

be against the public interest to disclose. Oral evidence is covered by this subsection:

Subject to the provisions of this section, a person who is required by an order made in any crown proceedings to answer interrogatories on behalf of the crown shall not be bound to answer any question if objection is taken in the affidavit made in answer to the interrogatories that it would be injurious to the public interest that the question should be answered.

It has always been the prerogative of the crown not to be compelled to disclose or divulge documents which it is against the public interest to disclose or divulge. Under the amendment of my hon. friend all this would disappear and everything would have to be made public. Might I refer to some other precautions which I think it would be well to take in any measure that would do away with the prerogative. For instance:

(a) Where in any proceedings against the crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties;

I believe that an injunction against the crown in a matter of public interest would be a dangerous thing. In a bill of this kind it would be necessary, I think, specifically to repeal the prerogative of the crown. I do not think we could do so without mentioning it, and that is what was done in the draft bill in England:

The provisions of this part of this act shall have full effect notwithstanding any right, privilege, or prerogative of the crown, rule of law, or enactment to the contrary, which existed or was in force immediately before the commencement of this act.

There are special provisions for execution of judgments and costs against the crown, or received by the crown, which also seem to require special consideration in any amendment of this kind.

There is another feature to which I would call attention, and it is this: If we took this action only in connection with this particular legislation, it would be doing something which would be discriminatory in its effect. In this bill we establish an agency to administer seven harbours in Canada; but there are many more harbours, and if my hon. friend's amendment were adopted, the rights of someone who might be injured on harbour property at Montreal or Halifax would be different from the rights of a person injured on public property in connection with the harbour at Churchill, for instance, or Port Colborne, or Fort William, and many other places. So that this would establish a differ-

[Mr. E. Lapointe.]

ence in treatment in connection with the various harbours in Canada.

Again, if my hon. friend's amendment were adopted, the crown would be sued in accordance with the ordinary procedure and before any court. I am not quite sure whether it would not be better if we did away, as I think we should, with the petition of right, fiat and all the special formalities surrounding litigation against the crown. I am not clear, however, whether we should not retain the exchequer court as the tribunal where all these actions for or against the crown should be instituted and heard. I am not sure that it would be a good thing that many of these cases should be heard by juries, as they would be, instead of by the exchequer court, where long jurisprudence guides the judges; and it would certainly make for greater uniformity in the law and the jurisprudence if these actions continued to be heard in the exchequer court.

There is another feature of the amendment to which I would direct attention, though it is one that might be easily changed. My hon. friend, in his amendment, proposes that:

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.

Possibly it would not be desirable, in important actions, if the writ or process were held to have been regularly served in the event of copies having been left in the hands of a doorkeeper or of a watchman at the gate of one of the harbour properties.

Mr. CAHAN: I might have made it more definite had I known what officers you were likely to appoint at the ports.

Mr. LAPOINTE (Quebec East): As I say, that is something which might be easily adjusted. My hon. friend from Winnipeg North Centre is not present or he would say that the suggestion I am going to make is a typically Liberal suggestion, but this is, as I think I have shown, a momentous change. If we make it let us do it well. If they have taken the trouble in England to appoint a committee of the best legal men there, who have taken years to report and to draft a bill, a bill which is not even now on the statute books of Great Britain, I think this would be a queer way of changing what has been not only a tradition but the practice of centuries, without looking at every phase of the matter and surrounding the change with all the guarantees and means of protection which might be necessary.