

I have given the matter very careful consideration, and am satisfied that your duties and powers as Auditor-General are confined to seeing that any moneys which the Government seek to expend have been voted to Her Majesty for the purpose, and that you have no right to enquire into the legal right of the Government to do that for which they seek to expend the money which has been voted to them by Parliament.

The question is one of principle, and not of degree. If you have a right to enquire into the legal right of the Government to do something which may appear to you to be clearly beyond their powers as a Government, then you would have an equal right, and it would be your duty, to enquire into the validity, in a legal point of view, of every act done by the Government involving the expenditure of money.

It is out of the question that any such responsibility should be cast upon you. Parliament never intended to make you the judge in the first instance of the validity of all the executive acts of the Crown. It must be remembered that the Government is responsible to Parliament and to the people for their acts. It is for them to satisfy Parliament and the people that they did not exceed their authority, or to justify any excess of authority on their part, and when necessary to ask Parliament to confirm their actions. Once it were admitted that the Government had to satisfy the Auditor-General, or any other person outside of Parliament, as to the legal validity of any proposed action on their part before such action could be taken, it is not difficult to imagine that the consequences might be disastrous.

A reference to the provisions of the Act under which you hold office, shows, I think, that your duties and powers are confined to those I have mentioned.

The 11th section authorizes the appointment of the Auditor-General "for the more complete examination of the public accounts of the Dominion, and for the reporting thereon to the House of Commons," and the 31st section makes it the duty of the Auditor-General to see that no cheque issues for the payment of any public money for which there is no direct Parliamentary appropriation, or in excess of any portion of such appropriation, the expenditure of which has been authorized by the Governor in Council.

The 32nd section provides that no cheque for public money shall issue, except upon the certificate of the Auditor-General that there is Parliamentary authority for the expenditure, save only in specified cases.

The Parliamentary authority referred to in the 32nd Section, means, I think, the same as Parliamentary appropriation mentioned in the 31st Section, otherwise nothing could be done by the Government involving the expenditure of public money unless the act sought to be done was authorized by a Statute. It is needless to say that there are very many things which the Crown can do, and which involve the expenditure of money, the doing of which depends upon the common law powers of the Crown and not upon statute.

I think, therefore, that if you find that moneys have been voted applicable to a certain purpose, and if the Government authorize the expenditure of such money for a purpose coming within that for which they were voted, it is your duty to authorize the issue of the necessary cheque.

It is not necessary for me to express any opinion upon the effect of the Canada Civil Service Act, 1868, and amendments, upon the general powers possessed by the Crown with respect to the employment of servants and agents. The general right of the Crown to employ servants is certainly not conferred by Statute. It always existed at Common Law.

I need not say that the Government should regard the provisions of Statutes and follow their directions.

Some Statutes are imperative and limit the powers of those acting under them, so that an Act done contrary to their provisions would be void. Other Statutes are directory only, non-compliance with which does not affect the legal validity of what may be done. It may be that the Civil Service Act is one of the latter class. Unless it be so, from all I can learn, a large number of servants who have been, and