plete representative institutions. Whilst it was thus a Crown colony an ordinance was passed in 1841 by the Governor, with the advice and consent of the Legislative Council, establishing a Supreme Court for New Zealand, and defining its jurisdiction, constitution, and practice. The eighth section is as follows: "The Court shall be holden before one Judge, who shall be called the Chief Justice of New Zealand, and such other Judges as her Majesty or the Governor shall from time to time be pleased to appoint." This provision was (with some others contained in the ordinance) modified by another ordinance passed in 1844, the tenth clause of which is in these terms: "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. Provided that it shall be lawful for His Excellency the Governor to appoint such Judges provisionally until Her Majesty's pleasure shall be known. The Judges of the Court shall hold their office during Her Majesty's pleasure." It is clear that as regards the Crown these were not enabling provisions. The power of the Crown to appoint in a Crown colony such Judges as might be deemed advisable could not be doubted, but whilst the earlier ordinance had conferred upon the Governor power to appoint absolutely, the later one gave him this provisionally only, until Her Majesty's pleasure was known, and further provided, in terms which the previous ordinance had not done, that the Judges should hold their office during Her Majesty's pleasure. By the Imperial Act, 15 and 16 Vict., c. 72, a representative Constitution was granted to the Colony of New Zealand. The 64th section of this Act is, so far as material, as follows: "There shall be payable to Her Majesty every year . . . the several sums mentioned in the schedule of this Act, such several sums to be paid for defraying the expenses of the services and purposes mentioned in such schedule." By section 65 the General Assembly of New Zealand was empowered by any Act or Acts to alter all or any of the sums mentioned in the schedule, and the appropriation of such sums to the services and purposes therein mentioned; but until and subject to such alteration by Act or Acts as aforesaid the salaries of the Governor and Judges were to be those respectively set against their several offices in the schedule. In the schedule to the Act occur these words: "Chief Justice, £1,000; Puisne Judge, £800." The section concludes with the following proviso: "Provided always that it shall not be lawful for the said General Assembly by any such Act as aforesaid to make any diminution in 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 such Act." It is manifest that this limitation of the legislative power of the General Assembly was designed to secure the independence of the Judges. It was not to be in the power of the colonial Parliament to affect the salary of any Judge to his prejudice during his continuance in office. But, if the Executive could appoint a Judge without any salary, and he needed to come to Parliament each year for remuneration for his services, the proviso would be rendered practically ineffectual, and the end sought to be gained would be defeated. It may well be doubted whether this proviso does not by implication declare that no Judge shall thereafter be appointed save with a salary provided by law to which he shall be entitled during his continuance in office, and his right to which could only be affected by that action of the New Zealand Legislature which is excluded by the Imperial Act. It appears from the affidavit of Mr. Francis Harrison that Mr. Justice Gresson was temporarily appointed a Puisne Judge on December 8, 1857. The affidavit does not state under what circumstances this took place, nor does it expressly state that the office of Puisne Judge was full at the time, but it may be presumed that the predecessor of Mr. Justice Johnston, who was appointed on November 3, 1858, then held that office. The appointment of Mr. Justice Gresson probably purported to be made by the Governor under the powers of the ordinance of 1844 which had not been repealed. Under these circumstances it was only natural that the whole subject of the status of the Judges, and the salaries to which they were to be entitled, should be brought under the consideration of the Legislature. Accordingly, two Acts were passed by the Legislature in the following year —the one entitled "An Act to regulate the Appointment and Tenure of Office of the Judges of the Supreme Court;" the other "An Act to alter the Sums granted to Her Majesty by the Constitution Act for Civil and Judicial Services." By the Supreme Court Judges Act, the tenth section of the ordinance of 1844 was repealed. The second and third sections were as follows: "II. 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. III. The commission of the present Chief Justice, and of every Chief Justice, and other Judges of the said Court to be hereinafter 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." The fourth clause empowered the Governor 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. It is needless to comment upon the important change which the third clause made in the status of the Judges thereafter appointed. It is contended that the second clause in terms enabled the Governor to appoint as many additional Judges as he pleased; that, though Parliament might not have sanctioned any increase of the judiciary or provided any salary for the Judges so appointed, the Governor might appoint any number of Judges without salary, or, as in the present case, with a salary temporarily provided by Parliament for other services, whose commission should not be temporary, but should continue in force during their good behaviour. It certainly would be startling to find that when the tenure of the judicial office was so materially altered, this power had been vested in the Governor by the advice of his Executive, for it is to be observed that whilst under the ordinance of 1844 the Governor could only appoint provisionally until Her Majesty's pleasure was known, this Act enables him to appoint absolutely in the name and on behalf of Her Majesty. Their Lordships need not dwell upon the importance of maintaining the independence of the judges; it cannot be doubted that whatever disadvantages may attach to such a system the public gain is,