

(No. 4.)



1866.

SESSION II.

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T A S M A N I A .

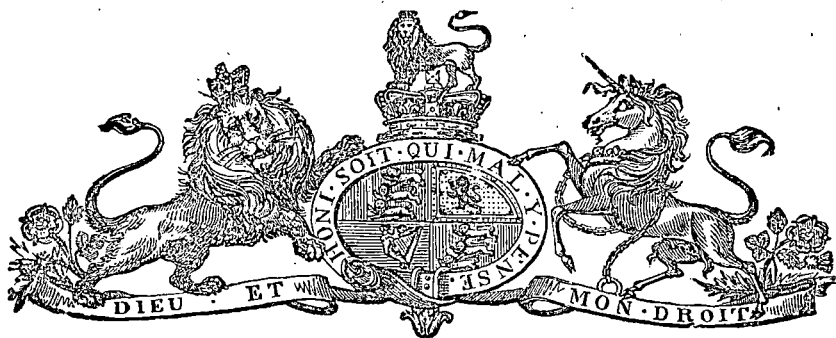
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## CLAIMS OF THE COLONY.

1. Despatch from the Secretary of State, No. 54, of September 11, 1865.
2. Minutes of Committee of Officers for reviewing Convict Expenditure.
3. Memorandum of the Governor to the Colonial Secretary ; with Reply.

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Laid upon the Table by Mr. Colonial Treasurer, and ordered by the House to be printed, 23 November, 1866.



TASMANIA.  
(No. 54.)

*Downing-street, 11th September, 1865.*

SIR,

I DULY received your Despatches, No. 98 of the 28th of November, and No. 106 of the 20th of December last, relative to the Claims preferred by the Colonial Government of Tasmania upon the Imperial Government for various items of expenditure connected with Convicts or persons who have been Convicts. I also received from the Treasury copies of some letters on the same subject from the Assistant Commissary-General.

I have the honor to enclose, for your information and guidance, a copy of the letter from the Treasury, and the answer which I caused to be returned to it, and of the reply from the Treasury.

Treasury,  
26 Apr. 1865.  
C.O., 15 July,  
1865.  
Treasury,  
2 Aug. 1865.

You will perceive that the communication from this Department embodied the facts of the case in a Memorandum, and conveyed my opinions in the covering letter, and that the Lords Commissioners of the Treasury have expressed their concurrence in those opinions.

It will be enough for me, therefore, in this Despatch merely to recapitulate the questions to be solved, and the conclusions which have been arrived at by Her Majesty's Government.

The questions may be summed up as follows :—

- 1st. What should be the rules followed in determining all pending and future Claims?
- 2nd. What should be done as to the retrospective Claims of the Colony in respect of Invalids?
- 3rd. What should be done as to the similar Claims in respect to destitute Children?
- 4th. What rule should be followed in fixing the amount of the restitution to be made of the Repayments obtained by the Colony in 1861 and 1862 under an erroneous construction of the law about Conditional Pardons?

First. With respect to all pending and future Claims the following rules should be strictly followed :—

As to Re-convicted men, the rule contained in the Duke of Newcastle's Despatch, No. 59, of the 12th of August, 1861.

As to Invalids, the rule defined in my Despatch, No. 47, of the 20th of July, 1864.

As to Orphan or destitute Children who are the offspring of one free and one Convict parent, the rule assented to in the Duke of Newcastle's Despatch, No. 37, of the 2nd of May, 1861.

Secondly. For the reasons stated in the letter which I caused to be addressed to the Treasury on the 15th of July, no retrospective claim is, in any pending or future case, to be admitted in respect of Invalids.

Thirdly. No retrospective claim is, in any pending or future case, to be admitted in respect of Children.

Fourthly. In all pending or future cases the notification of conditional or absolute pardon in the *Gazette* is to be reckoned as the date of a Convict's acquiring his freedom. But, as regards restitution of the payments obtained from the Imperial Government in error in 1861 and 1862, the date of freedom is to be the execution of the pardon by the Governor; and, consequently, no restitution of the past payments will be claimable in those cases in which the Conditional Pardons were never executed by the Governor.

Such being the general principles to be observed, Her Majesty's Government trust that an intelligent and candid application of them to particular cases by the Officers on the spot will admit of a ready settlement of the existing accounts, and will prevent the occurrence of similar complications for the future.

I have the honor to be,  
Sir,

Your most obedient humble Servant,

EDWARD CARDWELL.

Governor GORE BROWNE, C.B.

(Copy.)

Mr. PEEL to Sir F. ROGERS.

Treasury Chambers, 26th April, 1865.

SIR,

WITH reference to previous Correspondence on the subject of the alleged Claims of the Colonial Government of Tasmania upon the Imperial Government for the maintenance of Convict Paupers, Invalids, and other persons, I am desired by the Lords Commissioners of Her Majesty's Treasury to transmit herewith, for the information of Mr. Secretary Cardwell, copies of further letters which their Lordships have received from the Officer in charge of the Treasury Chest in that Colony, together with the several enclosures in original; viz.—A. C. G. Hawkins, 22nd February, 1864; ditto, 19th May, 1864; ditto, 22nd October, 1864; ditto, 21st January, 1865: and I am to request that my Lords may be informed as to the nature of the communications which Mr. Cardwell may have received from the Governor of Tasmania on the subject of these claims, and what views the Secretary of State is disposed to take upon the several questions which are raised in the Correspondence now sent.

It would appear to their Lordships that, as the liability of the Colonial Government for the maintenance of those persons who, though granted Conditional Pardons, had not taken up the formal instruments of pardon, is now placed beyond doubt, the Colony is bound to repay at once the two sums of £1203 11s. and £1398 18s. 11d. which have been actually paid by Local Officers of the Imperial Government in conformity, as they believed, with an opinion given on a former occasion by Law Officers in the Colony.

With regard to the cases of "previous disease," My Lords entirely adopt the view so clearly expressed in Mr. Cardwell's Despatch to Governor Browne of 20th July, 1864; and they think that, even if it could be shown that the object of the Secretary of State's Despatch, No. 59, of 12th August, 1861, was to make the Imperial Government liable to any greater extent, as the instruction was to have a prospective effect only, it could not, as proposed by the Colonial Officers, be applied in such (as My Lords conceive unauthorized) sense retrospectively, without making it indispensable that the Imperial Government should raise counter claims alluded to by A. C. G. Hawkins in his Memorandum of 10th May, 1864, to the extent of upwards of £8000,—being the share of the cost of the superintendence of the Colonial and Imperial Convicts in the Imperial Establishments,—viz., the Prisoners' Barracks and the Female Factory,—for the five years prior to 1st of April, 1862, justly chargeable to the Colony.

Their Lordships are very doubtful whether Her Majesty's Government ought to allow any cases of "previous disease" to be re-opened, the fact that the disease was contracted while the Patient was a Convict being now so difficult of proof; but, certainly, if the Colony is to be at liberty to put forward such claims, the Imperial Government should insist upon the payment of the cost of superintendence of Colonial Prisoners prior to 1st of April, 1862.

It is requested that the original enclosures in A. C. G. Hawkins' letters may be returned to this Office.

I am, &c.

(Signed) F. PEEL.

SIR F. ROGERS, *Bart.*

Mr. HAWKINS to the Assistant Secretary to the Treasury.

(Copy.)  
No. 112.

Commissariat, Tasmania, Hobart Town, 22nd February, 1864.

SIR,

WITH reference to your letter, 13,282<sup>1</sup>/<sub>2</sub>, dated 17th September last, and to its enclosures, on the subject of the Claims of the Government of Tasmania for the recovery of certain sums alleged to have been paid in error, I have the honor to report that I communicated to the Governor the

decisions of the Right Honorable the Lords Commissioners of Her Majesty's Treasury and of the Secretary of State, the Despatch of His Grace on the subject not having been received till two Mails subsequently.

In connection with the decisions on the cases of those persons who had not actually taken up their instruments of pardon, I have received the following communication from Mr. Colonial Secretary Whyte, which I request you will bring under their Lordships' consideration, together with my Memorandum of the 8th February which I addressed to the Governor, in order that the Colonial Secretary might have an opportunity of commenting on the statement therein contained.

The Colonial Secretary being out of town, no action in regard to the protest has yet been taken. I simply enclose these Memoranda, as I consider that mine of the 8th February contains information in material points with which it is my duty to keep their Lordships acquainted.

I have, &c.

(Signed) V. W. C. HAWKINS, A.C.G.

*The Assistant Secretary to the Treasury.*

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*Mr. HAWKINS to the Assistant Secretary to the Treasury.*

(Copy.)

No. 127.

*Commissariat, Tasmania, Hobart Town, 19th May, 1864.*

SIR,

WITH reference to my letter of the 22nd February last, No. 112, and to my letters of 22nd December, 1862, No. 58, as also of 22nd January and 28th March, 1863, No. 62 and 70 respectively, I have now the honor to report, for the information of the Right Honorable the Lords Commissioners of Her Majesty's Treasury, that the Colonial Government have at length admitted their liability for the maintenance of those persons who had not taken up their instruments of Conditional Pardon.

Having been throughout locally unsupported in my protest against this expenditure being imposed on the Imperial Government, it is the more gratifying to me now to learn that the Colonial Law Officers have, by their decision, confirmed my views; and that I have thus been mainly instrumental in averting an undue issue from the Treasury Chest of many thousand pounds.

I enclose for their Lordships' consideration the last correspondence which has passed on this subject between the Colonial Secretary, the Comptroller-General, and myself. It will be seen thereby that, notwithstanding that their Lordships' sanction has been obtained to the two payments of £1203 11s. 1d. and £1398 18s. 11d. made to the Colony under this head, I have felt it my duty to press for their restitution. This step I should not have presumed to take had it not been manifest to me that the Home sanction had been obtained purely on the faith of a statement based altogether on erroneous assumptions, as I trust I have proved by the Papers marked B, and the Act of the Colonial Parliament, 6 Vict. c. 7, sect. 2, annexed to my letter to the Comptroller-General, and a copy of which is attached.

Beyond this the correspondence has not progressed; and there are also still other points in my letter which have to be met, on one of which depends upwards of £8000. I have no doubt, however, that these matters will be sufficiently matured, so that the question may be submitted home by next Mail for final settlement.

I must observe that the Act of Parliament and accompanying Papers did not come into my possession till during the last month, although I had endeavoured to obtain them.

I have, &c.

(Signed) V. W. C. HAWKINS, A.C.G.

P.S.—20 May, 1864. I have just received official intimation that the system adopted by the Colony of awarding a 5 per cent. commission to the Clerk employed in bringing forward these Claims has been discontinued, and the more legitimate mode of rewarding him with extra salary has been substituted.

*The Assistant Secretary to the Treasury.*

*Mr. HAWKINS to the Assistant Secretary to the Treasury.*

(Copy.)

E. No. 150.

*Commissariat, Tasmania, Hobart Town,  
22nd October, 1864.*

SIR,

IN continuation of the Correspondence transmitted with my letter, No. 127, of the 19th May last, I have now the honor to enclose, for the information of the Right Honorable the Lords Commissioners of Her Majesty's Treasury, the following copies of Letters relating to the Claims of the Colony for repayment of sums alleged to have been erroneously paid for the maintenance of Paupers, Invalids, Orphans, &c.; viz.—

Comptroller-General's Letter of the 26th May to the Colonial Secretary.

The Assistant Commissary-General's Letter of the 5th July to the Comptroller-General.

Colonial Secretary's of 6th July to the Comptroller-General, with opinion of the Colonial Law Officers.

Comptroller-General's Letter of 12th August to the Assistant Commissary-General in reply to Letter of 5th July.

The Assistant Commissary-General of 24th August to Comptroller-General in reply to his Letter of 12th August.

The Assistant Commissary-General of 9th August in reply to Colonial Secretary's of 6th July.

Comptroller-General's Letter of 18th August to the Assistant Commissary-General in reply to his of the 9th August.

Comptroller-General's Letter of 1st August to Colonial Secretary regarding part of the Letter of the latter of the 6th July.

Colonial Secretary's Letter of the 4th October to Comptroller-General in reply to his letter of the 1st August.

The above closes the local correspondence; and as, either by this or the following Mail, His Excellency the Governor will transmit the Comptroller-General's Report on the subject to the Secretary of State, it remains for me to submit but a few final observations.

The unpaid Claims of the Colony now amount to £11,175 7s. 6½d., the original sum £13,155 3s. 3½d. having been reduced by £1979 15s. 9½d., the amount which rested on the disallowed plea of the instrument of conditional pardon not having been taken up.

I annex an analysis showing the heads under which the several sums composing the amount of £11,175 7s. 6½d. are claimed. The Claims themselves have been returned to the Colonial Secretary, and will be retained in Tasmania until a reply shall be received from home as to the admission of those under the head of "previous disease" which are antecedent to the 12th August, 1861, (date of the Duke of Newcastle's Despatch), and until it shall be decided whether those Claims are to be submitted to a Local Medical Board, as suggested in my letter of the 9th August to the Comptroller-General, or they shall be referred home.

All doubt as to the interpretation of the Duke of Newcastle's above Despatch *in regard to cases from or subsequent to its date* is dispelled by the Despatch of the Right Honorable Mr. Cardwell, of the 24th July, 1864, to Governor T. Gore Browne, copy of which, marked Z, is annexed.

In my letter before referred to, of the 9th August last, to the Comptroller-General, I have fully entered upon the "previous disease" question, supporting my statements by annexed quotations from Despatches of the Secretary of State and the Governors of the Colony. It forms a part of this correspondence, and it would be but repetition were I to write further on the subject.

Vide my letter of 19th May to the Treasury, enclosing copy of my letter to the Comptroller-General dated 10th May, 1864, paragraph 16.

As regards the repayment by the Colony of the two sums £1203 11s. 11d. and £1398 18s. 11d., claimed by me to be refunded into the Treasury Chest on the ground that they had been sanctioned by their Lordships and the Secretary of State solely on the faith of a statement founded on erroneous assumption, it will be seen by the letters of the Colonial Secretary (Mr. Whyte) to the Comptroller-General, dated the 6th July and 4th October last, that the Colony will not object to refund these two sums if so desired by the Secretary of State; but that, inasmuch as in some of the cases comprising the said amounts the instruments of pardon, through laxity on the part of the Comptroller-General, were not duly executed with the Governor's signature, the Colonial Secretary, with some degree of inconsistency, appeals to the sense of justice of the Secretary of State to allow this mere informality to defeat the intentions of the original *bonâ fide* arrangement; and on this,

which I cannot but regard as an unworthy plea, he requests to be allowed to retain these sums, at the same time that he acknowledges the inadvertence above alluded to, to have occurred "in ignorance of the effect which would legally result therefrom."

I have, &c.,

(Signed) V. C. W. HAWKINS, A.C.G.

*The Assistant Secretary to the Treasury.*

P.S.—The Comptroller-General has just shown me a letter from the Colonial Secretary (Mr. Whyte) to the effect that, on the understanding that the "previous disease" claims already preferred are admitted, the Colony will limit any other claims which they may have to make under this head to the 1st January, 1854. This subject, as the Comptroller-General states, will be referred by the next Mail to the Secretary of State.

(Signed) V. C. W. HAWKINS, A.C.G.

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*Mr. HAWKINS to the Assistant Secretary to the Treasury.*

(Copy.)  
No. 166.

*Commissariat, Tasmania, Hobart Town,  
21st January, 1865.*

SIR,

In further support of the Claims of the Colonial Government which were transmitted with my letter, dated 28th March, 1863, the Comptroller-General has forwarded to me the enclosed documents received from the Colonial Secretary.

The remaining additional back claims, amounting to about £7000, are retained in Tasmania by desire of the Comptroller-General until further directions shall be received from Home.

I have, &c.

(Signed) V. W. C. HAWKINS, A.C.G.

*The Assistant Secretary to the Treasury.*

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*Mr. ELLIOT to the Right Hon. F. PEEL, M.P.*

(Copy.)

*Downing-street, 15th July, 1865.*

SIR,

1. I AM directed by Mr. Secretary Cardwell to acknowledge your letter of the 26th of April, relative to the Claims preferred by the Colonial Government of Tasmania upon the Imperial Government for various items of expenditure connected with Convicts or persons who have been Convicts.

2. In accordance with the desire of the Lords Commissioners of the Treasury, I am desired to enclose copies of the two latest Reports received from the Governor on this subject. The first of them enters chiefly into the question which has arisen relative to the date from which Conditional Pardons should be considered to take effect; the second forwards an amended statement of the Claims now made by the Colony for the maintenance or treatment of Convicts.

No. 98, 28th  
Nov. 1864.  
No. 106, 20th  
Dec. 1864.

3. This subject has become so extensive that Mr. Cardwell has found it desirable to throw into the form of a separate Memorandum a statement of the principal facts and questions connected with it from the commencement to the present time. In the remainder of this letter he will assume that their Lordships have perused that Memorandum as containing the grounds on which his opinions have been formed, and he will confine himself in this place to stating his conclusions.

4. He would observe, at the outset, that all which it seems possible to do from England is to lay down the principles on which Her Majesty's Government will consent to a settlement of accounts. The application of those principles to particular cases, and the detailed examination of items, is a task which cannot be performed anywhere else than on the spot.

5. In respect of all pending and future claims, Mr. Cardwell is of opinion that, as to Reconvicted men, the rule contained in the Duke of Newcastle's Despatch, No. 59, of the 12th of August 1861; and as to Invalids, the rule defined in Mr. Cardwell's own Despatch, No. 47, of the 20th of July, 1864; and as to Orphan or destitute Children who are the offspring of one free and one Convict parent, the rule assented to in the Duke of Newcastle's Despatch, No. 37, of the 2nd of May, 1861, should be strictly followed.

6. Mr. Cardwell does not feel a doubt that, with regard to Invalids, it was erroneous to make or to admit retrospective claims. In the first place, the Duke of Newcastle himself distinctly described his concession on the subject as one "for the future." And, independently of this, the general reason of the case shows that endless confusion and differences must be produced by disturbing past settlements of accounts. Each case ought to be carefully examined as it arises; but when once the liability has been determined by the Officers who periodically examine the cases, the settlement should be final. So strongly does Mr. Cardwell deprecate a contrary practice, that, in accordance with the previous decision in 1863, he advises that the repayments already made specially under the head of Invalids in 1861 and 1862 should not be reclaimed. But, in respect to all pending and all future Claims, he thinks that it should be positively laid down that no retrospective claim under the Duke of Newcastle's rule about Invalids should be admitted.

7. For the same reasons Mr. Cardwell is clearly of opinion that the retrospective claims which have been brought forward about children should not be admitted.

8. If these views be acted upon, the question conditionally suggested in your letter, of a retrospective Claim by the Imperial Government for some of the expenses of Colonial Convicts, will not arise.

9. With respect to the somewhat intricate matter of the effect of Conditional Pardons, the Colonial Ministers offer to recognise the notification in the *Gazette* as the date of freedom, although this is in itself less favorable to the Colony than a strict legal construction would warrant. There can be no doubt that this date will be the most convenient; it is easiest to verify; it has been the one most punctually established; and has also been taken for granted in the practical dealings of the Colony.

10. On the other hand, so far as regards the restitution which the Colonial Ministers express themselves ready to make of the sums paid in error on this subject, it must be remembered that the original payments took place because the Colonial Law Officers reported the delivery of the Pardon to be the proper date, and that the repayment is only claimed because other Colonial Law Officers reported the execution of the Pardon to be the proper date. Mr. Cardwell thinks it equitable that the refunding should be limited to this correction.

11. On this part of the case, therefore, his opinion is that, in all pending or future cases, the notification in the *Gazette* should be received as the date of freedom; but that, as regards the payments made in error in 1861 and 1862, the date of freedom should be assumed to be the execution instead of the delivery of the Pardon, and that the claim to repayment from the Colony should be regulated accordingly.

12. The original enclosures which accompanied your letter are herewith returned.

I have, &c.

(Signed) T. F. ELLIOT.

*The Right Hon. F. PEEL.*

*MEMORANDUM upon CLAIMS made by TASMANIA on the Imperial Government for Expenditure connected with CONVICTS.*

THE question raised in these Claims is not the amount or fitness of the expenditure, but to which party, in each instance, it is properly chargeable.

So long as men transported from Home remain in the condition of Convicts, they are of course chargeable to the Imperial Government. So soon as they acquire the rights of free men they are merged in the Colonial population, and therefore it would seem at first sight that, in case of afterwards entailing expenses on the public, they should be chargeable to the Colonial Government.

But there are three cases in which it has been agreed that this would be inequitable:—1st, when an Imperial Convict is discharged of such a character that he soon commits a fresh crime; 2ndly, when he was sent out at such an age, or in such a state of health, that within no long time after becoming free he proves unable to earn his living; 3dly, when destitute children, the offspring of Convicts, require to be maintained at the public expense. The object of this Memorandum will be to exhibit the Rules laid down on the foregoing heads by successive Secretaries of State on behalf of Her Majesty's Government; to describe some important settlements of account under them in 1861 and 1862; to point out the nature and amount of the further Claims now presented; and then to state the questions which await decision with regard both to these pending Claims and to the previous accounts.

*Reconvicted Men.*—The Duke of Newcastle declared, in 1854, that any person originally transported from Home who should receive a fresh sentence for two years or upwards within twelve months after becoming free should be prosecuted and punished at the expense of the Imperial Government.

No. 23, 14th  
Feb. 1854.  
Parl. Paper,  
May, 1854,  
page 91.

*Invalids, Lunatics, and Paupers.*—The Duke of Newcastle announced, on the same occasion, that any persons of this class who at the time of their arrival in the Colony as Convicts were above sixty years of age should be chargeable to the British Treasury. Earl Grey had stated, so far back as 1848, irrespectively of age, that the Colony should be relieved of the maintenance of any man who should be unable to earn his living at the time of his release from the Public Works. The Duke of Newcastle materially extended the term. In 1861 he conveyed his assent to "the rule which it is proposed should in future be in force, that Paupers labouring under diseases which they can be shown to have contracted whilst they were Imperial Convicts shall be maintained by the Home Government unless they shall have been free for ten years." In consequence of some subsequent doubts, Mr. Cardwell, in 1864, supplied the following interpretation of this rule:—If a man shall have earned his own living for ten years after becoming free, the Imperial Treasury is for ever free from liability about him; but if within ten years he is rendered a burthen by some disease under which he laboured whilst still a prisoner, he will be chargeable to Imperial Funds.

No. 200, 23rd  
Dec. 1848.  
Parl. Paper,  
Feb. 1849,  
page 279.

No. 59, 12th  
Aug. 1861.  
Extract an-  
nexed to this  
Memo.

No. 47, 20th  
July, 1864.  
Copy annexed  
to this Memo.

*Orphans or Destitute Children.*—With respect to the distribution of the charge for children, the only decision of the Secretary of State which has been met with in the records is an assent by the Duke of Newcastle, in 1861, to the equitable principle that the expense of children, when one parent was free and the other a Convict, should be equally divided between the Imperial and Colonial Governments.

No. 37, 2nd  
May, 1861.  
Parl. Paper,  
May, 1862,  
page 110.

Now, these Rules appear sufficiently well defined to afford little room for doubt if applied to fresh cases as they occur. The difficulty has arisen from applying them retrospectively, and making them an occasion to disturb settled accounts.

On learning the Duke of Newcastle's concession about Invalid Paupers, the Colonial Government looked back to past cases and sought out fresh evidence, and brought in demands for repayment of money paid by them for men who had been fully admitted at the time to be chargeable to the Colonial Government.

About the same time the Colonial Government took a similar course upon an opinion of some former Law Officers in the Colony about Conditional Pardons, very materially postponing the date at which a man was to be considered as having legally acquired his freedom.

In 1861 they presented an account against the Home Government of £3134, and in 1862 for £4681 (or £4679, for the statements slightly differ), consisting largely of demands for repayment under the two foregoing heads. The amount included under the opinion as to Conditional Pardons was composed of two sums of £1203 11s. and £1398 18s. 11d., or a total of £2602 9s. 11d. These accounts were paid. But when by March, 1863, the Colonial Government had advanced still further claims of the same kind to an amount of nearly £4419, the attention of Her Majesty's Government was aroused to the subject; and whilst they abstained from re-opening their own past settlements of account, even though they believed them to have been made precipitately and in error, they demurred on principle to the new demands. This led to the further correspondence with the Colony which has resulted in the reports and explanations now under consideration, and to a revised Statement of Claims to the present date amounting to £10,960. They are composed as follows:—

	£
Orphan (or destitute) Children .....	5066
Chargeable by sickness or infirmity .....	4419
Chargeable by old age on arrival .....	639
Chargeable because they were Convicts when they became chargeable .....	836
	<hr/>
	£10,960
	<hr/>

The second account tallies in amount with, and is probably a repetition of, the Claims presented up to March, 1863.

The demand of £5066 for Children is explained in the Comptroller-General's Report of the 14th of January, 1865, which will be found among the enclosures of the Governor's Despatch, No. 106, bearing the earlier date of the 20th of December, 1864. The Comptroller-General makes the following statement:—

"3. Since the transfer of the Establishment at the close of the year 1859 from the Imperial Government, the Colonial Government have discovered cases in which the mothers were Convicts



at the time of the children being born, and it is for these cases that claim for repayment has been made, the cases having been originally admitted on the authority of the Colonial Secretary."

"4. The children of Convict mothers were held to be chargeable upon Convict funds; and it has been on this ground that I have certified to their being admissible on Convict funds."

The last paragraph assumes that the fact of the mother's being a Convict is conclusive, and therefore seems to imply that the Comptroller is not aware of or has overlooked the Rule settled in 1861, that the expense of Children, when one parent is free and the other a Convict, should be equally divided between the Colonial and Home Governments.

But his statement likewise discloses the more important fact that these Claims for Children, like those previously preferred in respect of Invalids, are retrospective. They consist of demands for the repayment of past disbursements in cases which were at the time fully admitted to be chargeable to the Colonial Government.

It remains to offer an explanation of the difficult questions to which the subject of Conditional Pardons has given rise. The date of freedom, it will be remembered, is the cardinal point on which the chargeableness of persons to one or other of the two Governments depends. The great bulk of the Convicts in Australia acquire their freedom by what are called Conditional Pardons; and an Imperial Act of Parliament provides that these can only be given after being recommended by the Governor and approved by the Secretary of State. Upon the receipt of this approval, it appears that three acts take place in the Colony,—First, a notification of the approval in the *Gazette*; secondly, the execution of the Instrument of Pardon by the Governor; thirdly, its delivery to the Convict on his application.

There are sufficient indications that the announcements in the *Gazette* have been made with regularity and promptitude. The execution of the Instruments has been far less regular. Their delivery has been extremely irregular and slow, for the men who have enjoyed all the benefit of the Pardon without them have had no motive to apply for the formal Instruments. Now, the Law Officers of a former Colonial Government gave an opinion that the Conditional Pardon did not legally take effect until it was "taken out," as it is termed in the Colony, by the Convict. This opinion was the basis on which there were inserted in the accounts presented and paid in 1861 and 1862 the two sums cited in a former part of this Paper, amounting jointly to £2602. The Law Advisers of the present Colonial Government have given an opinion that the Conditional Pardon takes effect from the second instead of the third of the acts which are done on the subject in the Colony; that is to say, from the execution by the Governor of the Instrument of Pardon. The Colonial Ministers have therefore freely acknowledged their liability to repair the error; and express themselves willing, if required, to repay the whole of the two above-mentioned sums. But they throw themselves on the equity of Her Majesty's Government, and make a different proposal.

They declare, in very liberal and considerate terms, that, with respect to all claims not yet disposed of, they are prepared to recognize the notification in the *Gazette* as the date of freedom; thus foregoing the Claim of the Colony on account of the strict legal *status* of the man.

On the other hand, the Colonial Secretary throws out a suggestion that, if this be done, all claim in respect of the payments already made in error should be relinquished. Or, at all events, he represents that the Colony should not repay in respect of men who, even by the last opinion of the Law Officers, had not yet acquired their freedom.

This completes a review of the transactions up to the present date. The questions awaiting solution may be summed up as follows:—

First,—What should be the rules followed in determining all pending and future Claims?

Secondly,—What should be done as to the retrospective Claims of the Colony in respect of Invalids?

Thirdly,—What should be done as to the similar Claims in respect of destitute Children?

Fourthly,—What rule should be followed in fixing the amount of the restitution to be made of the Repayments obtained by the Colony in 1861 and 1862 under the erroneous construction of the Law about Conditional Pardons?

*Colonial Office, Downing-street, 10th July, 1865.*

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*EXTRACT from a Despatch from the DUKE OF NEWCASTLE to Sir HENRY YOUNG, dated Downing-street, 12th August, 1861, No. 59, Tasmania. (Referred to in preceding Memorandum.)*

"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 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."

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*Mr. CARDWELL to Governor GORE BROWNE. (Referred to in preceding Memorandum.)*

(Copy.)

TASMANIA.—No. 47.

*Downing-street, 20th July, 1864.*

SIR,

I HAVE had under my consideration your Despatch, No. 18, of the 22nd of February, 1864, relative to the interpretation to be put upon certain former decisions respecting the chargeableness of men who have been Convicts and who afterwards became unable, through illness, to maintain themselves.

I have examined the previous Instructions, and I think that the following is their meaning :—

If for a period of Ten years after becoming free a man shall have earned his own living without ever becoming a burthen on the public, then the Imperial Treasury shall be altogether free from liability about him, and any subsequent charge on his account must fall on the Colony and not on this Country, whether or not he may be disabled by some organic disease under which he labored whilst still a Prisoner. But if, on the other hand, he at any time within Ten years from becoming free is rendered a burthen on the public through some organic disease under which he labored whilst still a Prisoner, he will be chargeable to Imperial Funds.

The question is not how long he has been from a recurrence of disease, but how long he has been a free man before proving unable to support himself.

Any particular cases which may arise should be determined according to the rule thus explained.

I have, &c.,

(Signed) E. CARDWELL.

Governor GORE BROWNE, C.B.

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*Mr. HAMILTON to Sir F. ROGERS.*

(Copy.)

*Treasury Chambers, 2nd August, 1865.*

SIR,

I AM commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Mr. Secretary Cardwell, that they agree generally with the opinions expressed in Mr. Elliot's letter of 15th July, in regard to the mode of dealing with the Claims of the Colonial Government of Tasmania upon the Imperial Government for the cost of maintaining certain Convicts, Invalids, Hospital Patients, Paupers, and Orphan Children in the Queen's Orphan Schools. My Lords understand Mr. Cardwell's view as regards the two sums of £3134 1s. 4d. and £4681 2s. 9d., which have been already paid to the Colonial Government, to be, not to disturb the Repayment of the sums claimed and included in the above two amounts under the head of "previous disease," but to revise the Repayments under the head of "Conditional Pardons not taken up" in respect of which the sums of £1203 11s. and £1398 18s. 11d. have been paid, and to apply to those cases the rule that the date of freedom should be the date of the execution by the Governor of the Instrument of Pardon, which the present Colonial Law Officers consider to be the proper date.

My Lords would here observe, that there are some cases in which the Conditional Pardons were never made out, and consequently never executed by the Governor; and they presume that in those cases, for which the Claim amounts to £796 as stated in the 10th paragraph of the Comptroller's Memorandum of 25th October, 1864, the cost of maintenance, so far as regards the Claims already paid, will be charged to the Imperial Funds.

Their Lordships concur in Mr. Cardwell's opinion in regard to all pending and all future Claims, that no retrospective application of the rules laid down by the despatches quoted by the Secretary of State's Memorandum should be allowed; and that, in respect of cases of "Conditional Pardons not taken up," the notification in the *Gazette* of the approval by the Secretary of State of the Conditional Pardon shall be considered the date of freedom in determining which Government is liable for the maintenance when the person is unable to maintain himself.

Enclosures in original. With regard to the Claim of £5066 for Orphan and Destitute Children which Mr. Cardwell proposes to reject, I am desired to forward to you, herewith, copies of two letters from A. C. G. Hawkins, one dated 21st April, 1865, the other dated 22nd May, 1865, with enclosures in original, reporting subsequent proceedings taken by him in investigating this claim, which, in their Lordships' opinion, tend to support Mr. Cardwell's views that the Claims under this head should not be re-opened.

I am, &c.

(Signed) GEO. A. HAMILTON.

Sir F. ROGERS, *Bart.*

*Assistant Commissary-General HAWKINS to the Assistant Secretary to the Treasury.*

(Copy.)  
No. 180.

*Commissariat, Tasmania, Hobarton, 21st April, 1865.*

SIR,

IN some of the back Claims lately brought forward by the Colony, and which have not yet been referred Home, it is sought to recover from the Treasury Chest the entire cost of the maintenance at the Queen's Orphan Asylum of the children of Convict women married to free men.

As I could find no authority to govern such cases I applied to the Comptroller-General, and was informed that previous to the rule of December, 1859, approved by the Duke of Newcastle in his Despatch, No. 37, of May, 1861, there was no written rule; but that a custom prevailed, that in cases where the condition of the parents differed, the one being bond and the other free, the condition of the mother governed the funds to which the children were chargeable,—the children of the bond woman falling on Imperial Funds, and the children of the free woman on Colonial Funds.

I was at the time satisfied with this explanation; but subsequently certain circumstances induced me to doubt whether the Colony had actually borne the charge for children of free women married to Convict men, and I accordingly applied to be furnished with cases in proof.

Failing to obtain a reply to my application, I myself pursued the enquiry, and found, so far as I could glean from the records of this Department, that the Imperial, instead of the Colonial, Government has borne the charge for maintenance of the children in very many, if not in all such cases.

It appeared to me, therefore, that the alleged custom, if it ever existed, must have been strangely disregarded; and, moreover, it had never been sanctioned by the Secretary of State, as admitted by the Comptroller-General. I, under these circumstances, deemed it my duty to differ from the views of Mr. Nairn, who had certified on the Claims, that the entire cost of these children of free women by Convict men was chargeable to Imperial Funds; and I have submitted for the consideration of the Committee of Officers, that the equitable rule of dividing the cost, as sanctioned by the Secretary of State, should apply to all such cases as may be contained with back Claims alluded to.

Vide Duke of Newcastle's Despatch, No. 37, of May, 1861; copy herewith.

My motive in bringing the subject in its present stage before their Lordships is, that it appears to me desirable that the decision in regard to the Claims for maintenance of the Orphan children should be deferred till this question has been discussed by the Committee of Officers, and the result referred Home. This will be done probably by next mail.

I have, &c.

(Signed) V. W. C. HAWKINS, A.C.G.

*The Assistant Secretary to the Treasury.*

*Assistant Commissary-General HAWKINS to the Assistant Secretary to the Treasury.*

(Copy.)  
E.—No. 186.

*Commissariat, Tasmania, Hobarton, 22nd May, 1865.*

SIR,

ADVERTING to my letter of the 21st ultimo, No. 180, having reference to a matter in connection with the Claims of the Colony for recovery of sums paid for the maintenance of children in the Queen's Orphan Asylum, I do myself the honor to report, for the information of the Lords Commissioners of Her Majesty's Treasury, that, at the Meeting of the Committee of Officers since held, I moved that that subject might be postponed till after the following important proposition, which I then submitted, had been duly considered.

That proposition is contained in the enclosed Memorandum; and in the discussion which ensued thereon it was strongly opposed by the Colonial Members, as indeed I had fully anticipated. The Committee then adjourned to allow of time for further consideration and investigation. D. 567.

I will here state the circumstances which led to my taking this step. Being dissatisfied with the statement of the Comptroller-General to the effect that custom, without any written rule, had governed the admission of children to the Asylum in cases of mixed free and convict parentage, I pursued my research far back into the accounts and records of my own and occasionally of other offices. The investigation revealed the omission which I have felt it my duty to bring to light: and, in regard to its importance, I need only observe, that the amount to be claimed thereon by the Imperial Government would far exceed that on the other hand sought to be recovered by the Colony as overpayments for maintenance at the Queen's Orphan Schools, and which now amounts, including the Claims not yet transmitted Home, to £5000. But, as explained in the last paragraph of my Memorandum, it is more with the view of effecting a sort of compromise, by inducing the Colonial Government to withdraw its Queen's Orphan Asylum Claims, that I have brought forward this proposal.

Vide my letter of 21st April, 1865.

Present actual amount of the Colonial *back* Claims unpaid on account of children of Convicts, £4986 15s., irrespective of the usual annual Claims.

I have, &c.

(Signed) V. W. C. HAWKINS, A.C.G.

*The Assistant Secretary to the Treasury.*

(Copy.)

D.—No. 567.

*Commissariat, Tasmania, Hobart Town, 15th May, 1865.*

# MEMORANDUM.

In order to arrive at an accurate knowledge of the complicated question of the relative liability of the two Governments for the maintenance of the Children in the Queen's Orphan Asylum, I have found it necessary to refer to, and trace from the earliest periods to the present time, all the Authorities, Accounts, and Records bearing on this subject. The investigation has revealed a very important point, which I now beg to bring under your consideration with a view to its being submitted to the Committee of Officers.

In 1837, when the Asylum was under Colonial control, a Board, of which the then Colonial Treasurer, Mr. Gregory, was President, under date the 18th of November of that year, rendered the following Report:—

“We are called upon, by the Government Order under which we act, to report what sum we consider should be transferred from the Commissariat to the Colonial Chest on account of this service. Upon this point we cannot do better than quote the words of the Committee of Inquiry into the Orphan School, whose Report, dated 8th July, 1837, has been printed, and recently laid before the Legislative Council.

“At the present rate of expenditure the average cost of each child in the Institution may be stated at about £13 per annum; and, as we see no reason why the Colony should be burthened with the maintenance as well as the education of the Children of Convict parents, we are of opinion that the British Treasury should defray prospectively the actual cost of their maintenance, and we think that £10 would be a fair and reasonable charge for each Child whose father or mother is still a Prisoner of the Crown, and not holding a Ticket-of-leave.”

Printed Report, page 15.

“In the opinion and recommendation of the late Committee of Inquiry just quoted we entirely concur; and we think that, although the actual expense incurred by the Colony in the superintendence and maintenance of Children in the Orphan Schools during the last nine years has considerably exceeded the average rate of £10 per annum per Child, yet bearing in mind the great advantage

which the Colony derives from the moral and religious improvement of the rising generation, and the reasonableness of imposing upon the inhabitants the cost of educating the Children of all poor parents whether bond or free, the Colony should be satisfied if the British Treasury defrays the actual cost of provisioning the Children of Convicts,—and in that point of view we are of opinion that the average rate of £10 per annum for the last nine years would be fair and reasonable. Assuming, therefore, the rate of £10 per annum for each Child, it will be seen, by reference to the last page of the annexed Return, that the total cost of maintaining the Children of Convicts from May, 1828, to 31st October, 1837, is £14,022 16s. 5d.”

In precise accordance with these terms a settlement was effected up to 1837 ; and agreeably to the approved recommendation contained in this Report, that the fixed rate of £10 per head for each Child should be continued to be paid by the Imperial Government as the cost for maintenance alone, exclusive of education, I find by my accounts that it was so paid to the 31st March, 1844, the date of the transfer of the Establishment to Imperial control.

The positions of the two Governments in regard to accounts and settlements were, of course, reversed by this transfer ; and I find a most important oversight occurred on the part of the Commissariat, who overlooked the fact that the Colony was still liable for the cost of education of Children of Convict parentage, from which obligation there is no authority whatever to show that it was ever released. Had it been the intention of the Committee of Officers so to relieve the Colony, it would assuredly have been inserted in their Minutes, for so important a matter would scarcely have escaped record when subjects comparatively trivial are found inserted in its Minutes.

It cannot be asserted that at the transfer there was any *bouleversement* or material alteration in former arrangements in regard to the relative liability, for the numbers of Children chargeable to each remained the same after as before the transfer ; and this fact is also confirmed by the accounts in my office. The only noticeable alteration is, that instead of a fixed rate, the charge against the Colony was to be regulated according to the expense of the whole Establishment. A perusal of the Minutes of the Committee will show that a reform in the administration of the Establishment in relation to the duties and salaries of its officers mainly occupied their attention.

No oversight is more natural than that of the Commissariat in having failed to bring a charge against the Colony for the cost of education. The Officer then in charge, who was a member of the Committee, had arrived years subsequent to Mr. Treasurer Gregory's Committee ; and the £10 fixed cost of maintenance continued from that date did not specify that the cost of education was excluded from that charge ; and the term maintenance, without such proviso, might very naturally have been understood to comprehend all charges, and as such, indeed, we now invariably apply the expression : and now it is only by searching other offices that I have succeeded in gleaning this information.

But it is by no means on speculation as to the origin of this oversight that I rest this claim, though I think it right to explain this cause. It is on the ground that the Colony should not be released from its obligation to carry out its share of the original compact unless some authority can be produced, especially when the Imperial Government undertook to bear the cost for the maintenance of Children of partial Convict parentage on the express proviso that the cost of education should be borne by the Colony. The Comptroller-General informs me that to his knowledge there is no such authority cancelling this stipulation, and I myself can find none.

As Officer in charge of the Treasury Chest, then, I submit that the Colony stands indebted for the cost of the education of Children of Convict parentage from April, 1844, to December, 1859, the date of the retransfer of the Establishment to Colonial control, and also for the year 1860, the period of last settlement : 3-13ths of the entire cost of these Children may fairly be continued to be estimated as the just proportion in like manner as was previously admitted.

The amount of this charge against the Colony would exceed that for which Claims have, on the other hand, been preferred against the Imperial Government as over-payments to the Asylum. I submit, therefore, considering the difficulties which beset the question, that it is advisable to compromise the matter by allowing settlements to remain undisturbed on both sides so far as regards the Queen's Orphan Asylum.

(Signed) V. HAWKINS, A.C.G.

Subject to modification, so far as concerned cases affected since February, 1859, by the Rule of the Committee of Officers under date 21st of that month.

(Copy.)

*Comptroller-General's Office, 16th May, 1865.*

## MEMORANDUM.

I FORWARD to the Colonial Secretary a Memorandum which I have received from the Assistant Commissary-General, setting forth the grounds upon which he considers that the Imperial Government have a Claim against the Colony in reference to the Children of Convicts maintained at the Queen's Orphan School since 1844, when the Establishment was transferred from the Colony to the Imperial Government.

From 1837 to 1844, it would appear that the Home Government paid £10 a year for each Child chargeable to the Convict Department, such charge being held to cover the cost of the maintenance of the Child, leaving the Colony to pay the cost of education.

On the transfer of the Establishment to the Imperial Government in 1844, a *pro rata* charge was adopted on the advice of the Committee of Officers, as shown in their Minute of the 11th January of that year. Mr. Hawkins now represents that the *pro rata* charge as regards the Children of Convicts should have been applied to the calculation of their maintenance only, and that the Colony should have been charged with the cost of their education.

It appears to me that the intention of the Committee of Officers was that the *pro rata* charge should apply to the whole expense, although it appears most probable that the Committee had not in any way under their consideration the original Report of Mr. Gregory to which Mr. Hawkins refers, on which the fixed charge of £10 each was fixed for the maintenance of Convict Children.

The Minute of the Committee of Officers is sent herewith.

The Assistant Commissary-General desires, as the Colonial Secretary will observe, that his Memorandum should be referred to the Committee of Officers.

(Signed) W. NAIRN, *Comptroller-General.*

*The Honorable the Colonial Secretary.*

## APPENDIX TO A. C. G. HAWKINS' MEMORANDUM OF 15 MAY, 1865.

Although for certain reasons it has been thought best to transmit entire copies of these Minutes alluded to in my Memorandum of 15th May, 1865, the Clauses marked in red ink have alone a material bearing on the subject.

V. HAWKINS, A.C.G.

*MINUTES of the Proceedings of the Committee of Officers for reviewing Convict Expenditure.*

11th January, 1844.

*Present.*—The Colonial Secretary, the Comptroller-General, the Deputy Commissary-General.

1. On the question of the transfer of the Queen's Orphan Schools from Colonial to Convict Funds, the proposition of the Colonial Secretary to the Lieutenant-Governor, which was read yesterday, is as follows:—

“The Colonial Secretary proposes for the consideration of the Lieutenant-Governor, that the management of the Orphan Schools be handed over to the Comptroller-General, and that the Colonial Treasury pay the Convict Department at £ per head per annum, to be estimated according to the annual expense.

“The house now occupied by the Rev. Mr. Ewing to be continued as the residence of the *Head Master* of the Institution. Mr. Ewing to continue to be the Religious Instructor of the children, and the Clergyman performing the duties of the parish, the colonial fund paying him, (say £284 18s., the ordinary income, per annum), and the convict fund £150 per annum; these sums to include house rent.

“That part of the Church now appropriated to the use of the children to be reserved for them, and the remainder to be for the accommodation of the neighbouring inhabitants.

“A layman to be appointed as Superintendent, who shall have the general charge of the Establishment under the Comptroller-General, at a salary of £300 per annum.

“The subsisting Contracts to be continued until they expire; afterwards the Contracts will be made by the Comptroller-General through the Commissariat.

“The Purveyor of the Institution to be called on to prepare a Return of the Stores on hand on the 31st ultimo.

“These heads are submitted as the basis of the arrangement, subject to the objections and modifications of the Comptroller and Commissariat.”

Having read the observations of His Excellency the Lieutenant-Governor on the foregoing proposition, the Members of the Committee proceed to record their several opinions on it.

*The Deputy Commissary-General* observes, that the Lieutenant-Governor has decided on transferring the charge of this Establishment to Convict Funds: it only remains for the Members of the Committee to state their views as to the most judicious manner in which His Excellency's intention may be carried into effect with reference to the Colonial Secretary's proposition, bearing in mind the objects of the Institution, and that no unnecessary expense is thrown on the Home Government by this arrangement. And first, with regard to the transfer, Mr. Maclean is of opinion that this should take place, subject to the advantages and disadvantages which it would entail on the Home Government; that is to say, that all land and buildings of every description should be handed over for the sole use of the Home Government, except the Church, so long as the Institution continues to be maintained at its expense, in order that by leasing out the former, and appropriating the latter to the accommodation of the Establishment generally, all available proceeds may be applied to the reduction of expenditure, and repairs of buildings, fences, &c.

The balance of pew-rents, after paying the salary of the Clerk and minor contingencies, to be paid over to the Home Government to keep the Church in repair, unless the Colonial Government prefer doing so, in which case the whole of the proceeds will be handed over to the Colonial Treasury.

2nd. As regards the separation of the Rev. Mr. Ewing's duties, which it is now proposed to confine to those of Religious Instructor only, and the special appointment of Head Master, Mr. Maclean does not perceive why that gentleman (the Rev. Mr. Ewing) might not have continued to give the Institution the benefit of his services as heretofore, combining the duties of Clergyman of the Parish of New Town with those of Head Master of the Schools, and Religious Instructor to the Protestant Children only (the Roman Catholic Children being provided with instruction from Clergymen of their own denomination), the Colony paying his salary as a parochial Clergyman, and the Home Government the difference between that and £400 a year, which he now receives as Head Master. The duties of the office hitherto performed by the Rev. Mr. Ewing having been limited, as Mr. Maclean understands, to a kind of general superintendence of the Establishment and religious instruction.

The possession of the house and ground to be continued to him as Head Master. This proposition Mr. Maclean considers to be quite practicable, and that it should in the first instance be offered to Mr. Ewing, as it involves retrenchment and economy so desirable in such arrangements. After providing funds for the religious instruction of the Roman Catholic Children,—in fact the Rev. Mr. Ewing would be precisely in the position he now occupies, with this difference, that he would be paid his salary as Minister of New Town, properly chargeable on the local revenue from Colonial Funds, which was formerly merged in the gross expense of the Schools. Should the Rev. Mr. Ewing decline this arrangement, or that valid objections could be urged against it, then it would be necessary that a Head Master or Superintendent should be nominated, the salary of which appointment Mr. Maclean is of opinion should not exceed £300 per annum, with the house and garden now occupied by Mr. Ewing as Head Master, £100 or £150 per annum being appropriated for the religious instruction of the children, to be divided between a Catholic and Protestant Minister in proportion to the number of children of each denomination.

The Deputy Commissary-General would further propose, in the event of His Excellency not considering it necessary in the first instance to obtain the sanction of the Secretary of State or the Lords of the Treasury to this arrangement, that as the present Contracts for the Institution will not expire before the 30th June next, the transfer should be made from the 1st July, so that in the interval all the arrangements for new contracts may be made, as well as a general revision of the present appointments, with a view to improvement and economy in the system of management. The sums included in the Colonial Estimate for 1844 for the Establishment are as follows:—Salaries, £1771; Contingent Expenses, £4282 18s.; Total, £6053 18s. The number of children in the establishment is 499: 376 of these are children of Convicts; 98 are orphans; and 25 are apprentices and children of servants. The total cost of the Establishment being taken as above, and deducting the probable number of children (98) to be paid for at £10 per head by the Colony, it would leave the sum of £5073 18s. to be defrayed by the Home Government in supporting the Institution.

During the last year the amount claimed from the Home Government by the Colony as their share of the expense amounts to £3479 15s. 8d., so that the difference £1324 2s. 4d. will, by the proposed arrangement, be thrown upon the Home Government, minus the expense of apprentices and children of servants, if it be ultimately decided that it should be borne by the persons themselves.

Mr. Maclean begs to add, that it was directed by the Treasury, on the 27th May, 1840, that the expense of children of Convicts maintained in the Institution should only be reimbursed to the Colony if it should be shown that the latter had refunded to the Home Government the whole expense defrayed from Convict Funds for the purchase of Stores, &c., for the Establishment, which, however, could not be done, a large balance being still due on that account; and although the periods of the payments were for a time suspended, they were subsequently resumed by Sir John Franklin's directions, without any approval from Home Authorities that Mr. Maclean is aware of. Looking to this circumstance, the increased expense which will now have to be incurred, and adverting also to the fact that many illegitimate children of Convict women by free men are supported at this Establishment at the public expense, Mr. Maclean is of opinion that so important an arrangement, which involves so considerable an addition to the charge on Convict Funds, should not be undertaken without in the first instance consulting and obtaining the sanction of the Home Government.

*The Comptroller-General*, after the minute of the Deputy Commissary-General.—There are but a few points connected with the question on which it is necessary for me to observe. The first is, that should His Excellency think fit to put a layman at the head of the Institution, I do not think he could get a proper person in the Colony under £400 a year and a house; but, as in the Papers before the Committee it is not intended to give the layman the house of the Head Master, I conceive that whatever expense the Home Government may be put to for house rent for him should be borne by the Colonial Government, it being entirely a Colonial arrangement.

I think under the operation of leasing the lands, and by superseding the arrangement of paying £10 for each child, and instead thereof charging the exact amount per child which it may cost, the expense of the transfer will be somewhat reduced. I do not think the £150 put aside for religious instruction and divided as proposed by the Deputy Commissary-General will answer; as, even admitting that the children are nearly divided into Protestants and Roman Catholics, the Clergymen respectively would only receive half the allowance granted to a Catechist.

*The Colonial Secretary*.—It appears to me desirable that some change should be made in the arrangements of the Institution as early as possible. First, because I think that several defects of management might be remedied,

particularly the farming establishment, which, as it produces little or nothing, might be got rid of. I am confirmed in this opinion of mismanagement, because one of the two Trustees or Guardians has applied to withdraw in consequence.

I think also that it is desirable to allow children of Roman Catholic mothers to be spiritually instructed by Clergymen of their own profession. This it would not be proper to do so long as all arrangements are of a Protestant character.

The head of the Roman Catholic Church has repeatedly applied to visit the children, but he has been constantly refused on this ground.

It is also desirable that a layman should be at the head of the Establishment, because his duties are almost altogether secular, the chief of them being attention to the feeding, clothing, and discipline of the children; besides which the inhabitants of New Town have now become so numerous and important that they ought to have a Clergyman who would perform his duties without being encumbered with secular duties, and they are not at present sufficiently provided for in this respect. I certainly consider that the duties of the Superintendent of the School cannot be properly combined with those of the Clergyman. I am induced to agree with the Deputy Commissary-General that £150 is sufficient to provide for religious instruction of the children; and if that sum be divided between a Protestant and Roman Catholic Clergyman who may reside in the neighbourhood, it will be sufficient.

With respect to the increased charge on the Convict Fund, I am of opinion that this change is only carrying out the principle so strongly urged by Lord Stanley, of separating Convict from Colonial expenses, and which the Lieutenant-Governor is desirous of seeing at once established: and I would, therefore, recommend that the arrangement be carried out, and that the convenience of the Convict Department be consulted as to the transfer taking place on the 31st March, the end of the parliamentary year.

The Board then adjourned.

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## No. 12.

### *MINUTES of the Proceedings of the Committee of Officers for reviewing Convict Expenditure. 16th January, 1844.*

*Present.*—The Colonial Secretary, the Comptroller-General, and the Deputy Commissary-General.

On the question of transfer of the Queen's Orphan Schools to Convict Funds. The Committee having heard the Lieutenant-Governor's remarks on their Minutes of the 11th January last, and his approval of Captain Booth as Superintendent, proceeded to consider the question of the salary of the Superintendent.

The Comptroller-General adheres to his former opinion that less than £400 a year would not be sufficient for any Superintendent of the Orphan Schools. He came to that opinion in consideration of the distance from town, the visitors to the Institution, the presents of books to the boys, which are all done of necessity; nevertheless, he thinks the plan proposed by the Lieutenant-Governor a good one, because in effect by it the Superintendent will get £400 a year, and in regard to the future, the fixed salary will be but £300.

He cannot close his observations without expressing his sincere satisfaction in the personal allowance of £100 a year to Captain Booth, in consideration of his long services, in which he has sacrificed his health.

The Deputy Commissary-General adheres to his former opinion that £300 is sufficient, leaving the question of pension open for the Governor to recommend to the Secretary of State for Captain Booth's long and arduous services at Port Arthur, and his present bad state of health.

The Colonial Secretary thinks that £300 a year is sufficient for the ordinary superintendence at the Orphan Schools, but recommends that £100 a year be given in addition to Captain Booth, in consideration of loss of health occasioned by the dangers to which he has been exposed in his situation of Commandant of Tasman's Peninsula during a period of Twelve years.

The lodging money of £100 a year to be paid by the Colony, or the house at present occupied by the Reverend Mr. Ewing to be given up to him, whichever can be arranged.

The Committee adjourned.

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### *The Duke of NEWCASTLE to Sir H. E. F. YOUNG.*

(Copy.)

TASMANIA.—No. 37.

*Downing-street, 2nd May, 1861.*

SIR,

YOUR Despatch No. 15, of the 10th February, 1860, was referred to the Treasury; and I have the honor to acquaint you that their Lordships have stated that they see no objection to the proposed arrangement that, in the apportionment between the Imperial and Colonial Governments of the expense of maintaining children of Convicts in the Government Establishments in Tasmania, when one of the parents is free and the other a Convict, the expense should be divided equally between the Imperial and Colonial Governments.

I have, &c.

(Signed) NEWCASTLE.

Governor Sir H. E. F. YOUNG, C.B.

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## MEETING OF THE COMMITTEE OF OFFICERS.

## PRESENT.

The Honorable JAMES WHYTE, *Colonial Secretary.*  
 The Honorable CHARLES MEREDITH, *Colonial Treasurer.*  
 The Honorable WILLIAM NAIRN, ESQ., *Comptroller-General.*  
 V. W. C. HAWKINS, ESQ., *Assistant Commissary-General.*

The Minutes of the last Meeting are read and confirmed.

(Signed) JAMES WHYTE,  
*Colonial Secretary's Office, 3rd September, 1866.*

1st. Read the following Memoranda in the order of their respective dates :—

## MEMORANDUM.

I BEG to remind you that I have as yet received no amended lists of the children chargeable to Imperial Funds in the Queen's Orphan Asylum.

In case they may be of any service to you, I return the lists previously rendered for the years 1861, 1862, and 1863, as considerable reductions will have to be made therefrom in consequence of the Secretary of State having disallowed, as I anticipated, more than a half charge in cases where one parent is free and the other Convict.

(Signed) V. W. C. HAWKINS, A.C.G.  
*Commissariat Office, Hobart Town, 29th January, 1866.*

*The Comptroller-General.*

## MEMORANDUM.

WITH reference to your Memo. of the 29th January, I have the honor to forward to you a list of children who will be half chargeable upon Colonial Funds under the Secretary of State's decision as to the liability of Convict Funds to bear these charges. I send also a list of three children chargeable entirely to Colonial Funds, and of one child removable from Imperial Funds on account of Conditional Pardon having been approved.

(Signed) W. NAIRN, *Comptroller-General.*  
*Comptroller-General's Office, 21st March, 1866.*

*The Assistant Commissary-General.*

THE Colonial Secretary is not aware of any decision of the Secretary of State to the effect herein named. Would the Comptroller-General be good enough to furnish a copy of it?

This matter engaged the attention of the Committee of Officers at a meeting held on the 29th June last, and the proposition was rejected,—the Governor concurring with the majority.

(Signed) JAMES WHYTE,  
*27th March, 1866.*

*REPLY to Colonial Secretary's Enquiry of 27th March, 1866, referred to Assistant Commissary-General by Comptroller-General, on 4th April, 1866.*

IN paragraph 5 of Mr. Elliot's Letter of the 15th July, 1865, to the Right Honorable Mr. Peel, it is stated :—" In respect of all pending and future Claims, Mr. Cardwell is of opinion that, as to Invalids, the Rule defined in his Despatch No. 47, of the 20th July, 1864, and as to Orphan or Destitute Children who are the offspring of one free and one Convict parent, the Rule assented to in the Duke of Newcastle's Despatch No. 37, of the 2nd May, 1861, *should be strictly followed.*"

These decisions were received with Mr. Cardwell's Despatch No. 54, of the 11th September, 1865, together with papers which contained a comprehensive review of the entire questions under discussion, and in consideration of which it would appear to have been deemed unnecessary to transmit any special instructions in respect to "the matter" which, as Mr. Whyte observes, "engaged the attention of the Committee of Officers at a meeting held on the 29th June last."

In a case precisely analogous to that of these children, but where it was to the interest of the Colony that the Rule assented to in the Duke of Newcastle's Despatch No. 59, of the 12th August, 1861, should take effect in the manner now claimed for His Grace's Despatch No. 37, of the 2nd May, 1861, the Comptroller-General consented that the Rule should be so applied. In proof of this I have only to refer to those Paupers, Invalids, &c. at Port Arthur who had been admitted and charged against the Colony previous to the Rule assented to in the Despatch first above quoted, but for the maintenance of whom, though still at Port Arthur, the Comptroller-General no longer makes a Claim against the Colonial Government in the pending or unpaid Claims.

On the same principle, in the pending Claims of the Colonial against the Imperial Government, children of half-free and half-convict parentage can now only be admitted as a half charge against the Imperial Government, although they may have been entirely charged against the latter previous to the Rule contained in the Despatch No. 37, of the 2nd May, 1861.

The transfer of the Paupers above alluded to from Colonial to Imperial Funds cannot be maintained or permitted on any other grounds than the Rule authorised by the Duke of Newcastle's Despatch of the 12th August, 1861, as the annexed quotation, marked "A," from the Memorandum of the Secretary of State clearly shows the position of these persons previous to the concession contained in that Despatch.

Ample reason, as well as authority, is thus shown for the reduction of the cost for the maintenance of these children from a full to a half charge against the Imperial Government; but to this it may be added that the Comptroller-General has not yet explained away the deduction to which his own statements have led, and which is alluded to as follows in the Memorandum from the Colonial Office above quoted:—"The demand of £5066 for children is explained in the Comptroller-General's Report of the 14th January, 1865, which will be found among the enclosures of the Governor's Despatch No. 106, bearing the earlier date of the 20th December, 1864. The Comptroller makes the following statement:—

"3. Since the transfer of the Establishment at the close of the year 1859 from the Imperial Government, the Colonial Government have discovered cases in which the mothers were Convicts at the time of the children being born; and it is for these cases that claim for repayment has been made, the cases having been originally admitted on the authority of the Colonial Secretary.

"4. The children of Convict mothers were held to be chargeable upon Convict Funds, and it has been on this ground that I have certified to their being admissible on Convict Funds."

The last paragraph assumes that the fact of the mother being a convict is conclusive, and therefore seems to imply that the Comptroller is not aware of or has overlooked the Rule settled in 1861, that the expense of children when one parent is free and the other a Convict should be equally divided between the Colonial and Home Governments.

But this statement likewise discloses the more important fact that these Claims for Children, like those previously preferred in respect of Invalids, are retrospective. They consist of demands for the repayment of past disbursements in cases which were at the time fully admitted to be chargeable to the Colonial Government.

(Signed) V. W. C. HAWKINS, A.C.G.  
Commissariat, Tasmania, Hobart Town, 11th April, 1866.

#### A.

##### *Invalids, Lunatics, and Paupers.*

The Duke of Newcastle announced, on the same occasion, that any persons of this class who at the time of their arrival in the Colony as Convicts were above 60 years of age should be chargeable to the British Treasury. Earl Grey had stated so far back as 1848, irrespectively of age, that the Colony should be relieved of the maintenance of any man who should be unable to earn his living at the time of his release from the Public Works.

The Duke of Newcastle materially extended the term. In 1861 he conveyed his assent to the Rule which it is proposed "should in future be in force, that Paupers labouring under diseases which

No. 200, 23  
Dec., 1848.  
Parl. Papers,  
Feb. 1849,  
p. 279.

No. 59, 12  
Aug., 1861.

Extract annexed to this Memo.

they can be shown to have contracted whilst they were Imperial Convicts shall be maintained by the Home Government unless they shall have been free for 10 years."

No. 47, 20  
July, 1864.  
Copy annexed  
to this Memorandum.

In consequence of some subsequent doubts, Mr. Cardwell in 1864 supplied the following interpretation of this Rule:—"If a man shall have earned his own living for 10 years after becoming free, the Imperial Treasury is for ever free from liability about him; but if within 10 years he is rendered a burthen by some disease under which he laboured whilst still a Prisoner, he will be chargeable to Imperial Funds."

I forward herewith the reasons which have induced the Assistant Commissary-General to require from me a list of Children who will be half chargeable upon Convict Funds.

(Signed)

W. NAIRN.  
13th April, 1866.

*The Hon. the Colonial Secretary.*

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#### MEMORANDUM.

THE Colonial Secretary and Colonial Treasurer have carefully considered the Memorandum of the Assistant Commissary-General of the 11th April, 1866, and at the same time had before them the Despatch of the Right Honorable the Secretary of State of the 11th September, 1865, in which Mr. Cardwell lays down the principles he says are to be observed in the settlement of the existing accounts between the Imperial and Colonial Governments.

The Colonial Secretary and Colonial Treasurer cannot on behalf of this Government acquiesce in the ruling of Mr. Secretary Cardwell; and before commenting upon Mr. Hawkins's Memorandum, they desire to lay before the Committee their views with regard to the decisions contained in the Despatch above quoted.

In order to render their observations as clear as possible they propose to comment upon the respective paragraphs of the Despatch, where comment may appear necessary, in the order in which they occur.

Mr. Cardwell says,—“First, with respect to all pending and future Claims the following Rules should be strictly followed:—

“As to Reconvicted men, the Rule contained in the Duke of Newcastle's Despatch, No. 59 of the 12th of August, 1861.”

It is presumed that this Despatch is referred to in error, the Despatch relating to this subject being No. 23 of the 14th February, 1854.

“As to Invalids, the Rule defined in my Despatch No. 47 of the 20th July, 1864.”

This Despatch being explanatory of Despatch No. 59, of the 12th August, 1861, upon the same subject, it is presumed the two are to be read together.

“As to Orphan or Destitute Children who are the offspring of one Free and one Convict parent, the Rule assented to in the Duke of Newcastle's Despatch, No. 37, of the 2nd May, 1861.”

Mr. Cardwell considers that this Rule should apply to “all pending and future Claims;” but the Colonial Secretary and the Colonial Treasurer must point out that to apply the Rule laid down in the Secretary of State's Despatch to the cases of Children who were admitted into the Queen's Asylum anterior to the receipt of that Despatch would unquestionably be giving the Rule a retrospective effect,—and this is positively objected to by the Home Authorities, for in a Letter from the Treasury, dated the 2nd August, 1865, addressed to Sir F. Rogers, Mr. Hamilton writes:—“Their Lordships concur in Mr. Cardwell's opinion in regard to *all pending and all future Claims* that no retrospective applications of the Rules laid down by the Despatches quoted by the Secretary of State's Memorandum should be allowed.”

The Colonial Government concur in the application of the Rule dividing between the Imperial and Colonial Governments the liability for the maintenance of Children one of whose parents was Free and the other Bond, who may become a burthen upon Public Funds, to all cases arising subsequently to the receipt of the Despatch; but where Children have been duly admitted into the Asylum in accordance with the established Rule or practice in force at the time of such admissions, they protest against their being transferred under a Regulation formed at a subsequent period.

The Colonial Secretary and Colonial Treasurer maintain that the only equitable mode of applying Rules laid down by the Imperial Government relating to the Claims of the respective

Governments now under consideration, is to give effect to their provisions in all cases arising after the receipt of the Despatch in which they are communicated to the Governor.

“Secondly, for the reasons stated in the Letter which I caused to be addressed to the Treasury on the 15th July, no retrospective Claim is in any pending or future case to be admitted in respect of Invalids.

“Thirdly, no retrospective Claim is in any pending or future case to be admitted in respect of Children.”

It will be necessary here to refer to the Letter addressed to the Treasury of which Mr. Cardwell speaks. In that Letter Mr. Elliot says, “Mr. Cardwell does not feel a doubt that with regard to Invalids it was erroneous to make or to admit retrospective Claims.”

In the first place the Duke of Newcastle himself distinctly described his concessions on the subject as “one for the future ;” and, independently of this, the general reason of the case shows that endless confusion and differences must be produced by disturbing past settlements of accounts. Each case ought to be carefully examined as it arises ; but when once the liability has been determined by the Officers who periodically examine the cases, the settlement should be final.

No possible objection can be raised to this ruling provided it is not made *retrospective* ; but to apply it to cases where errors in past accounts have been discovered, cases where Invalids and Destitute Children have been charged erroneously under the Rules or established practice in force at the time of their admission into the Charitable Institutions of the Colony, whether that error injuriously affects the Imperial or the Colonial Government, would be to take advantage of mistakes which have arisen through inadvertence, and in very many instances from the absence at the time the cases arose of that information which could alone ensure accurate decisions, and which information was in the custody of the Imperial Authorities.

Annexed to Mr. Elliot's Letter is a Memorandum in which are set forth the various decisions arrived at by the Secretaries of State at different periods respecting the Government liable for the maintenance of Re-convicted men, Invalids, Lunatics, and Paupers, and Orphans and Destitute Children.

In the Memorandum the following passage occurs :—“Now these Rules appear sufficiently well defined to afford little room for doubt if applied to fresh cases as they occur. The difficulty has arisen from applying them retrospectively, and making them an occasion to disturb settled accounts.

“On learning the Duke of Newcastle's concessions about Invalid Paupers, the Colonial Government looked back to past cases, and sought fresh evidence, and brought in demands for repayment of money paid by them for men who had been fully admitted at the time to be chargeable to the Colonial Government.”

The Colonial Secretary and Colonial Treasurer are compelled to dissent from the statements contained in the passage above quoted : the Colonial Government do not desire to apply the Rules referred to retrospectively, nor to make them the occasion to disturb settled accounts.

The Colonial Government have only sought to have erroneous settlements fairly revised, and the cases decided in accordance with the Rules and practice in force at the time they originated ; nor need there be any difficulty in carrying out such a revision.

Further, Mr. Elliot is in error in supposing that the examination into past cases was in any way affected by the Duke of Newcastle's ruling respecting Invalid Paupers : not only had such examination been commenced long before the date of that Despatch, but Claims substantiated by undeniable evidence had been preferred, acknowledged, and approved.

Again, in the same Memorandum there occurs a quotation from a statement by Mr. Nairn, the Comptroller-General, when forwarding certain surcharge Claims, “The children of Convict mothers were held chargeable upon Convict Funds, and it has been on this ground that I have certified to their being admissible on Convict Funds.”

On this the following remark is made in the Memorandum by Mr. Hawkins :—

“The last paragraph assumes that the fact of the Mother being a Convict is conclusive, and therefore seems to imply that the Comptroller-General is not aware of or has overlooked the Rule settled in 1861, that the expense of children when one parent is free and the other Convict should be equally divided between the Colonial and Home Governments.”

By this it would appear that in these cases the Rule of 1861, where it tends to limit somewhat the liability of the Imperial Government, is to be made retrospective in its effect, but in the case of

the Rule relating to Invalids and Paupers, which may be viewed as beneficial to the Colony, its application is to be strictly confined to future cases.

The Colonial Government protest against a different mode of applying Rules where such difference so unfairly militates against the just and equitable Claims of the Colony.

Whatever application may be agreed upon in one case should be extended to the others, if it is desirable to avoid the imputation of manifest inconsistency.

In order, however, to the adoption of a series of definite rules which shall be applicable to all Claims of either Government upon the other from whensoever they may date, the Colonial Secretary and the Colonial Treasurer would now suggest, as the best means to arrive at a final settlement of accounts, although the suggestion will involve the award of scant justice to the Colony, that—

No case arising from admissions anterior to 1854 shall be disturbed.

Despatches,  
No. 200,  
23 Dec. 1848;  
No. 59,  
12 Aug. 1861;  
No. 23,  
14 Feb. 1854;  
No. 37,  
2 May, 1861.  
Min. Com.  
of Officers,  
21 Feb. 1859;  
7 Nov. 1860.  
Also, children  
who arrived  
with their  
Convict  
mothers and  
*illegitimate*  
children of  
such mothers,  
as has been  
and is the  
practice, are  
chargeable to  
Convict  
Funds.

The adoption of this date was recommended by His Excellency the Governor on a former occasion.

That all Claims both surcharge and current shall be governed by the Rules laid down in the several Despatches and Documents named in the margin and annexed to this Memorandum.

That, in order to effect such final settlement of all Accounts and Claims they shall be jointly investigated by two Officers, one of whom shall be appointed by the Imperial and the other by the Colonial Government, who shall report quarterly to the Colonial Secretary and the Comptroller-General the result of their investigations; and the certificates of the latter Officers as to the funds to which each case is chargeable shall be taken as correct and final.

Should any case arise upon which the investigating Officers are unable to agree, such case shall be referred to the Committee of Officers for their consideration.

The Colonial Secretary and Colonial Treasurer would avail themselves of the present opportunity of placing on record the following particulars relating to the Criminal Branch of the Judicial Department of the Government, which must unmistakably prove to the Secretary of State that an enormous burthen has been cast upon the Treasury of Tasmania on account of the presence of British Felons. In the Claim about to be preferred by the Convict Department for the maintenance of Prisoners at Port Arthur during the past year undergoing sentences passed by the Judges of the Colony, there are ten native born, thirty who arrived free in the Colony, and three hundred and ninety who were transported to Tasmania.

The aggregate of the sentences passed on the ten natives amounts to 54 years; on the 30 who arrived free, 139 years and 2 for life; and on the 390 ex-Convicts, to 2280 years and 16 for sentence of life.

The annual cost of maintenance alone is, for the 10 natives about £300; for the 30 free men £1000; while that of the 390 ex-Convicts amounts to from £10,000 to £12,000.

They would further note the fact that the Colonial Government have recently, agreeably to their proposal contained in the two last paragraphs of the Colonial Secretary's letter to the Comptroller-General, dated the 14th April, 1864, sanctioned the payment of nearly £2000 to the British Treasury on account of Convicts who failed to take up their conditional pardon.

The Colonial Secretary and Colonial Treasurer, in conclusion, desire to call attention to the accompanying table, showing the expenditure for Police, Prison Discipline, and Charitable Institutions throughout the Australian Colonies; and when it is remembered that the excessive rates in Tasmania, as compared with the other possessions of Her Majesty in these seas, are consequences entailed upon this Colony arising from the presence of the off-scourings of the gaols and penal establishments of Great Britain, they feel bound to urge that the Colony may receive at the hands of Her Majesty's Government what they regret to observe has hitherto been but sparingly accorded, when not absolutely denied, even-handed justice.

Holding the views set forth in this Memorandum, the Colonial Secretary and the Colonial Treasurer do not feel it requisite to offer any comment upon the proposal contained in the Assistant Commissary-General's Memorandum of the 11th April, 1866, except that the adoption of the plan proposed by him would be most unjust to this Government, and while outwardly bearing the character of a compromise, would in reality be a direct abandonment of the legitimate Claims of the Colony, which, however advantageous to the Imperial, could not be acquiesced in by the Colonial Government.

(Signed) JAMES WHYTE.  
CHARLES MEREDITH.

## ANNEXURES TO MEMORANDUM.

1. *Despatch No. 200, dated the 23rd December, 1848 ; received 12th June, 1849.*

Rule respecting Invalids.—“ Their Lordships have agreed that it is reasonable to relieve the Colony from any further demand for the maintenance in Convict Hospitals or Invalid Depôts of persons sent out as Convicts, who, either at the time of their arrival in the Colony or when they ceased to be employed in compulsory labour on Public Works, were incapacitated from age, or organic disease, or mental or bodily infirmity, from supporting themselves by labour.”

2. *Despatch No. 59, dated 12th August, 1861 ; received 11th October, 1861.*

[Despatch explanatory : see No. 47, 20th July, 1864.]

“ I am also willing to assent to the adoption of the Rule which it 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 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.”

3. *Despatch No. 23, dated 14th February, 1854 ; received 19th May, 1854.*

Rule respecting Re-convicted Convicts.—“ Any Convict who within Twelve months of becoming free, either by expiration of sentence or by receipt of a Conditional Pardon, shall be convicted of an offence for which he is sentenced to a punishment of Two years or upwards, shall be maintained at the expense of the Imperial Government ; but no claim whatever shall be admissible upon the Home Government in respect of the punishment of a Convict for any fresh crime which he may commit after the lapse of one clear Twelvemonth from the date of his becoming free.”

4. *Despatch No. 37, dated 2nd May, 1861 ; received 15th July, 1861.*

“ I see no objection to the proposed arrangement, that in the apportionment between the Imperial and Colonial Governments of the expense of maintaining children of Convicts in the Government Establishments in Tasmania, when one of the parents is Free and the other a Convict, the expense should be divided equally between the Imperial and Colonial Governments.”

5. *Minute of Committee of Officers, dated 21st February, 1859.*

Children of Convicts chargeable till they are 21, or previously married ; and the Rule in cases of conception to take effect from the date of the Minute. (*Vide Minute 20th March, 1863.*)

“ Any cost, therefore, from destitution or other cause, involved in the support of children whose parents were Convicts will be chargeable on Imperial Funds, if the children came with their parents, or were born whilst their parents or either of them\* was a Convict, until they attain the age of 21 years ; or, in the case of daughters, until they attain 21 or are previously married. In the case of children born here, the date will be not that of birth, but of conception.”

*Extract from Minutes, 20th March, 1863.*

“ With regard to the case of Jane Brash, a child who was conceived before her mother became free, and who was an inmate of the Queen's Asylum from the 15th January, 1857, the Committee recommend that the Imperial liability for the maintenance of children conceived before their mothers became free should take effect from the date of the Minute of the Committee of Officers on this subject, namely, the 21st February, 1859 ; and they suggest that this case be withdrawn in order that the Claim may be amended accordingly.”

6. *Minutes of Committee of Officers, 7th November, 1860. Extract.*

“ In cases where the parent whose condition is to determine the Fund upon which the maintenance of any Pauper Child is to be borne has been bond, but where the civil condition or date of freedom cannot be ascertained, the Colonial and Imperial Governments should share the expense. The Committee recommend that the Rule proposed be adopted.”

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\* This Rule is now altered, and the charge where one parent is free is divided between the two Governments.



and likewise the Claims on account of Paupers and Convicts chargeable on arrival; in reference to which he directs that if the Claims of the Invalids be gone into, those raised by the Assistant Commissary-General in his Memorandum of the 10th May, 1864, to the extent of upwards of £8000, being the share of the cost of the Superintendence of the Colonial Inmates in the Prisoners' Barracks and Cascade Factory for 5 years prior to the 1st of April, 1862, shall also be taken into consideration.

(Signed) W. NAIRN, *Comptroller-General.*

MEMORANDUM of Assistant Commissary-General Hawkins on the Colonial Secretary's and Colonial Treasurer's conjoint statement, and the Comptroller-General's Memorandum of the 3rd August.

In the Comptroller-General's Memorandum of the 3rd August, which has just been brought before me, I cannot find any indication of that Officer's opinion on any one of the several points at issue; but I should not feel called upon to make any remark thereon were it not that the expressions used by the Comptroller convey a doubt as to whether he concurred in the interpretation put by me on a certain portion of the Secretary of State's decision. I allude to the statement of the Comptroller as regards the part taken by himself in rendering the lists of those Children the cost of whose maintenance it was desired to have divided, and by which means the Orphan School Claims for 1861, 1862, and 1863 were required to be materially reduced.

Now the Comptroller-General did certainly concur with me on this point, as the under-mentioned quotation from a Memorandum of his own, dated 21st March, 1866, addressed to myself, very clearly shows:—"With reference to your Memorandum of 29th January, I have the honor to forward to you a list of Children who will be half chargeable upon Colonial Funds under the Secretary of State's decision as to the liability of Convict Funds to bear these charges. W. NAIRN."

As regards the joint statement of the Colonial Secretary and Treasurer, the proposal which that document contains must, of course, be left to the decision of the Secretary of State; but as it has been thought proper to lay it before the Committee, I, as a Member, must beg leave to assert my privilege to make a few remarks thereon, lest silence on my part might be construed into assent to the proposal as it now stands.

Whilst claiming a revision of the settlements wherein the Colony is asserted to have been overcharged, the Colonial Secretary and Treasurer show no disposition to allow the Claim of the Imperial Government for the cost of the superintendence, &c. of Colonial Prisoners in the Prisoners' Barracks and Cascade Factory; although the Lords of the Treasury have stated that, "certainly if the Colony is to be at liberty to put forward such Claims, the Imperial Government should insist upon the payment of the cost of Superintendence of Colonial Prisoners prior to the 1st April, 1862."

Vide Mr. Peel's letter of 26 April, 1865, to Sir F. Rogers.

Unless this Imperial Claim be admitted so far back as 1854, the proposed re-adjustment cannot, in my opinion, be regarded as impartial; but assuming even that this be assented to by the Colonial Secretary and Treasurer, there appears to be but little prospect of removing the well-grounded objections of the Secretary of State to the re-opening of past settlements, without at least some assurance from the Comptroller-General that the Convict Official Records are sufficiently copious, and that they have been kept with such precision as to ensure the Imperial Government against loss from the inadequacy or non-preservation of Records.

The proposal of the Colonial Secretary and Colonial Treasurer contemplates a re-adjustment of each one of the numerous cases which have arisen within the last twelve years under Rules which were not in existence during a portion of that period, and that these cases be all re-opened and decided on such evidence or information as may be now attainable. I doubt the prudence of thus presuming to interfere with and reverse former decisions as to the funds to which the cost for maintenance has been assigned, unless there be a positive certainty that all the circumstances which influenced the original decisions can again be reproduced: the experience of the Comptroller-General should, however, best enable him to judge whether my apprehensions on this subject are well grounded.

If any re-adjustment is to take place, as a primary rule all cases should remain charged as they before stood, unless evidence can be produced that they are otherwise chargeable; for it appears to me to be but reasonable to infer that admissions may have been granted into Institutions under circumstances held to be sufficiently conclusive at the time, but which may have been left unnoted in the Books and Registers, &c., as the Records of Hospitals and such like Institutions are assuredly not kept with a view to their being subjected to such a test as after the lapse of years is now proposed.



It should also be provided that no transfer should be permitted on the mere assertions of the applicants, that when Convicts they suffered from the same disease ; these, as well as all cases, should before transfer be supported by full documentary evidence.

I observe that in fixing 1854 as the limitation, the terms used imply a concession on the part of the Colony ; but it should be borne in mind that the Imperial Government will be thus precluded from re-adjustment of the Queen's Orphan Asylum Accounts, wherein since the transfer in 1844 a very heavy burthen was shown by me at the meetings of the Committee last year to have been inequitably imposed on the Imperial Government.

(Signed) V. W. C. HAWKINS, A. C. G.

6th August, 1866.

THE Colonial Secretary and the Colonial Treasurer cannot coincide in the opinion of the Commissary-General expressed in his Memorandum just read, that unless the Imperial Claim for the superintendence of Colonial Prisoners in the Prisoners' Barracks and Cascades be admitted so far back as 1854 the proposed re-adjustment cannot be regarded as impartial, inasmuch as the subject was brought under the notice of the Secretary of State by the Comptroller-General in 1859, and that Officer again drew attention to the matter in 1861 ; and it was not until March, 1862, that the Lords of the Treasury decided that the time had arrived when the charges should be equally borne between both classes of Convicts, which arrangement was accordingly carried into effect from the 1st April of that year.

The continuation of the system previously in force was therefore not the result of deficient information, was not in fact an error to be subsequently rectified, but a decision arrived at in full knowledge of the facts ; and, consequently, a revision of the Accounts previous to 1862 under this head bears no analogy to the revision proposed by the Colonial Secretary and Colonial Treasurer, which relates to charges erroneously made in ignorance of the facts which should have governed the decisions.

With regard to the proofs required to substantiate any transfer either from Imperial to Colonial funds or *vice versa*, the Colonial Secretary and Colonial Treasurer would observe, that it is not proposed to disturb any case except upon satisfactory documentary evidence produced by the Officers of the respective Governments, that the individual has been charged contrary to the Regulations ; and they would add that, as regards the Hospital Records, they appear to have been well kept by the Convict Medical Officers, and to be fully competent to furnish all requisite information in cases depending upon such evidence.

The Colonial Secretary and the Colonial Treasurer have no further observations to offer, presuming that the documents now before the Committee must be submitted for the perusal of the Secretary of State before any further action can be taken in the matter.

The Committee advise that any further action be postponed till the Minutes have been laid before the Right Honorable the Secretary of State, and his reply received.

JAMES WHYTE, *Chairman*.

THESE documents shall be forwarded to the Secretary of State as desired.

T. GORE BROWNE.

17th September, 1866.

#### MEMORANDUM.

It has occurred to me that it might be advisable that I should recommend Her Majesty's Government to assent to an arbitration as to the principle (not the details) on which Claims for Maintenance in the Orphan School and other Institutions should be based.

Before I make this suggestion, however, I should like to know if the Colonial Government will assent to such a proposal.

(Signed) T. GORE BROWNE.

Government House, 24th September, 1866.

## MEMORANDUM.

IN the absence of the Colonial Secretary, Mr. Wilson has the honor to notify to His Excellency the concurrence of the Members of the Ministry in the suggestion of the Governor, that the principle upon which the Claims of the Colony upon the Imperial Government, and *vice versa*, should be decided, be left to arbitration by one Imperial and one Colonial Officer, with power to select a referee.

This arbitration not to extend to particular cases, but to decide finally upon what basis the adjustment of these disputed Claims should rest.

(Signed) J. M. WILSON.  
11 October, 1866.

*His Excellency the Governor.*