

## No. XVIII.

AUDIT.

An Act to regulate the Receipt Custody and Issue of the Public Moneys and to provide for the Audit of the Public Accounts. [7th May, 1870.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

## PART I.—COLLECTION AND PAYMENT OF PUBLIC MONEYS.

Collectors receivers and disbursers of public money to be "Public Accountants."

1. All persons who by any law regulation or appointment are now or shall hereafter be charged with the duty of collecting or receiving revenue or with the duty of disbursing moneys on account of the public service shall become and be "Public Accountants" and shall perform all such duties and render such accounts as this Act prescribes and as the Governor with the advice of the Executive Council shall from time to time direct.

Public Accountants in Sydney to pay into Treasury or bank.

2. Every such Public Accountant collecting or receiving revenue in Sydney shall pay weekly or at such times as may be otherwise specially appointed into the Treasury or into such bank as the Governor with the advice aforesaid may direct all sums of money collected or received by him on account of the revenue accompanied by vouchers bearing his signature and containing a full and accurate description of the services for which such sums shall have been collected or received and unless otherwise specially directed shall not later than the tenth day after the expiration of each month transmit to the Auditor General a return in the form contained in the first Schedule to this Act with such particulars in each case as may be required by the Auditor General of all moneys collected or received by him during the preceding month and shall make and subscribe the solemn declaration directed by the Act ninth Victoria number nine.

Public Accountants out of Sydney to pay into Treasury or bank.

3. Every such Public Accountant collecting or receiving revenue out of Sydney shall transmit or pay monthly or at such times as may be otherwise specially appointed into the Treasury or into such bank as the Governor with the advice aforesaid may direct all sums of money collected or received by him on account of the revenue accompanied by vouchers bearing his signature and containing a full and accurate description of the service for which such sums shall have been collected or received and unless otherwise specially directed shall on or before the tenth day after the expiration of each quarter transmit to the Auditor General a return in the form contained in the first Schedule to this Act with such particulars in each case as may be required by the Auditor General of all moneys collected or received by him during the preceding quarter and shall make and subscribe the solemn declaration directed by the Act ninth Victoria number nine.

Disposal of private moneys collected under Acts of Parliament.

4. When under any Act now or hereafter to be in force any money (which by such Act is or shall be directed to be paid into the Treasury) shall come to the possession or control of any person in the Public Service by virtue of his office or employment for or on account of or for the use or benefit of any other person such first-mentioned person shall pay the same and act in respect thereof and in regard thereto

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thereto in like manner as every such Public Accountant aforesaid is hereinbefore required to pay and act with reference to moneys which shall come to his possession or control for or on account of the Consolidated Revenue Fund or as near thereto as the circumstances of the case will permit and such moneys shall be placed to the credit of an account to be kept in the Treasury for such purpose to be called "The Trust Fund" under such separate heads as the provisions of any existing or future law may render necessary.

5. When by virtue of his office or employment or of any legal process whatsoever any moneys shall come to the possession or control of any person in the Public Service for or on account or for the use or benefit of any other person and shall have remained in such possession or under such control for seven days such first-mentioned person shall pay the same into such bank at such place and in such manner as the Treasurer shall from time to time by writing under his hand appoint and such moneys shall be paid by such person as aforesaid to a Public Account to be opened by him in such bank and all interest which shall become due from such bank for or in respect of the said moneys shall form part of the Consolidated Revenue and if any such person as aforesaid shall fail to pay the said moneys as lastly hereinbefore directed he shall incur a penalty not exceeding *one hundred pounds* to be recovered in a summary way before any two Justices of the Peace but no such person shall be answerable or accountable for any loss that may happen through any such bank.

Public Servants collecting private moneys to place them to their credit in bank.

6. When any such moneys as last aforesaid shall have remained in such bank or under such control as last aforesaid for three months next after the time at which the person entitled thereto could and might have received the said moneys such first-mentioned person shall pay the same and act in respect thereof and in regard thereto in like manner as every such collector as aforesaid is hereinbefore required to do with reference to moneys which shall come to his possession or control for or on account of the Consolidated Revenue or as near thereto as the circumstances of the case will permit and such moneys shall be placed to the credit of the said trust fund.

And after three months to be paid to the Public Account.

7. On the death resignation or removal of any such Public Accountant the balances remaining at the credit of their Public Accounts shall upon the appointment of their successors unless otherwise directed by law vest in and be transferred to the Public Accounts of such successors at the said banks and shall not in the event of the death of any such Public Accountants constitute assets of the deceased or be in any manner subject to the control of their legal representatives.

Transfer of balances on decease resignation or removal of Public Accountants.

8. Unless expressly enacted to the contrary all such sums as shall have been placed to the credit of the said trust fund and as shall have remained unclaimed for the period of *two* years after the same shall have been so placed shall be carried to and form part of the Consolidated Revenue Fund and no person shall be entitled to receive any sum which shall have remained unclaimed for *two* years but no time during which the person entitled to receive such sum shall have been an infant or *femme couvert* or of unsound mind or beyond the seas shall be taken into account in estimating the said period of *two* years. Provided also that any sum the claim to which shall be established to the satisfaction of the Governor and the Executive Council after the same has been carried to the credit of the Consolidated Revenue Fund may be withdrawn therefrom and refunded upon the authority of the Governor with the advice aforesaid.

Unclaimed trust fund to be carried to revenue.

9. The Auditor General shall transmit to the Treasurer the name of any Public Accountant or other person failing to comply with any of the provisions contained in sections two to six of this Act inclusively

Auditor General to report defaulters.

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inclusively and thereupon and until such failure shall have been made good to the satisfaction of the Auditor General all salary or other moneys that may be due and payable to such Public Accountant or other person shall be withheld and the Auditor General shall from time to time communicate with the Treasurer upon all matters relating to the collection receipt and expenditure of the public and other moneys under the operation of this Act.

Treasurer to pay daily into bank.

10. The Treasurer or his deputy shall from day to day pay into the bank keeping the Government account all moneys received into the Treasury to an account in such bank to be called "the Public Account" and such moneys shall be disposed of as hereinafter mentioned and not otherwise.

How moneys are to be issued.

11. All moneys paid into such bank to the Public Account as hereinbefore directed shall be deemed and taken to be money lent by Her Majesty to the person or persons to whom such bank may belong and such moneys shall be drawn from the said account in the following manner only (that is to say) the Treasurer shall as often as occasion may require calculate the amount of moneys likely to become due and payable out of the said account during a period not exceeding *one month* next after such calculation and shall thereupon prepare an instrument in the form contained in the Second Schedule to this Act and shall set forth therein the said amount classifying and arranging it (if for the public service) under the same divisions and heads that shall have been employed in the appropriation thereof or stating (if not for the public service) the purpose for which it is payable and after having signed such instrument shall transmit the same to the said Auditor General and such instrument when countersigned by him in the form contained in the same Schedule and approved by the Governor as hereinafter directed but not otherwise shall be the warrant for the making of the order next hereinafter mentioned.

Auditor General to be guided by appropriation.

12. Before countersigning any such instrument as aforesaid such Auditor General shall ascertain that the sums therein mentioned are then legally available for and applicable to the service or purpose mentioned in such instrument and after countersigning such instrument shall return the same to the Treasurer who shall thereupon submit it to the Governor for his approval and signature. Provided that in case the said Auditor General shall find that the sums therein mentioned or any of them are not then legally available or applicable to the services or purposes therein set forth he shall return the said instrument to the Treasurer for correction attaching thereto a paper setting forth in writing the sum or sums not found by him to be legally available or applicable as aforesaid.

Treasurer on receipt of warrant to issue orders for payment.

13. When the said warrant shall have been signed by the Governor the Treasurer or such officer or officers as he may authorize may from time to time issue drafts or cheques upon the said Public Account in such form as shall be directed by the Treasurer and such drafts or cheques shall be sufficient authority to the bank in which the said Public Account is kept to debit the said Public Account with the amounts mentioned therein and no moneys shall be drawn or paid out of the said account in any other manner. Provided always that the amounts mentioned in such drafts or cheques shall in no case exceed collectively the amount of the items set forth in the said warrant.

Further requirements as to payments.

14. No draft or cheque drawn as prescribed in the next preceding section shall be issued except in payment of such accounts as form part of expenditure which shall have been duly authorized and at the time of paying every such account the Treasurer or such officer or officers as he may appoint shall for the amount so paid obtain from the persons to whom the same was payable acquittances under their hands or those of their duly authorized agents or bankers.

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15. Every account shall be considered duly authorized that is in accordance with any existing law or regulation or has been directly sanctioned by one or other of the responsible Ministers of the Crown or by the Governor with the advice aforesaid and if chargeable on the Consolidated Revenue Fund is covered by any Appropriation Act in force at the time of payment Provided that such authorities shall not be held as extending to the computations and rates of charge unless expressly mentioned therein. Authority defined.

16. The correctness of every account in regard to computations castings rates of charge and the faithful performance of the services charged for shall be specially certified to by the officer incurring the expense who shall be surcharged by the Auditor General the amount of any overpayment that may be made on the faith of the correctness of such officer's certificate. Officer certifying responsible for accuracy of the account.

17. Unless expressly enacted to the contrary all sums of money which shall be appropriated to the public service for any year and which shall not be expended during such year or within the first three months of the following year shall lapse and shall not be issued or applied in any future year to the particular service for which the appropriation shall have been so made unless a contract or engagement shall have been made and entered into before the expiration of such year by which a liability so to issue or apply the same shall have been incurred. Lapsed votes.

18. If the exigencies of the Public Service render it necessary the Governor with the advice aforesaid shall have power to authorize the application of any Balances under the head of any Service for fixed establishments other than special votes for public works remaining unexpended for the purpose of supplementing any Votes for other Services found insufficient to meet the requirements thereof And a statement of all such applications of Balances as well as copies of all Minutes of the Governor in Council relative thereto shall be submitted by the Auditor General to Parliament within seven days if in Session and if not then within seven days after the commencement of the next ensuing Session. Temporary application of surplus balances of grants.

19. The Manager or person in charge of the bank keeping the Public Account shall on every day on which such bank is open deliver or send to the Treasurer and Auditor General respectively a copy (to be called the "Bank Sheet") of so much of the debit and credit sides of the Public Account respectively as he shall not have previously sent to the Treasurer and Auditor General respectively. Bankers to forward "Bank Sheet."

20. The Treasurer shall keep at the Treasury a book to be called the "Cash Book" with such subdivisions as the Treasurer may deem fit and shall enter therein daily under specific heads the several sums received from Public Accountants or others and his several drafts or cheques upon the Public Account and shall on every day on which the public offices are open send to the Auditor General a copy (to be called the "Cash Sheet") of so much of the said book as he shall not have previously sent to the said Auditor General so that the said cash sheet shall not contain any entries of older date than four days previous to the day on which it is so sent and with such sheet shall transmit the several vouchers and documents relating to the moneys so received and paid out of the Public Account. Treasurer to keep Cash Book and send Cash Sheet &c. to Auditor General.

21. The Treasurer as soon as conveniently may be after the expiration of every quarter of the financial year shall publish in the *Gazette* a statement in detail of the receipts and expenditure as well of the Consolidated Revenue Fund as of the said Trust Fund during such quarter together with a comparative statement of such receipts during the corresponding quarter of the previous financial year and in like manner at the expiration of the financial year shall publish an

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Annual Statement of Receipts and Expenditure with a comparative statement of such receipts during the previous financial year.

Treasurer to prepare statements of receipts and expenditure.

22. The Treasurer shall not later than three months after the end of every financial year prepare a full and particular statement of the expenditure of the Consolidated Revenue Fund for such year (classified under the same several divisions and heads that shall have been employed in the appropriation thereof) and of the said Trust Fund for the same period under the several heads of account of such fund and also of the receipt of the said Revenue and Trust Fund for the same year and shall transmit such statements to the Auditor General.

## PART II.—AUDIT OF PUBLIC ACCOUNTS.

Appointment of Auditor General.

23. The Auditor General for the time-being shall hold his office and have exercise and perform the same privileges salary power authority and duties and be subject to the same disabilities as if he had been appointed after the coming into operation of this Act and in case of the death resignation or removal of any Auditor General for the time-being it shall be lawful for the Governor with the advice of the Executive Council to appoint some other fit person in his stead.

How Auditor General removed from office or suspended.

24. The Auditor General shall hold his office during good behaviour Provided nevertheless that the Governor with the advice aforesaid may remove any Auditor General upon the Address of both Houses of the Legislature of this Colony Provided also that at any time it shall be lawful for the Governor with the advice aforesaid to suspend the Auditor General from his office for incompetency or misbehaviour and when and so often as the same shall happen a full statement of the cause of such suspension shall be laid before both Houses of Parliament if Parliament be then sitting and if Parliament be not sitting then within seven days after the commencement of the next Session thereof and if an Address shall at any time during that Session be presented to the Governor by the Legislative Council and the Legislative Assembly respectively praying for the restoration of such Auditor General to his office such Auditor General shall be restored accordingly but if no such Address shall be so presented it shall be lawful for the Governor with the advice aforesaid either to restore such Auditor General to his office or to confirm such suspension and to declare the office of such Auditor General to be and the same shall thereupon become and be vacant.

Auditor General to make a declaration.

25. The Auditor General before he shall enter upon the duties or exercise the powers vested in him by this Act shall make and subscribe before one of the Judges of the Supreme Court a declaration in the form of the fourth Schedule hereto and every such declaration shall be kept among the records of the said Court.

Appointment of deputy.

26. In the case of the illness suspension or absence of the Auditor General it shall be lawful for the Governor with the advice aforesaid to appoint some other person to act as the deputy of such Auditor General during such illness suspension or absence and every such person shall make and subscribe a declaration in the form last aforesaid and shall during the time for which he shall act as such deputy have all the powers and perform all the duties of such Auditor General.

Auditor General to examine accounts of Public Accountants receiving or collecting moneys and to discharge or surcharge.

27. The Auditor General on receipt by him of the returns required to be furnished by Public Accountants receiving or collecting moneys as hereinbefore provided shall examine and compare the same with the said Cash Sheets and with the said vouchers and documents and shall allow and discharge every such Public Accountant for all sums shown to have been by him respectively received or collected and duly paid into the Treasury or into a bank as hereinbefore provided and shall

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shall disallow and surcharge such Public Accountant all sums wilfully or negligently omitted to be received or collected by him which under any law or regulation it was his duty to receive or collect and all sums not duly paid in by him to the credit of the proper head of receipt in the Treasury and all such unsatisfied surcharges shall be transmitted by the said Auditor General to the Treasurer to be by him enforced against such Public Accountant.

28. The Auditor General on receipt by him of the Cash Sheet referred to in section twenty of this Act shall in the first place compare the debit and credit entries with the supporting vouchers and documents forwarded therewith and examine their correctness as to rates computations and castings and in the next place examine the supporting vouchers as to whether they bear upon the face of them a correct description of the proper heads of receipt or of expenditure to which the moneys mentioned therein have been debited or credited respectively and in the next place ascertain whether the moneys mentioned on the debit side of the said Cash Sheet have been duly paid over to the Public Account and whether the sums mentioned as paid on the credit side of the said Cash Sheet have been actually and duly disbursed under competent authority and on the prescribed certificates and the Auditor General shall allow and discharge the Treasurer monthly for all receipts which shall be found correct in the particulars hereinbefore mentioned and for all payments made in pursuance of the warrants under the hand of the Governor prescribed by the eleventh section of this Act and accompanied by the receipts or acquittances of the respective persons to whom such payments have been so made.

Further as to examination of accounts.

29. In the examination of the Cash Sheet Bank Sheet and all other documents produced as vouchers or as subordinate vouchers the Auditor General shall make such queries and observations addressed to Public Accountants officers certifying accounts or persons in any way concerned with the receipt or the disbursement of the moneys or funds referred to in this Act and shall call for such further accounts vouchers statements and explanations as he may think necessary and after such queries and observations have been answered and after such further accounts and explanations have been rendered the Auditor General shall disallow and surcharge all sums not duly credited to the proper Fund and paid over to the Public Account and shall disallow and surcharge all sums disbursed in excess or not duly vouched and authorized and shall forward to the Treasurer a statement of all such unsatisfied surcharges to be enforced by him against such Public Accountants officers certifying accounts or other persons through whose default such surcharges have arisen.

Auditor General to make observations and queries on accounts and to discharge or surcharge.

30. In all cases in which a Public Accountant may be dissatisfied with any disallowance or surcharge in his accounts made by the Auditor General such Public Accountant shall have a right of appeal to the Governor in Council who after such investigation as may by him be considered equitable may make such order directing the relief of the appellant wholly or in part from the disallowance or surcharge in question as shall appear to the Governor in Council to be just and reasonable and the Auditor General shall govern himself accordingly.

Accountants to have right of appeal to the Governor in Council.

31. No sum shall be allowed to have been duly received or paid without a written voucher for the actual receipt or payment of every sum so claimed to be allowed notwithstanding any allegation of papers having been lost or destroyed or of the impossibility of obtaining the prescribed voucher or vouchers except on application to the Governor in Council who upon satisfactory evidence being produced that the requisite papers have been lost or destroyed or that it is not possible to replace them shall order that the said sum shall be allowed

No sum to be allowed without voucher unless by order of the Governor in Council.

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allowed or disallowed as the case may be and shall make such other order in the premises as he shall think fit which order shall be binding on Her Majesty and all other parties and be acted on accordingly.

Proviso for imperfect vouchers.

32. When a voucher produced for a sum of money disbursed shall be defective from the want of any certificate or other document which ought to have accompanied it or in any other particular it shall be lawful for the Auditor General upon proof being made to his satisfaction that the Public Accountant did not wilfully neglect to procure such certificate or document and that the sum specified in the voucher has been actually and properly disbursed to admit such voucher as a sufficient discharge of the said Public Accountant and to allow the amount of the same to his credit.

Disallowances for want of vouchers or for imperfect vouchers to be reported.

33. In all cases where any sum of money shall be disallowed in consequence of the absence of a written voucher or upon an imperfect voucher or of an incorrect certificate the particulars and amount of such disallowance shall be reported to the Treasurer by the Auditor General and the amount thereof shall be returned or stopped from any moneys payable to such Public Accountant and shall be deemed and taken to be money paid by Her Majesty to the use of such Public Accountant at his request subject to appeal to the Governor in Council as hereinbefore provided under section thirty-one.

Vouchers may be allowed although not stamped.

34. It shall be lawful for the Auditor General in the examination of any accounts to admit and allow in cases where it shall appear to him to be reasonable and expedient for the Public Service vouchers for any moneys expressed therein although such vouchers be not stamped according to law.

Certain departments may be exempted from detailed audit.

35. It shall be lawful for the Governor with the advice aforesaid to exempt from detailed audit by the Auditor General but not from appropriation audit by him the accounts of receipt and expenditure of any department the peculiar duties constitution or circumstances of which may render such exemption expedient Provided that a report setting forth the department so exempted shall be laid before the Legislative Assembly if Parliament be then sitting within seven days after such exemption shall have been directed as aforesaid and if Parliament be not then sitting then within seven days after the next meeting of Parliament.

Auditor General to audit and report on Treasurer's annual statement.

36. The Auditor General upon receipt of the annual statement of receipts and expenditure referred to in section twenty-two of this Act shall cause the same to be examined and shall within six months from the receipt thereof prepare and sign a report explaining such statement in full and showing in what particulars such statement agrees with or differs from the accounts of the Treasurer furnished to him under the provisions hereinbefore contained and containing full particulars of every case in which the forms prescribed by this Act shall not have been adopted or shall in any manner have been varied or departed from and of every case in which default shall have been made in accounting for public or other moneys and of all sums disallowed in the absence of vouchers or upon imperfect vouchers or upon incorrect certificates and of any proceedings that may have been taken by or against any person in pursuance of the provisions herein contained.

Copies of Orders in Council and Law Officers' opinions to be appended.

37. The Auditor General shall annex or append to the said report a copy of every Order in Council exempting from detailed audit as provided in the thirty-sixth section of this Act the accounts of receipt and expenditure of any department and also a copy of every case or statement of facts laid by him before the Law Officers of the Crown or either of them for their or his opinion together with a copy of the opinion thereon given by the said Law Officers or either of them.

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38. The Auditor General shall within seven days after making and signing the said statement and report if Parliament be sitting and if Parliament be not sitting then within seven days after the next meeting of Parliament transmit to the Legislative Assembly the said statement accompanied by such report and by the said copies hereinbefore directed to be appended thereto.

Statement and report to be laid before Legislative Assembly.

39. It shall be lawful for the Auditor General in such yearly report or in any special report which he may at any time think fit to make to recommend any plans and suggestions that he may think worthy of adoption for the better collection and payment of the Consolidated Revenue Fund and other moneys as aforesaid and the more effectually and economically auditing and examining the Public Accounts and any improvement in the mode of keeping such accounts that may at any time be brought to his notice and generally to report upon all matters relating to the Public Accounts.

Auditor General to make suggestions for collection and payment.

## PART III.—MISCELLANEOUS PROVISIONS.

40. All Public Accountants shall provide security for such sum and in such manner and form as the Governor with the advice of the Executive Council shall from time to time direct for the due performance of their several offices and for the due accounting for and payment of all moneys which shall come to their respective possession or control by reason or virtue of their respective offices services or employments.

Security to be given.

41. The Governor with the advice aforesaid may frame and promulgate such regulations not inconsistent with this Act as may appear to be necessary for the due care and management of the public moneys and for the more effectual record check and audit of all receipts and disbursements on account of the public service by Public Accountants And all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if not then within fourteen days after the next meeting of Parliament.

Governor in Council may frame regulations—

To be laid before Parliament.

42. This Act shall commence on the first day of January next and may be cited as the "Audit Act of 1870."

Commencement of this Act.



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SCHEDULES.

THE FIRST SCHEDULE.

Sections 2 and 3.

Attested Account.

ACCOUNT of all Moneys collected by \_\_\_\_\_ as \_\_\_\_\_ from the \_\_\_\_\_  
to the \_\_\_\_\_ 187 \_\_\_\_\_ both days inclusive.

FROM WHOM RECEIVED.		TOTAL.		
TOTAL .....		£		
SETTLEMENT OF THE ABOVE COLLECTIONS WITH THE COLONIAL TREASURER.				
DATE OF PAYMENT OR REMITTANCE.	HEAD OF RECEIPT ON ACCOUNT OF WHICH REMITTANCE IS MADE.	AMOUNT.		
TOTAL .....		£		

I \_\_\_\_\_ do solemnly and sincerely declare that the above is a true and faithful Account of all Moneys collected by me as \_\_\_\_\_ from the \_\_\_\_\_ to the \_\_\_\_\_ 187 \_\_\_\_\_ both days inclusive and that I have paid over the whole amount to the Colonial Treasurer and I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the ninth year of the reign of Her present Majesty intituled "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales and to substitute Declarations in lieu thereof for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Made and signed before me at \_\_\_\_\_ }  
this \_\_\_\_\_ day of \_\_\_\_\_ 187 . }

*Signature of a Justice of the Peace* \_\_\_\_\_

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THE SECOND SCHEDULE.

WARRANT.

To the Auditor General.

The amount of moneys likely to become due and payable out of the Public Account during                      now next is                      pounds                      shillings and                      pence and the services and purposes for which the same will be required are as follows (that is to say) :—

FOR SERVICES PAYABLE OUT OF THE CONSOLIDATED REVENUE FUND.	FOR SERVICES PAYABLE OUT OF THE TRUST FUND.	AMOUNT.		
HEAD OF APPROPRIATION.	PURPOSE.			
TOTAL .....		£		

Dated this                      day of                      187 .                      Treasurer.

I CERTIFY that the sums above mentioned are now legally available for and applicable to the services and purposes respectively above set forth.  
 Dated this                      day of  
    Auditor General.

To the Treasurer of New South Wales.  
 You are hereby authorized to issue out of the Public Account the amount above set forth and for so doing this shall be your sufficient warrant.  
 Given under my hand, the  
 day of                      .  
    Governor.

THE THIRD SCHEDULE:

I do solemnly and sincerely promise and declare that according Section 6. to the best of my skill and ability I will faithfully impartially and truly execute the office and perform the duties of Auditor General.

(Signature.)