

1901.
NEW ZEALAND.

PUBLIC ACCOUNTS COMMITTEE

(REPORT OF ON PAPER No. 59: CORRESPONDENCE BETWEEN AUDIT OFFICE AND TREASURY IN FIVE CASES UNDER SECTION 9 OF "THE PUBLIC REVENUES ACT, 1900," TOGETHER WITH EVIDENCE ON TWO CASES).

(MR. FISHER, CHAIRMAN.)

Report brought up 22nd August, 1901, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 3RD DAY OF JULY, 1901.

Ordered, "That a Committee, consisting of ten members, be appointed to examine into and report upon such questions relating to the Public Accounts as they may think desirable, or that may be referred to them by the House or by the Government, and also into all matters relating to the finances of the colony which the Government may refer to them; five to be a quorum: the Committee to consist of Mr. J. Allen, Mr. Fisher, Mr. W. Fraser, Mr. Graham, Mr. Guinness, Mr. Morrison, Mr. Palmer, Captain Russell, Hon. Sir J. G. Ward, and the mover."—(Rt. Hon. R. J. SEDDON.)

WEDNESDAY, THE 10TH DAY OF JULY, 1901.

Ordered, "That Paper No. 59, Audit Office and Treasury Department: Correspondence in reference to decisions under 'The Public Revenues Act Amendment Act, 1900,' be referred to the Public Accounts Committee."—(Rt. Hon. R. J. SEDDON.)

REPORT.

PAPER No. 59, AUDIT OFFICE AND TREASURY DEPARTMENT: CORRESPONDENCE IN FIVE CASES UNDER SECTION 9 OF "THE PUBLIC REVENUES ACT, 1900."

THE Public Accounts Committee, to whom was referred Paper No. 59, having duly considered the same, have the honour to report as follows:—

Case 1.—That this Committee see no reason for proceeding any further in this matter.

Case 2.—That the Committee see no reason for proceeding any further in this matter.

Case 3.—That the Committee see no reason for proceeding any further in this matter.

Case 4.—That, in the opinion of this Committee, the action of the Controller and Auditor-General was unnecessary, as the moneys were properly paid into the Treasury.

Case 5.—That no action is deemed necessary.

22nd August, 1901.

MINUTES OF EVIDENCE.

WEDNESDAY, 31ST JULY, 1901.

JAMES KEMMIS WARBURTON, in attendance and examined. (No. 1.)

The Chairman: The case for the consideration of the Committee is case 4, which will be found on page 9 of the printed paper, B.-19, relating to the payment of £5,657 10s. 6d. interest on £500,000, Bank of New Zealand preferred shares redeemed. The Controller and Auditor-General is present. Does any member of the Committee wish to examine him?

1. *Rt. Hon. R. J. Seddon.*] Have you anything to add to what you have stated in the printed correspondence on this case?—No.

2. *Mr. J. Allen.*] There is a particular clause in "The Bank of New Zealand and Banking Act, 1895," referred to—subsection (2) of section 8. Will you read the whole section?—“(1.) The bank may from time to time, within six years after the issue of any such preferred shares, and on giving twelve months' notice of its intention so to do, repurchase from Her Majesty all or any of the shares so issued, at a price equal to the nominal amount thereof, *plus* the amount of all dividends accrued and unpaid in respect thereof up to the time of the payment of the price; and upon payment of the price therefor, all such repurchased shares shall be surrendered to the bank, and be available for reissue as hereinafter provided. (2.) All moneys received for the said repurchase of such shares shall be paid to the Public Trustee, and applied by him to the redemption, when due, of the securities authorised to be issued by section 7 hereof.”

3. What is your interpretation of the words "all moneys received"?—The Audit Office interprets them as meaning "a price equal to the nominal amount thereof, *plus* the amount of all dividends accrued and unpaid in respect thereof up to the time of payment of the price.”

4. Was this paid over to the Public Trustee?—The nominal amount was.

5. Including interest?—No, not interest.

6. You say it should have been paid to the Public Trustee?—The Audit Office says it should have been so paid.

7. What was the rate of interest paid by the colony for this £500,000?—3½ per cent., as far as I recollect.

8. The bank repaid it back on repurchasing the shares?—Yes; that is, the bank paid the dividend on the shares up to the date of repurchasing them.

9. *Rt. Hon. R. J. Seddon.*] Was the money received for the shares the bank redeemed paid to the Public Trustee?—Yes; £500,000 at that price.

10. The £500,000 was handed to the Public Trustee?—Yes.

11. And the amount of the interest was all paid to the Treasury?—Yes.

12. *Mr. J. Allen.*] What has become of the £500,000 paid to the Public Trustee?

Rt. Hon. R. J. Seddon: That is not the question before the Committee.

Mr. J. Allen: I say it is.

Rt. Hon. R. J. Seddon: We are inquiring whether the Order in Council was properly issued in relation to the matter in dispute between the Treasury and Audit Office as to the payment of £5,657 10s. 6d. interest—whether it should have been paid to the Public Trustee or paid into the Consolidated Fund. If you are to be permitted to inquire into the disposal of the £500,000—if, in fact, this is to be a "fishing" concern, then we shall not know where we are to stop. I say the inquiry is as to whether the Audit Office is right in its contention with regard to the payment of the £5,657 10s. 6d.

Mr. J. Allen: I say that these two sums are held by the Audit Office to be one sum, and they should both be held as moneys received on account of the repurchase of these shares; that both the £500,000 and the £5,657 10s. 6d. should be paid over to the Public Trustee, and therefore we are justified in assuming that they are one sum, and are entitled to ask what has become of the £500,000. We are entitled to know whether the Public Trustee is still holding that £500,000, or what has become of it—whether he is holding the money for the redemption, when due, of the securities authorised to be issued by section 7 of the Act.

Rt. Hon. R. J. Seddon: I submit that that does not come within the scope of the present inquiry, and I would ask the Chairman to give his ruling on the point.

The Chairman: I understand Mr. Allen's question to be this: After the £500,000 was paid to the Public Trustee, how has he invested it? On a cursory examination of the correspondence I must hold that that question is not involved.

Mr. J. Allen: I understood that it was before the Committee.

The Chairman: Where is it mentioned in the correspondence?

Mr. J. Allen: In the first paragraph.

Mr. Morrison: Mr. Allen is now raising a question which was before the Committee at its last meeting, and it was then decided that the question which the Committee had to determine was, whether the interest on the original amount should have been paid to the Public Trustee, or whether it should be paid in the ordinary course into the Consolidated Fund. It was considered advisable to postpone the matter, and to make it the first order of business at this meeting, and that Mr. Warburton and Mr. Heywood should be asked to give evidence on the point. The question of the disposal of the £500,000 was never involved, and I hold that Mr. Allen's argument is not upheld by this correspondence. The statute distinctly lays down that all moneys received for the repurchase of the shares shall be paid to the Public Trustee, and applied by him to the redemption, when due, of the securities authorised to be issued under the Act. I hold that after the Public Trustee received the £500,000 the shares were, in a manner of speaking, liquidated.

Mr. Allen : What about the inscribed stock ?

Mr. Morrison : You have no right to discuss the inscribed stock here. What we have to consider at present is, whether the interest at $3\frac{1}{2}$ per cent. on the £500,000—viz., £5,657 10s. 6d.—was correctly received by the Treasury and paid into the proper account, or whether it should have been paid to the Public Trustee.

Rt. Hon. R. J. Seddon : As far as I am concerned, if this were a "go-as-you-please" business I should not have raised this question. It would not be to my interest as Treasurer to do so; but I say we are not here trying the Public Trustee as to how he has invested this £500,000. He has received the money, and it is to be held by him for the redemption of the securities. I say we are not here to try the Public Trustee, for that is what Mr. Allen is trying to get at. He can do that either in the Committee or in the House; but it is not the question which is before us now.

13. *Mr. Fraser*.] What Mr. Allen said would be quite right if this Public Accounts Committee were to be of any real service in inquiring into the Public Accounts of the colony; but it has been settled by Chairman after Chairman that we have no right to inquire into anything except what is absolutely placed before us. So it is only "beating the air" to contend as he does that we should inquire into the disposal of these moneys. I think the Public Accounts Committee should have power to inquire into everything connected with the Public Accounts; but we are in this unfortunate position: that our powers are restricted, and we have to be bound by that restriction, and it is no use now to try and follow up that inquiry. But what I want to know is whether the Audit Office has taken its stand in this matter on the strict letter of the law. Is that so, Mr. Warburton?—Yes.

14. How is the Government going to pay the interest on this sum in future? Is it to be paid by the Public Trustee or is the Government going to pay it?—I have not considered that question.

15. I think it a right question to ask, who is to find the interest in the future? This £500,000 worth of $3\frac{1}{2}$ -per-cent. debentures were given to the bank in exchange for preference shares. The bank sold these debentures and has regularly paid to the Government the interest on the £500,000, thus enabling the Government to pay to the holders of said debentures the interest due to them. Whence will the Government derive this interest in the future? Do you hold that the Public Trustee would be entitled to pay the interest or would the Government have to pay it?—I have not considered that point.

16. Is it not a fact that the law would have to be altered to allow of this interest being paid? The Government has paid the interest in the past; but how about the future? Does the law enable the Public Trustee to deal with the revenue from the money which has been paid to him as interest on the amount originally advanced—does it enable him to use it in payment of the interest?—There is no statutory authority for him to do anything else than keep it for the redemption of the securities.

17. Then it would be necessary that the law on this point should be altered to enable the Government to get the interest from the Public Trustee?—That is not a point which I have considered.

18. You would rule that in order that it could be done there should be an alteration of the law?—That is a matter for further consideration.

19. That is to say, you only act in strict accordance with the law?—Yes.

Mr. J. Allen (to the Chairman) : Then you refuse to put my question?

The Chairman : Yes. I have ruled that Mr. Allen is debarred from putting his question because it involves a question which is not pertinent to the correspondence which the Committee has to consider at present. Does any member of the Committee wish to ask any further question?

Mr. J. Allen : It is no use asking questions. The Committee is a perfect farce. We cannot get the information we want. I wanted to know what had become of the £500,000 after it had been paid to the Public Trustee—how he had invested it—but I am precluded by your ruling from putting the question. You allowed Mr. Fraser to put a question with regard to the interest, which is exactly of the same sort as that which I put.

Rt. Hon. R. J. Seddon : I have nothing further to ask Mr. Warburton, but I should like to hear Mr. Heywood as to his reason for disputing the decision of the Audit Office.

JAMES BARNES HEYWOOD, Secretary to the Treasury, in attendance and examined. (No. 2.)

20. *Rt. Hon. R. J. Seddon*.] If the £5,657 10s. 6d. had been paid to the Public Trustee, he would immediately have had to give a cheque and pay it back to the Treasury, would he not?—That was the course which it was understood would be pursued: if we paid the money to the Public Trust Office it would at once be handed back to the Treasury.

21. By what authority?—I have nothing to do with the administration of the Public Trustee's office. He manages his own business.

Rt. Hon. R. J. Seddon : He occupies the position of the shareholders, which carries with it the obligation of paying the interest on the £500,000 advanced by the colony. He holds the £500,000, so that when the time comes he can redeem the shares.

22. *Mr. Fraser*.] That is merely splitting straws. At all events the *modus operandi* would have been that you would have paid a cheque to the Public Trustee and he would have paid back a cheque to you?—Yes; that would be so with regard to this sum of £5,657 10s. 6d. That is the amount which the bank had to pay, and we were only recipients from the bank of these moneys.

23. Then how would you pay it to the Public Trustee?—It was not our intention to pay it to the Public Trustee, but the Audit Office said it would have to be so paid. My opinion is that the £500,000, having been paid to the Public Trustee, the liability to pay further moneys in connection with the transaction, so far as we were concerned, closed. The Public Trustee has nothing more to do with the £500,000 than to find the money at the time the stock falls due. He has no

more money to find than the £500,000; therefore if we paid him the £5,657 10s. 6d. in addition he would have that amount in addition to hand over. That being the case, I consider it is not right he should have more than the original sum which the Act provides for. Therefore, if we handed a cheque to him for this amount he would at once hand it back to us. Of course all he is concerned with is the £500,000.

24. *The Chairman.*] How long have you been in the Treasury, Mr. Heywood?—Going on for thirty years.

25. How long have you been Secretary to the Treasury?—About nine or ten years.

26. How is it that you and the Auditor-General never agree on questions affecting the Treasury?—Well, I think that is making an assertion without due consideration. Mr. Warburton and myself are on perfectly good terms, and if we disagree at all, it is only officially that we disagree. I may say that, if the Committee hears that we are constantly disagreeing, such is not the case, as we constantly agree.

27. You do not answer the question. Why do you always disagree?—With all due respect, I say we do not always disagree.

28. *Mr. Fraser.*] Coming back to the matter which we have before us now, I would ask you whether you disagree with the Auditor-General's reading of section 8 of "The Bank of New Zealand Act, 1895"? What is the strict meaning of that law?—I should like to reply that the question, having been referred to the Solicitor-General by the Treasury, we are always guided by his opinion, and I should not like to give an opinion of my own on a question of law which he has given an opinion on. He gave his interpretation of the section, and the Treasury accepted that interpretation.

29. Do you think, where the law says that the money shall be paid to the Public Trustee, the law is complied with by the money being paid to the Treasury, instead of the money being paid to the Public Trustee direct?—Of course, I can only say that my interpretation of the law would be what I thought was the intention of the Act; but my opinion as a layman might be utterly wrong as regards the reading of the law by a lawyer. It appears to me that the intention of the law was that the sum of £500,000—the liability incurred for the bank—should be paid over to the Public Trustee. That has been done, and, in my opinion, that is clearly the intention of the law.

30. Did it comply with the strict letter of the law?—You have the interpretation of the law by the Solicitor-General, and as against that I cannot advance an opinion of my own, which would not be of the slightest value.

Rt. Hon. R. J. Seddon. He has expressed an opinion in the correspondence, and the question now is whether he will alter that opinion.

Mr. Fraser. He has expressed an opinion in the correspondence.

Mr. Heywood. I said I would not express an opinion on the law after the Solicitor-General had given his opinion. The matter on which I expressed an opinion in the correspondence is a totally different one from the present one, as you will see if you look at No. 3, page 9, of the correspondence.

Mr. Fraser. What I wanted to show was, that the Auditor-General was perfectly right in his objection on the strict letter of the law.

31. *Rt. Hon. R. J. Seddon.*] No. 5 is the one on which Mr. Heywood relies. Is it not so?—That is so. It has nothing to do with the Public Trustee. The opinion expressed there is my opinion at that time, and I have not altered it since.

32. *Mr. Fraser.*] The Treasury has to find the interest on the £500,000 of the public creditor: has it not?—Yes.

33. The Treasury has to pay in the future 3½ per cent. on £500,000 inscribed stock in half-yearly payments?—Yes.

34. How is the Treasury to pay it?—Out of the Consolidated Fund.

35. Do you think that is right?—It cannot help itself if it is not recouped.

36. As the Public Trustee will keep in his account the accumulation of interest?—That would be entirely wrong.

37. What power has the Public Trustee to pay that interest?—I cannot give you information as to how the Public Trustee pays over money, except that he does it in his own way, presumably in accordance with law.

38. *Mr. J. Allen.*] Do you think there is an amendment in the law required to provide that if the Public Trustee receives the interest on the £500,000 he should pay it into the Consolidated Fund to meet the interest on the inscribed stock?

Rt. Hon. R. J. Seddon. What has that to do with the question?

39. *Mr. J. Allen.*] It has everything to do with it. I ask whether he thinks an amendment of the law is required to enable that to be done?—I reply to that, that if there is a real difficulty in the payment or in the receipt of the money the law should be amended.

40. Will there be any difficulty?—I cannot, of course, say that until the occasion arises.

41. Take the question of the £5,657 10s. 6d. If that is paid into the Treasury, and the Auditor-General maintains that it should be paid to the Public Trustee, and it is so paid, under what authority can the Public Trustee pay it back into the Consolidated Fund?—I cannot answer that question, for it is a matter of administration by the Public Trustee. I do not know what authority there is, but I do not think there would be any difficulty. The Public Trust Office has its own system of administration.

42. But you are Secretary of the Treasury of the colony, and surely you are acquainted with all these things?—Not with the administration of the Public Trust Office.

43. Surely you are acquainted with the law as far as it affects the finance of the colony?—Not with the law connected with the administration of the Public Trust Office.

Rt. Hon. R. J. Seddon. Has there been any question raised yet before the Committee as to what is to be done in regard to the payment of the interest?

44. *Mr. J. Allen.*] This question of the £5,657 10s. 6d. is a question of interest. I ask Mr. Heywood whether he thinks the law is sufficient now, or whether an amendment is necessary in relation to the payment of interest?—I am inclined to think that as we have got into this difference of opinion between the Treasury and the Audit, it would certainly be better if it were straightened out.

Mr. Fraser : In No. 11 of the correspondence (page 10) Mr. Heywood says that if the Public Trustee "receives from the bank more than sufficient to meet the securities, the surplus would consequently be payable by him into the Public Account. It is true that the Act makes no express provision for this. It also makes no express provision for the disposal of the accumulation of interest on sums received by the Public Trustee from the bank as purchase money." That is the very thing I am raising just now. This No. 11 is signed by yourself, and you refer to the accumulations of interest as well as to the paying of interest. One would like to see the matter put straight, so that there should be no difficulty in the future.

The Chairman : We cannot consider that question now. Will some member move a resolution?

Mr. J. Allen : I move, "That the Committee is of opinion that it is necessary that the law should be altered to provide for the payment of the interest received by the Public Trustee on account of the £500,000 which he has received from the bank to the Consolidated Fund to meet the interest on the inscribed stock."

Rt. Hon. R. J. Seddon : I can only say that I know positively that the Public Trustee does not consider there is any necessity for an amendment of the law, and he is fully warranted in paying the interest; and if this money had been paid to him he would have simply given a cheque and paid the amount back to the Treasury. If he reckons he has power to pay the interest in the future to the Treasury, there is no necessity for an amendment of the law. If there is proved to be a necessity to make a change, we shall be justified in doing so, and I shall be only too glad to help you in making the change. In fact, it will be in my own interest as Treasurer, for if the Public Trustee cannot return the interest I shall have to find it.

Mr. J. Allen : If that opinion had been put before us by the Public Trustee I should not have raised any objection.

Mr. Fraser : The Premier says that we do not want an amendment of the law, but I think we certainly do. Let us get rid of this constant interference of the Governor in disputes between the Treasury and the Audit Office.

Rt. Hon. R. J. Seddon : I move, "That the resolution be postponed until we hear the Public Trustee."

Resolution postponed.

WEDNESDAY, 14TH AUGUST, 1901.

JOSEPH WILLIAM POYNTON, Public Trustee, in attendance and examined. (No. 3.)

1. *Rt. Hon. R. J. Seddon.*] You are Public Trustee of this colony?—Yes.

2. Some time ago you received £500,000 on account of the preference shares of the Bank of New Zealand?—Yes.

3. Are you aware that there is some money coming on that account?—There are dividends on the shares.

4. Did you receive that money?—No.

5. Are you aware where the £5,657 10s. 6d. dividend went?—To the Government.

6. Had it come to you what would you have done with it?—I would have handed it over to the Government. It belonged to the Government.

7. *Captain Russell.*] What does "belong to the Government" mean?—It belongs to the Government because if a sum of money is deposited the person with whom it is deposited holds all future accumulations in trust for the depositor.

8. *Rt. Hon. R. J. Seddon.*] Presuming that this £5,657 10s. 6d. interest had been paid to you, what would you have done with it?—I would have kept it until the Government demanded it. All the accumulations on the £500,000 belong to the Government. I am only concerned with the £500,000.

9. Presuming the money had been handed to you, you would have paid it back to the Treasury?—I would have done so. It belongs to the Government, and I informed the Treasury to that effect in March last.

10. There is interest accumulating on that £500,000?—Yes.

11. What would you do with that interest?—Pay it to the Government. It belongs to the Government. If they wish to leave it with me I will take charge of it.

12. On what authority?—The Act does not say what is to be done with the accumulations; but the ordinary rule of law is that the accumulations belong to the person who has deposited the money. Any work on equity will show you that there are different sorts of trusts. If, for example, I convey a property to a trustee to meet a future claim, or to do something with that property in, say, twenty or thirty years' time, all the net accumulations on the property, in the meantime, come back to me. The law is so clear on that point that every lawyer knows it.

13. Could you quote any authorities on the subject? We want to know the legal position?—I may refer you to Lewin: "Law of Trusts," page 155, 2nd edition, where it is laid down: "Resulting trust—where an estate is devised to A and his heirs to pay testator's debts and there is a surplus, this surplus results to testator's heirs." Again, in Story, "Equity Jurisprudence," 2nd edition, pages 824, 825, the words are: "Another form in which a resulting trust may appear is where certain trusts . . . are fully executed and yet leave an unexhausted residuum. In all such cases there will arise a resulting trust to the party creating the trust." In the same book, at

page 828, the following appears: "The same principle applies to cases where the whole of the estate is conveyed or devised, but for particular objects and purposes, or on particular trusts. In all such cases if those objects or purposes or trusts, by accident or otherwise, fail and do not take effect, or if they are all accomplished and do not exhaust the whole property, then a resulting trust will arise for the benefit of the grantor or devisor or his heirs." In *Cooke v. Smith* (45 C.D., page 38) it is laid down: "When a deed assigns the property of the debtor to trustees to pay debts, and does not expressly provide for the payment of the surplus to the debtor," there is a resulting trust of such surplus to the debtor. In fact, any work on equity will give you any number of such cases. The principle is that where there is a surplus beyond the amount required, that surplus reverts to the person who has paid the money.

14. Have you read the papers in reference to this matter?—Yes; I have read Parliamentary Paper B.—19.

15. You will have noticed that, in one opinion given by the Solicitor-General, he reads in certain words which are not in the Act. He reads them in so as to make clear the intention of the Legislature. Is there any authority for that?—Yes; there is authority for it. I should not think it necessary to read in the words, the principle governing trusts is so well known; but in "Broom's Legal Maxims," 6th edition, page 498, you will find this passage: "He who too minutely regards the form of expression takes but a superficial, and, therefore, probably an erroneous, view of the meaning of an instrument." In construing a deed every part of it must be made, if possible, to take effect, and every word must be made to operate in some shape or other. "The construction likewise must be such as will preserve rather than destroy": Lord Brougham, *Langston v. Langston* (2 Cl. and Fin.). "The Judges ought to be curious and subtle to invent reasons and means to make Acts effectual according to the just intent of the parties": Crossley *v. Scudamore*, *Mosely v. Motteux* (10 M. and W., page 533). "They will not therefore cavil about the propriety of the words, when the intent of the party appears, but will rather apply the words to fulfil the intent than destroy the intent by reason of the insufficiency of the words": 1 Plow, 159, 160, 162. "When a Court of law can clearly collect from the language within the four corners of a deed the real intention of the parties, they are bound to give effect to it by supplying anything necessarily to be inferred from the terms used": *Gwyn v. North Canal Company* (L.R., 3 Ex., 215). "It is an established rule when construing a statute that the intention of the lawgiver and the meaning of the law are to be ascertained by viewing the whole and every part of the Act. . . . If it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant; and it is a sound general principle in the exposition of statutes that less regard is to be paid to the words used than to the policy which dictated the Act: as if land be vested in the King and his heirs by Act of Parliament, saving the right of A, and A has at that time a lease of it for three years, in this case A shall hold it for his term of three years, and afterwards it shall go to the King": *Hine v. Reynolds* (2 Scott N.R. 419). "It is by no means an inconvenient mode of construing statutes to presume that the Legislature was aware of the state of the law at the time they passed": *Jones v. Brown* (2 Exch., 332). These are principles that would be considered in construing legislation with regard to trusts.

16. Then, the clause in the Bank of New Zealand and Banking Act, which says that the £500,000 may be paid over to you, being silent in respect to the disposition of the interest upon the debentures, you consider that it would have been superfluous to have inserted a provision in that regard, as the ordinary rule of law would apply?—If I saw an apparent omission I would understand that the Legislature saw there was no necessity for the words. In some cases the Legislature has put in such a provision, as for instance in "The Foreign Insurance Companies Act, 1894." That Act allows the foreign companies to deposit securities or cash with the Public Trustee. He holds them in trust to meet possible claims, and the Act expressly states that any earnings on the cash deposited go back to the depositor; but if the Act had not said so I should certainly, on the general principle of law, pay the earnings to the depositors.

17. All that you have to keep by law is the £500,000?—That is all. I should certainly pay the interest back to the Treasury. It would only be entered in the books of the Public Trust Office for the purpose of record so as to keep the books clear.

18. Have you received any interest since then?—Yes.

19. What interest?—Interest on the sum for the half year. This is the letter which I wrote to the Secretary of the Treasury:—

"Wellington, 16th May, 1901.

"SIR,—

£500,000 Investment.

"I should be glad of a reply to the first paragraph of my letter of the 26th ultimo at your earliest convenience.

"As the investment is in my name, it is necessary that I should have some record of the interest having been paid. The interest earned by the money belongs to the Government by a resulting trust, and perhaps you consider it unnecessary to pay it into this office, as it would be no doubt immediately taken out again.

"It would, however, in my opinion, be passed through our accounts in order to complete our records. I refer you to my letter of the 23rd October last, reminding you of a verbal arrangement between us that this should be done.

"You stated in your letter of the 14th March last that interest was payable on the 15th February and August in each year.

"I am, &c.,

"J. W. POYNTON, Public Trustee.

"The Secretary to the Treasury, Wellington."

It was on the 2nd July it was paid into the Treasury.

20. If there is any further interest accumulating, what will you do with it?—Pay it into the Treasury, unless the Treasury wishes me to take charge of the accumulations.

21. You do not expect any difficulty in regard to the interest accumulating?—No; I expect the Treasury will ask for it and get it.

22. In the meantime the Treasury will have to find the interest?—Yes; $3\frac{1}{2}$ per cent. on the debentures.

23. Have you received any intimation from the Controller and Auditor-General not to pay this money to the Treasury?—None officially. There is nothing on the file to show it. I have heard that he objects to its being paid, but his objection has not come to me yet.

24. Supposing you received an official notice from the Controller and Auditor-General not to pay the money, would you still pay it over?—Yes. I cannot find any authority by which I should be justified in holding the money. It certainly belongs to the Treasury.

25. Would the Audit Office be able to prevent you paying it over?—I do not know what would be the procedure. In March last I announced that I would pay the money over with the concurrence of the Audit Office. Of course, the Auditor-General may stick the matter up, but I do not see any objection to it. The money simply belongs to the Government. The Auditor-General is independent of me, and he may see objections from his point of view and refuse to pass it, but I do not see any objection.

26. He has to countersign the cheque?—I cannot speak positively about that. The Accountant arranges that. If the Auditor objects there would be other proceedings.

27. Would not that be an interference with the administration of the Public Trust Office?—No; the Auditor-General has control of our payments, and can object to any of them.

28. Then, if such a contingency arose it would mean a Governor's warrant?—Yes. If the Auditor-General objected we could not pay the money without a Governor's warrant.

29. You are a barrister and solicitor?—Yes.

30. And you are satisfied that what you are doing is well within the law?—I have no doubt of it. I contend the law is so clear that no lawyer can have any doubt about it. All works on trusts and equity set the law out so clearly that there can be no doubt about it.

31. Have you not a barrister in the office and a solicitor outside whom you could consult?—Yes; but I did not consult them in this case. The principle is so clear that I took the responsibility on myself if any difficulty arose. If I had any doubt I should certainly have consulted the office solicitor and the solicitor who conducts our cases outside, but I had no doubt.

32. *Mr. W. Fraser.*] You quoted some authorities just now as to the payment of accumulations on deposits: are you quite sure those authorities might not be quoted in the direction that the payment of the interest should be made at the end of the term?—No. It can be paid as it accrues—all accumulations can be paid as they accrue. In this case the holders of the debentures are to get $3\frac{1}{2}$ per cent. on them, and the Treasury could not get the accumulations to meet this if the interest was only paid at the end of the term. The trustee is only concerned with the amount which has been deposited.

33. Could the authorities be construed to mean that the accumulations should be paid after the end of the trust?—No. It is not the duty of a trustee to pile up funds. It is his duty to pay interest to the *cestui que trust* at reasonable times.

34. You said if the Auditor-General objected to the payment of this interest to the Treasury the only mode to get over the difficulty would be to have a fresh Governor's warrant?—Yes.

35. Would it not be a more effective way to alter the Act so that the money might be paid over by you?—No doubt a few words in the Act would clear up the difficulty between the departments.

36. You said just now you paid one sum to the Treasury?—Yes.

37. Did the Auditor-General countersign the cheque?—I could not say.

38. Has the money been paid?—Yes; so far as we are concerned.

39. Do you not know what becomes of the cheque after it leaves your office?—No.

40. Would you not know if the Auditor-General objected?—Yes; if we got notice from the Auditor-General that he objected. Otherwise I should assume there was no objection.

41. That is with regard to the £8,000 odd which you paid?—Yes.

42. Are you perfectly satisfied that there is ample power to pay these moneys as they accrue?—No doubt whatever. There is no doubt at all. If I had any doubt I would not have paid it; that is a certainty. I am quite satisfied about that.

43. *Captain Russell.*] What is the position of the £500,000?—That is another difficulty. Strictly by the law I should lock it up in the safe, but I did not do so. The Act says nothing about the investment of the £500,000. The Act simply said that the money was to be paid to the Public Trustee, and applied by him to the redemption of the debentures. If I had invested it in the ordinary way in outside securities, it would have thrown our accounts into confusion, and we should have been put to a considerable amount of expense; but fortunately I was afforded this opportunity of investing in Government securities at the time. The Government pay the interest and get it back, so that really they get a loan without having to pay interest. It does not matter to them whether they pay 3 per cent. or 4 per cent., or whatever the interest may be, because they get it back.

44. What is the value of the debentures?—They are short-dated debentures—about four years' debentures—so that when they fall in we shall be able to invest the money in mortgages which we could not have done without considerable expense if we had invested in such securities when the money was deposited.

45. Are the debentures at par or above par or below par?—I do not know.

46. I was only wondering whether these debentures might be below par, and whether you had intimation to that effect, and whether the rate of interest might not be lower?—I cannot say.

47. How are the 3-per-cents? Are they above or below par?—Below.

Rt. Hon. R. J. Seddon: But these debentures are not in the market, and we have to give par for them.

48. *Mr. W. Fraser.*] You told us the interest you paid for six months was £8,000 odd; but the interest at 3 per cent. on £500,000 does not come to that?—It came to that at the time. The original arrangement with the Government was 3 per cent., but now the Government pays $3\frac{1}{2}$ per cent.

49. *Captain Russell.*] What interest could you have got if you had gone into the outside market?—The highest interest allowed by the Act under which the debentures were issued would have been 4 per cent.

50. Could you not have done better than taking these 3-per-cent. debentures from the Government at par if you had gone into the open market?—I did not think I would be justified in doing that. It would have led to a lot of expense. We could not have found an investment here, and would have to go Home for one, which would have meant the employment of agents and many other expenses. It would have doubled the expenses, and as the interest on this money belonged to the Government it would not have been wise to do that. I thought the best way out of the difficulty was to accept the offer of the Government. The interest on the money belonged to them, and that was the easiest and simplest way.

51. *Rt. Hon. R. J. Seddon.*] What you said about the 3 per cent. was in error?—Yes; that was the original offer.

52. Well, take such a contingency as its being accepted, the Government would be paying 3 per cent. on the original debentures?—Yes; but it is immaterial what rate they are paying—whether it is 1 per cent. or $3\frac{1}{2}$ per cent.—because it goes back to them again.

53. It would nominally mean a loan at $\frac{1}{2}$ per cent.?—No. If the Government want the money and get it here in this way, we are really getting at the rate of 4 per cent. for it, supposing that to be the market rate, because there is no expense in the transaction, and no interest is paid away.

54. At all events, you say that passing an amending law would clear up any difficulty; but you yourself have no doubt?—I have no doubt whatever myself, but others may have, and a few words in the section would clear up all doubts.

55. As Public Trustee you are perfectly satisfied?—Yes, perfectly satisfied.

56. *The Controller and Auditor-General.*] I do not think the Treasury is authorised to pay more than 3 per cent., because that is the rate mentioned in the debentures. The Audit Office should not have passed a higher rate, and the Treasury should not have paid it. I would ask the Public Trustee whether there is not any statutory authority for the Public Trust Office investing any money coming into it without special direction as to investment—whether it should not be paid into the common fund?—I look upon this as a special matter. Of course, if it went into the common fund we should have to pay 4 per cent. on it, and we should lose by the transaction.

57. Does not section 29 of the Public Trust Office Consolidation Act make it compulsory that all such moneys received should be paid into the common fund?—That is more with the object of giving the security of the State to any moneys invested in the Public Trust Office, and before the money comes in it must go through certain forms; but this was a special matter, and if the money had to be paid into the common fund it would have been disastrous to us.

58. But the question is, whether by law it must or must not be paid into the common fund?—I do not think it need be. I regard this as a special statutory trust.

59. Section 29 of “The Public Trust Office Consolidation Act, 1894,” provides: “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.” Should you not be guided by that section?—That is a very reasonable question to ask; but I regard this as a special creation, and I do not consider that the money should fall into the common fund. In this case a certain interest is guaranteed and the State gives its security for the payment of that interest; therefore it is a special case which does not come under section 29 of the Public Trust Office Consolidation Act.

60. This is an investment which belongs to the common fund under that section of the Public Trust Office Consolidation Act?—If it should, we should be placed in the funniest position, as we should have to pay more interest on the money than we received for it.

61. The rate of interest to pay—if you can pay any—would be the rate of interest payable on the common fund?—Yes; that is 4 per cent. on the first £3,000, and $3\frac{1}{2}$ on the excess. Of course, it would be impossible for us to pay that rate.

62. The common fund has a legal right to the interest at 3 per cent. on this investment?—Yes; but I regard this as a special statutory investment not coming under section 29 of the Public Trust Office Consolidation Act.

JAMES BARNES HEYWOOD in attendance and examined. (No. 4.)

63. *Rt. Hon. R. J. Seddon.*] You are Secretary to the Treasury and Paymaster-General?—Yes.

64. Have you heard the reference to the payment of £8,000 and odd for half-year's interest?—Yes.

65. Has that reached the Treasury?—Yes.

66. How long ago?—I think it was during last month. The money was returned by the Public Trust Office to the Treasury less a small amount for cable-expenses.

67. You got the money all right?—Yes; that is all right.

68. Has there been anything further since this matter last came before the Committee?—Yes; the dispute is now growing with regard to this payment back to the Treasury. The Audit Office states that the Public Trustee should not have paid it back to the Treasury, and has

declined to allow the money to be allocated as the Treasury wished to allocate it. A deadlock has occurred, and the consequence is that a large amount of public revenue is hung up. There is this £8,000 hung up, and a very much larger sum which is in the same requisition.

69. Has that arisen after what took place in this Committee on the first day?—The action has taken place after the first meeting of the Committee.

70. *Mr. W. Fraser.*] You say that the money has been paid to you during this month?—During last month.

71. I understood from the Public Trustee that the cheque from his department had been countersigned by the Audit Office: has that been done?—I do not think so.

The Controller and Auditor-General: The Public Trustee's books are audited after the payments have been made.

The Public Trustee: Every item has to be approved.

72. *Mr. W. Fraser.*] Has this been approved?—The Auditor-General reports not.

73. You told us you could not allocate the money?—Yes, we have received the money, but we cannot allocate it.

Approximate Cost of Paper.—Preparation, not given; printing (1,375 copies), £5 10s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1901.

Price 6d.

