

SESS. II.—1897.
NEW ZEALAND.

THE MINES DEPARTMENT AND THE AUDIT OFFICE :
(CORRESPONDENCE RELATIVE TO FAILURE OF THE FORMER TO COMPLY WITH A
REQUISITION.)

Laid upon the Table by the Hon. the Speaker.

The CONTROLLER and AUDITOR-GENERAL to the Hon. the SPEAKER of the HOUSE of
REPRESENTATIVES.

11th November, 1897.

THE Controller and Auditor-General has the honour most respectfully to submit to the House of Representatives a copy of his correspondence relating to the reference which, in the report which he has appended to the public accounts for the quarter ended the 30th September, 1897, he has made to the failure of the Mines Department to comply with a requisition of the Audit Office.

J. K. WARBURTON,
Controller and Auditor-General.

he Hon. the Speaker, House of Representatives.

No. 1.

The CONTROLLER and AUDITOR-GENERAL to the Hon. the MINISTER of MINES.

SIR,—

Audit Office, 1st October, 1897.

I beg leave most respectfully to represent that I have, for the purpose of a satisfactory audit of the gold revenue, deemed it necessary to make, particularly in a memorandum of the 20th February, and in another of the 21st August, a requisition on the Under-Secretary of your department for a statement, certified by the Warden at Greymouth, of the leases and licenses which he issues under the Mines Act.

The statement is sought as an effective check on the accounts which the Receivers of Gold Revenue render of their receipts of the rent and charges paid to them under those leases and licenses. The Under-Secretary, however, declares himself, in his memorandum of the 22nd ultimo, after asking the Warden to suggest what means might be adopted, unable to do anything further in the matter.

As the statement required is merely such a return or report from the Warden of the contracts in the form of leases and licenses which he makes as it appears to me reasonable to suppose that he can readily certify with his signature, and as every Government officer, not even excepting a Minister of the Crown, would generally regard himself as obliged even by the unwritten law of Government service to furnish when required by the Audit Office to do so, and as the Minister himself might call for and obtain, as he calls for and obtains many reports from such officers, I have informed the Under-Secretary that it will be my duty, in reporting on the public accounts of the colony for the quarter which has just closed, to refer to the inability of the department to comply with the requisition, though this inability appears to arise only in respect of the one Warden.

I have already explained very fully and clearly in my memoranda to the Under-Secretary that what I require is not a statement under or in pursuance of any statute, and I need not add anything on this point. My main object, indeed, in addressing this letter to you is to provide against a doubt which I entertain whether this matter, which it may be of importance for the Government to consider, ought not to be directly communicated by the Audit Office to the Minister in charge of the department; and in order to further this object I attach a copy of the correspondence comprising the memoranda to which I have referred.

Regretting that there should be any occasion for the communication as necessary to a due performance of my duty,

I am, &c.,

J. K. WARBURTON,
Controller and Auditor-General.

The Hon. the Minister of Mines.

1—B. 20.

Enclosure 1 in No. 1.

The Receiver of Gold Revenue, Kumara.

Audit Office, 15th January, 1897.

THE monthly abstracts of licensed holdings, &c., issued during the month of December, forwarded by you, are not signed by the Warden, as required by a circular issued by the Mines Department on the 23rd September, 1896. It will therefore be necessary that fresh returns, duly signed by the Warden, shall be sent in to take the place of the informal ones.

J. K. WARBURTON.

I FORWARDED these abstracts to Greymouth to have same signed by Warden, but as he had not returned from his holidays, Mr. Harper, the Clerk at Greymouth, returned them to me, saying that I had better not delay them, but sign and forward on. I believe Mr. Stratford holds that when he peruses the abstracts, and finds them correct, that it is complying with section 76 of "The Mining Act, 1891," for him to direct the Clerk to forward same and sign for him. I would respectfully suggest that you communicate your wishes in this respect to the Warden.

J. McINNES, Receiver of Gold Revenue.

The Under-Secretary for Mines.

A SPECIAL departmental instruction appears to be necessary to Mr. Stratford that he should sign the abstract. It would obviously be absurd to regard as of any value for the purpose of checking a Receiver's accounts an abstract prepared by such Receiver but not certified as correct by the Warden.

29th January, 1897.

J. K. WARBURTON,
Controller and Auditor-General.

Enclosure 2 in No. 1.

MEMORANDUM for the CONTROLLER and AUDITOR-GENERAL.

I DESIRE to refer you to the accompanying minute with reference to the same question which Warden Stratford addressed to me on the 26th of January, on Audit Query No. 755 of the 11th of December, 1896.

The statute merely requires Wardens to cause abstracts of licensed holdings to be forwarded monthly to the Minister of Mines, and, as a matter of convenience, it has been the practice to transmit these abstracts to the Audit for the information of that department.

Recently, when I was called upon to furnish a statement of the number of licensed holdings issued by Wardens during the year 1896, you declined to permit the information to be compiled by one of the Audit officers from the returns which were filed in the Audit Department, and I was compelled to borrow back the returns, which properly belonged to the Mines Department, for the purpose of compiling the information I was called upon to supply. It will probably be more desirable in future for the Audit to obtain whatever information relating to the business of Wardens' Courts that department may require for purposes of audit, than for the returns, which are compiled in terms of the Mining Act for the information of the Mines Department, to be transmitted to the Audit, as has been the case in the past.

Whatever course may be adopted in future in respect to these returns, it would be unbecoming on my part to issue any instructions to Wardens as to the manner in which they should perform their statutory duties.

I may point out that the abstract of occupation licenses, which is one of the forms attached to the minute, is not required, section 230 of "The Mining Act, 1881" having been repealed by "The Mining Districts Land Occupation Act, 1894," and the issue of occupation licenses by Wardens has been discontinued since the date of the passing of that Act.

Mines Department, 6th February, 1897.

H. J. H. ELIOTT,
Under-Secretary.

Enclosure 3 in No. 1.

AUDIT QUERY No. 755.

The Mining Warden, Greymouth.

Audit Office, 11th December, 1896.

THE abstract of licensed holdings for the District of Ahaura for the month of November last are returned herewith, accompanied by a copy of the circular to Wardens issued by the Mines Department on the 23rd September, 1896. Please let the request therein made be complied with.

J. K. WARBURTON.

MINUTES ON ENCLOSURE 3 IN No. 1.

The Under-Secretary, Mines Department.

ON my return to my district last week I found this Audit Query lying on my table. Perhaps you will kindly explain to the Auditor-General (who does not seem to understand) that I am a statutory officer, and as such have the Act to guide me what to do, as your circular points out. He is under a misapprehension about the Registrar's returns not being checked, as the Warden is a monthly auditor, who checks the licenses issued and rent paid periodically, and certifies accordingly, and an auditor from Nelson about once a quarter audits all the accounts. It would never do for the officers in the different out-stations to keep all their returns back for Wardens to sign, and the Warden could not overtake the unnecessary extra labour. Of course, I will comply with the statute whether a circular is issued or not.

Grey, 26th January, 1897.

H. A. STRATFORD.

THE Audit Office requires one of the officers of the Department of Mines, a Mining Warden, to sign and send in a statement which may serve for a desirable check of certain pecuniary transactions of other officers of the department; and to a compliance with the requirements such objections as are offered in the foregoing memorandum are not thought unworthy of being raised—namely, the extra labour of signing a monthly return, and the vitiation of a statutory return by the signature being affixed to it of the officer required to cause it to be furnished or forwarded. If the signature is thought to be a violation, the department has only to request the officer to furnish an additional statement.

8th February, 1897.

J. K. WARBURTON.

MEMORANDUM for the CONTROLLER and AUDITOR-GENERAL.

THE Under-Secretary for Mines is in error when he says "the statute merely requires Wardens to cause abstracts of licensed holdings to be furnished," &c. Section 76 of "The Mines Act, 1891," directs that "copies or abstracts of all licenses" shall be forwarded monthly to the Minister.

It certainly has been the practice of the Mines Department to transmit these abstracts to the Audit Office, and I would point out that without them it would be impossible to audit the accounts of the Receivers of Gold Revenue, as from them the "Register of Leases issued under Mining Acts" is compiled; but after the register has been written up there is no reason why the abstracts should not be returned to the Mines Department if so desired.

The "Abstract of Occupation Licenses," being obsolete, can only be a "Nil" return, and Mining Registrars who are aware of its repeal do not use it.

8th February, 1897.

C. E. BRIGGS.

Enclosure 4 in No. 1.

The Under-Secretary, Mining Department.

I REGRET that my desire to obtain for the purposes of audit a Warden's certified statement of licenses issued should have occasioned you any annoyance, or put you to the trouble of writing your memorandum of the 6th instant.

A requirement easier to satisfy or more reasonable is rarely made. A statement signed by the Warden is desired. The Warden as a statutory officer already causes a statement to be sent in. If, consistently with the statutory duty, the Warden can sign that statement, there is nothing more to do. If he cannot do so, (?) you would, I presume, instruct him to sign and send in a separate statement, and thus resolve the little difficulty. The instruction would not appear to be necessary to more than the one Warden. How can there justly arise out of such a simple requirement any occasion for the formal declaration that it would be "unbecoming on your part to issue any instruction to Wardens as to the manner in which they should perform their statutory duties"? But though there could have been no idea of such interference, the officers who are directed by statute to cause a statement to be sent in will generally regard it, as all the Wardens but one evidently have regarded it, to be a fault that the statement should neither be signed by them nor bear any evidence of having been seen by them.

The relevancy of the third paragraph of your memorandum is not clear to me. In declining to prepare the statement which your department was recently called upon to furnish, I thought it superfluous to explain that, as statements, returns, and accounts required from the department may have to be audited, it is not appropriate that the Audit Office should prepare them; and there appeared no reason to suppose that you were not studying the convenience of your office by leaving the returns in comparatively good order in a room a few yards from your own in the same building.

I do not like to make any remarks on the assumption that you can really mean what the paragraph appears to literally imply—that, because I was unable to comply with your request, "it will probably be more desirable" to withhold the returns from audit inspection. It may be that your intention was to express no more than my own conviction, that it would be proper for the department to keep, and for the Audit Office to restrict itself to examining, the accounts which the Audit Office is now keeping, and uses the returns to compile, and that, in the meantime, the returns should, after the compilation, be sent back to the department. But in any case, the application of your third paragraph to the modest requirement of the Audit Office for nothing more than a certified statement from the Wardens is not understood.

Audit Office, 9th February, 1897.

J. K. WARBURTON,
Controller and Auditor-General.

Enclosure 5 in No. 1.

AUDIT QUERY No. 755, on the 12th [11th] December, 1896.—*Re* Letter from Audit Office, dated 2nd February, 1897.*

SIR,—

Greymouth, 5th February, 1897.

I have the honour to enclose a letter from the Auditor-General, who addressed me as "the Mining Warden," drawing my attention to section 31, "Public Revenues Act, 1891"; but as I am not a Receiver-General nor Paymaster-General, nor an accountant, nor any other person *ejusdem generis* under that Act, there can be no privity between the Auditor-General and myself. I have therefore to request that you will be kind enough to explain to the Auditor-General that, in accordance with the rules of the service, I can only correspond with the head of my own department.

The Audit query he refers to was sent to you by me on the 26th January last, with my letter No. 9. Would you be good enough to convey to the Auditor-General that no disrespect is meant in my declining to correspond directly with him, nor antagonism in not complying with his request.

* No Audit Office letter can be traced in the Audit Office of this date.

You know how impossible it would be for a Warden, with so many duties of his own to perform, to perform duties he is empowered to authorise other persons to do. He could not sign without inspection, and some of his officers are visited quarterly, others twice a year—the returns being required monthly. And I have ten distinct offices where returns are kept under my charge.

I have, &c.,

The Under-Secretary for Mines, Wellington.

H. A. STRATFORD, Warden.

MINUTES ON ENCLOSURE No. 5.

The Controller and Auditor-General.

THE Audit query in question was forwarded to you with my memorandum of the 5th instant.

22nd February, 1897.

H. J. H. ELIOTT.

The Under-Secretary, Mining Department.

YES. And though the Warden's interpretation of the Public Revenues Act is not correct, I think that, in the interests of administration, it might have been expected that I should in such a matter have addressed him through you. Any want of respect is perhaps rather my own, but is obviously accidental.

But to the main point. All that is required is that he will sign an abstract or statement of the licenses issued. It is stated in the papers that it is believed that "Mr. Stratford holds that when he peruses the abstracts and finds them correct, that it is complying with section 76 of 'The Mining Act, 1891,' for him to direct the Clerk to forward same and sign for him." If he cannot affix his signature to these statutory abstracts, he could to corresponding abstracts giving the same information; and I should be obliged if you could arrange accordingly.

J. K. WARBURTON,

12th February, 1897.

Controller and Auditor-General.

Enclosure 6 in No. 1.

The Controller and Auditor-General.

Mines Department, 17th February, 1897.

I FIND that pressure of official business has prevented my replying earlier to your memorandum No. 35 of the 9th instant, and I regret that I should not, in my previous communication of the 6th February, have made myself sufficiently explicit. What I intend to convey to you is as follows:—

1. That I have no desire to be implicated in a controversy between the Audit Department and any individual Warden.

2. That the returns required by section 76 of the Mining Act to be furnished to the Hon. Minister of Mines are for statistical purposes only, and if the Audit Department requires separate information, that department should obtain the returns in such form as it requires.

3. That I have no authority to instruct Wardens as to the manner in which they are to perform any duties that may be imposed upon them by statute, and particularly have I great delicacy in conveying any such instruction to so experienced an officer as Warden Stratford, who has pointed out in a recent communication, which I forwarded to you, the great delay that will be caused in furnishing the returns if he is required to sign each one for the different Courts, some ten in number, over which he presides.

Under these circumstances, I trust that you will see your way to obtain any information you may require for purposes of audit direct from the officers concerned.

H. J. H. ELIOTT, Under-Secretary.

Enclosure 7 in No. 1.

The Under-Secretary, Mining Department.

I CAN safely assure you against the danger of being implicated in any such controversy as you mention; for, so long as the Audit Office is careful not to encroach upon the province of the administration, no such controversy can arise. The Audit Office would not be justified in so far usurping the functions of the administration as to relieve the department from the duty of furnishing the desired statement.

Nothing more is required from the department than a statement signed by one of its officers giving such particulars of the licenses issued as are given in the statutory abstracts; and you, as the permanent head of the department, are asked to see that the statement may be furnished.

You have not been desired to instruct the Wardens how to perform their statutory duties; and your scruples arising from a fear that an attempt at such an instruction might be construed from a direction to furnish the required statement will not, it is suggested, operate against the issue of a direction embodying an express provision to exclude all application to the statutory duty.

I could not read without extreme surprise and regret your explanation of the idea which you had conceived of withholding the returns from the Audit Office. Passing over every question of relevancy or of propriety, it will not be disputed that a general instruction to the officers of a department to furnish separate returns ought to be given by the administration. It would in that case be only through the agency of the department that the Audit could appropriately "obtain the returns in such form as it desires." The department then, on being requested accordingly, would doubtless issue a general instruction; and this general instruction would convey to the Warden the particular instruction which there appears to be so much unwillingness to give, and which the general instruction including it is suggested as the method of avoiding.

It would seem, too, that the idea was not conceived out of any desire to extend to the great body of the officers of your department the consideration which is given to the objection of one Warden, that he will be overtaxed by affixing his signature to nine or ten statements a month, or that these few monthly statements must be unduly delayed by being forwarded through him for such signature. Objections like this are profitable as indicating the propositions to which they are offered to be open to no real objection.

Audit Office, 20th February, 1897.

J. K. WARBURTON,
Controller and Auditor-General.

Enclosure 8 in No. 1.

The Under-Secretary, Mining Department.

Audit Office, 21st August, 1897.

I BEG to request that you will, at your earliest possible convenience, let me know when I may expect to receive the statements which in my memoranda of the 9th and 17th February last I desired your department to obtain from the Warden at Greymouth. The Audit Office required and still requires the statements to satisfactorily complete the audit of the accounts of the Receivers of Gold Revenue in that Warden's district; and I am without even an acknowledgment of the receipt by you of the last of the two foregoing memoranda.

As your papers on the subject may not be readily accessible, it may be well for me to repeat here that the statements required are such as, signed by the Warden, will afford precisely the same particulars of the licenses which he issues as are afforded by the abstracts which it is his statutory duty, under section 76 of the Mining Act, to cause to be forwarded to the Minister, but which he cannot, as it would seem, see his way to sign, and thus, like all the other Wardens of the colony, make it serve the purpose of the statement certified by his signature.

In the absence of any doubt in this office that your department would in due course comply with the requirement of the Audit Office that the statements in question should be furnished, the revenue accounts of the Receivers of Gold Revenue in the district of the Warden at Greymouth have been passed by the Audit Office as open to no exception; but it would now appear to be questionable whether, after having requested one of the departments of administration to furnish certain statements regarded as necessary to a satisfactory audit of the revenue of that department, it was not my duty to have seen that the accounts, if passed at all, were passed subject to any correction which the statements might, when furnished by the department, prove to be necessary.

You are no doubt aware that the statutory abstracts are prepared by the Receivers; and, as I observed to you in a memorandum of the 29th January last, "it would obviously be absurd to regard as of any value for the purpose of checking a Receiver's account an abstract prepared by such Receiver, but not certified as correct by the Warden." The purpose, however, of this application is not to again fully describe what is required, but to ascertain when your department will be able to let me have the statement.

A desire to be as considerate as the circumstances would allow is the reason why I have not before reminded you of the matter.

J. K. WARBURTON,
Controller and Auditor-General.

Enclosure 9 in No. 1.

The Warden, Greymouth.

In order that you may be aware of my position in this matter as between the Audit Office and yourself, I send the file of correspondence for any remarks you may think it desirable to make in respect to the Audit requirement that you should sign the abstracts of licenses which Wardens are required by clause 76 of "The Mining Act, 1891," to cause to be transmitted each month to the Minister.

I thought my memorandum to the Controller and Auditor-General, dated 17th February last, No. 562, clearly explained the position of the department in respect to the question, and, as there was nothing in the further memorandum from the Auditor of the 20th February last, No. 46, to which I could reply, I held further correspondence on the subject in abeyance.

As, however, the Auditor-General has again reopened the question in his memorandum of the 21st instant, No. 237, I hope, after perusal of the correspondence, you may be able to suggest a means of preserving me from further controversy with the Audit Department on the particular question at issue.

I have just received your minute of 20/8/97, on Audit Query No. 638, which I attach.

24th August, 1897.

H. J. H. ELIOTT.

MINUTES ON ENCLOSURE No. 9.

To the Under-Secretary, Mines Department.

In accordance with your request, I beg to suggest a way of terminating the unsatisfactory correspondence containing a controversy as useless as it is harassing: That the returns sent in to you under section 76 of "The Mining Act, 1891," be applied only as intended—as records for the use of the Hon. the Minister of Mines, and not be at the disposal of any other branch of the service, especially when its head commences in a dictatorial manner to make invidious comparisons about your officers, and attempts to instruct you what you should make them do. Passing by the personal offensive remarks of the Auditor-General without comment, I would simply draw your attention to one opinion of the Auditor-General and comment on it. If it is, as he remarks, "obviously absurd" to regard as of any value for "the purpose of checking a Receiver's account an abstract prepared by such Receiver, but not certified as correct by the Warden," could not the same be said of copies of his cash-books, the correctness of which are not certified to by the Warden, but are

supported by the Receiver's declaration? Could not the same be said of a County Treasurer's balance-sheet, which is prepared by the County Clerk? If my first suggestion, that you do not lend the returns, be not accepted, perhaps you would adopt my second: That, as Receivers' declarations are considered sufficient subscribed to their cash-book returns, let them do likewise in the matter apart from their Mining Registrars' duties for the Warden under section 76 of the Act—the latter not being an Audit officer, but a subordinate officer to and acting for the Warden in administering the Act.

H. A. STRATFORD.

4th September, 1897.

The Controller and Auditor-General.

As I am unable to do anything further in this matter, I forward the foregoing minute by the Warden to you in the hope that the Audit Department will accept the return in question as forwarded by the clerks of the Warden's Court.

H. J. H. ELIOTT.

22nd November, 1897.

Enclosure 10 in No. 1.

The Receiver of Gold Revenue at Reefton.

Audit Office, 19th July, 1897.

THE "Abstracts of Licensed Holdings," &c., which the Warden is required to cause to be transmitted to the Minister, as provided by section 76 of "The Mining Act, 1891," and which it has been usual for you to transmit accordingly, have not been received by the Minister. An explanation is requested.

J. K. WARBURTON,

Controller and Auditor-General.

MINUTES ON ENCLOSURE No. 10.

RETURNS referred to were forwarded to Under-Secretary of Mines on 13th instant.

31st July, 1897.

HENRY LUCAS, Receiver of Gold Revenue.

The Receiver.

WHY were they not forwarded month by month? They were received in the Mines Department on the 21st July for the three months.

J. K. WARBURTON,

5th August, 1897.

Controller and Auditor-General.

The Warden, Reefton.

As the returns herein referred to are those which you are required to send to the Hon. Minister of Mines, I beg to refer this matter to you.

20th August, 1897.

HENRY LUCAS, Mining Registrar, Reefton.

Received 20/8/97.—H. A. S.

The Under-Secretary for Mines.

I BEG to forward herewith a query from the Auditor-General touching a matter for which I am responsible, but I am not aware that any one but the Hon. the Minister of Mines can call me to account for, as I cannot correspond with an officer of another department. I beg to enclose it for your perusal.

20th August, 1897.

H. A. STRATFORD, Reefton.

The Under-Secretary for Mines.

I BEG to object to an officer of another department writing to one of my subordinate officers, a Mining Registrar (calling him "Receiver of Gold Revenue" for the occasion), "reminding him" and alleging that I have "neglected my duty to the Minister of Mines," as most improper conduct, which I trust will not be repeated.

4th September, 1897.

H. A. STRATFORD, Westport.

Enclosure 11 in No. 1.

The Under-Secretary, Mining Department.

Audit Office, 22nd September, 1897.

THIS is a matter in which the Audit Office is concerned only with the Mining Department, in respect of an Audit requirement with which a compliance does not depend on any question with regard to the signing by the Warden of the abstracts mentioned in section 76 of the Mining Act.

The Audit Office has in the course of its duty made a requisition on the department for statements signed by an officer of the department, and the Under-Secretary, in pleading inability to comply with the requisition, forwards the departmental correspondence on the subject with the officer—correspondence which discloses to the Audit Office what, though not really a matter for consideration of the office, cannot but be deprecated by the Mining Department as, at the best, an unfortunate condition of things, and from which it does not appear that the officer has been instructed to supply what the department has been so long required to obtain from him.

It may perhaps be well to point out again what has been pointed out in several former memoranda: that the statements required by the Audit Office, though they are not necessarily the abstracts to which section 76 of the Mining Act refers, are such statements as, certified by the signature of the Warden, will serve a purpose which would be served by those abstracts if they could be signed by the Warden. It is, however, understood that he cannot see his way to sign the abstracts which it is his statutory duty to cause to be furnished, and that the Department of Mines fears that it would be an undue interference with the Warden in the performance of such duty to induce him to sign them. The alternative is obviously for the department to furnish the Audit Office with what the office has consequently required since February last—with statements signed by the Warden in addition to the statutory abstracts which it is his duty to cause to be furnished, but which he cannot bring himself to sign.

The Audit Office requisition is made upon the department just as the auditors of a public company would make a requisition on the directors for certified information from any officer of the company, and the Audit Office would not therefore, in ordinary course, be expected to consider the relations of the department with an officer, or the obstacles of the department to a compliance with the requisition. In a desire, however, to help and to be considerate with the department, the Audit Office has not only endeavoured to point out how easily those obstacles might be surmounted, but has, to the verge of a failure of duty, waited seven or eight months for the statements. Now, at last, the department, in a memorandum which leaves it to be concluded that a compliance with the requisition is out of all question, acknowledges itself unable to do anything further in the matter, and thus imposes upon the Audit Office the duty which the office has, to the utmost that a due consideration of the interests of the public service will allow, striven to avoid, and which it cannot perform without extreme regret: the duty of including in its report on the public accounts of the colony a reference to the failure of the department to comply with the requisition of the Audit Office for such a statement, signed by one of its officers, of the leases and licenses that he issues as will enable the office to satisfactorily check the Receivers of Gold Revenue in their accounts of their receipts under such leases and licenses.

J. K. WARBURTON,
Controller and Auditor-General.

P.S.—If it should, as I fear from looking through the papers it may, have happened that the Minister has not seen them, I would ask you to submit them to him at the earliest possible moment; for the position now is one which the Government may think it expedient to consider.—J. K. W., C. and A. G.

No. 2.

The Hon. the MINISTER of MINES to the CONTROLLER and AUDITOR-GENERAL.

SIR,—

Mines Department, Wellington, 16th October, 1897.

I have the honour to acknowledge the receipt of your letter of the 1st instant, No. 285, transmitting copies of correspondence which has passed between the Warden at Greymouth, the Under-Secretary for Mines, and yourself with reference to your request that the copies or abstracts of licenses issued, which the Warden at Greymouth is required by section 76 of "The Mining Act, 1891," to cause to be transmitted each month to the Minister of Mines, may be signed by Mr. Warden Stratford instead of being signed for the Warden by the Receiver of Gold Revenue or the Mining Registrar, as has hitherto been the practice.

In reply I have to state that, after perusing the correspondence, I have come to the conclusion that I believe I could easily have dealt with Mr. Stratford had the question been submitted to me in the first instance, but the matter has now arrived at such a stage as between Mr. Stratford and yourself that I prefer not to interfere, and I would rather that you carried out your intention as expressed in your memorandum of the 22nd ultimo, No. 274, to the Under-Secretary for Mines.

I have, &c.,

A. J. CADMAN,
Minister of Mines.

The Controller and Auditor-General, Wellington.

No. 3.

The CONTROLLER and AUDITOR-GENERAL to the Hon. the MINISTER of MINES.

SIR,—

Audit Office, Monday, 18th October, 1897.

I did not see, and I was unaware of the contents of, your letter of the 16th instant until late in the evening of yesterday, the letter having arrived too late on Saturday to be delivered to me before I left the office after the close of business. I took, however, on the 15th instant, the day before your letter was written, the course which you would, as you now state, prefer that I should follow, and which had become my unavoidable duty.

In thus apprising you that I have carried out my intention, I would very respectfully point out that, in speaking of the matter as one between myself and Mr. Stratford, you appear to be under an entire misapprehension of the position. The requisition that I have made is upon the department which he is appointed to serve, and I am accordingly concerned, not with the department's servant, but with the department itself. If in my correspondence I have mentioned Mr. Stratford, I have mentioned him as I have mentioned the abstracts under section 76 of the Mining Acts—the abstracts with which the requisition has in itself nothing to do—merely in supererogation of duty, with a view of helping the department and its officers to avoid inconvenience, and of explaining how to surmount difficulties which are of no direct concern to the Audit Office; and it is mainly from a desire to correct your misapprehension that I am writing this letter.

I venture, in conclusion, to express the hope that you do not, in stating that you could easily have dealt with Mr. Stratford had the question been submitted to you in the first instance, mean that you consider the fault by which you were not duly informed of the matter to be a fault of the Audit Office in regarding its communications with your Under-Secretary as virtually with yourself. If, however, you do regard the Audit Office at fault, I would submit that the fault is one of such long-standing practice in the conduct of the business of all the departments as to be not only prescriptive in character, but a fault for which the Ministers of many Governments, in allowing the practice to continue without objecting to it, would share the responsibility.

The requisitions of the Audit Office on a department can as readily be addressed to a Minister as to the Under-Secretary, and if I had not been influenced myself, as my predecessors appear to have been, by a regard either for practical results or for the convenience of Ministers, and had acted in none but a consideration of the interests of the Audit Office, I might not improbably have taken it upon myself to address every such requisition to a Minister; but I ought most respectfully to state that it would not have occurred to me to offer it as a reason that the Under-Secretary might not submit to the Minister the requisition of which he would expect to be informed.

I have, &c.,

J. K. WARBURTON,
Controller and Auditor-General.

The Hon. the Minister of Mines.

No. 4.

The Hon. the MINISTER of MINES to the CONTROLLER and AUDITOR-GENERAL.

SIR,—

Mines Department, Wellington, 1st November, 1897.

I have the honour to acknowledge the receipt of your letter of the 18th instant, informing me that before the receipt of my letter of the 16th you had already taken the course which you suggested in your memorandum of the 22nd September you intended to take, of including in the report of the Audit Office on the public accounts of the colony "a reference to the failure of the Mines Department to comply with the requisition of the Audit Office for such a statement, signed by one of its officers, of the leases and licenses that he issues as will enable the office to satisfactorily check the Receivers of Gold Revenue in their accounts of their receipts under such leases and licenses."

In reply, I have to direct your attention to the fact that you first entered into a correspondence on this subject with Mr. Warden Stratford on the 11th December last by returning to him the abstract of licensed holdings issued for the District of Ahaura during the previous month of November, and it was not until the 29th of January that you brought the question before the Mines Department, in a minute upon a query dated the 15th of that month addressed to the Receiver of Gold Revenue at Kumara, requesting that the monthly abstracts of leases and licenses issued at that place might be signed by the Warden. The Warden having declined to accede to your request before the matter came under my notice, I referred the point at issue to the Solicitor-General, who indorses the interpretation of the law expressed by Mr. Warden Stratford.

Under these circumstances I consider it unwise to interfere further, but, had the matter come to me in the first instance, I should probably have asked the Warden to do what you desired without raising the legal aspect of the case.

I have, &c.,

A. J. CADMAN,
Minister of Mines.

The Controller and Auditor-General, Wellington.

No. 5.

SIR,—

Audit Office, 3rd November, 1897.

To-day I received your letter of the 1st instant, and I hasten to reply, though I do not know what the precise question is on which you have obtained the advice of the Solicitor-General.

I beg leave to submit, what it has been my endeavour throughout all my correspondence with the Government and its departments on this subject to make clear, that the point at issue between the Audit Office and the Government, or the Mines Department, is not whether it was necessary for the Warden to sign or whether the Warden could or should be required to sign the abstract which it is his statutory duty to cause to be furnished, in accordance with section 76 of the Mining Act, but whether the Government is competent to obtain from one of its own servants, independently of and in addition to what it may be the actual statutory duty of the servant to furnish, a certified statement of the licenses and leases issued by such servant.

On the latter point—the point really at issue—the Solicitor-General or the Crown Law Office or a lawyer would hardly be asked to advise; for the question would, I respectfully urge, be whether the Government ought or ought not to expect from its own servants any more than the assistance which there is direct statutory authority to require them to render. This does not seem to me to be a question requiring any interpretation of law.

If, however, the Government complies with the requisition of the Audit Office, and thus furnishes the office with the means of making the verification for the purpose of which the requisition is made, the internal departmental arrangement by which compliance becomes practicable may not concern the Audit Office; and it may therefore be no part of my duty to express my own fear that it would be unsatisfactory that the Government should have to ask its own servants—the servants of a department—to furnish the means of enabling the department to comply with such a requisition of the Audit Office, and should have to depend on their mere will or pleasure for those means. I trust that you will understand me to be making these remarks out of an earnest desire to promote the interests of the administration.

I cannot but suppose it impossible that you have taken a comprehensive view of the circumstances of that memorandum of the 11th December last which I addressed to the Warden, and of which you speak as my correspondence with him; and on this supposition I propose now, as briefly and clearly as I can, to relate those circumstances, and to place the whole question in such a light as must, in my judgment, show you that my attitude has been proper and consistent throughout.

On the 23rd September, 1896, a little more than a year ago, your department issued the circular of which the following is a copy:—

" Mines Department, 23rd September, 1896.—Circular to Wardens.—I forward herewith for your information copy of a memorandum from the Controller and Auditor-General, and have to direct your attention to section 76 of ' The Mining Act, 1891.'—H. J. ELIOTT, Under-Secretary."

" Audit Office, 14th September, 1896.—The Under-Secretary, Mines Department.—The abstracts which are transmitted monthly to the Minister on the form Mining No. 84 by the Wardens are so often signed by the Mining Registrars—that is, by the Receivers whose cash receipts the abstracts are designed to check—instead of by the Wardens, that I should be glad if you would call the attention of each Warden to the matter and point out that, to promote an effective audit, his responsibility for the abstract being a true abstract of all the licenses issued by him should be acknowledged by his signature at the foot of each sheet.—J. K. WARBURTON, Controller and Auditor-General."

By this circular the Wardens all received instructions, which were the instructions of your own department, which expressed the desire of the Audit Office and explained the object in view, and which all but one of the Wardens have carried out and still carry out. In making the suggestion, which the department adopted, that the Wardens should be addressed on the subject by the department itself, I was even then judging the matter to be one in which the administration alone ought properly to do whatever it might be desirable to do.

The general circular expression of what was desired having been considered and issued by your own department, it was to be expected that the Audit Office would then, in the case of every officer to whom the circular was addressed, and who was neglecting to do as your department desired, call the attention of that officer to the matter. My memorandum of the 11th December accordingly pointed out to the Warden what was wanting, and reminded him of the circular; and, in returning to your department the Warden's explanation that the abstract which he was desired by the circular of your department to sign was the statutory statement, I remarked that "if the signature is thought to be a violation of the statute the department has only to request the officer to furnish an additional statement"—that is to say, a statement which would not be the statutory abstract, but which would answer all the purposes of the Audit Office, and leave the statutory abstract, which the Warden cannot see his way to sign, to be furnished by him as he thinks fit.

The reference to your department on the 29th January last of the memorandum of the Receiver of Gold Revenue at Kumara was only by way of offering the suggestion that, as the Warden was not carrying out the wishes of the department as expressed in its general departmental circular instruction, "a special departmental instruction appears to be necessary" to him. Thus, what I required was from the department, and to the department I referred in the matter from first to last. The difficulty with the Warden was a difficulty of the department with one of its own servants, and the Audit Office had no duty but to refer to the department in the particular case, consistently with the reference for the purpose of the general instruction. I therefore regret exceedingly to learn from you that the reason of the decision of the Government not to comply with the requisition and thus render effective the circular of the Mining Department itself is that through a fault, not the fault of the Audit Office, the matter did not come to you in the first instance.

I venture, however, to express with the greatest respect the hope that I have now made clear beyond the possibility of any reasonable doubt the facts of the case to be that it has no legal aspect; that the point really at issue is not a point on which the Solicitor-General could advise; that consequently, whatever may have been the precise question put to him, he has not advised on the point really at issue; that the Audit Office has no difference or concern but with the department; and that your decision not to interfere is only applicable to the case as a decision not to render effective the general circular instruction which your department has already issued, and with which, as I have already reported to the department, one Warden refuses to comply.

I have, &c.,

J. K. WARBURTON,
Controller and Auditor-General.

The Hon. the Minister of Mines.

No. 6.

PUBLIC ACCOUNTS for the QUARTER ended 30th SEPTEMBER, 1897, compared with Quarter ended 30th September, 1896.

SUBMITTED for audit.—J. B. HEYWOOD.—12th October, 1897.

THE foregoing accounts have been examined and found correct, except as regards the "Customs," "Railways," and "Territorial Revenue" receipts, which are not now examined by the Audit Office, and except as regards the receipts of gold revenue, which the Audit Office is unable to satisfactorily verify through the failure of the Mines Department to comply with a requisition for a certified statement of the amounts collectible as such revenue.

J. K. WARBURTON,
Controller and Auditor-General.

No. 7.

The Treasury, Wellington, 16th October, 1897.

THE Controller and Auditor-General will, I trust, recognise that the failure to obtain certain information from an outside department is not a matter which concerns the Treasury, and, with all respect, should not influence the object which the law has in view when the Treasury accounts are submitted—namely, that of ascertaining whether they are or are not correct.

The Treasury is completely in the dark as to the information required by the Audit Office, and it is therefore a surprise to have the accounts returned with a minute compromising their accuracy. The Treasury should at least be afforded the opportunity of seeing whether it is not possible to supply the information which the Audit Office is desirous of obtaining.

J. B. HEYWOOD,
Secretary to the Treasury.

No. 8.

Mr. Warburton.

Audit Office, 18th October, 1897.

I WOULD like to make a few remarks with regard to the note respecting the goldfields revenue appended by you to the certificate of the correctness of the Treasury Abstract of Revenue and Expenditure for the quarter ended the 30th September last.

To rightly understand the position it is necessary to inquire what is the scope of the Audit certificate which the Public Revenues Acts of 1891 and 1896 require to be placed on the quarterly abstract of the revenue and expenditure of the Public Account submitted by the Treasury to the Audit Office for examination.

It will be observed, on reference to section 69 of the Act of 1891, as amended by the Act of 1896, section 4, that the quarterly abstract to be sent to the Audit Office for examination is "an abstract of the revenue and expenditure of the public accounts, as provided by this Act, during such quarter."

As the matter now under discussion relates entirely to the revenue side of the "abstract" above mentioned, the first question naturally is, What is the revenue "as provided by this Act"? The answer is to be found in section 23 of the Act of 1891. It is an account prepared by the Receiver-General from the cash-book of the several Receivers, and sent daily to the Audit Office, showing so much of the moneys paid into the Public Account or otherwise by such Receivers as have not previously been included in any such account, and distributing such moneys to the several funds under the several heads of revenue, &c. This account, when certified by the Audit Office, is deemed to be the Revenue Account of the colony for the day to which it relates, and is to be recorded in the books of the Audit Office and Treasury accordingly. Before the account is certified and recorded in the books of the Audit Office it is, as a matter of fact, compared with the cash-books received in support of it to see that the Treasury has complied with the law in preparing it. I do not think it was intended that the examination of the cash-books and vouchers, received with the daily revenue account, was to proceed further than this for the purpose of the certificate required of the Audit by the Public Revenues Act. The detail audit, so to speak, was to come after.

If this view is correct it follows that the abstract of revenue for any quarter would simply be a compilation of the daily revenue account certified by the Audit Office, and should consequently be certified by the Controller and Auditor-General alone. That he does not do so, however, will presently appear.

By statute the audit of the revenue from Customs, Railways, and Lands has been removed from the Audit Office; and somehow—I know not how—the late Controller and Auditor-General found himself unable for that reason to certify the Treasury quarterly abstracts of revenue and expenditure, notwithstanding his having certified the daily revenue accounts upon which the quarterly abstracts were founded. This is the explanation of the peculiar audit certificate now found at foot of the quarterly abstracts.

It is quite obvious that the audit, even though it were continuous throughout the quarter, could not be completed in time for the publication of the Treasury accounts so that such a certificate of "correctness" could be given as would cover the whole of the ground usually traversed by an auditor to satisfy himself on the point of "correctness" in every respect. This, no doubt, is the reason why the Customs Department gives a limited certificate, thus: "Examined and found to agree with the Collectors' cash-books." The comparison of the cash-books with the Treasury abstract of revenue (which I may say is also done in this office) is evidently deemed by the department to be quite distinct from the detail examination underlying the cash-book, such as checking entries with the tariff, &c., an examination no doubt carried on from day to day, but always in arrear of the Customs revenue included in the Treasury abstract. The certificate of the Railway Department, I understand, covers the whole of the audit of the railway receipts; but those of the Land Department and our own office would more nearly meet the actual facts of the case were they worded the same as that of the Customs,—the detail audit being always in arrear of the Treasury abstracts of revenue.

Reverting to the note appended to the Audit certificate on the September quarter's accounts, it seems to me to be merely a question as to the best method of securing a satisfactory answer to the requisition for information to check the goldfields revenue. A request to the department having failed, an appeal should be made to Parliament, either by such a note on the public accounts as you have made, or by a letter to the Speaker of the House of Representatives. I cannot help thinking, however, that the Hon. the Minister of Mines, if thoroughly understanding the position, would not hesitate to give such an instruction as would at once enable you, in view of the opinion I have above expressed with regard to the nature of the certificate to be given by you, to pass the accounts of the quarter as "examined and found correct."

J. C. GAVIN,
Assistant Controller and Auditor.

No. 9.

The Treasury.

Audit Office, Tuesday, 19th October, 1897.

WITH reference to the Treasury memorandum of Saturday, the 16th instant, which I received yesterday, and from which I understand it to be the desire of the Treasury to know more particularly than can be gathered from my report on the quarterly accounts of the colony the nature of the fruitless requisition on the Mines Department, I beg to attach a copy of my letter of the 1st instant [No. 1], representing the position of the Hon. the Minister of Mines.

The requisition, as will be seen by a perusal of that letter, was made long before the close of last financial year, and I am in doubt whether it would have been right or proper in the Audit Office to send of its own motion a report of the matter to the Treasury, with a view of affording the Treasury an opportunity of seeing whether it was not possible for the Treasury to obtain what has been refused to the Audit Office. The Minister of Mines, in a letter of the 16th instant, has replied that he would rather, under all the circumstances, that I should carry out my intention; and it would thus seem that I am not to look for any such undertaking to comply with the requisition as would justify me in withdrawing from my report the reference to the matter.

But whether the failure of the Mines Department to comply with the requisition, and the consequent inability of the Audit Office to satisfactorily verify the receipts brought to charge in the cash-books, &c., which are the foundation of the certified accounts of the Receiver-General, should or should not concern the Treasury, it appears to me that, though a misconception exists as to the object and scope of the auditing for which the law provides, the reference that my duty requires me to make to the failure of the Mines Department should not imply any inaccuracy in the quarterly summary or compilation itself which the Treasury presents of the certified accounts.

The Audit Office certificate, so far as it directly applies to that summary, may, I think, be regarded as restricted to the correctness of the compilation; and I have, consistently with this view, so altered my report as to make the failure of the Mines Department affect the cash-books of the Receivers in respect of the doubt for which the Treasury disclaims responsibility, and not the Treasury compilation from those cash-books.

The law requires that the accounts shall be audited. The accounts cannot be said to be audited which are not examined in the foundation, no less than in the superstructure, and the Treasury would be under a misconception in understanding my report to be applicable only to the examination of the Treasury compilation. If the Receivers do not account to the Treasury for what they actually receive and ought to account, the very foundation of the Treasury compilation is at fault, though the accuracy of the compilation itself may be unquestionable. The Audit Office, in certifying the account which the Receiver-General prepares day by day from the cash-books and abstracts of the several Receivers, obviously cannot previously verify the correctness of the receipts of revenue entered in those cash-books and abstracts.

The verification takes place in due course, and the Audit Office, in certifying, without taking any exception to each account prepared by the Receiver-General, does so on the assumption that the ultimate examination will disclose nothing wrong; and this practice, though justifiable as long as there may be no serious obstacle or interruption to the verification, is, when the contrary is the case, not justifiable.

Now, the course which the Audit Office desires and thinks it expedient to follow in order to satisfactorily verify the entries of gold-revenue receipts in the cash-books, and for the purpose of which the requisition has been made upon the Department of Mines, cannot be followed because the department has failed to comply with the requisition. It does not, consequently, appear to me that I should be justified in certifying that the accounts have, in a complete application of the term "audited," been examined and found correct, unless in doing so I refer to the failure of the Mines Department. The certificate would otherwise, in my judgment, be misleading.

But as, if there is a fault anywhere, the Treasury may not be culpable, I have gone as far as I think that I justifiably can go in so modifying the reference as to preclude it from operating to compromise the Treasury compilation. The report which I made on the 15th instant, that "The foregoing accounts have been examined and found correct, except as regards the 'Customs,' 'Railways,' and 'Territorial Revenue' receipts, which are not now examined by the Audit Office, and except as regards the receipts of gold revenue, which the Audit Office is unable to satisfactorily verify through the failure of the Mines Department to comply with a requisition for a certified statement of the amounts collectible as such revenue," is now modified accordingly, and stands thus: "The foregoing accounts have been examined and found correct, except as regards the 'Customs,' 'Railways,' and 'Territorial Revenue' receipts, which are not now examined by the Audit Office; but, as regards the receipts of gold revenue, the Audit Office is unable to satisfactorily verify them through the failure of the Mines Department to comply with a requisition for a certified statement of the amounts collectible as such revenue."

The attached memorandum of yesterday [No. 8] in which Mr. Gavin reviews the position, and explains what would appear to be the meaning and scope of the several Audit certificates appended to the Revenue Account, will, I think, be interesting to the Treasury, and can hardly fail to be regarded by the Government as a valuable contribution in the direction of insuring a clearer comprehension of the provisions of the Public Revenues Act for auditing the public accounts.

J. K. WARBURTON,
Controller and Auditor-General.

No. 10.

MEMORANDUM for the CONTROLLER and AUDITOR-GENERAL.

In reply to the Controller and Auditor-General's explanatory memorandum of yesterday's date, I am directed by the Colonial Treasurer to observe that he is of opinion that the qualified certificate the Controller is good enough to state he will append to the Treasury accounts is quite unnecessary, and, with all respect, that it should not be attached. It must be clear that the statements of accounts as submitted are absolutely and entirely records of the receipts into and the payments out of the Public Account of the colony, and as such can be verified by the Audit Office. If they are correct, it should be so stated; if incorrect, the error or errors should be pointed out.

The Controller and Auditor-General does not clearly indicate the nature of the information which has been refused by the Mines Department; but, assuming that certain particulars are wanted for the purpose of ascertaining what amount of rents or fees should have been received into the Public Account, and also of obtaining an Audit check, it is evident that the quarterly accounts could not in any case serve as a medium to convey such information, as they do not purport to show the "assets" of the colony in the shape of uncollected dues.

The Colonial Treasurer still hopes the Controller and Auditor-General will see his way to withdraw the proposed addition to the usual certificate, and I am to express his desire that all proper information shall be afforded to the Audit Office, if it can be given, by the officers whose duty it is to supply such.

JAS. B. HEYWOOD,
Secretary to the Treasury.

The Treasury, Wellington, 20th October, 1897.

No. 11.

The Treasury.

Audit Office, Wednesday, 21st October, 1897.

I REGRET that I am unable to concur in the opinion of the Colonial Treasurer, if I understand his opinion correctly to be that the certificate which it is my duty to append to the public accounts of the colony can be so restricted as to apply only to the Treasury compilation.

In my judgment it is essential to the certificate that it should apply to the whole fabric of the public accounts. The basis or foundation for which the Treasury disclaims responsibility, and the superstructure for which the Treasury acknowledges responsibility, must equally come within the scope of that certificate.

The Treasury, if it is not responsible for a part of the whole work, does not become responsible for that part in consequence of a report that the part has not been satisfactorily proved. Nor can the Treasury be affected by such a report, otherwise than the department would naturally be affected at seeing its work resting upon a doubtful foundation. The statement required from the Mines Department is for the purpose of enabling the Audit Office, not to ascertain what are the assets of the colony in the shape of uncollected dues, but to render more satisfactory and effective the means of proving whether the revenue collected by the Receivers has all been brought to charge.

It is questionable whether the fact of doubt existing as to the correctness of the receipts brought to charge in accounts should be passed over, even in a report on a mere compilation from these accounts, when such doubt is not generally known and acknowledged. In any case it will not be disputed that such reason as there may be for doubt respecting the foundation for the Treasury statement of the public accounts should be communicated to Parliament; and it appears to me that the channel most appropriate and convenient for such communication is my report respecting the statement.

I have made on the Government, through the Department of Mines, a requisition for a certified statement deemed by me to be necessary to satisfactorily put to the proof the foundation of the Treasury work; and being in no uncertainty that, as the case now stands, it is my duty to add to my certificate the fact of the requisition having been made, and made in vain, I could not reconcile it with such duty to consent to withdraw from my certificate the reference to the requisition without an understanding from the Government that the required statement shall be furnished.

In order to form a correct judgment of the position it would, I think, be well to read all the correspondence with the Mines Department on the subject. It appears to me, as I gather from a letter of the 16th instant, which I have had the honour to receive from the Minister of Mines—for whom my respect is very great—that the Under-Secretary to whom the requisition was addressed did not, in the first instance, submit it to the Minister; that the fact of the requisition having been made upon the department had only just come to the knowledge of the Minister; and that, consequently, as he was not directly apprised by me of what was required, he is unable to make now the arrangement which he might otherwise have made.

J. K. WARBURTON,
Controller and Auditor-General.

No. 12.

MEMORANDUM for the CONTROLLER and AUDITOR-GENERAL.

In reply to your memorandum of yesterday, I am desired by the Colonial Treasurer to state that he regrets you should have considered it advisable to add to the usual certificate accompanying the quarterly accounts a reference to the failure of the Mines Department to supply certain information which you have desired to be furnished with.

The Colonial Treasurer does not wish to make any remarks on the matter of the difference of opinion which apparently exists between the Audit Office and the Mines Department. At the same time he cannot refrain from stating that, armed as the Audit Office undoubtedly is with large powers derived from the provisions of the Public Revenues Acts, it does seem singular that the Controller and Auditor-General should deem it necessary to resort to the certificate already named, as the medium by which he desires to place before the public the fact that he is in conflict with one of the departments of the State.

The Colonial Treasurer thinks the better course would have been to bring the matter before him with the view of seeing whether the powers possessed by the Audit Office should not be further extended so as to meet the difficulty which has arisen.

The Treasury, Wellington, 22nd October, 1897.

JAS. B. HEYWOOD,
Secretary to the Treasury.

No. 13.

The Treasury.

Audit Office, 23rd October, 1897.

Now that I observe it to be so much deprecated by the Colonial Treasurer that I should add the reference in question to my certificate, it is equally a matter of regret to me that I am unable to see how to justify a certificate without such addition. If I could understand my duty to leave open to me any course, other than by the addition to the certificate, of securing less unsatisfactorily to the Colonial Treasurer all that I think it essentially my duty to secure, I need hardly say that I would be glad to take such course.

The fact, however, is that, whoever may be in fault, or whether any one may be in fault or not, a verification which is thought desirable by the Audit Office has not been effected; and this is a fact on which my report cannot be silent if it is not to be misleading. It is also a fact that the Mines Department has failed to comply with the requisition of the Audit Office to supply the means of such verification. Whether it is possible to effect the verification notwithstanding the failure of the Government is another question. The last paragraph of the Treasury memorandum implies that the mind of the Colonial Treasurer is not clear of doubt whether the powers already possessed by the Audit Office are sufficient to meet the difficulty which has arisen, and the evident care and circumspection with which the memorandum has been written give strength to the implication.

It was urged in the Treasury memorandum of the 16th instant that the matter might at least have been referred to the Treasury; and I, in furnishing a copy of a letter in which I had indicated the position generally to the Minister of Mines, replied that I was in doubt whether it would have been right or proper in the Audit Office to appeal to the Treasury. In that doubt I am now confirmed by the assurance that "the Colonial Treasurer does not wish to make any remarks on the matter of the difference," &c. I venture to point out, however, that the last paragraph of the Treasury memorandum, in stating that "the Colonial Treasurer thinks the better course would have been to bring the matter before him," &c., makes the Colonial Treasurer appear to be urging the very proposition of the 16th instant respecting which he "does not wish to make any remarks," &c. That I am unable to understand the paragraph but as tantamount to a repetition of what was urged on the 16th is my apology for these remarks on the point.

The "Mines Department" and "one of the departments of the State" are in the present case expressions meaning "the Government." The three expressions are synonymous. The requisition of the Audit Office upon the Mines Department is a requisition upon that department of the State for the administration of which the responsibility lies with the Minister of Mines, whose acts are the acts of the Government, which includes the Colonial Treasurer; and, consequently, "the failure of the Mines Department" is the failure of the Government, and "the conflict of one of the departments of the State with the Audit Office" is the conflict of the Government with the Audit Office.

Large as are the powers conferred upon the Audit Office by the provisions of the Public Revenues Act, those powers do not appear to me—they are not in my judgment—designed to be applied in the case of the refusal or failure of the Government itself to comply with a requisition which the Audit Office makes upon the Government, and with which compliance requires an instruction by the department to its servants to furnish a certain statement. Such is the failure which has happened, and to which I regard it as my unavoidable duty to refer in certifying that I have audited and found correct a Treasury statement or compilation founded upon accounts which require such verification as a compliance with my requisition would have enabled me to effect.

The truth is that such an instruction is required to the servants of a department as it is properly in the province of the administration to issue. For example, the Secretary to the Treasury, in addressing the Colonial Treasurer on the 18th December, 1896, respecting the refusal of the Audit Office to sanction the withdrawal of mining deposits without the lawful authority of the depositors, observed as follows: "I regret to notice that certain instructions have apparently been sent to the Receivers by the Audit Office. Officers of the Treasury should only be instructed by that department, as it is obvious that if more than one department issues instructions there is likely to arise a clashing of directions and consequent confusion in administration.—JAS. B. HEYWOOD, 18th December, 1896." And the Colonial Treasurer's communication to the Audit Office subsequently was: "I regret the Audit Office should have so little respect for public convenience as to refuse to continue a practice that has gone on for years without a single case of loss occurring. This is a piece of red-tapeism, nothing more nor less. Under what authority has the Audit Office given instructions to Treasury officers? I consider the action taken unwarranted and discourteous, and one which is bound to cause complications.—R. J. S. 30/12/96."

The Treasury contention was acknowledged by the Audit Office to be right in the abstract, though the charge against the Audit Office turned out to be one of assertion without proof and due inquiry. Another illustration of my meaning is afforded by the case in which I suggested to the Colonial Treasurer the adoption of an arrangement by which it appeared to me that economy and efficiency would be secured in the rendering of certain accounts. In that case the Colonial Treasurer indorsed the papers with the word "Seen" and returned them to me, and I understood him in doing so to be exercising a right within the province of the administration.

With regard to a proposal to consider whether the powers already possessed by the Audit Office should not be extended, I would respectfully submit that any legislation to overcome the difficulty which has arisen must be legislation introduced and promoted by the Government, to require the Government itself to do what it has failed or refused to do. If, however, compliance with the requisition is reasonably to be expected, legislation to enforce compliance would appear to be superfluous; while, on the other hand, if it is not reasonable to expect compliance, any proposal to enforce compliance would be a proposal carrying its own rejection.

I may perhaps be permitted here to refer to the representations which I have made time after time respecting the penalties incurred for breaches of the Stamp Act in failures to duly stamp receipts and orders. These penalties appear to me, as I have pointed out, necessary to the protection of the revenue, but they would seem to have, in all such cases as have led me to make my representations on the subject, fallen into disuse, or become a dead-letter. The importance of the matter is that any consequent sacrifice of stamp revenue may be at the expense of those who pay taxes in other ways than by means of stamps. I have repeatedly pressed the suggestion on the Treasury, and pressed it in vain, that all public servants should be specially informed of the provisions of the Stamp Act, and required to see that their transactions may be in conformity with those provisions, and warned that the penalties would be enforced. Yet it was but a few weeks ago that the question was submitted to Cabinet whether a voucher bearing a receipt not duly stamped should be passed; and the decision of the Cabinet was, "Payment approved," though of course the law could not be overridden in this way. On another occasion the Stamp Department itself arranged that a receipt should be written again so that it might be lawfully stamped with the duty of one penny, and did not proceed for the penalty on the ground that there was no fraudulent intention, though the penalty is not subject to any such condition. I propose again to most respectfully urge upon the Colonial Treasurer the expediency of adopting my suggestion; and if in his judgment the penalties should not be strictly enforced he will doubtless consider whether the correspondence of the Audit Office with the Government and its departments on the subject should be made public.

J. K. WARBURTON,
Controller and Auditor-General.

No. 14.

The Controller and Auditor-General.

I AM desired to state, in reply to your memorandum of the 23rd instant, that the Colonial Treasurer does not think it necessary to pursue the subject of the qualifying addition made to your certificate attached to the quarterly accounts of the colony. His opinion as to its being quite unnecessary remains unchanged.

In the memorandum now under reply you have chosen to include subject-matter entirely foreign to this correspondence.

The Colonial Treasurer ventures to express the surmise that the extreme attitude taken up by the Audit Office, and the frivolous objections raised in the matter of the failure of some few individuals to affix a penny revenue stamp to official documents, or to have such stamps cancelled in strict accordance with the law, will not redound to the credit of the Audit Office.

It must be abundantly clear that in the conduct of an enormous business, such as that of the Treasury, there are certain to be occasions when, in the interest and furtherance of the public convenience, reasonable compliance with the spirit and intention of the law may be accepted, without insisting on strict observance of the letter, so long as the revenue does not suffer. In this connection, I am to point out that section 61 of "The Stamp Act, 1882," whilst indicating specific modes of cancellation of receipt stamps, provides that it shall be sufficient if "it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time."

The Colonial Treasurer is further of opinion that a discretion should be exercised in enforcing the penalty provisions of the Stamp Act, and to do otherwise when the omission is not wilful, and the revenue does not suffer, would savour of persecution.

JAS. B. HEYWOOD,
Secretary to the Treasury.

Treasury, Wellington, 27th October, 1897.

No. 15.

The Treasury.

Audit Office, 28th October, 1897.

I REGRET that the Colonial Treasurer is unable but to express himself unchanged in the opinion that the addition to my certificate appended to the quarterly accounts is unnecessary; but my respect for the Colonial Treasurer makes it difficult for me to assume that the memorandum in which his decision is conveyed to me has received his deliberate consideration and approval.

Though the Treasury is really one of the parties to the dispute with the Audit Office in its contention that the penalties imposed by the Stamp Act cannot justifiably be suspended at the discretion of the administration, the Colonial Treasurer appears to have concluded it to be out of the region of all doubt that the attitude of the Audit Office is extreme, that its objections are frivolous, that these objections are merely to the failure of some few individuals to affix a penny stamp, or to cancel such stamps in strict accordance with the law.

One great point of the dispute is whether the contention of the Audit Office does not proceed on right principles, and it is consequently to be yet decided whether the Colonial Treasurer has any good and just ground for stigmatizing, as he now stigmatizes, the objections which the Audit Office has raised. If, under the circumstances, terms of reflection or reproach have any force, or can with propriety be used by him in addressing the Audit Office, the force or propriety is only that which would be derived as the corollary of argument. The Colonial Treasurer, however, to whom the Audit Office looks with confidence to be supported in the performance of duties of a character naturally invidious, ventures, without even the appearance of argument in support of his propositions, to assume them to have been proved, and "to express the surmise . . . that they will not redound to the credit of the Audit Office."

The more thoroughly and reliably that the Audit Office performs its duty, and the more careful that the Government is to inculcate for the service of the office the respect which it is doubtless the wish of the Government to preserve, the greater will be the care taken by the departments of administration, and the smaller or less serious the faults which the Audit Office may find, but which the office must nevertheless challenge, on the principle that notice of the smallest irregularities is necessary to obtain a proper standard of efficiency, and prevent the faults from becoming serious. Thus, the better that the service of the Audit Office is performed, the more invidious must be its duty, and the more careful the Government should be to repress any indication of impatience with the office. It is the principle that should be kept clearly in view, if there is to be a right understanding of the objections raised by the office.

A great authority tells us that "a penal statute is virtually annulled if the penalties which it imposes are regularly remitted as often as they are incurred"; and that it is evidently our wisdom "to watch with jealousy the first beginnings of encroachment, and never to suffer irregularities, even when harmless in themselves, to pass unchallenged, lest they acquire the force of precedents." If there is nothing in the Stamp Act to make the discretion of the Government paramount over all the provisions for imposing the penalties in question, the Government arbitrarily annuls these penalties by not putting them into force in every such case of a breach of the Act as is not one of those surprising emergencies in which the Governor in Council might be advised to exercise his discretion.

The following extract from one of my memoranda on the subject explains the attitude of the Audit Office: "The question is really not so much one of duly affixing a duty stamp of a penny as of a compliance with the law which has been enacted in the interests of the revenue. One bad precedent begets another, and soon the penalties of the Act may become a dead-letter, with the obvious result that the stamp duties of which the payment is induced by a fear of the penalties may cease to be paid, and that these duties may not yield the revenue that they are expected and ought to yield. And, so far as the colony must raise by taxation from other sources than stamps a revenue in addition to the stamp revenue, every such sacrifice of stamp revenue as the want of a faithful and vigorous administration of the Stamp Act may entail can only be at the expense of other taxpayers—of those who pay the land-tax, the income-tax, the Customs duties, &c. This surely is anything but a trumpery matter."

It would, I submit, be well if the questions raised by the Audit Office and the consequent discussions were to be regularly communicated in a yearly report to Parliament, in order that the Legislature might estimate the character of the questions, and judge of the consideration which they should receive.

The Treasury memorandum speaks, among other things not unquestionable, of the business of the department as being so enormous that there must obviously be "occasions" when in the interest and furtherance of public convenience no more than a reasonable compliance with the law should be expected—as if, assuming that such circumstances as these could justify the Treasury in passing over some cases of a breach of the Stamp Act, the question were that of "occasions" or exceptional cases in the Treasury, and were not that of the penalties themselves having virtually become a dead-letter, and the provisions of the statute having so far been arbitrarily suspended.

Another great point of the whole question is whether the penalties are not necessary to the protection of the revenue. The Legislature has made the penalty for giving unstamped a receipt liable to stamp duty subject to no qualification whatever; and the Treasury is not justified in assuming that the spirit or intention of the law is that there may be any qualification, or that the Treasury itself can dispense with the penalty. Yet the memorandum of the Treasury, by making the words "so long as the revenue does not suffer" conclude an enumeration of the abstract circumstances under which, in the judgment of the Treasury, exceptional cases of the remission of the penalties might be reasonable, would appear to be assuming—what the Legislature has not contemplated—that the Treasury was capable of reliably determining that the revenue cannot suffer.

I ought to observe that, though the provisions which are pointed out to me of section 61 of the Stamp Act do not apply to such a breach of the Act as the giving unstamped of a receipt liable to stamp duty, the section provides, not as it is stated by the Treasury to provide, "that it shall be sufficient if," but that "an instrument is not to be deemed duly stamped . . . unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time." The section makes only a negative provision, and it no more follows that "if it is otherwise proved, &c.," the relative instrument is to be deemed duly stamped than, to illustrate my meaning

by analogy, it would follow that a person who is not to be deemed fit to enter the army unless proved to be in good health, would, if so proved, be admissible in spite of infancy or old age, or other incapacity than the want of good health.

As to the exercise by the Government of any discretion that extends beyond advising the Governor in Council what to exercise, the conclusion must be that, as the statute does not authorise it, the Legislature does not intend it, and that if the penalties are wholly suspended and are not operating as they would operate by the carrying-out of the law in its integrity, the neglect of which this result is the consequence is unjustifiable. And, as the law stands, this conclusion would not be affected if it were possible for the Treasury to prove that the revenue does not suffer, or that an omission to stamp was wilful. And, as regards any such proceedings as "would savour of persecution" I wrote as long ago as the 17th May last, what I may well repeat here, that "if all Government officers ignorant of the requirements of the law were warned, as I have repeatedly recommended, there could be no persecution in prosecuting for the neglect of such warning, and the straining of the law could then be avoided."

J. K. WARBURTON,
Controller and Auditor-General.

MINUTES ON No. 15.

SEEN. No new argument appears to be adduced.
4th November, 1897.

R. J. S.

The Controller and Auditor-General.
THE Hon. the Colonial Treasurer has nothing to add.
5th November, 1897.

JAS. B. HEYWOOD.

The Treasury.
SEEN.
5th November, 1897.

J. K. WARBURTON.

Approximate Cost of Paper.—Preparation, not given; printing (1,250 copies), £8 18s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1897.

Price 6d.]