

£2 10s. per cent. on payment becomes colonial funds, and the salary paid is therefore paid out of colonial funds to an officer appointed by the Colonial Government. Under these circumstances that salary will, in my opinion, be properly reckoned in fixing Dr. Pollen's colonial retiring-allowance.—FREDK. WHITAKER.—15th January, 1880.

MEMORANDUM.—Will the Solicitor-General be kind enough to give his opinion on this subject?—J. HALL.—20th January, 1880.

THE PREMIER.—Dr. Pollen, in his letter of 11th October, 1879, bases his claim to a superannuation allowance upon the 33rd section of "The Civil Service Act, 1866." This puts his case in a new aspect, the previous claim having been based upon the Civil Service Superannuation Acts, 1858 and 1861. I have read the opinion of the Attorney-General herewith, and, upon consideration of the facts, I concur in the opinion that Dr. Pollen is entitled to a retiring allowance upon the terms and in the manner stated by the Attorney-General.—W. S. REID.—28th January, 1880.

REFERRED to the Controller and Auditor-General, to be so good as to calculate the amount of retiring allowance to which Dr. Pollen will be entitled according to these opinions.—G. S. COOPER.—29th January, 1880.

MR. FITZGERALD.—As you are aware, the case has been under consideration on several occasions, and a variety of opinions have been held on its merits. The papers are again referred to Audit to compute the pension on the basis of the attached opinion obtained from the Hon. the Attorney-General. This gentleman has put the case in a new light, as coming under the 33rd section of the Civil Service Act, and this view would greatly simplify the matter, were it not for what appears to me a fatal objection—namely, that the Hon. Dr. Pollen's length of service as a "Civil servant" is within the fifteen years prescribed by the Act as necessary to entitle him to the benefit of the clause in question. It will be observed that the Hon. the Attorney-General distinctly states that the fact of any officer accepting any office incompatible with his original duties, *ipso facto* vacates his former appointment. Also, that the office of Minister was incompatible with that of the other offices held by Dr. Pollen. The same opinion is held by the Hon. Mr. Stout, as will be seen on referring to his memorandum attached. Accordingly, it would therefore appear clear that the time during which Dr. Pollen held the office of a Minister of the Crown cannot be reckoned in computing his pension. His first appointment dates from the 25th November, 1856, and from that date to the 12th May, 1873, is sixteen years twenty-four weeks. He was, according to his own statement, out of the service from 31st December, 1864, to 24th January, 1865, 25 weeks; Minister from 20th July, 1861, to 6th August, 1862, 1 year 2 weeks 4 days; Minister from 10th June, 1868, to 28th June, 1869, 1 year 2 weeks 5 days: total deducted, 2 years 30 weeks 2 days. Total service, 13 years 45 weeks 5 days, or upwards of a year short of the required period. With reference to the Hon. the Attorney-General's remarks as to Dr. Pollen's office of Paymaster of Imperial Pensions, may I be permitted to point out with the greatest deference that the salary attached to the office has never been paid out of a Parliamentary vote, a condition which is emphatically required by the Act. If any objections which may be entertained by the Audit are overruled, the pension to be given will be simply half-salary received in May, 1873, or £1,670 ÷ 4 = £417 10s.—J. G. ANDERSON.—11th February, 1880.

MEMORANDUM.—I am much afraid the 2nd section, excluding from the operation of the Act of 1866 offices of which the salary is not voted by the Legislature, precludes Dr. Pollen from counting his salary as Paymaster of Imperial Pensions. It must not be inferred from the Hon. Mr. Whitaker's opinion that I agreed to the view that Dr. Pollen's time of service should not count when he was Minister. I stated the view, but did not, and do not agree with it. The Audit is still unable to compute the pension.—J. E. F'G.—11th February, 1880.

MEMORANDUM.—The Premier.—The provision of "The Civil Service Act, 1866," to which attention is called by the Controller and Auditor-General is, no doubt, one of general application; but I am inclined to think there are cases to which it may be necessary to give a different construction. It should be recollected that the clause is peremptory in terms, and that as there was no provision in the Act of 1858 restricting its operation to offices in respect of which salary was appropriated by the Legislature, it would have defeated the intention (or at least might have done so), if the general provision in section 2 of the Act of 1866 could have applied to the cases provided for in section 33. I am disposed to think that the general provision of section 2 does not restrict the special privileges conferred upon those who are brought within the operation of the 33rd section.—W. S. REID.—12th February, 1880.

MEMORANDUM.—Mr. Anderson—calculate Dr. Pollen's pension on the opinion given by Mr. Reid.—J. E. F'G.—13th February, 1880.

MEMORANDUM.—Mr. Anderson.—The opinion of the Law Officers is that the time during which Dr. Pollen was Minister was not to count, but that the salary as Paymaster of Imperial Pensions was to count. Please calculate accordingly under the most favourable Act.—J. E. F'G.—13th February, 1880.

MEMORANDUM.—Mr. FitzGerald.—I regret that I should have misunderstood the decision, the effect of which is that Dr. Pollen's claim under the 33rd section of "The Civil Service Act, 1866," will require to be abandoned, his length of service being under the requisite period. The most favourable Act under which the honorable gentleman can retire is "The Civil Service Amendment Act, 1861." Having received an average salary of £825 for three years previous to retiring, for a service of upwards of fourteen and under seventeen years, the 3rd section of the Act entitles him to a pension of one-third of the above average salary of £275 a year.—J. G. ANDERSON.—14th February, 1880.