

But there is no express provision that the board may be sued in tort. Therefore a claimant who suffers damage from wrongful acts of the board, its officials or employees, is left in doubt as to whether he shall proceed by action against the board or by petition of right against the crown. On the second reading of the bill I suggested that such doubts should be removed, and in the committee I moved the amendment which I have just read, for the purpose of removing those doubts.

It is established by many judicial decisions which are binding upon the courts of this country that an action in tort does not lie against the crown, except under special statutory authority. In the memorandum prepared by the Deputy Minister of Justice, dated April 27, which the minister laid upon the table of the house at my request, I find that the deputy minister reports as follows:

In the debate on the second reading I notice that Mr. Cahan raised the question as to whether or not this harbour board as an agent of the crown would be liable in case of tort. As to this I may say that a servant or agent of the crown cannot be sued in tort with or without incorporation for a limited purpose if he is merely given the capacity to sue and be sued. In other words, such a provision does not give a right of action against the servant or agent of the crown for any act done by him as such servant or agent.

Then, after reciting certain decisions, the deputy minister proceeds:

The decisive question in all these cases is whether under the terms of the legislation the relationship of principal and agent or of master and servant exists as between the crown and the corporate body concerned, and it is necessary in this connection to inquire whether the purposes for which the corporate body has been created are such as are required and created by the government of the country and, therefore, are to be deemed part of the use and service of the crown.

But no doubt is left in this bill as to the relationship of this harbours board with the crown, inasmuch as section 3, subsection 2, provides that:

(2) The board shall be a body corporate and politic and be and be deemed to be, for all the purposes of this act, the agent of His Majesty the King in his right of the Dominion of Canada.

And by section 10, subsection 2, it is provided that all property acquired or held by the board shall be vested in His Majesty in his right of the Dominion of Canada.

I think it is clear, therefore, that this national harbours board is not liable to any action in tort, such as for negligence, nuisance and the like, except possibly on a petition of right under the very much restricted provision of section 19(c) of the Exchequer Court Act.

[Mr. Cahan.]

In recent years we have made progress in this respect. A few years ago it was asserted that the king could do no wrong, and without limitation or restriction no action in tort could be brought against the crown, because of the royal prerogative. But in connection with the government railways, which then did not comprise the Canadian National Railways, in 1910, by chapter 26 of the statutes of that year, a limited right of action was given against the government railways, but the amount of the claim was limited to \$200.

In 1913, by chapter 20, section 1, of the statutes of that year, parliament gave a limited right of action against the government railways, claims being limited to \$500, and the same provision appears now as part of chapter 173 of the revised statutes, the act relating to government railways. Section 86 of that statute reads:

86. Subject as hereinafter provided, any claim against His Majesty arising out of the operation of the government railways, and not exceeding in amount the sum of \$500, for damages alleged to be caused by negligence, or made payable by statute, may be sued for and prosecuted by action, suit or other proceeding in any provincial court having jurisdiction to the said amount over like claims between subjects.

(2) Any such action, suit or other proceeding may be commenced and prosecuted to judgment in the same manner and subject to the same rules of practice and procedure and to the same right of appeal as nearly as may be as in like cases between subjects.

(3) The said court shall have the same jurisdiction to order or adjudge the payment of costs either by plaintiff or defendant as in like cases in the said court between subjects.

Later there was a decision, *The King v. Armstrong*, reported in 40 S.C.R. 229, decided in 1908. An action arose to recover damages from the crown in consequence of a broken switch at a siding on the Intercolonial railway. Action was brought by the widow of the deceased, and in that case a decision was given for the claimant. But among those practising the legal profession in the dominion considerable doubt arose as to the application of that judgment, and so in the year 1910 the Exchequer Court Act was amended by a statute enacted as chapter 19 of the statutes of 1910, to include within the jurisdiction of the Exchequer Court of Canada the following:

19. (f) Every claim against the crown arising out of any death or injury or loss to the person or to property caused by the negligence of any officer or servant of the crown while acting within the scope of his duties or employment upon, in or about the construction, maintenance or operation of the Intercolonial railway or the Prince Edward Island railway.