

omission arose *originally* from misapprehension, and not from design.

3. In that way probably one class of public servants—viz. Colonial Governors—is still excluded from the benefit of that Act, though, more than any other, they may be said to be directly appointed by the Crown—not merely as receiving their commissions direct from the Crown, but far more as actually representing the Crown, and, in a viceregal capacity, practically exercising many of the most important personal and constitutional prerogatives of their Sovereign.

4. It is not apparent why this very striking anomaly was not alluded to by the Commissioners, though it is probable that, in common with diplomatic and political servants otherwise provided for, they may have been considered as beyond the scope of inquiry allotted to the Commissioners in 1857. The Act, therefore, of 1859 is still restricted to such persons only as may have served in the 'Permanent Civil Service,' or been paid from the 'Consolidated Fund, or monies voted by Parliament.\*' It thus excludes Governors, because they are not members of a continuous permanent service in the sense in which a clerk of the Treasury, when once appointed, may be said to belong to a permanent service. A Governor's office is such that, from the very intimate privity existing between the Crown and its immediate viceregal representatives, it must be an office wholly during pleasure, and not during what is ordinarily understood as 'good conduct,' which legally means no more than the absence of misconduct. Secondly, his remuneration being derived from various sources—sometimes from 'monies voted by Parliament;' sometimes from colonial funds; and sometimes from a civil list reserved to the Crown by a colony, and which may be thought to partake of the nature of the two former—it is highly improbable that any person administering, in the course of time, several Governments, could fulfil the second condition of that Act by drawing his salary always and exclusively from the Treasury. For example, the writer's first appointment was a judicial one, paid by the

\* Sec. xvii.