

(No. 45.)



1877.

SESSION IV.

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TASMANIA.

HOUSE OF ASSEMBLY.

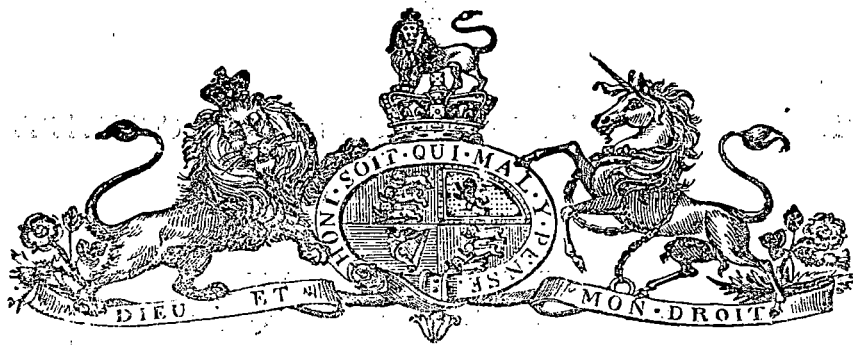
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MR. KIRWAN'S CASE.

REPORT OF SELECT COMMITTEE, WITH EVIDENCE.

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Brought up by Mr. Pillinger, and ordered by the House to be printed,  
November 15, 1877.



*SELECT COMMITTEE appointed on the 1st November, 1877, to enquire into the Validity of an Order in Council granting a Pension to MR. KIRWAN from the date of Issue.*

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MEMBERS OF THE COMMITTEE.

MR. GELLIBRAND.  
MR. BELBIN.  
MR. JUST.  
MR. DOUGLAS.

MR. GAYER.  
MR. LEWIS.  
MR. PILLINGER. (*Mover.*)

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DAYS OF MEETING.

2nd, 6th, 7th, 8th, and 14th November, 1877.

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WITNESSES EXAMINED.

Mr. Kirwan, Mr. Newman, Hon. F. M. Innes, Hon. C. Meredith, Hon. T. D. Chapman, Hon. Henry Butler,  
Hon. James Whyte.

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PROGRESS REPORT.

YOUR Committee met this day, and decided to ask your Honorable House that power be given to your Committee to enquire into the Pension granted to Mr. Kirwan; the reasons, if any, why the Order for the Pension (if any) was suspended; also if at the time the Pension to Mr. Kirwan was granted by this House any arrangement was made or entered into that the Pension should be paid from 1863, instead of the 28th October, 1857, when it appears an Order was made that Mr. Kirwan should receive his Pension.

ALFRED PILLINGER, *Chairman.*

*Committee Room, 2nd November 1877.*

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REPORT.

YOUR Committee have the honor to report that they have carefully considered the matter referred to them: they find that the Pension to Mr. Kirwan was granted upon the motion which was placed on the table of this House on the 30th July, 1863, to the effect that "An Address be presented to His Excellency the Governor, praying that His Excellency will be pleased to place the name of Mr. J. W. Kirwan on the Pension List as a reduced Police Magistrate;" and that this House refused any claim for arrears of Pension from the year 1857 to the year 1863, in the years 1864 and 1865: and your Committee, having examined witnesses and the records appertaining to this case, have come to the conclusion that Mr. J. W. Kirwan is not entitled to any arrears of Pension.

ALFRED PILLINGER, *Chairman.*

*Committee Room, 14th November, 1877.*

MINUTES OF MEETING OF THE SELECT COMMITTEE.

No. 1.

FRIDAY, 2 NOVEMBER, 1877.

*Present*—Messrs. Pillinger (in the Chair), Belbin, Gellibrand, Lewis, Gayer, Douglas.

Resolved, That the Committee ask for further powers from the House as follows:—"That power be given to this Committee to enquire into the Pension granted to Mr. Kirwan; the reasons, if any, why the order for Pension, if any, was suspended. Also, if at the time the Pension to Mr. Kirwan was granted by this House any arrangement was made or entered into that the Pension should be paid from 1863 instead of October, 1857, when it appears an order was made that Mr. Kirwan should receive his Pension." (*Mr. Douglas, Mr. Gellibrand.*)

Resolved, That the following witnesses be summoned:—For Tuesday at 11: the Record Clerk in the Colonial Secretary's Office, to produce Mr. Kirwan's papers; the Honorable T. D. Chapman and Mr. J. W. Kirwan. For subsequent date: the Honorable F. M. Innes, the Honorable C. Meredith, Mr. Balfe, and Mr. Solly.

Resolved, That the Chairman do bring up a Progress Report this day.

The Committee adjourned to 11 o'clock on Tuesday.

NOTE.—A Message to Legislative Council asking leave for Mr. Chapman to attend on Tuesday, 6th Nov. at 11. A summons, to produce Mr. Kirwan's papers, to Record Clerk of Colonial Secretary's Office, on Tuesday, 6th Nov. at 11. A summons to Mr. Kirwan on Tuesday, 6 Nov. at 11.

No. 2.

TUESDAY, 6 NOVEMBER, 1877.

*Present*—Messrs. Pillinger, Lewis, Just, Belbin, and Gellibrand.

Letter from Mr. Kirwan read requesting permission to attend the Committee during the examination of witnesses.

Resolved, That permission be given to Mr. Kirwan to be present.

Mr. Kirwan called in and examined.

The Committee adjourned until Wednesday, 7th November, at 11 o'clock.

No. 3.

WEDNESDAY, 7 NOVEMBER, 1877.

*Present*—Messrs. Pillinger, Gayer, Belbin, Just, Lewis, and Gellibrand.

Mr. Newman, Record Clerk, called in and examined.

The Hon. Charles Meredith examined.

The Hon. F. M. Innes examined.

The Hon. T. D. Chapman examined.

The Committee adjourned until Thursday, at 11 o'clock.

No. 4.

THURSDAY, 8 NOVEMBER, 1877.

*Present*—Messrs. Gayer, Just, Belbin, Gellibrand, Lewis, and Pillinger.

The Hon. Henry Butler examined.

Consideration of Draft Report.

Committee adjourned until Wednesday, 14 November, at 11 o'clock.

No. 5.

WEDNESDAY, 14 NOVEMBER, 1877.

*Present*—Messrs. Gayer, Lewis, Belbin, Just, Gellibrand, Douglas, and Pillinger.

Resolved, That the Hon. James Whyte be summoned.

The following remarks from Mr. J. W. Kirwan were read:—

MR. CHAIRMAN AND GENTLEMEN,

The evidence on this case having now closed, I desire to submit to your consideration a few observations upon that evidence, and the case generally.

1. It has been clearly proved by documentary evidence that an Order in Council, of 28th October, 1857, under the hand of His Excellency, was issued granting me a Pension.

2. That the amount of that Pension was placed on the Estimates for 1858, but owing to a *precis* of certain censures of Sir William Denison, and charges by a Member of the House, having been laid on the Table on the 20th October, and 19th November, 1857, respectively, the Pension was held in abeyance, pending investigation.

3. The subject matter of those charges was referred to a Select Committee for inquiry. The Chairman of that Committee was Dr. Butler, (the present Honorable Speaker,) and after sitting for several days, and hearing the evidence of the witnesses brought forward to sustain them, the further investigation of the matter was not proceeded with, owing, as stated by the Chairman, to the number of witnesses on both sides to be examined, and the approaching close of the Session. The Chairman, however, stated in his place in Parliament that I had, as far as the investigation had gone, been fully exonerated from the imputations embraced in those charges, of which he had selected the principal, not deeming it necessary to go into the minor matters.

4. This subject was, on the 23rd February, 1858, relegated to the Executive for, it is presumed, further investigation.

5. But the Hon. Mr. Innes, in his evidence, while admitting that he recognised the Order of the Governor in Council, and entered my Pension in the Estimates for 1858, states that he "withdrew it on the decision of the Cabinet"—or in other words; that it was so withdrawn without the knowledge or authority of the Governor who had issued that Order; that he considers it would be the duty of Ministers, speaking strictly, to carry out the Order of the Governor in Council, and that he does not consider it right to rescind an Order of the Governor in Council without reference to him; that he cannot express any opinion as to the truth of the charges; that he has no recollection if the charges were proved or not; and that he does not think he ever assisted at any investigation of these charges.

In answer to the question, whether it is not usual where charges are made against an officer to refer them to him for his observations and explanations? Mr. Innes states that he thinks it ought to be done in all cases.

6. Upon these points I submit to the Committee that it is an admitted principle of the Constitution, that an Order in Council (whether of the Sovereign or Her Representatives) is as binding and obligatory as Statute Law. Here is an Order in Council held in abeyance pending investigation into certain charges, the duty of which investigation was imposed upon the Executive by a Resolution of the House of Assembly on the 23rd February, 1858; that it does not appear that the Executive of that day ever discharged that duty, either by transmitting to me those charges for my explanations, or instituting any enquiry whatever into their truth or otherwise, so as to enable them to do impartial justice,—although the Executive must have been aware that I had been previously exonerated by the Select Committee from the more grave ones; yet is the Pension still held in abeyance for six years, and no reasons or grounds given to me for so doing. I contend, therefore, it was the duty of the Executive to have made that investigation or paid my Pension.

I am compelled to observe that such a course of procedure was a violation of the first principles of English justice.

7. With regard to the Governor's censures in 1851, 1852, 1853, and 1854, I submit that I have in my replies, 19th September, 1865, Paper 104, clearly demonstrated that they were at variance with truth and fact, and that the Governor acted on misinformation and misrepresentation,—and when I add, that they sprung from the suggestions of the Comptroller-General (Dr. Hampton), whose convict servants at his timber establishment at North West Bay, to the number of 60, I was compelled to send out of the district on account of their lawless and violent conduct, these misrepresentations may be easily accounted for and understood, and their animus manifested.

I may observe here that the Governor, finding that he had been misled and misinformed, cancelled several of these reproofs; and it is worthy of notice that nearly all these matters were, either directly or indirectly, connected with the Convict System.

I entreat the special attention of the Committee to my replies of 19th September, 1865, Paper 104, inasmuch as the Hon. Mr. Innes in his evidence observes, that when the charges (or reproofs) became known (to the Government) "it was resolved not to submit the Pension to Parliament." Of these replies I challenge the refutation; they are based on facts, and are founded on truth.

8. Mr. Chapman, in his evidence, states that on the 19th August, 1863, there was an understanding in the House that the Pension being in dispute a compromise had been made with Mr. Kirwan that his Pension was only to date from 1863.

To this it is simply sufficient to reply, that I was never spoken to on the subject; that I never made any compromise; and further, that had such a proposition been made to me I would not have entertained it.

The testimony, however, of the then Honorable Treasurer (Mr. Meredith) is, I think, conclusive upon this point. He declares that he never heard in the House of any compromise with Mr. Kirwan as to his arrears of pension, nor did he ever hear him acknowledge any such compromise; but that he "heard Mr. Kirwan express dissatisfaction at not getting his arrears of pension." The question having gone to a division proves that there was no compromise.

Mr. Meredith further observes, that he caused search to be made for any recorded objections to the Pension being granted, *but in vain*. This was in 1863.

That he did not put my arrears on the Estimates, Mr. Meredith remarks, does not imply that he did not consider me entitled to it.

Although Mr. Chapman was not one of the Ministry at the date of the Order in 1857, he states that he was aware there was a minute of the Governor in Council in 1857 in existence; yet when that Order was produced in the Assembly, in July, 1863, by the Colonial Treasurer, Mr. Meredith, Mr. Chapman observed that *if* the Order was *genuine*, and had not been rescinded, there was no necessity for considering the case; that the Government were culpable in not granting the Pension, and that they (meaning the Assembly) had no right to refuse the pension; and moreover than that, Mr. Kirwan was entitled to his arrears. (*Advertiser*, 31st July, 1863.) Extract from speech.

This admission is of great importance, as showing that although Mr. Chapman had the Governor's censures before him from 1857 to 1863, yet he was of opinion I was entitled to my arrears of pension; and as contrasted with the conviction which he stated before the Committee was on his mind at the time that, considering all the circumstances, Mr. Kirwan should have been dismissed. Mr. Chapman further says, that circumstances came to the knowledge of the Executive which prevented the Order being acted on. He was not a Member of the Executive at the time, and if there were any circumstances bearing on the case, it is presumed they would have been on record. Mr. Meredith, however, in his testimony, most distinctly states, that having caused search to be made, that is, in the records of the Executive Council and Colonial Secretary, there were no recorded objections found to the Pension being granted.

I beg to solicit the particular attention of the Committee to this important point, for the vague and indefinite word "circumstances" is susceptible of the construction calumnious whisperings, against which no officer or person in the community is or can be safe or protect himself; and I feel assured the Committee will not allow itself to be influenced in its deliberations by vague expressions or mere opinions.

9. I now proceed to bring under the notice of the Committee a subject for most attentive consideration:—

(1.) That the censures of the Governor given 25 years ago passed through the hands of the Honorable Mr. Champ, then Colonial Secretary and head of the Government:

- (2.) That they did not in any way affect his opinion of the integrity of my services, or disqualify me for continuance in office, is proved by the fact that he and his Government not only retained me in office several years after those censures, but when he became first responsible Minister in November, 1856, he, on the ground of arduous and faithful services, added an increase to my salary of £50 per annum. To that increase, I may observe, Mr Chapman, then Mr. Champ's Colonial Treasurer, was a party :
- (3.) That in the same year Letters Patent, under the hand of the Governor and Seal of the Colony, were issued in the following terms :—  
 " We, reposing especial trust and confidence in your loyalty, integrity, and ability, do constitute and appoint you, James Woodhouse Kirwan, Esq., to be Deputy Commissioner of the Court of Requests for the Police District of Kingborough, &c."
- (4.) That, on the 1st December, 1856, I was gazetted Chairman of Quarter Sessions for the same district :
- (5.) That, in the same year, I was raised from being an Assistant Police Magistrate to be full Police Magistrate with increased salary.

These several appointments establish, beyond all question, that I possessed the full confidence of the Government in my capacity and integrity; that that confidence was not abated or shaken in any way by those censures; and that they were considered a practical condonation of those censures, even were they merited, which I have in my answers shown they were not.

To all these appointments Mr. Chapman, as a Member of the Executive Council, was a party.

It may not be immaterial here to observe that, in August 1874, Dr. Butler, in his place, observed that, looking to the whole case and circumstances, he was of opinion that I had been unjustly treated before in having the Pension refused, and especially after the Governor in Council had agreed to it.

On the same occasion Mr. Innes said that I was reduced, as it was considered expedient to reduce the Magistracy; that it was through no fault of mine, and that the same course had been followed with other Magistrates.

Immediately on the abolition of my office, petitions from five different portions of the Huon were sent in to the Government praying for my retention, and expressing the opinion that "he had administered the Law with justice and impartiality, and to the protection of order and preservation of life and property." These petitions were signed by 255 landholders. (*Vide Daily News*, 1st August, 1857.)

In conclusion, Gentlemen, I would observe that you have had the order of the Governor in Council produced, granting me a pension; that that order has never been rescinded; that the pension was held in abeyance pending inquiry into certain complaints which have never been proved, but, on the contrary, have been disproved as far as inquiry went, by the very witnesses brought to sustain them—that the legitimate deduction to be drawn from no further inquiry taking place is, that either they could not be sustained, or were deemed of little moment.

That on the authority of the Governor's order Parliament voted my pension in 1863, and thus undoubtedly admitted my right to have received it in 1857; for if entitled in 1863 to pension, I am clearly entitled to arrears between 1857 and 1863.

I now leave the matter in your hands, Gentlemen, trusting that, in your sense of honor and love of justice and fair play, a right which for 20 years I have struggled, not without mental and physical suffering, to obtain, may at length meet due recognition.

14th November, 1877.

J. W. KIRWAN.

The Hon. James Whyte was called in and examined.

Mr Just moved that the following Draft Report be adopted by the Committee:—

THAT Mr. Kirwan held various offices under the Government of Tasmania between the years 1839 and 1857.

That in July of the year 1857 his office was abolished, and the Colonial Secretary forwarded to Mr. Kirwan a form of application for pension, requesting him to fill up the same.

That Mr. Kirwan filled up the said form and returned it to the Colonial Secretary; and on 28th October, 1857, the Governor ordered, by an Executive Council Minute, the payment of a pension of £80 17s. to Mr. Kirwan.

That the Treasurer, Mr. Innes, states that he placed the amount of such pension on the draft Estimates for 1858, but, owing to certain circumstances relating to charges against Mr. Kirwan in his official capacity having come under the notice of the Executive, the pension was not submitted to the House, Ministers considering that Mr. Kirwan should have been dismissed the Service, and consequently was not entitled to a pension.

That such charges appear to have been investigated at the time of their occurrence, and Mr. Kirwan insists that he successfully refuted such charges.

That no record of such refutation can be found: but it appears that Mr. Kirwan was retained in the Service for some time after the occurrence of such charges.

That no record can be found to show that the Governor's Minute ordering the pension of 28th October, 1857, was ever rescinded by the authority of the Governor. But on 14th September, 1858, the Assistant Colonial Secretary informed Mr. Kirwan that the Executive could not recommend His Excellency to direct any sum to be placed on the Estimates for his pension.

Under all the circumstances, the Committee arrive at the following conclusions:—

- 1st. That grave charges of misconduct were brought against Mr. Kirwan, and that they appear to have been dealt with in a most irregular manner by the Government of the day.
- 2nd. That Mr. Kirwan having been retained in the Service for a considerable period after these charges were brought; having been asked by the Government on his retirement to make his claim for a pension under the Regulations in force; and such pension having been ordered by the Governor by a Minute which has never been revoked,—the balance of evidence would seem to be in favour of Mr. Kirwan.

Your Committee incline to give Mr. Kirwan the benefit of the doubt which exists consequent on the irregular way in which his case was dealt with at the time; and they therefore recommend the House to grant to Mr. Kirwan the amount of his pension,—viz., £

Mr. Douglas moved as an Amendment that the following Report be adopted. (*See Report.*)

The Committee divided on Amendment.

AYES 4.  
 Mr. Gayer.  
 Mr. Douglas.  
 Mr. Belbin.  
 Mr. Gellibrand.

NOES 2.  
 Mr. Just.  
 Mr. Lewis.

And so it passed in the Affirmative.

Resolved, That the Chairman do bring up the amended Report this day.

The Committee adjourned.

# EVIDENCE.

TUESDAY, 6 NOVEMBER, 1877.

MR. KIRWAN. *examined.*

*By the Chairman.*—My name is James Woodhouse Kirwan. I entered the Civil Service of Tasmania on 26th October, 1839, in the capacity of Correspondent Clerk in the Colonial Secretary's Department, at a salary of £150 a year, with a yearly increase of £10 until it reached £200. I remained in this position until 1841. In 1841 I was transferred to the office of Writer or Assistant Clerk to the Legislative Council, and remained there until the office was abolished in 1844, when I was appointed Landing Waiter in the Customs at £200 per annum. In 1845 I was transferred by promotion to be Chief Clerk in the Governor's office. In 1840 I was promoted to be Private Secretary and Aide-de-camp to the Governor, at £300 per annum, and residence at Government Cottage. I held the same position under Mr. Latrobe when he became Administrator of the Colony until his departure in 1847. When Sir William Denison came here he appointed me Clerk of the Executive and Legislative Councils in March, 1847. I remained in these offices till August, 1849, at £250 per annum. I was then gazetted as Clerk of the Council until the return of Mr. Fraser at half salary. On the return of Mr. Fraser I lost my office of Clerk of the Council, and for the next twenty months was employed about Government House, but was not on pay, but was promised the first vacancy. On the 1st March, 1851, I received the appointment of Police Magistrate at Bothwell at a salary of £200 a year, with allowances of £50 per annum for horse-keep, and £50 per annum for house allowance, and my salary to be increased £50 per annum on five years service being completed. In September, 1851, I was appointed Police Magistrate at the Huon at the same salary and allowances. I also held at the same time the appointment of Sub-Collector of Customs with salary of £50 per annum. I continued to hold both these offices until the 31st July, 1857, when I received a letter dated 26th June, 1857, from the Colonial Secretary's office, informing me that in consequence of police retrenchment my office would be abolished on the 31st July, 1857. On the 1st January, 1857, I received a salary of £400 per annum; and the previous month Mr. Champ recommended that an increase of £50 per annum should be given me on account of my zealous discharge of my arduous duties. I left the public service of Tasmania on the 31st July, 1857. I entered it under the provisions of the Imperial Statute, 24 Vict. No. 16. When my office was abolished I took no steps towards claiming my pension until I received a letter in July, 1857, from the Colonial Secretary's Office enclosing a pension form, to be filled up with the particulars of my services, which I did, and returned it to the Office. I made application, and got an answer on the 14th September, 1858. The letter embraced two subjects: one informed me that the increase of £50 would be paid to me as soon as the Parliament voted the money, and the other stated that the Government did not intend to recommend my pension, not giving any reasons for so doing. I now read a copy of the letter:—

[COPY.]

*Colonial Secretary's Office, 14th September, 1858.*

SIR,

I AM directed to acknowledge the receipt of your letter of the 4th instant on the subject of your claim to a pension; and to certain arrears of pay from the 1st January to the 31st July, 1857, at the rate of £50 per annum.

In reply I am to inform you that the amount of back pay due will be inserted in the Supplementary Estimates for the year 1857, and it will be payable as soon as Parliament shall have voted the money.

With regard to your claim for a pension, I have to state that by a resolution of the House of Assembly the subject was left in the hands of the Executive Government, and that after full consideration of the matter they do not feel justified in recommending His Excellency the Governor to direct any sum to be placed on the Estimates for that purpose.

I have, &c.

(Signed) B. TRAVERS SOLLY, *Assistant Colonial Secretary.*

J. W. KIRWAN, *Esq., Kingston.*

I did not receive any other communication than this from any Government as to my pension. On the Whyte-Meredith Ministry taking office in 1863, I applied to Mr. Whyte to allow me to examine the records of his office, in order to discover whether a pension form which had been sent by me in 1857 was in existence; and further, to ascertain what decision, if any, the Governor in Council had come to on the question, inasmuch as I had heard nothing whatever from the previous administration touching the matter. Mr. Whyte gave me permission. I made the search, and discovered on the pension form the order of the Governor in Council granting me a pension of £80 17s., dated 28 October, 1857. I think I made the search on the 28 July, 1863. I took a copy of the order to the late Mr. Haggitt, and asked him to take action on it in the House of Assembly. Mr. Haggitt, at my request, passed this copy on to the Honorable the Colonial Treasurer. When brought before the House the genuineness of that order was impugned, and the matter adjourned until a reference could be made to the Clerk of the Executive Council, Mr. Nowell, to ascertain if it was genuine. On the next day the Colonial Treasurer stated that he had received a communication from Mr. Nowell stating that the order in question was a perfectly genuine one. It was objected again that there was another subject, to which the Clerk of the Executive Council replied that Mr. Kirwan's name never came before the Council after the 28th October, 1857, and that the order had not been rescinded. The pension was immediately voted by both Houses of Parliament. I took it for granted that the vote for my pension took effect from the date of the Order in Council, and never came to any arrangement or compromise with anyone to the contrary.

*Mr. Gellibrand.*—The Government of the day gave me no reason for refusing my pension. I was relieved from my Office strictly on the ground of economy. I received a letter on the 24th June, 1857,

abolishing my Office on the ground of retrenchment; and in allusion to pension or compensation, it alluded to charges made against me by two men whom I, as a magistrate, had fined for indecent exposure of person on the Kingston township; and the spirit of the letter was, that my pension depended on my satisfactorily explaining those charges, and notifying that the Government were awaiting my explanation. I sent it in, and although I applied to know if it was satisfactory or not, to this day I have received no answer; but I have privately heard that Sir Henry Fox Young was perfectly satisfied with my decision with regard to these two men. I fined the men the highest penalty the Law allowed,—viz. £10 each—because it was an aggravated case in each, being committed within a few yards of some ladies on the township. And another reason for imposing that penalty was, to put a stop to a practice which was becoming very prevalent, and which I thought severe measures ought to be taken to put down. When the men pleaded guilty, and when the fine was imposed, they told me they were unable to pay so large a sum at once, and asked me for time. I gave them time: they paid down about £4 each, and never paid a farthing more; and I never took any steps to enforce further payment. I was engaged as a Government Officer for four years after Sir William Denison's censure; and being retained during those four years, I have every reason to believe I gave satisfaction, and those censures could not have had anything to do with the refusal of my pension by the Government. Sir William Denison's charges were never proved. I never made or authorised anyone to make any compromise as regards my pension being retrospective; and I may add, I never heard anything about a compromise being made till long after receiving my pension. I am satisfied that I applied for the arrears of my pension on receiving the first payment of pension, and that I have been kept out of my due.

*By Mr. Just.*—How long, after filling in your pension form, did you apply for your pension? I cannot say; I remained quiescent. I am certain that I must have applied for my pension money in 1857; and finding I could get no satisfaction, I placed the matter in the hands of a Member of the House, which led to the passing of a resolution as stated in Colonial Secretary's letter.

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WEDNESDAY, 7 NOVEMBER, 1877.

MR. R. NEWMAN *examined.*

*By the Chairman.*—My name is Richard Newman. I am Record Clerk in the Colonial Secretary's Department. I produce the following documents in connection with Mr. Kirwan's claim for pension:—1. Letter to Mr. Kirwan notifying the abolishment of his office, date 24th June, 1857. 2. Mr. Kirwan's reply to same. 3. Letter from Mr. Kirwan forwarding pension form to Colonial Secretary, date 6th October, 1857, with Order of Governor in Council thereon. I am sure there was no Council Minute in connection with the letter from Mr. Solly under date 14th September, 1858. I come to this conclusion from the tenor of the letter.

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*The Honorable CHARLES MEREDITH examined.*

*By the Chairman.*—On Thursday, 13th August, Mr. Abbott asked the Hon. the Colonial Treasurer whether the Minute of His Excellency the Governor in Council, of date 28th October, 1857, awarding Mr. Kirwan a pension of £80 17s. per annum as a retired Police Magistrate, had been rescinded by the authority of the said Governor in Council; and whether there would be any objection to lay on the Table of this House a copy of such Minute rescinding the pension so granted? Mr. Colonial Treasurer replied that he had caused a careful search to be made in the Minute Book of the Executive Council, and that no reference to Mr. Kirwan could be found between the dates mentioned,—23rd February and 14th September, 1858.

And the Colonial Treasurer moved on the 19th August, 1863—That a pension of £78 14s. be granted to Mr. Kirwan.

Mr. Chapman moved—That the item be expunged from the Draft Estimates.

Question put.

The Committee divided.

AYES 8.  
Mr. Knight.  
Mr. Swan  
Mr. Chapman.  
Mr. Dodery.  
Mr. Clerke.  
Mr. Davies.  
Mr. Miller.  
Mr. Douglas. (*Teller.*)

NOES 13.  
Mr. Gregson.  
Mr. Colonial Treasurer.  
Mr. Sharland.  
Mr. Horne.  
Mr. Haggitt.  
Mr. Lette.  
Mr. Allison.  
Mr. Murray.  
Mr. Grant.  
Mr. Hodgson.  
Mr. Perkins.  
Mr. Hayes.  
Mr. Abbott. (*Teller.*)

*By Mr. Just.*—The term "Executive" means the Governor in Council, not the Ministers of the day. I was applied to for Mr. Kirwan's pension, and having caused search to be made for any recorded objections to it being granted in vain, I placed the amount of the pension on the Estimates. I did not put the back pension on the Estimates, because as Treasurer it was not my duty to make out a case for Mr. Kirwan; it is the duty of a Treasurer rather to guard the Public Chest. Mr. Kirwan complained at the

time of not getting his arrears of pension. The fact of my not putting down his arrears of pension on the Estimates does not imply that I did not consider him entitled to it. I have never heard of any compromise with Mr. Kirwan as to his arrears of pension mentioned in the House, nor did I ever hear him acknowledge any such compromise. I have heard Mr. Kirwan express dissatisfaction at not getting his arrears of pension. The order for Mr. Kirwan's pension was supposed to date from 1863.

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*The Honorable F. M. INNES examined.*

*By the Chairman.*—My name is Frederick Maitland Innes. I was Colonial Treasurer in 1857. Mr. Kirwan's pension was passed in the same manner as other pensions. I do not remember any special question being raised with respect to it. The Order of the Governor in Council was recognised by me as Colonial Treasurer, and entered on the Draft Estimates for 1858. I am speaking to the best of my recollection.

*By Mr. Just.*—I do not remember any special consideration given to Mr. Kirwan's case except that in consequence of the decision of the Cabinet I decided to withdraw Mr. Kirwan's pension from the Estimates. I think it would be the duty of Ministers, speaking strictly, to carry out the Order, the Minute of the Governor in Council.

*By Mr. Gayer.*—The sum for Mr. Kirwan's pension was not placed on the Estimates for 1858, because it had been withdrawn by the decision of the Cabinet. I do not consider it right to rescind an Order of the Governor in Council without reference to him. The Governor's Minute was given without knowledge of the charges made against Mr. Kirwan in the previous years 1851, 1852, 1853, and 1854. Afterwards, when they became known, it was resolved not to submit the pension to Parliament. The mere striking out of the pension by Parliament would not necessarily entail any revocation of the Order in Council. It was not submitted to Parliament, because the Members of the Executive considered they would not be justified in submitting the pension to Parliament; and in consequence of this decision I did not submit it. I speak from strong impressions. I know no other instance of a pension being submitted to and passed by the Executive Council and then to be withdrawn, though I believe the Government have a perfect right to do so if they please.

*By the Chairman.*—My attention was so much taken up at that time with financial matters that I cannot express any opinion as to the truth of the charges.

*By Mr. Just.*—I have no recollection if the charges were proved or not, and have no distinct recollection of the matter at all. I do not think I ever assisted at any investigation of these charges.

*By the Chairman.*—When charges are made against the character of an officer, is it not usual to refer them to him for his observations and explanation? I remember a case (there may have been more than one) in which an officer in a department under the Treasury made a claim for pension, which was prejudiced by charges made against him, and I gave him the document to reply to. Without saying that it has been the practice to invariably do so, I think that it ought to be done in all cases.

Did the Executive do so in Mr. Kirwan's case? I do not know, nor do I know if Mr. Kirwan made any demand for a copy of the charges preferred against him.

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*The Honorable T. D. CHAPMAN examined.*

*By the Chairman.*—My name is Thomas Daniel Chapman. On the 19th August, 1863, I moved, in Committee of Supply, "that Mr. Kirwan's pension be expunged from the Estimates." There was an understanding in the House that the pension having been in dispute, a compromise had been made with Mr. Kirwan that his pension was only to date from 1863. The pension had been claimed many times, and many Members were of opinion that it should not be entertained, and accepted the payment of the pension from 1863 as a final settlement of the question.

*By Mr. Gayer.*—I was aware that there was a Minute of the Governor in Council on the subject of Mr. Kirwan's pension in 1857 in existence. Circumstances came to the knowledge of the Executive which prevented the Order being acted on; it was considered Mr. Kirwan should have been dismissed and thus forfeit his right to a pension.

*By the Chairman.*—Were the circumstances which induced the Government not to carry out the Order of the Governor in Council as to Mr. Kirwan's pension connected with Mr. Balfe's charges against him, or with Sir William Denison's censures on his conduct? The circumstances were unquestionably in connection with Sir William Denison's censures, and many other circumstances which were notorious at the time. The conviction on my mind at the time was that, considering all the circumstances, Mr. Kirwan should have been dismissed from the Civil Service and so lost his claim to a pension.

Do you recollect being a Member of a Committee appointed to enquire into Mr. Balfe's charges against Mr. Kirwan in 1857? I do; and some of the facts that came before that Committee were of a most disgraceful nature.

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THURSDAY, 8 NOVEMBER, 1877.

*The Honorable HENRY BUTLER examined.*

*By the Chairman.*—I was Chairman of the Select Committee on Mr. Kirwan's case, about 22 October, 1857. I moved for this Committee with power to send for persons and papers. I was unable to



bring up a report to the House, owing to the non-attendance of members, and not having necessary papers before the Committee early enough. I believe that Mr. Kirwan was entitled to his pension. I have expressed this opinion to the House frequently. I was not a member of the House at the time Mr. Kirwan received his pension. I moved, subsequently, on Mr. Kirwan's behalf in October, 1858, and in August, 1860, but without success.

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WEDNESDAY, 14 NOVEMBER, 1877.

*The Honorable JAMES WHYTE examined.*

I remember perfectly the circumstances under which Mr. Kirwan received his pension; in my opinion Mr. Kirwan was unjustly deprived of his pension. In 1863, when I became Colonial Secretary, I could clearly see that I was bound to propose in Parliament that Mr. Kirwan's pension should be given to him. I considered at the time that Mr. Kirwan was entitled to his back pension, but the state of party feeling in Parliament at that time was such that I knew I could ask for the pension only; if I had asked for arrears of pension I would not have got them. I was of opinion at that time, and am of the same opinion still, that all the alleged offences against Mr. Kirwan had been condoned, and being condoned he was retained in the Public Service, and consequently these charges should never have been brought up against him again; further, within my personal knowledge, party and personal feeling was very strong at that period, and on a particular occasion Mr. Kirwan voted for the wrong man, and to this I attribute the loss of his pension at that time. I always considered that Mr. Kirwan was righteously entitled to his pension, and being entitled to the pension at all was entitled to all arrears.

*By Mr. Gayer.*—I cannot say why Mr. Kirwan's friends voted against his pension on the occasion it was refused, nor can I account for the majority of the House voting against it. Mr. Meredith, to begin with, was not a personal friend of Mr. Kirwan's, as you suppose.

*By Mr. Gellibrand.*—I consider the majority the Government had at the time they put my Ministry in by 22 to 6 a strong one. It was strong for certain purposes; but Mr. Kirwan had at that time (and may have still) the faculty of making personal enemies.

*By Mr. Douglas.*—Mr. Kirwan's claim for arrears was not preferred in 1863, because I knew if the pension and arrears had been asked for it would not have been granted. The pension was asked for alone. I knew that more could not at that time be obtained owing to the fact of Mr. Kirwan having many personal enemies. I do not think that the fact of Mr. Kirwan's having accepted a portion of his pension in any way implied that he had waived his right to arrears. I am of opinion that my Government was not strong enough to do justice on Mr. Kirwan's case. I am certain that no compromise was effected with him by the House. I do not consider that Mr. Kirwan's case was a political question, it was one simply of personal feeling: thus it was the members of my Government did not support me in bringing forward Mr. Kirwan's claim. I attach no importance to the circumstance that Mr. Kirwan's claim for arrears was refused by the House in two different Sessions.