Supreme Court Judgeship comes to an end also. The Commission has gone beyond the contract, and the Commission itself can be vacated. I shall refer by-and-by to the power under the 12th section of the Supreme Court Act of 1882. It provides not only for the appointment of a temporary Judge during the illness or absence of a Judge, but also uses the words, "for other temporary purpose," which, I submit, is not limited by these other words precedent. I shall rely on this point.

The Chief Justice: I understand you to raise that the validity of the appointment depends on the validity of the contract.

Sir R. Stout: I go further, and say that, in reference to this contract, because of its particular nature, the Court will have to look at the letters of the 1st and 5th March.

The Chief Justice: That it would be proper to do so, irrespective of the defendant setting up any special answer.

Sir R. Stout: I have a right to ask this, as in reference to a Crown grant, if I can show that the contract was not for the appointment of a sixth Judge of the Supreme Court under the Act to act constantly as a Judge under the Act. But if I can show that the appointment as Judge was to be ancillary and auxiliary to the Native Commissionership, then when the Commissionership came to an end the Supreme Court Judgeship came to an end. I do not deny, however, that the main point that the Court will have to determine will be, had the Governor the power to issue any Commission to any person as Judge?

Mr. Justice Richmond: The Governor is never once mentioned, I think, in the correspondence?

Sir R. Stout: Yes, your Honour. The letter of the 1st March says, "I have the honour to inform you that His Excellency the Governor," &c.

Mr. Justice Richmond: I observe that little mention has been made of the Crown, and there is surely some difficulty in controlling a Commission under the seal of the colony by correspondence with Ministers.

Sir R. Stout: On the face of it the contract—if there be a contract—made between the Crown and Mr. Edwards was not a contract to appoint him a permanent Judge of the Supreme Court; it was a contract to appoint him a Native Commissioner under section 20 of the Act of 1889, and it gave him the status of a Supreme Court Judge in order to better fulfil his duties as Commissioner. If, therefore, I repeat, his duties as Commissioner came to an end, the reason for his appointment as Supreme Court Judge came to an end; and the proper Commission that ought to have issued, in pursuance of the correspondence, was a Commission to him as Supreme Court Judge, only to act so long as he remained a Commissioner. That is, I submit, the reading of the letters. The principal and main point is, however—and the Court will have to determine this, I submit—had the Governor power to issue any Commission to any person, appointing him to be a permanent Judge, without express legislative sanction of some sort? or, in other words, are the terms of section 5 of the Supreme Court Act of 1882 wide enough to allow the Governor to create five Puisne Judges or twelve Puisne Judges?—because I understand that the contention of the other side will be that there is no limit to the number that may be appointed. I shall submit that the Supreme Court Act of 1882 does not enable the Governor to appoint another Judge if there are five Judges on the Bench—*i.e.*, a Chief Justice and four Puisne Judges. And if the Court comes to that conclusion, the Court may, either by *quo warranto* or *scire facias*, repeal the Commission. In order that this argument may be made perhaps more clear to the Bench, I will, with the permission of the Court, give a short sketch of the history of the Supreme Court of New Zealand, and also a sketch of the history of the appointments of Supreme Court Judges in England and America; and I then propose to deal with this question from the interpretation—so to speak—point of view of the Supreme Court Act. Of course, when this colony was a Crown colony the appointments of all officers necessary to perform the functions of government in the colony rested with the Home Government; and wherever there has been a Crown colony it has been pointed out that the position of Judges has been looked upon simply as colonial officers, removable from colony to colony; and this practice still remains in Crown colonies. It is mentioned in a note in the second volume of "Bacon's Abridgment" that the Act of Settlement was held not to apply to the colonies. The Court will find on page 387 a note, which says,—"Our distant settlements are not considered as within the compass of this statute, which is understood to be limited to the Courts of Westminster Hall, and therefore the Commissions of the King's Judges in the East Indies are still during pleasure." "The Statute of 13 George III., c. 63, and 39 and 40 George III. c. 79, under which the Courts in that country were constituted, are wholly silent as to the estate which the Judges shall take in their office, and being left as at common law, an estate at will only is granted to them." So that in New Zealand, when the first Judges were appointed, they were looked upon as officers of the Colonial Department, just the same as the Supreme Court Judges now in any of the Crown colonies—Fiji, and Western Australia until lately, and the West Indies. They might be appointed to serve in various colonies; they might be shifted from one colony to another; and their total service was counted for a pension. They are practically not Judges attached to any particular colony or place. And one might refer, as an illustration of this—if it be necessary—to the struggle to get Judges freed from the control of the Crown in Ireland. I will not take up the time of the Court by stating the history at length; but there is a passage in Froude's "English in Ireland," second volume, at page 53, where he gives a sketch of the struggle to get the Judges removed from the powers of the Executive, and to be freed from the ordinary rules which had been in force as to their appointment at pleasure; and he says the Irish Judges, like the Judges in the colonies, had hitherto held office during the Crown's pleasure. Then he goes on, at pages 53, 59, and 184 to deal further with the question—I will not take up the time of the Court in reading these extracts at length. Then, at pages 245 and 250 will be found further statements of the struggle which took place in the Irish Parliament to assimilate the tenure of the Judges in Ireland to the tenure of the Judges in England. I come now, however, to deal with what has happened in New Zealand, premising, I again repeat, that, until New Zealand had responsible government the ordinary rule applicable to Crown colonies was