

(No 60)



1867.

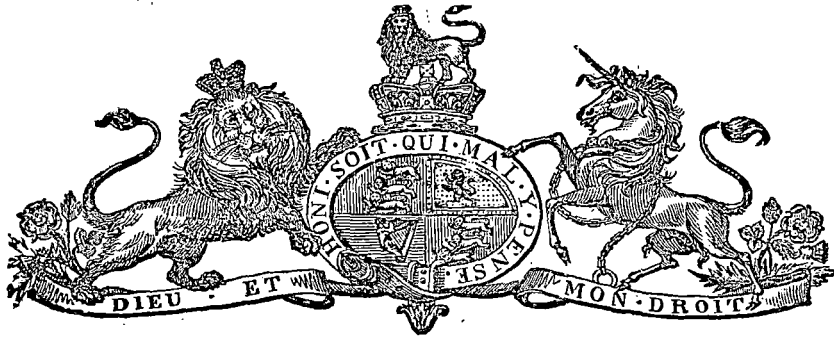
T A S M A N I A.

LEGISLATIVE COUNCIL.

MRS. LUTTRELL'S CASE.

REPORT OF SELECT COMMITTEE.

Brought up by Mr. Fysh, and ordered by the Council to be printed, October 4, 1867.



Legislative Council Chambers, 3rd October, 1867.

THE Select Committee appointed to enquire into the case of Mrs. Luttrell, having duly investigated the evidence annexed, find :

That her late husband, Mr. Edgar Luttrell, was particularly recommended to His Honor Governor Arthur for a special work of much importance to the Colony, which he successfully accomplished at the risk of his life, and at a pecuniary cost, bringing in the notorious Aboriginal "Mosquito," and at other times many of the Natives who were committing great depredations under that man's leadership.

That Mr. E. Luttrell received an order for 300 acres of land for such services, but neglecting to fulfil the conditions of the grant it lapsed, and its re-issue was refused.

That the conditions upon which grants were made were not generally complied with.

That no reward whatever was received by Mr. E. Luttrell.

And, with one exception, is of opinion that an equitable claim is established for compensation to the amount of One hundred and fifty Pounds, being an approximate estimate of the value of the land.

P. O. FYSH, *Chairman of the Committee.*

MINUTES of Proceedings of the SELECT COMMITTEE on MRS. LUTTRELL'S Case.

MEMBERS.

MR. WHYTE.
MR. KENNERLEY.
MR. WILSON.

MR. ARCHER.
MR. WEDGE.
MR. FYSH.

DAYS OF MEETING.

Friday, 27 September, 1867. Tuesday, 1 October, 1867.

WITNESSES EXAMINED.

MR. J. BEAMONT.

MR. E. ABBOTT.

Mrs. S. LUTTRELL.

FRIDAY, 27 SEPTEMBER.

Members present—Mr. Fysh, Mr. Wilson, Mr. Archer, Mr. Wedge.

Mr. Fysh in the chair.

Ordered, That Mrs. Luttrell, Mr. E. Abbott, and Mr. J. Beamont be summoned for Tuesday, at 11 o'clock.

TUESDAY, 1 OCTOBER, 1867.

Members present—Mr. Fysh, Mr. Wedge, Mr. Archer, Mr. Kennerley, Mr. Whyte.

Mr. Beamont, Mrs. Luttrell, and Mr. Abbott called in and examined.

The Committee adjourned.

EVIDENCE.

MR. J. BEAMONT called in and examined.

I KNEW Edgar Luttrell, and that he went out after Mosquito. I recommended him to Governor Arthur for that work because he knew the country well. To the best of my belief Edgar Luttrell brought Mosquito in. I am not aware that he received any fee or reward, but believe Colonel Arthur promised him some land, which was a customary reward in those times for such services. He must have had a great deal of trouble, and certainly risked his life. I think that 300 acres of land in those times was not a large reward. I do not remember what land was worth in those days; it was not worth much. I know nothing of his private circumstances. He was generally employed in the capture of natives and bushrangers, whenever his services were required. It was not customary in those days to compel people to comply with the conditions of their grants. Taking into consideration all the circumstances, I think he was entitled to a grant of land, notwithstanding the lapse of time between the location order and the application for another 11 years afterwards: I think he should have had it.

MR. E. ABBOTT called in and examined.

In my position as a Member of Parliament I took some trouble in the case of Mrs. Luttrell. I moved for the papers in the Legislative Council, and drafted a letter for her dated 26th July, 1866, stating the circumstances of Mr. Luttrell going out in pursuit of the natives at the instigation of the Government. At that time the natives were very numerous, and very annoying to the inhabitants of the Colony. How many natives Mr. Luttrell brought in I cannot say; but I know there were several brought in by him. He performed this duty at a great risk,—in fact, at the risk of his life. I understood at the time that he was promised a grant of land for his services. The statement of circumstances was from my own knowledge and recollection. Luttrell did bring in Mosquito, to the best of my belief,—an aboriginal outlaw of New South Wales, who was the head of a party of natives. I do not remember the native boy. The conditions of the old location orders were never rigidly enforced. I am aware that the late Government refused Mrs. Luttrell's application for compensation on the ground that the conditions had not been fulfilled. I think that 300 acres of land would be a very cheap reward for such services. My opinion of the value of a bare location order in those days untaken would be on an average from five to six shillings per acre. In my opinion, in a case of this kind, where a man has risked his life in rendering public service, no time should bar the claim. I call attention to Government Order respecting land, of date 31st January, 1832, which clearly declares that no grant of land shall be refused by reason of the non-fulfilment of the conditions. I remember the notorious aboriginal Black Jack, but have no recollection whether he was taken by Luttrell. I consider that in those days neither life nor property was safe in consequence of the depredations of the natives and bushrangers.

MRS. LUTTRELL called in and examined, said:—

I am widow of the late Mr. E. Luttrell. Colonel Arthur sent for my husband to assist in capturing the blacks, who were then very troublesome. On one occasion he was three weeks out, and lost for two days without provisions. Mosquito was captured at that time by my husband and one constable, and my black servant Tegg. A second time he was out for about 12 days, when he brought in the tribe of 30, of which Mosquito had been the leader, which was at that time considered the worst tribe out. The constable was rewarded, but in what way I do not know. The black boy was promised a pine boat, but they gave him a hardwood boat, which he refused. My husband did not receive any reward; neither was returned to him the money—from £12 to £14—which he laid out in their keep, and in expenses attending their capture. My husband received a location order for 300 acres on condition that he resided on it; but there being no restriction as to time that the location order should be acted upon, my husband reserved it for the use of his sons. On application 11 years after, the Governor refused to recognise my husband's claim. A third time His Honor the Governor sent for Mr. Luttrell, requesting him to go and capture the black boy Tegg, who had run away threatening to shoot the white people in consequence of a useless boat being given to him for his services on a former occasion; and he succeeded in bringing him back, and he remained with us during the remainder of his life. There were other instances of persons rendering similar services to Mr. Luttrell's, who I believe were more amply rewarded. I think Colonel Arthur was offended because my husband objected to join the black war for the capture of the blacks, his refusal being in consequence of having received no reward for his former services, and having under his protection an aged and widowed mother.

CAPTAIN FERGUSON having been summoned, was prevented from attending the Committee through illness, but forwarded the following letter:—

Tinderbox Bay, 30th September, 1867.

SIR,

My father is too unwell to answer your letter, and he has requested me to inform you that he recollects about the time of Colonel Arthur's arrival of Mr. Luttrell capturing 7 blacks, among whom were Mosquito and Black Jack for murder, for which he was promised three hundred acres of land.

I remain,

Sir,

Yours obediently,

W. G. FERGUSON.

E. C. NOWELL, *Esq.*, *Hobar Town.*

His Honor GEORGE ARTHUR, *Esquire, Lieutenant-Governor of Van Diemen's Land.*

The Memorial of Edgar Luttrell.

18th October, 1824.

HUMBLY SHOWETH :

THAT your Memorialist is the son of Mr. Surgeon Luttrell, formerly of the Medical Establishment of this Colony.

That your Memorialist received from Governor Macquarie Two hundred acres of land, which being incompetent to lay out in an agricultural manner, he disposed of for the purpose of aiding in the erection of a genteel house in Campbell-street.

That your Memorialist now having a wife and four small children, and desirous of turning his attention wholly to farming pursuits, possessing every means for the accomplishment thereof, he respectfully solicits the indulgence of such an additional Grant of Land as Your Honor may be pleased to conceive him deserving of; and your Memorialist, as in duty bound, will ever pray.

You had better send for the Memorialist, and explain to him that the disposal of his land already granted makes void his claim for more—enquire, however, what his means are of cultivation.

G. A.

Hobart Town, 2nd November, 1824.

SIR,

I HAVE the honor to reply to your communication relative to the explanation required by the Lieutenant-Governor, touching the means now in my power of laying out and cultivating such a Grant of Land as my means may be deemed adequate by His Honor for the improvement thereof.

In the first place I possess a house in Campbell-street, the rent of which is productive of £75 per annum. I have also a vessel of fifteen tons burthen, capable of producing One hundred and fifty Pounds per annum, and thirty head of horned cattle, with outstanding debts amounting to full One hundred and ninety Pounds, at Pittwater; as also a part bequest of Fifteen hundred Pounds in a train of arrangement in India.

I am, &c.,

EDGAR LUTTRELL.

Captain MONTAGU.

Secretary's Office, 17th November, 1824.

SIR,

I AM to acknowledge the receipt of your letter of the 2nd instant, and to acquaint you that His Honor the Lieutenant-Governor will make a grant to you of 300 acres of land upon condition you reside upon, cultivate it, and erect your necessary buildings.

I remain, &c.,

JOHN MONTAGU.

Mr. E. LUTTRELL.

Hobart Town, 39, Davey-street, 6th May, 1835.

SIR,

IN 1824 Mr. Edward Lord, by his agent Mr. Pritchard, received moneys due to me in India, amounting to £175 sterling; and I was also in possession of other property in Hobart Town of the value of about £310.

I applied to His Excellency the Lieutenant-Governor for a Grant of Land, and had the honor to receive a letter from the Colonial Secretary, dated the 17th of November, 1824, informing me that His Honor would be pleased to make a Grant to me of 300 acres.

Soon afterwards, and before I could make a selection, Mr. Lord left the Colony without paying the money his agent had so received for me, and I have not until lately had the power to enforce the payment at law. I have continued to reside in the Colony ever since I landed, 17 years ago, from Sydney; but from the want of the money due to me from Mr. Lord, and in the constant expectation of receiving it, I have refrained from applying for a location.

As I can now command the means of necessary improvements, I take the liberty to request that you will do me the favour to lay my case before His Excellency, and solicit His Excellency's sanction to my making a selection of land in some approved situation.

I have, &c.,

EDGAR LUTTRELL.

The Surveyor-General.

THIS gentleman wishes the accompanying application laid before the Governor, although what has passed does not appear to amount to an order for land.

G. FRANKLAND, *Surveyor-General*.

July, 1835.

It is not in my power to accede to the request.

G. A.
13th July.

THE Surveyor-General will communicate the nature of the Lieutenant-Governor's note to the applicant.

JOHN MONTAGU.

15th July, 1835.

His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of Van Diemen's Land.

The Memorial of Edgar Luttrell.

30th December, 1835.

HUMBLY SHOWETH:

THAT your Memorialist is the son of Edward Luttrell deceased, formerly Colonial Surgeon.

That at the time when the notorious Musquito was in the bush perpetrating the most sanguinary acts, having deprived many of life, your Memorialist then had under his protection a Native boy named Page.

That Your Excellency having so ascertained, Your Excellency was pleased to write to Mr. Bent to the following effect:—"The Lieutenant-Governor is much obliged to Mr. Bent for the information contained in his note, and will thank him to request Mr. Luttrell to call with the Native boy at the Lieutenant-Governor's Office at 9 o'clock to-morrow morning.—Wednesday evening."

That your Memorialist did so accordingly, and Your Excellency having promised the Native boy a pine boat provided he captured Musquito, he went in pursuit of him, and after great sufferings and privations succeeded in shooting him through the thigh, and brought him in safe custody to Your Excellency.

That the boat which Your Excellency ordered to be built for him being composed of stringy bark in lieu of pine plank, he took umbrage and flew to the bush, threatening extermination to every white man that fell in his way.

That Your Excellency dreading the alarming consequences arising from his flight, and aware of the influence he had over the various tribes, your Memorialist was again applied to, who at the peril of his life traversed the bush in quest of him.

That your Memorialist then took him as before under his protection, and uniting the habits of the Native boy with those of his own, he had the gratification of thoroughly civilizing him.

That for rendering such a public service your Memorialist was ordered Three hundred acres of land, which, owing to adverse fortune and a very large family, he was totally incapable of cultivating; that now he has the means of so doing the Crown has refused to confirm it, owing to the conditions thereof not having been fulfilled.

Your Memorialist therefore humbly prays Your Excellency will take into your sympathy the hardness of his case, and as he has expended divers large sums of money in the Colony, he hopes Your Excellency will be the means of restoring to him his land, and he will, as in duty bound, ever pray.

I HAVE NO recollection of this case—refer to the Surveyor-General.

G. A.
1st January, 1836.

The Surveyor-General,

JOHN MONTAGU.

8th January, 1836.

THE former Memorial from Mr. Luttrell (which I forward) urged his claim on totally different grounds.

A Grant was made to him in 1823 by Sir Thomas Brisbane of 200 acres, and I presume he has had the enjoyment of it; but as to the 300 acres now under consideration there is no order for such.

G. F.
8th January, 1836.

MR. Frankland is mistaken, as will appear by the enclosed papers. Does the Lieutenant-Governor approve of Mr. Luttrell having the 300 acres ordered for him in 1824?

J. M.

INFORM Mr. Luttrell that I regret very much it is not in my power to revive an order which has been dormant for so many years.

G. A.
25th January, 1836.

Informed accordingly.

27th January, 1836.

24, Frederick-street, Hobart Town, 26th July, 1866.

SIR,

I HAVE had the honor of receiving your answer of the 18th instant, informing me that the order of 300 acres of land being conditional, and the long interval of so many years, that for such reasons you are precluded from recommending my application to the consideration of His Excellency the Governor.

I venture to hope that, as all the facts have not been brought forward so prominently as they ought to have been in this correspondence, you will be pleased to reconsider my claim, and allow the same.

On this occasion I appeal to your innate sense of justice and right to recognise my claim in the words of your letter as bearing in the case a location order forwarded by my late husband in 1824, for services rendered the Government.

I could have brought forward again all the especial circumstances of the taking of the Natives by my late husband, which are well known to many Members of Parliament, and Messrs. Beamont and Ferguson, as well as others; but the admission in your letter above cited renders my doing so a work of supererogation.

I shall now respectfully address you on the main point in your communication, that the order was conditional. I would call your attention to the Government Order respecting lands of date 31st January, 1832, which clearly declares that no grant of land shall be refused by reason of the non-fulfilment of the conditions; and this principle should govern this case when the land was given for a consideration, viz., labour and exertion in the public service.

The words of the Order are as follows:—In all cases in which lands have been located or granted subject to the conditions of the grantee or locatee personally making a given expenditure on it, if the grantee or locatee shall have in fact parted with the actual occupation of the land to any other person before he shall have personally made such expenditure thereon, no grant will be made but upon payment of a similar fine as in cases of breach of the condition of non-alienation.

I may be allowed to state that I am advised that there is no instance on record of a grant of land being refused for a non-compliance with the conditions. The fact is patent and notorious that this liberal regulation has been acted on in every instance but mine. Why, therefore, may I ask, should my especial case be the exception?

With respect to the former decision in the case in 1835, that the then Governor could not revive an order which had been dormant so long, such an argument is fallacious; for every due regard to the public interests could not reasonably thus summarily negative a righteous and just claim, on account of which my husband put his life in jeopardy, as is well known to all the old hands. No one but the latter are fully aware of the fearful state of the country from the wholesale murders and ravages of the blacks, when my husband was employed by the Government in the perilous duty of capturing them, so that their atrocities should cease.

I would humbly submit to you that as the widow of an old servant of the Government, for the reasons herein detailed, I am justly, fairly, and equitably entitled to the order for 300 acres of land; that I am a poor lone woman entitled to your commiseration, only having a pension of £15 per annum to subsist on; and that as the land was awarded my late husband for special service, no time ought to bar such a just claim,—one founded on the principles of irrefragable justice.

Apologising for thus troubling you again, and trusting that you will not deem me importunate,

I remain, &c.,

SARAH LUTTRELL.

Colonial Secretary's Office, 11th August, 1866.

MADAM,

IN reply to your letter of the 26th ultimo upon the subject of your application for a Grant of Land on account of services performed by your late husband, I have the honor to inform you that the Executive Government cannot acquiesce in the revival of a claim originating forty-two years ago, which was refused thirty years ago as being then too long dormant, and which has remained in abeyance ever since.

I would also remark that the last decision was given four years after the Order you refer to.

The Legislature alone can authorise the recognition of your late husband's services, as without a special Act of Parliament the land you apply for could not be legally granted.

I am, &c.,

JAMES WHYTE.

Mrs. LUTTRELL, 24, Frederick-street.