

No. 19.

The Solicitor-General.

Does this affect your former opinion as to the legality of the debentures?—R. J. S.—
19th August, 1901.

No. 20.

Right Hon. the Colonial Treasurer.

Re Audit Office Objections.

No; but, as the matter will now have to be dealt with by the Governor, I propose to set out with some detail my reasons for thinking that the difference between the expressions "Consolidated Fund" and "public revenues" is one of form and not one of substance, and can neither affect the legality of the debentures nor be reasonably supposed to in any way embarrass or prejudice the holders.

Both the New Zealand and the Imperial Legislatures treat the two expressions as identical in meaning. In the New Zealand Loan Acts the form of the charging sections has varied from time to time. Prior to 1867 the charge was on the "ordinary revenues"; in 1867—the Consolidated Loan Act of that year—on the "consolidated revenues"; from 1867 to 1894, on the "Consolidated Fund"; and since 1894, on the "public revenues." It cannot be seriously suggested that the Legislature intended these terms to have any difference of meaning. The change of expression since 1894 was probably made in order that the charging section might correspond in terms with what I may call the saving section (commonly inserted in Loan Acts), which provides that "Nothing in this Act contained shall be constructed to alter or vary any security heretofore charged on the revenues of New Zealand." In 1896—the Aid to Public Works Act of that year—both the charging section and the saving section speak for the first time of the "public revenues." It was apparently thought that the same expression should be used in both sections, and that "public revenues" was better than "revenues," inasmuch as it pointed more clearly to the revenues of the Government as distinguished from those of local bodies. Be this as it may, however, the fact remains that in Acts subsequent to 1894, and containing the saving section, "public revenues" is treated as identical in meaning with "Consolidated Fund" and "revenues of New Zealand" in the charging and saving sections of the previous Acts, for in none of these previous Acts are securities charged in terms on the "revenues" or "public revenues"; the charge is in every case on the Consolidated Fund. If further proof of the identity were needed it may be found in this: that loans or securities charged by Act in terms on the "public revenues" may be raised or converted under "The Consolidated Stock Act, 1877," which charges them in terms on the Consolidated Fund (sections 2 and 6 of that Act).

So much for the New Zealand Legislature; and now for the Imperial. "The Colonial Stock Act, 1877," which, of course, applies to New Zealand loans, provides (section 19) that every declaration, stock certificate, coupon, &c., shall state that the "revenues of the colony alone are liable in respect of the stock," &c. The requirements of this section have been duly complied with in the case of every New Zealand loan which has been brought under the operation of the Imperial Act. This includes the bulk of our loans, and the bulk of them are charged in terms on the Consolidated Fund. It is absurd to suppose that the change from "Consolidated Fund" to "revenues" would be made in this wholesale manner unless the meaning of the terms was identical, and was recognised as such by the money-market and the investing public. And the reason of the identity is not far to find. In England, as in New Zealand, all public revenues belong to the Consolidated Fund (see, for New Zealand, section 7 of "The Public Revenues Act, 1891"), and therefore out of that fund all charges on the public revenues must be met. It may not be out of place to observe that the rigorous particularity now insisted on by the Audit Office is an entirely new doctrine, and quite in conflict with the practice of the past.

On investigation it will be found that it is not at all uncommon for debentures which by the Loan Acts are charged on the "Consolidated Fund" to be issued as charged on the "consolidated revenue." As instances, I may mention the debentures issued under the following Acts: "Defence and Other Purposes Loan Act, 1870"; "Consolidated Stock Act, 1884" (issued in 1891); Consolidated Stock Acts, 1884 and 1891 (issued in 1893); "District Railways Purchasing Act, 1885" (issued in 1894); "District Railways Purchasing Act, 1885" (issued in 1896); "Bank of New Zealand and Banking Act, 1895" (issued in 1895).