

2. That due process of law may be awarded against him, the said Worley Bassett Edwards, in this behalf, to make him answer to our said Lady the Queen, and show by what authority he claims to have, use, and enjoy the office aforesaid.
3. That this Court may declare that the said Commission ought to be cancelled, vacated, and disallowed.
4. That such relief may be granted as the Court may in the premises deem fit.

AFFIDAVIT OF H. B. VOGEL

(Sworn 6th May, 1891).

I, HARRY BENJAMIN VOGEL, of Wellington, in the Colony of New Zealand, barrister and solicitor, make oath and say,—

1. That I have read the statement of claim in this action.
2. That such of the allegations contained therein as are within my own knowledge are true in substance and in fact, and such of the said allegations as are not within my own knowledge I am informed and verily believe to be true.

NOTICE OF MOTION (IN THE SUPREME COURT).

TAKE NOTICE this Honourable Court will be moved on the 7th day of May, or as soon thereafter as counsel can be heard on behalf of the Plaintiff, to show cause why the Defendant should not show by what warrant and authority he claims to exercise the office of Judge of the Supreme Court of New Zealand, or why his Commission of Judge of the Supreme Court of New Zealand should not be cancelled on the grounds following:—

1. That he has not been legally appointed a Judge of the Supreme Court of New Zealand.
 2. On the grounds particularly set forth in the Statement of Claim in this action.
- Dated at Wellington this 6th day of May, 1891.

HUGH GULLY,
Solicitor for the Plaintiff.

STATEMENT OF DEFENCE.

THE Defendant, by Leonard Owen Howard Tripp, his solicitor, says,—

1. That he admits the 1st and 3rd paragraphs of the Statement of Claim.
2. That he denies that “The Civil List Act 1863 Amendment Act, 1873,” in any respect dealt with or affected the appointments of Judges of the Supreme Court of New Zealand, as alleged in the 2nd paragraph of the Statement of Claim.
3. That he admits and alleges that on the 2nd day of March, 1890, His Excellency the Governor of New Zealand, by and with the advice and consent of the Executive Council of the said colony, and in the name and on behalf of Her Majesty, appointed him, the Defendant, to be a Puisne Judge of the Supreme Court of New Zealand, and he, the Defendant, further admits and alleges that he was then a barrister of the Supreme Court of New Zealand of more than seven years’ standing—to wit, of upwards of fourteen years’ standing.
4. The Defendant also admits that the 4th paragraph of the Statement of Claim in this action substantially sets out the Commission whereby he, the Defendant, was so appointed; but the Defendant alleges that the concluding part of the said Commission is not accurately set out in the said Statement of Claim, and that the same is in the words following:—

Given under the hand of His Excellency the Right Honourable William Hillier, Earl of Onslow, of Onslow in the County of Salop; Viscount Cranley, of Cranley in the County of Surrey; Baron Onslow of Onslow in the County of Salop, and of West Clandon in the County of Surrey; Baron Cranley, of Imbercourt; Baronet; Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George; Governor and Commander-in-Chief in and over Her Majesty’s Colony of New Zealand and its Dependencies; and issued under the Seal of the said colony, at Auckland, this second day of March, in the year of our Lord one thousand eight hundred and ninety.

E. MITCHELSON.

5. The Defendant further alleges that the said Commission was given under the hand of His Excellency the Governor, and was sealed with the seal of the Colony of New Zealand, and