

stance, as these judges have been appointed, and then for the first time you fix their term of service at the age of 75, thereby introducing a new order of things which indicates to the judges of the land that if the Government can shorten their term at that age, they can shorten it at 60, or 50 years of age. Therefore, the reasons which have always led us to keep the judiciary absolutely independent of the executive, cease to prevail in this country. Up to this time, we have followed closely the English example, and the English policy, that a judge's office cannot be interfered with by the executive in this way. I would like to know if the hon. gentleman can give us a case in England, or in Canada, or in any of the old provinces, where the term of a judge has been shortened by the legislature. I have given a good deal of attention to this subject, it has been discussed in connection with the great age at which some judges have continued to serve. I have not found in any research a case under the British system of government where the tenure of a judge was affected after his appointment by Act of Parliament.

The SOLICITOR GENERAL. I do not understand that the hon. gentleman questions our right to legislate in this way, but he questions the propriety. I would ask the hon. gentleman to allow me to read the law as it now exists :

Every judge of a county court in any of the provinces of Canada shall, subject to the provisions of this Act, hold office during good behaviour, and his residence within the county or union of counties for which the court is established.

A judge of a county court may be removed from office by the Governor General in Council for misbehaviour, or for incapacity or inability to perform his duties properly, on account of old age, ill-health or any other cause.

The Governor in Council has a right to remove any person who is incapacitated for performing his duties through old age. If he has got that right, has not this Parliament got the right to legislate in such a way as to fix the limit at 75 years of age ?

Sir CHARLES HIBBERT TUPPER. That is hardly an arguable question. But there is a case where the legislature, on the appointment of a judge, defines what it means by inability, it is following really in the line of good behaviour. For instance, if a judge, after such an examination as a commission would make, showing that he was unable to perform his duties, no doubt, in the case of County Court judges, that being ascertained by a commission, he might be removed by impeachment, if he presumed to remain on the bench after his incapacity was declared. That does not affect the general principle that I refer to as having prevailed so long. But here you say that though a judge is in good health, though he may be the most brilliant man on

the bench, as was the Ontario judge I referred to, after he reaches the age of 75, he must be retired. But you make this legislation retroactive, and if you can do that, you practically intimate to other judges that their independence is gone, because unless they remain in sympathy with the executive, it is possible the executive may limit their judicial career by making the age 70.

Committee rose and reported progress.

It being Six o'clock, the Speaker left the Chair.

After Recess.

JUDGES OF THE PROVINCIAL COURTS.

(In the Committee.)

On section 3,

Sir CHARLES HIBBERT TUPPER. I move that this section be struck out. It seems to me that if there be anything in the argument of the Prime Minister the last clause of this section is unconstitutional, for it is fixing the salary conditionally. I know it is in the local law.

The SOLICITOR GENERAL (Mr. Fitzpatrick). It is Federal law. It is paragraph 4, chapter 138, which provides that the chief justice of the Superior Court shall receive \$6,000, the senior puisne judge residing in Quebec, if the chief justice resides in Montreal, or the senior puisne judge residing in Montreal, if the chief justice resides in Quebec, an addition to either salary of \$1,000. That has been the law for years, and is in the revised statutes. If this section were struck out there would be no increase of the judges' salaries.

Sir CHARLES HIBBERT TUPPER. It is simply following up the argument I made, and this section fixes the salaries.

The SOLICITOR GENERAL. The only increase here is that of \$1,000 for the judge of the district of Terrebonne. I suppose the hon. gentleman (Sir Charles Hibbert Tupper) does not raise the constitutional question now.

Sir CHARLES HIBBERT TUPPER. No. Amendment negatived.

On section 6,

Mr. BRITTON. I think there is a little misapprehension in the House in regard to judges' salaries in Ontario, and this is perhaps an opportune time to say a few words on the matter. The main object of this clause is to increase the salaries of the junior judges after three years of service to \$2,400, which will make their salary in all \$2,600. The junior judges of Ontario have no addition in any way to their remuneration except it be where there is a reference direct to them, whereby they supplement their salaries to some considerable extent. But the senior judges of the county courts are very differently paid, and in many cases they are very amply paid for the work they