

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.