

appointment of Judges, because, if it could have been shown that it bore the construction contended for, it would not have been possible to resist the conclusion, having regard to the terms of the Act of 1882, that the power which it conferred upon the Governor was still vested in him. If, on the other hand, the Act of 1858 conferred no such power, this is a legitimate consideration when inquiring into the effect of the later Act. Before proceeding to this inquiry, it will be desirable to refer to the intermediate legislation, as some stress has been laid upon it. "The Civil List Act, 1862," substituted for the sums mentioned in the schedule to "The Civil List Act, 1858," the following: "Judges, £6,200." "The Civil List Act, 1863," substituted £7,700 for £6,200 as the sum payable to the Judges. Whilst each of these Acts increased the sum payable, neither of them specified how the respective sums were to be distributed amongst the Judges. It appears to have been afterwards thought, not unnaturally, that this was objectionable, and accordingly an Act was passed in 1873 to amend "The Civil List Act, 1863," which, after reciting that it was expedient that the sum of £7,700 granted to Her Majesty by that Act for defraying the salaries and expenses of the Judges of the Supreme Court should be more definitely appropriated to such service, enacted that this sum should "be applied in paying to the Judges of the said Court respectively the annual salaries specified in the first schedule—viz., annual salary to the Chief Justice of the Supreme Court, £1,700; annual salaries of four Puisne Judges of the Supreme Court (£1,500 each), £6,000." This enactment implies that, unless the Legislature should intervene, "the Judges of the Supreme Court"—other than the Chief Justice—would be four in number only. This statute was in force, unaltered, at the time "The Supreme Court Act, 1882," was passed. The object of that Act was, it is to be gathered, to make certain alterations in the practice and procedure of the Court, but it was evidently thought convenient that the Judicature provisions should also be found in the same Act so as to render it a complete code. Part I. of the Act consists, therefore, in substance of a re-enactment of the Supreme Court Judges Act with the addition of a provision defining the qualifications requisite for the appointment to the office of Judge. The 7th section of the earlier Act is repeated with an immaterial verbal alteration. For the 6th, however, the following is substituted: "11. The salary of a Judge shall not be diminished during the continuance of his commission." What was the cause for this change does not appear, but it affords no ground for the conclusion that it was intended to affect the limitation of the power of appointing Judges which, in their Lordships' opinion, was then in force. The 11th section of the Act of 1882, as distinctly as the 6th section of the earlier Act, involves the necessity of a salary being fixed at the commencement of a Judge's commission. Some stress was laid in the argument for the respondent upon the interpretation which it was alleged had been put upon the Supreme Court Judges Act, as evidenced by certain appointments made by the Governor. It appears that Mr. Justice Gillies and Mr. Justice Williams were appointed in 1875, about a month before the resignation of the learned Judges whom they were to succeed was gazetted. Mr. Justice Richmond and Mr. Justice Chapman received their appointments in 1862 and 1864, before the Civil List Acts of 1862 and 1863, each of which provided the salary for an additional Judge, came respectively into force, though after they had passed the Legislature and had been reserved for Her Majesty's pleasure to be signified. The former Act provided that it was to take effect from 1st July, 1862, a date prior to the appointment of Mr. Justice Richmond, but there was no such provision in "The Civil List Act, 1863." It is manifest that all these were intended to be appointments of Judges to whose office a salary was regarded as already secured by the Legislature. And Mr. Justice Gresson, whose appointment was the first made under the Act of 1858, did not receive his commission until the day after the Act providing a salary for him had come into force. Their Lordships cannot attribute any weight to the facts relied on as affecting the interpretation of the enactments which have to be construed. There may have to be irregularity in some of these appointments, and it would be contrary to sound principle to allow the interpretation indicated by any such practice, even if it had been uniform and unequivocal, to guide the Court in the construction of a modern statute. Their Lordships will humbly advise Her Majesty that the judgment of the Court of Appeal of New Zealand should be reversed and judgment on the motion entered for the Attorney-General. Under the peculiar circumstances of this case, their Lordships do not think that the respondent should be ordered to pay the costs in the Court below or of this appeal.

Enclosure 2 in No. 18.

(Telegram.)

21st May, 1892.

EDWARDS appeal allowed, Court holding Judges can only be appointed for whom salary fixed by law. No costs either side.

To Premier, Wellington.

No. 19.

21, Cannon Street, London, E.C., 24th May, 1892.

Buckley v. Edwards.

DEAR SIR,—

Confirming our conversation with you on Saturday, the Privy Council delivered their formal decision on Saturday last, allowing the appeal of the Government, but without costs under all the circumstances of the case. We shall be able to obtain prints of the judgment as soon as Her Majesty has held a Council, so that the Order may be made, and you will, no doubt, like to have a copy.

We are reporting the matter to the Crown Solicitor by this week's mail.

We have, &c.,

The Agent-General for New Zealand.

MACKRELL, MATON, AND GODLEE.

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