

*Sir R. Stout*: Yes; the affidavit in the proceedings which says it was in 1862 Mr. Gresson was appointed is a mistake. It was not Mr. Harrison's mistake, your Honour. I believe he was told this by the Justice Department. The correct date is the 26th July, 1859. The next Act which deals with the Supreme Court Judges—of course they deal with procedure, which I will not refer to—is "The Supreme Court Act, 1862." This Act repeals section 4 of the Act of 1854. The 4th section of the Act gave power to the Governor to remove on an address from both Houses. The Act of 1862 took that power away from the Governor and left it with Her Majesty. It states "That it shall be lawful for Her Majesty, upon the address of both Houses of the General Assembly, to remove any Judge of the Supreme Court from his office, and to revoke the patent of his commission, and for the Governor to suspend any such Judge upon a like address." In the same session that this amending Act of the Supreme Court Judges Act was passed there was a "Civil List Act, 1862," passed. That provided an increase of the salary for the Governor, and it provided that a sum of £6,200 should be provided for Judges. It did not specify in this Civil List Act how the salaries were to be appropriated, and the 3rd section of this Act was this: "This Act shall be deemed to take effect on and after the first day of July, 1862."

*The Chief Justice*: Did it repeal the Civil List Act, or leave it standing?

*Sir R. Stout*: Section 2 says: "There shall be payable to Her Majesty every year out of the revenue arising from taxes duties rates and imposts levied under any Act or Acts of the General Assembly the several sums mentioned in the Schedule to this Act instead of the several sums mentioned in the Schedule to 'The Civil List Act, 1858.'"

It was a substitution of these sums—a substitution as to the Judges of £6,200. In fact, it lumped up the sums together. There are only four items in the schedule of the Act of 1862. This Civil List Act had a retrospective clause, deemed, I presume, to be retroactive, and to sanction the payments on and after the 1st July, 1862. This Act, however, was not proclaimed until 1863.

*The Chief Justice*: Mr. Swainson called attention to the impropriety of that—I think, in the Upper House.

*Sir R. Stout*: Of course, there was no need of having reserved the Civil List Act so far as the salary of the Judges was concerned; it was only because it altered the salary of the Governor. However, your Honour, this Act was passed when the population of the colony had rapidly increased and seemed to be very rapidly increasing, and it was impossible to carry on the judicial functions without an increase of the Judges. At this time the goldfields had broken out in Otago, and the population there had wonderfully increased. After this Act was passed, but before it was assented to, his Honour Mr. Justice Richmond was appointed a Judge—on the 20th October, 1862, but the Act was not gazetted in the *New Zealand Gazette* as law until the 11th July, 1863.

*Mr. Justice Denniston*: What do you mean by "gazetted as law"?

*Sir R. Stout*: It has to be gazetted here before it came into force, after receiving the Queen's assent.

*Mr. Justice Denniston*: Of course it was necessary to get the Queen's assent.

*Sir R. Stout*: It was not necessary for the Judges' salaries, but it was necessary, because the Act altered the salary for the Governor.

*Mr. Justice Richmond*: That was in 1862.

*Sir R. Stout*: The next year there was another Civil List Act passed; that was the Act called "The Civil List Act, 1863." That Act had no retrospective or retroactive clause. The section is this. Section 2 says: "There shall be payable to Her Majesty every year out of the revenue arising from taxes duties rates and imposts levied under any Act or Acts of the General Assembly the several sums mentioned in the Schedule to this Act instead of the several sums mentioned in the Schedule to 'The Civil List Act, 1862.'"

The Act of 1862 thus provided for a Governor £4,500, and for the Judges £7,700, saying nothing about their number. No doubt the need for this also was the great increase of judicial work in the southern part of the colony from the very rapid increase of population which had come into the colony through the goldfields. After this Act was passed, but before it was proclaimed the law of New Zealand, receiving the Queen's assent—namely, the 23rd March, 1864—the late Mr. Justice Chapman was appointed Judge, and the Civil List Act was not proclaimed till about four months later, the 27th July, 1864. I may therefore notice, your Honours, in passing, that, at all events, though the Civil List Act did not receive the Queen's assent, no appointment of an additional Judge was ever made by Parliament until Parliament had been consulted, and, so far as the Parliament of New Zealand was concerned, until it had voted the requisite sums for the Judge's maintenance and salary.

*Mr. Justice Williams*: No appointment was ever made by the Crown?

*Sir R. Stout*: Yes, by the Crown. The next Act that deals with the question is "The Civil List Act, 1873," and I would notice also about this that whenever a new Judge was necessary the Executive always seems to have consulted Parliament and gone to Parliament to obtain the necessary funds for the purpose.

*Mr. Justice Conolly*: You may state it more strongly, Sir Robert. Not only was Parliament consulted, but the two Houses of Parliament approved.

*Sir Robert Stout*: Yes; that is so. The next Act is 1873. That Civil List Act altered the form of the vote provided in "The Civil List Act, 1863;" and "The Civil List Act, 1863," is still in force. The Act says, "The short title of this Act shall be 'The Civil List Act 1863 Amendment