

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;