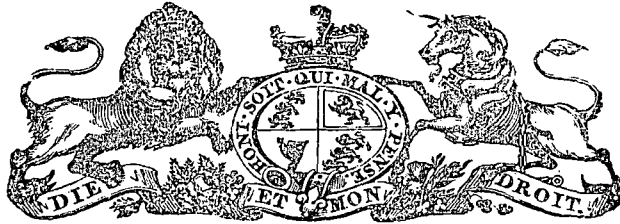


(No. 49.)



1863.

TASMANIA.
LEGISLATIVE COUNCIL.

BUCKINGHAM RIFLES.

CORRESPONDENCE IN REFERENCE TO THE RESIGNATION OF
THE HON. T. Y. LOWES, Esq.

Return to an Order of the Council of August 7, 1863. (Mr. Lowes.)

Laid on the Table by Mr. Whyte, and ordered by the Council to be printed,
August 26, 1863.



(CIRCULAR.)

Royal Engineers' Office, Hobart Town, 28th April, 1863.

SIR,

HAVING been appointed a Member of a Commission to enquire into the state of the Volunteer Force, I shall be obliged by your informing me of your reasons for resigning your Commission, and for any remarks on the subject.

The reply (whether marked confidential or otherwise) should reach me early.

I am, Sir,
Your obedient Servant,

F. R. CHESNEY.

*The Honorable T. Y. Lowes, Esq.,
Late Captain Buckingham Volunteer Rifle Company.*

Glenorchy, 4th May, 1863.

SIR,

I HAVE the honour to acknowledge the receipt of your Circular Letter, requesting me (I presume for the information of the Board of Officers appointed to enquire into the state of the Volunteer Force) to inform you of my reasons for resigning my Commission as Captain of the Buckingham V.R. Company, S.T.V.

In reply, I have the honour to forward you herewith a printed copy of the Correspondence between His Excellency the Governor and myself on this subject, presented to both Houses of Parliament by His Excellency in return to an Address from the House of Assembly. A perusal of these papers will place the Board in full possession of the reasons that operated with me in resigning my Commission as an Officer of Volunteers.

Parliamentary
Paper.
Resignation of
Captain
T. Y. Lowes.
Sess. 1862,
No. 87.

I avail myself of this opportunity to express my satisfaction at the institution of an enquiry into the condition of the Volunteer Force of the Colony. I took, from the first, a deep interest in the movement. I was mainly instrumental in originating the Buckingham Company, of which I was unanimously elected Captain. I devoted my time and personal attention to the interests and discipline of the Company, and to the movement generally in the Southern Division of the Colony; and I reflect with satisfaction that my efforts in that direction were crowned with success, so far as my own Company was concerned, until the fatal moment when the meddlesome intervention of the Inspecting Field Officer Commanding Volunteers with the internal discipline and economy of my Company unhappily received the sanction and approval of the highest Military Authority in the Colony. And I cannot forbear from expressing my gratification at the recognition and appreciation by my brother Officers and comrades in the Southern Division of my humble, but earnest, endeavours to foster and promote this great national movement.

I venture to hope the enquiries of the Board of Officers may result in the adoption of some system of dealing with the Volunteers that shall promote their efficiency to a higher standard than the absolute disorganisation which has been produced by the Command of the Southern Division by the late Inspecting Field Officer, Colonel Russell.

Though no longer an Officer of Volunteers, I feel too deep an interest in the movement not to place on record my earnest warning to the Government to be careful not to repeat the mistake of such an injudicious appointment.

The Officers commanding Volunteer Companies are in some cases, and ought to be without exception, gentlemen of property and standing in the community.

But this class of Officers must inevitably be driven out of the service in disgust, if the command of the Force is entrusted to an individual who, whether from interest or inclination, studies the political influence and social position, rather than the relative military rank in the service, of those members who render themselves liable to be dealt with by the salutary exercise of the discipline entrusted by law to Commanding Officers of Companies or Corps.

In my own case I had only too convincing proof, and the printed correspondence abundantly confirms the fact, that Colonel Russell throughout my controversy respecting Mr. Swan's reduction to the ranks was actuated far more strongly by a consideration of Mr. Swan's position as a Justice of the Peace and a near connection of the Premier's, than by a recollection of his membership of the Buckingham Volunteer Company, and his consequent liability to my superior authority and control.

Printed Correspondence,
No. 15.

So far did Colonel Russell allow himself to be influenced by these considerations, that in one letter to me he speaks of Cadet Swan as "John Swan, Esq., J. P.;" and so completely had his determination to uphold Mr. Swan against my authority betrayed him into the position of that gentleman's advocate and partisan, that in the same letter he refers to him as an "Officer," though he knew that Mr. Swan had never held a Commission in the Volunteer Service, and (until reduced) had been Sergeant-Major of my Company.

Further, Colonel Russell in his anxiety to shield and serve Mr. Swan was guilty of the grave breach of Military law and Official etiquette involved in corresponding direct, as Colonel Commanding, with a private member of my Company without my official privity; furnishing Mr. Swan, from time to time, with copies of all the correspondence that passed between Colonel Russell and myself.

Printed Correspondence,
No. 19, p. 26.

I feel so strongly the importance of the selection of a really qualified officer for the Military Command of the Volunteer Force, that I would repeat here the language I felt compelled to adopt in a letter to Colonel Russell, dated the 18th July, 1862, which expresses my own, and I believe, the general sentiment on this subject, of Officers commanding Companies:—

"I hoped, on the appointment of a Military Officer to command the Volunteer Force in this Colony, that the Commanding Officers of the Corps would receive the moral and substantial support of that functionary, in their endeavour to advance the movement by promoting the internal efficiency of their several Corps. I can only express my individual disappointment that these hopes have not been realised; and I am driven unwillingly to the conclusion, that something more than Regimental experience and Staff Officer appointments in charge of Pensioners is required to qualify Officers of Her Majesty's Regular Forces for the delicate duty of commanding a body of Volunteers in a free British Colonial Dependency."

The tendency of these remarks may prove as useful in the selection of future Commanding Officers, as they were only too appropriately applicable to the Officer by whose shortcomings they were provoked.

I should, however, fail equally in my duty to the Volunteer Service, and what is justly due to myself, did I refrain on this occasion from vindicating my own action in resigning my Commission from the injurious and unfounded imputation on my motives conveyed in His Excellency's Minute accepting my resignation.

Printed Correspondence,
page 33.

In that Minute the Governor was pleased to express his "regret that Captain Lowes' views of subordination are such as to render it impossible for him to obey the orders of his superior Officer."

Printed Correspondence,
page 1.

I am requested by the Board of Officers to assign my reasons for resigning my Commission; and it is impossible for me to declare those reasons without stating most explicitly, yet with the utmost respect for the Governor's military authority and official position, that this observation by His Excellency does me a deliberate injustice, and totally misrepresents my notions, as avowed in writing, in the communication I had addressed to the Governor explanatory of all the circumstances of the case, and in the very letter of resignation on which this Memorandum was minuted.

Printed Correspondence,
pages 32-3.

I have no desire now to re-open the controversy respecting the power of a Commanding Officer to reduce a Sergeant-Major to the ranks without trial.

No. 7.
Printed Correspondence,
page 16.

I am satisfied with the reflection, that neither Colonel Russell nor His Excellency, though assisted by the advice of the Law Officers of the Crown, was able to controvert, by argument, the position I had maintained in my letter to Colonel Russell, dated the 25th April, 1862.

My action was reversed by a forcible exercise of authority ; it was not shown to be inconsistent with the provisions of the Act of Parliament under which I held my Commission.

But there is nothing throughout my correspondence on this subject more forcibly insisted upon than my objection to reinstate Mr. Swan, because such reinstatement must prove destructive of the interests, if not of the existence, of the Company I had the honour to command.

I had stated to Colonel Russell, on the 18th July, 1862, that " Mr. Swan's removal from the post of Sergeant-Major was indispensable to the maintenance of the discipline of the Buckingham Volunteer Rifle Company, if not essential to the existence of the Company as a body of Volunteers." Printed Correspondence, No. 19, page 25.

In my letter to the Governor, dated the 9th August, 1862, I detailed at length Mr. Swan's gross impropriety of conduct as a Non-Commissioned Officer of my Company.

I acquainted His Excellency that the Company had passed a Resolution virtually expelling him as a Member, and had declared that the conduct for which I had reduced him to the ranks " amounted to a deliberate and gratuitous insult to the whole Company and to the Captain." Printed Correspondence, No. 23, p. 27.

It was in the interests of discipline and subordination, and of the very existence of my own Company, that I submitted to His Excellency a detailed statement of the whole case, including Mr. Swan's conduct both before and after his reduction, and of the decisive action taken by his comrades in vindication of my authority and condemnatory of Mr. Swan's behaviour.

I assured His Excellency that " Mr. Swan had not appeared publicly in the uniform of his Company for the last six months ; and that he had gone to reside at a distance from head quarters without applying for leave of absence : that for twelve months he had been striving to create discord and disunion in the Company, and unhappily with only too much success : that he had offered to apologise personally to myself, specially refusing to make any *amende* to the Adjutant, whom he had grossly and designedly outraged, and to the Company which his machinations had nearly disorganised." Printed Correspondence, page 9.

And I ventured to express my " confident belief that, after a careful perusal of my explanation, His Excellency would not wish or command the reinstatement of Mr. Swan as Sergeant-Major, in the face of a Resolution of the whole Company demanding his retirement." Printed Correspondence, page 9.

I further expressed myself " confident that His Excellency would not propose to any gentleman commissioned to command a body of Volunteers to perform an act so subversive of all military authority—*so destructive of the interests of the Company*—so inconsistent with his own sense of duty and his personal self-respect. I felt assured (I wrote) that His Excellency would not willingly place an Officer, commanding a Volunteer Company by the Governor's Commission, in a situation where he would be compelled to choose between his retention of that Commission, and the performance of an act repugnant to his conscientious conviction of his duty to himself and his Company."

In the same letter I " asked His Excellency to consider the effects likely to be produced upon the Company I had the honor to originate, of which I had been unanimously chosen Captain, which I had the honor to command by virtue of the Governor's Commission, if the honor and self-respect of myself and my Officers, and the discipline, interests, and publicly expressed wishes of my Company were to be outraged and disregarded by the reinstatement of a Sergeant-Major whose retirement from the ranks of the Company had been demanded by the deliberate resolution of his comrades." Printed Correspondence, page 10.

I assured His Excellency that " for me to make such an order would (in my judgment) *be a crime against the Company for whose honour and interests I was personally responsible to the Crown.*"

In my letter of resignation, I represented to His Excellency that I was required to " reinstate as Sergeant-Major a person whose conduct my Official Report had demonstrated beyond all question to be utterly unfit for any position of authority or responsibility in a Volunteer Company." I stated that " my knowledge and experience of my own Company convinced me that Mr. Swan's reinstatement would prove *seriously detrimental to the interests of the Company, if not destructive to its existence as a body of Volunteers.*" Printed Correspondence, page 33.

And I further stated, that my sense of " the responsibility I undertook to the Crown, to the public, and to the Volunteer Service, when I accepted the command of the B.V.R. Company, forbade me to become a party to an act *which I knew must prove ruinous to its interests*, and which I felt to be at the same time inconsistent with my own sense of personal honour."

In the face of these reiterated declarations of my motives, His Excellency has ascribed my resignation to " views of intoleration, which rendered it impossible for me to obey the order of my superior Officer!" I venture to express my conviction that my poor services in behalf of the

Volunteer movement in Tasmania merited some more generous mention by the Queen's Lieutenant than this extraordinary perversion and misrepresentation of my conduct and design.

But I ought not, perhaps, to be surprised at finding my motives thus misrepresented, when my conduct had been already prejudged. It is on this point that I feel at liberty to complain of the treatment I experienced at the hands of His Excellency.

I appealed from the obvious prejudice and determined personal hostility of Colonel Russell to the good sense and patriotism of the Governor.

I hoped that my account of the behaviour of Mr. Swan, and its effect upon the Company, would have induced the Governor to decline interference in a matter which it was clearly in the power of the Captain and the Company to adjust, without the assistance of any extraneous intervention.

I was prepared for Colonel Russell's animosity, but I expected an impartial judge in the Governor.

I was mistaken: His Excellency appeared to have been implicitly guided by Colonel Russell, whose determined advocacy of Mr. Swan had, in fact, by this time completely identified the Colonel Commanding with the insubordinate and reprehensible acts of my refractory Sergeant-Major; and the Governor seems to have felt that to sustain my position, was not only to decide against Mr. Swan, but to condemn Colonel Russell.

It is true that Colonel Russell, in his letters to myself and to the Colonial Secretary, has repeatedly declared that he had no official cognizance, and had never entered into the merits of the case as between myself and Mr. Swan. But the general tenour of his letters, and the circumstance already referred to of his communicating the correspondence, unofficially, without my privity to Mr. Swan, sufficiently demonstrates that this allegation is not sustained, by facts. And if additional confirmation be needed for the truth of this assertion, it will be found in Colonel Russell's marginal notes made in my letter of the 25th of April, 1862, in which, in several instances, Colonel Russell has animadverted upon the bearings of the whole case to my disadvantage, and has by no means confined his remarks to the mere legal or military aspect of the question.

It seems to me only too evident that the Governor's mind was, by this means, prejudiced against myself; and I complain that His Excellency's final decision was pronounced, not upon my official report, but upon Colonel Russell's prejudiced and *ex parte* misrepresentation of the facts, and interested palliation of Mr. Swan's insubordinate and unbecoming behaviour.

Under these circumstances, no attention was paid to my statements; no regard was vouchsafed to the expressed wishes of any Company, or to my representations of the effects that must inevitably attend Mr. Swan's reinstatement.

It was thought more important to the public service to uphold the *dictum* of a military pedant than to study the interests and preserve the existence of a Volunteer Company, which Colonel Russell had already proposed to "*disband*," rather than abandon the idea of Mr. Swan's restoration to his former rank.

Printed Correspondence,
page 24.

The Governor's memorandum on my official report confirms my opinion on this point; anxious only, it would seem, to concur in Colonel Russell's view of the case, and to support that Officer's dignity. His Excellency in that memorandum has most unnecessarily and undeservedly imputed to me the use of language in my letters to Colonel Russell the reverse of courteous and appropriate,—a charge I must respectfully, but most emphatically, repudiate: but the allegation in such a document indicates too plainly the unfortunate bias of His Excellency's mind.

Actuated by these impressions, the Governor made light of my explanation of the circumstances attending Mr. Swan's reduction to the ranks; and, perhaps, discredited any prediction of the consequences of a reversal of that legal order by an exercise of mere authority, unsupported by warrant of law.

Colonel Russell's decision was to be maintained at all hazards; and an Officer commanding a promising Company of Volunteers was required to do an act degrading to himself and destructive to his Company, irrespectively of the consequences to that particular Corps, or to the interests of the Volunteer movement throughout the Colony.

Even when my resignation was tendered to the Governor, and the consequences to the Company must have been obvious to the least discerning observer, the merits of this case and the existence of the Company were at once disregarded, for the sake of upholding the dignity of an Officer whose sole interest in the Volunteer service of Tasmania began and ended with the receipt of his salary as Colonel Commanding.

By that Officer my resignation was immediately submitted to the Governor, and its acceptance by His Excellency was subsequently communicated to me by Colonel Russell in terms of undisguised and indecent exultation. Printed Correspondence, page 33.

The Governor seems to have gladly availed himself of this opportunity of displaying his power to discourage the Volunteer movement by casting indignity on its Officers, and at once accepted my resignation in the disingenuous Minute, which I have already shown, by extracts from my official communications to the Governor himself, to be entirely inconsistent with, and completely to misrepresent, my repeatedly declared intentions and motives.

The relations between the Captains of Volunteer Corps and the Military Officer who is appointed to command the whole Force will, no doubt, occupy the attention of the Board; and the reflections suggested by the Correspondence forwarded with this letter may, perhaps, suggest some proposals for defining and reconciling their respective authority and functions.

As the law now stands, my position in reducing Mr. Swan was unassailable, except by the forcible exercise of power.

I had pointed out in my letter to the Governor, reporting on the whole case, that "His Excellency's *opinion*, even when pronounced as a *decision*, could not determine the legal question;" and I ventured to suggest to His Excellency, "that it is beyond the prerogative of the Sovereign herself to pronounce judicially on the legal validity of the acts of any of her servants, or the construction of the provisions of a Legislative Enactment."

I have now no hesitation in expressing my belief that, in an analogous case in England, no Lord Lieutenant of a County, or even the Queen herself, would have thought it desirable or becoming to interfere between the actual Commanding Officer of a Company of Volunteers and a Colonel appointed to command, not each separate Corps, but the Collective Force, when formed into a Battalion or brigaded on actual service.

I am borne out in this view by the Queen's Regulations for the Volunteer Service in Great Britain.

It is no satisfaction to me to point, for confirmation of my predictions, to the present condition of the Buckingham Volunteer Rifle Company. My retirement was immediately followed by the resignation of the First Lieutenant and Adjutant; and Mr. Swan was reinstated by the junior Subaltern, in obedience to peremptory orders from Colonel Russell.

The Returns accessible to the Board of Officers will demonstrate the effects of the treatment I and my Company have experienced at the hands of the Colonel Commanding, and of those by whom he was upheld.

It is not too much to say that the Governor's mandate for the reinstatement of Mr. Swan, in spite of the earnest remonstrance of his Commanding Officer, and the deliberate Resolution of the Company demanding his *retirement from the ranks*, has in effect *disbanded* the Buckingham Volunteer Rifle Company.

For the last nine months it has not been paraded or drilled; its best men have quitted its ranks; and, as a Company of Volunteers, it has ceased to exist.

I shall be glad to believe that the enquiries and recommendations of the Board of Officers now sitting will tend to prevent the recurrence of proceedings so disastrous to a National movement, in which, whether as an Officer or a colonist, I have always taken a deep and sincere interest.

I have the honour to be,
Sir,

Your obedient Servant,

Capt. CHESNEY,
Commanding Royal Engineer,
Member of Board of Officers on Volunteer Force.

THOS. Y. LOWES.

EXTRACT from Minute Book of the Volunteer Commission.

17th June, 1863.

Present.—Colonel Kempt, Honourable J. M. Wilson, and Captain Chesney, *R.E.*

"A Letter dated 4th May, 1863, covering printed Papers, was received by Captain Chesney from the Honourable T. Y. Lowes, and was taken into consideration by the Commissioners."

G. SMITH, *Secretary.*