

a multiplication of vexatious appeals. He wishes to prevent this situation: A man pretends that the patentee has not provided for the reasonable requirements of the public; he brings a petition before the commissioner, who finds he has no *prima facie* case at all and turns him away. Now the suggestion of the hon. member for South Simcoe is that that man should be put in precisely the same position as is the man in connection with whose application a *prima facie* case has been held to have been made out by the commissioner and that the applicant who has been turned down by him should have the right to go to the Supreme Court also. That is what I understand is the position taken by my hon. friend.

Mr. BOYS: To the Exchequer Court.

Mr. McMASTER: Yes, I mean the Exchequer Court. Would it not be possible to meet the desires of the member for South Simcoe and the desires of the minister by making this provision? Where the commissioner thinks a *prima facie* case is made out he refers the matter to the Exchequer Court, which is equipped to deal with it. I see force in the argument that we do not want to establish a court that will go into the whole matter; it might involve the commissioner in months of work and the office might more or less be retarded by the fact that he was tied up on the case just as our courts get tied up with cases lasting weeks; and that where a *prima facie* case is made out the commissioner transmits the matter to the Exchequer Court immediately. If the commissioner does not believe that a *prima facie* case is made out, and rejects the application, I would not want to deprive the applicant of any recourse whatsoever. But I would say to him: You have failed to make out a *prima facie* case; you may go to the Exchequer Court, but you must go on such terms as will assure your opponent that you are not resorting to that court vexatiously. Therefore I would suggest this course to the minister: That where an applicant has had application turned down by the commissioner, and wishes to go to the Exchequer Court, he should put up security for the costs that will be involved in his application. That will meet the views of the hon. member for South Simcoe. It will not put the commissioner in the position where he can arbitrarily turn down an application which perhaps has more merit in it than he thinks, but it will allow the applicant, on giving security, to go to the Exchequer Court. At the same time the fact that the applicant whose application

has been turned down has to put up security will discourage people from making frivolous applications before the commissioner and before the Exchequer Court.

Mr. BOYS: I am very slightly convinced perhaps in one connection by the remarks of the member for Centre Toronto (Mr. Bristol). I can conceive that occasionally a case of a highly technical nature might arise which would lead perhaps to a prolonged investigation and would require expert testimony. As a way out of the difficulty would it be improper to make this suggestion: While you put upon the commissioner the responsibility I have already indicated, you might add a proviso that in cases of a highly technical or unusually difficult nature the commissioner could, with the approval of the minister, refer them to the Exchequer Court. The effect of such a proviso would be that in all ordinary cases the commissioner would give a quick decision and, I venture to say, nearly always a satisfactory decision, at very little cost and with very little delay; but when he finds himself involved in some of the highly technical cases suggested, he will have the power to say, "This is a case of a highly technical nature and unusual difficulty and, with the approval of the minister, I shall refer it to the Exchequer Court". This would protect everybody; it would protect the public and it would protect the patentee, and besides this protection the costs in the majority of the cases will be kept down to the minimum, there being no necessity for an extra staff in the department. I think this would meet the objections advanced by the member for Centre Toronto. If I were permitted I could very easily add such a proviso to my amendment. Possibly it is a matter of such importance that the minister will let the section stand and so afford us sufficient time to draft what is necessary by way of amendment. I think this would save time in the end.

Mr. ROBB: Stands.

Mr. BRISTOL: Before this is done I would suggest to my hon. friend who has just sat down (Mr. Boys) consideration of this aspect: Whether instead of doing what he suggests where the commissioner said no *prima facie* case had been made out, it would not be better to let the applicant appeal to the Exchequer Court provided the Exchequer Court gave leave. He really gets a hearing then before the commissioner, and if he succeeds, then he should; if he does not succeed, then the thing is ended.