take up too long a time. I submit, however, that there is a concurrence of constitutional authorities as to what is necessary for the due independence of the Bench. And now I come to the question: Has this view of constitutional writers any bearing on the interpretation of our Act of 1882 and of the Act of 1873, which go together. I submit it has. Freeman in his book, "The Growth of the English Constitution," chap. iii., asks what is meant by the term "constitutional," and shows that the term "constitutional" will be used differently when spoken to by different persons. The best statement, however, I submit, as to what "constitutional" is is laid down in "Dicey's Lectures Introductory to the Study of the Law of the Constitution," second edition, published in 1886. He says, on page 24,—

"Constitutional law, as the term is used in England, appears to include all the rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the State. Hence it includes, amongst other things, all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority. Its rules prescribe the order of succession to the Throne, regulate the prerogatives of the Chief Magistrate, determine the form of the Legislature and its mode of election. These rules deal also with Ministers, with their responsibility, with their spheres of action, define the territory over which the sovereignty of the State extends, and settle who are to be deemed subjects or citizens. Observe that I have throughout used the word 'rules,' not 'laws.' This employment of terms is intentional. Its object is to call attention to the fact that the rules which make up constitutional law, as the term is used in England, include two sets of principles or maxims of a totally distinct character. The one set of rules are in the strictest sense laws, since they are rules which, whether written or unwritten, whether enacted by statute or derived from the mass of custom, tradition, or Judge-made maxims known as the common law, are enforced by the Courts. These rules constitute constitutional law in the proper sense of the term, and may, for the sake of distinction, be called collectively 'the law of the Constitution.' The other set of rules consist of conventions, understandings, habits, or practices, which, though they may regulate the conduct of the several members of the sovereign power, of the Ministry, or of other officials, are not in reality laws at all, since they are not enforced by the Courts. This portion of constitutional law may, for the sake of distinction, be termed the 'conventions of the Constitution,' or constitutional morality. To put the same thing in a somewhat different shape, 'constitutional law,' as the expression is used in England, both by the public and by the authoritative writers, consists of two elements. The one element, which I have called the law of the Constitution, is a body of undoubted law; the other element, which I have called the conventions of the Constitution, consists of maxims or practices which, though they regulate the ordinary conduct of the Crown and of Ministers and of others under the Constitution, are not in strictness laws at all. The contrast between the law of the Constitution and the conventions of the Constitution may be most clearly seen from examples. To the law of the Constitution belong the following rules: 'The King can do no wrong.' This maxim, as now interpreted by the Courts, means, in the first place, that by no proceeding known to law can the King be made personally responsible for any act done by him: if, to give an absurd example, the Queen were to shoot Mr. Gladstone through the head, no Court in England could take cognisance of the act. The maxim means, in the second place, that no one can plead the orders of the Crown, or, indeed, of any superior officer, in defence of any act not otherwise justifiable by law. This principle, in both its applications, is, be it noted, a law, and a law of the Constitution, but it is not a written law. 'There is no power in the Crown to dispense with the obligation to obey a law.' This negation or abolition of the dispensing-power now depends upon the Bill of Rights—it is a law of the Constitution, and a written law. Some person is legally responsible for every act done by the Crown." He goes on to state a great number of maxims which come under the law of the Constitution, and then he deals with what may be called the conventions of the Constitution, and gives such examples as "the House of Lords does not originate any money Bills."

These are what he terms conventions of the Constitution. I submit that this practically has become not merely the convention of our Constitution, but that the Court must read into the Supreme Court Act of 1882 a declaration to this effect: that the salaries shall be fixed and ascertained, and that the Supreme Court Act of 1882, when it comes to be interpreted, must be read as if these words were in it in these express terms. And in interpreting the Act of 1882 the Court, I submit, cannot ignore what has been the practice in dealing with Supreme Courts in England since George III.'s time, in other colonies where there has been representative government, and in our own colony—viz., that practically this maxim has been followed in England and in all the colonies: that before Judges have been appointed the Legislatures have been consulted, and have always made an effort to fix the salary before the office of Supreme Court Judge has been filled. Now, I submit, therefore, that this is more than a convention of the Constitution, such as Dicey mentions in his book. It is, so to speak, a law of the Constitution, which the Court must, I submit, look at, and must read into our New Zealand Acts. Now, as to the effect of what may be termed custom, or outside practice, or what may be termed even constitutional law, as bearing on the interpretation of the statutes, there are many examples in our books. I shall proceed to refer to one example — a late one—a well-known one, which has come before three Courts, Bell Cox *v.* Hakes, in the December number of the Law Reports of 1890, Appeal Cases, Vol. xv. The case begins at page 506, and continues to page 547. The Court is perhaps aware of what the case was. An application made for discharge by *habeas corpus* came before two Judges of the High Court of Justice, common-law side, and they discharged the prisoner. There was then an appeal to the Court of Appeal. The Court of Appeal, consisting of three Judges, reversed the decision; and then there was an appeal to the House of Lords. The case was twice argued, as Lord FitzGerald died between the first argument and the giving of judgment, and ultimately the decision was given by Lord Halsbury,