

If Mr. Edwards is right in his contention, the Act of Geo. III. was unnecessary, and the late Professor Hearn was wrong; and Sir George Bowyer, in his "Commentaries on the Constitutional Law of England," when he spoke of the "noble improvements" of the Act of Settlement by the statute 1 Geo. III., c. 23, was mistaken. (See also Stephens's "Commentaries," Vol. ii., p. 492. See also May's "Constitutional History," Vol. iii., p. 391,392.) As for Hallam's statement, it is true the Act of Settlement laid down the principle, but it was this Act of 1 Geo. III. that first carried that out in law, for in 1693 a Bill that passed both Houses of Parliament fixing the salaries as payable out of the Civil List was vetoed by King William. And now, as I have said, no Supreme Court Judge in England, or in the colonies having Responsible Government, has to depend on the annual vote of Parliament. If there be any Judge in such a position, Mr. Edwards is that one.

26. It is said by Mr. Edwards his independence is secured, as he has a contract with the Queen. What is that contract? It is, I assume, the letter from Sir H. A. Atkinson appointing him a Commissioner under "The Native Land Court Acts Amendment Act, 1889." In that letter the salary is mentioned as £1,500 per annum, the same as the present Puisne Judges. This letter assumes that the salary is to be paid to him as Commissioner and not as Judge. Nay, more, it rightly assumes that the appointment of Commissioner precedes that of Judge of the Supreme Court, and that there is no salary by law provided for him as a Judge. It cannot be contended, therefore, that there is a contract to pay Mr. Edwards as Judge of the Supreme Court any salary. It is only as Commissioner he has the salary, and that has to be voted by Parliament, and was partly so voted last year. No salary was properly paid to him as Judge and none was voted for that purpose. There is, therefore, no contract to pay him a salary as Judge.

27. But assume the late Premier or Governor had so agreed, would that be a contract binding the colony? Clearly Mr. Edwards could get no salary if the Parliament voted none. And if there was no express power given by Parliament to bind the Crown to the payment of £1,500 a year to him for life, no Premier or Government could enter into a binding contract to pay him that sum (see *Churchward v. Reg.* L.R. I. 9, B. 173). As Commissioner he has a salary of £1,500, but no term for his appointment or salary has been fixed. The Parliament may discontinue his employment or salary and he is helpless (*Shaw v. The Queen*). It cannot be said his appointment as Judge carries a salary of £1,500 with it, for there is no salary for a fifth Puisne Judge appropriated by Parliament. And like other Government officers, he would have to depend on an annual vote. Independence as a Judge he would have none; and further, he would, as compared with the Chief Justice and four Puisne Judges of the Supreme Court, be placed in such an invidious and improper position that he himself would not, I imagine, care to hold such an office.

28. It is useless to talk of his appointment pledging him a salary or making him independent; and this leads up to the question, Was his appointment constitutional? Clearly it is unconstitutional, and has been so since the George III. statute referred to, to appoint a Supreme Court Judge who has no salary "fixed and ascertained" for him, and who has to trust to the annual vote of Parliament. The independence of the Supreme Court Bench is gone should such a state of things prevail. It is certainly amazing to me to read that, in Mr. Edwards's opinion, an Act of Parliament making provision for a permanent Civil List gives no greater independence to Judges than a "contract" made by the Premier with them. And his arguments seem to me to end in the statement that in New Zealand there is not, and has not been, that constitutional safeguard for the independence of Judges that the Mother-country and other colonies have provided.

29. The appointment was unconstitutional on other grounds. The Parliament had a right to be consulted before the Bench was added to and such a high officer as a Judge appointed. No addition has been made to the number of Judges in New Zealand without Parliament being consulted; and none in either England, or in any of the other colonies having Responsible Government. The Government did not think it proper or right to appoint a Native Commissioner without consulting Parliament and getting its express sanction. And if it were necessary—I do not see the slightest necessity—that the European Commissioner should be a Judge of the Supreme Court, then Parliament should have been asked to sanction such a peculiar arrangement. It was assumed, apparently, that a Native could be found—and one was found, Mr. John Ormsby to wit—who would fulfil the duties of Commissioner without having the honour of a Supreme Court Judge appointment.

30. Parliament is not likely to vote Mr. Edwards's salary as a Judge. If not, is it constitutional for him to act as a Judge without pay? I need not answer such a question; but that is the position in which he has placed himself. He must have considered and known that no salary was "fixed and ascertained" for him as Judge when he accepted the Commission. He is not a layman, who can plead ignorance of the law; and perhaps the most painful thing in the whole of this judicial scandal is that he thinks his independence is secured if he gets, without Parliament's sanction, the promise of a salary from a Premier, and that making a salary permanent and on the Civil List is not securing it so well as a letter from a Premier does.

31. In my opinion, he is not *de jure* a Judge. He has been appointed in violation of all constitutional authority and precedent, and it remains for the Executive to consider what has to be done. To allow this scandal to continue is dishonouring to the Supreme Court Bench, and nothing is so necessary as to make and keep it strong and independent. Parliament is not likely to sanction a sixth Judge. I am assured that there is no necessity for such at present. If Mr. Edwards does not retire from the position he has assumed, and resign his Commission, then the Crown and Parliament have ample power to deal with his case.

3rd March, 1891.

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