

On the 13th November, a month after the date of that application, and then only in response to an urgent request personally made to the Hon. Colonel Whitmore, I received a letter informing me that "the question, which was surrounded by some difficulty, was still under the consideration of the Government."

Subsequently, on several occasions in writing, and on one occasion personally, I made application to the Hon. the Colonial Secretary for an answer to my letter of 13th October, 1877, hereinbefore mentioned, but without success. At length on the 15th December, 1878, nearly fourteen months after the date of my first application, I was informed that "the Law Officers of the Crown advise that as no salary was appropriated for the offices held by me during the last three years of my service as set forth in my application, excepting that drawn by me as a Minister, it was not legally competent for the Government to direct that any specific amount shall be awarded to me as pension under the provisions of 'The Civil Service Act Amendment Act, 1861.'" On receipt of this communication, I requested the Hon. the Colonial Secretary to be good enough to inform me why it was that the ordinary courtesy of an official reply to an official communication had been so denied to me, and was told, in reply, that "the question was necessarily a long time under consideration by the Government, and that the answer had been sent to me as soon as the reply had been received from the Law Officers to whom it had been referred."

I have not since that time moved further in this matter. I now respectfully crave a reconsideration of my claim. In my letter of date 6th December, 1878, I pointed out that on the 2nd June, 1873, a month before I joined the Ministry of Sir Julius Vogel, I had attained my sixtieth year, and was then entitled under the provisions of clause 33 of "The Civil Service Act, 1866," to the advantage of a retiring allowance equal to the half-pay of the offices then held by me. I venture respectfully to suggest that the technical difficulties which, as I am informed, have been found to surround my claim, may be obviated by taking the amount of my salary during the two years preceding that date, as giving the basis upon which the amount of pension now to be awarded to me may be calculated, and to request that payment may be directed to be made to me at the rate so to be fixed, as from the 30th October, 1876, the day on which His Excellency the Governor was pleased to accept my resignation of all the offices in the Civil Service then held by me.

I have, &c.,

The Hon. the Colonial Secretary, Wellington.

DANIEL POLLEN.

No. 59.

The Hon. F. WHITAKER to the Hon. the COLONIAL SECRETARY.

(Telegram.)

Auckland, 1st January, 1880.

PLEASE send Pollen's pension papers, and I will report on them.

The Hon. the Colonial Secretary.

FREDK. WHITAKER.

MEMORANDUM by the Hon. F. WHITAKER.

I HAVE carefully gone through Dr. Pollen's pension papers, and considered the whole case. I now state the conclusions I have come to: Mr. FitzGerald, Commissioner of Audit, in his minute of 6th September, 1876, points out that "there is a maxim of law that the acceptance of a higher office vacates a lower one;" and Mr. Stout, Attorney-General, in his memorandum of the 22nd July, 1878, refers to the same subject, and expresses an opinion that the office of Minister was incompatible with the offices Dr. Pollen held as Government Agent, &c.; but neither of those gentlemen drew what appears to be the necessary inference from the facts and law referred to. It is an undoubted rule of law that the holder of an office accepting another office incompatible with it *ipso facto* vacates the first; and I am of opinion that the office of Minister was incompatible with the other offices held by Dr. Pollen, and that the fact of his joining the Ministry of Sir Julius Vogel in July, 1873, had the effect *per se* of vacating those offices. If I am correct, then this disposes of Dr. Pollen's claim to pension, as put forward in his letter of 30th October, 1876; but in his letter, dated 11th October, 1878 (I presume 1879 is meant), he bases his claim on clause 33 of "The Civil Service Act, 1866." That clause provides that any officer who within ten years after the passing of the Act shall have attained the age of sixty years, as soon as he has been fifteen years in the Civil Service shall retire (not optional) on an annual allowance of half the average annual salary received by him during the two years preceding his superannuation. Is Dr. Pollen within the provision? It appears to me that he is so. On the 2nd June, 1873, he had attained the age of sixty years. At that date he had been fifteen years in the service, and, therefore, not only was entitled but was required to retire. He did not then, it appears, actually do so, but continued in the performance of the duties until his acceptance of a Ministerial office in the July following, when by doing so he vacated his other offices, if they were not already vacant under the clause referred to. Assuming the facts and dates to be correctly stated in the papers, I am of opinion that Dr. Pollen is entitled to an annual allowance of half the annual salary received by him during the two years preceding the acceptance of a Ministerial office in July, 1873, if not on the 3rd June preceding, under the 33rd clause above referred to. From what date is he so entitled? Section 36 of "The Civil Service Act, 1866," provides that "In case any person enjoying any superannuation or retiring allowance under this Act shall be appointed to fill any office in the Civil Service every such allowance shall cease to be paid for any period subsequent to such appointment, if the annual amount of the profits of the office to which he shall be appointed shall be equal to those of the office formerly held by him." Dr. Pollen ceased, it appears, to be a Minister on 13th October, 1877, and from that date he is, I think, entitled to receive his retiring allowance. The only remaining question is whether the salary that Dr. Pollen received in respect of his office of Paymaster of Imperial Pensions is to be reckoned in fixing the amount of the allowance. As I understand the matter it stands thus: The Imperial Government made an arrangement with the Colonial Government to allow the latter £2 10s. per cent. on the amount of pensions payable in this colony by the former, the Colonial Government undertaking the work at their own cost. In consequence of this arrangement Dr. Pollen was appointed by the Colonial Government at a fixed salary to perform the work. In my opinion the