

1901.
NEW ZEALAND.

“PUBLIC REVENUES ACT, 1900”
(CORRESPONDENCE IN FIVE CASES UNDER SECTION 9 OF THE).

Laid upon the Table in compliance with Section 9 of “The Public Revenues Act Amendment Act, 1900.”

Audit Office, 9th July, 1901.

The Hon. the Speaker of the House of Representatives.
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 five cases under that section, of a difference of opinion between the Audit Office and the Treasury.

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

CASE NO. 1.

N. 10.

Requisition received in Wellington 12/12/1900. Departmental No. 51.

Wellington, New Zealand, 12th December, 1900.

The Secretary, Marine Department, Wellington.

REQUIRED the sum of six hundred pounds sterling as an advance for payment of wages and contingencies in connection with the s.s. “Tutanekai.” To be placed to the credit of my imprest account with the Bank of New Zealand at Wellington.

Name: C. F. Post.

Official designation: Master, s.s. “Tutanekai.”

Station: Wellington.

(Approval stamp.)

Marine Department, 12th December, 1900.

Approved. £600. To be charged to “Advances, Miscellaneous, Vote 42.”

No. 2.

Is this advance required for, or in respect of, the service of the s.s. “Tutanekai” in conveying to Australia visitors and representatives to the Australian Commonwealth celebrations? If so, the advance is not chargeable to Vote 42. Neither the expenses of the steamer while absent from New Zealand on the service, nor the expenses of fitting her up for the purpose, would be chargeable to the vote.

13th December, 1900.

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

No. 3.

The Controller and Auditor-General.

THIS is required for the purpose to which you refer. As the Legislature has voted a sum of £11,300 (Vote 42) for working-expenses outside as well as inside the colony, I would be glad to have your reasons for objecting to charge the expenses of this trip to Vote 42.

13th December, 1900.

W. T. GLASGOW.

No. 4.

THE reason for objecting is that the service outside the colony in this case is not a service of the Marine Department. It will not be contended that the Marine service payments for which Vote 42 provides would be applicable, in the absence of any express power or authority to apply them, to the expenses of despatching the steamer on the mission in question.

13th December, 1900.

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

No. 5.

The Controller and Auditor-General.

REFERRING to my minute dated 13th instant, I wish to correct the first sentence. The purpose for which the vessel is required is to take Volunteers to Sydney to take part in the Federation celebrations. The term "visitors and representatives" in your minute of same date does not accurately express the facts.

18th December, 1900.

W. T. GLASGOW.

No. 6.

THE Audit Office merely asked the question. The answer is responsible for any inaccurate expression of the facts. On what ground is it proposed to apply to the expenses of employing the s.s. "Tutanekai" "to take Volunteers to Sydney, to take part in the Federal celebrations," the supplies granted by Vote 42? The service is either voted or not voted, and it is not a Marine service under Vote 42 within or outside the colony.

18th December, 1900.

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

No. 7.

Office of Minister for Public Works, Wellington, New Zealand.

The Solicitor-General.

THE amount asked for from attached requisition is to meet the payment of the working-expenses of the "Tutanekai," and includes the sum of £300 due at the end of this month for wages. This boat has been and is almost wholly employed upon work for other departments and outside of the Marine Department. As the "Tutanekai" will be employed upon public service and the amount is required for working-expenses, both within and outside the colony, kindly advise me if this is a fair charge against the vote referred to.

W. H.-J.—17/12/1900.

No. 8.

Hon. Hall-Jones.

RE *Requisition for £600 for "Tutanekai" and the Audit's Objection Thereto.*—Vote 42 as shown in the estimates is as follows:—

Government steamers: Working-expenses within or outside the colony	£ 16,000
Repairs, "Hinemoa"	800
	16,800
Less estimated recoveries under section 41 of "The Public Revenues Act, 1891"	5,500
	11,300
Total of Vote No. 42	11,300

It appears to me from this to be the clear intention of Parliament that the whole of the working-expenses of these steamers—on whatever public service they are employed—are to be charged against the vote. And with good reason, for otherwise Parliament would have no means of knowing how much, in fact, is spent during the year. This view accords with the uniform practice. Thus the "Tutanekai" is often employed in carrying co-operative workmen to co-operative works at the Sounds and elsewhere. In such cases the Marine Department pays the working-expenses of the steamer out of the vote, and subsequently credits to the vote whatever sum is recovered from the department on whose behalf the workmen are carried. I am therefore of opinion that the amount referred to in the requisition is properly chargeable against the Vote No. 42.

The reason of the Controller's objection is not quite clear. It is beside the question to say that it is not the business of the Marine Department to carry Volunteers to Sydney for the Commonwealth celebrations. It is the business of the Marine Department to employ the Government steamers on any public service for which the Government requires them. As to whether any particular mode of employment is or is not on the public service, that, it appears to me, is for the Government and not the Audit Office to decide.

FRED. FITCHETT, Solicitor-General.

Crown Law Office, 18th December, 1900.

No. 9.

Mr. Glasgow.

PLEASE see opinion of the Solicitor-General upon the matter. I cannot understand the position taken up by the Auditor-General, especially as the work to be done comes within the ordinary working-expenses for the year.
W. H.-J.—18/12/1900.

No. 10.

The Controller and Auditor-General.

PLEASE see the opinion of the Solicitor-General herewith. I hope that you will now see your way to pass this imprest requisition. The departure of the "Tutanekai" is fixed for the 20th instant.
18th December, 1900. W. T. GLASGOW.

No. 11.

Audit Office, 19th December, 1900.

Application for Advance on Account of Expenses of despatching s.s. "Tutanekai" to Sydney.

THE point of the question raised by the Audit Office on the Marine Department's application for money to pay the expenses of employing the s.s. "Tutanekai" to take the contingent of Volunteers to Sydney appears to have been misapprehended by the Solicitor-General. The question raised was not as to the merits or public nature of that service, but as to the vote on account of which the service is to be performed, and out of which the expense of such performance can be recovered, by the department. The Public Revenues Act requires the Audit Office to be satisfied, as regards every claim to payment of public money, "that the expenditure is charged upon the voucher against the proper vote and fund provided by Parliament for the same."

The service payments necessary to this special employment of the steamer are either voted or not voted; and by the term "voted" the Audit Office means "included in the estimates as passed by the House of Representatives." If the service payments are not so included they clearly differ from the payments which are—that is, from the payments for the passage-money of co-operative labourers, or for the carriage of material on account of departments authorised to pay for such carriage; and the Audit Office would ask where, on the estimates, is there any such authority to pay for the steamer's service in question as the authority to pay for her services in providing such passages and freight? The Audit Office denies not the right of the Marine Department to employ the Government steamers on any public service for which the Government requires them, but the right to charge to the Marine service payments included in the estimates under Vote 42 a public service for which the Audit Office does not know, and the Marine Department does not indicate, any provision but that vote—any provision out of which the payments charged to that vote could be recovered. If there is no such provision, and the public service in question is to be an unauthorised charge, the expenditure involved by the employment of the steamer in the service would be an unauthorised charge, and should be performed as such. This is obviously an important point in a large and expensive service of the steamer—a point which it may not have been considered expedient to raise in respect of general services of no great charge.

The value of the steamer's services is, in effect, advanced or not advanced by the department to which she belongs. If the value is advanced, there would be recovery from the provision in respect of which the advance is made; and the principle of advances under the Public Revenues Act is that they shall be charged to the vote for the service for which they are made. If the value is not advanced, it is, in this case, not chargeable to Vote 42 on the estimates.

The Audit Office has said nothing about any business of the Marine Department, but the business of charging the relative expenditure in accordance with the Statutory Authority for it.

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

No. 12.

The Solicitor-General.

PLEASE see remark of the Controller and Auditor-General. Kindly advise as to the course to be taken.
W. H.-J.—21/12/1900.

Hon. Minister.—Opinion answered. F. F.—21/12/1900.

No. 13.

Hon. the Minister.

THE Controller's minute of 19th instant does not seem to me to alter the position. If I understand him aright, he says in effect that where the steamer is employed on a service other than that of the Marine Department, her working-expenses cannot lawfully be charged to Vote No. 42 unless the service is provided for by a vote on the estimates, so that the expenses may be recovered from that vote. A sufficient answer to this is that, even where there is a vote for the service, the expenses are not recovered from it. Take, for example, the carriage of railway material for the Railway Department: That department is not concerned with the steamer's expenses, but merely pays a freight, which has no relation to these expenses, but which, when received by the Marine Department, is credited by it to Vote No. 42 as a recovery. So also in the case of co-operative labourers carried for the Public Works Department. That department merely pays passage-money, which the Marine Department credits to the vote as a recovery. But in every case the steamer must be kept in commission by the Marine Department out of Vote No. 42, and any other department using her is in no way concerned with her working-expenses.

If the steamer is employed in a service for which there is no vote on the estimates, then it may be that the department for which the service is performed may be called upon to pay for it out of "Unauthorised." This question, however, does not arise at the present stage, and it is therefore unnecessary to consider it. But, as in the cases already cited, the amount to be paid will be fixed by the departments concerned, and will in no case be a payment of the working-expenses of the steamer.

As indicated above, the Controller appears to me to be confusing the payment of the steamer's working-expenses with the payment of the services performed. There is no connection between them. In order to earn freight or passage-money the steamer must carry goods or passengers, and in order to carry them her working-expenses must first be paid. The working-expenses are provided for by Vote 42. The freight or passage-money is provided for either by a vote on the estimates or by "Unauthorised." But the former payment must be made before the latter comes up for consideration.

I may point out that, in the case of the present requisition, portion of the amount is for wages and other expenses not connected with the Sydney trip, and of the balance a large part would be payable in any event, as the necessary expenses of keeping the steamer in commission, even if she were not employed in any service.

The question in dispute may be disposed of under section 9 of "The Public Revenues Acts Amendment Act, 1900," and, as the Controller's minute shows that in his opinion the question involves matter of law, it should be determined by the Governor, having before him my opinion.

FRED. FITCHETT, Solicitor-General.

Crown Law Office, 21st December, 1900.

No. 14.

Wellington, 22nd December, 1900.

HIS Excellency the Governor is respectfully advised to sign the accompanying instrument, determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a question in dispute between the Audit Office and the Treasury.

R. J. SEDDON.

R.—24/12/1900.

RANFURLY, Governor.

WHEREAS by section nine 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 to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves questions 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 vote to which the expenditure referred to in the schedule hereto should be charged: 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 said expenditure should be charged to the vote specified in the estimates as "Vote No. 42, Marine, Miscellaneous Services."

Schedule.

Requisition by C. F. Post for £600 as advance for payment of wages and contingencies in connection with s.s. "Tutanekai."

Given under the hand of His Excellency the Governor, at the Government House, at Wellington, this 24th day of December, one thousand nine hundred.

WM. HALL-JONES.

The Audit Office.—To pass voucher, after noting Order in Council.
28th December, 1900.

JAS. B. HEYWOOD.

No. 15.

Audit Office, 28th December, 1900.

The Hon. the Colonial Treasurer.

THE Controller and Auditor-General, having this day received the determination by the Governor, in the manner provided by section 9 of "The Public Revenues Acts Amendment Act, 1900," that the expenditure in question should be charged to Vote 42 for "Marine, Miscellaneous Services," now passes the voucher, and in doing so ventures to express himself satisfied with the course adopted.

Passage-money and freight seem clearly to be resolvable into the working expenses and the profit thereon of the means of conveyance. But in any case the charge to the colony for the conveyance between New Zealand and Sydney of the contingent of Volunteers will be the amount of the whole value, including working-expenses, of the service of such conveyance by the s.s. "Tutanekai." The question then appears simply to be what vote and fund, other than the appropriation for "unauthorised expenditure," has Parliament provided for the charge; and, if Parliament has provided no such vote and fund, may the whole or any part of the charge be defrayed as the authorised expenditure of public money for the service of the Marine Department on the working expenses of the steamer? The Audit Office is not satisfied that Parliament did provide by Vote 42 that the charge may be so defrayed, and the foregoing determination is in consequence necessary to the passing of the voucher in question.

The Audit Office will lay before Parliament, in accordance with the provisions of section 9 of the Amendment Act, a copy of the correspondence relating to the difference of opinion.

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

CASE No. 2.

No. 1.

ACCOUNT of John McIlraith, for £156 17s., for supplies of provisions to s.s. "Tutanekai" from 7th to 18th December, 1900.

No. 2.

WERE these supplies or any of them obtained for the purpose of the service of the s.s. "Tutanekai" in conveying a contingent of Volunteers to Sydney to take part in the Federal celebrations?

4th January, 1901.

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

No. 3.

The Controller and Auditor-General.

ALL the supplies excepting such as are on first sheet of the account were procured for the trip to Sydney. It is possible that some portion may be unused on board, in which case they will be used on the vessel on return from Sydney.

7th January, 1901.

D. MCKELLAR (for Secretary).

No. 4.

THE despatch of the steamer to Sydney being for the purpose of the conveyance of the contingent, it does not appear to the Audit Office that such expenditure of public money as may be necessary to that purpose is chargeable as expenditure authorised by Vote 42.

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

No. 5.

Marine Department, Wellington, 5th February, 1901.

The Controller and Auditor-General, Wellington.

THE question as to whether or not the expenses of the "Tutanekai" can be charged against the Marine Vote No. 42, irrespective of her employment in or out of the colony, having been discussed on a previous voucher, and an Order in Council having been obtained authorising the charging of certain expenses in connection with the trip to Australia to that vote, I presume that there will now be no objection to the remaining expenses being dealt with in the same way.

W. T. GLASGOW, Secretary.

No. 6.

THE matter was discussed, but the Audit Office, in view of the fact that the voyage of the s.s. "Tutanekai" to Sydney was for the purpose of conveying the contingent of Volunteers to take part in the Federal celebrations there, was not satisfied that the expenditure of public money on that purpose could be charged in the Public Accounts as expenditure authorised for the working-expenses of the steamer. The Governor, in exercise of his power under section 9 of "The Public Revenues Acts Amendment Act, 1900," determined the question of the difference of opinion between the Audit Office and the Treasury only as regards the "requisition by C. F. Post for £600 as advance for payment of wages and contingencies in connection with s.s. 'Tutanekai,'" so that the objection of the Audit Office still holds good against any additional charge, and especially when the additional charge is for the supplies purchased on account of the service of conveying the contingent.

6th February, 1901.

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

No. 7.

Hon. the Minister.

I RECOMMEND that the Treasury Department be now requested to prepare an order for the signature of His Excellency the Governor. I would suggest, that if possible, such order should be made general in its terms, so as to include all the expenses of the trip, and so avoid the necessity for several orders.

7th February, 1901.

W. T. GLASGOW.

Approved. The order should cover any further charge in connection with this particular work.—W. H. J. 3/2/1901.

The Secretary, Treasury.

WILL you please have the necessary Order in Council issued, and arrange for payment of attached account, as McIlraith is anxious to get the money.

8th February, 1901.

W. T. GLASGOW.

No. 8.

The Treasury, New Zealand, Wellington, 13th February, 1901.

The Hon. the Colonial Treasurer.

I CANNOT see the necessity for another Order in Council. The opinion of the Solicitor-General is given at considerable length, and was not confined to the legality or otherwise of the charge con-

nected with the particular voucher for £600, but traversed the whole of the arguments of the Audit Office, and laid down the broad principle that "in every case the steamer must be kept in commission by the Marine Department out of Vote No. 42," and "the working-expenses are provided for by Vote 42." In other words, the particular service upon which the steamer is employed has nothing to do with the direction to charge for payment of the expenses of the steamer while employed on such service. In every case the payment for such expenses should be made a charge against Vote 42. The opinion and arguments of the Solicitor-General being concurred in by His Excellency the Governor, supported by the Order in Council, it appears to me to be quite unnecessary to require another Order in Council to enable payment to be made for services connected with the working-expenses of the steamer. As the Solicitor-General mentions in his memorandum of the 21st December, "the Controller appears to me to be confusing the payment of the steamer's working-expenses with the payment of the services performed"; and I feel sure that upon reconsideration of the matter the Audit Office will not desire to press for another Order in Council, but will, if they consider it necessary, be satisfied to include in their report to Parliament any subsequent payments for similar services which they consider are not properly chargeable to Vote 42.

JAS. B. HEYWOOD,
Secretary to the Treasury.

No. 9.

Hon. Mr. Hall-Jones.

HON. Mr. Seddon has asked me to send this to you, and suggested that you should refer the question to the Solicitor-General for his opinion.

13th February, 1901.

JAS. B. HEYWOOD.

Dr. Fitchett.

KINDLY let me have your opinion upon this matter.—W. H.-J. 13/2/1901.

No. 10.

Hon. the Minister.

FOR the reasons given by me when dealing with the voucher for £600, I am of opinion that these expenses are properly chargeable to Vote No. 42. The Audit Office would, of course, be quite justified in insisting upon a fresh warrant by His Excellency under section 9 of last year's Act, but I see no objection to the course suggested by Mr. Heywood—viz., dispense with another order, but treat the present question as covered by the order of 24th December, 1900, and report to Parliament accordingly. This, however, is a matter for the Controller.

14th February, 1901.

FRED. FITCHETT, Solicitor-General.

The Audit Office.—For reconsideration.—J. B. H. 13/2/1901.

No. 11.

The Treasury.

Audit Office, 20th February, 1901.

THE case is one of a difference of opinion on a question which can be determined only by the Governor under section 9 of the Public Revenues Act of 1900, and no proposition has been made or any ground been pointed out on which the Audit Office considers that it would, in the circumstances, be justified in dispensing with such determination.

The Treasury quotes the opinion of the Solicitor-General that "the Controller appears to me to be confusing the payment of the steamer's working-expenses with the payment of the services performed." This opinion was followed by his remark that "the former payment must be made before the latter comes up for consideration." It may, however, never happen that "the latter comes up for consideration." To take, for example, the working-expenses of the steamer on her special voyage to the South Sea Islands in May last, it is stated by the Marine Department, in the paper of which a copy is appended, that there have been no recoveries by the department for the services of the steamer during the period of that voyage—that, in other words, "the latter" did not "come up for consideration" in respect of service of the steamer to the South Sea Islands. And in this way the payments for an unauthorised service might be included, and appear so for all time, as the expenditure authorised for the working-expenses of the steamer.

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

Appended to No. 11.

Expenses of the s.s. "Tutanekai" on her Special Voyage to the South Sea Islands in May, 1900.

Audit Office, 31st January, 1901.

THE Audit Office would be obliged by a statement from the Marine Department showing,—(1.) The working-expenses of the s.s. "Tutanekai" on her special voyage to the South Sea Islands in May, 1900. (2.) The vote to which such working-expenses have been charged. (3.) The amount of any recoveries by the department for the services of the steamer during the period of the voyage.

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

Hon. the Minister.—Your authority for furnishing this information is requested.—W. T. GLASGOW. 4/2/1901.

The information is contained in the accompanying memo. The answer to question 2 is: "Vote 42, Marine, Miscellaneous Expenses." The answer to question 3 is "No."

W. T. G.—12/2/1901.

Cost of working-expenses of s.s. "Tutanekai" while on trip to South Sea Islands, from the 17th May to the 19th June, 1900: Wages of crew, £379 19s. 5d.; coal, provisions, stores, &c., £771 1s. 4d.: total, £1,151 0s. 9d.

W. T. GLASGOW—12/2/1901

Marine Department, Wellington, 12th February, 1901.

No. 12.

The Audit Office, The Treasury, New Zealand, Wellington, 26th February, 1901.

REFERRING to your memorandum dated 20th instant, relative to a difference of opinion as to the charging of a voucher for £156 17s. for provisions supplied to the s.s. "Tutanekai" upon the occasion of her visit to Sydney, I presume the Audit Office considers the question in dispute to be one of law. I should therefore be glad if you would state that this is the case, and the particular legal grounds upon which you reply.

JAS. B. HEYWOOD, Secretary.

No. 13.

THE Controller and Auditor-General, in replying to this inquiry, presumes it to have been made in compliance with the direction of the Hon. the Colonial Treasurer.

In the opinion of the Audit Office, the question of the difference of opinion between the Audit Office and the Treasury as to the appropriation to which the voucher for £156 17s. is chargeable involves matters of law, and no statement "of the objection of the Audit Office" will be satisfactory to the Controller and Auditor-General which does not recite the whole of the correspondence, commencing with the Audit Office minute of the 4th January, 1901, on the voucher itself, and ending with the memorandum of the 20th instant addressed by the Audit Office to the Treasury.

J. K. WARBURTON,

Controller and Auditor-General.

27th February, 1901.

No. 14.

Wellington, , 1901.

HIS Excellency the Governor is respectfully advised to sign the accompanying instrument, determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a question in dispute between the Audit Office and the Treasury.

WM. HALL-JONES.

R.—9th March, 1901.

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 to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves questions 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 vote to which the expenditure referred to in the schedule hereto should be charged: 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 said expenditure should be charged to the vote specified in the estimates as "Vote No. 42, Marine, Miscellaneous Services."

Schedule.

Claim by John McIlraith for £156 17s. for provisions supplied to the s.s. "Tutanekai."

Given under the hand of His Excellency the Governor at the Government House, at Wellington, this ninth day of March, one thousand nine hundred and one.

WM. HALL-JONES.

No. 15.

The Audit Office.

THE attached order by the Governor will now enable you to pass the voucher in favour of Mr. McIlraith.

14th March, 1901.

JAS. B. HEYWOOD.

No. 16.

The Hon. the Colonial Treasurer.

THE Audit Office having to-day received the order of the Governor determining that the expenditure in question shall be charged to "Vote 42, Marine, Miscellaneous Services," the Controller and Auditor-General begs respectively to inform the Hon. the Colonial Treasurer that the voucher charging the expenditure accordingly has been passed, and that the Audit Office will, in ordinary course, lay before Parliament, in accordance with section 9 of "The Public Revenues Acts Amendment Act, 1900," a copy of the correspondence relating to the difference of opinion.

J. K. WARBURTON,

Controller and Auditor-General.

16th March, 1901.

CASE No. 3.

No. 1.

S.s. "Tutaneikai," Supplies, &c., to, charged by determination of Governor to Vote 42, for "Marine, Miscellaneous Services."

Wellington, 18th April, 1901.

His Excellency the Governor is respectfully advised to sign the accompanying instrument determining under section 9 of "The Public Revenues Acts Amendment Act, 1900," a question in dispute between the Audit Office and the Treasury.

J. B. H.
R. J. SEDDON.
R.—30/4/01.

No. 2.

RANFURLY, Governor.

WHEREAS by section nine 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 to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves questions 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 vote to which the expenditure referred to in the schedule hereto should be charged: 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 said expenditure should be charged to the vote specified in "The Appropriation Act, 1900," as "Vote No. 42, Marine, Miscellaneous Services."

Schedule.

				£	s.	d.
Claim by Briscoe, MacNeill, and Co.	...	...	...	0	15	0
"	...	...	...	8	0	10
"	...	...	...	3	9	2
"	...	...	...	25	6	10
"	...	...	...	4	1	3
"	...	...	...	3	12	7
Claim by Graham, C. A.	...	...	...	1	11	0
" Kelly, D. L.	...	...	...	5	5	0
" Wellington Harbour Board	...	...	...	7	4	8
" N. Norberg and others	...	...	...	8	13	4
" Rod, John ...	...	...	...	60	16	7
" Turner, C. W.	...	...	...	30	0	0
" Andrews, Joseph	...	...	...	0	18	6
" Andrews, Joseph	...	...	...	6	16	7
" Cameron and Christie	...	...	...	0	14	8

Given under the hand of His Excellency the Governor, at the Government House, at Wellington, this thirtieth day of April, one thousand nine hundred and one.

R. J. SEDDON.

No 3.

REFERRED to Audit Office. To note, and to pass vouchers if otherwise correct.

2nd May, 1901.

JAS. B. HEYWOOD.

No. 4.

The Treasury.

WILL oblige by referring the Audit Office to the expression of the difference of opinion between the Audit Office and the Treasury as to the vote to which the expenditure in question should be charged, for it appears to be necessary to the determination of the Governor that there should have been expressed such difference of opinion as to the expenditure, and that the Solicitor-General should have expressed an opinion thereon.

3rd May, 1901.

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

No. 5.

The Secretary for Marine.

To enable me to reply.—JAS. B. HEYWOOD. 6th May, 1901.

No. 6.

The Secretary, Treasury.

THE correspondence with the Auditor-General was carried on as shown in Treasury Record 1900/2471. See also Marine 1901/283 herewith.

11th May, 1901.

W. T. GLASGOW.

No. 7.

The Audit Office.

THE accompanying papers show a decided difference of opinion between the Treasury and the Audit Office as regards the account or vote to be charged with expenditure incurred for claims now covered by the Governor's warrant.

16th May, 1901.

JAS. B. HEYWOOD.

No. 8.

The Treasury.

THAT difference of opinion was as to the vote to which should be charged the particular expenditure set down in the schedule to the former order of the Governor. The Audit Office will, however, regard that difference of opinion as extending to the expenditure set down in the schedule to the present order, and will pass the vouchers charged as this order determines that they should be, and the Controller and Auditor-General will in ordinary course lay before Parliament, in accordance with section 9 of "The Public Revenues Acts Amendment Act, 1900," a copy of the correspondence between the Audit Office and the Treasury on the matter.

18th May, 1901.

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

CASE No. 4.

No. 1.

Westminster Chambers, 13, Victoria Street, London, S.W.,

20th October, 1900.

SIR,—

I beg to state, for your information, that on the 17th instant the sum of £5,657 10s. 6d. was paid to credit of the Public Account, being interest on £500,000 for 118 days at $3\frac{1}{2}$ per cent. Bank of New Zealand preferred shares redeemed.

I have, &c.,

The Controller and Auditor-General, &c.

F. W. PALLISER.

No. 2.

UNDER subsection (2) of section 8 of "The Bank of New Zealand and Banking Act, 1895," "all moneys received for the said repurchase of such shares" include this amount, and it should therefore have been paid to the Public Trustee. Referred to the Treasury.

22nd November, 1900.

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

No. 3.

The Controller and Auditor-General.

I REALLY do not think that the language of the Act could convey the impression which has apparently taken hold of the custodians. Upon a more thoughtful interpretation it must be understood that the repurchase-money must in the first place be paid to the persons from whom it was borrowed, after which the requirements of the law as to paying over to the Public Trustee would have to be carried out. This was your impression also at the time I consulted you on the subject.

I have written to the Agent-General to similar effect.

28th November, 1900.

JAS. B. HEYWOOD.

No. 4.

The Treasury.

THE Audit Office is not raising any objection to the Treasury contention on that point, but has observed only that the custodians should not have parted with the securities till they had received the requisition under section 4, subsection (1), of the Public Securities Act. The custodians, as such, should in ordinary course part with the securities on receiving the requisition, and on being satisfied that it specifies a purpose provided for by law.

29th November, 1900.

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

No. 5.

The Accountant.

THE interest paid by the bank is no way different from the half-yearly payments of interest made since we gave them the stock. The interest is in recoupment of the interest the Treasury has to pay upon the stock issued to the bank.

27th November, 1900.

J. B. H.

No. 6.

THAT is so.—R. J. COLLINS. 27/11/1900.

2—B. 19.

No. 7.

The Audit Office.

I do not consider that interest is part of the purchase-money referred to in the section you quote.
28th November, 1900.

JAS. B. HEYWOOD.

No. 8.

The Treasury.

THE Audit Office is unable to take the meaning of the words of section 8 to be in accordance with the Treasury view of the matter.

Let x represent the nominal amount of the shares, and y the amount of accrued dividends. Then, as the price at which repurchase is authorised is equal to $x + y$, "all the moneys received for the said repurchase" include $x + y$.

29th November, 1900.

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

No. 9.

The Audit Office.

I do not think your equation correctly illustrates the position. The transaction was simple: £500,000 was borrowed, and interest at the rate of $3\frac{1}{2}$ per cent. per annum has been paid by the bank half-yearly to the Treasury, and has been credited in reduction of the interest payable upon the stock issued by the Treasury as a loan to the bank. The bank lately determined to get rid of its obligation to the Treasury, and gave notice of its intention to repurchase £500,000 of preferred shares lodged as security for the £500,000 of $3\frac{1}{2}$ -per-cent. inscribed stock. The complete repurchase-money (£500,000) was duly paid over to the Public Trustee, and the interest named herein—representing the accrued interest to date of repurchase—is payable to the Public Account, and should be dealt with in the same way it would have been dealt with had the whole half-year's dividend accrued instead of only 118 days.

3rd December, 1900.

JAS. B. HEYWOOD.

No. 10.

The Treasury.

THE use made of the letters was not by way of an equation, but only that section 8 of the Act might be read with them in place of the items as they are described in the section. The repurchase is to be at a price equal to one item *plus* the other. The Audit Office considers only what the section expressly provides.

5th December, 1900.

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

No. 11.

The Audit Office.

I THINK your view of the application of the section would be quite correct if only a part of the shares was being repurchased; but, as the bank has repurchased the whole of them for the full nominal amount (£500,000), and the section provides that the purchase-money is to be paid to the Public Trustee to enable him to meet the securities for £500,000 at maturity, it is manifest that if he receives from the bank more than £500,000 he will have more than sufficient to meet the securities, and the surplus would consequently be payable by him into the Public Account.

It is true that the Act makes no express provision for this. It also makes no express provision for the disposal of the accumulation of interest on sums received by the Public Trustee from the bank as purchase-money. In the present case these accumulations will be on £500,000 through a long series of years, and it seems to me to be only giving effect to the intention of the Act if the Public Trustee pays these accumulations to the Public Account to enable the interest on the securities to be paid. The same consideration applies to the £5,657 10s. 6d., and if that sum were paid over to the Public Trustee he would receive it for the Government, and would properly repay it into the Public Account. In these circumstances the payment to him is a mere formality that may reasonably be dispensed with.

6th December, 1900.

JAS. B. HEYWOOD.

No. 12.

The Treasury.

THE express requirement of the Act is that the moneys received for the repurchase of the shares shall be paid to the Public Trustee. The administration of the money lies not with the Treasury, but only with the Public Trustee. The Audit Office cannot in such case regard the payment to him of any part of the repurchase-moneys as a mere formality that may reasonably be dispensed with; and it is submitted that the Treasury, even if its statement of what the Public Trustee must do were correct, would not be justified in withholding from him any of such moneys.

Whether the Public Trustee may, from time to time, before the maturity of the debentures which he is to redeem with the repurchase-moneys, consider the trust-moneys more than sufficient for the purpose, and whether he should then feel himself justified in paying to the Public Account any part of such moneys, or the income derived from the investment of them, are questions for him to decide—questions which the Audit Office ventures to suggest that he will decide with a due consideration not only of the representations of the Treasury, but also of any probability that the short-dated debentures held by him, as an investment of the moneys, may not remain such investment, and of the contingencies of the future.

8th December, 1900.

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

No. 13.

The Audit Office.

HON. Colonial Treasurer will ask the Public Trustee to refund the amount as soon as received, so it is not worth while discussing the matter any further.

13th December, 1900.

JAS. B. HEYWOOD.

No. 14.

The Treasury.

Audit Office, 17th December, 1900.

Treasury Minute of 14th December, 1900, respecting Repurchase-moneys received under Section 8 of "The Bank of New Zealand and Banking Act, 1895."

ANY further discussion of the matter is certainly to be deprecated. The provisions of section 8 of the Act are so plain that the Audit Office, in returning the paper with thanks, regrets the discussion which has already taken place. It is generally better to comply with the requirements of the law, even in cases where compliance may be the mere formality that the Treasury seems still to be regarding the payment to the Public Trustee of the money in question. It unfortunately happens, in the case of this statutory trust of the repurchase-moneys, that the provisions of subsection (1) of section 2 of "The Public Revenues Act Amendment Act, 1895," were not observed with respect to the Public Trustee's investment of £500,000 in the short-dated debentures. The moneys required to be issued for the purpose of that investment were issued without any requisition under the Act having been sent to the Audit Office, though the investment accorded with advice previously received from the Treasury.

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

No. 15.

The Audit Office.

SEEN; but the Audit Office is quite mistaken in thinking that the Treasury has conceded the position that the law would not be complied with if the amount of interest, £5,657 10s. 6d., was not paid over to the Public Trustee. However, as already stated, there does not appear to be any necessity to discuss the matter further.

19th December, 1900.

JAS. B. HEYWOOD.

No. 16.

FILE for the present. The Treasury is understood to be about forthwith to comply with the requirement of the law, that the money shall be paid to the Public Trustee, and it matters very little that the Treasury, in taking this course, should express itself unconvinced that the law would not be complied with if the money were not paid to the Public Trustee.

20th December, 1900.

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

No. 17.

Treasury Voucher No. 9107.—Transfer.

Debit.—Consolidated Fund.				£	s.	d.
Deposit Account—Miscellaneous	...	...	...	5,657	10	6
Credit.—Consolidated Fund.						
Ordinary Revenue—Miscellaneous	...	...	...	5,657	10	6

Treasury, 20th March, 1901.

JAS. B. HEYWOOD.

R. J. COLLINS,
Accountant to Treasury.

No. 18.

ON what authority is it proposed to transfer from Deposits Account to "Miscellaneous revenue" the amount of £5,657 10s. 6d. for interest on the preferred shares?

28th March, 1901.

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

No. 19.

The Audit Office.

THE interest received from the bank upon their preferred shares has all along been carried into the Ordinary Revenue Account to credit of "Miscellaneous revenue" as a set-off against the expenditure caused through the payment of interest on the inscribed stock issued to the bank in exchange for the preferred shares. In the attached transfer the balance of interest paid by the bank up to the time they took back the shares is being dealt with in the same way as the previous payment of the half-yearly interest.

4th April, 1901.

JAS. B. HEYWOOD.

No. 20.

THE Bank of New Zealand, exercising the power given by section 8 of "The Bank of New Zealand and Banking Act, 1895," repurchased the preferred shares "at a price equal to the nominal amount thereof, plus the amount of all dividends accrued and unpaid up to the time of payment of

the price"—that is to say, at a price equal to £500,000, *plus* the amount in question of £5,657 10s. 6d. But, though the section requires that "all moneys received for the said repurchase of such shares shall be paid to the Public Trustee," the amount only of £500,000 has yet been paid to him. The amount of £5,657 10s. 6d. remains to be paid to him. It should, indeed, have been paid to him as soon as it was received by the Treasury, and the Audit Office understood that it was the intention of the Treasury to pay it to him in December last. It cannot legally be transferred by the Treasury to "Miscellaneous revenue."

10th April, 1901.

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

No. 21.

REFERRED to the Solicitor-General for his opinion.—J. G. WARD.

11/4/1901.

No. 22.

Hon. the Colonial Treasurer.

As stated by the Audit Office, the price of the shares repurchased under section 8 is £500,000, *plus* £5,657 10s. 6d. (the latter sum representing the dividends accrued and unpaid at the date of the repurchase), and the section directs that all moneys received for the repurchase of shares shall be paid to the Public Trustee. The section, however, goes on to declare that the moneys so paid to the Public Trustee shall be applied by him to the redemption, when due, of the securities issued under section 7. The capital sum represented by these securities is £500,000, and they will not fall due until 1st January, 1940. The £500,000 have been paid to the Public Trustee by the Crown, and he is thus in a position to fully comply with section 8 by redeeming the securities when they fall due in 1940. The £5,657 10s. 6d. are thus surplus moneys, and if paid over to the Public Trustee by the Crown they would, in my opinion, be subject to a resulting trust in favour of the Crown—according to the well-established rule as to resulting trusts—and the Crown could require him to straightway pay it back. In these circumstances I think the Colonial Treasurer is justified in putting the money to the credit of the Consolidated Fund in the first instance, instead of paying it over to the Public Trustee and forthwith requiring it back.

It is to be observed that the Public Trustee does not pay the interest on the securities. The Colonial Treasurer must pay it out of the Consolidated Fund as heretofore. The Act contemplates that the dividends received from the shares will enable the Colonial Treasurer to pay the interest on the securities, but makes no provision for his receiving from the Public Trustee the interest earned on the repurchase-moneys lying in his name, possibly because when the Act was framed the contingency of repurchase was considered too remote to need provision. It is, however, absurd to suppose that the Act intended that for the next thirty-nine years the accumulations of interest on half a million of repurchase money are to remain with the Public Trustee, while during all that time interest on the half-million of securities is to be paid by the Colonial Treasurer out of the Consolidated Fund.

The Banking Act is, in the language of the Interpretation Act, to receive such fair, large, and liberal construction as will best insure the attainment of the object of the Act according to its true intent, meaning, and spirit. Applying this rule, section 8 is, I think, to be read as if the words "to the extent of the total capital sum represented by all the securities issued under section 7 hereof" were inserted between "such shares shall" and "be paid to the Public Trustee." On this construction all repurchase-money (including accrued and unpaid dividends), and all interest thereon, would remain with the Public Trustee until the total amount in his hands was £500,000. but everything beyond that amount would be payable to the Consolidated Fund. In this way the £5,657 10s. 6d. of accrued and unpaid dividends, and also all interest earned on the half-million lying in the Public Trustee's hands, will be available towards meeting the interest on the securities during their currency, and at their maturity they will be redeemed by him with the half-million which he holds for the purpose.

Crown Law Office, 15th April, 1901.

FRED. FITCHETT, Solicitor-General.

No. 23.

The Audit Office.

FOR reconsideration of the proposed transfer as attached, having before them the opinion of the Solicitor-General on the subject.

19th April, 1901.

JAS. B. HEYWOOD.

No. 24.

THE judgment of the Audit Office is that the money in question must be paid to the Public Trustee in accordance with the clear, unqualified, and indisputable direction expressed by the Act; and, whatever the Administration may be justified in thinking, the Audit Office would not be justified in assenting to the proposed evasion of such direction on the ground that the Act may mean what it does not express.

19th April, 1901.

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

No. 25.

GET the Governor's order.—R. J. S. 20/4/1901.

No. 26.

Wellington, 30th April, 1901.

HIS Excellency the Governor is respectfully advised to sign the attached determination, under the provisions of section 9 of "The Public Revenues Acts Amendment Act, 1900," of a question

which has arisen between the Audit Office and the Treasury, of crediting a sum of £5,657 10s. 6d., accrued interest on Bank of New Zealand preferred shares repurchased by the bank.

J. CARROLL.

R.

R.—30/4/1901.

RANFURLY, Governor.

WHEREAS by section nine 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 proper head of revenue to which any receipt should be credited, the question shall, if in the opinion of the Audit Office it involves questions 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 proper head of revenue to which the money referred to in the schedule hereto should be credited: 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 that the said money should be credited to "Miscellaneous revenue" of the Consolidated Fund.

Schedule.

£5,657 10s. 6d., accrued interest on Bank of New Zealand preferred shares repurchased by the bank.

Given under the hand of His Excellency the Governor, at the Government House, at Wellington, this day of one thousand nine hundred and one.

No. 27.

The Audit Office.

PLEASE note and pass transfer.

2nd May, 1901.

J. B. HEYWOOD.

No. 28.

The Solicitor-General.

MAY I ask you to advise the Audit Office whether section 9 of "The Public Revenues Acts Amendment Act, 1900," provides for the determination by the Governor of a question whether the moneys which section 8 of "The Bank of New Zealand and Banking Act, 1895," so clearly directs to be paid to the Public Trustee shall be paid to him? The Public Revenues Act provides that, "In case any difference of opinion arises between the Audit Office and the Treasury . . . as to the proper head of revenue, fund, or account to which any receipt should be credited, the question shall be determined . . . by the Governor"; but what difference of opinion has arisen here is not as to what part of the Public Account moneys received shall be credited, but whether they shall be paid to the person to whom the statute directs they shall be paid.

3rd May, 1901.

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

No. 29.

The Controller.

YES; I think section 9 applies. The money is a "receipt" within the meaning of the section, and a dispute exists between the Audit Office and the Treasury as to "the proper head of revenue, fund, or account" to which the receipt should be credited. The Treasury thinks it should be credited to the Consolidated Fund, whilst the Audit Office thinks it should be paid over to the Public Trustee—that is, credited to the Public Trustee's Account.

4th May, 1901.

FRED. FITCHETT, Solicitor-General.

No. 30.

The Hon. the Colonial Treasurer.

Audit Office, 4th May, 1901.

THE Controller and Auditor-General, having received the Governor's order of the 30th ultimo, determining, under section 9 of "The Public Revenues Acts Amendment Act, 1900," that to "Miscellaneous revenue" should be credited the sum of £5,657 10s. 6d. received as part of the price at which the preferred shares of the Bank of New Zealand have, under section 8 of "The Bank of New Zealand and Banking Act, 1895," been repurchased by that bank, passes accordingly the transfer of such sum from the Deposits Account to "Miscellaneous revenue," and will, in accordance with the requirements of the Public Revenues Act, lay before Parliament in ordinary course a copy of the correspondence on the matter.

The question, however, whether the sum was not or is not payable to the Public Trustee, or whether it shall not be paid to him, is not a question which, in the judgment of the Audit Office, section 9 of the Public Revenues Act of 1900 gives the Governor power to determine. The section, though it authorises him to determine the question how moneys received shall be credited, does not authorise him to determine that the moneys received which the statute directs to be paid to Public Trustee shall not be paid to him.

The Public Trustee's Account not being an account in the Public Account, moneys which, received into the Public Account, are directed by statute to be paid to the Public Trustee can no more be paid to him by being credited in the Public Account than moneys received into the Public Account to be paid to any private person or corporation can be so paid by being credited in the Public Account to such private person or corporation.

The Audit Office, consequently, is unable to regard, as dispensing the Government from the statutory obligation to pay the moneys to the Public Trustee, the Governor's decision that it should be credited to "Miscellaneous revenue." The money is by statute still to be paid to the Public Trustee, and the Controller and Auditor-General regrets that he feels himself under the necessity of certifying the Public Accounts subject to a remark that the money should have been paid to the Public Trustee.

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

No. 31.

Abstract of the Revenue and Expenditure of the Public Account for the Financial Year ended 31st March, 1901.

* * * * *
THE foregoing accounts have been examined and found correct, subject to the following remarks:—
* * * * *

6. The lodgments to the credit of the Deposit Accounts include a sum of £5,657 10s. 6d., which was received for the repurchase by the Bank of New Zealand, under section 8 of "The Bank of New Zealand and Banking Act, 1895," of the preferred shares, and which, being such part of "all moneys received for the said repurchase" as consisted of "the amount of all dividends accrued and unpaid in respect thereof up to the time of payment of the price," should have been transferred to and shown in the the statement receipts and expenditure of "The Bank of New Zealand and Banking Act 1895" Account, and paid to the Public Trustee.

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

8th May, 1901.

CASE. No. 5.

No. 1.

Construction of Roads under Land for Settlements Act.

Mr. Knowles.

WOULD you kindly refer me to the section of "The Land for Settlements Consolidation Act, 1890," that authorises the construction of roads?

7th March, 1901.

J. C. GAVIN,
Assistant Controller and Auditor.

No. 2.

The Assistant Controller and Auditor.

PLEASE see section 66, subsection (1).

7th March, 1901.

R. A. PATERSON,
Deputy Chief Accountant.

No. 3.

Mr. Knowles.

DOES the land of the Starborough Estate contain deposits of coal, lime, or valuable stone?

7th March, 1901.

J. C. GAVIN.

No. 4.

The Assistant Controller and Auditor.

WITHOUT a special report, I cannot say. I believe there are limestone-deposits; but we have no definite information.

8th March, 1901.

R. A. PATERSON,
Deputy Chief Accountant.

No. 5.

Mr. Knowles.

I FEAR it will be necessary to satisfy the Audit Office on the point. Is the section quoted in your minute of 7th March the only authority in the Act for the construction of roads?

8th March, 1901.

J. C. GAVIN,
Assistant Controller and Auditor.

No. 6.

Mr. Gavin.

PLEASE see sections 51 and 71, and section 29.

21st March, 1901.

H. J. KNOWLES.

No. 7.

Mr. Knowles.

SECTION 51 does not contain express provision for the construction of roads; it is merely a direction as to the method of fixing the rental and capital value; and, though it provides for taking the cost of roading into consideration in fixing such rental and capital, it does not specifically authorise road-making; nor does it give authority which, together with section 71, would amount to an appropriation. The only authority in the Act for road-making is, apparently, in section 66, and that applies only to a certain class of lands.

22nd March, 1901.

J. C. GAVIN,
Assistant Controller and Auditor.

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

Act and its amendments, with regard to the authority of Parliament for the issue and payment of moneys for road-making within the lands acquired under the Acts referred to, must therefore be only by way of showing what these Acts did authorise, and what the Act of 1900 does not. Until the Act of 1900 the Audit Office relied upon the following sections of the Act of 1894 as constituting an appropriation: Section 29, which expressly provided for the application of the moneys in the Land for Settlements Account, to the payment of all expenses incident to the administration of the Act, including, *inter alia*, making roads ("laying off" being separately mentioned). Section 31, which authorised the Colonial Treasurer, without further appropriation, to pay out of the Land for Settlements Account "all such sums from time to time as shall become payable under this Act." These two sections, until the passing of the Consolidation Act of 1900, have been considered an appropriation, without limit, for making roads within the lands acquired under the Act of 1894 and its amendments.

Now as to the Act of 1900: Nowhere is there provision, such as that contained in the Act of 1894, section 29, for the application of the moneys in the Land for Settlements Account to the payment of all expenses incident to the administration of the Act. The section which approaches nearest in its provisions to 29 is section 65, but it will be observed, that while power is given to the Minister in that section to "lay off" roads, no power is given to make roads. Section 71 of the Act of 1900 corresponds with 31 of the Act of 1894. There is in section 66 of the Act of 1900 authority to construct roads, but that is applicable only to roads in a certain class of lands. Section 51 only implies the construction of roads. Nowhere, except in section 66, is there express authority to make roads; only to lay them off.

The expenses of road-making, other than as authorised in section 66, are therefore not moneys payable under the Act, and do not come within the provisions of section 71, which says that "all moneys payable under this Act shall be paid out of the Land for Settlements Account" without further appropriation than this Act.

The question of parliamentary authority for the issue and payment of public moneys is much too important to rest upon implication. Unless for any service there is a clear appropriation expressed in explicit terms, the Audit Office would not be justified in passing claims for such service; and there are no explicit terms of appropriation for the service of the construction of roads, except in section 66, which does not apply to the present claims.

I have written this memorandum after perusing the opinion of the Solicitor-General.

J. C. GAVIN,

Assistant Controller and Auditor.

1st April, 1900.

No. 12.

I CONCUR. A permanent appropriation should, to be operative, be clear. In the Land for Settlements Consolidation Act of 1900, however, there is nothing satisfactory to the Audit Office as an appropriation for the expense of making roads on land not containing deposits of coal, lime, or valuable stone.

J. K. WARBURTON,

Controller and Auditor-General.

3rd April, 1901.

No. 13.

Departments of Lands and Survey (Roads and Bridges Division),

The Solicitor-General.

Wellington, 15th April, 1901.

RE *Authority for Road-making under "The Land for Settlements Consolidation Act, 1900."*—Referring to your opinion of 19th ultimo, on papers below, I now forward for your consideration memoranda by the Auditor-General and the Assistant Controller, from which you will gather that they do not consider the sections quoted by you to be sufficient, in their opinion, to authorise the payment of money for road-works.

This is a very important matter, and I shall be glad if you will again consider it in case you have anything further to add that may convince the Audit Department that there is authority for the expenditure.

T. Y. DUNCAN,

Minister of Lands.

No. 14.

Further Opinion as to Road-making under "The Land for Settlements Consolidation Act, 1900."

I HAVE carefully considered the Audit minutes of the 1st and 3rd instant, but find nothing in them to alter the opinion given by me on the 19th ultimo.

It appears from these minutes that under the old Act the Audit Office relied on section 29 as appropriating money for road-making and authorising the work. Herein I think the office was wrong. In my opinion, section 29 is not intended to authorise or appropriate anything. Section 31 is the appropriating section. Section 29 is a limiting and not an enabling section, and it appears to me that its purpose is not far to seek. It is taken from the original Act of 1892, where it appears as section 13. That Act was avowedly an experiment in land-settlement. It gave large borrowing-powers, and was to continue in operation only for a specified period. In these circumstances the the Legislature very properly and prudently desired to prevent the funds raised for the Act being diverted to any other purpose. Hence the section in question, which establishes the Land for Settlements account, directs all moneys raised or received under the Act to be paid into it, declares that the moneys in the account shall be applied to no other purpose than the payment of the expenses incident to the administration of the Act, and, by way of further caution, collects from the other sections, and specifically sets out in the section itself a list of the expenses those sections authorise. The conditions existing when the Act of 1892 was passed existed also in the case of

the Act of 1894, and hence the section in question was re-enacted. The Consolidation Act of 1900, however, is a permanent one. Moreover, so many fresh items of expenditure had been authorised by the various amendments of the Act of 1894 that to recapitulate them all in a single section would have been exceedingly cumbersome and inconvenient. Hence the section was dropped altogether, and in lieu of it section 46 was adapted from section 14 of the Aid to Public Works and Land Settlement Act of same year.

I venture to surmise that, if the Act of 1894 had contained section 46 of the new Act instead of this unhappy section 29, the Audit Office would have found ample authority for road-making in the provisions referred to in my former minute, and the present difficulty would not have arisen.

Crown Law Office, 19th April, 1900.

FRED. FITCHETT, Solicitor-General.

No. 15.

The Controller and Auditor-General.

Audit Office, 22nd April, 1901.

I HAVE read the opinion of the Solicitor-General and reread the Act of 1900, and I have come to the conclusion that section 71 is either superfluous or that it merely renders indisputable the several appropriations to be found in other sections of the Act. I take, by way of illustration, the cost of surveying land acquired, and of laying off roads. In section 65, subsection (1), it is enacted that "the Minister . . . shall . . . cause it to be surveyed . . . and may lay off . . . roads"; and in subsection (4) it is enacted that "all moneys expended by the Minister under this section shall be paid out of the Land for Settlements Account." It would therefore seem that to make section 71 operative as regards road-making there must be as clear and direct authority to expend moneys in making roads on the land as there is to survey it and lay off roads on it.

It may be inferred from section 51, subsection (2), that the Act contemplates road-making. The same inference may be drawn with regard to surveying, mentioned in the same place; yet there is specific power given to survey the land and lay off roads, and pay the cost out of the Land for Settlements Account, and no such power is given to make roads and pay for them, except roads on lands containing mineral deposits, &c.; and, for all that may be gathered from the Act to the contrary, it may have been intended that the cost of the contemplated road-making should be met out of the Public Works Fund.

For the reasons above given, the Audit Office, I submit, would not be justified in considering that expenditure on road-making comes within the meaning of the words "moneys payable under this Act," occurring in section 71, referred to in the first paragraph of this memorandum.

In conclusion, I would remark that it is of the utmost importance that in a matter of this kind—involving the expenditure of large sums of money not coming under the annual review and vote of Parliament—the appropriation shall be so clear that "all who run may read."

J. C. GAVIN,

Assistant Controller and Auditor.

No. 16.

I AGREE. The appropriation by the Act is for all moneys payable under the Act, and, as the Act makes no express provision for the expenditure of moneys in road-making on the lands in question, the clear appropriation necessary to such expenditure is wanting.

22nd April, 1901.

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

No. 17.

FORWARDED to the Lands and Survey Department.
22nd April, 1901.

J. C. GAVIN,
Assistant Controller and Auditor.

No. 18.

Department of Lands and Survey, Wellington, 30th April, 1901.

Urgent.—To the Secretary to the Treasury.

THE Auditor and Controller-General has declined to allow vouchers to be charged against the Land for Settlements Account in which the service is for road-construction, except in connection with such settlements as contain mineral deposits (*vide* sections 65 and 66 of "The Land for Settlements Consolidation Act, 1900"). The Solicitor-General holds that such works can as legally be undertaken under this Consolidation Act as they were under the preceding Acts.

I shall be glad to have your opinion on the matter, and if you disagree with the Auditor-General's contentions I shall be glad if you will have the matter submitted to His Excellency the Governor, as provided by section 9 of "The Public Revenues Acts Amendment Act, 1900." If you should agree with the Auditor-General's ruling, there appears to be no option but to charge to Unauthorised Account.

T. Y. DUNCAN,
Minister of Lands.

No. 19.

Hon. Colonial Treasurer.

It seems to me that the Act of 1900 contemplates the "cost of roading" (which includes the construction of roads), because such cost is mentioned in section 51 of the Act. Further, as section 71 of the same Act provides that "all moneys payable under this Act shall be paid out of the Land for Settlements Account without further appropriation than this Act," I consider that expenditure upon the construction of roads may properly be charged against the moneys at credit

of the Land for Settlements Account. If you concur, a difference of opinion will have arisen between the Audit Office and the Treasury, and it will be necessary to obtain an order from His Excellency the Governor determining the question at issue.

2nd May, 1901.

JAS. B. HEYWOOD, Secretary.

No. 20.

I AGREE. Prepare recommendation to the Governor.

2nd May, 1901.

C. H. MILLS.

No. 21.

Memorandum for the Solicitor-General.

Wellington, 10th May, 1901.

THE Governor would be glad of further opinion on this matter. The Solicitor-General as well as the Audit Department refer to Acts now repealed. The Governor desires the sections relied on by the Solicitor-General in the consolidated Act of 1900 which give the power of road-making and of charging the cost to Land for Settlements Account.

RANFURLY.

No. 22.

Crown Laws Office, Wellington, 10th May, 1901.

Memorandum for His Excellency the Governor.

IN compliance with His Excellency's memorandum of this date, the Solicitor-General begs to specify the following sections of "The Land for Settlements Consolidation Act, 1900," as giving the power to make roads and to charge the cost to the Land for Settlements Account:—

Section 29, (2), provides, as one of the conditions subject to which the owner may remain in possession of the land after it has been compulsorily acquired, that the Minister shall have the right to enter for the purpose of road-making. It is unreasonable to suppose that the power which is there clearly shown to exist in cases where the owner remains in possession should not exist in cases where he does not remain in possession.

Section 51 directs that the rental of land shall be based on its capital value, and that the capital value shall include the cost of roading. This clearly indicates that the cost of roading may be incurred, and therefore gives power to make the roads.

Section 65, (2), provides that, for the purpose of utilising and developing land acquired and preparing it for settlement, the Minister may deal with the land and carry on operations thereon in such manner in all respects as he deems expedient. This is a general power, and does not specifically mention any particular work. The operations referred to must therefore be gathered from the other parts of the Act. Reading this section with the above-quoted sections 29 (2) and 51, it is quite clear that road-making is one of the operations authorised.

Section 71 directs that, except where otherwise provided, all moneys payable under the Act shall be payable out of the Land for Settlements Account without further appropriation. As the Act gives the power to make roads, the costs incurred are necessarily moneys payable under the Act, and as there is no other provision for their payment they are payable under this section.

The Solicitor-General desires to explain that in his former opinions he was compelled to deal with the repealed Acts, because the objections of the Audit Office were based on them. The Audit Office held that the only authority to make roads under the repealed Acts was contained in section 29 of the Act of 1894, and as this section was not re-enacted in the Act of 1900 there was now no authority. The Solicitor-General had to analyse the repealed Acts in order to show that the authority to make roads was contained in other sections than the one relied on by the Audit Office, and that those other sections were re-enacted in the Act of 1900.

FRED. FITCHETT.

No. 23.

Wellington, 3rd May, 1901.

His Excellency the Governor is respectfully advised to sign the attached instrument, under section 9 of "The Public Revenues Acts Amendment Act, 1900," deciding that the cost of making roads under "The Land for Settlements Consolidation Act, 1900," should be charged to the Land for Settlements Account.

J. B. H.

C. H. MILLS.

R.—10/5/1901.

RANFURLY, Governor.

WHEREAS by section nine of "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 to which any expenditure ought to be charged, the question shall, if in the opinion of the Audit Office it involves questions 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 whether the costs of making roads under "The Land for Settlements Consolidation Act, 1900," should be charged to the Land for Settlements Account: Now, therefore, I, Uchter John Mark, Earl of Ranfurly, the Governor of the Colony of New Zealand, in exercise of the powers hereinbefore recited, and having before me the opinion of the Solicitor-General, do hereby determine the said question by deciding that the said expenditure should be charged to the Land for Settlements Account.

Given under the hand of His Excellency the Governor, at the Government House, at Wellington, this day of May, one thousand nine hundred and one.

C. H. MILLS.

No. 24.

The Audit Office.
I SUBMIT the attached warrant for notation.
13th May, 1901.

JAS. B. HEYWOOD.

No. 25.

The Hon. the Colonial Treasurer.

Audit Office, 17th May, 1901.

Cost of making Roads on Land acquired under the Land for Settlements Act.

THE objection raised by the Audit Office is that "The Land for Settlements Consolidation Act, 1900," neither empowers the Minister to make roads on the land, nor authorises the cost of making any such roads to be paid out of the Land for Settlements Account; and that consequently section 71, in appropriating the "moneys payable under this Act," does not appropriate moneys for the making of roads, as it appropriates moneys which, expended under section 65, are, by its subsection (4), making payable out of such account.

The order of the Governor determining that the costing of making roads under "The Land for Settlements Consolidation Act, 1900," should be charged to the Land for Settlements Account is therefore regarded as overcoming the foregoing objection of the Audit Office, and deciding that moneys expended in making roads on the land are moneys which the Act, in section 71, does make payable out of such account without any further appropriation.

The effect of such decision would seem to be that the Act is to be read by the Audit Office to provide for making roads on the land in question, a permanent appropriation which, in the judgment of the Audit Office, the Act does not provide; and such an effect may perhaps be beyond the purpose of the provisions of section 9 of "The Public Revenues Acts Amendment Act, 1900."

The Controller and Auditor-General will pass the vouchers charging the expenditure according to the determination of the Governor as if section 65 empowered the Minister to make roads, as well as to survey the land and lay off roads, and provided in subsection (4) that the money so expended in making roads shall be paid out of the Land for Settlements Account; and a copy of the correspondence relating to the difference of opinion between the Audit Office and the Treasury on the question which has been so determined will in ordinary course be laid before Parliament, in accordance with section 9 of "The Public Revenues Act, 1900."

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

Approximate Cost of Paper.—Preparation, not given; printing (1,410 copies), £11.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1901.

Price, 6d.

