$3\frac{1}{2}$ per cent on the excess. This fixed rate he must pay, unless the Governor in Council reduces it. Hence, if he invests the money at a higher rate, he makes a profit; if at a lower rate, or not at all, he makes a loss. In the case of the half-million, he has invested it at 3 per cent., and, therefore, if it belongs to the common fund he is losing over £2,500 a year on it. The fact of his liability to pay a fixed rate of interest, irrespective of what he actually earns, seems to me to show conclusively that money of which he is appointed trustee by statute, without his own or the Board's consent, does not by force of section 29 fall automatically into the common fund, as contended by the Audit Office.

11. No doubt where the sole reason for excluding the money from the automatic operation of section 29 is the fact that the appointment has been made without consent, the Public Trustee may place it in the common fund if satisfied that this can be done with safety. But in such case it would be placed there by his deliberate action and not by force of the section.

12. Where, however, as in the present instance, the money is the beneficial property of the Crown, there are in my opinion special reasons for excluding it absolutely from the common fund. That the Crown should have power to itself fix the rate of interest the Public Trustee must pay on its own moneys is repugnant to reason as well as to the scheme of the common fund. Such a power would be unfair to the Public Trustee, dangerous to the Public Trust Office, and demoralising to the Government itself. Moreover, the other essential feature of the common fund—the State guarantee—would be a nullity in the case of such moneys, inasmuch as the Crown would be guaranteeing itself.

13. For these reasons I am of opinion that on the law as it stands the half-million cannot legally belong to the common fund at all, but must be separately invested under the general powers conferred on the Public Trustee by section 56 of this Act. His duty is to invest it as best he can on the authorised securities, and pay over to the Treasury the actual interest earned, less the expenses, &c., incurred. This he has done. The cost of the cable to which the Audit Office objects appears to be a legitimate expense. Indeed the sole ground of the objection is that the capital belongs to the common fund. The correction referred to in the last paragraph of the minute of the Audit Office can be made by the Treasury. It does not affect either the legality or the amount of the payment made by the Public Trustee.

FRED. FITCHETT,
Solicitor-General.

Crown Law Office, 4th September, 1901.

No. 25.

Rt. Hon. Colonial Treasurer.

SHALL a Warrant be now asked for?

12th September, 1901.

JAS. B. HEYWOOD.

No. 26.

YES, issue Warrant. It is quite clear that the Controller and Auditor-General is in error in his interpretation of the law.—R.J.S. 13/9/01.

No. 27.

(T.01/2468.) Wellington, 16th September, 1901.

HIS Excellency the Governor is respectfully advised to sign the attached instrument determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a question in dispute between the Audit Office and the Treasury.

R. J. SEDDON

Signed.—R. 18/9/1901.

RANFURLY, Governor. (T.01/2468.)

WHEREAS by section nine of "The Public Revenues Act Amendment Act, 1900," it is provided that in case any difference in opinion arises between the Audit Office and the Treasury as to the proper head of revenue, fund, or account to which any receipt should be credited, the question shall, if in the opinion of the Audit Office it involves questions of law, be determined by the Governor, having before him the opinion of the Attorney-General thereon: And whereas such difference of opinion as aforesaid has arisen as to the account to which interest received or to be received from the Public Trustee in respect of the £500,000 held by him under the provisions of section 8 of "The Bank of New Zealand and Banking Act, 1895," and which amount is at present invested in debentures issued under "The Aid to Public Works and Land Settlement Act, 1899," should be credited:

Now, therefore, I, Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, in exercise of the hereinbefore recited powers, and having before me the opinion of the Solicitor-General, do hereby determine the said question by deciding that the said half-million does not belong to the common fund of the Public Trust Office, but is the subject of special investment by the Public Trustee, and that the interest earned thereon is properly payable to the Treasury, and should be credited to the Consolidated Fund, Miscellaneous Revenue Account.

Given under the hand of His Excellency the Governor, at the Government House, at Wellington, this eighteenth day of September, one thousand nine hundred and one.

R. J. SEDDON.