

## No. 53.

## MEMORANDUM for CABINET.

THE questions of difficulty which arise on this claim are two: 1. Was Dr. Pollen a Civil servant up to 1876, when he resigned his position? 2. If he was, is he entitled to claim a pension; if so, at what rate?

Referring to the first, I am of opinion he was a Civil servant up to the date of his retirement, 30th October, 1876, although his holding such a position was in violation of the spirit if not the letter of "The Disqualification Act, 1870."

As to the second question, the terms of section 3 of "The Civil Service Amendment Act, 1861," are precise: The officer is entitled to an allowance equal to the average salary of office or offices held by him during the last three years of the period of his service. Now Dr. Pollen held certain offices, though he could hardly be called a Civil servant, because he was a Minister, and it would have been incompatible with his duties as Minister to have been at the same time a servant to his colleagues. For example: How could he, as Premier, be an agent for the Government, or a Receiver of Land Revenue under the Minister of Lands? Other persons, therefore, performed the duties of offices that he nominally held, and were paid for so performing those duties. No salary, save as Minister, was drawn by Dr. Pollen; and though in 1874 £400 was voted for Resident Agent in Auckland, and £100 for Receiver of Land Revenue, and the same amounts in 1875, whilst in 1876 £100 was voted for a Receiver of Land Revenue, yet these sums were not voted for any special officer; and, as regards either of these offices, there was no law prohibiting the Government from appointing two Agents, or two or more Receivers of Land Revenue. Was, then, the voting of this sum a voting of salary to Dr. Pollen? Really this becomes a matter of speculation, or rather a question of probability; and, treating it as such, is it probable that these sums could have been meant for a gentleman who was Premier? The best reply is that Dr. Pollen did not think they were so meant, for he neither performed the duties nor drew the salaries. If the salary belonged to him, his non-drawing of it would not now prevent him claiming it. His own action therefore shows that, from May, 1873, up to October, 1876, Dr. Pollen conceived he was in receipt of no salary save as Minister of the Crown. On what, then, can his allowance be based? The law says on the average salary of the office or offices held by him during the last three years of the period of his service; but during these three last years there was no salary, hence there can be no allowance. As to the question of the salary for paying Imperial pensions, Colonel Haultain has been paid that from May, 1873, up to and inclusive of 1876. No question can therefore be raised as to it. It seems to me, therefore, that the Governor cannot, under the existing law, grant Dr. Pollen any allowance.

*Re* equity of the claim it is not for me to discuss. I may, however, remark that, if equitably Dr. Pollen is entitled to an allowance, there are others in the Parliament who would have as good a claim: Mr. Bowen, for example. I have to deal only with the existing law. The Parliament, if necessary, can deal with Dr. Pollen's case on its equitable side.

22nd July, 1878.

ROBERT STOUT.

P.S.—If, however, my opinion is wrong, and he is entitled to claim, then the *quantum* of his pension could only be: Total amount of salaries voted and not drawn for three years, 1873, 1874, 1875–76, £1,100. One-third of this is £366 13s. 4d. Six-twelfths of this is £183 6s. 8d.; add three-eighths-fourths of such salary, £12 0s. 6d.: making in all £195 7s. 2d.—R. S.

INFORM Dr. Pollen that Attorney-General advises that, as no salary was appropriated for him during the last three years of his service, no amount can be paid him as pension.—G. S. W.—30th November, 1878.

## No. 54.

The Hon. the COLONIAL SECRETARY to the Hon. Dr. POLLEN.

SIR,—

Colonial Secretary's Office, Wellington, 4th December, 1878.

I have the honor to acknowledge the receipt of your letter of June last, calling attention to your application for the retiring allowance to which you may be found entitled under the provisions of the Civil Service Acts of 1858 and 1861.

In reply, I have to inform you that the Law Officers of the Crown advise that as no salary was appropriated for the offices held by you during the last three years of your service, as set forth in your application, excepting that drawn by you as a Minister, it is not legally competent to the Government to direct that any specific amount shall be awarded to you as pension under "The Civil Service Amendment Act, 1861."

The Hon. Dr. Pollen, M.L.C., Wellington.

I have, &c.,

G. S. WHITMORE.

## No. 55.

The Hon. Dr. POLLEN to the Hon. the COLONIAL SECRETARY.

SIR,—

Wellington, 2nd December, 1878.

On the 28th June last I had the honor to address to you a letter, in which, after recapitulating the circumstances attending my retirement from the Civil Service, and the efforts I have in vain made to get a reply from you to my letter on the subject of my claim to a pension, I requested that you would inform me why I had been denied the ordinary courtesy of an official reply to my official letters. More than five months having now elapsed, and as you have not thought fit to take any notice of that letter, I am forced again to repeat that question, and to crave the favour of a speedy reply.

I have, &c.,

The Hon. the Colonial Secretary, Wellington.

DANIEL POLLEN.