"By various subsequent statutes the various 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."

And the principle of the Civil List given in May's "Constitutional History" is that, not being an Act, but merely annual, the Civil List would come under review of the House of Commons from year to year, granting a lump sum, for it was a lump sum granted to the Crown in support of the dignity and honour of the Crown. Now, your Honours, more than once yesterday my learned friend said that the great object of the growth of legislation has been to try and get in all countries the question of Judges' salaries removed not only from the Crown but from Parliament. That has been so, no doubt, in England, and also in the United States; and in Victoria and New South Wales the salaries of the Judges have been absolutely removed from any interference by the Crown, which is the great object, in order to secure the independence of the Judges. But in a great many writers on constitutional history it has been stated, even by writers on the American Constitution, that there attempts only have been made, but there has no way been found of placing the Judges completely above the Parliament, so as to make them independent of Parliament with regard to their salaries. Now, that is clearly shown in Dicey on the Law of the English Constitution—a book referred to yesterday—at page 142, first edition.

Mr. Justice Richmond: Well, even private property is not free from interference.

Mr. Harper: Yes, your Honour, that is it. Dicey says, "our Judges are independent, in the sense of holding their office by a permanent tenure, and of being raised above the direct influence of the Crown or the Ministry; but the judicial department does not pretend to stand on a level with Parliament; its functions might be modified at any time by an Act of Parliament; and such a statute would be no violation of the law."

Mr. Justice Richmond: Yes; that simply means that Parliament, in political matters, is omnipotent.

Mr. Harper: Then, Cooley "On Constitutional Limitations," at page 276, says,—

"Where an office is created by statute it is wholly within the control of the Legislature. The term, the mode of appointment, and the compensation may be altered at pleasure, and the latter may be even taken away without abolishing the office. Such extreme legislation is not to be deemed probable in any case; but we are now discussing the legislative power, not its expediency or propriety. Having the power the Legislature will exercise it for the public good, and it is the sole judge of the exigency which demands its interference."

Sir R. Stout: That does not apply here.

Mr. Justice Williams: That is an amplification of the maxim that Parliament is supreme. If it chooses, it may pass an Act saying that the public creditor is not to be paid, and then that is the law.

Mr. Harper: It was asserted over and over again by my learned friend that the great object was to make them independent of the Parliament, not so much of the Crown, but of Parliament. It seems to me to have been the object to make them independent of the Crown, and then to see how far they could be made independent of Parliament. The Civil List is nothing but an annual vote and appropriation of the consolidated revenue, and it cannot be touched except by legislation. But it could be touched by legislation. It is clearly laid down by Story in his "Constitution of the United States," sec. 1632, Vol. ii.: "Tenure of good behaviour does not prevent the separation of the office from the officer, but only secures to the office his station upon the terms of 'good behaviour' so long as the office lasts."

Mr. Justice Richmond: There is less power in the Legislature under the American Constitution.

Mr. Harper: I am only giving these instances for the purpose of showing that the independence of Judges, both with reference to salary and tenure, has been of gradual growth in England, and that it has gone as far as it can go now. This gradual growth has also been recognised thoroughly by all the Australian Colonies ever since they got their Constitutions. There is a great difference between their Acts and our Acts. In all the Acts relating to the constitution of the Supreme Court, and the appointment of Judges, your Honours will find, in the case of Victoria, for instance, that the number of Judges has been fixed, just as in the Judicature Act at Home in England. In the case of Victoria the number of Judges was originally fixed at three, including the Chief Justice. The amounts of their salaries were named, and charged upon the consolidated revenue. Then from time to time Acts have been passed adding additional Judges, and in each of these Acts the salaries and emoluments have been mentioned and charged upon the consolidated revenue. So that the Judges of the Supreme Court of Victoria are on almost the same footing as Judges are who hold office under the English Judicature Act. There is no doubt whatever about the Acts. The numbers of the Judges are fixed, the salaries are fixed, and the source from which the salary is to be paid is secured. When we come to compare that state of things with the Act of 1882, and the previous legislation in connection with the Supreme Court in this colony, we shall see that it would be straining the Act if the Court has got to read into it a mere constitutional convention which has never been observed in England and elsewhere except by statutes embodying it; yet your Honours are asked by my friend to interpolate a number of words into the Act of 1882, and to refer to the Civil List Act for the purpose of incorporating into the Act of 1882 the constitutional law, as he calls it. I wish your Honours to make a point of that, whatever your Honours may think of it eventually, that notwithstanding the growth we have seen in the security of the salaries, the establishment and ascertainment of the salaries of the Judges has not been looked upon as a law of the Constitution. It has been put on one side, and the Legislature, instead of relying upon a rule outside the statutes, have gradually got the statutes so drawn as to permanently fix and ascertain those salaries; and they do not for one moment pretend in England at the present day to look outside the statutes, and apply to them a constitutional convention to aid those statutes. Neither do they in Australia. So we simply come to this, and I submit, in this colony we stand in a different position, so far as we are able to understand our Supreme Court Act of 1882, as far as the appointment of