

Edwards, would perform no judicial act as a Supreme Court Judge until after the next session of Parliament. Subsequently, after a consultation with the Attorney-General, the Chief Justice finding that the Supreme Court Judges had on several occasions been appointed before vacancies had actually taken place or a salary provided, felt it no longer necessary to press his doubts to the extent of standing in the way of Mr. Edwards acting as Puisne Judge of the Supreme Court."

I find upon the face of this memorandum pencil writing between the words "the" and "next" —"meeting of the"—so that it would read as follows: "until after the meeting of the next session of Parliament." How far Mr. Edwards has carried out that promise is a matter of notoriety, he having, I believe, in the time between his appointment as Commissioner and the meeting of Parliament exercised judicial functions in Nelson and Blenheim. I find also among the papers the following memorandum: "Hon. Minister of Justice.—Mr. Edwards was written to on March 1st with offer of appointment. He replied on March 5th. His Commission was, however, signed on March 2nd. He was sworn in on March 14th. He claims salary from February 27. From what date is it to be paid? Mr. Justice Conolly was paid from date of Commission.—C. J. A. HASelden.—12/4/90."

I cannot find in the papers any other correspondence in reference to this matter, and assume, therefore, that the whole correspondence has not been submitted to me by the Justice Department, otherwise why should Mr. Edwards claim salary from February?

I have approached this subject with some diffidence, seeing the importance of the question involved, and, after exhausting the authorities at my disposal, I can find no case on all fours with the present position, and am, therefore, obliged to construe the language of the Acts to which I will refer unaided by any precedent.

I have also carefully perused the opinion of the Solicitor-General\* upon this subject given to the Minister of Justice, in which he holds the view that the appointment of Mr. Edwards as a Judge of the Supreme Court was legal, although at the date thereof no provision had been made by law for the payment of his salary. I regret to differ from the opinion of so careful an authority, and feel that in doing so I am taking a course for which I must give such reasons as weigh with me in coming to a different conclusion. The Solicitor-General thinks that the English legislation affecting the tenure of office of Judges, such as the Act of Settlement, does not apply to this colony, because in this and other colonies the earlier appointments to judicial office were made under different authorities and in a different manner to appointments to such offices in England. It may be correct to say that the Acts referred to by him do not apply to the present position of the colony; but in the construction of the statutes to which I will refer I am bound to allude to first principles, and from these to draw my deduction as to what, in my opinion, is the law bearing on the subject.

I would like specially to call your attention to one or two paragraphs in the opinion of the Solicitor-General, in which he says, "It may assist the 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 was 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 on the 24th July, 1864."

It appears that each of the gentlemen above-named entered on his duties immediately on appointment, and the Solicitor-General contends that, if such appointments were not legal because salaries were not legally provided at the time they were made, there was a defect in each of the appointments above set out.

I am prepared to admit that there was in each of the cases a defect at the time, and that the authorities, relying on the constitutional principle, made provision for validating any defect in the appointments so made. Assuming that the appointments at the time they were made were not valid because there was no appropriation, the error should not be perpetuated in the present, or in any other case. It appears to me that from the first, as I read the correspondence, doubts were entertained by the late Attorney-General, the Chief Justice, and Mr. Edwards himself, as to the validity of the appointment, and that it was intended to validate the same by a Bill, which was the subject of a debate in Parliament during the session of 1890, to which I wish to refer you. That Bill was never allowed to become law, and if the doubt existed then the position is not altered. I need scarcely remind you of the views expressed in the House of Representatives during the passing of the estimates, in which you will remember that the word "Judge" was struck out and the salary voted to Mr. Commissioner Edwards until the expiry of the present financial year. I merely mention this, not with the view of aiding in the construction of statutes, because the expression of opinion of individual members of Parliament is no indication of the intention of the Legislature. There are other well-established canons of construction of the statute law.

On reference to "The Civil List Act, 1873," clause 2 enacts as follows: "The sum of seven thousand seven hundred pounds granted to Her Majesty by 'The Civil List Act, 1863' (hereinafter called 'the said Act'), for defraying the expenses of the salaries of the Judges of the Supreme Court, shall be applied in paying to the Judges of the said Court respectively the annual salaries specified in the First Schedule hereto." This is a clear departure from the original mode of ap-

\* See No. 44, page 14.