consequence upon what we have said we shall rest our case, if we are driven to that—that the appointment must be good notwithstanding that there has been no salary attached to it. However undesirable it may be to have a Judge without a salary, however much it may not be contemplated by the Constitution, still, the validity of the patent cannot be called in question on that account. I would like to refer your Honours to the case Regina *v.* Rogers, *Ex parte* Lewis (4 Victorian Law Reports, p. 335). In this case a County Court Judge was dismissed, with a lot of others, on "Black Wednesday." He afterwards, apparently, insisted on carrying on his office as a County Court Judge. He was called upon by *quo warranto* to say by what authority he claimed to exercise the office of Judge of the County Courts, and so forth. The whole question, which was very elaborately argued, turned upon the question—the Court was not unanimous in its decision—whether this Judge's patent could be revoked, and whether it was not practically during goodb ehaviour. It also turned upon the question, incidentally, that there had been no appropriation made by Act of Parliament. It was held ultimately, by Mr. Justice Barry and Mr. Justice Molesworth, that it was a patent during pleasure, and therefore could be revoked by the Governor, as it had been. I cite this case because it is an instructive one, inasmuch as they traced the history of the tenure of Judges in England; and in a very valuable note, given at page 355, compiled by Mr. Justice Barry, he gives a list of no fewer than twenty-two Judges who were dismissed, superseded, or prohibited from sitting in the Courts of Queen's Bench or Common Pleas. Amongst that list occur the names of two Chief Barons, who held their Commissions during good behaviour. One of them, Sir John Walter, who was Chief Baron of the Exchequer in 1630, and who had been appointed during good behaviour, refused to surrender his patent. He died about six months afterwards, but apparently his position was not filled up, or any proceedings taken by way of *scire facias* to repeal the patent. There is another case, that of Sir John Archer, who, in the same way, refused to give up his patent. He was suspended, and no proceedings were taken by way of *scire facias* to repeal his patent. Sir John Archer, who was a Puisne Judge of Common Pleas at the time of Charles II., was dismissed A.D. 1672, and, disregarding the Royal prohibition, put the Crown to a *scire facias* to repeal his Commission; which it was not expedient to bring. See also Slingsby's case."

The Chief Justice: You do not say that that shows that this is not a right proceeding?

Mr. Harper: We do not say that, but we say this Court cannot repeal this Commission because there has been no appropriation of any salary. We say Mr. Justice Edwards still remains a Judge even without a salary under the Act of 1882.

The Chief Justice: I do not understand that to be the argument.

Mr. Harper: That is my argument. That is the position we take up.

Sir R. Stout: I never used that argument at all.

Mr. Harper: I did not say you did. Chief Justice Stawell dissented from this judgment, and at page 378 he says,—

"In answer to the objection that, conceding the Judge could not be removed from office, yet, as the necessary supply might not be voted by Parliament, and the office could not continue without salary, the office itself would be abolished, it may be sufficient to observe that an office may exist though no fee, 'annual or casual,' be attached to it (Bishop of Salisbury's case); and this view of the law was adopted by Lord Ellenborough in Regina *v.* Bingham (2 East, 37)."

As I have mentioned, in this case it was argued, as a second point, that Parliament had not appropriated any sum of money. In Comyn's Digest A appears the following: "So, in the grant of a new office, the gift of a fee, casual or annual, is not necessary (Cont. 27 H. 8 28, R. Acc. Mo. 809 Acc.), for he shall have a *quantum meruit* for his labour." In Hardress's Reports, at p. 351, it says, "Besides, a fee is not of necessity (*vide* Moor, p. 808, 809—the Bishop of Salisbury's case—where it is held that the constitution of a new office and officer is good in law though no fee, neither annual nor casual, were annexed to it at first)." I would refer your Honours to Croke (Charles I.), page 205. He says,—

"On the 18th of November, 1630, in this term, John Walter, Knight, the Chief Baron, dies at Serjeants' Inn, being a profound learned man and of great integrity and courage, who being Lord Chief Baron by patent, 1 Car. I., *quamdiu se bene gesserit*, being in the King's displeasure, and commanded that he should forbear the exercising of his judicial place in Court, never exercised his place in Court from the beginning of Michaelmas term, 5 Car. I., until this day; and because he held that office *quamdiu se bene gesserit*, he would not leave his place, not surrender his patent, without a *scire facias*, to show what cause there was to determine his patent, or to forfeit it; so that he continued Chief Baron until the day of his death. But it appears that the Judges of both benches are made only *durante bene placito regis*, so as they are determinable at the King's pleasure."

It appears subsequently that his successor was appointed in Hilary term, a proceeding which would show it to be after the death of the Lord Baron who occupied the office. Whether he got pay or not history does not tell us, but he kept his office and maintained his right to retain his patent, and no proceedings were taken by way of *scire facias* to repeal it. Then it is well accepted that in England there is the power to remove Judges by joint address of Parliament presented to the Queen; but it has been held in practice that, notwithstanding that power, there is also power to remove a Judge by way of *scire facias* for the same reasons that make him removable on the joint address of the House of Commons and the House of Lords. That was to a certain extent touched upon in the celebrated case of Sir J. Barrington, who was removed on the joint petition of both Houses presented to the Queen.

The Court adjourned from 1 p.m. for an hour. On resuming—

Mr. Harper: I was about to point out at the adjournment a statement contained in Todd on "The Duties of Parliamentary Government," under the same chapter—"The Judges in relation to the Crown and to Parliament" (2nd volume, page 728). I am pointing this out for