

(No. 1.)



1891.

PARLIAMENT OF TASMANIA.

MR. FRANCIS BELSTEAD :

MEMO. BY ATTORNEY-GENERAL AS TO PENSION.

(In continuation of Paper 93, Session 1890.)

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



MEMO.

Re Mr. FRANCIS BELSTEAD'S Right to a Pension under The Superannuation Act.

I FIND that during my absence from the Colony in September last year, the correspondence between Mr. Belstead and myself and the Opinions of the Law Officers of the Crown on Mr. Belstead's right to a Pension under *The Superannuation Act* were presented to both Houses of Parliament, and that upon notice having been given that the matter be taken into consideration Mr. Belstead wrote to the Honorable the Minister of Lands and Works stating that he was credibly informed that certain of the Law Officers of the Crown who had advised upon his claim had been wrongly informed upon a point hearing strongly upon his case, and that such wrong information would be likely to have materially influenced the Opinion given by them. My attention having been called to Mr. Belstead's letter since my return to the Colony, I have deemed it my duty to make further enquiries in regard to the information supplied to me respecting the basis upon which pensions had been uniformly calculated in the Chief Secretary's Department when I wrote my Opinion upon Mr. Belstead's claim in May last year, and I find that such information is corroborated by all the records which have been placed before me in connection with my enquiries, as well as by the correspondence relating to Mr. Catley's pension, which was laid upon the Table of the House of Assembly in return to an Order of the House upon the Motion of Mr. Burgess in August last. (Paper 96, Session 1890, Vol. XXI.)

I understand that the point upon which Mr. Belstead had been told that some of the Law Officers of the Crown had been wrongly informed was the exclusion of fees, or, in other words, of sums received as remuneration for the performance of occasional and intermittent services, from the total amount of salary and emoluments upon which the amounts of pensions were calculated; and I find that the only cases in which fees of any kind have been included in the salary and emoluments of claimants for pensions are cases of schoolmasters who have been allowed pensions calculated upon a basis which included the average amount of school fees received by them during the last three years of their service. But the fees received by schoolmasters are not received by them for the performance of such occasional and intermittent services as those performed by Deputy-Registrars of Births, Deaths, and Marriages. It is true that, like the amounts received from the Government by Deputy-Registrars for the registration of births, &c., the fees received by schoolmasters may vary in amount from year to year or from quarter to quarter; but they are computed, like salary or wages, upon a periodic basis,—that is, per week or per quarter,—and they are received for services that are continuous throughout the periods in respect of which they are computed. It is also to be noted that *The Superannuation Act* authorises pensions to be computed "upon the amount of salary and emoluments enjoyed by a claimant at the date of his retirement," and it repeatedly uses the words "salary and emoluments." This language removes all possible doubt in regard to the right of a schoolmaster to have the school fees received by him included in the basis upon which his pension shall be calculated, because he is in receipt of "salary" as well as fees, and the fees received by him are indisputably "emoluments of his office" (see 49 Vict. No. 15, Sect. 14). But when a claim is made for a pension in respect of what may be called sporadic sums that have been paid for intermittent services to the holder of an office to which no "salary," in the usual meaning of the word, has been attached, the question to be settled is altogether different, because it is then necessary to decide whether such a claimant comes within the description given in the 1st section of *The Superannuation Act* of those persons who shall be entitled to the benefit of it, viz., "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"; and it is upon what I take to be the proper meaning and interpretation of these words that I have advised that Mr. Belstead cannot sustain his claim to a pension.

When I wrote my previous Opinion on Mr. Belstead's claim I made no attempt to treat the question exhaustively, but simply stated in concise terms the conclusion at which I had arrived upon it. But the Solicitor-General having given a lengthy and argumentative Opinion contrary in its conclusions to mine and to the Opinion of the Crown Solicitor, I deem it my duty to add the following observations to what I have already written upon the subject.

The Solicitor-General bases his Opinion in favour of Mr. Belstead's claim to a pension on his interpretation of the word "salary" as used in *The Superannuation Act*, and which he thinks includes the remuneration received by Mr. Belstead for the services performed by him as Deputy-Registrar of Births, Deaths, and Marriages at Westbury, and he speaks of the fees paid to Mr. Belstead as "quarterly remuneration," because they were paid to him quarterly by cheques from the Treasury. But I am of opinion that the word "salary" as used in *The Superannuation Act* does not include any remuneration not computed upon a periodic basis, that is, by the year, quarter, month, week, or day, &c.; and I think that whatever doubt might be reasonably entertained as to its meaning in the first section of the Act, such doubt must be dissipated by the language of the second section, which says, "The Superannuation Allowance to be granted to any person under this Act shall not be computed upon the amount of Salary and Emoluments enjoyed by him at the date of his retirement, unless he has been in receipt of *the same* for a period of at least Three years immediately before the granting of such Superannuation Allowance; and in case he has not enjoyed *his then existing Salary and Emoluments* for that period, such Superannuation Allowance shall be calculated upon the average amount of Salary and Emoluments received by such person for Three years next preceding the commencement of such Allowance."

The words "unless he has been in receipt of *the same*, &c." clearly show that the previous words "amount of Salary and Emoluments enjoyed by him at the time of his retirement" cannot mean an uncertain sum, which may be more or less in the last year of his service than the sum received by him in the same capacity, and at the same rate of remuneration, in the immediately preceding year, but, on the contrary, must mean a definite and ascertained sum which the claimant would certainly receive per annum during the previous three years if he held the same office throughout that period at the same rate of remuneration as that on which he holds it at the time of his retirement. And this point is again placed beyond all doubt by the use of the subsequent words, "his then existing Salary and Emoluments," which words could never be properly applied to an uncertain amount of remuneration contingently payable for occasional services which might in any year fail to "exist" at all. In short, if the word "Salary" as used in *The Superannuation Act* does not mean a fixed and ascertained sum, a large portion of the second section is surplusage, and the whole purport of the section would have been attained by simply providing that in every case the pension should be computed upon the average amount of the remuneration received by the claimant during the last three years of his service.

A. INGLIS CLARK.
12th January, 1891.

To the Honorable the Chief Secretary.