

Act the Court should not confine itself to one particular section, and that the context of earlier and later Acts and of analogous Acts are all to be looked at as aiding in the interpretation. That is at page 36. He says, "Such survey is always indispensable, even when the words are the plainest, for the true meaning of any passage is that which best harmonizes with the subject and with every other passage of the statute." Then, Maxwell also says at pages 42 and 43, "Where there are earlier Acts relating to the same subject the survey must extend to them, for all are, for the purpose of construction, considered as forming one homogeneous and consistent body of law, and each of them may explain and elucidate every other part of the common system to which it belongs. For instance, a by-law which authorised the election of 'any person' to be Chamberlain of the City of London would be construed so as to harmonize and not to conflict with an earlier one which limited the appointment to persons possessed of a certain qualification, and 'any person' would be understood to mean only any eligible person." I submit that helps in construction. At page 42 he gives illustrations—but it is unnecessary to take up the time of the Court by reading them at length—which show, I submit, that in dealing with the Act of 1882 the Court must read into it the Civil List Act of 1873. I have previously submitted that they must read into it the provisions of the Act of Settlement, and, as I have said before, they must read into it also, if necessary, the constitutional law. I submit, however, that, independently of that, whether the Court reads in these two things or not, whether it reads into it the Act of Settlement or the constitutional law or not, if it contents itself with reading into it the Civil List Act, and then looking at the context in the Act itself, I submit that will show there is no power to appoint a sixth Judge of the Supreme Court. Now, I will very briefly refer to some of the provisions of the Act itself, which I submit bear out my construction of the Act.

*Mr. Justice Denniston*: You contend that the salary can only be fixed and established by Act of the Legislature—that is to say, that a mere resolution is nothing.

*Sir R. Stout*: Yes, nothing. I am going to cite cases. It is said on the other side that there is a contract, and also that the contract is sufficient to fix and ascertain the salary. I shall show that that is not so.

*Mr. Justice Denniston*: Your argument involves that there shall be no addition to the Supreme Court Bench until the Legislature has passed another Act.

*Sir R. Stout*: That is so; and I submit it appears from the Act itself. I am going to show now that it does appear from the Act itself, and that the Act implies that the Civil List Act has been incorporated. The first section that deals with that is section 11—"The salary of a Judge shall not be diminished during the continuance of his Commission." Obviously, that implies there can be no Judge without a salary.

*Mr. Harper*: That is exactly what we say.

*Sir R. Stout*: Then I wish you joy of it.

*Mr. Justice Richmond*: I suppose you can no more contemplate a Judge without a salary than you can a tide waiter or any other officer. I suppose if you had a tide-waiter without a salary he might be tempted, as even a Judge might, to pay himself in some other way.

*Sir R. Stout*: I submit that the section does not only not contemplate a Judge without a salary, but it goes further and contemplates a salary fixed; and section 12 means fixed and ascertained as much as the Act of Settlement. My learned friends say they have a salary. I should like to know where it is: I cannot find it. Now comes section 12. This section says, "It shall be lawful for the Governor in Council, in the name and on behalf of Her Majesty, at any time during illness or absence of any Judge of the Court, or for any other temporary purpose, to appoint a Judge or Judges of the Court to hold office during His Excellency's pleasure, and every such Judge shall be paid such salary, not exceeding the amount payable by law to a Judge of the said Court, other than the Chief Justice, as the Governor in Council shall think fit to direct." What is the meaning, I ask the Court, of "payable by law"? I submit there is only one law that provides for the payment of a Judge's salary, and that is the Act of 1873. When, therefore, the Legislature speaks about salary payable by law, the Legislature must be construed to mean payable by existing law, or any alteration of that law that may be made. That is the only salary that can be payable by law, and that is the salary fixed by the Act of 1873. But I go further. What does this section 12 show? This section shows that so careful had the Legislature been in carrying out the constitutional rule about fixing and ascertaining salaries without reference to Parliament, that actually the salary of a temporary Judge has to be fixed without reference to Parliament. Then, section 11, which provides that salaries shall not be reduced—

*The Chief Justice*: That clause, for some reason or other, has been altered from the Act of 1858, and the provision of the Constitution Act has been followed. The Act of 1858 was far better.

*Sir R. Stout*: What the 12th clause says is this: "Every such Judge"—that is, temporary Judge—"shall be paid such salary, not exceeding the amount payable by law to a Judge of the said Court, other than the Chief Justice, as the Governor in Council shall think fit to direct." Here, then, was, I submit, an appropriation by the Governor in Council without reference to Parliament. It is left to him to fix and determine the salary even of a temporary Judge; and I ask, would it be assumed, in construing this Act with section 12 in it, when it speaks of the amount payable by law—is it to be assumed then that the salary of a sixth Supreme Court Judge was to depend upon what the defendant says—a vote of the House—and the defendant says in an affidavit that there was obstruction in the House, and hence his salary was not provided for? I submit that it is not so, and the Court will not assume it to be so, and therefore will read sections 11 and 12 together, and also will read the words "annual salary," in section 13, together, though that is not, I admit, so strong. Still, putting sections 11 and 12 together, with any light that may be thrown upon them by sections 13 and 14, showing that even the superannuation allowance was fixed and determined independently of Parliament, the Court will not assume that the Legislature meant by section 5 to give power to the Executive to create more Judges than there were salaries fixed and