

result of aroused opinion whereby political passions may be stirred. I agree with the hon. member for Stanstead, and I agree with the right hon. gentleman, that in certain matters judges have a place, but I say that nothing did more to bring down the bench of this country, as far as our people are concerned, than to take an estimable man like the Chief Justice of Canada, Sir Lyman Duff, and place him on a political commission, the Hong Kong investigation. These things undermine—

Mr. DECHENE: Leave the dead alone; talk about the living.

Mr. DIEFENBAKER: My hon. friend speaks of the dead. Sir Lyman still lives. Get up to date. It is these things, sir, that we object to.

Mr. ILSLEY: Sir Lyman Duff has not been brought down from anywhere. He is still up there.

Mr. DIEFENBAKER: I remember when, very recently, the Minister of Justice strongly objected to any suggestion of criticism of that commission and of the findings of the judge. Once he did that, once there were criticisms outside the house, the position of the Chief Justice of Canada was placed where it ought not to be.

Mr. ILSLEY: It was the position of his critics that suffered there.

Mr. DIEFENBAKER: Well, sir, I wish I could be as certain of that fact as is my right hon. friend, because he says we want to maintain the independence of the bench. But independence is not maintained by taking a judge and by subterfuge placing him—no, I will not call it subterfuge; by means suitable to the government, translating him—to the exchequer court, and then again, by indirect means, shunting him into the position of head of this board.

Look at the position. It is all arranged in advance. As reported at page 4888 of *Hansard*, Colonel Cross is consulted, and he admits that his term of office does not end until February 1950. What is all the rush? Colonel Cross has either done a good job or he has not. Colonel Cross is fully able to carry on his position. But he is consulted, and it is pointed out that some changes are to be made. Then he undertakes to resign if the changes take place. In fact he has given his resignation to take effect under these circumstances.

Surely the minister does not contend that that maintains the independence of the chairman of the board of transport commissioners.

[Mr. Diefenbaker.]

Then a judge on the bench is consulted, before any change is made—a judge totally removed from any suggestion of political considerations. He is asked whether he, as a judge of the supreme court of Nova Scotia, will be willing to accept another position provided that the incumbent resigns and legislation goes through parliament. The independence of the bench, of which the minister spoke a few minutes ago, cannot be maintained by playing ducks and drakes with it in that manner. I have no objection to a judge's occupying that position. But surely the whole thing could have been done simply by an amendment to the superannuation act or to the retirement provisions in the Judges Act. That was done in order to preserve the rights of a judge in Saskatchewan; at least it had that effect.

Imagine what will be our position from now on. I point this out to the minister, although he had nothing to do with it; he was a member of the government, but he was not Minister of Justice. In 1938 we appointed a judge to the court of appeal in the province of Saskatchewan because the court needed a judge. For one and a half years before the war he occupied a position under the Farmers' Creditors Arrangement Act. Then the war came along and he took a war job; I do not intend to argue that matter. He did his job and he did a job that I will commend. Though he had never sat on the bench, he remained a judge of the court of appeal of Saskatchewan, and had the advantages of a judge with regard to pension on retirement and the like. Then he decided that the diplomatic service was the place for him, and he went to Australia. That was in the latter days of the war. He returned from Australia, and was still a judge. Then something was said about his being appointed ambassador to China. But he could not be appointed to that position, otherwise he would lose his nine years' seniority on the bench and his pension qualifications. A bill was introduced which provided that a person who transferred himself from the bench to any other position should remain entitled to his pension qualifications. That procedure does not maintain the independence of the bench.

I suggest that in this matter the minister should not adopt the indirect method suggested by the various amendments he is bringing before the committee. I suggest that the end be achieved by the simple expedient of an amendment to the Superannuation Act, if you will. Why use the exchequer court as a medium through which a result may be effected that in the years to come cannot but constitute a dangerous precedent? Limitless possibilities are opened up here. If we want