

office on the 1st proximo and to take the leave of absence for three months granted to you from the termination of the mission entrusted by the Government to yourself and to two others; and, in reply, to express Sir Julius Vogel's approval of the course you propose to adopt.

The Hon. W. Gisborne,
Government Insurance Commissioner, Wellington.

I have, &c.,
JAMES C. GAVIN,
(for Secretary to the Treasury).

No. 31.

The SECRETARY to the TREASURY to the Hon. W. GISBORNE.

SIR,—

Treasury, Wellington, 27th June, 1876.

Referring to the leave of absence granted to you for three months from the date of the special service on which you have recently been engaged, which leave of absence it is understood will expire on the 8th September next, being three months from the day following that borne by the report of the Commission to which you were appointed, I have the honor, by direction of the Hon. the Colonial Treasurer, to enclose to you a form of claim under the Civil Service Superannuation Acts, and, with a view to determine the amount of allowance to which, with the sanction of the Governor in Council, you will be entitled on your retirement from the public service, to request that you will be good enough to specify therein the particulars of your service, and forward the same to the Commissioners of Audit for examination.

I have, &c.,

The Hon. W. Gisborne.

C. T. BATKIN,
Secretary to the Treasury.

No. 32.

The AUDITOR-GENERAL to the Hon. the COLONIAL SECRETARY.

(Memorandum 114.)

4th July, 1876.

BEFORE the amount of retiring allowance to which Mr. Gisborne is entitled can be ascertained, it will be necessary to take the opinion of the Law Adviser of the Crown in reference to the 9th clause of "The Civil Service Superannuation Act, 1858," whether or not the time during which Mr. Gisborne held a seat in the Cabinet can be reckoned in the computation.

CHARLES KNIGHT,
Auditor-General.

The Hon. the Colonial Secretary.

REFERRED to Law Officer accordingly.—J. VOGEL.—The Solicitor-General.—5th July 1876.

HON. the Premier.—I think that the meaning of section 9 of "The Civil Service Superannuation Act, 1858," is that the Act shall not apply to officers who, in respect of their offices, hold seats in the Executive Council. In this case Mr. Gisborne held an office which in no way depended on his being a member of the Executive. But the Act of 1858 is now repealed, except as to rights of persons appointed before the Act of 1866, and I do not think section 9 is now in operation, as far as Mr. Gisborne is concerned.—W. S. REID.—31st August, 1876.

MEMORANDUM.—On the 29th of June last the Solicitor-General ruled that a person appointed to an office before the passing of the Civil Service Act of 1866 could not avail himself of the privileges conferred in section 29 of that Act, if the office he held were abolished subsequent to the passing of that Act. Mr. Gisborne's office was abolished by "The Government Insurance Act, 1874." It would seem, therefore, that, under the ruling of the Solicitor-General, Mr. Gisborne can only claim retiring allowance under the Civil Service Act of 1866. The present claim is made under the Civil Service Acts of 1858 and 1861.—CHARLES KNIGHT, Commissioner of Audit.—25th October, 1876.

No. 33.

The COMMISSIONER of AUDIT to the Hon. the COLONIAL SECRETARY.

(Memorandum 143A.)

8th September, 1876.

On the 29th of June last the Solicitor-General ruled that a person appointed to an office before the passing of the Civil Service Act of 1866 could not avail himself of the privileges conferred in section 29 of that Act, if the office he held were abolished subsequent to the passing of that Act.

Mr. Gisborne's office was abolished by the Government Insurance Act of 1874. It would seem that, under the ruling of the Solicitor-General, Mr. Gisborne can only claim pension under the Civil Service Act of 1866.

Incidentally it may be mentioned, in reference to the case of the Auditor of Public Accounts, on which the above opinion of the Legal Adviser of the Crown was given, that, by section 44 of the Civil Service Act, the privileges conferred by section 29 (although apparently not effective in Mr. Gisborne's case) are specially made applicable to the person holding the office of Auditor of Public Accounts, notwithstanding the opinion of the Solicitor-General to the contrary.

Although I did not consider it proper in my own case to recommend the Government not to follow the advice of the Solicitor-General, yet where another officer is concerned I am more at liberty to express my opinion, and try to protect the legal rights of officers when they are set aside, not only without regard to legal maxims, but in violation, as I believe, of the express provisions of the Civil Service Act.