

SESS. II.—1887.
NEW ZEALAND.

RETIRING-ALLOWANCE TO MR. A. D. AUSTIN

(PAPERS RELATING TO).

Presented to both Houses of the General Assembly pursuant to "The Pensions Act, 1884."

PROPOSAL *re* THE GRANTING OF A PENSION, LAID BEFORE PARLIAMENT IN PURSUANCE OF SECTION 4 OF "THE PENSIONS ACT, 1884."

HIS Excellency the Governor in Council having approved of the retirement from the public service of Mr. A. D. Austin, lately the District Engineer of the Public Works Department for the Canterbury District, on the ground that he is incapable, from bodily infirmity, to longer discharge the duties of his office, it is hereby notified to the General Assembly that it is proposed to grant to the said A. D. Austin an annual retiring-allowance, as from the 1st October last, of £247 10s., in terms of "The Civil Service Act, 1866," and the Acts amending the same.

The official report of the Controller and Auditor-General on the case, required to be laid before Parliament in pursuance of section 5 of "The Pensions Act, 1884," is hereto appended; also copies of opinions given by the Solicitor-General and the Hon. the Attorney-General in reference to the matter.

The amount of the proposed allowance is based on the total length of Mr. Austin's service, in accordance with the opinions expressed by the Hon. the Attorney-General and the Controller and Auditor-General; and the first year's allowance is to be charged with the repayment of the sum of £200, which amount was presented to Mr. Austin by the Provincial Government of Nelson on his retiring from the service of that Government in 1866.

Public Works Office, Wellington, 7th December, 1887.

EDWIN MITCHELSON,
Minister for Public Works.

SIR,—

Audit Office, 26th October, 1887.

I have the honour to enclose herewith the papers relating to Mr. Austin's claim for pension, together with my report thereon, required by the 5th section of "The Pensions Act, 1884," to be laid before Parliament.

I have, &c.,

JAMES EDWARD FITZGERALD,
Controller and Auditor-General.

The Hon. the Minister for Public Works.

BEING required by the 5th section of "The Pensions Act, 1884," to make an official report on the case of any pension proposed to be granted, I report as follows:—

The facts of the case are correctly stated by Mr. O'Connor in his memorandum attached. The opinion of the Solicitor-General is also attached. It is admitted that Mr. Austin is entitled to pension under the Act of 1866. The only question is as to the length of service which he is entitled to have taken into account in computing the amount of the pension. The Solicitor-General considers that his services, for the purpose of this computation, commenced in March, 1871.

By the 6th section of the Civil Service Act of 1878 the sections 30 and 31 of the Act of 1866, which entitle an officer retiring to count the time of his provincial service, are kept in force as applying to officers who—(a) were on the 23rd September, 1878 (the time of the passing of the Act), in the Civil Service; (b) who entered the service prior to the above date (14th November, 1871); (c) who would be entitled to claim under "The Civil Service Act, 1866."

I do not see that it is anywhere alleged that Mr. Austin does not satisfy these three conditions. The only fact which throws any doubt that I can see on his claim is that he was paid and accepted the sum of £200 on leaving the service of the Nelson Government. If this were compensation for loss of office, it would so far invalidate his claim. Mr. Austin denies that it was more than a gratuity, and no facts are in evidence which enable me to offer any opinion on the point. The objection that he forfeited his claim by having ceased for some years to be in the general or provincial service is, it seems to me, answered by the 18th section of "The Civil Service Act, 1866," which specially provides for such a case, and declares that on reappointment the service shall be taken to be continuous.

JAMES EDWARD FITZGERALD,
Controller and Auditor-General.

26th October, 1887.

Statement of Case for Opinion of Solicitor-General re Mr. Austin's Application for a Retiring-Allowance.

1. MR. AUSTIN was appointed an Assistant-Surveyor in the General Government service on the 1st September, 1855, and was transferred, with other officers of the Survey Department in the province, to the service of the Provincial Government of Nelson on the 1st July, 1856 (*vide* A).

2. He remained in the service of the Provincial Government of Nelson until the 19th April, 1866, when, owing to ill-health, and the refusal of the provincial authorities to grant him sufficient

leave to enable him to regain his health, he was compelled to resign. He was, in fact, practically discharged, having been called upon to resign (*vide* Mr. Greenfield's letter, dated 14th May, 1887, (Vol. CB). Some short time after he left the Provincial Government service the Provincial Council voted him a sum of £200 as a testimonial in recognition of its high sense of the faithful manner in which he had discharged his duties (*vide* B). He states, however, that this was not intended to be regarded as compensation for loss of office.

4. He was appointed a draughtsman in the Land Transfer Department of the General Government service on the 27th March, 1871, and held that appointment at the time that he was appointed a Resident Engineer in the Public Works Department on the 21st October, 1872 (*vide* C and CA).

5. He was offered temporary employment in the Public Works Department, at a weekly salary, on the 5th March, 1872 (*vide* D), which he accepted by telegram the following day (*vide* E).

6. He was formally appointed by the Governor in Council as Resident Engineer of the Nelson and Foxhill Railway on the 13th November, 1872 (*vide* F), and received stamped letter of appointment, to take effect from the 21st October, 1872, on the 11th December of that year (*vide* G).

7. He has been continuously in the service of the General Government (Public Works Department) ever since, and on the 10th ultimo notice was sent to him that it was the intention of the Government to dispense with his services on the 30th September next (*vide* H).

Mr. Austin had, however, been in communication with the Engineer-in-Chief as to his intention of applying to be allowed to retire on a pension, owing to continued ill-health, for some little time prior to this notice being sent to him; and, in pursuance of that intention, he now asks to be allowed to retire on a pension, instead of receiving compensation for loss of office.

Mr. Austin has not at present attained the full age of sixty years, but he submits a medical certificate of incapacity to further efficiently perform his duties, in accordance with section 35 of "The Civil Service Act, 1866" (*vide* I). He considers that he is entitled to a retiring-allowance, and that section 18 of "The Civil Service Act, 1866," allows him to include in his total length of service the ten months that he was in the General Government service in 1855-56; and that section 6 of "The Civil Service Acts Amendment Act, 1878," allows him to include his provincial service; thus bringing up the total length of service in respect of which he can claim a retiring-allowance to slightly over twenty-seven years.

The points on which the Solicitor-General is requested to advise are as follow: (a.) Is Mr. Austin entitled to a retiring-allowance? (b.) If so, should it be computed under the provisions of the Civil Service Acts of 1858, 1861, or 1866? (c.) In respect of what length of service should the allowance be computed?

8th June, 1887.

C. Y. O'CONNOR.

Opinion of the Solicitor-General.

I HAVE perused and carefully considered the papers in Mr. Austin's case, to which I have been referred by the foregoing statement, and in my opinion Mr. Austin would be entitled to a retiring-allowance only as from the date he re-entered the Civil Service of the colony, in March, 1871. Although it appears he was originally the holder of a permanent office in the Civil Service, and was then transferred to the Nelson provincial service, yet I think his resignation of his office therein in 1866 precludes his being allowed to reckon his provincial service and the service prior thereto in any claim for retiring-allowance.

It may be that Mr. Austin was treated rigorously by the Nelson Government, and that his resignation was insisted on, still it effectually severed his connection with the public service of the province, and the rigour of the treatment by the province cannot be set up as against the Government of the colony. But for the fact of this resignation I think Mr. Austin would have had a legal claim to a retiring-allowance as from the date of his original appointment in 1855.

My answers, therefore, to the several questions put, are: (a.) Mr. Austin will be entitled to a retiring-allowance on the production of satisfactory evidence to the Governor in Council that he is incapable, from bodily infirmity, of discharging the duties of his office, and that such infirmity is likely to be permanent. (b.) Such pension should be computed under "The Civil Service Act, 1866." (c.) From the date of his appointment as Chief Clerk and Draughtsman in the Land Registry Office at Christchurch, in March, 1871.

13th June, 1887.

W. S. REID.

Minute by the Hon. the Minister for Public Works.

REFER this file to the Hon. the Attorney-General for his opinion.

15th October, 1887.

E. MITCHELSON.

Opinion of the Hon. the Attorney-General.

I THINK Mr. Austin is entitled to a pension for his General Government services, and that his provincial service may be reckoned if he returns the compensation of £200 paid him by the Nelson Provincial Government.

21st November, 1887.

FRED. WHITAKER.

Minute by the Under-Secretary for Public Works.

MR. AUSTIN is willing to pay the £200 out of his first year's pension.

28th November, 1887.

C. Y. O'CONNOR.

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