

No. 44.

The SOLICITOR-GENERAL to the HON. the MINISTER of JUSTICE.

Crown Law Offices, 17th February, 1891.

CASE of Mr. Justice Edwards: Referring to the conversation I recently had with you herein, I have considered the point connected with the appointment of this gentleman to the office of a Judge of the Supreme Court. I understand this point to be, that such appointment is illegal, because at the time it was made there was no vacancy on the Supreme Court Bench, and no provision had been made by law in respect of this office.

The appointment was made in March, 1890, under "The Supreme Court Act, 1882," section 5 of which empowers the Governor to appoint a Chief Justice, "and such other Judges of the said Court as His Excellency the Governor, in the name and behalf of Her Majesty, shall from time to time appoint." Nothing is said as to the number of such Judges, nor is provision made as to salaries; but section 11 contains a declaration that the salary of a Judge is not to be diminished during the continuance of his commission. By the existing Civil List Act of 1873 salaries are provided for a Chief Justice and four Puisne Judges, the amount of salary in each case being stated. Mr. Edwards has under this appointment performed, and still does perform, the duties of a Judge of the Supreme Court, although no special provision has been made for his salary in that capacity.

Upon consideration of the enactments above referred to, I am of opinion that the appointment of Mr. Edwards was legal, although at the date thereof no provision had been made by law for the payment of a salary. I do not think it is within my province to express an opinion as to the propriety of the late Government having made this appointment before provision had been made for the salary of the office. That is a matter of constitutional usage and practice, which, I think, is quite distinct from the legal position, and I confine myself entirely to the latter.

I do not think the English legislation affecting the tenure of office of Judges—such as the Act of Settlement (12 and 13 Will. III., cap. 2), or the 1 Geo. III., cap. 23—applies in this colony; because both in this and other colonies the earlier appointments to judicial office were made under different authority and in a different manner to such offices in England. As a rule, Judges held office only at pleasure of the Crown; and, if it became necessary to remove them from office, it was done by the Governor in Council under powers conferred by special Acts of the Imperial Parliament. In New Zealand, the Supreme Court Ordinance of 1844 expressly declared that Judges should hold office during Her Majesty's pleasure; and this law was in force till 1858, when the Supreme Court Judges Act of that year put the law on a footing to that now in force.

It may assist consideration of the matter if I call attention to some incidents connected with former appointments of Judges in this colony. (1.) The Constitution Act provided for the salaries of a Chief Justice and *one* Puisne Judge, and mentioned the salaries payable. (2.) On the 8th December, 1857, Mr. Justice Gresson was appointed a Puisne Judge; and on the 3rd November, 1858, Mr. Justice Johnston was appointed to a like office. There were then a Chief Justice and *two* Puisne Judges; but the Civil List Act of 1858 had provided for the salaries of these. The Act was reserved 21st August, 1858; assent of the Crown notified 22nd July, 1859. (3.) On the 20th October, 1862, Mr. Justice Richmond was appointed a Puisne Judge. The Civil List Act of 1862 had provided a lump sum of £6,200 for "Judges," without apportioning it in any way. This Act was reserved on the 15th September, 1862, and the Royal assent notified 11th July, 1863. (4.) Lastly, Mr. Justice Chapman was appointed a Puisne Judge in March, 1864. The Civil List Act of 1863 had made provision by a lump sum of £7,700, but not apportioning salaries. The Act was reserved on the 14th December, 1863, and the Royal assent notified 24th July, 1864.

As by the Constitution Act reserved Acts do not come into force until the Royal assent is notified in the colony, and as, I understand, each of the gentlemen above mentioned entered on their duties immediately on appointment, it follows that, if the contention be good that such appointments are not legal because salaries have not been legally provided at the time they are made, then there was a defect in each of the appointments above set out.

The Hon. the Minister of Justice.

W. S. REID.

No. 45.

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

SIR,—

Judge's Chambers, Wellington, 17th February, 1891.

I have the honour to request that His Excellency may be advised to approve of the appointment of Mr. Edwards as Deputy Judge of the Vice-Admiralty Court. Mr. Edwards is to take the Napier sittings of the Supreme Court early in March, and a case in the Vice-Admiralty Court is set down for hearing there; hence the necessity for this appointment, for I shall be in Wellington holding the sittings here.

I have, &c.,

The Hon. the Premier, Wellington.

JAMES PRENDERGAST, Chief Justice.

No. 46.

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

SIR,—

Premier's Office, Wellington, 18th February, 1891.

I have the honour to acknowledge the receipt of your letter of the 17th instant requesting that His Excellency may be advised to approve of the appointment of Mr. Edwards as Deputy Judge of the Vice-Admiralty Court.