

Crown Liability

That is something which I think is of great importance. For instance, with regard to the law of defamation, are we making the crown in the right of the dominion subject to the provisions of the libel and slander act. There are many other statutes in relation to the whole field of torts that one could enumerate.

It is a much simpler matter for a provincial legislature to enact legislation of this kind. For instance, in the province of Ontario the legislature passed similar legislation in 1952 under the title of "An act respecting proceedings against the crown." Like the bill now before us, it owed its inspiration largely to the legislation in the United Kingdom in 1947. But there is no problem of this kind in the way of a provincial legislature passing laws to make the crown in the right of the province liable for torts of servants of the crown, because you have no problem of two legislative bodies making laws in the same field there; you have no problem of territorial overlapping. It is simply a case of the provincial legislature passing laws in a field in which it has exclusive jurisdiction.

In this dominion field we are in a quite different situation, and it seems to me that what is required here to carry out the intent of the legislation, as I understand that intent, would be a further provision or an amplification of the present provision to make it quite clear that when we legislate to make the crown liable for torts of servants of the crown, we are doing so with respect to each province and making the crown liable for a tort according to the law of the province where the tort was committed.

I am sure this matter must have been considered by the law officers of the crown; but it seems to me, with all due respect to them, that we want some more explicit provision than we have here. I can well foresee that, under a provision of this kind, there will be a good deal of litigation arising, perhaps calling for interpretation in the highest court of the land, as to the extent to which parliament, by a general enactment of this kind, intended to submit the crown in the right of the dominion to legislative enactments of the legislatures of the provinces.

Before I pass on and deal with another point, perhaps the Minister of Justice would like to deal with that question.

Mr. Garson: Mr. Chairman, I am sure I agree with my hon. friend as to the difficulty which is posed in a federal state like Canada in passing a federal law of the character of the one which is now before us. It is more difficult here, for example, than it was in Great Britain which is a unitary state.

[Mr. Fleming.]

It is much more difficult here than it is in the province of Ontario where the provincial legislature, which has jurisdiction to pass the law making the provincial crown liable, has jurisdiction also over property and civil rights, and the one jurisdiction meshes with the other satisfactorily.

In applying ourselves to that problem here we were convinced that we had no authority to attempt to foist upon the provinces a separate federal code of laws with regard to the torts applicable in those cases in which the federal crown was the defendant in the provincial courts or in the exchequer court. Nor could we hope to have the laws of any one province adopted and applied in all the other provinces under this act. The problem really is by apt words to make the crown liable in each province as if it were a private person of full age and capacity.

My hon. friend should not jump to the conclusion that because the draftsman has achieved this in a few words these words are necessarily inadequate, because good draftsmanship at times can be both succinct and accurate, and this is one of the occasions on which I think that is true. Section 3 reads in this way:

The crown—

That is the federal crown, the crown in the interpretation section is defined in this way:

"Crown" means Her Majesty in right of Canada.

In effect, then, clause 3, subclause (1) reads:

Her Majesty in right of Canada is liable in tort for the damages for which, if she were a private person of full age and capacity, she would be liable first in respect of a tort committed by a servant of the crown.

And so on. My hon. friend is a lawyer of some eminence himself. If he can suggest any other wording that would be more apt here I am sure we would be glad to give it consideration; but I think if he will reflect upon the matter he will find that this wording is suitably applicable in every province in which a claim may arise. The purpose of this legislation is to create a liability upon the part of the crown which did not formerly exist. We have created that by saying that the crown shall be liable in Canada as if it were a private person of full age and capacity. To me that means that in any province, whether it be Nova Scotia, New Brunswick, Manitoba or British Columbia, the plaintiff who is seeking a remedy against the crown can treat the crown in that province as if it were a private person of full age and capacity, and proceed to enter suit against the crown; and on the strength of this legislation which states that the crown is liable.