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or £7,000 were paid out of it? He mentioned this to shew to the proprietors the dangerous situation in which they might be placed, if such a principle were longer tolerated. The act of the 33d of the king, chapter 52, section 125, expressly provided, in order that the funds of the Company should be protected from being burdened with any improper charges, that no salary, exceeding £200 a year, should be granted by the directors without the approbation of two general courts. Here it appeared that the directors had acted contrary to the statute. He supposed however they could not take upon themselves the disposal of such a sum of money without first having procured the opinion of the Company's law officers. To render the matter as clear as possible, he hoped the directors would not refuse to lay before the court the report on which the new appointment was founded. However he deprecated the system, which preferred strangers to their tried and efficient servants, still, if the reasons adduced in the report, on which the directors acted in making this appointment, were just and satisfactory, he would not interfere further in the business, or give the smallest trouble to the court of directors. But if these reasons were not satisfactory, the court would naturally expect that he should propose some resolution, declaratory of their opinion on the business as far as it had gone. He thought it particularly necessary that the subject of the fee fund should be inquired into, which struck him as being more dangerous than the secret service money, that was annually placed at the disposal of the crown. Here was £60,000 a year, wholly at the command of the court of directors; with that immense sum they might do precisely what they pleased: this circumstance could not be adverted to without feelings of apprehension. He should now conclude, by giving notice, that, before the court broke up, he should move "that the report establishing Colonel Brice's office, be laid before the proprietors;" and he wished to know whether there was any objection to its being immediately produced, without going through the formality of a regular notice?

To this inquiry no answer was given.

#### PENSION TO CAPTAIN SOLOMON EARLE.

The *Chairman*. "I think we had better now proceed to the regular business of the day, which is, to consider of the resolution of the court of directors, of the 18th ultimo, granting to Captain Solomon Earle, late paymaster of the Company's military depot at Chatham, a pension of £300 per annum."

The clerk then read the proceedings of a court of directors, held on Tuesday the 8th of March, recommending, for the reasons stated in a report of the committee of correspondence of that day, that a pension of £300 per annum should be granted to Captain Earle, provided the general court of proprietors and the commissioners for managing the affairs of India, should concur therein.

The report of the committee of correspondence, referred to in the resolution of the court of directors, was then read. It set forth that Mr. Earle went out as a cadet to India in December 1767, that in 1770 he obtained a lieutenancy, and in 1779 he was promoted to the rank of captain. In 1780 he returned to Europe for the recovery of his health; but having exceeded the time limited for his stay, he could not go back to India. In June 1804 he was placed in the situation of captain and adjutant of the Company's depot in the Isle of Wight; and in April 1814 he was removed to the military depot at Chatham. He was now in the 66th year of his age and was anxious to retire, if an allowance were granted to him sufficient for the maintenance of his large family. The committee taking into consideration Captain Earle's long services in India and in England, his advanced age, the infirm state of his health, and the situation of his wife, who for twenty years had been afflicted with illness, recommended that a pension of £300 per annum should be granted to him.

The *Chairman*. "I move that the court do approve of the said resolution of the court of directors, of the 18th ultimo, granting to Captain Solomon Earle a pension of £300 a year."

The hon. D. *Kinnaird*, said he should be very sorry to urge anything against the resolution now proposed. But since the gentlemen behind the bar did not chuse to avail themselves of the opportunity which his hon. friend had afforded them, for explaining certain points which he adverted to in the course of his speech, he felt it necessary to address the court on this occasion. He thought it would have been wise in the gentlemen behind the bar to have replied to his hon. friend, at least so far as the information which he had laid before the court was rapable of being either confirmed or denied. It would have been satisfactory to the proprietors if they had declared, whether any foundation existed for the statements that had been made by his hon. friend. As this had not been done, he must, according to the rules of the court, in speaking on the present motion for approving of a pension of £300 a year, enter into the general principle on which pensions were granted. In his opinion, there was not

thing more obviously absurd, in point of reason, than the distinction which was attempted to be made between the pension now about to be granted to Captain Earle, and the salary which had already been given to colonel Brice. In the present instance, the bye-law, which required two general courts to approve of the pension, was adhered to. But, in another case, it appeared that a salary of £300 a year was granted without the concurrence of the proprietors. If this were true, it demanded explanation; if otherwise, some hon. director ought to contradict the fact. It was stated that an allowance or salary of £200 a year was granted to colonel Brice independent of an additional hundred per annum which was taken from the fee fund. This he contended was an actual fraud on the bye-law; it was an absolute subterfuge in order to prevent the proprietors from expressing their opinion on the appointment of an officer whose salary really amounted to £300 a year. If this were the fact, he wished to know, why his assent, and the assent of the proprietors in general, was not called for to the salary granted to colonel Brice as well as to the pension now proposed to be given to captain Earle? He put this question in fairness to the court of directors; and, before he agreed to the present pension, it would be necessary that a fair statement, accounting for this dissimilarity of proceeding, should be submitted to the court. He made no specific objection to the pensions now proposed; but, he asked, why were they playing this extraordinary farce—calling for the consent of the proprietors in this case and utterly rejecting it in the other, where it appeared to him it was equally necessary? If no answer were given to this interrogatory, it would be manifest, that, in the case of colonel Brice, a barefaced subterfuge had been resorted to; and indeed it appeared to him that the court of directors had not a word to say for themselves. As he before observed, he was not hostile to the motion then before the court; but, until the circumstances to which he adverted were explained, he would not vote for any pension whatever. The directors ought to state, why the assent of the proprietors was not called for to the salary of £300 a year attached to colonel Brice's situation, while they came forward and requested that assent to the pension of captain Earle?

The *Chairman*.—"The hon. proprietor has occupied the attention of the court rather irregularly. The hon. gentleman (Mr. Hume) by whom this subject was introduced, stated his intention to move that the report respecting colonel Brice's appointment should be laid before the proprietors; it was, therefore, decent

and respectful to the court, to say nothing on the subject until that proposition was made. The topic on which the hon. proprietor has just spoken is altogether a distinct question from that now under our consideration."

The hon. *D. Kinnsaid*.—"My hon. friend stated that he would not go through the form of giving notice of a motion for the production of the report relative to colonel Brice's appointment, if no objection were made to that proceeding. To this observation no answer was returned, and I therefore thought that the court of directors refused the information."

Mr. *Grant*.—"I understood distinctly that the hon. gentleman (Mr. Hume) would submit a motion to the proprietors before the court broke up. I for one remained silent, thinking it was more proper to deliver my sentiments, when that motion was proposed. Surely, the regular mode was, to wait for the hon. gentleman's motion, when individuals would have an opportunity of speaking to the question. I think it is more fair to submit a motion to the court, than to go into a long history, quite irrelevant to the subject immediately under consideration. The question is one which may fairly be introduced, and when it is regularly before us, the court of directors will have something to say on it. It ought, however, to be brought forward as a distinct and substantive question; and when it is so introduced, I shall be ready to offer something to the consideration of the proprietors, in the way of explanation, which I hope will be found satisfactory."

Mr. *Hume* begged the indulgence of the court while he delivered his sentiments on the present question, which was one worthy of their most serious consideration. It was always unpleasant to object to a grant of money for specific purposes, particularly when the individual for whom it was intended laboured under circumstances calculated to excite the compassion of the court. He felt this most strongly; but, in such cases, there might be circumstances which would operate against sympathy. For instance, where a deviation from the rule and line which they ought to follow, was evidently contemplated. He was not prepared to deny any part of captain Earle's services—nor would he inquire why that gentleman had remained unemployed for thirteen or fourteen years. What he was anxious to do, was, to view the question on the grounds which he had himself set forth. In the year 1801, the duke of York, in order to save the Company trouble, undertook to raise men for the Company's service. He was to procure whatever number of men might be wanted. In consequence, a depot was established in the Isle of Wight, for the reception of the

troops provided for their service, until they embarked for India; and the following officers were appointed to superintend it—a commandant every way proper for the situation, with £660 per annum, a smart captain with £400 per annum, a paymaster with £432 per annum, a surgeon with £472 per annum, and an adjutant with £363 per annum. He believed, that both the captain and adjutant were gentlemen who had served the Company in India—who, on account of ill-health had been obliged to come to England—and, having been unable to return to India, were placed in situations here. This was creditable to the court of directors—the principle was a good one—and so far he was satisfied—provided it should appear that such an establishment was necessary. But he conceived that £2,300 per annum for receiving a few recruits, and instructing them previous to their departure for India, was a most extravagant expense. He was happy to find that the Company had again got into their own hands the recruiting of men for the India service—for, he believed, they procured better men, and at a cheaper rate, than government had done. Last year they had recruited nine hundred and twenty-six men, and, in the present, seven hundred, which rendered their military establishment complete. Now he conceived they ought to be extremely cautious how far they burdened the depot establishment, which was already very heavy—as it stood the Company in upwards of £2,300 a-year. On an average, eight hundred men were yearly sent out to India—and the expense of training and preparing them, before they embarked, was £3 a-head—making a gross sum of about £2,300, which the depot establishment cost. That perhaps was not too much; but, when they were called on to add to that expense, they ought not to act with precipitation. What were they now going to do? To give a new paymaster £432 per annum, while the old one retired on a pension of £300—making a charge of £732 a-year on an establishment already very expensive. This being the case, the necessity of the alteration ought to be clearly made out. Captain Earle having been in the Company's service for many years, he thought it was a proper feeling to employ him in preference to another. But when that gentleman stated, that he wished, on account of his family, to retire, it struck him as a little extraordinary, that he should be anxious to take £300 a-year, instead of £432, which he enjoyed as paymaster—at the same time, that, by so doing, there was a direct increase in the expense of the establishment, to the amount of the former sum. Before he could admit such a grant, he was anxious to sift the business thorough-

ly. He was disposed to think, that no man, in his common senses, capable of performing the trivial duty of paying a few soldiers, would give up such a situation, unless urged to do so; and Captain Earle must be in a deplorable situation, indeed, if he were unable to perform that duty. He thought, therefore, that there must be some understanding, with respect to the person who was to succeed him, and certainly he had heard that an individual was named for the situation, sometime since, in case that court should approve of him. On the face of the memorial of Captain Earle, and of the recommendation of the committee of correspondence, there was nothing that entitled him to a pension of £300 a-year. It was stated, that, being sixty-six years of age, was, in itself, a sufficient recommendation. But if, at such an age, individuals were generally incapacitated from transacting business, and were compelled to retire, how many of their most efficient men would they lose? In this instance, it appeared, they had not made those scrupulous inquiries which they did in other cases. Had they acted with their usual circumspection, they would have had the certificates of medical men, declaring that Captain Earle was unfit to perform his ordinary duty, laid before them. With such certificates in their possession, they would have a fair plea for saying, "This is an individual incapable of performing his official duties, is he not, then, a proper object for the bounty of the court?" This they had not done—and he thanked some friends near him for that alteration in the bye-laws by which the court of directors were obliged to report the grounds on which they recommended certain pensions. In this case, it appeared that they had recommended a pension to be conferred on Captain Earle, without having before them any proof that his infirmities prevented him from acting—and, when they considered the expense already occasioned by this establishment, they were not warranted in adding to it, unless under very peculiar circumstances. If Captain Earle were capable of performing his duties, why should he retire on a pension? On the other hand, if he (Mr. Hume) were satisfied that he was incapable, he would not object to his receiving the bounty of the court—but his incapacity ought to be clearly proved. Here he wished to inquire what measure of justice was dealt out to others? By the last act, the 53d of the King, renewing their charter, some regulations were made on this subject. In the 93d section they would find rules laid down, and regulations established, by which they were authorised to grant pensions to officers in India and England, according to a certain fixed scale of service. What did that

able say? If a servant, under sixty years of age, having served the Company faithfully for seven years, be found incapable, from infirmity of mind or body, to perform the duties of his office, it may be lawful to grant him a pension, not exceeding one-third of the salary and allowed emoluments of his office. Was Captain Earle in that situation? No—he was above sixty years of age. How then did the law apply to his case? The scale said, “If the servant be above sixty years of age, and has been employed by the Company for fifteen years, then it may be lawful to grant him a pension not exceeding two-thirds of his salary and emoluments.” Now it appeared that Captain Earle was, in reality, only a servant of twelve years standing—and yet the court of directors proposed to give him, not two-thirds of his salary, as paymaster, but three-fourths of it—£300 per annum out of £432, which the paymaster annually received; while the man who had served fifteen years, whose services were equally meritorious as those of Captain Earle, could only receive two-thirds of his salary as a pension, for the act prohibited a more extensive grant. His object in making this remark was, that equal justice should be done to all their servants, when they were no longer able to discharge their duties. If the law prohibited them from giving to any servant, however faithfully he had acted for them during fifteen years, more than two-thirds of his salary on his retiring, by what rule could they grant three-fourths to Captain Earle? The Act of Parliament farther stated, that where a servant was sixty-five years of age and upwards, and had served the Company forty years, then it would be lawful to allow him three-fourths of his salary; and here they were about to grant Captain Earle, who had served but twelve years, three-fourths of his annual income—and that too without having any proof that his infirmities are such as render him unable to discharge the duties of his office. Under these circumstances, he submitted to the candour of the court of directors (for no individual was more anxious than himself to meet a case of real distress with the most humane feeling) whether, when there was no evidence of incapacity before them, and when they were acting against the letter and spirit of the law, it was not his duty to advert to the subject, and to call on the court to pass before they decided? If a case could be made out, where, as a greatbody, they were called on to grant this boon, nothing could be more meritorious than the concession of it. But no documents were adduced to shew that Captain Earle was a more efficient servant than those whose pensions were regulated by the clause in

the Act of Parliament. Many pensions were granted for twenty, twenty-five, thirty, and forty years service. There was an instance of a gentleman retiring, who had served the Company for fifty years. The act said, if the servant be above sixty-five years of age, and has served fifty years or upwards, then, and in that case only, his pension may be equal to the whole of his salary. But all these cases were regulated by the Act of Parliament. Now, if they gave to Captain Earle £300 out of £432 per annum, he having served but twelve years, it was more than they would be authorized to grant to any man in their establishment, unless he had served for forty years, therefore, he contended, the law did not warrant them to vote so large a sum. He was unwilling to move any proposition that would mar the resolution altogether—but he thought a little time should be given between the present and the next court, in order to examine whether a necessity really existed for such a grant. When they had such a staff as he described, were they not bound, before they increased the expense, to investigate the duty which Captain Earle was called on to perform? They ought to inquire whether he was obliged to go out of doors? Whether he was compelled to drive from place to place? In short, they ought to understand his duties accurately. He (Mr. Hume) acted, for a considerable time, as paymaster. For several years he paid twenty thousand men, almost without moving from his desk. The adjutant mustered the men, and the paymaster had scarcely to rise from his seat. If Captain Earle were so gouty and so infirm as not to be able to move from one room to another, still, if he could sit in his chair, he might be capable of performing the duties of his office. This being the case, he hoped there was proof before the court of directors, to shew that Captain Earle was utterly incapacitated from discharging such easy functions. Humanity often sanctioned that which law would not countenance—and, therefore, he was unwilling to move a negative on the resolution. But as there was no proof that pointed out the necessity of giving Captain Earle £300 a-year out of a salary of £432, his wish was to move, at the next court, that the sum should be reduced. He should be glad to know, whether the proceedings of the present day would debar him, on a future occasion, from moving that the grant proposed by the resolution, should be lessened—or whether he should by the forms of the court, be compelled to oppose the resolution altogether, when they were convened for the purpose of confirming it? He asked this question, because he intended, on the present

occasion, to move an amendment, by way of addition, to the resolution. He would do this for the purpose of placing his sentiments on record, and of shewing that the question had not passed *sub silentio*, or without due notice. He felt it necessary to act in this manner, because, on a late occasion, some of his friends were reproached, as if they had not been present, in consequence of their not having placed their sentiments on record. It was said, indeed, that they were not opposed to the measure then brought forward, because their sentiments did not appear on the minutes; than which no assertion was ever more fallacious. To prevent the occurrence of such an error on this occasion, he should move that the following words be added to the resolution:

“And that this court, viewing with alarm the large and increasing pension list of the Company, doth recommend to the court of directors, the utmost vigilance and economy, in every application for a pension brought before them; and also that they will not, except in very urgent cases, depart from the *spirit of the law*,” (I might almost, observed Mr. Hume, say *the letter*), “as laid down in the act of the 53d Geo. III, cap. 155, sec. 93, which directs pensions to be granted according to the length of service of the Company’s servants.”

He wished to ascertain, from the legal authority present, whether he should be debarred, in consequence of this amendment, from moving, at the next court, that the grant specified in the resolution should be reduced? He did not himself consider that he should so bar himself, because he thought when the matter was again submitted to them, it might be treated as a new question: If there were any feeling in the court, that he should not have that privilege, he should be glad, if it met the wishes of the hon. Chairman, to refer the point to the legal officer. The question was, whether the amendment he was about to propose to-day, would debar him from moving, at the next court, another amendment, lowering the sum which they were now called on to grant to Captain Earle?

The Chairman—“I understand the hon. proprietor desires to know, whether, if the present question shall pass, with the approbation of the court, he can, when it comes before the next court, for confirmation, move another amendment? I beg leave to refer the point to our counsel, who is at hand.”

Mr. Serjeant Bosanquet—“I see no difficulty in the case. The present amendment does not amount to an approbation of the original resolution—it merely contains a monitory observation—and, therefore, pending the confirmation of the

resolution, the hon. proprietor is at liberty to move an amendment, altering the original proposition.”

Mr. Hume. “I should wish to be informed, whether, on a future day, I may be allowed to lower the amount of the proposed grant? I know I cannot move an increase, without giving due notice—and I am also aware, that, on the principle of *omne majus continet in se minus*, it was held, in this court, that a motion for reducing a grant may be made, without previous notice—but the question here is, whether my offering an amendment this day, will operate as a bar to my moving, at a future time, the substitution of a smaller sum for that now proposed?”

Mr. Serjeant Bosanquet.—“I am not aware of any rule established in this court, which can preclude the hon. proprietor from proposing such an amendment.”

Mr. R. Jackson. “The question is simply this—whether, if one amendment be moved this day by my hon. friend, he shall, at the next court, be competent to move another of a pecuniary nature—namely, for the purpose of lowering the intended grant?”

Mr. Serjeant Bosanquet.—“It requires two courts to approve and confirm the resolution—and, at the second, such an amendment may, I think, be proposed.”

Mr. R. Jackson. “I am of opinion, that the apprehended difficulty does not exist.”

Mr. Hume. “I now beg leave to stand up this, as an amendment. In doing so, I hope the gentlemen behind the bar will not suppose that I mean to pass any censure upon them. They have, however, certainly departed from the spirit of the law, as laid down in the 53d of the king.”

The Chairman.—“The hon. proprietor may qualify his meaning as he pleases; but the words which he wishes to be added to the original motion, do, in fact, convey a censure.”

The amendment having been read—

The Chairman rose. “I beg leave,” said he, “to offer a few words on the merits of Captain Earle’s case. He is stated to be sixty-six years of age, which is not denied. His indiscretions are certainly very great; and, if he were brought into this court, his appearance would indicate, that everything which was stated respecting him was perfectly true. With reference to the law which has been adverted to, I beg leave to say, notwithstanding the statement of the hon. proprietor, that the court of directors, in proposing this grant, do not, in any way, infringe the act of parliament which he has noticed. If the fact be otherwise, I shall doubtless find gentlemen who will set me right.”

Mr. Dixon said, when the hon. proprietor considered the nature of the amendment, he would, perhaps, rather wish to withdraw it—because there was an expression in it which, he conceived, the court of proprietors could not sanction. It was, by inference, admitted in the amendment, that the court of directors might, in what they considered urgent cases, depart from the letter and spirit of the law. This he considered highly objectionable; and, as it was not intended, on that day, to oppose the motion of the court of directors—as it was not intended, on that day, to recommend a smaller sum, as this amendment would not retard or forward the question in any point of view, as it could do, no manner of good whatsoever, he begged of the hon. proprietor not to persist in a proposition, which did not contradict the necessity of the grant now called for.

Mr. Hume. “I will explain, in one word, what I mean. The spirit of the act of parliament is this—that no individual, in the Company’s service, shall be entitled to receive a pension, equal to three-fourths of his salary, unless he be above sixty-five years of age, and have served the Company for forty years; and I wish my amendment to stand on record, in order that the court may not, in future, deviate from so wholesome a regulation.”

Mr. E. Parry. “The present case does not come under the provision quoted. Captain Earle’s situation is different. The court of directors brought it under the consideration of the proprietors, as a case of compassion. Captain Earle is totally incapable of doing his duty, and if kept in the situation, some other person must be employed to officiate. He had served the Company for nineteen years in India, and though he stated his age to be sixty-six years, it was not this advanced period of life which rendered him anxious to retire, but his extreme infirmity. I have known him for forty years, and I am sure that his services in India were most meritorious. He has no retiring pension, because he left India before the list was established. He has served the Company at the depot for many years, as faithfully as any individual could do; and, I am sorry to say, he is not likely to live a twelvemonth longer. Under these circumstances, the court of directors lent a favorable ear to Captain Earle’s case, and it is now for the court of proprietors to decide on it.”

Mr. D. Kimmsard said, he was more satisfied by what fell from the hon. gen. who had just addressed them, than by anything that had previously been stated to the court. If Captain Earle was absolutely incapable of performing

those very small duties, he was quite sensible that a case was made out to convince the proprietors of his being well worthy of their humane consideration. When he saw a gentleman, who had served the Company in so deplorable a state as not to be able to sign his name, he would not hesitate a moment to grant him a pension, which was only to afford him the common comforts of life. The conduct of his hon. friend (Mr. Hume) was kind and conciliating. He did not mean to oppose the motion, but was merely anxious that his sentiments might be put on record; and that something like a rule should be laid down for the conduct of the court of directors, in dealing out the liberality of the Company to different claimants. He trusted, therefore, that the motives of his hon. friend and of himself, if they persisted in placing the amendment on record, would not be misunderstood or misrepresented. The scale laid down in the act of parliament was, in his opinion, judiciously alluded to, as a fair and proper rule to guide them on such occasions. He confessed that he should object to the amendment altogether, if the words quoted by an hon. proprietor (Mr. Dixon) were omitted. Where the case was of an urgent nature, he would go beyond the rule—and this was, undoubtedly, a case of peculiar urgency. He was, therefore, desirous of marking it as an urgent case, by the adoption of the amendment—for nothing short of Capt. Earle’s being in a state of incapacity, unable even to sign his name to an account, could justify the proposition made to the court.

Mr. Hume. “Should there be any expression in this amendment, which the court may think improper, I will, with the greatest pleasure, make the necessary alteration.”

Mr. Lounnes was happy to give his vote in favor of a resolution which went to reward the meritorious exertions of an old servant. Careful as he was of the purse of the Company, he would always open it when an old servant claimed relief; but he should ever oppose sinecure and useless pensions. He never would countenance the frittering away of the Company’s money, by giving it to persons because they had influence in that house. Persons of that description he should always set his face against—for he considered grants made to them as connected with the basest corruption. But when, as in this case, an individual had served them faithfully for nineteen years, there was a very good reason for rewarding him.

The Deputy Chairman (James Pattison, Esq.) said, he rose to make a few observations merely with reference to the words proposed to be added to the origi-

nal motion. The hon. proprietor (Mr. Hume) stated, that there was not the slightest objection, on his part, to convey any censure on the court of directors, but that, as this was a special case, which deserved the notice of the court, he wished to shew, by placing his sentiments on record, that it was not passed over silently. He (Mr. Pattison), giving every degree of credit to the intentions of the hon. proprietor, hoped, however, that he would withdraw words, which, in some slight degree, did convey censure. The amendment recommended to the court of directors, "the utmost vigilance and economy, in every application for a pension;" and also, "that they would not, except in very urgent cases, deviate from the spirit of the law." If this were put upon record, it would seem as if they had not in all cases used "the utmost vigilance and economy;"—and it might also be inferred, that they had "deviated from the spirit of the law."

Mr. D. Kinnaird—"Perhaps it would be better if it were altered to, 'except in similar urgent cases.'"

Mr. Pattison proceeded.—There was another point on which he should now make an observation. He alluded to the amount of expense which the Company would incur by granting this pension, as the hon. proprietor had in some degree misstated it. The amount of the retiring pension, if granted, would be £300 a year, and the salary which Captain Earle's successor would receive, would be £250 per annum, making a gross sum of £550 a year. The charge from which the Company would be relieved by his retirement, was £432. 10s; therefore, the additional expense, created by the provision made for Captain Earle, and by the salary of his successor, would, in fact, be only £118. 10s. Captain Earle had been in the service of the Company, (with the exception of a few years), from the year 1767. He returned from India in 1786, after nineteen years military service. In 1804, he got a situation in the Company's depot, so that, adding the two periods of nineteen and thirteen years together, he had actually served the Company for thirty-two years. It was not his age alone which induced him to retire, but his extreme infirmities, the reason, stated in his memorial. The necessity of the grant was still farther supported by the unfortunate state of his domestic circumstances, which, he hoped, would never be left out of the consideration of a Company, that had ever acted with kindness and humanity to their servants. Under all these views, he trusted the hon. proprietor would be induced to withdraw what seemed to be a species of opposition to a measure so fully honorable, and praise-worthy.

Mr. Hume said, as he was talked on by the hon. director, he wished the court not see clearly what he meant. His object was, not to oppose the motion now, and perhaps not ultimately; but he thought it incumbent on him to place his sentiments on record, when an individual, for thirteen years service, was going to receive far more than the scale laid down in the Act of Parliament entitled 14th Geo. 4. As to the nineteen previous years they could not be taken into the account—for Capt. Earle came home as a civilian now did, without any claim on the Company. As to the pay and allowances of Capt. Earle's successor were only to be £250 per annum; then certainly the increased expense of the establishment would be merely £118; but he did not understand this. He supposed that the gentleman who succeeded Capt. Earle would receive the same salary which the captain had received. The circumstance stated by the hon. director was not mentioned in the report, and he, therefore, knew nothing of it. If they did not pay Capt. Earle's successor less than that gentleman received, it was obvious that there would be an increased charge of £300 per annum, instead of £118. He hoped the court would excuse him in persisting to place his amendment on record, in order to shew that this was one of those urgent cases which the liberality of the court would always consider favourably—at the same time that it did not come under the provision of the Act of Parliament. To prove that the court were cognizant of this latter circumstance, he was desirous that his amendment should be recorded. It would thus appear hereafter that the circumstance had not passed without observation.

Mr. Pattison said, Captain Earle had £250 a year as paymaster, and his other allowance of £182. 10s. was the pay of a captain, which he was not now to claim. The gentleman who succeeded him would come in on £250 per annum.

The Chairman—"I beg leave to say a few words on the merits of the amendment proposed by the hon. proprietor. He recommends the 'utmost vigilance and economy' to be exercised on every application for pension that may be brought before the court of directors. I beg leave to inform the court, perhaps unnecessarily, that, on every occasion of this kind, the feelings of the executive body are most sensibly alive to an economical disbursement of the Company's money. A severe and vigilant scrutiny takes place before the directors come forward with a recommendation to the court of proprietors; I think, therefore, the recommendation contained in the amendment is wholly unnecessary, because it is intended to be done which, I confidently assure,



the court's directors have always most solemnly and conscientiously performed."

Mr. Lowndes said, perhaps the opposition of the hon. proprietor arose from his supposing that the increased charge would be £300; instead of £118 a year. That had been explained, and it made a great difference.

The Chairman: "Will the hon. proprietor persist in his amendment?"

Mr. Haime: "Yes, certainly—the court will excuse me."

The Hon. W. F. Elphinstone said, the amendment evidently conveyed a censure on the court of directors. If their recommendation, in the present instance, was wrong, there would be some shew of reason for such an amendment; but, when the general feeling of the court was, that it was highly proper, why should a proposition of this nature be made? It surely cast a reflection on the court of directors, for it implied, that they had not adopted a system of vigilant economy. He would venture to say, if the matter were looked into, that the interest of the Company was as carefully and conscientiously attended to in the other room as it could be by any body of gentlemen, however strict, and however zealous. A direct censure was not cast on the executive body by this amendment, but, by inference, a severe reflection was thrown out against them.

Mr. K. Smith hoped the hon. proprietor would not divide the court on this occasion. As there was no necessity for the amendment, he trusted he would waive it.

Mr. Lowndes was always happy when he could agree to the propositions of his hon. friend, but he conceived the present amendment to be unnecessary.

The amendment was then negatived by a large majority—after which, the original question was carried unanimously.

#### MANDAMUS PAPERS.

The Chairman: "I have now to acquaint the court, that it is made special as the request of certain proprietors, for the purpose of taking into consideration the Mandamus Papers, as far as the same relate to the conduct of the court of directors, in resisting the powers exercised on that occasion by the honorable board of commissioners for the affairs of India, in adjudicating disputed pecuniary claims, and in directing the application of the Company's funds for their discharge."

The requisition, which was dated the 18th of March, having been read—

Mr. Howarth rose and observed, that the Mandamus Papers had for a long time been in the hands of the proprietors, who, he hoped, had perused them with that attention which their importance demanded. Many circumstances had con-

tributed to postpone the consideration of this interesting subject, some of private and others of public consequence. When the requisition was signed he was in a state of convalescence, and hoped he should have been able to attend of the day selected for the discussion; he was, however, disappointed in consequence of illness—and indeed he was now in that delicate state of health which rendered it extremely difficult for him to discharge the duty he had undertaken; but, feeling most anxious that the question should be considered maturely, being extremely unwilling that any circumstance should operate to set it aside—believing, as he did, that the subject was most materially connected with the interests of the Company, he was induced, incapable as he was, to bring it forward.—(Hear! Hear!)

—He would not, however, run the risk of weakening so good a cause by the incapacity of its advocate, but for one expectation,—namely, that his defects and errors would be supplied by the superior talents and abilities of others.—(Hear! Hear!)

—The court would now allow him to make two or three preliminary remarks before he stated the case. In the first place, he had been said, that the matter was completely at rest; that the case of Major Hart had been decided; that much had been done to prevent the court of directors from again coming in to collision with the board of control; and, in short, that the business had entirely gone by. Undoubtedly, the case of Major Hart had been decided, and that too by a tribunal from whose decrees there was no appeal; there was, therefore, no use in canvassing it; but he never could consider the question as entirely gone by, while the principle recognized by the Act of Parliament remained, and while that precedent was established by the privy council which now stood acknowledged. He thought it would be important for them to consider, whether they were tacitly to acquiesce in the principle that had been so recognized, and whether they should, or should not, complain of the precedent. It had been said, that they (the proprietors of East-India stock) were setting themselves up as interpreters of the Act of Parliament, as expositors of the law, in opposition to the judges of the Court of King's Bench—and it had been asked, whether they would place their political knowledge, as statesmen, against that of the privy council. They could have no such presumption; but legal decisions led to legal results,—and, as the result in the present case bore hard on the Company, they could not sit down without expressing an opinion. Legal decisions, it should be observed, were subject to revision, and sometimes to reversal. The judges

he was acquainted with—but still he did not approve of the proceeding. He (Mr. Kinnaird), under such circumstances, would never propose any person; and he felt himself utterly incompetent to vote for the re-election of any gentleman who had been appointed a member of the committee. The only occasion on which he could be brought to vote was, when two gentlemen were proposed at the same time, in opposition to each other; he would then feel it his duty to state which of them he thought most eligible. Having said this, he hoped it would be understood that they had no private feelings in the committee. For his own part, he was scarcely acquainted with any of the gentlemen of whom it was composed, with the exception of the hon. chairman.

Mr. R. Jackson said, the observation made by his hon. friend (Mr. Cumming) was occasioned by the few words he had previously addressed to the court. It should be recollected, however, that the proposition for the appointment of Sir H. Strachie came from the hon. chairman, and was seconded by his hon. colleague. Sir H. Strachie being very highly thought of by persons on this side of the bar, he (Mr. Jackson) stated the pleasure he felt at the handsome manner in which the gentlemen behind the bar met that feeling, and the hon. proprietor (Mr. Cumming) merely offered an explanatory observation. No doubt, as a general principle, it was right they should abstain from personal feeling altogether; but let not that hon. proprietor be supposed to have nominated a member of the committee. He had not done so; he merely gave that explanation which was necessary.

Mr. D. Kinnaird. "My only reason for making the observation I have done, is to prevent unpleasant feeling. At a subsequent time, if a difference of opinion existed in the committee, a part of it having been nominated by the members of the old committee, the latter, on a division, might find the new members opposed to them. The complaint perhaps would then be, 'Here are the very persons we appointed as our colleagues, voting against us.' I wish to avoid the possibility of such an occurrence."

Mr. Louder. "It is certainly a most extraordinary thing, that two of the most respectable, efficient, active and intelligent men in this court are never proposed on this committee. I allude to my two hon. friends Mr. Jackson and Mr. Hume. I say, it is setting a mark on them; but I suppose it is believed, that, if they were placed on the committee, they would not go well in harness. I think that is the reason of their not being proposed."

Mr. R. Jackson said, he felt flattered by the notice of his hon. friend; but he

had for several years past, stated, that it was inconsistent with his avocation to act on the committee. As he had some years since taken an active part in the revision of the by-laws, his hon. friend ought not to have thrown out the imputation he had done, because he (Mr. Jackson) had declined a situation, to the duties of which he could not pay proper attention.

(Sir Henry Strachie was then added to the committee).

Mr. R. Jackson observed, that, as they had arrived at the last name, he would trouble the court with a very few words. On a former day he had stated, that he should move the thanks of the court to the committee of by-laws, and an hon. director had expressed his readiness to second the motion. The labours of the committee had not yet, however, come to a close, and therefore the gentlemen composing it were anxious that the proposition of thanks should not now be made. He stated this to shew that he had not forgotten his promise, and to prove that he was not deficient in gratitude to the committee for the services they had rendered the Company, although they now declined the honour he had contemplated.

#### PENSION TO CAPTAIN EARLE.

The *Chairman* moved—"That this court confirm the resolution of the general court on the 16th of April last, approving the resolution of the court of directors of the 18th of March, for granting to Capt. Solomon Earle, paymaster of the military dépôt at Chatham, a pension of £300 per annum."

Mr. Hume inquired, whether the amendment he had moved, when this question was last before the court, was on record, and being answered by the chairman in the affirmative, he begged leave to make a few observations. By the public documents which had been submitted to the court, it was evident their pension-list was hourly increasing, and on that account it was that he had proposed the amendment which was negatived at the last court. He was anxious that the subject-matter of that amendment should not be lost, and therefore he would now call the attention of the court to the progressive increase of the pension-list. By papers laid before the house of commons for the three last years, it appeared, that the pensions granted by the Company had increased very much. By referring to the account for the present year, made up to the first of May, it would be found, that the superannuation and pension list exceeded in amount the list of the preceding year, by £8000. He referred to these documents

merely to support the observations he had offered to the last court, but without any intention of opposing the present resolution. The expenses of different kinds which the Company were now incurring, proceeded to an extent far beyond any thing that could be imagined by those who did not attend closely to the subject, therefore he wished to awaken the attention of the proprietors to the necessity of economy; and he hoped that his amendment, although negatived, would not be altogether lost, but that it would excite inquiry and investigation.

Mr. Lowndes. "What is the standard of superannuation? Is it great age, mental infirmity, or corporeal incapacity?"

Mr. Hume would refer his hon. friend to the act of parliament; a scale of service was there laid down, by which a certain portion of salary was allowed after a certain number of years' service. If the court of directors had continued the old form of the list, setting forth the new pensions granted, as it stood in 1814, (and why it was altered he knew not), it would have been much better. By the old mode, he was at once put in possession of the number of years service of each individual, and the salary and allowances which he had. There was a clear explanation of every case; but, from the list now laid before the court, he could not say, whether the annuities granted were, in the strict acceptance of the word, pensions, or whether they were portions of salary allowed to be granted under the act of parliament. He would tell the court why it was of importance that the nature of these grants should be specifically stated; it was, because if those who granted them proceeded in this manner, they would excite suspicion, and occasion more trouble to themselves than they wished to encounter. It was of the utmost importance that the proprietors should be enabled to place reliance on all the official documents, which, through the executive body, were given to the public. The word and signature of the directors ought to be sufficient to carry them through every opposition that might be offered to any document issued by them. If, therefore, he held in his hand a resolution emanating from the executive body, agreeing to give Col. Brice £200 per annum from the Company's cash, and £100 per annum from the *fee fund*, making a total of £300 a-year; if he saw, by the act of parliament, that the court of directors were called on to deliver to the proprietors, on a certain day, a list of all new salaries (together with the allowances) granted to individuals; and if he found, on looking to the printed list, that the salary of Colonel Brice, in the new situation of under military

auditor, was stated to be £200, while not a word was said about the £100 taken from the *fee fund*, then he had a right to contend, that the variance between the resolution and the list was contrary to the act of parliament, was a just subject of observation, and was calculated to excite distrust and suspicion.

Mr. Lowndes. "What is the *fee-fund*?"

Mr. Hume said, it was £80,000 a-year, which the directors considered pocket-money, and in the disposal of which they thought the proprietors had no right to interfere. The list would be extremely satisfactory, if the court would allow the form of proceeding, adopted in 1814, to be used in future. By that form, if any person wanted to ascertain the fact, he was at once acquainted with the number of years, and the amount of salary and emoluments, with reference to every individual mentioned in the list; by this means he was enabled to judge whether the sum granted by the court was consistent with the act of parliament or not. This he could not do by the form now introduced; and, having found one statement erroneous, he was warranted in thinking that others might be erroneous also. To this subject he would shortly call their attention; and he hoped, in doing so, he should avoid any unfair observations on his motives.

Sir J. Jackson. "The hon. proprietor has stated, that a sum of no less than £80,000 annually went into the pockets of the directors."

Mr. Hume. "No! no!"

Sir J. Jackson. "He said, that that sum was *pocket-money*, and connected it with the court of directors."

Mr. Hume. "I say it is at the discretion of the court of directors. Pensions, to the amount of £7000 a-year, are paid out of it."

Sir J. Jackson said, the hon. proprietor had often accused the directors of making unfair observations. Now, he thought the hon. gentleman went as far beyond the line of justice and propriety, in speaking of £80,000 as *pocket-money*, and coupling it with the court of directors, as any man could possibly go. This *fee-fund*, about which so much had been said, was formerly given entirely to the clerks. The court of directors found it necessary to take the fund into their own management, still, however, considering it as belonging to the clerks. It had been so administered, and the £100 granted to Colonel Brice from the *fee-fund*, was conferred on him as one of the clerks.

Mr. Hume said, if any idea went abroad that the directors put this money in their pockets, he would strenuously oppose it. But this fact could not be denied, that the money was given away without ap-

plying to the court of proprietors, which was contrary to the by-laws. He thought himself also correct in saying, that the whole was not appropriated to the clerks. There was now a balance of £160,000 of the fee-fund, which, in point of fact, was considered as Company's money, and was not accounted for by the treasurer. He did understand from the hon. deputy chairman, that measures would be taken to satisfy the court with respect to the appropriation of this fund; and he did hope, the appointment of Colonel Brice being a *bona fide* statement, that he would have submitted some information to the court on it, which would put an end to any further discussion relative to it. Had he done so, it would not have been mentioned by him.

The *Chairman*. "I will take this occasion to state to the court, that the business of the fee-fund is now under consideration, and very shortly a report relative to the whole subject will be laid before the proprietors. I can assure the court, that the executive body have not the least desire whatever to keep any thing secret that ought to be discussed."

Mr. *Loundes*. "I ask, then, why has not the fee-fund been fairly mentioned?"

Mr. *R. Jackson* said he was satisfied, with respect to the fee-fund, that no unworthy use was made of it. But he hoped that those who were employed in investigating it, would look to the legal point, namely, whether any part of it could be appropriated to pensions, without notifying the grant to parliament?

The *Deputy Chairman* (James Pattison, Esq.) said, the circumstances of the case now before the court, and that which was introduced, were totally different. A motion was made for the confirmation of a resolution granting a pension of £300 per annum to Capt. Earle, and, instead of speaking on this specific question, the hon. proprietor had taken the opportunity of introducing other topics, unconnected with it. He (Mr. Pattison) had had the honour of a conversation with the hon. proprietor, and then he distinctly stated to him, that the subject would be taken up seriously by the court of directors—and that the legal question, whether they could give more than £200, by drawing on the fee-fund, without the approbation of the court of proprietors, would be minutely investigated. Such an inquiry had been instituted—it was still before a committee—and a report would be finally made to the court on the subject. Nothing had been concealed, or kept in the dark. If the directors erred, in doing what they had done, they would come before the proprietors, and state that they had acted under a misconception—if not, they would defend their conduct by plain reasoning. This was a fund belonging to

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the clerks, which the court of directors took under their care, and which was distributed amongst those to whom it belonged. If any of it was improperly laid out, then let a fair and direct charge be brought against those who had abused it—but he did not consider it just to introduce the subject incidentally. If the law laid down by the hon. proprietor proved to be correct, that the court of directors could not grant more than £200, the overplus being taken from this fund, without the concurrence of the proprietors, that principle would, of course, be scrupulously acted on.

Mr. *D. Kinnaid* said, as this was a question relative to a pension, his hon. friend certainly had a right to allude to that which, under peculiar circumstances, had been granted to another individual. He (Mr. Kinnaid) wished to know, whether any, and, if any, what reason existed for not proceeding, with respect to the formation of the pension-list, on the old mode of 1814. He should feel it his duty to move for a return similar, in form, to that made in 1814, to the production of which he did not think there could be any objection. Such a mode of return would certainly give much more information than that recently adopted, and on points too which it was essential they should know.

Mr. *Loundes*. "Is there a by-law, ordaining that these lists should be laid before us? If there is not, I will move, on a future day, that they be regularly submitted to the court."

Mr. *D. Kinnaid*. "The list is first laid before parliament, and subsequently laid before the court."

The resolution granting a pension of £300 a year to Capt. Earle was then carried in the affirmative.

#### REPORT OF THE COMMITTEE OF BY-LAWS.

The *Chairman*. "I have to acquaint the court, that it is made special for the purpose of receiving the report of the committee of by laws, which will be given in, by the chairman of that committee."

Mr. *Howorth*. "Some difference of opinion having occurred, as to the manner of receiving the report of the committee of by-laws, on the last occasion, I beg leave to suggest this mode of proceeding.—I propose that the report should now be received and read; that a day should be fixed for the consideration of the subject; and that, in the mean time, it be laid on the table, for the perusal of the proprietors, until the appointed day arrive."

The report was then handed in and read. It suggested alterations in the law

Chap. III. . . . . sect. 4.

Chap. VI. . . . . sect. 5 & 6.

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