judges, and conniving at the proceedings of dishonest judges on the part of the Crown, which gave rise to serious complaints, and led to several attempts, during the seventeenth century, to limit the discretion of the Crown in regard to appointments to the bench.

Then, later on:

One step only remained to place the judges in a position of complete independence of the reigning sovereign, and that was to exempt them from the rule, ordinarily applicable to office-holders, whereby their commissions should be vacated upon the demise of the Crown.

The lawyers of the House are, of course, familiar with the legislation which took place to bring that about. Then, Todd, later on, discussing the tenure of the judges, says:

The legal effect of the grant of an office during good behaviour is the creation of an estate for life in the office. Such an estate is terminable only by the grantee's incapacity from mental or bodily infirmity, or by his breach of good behaviour. But, like any other conditional estate, it may be forfeited by a breach of the condition annexed to it—that is to say, by misbehaviour. Behaviour means behaviour in the grantee's official capacity

And he proceeds to discuss that phase of the question. Rightly or wrongly, we have given these judges that high estate, for the purpose of putting them in a position where they could act with the most complete independence of the Government of the day or of any political party, knowing that with these conditions their rights would be safeguarded by the common consent of Parliament. The only case I can find that comes at all near this proposition, and that can yet be distinguished easily from it, is a case that arose in the Imperial Parliament in 1867; and in that case, we shall see how quickly the Government appreciated the delicacy of interfering in the slightest way with the office of a judge, for the Bill I am going to refer to could have been justified on the ground that the duties of the office were so increased, in the case of an inferior court, that it could be said that the judge holding the office was incapable of satisfactorily performing them. They were dealing with a specific office and a specific judge, whose tenure of office it was proposed to interfere with because it was proposed to add to the duties of the office and to its importance, and the statement in support of the Bill was that the present incumbent was not fit to discharge those duties. This is the case:

Upon the introduction of a Bill to extend the jurisdiction, alter and amend the procedure and practice, and regulate the establishment of the Court of Admiralty in Ireland, with a view to bring under the cognizance of this court matters of common law in relation to which the presiding judge had no professional experience. Ministers being of opinion that the judge would be incompetent to discharge the additional duties, introduced a clause into the Bill to repeal his tenure of office, so as to permit of his removal at the pleasure of the Crown.

The Bill in that case proposed to remove this judge on the ground of his incapacity, which is not the case here at all. This Bill arbitrarily fixes the age for retirement at 75, whether the judge is capable or incapable, and applied that to judges now holding office. The English Bill provided that he should be entitled, on his retirement, to receive an annuity equal to his full salary. Under those circumstances, the Bill was carried by the majority of the House. I shall read what Lord Cranworth, when that Bill was introduced, said:

Lord Cranworth said that the judge of the Admiralty Court in Ireland held office under an Act of Parliament, which made him irremovable, except upon an Address from both Houses of Parliament; his tenure was, therefore, the same as that of the Lord Chief Justice of the Queen's Bench; yet for the first time in the annals of English history the enactment which fixed his tenure on this footing was to be repealed by this clause, in order that he might be immediately removed. If this gentleman was an unfit person to discharge the duties of the office, it would be proper to say so; but the judge defied anybody to show this. There had been a constitutional safeguard against the removal of judges, and it was now proposed to take it away.

I think I need not elaborate that, but it fully confirms the position I take, that even in that case—a case of almost admitted incapacity—the Bill itself was so criticised by Lord Cranworth, though it was amended so as to provide that if, in the public interest, it was desirable he should be removed, being guilty of no misconduct, then he should get his full salary on retirement. That, however, is not the proposal of the hon. gentleman, and his Bill therefore has not the merits involved in that proposition. Under it Parliament can lay its hand on judges capable of performing their duties, and the hon. gentleman will not say that the judges on the county court benches and in other courts in Canada to-day are not as able as ever in their lives to perform their duties. The proposal is that they shall be absolutely retired, contrary to the conditions on which they were appointed and without any consideration, such as was decided to be necessary in the case I have put. I say that this is a radical proposition and not supported by the British Parliament or any Canadian Parliament I am aware of.

The SOLICITOR GENERAL. There is a great deal in which the hon. gentleman has said, but it seems to me that there is no violation of any principle and no attack on the independence of judges in this Bill. All that we do is to say that a judge appointed under a statute which provides that if he become incapable from age to perform his duties, he may be removed, shall instead be removed when he has attained 75 years of age and thus avoid any inquiry.