Mr. Justice Richmond: An English county would have a mere resemblance in name. I may be wrong in supposing that was Lord Watson's opinion. It was not an opinion necessary to the decision as far as I know.

Mr. Vogel: Supporting my contention for this ascertainment, Parliament must fix a sum and authorise it to be paid. I would submit that the true definition of ascertainment and establishment in the way used under the Act of Settlement would be that ascertainment means the naming or deciding a minimum amount, with the qualification that any increase from time to time would form that minimum; and following that, that the word establishment means the giving of such a minimum by a person, or body, or power authorised or having authority to give it; and I submit that I am only repeating what my learned friend has said, and that it is useless for me to add any cases to those he has cited to prove that until Parliament has directly authorised such a person or body—and I submit it is an Act alone that can give authority—that no one, no person or body, is able to ascertain or to establish the amount to be paid to any person. The distinction, I submit, is this: that after such sum has been given by the Executive, under circumstances such as these, it requires an Act of Parliament to ratify or to definitely give it; and, although I admit that Parliament cannot bind its successors, still, if Parliament gives this sum, and it is placed as a permanent charge on the Civil List, it requires an Act of Parliament passed by both Houses to negative or repeal that grant; and I submit there is no possible comparison between a grant that requires an Act of Parliament to ratify it and a grant of money that it requires an Act of Parliament to negative it. If the one can be called a sum ascertained and established certainly the other cannot be. Now, taking up the Act of 1882. At any rate, prior to the Act of 1882 it was necessary that a Judge should have a salary, and I think the words of the section in the Act of 1858 are so definite that it could but have been held prior to the Act of 1858 that a Judge must have a salary. The words there are very strong, and they affirm the constitutional rule, or at any rate the rule which has been acted upon, that such a thing as a Judge without a salary is practically unknown. Then, I submit, the question arises: Does this Act of 1882 negative that rule or law? It is not so much does it re-enact it, but does it enact the contrary. I submit the words of that Act cannot be so interpreted, but that they can be reasonably and properly interpreted so as to mean all that has been the law in force before the passing of that Act, and that it has not made this radical change, and that it has not created a law and will not create a law of such a kind as must be contended for on behalf of the defendant. Parliament has refused to give a salary to Mr. Edwards. He has mentioned in his statement of defence that he is only in the position of other Civil servants, and that their salaries stopped on the 31st March, 1891, or are only paid because the Government have authority to pay out of the "unauthorised;" and that the stopping of his salary in March, 1891, does not mean the stoppage of his salary entirely. I submit that that of itself is, at any rate, an argument against the propriety of his position—that a Judge of the Supreme Court admits that his salary is stopped, and that he is dependent upon a vote of Parliament to say whether he shall get his salary renewed, and even as to its amount, whether he is to get it fully renewed. The impropriety of the position, I cannot but think, was strongly shown before this Court not very long ago—a case that is only in its early stages—the case of Whitaker *v.* Hutchison. Surely there is impropriety in a Judge sitting on the Bench whose salary depends to a large extent upon the good-will of one at least of the parties contending before him. The position would be one of the most painful I can imagine to those who have respect for the dignity and status of our Bench. In the case there is an ex-Minister as plaintiff, whose power is probably gone, but the case is of the utmost importance to him; and on the other side there is a most prominent member of Parliament, who would have much power in deciding whether the Judge in the case was to have a salary or not in the coming year. I think that case must at least bring out the impropriety of such a law as this Act of 1882 is, it will be contended, able to be interpreted into. Nor must this case be looked upon as simply applying to this one circumstance. It may be that the appointment is only wrong when tested by constitutional rules and principles, and that the Bench itself would lose nothing in its worth by reason of the appointment. Nor, I submit, must it be considered in the light of any possible legislation that may be passed, wisely or unwisely, to alter the Act. I submit the Court has to interpret this as the law of the land, and there must be no idea of its being amended. That is unquestionable. I submit that this Act, without any great strain, may be interpreted to mean that which we submit it is capable of being interpreted to mean, and that this Court will not interpret the Act to mean that under it an unlimited number of Judges may be appointed by the Executive of the day. I venture to think that such a thing must not be thought lightly of, because, in that case—if we can imagine such a possibility as an unscrupulous Ministry, and, perhaps, a weak Governor—things may be done which would greatly drag down the Bench.

The Chief Justice: I do not know about a weak Governor—a constitutional Governor, I suppose.

Mr. Vogel: He would be weak, inasmuch as he would be acting without consideration of the consequences, because, although the Governor makes an appointment in consequence of the advice of his Ministers, he has power to make them without the advice of the Ministry, and might be subject to certain influences, and make improper appointments. I do not suggest the probability of an unscrupulous Government or Governor, but I say that we must consider these things in the light of possibilities. I therefore say that the Act must be interpreted without any thought that it may be amended. The very fact of an amendment of the Act being considered necessary is one of the strongest arguments that could be brought in support of the interpretation which we claim for it. It is capable of a thoroughly constitutional interpretation, and that interpretation ought to be placed upon it, which is, that it is not possible for the Executive to appoint any number of Judges. It is not contended for one moment that it is not right for the Executive to have power of nominating a Judge to fill a vacancy; but that is a very different thing from appointing a fresh Judge. It is very proper and constitutional that the Executive should have certain power; but that it should have unlimited power of altering in any respect any one great branch of our Constitution is, I venture to say, that which the Legislature had no intention of granting. That, your Honours, with the remarks of my learned friend, completes all that is to be said for the present for the plaintiff.

The Court adjourned at twenty minutes past 4 p.m.