

so placed could, indeed, properly exercise the duties of his office. One of these duties, for instance, is the trial of petitions against the return of members to Parliament. How could a Judge in this position be asked to take part in such a trial? Against the occurrence of such a state of things obviously neither the power of the purse which Parliament has, nor the power of removal by address, can be a sufficient protection. Certainly Parliament never could have supposed that a Judge would be placed in this position; but the question is whether it has so legislated as to prevent his being thus placed. For my own part, I deeply regret that it has not. If the Crown exercises its power of appointment without a previous appropriation, or without having in some way or other ascertained the mind of Parliament in the matter, the occurrence of such a state of things may not unreasonably be anticipated. I think our judgment must be for the defendant.

JUDGMENT OF CONOLLY, J.

I do not think it necessary to add much to the judgment delivered by the Chief Justice, with which I agree.

A great number of papers have been printed and laid before us, in addition to the statement of claim and statement of defence. The reason for printing all these papers I have not been able to discover; for, with the exception of two or three letters, they were not referred to on either side by counsel, and have apparently no bearing upon the questions to be decided. Those questions are, Was the defendant legally appointed a Judge of the Supreme Court? and, if so, was he by such appointment entitled to the salary and allowances the same as those paid or allowed to the other Judges?

In dealing with these questions, it appears to me to be desirable first to consider the Acts as to the appointment and salaries of Judges as they were when the defendant's commission as a Judge was issued; then to refer to previous legislation within the colony upon the same subjects; and, lastly, if necessary, to view this legislation by the light thrown upon it by the principles established with respect to the appointment and tenure of office of Judges in England.

The only Act dealing with the appointment of Judges of the Supreme Court which was in force within the colony at the time when the commission of the defendant was issued was "The Supreme Court Act, 1882." This Act must be read as a whole; for if the words in a single clause are taken by themselves, they might lead to a conclusion not to be justified if other parts of the Act are allowed their due weight. We find by section 5 that the Court shall consist of one Judge, to be appointed by His Excellency the Governor in the name and on behalf of Her Majesty, who shall be called the Chief Justice of the said Court, and of such other Judges of the said Court as His Excellency the Governor, in the name and on behalf of Her Majesty, shall from time to time appoint; and that the Chief Justice and the Judges of the Supreme Court in office at the time of the commencement of this Act shall be the Chief Justice and Judges of the said Court as if their appointments had been made under this Act.

Now, if this section is read irrespective of any other part of the Act, it would be apparently an authority for the appointment of an unlimited number of Judges; and it must be the defendant's contention that the number of Judges of the Supreme Court holding office during good behaviour at any one time is a matter entirely in the discretion of the Governor, acting, of course, by the advice of his Executive Council. This, however, is not necessarily the only construction to be put upon this section even if it stood alone; for the appointments to be made by the Governor from time to time might be as vacancies occurred. This is, I think, the proper construction of the section.

But section 8 provides that the Chief Justice and Judges shall be appointed during good behaviour; section 11, that the salary of a Judge shall not be diminished during the continuance of his commission; and section 13, that under certain circumstances every Judge holding office during good behaviour shall be entitled to a superannuation allowance in proportion to the amount of his annual salary.

It appears to me that section 5 cannot be read without reference to these sections, and that they clearly contemplate that every Judge appointed during good behaviour must have his salary previously ascertained and established, and not liable to diminution during the continuance of his commission.

Ex parte Griffith in re Wilcoxon was cited on behalf of the defendant. In the head-note it is stated that in determining whether a transaction amounts to a fraudulent preference the Court ought to regard simply the statutory definition in a certain section of the Bankruptcy Act; but nowhere in the judgments in that case will be found anything to the