

Crown Liability

details have been received here, the matter will be referred to the Department of Justice for a decision on the responsibility of the crown.

Your sincerely,

C. W. Jackson,
Acting deputy minister.

That letter is dated September 24, 1952. Then on December 18 the solicitors of the injured person, Messrs. Parker, Williams and Varcoe, of Trail, British Columbia, received a letter from Mr. J. Smart, director, Department of Resources and Development. It reads as follows:

Dear Sirs:

Attention: of Mr. John B. Varcoe
Motor Accident—Kootenay national park
Claim of Mr. R. H. Varcoe

The Department of Justice has now handed down a ruling in connection with the claim for damages forwarded on behalf of Mr. R. H. Varcoe to the effect that material submitted does not establish any legal liability on the part of the crown. In the circumstances, it is not proposed to take any further action in connection with the claim submitted.

Then quite recently I wrote to the Minister of Justice (Mr. Garson) and asked what were the reasons for the crown denying liability in connection with this accident. I simply bring this one case to the attention of the minister and the house because, as a layman, I think it gives me an opportunity, when the minister replies, to have a better understanding of what this act really means. I should like the minister to explain what effect this bill will have in circumstances such as those of which I have just spoken; and second, in order that we poor laymen in the audience, shall I say, can understand, I should like him to explain what is the general effect of this legislation upon the subject at this time.

Mr. G. C. Nowlan (Annapolis-Kings): Mr. Speaker, when the resolution on this matter was before the house some weeks ago I raised a question with the Minister of Justice and at that time he suggested that I had better wait until I saw the bill and then I would have my answer. I certainly found the answer there. There are other matters which perhaps could be dealt with in committee; nevertheless since we have been referring to certain specific matters which it is suggested could be dealt with by amendment, I propose to refer to them now.

In the first place I certainly want to agree with what has been said by others. On the principle of this measure, as far as it goes, I am sure we are all in agreement. It is something the country has needed for some considerable time. It is legislation which probably should have been introduced before, and we welcome and support it in so far as it applies.

I agree, however, with the statements which have been made by the hon. member for Gloucester (Mr. Robichaud) as to some of the limitations of this bill. I regret the fact that the right of trial by jury has been limited. I can quite understand that the Minister of Justice, with the responsibilities of his office, and perhaps having some slightly jaundiced suspicion of juries, might feel that if the crown were represented on the one side and a poor layman on the other, the lay jury might be inclined, not to violate their oath of course, but possibly to cast a sympathetic eye upon the litigant and say, "Well, after all, the Dominion of Canada is wealthy and they can afford to pay a substantial amount of money".

That is a risk, of course, which all litigants take when they go into court; nevertheless I do not think it is something, sir, which should infringe or restrict our right to trial by jury. I think we have all seen cases—I know there was one brought in our own court recently—involving a tremendous amount of money, at least to the parties concerned, running into many thousands of dollars, which could not be tried before a jury. It dealt with damages done to a breeder of foxes. He alleged that substantial damages were caused by the flight of government planes over the fox ranches at certain times, and as a result he was deprived of damages which I think possibly he should have received. If that is government policy, then all we can do is suggest that it is a mistaken one, and that this matter should be enlarged to permit of trial by jury.

I do not follow the minister in the fact that he permits trial in provincial courts up to \$1,000 and precludes them above that amount. After all, a thousand dollar item is perhaps a fairly substantial one. If you recognize our county court judges or district court judges as having ability to try these cases—and they have—then I suggest, sir, there is every reason in the world why judges of superior courts should also be recognized and given the right to try all these cases.

It is all right to say, "We now give you the right to bring action in our courts", but for many of our citizens, sir, it is an expensive procedure to go before the Exchequer Court of Canada, and the practice is somewhat different. I am sure there are many lawyers practising in smaller centres who have some diffidence about, and little experience in, dealing with that practice; and it raises real difficulties which I do not think are necessary.

I do say that this legislation, once the principle has been adopted, should permit action