As already more generally remarked, when the power to create Judgeships for life, and to appoint to them, is conferred by the Legislature, one would naturally look for some limitation upon the power, and, if not found expressly provided, one would seek to see if the Legislature, though it has not expressed the limitation, had not yet so provided as to put a limit upon the exercise of such a power. A person appointed to the office of Judge of the Supreme Court is surely bound to perform the duties of the office. It could not be intended that the Crown should have power to appoint to such an office without at the same time having power to allot a salary for the performance of the duties, unless a salary were by law attached to the office.

The position of a Judge appointed during pleasure is very different. It may be that the Crown, without appropriation of funds out of which to pay the salary, cannot enter into a contract for the payment of a salary while the office held during pleasure is held; but, as the appointment is revocable at pleasure, the obligation to perform the duties may be at once determined, and so the person is not only not obliged to perform the duties, but is rendered incapable of performing them. Not so when the office is held for life. It is true the holder may possibly have a right to resign the office, but he is not under any obligation to do so.

It is unnecessary to go fully into the many reasons which exist in the public interest for rendering the office of a Judge of the Supreme Court as nearly independent as possible. Ample provision is made for removing from office a Judge, *by Parliament;* and *the law* also amply provides for removing a Judge from office for misconduct. The importance, the necessity of that measure of independence is too well recognised to require to be dwelt upon. It is, I think, certain that Parliament in 1858 intended to carry out to its fullest extent this principle, the partial introduction of which into New Zealand is to be found in the Constitution Act. The question is, whether Parliament has used language which sufficiently conveys this intention. In my opinion it has.

It is contended that, though undoubtedly the intention was that the principle of judicial independence should be introduced, nevertheless the Legislature advisedly put it into the power of the Crown to create new Judgeships and to appoint to them, and advisedly omitted to make provision whereby in regard to those offices and appointments the principle would in every case be recognised—at any rate, in the manner and to the extent Parliament had determined that in general it should; and it is contended that this is not strange, for Parliament could itself, after the Crown had exercised the power, rectify that which Parliament had itself authorised to be done in violation of the principle which it had determined should in general be recognised. The meaning of this must be that Parliament could in any such case rectify the matter by providing, after the appointment was made, a permanent appropriation. But what if Parliament is not of opinion that a permanent appropriation should be made? Is the matter rectified then? The appointee holds his office for life, and without salary. Is not the office then held in violation of the principle which Parliament had determined should be maintained in general?

The answer, indeed, to this contention is that Parliament cannot, in the absence of unmistakable language, be supposed to legislate with its eyes open to a possible state of things which may require further legislation to put right that which it has itself intentionally authorised to be done in violation of a principle which it has said ought to be maintained. Parliament ought not, in the absence of clear and express provision to the contrary, be deemed to have so enacted as that it may afterwards feel itself forced, for shame's sake, to do what it disapproves of.

I have adverted to the different subject-matter dealt with by the ordinance, and the absence of context there from which restriction upon the implied authority could be inferred. I now proceed to consider the Act of 1858. The recital to this Act is that it is expedient to repeal section 10 of the ordinance, and to make other provisions in lieu thereof. This Act of 1858 must also be construed as if there were also recited in it the provisions in the Constitution Act relating to the offices of Judges of the Supreme Court. These provisions are contained in the 64th and 65th sections and the schedule to that Act. The 64th section grants to Her Majesty, to be paid annually and permanently, £1,000 for "Chief Justice," and £800 for "Puisne Judge." No one doubts that Judges of the Supreme Court are here meant. The 65th section provides that the Colonial Parliament may alter these appropriations, but enacts that until altered by Act of the Colonial Parliament the salaries of the Judges—that is, the Chief Justice and one Puisne Judge—"*shall be those respectively set against their several offices in the schedule:*"