Enclosure 1 in No. 69.

COPY OF OPINION OF MR. JUSTICE RICHMOND ON APPOINTMENT OF MR. EDWARDS.

IN putting upon paper the grounds of my present opinion regarding the validity of the appointment of Mr. Edwards to be a Judge of the Supreme Court, I desire it to be understood that I must necessarily continue free to modify or reverse that opinion, should I ever be called upon to consider the matter judicially. This, I have no doubt, will be also the position assumed by the other Judges.

Under ordinary circumstances it would be wrong to go even as far as I propose to go. Judges are necessarily in the habit of considering beforehand questions on which they may have to adjudicate, and must often form more or less positive opinions thereon; but they abstain from expressing such opinions otherwise than in discussion with their colleagues. Nor are they likely to forget that conclusions arrived at without argument may have to be abandoned on reconsideration of the subject after all parties have been heard.

The circumstances of the present case are, however, peculiar. At the request of the Chief Justice, the opinions of the Judges have been to a certain extent expressed to him, on a proper occasion, for a practical purpose; and these opinions have become known, more or less accurately, to the Government and to Mr. Edwards himself. There seems to have been misunderstanding in regard to some, at least, of these opinions.

It seems convenient, therefore, that, at the request of those who represent the Crown, and also of Mr. Edwards himself, we should express more fully our present views on the question raised, and the reasons which appear to us to support our provisional conclusions.

As at present advised, I think that the appointment of Mr. W. B. Edwards to be a Puisne Judge of the Supreme Court of this Colony is valid.

Objectors to the appointment take, as I understand, this position: They assert it to be a principle of the Constitution of this colony that every permanent Judge of the Supreme Court shall, from the issue of his commission, have his salary fixed and secured to him during his term of office as a permanent charge on the revenues of the colony; and that, unless such a provision exists, and is available for the salary of the person whom it is proposed to appoint, or until such provision, if it do not already exist, is made, the Governor has no power to appoint to a Judgeship. In other words, it is contended that the prior existence of such a provision is a condition precedent in law to the exercise of the Governor's power of appointment, the number of the Judges being limited by the existing provision for their remuneration.

The objection leads at once to the inquiry, when and how was the supposed condition created? It is not pretended that any such rule was in force prior to the Constitution Act. Under the Charters of 1840 and 1846, and the ordinances establishing a Supreme Court, there was no limit to the number of Puisne Judges. They held office during the pleasure of the Crown, and no provision existed for the security of their salaries. The inquiry suggested may then be limited to the provisions of the Constitution Act and its amendments, and to the Acts of the General Assembly.

The Acts amending the Constitution do not touch the matter; and the only provisions of the Constitution Act itself which in any wise relate to it are sections 64 and 65. Section 64 establishes a Civil List of £16,000 for definite purposes, amongst which are the salaries of a Chief Justice and a Puisne Judge. Section 65 empowers the General Assembly to alter the appropriation of the Civil List; but it is provided that it shall not be lawful by any Act passed in exercise of that power to diminish the salary of any Judge holding office at the passing of the Act. This is the first provision in our laws for securing the salaries of the Judges. The plain terms of the enactment show it to be a limitation by the Imperial Parliament of the powers of the local Legislature, and nothing more. There is no interference with the powers of the Executive Government. At the date of the Constitution Act the Judges' tenure of office remained what it had been since the foundation of the colony. They still held office at the pleasure of the Crown. It is clear, therefore, that the Constitution Act cannot have introduced the supposed condition that no permanent Judge shall be appointed until permanent provision shall have been first made for his salary. Judges whose salaries have been charged on the Civil List are protected against reductions by the Legislature, but there is no limitation, even by implication, of the Governor's then existing power to appoint as many Puisne Judges as he thought proper. The schedule to the Constitution Act, in providing the salary of one Puisne Judge (the words "Puisne Judge" are in the singular), is to be regarded as fixing rather a minimum than a maximum. It says, in effect, the Crown shall have the right, without asking for a vote in supply, to pay £800 a year to a Puisne Judge. It does not bar the appointment of an additional Judge or Judges; simply it leaves their payment unprovided for.

The Judges' tenure of office was first established on its present basis by the Supreme Court Act of 1858, amended in 1862. Subject to the power of making appointments for temporary purposes, it is provided by the Act of 1858 that the Commissions of the Judges shall be in force during their good behaviour; and by section 6 it is enacted that their salaries shall not be reduced. The latter provision, unlike that in the Constitution Act, is a restraint on the Executive Government. As a restraint on the Legislature it would be futile, since a legislative body cannot bind its successors. The provision cannot, therefore, be equivalent to or imply an enactment that the salaries of Judges shall be provided for by permanent appropriations. By section 2 the Governor's power of appointing an unlimited number of Puisne Judges is continued. The words are, "The Supreme Court of New Zealand shall consist of one Judge, to be appointed in the name and on behalf of Her Majesty, who shall be called the Chief Justice, and of such other Judges as His Excellency, in the name and on behalf of Her Majesty, shall from time to time appoint." The language is identically the same, as far as concerns the present question, with that of clause 10 of the ordinance of 1844, which section 2 replaces. It is observable that the Legislature has had distinctly in view the question of number. There is to be only one Chief Justice. This makes the absence of limitation