

be called out or not. That is not the law at present.

Notwithstanding what has been said by the Minister of Justice, it does seem to me that there may be some confusion under this statute. For example, you have a permanent force in the province of New Brunswick, and riots should take place in the city of St. John and a requisition were made on the senior officer in that city, is he to call out the permanent force from Fredericton or the force under his command at St. John? The Minister of Justice says that the statute means the district officer commanding, or in case of his absence the senior officer of the active militia present. It does not quite say that. It says:

The district officer commanding or the senior officer of the active militia present at any locality.

Now, to whom is the requisition to be addressed? I know that practical difficulties have arisen under this statute because I was professionally engaged in a suit in connection with the calling out of the militia, and I think my hon. friend the Minister of Justice (Hon. Mr. Fitzpatrick), should give his attention to this section, and also to one subsequent section. A very serious question arises under the provisions of the statute which enables a suit to be brought by the commanding officer. In one case the commanding officer happened to die after the suit was brought. Finally a divided court held that his administrator could maintain the action, but there was a great deal of difference of opinion and two very able judges dissented. Then supposing the commanding officer should die before the suit was brought, a difficulty would be presented which I do not think would be covered by that decision of the Supreme Court of Canada. After all the suit is brought on behalf of the government, as is shown by the fact that there is a provision that the government may advance the pay and allowances pending the litigation. Would it not be better that these suits should be brought in the name of the Crown, or that some provision should be made whereby difficulties such as these should not be raised in the courts when these payments are demanded. It would also seem to me that we might very well guard against an unwise use of this statute by providing a form which must be signed by the persons who call out the militia. The order calling out the militia is prepared by three justices of the peace or by the mayor, warden or other municipal officers. They use their own language in the requisition and great difficulty has arisen in more than one case as to whether or not the terms of the requisition so drawn were in compliance with the terms of the statute. It would seem to me desirable to provide by statute a form which would acquaint those who sign it that they are undertaking a matter of serious import. No

Mr. BORDEN (Halifax).

question could afterwards be raised as to the legality of a form so signed. There are a few matters of this kind which I think might well be taken into the consideration of the department, pending the full discussion of the principle of the Bill which I shall not touch upon now.

Mr. TARTE. I desire to call attention to a case of undoubted hardship that has been called to my notice. During the unfortunate strike in Montreal last year some labour associations protested to me against the calling out of the militia in case of strikes. Some of them represented to me that when they were on strike, their friends and even their brothers, who were members of the militia, were called upon to act against them. Could not my hon. friend (Sir Frederick Borden) find some means of preventing the brothers and friends of men who were on strike acting on the militia in such cases? This is a matter which I think is worthy of consideration.

Mr. SAM. HUGHES. I would suggest to the minister that section 36 would be just as strong if the words 'the district officer commanding' were omitted, because the district officer commanding would be the senior officer present. In the case brought up by my leader (Mr. R. L. Borden) the district officer commanding the corps at Fredericton, if living in the city of St. John, under the interpretation of the Militia Act could not order the permanent corps at Fredericton to go to St. John but must take the St. John militia.

Mr. FITZPATRICK. The points raised by my hon. friend (Mr. R. L. Borden) are worthy of consideration. As to the person in whose name the suit is to be brought that is an existing difficulty that can be dealt with. With respect to the form to be used by those acting on behalf of the civil power to call the militia to their aid, the difficulty would be to draft a form that would meet all the cases likely to occur. I must confess that I am always very anxious to allow those who have to exercise discretion in such difficult cases to have the widest possible latitude. The matter is worthy of consideration and I shall endeavour with the permission of my hon. friend (Sir Frederick Borden) to see how far such a form can be prepared. The hon. member for St. Mary's division (Mr. Tarte) has mentioned a case of extreme hardship. These are cases that constantly occur and my hon. friend will remember that in 1878 just such cases as he indicates occurred, but I cannot, for the present at all events, see how it is possible to avoid them. Of necessity our active militia are recruited more or less from the ranks of the labouring classes, and it necessarily occurs, particularly in labour riots, that those who are engaged in the riots are members of the labouring classes. So that unless we want to restrict the field