

impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honour of the Crown.'"

Hearn, at page 81, having mentioned the circumstance of William refusing to put the salaries of the Judges on the Civil List, says, "In 1693 a Bill passed both Houses, which proposed to give to each Judge a salary of £1,000, payable out of the Civil List; that King William thought that Parliament, if it wished to be liberal, should not be so at his expense, and refused his assent. At length, however, a clause was inserted in the Act of Parliament directing that the salaries of Judges should be fixed and ascertained, and determining their tenure; that it was held that the death of the reigning King vacated all his commissions." He goes on, "One of the first measures of that King [George III.], and for which, useful though it was, he has received more than his fair share of praise, was to recommend to Parliament the removal of this limitation. His suggestion was adopted, and at the same time an improvement of much greater practical value was effected. Although the Act recited had directed that the salaries of the Judges should be for ever ascertained, it contained no precise enactment for the purpose. This defect was remedied by the Act of George the Third. The amount of salary attached to each office was specified, and the same was made a permanent charge on the Civil List. Thus the independence of the Bench was secured as far as law can secure it." That is what Hearn says. Now, I say that "fixed and determined" means fixed and determined by a body with power to pay, and that means Parliament. There can be no "fixing" by merely making a contract. Fixing means that some revenues are made liable for carrying it out. On every ground Hearn lays down the principle that in order to secure the independence of the Bench two things are necessary—first, a fixed tenure; and, secondly, a fixed salary. That is the view of all our constitutional writers and, though the first was secured by the Act of Settlement, it was not until the Act of George that complete independence was secured. From the time of the passing of the Act of Settlement until the Act of George independence was not thoroughly established.

Mr. Justice Richmond: The Act of Settlement declared the principles, but the principles were not carried out.

Sir R. Stout: It laid down what was to be the law, but it was not fully carried out until the Act of George III. was passed.

Mr. Justice Williams: I think the Judges were paid during that time by fees.

Sir R. Stout: Partially. Afterwards the fees went to the clerks, and it is stated in one of the books, I think, that the clerks made a greater salary than the Judges. What I would point out is this: that it has been considered in England essentially necessary that salaries of the Judges should be secured in some permanent way. Story, in his book on the Constitution of the United States, 3rd edition, page 473, paragraph 1627, says, "It is observable that the Constitution has declared that the Judges of the inferior Courts as well as of the Supreme Court of the United States shall hold their office during good behaviour. In this respect there is a marked contrast between the English Government and our own. In England the tenure is exclusively confined to the Judges of the superior Courts, and does not, as we have already seen, even embrace all these." In section 1628 he says, "The next clause in the Constitution declares that the Judges of the Supreme and inferior Courts 'shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.' Without this provision the other, as to tenure of office, would have been utterly nugatory and, indeed, a mere mockery." Paragraph 1629 quotes from "The Federalist," and also refers to Kent's "Commentaries." It quotes from "The Federalist:"—

"Next to permanency in office nothing can contribute more to the independence of the Judges than a fixed provision for their support. . . . In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realised in practice the complete separation of the judicial from the legislative power in any system which leaves the former dependent for pecuniary resource on the occasional grants of the latter. Enlightened friends to good government in every State have seen cause to lament the want of precise and explicit precautions in the State Constitutions on this head. Some of these, indeed, have declared that permanent salaries should be established for the Judges, but the defendant has in some instances shown that such expressions are not sufficiently adequate to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the Convention, accordingly, has provided that the Judges of the United States shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

Hamilton, in "The Federalist," gives the sections which I have quoted from Story, and Kent's "Commentaries," vol. i., pp. 307 and 308, deals with the same question.

I need not quote, but I may tell the effect of this writer. This principle is laid down. It points out clearly that, unless the salary can be drawn independently of the legislative department of the Constitution, that the judicial is not in an independent position. It may be said that in England this law was passed to preserve Judges from interference by the Crown. No doubt in those days that was the evil to be avoided—that the Crown should not have the power to dismiss Judges if they did not give judgments in consonance with the opinions of the Crown or in consonance with the policy of the Crown. But I submit that, although the power of the Crown has been lessened, there is just as good reason for insisting now on the independence of the Judges and of freeing them from legislative control as ever there was for insisting on their independence from Crown control, and that can only be accomplished by carrying out the principle laid down in the Act of Settlement, and which was given effect to in the Act of George, and which, I submit, is still given effect to in our Act—that the salaries of Supreme Court Judges should be independent of annual grants of Parliament for the purpose. Another authority dealing with this matter is in Bishop Burnet's history—folio edition, Vol. 2, p. 86; library edition, Vol. iv., p. 149; and also on p. 32 of the preface to his work. It is not, perhaps, necessary that I should cite this at length, as it would