

1880-81.

VICTORIA.

INTERCOLONIAL CONFERENCE.

DESPATCH AND AMENDED MEMORANDUM * FROM THE HIGH COMMISSIONER FOR THE WESTERN PACIFIC, RELATIVE TO THE REPORT OF THE INTERCOLONIAL CONFERENCE REGARDING THE STATE OF AFFAIRS IN POLYNESIA, AND THE POWERS OF THE HIGH COMMISSIONER.

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY HIS EXCELLENCY'S COMMAND.

Western Pacific High Commission.

MY LORD,

Wellington, New Zealand, 19 May 1881.

I have the honor to enclose an amended copy of my memorandum of the 26th February, which I request may be substituted for that accompanying my letter of the 28th February.

In the original memorandum (p. 1, line 14) it was stated that the Conference had "desired" Lord Augustus Loftus to inform me of the appointment of the Committee, &c. To this sentence, as well as to the expression (line 20) that I had in reply desired His Lordship to thank the Conference for its communication, Lord Augustus Loftus took exception, as implying that he "received orders and directions" from the delegates of a Colonial Conference and from myself.

I do not myself consider that the word "desire" (which was only used to avoid a repetition of the word "ask") is open to such an interpretation, but as of course the meaning which it seems to be thought may be attributed to it was not that which I intended to convey, I cannot have any objection to the substitution of other words as to the construction of which there can be no difference of opinion.

I have, &c.,

(Sd.) A. GORDON.

His Excellency the Governor of Victoria.

(Enclosure.)

Memorandum by the High Commissioner for the Western Pacific.

I HAVE received from the Governor of New South Wales a copy of the Minutes of the Proceedings of the Intercolonial Conference lately held at Sydney. Among them will be found (p. 10, pp. 12, 13) the report of a committee chosen to consider a resolution calling attention to the state of affairs in Polynesia, proposed by the Hon. A. H. Palmer, and to examine the papers relating to the appointment of a High Commissioner for the Western Pacific.

On hearing that the Conference was about to enter on such an inquiry, I conveyed to Lord Augustus Loftus the expression of my opinion that some communication should be addressed to

* For original Memorandum, *vide* Parliamentary Paper No. 71 of present Session.

me upon the subject, and stated my willingness to afford any information which the Conference might require, and without which it was, I thought, improbable that the members of the committee could attain an accurate knowledge of the matters on which it was directed to report. My telegram was communicated to the Conference by Lord Augustus Loftus, who was, in reply, requested to inform me of the appointment of the committee, and that the Conference would willingly receive any information which I might desire to communicate to it. Though very ready to furnish the Conference with papers or statements of fact asked for by it, it was of course impossible for me to submit, unsought for, anything like defence or explanation of my own proceedings or conduct, to a body to which I was in no way responsible, and with which I had no official relation. I therefore replied by asking Lord Augustus Loftus to thank the Conference for its communication, and inform it that I should be happy to afford any assistance or information which might be desired. Of this offer no advantage was taken by the Conference; and on the same day on which it was made, the committee presented their report, in the preamble to which it is stated to have been prepared, "having before them the Commission to Sir A. Gordon, the High Commissioner and Consul-General for the Western Pacific"—a statement in which it appears to me that some error must be involved.* The resolutions recommended by the committee were, with some modifications, adopted by the Conference.

These resolutions have been submitted to the consideration of the Imperial Government, from which they will no doubt receive that respectful attention which is due to any recommendation emanating from such a source. It would be out of place here to discuss them; but the appendix to the report of the committee contains matter which may with advantage receive some immediate comment from me.

The contents of that appendix are somewhat singular. No statistical table is given from which information could be drawn as to the comparative frequency of murders among Europeans in the Pacific at different times, or the proportions which such murders bore to the number of European residents in those seas now and formerly,—official or authentic accounts of massacres recently perpetrated are altogether wanting, and other evidence in support of the resolutions of the committee will be as vainly looked for. All the information given with regard to outrages recently committed is contained in a telegram without date, and addressed to some unnamed individual,† reporting the murder of the crew‡ of the *Prosperity*, and four newspaper paragraphs containing details of other murders. These paragraphs are undoubtedly written in good faith, and no doubt contain the best account obtainable by the editor of the transactions to which they refer; but it is often found on subsequent examination that such narratives are, owing to very obvious causes, not always to be relied on as strictly accurate.

The appendix further contains two leading articles from the *Sydney Morning Herald* (pp. 27, 28), which, though based on erroneous assumptions, are fairly and temperately written; and no fewer than eleven extracts from the *Sydney Daily Telegraph* (pp. 23 to 25, and 29 to 35), censuring in strong terms the High Commissioner, the Commodore commanding the Australian squadron, the Chief Judicial Commissioner, and the Government of the colony of Fiji. There is also a letter in a similar strain addressed to the secretary of the Conference by a person of the name of Thomas, the avowed author of two of the extracts taken from the *Sydney Daily Telegraph*, with which newspaper I am informed he is closely connected,—a statement which the internal evidence afforded by the remainder of the extracts from that journal would incline me to believe to be well founded.

It is not easy to understand the object of the Conference in reprinting and giving official circulation to these articles. It is certainly not to convey information as to facts, for they contain none. It cannot be to exhibit the state of popular opinion in Australia, for the extracts are almost exclusively taken from a single Sydney journal; and even in the choice of these extracts care has been taken to limit them to such as reflect but one opinion; the anonymous letter of "A Queenslander" (p. 35), containing little but invective, being inserted, whilst that of a man so competent to speak on the subject as the Rev. Mr. Murray, referred to at p. 31, is omitted. I am not well acquainted with Australian journals, but I know that some of them entertain different views from those advocated by the *Sydney Daily Telegraph*.

Yet it would be inconsistent with the respect due to a Conference consisting of the leading officials of the Australian colonies to suppose that they intended to imply their own adoption of statements they have had no means of verifying, their concurrence in recommendations that the Solomon Islanders should be "cruelly and relentlessly massacred,"§ or their participation in attacks on officers of the Imperial Government, on high judicial authorities, and on the Government of a colony unrepresented at the meeting of the Conference.

But, whatever the motive of the publication, the fact remains that grave charges against the High Commissioner for the Western Pacific, the Commodore commanding on the Australian Station, the Chief Justice of Fiji, and the Government of that colony generally, have been reprinted at the public expense by order of the Conference, and have been presented by command

* My commission as Consul-General, and my full powers under the Great Seal, have never been published or communicated to any colonial Government; nor am I aware that my commission as High Commissioner has been so, though such may be the case.

† This telegram is said, but evidently erroneously, to be addressed to the Hon. A. H. Palmer, who is referred to in it as a third party. "As Mr. Palmer is in Sydney, please get him to use influence." This is not the language of a telegram addressed to Mr. Palmer himself.

‡ Not British subjects.

§ "The course that the captain of H.M.S. *Emerald* is called upon to pursue certainly does not form part of a civilized programme. Our people have been *cruelly and relentlessly massacred*, and the *Solomon Islanders must be dealt with in like fashion*. All ideas founded on Exeter-Hallism must be thrown to the winds. If they are not, the *Emerald* might as well remain at Farm Cove" (p. 30).

of the Governor to the Parliament of New South Wales, and probably to the Legislatures of other colonies, thus giving to them a wide-spread official circulation. These facts, and the deduction which will inevitably, if erroneously, be in many quarters drawn from them, that the Conference adopts the charges made, render it, I think, desirable that their want of foundation should at once be made apparent.

The charge preferred against the High Commissioner is twofold. It is alleged that he has, on the one hand, shown undue leniency towards the misdeeds of natives, and, on the other, has shown equally undue harshness in the punishment of British subjects when charged before him with offences against natives.

The jurisdiction of the High Commissioner extends over all British subjects in the Western Pacific, but over British subjects exclusively. He has no authority whatever to deal, whether judicially or in his executive capacity, with the offences of natives of islands not under the dominion of the Crown.

The High Commissioner has on more than one occasion pointed out to the Imperial Government that, unless a jurisdiction were created competent to take cognizance of offences committed against British subjects in the Pacific beyond Her Majesty's possessions, the infliction of punishment on British subjects for outrages against natives in the same regions, when such cases came before the High Commissioner's Court, was sure to excite on their part not unnatural irritation, and a sense of being treated with injustice; for it is hardly to be expected that men of the class to which most British subjects in the Pacific belong should understand that Great Britain has an interest in their good conduct and the maintenance of legal restraint over their actions, quite apart from any sympathy with natives or care for their protection. The reply returned to such representations has invariably been that, in the opinion of the Law Officers of the Crown, insuperable obstacles exist to any assumption of jurisdiction by Her Majesty over others than British subjects, beyond the limits of Her Majesty's dominions. Nevertheless, although Her Majesty's Government does not see its way to overcome the real as well as the formal and technical difficulties with which any such exercise of authority is undoubtedly surrounded, the necessity for exceptional dealing with exceptional circumstances is not, I think, unrecognized. Meanwhile, however, the High Commissioner is absolutely powerless to take judicial cognizance of any offence committed by a Polynesian native not also a subject of Her Majesty.

Should the proceedings of any native community be such as can be deemed acts of war, they can be dealt with as such by Her Majesty's naval force on the station. Until a few months since, the Commodore acted in such matters entirely independently of the High Commissioner, and on his own responsibility alone. Lately he has been instructed, wherever possible, to consult the High Commissioner before proceeding to active hostilities; but no proposal made by him has ever been objected to by the High Commissioner, between whom and the Commodore there exist the most entire confidence and agreement. Although, however, his concert is in certain cases required, the High Commissioner has no control whatever over the movements of the Australian squadron, nor can he direct the course or hasten or retard the sailing of a single vessel.

It is therefore manifest that the High Commissioner has had no opportunity of showing either leniency or severity towards natives, and that it has been made a matter of reproach to him that he has not exercised a jurisdiction which he has been strictly forbidden to assume, and that he has abstained from issuing orders which he has no right to give, and to which he could neither enforce nor claim obedience.

The charge of undue harshness towards whites has next to be considered.

The whole of the cases referred to at pp. 23, 24 were tried during my absence in England, and, even assuming them to be accurately described (which it will presently be shown they are not), they would not in any way affect the High Commissioner. Since my return to Fiji, in 1879, the cases brought to the cognizance of the Court* have been but four, in only one of which a white man was concerned. That white man was the Rev. George Brown, who has certainly no reason to complain of undue severity on the part of the High Commissioner's Court. Two of the other parties tried before the Chief Judicial Commissioner since September 1879 were colored subjects of Her Majesty: of these, one was convicted of murder and sentenced to death; the other, charged with theft, was acquitted, the only evidence against him (his own confession) being shown to have been extorted by threats and torture inflicted by Europeans. The fourth case was that of Aratuga, a Polynesian, concerned in the murder of the mate and labor-agent of the *Mystery*, who was brought to Fiji as a prisoner by Her Majesty's ship *Conflict*, and was put on his trial before the High Commissioner's Court, in the hope that some ground for claiming jurisdiction over him would be discovered. But no escape could be found from the conclusion that he was beyond the authority of the Court, a view the correctness of which has been emphatically confirmed by the highest legal authorities in England. Another case, that of a half-caste Tongan, charged with the murder of another half-caste, and of the captain of a German vessel, was never brought before the Court at all, it being clear that it was equally out of its jurisdiction, and the man was handed over to the Tongan authorities to be dealt with by them.

It hence appears that, whilst a harsh exercise of the judicial powers he undoubtedly does possess over British subjects is imputed to the High Commissioner, but one white man has been judicially before his Court since the return of the High Commissioner to the Pacific, and that he was treated with marked indulgence. This branch of the accusation, therefore, fails like the other, being as destitute of evidence to support it.

* I do not take into account petty cases between British subjects themselves, heard before the Deputy-Commissioner's Courts at Apia and Nukualofa.

I should wish to believe these charges to proceed from the levity of ignorance rather than from conscious malice ; and it may be well here to note that the objects of the Western Pacific Orders in Council, and of the institution of the High Commissioner's Court, appear to have been frequently much misunderstood. It was not by any means "to see that whites were protected from outrages by natives" (p. 29), and but in a secondary sense "to protect natives from outrages by whites" (p. 29), that that Court was formed. It was principally designed to provide means for the settlement of disputes between white men themselves, and to prevent Her Majesty's subjects from breaking Her Majesty's laws. It was found that in Samoa, in Tonga, in the New Hebrides, and in other places, small communities of British subjects were springing up, over which no court had jurisdiction and no law had force. Debts were incurred, and the debtor could at pleasure evade his creditor's claim ; contracts were entered into, the performance of which could not be enforced ; wills were made which could not be proved ; disputes arose as to successions which could not be settled ; crimes were committed, which either escaped punishment altogether or were dealt with by a lynch law demoralizing to those engaged in it. It was primarily to remedy this state of things that the Deputy-Commissioners' Courts under the High Commissioner were established at Apia and Nukualofa. It was no doubt also an object that the letter and spirit of the Western Pacific Acts should be carried out by Her Majesty's subjects, and that the Court should enforce their strict observance ; but no one who looks carefully at the Orders in Council can fail to perceive what was their primary object—the establishment of a court to which British subjects who had no *locus standi* before any other judicial tribunal might resort.

It may be said, and truly, that large executive and *quasi*-legislative powers have been lodged in the hands of the High Commissioner, distinct from his judicial authority. Their grant was prompted by the belief that the State would fail in its duty if it neglected to claim and to exercise control over British subjects who had escaped from the restraints of all constituted authority, and few will say that such action was uncalled for.

The same charges of over-leniency on the one hand and over-severity on the other that are brought against the High Commissioner are also preferred against Chief Justice Gorrie. Of these, the former may be met by the same simple and complete answer that, as regards other than British subjects, he has no jurisdiction. He has, in the case of Aratuga, endeavored to establish such a jurisdiction, and has failed to do so. The charge of over-severity can only be properly appreciated after a careful examination of the various cases tried before the Court, an examination the want of which is certainly not supplied by the misleading paragraphs to be found on pages 23 and 24 of the Blue Book containing the Minutes of the Conference. Captain Kilgour was punished, not for "recovering a boat which the natives endeavored to retain" (p. 24), but for destroying villages belonging to a tribe which, as it turned out, had committed no offence, and for levying war on his own account while one of Her Majesty's ships was in his immediate vicinity. Captain Waite's case is also gravely misstated. Captain Daly, whose treatment is termed "arbitrary," but against whom two previous sentences are recorded in the Supreme Court of New South Wales, was convicted of what is euphemistically styled "detaining a native on board without his consent" (p. 24), or, in other and plainer words, kidnapping him,—an offence which may not appear to unprejudiced persons one of so venial and trifling a character as it does to "every one" of the clique to the passions and prejudices of which expression is given by the article in question.

It is not my intention to enter into an examination of Chief Justice Gorrie's proceedings, or to attempt to review, extrajudicially, the sentences deliberately pronounced after full and careful inquiry by a competent Court, presided over by a fearless and enlightened Judge ; but I think it only right to record my own grateful appreciation of the services he has rendered as Chief Judicial Commissioner, and my entire conviction of the correctness of the judgments he has pronounced. I am, moreover, confident that most men will concur with me in regretting the official circulation of anonymous attacks on the Chief Justice of the Supreme Court of an Australasian colony. Had reflections upon the conduct on the Bench of a Chief Justice of any one of the older colonies, whether great or small,—New South Wales or Victoria,—Tasmania or Western Australia,—been published in a similar manner, the impropriety of the act would have met with universal reprobation, and that the more emphatic, if the colony, the chief judicial authority of which was thus assailed, had happened to be unrepresented at the meeting of the Conference.

The charge of culpable indifference to the lives of Englishmen, which is that brought against Commodore Wilson in the articles of the *Sydney Daily Telegraph* selected for republication, is one which that distinguished officer may well afford to treat as lightly as that of cowardice preferred against him in the same journal, but which the Committee has not included in its collection of extracts. Notwithstanding the contempt with which he must regard such slanders, the gravity unfortunately given to them by their official publication may not impossibly induce him to take some public notice of the attack. I will not attempt to anticipate the observations he may think proper to make, should he do so, but will content myself with the remark that there appears to be nearly as much misapprehension as to the degree of protection which British subjects are entitled to anticipate in savage regions as with regard to the functions of the High Commissioner. Strictly speaking, none but those who are employed on public duty are entitled to such protection. Where, as in the recent case of the "Sandfly," men, not of their own free will, but in the service of the State, and in obedience to the command of its constituted authorities, are placed in situations of peril, the Government they serve may be said to be bound to protect them, and to punish injury done them whilst employed in its service ; but where men for their own personal objects, and in defiance of warning, withdraw themselves from the operation of the institutions of

their own country, they take their lives in their hands, and have no right to expect to receive the forcible support of the State whose sheltering protection they have left. Private parties cannot be allowed thus at their own will to force the hand (if such an expression may be used) of their Government. This is clearly understood in other parts of the world, and I know not why different maxims should prevail in Polynesia. The doctrine that, wherever a trader thrusts his way he is to be followed by a man-of-war for his protection, and that if he loses his life in the pursuit of his enterprise, the Naval Force of the country is to be employed to avenge his death on the countrymen of those who have killed him, is an altogether novel one.

When in Melbourne, in 1878, I explained this at some length to the promoters of an association for an expedition to New Guinea, then contemplated, and stated that it was "my duty formally and emphatically to declare that the British Government disclaim all obligation to protect or interfere on behalf of persons voluntarily placing themselves in positions of danger in a savage country, and that those who enter on such enterprises do so at their own risk and peril." I subsequently received official intimation that the language I then used was entirely approved by the Imperial Government, of which it correctly expressed the views.

Such also has most emphatically been the language of the United States Government, and of the jurists of that country, who have very clearly laid down that those engaged in such adventures forfeit all right to claim the protection of the State. But, though such protection cannot be claimed as a right, there are no doubt many cases in which it ought to be, and practically would be given. Each case must, however, depend on its own merits, and those merits it is often no easy task to ascertain. It by no means follows that, in every instance where a white man's life has been taken, a *casus belli* has been established. It is often difficult to assign any immediate cause for the act, and there is too frequently an entire absence of reliable evidence as to the attendant circumstances.

In many cases I have no doubt that massacres are perpetrated to gratify a mere savage thirst of blood, or to satisfy the cupidity excited by a display of tempting goods; but this is not always so. The murder may have taken place in some tribal broil—it may have been the result of previous quarrels—it may even be the just punishment of a grave offence, or the natural result of serious provocation—it may have resulted from a breach of customs having the force of law, of the consequences of breaking which the murdered man may have been himself well aware. The punishment of death is naturally and indeed necessarily often resorted to by barbarous nations who have no means of carrying out long sentences of imprisonment or other secondary punishments. It is true that in England murder and treason are now the only capital offences, and that we are apt to regard the infliction of death for other crimes as unjustifiable; but it can hardly be a subject for wonder or complaint if among savage tribes punishments should be as sanguinary as among ourselves fifty or sixty years ago. Where a white man is put to death by savages for an offence which, if committed by one of themselves, would, with the general assent of the community, have entailed a similar penalty, it would generally (though not always) be difficult to say that an "act of war" had been committed.

The questions thus raised are numerous and intricate, nor is it my object now to follow them up in detail, but merely to point out that the apparently popular notion that, whenever an English trader or traveller is killed in Polynesia (though not if he be killed in any other savage region of the world out of the Queen's dominions), it is the duty of Her Majesty's Government to despatch an armed force to avenge his death, is not altogether a sound one, and that the expediency and propriety of such action entirely depend on the special circumstances of each particular case.

The graver charges of neglect of duty, and misuse of power, on the part of the High Commissioner, the Commodore, and the Chief Judicial Commissioner, being disposed of, the loose and inaccurate assertions on particular points scattered through this appendix are in themselves little worthy of notice; but it may perhaps not be amiss to correct a statement so easily susceptible of correction as that on page 23, where we are told that "the natives are protected* by a High Commissioner and many Deputy-Commissioners, costing Great Britain some £20,000 annually." Now, the fact is that there are but two Deputy-Commissioners, one of whom receives a salary of £450, and the other a salary of £100, in addition to his pay as Her Majesty's Consul at Samoa. The Chief Judicial Commissioner receives £300 a year in addition to his salary as Chief Justice. The High Commissioner and Assistant High Commissioner draw no salary; and the whole cost of the working of the High Commission, including the expenditure incurred in the employment of Her Majesty's ships in passages, &c., has not in any year since its establishment amounted to £3,000, the amount annually voted for the purpose by the House of Commons.

Though not very closely connected with the subject of these outrages, the extracts from the *Sydney Daily Telegraph*, and acknowledged letters of Mr. Thomas, which the Conference has deemed worthy of reprinting, will be found to contain a good deal of severe censure on the Government of Fiji in respect of the policy it has pursued in the internal administration of that colony. It is a policy which in India, as well as in Fiji, is misunderstood and misrepresented by those who, arrogating on the score of their color an unlimited deference and obedience from their darker fellow-subjects, condemn institutions and chafe under restraints which are fortunately maintained with unimpaired rigidity by those to whom the destinies of that empire are confided. India is a great continent containing many millions of inhabitants; Fiji, a small group of islands inhabited by less than 120,000 people; but the same principles of government apply to both. The circumstances of the acquisition of Fiji, like those which have attended the rise of English power in India, impose a moral obligation to govern in the interests of its people. Fiji, like India,

* That the protection of natives is not the primary object of the High Commission I have already shown.

is no mere colony of white men planted on an empty waste, or for the first time cultivating a land hitherto only roamed over by nomadic savages. It is the home of a large and industrious settled population, who own and till the soil, and possess a social and political organization, by means of which the country is easily, peaceably, and cheaply governed. In Fiji, as in India, policy teaches the same lesson as justice, and proclaims, in tones not to be mistaken, that, when a native population outnumbers by more than fifty to one the strangers dwelling among them, it is not safe, even if it be practicable, to take out of their hands large powers of local self-government, and that to do so would inevitably cause wide-spread discontent, and, in the end, armed collision.

Both in India and in Fiji, however, there are those who would grant to every white man, however irresponsible, the privileges belonging to the members of a ruling caste, who regard as "insolence" any independence of action on the part of the native landholders of the country, and as treason to white supremacy the retention in native hands of executive or judicial power—who would rather see crime committed with impunity than permit the sacredness of the "dominant race" to be profaned by the touch of a native constable (p. 22).

It is not surprising that to such men the policy pursued with marked success in Fiji should be distasteful, or that they should express their disapproval loudly; but it is, I think, to be deplored that their reflections on the Government of a colony not represented at the Conference should be republished under the auspices of that body. What would be thought of the good taste or propriety of the conduct of this Government, if it had reprinted and laid before the Legislature newspaper attacks on the internal administration of an Australian colony; the letters, for instance, which have lately appeared in the Sydney press as to the alleged systematic and wholesale murder of natives in Queensland; or the attacks upon members of this or that Cabinet which might be gathered from the Victorian Press during the heat of an election contest? Yet what has been done in this instance is practically very similar; and Fiji, as an Australasian colony not less sensitive to her rights and dignity than those of larger area and some years' longer history, has a right to ask why, if her affairs were to be a topic of discussion, she was not herself invited to take part in the Conference; and is entitled to protest against a course calculated to excite popular prejudice against the highest officials of her Government, especially those occupying the bench of justice.

I cannot conclude this memorandum without expressing my regret that the Conference should not have availed itself of my offer, at least so far as to make some inquiry of me into the nature of the powers possessed by the High Commissioner. Had this been done, I do not think its members would have collected, and thought worthy of republication, allegations which they would then have known to be based on misapprehension. But I still more regret that, if it was originally intended that the subject of those powers should be discussed at the Conference, it should not have been mentioned in the circular sent to the different Governments, as a matter to which attention was to be invited, and that no intimation should have been given to the High Commissioner himself. The subject was certainly one of sufficient importance to warrant such mention if its introduction was contemplated. If, on the other hand, the question was raised without previous concert, it is, I think, still more unfortunate that the Conference should not have declined to enter into its consideration without previous communication with those from whom alone it could obtain accurate information on, at all events, some of the points raised, and that it should have allowed itself to be made a medium for the dissemination of slanders on men holding high and responsible situations, who had received no intimation of the intention of the Conference to investigate the nature of the functions committed to them by the Crown.

A. H. G.

Wellington, 26th February 1881.