

harbours board being sued in tort, as, for instance, for nuisance or negligence. It was with a view to having that clarified, and to make it clear that the board can be sued in tort, although it is declared by the bill to be the agent of the crown, that this amendment was suggested.

Mr. FINN: May I ask, is it only in reference to actions in tort? My hon. friend admits that action is possible by fiat being granted by the attorney general or the Minister of Justice at the present time?

Mr. CAHAN: I think it is a matter of grave doubt. It will depend upon the nature and locus of the negligence complained of.

Mr. FINN: That could be defined only in the statement of claim.

Mr. CAHAN: If the hon. gentleman will read the opinion of the Deputy Minister of Justice to which I referred it will be quite clear to his mind, if he accepts the statement of the deputy minister, which I think may be accepted without doubt, that under this bill no action in tort can be brought against the harbours board. I was suggesting that provision should be made that such action could be brought. In other words, no such action will now lie against the board.

Mr. FINN: Taking for granted that no action will lie, I accept that although I have not read the opinion of the deputy minister; I believe his judgment is superior to mine. Unfortunately I have devoted more time to politics than to law, and therefore I am not as good a lawyer as I might have been. But I would like to ask my hon. friend: If the statement he makes is correct that there is doubt as to the right of bringing action for a wrong, which is a tort, does it not lie within the jurisdiction of the Minister of Justice or Attorney General of Canada to grant a fiat to permit a writ to issue for that purpose?

Mr. CAHAN: Unless there is a clear statutory provision authorizing such a claim by petition of right it is not within the discretion of the Minister of Justice or of the governor in council to grant a fiat on such a petition. There must be statutory authority somewhere.

Mr. BENNETT: The Minister of Justice I think overlooks the fact that in England they have no exchequer court. We have an exchequer court in Canada and my colleague has pointed out that special legislation has been enacted conferring jurisdiction upon that court to deal with certain claims which may arise against the Canadian National Railways. Now, is that not the very sort of thing which

should be done with respect to actions in tort against this board? It would seem to me by analogy that is the very thing which should be done. The reason the English draft bill was so long was because it had to provide an entirely new code of procedure for dealing with actions against the crown. Such procedure has not heretofore been provided since the abolition of the old court of exchequer chamber. The proceedings contemplated under our Exchequer Court Act in actions brought in that court against the Canadian National Railways are not actions triable by a jury, but actions that are tried in consequence of the power being conferred upon that court to consider them. And as that court has its own rules and regulations it is not necessary to have a long bill concerning the procedure in that court.

I am not going over the ground that I went over the other evening when I gave an illustration in which I referred to a man working on a dock, and crossing over to a railway. In one case there was liability, and in the other there was not. There was action against the shipping company but no action against the operators of the railway. But I just put this case to you, Mr. Chairman, and then I shall have concluded all I have to say:

1. We have created a corporation for the purpose of dealing with the harbours. Nominally that corporation would be liable to action, because it is one of the implied powers of a corporation to sue and be sued. That is a statutory provision.

2. However we have said that that corporation is the agent of the crown, and as a consequence of that declaration the deputy minister has given the opinion that no action for tort would lie against the board.

3. We having deprived the board of the ordinary implied powers of a corporation, by reason of declaring it to be an agent of the crown, it would be nothing more than right or proper that the law, in view of all the minister has said, should confer jurisdiction upon our exchequer court, to determine actions regarding persons or property to the same extent, in the same way, by the same form of procedure and in the same limitations as parliament, in consequence of the Armstrong case, conferred upon the exchequer court by statute in 1910. That is all I desire to say.

I can readily understand the minister not desiring to enact a general law at this time in view of the fact that if he does so he has to make a choice between conferring an open power upon the exchequer court over existing rules and regulations covering procedure, and following the British proposal and by a legislative act which confers the jurisdiction to