

1904.
NEW ZEALAND.

“ THE PUBLIC REVENUES ACTS AMENDMENT ACT, 1900 ”

(CORRESPONDENCE IN A CASE UNDER SECTION 9 OF), RELATIVE TO THE PAYMENT OF
INTEREST ON DEBENTURES ISSUED UNDER “THE AID TO PUBLIC WORKS AND LAND
SETTLEMENT ACT, 1900.”

Laid on the Table pursuant to Section 9 of “The Public Revenues Acts Amendment Act, 1900.”

The CONTROLLER AND AUDITOR-GENERAL to the Hon. the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR,—

Audit Office, 6th July, 1904.

The Controller and Auditor-General has the honour to respectfully submit to the House of Representatives, in accordance with the provisions of “The Public Revenues Acts Amendment Act, 1900,” a copy of the correspondence in a case under that section where a difference of opinion having arisen between the Audit Office and the Treasury on the question whether on money raised by certain debentures issued under “The Aid to Public Works and Land Settlement Act, 1900,” there is appropriation in that Act for the payment of interest in addition to the interest which the debentures were issued and provided with coupons to bear. The Governor has decided the question by determining that the payment of interest beyond the due date of such debentures up to the date of actual payment in cases where the delay in payment was not caused by the holder thereof should be charged to the Act.

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

No. 1.

COPY of a MINUTE or Voucher for £1 7s. 4d. in favour of Trustees, Porirua College.

THERE is no authority in “The Aid to Public Works and Land Settlement Act, 1900,” for paying interest in respect of the debentures beyond the due date thereof.

J. C. GAVIN, A.C. & A.
14th April, 1904.

No. 2.

Memorandum for the Audit Office.

THE Treasury is of opinion that the payment of overdue interest is duly provided for by section 11 of “The Aid to Public Works and Land Settlement Act, 1900.” The wording of subsection (3) of section 11 refers to the *sum of money* named in the debenture, and states that “*all* interest payable in respect” of such sum of money shall “be a charge,” &c. The Treasury reads such subsection to mean that all interest (including overdue interest) may be paid under the appropriation of the Act authorising the issue of the debentures.

JAS. B. HEYWOOD,
Secretary to the Treasury.
15th April, 1904.

No. 3.

THE interest payable under section 11 is the interest payable in respect of the debentures—that is, the interest which section 3 provides that “they shall bear.” It is only on money raised under the Act by debentures, scrip, or stock that the Act authorises the payment of interest. If in paying off the debentures, there is failure to duly pay, for which the Treasury is responsible, and interest is allowed for the period of such default, this interest would be not interest in respect of the debentures but interest in respect of the money in default, and would not therefore be authorised by the Act. Where the Treasury is not responsible for the failure of the holders of the debentures to receive payment of them at the due date it is obvious that interest allowed for any period after such due date is not authorised by the Act.

J. K. WARBURTON, C. & A.-General.
18th April, 1904.

No. 4.

Right Hon. Colonial Treasurer.

It is clear to my mind that the law provides for the payment of interest on a loan represented by debentures, stock, or scrip, until the amount of such loan has been paid off or provided for under another Loan Act. Do you care to have the opinion of the Solicitor-General on the subject? The present amount chargeable to the "Unauthorised" account, supposing the Solicitor-General confirms the view of the Audit Office, is very small, but it might be as well to get an expression of opinion, as the principle involved is of importance.

JAS. B. HEYWOOD,
21st April, 1904.

No. 5.

The Solicitor-General.

PLEASE advise hereon.

R. J. S.
23/4/04.

Omitting the case where the holder neglects to present his debentures for payment at maturity or to take his money, it is quite clear that in law they bear interest until they are paid. This is one of the ordinary legal incidents of such documents, and there is nothing in the Act or elsewhere to suggest that New Zealand Government debentures are an exception to the rule. It would be odd if they were. Suppose a debenture-holder's action and the appointment of a Receiver: it cannot be seriously contended that his right to recover interest would be limited to interest up to the due date of the debentures.

Possibly the Audit Office means that, admitting the legal right to interest, the Act itself does not authorise payment for any period subsequent to the due date of the debentures—and therefore such interest cannot be paid under the Act—but must be provided for out of "Unauthorised." It appears to me that subsection (3) of section 11 affords a complete answer to this. It authorises the payment of the sum of money named in the debenture, "together with all interest payable in respect thereof." This can only mean whatever interest the debentures carry in law; and in law they carry interest until they are paid.

I understand from the Treasury that in the present case the debentures were lodged with it a day or two prior to maturity (1st April), but by reason of intervening holidays, during which the Treasury Office was closed, payment was not made until the 5th April. On these facts I am of opinion that the holders are entitled to interest up to date of actual payment of the debentures, and that payment of this interest is authorised by the Act.

FRED. FITCHETT, Sol.-Genl.,
25/4/04.

For information of Right Hon. R. J. Seddon.

JAS. B. HEYWOOD,
26 Apl., '04.

No. 6.

The Auditor and Controller-General.

THE Solicitor-General having advised that debentures are legally entitled to the interest up to date of our actual payments I hope you may see your way to pass the payments.

Received, 28th.

R. J. S.
26/4/04.

No. 7.

The Hon. the Colonial Treasurer.

Audit Office, 3rd May, 1904.

Authority for Payment on Moneys raised under "The Aid to Public Works and Land Settlement Act, 1900," of Interest not provided for in the Securities.

THE question which the Audit Office considers here is not whether the payments should be made but only whether there is authority in the Loan Act to make them, and it does not appear to the Audit Office that there is any such authority in the Loan Act.

Subsection (3) of section 11 of the Act provides merely for securing on the public revenues the moneys raised under the Act and the interest payable in terms of the Act. If, on moneys raised under the Act by the securities by which alone the Act authorises such moneys to be raised, interest not provided for by such securities is paid for a period during which the holders do not receive the moneys after the date on which the securities entitle the holders to receive the moneys, such interest is paid on moneys *not raised for that period* by securities under the Act. The moneys raised under the Act might otherwise become an interest-bearing debt for moneys not duly repaid by the Government.

The Loan Act does not contemplate a Receiver. It does not provide for a case of default by the colony or of failure for which the Government is responsible to redeem the loan-securities according to the terms of them. If then the moneys raised by such securities should not be duly paid by the Government in terms of the securities, and the holders should consequently be entitled to interest, it would not be interest authorised by the Act, but rather interest at the market-rate, to be obtained by the holders for the moneys at the date on which the securities entitled the holders to receive the moneys. It would be interest chargeable, as such interest was in a recent case charged, to the Unauthorised Expenditure Account.

J. K. WARBURTON, C. & A.-General.

No. 8.

The Solicitor-General.
For your information.

JAS. B. HEYWOOD,
4 May, '04.

In determining the meaning of an Act it is a well-established canon of construction that the Legislature does not intend to make any alteration in the law beyond what it explicitly declares either in express terms or by implication. As stated by Maxwell (p. 113), "it is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness." If this be applied in the present case the difficulties felt by the Audit Office will, I think, disappear. The Act is silent as to the rights of the debenture-holders, because it is unnecessary to mention them as the general rules of law apply.

What the Act charges on the public revenues and makes payable out of the Consolidated Fund is the principal sums named in the debentures, "together with all interest payable in respect thereof." It is unnecessary to speculate on the serious consequences to the public credit if this meant merely interest up to the due date of the debentures, so that in case of default interest would not continue to run. It means all interest payable in law; and in law—quite apart from any express provision to that effect—interest at the rate named in the debenture continues to run until the debenture is paid (Price and South-western Railway Company: 16 L.J. Ex. 87).

This interest is charged on the public revenues and payable out of the Consolidated Fund. It is therefore payable under the Act.

FRED. FITCHETT, Sol.-General.
19/5/04.

The Controller and Auditor-General.

Please see further remarks by the Solicitor-General.

JAS. B. HEYWOOD.
25 May, '04.

No. 9.

The Hon. the Colonial Treasurer.

Audit Office, 6th June, 1904.

Solicitor-General's Opinion of the 19th May, 1904, as to Appropriation for Interest Money raised by Debentures for a Period after their Currency.

THE Audit Office is not satisfied. Whatever rights the debenture-holders may have in respect of their failure, for which the Treasury is responsible, to receive at the due date payment of the amount of their debentures there must be a clearly expressed appropriation in the Loan Act for every payment which can be passed as chargeable to the Act, and the judgment in the case of the South-western Railway Company is not applicable unless it answers the question of appropriation.

Where the debenture-holders fail to receive on the due dates the payments which their debentures issued to them in terms of the Loan Act entitle them to so receive, then, if responsibility lies with the Treasury, it is responsibility for a fault not provided for or contemplated by the Act; and unless there is authority in the Act thus to postpone payment of the amount of a debenture, there is no authority to charge the Act with interest in respect of such postponement. No serious consequences to the public credit need be apprehended if the Treasury is strict to observe the terms of its contracts with the debenture-holders.

J. K. WARBURTON, C. & A.-General.

No. 10.

The Hon. the Colonial Treasurer.

I RECOMMEND matter be now submitted for the opinion of the Hon. the Attorney-General.

JAS. B. HEYWOOD.
7th June, 1904.

Approved.—C. H. M. 7/6/4.

I have perused the opinion of the Solicitor-General herein and I entirely concur in the opinion expressed by him upon the matter submitted to him. The Controller and Auditor-General apparently does not question the right of debenture-holders to interest up to the actual time of payment of the principal sum made payable by the debentures, but he contends that there is no appropriation for the payment of interest beyond the due date of the debentures. In my opinion sufficient appropriation is made by section 11, subsection (3), of "The Aid to Public Works and Land Settlement Act, 1900," which makes "all interest payable in respect" of the debentures a charge and to be payable out of the public revenues of New Zealand. The Controller and Auditor-General would read the subsection as if the words "up to due date" were inserted after the word "thereof" in the second line of the subsection—but in my opinion the subsection cannot be so read.

ALBERT PITT, Attorney-General.

8/6/04.

No. 11.

The Audit Office.

With the opinion of the Hon. the Attorney-General before you you may now be satisfied.

JAS. B. HEYWOOD, Secretary.
9th June, 1904.

No. 12.

The Hon. the Colonial Treasurer.

Audit Office, 10th June, 1904.

The Attorney-General's Opinion of the 8th June, 1904, on the Question whether on Money raised by Debentures there is Appropriation for Interest for a Period beyond their Currency.

It appears to the Audit Office that, unless there is authority in the Loan Act to extend, otherwise than in a manner provided by the Act, the currency of the loan raised by short-dated debentures

there is no appropriation in the Act for the payment of interest for the period of any such extension. The Audit Office is not satisfied that anything in the Act appropriates as chargeable to it any interest on the moneys raised by debentures but such interest as the debentures *are issued and provided with coupons* to bear in accordance with the Act. For each of the debentures in question the purchaser received in the debenture and its coupons the titles to all the payments for which there was appropriation in the Act to make in respect of such debenture, for there is no provision in the Act in case of default, and no appropriation in it for the payment of additional interest in such case. The Controller and Auditor-General's judgment still is accordingly that on the moneys raised by the debentures the only interest for the payment of which there is *appropriation in the Act* is the interest which, under the authority of subsection (1) of section 3, they were issued and provided with coupons to bear during their currency; and that subsection (3) of section 11 by making chargeable on the public revenues *all interest payable in respect of* the debentures appropriates for the payment of such interest no more than the interest which they were so issued and provided with coupons to bear.

J. K. WARBURTON, C. & A.-General.

No. 13.

Wellington, 15th June, 1904.

HIS Excellency the Governor is respectfully advised to sign the attached determination under section 9 of "The Public Revenues Acts Amendment Act, 1900," deciding that interest on debentures issued under "The Aid to Public Works and Land Settlement Act, 1900," beyond the due date of such debentures up to date of actual payment may be paid in certain cases.

T. Y. DUNCAN.

RANFURLY.

17/6/1904.

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 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 statutory authority to pay interest on debentures issued under "The Aid to Public Works and Land Settlement Act, 1900," beyond the due date of such debentures up to the date of actual payment in cases where the delay in payment of the debentures has not been caused by the holder thereof:

Now, therefore, I, Uchter John Mark, Earl of Ranfury, the Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Attorney-General, do hereby determine the said question by deciding that in every such case as aforesaid interest as aforesaid is a proper charge upon and is payable out of the public revenues of New Zealand under subsection three of section eleven of "The Aid to Public Works and Land Settlement Act, 1900."

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

T. Y. DUNCAN.

The Audit Office.

The determination of H/E herewith to be noted.

JAS. B. HEYWOOD, Sec'y.

17 June, '04.

No. 14.

The Hon. the Colonial Treasurer.

THE payment of £1 7s. 4d., according to the voucher in favour of the Trustees, Porirua College, will now be passed by the Audit Office as a charge to the Loan Act, such being the expenditure which is made so chargeable by the Governor's determination, and to which it applies; and the Controller and Auditor-General will in ordinary course lay before Parliament in accordance with the provisions of the Public Revenues Act the correspondence on the subject.

J. K. WARBURTON, C. & A.-General.

18 June, 1904.

No. 15.

The Audit Office.

VOUCHERS for £1 7s. 4d. and £5 9s. 7d. herewith for audit. These, I think, were the only payments made.

JAS. B. HEYWOOD.

23 Je., '04.

The Hon. the Colonial Treasurer.

The vouchers for these payments are now passed as a charge to the Loan Act.

J. K. WARBURTON, C. & A.-Genl.

23 June, 1904.

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