

sue for tort also providing the method of procedure which shall be followed in enforcing the right. I can also understand the minister's hesitancy in singling out this particular class of case, to the exclusion of others. But that unwillingness or doubt is answered by the fact that in 1910 a former government enacted the section to which reference has been made, in consequence of the Armstrong case. Parliament having thus conferred jurisdiction upon the exchequer court—not an ordinary court as was at first suggested, but the exchequer court—it would be a reasonable and proper thing to say that for actions of tort this corporation, which we have deprived of the obligation incident to action being brought against it, could be sued just as we have declared that the Canadian National Railways could be sued.

My hon. friend and colleague fully appreciates the difficulty, but there is not the slightest difficulty in the suggestion as he put it to-night. I will put it in this way: A corporation deprived of the obligation of being sued, because it is made an agent of the crown by the statute creating it, should not be placed in a position where it is not liable for negligence in connection with a railway, when the liability attaches to those who operate the very facilities that now are under the control of the corporation only perhaps a few feet away. I think, instead of our waiting for a general law, this might be a proper case in which to exercise our jurisdiction as we did in 1910 in the railway case, and it would be a step forward in creating an obligation that is co-extensive with a right. That is, if we have limited the power of this corporation, as we have done, then let us at least say that by so doing, having conferred extraordinary rights upon it with respect to taxation and matters of that kind, we are not going to put the unfortunate person injured by the operation of the railway, or a workman injured by the operation of the property, in a position different from the one he would be in if he worked for another corporation which was not an agent of the crown and had not these limitations imposed upon it. If the government has made up its mind that the legislation should not be enacted, then of course it is idle further to waste time in discussion. But at least it is our duty to place our position on record as concisely as possible.

Mr. LAPOINTE (Quebec East): I am grateful to my right hon. friend for his remarks, because they will help when we are to arrive at a decision upon what course is to be followed in connection with general legis-

[Mr. Bennett.]

lation concerning the matter. But I am afraid the course suggested does not lessen the present difficulty. My right hon. friend seems to be of opinion that all these actions should be kept before the exchequer court.

Mr. BENNETT: I said that could be done.

Mr. LAPOINTE (Quebec East): Yes. If they are retained there, then the only thing that will remain is the petition of right, because at the present time there is no doubt—and in this I differ from the hon. member for St. Lawrence-St. George—that the recourse exists under section 19 of the Exchequer Court Act. I admit that there has been for a time a difference of opinion among members of the judiciary, but the decisions of 1934 and 1935 are to the effect that public works are broad enough to include what my hon. friend has in mind, and that the definition of the Expropriation Act should be accepted.

With regard to the Canadian National Railways my hon. friends say: Well, the Canadian National Railways can be sued before all courts. Yes, but the exception was made and kept with regard to those sections of the railway which were the property of the people of Canada, when the absorption or amalgamation was brought about.

Mr. CAHAN: They are all the property of Canada, but three of them are vested in His Majesty.

Mr. LAPOINTE (Quebec East): Yes; but my hon. friend knows, too, that when the Grand Trunk became the property of Canada through special legislation it was private property at the time and it was thought better to leave to that company the law under which it had operated before. But care was taken not to include the Intercolonial railway and the Prince Edward Island railway, railways which had always been the public property of Canada, and even now, except in connection with the small claims to which the hon. member referred, one has to apply for a petition of right. So I believe the whole matter will have to be considered as a whole, and revised. I repeat that so far as I am concerned I share the view that this procedure should be changed. There is not the same reason to-day as existed in former days for the retention of this special procedure with regard to crown litigation.

Mr. BENNETT: The crown was not engaged in business then.