

"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." I do not say that the subsequent letter of Mr. Mitchelson's will throw light upon it, but, apparently, in his mind the Commissionership came first, and the Supreme Court Judgeship followed a long way after. That is the way, I submit, Mr. Mitchelson's letter reads. Apparently there was also written a reply to Mr. Edwards's letter raising a contrary contention, but that reply was never sent. That I cannot explain to the Court—that is, I could, but, as it is not before the Court I cannot explain it in this case. I do not see that the subsequent letters of Mr. Edwards or Mr. Mitchelson can have any bearing on the interpretation of the documents; but, at all events, Mr. Mitchelson assumed in his letter, rightly or wrongly, that Mr. Edwards was to be Commissioner first, and Supreme Court Judge only occasionally, to help. That was the assumption, and the letter of the 1st March supports it; and therefore the contract, if a contract existed, was a contract for a Commissionership, with the status of a Judge only existing so long as the Commissionership existed; and therefore, as the statement of claim shows, and as cannot be denied, as the Commissionership has been put an end to and finished with, the status of a Supreme Court Judge must also fall with it. If this Commission purports to go beyond that which ought to be provided for under section 12, this Commission goes far beyond the contract made between the parties, and, being beyond the contract made between the parties, it ought to be repealed. I again, however, submit they cannot rely upon this contract as fixing and ascertaining the salary for a Supreme Court Judge. There are no words in it that do that, and therefore the Court will have to hold that if the Commissionership has come to an end, there is to be a Supreme Court Judge without any salary. Now I come to the question which his Honour Mr. Justice Richmond, and also Mr. Justice Denniston, referred to—that is, could the Crown make a contract without first having an appropriation made by Parliament for the office. I submit it could not do so as to bind Parliament to any salary whatever, and the Parliament might be pleased to vote a shilling a year—it is not bound to any salary. There are various cases bearing on that. There is the well-known case of *Churchward v. The Queen* (L.R., 1 Queen's Bench Cases, 173.) There are expressions there by Chief Justice Cockburn, in commenting upon the case, which other Judges later think went beyond what was necessary for the decision of the case, and I notice that the Supreme Court of Victoria, for example, says that the judgment of Justice Shee puts the thing more concisely. Chief Justice Cockburn, I submit, shows this. The judgment is a very long one, but the note is this:—

"Held, That there was in the above agreement only a covenant by the Commissioners, on behalf of the Crown, that, in consideration of the contractor performing his part of the contract by having vessels always ready for the service, the Crown would pay him if Parliament provided funds; and that there was no implied covenant on the part of the Commissioners to employ the contractor; and that a petition of right, founded on the agreement, alleging that the Commissioners had refused to employ the contractor to carry the mails, and did not nor would permit him to perform the agreement, and prevented him from carrying the mails and claiming damages, could not be maintained."

*Mr. Justice Richmond*: They would not let him be employed, leaving him to go to Parliament and say, "I have done the work and am entitled to be paid."

*Sir R. Stout*: No, they would not allow him to do that. Sir Hugh Cairns practically admitted that in his argument. He said: "Your Honours will see that Sir Hugh Cairns had to go this far: that if a man did the work and then sued for the money, the Commissioners could set up that Parliament had not provided the money; and that is an answer to our breach for non-payment."

*Mr. Justice Richmond*: The whole position was that Churchward said, "You have agreed to employ me, let alone the payment, but let me do the work."

*Sir R. Stout*: Yes, that is how the thing is put. They, however, raised this question: that before the Commissioners employed any one they ought to have seen that Parliament was going to provide the funds; and they had to say that in the argument. The judgment of Chief Justice Cockburn is so long that I cannot attempt to quote it all, but I will read a short extract, commencing on page 199. "We start with this," Chief Justice Cockburn says: "that there is involved in this contract the possibility of Parliament refusing to find funds. The Commissioners do not make themselves, nor their department, nor the Crown answerable for a default in the payment of the £18,000 a year to the contractor. It is left to Parliament to find the funds, and in that is necessarily involved the possibility of Parliament, in the exercise of its absolute power, refusing so to do; and, in point of fact, we cannot shut our eyes to the fact, because I think it sufficiently appears from this record, and the Acts of Parliament referred to, that Parliament has refused to find the funds [and so I say here]. In two successive Appropriation Acts Parliament has not merely omitted to find a fund applicable to this purpose, but it has had the case of Mr. Churchward before it, and has cautiously provided for the exclusion of the satisfaction of his claim from the fund which it has appropriated for the postal service. Therefore, when we come to consider whether there is to be implied from the other terms of this contract an intention on the part of the Lords of the Admiralty to bind the Crown in the event of Parliament not providing the funds, let us see what the position of all parties concerned would be if, after Parliament had refused to find the funds to satisfy the exigency of this contract, the Lords of the Admiralty had taken upon themselves, nevertheless, to continue to employ the contractor. In the first place, the Government would have put itself in a state of antagonism to Parliament, inasmuch as it would have set the authority of Parliament at defiance. In the second place, the head of a public department would continue to employ a public contractor without the means of paying him; for when it is said that possibly in the future Parliament may find the funds, one can hardly suppose that a public Minister would be warranted in assuming such a possibility when so far experience has shown Parliament has refused to find the funds; and I must say it appears to me that to employ a public contractor without the