

mere money bills; but though the parliamentary incidents of such bills are no doubt special when they pass into law they do not in their Lordships' opinion differ from any other Act of the Legislature. "The Civil List Act, 1858," provides that there shall be payable to Her Majesty the several sums mentioned in the schedule to this Act instead and in lieu of the sums mentioned in the schedule to the Constitution Act of the 15th and 16th Victoria. The schedule to the Civil List Act contains these words: "Chief Justice, 1,400; First Puisne Judge, 1,000; Second Puisne Judge, 1,000." Reading the two statutes together, the effect of the Civil List Act of 1858 clearly is to provide that the salaries of the Chief Justice and the two Puisne Judges "shall be those respectively set against their several offices in the schedule." This Act, though reserved for the signification of Her Majesty's pleasure on the 21st of August, 1858, did not receive the Royal assent until the 25th of July, 1859; but it is significant that its second clause provided that it should "be deemed to take effect on and after the first day of July, 1858," immediately prior to the Supreme Court Judges Act, which came into force on the 3rd of July following. What was meant, therefore, in the sixth clause of the Supreme Court Judges Act by the salary payable by law to a Judge on his appointment does not admit of doubt. There was a fixed salary payable to the Chief Justice and one Puisne Judge under the Constitution Act, and "The Civil List Act, 1858," made provision for the payment of a fixed salary to the Chief Justice and to two Puisne Judges respectively, which could only be altered by fresh legislation.

But the sixth section of the Supreme Court Judges Act is not the only one which throws light on the construction to be put upon the second section of that Act. The seventh section empowers the Governor in Council, at any time during the illness or absence of any Judge appointed as aforesaid, or for any other temporary purpose, to appoint a Judge or Judges of the Supreme Court to hold office during His Excellency's pleasure, and it provides that every such Judge shall be paid such salary, "not exceeding the amount payable by law to a Puisne Judge of the said Court," as the Governor in Council shall think fit to direct. This section clearly implies that there will be a fixed salary payable to any person filling the office of Puisne Judge of the Supreme Court. If a Puisne Judge can be appointed to whom there is no amount payable as salary, what will be the operation of this section? The superannuation clauses point to the same direction, although perhaps not so forcibly. They imply, however, that *every* Judge of the Supreme Court will be entitled to an annual salary at the time of resignation. Returning now to the second clause, which is more immediately under consideration, it is to be observed that even if it be confined, by reference to other parts of the Act, to the appointment of Judges to whom a fixed salary is payable by law at the time of their appointment, every word of the section, the main object of which was manifestly to define the constitution of the Supreme Court and to prescribe the mode of the Judges, would still be necessary, and would have full effect. In view of the considerations to which attention has been called, their Lordships are of opinion that the section can, consistently with other parts of the Act, only be construed as vesting in the Governor the appointment of Judges to whom an ascertained salary is payable by law at the time of their appointment. None of the Judges in the Court below appear to have doubted the expediency of such construction if it be legitimate, and their Lordships think that it is the only one which will give full and consistent effect to all the provisions of the Act.

Their Lordships have dealt thus fully with the construction of the Supreme Court Judges Act of 1858, although it is not the statute which now regulates the appointment of Judges, because, if it could have been shown that it bore the construction contended for, it would not have been possible to resist the conclusion, having regard to the terms of the Act of 1832, that the power which it conferred upon the Governor was still vested in him. If, on the other hand, the Act of 1858 conferred no such power, this is a legitimate consideration when inquiring into the effect of the later Act. Before proceeding to this inquiry it will be desirable to refer to the intermediate legislation, as some stress has been laid upon it. "The Civil List Act, 1862," substituted for the sums mentioned in the schedule to the Civil List Act of 1858 the following: "Judges £6,200." The Civil Act of 1863 substituted £7,700 for £6,200 as the sum payable to the Judges. Whilst each of these Acts increased the sum payable, neither of them specified how the respective sums were to be distributed amongst the Judges. It appears to have been afterwards thought, not unnaturally, that this was objectionable, and accordingly an Act was passed in 1873 to amend "The Civil List Act, 1863," which, after reciting that it was expedient that the sum of £7,700, granted to Her Majesty by that Act for defraying the salaries and expenses of the Judges of the Supreme Court, should be more definitely appropriated to such service, enacted that this sum should "be applied in paying to the Judges of the said Court respectively the annual salaries specified in the first schedule" thereto. The schedule was in these terms: "Annual salary of the Chief Justice of the Supreme Court, £1,700; annual salaries of four Puisne Judges of the Supreme Court, each £1,500—£6,000." This enactment implies that, unless the legislation should intervene, the Judges of the Supreme Court, other than the Chief Justice, would be four in number only. This statute was in force, unaltered, at the time "The Supreme Court Act, 1882," was passed. The object of that Act was, it is to be gathered, to make certain alterations in the practice and procedure of the Court, but it was evidently thought convenient that the judicial provisions should also be found in the same Act, so as to render it a complete code.

Part I. of the Act consists, therefore, in substance, of a re-enactment of the Supreme Court Judges Act, with the addition of a provision defining the qualifications requisite for appointment to the office of Judge. The seventh section of the earlier Act is repeated, with an immaterial verbal alteration. For the sixth section, however, the following is substituted: "The salary of a Judge shall not be diminished during the continuance of his commission." What was the cause for this change does not appear. But it affords no ground for the conclusion that it was intended to affect the limitation of the power of appointing Judges, which, in their Lordships' opinion, was then in force. The eleventh section of the Act of 1882, as distinctly as the sixth section of the earlier Act, involves the necessity of a salary being fixed at the commencement of the Judge's commission.