

most of the time which would mean that the assistant judge would be called upon to act as the ad hoc judge.

Sir WILFRID LAURIER: It would be sufficient to say in the Bill that the judge of the Supreme Court should have discretion to call either the judge of the Exchequer Court, or the assistant judge or a provincial judge. I am sure that the judge of the Supreme Court would always see that there were not more than two judges from the province of Quebec on the bench. If we would not trust to his discretion in that regard it might easily be provided for but I do not see why there should be that exclusion, mentioned by the Minister of Justice and by my hon. friend from Simcoe, of the assistant judge of the court of exchequer.

Mr. DOHERTY: I do not think it is susceptible of question that, with the amendment in, the provision will reach the results pointed out by the hon. member for Simcoe because, if we leave it as it stands now and add the amendment of the hon. member from Maisonneuve, it will be imperative for the chief justice of the Supreme Court, before he asks for any provincial judge, to take either the judge of the Exchequer Court or the assistant judge of the Exchequer Court. If the judge of the Exchequer Court be away it will be imperative upon the chief justice to take the assistant judge. If the absent judge who had to be replaced was a judge from a province other than Quebec you would have three gentlemen, all of them originally versed in the civil law of Quebec, sitting. If I seized rightly the suggestion of the leader of the Opposition it was that we should remove from the chief justice the obligation in any case of taking the Exchequer Court judge and leave to him freedom to say whether he will call on the Exchequer Court judge or whether he will call upon the assistant judge, or whether he will call upon the chief justice of a province to give him a judge. As the Bill stands now, with the amendment as suggested this afternoon, it has the effect of leaving the chief justice no choice as to the individual judge. His duty is to call upon the Exchequer Court judge. If the Exchequer Court judge is not available then it becomes his duty to call upon the chief justice of one of the provinces to furnish him with a judge. If we accept the suggestion of the leader of the Opposition we put the chief justice of the Supreme Court in this position: the judge of the Exchequer court is here and the assistant judge is

[Mr. Boys.]

here. If for any reason the chief justice would rather have a provincial judge he will be put in the position of having to make an invidious distinction by having it placed in his hands to select either of these two judges or by passing them over to ask for a provincial judge. I hardly think it is fair to put the chief justice of the Supreme Court in the position of having to decide as between individuals. As it stands at the present time his duty is all marked out for him. He asks for the judge of the Exchequer Court. It is not because he wants to do it but because the law says he has to do it. Failing him, he has to ask the chief justice of a province to furnish him with a judge.

Mr. MORPHY: Will it be competent for the provincial chief justice to furnish him with the assistant judge of the Exchequer Court according to the meaning of this Bill?

Mr. DOHERTY: Not as the law is worded now, and it would perhaps be a little anomalous for the chief justice of a court, say in British Columbia, to designate the assistant judge of the Exchequer Court for any particular duty. I am afraid to do so would be to introduce confusion into the operations of the Bench. While I am quite prepared to admit the force of the different objections that have been made from that point of view, from the best consideration I have been able to give the matter up to the present time, I am still disposed to think that the section as amended perhaps meets all the exigencies of the case, and I would like to repeat that it could not be interpreted as implying any reflection upon the gentleman who happens to be assistant judge of the Exchequer Court.

Mr. W. A. BOYS (Simcoe, S.): There are only two Exchequer Court Judges for the whole of Canada, and it seems to me that if this amendment be carried we may have this result: It will be some months yet before Mr. Justice Duff may be liberated from his duties as Central Appeal Judge, and be free to return to the Supreme Court. Now if one of the two Exchequer Court Judges should be required elsewhere, it might have the effect of causing a congestion in the Exchequer Court, and tying up business there. That is the reason I would not be disposed to favour my hon. friend's amendment.

Mr. LEMIEUX: Supposing that one of the judges of the Supreme Court of the province of Quebec is ill, and has to be