of the Government, and that Mr. Justice Edwards has expressed a desire that the more decided opinion which subsequent consideration has led me to form on the subject should be submitted in the same quarter. It is of course to be understood that what I now write is extra-judicial, and open, if necessary, to full reconsideration on hearing argument.

The appointment of Judges of the Supreme Court is now regulated by section 5 of "The Supreme Court Act, 1882." That section provides that "the said Court shall consist of one Judge, to be appointed by His Excellency the Governor in the name and behalf of Her Majesty, who shall be called the Chief Justice of the said Court, and of such other Judges of the said Court as His Excellency the Governor, in the name and on behalf of Her Majesty, shall from time to time appoint." There is in these words no limitation in terms of the number of Judges other than the Chief Justice. If such limitation exists it has to be inferred from other parts of the Act, or from legislation, or circumstances outside the Act. Such a method of construction is undoubtedly permissible. The subject has been very fully discussed by the House of Lords in the case of Cox *v.* Hakes, reported in the last Appeal Case Reports (15 App. Cas., 506). The contention that the right of the Governor to appoint is limited to the filling-up of vacancies in the existing Bench is, I understand, founded on two grounds—that a consideration of the whole Act shows that no appointment of a Judge of the Supreme Court is intended to be made without provision for a salary, while there is only provision for salary for the existing number of Judges; and that the power of creating an unlimited number of Judges is one which it cannot be assumed the Legislature intended to give to the Executive for the time being. No doubt the Act assumes throughout that in every case provision is made for a salary (see sections 11 and 13); and it is also undoubted that the idea of a Judge without salary, or whose salary is dependent upon the volition of Parliament for the time being, is repugnant to modern views of the position and independence of Judges: but I do not think that it necessarily follows from these considerations that the absolute power of appointment given by section 5 is to be limited by implication by the precedent condition that Parliament shall have permanently provided a salary. It would have been the simplest thing to have inserted such limitation in section 5. Conditions may well be assumed—such as a sudden increase in population in some part of the colony—in which it might be advisable to increase on short notice the judicial strength of the colony; and it might be convenient—as in the case of several of the Judges previously appointed—to appoint Judges pending the formal resignation of their predecessors. Any abuse of the power might reasonably have been held to be prevented by the extreme improbability of any Government increasing the number of Judges unnecessarily, or without the certainty that its action would be indorsed by Parliament. A consideration of the legislation of the colony will show that the Governor had power to appoint, and did appoint, Judges for whose salaries no permanent provision had been made. I am therefore of opinion that there is no legal restriction on the power of appointment given by section 5, and consequently that the appointment of Mr. Justice Edwards is valid.

I think it right to add a word as to the suggestion as to the possible effect of a contrary view of the statute as to the position of some of the other Judges. Even assuming that in such case the same technical informality is applied to their original appointments, it seems to me open to substantial consideration whether the position of such Judges is not established by the Act of 1882. Section 5 says, "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." The Acts under which the Judges were appointed are repealed by the Act of 1882. It is under that Act that the existing Court is constituted, although the existing status and rights of the Judges are saved by sections 5 and 15. The words, "in office at the time of the commencement of this Act," may, I think, fairly be held to apply to those who were *de facto* Judges at the date of the Act. At that date the latest appointment of a Judge was seven years old, and the Legislature was well aware who were then administering justice in the Supreme Court; and there can be no doubt whose names would have been inserted in the Act as the Judges whose commission it was intended to continue, had such a course been pursued in lieu of using the general words actually employed.

I have in this memorandum confined myself entirely to the legal questions involved in the question of Mr. Justice Edwards's appointment. I have had an opportunity of reading a memorandum on the subject by Mr. Justice Edwards, which I mention only to state that I do not desire to be considered as concurring in all the views there suggested.

J. E. DENNISTON.

No. 70.

Mr. Justice EDWARDS to the Hon. the PREMIER.

SIR,— Wellington, 14th April, 1891.

I have the honour to forward to you herewith copies of a Statement of Claim and other documents served upon me at the suit of John Aldridge, a criminal sentenced by me at the Blenheim sittings of the Supreme Court in November last to five years' penal servitude.

I have the honour to request that you will inform me whether, as the powers and prerogatives of the Crown are directly questioned in the matter, and the action arises out of acts regularly done by me in my official capacity, you will cause the Law Officers of the Crown to be instructed to defend the action.

I have, &c.,

The Hon. the Premier, Wellington. W. B. EDWARDS.