

No. 20.

DEAR SIR,—

Wellington, 16th August, 1901.

£500,000 Loan.

Replying to your letter of the 13th instant, there is no statutory authority for the payment of the interest to the Treasury. Where a sum of money is deposited with a trustee to meet a claim payable at a future time, the interest earned by that sum in the meantime reverts to the depositor by what is known in law as a "resulting trust." This rule governs the present case, and it is so well known that I feel no hesitation in acting upon it without any express authority. The Legislature, I think, must be presumed to have been fully aware of the principle, and so thought it unnecessary to direct the application of the interest produced by the £500,000 deposited with me.

Yours, &c.,

The Audit Inspector, Wellington.

J. W. POYNTON, Public Trustee.

No. 21.

Controller and Auditor-General, Wellington.

16th August, 1901.

ENCLOSED please find copy of my letter to the Public Trustee, and his reply *re* the interest on the £500,000 investment.

W. H. CARLYLE.

No. 22.

Audit Office, 19th August, 1901.

Payment to Public Account of interest received on investment of £500,000 in Debentures under "The Aid to Public Works and Land Settlement Act, 1899."

THE Public Trustee's letter of the 16th instant does not satisfy the Audit Office that the payment in question is authorised by law.

In the first place, the moneys amounting to £500,000, which have been paid to the Public Trustee under section 8 of "The Bank of New Zealand and Banking Act, 1895," are capital moneys of the trust—capital moneys which, as soon as he received them, fell into the common fund by the operation of section 29 of "The Public Trust Office Consolidation Act, 1894"; and, as no investment made from the common fund belongs to a particular trust, the interest derived from the investment does not. Even if the Public Trustee could obey the direction of the Executive authority of Government to pay to the Public Account the amount of any of the income not necessary to the purpose of the trust, it would not be the income consisting of interest derived from the Public Trustee's investment of the capital moneys, but only the income of the trust from interest to which moneys forming the common fund are entitled. And if it should be objected that the present common-fund rate would afford the trust very much more interest than the common fund derives from the investment, and could not therefore be paid without a disastrous result to the Public Trust Office, the answer is that the 3rd paragraph of section 29 provides that the Governor in Council may make regulations to meet such a case.

In the second place, the authority for the trust is not the Executive authority of Government, but only the *Legislature*, and consequently any equitable interest would result—any resulting trust would be—to the Legislature. The Legislature, in requiring that the moneys should be paid to the Public Trustee, placed them beyond the control of the Executive; and there is thus all the more reason for regarding the Legislature as the authority to which the Public Trustee should look for direction as to the disposal of any such income as the Public Trustee may not require for the purpose of the trust, and the Legislature's direction in such a case could be only by statute. So that even the operation of the common-law rule as to "resulting trusts" would seem to require statutory authority.

The capital moneys of the trust are guaranteed by the colony under the provisions of section 32 of the Public Trust Office Act, so that the purpose of the trust being only to pay £500,000 at a future date there is no necessity for the Public Trustee to retain more. The amount that he has cannot diminish. The only question is whether, without any direction from the authority for the trust—the Legislature—he can pay to the Public Account any surplus to be dealt with by the Treasury.

It may be well to add that the payment made by the Treasury in July last, of £8,750 to the Public Trustee, as for six months' interest on the debentures, is at the rate of $3\frac{1}{2}$ per cent. per annum, and that, as the rate of interest for which the debentures have been issued is only 3 per cent. per annum, the Treasury has paid, and the Public Trustee has received, too much by £1,250. The error has been pointed out to the Treasury, and should, as it no doubt will, be corrected as soon as possible.

The Public Trustee.

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

No. 23.

Rt. Hon. Mr. Seddon,

(Urgent.)

I THINK this correspondence should be submitted to the Solicitor-General, who is advising upon the question.

26th August, 1901.

JAS. B. HEYWOOD.

The Solicitor-General.

KINDLY advise hereon.—R. J. S. 26/8/1901.