

HOUSE OF ASSEMBLY.

Private Secretary's Fees.

Mr. FRASER, as chairman of the committee appointed to report concerning certain Fees taken and retained by the late Colonial Secretary, as Private Secretary's Fees, presented a Report of which the following is a true copy, as handed to us by the Clerk of the Assembly:—

REPORT.

Your Committee to whom was referred the Return of Fees received by the Colonial Secretary as Private Secretary's fees—have to Report, that from the date of his appointment, in 1840, up to the 31st December, 1850, the following amounts have been exacted and detained by him, viz.:—For marriage Licences, £249 5s. 2d.; Marriage Bonds, which have no reference to Private seal, £420; Tavern Licences, £99 14s. 5d.; Pedlars and Ferry Licences, £27 10s. 10d.: the three last items amounting to £517 4s. 5d. being under Public Acts, which do not require any Private seal, nor authorise any fees for Private Secretary to be taken on them, your Committee submit were taken and detained as will be hereafter seen without the authority of any specific Law. As regards Tavern Licences, your Committee submit, that by the Act 6th Will. 4. it appears the issuing of those Licences was contemplated to be accomplished in the Colonial Secretary's office. The first clause of the said Act goes on to say that before any person receives a Tavern License, such person shall give a Bond to two Justices of the Peace, which Justices shall give a certificate to the person requiring such License; and which Bond and certificate shall be left with the Colonial Secretary at the time of obtaining such License. As respects the first item, viz.: £249 5s. 2d. for Marriage Licences, which is the only item, in the opinion of your Committee, in the return, that has the authority of Law to use a Private Seal, provided there was a Commission issued; your Committee will have to remark more at large, in order that the reasons which may be adduced may not only bear upon that particular item; but, if necessary, upon the other items likewise. The only authority which your Committee can find in reference to said item is contained in an Act passed 1776, denominated the Private Fee Act, wherein under the head "Private Secretary's fees," there is the following item: "All Licences under the Private Seal, 5s." But before descending upon the item, marriage Licences, your Committee will remark again that the Act of 1776 does not specially authorise that the three last items should be marked with the Private seal, and consequently it must be inferred that no Private fees were contemplated to be taken for the issuing of those items; and in as much as the Act 6th Will. 4. contemplates that Tavern Licences would be issued in the Colonial Secretary's Office, your Committee submit that in the absence of any specific Law to the contrary, it was part of the duty of the Colonial Secretary to issue Pedlar and Ferry Licences, as well as execute Marriage Bonds, for which he was paid a stated salary, as will be hereafter more particularly referred to. In regard to Marriage Bonds, as declared by the Act, 6th Vic. cap. 8, it is clearly set forth that the Prothonotaries of King's and Prince Counties only should be paid Fees for taking those Bonds, while the spirit of the Act excludes the Private Secretary, even if there was such an officer in commission, from taking fees on those Bonds—for this reason, your Committee submit, that at the passing of the Act, they had no stated salary attached to their offices, and consequently Fees were allowed to remunerate them for the services consequent on those Bonds from which it is evident—not only in the absence of any declaration to the contrary, but even according to the spirit of the Act—that as Mr. Haviland had a stated salary in lieu of fees, it was part of his duty to execute those Bonds without any other remuneration. But independent of what has been said, your Committee submit that the said Act of 1776, with the ex-

ception of that part of it which has reference to the Lieutenant Governor alone, has been disused and consequently has become obsolete, and not been adhered to for upwards of twenty years past. And your Committee have reason to believe that there has been no commission issued or appointment made, and of consequence there has been no acknowledged Private Secretary in the Island, for the period for which the said last item, as likewise the other sums, were exacted for some years previous thereto.

Your Committee have come to this conclusion from the following circumstances;—that the office became virtually abandoned in 1829, when the salary attached to it was withdrawn by the Imperial Government,—and that when His late Excellency Sir Donald Campbell was requested by an Address from the House of Assembly in 1850 to cause a copy of the commission appointing the late Colonial Secretary, Mr. Haviland, to that office, to be laid before the House, he declined complying with their request, and that his Excellency declared to that committee that he had no Private Secretary. And in reference to the Private Fees for the past year, which are now before the House, by command of his Excellency, there is no commission asserted to have been given to Mr. Haviland, only his own written assertion to the effect, that it was arranged in 1829, with the late Lieutenant Governor Ready, that he should act in that capacity; which, in the absence of any commission, and in contradiction to the evidence which will be hereafter adduced, appears to your Committee incredible and cannot be taken as a proof that Mr. Haviland, by that assumption, was entitled to those fees, especially when it will be considered, that at the time of the late Lieutenant Governor Ready Mr. Haviland was only Provost Marshal, and that Mr. Collins the then Colonial Secretary, was the person by virtue of his office, who had the most intercourse with his Excellency,—and, of consequence, is more likely, if such an office was continued, to be the person that would be commissioned to discharge the duties of the same. But, independent of this, and of the written assertion of Mr. Haviland, your committee find that Marriage Licences, and Licences for the sale of spirituous Liquors, were issued by Mr. Haviland's predecessor (Mr. Collins); and those Licences were issued by virtue of his having the office of Colonial Secretary, as will appear by the several marriage Licences hereto annexed, the first issued in 1829, marked with the Colonial Secretary's seal (and not a private seal) over the Lieutenant Governor's name, and signed, "J. P. Collins, Colonial Secretary," and the following Marriage Licences, dated April, 1832; May, 1833; Feb. 7, 1831; Feb. 7, 1835; and June, 1838; marked in like manner with the Colonial Secretary's seal, and signed, "J. P. Collins, Colonial Secretary."

And notwithstanding Mr. Haviland's assertion, that it was arranged with the late Governor Ready, that he was to perform the duties of Private Secretary, subsequent to 1829, your committee do not find any one instance in which he acted in that capacity, from 1829 until he came to hold the office of Colonial Secretary himself; but, on the contrary, they find that Mr. Collins did the duties for said period, and your committee have adduced those Licences in confirmation thereof, and could adduce more such evidences, in refutation of Mr. Haviland's written assertion, if necessary.

Your Committee further find, that Mr. Haviland himself, although he took and retained Private Secretary's fees while he was in office, did not issue Licences as Private Secretary, which will appear from the annual Licences, dated October, 1841; September, 1842; and July, 1843.—signed by his Deputy, George Thresher, as Deputy Registrar; thus showing that fees were taken and designed for the duties of an office whose emoluments were specially commuted for a stated salary, as will be seen by the Act 3rd Vic. Cap. 27, which will be hereafter referred to, and for which proceedings your committee submit there can be no palliation. And notwithstanding that Mr. Haviland had since the said fees were brought in question, altered the Colonial Secretary's

seal into a private seal, as will appear by the annexed Marriage Licences, dated 11th Feb. and 3rd March, 1851, and has likewise altered the seal upon Licences for the retail of spirituous Liquors, as will appear from the hereto annexed Licences, dated Feb. 1851, and January, 1847. Your Committee submit that he had no authority for so doing, and it would appear, from the evidence adduced, that it was done for the purpose of appropriating to his own use those fees which, as far as the issuing of Marriage Licences was concerned, before the fees were commuted, he might do, as well as his predecessor, in his capacity of Colonial Secretary; but after a stated salary was allowed, in lieu of fees, upon the basis of the Return of 1838, and laid before the Assembly, in 1840, as hereto annexed, and which will be hereafter more particularly referred to, your Committee submit that, in the absence of any commission, he had no right to detain those fees; and further in confirmation of there being no such official acknowledgment, we find that the Printed Forms of those Licences were included in the charges attendant on the Colonial Secretary's office, and charged to the Government of this Island; and that by the fortieth paragraph of the Royal Instructions, as likewise by the directions in the Blue Books, it is required that the Tables in those Books shall be annually filled up with certain Returns; notwithstanding which, and that the late Colonial Secretary was the person on whom devolved the filling up of those Books, there is no Return of the Private Secretary's, nor any mention made of, Fees received by any person, for performing the duties of Private Secretary, for 1840 up to 1848, as will appear from a transcript of the Blue Books, hereto annexed, marked (A). When for the first time in that year, the taking and detaining of those fees became a question of dispute, the following remark was made in the Blue Book, page 68: "The Colonial Secretary performs the duty of Private Secretary, for which he received, in 1848, the amount of £53 sterling," which omission is a proof, in the opinion of your Committee, that Mr. Haviland did not consider himself justly entitled to those fees when he kept them for so long a period, a secret, when by his instructions he was so particularly required to insert them in those Books for the inspection of the Imperial Government and the Legislature of this Island. Your Committee will remark, that they cannot but disapprove of the manner in which those Books have in general been drawn up; and as an instance of their inaccuracy, will refer only to the Tables in connection with Mr. Haviland alone, as hereto annexed, up to the 31st December, 1847, where it will appear that he only held four offices, viz. that of Colonial Secretary, Registrar, Clerk of the Executive and Legislative Councils, for which, by the return of those Books, he received only £150 sterling and £400 currency, when in fact at that time he received besides the amount of at least £153 annually, for being Clerk of the Legislative Council, and retained at an average to the amount of £70 annually for the assumed office of Private Secretary, and two and a half per cent for being Accountant in Charge, and £159 sterling for retired Naval Officer's Allowance; and your Committee believe that he held, besides, several other minor offices, to each of which there were attached some fees or emoluments, which it is unnecessary to mention, and neither of which, or the offices and emoluments previously named, are mentioned in those Books. Your Committee submit that in 1840, when the stated salary was allowed in lieu of all fees, by a Resolution of the House, His Excellency the Lieut. Governor laid before the Assembly a return heretofore referred to, said to be an abstract of the Blue Books prepared by Mr. Haviland acting then as Colonial Secretary for the last six years, previous to the 31st December, 1838—in which abstract the sum of £689 5s. 7d. appears to have been received as fees and emoluments for the offices of Colonial Secretary, Registrar and Clerk of the Executive Council, for the year 1838; and your committee on referring to the Blue Books of 1838 find the amount returned for that year to be only £603 15s. 7d., by which

there appears to be a discrepancy of £86 9s.; and for the purpose of solving said discrepancy, your committee waited upon Mr. Haviland, at his office, in order to compare the detailed fees in the original Books kept by Mr. Collins, his predecessor, when Mr. Haviland answered your committee to the effect, that he had no Books kept by Mr. Collins, his predecessor, nor any Books relative to fees previous to his taking the office of Colonial Secretary; and that Mr. Collins's Books, belonged to his wife, who took them.—Your committee on reverting to the said sum of £689 5s. 7d. submit that fees for marriage Licences must have been included in said sum, as is £95 9s. more than the amount returned in the Blue Book of 1838, when there is no return made of Private Secretary's fees; and your committee are borne out in this, by the fact, that from 1829, and thereafter, Mr. Collins, in his capacity of Colonial Secretary did the duties performed by the Private Secretary, as will appear by the several Licences heretofore referred to, signed "J. P. Collins, Colonial Secretary;" and further, that although he did the duties, he did not assume to himself the office of Private Secretary.

And your Committee submit that Mr. Haviland, when he took the office of Colonial Secretary, had no more authority or commission for taking private fees than his predecessor had, and as it appears, his predecessor (Mr. Collins) did the duties as Colonial Secretary, it must be admitted that those fees were included in the return of 1838, heretofore referred to; which return was the basis on which Mr. Haviland accepted the stated salary in lieu of fees, independent of which, your committee submit that by the passing of the Act 3rd Vic. Cap. 27, which provides a stated salary in lieu of all fees, coupled with the return heretofore referred to, the Colonial Secretary was precluded from appropriating to his own use and benefit any fees, by whatever name he might call them. The first clause of the Act sets forth, to wit: "In lieu of all fees, emoluments and allowances whatsoever, now by the laws of this Island payable to that officer, in respect of any service or duty to be performed by him, and heretofore paid or payable by or on behalf of the Government of this Island, and all other persons whomsoever." And the second clause goes on to say, that all fees and emoluments whatsoever to him paid or payable shall be accounted for to the Government of this Island; and that he shall pay the amount quarterly, in every year &c., under a penalty of fifty pounds for every neglect or refusal. &c. And now that the exacting and detaining of those fees have been brought in question, we find that there has been paid into the Treasury, by the return of 1850, the sum £11 6s. 0d., and by that of 1851, £9 3s. 4d., which is a proof, that if it was lawful to pay the said amount into the Treasury, in those years, it must have been unlawful in the previous years to detain such like sums for his own use and benefit.

In conclusion, your committee will remark that independent of the Act 3rd Vic. Cap. 27, they have no doubt that the three last items were exacted and detained without the authority of law, and by the passing of said Act, and in the absence of any commission, it must be admitted, from the evidence adduced, that the issuing of all Licences was accomplished, and formed part of the Colonial Secretary's duty, when Mr. Haviland assumed that office; and consequently it must be admitted, that those fees were included in the return of 1838, for which as heretofore stated, they were commuted for a stated salary; and as Mr. Collins, his predecessor, issued those Licences, as heretofore proved, by virtue of his being Colonial Secretary, and that Mr. Haviland when he accepted that office upon the basis of the return of 1838, and in the absence of any commission, was not put into a better position than his predecessor, he, in consequence, was bound to perform the same duties, and therefore ought to have paid the first mentioned item, viz.: that for marriage Licences, as likewise the two items, viz.: that for Tavern Licences, and that for Pedlars and Ferry Licences, regularly, into the Treasury, and refrained from taking any fees for Marriage Bonds. Under these cir-