

provided that it should be lawful for the Governor to appoint such Judges provisionally until Her Majesty's pleasure should be known. It was expressly provided that the Judges should hold office during Her Majesty's pleasure.

6. The ordinance mentioned in the last paragraph contained no provision against diminishing the Judges' salaries, nor for fixing the amounts or providing for payment thereof, and there was, of course, no Civil List Act at this time.

7. The Constitution Act, 15 and 16 Vict., c. 72, of the Imperial Parliament, provided that certain sums should be payable to Her Majesty for the purposes mentioned in the schedule. Amongst the sums are—Chief Justice, £1,000; Puisne Judge, £800. Section 65 forbade the diminution by the Colonial Legislature of the salary of any person holding office as a Judge at the time of the passing of the Act, but otherwise authorised the Colonial Legislature to deal with the salaries of the Judges as it might think fit.

8. The Constitution Act did not repeal or abrogate the ordinance mentioned in the 5th and 6th paragraphs, and the Judges then holding office continued to hold office at Her Majesty's pleasure.

9. It is plain, therefore, that it is idle to contend that my appointment is unconstitutional, as being contrary to the spirit of the Constitution Act, as that Act left all the Judges holding office at pleasure, and (except as to the Judges then actually holding office) liable to have their salaries reduced. All the safeguards which are considered necessary to secure the independence of the Judges were thus wanting.

10. Then, is it contrary to the spirit of any subsequent legislation?

11. "The Supreme Court Judges Act, 1858," came into force on the 3rd July, 1858, and remained in operation until the 1st day of January, 1883, when it was repealed by "The Supreme Court Act, 1882," under which my appointment was made.

12. The Act of 1858 provided (section 2) that the Supreme Court should consist of one Judge, to be called the Chief Justice, and of such other Judges as His Excellency the Governor, in the name and behalf of Her Majesty, should from time to time appoint. Section 3 provided that the Judge's commission should continue in force during good behaviour, and section 5 provided against the diminution of any Judge's salary.

13. The power of appointment contained in the Act of 1858 is similar to that contained in the Ordinance No. 1 of Session 3 (see paragraph 5), which cannot upon any principle be contended to have been limited.

14. By what, then, is the power given by the Act of 1858 limited? Certainly not by the Constitution Act, for the reasons stated in paragraph 9, and for the further reason that if the Act of 1858 were limited by the Constitution Act it must be so limited that not more than two Judges could hold office at the same time—a contention which would be fatal to the validity of the commission of probably every Judge who has ever been appointed in the colony, except perhaps the Chief Justice.

15. If, then, the power given by the Act of 1858 is limited in principle it must be limited by the several Acts (passed subsequently to the appointments increasing from time to time the number of Judges) by which the salaries of such Judges have been removed from the necessity of being provided by an annual vote.

16. These Acts are referred to in paragraphs 30, 32, 35, and 37 hereof. I make bold to say no such intention can be deduced from them, and on principle it is plain that no such construction can be given to them. To give such a construction to the first of these Acts amending the Civil List would have the remarkable effect of invalidating the appointment of the very Judge for whose benefit the provision was made.

17. According to the contention which has been raised, "The Supreme Court Judges Act, 1858," must be read as though the power of appointment had been qualified by the addition of the following or some similar words: "not exceeding in number those whose salaries are permanently appropriated by the Civil List Act for the time being in force." What authority is there for the interpolation of any such words? and how can it be pretended that they were in the contemplation of the Legislature, seeing that there was then no Civil List Act in existence?

18. Then, has there grown up any usage with respect to the appointments of additional Judges which has been infringed by my appointment? The number of Judges has been increased three times (by the appointments mentioned in paragraphs 29, 31, and 34 hereof) since the passing of the Constitution Act, and on each separate occasion the additional Judge has been appointed and has acted before his salary has been provided for by any alteration of the Civil List. On a fourth occasion, referred to in paragraphs 38 and 39 hereof, although no permanent addition to the Bench was made, two Judges were appointed for a month before their predecessors resigned office, so that for a limited period there were actually seven Judges holding commissions and drawing salaries in the colony. My appointment is therefore strictly in accordance with every precedent in this colony.

19. For the reasons already stated, the word "unconstitutional," as applied to my appointment, must, if it means anything, mean something contrary to the spirit of the laws of this colony; and I have sufficiently shown that it is not unconstitutional in that sense. Further, I venture to say that it is strictly constitutional according to the doctrines laid down in the greatest writers on constitutional history.

20. Hallam, at page 192, Vol. iii., of the eighth edition of his work on the "Constitutional History of England," says, "The commissions, however, of William's Judges ran *quamdiu se bene gesserint*. But the King gave an unfortunate instance of his very injudicious tenacity of bad prerogatives in refusing his assent, in 1692, to a Bill that had passed both Houses for establishing this independence of the Judges by law, and confirming their salaries. We owe this important provision to the Act of Settlement, not, as ignorance and adulation have perpetually asserted, to His late Majesty George III. No Judge can be dismissed from office except in consequence of a conviction