

No. 8.

Department of Lands and Survey, Wellington,
12th March, 1901.

The Solicitor-General, Wellington.

SECTION 29 of "The Land for Settlements Act, 1894," gave power to construct roads on estates which have been purchased, and also to pay all expenses incident to the administration out of the funds at credit of the Land for Settlements Account.

The Land for Settlements Consolidation Act of 1900 appears to limit the road-works to "laying off," except in cases where there are mineral deposits (*vide* sections 65 and 66). It is not clear whether, as in the case of estates purchased under the Act of 1894 and preceding Acts, they can be roaded if mineral deposits are not found, nor does the Act of 1900 appear to give the same power as that of 1894 in the matter of administration, the latter Act being very general in its terms (section 29).

Please advise as early as possible, as many payments are being delayed in consequence of the implied restrictions of the present Act. An opinion is also requested as to the power to construct river protective works.

C. H. MILLS,
Minister of Lands.

No. 9.

Opinion as to Power to make Roads under "The Land for Settlements Act, 1900."

It appears to me that the Minister has as full power to construct roads under the new Act as he had under the old. In the case of the old Act this power does not rest on section 29. That section directs that the moneys borrowed or received under the Act shall be applied for paying all expenses incident to the administration of the Act, and amongst these expenses the cost of laying off and making roads is mentioned amongst other specified items. Now, it may be that the fact of these items being so specified is in itself an implied authorisation of them; but, in my opinion, they are specified there not for that purpose, but in order to show that they are expenses incident to the administration of the Act, and therefore payable out of the Land for Settlements Account. If this is so, then express authority should be found elsewhere in the Act. Accordingly, we find the authority for purchase in section 21. Similarly, the cost of survey or division of land is authorised by section 30, and the latter section, in providing for the cost of "roading," covers the cost of laying off and making roads. "Road-making" is also by necessary implication provided for in subsection (b) of section 19, for, although that section deals with land in the possession of the owner, its plain purpose is to give to the Minister the same powers over the land as if it were in the possession of the Crown.

So much for the Minister's power under the Act of 1894. Now as to the Act of 1900: Section 51 of the new Act corresponds with section 30 of the old. Each of these sections provides that the capital value of all land acquired shall be fixed at a rate sufficient to cover, *inter alia*, the cost of "roading," and thereby clearly implies the power to expend money in "roading," a term which plainly includes making as well as laying off the roads.

My remarks as to the operation of section 19 of the Act of 1894 apply also to the corresponding section (section 29) of the Act of 1900. The special powers conferred on the Minister by sections 65 and 66 of the Act of 1900 do not in any way limit his powers under the other sections of the Act. They merely re-enact and amplify the provisions of section 8 of the Act of 1896.

The reason why the power to lay off roads is specifically given in section 65 is probably to make it quite clear that the previous references to "roading" and road-making are not to be confined to roads already laid off at the time when the land is acquired. It is to be noticed that, with the power to lay off roads the power to set aside such reserves as the Minister thinks expedient is also given, and, as these powers conflict with the earlier provisions of the Act directing that all lands acquired shall be disposed of by way of lease, &c., there is good reason for giving them by express words instead of leaving them to implication.

With regard to river protective works, I do not think the Act authorises the Minister to undertake them. Subsection (2) of section 65 gives him general power to "deal with the land," and "carry on operations thereon," pending its disposal by way of lease, but, having regard to the scope and purpose of the section, I do not think it would extend to such a case. Protective works are something quite distinct from works for the purpose of utilising and developing the land and preparing it for settlement.

FRED. FITCHETT, Solicitor-General.

19th March, 1901.

No. 10.

The Audit Office,
SOLICITOR-GENERAL'S opinion herewith. Please return when done with.H. J. KNOWLES,
Chief Accountant, Lands.

28th March, 1901.

No. 11.

Authority for Road-making under "The Land for Settlements Consolidation Act, 1900."

The Controller and Auditor-General.

SINCE 20th October, 1900, "The Land for Settlements Consolidation Act, 1900," has been the only authority for the issue and payment of moneys out of the Land for Settlements Account, that Act having repealed the original Act of 1894 and its amendments. Any reference to the original