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