

and that, as far as could be done, it was both constitutional and legal at the time when it was issued to him, and that he took under that Commission the office of a Judge, which office is now sought to be taken from him. I shall only briefly refer to the history which my learned friend Sir Robert Stout sketched yesterday with reference to the growth of the great constitutional principle which is embodied in the Act of Settlement, as to Judges not only holding their Commission during good behaviour, but that their salaries should be ascertained and established. Up to the time of the Act of Settlement it appears that the Chief Baron of the Exchequer and the Barons of the Exchequer only held their Commissions during good behaviour. They are the only Judges at that date who did so; but in some Commissions issued by Charles II. all of them held their commissions for a time during good behaviour. But that was transitory. It may be taken, generally speaking, that up to the Act of Settlement it was not a settled thing at all that the Judges generally held their Commissions during good behaviour. From that time it has been settled absolutely by law. We have to go no further than our own Act to find the same great principle embodied with regard to that—the Act of 1882. But with regard to salaries, another question altogether arises. Up to the end of 1692, I think it was, or thereabouts, all Judges were entirely at the mercy of the Crown both as to the amount of and the sources from which they were to get their salaries. Parliament did not protect them at all in that respect, but they were at the mercy of the Crown as far as tenure of office was concerned, and as to the amount of and the sources from which their salaries were to be obtained. This was felt so much that before the Act of Settlement an Act was submitted to the King for his assent, asking him to assent to the salaries being ascertained and established, and Burnett, in his history of his own times, says that the Judges themselves begged the King not to assent to that because they thought it was a proper thing that they, the Judges, should be dependent upon the Crown. It was the Judges who prevailed upon the King not to assent to it. This is in Burnett's history of his own times, Vol. iv., page 86, folio edition.

*Mr. Justice Williams*: What King was it—William?

*Mr. Harper*: Yes, William III. Then, shortly afterwards the House of Commons and the House of Lords got their own way, and the Act of Settlement was brought in, embodying the great principle that Judges were to have their salaries ascertained and established. Now, from that time to the first year of the reign of George III., we have not been able to discover how these salaries were ascertained and established in any shape or form. The contrary rather appears to be the case. What happened during that period has not been very clearly mentioned by the different text-writers, but I think it may be fairly assumed, from their silence on that particular question, and also from the manner in which they show how gradually the salaries came to be ascertained and secured, that, from their statements as to the gradual securing of the salaries, it is shown that up to the time of George III. at the least the Judges' salaries were at the mercy of the Crown, as they had been previously to the Act of Settlement. Now, in "Todd's Parliamentary Government," in the chapter relating to the Judges in their relation to the Crown and to Parliament, at page 726, and at the bottom of page 725—

*The Chief Justice*: Is it the second volume?

*Mr. Harper*: This is the second volume, it is paged consecutively through. At page 725 it says:—

"Previous to the revolution of 1688 the Judges of the superior Courts, as a general rule, held their offices at the will and pleasure of the Crown. Under this tenure there were frequent instances, from time to time, of venal, corrupt, or oppressive conduct on the part of Judges, and of arbitrary conduct—in the displacement of upright Judges and conniving at the proceedings of dishonest Judges—on the part of the Crown, the which gave rise to serious complaints, and led to several attempts during the seventeenth century to limit the discretion of the Crown in regard to appointments to the bench. At length, by the Act of Settlement, passed in the year 1700, it was provided that after the accession of the House of Hanover to the Throne of England 'Judges' Commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament, it may be lawful to remove them.

"One step only remained to place the Judges in a position of complete independence of the reigning sovereign, and that was to exempt them from the rule, ordinarily applicable to all office-holders, whereby their Commissions should be vacated upon the demise of the Crown. It is very doubtful whether this rule applied to the Judges after they began to be appointed 'during good behaviour'; but it was deemed expedient to place the matter beyond dispute. Accordingly, one of the first public acts of George III., upon his accession to the throne, was to recommend to Parliament the removal of this limitation. The suggestion was adopted by the passing of an Act which declared that the Commissions of the Judges shall remain in force during their good behaviour, notwithstanding the demise of the Crown: 'Provided always that it may be lawful for His Majesty, his heirs, &c., to remove any Judge or Judges upon the address of both Houses of Parliament.' It was further provided that the amount of the Judges' salaries now or hereafter to be allowed by any Act of Parliament should be made a permanent charge upon the Civil List. By various subsequent statutes the Judges' salaries are now made payable out of the Consolidated Fund, which removes them still more effectually from the uncertainty attendant upon an annual vote in Committee of Supply."

Now, your Honours, on the opening of Parliament by George III.—from the Commons Journals, which are in the parliamentary library here—it appears that, in the Speech from the Throne, George III. was made to say—so some of the sarcastic writers of that period put it—he was made to say by Lord Bute, who was in power at the time, that "steps ought to be taken to remedy the evil which had existed in the past and up to that date, and which had not been overtaken in any sense by the Act of Settlement, and therefore he begged the Commons to originate and pass a Bill for that purpose."