

Crown Liability

Mr. Knowles: May I ask the minister one other question with respect to the case about which I was speaking some minutes ago? I refer to the case of the air crash in British Columbia. After the passing of this legislation will it be possible for the people who are concerned for the children who are left to sue in a manner which was not previously possible? I am not asking the minister to say whether or not they would be able to establish their claim, but would they have a right to sue for something other than negligence, a right which I take it was not theirs previous to the passing of this legislation.

Mr. Garson: It is pretty hard to answer a question involving the laws of the different provinces of Canada. I think they could sue provided it was not statute barred, but whether it is statute barred I do not know. Where did the accident take place; British Columbia?

Mr. Knowles: In British Columbia.

Mr. Garson: I do not carry in my mind what the statute of limitations of British Columbia is. The hon. member for Gloucester signals to me that it is six years, but for a tort I doubt it. I think my hon. friend is thinking of a contract. I think the limitation period for a tort would be less than six years.

Mr. Diefenbaker: As a matter of fact, provision is made in this measure that there is no right of action at all for anything that has happened prior to the passing of this bill. That is one of the points I raised, and we will come to it in due course. Anything that has happened up to the present time, regardless of whether or not it was a tort, is barred.

Mr. Garson: This illustrates the difficulty of discussing these cases. That is quite true; but my hon. friend will realize, will he not, that so far as negligence is concerned his right of action is unchanged by the present legislation.

Mr. Diefenbaker: That is true.

Mr. Garson: So if he had a case that was within the statute of limitations he could still take it, anyway.

Mr. Diefenbaker: That is perfectly correct. I come to one other matter. Who is sued under these proceedings? I have placed before the minister the example of a person who lives adjacent to a military camp. The military authorities engage in musketry practice, carelessness follows and someone is wounded when going about his ordinary business on his own property. No one knows

[Mr. Adamson.]

who fired the shot; there is no identification of the person who fired it and therefore there is no individual to sue. You cannot sue an imaginary defendant or create a Richard Roe or John Doe, to use the expressions of the Minister of Justice.

In the United Kingdom provision is made, in a case where you cannot identify the wrongdoer, to sue the attorney general. Is there any provision under this legislation to cover a case such as I have placed before the minister? Should there not be something similar to that provided in the United Kingdom act, where there is no identification of the wrongdoer, so the right of action shall not be lost?

Mr. Garson: As a matter of fact, I think our provision is superior to that of the United Kingdom statute in the respect that my hon. friend has just raised. It runs in my mind that under the British statute the suit has to be brought against the department of government involved, which would involve establishing in which department the servant was against whom negligence or some other tort was charged. In Canada the suit in the exchequer court is against Her Majesty regardless of the department in which the matter arose. In the provincial courts it would be against the Attorney General of Canada. I think my hon. friend will find that provided for in section 10, subsection 2.

Mr. Robichaud: Section 12 provides that there shall be no judgment by default against the crown when the proceeding is instituted in a provincial court. Is there such a provision in the exchequer court practice? After the filing of a petition of right is there provision barring the entry of judgment by default against the crown? I have tried to get Audette on "Exchequer Court Practice" but they tell me in the library that it has been taken out from the shelves, so I am not just sure of the practice. Could the minister clarify the situation? I would like to know if there is a similar provision in the exchequer court practice.

Mr. Garson: Speaking from memory I do not think there is. I am sure my hon. friend will recall that up until a year or so ago actions against the crown could not be taken until a fiat had been obtained from Her Majesty permitting suit to be brought. In the process of considering whether or not the fiat should be issued the crown was put upon notice; and this facilitated the by no means uncomplicated process of the Department of Justice conferring with the department concerned, which in turn might have to confer with some employee in a remote part of British Columbia, for example. Under the fiat system the matter of getting a proper