

Although unclaimed moneys paid to the credit of the Treasurer, as directed by section 6 of the Act, are declared by that section to be so paid for the use of the public revenue, such "use" is not absolute, but is subject to the provisions as to the payment of such moneys at any time to a claimant who can prove that he is the owner thereof, and therefore I do not see why an appropriation by Parliament in respect of such payment should be necessary. These unclaimed moneys were evidently intended by the Legislature to be dealt with in the same manner as unclaimed deposits are directed to be dealt with under section 9 of "The Public Revenues Act, 1891." Under that section deposits unclaimed for a period of one year after having become payable to the depositor are to be paid into and form part of the Consolidated Fund, but the Treasury may issue and pay the same to any legally entitled claimant thereof at any time within ten years thereafter. There is nothing in that section about "appropriation," and I understand the Treasury repays these deposits as soon as the title of the claimant thereto is established, and without charging the amount to "Unauthorised expenditure," or any appropriation by Parliament being taken in respect of such payment.

Unclaimed moneys under "The Unclaimed Moneys Act, 1898," and unclaimed deposits under "The Public Revenues Act, 1891," are in similar classes: they each come into the hands of the Treasurer in the same way—through being temporarily unclaimed. He is a trustee thereof for the person legally entitled thereto (subject to the provisions of the Acts), and the Legislature has prescribed similar methods of repayment in each case, and without requiring appropriation in either. The authority of the Act for the repayment in each case is, in my opinion, sufficient.

Wellington, 31st January, 1906.

ALBERT PRIT, Attorney-General.

The Audit Office.

The Hon. the Attorney-General concurs with the Treasury view that there is sufficient authority under "The Unclaimed Moneys Act, 1898," to enable refund to be made without further appropriation to the person entitled to receive such refund. With the Attorney-General's opinion before you I think you will be able to pass the attached and kindred claims.

JAS. B. HEYWOOD.

1st February, 1906.

No. 6.

The Hon. the Colonial Treasurer.

Audit Office, 3rd February, 1906.

"The Unclaimed Moneys Act, 1898," and Absence of Appropriation therein for the Payments thereunder.

THE Audit Office regrets that it cannot well alter its decision in this matter—that, if there is no appropriation for the payments in question, they can only be made as "unauthorised."

An issue of moneys out of the Public Account is of course necessary to the payments; and it is provided by section 43 of the Public Revenues Act that "No money shall be issued out of the Public Account except in pursuance of a Warrant under the hand of the Governor." By such Warrant the Colonial Treasurer is authorised to so issue "moneys amounting to . . . for the payment of . . . and to cause the same to be paid to such persons as may become entitled thereto under any Act or Acts of the General Assembly appropriating the said moneys."

If, then, the Colonial Treasurer would make, out of the moneys so issued, payments for which there is no appropriation, he must of course make them as "unauthorised," in compliance with the requirements of sections 47, 48, and 49; and it is accordingly only under section 48 that the Audit Office can lawfully issue orders for the payment of vouchers without the appropriation of Parliament.

And if the moneys unclaimed under the Unclaimed Moneys Act were intended by the Legislature to be dealt with in the same manner as unclaimed deposits are directed to be dealt with under section 9 of the Public Revenues Act, it is submitted that as such section 9 provides, by the authority to "issue and pay," the complete permanent appropriation which is often less satisfactorily provided now by the authority to "pay without further appropriation than this Act," the Legislature's intention would have been to provide appropriation in the Unclaimed Moneys Act in the same manner. There is, however, no such intention expressed in the Act.

It is on the authority to "issue and pay" that the Treasury repays the deposits received under the Public Revenues Act, and sets down in the estimates, among the permanent charges of the present year, the following estimate: "Public Revenues Act . . . Claims repayable under sections 9, 76, and 91, £500."

J. K. WARBURTON, C. & A.-General.

No. 7.

T. 05/2824.

"The Unclaimed Moneys Act, 1898": In re John E. May, £47 6s.

THE whole question at issue in this matter is whether there is "an appropriation for the payments in question."

The general principle is that moneys in the Public Account can only be legally expended under the authority of some Act of Parliament. The authority may be given by a *permanent Act*, or it may be given by the annual Appropriation Act. (Dicey on the Law of the Constitution, fourth edition, p. 295).

In my opinion such an authority by permanent Act has been given by Parliament in section 8 of "The Unclaimed Moneys Act, 1898," and no further appropriation is necessary. Had the words "without further appropriation than this Act" been inserted in that section, the Audit Office apparently considers that those words would have provided a sufficient "complete permanent appropriation." It is obvious, however, that if Parliament has power by a permanent Act to authorise payments from time to time of moneys out of the Public Account "without further appropriation" being necessary, then a permanent Act passed by Parliament authorising such payments must in itself be a sufficient authority for them to be made, although the words "without further appropriation than this Act" be omitted. The permanent Act is the necessary appropriation, and is all the authority required for the issue of the moneys out of the Public Account.