

I also call attention to the fact that, where the intention has been to charge past expenditure to a new appropriation, such intention has been distinctly expressed. Thus, in the Schedule to "The Immigration and Public Works Loan Act, 1870," to the vote for the construction of roads the words are added "including repayments of advances from the Consolidated Fund already made for the same purpose;" and in the Defence Loan Act of the same year, section 14, the words used are "all such sums as shall have been applied," &c.

I am therefore led to the conclusion that the Act of 1882 provides that one-half of the loan to be raised under it was to be expended on works undertaken, or engagements entered into, subsequently to the day on which the Act came into force, namely, the 13th September, 1882; and, therefore, that the Lower Harbour Fund cannot legitimately be charged with any expenditure on plant or otherwise which had been made prior to that date.

I have caused a balance-sheet to be prepared (Appendix B) showing the position of the Lower Harbour Fund on the 30th September last, as I conceive the provisions of the Act of 1882 require the amount to be kept. This account has been carefully prepared by Mr. King, the Audit Inspector, from the original vouchers, and comprises all expenditure on the Lower Harbour which can by a fair and liberal interpretation be brought within the meaning of the word "*improvements*," excluding charges for general harbour service. It is possible that opinions might differ as to the inclusion or exclusion of particular small items in or from this account, but to the general principle of its construction I think no exception can be taken. It appears from this account that the balance belonging to the Lower Harbour Fund exceeds the moneys at present at the disposal of the Board. There seems but one way in which this deficiency can be made good. By "The Otago Harbour Board Loans Consolidation Act, 1884," the Board is empowered to borrow £150,000 for fresh works (in addition to the amounts for paying off the outstanding loans); and, of this, section 10 enacts that "out of the sum or sums of money raised under the authority of this Act, not less than sixty-five thousand pounds sterling shall be expended on harbour works undertaken for the improvement of the bar at the Otago Heads and the general improvement of the Lower Harbour." If I have been correct in the reading of the Act of 1882, the same interpretation must be applied to the same words in the Act of 1884; that is to say, the £65,000 must be applied only to expenses incurred subsequently to the date on which the latter Act came into force, *i.e.*, 6th November, 1884, and cannot be used to recoup the deficiency in the Lower Harbour Fund at that date. But there will remain the balance, £85,000, which is applicable to all works which it is competent to the Board to undertake; and of this, I am of opinion, it is the duty of the Board to transfer to the Lower Harbour Account such an amount as will repay the deficiency.

I am not aware that it is desired by any one that the members of the Board should be made personally liable for a misappropriation of trust funds. It is admitted on all hands that the funds of the Board have been honestly applied to the works they were appointed to administer. No question can be raised as to whether they have exercised a wise discretion or not, the law having vested that discretion solely in the Board; the only dispute being as to the construction of the Acts of Parliament, which the Board has interpreted under a misapprehension, and the error being capable of being rectified by a fresh construction of the account consistent with the provisions of the Act. Such, it is submitted, is the proper course to be adopted.

I would also suggest that, by consent of all parties, and by an inexpensive process, a question might be submitted for the judgment of the Supreme Court to obtain a judicial interpretation of the Acts as regards the point at issue.

I would also respectfully submit that "The Harbours Act, 1878," requires to be amended so as to provide that all loans should be carried to a separate account, and expended solely on permanent works, and not on current services, still less on the payment of interest, which should be charges solely on the annual income of the Board. Such provisions will be found in the Municipal Corporations Acts and in the Counties Acts, and should apply with equal force to all local bodies empowered to borrow money.

The question also arises whether the Board should keep separate banking accounts for its general and trust fund? It is not incumbent on them to do so; but, as a matter of convenience, and as a protection against applying one fund to supplement deficiencies on another, it is a very desirable course to adopt. In the Public Accounts only one banking account is kept for moneys of the Consolidated Fund and of the Public Works Fund; but under the established system of control there is ample provision by which it is impossible that the moneys of one fund can be used for the other. But in accounts where no such special provisions exist, a separate banking account is a great protection against an inadvertent misuse of trust funds. Thus, for example, in the Bankruptcy Act the Official Assignee is compelled to keep a separate banking account in each estate, notwithstanding the additional trouble and inconvenience of such a system, in order to prevent the moneys belonging to one estate being used for another. I should therefore respectfully suggest that the Board should adopt a similar course in regard to funds subject to special parliamentary appropriation.

In stating the above view as to the manner in which the accounts should be kept in order to satisfy the requirements of the Act, I desire to say that I have excluded all considerations of the relative importance of the works which are in the course of construction, which must naturally involve differences of opinion, and possibly conflicting interests. All these works equally appear to be of great ultimate importance, and the question is not which should be omitted in favour of the other, but rather which should be done first out of the means from time to time placed at the disposal of the Board. This latter question has, however, been determined by Parliament by the Act of 1882, and again by the Act of 1884, by allocating to each account a fixed share of the moneys to be borrowed.

Nor can I allow any consideration of what may be thought by some to be a fair or equitable mode of charging the Lower Harbour Account to influence the decision to be arrived at. It may