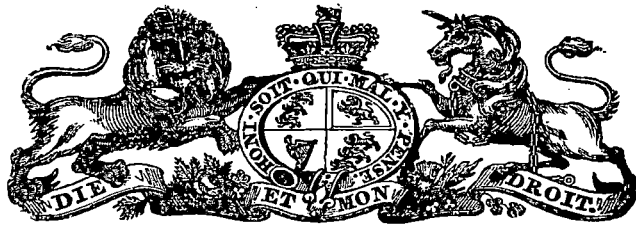


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PARLIAMENT OF TASMANIA.

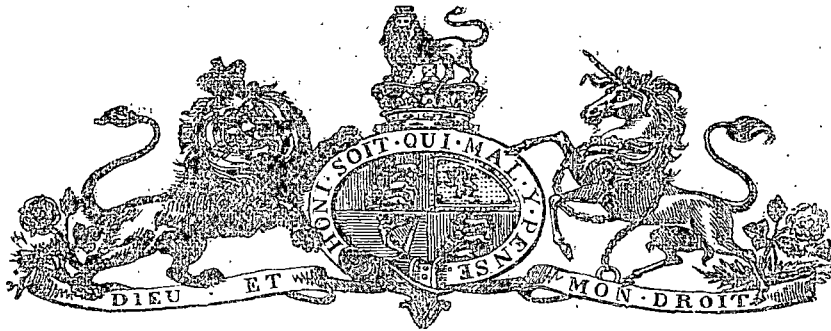
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MR. FRANCIS BELSTEAD :

CORRESPONDENCE AS TO HIS RIGHT TO A PENSION,  
WITH OPINIONS OF THE LAW OFFICERS THEREON.

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Presented to both Houses of Parliament by His Excellency's Command.



*Attorney-General's Office, 29th September, 1888.*

DEAR SIR,

REFERRING to our late conversation on the question of your right to a pension under the Superannuation Act, I have to inform you that Mr. Lette moved in the House of Assembly last night for the appointment of a Select Committee to enquire into the matter, and in the course of the debate I stated to the House that I had had a conversation with you on the subject, and had suggested to you the desirability of placing before the Law Officers of the Crown the facts upon which any claim you might have to a pension would be based, and obtaining their opinion thereon, and that as soon as you did so I would investigate the question and confer thereon with the Solicitor-General, and communicate our joint opinion to Parliament. Upon my making this statement, Mr. Lette and the other Members supporting his motion consented to withdraw it. I would therefore be pleased if you would forward to me at your earliest convenience a statement of the facts upon which the question must be decided, and so enable me to inform Parliament respecting the nature and validity of your claim to a pension before the close of the present Session.

I am, Dear Sir,  
Yours faithfully,

A. INGLIS CLARK.

F. BELSTEAD, *Esq.*, *Secretary of Mines, Hobart.*

*Hobart, 26th August, 1889.*

SIR,

I HAVE to apologise for having failed to reply to your request of the 29th September last, that I would furnish you with a statement of facts upon which the question of any claim I may have to a pension under the Superannuation Act is based. Your letter came at a time when I was greatly pressed with work, and the Session of Parliament for which the information was required closing very shortly after, the matter escaped my attention until I read what was said in Parliament on Wednesday evening last. I feel sure that it is hardly necessary for me to say that no discourtesy was intended.

I would premise that I have not at any time asserted any claim to a pension; whatever may have been said in that direction has been said by others, and not by me or at my instigation; nevertheless I hold that should ever the time arrive for the matter to be dealt with I have a legal claim, and the grounds upon which that claim is based are as follows:—

I entered the Public Service under the Imperial Government in August, 1850, and continued therein until April, 1858, when I was appointed under the Colonial Government to the offices of Police Clerk and Deputy Registrar of Births, Deaths, and Marriages, the former office being paid by yearly salary, and the latter by a payment by the Government of 2s. 6d. for each registration effected. I continued to hold these offices until the establishment of Municipal Government, when my office as Police Clerk ceased and was determined, but I continued uninterruptedly to hold the office of Registrar, and to be paid in the same manner up to the time of my transfer to the office of Commissioner of Mines in Launceston, in 1883. Upon the termination of my service as Police Clerk I was paid compensation for loss of office as *Police Clerk*, which compensation was computed

upon my salary as Police Clerk only, the emoluments attached to the office of Registrar of Births, &c. not being taken into account in such computation.

I submit, therefore—

1. That I have had continuous service within the meaning of the Superannuation Act from April, 1858, to the present date.
2. That had it been intended to entirely break my connection with the Service, and to have deprived me of any claim to pension, my tenure of office as Registrar of Births, &c. would have been terminated in the same manner as was that of my office as Police Clerk, and, further, that my compensation would have been differently computed.

These, Sir, are the legal grounds upon which my claim rests; but, apart from the legal grounds, I am informed that precedent is in my favour, and I confidently cherish the hope that should necessity for it arise, my case will receive at the hands of Ministers such equitable consideration as long and faithful service will afford a very strong claim to.

I have, &c.

*The Hon. the Attorney-General.*

F. BELSTEAD.

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*Attorney-General's Office, 27th August, 1889.*

SIR,

I AM directed to acknowledge the receipt of your letter of the date noted in the margin (26th August, 1889), referring to a letter addressed to you by the Attorney-General on 29th September last, asking you to furnish a statement of facts upon which the question of any claim you may have to a pension under "The Superannuation Act" is based.

I am to thank you for the information conveyed, and to ask you to furnish particulars of the precedent in your favour to which reference is made in your letter.

I have, &c.

F. BELSTEAD, *Esq., Davey-street, Hobart.*

F. STOPS.

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*Hobart, 29th August, 1889.*

SIR,

I AM in receipt of your letter of the 27th instant, requesting me to furnish particulars as to any precedents in favour of my claim to a pension under the Superannuation Act. Your request shall have as early attention as possible.

I have, &c.

F. BELSTEAD.

F. STOPS, *Esq., Secretary Law Department, Hobart.*

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*Hobart, 9th October, 1889.*

SIR,

IN compliance with your request of the 27th August last, that I would furnish you with the particulars of any precedent bearing upon my claim to pension, I have the honor to state that in the limited service of this Colony it is not likely that any case exists exactly upon all-fours with the circumstances upon which I rest my claim, and therefore various points of analogy only can be extracted from the several cases, the particulars as to which have been kindly placed at my disposal by the Chief Secretary's Department.

1. One of the grounds upon which I base my claim is, that had it been intended to completely sever my connection with the service when my office as Police Clerk was determined, I should have been paid compensation upon the basis of the salary and emoluments *of all the offices I then held*, and should have been divested of all those offices; whereas in fact I was paid compensation for loss of office as Police Clerk only, the reason being that I did not lose those other offices, but retained them; and as to one of them, namely, that of Registrar of Births, &c., I continued in the service up to the time of my transfer to Launceston in 1883.

Precedent to some extent exists here in the case of Richard Uniacke, Police Clerk at Longford, who, upon the district taking Municipal action (as in my case), lost the whole of his offices—his connection with the service was entirely severed: he was granted pension upon his salary *and emoluments*.

2. I contend, further, that the fact of my retaining the office of Registrar of Births, &c., to which I had been appointed by the Government, and for which I was paid by the Government, *establishes continuous service*; and that had it been intended to break that service my office would have been determined as was my office of Police Clerk.

The case of Thomas Reidy, Gaoler, may fairly be taken in as some degree a precedent bearing upon this point. This officer, whilst in the service of the Imperial Government, annually received remuneration for services rendered to the Colonial Government; his office in the Imperial service was abolished, and he was compensated for the loss thereof; he was then appointed to a permanent office in the Colonial Service, the Superannuation Act having been repealed some eighteen months before he became wholly a Colonial officer; but notwithstanding that, his services prior to his permanent appointment in the Colonial Service were counted and considered as constituting continuous service, and he was granted a Colonial pension calculated as from the time when he commenced to receive such remuneration prior to his permanent appointment.—*Vide* letter to Reidy from Colonial Secretary, 13th May, 1874.

3. The case of Ringrose Atkins, Gaoler, is, I am informed, a somewhat stronger case, but I have not yet been able to gain access to it.

These cases may not be considered as direct precedents in support of my claim, but I submit that they each reveal points, which taken together, must be regarded as bearing strongly in favour thereof.

There may be, and doubtless are, other cases where the claims of holders of minor offices have been considered and allowed in the admission and calculation of their pensions in ways somewhat similar to my contention, but I have not so far been able to gain the particulars.

In conclusion, as this matter is one of vast importance to me, after having spent nearly forty years continuously in the Public Service, I would respectfully urge that, in the event of the justness of my claim not being established in your mind (as it undoubtedly is in mine), this present investigation of it may not be deemed to be final, for the reason that between this date and the time when, if ever, my case comes to be dealt with, other circumstances may arise which will put the matter beyond question; and, on the other hand, inasmuch as, for some to me unknown reason, the somewhat unusual course has been adopted of calling upon me to prove my case before I have made a claim, I think I may fairly ask that should the Government of the day, after viewing the case in all its bearings, come to the conclusion that the claim is a just one, then that a permanent record may be made of that fact.

Regretting the necessity for having troubled you at such length,

I have, &c.

F. BELSTEAD, *Secretary of Mines.*

*The Hon. the Attorney-General, Hobart.*

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*Attorney-General's Office, Hobart, 3rd May, 1890.*

#### MEMORANDUM.

*In re* Mr. F. Belstead's claim to the benefit of "The Superannuation Act."

Mr. Belstead states that he entered the Public Service of Tasmania under the Imperial Government in 1850, and continued therein until April, 1858, when he was appointed to the offices of Police Clerk and Deputy Registrar of Births, Deaths, and Marriages at Westbury under the Colonial Government, the first-mentioned office carrying with it a yearly salary, and the second a fee of 3s. for every registration. He continued to hold both offices until the establishment of Municipal Government at Westbury, when his office as Police Clerk was determined, and compensation paid to him for loss of that office, but his appointment as Deputy Registrar was not determined, and the emoluments attaching to it were not taken into account in the computation paid to him for loss of the other office. He continued to hold the office of Deputy Registrar at Westbury until he was appointed to a position in the Mines Department, and he has remained in that Department up to the present time. I do not think that it can be disputed that Mr. Belstead has been continuously in the service of the Colonial Government of Tasmania since April, 1858, but I am of opinion that in order to entitle him to claim the benefit of "The Superannuation Act" it is necessary that his service prior to the date on which "The Abolition of Pensions Act" came into force (1 August, 1863) shall have carried with it remuneration periodically computed.

The first section of "The Superannuation Act" limits "the benefits conferred by it to persons who have served in an established capacity in the permanent Civil Service of the Colonial Government, whether their remuneration be computed by day-pay, weekly wages, or annual salary." There

is no mention made of remuneration by fees, and I am of opinion that no person can claim the benefit of the Act for service in an office to which no periodical remuneration was attached during the time he held it.

I do not know whether any officers of the Civil Service, who have held several offices conjointly, and who have received remuneration periodically computed for their services in one or more of such offices, and remuneration in fees for their services in the other offices held by them, have been granted pensions computed upon the total incomes derived from all the offices held by them; but if such computations have been made and acted upon, I am very doubtful whether they were authorised by the language of "The Superannuation Act." The words used by the Act to describe the basis upon which computations of pensions shall be made are "salary and emoluments of his office," and I take those words to mean the salary and emoluments attached to the particular office in virtue of which a claimant is entitled to the allowance prescribed by the Act, and not to include fees or other emoluments attached to an office which, if held singly, would not entitle the holder of it to a superannuation allowance.

I am not aware that the question raised by Mr. Belstead has at any time before been submitted to the Law Officers of the Crown for their opinion, and I therefore shall be pleased to receive the observations of the Solicitor-General and the Crown Solicitor upon Mr. Belstead's case.

A. INGLIS CLARK, *Attorney-General.*

*Solicitor-General's Office, 29th July, 1890.*

MEMORANDUM.

*Re Mr. F. Belstead's claim to the benefit of "The Superannuation Act."*

It appears that Mr. Belstead held the office of Deputy Registrar of Births, Deaths, and Marriages at Westbury from the month of April, 1858, until his appointment as Secretary of Mines, an appointment which he has held ever since. From the year 1858 to the present time Mr. Belstead has, in my opinion, "served in an established capacity in the permanent Civil Service of the Colonial Government" within the meaning of Section 1 of "The Superannuation Act."

It must be conceded that the office of Deputy Registrar of Births, &c. is an office, and an important one, established by law in the permanent Civil Service—see 2 Vict. No. 8, and the other Registration Acts.

Section 1 of the Superannuation Act, after providing that the Superannuation allowance is to be granted to persons who have served in an established capacity, &c., goes on to say: "whether their remuneration be computed by *day pay, weekly wages, or annual salary.*" What, then, was the nature of Mr. Belstead's remuneration? It appears from the Registration Acts that the Deputy Registrars were only allowed to receive a fee in respect of registration of a birth or death if the same were effected after the expiration of 42 days. They were also allowed certain other prescribed fees in respect of searches made and certificates given. These fees, *prescribed by law*, amounted to a very small portion of the total remuneration. For the bulk of the work done, namely, the ordinary registration within the 42 days, no charge was made to the public, no fees were prescribed by law, and no money paid direct to the Deputy Registrar. When, therefore, any Deputy Registrar was appointed the Government gave him remuneration additional to the few fees prescribed by the Act, such remuneration being the sum of 2s. 6d. for each registration effected by him. He received his remuneration every quarter from the head of his department by moneys paid from the Treasury, just as in the case of an ordinary civil servant. It was quite open to the Government to remunerate him by a fixed payment, just as the Registrar in Hobart is remunerated, but instead of doing so they agreed to pay him in proportion to the number of registrations effected.

The sole question for consideration, therefore, is whether Mr. Belstead comes within the definition of a person whose remuneration was computed by "day pay, weekly wages, or annual salary." The words "day pay and weekly wages" may, I think, be disregarded as not being applicable to this special case, and the question remains, whether Mr. Belstead was remunerated by annual salary?

The word "salary" has now become a sort of loose colloquial expression used to distinguish the remuneration of clerks and others paid weekly, monthly, or quarterly, from the remuneration paid to mechanics and labourers, &c. by the day, or to domestic servants.

It appears to me, however, that "salary" is, strictly speaking, a word of large significance, and in some of the best dictionaries it is given as synonymous with "a recompense for services," and with "wages."

The words in the Act, "day pay, weekly wages, or annual salary," are very wide, and, I think, they are meant to be read as including every kind of remuneration which, by fair intendment, can come within them.

For instance, suppose a person were remunerated by fortnightly or monthly wages, would he be deprived of the benefit of the Act merely because the words "monthly" or "fortnightly" are not mentioned in the section?

It may be said, therefore, that Mr. Belstead was remunerated by a salary paid quarterly. True, it was not a salary of fixed amount, but the Act does not require the salary to be fixed. It is to be *annual* only, and the salary in question was none the less annual because it was paid by monthly, quarterly, or any other instalments. The salary would continue from year to year until the office was vacated by death, resignation, or other cause.

Though the salary was not of an ascertained amount, it was fixed by reference to the amount of work done in the district, and was, so to speak, a payment of salary by results.

There can be no objection to remunerating an officer in "an established capacity" in this way if the law allows it. After careful consideration of the case I have come to the conclusion that Mr. Belstead would, under the circumstances, be entitled to the benefit of the Act. I am aware that the Attorney-General has expressed an opinion to the contrary, and this is quite sufficient to show that the matter may be doubtful to some minds.

For my own part, however, I cannot subscribe to the opinion that the words used in the Act, "remuneration by salary, &c.," were ever intended to exclude the quarterly remuneration paid by the Treasury year after year to Mr. Belstead for services rendered by him in an "established capacity."

As the Attorney-General has asked for my observations upon the case, I hope I may be permitted to say that the matter is one of the greatest importance to Mr. Belstead, who has spent nearly 40 years continuously (as he points out in the correspondence) in the Public Service. The time for deciding the question of pension or no pension *has not yet arrived*. No doubt the House of Assembly has the legal power to appoint a Select Committee upon this question, and the Committee may call upon Mr. Belstead to make a premature claim and substantiate it, and they may report in favour of the claim or against it. Such a course, however, though it may be legal, appears to me unprecedented, and most unconstitutional. Neither the report of the Committee nor any Resolution of the House founded upon it can bind the Executive Council of the day who may ultimately have to deal with the question.

ALFRED DOBSON.

*Solicitor-General's Chambers, 29th July, 1890.*

*Crown Solicitor's Office, Hobart, 31st July, 1890.*

#### MEMORANDUM.

*In re* Mr. F. Belstead's claim to the benefit of the Superannuation Act.

As requested by the Honorable the Attorney-General in his Memorandum hereon, I have the honor to submit my observations upon Mr. Belstead's case.

I think the validity of Mr. Belstead's claim must be determined by ascertaining whether, under the Superannuation Act, any person such as a Deputy Registrar whose services are paid for by fees only, and who holds no other office, is entitled to a pension, and it appears to me plain that such a claim would be insupportable. There is, I understand, no record in the Chief Secretary's office of any case in which such fees have been included, even as emoluments, when the officer has been pensioned in respect of another office. And if Mr. Belstead's appointment as Deputy Registrar did not itself carry with it the right to a pension in respect of the amounts received by him year by year by way of remuneration for the services rendered, it clearly cannot now be made the basis of a claim to pension in respect of an office to which the holder has been appointed years subsequent to the date when pensions were abolished.

I agree, therefore, with the Attorney-General in the view he takes of this claim in his Memorandum already referred to.

EDW. D. DOBBIE.

*The Hon. the Attorney-General.*

(*In continuation of Paper No. 93.*)

Hobart, 16th September, 1890.

SIR,

I OBSERVE by the Notice Paper that it is to be moved in the House of Assembly to-night—

“That Paper No. 93, correspondence *re* Mr. F. Belstead’s claim to the benefit of ‘The Superannuation Act,’ be taken into consideration.”

I am credibly informed that certain of the Law Officers of the Crown who have advised upon my claim have been wrongly informed upon a point bearing strongly upon my case, and that such wrong information would be likely to have materially influenced the opinion given thereon.

I have a record of over forty years’ honorable and faithful public service in this Colony.

I have the fullest confidence that the Parliament will not consent to deprive me of aught to which I am entitled, and beyond that I desire nothing; but the course which is being pursued in my case is so unusual that I am compelled most respectfully to ask:—

1st. That if Parliament should see fit to consider the matter in any way, it will not do so until the case has been again submitted to the Honorable the Attorney-General, and all material facts relating thereto rightly furnished to the Crown Law Officers.

2nd. That this letter may be printed in the Records of your Honorable House.

I have the honor to be,

Sir,

Your most obedient Servant,

F. BELSTEAD, *Secretary of Mines.*

*The Hon. the Minister of Lands and Works.*