

dinarily the retention of the pass-book and the vouchers without objection could only operate against the customer, when there existed such a contract, by way of estoppel, and where the facts of the particular case were such as to justify the application of this doctrine.

The contention of defendants that the receipts acknowledging the correctness of the monthly statements and balances were settlements of the accounts between the department and the bank is answered in the judgment appealed from by referring to sec. 30 of the Audit Act, R. S. C. 1886 ch. 29, and asserting that the only mode of settling such accounts is the one there pointed out, namely, by the Receiver-General and the Auditor-General giving reimbursement cheques to cover proper payments by the bank; that, however convenient in practice the sending of the pass-book sheets and the taking of the receipts and acknowledgments from the department might be, it could not be a substitute for the mode of settlement prescribed by the Audit Act; and that, as none of these reimbursement cheques covered the Martineau forgeries, there was no binding settlement which included or recognized them. In answer to this it is contended by the bank that the Audit Act only governs the internal administration of the departments of the Government, and was not intended to regulate or vary as between the Government and the bank the usual relations and obligations between a bank and its customer.

The principal ground, however, upon which the defence of the bank was disposed of in the Court below, was the broad one that the King is not bound by estoppel, and that the Crown is not responsible for the negligence, laches, or torts of its servants. A number of English authorities and some cases in our Courts are cited in support of this proposition. United States cases are also referred to as shewing that the same principle is applied in that country to the Government and its officers and servants.

In the argument of the present appeal before us, counsel for the Bank of Montreal admitted that the doctrine of estoppel was not applicable to the Crown. It was also admitted that according to our law, in the absence of contract, the customer of a bank was not bound to examine his pass-book; but it was contended that if he did examine it and contracted with reference to it, he would be bound, and there would then exist the contractual relation of a settled account. It was