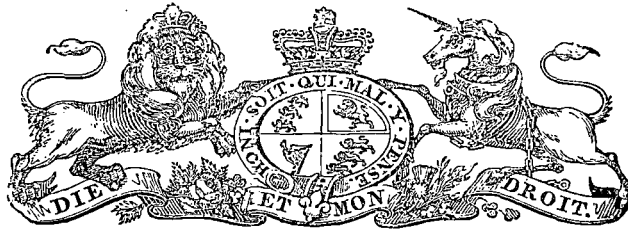


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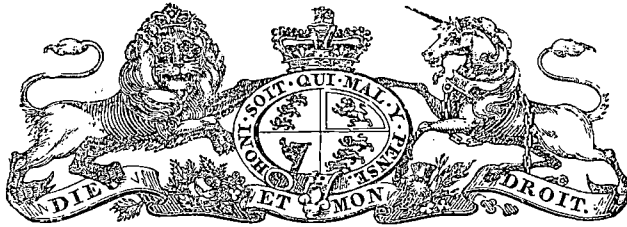
PARLIAMENT OF TASMANIA.

P E N S I O N S :

CIVIL SERVANTS ENTITLED TO.

Return to an Order of the Legislative Council. (Mr. Fysh, November 4, 1892.)

Ordered by the Legislative Council to be printed.



NOMINAL Return of Officers at present in Government Service entitled to Pensions upon Retirement, together with the approximate Age and Estimate of the present Amount of Retiring Allowance of each. Made up to 31st December, 1892.

No.	Name.	Office.	Approximate Age.	Three Years' average Salary and Emolument.	Service from	No. of Years Service.	Amount of Pension estimated at 31st December, 1892.						
							Ordinary.		Under Section Five of "Superannuation Act."				
				£	s.	d.	£	s.	d.				
1	Adams, G. P.	Registrar Supreme Court, &c.	58	600 0 0	16 Nov. 1860	32	320	0	0	400	0	0	
2	Armstrong, Robert	Superintendent Police, Selby	58	245 0 0	16 April, 1861	31	126	11	8	163	6	8	
3	Boyes, E. T.	Inspector of Customs	69	600 0 0	22 Dec. 1839 ^a	46	400	0	0	400	0	0	
4	Boyes, Henry	Secretary Post Office	59	494 8 11	1 Feb. 1853	39	321	7	9	329	12	7	
5	Browne, Geo.	Judges' Associate, &c.	54	425 0 0	1 Aug. 1862	30	212	10	0	283	6	8	
6	Campbell, J. W. ...	Collector of Customs, Launceston	64	500 0 0	12 Feb. 1843	49	333	6	8	333	6	8	
7	Clemons, J. N.	Teacher, Charles-street, ditto	58	427 8 6 ^b	1 Oct. 1862	30	213	14	3	284	19	0	
8	Darcey, M. F.	Teacher, Deloraine	45	234 5 6 ^b	13 Oct. 1862	30	117	2	9	156	3	8	
9	Doran, John.	Messenger, Legislative Council	64	110 0 0	1 Mar. 1861	31	56	16	8	73	6	8	
10	Evans, Hugh	Constable, &c., Emu Bay	60	103 5 0	27 Mar. 1860	32	55	1	4	68	16	8	
11	Fletcher, G. W.	Receiver and Paymaster, Treasury	60	408 6 8	1 July, 1852	40	272	4	5	272	4	5	
12	Grahame, Wm.	Overseer Printing Department	57	308 6 8	18 July, 1859	33	169	11	8	205	11	1	
13	Grubb, A.	Sub-Inspector, Emu Bay	57	181 0 0	14 Jan. 1862	30	90	10	0	120	13	4	
14	Hales, Rev. F.	Clergyman, Launceston	71	260 0 0	1 Feb. 1856	36	200	0	0	200	0	0 ^c	
15	Hayes, M. J.	Sub-Inspector, George Town	53	124 0 0	29 June, 1863	29	59	18	8	82	13	4	
16	Henry, R.	Superintendent Telegraph Dept.	54	483 6 8	1 Sept. 1852	40	322	4	5	322	4	5	
17	Hewitt, T. E.	Chief Clerk, Customs	60	450 0 0	20 April, 1853	39	292	10	0	300	0	0	
18	Hogg, Jas.	Reader, Printing Department	55	258 6 8	22 Aug. 1854	38	163	12	3	172	4	5	
19	Honey, W. R.	Clerk, Audit Department	68	280 0 0	1 Jan. 1859	34	158	13	4	186	13	4	
20	Hunt, W.	Deputy Sheriff, Launceston	46	400 0 0	1 Jan. 1861	31	206	13	4	266	13	4	
21	Huxtable, C. H.	Colonial Storekeeper	72	400 0 0	29 July, 1856	36	240	0	0	266	13	4	
22	Jones, Alfred	Superintendent Gaol, Hobart	59	465 0 0	1 Aug. 1859	33	255	15	0	310	0	0	
23	Kidd, Mrs. E.	Teacher, Frederick st., Launceston	50	219 16 10 ^b	2 May, 1858	34	124	11	6 ^b	146	11	3	
24	Lovett, G. F.	Chief Clerk, Mines Department	52	400 0 0	1 Jan. 1859	34	226	13	4	266	13	4	
25	Lovett, Wm.	Auditor-General	67	666 13 4	18 Feb. 1841	51	444	8	11	444	8	11	
26	M'Donald, J. J.	Supt. Railway Telegraphs	52	346 10 7	21 Nov. 1862	30	173	5	3	231	0	4	
27	M'Phee, M.	Teacher, Battery Point	53	598 3 1 ^b	12 Oct. 1860	32	319	0	4 ^b	398	15	5	
28	Murray, W. W. F.	Clergyman, New Norfolk	72	250 0 0	15 Nov. 1850	42	200	0	0	200	0	0 ^c	
29	Newman, R.	Clerk, Chief Secretary's Dept.	73	330 0 0	26 July, 1841	51	220	0	0	220	0	0	
30	O'Boyle, J.	Administrator Charitable Grants	55	458 6 8	1 Feb. 1852	40	305	11	1	305	11	1	
31	Packer, J. E.	Under-Treasurer	54	550 0 0	1 Mar. 1859	33	302	10	0	366	13	4	
32	Reid, Albert	Dep. Commissioner Crown Lands	51	466 13 4	9 Aug. 1856	36	250	0	0	311	2	3	
33	Reid, Alex.	Accountant Treasury	59	433 6 8	1 April, 1858	34	245	11	1	288	17	9	
34	Reynolds, L.	Bench Clerk, Hobart	67	400 0 0	7 Mar. 1853	39	260	0	0	266	13	4	
35	Ridley, W.	Teacher, Hadspen	61	123 7 7 ^b	1 Sept. 1861	31	63	14	10 ^b	82	5	1	
36	Richardson, Geo.	Superintendent New Town Charitable Institution	51	426 0 0	1 May, 1861	31	220	2	0	284	0	0	
37	Roberts, Geo.	Teacher, Trinity Hill	57	333 1 4 ^b	1 Dec. 1855	37	205	7	10 ^b	222	0	11	
38	Rule, Jas.	Senior Inspector of Schools	62	450 0 0	21 May, 1855	37	277	10	0	300	0	0	
39	Seager, P. S.	Deputy Sheriff, &c.	57	458 6 8	14 May, 1863	29	221	10	7	297	18	4	
40	Smith, Rev. G. B. ...	Clergyman, Battery Point	66	310 0 0	20 Dec. 1858	34	200	0	0	200	0	0 ^c	
41	Smith, H. E.	Chief Clerk, Chief Secretary's Department	55	408 6 8	8 Jan. 1848	44	272	4	5	272	4	5	
42	Smith, Wm.	Secretary Public Works Dept.	45	408 6 8	12 Jan. 1863	29	197	7	3	265	8	4	
43	Solly, B. T.	Under-Secretary	72	566 13 4	1 Oct. 1857	35	330	11	1	377	15	7	
44	Stephens, Thos.	Director of Education	62	550 0 0	27 Sept. 1857	35	320	16	8	366	13	4	
45	Stops, F.	Secretary Law Department	59	516 13 4	21 Nov. 1855	37	318	12	3	344	8	11	
46	Strutt, Wm.	Government Printer	64	466 13 4	24 Dec. 1849	43	311	2	3	311	2	3	
47	Tarleton, Wm.	Police Magistrate	72	600 0 0	2 June, 1842	50	400	0	0	400	0	0	
48	Tibbs, C.	Senior Landing Waiter, Hobart	61	329 3 4	7 Jan. 1854	38	208	9	6	218	8	11	
49	Wheeldon, Wm.	Information Clerk, Hobart	59	216 13 4	23 Feb. 1861	31	111	18	11	144	8	11	
50	Willcombe, A.	Teacher, Plenty	58	132 7 10 ^b	10 Oct. 1856	36	79	8	8 ^b	88	5	3	
51	Windeatt, Wm.	Postmaster, Launceston	67	483 6 8	24 Aug. 1841	51	322	4	5	322	4	5	
							£	11,750	16	4	13,143	1	3

^a Less seven years, Royal Engineers' Department.

^b Teachers' Fees partially estimated.

^c Amount payable under "The State Aid Commutation Act."

NOTE.—The Pensions payable under "The Supreme Court and Judges Retiring Allowance Act," are not included in the foregoing Return.

NOTE.—The above Pensions have been calculated with reference to the known circumstances of each case; but the basis upon which the calculation has been made cannot be held to establish or debar a future claim on the part of any of the Civil Servants, or in any way to prevent a full and impartial consideration of every circumstance affecting his case when he may retire from the Service.

Audit Department, 15th November, 1892.

W. LOVETT, Auditor-General.

Legislative Council, November 17th, 1892.

SIR,

LOOKING at the Return of Officers laid upon the Table of the Council yesterday, I observe that my name has been omitted. On a former occasion, when the same thing happened in regard to a Return ordered in the House of Assembly, I forwarded a protest dated 28th November, 1873, to the then Colonial Secretary. I presume it is recorded in your Department. If not, I will supply a copy, if desired.

My replies to objections taken on the first occasion, and which I presume have influenced the Auditor-General at the present time are, very briefly, these :—

1. That my service commenced before the date of the abolition of Pensions, as a Clerk in the Governor's Office, and that there are precedents for the recognition of such service in regard to Pensions in the cases of Mr. Charles Arthur, as Private Secretary, and Messrs. W. T. Noyes and H. M. Hull, as Clerks.

2. That as to the short break (quite involuntary) which took place on the arrival of Governor Sir T. Gore Browne, there are at least two precedents in my favour,—that of Mr. Jean, who was allowed to count 11 months' break, though it was occasioned by his own voluntary act, and that of the Rev. A. Davenport, in whose service there was a break, caused by his transfer to Norfolk Island under the Imperial Government.

3. That my 16 years' laborious statistical work without any remuneration is a good ground for special consideration.

Under these circumstances I ask either that the Return may be amended so as to include my name, or that some other effectual means may be taken to prevent the serious injury which would be done to me by the publication of the Return as it now stands, inasmuch as it would be considered as expressing the authoritative decision of the Government in each case.

I have, &c.

E. C. NOWELL.

The Hon. the Chief Secretary.

Chief Secretary's Office, Hobart, 18th November, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of yesterday's date, calling my attention to the omission of your name in the Return of Officers entitled to Pensions.

The Return laid on the Table of the Council can be regarded only as containing the names of those Civil Servants who, without exception, are entitled to Pensions.

Your case is decidedly exceptional, and the Auditor-General would not have been justified in placing your name on that list.

When the time arrives for your case to be considered, there can be no doubt that the Government of the day will, in view of all the circumstances, do what is just and right.

I have, &c.

ADYE DOUGLAS.

E. C. NOWELL, *Esquire, Clerk of the Legislative Council.*

Legislative Council, November 21st, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 18th instant, in reply to mine of the 17th, with reference to the omission of my name from the list of Officers entitled to Pensions, laid upon the Table of the Council on the previous day.

It is obvious that if that list should go forth without explanation my case would be seriously prejudiced whenever the time comes for my retirement; and I therefore beg that you will be good enough to lay before the Council extract from my letter of November 28th, 1873, my first letter to you, with the correspondence arising out of it, and the copies, herewith forwarded, of Mr. Scott's communication to me and Mr. Whyte's Memorandum, and also to move the Council to have them printed with the Return of Officers.

I might add to what has already been said, that both before and after my being displaced on Sir T. Gore Browne's arrival, and pending re-employment, I sought and obtained leave of absence.

I have, &c.

E. C. NOWELL.

The Hon. the Chief Secretary.

Chief Secretary's Office, Hobart, 24th November, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 21st instant, requesting me to lay before the Legislative Council certain correspondence relating to your claim to Pension under the Superannuation Act when the time comes for your retirement from the Civil Service, in order that it may be printed with the Return of persons entitled to Pensions prepared by the Auditor-General, and laid before Parliament.

In reply, I desire to point out that it is not for me to question the accuracy of the Return referred to; but you are perfectly at liberty, should you so desire, to apply to any private Member of the Council to move for the production of the correspondence.

I have, &c.

ADYE DOUGLAS.

E. C. NOWELL, *Esquire, Clerk of the Legislative Council.*

Legislative Council, Hobart, November 24th, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your letter dated this day, with reference to the production of the correspondence in regard to my claim to a Pension, and to thank you for the permission to apply to a private Member to move for such correspondence—a permission of which I have gladly availed myself.

I have, &c.

E. C. NOWELL.

The Hon. the Chief Secretary.

Legislative Council Office, 18th November, 1863.

SIR,

MY health having been impaired by severe mental labour, close application to my duties, and anxiety and uncertainty caused by the unsettled state of my affairs for the last two years, I now feel it necessary to apply for leave of absence for three months, to enable me to seek change of air and the best medical advice which these Colonies can afford, so soon as my arrangements are completed.

As my present tenure of office will expire simultaneously with Mr. Wilmot's leave of absence at the termination of the present month, I beg respectfully to request from the Government an assurance that my appointment to any other office under this Government shall not be regarded as coming within the operation of the Pensions Abolition Act; and a reference to that Act will, I doubt not, at once show the reasonableness of such a request.

The first Section runs thus: "No person *who shall enter into the Civil Service* of this Colony after the commencement of this Act (1st August, 1863) shall be entitled to or receive any Pension, &c." Having been employed in the service of this Colony prior to the commencement of the Act, my being appointed to another sphere of duty can scarcely, I conceive, by any possible interpretation, be taken to mean "an entering" [*i.e.* for the *first time*] into the Civil Service of the Colony.

It is important to me to obtain an early decision on this point, inasmuch as, were it adverse, it would materially affect the value of any appointment which might hereafter be conferred upon me.

I have, &c.

E. C. NOWELL.

SUBMITTED for His Excellency's approval as regards the leave of absence applied for, to which the Members of the Executive Council have no objection to offer.

JAMES WHYTE.
18 November, 1863.

Approved.

I SHALL be obliged if the Members of the Executive Council will consider Mr. Nowell's case, and, if possible, give him some permanent or provisional appointment. When I made the reductions in my establishment it was with an understanding that Ministers would endeavour to provide for Mr. Nowell, whose services entitle him to every consideration.

T. G. B.
19 November.

(No. 109.)

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Colonial Secretary's Office, 24th November, 1863.

SIR,

I AM in receipt of your letter of the 18th instant, in which you apply for three months' leave of absence for the benefit of your health.

In reply, I beg to inform you that His Excellency has been pleased to grant the leave for which you have applied; but, with regard to the assurance which you are desirous the Government should give you that in the event of your services being again rendered available you will not be regarded as coming within the operation of the Pensions Abolition Act, I regret that I am not in a position to afford you any guarantee that your view in the matter can be conceded under the provisions of the 27th Victoria, No. 4.

I have, &c.

JAMES WHYTE.

E. C. NOWELL, *Esquire, Lowlands.*

Lowlands, Richmond, 16th February, 1864.

SIR,

THE three months' leave of absence granted to me at my request on the 22nd of November last being about to expire, I now beg to solicit an extension of such leave of absence until the 31st of March next inclusive.

I have, &c.

E. C. NOWELL.

The Hon. the Colonial Secretary.

SUBMITTED for the Governor's approval.

For the Colonial Secretary, absent,

B. TRAVERS SOLLY.
18 Feb. '64.

Approved.

T. G. B.
Feb. 19.

MEMO.

IN submitting Mr. Nowell's application for an extension of his leave of absence, the Assistant Colonial Secretary begs to observe that Mr. Nowell not being at present borne on the Abstracts of any Department, no loss to the Revenue will accrue by a compliance with his request; but inasmuch as while "on leave" his connection with the Public Service remains unbroken, he will, when again in active employment, still enjoy the advantage of serving under the provisions of the Superannuation Act: on the contrary, if his services are now discontinued, and at any future time he should be re-employed, he will come under the operation of the Pensions Abolition Act of last Session.

B. TRAVERS SOLLY.
18 Feb. '64.

Approved.

I TRUST Ministers will take an early opportunity to re-employ Mr. Nowell.

T. G. B.
Feb. 19.

Colonial Secretary's Office, 20th February, 1864.

SIR,

I AM directed to acquaint you that, in compliance with the request contained in your letter of the 16th instant, the Governor has been pleased to extend your leave of absence to the 31st proximo.

I have &c.

B. TRAVERS SOLLY.

E. C. NOWELL, *Esquire, Lowlands, Richmond.*

Legislative Council Office, November 28th, 1873.

SIR,

IN perusing the Return relating to Pensions laid upon the Table of the Council on 10th October last (Paper No. 67), I observed that my own name was omitted; and on referring to the Auditor as to the reason of the omission, I was informed by him that it was made in accordance with the decision of the late Colonial Secretary (30th July, 1873,) in these terms:—"As Mr. Nowell's permanent

appointment was not made until 16th May, 1864, and his previous temporary services were not continuous, he has no strict legal claim to a Pension."

This decision, if allowed to pass unchallenged on my part, may operate to my serious prejudice at some future time, when the facts are not so readily accessible as they are at present; and I therefore now beg to show cause why I cannot acquiesce in it.

The grounds upon which Mr. Scott based his decision appear to be three:—1. That my permanent appointment, having been made in 1864, was subject to the operation of the Pensions Abolition Act of 1863." 2. That my previous services were temporary. 3. That they were "not continuous."

Before proceeding to deal with these grounds categorically, I beg to state, for the information of the Government, the history of my connection with the Public Service of the Colony previously to the date of my appointment in 1864.

From August, 1852, to September 30th, 1857, I was in the employ of the Imperial Government; and, on Mr. Solly's appointment as Assistant Colonial Secretary, resigned in order to enter the Colonial Service, my chief inducements being its supposed greater permanence, and the expectation of a pension. With this view, I accepted for the time a lower salary, the loss being, if I remember rightly, £8 per annum; and my resignation deprived me of the compensation which I should have received had my services been dispensed with by the Imperial Government,—an event which, though not unexpected, was not likely to arise for a considerable time, since, when notice had been given to other temporary employes of an early discontinuance of their services, the special exception was made in my case that I should be the last to leave.

On joining the Governor's Establishment, on 1st October, 1857, my salary was £200 per annum, with an annual increase of £20 until it should reach £300. When it was £280, the arrival of Colonel (now Sir Thomas) Gore Browne with his Private Secretary displaced me, and I was appointed, on 1st March, 1862, Acting Clerk Assistant to the House of Assembly; and, on the 1st April following, Acting Clerk of Executive and Legislative Councils, during the absence on leave of Mr. Wilmot, on half salary—namely, £250—in which capacity I continued to act until 30th November, 1863, a period of one year and eight months.

I had at first lost £8 per annum by accepting service under the Colonial Government: on this second occasion I had to submit to a reduction of £30—after about 4½ years' service—by no choice or fault of my own.

On Mr. Wilmot's return, at the beginning of December, 1863, I was again displaced; but on his resignation I was permanently appointed, on May 16th, 1864, as Clerk of the Council. I understand the late Colonial Secretary's view to be that, because that appointment was made after the passing of the Pensions Abolition Act, I am not entitled to a Pension. But I urge, first, that that appointment was not a new one, but only the resumption (after a short interval, on a firmer basis) of one which I had held from 1862; and this contention acquires greater strength from Mr. Scott's own decision (to be presently quoted) in the case of Mr. Best, that temporary service might be counted provided that an officer were "*subsequently appointed to a permanent office.*" Secondly, that as two persons were jointly drawing the salary while Mr. Wilmot was absent on leave, one or the other was entitled to count the period of service for Pension. Mr. Wilmot, having resigned, did not, therefore I, as the joint recipient, am, I contend, entitled to do so. The then Colonial Secretary freely acknowledged to me, verbally, that if Mr. Wilmot was not in a position to claim this period, I should have a right to add it to my service.

The foregoing decision seems to be based upon the wording of Section 2 of the before-mentioned Act (27 Vict. No. 4) that after the 1st August, 1863, the Superannuation Act shall apply only to persons serving in an "established capacity in the permanent Civil Service of this Colony." It cannot obviously be based upon Section 1, because it would be absurd to maintain that it applied to me, since I "entered" the Service of the Colony long before the passing of the Act. That I was employed in the "permanent Civil Service" there can be no doubt. The only question is, was I serving from April, 1862, to November, 1863, in an "established capacity" in such permanent Civil Service? The view of the late Government seems to have been that, as I was only acting for another, I was not so serving, and if the arrangement had been only a private one between Mr. Wilmot and myself it would have been unassailable. But I submit that as I was appointed by the Governor in Council, and drew my moiety of the salary from the Treasury under the Governor's Warrant, I was in the same position, for the time being, as any other officer of the Civil Service. My appointment was the act of the Government itself and my status was officially recognised; and I contend therefore that I was serving in an "established capacity." But if I was in an "established* capacity" in "the permanent Civil Service of this Colony," I am entitled to the benefit of the Superannuation Act.

* "Establish (among other meanings), make firm, ratify."—*Johnson, Webster.*

One argument will be sufficient to show the injustice which would spring out of the opposite view. Had I first entered the Service and been appointed absolutely, only on 31st July, 1863, my claim to a Pension would have been a matter of course, since there could have been no room for doubt. But I entered the Service six years earlier; and therefore, after that period, I should be in a worse position than, if in the supposed case, I had had no previous service at all! Moreover, I should suffer a double detriment to the loss of half salary, and the anxiety attendant upon being shifted about at the convenience of others or the exigencies of the Public Service, would be added the deprivation, after spending some of the best years of my life in the employ of the Government, and in a most anxious and laborious work, of my hard-earned Pension, after having depended upon it for 16 years, as a means of subsistence when mentally or physically worn out. It is impossible to imagine that the Parliament, in passing the Act abolishing Pensions, could ever have contemplated that it would so affect any one then in the Civil Service. Mine is altogether an exceptional case, of which no counterpart can ever arise in this Colony.

If I have succeeded in making it clear that I was serving in an "established capacity," while acting for my predecessor, the second objection as to the temporary nature of my service, is effectually disposed of: the more so, as the objection is quite outside the Act, and as the "temporary" appointment was afterwards made permanent. But here, fortunately, I am not left to argument alone: I can produce the decision of the late Colonial Secretary, given under the same circumstances, in regard to the service of Mr. H. E. Best. "Mr. Best's appointment," the Auditor wrote, on March 18th, 1872, was a *temporary* one, and his pay was charged to Incidental Expenses under "Contingencies." Can Mr. Best's name be introduced into the Pension Return? * Mr. Scott replied: "With respect to the case of Mr. Best and others in a similar position, my opinion is, that where an officer has been employed in any Department of the Public Service the full period of such service may be taken into consideration in calculating his Pension, although he may not, during the earlier portion, have been paid as a permanent officer specifically referred to in the Estimates, provided he shall have been subsequently appointed to a permanent office, and that his services under the Government have been continuous." (14th July, 1873).

This decision of itself leads to the third objection, that my service was not continuous, there being an interval between December, 1863, and May, 1864. In reply, it might be sufficient to refer to the precedent established in Mr. Jean's case, where he was allowed to count the early portion of his service, notwithstanding that there was a break of 11 months between it and the later portion. But I beg also to refer to the fact that there is nothing in the Superannuation Act requiring the service to be continuous. Seeing, therefore, that the break occurred through no voluntary action on my part, it cannot legally exclude me from the benefit of the Act.

There is another consideration which, I submit, ought to have great weight in dealing with my case. Since 1st January, 1867, (nearly 7 years), the additional labour of compiling the Statistics has been imposed upon me, my salary remaining the same in amount as before. This duty keeps me laboriously and anxiously employed during from six to eight months out of every year, besides entailing references, correspondence, &c. at all times; and the mental and physical wear and tear occasioned by it is far greater than that of the two other duties to which it has been superadded.

I would also beg to refer to the 1st Section of "The Superannuation Act," which, by providing that in all questions arising under it the decision of the Governor in Council shall be final, gives His Excellency all necessary power to deal with each case upon its merits; and I have already shown that there is nothing in the Act 27 Vict. No. 4 to bar my claim.

I desire to place these facts and arguments on record, in order that they may be available for reference at a future time when I may have occasion to prosecute my claim to a Retiring Allowance.

I have, &c.

E. C. NOWELL.

The Hon. the Colonial Secretary.

MEMORANDUM.

THE statements contained in Mr. Nowell's letter of the 28th November, 1873, addressed to the Honorable the Colonial Secretary, are correct; and I agree with his argument thereon.

Whatever may be the letter of the law as bearing upon his case, of this I am certain, that it was never the intention of its framers that an officer in the circumstances stated should be deprived of his right to a Pension through a short break in his service, which arose from no fault of his own, but from the exigencies of the Public Service, which for a very short period indeed failed to provide suitable employment for him.

* I would request special attention to these words in connection with the reply, which recognises not only temporary but even *contingent service not appearing on the Abstracts of the regular Establishment.*

His services in the ordinary sense of the term had not been dispensed with: they were only in abeyance. Had this not been so, Mr. Nowell would have been entitled to, and doubtless would have claimed, compensation under the Superannuation Act.

The "Pensions Abolition Act" of 1863 was initiated by me when Colonial Secretary and Premier; but certainly it was never contemplated either by myself or by any of my Colleagues that it should interfere with any existing legal or equitable rights which might flow therefrom.

JAMES WHYTE.
12th February, 1874.

To E. C. NOWELL, Esq.

New Town, 8th April, 1874.

MY DEAR SIR,

I HAVE perused the papers which accompanied your letter of 13th February on the subject of your claim to a Pension under the Superannuation Act,—viz., copy of a letter from you to the Colonial Secretary, dated 28th November, 1873, and of a Memorandum by the Hon. James Whyte, of 12th February, 1874. My absence in the N.W. has caused delay in my reply.

I must explain that the Pension Paper, No. 67, of last Session, was settled under the following circumstances:—The House of Assembly had, in 1871, ordered a Return of all prospective Pensions; and I found, on my taking office, a portfolio of Queries from the Auditor on cases presenting intricate or doubtful points. I saw that any decision at that time could not be a permanent settlement of these points, or anticipate the future exercise of discretionary powers in any case when it is finally considered by the Governor in Council: therefore, on purpose to enable the Return to be compiled and furnished to Parliament as speedily as possible, I replied to the Auditor's Queries according to the principles which would guide my decision if it had then to be given on the information supplied to me; I also specially intimated that no claim should be established or case debarred from consideration on account of that Return. Any other course would have caused indefinite delay.

Your claim was not the only one which I had to disallow or reduce; and it has since occurred to me that the Return, to be complete, should be supplemented by a list of those gentlemen not included who consider themselves entitled to Pension, and also of those who claim a higher amount than is therein assigned to them.

You refer to Mr. Best's and similar cases. In my Memorandum on that Paper I merely wished to define under what circumstances "temporary" and "contingent" services could be included in calculating the Pensions; and I adopted the principle which, I understand, has always been the practice, and which I believe to be just, that the length of service of those in an established capacity should be based upon the whole period of their continuous employment; holding that the designation "temporary" applies to an established position if the services have merged naturally and without a break into a situation with an apparently more fixed title. For this view continuous service is indispensable; and, *vice versa*, I hold that disconnected services were terminated and satisfied at the time of their interruption, unless proof is shown to the contrary. The whole of my Memorandum on Mr. Best's paper requires to be read together if any argument is to be founded upon it.

The case of Mr. Henry is probably more analagous to yours than the preceding. A break of 5 or 6 months occurred in Mr. Henry's services, but it was shown to be occasioned solely by his receiving necessary instruction in the duties of a Department to which he was transferred.

I infer from the documents you sent me (especially Mr. Whyte's Memo.) that the chief new points of your case as now put for my review are,—(1) that your services were not dispensed with in 1863 in the ordinary sense of the term, but were merely in abeyance till suitable employment offered; and (2) that, in consequence, you did not then claim from the Colonial Government compensation to which you were entitled.

Without attempting to discuss the letter of the Pension Acts, I am ready to admit that, if you establish these points, the spirit of the law would justify a favourable consideration of your claim. I recognize the importance to the public of retaining skilled and trustworthy officials in the Service, and incline to as liberal an interpretation as the law will admit.

I remain,

Yours sincerely,

JAMES R. SCOTT.