

that the said Commission was and is in the same form as all other Commissions heretofore issued to Judges of the Supreme Court of New Zealand.

6. Except as is herein expressly admitted, the Defendant denies all the allegations of fact contained in the 4th paragraph of the Statement of Claim in this action.

7.—The Defendant denies that the said Commission was issued to him upon the 2nd day of March, 1890; and the Defendant alleges that he was not at any time prior to the 6th day of March, 1890, informed that the said Commission had been signed and sealed.

8. The Defendant denies that the letter set out in the 5th paragraph of the Statement of Claim in this action accompanied the said Commission, as therein alleged.

9. The Defendant alleges that the circumstances under which he was appointed a Judge of the Supreme Court of New Zealand, and the terms upon which he was appointed, are as follows :—

10. In and for many years prior to the years 1889 and 1890 the Defendant was a barrister and solicitor in large practice in the City of Wellington, in New Zealand, and the Defendant was reputed to possess a special knowledge of the laws relating to Native lands and Native titles in New Zealand.

11. In the year 1889 the Parliament of the Colony of New Zealand passed a statute intituled “The Native Land Court Acts Amendment Act, 1889,” whereby provision was made for the appointment of a Commission to ascertain and determine claims to Native lands, as upon reference to the said statute will more fully appear.

12. Soon after the termination of the session of Parliament of 1889, the Under-Secretary for Native Affairs, by direction of the Minister for Native Affairs, waited upon the Defendant at his office in Wellington, and informed the Defendant that he, the said Under-Secretary, was directed by the Hon. the Minister for Native Affairs then holding office to ascertain whether the Defendant would accept the position of Commissioner under the statute mentioned in paragraph 11 hereof. At the same time the said Under-Secretary for Native Affairs then informed the Defendant that the Hon. the Minister for Native Affairs considered that the Commissioner should receive the same salary and allowances as the Chief Judge of the Native Land Court—to wit, the sum of £700 per annum and certain travelling-allowances; and that if he, the Defendant, accepted the said appointment he would be at liberty to continue the practice of his profession as a barrister and solicitor.

13. The Defendant thereupon informed the said Under-Secretary—as the fact was—that the Defendant had, in the preceding month of May, had a careful balance of his books made for partnership purposes for the four years which had elapsed since the death of a former partner, and that the result showed that he, the Defendant, was making a net income of £2,250 per annum. The Defendant also informed the said Under-Secretary that it was improbable that he, the Defendant, could accept the said office of Commissioner unless he received the same salary and allowances as a Judge of the Supreme Court, and unless the Defendant was also at liberty to carry on the practice of his profession as a barrister and solicitor; but that he, the Defendant, would consider the matter, and would let the said Under-Secretary know shortly his decision upon it.

14. Shortly after this interview the Defendant again saw the said Under-Secretary, and intimated to him that he, the Defendant, had determined to adhere to his first impression, and that he would not accept the office unless he received as Commissioner the same salary and allowances as those of a Judge of the Supreme Court, and unless he was also at liberty to carry on the practice of his profession, so far as it was possible to do so.

The Defendant heard nothing further about the matter for some time, and he considered that the negotiation was at an end.

15. On the 15th October, 1889, however, the Defendant received a message from the Hon. the Native Minister requesting the Defendant to call upon him at the Government Buildings.

16. The Defendant did so, and the Hon. the Native Minister formally offered the Defendant the appointment of Commissioner at a salary of £1,200 a year, and £1 1s. per day travelling-allowance, with the liberty of private practice. The Hon. the Native Minister also informed the Defendant that it was estimated that the work would last from five to ten years.

17. The Defendant then informed the Hon. the Native Minister that since the said Under-Secretary had spoken to the Defendant upon the matter a change had taken place in his business arrangements, and that it was hardly likely that he could accept the appointment, and that if he did so he did not think that he could accept less than he had already stated—namely, the salary and allowances of a Judge of the Supreme Court, with liberty of private