

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

B.C.]

MORTON v. FULTON.

[June 24.

Constitutional law—Construction of statute—Duty of responsible Ministers of the Crown—Refusal to submit petition of right—Right of action—Damages—Pleading—Practice—Withdrawal of case from jury—New trial—Costs.

Under the provisions of the "Crown Procedure Act," R.S. B.C. ch. 57, an imperative duty is imposed upon the Provincial Secretary to submit petitions of right for the consideration of the Lieutenant-Governor within a reasonable time after presentation, and failure to do so gives a right of action to recover damages.

After a decisive refusal to submit the petition has been made, the right of action vests at once, and the fact that a submission was duly made after the institution of the action is not an answer to the plaintiff's claim.

In a case where it would be open to a jury to find that an actionable wrong had been suffered and to award damages, the withdrawal of the case from the jury is improper and a new trial should be had.

The Supreme Court of Canada reversed the judgment appealed from, which had affirmed the judgment at the trial dismissing the action with a variation allowing the plaintiff his costs up to the time of service of the statement of defence, costs being given against the defendant in all the courts and a new trial ordered. DAVIES and MACLENNAN, J.J., dissented, and taking the view that the refusal, though illegal, had not been made maliciously or wrongfully, considered that on that issue the plaintiff was entitled to nominal damages, that, in other respects, the judgment appealed from should be affirmed and that there should be no costs allowed on the appeal to the Supreme Court of Canada.

Deacon, for appellant. Nesbitt, K.C., for respondent.