taken place, and wrote a letter to the Governor. The other Puisne Judges brought the second Puisne Judge before them for contempt, and imprisoned him. He, however, took proceedings, and was reinstated. He also obtained £1,500 damages. This is referred to in 3 Moore's "Privy Council Cases." The judgment certainly was not very long. It was a judgment by Lord Brougham. He said,—

"Their Lordships are of opinion that the action in the case lay, that it was well brought, and that the respondent, the plaintiff below, was entitled to a verdict. The sentence of the Court below therefore must stand, but their Lordships think the damages given, £3,000, excessive, and that they ought to be reduced to £1,500. We therefore affirm the judgment, with damages to that extent, and, as we have reduced the damages, such affirmance will be without costs."

So that there the Privy Council did not think very much of the Commission even of a Supreme Court Judge, if that Commission had been issued without lawful authority.

The Chief Justice: I do not know whether I understood Mr. Harper correctly, but my impression of the correspondence is that Mr. Justice Edwards has shown no annoyance at these proceedings.

Mr. Harper: No; nothing was ever hinted at by me. I never wished to show that there was any annoyance. I said that we wanted to fight the thing out on its merits, and apart from any technical objections to the mode of procedure.

Sir R. Stout: That is quite true, but by the time my learned friend got to the middle of his argument he stated that he would take advantage of any technical point he could.

Mr. Harper: My learned friend is not stating correctly what I did say.

The Chief Justice: I understand Mr. Justice Edwards's position is this: If there is any question he is not disinclined to have it decided.

Sir R. Stout: Now I come to deal with how these Acts have been interpreted. What the other side say—and what I have admitted—is that the present constitutional law has been in process of growth for centuries, and that so far as New Zealand is concerned it also has been in process of growth, as also in the case of the other colonies. My learned friend quoted the following from Cooley, p. 276,—

"Where an office is created by statute it is wholly within the control of the Legislature. The term, the mode of appointment, and the compensation may be altered at pleasure, and the latter may be even taken away, without abolishing the office. Such extreme legislation is not to be deemed probable in any case; but we are now discussing the legislative power, not its expediency or propriety. Having the power, the Legislature will exercise it for the public good, and it is the sole judge of the exigency which demands its interference."

But Cooley is not speaking of Judges. The Judges of the Supreme Court are appointed under the Constitution, and Congress cannot vary that Constitution, and there is the distinction. The reference of my learned friend therefore has no bearing on the Judges. The Judges in America are just as independent of the Legislature as they can well be, The Legislature cannot vary their office—it cannot vary the portion of the Constitution under which they are appointed. The Legislature is one thing, the Executive is another, and the Judiciary is a third, and in America they have recognised the three co-ordinate powers in the State. On this point I might refer to pages from 42 to 47 of Cooley. So that as far as that is concerned my friends have cited a note which has no bearing upon the question of Judges. Now, what does the argument really come to on the other side? I admit at once that this constitutional law has been a process of growth, and the whole of Mr. Harper's argument was simply that. He traced its development bit by bit. I submit that he proved conclusively that the Judges had been placed in a stronger position of independence than they have ever been placed in before. In the other colonies it is so; and so it is, I submit, in New Zealand. What was the use of referring to this constitutional rule and growth? I referred to it for the purpose of showing, when this Court comes to interpret the Act of 1882, that it cannot shut its eyes to the constitutional law that has been developed in English-speaking countries during the past century; and it ought therefore to assume in construing this Act that this constitutional law was known to the Legislature, and that the Legislature intended to follow it. But it has been said, "Oh! but there have been appointments that have been practically in violation of this constitutional law." Here comes in technical violations, but not in spirit; because even in New Zealand there has been no appointment of a Supreme Court Judge until the Legislature had first been consulted. But we bring here before the Court a case not relying on technical defects, but because there has been an appointment without consulting the Legislature, and which the Legislature has so far refused to ratify; and the other side ask the Court not to interpret the Supreme Court Act along with the Civil List Act, but to throw all constitutional law aside, and say it is not to be looked at in the interpretation of our Supreme Court Act. I submit the Court ought not to do that. I have pointed out what the Constitutional law is, but I do not need to rely upon that. I only say if there should be any ambiguity or doubtful expression in the Act the Court will, in construing the doubt, lean towards the constitutional principle recognised both here and in England. That is all I quote it for. How is the Act to be construed? Have my friends ventured to say, or have they cited a single case to show, that this Court is not to construe "The Civil List Act, 1873," as part of the Act of 1882. I submit, no case has been cited. On the contrary, cases have been cited by the other side to show that these statutes are to be construed *in pari materiâ*. It has been shown that in the other colonies, as in England, the Act which provides for the creation and appointment of Judges also provides for their salaries. If the Parliament of New Zealand has done by two separate Acts what other countries have done by one Act, is the Court not to construe these two separate Acts as if they were one statute dealing with the same subject-matter? When are statutes not to be construed *in pari materiâ?* They are not to be construed *in*