

I am not going to say anything more about the principle of the use of judges. In my view there is much to be said against it; obviously there is much to be said for it; therefore I shall not take the time of the committee in a discussion of that point. I would say however that I believe in substance what the hon. member for Macleod said is true; and the Minister of Justice, who in this House of Commons has acquired a reputation for sincerity and a readiness to speak his own mind, should state his position clearly. I shall be interested to hear what he has to say.

Mr. FULTON: Mr. Chairman, it seems to me that in acting this way we are setting what may turn out to be an unfortunate precedent from which we can escape only by another amendment to the act at a later time. If the chairman of the board of transport commissioners is appointed in this manner, as a judge of the exchequer court, then in ten years time, when his term of office as chairman is completed, we shall have to add another judge to the exchequer court in order to find a new chairman for the board; and so we shall have to go on adding to the number of judges on the court. The deaths of judges already serving may not coincide with the expiration of terms of office of chairmen of the board. In my view it is undesirable to narrow the choice of persons to fill the office by requiring that they must be suitable for and in fact appointed to the Exchequer Court of Canada before they can be chairman of the board.

It seems to me this is too much like writing legislation to suit the personality or qualifications of one individual the government may have in mind to appoint to a certain position. It is a dangerous trend to follow, and a dangerous principle to introduce. In addition we are narrowing too much the freedom of choosing suitable persons to be chairmen of the board in the future.

Mr. ILSLEY: I do not know how long the committee would like to carry on this discussion, but I should like to say something about the charge that this method of procedure undermines parliamentary institutions.

As the hon. member for Winnipeg North Centre pointed out, the Prime Minister was correct in the position he took at the time of his announcement to the house. Colonel Cross' resignation is not to take effect unless this measure passes. Mr. Justice Archibald is still a judge of the supreme court of Nova Scotia, and will not resign from that court until this measure passes. He will not be appointed as chief commissioner of the board, or to the Exchequer Court of Canada, unless this measure passes. This was all made clear.

[Mr. Macdonnell (Muskoka-Ontario).]

The house has the matter in its own hands. I think it would be a pity if this proposed legislation were defeated. I do not think it will be; but parliament has it in its power to defeat it.

No action has been taken by the government except to make the necessary arrangements with Colonel Cross and Mr. Justice Archibald. If we had brought this legislation before the house without any reference to what are called personalities, without any reference to names or persons, the air would have been filled with rumours, and the newspapers would have been full of guesses as to what we were trying to do. The present chairman of the board would have been placed in an invidious position, as would also the appointee. We would have heard many appeals in the house asking the government to be frank, and to tell the House of Commons what its intentions were and what it was trying to do. We would have been obliged to do it. This was one arrangement which had to be announced clearly, fully and frankly in advance. I could not come before the house and suggest this legislation without showing what we were attempting to do.

My justification for the proposal I can put on narrow and clear ground. The present Railway Act provides that a judge may be appointed as a member of the board of transport commissioners. This legislation makes it possible for us to get a judge. Without some legislation of the kind it would be impossible for us to do so. At a time when salary ranges were altogether different and the relationship between them was different, this was not so. But today it is unreasonable to expect a superior court judge to abandon a position in which he has life tenure, to abandon all his pension privileges for himself and his wife, to accept a position with only a ten-year tenure of office, with not so much difference in salary, and with pension privileges which are negligible as compared with those enjoyed by a judge. If therefore we were to get a judge we had to make some change in the legislation.

Hon. members say: "Take some other method; do it in some other way". What other way? I considered first changing the tenure of the board chairman to a life tenure. But that would have serious disadvantages. The hon. member for Eglinton himself said that he thought the ten-year tenure was one which should be adhered to, instead of making the appointment of the chief commissioner a lifetime job. You may not want him for life. It is a little different from an ordinary judicial appointment. So we think we should stick to