

(No. 52.)



1874.

T A S M A N I A.

HOUSE OF ASSEMBLY.

COLONIAL AUDITOR'S SALARY.

CORRESPONDENCE.

Laid upon the Table by the Colonial Treasurer, and ordered by the House to be printed, August 4, 1874.



MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Colonial Secretary's Office, Hobart Town, 7th July, 1873.

SUBMITTED,

THAT William Lovett, Esquire, Assistant Colonial Treasurer, be appointed Colonial Auditor in the room of Edward Johnstone Manley, Esquire, who retires on Pension.

Mr. Lovett's salary to be at the rate of Five hundred Pounds per annum, and the appointment to take effect on and from the 8th instant.

JAMES R. SCOTT.

THE Governor in Council approves.

E. C. NOWELL.
7. 7. 73.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 7th July, 1873.

SIR,

I HAVE the honor to acquaint you that the Governor in Council has been pleased to appoint you to be Colonial Auditor, in the room of Edward Johnstone Manley, Esquire, who retires on a Pension, with salary at the rate of Five hundred Pounds per annum; to take effect on and from the 8th instant.

I have the honor to be,
Sir,

Your obedient Servant,

JAMES R. SCOTT.

WILLIAM LOVETT, *Esquire.*

Colonial Secretary's Office, 7th July, 1873.

MEMORANDUM.

THE Governor in Council has been pleased to appoint W. Lovett, Esq., to be Colonial Auditor, in the room of E. J. Manley, Esq., who retires on a Pension, with a salary of £500 per annum: to take effect on and from the 8th instant.

By Command,

(Signed) J. R. SCOTT.

The Colonial Treasurer.

GOVERNMENT NOTICE.

No. 86.

Colonial Secretary's Office, 7th July, 1873.

THE Governor in Council has been pleased to appoint William Lovett, Esquire, to be Colonial Auditor, *vice* Edward Johnstone Manley, Esquire, who retires on a Pension: the appointment to take effect on and from the 8th instant.

By His Excellency's Command,

JAMES R. SCOTT.

Audit Office, 16th July, 1873.

SIR,

I HAVE the honor to acknowledge the receipt, on the 11th, of your letter of the 7th instant, intimating that the Governor in Council has been pleased to appoint me to be Colonial Auditor, at a Salary of Five hundred Pounds per annum.

In returning my best thanks to the Members of the Executive Government for conferring upon me the honorable and responsible post referred to, I beg to remind you that, when the position was offered to me, the amount of remuneration was not mentioned: I therefore naturally concluded that the Government had decided to give me the amount of Salary provided by Law at the time the appointment was made.

I therefore respectfully beg to appeal to the Governor in Council against my Salary being made lower than that enjoyed by my predecessor, on the grounds that, as the Salary of the Colonial Auditor is fixed by Imperial Statute at Six hundred Pounds per annum, I have a vested right in the amount,—having been appointed to the office before the Bill to reduce the Salary of future Auditors had passed the Colonial Legislature; and because the Imperial Act is still in force.

Trusting the justice of my appeal may be acknowledged,

I have the honor to be,

Sir,

Your most obedient Servant,

W. LOVETT.

The Honorable the Colonial Secretary.

Audit Office, 22nd July, 1873.

SIR,

ADVERTING to my letter of the 16th instant, I have the honor to remind you that, immediately on receipt of your intimation that the Governor in Council had named the sum of Five hundred Pounds as the annual salary to be paid to me as Colonial Auditor, I verbally protested against any reduction of salary as fixed by the Imperial Act, 18 Vict. No. 17, upon the grounds taken up in the letter referred to; and it was only upon your suggestion that the Bill then before the Houses of Legislature for reducing the salaries of future Auditors was not likely to pass the Legislative Council that I did not make such protest in writing at once.

My object in now writing is that His Excellency the Governor may have an opportunity of considering the justice of my appeal, and whether it would not be justifiable to recommend that the assent of Her Most Gracious Majesty the Queen be not given to the Bill for reducing the salaries of future Auditors lately passed by the Colonial Legislature.

I have therefore to request you will be so good as to forward this, with my letter of the 16th instant, to His Excellency; and in doing so venture to ask you to confirm the statement made by me in the first part of this communication.

I have the honor to be,

Sir,

Your most obedient Servant,

W. LOVETT, *Colonial Auditor.*

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 25th July, 1873.

SIR,

I HAVE the honor to forward two letters, dated respectively 16th and 22nd July, from W. Lovett, Esq., Colonial Auditor, representing his right to a salary of Six hundred Pounds a year, and praying that Her Majesty's assent may be withheld from the "Bill to reduce the Salary of every future Colonial Auditor."

The late Colonial Auditor, Mr. Manley, had repeatedly applied to be allowed to retire upon his pension; but his requests were not at the time complied with, because the Government proposed to submit to Parliament a measure for reducing the salary of his successor to Five hundred Pounds. The Government introduced a Bill to that effect, which received the sanction of the House of Assembly on the 2nd of July. It was then felt that Mr. Manley's urgent entreaties for permission to retire need no longer be refused; and, accordingly, on the 7th instant Your Excellency in Council approved of his being pensioned from the 8th; Mr. Lovett being appointed to succeed him at a salary of Five hundred Pounds.

It will be observed that the Bill mentions Mr. Manley by name, and provides that the salary of every Colonial Auditor, except Edward Johnstone Manley, Esquire, shall be Five hundred Pounds a year, and no more. This Bill had passed through such a stage as to be sufficient intimation to Mr. Lovett that, in accepting the office, his salary must be dependent upon the result of the Bill, and his appointment was made accordingly.

I explained the foregoing circumstances to him at the verbal interview to which he alludes in his letter of the 22nd July. In the course of conversation I also expressed my opinion that the measure would be rejected by the Legislative Council,—an opinion I was justified in holding, as, on the 15th July, the Council passed the Bill by a majority of one vote only. I made no *suggestion* which could have prevented him from making any written representation or protest at the time either to me or to the Parliament; nor did he give me any reason to believe that the promotion would not be acceptable to him at Five hundred Pounds a year.

I have the honor to be,
Sir,

Your Excellency's most obedient Servant,
JAMES R. SCOTT.

His Excellency the Governor.

Audit Office, 4th August, 1873.

SIR,

I HAVE the honor to enclose a letter received this morning from the Hon. J. Maclanachan, M.L.C., and to request you will be so good as to forward it to His Excellency the Governor, to be attached to the papers forwarded with my letter of the 22nd ultimo.

It will be remembered that on the occasion of the passing of the Auditor's Salary Bill in the Legislative Council the votes were 8 for and 7 against, and it is evident that the Bill was passed through a misapprehension on the part of Mr. Maclanachan. I hope, therefore, His Excellency will look upon this circumstance as an additional reason for reconsidering the whole question referred to in my previous communications.

I have the honor to be,
Sir,

Your most obedient Servant,

W. LOVETT, *Colonial Auditor.*

The Hon. the Colonial Secretary.

Ballochmyle, Tunbridge, 2nd August, 1873.

SIR,

I REGRET exceedingly that it was entirely through a misapprehension I gave my vote on the "Reduction of Auditor's Salary Bill:" having always considered that office one of the most important in the Government service, I would have voted against it.

I am,
Sir,

Your very obedient Servant,

J. MACLANACHAN.

W. LOVETT, *Esq., Colonial Auditor.*

Colonial Secretary's Office, 4th August, 1873.

SIR,

WITH reference to my letter of the 25th ultimo, forwarding two letters from Mr. W. Lovett upon the subject of his claim to a Salary of Six hundred Pounds per annum as Colonial Auditor, I have now the honor to forward a further communication from that gentleman, enclosing a letter received by him from the Hon. J. Maclanachan, M.L.C., stating that he voted upon the Auditor's Salary Reduction Bill under a misapprehension.

This statement by Mr. Maclanachan, Your Excellency will observe, fully justifies the opinion I expressed to Mr. Lovett, as mentioned in my letter of the 25th ultimo, that the Bill would be rejected by the Legislative Council.

I have the honor to be,
Sir,

Your most obedient Servant,

JAMES R. SCOTT.

His Excellency the Governor.

Government House, August 12, 1873.

MEMORANDUM FOR MINISTERS.

THE enclosed correspondence was forwarded to me a short time since by the late Colonial Secretary, at the request of Mr. Lovett, the Colonial Auditor, who was under the impression that the Colonial Auditor's Act passed this Session was one which I should be obliged to reserve for the signification of Her Majesty's pleasure thereon.

2. I have informed Mr. Lovett that the Act is not one which I am obliged to reserve; but I intimated to him at the same time that I would defer giving it my assent till the subject matter of this correspondence had been referred to and considered by my responsible advisers.

3. On the question whether the salary fixed by the Act for the office of Colonial Auditor is an adequate one or otherwise I offer no opinion. But I think it appears from this correspondence that Mr. Lovett at the time the office was offered to him was unaware of his actual position with respect to the Bill, and concluded that he was to receive the same salary as his predecessor. It may appear somewhat singular that when Mr. Lovett was undeceived on this point by Mr. Scott he should not have taken some immediate action towards bringing his position before the Legislature while the fate of the Bill was yet in doubt. But it is evident that he refrained from so doing in consequence of Mr. Scott expressing an opinion that the Bill was likely to be thrown out in the Legislative Council, though without doubt Mr. Scott did not express that opinion with a view to prevent Mr. Lovett making any written representation or protest at the time.

4. It is also perfectly clear that Mr. Maclanachan voted under a misapprehension, and that but for this circumstance Mr. Scott's anticipation would have been justified, and the Bill rejected. Under these circumstances I leave it for Ministers to consider whether or not any action can now be taken for bringing Mr. Lovett's case once more under the notice of the Legislature.

C. DU CANE.

Audit Office, 14th August, 1873.

SIR,

IN forwarding my appeal against the reduction of my salary as Colonial Auditor I thought I was bound in the first instance to confine myself to a simple statement of facts; but since you did me the honor to allow me to read the letter of the late Colonial Secretary of the 25th July, I trust you will also allow me to add a few remarks as to my reasons for believing I am equitably entitled to the full salary of £600 per annum.

On the 7th July I was informed by the Premier (Mr. Innes) that it was the intention of the Government to appoint me Colonial Auditor, and on the 8th July the appointment was gazetted. I took office on that day under the authority of the *Gazette* Notice, and it was not until the 11th July that I received any intimation that my salary would be less than £600 a year; I think therefore I was fully justified in believing that I could claim the full amount.

The late Colonial Secretary says that the fact of the Bill for reducing the Auditor's salary having passed the House of Assembly was sufficient intimation to me that the salary would be only £500 a year; but putting aside the equitable grounds why I should not be bound to accept this as sufficient notice, I think it will be conceded that the admission of my having verbally objected to the reduction is sufficient proof that I did not look at it in that light: besides Mr. Scott did not perhaps know, although I thought I had mentioned it, that I had not seen the Bill until the 11th July, and did not know till then that it was intended to have a retrospective effect.

Mr. Scott also says that he said nothing to deter me from making a protest in writing either to the Government or to the Legislature; but having verbally protested to the Colonial Secretary, and having been told by that gentleman that it was thought the Bill would be rejected by the Legislative Council,—and especially as the Premier and Colonial Secretary had both informed me that personally they were adverse to the reduction of salary,—I think I had good reason to expect, as I did expect, that the Government would protect my interest to the extent of informing the Members of the Legislative Council when the Bill was before them that I had so objected; and if this had been done the result would have been different, I have very little doubt. I certainly think I ought not to have been expected to use other means to influence the Members of the Council in giving their votes.

The time also was short; and when it is considered that the letter intimating my appointment did not reach me for four days after it was dated, I may fairly claim some consideration on that account.

I have the honor to be,

Sir,

Your most obedient Servant,

W. LOVETT.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 14th August, 1873.

SIR,

I HAVE the honor of transmitting for your perusal copies of correspondence between Mr. Lovett, Colonial Auditor, and this Department in reference to his appointment to that office. You will observe that Mr. Lovett, in his letter of the 16th July, states "that when the appointment was offered to me the amount of remuneration was not mentioned; I therefore naturally concluded that the Government had decided to give me the same amount of salary as provided by law at the time the appointment was made."

As Mr. Lovett has appealed to the Governor in Council against his salary being made lower than that enjoyed by his predecessor, Mr. Manley, on the ground that the salary attached to the office is fixed by Statute, and as it appears by the records of the Executive Council on the 7th July last that Mr. Lovett was appointed Auditor at a salary of £500 per annum, I have to request that you will be good enough to inform me, for the information of the Governor in Council, whether, in the interview Mr. Lovett had with you on the 7th July last when you offered him the appointment, any reference whatever was made to the amount of salary to be drawn by him, or to the Bill reducing the Salary of future Auditors then before Parliament.

Awaiting your early reply,

I have, &c.,

(Signed) THOS. D. CHAPMAN.

The Hon. F. M. INNES, Newlands.

Newlands, 15th August, 1873.

SIR,

IN answer to your letter of yesterday's date, I have the honor to state that nothing was expressly introduced into my communication with Mr. Lovett in reference to the salary attached to the office of Colonial Auditor, the Bill on the subject being then before Parliament.

I have the honor to be,

Your obedient Servant,

FRED^K. M. INNES.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 23rd August, 1873.

THE Colonial Secretary has the honor to inform His Excellency the Governor that His Excellency's Memorandum for Ministers, dated the 12th instant, in reference to the Auditor's Salary Bill, and Mr. Lovett's appeal to His Excellency in reference thereto, has received the careful consideration of His Excellency's Responsible Advisers; and the Colonial Secretary has the honor to inform His Excellency that, in the opinion of Ministers, it would be desirable to let the matter stand over until the close of the present Session of Parliament, when His Excellency will be at liberty to give Her Majesty's assent to the Bill, unless His Excellency should be requested by both branches of the Legislature to withhold the Royal Assent thereto.

The Colonial Secretary desires also to state that Ministers are of opinion that, under all the circumstances of the case, Mr. Lovett should be informed that the Executive Government will have no objection to Mr. Lovett bringing his case before Parliament if he should think fit to do so.

THOS. D. CHAPMAN.

His Excellency the Governor.

Government House, 28th August, 1873.

MEMORANDUM FOR MINISTERS.

WITH reference to the questions raised by Mr. Lovett as to his present position with respect to the Colonial Auditor's Salary Bill, I concur in the views expressed in the Memorandum of the Colonial Secretary, dated August 23rd. In accordance with those views, I shall be prepared to withhold the Royal Assent from the Auditor's Salary Bill until the end of the Session.

2. I also concur in the suggestion that Mr. Lovett should be informed that no objection will be raised on the part of the Executive Government to his bringing his case before Parliament should he think fit to do so.

CHARLES DU CANE.

Colonial Secretary's Office, 28th August, 1873.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 14th instant, in reference to your appeal to His Excellency the Governor respecting the salary attached to the Office of Colonial Auditor under the Constitution Act; and in reply I have the honor of informing you that His Excellency has decided to withhold the Royal Assent to the Bill for reducing the Colonial Auditor's Salary until the close of the present Session of Parliament.

As you were appointed to the Office of Colonial Auditor by His Excellency the Governor, on the recommendation of the late Ministry, at a salary of £500 per annum during the passage of the Colonial Auditor's Salary Reduction Bill through Parliament, I have the honor of informing you that no objection will be raised by the Executive Government to your submitting your case for the consideration of the Legislature during the present Session should you think fit to do so.

I have, &c.,

WILLIAM LOVETT, *Esquire, Colonial Auditor.*

(Signed) THOS. D. CHAPMAN.

Audit Office, 15th September, 1873.

SIR,

I HAVE the honor to acknowledge the receipt of your favour of the 28th ultimo in reply to my letter of the 14th ultimo, informing me that His Excellency the Governor had decided to withhold the Royal Assent to the Bill for reducing the Colonial Auditor's Salary until the close of the present Session of Parliament; and that, under the circumstances named, no objection would be raised by the Executive Government to my case being submitted for the consideration of the Legislature during the present Session, should I think fit to do so.

I beg respectfully to return my thanks to His Excellency and the Members of the Executive Government for the opportunity afforded me, of which I am anxious to take advantage, and therefore have the honor to request you will allow me to submit my case through the Government for the consideration of Parliament. The correspondence on the subject, in which the case is fully set forth, is in your possession; and I hope the Parliament need only the explanation given therein to be convinced that I have an equitable right to the amount reserved under Act 18 Vict. No. 17.

I venture to add, for the information of the Honorable the Members of Parliament, a short outline of my Services under the Colonial Government during a period of upwards of 32 years.

I was appointed Junior Clerk in the Post Office Department on 18th February, 1841; was promoted from time to time until I reached the position of Chief Clerk in that Department, in which position I continued until appointed Accountant to the Treasury, on 26th November, 1860; remained in that office until appointed Deputy Auditor on 1 April, 1865, to act during Mr. Manley's absence on leave; returned to the Treasury on 1 December, 1866, and appointed Assistant Colonial Treasurer and Accountant to the Treasury on 1 January, 1867, and remained in that position until appointed Colonial Auditor, on 8th August, 1873.

On referring to "The Audit Act," 22 Vict. No. 6, and to the Audit Regulations published in the *Gazette* of 10 February, 1859, at page 333, it will be seen that the Colonial Auditor's position is one of high trust and responsibility, and that his duties require careful thought and constant attention. I beg therefore, with due deference, also to request that the Honorable the Members of the Parliament may be asked to fully consider these circumstances when my case is before them.

I have the honor to be,

Sir,

Your most obedient Servant,

The Honorable the Colonial Secretary.

W. LOVETT.

Colonial Secretary's Office, 23rd September, 1873.

SIR,

IN reply to your letter of the 15th instant, requesting to be allowed to submit your case through the Government for the consideration of Parliament, I have the honor to state that the Ministry cannot accept the responsibility of presenting your claims to the Legislature; but the correspondence that has taken place will be laid before both Houses of Parliament, and thus the opportunity will be afforded for an impartial consideration of the whole question upon its merits.

I have the honor to be,

Sir,

Your obedient Servant,

W. LOVETT, *Esq., Colonial Auditor.*

THOS. D. CHAPMAN.

Audit Office, 18th March, 1874.

SIR,

I HAVE the honor to forward herewith a claim for £31 9s., which I make for salary due to me from 8th July to 31st Oct., 1873.

By *The Constitutional Act*, 18 Vict. No. 17, I was entitled to draw pay at the rate of £600 per annum as Colonial Auditor, until this right was taken from me by the Parliament under the Act to reduce the Colonial Auditor's salary, which was passed on 31st October, 1873.

Having therefore only drawn pay at the rate of £500 per annum under protest, I have no doubt that I am entitled legally to the amount claimed, and presume as the full salary was included in the Estimates for 1873 that payment can be made without difficulty.

I have the honor to be,

Sir,

Your most obedient Servant,

W. LOVETT.

The Honorable the Colonial Treasurer.

REFERRED to the Attorney-General for him to advise whether the claim can be sustained legally.

P. O. FYSH.
31. 3. 74.

THE legality of Mr. Lovett's claim depends upon the terms of his appointment, which are not before me. Notwithstanding £600 a year was reserved by Law as the salary of the Colonial Auditor, it was competent for the Executive Government on any vacancy happening in the Office to appoint another Auditor at £500 per annum; and if any gentleman accepted the appointment at the lower salary he could not be entitled afterwards to claim a higher one, on the ground that the larger rate was named in an Act of Parliament.

W. R. GIBLIN.
15. 5. 74.

FORWARDED to the Auditor.

P. O. FYSH, *Colonial Treasurer.*
18th May, 1874.

THE Minute of the Honorable the Attorney-General seems to infer that I am legally entitled to the sum claimed, if proof can be given that upon accepting the appointment of Colonial Auditor I did not agree to accept a lower rate of pay than that fixed by Law at the time. I presume that Parliamentary Paper 59, Legislative Council, Session 1873, would be taken as a document in a Court of Law, and therefore can now be taken to prove that I did not agree to accept £500 per annum as full payment of salary as Colonial Auditor; I therefore transmit herewith a copy of the Paper to further support my application for payment of the sum which I consider is due to me, and beg to refer particularly to the Honorable the Colonial Secretary's letter of the 14th August, 1873, to the Honorable F. M. Innes, with Mr. Innes's reply thereto, as proving beyond doubt that I did not consent to the reduction in the first instance.

W. LOVETT, *Colonial Auditor.*
18 May, 1874.

The Hon. the Colonial Treasurer.

REFERRED to the Hon. the Attorney-General with the additional Paper furnished by the Auditor.

P. O. FYSH, *Colonial Treasurer.*
19. 5. 74.

THE Papers herewith transmitted show that Mr. Lovett was *appointed* at a salary of £500 per annum by the Governor in Council on 7th July, and on receiving intimation that the salary was so fixed Mr. Lovett did not absolutely decline the duties at such rate, but protested against the reduction, first verbally and afterwards in writing,—but never stated he would not accept the position at the reduced salary,—and the correspondence leaves the impression on my mind that the amount of salary was to be “dependent upon the result of the Bill,” and Mr. Scott states (Letter of 25th July, 1873,) that this was explained to Mr. Lovett.

It is obvious that the late Colonial Secretary and Colonial Treasurer did not succeed in clearly making Mr. Lovett understand their views; but I am not desirous of entering into a controversy

upon the question of who is to blame for this ; I merely give my opinion that in Law Mr. Lovett cannot claim a higher salary than £500 per annum from the date of his appointment. The equitable aspect of the case might, if Mr. Lovett so desire, be submitted to Parliament.

W. R. GIBLIN.
15. 6. 74.

FORWARDED for the Auditor's perusal, with the request that the whole of these documents be returned to this Office.

P. O. FYSH.
Colonial Treasury, 15. 6. 74.

IN returning these documents to the Honorable the Colonial Treasurer, I have the honor to request that the Government will submit the "equitable aspect of the case to Parliament" for consideration, and in doing so beg leave to offer a few remarks on the Minute of the Honorable the Attorney-General.

If the Government intended that the amount of my salary should depend upon the passing of the Bill, the Members of Parliament should, in good faith, have been made acquainted with the fact that I had protested against the lower rate of pay when the Bill was under consideration : that this was not done is evident from the debates, and that the omission was fatal to my interest cannot be doubted ; it is, however, quite possible that the omission was unintentional.

That there may have been a misunderstanding on both sides I am willing to admit, but do not think it would be generous or fair to punish me for not placing the Government in an awkward position by positively refusing to accept the situation when I found it was intended to give a lower rate of pay than I expected, and which I thought, and still think, I was equitably if not legally entitled to.

I have always considered the Government to be the proper channel through which to seek redress ; and, in respectfully asking to have the question submitted by the Government, I am aware that in no other way can I hope to succeed in making my case fully understood by the Parliament.

W. LOVETT, *Colonial Auditor*.
16th June, 1874.

The Honorable the Colonial Treasurer.