

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 presume 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 Attorney-General had been appointed to such a chief justiceship, not with the intention of his proceeding to India to fill the office, but simply for the purpose of his becoming qualified, according to the letter of the statute, for an appointment to the Judicial Committee? What an outcry would have been raised at so palpable an evasion of the Act! But what possible difference, allow me to ask, can there be, in principle, between such an appointment as the one I have just referred to, and an appointment to a judgeship in the Court of Common Pleas, the duties of which it is not intended shall be discharged, for the sole purpose of creating a qualification in a person not otherwise qualified? I cannot refrain from submitting to you that such a proceeding is at once a violation of the spirit of the Act of Parliament and a degradation of the judicial office.

"I ought to add, that from every member of the legal profession with whom I have been brought into contact in the course of the last few days, I have met with but one expression of opinion as to the proposed step—an opinion, to use the mildest terms I can select, of strong and unqualified condemnation. Such, I can take upon myself to say, is the unanimous opinion of the profession. I have never in my time known of so strong an expression, I had almost said explosion of opinion.

"Under these circumstances, I feel myself justified, as Chief Justice of England, in conveying to you what I know to be the opinion of the profession at large, an opinion in which I entirely concur. I feel it to be a duty, not only to the profession, but to the Government itself, to protest—I hope before it is too late—against a step—as to the legality of which I abstain from expressing any opinion, lest I should be called upon to pronounce upon it in my judicial capacity—but the impropriety of which, for the reason I have given, is to my mind strikingly and painfully apparent.

"I beg you to believe that I make these observations in no unfriendly spirit, but from a sense of duty only. I should sincerely rejoice at