

determined and ascertained for by the Legislature itself. That is my submission to the Court on the meaning of the Act of 1882; and I do not know that if I spoke for an hour I could put it any more distinctly. Looking at it, I submit the Court cannot say that the Legislature, in passing the Act of 1882, meant by section 5 to go further than this: "Yes, you may appoint as many Judges as you please, provided we have supplied funds for the offices." Now, as throwing light upon that, the next point I shall deal with is this question of contract. Is there a contract? As I understand, the other side say that there is a contract, and that this contract fixes and ascertains the salary. It is rather singular that this idea of fixing and ascertaining was not known to any of the writers on constitutional history. I do not know one of them from whom it can be inferred that fixing and ascertaining by contract between the Executive and the Judge would be fixing and ascertaining within the meaning of the Act of Settlement. Certainly Hearn, Hamilton, and May do not think so; and so I could run through the constitutional writers of England and America: they never thought that fixing and ascertaining salary by contract was fixing and ascertaining to make a Judge independent. What is the contract? I submit that all the Court can look at as evidencing the contract is the letter of the 1st March and the reply of the 5th March. The rule as to admission of prior or oral evidence as affecting a written contract is referred to in Taylor on Evidence, page 986; and also by his Honour Mr. Justice Williams in a considered judgment, where he cited a great number of authorities dealing with this at length, in a case *Colonial Bank v. Lewis* (5 N.Z.L.R., Supreme Court, 472). I submit that this principle is laid down both in Taylor and in his Honour's judgment: that in the case of a plain contract, without any ambiguous terms, the Court will not look at prior negotiations; they will not look to any oral conversations that led up to the making of the written bargain or contract. What, then, is this written bargain or contract? I again repeat that this written bargain or contract is contained, independent of the commission, in two letters—one from Sir H. Atkinson, of the 1st March, 1890, and Mr. Edwards's acceptance of that contract four days later.

*Mr. Justice Richmond*: Can the Crown make a valid contract for the payment of public money for which, at the date of the contract, there was no provision?

*Sir R. Stout*: I say No; and I am going to cite cases to show it. On that point there are four or five cases I am going to cite.

*Mr. Justice Richmond*: The objection goes further than saying no damages can be recovered: the question is whether the contract may not be *ultra vires*.

*Sir R. Stout*: I say it is, and I am going to deal with that; but that is another branch of the case.

*The Chief Justice*: You might get judgment.

*Sir R. Stout*: If provisions exist at the time you could get judgment, and execution would depend upon whether the House chose to pass a supplementary vote.

*Mr. Justice Denniston*: I do not understand that the Crown Relief Act gives validity to any contract.

*Sir R. Stout*: I am going to cite cases to show there could be no contract without a prior vote of the House; but I am now dealing with what is the meaning of the contract itself as ordinarily understood. If the contract means anything, I again repeat, you cannot import into it oral conversations with the Premier. That will be absurd, and I am surprised at such a statement being put on affidavit and in defence. The only thing that can be done is to look at the letter of the 1st of March, and find what it means. I repeat with confidence that what was offered was an appointment of Commissioner under section 20 of "The Native Land Court Act Amendment Act, 1889," with the status of a Judge of the Supreme Court, so to speak, to use a vulgarism, thrown in. Therefore the Court, in interpreting that contract, will have to say this, that as this status of a Supreme Court Judge was only given ancillary to the Commissionership under the Native Lands Act, when the Commissionership ceased the Supreme Court Judgeship also ceased, independently of what appears on the face of the Commission. I submit that is the meaning of it, and that is the meaning apparently that Parliament put upon it, if you put any weight upon what Parliament did. The Parliament only voted the salary of a Commissioner. They only allowed it at the rate of £1,375 per year to pass, and, as appears from the evidence, not until the Governor had sent down a message striking out the words "and Judge." They declined to recognise the position of Judge, so that, so far as Parliament has spoken, it has spoken definitely, even through the mouth of the Governor, who, of course, sent down the message asking that the words "and Judge" should be struck out of the supplementary estimates. I submit that the salary is allocated to the Commissionership on the face of this letter, and that there is no salary allocated to the Judge at all, and the Commission allocates no salary; because what does the commission say? It says, "together with all and singular the rights, privileges, powers, authorities, rank, and precedence whatsoever to the office and place belonging or in any wise appertaining." But if they have to say, as they will have to say, that there was no salary appertaining to a fifth Puisne Judge, then there is no salary found in the Commission.

*The Chief Justice*: There was none in my Commission; it was just the same.

*Sir R. Stout*: The reason for that is obvious. There was no need to put in any salary when the law specially fixed the salary as appertaining to the Chief Justice.

*Mr. Justice Richmond*: There is no salary mentioned in the Commission?

*Sir R. Stout*: There is no salary in the Commission, but the point I wish to make is this: that on the face of this Commission they could not contend there was any salary allocated, and there was none allocated by law, and so the words "together with all and singular the rights, powers, and privileges belonging or in anywise appertaining," cannot include salary; and if it cannot include salary, where is the salary fixed and ascertained, I ask? I say the only place where salary is mentioned is the letter of the 1st March; and this letter of the 1st March, I submit with confidence to the Court, implies that the salary is to be paid to the Commissioner *qua* Commissioner, and not as a Judge of the Supreme Court at all, because it says,