

## JUDICIAL SALARIES AND TENURE OF OFFICE<sup>1</sup>

I think there is a failure on the part of many honourable members to realize that Judges are really the most important officials there are in the country. Some of my honourable friends may seriously differ from me with respect to that, and yet you remember that one of the most powerful minds of his time always regarded Judges as being next even to the Sovereign in the early days of the government of the country. Upon the integrity, the ability, the capacity and the right sense of justice of the Judges of the country depends the progress of our civilisation. Whether we like it or not that is so, and it is important that Judges should be appointed to the Bench who are first of all men of experience and learning, men of character and men of worth, because the administration of justice has rightly been said once to be almost an attribute of the Godhead itself. Now if men enjoying large incomes have no ambition to go upon the Bench it follows that you have to fall back upon the second line, and instead of appointing the best men to the judiciary you have recourse to men of indifferent qualifications in their profession. In England it has long since been found that you have to pay your Judges adequate salaries in order to attract the best men, and hence it is that salaries ranging from \$50,000 to \$30,000 a year are paid to Judges over there, and the salaries are paid so that they will attract, as I say, the very best minds to judicial office. You will notice that the appointments made in recent years to the office of Judge in England have been of men who were leaders at the Bar. It is true that men who have held office as law officers of the Crown take only one of two positions, that of Lord Chancellor or Lord Chief Justice, and with the exception of the Attorney-General and the Solicitor-General it has always been the custom for leaders of the English Bar to look for places on the Bench. Only a few days ago one of the great leaders of the English Bar, the man who led for this country in the Grand Trunk Pacific arbitration case, was appointed to the Chancery Division. He was enjoying a very large income, but he has taken a much lesser income and gone to the Bench, for what reason? For the reason that the position is one of great dignity and carries with it a reasonable salary and an adequate

<sup>1</sup>Portion of a speech delivered by the Honourable R. B. Bennett, K. C., West Calgary, in the House of Commons on the second reading of Bill 141 to amend the Supreme Court Act. The purport of the amendment is to increase the number of Judges in the Court to seven, and to provide for their retirement at the age of seventy-five years.

pension in his old age, and no man will go to the Bench in Canada and forego fifty or sixty or seventy-five thousand dollars a year if he does not feel that there is some assurance that, with the limited salary he receives on the Bench, he will have some security for his old age. That seems to me to be elementary.

In England, where they have increased the salaries of the Judiciary until they have attained their present figures, they have learned by experience that to appoint second-class men to the Judiciary has been in the end the worst possible thing for the country. Nothing has struck me more than the respect, amounting almost to reverence, with which the Judiciary in Great Britain is held by the common working people of the country, and I use that word in the sense of the man on the street. In this country you have a somewhat different condition prevailing, and I attribute it in part to the fact that because of the meagre salaries that are paid to Judges on the Bench, men of indifferent professional attainments, by virtue of political considerations, are elevated to the Bench, and in the end it is a costly thing for litigants because they are compelled to appeal from time to time in order that justice may be done, whereas if first rank men, men of the highest capacity in their profession, occupying great positions at the Bar and enjoying large incomes, can be induced to accept judicial positions, you have brought to bear upon the solution of the problems that effect the well-being of the country the very best minds within it.

My honourable friend from Southeast Grey (Miss Macphail) has suggested that perhaps the increasing number of lawyers in the legislative bodies of the country had something to do with the business that has to be transacted in the Courts. That is hardly so. The great commercial cases, great matters affecting the constitution, great matters affecting the interests of the country as a whole, must necessarily find their way to the Courts. For instance, in the evolution of our constitutional system of to-day, the interpretation of the British North America Act would never have been as perfect as it has been, with all its imperfections, were it not for the fact that there has always been the right of appeal to the Privy Council, where a single judgment expresses the opinion of that great Court; there is no possibility of their being dissenting judgments or differences of opinion in that tribunal. Personally, I have always favoured a single judgment written, and that to a great extent is what is prevailing in our Supreme Court to-day, because when a litigant reads that two out of three Judges have found in favour of his opponent, and finds that the majority of the Judges in the lower Courts, in the Appeal

Courts and in the Court of last resort are in his favour, he is dissatisfied. That does not make for confidence, but it sometimes happens under our judicial system.

I should like the honourable member for Southeast Grey to realize that we are advocating adequate salaries for Judges, not because they happen to be lawyers, but because you cannot attract the best minds, leaders of the Bar enjoying a large income, unless you pay them adequate compensation for their services. These men who have given up their practice and gone to the Bench were enjoying in many cases three and four times the income they now enjoy. For instance, one great leader of the English Bar to my knowledge earned in one year \$70,000. The highest salary he could possibly hope to obtain as a Judge would be perhaps \$50,000. If he went to the Bench, to the highest judicial position, if his party were in power, he would receive a small pension on retirement. One of the most eminent English Judges to-day, a retired Lord Chancellor, depends very largely on his pension. One of them, who is now giving great service at The Hague, a gentleman over eighty, is not in receipt of any pension because when he became Lord Chancellor he was content to abandon altogether the idea of a pension because his idea of public service was such that he felt he could afford to do it. It is idle to suppose that a man may attain the high position of Judge, with all the social and other obligations that attach to it in Ottawa, and live as he should do on \$1,000 a month, and be able to make any provision for his old age, and hence it is that the State has always provided a pension so that after a given number of years of service the Judges may be able to retire and live in some measure of comfort.

But there is another reason. In the early days in Great Britain and elsewhere there have been cases in which as much as \$100,000,000 was involved. When you have litigation of that character, if you have a man on the Bench enjoying a salary of only \$5,000 or \$6,000 a year—and there are those who would endeavour to destroy the integrity of Judges—think how great the temptation that may sometimes be placed in his way, sometimes has been; and so it has been found desirable that you should relieve them of any possibility of temptation, on the one hand, and get men of the highest qualifications, on the other, men of professional rectitude, men of character, men of the highest attainments to grace the positions they occupy not only by reason of their learning and ability, but by reason also of their character.

That is the effort that is being made in this country. Sometimes we have made appointments that have been political in their charac-

ter. That is true; both sides have done it. It has been the reward sometimes for candidates who have run elections. Men have run elections, gone into a campaign, faced a constituency and said: Well, this is the only sure way by which I can get a Judgeship. I know of cases like that, and so does my honourable friend the Minister of Justice, and I regret to say that in every province of Canada you will probably find on the Bench one or two men whose appointments have been made solely because of the services they have rendered of a political character. But if we make the salaries, the emoluments and the pension that attaches to office adequate then with the realisation that work well done for the State will be recognized not only by the State but by the community in which the Judges live, we may be able to break down slowly the pull and the pressure that comes from political consideration in appointments of this character and get our best minds on the Bench.

What the honourable member for St. Lawrence-St. George (Mr. Cahan) said with respect to some men having done their best work at an advanced age is certainly very encouraging to one of my years, and I heard his observations with the greatest interest and pleasure, but I do sometimes think that when men have attained the age of seventy-five or eighty years there is a strain upon their mental powers in a country such as this that makes it undesirable for them to continue the administration of justice. I have held that view for a great many years. I do not say that seventy-five is the age; it is difficult to fix, because we have striking examples in every part of the country of men who at seventy-five and perhaps over have done their very best work. But these are the exceptions.

I should like further to say that it is not fair to institute a comparison between a Judge in an older civilisation and a Judge in a country such as this. Judges in England are appointed from the barrister branch of the profession. They have had none of the drudgery of solicitors. Men in Canada who practise the profession usually practise both branches; they are both attorneys, solicitors and barristers, and if you appoint these men to the Bench I think in most cases it will be found that before they reach the age of eighty there is a conscious or unconscious failing of their mental powers. I do know that one distinguished member of the Bar in this country declined judicial office because he said to me he felt that at his age—he had not attained eighty, but he was over seventy—he would not be able to discharge his duties in such a way as would be creditable either to himself or to the country. A former Minister of Justice declined to appoint to the Bench anyone over seventy years of age,

because he felt that it was improper to appoint to the Bench anyone over that age, which may or may not have been correct. I do not desire to express a definite opinion with regard to the age, as between seventy-five or eighty, but I think you will find there is a general consensus of opinion among litigants in the country that when a Judge has attained the age of seventy-five he has, not wishing to be unkind, outlived his usefulness. There are cases where this condition does not apply and there always will be such cases. But speaking generally when men have discharged the difficult duties and borne the wear and toil of professional work to the extent to which a successful practitioner does, at the age of seventy-five I think they should be willing to take a holiday and enjoy a well-earned pension. Whether seventy-five is the exact age or not, I am not prepared to say, but I do feel from my own observation that at the age of eighty no gentleman should be occupying a seat on the Bench. That is my personal view.

Now with respect to this particular measure which will have the effect of retiring at once a member of the Supreme Court of Canada, I have had grave doubts in my own mind as to the soundness of legislation that terminates, in terms of age, a contract between the State and a Judge which was not a condition of the contract when it was made. I mentioned my view to my honourable friend the Minister of Justice yesterday, because it will be remembered that under the British North America Act a Judge is appointed during good behaviour or for life and when his commission is issued one of the terms of the commission is that very provision that he should hold office during good behaviour or life.

Now to add to that contract in reference to an existing Judge a term whereby at the age of seventy-five he vacates office, or if he has already attained that age, he must vacate office, is really to create a breach of that contract by legislative authority, and it may well be that the question of compensation will be alleged to be involved, I, myself, presented that view to the Privy Council in connection with a case that arose in the province of Alberta, and the Court then held that it was competent for the appointing power to select, because of the terms of that particular legislation, without involving a breach of contract, a particular person to be Chief Justice of the Court in question, although there had been a Chief Justice under the previous legislation. That was a matter arising under a particular statute. This Parliament has power undoubtedly to pass this legislation. It has not power to limit the age of provincial Judges, because it is provided in the statute itself that no limitation of age shall involve

their removal from office. That is altogether different from the Federal Court. This Parliament could, if it so desired, abolish the Supreme Court of Canada, it could abolish the Exchequer Court of Canada, and it could provide by reorganizing the constitution of the Court, that no person could hold office after he reached the age of seventy-five, but that would involve the destruction of the Court. What we are now doing involves a breach of the contract between the individual who holds office at the present time and the State, because his patent of office declares that he shall hold office during life or during good behaviour. He is still alive. His behaviour is not questioned, and the State has now said that because he attained the age of seventy-five years some time ago, he shall now forfeit or surrender his office—that by virtue of the statute his office is abolished, notwithstanding his patent. I suggested that it might be desirable to consider the question as to how far this Parliament was committed under these circumstances to pay him during his lifetime the salary attaching to his office. I only mention that. I do not suggest it in any sense as being critical of the measure, but I suggest it because it is involved in the discussion of this matter. I think the Minister should carefully consider that point. He was good enough to mention it to me yesterday and I have given some thought to the matter since.

May I say to my honourable friends to my left, do not imagine for a moment that those who belong to the legal profession urge large salaries and retiring allowances to the Judiciary in order to advance their own interests. This is not a close profession. It is a profession to which you will find, in the west particularly, that young men who have made their way by dint of toil and study have been attracted. It is important from the standpoint of the men who toil with their hands that there should be at all times in the country the utmost confidence in the Courts of Justice and confidence is begotten of a recognition and realisation of knowledge, learning, ability and character. These attributes are of importance to Judges. They are the instruments in the administration of justice. The essential quality of the Goddess of Justice is impartiality and justice is an attribute of God. If you are to have justice administered efficiently and faithfully, if you are to have confidence in the Judges of our Courts, to rely upon their judgments and to feel that the differences between labour and capital and the great issues involving property and men's liberties, privileges and lives are honestly and justly dealt with, it can be done only by attracting to the Bench men with the qualifications and attributes to which I have alluded, not for any monetary

consideration that those of us who have any hope and desire to attain judicial office do urge as strongly as we may that this High Court of Parliament should recognize that those who administer the law should be beyond suspicion and should be amply protected by sufficient salaries while they are able to discharge their duties and ample pensions when they are unable to do so.

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