

into contracts for the full amount, of what use would the Governor's subsequent disallowance of the Act be, if your view is correct? That would be a much more monstrous consequence than that which you suggest.

Mr. TRAVERS.—I submit that the rights of third parties ought not to be affected by it. At all events, the question is open as to what is really to be the effect of discontinuance.

The next question is as to the validity of the warrant. The section of the Constitution Act which relates to the issue of moneys from the Provincial Treasury is the 29th, and it provides that no money is to be so issued except on warrants to be granted by the Superintendent. The question is, whether a general warrant by the Superintendent, authorizing the Treasurer to pay moneys appropriated to persons to whom it may ultimately become payable, is a good warrant.

JOHNSTON, J.—We may take it that these moneys were not absolutely payable. This warrant is one in which there is no suggestion of ratification of a bygone transaction, but the appropriation of a certain sum towards certain works, and not of certain specific sums to certain specific individuals. If by warrant is meant authority to pay something which has been earned, then this is not a warrant.

Mr. TRAVERS.—I contend that the warrant was good up to the time the Act was disallowed. It was good in form of law. There is nothing in the section of the Constitution Act which requires that the warrant should specify the individuals to whom the money is to be paid. It says simply that a warrant is to be issued for the payment of moneys.

JOHNSTON, J.—Is it for prospective expenditure, or to warrant the payment of what is already incurred?

Mr. TRAVERS.—It may be either.

RICHMOND, J.—There are two very distinct things in these financial matters—the issues of moneys to the Treasurer, and the issues of moneys by him. In England, and I believe to some extent in the General Government of this Colony, the two processes are distinct. They are the functions of the Exchequer and the functions of the Treasurer.

Mr. TRAVERS.—There is nothing of the kind in the Provincial system.

RICHMOND, J.—The Auditor is to exercise control over the issue by the Provincial Treasurer to the persons who have afterwards to expend the money. It is, therefore, a case of issue to the Provincial Treasurer and not by him. What control is there over the expenditure by him?

Mr. TRAVERS.—There is no control. The effect of the Provincial system is that the Auditor stands between the Executive and the Legislature. It is his duty to see that he does not certify to any warrants unless provision for the specific works has been made by Act of the Provincial Council.

RICHMOND, J.—If we take the words of the Act, “legally available,” in their narrower sense, there appears to be no check over the expenditure. It seems to me that the point really is: Is the money “legally available” for the services before the services are performed?

Mr. TRAVERS.—I apprehend that the narrower construction must prevail on the grammatical construction of the section. The words are “legally available for the services therein specified by virtue of an Act or Ordinance of the Superintendent and Provincial Council of the Province.” If the clause had ended after the word “specified” it would have been a different matter. The contention on the other side, as it appears on the face of the information, is that the Auditor is to see that the money is absolutely in the Bank at the time.

RICHMOND, J.—In fact, for a complete system of audit, you want audit before issue to the Treasurer, and audit before the money is paid to the parties performing the services.

Mr. TRAVERS.—The latter is wanting in the Provincial system.

JOHNSTON, J.—Then all that the Auditor has to do is to sign a warrant for the money the day after the Act is passed?

Mr. TRAVERS.—All that he has to do in the first instance, but he has afterwards to audit the accounts of the Treasurer, and see that the moneys which have gone to the Treasurer by virtue of his Treasury warrant, have been properly expended, and that the abstracts, acquittances, and vouchers are produced.

JOHNSTON, J.—The warrants brought before me in the Court below, with the exception of this one, were very specific, and showed that such was the constant practice, even though it may not have been required by law.

Mr. TRAVERS.—I contend that *non constat* because in some cases warrants go into detail as to specific services, that it is essential. Of course, the question is, whether the Superintendent can relegate to the Provincial Treasurer the duty of ultimately issuing money from the Bank by cheque. For the purposes of payment to the individuals who earn it, the money must be supposed to be in bulk in the Treasurer's chest. Therefore the question is, whether the Superintendent can relegate to the Treasurer the entire control of the ultimate payment to the parties entitled. The 10th section of “The Provincial Audit Act, 1866,” contemplates the existence of the Provincial Treasurer, who is to pay the money, and does not contemplate that the Auditor should ascertain that the money is earned before he issues his certificate. If that which is necessary to the ultimate payment of the money is the intervention of the Auditor, then there is no necessity for a Provincial Treasurer.

JOHNSTON, J.—On the other hand it is useless to have an Auditor if the Superintendent can issue a warrant in the absolute terms of the Appropriation Act—that is to say, if the Auditor is to certify only to the source of appropriation and not to the destination.

Mr. TRAVERS.—I submit that the Auditor's duties are these:—He enters in his book the