

Crown Liability

service of the writ of summons which provides for the appearance to be filed within ten days—which in my submission is surely enough protection thrown around the office of the deputy attorney general of Canada, this bill goes further and says that even when all this has been done, if no appearance is filed within the time prescribed by the writ of summons no judgment by default can be taken against the crown unless by leave.

I shall never profess to know law because, Mr. Speaker, in my estimation the study of law is almost eternal. Although I have practised actively before our courts for the last quarter of a century, I know that I have quite a lot of law to learn yet. But I submit that this is a wide departure from recognized legal practice and procedure, when we give 90 days' notice to the deputy attorney general of Canada before instituting the proceedings, then issue a writ of summons which gives him ten more days to file an appearance, and then if he fails to do so we have no right, under the rules provided and prescribed by this bill, to sign judgment by default without leave, which I greatly doubt would be granted even if we applied for it.

Mr. Lesage: That is leave from the court.

Mr. Robichaud: I will point out to my friend the hon. member for Montmagny-L'Islet (Mr. Lesage) that any lawyer who knows a little bit of law when he mentions leave in referring to a matter such as this means leave of the court. The hon. member should know that.

Mr. Speaker, these are briefly the remarks which I wanted to submit to the Minister of Justice (Mr. Garson). Again I repeat that I am totally in accord with the principle of the bill, but in the wake of the hon. member for Lake Centre (Mr. Diefenbaker) I point out that there should be no limit to the jurisdiction; that is, no limit to the amount involved in cases where provincial jurisdiction is permitted.

Second, I suggest that the bill should not contain any provision giving the right, as this one does, to the governor in council to prescribe rules of practice and procedure which would apply to provincial courts if proceedings are instituted therein under the provisions of this bill; because in my submission this is a dangerous invasion of recognized provincial rights in the matter.

Third, I wish to go on record as being strongly in favour of at least the same privilege with respect to jury trial, in cases under this bill or within the ambit thereof, being accorded to litigants as they now have

[Mr. Robichaud.]

and enjoy in the various provinces where proceedings might be instituted under this bill.

Mr. H. W. Herridge (Kootenay West): Mr. Speaker, in rising to have a few words to say—and they will be few—in this debate, I am somewhat like a non-swimmer jumping into deep water. I have not the knowledge of the fine points of the law which the hon. member for Simcoe North (Mr. Ferguson) has. However, I wish to bring one or two things to the attention of the minister. In reading the bill—and I am speaking as a layman—I notice that the explanatory notes read as follows:

The purpose of this bill is to place the crown in substantially the same position as a private person as regards liability for

- (a) torts committed by servants,
 - (b) torts arising out of breach of duty attaching to the ownership, occupation, possession or control of property,
 - (c) damages caused by a motor vehicle upon a highway, and
 - (d) civil salvage,
- and to permit certain actions to be taken against the crown in the provincial courts.

As I indicated before, Mr. Speaker, I am not competent to deal with the constitutional aspects of the question as has been done by hon. members who have spoken previously. Therefore, as a layman, in order to get some comprehension of what this matter is all about I want to proceed from the abstract to the concrete.

A constituent of mine last summer suffered a serious motorcar accident in Kootenay national park. He claimed that the accident was caused by the negligence of the employees of the federal government, who were at that time repairing a road in that park. As a result of communications with and explanations from this constituent—who I thought, from his explanations to me, had a watertight case so far as negligence was concerned on the part of servants of the crown—I wrote to the deputy minister of the Department of Resources and Development; and I received from Mr. C. W. Jackson, acting deputy minister, a reply which is in the following terms:

Dear Sir:

In the absence of Major General H. A. Young this will acknowledge yours of the 13th of September, enclosing copy of a letter which you have received from Mr. John B. Varcoe of Trail, British Columbia, regarding a motor vehicle accident suffered by Mr. R. H. Varcoe while travelling through Kootenay national park.

Without prejudice and without admitting any liability, Mr. Varcoe has been requested to furnish a detailed statement of the facts on which he bases his claim, together with a detailed statement showing how the claim is computed. When the full