

1881.  
NEW ZEALAND.

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## REPORT OF PUBLIC ACCOUNTS COMMITTEE ON PENSIONS.

(TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE)

*Brought up 16th August, 1881, and ordered to be printed.*

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### ORDERS OF REFERENCE.

*Extracts from the Journals of the House of Representatives.*

THURSDAY, THE 7TH DAY OF JULY, 1881.

*Ordered*, "That it is not desirable that the House should come to any decision as to the course to be taken with reference to Dr. Pollen's pension until the circumstances under which pensions have been granted to the Hon. Sir William Fitzherbert, the Hon. Mr. Gisborne, and Mr. Domett have been considered by the Public Accounts Committee and reported to this House."—(*Mr. Saunders.*)

But, until the report of the Public Accounts Committee on the additional pensions referred to has been dealt with by the House, no further payment should be made on account of any or either of such pensions, and that the Committee do report to the House upon the pensions of Mr. Domett, Sir William Fitzherbert, and Mr. Gisborne, within three weeks.—(*Mr. J. B. Fisher.*)

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THURSDAY, THE 28TH DAY OF JULY, 1881.

*Ordered*, "That the Public Accounts Committee have leave to postpone for fourteen days the bringing up of their report in the matter of certain pensions, referred to them on the 7th day of July instant."

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THURSDAY, THE 11TH DAY OF AUGUST, 1881.

*Ordered*, "That the Public Accounts Committee have leave to postpone the bringing up of their report upon the subject of pensions for one week."

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### REPORT

THE Public Accounts Committee, which has been directed by the House to consider and report upon the pensions granted to Sir William Fitzherbert, the Hon. Mr. Gisborne, and Mr. Domett, has the honour to report,—

That, on the 2nd December, 1869, Mr. Fitzherbert applied to the Colonial Secretary for a superannuation allowance, having on the 2nd November previous tendered his resignation of the office of Commissioner of Crown Lands. He based his claim on sections 31, 32, and 33 of "The Civil Service Act, 1866." To entitle him to a pension under that Act it was necessary, under sections 32 and 33: (1.) That he should have attained the full age of sixty years at the date of his resignation; (2.) That he should have been fifteen years in the Civil Service of New Zealand. If those conditions were fulfilled, the superannuation allowance would be "an annual allowance of half the average annual salary received by him during the two years preceding his superannuation."

With regard to the first of these conditions, Mr. Fitzherbert seems to have been in his sixtieth year, but not "of the full age of sixty years," when he tendered his resignation, which was accepted to take effect nearly eight months afterwards.

With regard to the second condition, the public records show that Mr. Fitzherbert joined the Provincial Service of Wellington as Secretary (which was held by the Attorney-General in office when the pension was granted to be equivalent to the Civil Service of the colony, in computing pensions) on 3rd November, 1853. He held the political office of Colonial Treasurer from 24th November, 1864, to 16th October, 1865, in Mr Weld's Ministry; and again held political office as Colonial Treasurer and Commissioner of Stamp Duties, and member of the Executive, from 24th August, 1866, to 28th June, 1869, in Mr Stafford's Ministry.

The opinions of both Mr Attorney-General Stout and Mr. Attorney-General Whitaker are clearly that the acceptance of political office is incompatible with the position of a Civil servant, and the latter authority expressly lays down that the "holder of an office accepting another office incompatible with it *ipso facto* vacates the first."

It is evident, therefore, that the entire service of Mr Fitzherbert, deducting the time during which he held political office, does not exceed thirteen years. It may be further observed that, as Mr Fitzherbert held the political office of Colonial Treasurer on the 8th October, 1866, (the date of the Act under which he claims,) and was, therefore, not a Civil servant at that time, he was not entitled, under the provisions of section 31 of that Act, to claim the time during which he held office in the "Provincial Civil Service of Wellington" in the computation of his retiring allowance. If that time is not counted, his length of service would only be six years three months and eight days.

With regard to the amount of pension, Mr Fitzherbert was granted a retiring allowance on the basis of half the annual salary he drew as a Civil servant; but the law was not complied with in this particular, inasmuch as during the two years preceding his superannuation he was, for a large portion of the time, a Minister of the Crown, and, consequently, not in receipt of salary as a Civil servant; and, further, he was, during the last seven months of his computed time, absent on leave without salary.

The evidence shows that the Ministry who recommended the granting of the allowance were aware that the tenure of political office was an important feature of the case; and, in granting the allowance, they considered that the case should be specially treated, partly because their own judgment was in favour of that course, and partly because their immediate predecessors had granted Mr Fitzherbert leave, as a Civil servant, whilst he was on a mission in his capacity of Minister of the Crown.

The Committee thinks it right to point out that the Governor's warrant granting the allowance is inaccurate in its recitals, inasmuch as it states, as a ground for granting the pension, that Mr Fitzherbert had "been actually employed in the public service of New Zealand for the period of sixteen years," which could not be the case if his political service were not included; and further states that he had, "during the last two years of such service," been employed at an average salary of £650 per annum.

Mr Domett's pension of £559 10s. 6d. per annum, claimed under "The Civil Service Superannuation Act, 1858," and "The Civil Service Amendment Act, 1861," was granted on the 14th August, 1871. He entered the colonial service on the 14th February, 1848, and claimed pension from that date, or for twenty-three years and six months; but the claim for the time he held the political offices of Premier and Colonial Secretary, in 1862-1863, was disallowed; and his time was computed at twenty-two years and two months' service. The time that he was absent from his office in Nelson to attend the meetings of the House of Representatives, in Auckland and Wellington, during some months of each year for six years, does not appear to have been deducted.

He claims to have held the office of Secretary of Crown Lands "during almost all the period" that he was Premier, and therefore it would appear that the higher office was not then treated as incompatible with the lower; but he was duly re-appointed Secretary for Crown Lands on the 24th September, 1863, only 55 days after he had ceased to hold the offices of Premier and Colonial Secretary; and, on every other point, his pension appears to have been granted in accordance with the provisions of the two Acts of 1858 and 1861, under which it was claimed.

Mr. Gisborne claimed his pension on the 30th March, 1875, under "The Civil Service Amendment Act, 1861."

The Civil Service Act of 1866, clause 29, in repealing the Act under which Mr Gisborne claimed a pension at the age of 50 years, reserves the rights "of persons appointed to offices before the passing of that Act." But Mr. Gisborne, at the time of claiming his pension, was not holding any office that he held in 1866, when that Act was passed; and, according to the legal opinions quoted below, was therefore not entitled to claim under it, even if he had not been deemed to have *ipso facto* vacated all subordinate office, by the acceptance of the political office of Colonial Secretary on the 5th July, 1869. Without raising the latter point, the Solicitor-General, Mr Reid, writes on the 3rd November, 1876: "I have given this matter very careful consideration, and have come to the conclusion that retiring allowances can only be claimed, under the Acts of 1858 and 1861, in respect of offices held prior to the passing of the Act of 1866. So long as a person holds the office he held at the time of the passing of the Act of 1866 he would be entitled to the privileges by that Act preserved to him; but where, subsequently to that Act, such person accepts a new office, I think he cannot, in respect of the new office, claim the privileges of the Acts of 1858 and 1861." This legal opinion is confirmed by the Attorney-General (Mr. Whitaker) who, on the 6th November, 1876, writes: "I am of opinion that, in

its legal aspect, as a matter of interpretation of Statutes, the above opinion of the Solicitor-General is correct in stating the law as it stands at present. The only remedy, it appears to me, is a declaratory Act of the Assembly. I think that should be prepared as soon as the Assembly meets again." No such declaratory Act was passed in 1877, the year following the granting of the pension; but, in 1878, the Civil Service Acts Amendment Act was passed, which was apparently intended to cover this and similar cases.

The Committee has also to place before the House an opinion of the Solicitor-General on Dr Pollen's case, which was not furnished to the Committee until after its report of that case of the 1st July last. The reason the Committee had not this opinion before it was, that it was not filed with the papers relating to the case, and its existence was unknown to the Government.

In submitting to the House the accompanying papers, and the foregoing summary of the facts in the respective cases referred to it, the Committee expresses its opinion that, although there has been irregularity in the granting of the pensions to Sir William Fitzherbert, the Hon. William Gisborne, and the Hon. Dr Pollen, the Committee does not consider that the circumstances of the several cases are such as would render it advisable to repudiate liabilities based on the Governor's warrants, and, therefore, recommends that all doubts as to the legality of those pensions should be removed by a special Act.

15th August, 1881

E. C. J STEVENS,  
Chairman, Public Accounts Committee.

## MINUTES OF PROCEEDINGS.

TUESDAY, 12TH JULY, 1881.

THE order of reference of the 7th July was read.

On the motion of Mr. Montgomery, *Resolved*, That the Chairman should see Sir William Fitzherbert, to ascertain if he wishes to attend the Committee to make any statement as to his pension; and, if so, to arrange a time with him accordingly.

A letter from the Hon. Mr. Gisborne, of the 11th July, was read, offering to give evidence before the Committee. *Resolved*, That the letter be acknowledged, and that the Hon. Mr. Gisborne be informed that the Committee will be happy to meet him to-morrow, if he wishes to make any statement respecting his pension.

On the motion of Mr. Reader Wood, *Resolved*, That all information be obtained with regard to Sir William Fitzherbert's appointment as Commissioner of Crown Lands, his resignations, and his re-appointments, if any; also, the dates of his several appointments to the Executive Council of the colony and as Minister, and his resignations of the same. That similar information be obtained in regard to the several appointments held by Messrs. Gisborne and Domett respectively.

On the motion of Mr. Saunders, *Resolved*, That in all three cases the quantity of leave, on full pay or otherwise, granted to the pensioners respectively, during their terms of service, be ascertained for the information of the Committee. That, in all three cases, the sums of money, if any, received by the pensioners respectively, concurrently with their pensions, be ascertained for the information of the Committee.

WEDNESDAY, 13TH JULY, 1881.

The Chairman reported that he had seen Sir William Fitzherbert, who had appointed to attend the Committee next Friday, at 11 a.m.

Hon. Mr. Gisborne, being in attendance according to appointment, made a statement with regard to his own pension and those of Mr. Domett and Sir William Fitzherbert; and he was subsequently examined by various members of the Committee on the subject of the pensions generally.

FRIDAY, 15TH JULY, 1881.

Sir William Fitzherbert was in attendance according to appointment, and, having made a statement with regard to his pension, he submitted himself for examination by the members of the Committee.

On the motion of Mr. Montgomery, *Resolved*, That the Hon. Sir William Fox be requested to attend the Committee at 11 a.m. on Wednesday, the 20th instant, until which date the Committee should adjourn.

WEDNESDAY, 20TH JULY, 1881.

The Chairman read letters from the Treasury of the 14th July, and the Colonial Secretary's Office, of the 19th July, giving the information asked for on the subject of pensions, and reported that the Hon. Mr. Gisborne desired to make some additions to his evidence. It was resolved that permission be granted.

On the motion of Mr. McLean, *Ordered*, That the following papers be obtained for the Committee, viz.:—(1.) Application form, filled up by Sir William Fitzherbert when applying for his pension. (2.)

Copy of Governor's warrant granting such pension. (3.) Auditor-General's sanction to the payment.

Sir William Fox was present by appointment, and was examined by the Committee respecting matters relating to pensions during the time he was a Minister of the Crown.

On the motion of Mr. Reader Wood, *Resolved*, To summon the Auditor-General to give evidence to-morrow, and meanwhile to have the papers printed for distribution to members of the Committee.

THURSDAY, 21ST JULY, 1881.

The Chairman read the Governor's warrant granting Sir William Fitzherbert's pension.

Mr. FitzGerald, being in attendance, was examined by the Committee on the subject of the pensions.

It was resolved to summon Dr. Knight for the next meeting.

TUESDAY, 26TH JULY, 1881.

Dr. Knight and the Hon. Mr. Gisborne were in attendance, and gave evidence on the subject of pensions.

The Chairman read a letter and memorandum from Mr. FitzGerald.

On the motion of Mr. Reader Wood, *Resolved*, That all the evidence in the pensions cases, not already printed, be printed.

WEDNESDAY, 27TH JULY, 1881.

Moved by Mr. Reader Wood, That Sir William Fitzherbert claimed his pension under the provisions of "The Civil Service Act, 1866." To entitle him to the pension he draws, he should have been sixty years of age, and have served fifteen years at the time it was given to him. Sir William Fitzherbert was appointed Commissioner of Crown Lands on the 24th June, 1859. He was appointed to the political office of Colonial Treasurer, with a seat in the Executive Council, on the 24th November, 1864. He had consequently served less than five and a half years at the time of that appointment; and, according to the law laid down both by the present and late Attorney-General in Dr. Pollen's case, Sir William Fitzherbert vacated his office of Commissioner of Crown Lands by accepting the political office of Colonial Treasurer. The opinion of Mr. Whitaker is, "An officer accepting another office incompatible with it, *ipso facto* vacates the first; and I am of opinion that the office of Minister was incompatible with the other offices held by Dr. Pollen." And again, the same authority says, "Incompatibility is the test in all cases. In Dr. Pollen's case, the offices of Premier and Colonial Secretary, &c., were, in my opinion, incompatible with the offices of Government Agent, &c." Mr. Attorney-General Stout is of the same opinion; he says, in reference to Dr. Pollen's case, "he could hardly be called a Civil servant, because he was a Minister; and it would have been incompatible with his duties as Minister to have been, at the same time, a servant to his colleagues." Sir William Fitzherbert's claim seems to be thus effectually disposed of, and he cannot, in the opinion of the Committee, be considered entitled to a pension.

On the motion of Mr. Ballance, *Resolved*, That the Committee adjourn until the evidence taken by the Committee be printed.

TUESDAY, 2ND AUGUST, 1881.

The order of reference of 28th July was read.

Mr. Reader Wood obtained leave to amend his motion by the insertion, after the word "years," of the words "his provincial service being barred by section 31 of the Civil Service Act."

The discussion of the motion was postponed until next meeting.

On the motion of Mr. Montgomery, *Resolved*, That any opinions given by the Solicitor-General on any of the pensions under consideration, not already in evidence, be obtained from the Colonial Secretary's Office.

Moved by Mr. McLean, That the Law Officers of the Crown be asked if the pensions to Mr. Domett, Sir William Fitzherbert, Mr. Gisborne, and Dr. Pollen have been granted, and are being paid according to law

And the question being put, the Committee divided:—

*Ayes*, 3.—Major Atkinson, Mr. McLean, Mr. Saunders.

*Noes*, 3.—Mr. Ballance, Mr. Montgomery, Mr. Moss.

The Chairman gave his casting vote with the *Noes*.

So it passed in the negative.

On the motion of Mr. McLean, *Resolved*, That the Attorney-General and Solicitor-General be asked to attend and give evidence on the pension cases.

THURSDAY, 4TH AUGUST, 1881.

The Chairman reported that, owing to the illness of the Solicitor-General, he could not ask him to attend at present.

The Hon. F. Whitaker (Attorney-General) was in attendance, and, in course of examination by members of the Committee, gave his opinions with regard to the question of pensions.

TUESDAY, 9TH AUGUST, 1881.

The Chairman read the Solicitor-General's opinion upon the subject of Dr. Pollen's pension, dated 25th June, 1878.

Moved by Mr. Saunders, That all the words after "That" in Mr. Reader Wood's motion, be omitted.

And the question being put, That the words proposed to be omitted stand part of the question, it passed in the negative.

Moved by Mr. Saunders, That the following words be inserted after the word "That": "on the 2nd December, 1869, Mr. Fitzherbert applied to the Colonial Secretary for a superannuation allowance under 'The Civil Service Act, 1866. To entitle him to a pension under that Act it was necessary, under clauses 32 and 33: (1.) That he should have 'attained the full age of sixty years at the date of his resignation. (2.) That he should have been fifteen years in the Civil Service of New Zealand. (3.) That the superannuation allowance should be equal to 'half the annual salary received by him (as a Civil servant) during the two years preceding his superannuation.' None of these conditions have been complied with. With regard to the first of these conditions, we find that Mr. Fitzherbert took a seat in the Ministry of Mr. Weld, as Colonial Treasurer and Commissioner of Customs, on the 24th of November, 1864, and thereby, in the recorded opinions of Attorneys-General Messrs. Stout and Whitaker, *ipso facto* vacated the lower and subordinate office of Commissioner of Crown Lands, when, by his own reckoning, he had only attained the age of fifty-four years and four months. On the 24th of August, 1866, when only fifty-six years old, we find that he again accepted office as Colonial Treasurer, which he held until the 28th of June, 1869. We also find that, on the 17th of November, 1869, he gave in his resignation as Commissioner of Crown Lands, whilst he was still under the age of sixty years. With regard to the second qualification, we find that Mr. Fitzherbert had only held a colonial office in the Civil Service for five years and five months, when, on the first occasion, he *ipso facto* vacated that office by accepting the higher and the political office of Colonial Treasurer. If the period between the 16th of October, 1865, and the 24th of August, 1866 (during which he did not hold the political office of Colonial Treasurer), be added, his period of colonial service can only count as six years three months and eight days. The claim of Mr. Fitzherbert to benefit by the 31st section of the Civil Service Act of 1866, and under which he claims to add the period of his provincial service, is evidently barred by the fact that he was not a Civil servant but a political officer, at the time the Act was passed. The Act expressly confines the privilege claimed to 'any officer now in the colonial service:' the date of the Act being the 8th October, 1866, when Mr. Fitzherbert was Colonial Treasurer. Under the third condition, Mr. Fitzherbert could legally receive no superannuation allowance, as he had received nothing as a Civil servant 'during the two years preceding his superannuation,' and upon which alone the Act upon which he claims authorizes the amount of pension being calculated. Mr. Domett's pension of £559 10s. 6d. per annum, claimed under 'The Civil Service Superannuation Act, 1858, and 'The Civil Service Amendment Act, 1861,' was granted on the 14th August, 1871. He entered the colonial service on the 14th February, 1848, and claimed pension from that date, or for twenty-three years and six months; but the claim for the time he held the political offices of Premier and Colonial Secretary, in 1862-63, was disallowed, and his time computed at twenty-two years and two months' service. The time that he was absent from his office in Nelson to attend the meetings of the House of Representatives, in Auckland and Wellington, during some months of each year for six years, does not appear to have been deducted. He claims to have held the office of Secretary of Crown Lands 'during almost all the period that he was Premier; and, therefore, it would appear that the higher office was not then treated as incompatible with the lower; but he was duly re-appointed Secretary for Crown Lands on the 24th December, 1863, only fifty-five days after he had ceased to hold the offices of Premier and Colonial Secretary; and, on every other point, his pension appears to have been granted in accordance with the provisions of the two Acts of 1855 and 1861, under which it was claimed. Mr. Gisborne claimed his pension on the 30th March, 1875, under 'The Civil Service Amendment Act, 1861.' The Civil Service Act of 1866, clause 29, in repealing the Act under which Mr. Gisborne claimed a pension at the early age of fifty years, reserves the rights of 'persons appointed to offices before the passing of that Act.' But Mr. Gisborne, at the time of claiming his pension, was not holding any office that he held in 1866 when that Act was passed, and was therefore not entitled to claim under it, even if he had not been deemed to have *ipso facto* vacated all subordinate office by the acceptance of the political office of Colonial Secretary, on the 5th July, 1869. Without raising the latter point, the Solicitor-General, Mr. Reid, writes on the 3rd November, 1876: 'I have given this matter very careful consideration, and have come to the conclusion that retiring allowances can only be claimed under the Acts of 1858 and 1861 in respect of offices held prior to the passing of the Act of 1866. So long as the person holds the office he held at the time of the passing of the Act of 1866, he would be entitled to the privileges by that Act preserved to him; but, where subsequently to that Act such person accepts a new office, I think he cannot, in respect of the new office, claim the privileges of the Acts of 1858 and 1861. This legal opinion is confirmed by the Attorney-General, Mr. Whitaker, who, on the 6th November, 1876, writes: 'I am of opinion that in its legal aspect, as a matter of interpretation of Statutes, the above opinion of the Solicitor-General is correct in stating the law as it stands at present. The only remedy, it appears to me, is a declaratory Act of the Assembly. I think that should be prepared as soon as the Assembly meets again.' No such Act was prepared or submitted to Parliament; and the pension thus illegally granted has ever since continued to be illegally paid, and Mr. Gisborne continues to receive a pension of £466 13s. 4d. per annum ten years before he was entitled to it under any existing law. From the opinions so plainly stated by the Solicitor- and Attorney-General in 1876, as well as of the more recent opinions of Messrs. Stout and Whitaker, that any office in the Civil Service was *ipso facto* vacated by Mr. Gisborne, when he accepted the higher political office of Colonial Secretary on the 15th July, 1869, it will be evident that any pension granted to Mr. Gisborne has not been granted according to law. But if Mr. Gisborne had been entitled to a pension under the Acts of 1858 and 1861 (and for this purpose they cannot be separated), he could only have been entitled to it on such terms as those Acts provided; and he must

have come under the provisions of clause 4 in the Act of 1858, which would clearly have forbidden him to draw his pension as he did, whilst receiving £1,250 a year as the salary of the high political offices he held in the Grey Ministry. As the colony will no doubt consider itself responsible for the actions of its Governments, however impolitic or illegal they may have been, it becomes desirable that an Act should be passed legalizing the pensions that have been granted to Sir William Fitzherbert and the Hon. Mr. Gisborne, and removing all doubts as to the legality, the due date, and the amount of Dr. Pollen's pension. At the same time it is most desirable that clause 36 of "The Civil Service Act, 1866," should be amended, so as to distinctly comprise the same provisions as those of clause 4 in the repealed Civil Service Superannuation Act of 1858, the provisions of which clause it was evidently and most naturally intended to re-enact. The Attorney-General considers the spirit and intention of the existing Act, clause 36, to be the same; but, in practice, it has proved insufficient to prevent Sir William Fitzherbert and the Hon. Mr. Gisborne drawing their superannuation allowances, at the same time that they were receiving large annual payments from the colony for political or other services: advantage having been taken in their cases of the more technical circumstance that their office did not bring them under the category of Civil servants."

On the motion of Mr. McLean, *Resolved*, To postpone the consideration of this motion for the present.

On the motion of Mr. Montgomery, *Resolved*, That the Chairman and Mr. Saunders prepare a statement of the facts in the pension cases upon which to base the Committee's report.

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THURSDAY, 11TH AUGUST, 1881.

The Chairman read the statement prepared by Mr. Saunders and himself on the facts of the pension cases.

Mr. Saunders having withdrawn his motion of the 9th August, by leave, it was moved by Mr. Saunders, That, although there has been irregularity in the granting of the pensions to Sir William Fitzherbert, the Hon. W. Gisborne, and the Hon. Dr. Pollen, the Committee does not think that the circumstances of the several cases are such as would render it advisable to repudiate liabilities based on the Governor's warrants, and therefore recommends that all doubts as to the legality of those pensions should be removed by a special Act.

Amendment proposed by Mr. Moss, That, all the words after "That," in the first line, be omitted, for the purpose of inserting the words, "the circumstances under which these pensions were granted vary in each case; and it is therefore just to the pensioners that the cases should be judged separately, and a separate report and recommendation on each be made to the House."

And the question being put, That the words be so omitted, the Committee divided.

*Ayes*, 2.—Grey, Moss.

*Noes*, 6.—Atkinson, Ballance, Hall, McLean, Montgomery, Saunders.

So it passed in the negative.

Amendment proposed by Sir George Grey, To add the following words to the motion: "and there are no circumstances that would in any case have justified the repudiation of the pension granted to the Hon. Mr. Gisborne."

Amendment negatived.

And the question being put, That Mr. Saunders's motion be agreed to, the Committee divided.

*Ayes*, 6.—Atkinson, Ballance, Hall, McLean, Montgomery, Saunders.

*Noes*, 2.—Grey, Moss.

So it was resolved in the affirmative.

On the motion of Mr. Montgomery, *Resolved*, That the Chairman report to the House in accordance with the draft report passed by the Committee.

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## MINUTES OF EVIDENCE.

### PUBLIC ACCOUNTS COMMITTEE ON PENSIONS.

Mr. E. C. J. STEVENS, Chairman.

WEDNESDAY, 13TH JULY, 1881.

The Hon. W. GISBORNE, M.H.R., examined.

1. *The Chairman.*] Mr. Gisborne, the Committee would like to know whether you wish to make any statement in regard to this question of the pension to yourself?—I wrote to the Committee in order to explain something that seemed to me to be not explained by the correspondence before the Committee; but, as I stated, if the Committee desire it, I am willing to give evidence on any point which may require further explanation.

2. Then, perhaps, you had better make a statement on the subject.—The subject divides itself into two parts: one with reference to my action as a Minister of the Crown on the subject of the pensions to Mr. Domett and Sir William Fitzherbert; and the other with regard to the circumstances under which I obtained my own pension. My view was that, with regard to the pensions granted under Acts of the General Assembly, the duty of the Government of the day was to see that the conditions of the Act under which the pensions were granted were fully complied with, and, for that purpose the Government had to consult the Law Officers of the Crown and the Auditor-General. In regard to the pensions of Mr. Domett and Sir William Fitzherbert, I acted in the manner indicated. Although my name as Colonial Secretary appears on the letters before the Committee, it was not written by me on my sole responsibility. At every step I consulted my colleagues, and gave effect to their unanimous opinion. That is what I have to say generally with regard to the pensions of Mr. Domett and Sir William Fitzherbert. With respect to my own pension, I, of course, in claiming that, was only acting as a Government officer or a private individual. I had been in the Government service for about thirty years, and stated my case conscientiously, and allowed the Ministry of the day to decide what their action upon it should be. They proceeded, I think, upon the principles which guided other Governments in deciding these matters. They consulted the Law Officers and the Auditor-General, and acted, as far as I know, in accordance with the opinion of those officers. In my claim, I described the time during which I acted as Commissioner of Annuities as part of my service. When I first took a political office I, for a time, actually severed my connection with the Civil Service, and afterwards I was offered the post of head of the Government Insurance Department. For that I received no salary, because I was already receiving payment as a member of the Ministry. I may remark here, that I did considerable work in organizing and conducting the Insurance Department; and I received no remuneration for it. In order to show that I did not spare myself in the matter of work, I may say that for ten months I had no Under-Secretary, and I was doing the work of that officer as well as my own. In accepting the Civil office of Commissioner of Annuities, I thought that, in justice to myself and my family, I was not wrong in accepting a Civil office, after having been for so long a time in the Government service, in order to complete an already lengthened term of service, and to entitle myself to a pension. When I made the claim, the Atkinson Government were in office, and there was, I believe, no question as to the legality of any part of the claim which I made, except in regard to that portion of the time during which I performed the duties of Commissioner of Annuities, as well as those of a Minister of the Crown. After I had left the Ministry, and had accepted office as a Civil servant, I stood as a candidate for a seat in the House of Representatives, and was elected; and I then told the Colonial Secretary that, under these circumstances, to prevent misconception, while my claim was in abeyance, I would withdraw it. With regard to some doubts which have been raised, respecting the pensions of some other Civil servants who have resigned one office and taken another, the Committee are probably aware that that point was settled by an Act called "The Civil Service Acts Amendment Act, 1878." That Act was brought in by the Grey Government, before I joined it, and passed by the House in 1878. That Act settles the doubts raised by the Solicitor-General with regard to the pensions of certain officers of the Government. My pension was granted under the Act of 1861. I believe it has been insinuated that myself and other officers caused, or used great influence to cause, these Acts to be passed. In respect of that, I have to say that the Act of 1858 was founded on some English Act, and, in regard to the Act of 1861, I wish to say that, though I was Under-Secretary at the time, I did not attempt to use any influence to have it passed, nor was I consulted about it. The Act of 1866 was the outcome of certain inquiries and investigations made by a Commission, which was appointed to inquire into the whole working of the Civil Service. I was a member of that Commission, and we did all that we thought was fair, and were guided in a great measure by the Acts of other Legislatures in regard to the pensions. I was not a member of the Legislature when the Act of 1866 was passed. I think it is only right that I should state another matter, which, perhaps, the Committee has not yet been made aware of, and that is with regard to the right of a Minister of the Crown to draw his pension, and also his salary at the same time. In 1879, when Sir George Grey was Premier, and I was for three months in his Ministry, this question arose; and I referred to the fact that, in his own case, his Imperial pension to a certain extent ceased while he drew

the colonial salary as Premier of New Zealand. He explained that that was in consequence of a special provision in the Imperial Act, and he said he believed that the colonial law was not the same as the English on the subject. He wrote a memorandum to the Solicitor-General, and, I think, to the Auditor-General, asking them to look into the matter, and see what the law was; and he said I should not be wrong in drawing whatever the law allowed. They decided that, as the New Zealand law stood, a Minister was entitled to draw his pension as well as his salary, and, consequently, for a time I drew my pension as well as my salary as a Minister. That, I think, embodies all I have to say with regard to the pensions of myself and the other persons named.

3. Do you remember the dates of your resignations of office?—I resigned in June, 1869, the office of Under-Secretary, and five months afterwards I accepted the office of Government Insurance Commissioner. I held that office until I left the service. I had been many years ago a Commissioner of Crown Lands, and a chief clerk in the Colonial Secretary's Office. I held the office of Under-Secretary until I resigned in 1869.

4. Could you tell the Committee what quantity of leave of absence you received, on full pay or otherwise?—When I was Commissioner of Crown Lands in Auckland, in 1850 and 1851, I received eighteen months leave of absence on half-pay, and that was the only occasion on which I obtained leave of absence to any extent either on full or half pay. It was usual in the case of officers who had been a long time in the service to give such officers leave of absence on full pay for a time, in order to give them time to make arrangements for their retirement. I had three months on that account. As I have said, the only extended leave I have had was for eighteen months on half salary.

5. You took political office in June, 1869?—Yes, it was in 1869.

6. It would appear from the papers that you took the office of Government Annuities Commissioner in November of that year?—Yes.

7. And of course you resigned your post in the Civil Service before that?—Yes. I resigned in June, but the law at the time was to the effect that, if an officer left the service and was again appointed to it, the time he had previously served would be reckoned if he applied for a pension.

8. But there was a break in the continuity of your service?—Yes, of five or six months.

9. In your letter to the Secretary to the Treasury, of 27th November, 1876, you say that there was a distinct understanding that, while you performed the duties of Commissioner of Annuities in addition to those of Minister, that time should count in the computation of your pension?—I say that that was what was told me by the Premier, Sir William Fox, and other Ministers at the time. They told me that the time during which I held office in the Civil Service would count in respect of my pension, notwithstanding that at the same time I was a Minister of the Crown. In making my claim to Major Atkinson, I understood that the Law Officers were of opinion that the service in question would count. I took the Insurance Office on the strength of that understanding.

10. Do I understand you to imply that you risked the possible interpretation of the law, when you took political office, as to your right to take Civil office?—I was under the impression that the law allowed it, and I was aware that the same thing had been done in the case of other officers.

11. On the very face of these papers, Sir William Fox, who was, I believe, the head of the Government which you joined, made a minute in reference to the case of Sir William Fitzherbert, to the effect that this case ought not to be drawn into a precedent?—In Sir William Fitzherbert's case there was no pretence that he was doing the work of the Commissioner of Crown Lands, because even when he was in the colony the duties were, I believe, for some time performed by a deputy; but when he went to England I am certain that they were done by a deputy.

12. *Mr. McLean.*] I see by your application for a pension, that you state you joined the service on July 12th, 1847. What were your appointments when you first joined?—I came first as private secretary to Lieutenant-Governor Eyre. I may say, with reference to that, that there had been other cases in which Civil servants had been attached to Governors personally, long before any Civil Service Act was passed, and in those cases the time they had so served had been allowed to count in regard to their pensions.

13. Which Act do you claim to retire under?—The Civil Service Act of 1861.

14. Then you claim this £2,250 as for three years of service under that Act?—I claim under the Act which allowed an officer to retire at the age of fifty years. That is the Act of 1861, and that Act says that an officer who has reached the age of fifty years may retire.

15. How is this £2,250 made up?—I suppose it was made up from information supplied by the Treasury. That information can be obtained from the Treasury.

16. You resigned your non-political office in June, 1869, in order to accept office in the Ministry?—Yes.

17. And up to that time you had been twenty-two years in the Government service?—Yes.

18. And after that, you were a Minister from some time in June until the following November?—Yes; but I was a Minister longer than that. I was a Minister from 1869 till 1872.

19. You retired from the Civil service in 1869, and after that you were a Minister for three years?—Yes, for three years and three months. When the Act (under which the office of Government Insurance Commissioner was created) was passed, I was offered the position, and I was told that the time during which I acted in that capacity would count when the question of my pension came up.

20. In 1869 you severed your connection with the Civil Service?—Yes.

21. And you did not make any application for your pension, reckoning your service of the previous three years?—No, because I could not do so. I was not fifty years of age, and I could not produce a medical certificate showing that I was in ill-health.

22. In what year was the first Government Insurance Act passed?—In 1869; but that was afterwards repealed, and another was passed in 1872.

23. And it was passed soon after you became a Minister?—It was passed in the same session of Parliament.

24. Was that the year in which you assumed office as a Minister?—Yes, I assumed office in November of the year in which the Act was passed.

25. Was the salary voted for the office in that year?—The Act, when first passed, stated that the Governor in Council should declare a salary for the office not exceeding £800 a year, and Sir Julius



Vogel stated that he was going to advise the Governor in Council to make it £800 a year; and I expressed the opinion that it should only be £700 a year. In the following year, however, the House expressed a wish that the salary, among others, should be left to it instead of its being fixed by the Governor in Council. From that time the salary was always put down at £700 a year, and an asterisk was always put against the item. The note of explanation was to the effect that the salary would not be drawn during the time the Government Insurance Commissioner was also a Minister of the Crown.

26. Well, if this salary was not drawn every year, what was the reason of its being put on the Estimates every time they were brought down?—It was considered fairer to let the House know that the matter was subject to a vote of the House.

27. But what was the object of putting it on the Estimates, if it was known that the money would not be drawn?—It was known that I might withdraw from the office at any moment; and it was considered proper that the House should know that the Government Insurance Commissioner was a paid officer, and, if I resigned it, it might be handed over to any person who was not a political officer, and who, therefore, would have to be paid a salary. As I have already explained, it was always understood that, while the office was held by a political officer, there would be no salary drawn.

28. In 1872 you became Commissioner of Annuities?—I was already the Commissioner, but in that year I became entitled to draw salary for the office. I was entitled to retire a short time before I did so, and I held office longer than was necessary. In fact, I went on a special mission at the request of Sir Julius Vogel, who was then Premier.

29. You pointed out some clause in one of the Civil Service Acts which enables a man, after severing his connection with the Civil Service, to count his previous service if he is reappointed?—Yes, I think that is provided for in the Act of 1858. Take a case like this, for example: a person may have been in the service for twenty years, but through some circumstance his connection with the service is severed; afterwards he may be reinstated in the service, and in that case he would be entitled to claim his previous service. But, of course, the time during which he was absent from the service would not count.

30. If a man resigned from the Civil Service, and went into business on his own account and failed, and afterwards re-entered the service, years afterwards, would you consider that he was entitled to count his former service?—If Ministers reappointed him to the Civil Service, unless they made a special condition to the contrary, they would of course be aware that he would be entitled to claim under the Act the portion of his service that he had given previous to leaving the Government employ.

31. Then, when you accepted the office of Commissioner of Annuities, it was agreed between you and the Government that in claiming your pension you should count your former service?—There was no agreement; but I was in the position of a Civil servant, who could according to law claim that the time he had formerly served should count when he completed his service, and put in his claim for a pension.

32. You say that, during the time you were a Minister, Sir George Grey got opinions from the Law Officers of the Crown and the Auditor-General. Were those "opinions" left amongst the documents in the Government offices?—I think so.

33. *Mr. Reader Wood.*] You have spoken with reference to Sir William Fitzherbert's pension?—Yes, and also with regard to Mr. Domett's pension.

34. Then, with regard to your letter to Sir William Fitzherbert, dated December 22nd, which I understood you to say was in accordance with the views of the Government at the time: In that letter you say, in the beginning of the third paragraph, on page 4, "The Government, however, willingly admit that your case is special, inasmuch as it involves the case of an officer holding his office (in respect of which he claims pension) while also a Minister of the Crown, and that you have also special claims for consideration." Do you mean by that that there should be special claims outside of the law?—What I meant by the word "special" was this: that, if the law allowed it, there was great reason why his case should be specially considered, because he had gone to England on matters of great colonial importance; and I thought, with him, that he was entitled to count the time during which he was in England, but during which also he held the position of Commissioner of Crown Lands in this colony. Mr. Stafford promised that he should be allowed to count that time. If the Law Officers had been of opinion that it was contrary to law for him to do so, we should have had to appeal to the House on the subject.

35. It appears to me that if the law allowed it, he could demand it, and there could be no speciality about it?—We held that we could not do anything unless the Law Officers advised that the thing could be done legally. Of course, in using the expressions which I did, I could not have meant that the Government were entitled to break the law.

36. It appears also that Sir William Fox, who was, I think, the head of the Government, used somewhat similar language. He says, "The circumstances of the case are exceptional, arising out of Mr. Fitzherbert having held responsible offices in the General Government, and his special agency in England. The case ought not to be drawn into a precedent."—It was, no doubt, an exceptional case, and as such he may have thought it inadvisable that it should occur again. I certainly was not of opinion that we were acting outside the law.

37. *Hon. W. Johnston.*] I understood you to say that, when you resigned your appointment in June, 1869, the effect of your resignation was to deprive yourself of any claim which you might have on the colony?—Yes; if the Ministry had been turned out of office between June and November, I should have had no legal claim.

38. And that the effect of your fresh appointment as Commissioner of Annuities was to revive any rights which you had previously?—Yes.

39. May I ask whether, at the time you resigned in June, 1869, you were aware that you were going to take office in the Fox Government?—Yes, I was going to take office with Sir William Fox, Sir Julius Vogel, and Sir Donald McLean. Those gentlemen were already Ministers.

40. Who was Prime Minister?—Sir William Fox.

41. At the time at which you took office as a Minister, did you resign your position in the Civil Service in order to take office?—Yes.

42. Did you resign your position as Under-Secretary with the deliberate intention of depriving yourself of all rights to a pension; or, rather, with the intention of getting another appointment, and so getting a right to a pension?—My object was this: I was very much pressed by Sir William Fox and Sir Donald McLean to become a Minister, and I ran the risk of losing my service by so doing; but, of course, I had the idea that I was not to be a Minister always, and I did not see that there was any reason why, when I ceased to be a Minister, I should not have a chance of re-entering the Civil Service. Of course there was no certainty about the matter. I thought also that, if I were put out of office as a Minister, I should, on account of my long service, have a claim to get into the Government employ again.

43. *Mr. Oliver.*] You did actually perform the duties of Commissioner of Annuities?—Yes, I did the work.

44. *Mr. Saunders.*] Do you think that the duties of Colonial Secretary are of such a character that such an officer could discharge the duties of a subordinate office, in addition to his own work, without neglecting his superior office?—It may appear egotistical to say so, but, though the duties of a Minister have increased very much since 1869, I do not think I could have done the work if it had not been for the fact that I had had great official experience in the Civil Service. I am positive that I could not have done the work if I had not been so long in the Civil Service that I had gained a great insight into the administration of public affairs, and, perhaps, thus acquired a special faculty for dealing with the current business of an office.

45. In your correspondence, you have laid special stress on the fact that you have saved the colony a certain amount of money by discharging the duties of the two offices together. Now, do you not think that the colony must have lost far more by any interruption of your duties in the superior office than it could have gained by anything you did in the inferior office?—I really think the colony did not suffer by that. I consider that the experience which I had in the Civil Service was useful for the purposes of the inferior office, as well as for those of the superior; and I venture to say so, though, as I stated before that, for ten months I had no Under-Secretary. I feel now that, as a general rule, a Minister has quite enough to do, without undertaking anything else that may be considered to entail onerous duties.

46. Now, with regard to Sir William Fitzherbert's pension: is there any Act which gives power to the Government to give a Civil servant more than one year's leave of absence on full pay?—Mr. Stafford's Government considered they had authority to do so.

47. Do you consider it indispensable, in considering a pension, that the last three years' service should be taken into account?—Yes; in the case of a person fifty years of age. The Act says that.

48. It appears, in Sir William Fitzherbert's case, that he had no salary for the last year or so, and yet his pension is calculated on the highest salary he ever received?—That point was referred to the Attorney-General.

49. Does it not strike you that it is contrary to law to give a pension on a salary that has not been received?—That is a question for a lawyer to decide. I should say, in regard to its legality, that the opinion of the Attorney-General was the proper guide to the Government.

50. I understand that, according to your view, a Civil servant can resign at any time, and if he is afterwards reappointed, there is really no break in his claim?—If a Civil servant resigns, and receives compensation, in the event of his being reappointed he must repay that compensation, or his time will not count; but if an officer resigned, and did not get compensation, but was subsequently reappointed to the service, he would be allowed to count the two periods during which he had served, when he was making a claim for a pension.

51. You are aware that Sir William Fitzherbert resigned his position as Commissioner of Crown Lands in 1865?—I do not remember the date, but I remember the letter which came to Mr. Stafford, in which the reasons for his resignation were given. Mr. Stafford would not accept his resignation on that occasion; and if Sir William Fitzherbert resigned in 1865, he must have been reappointed.

52. *The Chairman.*] I see by the papers, Mr. Gisborne, that in your case there was a question raised on this matter of the counting of the time while you were a Minister. Major Atkinson made a minute, in which he says that he is willing to approve of the payment of the pension to you, less the time when you were a Minister?—Yes.

53. But ultimately your pension was computed on the full time of your service?—No, I withdrew my claim, and the three years during which I was a Minister has not been counted.

54. The reason why I ask the question is that somewhere in Dr. Pollen's case it was stated that it was so?—The time that I was a Minister was not counted.

55. *Hon. W. Johnston.*] There appear to be many cases in which officers of the Civil Service on becoming Ministers were allowed their former service; but do you know of any case similar to your own, in which a Minister has become a Civil servant?—I have known the case of a Minister of the Crown who was called a Government Agent. I think that Mr. George McLean acted as a Government Agent in Otago while he was a Minister.\*

FRIDAY, 15TH JULY, 1881.

SIR WILLIAM FITZHERBERT, examined.

56. *The Chairman.*] Sir William Fitzherbert has attended this meeting of the Committee with a view, if he thinks fit, of making any statement with regard to this question of his pension; and it is understood he is prepared to reply to questions afterwards. He would like, perhaps, to make a statement first.—What I would say is this: I have perused the printed documents. I looked out the correspondence I had by me—the original correspondence—comparing them with what is printed.

\* I should like to add, in reply to this question, that I have since recollected two other cases—namely, that of Mr. Stout, who, when Attorney-General, and a member of the Cabinet, took the office of Land Claims Commissioner; and also that of Colonel Whitmore, who, when Colonial Secretary, was also appointed Commissioner of Armed Constabulary. If the Committee think I should give oral evidence to this effect, in order to make this addition part of my evidence, I am ready to do so.—W. GISBORNE.—19th July, 1881.

They are right, excepting that there are two letters omitted. The first letter could scarcely have been expected to have been put in, because it is from the then Superintendent of the Province of Wellington, and the Government may have supposed they had no opportunity of obtaining that. Although, by-the-by, that ought not to be, because all the documents of the province were handed over to the Government of the colony. [Letter from Dr. Featherston to Sir William Fitzherbert, dated 24th November, 1869, handed in, and read by Chairman.] I may state, in reference to that, that this letter is the testimony of the officer under whom I immediately served for these years, that the duties of the office in connection with which I applied for a pension were, in his opinion, faithfully performed. The last letter is dated 31st January, from the Colonial Secretary's Office. [Letter read by Chairman.]

57 *Mr. Montgomery.*] That letter is not here?—No. Neither of them. I think they are of great importance, as showing that the resignation was sent in in proper order, and the services acknowledged as having been properly performed; and showing that after an investigation the Governor issued a warrant for a definite sum for a pension. I have had that pension for ten years, and I think it hard that it is now called in question. It is not a matter of indifference to me, but I do not know that I need be ashamed of that; it is rather a credit. But I may state this—it is, perhaps pertinent to the subject: the present Premier was a member of the Government when I, feeling that I could not perform the higher duties that I was then charged with, without prematurely leaving England, was ready to sacrifice my personal interests, and did absolutely send in my resignation, though thereby I hazarded the pension which I had worked for for many years. The present Premier was a prominent member of the Government which refused to accept it—and that will be seen in the printed papers—with a view to my ulterior prospect of a retiring allowance. Mr. Gisborne at that time had no office, he was simply an Under-Secretary and was merely the mouth-piece of the Government of the day, of which Mr. Fox and Mr. Vogel were members; and it was well known I could bring no influence to bear upon those gentlemen. On the contrary, they were my political opponents. I put the application in—everybody knew that—the thing was done before the people, in the presence of the people, with the cognizance of the people. The Governor put his name to the warrant for a definite sum, and I think it hard that it should now be called in question. At any rate, I did not give it to myself; my friends did not give it me. The then Attorney-General did not take the same view that I did, as to the exact day when I attained the age of sixty years; but that is a mere bagatelle. It would only have been for me, if I wished, to continue that office; I was not turned out of it. I had been turned out of the Government by Messrs Fox and Vogel, and there was no reason, therefore, that I should not have continued the office of Commissioner of Crown Lands. Mr. Holdsworth was the deputy. He had been acting when the Government of the day, after investigation, declared me entitled to a pension. I did not wish to stand in the way of Mr. Holdsworth, but I have no doubt if I had expressed a wish to continue the few months to the end of July 1871, I could have done so. The Governor issued the warrant as from the 31st July, 1870. I do not know that I have anything else to say to the Committee.

58 *The Chairman.*] I understand you to say that these papers comprise the whole of the case, so far as you are aware, when the two letters you have put in are included?—Yes.

59. The computation of your pension included, did it not, the time you were responsible Minister? Yes.

60. I think you were a Minister when you went to England for the purpose of conversion and consolidation?—Yes, I having leave of absence granted.

61. Do you happen to remember whether this matter was ever submitted to the Audit Office?—I am not aware. I may say distinctly, it is the first time I ever heard of any objection, officially or unofficially; I might have left the colony and, being persuaded that such a thing could not be altered, have sold my interest in the pension any day.

62. I ask you that question because I see nothing in the papers relating to your case, or any sign of the intervention of the Audit; whilst in all the other cases it does appear so?—No; I have had no intimation from any of the officers of the Government, either officially or semi-officially, or otherwise. It is the first time it has been subject to comment.

63. Then would it be right to assume that your pension was made the subject merely of legal approval—that it was passed on the ground of legal opinion?—All that I know is that I did not grant myself the pension. I sent in my application, and that was considered, with such results as are before this Committee. The only intimation I have had is in the papers placed before the Committee; and neither before nor subsequently have I ever received any communication.

64. During what portion of the computed period did you cease to perform the duties of Commissioner of Crown Lands?—When I went to England. In reality I was performing the duties at a prior period, when I held office in the Government of the colony. During that time the responsibilities of the double work rested with me. I was constantly appealed to, and had the work to do, though I received no payment for that time. When I went to England I had special leave of absence, and a deputy was appointed to act for me.

65. *Mr. McLean.*] You are aware, Sir William, that this is not the only case picked out. It has all come out of the question whether you could hold the position of Minister, and the other position, and be entitled to a pension; and it is the case with all the other pensions. Did you fill up any return of your dates of service, the same as is filled up by any other servant?—I suppose I did; I do not know. I have nothing but what I sent in. I had no communication with the Government, verbal or written, except what appears in the papers before the Committee. The position was a kind of double thing. The Committee will quite understand that the Commissioner of Crown Lands now holds office under very different circumstances. It was a very mixed affair then. He had a kind of an allegiance to the Government of the colony, and also to the Superintendent; and it is very possible that the Superintendent, to whom reference was made—as I believe appears in the printed papers—did make a statement as to the services performed and amount due. That was not my statement, but his statement.

66. You are aware that every one applying for a pension has to fill up a schedule of services, and it was that schedule I was referring to?—If I filled it up myself it must be in the possession of the General Government; I have no recollection myself. No letter was sent to me calling attention to any omission on my part. In respect of this, I think I can refer to a fact that will make some im-

pression on the mind of the Committee, that I did not greedily take all that I might have done; because when I was first solicited to become a member of the Government, in 1864, I was holding the position of Commissioner of Crown Lands, and also that of Receiver of Land Revenue, at an additional salary of £100 per year. But, when I found there was a manifest impropriety in retaining the latter office, I gave it up, and I therefore did so far damage my subsequent claim for a larger amount of retiring allowance.

67. Can you say how long your service was, independent of the time that you held a seat in the Government. You were two or three times in the Government during the time you calculated for a pension?—I do not know, but I should think about two or three years—not that quite.

68. Was that counting that time? Of course you could not legally count your pension during that time?—I do not intend to interpret that. It was not for me to be the receiver of the pension and settle the terms of it. I did all I could; and if I had been asked to serve for a longer period as Commissioner of Crown Lands I should have done so. As to whether it is legal or otherwise, it was the duty of the then Attorney-General, the present Chief Justice, to have pointed it out; it was the duty of the Auditor and Controller-General to have said so if anything was wrong. And I think it a great shame and disgrace to those high officers, and to the Government of the day who granted it, if they let me into a hole and gave me what I should not have had. It was a still greater crime upon the public, to grant a claim that would not hold water. I do not want to, even if I had the capacity, to give a legal opinion. There is one thing I would draw attention to in respect to the three years' time: I think you will find in Mr. Prendergast's opinion that he puts the time at somewhat longer date, though he differs in regard to the question of age. I gave a suggestion of what I thought would be a fair ground of computation. He does not seem to have agreed with that, but he remarked that there was a time to come and go upon—some year or more. And, I say, I ask the Committee to consider this: that when leave of absence is given, and even putting aside the apparent incongruity—and, if the Committee wish, I will give an opinion as to the compatibility of holding the two offices—I do think the effect of granting leave of absence is that a person comes in and has the benefit of such leave in computation of service. It is not like a man giving up office and then having to take it again; but the meaning of the leave of absence carries that with it, especially as these documents show it was granted with the view of saving the pension. That was said by the Government of which the present Prime Minister was a prominent member. If the Committee wish me to give them my opinion, whatever it may be worth, as to the question of an individual holding two such offices as those of a Minister of the Crown and permanent officer in the Civil Service, I am quite willing to give it. I say, frankly, I think that anybody—take any outside person, a public man in any of the colonies or in the mother-country—and he would at first be astonished at a Minister of the Crown holding a Civil office in the Civil Service; but I ask the Committee to consider this, that it is not right to insist on the present more perfect order of things and view prior transactions in the light of the more perfect state of opinion which now prevails. I think that consideration is very applicable in this, and, I have no doubt, in other cases. It is well known that in reality I never was one of those to go and gratify ambition. I am far from speaking that in the sense of opprobrium; but every office I have had has been pressed upon me, and I have frequently refused. I frankly say, and it is, I think, to my credit, that this pension is an object to me, and it would be exceedingly hard that I should be deprived of it at this time. It is not the same as a question of now granting it. But I do say, as to incompatibility, it would be a very different thing now than in the times you are treating of. Then it became almost a matter of absolute necessity, if a man was thought capable, that he should agree to do the work of a Minister. I have never willingly consented to forego the just claims that I was entitled to. I think there is a manifest incompatibility in the holding of two such offices; nevertheless it was done with the consent of the authorities. It was on more than one occasion the subject of debate in the House. I say all those things were not done unknown to the House of Representatives. They knew, and the majority concurred in, the anomaly; and the circumstances of the country required such an anomaly.

69. I understand you to say, we should look upon your case as different from the ones to be judged at the present time. Do you mean to say that we are judging some different to yours?—What I wish the Committee to consider is the incompatibility of holding the offices of Minister of the Crown and one in the Civil Service. I pointed out, at the same time, that it would be exceedingly hard to judge a former thing by the light of a future time. I did not say anything that would affect any other person's claim, that was probably contemporaneous or antecedent.

70. Then, I take it, by that answer, that if any change was to be made, it would be after notice was given?—Yes. I think it would be exceedingly hard, when that which was apparently an anomaly, but a necessary one from circumstances, that you should come now and apply stringent rules, that could not have been applicable at the time I refer to.

71. Have you any recollection of your case being before the House itself?—It was on more than one occasion, when the anomaly—as it was then declared by some—of the Crown Lands Commissioner holding a seat in the Government, was referred to.

72. I do not refer to the question of Commissionership; I mean the question of pension?—Does that not involve it? The Parliament could not say this was done behind their back; because the question of having a seat in the House of Representatives and holding the office of Crown Lands Commissioner was involved in the discussion of that question.

73. The principal question just now is, were ever these papers in any way before the House. Had the House any knowledge of them?—Not that I know of.

74. On the face of these papers, would you consider that there was no pretension to a legal claim; but that there was simply an equitable claim?—I do not know, I am sure. I considered the question had to be discussed by the Attorney-General, and that he would not recommend the Governor to sign the warrant, if he thought it was illegal. I think if you look at the letter from the Colonial Secretary's Office, that refers to the question of granting leave of absence for the period from January until July. The action of the Attorney-General should show the question of legality.

75. You will see that the question of holding the office of Minister and Commissioner of Crown Lands being incompatible was never put to him. It was put in the case of Dr. Pollen, but not in your

case. Therefore, I ask you, how long service could you make up without counting your time as Minister of the Crown?—I served as Minister about three years, and, from Mr. Prendergast's opinion, there is a surplus of time. I imagine that the whole time would not be a year and a half. In fact, I do not base my claim in respect to that. My political opponents looked into the thing; they referred it to the Attorney-General; and it ended by their granting me a pension, for which the Governor signed a warrant.

76. Were you actively engaged in conducting the Commissionership of Crown Lands for some years before going to England?—Actively, myself; and I think I may fairly appeal to the letter of the Superintendent on that point. It is well known that the duties of Commissioner of Crown Lands were repeatedly acknowledged to be performed in a satisfactory manner.

77. I ask whether or not you or your deputy did it?—I had no deputy at all. The only time that I had—and then, in reality, I performed the duties—was on the occasion I was first in the Government. I was in New Zealand, and the whole responsibility was upon me, and I performed the duties.

78. *Mr. Oliver.*] You went Home at the end of 1867?—Yes.

79. On leave?—On leave.

80. What was leave granted for? How long a time?—Twelve months.

81. Was it competent for the Ministry to grant a longer leave?—I do not know.

82. Was it at all contemplated that you might possibly be detained at Home longer than the twelve months?—That was really the time I was supposed to be likely to be absent.

83. Had you foreseen the possibility of being detained longer, and of having to send in a claim for a retiring allowance while you were at Home?—If my colleagues supposed my time would have been longer, that question would have come up. It was supposed twelve months was sufficient. When I was requested by my colleagues to go to England on that mission, a mission to get the colony relieved of three-quarters of a million of public debt, and to convert the debentures—when they asked me to perform these duties I did not see my way to do so. They pressed me very much to go; and I said, "Very well, I must have a month to think it over." Then, among the things I had to consider, was the question of giving up my office. I said, "If there is any difficulty in respect to this I shall not go." I suppose they looked into it—your present Premier and others. I made it a *sine qua non* that I would not give up this, and I suppose they saw their way to give me leave of absence; but as to whether the law would have allowed them to give more time, I do not know. It was thought twelve months would be sufficient. It was only when I found that I could not do so, that, sacrificing my personal interests, I tendered my resignation. The Government took the responsibility of refusing to accept it. It was an ingredient part, running through the whole, that I was not to be damaged in respect of any computation of time of service.

84. Then it had been contemplated that this question might arise. Did you meet it then, or come home, that your position should not be sacrificed?—That was distinctly understood; I think the printed letters show that.

85. *Hon. W. Johnston.*] As a matter of fact, was it recognized by the House that a Minister might hold a position in the Civil Service, and did so?—Yes, it was particularly raised by Mr. Stafford on more than one occasion. Mr. Collins, no doubt, can give the House accurate information upon that. It was levelled more particularly at myself, and sometimes against Mr. Domett, and we were frequently the subject of comment on that point; but the House sanctioned it. I think there is a manifest *prima facie* incompatibility; but in the beginning such anomalies had to go on, and ought not afterwards to be thrown against an individual as if he had robbed the public. The House knew of it as well as they know of anything discussed yesterday.

86. *Mr. Montgomery.*] At what date did you return to the colony?—I think in April, 1869. The Panama line broke down, and prevented the possibility of my coming one or two months earlier.

87. *The Chairman.*] Sir William must have been here in May, because letters were addressed by him that month in Wellington?—I came by way of Melbourne; and if I had come direct by way of Panama I should have been here from six weeks to two months earlier.

88. *Mr. Montgomery.*] At the date of your arrival here, were you a Minister of the Crown?—Yes.

89. When did you go out of office as Minister?—Very shortly afterwards. As soon as the House met in June.

90. You tendered your resignation upon the 16th November?—Yes.

91. Did you wish to resign the office?—I supposed no question of difficulty had been raised about a retiring allowance, though I had no interview with any of the members of the Government. Mr. Holdsworth was appointed deputy, and I gathered it was wanted he should have the office of Commissioner; but, if I had wished to keep on, the Government would scarcely have made me resign; and I should most certainly have retained the office if the Government had intimated to me that it was necessary that I should continue the office to make up time. I did not want to stand in the way of Mr. Holdsworth.

92. I suppose Mr. Holdsworth wanted the office?—I suppose so. If I had had my attention drawn to difficulties in the way, I should not have imperilled my prospects.

93. You were receiving £650. What pension are you getting?—My pension is £325.

94. And you gave up that office, when you could have retained it if you liked?—I did; and I gave up the office of Receiver of Land Revenue also, voluntarily, thereby reducing my claim to an additional £50 per annum of retiring allowance.

95. You gave up that £650, when you could have retained it, because there was an arrangement with you and the Government?—I was contented to have my pension assured to me.

96. That was the reason?—Yes; I thought it was wished that I should resign.

97. By whom?—Well, the Government of the day who had the arrangement of the thing. I ask the Committee to consider that it was not a friendly Government, but my opponents, that gave me this pension, when we were hot from a defeat. If the Government had thrown difficulties in the way I should have retained my office.

98. That is what I wish to get out. You would have retained office had you not been assured of your pension?—Yes.

99. *Mr. Moss.*] I understand your pension has never been the subject of dispute?—Never.

100. Never, previous to this occasion?—Never.

101. And, I understand, also, that the maxims of government were different then to what prevail now?—Very different. As far as abstract principles are concerned, I think there is a manifest incompatibility in holding the two offices. I do not mean this to apply to any particular case; I am speaking generally. Rather than lie under the imputation of taking money wrongfully, and contrary to acknowledged principles, I would starve. I think, as a principle, it is not a good one that you should hold a Civil office and a position in a responsible Government; but, if the few men then to be found had not sacrificed their time, things in this country would have been very different.

102. In explanation of that, can you remember any instance in which paid officers of the Government were called to the Upper House. This occurs to me as one of the differences between the maxims that prevailed at that time, and what would be considered right now?—I think there was.

103. I merely call attention to that, as an important thing, illustrating one of the circumstances connected with Sir William Fitzherbert's pension.

104. *Mr. Saunders.*] You reckon, I suppose, for the purposes of your pension, that you resigned on the 15th July, 1870?—Well, I sent in my resignation in November, 1869, and then the question was considered by the Government, and referred to the Attorney-General; and the way they did it was this: they accepted my resignation as from the 15th July, 1870, eight months subsequently. That was the doing of the Government.

105. I want to know what salary you had received on account of your Civil office for the previous two years. I understand you did not draw salary while Commissioner of Crown Lands and Minister, nor during the latter portion of your leave of absence?—No.

106. Upon what, in the terms of the Act, was your pension calculated?—You cannot ask me to interpret the law upon my own case. If I had to make out a case, well and good. I simply sent in the data. The Government have their own officers to compute on those data.

107. Still, I understand, personally you are not aware of any law under which you could draw your pension?—I do not say that. On the contrary, the very fact that I applied for a pension shows that I thought I was entitled. I certainly should not have been guilty of applying to the Government for a pension if I did not think I was entitled to it.

108. So far as I understand, you applied for a pension under an Act upon which the pension should be calculated upon the salary you received during the last two years?—I do not know. All these are subtleties which may or may not hold good in a Court of law. I decline in the most distinct manner to give any legal opinion as to whether I was entitled or not. The duty of interpretation rested with the Government of the day, and that Government were my political opponents.

109. I see that you resigned in 1869, and that the Provincial Council then reduced the salary to £350?—That is very possible; I do not recollect it.

110. You can give us no explanation of that?—No, I cannot, if it is a question of amount. The Superintendent of the Province sent in that to the Government, and, if at the day you speak of there was any reduction, I have no recollection of it. Still, that, I think, would not affect the case. The amount is not of my stating, but that of the Superintendent of the Province. He is responsible officially. Being informed that I must get a certificate of the amount that I had received, I wrote to the Superintendent, and he forwarded to the Government the amount. I wish to state distinctly that I made no specification upon my own authority.

111. So far as I understand it, you received no salary for two years previous to the 15th July, 1870, on account of the office in the Government?—I know I did not. I cannot absolutely say I did not receive something, after I ceased to hold office as Minister—after I sent in my resignation.

112. *Mr. McLean.*] Mr. Moss spoke of an appointment in the Legislative Council. Do you recollect a question coming up during your Government's time in which your Government insisted that Mr. Strode should vote with the Government, he being a Resident Magistrate, or resign the seat in the Council?—I have not a very distinct recollection, but something of that kind occurred, and I believe it is substantially correct.

113. Did not that show the incompatibility of holding a seat in the Legislative Council as well as in the Government? Now, I want to make another thing clear. In addition to your allowance, when you went to England, they voted you the sum of £3,000 when you came back?—Yes.

114. There was no understanding that that was to compensate you for loss of pension, was there?—No; on the contrary. When I got Home I found the expenses infinitely greater than I expected, and I at once wrote to that effect to Mr. Stafford. He said, 'I cannot alter that now but when you come back a sum will be placed for you.' Well, a new Government came in, and they did not at all see my service in the same light as my colleagues. Prior to their going in I brought this up before my colleagues, and said, 'I leave it to you, but, as to the expenses to which I have been put, less than £3,000 won't reimburse me.' When afterwards a hostile Government came in, they acknowledged the claim, and put £3,000 down for the reimbursement of expenses. In this vote, remuneration for services was distinctly repudiated.

115. What was the allowance made you to England?—£5 per day. The vote of £3,000 was to cover expenses incurred, and was in no sense either compensation for pension or remuneration for services. I consider that I was never remunerated for the services so successfully rendered by me to the colony.

WEDNESDAY, 20TH JULY, 1881.

Sir WILLIAM FOX, K.C.M.G., examined.

116. *The Chairman.*] The Committee desire you, Sir William, to give evidence in regard to the retirement of Sir William Fitzherbert, and the circumstances that surrounded his case, so far as you were connected with it. Will you do so?—I am sorry to say that I have very little, if any, recollection of it.

117. You state in your minute, that the case of Mr. Fitzherbert ought not to be drawn into a precedent whilst at the same time you fully concurred in the course suggested, namely, that he should retire on the terms mentioned?—Yes.



118. Would you tell the Committee what was in your mind when you made that minute?—Probably I had the same feeling that Mr. Gisborne had when he said that the case was a peculiar one, and that the previous Government had given absolute pledges on the subject. The Hon. William Gisborne, writing to Mr. William Fitzherbert on 22nd December, 1869, says: "The late Government expressly agreed, in giving you leave of absence as Commissioner of Crown Lands, during your special mission to England, that such time should be allowed to be reckoned in the computation of your retiring allowance; and, when you tendered your resignation as Commissioner of Crown Lands, in 1868, because you found that your public duties in England on the part of the colony would compel you to overstay such leave, the late Government refused to accept your resignation, and repeated its assurance to which I have referred." And I think that at that time the general impression was that, whether it was legal or not, the time that was spent by Mr. Fitzherbert in holding his Civil office should be counted.

119. In the fourth paragraph of Mr. Gisborne's letter to the Secretary to the Treasury, dated the 27th November, 1876, the following passage occurs: "When I accepted the office of Commissioner of Annuities, in November, 1869, it was on the distinct understanding that, while I performed its duties in addition to those of a responsible Minister, I should not draw the salary, but that the time during which I did its duties should count in computation of my pension." And Mr. Gisborne, in the evidence which he gave before this Committee a few days ago, says there was a distinct understanding on this subject. His attention was called specially to those words by myself, when I asked him the following question: "In your letter to the Secretary to the Treasury of the 27th November, 1876, you say that there was a distinct understanding that, while you performed the duties of Commissioner of Annuities in addition to those of Minister, that time should count in the computation of your pension?" His reply was, "I say that that was what was told me by the Premier, Sir William Fox, and other Ministers at the time. They told me that the time during which I held office in the Civil Service would count in respect of my pension, notwithstanding that at the same time I was a Minister of the Crown. In making my claim to Major Atkinson, I understood that the Law Officers were of opinion that the services in question would count. I took the Insurance Office on that understanding." Then I asked him, "Do I understand you to imply that you risked the possible interpretation of the law when you took political office, as to your right to take Civil office?" and the reply was, "I was under the impression that the law allowed it, and I was aware that the same thing had been done in the case of other officers." Then I said, "On the very face of these papers, Sir William Fox, who was, I believe, the head of the Government which you joined, made a minute in reference to the case of Sir William Fitzherbert to the effect that the case ought not to be drawn into a precedent?" He replied, "In Sir William Fitzherbert's case there was no pretence that he was doing the work of the Commissioner of Crown Lands, because even when he was in the colony the duties were, I believe, for some time performed by a deputy; but when he went to England I am quite certain that they were done by a deputy." Do you remember the circumstances sufficiently to give any information to the Committee?—Yes, I entirely confirm the statements made by Mr. Gisborne. It was distinctly understood at the time he accepted Ministerial office, which he did at my personal request, that he should hold the position of Commissioner of Insurance, but that he should receive no payment for his services in that capacity while he held his Ministerial office; and I distinctly remember that it was agreed that the time he served as Commissioner of Insurance should count when he applied for his pension. He is also right in saying that there was a difference between his case and that of Mr. Fitzherbert, because I know that he did actually do the work of his office; while Mr. Fitzherbert, being in England, did not do the work of the Commissioner of Crown Lands. I entirely confirm all that he (Mr. Gisborne) has said before this Committee on the subject. There was at that time probably a feeling in my mind, and in the minds of others who were associated with me, that, as both the late Ministry and my own agreed that the time should count, no objection should be raised, and, consequently, the matter did not bear the same aspect that it does now when the question of its impropriety has been raised.

120. You formed your Administration in June, 1869?—It was about that time.

121. And the office of Commissioner of Insurance had not been created at that time?—Yes, I think it had been; at any rate, the office was contemplated.

122. The "distinct understanding" that Mr. Gisborne refers to was, that when he accepted the office of Commissioner of Annuities it was understood that, while he held office as a Minister, he should not draw salary for the former office; but that, in applying for his pension, he should count the time during which he had held the Civil office without salary?—I am certain that that was the condition upon which he accepted office as a Minister.

123. Your impression is that the Government Insurance Office was in existence on or about the 2nd July, when Mr. Gisborne joined your Ministry?—That is my impression; but, at any rate, I am quite certain that such an office was contemplated.

124. The Government Insurance Act was passed by your Government on the 3rd September, 1869?—That was the date of the Act being assented to by the Governor.

125. You say, as I understand, that when Mr. Gisborne took political office with you, it was on the understanding that he should hold the office of Commissioner of Annuities without salary, and that the time that he held that office should count in the computation of his pension?—So far as I can recollect I should say, most positively, that such was the case.

126. You see that the difference between your opinion and Mr. Gisborne's is, that he thinks the time was to count from the time when he took office as Commissioner of Insurance?—I should like to say that one sometimes recollects a fact as a fact, but sometimes you only remember the impression that is left by a fact on your mind. In this case, I have always had the impression on my mind that Mr. Gisborne accepted office on the terms he has mentioned.

127. How could he have taken office on the 2nd July, 1869, with a distinct understanding, or any understanding at all, that he should have an office which was not in existence, according to law, until the 3rd September?—It was contemplated that the Act would be passed, and it was not thought that there would be any difficulty about it.

128. Do you think this was the understanding: that, if the Act was passed, and the office was created, Mr. Gisborne should have it?—Yes; to the best of my recollection, it was an expressed condition of his taking political office that he should have the post of Commissioner of Annuities.

129. *Mr. Montgomery.* With regard to the minute on page 4, in which you state that the circumstances of this case are exceptional, did you understand that the granting of Sir William Fitzherbert's pension was in contravention of the terms of "The Civil Service Act, 1866?" Was that why it was exceptional?—I cannot say, as I have not a distinct recollection of Sir William Fitzherbert's case.

130. One of the reasons advanced against him was, that he was absent from the colony longer than the Government had decided to allow him to be absent?—Yes; but I think there was a pledge given to him that his time should be allowed to count.

131. Do you think that a mere pledge should be allowed to override an Act of Parliament?—No, I do not; but the circumstances of this case were exceptional.

132. Would it not have been the proper thing for the Government to have brought in an Act to validate the granting of this pension?—Yes, if the law had been violated; and I would infer, from the fact that no such Act was ever brought in, that it was not considered to be in violation of the law. The exception referred to, was the fact that the claimant for the pension had not been holding office in the colony during the whole time for which he claimed. I would be guided principally by the fact that a distinct pledge had been given by the previous Government; and, that being the case, I would probably not look very minutely into all the circumstances of the case. But, of course, after the lapse of a dozen years, I cannot remember all that passed through my mind. The case was a mixed one, and which of the elements weighed most with me I cannot say.

133. And though you said that this case was not to be made a precedent, still it was made a precedent?—When I arranged with Mr. Gisborne about his accepting office, there was no reference to Mr. Fitzherbert's pension, that I remember, so that it was not made a precedent by me. When Mr. Gisborne's pension was afterwards granted, I was not in the Government, and had nothing to do with it. It was probably considered on its own merits; and the action of both sides of the House appeared to be agreeable to the course pursued.

134. *Mr. Reader Wood.* I understood you to say just now that you supposed the granting of the pension was thought to be legal, inasmuch as no validating law was brought in?—Yes.

135. Had the House been made aware of the circumstances under which Sir William Fitzherbert's pension was granted before these papers were laid on the table?—I cannot tell you. I have no recollection of the question ever having been raised before.

136. *Mr. Oliver.* Was Mr. Gisborne an officer of the Civil Service when he joined your Government?—Yes; he was Under-Secretary in the Colonial Secretary's office, and was the head of the Civil Service at that time.

137. Is it not possible that your recollection of what occurred between yourself and Mr. Gisborne, with reference to his appointment to the office of Commissioner of Annuities, may be mixed up or confused with some conversation which took place before he joined you in the Government?—Of course it is possible, but, as far as my memory serves me, it was distinctly understood that he accepted office on the understanding that he should hold also the post of Commissioner of Annuities. If I am wrong in this, Mr. Gisborne will probably be able to correct me. I have a distinct recollection, however, that Mr. Gisborne was virtually Commissioner of Annuities when he joined the Government.

138. *Sir G. Grey.* I understand you to say that Mr. Gisborne might have a better recollection of these matters than yourself, and that if, after all these years, there is a discrepancy between his evidence and yours, you would consider that such discrepancies naturally arose from lapse of time?—I would prefer to believe in his recollection to my own, because the matter concerned him more closely than myself, and his recollection would probably be more accurate.

THURSDAY, 21ST JULY, 1881.

Mr. J. E. FITZGERALD, C.M.G., Auditor-General, examined.

139. *The Chairman.* The Committee have asked you, Mr. Fitzgerald, to attend here for the purpose of taking your evidence, as the head of the Audit Department, in regard to the pensions of Messrs. Fitzherbert, Gisborne, and Domett, and Dr. Pollen. I would like to call your attention to the 3rd page of the papers which have been laid before the House. Mr. Gisborne, in his minute, refers to the Auditor, to state what the pension of Mr. William Fitzherbert would amount to under a particular Act; and the reply to that is sent by a Mr. Hill, who signs on behalf of the Auditor. Can you tell the Committee how it was that in that instance the Audit did not deal particularly with the legality of the pension, but appeared to confine its attention exclusively to the computation of the amount which he would have to receive, whereas in other cases the Audit intervened as a sort of interpreter of the law?—I do not think I can give you any information on that point, as I was not in the Audit Office at that time. Mr. Hill, who was chief clerk in the Audit Office, is now dead; but the fact of his having signed the memorandum seems to indicate that the matter was not brought under the notice of Dr. Knight, who was at that time the head of the Audit Office.

140. Had you any connection with any of these cases except that of Dr. Pollen?—I have no recollection of having had anything to do with them. I did not join the Audit Office until 1872.

141. Then you think that your acquaintance with these cases is confined practically to that of Dr. Pollen?—Yes; but in dealing with his case, I was probably aware of everything that had been done in respect of the other pensions you have mentioned.

142. You are aware that it was understood by the Government that was in office in 1869 that the case of Mr. Fitzherbert was not to be made a precedent?—I do not recollect that; but I have no doubt it came under my notice at the time, if such was the case.

143. *Mr. McLean.* At the time Mr. Domett's pension was granted I suppose you had nothing to do with the Audit?—No.



144. At the time Mr. Fitzherbert's pension was granted, in 1870, had you anything to do with it?—No.

145. And you have no knowledge of any application by Mr. Fitzherbert for a pension coming before you?—No, I think not. The Committee will understand that, at the time to which you refer, there was no prior audit of payments in the colony at all, and, consequently, the matter would only have come officially under the notice of the Audit after the pension had been paid. But it was the custom always in the case of pensions to refer the matter to the Audit Office, for the purpose of having the calculations checked, so as to ascertain what the amount of the pension should be. All such calculations, since I have had anything to do with the department, have been made by Mr. Anderson.

146. Supposing an application for a pension were put in, as in this case, through whose hands would it pass?—For many years, in fact ever since I have had anything to do with the Audit Department, the calculations have been made by Mr. Anderson, the chief clerk; but whether he was chief clerk in 1870 or not I am not quite sure.

147. It is probable we could trace this application of Mr. Fitzherbert's through him?—Yes; I think he would probably have had to make the calculations; but, of course, if any legal question was raised, the matter would have to come before Dr. Knight.

148. A question has arisen as to the commission which the colony receives for the payment of the Imperial pensions. Do you know anything about that?—Yes; that is a new feature which was introduced into Dr. Pollen's case.

149. Can you explain how that money can get into the office in London, and come out here, without being colonial funds—or, in other words, how does it get into, and how does it get out of, the Treasury, without an Act of Parliament?—The fact is, that the whole thing is illegal, from beginning to end. It is something like the arrangement that has been come to for the buying of silver coin for the English Government, and which is also illegal. The Government here collects this coin as a matter of courtesy to the Home Government. Similarly, when the troops were withdrawn from this country, the English Government asked the Colonial Government to pay, on its behalf, pensions to those who were entitled to them. They agreed to pay 3 per cent. to the Colonial Government for the trouble it would be put to in this matter. At the same time, it is one of those matters on which Parliament has not been consulted, though I believe that Parliament had all the papers before it, and knew what was being done. At the same time, I may be mistaken in that. The pensions are paid by the Treasury; and the pensioners' receipts are handed to the post office, and transmitted to England by that department instead of cash. The post office in the colony always owes to the post office in London something like £60,000 a year for money orders. The pension receipts are, in fact, remitted by the post office as cash. That system has been in vogue ever since the troops went away from here. It is an illegal arrangement, no doubt, but it is what I should call a simple banking transaction. With regard to this £300, which is received as commission for the payment of pensions—I may say that I am not certain about the amount, but I know that it was more than was paid to Dr. Pollen—I have only to remark that it has never been brought to charge at all; and what I understood, as far as my recollection serves me, is, that Sir Julius Vogel agreed to pay this £300 a year to Dr. Pollen for the purpose of relieving the Consolidated Fund of a similar amount, and that, if that arrangement had not been made, Dr. Pollen would have received the £300 a year out of the Consolidated Fund for the two or three offices which he held. As far as I remember, Dr. Pollen raised the question at the time, as to whether it would affect his pension, and was told by the Premier that it would not; and I think we considered that, under that arrangement, it was virtually the same as if he had been paid out of the Consolidated Fund, as he would have been if this arrangement had not been made for the purpose of economy.

150. You say that the money has never been brought to account. Then, that being the case, where is the balance between the £300 that has been paid to Dr. Pollen and the £400 or £500 which has actually been received from the Imperial Government?—I cannot say now, but I can let you know after I have looked into the matter. If there is any balance brought to account it will be in incidental revenue. There are certain other little expenses besides salary paid out of that account.

151. How does this £300 a year get out of the Treasury and paid to Dr. Pollen without a vote of the House?—It would have got out in the usual way. There are two accounts—namely, the Imperial Pensions Advance Account and the Imperial Pensions Account. The Advance Account is the money advanced by the Treasury for the purpose of paying the pensions to the pensioners; and that is recouped in the adjustment of the account. We lose no money by it. There can be no question that there are one or two transactions of this kind for which there is no parliamentary authority, and the money is paid by way of imprest.

152. Then you cannot account for its not having been brought to account in the ordinary incidental revenue?—It was considered not to be money belonging to the Colonial Government, but money in regard to the payment of which the Colonial Government was acting simply as agents for the Home Government. At the same time, I am not prepared to say that that was the correct view to take of the matter.

153. Does it not strike you that all moneys coming into the hands of the Government of the colony and having to go out of the Audit Office (which is under the control of the House) should be brought into account?—Yes, I think it is far better that it should be so.

154. The Government of New Zealand undertook to do certain work for the English Government; in doing so were they not acting within the knowledge and with the tacit consent of Parliament?—I do not say that what was done was strictly correct, but I simply state the fact that it has been done for some time. The House had every means of knowing that the thing was being done. I mean that the colony was doing the work for the Imperial Government, because the item for Imperial pensions has appeared on the Estimates for many years. There can be no doubt that the House knew that we were paying the Imperial pensions. The money was paid out of what was called a "Suspense Account." The colony owes the English Government certain moneys, and out of those moneys we pay the pensions instead of sending the money direct to England. That is the explanation of the transaction; but it is

quite true that in doing this we lend England moneys for a short time, inasmuch as we make advances out of the public chest for the payment of these pensions.

155. *Mr. Reader Wood.*] I understood you to say that you considered, in calculating Dr. Pollen's pension, that the £300 paid to him out of this Imperial Pension Fund was exactly the same as if the money had been voted by the House?—I say that if it had not been so paid it would have been voted by the House.

156. But the House had no control over this money. How then could the Audit deal with it as if it were voted by the House?—I am not defending the arrangement that was made, I am simply stating what was done. It was a distinct arrangement made with Dr. Pollen.

157. Would the Audit Office, the servant of the House, whose business it is to see that the Government acts within the law, allow an illegal transaction to take place?—As I have said, I do not think the thing was strictly legal; but, as a matter of equity, Dr Pollen was a Civil servant, though his salary was not paid out of the colonial chest, but was drawn from a fund which was outside the control of Parliament.

158. Do you, or do you not, think that if the Audit is to allow outside arrangements of this kind between a Minister and a Civil servant, it is protecting the interests of Parliament? It seems to me that the Audit should have informed Parliament of the circumstances of the case. Is not that your opinion?—I am of opinion that the case admits of argument on both sides. The circumstances are peculiar. I am not prepared to say that the thing was strictly legal; but I find that on February 13th, 1880, I wrote the following memorandum to Mr. Anderson: "The opinion of the Law Officers is that the time during which Dr. Pollen was Minister was not to count, but that the salary as Paymaster of Imperial Pensions was to count. Please calculate accordingly, under the most favourable Act."

159. Do you consider yourself always bound by the opinion of the Law Officers if your own opinion is contrary to theirs?—No, I do not. I may say that it appears to me, after looking over the papers which are before the Committee, that very little consideration was given to the point upon which I am now being examined. The main consideration seems to have been the counting of the time during which Dr. Pollen was a Minister.

160. You will observe that Dr. Knight, in his memorandum on page 20, says, after referring to the opinion of the Law Officer: "Acting on this opinion, and having obtained Dr. Pollen's certificate that he has held the office and discharged the duties required of him up to the 30th October, 1876, the claim of £408 6s. 8d. was not further objected to." It would seem, from the way in which Dr. Knight has worded that, that he has acted on the opinion of the Law Officer, although he himself did not concur in the opinion of the Law Officer?—Yes, that is frequently the case. I have done so myself; but I should be very careful in doing so, because I think it is the duty of the Audit to be guided as far as possible by the opinion of the Law Officers, but not to be always bound by it.

161. Look at your own letter of 6th December, 1876, on page 18 of the papers. In paragraph 3 you quote this language: "'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." Might not those words really have meant that Ministers, and persons holding political office, shall have no connection of any kind whatever with the Civil Service?—I think not. I think it was intended to mean that Ministers were not, as Ministers, Civil servants within the meaning of the Act.

162. You think the Legislature meant simply to prevent Ministers from drawing salaries as Civil servants while they held office as Ministers?—Yes. Judging from the silence of the Act on the subject, I imagine that the Legislature did not contemplate the case of Civil servants becoming Ministers.

163. Does not the Act contemplate that if a Civil servant joined the Ministry, and afterwards was reappointed to the Civil Service, the time during which he served as Minister should not count when he applied for a pension?—Yes; it seems to me that you are thinking of the amount of the pension more than of the time of service which was to count. The Minister's salary has never been reckoned as affecting the amount. We are now dealing with the question of the length of time during which an officer has been a Civil servant. If he has *de facto* been a Civil servant during the time he has also been a Minister, I confess that I can see nothing in the Act that necessitates the not counting of that time in his service.

164. Do you not think that is a defect in the Act itself?—I am not prepared to give any opinion with regard to that.

165. At the conclusion of the letter which you wrote on September 6th, 1876, you say, "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 or Civil office being united." On what grounds did you think it not your duty to express your opinion?—I think that the fewer opinions I express the better.

166. Will you favour the Committee with your opinion on the constitutional ground?—You must recollect that you are asking that question of an officer who is debarred from giving any opinion on political matters.

167. Then I should like your opinion on one point, and that is the simple legality of the monthly payments that are now being made to the pensioners under the Pensions Act. Is there any appropriation clause in any of these Acts which justifies the Audit in paying these amounts without there being a special appropriation clause in the Act?—You ask me whether the Civil Service Act is of the nature of a permanent Appropriation Act. Well, all I have to say is that there are payments made under several Acts of Parliament, which are not, in my opinion, Appropriation Acts, and which do not contain the words "issue and apply." I have brought that under the notice of the Government, but the rule of the Audit Office has been that, where transactions have gone on for many years, and where they have been submitted to the House for many years without objection being raised, it is not the duty of the Audit Office in such cases to take exception to the payments. At the same time, I admit that these Acts are not, properly speaking, Appropriation Acts; and I may further add, that there were formerly more of these Acts in existence than there are now. When Sir Julius Vogel was Treasurer, he altered the plan with regard to a number of the old Acts, and had everything brought upon the Estimates;

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.

187 Then, as a matter of fact, you are of opinion that the money so earned was colonial revenue?—The profit was certainly revenue.

188 If a Government railway carries a passenger from one place to another, the fare paid by that passenger is colonial revenue, is it not?—Yes.

189. Can you make any distinction between the money paid by that passenger, and the money received from the Imperial Government for the services of the Paymaster of Imperial Pensions? Yes. The payment made to the Colonial Government by the Home Government, for services rendered by the former as agent for the latter, does not appear to me to be necessarily revenue.

190. Why do you consider that money received by the colony for services rendered is not revenue?—The money belongs to the Home Government.

191. After it has been earned by the colony does it belong to the Home Government?—It is expended in carrying out the wishes of the Home Government. It must be remembered that this money is only commission. Suppose that, instead of paying this commission the Home Government had paid the actual cost of paying these pensions, I should not have called the amount then received revenue; but instead of paying the actual cost they pay a commission of 3 per cent., and therefore I do not look upon it as revenue at all. I only look upon the profit as revenue.

192. Are we to consider nothing revenue that does not yield a profit to the colony?—I do not see exactly what you mean. As I have already told the Committee, I consider that the whole thing is without the authority of law.

193. Do you not think that this money which has been received from the Home Government should have been brought to account in the same way that other revenue was?—No, I do not think it was necessarily so.

194. Can you point out any other way in which it could have been dealt with?—There is no specific authority or power for dealing with the matter at all, because it is outside the law. We are advancing public moneys for the benefit of the Imperial Government; but, if the Imperial Government sent us out the cash to pay these pensions, I think the Government of this colony would be acting rightly if they paid away the money without Legislative authority. You must recollect that we always owe the Home Government money, and, as a matter of fact, the whole thing assumes the character of a banking or exchange transaction.

195. What would you call the balance of the money which is received from the Imperial Government, but which is not profit?—That is money belonging to the Home Government, which is spent in its service. I have no doubt that it would have been much better to have regarded this money as revenue, and, by so doing, have brought it into the Public Account.

196. Is it your opinion that Dr. Pollen ought not to be made to suffer in consequence of this money not having been brought into the Public Account?—The view we took was that the office of Paymaster of Imperial Pensions was equivalent to a colonial office, because Dr. Pollen already held several colonial offices. His salary for this particular office was simply shifted from one account to another for the sake of economy. If the money for his salary had been voted in the ordinary way this question would never have arisen.

197. And you seem to have been of opinion that Dr. Pollen ought not to suffer on account of this irregularity?—Certainly; for he was holding other offices, and doing the work of other offices at the time, for which he received no salary.

198. *The Chairman*] In your memorandum of February 11th, 1880, I notice that you express the opinion that the second section of the Act of 1866 precludes Dr. Pollen from counting his salary as Paymaster of Imperial Pensions, and, the opinion of the Solicitor-General being adverse to your view upon that point, you gave way upon it?—That appears to have been my opinion, judging by my memorandum of the 13th February.

199. That, I suppose, was one of those instances in which the Audit did not consider itself justified in acting contrary to the opinion of the Law Officers?—I do not think the Audit would be justified in acting contrary to the opinion of the Law Officers, unless it had very strong grounds for thinking that the Law Officers were wrong.

200. And that is the general practice of the Audit in cases of that sort?—Yes; but we always refer to the Law Officers first.

201. It is the fact, therefore, that in the case of Dr. Pollen the ordinary course was pursued, and that there was no departure by the Audit from the ordinary course in regard to matters involving legal consideration?—No, there was no departure at all from the usual course.

202. *Mr. Moss*.] Did Dr. Pollen hold both offices of Sub-Treasurer and Paymaster of Imperial Pensions at the same time?—Yes, I think so; and he was also Agent for the Government at Auckland.

203. And the salary of these two offices was £400 a year?—I cannot recollect exactly, but to the best of my recollection he never resigned any of his offices.

204. Do you know who is Sub-Treasurer now, or who was appointed Sub-Treasurer when Dr. Pollen resigned?—There are no Sub-Treasurers now. The office has been abolished throughout the colony.

205. Who was appointed Government Agent in his place?—I do not think anybody was appointed.

206. Does not the Collector of Customs act as a sort of Sub-Treasurer?—No, he makes no payments. Any payments that cannot be made from the Treasury direct are made by implestees.

207. Have you any idea of what the duties of the Paymaster of Imperial Pensions were?—Yes; he had actually to take the money in his pocket and travel round the different villages, and pay the pensioners. He had also to get receipts for the money so paid, and forward them to the Home Government.

208. Did Dr. Pollen do that work himself?—I think he was assisted by Colonel Haultain.

209. Dr. Pollen was very often absent from Auckland while he held that office, and I think he was Minister while he held it. Did he continue to draw his pay while he was a Minister for acting as Paymaster?—I do not think he drew his pay while he was a Minister, but he continued to hold the office nominally.

210. Then, when he held the office nominally, while he was a Minister, what became of the salary?—I do not know, but it would go to the credit of the colony. It would be paid into the Treasury as miscellaneous revenue. It would have been very much better if this money, which was received from the Imperial Government, had been always considered Colonial revenue.

211. *Hon. W. Johnston.*] I understand you to say that payments made to the Colonial Government by the Home Government for services rendered should not be considered colonial revenue. Do you not consider the moneys received by the Post Office for money orders from the Home Government colonial revenue?—No, they are not colonial revenue. They are not brought into account as revenue, but they are made public moneys, and the property of the Crown, for the purpose of bringing them under the control of the Audit.

212. I refer to the commission received for money orders?—That is brought to charge as part of the postal revenue.

213. Is not that an exactly similar case to that of the payment of Imperial pensions?—Yes, it is. The only difference is that the one thing is authorized by statute, and the other is not. One is settled by law, and the other is a transaction outside the law.

214. *Mr. G. McLean.*] Let us suppose a case of this sort: if that money came out to you as the servant of the House, and you chose to put it into your pocket, and used it for your own purposes, who would have to refund it to the Home Government?—Of course the colony, having undertaken to do the work, would have to do it, whether it lost or gained by it. If any of the money was lost, no doubt the colony would have to make it good.

215. Now, the Government is the Government of the colony, and I wish to ask you, whether, as such, it has any right to enter into private transactions of this kind, which might cause a loss to the colony?—Certainly not. Any contract made by the Crown for the expenditure of moneys without the sanction of Parliament is *ab initio* null and void.

216. And if anything had happened to this money, the colony would have been responsible for it?—Yes, practically; but if the House chose not to vote it, I am not prepared to say what would be the position then.

217. *Mr. Moss.*] How is an officer appointed, so as to bring him under the Act of 1858 or 1861?—If I may say so, without being deemed impertinent, I think it would be a very good thing if the Committee were to ask how all the officers in the Civil Service were appointed, because at present there is a good deal of irregularity. There are men who are considered to be in the Civil Service who have never had a proper official appointment; and some portion of the staff is employed temporarily on day wages, the only warrant for their employment being the initials of a Minister. Those men are not considered to be in the service. I hold that every person who is appointed to the Civil Service should receive an official letter of appointment, and that certain officers should be appointed under the hand of the Governor.

218. Was Dr. Pollen's appointment as Paymaster of Imperial Pensions gazetted?—I think not.

219. Is it not usual to gazette appointments to the Civil Service?—Yes; but I do not think that Dr. Pollen belonged to the Civil Service in his capacity as Paymaster of Imperial Pensions, although he drew salaries for other offices.

220. Were the duties of the Sub-Treasurer so light that Dr. Pollen could perform them in addition to his other work?—I cannot say; but I know that Dr. Pollen always did perform his duties. He really was a hard worker, and was the most satisfactory man of business I ever met.

221. Was not the whole of the work of the Paymaster of Imperial Pensions performed by officers other than Dr. Pollen, and had he not only to sign the vouchers?—I do not know. I cannot say.

222. *Hon. W. Johnston.*] Under the Public Revenues Act, out of what account was the commission paid?—It was not paid at all; it would only be deducted from the amount which the colony owed the English Government.

223. On the receipt of the money, what fund would it go into?—Perhaps into the Imperial Pensions Advance Account, or, probably, to the Consolidated Fund. I am not quite sure; but I will look up that point, and inform the Committee.

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TUESDAY, 26TH JULY, 1881.

Hon. W. GISBORNE, M.H.R., examined.

224. *The Chairman.*] The object of the Committee in asking you to attend here again, Mr. Gisborne, was to inform you of a point of difference between a statement you made when you were last before the Committee and a statement on the same subject which has since been made by Sir William Fox. His attention was drawn to the statement made in your letter of the 27th November, 1876, to the effect that, you accepted the office of Commissioner of Annuities on the distinct understanding that while you performed the duties in addition to those of Minister your time should count, but that the time during which you were a Minister should not count in the computation of your pension. I will read to you the questions that were put to Sir William Fox on that point, and his replies to them. They are as follows:—Mr. Gisborne was asked: "You say there was a distinct understanding that, while you performed the duties of Commissioner of Annuities in addition to those of Minister, that time should count in the computation of your pension?" His reply was, "I say that that was what was told me by the Premier, Sir William Fox, and other Ministers at the time. They told me that the time during which I held office in the Civil Service would count in respect of my pension, notwithstanding that at the same time I was a Minister of the Crown. In making my claim to Major Atkinson, I understood that the Law Officers were of opinion that the services in question would count. I took the Insurance Office on that understanding." Then I asked him, "Do I understand you to imply that you risked the possible interpretation of the law when you took political office, as to your right to take Civil office?" and the reply was, "I was under the impression that the law allowed it, and I was aware that the same thing had been done in the case of other officers." Then I said, "On the very face of these papers, Sir William Fox, who was, I believe the head

of the Government which you joined, made a minute in reference to the case of Sir William Fitzherbert to the effect that the case ought not to be drawn into a precedent?" He replied, "In Sir William Fitzherbert's case there was no pretence that he was doing the work of the Commissioner of Crown Lands, because even when he was in the colony the duties were, I believe, for some time performed by a deputy; but when he went to England I am certain that they were done by a deputy." I then asked Sir William Fox the question, "Do you remember the circumstances sufficiently to give any information to the Committee?" To which he replied, "Yes, I entirely confirm the statements made by Mr. Gisborne. It was distinctly understood at the time he accepted Ministerial office, which he did at my personal request, that he should hold the position of Commissioner of Insurance, but that he should receive no payment for his services in that capacity while he held his Ministerial office; and I distinctly remember that it was agreed that the time he served as Commissioner of Insurance should count when he applied for his pension." You will notice that Sir William Fox goes further than you went, and says it was distinctly understood when you accepted Ministerial office that you should hold the position of Commissioner of Annuities?—A little confusion has, I think, arisen in Sir William Fox's mind with reference to the dates of my acceptance of Ministerial office and of my acceptance of the office of Government Insurance Commissioner. When I accepted Ministerial office there was no Government Insurance Office created by law, nor was it created until two or three months afterwards. Sir William Fox is quite right in saying that, when I accepted the Insurance Office, there was an understanding that the time would count during which I held the Insurance Office as well as the position of a Minister. There was no understanding with me when I first became a Minister. There may have been an understanding between the Ministers then in office (excluding myself) that, if such an office were created, I should have the offer of it. All that I believed was that, like some other officers, if a suitable opportunity arose, I should be allowed to hold an office in addition to the Ministerial portfolio, so that I should be able to count the previous time I had been in the service for the purpose of claiming a pension when the proper time arrived. There was no pledge or promise held out to me by any of the Ministers when in the Cabinet.

225. The Insurance Act was then in course of passage, was it not?—No. Sir J. Vogel, before the Stafford Government left office, carried some resolutions providing for the bringing in of a Bill for the purpose. I think the discrepancy between Sir W. Fox's evidence and mine is caused by the fact that he has confused the time when I accepted Ministerial office with the time when I accepted the Insurance office, five months afterwards. The time during which I held office as a Minister and also acted as Government Insurance Commissioner has not been counted in the computation of my pension.

226. The computation on page 14 of the papers, namely, £466 13s. 4d., is correct, is it not?—Yes, I believe so, exclusive of the time during which I was in the Cabinet, and which, as I have stated, has not been counted.

Dr. KNIGHT, late Commissioner of Audit, examined.

227. *The Chairman.*] The Committee have asked you to attend to-day, Dr. Knight, for the purpose of getting some information from you with regard to the pensions of Messrs. Fitzherbert, Domett, and Gisborne. I think you were not concerned in Dr. Pollen's pension?—Yes, that came before me; but when the question of Mr. Fitzherbert's pension came up I was in England. Consequently I know very little about that.

228. You did not hold, at any time, that the taking of political office affected the permanent office?—Yes, I did so in Mr. Gisborne's case. That was the objection which I previously raised in Mr. Domett's case.

229. Did you hold that taking a political office did not annihilate the claim?—It suspended the claim, but did not annihilate it.

230. You did not hold that the fact of a man's vacating a permanent office for a political one ended his claim to a pension, but merely that it took so many years off the time, when the computation was made for a pension?—Yes; that is the case.

231. Did you hold, in regard to any of these pensions, that the taking of political office and consequent vacation of permanent office caused the claimant to forfeit his right to a pension?—No; I maintained the very opposite of that; but that requires some explanation. What I maintained was that, when Mr. Gisborne accepted a Ministerial office, he virtually and really was no longer in the Civil Service, as the two offices—one in the Ministry and the other in the Civil Service—were incompatible. When he accepted office as Colonial Secretary, I understood that the Civil Service offices which he previously held were vacated, because the two offices were really incompatible. At the same time I believed that, under what may be called a Ministerial arrangement, he continued to act as Commissioner of Annuities without salary. I consider that if the office of Commissioner of Annuities were held by a Minister he was not entitled to count the time during which he held that office in claiming a retiring allowance. I understand the arrangement was made with the view of securing to Mr. Gisborne the office of Insurance Commissioner, if he ceased to be a Minister of the Crown. The Solicitor-General based the opinion which he gave on the question on an Imperial Statute. In England the officers of the Civil Service are entitled to retire on an allowance; but it sometimes happened that the Government in England were anxious to appoint persons in the Civil Service to offices in the colonies, or in England, in connection with which there was no retiring allowance. For the purpose of entitling such officers to a retiring allowance, an Act was passed to enable the Government at Home to transfer officers belonging to the Civil Service there to offices not entitled to retiring allowances, without prejudice to claims for pensions. The Solicitor-General argued that no such provision had been made in this colony to secure the rights of officers to a retiring allowance who accepted office after the Act of 1866 was passed. By the Act of 1866, which repeals the Acts of 1858 and 1861, and provides that nothing in that Act shall prejudice or affect the rights under those Acts of persons appointed to offices before the passing of the Act.

232. What do you consider to be the value of what you describe as a Ministerial arrangement, as bearing on the question of computation of pension?—I look upon it in this way: If a Minister of the



Crown continues, under arrangement made by the Ministry, to hold the inferior office, he must be considered to hold the latter office as one of the Ministerial offices; but that would not prejudice any future claim for retiring allowance for the period prior to the date on which Mr. Gisborne accepted the office of Colonial Secretary.

233. Are you applying this remark simply to Mr. Gisborne's case, or are you applying it also to Mr. Fitzherbert's case?—I may say that I consider it inconsistent that a person should at one and the same time be a Civil servant and a Minister of the Crown. In Mr. Gisborne's case the Commissioner of Annuities would have been subject to the directions of the Colonial Treasurer, unless the office were regarded as a Ministerial one.

234. You think then that the time during which the claimant held political office his service as a Civil servant should not count?—Yes.

235. *Mr. Reader Wood.*] On page 20 of the papers you say, in your memorandum dated 31st October, 1877: "In the case of Dr. Pollen I was doubtful whether, in computing the amount of his retiring allowance, the salary paid to him as Paymaster of the Imperial Pensioners residing in the colony should count." You say you were doubtful about that?—Yes.

236. Upon what grounds were you doubtful?—The office was not known to the Legislature, and the salary was not provided for in the Estimates.

237. If you look at the Civil Service Act you will find this clause: "Nothing in this Act shall apply except as hereinafter provided to any responsible Minister, or to any Judge of the Supreme Court, or to any officer of either House of Parliament, or to the Auditor or Controller of Public Accounts, or to any officer the right to appoint whom is not vested in the Governor, or to any officer of or member of a colonial military or Volunteer Force, or to any person paid by fees or commission, nor to any officer appointed by the Governor to whose office salary is not appropriated by the colonial Legislature." That salary was never appropriated by the colonial Legislature?—Yes; I consider that the Crown has power to appoint any officer it chooses to perform executive duties, but it is the Legislature only that can provide the money for payment of services rendered.

238. *The Chairman.*] On page 12 you appear not to have agreed with the opinion which was given by the Solicitor-General, in regard to Mr. Gisborne's pension?—No; for this reason: That the view taken by the Solicitor-General was that Mr. Gisborne had accepted a new office; but that was not the case. There was a consolidation Act passed, and in that Act it was provided that the person holding the position or office of Commissioner of Government Annuities should continue as Commissioner under that Act; so that there was perfect continuity of office, and there was no moment in which Mr. Gisborne was not Commissioner of Annuities, and in no sense did he enter upon a new office. It was unnecessary to appoint the same officer again under the consolidation Act, as it was provided by the Act that he should be considered to have been appointed under it.

239. What was the name of the consolidation Act?—It was called the Government Annuities Act. You will notice the language used by the Solicitor-General. He refers to any person who accepts a "new office"; but there was no acceptance of any new office in this case.

240. Suppose that a Civil servant resigned his office and became a Minister of the Crown, and that he was subsequently appointed to a newly-created office, there being an interval between his resignation of his Civil office and his acceptance of the political office, and his appointment to the new office—what would be his position?—His position then, according to the opinion of the Solicitor-General, is that he is no longer entitled to the rights and privileges that were secured to him under the Act of 1866; and he would have lost all his privileges under the Acts of 1858 and 1861.

241. Was it not a fact that Mr. Gisborne took office about July, 1869, resigning the appointment which he then held in the Civil Service, and at the same time accepted an office in the Civil Service which was actually not created until September, 1869?—Those circumstances are not within my memory.

242. Can you offer any opinion about the matter?—I am of opinion that, when he accepted a new office, he was entitled to a retiring allowance up to the date when he retired from the office he had previously held. When he accepted the new office, he was in the same position as any other officer who joined the Service after the Act of 1866 was passed—that is to say, he was not entitled to count the time he served in the new office in determining the amount of his retiring allowance. In other words, he virtually became a new officer, and was no longer entitled to the privileges under the Acts of 1858 and 1861.

243. *Mr. Reader Wood.*] Are you of opinion, then, that, when an officer in the Civil Service gives up his appointment for the sole purpose of taking a political office, and becomes a Minister, he can be considered to retire from the Civil Service, considering how the word "retire" is used in the Pensions Acts?—It would depend whether, in the case of his resigning, he would be entitled to a retiring allowance. No officer can retire on a pension unless he has been a certain time in the public service; but if he has been in the service for the specified time, and then resigns, he is entitled to the retiring allowance computed up to the date of his resignation.

244. Do you not think that an officer receiving a salary of, say, £400 a year might make a very good thing by retiring from the Civil Service and abandoning all right to a pension, if he could get a salary of £1,750 a year and allowances, with the chance of its lasting for some years?—It is not very easy to reply to that question. Supposing, for instance, such a person accepted office as Prime Minister, and three days afterwards was thrown out of office, he, of course, would be a loser by it. But, if he could secure both a pension for his past services and his salary as a Minister, it would doubtless be a very good thing for him.

245. I understood you to say that Mr. Gisborne did not accept a new office, and that, therefore, there was no break in his service. Now, in fact, he resigned office before the consolidation Act was passed?—My attention had not been called to that point. On the understanding that no actual vacancy had occurred, I did not concur in the opinion the Law Advisers of the Crown.

246. *The Chairman.*] Mr. Gisborne resigned his appointment as Under-Secretary about July,  
3—I. 5A.

1869, and was appointed Commissioner of Annuities under the Act of 1869, which did not become law until the 3rd September following.

247. *Sir G. Grey.*] Did Mr. Gisborne make it a condition that if he resigned his office he should get a seat in the Legislative Council which he could hold for life?—I know nothing about that. I know that he was appointed to the Legislative Council.

248. Which he could have held for life, and to which was attached an allowance of £200 a year, while he would have to pay no election expenses?—Yes, that is the case. I agree with you.

249. Was that the case with Dr. Pollen too?—Yes. Dr. Pollen was also in the Legislative Council.

250. *Mr. Moss.*] Was not the time during which Messrs. Gisborne, Pollen, and others were acting as Legislative Councillors, counted in the computation of their pensions?—The fact of their being Legislative Councillors was not considered at all.

251. On page 20 of the papers you state that Dr. Pollen's case is peculiar, in this respect: that the salary paid to him for services rendered as Paymaster of Imperial Pensions was computed in the amount of his retiring allowance?—Yes, it added a certain number of years to his claim.

252. And you were doubtful whether or not that should be the case?—Yes, I was doubtful about it.

253. And your reason for being doubtful was that the office was not known to the Legislature; and the salary of £300 a year, which was attached to it, was not provided by the Legislature?—Yes.

254. And you changed that opinion because, when the question was referred to the Law Adviser of the Crown, he stated that he understood that all the offices in respect of which Dr. Pollen claimed were offices held by him under the General Government and in the Civil Service of the colony?—Yes; I acted on the opinion of the Law Adviser of the Crown.

255. Do you think that the office of Paymaster of Imperial Pensions was a Civil Service office?—Yes.

256. On what ground do you think so?—On the ground that the Government have a right to appoint any officer they please to do official work, as I stated just now.

257. Under which of the Acts do you think he was a Civil servant?—Under the Act of 1858, which provides for the retirement of officers and others employed in the Civil Service of the colony. I think the fact of his being required to do certain work for the Crown made him a Civil servant for the time. It is the right of the Crown to appoint anybody it likes to do its work; and it is the privilege of Parliament alone to provide the money to pay the salary of any person so appointed. Without such provision no remuneration by way of salary can be made to him.

258. You consider that he was a Civil servant, though he was not necessarily entitled to a pension as a Civil servant holding that position?—Yes, because the Act distinctly states that no person shall be entitled to draw a retiring allowance whose office has not been provided for by the General Assembly.

259. What is your opinion on the subject now?—I am of opinion that Dr. Pollen was not entitled to count the period or reckon the salary, when applying for his pension, for the time during which he was acting as Paymaster of Imperial Pensions, because the Legislature distinctly stated that no officer should have a claim for a retiring allowance unless the Legislature had made provision for the payment of his salary.

260. Is there any point similar to that to be considered in reference to the pensions of Messrs. Fitzherbert, Gisborne, or Domett?—No; I do not think there is any similar point.

261. Then, in your opinion, they were unquestionably Civil servants, who were entitled to draw pensions?—Yes. In Mr. Domett's case, there was a period for which he was mulct of the time during which he was a Minister.

262. *The Chairman.*] In reply to Sir George Grey, you stated that you agreed with him that Mr. Gisborne had accepted an appointment in the Legislative Council, which he might have held for life, and to which a sum of £200 a year was attached, the money being given for his expenses?—I do not know that I said exactly that. I simply agreed with Sir George Grey as to the facts, as far as they existed at the time.

263. I understood from your manner that you considered that the payment of £200 a year was a certainty in connection with the office?—No; of course I know that it is an uncertainty, and that it depends on the Assembly whether it shall be voted or not.

264. *Sir G. Grey.*] In the event of Dr. Pollen's being paid money by Great Britain, and if he was entitled to receive a pension for the money so paid, do you not think that Great Britain should pay him that pension?—I do not consider that Great Britain paid him that money. I think that Great Britain paid the money to the colony, and that the colony paid Dr. Pollen. The Imperial Government paid into the colonial chest the percentage out of which Dr. Pollen's salary was paid, but it knew nothing of Dr. Pollen. Dr. Pollen was engaged to do the work by the Government of this colony.

265. Then you think it was colonial money that was used to pay him?—Yes; strictly and unquestionably.

266. Then the pensioners were paid with colonial money and not with British money?—No; the Imperial Government were previously sending out moneys to pay their pensioners in the colony, while on the other hand New Zealand was remitting moneys to England on account of the postal service, and the two transactions were running on concurrently. Now, the Imperial Government pays our postal account, and we pay the Imperial pensioners.

267. What relation was there between the two accounts?—Simply that of reciprocity. If the colony had not been indebted to the Imperial Government we should have required them to pay us the money direct; but, as we owed the Imperial Government moneys, we agreed to pay the pensioners in discharge of our liabilities.

268. The ownership of the money was not altered by that?—The money was money owing to the English Government, but, instead of being remitted to England, it was paid to certain creditors of the British Government here.



269. What arrangement was there with regard to remitting the money to England?—We owed the Government in England certain moneys in connection with postal matters, and out of that we paid the pensioners. There was no arrangement for remitting money Home. I have always understood that it was the proposal of the English Government, that, instead of remitting the money to England, we should pay their pensioners in this colony with it.

270. Do you not know that it was the proposal of the Imperial Government that we should pay these pensioners, without any reference to postal matters?—No, I only know that we were paying the pensioners out of money that we owed to the English Government.

271. *The Chairman.*] Is it not a fact that the Government of the colony has been in the habit of advancing money to pay these pensions?—Yes. I do not know whether the exchange was at times against us or not.

272. *Mr. Reader Wood.*] Was it not merely an exchange transaction?—Yes; and it was a convenience to both parties.

THURSDAY, 4TH AUGUST, 1881.

Hon. F. WHITAKER examined.

273. *The Chairman.*] The Committee have asked you to come here for the purpose of getting your opinion in reference to several cases in which pensions are involved.

274. *Mr. McLean.*] You have given opinions in reference to some of these pensions, particularly that of Dr. Pollen?—I have given an opinion in Dr. Pollen's case, but no other.

275. Will you tell us plainly whether Dr. Pollen's pension was granted and is being paid according to law?—Yes; I think the pension was properly granted, and is accordingly being properly paid. The only doubt that arose in my mind in connection with the pension was whether the time he held office as a member of the Executive Council, without a portfolio, should count in his application for a pension. After careful consideration of that point I came to the conclusion that the time during which he was an Executive Councillor only should not be deducted from his term of service. It did not appear to me that holding office as a member of the Executive Council without other office was incompatible with holding a position in the Civil Service.

276. In referring to the time in which Dr. Pollen was a Minister, do you mean the time in which he was an Executive Councillor only?—That was the point that raised a doubt in my mind.

277. Do you hold that the time during which a Minister receives a salary as a Minister should be counted in the event of his applying for a pension?—No; I still adhere to the opinion I formerly expressed, which was that a Minister cannot at the same time be a Civil servant.

278. Then you think that when a Civil servant holds the position of a Minister, and receives salary as a Minister, he should not be allowed to count that time when applying for a pension?—I think not. I think that, when a man holding an office in the Civil service accepts a position as Minister, he cannot hold both positions, as they are incompatible. I think the lower office becomes vacant when he accepts the higher. I may say that I do not think the question would have arisen if Dr. Pollen had only held the honorary office of Executive Councillor.

279. You know nothing about the pensions of Messrs. Fitzherbert, Domett, and Gisborne?—No. With regard to Dr. Pollen's pension I have only to say that I gave all the attention that was necessary to it in order to enable me to form a correct opinion.

280. *Mr. Moss.*] The last paragraph but one of page 24 of the papers is to this effect: "The only remaining question is whether the salary that Dr. Pollen received in respect of his office of Paymaster of Imperial Pensions is to be reckoned in fixing the amount of the allowance. As I understand the matter it stands thus: The Imperial Government made an arrangement with the Colonial Government to allow the latter £2 10s. per cent on the amount of pensions payable in this colony by the former, the Colonial Government undertaking the work at their own cost. In consequence of this arrangement Dr. Pollen was appointed by the Colonial Government at a fixed salary to perform the work. In my opinion the £2 10s. per cent. on payment becomes colonial funds, and the salary paid is therefore paid out of colonial funds to an officer appointed by the Colonial Government. Under these circumstances that salary will, in my opinion, be properly reckoned in fixing Dr. Pollen's colonial retiring allowance.—FREDK. WHITAKER.—15th January, 1880." In this case I do not see anything to show that the salary was appropriated by the Colonial Legislature?—I know nothing about that. In my opinion the money was colonial funds, and it was a misappropriation to use that money without authority of Parliament.

281. *Mr. Saunders.*] Do I understand you to state that your doubt as to the position of Dr. Pollen in the matter arose entirely from the fact that he held his political office without salary—that is to say, if he had held the office with salary, would he have been entitled to count his time?—If he had held the office of Minister with salary in the ordinary way, I do think that the time would have to be disallowed.

282. *Mr. Ballance.*] Was the fact not before you that the salary of £300 had not been appropriated by Parliament?—It was not.

283. Then you gave your opinion respecting it on the supposition that the funds you were dealing with were colonial funds?—I assumed that the money had been properly paid, and there was no question in my mind as to its being colonial funds. On principle I think it is wrong that a man should draw a salary as well as a pension. It appears to me that the spirit of the law is against a man drawing a pension as well as a salary; at the same time I admit that a strict interpretation of the law may lead to an opposite conclusion.

284. Do you think that any person claiming a pension under the Act of 1866 would be entitled to have his rights protected under the Act of 1858 or that of 1861?—My attention was not drawn to the matter, but I will look into it. Those Acts were repealed by the Act of 1866, and do not apply to Dr. Pollen's case, who gets his pension under the Act of 1866.

285. Can a Minister, in your opinion, hold a Civil Service appointment whilst he is a Minister?—I should say not. My opinion is very decisive on that point.

286. Under section 33 of "The Civil Service Act, 1866," if Dr. Pollen did not receive any salary for the two years previous to 1873, would he be debarred from drawing pension on the salary he should have received during those two last years?—Yes; to be entitled to pension he must have received salary

287 *Mr. Montgomery.*] In the event of an officer in the Civil Service taking the position of member of the Executive Council, might he not give such advice as would influence the Government in the appointment of his successor in the Civil Service?—The objection to a man holding an incompatible office is that he would be both master and servant; but that would hardly apply to an Executive Councillor only without other office.

288. *Mr. McLean.*] Are you of opinion that the money paid by the Imperial Government to the Colonial Government for services rendered in connection with the payment of Imperial pensions should be considered colonial revenue?—This was, it appears, an agreement between the Imperial Government and the Colonial Government; and I am of opinion that the moment the former paid to the latter any sum of money that money became colonial funds.

289. *The Chairman.*] You expressed the opinion that the drawing of a pension in virtue of length of service by any one who is at the same time a Minister is against the spirit of the law?—Yes.

290. Are you aware that that question has been submitted to the present Solicitor-General, and that he has given a different opinion respecting it?—I have not seen the opinion; and I have told you that the strict interpretation of the law is rather the other way

291. Your opinion appears to be that a Civil servant who accepts a portfolio in the Ministry vacates his office in the Civil Service?—Yes.

292. I want to know what is the precise legal meaning of the word "vacates" in that case—whether it means the absolute termination of office, or merely a temporary vacation of the office, which allows the occupant to rehabilitate himself?—I think that it means that the Civil Service office is absolutely abandoned.

293. But you think that a break occurring in the continuity of a man's service should not count for pension?—That is my opinion.

294. Then, is it reasonable that if he ever becomes a Civil servant again, he should be entitled to count the time he formerly served?—I will give you an instance: If I had been holding office as Assistant Law Officer, and I became Attorney-General, my office as Assistant Law Officer would absolutely become vacant, and I would have no claim in connexion with it.

295. And in case you had continued to act as Assistant Law Officer for a certain time longer, in order to become entitled to a pension, would you, after the break caused by your taking office as Attorney-General, be entitled to count your service if you went back to the Civil Service?—I do not understand that it requires continuous service. The 18th section of the Act of 1866 allows a man to count the time he serves as continuous, through there has been a break.

296. *Mr. Ballance.*] Should the non-appropriation of the £300 salary paid to Dr. Pollen on account of Imperial Pensions exclude that salary from the computation of pension?—I see nothing in the Act of 1866 that makes it a condition that the salary should be appropriated by Parliament, but payment without appropriation would no doubt be irregular

## APPENDIX.

### THE HON MR. GISBORNE'S PENSION

The Solicitor-General.

18th August, 1879.

Will you be good enough to advise upon the following question: If an officer receives a pension under the provisions of the Civil Service Acts, and becomes a member of the Executive Council, is he entitled to draw his pension and his salary as a Minister, or ought there to be any, and, if so, what, deduction?

G. GREY

Hon. the Premier.

THE question submitted, being a general one, must be considered with reference to the Acts conferring superannuation allowances prior to 1866, and also to the Acts passed in that year. Upon reference to the Acts in question, I am of opinion that there is nothing making it unlawful for a person in the receipt of a pension under the Civil Service Acts to draw his salary as a Responsible Minister of the Crown. Both the Acts of 1858 and "The Civil Service Act, 1866," contain provisions applicable to the ordinary case of an officer receiving a retiring allowance, and being subsequently appointed to some other office in the Civil Service (*vide* section 4 of "The Superannuation Act, 1858," and section 36 of "The Civil Service Act, 1866"). The effect of the provisions referred to is that, in the case of any such subsequent appointment, the retiring allowance shall cease to be paid if the annual amount of the profits of the new office shall be equal to those of the office formerly held; and, in case they are not equal, then no more of the superannuation allowance is to be paid than what, with the salary of the new appointment, shall be equal to that of the former office.

It would have been a fair question for argument, whether these provisions could have applied to such a case as now before me; but all doubt is relieved by the terms of the Acts referred to. The Act of 1858 expressly provides (section 9) that it shall not apply to offices whose holders have seats in the Executive Council, or from which they are removable on political grounds; in the Act of 1866, section 2 declares that it shall not apply to any Responsible Minister.

20th August, 1879.

W. S. REID.

12th July, 1847 Appointed Private Secretary to Lieutenant-Governor Eyre.  
 Feb., 1848. Appointed Clerk to Executive Council.  
 1st Sept., 1849. Appointed Commissioner of Crown Lands, Auckland.  
 1st July, 1856. Appointed Under-Secretary  
 2nd July, 1869. Resigned as Under-Secretary  
 Appointed Member Executive Council.  
 5th July, 1869. Took office of Colonial Secretary  
 22nd Nov., 1869. Appointed Commissioner of Government Insurance.  
 10th Sept., 1872. Ceased to be Colonial Secretary  
 30th Sept., 1876. Resigned as Commissioner of Insurance.  
 5th July, 1879, to } Minister of Lands, Mines, and Education, and Member Executive Council.  
 8th Oct., 1879. }  
 Leave granted: 1st May, 1852, to 31st October, 1853; 9th June, 1876, to 30th September, 1876.  
 Sums of money received with pension: Salary as Minister, July–October, 1879, £325 18s. 10d.

SIR,—

Wellington, 11th July, 1881.

For obvious reasons I refrain from taking part in the deliberations of the Public Accounts Committee on the subject of certain pensions.

I wish, however, in this letter to explain why my correspondence with the Government on the subject of my pension appears unfinished. While my claim, to count as part of the time of my service the period during which I held the office of Government Insurance Commissioner in addition to a ministerial portfolio, was under the consideration of the Government in 1877, I became a candidate for, and was elected to, a seat in the House of Representatives. Thereupon I waited on the Hon. Major Atkinson, the Colonial Treasurer, and, in order to avoid misconstruction, I withdrew that claim.

I shall of course be ready, if the Committee desire it, to give my evidence on any point which, in their opinion, requires my examination.

I have, &c.,

The Chairman of the Public Accounts Committee, &c.

W GISBORNE.

SIR,—

I might have added yesterday that an officer on half-pay in the army or navy does not, I believe, lose his pay when he becomes Minister. I am under the belief, though I will not say I am certain, that the Commander-in-Chief who used to be a Minister, though not in the Cabinet, drew his General's or Field Marshal's pay in addition to his pay as Minister. And the Duke of Wellington as Premier, or General Peel as Secretary of War, drew pay as Field Marshal and General in addition to that of their office.

I should also like to express the opinion that, whatever be thought of the propriety of a permanent office being held conjointly with a nominated one, the question cannot be raised as regards pension. The latter matter depends not on whether the civil office ought to have been, but on whether it actually was, held. In Gisborne's case the office was held, and to say it was not would invalidate his acts as Commissioner of Annuities; and Parliament was aware of the arrangement at the time.

I need not say I think the matter should be put at rest by an Act, and that Ministers should not be allowed to hold civil offices nor time to count for pensions. But such is not, in my mind, the law at present.

I enclose the memorandum I promised yesterday

I have, &c.,

The Chairman, Public Accounts Committee.

JAMES EDWARD FITZGERALD.

## DR. POLLEN'S PENSION

### THE SOLICITOR-GENERAL'S OPINIONS.

I HAVE carefully considered the various questions put to me on attached papers,\* and now beg to reply to them in their order, adapting my answers to the circumstances of Dr. Pollen's case:—

1. Can a Civil servant, who resigns, claim his pension as a matter of right?—If a Civil servant resigns his office absolutely he cannot claim his pension as a matter of right. The act of resignation usually carries with it a surrender of the privileges attached to the office; and, in the Civil Service Acts the expressions used in respect of officers claiming superannuation allowances are, to “retire from the service,” “retiring allowances,” &c., which convey quite a different meaning from resignation. But I think an officer may, in resigning his office, reserve the question of his right to receive a retiring allowance; and this Dr. Pollen did, in his letter of the 30th October, 1876, and his resignation was accepted upon those terms by the Governor.

2. If Civil servant called to Legislative Council, can he remain Civil servant: (a.) under “The Disqualification Act, 1870;” (b.) under “The Disqualification Act, 1876?”—Speaking generally a Civil servant—i.e., one holding any office, place, or employment, &c., within the meaning of the Disqualification Acts—would not be *capable* of being summoned to the Legislative Council. But the Disqualification Act of 1870 exempted from its operation members of the Executive Council holding certain Ministerial offices; and under this Act there is no prohibition of a person being called to the Legislative Council while a Civil servant, so long as he also remains a member of the Executive Council, and holds his Ministerial office. There is a similar provision in the Disqualification Act of 1876, to which the same remark would apply, subject, however, to the terms of section 14, which enact that a member of the Civil service shall not, while he is such member or for six months thereafter, be capable of holding a seat in the Legislative Council. As a matter of fact, members of the Executive have held offices in

\* NOTE.—The above series of questions are unsigned. They are in the handwriting of Mr. Stout, the Attorney-General of the period.

the Civil Service, both when the Act of 1870 was in operation and since the present Act came into force. The only one which occurs to me at present is that of Land Claims Commissioner under "The Land Claims Act, 1856;" but, as I presume no salary, &c., is attached to the office, there is of course no disqualification on that ground; and, being held by a member of the Executive, comes within the view I have expressed as to the operation of the Disqualification Act. From the papers it appears Dr. Pollen resigned his offices one day prior to the passing of the Act now in force.

3. Was the memorandum as to departmental arrangements at Auckland legal, so far as agreement as to £300 for paying Imperial pensions was concerned?—I have read Sir Julius Vogel's memorandum of 6th January, 1872, which can hardly be called an agreement, but is rather a statement of arrangements made as to the conduct of Treasury business in Auckland, including the terms upon which Dr. Pollen undertook the payment of the Imperial pensions. The latter were: that, out of certain commissions allowed to the colony by the Imperial Government, Dr. Pollen should be allowed an annual sum of £300 in lieu of a like sum paid him by the Treasury. I do not think this arrangement can be looked upon in the nature of an agreement, because the commission was the money of the colony, and could be apportioned as it pleased, whether Dr. Pollen was a party to such apportionment or not. The Treasury could have cast the duty of paying these pensioners upon him, and paid him out of this commission without his sanction or knowledge. Indeed the main object was to relieve "the Treasury of some departmental expenditure;" and the fact that there was a kind of reservation of Dr. Pollen's rights in respect of departmental service does not, in my opinion, weaken his position. On the contrary, it was only such an equitable stipulation as an officer so situated might well make, and, so long as it did not contravene the law, was one within the province of the Treasury to allow. As to the latter point, Dr. Pollen's claim is made under the Acts of 1858 and 1861, and in these Acts there is no such limitation as in the Act of 1866, which provides that *that Act* shall not apply to offices to which salary is not appropriated by the colonial Legislature. Had Dr. Pollen become an officer of the Imperial Government, and been paid by them, of course he would have had no claim on the colony; or even if this commission had been specifically devoted by the Imperial Government to defraying the expenses connected with paying these pensioners, then, I think, his claim would have been untenable; but it is treated as the money of the colony, and by it devoted as it pleases. Dr. Pollen still remains an officer of the Colonial Government, and, in discharging his duties is, by the memorandum in question, assumed to be under the control and direction of that Government. For these reasons I think the arrangements made by the Treasury should not be allowed to prejudice any claim to retiring allowance which Dr. Pollen may legally establish. I may add that, when these papers were previously before me, the Treasury memorandum was not with them, and I have now expressed an opinion on it for the first time.

4. If Dr. Pollen is entitled to pension, up to what date must he claim?—I think this claim should be made upon the average salary of the offices held during the last three years of the period of service. This is the language of section 3 of the Act of 1861; and it does not, in my opinion, affect the claim, although the salary was not actually drawn. I do not think it necessary to go into the question, as to the right of a claimant to claim up to any date he pleases within the period of his service, and waive any portion of such service, because in this case it would not make any real difference.

5. Could he hold offices, and still act as Minister of the Crown?—This question is disposed of by my answer to No. 2, above.

6. As it appears Dr. Pollen did not resign his offices till 30th October, 1876, must not his pension count for the salary drawn during the three last years?—Also disposed of by my answer to No. 6, above.

25th June, 1878.

W. S. REID.

#### MEMORANDUM for the PUBLIC ACCOUNTS COMMITTEE.

THE process as to payment of Imperial pensions is follows:—

1. Money is issued on imprest for the payment of these pensions and debited to the Imperial Pensions Advance Account.

2. On the return of pension receipts the Imperial Pensions Advance Account is credited, and the Imperial Pensions Account debited.

3. At the end of each quarter the Treasury makes up a schedule of the pensions paid, adding 3 per cent. to the total, and sends it to the Postmaster-General, together with the pension receipts as vouchers.

4. The Postmaster-General gives his cheque for the total, which is paid into the Public Account. The amount of the pensions is carried to the credit of the Imperial Pensions Account, and the commission to the Imperial Pensions Expenses Account, out of which the expenses of paying the pensions is paid.

5. The balance in the latter account was not carried to revenue. The amount to credit of the account was treated as the limit of the expenditure.

6. The Postmaster-General transmits the list of pensions and commission to England, where the amount is credited to the New Zealand Post Office Account with the London Post Office for money orders.

7. All these accounts are suspense accounts, which are extinguished currently, without charge on the colonial revenue. They have been reported to Parliament for many years, included in the suspense and deposit accounts of the Consolidated Fund, and have been tacitly admitted by Parliament.

8. Since the 31st March last the system of account has been altered: the "Expenses Account" has been closed, the commission is now carried to revenue, and the expenses are to be paid out of a vote of Parliament.

There will still remain no legal authority for the original issue of the imprests out of which the pensions are paid.

Other occasional payments equally without statutable authority have always been made on behalf of the Imperial Government, and reported to Parliament, under the head of Imperial Government Advances Account.

22nd July, 1881.

JAMES EDWARD FITZGERALD,  
Controller and Auditor-General.

### SIR WILLIAM FITZHERBERT'S PENSION

SIR,— Superintendent's Office, Wellington, 24th November, 1869.

I have the honor to acknowledge the receipt of your letter of the 17th instant, informing me that you have forwarded your resignation of the office of Commissioner of Crown Lands to the Hon. the Colonial Secretary

I have to express my very sincere regret at the termination of the official connection which has subsisted between us for a period of above sixteen years, and at the same time to assure you that I shall ever remain grateful to you for the valuable assistance you have invariably afforded me in your capacity both of Commissioner of Crown Lands and of a Member of my Executive.

I have, &c.,

I. E. FEATHERSTON,  
Superintendent.

William Fitzherbert, Esq.

SIR,— Colonial Secretary's Office, Wellington, 31st January, 1870.

Adverting to my letter (No. 8) of the 8th instant, I have the honor to inform you that leave of absence has been granted to you, without salary, till the 15th July, 1870, and that His Excellency is pleased to accept, on and from that date, your resignation of the office of Commissioner of Crown Lands.

A warrant has been signed by His Excellency, giving you, from the 15th July, 1870, a pension under the 41st section of "The Civil Service Act, 1866," at the rate of £325 per annum.

I have, &c.,

William Fitzherbert, Esq., M.G.A., the Hutt, Wellington.

W. GISBORNE.

SIR,— Parliament Buildings, 20th July, 1881.

By direction of the Chairman of the Public Accounts Committee, I have the honor to request that you will furnish me with the following papers before 11 a.m. of to-morrow, viz. :—

1. Application form filled up by Sir William Fitzherbert when applying for his pension.
2. Copy of Governor's warrant granting such pension.
3. Auditor-General's sanction to the payment.

I have, &c.,

HENRY WRIGHT,  
Clerk to the Public Accounts Committee.

The Secretary to the Treasury

There is no application form, and I cannot find any Auditor-General's sanction.—G. S. COOPER.—  
20th July 1881.

Mr. Wright.—Copy warrant herewith.—JAMES C. GAVIN.—21st July, 1881.

G. F. BOWEN, Governor.

To the Honorable the Colonial Treasurer of New Zealand, for the time being.

WHEREAS by "The Civil Service Act, 1866," provision is made for granting to officers of the Civil Service on their retirement, in certain cases, superannuation and other allowances; and by the forty-first section of the said Act it is enacted that, when any superannuation or other allowance or gratuity is granted under the said Act, the causes of the granting thereof shall be set forth in the warrant granting the same: And whereas William Fitzherbert, Esquire, of Wellington, will, on the fifteenth day of July, one thousand eight hundred and seventy, have attained the age of sixty years, and will have been actually employed in the Public Service of New Zealand for the period of sixteen years, and will have been during the last two years of such service employed as Commissioner of Crown Lands at Wellington, at an average salary of six hundred and fifty pounds (£650) per annum: And whereas the said William Fitzherbert is desirous of retiring from the Civil Service on the fifteenth day of July, one thousand eight hundred and seventy, to which date he has received leave of absence: Now, therefore, I, Sir George Ferguson Bowen, G.C.M.G., the Governor of the Colony of New Zealand, in pursuance and in exercise of the power and authority in me in this behalf vested by the said Act, do hereby authorize and empower you, the Colonial Treasurer for the time being of the said colony, from time to time to pay to the said William Fitzherbert, Esquire, during his natural life, or until the cancellation of this warrant, a retiring allowance after the rate of three hundred and twenty-five pounds per annum, from and after the fifteenth day of July, one thousand eight hundred and seventy, and for your so doing this shall be your sufficient warrant.

Given under the hand of His Excellency Sir George Ferguson Bowen, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, at the Government House at Auckland, this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy

W. GISBORNE.

3rd Nov., 1853. Appointed Provincial Secretary and Treasurer.  
 11th Sept., 1857 Appointed Receiver of Land Revenue (no salary).  
 24th June, 1859. Appointed Commissioner of Crown Lands.  
 24th Nov., 1864, to } Colonial Treasurer.  
 16th Oct., 1865. }  
 24th Aug., 1866. Colonial Treasurer and Commissioner of Stamp Duties, and Member of Executive.  
 2nd Sept., 1868. Resignation tendered as Minister of Crown Lands, not accepted.  
 28th June, 1869. Ceased to be Colonial Treasurer, Commissioner of Stamp Duties, and Member of Executive.  
 17th Nov., 1869. Resigned as Commissioner of Crown Lands.  
 10th Sept., to } Secretary of Crown Lands and Immigration, and Member of Executive Council.  
 11th Oct., 1872. }  
 Leave granted from 8th December, 1867, to 8th December, 1868; and extension granted till return from England.  
 Leave granted, without salary, from 22nd December, 1869, to 15th July, 1870.  
 Sums of money received with pension: Salary as Minister, September–October, 1872, £85 2s. 5d.; salary as Speaker of House of Representatives and Legislative Council,

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#### MR. A. DOMETT'S PENSION

14th Feb., 1848. Appointed Colonial Secretary, New Munster.  
 11th Nov., 1851. Appointed Civil Secretary (no extra pay).  
 Jan., 1854. Appointed Resident Magistrate and Commissioner of Crown Lands, Napier.  
 8th Sept., 1856. Appointed Commissioner of Crown Lands, Nelson.  
 6th Aug., 1862. Colonial Secretary and Member of Executive Council.  
 22nd Aug., 1862. Secretary for Crown Lands (non-political)  
 30th Oct., 1863. Ceased to be Colonial Secretary and Member of Executive Council.  
 1st Sept., 1871. Resigned (pensioned).  
 No leave.

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By Authority; GEORGE DIDSEBURY, Government Printer, Wellington.—1881.