

Similar language was used by the rest of the Court, and the probable intention of the legislature in using the words alluded to, and the inevitable result of the language of the Statute, is thus stated by the Chief Justice of the Court.

"In making this exception the Legislature excluded the testimony, either on the ground of interest, or for the general mischief likely to arise from the possible appearance of husband and wife contradicting each other on oath. The grant of the privilege to withhold communications between husband and wife, during coverture, favors the probability of the latter view having influenced the Legislature. In that view, and perhaps almost equally in the alternative view, the exclusion of the evidence is perfectly intelligible.

"I do not feel at liberty to refine away plain language, used, as I read it, to carry out an obvious intent. I am therefore of opinion that in actions where husband and wife are co-plaintiffs or defendants, their evidence is necessarily excluded for or against each other."

JUDICIAL APPOINTMENTS.

The appointment of Sir Robert Collier to a vacant judgeship in the Common Pleas in England, for the mere purpose of making him eligible as one of the four paid members of the Judicial Committee of the Privy Council, has been discussed *ad nauseam*; we do not, therefore, propose to add anything to what has already been said, so much better than we could say it, in the English law periodicals on this subject. It may be well, however, to record for future reference the admirable protest of the Lord Chief Justice of England against the high-handed act of Mr. Gladstone and his Chancellor, which was, in the words of Sir Alexander Cockburn, "at once a violation of the spirit of the Act of Parliament, and a degradation of the judicial office." And in connection with this proceeding, we may refer briefly to some other matters of a kindred nature.

The following is the text of the letter addressed on the 10th November, 1871, to Mr. Gladstone, by the Chief Justice:—

"DEAR MR. GLADSTONE,—

"It is universally believed that the appointment of Sir Robert Collier to the seat in the Court of Common Pleas, vacated by Mr. Justice Montagu Smith, has been made, not with a view to the discharge of the duties of a judge of that court, but simply to qualify the late Attorney-General for a seat in the Judicial Committee of the Privy

Council, under the recent Act of the 34 & 35 Vict. c. 91.

"I feel warranted in assuming the general belief to which I have referred to be well founded, from the fact that the Lord Chancellor, with a view to contemplated changes in our judicial system, has, notwithstanding my earnest remonstrance, declined for the last two years to fill up the vacant judgeship in the Court of Queen's Bench. I cannot suppose that the Lord Chancellor would fill up the number of the judges of the Court of Common Pleas, while to the great inconvenience of the suitors and the public, the number of the judges of the Queen's Bench is kept incomplete.

"I assume, therefore, that the announcement in the public papers, which has so startled and astounded the legal profession, is true; and, this being so, I feel myself called upon, both as the 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