

and on the part of the Government to pay. But even if there was an absolute contract, we have never, I think, known an instance where the individual judge would object to having the contract varied by an increase in the amount of the salary. At any rate, there has been repeated agitation to secure an increase of salary for the judges, and if there is a sacred contract that cannot be broken on either side, I do not very well see how anyone could support a change in the way of increasing the salary, any more than in the way of diminishing it.

But whether or not there is any actual contract as to salary, I do say that it would be nothing else than a breach of good faith on the part of Parliament to make this Bill apply to judges already appointed. Every man who is offered a position on the Bench has necessarily to consider seriously the consequences of accepting such an offer. We are often told that the salaries now paid our judges are much too low; that it is impossible to get the best of the practising lawyers of the country to take judicial positions, simply because all, or many of them, are making annual incomes much larger than their salaries would be. I think that is probably true as to the amount of income in comparison with the amount of a judicial salary. But I would point out as a countervailing circumstance a factor which to my personal knowledge has been the determining influence in the case of many a man who has accepted a judgeship at a considerable pecuniary sacrifice. I refer to the retiring allowance. There is provision for old age which has always been regarded as a contractual obligation on the part of the Government or of the Parliament of Canada. That provision was in existence, I fancy, before any of us were born. At any rate, it was on the Statute Book before I had any personal knowledge of the statutes of the country, and has remained ever since. Over and over again, that retiring allowance has been looked upon as a material part of the judicial remuneration, as compensation to a judge for accepting a salary lower than he otherwise clearly would have been entitled to. How, then, can you say to a man who has been serving on the Bench for ten, fifteen or twenty years, "You retire now or your salary for the future will be reduced to the amount which you would have been entitled to receive as a pension if you had retired some years ago, when you reached the age of seventy-five"? You are simply making an inroad upon the pension which the statute provided at the time the judge in question accepted his judicial position. At the close of his judicial career you are taking from him the very inducement

Hon. Sir ALLEN AYLESWORTH.

which you held out to him fifteen or twenty years ago as a reason why he might serve for years at a greatly reduced salary. That, it seems to me, is an utter breach of good faith. So strongly do I feel upon this point that I intend to move in committee, if this measure receives its second reading, an amendment to make this legislation applicable only to future appointments. There will be no bad faith about it if there is a provision like this on the Statute Book when any proposed appointment is under consideration by a man to be appointed; he will know exactly what are his prospects in a financial way, and he will be able to make his decision accordingly. But if the Bill is to be made to apply to judges who have already earned their full statutory pension—to those who are entitled to it as a matter of deferred salary—I say it constitutes, if not an absolute breach of contract, at any rate a breach of good faith.

I want to mention one other evil effect that this legislation would have. If it passes in any form it will create two distinct classes of judges on the Bench—those who have reached seventy-five and those who have not—and will discriminate between those two classes in the matter of remuneration. I think that any discrimination of that character is a bad thing and ought never to be permitted if it is possible of avoidance.

And let me point out just one thing more, as to how this measure will work in actual practice. It will give to each judge who has attained or may attain the age of seventy-five years the option of continuing in office or retiring upon a certain pension. Well, who is going to accept the option of continuing to serve at the reduced amount except a judge who can afford to do so? It will depend on the circumstances of the individual judge. A judge who is a wealthy man of himself, apart from his salary, or who happens to have married a wealthy woman, or whose children are all well-to-do, or away from home and doing for themselves, can afford to accept the reduced pay. And that is exactly what such a man will do. He will snap his fingers at this legislation and will decline to give to those who are proposing it the satisfaction of seeing him forced off the Bench. But the poor man who has given his life to the service of his country, and who at the age of seventy-five is unable to support himself otherwise than upon what he receives from the Government, will be forced off the Bench by reason of this reduction in salary. That means discrimination of the very worst sort, and will be the necessary effect of this legislation if it passes.

Hon. JAMES MURDOCK: Honourable senators, someone—do not ask me who it was