

means of payment, even if he were willing to be so employed, would be a course of proceeding altogether derogatory to the dignity of the Crown and to the honour of the country. In the third place, the contract certainly could not be enforced under such circumstances. I mean, enforced by the public department. Suppose that Parliament refused for the coming year to find the fund wherewith to remunerate Mr. Churchward, he, under such circumstances, would be entitled to say, 'As I cannot look to you the other contracting parties, as I am not entitled to look to the Crown, as I can only look to Parliament, and Parliament refuses to find the funds to pay me, I am not bound to go on.' I take it, if the other contracting parties then endeavoured to enforce the contract, equity would relieve the contractor from the obligation to obey it; and if an action were brought at law I doubt very much indeed whether a Court of law would not say that the providing of the fund by Parliament was a condition precedent to the fulfilment or necessity of fulfilling the contract. At all events, Sir Hugh Cairns himself admitted, if an action at law were brought, it is impossible to suppose that any jury would give the public department at whose instance such an action was brought, anything in the shape of damages beyond the smallest coin."

Then there is a passage in the following page which the Supreme Court of Victoria considered extra-judicial, and said they preferred the judgment of Mr. Justice Shee. That is as follows:—

"I am very far indeed from saying, if by express terms the Lords of the Admiralty had engaged, whether Parliament found the funds or not, to employ Mr. Churchward to perform all these services, that then, whatever might be the inconvenience that might arise, such a contract would not have been binding. And I am very far from saying that in such a case a petition of right would not lie, where a public officer or the head of a department makes such a contract on the part of the Crown, and then afterwards breaks it. We are not called upon to decide that in the present case, and I should be sorry to think that we should be driven to come to an opposite conclusion."

However, as Sir William Stawell said, this is a matter which need not be now considered, because it did not give an affirmative answer to the question raised. Then, Mr. Justice Mellor gave a judgment, and Mr. Justice Shee gave a long judgment, which means, as I have already said, that the Crown is not bound, unless there were funds provided by Parliament. There are a few words, commencing on page 209, which I may cite: "It was beyond the power of the Commissioners, as the suppliant must have known, to contract on behalf of the Crown on any terms but those by which the covenant is restricted and fenced."

Now, the way it was restricted and fenced was, that it was subject to a vote of Parliament. "I am of opinion," said the learned Judge, "that the providing of funds by Parliament is a condition precedent to its attaching. The most important department of the public service, however negligently or inefficiently conducted, would be above control of Parliament were it otherwise." I submit that that case applies with great strength here, and that if you have allowed Mr. Edwards—it does not matter whether it is a Judge or a contractor—to do work without any funds being provided by Parliament, or after Parliament has refused to provide the funds, then, as Chief Justice Cockburn says, you have taken a course of procedure which is derogatory to the dignity of the Crown and to the honour of the country. The next case to which I will refer your Honours is the well-known Victorian case of *Alcock v. Fergie* (4 Wyatt Webb and A'Beckett, 285). This was a case which occurred during the deadlock arising, I think, out of the Darling Grant controversy, during which the Upper House had thrown out the annual Appropriation Bill. The case arose in this way—but perhaps I had better read the head-note, for that will explain the position. "*Alcock v. Fergie*: Plaintiff sued defendant for breach of an agreement to give time to the plaintiff for payment of a debt, in consideration of the assignment by plaintiff to defendant of a judgment recovered against the Crown for a large amount. It appeared upon the pleadings that the judgment went by default on a petition under the Act No. 241, upon a contract for the supply of furniture to the Board of Land and Works; that the session of Parliament in which the Legislative Assembly voted money to provide for such contract ended without an Appropriation Act; and that such contract was made after the close of such session."

*Mr. Justice Denniston*: Does the Crown Redress Act validate a contract, or only provide for procedure?

*Sir R. Stout*: It only provides for procedure; but nothing turns on that. There seems to have been a full Bench. Sir William Stawell was on the bench, and there were others, but I do not know who the other Judges were, except Judge Barry. I know it was a case which created great excitement in Victoria, because the question raised was whether the Government, having no Appropriation Act, could make contracts and consent to judgment. At any rate two or three of the Judges were on the bench, as I gather from remarks made during the course of the argument. Sir William Stawell, in giving judgment, referred to the case of *Churchward v. The Queen*, and he says at page 310,—

"As regards the first ground, Parliament may by legislative enactment, either in express terms or by necessary implication, authorise the Government to enter into contracts. Statutes directing the execution of certain works, and appointing a certain department or person to carry them out, afford instances of the former. Statutes appropriating part of the consolidated revenue for certain services, and thus implicitly empowering contracts to be made for the performance of those services, afford instances of the latter kind. But no authority was cited to show, and we are not aware of any decision in Courts of law which determines, that, in the absence of such enabling-power, the Government can enter into contracts to bind the State. Cases of unforeseen exigencies may not unfrequently be met by the Government acting on the faith of Parliament confirming their acts; but until this confirmation has been given, although it may scarcely ever be withheld, the act done by the Government is not at law obligatory on the State. It is clear that the adoption of legal proceedings merely to recover a debt will neither confer a power nor render valid an act; the power must have previously existed or the act must have been