

Of course, I am going to vote against my hon. friend's amendment, though with some diffidence, because as I have said I believe that the method is an antiquated one and should be changed, but it should be changed all along the line and not only with respect to a particular part of the public property of Canada. I may say on behalf of my department and, I believe, of the government that before next session we shall prepare a bill which will cover not only the harbours but all public property. We shall try to meet the wishes of my hon. friend, and we believe it would be better to enact general legislation doing away with the petition of right, and going so with respect to all claims for torts and injuries against the crown in future.

The CHAIRMAN: The amendment has not yet been read.

Mr. CAHAN: It was read in the house on Wednesday and debated.

The CHAIRMAN: It has not yet been read by the chair. It is moved by Mr. Cahan:

That section 37 of the bill be amended by adding the following subsections:

(3) That the board shall become and be liable to be sued in tort, and that in the case of any such suit in tort, the same procedure shall apply as that which regulates the conduct of similar cases between subjects, including such matters as discovery, the receiving and paying of costs by the board, and the like.

(4) Service upon the board of any writ or process may be effected by personal service upon an officer or employee of the board at any of the harbours over which the board has jurisdiction.

Mr. CAHAN: There is very little I can add to what I have already said. The Minister of Justice has suggested that there should be a general revision of the law dealing with petitions of right, so as to enable claimants in tort to litigate their rights as against the crown in respect of all activities of all departments of government. I am pleased indeed to learn that the government will undertake the consideration of such a general provision as that, but the very sweeping nature of the provision suggested seems to indicate that it will be years before such a measure is likely to be formulated.

Mr. LAPOINTE (Quebec East): Oh, no.

Mr. CAHAN: In the meantime I would be quite content with some form of amendment such as is made in the Canadian National Railways act, which I read, which provides that actions, suits and other proceedings may be brought against any constituent members of the Canadian National Railways. That as drafted deals with particular activities and is expressed in a very few sentences. I may say

that the draft which I made and proposed as an amendment on this occasion was taken by me almost in toto, if I remember, from a lecture or other dissertation given not long ago by Lord Hewart, who was a member of the committee to which the hon. Minister of Justice has referred. We cannot, however, obtain uniformity in such matters, because in respect of actions for tort the law is not the same in the various provinces of Canada. For instance, as the hon. Minister of Justice will recognize, the law respecting common employment and acts of negligence arising out of common employment is different in Quebec from what it is in the other provinces of Canada, although the right hon. leader of the opposition suggested to me the other day that in one of the western provinces they had adopted a law similar to the civil code of Quebec. We cannot expect uniformity in such proceedings, but I suggest that, as we have proceeded in the case of the Intercolonial railway and the Prince Edward Island railway, as we have proceeded in connection with the Canadian National Railways, we could with clear justification adopt an amendment to this bill which is confined in its application to the National Harbours board as created by this bill. There is grave necessity for such an amendment. I know that it is difficult to rely upon memory after years have elapsed, but there was a time, five or six years ago, when my mind was quite clear in respect to causes of action arising against such a board as the Montreal harbour board. But I think I am right in saying that after this bill is passed any practising lawyer in the province of Quebec will have very considerable difficulty at times in determining whether the right of action exists against the harbour board, or whether the action should be by petition of right, and when counsel comes to consider the question as to whether there is a petition of right in respect of the negligence or nuisance, he will find it very difficult indeed to determine whether, under the restrictive provision of section 19, of chapter 34, revised statutes, clause (e), a right of action exists. I say that without attempting to labour the question.

Mr. LAPOINTE (Quebec East): Has my hon. friend considered 19(c)? I admit that under (f) that will apply only to the railways, but (c) concerns any public work.

Mr. CAHAN: It is (e), is it not? I am referring to (e) of the original act.

Mr. LAPOINTE (Quebec East): Yes, I know, but (c) would cover it.

Mr. CAHAN: Would you please read (c)? Section 19(c) provides that the exchequer court shall have exclusive and original juris-