17. In 1863 another Civil List Act was passed allocating £7,700 to Judges, but not specifying the number or salaries; and Mr. Justice Chapman was appointed a Judge on the 23rd March, 1864, before the assent of the Queen to this Civil List Act was gazetted in the colony.

18. In 1873 a Civil List Act was passed, and it provided: "2. The sum of seven thousand seven hundred pounds, granted to Her Majesty by 'The Civil List Act, 1863' (hereinafter called 'the said Act'), 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." Schedule: "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."

19. This Act was still in existence when the late Mr. Justice Gillies and Mr. Justice Williams were appointed.

20. Before the appointment of the last-named Judges, both Mr. Justice Gresson and Mr. Justice Chapman had resigned their offices, but their resignations were not gazetted till the 1st April, 1875.

21. Such is a sketch of the Acts dealing with the Supreme Court Judges and their salaries till 1882, when the Supreme Court Act was passed, coming into operation on the 1st January, 1883.

22. The question is, Was Mr. Edwards properly appointed? I am of opinion that the question is not whether Mr. Chapman, or Mr. Williams, or Mr. Gillies was properly appointed. If there were a flaw in any of these appointments it was abundantly cured by the proviso in section 5 of the 1882 Act, so far as the Judges existing at the time of the passing of that Act were concerned. The proviso is: "Provided that the Chief Justice and the Judges of the Supreme Court in office at the time of the commencement of this Act shall be the Chief Justice and Judges of the said Court as if their appointments had been made under this Act; but their existing seniority shall be retained." And it should be remembered that the Queen had, under the seal of the colony, recognised these gentlemen as Judges *de facto* when the Commission to report on the Supreme Court rules and procedure was issued. (See Appendix to Journals House of Representatives, Vol. i., A.–3, 1882.) Mr. Edwards's contention, therefore, that his appointment is valid because that of Mr. Williams was invalid is an admission that the interpretation put on the Act by me is right, but save as such admission it is not of much force. As I have pointed out, the Act of 1882 validated everything invalid in previous appointments of existing Judges.

23. In interpreting "The Supreme Court Act, 1882," the Civil List Act of 1873 must be read along with it. They are measures dealing with the same subject-matter, and "The Supreme Court Act, 1882," must be construed as if section 2 of the 1873 Act, and the part of the schedule referring to Judges, were re-enacted in the Supreme Court Act of 1882. Reading them together, it is clear that the wide words of section 5, on which Mr. Edwards relies, must be controlled by the Civil List Act, and that no more than four Puisne Judges can be appointed. If sections 11 and 12 are looked at, it will be seen that it is assumed that there is a salary payable by law for a Judge other than the Chief Justice. What is that salary? The Civil List Act must answer, but it merely fixes salaries for four Judges. There is no salary fixed for a fifth Judge, and there is therefore no power to appoint such, for otherwise the words of the 11th section, and the words referred to in the 12th section, become meaningless. The maxim "*Ut res magis valeat quam pereat*" applies. Read the Act as limited to four Judges, and every word of the statute has a meaning. Assume that five, six, seven, or even twelve Puisne Judges may be appointed and the 11th section and the 12th are unmeaning. And so read, it would appear that for a temporary Judge there is a permanent salary independent of the Parliament, but not for a permanent Judge. My contention is, that the appointment of Mr. Edwards as Judge is illegal, and not merely unconstitutional.

24. In construing the Supreme Court Act even from a legal point of view, "conventions of the Constitution" should have some weight. Is it then unconstitutional to appoint a Supreme Court Judge for whom no salary has been permanently appropriated? It is clear that it was thought a necessary precaution in our own Constitution Act. In it the salaries of the then existing Judges were fixed and determined, and not left to the annual vote of the Parliament—the Parliament, perhaps, refusing to vote the salary and leaving the Judge without one—and thus tending to destroy his independence. It is true that the two subsequent Civil List Acts (the Acts of 1862 and 1863) did not particularise the salaries payable to the Judges—the vote was one—and this is sufficient to show the difference between the law existing in 1864, when Mr. Justice Chapman was appointed, from that which now exists. Even in that case, however, the Judge was not appointed till months after the Parliament had passed the Act making permanent provision for the salary, though the Queen's assent to it had not been given. If it had been limited to merely increasing the vote for salaries of Judges, it was not, in my opinion, necessary it should have been reserved for the Queen's pleasure.

25. Now, the positive law, and the constitutional rule, have alike been since the Act of Settlement that the salaries of the Supreme Court Judges should not be made to depend on annual votes of Parliament. I need not stop to point out what that means. If a Judge has to rely on an annual vote for his salary he can hardly be said to have been made independent of Parliament. The Act of Settlement provided the salaries should be "ascertained and established," and though it contained no provision for doing so, still the principle was laid down. By the Act of 1 Geo. III., c. 23, this principle was carried out; and ever since it has been followed in England, and in her colonies that have had representative government. It is said by Mr. Edwards in his memorandum (paragraph 22) that "ascertained and established" must mean "ascertained and established" by their appointments. I am surprised to see such a statement. The defect in the Act of Settlement was that the salaries were not "ascertained and established," and Hearn in his "Government in England," p. 81, 1st ed., says, "This defect was remedied by the Act of Geo. III. The amount of salary attached to each office was specified, and the same was made a permanent charge on the Civil List." Thus the independence of the "Bench was secured as far as the law can secure it."