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.

By Authority: George Didsbury, Government Printer, Wellington.—1874.

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