INTERIM REPORT

Wellington, New Zealand, 14th March, 1946.

MAY IT PLEASE YOUR EXCELLENCY,—

We have the honour to refer to the Commission directed to us by Your Excellency dated the 18th January, 1946, appointing us to be a Commission to inquire into and report upon a certain question arising out of the administration of the Government and relating to an agreement constituted by two letters of the 18th June, 1943, which passed between the Honourable Minister of Industries and Commerce and the Chairman of the Farmers' Federation.

We appreciate the importance of the question raised to the Government, the Dairy Industry, and the public generally, and we are most anxious to give the fullest effect to Your Excellency's Commission. But a difficulty has arisen regarding which we feel it to be our duty to make what may be regarded as an interim report. The difficulty is one which Your Excellency's Advisers may be able to overcome, but as at present advised we feel that a final report cannot be made until it has been overcome.

Recognizing the public importance of the question submitted to us and the necessity for a prompt report, we proceeded with our inquiry during the long vacation, commencing our work on the 24th January. Both the Government and the dairy industry were represented by counsel. No evidence was called, but voluminous documents were submitted as having a bearing upon the question involved. Counsel argued their respective viewpoints at considerable length, the argument lasting for five days.

The difficulty to which we now propose to advert was not mentioned to us by any of the counsel during the argument and did not come under our notice until discovered by ourselves during a conference a few days ago, when we had the first opportunity of meeting after finishing our circuit engagements in various parts of New Zealand. It seemed plain to us then that the agreement which Your Excellency's mandate requires us to interpret was *ultra vires* the powers of the Minister or, indeed, of the Government—*ultra vires* because it purports to provide for the disposition of moneys which by the Marketing Act, 1936, are moneys of the Crown, in a manner different from that provided for by the existing statutes and not authorized by Parliament. We searched anxiously to find some statutory provision validating the transactions provided for by the agreement. The only statutory enactment that we were able to find is contained in section 2 of the Finance Act, 1945. We regret, however, that so far as we can see section 2 of the Finance Act is not sufficient. All that it does is to permit the payment out of any account established under the Marketing Act, 1936, of such sums as the Minister of Marketing may, in accordance with agreements entered into with representatives of the industry concerned, approve as payment of or contributions towards any expenditure incurred or required to be incurred for the purpose of subsidizing the costs of the production or marketing of any goods of the class or classes in relation to which the account has been established, or for the purpose of equalizing as far as possible the net returns received or payable in respect of any such goods.

The agreement of the 18th June, 1943, constituted by the letters to which we have already referred, deals first with the payment into a stabilization account of moneys which under the Marketing Act should be paid into an account established under that Act, and then with the payment of moneys not out of any account established under the Marketing Act, but out of the stabilization account for which there is no warrant under the Marketing Act.

In these circumstances we feel great difficulty in making a report on the matter as it now stands, as we are asked to construe as a valid agreement a document which, so far as we can see, at present has no validity at all, and any report not only might be valueless in that the Government could not lawfully act upon it, but might also create great confusion.