

followed in New Zealand. The first ordinance passed dealing with the Judges was passed in 1841, and that ordinance said that the appointment of the Judges should be by Her Majesty or the Governor. Section 1 says—

*Mr. Justice Denniston*: How do you cite that?

*Sir R. Stout*: Supreme Court Ordinance, page 67 in this volume, 1841, Session II., No. 1, the first ordinance of the second session. It says, "The Court shall be holden before one Judge, who shall be called the Chief Justice of New Zealand, and such other Judges as Her Majesty or the Governor shall from time to time be pleased to appoint." There was no provision in this Act for salaries.

*Mr. Justice Richmond*: It goes on to say expressly they are to hold office during pleasure?

*Sir R. Stout*: That was in the next ordinance.

*Mr. Justice Richmond*: It is not in the first?

*Sir R. Stout*: No, not in the first. In the next ordinance it says that they are to hold office during pleasure. Then the next ordinance dealing with the matter was the first in the next session, that is, in 1844. Section 10 of that ordinance provided, page 119:—

"The Court shall consist of one Judge, who shall be called the Chief Justice of New Zealand, and of such other Judges as Her Majesty shall from time to time be pleased to appoint: Provided that it shall be lawful for His Excellency the Governor to appoint such Judges provisionally until Her Majesty's pleasure shall be known. The Judges of the Court shall hold their office during Her Majesty's pleasure."

The alteration made seems to be that the Judges were to be appointed by the Queen, not by the Queen or the Governor. The only power of appointment that the Governor had was to appoint provisionally. This, I submit, shows that the colony then recognised that the appointment of all officers practically rested with the Home Government; but the colony had not given to it the full powers of government; it was still governed from England. In this ordinance, also, there was no provision for salaries. There were various subsequent Supreme Court Acts and ordinances—1846, 1848, and 1853—but none of these amendments touched the question now to be considered by the Court. Then we come to the granting of a Constitution and representative government for New Zealand by the Constitution Act in 1852. The Constitution Act deals with the constitution of the Supreme Court indirectly, and I submit it is important to notice it, for at all events it attempted, I submit, to bring into the colony part of the privileges which the Supreme Court Judges held in England. I refer, for example, to section 65 of the Constitution Act, in which it says—I need not read the whole section:—

"Every Bill shall be passed by the said Legislative Council and House of Representatives, but every Bill which shall be passed by the said Legislative Council and House of Representatives altering the salary of the Governor, or altering the sum described as for Native purposes, shall be reserved for the signification of Her Majesty's pleasure thereon, and, until and subject to such alteration by Act or Acts as aforesaid, the salaries of the Governor and Judges shall be those respectively set against their several offices in the said schedule."

And further details are mentioned, but I need not read these. But there is this proviso to section 15:—

"Provided always that it shall not be lawful for the said General Assembly, by any such Act as aforesaid, to make any diminution in the salary of any Judge to take effect during the continuance in office of any person being such Judge at the time of the passing of such Act."

The salaries are set out—one Chief Justice, £1,000; one Puisne Judge, £800. In section 64 there is provision that practically these sums shall belong to what may be termed the Civil List, and be independent of appropriation by the Parliament of New Zealand. It says in section 64:—

"There shall be payable to Her Majesty, every year, out of the revenue arising from such taxes, duties, rates, and imposts, and from the disposal of such waste lands of the Crown in New Zealand, the several sums mentioned in the Schedule to this Act."

I have read the part of the schedule referring to the Judges of the Supreme Court. Now, I submit that, so far, therefore, as the Judges were concerned, they were practically put in a higher position than the Governor, because his salary might be varied—only I conceive that would have to be reserved for the Queen's pleasure—but the salary of the Judges could not be varied by any Act of the General Assembly of New Zealand.

*Mr. Justice Denniston*: That is, Judges then in office.

*Sir R. Stout*: Yes.

*Mr. Justice Williams*: I think the section goes further than that. If you read the section carefully I think you will see it applies to future Judges as well as to the Judges then in office.

*Sir R. Stout*: It might mean that, of course. It is stronger for me to put it in that way, but I was willing to take it in the modified form. My main point, however, is this:—

*The Chief Justice*: What you say is that that provides that the salary shall be—Chief Justice, £1,000, and Puisne Judge, £800; and this has to be read into the ordinance, only it is made permanent and unalterable.

*Sir R. Stout*: That is so; that, at all events, those two sums—£1,800—were permanently appropriated for certain services, the one given for a Judge as Chief Justice, and the other for a Puisne Judge, and that these sums could not be taken from the Queen. That, I submit, is clear, according to section 64, and I shall show if it is necessary, afterwards, that, though there was power given to the General Assembly to repeal certain sections in the Constitution Act, these sections that dealt with Judges could not be repealed. This sum was permanently set apart by the Parliament of England for the Judges—and I submit that it was a permanent appropriation.

*The Chief Justice*: You mean, that it was not only an appropriation, but a fixing of the salaries.