

4. The Foreign Imprest Account is operated on by cheque signed by the Agent-General and countersigned by the Audit officer in London, and the Audit officer is forbidden to "countersign any cheque except for payments authorised by requisition as aforesaid" (section 64). It is at this point that the Audit Office seems to me to go wrong. In its minute of 17th instant it says of this officer that he cannot lawfully countersign a cheque for unauthorised expenditure except pursuant to the authority of a requisition *in which the expenditure is charged to "Unauthorised."* The words underlined are not warranted by section 64, or, as far as I am aware, by any other provision of the Act. In expressly forbidding the Audit officer to countersign any cheque unless the expenditure is authorised by requisition, the section, by clear implication, requires him to countersign all cheques which are so authorised; and, in my opinion, any expenditure is authorised by requisition if the amount of the cheque, when charged to General Imprest by the Agent-General, will not make the balance unaccounted, for exceed £60,000, and the expenditure is one that might lawfully have been the subject of requisition, charging it to a vote other than General Imprest. The Audit Office apparently recognises that this is so in other cases, but objects in the case of "Unauthorised." I have shown, however, that "Unauthorised" is a vote which may be charged by requisition as freely as any other vote, and hence this objection falls to the ground.

5. If the Treasury makes a requisition for money for a service which to its knowledge is unauthorised, the Act requires that the requisition shall charge the amount to "Unauthorised." But nowhere does the Act, directly or indirectly, say that where such knowledge exists such requisition must be made; or that, for service known by the Treasury to be unauthorised, payment cannot lawfully be made out of moneys then in the Foreign Imprest Account, pursuant to previous requisitions charging General Imprest; or that (to state the specific question put by the Audit Office) the Audit officer cannot lawfully countersign a cheque for services known by the Treasury to be unauthorised unless the payment is made out of moneys issued under the appropriation for unauthorised expenditure. In my opinion the Audit officer is not concerned with the nature of the service, or with the knowledge of the Treasury, but can lawfully countersign a cheque for any service, whether authorised or not, and whatever the knowledge of the Treasury, if the payment is made out of moneys charged by requisition to General Imprest. The Audit Office appears to think that if this can be done the limit of £15,000 for "Unauthorised" may be exceeded. But if so, then the same thing may happen even although nothing but authorised expenditure were paid out of General Imprest. When the Agent-General's Foreign Imprest Account comes to be audited, and the payments charged to General Imprest have to be transferred and charged to their respective votes, it may occur that the transfers cannot be made owing to the votes being exhausted; and if the appropriation for "Unauthorised" is exhausted too, the transfers cannot be made at all. Thus, if the objection were valid, it would apply with equal force to the view of the law held by the Audit Office. But in point of fact the limit will in no case be exceeded, for whatever cannot be transferred will remain in General Imprest as balance unaccounted-for, and this is authorised and appropriated under section 63.

6. The Audit Office states that in the case of the Foreign Imprest Account the expenditure is audited before payment. The Act nowhere so provides; on the contrary, it specifically directs that the Agent-General, as imprestee, shall send his accounts and vouchers to the Treasury and Audit Office in Wellington, where they are audited and passed in the same way as in the case of a New Zealand imprestee (sections 66 and 67). The only distinction between the two cases is that in New Zealand the Audit Department does not countersign the imprestee's cheques, whereas in London it does, and with good reason, having regard to the large sums involved, and the distance from the colony.

7. The present difficulty is wholly created by this attempt of the Audit Office to pre-audit the London expenditure, a course which is not only unwarranted by the Act, but must inevitably break down in practice. How can the Audit officer in London possibly know whether any proposed payment is authorised or not? Section 47, which deals with the subject, makes no distinction between expenditure which is unauthorised as being in excess of appropriation and expenditure which is unauthorised as being without appropriation at all. The section runs: "Whenever it appears necessary for the public service that money should be expended in excess of or without appropriation of Parliament," &c. Now, in the former case the Audit officer has no knowledge of the expenditure in New Zealand, and therefore cannot possibly say whether any given appropriation has been exceeded or not. And in the latter, even assuming him to be qualified to decide from the Public Accounts whether an appropriation has been made, he may be called on to countersign before he receives them from New Zealand. Again, how can the legality of his action in London be affected by the knowledge of the Treasury in Wellington? In short, any attempt to check the expenditure in this way must result in what has occurred in the present case—a reference by cablegram to the Audit Office for instructions, involving not only expense, but, what is of more importance, embarrassment of the public service and hazard to the public credit. For these reasons I am of opinion that the draft for £3,000 may lawfully be charged to General Imprest, and that it is the duty of the Audit officer in London to countersign the cheque accordingly; and I venture to hold this view notwithstanding the emphatic declaration by the Audit Office that its decision is the determination of the law.

FRED. FITCHETT,

Crown Law Office, 21st June, 1902.

Solicitor-General.

No. 14.

Wellington, 21st June, 1902.

His Excellency the Governor is respectfully advised to sign the accompanying warrant, determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a difference of opinion that has arisen between the Audit Office and the Treasury in connection with a payment to be made by the Agent-General in London out of the Foreign Imprest Account.

J. G. WARD.

Signed.—RANFURLY, 23/6/1902.