

what is necessary to give effect to such determination, and will in ordinary course lay before Parliament, in accordance with the Public Revenues Act, the correspondence on the subject.

To the proposal of the Treasury to credit public revenue with the amount paid out of the Public Account for the interest on the debentures, "the sole ground of the Audit Office objection is that the capital belongs to the common fund." The question, therefore, which has arisen here is not whether the *income to which such statutory trust is entitled* may be paid by the Public Trustee to the Treasury, but only whether *the interest received by him on his investment* of the trust fund belongs to the trust or to the common fund. If the legal income of the trust is the common fund rate of interest, as regulated by the Governor in Council under section 29 of the Public Trust Office Act, then there can be no doubt that legally *the interest paid to the Public Trustee on the investment* cannot be repaid to the Public Account *without fresh statutory authority*, even if the only effect of the repurchase of the shares has been to substitute the half million for them.

"The Public Trust Office Consolidation Act, 1894," provides as follows:—

"2. In this Act, if not inconsistent with the context, the expression 'instrument' includes an Act of the General Assembly.

*"Investments.*

"29. Subject as is provided by section thirty of this Act, all capital moneys, however arising, whether before or after the coming into operation of this Act, and whether directed to be invested or not, shall, unless expressly forbidden to be invested, become one common fund, and such moneys shall be invested as provided by section thirty-one of this Act; and any investments made from such common fund shall not be made on account of or belong to any particular estate.

"The interest payable to the respective estates the moneys of which shall form such common fund shall be at a rate to be from time to time determined by the Governor in Council, and such rate of interest shall be credited to the respective estates quarterly—namely, on the first day of January, on the first day of April, on the first day of July, and on the first day of October in each year. On the moneys arising from one estate no rate shall be allowed higher than five pounds per centum per annum on an amount not exceeding three thousand pounds, and on any amount exceeding three thousand pounds not higher than five pounds per centum per annum on the first three thousand pounds, or higher than four pounds per centum per annum on the excess:—

"Provided always that the Governor in Council may, subject to the limitations aforesaid as to the rate of interest, make regulations as to the payment or non-payment of interest upon moneys belonging to any estate, and as to the period from which interest, if allowed, is to be computed, as he thinks proper."

These provisions are expressed in language so plain as to carry its own interpretation. Section 56 operates only to strengthen them. The proviso in the third paragraph was designed to meet precisely such a case as that of the trust in question; and it appears to the Audit Office to serve the purpose perfectly.

Now, the half-million is an amount received by the Public Trustee of trust moneys which, arising under an instrument as defined by the Public Trust Office Act, are not directed to be invested. The only material difference between this statutory trust and the statutory trust under section 5 of "The Government Loans to Local Bodies Act Amendment Act, 1892," is that in the latter case the statute directs that the funds shall be invested specially; and such direction is known to have been suggested as one which would serve the purpose of such a special direction as to investment as would keep the funds of the statutory trust from becoming common fund of the Public Trust Office.

The Public Trustee accordingly let the half-million go to form common fund. His accounts show that he has invested the amount as that of moneys of the common fund. From his statutory accounts, and from his report of the 31st March, 1901, which has been presented to Parliament as Paper H.-12 of the present session, it is to be seen that the investments of the common fund include the investment of the half-million. Thus, according to the Acts of administration, as well as according to law as understood by the Audit Office, the interest which the Public Trustee has paid back to the Treasury belongs, not to the public revenue, but to the common fund of the Public Trust Office.

It was for the Public Trustee, as soon as he received the half-million and placed it in the common fund, to move the Government to have the payment or non-payment of interest regulated as the circumstances required; for he could then have ascertained what interest or whether any interest was to be paid to him on the debentures representing his investment, and what interest or whether any interest could profitably be afforded to the trust as the rate to be allowed on its capital moneys in the common fund.

If the Treasury pays on the debentures interest which the Public Accounts are to show as expenditure passing through the Public Trust Office to the credit of the revenue of the colony, one of the effects of the repurchase of the shares is simply to inflate such revenue by the payment to it of the colony's own expenditure. It would be far less objectionable if, when such interest is repaid to the Public Account, the amount were put back to the credit of the appropriation to which the payment is charged, or if, going through the form of law, the Governor in Council were to allow no interest to the Trust Fund, and the Government were at the same time to arrange that no interest should be paid to the Public Trustee on the debentures.

It can only weaken the argument against the objection of the Audit Office to suggest that the Governor in Council would so exercise his power of regulating the rate of interest as to cause any *extraordinary consequences*; or that he would regulate such rate of interest without regard to the circumstances; or that the words of section 29, "all moneys however arising," exclude moneys placed in the Public Trust Office by any instrument under the Public Trust Office Act; or that the State guarantee to moneys in the Public Trust Office, applicable to the redemption of debentures of the colony, would be a nullity.