1844 provided: "The Court shall consist of one Judge, who shall be called the Chief Justice of New Zealand, and of such other Judges as Her Majesty shall from time to time be pleased to appoint." Before I pass to the Constitution Act and the legislation subsequent to that Act, I submit to your Honours that in framing those subsequent Acts the Legislature had been guided by the original manner in which the Supreme Court was constituted in this colony, and by the manner in which the Judges were originally appointed, and they have reserved throughout the legislation the powers reserved in the Queen's original Charter. Thus, the ordinance of 1844 evidently contemplated that the Queen should from time to time appoint additional Judges; it left it open to Her Majesty to add to the number of Judges from time to time, and left that number indeterminate. In Domett's "Ordinances," p. A.–4, we find the first provision for a Court of Appeal: "The Governor for the time being, and the Executive Council of the said colony (excepting the Attorney-General), shall be a Court of Appeal;" but that provision was expressly stated to be of only temporary application—namely, "Until there shall be within the colony a sufficient number of Judges." Then comes the Constitution Act, granting to the Queen a certain sum of money for the payment of two Judges, but leaving unaffected altogether the Queen's power of appointment. If I apprehend my learned friend Sir Robert Stout's argument aright, and follow it to its legitimate conclusion, the effect of the Constitution Act was to limit the Queen's power of appointment of Judges. I submit that could not have been so. The Queen still preserved her prerogative. It was by virtue of her prerogative the Judges were appointed, and the Governor now exercises his power of appointment as well by the Queen's prerogative as by statutory power dedicated to him in a constitutional colony. My learned friend's argument must go to this extent: that if it is necessary, in order to have a valid appointment of a Judge, that the salary shall be first ascertained and established, then our Constitution Act, in only fixing the salary of two Judges, limits it to those two Judges, and so controls the Queen's prerogative. I submit that would be an unwarrantable limitation of the Queen's prerogative, and is contrary to all authority. The Queen's prerogative can only be limited by express words.

The Chief Justice: I do not understand there is any question of prerogative.

Mr. Cooper: The ordinances preserve the Queen's prerogative.

The Chief Justice: The power is under the ordinance, surely.

Mr. Cooper: The ordinance does not give the Queen power to appoint. The ordinance is simply a statement that the Court shall consist of certain Judges that the Queen may be pleased to appoint.

The Chief Justice: She could not establish a different Supreme Court.

Mr. Cooper: She could not establish a Court with original jurisdiction. The Crown cannot erect Courts with fresh jurisdiction without the consent of Parliament, but the Queen can increase the number of Judges in Courts already in existence, without the consent of Parliament. There is the decision in the Bishop of Natal's case.

Mr. Justice Richmond: It was held that after an independent Parliament had been granted to a colony the Queen could not create a new coercive jurisdiction.

Mr. Cooper: The same question arose in Canada when they tried to introduce a Rolls Court. The Law Advisers of the Crown advised the Crown that the Imperial Government could not erect a Court of fresh jurisdiction in Canada, but it might appoint Judges of a Court which already existed. Under the ordinance of 1844, I submit to your Honours, the Queen's prerogative was untouched. The Charter of 1840 was under an Imperial statute, 9 Geo. IV., sec. 3, chap. 72, amended 3 and 4 Vict., chap. 72. The Queen's prerogative was preserved. The Legislative Council acted in obedience to the instructions from the Crown, and, in accordance with the powers which had been given to it under that statute and the Charter, it passed the ordinance creating the Supreme Court, but did not attempt by that ordinance—and it would have been an improper thing to do so—to give the Queen the power to appoint Judges. It simply created the jurisdiction, if I may put it in that way, and left it to the Queen, by virtue of her prerogative, to appoint the Judges. The Act of 1858, coming after the Constitution Act, first, as has been pointed out, altered the tenure of the Judges. The question of whether or not the Act of Settlement is in force in this colony has really very little bearing on the question at issue, but it is necessary to deal with that. I submit that that portion of section 3 of the Act of Settlement relating to the Judges was never in force in the colony. It certainly was not in operation during the time the colony was a Crown colony, if the conclusion that the editor of Bacon's "Abridgment" comes to is correct; that section in the Act of Settlement was intended simply to apply to Her Majesty's Courts at Westminster—that the section had a local significance, and nothing more. In one sense, as has been pointed out, the Act of Settlement is in force in the colony, but not in relation to the Judges, and not in the sense in which English statutes are held to be in force in the colony. The Act of Settlement appears to me to apply to the person of the Sovereign more than to her subjects. The Act of Settlement binds the Queen or Sovereign. In that sense we, being all subjects of the Queen, are entitled to the protection of that portion of the Act of Settlement. It prescribes what the Sovereign may or may not do, and the particular religion that the Sovereign shall follow. This is a personal Act, in the first sense, in relation to the Crown, or the person who constitutes the head of the State; and, in a second sense, it gives protection to the subjects of the Crown. It lays down no original law. It simply states the constitutional principle which was practically obtained by Magna Charta and the Bill of Rights. That really, I submit, was the effect of the Act of Settlement. There are two authorities upon the point which I venture to submit to your Honours in reference to the applicability of such a statute. I do not insist very strongly upon this point—it has been covered already by my friends; but I submit it is important to determine whether or not that particular clause of the Act of Settlement is in force here, or whether or not we have legislated in the light of the spirit of that section, or whether or not we have not created special legislation governing the Supreme Court, and within the four corners of which the matters lie for the determination of this