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