

*Mr. Justice Richmond*: That is Mr. Sewell's motion.

*Sir R. Stout*: Mr. Stafford first introduced the resolutions, but Mr. Sewell made some amendments, and Mr. Fox also. The resolutions conclude as follows: "That a respectful address be presented to His Excellency the Governor praying him to take the necessary steps towards effecting the above object. Resolutions adopted by the House." I submit these resolutions show that, at all events so far as the House of Representatives was concerned, it desired to have the law referring to the appointment of Judges in New Zealand assimilated to that which was in force in England. There was to be a Civil List to provide for their payment. No other Puisne Judge was to be appointed until the Civil List was amended; and the tenure was to be similar to the tenure of Judges in England. This was in 1856. The next session was, I think, 1858, and then the Supreme Court Judges Bill of 1858 was introduced. His Honour Mr. Justice Richmond apparently had charge of it, being then Colonial Treasurer, and *Hansard* says: "Mr. Richmond, after briefly recapitulating the leading provisions of the Bill, said the present Ministry could not expect in the ordinary course of things to remain in office any great length of time, but they wished while they did hold power to lay the foundation of sound and liberal institutions in the country, and, where beneficial results could accrue from it, to divest themselves as much as possible of executive power."

The Act of 1858 repealed section 10 of the Act of 1844. That was the section of the Act which said that there was to be a Chief Justice and other Judges, who were to hold office during pleasure. The second and third section provide,—

"The Supreme Court of New Zealand shall consist of one Judge to be appointed in the name and on behalf of Her Majesty, who shall be called the Chief Justice, and of such other Judges as His Excellency in the name and on behalf of Her Majesty shall from time to time appoint."

"The Commission of the present Chief Justice, and of every Chief Justice and other Judge of the said Court to be hereafter appointed (except as hereinafter provided) shall be and continue in full force during their good behaviour, notwithstanding the demise of Her Majesty, any law, usage, or practice to the contrary notwithstanding."

*Mr. Justice Richmond*: I am rather ashamed with having something to do with an Act which refers to the "demise of Her Majesty." It is a gross vulgarism, and also a blunder. It should be "the demise of the Crown," and the sooner it is set right the better.

*Sir R. Stout*: Yes. It also says,—

"Provided always that it shall be lawful for the Governor of New Zealand at his discretion, in the name and on behalf of Her Majesty, upon the address of both Houses of the General Assembly, to remove any such Judge from his office and to revoke his patent or commission."

Then there was power to suspend under section 5; and section 6 provided,—

"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 Patent or Commission shall continue and remain in force."

Then section 7 gave power to appoint a Judge for temporary purposes, and section 8 provided for superannuation-allowances. I submit that this Act was simply carrying out, though with some alterations, the previous decision of the House in 1856—to assimilate the law of New Zealand to that of England, so far as the Supreme Court Judges were concerned.

*Mr. Justice Denniston*: You do not intend to read the resolutions to interpret the Act?

*Sir R. Stout*: No; I am only giving a sketch of how the Act came to be passed. As to how the Court is to interpret the statutes, I will deal with that later on. Now, at this time, the passing of the Act of 1858, Sir George Arney was Chief Justice. The Act was passed on the 24th August, 1858, and in the same session that this Act was passed providing for a new tenure for the Supreme Court Judges there was passed the Civil Service Act.

*The Chief Justice*: He was in office.

*Sir R. Stout*: Yes, he was in office.

*The Chief Justice*: In 1857.

*Sir R. Stout*: I will give the date; it was in 1858, and he was in office then.

*The Chief Justice*: Mr. Justice Johnston, was he in then?

*Sir R. Stout*: No, he was appointed afterwards.

*Mr. Justice Richmond*: Shortly after?

*Mr. Harper*: In November, 1858, your Honour.

*Sir R. Stout*: His Honour Mr. Justice Johnston was appointed on the 3rd November, 1858, and the Chief Justice on the 1st March, 1858. There were eight months between them. This list, your Honour, is in this volume, page 354 of New Zealand Statutes, 1854 to 1860. It is called "The Civil List Act, 1858." It recited the Constitution Act, and then it proceeded to give a certain sum to the Governor, a certain sum for his Private Secretary, a certain sum for the Chief Justice, for the first Puisne Judge, and for the second Puisne Judge, following the resolution in the House in 1856; and it provided that this Act shall be deemed to take effect on and after the 1st July, 1858. Whether that was to have a retrospective or retroactive effect or not I do not think matters so far as this Act is concerned. This Act was proclaimed by the Governor, Sir Thomas Gore Browne, on the 25th July, 1859, as having been assented to by the Queen, and then became law; and on the day after its proclamation Mr. Justice Gresson, who had been acting as a temporary Judge, was permanently appointed; so that the Executive of that day waited till the day after the proclamation of the Act of 1858 before appointing the second Puisne Judge.

*The Chief Justice*: That is so.