(No. 41.)

1864.

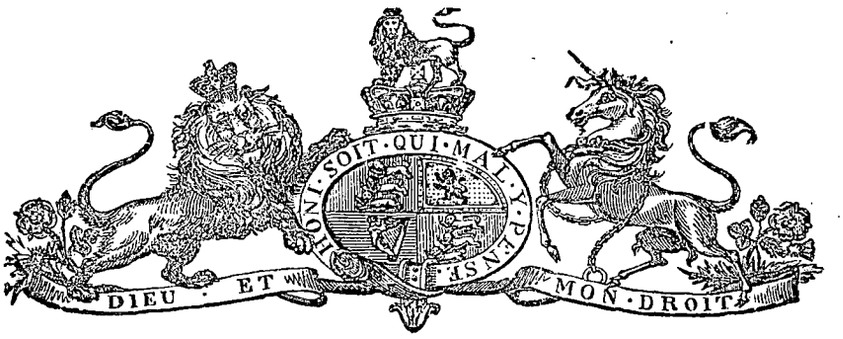
TASMANIA.

LEGISLATIVE COUNCIL.

CLAIMS OF THE COLONY ON THE IMPERIAL GOVERNMENT.

Return to an Address to His Excellency the Governor, dated July 1, 1864.
(Mr. Innes.)

Laid on the Table by Mr. Whyte, and ordered by the Council to be printed,
July 21, 1864.



TASMANIA

No. 48.

Downing-street, 14*th September*, 1863.

SIR,

I TRANSMITTED for the consideration of the Lords Commissioners of the Treasury a copy of your Despatch No. 14, of the 14th February, in which you bring before me a proposal of your Government that half the cost, amounting to £4843, of the new Buildings at the Queen's Orphan Schools should be admitted by the Imperial Government as belonging to the Expenditure of the year 1861-62, and should not be spread over a term of years. Their Lordships, as you will learn from the accompanying copy of their reply, cannot agree to this proposal; but maintain that the number of Imperial, as compared with the number of Colonial, children must be taken into consideration, as well as the fact that the building will eventually be used solely for Colonial purposes. Their Lordships therefore propose that the Imperial Government should either pay one sum amounting to a third of the entire cost, or that the entire cost being spread over ten years, they should annually pay a proportionate sum varying as the number of Imperial children.

I have the honor to be,
Sir,
Your most obedient humble Servant,
NEWCASTLE.

Governor GORE BROWNE, *C.B.*

The Honorable F. PEEL *to Sir* F. ROGERS.

(Copy.)

Treasury Chambers, 1*st September*, 1863.

SIR,

WITH reference to Mr. Elliot's letter of 11th of May last, enclosing correspondence relating to the charge to be borne by the Imperial Government for the maintenance, in 1861, of Children in the Queen's Orphan Schools in Tasmania, I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of the Duke of Newcastle, that they cannot consent to the payment to the Colonial Government of the sum of £4843 on account of new Buildings at the Queen's Orphan Schools, erected in 1861 at an estimated cost of twice that amount. My Lords are of opinion that, considering that the number of children chargeable to Convict Funds must be annually decreasing, and that on 30th June, 1862, there were only 219 such children against 255 Colonial children, it would not be fair that the expense of a permanent building should be equally divided, as if each Government was to derive the same benefit from it.

It appears to this Board that either the course suggested in 1861 might be followed; viz., that the Imperial Government should pay, for a period not exceeding 20 years, a proportionate part of one-tenth of the expense varying with the relative numbers of British Orphan children from year to year compared with the number of other children in the Schools; or that, if a payment in full be made at once, then, having regard to the present and probable future numbers of British children in the Schools, not more than one-third of the certified total expense should be charged to Imperial Funds.

I am to observe, that in the claim to repayment out of Convict Funds recently preferred by the Colonial Government of Tasmania, and upon which my Lords have expressed their views in another letter, there is a sum of nearly £1000 claimed in respect of children formerly in these Schools, who, till lately, were considered properly chargeable to the Colony, and were paid for by the Local Government, but who are now alleged, on insufficient grounds as my Lords consider, to have been chargeable to funds voted by Parliament.

I am, &c.,
(Signed) F. PEEL.

Sir F. ROGERS, *Bart.*

Colonial Secretary's Office, 18th May, 1864.

SIR,

I HAVE the honor to return herewith the Despatch, No. 48, of the 14th September, 1863, enclosing copy of a communication from the Right Honorable F. Peel to Sir F. Rogers, conveying the opinion of My Lords of the Treasury respecting the proportion of the expenses incurred in the erection of the Infant School at the Queen's Asylum that is fairly chargeable to the Imperial Government, and suggesting either the immediate payment of one-third of the certified total expense of the building, or the payment annually, for a period of twenty years, of a proportionate part of one-tenth of the cost of the erection, varying with the relative number of British and Colonial Children in the Asylum.

I have now the honor to inform you that, the subject having received the careful consideration of Your Excellency's Ministry, they are prepared to acquiesce in the suggestion of My Lords of the Treasury for the payment of one-third of the certified total cost of the building, and to accept that amount as a liquidation of the claim of the Colonial against the Imperial Government on account of the Infant School.

At the same time, the Ministry beg to point out to Your Excellency that they cannot ignore the fact that, but for the presence of the Imperial Convict element, the building would never have been required, and the funds of this Colony would thus have been spared the outlay of the remaining two-thirds,—an amount with which the finances of Tasmania can ill afford to be charged.

I have, &c.

JAMES WHYTE.

His Excellency the Governor.

MEMORANDUM.

THE Comptroller-General, acting in accordance with the tenor of a communication received from the Home Government, having objected to the introduction of the entire cost of new Buildings which the Local Authorities may desire to erect into the Accounts of "Annual Expenditure" incurred for Institutions in which the British and Colonial Governments are jointly interested,—the latter have decided, with the consent of the Comptroller-General, upon fixing an annual rental of 10 per cent., calculated on the actual expense of any new Buildings which may be required; the Imperial Government defraying a proportion of that annual rental, according to the number of persons in the Establishment borne on Convict funds, for a period of twenty years.

Colonial Secretary's Office, 21st July, 1864.

Comptroller-General's Office, 3rd February, 1864.

MEMORANDUM.

I HAVE the honor to forward to the Colonial Secretary the enclosed Despatch from the Right Honorable the Secretary of State, dated 13th November, 1863, No. 64, forwarding copies of the Correspondence that has taken place between Sir F. Rogers and the Lords of the Treasury relative to the claims which have been preferred by the Colonial Government for repayment of sums paid for the maintenance of persons alleged to have been erroneously admitted as charges upon Colonial Funds. Copies of the enclosures in this Despatch were transmitted by me to the Colonial Secretary on the 11th ultimo, as having been received from the Assistant Commissary-General; and the Colonial Secretary will observe, from a Memorandum by the Governor on the Despatch, that His Excellency is desirous that the matter should be settled and replied to by the next mail.

W. NAIRN, *Comptroller-General.*

The Hon. the Colonial Secretary.

TASMANIA.
No. 64.

Downing-street, 13*th November*, 1863.

SIR,

ADVERTING to my Despatch No. 75, of the 26th of November last, I have the honor to transmit, for your information and guidance, an extract of a letter from the Board of Treasury upon the subject of certain Claims connected with Convict Expenditure which have been made by the Colony on the Imperial Government. This letter has reference to two previous cases in which the claims advanced by your Government have been allowed, and also to a third and fresh claim for the sum of £4418 10*s.* 7*d.*, the liquidation of which was very properly deferred by the Officer in charge of the local Commissariat Chest until he could receive instructions from home.

I have to inform you, that the Lords Commissioners of the Treasury have consented to abandon all claim in respect of either of the sums which were paid to the account of your Government in 1861 and 1862, though, for the reasons stated in the enclosed letter, they are not prepared to accede to the present demand.

I have to call your attention to the remark of their Lordships, that there are several persons now being maintained at Imperial cost who have been free by expiration of Sentence, or receipt of a Pardon, for more than ten years; and I have to instruct you to take such steps as may be necessary for transferring the charges for these persons to the account of the Local Government.

I have the honor to be,
Sir,
Your most obedient humble Servant,
NEWCASTLE.

Governor GORE BROWNE, *C.B.*

(Copy.)

Treasury Chambers, 28*th Augnst*, 1863.

SIR,

WITH reference to Mr. Elliot's letter of the 26th November, 1862, respecting the Claims of the Colonial Government of Tasmania to repayment of sums alleged to have been erroneously paid by the Colonial to the Imperial Government, I am commanded by the Lords Commissioners of Her Majesty's Treasury to request that you will observe to the Duke of Newcastle, that their Lordships were informed, by Mr. Elliot's letter of 18th October, 1861, that His Grace had already sanctioned a Claim made by the Colonial Government, and brought under his consideration, to be reimbursed the sum of £3134 2*s.* 1*d.*; and they find that, on the 21st June, 1862, a further Claim amounting to £4681 2*s.* 9*d.* was admitted in the Colony, and forthwith paid to the Colonial Government by order and upon the responsibility of the Governor.

This Claim formed the subject of the letter from this Board to which His Grace's communication of 26th November, 1862, was in reply.

My Lords now desire me to transmit for the consideration of the Duke of Newcastle copies of four letters, dated 22nd December, 1862, and 22nd January, 21st February, and 28th March, 1863, which their Lordships have received from Assistant-Commissary-General Hawkins, and by which it appears that the Colonial Government claim to have paid in error additional sums amounting to £4418 10*s.* 7*d.*, but that repayment of this sum has very properly been deferred in order that the Assistant-Commissary-General might obtain the instructions of their Lordships.

The general ground of these claims to repayment is, that the persons who were paid for by the Colonial Government were, all the time, properly chargeable to the British Government; and the two principal questions involved are, whether a person who has been granted a pardon by Her Majesty or with her approval, but who has not applied for the formal documents, should be considered to be still a Convict; and whether the concession made by His Grace, in his Despatch of 12th August, 1861, that a person free by Servitude or Pardon and in hospital for a disease which could be traced to the time when he was a Convict, should, with certain exceptions, be maintained at the expense of the British Government, was intended to be applied retrospectively or not.

My Lords desire to observe that accounts settled years ago, some so far back as the year 1839, have been re-opened in making these Claims; and that, on the principle adopted in making them, cases older still, and indeed of any date however remote, may be put forward for re-adjustment. But a lapse of time is a serious objection to entertaining claims of this description: it is impossible that they should be substantiated by proof as satisfactory as when the cases are of recent occurrence.

This is so with the present Claims. In the large class, for instance, on account of "previous disease" there is seldom any evidence that the particular disease for which the free person was treated was contracted while he was under sentence. Again, as regards a Claim made by the Colony to be repaid £1250, not on account of a corresponding amount paid to the Imperial Government, but as expenses of Colonial Hospital supported by the Colonial Government, for persons held, when admitted, to be chargeable to the Colony, but which expenses it is now sought to transfer to the British Government on the plea that the patients had not taken up their Conditional Pardons, or had been in Hospital when they were Convicts, the proper proofs that the Colony actually paid the sums set down for reimbursement have not, except occasionally, been adduced.

My Lords, however, have other objections besides that of insufficiency of proof, and they are quite unable to admit the principle on which the claims generally are founded.

They would call the attention of His Grace to the remarks of Mr. Hawkins, in his letter of 22nd December, 1862, on the subject of the issue of conditional pardons; and they desire me to state, that they agree with that Officer that where pardons have been granted by Her Majesty, and public notice thereof given, there is not that dissimilarity of condition as between the person who applies for the formal document and the person who does not so apply, which would justify one being regarded as still a Convict and the other as free, in regulating the apportionments of charges between the Imperial Government and the Colonial Government, and still less with a view to re-opening the accounts for the last 20 years or more between the two Governments which have been adjusted on the principle of there being no real difference of condition.

My Lords must therefore decline to admit any claims to repayment founded on the circumstance of the conditional pardon not having been taken up.

As regards the other large class of claims, it is not necessary to do more than refer to the terms of the Secretary of State's Despatch, No. 59, of 12th August, 1861, which are as follows:—

"I am also willing to assent to the adoption of the rule which it is proposed should *in future* be in force, that Paupers labouring under diseases which can be shown to have been contracted while they were Imperial Convicts, and who may have become a burthen upon the public, shall be maintained by the Home Government unless they shall have been free for a period of 10 years, in which case the cost of their maintenance will devolve upon the Colony."

It is there distinctly stated, that the rule was proposed as a prospective rule, and that consent was given to its being in force in future.

No sanction has been obtained for its application to any antecedent period, and My Lords are of opinion that claims brought forward on the erroneous assumption that it was to have a retrospective effect should not be admitted.

With reference to the concluding part of the above Extract, My Lords observe, in looking over the claims in question, that there are several persons now being maintained in Tasmania out of Convict Funds voted by Parliament who have been free more than 10 years, the "freedom" being apparently construed to mean freedom for ten years from illness, instead of, as My Lords understand the passage, freedom by expiration of sentence or receipt of pardon.

My Lords suggest that the Governor's attention should be called to this misconstruction, and directions given to him to transfer to the charge of the Local Government any persons whose sentences have expired or been remitted more than ten years.

Before acquainting Assistant-Commissary-General Hawkins with the result of their consideration of his letters, My Lords desire to be favoured with the expression of His Grace's views in the matter; and should His Grace concur with them, they will then desire Mr. Hawkins to return the last set of claims, amounting to £4418 10*s.* 7*d.*, to be revised accordingly.

As regards the two sums of £3134 2*s.* 1*d.* and £4681 2*s.* 9*d.*, which have been already paid to the Colonial Government, the first with the sanction of His Grace, they might, under the circumstances, be made the subject of special arrangement on the basis perhaps of a refunding of part of the latter amount.

I am, &c.,

(Signed) F. PEEL.

Sir F. Rogers, *Bart.*

(Copy.)

Downing-street, 9th September, 1863.

SIR,

I AM directed by the Duke of Newcastle to state that His Grace has had under his consideration your letter of the 28th ultimo, with reference to the claims of the Government of Tasmania to repayment of sums alleged to have been erroneously paid by the Colonial to the Imperial Government; and I am to request that you will inform the Lords Commissioners of the Treasury in reply, that the Duke of Newcastle concurs in the view taken by their Lordships, except in the case adverted to in the last paragraph of your letter as to requiring the Colony to refund a part of the sum of £4681 2*s*. 9*d*. already paid over to them.

His Grace is of opinion that any attempt to obtain the concurrence of the Colony to such a step would be of no avail, and would only create useless irritation.

Subject to this qualification His Grace will be prepared, on receiving the assent of the Lords Commissioners, to forward a copy of your letter to the Governor of Tasmania for his information and guidance.

I am, &c.,
(Signed) FREDERIC ROGERS.

The Secretary to the Treasury.

(Copy.)

Treasury Chambers, 17th September, 1863.

SIR,

THE Lords Commissioners of Her Majesty's Treasury have had before them your letter of the 9th instant, in answer to mine of the 28th ultimo, and stating that the Duke of Newcastle concurs with their Lordships in their views of the recent claims of the Government of Tasmania in connection with past Convict Expenditure, except that His Grace considers that no demand should be made upon that Government in respect of either of the sums paid to its account in 1861 and 1862, and that subject to this qualification His Grace is prepared to direct compliance with their Lordship's views.

My Lords request that you will inform the Duke of Newcastle that they assent to the qualification proposed by him.

I am, &c.,
(Signed) F. PEEL.

Sir F. ROGERS, *Bart.*

(Copy.)

Colonial Secretary's Office, 14th April, 1864.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 3rd February last, enclosing a Despatch from the Right Honorable the Secretary of State, dated 13th November, 1863, No. 64, covering copy of the correspondence which has taken place between Sir F. Rogers and the Lords of the Treasury relative to the claims which have been preferred by the Colonial Government for repayment of sums paid for the maintenance of persons alleged to have been erroneously admitted as charges upon Colonial Funds, and notifying the decision of their Lordships upon the claims preferred but unsettled at the date of the Despatch.

With regard to their Lordships' interpretation of the Rule approved by His Grace the Duke of Newcastle, respecting the maintenance of persons being sick, invalided, or insane, who are suffering from diseases originating while they were Prisoners of the Crown, and who have not been free for a period of ten years without a recurrence of the disorder (or cause of their incapacity to maintain themselves), I most respectfully protest against the view adopted by their Lordships; and I submit that the wording of the Minute of the Committee of Officers will not bear the construction put upon it; while, at the same time, I know that such meaning was not intended to be conveyed by the Committee. The wording of the Minute is clear and definite, and is as follows:—

"The Colonial Secretary considers that unless the individual is free from a recurrence of the disease for a continuous period of ten years after he becomes free, he should be chargeable upon Imperial Funds; and that this should be adopted as the Rule between the Colonial and Imperial Governments in all such cases."

"The Comptroller-General consents to the adoption of this rule pending the approval of the Secretary of State."

The origin of this Minute, as you will doubtless remember, was, your desire to fix a time when the Imperial Government should be exempted from the liability to maintain persons who suffered from diseases originating anterior to their freedom; no defined limit having been determined upon up to the date of the Minute, and the practice having been to admit the liability of the Imperial Government without reference to the lapse of time since the man's freedom.

The cases for which repayments have been claimed were originally sanctioned as a charge to the Colony on erroneous or insufficient data; and the Colonial authorities had not at the time the means of investigating them so as to ensure accuracy: these difficulties were, however, removed when the Records of the Hospitals and Asylums came into the possession of the Colony, upon the transfer by the Home Government of the various Charitable Institutions, and the opportunity arose from the examination of the several cases by an efficient Colonial Officer; and, as you are yourself aware, no investigation could be more strict than that to which all such claims have been, and are now, subjected with reference to the proof of the same disease having existed while the individual was a Prisoner of the Crown.

The Secretary of State, in his Despatch, No. 59, of the 12th August, 1861, approves of the adoption of the proposed Rule in the following words:—"I am also willing to assent to the adoption of the Rule which it is proposed should in future be in force, that Paupers labouring under diseases which can be shown to have been contracted while they were Imperial Convicts, and who may have become a burden on the public, shall be maintained by the Home Government unless they shall have been free for a period of ten years; in which case the cost of their maintenance will devolve upon the Colony."

It is evident that the freedom here spoken of, is the same freedom referred to in the proposed Rule the adoption of which is approved; and the wording of the Rule itself is too clear to require any comment.

The Rule is, in fact, a limitation of Imperial liability conceded by the Colony in favour of the British Government; and I cannot doubt but that, upon reconsideration, the Right Honorable the Secretary of State will take the same view of the question.

As I have been given to understand that you have already communicated with the Home Government upon this subject, I do not deem it necessary that I should say anything further; and I trust that what has been advanced may prove sufficient to determine the point at issue finally and satisfactorily.

With regard to the question as to which Government is liable for the Maintenance of Prisoners, Paupers, Insane, or Invalids, who have not taken up the instrument of their Conditional Pardon, I beg to observe, that the claims were preferred on the basis of an opinion given by the Crown Law Officers as referred to by the Convict Department, and which had been acted upon for several years whenever a case came under consideration: this opinion, together with a full statement of the question at issue, having been submitted for the consideration of the present Attorney and Solicitor General of the Colony, these Officers have given it as their opinion that the Conditional Pardon takes effect from the date of the Governor's signature, notwithstanding that the Instrument may remain in the custody of the Convict Department.

As it appears that for Departmental reasons only the preparation of the document of Pardon was for some years delayed until the instrument was applied for (the Convict authorities not deeming that the omission could have any injurious effect upon Imperial interests), the Colonial Government are prepared to recognise as the most equitable rule, under the opinion of the present legal advisers of the Crown, that all Convicts upon being gazetted as Conditionally Pardoned shall be considered as having duly received such Pardon.

By this ruling the Government are prepared to abide for the future; and also that it should apply to the claims for repayment now preferred but unsettled, and which will consequently require to be reviewed.

I have the honor to be,
Sir,
Your obedient Servant,
JAMES WHYTE.

The Comptroller-General.

Comptroller-General's Office, 26th May, 1864.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 14th ultimo, in reference to the Despatch of the Right Honorable the Secretary of State, dated 13th November, 1863, No. 64, upon the claims for repayment from Imperial funds of sums alleged to have been paid in error by the Colony.

2. I have now the honor to forward to you copy of a letter addressed by me to the Assistant-Commissary-General, dated 21st April; as also copy of that Officer's reply, dated 18th instant.

3. In paragraph 5 of his letter, Mr. Hawkins states his concurrence with the opinion which I expressed to the Colonial Secretary under date 8th of January last, that it appeared questionable to me how far claims for repayment should be continued to be admitted without limit as to time or number. The Lords of the Treasury, in their letter of the 28th of August, 1863, have drawn especial attention to the objection to the admission of claims arising from lapse of time; and I would press upon the consideration of the Colonial Secretary this objection, regarded as it evidently is by their Lordships as a serious obstacle to the admission of the claims that have been put forward,—the point not appearing to me to have been adverted to by the Colonial Secretary in his letter of the 14th April.

4. In paragraphs 10 and 11, Mr. Hawkins submits that there will doubtless be no hesitation in claiming from the Colony the proportion due for the custody and superintendence of the Colonial inmates of the Factory and Barracks. He remarks, that no consent of the Secretary of State or Treasury was ever yielded to the cost of the superintendence of these Colonial Convicts being borne by Imperial funds; and he further urges, that the Colony not being charged with its share of the expense is manifestly owing to the omission of the local Convict Officers in failing to report the matter, or in not having preferred the necessary claim for each year; but that such oversight cannot be urged as a plea against payment, if the Colony is to be absolved from its responsibility for the errors resulting from the omissions or indifference of their officers in relation to their own claims.

From this view of the question, so far as it relates to the Prisoners' Barracks and Factory, I must express my dissent. Mr. Hawkins says that there was no authority from the Secretary of State ever given to admit into the Prisoners' Barracks or the Factory Colonial prisoners on the Colony providing them rations and clothing. To this I would reply, that this course was pursued twenty years ago before I entered the Department, and my predecessor handed over the Department to me with the arrangement in force. As to the alleged omission of the Convict Department in failing to report the matter home, or preferring the necessary claim at the end of each year, I cannot admit that any omission occurred on my part. In my Annual Report to the Secretary of State in 1859, when writing respecting the Prisoners' Barracks, I stated as follows:—"There were also 80 Free prisoners on the 30th of June, for whom the Colony provides food and clothing, but pay no other charge except the salary of one Overseer and a portion of that of the Superintendent: of these 80, 76 were originally Convicts." In 1861, before Mr. Hawkins arrived in the Colony, I drew attention to the reduction which had taken place in the number of Imperial Convicts, and I obtained the authority of the Governor to apply to the Colonial Government to pay their share of the superintendence of the Colonial Convicts in the Barracks and Factory; and, on my reporting home on the subject, the Lords of the Treasury approved of all the charges being equally borne between both classes of Convicts from the 1st of April, 1862.

5. I come now to paragraph 14 of Mr. Hawkins's letter, in which he draws attention to the fact that there is no mention in your letter of any restitution of the payment of the sums erroneously paid on account of the Pardons not being taken up, and requests that you may be called upon to repay this amount. There can, I apprehend, be no doubt as to the justice of the claim for repayment by the Colony of the amount paid under an erroneous opinion; and I trust that the Colonial Secretary will give the necessary directions for its being complied with. As to the alleged decision of the Law Officers, to which Mr. Hawkins refers, I have only to observe, that the opinion that the Pardon must be taken up was founded on an opinion given by the Law Officers in 1852. Mr. Hampton was then Comptroller-General, and the belief of the Department unquestionably became, that unless the document was taken up the individual was not Free: when, therefore, the Colonial Secretary, in 1861, presented the claims before the Committee of Officers on account of persons whose Pardons were not taken up, as being in the condition of Convicts, I knew that the Department had regarded them as being in that condition, and it never presented itself to my mind to question that position. The matter is, however, now disposed of, and I am not aware that I am called upon to make any further comment thereon.

6. In conclusion, Mr. Hawkins requests to be furnished with the last opinion of the Law Officers, and I have to submit that his request may be complied with.

I have the honor to be,
Sir,
Your obedient Servant,
W. NAIRN.

The Honorable the Colonial Secretary.

(Copy.)

Comptroller-General's Office, 27th April, 1864.

SIR,

I HAVE the honor to forward to you copy of a letter which I received from the Honorable the Colonial Secretary on the 18th instant, in reference to the Despatch of the Right Honorable the Secretary of State, dated 13th of November, 1863, No. 64, respecting the claims which have been preferred by the Colony for repayment for persons alleged to have been erroneously charged to the Colony as Paupers, Convicts, &c.

2. The Colonial Secretary first refers to the interpretation by the Lords of the Treasury of the Rule proposed by the Committee of Officers in February, 1861, and subsequently approved by the Secretary of State, as to the maintenance of Invalids who may be suffering, after they become free, from disease under which they labored when Convicts. The Colonial Secretary places an interpretation on this Rule in accordance with what was the intention of the Committee; and I have already transmitted to the Governor for the consideration of the Right Honorable the Secretary of State a Memorandum upon this portion of the subject.

3. The Colonial Secretary has also correctly stated that, prior to the adoption of the Rule, persons who had been Convicts had been admitted as chargeable upon Convict Funds: but there was no Rule, each case had been decided on its own merits,—and it was the uncertainty incidental on the practice which induced me to bring the matter under consideration with the view of having some Rule laid down. I cannot, however, acquiesce in the view taken by the Colonial Secretary, that the Rule was a limitation of Imperial liability conceded by the Colony in favour of the British Government; on the contrary, the practice would, in my opinion, only be regarded as a concession to the Colony,—and the adoption of the Rule was so far beneficial to the Colony as it authorised a liability on the part of the Imperial Government which was previously of an uncertain and arbitrary character. With regard to the claims for repayment, I enclose for your information copy of a Memorandum which I addressed to the Colonial Secretary on the 8th January, in which I took occasion to point out that no individual had ever been charged for by the Convict Department at the Hospital, Orphan Schools, or Paupers Depôt for whose admission upon Colonial Funds an authority had not been given by the Colonial Secretay,—although it may be perfectly true that many cases may thus have been admitted by the Colony which would, upon a strict investigation, have been borne upon Imperial Funds. I have further stated, as you will observe, that it appeared to me questionable how far claims for repayment should continue to be admitted without limit as to time or number, arising from the Colonial Government having failed to require that minute investigation at the time which might have relieved them from the charge.

4. With regard to prisoners who have not taken up their Pardons, you will perceive from the Colonial Secretary's letter that, upon a reference to the present Law Officers of the Crown, an opinion has been given that where the Pardon itself has been signed and sealed, the person so pardoned becomes free from the date of the signature.

Up to the time of this opinion, it had been held that the document must be issued to the individual himself to confer freedom; the Colonial Secretary refers to cases in which the Pardon has not been prepared. And, with regard to this point, I may state that, from September, 1843, to the 27th November, 1849, all Pardons were made out and signed by the Governor on the receipt of their approval from the Secretary of State; from December, 1849, to 13th November, 1855, Pardons were not made out till applied for by the persons entitled to them; from November, 1855, up to January, 1860, all Pardons were made out ready to be issued on the receipt of the approval from England; and from January, 1860, up to March, 1863, they were only made out when applied for. There were thus two intervals from December, 1849, to November, 1855, and from January, 1860, to March, 1863, when the Pardons were not made out until applied for; and it would now appear that, in the strict letter of the law, the persons who have not taken up their Pardons during these intervals would not be free until the instrument is prepared and signed. It may be right that I should observe that the reason of discontinuing the making out of the Pardons in 1849 by the Comptroller-General, Mr. Hampton, was, that the accumulation of Pardons not taken up was found to be inconvenient; and the practice was resumed by me in November, 1855, because it was then desired to have them ready for immediate issue on application. In 1860 the strength of my office had been so reduced that no more work was undertaken than was absolutely necessary; and as Pardons might be made out which would not be called for, the practice was recurred to of not making them out until applied for. The number of Pardons not taken up from 1860 to 1863 amounts only to eighty.

5. The Colonial Secretary proposes, however, that for the future, and with respect to all outstanding claims, the approval of the pardons in the *Gazette* shall be regarded as the date of freedom in reference to such claims; and it will therefore be necessary that such claims should be returned in order that all those under the head of pardons not taken up may be struck out.

6. I have already given instructions for lists to be made out of all persons borne on Imperial funds from the date of the last payments on account of persons chargeable to the Colony, so as to transfer to the Colony from such dates all those who may have been or are borne on Imperial funds as not having taken up their pardons.

I have the honor to be,
Sir,
Your obedient Servant,
W. NAIRN, *Comptroller-General.*

The Assistant-Commissary-General.

Commissariat, Tasmania, Hobart Town, 10th May, 1864.

SIR,

SINCE the receipt of your letter of the 26th ultimo, enclosing the Colonial Secretary's letter of the 14th of the same month, I have been busily engaged in the purchase and shipment of large quantities of supplies urgently required in New Zealand, and consequently have been prevented from sending you an earlier reply.

2. With regard to the interpretation placed by the Lords Commissioners of Her Majesty's Treasury on the rule laid down in the Despatch No. 59, dated 12th August, 1861, of His Grace the Duke of Newcastle, although taken by itself that document undoubtedly conveys the meaning attached to it by their Lordships, I have little doubt that the explanations alluded to by you as having been since conveyed by His Excellency the Governor to the Secretary of State will ere this have served to convince their Lordships as to the intention of the Committee of Officers; and I agree with you in the concurrence you have so far expressed with the views of the Colonial Secretary on that portion of the subject.

3. Considering that you, either as Comptroller-General or as Deputy Comptroller-General, were present during the whole period of twenty years and upwards over which these disputed claims range, it must be admitted that there can be no better authority in regard to the course of procedure, and the means by which the original and now disputed charges for maintenance of these paupers, invalids, &c., were preferred against, and paid by, the Colony.

4. In your Memorandum, dated 8th January, 1864, you state, and repeat in paragraph 3 of your letter of the 26th ultimo, that "no claim was ever made by the Imperial Government for any individual adult or child for which a special approval was not given by the Colonial Secretary, sanctioning the admission of the child or individual as chargeable upon Colonial funds." And further, you have stated to me that in no case to your knowledge was any information refused to the Colonial Officers which the Convict records were capable of supplying.

5. I therefore quite concur with you, that "it is questionable how far claims for repayment should be continued to be admitted without limit as to time or number, arising from the Colonial Government failing to require that accurate investigation at the time which might have relieved them from these charges."

6. To show that my views are identical with those which you have expressed at the commencement of the 3rd paragraph of your letter, I might refer to the extracts from some notes on the subject which I submitted to His Excellency the Governor in December last.

7. But I must observe that, previous to my having raised this question in my letters to the Lords Commissioners of Her Majesty's Treasury, you had already recommended the payment of these claims without any qualification such as is contained in the extracts from your letter I have above quoted; and you had attached to these claims certificates, and to which you still hold, that you had examined and had found them to be properly chargeable to the Imperial Government.

8. Under all the circumstances of the case, the Lords of the Treasury may be induced to consent to the payment of that portion of the claims which relate to the maintenance of those Paupers who, after freedom, suffered from diseases under which they had laboured when prisoners, thus admitting the inconvenient precedent of allowing accounts already settled to be re-opened. Should this be the case, it cannot be expected that the precedent should be used for the sole advantage of the Colony.

9. There will, doubtless, be no longer any hesitation to claim from the Colony the proportion due for the custody, superintendence, medical treatment, &c., of the Colonial Prisoners and Convicts in the Prisoners' Barracks and Female Factory at Hobart Town, on the same principle or rule as has been observed in all the other large Institutions. This matter was not, it appears, brought under

their Lordships' notice by you till 1861, when its injustice was commented upon from home, and it was desired that the Colony should be called on to pay their proportion as in the other Establishments.

10. The charge since made by you under this head against the Colony has not, however, extended further back than 1st April, 1862, although, as shown by my Report to the Treasury in my letter No. 58, of the 22nd December, 1861, for the five years anterior to that date a sum of upwards of Eight thousand Pounds remained due. No consent either of the Secretary of State or Treasury was ever yielded to the cost for the superintendence of these Colonial Convicts being borne by the Imperial Government; and it is only necessary to glance at the large number of Warders, &c., when compared with the small number of Imperial Convicts, to show that their retention was mainly rendered necessary for the custody of the Colonial Convicts.

11. That the Colony has not borne its share of this expense is, manifestly, owing to the omission of the Local Convict Officers in failing to report the matter home, or in not having preferred the necessary claim at the expiration of each year; but such an oversight cannot now be urged as a plea against payment, if the Colony is to be absolved from its responsibility for the errors resulting from the omissions or indifference of their officers in relation to their own claims: for there exists so close an analogy between the two claims, that the payment of the one by the Imperial Government must entail, necessarily, the payment of the other by the Colony.

12. With regard to the means adopted by the Colony in preferring these claims, I have throughout held that, in the solution of disputed matters of public account, to vest a personal interest in those entrusted with their investigation is to introduce an element most calculated to militate against an equitable settlement. I have been the more confirmed in this opinion as my examination of these claims progressed; and for ample confirmation of my assertion, I have only to point to a few of my queries embodied in my Memorandum of 12th January, 1864, addressed to you for His Excellency's information.

13. With regard to the question as to which Government is liable for the maintenance of Prisoners, Paupers, Insane, and Invalids, who have not taken up the Instruments of their Conditional Pardon, and which subject is treated in the four last paragraphs of the Colonial Secretary's letter of the 14th ultimo, (as I had so long stood alone in maintaining that the Colonial Government were properly liable), it is the more gratifying to me now to learn that the present Law Officers of the Crown have, by their decision, confirmed my views; and that thus the Imperial Government will be relieved from all further payments under this head. Moreover, it appears that they have overruled the *alleged* decision of the previous Law Officers, whereon alone was based the plea by which the Colony recovered from the Imperial Treasury £1203 11*s.* 1*d.* and £1398 18*s.* 11*d.*

14. I remark that the Colonial Secretary accompanies this admission by no offer of restitution, although the payment of these sums was sanctioned by the Duke of Newcastle and the Lords of the Treasury on what now appears to have been entirely an erroneous assumption.

15. In support of the term "alleged decision," which I have used advisedly, I annex copies of the papers which contain the actual decision of the Law Officers referred to; and I do not hesitate to state my conviction, that it was an erroneous deduction which was drawn therefrom and conveyed to His Grace in the Minutes of the Committee of Officers of the 7th November, 1860, wherein it is stated, "that with regard to the claim, under head 3, for Convicts in whose cases conditional pardons had been approved but who had failed to take them up,—the Law Officers having decided that a Ticket-of-Leave holder must be considered to remain in that condition until the pardon is formally issued to him,—it would appear that the Convicts who may fail to take up their pardon must be legally held to be chargeable to Convict Funds. The Committee in this case advise that these claims be admitted." Solely on the faith of this statement were those before-mentioned payments sanctioned from home.

16. I request, therefore, that the Colonial Secretary may be called upon to repay those two sums; and, further, that you will be good enough to prefer my request that I may be favoured with the last opinion of the Law Officers of the Crown for the information of the Lords of the Treasury, and for the purpose of avoiding any further misunderstanding or informality.

I have the honor to be,
Sir,
Your most obedient Servant,
V. C. HAWKINS, *A.C.G.*

The Comptroller-General.

Colonial Secretary's Office, 6th July, 1864.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 26th April last, referring to my letter of the 14th, and forwarding copy of one addressed by you to the Assistant-Commissary-General, together with the reply of that Officer.

In your letter to the Assistant-Commissary-General you intimate your dissent from the view I have expressed that the limitation of Imperial liability for Maintenance of sick and invalid Paupers must be considered as a concession on the part of the Colony. You state that formerly there was no rule, and that each case was decided upon its own merits; but I beg to call your attention to the 13th paragraph of Sir William Denison's Despatch, No. 154, of the 2nd July, 1853, the suggestions contained in which are approved by the Secretary of State in his Despatch, No. 66, of the 8th November, 1854, to the effect "that the maintenance of those who while they are Convicts become incapable of maintaining themselves either in consequence of age, chronic disease, or mental or bodily infirmity, and those who at the time of their landing in the Colony were above sixty years of age, should be charged to the British Treasury; while the cost of the maintenance of all free men should be paid by the Colony." By this general practice the Convict Department was governed when considering the question of the maintenance of sick or infirm Paupers; but, of course, instances occurred at intervals where it became desirable to take the opinion of the Committee of Officers whether they came within the terms of the Despatch. No limit as regards time had been fixed, nor had the lapse of time since the "previous attack" been urged as a bar to the maintenance of the patient on Imperial Funds; consequently, I must still maintain that, by the adoption of the rule, the Colony, while gaining the advantage of a fixed and definite principle for its guidance, surrendered that which had practically been admitted and acted upon for many years; and I attach copies of a few out of many instances in support of my remarks.

I now come to that portion of paragraph 3 where you say, "that *no* individual has ever been charged for by the Convict Department at the Hospital, Orphan Schools, or Pauper Depôts for whose admission upon Colonial Funds an authority had not been given by the Colonial Secretary, —although it may be perfectly true that many cases may thus have been admitted by the Colony which would, upon a strict investigation, have been borne on Imperial Funds."

While I am aware that it was the rule to obtain the authority of the Colonial Secretary, you will allow me to point out that exceptions have occurred; and, for example, I annex a few cases in point.

As regards the latter part of the quotation, I have only to observe that the Colonial authorities, not being at the time possessed of the Hospital Records, had not the means of investigating the cases.

With respect to the objections raised by the Lords of the Treasury to the admission of claims for repayment on account of sick Paupers and Invalids without limitation of time, I would suggest that the question be brought under the consideration of the Committee of Officers, in order that some definite understanding may be arrived at on this point.

The remarks of the Assistant Commissary-General in the 10th and 11th paragraphs of his letter, adverted to by you, require but little comment from me.

The Imperial Convict Department is presided over by the Governor of the Colony and the Comptroller-General of Convicts; and questions relating to the practice adopted between the Imperial and Colonial Governments, in the adjustment of claims for the superintendence and maintenance of Prisoners and others, cannot be recognised by the Colonial Government as subjects which they are prepared to discuss with the Officer at the head of the Commissariat: indeed that Officer has, in a communication addressed to the Governor, under date the 10th of December, 1863, when defending his Department from blame on account of carelessness evinced in the preparation of claims against the Colony, distinctly limited the sphere of his responsibility to the accuracy of the rates and computations in such cases.

Your explanation of the special matter, commented upon in so unusual a manner by the Assistant-Commissary-General, appears to be perfectly correct and sufficient; and on this head I have only to express the surprise I feel at the attempt to introduce such an element into the question of the claims of the respective Governments: at the same time I am bound to remark, with reference to the imputed indifference on the part of the Officers of the Colonial Government in relation to their own claims, referred to in the 11th paragraph of Mr. Hawkins's letter, that numerous instances have occurred where the Colonial Government applied at the time of admission for authority to charge the maintenance of the patients to Imperial Funds, but were refused; and, as I have before mentioned, not being in possession of the Hospital Medical Books, the decision of the Comptroller-General was of necessity accepted by the Colonial Government; and it was not until the transfer of the Institution, when the records were available to the Officers referred to, that the cases were discovered to be wrongly charged to the Colony.

The reiteration in Mr. Hawkins's letter of his views respecting the mode adopted by the Colonial Government of remunerating the Officer employed in the investigation of the Convict Accounts is, I think, uncalled for, and I must add, calculated to be offensive; and I regret that, in his desire to defend the interests of the Imperial Government, he should allow himself to forget that the Colonial Government are actuated by motives quite as far removed from a desire to obtain any undue advantage as Mr. Hawkins himself.

With regard to the repayment of the amounts refunded in error to the Colony, and stated by the Assistant-Commissary-General to be £1203 11*s.* 1*d.* and £1398 18*s.* 11*d.*, I have to refer you to the last paragraph of my letter of the 14th of April, in which I state that the Government are prepared to accept for the future the date upon which the notification of the grant of a Conditional Pardon appears in the *Gazette* as the date of issue, and that this should apply to all claims preferred but unsettled at that time.

His Grace the Duke of Newcastle has intimated his decision respecting the amounts claimed and paid that the settlement should not be disturbed; and while I am quite prepared to admit the right of the Right Honorable the Secretary of State to vary that decision when he is made acquainted with the legal aspect of the case as expressed in the opinion of the present legal advisers of the Crown, I must be permitted to decline recommending any such payment upon the application of the Assistant-Commissary-General without reference to the Right Honorable the Secretary of State, and without a clear explanation of the position of those men in whose favour it was intended to issue a Conditional Pardon but where the issue had never taken place, and who were clearly amenable to the Imperial Government as Ticket-of-leave men.

In accordance with the request of the Assistant-Commissary-General, I beg to forward, for the information of the Lords of the Treasury, a copy of the opinion of the Law Officers of the Crown referred to in the previous paragraph.

I have the honor to be,
Sir,
Your obedient Servant,
JAMES WHYTE.

The Comptroller-General of Convicts.

P.S.—Since the foregoing letter was written I have received from you a letter of the Assistant-Commissary-General to yourself, upon which I do not feel it incumbent to offer any remarks, the subject having been fully considered in the earlier portion of this communication. The document itself I now return to you.

J. W.

9*th July*, 1864.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.