

not wish this case to turn on any trivial matter. It is, however, peculiar that in this letter of the 5th March the singular number is used—it only speaks of the “appointment,” not of the “appointments.” But after this letter there is the letter of the 6th March. The two letters of the 6th March which are set out in the affidavits were written, and this shows that the Commission under the Native Land Court Act of 1889 and the Commission as a Judge of the Supreme Court were both sent to Mr. Edwards on the same day—namely, on the 6th March, 1889. What I submit is that the letter of the 1st March shows that the appointment to the Supreme Court Judgeship was offered to Mr. Edwards as an office auxiliary to and subsidiary to his appointment as Commissioner under section 20 of “The Native Land Court Acts Amendment Act, 1889.” I submit that this appears from the 2nd paragraph in this letter of the 1st March, but I shall read the letter at length, in case it may be said that the context of the letter explains the 2nd paragraph. The letter in full is as follows:—“Sir,—In reference to the conversation I had with you on the subject of the appointment of a Commissioner under section 20 of “The Native Land Court Acts Amendment Act, 1889,” I have now the honour to inform you that His Excellency the Governor has been pleased to approve of your appointment to that office. It has appeared to the Government—and such appears to be the general feeling—that for an office of such importance, involving such large interests, the Commissioner should have the status of a Judge of the Supreme Court, and therefore you will be appointed to that office also. As you are aware, the demands on the time of the present Judges of the Supreme Court cause inconvenient but unavoidable delay in the despatch of business, and the leave of absence granted to Mr. Justice Richmond will aggravate the evil unless some provision is now made to meet it. The Government is averse to the appointment of a temporary Judge if it can be avoided, and they hope that the arrangement by which you will afford occasional assistance in the Supreme Court work will temporarily meet the requirements. Your salary will be £1,500 per annum, the same as the present Puisne Judges’. Your Commissions to the above offices will be at once forwarded to you.” Then, there is the letter of acceptance, as I have already said, dated the 5th March: “I have the honour to acknowledge the receipt of your letter of the 1st March, and to say that I accept the appointment therein named upon the terms therein mentioned.”

Independent of the 2nd paragraph of the letter, which, I submit, plainly proves that Mr. Edwards was not appointed to the office of a Supreme Court Judge with the additional duties of Commissioner cast upon him, but was appointed a Commissioner with the duties of a Supreme Court Judge given to him, to be only auxiliary to those of Commissioner; further, that he was not expected to do Supreme Court work—that he was only to do it, apparently, occasionally, and therefore that he was only temporarily to do the work of a Judge. This, I submit, also appears plainly from the last paragraph but one of the letter—as to salary. The words are, not that he is to be paid as a Supreme Court Judge, but simply this: “Your salary will be £1,500, the same as the present Puisne Judges;” showing that the salary to be allocated to him as Commissioner is to be at the same rate as the Puisne Judges. I submit that, if contract there was between the Government and Mr. Edwards, the contract appears in these two letters. A great deal of matter which seems to me to be entirely irrelevant is set out in the defence and in the affidavits of the defendant. And, as this irrelevant matter has been set out in the defence, we have also brought before the Court the correspondence, which I submit is also irrelevant; only the whole correspondence has been set out. I do not think, however, that this correspondence has any bearing particularly on the questions which the Court has to decide. I may summarise it by-and-by. But, taking what I conceive to be the statement of claim and defence and the affidavits on both sides together, I think I may summarise the whole as follows: First, it is clear that Mr. Edwards was not appointed by way of a substitute for, or in succession to, any of the Judges; nor does his Commission purport to be an appointment under section 12 of the Supreme Court Act.

*The Chief Justice:* That is the provision for appointing a temporary Judge?

*Sir R. Stout:* Yes, your Honour. I submit, however, that the letter of the 1st March and the letter of the 5th March—if they can be read to aid the Commission in any way—are to be treated as the contract under which both commissions were issued.

*The Chief Justice:* That the appointment shows that he is not a temporary Judge?

*Sir R. Stout:* It does not say anything in reference to that. The words of the Commission are: “to have, hold, exercise, and enjoy office and place during good behaviour.” However, if the defendant relies on some contract outside of the Commission, then I submit that, reading the letters and the Commission together, the Court must assume that his Commission as Judge must determine so soon as his office as Commissioner comes to an end. And if it appears, as it does appear—and is set out in the statement of claim—that his position as Commissioner was put an end to on the 31st March, 1891 (see the 9th paragraph of the statement of claim)——

*The Chief Justice:* How do you state that?

*Sir R. Stout:* I say that the Judgeship was, according to the letters, only to last so long as the Commissionership lasted, and to be auxiliary to that office; and if it appears on the face of the proceedings, as it does appear by the 9th paragraph of the statement of claim, that the Commissionership ended on the 31st March, 1891, I submit that the power to act as Judge must fall when the Commissionership falls. The Judgeship was only to be, as I again repeat, auxiliary to that of the Commissionership, and if it appears that the Commission was too large, and has gone beyond the contract, then the Commission may be vacated; because the Court will hold just the same as in the issue of a Crown grant or other patent, that the Commission is wider than the contract between the parties, and, being wider than the contract between the parties, must be rescinded. I submit that the correspondence of the 1st and 5th March, on which the Commission is issued, and in which Mr. Edwards accepts it, shows that he was not appointed a Supreme Court Judge independent of the duties and office of a Commissioner under “The Native Land Courts Act, 1889;” and if, therefore, there is a contract between the parties this contract was for the Commissionership, with the status of the Supreme Court Judgeship thrown in; and, once the Commissionership comes to an end, the