Sir R. Stout: Yes, your Honour; I think so.

Mr. Justice Williams: I think there was some discretion left, or something to be done.

Sir R. Stout: Yes, there was to be a warrant from the Governor. Until that comes there can be nothing done. How was this money to be got? First I say there was no money voted, and under the Crown Redress Act there could not be a judgment got at all; but, even if there was a judgment got, the person was no further forward.

Mr. Justice Denniston: You say he is still at the mercy of Parliament?

Sir R. Stout: I think there was a case in which there was a judgment, and still Parliament would not vote the money. I also understand that a case came before Mr. Justice Richmond, in Marlborough, in which the Crown Lands Commissioner made a contract for the surrender of a lease, and it was held not to be binding on the Crown. I therefore submit that there was no contract at all; I submit there could be no contract without the express authority of Parliament. With regard to the point that may be raised that the other Judges were not properly appointed, I have two replies to this. I submit several cases dealing with this matter: The Queen *v.* The Councillors of Derby (7 Ad. and Ellis's Reports, 419); The Queen *v.* The Mayor of Winchester (215 of the same volume); and these two are referred to in the argument in The Queen *v.* Grimshaw (10 Queen's Bench, 754). Then there is the decision of Mr. Justice Williams, showing the question of estoppel *In re* the Bruce Milling Company—I do not think it is reported—where it was held that the appointment of a liquidator by the Supreme Court Judge was improper; but, as it had been recognised by a District Court Judge, it was practically an estoppel, and, as he had been mentioned in the orders as liquidator, that was held sufficient to make the appointment good. That, coupled with the fact that there is this proviso in section 5, makes all appointments prior to 1882 absolutely valid, especially as they were acting as Judges *de facto*, and more especially as the Queen had recognised them as Judges of the Supreme Court, under the public seal, in the Commission I have already referred to.

I do not know if it is necessary to trouble the Court with all this mass of affidavits, because really it seems to me that they really do not touch the point at all. Why they are set out I do not know. The points may, so to speak, resolve themselves into two: First, if there was a contract, was it not for a Judge for a temporary purpose—to last as long as the Commissioner acted? If so, then I submit that the Commission ought to be vacated. Secondly, whether this be so or not, was there any power to appoint a Judge under the Act of 1882? I submit that there was no power to appoint a Judge under the Act of 1882, and that the consensus of decisions on construction of the statutes that I have referred to bears this out. I need not submit to the Court that this is a most important case as far as affecting the independence of the Supreme Court Bench is concerned, because if it is held hereafter that an Executive is to have the power to multiply Judges of the Supreme Court without any provision being made for their salaries, and that those Judges so appointed have to depend on an annual vote of Parliament, or, as it turned out in the session of 1890, no vote of Parliament, then the independence of the Supreme Court Bench is gone—there is no such thing in existence. It is all very well for the other side to say that what had to be guarded against in the old days was the interference of the Crown with the Supreme Court Bench. That was so. But I submit that in these latter days there is—and the Americans have seen it, and have wisely provided for it—just as much need, perhaps more need, of having the Judicial Bench looked upon as an independent part of the State authority as there is for having the Parliament independent of the Executive. It is, in fact, I submit, even more important now. The constitutional law that has grown up now has so limited and controlled the action of the Crown that the action of the Crown is a mere myth—it has not been much in later years. In order to make the Supreme Court Bench independent—to be removed above party struggles and party feeling—it must have the salaries of the Judges made independent of parliamentary vote. I submit that it is a most unfortunate thing that this case should have occurred, and I cannot—and I would not if I could—refer to any political aspect this case may bear; but I think it is exceedingly to be regretted that a barrister of such standing should have accepted the position of Judge, knowing that no salary was appropriated. It is, in fact, the profession that should stand up in defence of the Bench, and it seems to me in this respect the Bench was "wounded in the house of its friends." I am not asking it—it would be a wrong thing for me to do, and I know the Court would not go beyond what is the law in this matter—but I do press upon the Court this: that it ought to do what Lord Chief Justice Cockburn said should be done—if the section is to be strained, it ought to be strained to maintain the dignity and independence of this Court. If, however, it be held that the defendant is right, and that he still remains a Judge of the Supreme Court Bench, then the dignity and honour and independence of the Supreme Court Bench in New Zealand have vanished.

Mr. Vogel: May it please your Honours, I apprehend there is very little left for me after the argument of my learned friend, Sir Robert Stout. This case is simply one of interpretation, but it has assumed the magnitude it has because of the important law which is attempted to be interpreted. My learned friend has given perhaps almost every possible case there is of importance in the way of interpreting statutes. There is one, however, which I would cite as, I think, being applicable to this case. It is a case contained in the Law Reports, Vol. ii., Appeal cases. I will cite a very short passage from it. It is at page 762. It is the case of the River Wear Commissioners *v.* Adamson. This was a case which arose out of damage done to a pier. A ship had been wrecked and the sailors and master had abandoned her, and she was driven against a pier, doing certain damage. This was an action brought by the River Wear Commissioners against the owners of this vessel for compensation for damage done, and they founded their case upon 10 Vict., cap. 27. This section very explicitly enacted that "The owner of every vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith." The question arose as to the interpretation of that section. It was held finally that the owner of this wreck was not liable, and in giving judgment Lord O'Hagan used these words, which,