

No. 43.

The COMMISSIONER of AUDIT to the Hon. the COLONIAL SECRETARY.

Re *Dr. Pollen's Retiring Allowance.*

SIR,—

Audit Office, 6th September, 1876.

The computation of Dr. Pollen's retiring allowance depends on the question which has already been raised in the case of Mr. Gisborne: whether the time during which a Civil servant has held political office, without retiring from his office under the Civil Service, is entitled to count under the Acts of 1858 and 1861, under which the claim in both cases arises.

There does not appear to me, after a careful study of the Acts, to be anything which can preclude the counting of this time.

The words relied on as proving the contrary occur in the 9th section of the Act of 1858: "This Act shall not apply to offices whose holders have seats in the Executive Council," &c. I think this must be held to mean "whose holders have, in virtue of such seats," &c., and is intended to refer to Ministerial offices only.

The non-payment of salary during the time of holding a seat in the Executive Council does not seem to me to affect the question, as it is always by arrangement that the officer entitled to the lower salary abandons it for the higher. If the Minister had not been receiving salary as Minister, he would receive the salary of his permanent office.

There is a maxim of law that the acceptance of a higher office vacates a lower one—thus a colonel ceases to be a captain, and a bishop to be a rector; but I am not aware whether this could be applied to a political appointment.

Nor is it our duty to express any opinion as to the propriety or legality of the position on constitutional grounds of the double character of a political and civil office being united.

Taking the Acts as they stand, I am unable to say that Dr. Pollen has not been a Civil servant within the meaning of the Acts of 1858 and 1861, during the time for which he claims, although doubt may fairly be raised on the point, and it is clearly one that ought to be settled.

I have, &c.,

The Hon. the Colonial Secretary.

JAMES EDWARD FITZGERALD.

REFERRED to the Solicitor-General, to consider the point raised by the Audit. It must be remembered that the Hon. Dr. Pollen, when formerly in the Ministry, never held a portfolio, and never ceased to perform the active duties of his Civil offices. He always resided in Auckland during the recess, and regularly attended the office. I understand from him that, not desiring to have a doubtful point ruled in his favour, he waives all the time of his Civil service since his accession to the Vogel Ministry, in which he has held a portfolio, except the six months from May to November, 1873, which period is always allowed to officers in leaving the Civil Service, and which he has, as it appears to me, a right to claim.—G. S. COOPER.—8th September, 1876.

MR. COOPER.—I have already given an opinion as to the construction of the 9th section of "The Civil Service Superannuation Act, 1858." That opinion was given in Mr. Gisborne's case, and was to the effect stated by Mr. FitzGerald in the within memorandum. I have no doubt on the point as to the proper construction of the section, and that it only refers to Ministerial offices. I do not think there is any other matter calling for remark from me herein.—W. S. REID.—20th September, 1876.

REFERRED to the Commissioners of Audit.—G. S. COOPER.—21st September, 1876.

The opinion of the Solicitor-General in Mr. Gisborne's case has not, to the best of my recollection, been before me.

MR. ANDERSON.—Calculate Dr. Pollen's retiring allowance in accordance with the Solicitor-General's opinion.—J. E. F.—21st September, 1876.

THE Commissioners request to be informed how the sum of £2,475 is made up.—CHARLES KNIGHT, Commissioner of Audit.—22nd September, 1876.

£400, Government Agent; £100, Receiver of Land Revenue; £300, Paymaster, Imperial Pensions, &c.; £25, Native Frauds Commissioner.—DANIEL POLLEN.—27th October, 1876.

MEMORANDUM (No. 175) for the COMMISSIONER.

IN examining Dr. Pollen's claim for retiring allowance, I observe from his memorandum of this morning that he includes his salary as Paymaster of Imperial Pensions, in the aggregate amount on which he proposes to compute his pension. As you are no doubt well aware, this salary is not paid by the colony, but out of an allowance of $2\frac{1}{2}$ per cent. debited to the Imperial Government in the Pension Expenses Account. It is not voted by the Colonial Parliament. The account referred to is an open one, on which there may be a profit, but no part of the $2\frac{1}{2}$ per cent. has, so far as I am aware, found its way to the revenue. I therefore think Dr. Pollen's claim under this head is very questionable, and request your instructions on the subject. Beyond this, no question of consequence seems to arise. If the Imperial Pensions salary is disallowed, the computation will stand thus: 25th November, 1876, to 11th May, 1873, 16 years 24 weeks; out of service, 31st December, 1864, to 24th June, 1865, 25 weeks: total service, 15 years 51 weeks. Average salary of office for three years (one-third of £1,575), £525, of which one-third is £175, which will be the pension for a service of fourteen and under seventeen years. It will be observed that it requires one full year and upwards to bring the period of service up to seventeen years, which is required to give the next higher rate of pension, so that the six months to 10th November, 1873, if conceded (which is questionable), would not affect the result.—J. G. ANDERSON.—27th October, 1876.