

*Mr. Justice Richmond*: It would be quite clear that £5,000 was too much for a Judge.

*Mr. Cooper*: I should be sorry to say that, your Honour.

*Mr. Justice Richmond*: But, supposing the contract was for the appointment of a Railway Commissioner. You cannot pay too highly for a competent railway man. What would you say then?

*Mr. Cooper*: The Legislature appears to look on a Railway Commissioner as worth a very considerable sum. The view of the Legislature was that they could get a Supreme Court Judge for a much less sum than a Railway Commissioner. The salary of a Railway Commissioner was stated at £2,500.

*Mr. Justice Richmond*: A contract binding the Crown is really a modernism—it has grown up by degrees.

*Mr. Cooper*: Of course the law considered that the King would pay his just debts.

*Mr. Justice Richmond*: Until the petition of right was put on a better footing in England, it was so precarious a matter that it was not regarded as a legal remedy.

*Mr. Cooper*: Yes, your Honour.

*Mr. Justice Richmond*: My point is this: If it be, as I say, quite a modern introduction, why should we not take it to be subject to modern limitation—viz., that the Crown cannot contract so as to bind the revenues of the country, unless there has been a legal appropriation for the services contracted for? The question of the validity of contract would depend on the question whether or not there had been an appropriation.

*Mr. Cooper*: I submit that it would not be affected in that way. The fact that a judgment is obtained, even though the contract is valid, does not bind the Legislature.

*Mr. Justice Richmond*: No doubt the Crown Remedies Act provides for verdict and judgment, though there are no funds. But such a provision would be necessary for such cases as where, there having been funds at the time of the contract, they have been expended. The contract might be perfectly good. There might be a large sum, for instance, on the estimates for railway contracts; the Crown might have entered into a number of contracts, and all might have been good; and yet all the money might have been expended at the time of the suit, so that really there was no money to meet the contract sued on. That would be a case that would need to be provided for by allowing the contractor to get judgment, but saying that execution must depend on a vote.

*Mr. Justice Denniston*: Why should the power of appointment necessarily carry with it the power to fix the salary?

*Mr. Cooper*: I do not submit that it does. The Legislature is not bound by the particular emolument which the Governor may attach to an office.

*Mr. Justice Richmond*: I hope we have not got outside the question. The argument might have been very well in place if it had been the ascertaining of salaries.

*Mr. Cooper*: At the outset, in commencing this branch of my argument, I submitted that it was in no sense necessary to this question at all.

*Mr. Justice Denniston*: But it might have a very important bearing on the case, and might carry heavy weight.

*Mr. Cooper*: I simply am meeting the proposition submitted by my learned friend. I do not for one moment contend that the Governor can bind the revenues of the country when there has been no appropriation.

*Mr. Justice Denniston*: The question is, can he bind the Crown?

*Mr. Cooper*: There may be a contract with the Crown.

*Mr. Justice Denniston*: If there be a contract, and it merely happens to be unenforceable, it does not prevent its being a contract. The question is whether the mere power to appoint gives with it the power to enter into a contract.

*Mr. Cooper*: I submit that it is not necessary to decide that it does; nor do I contend that the power to appoint necessarily carries the power to contract.

*Mr. Justice Richmond*: Your argument is this: On the other side it is said, such a thing is done which is not contemplated under the law; therefore, if you cannot appoint a salary, you cannot appoint a Judge. That is the way you come to argue the question at all.

*Mr. Cooper*: I should not have touched this branch of the subject but for this. I was going to refer your Honours to the letters themselves, but I submit that they speak for themselves, and any assistance I might give by way of construction would be of very little value. Your Honours have the whole of the correspondence before you, which shows, I submit, that the argument is fallacious which suggests that the office of Judge was only intended to be auxiliary and ancillary to the office of Commissioner. That is the only object I have in view in drawing attention to the correspondence. I submit that the whole of the correspondence shows clearly that the office offered and accepted was the permanent office of Judge, and that Judge Edwards would not accept any less office; that he had been offered and refused the very office which my learned friend says he accepted. And the whole tenor of the correspondence shows that from the first to the last the intention of the Government was to offer to Judge Edwards, and the intention of Judge Edwards was to accept, only the permanent office of Supreme Court Judge with the duties of Commissioner and with the office of Commissioner; that, although his appointment as Commissioner was necessarily made, it was the office of Supreme Court Judge he accepted, though he had also the office of Commissioner and his duties to perform. Going back one moment to the question of the power to appoint, and the question of salary, I might put this case: Supposing the Native Land Act of 1889 had contained no reference to salary; suppose it had said that there should be a Commissioner appointed by his Excellency, and said nothing about the fixing of a salary, what would have been the position of the Governor then? He certainly would have been entitled to make reasonable arrangements with the Commissioner, leaving it with the Legislature not to vacate the office of Commissioner or to invoke the Courts to do it, but refuse to vote the sum of money the Governor has chosen to appropriate to it.

*Mr. Justice Denniston*: You say the Legislature could not absolutely refuse to vote it.