"The Native Land Court Acts Amendment Act, 1889;" the 23rd section of which provides that out of money voted by Parliament, or to be voted, for the purpose of the Commission, there were to be paid such sums as authorised by the Native Minister in payment of the services of the Commissioners. One of the Commissioners appointed was Mr. Edwards, his appointment bearing date the 27th February, 1890. Mr. Edwards's appointment as Judge of the Supreme Court was dated the 2nd March, 1890. In the letter informing Mr. Edwards of these appointments no distinction is made in respect of which of the two the salary mentioned in the letter is to be paid. There being express authority, therefore, as to agreeing, subject to appropriation, as to one appointment, and no express authority at all as to the other, I should infer that the agreement, if any, was made with reference on both sides to the express authority. Moreover, it was evidently in the contemplation of the parties that Mr. Edwards's services, subject to some temporary service during the absence on leave of Mr. Justice Richmond, were to be devoted almost if not wholly to the work of the Commission. The incompatibility of the two appointments on other grounds, arising out of the judicial functions conferred on the Commissioner by the 27th section of the Act under which the Commission was made, does not seem to have been considered.

As already remarked, it is not worth while to go into the facts stated in the defence as to the circumstances under which the appointment was made, inasmuch as want of authority to contract for the payment of a salary as Judge of the Supreme Court is, I think, clear. But Sir Robert Stout contended that the facts relied upon by the defendant as showing a valid contract, and so a provision by law for a salary, so as to satisfy the provision of the Act of 1882, instead of supporting that contention, showed such an exercise of the power of appointment as was an abuse of the power, and, consequently, not being within the contemplated exercise of the power, was not within it according to the intention of the Legislature. By this is meant not that the Supreme Court can for this reason exercise a sort of equitable jurisdiction, and cancel the grant, but that, as stated in Maxwell on the Interpretation of Statutes, p. 146, ed. 2, "Enactments which confer powers are so construed as to meet all attempts to abuse them by exercising them in cases not intended by the statute." "Though the act done was ostensibly in execution of the statutory power, and within its letter, it would nevertheless be held not to come within the power if done otherwise than honestly, and in the spirit of the enactment." It was urged that the facts in the defence showed that the object in the exercise of the power in this case was not to provide for the exercise of judicial functions in the Supreme Court, but either to give to the holder of the commission under the Native Land Court Act some so-called "status" or that the provision of the Supreme Court Judges Act was to be made use of as the means of inducing Mr. Edwards to accept the Native Land Commission.

It appears that the first suggestion of the creation of a new Judgeship came from Mr. Edwards himself, as appears by his letter of the 6th November, 1889, set out in the statement of defence, addressed to the Minister for Native Lands. This seems to have been the origin of what has eventuated in the present state of things—a state of things the meaning and effect of which cannot, as appears to me, be ascertained if the opinion of the majority of this Court correctly interprets the law on the points involved.

The Governor must now, in accordance with the judgment in this case, be taken to have had the power to make the appointment. What, then, is Mr. Edwards's position? If one of the other Judges resigns his office, has not the Crown power to abstain from allotting the appropriated funds to the payment of a salary to Mr. Edwards? May not another appointment be made, and the funds allotted to that appointment, and not to Mr. Edwards? If the Chief Justice vacates his office, may not a salary equal to what he receives be allotted to Mr. Edwards, and a Chief Justice appointed without any salary? May not several appointments be made, and the funds released by the vacation of any office be distributed amongst them? and so there will be some Judges on the bench with one rate of salary, and others with another rate.

The Legislature will presumably accept the interpretation of the law as determined by the judgment of the Court; and, as that law was the intention of the Legislature in 1858 and 1882, why should the Legislature in 1891 intend differently, and alter the law? The incongruities are too apparent. It cannot be said in this case, as may be said in some, that the Legislature omitted to foresee the results of its legislation; for these results are manifest—they cannot be deemed to have been overlooked.

In support of the contention that the authority to appoint a Judge without provision as to salary existed, reference was made to some Executive action in the appointment of some of