

1902.

NEW ZEALAND.

“THE PUBLIC REVENUES ACT, 1891”:

CORRESPONDENCE IN CASE OF DIFFERENCE OF OPINION BETWEEN AUDIT OFFICE AND
TREASURY AS TO REFUNDS OF STAMP DUTY ON ESTATES OF DECEASED MEMBERS OF
CONTINGENTS.*Laid on the Table pursuant to Section 9 of “The Public Revenues Act, 1900.”*The CONTROLLER AND AUDITOR-GENERAL to the Hon. the SPEAKER of the House of
Representatives.

Audit Office, 3rd July, 1902.

THE Controller and Auditor-General has the honour respectfully to submit to the House of Representatives, in accordance with the provisions of section 9 of “The Public Revenues Acts Amendment Act, 1900,” a copy of correspondence in a case under that section where a difference of opinion having arisen between the Audit Office and the Treasury as to the authority to which should be charged refunds of stamp duty on estates of deceased members of contingents in excess of the item 25 of Vote 48, £100, in the appropriations for the year ending 31st March, 1902, the Governor determined the question by deciding that such item applied to all stamp duty paid on estates of deceased members of the contingents during the year, and that consequently it was lawful to make remission, and to charge the expenditure in respect thereof to the Vote 48, notwithstanding that the amount of the item was thereby exceeded.

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

The Hon. the Speaker of the House of Representatives.

No. 1.

TREASURY VOUCHER.

Departmental No. 484, Christchurch, New Zealand.

New Zealand Government, Department Stamps,
Dr. to

Wynn Williams and Broun.

Re *Campbell and Parkinson, deceased, C. 01/44.*

	£	s.	d.
1901.			
May 16th—To refund of duty paid on the above estate ...	566	18	3
Deceased was a member of the Third New Zealand Contingent and died while on active service in South Africa.			
Remission of duty on all such estates sanctioned by Cabinet (<i>vide</i> Stamps Record 11/522), and provided for by Vote 48, item 25, estimates, 10/02.			
Stamps, 1902/36.			
	£566	18	3

Claimants: Wynn Williams and Broun, Solicitors, Christchurch.

I certify, &c.; and that the refund has been sanctioned by the Commissioner.

H. O. WILLIAMS.

Vote 48, item 25.

(Signature of Officer authorised to certify.)

No. 2.

By item 25 of Vote 48 no more than £100 is voted for such remissions, and the amount
already charged under that item has inadvertently been allowed to exceed £100.

J. K. W., C. and A.G.

14th February, 1902.

No. 3.

The Audit Office.

ITEM 25 of Vote No. 48 appears to be in the same position as any other item of the many hundreds which are contained in the several votes, and it is understood that the Audit Office control is connected with the amount of the vote as mentioned in the Appropriation Act, and not with the amount of items contained in such vote and which are not mentioned in the Act.

JAS. B. HEYWOOD,
18th February, 1902.

No. 29.

No. 4.

The Treasury.

SUCH an item as this is regarded by the Audit Office as specific, and applicable consequently only to cases which were known to have arisen for remission when the item was placed on the estimates. The contention of the Treasury would appear to be that revenue payable under an Act which does not authorise remission or refund may notwithstanding be remitted to the amount of the whole unexpended balance of a large vote, and of the appropriation for unauthorised expenditure, if the remission of a small amount is authorised by being comprised among the items of such vote.

J. K. WARBURTON, C. and A.G.
18/2/1902.

No. 5.

The Audit Office.

The Treasury, New Zealand, Wellington,
20th February, 1902.

THERE is a clear appropriation of Parliament for the payment of "Remission of duty on estates of deceased members of contingents"; it is therefore evident that, although the Act imposing the duty does not provide for its remission, Parliament has subsequently thought fit to allow remissions to be made. Further, I understand there is no direct prohibition by law that these remissions should not be allowed, and therefore I apprehend that the Government if they saw fit, and in the absence of an appropriation, could pay remissions out of "Unauthorised," as, in fact, is the frequent practice.

The question left to consider, therefore, is whether the Audit contention is sound as to item 25 in Vote 48 being "specific," and the amount of which may not be exceeded. The only items which may be classed are those amounts which Parliament has chosen to appropriate notwithstanding that the law in connection with such services prohibits payments being made. In such cases the Public Revenues Act of 1900 makes provision that these special appropriations shall not be exceeded, and, as the Act is carefully worded so as to apply only to these cases, it is not unreasonable to assume that the Legislature recognised that in the ordinary course of payments items may be exceeded.

It would not be difficult to find a number of items of appropriation which are similar in character to these remissions and which the Audit Office have not attempted to control as to the issuing amount—*e.g.*, such items as "Refunds of fines," "Refunds of Customs duties," "Refunds of warehouse duties," "Refunds of rent," "Refunds of quarantine charges," "Refunds of railway fares," "Refunds of survey fees," "Refunds on account of lands disposed of, &c.," "Refunds for improvements effected," "Remission of rent," &c. These appropriations pretty clearly show that the intention of Parliament is that remission and refunds should be made notwithstanding there is no special provision for such refunds or remissions in the governing Acts. The Audit Office have not, so far as I am aware, objected to the sums so appropriated being in some cases exceeded, and I can see no reason why this item for remission of stamp duty should be singled out for special control. It may further be mentioned that the amount appropriated was probably sufficient to cover such remissions as were in sight at the time the estimates were passed, but by the very character of the service it would be only reasonable to suppose that a larger sum might at any subsequent time be required.

JAS. B. HEYWOOD, Secretary.

(No. 34.)

No. 6.

The Hon. the Colonial Treasurer.

Audit Office, 21st February, 1902.

Refund of Stamp Duty, and the Treasury Memorandum of 20th February, 1902.

THE Minister's communication of yesterday, the 20th instant, appears to the Audit Office to have been written in entire misconception of the true position.

In the Audit Office minutes on the claim to the refund in question there is no reference whatever to the Public Revenues Act of 1900. The word "specific," which has perhaps been assumed to imply such a reference, was in common use long before the passing of that Act.

The late Controller and Auditor-General wrote on the 1st November, 1890: "It is quite true that, as a general rule, the Audit does not take notice of the items in the estimates, but only of the votes as set forth in the schedule to the Appropriation Act, especially as regards the ordinary departmental service, which may be varied at the pleasure of the Minister within the limits of the vote. But the case is different as regards a specific appropriation for a special service, as in the case of compensation to a particular individual, and not for the service of a Department."

The Public Accounts Committee, too, as far back as the 11th September, 1891, made the report of which the following is an extract: "It has always been understood that the Audit Office has no knowledge of items, and is guided by the amount voted only; but where the House has

determined that only a certain sum shall be paid for a specific service it ought not to be competent for the Treasury to pay more and to charge the excess as for a service for which no provision is made." It is in such sense that the Audit Office uses the word "specific."

Nor has the Audit Office raised any objection to charging unauthorised refunds of revenue to the Unauthorised Expenditure Account, for such a charge is made on the condition which the Audit Office considers necessary, the condition that there must be a vote for a specific refund; and a refund charged to the Unauthorised Expenditure Account is passed, if passed at all, by inclusion of the specific payment in the Appropriation Act itself.

Taking now the item "Refund of Customs duties" as the first of the most considerable of the items which the Minister quotes as similar in character to the item for refund of stamp duty, the Audit Office would point out that the administration does regard as specific the items passed on the estimates for refunds of Customs duties, and that in this regard the Customs estimates have been framed, as a more particular inquiry should make clear.

The question as to the power carried by items placed in the Customs estimates and passed for the refund of Customs duties was raised four years ago, and a copy is attached for the information of the Minister of two of the Audit Office minutes which preceded the adoption of the Audit Office decision. The items that are quoted by the Minister as having been passed at one time or another for refunds of other revenues not authorised by law to be refunded are, of course, equally specific, and have occasionally been pointed out to be so.

It may be observed, in conclusion, that the item 25 of Vote 48 on the estimates was passed only by the House of Representatives; that it was not an appropriation passed by Parliament; that the intention of Parliament, so far as such intention is to be gathered from the Acts, was not to authorise the refund; and that such intention of Parliament, according to its Acts, prevails against an application of the item to any but specific refunds of revenue to a total amount not exceeding that of the item—that is, to refunds of revenue the amount of which was known to the Administration to be payable before, and in respect of which the item was placed on the estimates.

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

No. 7 (attached to No. 6).

The Controller and Auditor-General.

Audit Office, 26th February, 1898.

Refund of Customs Duties paid by His Excellency the Governor, £96 4s.

It would appear from the minute of the Secretary for Customs that, in his opinion, the duties now sought to be refunded were correctly paid, and that in collecting them the Customs Department acted as it had previously done in the case of His Excellency's predecessor, the Earl of Glasgow, the late Mr. Ballance having given instructions that the Governor was to be treated like any other person arriving in the colony.

The charge upon the voucher is Vote 39, item 13, "Sundry articles remitted by order of the Commissioner of Customs." The amount provided for this purpose is £50. There are eight other items in the estimates under the heading "Refund of Customs duty," but they relate to specific articles, so that in making provision for refunding the duty on them the House, to use a common phrase, "knew what it was about." Item 13, however, is a general authority to the Commissioner of Customs to remit duty on any article at his discretion, and the amount which may be so remitted is not limited by the amount of the item, nor even by the total amount of the vote, because a vote may be exceeded. This method of making refunds of Customs duties is of recent origin, and places an authority in the hands of the Commissioner which I venture to think the House unwittingly assented to.

I doubt very much whether such an authority can legally be acted on; but as other vouchers have been passed charged to the same vote and item, I think we should not decline to pass this one. If you agree with me that the authority is insufficient, it might be well to intimate to the Department that, should such an item recur in the estimates, the Audit Office will be unable to accept it as a valid appropriation.

J. C. GAVIN, A.C. and A.

No. 8 (attached to No. 6).

Mr. Gavin.

I CONCUR. It does not appear to me that the item of £50 carries a power sufficient to authorise the Audit Office legally to pass claims in general to the repayment of Customs duty not repayable under the Customs laws.

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

3/3/98.

No. 9.

REFER to Solicitor-General for advice.

R. J. S.

26/2/02.

It appears to me that the sense in which the term "specific" is used in the late Controller's minute of the 1st November, 1890, and in the report of the Public Accounts Committee is to be gathered from the illustration given—viz., compensation to a particular individual—and I quite agree that in such a case the amount of the item cannot lawfully be exceeded. And with good reason, for the House has the whole matter before it when the vote is passed, and consequently the will of Parliament is expressed with fullness and precision. As other examples of specific appropriations in this sense, I take from last year's estimates such items as these: "Sir George Grey's statue," "Contribution to Indian Famine Fund," "Refund of Customs duty paid on

fountain in Wanganui Gardens." In each of these cases all the facts are ascertained at the time of the vote, and the amount voted is therefore final and specific. In the present case, however, there is nothing to show that all the facts were before the House at the time of the vote. On the contrary, the item is quite general in terms, and has no reference to any particular case. For these reasons I agree with the Treasury that it is not "specific" in the sense quoted, but is intended to apply to all stamp duty paid on estates of deceased members of the contingents during the year, and may consequently be exceeded as claims for remission occur.

FRED. FITCHETT, Solicitor-General.

10/3/1902.

No. 10.

The Audit Office.

BE good enough to see the Solicitor-General's opinion.

JAS. B. HEYWOOD.

12th March, 1902.

No. 11.

The Hon. the Colonial Treasurer.

Audit Office, 12th March, 1902.

Refund of Stamp Duty and the Solicitor-General's Opinion of 10th March, 1902.

If the item in question is, as the Solicitor-General states it to be his opinion, "quite general in terms, and has no reference to any particular case," and is an item to which section 3 of the Public Revenues Acts Amendment Act of 1900 does not apply, then the item is not sufficient, in the judgment of the Audit Office, to authorise any payments whatever in refund of stamp revenue.

After a most careful consideration of the opinion of the Solicitor-General, the Controller and Auditor-General regrets that he is unable to concur with him. His opinion, indeed, is understood by the Audit Office to lead to the conclusion that it would be sufficient for an item to be passed on the estimates of £1 for any class of revenue to justify the Administration in refunding such revenue to the amount of the available balance of the vote and of the appropriation for unauthorised expenditure.

J. K. WARBURTON,

Controller and Auditor-General.

No. 12.

The Hon. the Colonial Treasurer.

ASSUMING that a Warrant of His Excellency the Governor will be asked for, I think we should first ask the Solicitor-General if he desires to make any remarks upon the above reply of the Audit Office.

JAS. B. HEYWOOD.

14th March, 1902.

Refer accordingly.—J. McG., 14/3/02.

The Solicitor-General.—JAS. B. HEYWOOD, 14th March, 1902.

No. 13.

THE conclusion drawn by the Audit Office as to the effect of my opinion is quite correct in the case of a non-specific item, and is in strict accord with the view of the Audit Office itself in its minute of the 21st February. The sole question at issue is whether the item is specific or not, and in suggesting as it now does that this must be determined by the amount of the item, instead of by its nature, the Audit Office appears to me to contradict itself.

FRED. FITCHETT, Solicitor-General.

18/3/1902.

No. 14.

WELLINGTON, 19th March, 1902.—His Excellency the Governor is respectfully advised to sign the attached determination, under section 9 of "The Public Revenues Acts Amendment Act, 1900," respecting item 25, Vote 48, "£100, remission of duty on estates of deceased members of contingents."

C. H. MILLS.

Signed.—R.—27/3/1902.

RANFURLY, Governor.

WHEREAS by section 9 of "The Public Revenues Acts Amendment Act, 1900," it is provided that in case any difference of opinion arises between the Audit Office and the Treasury as to the vote, appropriation, fund, account, or other authority to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves a question of law, be determined by the Governor, having before him the opinion of the Attorney-General thereon: And whereas such difference of opinion as aforesaid has arisen as to the authority to which should be charged refunds of stamp duty on estates of deceased members of contingents in excess of the item 25 of Vote 48, £100, in the appropriations for the year ending the thirty-first March, one thousand nine hundred and two, the Audit Office contending that refunds in excess of that item cannot lawfully be charged to that vote, inasmuch as the item is specific in the sense that the amount thereof cannot be exceeded:

Now, therefore, I, Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Solicitor-General, do hereby determine the said question by deciding that the item in question is

not specific in the sense referred to, but applies to all stamp duty paid on estates of deceased members of the contingents during the year; and that consequently remission may be made, and the expenditure in respect thereof be lawfully charged to the said Vote 48, notwithstanding that the amount of the said item is thereby exceeded.

Given under the hand of His Excellency the Governor at Wellington, this twenty-seventh day of March, one thousand nine hundred and two.

C. H. MILLS.

The Audit Office.
To note His Excellency's determination.

No. 15.

JAS. B. HEYWOOD.
2nd April, 1902.

No. 16.

The Hon. the Colonial Treasurer.

Audit Office, 3rd April, 1902.

THE Governor having determined, under section 9 of "The Public Revenues Acts Amendment Act, 1900," that item 25 of Vote 48, "Remission of duty on estates of deceased members of contingents, £100," in the appropriations for the year ending the 31st March, 1902, applies to the refund proposed to be made of the sum of £566 18s. 3d. paid for duty on the estate in question, and that consequently remission of such sum may be made as a charge to Vote 48 notwithstanding that the amount of the said item is thereby exceeded, the Controller and Auditor-General has passed the relative voucher, 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.

The item on the estimates was intended to provide for remission, by payment out of the Consolidated Fund, of stamp duty which was required by statute to be paid out of particular estates—that is, for remission to private persons of revenue legally payable by them which there is no statutory authority to remit, except as a charge to the Unauthorised Expenditure Account of money expended in excess of the appropriation of Parliament; and such an item is obviously not an appropriation for the service of a Department.

Passing over the question whether an appropriation for remission of duty would apply to the present claim, "to refund of duty paid on the above estate," the item for remission of duty was either specific or not specific. If it was specific, it authorised no more than its amount of expenditure for the remission. If it was not specific, it authorised no remission whatever of revenue required by statute to be paid by private persons or estates. For if an item to relieve classes of persons or estates from liability to pay duty is quite general in terms, and has no specific reference to any particular case, the provision of the statute that such persons or estates shall be liable is paramount, except in a case under section 3 of the Public Revenues Amendment Act of 1900, where the payments must in no case exceed the amount of the item.

Such was accordingly the judgment of the Audit Office, and such, consequently, the law; and in none of the Audit Office minutes on the question is there anything that can reasonably be read even as implying a suggestion that the question whether the item is specific must be determined by its amount.

The remark that the Solicitor-General's "opinion, indeed, is understood by the Audit Office to lead to the conclusion that it would be sufficient for an item to be passed on the estimates of £1 for any class of revenue to justify the Administration in refunding such revenue to the amount of the available balance of the vote and of the appropriation for unauthorised expenditure" was a remark made by the Controller and Auditor-General by way of submitting that the opinion which led to such a conclusion was open to conclusive objection.

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

No. 17.

The Solicitor-General.

Premier's Office, Wellington, 7th April, 1902.

THE further remarks of the Audit Office, dated the 3rd instant, are submitted for any comment you may care to make.

I think these memoranda, after the Governor's Warrant has been obtained, are very objectionable, inasmuch as such correspondence might be continued indefinitely, and altogether new arguments and matter introduced.

In the cases of difference of opinion between the Audit Office and the Treasury the opinion of the Solicitor-General is obtained, and such opinion is forwarded to the Audit Office for their information. If the Audit Office does not accept such opinion, they should at this stage exhaust all the objections they may have to the course which the Solicitor-General advises the Government may be pursued in the matter, and the correspondence should close with the determination of the Governor, leaving merely to the Audit Office the task of transmitting a copy of the papers to be laid before Parliament.

It will probably be necessary to amend the Public Revenues Act in this direction.

R. J. SEDDON.

No. 18.

The Right Hon. the Colonial Treasurer.

I HAVE no comment to make, except to say that I do not take the Audit Office to now hold that the case is governed by section 3 of "The Public Revenues Acts Amendment Act, 1900." In its

minute of the 21st February it indicated its view that the section referred to did not apply, and, I think, rightly so, for it is confined to items which are in conflict with some statutory limitation or prohibition of payment.

FRED. FITCHETT, Solicitor-General.

6/4/1902.

No. 19.

FOR the Audit Office.—JAS. B. HEYWOOD.—9th April, 1902.

No. 20.

The Hon. the Colonial Treasurer.

Audit Office, 10th April, 1902.

IN acknowledging the receipt of and returning these papers, the Controller and Auditor-General begs leave respectfully to point out that the suggestion of the Minister, in his memorandum to the Solicitor-General of the 7th instant hardly applies to the present case.

The Minister referred for the remarks which the Solicitor-General made in his minute of the 18th March the memorandum of the 12th March which was addressed to the Minister by the Audit Office in connection with its judgment on the question; but those remarks of the Solicitor-General, though they appear to the Audit Office to cast reflection on it, and may reasonably be deemed to have influenced the Treasury, were not forwarded to the Audit Office till after the Government had advised the issue of, and obtained, the Governor's Warrant. It is submitted that, in these circumstances, the Controller and Auditor-General could not well have passed over the remarks in silence, except at the risk of being misapprehended to imply acquiescence.

In every such case, however, the Audit Office concern is only that the expenditure may be charged in accordance with law; and the purpose of the Audit Office memoranda is, as the Controller and Auditor-General would assure the Minister, only to afford assistance to a clear conception of the law.

J. K. WARBURTON,

Controller and Auditor-General.

Approximate Cost of Paper.—Preparation, not given; printing (1,410 copies) £3 9s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1902.

Price 6d.]