

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