

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.

1st April, 1900.

J. C. GAVIN,  
Assistant Controller and Auditor.

#### 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.

3rd April, 1901.

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

#### 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 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