

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 upon 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 gesserit*, 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 these Acts. The Act of the first year of George III., c. 23, recited the provision of the Act of Settlement to which attention has been called. It is 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 of 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 such Judge or 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 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 6th George 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 of the 1st George 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 the 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 the year 1852 New Zealand was a Crown colony; it was only then that it received complete representative institutions. Whilst it was thus a Crown colony an ordinance was passed in the year 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 the year 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 power 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 of the 15th and 16th Victoria, 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 to 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 occurs 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 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