reached an age where senility has set in. This amounts to an infirmity and prevents him from rendering proper justice from his high place. There is that about it. The second reason is:

(b) having been guilty of misconduct,

I think that could probably be given a good interpretation. The third reason is:

(c) having failed in due execution of his office,

There are many famous stories about the conduct of trials. I do not want to add to them this afternoon, although I have many priceless memories of my days in court. When a counsel appeared before a certain judge, the judge indicated that he would set down the case for Friday, the 13th. The lawyer said "My Lord, that is an unlucky day." The judge replied "It is generally found that in these cases one side wins and one side loses. Fifty per cent win and 50 per cent lose. Some are lucky and some are unlucky." The case was set down for the 13th. Does the fellow who loses in that case say that the judge failed in the due execution of his office? The final reason is:

(d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of his office.

It is difficult to decide what that means. The Minister of Justice (Mr. Turner) will have to defend that Paragraph when the bill is studied in committee. The matter of having a remedy might have been useful in the Landreville case, but it may be a weapon that will in some way hang over courts and inhibit some people from seeking a judicial office. Subclause (3) reads:

A judge who is found by the Governor in Council, upon report made to the Minister of Justice of Canada by the Council to have become incapacitated or disabled from the due execution of his office shall . . . cease to be paid or to receive or to be entitled to receive any further salary—

In short, the council makes its decision and bang, there goes the judge. Subclause (6) reads:

The Governor in Council may grant to any judge found, pursuant to subsection (3), to be incapacitated—

That would be justice. A man may reach senility and not realize it. If he is found to be senile by the Canadian Judicial Council, he would be out of a job, even though he has worked long and hard on the bench. There was one case in the province of Nova Scotia. During the last few years of the particular judge's career on the bench, he could only say that he agreed with one of his brethren on the bench. He would either agree with one judge or another. At that stage, he could no longer write opinions. He was perhaps the best trial judge we had in Nova Scotia, certainly within the past 30 years. It would have been just if that man had retired under the saving provision of subclause (4) whereby money could have been paid to him. He had been a good and faithful servant to the province of Nova Scotia for a very long period of time.

I have some qualms about the over-reaching effects of this particular part of the bill which deals with the Canadian Judicial Council, and what change it will have on the judiciary. Perhaps it goes too far. It all seems to be sensible, but maybe the Canadian Judicial Council has not been given as much examination as one would like. There is no right of appeal. A judge cannot appeal to Parliament, the highest court in the land. They cannot come to Parliament which must by resolution, uphold the council's decision and dismiss the judge. The council will dismiss the judge.

If a judge is wrongly treated, there is no remedy. This seems a very strange provision to have in a system of law which pays so much attention to the right of any person to be declared innocent unless everything is so clear that there can be no other interpretation except to find him guilty. There is every safeguard by the right to appeal, so that the whole matter can again be considered by dispassionate and different people each time. There is no such safeguard in this legislation. I will be asking the minister why this legislation does not have this extra safeguard.

I realize the problems. For example, a supreme court judge could become enmeshed in a problem. He would not want to take the whole bloody business to the Supreme Court of Canada by way of an appeal because other judges would be sitting in judgment on him. There has to be some sort of appeal, even if it involves setting up some procedure in Parliament. This is important to protect the integrity and the independence of judges.

• (4:50 p.m.)

Perhaps in this regard I might quote from the report of Mr. Justice Rand who dealt with the Landreville case. He said:

But what does the independence of judges imply? That can be nothing short of this: that the minister to whom such an authority is committed shall himself be the first to respect what has been entrusted to him, the administration of the rule of Justice under Law, including loyalty to its institutions. The public acceptability of character for such a function is of that which exhibits itself in action as beyond influences that tend to taint its discharge with alien factors.

Vital damage to a state would be the impairment of that independence; its constitutional character is essential to the public acceptance of our mode of resolving conflicts. Judgments may be criticized: they may call for legislative amendment; but the underlying basic assumption is the intellectual and moral integrity of the judicial officer in the execution of his office. Only under a regime of Law can societies today be maintained in peace and freedom: its administration must carry the respect and acceptance of the public as being of the character postulated. Impartiality must mark judgment to the extent possible to men; our court system is the result of a thousand years of experience; and so far as it may be imperfect the answer is that man is imperfect. But it stands favourable comparison with any other system of mankind; and the preservation of the essential quality of freedom in its ministers from influences foreign to its processes, conscious or unconscious, is a supreme necessity. The governing fact is that condition is the susceptibility of the mind so influenced, the confirmation of which exhibits a moral sense incompatible with the judicial essence.

Before the 13th century, in the administration of our Common Law, men were looked upon as untrustworthy for passing judgment upon fellow men, and the Ordeal the acceptable test of guilt or innocence, right or wrong. We know now that men can reach and continue in disinterested and acceptable objectivity in adjudication but only on the assumption of fidelity and integrity; the independence and tenure of Judges, necessary to their function, have a specific test of the violation of duty: the justified forfeiture of public and professional moral confidence.