

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 the 8th December, 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 the 3rd of November, 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Gresson probably purported to be made by the Governor under the powers of the ordinance of 1844, which had not been repealed.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 By the Supreme Court Judges Act the tenth section of the ordinance of 1844 was repealed.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 Judge of the said Court to be hereafter appointed (except as hereinafter provided), shall be and continue in force during their good behaviour, notwithstanding the demise of Her Majesty, and 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 provide any number of Judges without salary, or, as in the present case, with a salary temporarily provided by Parliament for other services, whose commissions 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 on 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, on the whole, great. It tends to secure an impartial and fearless administration of justice, and acts as a salutary safeguard against any arbitrary action of the executive. The mischief that is likely to result if the construction contended for by the respondent be adopted is forcibly pointed out by one of the learned Judges, who held the appointment now in question to be valid. He said, "In the present case, until such time as the matter may be finally dealt with by Parliament, the position will undoubtedly remain most unsatisfactory. The Judge is absolutely dependent upon the Ministry of the day for the payment of his salary, and has to come before Parliament as a suppliant to ask that a salary be given him. It is difficult to conceive a position of greater dependence. No Judge 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." Nevertheless, weighty as these considerations are, if the natural meaning of the general words used be to confer the power contended for, and if there be no other provisions in the Act showing that this was not the intention of the Legislature, effect must be given to the enactment without regard to the consequences; but it cannot be disputed that it is legitimate to read every part of an Act in order to see what construction ought to be put upon any particular provision contained in it. Now, the sixth section of the Supreme Court Judges Act provides that "a salary equal at least in amount to that which at the time of the appointment of any Judge shall then be payable by law shall be paid to such Judge so long as his patent or commission shall continue and remain in force." The language of this section is imperative and general. How can its requirements possibly be complied with in any reasonable sense in the case of a Judge to whom at the time of his appointment there was no salary payable by law? Is this not a clear indication of the intention of the Legislature that there should be no appointment of a Judge unless at the time of his appointment there was a fixed salary payable to him by law in respect of his office? It is inconceivable that it should have intended to enable the creation of two classes of Judges, the one entitled by law from the time of their appointment to a salary unalterable during the continuance of their commission, the other without any legal right to salary at all. There was some controversy as to what the salary "then payable by law" referred to. Their Lordships think this is made clear by a reference to the Civil List Act of the same year, which must be read with the sixth section of the Supreme Court Judges Act. It was said in the Court below that this and the other Civil List Acts, to which reference will have to be made, were