

*Sir R. Stout* : Of course, I submit it is a permanent fixing of £1,800, by placing it on the Queen's Civil List, and the reason for that, I shall show further when I refer to the Constitution. I do not know that it ever came before the Court, but this point happened in England. I cannot find a reference to it at present, but this is what happened; there may be no reference to it in the reports: There was a vacancy in one of the Courts, and when a Judge was appointed to the Court it was afterwards claimed that the salary, which had not been paid to anybody during the time there had been a vacancy, belonged to the Judge appointed, and it was said that it was like a life estate.

*Mr. Justice Richmond* : There was a statutory provision about it if I recollect.

*Sir R. Stout* : There may have been afterwards.

*Mr. Justice Richmond* : I know there is—one depriving the Judge of any right to go back to the vacancy of the office.

*Sir R. Stout* : The point which was raised was that one Judge claimed, as there was a life estate, he went back, and could claim the money that had accrued to that vacancy.

*Mr. Justice Richmond* : His Honour's suggestion was whether an Act of the Executive or the Crown was necessary. You say not.

*Sir R. Stout* : No. I said that when he was appointed Chief Justice the salary attached to the office.

*Mr. Justice Richmond* : Well, I am not aware whether that point has been decided. The question whether the Crown might make savings upon the money seems to me to be an open one.

*Sir R. Stout* : I will state what the practice here is at all events. In 1875, when his Honour the late Mr. Justice Gillies was appointed to the office, it was held there were savings in the Civil List. The Audit Department holds that these Civil List sums are permanently appropriated, and that they cannot be changed from the purposes for which they are set apart—that they are for the salaries of Judges and nothing else.

*Mr. Justice Richmond* : You will see there were in the Constitution Act other provisions—about the collection of Customs, and the administration of the lands. In both those cases the Crown might provide for the service without vote. The idea was, in handing over the power of the purse to the colonists, that the Crown reserved to itself the right to appropriate certain sums out of the revenue without a vote.

*Sir R. Stout* : I admit that, and also shall show from authority that it is looked upon as absolutely necessary for the independence of the judicial—

*Mr. Justice Richmond* : A Judge's salary could not be diminished by the General Assembly during his term of office.

*Sir R. Stout* : No doubt; and I shall also show that this is admitted, that without such permanency and without a permanent vote there is no independence of the Bench. I shall show by-and-by that in America it has been not only provided for federal but even in the case of the subsidiary Judges.

*Mr. Justice Richmond* : There is nothing in the Constitution Act expressly prohibiting the Executive from reducing a Judge's salary; but it is directed against the power of the Legislature.

*Sir R. Stout* : But I submit the salary attached—

*Mr. Justice Richmond* : They had a freehold, you mean?

*Sir R. Stout* : Well, it amounts to that. The Constitution Act does not go that length at all. I am going to show what was done in New Zealand to bring that into force.

*Mr. Justice Richmond* : Of course, there was nothing there to alter the tenure.

*Sir R. Stout* : Although there is nothing expressly preventing the Governor from reducing the salary of a Judge, there is by implication, though not expressed.

*Mr. Justice Williams* : Do you contend that the effect of section 65 of the Constitution Act is to limit the right given by the ordinance to the Crown to appoint any number of Judges?

*Sir R. Stout* : I submit that section 64 and section 65 read together do have that effect, but it is not necessary for my argument; but I submit it is—

*Mr. Justice Williams* : You may call it to your aid in support of that argument; section 66 I think it is.

*Sir R. Stout* : I intend to refer to that afterwards. In giving the rapid sketch I referred to, I submit I will be allowed to read things which may or may not be regarded as really evidence. Of course I do not say the Court is bound by what I may read in giving this historical sketch. I shall first refer to a series of resolutions passed in the House of Representatives in 1856. These resolutions will be found in *Hansard*, 1856–58, p. 300. The resolutions are as follows:—

“That, in the opinion of this House, the tenure of office of Judges of the Supreme Court ought to be assimilated as nearly as may be to that of Judges in England; that the Judges of the Supreme Court ought not to be removable except by Her Majesty, on an address from both Houses of the General Assembly, and should only be liable to suspension by the Governor on a like address. That there ought to be a Chief Justice and two Puisne Judges of such Court. That so soon as Judges shall be appointed in accordance with these resolutions, the salary of the Chief Justice ought to be £1,400 per annum, and that of the two Puisne Judges £1,000 each per annum. That a proportionate increase ought to be made in the Civil List; but no second Puisne Judge ought to be appointed till this House shall have resolved that the said appointment is necessary. That the appointment of Judges ought to be with Her Majesty, but to be exercised on the recommendation of some one of the Judges of the superior Courts in England, who may be from time to time designated in that behalf by the Colonial Government on behalf of the colony.”

*Mr. Justice Denniston* : Is that a resolution of one House or two?

*Sir R. Stout* : Of the House of Representatives. There was a Committee of the Legislative Council dealing with the matter, and I will refer to that, if necessary, afterwards. But these are resolutions of the House of Representatives I am reading now.