

*Mr. Justice Richmond* : I really owe an apology to the framers of the Act of 1858. Yesterday, I censured the use of the term "demise of Her Majesty;" I had forgotten what I believe I knew thirty years ago, that the phrase, though etymologically incorrect, is warranted by legal usage. Blackstone says so tender is the law of supposing even a possibility of the death of the Sovereign, that it is euphemistically referred to as "his Majesty's demise." But of course the purpose for which I mentioned it yesterday is unaffected. I mean to say that the Act is plainly defective in not providing for the demise of the Crown generally. But no doubt the term is sanctioned by legal usage. I think it is used in the Act you are referring to.

*Mr. Harper* : Yes, your Honour.

*Mr. Justice Richmond* : I am bound to admit I was wrong. When I had charge of the Act I suppose I knew more than I did yesterday.

*Mr. Harper* : The Speech from the Throne is contained in Vol. xxviii., House of Commons Journals, pages 1094–1098.

*The Chief Justice* : You have not got it there.

*Mr. Harper* : I did not know I should be permitted to take it.

*The Chief Justice* : You have only an extract.

*Mr. Harper* : I have not an extract, only a memory of it; but that is its effect, and there is the reference I gave your Honours. In Adolphus's "Reign of George III.," which is in the Government library, Vol. i., page 17, he alludes pointedly to the fact that up to that time the Judges' salaries were not ascertained and established, and that the necessity arose to charge them on the Civil List; and also in Blackstone's "Commentaries"—the old Blackstone—Vol. i., page 268. Then, in May's "Constitutional History," Vol. i., at page 232, the Civil List—the nature and security, if you may call it so, of the Civil List—is explained, and its history and how it grew is given. May starts with the settlement of the Civil List of William and Mary, which gave to the Crown certain revenue, out of which were to be paid all the great officers of State, as well as pensions. And then he goes on to show how that Civil List, by every King and Queen, as a matter of course, was exceeded, and gradually how Parliament managed to bring it down, till we come to George the Third's reign, when the King consented, it is said, to give up the hereditary revenues of the Crown of England, to be dealt with as the Parliament might think fit. He gave up all the hereditary revenues, and accepted a fixed amount as the Civil List for the support of "the household, the honour and dignity of the Crown." I call attention to these words because in all Civil List Acts they continually occurred during the different reigns. In all of them, up to the one in 1779, there is no mention whatever of the Judges' salary at all in these Civil Lists Acts; the only thing at all mentioned in the Acts is that a certain amount is granted to the King or Queen, as the case may be, for the support of his household—the honour and dignity of the Crown—and by these words—these large general words—the salaries of the Judges were, so to speak, secured. They were not charged on the consolidated revenue at that time. Now, this is shown pretty plainly by the Act which was passed in George III.'s reign: 39 Geo. III., 3rd chap., p. 110. That is the first Act that I have been able to find which really deals with salaries, and in that Act it recites that the Judges are not well paid, and that they ought to have their salaries augmented, and it goes on to charge the augmentation only on the Consolidated Fund, not the salaries, but the augmentation of those salaries on the Consolidated Fund, thereby, of course, taking the augmentation completely out of the power of the Crown, which is the main object to be attained. Then we find, your Honours, that by the Act of 6 Geo. IV., chap. 82, in the end of 1825, after the lapse of about twenty-five years, they abolished the sale of offices in the Courts of Queen's Bench, Exchequer, and Common Pleas, and the Chief Justices were given a salary—a certain salary, to be paid out of the Consolidated Fund, and to be a charge on the Consolidated Fund. It was in the Civil List no longer, but on the Consolidated Fund. Then the next Act was the 2nd of Geo. IV., and the 1st of William IV., chap. 70.

*Mr. Justice Conolly* : The 7th of George IV. it should be.

*Mr. Harper* : The 7th it ought to be—your Honour is right. Then, as his Honour Mr. Justice Williams referred to a short time ago, three additional Judges were appointed under this Act, and their salaries were charged on the Consolidated Fund. We next come to the 2nd and 3rd of William IV., chap. 116, in which all the salaries of the Judges of the Courts were ascertained in amount and charged on the consolidated revenue; and that is where they have been from that time up to now in England.

*Mr. Justice Richmond* : And under the Judicature Act.

*Mr. Harper* : They are repeated under the Judicature Act, but your Honours will see—and I wish to mention this—that from the time of William III. up to George III. they were not actually fixed on the Civil List. He might have paid them out of it or might not; probably he did.

*Mr. Justice Richmond* : There may have been a scheme of appropriation, apart from the Act.

*Mr. Justice Williams* : There was no other fund out of which they could be paid.

*Mr. Harper* : Except by fees. As your Honours will see, they were dependent upon the Crown till they got on to the consolidated revenue. They were dependent upon the Crown for their salary even if they were charged on the Civil List.

*The Chief Justice* : Surely they could enforce their right against the Crown if they were made a charge on the Civil List.

*Mr. Harper* : No, your Honour, I submit not. The object shown was to get more and more security.

*Mr. Justice Denniston* : Were they not paid largely by fees?

*Mr. Harper* : Yes, by fees and the sale of offices.

*Mr. Justice Denniston* : Would they not probably make a much larger revenue in that way?

*Mr. Harper* : It might be so, but my point is this: that the Act of Settlement has been honoured in the breach rather than in the observance, and the Legislature at Home have tried, step by step, to fix the Judges' salaries to certain amounts, which ultimately were put down and secured to