

continue the practice of requiring a deposit of \$50 as security for costs on an appeal?

Hon. Mr. Hugessen: I might answer my honourable friend by asking him "Why not?"

Hon. Mr. Leger: Well, it is not so in the Supreme Court or in the lower courts. Why should this practice be continued in the Exchequer Court?

Hon. Mr. Hugessen: I do not know why the practice is continued. This bill makes no reference to a change in that respect.

Hon. Mr. Leger: I know that it does not, but my friend has just said that the bill proposes to modernize the Act. I thought it might do away with the provision requiring a deposit of \$50.

Hon. Mr. Hugessen: I have no instructions on that point. Perhaps the honourable senator wishes to move an amendment.

Hon. Mr. Leger: I thought the government would do it as a matter of grace.

Hon. Mr. Hugessen: I have no right to speak for the government in that matter.

Section 4 of the bill proposes to amend the Act, to permit the Judges of the Exchequer Court to make rules providing for the examination for discovery of departmental officers in cases in which the Crown is interested; it also proposes to allow the Judges of the Exchequer Court to make rules, as is common in the Civil Courts in the provinces, providing for the medical examination of parties who claim damages by reason of personal injuries.

That, honourable senators, is as simple an explanation as I can give of the bill.

Hon. A. W. Roebuck: Honourable senators, my friend has asked a question concerning the deposit of \$50 for security of costs. I may be wrong, but as I understand it the costs are the fees of the solicitors who represent the Crown in such cases. For instance, if I sue the Crown in the Exchequer Court, I am required to put up \$50 costs, and if I lose the case the officials of the Department of Justice put the \$50 in their pockets. Is that not correct? That I understand is what takes place.

Hon. Mr. Beaubien: The solicitors?

Hon. Mr. Roebuck: The solicitors or counsel who appear for the Crown tax their costs against my client, and the \$50 deposit pays their costs.

Hon. Mr. Hugessen: To the extent that that is possible.

Hon. Mr. Roebuck: To the extent that they are allowed costs. Usually the \$50 is eaten up, and some more besides. On the other hand, if my client brings an action in the

Exchequer Court and succeeds, does he tax costs against the Crown?

Hon. Mr. Leger: No.

Hon. Mr. Roebuck: I think not. I do not think the Crown pays costs in the Exchequer Court.

The bill that is before us is for the modernizing of the Exchequer Court Act. My friend is quite right in saying that some consideration should be given to the matter of the \$50 deposit. The Exchequer Court should be on the same basis and should operate in the same way as all other courts. For instance, I can take a case before the Supreme Court of Ontario without making a deposit of any amount. I merely pay \$2.50 to issue a writ.

Hon. Mr. Hugessen: But not to appeal, surely.

Hon. Mr. Roebuck: Yes, I can go to the Appeal Court in the province of Ontario without posting any security for costs.

Hon. Mr. Farris: Of course an application can be made requiring you to put up security for costs.

Hon. Mr. Roebuck: Only when the defendant is out of the jurisdiction, or there are some special reasons.

Hon. Mr. Farris: That is not so in the other provinces.

Hon. Mr. Leger: It is so in New Brunswick. Only where the party is out of the jurisdiction is security for costs granted.

Hon. Mr. Roebuck: I am fairly sure of my ground in saying that security for costs is not ordered within the province of Ontario.

Hon. Mr. Horner: If the person is out of the jurisdiction?

Hon. Mr. Roebuck: Oh, if he is out of the jurisdiction, that is another matter. That constitutes a special reason for giving security. Usually in an appeal to the Supreme Court of Canada application is made on behalf of the respondent that the appellant give security for costs, and ordinarily it is awarded in appeals to the Supreme Court of Canada from judgments of the Supreme Court of Ontario. But this is not a case of appeal at all; it has to do with the original trial of the action.

Hon. Mr. Hugessen: I am afraid I cannot have explained the matter with sufficient clearness. What I was dealing with was appeals from a judgment of the Exchequer Court to the Supreme Court.

Hon. Mr. Roebuck: I was wrong, then.

The motion was agreed to, and the bill was read the second time.