

(No. 49.)



1858.

T A S M A N I A.

M R. K I R W A N.

RETURN TO AN ORDER OF THE HOUSE MADE ON THURSDAY,
OCTOBER 7, 1858.

(Mr. Balfe.)

Laid on the Table by Mr. Colonial Treasurer, and ordered by the House to be
printed, 12 October, 1858.



LETTER from J. W. KIRWAN, ESQ., to the Honorable the COLONIAL SECRETARY.

Kingston, 9th October, 1857.

SIR,

I HAVE the honour, in reference to your letter of the 24th June, 1857, informing me that a considerable reduction in the number of Police Magistrates had been approved of, and a new distribution of Police duties, by which my services would not be required beyond the 1st August, 1857, to make the following observations as a respectful Protest against the course which has been thus pursued towards me.

1. That I arrived in this Colony in September, 1839, bringing with me the highest testimonial from the Government of India, where I served, and have been nearly eighteen years in the Public Service; having, during a portion of the time, held offices of high responsibility and honour, viz., those of Private Secretary and Clerk of the Executive and Legislative Councils, and have received the public thanks of the Governor for the satisfactory manner in which I had discharged the duties of my office.

2. That in October, 1851, I was appointed to be Police Magistrate of the North and South Huon Districts, at a period when men of the most desperate character were at large as bush-rangers, and when, from the unprecedented number of Prisoners of the Crown in assigned service, the districts were in a most disorderly and turbulent state, (more especially the Franklin or South Huon), and life and property most insecure.

That the measures which I adopted to restore order, to repress violence, and to afford protection to life and property, met with the approval of the Government, and the approbation of the inhabitants.

3. The very arduous nature of the duties which had to be performed in two extensive districts, and the scattered nature of the population, induced the Government in 1853-4 to appoint a second Magistrate to assist me by taking charge of the South Huon.

4. Upon the occasion of my thus relinquishing charge of the South Huon, the respectable inhabitants presented me with an Address, accompanied with a service of plate, expressive of their sense of the efficient and impartial manner in which I had discharged my duties as Police Magistrate.

5. It might, therefore, naturally and justly be expected that, in a new distribution of Police duties, by which the two districts were to be committed to the charge of one Magistrate, my services would have met with due recognition by the Government, and that regard would have been had to the claims of the Officer who had previously discharged the duties of both districts to the satisfaction of the inhabitants, and that he should revert to his original position.

6. In my particular case, however, you have, as it appears to me, departed from those rules and principles which have hitherto, by deferring to and recognising the claims of efficiency and seniority of service, governed the distribution of Public Offices in Her Majesty's Civil Service in this and every other Colony, inasmuch as you have appointed to the charge of both districts an Officer who was taken from the Convict Department at Port Arthur, where he officiated as Catechist, and who, having been scarcely three years in the service, had no claim whatever upon the Colony, to the prejudice of an Officer who had served the Colony for a period of 18 years.

7. I may here observe that Sir William Denison, in appointing Mr. Walpole, informed him that, in the event of Magisterial reductions which were anticipated, he must be prepared to retire as one of the juniors in the service: such I learn was contemplated by Mr. Champ also; and your immediate predecessor, Mr. Gregson, brought my name under the notice of His Excellency the Governor as the Officer who should have the sole charge of the North and South Huon in his scheme of Retrenchment; that is, assuming that one Magistrate could possibly efficiently discharge the duties of both Districts.

8. Such having been the intentions of your immediate predecessors in the Government, allow me, with great respect, to inquire what cause has arisen since your accession to office which could justify yourself and your colleagues in setting aside their arrangements, and committing, as respects me, an unprecedented act of injustice as well as injury?

9. You have had no official correspondence with me, nor have you received any complaints respecting me in my official capacity, beyond the statements of two drunken men who were instigated by Mr. Balfe, and to which I shall more particularly reply in another portion of this letter.

10. While I am not unwilling to recognise your anxious desire to reduce the public expenditure, I am nevertheless constrained to observe, that the proposed scheme of dispensing with my services, and retaining a junior in the service in my own District, so far from being a reduction in the expenditure, is a direct and positive increased charge upon the Revenue, inasmuch as the public funds are to be subjected to the charge of—1st, an annual Pension to me; 2nd, an annual charge to a Magistrate to visit Kingston from Hobart Town; and 3rd, an increased annual amount of travelling expenses to Mr. Walpole,—thus involving an additional expense to the Revenue of about £250 per annum above what would be required by my retention of office. Mr. Walpole having no services in the Colony, his reduction would involve no charge upon the Revenue.

11. I have thus established my just right to be retained in my original position of Police Magistrate of the North and South Huon, and demonstrated, as regards reduction in the expenditure, that an increased, not a diminished outlay, is the result of your arrangement.

12. On the 26th June, I had the honour to address you a letter requesting to be informed why my services were not to be required beyond the 1st of August, when there were so many Police Magistrates junior to myself in service.

Your reply was as follows:—"That the Governor and Council do not deem themselves bound to defer to the consideration of seniority, but solely what appears to them most conducive to the public advantage."

13. You will permit me respectfully to express my dissent from, and to controvert, the position which appears to be assumed in this paragraph. I entertain no doubt for a moment of your desire to do that which you may conceive to be for the public advantage; but I deny that, in my particular case, the proposal to supersede me is conducive to the public advantage; for my services as Police Magistrate have received the public approbation and acknowledgment of nearly every respectable person in the North and South Huon,—not once only, but on several occasions has this public recognition been made.

14. The fair and legitimate conclusion to be drawn from such testimony is, that I discharged my duties as a Magistrate with efficiency, impartiality, and benefit to the Public Service: and were further evidence wanting upon this point, it will be found in the fact that, at the very moment when the prestige of official authority had ceased to exercise any influence over men's minds, the Inhabitants of the District over which I had presided for six years have unanimously raised their voice, through the Petitions which have been transmitted to the Government, against my supercession; convinced that that supercession has been no less unjust to myself personally, than inimical to the public interests.

15. I am desirous now to address myself to the concluding portion of your letter of the 24th June, wherein you observe, "I am bound, in reference to the charges preferred against you to the Government, to say that, should they fail to be disproved, and should they appear to His Excellency in Council of sufficient gravity, the intimation I have given that your services will be dispensed with on the ground of necessary reductions, and by which you would in ordinary circumstances be entitled to compensation, must not be interpreted to compromise the Government in respect to the course which it might find necessary to pursue towards any Officer in its service for official misconduct."

16. It has hitherto been the invariable practice of the Government when complaints, however just or however frivolous they might be, have been made against a Public Officer, at once to transmit them to that Officer for his explanations, and to reserve its opinion and judgment in the matter until his explanation had been received.

17. This practice is founded upon the clearest principles of justice.

18. I regret to observe, however, that, in my particular case, so sound a principle should have been entirely lost sight of; and that, previously to writing the paragraph which I have quoted above, in which you appear to have taken for granted the truth of the statements of two drunken men, and to found upon them the imputation of "official misconduct," you did not afford me the opportunity of not only demonstrating their falsehood, which I have subsequently done, but showing that they had their origin in the malignant and vindictive spirit of Mr. Balfe, who had instigated them to make them.

19. This course would appear to have been due to the position and character of the Officer whom these statements were intended to affect, and to which you had, in your letter on the 24th June, attached that importance which induced the observation therein that, unless they were disproved, my compensation would not be granted.

20. The complaints of these two men, one of whom had been fined in October, 1856, and the other in May, 1857, for drunkenness and indecency, were dated 4th June, 1857, and were transmitted to your office by Mr. Balfe 8th June, 1857, and were not forwarded for my observations until the 24th June, thus allowing a period of 16 days to elapse.

21. I must not omit here to state, that I have been informed that the complaints of these men had been made the subject of consideration by the Ministry several days before they were transmitted to me for explanation.

22. I received these complaints on the 25th June, with your memorandum calling for my observations; and on the 26th June I received your letter dispensing with my services, and containing the prejudging and condemnatory paragraph I have quoted above. Thus the charge and the condemnation came, as it were, at one and the same time.

23. I cannot, therefore, but feel impressed with the conviction that these *ex parte* statements formed one of the grounds upon which my services were so summarily dispensed with.

24. I feel constrained to express my surprise and regret at the tone and style in which your letter to me of the 24th June has been couched,—a tone not less hurtful to the feelings of a gentleman than unjust towards a Public Officer, who, from the various positions he has held in the service of the Colony for a period of 18 years, might not unreasonably have expected to be treated with some degree of consideration. Nor has the feeling of surprise been diminished when I consider that, although you received on the 30th June my explanation in respect to the frivolous and unfounded complaints in question, you have not up to the present moment thought proper to extend to me the courtesy of an official acknowledgment of my letter, as to whether my explanation was or was not satisfactory.

25. The absence of this simple act of justice was calculated to lower in the minds of the people the position of a Magistrate in his own District, and to afford ground for the belief of the report so industriously circulated by Mr. Balfe, that the complaints of these two drunken and indecent characters had operated in some measure with the Government in dispensing with my services.

26. As having a direct bearing upon the subject, allow me to contrast the consideration which I have received from the present Government with that which has been extended to the Shipping Master in Hobart Town.

27. In answer to the complaint which has recently been made to the Government against that functionary, the Colonial Treasurer makes the following observations; viz.—“In reference to the allegations against the present Shipping Master, while the Government would at any time be bound to institute inquiry into the conduct of any Public Officer against whom specific charges were preferred, it deems that it would be highly inconvenient, not to say unjust, were it to countenance mere vague accusations, more particularly against any functionary whose duties to the public the more zealously and faithfully they were executed, the more exposed him to the disfavour of particular sections of the community.”

28. A principle more sound or more just for the protection of Public Officers than that enunciated in the above paragraph could not possibly be established.

29. If there be any Officer whose duties to the public “the more zealously and faithfully they are executed, the more he is exposed to the disfavour of particular sections of the community,” that Officer is a Police Magistrate: for he is more especially so exposed amongst a population such as that of the Huon, where the example and influence of even one bad man tends to create dissension, and to disturb the minds of the unwary and the ignorant.

30. In my case, what are the facts? The complaints of two drunken men are sent in to the Government by Mr. Balfe, with the avowed object of influencing its decision, at the very time when he knew that Police reductions were under its consideration. These complaints were not only vague, but proved to be utterly unfounded and malicious, and prompted by a bitter personal enemy; yet the Government not only entertained them, but even withheld from me the opportunity of refuting them until the Magisterial reductions were consummated.

31. I deem it only right now to put you in possession of the manner in which those unfounded statements originated. On the 25th May last, shortly after the recent Huon Election, and the day of Mullins's trial, Mr. Balfe was on this Township. He entered into a correspondence with a person named Pointon, a carter, residing near the Town, in order that

he might communicate with Mullins and Williamson, the men whose statements I have already alluded to, and to fix a day for meeting him (Mr. Balfe) in Hobart Town. Mr. Balfe met these men by appointment on the 4th June. He took them to Mr. M'Minn, the Solicitor, and ultimately to the office of Mr. Lees, a Solicitor also, where he got them to make certain statements—observing that “if it cost him £500 he would smother Mr. Kirwan:” that he then took them to a public-house, gave Williamson liquor and Mullins £1, telling him that he would pay his expenses for coming from Huon Island, and that he would see him another day. Mr. Balfe, it further appears, wrote to Pointon to inform Williamson that he, Mr. Balfe, would “give him the sum of £15 and his travelling expenses if Mr. Kirwan were dismissed.”

32. You could not possibly be aware, when you received these men's statements on the 8th June, that they originated in such disgraceful proceedings on Mr. Balfe's part—who, it appears, not content with conspiring with these parties, and making them the tools of his vindictiveness in framing false statements, but has also given them a consideration of a pecuniary kind to do so.

33. Mr. Balfe dates his letter to you from Port Cygnet, 8th June, transmitting these men's statements. This is a deliberate attempt to deceive. He was not at Port Cygnet on the 8th June, nor had he been there for some days previously and subsequently, but he was in Hobart Town, and about the Public Offices. His object, therefore, in falsely dating his letter from a place where he was not, was to make it appear that those men, who resided nearly forty miles apart, had merely forwarded their complaints to him as a Member of the House of Assembly; whereas, in fact and in truth, he was in personal intercourse with them in Hobart Town, and urged them to make their complaints.

34. With respect to Mr. Balfe, it may be sufficient simply to observe, that his repeated acts of violence have been the subject of judicial inquiry in the Supreme Court and the Police Court of the Colony; that his habits of intemperance are equally notorious; and it is not, therefore, difficult to understand why he should sympathise with men of similar habits to his own, or why he, who has so frequently rendered himself obnoxious to the Law, should seek to disturb and agitate the minds of men who had, from time to time, violated that Law, by impressing them with the belief that they were harshly and arbitrarily treated when the authority of the Law was simply and justly administered, and vindicated by the repression of crime in their particular cases.

35. To disturb the peace of the community,—to set law and order and constituted authority at defiance,—has been the prominent feature in the career of Mr. Balfe since his residence in this Colony.

36. In furtherance of his fiendish and malignant purpose, you cannot fail to observe that Mr. Balfe has, in his letter of the 8th June, not scrupled to resort to the base course of invading the sanctity of domestic life, by an insinuation which stamps him as a most wickedly disposed person, and deserving the reprobation of every right-minded man.

37. In concluding my remarks upon Mr. Balfe's conduct, I must not omit to state that on the 25th July, when a Deputation in favour of my retention in office waited upon you, he publicly boasted in Hobart Town that, if your Ministry retained me and dispensed with Mr. Walpole's services, he “would turn round and oppose them to the utmost.” In his letter published in the *Advertiser* of the 7th July, under the signature of “A Paling,” there appears the following passage:—“The axe is laid to the root of the evil at length; and all the surreptitious petitions, addresses, or remonstrances that, either by compulsion or delusion, can be got up against the Ministerial arrangement in reference to the Huon District must not be allowed to influence the present determination of the Executive. Let Mr. Kirwan's friends (?) try the Address dodge, and very soon they will find its influence gone.”

38. The object which Mr. Balfe had thus in view was to indicate the possession of such an influence with the Ministry as to induce the belief that whatever arrangement he might suggest would be carried out. Nor can the positive tone in which he speaks in the above paragraph of the intentions of the Ministry escape observation. He remarks in a former part of the same letter, that “Mr. Kirwan's official explanations are all open to inspection now;” and he has publicly boasted in the Huon, that he has recently been permitted to have access to the records of your office, and to obtain copies of whatever correspondence passed some years since between the then Government and myself, partly having reference to his conduct and partly having reference to other subjects, and he has shown that correspondence, openly assuming this to be the fact.

39. The course which has thus been adopted towards me of handing over to a person of Mr. Balfe's character, or indeed to any one having a malignant and vindictive purpose to effect, copies of correspondence sent in by a Public Officer to a former Government in the strict discharge of his official duty, and penned in strict confidence and reliance on their sacred character, in the mind of that Government, appears to me to be one of a most unprecedented nature, one that has no parallel in the history of the public service, and such as has never been sanctioned by any previous Government.

40. It must tend to create a feeling in the minds of Public Officers subversive of all confidence. It is a course and a mode of action under which the reputation of no Officer, however high his character and position, however faithfully and zealously he may devote his best energies to the Public Service, can be safe. It is, if I may be allowed the expression, stabbing him secretly and in the dark, and while his hands are tied.

41. There is now another and an important point to be observed upon, viz., the statement that Mr. Knight recently lost his Election for the Huon through my influence, and that this formed another ground for dispensing with my services. I am bound to give to this statement the most unqualified contradiction; I neither directly nor indirectly influenced any elector. When Mr. Knight first stood forward as a Candidate for this District, he waited upon me at Kingston, and in express terms solicited my support. I declined, on the ground that as Police Magistrate I felt bound to stand strictly neutral. On Mr. Knight having accepted the office of Solicitor-General, and having to contest the Election in May last, he again waited upon me at Kingston, late in the evening, bringing with him the Writ, which he informed me that he had that day received from you. He consulted me on the subject of the election. I might have regarded the fact of that gentleman giving me the Writ as an imperative command from you to support his pretensions; but I conceived that my oath as Returning Officer imposed upon me a far higher duty, and I declined to support any Candidate. It is notorious that Mr. Walpole, the Police Magistrate of Franklin, did support Mr. Knight to the utmost of his power. It is equally well known that I did not support Mr. Knight, nor the opposing Candidate. Mr. Walpole's services as Police Magistrate have been retained—mine have been dispensed with. I draw no inference, I simply desire to state certain facts, and I leave it to others, to whom it more properly and legitimately belongs, to draw their conclusions from the facts so stated. I desire respectfully to inquire whether Mr. Knight, as a member of the Executive Council, was present when the subject of Magisterial reductions was under its consideration?

42. It is with regret that I now advert to the extreme want of courtesy which has characterised the present Government in my official correspondence with it.

43. I had the honour, shortly after your accession to office, to address you a letter in reference to the arduous nature of my duties, and to the inadequacy of my Salary. To that letter I have never received any reply.

44. About the month of June I addressed another communication to you, in which I drew the attention of the Government, through you, to the very bad quality of the provisions supplied to the Aborigines Establishment at Oyster Cove, to which I was Visiting Magistrate; and I submitted certain suggestions having for their object the comfort of the Natives, and their especial claim to the consideration of the Government. To that communication also I have not, up to the present moment, received any acknowledgment. The present reduced expenditure by which that establishment is conducted originated in a report which I had furnished for the information of His Excellency the Governor. It was in the performance of the duties connected with it that I had nearly lost my life, dislocating and fracturing my right collar-bone. This accident involved me in an expense of £100, yet I have never received any remuneration for those duties.

45. Surely, where an Officer devotes his time gratuitously to a certain public trust, and, from his anxiety faithfully to discharge that trust, endeavours to provide for the comfort of those committed to his care, it cannot be deemed inconsistent with the dignity of the Government whom he serves to simply acknowledge his letters, if even it should not intend to adopt his suggestions. It certainly is not for the advantage of the Public Service that he should be subjected to the indignity of its silence.

46. And therefore it is that I complain,—in the language, however, of respectful remonstrance,—that I have been subjected to a mode of treatment by you such as no Public Officer has ever experienced. I will now briefly recapitulate the grounds upon which I am compelled respectfully to remonstrate against the proceedings of the present Government in my particular case:—

1. That after 18 years' service I have been unjustly superseded in my office as Police Magistrate, in my own District, by an Officer advanced in years, appointed solely to assist me, with no claim upon the Colony, and with only one-sixth of my service; that Petitions from all parts of the District, signed by 247 persons, have been transmitted to the Government protesting against the injustice of my supercession, and demonstrating the necessity of my retention on the ground that it would be conducive to the public interests; that these Petitions appear to have had no weight in influencing the decision of the Government in my case, yet a Petition signed by 132 persons from Circular Head in favour of retaining the Police Magistrate there, who has been about 18 months in the service, has had the effect of retaining that Officer; and, further, that you have retained five Police Magistrates junior to myself as Magistrates, contrary to the principle which has hitherto regulated the service as respects Public Officers.

2. That the arrangement dispensing with my services, and retaining those of a junior, I have demonstrated to be no reduction in the expenditure, but to involve an increased, not a diminished charge upon the Revenue annually.

3. That you had not afforded me the opportunity of refuting the statements of two drunken and indecent characters, who were instigated by the malevolence of Mr. Balfe, until these statements, and his wickedly devised misrepresentations, had been allowed to influence and prejudice my case in the scheme of Magisterial reductions.

4. The contrast of the treatment which I have received at the hands of the present Government with that of the Shipping Master in Hobart Town.

5. The person in whom, and the manner in which, the unfounded and malicious statements already referred to originated.

6. Mr. Balfe's threat against the Ministry in the event of my retention; and his knowledge of their intentions respecting these reductions.

7. The allowing Mr. Balfe to have access to, and to obtain copies of, the records of your office, to consummate his vindictive purposes towards me respecting these reductions.

8. The loss by Mr. Knight of his Election for the Huon, alleged to have formed one of the grounds of my supercession, he being one of the Ministry.

9. The extreme want of courtesy which has characterised the present Government in the not acknowledging official letters which I had addressed to you, viz., 1st, upon the subject of the arduous nature of my duties and the inadequacy of salary; 2nd, in reference to the explanations which I had submitted upon the statements of the two drunken men above alluded to, as to whether they were or were not deemed to be satisfactory; and 3rd, in respect to the suggestions which I had submitted for the additional comfort of the Aborigines at Oyster Cove.

Before finally concluding, I think it only due to myself to annex a copy of a testimonial which I received on leaving India from Major-General R. Alexander, Judge-Advocate-General, of the Madras Presidency, as to the appreciation of my services there; a testimonial which the public will recognise as one of no little value as coming from so high a quarter.

I also annex a copy of Sir W. Denison's testimonial, published in the *Gazette*, as to the efficient discharge of my duties as Clerk of the Executive and Legislative Councils.

I have the honor to be,

Sir,

Your most obedient Servant,

J. W. KIRWAN.

The Hon. the Colonial Secretary.

COPY of a Letter from MAJOR-GENERAL ALEXANDER.

Madras, 15th July, 1839.

MY DEAR SIR,

ON your departure for New South Wales, I cannot take leave of you without expressing my sympathy in the painful events which have lately occurred in your family, and in the necessity of your leaving India to seek health in a more congenial climate. By me your loss will long be severely felt; for I need hardly assure you that both in your public capacity as the head of the Judge-Advocate-General's Office, and in the character you have established in private life, I have ever had reason to appreciate your conduct, and the justness of the esteem which was felt for you by my predecessor in office. As, however, the necessity for your departure is so imperative that your physician assures me that each day of your stay in India is a risk, and that the renovation of your constitution in India is hopeless, I must acquiesce in the measures you have chosen to adopt, and trust that your plans will be as successful as they appear to me to be wisely laid.

Pray accept my best and sincerest wishes for your future happiness and welfare; and it will always be a satisfaction for me to know that, under the good guidance of Providence, your success in life is commensurate with the merit which has gained you the respect and esteem of,

Yours very faithfully,

(Signed) R. ALEXANDER,
Judge-Advocate-General of the Madras Army.

EXTRACT from a Letter from MAJOR-GENERAL ALEXANDER, dated Ootacamund (Madras), 19th December, 1846.

MY DEAR SIR,

FEW letters that I have received in the course of my life have given me greater pleasure than yours of the 7th August; and most heartily do I congratulate you on accession to a situation in which I trust and believe you will benefit the public interests, and advance your own happiness and honour. * * * * *

I hope your highest hopes may be fulfilled,—that high rank and well-used opportunities of usefulness may be not only the public reward of your merits, but also the comfort and happiness of your private life. Whenever you favour me with a letter, I shall be most happy thus to learn that I am borne in your remembrance as one who will always rejoice to hear of your welfare with the most lively interest.

Believe me, my dear Sir,
Yours very sincerely,

R. ALEXANDER.

J. KIRWAN, *Esq., Private Secretary,*
Government House, Van Diemen's Land.

GOVERNMENT NOTICE. No. 62.

Colonial Secretary's Office, 2nd July, 1849.

PETER FRASER, *Esq.*, having returned to the Colony, has resumed his duties as Colonial Treasurer and Collector of Internal Revenue; and Adam Turnbull, *Esq., M.D.*, has returned to his office of Clerk of the Councils.

The employment of J. W. Kirwan, *Esq.*, as Clerk of the Executive and Legislative Councils, having now terminated, the Lieutenant-Governor avails himself of the opportunity of notifying his satisfaction at the mode in which Mr. Kirwan has performed the several duties devolving upon him.

By His Excellency's Command,
(Signed) J. E. BICHENO, *Colonial Secretary.*

True copies,
J. W. KIRWAN.