

court, unless indeed, it is provided that there shall be no costs against the subject.

Mr. FITZPATRICK. The judges of the Supreme Court will take care of that.

Mr. R. L. BORDEN. Some of the reasons suggested by the Minister of Justice as to the Crown getting scant justice, are rather a reflection on the court than argument for legislation of this kind. Why should the Crown be entitled to an appeal at the expense of the subject? If a test case is selected on which many other cases depend, why should the unfortunate suppliant have to bear the general costs in the event of the Crown succeeding? Where the subject has not the right to appeal, it should be provided that the Crown, if successful, cannot recover costs against the subject.

Mr. FITZPATRICK. That does not seem unreasonable; it is the practice any way.

Mr. R. L. BORDEN. The courts vary more or less.

Mr. FITZPATRICK. Not the Supreme Court.

Mr. R. L. BORDEN. If I were a litigant, I would feel more comfortable if protected by statute.

At present the Crown has discretion to allow, or to refuse, a fiat on a petition of right. I remember on one occasion, the Postmaster General refused a fiat in some thirty or forty cases, and he refused simply because in his pure unadulterated wisdom, he decided that they had not what he called any moral claim against the Crown. Well, that ought to be decided by the courts and not by a minister. I do not believe that practice is conducive to good government. I agree with the Minister of Justice that where persons are likely to run up a large amount of costs, it would be proper for the Crown to insist that before a petition of right is granted there should be security for costs. I would protect the Crown, but I would not allow the Crown to deprive a subject of the right to enforce what he thinks a good claim against the Crown. Some years ago when I discussed this matter, the Minister of Justice seemed to share my views. I would ask him now to take this matter into consideration, and to determine whether some amendment to the law in this respect should not be made. My recollection is that in England petitions of right are allowed with much greater freedom than they are here.

Mr. CASGRAIN. They are hardly ever refused in England.

Mr. R. L. BORDEN. I would suggest that this Bill should be amended so that in cases where the subject has not the right of appeal, if the Crown succeeds on appeal, the subject should not be liable for costs.

Mr. FITZPATRICK. My opinion has never varied with respect to the granting of fiats in petitions of right. Except in extreme cases, I have always been under the impression that the proper course is to give the suppliant an opportunity to litigate his claim before the courts.

Mr. R. L. BORDEN. Hear, hear.

Mr. FITZPATRICK. The courts are established to decide controversies between subjects, and when the Crown, as is the practice nowadays, extends its operations beyond the original limits assigned to it, we ought deal generously with those who make applications for petitions of right. That has been our practice recently at all events. I have not consulted the other members of the government, but it is my personal intention to introduce legislation this session for the purpose of adapting our practice with respect to petitions of right, to the practice in the province of Quebec which provides that security for costs ought to be given in all cases. I would not leave it discretionary with the Crown, because if the Crown wished to favour a suppliant it might be possible to say that he should not give security. It would be better to have a statutory enactment requiring security for costs in proportion to the amount in controversy between the Crown and the suppliant. Perhaps the debate on this Bill had better be adjourned for the purpose, of enabling me to consider how far I may incorporate in the Bill these other matters which I have in mind now. It is a very fair proposition, that when the Crown appeals for the purpose of having a question of principle settled, the costs should not be granted against the subject in the event of the Crown succeeding. That is the practice in the courts now; and we might make it statutory.

Mr. McCARTHY. I would go a step further. If the subject recovers in the court of first instance on a small claim; and if the Crown appeals for the purpose of establishing a principle on which many thousands of dollars might depend, it is not fair that the subject should be dragged through the courts on account of his small claim, and made to pay even his own costs on the appeal. The Privy Council in England frequently, when a rich corporation asks for leave to appeal, says, you may appeal if you wish, but you have to bear the costs of both sides in any event. This is a case in which I think the Crown should bear not only its own costs, but the suppliant's costs as well.

Mr. LEMIEUX. I want to add that since I have been Solicitor General I have had occasion to examine the records of the department with regard to several cases in which petitions of right have been granted by the Crown, and I may say to my hon. friend