

*Mr. Cooper*: We say that the Governor has power to appoint, and the Legislature would not be honest in refusing to vote the money; although we are not driven to this argument. It is the same with a temporary Judge. Supposing the Governor appoints a temporary Judge, and fixes his salary at the extreme limit of £1,500, the Legislature may say that it was improper to pay so high a salary to a temporary Judge, and might refuse to pay it. No doubt the Legislature parted with the power to fix salaries in other instances. My contention is that they parted with the power to appoint, though they may have retained the power to fix the salary. I was going to refer your Honours to the Public Revenues Act, but it is clear that in no case can any judgment be enforced against the revenue; that matter rests entirely with the Governor to sign the warrant, and no mandamus would lie against the Governor to compel him to sign the warrant; and consequently every officer of the State, although his salary is protected by the Civil List, is, in theory, in the position that he depends on the honour of all members of the State to pay his salary. I do not wish to submit an argument founded on this ground to your Honours.

*Mr. Justice Williams*: The same argument applies to the public creditor.

*Mr. Cooper*: Yes; it is one of those cases which can be put in theory, but may never arise in practice. I have to draw your Honours' attention to an additional affidavit which has been filed explaining the affidavit of Mr. Haselden filed on the 18th May, 1891. It has reference to the statement made by Sir R. Stout that the defendant received his salary from the 27th February.

*Sir R. Stout*: Mr. Haselden did not say so.

*Mr. Cooper*: No; Mr. Haselden does not say so; but I understand my learned friend's argument to be that the salary was claimed from the 27th February, and was paid out of unauthorised expenditure.

*Sir R. Stout*: As it was.

*Mr. Cooper*: It was only paid from the date of the Commission appointing Judge Edwards a Judge, on the 2nd March. The affidavit that has been filed in answer to Mr. Haselden explains the circumstances under which a voucher was sent in—not authorised by Judge Edwards, nor certified by him—in which, by a clerical error, the 27th was stated. This voucher was afterwards withdrawn, and the date altered by the officers of the department to the 2nd March, and the salary paid from that day. The necessity for filing this affidavit arises because Mr. Haselden's affidavit, although it contains part of the truth, does not contain the whole; and we think it advisable that the whole truth should be given. I have very little more to say to your Honours. I submit that we have shown that the Governor's power to appoint Judge Edwards can be derived from the statute of 1882; that this statute was passed in the light of the interpretation put on the preceding statute of 1858; and that from the commencement of this colony—from the erection of this colony in 1840 to the present time there has been the principle apparent in all the instructions and ordinances of the late Legislature and the Acts of the present Legislature, reserving to the Queen, or rather to her executive officer, the Governor, the power to appoint Judges, this power being limited only, I submit, by what is reasonable in the minds of the Ministry of the day. The magnitude of this case—the magnitude of the issues to the defendant, and the importance of the questions which have to be decided by your Honours to the country and to this Court—have rendered our task one of considerable difficulty. I, for my part, and I think I can speak on behalf of my learned friends, have endeavoured, while submitting all the arguments which we thought could bear on this case in the interests of the defendant, to submit nothing to your Honours except fair and legitimate arguments on which we can venture to ask your Honours for a judgment of the Court in favour of the defendant.

*Sir R. Stout*: May it please your Honours, it is unnecessary for me, in reply, to traverse at length the statement of my learned friend Mr. Harper in his opening, as it practically—excepting in one or two matters in which, I submit, I shall have to correct him, he having unwittingly, in reference to an American text-book, made a mistake—has amplified the position I laid down in my opening, which I submit was this: that the growth of constitutional law affecting the appointment of Judges in England has been developed bit by bit—that at first Judges were simply officers in the King's household, provided with salaries by him just the same as his other officers; and that through a long series of years in England they obtained a position of independence. If it were necessary, I could have gone further back than he went to show how in olden days the revenue of England was expended in dealing with Judges; but it has only a historical value, and no practical value in this case. But I might refer to what your Honours will get a copy of—what might be termed the Financial Statement—the estimates of expenditure of the Government of England, say, in 1421 and 1432, all set out; when the revenue of England hardly amounted to £55,000, and the expenditure, which was then apparently kept within the revenue, £52,000. As far back as that it will be seen that, like other constitutional rules which have developed under the English form of government, the law of the Constitution regarding the Judges' appointments and privileges has certainly been developed. Take the example of the Cabinet: Before the reign of William III. the Cabinet was practically unknown; and even now, if we read that interesting article by Mr. Gladstone on "Our Kin Beyond the Sea," he shows in it the development of the Cabinet and the acknowledgment of a Premier. We shall find that the first acknowledgment of a Prime Minister was in the Treaty of Berlin. All these things have gradually grown up; and in the colonies you will find the same growth. In new countries the same stages of growth are passed through as have been passed through in the older countries though the development is quicker. I submit that it has been shown that in New Zealand, as at Home, the rule as to Judges has gradually grown up; so that by our Act of 1882, with the Civil List Act of 1873, they are placed in the same position now in New Zealand as the Judges in England are placed. My learned friend was in error in assuming, because the Judges in the colonies were appointed to hold office during pleasure, that this principle of not removing the Judges save for misbehaviour in the colonies was not recognised. In Todd's "Parliamentary Government," 2nd volume, it is pointed out that, though