

that the certain rule of construction is that every word of a statute shall be deemed to have some meaning and some validity, and the Court will not assume that there are words in the Act that are unmeaning and useless, and that ought not to appear. Before I conclude, just one word about the contract. I cannot understand my friends about the contract. It seems to me that each one of the three has a different way of putting it. As I understand the thing, there can be no contract prior to the Commission—that is, the contract to appoint a Judge. Is he to be appointed *in futuro*? I submit, your Honours, that a contract prior to appointment is unheard of. An agreement to give an office! Whoever heard of that? I submit there is no such thing known as an agreement to give an office, and I am not aware of a single case where any such contract ever came up, or was made against the Crown or even against an individual.

*Mr. Justice Richmond*: That would be an action for specific performance.

*Sir R. Stout*: And that, I submit, is unknown.

*Mr. Justice Richmond*: However, I did not understand the other side to contend that.

*Sir R. Stout*: Practically it amounted to some contract prior to appointment.

*Mr. Justice Richmond*: It was a contract as to salary.

*Sir R. Stout*: The reason I referred to the letters of the 1st and 5th of March was this: that, whatever the oral communications had been before, the letters crystallized, so to speak, the previous oral bargaining between the parties. I am not going into those bargains at all. I think it is unfortunate that there should have been bargaining; but I am not going into that. The two letters purported to crystallize what took place, and the Premier says in his letter—and that letter practically bears out what the oral communications were, and the defendant does not deny it—the Premier in his letter says,—

“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.”

What does that “therefore” mean? Does it mean that there had been an agreement prior to this? On the contrary, the Premier is arguing to show that, having got the appointment to the office of Commissioner, in order to give that Commissioner a status of a Supreme Court Judge, “therefore you will be appointed to that office also.” This letter therefore did not contemplate the appointment of a Supreme Court Judge as a Supreme Court Judge. This letter no doubt only contemplated the appointment of a Commissioner with the status of a Supreme Court Judge, to enable him apparently the better to perform his duties as Commissioner. And I submit that is the true reading of this contract. Nor does the letter in reply attempt to say that this letter of the 5th March does not clearly set out the understanding between the parties. On the contrary, the letter is an acknowledgment to say that he accepts the appointment. How? “Upon the terms therein mentioned.” What are the terms? I submit the appointment that is mentioned is the appointment of a Commissioner, and the terms that are mentioned are two. The terms are—first, that he is to have the status of a Supreme Court Judge; and the second term is the term as to salary. These terms are mentioned, and that is the acceptance, or else appointment would have been put in the plural number. That, I submit, is the true meaning of the letter and the true contract. I again repeat that, if contract it can be called, it was a contract for the Commissionership with the status of a Supreme Court Judgeship added to it, in order, it appears, the better to provide for the performance of the high duties of the Commissionership. I am not going to say whether it was right or wrong that the Supreme Court Judgeship should be deemed to be the secondary office to that of Native Commissioner. All I say is that it was peculiar—that is all. What, then, is it that the Court really has to decide in this case?

*The Chief Justice*: How did you understand Mr. Harper about this matter of contract?

*Sir R. Stout*: They had to abandon it towards the end. At first they wished to show that the contract was sufficient to fix and ascertain the salary in compliance with the Act of Settlement. That is how they began, but that has been abandoned during the argument. They were driven to this position to argue that the fixing and ascertaining could come after the Judge had been appointed. I ask when? How long are they to wait for it? Six years?

*Mr. Harper*: We did not abandon that.

*Sir R. Stout*: Pardon me, I have a note of it. My learned friend said that the fixing and ascertaining could come after the appointment.

*Mr. Harper*: That was on another point, at another part of the argument.

*Sir R. Stout*: Well, then, my learned friends mean either that it was fixed and ascertained or that it was not. Where was it fixed and ascertained, and who fixed and ascertained it? Not Parliament. I have shown, in *Churchward v. The Queen*, and in other cases to the same effect, that there could be no fixing and ascertaining of the payment of the money without the sanction of Parliament. Who, then, could fix and ascertain it but Parliament? and how can it be fixed and ascertained if Mr. Edwards's salary is to depend upon an annual vote? That never can be the meaning of fixing and ascertaining in the Act of Settlement. My learned friend Mr. Cooper cited a case to show that contemporaneous opinion on the interpretation of statutes could be invoked. So do I say. What then? Can my learned friend point to a single case in which it has been said that “fixed and ascertained” means fixed and ascertained in a series of letters between the Premier and a Judge? That surely would not be fixing and ascertaining. “Fixing and ascertaining” means fixing and ascertaining by Parliament, so as to make the office independent of an annual vote. That has not been done, and therefore that part of the contract is gone. The part they have left is that the fixing and ascertaining may come after the appointment.