

duties as a Judge of the Supreme Court, and that the Ministry would pay to the defendant his full salary of £1,500 a year. Well, we know that Ministers of Justice have done foolish things.

*Mr. Harper* : The right thing was done.

*Sir R. Stout* : Well, my learned friend has not had much parliamentary experience, or he would not talk about doing the right thing. At any rate, this seemed to be doing what Lord Chief Justice Cockburn condemned when he spoke of the possibility of making the executive contrary to the legislative authority, instead of all working together harmoniously in the interests of the State. That is the view which Chief Justice Cockburn would no doubt have taken of this matter, whatever may be the views of Mr. Harper. However, that is what happened. It was as if, two persons having been engaged in a tussle, one, finding himself beaten, retired shouting defiance at the other side. That seems to have been the action of the Minister of Justice. He saw that he was defeated, but he still shouted defiance: "I am licked, but I shall fight in another way. I shall do as I please notwithstanding my defeat." That would appear to have been the action of the Minister of Justice. At any rate, Parliament did not pass the vote as proposed. Apparently it did pass a vote for £1,375 for Commissioner, but gave the Judge nothing; and the Government, having got the £1,375, paid £125 out of "Unauthorised" to make up the salary of a Judge. Now, the defendant says in his affidavits, "I have got £125 paid to me every month, and I am a Judge." But what has that got to do with it. He did get his £125 a month, but that does not touch the question. No doubt he did not care so long as he got his money; but, so far as Parliament is concerned, if it recognised him as Commissioner it did not recognise him as a Judge. Where, then, is the contract? I submit there is no contract. There is no contract even on the letters; and *Churchward v. The Queen*, and *Alcock and Fergie*, and other cases, all go to show that there could be no valid contract unless Parliament had authorised it; and Parliament has never authorised any contract for any salary to be paid to Mr. Edwards. That is all I have to say upon the question of a contract. As to the Crown Suits Act, as I have said, it only provides for procedure. It has been held by the Court of Appeal that the Crown Suits Act can never make a contract. The point was raised before Mr. Justice Williams.

*Mr. Justice Williams* : That was the ferret case.

*Sir R. Stout* : Yes: *Lowe v. The Queen*. I do not know whether it has been reported, but during the argument your Honour said that the Act was nothing more than a procedure statute; it could not make a contract. There the man had gone to large expense for ferrets for the Government, and had letters authorising the expenditure; but the Crown set up that there was no authority from Parliament to make a contract. The department had no authority.

*Mr. Justice Williams* : They could not trace a contract up to a Minister of the Crown, I think. There was a missing link there, and that is why the case broke down. Some subordinate head made the contract, and that was not binding upon the Government.

*Sir R. Stout* : The officer could not bind the Crown.

*Mr. Justice Williams* : They could not connect the subordinate with the Minister.

*Sir R. Stout* : There was no proof that the Minister had given authority to the Under-Secretary or whoever it was who made the contract, although the contract purported to be made in writing with the Queen.

*Mr. Justice Denniston* : In this case the difficulty is that there is no express authority for a salary.

*The Chief Justice* : The point, in my estimation, is this: Parliament may give authority to make a contract, and undoubtedly Parliament may commit a breach of faith by not voting the money to fulfil it. The question is not settled by saying, "Oh, well! Parliament may not vote the money;" that might be, in the estimation of all, a breach of faith: but it is whether the words of this Crown Redress Act gave a general authority.

*Sir R. Stout* : But what is the value of it, your Honour?

*The Chief Justice* : That is another matter.

*Sir R. Stout* : Judge Stawell says the Court of Victoria has no right to sit and consider the honour of Parliament.

*The Chief Justice* : Are the words taken from the original Act?

*Sir R. Stout* : I have not looked up the Victorian Act for a long time.

*The Chief Justice* : I forget what the words of the Act were. I do not think the Act was in force at the time.

*Sir R. Stout* : They had a Crown Suits Act in force then in Victoria, because it was decided that there could be judgment by default. Apparently, under the Crown Suits Act of Victoria, if once a man got a judgment he had a right to go and get a certificate, and get his money.

*Mr. Justice Denniston* : The point was, did this Act make a contract what was not a contract before?

*Sir R. Stout* : I submit that it does not. I also point out to your Honour, what would proceeding under the Crown Suits Act amount to? Supposing they were to say, "There is no money; there is no power of getting it except Parliament votes it." There can be no mandamus against the Treasurer or the Governor. There was an attempt to get a mandamus against the Governor. I appeared in the case.

*Mr. Justice Richmond* : It must have been in some democratic place.

*Sir R. Stout* : Yes, your Honour, it was in Otago.

*Mr. Justice Denniston* : You say the salary is not fixed because the only legal means of getting paid are not available.

*Sir R. Stout* : Yes, your Honour; and I go further and say that there was no attempt to fix the salary. I also submit that it was held that there could be no mandamus against the Colonial Treasurer. This happened in Christchurch in 1878, before Mr. Justice Johnston and Mr. Justice Williams.

*The Chief Justice* : Not absolutely, I think.