

1901.  
NEW ZEALAND.

# “THE PUBLIC REVENUES ACT, 1900”:

CORRESPONDENCE RELATIVE TO DEBENTURES FOR £500,000.

*Laid upon the Table in accordance with Section 9 of “The Public Revenues Acts Amendment Act, 1900.”*

Audit Office, 27th August, 1901.

THE Controller and Auditor-General has the honour respectfully to submit to the House of Representatives, in accordance with the provisions of section 9 of “The Public Revenues Acts Amendment Act, 1900,” a copy of the correspondence in a case under that section of a difference of opinion between the Audit Office and the Treasury on the question whether the 4-per-cent. debentures for £500,000, raised in the colony under “The Aid to Public Works and Land Settlement Act, 1900,” have not been sold at a price which will yield to the purchasers on their purchase-money a higher rate of interest by the year than the maximum statutory rate of 4 per cent. per annum.

A copy is submitted also of correspondence relative to an Audit Office objection to the form of the debentures, in declaring their security by an expression not textually in accord with the Act.

J. K. WARBURTON,

Controller and Auditor-General.

The Hon. the Speaker of the House of Representatives.

No. 1.

NEW ZEALAND GOVERNMENT £4-PER-CENT. DEBENTURE LOAN.

*Issue of £500,000 under the Authority of “The Aid to Public Works and Land Settlement Act, 1900.”*

Minimum Price of Issue, £100 per Cent.

THE Colonial Treasurer invites tenders for £500,000 New Zealand Government 4-per-cent. Debentures, payable to bearer, and of the face-value of £1,000, £500, £200, and £100 respectively, as may be desired.

These debentures are secured on the public revenues of the colony, and are issued, repayable on the 1st April, 1904, at the Treasury, Wellington, New Zealand, or (if the tenderer so requests in his tender) at the office of the Agent-General for New Zealand in London.

Dividends, represented by coupons attached to the debentures, will be payable on the 1st April and the 1st October in each year during the currency of the loan, at the Cashier's Office, Treasury, Wellington, or at any branch of the Bank of New Zealand in New Zealand, or (if the debentures are issued repayable in London) at the office of the Agent-General for New Zealand in London.

At the option of the holder of any debenture issued repayable in New Zealand, and on application made in that behalf at the Treasury, Wellington, New Zealand, he may at any time during its currency have it indorsed payable, both as to principal and interest, at the office of the Agent-General for New Zealand, London, or at any specified branch of the Bank of New Zealand in Australia: Provided that in the former case the indorsement shall be made not less than three months, and in the latter case not less than one month, before the due date of the next ensuing payment of interest.

The first interest-coupon will be payable on the 1st October, 1901, and will be for a sum equal to six months' interest on the nominal amount of the debenture.

The issue-price will be at the rate of £100 in money for every £100 expressed in debentures (below which no tender will be accepted), payable as follows: Deposit of 5 per cent. on application; first instalment of 45 per cent. on Tuesday, 7th May, 1901; second instalment of 50 per cent. on Tuesday, 4th June, 1901.

Payments may be made in full at any time on or after the 7th May, 1901, and prior to the 4th June, 1901, at a discount at the rate of £1 10s. per centum per annum.

Sealed tenders, addressed to the Secretary to the Treasury, Government Buildings, Wellington, accompanied with the 5-per-cent. deposit, will be received up to noon of Tuesday, 23rd April, 1901, when they will be opened in the presence of the Colonial Treasurer and the Controller and Auditor-General, and allotment will forthwith be made. If cheques are lodged with a tender they must be drawn upon a bank in Wellington, and be marked by such bank as "good" for fourteen days. Cheques issued by a bank need not be so marked.

Tenders may be for the whole or any part of the loan, and must state what amount of money will be given for every £100 of the debentures tendered for. Tenders must be for even hundreds of pounds sterling, and at prices which are multiples of 6d. Tenders at different prices must be on separate forms. The nominal amount of debentures tendered for must be written on the outside of the tender.

In case of default in the payment of any instalment at its proper date, the deposit and instalment (if any) previously paid will be liable to forfeiture. If no allotment is made the deposit will be returned.

The first and second instalments may be paid at any branch of the Bank of New Zealand either in the colony or Australia to the credit of the Public Account, or at the Treasury, Wellington, not later than the several dates previously mentioned.

Scrip-certificates will be issued, to be subsequently exchanged for the debenture-bonds.

Tenders must be on printed forms, which may be obtained at the Cashier's Office, Treasury, Wellington, or at the offices of the Bank of New Zealand at Sydney, Melbourne, Auckland, Wellington, Christchurch, or Dunedin.

Office of the Colonial Treasurer, Wellington, 2nd April, 1901.

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#### No. 2.

The Treasury.

Audit Office, 11th April, 1901.

WITH reference to the public notice in which the Hon. the Colonial Treasurer is inviting tenders for New Zealand Government 4-per-cent. Debentures—"issue of £500,000 under the authority of 'The Aid to Public Works and Land Settlement Act, 1900'"—it would appear that the proposal to pay, on the 1st October, 1901, six months' interest at 4 per cent. per annum on the nominal amount of the debentures would, in the case of any of the debentures purchased at par, be a proposal to pay more than the maximum rate of interest as provided by section 10 of the Act.

The Controller and Auditor-General, therefore, ventures to inquire of the Treasury whether the question has been considered, and to ask that, if it has been, he may be informed of the result.

J. K. WARBURTON,

Controller and Auditor-General.

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#### No. 3.

The Audit Office.

THE question has been considered, and the Colonial Treasurer has been advised that there is nothing in the point raised by the Audit Office.

13th April, 1901.

JAS. B. HEYWOOD.

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#### No. 4.

The Treasury.

THE question was asked under the misapprehension that the opening of the tenders in the presence of the Controller and Auditor-General might imply his satisfaction as to the point raised. He will, however, be merely a witness of the opening of the tenders which may be opened in his presence.

J. K. WARBURTON,

Controller and Auditor-General.

18th April, 1901.

## No. 5.

*Narration of Debentures issued under "The Aid to Public Works and Land Settlement Act, 1900."*

1. Amount issued : £255,000.
2. Date of issue : 4th June, 1901.
3. Date on which debentures mature : 1st April, 1904.
4. Rate of interest : 4 per centum per annum.
5. Interest payable on : 1st April, 1st October.
6. Numbers and value : 1051 to 1310, £100 each, £26,000 ; 1311 to 1408, £500 each, £49,000 ; 1409 to 1588, £1,000 each, £180,000.
7. To whom issued : Public.
8. Interest and principal payable at : Office of Agent-General, London.
9. Treasury record number.

Signed on behalf of the Government of New Zealand, this 27th day of July, 1901.

R. J. SEDDON,\*

Colonial Treasurer.

Interest-coupons (six) attached to each debenture.

\* The debentures have been signed by the Hon. C. H. Mills.

## No 6.

The Treasury.

THE coupons attached to each of these debentures propose to pay 4 per cent. per annum for interest on every £100 from the 1st April, 1901. As, however, the purchase-money was not received till some time after the 1st April, a payment according to coupon No. 1 of £2 for interest from the 1st April, 1901, to the 1st October, 1901, will result in yielding to the purchaser a higher rate than 4 per cent. per annum on the purchase-money, contrary to the provisions of section 10 of "The Aid to Public Works and Land Settlement Act, 1900."

J. K. WARBURTON,

Controller and Auditor-General.

29th July, 1901.

## No. 7.

The Solicitor-General.

PLEASE advise, for the information of the Right Hon. the Colonial Treasurer, whether, in your opinion, the section quoted operates as a bar against the provision made on the coupon No. 1 attached to the debentures prepared for issue under the Aid to Public Works and Land Settlement Act of last session.

29th July, 1901.

JAS. B. HEYWOOD.

## No. 8.

SEE opinion annexed hereto. Copy prospectus and debenture returned herewith.

FRED. FITCHETT,

Solicitor-General.

12th August, 1901.

Hon. Colonial Treasurer.

*Re Objection by Audit Office to Half-million Loan.*

In my opinion, the objection raised by the Audit Office is not sound.

Section 10 of the Act provides that "no debenture shall be sold at a price that will yield to the purchaser a higher rate of interest by the year than four pounds for every hundred pounds of purchase-money." The section is not a new one. For very many years past it has been enacted in every Loan Act, and it is to be presumed that the Legislature uses the same language in the same sense when dealing at different times with the same subject (Maxwell, page 50). Moreover, where a particular construction has long been put upon a clause, and that clause is re-enacted, this construction is to be deemed to be sanctioned by the Legislature (Hardcastle, page 180). These rules and principles of construction are distinctly in point, and show that section 10 must be construed in accordance with the accepted usage and practice in the floating of loans under the Acts containing these sections.

In the issue of loans a uniform practice has always been observed, and I understand from the Treasury that it is not confined to New Zealand, but extends almost universally

in the floating of public loans. A prospectus is published specifying the amount of the loan, the minimum price of issue, and the conditions of tendering. Each tender is to be accompanied by a deposit (usually 5 per cent.), and the balance of the purchase-money is to be paid by specified instalments on specified dates, with a specified discount on instalments paid in advance. The interest is payable half-yearly on specified dates, computed from the commencement of the term of the loan, which is usually fixed at or about the date of the prospectus, and it is stated that the first coupon will be for six months' interest on the full nominal amount of the debenture. The purchaser thus receives interest on the full nominal amount of his debentures from the commencement of the term, although the full purchase-money is not paid until he pays the final instalment. This concession of interest in the first coupon is to cover any loss of interest the tenderer might otherwise suffer whilst his capital lies idle awaiting the result of the tender and the completion of the transaction.

In the present case the prospectus, which is on precisely the same lines as those indicated above, sets forth the price of issue thus: "Minimum price of issue, £100 per cent." In the case of loans issued at less than par—as, for instance, in the 1879 loan—the prospectus states the price thus: "Price of issue, £97 10s. per cent." In the case of the Million 3-per-cent. Inscribed Stock issued at 96 per cent. in 1899, the prospectus not only states "Minimum price of issue £96 per cent.," but contains the following paragraph: "The minimum price below which no tender can be accepted has been fixed at £96 for every £100 of stock." The point is that in every case the prospectus distinctly specifies the price of issue as a percentage of the amount of the debentures or stock tendered for. It is thus perfectly clear that through all these years the Government in offering the loans, and the public in tendering for them, have taken the "price" or "purchase-money" of the debentures to mean simply the price tendered for each £100 quite irrespective of the concession of interest in the first coupon or the discount on instalments paid in advance.

On the authorities I have quoted, the Legislature must be presumed to have sanctioned this meaning when re-enacting the sections referred to, and they must be construed accordingly. This view is not only in accordance with reason and authority, but is supported by the language of the sections themselves. The price paid is not to yield more than the specified percentage of interest "by the year"—that is to say, yearly and every year during the currency of the debentures—and it is not inconsistent with this restriction that the interest for the first half-year is computed from the date on which the term of the loan is deemed to commence, and not from the dates on which the instalments are actually paid.

The foregoing considerations apply also to the discounts allowed on instalments paid in advance, although that question is not raised by the Audit Office. Moreover, in the case of the discounts there is this further consideration (based, of course, on the assumption that the concession of interest is legal): The debentures carry interest at 4 per cent., and it is therefore to be presumed that the money they represent is worth that to the Government. If so, then in every case where an instalment is paid in advance the Government gets for  $1\frac{1}{2}$  per cent. (the rate of discount allowed) what is worth to it 4 per cent. The result is thus a clear gain of  $2\frac{1}{2}$  per cent., and it cannot be reasonably contended that the section forbids it.

I desire to guard myself from being supposed to hold that these concessions and discounts may lawfully be granted without limit. They may be so excessive as to amount to an unlawful evasion of the Act. It is a question of intention and degree, and each case must be determined on its own facts. In the present case what has been done is in strict accordance with the established usage and practice. Indeed, I may point out that the Audit Office itself raised no objection to the Half-million  $3\frac{1}{2}$ -per-cent. Loan issued in November, 1896, although there, as here, the minimum price of issue (£100 per cent.) gave the maximum rate of interest allowed by the Act. There was no margin, and yet the usual concessions of interest and discount were allowed, just as in the present case.

I have dealt with this question very fully not because I felt any doubt about it, but because it practically involves the validity of the Half-million Loan. The Audit Office is, of course, only doing its duty in insisting on the strict observance of the law in the issue of public moneys. It is therefore bound to object to anything which in its opinion is not in accordance with law. In questions of purely departmental concern the stage at which its objections are raised is not of much importance; but in large financial transactions such as this it is in the highest degree desirable that all objections should be raised and disposed of at the earliest possible moment, and, at all events, before the public credit has been committed. In the present case the scrip-certificates have been duly countersigned by the

Audit Office and issued to the subscribers, and it is much to be regretted that the office should now feel compelled to question the legality of the debentures for which, in terms of the prospectus, these certificates are to be exchanged.

To prevent such a thing happening again, I would suggest that in the case of any future loan the draft prospectus should be submitted to the Audit Office, so that all its objections may be raised and disposed of before the prospectus is published.

FRED. FITCHETT,

Solicitor-General.

Crown Law Office, 12th August, 1901.

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No. 9.

THE draft prospectus was duly submitted to the Audit Office prior to its publication, and was not dissented from. On the 11th April, 1901, after the publication of the prospectus, the Controller and Auditor-General inquired whether the proposal to make the first year's interest date from 1st April had been considered, as in his opinion it appeared to be a proposal to pay more than the maximum rate of interest as provided by section 10 of the Act. The Solicitor-General was consulted, and he advised that there was nothing in the point raised by the Audit Office, and the Controller was so informed on the 13th idem. On the 18th idem the Controller replied that he had asked the question under a misapprehension that the opening of the tenders in his presence might imply his satisfaction as to the point raised. Nothing more was heard of the matter until a parcel of debentures was sent up to the Controller for countersignature, when they were returned with the minute which has given rise to this reference to the Solicitor-General.

13th August, 1901.

JAS. B. HEYWOOD, Secretary.

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No. 10.

PREPARE order for Governor's warrant.—R. J. S.—13th August, 1901.

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No. 11.

RANFURLY, Governor.

WHEREAS by section nine of "The Public Revenues Acts Amendment Act, 1900," it is provided that, in case any difference of opinion arises between the Audit Office and the Treasury as to the vote, appropriation, fund, account, or other authority to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves questions of law, be determined by the Governor, having before him the opinion of the Attorney-General thereon: And whereas such difference of opinion as aforesaid has arisen as to the interest payable in respect of debentures to be issued under "The Aid to Public Works and Land Settlement Act, 1900":

Now, therefore, I, Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Solicitor-General, do hereby determine the said question by deciding that interest at four per cent. per annum on short-dated debentures for five hundred thousand pounds, to be issued under "The Aid to Public Works and Land Settlement Act, 1900," shall be payable from the first day of April, one thousand nine hundred and one, as announced in the prospectus inviting tenders for the loan.

Given under the hand of His Excellency the Governor, at the Government House,  
at Wellington, this fourteenth day of August, one thousand nine hundred  
and one.

R. J. SEDDON.

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No. 12.

The Controller and Auditor-General.

DETERMINATION of His Excellency the Governor with reference to question as to the lawful payment of interest from 1st April last is attached, and the debentures are again submitted for your countersignature.

15th August, 1901.

JAS. B. HEYWOOD.

The debentures will be sent to the Agent-General for delivery only upon the surrender of the relative scrip representing the aggregate amount of each parcel of debentures.—JAS. B. HEYWOOD.

## No. 13.

The Treasury.

Audit Office, 16th August, 1901.

*Debentures for £255,000 under "The Aid to Public Works and Land Settlement Act, 1900," submitted for Countersignature.*

It is declared by these debentures that, according to the Act by which their issue is authorised, "the principal and interest are chargeable on the Consolidated Fund of the Colony." Subsection (3) of section 11 of the Act provides, however, as follows: "The sum of money named in any such debenture, scrip, or other security, together with all interest payable in respect thereof, is hereby declared to be a charge upon and to be payable out of the public revenues of New Zealand"; and it is also declared in the prospectus of the loan that "these debentures are secured on the public revenues of the colony."

It would appear that, in view of such discrepancy between the declaration in the debentures and the provisions of the Act and of the prospectus of the loan, the Audit Office would not be justified in countersigning the debentures. This objection to the form of the debentures was mentioned about two or three months ago, when a proof of the form was shown to the Audit Office.

J. K. WARBURTON,

Controller and Auditor-General.

## No. 14.

I THINK the Controller is referring to the Land for Settlements Consolidation Act debentures.—J. B. H.

## No. 15.

The Solicitor-General.

HON. Colonial Treasurer would be glad to receive your opinion upon the new point raised.  
17th August, 1901.

JAS. B. HEYWOOD.

## No. 16.

THE rights of the debenture-holders are governed by the Act itself, which charges the moneys on the "public revenues" of the colony, and these rights are not in any way affected by the fact that on their face the debentures are expressed to be charged on the "Consolidated Fund" of the colony—the two expressions have the same meaning. I am therefore of opinion that, whilst it would be well that the debentures should accord textually with the Act—and the Audit Office does quite right in drawing attention to the difference—yet the validity of the debentures is not affected, and the Audit Office is therefore justified in countersigning them.

17th August, 1901.

FRED. FITCHETT.

## No 17.

The Controller and Auditor-General.

I THINK the Solicitor-General's opinion will now enable you to see your way to countersign the debentures, which are urgently needed.

17th August, 1901.

JAS. B. HEYWOOD.

## No. 18.

The Treasury.

Audit Office, 17th August, 1901.

*Debentures submitted for Countersignature.*

THE Controller and Auditor-General, after very carefully reconsidering the matter, extremely regrets that he should still feel it to be his duty not to countersign debentures which declare the security to be anything else than the Act prescribes which authorises their issue, and especially when it is not clear that the amount of the security mentioned in the debentures includes, or is not less than, the amount of the security as declared by the Act. The purchasers might be unable readily to sell the debentures which should declare as the security what the Act and the prospectus do not declare it to be. The discrepancy might affect the marketable value of the debentures, and so occasion complaints as to the error in the issue of them.

J. K. WARBURTON,

Controller and Auditor-General.

## No. 19.

The Solicitor-General.

Does this affect your former opinion as to the legality of the debentures?—R. J. S.—  
19th August, 1901.

## No. 20.

Right Hon. the Colonial Treasurer.

*Re Audit Office Objections.*

No; but, as the matter will now have to be dealt with by the Governor, I propose to set out with some detail my reasons for thinking that the difference between the expressions "Consolidated Fund" and "public revenues" is one of form and not one of substance, and can neither affect the legality of the debentures nor be reasonably supposed to in any way embarrass or prejudice the holders.

Both the New Zealand and the Imperial Legislatures treat the two expressions as identical in meaning. In the New Zealand Loan Acts the form of the charging sections has varied from time to time. Prior to 1867 the charge was on the "ordinary revenues"; in 1867—the Consolidated Loan Act of that year—on the "consolidated revenues"; from 1867 to 1894, on the "Consolidated Fund"; and since 1894, on the "public revenues." It cannot be seriously suggested that the Legislature intended these terms to have any difference of meaning. The change of expression since 1894 was probably made in order that the charging section might correspond in terms with what I may call the saving section (commonly inserted in Loan Acts), which provides that "Nothing in this Act contained shall be constructed to alter or vary any security heretofore charged on the revenues of New Zealand." In 1896—the Aid to Public Works Act of that year—both the charging section and the saving section speak for the first time of the "public revenues." It was apparently thought that the same expression should be used in both sections, and that "public revenues" was better than "revenues," inasmuch as it pointed more clearly to the revenues of the Government as distinguished from those of local bodies. Be this as it may, however, the fact remains that in Acts subsequent to 1894, and containing the saving section, "public revenues" is treated as identical in meaning with "Consolidated Fund" and "revenues of New Zealand" in the charging and saving sections of the previous Acts, for in none of these previous Acts are securities charged in terms on the "revenues" or "public revenues"; the charge is in every case on the Consolidated Fund. If further proof of the identity were needed it may be found in this: that loans or securities charged by Act in terms on the "public revenues" may be raised or converted under "The Consolidated Stock Act, 1877," which charges them in terms on the Consolidated Fund (sections 2 and 6 of that Act).

So much for the New Zealand Legislature; and now for the Imperial. "The Colonial Stock Act, 1877," which, of course, applies to New Zealand loans, provides (section 19) that every declaration, stock certificate, coupon, &c., shall state that the "revenues of the colony alone are liable in respect of the stock," &c. The requirements of this section have been duly complied with in the case of every New Zealand loan which has been brought under the operation of the Imperial Act. This includes the bulk of our loans, and the bulk of them are charged in terms on the Consolidated Fund. It is absurd to suppose that the change from "Consolidated Fund" to "revenues" would be made in this wholesale manner unless the meaning of the terms was identical, and was recognised as such by the money-market and the investing public. And the reason of the identity is not far to find. In England, as in New Zealand, all public revenues belong to the Consolidated Fund (see, for New Zealand, section 7 of "The Public Revenues Act, 1891"), and therefore out of that fund all charges on the public revenues must be met. It may not be out of place to observe that the rigorous particularity now insisted on by the Audit Office is an entirely new doctrine, and quite in conflict with the practice of the past.

On investigation it will be found that it is not at all uncommon for debentures which by the Loan Acts are charged on the "Consolidated Fund" to be issued as charged on the "consolidated revenue." As instances, I may mention the debentures issued under the following Acts: "Defence and Other Purposes Loan Act, 1870"; "Consolidated Stock Act, 1884" (issued in 1891); Consolidated Stock Acts, 1884 and 1891 (issued in 1893); "District Railways Purchasing Act, 1885" (issued in 1894); "District Railways Purchasing Act, 1885" (issued in 1896); "Bank of New Zealand and Banking Act, 1895" (issued in 1895).

The debentures under "The Lands Improvement and Native Lands Acquisition Act, 1894," though similarly charged by Act on the Consolidated Fund, were issued as charged on the "ordinary revenues of the colony." Surely the difference between "Consolidated Fund" on the one hand, and "consolidated revenue" or "ordinary revenues of the colony" on the other, is as great as that between "Consolidated Fund" and "public revenues." And yet all these debentures have been passed and countersigned by the Audit Office without question—those in 1896, indeed, by the present-Controller.

In light of the foregoing considerations it appears to me that the legality of the debentures is unquestionable, and that the holders cannot be in any way prejudiced or embarrassed as suggested by the Audit Office.

In this case, as in the case of the objections previously raised by the Audit Office with respect to these debentures, I have treated the matter very fully, as the loan has been floated and the public credit is absolutely committed. It is eminently desirable that no colour of suspicion or doubt should by any possibility be allowed to exist as to the validity of Government debentures, and it may therefore be pointed out that, even if they contained any irregularity or defect (which these do not), yet the holders cannot suffer, as when once the debentures are issued their validity cannot be questioned. Section 12 of the Act makes full provision as follows: "No person from whom any part of the aforesaid moneys is raised, or who is the holder of any debenture, scrip, or other security in respect of such moneys, shall be concerned to see or inquire whether or to what extent the powers conferred by or under this Act have been previously exercised, or are intended to be exercised; and all moneys raised or purporting to be raised, and all debentures, scrip, or other securities created or issued, or purporting to be created or issued, under this Act shall, so far as concerns the lender or holder, be deemed to have been lawfully raised, created, or issued within the powers by this Act conferred in that behalf."

I am, however, satisfied that these debentures may be legally issued in their present form. As by section 3 of "The Public Revenues Act, 1891," they are included in the term "public moneys," the legality of their issue might, I think, be determined by the Governor in Council under section 53 of that Act; but, inasmuch as the question of charge on the Consolidated Fund is also raised, it will, on the whole, be better for His Excellency to act under both that section and section 9 of the Amendment Act of 1900. It sufficiently appears that, in the opinion of the Audit Office, the difference of opinion between it and the Treasury involves matter of law.

FRED. FITCHETT,

Crown Law Office, 21st August, 1901.

Solicitor-General.

#### No. 21.

(On submission of Warrant, for which see papers numbered 26 and 27 of this correspondence.)

For the Solicitor-General.

Wellington, 22nd August, 1901.

In reference to the Audit Office minute of the 17th August, and the Solicitor-General's opinion of the 21st August thereon: The Governor would be glad of a distinct expression as to whether it was the Solicitor-General's intention to convey therein "that the debentures do not declare the security to be other than the Act prescribes which authorises their issue," and that, though the wording is somewhat different, the legal meaning and effect is identical. (2.) That this difference in wording cannot affect the marketable value of the loan or in any way prejudice the subscribers.

RANFURLY.

#### No. 22.

For His Excellency.

YES; it was my intention to convey the meaning indicated.

22nd August, 1901.

FRED. FITCHETT, Solicitor-General.

#### No. 23.

Wellington, 22nd August, 1901.

Memorandum for the Right Hon. the Premier.

THE Governor would be glad if the Premier would obtain for him the Solicitor-General's answer on the enclosed minute.

RANFURLY.



## No. 24.

Premier's Office, Wellington, 22nd August, 1901.

Memorandum for the Solicitor-General.

THE Premier desires to obtain from you, for the information of His Excellency the Governor, your opinion upon the following minutes:—

Whether it was your intention to convey in your opinion of the 21st August: (1.) That the debentures do not declare the security to be other than the Act prescribes which authorises their issue, and that, though the wording is somewhat different, the legal meaning in effect is identical. (2.) That this difference in wording cannot affect the marketable value of the loan, or in any way prejudice the subscribers.

R. J. SEDDON.

## No. 25.

Rt. Hon. the Premier.

Yes, such was my intention, and it seems to me to be clearly expressed in the opinion itself; see, for example, the very first paragraph.

FRED. FITCHETT,  
Solicitor-General.

22nd August, 1901.

SEEN.—R.—24/8/1901.

## No. 26.

IN EXECUTIVE COUNCIL.

HIS Excellency the Governor is recommended, under section 53 of "The Public Revenues Act, 1891," and section 9 of "The Public Revenues Acts Amendment Act, 1900," to sign the attached Warrant deciding that certain debentures under "The Aid to Public Works and Land Settlement Act, 1900," and the expenditure in respect thereof, ought to be charged on the Consolidated Fund, and that the said debentures bearing on their face a statement that they are so charged are in accordance with law, and may lawfully be countersigned and issued accordingly.

R. J. SEDDON.

Approved in Council.—R.—22/8/1901.

ALEX. WILLIS, Clerk of the Executive Council.

## No. 27.

RANFURLY, Governor.

WHEREAS by section fifty-three of "The Public Revenues Act, 1891," it is provided that, if the Audit Office declines to pass any issue requisition on the ground that the charges therein are not according to law, the matter in dispute shall be determined by the Governor in Council, having before him the opinion of the Attorney-General thereon: And whereas by section nine of "The Public Revenues Acts Amendment Act, 1900," it is provided that, if any difference of opinion arises between the Audit Office and the Treasury as to the fund, account, or other authority to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves a question of law, be determined by the Governor, having before him the opinion of the Attorney-General thereon: And whereas the Audit Office has declined to pass the issue requisition in respect of certain debentures to be issued under "The Aid to Public Works and Land Settlement Act, 1900," by declining to countersign the said debentures on the ground that the charges therein are not according to law, inasmuch as on their face they are expressed to be charged on the Consolidated Fund of the colony instead of on the public revenues of the colony, as provided by the said Act under which they purport to be issued: And whereas by reason of the premises, and on the ground aforesaid, a difference of opinion has arisen as to whether the said debentures and the expenditure in respect of the principal and interest payable thereunder ought to be charged to the Consolidated Fund:

Now, therefore, I, Uchter John Mark, Earl of Ranfurly, Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Solicitor-General thereon, and acting by and with the advice and consent of the Executive Council of the said colony, do hereby determine the said matter in dispute and

difference of opinion by deciding that the said debentures and expenditure ought to be charged on the Consolidated Fund, and that the said debentures bearing on their face a statement that they are so charged are in accordance with law, and may lawfully be countersigned and issued accordingly.

Given under the hand of His Excellency the Governor, at the Government House,  
at Wellington, this twenty-second day of August, one thousand nine hundred  
and one.

R. J. SEDDON.

In Executive Council.

ALEX. WILLIS, Clerk of the Council.

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No. 28.

The Audit Office.

FURTHER Warrant of His Excellency the Governor deciding that certain debentures under "The Aid to Public Works and Land Settlement Act, 1900," are charged in accordance with law, and may be lawfully countersigned and issued, is attached.

I again submit the debentures for countersignature. They are urgently required.  
24th August, 1901.

JAS. B. HEYWOOD.

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No. 29.

The Hon. the Colonial Treasurer.

Audit Office, 26th August, 1901.

*Audit Office Objections to 4-per-cent. Debentures for £255,000, issued under "The Aid to Public Works and Land Settlement Act, 1900," on 4th June, 1901, and repayable on 1st April, 1904.*

THE Governor having determined, under section 9 of "The Public Revenues Acts Amendment Act, 1900," the question respecting the interest to be paid to the purchasers of these debentures, by deciding that interest at the rate of 4 per cent. per annum shall be payable from the 1st April, 1901, the Controller and Auditor-General has now countersigned them, and will in ordinary course lay before Parliament, in accordance with the provisions of the Public Revenues Act, a copy of the correspondence on the subject.

The recollection of the Audit Office does not bear out the statement that "the draft prospectus was submitted to the Audit Office, and was not objected to." The draft was shown to the Audit Office in an unofficial way; but the Controller and Auditor-General, not only then but on several other occasions, pointed out in the same way that the terms of the prospectus as to interest went beyond the statutory limit as to its rate. And the official inquiry of the 11th April was addressed to the Minister because the Audit Office had not then been informed that any notice had been taken of such unofficial objection, and the Controller and Auditor-General therefore desires to have the question raised by the Audit Office recorded, and to make clear his own position as a witness to the opening of the tenders.

But, as to the objection itself, the debentures have been purchased at the price of £100 for every £100 named in them, and they are to yield, as interest to the purchaser on the purchase-money, the *amount* that the *rate* of 4 per cent. per annum would so yield if the purchase-money had been paid for three whole years. The question thus is simply whether the debentures which so yield that *amount of interest* do not yield a *higher rate of interest* than 4 per cent. per annum to the purchaser whose purchase-money is paid for a period of less than three whole years—whether, in short, the *amount* of interest at the full rate of 4 per cent. per annum will not be greater for a period of three whole years than for a shorter period.

It is not to the point to refer to any loan such as that of 1879, or that of 1899, where the loan is issued to bear interest at a rate lower than the rate to which the purchaser is limited by the Loan Act, and the concessions are not calculated to result in a sale at a price that could yield to the purchaser more interest than such limit would allow. There may have been one case, or even more than one, of the limit having been exceeded. But the Audit Office does not know that what has been done in the present case is in strict accordance with established usage and practice either in New Zealand, or in other countries limited like New Zealand by statute as to the rate of interest, and cannot but object to any such limit or degree of concession as may be beyond the limit of the statute.

If the sale of the present debentures at the price equal to the nominal value had been a sale at that price of debentures bearing interest at the rate of  $3\frac{1}{2}$  or even  $3\frac{3}{4}$  per cent. per

annum, instead of 4 per cent. per annum, the concession made as to payment of the price would not have resulted in the debentures yielding so much as the rate of 4 per cent. per annum to the purchasers on their purchase-money.

With regard to the informality arising from the discrepancy between the words by which the debentures declare the security for the principal and interest and the words by which such security is declared in the Act and prospectus—that is, the informality which the Audit Office has described as “this objection to the form of the debentures”—there is no such objection by or dispute with the Audit Office, or such difference of opinion between the Audit Office and the Treasury, as the Governor is authorised to determine. The Audit Office has not disputed any proposal to charge the debentures to the Consolidated Fund, or suggested that the validity of the debentures would be affected by the discrepancy. The objection is merely that to which the Solicitor-General alludes by his remark that “it would be well that the debentures should accord textually with the Act.” The debentures do not express their security as it is expressed in the Act and prospectus. And, consequently, even if there were no doubt that “the public revenues of New Zealand” are identical in meaning with “the Consolidated Fund of the colony,” any advice which presumes and applies to a dispute on the question whether principal and interest which are chargeable by statute on the public revenues are not chargeable on the Consolidated Fund is inapplicable to the actual objection, and so, of course, is the Governor’s Order determining such a dispute.

It may, however, here be observed that section 2 of the Public Revenues Act of 1896 provides as follows: “The Public Account shall comprise not only the Consolidated Fund and the Public Works Fund, as provided by section seven of the principal Act, but also every separate fund or account which by any Act of the General Assembly heretofore or hereafter passed is directed to be paid into and to form part of the Public Account”; and that, as by this amendment of section 7 of the Act of 1891 the Consolidated Fund does not comprise all receipts but the produce of loans, it is the more desirable that the debentures for a loan raised on the security of the public revenues of New Zealand should declare the security in textual accord with the relative Loan Act.

It is respectfully submitted that the objection was, in the circumstances, virtually no more than a requirement that the form should be corrected to accord textually with the Act and the prospectus, and that the debentures should be printed again in the correct form—as, indeed, other debentures for the same loan have since been printed; and the Controller and Auditor-General, fearing that Parliament may consider that he should not have countersigned the debentures till they had been corrected, would venture to urge the Hon. the Minister to consider whether it would not, even now, be better to have them corrected.

J. K. WARBURTON,  
Controller and Auditor-General.

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