

Appendix
(D. D.)

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No. 3.—*Opinion of the Visitors of King's College on the subject of the two preceding Documents.*

The Visitors of King's College have been requested by His Excellency the late Governor General, as Chancellor of the University, to state whether in their opinion it is competent to the College Council to sell or alienate the lands which formed the Endowment, for any and what purposes?

2ndly. Whether anything can be done by mere vote of the Council which the Statute authorizes to be done by Statute, Rule and Ordinance?

3rdly. Whether a Statute ought to be passed for the appropriation generally of all monies to be expended, that is to say, a gross sum for the Bursar's Office, a gross sum for any other incidental expense (the Library for example,) and especially for the salaries of Professors and other Officers of the Institution?

The Visitors would gladly (if they could with propriety) forbear expressing opinions upon these questions, especially upon the first of them, because they are sensible that although it is strictly in their capacity of Visitors that they have been thus referred to, yet their opinions are likely to be regarded in general as judicial, and they feel that as the doubts which have suggested these questions may at any moment give rise to legal proceedings in the Court of Queen's Bench, affecting the rights of parties unconnected with the College, it would be much more satisfactory to such parties that the Judges should be in a situation, after hearing the arguments that might be addressed to them, to pronounce a judicial decision in any such case unbiassed by any previous declaration of their opinions.

But being in fact made Visitors by an Act of the Legislature, and their duties as such not being limited by the Charter to any special objects as is sometimes the case, nor directed to be performed in any peculiar manner, they consider that they have no right to withhold from the Institution any advantage which it may be supposed can be derived from their discharging fully the duties of Visitors in the sense which belongs to the office, in connection with such a Corporation as that of King's College; in other words, as the Bishop of Quebec must have done if he had continued to be the Visitor, according to the original Charter.

The Visitors are aware that the Court of Queen's Bench in England are by law Visitors of many Corporations; but those are Institutions of a different kind and for different purposes; and the duties of Visitation which are considered to be incumbent in the Court in such cases are of a different nature, having other objects in view and are performed only in the open and regular exercise of judicial functions upon a proper formal proceeding, at the instance of some party having a substantial interest in the question moved.

The Statute 7 William, IV. chap. 16, however has made not the Court, but the Judges of the Court, Visitors of King's College; and being the only Visitors of this Eleemosynary foundation, they seppose it to be incumbent upon them to do whatever Visitors of such a Corporation should do, to whom the duty has been committed in an unrestricted sense.

The Visitors have thought it right to state these considerations, because if there be any inconvenience or impropriety in committing a duty of this description to the Judges, it rests with the Legislature to place the matter on another footing.

The Visitors further beg leave to state that they are not aware that it is regularly a part of the duty of Visitors to answer references upon abstract questions of law affecting the Institution or its proceedings, but they consider their duties are rather to visit the College when they apprehend that there may be some abuse or irregularity requiring to be checked,—to afford redress to any

member or officer of the Institution complaining of injustice,—to keep the Governing Body of the Corporation within the terms of the Charter,—and to exercise the power of supervision in regard to the Statute that the Charter has committed to them.

For the direction of the Council upon any doubtful legal question that may present itself, the more regular course would seem to be to take the opinion of Council and to abide by that opinion, leaving it to the Visitors to interfere in their discretion when they have reason to think that anything wrong has been done, or upon an application from some party entitled to look to them for redress.

Having offered these explanations of their sentiments upon a subject which has been little canvassed in this country, and offered them rather with a view of their being considered in connexion with any reference which it may be proposed to make to them hereafter, than by way of urging objections on this occasion which might create embarrassment, the Visitors proceed to state:

1stly. That in their opinion it is competent to the College Council to sell or alienate the lands which form the Endowment, in order to raise funds for carrying on the proper business of the Institution.

2ndly. That in their opinion there may be many things legally done by vote or resolution of the Council which the Charter *authorizes* to be done by Statute, Rule or Ordinance.

The Visitors have answered this question strictly in the terms in which it is proposed to them. It need hardly be said that if there be anything which the Charter requires to be done, by Statute, Rule or Ordinance, such matters cannot be done by mere vote of the Council.

3rdly. In the opinion of the Judges a Statute ought to be passed, authorizing any permanent or stated appropriations of money in the shape of salaries to Professors or others, and that any other payment of contingent account whether for the Library or other incidental purposes, or for the ordinary current expenses of the Institution, should be made under the authority of some Statute, Rule or Ordinance, either specifying the particular service and expenditure, or directing prospectively how such charges may be incurred and defrayed as the occasion arises, and providing for the subsequent passing of the accounts.

When the Visitors speak of this as being fit to be done, they do not go so far as to say that it is to the full extent necessary in strictness of Law, so that whatever has been done otherwise is illegal; they do not conceive that the power given to the Council of King's College to make Statutes, Rules and Ordinances *respecting the management of the revenues and property of the College*, was given in any other spirit or intended to be exercised in any other manner than the power to make Statutes for such purposes as is understood to be given, and is usually exercised in other similar Institutions; and the Visitors have, unfortunately, not had the means of observing what is the course usually practised in that respect in other Colleges governed under similar Charters.

The Visitors have no doubt that the College Council may (subject to the approval of the Visitors) make Statutes which shall extend to and control the expenditure of the revenues in every particular, and in regard to the minutest and most ordinary charge, so that no expenditure could afterwards rightly take place which should not be made in strict conformity to such Statutes.

But so long as such Statutes have not been made, the Visitors do not express the opinion that the Governing Body of King's College may not by analogy with other Corporations make many disbursements in the ordinary conduct of their affairs by their mere resolution or order and without a formal statute.

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