The usage here had been not for a very long period of years—not for more than a generation—but, seeing that a certain interpretation had been given by the authorities, both judicial and Executive, to the meaning of these statutes, although the wording of the statutes appears to be plain, yet long-continued usage and contemporaneous interpretation had given these provisions a particular meaning, and therefore, although these two Commissioners, by statute, ought to have been the same two Commissioners to try the case, and only one sat instead of the two sitting at the same time, the Judges held that they were entitled to take into consideration the practice that had grown up; and therefore, in their opinion, the decision was upheld.

The Chief Justice: The facts are not very well or at all distinctly stated with regard to the appointment of Mr. Justice Gillies or Mr. Justice Williams.

Mr. Cooper: I only deal with the facts as they appear in the case.

The Chief Justice: I do not know that they are stated there, and the *Gazettes* do not satisfy one as to how the resignations took place.

Mr. Cooper: Apparently they had not properly vacated the office of Judge. By reason of its being a freehold, a deed of surrender would be necessary. Under the Judicature Act a Judge can vacate an office by writing instead of by deed. But I take it that, although a Judge has resigned his position, he has not vacated it until the office is filled up by some other person.

The Chief Justice: Do you know anything as to the fact of the resignation, and how it was made?

Mr. Cooper: I cannot refer your Honour to anything more than the affidavit stating that the resignation of Mr. Justice Chapman and Mr. Justice Gresson took place on the 1st April, and that his Honour Mr. Justice Williams and his Honour Mr. Justice Gillies were appointed on the 3rd March. I submit that the matter was in perfect form. It was, no doubt, intimated to the Governor that these two gentlemen were going to resign; but before the resignation actually took effect the Governor, no doubt, was advised that he could legally appoint two Judges to take their places, but they were nevertheless appointed under the general power contained in the Supreme Court Act, and their appointment dates from a time when those two Judges whom they subsequently succeeded were Judges of this Court, with all the jurisdiction of this Court vested in them.

The Chief Justice: I do not understand, from anything we have had before us, how the resignation took place, or when it took place. There is some *Gazette* notice referred to, but I do not know that we can make any use of that. Supposing that we admitted the principle, I do not see that we have any facts to show that there was any contract made with anybody.

Mr. Cooper: Of course, I cannot state any facts other than those mentioned in the case.

Sir R. Stout: I might mention the fact that Mr. Justice Chapman sat upon the bench towards the end of March—about the 30th, I think. There was a case heard by him, I think, in the last week in March.

Mr. Harper: I remember the same thing occurred in the case of Mr. Justice Gresson. He held a sitting and made his farewell to the Bar about the end of March. There was an account given of it in a paper published. I think it is in "The New Jurist Reports," and we can find it out from that.

Mr. Cooper: It seems to me that it would be impossible, upon the construction of these statutes, to say that there was any invalidity in the appointment of Mr. Justice Richmond, or Mr. Justice Chapman, or Mr. Justice Williams, or Mr. Justice Gillies. What I contend for is that the Legislature recognised that the Governor, by virtue of the statutes and by virtue of his instructions, had the power to appoint Judges of the Supreme Court, although there were then five Judges holding office. In the first instance, he had power to appoint Judges, although no Civil List was in existence by which the salaries of Judges were established; and, secondly, he had power to appoint Judges, although the Bench consisted of five Judges. Therefore I claim that we are entitled to invoke the assistance of the very cases Sir Robert Stout has quoted, in support of our position; and he is driven to this—he must be driven to this: Either the appointment of Mr. Justice Edwards is bad, and if it be bad, then there was an inherent defect in the appointment of other Judges of the Court; or that the appointments of the other Judges were good, and therefore he must admit that the appointment of Mr. Justice Edwards is good also. It must not be assumed that the salary of Mr. Justice Edwards will not be voted by the Legislature; and if the Legislature do vote his salary next session, then I submit it would be idle to contend that there was any difference in principle whatever between his appointment and that of their Honours Mr. Justice Richmond and Mr. Justice Chapman. Then I come to the Act of 1882, which I submit did not validate, and never was intended to have the effect of validating, the Commissions of Judges whose appointments might be affected, but recognises the fact that they had been properly appointed, and consequently that the seal of the Legislature—not only have we the practice prior to the Act of 1882 on the part of Parliament and the Law Officers of the Crown, but the seal of the Legislature, by the Act of 1882, has been put upon the construction placed upon the statute of 1858 by the Governor appointing these gentlemen as Judges. The authorities my friend has quoted support, I submit—support to the fullest extent—the proposition I have submitted to your Honours. There is one case which my friend relied on very strongly indeed, and that was the case of Bell-Cox *v.* Hakes. I think he quoted that case for the purpose, first, of supporting the principle that usage gives a meaning to a statute, and, secondly, in support of the proposition—which none of us deny—that the words of a statute, although strictly speaking they express one thing, have been construed by the Courts in numbers of cases to express something else, and have been limited or restricted. That is a proposition which dates as far back as Plowden, and which, by the way, was more applicable to ancient statutes than to modern statutes, because we find when we examine the books upon the subject that the statutes were then drawn by the Judges, and that when they found a difficulty in interpretation they were disposed, not merely to declare the law exactly as it stood, but to make their statutes express what they meant them to express. The canon of interpretation referred to in Plowden was therefore more applicable to the old statutes than to modern statutes, and it was