

1905.
NEW ZEALAND.

PUBLIC ACCOUNTS COMMITTEE

(REPORT OF) ON THE PAPER B.-19, 1904 (CORRESPONDENCE IN A CASE UNDER SECTION 9 OF "THE PUBLIC REVENUES ACT AMENDMENT ACT, 1900," RELATIVE TO THE PAYMENT OF INTEREST ON DEBENTURES ISSUED UNDER "THE AID TO PUBLIC WORKS AND LAND SETTLEMENT ACT, 1900"); TOGETHER WITH MINUTES OF EVIDENCE.

(MR. McNAB, CHAIRMAN.)

Report brought up on the 22nd August, 1905, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

THURSDAY, THE 30TH DAY OF JUNE, 1905.

Ordered, "That Standing Order No. 218 be suspended, and that a Committee, consisting of twelve members, be appointed to examine into and report upon such questions relating to the Public Accounts as they may think desirable, or that may be referred to them by the House or the Government, and also into all matters relating to the finances of the colony which the Government may refer to them; five to be a quorum: the Committee to consist of Mr. J. Allen, Mr. Colvin, Mr. E. G. Allen, Mr. Flatman, Mr. W. Fraser, Mr. Graham, Mr. T. Mackenzie, Mr. McNab, Sir W. R. Russell, Hon. Sir J. G. Ward, Mr. Wood, and the mover."—(Right Hon. R. J. SEDDON.)

WEDNESDAY, THE 6TH DAY OF JULY, 1904.

Ordered, "That Paper No. 70.-B (Correspondence between the Audit and Treasury in connection with the Payment of Interest on Debentures issued under 'The Aid to Public Works and Land Settlement Act, 1900') be referred to the Public Accounts Committee."—(Right Hon. R. J. SEDDON.)

REPORT.

YOUR Committee has the honour to report on the above-mentioned paper that the debentures fell due on the 1st April, 1904, the banks being closed until the 5th April. The debenture-holders claimed interest for the five days, and the Treasurer paid the same. This was questioned by the Audit Department, and the Solicitor-General gave his opinion that the payment was a proper and legal charge, and the payment was determined by the Governor.

Seeing that a similar circumstance and position may again arise, your Committee therefore recommend that an amendment of the law be made, to the effect that when the day of payment is on a bank holiday under "The Banks and Bankers Act, 1880," payment of the debenture may be made on the succeeding business day, and interest to such day shall be deemed to be interest payable in respect to such debenture.

22nd August, 1905.

ROBERT McNAB, Chairman.

MINUTES OF EVIDENCE.

TUESDAY, 15TH AUGUST, 1905.

J. K. WARBURTON, Controller and Auditor-General, examined. (No. 1.)

1. *Mr. W. Fraser.*] Judging by the correspondence submitted to us which has passed between the Treasury and yourself, Mr. Warburton, I gather that the reason why you have declined to certify in this matter is because you contend that under the Act interest cannot be paid out of public revenues on these debentures after the maturing of the debt?—Yes; my objection is that interest on the amount of the debentures for a period after the date of their maturity cannot be paid as a charge to the Loan Act unless provided for by a security authorised by the Loan Act.

2. Cannot be paid by anybody?—A payment cannot be made under the Act of interest for a period after the maturity of the debentures as interest authorised by the Loan Act.

3. Do I understand that it cannot be paid at all? Could it not be paid out of “Unauthorised”?—It might be paid out of “Unauthorised,” but the objection taken by the Audit Office is to the payment as a charge to the Loan Act of such interest as is not provided for by a security issued for the money under the Loan Act.

4. But it could be paid out of “Unauthorised”? Do you hold that?—I think it could.

5. What do you suggest—that the Loan Act should be altered so as to make provision for the payment of interest upon debentures until they are paid? Do you suggest that?—I think that the amount of a debenture should, if the loan is to be continued, be continued by the issue of a new security under the Loan Act from the date of the maturity of the old security. Then interest would be payable on the new security. The objection of the Audit Office is that there is no security under which interest is payable as a charge to the Loan Act, for a period after the date of the maturity, as in this case.

6. Might that not prove inconvenient in some cases? For instance, suppose that a debenture matured, as I believe in this case it did, on a Saturday, it is only a matter of a few days' interest that is in question, is it not?—Yes.

7. You would not suggest the issuing of a fresh debenture for a few days? If provision were made in the Loan Act that, if through any unforeseen cause a debenture was not redeemed or paid off on maturity, interest should continue to be paid upon it until it was paid off, would that meet your difficulty?—I think that would meet the difficulty; but that would require consideration, I presume. I think that would meet the difficulty.

8. I want you to understand why I asked you whether the money could be paid at all. It is because running through this correspondence there is the assumption that it could not be paid—that the public credit might be affected. Could that be so?—The Loan Act is an Act for raising moneys on certain securities, but there was no security bearing or providing for the payment of interest from the date of the maturity of the debentures, and the objection of the Audit Office was that the interest in such a case was charged to the Loan Act instead of to some other fund.

9. As, for instance “Unauthorised”?—As, for instance, “Unauthorised.”

10. *Mr. J. Allen.*] When did the debentures become due? Do you know?—I do not know, unless I have stated it in this paper.

11. You cannot tell us, I suppose, when the money was lodged with the Treasury to pay with?—The Treasury have a general imprest.

12. In his letter on page 2, No. 5, the Solicitor-General says, “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)”?—Yes, 1st April.

13. Well, then, I presume that the debentures were lodged with the Treasury some time before the 1st April?—I am not sure. I had all the information, but I really cannot recollect now.

14. It is quite clear that this money could have been paid out of “Unauthorised,” is it not?—I am not prepared to raise any objection to that. I think it could have been paid out of “Unauthorised.”

15. So that there would be no fear of any default on the part of the colony, would there?—Not if the interest were duly paid out of “Unauthorised.”

16. In answer to Mr. Fraser, you said that an amendment of the Act which would allow payment to be made under the Act itself, even after the debenture became due, would remove the difficulty, but that it was a matter for consideration. Supposing that a general principle were put into any Act that the interest on a debenture might be paid after the due date of the debenture, without any limitation, would it not be possible then for a debenture to go on for year after year and interest to be paid indefinitely?—Yes, within the limit of any period provided by the Loan Act.

17. I am assuming that there is no limit. That was the question put to you?—It might go on indefinitely if provision were made in the authorising Act for paying interest for any period after the date of maturity at the same rate that the debenture carried, or at any rate.

18. If that principle were put into an Act there would be no object in putting in any limitation of time for a debenture, would there?—These are abstract questions that require to be studied, but that appears to be so.

19. That was the consideration you were referring to?—Yes. I find I have it noted here with regard to the payment of £1 7s. 4d., the amount in question, “Charge to Act. Approved by Treasury for payment on the 12th April”; and the money was paid on the 16th April.

20. When did the debenture become due?—On the 1st April.

21. *Hon. Sir J. G. Ward.*] After the Governor's Warrant was issued?—No. It was not after the Governor's Warrant was issued that this money was paid by the Treasury.

22. *Mr. J. Allen.*] Why was that? How did they pay it—out of “Unauthorised”?—Out of the Treasury Cashier’s imprest, and it was to the charge to the Loan Act of that payment by the imprestee that the Audit Office objected.

23. What authority had they to pay it? There was no Governor’s Warrant then, was there?—No. The Treasury claimed the authority of the Act to pay the rate of interest on the debenture for a period after the maturity of the debenture.

24. But you were objecting to it at that time?—Yes.

25. They paid, notwithstanding your objection, and without the Governor’s Warrant?—They had paid before I saw the papers.

26. Was the payment, in your opinion, made without authority either by the Governor or anybody else?—It was, in my opinion, a charge not authorised by the Loan Act under which the debentures were issued.

27. And the Governor’s Warrant had not authorised it at that time?—That is so. Then there was a payment to the trustees of the Rhodes Estate of £5 9s. 7d, which was approved on the 10th April by the Treasury. That amount was paid on the 6th April, according to my notes.

28. It was paid before it was approved by the Treasury then?—The Treasury would approve of it after the Treasury Cashier paid it, I presume. This is my note, “Approved on 10th April; paid on 6th April.”

29. But how can these payments be made without your authority?—An imprestee’s payments are audited afterwards. They come up for audit after payment.

30. *Hon. Sir J. G. Ward.*] In any case, I assume, the Treasury must pay interest upon debentures to those to whom it is payable when the interest coupon is presented?—Yes, but there was no coupon in this case. The Audit Office was objecting to the payment of interest for which there was no coupon—interest for a period subsequent to the maturity of and not provided for by the debentures.

31. It is quite clear, I think, that where interest is payable by the Treasury to the holders of the colony’s stock, such payment does not wait for audit in any case—they must pay on presentation?—The ordinary course of the Treasury is to provide for the interest by requisition before the payments become due; but if no such provision is made they pay out of imprest here, or if the payment has to be made in London and the High Commissioner is not provided with the money by requisition, he pays by Commissioner’s order under the Public Revenues Act.

32. So that in any case he pays the money before authority is given?—He pays it before he receives other authority to pay it than such authority under the Public Revenues Act. He has the general authority of the Public Revenues Act to draw, by Commissioner’s order, for what money is necessary for the payment of the charges on the public debt.

33. In other words, it is beyond question that the interest must be paid by the Treasury on presentation of the authority to get the interest by the person holding that authority?—Yes, interest in accordance with the debentures.

34. Well, if the Treasury, by authority under Act, make a payment out of imprest that is considered by you to be irregular, it is a case of post-audit and not pre-audit with you?—Yes, I come in then to audit after the payment has been made.

35. In any case, you do not claim that you should audit before payment is made?—That is a matter for the consideration of the Treasury.

36. I put it to you as a matter for the consideration of the Auditor-General: do you claim that before interest is paid to the holder of a coupon you should audit that before the interest is paid by the Treasury, who give the authority without reference to the Audit Office in the first instance?—No; the Treasury are frequently applying for advances of money for the purpose of paying interest, and if they have any advances they can apply those advances to the payment of interest authorised and provided for by securities under a Loan Act.

37. I take it that what you mean is that the Treasury may requisition for, say, £100,000 *in globo* for the payment of interest, but upon presentation of a coupon for £50 by the holder, the Treasury may pay that person the £50 without waiting for the Audit Department to audit the payment?—Yes.

38. And that is the course that was followed in this particular case?—I think so.

39. The authority of the Audit Department must come in after the payment of the interest is made to the individual; it cannot come in before?—That is so in such case; but this is a question of authority for the charge.

40. That is another point. Is it not a fact that as a matter of procedure—which probably could not be otherwise—the Treasury in the first place must pay the interest to the person who is entitled to it, and that your supervision over that authority comes in after the payment is made?—It does not follow that it must be so. The Treasury may provide for the payment of interest by requisition, or may obtain an advance for the purpose of paying interest. I think those two courses are open to the Treasury. The coupon is simply a voucher for a Treasury payment, just as any other voucher is a voucher for a Treasury payment.

41. You do not lay it down as the duty of the Controller and Auditor-General that you should pre-audit payments of interest made by the Treasury?—I do not think I can.

42. So that the authority for the payment of interest in the first instance rests with the Colonial Treasurer, or some other Minister acting for him?—The authority for the payment of interest?

43. Yes; the authority of the Crown—in other words, it must rest with the responsible Minister in the first instance?—The authority for the payment of interest is the Loan Act.

44. Yes, but he is acting under the authority of Parliament in some form or other?—If the Colonial Treasurer uses money which is applicable to the payment of interest authorised by the Loan Act for payment of interest which is not authorised by the Loan Act, the Audit Office, when the voucher comes up for the payment of that interest, questions the charge. If it is a charge

made to the Loan Act for interest on security under that Loan Act when no such security has been issued—

45. But you do not claim that you have to be consulted beforehand?—No, I do not claim that.

46. With regard to the depositing of these debentures which have to be repaid by the Treasury on a certain date, if a position has arisen by which they cannot make the payment on that date, is it not your opinion that the law should be altered to give authority, with some safeguards, so as to enable a case of the kind to be met?—The money is actually paid by the im-
presee, and, so far as the credit of the colony is concerned, payment has been made. The whole question here is the authority for the charge. Now, these debentures matured on the 1st April. On the 9th April the Treasury recorded an application made by telephone, and agreed to, for interest on debentures due on the 1st April, which had been issued under "The Aid to Public Works and Land Settlement Act, 1900"—interest on them from the 1st to the 5th April, when the banks were closed for holidays; debentures Nos. 1593 to 1601, £2,500.

47. What I want to get at is this: whether the holders in this particular case were entitled to their interest on the 1st April, but could not get it till the 5th April?—That was not the case. The case was the payment of interest for the period following the 1st April, when the debentures matured.

48. But they could not get their money on the 1st April: that is the point I am referring to?—That is not the point in these papers. The payment of money under the debentures could be made at any time.

49. But the point I am trying to make is consequent upon that?—The payment of interest up to date of maturity could be made on the 1st April that year, or the next year. It would be always due, and would be always a legal payment. The question was as to the payment of interest for a period after the debentures matured—that is, from the 1st to the 5th April—and for which no security under the Act has been issued. The security under the Act is the security that would provide for the interest chargeable to the Act. In this case there was no such security.

50. The case in point is a case where people could not obtain payment on due date on account of holidays?—If the Colonial Treasurer thinks it expedient to pay interest he pays it, but it is a question of charge. The voucher comes up afterwards, but the Audit Office does not question the payment in any way whatever; we question the charge.

51. You hold that, in cases of the kind, the money ought to be paid out of "Unauthorised"?—I think an "Unauthorised" charge would meet the case.

52. You do not consider legislation necessary to meet a case of the kind?—I cannot conceive it to be necessary. Wherever the Government has any money it can be applied to payment of the charges of the public debt.

53. Do you recognise, in your official capacity as Controller and Auditor-General, that the holders of these debentures, who have received their money, were entitled to interest from the State so long as the State held their money?—I can only speak of what is provided under the Act. According to my opinion, they were not entitled to interest for those days under the Act. The other question is for the Government.

54. But, giving your own personal opinion, do you think the colony is entitled to hold their money for four days without paying interest upon it?—It depends on the circumstances under which they left their money in the Treasury.

55. *Right Hon. R. J. Seddon.*] I want to ask you a question with regard to Dr. Fitchett's opinion. He says, "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 as 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 v. 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." That is the opinion of the Solicitor-General. Now, in future, if a contingency such as this arises, you will recognise this and pay under it?—The opinion of the Solicitor-General?

56. Yes?—No, I could not do that, because it is not my opinion.

57. Then, if another case similar to this came up you would require again the Governor to act, on the advice of the Solicitor-General?—I should object to it; I should be unable to pass the interest in a case like that.

58. It would then follow that the power of the Governor, by Order in Council, would be invoked again?—Yes, to charge the Act.

59. That is the position you take up?—Yes. The Solicitor-General himself acknowledges that that is the true position.

60. Although this decision has been given by him in this case it would not guide you in similar cases?—That is his advice; the decision of the matter lies with the Audit Office.

61. I suppose you admit that this matter arose at a time when the banks were closed, and that the interest could not be paid on the debentures when they fell due—1st April? A similar case might occur. Would there, in your opinion, be any objection to providing in the Act

authorising a loan that within fourteen days interest might be paid—fourteen days after it fell due—so as to meet a case of this kind, and avoid the necessity for an Order in Council? Would there be any objection to that?—I think that is a question really for the consideration of the Government.

62. Might it not occur again?—It might occur again.

63. That the banks be closed and the debentures and the interest fall due, and yet the money would have to lie there, and interest, of course, in justice to the debenture-holders, would be accruing?—Yes; but large sums of interest are sometimes left with the Government, and are not claimed till after due date, and there is no interest paid on them.

64. That is another matter. If the circumstances are the same as in this case, and the debenture-holders claim their interest, as the Government have had the advantage of their money, should there not be some provision made to meet that contingency?—Of course, I do not know these circumstances. I have only considered the law on the point of the charge.

65. I will give you a hypothetical case: we will say it is Easter, or some other bank holidays, and when the debentures fall due the banks are closed, and no payment can be made or lodged for the debenture-holders until the banks open again. Now, if provision is made in the Act for a given period to cover that, would that not be preferable to charging against "Unauthorised"?—Well, a provision like that would meet the case if it were made law. If that were authorised by law I could not object to the charge. But, as a general rule, debenture-holders look after their own interests. They would come for the payment of the capital money on the due date.

66. The facts are that it was holiday-time, and the banks were closed on the due date?—Was the 1st April a holiday?

67. Yes, from the 1st to the 5th April were bank holidays. The money was there, but the debenture-holders could not get it until the banks opened. Under the Banking Act, when any payment falls due in the interval when the banks are closed the due date of payment then is the first day when the banks open?—Yes, I think that might be considered a reasonable ground for payment; but why should not the payment be made and charged to "Unauthorised"?—There can be very few cases of the kind.

68. Anything charged to "Unauthorised" must appear on the estimates, must it not?—Yes, in the Appropriation Act.

69. *Hon. Sir J. G. Ward.*] Is it not a fact that in the case of all payments made out of "Unauthorised" the purpose and the party to whom the money is paid must be stated?—The particular purpose must be given, but I do not think—

70. *Right Hon. R. J. Seddon.*] Would there not have to be a voucher prepared, and would not the name of the person who received the money appear on the voucher?—All that we should require to appear in "Unauthorised" would be the charge on the voucher.

71. But it would have to be an amount payable to somebody and for a specific purpose, would it not?—The name of the person would not necessarily be given.

72. A voucher showing what the payment was for would have to be prepared?—Yes; certainly.

73. And the person who received the money would have to sign the voucher?—Yes.

74. In the case of a coupon there is no name at all, is there?—No.

75. The identity is not disclosed?—No.

76. I understand you to say, Mr. Warburton, that there are two ways of meeting such a case as this in the future—either to take legislative authority to pay interest for a few days on overdue debentures, or to charge the payment to "Unauthorised." Those are the two ways?—Yes.

77. *The Chairman.*] In the event of a debenture falling due on a Sunday, when is payment made?—I should have to refer to the law for that; but perhaps Mr. Heywood can tell you.

78. You cannot tell us?—I could not speak without a little doubt. I think that is provided for; but, as I say, I could not now speak without doubt.

79. It has not come under your notice before when a debenture has fallen due?—I do not recollect such a case.

80. Has any case come up before when a debenture has fallen due on a bank holiday?—I do not recollect a case. Such a case may have occurred, but there would be no question arising if the debenture-holder got his money the next day.

81. But if he asked for another day's interest the matter would come up before you, would it not?—I think so.

82. Supposing that a debenture fell due on a Sunday, and a debenture-holder asked for another day's interest because it was paid on the Monday, would you object if they paid the day's interest and charged it against the loan account?—I should look up first of all what the authority was.

83. If there were no special authority providing for that case, would you object to its being made a charge against the loan?—I think I should. But I am speaking now on the assumption that there would be no authority.

84. Yes?—I should make an objection, I think.

85. How about if, when this particular debenture fell due, it was a bank holiday? This case is on all-fours with the case I refer to?—With the case of a debenture falling due on a holiday?

86. Yes, on a day when you cannot get it paid at the bank, and when the first day comes on which it can be paid interest is paid to the holder of the debenture for the extra days?—Yes; but the bank is not necessary to the payment. Why should not the Government be ready to pay on a holiday?

87. In the ordinary carrying-on of commercial business nowadays, is not a bank absolutely necessary to a large payment of money—is it not a necessity?—I do not think it is quite a necessity.

88. Would not the alternative be having to keep gold in the Treasury?—Yes, gold, or something equally satisfactory.

89. From a practical business point of view, is that not out of the question?—It would perhaps depend on the amount.

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

90. *Right Hon. R. J. Seddon.*] Will you please state shortly to the Committee the facts in relation to this matter?—Well, as far as my memory serves me, these debentures were due on the 1st April, and bank holidays intervened up to the 5th April.

91. *Hon. Sir J. G. Ward.*] Including the 1st?—Yes. We, of course, were not able to send down to the bank on the 1st April our bank order for payment of the interest so as to protect the cheques, and we could not pay until the first day on which the banks were opened after the holidays, which was the legal paying-day. At the same time these debentures had been lodged, in accordance with the prospectus, three days or more before the due date. The holders of the debentures had lodged the debentures with us for payment on the 1st. It was through no fault of theirs that they could not get payment on the 1st, and the Government decided—in my opinion, properly—to pay them the overdue interest. The question then arose with the Audit Office as to whether this was a proper charge under the Act—these few days' extra interest. The Solicitor-General gave it as his opinion that it was a proper charge under the Act. The Audit Office declined to recognise his opinion, and the alternatives left were that it should be made a charge to "Unauthorised," or that a Governor's Warrant should be obtained, directing the Audit Office to accept the charge as it stood. That really sets out the matter. The Audit Office accepted the Governor's Warrant. So far as charging the payment to "Unauthorised" is concerned, it appears to me that it would be a terrible blow to the credit of the colony if it were once known that it could be left to the discretion of Ministers whether they could pay a legal charge for interest or whether they could not—that is to say, that investors would be at the mercy of the Ministry of the day as to whether they would get their proper legal interest or not. That is what it would amount to if such payments were left to be charged to "Unauthorised." So far as my own knowledge is concerned, I have never heard of any case before where the authority of the Loan Act itself was not supposed, at any rate, to cover authority to pay interest up to the date upon which the principal sum was paid off. I have no doubt—in fact, I am sure—that there have been cases in Australia often enough where principal sums have not been paid on the due date, and there has never been a question as to whether the Loan Act has been sufficient to provide for payment of the interest. The opinion of the Solicitor-General seems perfectly clear on the subject, and I think that to all persons of common-sense, at any rate, it would appear that until you have paid off your principal the interest must run, and it must run under the Act which authorises the payment of interest. I do not know that I have anything more to observe on the matter.

92. *Right Hon. R. J. Seddon.*] The fact is that the Government could not pay this money at the time the debentures fell due—on the 1st April?—They were unable to pay the money. They could not provide the money in the bank to pay the interest.

93. *Hon. Sir J. G. Ward.*] I would just like that point made clear. You say they could not provide the money?—They could not get the bank order down at the bank on the 1st April, because the bank was closed on that date.

94. *Right Hon. R. J. Seddon.*] You have heard the evidence given by the Controller and Auditor-General. One suggestion is to pay out of "Unauthorised," and another is to alter the Act, giving debenture-holders the right to the interest and the Treasury the power to pay it on moneys not paid till after due date. What is your opinion upon the suggestion to pay out of "Unauthorised"?—As I said before, I think it would be a very serious thing that investors should come to the conclusion that there would be a possibility of the interest which is legally due to them being at the mercy of the Ministry of the day, as it must be if it becomes a charge to "Unauthorised." They would, on the other hand, be of opinion that the Act which authorises the payment of interest would authorise it until the date of payment of the principal.

95. Would this meet the case: "That an amendment of the law be made conferring the right to receive, and power for the Treasury to pay, interest on debentures which, owing to similar circumstances, for a period not exceeding one month, remain unpaid"?—If you asked my opinion I should say that legislation of that character is vicious. If the Committee desire my opinion, straight-out, about the Act, I say that I consider it ample for the payment of interest. We have only the opinion of a layman in the matter—a gentleman who holds his own opinions, and they are very often necessarily, in the course of his duties, at variance with the views of the Law Officers of the Crown. At the same time, we must feel—at least, I must feel—that they are only the opinions of a layman, and not of a skilled lawyer in the matter.

96. Would it not be better, though, to avoid anything of this kind arising? You have heard the evidence of the Auditor-General, and there are statutory obligations cast upon him. If you put it in the Act and said straight-out that interest was payable to the debenture-holders until the principal was paid——?—That is quite another thing.

97. The Solicitor-General advises that that is the law now; but suppose we put it in concrete form, in an Act of Parliament, that until the principal was paid the debenture-holders were entitled to interest?—Then you are giving room for further dangers ahead if such an alteration is made.

98. The only danger is that the Government may not pay at the given date, and the interest will continue to run?—Well, you might arrange and hold over the payment of principal for an indefinite period. It would not be a proper thing to do; it would not be a straightforward act.

99. But did you not just now state that you believed that in Australia it has been the case that they have not been able to pay?—No, I have never heard of such a thing. You mean, not been able to pay on due date?

100. Yes?—I had an impression of hearing of a case some time ago where they had paid overdue interest, but I could not turn it up. It is only an impression running through my mind. I have never heard of the opposite—that they have ever had any difficulty.

101. Is it not likely that the same position as that before us may occur again, as the law stands now?—Yes, quite likely.

102. That means that the matter has to go before the Solicitor-General, that an Order in Council has to be obtained, and the question be brought before the Public Accounts Committee?—Yes.

103. Well, now, what suggestion do you make to relieve that situation, or have you any suggestion to make to relieve such a situation?—The suggestion I would make would be that the Controller and Auditor-General should alter his opinion.

104. What objection would there be to stating in the Act that where bank holidays intervene and debentures fall due, and owing to the banks being closed the moneys cannot be paid—you limit it to that specific case—interest can be demanded by the debenture-holders and be paid by the Colonial Treasurer?

105. *Mr. Warburton*: How would it do to provide that if the due date for the payment of interest and debentures falls on a holiday, the money be paid on the day before?

Mr. Heywood: The law now provides that if a payment falls due on a Sunday it shall be made on the Saturday.

The Chairman: I had just finished writing this when Mr. Warburton spoke, "Following the forms of the Bills of Exchange Act, when the date of payment is a bank holiday under 'The Banks and Bankers Act, 1880,' payment of debentures may be made on the succeeding business day, and interest to such day shall be deemed to be interest payable in respect to such debentures."

106. *Right Hon. R. J. Seddon* (to Mr. Warburton).] Would you think it would meet the case if we made provision for it where, owing to bank holidays, the payment could not be made?—I think that would meet the case.

Mr. Heywood: I see no objection to that, because the purpose for which the alteration is proposed to be made is specific. I might say that it seems to me most extraordinary for this sort of thing to occur. We never hear of these things happening in other parts of the world, except in New Zealand. Curious views are held on these subjects by some people.

107. *Mr. J. Allen*.] Perhaps they pay on the previous day?—Not if bank holidays occur.

Mr. Warburton: I think it would be more in accordance with business arrangements to pay on the previous day.

108. *Hon. Sir J. G. Ward* (to Mr. Warburton).] This might arise: a person might live in the far north or in the far south, and he might forward his debentures to get here on the due date. Under the banking law interest is payable on an overdue mortgage just the same, is it not?—Yes, that might happen; but debenture-holders look after their money so well!

109. *Mr. J. Allen* (to Mr. Heywood).] I understand that you maintain it is legal to pay interest under the Loan Act, even after the debentures become due?—Yes.

110. How long would you consider that legality would remain under the Loan Act?—Clearly, until the principal is paid off.

111. It might remain for twenty years?—I think so, or fifty or a hundred years.

112. *Mr. W. Fraser*.] When a debenture falls due, how do you pay the man that holds it—by cheque or by cash?—We pay everything, as a matter of fact, by cheque. If it is paid through the Treasury Cashier it is paid by cheque.

113. You pay by cheque?—Yes.

114. Supposing that debentures fell due on the 1st April, a bank holiday, could you not have a marked cheque for each person who held debentures, and arrange that he should receive his cheque? It is nothing to you that the man cannot get it cashed for four days. Could that not be done?—It could be done in a good many cases, possibly, but the initial difficulty would be that we could not get the bank order down to the bank to protect my cheques.

115. You could not arrange beforehand?—Not until the 5th.

116. Not on the 30th March?—Then, you see, we should be charging it in the wrong year, supposing it had been on the 1st April—

117. Say, the 31st March?—Very well. If we had got that down to the bank on the 31st March it would have been made a charge in the wrong year.

118. Suppose we make it, for sake of argument, a holiday, on the 1st June?—There would not have been the same difficulty then.

119. That is only a difficulty arising out of the fact of the 31st March being balance-day?—Yes. That is one of the gravest difficulties.

120. There was nothing to prevent the Treasury paying the holders of these debentures cheques on the 1st April, except the inconvenience of charging to the previous year's account a payment due in the next year. Is that not so?—I think it could have been done if it had been at another period of the year.

121. It could have been done but for the inconvenience of its being the balance-day?—Yes. I duly considered that position at the time, but the law was in my favour—that the money was not payable till the 5th.

122. You thought the law was in your favour?—The banking law is that payment is to be made on the first day succeeding the banking holiday. Therefore, it was not payable until the 5th.

123. The banking law in regard to what—debentures?—The banking law in connection with payments of bills of exchange at the bank.

124. Do you call a debenture a "bill of exchange" or a "mortgage debenture"?—I think we always call them "bills of exchange." I do not consider them mortgages.

125. You know that an overdue mortgage carries interest until it is paid off?—Yes.

126. Does it seem a proper obligation to hold good with regard to a debenture?—It does.

127. By what law?—By each individual authorising Act. That is the very point, I think, that Dr. Fitchett touches on.

128. It is disputed?—But, with all deference, it is disputed by a layman. That is the whole point. I consider that a skilled lawyer is really much better able to interpret an Act than a layman is. Of course, I am submitting this, as I say, with all due deference to the Controller's high position; but I do not think that he himself says that he is a skilled lawyer. I am not aware of it.

129. *Hon. Sir J. G. Ward.*] This payment was not due during the financial year of 1903?—No.

130. You said, in reply to Mr. Fraser, that you could have made provision for the payment on the 31st March. Could you have done so legally?—No; it would have been making a payment before it was due.

131. Can you make a payment before it is due, legally?—That is not exactly the point that Mr. Fraser desired to make. He asked whether we could have made the payment on the 1st April—that is, by issuing a cheque dated 1st April—I assume he meant that—dated on the 1st April, to the holder of the debentures.

Mr. W. Fraser: Exactly.

132. *Hon. Sir J. G. Ward.*] In that case would not that be practically post-dating a cheque?—Yes; but I do not think there would be any objection to that, so long as we got the interests of our clients properly safeguarded.

133. Do you think it would be a proper thing for the Treasury of any country to post-date a cheque payable to a person whose principal was repayable on the 1st April, with a knowledge of the fact that he could not get his money on the 1st April?—It is impossible to say that he could not get his money on the 1st April.

134. You knew on the 31st March that the banks were going to be closed from the 1st to the 5th April?—Yes.

135. Would it be a proper thing to give a person on the 31st March a cheque dated 1st April, with the object of evading the payment of interest for four days, when you knew he could not get his principal on the 1st April?—It is possible that he could. He might go to a storekeeper and get the money from him. You could not say it was impossible.

136. Do you think it would be a proper thing for the storekeeper to be "had" by the colony in that way?—I do not think so myself. As I have said, I took the matter carefully into consideration, and the law being that the money was not payable until the 6th, it was then that we had to make arrangements for payment.

137. The whole point is whether the law should be amended so as to make the matter quite clear to the Administration and to the Controller and Auditor-General?—My opinion is that the law does not require to be altered.

138. Where the Auditor-General holds that the Solicitor-General is wrong, should not the law be altered so as to make it clear, in order that a case of this sort may not arise again?—Possibly that would be the easiest way of getting over the difficulty. At the same time, I hold the opinion that the law is sufficient for the purpose.

Mr. Warburton: I would just like to make this remark: the Audit Office regards the Loan Act as an authority to the Government to raise moneys on certain securities, and for the payment of interest provided by such securities. There were no securities, in the opinion of the Audit Office, authorised by the Act for the payment of this interest.

139. *Mr. J. Allen* (to Mr. Heywood).] How many debentures became due on the 1st April? Were there any others than these?—Oh, yes; a large number.

140. Why were these treated differently from the others, then?—At the moment I do not exactly remember, except that we had no applications from the others. These two claimed their overdue interest.

141. And the others who were paid on the 6th April got no extra interest?—That is so.

142. Would it not be honest on the part of the colony to treat them all alike? Because a man asks for a thing is he more entitled to it than a man who does not ask—if the thing is legal? Do you not think it would have been fair for the colony to have paid the whole lot this extra interest, rather than select two who asked for it?—My own opinion would be, of course, that the whole lot would be entitled to the interest, if they were not paid on the due date. At the same time, you must remember that it was not the Government's fault they were not paid on the due date. It was the unfortunate occurrence of circumstances.

143. Who did these two sets of debentures belong to?—The Rhodes trustees held one lot.

Mr. Warburton: The others were held by the trustees of the Porirua College.

144. *Mr. J. Allen* (to Mr. Heywood).] How many debentures became due, the payment of which was postponed like that—roughly? Several hundred thousand 'pounds' worth?—Yes, they represented a large sum.

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