

*Crown Liability*

diminishing one on the authority or on the prestige of the crown. I thought today, as this house paid its homage to the late Queen, how much we in this country owe to the traditions ordinarily incident to the British sovereignty, and as the Prime Minister and the Leader of the Opposition, together with other hon. members, paid their tribute to the late Queen Mary one could not but be deeply impressed not only with the solemnity of the occasion but as well by the unity that binds us together and permits that continuity of succession in the monarchy that gives to our system of government a stability known to no other.

I suggest once more to the minister that, as the effect of this legislation will be to diminish the prerogative of the crown, he give the same consideration he did to the suggestion I raised on a previous occasion that the crown's prerogative cannot be diminished without specific reference to that fact. In other words, before third reading of the measure the minister will, in the British tradition, be required to state that the Queen's pleasure in this matter will be signified, and that the Queen, having been made aware of the purport of this legislation, recommends it to the house.

**Mr. Garson:** I might advise my hon. friend, Mr. Speaker, that in his absence, at the earlier stages of this matter that was signified.

**Mr. Diefenbaker:** It did not appear in the record.

**Mr. Garson:** Yes, it did.

**Mr. Diefenbaker:** Two years ago, when the matter was before the house, I raised it at that time and the minister followed the suggestion. On this occasion the record did not indicate it, and that is the reason why I referred to it in passing.

Furthermore, I should like to say that similar legislation has been passed in four of the provinces. The time may not be far distant when this anachronism will have been entirely removed. My mind goes back to May 28, 1951, on the occasion that legislation was before the house for the removal of fiats in respect of those types of action that the individual could then take against the crown under petition of right. The minister said on that occasion, at page 3481 of *Hansard*:

However, in recent years the expanding role of government has given more prominence to the position of the crown as a litigant in court proceedings. As the role of government has grown its activities have impinged much more frequently upon the citizens at large, and as a result there has been some increase in the volume of litigation between the crown and the subject.

I asked on that occasion whether or not the government would give consideration to permitting action to be taken as against the crown for torts which, as the Minister of Justice has explained, are the wrongs, the nature of which he has outlined in detail. The answer given by the minister on that occasion was that he did not feel that such a suggestion merited attention at the time, and that it was not necessary.

A little later on, on the same occasion, I said this:

I suggest that having gone so far along the road in extending to the subject equality with the king, one thing more remains to be done, namely, to extend the rights of the individual so that there will, in fact, be in the king's court equality of the individual with the king and his representatives.

There has been quite a change in the attitude of the government in this regard in recent years. I go back to 1945, when the hon. member for Eglinton (Mr. Fleming), on December 13 of that year, asked a question, as reported at page 3467 of *Hansard*:

What progress, if any, is being made in the department with reference to the matter of petitions of right? It has been such a sore point for so long, and I think the courts and the bar are looking for some leadership in this matter. I know the Minister of Justice has had this matter brought actively before him for a long time. When may we look for some action in the direction of elimination of petitions of right in actions against the crown?

The minister of justice of that time is the Prime Minister of today and he replied most unequivocally in these words:

Not while I am Minister of Justice.

But the changing circumstances of the years brought about an introduction of this legislation; and while yesterday some question was raised by the Minister of Justice as to the contribution an opposition could make in parliament, may I say this, sir, that throughout the last years over and over again on this side of the house in Her Majesty's loyal opposition we have advocated these changes; and, through the creation of public opinion, final unanimity has been secured and they have been introduced.

Having said that, and having welcomed this legislation, may I make a few suggestions that I believe might be given consideration by the Minister of Justice, particularly when this legislation is in committee. The first is: It is not clearly set forth whom action may be taken against when there is any doubt as to the person or persons who committed negligence or who committed any other tort covered by this legislation. In the United Kingdom provision is made where there is any doubt that civil proceedings may be instituted against the attorney general of the United Kingdom. That same change