

Crown Liability

Section agreed to.

Section 2 agreed to.

On section 3—*Liability in tort.*

Mr. Green: When the resolution preceding the bill was under debate on January 23, I asked the minister this question as recorded on page 1271 of *Hansard* for that date:

May I ask the minister whether this measure will cover the case of a person suffering damage before the bill becomes law? For example, suppose a person was injured a year ago by reason of neglect in the care of a government building, would it be possible to sue in respect of that negligence under the new act? I would hope that would be the case. I do not think it would be fair to restrict the right to causes of action which arise after the bill has been passed, provided the causes have not been outlawed by provincial law.

At that time the minister said he would answer when the bill was under debate.

Mr. Garson: The answer is no, Mr. Chairman.

Mr. Green: Why is the bill worded in such a restrictive way? It does seem to me the test should be whether or not the cause of action is outlawed. If a person were injured six months ago and has not yet sued, why should he not have the benefit of the provisions for suing, for example, in the county court?

Mr. Garson: If we examine the nature of the legislation which is being brought forward, it will be seen that what we are doing is creating for the benefit of certain groups of claimants throughout Canada, as of this date, causes of action which formerly did not exist at all. We are doing that at the expense, not of the crown except in a rather unreal sense, but at the expense of the Canadian taxpayer. We have thought that since a line has to be drawn somewhere, the proper way to draw the line is to make the act applicable to those cases which arise after the act has been passed.

My hon. friend says we should go back to the period of limitation which would mean, I presume, since this is a matter of property and civil rights, that it would be governed by the statute of limitations of the various provinces. These would vary from province to province. In view of all the considerations which could be taken into account, we thought the proper way was to do it as indicated in the bill.

Mr. Green: The minister said these are new causes of action provided by the bill, but that is not accurate, is it?

Mr. Garson: Yes, it is accurate.

[Mr. Garson.]

Mr. Green: The bill applies to some causes of action which people had before, but which had to be taken in the exchequer court.

Mr. Garson: No, the causes of action which are covered by this bill are those for which Her Majesty was not previously liable in law.

Mr. Diefenbaker: It includes all torts, so it would include negligence, too.

Mr. Garson: So far as negligence is concerned, there is a continuity there.

Mr. Diefenbaker: A moment ago the minister mentioned that whatever was ordered by the courts to be paid would have to be paid by the people of Canada. Having regard to the number of claims that have been made which could not be considered because of the fact that the crown was not liable, would the minister estimate what this would cost the Canadian people per year? It will be surmise in part, but it will be based also on the number of claims during the last year that, but for the fact there was no liability on the part of the crown except for negligence, would have found their way into the courts.

Mr. Garson: If I may say so, I doubt very much if any estimate could be made for which any claim of accuracy could be established. If one were interested in arriving at an abstract result, the best way would be to compare the experience of the British over the last five years. It is true, as I have said in previous debates on this general subject in this chamber, that the great majority of claims in tort against the crown are based upon negligence. We have no means of knowing, even to an approximate extent, what claims for these other types and conditions would amount to until we create the liability. When there is no liability and there are lots of sets of facts upon which claims might now be based, which were not made before because it was known there was no use in making them, I think it would be quite a useless undertaking to make an estimate.

Mr. Diefenbaker: What did the British find?

Mr. Garson: I could not tell you that.

Mr. Diefenbaker: What does section 3(1) (b) mean when it says,

—in respect of a breach of duty attaching to the ownership, occupation, possession or control of property.

I ask that because of the limitation on the right of action in respect of that section which is provided for in section 4.