

Mr. BOYS: As I understand it, the amendment proposes to insert after the word "judge" in line 16, the words "or assistant judge," and to make a change in the next line by saying "or should they be absent." It seems to me to come down to this: These changes would render almost useless the following language in the section, for as I understand it, either the judge of the Exchequer Court, or the assistant judge thereof is always present in Ottawa, and in consequence no other ad hoc judge would be designated. I think that would be undesirable, because you might get a case like this—in an appeal from the province of Ontario, two regular judges of the Supreme Court might be unavailable; you would then require an ad hoc judge. The judge of the Exchequer Court might be absent, in which case the assistant judge, Mr. Justice Audette, would be called upon to preside. You might then have the Supreme Court constituted of three judges from the province of Quebec trying an appeal from the province of Ontario. I do not think that would be any more desirable than having three or more judges from the province of Ontario, or some province other than Quebec trying an appeal from the province of Quebec. It seems to me that the section as worded is more desirable than as proposed to be amended by my hon. friend from Maisonneuve.

Sir WILFRID LAURIER: If the amendment proposed by my hon. friend from Maisonneuve (Mr. Lemieux) were to have the consequences which have just been pointed out by my hon. friend (Mr. Boys) I would altogether agree with him. This takes us back to the formation of the court. Section 6 of the Supreme Court Act reads as follows:

Two at least of the judges shall be appointed from among the judges of the Court of King's Bench, or of the Superior Court, or the barristers or advocates of the Province of Quebec.

What is the reason of that exceptional provision? When the Act was passed in 1875 establishing the Supreme Court there was great objection in many of the provinces, in Quebec particularly, to having the Supreme Court constituted as a court of appeal to pass upon provincial laws. Many held, as I did myself—I was a young member then—that it would be better to have a court of appeal, to be known as the Supreme Court, to pass upon the laws of the Dominion alone. But a contrary opinion prevailed and it was made a court of appeal for all the provinces. The province

of Quebec, not being under the common law but under the civil law, it was thought fair that two judges of the court should at least be versed in the civil law and not in the common law only. That, I think, was a wise provision. If the effect of this amendment were to be that three judges versed in the civil law would have to pass upon a case from the province of Ontario, which is under the common law, it would be very unfair. If that should be the consequence I would advise my hon. friend on my right (Mr. Lemieux) not to press his amendment. But, let us look at the Bill. The Bill provides that if there is a judge ad hoc to be appointed, the first choice should fall upon a judge resident in Ottawa. Everybody can understand the advantage of having a judge resident in Ottawa. There come here lawyers from all parts of the country, from Prince Edward Island to British Columbia, their time is precious; of a sudden a judge cannot sit, the court has no quorum and it is indispensable that the quorum should be filled at once so that it can go on with its business. The first thing that happens is that the judge of the Supreme Court takes a judge sitting in Ottawa—the judge of the Court of Exchequer. If there is no judge in the Exchequer Court available, the chief justice of the Supreme Court, or in his absence the senior puisne judge, has to seek one elsewhere. If you say that the Chief Justice of the Supreme Court shall have the power to address himself, first, to the judge of the Exchequer Court, or, if for any reason he is unable to act, then to the assistant judge or to a judge of any provincial Superior Court, leaving a discretion open to the Chief Justice to call either for the Exchequer Court judge or the assistant judge or for a judge in any of the different provinces, the difficulty is obviated.

Mr. BOYS: That is not the wording of the section as amended by the hon. member for Maisonneuve.

Sir WILFRID LAURIER: Hear, hear. I agree, but I repeat what I said at the beginning: If the wording is such that the possible consequence might be that three judges from the province of Quebec could not be avoided, or if we should have to take the judgment of three judges from that province, I would advise my hon. friend, (Mr. Lemieux) not to press his amendment because it would not be fair nor in accordance with the principle which was embodied in the Supreme Court Act.

Mr. BOYS: I understand that the chief justice of the Exchequer Court is away