

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.