1874.

NEW ZEALAND.

DISALLOWANCE OF PROVINCIAL BILLS,

(PAPERS RELATIVE TO).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 19th January, 1874.

I do myself the honor to forward through you, for His Excellency the Governor, the following Acts passed by the Provincial Council of Wellington during their present Session (XXVI.), to which I have assented on His Excellency's behalf, viz.,—

"An Act to authorize the construction of certain Bridges, Roads, and other Works in the Province of Wellington;"

"An Act to authorize the Superintendent to convey a Piece of Land at Masterton to Her Majesty the Queen;"

"An Act to bring 'The Municipal Corporations Waterworks Act, 1872,' into operation in and for the Borough of Wanganui, in the Province of Wellington;"

"An Act to provide for the Management of certain Public Reserves situate in or near the Borough of Wanganui."

I have, &c.,
WILLIAM FITZHERBERT,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 2.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 28th January, 1874.

"The Bridges, Roads, and other Works Appropriation Ordinance, 1874," has attracted the notice of the Government on account of the manner in which it is framed. Instead of the ordinary authority to expend out of Provincial revenue, with the provisions usually inserted in the Appropriation Ordinances of the Province, the Ordinance authorizes the expenditure to be made by the Superintendent, without defining out of what source it is to be defrayed.

Before coming to a decision as to what advice Ministers should tender to His Excellency on the subject, I have to ask your Honor if you are prepared to give a specific assurance,—

1. That the £50,550 appropriated by the Ordinance will be expended only out of ordinary Provincial revenue, supplemented, if required, by overdraft not exceeding that which "The Provincial Audit Act, 1869," sanctions.

2. That the expenditure shall only be made with the cognizance of the Provincial Auditor, under the provisions of the various Acts regulating the auditing of Provincial expenditure.

I have further to observe, with reference to the loan to which the Ordinance refers, that your Honor must not consider—supposing the Ordinance is not disallowed—that it creates a claim to the loan, or that it would warrant the supposition by the Assembly that the Government had in any way committed the country to such loan.

As the fate of the Ordinance is uncertain, it would be well for your Honor to delay acting on it for a few days.

I have, &c.,
WILLIAM H. REYNOLDS,
(in the absence of the Colonial Secretary).

His Honor the Superintendent, Wellington.

No. 3.

His Honor the Superintendent, Wellington, to the Hon. the Colonial Secretary.

Sir,— Superintendent's Office, Wellington, 2nd February, 1874.

I have the honor to acknowledge the receipt of your letter of the 28th ultimo. In reply to your several questions, I have to observe,—

1. That, whilst I am unable to give you any specific assurance, it will be the aim and endeavour of the Provincial Government to provide, as far as practicable, for the expenditure authorized by "The Bridges, Roads, and other Works Appropriation Ordinance, 1874," out of the ordinary Provincial revenue, and not to have recourse to any overdraft to a greater extent than may be necessary to give effect to the wishes of the Council.

2. That no expenditure will be made except under authority of a warrant first certified to by the Provincial Auditor, and afterwards signed by the Superintendent.

With reference to the last paragraph of your letter, I venture to express my belief that the New Zealand Parliament will, if left to itself, be disposed to support the views of the several Provincial Councils; and that it will not oppose the wishes of the representatives of the people of any particular Province, after they have been deliberately and unanimously expressed by Acts.

I have, &c.,

William Fitzherbert,

The Hon. the Colonial Secretary, Wellington. Superintendent.

No. 4.

The Hon. the Colonial Secretary to His Honor the Superintendent, Wellington.

Sir,— Colonial Secretary's Office, Wellington, 6th February, 1874.

I have the honor to acknowledge the receipt of your letter of February 2nd, in which you decline to give me the specific assurance for which I asked in my letter of the 28th ultimo, that you would confine within legal limits the expenditure under "The Wellington Bridges, Roads, and other Works Appropriation Ordinance, 1874;" and in which you further state, in reply to the second assurance asked for in my letter, "That no expenditure will be made except under the authority of a warrant first certified to by the Provincial Auditor, and afterwards signed by the Superintendent."

Before referring further to your Honor's letter, I will explain the circumstances under which the letter was written to which yours is a reply.

It was within the knowledge of the Government that in your Honor's opening address to the Provincial Council on the 5th November, you stated that you had arranged to procure £50,000 by overdraft from the bank, and that you proposed that this sum should be expended on account of a larger sum appropriated, which you said the Provincial Government would endeavour to obtain as wanted. The proposed Ordinance fell through during the then Session; but during a second Session held in January, the Ordinance now under consideration passed the Council, and in ordinary course it came before the Government to consider whether His Excellency should be advised to leave it to its operation or to exercise his power of disallowance.

If the Ordinance had proposed to give power to expend money obtained by way of overdraft or loan in excess of what the law allows, the Government would at once have felt it their duty to advise His Excellency to disallow it. The Ordinance is so framed as to raise a strong presumption that it is intended the money appropriated shall be procured in some other than the ordinary way, because (as I remarked in my letter of January 28th), instead of the ordinary authority to expend out of Provincial revenue, with the usual provisions inserted in Appropriation Ordinances of the Province, the Ordinance authorizes the expenditure to be made by the Superintendent, without defining the source out of which it is to be defrayed. The Government were advised that, supposing any one sufficiently relied on the good faith of the Province to make him willing to advance the money to the Superintendent without the authority of law, there would be nothing to prevent the Superintendent expending such money without the concurrence of the Provincial Auditor. Granted that an Ordinance framed under such circumstances would be *ultra vires*, it might still be held as a moral recognition on the part of the Provincial Council of the debt incurred. The Assembly attaches so much importance to restricting unauthorized Provincial borrowing, and to Provincial expenditure being controlled by Provincial Auditors, that the General Government felt they would not be fulfilling their duty if they sanctioned, directly or indirectly, any measures which, either in letter or spirit, evaded the wishes of Parliament oftentimes expressed.

My letter of the 28th January was written to your Honor in the hope that, notwithstanding the questionable shape of the Ordinance, the Government might have been justified in advising that it should be left to its operation, upon the security afforded by your Honor's assurance that nothing irregular would be done under it. Two questions were submitted to your Honor: firstly, you were asked for an assurance that the expenditure under the Ordinance should be out of Provincial revenue, supplemented, if necessary, by an overdraft not exceeding that which the law permits; secondly, that the expenditure should only be made with the cognizance of the Provincial Auditor.

Your Honor declines to give the first of those assurances; but if the matter rested there, so reluctant would the Government have been to advise the disallowance of the Ordinance, that I should have again urged you to give the assurance asked for, and, indeed, if necessary, offered you some temporary assistance to enable you to have kept within the limits of the overdraft allowed by law. But the matter does not so rest; for, whilst your Honor professes to assure the Government that the Provincial Auditor will control the expenditure, it has come to the knowledge of the Government that that officer has already signed a warrant for the whole amount of the expenditure. I must express great regret that your Honor should have given the Government an assurance couched in a manner so calculated to mislead. Your Honor must have been aware that the assurance asked for was, that the Provincial Auditor would properly control the expenditure, as other Auditors control the expenditure in other Provinces. Had your Honor, instead of the ambiguous assurance given, stated that the Provincial Auditor had already signed the warrant for the amount, you would have shown a better appreciation of the frank manner in which the Government had treated you. It seems that the Auditor has been induced to sign a warrant authorizing Mr. Bunny to pay for the services as he considers them rendered. This document was signed without the Provincial Auditor having first satisfied himself that the amount it authorized was legally available. It may be that there was a sufficient amount to the credit of the Provincial Account to save the Provincial Auditor from the legal consequences of a breach of the 24th section of "The Provincial Audit Act, 1866," but none the less is this his action a breach of the spirit and intention of the provisions of the legislation for controlling Provincial expenditure.

The Provincial Audit Acts were meant for the protection of the Provincial Councils, as the Colonial Audit Acts are meant for the protection of the Colonial Parliament; and in condemning the proceeding under notice, the General Government are acting just as much in the interest of the Province and of Provincial institutions as fulfilling their duty to the Colony.

Unless it be held that the end justifies the means, no arguments in favour of the objects of the expenditure can be admitted as an excuse.

In view of such a proceeding, the Government cannot hope that the irregularities on the face of the Ordinance are likely to be surmounted by the discretion of the Provincial Government; and it will therefore be the duty of the Government to advise His Excellency to disallow it.

I have to inform your Honor that the Provincial Auditor will be suspended, and his conduct inquired into. In the meantime, I have to caution your Honor not to act on the warrant, the legal value of which is doubtful.

I have, &c.,

His Honor the Superintendent, Wellington. WILLIAM H. REYNOLDS.

No. 5.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 12th February, 1874.

I desire to bring under your immediate attention the great public inconvenience which has arisen from your suspension of the Provincial Auditor.

I am professionally advised that no other than the Provincial Auditor can certify to a warrant, except in the special cases cited in the 7th section of "The Provincial Audit Act, 1866."

On the 12th of every month I have to direct certain moneys to be paid to different persons for services performed: to-day I am unable to do so, unless you think proper to authorize Mr. Dorset to act notwithstanding your suspension of him from his duties.

I have, &c.,

WILLIAM FITZHERBERT,

The Hon. the Colonial Secretary, Wellington. Superintendent.

No. 6.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 13th February, 1874.

I have to acknowledge the receipt of your letter of the 12th instant, in which you direct my attention to the inconvenience arising from the suspension of the Provincial Auditor.

In reply, I have to state that the Provincial Auditor has been suspended on account of most irregular action, instigated by the Provincial Government; and if the Provincial Government sustain inconvenience, they have themselves to thank for it; and if the public are inconvenienced, they also may thank the Provincial Government.

Mr Dorset was directed to notify his suspension to the Deputy Auditor; I am not aware that he has done so.

I have, &c.,

WILLIAM H. REYNOLDS,

(in the absence of the Colonial Secretary).

His Honor the Superintendent, Wellington.

No. 7.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 13th February, 1874.

Referring to my letter of yesterday, *re* Provincial Auditor Mr. Dorset suspended, I now enclose copy of a legal opinion I have since received on the subject.

I am unwilling, however, to act upon it, and submit a warrant for Mr. Dorset's signature without informing you, lest you may think that I am inviting that officer to perform an act in defiance of your suspension. At the same time, I point out to you the great inconvenience to many persons in the Province which is now experienced, owing to the non-certifying to a warrant for payment of moneys due on the 12th instant.

I have, &c.,
WILLIAM FITZHERBERT,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

Enclosure in No. 7.

LEGAL OPINION.

I AM of opinion that the suspension of the Provincial Auditor, even assuming it to be regular, does not affect his authority to certify in respect of moneys to be issued from the Provincial Treasury.

The Regulations of 1867 leave in great doubt the effect of the suspension authorized by the 24th of these Regulations; whilst the 20th section of "The Civil Service Act, 1866," under which the Regulations are issued, provides "That such Regulations are not in any manner to alter or affect duties which by any Act then or thereafter to be in force are or shall be required to be performed."

But, in any event, the Deputy Auditor has no authority to certify during the mere suspension of the Provincial Auditor. His functions arise only in the case of the death, illness, or absence of the Provincial Auditor (see section 111 of "Provincial Audit Act, 1866"), and cannot be extended to cases not actually provided for by the terms of that Act.

12th February, 1874. WM. THOS. LOCKE TRAVERS.

No. 8.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 16th February, 1874.

I have the honor to acknowledge the receipt of your letter of the 13th instant, with reference to the suspension of Mr. Dorset, and in reply to inform your Honor that, in notifying to the Provincial Auditor that the Hon. Colonial Treasurer had suspended him from duty, that officer was requested, with a view to providing for the conduct of the business of his Department, to notify to the Deputy Auditor that the Provincial Auditor had ceased to act; and that, as the Provincial Auditor has not, so far as the Government is aware, complied with that request, the Government is unable to take further steps in the matter, pending the return of His Excellency the Governor, now hourly expected.

I have, &c.,
WILLIAM H. REYNOLDS,
(in the absence of the Colonial Secretary).

His Honor the Superintendent, Wellington.

No. 9.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 16th February, 1874.

In reply to your letter of this date, just received, I have the honor to state that it is my intention to-morrow to submit a warrant to the Provincial Auditor for his certificate.

I have, &c.,
WILLIAM FITZHERBERT,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

No. 10.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 23rd February, 1874.

Adverting to former correspondence on the subject, I have to inform your Honor that Mr. B. Smith, who was gazetted as Provincial Auditor for this Province on the 19th instant,

has declined the appointment, and has likewise resigned the office of Deputy Auditor, and that Mr. H. S. McKellar has been appointed Provincial Auditor in consequence.

I have, &c.,

His Honor the Superintendent, Wellington. WILLIAM H. REYNOLDS.

No. 11.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 12th March, 1874.

Adverting to the Hon. Mr. Reynolds' letter of the 6th February, I have the honor to inform you that His Excellency the Governor has disallowed "The Bridges, Roads, and other Works Appropriation Act, 1874," and that the Proclamation of disallowance will be published in the *New Zealand Gazette*.

His Excellency has not been advised to exercise his power of disallowance with respect to the other Acts forwarded in your Honor's letter of the 19th January, viz.,—

"The Masterton Court House and Telegraph Site Sale Act, 1874."

"The Municipal Corporations Waterworks Act (Wanganui) Adoption Act, 1874."

"The Wanganui Reserves Management Act, 1874."

I have, &c.,

His Honor the Superintendent, Wellington. DANIEL POLLEN.

No. 12.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 18th March, 1874.

The Attorney-General advises that in order to consider a settlement of the questions in dispute between the Provincial Government of Wellington and the Provincial Auditor, it is necessary that the Treasury should be informed,—

First, What was (as agreed by the Provincial Auditor and the Province) the Provincial ordinary revenue for the year 1872–73; and what is the amount of special orders already issued for the current financial year.

Second, The amount of appropriation for ordinary services not yet applied, and for what services.

Is your Honor able to supply this information? If so, will you be so good as to supply it to-day?

It would be desirable that, as far as possible, the information should be verified by the Provincial Auditor.

A copy of this letter will be handed to the Provincial Auditor, with instructions to help your Honor in obtaining the Treasury information required.

I have, &c.,

His Honor the Superintendent, Wellington. DANIEL POLLEN.

No. 13.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 19th March, 1874.

I have the honor to acknowledge receipt of your letter of the 18th instant, requesting certain information with reference to the questions in dispute between the Provincial Government and the Provincial Auditor, and to enclose the information required with a memorandum from the Provincial Auditor verifying the same.

I have, &c.,

WILLIAM FITZHERBERT,

The Hon. the Colonial Secretary, &c. Superintendent.

Enclosure 1 in No. 13.

Provincial Audit Office, Wellington, 19th March, 1874.

I CERTIFY that £67,230 3s. 8d. represents all the receipts of the Province of Wellington (exclusive of proceeds of loans and advances under "The Wellington Debts Act, 1871) for the year ending the 31st March, 1873; and that the amounts stated under "Appropriation not yet applied," agree with the balances on the 25th February last, as shown by the late Auditor in his estimate ledger, and are exclusive of certain sums therein credited as transfers and refunds referred to in the memorandum by the Assistant Provincial Treasurer herewith, and of others for which explanation has been given by the late Auditor.

H. S. MCKELLAR,

Provincial Auditor.

Enclosure 2 in No. 13.

MEMORANDUM for His Honor the SUPERINTENDENT.

	£	s.	d.
Amount of Provincial Ordinary Revenue for the year 1872–73	67,230	3	8
Amount of Special Orders issued for the current financial year	1,747	14	0
Less Transfers and Refunds	1,434	7	6
	£313	6	6
Amount for which Special Orders will be required in payments to be made as soon as certificate of Auditor is obtained	1,132	13	6
Total	£1,446	0	0

AMOUNT of APPROPRIATION for ORDINARY SERVICES not yet applied.

Services.	Appropriation not yet applied.			Expended in excess of Appropriation.			Required for payment as soon as Auditor certifies.		
	£	s.	d.				£	s.	d.
Executive	475	0	0				216	13	4
Legislative	2	19	8				37	11	8
Judicial and Police	1,250	4	10				683	6	9
Charitable	106	8	11				598	7	8
Education	1,805	0	0				..		
Harbours	701	6	0				317	0	6
Special	470	14	0				525	12	5
Miscellaneous	378	10	8				360	10	4
Native Land Purchases ..	81	1	7				66	8	8
Survey and Land Departments ..	6,056	17	0				1,247	5	3
Engineers' Departments.. ..	1,228	7	8				193	3	1
Sundry undertakings	5,255	17	9				465	19	5
Roads	4,528	11	5				2,355	10	2
Bridges	..			44	0	0	75	0	0
Contingent vote for Public Works..	..			269	6	6	529	2	9

Provincial Treasury, Wellington,
19th March, 1874.

CHARLES P. POWLES,
Assistant Provincial Treasurer.

Special Item under "Wanganui Bridge and Wharf Act, 1872."
Contingent Expenses.
Amount not yet applied, £16 5s. 8d.—C. P. P.

MEMORANDUM in Explanation of the item Transfer and Refunds, £1,434 7s. 6d., deducted from the Amount of Special Orders in the accompanying Memorandum.

The following special orders were issued from time to time, viz.,—

		£	s.	d.
9th December, 1871.	No. 1, Contingent vote	54	3	3
10th January, 1874.	No. 2, „	16	2	6
10th January, 1874.	No. 3, „	36	7	0
10th January, 1874.	No. 4, „	438	10	3
10th January, 1874.	No. 5, Bridges	44	0	0
16th January, 1874.	No. 6, Contingent vote	198	11	0
6th February, 1874.	No. 7, Native Land Purchases ..	960	0	0
		£1,747	14	0

On the 27th January, 1874, a warrant having been signed under "The Bridges, Roads, and other Works Appropriation Act, 1874," the following transfers were made of sums which had been charged to votes under "The Appropriation Act, 1873," pending the passing of the above Appropriation Act, 1874, viz.,—

	£	s.	d.
From Contingent vote to vote for Schoolhouses, &c.	300	0	0
From Contingent vote to vote for Preliminary Expenses, Survey, &c., Wanganui River	174	7	6

and the Provincial Auditor (Mr. Dorset) notified the making of these transfers to the Superintendent, whereby the excess of the Contingent vote was reduced to £269 6s. 6d.

The special order for £960 was given to enable an advance of £1,250 to be made to Mr. J. Booth, as requested by the Native Minister; and on the 25th February Mr. Booth refunded £1,050, which was credited to the vote for Native Land Purchases, thereby giving to that vote an available balance, nothing having been charged to it in the meantime.

Provincial Treasury, Wellington, 19th March, 1874.

CHARLES P. POWLES, Assistant Provincial Treasurer.

No. 14.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 19th March, 1874.

I have the honor to acknowledge the receipt of your letter of this date, enclosing information which I asked you to give me yesterday, and to thank you for the same.

Before proceeding to convey to your Honor the decision at which the Government have arrived in respect to the legal proceedings pending between the Provincial Government and the Provincial Auditor, I venture to make some observations regarding what has hitherto occurred.

During the Session of 1871, the Assembly passed with much reluctance the Wellington Debts Act. Indeed it was only the active support of the Government that induced a majority of members to allow it to become law. One of the points about which there was the greatest reluctance was concerning the question of allowing the Province to again borrow by overdraft, after liquidating by means of the Act the already existing overdraft. The Act, however, was passed, so that the Province of Wellington was left in possession of the same power of borrowing by overdraft as the other Provinces possessed.

I may, I think, with confidence assert that it did not enter into the minds of honorable members that the Province would endeavour to stretch that power as your Honor's Government have attempted to do.

During last Session the Assembly refused, although urged to do so by the Government, to increase the borrowing powers of the Provinces.

Almost immediately after the Session your Honor convened the Provincial Council, and in effect allowed it to be understood that you proposed, in defiance of the Assembly, to carry out the works you desired, and that you had found a means to obtain money in excess of what the law permitted. The Provincial Council, very much to its credit, declined to pass the Bill. Under great pressure it subsequently passed a somewhat modified measure.

The peculiar nature of this measure was at once pointed out to your Honor, and you were asked to give two assurances, viz., first, that you would limit the expenditure under it to moneys legally available; secondly, that the expenditure would be conducted under the sanction of the Auditor.

Your Honor declined to give an explicit assurance in respect to the first; and in respect to the second, you gave an apparently highly satisfactory assurance.

The Government found out, with great regret, that this second assurance was, to mildly characterize it, entirely disingenuous; that far from the Auditor supervising the proposed payments, he had already given a species of authority or warrant to expend the full amount the measure professed to authorize. This extraordinary proceeding of the Auditor could have no other object than to anticipate the decision of His Excellency in regard to an expected disallowance of the Bill.

On ascertaining the action taken by the Auditor, the Government decided to recommend his dismissal and the disallowance of the Bill, with both of which recommendations His Excellency complied.

The new Provincial Auditor, on taking office, was confronted with the difficulty that supposing the warrant to which I have referred, given by the former Auditor, was valid, authority had been given for an amount of expenditure which left nothing available for ordinary purposes.

The Government did not consider the warrant valid; indeed there were serious doubts as to whether the disallowed Bill was a measure of appropriation. Pending steps being taken to establish the invalidity of the warrant, the Auditor, at your Honor's instance, was served with a rule for a mandamus to compel him to sign warrants for ordinary expenditure.

In the meanwhile it came to the knowledge of the Auditor that, under cover of the *quasi* warrant, a sum of £10,000 was drawn out of the account and placed to the credit of an account termed "Provincial Account No. 2," on which the Provincial Treasurer operated without any Auditor's restraint.

The Attorney-General, on this being brought to his knowledge, applied to the Court to restrain any action being taken under the warrant, and to compel the re-instalment in the Provincial Account of the moneys improperly drawn therefrom.

Negotiations were then opened with a view to a settlement without recourse to law. It was proposed that the basis of such settlement should be the cancelling of the warrant, the repayment to the Provincial Account of the unexpended balance of the £10,000, and that to prevent inconvenience arising to those who had dealings with the Provincial Government, the

Colonial Government should advance to the Province for twelve months £25,000. In order that the General Government might consider the matter, the proceedings have, by mutual consent, been adjourned from day to day.

Since then your Honor has obligingly furnished information.

I may mention two other points that have come under the notice of the Government—first, the Council has made appropriations only up to the end of the present month; and, second, that the accounts for the December quarter have not yet been presented to the Auditor.

This afternoon, also, the Government have learnt with extreme surprise that last Thursday a second sum of £10,000 was drawn out of the Provincial Account under cover of the same *quasi* warrant; the Provincial Auditor only discovered this to-day.

On all these circumstances the Government have come to the conclusion,—

(1.) That the affairs of the Provincial Treasury have been conducted with great laxness and indifference to legal requirements.

(2.) That a determination has been manifested to overstep the borrowing limits prescribed by the law.

(3.) That there is reason to think that the Provincial Council is not cognizant of all the circumstances of the Provincial Treasury, and that it is desirable that body should be convened without delay.

(4.) That whilst the General Government should have some regard for the interests of third parties affected by faults not their own, it is necessary that they should strictly insist on the Provincial Treasury complying with the requirements of the law.

Taking these circumstances into consideration, the Government have decided that they must insist on the warrant being cancelled, and the unexpended balance of the two sums of £10,000 being returned to the Provincial Account, reserving to the Auditor the right to take such action in respect to those amounts having been drawn as he may think fit.

On the warrant being cancelled, there will be no obstacle to meeting ordinary payments which have been properly appropriated. I judge that your Honor has nearly exhausted your powers of issuing special orders. I may observe that it cannot be considered legal to write off special orders by subsequent transfers, and that any special orders issued should be submitted to the Council.

If your Honor will at once convene a meeting of the Provincial Council, the Government will advance the money necessary in the meantime to meet the actual payments on account of the contracts and engagements outstanding, which, being unauthorized, your Honor cannot meet.

Should the Council, when acquainted with all the circumstances, authorize the continuance of the works proposed, and should your Honor advise the Government that they are urgent, and that you require money to proceed with them, the Treasury will advance an amount not exceeding, inclusive of amounts advanced in the interim for contracts outstanding, £20,000, on the understanding that it will be repaid in twelve months, and that, if necessary, your Honor will put land into the market to repay it.

I have, &c.,

His Honor the Superintendent, Wellington. DANIEL POLLEN.

No. 15.

His Honor the SUPERINTENDENT, Wellington, to the Hon. the COLONIAL SECRETARY.

SIR,— Superintendent's Office, Wellington, 20th March, 1874.

I have the honor to acknowledge the receipt of your letter of the 19th instant. I at present only reply to two points:—

1. I have taken the best legal opinions I can obtain, and am advised that I ought not to cancel the warrant referred to.

2. The unexpended balance of the two sums of £10,000 each standing to the credit of Provincial Account No. 2 has been transferred to Provincial Account No. 1.

I have, &c.,

W. FITZHERBERT,

The Hon. the Colonial Secretary, Wellington. Superintendent.

No. 16.

The Hon. the COLONIAL SECRETARY to His Honor the SUPERINTENDENT, Wellington.

SIR,— Colonial Secretary's Office, Wellington, 21st March, 1874.

I have to acknowledge the receipt of your Honor's letter of the 20th instant in reply to mine, No. 71, of the 19th instant.

I have, &c.,

His Honor the Superintendent, Wellington. DANIEL POLLEN.

No. 17.

MEMORANDUM No. 1.

Treasury, Wellington, 5th February, 1874.

HAVING recently had under consideration "The Bridges, Roads, and other Works Appropriation Act," passed by the Provincial Council of this Province, authorizing the construction of certain bridges, roads, and other public works, and perceiving that the peculiar construction of that Act, and other circumstances connected with it, would probably necessitate an unusual degree of care in any action required to be taken by the Provincial Auditor, I have taken occasion, as the Permanent Head of the Department to which he is responsible, to confer with that officer, with the object of ascertaining his views on the general question of Provincial overdrafts, and of the course which he would consider it his duty to adopt in the case of an overdraft in excess of the proportion sanctioned by the Provincial Audit Act of 1869.

I found that Mr. Dorset's views on these questions were altogether vague and unsatisfactory, for, while he assented to the proposition that it was his duty, before affixing his certificate to the warrant of the Superintendent, to see that funds sufficient to meet the required issue were not only at credit of the Provincial Account but were "legally available" for issue, in terms of the Provincial Audit Act and its amendments, he informed me that in practice he did not take steps to inform himself on either of those points, or, indeed, to ascertain at any time the amount at credit of the Provincial Account at the bank.

On inquiry whether, in the event of a warrant directing the issue of moneys under the Bridges Roads &c. Act being laid before him for signature, he would consider it necessary to ascertain that the moneys required to be issued were legally available for the purpose, the Auditor informed me that he had already (on the 27th ultimo) certified the warrant of the Superintendent for the whole sum contained in Schedule II. to the Act in question; that he had done so not only without consideration of the question of the ways and means out of which the issues were to be made, but without having read the Act.

In reporting this matter for the consideration of the Hon. the Colonial Treasurer, I regret to state that, as the general result of the interview I have had with Mr. Dorset, I am of opinion that that gentleman has no real perception of the important functions attaching to the office of Provincial Auditor, and that the duty of controlling the expenditure of the Provincial Government is one which, except in its most restricted sense, he has not only neglected to perform, but has even failed to recognize.

C. T. BATKIN,
Secretary to Treasury.

The Hon. the Colonial Treasurer.

MINUTE ON MEMORANDUM No. 1.

CLEARLY this officer is inefficient. I incline to think he has rendered himself liable to legal penalties, but this cannot be ascertained until it is known if the money was available legally for which he signed the warrant. If he has made himself legally liable to penalties, I direct that he be proceeded against for them.

In any case, he is not an efficient officer, and a letter had better be written to him that the Governor will be advised to remove him for inefficiency, and asking him if he desires a formal inquiry such as the Civil Service Acts give him the right to request. I believe the inquiry can be either by persons appointed for the purpose or by a Board already constituted; the option, I believe, rests with the Governor. Do you advise his suspension in the meanwhile?

To the Secretary to the Treasury. J. VOGEL.

REPLY to MINUTE of Hon. J. VOGEL on MEMORANDUM No. 1.

THE decision of the Government on this matter appears to me to require that, as regards the conduct of the Provincial Auditor's office, it should have immediate effect. I recommend, therefore, that, pending the decision of His Excellency the Governor, the Provincial Auditor be forthwith suspended, and that the Deputy Auditor be informed to that effect.

7th February, 1874. C. T. BATKIN.

ACCORDINGLY take the necessary steps.—J. VOGEL.

7th February, 1874.

No. 18.

The SECRETARY to the TREASURY to the PROVINCIAL AUDITOR.

SIR,— Treasury, Wellington, 9th February, 1874.

The attention of the Government has been called to the manner in which the duties of Provincial Auditor have been performed by you, and inquiries made in the matter have shown that you have failed to perform those duties with the care which the efficient execution of so important an office requires.

I am accordingly directed by the Hon. the Colonial Treasurer to inform you that His Excellency the Governor will be advised to remove you from that office, and that, until the decision of His Excellency be known, you are suspended from further duty.

With a view to provide for the conduct of the business of your department in the meantime, I am to request that you will forthwith notify to the Deputy Auditor that you have ceased to act as Provincial Auditor, and that you will hand over to that officer the books, papers, &c., in your charge.

I am further to request that you will state whether or not you desire that this matter should be made the subject of an inquiry in the manner provided by section 4 of "The Civil Service Act, 1871."

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

W. Dorset, Esq., Wellington.

No. 19.

The Secretary to the Treasury to the Deputy Provincial Auditor, Wellington.

Sir,— Treasury, Wellington, 10th February, 1874.

I have the honor, by direction of the Hon. the Colonial Treasurer, to inform you that the Provincial Auditor has been suspended from duty, and has been requested to forward to you a certificate that he has ceased to act.

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

B. Smith, Esq., Deputy Provincial Auditor, Wellington.

No. 20.

Memorandum No. 24.

The Secretary to the Treasury to the Provincial Auditor, Wellington.

Treasury, Wellington, 6th February, 1874.

It is requested that the Provincial Auditor will be good enough to state whether the warrant, of which a copy was transmitted to me yesterday, and the certificate of the Auditor thereto attached, are both in the customary form, or whether in either case a special form was adopted; and if so, to forward copy of the ordinary form of warrant, with the customary certificate.

The Provincial Auditor is also requested to ascertain and state what was the amount at credit of the Provincial Account at the Bank on the 27th January last.

C. T. Batkin,
Secretary to the Treasury.

The Provincial Auditor, Wellington.

No. 21.

The Provincial Auditor, Wellington, to the Secretary to the Treasury.

Sir,— Provincial Audit Office, Wellington, 7th February, 1874.

In reply to your Memorandum No. 24, of yesterday's date, I have the honor to inform you that the warrant, copy of which is in your hands, is substantially the same in form as warrants generally issued by the Superintendent to the Provincial Treasurer. In those the names of the individuals to whom the money is to be paid is inserted; in this one, payment is authorized to the persons to whom moneys may be or may become due.

I am unable to reply to the question as to the balance of the Provincial Account in the absence of the Provincial Treasurer, who is away from town for a few days; immediately on his return I will make application officially to him for the information required.

I have, &c.,
William Dorset,
Provincial Auditor.

C. T. Batkin, Esq., Secretary to the Treasury.

No. 22.

The Secretary to the Treasury to the Deputy Provincial Auditor.

Sir,— Treasury, Wellington, 14th February, 1874.

Referring to my letter of the 10th instant, advising you of the suspension of the Provincial Auditor, and informing you that that officer had been requested to forward to you a certificate that he had ceased to act, I have the honor, by direction of the Hon. the Colonial Treasurer, to request that you will inform me whether you have yet received the certificate referred to.

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

B. Smith, Esq.,
Deputy Provincial Auditor, Wellington.

No. 23.

The Deputy Provincial Auditor, Wellington, to the Secretary to the Treasury.

Sir,— Lambton Quay, Wellington, 14th February, 1874.

In reply to your communication of this day, I have the honor to inform you that I have not received the certificate referred to from the Provincial Auditor.

I have, &c.,
B. Smith,
Deputy Provincial Auditor, Wellington.

C. T. Batkin, Esq.,
Secretary to the Treasury, Government Buildings.

No. 24.

James Fergusson, Governor.

Treasury, Wellington, 12th February, 1874.

His Excellency the Governor is respectfully advised to remove Mr. William Dorset, the Provincial Auditor of the Province of Wellington, from that office. The papers on the subject are attached for His Excellency's information.

It appears, from the report of the Secretary to the Treasury, Mr. Dorset has admitted that he certified the warrant of His Honor the Superintendent for the total sum appropriated by an Act authorizing expenditure on various objects without having read that Act, or satisfying himself, as he was by law required to do, that the money to be issued was legally available. If by this proceeding he has not transgressed the law, he has certainly neglected attending to what has always been considered the most important of his duties; and if the action taken by him arose through incapacity to appreciate the spirit and intention of his functions, there would be sufficient reason for his immediate removal.

I am bound to say there is besides grave suspicion of his having, at the instigation of the Provincial Government, acted in such a manner as to anticipate, or attempt to anticipate, the disallowance of the Act referred to, there is reason to believe that the warrant differed from the ordinary form.

The reason for obtaining a warrant in full for the sum authorized could only have arisen out of the desire of the Provincial authorities to anticipate the possible disallowance of the Act.

It was clearly the duty of the Provincial Auditor by all proper vigilance to endeavour to frustrate such a proceeding, and not by complicity to aid or abet it.

In the event of Mr. Dorset desiring an inquiry under the Civil Service Acts, His Excellency is respectfully recommended to grant an inquiry under section 4 of the Civil Service Act of 1871, and to appoint the under-mentioned officers to conduct the inquiry—Charles Knight, Esq., Auditor-General, and William Seed, Esq., Secretary of Customs.

Julius Vogel.

Approved in Council, 19th February, 1874.—Forster Goring.

No. 25.

The Secretary to the Treasury to Mr. Dorset.

Sir,— Treasury, Wellington, 19th February, 1874.

I have the honor, by direction of the Hon. the Colonial Treasurer, to inform you that His Excellency the Governor has been pleased to remove you from the office of Provincial Auditor of the Province of Wellington, and to request that you will be good enough to hand over the books, papers, &c., appertaining to that office to your successor, Mr. Benjamin Smith.

I have, &c.,
C. T. Batkin,
Secretary to the Treasury.

W. Dorset, Esq., Wellington.

No. 26.

In Executive Council.

His Excellency the Governor is recommended to appoint Benjamin Smith, Esq., to be Auditor of the Public Accounts of the Province of Wellington, at a salary of £200 per annum.

William H. Reynolds.

Approved.—James Fergusson, Governor.

Forster Goring, Clerk of Executive Council.

No. 27.

The Secretary to the Treasury to Mr. Smith.

Sir,— Treasury, Wellington, 19th February, 1874.

Herewith I have the honor, by direction of the Hon. the Colonial Treasurer, to transmit to you a warrant under the hand of His Excellency the Governor, appointing you to the office of Auditor of the Public Accounts of the Province of Wellington at a salary of £200 per annum.

In conferring this appointment on you, the Government desires it to be distinctly understood that it is to be regarded as temporary, and one which they are at liberty to rescind in the event of its being considered desirable to make other arrangements.

You will be good enough to take over from Mr. Dorset the books, papers, &c., in his charge, and to enter on the duties of the office without delay.

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

B. Smith, Esq., Wellington.

No. 28.

Mr. Dorset to His Excellency the Governor.

Sir,— Wellington, 19th February, 1874.

I venture to bring under your Excellency's consideration the circumstances under which I am at present placed as Provincial Auditor.

During your Excellency's absence I have been suspended by the General Government, and informed that I shall be dismissed on your return.

I have taken legal opinions on my position, and am advised that I have acted in accordance with the law regulating the conduct of Provincial Auditors; whilst I have been threatened with dismissal, as if I had broken the law.

I appeal to your Excellency to withhold your sanction to my dismissal without a reference to the Judges of the Supreme Court.

If they decide that I have acted illegally, I am prepared to bow to their decision and submit to the severe pains and penalties which the law has provided for such cases. If, however, it be judicially decided that I have acted in accordance with the law, I confidently appeal to your Excellency for protection, for I submit most respectfully that a Provincial Auditor holds an office which, from its character, ought, on constitutional grounds, to be carefully protected against being made an object of political action.

It is quite true that I have been asked whether I would apply for an inquiry under the Civil Service Act; but the question is one of the interpretation of the law, and I ask for it to be submitted to the decision of the Supreme Court before I am punished for an alleged breach of the law. An appeal under the Civil Service Act would be simply an appeal to those who have already decided against me, and who can very properly act as judges on a question of insubordination or negligence, but who are not competent to decide on a question of law.

I have, &c.,
William Dorset.

His Excellency Sir James Fergusson.

Minutes on the above.

Referred to Ministers. I do not desire to interfere. The Government have not dealt with the case as one so much of breach of the law as of disregard of duty.

19th February, 1874. J. F., Gr.

The receipt of this letter, and the fact of its being referred to Hon. Ministers, have no doubt been notified to Mr. Dorset by the Private Secretary.

I think that Mr. Dorset should now be informed that the Government had given the matter its fullest consideration prior to adopting the step of removing him from office, as notified in the Treasury letter of yesterday.

20th February, 1874. C. T. Batkin.

Approved.—W. H. Reynolds.

No. 29.

The Secretary to the Treasury to Mr. Dorset.

Sir,— Treasury, Wellington, 20th February, 1874.

I have the honor, by direction of the Hon. the Colonial Treasurer, to acknowledge the receipt of your letter of the 19th instant, addressed to His Excellency the Governor, on the subject of your removal from the office of Provincial Auditor.

In reply, I am to inform you that this matter had received the fullest consideration from the Government prior to its adopting the step of removing you from office, as notified in the Treasury letter of yesterday's date.

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

W. Dorset, Esq., Wellington.

No. 30.

Mr. Smith to the Secretary to the Treasury.

Sir,— Wellington, 20th February, 1874.

I have the honor to acknowledge your letter (No. 150) covering the warrant of His Excellency the Governor, appointing me to the office of Auditor of the Public Accounts of the Province of Wellington, &c.

The second paragraph of your letter states that it is to be distinctly understood that the appointment is to be regarded as temporary, and one which the Government are at liberty to rescind in the event of its being considered desirable to make other arrangements.

I should state that the conversations I had with you on the subject gave me no indication of this feature in the appointment, and in view of the peculiar position of the affairs and with the certainty of much labour, if nothing more, in the outset, while gratefully acknowledging the honor conferred, I beg most respectfully to decline the appointment on the terms proposed, and I accordingly return His Excellency's warrant herewith.

I do not know whether, under present circumstances, I may be considered to hold the office of Deputy Auditor; but if it be so, in order to enable the Government to make arrangements to facilitate the public business, I respectfully resign that appointment.

I have, &c.,
B. Smith.

C. T. Batkin, Esq., Secretary to the Treasury, Wellington.

Minute on above.

Recommended that His Honor the Superintendent of Wellington be informed that Mr. B. Smith, who was gazetted as Provincial Auditor on the 19th instant, has declined the appointment, and has likewise resigned the office of Deputy Auditor; also, that H. S. McKellar, Esq., has been appointed Provincial Auditor.

23rd February, 1874. C. T. Batkin.

No. 31.

The Secretary to the Treasury to Mr. Smith.

Sir,— Treasury, Wellington, 23rd February, 1874.

I have the honor, by direction of the Hon. the Colonial Treasurer, to acknowledge the receipt of your letter of the 20th instant, in which you state that, in assenting to the proposal to appoint you to the office of Provincial Auditor, you had received no indication that the appointment was to be regarded as temporary, and that, in view of the peculiar position of affairs, and, as I gather from your letter, of possible difficulties to be met with in the outset, you decline to accept the appointment. You add that, in order to enable the Government to make arrangements to facilitate the public business, you resign the appointment of Deputy Auditor.

The Hon. the Colonial Treasurer has directed me to express his regret that the conditions to which you refer should have presented an insuperable objection to your acceptance of the proposed appointment, and his surprise to learn that your resignation of the office of Deputy Auditor should have been dictated by a desire "to enable the Government to make arrangements to facilitate the public business."

I am to point out to you that, in terms of "The Provincial Audit Act, 1866," your resignation of the last-named office should be "by writing addressed to the Governor."

I have, &c.,
C. T. Batkin,
Secretary to Treasury.

B. Smith, Esq., Wellington.

No. 32.

The Secretary to the Treasury to Mr. McKellar.

Sir,— Treasury, Wellington, 23rd February, 1874.

By direction of the Hon. the Colonial Treasurer, I have the honor to enclose herewith a warrant, under the hand of His Excellency the Governor, appointing you to be Auditor of the Public Accounts of the Province of Wellington.

I also enclose a copy of "The Provincial Audit Act, 1866," "The Provincial Audit Act Amendment Act, 1868," and of "The Provincial Audit Act Amendment Act, 1869," in which you will find the necessary instructions relative to your duties in the capacity of Provincial Auditor.

You will be good enough to take over from Mr. Benjamin Smith the books, papers, &c., in his charge, and to enter on the duties of the office without delay.

I have, &c.,
C. T. BATKIN,
Secretary to Treasury.

H. S. McKellar, Esq., Wellington.

No. 33.

The SECRETARY to the TREASURY to Mr. SMITH.

SIR,— Treasury, Wellington, 23rd February, 1874.

I have the honor to inform you that Mr. H. S. McKellar has been appointed to the office of Auditor of the Public Accounts of the Province of Wellington, and to request that you will be good enough to hand over to that gentleman the books, papers, &c., appertaining to the office.

I have, &c.,
C. T. BATKIN,
Secretary to Treasury.

B. Smith, Esq., Wellington.

No. 34.

Mr. SMITH to the SECRETARY to the TREASURY.

SIR,— Wellington, 23rd February, 1874.

I have the honor to acknowledge the receipt of your letter No. 164, in which you acknowledge mine of the 20th instant.

In reference to the surprise expressed for the reason assigned by me for the resignation of the Deputy Auditorship, I ought, perhaps, to have referred to my first conversation with you upon the subject, in which I stated that I could not, at the present juncture, undertake the duties as Deputy, subject to be superseded at any moment. And as the distinct understanding expressed by the Government, that my appointment as Auditor was to be regarded as temporary only, and liable to be rescinded if it were considered desirable to make other arrangements, would have placed me in a position in which, I respectfully submit, no Public Auditor ought to be placed, I had no alternative but to resign; and by doing so I conceived that I was facilitating public business, by enabling the Government to make both appointments without delay.

My formal resignation of the Auditorship and Deputy Auditorship is forwarded to His Excellency.

In reference to your letter No. 166, informing me of the appointment of Mr. McKellar as Provincial Auditor, and requesting me to hand over to him the books, papers, &c., appertaining to the office, I have to state that they have never been in my possession; but, if it be needful, I shall be happy to meet Messrs. Dorset and McKellar at the office, whenever it may be convenient to those gentlemen to attend.

I have, &c.,
B. SMITH.

C. T. Batkin, Esq., Secretary to Treasury.

No. 35.

Mr. SMITH to His Excellency the Governor.

SIR,— Wellington, 23rd February, 1874.

I beg most respectfully to tender to your Excellency the resignation of the offices of Auditor and of Deputy Auditor of the Public Accounts of the Province of Wellington.

I have, &c.,
B. SMITH.

His Excellency Sir James Fergusson, Bart.,
Governor of New Zealand.

No. 36.

The PROVINCIAL AUDITOR, Wellington, to the SECRETARY to the TREASURY.

SIR,— Wellington, 27th February, 1874.

At the commencement of my duties I find that the balance in the Provincial Account is insufficient to meet claims included in warrants previously issued, but now remaining partly unexercised; it appears to me, therefore, that warrants now presented to me for certificate for

current services cannot be issued, there being no sums legally available for them. To remove all doubt, I shall feel obliged by your obtaining the opinion of the law officers as to the proper interpretation of the words "legally available," as used in the 11th section of "The Provincial Audit Act, 1866," viz., Is the Provincial Auditor "before signing or certifying a warrant, in addition to seeing that the services therein specified are duly authorized by an Appropriation Act, required to see that sufficient money is in the Provincial Account to pay the amount of such warrant, and of all warrants previously issued but remaining unexercised?"

I have, &c.,
H. S. McKellar,
Provincial Auditor.

The Secretary to the Treasury, Wellington.

Minutes on Mr. McKellar's Letter of 27th February, 1874.

Will the law officers be good enough to advise hereon? Urgent—C. T. Batkin.
28th February, 1874.

I think the Provincial Auditor should be informed that the Government considers it is his duty, before issuing a warrant, to ascertain whether there are at the Provincial Account moneys legally at that account sufficient to meet not only the warrants, but all previously certified warrants, and should also be informed that the Government considers that this was the intention of the Legislature, and that such intention is sufficiently expressed in the Audit Act, and will support the Auditor in that interpretation of the Act, should it be contested by the Provincial Government.

28th February, 1874. J. Prendergast.

Inform Mr. McKellar accordingly.—W. H. R.

No. 37.

The Secretary to the Treasury to the Provincial Auditor, Wellington.

Sir,— Treasury, Wellington, 2nd March, 1874.

I have the honor to acknowledge the receipt of your letter of the 27th ultimo, in which you state that at the time of entering on your duties as Provincial Auditor, you find that the cash balance at the credit of the Provincial Account is insufficient to provide for claims included in warrants previously issued, but now remaining partly unexercised.

You express an opinion that under these circumstances you would be unable to certify to any warrant presented for that purpose, and request you may be advised whether, under the 11th section of "The Provincial Audit Act, 1866," the Provincial Auditor is required, before certifying any warrant, to see that the money in the Provincial Account is sufficient to provide for the expenditure included in such warrant, and for that included in warrants previously issued but remaining unexercised.

In reply, I am directed by the Hon. the Colonial Treasurer to inform you that the Government considers it to be your duty, before certifying any warrant, to ascertain that there are moneys at the credit of the Provincial Account sufficient to meet not only the amount of that warrant, but of all warrants previously certified but at that time unexercised.

It is considered that this was the intention of the Legislature; that this intention is sufficiently expressed in the Audit Acts; and the Government will support the Provincial Auditor in this interpretation of the law, in the event of its being contested by the Provincial Government.

I have, &c.,
C. T. Batkin,
Secretary to the Treasury,

H. S. McKellar, Esq.,
Provincial Auditor, Wellington.

No. 38.

The Provincial Auditor, Wellington, to the Secretary to the Treasury.

Sir,— Provincial Audit Office, Wellington, 10th March, 1874.

With reference to your letter of the 2nd instant, I have the honor to report that on the 27th ultimo warrants were presented to me for certificate amounting to £4,382 8s. 3d. "The Provincial Account" at the Bank of New Zealand being then overdrawn to the extent of £4,135 8s. 8d., and warrant 15, issued under certificate of the late Auditor, for £49,550, being only partly exercised, and although in my opinion illegally issued, the Provincial Treasurer being able under it to draw money from the Provincial Account, I decided that I could not certify that any sums were legally available for the services, and accordingly gave notice thereof to the Provincial Treasurer. Copy of letter herewith.

To-day I have received an order of the Supreme Court to show cause by Counsel, on the 17th instant, why a mandamus should not be issued to compel me to certify certain warrants; and I have to request that you will obtain from the Hon. the Colonial Treasurer authority for the necessary professional assistance.

I also enclose copy of a letter I have sent to His Honor the Superintendent, bringing to his notice the fact of the Provincial Treasurer having, on the 13th February, withdrawn £10,000 from the "Provincial Account," and placed it to a new account called by him "Provincial Account No. 2," quoting warrant No. 15, already referred to, as his authority. It appears to me that the Provincial Treasurer has rendered himself liable to the penalty of £500 under section 10 of "The Provincial Audit Act, 1866;" and I have to request that you will take the necessary steps to enable me to have the opinion and assistance in this matter, and in any other matter that may occur, of the Attorney-General.

I have, &c.,
H. S. McKellar,
Provincial Auditor.

The Secretary to the Treasury, Wellington.

Enclosure 1 in No. 38.

The Provincial Auditor to the Provincial Treasurer, Wellington.

Sir,— Provincial Audit Office, Wellington, 2nd March, 1874.

In answer to your letter of the 27th ultimo, informing me that warrants were awaiting my certificate, I have the honor to state that, finding the balance to credit of the "Provincial Account" is insufficient to meet amounts of previously certified warrants now remaining unexercised, I am unable at present to certify any warrants.

I have, &c.,
H. S. McKellar,
Provincial Auditor.

The Provincial Treasurer, Wellington.

Enclosure 2 in No. 38.

Copy of a Letter to the Superintendent, Wellington, referred to in Mr. McKellar's Letter of 10th March, 1874.

Your Honor,— Provincial Audit Office, Wellington, 9th March, 1874.

In accordance with article 3 of the Schedule to "The Provintial Audit Act, 1866," I beg to bring under your consideration the following circumstance:—

On examination of the pass-book of the Bank of New Zealand for the "Provincial Account," I find that on the 13th February the sum of £10,000 was withdrawn from that account, on cheque No. 395. This was signed by the Provincial Treasurer, and paid by him into an account at the Bank of New Zealand called "Provincial Account No. 2." On reference to the counterfoil, I find there stated that it was drawn under warrant No. 15, on account of "The Bridges, Roads, and other Works Appropriation Act, 1874." A similar entry appears in the cash-book. Since that date many cheques have been drawn on the new account, without any entry thereof in the cash-book.

I submit that there is no authority in warrant 15, even if that warrant is legal, for such a proceeding on the part of the Provincial Treasurer; and I have deemed it my duty to bring the matter under your notice.

I have, &c.,
H. S. McKellar,
Provincial Auditor.

His Honor the Superintendent, Wellington.

No. 39.

The Secretary to the Treasury to the Provincial Auditor, Wellington.

Sir,— Treasury, Wellington, 13th March, 1874.

I have the honor, by direction of the Hon. the Colonial Treasurer, to acknowledge the receipt of your letter of the 10th instant, reporting that you had refused to sign certain warrants presented to you for that purpose, amounting to £4,382 8s. 3d., and that you had received an order of the Supreme Court, to show cause by Counsel, on the 17th instant, why a *mandamus* should not be issued to compel you to certify. In reply I am to inform you that the Attorney-General will be instructed to give you the assistance you require to meet the Rule *Nisi*.

With reference to that part of your letter which relates to the transfer by the Provincial Treasurer of £10,000 from the Provincial Account to a new account called by him "Provincial Account No. 2," whereby it appears to you that he has rendered himself liable to the penalty of £500, under section 10 of "The Provincial Audit Act, 1866," I am to inform you that the Attorney-General will also be instructed to assist you in suing the Provincial Treasurer for the penalty referred to.

I am further to inform you that steps should be instantly taken to recover the £10,000 transferred from the Provincial Account by the Provincial Treasurer; and to restrain further action under the warrant quoted by him as his authority, which the Hon. the Colonial Treasurer concurs with you in considering illegal.

I have, &c.,
JAMES C. GAVIN,
(for Secretary to the Treasury).

The Provincial Auditor, Wellington.

No. 40.

Memorandum by the SECRETARY to the TREASURY for the Hon. the COLONIAL TREASURER.

I HAVE heard incidentally that Mr. Dorset, the late Provincial Auditor, denies the statement that he had issued the warrant of the 27th January (referred to in my memorandum of the 5th February) "without having read the Act."

I repeat, that Mr. Dorset informed me that he had not read the Act. I believe his words were "I have not seen the Act": and I beg to add, that on my asking Mr. Dorset whether he did not think he had committed a grave irregularity, in certifying to a warrant for the whole sum authorized by an Act, without having even read the Act, he stated that he began to see the error he had committed, but that he had been led into it by the knowledge that the Act submitted to the Provincial Council during the previous Session had been drafted by the Attorney-General, and he had supposed that the Act subsequently passed had been prepared in the same way.

C. T. BATKIN,
Secretary to the Treasury.

Treasury, Wellington, 29th May, 1874.

IN THE APPEAL COURT, 11TH, 12TH, 13TH MAY, AND 1ST JUNE, 1874.

ATTORNEY-GENERAL *v.* BUNNY.

Demurrer to an Information by the Attorney-General in which an interim Injunction had been granted by the Supreme Court, Wellington.

Coram.—ARNEY, C. J., JOHNSTON, J., GRESSON, J., and RICHMOND, J.

Mr. TRAVERS in support of the demurrer.

The ATTORNEY-GENERAL in support of the information.

The information was as follows:—

INFORMATION.

In the Supreme Court of New Zealand,
Wellington District.

ON Friday, the thirteenth day of March, one thousand eight hundred and seventy-four, James Prendergast, Her Majesty's Attorney-General in and for New Zealand, on behalf of Her Majesty, informing, showeth unto the Supreme Court,—

1. That the Provincial Council of the Province of Wellington, in a session of the said Council held in January last, passed an Act the short title whereof is "The Bridges, Roads, and other Works Appropriation Act, 1874," which said Act was assented to by the Superintendent on the sixteenth day of January last, and was disallowed by the Governor on the twelfth day of March instant.

2. That by the said Act it is amongst other things enacted that the Superintendent of the said Province is thereby authorized and empowered to expend any sum or sums not exceeding fifty thousand five hundred and fifty pounds in the construction of the several works set forth in the Second Schedule thereto, which said Second Schedule is as follows:—

SECOND SCHEDULE.

Bridges—Ruamahanga (near Te Ore Ore)	£4,000	0	0
Abbott's Creek (two bridges)	4,500	0	0
Roads—Foxton to Sandon	3,741	0	0
Roads to open up Paraekaretu Block	6,000	0	0
Preliminary Surveys, Deviation Paikakariki Hill Road	600	0	0
Tinui to Alfredton and Forty-Mile Bush	4,000	0	0
Masterton to Alfredton, through Wangaehu	4,000	0	0
Lunatic Asylum in Wellington	7,709	0	0
School-houses and Teachers' Residences, and Lands for the same	9,000	0	0
	£44,550	0	0
Preliminary Expenses, Survey, and Removing Snags, &c., Wanganui River	1,000	0	0
Contingencies	5,000	0	0
	£50,550	0	0

3. That the Hon. William Fitzherbert, a member of the House of Representatives, was at the date of the passing of the said Act, and has continuously been and still is, Superintendent of the said Province.

[An Act to establish an Executive Government for the Province of Wellington, Session 1, No. 1. Assented to, 3rd November, 1853. Sections 1, 6 & 7.

4. That Henry Bunny, a member of the Provincial Council of the said Province, was, at the date of the passing of the said Act, and hath continuously been and still is, the Provincial Treasurer of the said Province, appointed under the Act of the Provincial Council of the said Province mentioned in the margin hereof; and the said James Prendergast, Attorney-General as aforesaid on behalf as aforesaid, relies on the sections of the said Act mentioned in the margin hereof.

5. That William Dorset was, at the date of the passing of the Act mentioned in the first paragraph hereof, the Provincial Auditor of the said Province, under the Act of the General Assembly the short title whereof is "The Provincial Audit Act, 1866," and was the Auditor of the said Province under the said last-mentioned Act on the twenty-seventh day of January last.

6. That, on the said twenty-seventh day of January last, the said William Fitzherbert and Henry Bunny caused to be prepared and presented to the said William Dorset, in his capacity of Provincial Auditor of the said Province, a paper writing, of which the following is a copy:—

Warrant No. 15, 1874.

By His Honor William Fitzherbert, Esquire, Superintendent of the Province of Wellington, New Zealand, &c., &c., &c.

To Henry Bunny, Esquire, Provincial Treasurer, Wellington.

You are hereby authorized to pay or cause to be paid to the persons who may be and may become respectively entitled thereto, the several sums hereinafter mentioned, for the services also hereinafter mentioned, upon such days as the said several sums, or such respective parts thereof, shall become due and payable, that is to say,—

	£	s.	d.	£	s.	d.
Bridges—Ruamahanga (near Te Ore Ore)	4,000	0	0			
Abbott's Creek (two bridges)	4,500	0	0			
				8,500	0	0
Roads—Foxton to Sandon	£3,741	0	0			
Roads to open up Paraekaretu Block	6,000	0	0			
Preliminary Surveys, Deviation Paikakariki Hill Road	600	0	0			
Tinui to Alfredton and Forty-Mile Bush ..	4,000	0	0			
Masterton to Alfredton, through Wangaehu ..	4,000	0	0			
				18,341	0	0
Lunatic Asylum in Wellington	..		..	7,709	0	0
School-houses and Teachers' Residences, and Lands for same	..		..	9,000	0	0
Preliminary Expenses, Survey, and Removing Snags, &c., Wanganui River ..				1,000	0	0
Contingencies	..		..	5,000	0	0
				£49,550	0	0

Amounting to Forty-nine thousand five hundred and fifty pounds sterling.

And for so doing this authority, with the several abstracts, supported by the proper vouchers and acquittances of the parties who are respectively entitled to the sums mentioned herein, shall be your sufficient warrant and discharge.

Given under my hand at Wellington, New Zealand, this twenty-seventh day of January, one thousand eight hundred and seventy-four.

7. That the said William Fitzherbert and the said Henry Bunny pretended, at the time of presenting the same to the said William Dorset as aforesaid, that the said paper writing was a warrant within the meaning and complying with the provisions of the twenty-fifth section of the Constitution Act, and the said Act of the Provincial Council hereinbefore mentioned in the margin hereof, and the said "Provincial Audit Act, 1866," whereas in fact the said paper writing is not a warrant within the meaning of the said Acts.

8. That at the time of the presentation of the said paper writing to the said William Dorset for his certificate as aforesaid, there was no Act of the Provincial Legislature of the said Province in force, appropriating any of the Provincial revenues to the services mentioned in the said paper writing, nor has any such Act since such presentation come into or been in force.

9. That the said paper writing so presented to the said William Dorset for his certificate was not accompanied by any special order, as required by the twelfth section of the said "Provincial Audit Act, 1866."

10. That at the time of the presentation of the said paper writing to the said William Dorset for such certificate as aforesaid, the amount of the Provincial revenue of the said Province at the credit of the Provincial Account of the said Province was one hundred and eighty-five pounds twelve shillings and sixpence (£185 12s. 6d.), and no more, and that, at the time of such certificate being made, the works and services mentioned in the said paper writing had not been performed or executed, and no liabilities had been incurred in respect thereof.

11. That notwithstanding the matters aforesaid, the said William Dorset, as such Provincial Auditor, did certify to the said paper writing as if the same were a valid warrant within the meaning of the said Acts, and as if the sums therein mentioned were then legally available within the meaning of the said Acts, and which said certificate was in the words and figures following:—

"I, the undersigned, hereby certify that the amounts directed to be paid by this warrant have been appropriated by Act of the Provincial Council for the services herein specified.

"WILLIAM DORSET,

"Audit Office, 27th January, 1874. "Provincial Auditor."

And thereupon the said William Fitzherbert did, as such Superintendent, sign the said paper writing.

12. That at the time of the said so certifying the said paper writing as aforesaid, the amount at the credit of the Provincial Account of the said Province was the sum of one hundred and eighty-five pounds twelve shillings and sixpence and no more, and the amount authorized to be borrowed by way of overdraft or deficiency bill by or on behalf of the said Province, and payable to the Provincial Account in aid of the revenues thereof, was about eight thousand six hundred pounds.

13. That the Bank appointed under "The Provincial Audit Act, 1866," to be the Bank at which the Provincial Account of the said Province is to be kept, is the Bank of New Zealand at Wellington, in the said Province; and on the thirteenth day of February last the said Provincial Account was kept at the said Bank in accordance with the provisions of the said "Provincial Audit Act, 1866."

14. That since the said signing and certifying of the said paper writing, one Charles Plummer Powles, clerk in the office of the said Provincial Treasurer, was, with the knowledge and consent and by the direction of the said William Fitzherbert, acting as such Superintendent as aforesaid, and the said Henry Bunny, and pretending to act under the authority and in pursuance of the said paper writing, and pretending that the said paper writing was a valid warrant within the meaning of the said Acts, has withdrawn and issued from the Provincial Account of the said Province several large sums of money, being portion of the Provincial revenue of the said Province.

15. That on the thirteenth day of February last, the said Henry Bunny, with the knowledge and consent and with the concurrence of the said William Fitzherbert, drew a cheque upon the Provincial Account of the said Province for the sum of ten thousand pounds, which said cheque was in the words and figures following:—

No. 52799 (812), 13 February, 1874.
Bank of New Zealand, Wellington.
Pay 395 (Warrant No. 15, 1874), or bearer, Ten thousand pounds Sterling.

HENRY BUNNY, [Stamp.]

£10,000. Provincial Treasurer.

16. That the said Henry Bunny, with the knowledge and consent and with the concurrence of the said William Fitzherbert, presented the said cheque at the said Bank for payment, and payment thereof was made to the said Henry Bunny out of the said Provincial Account, and the said Henry Bunny thereupon at and with the said Bank created and opened an account called "The Provincial Account No. 2," and the said Henry Bunny paid into the said last-named account the proceeds of the said cheque.

17. That the said moneys so drawn from the said Provincial Account were not drawn therefrom or paid or issued in pursuance of any valid warrant of the Superintendent, certified by the Provincial Auditor of the said Province, as required by "The Provincial Audit Act, 1866," and the Acts amending the same.

18. That on the nineteenth day of January an authentic copy of the said Act mentioned in the first paragraph of this information was sent by the said William Fitzherbert to the Colonial Secretary of New Zealand, with a letter, of which the following is a copy, in order that the said copy might, in compliance with the provisions of "The Constitution Act," be transmitted to the Governor:—

SIR,— Superintendent's Office, Wellington, 19th January, 1874.

I do myself the honor to forward through you, for His Excellency the Governor, the following Acts, passed by the Provincial Council of Wellington during their present Session (XXVI.), to which I have assented on His Excellency's behalf, viz.:—

"An Act to authorize the Construction of certain Bridges, Roads, and other Works in the Province of Wellington."

"An Act to authorize the Superintendent to Convey a piece of Land at Masterton to Her Majesty the Queen."

"An Act to bring 'The Municipal Corporations Waterworks Act, 1872,' into operation in and for the Borough of Wanganui, in the Province of Wellington."

"An Act to provide for the management of certain Public Reserves, situate in or near the Borough of Wanganui."

I have, &c.,

The Hon. the Colonial Secretary, Wellington. WILLIAM FITZHERBERT.

19. That on the twenty-eighth day of January last, one of the members of the Executive Council of New Zealand, and acting as and for the Colonial Secretary for the said Colony, wrote and caused to be delivered to the said William Fitzherbert, as such Superintendent as aforesaid, a letter, of which the following is a copy:—

SIR,— Colonial Secretary's Office, Wellington, 28th January, 1874.

"The Bridges, Roads, and other Works Appropriation Act, 1874," has attracted the notice of the Government on account of the manner in which it is framed. Instead of the ordinary authority to expend out of the Provincial revenue, with the provisions usually inserted in the Appropriation Ordinances of the Province, the Ordinance authorizes the expenditure to be made by the Superintendent, without defining out of what source it is to be defrayed.

Before coming to a decision as to what advice Ministers should tender to His Excellency on the subject, I have to ask your Honor if you are prepared to give a specific assurance,—

1st. That the fifty thousand five hundred and fifty pounds appropriated by the Ordinance will be expended only out of the ordinary Provincial revenue, supplemented, if required, by overdraft not exceeding that which "The Provincial Audit Act Amendment Act, 1869," sanctions.

2nd. That the expenditnre shall only be made with the cognizance of the Provincial Anditor, under the provisions of the various Acts regulating the auditing of Provincial expenditure.

I have further to observe, with reference to the loan to which the Ordinance refers, that your Honor must not consider—supposing the Ordinance is not disallowed—that it creates a claim to the loan, or that it would warrant the supposition by the Assembly that the Government had in any way committed the country to such loan. As the fate of the Ordinance is uncertain, it would be well for your Honor to delay acting on it for a few days.

I have, &c.,
W. H. REYNOLDS,
(in the absence of the Colonial Secretary).

His Honor the Superintendent, Wellington.

20. That immediately after the receipt of the said last-mentioned letter by the said William Fitzherbert, the said Henry Bunny was informed of the contents thereof.

21. That on the second day of February last, the said William Fitzherbert, with the knowledge and consent of the said Henry Bunny, wrote and caused to be delivered to the said Colonial Secretary, in reply, a letter, of which the following is a copy:—

SIR,— Superintendent's Office, Wellington, 2nd February, 1874.

I have the honor to acknowledge the receipt of your letter of the 28th ultimo.

In reply to your several questions, I have to observe,—

1. That whilst I am unable to give you any specific assurance, it will be the aim and endeavour of the Provincial Government to provide, so far as practicable, for the expenditure authorized by "The Bridges, Roads, and other Works Appropriation Ordinance, 1874," out of the ordinary Provincial revenue, and not to have recourse to any overdraft to a greater extent than may be necessary to give effect to the wishes of the Council.

2. That no expenditure will be made except under authority of a warrant, first certified to by the Provincial Auditor, and afterwards signed by the Superintendent.

With reference to the last paragraph of your letter, I venture to express my belief that the New Zealand Parliament, if left to itself, will be disposed to support the views of the several Provincial Councils, and that it will not oppose the wishes of the representatives of the people of any particular Province after they have been deliberately and unanimously expressed by Acts.

I have, &c.,
WILLIAM FITZHERBERT,
Superintendent.

The Hon. the Colonial Secretary, Wellington.

22. That on the sixth day of February last, the said member of the Executive Council aforesaid, acting as and for the Colonial Secretary as aforesaid, in reply to the said last-mentioned letter, wrote and caused to be delivered to the said William Fitzherbert, as such Superintendent as aforesaid, a letter informing him, amongst other things, that it would be the duty of the Government to advise His Excellency to disallow the said Ordinance, and that the Provincial Auditor would be suspended and his conduct inquired into; and further cautioned the said William Fitzherbert not to act in the meantime on the warrant, the legal value of which was doubtful.

23. That the said Henry Bunny was, immediately after the receipt by the said William Fitzherbert of the said last-mentioned letter, informed of the contents thereof.

24. That the said Henry Bunny, in contravention of the provisions of the said Constitution Act, and the said "Provincial Audit Act, 1866," and notwithstanding the facts and matters aforesaid, threatens and intends to draw out from the Provincial Account of the said Province, and to issue and pay, all the sums mentioned in the said paper writing, without any further or other warrant than the said paper writing so certified as aforesaid, and without any further or other certificate than as aforesaid, and pretends and alleges that the said paper writing is a valid and sufficient warrant to authorize him to draw out, issue, and pay such sums, and also pretends

and alleges that the said Act mentioned in the first paragraph of this information is an Appropriation Act of the revenue of the said Province, at the Provincial Account of the said several sums mentioned in the said paper writing for the purposes mentioned therein.

25. That the said paper writing is in the custody and possession of the said Henry Bunny.

26. That the said Henry Bunny has, since the thirteenth day of February last, drawn out from the moneys so placed by him to the credit of the said account, called "Provincial Account No. 2," divers sums of money, amounting in all to about seven hundred pounds, and further threatens and intends, unless restrained by order or injunction of this Honourable Court, to draw out the residue of the said sum of ten thousand pounds without any other authority than the said paper writing.

Wherefore the said informant prays,—

(1.) That the said paper writing may be declared not to be a warrant within the meaning of the said Acts, and that the said certificate of the said William Dorset thereto may be declared to be invalid, as the certificate of the Provincial Auditor of the said Province; and that the said Henry Bunny be ordered to deliver up the said paper writing and certificate to be cancelled.

(2.) That the said Henry Bunny may be ordered to repay the said sum of ten thousand pounds to the Provincial Account of the said Province, and that the said Henry Bunny be restrained, by order and injunction of this Court, from dealing with the said sum of ten thousand pounds or any part thereof.

(3.) That the said Henry Bunny may be restrained, by the order and injunction of this Court, from drawing, issuing, or paying any moneys from the Provincial Account of the said Province, in pursuance or under the authority of the said paper writing.

(4.) That the informant may have such further or other relief as may appear just.

GROUNDS OF DEMURRER.

1. That James Prendergast, claiming to have and exercise authority, as Attorney-General for and on behalf of Her Majesty the Queen, in the said information, has no authority to do so.

2. That no such case is made against the defendant as entitles Her Majesty's Attorney-General to any such relief, touching the matters in the said information and complained of, as is thereby prayed, or any other specific relief.

3. That the matter of the said information does not affect any immediate right of the Crown, and therefore the information ought, in law, to have been filed in behalf of some person claiming to be interested in the matter of the said information, and entitled to the protection of the Crown in relation thereto.

4. That the Attorney-General has not brought before this Court, in the said information, as defendants, all the persons who are affected by the matters therein named, and who must necessarily be affected by any decree granting the relief claimed therein, or any other specific relief that can be granted upon the matters contained in the information.

JOINDER IN DEMURRER.

That the information is good in substance.

Mr. TRAVERS argued as follows:—

The clauses of "The Executive Government Act" of the Province, referred to in paragraph 4 of the information, are as follows:—

"I. The entire administration of the Provincial Executive Government shall be vested in the Superintendent alone, acting by and with the advice of an Executive Council, to be appointed as hereinafter provided.

"VI. There shall be a Treasurer for the Province, who shall receive and pay all moneys payable for the uses and on behalf of the Province.

"VII. No public money shall be paid by the Treasurer, unless the warrant for the payment thereof shall have been signed by the Superintendent, and registered in the Secretary's office."

Proceedings by information by the Attorney-General are regulated by the Rules of the Supreme Court, and provision is made for two distinct classes of cases:—

Rule 563 provides for informations by the Attorney-General, or other officer of the Crown, concerning prerogative rights of the Crown, and the practice in these cases is to be the same as in the Superior Courts of Westminster.

Rule 547 provides for cases where the proceedings do not affect the immediate rights of the Crown, but in which individuals have a right to use the name of the Attorney-General.

In the former case the Attorney-General or Solicitor-General is the only party to the information, and there is not of necessity a relator: but in the latter, where the rights of persons who could claim the protection of the Crown are involved, it is invariably necessary that there should be a relator, who shall be responsible for costs. (*Mitford on Pleadings*, fifth edition, p. 119.) The proceedings are taken at the instance of the relator, although the Attorney-General is the party in whose name those proceedings are to be taken.

The first question to be considered is, whether in fact the subject-matter of this information directly affects the rights of the Crown,—what is the special interest of the Crown in the

expenditure of the revenues of the Province,—and in what manner that expenditure differs from the expenditure of a corporation, or any other such public body.

JOHNSTON, J.—I suppose you draw a distinct line between the general revenue of the Colony and the revenue of the Province. You argue, no doubt, that even supposing the general revenue of the Colony is a matter in which the Crown may have a direct interest, still the revenue of the Province, although in part originally derived from the revenue of the Colony, is to be treated in the light of local taxation, and so appropriated by the Provincial Council. It comes, then, to a question whether the revenue of the Province is or is not, in the first instance, a portion of the revenues of the Crown.

Mr. TRAVERS.—There is nothing in this information to show from what particular sources the Provincial revenue is derived; but, on the general law of the Colony, we know that each Provincial Government derives its revenue partly from funds raised by its own taxation, and partly from contributions made to it by the General Government, which are handed over to it to be distributed in any way it shall think fit.

JOHNSTON, J.—The distinction between the revenues of a Province and those of a Corporation is, that a Province obtains its status under the Constitution Act, and is therefore as much a portion of the general laws as the Colony itself. Now, is the Constitution Act free from any differential regulations as to dealings with the revenues of a Province and with those of the Colony?

Mr. TRAVERS.—Under the Constitution Act the general revenue is to be appropriated by the General Assembly, and after their appropriations are exhausted, the balance is to be divided amongst the Provincial Governments in the proportion in which the gross revenue was derived from each. The moneys cease to be revenue of the Colony of New Zealand at all, and become merely so much money to be handed over to the Provinces to be dealt with by them, in such manner as the local Legislature shall determine, for the benefit of the locality. It is the property of the Province, vested in the Superintendent. Up to a certain stage it is treated as being Her Majesty's revenue (Constitution Act, section 59), but in the section (25) relating to Provincial appropriations, it is not so treated. The moment that residue has passed away from the General Assembly to the Province it ceases to be Her Majesty's moneys, and is vested in the Superintendent as part of the funds of the Province, liable to be appropriated for the benefit of a particular section of the public. I submit, therefore, that while a proceeding taken to restrain the Colonial Treasurer from dealing with the general revenues of the Colony might be said to be one in which the Crown's rights were directly affected, it cannot be said that the appropriation or expenditure of moneys by the Provincial Council, which has an absolute authority in that respect is a matter which concerns the rights of the Crown otherwise than in the character of *parens patriæ*.

I submit, also, that proceedings must be taken in this Court in reference to expenditure of Provincial revenue, precisely in the same manner as they might be taken in reference to expenditure of the revenue of a municipal or other body having public functions—that is to say, there must be a relator. The Attorney-General is an officer of the Crown, and the Crown allows its name to be used in informations at the instance of some person who is or may be interested in the subject-matter, and who is, at all events, responsible for costs. (*Fisher's Digest* Attorney-General *v.* Brown, 1 Swanston 265; Rex *v.* Wilks, 4 Burrowes 2570; Rex *v.* Austen, 9 Price 142.)

JOHNSTON, J.—The omission of a relator might be an irregularity, and still might not be a good ground of demurrer.

Mr. TRAVERS.—It is good ground of demurrer unless the Attorney-General is treating the matter as one affecting the prerogative rights of the Crown, which we say, *ex facie*, it is not. With regard to the position of Attorney-General, I find that no special functions are defined as belonging to the office—that he is an officer selected from the Serjeants-at-Law to be the special representative of the Crown, and that the office has grown to be a political one. The peculiarity of the Act under which the office is created in this Colony is, that the holder of it is not Attorney-General of the Colony but Attorney-General of the Crown, and it is questionable whether a Colonial Parliament has a right to pass an Act constituting such an officer. Her Majesty's Attorney-General derives his authority from a patent issued at the instance of the Crown itself.

JOHNSTON, J.—Letters patent of the Colony are direct from the Crown under the seal of the Colony.

ARNEY, C. J.—You do not deny that supplies granted by the Assembly are to the Crown?

Mr. TRAVERS.—I will not contend that point farther; but at all events the Act cannot confer greater powers upon the Attorney-General of the Colony than the Attorney-General of England possesses. There are no functions prescribed by the Act, and therefore we can only say that he is to exercise the same functions which would be exercised in England by the Attorney-General there.

JOHNSTON, J.—You agree to the general principle, that where the expenditure of public charities and such funds requires the intervention of the Crown, the Attorney-General might interfere with the aid of a relator. It seems to me that the question we have to consider here is, whether the revenue raised by the Provincial Council is the same as that raised by the General Assembly.

Mr. TRAVERS.—The latter is treated as the revenue of the Crown absolutely, and therefore t may be supposed that everything affecting that revenue is a matter directly affecting the rights

of the Crown. Even then I would draw attention to the distinction between the prerogative rights of the Crown and the rights of the Crown in their general acceptation.

RICHMOND, J.—Supposing this was in reality a misapplication of the general revenues of the Colony, you are not contending that the Attorney-General would not be the proper informant in such a case?

Mr. TRAVERS.—I am not prepared to admit absolutely that he could be the proper informant, except at the instance of a relator. In what position are the revenues of the Province? They are kept in a Bank in the name of the Provincial Treasurer, who operates upon them by his own cheque.

RICHMOND, J.—The general revenues of the Colony are in the same case.

Mr. TRAVERS.—Yes, but they are under a Controller.

JOHNSTON, J.—Who do you suggest should be the relator?

Mr. TRAVERS.—Anybody who is interested in the Provincial revenue.

JOHNSTON, J.—But if the warrant mentioned here was a warrant for the specific payment to specific individuals of a portion of the sum appropriated, nobody but those individuals would be interested, and they would be the proper relators.

Mr. TRAVERS.—Everybody in the Province who pays rates and who is entitled to vote for the election of Superintendent and Provincial Council, is interested in the expenditure of the Provincial revenue, and would be entitled to be relator. The Attorney-General has nowhere in this information stated that the revenues in respect to which he has filed the information are revenues of the Crown. They are throughout treated as Provincial revenues, and therefore, I submit, precisely in the same position as the revenues of any corporate body. It is true that the mode of appropriating and distributing these revenues is by a legislative enactment, but to all intents and purposes that enactment has no greater force than the resolutions or orders of a municipal body. They must be applied to particular purposes, and those only, and not to the general benefit of the Colony.

I now propose to consider the validity of the Appropriation Ordinance, which is said in the information not to be valid.

The section in question is the 3rd, which is as follows:—

"The Superintendent is hereby authorized and empowered to expend any sum or sums not exceeding £50,500 in the construction of the several works set forth in the Second Schedule hereto."

The point raised under that section is referred to in a letter of the 28th January, 1874, from the Colonial Secretary to the Superintendent, in the following passage:—

"'The Bridges, Roads, and other Works Appropriation Act, 1874,' has attracted the notice of the Government on account of the manner in which it is framed. Instead of the ordinary authority to expend out of the Provincial revenue, with the provisions usually inserted in the Appropriation Ordinances of the Province, the Ordinance authorizes the expenditure to be made by the Superintendent, without defining out of what source it is to be defrayed."

The words "out of the Provincial revenues," which are usually inserted, do not occur in this section. I submit that it is immaterial whether they occur or not, because it is only out of Provincial revenue that such expenditure can be made by law, the words must therefore be implied, inasmuch as the only source from which expenditure of this kind can be derived is the ordinary revenues at the command of the Provincial Government, or funds which, though not properly considered as revenue, are in the hands of the Government for expenditure. Such funds are moneys raised by loan or otherwise. In point of fact the omission of these words may, to a certain extent, be proper in all cases, inasmuch as there are sources from which funds are placed at the command of the Provincial Government which would not come strictly under the title "revenue," although properly in the hands of the Government.

I submit, therefore, that the omission of the words "out of the Provincial revenue," does not invalidate the Ordinance.

RICHMOND, J.—I presume that such loans must be taken to be loans specifically authorized by the Provincial Council, and not what the Superintendent can raise *ex officio?*

Mr. TRAVERS.—Clearly; they are loans raised without infringing on the powers conferred on Provincial Councils. The Superintendent has no power, without the sanction of the Provincial Council or of the General Assembly, to incur any debt or raise any loan except under special provisions contained in the Provincial Audit Acts. In "The Provincial Audit Act, 1866," and "The Provincial Audit Amendment Act, 1869," a distinction is drawn between the two classes of revenue. Under the former Act the Superintendent is empowered to issue special orders to the extent of one-twentieth part of the amount of the ordinary Provincial revenues for the preceding year—the words being "ordinary Provincial revenues." Under the latter Act he is empowered to borrow from any Bank or other person to the extent of one-fifth of the previous year's "Provincial revenue;" and the previous year's Provincial revenue is defined to mean "the total sum actually paid into the Provincial Account on account of revenue during the financial year ending next before the commencement of the Session in which such appropriations as aforesaid shall have been made, after deducting therefrom the proceeds of all loans, whether raised under this Act or otherwise, and the amount of any sinking funds paid or payable to such Province under any Act of the General Assembly."

JOHNSTON, J.—Does not that tend to show that the word "revenue" excludes loans?

Mr. TRAVERS.—The Act also uses the term "income," which includes loans, while

"revenue" apparently excludes them. It is not necessary, however, in an Appropriation Act, to state that the moneys to be expended are to be expended out of Provincial revenue, because they can be expended out of the sources I have indicated, and no other. If there be no other funds, then the words must be implied; and if there be any other funds not contemplated by the Provincial Audit Acts, then the Attorney-General can make no objection, because it is not a matter which affects the General Government in any degree. If the Superintendent have at his command sums of money which may be applied to certain purposes, he may, as between himself and the Provincial Council, require authority to expend them, while at the same time they may be funds entirely outside the general revenue of the Colony, and not derived from any of those sources which come under the ordinary denomination of Provincial revenue.

ARNEY, C. J.—Are we to assume that, having got this Appropriation Act passed, and there not being sufficient money at the Bank, even if aided by the power given under the Provincial Audit Acts, the Superintendent had power to borrow from the Bank to the extent required?

Mr. TRAVERS.—Up to a certain extent, namely, to one-fifth of the previous year's revenue. Furthermore, there is nothing to prevent any individual in the Colony placing at the disposal of the Provincial Government sums of money to be devoted to public works, and only to be expended on appropriation by the Provincial Council. Moneys received in that way, as a gift, could not be treated as Provincial revenue, and therefore it would be improper for the Appropriation Act to treat it as appropriation out of Provincial revenue. There is no doubt that it would have been better to have inserted the words, but what I submit is, that there is nothing to show that there was any intention to omit them for the purpose of committing an illegality.

RICHMOND, J.—The objection of the General Government appears to be that the Provincial Council went into supply without first finding ways and means.

Mr. TRAVERS.—It may be so. But we know the ways and means of the Provincial Government. Provincial Councils are not, in their broadest sense, taxing bodies, and their incomes are somewhat fixed. The revenue of a Provincial Council is a fund accruing *de die in diem;* and all that the Provincial Council has to do is to see that, during the course of the financial period for which they make an appropriation, funds will accrue to meet the appropriations they make.

RICHMOND, J.—I believe it has been notoriously a fact that Provincial Legislatures authorize expenditure far beyond revenue, which throws immense power into the hands of the Executive, as they may choose which sums out of the appropriation shall be expended. It has not hitherto been thought illegal for Provincial Councils to act in that way, but it may be illegal for all that.

Mr. TRAVERS.—I submit that it cannot be contended that the Provincial Legislature contemplated any illegal action on the part of the Executive.

This Act was passed on the 16th January, and was not disallowed until the 12th March; and I submit that everything done and completed during that interval must be treated as good and valid.

I submit, also, that there is a distinction between an Act repealed and an Act the operation of which is merely discontinued from a particular period. An Act repealed does not interfere with transactions commenced and duly completed under it. I contend that in the case of an Act discontinued from a certain date, contracts entered into prior to the discontinuance must be treated as existing contracts, and be carried out. If disallowance from a certain period has the same effect as repeal, then there is no distinction between them, and the language of the 29th section of the Constitution Act is insensible. That section says that the disallowance may take place from the date of the proclamation or a "subsequent date." There would be no magic in those words if disallowance is to have the same effect as repeal, for repeal already saves all transactions commenced and duly completed. I submit that all rights acquired under a disallowed Act should be saved; that contracts absolutely entered into and concluded between the parties while the Act was still in force, should be treated as transactions completed; and that all transactions entered into during the period while it was still to be treated as a subsisting Statute, should be saved and declared capable of being carried on to completion, if they do not require the aid of the Act to complete them. This is an Act authorizing the construction of certain works. If a contract had been made for the construction of one of these works, and the work was completed, but the party was not to receive payment for one month after the completion, and the Statute should be disallowed any time before the payment of the money and after the completion of the work, would the remedy of the party be gone because the Act was gone?

JOHNSTON, J.—But you say yourself that a repealed Act saves all transactions completed, and that would be such a transaction, and the party would have earned his money. In the present case there is no pretence that any of the moneys have been earned.

Mr. TRAVERS.—If a disallowed Act is only to have the same force as a repealed Act, the functions of the Provincial Government might just as well cease for the three months after an Act is passed, during which it is in the power of the Governor to disallow it. I submit that, on the true construction of the terms of the Constitution Act, it was intended that all rights actually acquired should be deemed to be subsisting rights, capable of complete effect, even after the date on which the Ordinance was no longer to operate, otherwise great embarrassment would accrue in carrying on the government of the country.

JOHNSTON, J.—But look at the other side of the question. If the Provincial Council passes an Act authorizing the expenditure of £50,000, and the next day the Government enters

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 peformed?

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

various heads of appropriation in the Appropriation Act, and under the various heads places the several amounts. When asked to certify a warrant, he turns to his book to see whether there has been an appropriation, and whether the amount which is sought to be expended is or is not in excess of the actual amount appropriated, or the balance of it. If he finds that the warrant would not exceed the amount, he certifies to it without any knowledge whatever of whether the service has been performed or not. What would be the object of the subsequent audit of accounts if he had in the beginning to ascertain that the money had been earned? There is no doubt that a system which would ascertain the absolute performance of services to the satisfaction of the Auditor might be best, but the question is, whether it is legally necessary. I submit that all the Auditor has to do is to ascertain whether the funds are there, just as the officer of a Bank looks at his ledger to see if the customer has the money to his credit when he presents his cheque, initials the cheque if the money is there, and then it is cashed. If the duty of ascertaining that the money has been earned is thrown upon the Auditor, he will have the duty of pre-auditing, and all he will have to do afterwards is to ascertain that so much money had been handed to the Treasurer, so much expended, and that the balance was correct.

Arney, C. J.—It appeared to me that the words "legally available" went further, and that the Auditor had to see that there were funds "legally available" to meet the service, otherwise the Executive Government might borrow the money on any terms they chose.

Richmond, J.—Do the Appropriation Acts passed since the Public Revenues Act came into force contain the clause requiring payments to be made only on warrants by the Governor? That clause was included in Appropriation Acts passed prior to the passing of the Public Revenues Act, and seems clearly to mean that the Governor's warrant was necessary for the payment to specific persons, and not the issue of large sums of money to individuals, to be afterwards distributed by them. Without some such provision it is plain that you may put the whole Appropriation Act into one warrant, and no further warrant is necessary. That is your contention.

Mr. Travers.—That is so; and it is the duty of the Treasurer to see that the moneys are paid to the persons who have earned them. The Provincial Treasurer is the officer who draws the cheques, and his office is one contemplated by the Constitution Act itself. Therefore, there is no necessity for the Superintendent to draw cheques, but simply to give the Treasurer authority to do so. Your Honor suggests that the warrant should on the face of it show that the money has been earned; but the Auditor has to assume that, and ascertain that sufficient money has been appropriated to meet the service.

Johnston, J.—That is very different from the ordinary practice of Provincial Governments.

Mr. Travers.—*Non constat* that it is therefore illegal. Attention has been called to the introduction of certain clauses in the Appropriation Acts of the General Assembly, requiring the Governor's warrant before the issue of moneys for the payment of specific services. The 54th section of the Constitution Act provides for the appropriation and issue of moneys by the General Assembly and Government, and says that no part of Her Majesty's revenue shall be issued "except in pursuance of warrants under the hand of the Governor." If that section implied what is stated in the Appropriation Acts of the General Assembly, it would be unnecessary to insert the clauses in those Acts; but I submit that the clauses inserted in those Acts are something superadded to the provisions of the Constitution Act. They require a certain course to be pursued which apparently in the mind of the Legislature was not provided for by the terms of the Constitution Act.

Johnston, J.—Is it not rather that the clauses are inserted in pursuance of section 54 of the Constitution Act?

Mr. Travers.—No, they add something to it. Section 54 is at large, and refers generally to appropriations. Then come the clauses of the Appropriation Acts which require specific warrants.

Johnston, J.—It does not follow that the Legislature might not have taken this construction of the Constitution Act, amplifying it in the Appropriation Acts.

Mr. Travers.—The Court will have to determine the construction of the Constitution Act without looking at those Appropriation Acts. These particular provisions in the Appropriation Acts are not inserted for the purpose of construing the terms of the Constitution Act. They require the warrants to be specific in regard to times, to persons, and to other matters, but the warrants mentioned in the Constitution Act are warrants at large.

Johnston, J.—Section 54 of the Constitution Act says issue to the Treasurer, but section 25 does not say to anybody.

Mr. Travers.—True; but section 25 of the Constitution Act, *plus* the Wellington Executive Government Act, makes it payable to the Provincial Treasurer. I submit that the law only requires that there should be a warrant to the Provincial Treasurer, authorizing him to expend the moneys appropriated in the manner contemplated by the Appropriation Act, leaving the Treasurer responsible for the due application of those moneys. The warrant is in reality the protection of the Treasurer. That is the document under which alone he can properly deal with the funds at his command. If the Auditor is called upon to ascertain in the first instance whether there is actually sufficient money in the Bank to meet the particular warrant, the administration of the Government must, to a certain extent, be at a standstill. There may be funds potentially available which are not actually in the Bank at the moment. Is it to be said that if, in the ordinary course of administration, the Provincial Government have to pay a sum of £5,000, and on the warrant being presented to the Auditor for certificate he finds that there are

only £4,999 19s. 11¾d. in the Bank, that he is to refuse his certificate—for the principle holds good with one farthing as with a thousand pounds—when a few minutes afterwards there may be ample funds in the Bank? The Provincial Treasurer is liable to a penalty if he issues moneys without a warrant, but the warrant being in his hands it is his protection.

Inasmuch as that warrant is the Treasurer's protection for the issue of any moneys pursuant to this Appropriation Act, it ought not to be cancelled. As the Act has been disallowed there may be some reason for asking that he shall be restrained from issuing any more moneys under it, but there is no ground for asking that the warrant be cancelled unless it is shown that he has issued moneys to persons not entitled to receive them. We may assume that between the passing of the Act on the 16th January and its disallowance on the 12th March, the Government, acting on its authority, may have acquired liabilities which should be discharged, and the only authority which the Treasurer had for discharging those liabilities is the warrant which he held. It is stated in the information that a sum of £700 was issued from these moneys. The presumption is that that was issued to persons entitled to receive it, and therefore if the Treasurer has issued the money to persons entitled to receive it, and has obtained the proper vouchers from them, the warrant ought not to be cancelled, for it is his only protection.

Moreover, I submit that this is not the warrant of the Treasurer at all, and he has no power to cancel it. The person who should have been brought before the Court is the person who made the warrant, namely, the Superintendent.

After declaring that it is not to be a warrant, and that the certificate of the Auditor is to be declared invalid, then they demand that the warrant shall be given up to be cancelled. I submit that there is no necessity for doing that. Besides, although the warrant might not have been a strictly right one at first, still, if acted upon in good faith by the Treasurer, it ought not to be cancelled, for that would place him in the position of having issued moneys without that authority which the law requires, and would render him liable to penalties under section 10 of "The Provincial Audit Act, 1866."

There is an allegation that, notwithstanding the disallowance of the Act, the Provincial Treasurer threatens to operate under it. Now, this writ was attested on the 13th March, and the statement in the information is, that the Act was disallowed on the 12th March, so that the period during which such threats could have been made was very short. There is no allegation that these threats of expenditure were made after the disallowance of the Act, therefore it must be assumed that the threats were made before. All that is set out is a letter from the Colonial Secretary on the 28th January, and a reply from the Superintendent on the 2nd February; and although the assurances there given do not appear to have been of a very satisfactory character, still they are not such as could be construed as threats to expend moneys illegally.

The Provincial Treasurer objects to the cancellation of the warrant *ab initio*, without the Superintendent and the Auditor who certified being made parties to the suit, he being only the officer who acted upon what, on the face of it, appeared to be a good warrant.

Richmond, J.—Clearly, you cannot successfully contend that the Treasurer could act upon an illegal warrant. He must see to it. It is at his peril that he acts upon the warrant. That, however, does not affect your argument that the Superintendent and Auditor should be here also. There may be something in the argument that we should not declare it to be a bad warrant without having the Superintendent and Auditor present.

Mr. Travers.—The only other claim that they make is, that the Act being dissallowed, the Provincial Treasurer be restrained from the further issue of moneys under it. To that there can be no objection.

Johnston, J.—This being a general demurrer, you cannot suggest that the judgment of the Court cannot be for the plaintiff on one point only.

Mr. Travers.—If the Court is of opinion that the proceedings are irregular, judgment will be for the defendant; but if it considers them regular, then I cannot resist the application for an injunction which my friend has got already. In point of fact, the basis of these proceedings is the invalidity of the warrant *ab initio*, and the injunction is merely tacked on to it, because there is no reason for supposing that the Treasurer will act upon an Act after its disallowance.

Upon these grounds, I submit that the demurrer should be allowed.

Attorney-General.—On the first point, as to whether a relator should be here or not, I submit that it is merely a matter of regularity or irregularity of practice; and if it turn out that the Attorney-General has acted unadvisedly in allowing these proceedings without a relator, that is not a matter which can be taken advantage of by demurrer.

The condition of things in New Zealand is so peculiar, that no analogy can be found in the cases in England or elsewhere. There is such a connection between the Provincial and the General Governments, between the revenues of the Provinces and the revenues of the Crown, that it is impossible strictly to apply those reasons which are only applicable in dealing with corporate funds. However right it may be that a relator should be made a party to a suit where the question raised is with respect to the administration of corporate and charitable funds, yet that principle can have no place where we are treating of funds that have so public a nature as the revenues of a Province.

I submit that there is no necessity for a relator in this case. (*Drury on Equity Pleadings*, p. 3; *Storey on Pleadings*, section 8, p. 7; *In re* Masters of the Bedford Charity, 2 *Swanston*, p. 520; *Mitford on Pleadings*, pp. 23 and 24; Notes.)

The rule that there should be a relator where some private right is interfered with, has no application in a case like this, where the Attorney-General, on the part of the Crown, is proceeding against a public officer for a breach of his duty, by which the public funds have been placed in such a condition as they ought not to have been in, and when he is dealing with funds as he ought not to have done.

I submit that it is not a question of demurrer, but of practice; and even supposing an application were now made that a relator should be named, the Court would refuse it on the ground that there is no necessity for a relator in such a case. A Provincial Treasurer acting under Statute is called upon, at the instance of the Government of the country, to be restrained from dealing with certain public funds. It would have been most indecent, under such circumstances, to have placed a relator on the record. The Attorney-General is taking these proceedings on his own responsibility.

A question has been raised as to whether these funds were Crown property or not. That they are public funds there can be no doubt. They are not private funds, trust funds, or funds in the nature of corporate funds. They are public funds for public purposes, and there is a distinction between them and corporate funds, which are only applied to *quasi* public purposes, while these are applied to *de facto* public purposes. From the Constitution Act downwards, in the Audit Acts and others, they are always spoken of as public moneys. So much is this the case, that in a late Imperial Act, 25 and 26 Vict. c. 48, sub-section 6 of section 4 (1862), provision seems to be made for the Governor himself recommending the appropriation of these moneys by the Provincial Councils.

Section 25 of the Constitution Act says that it shall not be lawful for any Provincial Council to pass an Appropriation Act unless the Superintendent shall have first recommended that provision shall be made for the specific services. True, it does not use the words "public money," but it says "appropriating money to the public service." Then it proceeds, "No such money shall be issued, or be made issuable, except by warrants to be granted by the Superintendent." Section 54 of the Constitution Act says, "No part of Her Majesty's revenue for New Zealand shall be issued except in pursuance of warrants under the hand of the Governor." It will be noticed that in the former section the words are "by warrants," and in the latter "in pursuance of warrants," while the words "be made issuable" are omitted. I shall submit on another branch of the case, namely, the validity or invalidity of the Ordinance, that Provincial Councils cannot make moneys issuable except by warrants to be granted by the Superintendent. The Constitution Act says that no such moneys shall be issued, and moreover they shall not be made issuable except by warrants.

All the Acts treat these moneys as public moneys, and speak of them as such.

ARNEY, C. J.—You need not argue that point further. The Court is satisfied that these are to be treated as public moneys for the public service of the country.

RICHMOND, J.—Granting that; you invoke the equitable jurisdiction of the Court, but how do you bring the case under that jurisdiction?

ATTORNEY-GENERAL.—Inasmuch as there is a *quasi* trust involved. It is a misfeasance of a public officer in respect to his duties towards public moneys, which, if not treated as a criminal offence, is a breach of a *quasi* trust.

ARNEY, C. J.—I may take it that this is an information of the nature of one brought before the Court of Chancery in England, claiming the equitable jurisdiction of that Court, and not in the nature of a criminal proceeding.

ATTORNEY-GENERAL.—It is entirely so, on the principle on which trust funds are dealt with. These funds are either the gift of the General Assembly or are raised under Provincial Ordinances. They are raised by legislation either Provincial or General, and are consequently vested with a *quasi* trust, which would bring them under the equitable jurisdiction of the Court. (*Calvert on Parties*, 393; Frenn *v.* Lewis, 4 Milne and Craig 255; Ellis *v.* Earl Grey, 6 Symons; Attorney-General *v.* Heelis, 2 Sim. and Stu., 67.)

The question may be raised—What other mode of proceeding can there be? No doubt parties may be compelled to perform public duties by *mandamus*, but that course would be of no use here. It might have compelled Mr. Bunny to repay into the public account the money he took out of it; but no *mandamus* can restrain him from acting under this warrant. I submit that although very little authority can be found analogous to a case like this, still that as corporate funds may be said to have a trust attached to them, so Provincial revenues have a trust attached to them to deal with them according to law.

RICHMOND, J.—The Attorney-General would appear to be exercising a parental control over these Provincial funds. It is difficult to see how the Provincial Treasurer is a trustee. He has a certain power which you say he is abusing.

ATTORNEY-GENERAL.—The moneys are really in his custody and under his control. Clause 6 of the Wellington Executive Council Ordinance says that there shall be a Treasurer for the Province, who shall receive and pay all moneys payable for the use and on behalf of the Province. Clause 8 requires him to give a bond "for the faithful discharge of his trust to and to the satisfaction of the Superintendent." "The Provincial Audit Act, 1866," must be read with this Provincial legislation upon the subject, and therefore must apply to the Provincial Treasurer.

With regard to the validity of the Ordinance in question in this suit, I submit that it is not an Appropriation Act: that is to say, that the true construction of the Ordinance is that the Provincial Legislature did not intend by it to appropriate any of the Provincial revenue for the

construction of these public works, but merely to give the Superintendent authority to construct certain works. There may be given authority to construct works, and yet an absence of provision for the construction. Although there may be language in the Ordinance leading apparently to an opposite conclusion, still I submit that the defect of provisions which are always made by the Provincial and General Legislatures, and which are in accordance with the terms of the Constitution Act in relation to these matters, shows that the Provincial Council did not intend to appropriate moneys by this Ordinance. The long title of the Ordinance is, "An Act to authorize the construction of certain Bridges, Roads, and other Works in the Province of Wellington;" and the 3rd clause says, "The Superintendent is hereby authorized and empowered to expend any sum or sums not exceeding £50,500 in the construction of the several works set forth in the Second Schedule." There is no specification of the funds out of which these works are to be constructed, and there is no time stated over which the expenditure is to extend. It may be a month, a year, two years, or any time. The Ordinance does not say whether the money is to come out of ordinary revenues or revenues raised by loan, or, as my friend suggests, the gift of a private individual.

If this was not an appropriation of Provincial revenue, it was no authority for the Provincial Auditor to issue his certificate. The Superintendent's warrant and the Auditor's certificate are for the issue of moneys from the Provincial revenues. It is true that the 4th clause, which contains the words "moneys heretofore or hereby or hereafter appropriated by the Provincial Council," apparently shows that the Provincial Council thought they were appropriating money; but I submit that the Constitution Act makes it necessary that the clause which is almost always inserted in Appropriation Acts, should have been put into this one.

If the Ordinance authorizes the issue of moneys in non-compliance with the Constitution Act, which provides that they shall be issued and made issuable by warrants of the Superintendent, then it is invalid. If, on the other hand, it is to be read as *primâ facie* intending to appropriate moneys, then I say that the absence of the clause required by the Constitution Act, and inserted in the regular Appropriation Act of the same Province of the same year, and in almost all other Appropriation Acts, shows that it was not intended to be an appropriation. The words "out of the Provincial revenues" should have been inserted.

The other difficulty with respect to the Ordinance is that no period has been fixed during which the expenditure is to be made. That every appropriation should be for a particular period is evident from the Provincial Audit Acts. Looking at the Provincial Audit Acts, it is evident that Provincial Councils cannot pass permanent appropriations. They must fix a time during which the work shall be done. Section 12 of "The Provincial Audit Act, 1866," provides for the issue, by the Superintendent, of special orders to the extent of one-twentieth of the ordinary Provincial revenues of the preceding year. Section 15 provides that all moneys not expended during the financial period for which they were appropriated, are to be carried to the credit of the revenue of the following period. Therefore, unless appropriations are for a fixed period, it will be impossible to ascertain the amount of special orders which the Superintendent can issue, and the legislation will nullify that of the Provincial Audit Act, which says that if moneys are not applied within the period for which they are appropriated, they are to fall back into the Provincial revenue.

The fair inference from these various facts is, that the Provincial Legislature did not intend by this Ordinance to appropriate moneys, but that they would do so by other legislation.

It is quite competent for the General Assembly to provide that certain moneys shall be subject to appropriation by Provincial Councils, but shall not go into the Provincial account; therefore the Auditor had no ground for concluding from this Ordinance that the moneys intended to be expended were Provincial revenues from the public account; for all he could tell from this Ordinance, they were moneys to be provided in some other way.

That the Wellington Provincial Council itself was aware that there was a doubt as to its being able to appropriate moneys for more than a year, is shown by "The Wellington College Vote in Aid Act, 1873." The long title of that Act is, "An Act to authorize the appropriation for certain purposes of the Annual Sum of £1,000 for Four Years, out of the Provincial Revenue of the Province of Wellington." The preamble consists of resolutions passed by the Provincial Council, one of which is as follows:—"That with a view to the removal of any doubt which exists as to the power of a Provincial Legislature making an appropriation beyond the period of one year, His Honor be further requested to cause to be proposed to the General Assembly a Bill authorizing and requiring him to pay such Provincial appropriation to the Governors of the Wellington College." Of course it may well be that although the Provincial Legislature had a doubt, this Court may come to the conclusion that there is no doubt.

JOHNSTON, J.—Might it not be said that if this indicates the maximum of time for which a Provincial Legislature can make an appropriation of the sort, the absence of the language shows that the Ordinance is good for one year at all events?

ATTORNEY-GENERAL.—No doubt; but I submit that the other interpretation is entitled to its weight.

RICHMOND, J.—The question is, whether or not the Audit Act of 1866 can impose upon the powers of appropriation by Provincial Legislatures under the Constitution Act, any restriction.

ATTORNEY-GENERAL.—The latter part of section 53 of the Constitution Act provides that "any law or ordinance made or ordained by any Provincial Council, in pursuance of the authority hereby conferred upon it, and on any subject whereon, under such authority as afore-

said, it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void." I submit that the General Assembly may pass any Act upon any subject, and any part of the legislation of a Province which is repugnant to that Act is done away with.

On these various grounds, the absence of specification of the fund out of which the moneys are to come, of the time over which the expenditure is to extend, and of provisions as to the moneys being issued under warrant by the Superintendents, I ask the Court to say that this was not an Appropriation Act, and was not intended by the Provincial Council to be one. If it was an Appropriation Act, then I ask the Court to say that it was not such an one as the Auditor could issue his certificate under.

RICHMOND, J.—Unless there is some period fixed, and some fund specified out of which the moneys are to come, it is impossible to see how there can be any check over the Provincial Executive.

ATTORNEY-GENERAL.—Exactly. The Superintendent may say, "We have got this money voted, but we will not expend it this year or next, but at any time we choose." £50,000 was tied up for an indefinite period, if this be an appropriation of the money, and, had not the Act been disallowed, the ordinary services of the Province could not have been met. Until the Act was disallowed, the Auditor could not certify to the ordinary warrants because all this money was tied up.

The intention of all legislative bodies is to keep control over the Executive by making them come year by year for appropriation. That principle is acknowledged even in England, in the case of public works, the expenditure on which must extend over a period of years. (Fortifications Provisional Expenses Act, 1862, c. 78.)

I now submit that the warrant itself is bad for uncertainty, and as not being a warrant within the meaning of the law.

The only officer who is responsible for the issue of all moneys is the Superintendent, who represents the Province. By the Constitution Act it is provided that "no such money shall be issued except by warrants to be granted by the Superintendent." The words here are different from those used with regard to the General Government. In the case of Provincial expenditure, it is to be "by" warrants to be granted by the Superintendent; and in the case of General expenditure, it is to be "in pursuance of" warrants under the hand of the Governor. In the case of the Superintendent, his warrant is the direct authority for the issue of the money, making him the direct controller of that issue.

By virtue of the Constitution Acts the moneys are to be issued "by" warrants, and by "The Provincial Audit Act, 1866," they are to be issued "in pursuance of" warrants; so that they are to be issued both "by" and "in pursuance of" warrants. Where the Legislature provides that moneys are to be issued "in pursuance of" warrants, those warrants must indicate to the person who is to act under them, the services in respect of which the moneys are to be issued, and the parties to whom they are to be paid, otherwise the whole object of the warrant, as may be seen at once in this case, is nullified. What is the use of this warrant? The Appropriation Act itself is just as good as the warrant which merely follows it.

"The Provincial Audit Act, 1866," is a combination of "The Provincial Audit Act, 1861," and "The Controller's Act, 1865." "The Audit Act, 1861," had virtually no control in it. The only control was that the Auditor, before certifying a warrant, was to see that the moneys had been appropriated. There was a control so far, but nothing like that under the present Act. Section 18 of "The Audit Act, 1861," says, "Every warrant for the issue of money from the Treasury of any Province"—there is the first difference; under the Act of 1866, the moneys are necessarily in a Bank, at the Provincial Account,—"shall, before the same is signed by the Superintendent, be laid before the Auditor or Deputy-Auditor, who shall, in writing on the face thereof, signed by him, certify that the amount directed to be paid thereby has been appropriated by Act of Council for the service therein specified, or has not been so appropriated, or is in excess, and if so, how much in excess, of some appropriation for the specified service." Section 11 of "The Audit Act, 1866," says that the Auditor "shall not certify the same unless the sums therein mentioned are then legally available for the services therein specified."

The difference in the language of the two Acts is very material. Under the former Act the Auditor was to certify that the moneys were appropriated, were not appropriated, or were in excess of appropriation; but under the present Act he is to certify that the moneys are "then"—at the time he certifies—legally available for the services. Under section 12 of the Act of 1866, if there has been no appropriation, or an excess of appropriation, the warrant is to be accompanied by a special order by the Superintendent, and the Auditor is to certify that there are moneys legally available, although there is no appropriation, because the Superintendent has done that which, in the eye of the law, is equivalent to appropriation, namely, given his special order. I submit that if the Court, in construing Acts of Parliament, finds that one Act repeals another dealing with a similar subject and uses different language, it must be supposed *primâ facie* that there was some reason for the change. If the later Act means that the Auditor is only to see that the moneys have been appropriated, why should the words "then legally available" be inserted. There are two grounds why moneys might not be legally available:—First, because there are none available, and secondly, because they are not available for the services, and there is no reason for saying that the certificate under section 12 is different from that under section 11, as the special orders which the Superintendent is entitled by law to issue are equivalent to appropriation.

Those special orders are limited in amount to one-twentieth of the ordinary Provincial revenue of the preceding financial year, and must specify the services for which they are issued.

As a matter of fact, there were no moneys available for these services at the time the warrant was presented to the Auditor for his certificate. There were only £185 at the credit of the Provincial Account, and the Superintendent had only power to raise about £8,600 more.

We may look at "The Provincial Audit Act, 1869," to see how the General Assembly has treated these words "legally available." "The Consolidation of Loans Act, 1867," forbad Provinces to borrow, and there appears to have been a doubt as to whether that forbad the right to obtain an overdraft at a Bank. It seems to have been considered that the want of power to obtain temporary loans from the Banks, prevented there being moneys legally available within the meaning of "The Audit Act, 1866." There might be money coming in and expected to come in, yet if there was no money to the credit of the account, it could not be considered that there was any legally available. It was therefore enacted by "The Audit Act, 1869," that Superintendents might borrow moneys under certain conditions in order that those moneys might be at their disposal. The recital of that Act recites section 11 of "The Audit Act, 1866," and concludes by saying "whereas the irregular and uncertain intervals at which the revenue of Provinces is received, render overdrafts and temporary loans sometimes necessary"—necessary because "The Audit Act, 1866," caused this difficulty in the administration of the affairs of Provinces, that the Auditor had to certify that the money was "legally available" at the time of the presentation of the warrant. The wording of the 5th section of the Act of 1869 is of importance, for if the money was merely raised by ordinary overdraft at the Bank, the proceeds would not be passed over to the credit side of the account; but the Act provides that the proceeds of the overdraft or Deficiency Bill shall be paid into the Provincial Account in order to allow the Auditor to know that the power had been exercised. The Legislature intended that the moneys borrowed should be, within the meaning of the Provincial Audit Act, issuable, which they would not be unless they were at the Provincial Account.

RICHMOND, J.—Then, in order to know whether sums are legally available or not, the Auditor should have the entire balance sheet before him on each occasion that a warrant is presented to him.

ATTORNEY-GENERAL.—Certainly. Supposing a warrant was issued for the payment of money to A. B. for a contract, and the Superintendent were to go to the Auditor and say, "I do not intend to pay this money at present, but I ask you now to certify another warrant for other items of appropriation." Would the Auditor be justified, having once certified to a warrant, in being a party to saying to the Superintendent, "You may issue the money to somebody else," without having cancelled the first warrant? Would not A. B. have a right to go to the Supreme Court for a *mandamus*, and insist on the issue of the money to him?

It has been argued that "The Audit Act, 1866," was never intended to be a control. I submit that, upon the very terms of its provisions, it is a control. The long title of the Act is "An Act to control the issue of Provincial Revenues and to provide for the Audit of the Accounts of the Provincial Governments." Sections 11 and 12 are taken from "The Controller's Act, 1865." Section 8 follows section 8 of the Controller's Act very closely, and section 9 in both Acts is the same. Section 10 of the Controller's Act is, however, very different from the corresponding section of the Audit Act, because the systems in force in the General and Provincial Governments are different.

The arguments I have been addressing to the Court are rather addressed to the invalidity of the certificate than to the badness of the warrant, though of course they go to the badness of the warrant. The attention of the Court has already been fully drawn to the wording of the Constitution Act, and I shall now call attention to the wording of the Audit Act in connection with this warrant. The 10th paragraph of the information states that at the time of the presentation of this warrant for the Auditor's certificate, there were only £185 12s. 6d. at the Provincial Account, and that none of the works or services mentioned in the warrant had been performed or executed, and no liabilities had been incurred in respect thereof. That being the condition of things, the Superintendent presents this document to the Auditor as a warrant within the meaning of the Constitution Act; for there is no other warrant referred to or provided for. It is addressed to Henry Bunny, Provincial Treasurer of Wellington, and says, "You are hereby authorized to pay or cause to be paid to the persons who may be or may become respectively entitled thereto, the several sums hereinafter mentioned." So that the only person who is to see who are entitled to receive the money is Mr. Henry Bunny. By the Constitution Act, the Superintendent is the only person who is to see to these things, and yet he delegates this power to Mr. Henry Bunny, who is also to see that everything is done; "and for so doing this authority with the several abstracts supported by the proper vouchers and acquittances of the parties who are respectively entitled to the sums mentioned herein shall be your sufficient warrant and discharge." I submit that the person who signs the warrant must have some control in the matter of the expenditure. The Provincial Treasurer has no direct responsibility. From the Constitution Act downwards it is the Superintendent who is treated as being the person to control the expenditure, and to say to whom the money is to be paid. It is therefore clearly not a warrant within the meaning of the Constitution Act.

It is not a warrant within the meaning of the Audit Act, because to be so it should point out to the Treasurer the persons to whom he is to issue cheques and the amounts to be issued. It might very well be, that after the issue of this warrant the Superintendent would have one

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.

On these grounds I submit that the information must be upheld and the demurrer overruled.

Mr. TRAVERS, in reply.—I would call the attention of the Court, in connection with some of the arguments of my friend, to this fact,—that the whole legislation in this direction by the General Assembly and the Provincial Councils, presupposes the same course being adopted by the latter bodies as by the former, namely, first, appropriation; secondly, ways and means; and that the ways and means are always provided by the Legislature to meet the supplies that they have given.

The 6th section of "The Audit Act, 1868," shows that it was in contemplation by the General Legislature that appropriations by Provincial Councils should extend far beyond a year. It is supposed by that section that at the end of any particular financial period there may be portions of the revenue of that period unexpended, and these are to be carried to the credit of the revenue of the next financial period, unless there shall have been contracts entered into, and payments made on account of them. In respect to those contracts, the money is absolutely ear-marked; therefore there is nothing to prevent money remaining for a longer period than that during which it is provided.

It is sought by the other side to throw upon the Auditor the entire duty of satisfying himself that the services have been performed, that appropriations have been made for those services, and moneys exist to meet the claims.

JOHNSTON, J.—Is it not rather that he is to have an allegation made to him that the services have been performed?

Mr. TRAVERS.—No; because his certificate precedes that of the Superintendent. The warrant is not signed by any one before him; it is submitted to him in blank, so far as the signature is concerned. If the signature of the Superintendent preceded that of the Auditor, the latter would have the voucher of that signature for the claim made. The Statute does not say who is to lay the warrant before the Auditor. It is laid before him by some officer, no doubt for the purpose of ascertaining if there has been an appropriation made for the particular service. Then it is forwarded to the Superintendent, who is to satisfy himself whether the service has been performed.

My friend tried to prove that the Auditor had a power of control under "The Audit Act, 1866," and read the long title of that Act to prove it, but that title is at variance with the recital and provisions of the Act. But even supposing the Act provided for the control of the issue of moneys, it does not follow that the control is vested in the Auditor. I submit that the control rests with the Superintendent, who is responsible for the ultimate issue of the money, and that the Auditor has only to certify that the moneys have been appropriated.

My friend cited several cases to show that this was one of that class of cases over which this Court had jurisdiction. (Attorney-General *v.* Brown, and Attorney-General *v.* Heelis.) It will be seen, by reference to these cases, that, in order to give the Court jurisdiction, the moneys must be for charitable purposes. Then my friend endeavoured to prove that the moneys in the present case were in the nature of charitable funds clothed with a trust. But the funds in the above cases were vested in private individuals in trust for special and particular purposes, and it was held that they must be in that condition in order to bring them within the equity of the Statute. This Court has now to say whether the revenues of a Province are charitable funds in trust in the hands of an individual, and therefore subject to the jurisdiction of the Court. If it is so, the Attorney-General might disapprove altogether of the mode of appropriation by a Provincial Council, and come here to restrain that body from legislating.

With reference to the creation of "Account No. 2," I submit that it was not a violation of the law; that it was but a branch of the Provincial Account, created for purposes of administration and convenience only. It cannot be operated upon in a different manner from No. 1 Account. The only person who operates upon No. 1 Account is the Provincial Treasurer, as shown by the cheque in the information. There is nothing, except the penal consequences, to prevent the Treasurer signing a cheque for the whole of the money at that account, and putting it in his pocket, so long as he has the warrant in his hand authorizing the issue. The Bank never sees the warrant. Therefore the mere creation of No. 2 Account is neither a fraud nor a breach of the law. It is merely an ear-marking of the money for the payment of particular services.

RICHMOND, J.—Could the moneys be issued from that account without further warrant?

Mr. TRAVERS.—It appears to me that they could. I am not prepared to say that it was in all respects a desirable course, except for the purpose of keeping distinct the revenues for the two classes of appropriation—the ordinary appropriation on one side, and the special appropriation on the other.

RICHMOND, J.—The books would do that. There can be no doubt that it was a device to get a warrant once for all. If the Attorney-General had prosecuted for issuing from Account No. 2 without warrant, it is very doubtful whether he would recover the penalty of £500 against the Treasurer.

Mr. TRAVERS.—No doubt; that appears to have been the reason—to have got rid of the necessity of special warrants for each item of expenditure as it accrued. In reality the warrant throws into the hands of the Treasurer the entire power. As to the wisdom of the course, we are not to discuss it; but that was the effect limited only by the propriety to obey the direction on the warrant that he should only issue to persons on vouchers and so on. I apprehend he

could have used that warrant for disbursing the whole £49,000, without any other intervention on the part of the Superintendent or Auditor.

With regard to the introduction of a relator in a case of this kind, I submit that if my friend proceeds advisedly in his capacity as Attorney-General, it is to be presumed that he has proceeded in a matter directly affecting the rights of the Crown, and he ought to be able to satisfy the Court that it is so. If, on the other hand, he admits that it is not a matter that directly affects the rights of the Crown, then he must satisfy the Court that he is dealing with a matter in which some trust is involved, in which case the intervention of a relator is, as Lord Redesdale says, invariable.

JUDGMENT.

ARNEY, C. J., delivered the judgment of the Court:—

Upon this demurrer the first substantial question raised is, as to the validity of the several proceedings which have resulted in the transfer of the sum of £10,000 from the Provincial Account proper, to the credit of the account styled "The Provincial Account No. 2." These proceedings are impugned in three several stages. The Attorney-General has contended that the Ordinance styled "The Bridges, Roads, and other Works Appropriation Act, 1874," is void as an appropriation of Provincial revenues; that the Auditor's certificate of 27th January, 1874, was illegally given; and that the Superintendent's warrant itself, on the authority of which the transfer was made, is not a valid warrant under the 25th section of the Constitution Act.

Upon all these points there is much to be urged in favour of the view taken by the informant. But on the latter point our opinion is so clear and decided that it is unnecessary to enter upon the discussion of the validity of the Ordinance and certificate. It is, and has been throughout the argument, plain to us that a warrant, which is essentially a mere transcript of the Schedule to the Act of Appropriation, is not a warrant within the 25th section. The Superintendent, as a branch of the Provincial Legislature, has already, by the Act of Appropriation, given his sanction to an expenditure not exceeding the lump sums named in the Act as *maxima*. The 25th section must mean something more than that the Superintendent should repeat an approval already given. In truth, the 25th section casts upon him a duty of Executive Government quite distinct from the function which, as a branch of the Legislature, he has already discharged. The Legislature having already spoken in general terms, it is made the duty of the head of the Provincial Executive to see that the particular application corresponds with, and keeps within, those general terms. The provision in question makes him responsible for the ultimate issue of the money to those persons who, by performance of the stipulated services, shall have entitled themselves thereto. His warrant should therefore specify the names of these payees, or their agents, and ought only to issue upon due proof that these persons have executed their side of their engagements with the Provincial Government, or at the least that, under some lawful contract, they are entitled to a payment in advance. Imprest advances to officers charged with the execution of particular services, or to agents of the Treasury at distant places, do not violate the spirit of the enactment. But it seems proper, in the case of such issues of public money, to cover by warrant its ultimate disbursement when the advance is accounted for.

The present is no case of an imprest advance; but the Superintendent has attempted, contrary to all legal principle, to delegate to another person the entire constitutional duty imposed upon himself.

But the demurrer raises a more difficult question, namely, whether the Supreme Court, possessing in this Colony the powers of the Court of Chancery, can, in the exercise of its equitable jurisdiction, give the relief, or any part of the relief, claimed in this proceeding by the Attorney-General.

It is, as confessed on the part of the informant, impossible to find amongst public bodies known to the English law and Constitution, anything analogous to the Provincial Executive Governments of New Zealand. The many cases which might be cited to show that Municipal Corporations, parish vestries, and public bodies and functionaries exercising special statutory powers are amenable to the jurisdiction of a Court of Equity, in a proceeding of the present kind, are, therefore, not directly in point. The case is new in the instance, and we are compelled to consider whether the general principles on which a Court of Equity has exercised its protective and preventive jurisdiction over public funds, justify and require our interference with the acts of the defendant in the manner here prayed.

The cases which present the closest analogy to the present are those in which persons invested with statutory powers over the expenditure of funds raised by local taxation have been restrained at the suit of the Attorney-General from the abuse of those powers. These cases are numerous, and we shall have to refer more particularly to some of them. The question for our consideration is, whether there is any essential feature in the case before us which should prevent us from extending to it the jurisdiction which has been exercised in England in the instances to which we advert. It has to be considered by us, what are the principles upon which the Court of Chancery has interfered for the protection of public funds in the cases adverted to; and whether, in the nature of the defendant's office, or of the fund which he administers, viewed in regard either to its source or to the purposes to which it is applicable, there is anything to withdraw the defendant from the operation of those principles.

And first it will be convenient to consider the character of the defendant's office. The Constitution Act, as is well known, contains scarcely any provision relative to the Executive

Government of Provinces. There is the single enactment of section 25, making requisite the Superintendent's previous recommendation of all grants of public money, and prohibiting any issue of such money otherwise than upon warrants granted by the Superintendent. In section 66, also, there is a provision for the payment over to the respective Treasuries of the Provinces, for the time being established in New Zealand, of the surplus revenues of the Colony, for the public uses of such Provinces. These important clauses, read in connection with the rest of the Statute, indicate, in a general way, the position to be occupied by the Provincial Governments as bodies charged with the expenditure, for local purposes of government, of a portion of the Colonial revenues. The constitution in detail of the Executive Governments of Provinces has been worked out by local, chiefly by Provincial, legislation. The present information cites in the margin sections 1, 6, and 7 of "The Provincial Act to establish an Executive Government for the Province of Wellington, 1853." On reference to this Ordinance it appears that the Provincial Treasurer is appointed by, and holds office during the pleasure of, the Superintendent. The office of Superintendent being elective, it follows that the Provincial Treasurer is in no sense an officer of or under the control of the Crown. The entire administration of the Provincial Executive Government being, under the Ordinance, vested in the Superintendent, the Treasurer is for many purposes a subordinate officer. But in regard to the custody and disbursement of the public moneys in his charge, he possesses a legal *status* involving independent duties and responsibilities. This independent *status* is even based upon the Constitution Act itself; which, by its mention of Provincial Treasuries, implies the existence of Provincial Treasurers; and, by its requirement of the Superintendent's warrant for the issue of money, implies the existence of an officer to whom such warrant shall be directed. (Compare section 54 of the Constitution Act.) The tenure of the Provincial Treasurer's office at the will of the Superintendent in no degree affects the legal responsibilities which attach to that office.

The circumstance that the Provincial Treasurer is not an officer of the Crown, appears to be of some moment in reference to the existence of a necessity for the Court's interference. Any argument tending to show that there could be no need for such a jurisdiction, would tend also to show that no such jurisdiction existed. In the case of one holding office at the pleasure of the Crown, he may be deprived, by dismissal from office, of the custody of a fund which he threatens to misapply. But this is a remedy which cannot here be resorted to.

There is another point in regard to the position of a Provincial Treasurer which requires notice. It may be argued that he has no property in the funds in his custody, and so cannot, in the ordinary sense of the term, be a trustee of those funds. We think, however, that it is enough, and that the cases show that it is enough, that the defendant has over the funds a power which he has abused, and threatens to go on abusing. The cases appear to us to stand upon the principle of preventing the misuse of an authority over public funds, and not on that of enforcing the equitable right of ownership against the legal.

In the class of cases which has been above adverted to as most resembling the present case, the interference of the Court of Chancery has commonly been referred to its special jurisdiction over charitable trusts; the fund which the Court has been called upon to protect having been subject to a charitable use. By a charitable use, the Court of Chancery understands either such public and charitable purposes as are expressed in the Statute 43 Eliz., c. 4, commonly called the Statute of Charitable Uses, or purposes analogous to them. (See Morice *v.* Bishop of Durham, 9 Ves. 399; S.C., on appeal, 10 Ves. 522.) Some of these purposes expressed in the Statute are, in the popular sense of the term, charitable,—as the relief of aged, impotent, and poor people; others are of a character more generally beneficial, as the repair of bridges, ports, havens, sea banks, and highways. The Statute has received a very liberal exposition. In the Attorney-General *v.* Heelis 2 Sim. and Stu. 67, the Vice-Chancellor, Sir John Leach, says:—"I am of opinion that funds supplied from the gift of the Crown, or from the gift of the Legislature, or from private gift, for any legal, public, or general purpose, are charitable funds to be administered by Courts of Equity. It is not material that the particular public or general purpose is not expressed in the Statute of Elizabeth, all other legal public or general purposes being within the equity of that Statute." This wide definition of a charitable purpose within the Statute has frequently been acted upon, and has been very recently approved by high authority. (Beaumont *v.* Olivier, A.L.R. 4 Ch., 309.) On the other hand, the same learned Judge was of opinion that no fund was subject to the control of the Court of Chancery as a charitable fund unless it had originated in a donation of some kind. This view is perceptible in the extract already given from His Honor's judgment in the case of Attorney-General *v.* Heelis, and is distinctly put in a subsequent passage of the same judgment. "I am of opinion," he says, "that it is the source whence the funds are derived, and not the mere purpose to which they are dedicated, which constitutes the use charitable; and that funds derived from the gift of the Crown, or the gift of the Legislature, or from private gift, for paving, lighting, cleansing, and improving a town, are, within the equity of the Statute of Elizabeth, charitable funds to be administered by the Court. But," the Vice-Chancellor continues, "where an Act of Parliament passes for paving, lighting, cleansing, and improving a town, to be paid for wholly by rates or assessments to be levied upon the inhabitants of that town, the funds so raised, being in no sense derived from bounty or charity, in the most extended sense of that word, are not charitable funds to be administered by this Court." The doctrine here laid down by Vice-Chancellor Leach, that no fund is to be administered by the Court as charitable unless it originates in a gift of some kind, and that a rate raised by local taxation cannot constitute such a fund, has

been disapproved of by Lords Eldon and Redesdale, in the House of Lords, in the case which we shall presently have to cite more at large of Attorney-General *v.* Mayor and Corporation of Dublin, 1 Bligh N.S.312. The difference between Lord Eldon and Sir John Leach is fully discussed by Lord Hatherly, when Vice-Chancellor, in the case of Attorney-General *v.* Eastlake, 11 Hare 205. The Vice-Chancellor says:—"There can be no doubt that the conclusion of the House of Lords was, that the mode in which the rate was levied was not to be looked at, but the purpose to which it was to be applied; and I apprehend the purpose must be the real criterion." Further on, addressing himself to the particular case before the Court, in which the defendants were Commissioners empowered by a local Act to levy rates on the inhabitants of the town of Plymouth for paving, lighting, watching, and improving the same, the Vice-Chancellor proceeds:—"It is sufficient to say that it is a large and general purpose for this town, and that, for that purpose, certain moneys are to be levied. I cannot see that the source from which these moneys here are derived, namely, from taxation, can make any difference as to the charitable or public nature which would be attributable to the funds if they proceeded from a more limited sphere of bounty; and if there be no distinction on that ground, the Attorney-General is the proper person to represent those who are interested in the general and public, or charitable purpose."

Thus the result of the authorities is to give an exceedingly comprehensive definition of a charitable fund, in the legal sense, including within it moneys granted by Parliament, or raised by local taxation, for local public uses; and the Attorney-General has invited us to declare that, in this technical sense, the public revenue of a Province constitutes a charitable fund, and is accordingly subject to the control of this Court, as a Court of Equity. Looking to the sources of that revenue, there seems no reason to contest this conclusion, however strange it may appear. Provincial revenue consists partly of a portion of the general and territorial revenues of the Colony paid into the Provincial chest under the authority of Acts of the General Assembly, partly of the proceeds of local taxation imposed by the Provincial Legislature. As regards the sources of the fund, there is nothing which does not agree with the definition of a charitable fund. As regards the purposes to which the Provincial revenue is applicable, there is more difficulty in saying that it comes within the definition. Those purposes may be defined as the public uses of the Province according to appropriations to be made thereof by the Provincial Legislature. (See section 66 of the Constitution Act.) Provincial revenue, when appropriated, may come within the equity of the Statute of Elizabeth; but, until appropriation, there is no determinate purpose to which the revenue is dedicated. This appears to constitute a distinction—possibly not, for the present purpose, a material distinction, but still a real practical difference—between the case of the revenue of a Province of this Colony, and that of any fund which has as yet been treated as in its nature charitable. Even in support of a salutary jurisdiction we should not venture to strain a definition, already perhaps extended to the utmost limit.

A case much dwelt upon in the argument was the Attorney-General *v.* Brown, 1 Swanst. 265. That was an information filed against Commissioners authorized by Act of Parliament to levy a rate on every chaldron of coal landed on the beach or otherwise brought into the town of Brighton; such rate to be applied in repairing or building groins, walls, and other works for the protection of the town from the encroachment of the sea. The information charged the Commissioners with misapplying the proceeds of this rate, and prayed a declaration as to the powers of the Commissioners, and an injunction to restrain them from any levy except for the purposes authorized by the Statute. There was a demurrer for want of equity, which was overruled by Lord Eldon. The case was most elaborately argued, and the Court seemed to feel considerable difficulty in making out that the coal duty was subject to a charitable use, the Lord Chancellor at first saying (according to Mr. Swanston's report) that he thought there was not a charitable use within the Statute. The very able counsel who appeared for the Attorney-General and the relators had urged in argument that it was unnecessary to the jurisdiction that the purposes should be charitable. "In describing the practice of the Court on the subject of informations, Lord Redesdale," they said, "mentions charities only as one instance, amongst many, of the cases in which that remedy is allowed. (Mitford's Eq. Pleading 7.) Whenever a fund is appropriated to objects beneficial to the nation at large, any individual is entitled to the aid of the Attorney-General for compelling its due administration." But it does not appear from the report of the case that the Court adopted, even partially, the extensive principle thus contended for. On the contrary, Lord Eldon, whilst expressing a strong conviction that there must exist in some Court in the kingdom an authority to compel the Commissioners properly to apply the money which they were authorized to raise, seemed anxiously to found the jurisdiction, which he asserted, upon the existence of a charitable use within the Statute. He is represented as finally deciding that the coal duty was a fund granted by Parliament in aid of the pecuniary inability of the poor inhabitants of Brighton to protect themselves from the ravages of the sea; and so a gift to a charitable use within the Statute, which expressly mentions the repair of sea-banks as one of the purposes of charitable donation.

Unexplained, this decision of the Attorney-General *v.* Brown would have left on our minds very grave doubts, to say the least, of our jurisdiction in the case before us; nor is it surprising that Sir John Leach, who was of counsel for the defendants, for whom he argued most ably, should afterwards, as Vice-Chancellor, have assumed, in the case of Attorney-General *v.* Heelis, that the jurisdiction of the Court of Chancery over the administrators of public funds depended upon the existence of a charitable use. But in the subsequent case of the Attorney-General *v.* the Mayor of Dublin, in the House of Lords, Lord Eldon expressly disclaims that ground as con-

stituting the sole *ratio decidendi* in Attorney-General *v.* Brown—"after the argument," he says, "it appeared to me that it was a charitable use. But that was not the ground of the judgment in that case, whether it was well or ill founded; because I was of opinion that the Court of Chancery had jurisdiction in that case, whether it was or was not a charitable use." The case before the House of Lords in which this observation was made was an information against the Corporation of Dublin, charging misappropriation of rates levied on the inhabitants under Act of Parliament for the improvement of the water supply of the city, and praying (amongst other things) a declaration and execution of the trusts and an account of the rates. Lord Redesdale delivered an elaborate opinion. He remarks that "in early times our Kings took upon themselves by prerogative to grant certain duties, very much resembling these duties, for the benefit of towns and cities; to wall towns, to pave towns, and for various other purposes. There are in the Register writs expressly adapted to that purpose, reciting the grant, by some remote ancestor of the King, of certain duties which were to be applied to the walling of towns, or paving towns, or other public purposes; and that those duties so taken had not been so applied; and, not having been so applied, the writ authorized certain persons to call before them the persons whose duty it was to account, and to direct whatever should be in their hands to be applied according to the original intention of the grant, until the whole should be applied according to the intention of the grant." After denying that the jurisdiction rests merely upon the Statute of charitable uses, his Lordship proceeds,—"The right which the Attorney-General has to file an information is a right of perogative; the King, as *parens patriæ*, has a right, by his proper officer, to call upon the several Courts of Justice, according to the nature of their several jurisdictions, to see that right is done to his subjects who are incompetent to act for themselves, as in the case of charities, and other cases. . . . . I take this case to be one which falls precisely within the description that I have mentioned. I apprehend it is one in which, according to the practice of the ancient law, such a commission as this which is to be found in the Register, might have issued; because the persons who collect these rates are to account for the application of them, and to apply them accordingly." Lord Eldon, then Lord Chancellor, appears to have fully agreed with Lord Redesdale, saying that noble and learned lord had "reasoned satisfactorily, at least to his humble judgment, that if a writ of account could have been maintained, a suit in Chancery would be also capable of being maintained, unless the jurisdiction of the Court was expressly, or by necessary implication, taken away." And in accordance with the opinion of these eminent persons, a decree of the Lord Chancellor of Ireland dismissing the information was reversed, and an account of the rates was decreed against the Corporation.

This case seems to us to lay down a broad and intelligible doctrine which is applicable to the present suit. In a passage which we have not yet quoted, but which perhaps is of more pointed application to the present case than anything in his judgment, Lord Redesdale says, "It is expedient, in such cases, that there should be a remedy, and highly important that persons in the receipt of public money should know that they are liable to account, in a Court of Equity, as well for the misapplication of, as for withholding, the funds. Suppose even the case of a public accountant clearly within the Act"—His Lordship means the Statute appointing Commissioners for auditing public accounts in Ireland—"who having embezzled or misemployed the public moneys, had rendered accounts which were imperfect or fabricated—could not the Attorney-General, upon discovery of the fact, or the fraud, proceed by information to recover the moneys so fraudulently withheld or misappropriated? It has been said, by high authority, that such a right vests in the Attorney-General by virtue of his office, and that the Court of Exchequer, upon such information, has jurisdiction to order such person to account and pay the money. A similar remedy is applicable, as I conceive, to every other person having the trust and management of public money; any public accountant of any description." Can it be supposed that the application of the principles thus laid down by the learned lords, depended upon the municipal character, either of the defendants themselves, in the case before the House, or of the purposes to which the funds under their control were applicable? There is no hint given of such a limitation; and it cannot be doubted that the House, on the advice of those learned lords, would have asserted the same jurisdiction against persons entrusted with the local funds of a county. We are unable to see any reason whatever why they should not be applied to the officers and the funds of the Provinces of New Zealand.

One topic only remains to be dealt with on this part of the case. The information in the Attorney-General *v.* Mayor, &c., of Dublin, charged that the Corporation were trustees of the water-rate, and that their conduct amounted to a breach of trust; and prayed a declaration and execution of the trust, and an account of the rates. The decree made by the House of Lords was interlocutory only for an account, and it does not appear how the cause was finally disposed of. It may be thought that this decision and that in Attorney-General *v.* Brown are referable purely to the jurisdiction of the Court over a trust fund. Were this the true view of the matter, these decisions would be inapplicable; for it is plain that the revenues of the Provinces of New Zealand are not, in the ordinary sense of the term, trust funds, nor are those who administer them, in the ordinary sense of the term, trustees. No Court could undertake the administration of such a trust, for it would be to assume the duties of a Government. But on any rational construction of the judgments of Lords Eldon and Redesdale, it will be seen that they proceed upon a wider ground than that of the existence, in the case before the House, of an ordinary trust. There is a sense in which every public officer is a trustee—a trustee, not neces-

sarily of property vested in him, but of powers and functions. The public bodies before the Court in the two cases referred to, may or may not have had vested in them the legal right of property in the public funds which they administered. That is an entirely immaterial circumstance. Clearly they were not trustees in the ordinary sense. Trustees in the common sense of the term may be removed by the Court for misconduct, but there could be no power in the Court of Chancery to remove members of either of the public bodies whose acts were in question, nor could the Court have undertaken the administration of either fund in the same way as it undertakes the administration of a private trust fund. In such cases the Court can do no more than correct abuses, and restrain the parties from exceeding the proper limits of their functions. The exercise of such a jurisdiction is entirely accordant with the principles on which the Court habitually acts. Thus, a parish vestry authorized by Act of Parliament to levy rates for certain purposes, has been restrained by injunction from mixing the moneys arising from district rates into one fund for the purpose of meeting the general expenditure of the parish, and generally from applying the moneys recovered by them for any other purposes than those to which, under the Statute, they were properly applicable. (Attorney-General *v.* Daniel, 9 *Law Journal* [N.S.], Ch. 394.) And in another case, Frewin *v.* Lewis, 4 My. and Cr. 234, Lord Cottenham had no doubt of his power to restrain the Poor Law Commissioners from making an order infringing upon the right and functions of another public body. His Lordship put the jurisdiction on the widest possible basis. "Public functionaries," he said, "or bodies incorporated by Statute for a public purpose or the promotion of a public benefit, may not exceed the jurisdiction which has been entrusted to them by the Legislature. So long as they strictly confine themselves within the limits of their jurisdiction, and proceed in the mode which the Legislature has pointed out, the Court will not interfere to see whether any regulation or alteration which they make is good or bad; but if, under pretence of an authority which the law does give them to a certain extent, they go beyond the line of their authority, and assume to themselves a power which the law does not give them, the Court no longer considers them as acting under the authority of their commission, but treats them as persons acting without legal authority." If the Supreme Court of New Zealand is by this information prayed, directly or indirectly, to undertake any single function belonging to the defendant as a public officer, it would be an answer that the revenues of a Province are not a trust fund vested in the Treasurer as an ordinary trustee, and that the same can be administered only by the persons specially empowered by law in that behalf. But no such thing is involved in the prayer. The Court is simply asked to restrain a partly accomplished malversation of office, and to restore public moneys to their proper custody. To do this much we are of opinion that it has jurisdiction.

This disposes of the principal grounds of demurrer, viz., the first and second. As to the third ground, that a relator should have joined in the suit, it is plainly untenable. The case in the House of Lords (Attorney-General *v.* Mayor, &c., of Dublin) is a distinct authority upon this point. It is twice stated by Lord Redesdale that the Court has jurisdiction, on the information of the Attorney-General, with or without a relator. The information before the House might, he says (Judgment, 1 Bligh N.S. 351), have been filed without a relator. It is optional with the Attorney-General; and in the present case, which is a suit instituted by the Government, the introduction of a relator manifestly would have been improper. In no case could the omission of a relator be ground of demurrer.

The fourth ground of demurrer is for want of parties. It was said that the Superintendent and the Auditor should have been joined as defendants. The answer is first, that this information, not concerning the rights of the Crown within the meaning of R.G. 563, is subject to the same rules as to procedure as an ordinary action (R.G. 550), and the Provincial Treasurer is the only person against whom relief is directly sought (R.G. 234). The substantial relief sought is, that the Treasurer be ordered to replace the £10,000, and be restrained from acting further upon the authority of the pretended warrant. Had the prayer of the Bill been limited to these particulars, it could not have been said that relief was directly sought against the Superintendent. The declaration asked for, that the warrant is invalid, is merely a formal consequence of the injunction against any further issues of public money upon its authority. It might be struck out without practically affecting the purpose of the suit. If made, it cannot prejudice either the Superintendent or the Auditor, who will be at liberty to dispute it in any other proceeding, civil or criminal. The argument that the Treasurer is a mere instrument of the Superintendent is sufficiently answered by what we have said respecting the nature of the office of Provincial Treasurer. This is not a case to which the maxim "*Respondeat superior*" has any application.

On the whole, we are of opinion that the defendant is amenable to the jurisdiction of the Court in respect of the matters complained of, and that the demurrer must be overruled, with costs.

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