

concerned in his acceptance of the office, every step was taken by him for the purpose of having not the status only, but the position of a Supreme Court Judge assured to him, and the salary ascertained and established. I will refer your Honours briefly to what took place, before we come to the abstract question—that is, the abstract question raised by the Commission which is set up in defence, and also the letter which accompanied it, and the letter of acceptance. The defendant, in his statement of defence, says—to put it shortly—that some time before the offer came to him from the Premier he was in correspondence with, as well as seeing, various officers connected with the State with reference to his appointment as Commissioner in the first instance; and Mr. Edwards tells us what followed in paragraph 14, after having seen the Minister of Native Affairs, and shortly after his interview with the Native Under Secretary,—

*Mr. Harper* read the following paragraphs:—

“14. Shortly after this interview the defendant again saw the said Under-Secretary, and intimated to him that he, the defendant, had determined to adhere to his first impression, and that he would not accept the office unless he received as Commissioner the same salary and allowances as those of a Judge of the Supreme Court, and unless he was also at liberty to carry on the practice of his profession, so far as it was possible to do so.

“The defendant heard nothing further about the matter for some time, and he considered that the negotiation was at an end.

“15. On the 15th October, 1889, however, the defendant received a message from the Hon. the Native Minister requesting the defendant to call upon him at the Government Buildings.

“16. The defendant did so, and the Hon. the Native Minister formally offered the defendant the appointment of Commissioner, at a salary of £1,200 a year, and £1 1s. per day travelling-allowance, with the liberty of private practice. The Hon. the Native Minister also informed the defendant that it was estimated that the work would last from five to ten years.

“17. The defendant then informed the Hon. the Native Minister that since the said Under-Secretary had spoken to the defendant upon the matter a change had taken place in his business arrangements, and that it was hardly likely that he could accept the appointment, and that if he did so he did not think that he could accept less than he had already stated—namely, the salary and allowances of a Judge of the Supreme Court, with liberty of private practice. The defendant also informed the Hon. the Native Minister that his books had been balanced, and his income from his practice had been found to be as previously stated.

“18. After some consideration the defendant determined to accept the appointment, provided he received the salary and allowances of a Judge of the Supreme Court, and he had a guarantee of a three years' engagement, but not otherwise; and he intimated this determination to the Hon. the Native Minister.”

Then the defendant heard nothing of the matter for some time; and he considered the negotiations were at an end. On the 15th October the defendant received a message from the Native Minister requesting him to call upon him at the Government Buildings; and the Native Minister formally offered him the appointment of Commissioner, at a salary of £1,200, and one guinea per day travelling-allowance, with liberty of private practice. But defendant then informed the Native Minister that, since the Under-Secretary had spoken to the defendant on the matter, a change had taken place in his private arrangements, and it was hardly likely he would accept the appointment. In the meantime the defendant had an opportunity of reconsidering the matter, and then he wrote the letter of the 6th November, 1889, in the concluding paragraph of which he refers generally to the necessity supposed to exist amongst the people and the profession that an additional Judge would shortly require to be appointed. That letter, so far back as the 6th November, is important, because it shows what was in Mr. Edwards's mind at the time, clearly. Then we have got the receipt to that letter from Mr. Mitchelson, in which he says that the question which was raised was one of so much importance that it would be referred to the Cabinet. Then we come to this statement—it is an oral statement, but Mr. Justice Edwards has sworn to it as being correct, and it is not denied. Mr. Harper then referred to paragraphs 23 and 24 of the defence, as follows:—

“23. After the lapse of some time, and on or about the 20th day of February, 1890, the Hon. Sir Harry Atkinson, then Premier of the Colony of New Zealand, sent a message to the defendant requesting the defendant to call at the Premier's office, and on the defendant doing so the said Premier then offered to the defendant the offices of a Judge of the Supreme Court of New Zealand and of Commissioner under the said statute, at the same salary and allowances as the other Puisne Judges of the said Court, and the defendant agreed to accept the said offices upon those terms.

“24. On or about the 1st day of March, 1890, the defendant received from the said Premier the letter set out in the 5th paragraph of the statement of claim in this action; and on the 5th day of March, 1890, the defendant wrote and despatched to the said Premier the letter set out in the 6th paragraph of the statement of claim in this action.”

*Mr. Harper* then resumed:—

I submit that up to that point there is no doubt Mr. Edwards was unwilling to accept the position of Commissioner only, which was an appointment to be held only during pleasure. The work might last five years or six months, or the Act might be repealed. He made it a condition precedent to his accepting the offer that he should also be appointed a Judge of the Supreme Court. Now we come back to the letter from the Premier—and my learned friend Sir Robert Stout has referred to that over and over again as showing what was in the mind of the Government of the day. I submit that even if we rested our case only upon that letter—taking that letter alone—that it shows clearly on the face of it that the defendant was to be a Judge of the Supreme Court—not a temporary or additional Judge, but a Judge of the Supreme Court. Your Honours will see the wording. Of course it can be twisted to read either way, but I was surprised at my learned friend taking the view of the case he did. I am sorry to take up time in referring to it, but I am bound