

*Crown Liability*

to ask the then minister of justice this question:

When may we look for some action in the direction of elimination of petitions of right in actions against the crown?

Mr. St. Laurent: Not while I am Minister of Justice.

Then further down, in reply to a further question upon the same point, he said this:

What would be involved in abandoning that position would be an acceptance of the jurisdiction of the provincial courts in claims against the crown.

Now, at long last, we have in this bill the acceptance of the jurisdiction of the provincial courts, up to a point, in claims against the crown.

Then in 1947 a major forward step was taken in the parliament of the United Kingdom with the enactment of the crown proceedings act, and the way was thereby opened for actions to be brought against the crown in the United Kingdom, without fiat, in respect of all torts committed by servants of the crown.

In this parliament in 1950 an important step was taken when, in the amendment to the Petition of Right Act, the requirement of petition of right was dispensed with. But it still left the crown with immunity against any possibility of action being brought in respect of torts committed by servants of the crown in any case except one of negligence under the provisions of section 19 of the Exchequer Court Act. Therefore, Mr. Chairman, in this step that is taken in this present bill, we may see the culmination of a good deal of effort, the fruit of many pleas put forward by hon. members of the House of Commons that this old anachronism should be swept aside and the way should be opened to bring action against the crown in the courts in respect of torts committed by servants of the crown.

I think the Minister of Justice was quite right in referring to this as a far-reaching bill. There are some aspects of it which will call for comment, Mr. Chairman; but unquestionably the attitude of this committee will be to welcome this measure and to say that we are glad to see it. We should like to have seen it before, but we welcome it now.

May I now come specifically to one or two points in connection with section 3 of the bill.

**The Chairman:** In order to facilitate orderly discussion, may I suggest that we take the subparagraphs seriatim. For instance, the first will be section 3 (1) (a).

**Mr. Fleming:** Mr. Chairman, by section 3 (1) (a), and perhaps by others as well, the question is raised generally as to the legal

test of torts. In section 3 (1) (a) we have the provision that the crown is to be hereafter liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable in respect of a tort committed by a servant of the crown.

Legislative jurisdiction in respect of torts in Canada is vested in the legislatures of the provinces. In this respect I take it to be the intention of the government to submit itself to the law of the province. Indeed I do not think the measure would be very meaningful if that were not the full intention of the bill. But it occurs to me that we should have in this bill more explicit provision with respect to this matter; for when parliament legislates for the purpose of making the crown liable in respect of a tort committed by a servant of the crown, parliament might in effect be legislating in ten different ways in ten different provinces. It happens that the laws of most of the common-law provinces of this country, in the field of tort, are quite closely parallel. They are not identical in all respects. But so far as the common law with respect to torts is involved here, it is reasonably uniform in the nine common-law provinces. But no one will say that the law in relation to delicts in the province of Quebec is the same as the common law in relation to torts.

**Mr. Lesage:** It is very close.

**Mr. Fleming:** It is very close indeed, but it is not precisely the same. I think in a provision of this kind some plainer words are required to make it quite clear that we are to submit the crown in the right of the dominion to the law of the province in each case. We are simply enacting a general provision here that the crown is to be liable as it would be if it were a private person in respect of a tort committed by a servant of the crown.

Let us carry this matter a step further and consider the extent to which the problem could be complicated by provincial statutes in relation to torts. For instance, let us take the case of negligence. We have the negligence act in the province of Ontario—which about 23 years ago introduced important changes in the law of negligence in relation to contribution between joint tort-feasors and in respect to the old doctrine of ultimate negligence and contributory negligence. Now when we are legislating in terms like these, making the crown in the right of the dominion liable for torts just as is a private person, are we to understand that we are in any province submitting the crown in the right of the dominion to provincial statute law in respect of torts?