

This important case was argued on March 22 and 30 before a Board consisting of the Lord Chancellor, Lord Watson, Lord Hobhouse, Lord Herschell, Lord Macnaghten, Lord Hannen, and Sir Richard Couch, when judgment was reserved.

Lord Herschell to-day gave their Lordships' judgment. He said: On March 2, 1890, His Excellency the Governor of New Zealand issued a commission to the respondent appointing him a Puisne Judge of the Supreme Court of New Zealand, to hold the office during good behaviour. On the previous day the then Premier of New Zealand wrote a letter to the respondent informing him that the Governor had approved of his appointment to the office of a Commissioner under "The Native Land Courts Acts Amendment Act, 1889," and that it had appeared to the Government that for an office of such importance the Commissioner should have the status of a Judge of the Supreme Court, and, therefore, he would be appointed to that office also. The letter added that the demands on the time of the Judges caused unavoidable delay in the despatch of business, and that it was hoped that this arrangement, by which the respondent would afford occasional assistance in the Supreme Court work, would temporarily meet the requirements. On March 6, 1890, the commission appointing him a Judge was transmitted to the respondent, together with an Order in Council appointing him and Mr. John Ormsby to be Commissioners under the Native Land Act above mentioned. The appointment of the respondent as Commissioner came to an end on March 31, 1891. No salary had at the time of his appointment or has since been provided for the respondent as Puisne Judge by the General Assembly of New Zealand, nor was there any parliamentary sanction for the appointment of an additional Puisne Judge unless it is to be found in prior legislation. It may be added that shortly after the appointment of the respondent a change of Government took place in the colony, and that the House of Representatives of New Zealand have refused to vote any salary for the respondent as a Judge of the Supreme Court, and that, although a Bill to amend the Supreme Court Act, 1882, and to provide for the payment of an additional Judge was transmitted by the Governor to the House of Representatives, leave to introduce such Bill was not given. Under these circumstances the appellant, as Attorney-General of New Zealand, filed his statement of claim in the Supreme Court. On 6th May notice of motion was filed on behalf of the appellant, calling on the respondent to show cause why he should not show by what warrant and authority he claimed to exercise the office of Judge of the Supreme Court of New Zealand, or why his commission of Judge of the Supreme Court of New Zealand should not be cancelled. This motion was heard by the Court of Appeal, and judgment was pronounced in favour of the respondent by three learned Judges, the Chief Justice and one other Judge dissenting. The question raised is one of grave importance, the contention on the part of the respondent being that, as the law stands in New Zealand, the Governor has the power of adding without limit to the number of Judges of the Supreme Court of that colony without express parliamentary sanction and in the absence of any parliamentary provision for the salaries of the Judges so appointed. Both sides have placed reliance on the law which has prevailed in England governing the appointment of Judges. Their Lordships do not propose to deal with this subject in detail, as it can have only an indirect bearing upon the question to be determined, which must depend upon the construction of certain New Zealand statutes. It appears certain that since the reign of James I., with two possible exceptions, the latest of which dates back as far as 1714, no addition has been made to the number of Judges without express Parliamentary sanction. In the Act of Settlement it was provided that the Judges' commissions should be made *quamdiu se bene gesserint*, "and that their salaries should be ascertained and established." The latter provision was not completely carried into effect until a subsequent period. The remuneration of the Judges was in former times derived partly from fees and partly from the Civil List of the Sovereign. By several Acts passed prior to the reign of George III. the salaries of the Judges were in part provided by certain sums charged upon the duties granted by those Acts. The Act of the first year of Geo. III., c. 23, recited the provision of the Act of Settlement to which attention has been called. It recited further that his Majesty had been pleased to declare from the Throne to both Houses of Parliament that he looked upon the independence and uprightness of the Judges as essential to the administration of justice and as one of the best securities of the rights and liberties of his subjects, and that in consequence thereof his Majesty had recommended to Parliament to make further provision for the continuing Judges in office, notwithstanding the demise of his Majesty, and that his Majesty had also desired his faithful Commons that he might be enabled to secure the salaries of Judges during the continuance of their commissions. After these recitals it was enacted that such salaries as were settled on Judges by Act of Parliament, and also such salaries as had been or should be granted by His Majesty, his heirs and successors, to any Judge or Judges, should in all times coming be paid and payable to every such Judge and Judges for the time being, so long as their patents or commissions should remain in force, and should, after the demise of the Crown, be charged upon and payable out of such of the duties and revenues granted for the use of the civil government of His Majesty, his heirs and successors, as should be subsisting after such demise, until further provision was made by Parliament. By an Act of the 6 Geo. IV., the salaries of the Puisne Judges were fixed at £5,000 a year, and charged upon the Consolidated Fund. Their Lordships think that the Act, 1 Geo. III., c. 23, would render it difficult to contend that the Crown could after that date appoint additional Judges for the payment of salary to whom Parliament had given no sanction. For the salaries of the Judges were then, by the authority of Parliament, secured to them during the continuance of their commissions, and after the demise of the Sovereign were charged upon the revenues granted by Parliament for civil government of the realm. The recital which precedes this legislation shows that with a view to their independence it must have been intended that all the Judges should be in this position, and it certainly cannot have been the intention of Parliament to enable the Sovereign to increase without its sanction the charges which, after the demise of the Sovereign, were to be imposed upon the revenues of the realm. Down to 1852 New Zealand was a Crown colony. It was only then that it received com-