

No. 24.

OPINION annexed—F. F. 4/9/1901.

(T.01/2468.)

Opinion on objections of Audit Office to Legality of the Payment of £8,745 1s. 10d. by the Public Trustee to the Treasury.

1. In my opinion the Public Trustee has ample authority in law to make the payment.
2. By isolating from their context section 29 of the Public Trust Act and section 8 of the Banking Act, the Audit Office arrives at the extraordinary conclusion that in directing the half-million to be paid over to the Public Trustee, the Legislature seriously intended that, whether he succeeded in investing it or not, he should be liable to pay interest on it at whatever rate (up to 5 per cent. on the first £3,000, and 4 per cent. on the excess) the Governor in Council liked to fix. Further, that this interest should not be paid over to the Treasury, but should be accumulated until Parliament otherwise directed; and that in the meantime the interest on the debentures—£17,500 a year—should be provided by the taxpayers out of the Consolidated Fund.
3. Of course when once the meaning of an enactment is ascertained by correct interpretation, it must be taken to be a deliberate expression of the will of Parliament, and, as such, must be given full effect to, be the consequences what they may. But a consideration of the consequences of any suggested interpretation is an excellent touchstone of its accuracy. And where, as here, the consequences are so extraordinary, a strong presumption arises that the interpretation is at fault.
4. The plain purpose of the Banking Act was to help the bank with the least possible loss to the colony. To this end the Government gave debentures for half a million to the bank, taking in return preferred shares of the face value of half a million, which carried a dividend at the same rate as the interest payable on the debentures. With the dividends the Government paid the interest, and thus the Consolidated Fund was not burdened. Such was the clear intention of Parliament as shown in sections 4 to 7 of the Act, and if further proof of it were needed it may be found in section 21 of the Amending Act of 1898, which directed that the dividends should be paid in London on the 21st June and December (ten days before the due date of the interest) without the consent or authority of the shareholders. This was the scheme whilst the shares were held by the Government.
5. By section 8, but as part of the same scheme, power was given to the bank to repurchase the shares at a price not less than the face value, the repurchase money to be paid over to the Public Trustee, and to be applied by him in redeeming the debentures at maturity, about forty years hence. All the shares have been repurchased and the Public Trustee has duly received half a million, being the full amount of the debentures. This section must not be isolated from the preceding ones, and reading them together it is, in my opinion, perfectly clear that the only effect of the repurchase is to substitute the half-million for the shares, the income derived from the half-million for the dividends on the shares, and the Public Trustee for the bank.
6. The Audit Office holds that it would require express words in the Act to authorise the Public Trustee to pay over this income. On the contrary, it would require express words to prevent him from doing so. For, quite apart from the clear intention of the Act that the income derived from the shares, or from the proceeds of the shares, should be available towards payment of the interest on the debentures, there is the ordinary principle of law and common sense that the person who is entitled to receive the income derived from any specified form of property—*e.g.*, shares—is not to be deprived of it merely because the form is changed—*e.g.*, by the shares being sold and converted into cash. The only effect of the conversion is to change the form of his income from dividends on the shares to interest on the cash when invested. In the absence of express words to the contrary, the Legislature must in the present case be deemed to have recognised this principle.
7. For these reasons I am of opinion that the Government has the same right to receive the income derived from the half-million as it had to receive the dividends on the shares—and this without any further statutory authority. It is unnecessary to comment seriously on the suggestion of the Audit Office, that because the Legislature is the authority for the trust any equitable interest or resulting trust must be to the Legislature. The terms are used with a complete misunderstanding of their meaning.
8. So much as to the power in law of the Public Trustee to pay over to the Treasury at all. It remains, however, to consider the further objection of the Audit Office: that if he has the power to pay at all, he must pay in accordance with the provisions relating to the common fund, inasmuch as, by force of section 29, the half-million fell automatically into that fund as soon as it was received by him.
9. The Public Trustee is a corporation sole, created by the Public Trust Act for the purpose of carrying on business in the ordinary commercial way as trustee, attorney, agent, &c., in cases where he is duly appointed with his consent (section 12). And he cannot be appointed unless the Board consents (section 9). Thus it would require a statute, as in the present instance, to place a fund in his hands and appoint him trustee of it without the Board's consent. Again, it would be in conflict with the Public Revenues Act, and therefore not in contemplation of the Public Trust Act, that moneys belonging beneficially to the Crown should be placed in his hands for investment. It would require a statute, as in the present instance, to authorise such a thing. Now, having regard to the nature and incidence of the common fund, I am satisfied that only such capital moneys fall into it automatically as, in the contemplation of the Act, may arise in the ordinary course of his business; and, as I have shown, the half-million is not of this description.
10. The distinctive features of the common fund are that the Public Trustee pays interest on it at a rate fixed by the Governor in Council, not exceeding in the case of each estate 5 per cent. on the first £3,000, and 4 per cent. on the excess; and that the sufficiency of the fund is guaranteed by a charge on the Consolidated Fund. The rate now in force is 4 per cent on the first £3,000 and