

286. Under section 33 of "The Civil Service Act, 1866," if Dr. Pollen did not receive any salary for the two years previous to 1873, would he be debarred from drawing pension on the salary he should have received during those two last years?—Yes; to be entitled to pension he must have received salary

287. *Mr. Montgomery.*] In the event of an officer in the Civil Service taking the position of member of the Executive Council, might he not give such advice as would influence the Government in the appointment of his successor in the Civil Service?—The objection to a man holding an incompatible office is that he would be both master and servant; but that would hardly apply to an Executive Councillor only without other office.

288. *Mr. McLean.*] Are you of opinion that the money paid by the Imperial Government to the Colonial Government for services rendered in connection with the payment of Imperial pensions should be considered colonial revenue?—This was, it appears, an agreement between the Imperial Government and the Colonial Government; and I am of opinion that the moment the former paid to the latter any sum of money that money became colonial funds.

289. *The Chairman.*] You expressed the opinion that the drawing of a pension in virtue of length of service by any one who is at the same time a Minister is against the spirit of the law?—Yes.

290. Are you aware that that question has been submitted to the present Solicitor-General, and that he has given a different opinion respecting it?—I have not seen the opinion; and I have told you that the strict interpretation of the law is rather the other way.

291. Your opinion appears to be that a Civil servant who accepts a portfolio in the Ministry vacates his office in the Civil Service?—Yes.

292. I want to know what is the precise legal meaning of the word "vacates" in that case—whether it means the absolute termination of office, or merely a temporary vacation of the office, which allows the occupant to rehabilitate himself?—I think that it means that the Civil Service office is absolutely abandoned.

293. But you think that a break occurring in the continuity of a man's service should not count for pension?—That is my opinion.

294. Then, is it reasonable that if he ever becomes a Civil servant again, he should be entitled to count the time he formerly served?—I will give you an instance: If I had been holding office as Assistant Law Officer, and I became Attorney-General, my office as Assistant Law Officer would absolutely become vacant, and I would have no claim in connexion with it.

295. And in case you had continued to act as Assistant Law Officer for a certain time longer, in order to become entitled to a pension, would you, after the break caused by your taking office as Attorney-General, be entitled to count your service if you went back to the Civil Service?—I do not understand that it requires continuous service. The 18th section of the Act of 1866 allows a man to count the time he serves as continuous, through there has been a break.

296. *Mr. Ballance.*] Should the non-appropriation of the £300 salary paid to Dr. Pollen on account of Imperial Pensions exclude that salary from the computation of pension?—I see nothing in the Act of 1866 that makes it a condition that the salary should be appropriated by Parliament, but payment without appropriation would no doubt be irregular.

APPENDIX.

THE HON MR. GISBORNE'S PENSION

The Solicitor-General.

18th August, 1879.

Will you be good enough to advise upon the following question: If an officer receives a pension under the provisions of the Civil Service Acts, and becomes a member of the Executive Council, is he entitled to draw his pension and his salary as a Minister, or ought there to be any, and, if so, what, deduction?

G. GREY

Hon. the Premier.

THE question submitted, being a general one, must be considered with reference to the Acts conferring superannuation allowances prior to 1866, and also to the Acts passed in that year. Upon reference to the Acts in question, I am of opinion that there is nothing making it unlawful for a person in the receipt of a pension under the Civil Service Acts to draw his salary as a Responsible Minister of the Crown. Both the Acts of 1858 and "The Civil Service Act, 1866," contain provisions applicable to the ordinary case of an officer receiving a retiring allowance, and being subsequently appointed to some other office in the Civil Service (*vide* section 4 of "The Superannuation Act, 1858," and section 36 of "The Civil Service Act, 1866"). The effect of the provisions referred to is that, in the case of any such subsequent appointment, the retiring allowance shall cease to be paid if the annual amount of the profits of the new office shall be equal to those of the office formerly held; and, in case they are not equal, then no more of the superannuation allowance is to be paid than what, with the salary of the new appointment, shall be equal to that of the former office.

It would have been a fair question for argument, whether these provisions could have applied to such a case as now before me; but all doubt is relieved by the terms of the Acts referred to. The Act of 1858 expressly provides (section 9) that it shall not apply to offices whose holders have seats in the Executive Council, or from which they are removable on political grounds; in the Act of 1866, section 2 declares that it shall not apply to any Responsible Minister.

20th August, 1879.

W. S. REID.