

Crown Liability

Mr. Diefenbaker: Mr. Chairman, a little while ago the minister said that he was taking up the role of a professor in law school. I thought his explanation of the law of negligence revealed him to be an outstanding potential aspirant for such a position because he has covered with great clarity an extremely difficult subject. I now want to ask him another question. I am wondering whether or not—

Mr. Graydon: You are going to make him a judge before long.

Mr. Diefenbaker: Well, things like that have happened before.

Mr. Graydon: It could happen again.

Mr. Diefenbaker: I wanted to ask him this question. Is there anything in the Post Office Act or in the defence act that, under the Post Office Act, denies an action for failure to transmit letters; or under the defence act, where army, navy, or air force officers commit acts of negligence toward members of the forces, specifically exempts the crown from action? The minister knows what I have in mind.

Mr. Garson: I would not like to commit myself just offhand to a statement as to the other acts which my hon. friend has named. In the case of the Post Office Act my recollection is that there is a provision of registration and insurance whereby a person sending a letter can at a very nominal cost protect himself against the loss of any letter, and accompanied with that is an absence of liability upon the post office for the safe delivery of letters which are not registered and not insured.

Mr. Diefenbaker: It is very important that the minister should be fully aware of the regulation in this regard; otherwise the door will be open under this legislation to a multitude of possible actions. In the act passed in Britain there is an exception of the post office and also of the armed forces. I have before me the *Canadian Bar Review* of 1948. There is an article by Sir Thomas Barnes, treasury solicitor, and he goes on to point out that under the English act the crown and any servant of the crown is protected from any liability in respect of the carriage of ordinary mails. Later on he says:

Unless, therefore, some provision exempting the crown from liability existed, a multitude of claims might well be made in respect of loss of mails or delay in their carriage or in the transmission of messages.

That is carriage by government telegraphs. A little later on he says there is also the exemption of claims by one member of the armed forces of the crown against another. In the training and maintenance of the

armed forces the crown and its officers have to undertake duties which, if done by a private individual, would not only be unlawful but might also be criminal. He gives as examples the use of live ammunition in training the army and the deliberate flying and close formation necessary for training the air force. There is a section that exempts from liability both the crown and any member of the armed forces in respect of death or personal injuries suffered by another member of the armed forces:

(a) When he is on duty and is either killed or injured by the act of another member of the forces while on duty; or

(b) When, although not actually on duty, he is killed or injured by the act of a fellow member of the forces on duty if the event causing the death or injury happens on military premises, or on a ship, aircraft or vehicle used for military purposes;

The British act again exempts the crown and any member of the forces from liability. It is to be observed that that exemption applies only to death or personal injury, and not to the other torts. I have read and re-read this bill, and I am wondering whether or not the matters I have brought to the attention of the minister have been considered. If they have not, the minister is going to be faced with a lot of actions he does not anticipate. For instance, I send a letter in which I accept an offer. If that acceptance arrived in time it would mean in the normal course of events that I would have been able to make a certain sum of money. Owing to the negligence of the post office in transmission, that letter gets put into some out of the way place; and unless that is excepted the crown will find itself in the position where it is going to buy itself a lot of good actions for the litigants, but not so good for the crown.

Then again, in connection with the armed forces in the United Kingdom it was found necessary to particularly exempt the armed forces; otherwise, as was stated in the House of Lords by the Lord Chancellor in a debate some years ago, everyone who survived the battle of Balaklava and who was wounded would have had a right of action, and the beneficiaries of any who lost their lives would have had, under Lord Campbell's act, a right of action. One can think of all the eventualities that might occur in a training camp where live ammunition is used, where musketry training is going on and a live cartridge finds its way into one of the rifles for use. Unless that is excepted, as it is in the United Kingdom, this bill may have much wider consequences than were ever anticipated. That is why I asked particularly whether in the defence act and in the Post Office Act the crown is not liable. The