The grounds of that decision are not stated in the very brief judgment delivered by Lord Brougham. This is not the time accurately to examine the case, but it is in the highest degree improbable that the Judicial Committee meant to depart from the long line of authorities, beginning with Bagot's case (9 Edw. IV., folios 1 and 9), which have established that the acts of persons *de facto* exercising judicial functions in the State, from the King downwards, are valid, notwithstanding the defective title of the person exercising the office.

For the foregoing reasons I am of opinion that the informant's objection to the validity of the patent is not well-founded, and that judgment must be for the defendant.

JUDGMENT OF WILLIAMS, J.

The question we have to determine is whether the power of appointment of Judges of the Supreme Court given to the Crown by section 5 of "The Supreme Court Act, 1882," is limited to the number of Judges whose salaries have been provided for by law, and whether the circumstance that at the time of the appointment of a Judge no salary has been thus provided for him renders his appointment in excess of the powers vested in the Crown and void. Section 5 of "The Supreme Court Act, 1882," is a re-enactment, with a slight variation, of section 2 of "The Supreme Court Judges Act, 1858," which itself re-enacts substantially the provisions of section 10 of "The Supreme Court Ordinance, 1844," so far as they relate to the power of the Crown to appoint Judges. Section 10 of the ordinance of 1844 enacts 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 be pleased to appoint." The section goes on to provide that the Governor may appoint Judges provisionally until Her Majesty's pleasure be known, and that the Judges shall hold office during Her Majesty's pleasure. The provisions of the Act of Settlement as to the tenure of office of Judges and the ascertainment of their salaries were therefore not in force in this colony at the time it became a separate colony. As it was then, and remained until the coming into operation of the Constitution Act, a Crown colony, the Crown had full power to take such order in the matter as seemed advisable, and by the ordinance the provision of the Act of Settlement as to the tenure of the judicial office was expressly disregarded. The circumstance mentioned in the argument, that the practice in Crown colonies was not to remove a Judge except for cause, although his appointment was during pleasure, shows only that the Crown in exercising the power of removal looked at the provisions of the Act of Settlement not as a law by which it was bound, but as a salutary rule which it was desirable to follow. The provision of section 10 of the ordinance of 1844 is little more than a declaration of the power which the Crown in a Crown colony would have had, apart from the ordinance, to erect a Supreme Court and appoint Judges. The section rather assumes that the power of appointing Judges belongs to the Crown than confers upon the Crown the power of appointing them. The Crown could have appointed any number of Judges it might deem expedient, and, in so far as it had the control of the revenue, could have found the money to pay their salaries. The colony ceased to be a Crown colony when the Constitution Act passed by the Imperial Parliament (15 and 16 Vict., c. 72) came into operation. The 1st section of that Act provides that the ordinances previously made, amongst which was the ordinance of 1844 above mentioned, should be held valid. The 64th section of the Act provides that there shall be payable to Her Majesty, out of the revenues of the colony, the several sums mentioned in the schedule for defraying the expenses of the services mentioned in the schedule. The 65th section provides that the General Assembly may by any Act or Acts alter all or any of the sums mentioned in the schedule, and the appropriation of such sums to the purposes there mentioned, and that until and subject to such alteration the salaries of the Judges shall be those respectively set against their offices in the schedule. The section goes on to provide that it shall not be lawful for the General Assembly by any Act to make any diminution of the salary of any Judge to take effect during the continuance in office of any person being such Judge at the time of the passing of any such Act. In the schedule referred to the salary of the Chief Justice is fixed at £1,000, and of one Puisne Judge, £800. Sections 64 and 65 are among those which the General Assembly is debarred from altering, and are still law (Constitution Amendment Act—20 and 21 Vict., c. 53, s. 2). I see no reason why the prohibition in section 65 against diminishing the salaries of Judges during their continuance in office should not continue to the present day, and apply to the existing Judges. By the 66th section of the Act the net revenue of the colony, after providing for the sums made payable to Her Majesty for the above-mentioned services, is subject to be appropriated by