

No. 55.

Mr. Justice EDWARDS to the Hon. the PREMIER.

SIR,—

Judge's Chambers, Wellington, 26th February, 1891.

I have the honour to inform you that your letter of the 23rd February, addressed to his Honour the Chief Justice, upon the subject of my appointment as a Judge of the Supreme Court of New Zealand, has been officially communicated to me by him.

As doubts have now been expressed by the Government of the colony as to the validity of my appointment, and as I myself entertain no such doubts, and I believe that a great deal of misapprehension exists as to the matter, I have felt it to be my duty to prepare, and I now have the honour to forward to you for your information, a memorandum showing the position, as I understand it, from a legal and constitutional aspect.

Further, inasmuch as, although my position and appointment have been frequently under discussion, no statement has, so far as I am aware, ever been made as to the circumstances which led to that appointment, I have deemed it also to be my duty to prepare, and I now have the honour also to forward to you herewith, a memorandum thereof.

With reference to that part of your letter which appears to infer that the doubts which have been raised affect the validity of my appointment only, I have the honour to call your particular attention to the first-mentioned memorandum herewith enclosed, from which you will see that the doubts so raised affect the validity of other appointments besides my own, including that of a Judge who is still exercising his functions.

In this connection I have the honour to add that I believe that it is erroneous to suppose that the Bill to amend "The Supreme Court Act, 1882," and to provide for the payment of an additional Judge, which was introduced in the session of 1890, was intended to validate my appointment alone, and that it will be found that that Bill was, so far as the removal of doubts was concerned, intended to be a general measure, removing all doubts as to the validity of any Commission theretofore granted by His Excellency the Governor in the name and on behalf of Her Majesty to any Judge.

With reference to that part of your letter which states that the Government do not think that I should exercise any judicial functions until Parliament has provided for my salary and has had the opportunity of reviewing my position, I have the honour to say that, as the question of the validity of my appointment is a question of law alone, I conceive, with the greatest respect for Parliament, that Parliament is not the proper tribunal to review my position, at all events so far as the validity of my appointment is concerned; and that, if I were to accede to your proposition in this respect, I should be demonstrating by example that it is within the power of the Government to interfere with the independence of the Judicial Bench.

Referring, however, to the interview of the Hon. the Attorney-General with his Honour the Chief Justice upon this subject, and to the suggestion made by the Hon. the Attorney-General that it would be in the public interest that I should not exercise judicial functions until some reliable opinion had been obtained as to the validity of my appointment, and that with that end it would be desirable to obtain the opinion of the Attorney-General and Solicitor-General of England, I have the honour to say that if the Government are of opinion that it is in the public interest that I should cease to exercise judicial functions for the period necessary to enable such opinion to be procured, if possible, from the Privy Council, and, if not, then from Her Majesty's Attorney-General and Solicitor-General for England upon a case containing all facts which the Government and myself think essential to enable a proper opinion to be obtained, as well as a statement of all arguments which the Government and myself shall wish to be submitted for consideration, then I am prepared, under proper conditions, to accede to that proposition.

The Supreme Court sittings at Napier commence upon Monday next, and I fear that it will not be possible at this late stage to make any other than the existing arrangement for the despatch of the business there, though, if any such arrangement as is suggested is to be made, I personally should prefer that it should be concluded at once.

I have, &c.,

The Hon. the Premier.

W. B. EDWARDS.

Enclosure 1 in No. 55.

MEMORANDUM of Mr. Justice EDWARDS as to the Validity of his Appointment as a Judge of the Supreme Court of New Zealand.

1. It has been alleged that my appointment as a Judge of the Supreme Court of New Zealand is "unconstitutional and illegal," upon the grounds that there was at the time no appropriation upon the Civil List for the purpose of paying my salary. I therefore deem it expedient to state shortly the grounds upon which I conceive it to be both legal and constitutional.

2. I propose to deal with the matter from its constitutional aspect first, as apart from this question it has never been pretended that my appointment is not strictly warranted by the law.

3. The word "unconstitutional" is frequently very loosely used, but it must, I apprehend, be used by those who challenge my appointment upon this ground as meaning something which is so contrary to the spirit of the Constitution of this colony as to render it illegal.

4. Representative government was first granted to this colony by 15 and 16 Vict., c. 72, of the Imperial Parliament, commonly called the Constitution Act.

5. The law which then regulated the appointments of Judges in this colony was the Ordinance No. 1 of the third session of the Governor and late Legislative Council, passed in the year 1844. This ordinance provided that the Supreme Court should consist of one Judge, to be called the Chief Justice, and of such other Judges as Her Majesty should from time to time be pleased to appoint: