This problem of retroactivity has perturbed me a very great deal, although I recognize that this Parliament is being asked to make more generous pension provisions for all judges who are henceforth to be retired, at a certain age and for other reasons. I am not prepared to defeat this resolution on the principle of retroactivity, although, personally, I would rather not see this retroactive principle included in the resolution. Whatever problems we are trying to resolve through the compulsory retirement of superior court judges at the age of 75—and I stress again that these problems have not really been adequately explained to this or to the other house—I believe that these problems will be resolved more naturally and without injecting this retroactive element, by stating clearly the wishes of the Canadian people that superior court judges should henceforth retire at the age of 75 years, just as other judges do.

I would like to refer honourable senators to the *Canadian Bar Review*, volume 12 of 1934, which records an address by the Right Honourable Sir William Mulock, a very eminent jurist. Under the title "Independence of Judges", Sir William discussed the retroactive features of the legislation of 1927 and of 1933, which last bill was defeated in this house. I do not wish to quote from this discussion, but I bring it to the attention of honourable senators.

I can accept the proposition that there can be no real dispute in general concerning the retirement of all judges at 75 years, especially when this principle now applies in practice to the district and county court judges and to the judges of our federal courts. Yet, to me there is something wrong in principle and dangerous in practice to have this Parliament agree to apply this legislation to previously appointed judges on a retroactive basis, when their patents as judges provide for lifetime tenure. Of all the institutions in our country, Parliament should be most jealous and most zealous about preserving the sanctity of contracts entered into on its behalf by the Government of Canada.

It is interesting to note that the British Parliament passed in 1959 the Judicial Pensions Act, being 8, Elizabeth II, chapter 9. Section 2 of that act provides for the retirement of judges at 75. I quote:

> Any person who holds an office listed in the first schedule to this act shall vacate that office on the day in which he attains the age of 75 years.

However, section 3 (1) states:

> The foregoing provisions of this act shall not apply to any person who holds an office listed in the First Schedule to this act at the commencement of this act, unless he elects that those provisions shall apply to him . . .

I must add that I suspect that this objectionable feature of retroactivity in the proposed imperial, and not Canadian, legislation does have a relationship to, and threatens, if it does not actually violate, the basic principle of the independence of the judiciary. I find it difficult to believe that the fundamental independence of the judiciary can be maintained if at the desire of the Government, and with the concurrence of Parliament, the term under which judges are appointed can be amended from time to time, and be made to apply to judges already holding office. Surely judges appointed for life, or for any other term, are entitled to rely upon the word and good faith of Government that such appointments will not be tampered with. In this context, Parliament has an obligation.

Honourable senators, let us consider the constitutional implications and anomalies of the proposed joint and humble address. To me these are fundamental, and they form the basis of my objection to this address in this form.

When the Right Honourable the Prime Minister introduced the motion to amend the British North America Act by a joint address to Her Majesty, he pointed out that there was nothing unusual in the course being followed, and furnished the house with fifteen precedents, dating back to 1871, and ending with the amending act of 1949 which, as you know, gave power to the federal Government to amend the Constitution of Canada except in a number of matters which have been very well described by the honourable senator from Vancouver South (Hon. Mr. Farris).

To me it is significant that when the British North America (No. 2) Act, 1949, was under debate in Parliament the then Conservative Opposition moved an amendment to defer action on the resolution until the whole problem of amending the Constitution could be resolved by a constitutional conference. I am wondering why a similar deferral was not considered by the Government before action was taken to proceed with this address, and to resolve a problem area about retirement of judges, which is certainly not more important than the act of 1949—and which, I believe, can be settled at home, using the constitutional amending powers of the federal Parliament accorded to us by the British North America (No. 2) Act, 1949. In this context, concurrence of the provinces, as already expressed, is helpful as an expression of approval.

It is equally significant, honourable senators, that the Prime Minister indicated that he regarded the present constitutional amending position of Canada as a political