

The opinion of the Solicitor-General is requested on the following questions: (1.) Is there legal authority for the appointment of Mr. Edwards to the offices above mentioned, and has he been duly appointed to them? (2.) Does the Chief Justice in any way commit himself to the question of the legality of the appointment of Mr. Edwards by administering the judicial oath under the Promissory Oaths Act? (3.) Can Mr. Edwards enter upon his judicial duties before he has taken the oaths under the Promissory Oaths Act, he being willing at any time to take such oaths?

H. A. ATKINSON.

Wellington, 11th March, 1890.

No. 10.

The SOLICITOR-GENERAL to the Hon. the PREMIER.

The Hon. the Premier.

MY answers to the several questions put are as follows:—

1. I think there is legal authority for the appointment of Mr. Edwards to the offices mentioned, and I do not think the power conferred by "The Supreme Court Act, 1882," is controlled by "The Civil List Act, 1873." I regard the latter merely as an Appropriation Act, setting apart certain funds for specific purposes. I may remark, too, there are former cases in point which are against the contention of the Chief Justice. The Civil List Act of 1858 provided for the salary of a Chief Justice and those of two Puisne Judges. In September, 1862, the Civil List Act of that year provided a lump sum of £6,200 for "Judges," and the Act was reserved for the Royal assent. In October, 1862, Mr. Richmond was appointed a Judge of the Supreme Court under an Act the terms of which are identical with that now in force. Again, in 1863, the Civil List Act of that year provided a lump sum of £7,700 for "Judges," which Act was reserved as before; and in March, 1864, Mr. Justice Chapman was appointed. In neither of these cases could the Acts in question have received the Royal assent before the appointments were made.

2. I do not think he does. He is called upon only to perform a ministerial duty pursuant to the direction of the Governor.

3. I think Mr. Edwards is required to take the oaths prescribed by "The Promissory Oaths Act, 1873," and that he ought not to enter upon the duties of his office without doing so.

11th March, 1890.

W. S. REID.

No. 11.

His Honour the CHIEF JUSTICE to the Hon. the PREMIER.

DEAR SIR HARRY,—

I do not think I can see you before to-morrow morning; but in meantime send enclosed for your perusal. I am not sure that I have abandoned my intentions expressed this morning; but you see I am not unreasonable in my doubts and fears.

Yours, &c.,

J. PRENDERGAST.

No. 12.

His Honour the CHIEF JUSTICE to His Honour Mr. Justice DENNISTON.

(Urgent telegram.)

His Honour Mr. Justice Denniston, Supreme Court, Christchurch.

Wellington.

WHAT appears to me a serious question has arisen. I have received a Governor's authority or appointment, under "The Promissory Oaths Act, 1873," to swear in Mr. Edwards. I am informed by the Prime Minister that Mr. Edwards is appointed a Judge of the Supreme Court *quandiu*, and not under the 12th section of the Supreme Court Act. The Government are advised, I understand, that they can, under section 5, appoint any number of Judges during good behaviour, notwithstanding "The Civil List Act, 1873." I have privately informed the Prime Minister that I seriously doubt the authority to appoint more than those four for whom salaries are provided. I do not raise here the constitutional questions involved, but the legal question only.

Will you advise—(1.) In your opinion, is the power to appoint limited in law to the four for whom salaries are provided? (2.) If your opinion is that the power is limited in law, shall I not be compromised as Judge by administering the oath? (3.) Whichever way your opinion is, say whether I may make it known to the Government, and, if so, whether only expressly unofficially or unreservedly, as it is intended that Mr. Edwards shall not perform judicial functions except during Richmond, J.'s, absence, and during that time circuit work only, commencing in July next, but be employed as Commissioner under "The Native Land Act, 1889," and paid as such. I have suggested that I, at any rate, ought not to be asked to administer the oaths till after Parliament has met; but I may be pressed to administer the oath at once.

J. PRENDERGAST.

No. 13.

Mr. Justice DENNISTON to His Honour the CHIEF JUSTICE.

(Urgent telegram.)

His Honour the Chief Justice, Wellington.

Christchurch, 12th March, 1891.

I THINK it very doubtful if section 5 authorises appointment Judges beyond four. The words "such other Judges as Governor may appoint" may be read "as may lawfully appoint." Sections 11, 12, and 13 seem to assume every Judge fixed annual salary (see especially 12). Section 2, Civil List Act, speaks of "the" Judge, and temporary appointments provided by 13, Supreme Court Act.