

38096/

CO 533/466

38096/

KENYA

Judicial Staff

Salary of Chief Justice.

Previous 1935	R. 297	12/2
	(1) C.S.D.	17/10
	(2) Promo. } extra	20/10
	(3) R. 295	20/10
Subsequent	R 297	20/10
	Millets	9.11
	R. 297	

297	9/9
Mr. Flood	10.
Sir P. Busha	14
Sir C. B. O'Connell (C. O. O'Connell)	3/10
Sir G. G. G. G.	5/10
Sir J. Maffey	6
S. J. S.	6/10.
Sir J. Maffey	7/2
Sir P. Busha	7/10
Sir P. Busha	8/10
Sir P. Busha	8.10
Mr. Flood	-
299	16/10
R. 297	

Cl. legal

1.3

Sir J. Byrne. s/o _____ 23/4/34
 End a memo. giving the material facts regarding the salary of Sir J. Sheridan. Considers it would not be wise for the Govt. to raise his salary in next year's estimates but suggests that the S of S. might give directions for the increase in view of the circumstances.

Sir G. B. B. B.

The discussion as to the salary of the Chief Justice, Kenya, will be found in 3288/33. The position then was that the salary of the Chief Justice was £2,400 a year, but the Elected Members were then arguing that the salary should be reduced to £2,000 a year. You and I were both of opinion that the salary should stay at £2,400 but Lord Swinton took the view that Chief Justices need not get a higher salary than Chief Administrative Officers, though he agreed that in view of the position of the Chief Justice of Kenya as President of the Court of Appeal, an additional £100 a year above the salary of the ^{Colonial} ~~Chief~~ Secretary was justifiable. In a despatch the Secretary of State said that he would consider the rate of £2,400 a year as "hardly excessive," but in view of the need for economy some reduction was possible and he therefore accepted the £2,300.

Sir Joseph Sheridan was duly offered the appointment in January, 1934, with salary of £2,300 which he accepted. Since then he has been pretty busy raising the question and in December last he wrote to you. He asked that the old salary should be restored on the ground that:-

- (i) No other Senior post had been reduced in Kenya.
- (ii) The position of the Chief Justice of Kenya as

President

President of the Court of Appeal could hardly be recognised by the small addition of £100.

- (iii) That the reduction of £100 was not really an appreciable economy.
- (iv) If he retired from Kenya he would not get as much pension as if he had stayed in Tanganyika.
- (v) If Sir Jacob Barth had retired a little earlier he would have got the benefit of the old 15% house allowance.
- (vi) He had always felt that the reduction was to be temporary.

He has now written direct to the Secretary of State appealing for the restoration of the £2,400 rate, and we now have the Governor's comments upon it. The Governor agrees that Sir Joseph has been unlucky and says that he has been very helpful as Chief Justice.

On the other hand, if the Kenya Government were to propose an increase of salary the Unofficial Members would certainly object; but he does suggest that the Secretary of State might proceed to give directions to raise the salary because the reduction was only decided upon in view of the acute difficulties.

This is a very favourite game of Kenya. In order to avoid facing criticism they seek to get instructions from the Secretary of State behind which they can shelter. They can then when attacked in Council get up and say "We are very sorry but it is an order". Now, that is not the right way to go about it. In my opinion the occasions when the Secretary of State should be asked for orders are very few and far between and only arise when there is

some

some real question of important policy in which he feels that the Colonial Government ought not to be given any latitude. - the case of the Basle Mission Trading Society was one. Generally speaking, however, I think the Colonial Government should take the line that things moved in Council are their responsibility. They may have ascertained beforehand from the Secretary of State that he will not object, but the matter is theirs and the fact of the Secretary of State's approval should not be allowed to stifle discussion or to prevent reconsideration should some new point occur in discussion.

I think then the only answer can be that we are very sorry but that it can hardly be said that the financial situation is so much improved as to justify the restoration of the Chief Justice's salary. *See a P.M. says nothing about it*

J.W. Reid
10.9

I always thought that to single out this salary alone for reduction was very hard on Sir J. Sheridan, and that it was pointed. If the Secretary of State agrees, as I hope he may, that there is a case for restoring the salary, surely we can say that much to the Governor even if we must add the Secretary of State is not prepared to direct its restoration or to instruct the Governor to force it through the Legislative Council against the unanimous wishes of the Unofficials. My own belief is that if the case was put up tactfully, and it was made clear in public that if the

Unofficials

Unofficials objected the proposal would be dropped, the Unofficials would not take the responsibility of adopting that course. No doubt they might oppose it if they thought that nevertheless it would be carried.

4/10 14.9.36

Sir G. Tomlinson.

Sir J. Maffey.

The position is fully set out in these minutes.

If Lord Swinton's view that Chief Justices should not get a higher salary than Chief Administrative Officers is to be carried into effect throughout the Colonial Service there is nothing to be done but to reply as Mr. Flood proposes.

If, however, no general policy on this point is to be adopted it is certainly hard luck on Sir J. Sheridan that he should be the only victim, especially as it seems very unlikely that the other reduction with which it was originally coupled (that in the duty allowance of the Governor) will be adopted, at all events in connection with the appointment of a successor to Sir J. Byrne. It would be possible, when we know that the duty allowance must be retained at its present figure in order to secure a suitable person as Governor, to recouple the two and to say that in the circumstances

circumstances the Secretary of State does not consider that it is equitable to maintain the reduction in the emoluments of the Chief Justice, but on the whole, in spite of the hardship to Sir J. Sheridan, I should prefer to leave the matter alone and adopt Mr. Flood's formula for the reply.

W.C.S.
3/10/36

I did not regard Lord Swinton's dictum as an order to alter the relations of between the salaries of the C.A. Sec. & C.J. wherever the former drew less pay than the latter. In most important Colonies (e.g. Gold Coast, T.T., Palestine, Jamaica, Hong Kong) the C.A. Sec. does draw less than the C.J. There are only three important places (Straits, Ceylon & Nigeria) where he draws more.

I agree with the last three lines of Sir Bolton's minute.

S.P.D.
5.10.36

I do not differ from the view
expressed above by S. J. D.
I shall see Mr. J. D. B. in
the hope of a personal letter
from him to J. D. B. in
London to
Mr. D. B. - Gov.

Jan

4x

I agree with Sir J. Maffey.
I think Lord Swanton's dictum
cannot be sustained in
every case and that there
is a clear case for treating
Sir J. Sheridan more generously.
He has a poor cause, but has
to entertain a lot - even Sir
I had decided from Dar es Salaam
preferring to stay with him
rather than at Gov House when
visiting Nairobi. I would
go even further than Sir J.
Pouche and tell the Governor
that he can inform the unofficers
that I consider it an act
of justice that Sir J. Sheridan's
Salary should be restored. He
has been a most useful
man to Government & the
Community in Kenya. I
am quite prepared to take
the responsibility of success or
failure.

To Kenya, 812

06.1936

best

12/10/36

29/10

1/11/36

Kenya

Necessary
action
taken in
Promotions
Branch

4/13
9/10
11/29
9/10
11/29
9/10

10/10/36

C. O.

Mr. Flood 9/10/36

Mr.

X Sir G. Baskin 10/10

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir G. Bottomley 2/10

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.KENYA.

NO. 812

GOVERNOR.

FURTHER ACTION.

Downing Street,

24 10 October, 1936.

Sir,

I have etc. to refer to the despatch No. 976 of the 20th of November, 1933, from Sir Philip Cunliffe-Lister (now Viscount Swinton) in which he discussed the duty allowance of the Governor and the salary of the Chief Justice of Kenya. As a result of that despatch it was decided that the duty allowance of the Governor should remain unaltered but that, in view of the need for economy, some reduction might be made in the salary of the Chief Justice as a vacancy then existed and there was an opportunity for effecting a saving.

I do not in this despatch desire to deal with the emoluments of the Governor, especially as Sir Alan Pin.

in

in his recent report has formed the opinion that

expenditure on the Governor's emoluments cannot be

said to be excessive, but I think that there is

now a good case for re-consideration of the Chief

Justice's salary and for restoring it to its

former figure of £2,400 a year. The Chief Justice

was in fact the only very senior official in Kenya

whose emoluments were substantively reduced -

apart from any question of salary levy - and in

view of his position and responsibility, I think

that it is now ^{only} a simple act of justice to restore

the salary to the figure at which it stood for

Sir Joseph Sheridan's predecessor. I authorise you

to make provision accordingly in the Estimates for

1937, and I have no doubt that the Unofficial Members

of Council will be ready to agree to *this small*
increase in expenditure

I have, etc.

(Signed) W. OSMOND GORE.

BY AIR MAIL.

PERSONAL AND PRIVATE:

GOVERNMENT HOUSE,

KENYA,

EAST AFRICA.

Sunday, 23rd August, 1956.

My dear Bottomley,

I returned from Mombasa on Friday and was immediately approached by Sheridan, the Chief Justice, on the subject of his salary.

To refresh your memory, I enclose a memorandum giving the material facts.

Apparently he has been in communication with Bushe and he has shown me a personal letter which he has addressed to Mr. Ormsby-Gore.

I think Sheridan has had ^{bad} luck. The appointment became vacant at a time when the Elected Members were very much on the rampage and he was about the only super post victim. But he accepted the post at the reduced salary, and you will realize that at the present time, when every-

thing.....

SIR W. C. BOTTOMLEY, K.C.M.G., C.B., C.B.E.,

COLONIAL OFFICE,

... DOWNING STREET, S. W. I.

BY AIR MAIL.

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STR W. C. BOTTOMLEY, K.C.M.G., C.B., C.B.E.,

COLONIAL OFFICE,

DOWNING STREET, S. W. I.

thing is in the melting pot owing to the Pim Report, it would be wrong and bad tactics for the Government to raise the salary in next year's estimates. There would certainly be an outcry.

On the other hand, the Secretary of State might think fit to give directions to the effect that the salary should be raised on the grounds that his predecessor only consented to the lower salary because of the acute financial difficulties then existing. The present improved conditions might be held to justify such a revision.

Sheridan's legal and judicial qualifications I am not competent to gauge, but I can state definitely that he has been a very loyal and helpful colleague.

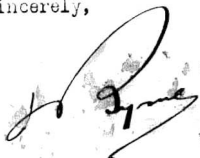
Where he has been particularly helpful is in the way of permitting the puisne judges to preside over various Boards and Committees, such as the Conciliation Board and the Commission appointed to enquire into the allegations of abuse.....

GOVERNMENT HOUSE,
KENYA,
EAST AFRICA.

of abuse in the collection of Native and Non-Native Poll Tax.

Many Chief Justices have served under me during the past fourteen years and I think most of them would have pleaded shortage of Judges and fought against their employment on extra non judicial work.

Yours sincerely,



Enclos:

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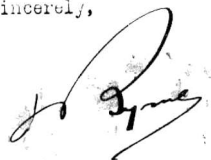
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Enclos:

COPY.

SALARY OF THE CHIEF JUSTICE

The salary of the Chief Justice prior to the revision of salaries in 1926 was £2,000 per annum. In Kenya despatch No. 230 Confidential of the 1st December, 1924, a salary of £2,200 plus a personal and pensionable allowance of £200 to Sir Jacob Mathias was recommended. The Secretary of State decided that the personal allowance should be £100 only.

2. A Select Committee of Legislative Council appointed to consider anomalies as the result of the revision of salaries recommended that the remuneration for the post of Chief Justice should be £2,400 per annum and this recommendation was supported in Kenya despatch no. 154 Confidential of the 26th November, 1926. The Secretary of State saw no sufficient reason for increasing the substantive salary of the post, but was prepared to agree to the personal allowance to Sir Jacob Mathias being increased to £200 per annum.

3. Representations were again made to the Secretary of State recommending a substantive salary of £2,400 per annum for the post and the latter eventually agreed to the salary being increased to this figure.

4. The Acting Chairman of the Elected Members of the Legislative Council wrote on the 27th August, 1933, to the effect that he and the invention of the Elected members when considering the proposals for 1934 to propose, inter alia, that the substantive salary of the Chief Justice should be fixed at £2,000 p.a. In view of the fact that the post of Chief Justice was due to fall vacant in the near future, some of the letter from the Elected members was forwarded to the Secretary of State. (1 on 3288/33)

(2 on 3288/33 1934)
The Secretary of State (Despatch Kenya 875 dated 20th November, 1933) considered that the most that could reasonably be done to meet the views of the Elected members

would be.....

would be to reduce the salary on the occurrence of the impending vacancy to £2,200 p.a. However, in view of the special position accorded to the Chief Justice of Kenya, of which he is the President of the East African Court of Appeal, he considered that the salary of £2,400 per annum would hardly be excessive, but in view of the need for economy, he thought that some reduction should be possible and was prepared to agree to a salary of £2,300. The Select Committee on the Draft Estimates for 1934 recommended the reduced salary of £2,300 per annum for future holders of the post of Chief Justice.

5. Sir Joseph Sheridan was appointed Chief Justice on the retirement of Sir Jacob Barth at a salary of £2,300 per annum.
