Judges to be Judges of the Court under that Act. If the Act had gone further, and had actually adopted the very words of the Civil List Act, it would not have limited the right of the Governor to make additional appointments if he chose so to do, and if it said also that the particular salaries referred to should not be diminished during the office of these particular gentlemen, I submit that that would not restrict the powers of the Governor, and that is incorporating into the Supreme Court Act of 1882 the substance of the Civil List Act of 1873. My friend's argument can go no further than this. If it was intended to limit the Governor's power of appointment, then the Act would have prescribed the number of the Judges who should constitute the Court, as has been done in Victoria and in England in the latest legislation. Until this is done, the Governor has power to appoint. The appointment must precede the voting and ascertainment of the salary. The Governor has done his part—the duty which is imposed upon him under the statute, and it rests upon the Legislature to do theirs. No doubt it is an unfortunate matter that circumstances should arise under which a Judge should be left without a salary, but I submit that this is the fault of the existing state of the law. The appointment must precede the ascertainment of the salary, because no salary can be paid to a Judge until he is appointed, and my friend's argument practically goes to this length: that the Legislature limits the Governor's power of appointment; and he says that the Governor has no power to appoint a Judge until the Legislature has first voted a sum for his maintenance. I put this case to your Honours: Supposing that before these proceedings had been instituted the Legislature had met and voted a sum of money for Judge Edwards, would he have derived his jurisdiction because of the vote of money, or under the Governor's Commission? I submit he would derive his power to sit on the bench as Judge of the Supreme Court by virtue of his Commission. But my learned friend would suggest that the voting of the sum of money would validate his exercise of powers which he ought not to exercise under the Commission.

*Mr. Justice Conolly:* No one has suggested that the Act provided for the Judge's salary by name.

*Mr. Cooper*: These Acts have no other bearing. There was a Chief Justice and four Puisne Judges in 1873. There was a Chief Justice and four Puisne Judges in 1882. These Judges are, in effect, nominated Judges of the new Court under the Act of 1882, and they receive their salaries because they are the Chief Justice and four Puisne Judges under the Act of 1873—in other words, they are appointed under the Act of 1882, with the salaries they received in 1873.

*Mr. Justice Conolly*: But they are not the same persons by name.

*Mr. Cooper*: That makes no substantial difference, your Honour; they were in fact the persons named. It is true they were not, all of them, the Judges when the Act of 1873 came into force. As each Judge came into office he became Judge by name under this statute practically, and therefore they were the Chief Justice and four Puisne Judges by name. The effect of the Act of 1882 is nothing more than the appointment of Chief Justice Prendergast as Chief Justice and the other Judges on the bench, with £1,700 for the Chief Justice, and with £1,500 for all the other Judges, and with a proviso that the salary of these Judges should not be diminished while they remained in office. That is the clear and logical manner of reading the statute. To read it in any other way you must strain the statute, in order to upset the validity of the appointment. Unless this can be done, unless the words of the statute are strained, I submit that the defendant is entitled to hold office because of his Commission. But the view I submit to your Honours is the true test: Is this Commission good or bad? If it is bad, then nothing can make it good, there must be a fresh Commission. If it would be good twelve months hence, because Parliament chose to vote a salary, it is good now, without the salary. I have not understood my learned friend to contend that if the House, during last session, instead of wrangling all night over the question of salary, had chosen to vote the salary——

*Sir R. Stout:* As Commissioner's salary; "as Judge" was struck out.

*Mr. Cooper:* If the House, instead of wrangling over the question of salary, had voted it as for a Judge of the Supreme Court, my learned friend would, I submit, have had no case to go on with.

*Sir R. Stout*: I do not admit that.

*Mr. Cooper*: Then, this is the position in which I wish to place my friend. He is driven to this: that even though the Legislature choose to vote the salary the Commission would nevertheless be bad. We meet my learned friend on this ground. There is no authority either in any statute or in any case that has been cited which warrants your Honours in holding that if the Crown proposed a salary, and the salary was voted the session afterwards, or even a day afterwards, this Court would nevertheless be justified in holding that this Commission was bad.

*The Chief Justice*: The reduction of salary could be complied with, but because there is no salary there could be no reduction.

*Mr. Cooper*: There can be no reduction, and we can bring in the words of this clause.

*The Chief Justice*: You say the section is complied with.

*Mr. Cooper*: Yes, substantially. And whatever the position may be in which the matter is placed by Parliament in the future, all that is to be done is to construe the words of the statute and give them their plain logical meaning. My friend has suggested that the spirit of the Act of Settlement is in force here under this Act, because the Judges are to hold office during good behaviour. I am not going to occupy the time of the Bench with traversing ground over which my friends have already gone, but I cannot help once more drawing attention to the fact that the spirit of the Act of Settlement has been deliberately broken by the Act of 1882. If a statute had been introduced into England giving the Crown power to appoint temporary Judges of the highest Courts of judicature, to hold office during the pleasure of the Sovereign, and to have their salary at the mercy of the Sovereign, it would be a direct violation of the Act of Settlement. Yet that is what our Act does. In the strongest possible manner the Legislature has declared that the colony is not to be bound by the spirit of the Act of Settlement. The provision in the Act of Settlement, that Judges should hold office during good behaviour, was introduced in order to prevent sub-