The 7th section again refers to the "*salary payable by law.*" This section empowers to appoint Judges during pleasure for a temporary purpose, and it enacts that "every such Judge shall be paid" such salary, "not exceeding the amount *payable by law to a Puisne Judge of the said Court,* as the Governor in Council shall think fit to direct;" and the 8th section provides for superannuation allowances to every Judge appointed *during good behaviour,* such superannuation allowance to be proportioned to the annual salary of the Judge at the time of resignation.

Now, it is contended that, as the general words in the 2nd section of the Act of 1858, "and of such other Judges as the Governor shall from time to time appoint," are almost identical with the general words in the ordinance, where they undoubtedly were uncontrolled by anything in the other provisions of the ordinance, therefore they should be held to have the same meaning when used in the Act of 1858. But the office of Judge of the Supreme Court, to be held during good behaviour, and therefore practically for life, is a very different subject-matter to the office of Judge of the Court to be held at pleasure, and therefore revocable at the will of the Crown.

Irrespective of the reasons upon which the principle that Judges of a Supreme Court should have security of tenure of office, and should have their remuneration also fixed and secured, it is due to the credit and honour of the Crown that, in respect of any office, judicial or otherwise, and to which the Crown is empowered to appoint for life, and the holder of which has public services to perform, there should be adequate remuneration provided, and that such remuneration should be inseparably attached to the office; and, consequently, one is entitled to expect that, where such offices exist under the law, the law has provided for the payment of such remuneration, either by expressly defining such remuneration and providing for it, or by giving to the authority to which is given the power to appoint the power also to define the remuneration, and by providing for that which may be so defined.

As any other arrangement of authority is so clearly calculated to bring about not only a discreditable state of things, but a state of things inconsistent with the expectation that the duties of the office will be discharged with a due regard to the public interest, even as I think with regard to any office, though not the highest judicial office, that it ought not readily to be supposed that the Legislature would wittingly enact to that effect, and, consequently, that, in considering any legislative provisions dealing with such a subject, the improbability of the Legislature so enacting ought to be constantly borne in mind. If this be so with regard to any office to which the holder is appointed for life, it needs scarcely to be mentioned that the reasons have still greater force when the office is that of a Judge of the Supreme Court.

To proceed, then, to the consideration of the legislative provisions now in question: The general words used in the ordinance of 1844—the same being, it is to be borne in mind, in relation to offices that could be made only during pleasure—were not used expressly for providing as to the "*number*" of Judges that might be appointed, but rather as providing by whom the persons to hold the offices were "from time to time" to be appointed—that is, as vacancies from time to time occur. This appears from the fact that the words apply to the filling the office of Chief Justice, as well as to the other judicial offices. No doubt, when the ordinance was in force—at any rate, before the Constitution Act came also into force—these general words would, there being nothing in the ordinance to the contrary, justify the implication that Her Majesty might not only "appoint" to the office of Judge whenever from time to time vacated, but also appoint a Judge when no vacancy had occurred. As, therefore, the words as used in the repealed ordinance, where applied to the office of Chief Justice, mean *only* appoint when a vacancy from time to time occurs, and do not expressly relate to the defining the number of other judicial offices, but do so rather by implication, the same words, when used with regard to the different subject-matter and with the different context, are readily capable of taking their force and meaning from the context with which they are used and the subject-matter with regard to which they are used, and then assume a different meaning, and negative an implication which implication was quite justifiable in the ordinance when dealing with a different subject-matter, and having a different context.

The power from time to time to create what may be called a new "Judgeship" may still be capable of being implied when used with relation to a different subject-matter and with a different context, but, the power being still only an implied one, it needs less in the way of context to introduce a limitation upon the power than it would if the power to create were express on the matter. It hardly needs observation that the office of Judge of the Supreme Court, to which is attached in the interest of the public a tenure practically one for life, is a very different subject-matter to that of the like office held during pleasure.