

to do so, as he has made a point of it, and, I suppose, attaches some importance to it. In this letter he says,—

“SIR,—

“Wellington, 1st March, 1890.

“In reference to the conversation I had with you on the subject of the appointment of a Commissioner under section 20 of ‘The Native Land Court Acts Amendment Act, 1889,’ I have now the honour to inform you that His Excellency the Governor has been pleased to approve of your appointment to that office. It has appeared to the Government, and such appears to be the general feeling, that, for an office of such importance, involving such large interests, the Commissioner should have the status of a Judge of the Supreme Court, and therefore you will be appointed to that office also.

“As you are aware, the demands on the time of the present Judges of the Supreme Court cause inconvenient but unavoidable delay in the despatch of business, and the leave of absence granted to Mr. Justice Richmond will aggravate the evil unless some provision is now made to meet it. The Government is averse to the appointment of a temporary Judge if it can be avoided, and they hope that the arrangement, by which you will afford occasional assistance in the Supreme Court work, will temporarily meet the requirements.

“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 have, &c.,

“W. B. Edwards, Esq., Wellington.”

“H. A. ATKINSON.

Now, my learned friend says the words “the same as” imply that “you are to have the status, precedence, and authority of a Judge of the Supreme Court, but you are only a Commissioner with the same salary as the other Puisne Judges.” I submit confidently that your Honours will not, in a case of this importance, decide, or attempt to decide, the case upon such a narrow straining of the construction of these letters, and that your Honours will pass on to the main issue which you have been brought here to try. Since that time everything was done as far as Mr. Edwards was concerned, as far as the Governor’s Commission was concerned, as far as the right to hold the office of Judge under that Commission was concerned—everything was done by him that should have been done to meet all the requirements of the law and constitutional practice. If I can establish this to your Honours’ satisfaction I shall submit that it matters little that Mr. Edwards has been subjected to be kicked, as I may say, from one side to the other, simply for political or party purposes, and that no salary has been given to him by Parliament. I am prepared to rest my case upon this ground—it may seem a high ground to take up, but I hope I shall be prepared to support it to your Honours’ satisfaction. I am prepared to rest my case upon this—looking at the correspondence and what has passed—taking this point first: that this appointment was offered to Mr. Edwards as a Judge of the Supreme Court, and it was accepted by him as such; that his Commission was issued to him as such; and that all the steps were taken, as far as he was concerned, to obtain the ascertainment and establishment of his salary. And I would here, in passing, remind your Honours that this is a case in which it is sought nominally by the Queen to cancel or upset her own grant by these proceedings. As I said at starting, the authorities on the subject are very meagre. There are mere dicta, so to speak, in the books of procedure—there are mere dicta which show that the King or Queen can repeal his or her grant, if the King or Queen had no power at law to issue it, or if they have been deceived in the grant of it, or if it were granted on a false suggestion; and, further, when it has been granted on a false suggestion in reference to the person who claims the office or right under it. In regard to the last ground, there cannot be suggestion in this case as to that. We do not want to take advantage of any technical procedure if we could, but we desire to have the thing out, and have done with it. I wish to point out to your Honours that the suggestion for the issue of this Commission to Mr. Edwards as a Judge of this Court was a suggestion through the proper channels. There was no—to use the word colloquially—deceit in any way. The Queen or Governor were not deceived into granting it, and up to that point it was granted in a perfectly *bona fide* manner, and as far as Mr. Edwards was concerned he took it in that spirit.

*Mr. Justice Denniston*: Is there not a great difference between a prerogative grant and a grant which is placed upon statute?

*Mr. Harper*: I submit not.

*Mr. Justice Denniston*: Surely it must make all the difference.

*Mr. Harper*: No, I submit not—only this, the prerogative grant is embodied in the statute; we have nothing really to do with the prerogative apart from the statutes. It would amount to this, with regard to the prerogative: The prerogative did exist—as I shall show presently—in the Queen, until it was altered by the statute appointing the Judges. Up to the time of the Elections Petitions Act—that was the first Act in England where it was stated by statute that the Queen should appoint the Judges—up to that time the appointment was by virtue of the King’s or Queen’s prerogative. See 31 and 32 Vict. It was for the purpose of having three additional Judges to hear election petitions, and remove those petitions from Parliamentary Committees. Up to that time the Judges did not have their appointments in England under any statute. They took it direct from the King or Queen, as the case might be; and in one statute, which I shall refer your Honours to, that is very plainly put. It is a statute of the last year of the reign of George IV. and the first of William IV. It is a statute relating to the appointment of three additional Judges, and the words of the statute are, “Whenever it shall please your Majesty to appoint three additional Judges, then the salaries of the Judges shall be a charge upon the Consolidated Fund.” The next statute in order was the Elections Petitions Act, and then we come down to the Judicature Acts, which fixed the number of Judges to be appointed. It was to be done by the Queen, but the prerogative is, so to speak, embodied in that statute. Now, your Honours, to resume. I submit to the Court that everything was done that could be done as far as Mr. Edwards was concerned, and the issue of this Commission to him was right and proper as far as it went,