

haviour, another Judge or other Judges should equally hold office during good behaviour, but be dependent on the will of the Government of the day or of a majority of the House of Representatives for the time being for the amount of their salary, or for any salary at all. The possibility of such being the case, if section 5 of the Supreme Court Act gave the Governor the power to appoint an unlimited number of Judges, is, to my mind, a strong argument that such could not be the proper construction of the section. If the words are doubtful, I prefer to think that the Legislature did not intend that they should be so interpreted as to bring about such a constitutional scandal, and that such an interpretation would be wrong when another is possible. There is really nothing in the contention that there was a contract for payment of the salary of a Judge, either made verbally with the Premier or by the letters. No such contract could be made to bind Parliament, and apart from Parliament there could be no funds to pay a salary.

I am therefore of opinion that the commission issued by the Governor on the 2nd March, 1890, appointing the defendant to be a Puisne Judge of the Supreme Court of New Zealand during good behaviour, was made without authority of law, and ought to be cancelled.

#### JUDGMENT OF DENNISTON, J.

I am satisfied that the sole power of fixing and establishing the salary of a Judge is in the Legislature, and that it never intended to delegate, and never has delegated, any part of such power. I also think that the whole course of legislation, past and present, in the colony shows that the Legislature never contemplated the appointment of a Judge of the Supreme Court before his salary was either established or arranged for.

It would be justified in so thinking by the consideration that every appointment will be made by the Governor by the advice of his Responsible Advisers, and the improbability, to say the least, that any Ministry would propose, or any person accept, such appointment without the preliminary sanction of the Legislature, such sanction of course involving the provision of a salary. Nevertheless, the Legislature in set terms and apt language has enacted that the Supreme Court shall consist of such Judges as His Excellency the Governor, in the name and on behalf of Her Majesty, shall from time to time appoint. The only restriction is that the person appointed must be of not less than seven years' professional standing. In pursuance of this power the Governor has, by a commission issued in the name and on behalf of Her Majesty, appointed the defendant, who possesses the necessary qualification, to be a Judge of the Supreme Court of New Zealand.

I do not think this Court can challenge such commission. The Governor has not been deceived or misled by the appointee. If the result of the appointment is a judicial scandal, and the possibility of its repetition a menace to the independence of the Bench, the remedy is, I think, with the Legislature, which can provide a salary, or can reverse the appointment; and can, if it think fit, prevent a repetition in the future.

It is suggested that by an elaborate collation of other statutes, past and present, and the aid of certain constitutional maxims, one may arrive at an intent of the Legislature other than that apparent by the words of the Act. I do not dispute that the consequences of a literal construction may compel violence to the words of a statute. But this canon of construction is, I think, one to be invoked as seldom as possible. It leads not seldom to a judicial assumption that the Legislature must be taken to have said what it does not say, because of the inconvenience of holding it to have said what it did say. I do not think that in this case the natural or necessary consequences of construing the statute in its plain terms require any such drastic judicial remedy.

In this Court, at least, one long and distinguished judicial career began and ended with admittedly no better title than that conferred on Mr. Edwards.

I think judgment should be for defendant.

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