

From this you will see that clause 4, except sub-section 2, is essential; that clause 7 cannot be dispensed with; that clause 15 is of the highest importance; and that clause 19 is also essential; and that they advise the retention of several other clauses.

In reply to your observations on clause 12, we will observe that it is of the highest importance to make colonial stocks attractive to trustees, and to give the utmost protection to *cestuis que trusts*, whose consent may be necessary to trustees investing in these stocks. It might be difficult to obtain such consents if trustees were empowered to convert inscribed stock into certificates to bearer, unless specially empowered by their trust deed to do so.

It is earnestly hoped that, after this expression of opinion by the Counsel of the Bank of England and Mr. Reilly, the Lords of the Treasury will introduce the necessary Bill into Parliament at the beginning of the present session, as promised by Mr. Smith to the representatives of the colonies when the Bill was abandoned at the end of last session.

It is manifest, of course, that after this expression of opinion by the counsel of the Bank of England, and by so eminent a counsel as Mr. Reilly, there will be no hope of inducing the Bank of England to take the management of New Zealand stocks as desired, until the Imperial legislation, which they are advised is necessary, shall have been obtained.

Your faithful servants,

JOHN MACKELL AND CO.

W. R. Malcolm, Esq.,
Assistant Under Secretary of State, Colonial Office.

Sub-Enclosure to Enclosure 1.

OPINION of Messrs. COTTON and REILLY.

Colonial Stock Bill (printed 14th August, 1876).

WE have considered this draft Bill, in consultation, on behalf of the Government of New Zealand and the Bank of England (Mr. Cotton being for the latter, Mr. Reilly for the former).

Our object has been to ascertain and advise to what, if any, extent Imperial legislation is necessary for effecting the objects to which the draft Bill relates; and we have formed the opinion thereon which we proceed to state:—

1. *Clauses 1, 2, 3.*—No observation is necessary on these.

2. *Clause 4.*—Paragraph (1) of this clause is to the effect that the colonial stock shall be transferred only in the register. It is doubtful whether this can be effectually accomplished by contract among the three parties—the New Zealand Government, the stockholder, and the Bank of England—so as to be binding on, for instance, trustees in bankruptcy, or other third parties who might be disposed to assert their common-law right of transferring by deed, or in any lawful manner. Paragraph (2) of this clause, providing that the transferee may, if he thinks fit, underwrite his acceptance of the transfer, is not essential, and may, if desired, be omitted. The object of paragraph (3) of this clause (which is that “the executors or administrators of a deceased stockholder shall alone be recognized by the registrar as having any title to the stock or any dividend thereon”) clearly cannot be accomplished without Imperial legislation. This provision is intended to comprise the effect of the provision in section 23 of “The National Debt Act, 1870,” that the interest of a stockholder dying, in stock, shall be transferable by his executor or administrators, notwithstanding any specific bequest thereof. In the absence of such a provision, a specific legatee of stock, alleging the assent of the executor to the bequest, might call on the registrar to transfer the stock into his (the legatee’s) name. Questions connected with specific legacies, and the assent of executors, are often nice. The provision of paragraph (4) of this clause, authorizing the registrar to require evidence of title, cannot safely be rested on less authority than that of Imperial legislation, with reference, for instance, to the case of bankruptcy.

3. *Clause 5.*—This authorizes the closing of the register for dividend, and is not essential, and may be omitted, if desired.

4. *Clause 6.*—This clause applies to the case where stock is standing in the name of an infant or person of unsound mind, jointly with a person not under legal disability, and enables the latter to give an effectual power of attorney for receipt of dividends. It is very doubtful whether such a power could be made valid by contract among the parties, especially with reference to the case of a person of unsound mind; and we recommend the retention of this clause.

5. *Clause 7.*—This clause is the first of a series relating to stock certificates to bearer, and, in so far as it makes the right to stock transferable by delivery of the certificates, it clearly must be part of an Imperial Act. No contract among the parties could have the effect of altering the general law of England respecting the assignment of debts. The last paragraph of this clause also requires Imperial legislation. It has the effect of importing, and of applying to coupons attached to stock certificates to bearer, the statute and other law of England relating to cheques on bankers. It will, for instance, have the effect of applying the Crossed Cheques Act of the last session of Parliament to such coupons. Nothing but an Imperial Act can accomplish this.

6. *Clause 8.*—This clause relates to the stamp duty on stock certificates, and is essential from every point of view.

7. *Clause 9.*—This provides for the renewal of stock certificates when the coupons are exhausted, and for the stamp duty on the new certificates, and is essential.

8. *Clause 10.*—This provides for the reconversion of stock in a stock certificate into ordinary stock, and is essential.

9. *Clause 11.*—This enables the bearer of a stock certificate to convert it into a nominal certificate, and is a proper and reasonable consequence of the stock-certificate system, which, even if it could be provided for by contract, could not be conveniently disjoined from the body of provisions relating to stock certificates.

10. *Clause 12.*—This clause begins by providing that a trustee shall not apply for or hold a stock certificate unless authorized to do so by the terms of his trust, and that any contravention of this