

indication. Who can tell from this, even knowing that before the introduction of the Act there were a Chief Justice and two Puisne Judges—who can tell what salary the Judges were to have, and how many Judges there were to be? If we take it that the number of Judges was to remain the same, we are still unable to tell what were their respective salaries. If we assume there was to be an addition to their number, we are unable to tell how many were to be added or what their salaries were to be.

*Mr. Justice Williams*: Do you contend this: There was a fixed amount to be divided. You contend that there was power to appoint as many Judges as the Governor chose. Will you contend that those appointed afterwards would have still to share that sum?

*Mr. Chapman*: No.

*Mr. Justice Richmond*: Do you contend that, supposing all the Judges' offices became vacant, if the Governor thought fit, and if he could find people to accept, he might appoint sixty-two Judges at £100 a year?

*Mr. Chapman*: There is nothing in the Act to prevent it, your Honour, if circumstances made sixty-three Judges proper.

*Mr. Justice Denniston*: He would never be able to find sixty-two lawyers to accept the position.

*Mr. Chapman*: He might find sixty-two persons who had been called to the bar for seven years.

*Mr. Justice Richmond*: Are the unemployed so numerous?

*Mr. Chapman*: Your Honours must see that we have three unknown quantities to determine—namely, the salary of the Chief Justice, the number of Puisne Judges, and the salary of each—and we have only one equation to determine them; that is what is known in mathematics as an indeterminate equation; and this Act must have remained subject to an indeterminate equation.

*The Chief Justice*: Your contention leads to this: that one Judge might be appointed to whom the Governor might allot £6,200 as salary, and there would be no power to prevent that.

*Mr. Chapman*: I do not see that my argument leads to that, with all respect to your Honour.

*Mr. Justice Williams*: If the Governor had the original power to appoint the Judges, he could divide the amount as he chose.

*Mr. Chapman*: It appears to me that is the construction of the Act, though it is not necessary for my case to say so.

*The Chief Justice*: This was the case till the Act of 1873.

*Mr. Chapman*: From 1862 to 1873. In 1862 it was absolutely indeterminate. The Act of 1873 first divides it up. That appoints the annual salary of the Chief Justice at £1,700, and the annual salary of the four Puisne Judges at £1,500 each. There it is divided, but up to that time I submit that the constitutional principle my learned friend is contending for was in abeyance.

*Mr. Justice Denniston*: Might not the equation be determined by the Legislature going outside the Act, and finding out not only the contract, but the equity and agreement, which each Judge held? That would determine the equation.

*Mr. Chapman*: That is my contention. I do not say anything illogical. I only say it proves that the contention of my learned friend is invalid in New Zealand, at least—viz., that there is no validity in the appointment of a Judge unless his salary is ascertained and established by Act.

*Sir R. Stout*: I never said so.

*Mr. Chapman*: My learned friend Mr. Vogel said it; and I understood him to be adopting the previous argument of my learned friend. But I say, looking at the Judge's contract with the Crown, whatever it was—it might have been a verbal conversation with the Minister, but some arrangement there was between the Judge and the Crown which absolutely ascertained the amount that was to be paid. And I submit that from 1862 to 1873 no Judge of the Supreme Court—supposing he were put to enforce his remedy, whatever it might be, against the Crown for his salary—could have informed the Court what his salary was without reference to his contract. That is my argument—that it was not ascertained by any Act of Parliament, it was ascertained by his contract; and I submit that was perfectly legal. I have no doubt my learned friend Sir R. Stout would say that there was no Judge on the bench who was validly appointed so long as the Civil List Act was in force—

*Sir R. Stout*: Nothing so absurd.

*Mr. Chapman*: Because the amount of his salary was not ascertained nor established by Act we say that the amount was ascertained by the Judge's contract, and that this is sufficient. Then, again, I wish also to insist on this as showing that my learned friend's constitutional principle has not the force of law in New Zealand, however valuable it may be and however wrong it may be for a Minister to ignore it. There are many things which it is wrong for a Minister to ignore, but the only constitutional remedy is to turn him out of office. I rely on this as showing that the constitutional principle invoked by my learned friend is not in force in New Zealand; that Ministers, without any instruction from Parliament or any other source, appointed the Judges under these Acts before actually they had received the Queen's assent. I say that shows that the constitutional practice invoked by my honourable friend is not in force, and that the present appointment stands on exactly the same footing as those. I should be ready always to contend in the very strongest manner that all these appointments were not only valid, but unexceptionable; but I rely on the usage of the colony in these appointments—as showing what the constitutional usage of the colony is, as showing that the constitutional usage of the colony is not such as my learned friend has contended; for I apprehend—my learned friend relied on the constitutional usage of England—I apprehend that we here, not having adopted the statutory laws of England, have nothing better to look to when construing our own statutes than the constitutional usage—which has been hitherto, at least, productive of good results. My learned friend Sir Robert Stout said that the Executive always went to Parliament before making an appointment, and Mr. Justice Conolly said that you might put it stronger—the appointment was not made until Parliament had approved.