

1901.
NEW ZEALAND.

“THE PUBLIC REVENUES ACT, 1900”:

CORRESPONDENCE RELATIVE TO INTEREST ON DEBENTURES FOR THE SUM OF £500,000
RECEIVED UNDER “THE BANK OF NEW ZEALAND AND BANKING ACT, 1895.”

Laid upon the Table by the Deputy Speaker.

Audit Office, 16th October, 1901.

THE Controller and Auditor-General has the honour most 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 public revenue should be credited with the amount paid out of the Public Account for interest on the New Zealand Government debentures, in which the Public Trustee has invested the sum of £500,000 received by him under section 8 of “The Bank of New Zealand and Banking Act, 1895.”

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

The Hon. the Speaker of the House of Representatives.

No. 1.

(On the Public Trustee's Account to Treasury of 15th July, 1901, for £4 18s. 2d., cost of cable-gram to Bank of New Zealand, London, as to £500,000 received under section 8 of “The Bank of New Zealand and Banking Act, 1895.”)

The Under-Secretary, Colonial Secretary's Office.

KINDLY charge and approve voucher and return to me.
7th July.

Accordingly.—H. POLLEN. 9/7/1901.

For Audit.—R. J. C. 15th July.

No. 2.

THIS appears to be an expense incident to the administration of the trust, and should accordingly be charged by the Public Trustee to the Trust Account.

16th July, 1901.

J. C. GAVIN,
Assistant Controller and Auditor.

No. 3.

The Audit Office.

It is not intended that there should be any expenses connected with the administration of the trust by the Public Trustee, saving some book-keeping to record the transaction. I think this telegram was sent at our request in accordance with arrangements made at the time. I think voucher might be passed as submitted.

22nd July, 1901.

JAS. B. HEYWOOD.

No. 4.

The Treasury.

THE Audit Office is not satisfied that the Treasury is authorised thus to pay or regulate the expenses of the Public Trustee's administration of the trust under section 8 of “The Bank of New Zealand and Banking Act, 1895.”

23rd July, 1901.

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

1—B. 19c.

No. 5.

128. TRANSFER.

<i>Debit.</i>	£	s.	d.	<i>Credit.</i>	£	s.	d.
Consolidated Fund.—Vote, Colonial Secretary,				Consolidated Fund.—Ordinary Revenue, Mis-			
Miscellaneous	4	18	2	cellaneous	4	18	2
Cost of cablegram to Manager Bank of				Amount of interest deducted by Public			
New Zealand, London, re invest-				Trustee when making payment			
ment of £500,000 by Public Trustee				on account of £500,000 invest-			
(T. 01/1727).				ment.			
	£4	18	2		£4	18	2

(Treasury.—Approved, July, 1901.)
29th July, 1901.

R. J. COLLINS,
Accountant to the Treasury.
JAS. B. HEYWOOD.

No. 6.

The Treasury.

WHY is it proposed to make this transfer? The Audit Office has already refused to pass a voucher to make the cost of the cablegram in question a charge to the Public Account, and this voucher does not consist with that refusal.

1st August, 1901.

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

No. 7.

The Audit Office.

THE cost of the cablegram has been already paid by the Public Trustee, and as he considered he was entitled to reimbursement he deducted the amount from a payment *he had to make to us*. I think the Treasury should reimburse the cost, and this transfer is to make good the shortage the Public Trustee paid over.

2nd August, 1901.

JAS. B. HEYWOOD.

No. 8.

The Treasury.

THE Public Trustee's cablegram is an expense of his administration—an expense which he does not appear to be entitled by law either to have reimbursed by the Treasury or to charge to or deduct from the income of his trust under section 8 of "The Bank of New Zealand and Banking Act, 1895." Then the Treasury, though it had the express statutory right as the proprietor of the preferred shares to receive the dividend of $3\frac{1}{2}$ per cent. on them, has no statutory right either to the interest on the Public Trustee's investment of the moneys received for the repurchase of the shares or to the income of his trust of such moneys. Nor has the Public Trustee any statutory duty or authority to pay such interest or income to the Public Account. The case is not one of a "payment he had to make" to that account.

3rd August, 1901.

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

No. 9.

Revenue Account.

No. 57.—Consolidated Fund (miscellaneous)	6th July, 1901.
M. 1200.				£8,745 1s. 10d.

No. 10.

The Treasury.

ACCORDING to this Revenue Account it is proposed to credit to Miscellaneous Revenue the sum of £8,745 1s. 10d. paid by the Public Trustee to the Public Account as for "Interest on £500,000, Aid to Public Works and Land-settlement Act, 1900, held by Public Trustee as from the 23rd October to the 23rd April, £8,750 0s. 0d.; less amount to be adjusted, £4 18s. 2d.: total, £8,745 1s. 10d."

Has the Treasury considered whether the Public Trustee had any authority of law for making the payment? For if it is not clear that he had such authority, it is submitted that the money should either be returned to him or, pending the determination of the question, be placed to the credit of deposits.

1st August, 1901.

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

No. 11.

The Audit Office.

IT is not for me to set myself up as a judge of the legality of the action of the Public Trustee. If he had not considered himself justified in making the payment referred to he would presumably not have done so. So far as concerns the Treasury, it appears to me that the money should be credited to revenue, thus applying to the interest on the proceeds of the bank shares the same rule as obtained in the case of the dividends formerly received from those shares.

1st August, 1901.

JAS. B. HEYWOOD.

No. 12.

The Treasury.

It would appear that, in view of section 29 of "The Public Trust Office Consolidation Act, 1894," the Public Trustee is without authority to pay to the Treasury "the interest on the proceeds of the bank shares." The interest on the Public Trustee's investment of the proceeds of the bank shares belongs neither to his trust under section 8 of "The Bank of New Zealand and Banking Act, 1895," nor to any particular estate in the Public Trust Office; and if the Public Trustee is authorised to pay to the Public Account now any money in respect of the trust, it is only the income of the trust. But the income of the trust is not the interest which the Public Trustee has paid to the Public Account and which the Treasury proposes to credit to Miscellaneous Revenue.

2nd August, 1901.

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

No. 13.

The Audit Office.

I WOULD suggest that, as the matter appears to relate to the administration of the Public Trust Office, you should address the Public Trustee on the subject. He will, I am sure, be able to give a satisfactory reply.

2nd August, 1901.

JAS. B. HEYWOOD.

No. 14.

The Treasury.

Audit Office, 5th August, 1901.

Revenue Account, No. 57 of 6th July, 1901.

It is upon the proposal of this Revenue Account that the present question has been raised—the proposal to credit revenue with the amount received from the Public Trustee of a payment which he is known to have no statutory authority to make. The question which the Audit Office may have to raise with the Public Trustee will be raised on the Public Trust Office Accounts, for the purpose of ascertaining the reason of his own transaction in making the payment to the Public Account. Meantime, the Audit Office will be unable to pass the amount to the credit of the revenue.

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

No. 15.

The Hon. the Colonial Treasurer.

THERE seems no other course open to the Treasury than to apply to the Solicitor-General for his opinion, under which, if he concurs with the action of the Treasury, a Warrant of His Excellency the Governor may be asked for.

5th August, 1901.

JAS. B. HEYWOOD.

No. 16.

THE Public Trustee is very confident he is within his powers in paying over. If the contingency arises later on, a Warrant under the hand of His Excellency can then be obtained.—R. J. S. 5/8/01.

No. 17.

PREPARE the necessary Warrant, if the Solicitor-General so advises.—R. J. S. 6/8/01.

REFERRED to Solicitor-General for his opinion.

6th August, 1901.

JAMES B. HEYWOOD.

No. 18.

Audit Office, 22nd August, 1901.

Revenue Account No. 57 of 6th July, 1901.

ADVERTING to the Audit Office minute of the 5th instant, on the question whether the Public Trustee had any authority of law for making the payment to the Public Account of £8,745 1s. 10d., which the Treasury proposes to place to the credit of revenue, that question has since been raised on the transaction in the Public Trust Office Accounts; and in submitting a copy of the Audit Office correspondence with the Public Trustee on the subject, the Controller and Auditor-General begs to express his regret that he is unable, for the reasons which are given in his memorandum to the Public Trustee of the 19th instant, to pass the amount to the credit of the revenue. The amount should therefore be struck out of the Revenue Account in question.

The Hon. the Colonial Treasurer.

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

No. 19.

Wellington, 13th August, 1901.

ON the 2nd July last a payment of £8,745 1s. 10d. was made to the Treasury, being a refund of interest (less cost of cable) on the investment of £500,000, under the Aid to Public Works and Land Settlement Acts. Would you kindly state under what authority this payment was made.

The Public Trustee, Wellington.

W. H. CARLYLE,
Audit Inspector.

No. 20.

DEAR SIR,—

Wellington, 16th August, 1901.

£500,000 Loan.

Replying to your letter of the 13th instant, there is no statutory authority for the payment of the interest to the Treasury. Where a sum of money is deposited with a trustee to meet a claim payable at a future time, the interest earned by that sum in the meantime reverts to the depositor by what is known in law as a "resulting trust." This rule governs the present case, and it is so well known that I feel no hesitation in acting upon it without any express authority. The Legislature, I think, must be presumed to have been fully aware of the principle, and so thought it unnecessary to direct the application of the interest produced by the £500,000 deposited with me.

Yours, &c.,

The Audit Inspector, Wellington.

J. W. POYNTON, Public Trustee.

No. 21.

Controller and Auditor-General, Wellington.

16th August, 1901.

ENCLOSED please find copy of my letter to the Public Trustee, and his reply *re* the interest on the £500,000 investment.

W. H. CARLYLE.

No. 22.

Audit Office, 19th August, 1901.

Payment to Public Account of interest received on investment of £500,000 in Debentures under "The Aid to Public Works and Land Settlement Act, 1899."

THE Public Trustee's letter of the 16th instant does not satisfy the Audit Office that the payment in question is authorised by law.

In the first place, the moneys amounting to £500,000, which have been paid to the Public Trustee under section 8 of "The Bank of New Zealand and Banking Act, 1895," are capital moneys of the trust—capital moneys which, as soon as he received them, fell into the common fund by the operation of section 29 of "The Public Trust Office Consolidation Act, 1894"; and, as no investment made from the common fund belongs to a particular trust, the interest derived from the investment does not. Even if the Public Trustee could obey the direction of the Executive authority of Government to pay to the Public Account the amount of any of the income not necessary to the purpose of the trust, it would not be the income consisting of interest derived from the Public Trustee's investment of the capital moneys, but only the income of the trust from interest to which moneys forming the common fund are entitled. And if it should be objected that the present common-fund rate would afford the trust very much more interest than the common fund derives from the investment, and could not therefore be paid without a disastrous result to the Public Trust Office, the answer is that the 3rd paragraph of section 29 provides that the Governor in Council may make regulations to meet such a case.

In the second place, the authority for the trust is not the Executive authority of Government, but only the *Legislature*, and consequently any equitable interest would result—any resulting trust would be—to the Legislature. The Legislature, in requiring that the moneys should be paid to the Public Trustee, placed them beyond the control of the Executive; and there is thus all the more reason for regarding the Legislature as the authority to which the Public Trustee should look for direction as to the disposal of any such income as the Public Trustee may not require for the purpose of the trust, and the Legislature's direction in such a case could be only by statute. So that even the operation of the common-law rule as to "resulting trusts" would seem to require statutory authority.

The capital moneys of the trust are guaranteed by the colony under the provisions of section 32 of the Public Trust Office Act, so that the purpose of the trust being only to pay £500,000 at a future date there is no necessity for the Public Trustee to retain more. The amount that he has cannot diminish. The only question is whether, without any direction from the authority for the trust—the Legislature—he can pay to the Public Account any surplus to be dealt with by the Treasury.

It may be well to add that the payment made by the Treasury in July last, of £8,750 to the Public Trustee, as for six months' interest on the debentures, is at the rate of $3\frac{1}{2}$ per cent. per annum, and that, as the rate of interest for which the debentures have been issued is only 3 per cent. per annum, the Treasury has paid, and the Public Trustee has received, too much by £1,250. The error has been pointed out to the Treasury, and should, as it no doubt will, be corrected as soon as possible.

The Public Trustee.

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

No. 23.

Rt. Hon. Mr. Seddon,

(Urgent.)

I THINK this correspondence should be submitted to the Solicitor-General, who is advising upon the question.

26th August, 1901.

JAS. B. HEYWOOD.

The Solicitor-General.

KINDLY advise hereon.—R. J. S. 26/8/1901.

No. 24.

OPINION annexed—F. F. 4/9/1901.

(T.01/2468.)

Opinion on objections of Audit Office to Legality of the Payment of £8,745 1s. 10d. by the Public Trustee to the Treasury.

1. In my opinion the Public Trustee has ample authority in law to make the payment.
2. By isolating from their context section 29 of the Public Trust Act and section 8 of the Banking Act, the Audit Office arrives at the extraordinary conclusion that in directing the half-million to be paid over to the Public Trustee, the Legislature seriously intended that, whether he succeeded in investing it or not, he should be liable to pay interest on it at whatever rate (up to 5 per cent. on the first £3,000, and 4 per cent. on the excess) the Governor in Council liked to fix. Further, that this interest should not be paid over to the Treasury, but should be accumulated until Parliament otherwise directed; and that in the meantime the interest on the debentures—£17,500 a year—should be provided by the taxpayers out of the Consolidated Fund.
3. Of course when once the meaning of an enactment is ascertained by correct interpretation, it must be taken to be a deliberate expression of the will of Parliament, and, as such, must be given full effect to, be the consequences what they may. But a consideration of the consequences of any suggested interpretation is an excellent touchstone of its accuracy. And where, as here, the consequences are so extraordinary, a strong presumption arises that the interpretation is at fault.
4. The plain purpose of the Banking Act was to help the bank with the least possible loss to the colony. To this end the Government gave debentures for half a million to the bank, taking in return preferred shares of the face value of half a million, which carried a dividend at the same rate as the interest payable on the debentures. With the dividends the Government paid the interest, and thus the Consolidated Fund was not burdened. Such was the clear intention of Parliament as shown in sections 4 to 7 of the Act, and if further proof of it were needed it may be found in section 21 of the Amending Act of 1898, which directed that the dividends should be paid in London on the 21st June and December (ten days before the due date of the interest) without the consent or authority of the shareholders. This was the scheme whilst the shares were held by the Government.
5. By section 8, but as part of the same scheme, power was given to the bank to repurchase the shares at a price not less than the face value, the repurchase money to be paid over to the Public Trustee, and to be applied by him in redeeming the debentures at maturity, about forty years hence. All the shares have been repurchased and the Public Trustee has duly received half a million, being the full amount of the debentures. This section must not be isolated from the preceding ones, and reading them together it is, in my opinion, perfectly clear that the only effect of the repurchase is to substitute the half-million for the shares, the income derived from the half-million for the dividends on the shares, and the Public Trustee for the bank.
6. The Audit Office holds that it would require express words in the Act to authorise the Public Trustee to pay over this income. On the contrary, it would require express words to prevent him from doing so. For, quite apart from the clear intention of the Act that the income derived from the shares, or from the proceeds of the shares, should be available towards payment of the interest on the debentures, there is the ordinary principle of law and common sense that the person who is entitled to receive the income derived from any specified form of property—*e.g.*, shares—is not to be deprived of it merely because the form is changed—*e.g.*, by the shares being sold and converted into cash. The only effect of the conversion is to change the form of his income from dividends on the shares to interest on the cash when invested. In the absence of express words to the contrary, the Legislature must in the present case be deemed to have recognised this principle.
7. For these reasons I am of opinion that the Government has the same right to receive the income derived from the half-million as it had to receive the dividends on the shares—and this without any further statutory authority. It is unnecessary to comment seriously on the suggestion of the Audit Office, that because the Legislature is the authority for the trust any equitable interest or resulting trust must be to the Legislature. The terms are used with a complete misunderstanding of their meaning.
8. So much as to the power in law of the Public Trustee to pay over to the Treasury at all. It remains, however, to consider the further objection of the Audit Office: that if he has the power to pay at all, he must pay in accordance with the provisions relating to the common fund, inasmuch as, by force of section 29, the half-million fell automatically into that fund as soon as it was received by him.
9. The Public Trustee is a corporation sole, created by the Public Trust Act for the purpose of carrying on business in the ordinary commercial way as trustee, attorney, agent, &c., in cases where he is duly appointed with his consent (section 12). And he cannot be appointed unless the Board consents (section 9). Thus it would require a statute, as in the present instance, to place a fund in his hands and appoint him trustee of it without the Board's consent. Again, it would be in conflict with the Public Revenues Act, and therefore not in contemplation of the Public Trust Act, that moneys belonging beneficially to the Crown should be placed in his hands for investment. It would require a statute, as in the present instance, to authorise such a thing. Now, having regard to the nature and incidence of the common fund, I am satisfied that only such capital moneys fall into it automatically as, in the contemplation of the Act, may arise in the ordinary course of his business; and, as I have shown, the half-million is not of this description.
10. The distinctive features of the common fund are that the Public Trustee pays interest on it at a rate fixed by the Governor in Council, not exceeding in the case of each estate 5 per cent. on the first £3,000, and 4 per cent. on the excess; and that the sufficiency of the fund is guaranteed by a charge on the Consolidated Fund. The rate now in force is 4 per cent on the first £3,000 and

$3\frac{1}{2}$ per cent on the excess. This fixed rate he must pay, unless the Governor in Council reduces it. Hence, if he invests the money at a higher rate, he makes a profit; if at a lower rate, or not at all, he makes a loss. In the case of the half-million, he has invested it at 3 per cent., and, therefore, if it belongs to the common fund he is losing over £2,500 a year on it. The fact of his liability to pay a fixed rate of interest, irrespective of what he actually earns, seems to me to show conclusively that money of which he is appointed trustee by statute, without his own or the Board's consent, does not by force of section 29 fall automatically into the common fund, as contended by the Audit Office.

11. No doubt where the sole reason for excluding the money from the automatic operation of section 29 is the fact that the appointment has been made without consent, the Public Trustee may place it in the common fund if satisfied that this can be done with safety. But in such case it would be placed there by his deliberate action and not by force of the section.

12. Where, however, as in the present instance, the money is the beneficial property of the Crown, there are in my opinion special reasons for excluding it absolutely from the common fund. That the Crown should have power to itself fix the rate of interest the Public Trustee must pay on its own moneys is repugnant to reason as well as to the scheme of the common fund. Such a power would be unfair to the Public Trustee, dangerous to the Public Trust Office, and demoralising to the Government itself. Moreover, the other essential feature of the common fund—the State guarantee—would be a nullity in the case of such moneys, inasmuch as the Crown would be guaranteeing itself.

13. For these reasons I am of opinion that on the law as it stands the half-million cannot legally belong to the common fund at all, but must be separately invested under the general powers conferred on the Public Trustee by section 56 of this Act. His duty is to invest it as best he can on the authorised securities, and pay over to the Treasury the actual interest earned, less the expenses, &c., incurred. This he has done. The cost of the cable to which the Audit Office objects appears to be a legitimate expense. Indeed the sole ground of the objection is that the capital belongs to the common fund. The correction referred to in the last paragraph of the minute of the Audit Office can be made by the Treasury. It does not affect either the legality or the amount of the payment made by the Public Trustee.

FRED. FITCHETT,
Solicitor-General.

Crown Law Office, 4th September, 1901.

No. 25.

Rt. Hon. Colonial Treasurer.
SHALL a Warrant be now asked for?
12th September, 1901.

JAS. B. HEYWOOD.

No. 26.

YES, issue Warrant. It is quite clear that the Controller and Auditor-General is in error in his interpretation of the law.—R.J.S. 13/9/01.

No. 27.

(T.01/2468.)

Wellington, 16th September, 1901.

HIS Excellency the Governor is respectfully advised to sign the attached instrument determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a question in dispute between the Audit Office and the Treasury.

R. J. SEDDON

Signed.—R. 18/9/1901.

RANFURLY, Governor.

(T.01/2468.)

WHEREAS by section nine of "The Public Revenues Act Amendment Act, 1900," it is provided that in case any difference in opinion arises between the Audit Office and the Treasury as to the proper head of revenue, fund, or account to which any receipt should be credited, 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 account to which interest received or to be received from the Public Trustee in respect of the £500,000 held by him under the provisions of section 8 of "The Bank of New Zealand and Banking Act, 1895," and which amount is at present invested in debentures issued under "The Aid to Public Works and Land Settlement Act, 1899," should be credited:

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 the said half-million does not belong to the common fund of the Public Trust Office, but is the subject of special investment by the Public Trustee, and that the interest earned thereon is properly payable to the Treasury, and should be credited to the Consolidated Fund, Miscellaneous Revenue Account.

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

R. J. SEDDON.

No. 28.

The Audit Office.

To note the issue of the Governor's Warrant. The adjustment of the overpayment of interest can be made in the attached requisition, or by transfer, as you may determine.

21st September, 1901.

JAS. B. HEYWOOD.

No. 29.

The Hon. the Colonial Treasurer.

In order that the revenue may not be credited with the amount of the overpayment of interest, the Controller and Auditor-General would ask that the Revenue Account in question may, before it is passed by the Audit Office, be so amended that the correction of the error will be effected by a direct restoration of the amount to the appropriation to which it has been charged.

24th September, 1901.

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

No. 30.

The Accountant.

MAKE adjustment in the requisition accordingly.—JAS. B. HEYWOOD.

24th September, 1901.

CREDIT voucher amended and Revenue Account altered.—R. J. COLLINS.

25th September, 1901.

No. 31.

The Audit Office.

REQUISITION amended.—JAS. B. HEYWOOD.

30th September, 1901.

No. 32.

The Hon. the Colonial Treasurer.

Audit Office objection to Revenue being credited with interest paid by Treasury to Public Trustee on his Investment of £500,000 received by him under section 8 of the Banking Act.

It is observed that the Order of the Governor, determining the difference of opinion in this case between the Audit Office and the Treasury, states that the amount is at present invested in debentures issued under "The Aid to Public Works and Land Settlement Act, 1900." The investment, however, is in debentures issued under the Act of 1899, and it would appear necessary that the error should be corrected before effect can be given to the determination of the Governor.

2nd October, 1901.

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

No. 33.

CORRECTION to "1899" as initialled approved, same being typographical error.—R. 3/10/01.

No. 34.

The Audit Office.

THIS is a mere typographical error not affecting the validity of the instrument. The error has now been corrected and initialled, and I hope you will see your way to give effect to the Warrant.

3rd October, 1901.

JAS. B. HEYWOOD.
Secretary.

No. 35.

THE voucher which supports the Revenue Account, and is necessary to passing it, having been amended to accord with the amendment in such Revenue Account, was returned to the Audit Office to-day, the 7th October, 1901.

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

No. 36.

Audit Office, 7th October, 1901.

Audit Office objection to Revenue being credited with interest paid by Treasury to Public Trustee on his investment of £500,000 debentures issued under "The Aid to Public Works and Land Settlement Act, 1899."

THE Governor having determined, under section 9 of "The Public Revenues Acts Amendment Act, 1900," the question whether the interest which the Public Trustee receives from his investment of the half-million arising under section 8 of "The Bank of New Zealand and Banking Act, 1895," is payable to the Treasury for credit of the public revenue, by deciding that such interest is properly so payable and should be so credited, the Controller and Auditor-General has now passed

what is necessary to give effect to such determination, and will in ordinary course lay before Parliament, in accordance with the Public Revenues Act, the correspondence on the subject.

To the proposal of the Treasury to credit public revenue with the amount paid out of the Public Account for the interest on the debentures, "the sole ground of the Audit Office objection is that the capital belongs to the common fund." The question, therefore, which has arisen here is not whether the *income to which such statutory trust is entitled* may be paid by the Public Trustee to the Treasury, but only whether *the interest received by him on his investment* of the trust fund belongs to the trust or to the common fund. If the legal income of the trust is the common fund rate of interest, as regulated by the Governor in Council under section 29 of the Public Trust Office Act, then there can be no doubt that legally *the interest paid to the Public Trustee on the investment* cannot be repaid to the Public Account *without fresh statutory authority*, even if the only effect of the repurchase of the shares has been to substitute the half million for them.

"The Public Trust Office Consolidation Act, 1894," provides as follows:—

"2. In this Act, if not inconsistent with the context, the expression 'instrument' includes an Act of the General Assembly.

"Investments.

"29. Subject as is provided by section thirty of this Act, all capital moneys, however arising, whether before or after the coming into operation of this Act, and whether directed to be invested or not, shall, unless expressly forbidden to be invested, become one common fund, and such moneys shall be invested as provided by section thirty-one of this Act; and any investments made from such common fund shall not be made on account of or belong to any particular estate.

"The interest payable to the respective estates the moneys of which shall form such common fund shall be at a rate to be from time to time determined by the Governor in Council, and such rate of interest shall be credited to the respective estates quarterly—namely, on the first day of January, on the first day of April, on the first day of July, and on the first day of October in each year. On the moneys arising from one estate no rate shall be allowed higher than five pounds per centum per annum on an amount not exceeding three thousand pounds, and on any amount exceeding three thousand pounds not higher than five pounds per centum per annum on the first three thousand pounds, or higher than four pounds per centum per annum on the excess:—

"Provided always that the Governor in Council may, subject to the limitations aforesaid as to the rate of interest, make regulations as to the payment or non-payment of interest upon moneys belonging to any estate, and as to the period from which interest, if allowed, is to be computed, as he thinks proper."

These provisions are expressed in language so plain as to carry its own interpretation. Section 56 operates only to strengthen them. The proviso in the third paragraph was designed to meet precisely such a case as that of the trust in question; and it appears to the Audit Office to serve the purpose perfectly.

Now, the half-million is an amount received by the Public Trustee of trust moneys which, arising under an instrument as defined by the Public Trust Office Act, are not directed to be invested. The only material difference between this statutory trust and the statutory trust under section 5 of "The Government Loans to Local Bodies Act Amendment Act, 1892," is that in the latter case the statute directs that the funds shall be invested specially; and such direction is known to have been suggested as one which would serve the purpose of such a special direction as to investment as would keep the funds of the statutory trust from becoming common fund of the Public Trust Office.

The Public Trustee accordingly let the half-million go to form common fund. His accounts show that he has invested the amount as that of moneys of the common fund. From his statutory accounts, and from his report of the 31st March, 1901, which has been presented to Parliament as Paper H.-12 of the present session, it is to be seen that the investments of the common fund include the investment of the half-million. Thus, according to the Acts of administration, as well as according to law as understood by the Audit Office, the interest which the Public Trustee has paid back to the Treasury belongs, not to the public revenue, but to the common fund of the Public Trust Office.

It was for the Public Trustee, as soon as he received the half-million and placed it in the common fund, to move the Government to have the payment or non-payment of interest regulated as the circumstances required; for he could then have ascertained what interest or whether any interest was to be paid to him on the debentures representing his investment, and what interest or whether any interest could profitably be afforded to the trust as the rate to be allowed on its capital moneys in the common fund.

If the Treasury pays on the debentures interest which the Public Accounts are to show as expenditure passing through the Public Trust Office to the credit of the revenue of the colony, one of the effects of the repurchase of the shares is simply to inflate such revenue by the payment to it of the colony's own expenditure. It would be far less objectionable if, when such interest is repaid to the Public Account, the amount were put back to the credit of the appropriation to which the payment is charged, or if, going through the form of law, the Governor in Council were to allow no interest to the Trust Fund, and the Government were at the same time to arrange that no interest should be paid to the Public Trustee on the debentures.

It can only weaken the argument against the objection of the Audit Office to suggest that the Governor in Council would so exercise his power of regulating the rate of interest as to cause any *extraordinary consequences*; or that he would regulate such rate of interest without regard to the circumstances; or that the words of section 29, "all moneys however arising," exclude moneys placed in the Public Trust Office by any instrument under the Public Trust Office Act; or that the State guarantee to moneys in the Public Trust Office, applicable to the redemption of debentures of the colony, would be a nullity.

The inclusion in the common fund of the moneys arising under such a trust being not optional but mandatory with the Public Trustee, the moneys have to go into the common fund ; and this is the ground of the Audit Office objection to crediting to revenue the interest on the investment of them.

The Hon. the Colonial Treasurer.

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

No. 37.

REFERRED to the Solicitor-General for any remarks he may think it desirable to make.

8th October, 1901.

Jas. B. Heywood.

No. 38.

I HAVE nothing to add to what I have already said on the matter, unless, indeed, it be to suggest that it would be better from every point of view if in these cases the Audit Office would state its objections fully in the first instance, and allow the correspondence to close with the Governor's Warrant.

8th October, 1901.

FRED. FITCHETT,
Solicitor-General.

No. 39.

The Audit Office.

ABOVE for your information. The Right Hon. the Colonial Treasurer concurs with the suggestion of the Solicitor-General.

10th October, 1901.

Jas. B. Heywood.

No. 40.

Audit Office, 11th October, 1901.

THE Controller and Auditor-General could hardly justify his concurrence with the suggestion of the Solicitor-General if its object is to restrict the Audit Office in its duty of informing Parliament. But if, before a dispute between the Colonial Treasurer and the Controller and Auditor-General is submitted for the judgment of the Governor, the case as presented to the Solicitor-General, and his opinion on it, were referred to the Audit Office, there would appear to be no objection to a general rule of closing the correspondence with the Governor's Warrant. In the exceptional cases in which the Audit Office might consider it to be its duty to afford additional information to Parliament, such information could be conveyed in a separate paper.

The Hon. the Colonial Treasurer.

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

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