

for some offence, or the address of both Houses of Parliament, which is tantamount to an Act of the Legislature.”

21. Turning to the Act of Settlement (12 and 13 Will. III., c. 2), referred to by Hallam in the passage quoted in the last paragraph, it will be found that the only provision relating to the Judges is that contained in section 3: “That, after the said limitations shall take effect as aforesaid, Judges’ commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them.”

22. The provision in this statute that the salaries of the Judges shall be ascertained and established must mean “ascertained and established” by the terms of their appointments, not by Act of Parliament, as one Parliament cannot bind another; and, if further legislation had been required to make the statute effective, obviously it would have been of no utility. It is to be observed that the emoluments of the Judges were originally derived from fees and from the sale of offices, and that, so far, at all events, as the Lord Chief Justice of England and the Lord Chief Justice of the Court of Common Pleas were concerned, this continued until 6 Geo. IV. See 6, Geo. IV., c. 82 and 83, which abolish this for the future, and provide fixed salaries. There is not one word in the Act of Settlement charging the salaries of the Judges upon any revenue or fund whatever.

23. That provision first appears in 1 Geo. III., c. 23, the Act which is mentioned by Hallam with such contempt; yet it is the absence of this provision, and of this provision alone, which is said to render my appointment illegal and unconstitutional.

24. My salary is ascertained and established by my contract with Her Majesty. By section 8 of “The Supreme Court Act, 1882,” under which I have been appointed, my commission continues in force during good behaviour, and by section 11 of the same Act my salary cannot be diminished during the continuance of my commission. In what respect, then, is my position wanting in the safeguards for independence referred to by Hallam?

25. It is to be observed that from the year 1863 to 1873 no one of the Judges could have established what his salary was without resorting to his contract with the Crown, as during that period the Civil List Act appropriated gross sums for the Judges, without showing in what proportion these sums were payable. (See paragraphs 32 and 35 hereof.)

26. Turning now to the point of legality, apart from the constitutional question, I propose to show that, if the point raised is good, then there was, at the time of my appointment, an existing vacancy upon the bench, to which I have been lawfully appointed. To do this it is necessary to trace the history of the appointments of the Judges since the passing of the Constitution Act.

27. The first Judge appointed after the passing of the Constitution Act was Chief Justice Arney, who was appointed under the provisions of the ordinance of 1844, with the benefit of the appropriation made by the Constitution Act (see paragraphs 5, 6, 7, and 8 hereof) on 1st March, 1858, and who held office until 1st April, 1875, when he resigned.

28. Mr. Justice Gresson received, on the 8th December, 1857, a temporary appointment from the Governor, under the special power given to him. He appears to have been permanently appointed after the coming into operation of “The Supreme Court Judges Act, 1858” (see paragraphs 11 and 12 hereof). He held office until 1st April, 1875, when he resigned.

29. Mr. Justice Johnston was appointed on the 3rd November, 1858, under the provisions of “The Supreme Court Judges Act, 1858” (see paragraphs 11 and 12 hereof), and he held office until his death in 1888.

30. “The Civil List Act, 1858,” which was, on the 1st August, 1858, reserved for signification of Her Majesty’s pleasure, was assented to, and came into force on the 25th July, 1859. This Act provided for—“Chief Justice, £1,400; first Puisne Judge, £1,000; second Puisne Judge, £1,000.” By section 2, “This Act shall be deemed to take effect on and after the first day of July, one thousand eight hundred and fifty-eight.”

31. Mr. Justice Richmond was appointed on the 20th October, 1862, and still holds office.

32. “The Civil List Act, 1862,” reserved for the signification of Her Majesty’s pleasure, was assented to, and came into force on the 11th July, 1863. This Act provided (*inter alia*)—“Judges, £6,200.” The amount is not allocated. Section 3 provided—“This Act shall be deemed to take effect on and after 1st July, one thousand eight hundred and sixty-two.”

33. It is conceded, I believe, on all sides that the effect of the retrospective clauses in the statutes mentioned in paragraphs 30 and 32 must be to remove all doubts as to the validity of the appointments of Mr. Justice Johnston and Mr. Justice Richmond, but whether this is so or not does not affect the ultimate result, or the consequence hereinafter referred to.

34. Mr. Justice Chapman was appointed on the 23rd March, 1864, and held office until the 1st April, 1875.

35. “The Civil List Act, 1863,” reserved for signification of Her Majesty’s pleasure, provided for “Judges, £7,700,” without allocating the amount. This Act was assented to, and came into force on the 27th July, 1864. It has no clauses giving it any retrospective operation.

36. The result is that, if the objections raised to my appointment are good, Mr. Justice Chapman was never lawfully appointed a Judge, and all his acts during the time when he sat upon the bench, from the 23rd March, 1864, to the 1st April, 1875, are void.

37. “The Civil List Act 1863 Amendment Act, 1873,” came into force on the 2nd October, 1873. This Act provided (section 2)—“The sum of £7,700 granted to Her Majesty by ‘The Civil List Act, 1863,’ for defraying the expenses of the salaries of the Judges of the Supreme Court, shall be applied in paying to the Judges of the said Court respectively the annual salaries specified in the First Schedule hereto: 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.”

38. Mr. Justice Gillies was appointed on the 3rd March, 1875, and he held office until his death in 1889.