

1883.  
NEW ZEALAND.

## THE PERMANENT OFFICERS' SALARIES ACT, 1880

(MEMORANDUM BY THE CONTROLLER AND AUDITOR-GENERAL RESPECTING).

*Laid on the Table by the Hon. Major Atkinson, with Leave of the House.*

SIR,—

Audit Office, 4th May, 1883.

After the Act ("Permanent Officers' Salaries Act, 1880") was passed three years ago, by which 10 per cent. of my salary was taken away for nine months, I prepared a petition to Parliament, as a protest against that measure. I abstained from presenting it, because I was unwilling to embarrass the Government by awaking discussion on a measure on which it had resolved. Mr. Hall having resigned, and a new Government having been constituted, and a new House of Representatives having been elected, I have not carried out my original intention. But as I am persuaded that the measure in question is one of great constitutional importance, and as I am still very unwilling to trouble Parliament with any question which may even appear to be of a personal character, whilst at the same time I feel it a duty to the office I have the honour to hold not to allow such a measure to remain on the Statute Book without my respectful protest, I beg to lay before you the reasons for such protest, and to request you to be so good as to communicate them to Parliament should you think fit to do so, and to take such other steps as you may think fit thereon.

An Act ("Public Revenues Act, 1865") was passed in 1865 constituting the office of the Controller of the Public Account, to be held upon good behaviour, and from which the holder could be removed only by address from both Houses of Parliament, and the salary to which was made a permanent charge upon the Consolidated Fund. Whilst the Governor was empowered to remove the Controller from his office during the recess of Parliament for malversation in his duties, it was expressly provided that the salary should continue to be paid to the Controller until Parliament had approved of his removal.

I respectfully submit that an office so created has ever been deemed to be a patent office, of the nature of a freehold for life, subject to the due performance of its duties, standing on exactly the same footing as that of Her Majesty's Judges, and of pensioners by permanent Act.

In 1872 ("Public Revenues Act, 1872") the office of Controller was abolished, and its duties were vested in two Commissioners of Audit, the status of the office being the same as that of the Controller. This Act was passed after full discussion with myself, and upon my consent to waive all claims arising under the Controllers Act in consideration of receiving the office of Commissioner of Audit, my appointment to which was provided for in the Act of 1872.

In 1878 ("Public Revenues Act, 1878") a further Act was passed by which the Commissioners of Audit were abolished and two new offices were created, those of Controller and Auditor-General and Assistant-Controller and Auditor, the tenure of these offices being the same as before, and the salaries being made, as before, a permanent charge on the Consolidated Fund. This Act was also passed after full consultation with me, and after a similar consent on my part to waive all claims arising under former Acts, on condition of receiving the office of Controller and Auditor-General, to which I was appointed by the statute itself.

In accepting each of the above offices, including that which I have still the honour to fill, I did so in the belief that the privileges and emoluments attached thereto were secured to me by the good faith and honour of the State, and that no alteration could be made in those privileges or emoluments without entitling me to full compensation for a breach of a binding contract.

In accepting each of the above offices I respectfully submit I had to abandon the occupations in which I had been or might be engaged, and at the same time to withdraw from political life and to resign my seat in the House of Representatives, of which I had been a member from its first establishment except when I was absent from the colony, and with it to resign all chance of those honours and emoluments which attach to a political career, and which may not be deemed to be beyond the reach of one who had twice been a Minister of the Crown, and had on several other occasions been offered and had declined a similar honourable position. It may be not unreasonably presumed that I should not have abandoned such a career except in the belief that the contract into which I entered was one which rested on the good faith and honour of the State, confirmed by an Act of the Assembly under provisions which have been three times repeated in successive statutes, and the violation of which it was impossible for me to contemplate.

In the year 1880 an Act was passed by which the salary which was secured to me by statute was diminished by 10 per cent. for nine months of the year. In stating to the House that the Government intended to reduce the salaries of the Civil Service by 10 per cent. for the then current year, the Premier, Sir John Hall, is reported to have said that this reduction was to apply

to all salaries and pensions, including those of the Judges of the Supreme Court. The latter proposal was, however, subsequently abandoned, and the Act which was passed, although by its title appearing to refer to a *class* of public servants whose salaries were fixed by permanent statute, really affected only the salaries of the Controller and Auditor-General and the Assistant Controller and Auditor, the only public servants whose salaries are so fixed except those of the Judges. It was not therefore a *general*, but in effect a *personal*, Act.

I further respectfully submit that in the preparation of the Act of 1880 no communication was made to me, as had been the case on all previous occasions, and no opportunity was afforded to me of appealing to Parliament by petition, or of being heard by counsel at the bar, against the passing of an Act which seriously affected my personal rights: a course, I venture to submit, which is contrary to the uniform constitutional usage of Parliament, by which no private or personal rights are ever affected without affording those interested full opportunity of being heard in support of their claims or in defence of their rights.

The Act in question was passed on the grounds of the necessity of curtailing the public expenditure during a season of temporary financial depression, and, had an appeal been made to me on such grounds, I need hardly say I would have cheerfully submitted to any sacrifice required by the necessities of the State, or to maintain the credit of the colony. But I feel it my duty respectfully to protest against the passing of an Act by which it is assumed that it is competent to the Government or to Parliament, arbitrarily and for any cause whatever (for the special cause is not even set forth in the Act), to alter at its discretion a contract into which the country has deliberately entered, without the consent of the other party to such contract: a contract established by the most solemn sanction a State can give.

I submit that the security for the salary of the office I hold rests on precisely the same basis as that of any other permanent obligation of the Government of the country—the salaries of the Governor, the Ministers and Judges of the Crown, the pensions, and even the charges of the public debt. The assumption which is involved in the Act, that it is competent to Parliament, for any cause, still less for no cause stated in the Act, to repudiate any one of such engagements, cannot but suggest the inference that it is competent to Parliament to vary at its will any other of the engagements which are founded on the same security and are expressed in the same words, including the charges of the public debt.

I beg to be forgiven if I further point out that no necessity for violating the permanent obligations of the colony was shown to exist. The public revenues had not diminished, but, on the contrary, had considerably increased, since those obligations were incurred; and any temporary embarrassment in meeting the public engagements arose, not from a diminution of the public income, but from an inflation of the public expenditure, and especially from the increased charges of the public debt; and it can hardly be argued that the voluntary incurrence of new engagements on the part of the colony relieved the Government from the responsibility of meeting engagements into which it had previously entered, any more than it would be admitted that, in private affairs, the contraction of fresh debts relieves the person incurring them from the obligation to pay those for which he was previously responsible.

I am aware that it was argued that, whilst the nature of the tenure of the office of Controller cannot be altered during the life-time of the possessor, there is nothing which precludes Parliament from altering the salary from time to time as it thinks fit. But if the intention of the Act was, as seems sufficiently obvious, that the Controller should be able to exercise the powers and fulfil the duties vested in him, wholly uninfluenced by political pressure and with the same freedom from such pressure as is enjoyed by the Judges of the Supreme Court; and, if the endowment of the office with a permanent fixed salary was the means provided for securing such independence, the whole object and intent of the Act is evaded if the salary is not really fixed, but may be at any time altered by a Government wielding a temporary majority in Parliament. If such a power is assumed to exist, if the salary may be curtailed at the pleasure of the Government, it seems obvious that such a pressure may at any time be brought to bear on the Controller, by making the office practically untenable, as entirely to destroy that independence which it would seem to have been the special object of the Act to secure.

In conclusion, I beg you to believe that I am influenced by no personal motives in submitting this to your consideration and, unless you should decline to do so, to the consideration of Parliament; still less that I do so with the object of pressing any claim for compensation for what, at the same time, I cannot but regard as the breach of a national engagement. But I am earnestly desirous that the Act of 1880 should be repealed, and that the precedent it affords should be erased from the Statute Book. I cannot but think that the considerations I have now the honour respectfully to submit were not pressed upon the attention of Parliament at the time the Act of 1880 was passed, and that, had they been so pressed, Parliament would have perceived that its enactment virtually asserted a principle which is hardly compatible with public faith and honour. I believe I am correct in stating, which I do on high authority, that, in the abolition of a large number of similar offices in the course of the present century in England, even of sinecure offices to which no duties were attached, in no single case has a salary been altered or abolished without full compensation being made to the then holder. This doctrine was fully admitted by Mr. Burke in his proposal to curtail the pension list, which in his time had been grossly abused.

Begging you will pardon any expression in this letter which may appear incompatible with the respect it is my duty to pay to the Government or Parliament, and will kindly attribute it, if any such there be, to my strong regard for the honour and good faith of the colony, which I have served almost continuously for more than thirty years, and to my sense of what is due to the office which I have now filled for nearly seventeen years,

I have, &c.,

JAMES EDWARD FITZGERALD,  
Controller and Auditor-General.

The Hon. the Premier.