

No. 8.

The Solicitor-General.
For your information.

JAS. B. HEYWOOD,
4 May, '04.

In determining the meaning of an Act it is a well-established canon of construction that the Legislature does not intend to make any alteration in the law beyond what it explicitly declares either in express terms or by implication. As stated by Maxwell (p. 113), "it is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness." If this be applied in the present case the difficulties felt by the Audit Office will, I think, disappear. The Act is silent as to the rights of the debenture-holders, because it is unnecessary to mention them as the general rules of law apply.

What the Act charges on the public revenues and makes payable out of the Consolidated Fund is the principal sums named in the debentures, "together with all interest payable in respect thereof." It is unnecessary to speculate on the serious consequences to the public credit if this meant merely interest up to the due date of the debentures, so that in case of default interest would not continue to run. It means all interest payable in law; and in law—quite apart from any express provision to that effect—interest at the rate named in the debenture continues to run until the debenture is paid (Price and South-western Railway Company: 16 L.J. Ex. 87).

This interest is charged on the public revenues and payable out of the Consolidated Fund. It is therefore payable under the Act.

FRED. FITCHETT, Sol.-General.
19/5/04.

The Controller and Auditor-General.

Please see further remarks by the Solicitor-General.

JAS. B. HEYWOOD.
25 May, '04.

No. 9.

The Hon. the Colonial Treasurer.

Audit Office, 6th June, 1904.

Solicitor-General's Opinion of the 19th May, 1904, as to Appropriation for Interest Money raised by Debentures for a Period after their Currency.

THE Audit Office is not satisfied. Whatever rights the debenture-holders may have in respect of their failure, for which the Treasury is responsible, to receive at the due date payment of the amount of their debentures there must be a clearly expressed appropriation in the Loan Act for every payment which can be passed as chargeable to the Act, and the judgment in the case of the South-western Railway Company is not applicable unless it answers the question of appropriation.

Where the debenture-holders fail to receive on the due dates the payments which their debentures issued to them in terms of the Loan Act entitle them to so receive, then, if responsibility lies with the Treasury, it is responsibility for a fault not provided for or contemplated by the Act; and unless there is authority in the Act thus to postpone payment of the amount of a debenture, there is no authority to charge the Act with interest in respect of such postponement. No serious consequences to the public credit need be apprehended if the Treasury is strict to observe the terms of its contracts with the debenture-holders.

J. K. WARBURTON, C. & A.-General.

No. 10.

The Hon. the Colonial Treasurer.

I RECOMMEND matter be now submitted for the opinion of the Hon. the Attorney-General.

JAS. B. HEYWOOD.
7th June, 1904.

Approved.—C. H. M. 7/6/4.

I have perused the opinion of the Solicitor-General herein and I entirely concur in the opinion expressed by him upon the matter submitted to him. The Controller and Auditor-General apparently does not question the right of debenture-holders to interest up to the actual time of payment of the principal sum made payable by the debentures, but he contends that there is no appropriation for the payment of interest beyond the due date of the debentures. In my opinion sufficient appropriation is made by section 11, subsection (3), of "The Aid to Public Works and Land Settlement Act, 1900," which makes "all interest payable in respect" of the debentures a charge and to be payable out of the public revenues of New Zealand. The Controller and Auditor-General would read the subsection as if the words "up to due date" were inserted after the word "thereof" in the second line of the subsection—but in my opinion the subsection cannot be so read.

ALBERT PITT, Attorney-General.

8/6/04.

No. 11.

The Audit Office.

With the opinion of the Hon. the Attorney-General before you you may now be satisfied.

JAS. B. HEYWOOD, Secretary.
9th June, 1904.

No. 12.

The Hon. the Colonial Treasurer.

Audit Office, 10th June, 1904.

The Attorney-General's Opinion of the 8th June, 1904, on the Question whether on Money raised by Debentures there is Appropriation for Interest for a Period beyond their Currency.

It appears to the Audit Office that, unless there is authority in the Loan Act to extend, otherwise than in a manner provided by the Act, the currency of the loan raised by short-dated debentures