

except in the case of two or three Acts, one of which is the Civil Service Act and another the Military Pensions Act. There are only one or two of these which are not, properly speaking, Appropriation Acts, and, in regard to them, we have held that where it has been the practice for many years to pay under them we should not be acting rightly in refusing to make the payments as usual.

168. Then you say that there is no appropriation clause for these payments?—There is the tacit consent of Parliament, for many years, to accept them as Appropriation Acts; and there is not the slightest doubt that at the time these Acts were passed Parliament considered them to be Appropriation Acts. It is only during the last few years that the words, “to be paid out of moneys appropriated by Parliament for the purpose,” have been used in Acts, which, like the Civil Service Act, create claims on the Government, but do not specify out of what funds they are to be met.

169. You draw your own salary under the Public Revenues Act?—Yes.

170. You will find there a distinct and specific appropriation clause, to the effect that money shall be applied for that purpose out of the consolidated revenue?—Yes.

171. Is there any such appropriation clause in any of these Acts?—No, but the Acts were passed by the Legislature, who were under the impression that they were Appropriation Acts.

172. And in the Appropriation Act there was always a clause specifically authorizing the payment of salaries out of certain funds, and stating what funds they should be paid out of?—Yes; but, in the public accounts laid before Parliament every year, there appear under the head of “Permanent Charges” specified amounts which have been paid under the Acts to which I have referred, and Parliament has never taken exception to them.

173. Do you think the practice is irregular?—I think the practice has arisen from a loose system. These payments used to be made under about a dozen of these Acts, which were supposed to be of the nature of permanent Appropriation Acts.

174. Is it not possible that, when Parliament passed these Acts, they thought that proper appropriation clauses would be inserted in the Appropriation Act?—No; because it is not possible to make a correct estimate for services of this kind. A pension is never voted by the House year by year. You could not have an Act, giving a man the right to receive, year by year, a pension, and at the same time say that the House shall decide year by year whether he shall have it or not. The only things that are wanting in these Acts are the words which are now contained in a permanent Appropriation Act, “the Treasurer shall issue and pay the same.”

175. *Mr. Moss.*] What do you consider constitutes an office held under the Colonial Government and in the Civil Service of the colony? Is an office for which an annual appropriation is not made an office held under the Civil Service?—Properly speaking, an officer is not in the Civil Service unless his salary is appropriated. The Civil Service Act does not apply to certain persons, and, amongst others, to “any person paid by fees or commission.”

176. In your opinion, the Paymaster of Imperial Pensions was not an officer of the Colonial Government?—No, not as Paymaster of Imperial Pensions; but Dr. Pollen held other offices, in virtue of which he was a Civil servant.

177. And yet the opinion given by the Law Officer of the Crown, on the 30th October, 1876, is to this effect: “I understand that the offices in respect of which Dr. Pollen claims retiring allowance are all offices held under the Colonial Government, and in the Civil Service of the colony?”—I find that I have made a mistake. I was going according to the Act of 1866, while Dr. Pollen’s claim was made under the Acts of 1858 or 1861.

178. I notice that there is an inconsistency between a memorandum of Mr. Anderson, on page 18 of the papers, and the opinion of Mr. Reid, the Law Officer, on page 19. Mr. Anderson distinctly states that this salary is not paid to Dr. Pollen by the colony; and, when that memorandum is referred to the Law Officer by Mr. Batkin, the Law Officer bases the opinion which he gives on the statement that all the offices held by Dr. Pollen were offices in the Civil Service, but it is not shown how he arrived at that opinion?—I think that instead of the words “I understand,” &c., Mr. Reid should have used the words, “It is my opinion,” &c. So far as the Act of 1861 is concerned, I considered that this officer was in the Civil Service.

179. Then you consider Dr. Pollen to have been in the Civil Service when he was acting as Paymaster of Imperial Pensions?—No, I do not think so, if you put it to me on strictly legal grounds. The money was paid to him as it was, only for the purpose of relieving the colony of a certain amount of expense.

180. *Hon. W. Johnston.*] How did it happen that the salary of Dr. Pollen as Paymaster of Imperial Pensions was issued from the Treasury by the Controller without being voted by the House?—I have already explained that the colony was simply acting as the agent of the English Government in the matter.

181. Do you know that it is proposed to appropriate that money this year, and that disbursements from that fund are set forth in the Estimates?—No, I have not yet seen the Estimates.

182. *Mr. Oliver.*] The money which was to be given to the colony by the English Government for the payment of these pensions was to be given for services rendered, was it not?—Yes.

183. And the colony consequently became the paid agent of the English Government?—Yes.

184. Just in the same manner that the Public Trustee earns certain moneys for the colony by doing certain work?—Yes.

185. Then the money which was paid to the colony became, or ought to have become, colonial revenue?—It was revenue received for services which the Government of the colony had no right to perform. That is to say, they had no authority from the General Assembly to perform this service. The whole transaction is an illegal one, as I have already explained. There was no authority except the plenary power which is given to all Governments to do that which they think is best for the State; and in this case they, I suppose, considered it best to enter into an arrangement of the kind with the Imperial Government, by which no loss could be incurred by the colony.

186. And, as a matter of fact, the performance of this service resulted in a profit to the colony?—Yes, it earned a profit to the colony, because the amount earned was greater than the salary which was paid to Dr. Pollen for doing the work.