I did not say could not possibly be so taken, for we are not taking technical objections to the mode of procedure. But I submit to the Court that it is perfectly plain that if the Court goes so far it will have to go further than merely to say that Mr. Justice Edwards has no right to usurp the office which he purports to usurp; they will have to go further, and cancel these letters patent as being a record which can be got at by the Court. Otherwise Mr. Justice Edwards could go on, I submit, attempting to hold his position under an unrepealed Commission so long as it remains unrepealed. I have already referred the Court to the latter part of the judgment, where Chief Justice Stawell states that there may be an office without payment, and that there need not necessarily be payment attached to it. Of course, that brings us to this position in this case—one we have had to face all through—namely, that we cannot control, that we can say anything at all as to what Parliament has done or ought to do or would do in this case. We can say nothing about that; we cannot import it into the case at all; but we do rely upon this—and I once again refer the Court to the great distinction that has been drawn by Mr. Dicey in his book, between what may be called the law of the Constitution and the function of the Constitution—and we do rely upon this: that the Act itself under which Mr. Edwards received his appointment of necessity put the initiative upon the Crown to make the appointment. I omitted to support my statement before the adjournment, and I should like to support it, even at the risk of repetition. It has only come into my mind since, but I had it on my notes, and I wish to say that the Court will see that when the Constitution Act was passed in 1852, and between that time and up to the end of 1858, when the first Supreme Court Judges Act was passed, up to that time the so-called constitutional law, which my learned friend stamps as absolute constitutional law, was not observed in any way in New Zealand, with the exception of as to the fixing of salaries. The Judges up to that time still held their offices at the pleasure of the Crown, and the number was practically unlimited. It cannot be said for a moment that under the Constitution Act the number was limited by the Crown itself in assenting to the Constitution Act. When the Constitution Act was given to New Zealand it cannot be said for a moment that it was limited in principle to two Judges, for whom salary was provided under the Act, because we find still the old ordinance was in existence—the ordinance of 1844, which gave the Crown unlimited power after the Constitution Act, the same that it had before, in appointing any number of Judges. I think it is important also to add this, looking at the Act of 1882, where this same unlimited power of appointment is repeated in the very same words: Can it be said that the Governor, in appointing Mr. Edwards under that Act, violated any constitutional principle. That he was appointed without first consulting Parliament cannot do away with the validity of the appointment under these general words. I am not going to address the Court in particular with reference to the question of the construction of this statute by the light of other statutes. I am going to leave that to my learned friends by arrangement. Neither do I intend to address the Court with reference to the case of Cox *v.* Hakes, and the other cases connected with the matter of contract, which still remains to be discussed in the case. I have a little more to add to the Court in connection with the general constitutional aspect of the whole subject, and I wish to impress that upon the Court before closing this part of the argument, subject to what my learned friends may say—I wish to impress upon the Court again, as at starting, that this is a most singular case. It is of greater magnitude in one sense of the word than even the case quoted in the course of the argument, which was a case where there was an attempt to give a further right of appeal, which was not successful under the Habeas Corpus Act, and in that case Lord Halsbury starts by stating that it is one of the most important cases that ever came before the Court; and in this case, although the questions may not be difficult either in themselves or in the law that is brought to bear upon them, still, the object of the case which is before the Court is, I submit, one that the Court will take into the very gravest consideration before it will say it is possible to import into a statute such as the Court has before it what at most may be termed a doubtful question as to whether it is the law of the Constitution or a convention of the Constitution. It is admitted by the other side that it is necessary to read something into that statute before the Court can say that this appointment of Mr. Edwards was invalid and not according to law. It is necessary for the Court to do so; and I once more submit, with some confidence, that the Court will see that this so-called great principle has never been accepted in any way but by actually putting it into and introducing it into all the statutes which apply to the appointment of Judges. It has never been left to be implied, never left as a matter of inference, and never left to these numerous canons of construction to be brought to bear upon any statute which may come before the Court. The Legislature at Home has been careful, although the process has extended over many years, step by step, to secure the independence of the the Judges as well as their salaries, and we see how far they have gone. They have gone a step further in America, and in Victoria they have gone as far as in England; but our Act does not go so far, and it may be for a purpose that it does not go as far, especially when it contains side by side with this unlimited power of appointment also an unlimited power for the appointment of temporary Judges. I may say, in answer to what my learned friend said yesterday, that the Governor might go so far as to pack the Bench if he chose to do so; but under the Act he may, if he chose to appoint half a dozen temporary Judges, and to allot to them salaries during his pleasure, there is nothing to prevent him doing so under the 12th section. It would probably be very unconstitutional, but still, strictly speaking, it could be done, and when we are arguing in this way we may as well argue down to the bed-rock; and there is nothing to prevent him—he has power so to appoint temporary Judges.

Sir R. Stout: Only during pleasure.

Mr. Harper: Only during pleasure. That is all the more serious, for then the independence of the Bench would be utterly gone, for all the constitutional safeguards would be taken away. If we are to argue the matter in that way it will go to that length, and I am perfectly correct in pointing that out to the Court. I submit to the Court generally, with regard to the Act, that it does not