

advancing new moneys from the Common Fund but was merely authorizing the extension of the term by means of a memorandum of variation ; also that the granting of a renewal for an amount in excess of three-fifths of the Government valuation might rightly be regarded as an exercise by the Public Trustee of the power conferred by section 15 (1) of the Finance Act, 1924, which reads as follows :—

“ The Public Trustee is hereby authorized, without further appropriation than this Act, to expend out of the Investment Fluctuation Account (and if such account is insufficient for the purpose, then out of the Assurance and Reserve Fund) such sums as he may consider necessary for the protection of the securities in which the Common Fund is invested ; and such authority shall extend to the expenditure of moneys for the purpose of stocking and cultivating mortgaged lands, the employment of labour thereon, making advances to mortgagors, and the carrying-on of farming businesses, or for such other purposes as the Public Trustee may as a matter of business prudence consider necessary to prevent or minimize any loss on the realization of any such securities ; and to charge against such account any losses incurred in the realization of such securities.”

The Public Trustee also urged the provisions of section 20 (1) (j) of the Public Trust Office Amendment Act, 1921–22, which is as follows :—

“ In addition to the powers contained in section twenty-nine of the principal Act and in section twenty-one of the Public Trust Office Amendment Act, 1913, the Public Trustee shall have the following further powers : (j) He may, where he is mortgagor or mortgagee in respect of any mortgage, from time to time agree to the renewal, extension, or variation of such mortgage for such period and on such terms and conditions as he thinks fit.”

The Audit Office was not, however, satisfied that the action of the Board could be considered to comply with the terms of the law, and although it did not suggest that there was any immediate risk of loss in connection with the particular case under consideration (the excess of the loan granted amounting to £27 only), it took the view that the principle involved was of sufficient importance to warrant further action. The question was then referred back to the Solicitor-General, whose opinion again confirmed the view expressed by Audit.

As the Public Trustee in his communication of the 14th June had stated his intention of regarding the matter as closed, and as the Audit Office was of opinion that further action was essential, application was made to the Hon. the Minister of Finance for the correspondence to be referred to the Hon. the Attorney-General in terms of section 18 of the Public Revenues Act, 1910. The Hon. the Minister of Finance complied with the Audit request, and the decision of the Hon. the Attorney-General is appended.

Attorney-General's Office, Wellington, 29th June, 1926.

Memorandum for the Hon. the Minister of Finance.

It is clear that the advance in question must be treated as a new mortgage from Mrs. Imlah, and not as an extension of the original mortgage given by Mr. Barleyman, which in point of fact has been discharged.

Section 20 (j) of the Public Trust Office Amendment Act, 1921–22, relates to the “ renewal, extension, or variation ” of an existing mortgage, and does not therefore affect this matter.

Neither does section 15 of the Finance Act, 1924, affect the question. This section merely confers powers to nurse an existing mortgage in order to minimize any loss on realization.

The sole question is therefore whether the new advance to Mrs. Imlah is one justified by section 34 (c) of the Public Trust Office Act, 1908. Clearly the valuation referred to in this section can only be the valuation made at the time of the advance ; so that, to the extent of £27, being the excess of the amount of the advance over three-fifths of the valuation, the advance to Mrs. Imlah is an unauthorized advance. It follows that, in the event of the security being realized and a loss being made, the Public Trust Office will be liable to make good such loss to the extent of £27.

The Public Trustee is a statutory officer, and as such is necessarily bound by the terms of the statute creating his powers, which it is clear have been exceeded in this case.

I think the Audit Office is justified in taking exception to the advance.

F. J. ROLLESTON, Attorney-General.

*Approximate Cost of Paper.*—Preparation, not given ; printing (500 copies), £2 15s.

By Authority : W. A. G. SKINNER, Government Printer, Wellington.—1926.

Price 3d.]