

No. 31.

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

(No. 351.)

Colonial Secretary's Office,

SIR,—

Wellington, 14th July, 1868.

I have the honor to acknowledge the receipt of your Honor's letter of the 11th instant, in reply to mine of the 16th ultimo, on the subject of the sinking fund for the payment of the Nelson Debentures.

As the arguments contained in your letter appear to me to be founded on some misapprehension of the facts of the case, I desire, as briefly as possible, to point out in what, I conceive, that misapprehension consists.

Your Honor states, with respect to the sum of twelve thousand pounds, that no trust was "either declared or implied" for the payment of that sum as sinking fund to the loan. On that point I would refer your Honor to the letters respectively dated the 6th of May, the 6th of July, and the 21st of December, 1866. In those letters, Mr. Saunders, the then Superintendent of the Province of Nelson, altogether recognizes the sum voted by the Provincial Council as part of the sinking fund raised under "The Nelson Waterworks Loan Act, 1864," and treats of the whole as one amount ready for investment by trustees. I would also refer your Honor to the letter dated 21st February, 1867, from the Deputy Superintendent of Nelson, who writes, that "previous to the resignation of Mr. Saunders of the office of the Superintendent of this Province, the sum of twelve thousand pounds was paid over to a separate account as a fixed deposit, the Union Bank allowing six per cent. interest—the reason for adopting this course being that the debentures issued under 'The Nelson Debenture Act, 1858,' become payable on the 1st July, 1868, and that an investment for so short a period of so large a sum of money could not be readily found;" and further, with respect to the sinking fund created by the Waterworks Loan Act, he advises that trustees should "adopt a similar course to that adopted by the Provincial Government, by depositing the amount in that bank as a fixed deposit until the 1st July, 1868." The effect of these letters appears to have escaped your Honor's attention, for they not only imply, but even declare a trust with respect to the sum to which they refer. The deposit in the bank is expressly named as a substitute, under special circumstances, for a more permanent investment—the object to which the money was devoted being the same in both cases—and the advice given was to adopt the same course with respect to the other part of the sinking fund, concerning which no question has arisen. The investment of the money in the names of three members of the Provincial Executive Council instead of trustees of the sinking fund, does not prove, as your Honor infers, that no trust was intended to be created, for at that time no such trustees had been appointed, and the Superintendent had no power to make the appointment.

Your Honor further states that the Provincial Appropriation Act, under which the twelve thousand pounds were appropriated, simply authorized, but did not require the Superintendent to expend that sum. But I must remind your Honor that in this case the authority conferred by the Provincial Legislature was acted on by the Superintendent, who drew the money from the Provincial Treasury, and invested it in the names of certain persons for the express and avowed purpose of using it as a supplemental sinking fund. The combined action of the Provincial Legislature, which authorized the issue of the money for the particular purpose of a sinking fund, and of the Superintendent who, under that authority, issued that money, necessarily converted it into a sinking fund as inalienable as that created by "The Nelson Waterworks Loan Act, 1864," and constituted, so far as equity is concerned, a contract with the public creditor which could not, without breach of faith, be revoked even by subsequent legislation.

This statement will elucidate the reference (which you state you are unable to understand) in my letter of the 16th ultimo, to "a breach of faith with the public creditor." I cannot, however, perceive any indistinctness in the paragraph which contains those words. I stated that, as the money in question had ceased to be Provincial revenue, and had been issued under the Appropriation Act, and had been deposited at interest in the names of certain persons to await the maturity of the debentures for the purpose of paying them, it would be a breach of faith with the public creditor to abolish, even by legislation, this security. The mere fact that another person has guaranteed that the principal when due shall be paid, does not affect the breach of faith that would arise from the diversion to other purposes of what had accrued as a sinking fund for the payment of that principal.

I cannot admit the correctness of your Honor's definition of the points at issue. They do not relate merely to questions of discretion and intention, but they are—first: Has the money been issued by warrant of the Superintendent under the Appropriation Act? And, secondly: Did the Superintendent make that issue with the express object of using the money as an additional sinking fund? Both these questions must, I submit, be distinctly answered in the affirmative. The Superintendent had no legal power to take money out of the Provincial Treasury and pay it to certain persons in trust, and then to return it into that Treasury. Those persons had no power to hold public money for such a purpose. But the Superintendent had legal power to issue a sum appropriated towards the payment of the debentures, and he did make that issue, and invested it for that object in the mode which he thought most desirable. No element is wanting to the completion of the transaction. The authority to issue, the issue itself, and the intention of the Legislature and the Executive are in entire harmony, while all embarrassment and suspicion are avoided. Should your Honor's assumptions as to the position of the case be adopted, the intention of the Legislature would be frustrated, the action of the Superintendent illegal, and a large sum dealt with at the discretion of the Executive for the time being, either as a sinking fund or not, in a manner so lax and irregular as could not fail to be highly injurious to public interests.

I have, &c.,

E. W. STAFFORD.

His Honor the Superintendent, Nelson.