

attempt in any way to tie down the Legislature or the Governor acting through the Act to the appointment of any number of Judges, and the fixing of their salaries as a condition precedent to their being appointed. My learned friend stated to the Court yesterday—it was rather in the way of peroration that he put it—that the dignity of the Bench had suffered through what had been done. I am not going to cavil at what my learned friend says. We all wish to see the dignity and independence of the Bench supported as far as possible; but I think, to put it colloquially, the boot is on the other leg, and say that, as we read the law, the dignity of the Bench has been upheld as far as possible by the constitutional appointment in the first instance of Mr. Justice Edwards, an appointment which was perfectly proper. All the surrounding circumstances showed that it was proper in every way—that there was reason for it, and that Mr. Justice Edwards accepted it on condition that he got his salary, and that everything was done so far as it could be done. Whatever my learned friend may say, Mr. Justice Edwards was appointed by the Governor, and we may presume that the Governor was acting on the advice of his Responsible Advisers, as well as on the advice of the Crown Law Officers, at that time. Therefore I do not think it lies in my friend's mouth at all to attempt, in a serious case of this sort, where nothing can be said against my client with reference to the appointment so far as his appointment *per se* is concerned, to say that he himself brought about any question relating to the dignity of the Bench or of his position thereon.

*Mr. Chapman:* May it please your Honours, I propose to say a few words in the first place about the argument of my learned friend on the construction that should be put on the Governor's warrant to Mr. Justice Edwards. Sir Robert Stout said that his Commission as a Judge was to be taken as auxiliary to his Commission as Commissioner—that the two must be read together, and that the Commission of the Judge was to be read as simply giving the status of Judge with its emoluments and dignity, and that the two fell with the latter appointment; and in order to enforce that argument he made use of letters which were sent with the Commission. The letter which Sir Robert Stout relied upon was this:—

“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.”

That is the letter of the 1st March, 1890, on page 2 of the case; and that, it was submitted, shows that it was not intended to appoint Mr. Justice Edwards as a Judge of this Court, but that it was intended to appoint him as Commissioner with—whatever this means—the status of a Judge of the Supreme Court. Now, had that letter been intended to do that—had that been the intention of the Government—it would, reading that letter with prior correspondence, have been actually a fraud upon Mr. Justice Edwards to have put the matter in that way, when it is manifest from the previous conversation, and from the correspondence, that Mr. Edwards actually refused any such appointment as that. He refused the appointment of a Commissioner and Judge when the appointment was proposed to last only so long as his office of Commissioner should last. When it was proposed that his position as Judge should last only so long as his position as Commissioner that was refused. That is manifest from the correspondence. My friend has read the letter of the 1st March; but why did he not also read the letter of the 6th March.

“I have the honour to transmit to you the accompanying Commission, under the hand of His Excellency the Governor and the seal of the colony, appointing you to be a Judge of the Supreme Court of New Zealand.

“I also enclose a Commission assigning you to hold the office of a Judge in bankruptcy.”

Now, if he was to have the office of Commissioner with the status of a Judge of the Supreme Court—whatever that may mean—why should he be appointed a Judge in Bankruptcy? because that gave him really nothing additional, and that appointment could only be made on the assumption that he was to exercise his function of a Judge—that he was, in fact, to be a Judge. The conversation with the Premier is set out on page 6 of the case—“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 on those terms”—must be also considered by the Court. If the Minister had only sent Mr. Edwards a Commission as Judge which was only to last while the office of Commissioner lasted, then that would have been departing from the agreement—the honourable agreement—which was made between himself and the proposed Judge. But there is a very excellent reason, I submit to your Honours, why your Honours should not adopt that sort of construction. Sir Robert Stout has attempted to read into these Commissions—he has attempted to read into both Commissions the correspondence which took place with the Minister. I submit that cannot possibly be done. That amounts to this: It is controlling an instrument of high solemnity by means of an instrument of low solemnity; and that cannot be done. Anything in writing cannot be controlled by mere words, by mere parole. If there is a deed under seal, that cannot be controlled even by writing, and, *a fortiori*, an instrument of such high authority as letters patent from the Crown cannot possibly be controlled by a letter from a Minister, or by a letter from any person, however high in office—not even by a letter of the Governor himself. I apprehend that that principle is unassailable. Of course, as a matter of fact, looking at the Commission alone, the whole of that argument disappears. Looking at the Commission it is found not simply to give the status of a Judge, but to give the office of a Judge.