in the case of the Puisne Judges significant of an actual purpose that their number should be left to the discretion of the Executive, subject, of course, to the same practical control as is exercised by the Legislature with respect to other services. It appears to me impossible to say that section 6 is to be read as impliedly controlling section 2, and restricting the legal power of appointing Judges to the number for whom salaries have been previously provided. Had it been meant to prescribe that the number of permanent Judges should never be increased without the prior sanction of the Legislature, it would have been easy and natural to do so by section 2 itself. It would only have been necessary to state, as a limit, a number corresponding with the then existing provision of the Civil List. It is obvious that the point was never considered by the Legislature.

Perhaps I ought to notice the extraordinary power conferred by section 7, enabling the Governor in Council to appoint a salary to a temporary Judge without an appropriation by the Legislature. It may be adduced to prove that the Legislature never contemplated the appointment of a Judge without legal provision for his salary. I agree that such a thing was never contemplated. The Legislature is simply silent about such a case. The matter is left, as apparently it well might be, to the good sense of the Legislature and Executive. It has not been supposed that the Executive Government would make appointments without sufficient assurance of the subsequent approval of the Legislature, or that the Legislature would capriciously refuse to concur in the action of the Executive.

There is no essential difference between the appointment of a Judge and of any other officer without the previous authority of the Legislature for the payment of his salary. In either case there is the risk of the House refusing to provide a salary. No doubt the previous concurrence of the Legislature is desirable in exact proportion to the importance of the office; and it is especially desirable in the case of a Judge for whom a permanent grant is to be asked. But in every case, great and small, the functions of the Executive and the Legislature are distinct, and not interdependent. The one appoints the officer; the other, if it so pleases, provides his salary: and in the absence of express enactment it cannot be inferred that the exercise of the Crown prerogative of appointment is in law dependent on the assent of the Legislature.

The principle to be safeguarded in the case of the Judges is no doubt of prime importance—I should be sorry to be thought to underrate it; but there is not, and cannot be, any law binding the Legislature to secure the salaries of additional Judges by a permanent grant. Nor is there, so far as I can find, what there well might be, any law prohibiting the Executive Government from appointing a Judge for whose salary such a provision does not yet exist. The present state of things is, without doubt, a constitutional scandal; and the recurrence of such a position ought to be precluded by express enactment.

"The Supreme Court Act, 1882," in nowise alters the aspect of the question. Section 4 re-enacts section 2 of the Act of 1858, making the same distinction between the indefinite number of Puisne Judges and the one Chief Justice. The provision against diminution of salary is repeated in equivalent terms.

It only remains to notice the several Acts which have been passed altering the Civil List in regard to the Judges' salaries. Of these the first is "The Civil List Act, 1858," passed on the occasion of the appointment of Chief Justice Arney and Mr. Justice Johnston. It augments the salary attached to the office of Chief Justice, and provides for two Puisne Judges. It was reserved —apparently without actual necessity—for the Queen's assent. The next alteration was in 1862. This Act increases the Governor's salary and other appropriations, and was necessarily reserved for the Queen's assent. The provision for Judge's salaries is raised to a lump sum of £6,200, with a view to the augmentation of the salaries of the existing Judges, and to my own appointment, which followed soon after the reservation of the Act for Her Majesty's assent.

In the case of Mr. Justice Johnston and in my own case, the Commissions were issued before the notification of Her Majesty's assent to the reserved Acts. But each Act contained a clause giving it effect from the beginning of the current financial year—that is to say, from the previous 1st of July, which was prior to the date of our Commissions. If these two appointments were originally void, as the rigid application of the objection which I am discussing would imply, it is not, perhaps, clear that they would be validated by the retrospective clauses, which appear, from the date selected, to have had only a financial object. The next alteration was in 1863, when, to provide for the salary of Mr. Justice Chapman, the grant for the Judges on the Civil List was increased again in a lump sum from £6,200 to £7,700, at which latter amount it still stands. This Act was reserved apparently without necessity, and the Queen's assent was not given till after the issue of Mr. Justice Chapman's Commission. There was in this Act no provision for retrospective operation.

One more alteration must be noticed. "The Civil List Act 1863 Amendment Act, 1873," after reciting, amongst other things, "that it is expedient that the sum of seven thousand seven hundred pounds granted to Her Majesty by 'The Civil List Act, 1863,' for defraying the salaries and expenses of the Judges of the Supreme Court should be more definitely appropriated to such service," separates that sum into grants of £1,700 for the annual salary of the Chief Justice, and £6,000 for the annual salaries of four Puisne Judges of the Supreme Court—each £1,500—this division corresponding with the actually existing apportionment of the aggregate grant of £7,700.

This series of financial Acts may be cited as showing that it has been the custom to consult the Legislature beforehand as to any proposed augmentation of the strength of the Court. There can be no doubt that it has been so; and the inconvenience of a deviation from this practice has been forcibly illustrated in the present unfortunate dispute. Nevertheless, the existence of the usage is far from proving the proposition of those who object to the validity of the appointment of Mr. Justice Edwards. It is altogether unsound to argue that the Civil List Acts, or any of them, operate to limit the legal number of Puisne Judges. The scope and purpose of these Acts are purely financial. In the case of those Acts of the series which grant lump sums, it is evident that the Committee of Supply has not been attempting to prescribe the number of the Judges who shall