

SESSION II  
1906.  
NEW ZEALAND.

# “THE UNCLAIMED MONEYS ACT, 1898”

CORRESPONDENCE BETWEEN AUDIT AND TREASURY DEPARTMENTS RELATIVE TO PAYMENTS  
(UNDER).

*Laid on the Table pursuant to Section 9 of “The Public Revenues Acts Amendment Act, 1900.”*

Audit Office, 28th August, 1906.

THE Controller and Auditor-General has the honour most 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 the correspondence in a case under that section, where, a difference of opinion having arisen between the Audit Office and the Treasury as to whether “The Unclaimed Moneys Act, 1898,” is an Act appropriating the public moneys necessary to pay to a claimant an amount paid into the Public Account under the provisions of that Act, the Governor determined the question by deciding that such moneys are appropriated by section 8 of the Act, and that the payment in question could lawfully be made as a charge against the Act without further appropriation.

J. K. WARBURTON,

Controller and Auditor-General.

The Hon. the Speaker of the House of Representatives.

## No. 1.

### “THE UNCLAIMED MONEYS ACT, 1898.”

Wellington, New Zealand.

The New Zealand Government.

*Department or Service:* Treasury.

1905.

Nov. 27. Refund of amount paid into the Public Account by the Bank of New South Wales in terms of “The Unclaimed Moneys Act, 1898,” and Amendment Act, 1902—

	£	s.	d.	£	s.	d.
T. 05/2824. Amount lodged to Public Account .. .. .	47	19	0			
Less cost of advertising .. .. .		13	0			
				47	6	0
	£	s.	d.			
T. 05/79. .. .. .	44	19	0			
05/1974. .. .. .	3	0	0			
				£47	6	0

Dr. to John E. May.

*Claimant:* John E. May, Bluff Cottage, Strathclair, Manitoba, Canada.

I certify that, to the best of my knowledge and belief, the foregoing account is true and correct in every particular.

R. J. COLLINS.

To be charged to P. C., “The Unclaimed Moneys Act, 1898,” section 8.

[Treasury stamp approved.]

JAS. B. HEYWOOD, Under-Secretary.

28 Nov., 1905.

## No. 2.

It is not stated on the papers attached that the Treasury is satisfied as to the claimant's ownership, as required by “The Unclaimed Moneys Act, 1898.” The section quoted in the direction to charge is not considered by the Audit Office to be an appropriation clause.

J. K. W., C. & A.-G.

1/12/05.

Hon. Colonial Treasurer.  
Kindly approve.

JAS. B. HEYWOOD.  
1 Dec., '05.

Approved.—ALBERT PITT. 1/12/'05.

The Audit Office.

Now approved by the Minister acting for the Colonial Treasurer; but I venture to think that my delegated authority to approve expenditure would cover this. I read the section quoted (8) as sufficient authority to make the payment.

JAS. B. HEYWOOD, P.G.  
1 Dec., '05.

### No. 3.

I REGRET that I cannot read s. 8 as a sufficient authority to make the payment as a charge to the Act. What is required for that purpose is a provision similar to that of section 31 of "The Land for Settlements Act, 1894," to expressly provide the appropriation to give effect to the provision of section 29 that "all moneys . . . shall be applied to paying all expenses."

J. K. WARBURTON, C. & A.-General.  
1/12/'05.

The Audit Office.

If you do not consider section 8 is sufficient authority to make the payment, will you kindly indicate to what vote or account you think the proposed payment should be charged.

JAS. B. HEYWOOD.  
4 Decr., '05.

All that I can say is that the payment might, if made before appropriation, be made as a charge to the Unauthorised Expenditure Account. It is certainly an omission of the Act not to provide the appropriation.

J. K. WARBURTON, C. & A.-G.  
5/12/'05.

### No. 4.

T. 05/2824.

The Hon. the Colonial Treasurer.

The Treasury, N.Z., Wellington, 8th December, 1905.

I REGRET that I am unable to agree with the Audit Office that the within-proposed refund should be charged to "Unauthorised" in order that payment may be made to the claimant.

In my opinion there is no necessity to make a charge upon the Unauthorised Expenditure Account. I think the wording of section 8 of "The Unclaimed Moneys Act, 1898," is clear and distinct that "upon being satisfied that the claimant is the owner of the money demanded by him" you "shall order and direct payment thereof to be made to him"—in other words, that the moneys originally belonging to the claimant, and which while in the custody of the bank were held at the disposal of the claimant, but having been paid over to the Government by the bank the Treasurer should take the place of the bank and should pay over to the claimant the moneys which had reached their hands under the operation of the Act.

I agree with the Audit Office that it would have been a better direction if the Colonial Treasurer had been ordered to pay "without further appropriation all such sums as from time to time shall become payable under this Act," but I do not concede that the absence of the words "without further appropriation" prevents the Colonial Treasurer from making the proposed payment a charge under the Unclaimed Moneys Act.

It is quite evident that Parliament intended that a refund of the moneys paid into the Consolidated Fund should, when properly claimed, be refunded at any time, and therefore these unclaimed moneys are on all-fours with unclaimed deposits which have been paid into and form part of the Consolidated Fund (section 9 of "The Public Revenues Act, 1891"), and by the authority of the Public Revenues Act the Colonial Treasurer "may issue and pay the same to any legally entitled claimant thereof." The Audit Office has never demurred to refunds being charged under this Act, notwithstanding the fact that the section of "The Public Revenues Act, 1891," referred to does not contain the words now insisted upon by the Audit Office—namely, "without further appropriation."

I recommend that the opinion of the Hon. the Attorney-General be asked upon the sufficiency or otherwise of section 8 of "The Unclaimed Moneys Act, 1898," for the purpose of giving effect to the direction of the Colonial Treasurer that payment should be made to the claimant and that the charge should be made under the Act accordingly.

JAS. B. HEYWOOD, Secretary to the Treasury.

The Attorney-General.

Please advise.—R. J. S.  
29/1/'06.

### No. 5.

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

If the Colonial Treasurer is satisfied that the claimant is the owner of the money demanded by him herein, then, in my opinion, he may order and direct payment of such money to be made to the claimant, and the same may thereupon be paid to the claimant under the statutory authority contained in section 8 of "The Unclaimed Moneys Act, 1898," without the necessity of any appropriation thereof by Parliament, and without the necessity of the money so paid being charged to "Unauthorised" expenditure.

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.

I do not understand the Audit Office to contend that a Governor's Warrant pursuant to section 43 of "The Public Revenues Act, 1891," is necessary for the payment of these moneys to the claimant. The moneys to which the claimant may prove himself entitled would of course be payable out of moneys in the hands of the Treasurer in respect of which he had obtained the necessary Warrant under section 43.

Crown Law Office, 8th February, 1906.

ALBERT PITT, Attorney-General.

Attorney-General's opinion submitted to the Audit Office for consideration.—R. J. SEDDON.  
8/2/06.

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No. 8.

The Hon. the Colonial Treasurer.

Audit Office, 14th February, 1906.

"*The Unclaimed Moneys Act, 1898,*" and the Question whether it is an Act appropriating Public Moneys.

THE Audit Office, in its minute of the 3rd instant, dealt with the proposition that the payments in question could be made without the necessity of appropriation and without the necessity of being charged to the Unauthorised Expenditure Account.

If appropriation is now allowed to be necessary to avoid recourse to the provision for unauthorised expenditure, and the question is whether the Act is, by the words of section 8 "the Treasurer shall order and direct payment," an Act "appropriating the said moneys," the Controller and Auditor-General, having carefully considered the whole question, would respectfully express himself unable but to adhere to his decision of the 1st December, that the section is not an appropriation clause.

Unclaimed moneys under the Act, like unclaimed deposits under section 9 of the Public Revenues Act, are not kept in any deposit or trust account. They are paid into the Public Account for use of, and are *used* for, the Public Revenue; and the payments must consequently be made out of other moneys than the unclaimed moneys so *used*—that is, out of moneys which should, in the opinion of the Audit Office, be clearly expressed to be appropriated to the purpose. There is, however, nothing in section 8 to the effect that the moneys shall be *paid*, or *issued and paid*, out of any fund; or that the Consolidated or other fund is *appropriated* to the payments; or that the Colonial Treasurer shall *pay without further appropriation* than the Act.

The money necessary to the payments is issued by the Colonial Treasurer in pursuance of the Governor's Warrant, and the issue and payment are submitted to the Audit Office for simultaneous approval in the requisition prescribed by section 45 of the Public Revenues Act.

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

His Excellency to issue Warrant.—R. J. S. 17/2/06.

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No. 9.

T. 607/06.

Wellington, 26th February, 1906.

His Excellency the Governor is respectfully advised to sign the attached determination under section 9 of "The Public Revenues Acts Amendment Act, 1900," deciding that section 8 of "The Unclaimed Moneys Act, 1898," is a sufficient appropriation for payment to be made as a charge against that Act.

R. J. SEDDON.

P. 1/3/1906.

PLUNKET, 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 the question shall, if in the opinion of the Audit Office it involves a question 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 statutory authority for payment to claimants of amounts paid into the Treasury under the provisions of "The Unclaimed Moneys Act, 1898," the Treasury contending that section 8 of that Act is a sufficient appropriation and the Audit Office deciding that it is not:

Now, therefore I, William Lee, Baron Plunket, the Governor of the Colony of New Zealand, in exercise of the hereinbefore-recited powers, and having before me the opinion of the Attorney-General, do hereby determine the said question by deciding that the aforesaid section 8 is an appropriation for the payments therein referred to, and that accordingly such payments may lawfully be made as a charge against the Act without further appropriation.

Given under the hand of His Excellency the Governor, this 1st day of March, 1906.

R. J. SEDDON.

The Audit Office.

Please note.

JAS. B. HEYWOOD.

2 M'ch, '06.

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No. 10.

The Hon. the Colonial Treasurer.

THE payment of the amount in question will now be passed as a charge to the Unclaimed Moneys Act, such being the payment which is made so chargeable by the Governor's determination, and to which it applied; and the Controller and Auditor-General will in ordinary course lay before Parliament, in accordance with the provisions of the Public Revenues Act, the correspondence on the subject.

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

5 M'ch, 1906.

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