

THE
ONTARIO WEEKLY REPORTER.

(To and including January 31st, 1903.)

VOL. II. TORONTO, FEBRUARY 5, 1903. No. 4.

BURBIDGE, J.

JANUARY 26TH, 1903.

EXCHEQUER COURT.

ATLANTIC AND LAKE SUPERIOR R. W. CO. v. THE
KING.

*Security for Costs—Petition of Right—Company—Crown—English
Companies Act.*

Application by the Crown for security for costs of a petition of right.

E. L. Newcombe, for the Crown.

W. D. Hogg, K.C., for the suppliants, referred to Colwell v. Taylor, 31 Ch. D. 34; Cook v. Whellock, 24 Q. B. D. 658; Dartmouth Com'rs v. Dartmouth, 34 W. R. 774; Wallbridge v. Trust and Loan Co., 13 P. R. 67; Major v. McKenzie, 17 P. R. 18.

BURBIDGE, J.—This is an application on the part of the respondent for security for costs, on the ground that there is reason to believe that if the respondent is successful in the defence the assets of the suppliant company will not be sufficient to pay his costs.

The application is based upon sec. 69 of the Companies Act, 1863 (U. K. 25 & 26 Vict. ch. 89), which, it is argued, is in force as part of the practice and procedure in this Court under sec. 21 of the Exchequer Court Act and the Rules of Court (see Audette's Practice, p. 217, Rule 1), which provide that the practice and procedure in the Exchequer Court shall, so far as they are applicable and unless otherwise provided for, be regulated by the practice and procedure in similar suits, actions, and matters in the High Court of Justice in England. The case is not otherwise provided for; but the proceeding being by petition of right; it is necessary in the first instance to see what the practice is in England in such a proceeding. By sec. 7 of the English Petition of Right Act (23 &