

*Crown Liability*

**Mr. Robichaud:** Well, just keep silent for a moment and you might. Hon. members opposite seem to delight in interruptions. I do not mind them. I would ask you to bear in mind that under the criminal law, as we all know, all criminal cases are styled in the name of the King or the Queen, without any reference in the indictment to the Queen in the right of Canada or in the right of the province. This is the first thing that I wish to underline. As has been pointed out by the hon. member for Lake Centre, our judges are appointed by the Dominion of Canada or through the recommendation of the Minister of Justice. Thirdly, and I think this is something which should not be forgotten—we all know it, but it is well to remind ourselves sometimes of the things we know—our Criminal Code is promulgated by the Dominion of Canada.

At this moment, as the Minister of Justice knows, he and I should be in the committee which is studying the famous bill for the revision of the Criminal Code. As the minister will recall, on two or three occasions remarks similar to those made this afternoon by the hon. member for Lake Centre have been made at the sittings of the Criminal Code committee; that is, what steps can be taken to provide a means of compensation for Canadians unjustly incarcerated and deprived of their liberty through an error, such as cases of mistaken identity, etc.

Now, I do not wish to repeat—I hate to be repetitious—what has been so tersely put forward by the hon. member for Lake Centre. I do wish, however, to concur with him most heartily in his remarks about juries. Some years ago the people of New Brunswick were entitled, as by right, to jury trials in all civil cases in county courts, Queen's bench division or superior courts. A few years ago this right of trial by jury was whittled down to a considerable extent in civil cases in the Queen's bench division so that now we are left with but a few instances in which a party to a civil case can obtain, as of right, a trial by jury.

If my memory serves me right, I think malicious prosecution is one of those, and false arrest and imprisonment and possibly trespass are the others. Here are possible cases which might arise under this bill: malicious prosecution, false arrest and imprisonment; and it seems to me that by depriving the right of a litigant in my province to a trial by jury, when by our present provincial law we have that right, just because the crown is a party to the proceedings, the Minister of Justice is going a little far in this legislation. I wish to register my approval of whatever remarks the hon.

member for Lake Centre made on this score, that is jury trials. I realize quite well that under the present Exchequer Court Act, section 39 I think it is, trials must be before a judge of that court and not before a judge and jury. It seems to me that when we make provisions in this bill for the trial of certain actions against the crown in provincial courts, it is rather dangerous to invade the domain of provincial jurisdiction and say that, even in cases where the provincial law gives the litigant the privilege of trial by jury, as a matter of right when the crown is a party this same litigant shall be debarred from this right granted under the provincial laws.

Now, I respectfully suggest to the minister certain other things which have not been brought to the fore so far. I wish to draw to his attention the procedure that is laid down under this bill. May I preface my remarks by saying that, in my humble submission, there is an attempt, through this bill, to invade or trespass upon the rights of the provinces to prescribe the rules of practice and procedure in their own courts. No one will gainsay or deny that the provinces have the exclusive right to make and prescribe the rules of practice and procedure in their own courts. I agree wholeheartedly with the principle in the bill which gives the right to the subject, if the amount involved is not over \$1,000, to sue in a provincial court. Again I say, however, that there should be no limit to the amount for which a suit may be brought in the provincial courts. We say in effect, to the provinces, that we give the litigant the right to sue the crown in provincial courts, but the dominion parliament shall prescribe the rules of practice and procedure.

For instance, if we just glance at the bill now before the house to see how proceedings are instituted, we find that the claimant must give at least 90 days' notice, before the commencement of proceedings, to the deputy attorney general of Canada, with sufficient details of the facts upon which the claim is based to enable him to investigate it. To this preliminary item of procedure, I have no objection. These proceedings are commenced, as they are in our provincial courts, by a writ of summons or any other instrument originating the proceeding. This writ or other instrument originating the proceedings, or a copy thereof, is served upon the deputy attorney general of Canada. But, Mr. Speaker, what I object to is that even after all those proceedings—90 days' notice before action is initiated or instituted, the