

No case was cited on the point of amendment, nor have I found any, except that of *Smylie v. The Queen*, 27 A. R. 172, where an amendment was granted by the Court of Appeal quantum valeat. No mention of this is made in the judgment of the trial Judge in 31 O. R. 202, and I have not been able to see a copy of the appeal book. But counsel for the Crown in that case may not have objected to the amendment, which only asked alternative relief by way of damages in case the suppliants were held to be entitled to the relief prayed for, and the Crown was unwilling to renew the licenses in the old form. It was not sought in that case to vary the statement of what is *prima facie* a material fact, as is asked here. The present motion is opposed except on terms which the suppliants decline to accept. I am, therefore, of opinion that it cannot be granted for two reasons.

(1) A petition of right has to be verified by affidavit. It would therefore seem to follow that as a condition precedent to entertaining the motion the proposed amendment should be verified in the same way, and the mistake satisfactorily accounted for.

(2) But, however that may be, it seems to be a more serious and indeed a fatal objection that any such amendment should be first submitted to the Lieutenant-Governor and approved of by him. The granting of the necessary fiat is an act of grace (Clode, p. 165, and cases cited.) Without this no further proceedings can be taken. If, therefore, a different case is sought to be set up, it is surely necessary that the permission of the Crown to proceed thereon should be granted.

This would sufficiently appear from the consent of the counsel for the Crown, which in such a case should be recited in the order.

For these reasons I am of opinion that the Rules as to amendments are not applicable to the present motion, as the Court has no power to amend a petition of right without the consent of the Crown.

The question is one of some novelty and importance, and the costs may be in the cause. . . .