

that similarly, there is in his official
conduct an spontaneous objection as to the
measures which might be taken by the
Govt against the offender, altho in his private
letter he refers to deportation in terms
from which it can only be gathered that
he would have regarded this as an
obvious step to take if he had been
sure of his power in the matter of the
S. J.S.'s emigration - that appears
+ appears to be a desire
to avoid embarrassing the
Govt in the matter of the S. J.S.'s
deportation. It is clear that the S. J.S.
had decided to depart & that
arranging the transportation for the
S. J.S. after that it was impossible
to resist the conclusion he refers to
his anxiety to avoid embarrassing
H. M.'s Govt but that it must have
been abundantly clear to him that
H. M.'s Govt would rather see
ground for his fears + that, on seeing
the consequences had passed since the tel.

1888 - 1889
draft of
document

of the 28th of July 1889 which the
S. J.S. intimated he desired to
depart H. M. Cole it seems impossible
to avoid the conclusion that the
Govt was anxious to avoid the
unpopularity of deporting H. M. Cole +,
feeling that to make it clear that
he was only acting under instructions
from home - + print at ^{with refer to the} ~~arrangement~~
in depth that a statement appeared
in the "Times" three days after the
issue of the warrant in which it was
stated that according to a telegram
received from the correspondent of the
"African World" at Nairobi H. M. Cole
was being deported from the colony
by order of the Governor acting on
instructions from the Colonial Office.
Add that it was with great regret
that the S. J.S. would be
that of the 11th of Sept. + that he
thinks that

June 2
in stated

of Better
1889

make a similar complaint in future.

M. J. R.

7/8

I must say that I think that the proposed copy should be subjected to destructive criticism of almost every point made in it. But surely it is better not to reply at present?

W. G. C.

Mrs Hancock.

As has said, & unless anything unforeseen arises here is, I think, nothing more that will necessitate a contrivance of confidential correspondence, and under these circumstances have inclined to think that it would be a good thing to answer this letter & get the incident closed.

The gravamen of our charge against Sir P. G. is as follows.

~~The following are the charges~~

The action you decided to take was (a) strictly legal. (b) in accordance with Sir P. G.'s ~~private~~ views as expressed in his letter. This action could have been carried out more promptly, & with less fuss but for the time Sir P. G. took.

Smaller & broader transplant in future

H. J. R.

7/8

I must say that I think that the proposed copy should be subjected to destructive criticism of almost every point made in it. But surely it is better not to reply at present?

W. G. C.

Mrs Hancock.

Debarred, & unless anything unforeseen arises here is, I think, nothing more that will necessitate a continuance of confidential correspondence, and under these circumstances I am inclined to think that it would be a good thing to answer her letter & get the incident closed.

The gravamen of our charge against Sir P. G. is as follows.

~~The charge against Sir P. G. is as follows.~~

The action you decided to take was (a) strictly legal. (b) an accordsome interpretation of Sir P. G.'s private views as expressed in his letter. This action could have been carried out more promptly, & with less fuss but for the time Sir P. G. took.

Mr Harcourt

You will
see the Sunday
Times quoted
the Deportation
warrant
incorrectly

LG

10/10.

Yes: the warrant is
quite satisfactory

H 11-10-11

In private his ~~expressed~~ ¹⁷⁷ views appeared to be
in sympathy with ours, his official action was
almost directly antagonistic. He caused
delay, he gave not the slightest assistance,
& the climax was reached in his telegram
of September 5 & the almost simultaneous
appearance of the paragraph in the Times.

For all this, it seems true, his
letter of Sept 15 furnishes no justification
or explanation. and I think best in
answering it replying it wd be better
rather to state our case than to trouble
needlessly to the points he raises in that letter.
For this purpose nothing wd be better than
the admirable statement of the facts
contained in Mr Butlers draft for the
private letter that was to have been sent.
Up to the middle of ^(of the Henry) page 4 that letter
hardly requires alteration. The substance
of the admission from the top of p. 6 onwards
(excluding the second para on p. 7) does not
require altering, but it might be toned
down a little.

I think a letter on these lines wd
be the best reply we could send.

10.10.11.

There is no hurry to reply, but please
re draft private letter on lines suggested
by Mr Lucas and ask Mr. Fiddes for
his criticisms as to words & facts.

L. 11.10.11

In private his ~~opinion~~ ^{view} appeared to be
in sympathy with ours, his official action was
almost directly antagonistic. He caused
delay, he gave not the slightest assistance,
& the climax was reached in his telegram
of September 5 & the almost simultaneous
appearance of the paragraph in the Times.

For all this, it seems to me, his
letter of Sept 15 furnishes no justification
or explanation. and I think that in
~~answering it~~ replying it w^d be better
rather to state our case than to trouble
triflingly to the points he raises in that letter.
For this purpose nothing c^d be better than
the admirable statement of the facts
contained in Mr Butlers draft for the
private letter that was to have been sent.
Up to the middle of ^(of the plainness) page 4, that letter
hardly requires alteration. The substance
of the admission from the top of p. 6 onwards,
(excluding the second para on p. 7) does not
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There is no hurry to reply, but please
re-draft private letter on lines suggested
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his criticisms as to word & job.

L. 11.10.11

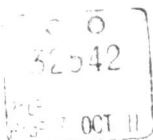
GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA

EAST AFRICA PROTECTORATE.

15th September 1911.

NO. 77 (CONFIDENTIAL).

(P.C. 1)



Sir,

I have the honour to refer to your cypher telegram of the 9th September in which I regret to notice that you take exception to my lack of co-operation in the Cole case. I feel therefore that I must submit to you a despatch and explain to you the many difficulties with which I have had to contend in dealing with this question.

Warrant

2. After the acquittal of Mr Cole I had the honour to forward to you a cable and a despatch upon the subject. At the same time I wrote you a private letter; at the time of writing this letter I was on safari and had in no way considered the legality or advisability of any line of action - a fact I endeavoured to make clear to you when I informed you that two lines of administrative action appeared to be open to me: (1) the suspension of the jury law; (2) the deportation of Mr Cole; adding that here I was unaware of my rights in the matter.

THE RIGHT HONOURABLE

LEWIS HARCOURT, F.C., M.P.

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

2.

matter.

Handwritten notes:
20/7/20
20/7/20

3. In reference to my confidential despatch of the 24th June I received your cypher telegram of the 28th July in which you informed me that you had come to the conclusion that Mr Cole must be deported forthwith under Section 25, Sub-section 1, of the Order in Council 1902; at the same time requesting me to telegraph any observations I might have to make on the matter. I therefore took steps to obtain the soundest legal advice procurable by me at the time. I consulted the Principal Judge of the High Court, who in his turn consulted his colleagues, realising no doubt that as no appeal could lie against my order this matter could not be referred to them in their judicial capacity. I also consulted the Hon. Mr Young, Acting Crown Advocate, and thereupon despatched to you my cypher telegram of the 30th July in which I pointed out that in the opinion of my legal advisers Section 25 of the Order in Council did not apply to a person accused of an offence against the penal code of which he had been acquitted. I also called to your notice Mr Lyttelton's ruling in his despatch No. 543 of the 15th August 1905 where he held that the power of deportation should only be applied for political offences. In reply to this wire I received your cypher telegram of the 16th August in which you informed me that "the only connection of deportation with trial is that person named is conducting himself so as to be a danger to peace and good order," and in which you instructed

Handwritten notes:
4/8/20
20/8/20

Handwritten notes:
4/8/20
13/8/20

3.

was to require a suitable official to swear an affidavit as to the facts admitted by the accused at his trial. I was still faced with the following problems :-

- (a) Whether I could legally accept evidence against an individual upon which he had been acquitted.
- (b) The fact that I had received orders to act before the sworn evidence had been prepared upon which I was to pass judgment.
- (c) My legal advisers were extremely doubtful whether the words "is acting" in Section 25 of the Order in Council would apply to an act of the past, especially when the accused had been tried and acquitted by a jury.
- (d) That I was dealing with the liberty of a British subject, tried and acquitted by a British jury, a man moreover universally trusted and respected.

4. In the face of all these difficulties my desire was to do my best to avoid embarrassing His Majesty's Government by my actions. The only plan which seemed possible to me under the circumstances was to refer the matter again to you for your consideration in order that you could call upon the law officers of the Crown to fully consider this matter. The Executive Council were unanimous in supporting this line of action, and I therefore despatched my wire of the 22nd August in which I quoted the sworn evidence which had been laid before me, and upon which I was called upon to act, in order that you could refer the question to the highest legal authorities and thus satisfy me that I was acting within my legal rights and that there was no chance of any hasty action upon my part embarrassing the Government.

5. I received in reply your cypher telegram of

the

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28215

4
29561

the 29th August in which you informed me that in your opinion it was unnecessary to refer to the law officers again in this matter. Upon receipt of this telegram I promptly issued and served an order of deportation upon Mr Cole in strict accordance with the Order in Council of 1902, at the same time sending you my cypher telegram of the 5th September in which I pointed out that I was bound, according to Section 3 of the Order in Council 1906, to carry out any instructions from you providing that these instructions were within the law. I despatched this telegram because, I am bound to say, I was still uneasy as to the legality of my action, and both my legal advisers and the Executive Council were extremely doubtful as to the result of my executive action in deporting Mr Cole. Having however satisfied myself that you and the highest legal authorities were of opinion that my action was within the law I promptly carried out your instructions.

2. The deportation warrant, a copy of which is herewith enclosed, was personally issued by me in strict accordance with the Order in Council 1902. No mention was made of your action or instructions in the matter, and no information was given to the press or others in spite of many appeals for the production of the evidence upon which I had acted, the press being simply informed that the Governor had deported Mr Cole under Section 23 of the Order in Council 1902. I may add that strict secrecy was

observed

observed throughout this matter as was evidenced by the fact that my action in issuing the order of deportation came as a complete surprise to the general public.

7. It is with deep regret that in the face of these difficulties I noticed in your cypher telegram of the 9th September your statement about my lack of co-operation in this case. I can only say that I was faced with a unique legal problem affecting the liberty of a British subject, tried and acquitted by a British jury. I felt what strong feeling the deportation of Mr Cole would arouse here and at home, and I therefore took what seemed to be the only course open to me, by humbly pointing out to you as clearly as possible my doubts, and the doubts in the minds of my advisers, in order that you might fully satisfy yourself that my action was both legal and politic under the circumstances; and I deeply regret that my anxiety to save His Majesty's Government any embarrassment should lead you to consider that you were not being supported by me in the matter.

I have the honour to be,

Sir,

Your humble obedient servant,


GOVERNOR.

*Copy*REC'D
7 OCT 11

WHEREAS it has been shown to me SIR EDOUARD PERCY
 CRANWILL, CIRCUARD Governor of the East Africa
 Protectorate by evidence upon oath that the Honourable
 Galbraith Lowry Egerton Cole is conducting himself
 so as to be dangerous to peace and good order in
 East Africa, NOW WHEREFORE SIR Edouard Percy Cranwill
 CIRCUARD Governor of the East Africa Protectorate
 under the authority vested in me by Section 25 of the
 East Africa Order in Council 1902 DO HEREBY ORDER
 that you the said Galbraith Lowry Egerton Cole be
 deported from the Protectorate to the United
 Kingdom.

Given under my hand and official seal

this *5th* day of *September* 1911.

[Signature]

306

CopyREC'D
7 OCT 11

WHEREAS it has been shown to me SIR EDOUARD PERCY
 GRANVILLE GIRAUD, Governor of the East Africa
 Protectorate by evidence upon oath that the Honourable
 Galbraith Lowry Egerton Cole is conducting himself
 so as to be dangerous to peace and good order in
 East Africa, NOW THEREFORE Sir Edouard Percy Granville
 Giraud Governor of the East Africa Protectorate
 under the authority vested in me by Section 25 of the
 East Africa Order in Council 1902 DO HEREBY ORDER
 that you the said Galbraith Lowry Egerton Cole be
 deported from the Protectorate to the United
 Kingdom.

Given under my hand and official seal

this 5th day of September 1911.



306

Downing Street,

24 October, 1911.

Dear Sir Percy Girouard,

I have received your confidential despatch No. 77 of the 15th of September relating to the case of Mr. Cole. In order that you may understand my attitude in the matter, I think it desirable to summarise the correspondence which has taken place on the subject.

In your private letter to me of the 25th of June, received on the 26th of July, you wrote, inter alia, as follows :-

"Two lines of administrative action appeared to be open to me; (1) to recommend the suspension of trial by jury. Without very sound legal advice, and a thorough knowledge of Colonial precedent, I have felt loth to do so. (2) The deportation of Mr. Cole. Here I was unaware of my exact rights and your possible orders in the case."

I will await your instructions in the matter, but would beg that if any drastic measures are thought necessary I should be consulted."

On the 26th of July after considering your confidential despatch No. 53 of the 25th of June on the subject, I telegraphed to you that, after reading the papers in the Cole case, I had come to the conclusion that he must be deported under Section 25 (1) of the Order in Council, and asked that, if you had any observations

observations, you would make them by telegraph at once, as I wished to direct deportation immediately.

No reply was received from you, and I telegraphed pressing for an answer on the 3rd, 7th and 9th of August.

In your telegram No. 162 sent by the Nile route dated the 2nd of August but not received here till the 10th of August, you stated that you could not send a reply before the 10th of August.

I presume that the interval was used to consult the Executive Council and the Judges of the High Court, as reported in your telegram of the 10th of August. I have already, in my reply of the same date, expressed my opinion of the grave impropriety of your action in consulting the Judges on this matter, and in the same telegram, after consultation with the Law Officers of the Crown, I gave explicit instructions for Cole's deportation and as to the manner in which you were to proceed.

On the 15th of August you telegraphed that the sworn evidence was being prepared. You also expressed your opinion that a serious political situation might arise, and enquired whether the possibility of a civil action being brought against you had been considered. I replied at once that I should be prepared to give you my fullest support in dealing with any situation which might arise, and that I had considered the possibility of an action being brought against you.

In your telegram of the 22nd of August, received here on the 28th, you said that you were still advised that it was doubtful whether sections

25 and 26 of the Order in Council of 1902 applied to the case, and I answered on the 29th of August that the affidavit of the Acting Crown Advocate, which was quoted in your telegram, appeared to follow the evidence already submitted to the Law Officers of the Crown and that it was therefore unnecessary to submit the matter to them again.

I received on the 8th of September your telegram of the 5th of that month, stating that, as the Law Officers of the Crown advise that section 25 of the Order in Council of 1902 is applicable on the evidence followed by the affidavit laid before you, and as the Order in Council of October 1906 directs you to carry out the Secretary of State's instructions, you were issuing the deportation warrant ordered by my telegram of the 28th of July. You added that your message had the approval of the Executive Council to whom it had been submitted.

Simultaneously there appeared in the Press categorical statements to the effect that in issuing the order you were acting on instructions from the Colonial Office.

I replied on the 9th of September that your instructions as to Cole were clearly contained in my telegram of the 10th of August; that the provisions of sections 25 and 26 of the Order in Council of 1902 must be complied with exactly; and that the Governor must issue an order of deportation and also, if necessary, a warrant for detention in custody pending deportation. I enquired whether you had complied strictly with these provisions, or whether you had in the order, as in the telegram to which I was replying, attempted to divest yourself

yourself of responsibility in the matter, and had cited instructions from me. I said that, if so, the order must be cancelled at once, and a fresh order must be issued in strict accordance with the provisions of the Order in Council of 1902. I added that I regretted that throughout this case I had failed to receive from you the co-operation to which I considered myself entitled.

I have been glad to learn from your telegram of the 18th of September, and from the copy of the deportation order enclosed in the despatch to which I am now replying, that my fears as to an irregularity in the form of the order were groundless. But there still remain features in the conduct of the case which I am afraid that I cannot regard as satisfactory.

I have noticed with regret your failure in your official communications to stigmatise the occurrence in the terms which I should have expected you to use, although in your private letter to me of the 25th of June you speak of the crime with the indignation which it would naturally excite. Similarly, there is in your official communications no spontaneous suggestion as to the measures which might be taken by the Government against the offender. In your private letter, however, you referred to deportation, in terms from which it was a reasonable inference that you would have regarded this as an obvious step to take if you had been sure of your powers in the matter and of my concurrence.

It must have been clear to you since my telegram of the 10th of August that I had fully considered the legal aspect of deportation, and that I

was

was satisfied that there was no objection to it on the score. You were aware from that telegram that I was relying upon the highest legal advice obtainable, that of the Law Officers of the Crown. I had also, as I have indicated, every reason to believe from your private letter that the step was one which was in accordance with your personal views.

In these circumstances I was greatly disappointed to find that so far from lending me ready assistance, you continued to raise difficulties which appeared to me to be adequately covered by the instructions and opinion already sent to you.

My feeling of surprise and disappointment reached its height on the receipt of your telegram of the 5th of September, from which I could only conclude that you were anxious to dissociate yourself, so far as it was within your power to do so, from the measure which had been taken.

It was this feeling that prompted me to send my telegram of the 9th of September. It was with great regret that I felt compelled to send you such a message, and I trust that the necessity will not again arise.

Yours very truly,

(Sgd.)

Govt. Secy

12572

LC

In Mr. Harcourt's signature

DRAFT.

Sir Percy Girouard, K.C.M.G., D.S.O., R.E.

Downing Street,

24 October, 1911.

MINUTE.

Mr. Butler. *Oct 14*

Mr. *2*

Mr. Pidda. *19*

Sr H. Just.

Sr G. Lucas.

Sr J. Anderson. *20*

Lord Lucas.

Mr. Harcourt. *21-10-11*

In case

Mr. Harcourt's signature.

have no copy of...

from better...

...attentions

...to Mr. Pidda's

...own

Dear Sir Percy Girouard,

I have received your Confidential despatch No. 77 of the 15th of September relating to the case of Mr. Cole, and in order that you may understand my attitude in the matter, I think it desirable to summarise the correspondence which has taken place on the subject.

In your letter to me of the 25th of June, received on the 26th of July, you wrote, *inter alia*, as follows:-

"Two lines of administrative action appeared to be open to me; (1) to recommend

the

the suspension of trial by jury. Without
very sound legal advice, and a thorough know-
ledge of Colonial precedent, I have felt
loath to do so. (2) The deportation of Mr.
Cole. Here I was unaware of my exact rights
and your possible orders in the case.....

I will await your instructions in the
matter, but would beg that if any drastic
measures are thought necessary I should be
consulted."

On the 28th of July, after considering
your confidential despatch No.53 of the 24th
of June on the subject, I telegraphed to you
that, on reading the papers in the Cole case,
I had come to the conclusion that he must be
deported under Section 25 (1) of the Order
in Council, and asked that, if you had any
observations, you would make them by telegraph
at once, as I wished to direct deportation
immediately.

No

No reply was received from you, and
I telegraphed pressing for an answer on the
3rd, 7th and 9th of August.

In your telegram No.162 sent by the
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I presume that the interval was used
to consult the Executive Council and the Judges
of the High Court, as reported in your tele-
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action in consulting the Judges on this
matter, and in the same telegram, after con-
sultation with the Law Officers of the Crown,
I gave explicit instructions for Cole's depor-
tation and as to the manner in which you were
to proceed.

On the 15th of August you telegraphed that the sworn evidence was being prepared. You also expressed your opinion that a serious political situation might arise, and enquired whether the possibility of a civil action being brought against you had been considered. I replied at once that I should be prepared to give you my fullest support in dealing with any situation which might arise, and that I had considered the possibility of an action being brought against you.

In your telegram of the 22nd of August, received here on the 28th, you said that you were still advised that it was doubtful whether sections 25 and 26 of the Order in Council of 1902 applied to the case, and I answered on the 29th of August that the affidavit of the Acting Crown Advocate, which was quoted in your telegram, appeared to follow the evidence already submitted to

the

the Law Officers of the Crown and that it was therefore unnecessary to submit the matter to them again.

DRAFT

I received on the 6th of September your telegram of the 5th of that month, stating that, as the Law Officers of the Crown advise that section 25 of the Order in Council of 1902 is applicable on the evidence followed by the affidavit laid before you, and as the Order in Council of October 1906 directs you to carry out the Secretary of State's instructions, you were issuing the deportation warrant ordered by my telegram of the 28th of July. You added that your message had the approval of the Executive Council to whom it had been submitted.

I replied on the 9th of September that your instructions as to Cole were clearly contained in my telegram of the 10th of August; that the provisions of sections 25 and 26 of the

Order

(29581)

(n 27032)

(28215)

(n 18015)

(n 29661)

Handwritten note:
 I'll have only been
 in the Press
 since today
 effect that in coming
 order you were acting
 this with instructions from
 the
 O.

Order in Council of 1902 must be complied with exactly; and that the Governor must issue an order of deportation and also, if necessary, a warrant for detention in custody pending deportation. I enquired whether you had complied strictly with these provisions, or whether you had in the order, as in the telegram to which I was replying, attempted to divest yourself of responsibility in the matter, and had cited instructions from me. I said that, if so, the order must be cancelled at once, and a fresh order must be issued in strict accordance with the provisions of the Order in Council of 1902. I added that I regretted that throughout this case I had failed to receive from you the co-operation to which I considered myself entitled.

I have been relieved to find from your telegram of the 16th of September and from

from the copy of the deportation order enclosed in the despatch to which I am now replying, that my fears as to the form of the order were groundless. ^{But} There still remain however features in the conduct of the case which I am afraid that I ~~must~~ regard as unsatisfactory.

I have noticed with regret your failure in your official communications to stigmatise the occurrence in the terms which I should have expected you to use, in your private letter to me of the 25th of June you do, however, speak of the crime with the indignation which it would naturally excite. Similarly, there is in your official communications no spontaneous suggestion as to the measures which might be taken by the Government against the offender. In your private letter, however, you refer ^{to} deportation, in terms from which I can only gather that you

would

would have regarded this as an obvious step to take if you had been sure of your powers in the matter and of my concurrence.

It ^{was clear} ~~has~~ been clear ^{to you} since my telegram of the 10th of August that I had fully considered the legal aspect of the ^{deportation,} proposed step, and that I was satisfied that there was no objection to it on that score. You were aware from that telegram that I was relying upon the highest legal advice obtainable, ~~namely,~~ that of the Law Officers of the Crown.

I had also, as I have indicated, every reason to believe from your private letter that the step was one which was in accordance with your ~~present~~ views.

In these circumstances I was greatly disappointed to find that you continued to raise difficulties which appear to me to be adequately covered by the instructions and

opinion

DRAFT.

*Belong of Surprised and
apprehensive reached to
not in the receipt of
telegram of the 10th of
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of the necessity of
consulting the Law
Officers of the Crown
before any step was
taken which had been
advised by the
Law Officers of the
Crown. I am sure
that you were acting
in accordance with
the instructions of
the Law Officers.*

opinion already sent to you. [It was obvious that the delay thus interposed could not but prejudice the position of the Government in the matter, as it was clearly essential that the deportation should take place as soon as possible after the occurrence which had made it necessary.

It was this feeling that prompted me to send my telegram of the 9th of September. It was with ~~very~~ ^{great} regret that I felt compelled to send you such a message, and I trust that the necessity will not again arise.

Yours very truly,

(Sd.)