is more important because of the dignity and permanence of the office, and also because it ought to be provided for by a permanent grant. There is greater reason, therefore, for consulting the Legislature beforehand upon the subject. This, however, is no ground for attributing to a grant for a judicial service any extraordinary significance and effect as limiting the powers of the Executive Government.

The Civil List Acts of 1862 and 1863 come next in order of date. By the former the grant for Judges' salaries is increased to a gross sum of £6,200, and by the latter further increased to a gross sum of £7,700, at which it still stands. Both grants are in lump sums, under the monosyllabic heading, "Judges." In point of fact the number of the Puisne Judges was increased in 1862 to three, and in 1863 to four; but these Civil List Acts specify neither the number provided for nor the rate of the salaries. This evidently strengthens the argument that the Civil List Acts are not to be regarded as defining the number of the Judges.

I come to "The Civil List Act 1863 Amendment Act, 1873," which is made a strong point of by the prosecution. After reciting, amongst other things, "that it is expedient that the sum of £7,700 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," the Act 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 measure reasserts the control of the Legislature over the detail of the expenditure of the grant for Judges' salaries—a control which had been abandoned by the grant of lump sums in 1862 and 1863. Clearly the Act limits, as the Civil List Act of 1858 had done, the expenditure of the grant to the payment of definite salaries to a definite number of Judges; but, for the reasons already given by me in reference to the Civil List Act of 1858, it is not to be considered as limiting the number of Judgeships. Had it been meant to alter in this respect the constitution of the Court as it has existed since the foundation of the colony, the only proper method would have been to amend section 2 of "The Supreme Court Judges Act, 1858." I cannot take this Act of 1873 as an implied amendment of that enactment, which would be out of place in a money Bill.

This view of the matter is strongly supported by the terms of "The Supreme Court Act, 1882," re-enacting without material alteration section 2 of the Act of 1858; as that statute had re-enacted the provision of the ordinance of 1844. Sir Robert Stout's attempt to read into the Act of 1882 the limitation of the number of Puisne Judges to four, which he finds, as he supposes, in the Civil List Act of 1873, is no more feasible than it is to control "The Supreme Court Judges Act, 1858," by the contemporary Civil List.

Frequent reference was made in argument to various provisions of the statutes as showing it to be clearly contemplated that every permanent Judge of the Court should have a salary provided for him from the date of his appointment. No doubt that is so; but, as I have already observed in commenting on section 6 of "The Supreme Court Judges Act, 1858," it is pushing the matter too far to say that incidental references of this kind imply the existence of a positive inhibition—positive, yet nowhere expressed in the statute-book—of all appointments prior to the grant of a salary. It may well have been supposed that the Executive Government and the Legislature would, without the check of positive law, never act otherwise than in concert in such a matter—that the Executive Government would never, without proved and undeniable necessity, and a practical certainty as to the consent of the Legislature, add to the number of permanent Judges; and that the Legislature would never capriciously refuse to make good the engagements of the Executive as to salary. If the present case should prove the futility of this expectation, it will be a matter profoundly to be regretted; but it cannot vary the legal conclusion that the possibility of such a conflict of opinion and authority has never yet been provided against.

It was fairly acknowledged, as the logical result of the position taken by the prosecution, that all appointments to a Judgeship, even though made with the approval of the House of Representatives, are void if previous provision has not actually been made by statute for the salary; so that an increase in the Civil List made next session to meet the salary of Mr. Edwards would not validate his commission. As it is the fact that several previous commissions have been issued which, though substantially unobjectionable, are technically open to this objection, the Court should be slow to admit its validity. To make the position still more alarming, Sir Robert Stout cited to us the case of Gahan *v.* Lafitte (3 Moore, P.C., 382), which is supposed to show that the judicial acts of a Judge *de facto sed non de jure* are void.