

2. Because under the present state of the law the Crown cannot be impleaded in the courts without a fiat. This principle constitutes the main impediment in the way of garnishee proceedings. The proposed amendment would in effect amount to the abandonment of this prerogative of the Crown in a limited class of cases. It is most important that the position of the Crown in relation to the courts should not be altered in this respect without full consideration being given to the whole problem of proceedings against the Crown.

As to everything there stated, with the exception of the last sentence, I have no word of dispute to express. Without doubt the three first sentences are correct. The last sentence merely says that if we are going to abandon the prerogative of the Crown in a limited class of cases, it is important that there should be full consideration given to the whole problem. Strictly speaking, I have no objection to that either. Of course we should be careful. In our third amendment we are so extremely careful that we do not give an absolute and final right to anybody. In the ultimate, the Governor in Council is in control. While this is a partial invasion of the historic right of the Crown to refuse to be impleaded, it seemed to the committee, and I am satisfied that it seems to this House, a very advisable invasion; otherwise a section of our population is privileged to do what should be forbidden with the utmost finality—privileged to defy its creditors and refuse to pay its debts. That alone is the reason of the limitation. That distinct reason for this section of the territory of the Crown's prerogative being invaded does not apply to the remainder; and in invading this section of territory the amendment exercises the extremest care.

3. Because the question of recognition by the Crown of voluntary assignments of debts due from the Crown is allied to the subject-matter of the amendment and it is not clear why it should not also be dealt with.

It is clear to me, and I admit, that the question whether the subject who has a debt due him from the Crown in the right of Canada can assign that debt, and thus compel the Crown to pay to somebody else, is allied to the question of the right of garnishment; but it is only allied and does not need to be considered immediately with that question. Even if it did have to be considered soon after, I could see nothing in the consideration to cause terror. I do not know of any great difficulty that this consideration would entail. The third reason, while no doubt truthfully expressed, is very weak.

4. Because the proposed amendment only permits garnishee proceedings to be taken in respect of any judgment for or on account of any tax or other debt not sounding in damages. The justification for excluding other judgments is not clear.

Well, if the justification is not clear, my answer to No. 4 is, include the other judgments. We thought that debts sounding in damages against the Crown were somewhat different from simple contract debts, and so included only the one class. If it is going to simplify matters to include debts sounding in damages, I for one should have no objection at all to our doing so.

5. Because the grounds for making a distinction between officers, servants or employees of His Majesty in the right of Canada on the one hand and other persons to whom amounts may from time to time be due from the Crown on the other are not apparent from the proposed legislation, will not be apparent to the public, and require consideration.

At this point I interject the remark that there is no distinction. What is in the mind of the Commons appears in the next sentence.

In particular, it is not clear why such persons as senators, members of the House of Commons, judges, and persons entering into contracts with His Majesty in the right of Canada are excluded from the provisions of the amendment.

I know of no reason for saying that persons entering into contracts with His Majesty in the right of Canada are excluded. If they became creditors, they would be subject to garnishment under amendment No. 3. Now, it is pointed out that if the debts are due from the Crown to senators, members of the House of Commons and judges, they would be garnishable also. It is only fair to add that in my opinion, as respects the indemnity payable to senators and members of the Commons, there is no debt due from the Crown to them; they are not in a position at all analogous, legally, to that of the civil servants; consequently the phrasing of the Bill as it came to us would not include them anyway. I am not expressing the same opinion as to the judges; I think that in this matter they are in just the same class as civil servants. In this respect we are just adopting the language of the Bill itself. If it is the desire to include senators and members of the Commons there would have to be a new Bill to attack the subject in an entirely different way. I have not the least objection to that. I do not know why they should not be subject to garnishment the same as any other persons; but you could not do it along the lines of that measure.

6. Because under the proposed amendment a creditor is put to the expense of obtaining a judgment and garnishee order and forwarding them to the Minister of Finance, but the Min-