

1880.

NEW ZEALAND.

SUM OF £300 PAID TO MR. SIEVWRIGHT

(MEMORANDUM BY THE CONTROLLER AND AUDITOR-GENERAL RELATING TO).

[In continuation of H.-36, Sess. II., 1879.]

Presented to both Houses of the General Assembly by Command of His Excellency.

MEMORANDUM for the Hon. the PREMIER.

THE Controller and Auditor-General has carefully considered the desire expressed by the Government that the Audit Office should put in force the powers vested in it by the Public Revenues Act to recover the sum of £300 paid to Mr. Rees; and also the report by the Public Accounts Committee, to whom the matter was referred last session, expressing the opinion that the case was one which might be dealt with under those powers.

The money having been issued to Mr. Sievwright by the Cashier, on the order of the Treasury, out of the imprests in his hands, on account of legal services to be rendered, the Audit Office called on Mr. Sievwright to account. This was done; when it appeared that Mr. Sievwright had paid the £300 to Mr. Rees as fee or retaining fee as counsel for certain Natives in defence of prisoners, or for legal advice in respect of certain claims arising within the confiscated lands, and that this payment was made under the authority of a Minister.

The Controller and Auditor-General cannot think that it is a part of his duty to determine what legal services are required by the Government, or what may be the value of the professional assistance rendered. To do so, he must be possessed of information which he has no means of obtaining, and would, he respectfully submits, be encroaching on the duties of the Executive Government.

The Solicitor is, in the opinion of the Audit, properly discharged by accounting for the money as paid to counsel by order of a Minister. Against Mr. Rees himself no proceedings can be taken by the Audit, because he did not receive the money as imprest, and the money ceased to be public money when it came into his hands. It was to him a final payment for professional services rendered, by the order and upon the responsibility of a Minister of the Crown.

The money is still standing to the debit of Mr. Best, the Cashier, who asks for his discharge. This, however, he cannot receive, for the following reasons. The voucher submitted to Audit does not contain any "direction to charge." Had it been sent in with the charge to any vote, such as "Native Contingencies," or "The Civil List Native," or "Unauthorized," the Audit Office, which has little or no control over those votes—the discretion as to their expenditure being left by Parliament in the Government, without restriction—would have been bound to pass the voucher; but, before credit was asked and the voucher submitted to Audit, the Ministry which had authorized the expenditure was replaced by another, which refused its sanction to it. Mr. Best is undoubtedly entitled to his discharge for a payment made under the authority of the Treasury; but he cannot obtain it, for the reason above stated.

The only course open to the Audit Office would be to call on Mr. Best, who is primarily the accountant to the Crown in the matter, and stands charged with the imprest in the Audit books, to pay the money back into the Public Account.

The Controller and Auditor-General, however, feels very strongly that to do so would be to make a subordinate officer answerable for what was really the act of his superior. This would be not only a harsh and unjust proceeding, but one which could hardly have been contemplated by the provisions of the Revenues Act. The large powers intrusted to the Audit Office are clearly intended to meet the case of a default in accounting for, or a fraudulent use of, public moneys; not to a case in which a use, however improper, has been made of such moneys by order of and upon the responsibility of a Minister of the Crown.

For such latter case the Public Revenues Act fully provides in the 70th and subsequent sections; and the creation of the special machinery thereby provided seems sufficiently to indicate that the powers vested in the Audit Office were not intended to apply to such a case.

The Controller and Auditor-General therefore does not think he should proceed in this matter; and he has the less hesitation in coming to this conclusion because his reluctance to act in no way prevents the Government from taking proceedings in the Supreme Court, which, as the representative of the Court of Exchequer, has far greater powers than those of the Audit Office. There are only two possible methods by which the Cashier can be relieved of the debt with which he is at present charged—(1) by Parliament voting the money; (2) by recovering the money, under process indicated in the 70th and succeeding sections of the Public Revenues Act, from one or all of the late Ministers, and paying it in to the credit of Mr. Best's imprest account.

For these reasons, the Controller and Auditor-General respectfully requests that his objections, as stated in this memorandum, to instituting any proceedings for the recovery of the money paid to Mr. Rees, may be laid before Parliament, in order that its final decision in the matter may be taken.

9th April, 1880.

JAMES EDWARD FITZGERALD,
Controller and Auditor-General.

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