

1882.
NEW ZEALAND.

COMPENSATION TO PROVINCIAL OFFICERS

(LEGAL OPINION AS TO).

Presented to both Houses of the General Assembly by Command of His Excellency.

The CHAIRMAN of the PUBLIC PETITIONS COMMITTEE to the UNDER-SECRETARY.

SIR,—

Public Petitions Committee, 6th June, 1882.

I have been directed by the Public Petitions Committee to request the Government to obtain the opinion of the Law Officers of the Crown on the following, viz. :—

The 13th section of "The Abolition of Provinces Act, 1875," provides for compensation being given to provincial officers if their services are dispensed with after abolition has taken place in consequence of such abolition.

1. What is the legal interpretation of this? Must an officer, to become entitled to compensation, have his services dispensed with immediately on abolition taking place, viz., on the 1st November, 1876, or is it discretionary on the part of the Government to grant it at any time after that date?

2. Could compensation be legally given under section 13 of "The Abolition of Provinces Act, 1875," after the Abolition of Provinces Act came into operation, to any officer whose services were dispensed with, without the office he held being abolished?

3. If a provincial officer continues to hold his office after the date of abolition, and the office he holds is abolished subsequently, has such officer any claim to compensation under the 13th section of "The Abolition of Provinces Act, 1875," for his services as a provincial officer?

I have, &c.,

T. KELLY,

The Under-Secretary.

Chairman, Public Petitions Committee.

Extract from "The Abolition of Provinces Act, 1875."

Section 13. If, after the date of the abolition hereunder of any province, the services of any officer in the employment of the colony, or of the Provincial Government of the abolished province, are dispensed with in consequence of the abolition of such province, he shall be paid out of the ordinary revenue of the colony such sum as he shall be entitled to under the terms of any engagement with the province entered into previous to the fifteenth day of September, one thousand eight hundred and seventy-five, and in default of any such agreement, then for each year of service one month's salary, according to the rate payable to him at the time of such abolition.

Extract from "The Financial Arrangements Act, 1876."

Section 34. Every officer and person employed in the service of the Government of any province shall, on the date of the abolition of such province, become and be an officer or person employed by the Government of the colony; but no such officer or person shall by virtue of this provision acquire any rights under "The Civil Service Act, 1866."

Section 35. The Governor may, if he deems it necessary, until the end of the next session of Parliament continue and carry on any service heretofore carried on by any Provincial Government, and may until such period retain in the public service any officer or servant theretofore employed in the service of any province, at the same rate of salary as that which he is receiving when this Act comes into force; and the Colonial Treasurer shall issue and pay the cost of any such service or any such salary accordingly.

Section 36. No person who may be a member of the Legislative Council or the House of Representatives, and whose services may be retained under the preceding section, shall, in consequence of such retention of services, be subject to any liability, penalty, or disqualification under "The Disqualification Act, 1870," or any Act repealing or amending the same: Provided that every such person shall resign such office, place, or employment on or before the thirty-first day of December next.

Extract from "The Civil Service Acts Amendment Act, 1878."

Section 8. No person who was a provincial officer on the coming into operation of "The Abolition of Provinces Act, 1875," and transferred to the Civil Service on the coming into operation of the Act last mentioned, shall be entitled to any retiring allowance under "The Civil Service Act, 1866," or any Acts repealed by such Act.

The UNDER-SECRETARY to the CHAIRMAN of the PUBLIC PETITIONS COMMITTEE.

SIR,—

Colonial Secretary's Office, Wellington, 15th June, 1882.

I have the honor to acknowledge the receipt of your letter of the 6th instant, and am directed to enclose herewith copy of an opinion by the Solicitor-General on the subject of the payment of compensation to provincial officers under "The Abolition of Provinces Act, 1875."

I have, &c.,

HUGH POLLEN,

(for the Under-Secretary.)

T. Kelly, Esq., M.H.R.,

Chairman, Public Petitions Committee, Wellington.

Enclosure.

OPINION ON QUESTION No. 17, 1882, from the PUBLIC PETITIONS COMMITTEE.

1. IN answer to the first question, I think that, in order to entitle a person to compensation under section 13 of "The Abolition of Provinces Act, 1875," it is not necessary his services should have been dispensed with on the date when abolition took place.

Reference must be made to "The Financial Arrangements Act, 1876" (sections 34, 35, and 36). Under section 35 there is express power to retain the services of provincial officers for a stated period, and it seems clear that Parliament did not contemplate the possibility of dispensing with the services of provincial officers immediately upon the Abolition Act coming into force.

2. The answer to the second question must, I think, be in the affirmative.

Section 13 of "The Abolition of Provinces Act, 1875," was brought into operation when services were dispensed with in consequence of abolition. There was no necessity that the *office* held should be abolished, and I presume it frequently happened that, upon abolition taking effect, an officer was dispensed with simply because the duties of his office could readily be discharged by some other officer. This was, in fact, a consequence of abolition.

3. To this question only a general reply can be given, as it would depend upon the facts of any particular case whether compensation should be given or withheld, having regard to the views hereafter expressed.

Upon the whole question I may observe that the sections of the Financial Arrangements Act, above mentioned, were evidently intended to enable the Executive Government to perfect the arrangement of the public service necessitated by the abolition of the provinces. Section 34 directed that provincial officers should become officers of the Colonial Government, thus giving the latter a necessary control over persons who had not previously been in the colonial service. The provision of the latter part of the clause is ambiguous: possibly it meant that provincial officers should not, by reason of the transition from provincial to colonial service, have any right to pension. This part of the enactment does not, however, affect the questions put to me, and it was rendered quite clear by a subsequent provision in "The Civil Service Amendment Act, 1878" (section 8).

Taking the clauses as a whole the effect of them seems to be,—

(a.) If an officer were permanently transferred to the Civil Service of the colony, then he would come under the ordinary law affecting civil servants, and would have had no claim for compensation under the Abolition of Provinces Act;

(b.) If his services were retained temporarily under section 35 of the Financial Arrangements Act, and then dispensed with, the officer would receive the compensation provided for by the Abolition of Provinces Act.

I think that, in so far as the question of compensation to provincial officers was concerned, the enactments under consideration ought to have been liberally construed.

For instance, if the services of an officer had been retained beyond the period prescribed in section 35, and then were dispensed with, the officer would still, in my opinion, have been entitled to compensation.

It may be assumed that the Legislature intended to do what was fair and equitable in all cases which could reasonably come within the scope of the provisions referred to.

I have dealt with the question generally; there may have been particular cases in which the facts would have made a difference, having regard to the views above expressed.

W. S. REID.

Crown Law Office, 14th June, 1882.