

No. 30.

Copy of a Letter from His Honor O. CURTIS to the Hon. E. W. STAFFORD.

SIR,—

House of Representatives, Wellington, 11th July, 1868.

I have the honor to acknowledge the receipt of your letter of the 16th of June, respecting the payment of the Nelson debentures, which fell due on the 1st of this month.

The main question at issue is, as you remark, whether the sum of £15,000, appropriated by the Provincial Legislature in 1866, towards augmenting the sinking fund provided by "The Waterworks Loan Act, 1864," or at all events that of £12,000, lodged by the late Superintendent in the Union Bank of Australia with the intention that it should be ultimately so applied, can be claimed by the Colonial Government towards payment of the debentures.

But I cannot allow that this sum of £12,000 was, as you state, deposited "in trust for that purpose." On the contrary, no such trust was either declared or implied, and at the expiration of the term for which the money was deposited, the amount necessarily reverted to the Provincial Treasury. Had it been intended by the late Superintendent to create any such trust, it seems perfectly clear that he would have placed the money in the hands of the trustees of the sinking fund itself, instead of in the hands of three members of his Executive Council, with no other instructions than to deposit it at interest in the Union Bank of Australia for a specified term.

There can be no question that, so far as the operation of the sinking funds provided by law is concerned, the Provinces are still responsible for the repayment of their loans, but, as I have already maintained, not otherwise.

You observe that I have not drawn, and have not attempted to draw, any distinction between the sinking fund provided in "The Waterworks Loan Act, 1864," and the sum set down for sinking fund in "The Appropriation Act, 1866."

I have not done so because I considered the distinction to be so wide and so obvious that it was quite unnecessary to refer to it.

The Waterworks Loan Act enacts, that "there shall be paid yearly out of the public revenue of the Province of Nelson, such sum of money as shall be equal to two pounds per centum per annum upon the said sum of £21,500, being the debt of the Province of Nelson under the said first-mentioned Act." ("Nelson Debentures Act, 1858.")

"The Appropriation Act, 1866," enacts that "out of the revenue of the Province of Nelson there may be issued and applied any sums of money not exceeding the several sums hereinafter specified."

The first quoted Act imposes a positive legal obligation to pay not less than a certain sum of money.

The Appropriation Act simply authorizes, but does not require, the Superintendent to apportion the revenue in the manner therein specified.

It is the Superintendent's constitutional duty to carry out the provisions of the Appropriation Act; but he is under no legal obligation to devote a single shilling of the revenue to any one of the items of expenditure specified in it.

While generally carrying out the intentions of the Provincial Legislature, it is, I contend, not only the right, but the duty, of the Superintendent to refrain from the expenditure of the public money upon objects to which subsequent events have rendered it unnecessary or impolitic to devote it.

"The Public Debts Act, 1867," entirely changed the position of the Provinces with respect to the repayment of their loans, by imposing that duty directly, and not by way of guarantee, as I understand you to maintain, upon the Colonial Government.

The only obligation still devolving upon the Provinces is that of providing for the payment of the interest and sinking funds established by law, and this obligation the Province of Nelson is perfectly prepared to fulfil.

I am unable to understand your reference to "a breach of faith with the public creditor."

So long as the public creditor is paid his money when it becomes due there can be no breach of faith; and I am surely not to infer that you consider that the public creditor will be aggrieved by being so paid under the provisions of "The Public Debts Act, 1867," instead of under those of "The Nelson Appropriation Act, 1866."

The question in difference is one affecting the relations between the Colony and the Provinces as regards the Provincial loans, and in no way concerns the public creditor, who can have recourse to either, or both.

The immediate points at issue are, firstly—Whether an Appropriation Act, passed by the Provincial Legislature, binds the Province to expend each and every of the sums therein specified, whatever circumstances may arise to render such expenditure unnecessary or unadvisable; and, secondly—Whether the admitted intention of one Superintendent to expend a certain sum in accordance with that Act can be construed to be either legally or morally binding upon his successor under a totally altered state of things which it was impossible to foresee.

That any trust, either declared or implied, other than that to return the money and interest to the Provincial Treasury when the term had expired, attached to the £12,000 deposited in the Union Bank of Australia, or to the gentlemen in whose names it was deposited, I again distinctly deny; and I must at the same time protest against the manner in which you repeatedly assume and assert, in the course of the letter to which I am now replying, that the £12,000 was placed in trust for the augmentation of the sinking fund, or for the payment of the debentures.

In reference to your intimation that, pending the decision of the General Assembly upon this subject, the Governor will be advised to withhold his dissent from, or to disallow, any Provincial Act which may purport to appropriate to other purposes the sums already appropriated towards providing for the discharge of the Nelson debts, I may observe that no Act of the Provincial Legislature of Nelson will be submitted to His Excellency which purports to appropriate any specific sums, or any money which does not legally form a part of the public revenues of that Province.

I have, &c.,

OSWALD CURTIS,
Superintendent of Nelson.The Hon. the Colonial Secretary,
Wellington.