

60. Then the difference of opinion between yourself and the Treasury was not upon the construction of the Customs Duties Act, but upon the construction of section 3 of the Public Revenues Act?—Upon the construction of the two.

61. Let me put it in another way. Had you any difference of opinion with the Treasury in regard to the construction of the Customs Duties Act—that is to say, as to the legality of refunds?—Yes; on page 3 is the opinion of the Attorney-General, which the Treasury sought on the question.

62. Where does he say anything about the Customs Duties Act permitting refunds to be made?—The Attorney-General, in paper No. 7 of this correspondence, replies to the Treasury's memo., set out in No. 6, in which his opinion is sought. The Treasury says, "The use of the words 'special item' is intended probably to place the items under the provisions of clause 3 of 'The Public Revenues Acts Amendment Act, 1900,' but it is open to question whether items representing refunds of Customs duties can be so placed, as, 'The Customs Laws Consolidation Act, 1882,' although it does not authorise such refunds, does not prohibit this being done. Assuming, therefore, that the items 4 and 13 and others of similar nature do not come under the operations of clause 3 of 'The Public Revenues Acts Amendment Act, 1900,' it is considered that expenditure in excess of the sums appropriated may be lawfully made and may be charged to the vote and items without such excess being charged to 'Unauthorised,' so long as the net amount charged to the vote does not exceed the sum appropriated."

63. Mr. Heywood says that?—Yes.

64. That is not the Attorney-General's opinion?—That is the memo. submitted "for your information"—that is, for the purpose of the Attorney-General's opinion. There are several items in that vote (No. 43) for refund of Customs duties, as will be seen by reference to paper No. 1 of the correspondence; and the Attorney-General said, "In my opinion item 4 of Vote 43 (1904-5) for £675 for refund of duty on machinery for Calliope Dock is a 'specific' item, and 'has reference to refund of revenue' the amount of which was supposed to be 'known to the Administration' or estimated by them 'to be payable before—and in respect of which—the item was placed upon the estimates.' It appears to me to be a specific appropriation for a particular and special matter and amount, and not for the service of the Department. There is nothing in the item which can properly suggest that it was intended to refund all duty, of whatever amount, payable on machinery for the Calliope Dock throughout the financial year, beyond the sum specifically voted. No doubt it was thought by the Administration at the time the item was placed upon the estimates that the total duty of which a refund would be sought would amount to £675, and that sum was accordingly inserted in the estimates for the particular purpose of that refund. I understand the amount of duty payable is now found to be more, but that, through some oversight, the extra amount of such duty has not been provided for." In that case the difference was not allowed to be a charge to the item. The Administration did not claim to charge the item with the excess of that amount. "Item 4 seems to me to be specific equally with items 7 and 8"—those, also, are considered specific refunds—"which are for refund of duty upon memorial windows in memory of particular persons, and equally with item 9, which is for refund of duty upon a lectern for St. Paul's Church, Auckland." Then follow his remarks as to item 13 of Vote 43: "This is a general and not a 'specific' item." And he concludes by saying, "There is nothing in the item to show that it was intended to be confined to any particular artificial limbs." The Audit Office judgment is that a general item which amounts to an amendment of the statute—the Customs Laws Act and the Preferential Duties Act—applies, if it applies at all, only to an expenditure not exceeding the amount of it.

J. B. HEYWOOD, Secretary to the Treasury, examined. (No. 2.)

65. *The Chairman.*—The Committee would like to hear you, Mr. Heywood. Will you explain the position that the Treasury took up?—My personal opinion regarding the position is in all respects antagonistic to the Audit Office views, and, with all respect, even to that expressed by the Attorney-General. In my opinion, the Customs Laws Consolidation Act does not prohibit refunds being made. The provisions of the Customs Laws Consolidation Act have been fully carried out, and also the provisions contained in the Preferential and Reciprocal Trade Act. The duties which these Acts impose were levied, collected, and paid into the Public Account, and both Acts are silent as to refunds. It is only common-sense to consider that refunds have got to be made. Even the Audit Office admits, as was stated by the Controller just now, that in cases of error refunds are made. In the course of administration it must be found—and it has been found, ever since I have been connected with the Government service—that refunds are required to be made for some purpose or another. Up to some years before 1898 refunds had been provided for by a general item upon the estimates, which was allowed by the Audit Office to be exceeded as occasion required, so long as the vote was not exceeded. I maintain, personally, at any rate, that it is a reasonable thing for the Administration to require to make refunds, and as the Act does not prohibit refunds being made, these refunds appear to me to be outside the provisions of section 3 of "The Public Revenues Act, 1900." Holding that view, I, with all respect, differ even from the opinion expressed by the Law Officers, and supported by the Attorney-General; but, of course, I at once bowed to their decision, and effect has been given to it. With regard to the item for artificial limbs, the Attorney-General has expressed the view that has guided him in concluding that this item is outside the provisions of section 3 of the Public Revenues Act, and therefore that it is not a limited item. I think that every reasonable person would understand that it was the intention of the Administration to make refunds on all artificial limbs if they had made up their minds that artificial limbs were an object upon which a refund should be made; and as it would be impossible at the time the estimates were drafted to estimate how much duty would be collected upon artificial limbs brought into the colony, it would be equally impossible to estimate the amount to be refunded.