by Dicey as to what is the law of the Constitution and what is constitutional convention. This is what he says of constitutional law and constitutional convention. He says, "The test of it is, can the Courts get at a breach of one or the other? There is the maxim that the King can do no wrong: the Courts can reach that—they can prevent the King from being sued. That the King can dispense with the observance of a statute: that the Court can disregard." Then he gives the conventions, on the other hand—for instance, the convention that the House of Lords may not originate a money Bill, and so on. Supposing they did, could the Courts get at the House of Lords by way of injunction, to restrain them? No. That is the answer. The violation of constitutional conventions cannot be reached by the Courts, however wrong it may be; but violation of constitutional principle, which has come to be law—although an unwritten law—can be reached by the Courts. Now, the Court is asked to go this length, and revoke this Commission that has been issued by the Governor. It is asked to go this length, and introduce into this Act of 1882 a constitutional principle which has only been observed by legislation in England and Australia, and was only attempted to be observed here by the passing of the Civil List Act. It has only been observed from George III.'s reign to a certain extent, and subsequently by the Legislature in no longer treating it as a mere constitutional principle in the abstract. I have said enough with regard to this point.

And now with regard to what has been said as to the right of the Court to confine this Act in its operation, and to restrict it by reference to an Act which is anterior in every respect to the Act of 1882—not merely anterior in date, but which is not recognised in any way as being an Act by the Supreme Court Act of 1882, or contemporaneous with it. It is a mere financial Act, and cannot control the unlimited power given to the Governor under this Act. I have shown your Honours that up to 1858 the Crown appointed Judges at pleasure, and the salaries of two, at least, were fixed by the Act of Constitution—there was only half, so to speak, of the principle invoked into the Acts at that time. By section 12 power is given to the Crown—which does not occur in English Acts in any way: I think it occurs in the Victorian Acts where Acting-Judges are appointed—to appoint any number of Judges for temporary purposes, at such a salary as the Governor pleases, and to hold office during his pleasure—to receive amounts not exceeding the amounts payable to the Judges of the Supreme Court at the time, other than the Chief Justice. So that we see here the power contemplated by the Act—the power given to the Act by the Legislature—not only by section 5, of appointing permanent Judges of the Supreme Court from time to time, but also a large power, contrary to the spirit of the Act of Settlement, of appointing additional Judges with the same power as this Court holds. Why should this Court read into this Act a constitutional principle, so called, to the detriment of a Judge who purports to hold a permanent position under section 5? One would have thought (as the Premier says) that the appointment of a temporary Judge was undesirable. And the reason for it is so simple. He is under the power of the Crown. If this is to be so, he lies at the mercy of the Crown for salary and tenure. And yet my learned friend wants your Honours to enact—I put it in this way—to put into this statute these words, because he says they are constitutional so long ago as the Act of Settlement. I submit to your Honours that if such a principle is at the bottom of the whole of English law—as my learned friend says it is—and if it is to be made so by statute, then I submit that side by side there is nothing to prevent the Governor here, if he chose, from appointing any number of additional Judges. Of course, it is not to be supposed that he would strain the rights given to him, or that the Ministry of the day would do so—some good faith and reliance must be placed upon them; but at the same time the power is there to appoint additional Judges.

Now, your Honours, I am going to leave the question of the constitutional convention, which we submit it to be. I shall leave that for the present. But I want to refer your Honours shortly to the position we take up under the Act of 1882 itself. We maintain, taking the Act as it stands, reading it in its plain words, the Governor has been given—whether wisely or not—the power to appoint Judges from time to time. Then we say that we can invoke for this purpose the spirit of the Act of Settlement. We see it going through the Constitution Act; we see it also mentioned in the Act of 1858; and we say that it is the Legislature which ought to act in a constitutional spirit and establish the salary of the Judge. It is laid down in Todd—which I find, as far as I am concerned, the most convenient book on the subject, although I can refer to many others—in the first volume, speaking generally of the appointments and remuneration of public officers—and this is where the Crown exercises its prerogative, not where it exercises its right under the statute (Todd, Vol. i., p. 401)—

"The authority that appoints to office is necessarily competent to dismiss any insufficient or untrustworthy servants. It is also the proper judge of their qualifications and of the remuneration they should receive. In all such matters Parliament has no right to interfere, except in cases of manifest abuse or corruption, when it may be called upon to exercise its inquisitorial power. Upon such occasions, however, the Houses of Parliament are constitutionally empowered to institute investigations, to declare their opinion as to the manner in which this prerogative has been exercised in any particular instance, and, if need be, either to appeal to the Crown to redress the grievance or to proceed to remedy it themselves by an act of legislation."

Now, granted, as in this case, that the Crown is exercising in a proper way the powers given to it under the Act of 1882, of appointing a Judge, and of stating the remuneration that the Judge was to receive, the Legislature, on the other hand, had the power given to it—which is pointed out by Todd here—to censure and, if need be, to turn out the Ministry if it disapproved of the exercise of the right of appointment, or to pass an Act of Parliament revoking the appointment, or to take care that the mischief did not occur again by passing an Act of Parliament limiting the number of Judges. There are all those safeguards if the Governor went out of his way and appointed a Judge—there are all those constitutional safeguards which can be invoked by the Legislature. I submit that the Legislature would, under these circumstances, not visit the offence—if you can call