

practice. The Defendant also informed the Hon. the Native Minister that his books had been balanced, and his income from his practice had been found to be as previously stated.

18. After some consideration the Defendant determined to accept the appointment, provided he received the salary and allowances of a Judge of the Supreme Court, and he had a guarantee of a three years' engagement, but not otherwise; and he intimated this determination to the Hon. the Native Minister.

19. The Defendant received no further communication from the Hon. the Native Minister for some time, and he understood that the said Minister had left Wellington shortly after the decision of the Defendant was communicated to him.

20. In the meantime the Defendant had an opportunity of reconsidering the matter, and the result was that the Defendant came to the conclusion that his acceptance of the office would practically result in his retirement from the practice of his profession, and also that it was improper upon public grounds that the office of Commissioner should be held by a barrister in practice, and on the 16th November, 1889, the Defendant wrote to the Hon. the Native Minister informing him that he must decline the office, even though the Government should be willing to fix the salary and allowances at those of a Judge of the Supreme Court.

21. The letter mentioned in the last paragraph was and is in the words and figures following (See No. 1, page 1).

22. In reply to the letter set out in the last paragraph, the defendant received from the Hon. the Native Minister a letter which was and is in the words and figures following (See No. 2, page 2).

23. After the lapse of some time, and on or about the 20th day of February, 1890, the Hon. Sir Harry Atkinson, then Premier of the Colony of New Zealand, sent a message to the Defendant requesting the Defendant to call at the Premier's office, and on the Defendant doing so the said Premier then offered to the Defendant the offices of a Judge of the Supreme Court of New Zealand and of Commissioner under the said statute, at the same salary and allowances as the other Puisne Judges of the said Court, and the Defendant agreed to accept the said offices upon those terms.

24. On or about the 1st day of March, 1890, the Defendant received from the said Premier the letter set out in the 5th paragraph of the Statement of Claim in this action; and on the 5th day of March, 1890, the Defendant wrote and despatched to the said Premier the letter set out in the 6th paragraph of the Statement of Claim in this action.

25. Both the letters mentioned in the last paragraph were written, despatched, and received prior to the delivery to the Defendant of his Commission.

26. On or about, but not before, the 6th day of March, 1890, the Defendant received from the Hon. the Minister of Justice his said Commission, and a letter accompanying the same in the words and figures following (See No. 5, page 2).

27. The appointments conferred upon the Defendant were gazetted on the 6th day of March, 1890, and on that date the Defendant retired from the practice of a barrister and solicitor theretofore carried on by him.

28. The Defendant took the oaths as a Judge of the Supreme Court of New Zealand in due form of law on the 14th day of March, 1890.

29. The Defendant alleges and submits that the negotiations and correspondence hereinbefore set out and referred to constitute a contract binding on the Crown, whereby his salary as a Judge of the Supreme Court of New Zealand was ascertained and established.

30. The Defendant denies, therefore, that no salary was ascertained and established for him as such Judge, as is alleged in the 8th paragraph of the Statement of Claim in this action, and the Defendant denies that it is true, as alleged in the said paragraph, that Parliament has refused to vote any salary for the Defendant as a Judge of the Supreme Court.

31. The Defendant alleges that during the session of the House of Representatives in the year 1890 a minority of the members of the said House threatened to obstruct the business and proceedings of the said House until the said House should come to an end by effluxion of time on the 5th day of October, 1890, to the injury of the public business of the colony, and that in consequence thereof, and not otherwise, and in order to save the great public loss and inconvenience which would have resulted therefrom, the Ministry then in office submitted to recommend His Excellency the Governor to withdraw the word "Judge," which had been inserted in a Message of His Excellency recommending provision to be made for payment of the Defendant's salary, and thereupon the said House passed the sum of £1,400 for payment of the Defendant as Commissioner. At the same time the Minister in charge of the estimates declared in his place upon the Treasury benches in the House of Representatives that the Ministry could not interfere, and would not attempt to interfere,