

diction to hear and determine the following matters:

(c) every claim against the crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the crown while acting within the scope of his duties or employment upon any public work.

Mr. LAPOINTE (Quebec East): That is right. That is (c) now.

Mr. CAHAN: This is what I took, section 19 (c) of chapter 34 of the revised statute. I was mistaken in referring to it as (e), but I accept the correction, of course. I think very great difficulty arises under that clause, as in order to ascertain what is any public work and what is employment upon a public work we have had the Supreme Court of Canada on one occasion declaring that a public work was a work defined as a public work by the Public Works act or by the Expropriation act, and then we had a different personnel of the Supreme Court of Canada declaring that the definitions of the Expropriation act and of the Public Works act were not sufficient to define with accuracy what is a public work. Then we have again this case arising: At first there was a suggestion that an accident occurring on the Intercolonial was under certain conditions an accident occurring on a public work, that is, that the Intercolonial railway was a public work, and the supreme court decided accordingly, but that decision gave rise to so many protests that the parliament of Canada was asked by the Department of Justice in 1910—I think that was when the hon. gentleman was Minister of Justice—

Mr. LAPOINTE (Quebec East): No.

Mr. CAHAN: No? The parliament of Canada was asked—

Mr. BENNETT: That was in consequence of the Armstrong case.

Mr. CAHAN: Quite so, but there was so much protest against the Armstrong decision that parliament was asked to make a special enactment with regard to the Intercolonial railway and the Prince Edward Island railway. Parliament having made a special enactment with regard to the Intercolonial railway and the Prince Edward Island railway, which are government railways, it left a clear presumption that in clause (c), to which the hon. gentleman refers, the term "public work" did not apply to railways. After that date, while I was practising law, I do not think there was a lawyer in Montreal who was giving attention to those matters who would give a firm opinion that negli-

[Mr. Cahan.]

gence on the harbour railway was negligence upon a public work within the meaning of clause (c). There are very grave difficulties about the matter, I suggest, and there is no reason in the world why every labourer or other person crossing this railway, if he suffers injury from negligence, should be placed in a position where it is very doubtful whether he has a cause of action or not. It is to remove that doubt and confusion that I am suggesting this amendment. If there is to be a general revision I trust it will take place soon, but I cannot see why we should to-day wait upon a general revision any more than in 1910 we declined to wait for a general revision, or in 1919 in connection with the Canadian National Railways, or any more than we declined to wait on several other occasions for a general revision of the Petition of Right Act and of the statutory jurisdiction of the exchequer court.

Mr. FINN: I regret exceedingly that I was not in the committee when the hon. member for St. Lawrence-St. George (Mr. Cahan) proposed his amendment. I have not a copy of the amendment before me, and it seems impossible to get it. For that, of course, the hon. gentleman is not to blame. The port of Halifax is involved in the question raised by my hon. friend. I was not quite able to catch his meaning in his general statement in connection with rights of action, whether or not they would lie without obtaining a fiat by bringing an action against the railway as a public work or by bringing an action as you would against an individual, by simply issuing a writ and serving it. As it seems to be the only way I can find out, I would like to ask the hon. member just what that point is, not to raise any objection or criticism but just in order to be informed. I regret that I was ill and not in the committee the other day when the hon. gentleman brought the matter up.

Mr. CAHAN: The amendment which I proposed and the explanation of it will be found on page 3001 of Hansard.

Mr. FINN: I do not have Hansard before me. I came down to this seat where I am now in order to be able to hear the hon. gentleman.

Mr. CAHAN: I think the issue is clearly stated in the memorandum prepared by the Deputy Minister of Justice and laid upon the table of the house, namely that while this bill states in express terms that the harbours board may make contracts and may sue and be sued, that provision does not permit of the