

## Auditor General's Report.

### Memos. of Minister of Justice on appeals to the Treasury Board.

AUDIT OFFICE, OTTAWA, December 10, 1897.

SIR,—The nature of the memoranda of the late Minister of Justice, Sir Oliver Mowat, on the matters submitted to him by the Board in connection with the appeals from my decisions on the Wm. Davis & Sons' claim for work done by them on the Cornwall Canal, and on the \$8,000 payment to the Lake St. John Railway Company, renders it advisable that I should make some remarks on them.

#### *The Davis Case (page—cxix)*

Let us see what the full meaning of the memorandum is. It is that there is no restriction, except what may be contained in the appropriation under which the expenditure is made, on the power of the Government to appoint a person to determine how much shall be paid for anything. The late Minister of Justice admits that if there were anything in any Statute and, therefore, in the Audit Act, inconsistent with this, the Government would not have the power. If there is nothing inconsistent with his conclusion in the Audit Act, the intention of Parliament in appointing an Auditor General went no further in regard to the direct restraining of the expenditure of public money, than the seeing that no more money was expended for a particular purpose than the amount voted for that purpose. If this is so, it took a long time to say it. The Act must then have been misinterpreted for nearly twenty years. I trust that the public exchequer has not suffered much from its not having been known, that the Government had full power to appoint a man without any pretensions to a knowledge of law, to dispose of the legal points in contracts, or who laughs at the Auditor General, the Minister of Justice, Treasury Board and Parliament,—not like the insignificant Auditor General whose acts are all subject to an appeal to the Treasury Board.

It might be supposed that this immunity from criticism or appeal would be on something in which the engineer is an expert,—the kind of masonry to suit a particular purpose at the least cost, the proper method to unwater effectually a part of a work, &c. ; not at all, but on the interpretation of contracts and other legal questions.

The Minister of Justice practically admits with reference to the Close-Pile Trenches that the contractor got more for them than the contract which he signed provided for the work, but says that the payment must be made, because the right to interpret the law was given to a man who, while he may be a very good engineer, could not be of any service in the interpretation of contracts, unless the power came to him by intuition. As the costly blunders might go undetected, this would be bad enough, if there were any chance of setting the matter right by appeal, but when the public functionary, the Minister of Justice, who above all is able to speak with authority on the subject, finds that the blunders have been made, the memorandum says there is no redress.

I could understand that, if the contractor had performed a piece of work under the directions of the Government Engineer, did it badly, but at the same cost to himself as if he did it well, the Government would be bound by the ignorance or carelessness of its official ; but surely if the contractor only did what he agreed to do, and it is found out before he is overpaid, that the engineer did not do his lawyer's work correctly, the law ought to be elastic enough to permit the doing of justice to the people. Perhaps the people ought to be satisfied that the lawyers were not appointed to do the engineers' work without recourse, as the engineers were appointed to do the lawyers' without recourse. By the opinion of the Minister of Justice one was within the power of the Government as well as the other.

I may be told that in contracts between private individuals an engineer or architect is often given the power to settle absolutely between the parties. The building of a house is not as complicated as the building of a canal, the architect is not the servant of either, the private individuals have neither a Minister of Justice, an Auditor General, nor a Treasury Board to assist in such matters. It may also be said that, as the engineer is the official of the Government, the Government has the advantage. I do