how, if at all, the law of the Constitution is connected with the conventions of the Constitution." A passage from Freeman's "Growth of the English Constitution," quoted by Dicey, is worth reproducing here. "When an Englishman [Mr. Freeman says] speaks of the conduct of a public man being constitutional or unconstitutional he means something wholly different from what he means by conduct being legal or illegal," and illustrations are given. When the word "constitutional" is used no one thinks of referring to the written law of a Constitution Act. It must refer to those conventions which every one recognises, and regarding which there is no trace in any positive law of the Empire. Those "conventions" may, I submit, however, help us to interpret statutes regarding important Executive acts. I propose, after I have dealt with the legal aspect of the appointment, to refer to its constitutional point of view also.

6. Regarding the legal position, I notice that Mr. Edwards has made no distinction between the ordinances of the colony and its Acts. He has overlooked this important distinction: that so long as New Zealand was a Crown colony, its Government rested with the authorities in England. If, for example, a Judge was appointed, the appointment was made in England, and he was deemed an officer of the Colonial Department of the Empire. This practice still continues in Crown colonies, and hence we see Judges sent from one colony to another, and paid and pensioned as officers of the Empire—their time for a pension counting in whatever colony they may have served. What was done in New Zealand, therefore, before the Constitution Act gives little aid in determining the true interpretation of "The Supreme Court Act, 1882." And it is an extraordinary contention to make that his appointment is valid because in 1844, and down to 1858, the independence of the Bench had not been properly secured. I may, however, notice that the first ordinance creating a Supreme Court was passed in 1841. It provided that the appointment of Judges was to be by Her Majesty or the Governor. The 1844 ordinance expressly declared the appointment to be by Her Majesty alone. The usual safeguards as to Judges did not, of course, appear in these ordinances for the reason I have given, that they were not, in effect, servants of the colony, but officers of the Empire, perhaps only temporarily located in the colony.

7. The Constitution Act (15 and 16 Vict., c. 72) gave power to the General Assembly to provide for the establishment of Courts of Judicature. And it expressly provided for the allocation to Her Majesty of "£1,000 for a Chief Justice, and £800 for a Puisne Judge" (section 64). It gave power to alter the salaries by Act or Acts, and, until alteration, the salaries mentioned were to be the salaries of the Judges, and it said (section 65), "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."

8. The Constitution Act therefore provided for the permanent appropriation of Supreme Court Judges' salaries, and it laid down the principle that a salary once fixed could not be diminished.

9. The Constitution Act was amended by the 20 and 21 Vict., c. 53, and in this Act it is expressly declared that, so far as sections 64 and 65 are amended, it should not be lawful to repeal them.

10. No legislation affecting the Supreme Court was enacted till 1858. It was, however, apparently seen then that there was need of placing the Judges in a different position. I find from *Hansard* that Mr. Richmond, now Mr. Justice Richmond, is reported to have said, "The present Ministry could not expect, in the ordinary course of things, to remain in office any length of time, but they wished, while they did hold power, to lay the foundation of sound and liberal institutions in this country, and, where beneficial results could accrue from it, to divest themselves as much as possible of executive power" (*Hansard*, 1856–1858, p. 441).

11. The first statute passed by the New Zealand Parliament under Responsible Government dealing with Judges enacted:—"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 full force during their good behaviour, notwithstanding the demise of Her Majesty, any law, usage, or practice, to the contrary notwithstanding. IV. Provided always that it shall be lawful for the Governor of New Zealand, 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, and to revoke his patent or commission."

12. In the same year a Civil List Act was passed providing for the salaries of three Judges—a Chief Justice at £1,400; a First Puisne Judge, £1,000; a Second Puisne Judge, £1,000.

13. So that in 1858 the old tenure of Judges that had existed when they were Imperial officers was changed. They became, under the Act of 1858, Judges of New Zealand, and their power of removal was limited, their salaries fixed and determined, and made independent of the yearly vote of the Parliament. In effect, the position of the Judges was made like to the Judges in England and in other colonies where representative government had been established. To argue, therefore, as Mr. Edwards does in paragraph 9, that his appointment is constitutional because the old system of Judges continued till 1858, seems certainly an "idle contention."

14. There were, immediately after 1858, three Judges in New Zealand—Sir George Alfred Arney, Mr. Justice Johnston, and Mr. Justice Gresson.

15. The next Act dealing with Supreme Court Judges was passed in 1862. It repealed section 4 of the 1858 Act, and enacted in lieu of it the following: "IV. It shall be lawful for Her Majesty, upon the address of both Houses of the General Assembly, to remove any Judge of the Supreme Court from his office, and to revoke his patent or commission, and for the Governor to suspend any such Judge upon a like address."

16. A Civil List Act was passed in the same year, and it provided a lump sum of £6,200 for Judges. It did not specify the salary to each, but the salaries of Puisne Judges were raised from £1,000 to £1,200. It was expressly declared that the Act was to be deemed to take effect on and after the 1st day of July, 1862; and I see no legal objection to that provision being recognised as law. Acts are often made retroactive. The Act was reserved for Her Majesty's pleasure. Mr. Justice Richmond was appointed Judge on the 20th October, 1862.