

Sir CHARLES HIBBERT TUPPER. As to the future that is a strong position.

The SOLICITOR GENERAL. My right hon. friend has to admit two things. First, that we have a constitutional right to do this, and secondly that it is a wise precaution for the future. The only objection he takes is that it is an interference with the quasi contract entered into between the judge and the Government of Canada, and I admit there is a great deal in his contention, but I submit there is no sacrifice of principle.

Sir CHARLES HIBBERT TUPPER. I shall take the opportunity of moving on the third reading of the Bill, if this clause carries, that this section would be amended by adding to the 11th line after the words "provided that no person" the words "hereafter appointed," and to strike out of the subsection 2 of that section 1 the words "as well as the judges now holding office as"

Mr. McNEILL. Does my hon. friend mean to say that it is to be retroactive? Are we to understand that the judges who have been acting for years on an understanding with the country, are to be now treated on a different basis?

The SOLICITOR GENERAL. Under the law as it now stands, any county court judge holds office during his good behaviour, but he may be removed from office on proper investigation, either for misconduct or for inability from any cause to perform his duties. The intention of this amendment is to provide that he shall when he has reached 75 years of age, ipso facto cease to be a judge.

Mr. McNEILL. Even if he is still able to perform his functions of judge efficiently and there be no excuse for dismissing him.

The SOLICITOR GENERAL. Without any reference to that whatever.

Mr. McNEILL. Is not that a terrible proposition?

Sir CHARLES HIBBERT TUPPER. It is unprecedented as well as terrible.

Mr. INGRAM. How many judges are there on the bench 75 years of age?

The SOLICITOR GENERAL. There are two cases, one over 90 and the other over 80, and each of them is absolutely unable to perform his duties.

Sir CHARLES HIBBERT TUPPER. Then they can be removed under the present law.

The SOLICITOR GENERAL. Those are the only two cases I know of.

Mr. McNEILL. Some of the ablest and best judges we have ever had, in the mother country, at all events, were very much over the limit of age my hon. friend has laid

Mr. FITZPATRICK.

down here, and it seems to me to be a very cruel thing to make this clause retroactive.

The SOLICITOR GENERAL. My hon. friend will bear in mind that there are not many Lord Ushers and there are a good many Justices Stevens. There are only one or two judges that have gone beyond the age of 80 who are of any use. There have been a great many under 75 who ought to be removed, and a few years ago a very serious agitation arose out of some things that transpired in reference to Mr. Justice Stevens, that pointed to the necessity for such legislation.

Mr. McNEILL. My hon. friend has referred to a limit of 80 years, but I am speaking of 75. Perhaps the most efficient judges we have had at Westminster were over 75.

The SOLICITOR GENERAL. I admit that it is quite a radical change.

Mr. McNEILL. If the judge is unfit to perform his duties, he can be removed under the existing law. Would it not be better to accept the suggestion of the member for Pictou (Sir Charles Hibbert Tupper) and strike out this retroactive part of the Bill?

The SOLICITOR GENERAL. I quite appreciate the point made by the hon. member for Pictou, that he does not wish this to be made applicable to those holding office; and I understand him to say that he will, on the third reading, move an amendment to meet that point.

Mr. McNEILL. If my hon. friend would agree to it, it could be moved now.

The SOLICITOR GENERAL. I cannot consent to that.

Sir CHARLES HIBBERT TUPPER moved that in section 1, line 1, after the word "person" the words "hereafter appointed" be added, and in section 2 of same section the words "as well as the judges holding office as" be struck out.

Mr. BRITTON. I am not going to argue the point taken by the hon. member for Pictou (Sir Charles Hibbert Tupper). But I think there is a great deal in it. This is certainly an interference with vested rights. My hon. friend the Solicitor General has omitted to notice what may be the effect of this with regard to superannuation. The superannuation clause provides that if, after service of ten years as county judge, a man suffers from any permanent disease or disability, he can be retired on a two-thirds allowance. But after service of 25 years, he may voluntarily retire on a two-thirds allowance. This Act provides for the compulsory retirement of a judge at 75 years of age. But if a man has been appointed late in life, he may be retired without any provision being made for superannuation allowance at all. I should think that that would not be the intention. There ought to be a saving clause to protect the