Judges were in the colonies appointed during pleasure, yet the effect of this constitutional maxim which was laid down in the Act of Settlement even affected their tenure. I shall read the passage:—

"So long as Judges of the Supreme Courts of law in the British colonies were appointed under the authority of Imperial statutes, it was customary for them to receive their appointments during pleasure. Thus, by the Act 4 Geo. IV., c. 96, which was re-enacted by the 9 Geo. IV., c. 83, the Judges of the Supreme Courts in New South Wales and Van Diemen's Land are removable at the will of the Crown. And by the Act 6 and 7 Will. IV., c. 17, sec. 5, the Judges of the Supreme Courts of Judicature in the West Indies are appointed to hold office during the pleasure of the Crown."

Then he goes on to refer to the Act of 22 Geo. III., c. 75, which gave power to appeal on the removal of officers. In New South Wales there is the case of Robertson *v.* The Governor of New South Wales, where a Commissioner of Crown Lands appealed against his dismissal. In the argument it will be found that the counsel for respondent—I think it was Sir Roundell Palmer—expressly said that, so far as 22 Geo. III.. c. 75, was concerned, it only applied to Judges. He said, "It is therefore an office held during pleasure only, and there is no right of appeal from an order of a motion made by the Governor-General and Executive Council from such an office under the statute 22 Geo. III., c. 75, that statute being confined to judicial offices which are in the nature of freeholds." The reference is page 292 of 11 Moore's "Privy Council Cases."

The Chief Justice: The meaning of that is that this Act, limiting, as it were, the right or power of removal now in effect gave them something——

Sir R. Stout: Something similar to the English Judges' tenure; and if the Court will look at the statutes authorising Governors of colonies to appoint Judges, it will see that in the statutes also reference to the salaries is made. In 9 Geo. IV., c. 83, we see, "And the said Judges shall from time to time be appointed by His Majesty, his heirs and successors, and the said ministerial and other officers of the said Courts respectively shall from time to time be appointed to and removed from their respective offices in such manner as His Majesty, his heirs and successors, shall by such charters or letters patent as aforesaid direct; and the said Judges shall respectively be entitled to receive such reasonable salaries as His Majesty, his heirs and successors, shall approve and direct, which salaries shall be in lieu of all fees or other emoluments whatsoever."

Mr. Justice Richmond: What Judges are referred to?

Sir R. Stout: The Judges in the colonies. This was a statute which gave power for the better administration in New South Wales and Van Diemen's Land; so that I submit that, from what appears from Todd, this constitutional law which I have referred to, even though Judges were appointed at will or pleasure, was practically recognised by and was the practice of the Privy Council; and the Court will see from various cases which came before the Privy Council, that before a Judge could be removed he must have been guilty of misbehaviour. There are several of these cases in Moore. There is a case of Judge Willis—I forget the names of the others. So that this constitutional law, according to Todd, and according to the practice of the Privy Council, was recognised in the colonies before our Acts were passed; and it is not correct to say that the constitutional law was not recognised in England as affecting the tenure of Judges. The next point is that raised by Mr. Cooper in reference to the practice in America. I submit that the growth of the law shows how our English law has been developed. One has only to read the text-books on constitutional law to see that the prerogative has practically died away. There is a question which arose at the same time as the incident of Sir Robert Collier mentioned by Mr. Chapman. It was with reference to purchase in the army. What was then said? The Attorney-General and Solicitor-General differed: one said the warrant abolishing purchase could be issued by the prerogative, and the other that it must be issued by virtue of a statute. That case shows that the theory of the prerogative overriding or adding to the statute law is practically obsolete. In 3 Moore's "Privy Council," new series, p. 152, it is laid down: "It is a settled constitutional principle or rule of law that, although the Crown may by its prerogative establish Courts to proceed according to the common law, yet it cannot create any new Court to administer any other law." In construing the right of the Queen to issue a patent or commission, you have to look at what is the constitutional rule. In the case of the Bishop of Natal the Privy Council made very short work in setting that Commission aside.

Mr. Harper: The patent never was set aside.

Sir R. Stout: It was better than setting it aside, for it was declared to have no virtue or effect—it did not give the power it pretended to give to the Bishop. I do not see the need of having invoked the prerogative, because it is not the Queen who has exercised her prerogative. This is a Commission issued not under the hand of the Queen, but purporting to be issued by the Governor under the statute of 1882, and therefore the question of the prerogative cannot arise in this case. The question is, had the Governor a right to issue his Commission to Mr. Edwards under "The Supreme Court Act, 1882"? I submit that, so far as the prerogative is concerned, that can be brushed aside as having no bearing upon this case. My learned friends seem to think that it is a very extraordinary thing to have brought these proceedings against a Judge. Of course, there have been such cases brought against County Court Judges in England, such as The Queen *v.* Parham, 13 Q.B., p. 858. This question also rose in a case in the West Indies.

Mr. Harper: Why did you not cite that case in starting?

Sir R. Stout: I will show you why. It was only in reply to your arguments. In the case in the West Indies, what happened there? My learned friend said he could not find a case where Judges had no salaries. But in this case a second and third Puisne Judge were appointed with no salaries. Of course this place was only a small island; but what happened was this: The Governor of St. Lucia issued a Commission for a second Puisne Judge, whilst the second one was still in office. That was a Crown colony. In this case the second Puisne Judge was very angry with what had