

limit or restriction on the part of the Imperial Government than the general power of the Crown to disallow its Acts. It is not contended that the Act of the Canadian Parliament has not been complied with by the Government in dealing with the loan, or that the ordinary mode of administering trust moneys by that Government has been departed from.

The Board do not think it necessary, in discussing an objection which is now limited to a point of technical construction, to dwell further on this view, which appears to them so well founded, that the measure of discretion which the Government may exercise in the management of the fund, is to be looked for in the terms of the Canadian, and not of the Imperial Act of Parliament.

The Board deem it respectful, however, briefly to advert, *seriatim*, to the three points they have noted as embraced in the opinions which accompanied Earl Granville's Despatch.

*First.* That there should be an appropriation in specie kept distinct and apart.

If this view is the true one it would appear to be equally objectionable to place the money for safe keeping into the hands of the agents of the Government, or to deposit it in any bank whatever. It would merge, in either case, into the general mass of deposits; would not be "set aside" or "kept apart," but would be invested by them, on their discretion and responsibility, with other moneys in their hands. The merging of the loan by the Government with the other moneys in its hands, cannot surely be more objectionable than the merging of it with the ordinary money of any bank into which it might be placed. The only mode of complying literally with the Act, as sought to be construed by the law officers, would appear to be to place away the identical money received from the lenders in packages, to keep these physically separate during the entire period of construction, and to pay away the same money to the persons employed in the prosecution of the work. Anything less would fail to carry out, literally, the view of the law officers as to the complete setting aside and separation of the loan from other moneys, which is, in their opinion, implied by the word appropriate.

It can hardly be supposed, however, that the Imperial Parliament had any such operation in view. If it had not, then the keeping of distinct accounts, and the expenditure, with due promptitude of an equal amount to that raised, on the road, would seem to be a satisfactory and rational compliance with the provisions of the Act.

The public revenue is the produce of loans and taxes, and is not distinguishable in respect of its origin. That revenue or fund has been increased by the amount of the railway loan; the construction of the work is being proceeded with. Parliament has authorised the "payment" of the requisite amount out of that general fund to meet the outlay.

The Board cannot regard the appropriation by Parliament as a direction to deal with it in specie, but only as an authority to the proper officer to pay out of the general fund for the specific object for which the appropriation is made.

*Second.*—But the Law Officers would appear to admit that there may be some sort of an investment into which the loan could properly be placed, viz., one "the rate of which does not fluctuate, and which is convertible at any moment without loss."

If this be granted, it is a sufficient answer to say that the Board consider the securities which have been set apart as of that character.

If, in the realisation of these securities, there would be any loss, that loss would not fall on the Intercolonial Fund, but on the general revenue of Canada.

It would seem as if the Law Officers of the Crown considered that any loss in the value of the securities would be charged to the Intercolonial Fund, and diminish it by so much; and that the Government of Canada was not under the obligation of making the loss good.

The Board cannot take so restricted a view of the responsibility of the Canadian Government.

On the contrary, they believe that the duty of managing the fund devolved on them, and that it carries with it the corresponding obligation of making it good against loss and disaster of every kind, and of expending the total sum raised on the work, no matter what intermediate diminution from failures, depreciation or other losses, may take place.

The Canadian Government know that the securities set apart are convertible at any moment before the money is required, with certainly no loss whatever to the fund, and probably no loss even to the Government.

*Third.*—The Law Officers consider that the temporary application of the loan to the reduction of the debt of Canada is not an appropriation of the money.

The Board cannot but take exception to the form in which the operation is made to appear by the expression which the Law Officers, in their first opinion, made use of, viz., "paying off with the Railway Loan Canadian Provincial debts," inasmuch as there was really an investment in the Exchequer Bills of the Dominion of the Intercolonial money to the extent to which it was applied in reduction of debt. For the payment of these Exchequer Bills the whole revenues of the Dominion are pledged by anticipation.

The Law Officers admit that the money may be invested in some form, and that there may be a class of investment within the provisions of the Imperial Act. They add, that the securities of the Government of Canada may be a *useful investment* of the money raised, but do not seem to be an appropriation of it.

If it be admitted that the loan may lawfully be invested at all, and that securities, which are immediately convertible and not of a fluctuating nature, would be an investment within the provisions of the Act, the only other question would seem to be, who is to judge