

It is contended in support of the validity of the appointment now questioned that the words of this 5th section do empower the Governor to create at any time, and from time to time, any number of offices of Judge of the Supreme Court, without restriction, and appoint persons to such offices; the only limit, according to this contention, apparently being that there may not be more than one Chief Justice.

It is contended that none of the other provisions of the Act control this power—such as the provision in the 8th section that the commissions of the Judges “shall continue in full force during good behaviour;” the provision in the 11th section that the salary of the Judge shall not be diminished during the continuance of his commission; the provision in the 12th section for the appointment of Judges temporarily, and that every temporary Judge appointed under that section shall be paid such salary, not exceeding the amount “payable by law” to a Judge other than the Chief Justice, as the Governor in Council may direct; and the provision in the 13th section for superannuation allowances to Judges, and which provision it is certain contemplates, and can only be satisfied by, the Judge having an annual salary, at any rate at the time of resignation.

It is contended that “The Civil List Act 1863 Amendment Act, 1873,” together with the 65th section of the Constitution Act, and the provisions just referred to of the Act of 1882, do not control the general words in the 5th section.

In “The Civil List Act 1863 Amendment Act, 1873,” it is provided that the sum of £7,700 granted by “The Civil List Act, 1863,” for paying the expenses of the salaries of the Judges of the Supreme Court *shall be applied* in paying “to the Judges of the said Court respectively the salaries specified in the First Schedule,” the schedule being as follows: “Annual salary of the Chief Justice,” so much; “annual salary of four Puisne Judges, each,” so much. The Act of 1863 provides that the sums mentioned in the schedule shall be in lieu of those in the schedule to the Act of 1858; and the Civil List Act of 1858 provides that the sums in the schedule to that Act shall be in lieu of the sums mentioned in the schedule to the Constitution Act.

I am unable to accede to this contention: in my opinion the general words relied upon are controlled. The Governor had not, as I think, at the time he made the appointment in question power to appoint another Puisne Judge to hold office during good behaviour, the other four offices of Puisne Judge being at the time full, and no salary provided by law for a fifth Puisne Judge.

The Act of 1882 repealed the Supreme Court Judges Act of 1858. A somewhat different phraseology is used in some of the sections of the Act of 1882, which are analogous to those in the Act of 1858. There being, however, clearly no intention in 1882 to extend the Governor’s power of appointment, or to introduce any change in the tenure of office of the Judges, the law, as established by the Constitution Act, and “The Supreme Court Judges Act, 1858,” and “The Civil List Act, 1858,” ought to be considered; and if that state of the law assists in arriving at that construction of the repealing Act of 1882 which I think it capable of receiving, that assistance may certainly be used in conducting to the acceptance of that construction as being that which the Legislature intended the Act should bear.

Before noticing the provision of the Supreme Court Judges Act of 1858, and “The Civil List Act, 1858,” it is necessary to advert to some provisions in the Constitution Act, which came into force in 1853, relative to the offices of Judges of the Supreme Court, and also to advert to the law as it then stood relative to the appointment and tenure of office of Judges of the Supreme Court.

The Supreme Court Ordinance of 1844 was then in force. By section 10 of that ordinance it was provided that “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 appoint.” This provision closely resembles the analogous provision in section 2 of “The Supreme Court Judges Act, 1858,” and section 5 of the Act of 1882, the only difference being one that I shall notice hereafter. In the section of the ordinance, however, it is provided that “the Judges of the Court shall hold office during pleasure,” and there is no provision in the ordinance as to salary or superannuation, or providing for the appointment of temporary Judges.

In the Act of 1858, however, the 3rd section provides that the commissions of the Judges of the Court, except those of temporary Judges appointed during pleasure, shall continue during good behaviour—with a provision in the 4th section for removal on address by both Houses of the General Assembly; and in the 6th section it is provided that “a salary equal at least in amount to that which at the time of the appointment of any Judge shall be then *payable by law* shall be paid to such Judge so long as his commission continues.”