

No. 9.

The Solicitor-General.

(T. 01/2497.)

OBJECTION of Audit Office referred for your opinion. As regards the interest payable upon the first coupon, the amount, in accordance with agreement with the purchaser, is computed as from the 14th April to the 1st November, 1901, the instalments of purchase-money being paid to the Public Account, £5,000 on 7th May, and £5,000 on 10th May, 1901.

The present objection of the Audit Office to countersign ten debentures of the total value of £10,000 comes somewhat as a surprise, because the Controller and Auditor-General raised no objection to countersign 322 debentures of a total value of £130,000 of the same issue, and carrying interest from a date prior to the lodgment of the purchase-money to the Public Account. These debentures have been duly countersigned, and have been issued to the purchasers.

10th October, 1901.

JAS. B. HEYWOOD.

No. 10.

Right Hon. the Colonial Treasurer.

Re *Objection by Audit Office to Ten Debentures under "The Land for Settlements Consolidation Act, 1900."*

1. THE question in this case is the same as the one determined by His Excellency by Warrant of the 14th August. The difference pointed out by the Audit Office is one of detail, and not of principle. The Acts do not in any way fetter the Treasurer's discretion as to the mode of selling the debentures, and it is manifest that concessions which would be legal if granted by public tender do not become illegal merely because they are granted by private contract. The Audit Office appears to recognise this, for, whilst mentioning the difference, it does not treat it as affecting the question in issue.

2. In this case, as in the previous one, I am of opinion that on the true construction of the section limiting the yearly rate of interest which his purchase-money is to yield to the purchaser the limit is not exceeded, and consequently the Audit objection is not sound, and the debentures are legal.

3. My reasons are set out in my minutes of the 12th August and 17th September, to which I beg to refer you, as they apply fully to the present case. You are aware that the latter minute was rendered necessary by the Controller's minute to you on the 26th August, which varied the form of his original objection, and did not come to my notice until I saw it in the Parliamentary Paper B.—19A. For your convenience I quote so much of it as deals with the matter:—

"But, as to the objection itself, the debentures have been purchased at the price of £100 for every £100 named in them, and they are to yield, as interest to the purchaser on the purchase-money, the amount that the rate of 4 per cent. per annum would so yield if the purchase-money had been paid for three whole years. The question thus is simply whether the debentures which so yield that amount of interest do not yield a higher rate of interest than 4 per cent. per annum to the purchaser whose purchase-money is paid for a period of less than three whole years—whether, in short, the amount of interest at the full rate of 4 per cent. per annum will not be greater for a period of three whole years than for a shorter period.

"It is not to the point to refer to any loan such as that of 1879, or that of 1899, where the loan is issued to bear interest at a rate lower than the rate to which the purchaser is limited by the Loan Act, and the concessions are not calculated to result in a sale at a price that could yield to the purchaser more interest than such limit would allow. There may have been one case, or even more than one, of the limit having been exceeded. But the Audit Office does not know that what has been done in the present case is in strict accordance with established usage and practice either in New Zealand, or in other countries limited like New Zealand by statute as to the rate of interest, and cannot but object to any such limit or degree of concession as may be beyond the limit of the statute.

"If the sale of the present debentures at the price equal to the nominal value had been a sale at that price of debentures bearing interest at the rate of $3\frac{1}{2}$ or even $3\frac{3}{4}$ per cent. per annum, instead of 4 per cent. per annum, the concession made as to payment of the price would not have resulted in the debentures yielding so much as the rate of 4 per cent. per annum to the purchasers on their purchase-money."

4. This minute of the Controller's is somewhat belated, coming as it does after the objection as originally raised had been disposed of by His Excellency. But there it is, and I quote it because it shows in what sense the Audit Office desires its present objection to be understood. It is fully dealt with in my reply of the 17th September, and, so far as concerns the legality of the present debentures, I have nothing to add to my reasons as set out there in my previous minute of 12th August.

FRED. FITCHETT,
Solicitor-General.

Crown Law Offices, 2nd October, 1901.

No. 11.

PREPARE and submit Warrant for His Excellency.—R. J. S. 9/10/01.

No. 12.

IN EXECUTIVE COUNCIL.

(T. 01/2799.)

HIS Excellency the Governor is recommended to sign the attached Order in Council determining, under section 53 of "The Public Revenues Act, 1891," a matter in dispute between the Audit and the Treasury—viz., the interest payable on the first coupons of ten debentures under "The Land for Settlements Consolidation Act, 1900," which, the Audit Office contends, will result in yielding to the purchaser a higher rate of interest on the purchase-money than the maximum rate authorised by the Act.

R. J. SEDDON.

APPROVED in Council.—R. 21/10/1901.

ALEX. WILLIS, Clerk of Executive Council.