

view of what ought to be done under a contract and the Treasurer another view. But the Superintendent's control is gone, and the Treasurer is to control everything, and even say who is to be first paid. Section 24 of "The Audit Act, 1866," subjects the Auditor to a penalty of £500 if he shall "certify any warrant, cheque, draft, or order except in accordance with the provisions of this Act." That shows that the warrant is to indicate the person to whom the money is to be paid, and it cannot be contended that the Act intended to provide that the money might be drawn out and placed to the credit of the Provincial Treasurer by that officer himself, and that the Auditor should be under no responsibility for the issue. It cannot be said that the vouchers are to be the Treasurer's authority for issuing the money; they, with the abstracts and acquittances, are to be his discharge, and the warrant is his authority. I submit that the Superintendent had no power to give any such general warrant as this, by which he was denuding himself of the control and power which the Legislature conferred upon him, and the Provincial Treasurer could not act under it.

With regard to "Provincial Accounts No. 2," I submit that the creation of that account was a dealing with the public funds in entire contravention of the law. The Superintendent is to fix the Bank at which the Provincial Account is to be kept. It is to be one account into which all moneys are to be paid. It is true that the account may be kept at more Banks than one, but it must be one account only—"The Provincial Account." These two accounts cannot both be the Provincial Account under the Act of 1866.

RICHMOND, J.—Perhaps the best test to put is this: Could the Provincial Treasurer be sued for the penalty of £500 for issuing money out of Account No. 2, except in accordance with the provisions of the Act?

ATTORNEY-GENERAL.—No; but he would be liable for improperly dealing with public moneys.

The 14th paragraph says that one Charles Plummer Powles, a clerk in the Provincial Treasurer's office, has, since the issue of this warrant, and with the knowledge and authority of the Superintendent and Provincial Treasurer, issued large sums of money from the Provincial Account. We are not proceeding against Mr. Powles or any other person for doing that; but the paragraph is introduced to show that a clerk in the Treasurer's office has, with the concurrence of the Superintendent, drawn money out of the Provincial Account without any further warrant. I submit that Mr. Bunny had no power to delegate his duties to another person. He as Provincial Treasurer has to receive and issue all moneys, and he cannot delegate that power to another person.

Paragraph 15 shows that there was an actual withdrawal from the Provincial Account of £10,000 by Mr. Bunny, which was paid to an account created by him. It is true that the Superintendent has power to authorize more than one Bank to keep the account, but he has not authority to alter the name of the account. But that is what has been done. Mr. Bunny has created a new account in his own name, into which no revenues are to be paid, and which is treated by the Bank as his account.

The allegations in paragraphs 24 and 25 are inserted to show the necessity for immediate action on the part of the Court.

With regard to the disallowance of the Act, I may say that there is nothing here to show that any contracts were entered into or any works done under it. On the contrary, the information says that, at the time this warrant was made, no liabilities had been entered into under the Act. Therefore, previous to the disallowance of the Act, no moneys had been issued for work done, and since the disallowance of the Act the warrant is no longer a good one. The meaning of disallowance by the Governor in the Constitution Act is, that the Bill disallowed is just in the same position as an Act coming into operation on a certain day, and containing a repealing clause. If an Act is to come into operation on a future day, then all clauses are to have their usual interpretation. The Superintendent here has given the Governor's assent to a Bill, and then the Governor withdraws that assent. That, I submit, is much stronger than mere repealing.

My friend contends that the declaration makes out no equity. This demurrer goes to the whole equity, and, therefore, is not that the informant is limited to the relief asked for absolutely. If the informant asks to have the warrant declared invalid, I apprehend that this Court can say "invalid so far as may be necessary." The demurrer is to the whole Bill. It is not a demurrer as to part, and my friend already admits that as to some of it he cannot resist.

With regard to the parties, it is possible that there may be some reasons why the Superintendent and Auditor should be made parties; but no judgment which this Court would give would so affect this warrant as to render the Auditor liable if he was not liable before. By our rules you cannot demur on account of want of parties, and an objection must point out who the persons are that the defendant says ought to be made parties. In this matter the Court will look at the general rule just as if this was an action for specific relief; and if it should be necessary that either the Superintendent or Auditor should be made a party to the suit, he can be made so.

The other side has shown no ground for demurrer, unless they prove that this was simply a political matter, and that the persons concerned did not come under the jurisdiction of the Court. I submit that the duties of these officers and the administration of these funds, if provided for by Statute, call for the interposition of this Court. If there were no legislation on the subject, and if the matter were altogether political, it might be otherwise; but looking at the Constitution Act and at the Audit Acts, it is evident that this Court has jurisdiction over the matter.