

*Crown Liability*

period within which notice may be given should be considerably extended beyond the seven days.

**Mr. Garson:** Mr. Chairman, Mr. Driedger, the parliamentary counsel to the Department of Justice, has heard this discussion and I have just suggested that he might retire for a moment and see what he can do to modify that clause in accordance with the suggestion made by my hon. friend.

**Mr. Browne (St. John's West):** Before he retires, Mr. Chairman, I should like to make a suggestion. Heretofore in some workmen's compensation acts a similar provision is made, that notice must be given within seven days. But it is also provided that if a plaintiff can show that the failure to give due notice was not owing to any fault of his or was owing to reasons for which he can give a full and valid explanation, then the court may extend the time in which notice may be given, or at least it is not obliged to throw out the action because the limit of seven days was not observed.

May I add another suggestion and say that I have never heard of any complaint because a period of at least two years—or six years perhaps in some jurisdictions—is allowed to a private person within which to take action for negligence. I therefore believe it is imaginary and theoretical to speak of the damages which might accrue to the crown because a longer period than seven days was allowed.

**The Chairman:** Shall section 4 stand until later?

**Some hon. Members:** Agreed.

Section stands.

Section 5 agreed to.

On section 6—*Proceedings in rem*.

**Mr. Robichaud:** I wish to submit to the minister that, in my opinion, section 6 is taking away a privilege which heretofore was enjoyed by the subject in proceedings under the Exchequer Court Act; because under the provisions of section 6, proceedings in rem are not authorized. In rule 4 of the general rules and orders of the exchequer court, not only were proceedings in rem allowed but there was provision for a joinder of proceedings in rem and proceedings in personam.

I can quite imagine, even under this statute now, a case where as the result of the commission of a tort by a servant of the crown, anything involved in the commission of the offence may be liable to condemnation, as we call it under the exchequer court practice,

[Mr. Fleming.]

and the offender may be liable as well to answer for his act. Why would not this condemnation and claim for damages for an unlawful act of the offender be joined in one and the same action? In other words I cannot understand why, on the one hand, we say in effect that we give the subject more privileges now in an action against the crown because we give him another forum—we give him the privilege of suing in his own province—but on the other hand we whittle away some of the rights which he heretofore enjoyed under the practice of the exchequer court. In this one instance, under the exchequer court practice, the subject had the right to an action in rem and to condemnation of the matter involved. But now under this bill the action in rem is not authorized. I should like to have some explanation from the minister as to the reason why an action in rem is not now authorized under the statute.

**Mr. Garson:** Mr. Chairman, although I am by no means an expert in admiralty law, I understand that the purpose of an action in rem is that the ship or thing itself may be attached by the process so that the damages which are recovered in the lawsuit can be obtained or the payment of them can be exacted before the ship or thing is released. Where a ship is in a harbour, if you do not attach it in rem and it sails away I can understand you will have a hard time collecting judgment. But there is great permanency to the federal crown as compared with a ship of that kind. Therefore there is no purpose in tying up a crown ship by an action in rem because the federal crown will always be able to pay any damages that are charged against it. The purpose of the action in rem therefore never having existed in relation to the federal crown, there is no reason why the action itself should be retained.

**Mr. Robichaud:** Why then, under the present practice in the exchequer court, is this rule 4 still in existence? I will quote it for the record:

## Rule 4

## Joinder in rem and in personam

Where, by reason of the commission of any offence, any thing is liable to condemnation, and the offender is also liable to a penalty, such condemnation and penalty may be enforced and recovered in one and the same proceeding; but no judgment for any such penalty shall be given against any person who has not been served with the information.

That is the present practice of the exchequer court, Mr. Chairman. With the minister I quite admit that the crown is not likely to run away; and I quite admit that