

and this enables the court having general authority over such matters, to make a general order, prescribing what amount of security shall be given as a preliminary to a motion to quash the conviction.

Mr. CAMERON (Huron). Does the hon. gentleman know that it is the law now that the court shall have authority to make the rules fixing the amount of security, as one of the conditions upon which the application shall be made? If this is not the law now with regard to cases of *certiorari*, I do not think it would impose any greater hardship upon applicants than is now imposed on them by the law. The effect of it will be that a poor man, however much wronged or injured he may be, cannot get redress unless he enters into security for the payment of costs, and that sometimes may be very difficult. In almost every case of litigation, every subject of Her Majesty has the right to invoke the power of the court for the redress of wrong, without giving security for the costs. Now, why should the man who believes himself to be laboring under an injustice be compelled to give security for the costs any more than the man who sues to recover a debt? It simply places the poor man at a disadvantage as compared with the rich man who is in a better position to get security than the poor man; it is practically discriminating in favor of the rich and against the poor. I do not recollect, though I am under the impression that you require to give security under the present law, in an application for *certiorari*, and if the law is such I do not think the hon. gentleman should impose that burden on the litigants seeking redress.

Mr. THOMPSON (Antigonish). It is the law now. The hon. gentleman will find it in 5 George II, chap. 19, section 2, which in two cases has been decided to be in force in Ontario. I stated a few moments ago that it was considered to be more convenient to have that provision embodied in the face of the Act, instead of its having the force of law merely by the circumstance of its being in an English Statute. When we embody it in the Act, modified as I propose to modify it by having it subject to the order-making power of the court, the Act will show the whole law on the subject of *certiorari* and motions to quash convictions. It does not, however, make any radical change in the law.

Mr. CAMERON (Huron). Does that law apply to all classes of cases? The hon. member for North Simcoe (Mr. McCarthy), who is an authority in cases of that kind, intimated to the House the other day that security for the costs was not a condition to the obtaining of a writ of *certiorari*. My impression was the other way, but that hon. gentleman having so stated, I have some doubts on the subject, and especially as to whether it applies to all cases of application for *certiorari*. Take, for instance, the case of an application made under the Scott Act, where an application can be made.

Mr. THOMPSON (Antigonish). I think it is of universal application as to convictions under the order of a justice of the peace. While the Act is in force in Ontario, however, under the English law, it has not been recognised as being in force in some, or perhaps any of the other Provinces. I think it is better to have it uniform, especially as we are not imposing any undue stringency, but are simply putting the law on the subject on the face of the Act, so that magistrates may be made aware of their right to take security in such cases. There is, no doubt, a good deal in the observation of the hon. gentleman, that it may seem hard on litigants to require them to give security for costs. Still, we know

Mr. THOMPSON (Antigonish).

that a writ of *certiorari* is a writ easily obtained, and it will always be used as a means of defeating an order or conviction, unless we impose some restraint like this, which establishes the good faith, and requires a fair reason for litigating further, which, no doubt, the suitor would be sure to have before he would undertake to give security for costs.

Mr. CAMERON (Huron). The hon. gentleman provides that upon an application to quash a conviction by a writ of *certiorari*, the court shall have power to amend the conviction both in matters of form and substance. It is only in a case where there is a real wrong to be righted that there is much likelihood of an application being made for a writ of *certiorari*. As the law stood before, there was no power to amend; but under this Bill, power to amend is given, and convictions will not be quashed unless they are not sustained by the evidence. That being the case, I do not see the necessity of imposing additional hardship or restrictions upon appellants by compelling them to give security for costs.

Mr. THOMPSON (Antigonish). That is quite true; but the argument only reaches this point, that applications to quash convictions under this Bill are much less likely to succeed, but not less likely to be taken; and the fact that we have made it more difficult for them to succeed, is all the more reason why we should require them to give security.

Mr. LISTER. The amount of the security is not fixed by this section. I think under the English Statute the amount of the security is put at £40 sterling. It is possible under this Act that the courts may make an order directing that security shall be given for a greater sum. I think this section should fix a limit of the amount of security required. With regard to the proceedings to quash a conviction by writ of *certiorari*, after a little experience I can say that they are somewhat more complicated, especially in the Province of Ontario, than the hon. gentleman gives us to understand. I think litigants should be protected to that extent, that the maximum amount of the security should be fixed by the Statute.

Mr. THOMPSON (Antigonish). I would suggest that it be left to the judges to fix the amount by a general order. It would be difficult for us to fix an amount that would be proper for the different Provinces. There would probably be a difference as to the court in which the motion would be made. The costs incurred would probably be greater in the Province of Ontario than in the Maritime Provinces. My amendment gives power to the court which entertains the motion to quash a conviction, to make a general order prescribing the security, and how the motion shall be made.

Mr. LISTER. I understand that is the intention, but my suggestion is that the courts should not have power to make an order for a greater amount than the law now prescribes.

Mr. LANDERKIN. With regard to the principle of this provision, something may be said both for and against it; but in the practical application of the principle I think it will probably be found to be correct. A case came under my notice this winter of a magistrate having been harassed for having discharged his duty fairly and honestly. An action arose in a town by reason of some boys driving furiously and running against a woman. The husband of the woman brought an action against the boys for furious driving. The magistrate issued a warrant for their arrest. They were arrested and fined, and the father of one of the boys brought an action against the magistrate, as well as the man who had laid the information, and