The Chief Justice: I understood last night that you assented to what Mr. Cooper said—that your argument involved this: that if next session the Government choose to make a grant, and to put £1,500 on the Civil List for an additional Judge, that would not validate the Commission.

Sir R. Stout: That is what I say: they would have to expressly validate it, not by vote of money.

The Chief Justice: By an Act?

Sir R. Stout: There would have to be an Act to validate it; that is what I submit; or the Governor must reappoint.

Mr. Justice Richmond: That is supposing it was for an additional Judge. If it was to grant a salary to Mr. W. B. Edwards that would be another thing.

Sir R. Stout: That might prove legislative recognition. I submit there has been no fixing and ascertainment of the salary.

Mr. Justice Richmond: It would scarcely be a validation of the Commission. It would be a fresh title.

Sir R. Stout: Yes.

Mr. Justice Richmond: Your position is that the mere voting of money in that way is not a fixing and ascertaining. There must be a fixing and ascertaining prior to appointment.

Sir R. Stout: I submit that is what the statutes in England have done. I have taken up no position that cannot stand the strain of being pushed to its utmost logical conclusion; but I do not think my friend's argument will stand that test when they set up technical breaches of the Constitution, and then argue that because there have been technical breaches of the Constitution there can be no constitutional law at all. They have spoken of the so-called constitutional law, because there have been technical breaches; but I say that the spirit of the Constitution has always been observed hitherto, because, before any Judge had been appointed, Parliament had been consulted, and both Houses had done what was to be done. It was not until the Act of 1873 that practically the constitutional principle was fully complied with, the separate salaries then being voted for each office.

The Chief Justice: The principle was started in 1858.

Sir R. Stout: No doubt; even in the Constitution Act; but there was a change in 1862.

Mr. Justice Richmond: The statute might make the salary of the office certain, but the tenure remained precarious.

Sir R. Stout: It was precarious, but when it was reduced to practice it was not precarious, because the Privy Council never let a Judge be dismissed unless he had been proved guilty of misbehaviour under the Act of George. There must have been some misbehaviour before removal. There are various cases in 5 Moore's "Privy Council" and 6 Moore's "Privy Council" in point. One was a case of Judge Willis, of Port Philip, another was a case of a Judge in Tasmania. Now, I say, dealing with the question of contract, I submit there has been no such thing as a contract. If there was a contract the contract was for the position of Commissioner under the Native Land Act. I shall simply say one thing further: My learnd friend, running through all the statutes, said that the Judges in this colony were not in the same position as at Home, and that they were intended to be in a different constitutional position. I submit not, and that the Acts of 1873 and 1882 place them in the same position. Further, I say it is both for the benefit of Judge Edwards as well as for the benefit of the Bench and the colony that these proceedings should have been taken. Otherwise he might have been left in circumstances similar to those of the Judge at St. Lucia, and be sued for damages for exercising the duties of a position which he did not hold. I submit that it is for the benefit of the colony, because if it be allowable to appoint Supreme Court Judges without a tenure, and without a salary, leaving the Judges dependent upon the vote of the House, it is a most unconstitutional position, and if it be legally possible, it is well that the colony should know it, and that the people should take steps to see that the law is altered. Further, it is well that these proceedings have been taken, for it will be a warning to Executives in the future not to attempt to so deal with such a high position as that of a Judge of the Supreme Court, making it merely a sort of addendum to a Native Commission; and especially, I say, the Executive ought not to have attempted to appoint a Judge to the Supreme Court bench without being frank and open with Parliament, and without having consulted Parliament and asked for its advice upon the matter.

The Chief Justice: The Court will reserve its decision.

No. 84.

JUDGMENTS IN THE COURT OF APPEAL, NEW ZEALAND, IN THE CASE OF THE HON. THE ATTORNEY-GENERAL AND MR. W. B. EDWARDS.

JUDGMENT OF PRENDERGAST, C.J.

THE real question in this case is whether the general words in the 5th section of "The Supreme Court Act, 1882," are controlled by the subject-matter with which the provision is dealing, and the other provisions in the same Act, together with the 65th section of the Constitution Act, and "The Civil List Act, 1863," as amended by "The Civil List Act Amendment Act, 1873."

The provision in question, shortly stated, is that the Supreme Court shall consist of one Judge, to be appointed by the Governor, who shall be called the Chief Justice, and "of such other Judges of the said Court as the Governor, in the name and on behalf of the Queen, shall from time to time appoint."