

Bill. It was only printed and distributed yesterday by mistake, and I have had no chance of considering its terms.

Order allowed to stand.

EXCHEQUER COURT ACT AMENDMENT.

Hon. CHARLES FITZPATRICK (Minister of Justice) moved the third reading of Bill (No. 37) to amend the Exchequer Court Act. He said: This is the Act which extends the right of appeal so far as the government is concerned to enable us to take an appeal in any case whatever the amount involved may be.

Mr. McCARTHY. Has the subject the same right?

Mr. FITZPATRICK. No.

Mr. McCARTHY. Why not?

Mr. R. L. BORDEN. I would like to ask the Minister of Justice (Mr. Fitzpatrick) why the Crown should have the right of appeal while the subject has not that right? It seems to me a rather unusual practice. Of course the prerogative of the Crown extends so as to give the Crown a great many privileges to which the subject is not entitled, but the trend of modern legislation has been to place the Crown and the subject altogether on an equality in regard to matters of this kind. For example, the Crown could at one time exact costs while the subject was not entitled to exact costs, but I think the trend of the decisions in modern times is that where the Crown is entitled to receive costs, it shall pay costs, and where it is not entitled to receive costs it shall not have to pay costs. If the Crown is to have a right to appeal why should not the subject have the right to appeal in cases in the Exchequer court or anywhere else?

Mr. FITZPATRICK. My hon. friend is, of course, aware that the right of the subject to sue is only by exception. The subject now has practically the right to bring the Crown before the courts. We have a practice in Ottawa that does not, I think, exist elsewhere; a fiat is granted to any person, and any person who has a claim against the Crown has a right to exercise it. The result is that we are very frequently compelled to defend ourselves in suits in which the subject has a very doubtful claim indeed, and the amount of costs thus incurred is sometimes very large. The point now is that so far as concerns the Exchequer Court which is of somewhat recent creation, the practice is not very well settled, and it frequently happens that points come up in a comparatively trivial suit which ought to be decided in a definite manner by the Supreme Court, so that we may know the practice and be in a position to decide whether or not it is proper to introduce legislation. I must confess that I can see no

Mr. FITZPATRICK.

great hardship in the present proposal. My experience in practice at Ottawa has been that in cases before the Exchequer Court, the Crown more frequently receives the short end and does not very often receive much sympathy from the courts. It is desirable that we should have an opportunity of having questions of principle settled by resort to a final court. I do not think there is much hardship in this matter, because in all cases where more than \$500 is involved there is an appeal on both sides. But there may be large principles involved in cases over very small amounts, perhaps not exceeding \$100 or \$200. The principle involved in such a case may apply to a dozen cases. I have one case in my mind now where there are fifty-two cases depending on a judgment in a matter in which the amount involved does not exceed \$500, and I think it is desirable in the interest of the Crown, in the interest of the government, that we should have an opportunity of having these things settled finally by judgment of the Supreme Court.

Mr. CASGRAIN. It seems to me that all these questions of prerogative have been vastly changed in the last few years, by reason of the change in the relations of the Crown to the subject. When these prerogatives were established, the Crown had not gone into the business of running railways and of doing a great many other things which are done now, and it seems to me that instead of increasing the prerogatives of the Crown and the privileges which the Crown possesses before all the courts in this country and in England, the tendency should be to limit them as much as possible. I really do not see now why a man who is injured on a railway or on some public work carried on by the Crown, should be obliged to go to the Governor in Council and ask for permission to sue the Crown.

Mr. LEMIEUX. Why?

Mr. CASGRAIN. Because if the Crown goes into the business of running the railways and owning steamships, it becomes more like a common subject and in its relations to the common subject, should have no greater privilege extended to it than the privileges which are extended to the subject. I am aware of many instances in which the fiat has been withheld without any justification whatever, but I do not say that such has been done by this government.

Mr. R. L. BORDEN. It has.

Mr. CASGRAIN. Probably, but I am not personally aware of it. It seems to me that it is placing the subject in a disadvantageous position, when you give the crown the right to appeal, and deprive him of that right, so that the Crown can carry on litigation at the expense of the subject. The Crown should not be permitted to appeal simply for the purpose of getting questions of principle decided by the highest