

1926.  
NEW ZEALAND.

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## THE PUBLIC REVENUES ACT, 1910.

STATEMENT OF CASE OF DIFFERENCE OF OPINION BETWEEN THE CONTROLLER AND AUDITOR-GENERAL AND THE PUBLIC TRUSTEE, TOGETHER WITH THE DECISION OF THE HON. THE ATTORNEY-GENERAL THEREON, IN REGARD TO THE INTERPRETATION OF STATUTE.

*Laid on the Table of the House of Representatives pursuant to Section 18 (2) of the Public Revenues Act, 1910.*

The CONTROLLER AND AUDITOR-GENERAL to the HON. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR,—

The Audit Office, Wellington, N.Z., 6th July, 1926.

I have the honour to forward the attached statement regarding a difference of opinion between the Public Trustee and the Controller and Auditor-General, together with the decision of the Hon. the Attorney-General thereon, for presentation to Parliament in terms of section 18 (2) of the Public Revenues Act, 1910.

I have, &c.,

G. F. C. CAMPBELL, Controller and Auditor-General.

The Hon. the Speaker, House of Representatives, Wellington.

STATEMENT OF CASE OF DIFFERENCE OF OPINION BETWEEN THE CONTROLLER AND AUDITOR-GENERAL AND THE PUBLIC TRUSTEE IN REGARD TO THE INTERPRETATION OF STATUTE.

In the course of the Audit examination of the transactions of the Public Trust Office it was ascertained that an advance by way of mortgage had been granted by the Investment Board in excess of the proportion of the security as provided in section 34 (c) of the Public Trust Office Act, 1908, which reads as follows:—

“ Unless expressly prohibited, the Public Trustee may invest all capital moneys . . . (c) In advances by way of mortgage on the security of any real estate held in fee-simple in New Zealand, and free from incumbrances, to an amount not exceeding three-fifths of the estimated value of such estate, according to a valuation approved by the Board.”

The facts are that in the year 1920 a loan on mortgage of £1,300 was granted by the Board aforesaid, the value of the security having then been certified to by the Valuer-General at £2,593. The amount so loaned came correctly within the provisions of section 34 (c) above referred to.

The loan fell due for repayment on the 24th August, 1925, but the security during the currency of the loan had changed hands. At maturity the old mortgage was released, and a new mortgage to the extent of £1,300 was executed in the name of the new owner.

Prior to the granting of the new mortgage, however, a fresh valuation had been obtained from the Valuer-General. This valuation amounted to £2,123, disclosing a reduction of £470 as compared with the valuation upon which the original loan was granted. Notwithstanding the reduction in value of the security the Board granted a new loan of £1,300 instead of £1,273, the latter amount being the full three-fifths proportion of the new value.

The Audit Office questioned the legality of the action of the Investment Board, on the grounds that the amount of the new mortgage, £1,300, was in excess of the statutory proportion (three-fifths) of the value of the security.

The Public Trustee, however, disagreed with the Audit Office, and the matter was then referred to the Solicitor-General, who upheld the Audit view of the matter. The Public Trustee, on the 14th June, 1926, again expressed his disagreement, on the grounds that the Investment Board was not

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.]