servient Judges being placed on the bench of the highest Court of justice—Judges who would as in the days of the Stuarts, give any decision in favour of the King if asked to do so. In these enlightened days, of course, no such thing would be possible where the Judges are appointed during pleasure, otherwise we should have the Crown and the Government pre-eminent in the lower Courts, where all the Judges are appointed during pleasure. It has been shown clearly that the safeguards introduced by the Act of Settlement are not necessary now. There is too fierce a light beating upon the Bench and upon the Government to allow subservient men to occupy judicial offices, or to allow a weak or corrupt Government to pack the Supreme Court Bench for the purpose of obtaining decisions contrary to equity and law. But, still, under the Act of 1882, if times were such that such men could be appointed, there is the power to do so. This, we submit to your Honours, is the true construction of the Act. I understand my learned friend to suggest that Commissioners of Assize were appointed in England during pleasure. As I understand, they are appointed by special Commission; they take cases at Assize, and only act, as it were, as representatives of the other Judges. The appointment of Commissioners of Assize is not analagous to the appointment of Judges of the highest Courts of justice; they have not the same jurisdiction, nor the same duties to perform.

Mr. Cooper had not concluded when the Court adjourned, at twenty-five minutes past 4 p.m.

WEDNESDAY, 20TH MAY, 1891.

The Court resumed at half-past 10 o'clock this morning.

Mr. Cooper: Your Honours, at the adjournment last night I was proceeding to the second branch of the argument I propose to address to your Honours, and that was in reference to the authorities quoted by my learned friend Sir Robert Stout on the construction of statutes, and the usage which should be read into the Act of 1882; and, though I submit it is not necessary in deciding the present question to rely upon those authorities at all, yet I claim that we are entitled, on behalf of the defendant, to claim the assistance of the very maxims and propositions that my learned friend quoted to your Honours. Before I refer to the authorities, your Honours will pardon me if I quote one or two passages from Maxwell on the Interpretation of Statutes. First of all, page 161 has some bearing upon this branch of the subject. I shall refer later to another branch of the question. At page 161 of the second edition the author states that the Crown's rights are not affected by statute unless the Crown is either expressly named, or the Crown's rights are expressly limited, or the limitation is necessarily implied. Maxwell says—and he quotes a number of authorities: I will not trouble you with the authorities,—

"On probably similar ground rests the rule commonly stated in the form that the Crown is not bound by a statute unless named in it. It has been said that the law is *primâ facie* presumed to be made for subjects only. At all events, the Crown is not reached except by express words, or by necessary implication, in any case where it would be ousted of an existing prerogative or interest. It is presumed that the Legislature does not intend to deprive the Crown of any prerogative, right, or property unless it expresses its intention to do so in explicit terms, or makes the inference irresistible. Where, therefore, the language of the statute is general, and in its wide and natural sense would divert or take away any prerogative or right from the Crown, it is construed so as to exclude that effect."

The language of this statute is general, but its very generality preserves the right which the Crown through its Executive Officer possesses to appoint Judges of this Court, and therefore I am entitled to claim the full benefit of the rule that, even though the words are general in their terms, they cannot have the effect of restricting the Crown's right. If that rule is sound—and I submit that it is—then, where the general words preserve the right of the Crown the argument which I base upon the proposition laid down by Maxwell is stronger in support of the defendant's case. Then, on page 44 of Maxwell the learned author states,—

"The language and provisions of expired and repealed Acts on the same subject, and the construction which they have authoritatively received, are also to be taken into consideration; for it is presumed that the Legislature uses the same language in the same sense when dealing at different times with the same subject, and also that any change of language is some indication of a change of intention."

Then, on page 374 the author, in referring to the remarks of Lord Campbell, says,—

"When the Legislature puts a construction on an Act, a subsequent cognate enactment in the same terms would *primâ facie* be considered in the same sense.

* * * * * *

"Where it is gathered from a later Act that the Legislature attached a certain meaning to certain words in an earlier cognate one, this would be taken as a legislative declaration of its meaning there."

Then, on page 369 the author, in referring to Lord Kenyon, says,—

"Not *communis error*, but uniform and unbroken usage, *facit jus*. 'Were the language obscure,' said Lord Campbell in a celebrated case, 'instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long-continued usage. There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken as to the true meaning of an old Act of Parliament.' If we find a uniform interpretation of a statute materially affecting property, and perpetually recurring, and which has been adhered to without interruption, it would be impossible to introduce the precedent of disregarding that interpretation."