

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