

## JUDICIAL APPOINTMENTS.

head of the common law of England, and as a member of the Judicial Committee of the Privy Council, to beg you, if not too late, to reconsider any decision that may have been come to in this matter; or, at all events, to record my emphatic protest against the course proposed—as a judge, because a colourable appointment to a judgeship for the purpose of evading the law appears to me most seriously to compromise the dignity of the judicial office—as a member of the judicial committee, because, while grave doubts as to the legality of the appointment are entertained in many quarters, none seem to exist as to its grievous impropriety as a mere subterfuge and evasion of the statute.

“The statute in question, the 34 & 35 Vict. c. 91, contains in the first section the following enactment: ‘Any persons appointed to act under the provisions of this Act as members of the said Judicial Committee must be specially qualified as follows—that is to say, must at the date of their appointment be, or have been, judges of one of Her Majesty’s Superior Courts at Westminster, or a Chief Justice of the High Court of Judicature, at Fort William in Bengal, or Madras, or Bombay, or of the late Supreme Court of Judicature in Bengal.’

“Now, the meaning of the Legislature in passing this enactment is plain and unmistakable. It was intended to secure in the constitution of the high appellate tribunal, by which appeals, many of them in cases of vast importance, from our Indian possessions as well as from the rest of our colonial empire, are to be finally decided, the appointment of persons who had already held judicial office as judges of the Superior Courts. Whether wisely or unwisely, it plainly was not intended that the selection might be made from the Bar. It was to be confined to those who were, or had been, judges, and who, in the actual and practical exercise of judicial functions had acquired and given proof of learning, knowledge, experience, and the other qualifications which constitute judicial excellence. No exception in this respect is made in favour of an Attorney-General or other law officer of the Crown, who, however eminent and distinguished their position, of course remain members of the Bar. Nothing could have been easier, had it been intended to make such an exception, than to have included the law officers of the Crown among the persons specified as eligible. But the eligibility of the law officers does not even appear to have been contemplated by the Government in passing the present Act, a provision enabling the appointment to the Judicial Committee to be made from the Bar, contained in the Bill of the previous year, having been, I pre-

sume purposely, omitted from the Bill as introduced in the last session. It is, however, unnecessary to dwell further on this point. No one will be found to say that it was intended to make a law officer, as such, eligible under this Act.

“It being, then plain that the intention of the Legislature was that the selection should be made from the judges, I cannot shut my eyes to the fact that the appointment of the Attorney-General, who, as such, was not qualified under the Statute, to a judgeship (the functions of which he is not intended to discharge) in order that he may thus become qualified according to the letter of the Act, cannot be looked upon otherwise than as colourable, as an evasion of the statute, and a palpable violation, if not of its letter, at all events of its spirit and meaning. I cannot help thinking of what would have been the language in which the Court of Queen’s Bench would have expressed its opinion if such an evasion of a statute had been attempted for the purpose of qualifying an individual for a municipal office, and the case had been brought before it on an information in the nature of *quo warranto*. In the present instance, the Legislature, having settled the qualification for the newly-created office, momentarily to invest a party otherwise not qualified with a qualifying office, not that he shall hold the latter, but that he may be immediately transferred to the former, appears to me, I am bound to say, to be nothing less than the manufacture of a qualification, not very dissimilar in character to the manufacture of qualifications such as we have known practised in other instances in order to evade the law. Forgive me, I pray you, if I ask you to consider whether such a proceeding should be resorted to in a matter intimately connected with the administration of justice in its highest departments.

“It would obviously afford no answer to the objection to the proposed appointment to say that a gentleman who has held the position of a law officer of the Crown must be taken to be qualified to fill any judicial office, however high or important. This might have been a cogent argument to induce the Legislature to include the Attorney-General among the persons ‘specially qualified’ under the Act; but it can afford no justification for having recourse to what cannot be regarded as anything better than a contrivance to evade the stringency of the statute as it stands. The section in question makes the office of an Indian chief justice a qualification for an appointment to the Judicial Committee. Suppose that, as might easily have happened, an Indian chief justiceship had chanced to be vacant. An attorney-general would, of course, be perfectly qualified for the office. What would have been said if the