

1856.

HOUSE OF REPRESENTATIVES.

REPORT OF THE SELECT COMMITTEE
ON
THE PENSIONED OFFICIALS.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE HOUSE OF
REPRESENTATIVES.

VOTES, No. 33, FRIDAY, JUNE 6, 1856.

9. Pensioned Officials Committee :—Mr. Fox, pursuant to (amended) notice, moved, That the order referring to the Committee on Sir George Grey's Land Regulations, the correspondence on the Nelson defalcation be discharged; and that such correspondence, with the further correspondence already laid on the table, be referred to a Committee consisting of the following members, Mr. Fitzherbert, Mr. Brown, Mr. Cuff, Mr. Stafford, and the mover, and that it be an instruction to such Committee to consider any report which may be brought up by the Committee on Sir George Grey's Land Regulations; and also the report of the Committee on Lazarus Berlowitz case; and also to receive and report on any other evidence tending to show official misconduct on the part of the pensioned officials, and to report on such misconduct, if established, to this House, with the object of forwarding such report to the Home Government with the Pension Act.

Mr. Williamson moved, as an amendment, that the members to serve on the Committee be elected by ballot.

The ballot having been taken, the following members were elected, viz., Mr. Stafford, Mr. Ludlam, Mr. Hall, and Mr. Fitzherbert.

Whereupon question as amended put and passed.

VOTES, No. 38, MONDAY, JUNE 16, 1856.

5. Pensioned Officials:—Mr. Fox, pursuant to notice, moved, That the papers now on the table of this House relative to a land claim of Captain Salmon's, be referred to the Committee on the pensioned officials and other matters.

Question put and passed.

VOTES, No. 57, FRIDAY, JULY 11, 1856.

8. Pensioned Officials:—Mr. Fox, Chairman of this Committee, brought up their report, which, with the evidence of Mr. Sinclair, taken by the Committee, was ordered to be printed.

REPORT.

THE SELECT COMMITTEE of the House of Representatives, appointed June 6, 1856, to report on the correspondence relating to the defalcation of the Collector of Customs at Nelson, and to receive and report on any other evidence tending to shew official misconduct on the part of the pensioned officials, and to report such misconduct, if any, to this House, with the object of forwarding such report to the Home Government with the Pension Act, has taken evidence on the cases referred to it, and now reports as follows:—

This Committee was appointed to investigate the circumstances attending a defalcation of the Collector of Customs at Nelson, and to ascertain how far the loss incurred by the Colony, in consequence of his having given no security for the faithful discharge of his duties, was attributable to the neglect of the executive officials, to whom pensions have been granted by Act of this session. Subsequently other cases* were referred to it with the same object, and it was instructed by the House to consider the report of the Committee upon Sir George Grey's Land Regulations, which had been appointed for a similar purpose.

First.—The Nelson defalcation case.

It appears that Mr. Blackmore was appointed by Sir George Grey to the Collectorship of Customs at Nelson, immediately before His Excellency left the Colony; *i.e.*, in the latter part of the year 1853. That previously to such appointment, and while holding another office, complaints were repeatedly made by the Colonial Secretary to Sir George Grey of his official conduct, which resulted in His Excellency "taking him out of the hands of the Colonial Secretary, and preventing the latter having any further control over him." That very shortly after his appointment to the collectorship he was required by the Colonial Secretary (13th February, 1854,) to give the usual securities for the fulfilment of his official duties, but neglected to do so, without offering any excuse. That from the very first, down to the period of his default, more than two years, his repeated neglect of instructions in reference to forwarding accounts and paying his receipts into the Union Bank, were known to the Colonial Secretary; that he was repeatedly written to, both on those points, and also on his neglect to give requisite securities. That he was repeatedly threatened with suspension in consequence. That such threats grew less emphatic latterly, than they were at an earlier period. That the Colonial Secretary repeatedly (at least five times) called the attention of the Officer Administering the Government to Mr. Blackmore's irregularities. That neither His Excellency, nor the Colonial Secretary ever brought the matter before the Executive Council. That the excuse offered by the Colonial Secretary for not having done so himself, is that it was not the practice for any members of that Council to initiate business, but only to advise on such questions as the Governor or Officer Administering the Government might lay before it, and that had any member presumed to do so, he would have incurred the Governor's displeasure. That the royal instructions of 1846 expressly authorize any member of the Executive Council to originate subjects for discussion in it. That the Colonial Secretary was ignorant of that part of those instructions. That under no circumstances of emergency, would he have considered himself justified in bringing any matter before the Executive Council, considering that that was the sole privilege of His Excellency. That had the proper securities been insisted upon, the Colony would not have suffered the loss to which it had been subjected. That the amount of such loss will be above £1200 (twelve hundred pounds.)

Your Committee considers that the conduct of Mr. Sinclair in the above case subjects him to very grave censure. That he should, with a full knowledge of Mr. Blackmore's official irregularities, and, as he says, with the belief that he was laughing at the authorities, have abstained for more than two years from bringing the matter under the notice of the Executive Council, seems to your Committee altogether unjustified by the excuse that his doing so would have displeased the Officer Administering the Government. It was equally the duty of the latter officer not to be displeased, and of the Colonial Secretary to disregard such displeasure. If the performance of official duties of the highest order were to depend on the question whether it was pleasing or not to the Governor, the existence of an Executive Council would become, as indeed it would seem to have become, a mere delusion; the office of an executive official will be reduced to a mere clerkship, while the salary attached to it would be altogether disproportioned to its functions, and ought not to have formed the basis of calculation for the pensions awarded.

* Berlowitz', Busby's, De Moulin's, Salmon's.

Considering, however, all the circumstances of the case, and that the mistaken view which the Colonial Secretary took of his official position appears to have prevailed for many years, and that interference by members of the Executive Council had been always discouraged by previous Governors, your Committee is not prepared to recommend that the late Colonial Secretary should be held liable for the loss in the present case, although they feel bound to express their opinion that his view of his duty was entirely erroneous, and that the loss is attributable to the neglect in requiring sureties.

The circumstances of the other cases referred to your Committee, which have been carefully investigated, do not, in their opinion, establish any charge against the pensioned officials.

The report of the Committee on Sir George Grey's Land Regulations having exculpated the pensioned officials from the charge of misconduct in reference to that subject, your Committee does not consider it necessary to remark upon it.

WILLIAM FOX, *Chairman.*

*Committee Room, House of Representatives,
July 8, 1856.*

MINUTES OF EVIDENCE

TAKEN BEFORE THE PENSIONED OFFICIALS COMMITTEE.

EXAMINATION OF A. SINCLAIR, ESQ.

SATURDAY, JUNE 14, 1856.

1. *By the Chairman.*—I find in the correspondence referred to the Committee by the House of Representatives, for the purpose of enquiring into the late defalcations at Nelson by the Collector and Sub-Treasurer of that place, that you have allowed that person to retain his office over two years, notwithstanding that he had not given security, or correct returns made by him of moneys entrusted to his care of the public?—Mr Blackmore led us to believe that he was procuring sureties, but I supposed he had very great difficulty, from his embarrassed circumstances several years ago, and from his former conduct; it was not from any neglect of mine; I assure the Committee I have brought this subject at least five times, which I have noted, before the Governor, or the Officer Administering the Government.

2. When the letter was written by Dr. Knight, Auditor-General, to the Collector of Customs at Nelson, was it with your knowledge it was written that he was required to send his returns and give security?—Yes, it was; and I was seldom able to get returns from him; and from the frequency of application, and I may say, the hopelessness at least of expecting of ever getting any reply satisfactorily, relative to returns for the Blue Book, that I recommended the Governor to lay the matter before the Secretary of State.

3. We observe early in the correspondence the threat of suspension; pray why was it not acted upon, was it not your duty as Colonial Secretary to bring the subject of such a transaction before the Governor or Executive Council?—I could do no more than bring it under the notice of the Governor; if I had gone any further than I did, he might have taken umbrage, and considered that I had some personal pique or enmity against Mr. Blackmore; after the complaint I made to Sir George Grey in the case of Mr. Blackmore, he took that officer entirely out of my hands; I had no control over him; the Governor having arranged otherwise, I considered the matters relating to Mr. Blackmore rested in the Governor's hands; I am unable to say why Sir George Grey did not do otherwise; I considered it trenching upon the Governor in a tender point, for me to suggest anything further than I did; he might take offence at my so doing, or offering further uncalled for advice.

4. Was it not within your province to have raised the subject in the Executive Council?—No; as I said before, it is a tender point with a Governor to urge the suspension of an officer; he alone can bring any matter under the notice of the Executive Council; new members have sometimes endeavoured to bring an officer under the notice of the Council; but were informed it was wrong, and from the resistance shewn by the Governor to the innovation, soon learned the proper mode of entertaining such matters. He alone can bring any thing under the notice of the Executive Council; all the Attorney-Generals have agreed in giving an opinion in accordance with this statement.

5. From your position as Colonial Secretary ought not you to have done so; do you not consider it was your responsible duty so to do?—Not before the Executive Council; only in private conference on public business. I consider it only a matter for a Governor to do. Such subjects are always laid before the Governor, with the whole correspondence relating to them. If I encroached with suggestions too much it would defeat the object in view. I confess that such a defalcation as the one in question is a reproach to a Government. I would suggest that it rests with the House of Representatives to frame regulations to alter the present unsafe state of things relative to the securities of Government officials, and to enable the Executive to take more prompt and efficient steps in such cases.

6. Is it not opportune to the duty of the Colonial Secretary to have moved the Executive Council in the matter?—The Governor in the case of such a thing being done on my part would not quietly submit to it, considering it as within his province only.

7. Then you consider it was not the duty of the Colonial Secretary, and could not initiate such a subject yourself in the Executive Council?—It has been the custom for the Governor to introduce such a matter to the Council. It has been the practice for the Colonial Secretary to bring such things in a private conference under the notice of the Governor; but in such a case as the present, the Governor would have been opposed to my interfering as you suggest.

8. Then you would consider it not your duty to have given the Governor to consider that Mr. Blackmore had not given proper security?—I do not think that I should have been justified in bringing the subject before the Executive Council. (Reference to Instructions 1846, clauses 4, and 5, c. 2, page 45.)

9. I see by the following correspondence which has passed between you and Mr. Blackmore, that you have been threatening him with suspension for nearly two years; can you explain why it was you did not fulfil this?—It was hoped that he would send the returns, and furnish securities. It was not my province; as I before stated, I could do no more than lay the correspondence before the Governor with the recommendations I considered the case required.

10. *By Mr. Ludlam:*—Was this letter laid before the Governor by you, (dated August, 12, 1854,)?—Certainly it was.

11. Explain was this also laid before the Governor, (August, 17, 1854)?—Yes, it was written under his authority.

12. Explain was this letter laid before the Governor in Council and acted upon (November, 6, 1854,)?—Yes, I believed at last Mr. Blackmore was laughing at us trying to obtain information from him.

13. Was this also laid before the Council (November, 8, 1854,)?—It was.

14. Was this letter also laid before the Governor, do you recollect it (December 27, 1855)? Yes, perfectly well, I remember I was glad to see it acted upon.

15. Explain was this letter laid before the Council and Governor, (September 14, 1855)?—It was.

16. Was this also laid before the Governor and Council and acted upon, (October 19, 1855,)?—Yes; by order of the Governor. I may remark to the Committee that there was great difficulty in procuring sureties from officials; that other parties, for example, Mr. Bell, and Mr. Penton, for various reasons did not give securities, at least till lately.

17. Mr. Bell has given his personal security since?—I believe he has.

18. I see that Mr. Shepherd has not by this return given security?—The return is erroneous; his brother, the Chairman of the Honorable East India Company was one; the name of the other I cannot now give the Committee; both are in England.

19. Can you assign any reason for the disparity of sums offered as security by government officials; the sums required for security vary from £200 to £2000, for the same services. For example—Mr. Domett, security £200; Mr. Richmond, £2000; yet Mr. Domett's land sales are frequently twice as extensive as Mr. Richmond's?—The sums were generally suggested by the Auditor-General, and I think most of the disparities may be satisfactorily explained; I am perfectly aware the circumstances of some parties make it difficult to get securities.

20. I find all the Custom House officers' securities, as put down in this return, are merchants or commercial men of the town; a state of things much to be deprecated as unsound?—It is wrong in principle; but cannot be easily amended under present circumstances.

21. Can you, Mr. Sinclair, explain why so long a time elapsed before the letter, which you wrote to the Collector of Customs at Nelson, to return Lazarus Berlowitz his goods, was delivered?—I am not aware of any avoidable delay having taken place; the Government of Victoria had to be written to on the subject; it may have been owing to the detention of the mail. It was sent, if I recollect right, after the "Zingari" had sailed two days, and then it must have gone by the overland route.

22. You seem to have written two letters to him on this subject?—Yes.

23. From reference to the letters received from the Government, you were led to ordering the Customs authorities to restore the articles seized, to Berlowitz, viz.—Government of New Zealand to Government of Victoria, 14th March; replied to, 28th July, 1855.—Government of New Zealand to Government of Victoria, and reply from same, 18th August, 1855?—It is an unfortunate affair, and I am not yet satisfied to what extent Mr. Blackmore was to blame.