

1901.

NEW ZEALAND.

“THE PUBLIC REVENUES ACT, 1891”:

CORRESPONDENCE IN CASE IN WHICH AUDIT OFFICE DECLINED TO SIGN DEBENTURES FOR £10,000 UNDER THE LAND FOR SETTLEMENTS CONSOLIDATION ACT.

Laid upon the Table by the Deputy-Speaker.

Audit Office, 30th October, 1901.

THE Controller and Auditor-General has the honour respectfully to submit to the House of Representatives, in accordance with the provisions of section 53 of “The Public Revenues Act, 1891,” a copy of the correspondence in a case under that section, in which, the Audit Office having declined to sign debentures for £10,000 under “The Land for Settlements Consolidation Act, 1900,” on the ground that the interest payable in the first coupon is 4 per cent. per annum computed from the 14th day of April, 1901, whereas the full purchase-money was not paid until after that date, and consequently the price paid—£100 per cent. of the amount of the debenture—would result in yielding to the purchaser a higher yearly rate of interest on the purchase-money than the maximum rate—4 per cent.—authorised by section 10 of the Act; the Governor has by Order in Council determined that the interest payable on the first coupon will not result in yielding to the purchaser of the said debentures a higher rate of interest on his purchase-money than the maximum rate authorised by section 10 of “The Land for Settlements Consolidation Act, 1900,” and that consequently the debentures may be lawfully issued with the first coupon representing interest at 4 per cent. per annum from the 14th day of April, 1901, notwithstanding that the full purchase-money was not actually paid until after that date.

J. K. WARBURTON,

Controller and Auditor-General.

The Hon. the Speaker of the House of Representatives.

No. 1.

Audit Office, 23rd September, 1901.

*Narration of Debentures issued under “The Land for Settlements Consolidation Act, 1900.”—
Amount issued, £204,000.*

THE ten debentures entered in this narration, and numbered from 559 to 568, for £1,000 each, or £10,000 in all, have coupons attached to each of them to pay the purchaser interest at the rate of 4 per cent. per annum from the 14th April, 1901. As, however, the debentures have been sold at the price of £100 for every £100 mentioned in them, and the purchase-money was paid, £5,000 not before the 7th May, and £5,000 not before the 10th May, the payment of the foregoing rate of interest from the 14th April will result in the debentures yielding to the purchaser a higher rate of interest by the year than 4 per cent. per annum on the purchase-money, contrary to the provisions of section 39 of the Loan Act. The Controller and Auditor-General regrets that he is, in consequence, unable to countersign such debentures.

J. K. WARBURTON,

Controller and Auditor-General.

Hon. the Colonial Treasurer.

No. 2.

The Audit Office.

I DESIRE to point out for your consideration that the objection you now raise is precisely the same as that which was raised by you and determined by His Excellency in connection with the debentures for the Half-million Loan issued under “The Aid to Public Works and Land Settlement Act, 1900.” In these circumstances it seems to me to be unnecessary to trouble His Excellency again, and I would suggest that you treat the former Warrant as applying to the present case.

24th September, 1901.

JAS. B. HEYWOOD.

1—B. 19D.

No. 3.

Hon. the Colonial Treasurer.

ACCORDING to the coupons attached to the ten debentures in question, they will yield to the purchaser on the purchase-money a higher rate of interest by the year than 4 per cent. The Loan Act expressly and very plainly provides that the debentures shall not be sold at a price that will have such result. The determination of the Governor in the case of the debentures for the Half-million Loan is not understood by the Audit Office to have the force of a judgment of the authorised interpreters of the law as to the meaning of the provision of the Loan Act. The Solicitor-General has remarked, on a former proposal to treat one Warrant as dispensing with another, that "the Audit Office would, of course, be quite justified in insisting upon a fresh Warrant by His Excellency." In these circumstances the Controller and Auditor-General extremely regrets that he does not feel himself justified in applying the Governor's determination to any but the debentures to which it is expressed to be applicable.

It may be added that the present case is not considered by the Audit Office to be precisely the same as that of the issue of the debentures in terms of the prospectus for the Half-million 4-per-cent. Loan.

26th September, 1901.

J. K. WARBURTON,
Controller and Auditor-General.

No. 4.

The Treasury, Wellington, New Zealand,
27th September, 1901.

The Audit Office.

WITH reference to your memorandum dated the 23rd instant, intimating that for reasons given you find yourself unable to countersign the debentures submitted on the 21st, I have to inform you that the Right Hon. the Colonial Treasurer has decided to refer the matter to the Solicitor-General, with the view of subsequent action under the Public Revenues Act if warranted by the Solicitor-General's opinion, and I therefore take the opportunity of asking you whether your objections as contained in the memoranda dated 23rd and 26th instant may be considered complete.

JAS. B. HEYWOOD,
Secretary to the Treasury.

No. 5.

Right Hon. the Colonial Treasurer.

YES; those objections are complete. The Controller and Auditor-General presumes, however, that if any special case is submitted to the Solicitor-General it will be a case satisfactory to both parties to the dispute.

28th September, 1901.

J. K. WARBURTON,
Controller and Auditor-General.

No. 6.

The Audit Office.

THE case which will be referred to the Solicitor-General will be the objection made in your memorandum of the 23rd instant.

As already mentioned, the Treasury is of opinion that the objection now raised is identical in principle with that raised by the Audit Office on the 29th July last in connection with the interest payable on debentures of "The Aid to Public Works and Land Settlement Act, 1900," and which objection was determined by the Governor in his Warrant dated the 14th August, 1901. In your memorandum dated the 26th instant you state "that the present case is not considered by the Audit Office to be precisely the same as that of the issue in terms of the prospectus of the Half-million 4-per-cent. Loan." I shall therefore be obliged if you will state in what way the principle underlying both objections is not identical.

30th September, 1901.

JAS. B. HEYWOOD.

No. 7.

Hon. the Colonial Treasurer.

THE difference between the two cases was this: In one case the debentures were sold by public tender according to the terms of a prospectus; and what was assumed to have been the practice of selling the debentures in this way appears to have been regarded by the Law Office as precedent to interpret the laws. In the other case the debentures were sold privately to the first applicant. In principle, however, the Audit Office objection is the same in both cases. The statute provides that the purchaser shall not receive a higher rate of interest on the purchase-money than 4 per cent. per annum. The proposal of the Treasury is to pay to the purchaser a higher rate of interest than 4 per cent. per annum. To that proposal the Audit Office, of course, objects.

30th September, 1901.

J. K. WARBURTON,
Controller and Auditor-General.

No. 8.

Audit Office, 19th October, 1901.

Ten Debentures numbered 559 to 568, for £1,000 each, or £10,000, issued under "The Land for Settlements Consolidation Act, 1900."

ADVERTING to the Audit Office objection to the proposal of the coupons attached to these debentures to pay to the purchaser a higher rate of interest than 4 per cent. per annum on the purchase-money, contrary to the provisions of the Loan Act, the Controller and Auditor-General begs now to return the debentures, and the narration of them.

Hon. the Colonial Treasurer.

J. K. WARBURTON,
Controller and Auditor-General.

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.

RANFURLY, Governor.

ORDER IN COUNCIL.

At the Government House, at Wellington, this twenty-first day of October, one thousand nine hundred and one.

Present: His Excellency the Governor in Council.

WHEREAS by section fifty-three of "The Public Revenues Act, 1891," it is provided that, if the Audit Office declines to pass any issue requisition on the ground that the charges therein are not according to law, the matter in dispute shall be determined by the Governor in Council, having before him the opinion of the Attorney-General thereon: And whereas the Audit Office has declined to sign debentures Numbers 559 to 568, for ten thousand pounds, under "The Land for Settlements Consolidation Act, 1900," on the ground that the interest payable in the first coupon is four per centum per annum computed from the fourteenth day of April, one thousand nine hundred and one, whereas the full purchase-money was not paid until after that date, and consequently the price paid—one hundred pounds per centum of the amount of the debenture—would result in yielding to the purchaser a higher yearly rate of interest on the purchase-money than the maximum rate—four per centum—authorised by section ten of the Act:

Now, therefore, His Excellency the Governor of the Colony of New Zealand, in pursuance and exercise of the power and authority conferred upon him as aforesaid, and by and with the advice and consent of the Executive Council of the said colony, having before him the opinion of the Solicitor-General (the office of the Attorney-General being vacant), doth hereby determine that the interest payable on the first coupon will not result in yielding to the purchaser of the said debentures a higher rate of interest on his purchase-money than the maximum rate authorised by section ten of "The Land for Settlements Consolidation Act, 1900," and that consequently the debentures may be lawfully issued with the first coupon representing interest at four per centum per annum from the fourteenth day of April, one thousand nine hundred and one, notwithstanding that the full purchase-money was not actually paid until after that date.

ALEX. WILLIS,

Clerk of the Executive Council.

No. 13.

The Audit Office.

His Excellency the Governor having again determined, by an Order in Council, that interest in accordance with the first coupons attached to Debentures Nos. 559 to 568, issued under "The Land for Settlements Consolidation Act, 1900," is lawfully payable, I shall be glad if you will countersign the debentures, which are herewith returned for the purpose.

22nd October, 1901.

JAS. B. HEYWOOD.

No. 14.

Audit Office, 23rd October, 1901.

Audit Office Objection to Interest payable on First Coupon of each of Ten Debentures, issued under the Land for Settlements Act, for £10,000.

THE Governor in Council having in this case determined, under section 53 of the Public Revenues Act, that the interest payable on the first coupon will not result in yielding to the purchaser of the said debentures a higher rate of interest on his purchase-money than the maximum rate authorised by section 10 of "The Land for Settlements Consolidation Act, 1900," and that consequently the debentures may be lawfully issued with the first coupon representing interest at 4 per cent. per annum from the 14th day of April, 1901, notwithstanding that the full purchase-money was not actually paid until after that date, the Controller and Auditor-General has countersigned the debentures, and will in ordinary course lay before Parliament, in accordance with the provisions of the Public Revenues Act, a copy of the correspondence on the subject.

It is submitted that, if debentures for £130,000 of the same issue and carrying interest from a date prior to the payment of the purchase-money were previously countersigned by the Audit Office without objection, the explanation is that the unauthorised allowance of interest escaped detection, in consequence of the examining Audit officers taking the date from which the Treasury narration stated the interest to be payable to be the date of the payment of the purchase-money.

The first intimation to the Controller and Auditor-General that the debentures were issued to pay such unauthorised allowance of interest was not till after the order of the Governor in Council had been received by the Audit Office. The matter was then observed to form part of the case as submitted by the Colonial Treasurer for the opinion of the Solicitor-General.

J. K. WARBURTON,

Controller and Auditor-General.

Hon. the Colonial Treasurer.

No. 15.

Treasury, Wellington, 24th October, 1901.

SIR,—

I am instructed by the Right Hon. the Colonial Treasurer to acknowledge receipt this afternoon of your letter of yesterday's date, intimating that you had countersigned debentures for £10,000, having received the Order in Council determining the objection raised by the Audit Office.

With regard to your explanation that debentures for £130,000 were countersigned in consequence of the Audit Office mistaking "the date from which the Treasury narration stated the interest to be payable to be the date of the payment of the purchase-money," I am to reply that the only date upon the narrations referred to is one inserted upon the narration by yourself, and not by the Treasury.

I have, &c.,

JAS. B. HEYWOOD,

Secretary to the Treasury.

The Controller and Auditor-General.

No. 16.

Hon. the Colonial Treasurer.
KINDLY cause the narrations for the debentures amounting to £130,000 to be submitted for inspection by the Audit Office.
25/10/1901.

J. K. WARBURTON,
Controller and Auditor-General.

No. 17.

HEREWITH.—JAS. B. HEYWOOD. 25/10/01.

No. 18.

Audit Office, 26th October, 1901.

The Minister's Letter of 24th October, 1901, as to Dates in Narrations of Debentures.

THE narrations submitted by the Minister are three. They comprise 955 debentures for £281,750, among which are 322 debentures carrying interest from a date prior to that of the payment of the purchase-money. There is on all the three narrations the Treasury entry, "Interest payable on 1st May, 1st November"; and the first coupons of the 322 debentures are filled up for the full half-year's interest from 1st May. On two of the narrations there is the Treasury statement of what it has computed to be, and entered in the first coupons as, payable for interest. On the third narration no such Treasury statement appears, but there is the Controller and Auditor-General's note, which virtually supplies the omission, "Interest payable from 1st May, 1901, on all but Nos. 215 to 274 inclusive, on which interest is payable from 7th June, 1901."

It would no doubt have been more precise for the Controller and Auditor-General to say that the Audit mistake was in assuming the purchase-money to have been paid on the date—the 1st May—from which the Treasury has computed, what it has stated on the first coupons, and on two of the narrations, but omitted from the third, to be the amount of the first payment of interest.

Occasion may be taken here to remark that the Treasury, when it sent each of the three narrations to the Audit Office, knew it to have been judged by the Controller and Auditor-General to be contrary to law to pay the maximum rate of interest from a date prior to the payment of the purchase-money, and that in such case the Audit Office expects the Treasury to point out, in submitting the debentures for countersignature, those to which the Audit Office objection applies. If, however, the Treasury, without letting the Audit Office know, comprises in one narration debentures which are considered objectionable by the Audit Office with debentures which are not, such objectionable debentures may occasionally escape detection.

J. K. WARBURTON,
Controller and Auditor-General.

Hon. the Colonial Treasurer.

No. 19.

The Treasury, Wellington, New Zealand,
28th October, 1901.

The Audit Office.

IN reply to your letter of the 26th instant, the Treasury begs to take exception to the remarks in the last paragraph, which seems to imply that the Treasury should have informed the Audit Office that some of the debentures carried coupons for interest computed from dates prior to the actual receipt of the purchase-moneys, and that such debentures would become objectionable to the Audit Office.

Debentures with narrations were forwarded for countersignature in the usual way, and it was certainly never contemplated by the Treasury that the Audit Office would raise any further objection to debentures carrying interest from dates prior to the dates of payment of purchase-moneys, seeing that the principle involved in so paying interest had only very shortly before been settled and determined by the Governor's Warrant.

With the knowledge that the Treasury's action was in accordance with law, and having the determination of His Excellency the Governor before them, it could not be anticipated by the Treasury that the Audit Office would raise further objection; and in the face of such opinion and determination the objection of the Audit to countersign for reasons identical with those already disposed of appears to the Treasury to be an unnecessary obstruction to the public business.

R. J. SEDDON,
Colonial Treasurer.

No. 20.

Audit Office, 29th October, 1901.

As the Minister appears, from his letter of yesterday, to consider it to be an unnecessary obstruction of public business for the Audit Office to decline to countersign debentures on the ground of objection taken in a case in which the Governor in Council has already determined a dispute, the Controller and Auditor-General feels that he ought to state the position of the Audit Office in the matter.

Section 53 of the Public Revenues Act provides that, "If the Audit Office declines to pass any issue or credit requisition on the ground that the charges therein are not according to law, the matter in dispute shall be determined by the Governor in Council." But the Governor, in exercising this power, does not interpret the law. The Audit Office has declined to pass a requisition on the ground that the charges therein are not according to law. Till, therefore, the law is amended, or its interpreters pronounce that it authorises the charges, it is the duty of the Audit Office to decline to pass any subsequent requisition in which there are similar charges of the same nature.

It is for these reasons that the Treasury is expected, when it sends a requisition to the Audit Office, to point out the charges which are not according to law in what may then be known to be the judgment of the Audit Office.

Hon. the Colonial Treasurer.

J. K. WARBURTON,
Controller and Auditor-General.

No. 21.

The Audit Office. The Treasury, Wellington, 30th October, 1901.
It is only necessary to remark, in reply to your memo. of yesterday's date, that the Treasury has all along been of opinion that the charges were in accordance with law, and such opinion was confirmed by the Solicitor-General, who interprets the law. For this reason the Treasury could not be expected to point out something which had no existence, nor to attempt to foresee what the judgment of the Audit Office might be in this or any other case.

R. J. SEDDON,
Colonial Treasurer.

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