beyond the period when they were physically fit to discharge the duties of their office, and it was thought it would be possible, without causing any great hardship to these men or disadvantage to the country, to retire them on a new principle, which did not then exist in our legislation. It was provided that a judge who was 70 years of age and who had served 25 years could retire on full salary, and other judges, who had not attained that age, could retire on full salary after 30 years' service. The intention was to dispense with a number of men who were thought to be incapacitated, but the law did not have the effect intended, because, while it did retire those men, it held out to a number of other men who could retire at the end of 15 years' service the prospect of getting a retiring allowance equal to their whole salary if they remained in office for the full period mentioned in the statute. The proposition involved in section 1 of this Bill is to revert to the old system, namely, to allow a judge to be retired at the end of fifteen years, but not to interfere with the vested rights of any judge who is now holding office. This repeal would apply only to a man who accepted office after the coming into force of the Act. That is the principle, and of course it will have to be discussed, and the House will have to determine whether to adopt it or not. We adopted it practically unanimously last year.

The second section of the Bill deals with an entirely different matter. In my mind, the main principle that underlies that section is the principle of conserving the judicial position of the judges. The principle that I think we ought to lay down with regard to the judges is that when a man becomes a judge in any of the courts of Canada, he should be a judge and practically nothing else—that he should keep clear of as many other activities as possible.

The principle for which I am contending was stated by Lord Esher at a Lord Mayor's dinner in England:

> When the judges of England acted within the scope of their ordinary duties nobody ever attempted to suggest that they were not impartial. At the present time, however, they knew that one of the judges had been asked to go beyond the scope of his ordinary duty.

That is, Mr. Justice Mathew, afterwards Lord Justice Mathew, who was appointed as chairman of the Irish Evicted Tenants Commission. Lord Esher continued:

> He for one was sorry and surprised that the judge in question had consented to do so. The result was inevitable. That judge had already been fiercely accused of partiality or a want of desire to do justice. But he could safely say that throughout his close experience of twenty-four years there had not been a judge on the English Bench who had shown at any time or in any position any other feeling or desire than to be absolutely impartial and to do right.

The appointment of Mr. Justice Mathew to such a position destroyed his usefulness as a judge.

The Law Times of November 16 last refers to the same subject. It refers to the position taken by Lord Esher, and then speaks of the war. Of course, what was done during the war is not a precedent. It says:

> Before the war we were resolutely opposed to the calling upon His Majesty's judges to perform duties not connected with their positions. But, as Sir Charles Swinfen Eady pointed out, in the strenuous and unprecedented times through which we have passed in the last four years, it was the duty of every one to give of his best to the state in her hour of need. And well has the Bench responded to the call, rendering invaluable services, while at the same time the cause of justice has in no way been impeded. We joint with the Master of the Rolls in hoping that the time is not far distant when a full and complete severance will be made between executive and judicial duties, and the old position will be reverted to with strictness.

That is the principle which I claim underlies section 2 of this Bill. I ought to explain that the Bill as constructed this year is a little different from the Bill of last year. As honourable gentlemen who look at section 33 of the Judges Act will see, that Act provides that a judge shall give his whole time to his judicial duties and shall not be engaged in other business. It was argued that that section was ultra vires. When I drafted the Bill of last year, I assumed that the Judges' Act was intra vires of the Parliament of Canada, but it seems to be the fact that under the British North America Act the Dominion Government names the judges and pays them, but that the constitution and the functions of the courts are within the jurisdiction of the local legislatures. Therefore, to guard against that objection, section 33 being ultra vires, I have drawn a line between Dominion judges and provincial judges. I have defined what is a Dominion judge and what is a provincial judge. In the case of Dominion judges there can be no doubt at all about our jurisdiction. On provincial judges the only check we would have would be to provide that if we found that a provincial judge was being paid elsewhere, we should take an amount equal to what he was being paid from the salary paid him by the Dominion Government.