

Crown Liability

should be made in this bill in order to clarify the situation. It has been found in Britain, as a result of experience, that very often it is impossible to point out with clarity and with certainty the identity of that person or persons who committed the tort.

I welcome this legislation for one reason: I think it is an example that indicates the danger to the subject when the crown is above the law. About three years ago one of the departments of government, the income tax department, communicated with an insurance company in Winnipeg and advised that company that their agent in the province of Saskatchewan who had borne, and still bears, a very high reputation, was in default in his income tax and was not paying it. As a result that man suffered not only the opprobrium of letters suggesting that he was dishonest, but even removal from his position as a general agent. It was only after a very considerable correspondence had passed between these persons and others that that man, who as a result of that slanderous statement had suffered wrong, was reinstated. Then he had no action; now he has.

And, Mr. Speaker, I can give an example which occurred in the Exchequer Court two or three years ago when the president of that court said that in the event that a member of the administration or of the civil service, acting under a government order, were to order the destruction or to permit the destruction of any goods or property of a citizen, there was no right of action as against the crown. He pointed out that in that case a Canadian subject had suffered damage to the extent, as I remember it, of \$25,000, through the wanton act of a servant of the crown. And yet the crown assumed no responsibility for that. The person who did the wrong was worthless, financially; and the Canadian subject suffered the damage to which I have referred.

I mention these cases because I believe this bill in its present form should be made effective as an instrument to protect Canadian citizens within a period that would go back as far as the limitation of actions in the respective provinces. In other words, it seems unfair to me that those individuals to whom I have just referred should be denied the right of action even today, when this legislation is brought into effect, the wrongful conduct being within a period within which, under the laws of the various provinces, a right of action continues and lives. I do suggest it is rather unfair that under this legislation, late as it is in being introduced, having regard to the fact that the necessity for petitions of right was done

[Mr. Diefenbaker.]

away with in respect of certain matters some years ago, individuals in Canada whose right of action still exists under the limitation acts should be denied proceedings under this act.

Then, next, with regard to the exclusive jurisdiction of the courts, with the exception of county and district courts where damages are asked for in amounts less than a thousand dollars, the right of the individual to sue in the Queen's courts in the various provinces is denied. I think the individual should have the right not to be required to go to the Exchequer Court, and in the various provinces should have the right to take action in the courts of those various provinces. That right is granted, so far as county or district courts are concerned, when damages are restricted to a thousand dollars. Why deny the right in so far as the superior courts are concerned?

Personally, I cannot see any justification for that. Certainly the Queen's superior courts should not be denied within a province jurisdiction that is being granted under legislation to the inferior courts. And I point out this, further, that the action in the Exchequer Court will be much more costly than in the superior courts of the provinces. That has been the experience of the last few years. If the individual is to have the right of recourse to the courts, then when we are establishing equality between the crown and the individual I can see no reason why the individual should be denied recourse to those courts that, ordinarily, would be the courts available for the purpose.

The next point I wish to raise, and which I ask the minister to bring within the ambit of the legislation, is that during the last few months there have been a number of cases in which innocent men have been convicted and appeals have taken place. The appeals have indicated that the accused persons were innocent and had been wrongly convicted.

Only yesterday in Ontario two men, sentenced to die on Tuesday next, on appeal to the court of appeal in Ontario were freed on the ground that there was no evidence upon which a court or jury should have acted. Now, it was not because of a mistake in the law or in direction on the part of the judge, for in that case new trials would have been ordered. But these two men in the shadow of the gallows finally got their case before the appeal court in Ontario because of the action of two young men who undertook to plead their cases. The result is that the court of appeal in Ontario said yesterday that there was not a vestige of evidence against these two convicted men.