

dian Pacific Railway. That is so by reason of what I might call a special enactment of the parliament of Canada. I suggest, therefore, that it is only equitable and just that parliament, in reconstituting the seven harbour boards under one act the declaring that the new board, the consolidated board I may call it, shall be empowered to make contracts and to sue and to be sued, should go further and declare that this great public utility, which is now being consolidated, should be liable to actions in tort in exactly the same manner, to the same extent, and before the same provincial courts of competent jurisdiction, as the Canadian Pacific Railway is liable, as all companies owning and operating docks in the various harbours of Canada are liable, and as all railways which are specially incorporated and operated under the general Railway Act of Canada are at present liable. It was with this in view that, upon consultation with the right hon. leader of the opposition (Mr. Bennett), I moved this amendment, which I think is worthy of all consideration, and which might properly be dealt with in this act because it is an act relating to all these harbours in just the same way and to the same extent as the Canadian National Railway Act deals with a large number of companies, now between thirty and forty in number, which are constituted as parts of the Canadian National Railways.

Mr. LAPOINTE (Quebec East): Although I am free to admit that I have a good deal of sympathy with most of the views expressed by my hon. friend (Mr. Cahan), I will give one or two reasons why I have to join with my hon. friend the Minister of Railways (Mr. Howe) in opposing this amendment.

The special way of dealing with the crown as a litigant has come to us through many centuries, and is based upon the theory, first, that the king is not responsible for his negligence nor for the negligence of his officers or agents, and, second, that the king cannot be brought against his will before his own courts except through special statutory provision.

My hon. friend has fully and ably presented the arguments which are usually set forth on behalf of those who think that the crown should be held responsible in tort as are ordinary citizens. He has quoted the remarks of Mr. Justice Davis, then on the bench of Ontario, now a justice of the Supreme Court of Canada, in which Mr. Justice Davis said that he had to apply the doctrine as it is, though he expressed the view that it should be repealed and that the crown should be

[Mr. Cahan.]

considered just like any other litigant with regard to torts as well as with respect to contracts which the crown may have entered into with its subjects.

Sir Lyman Duff, Chief Justice of Canada, expressed the same view quite recently in the case of *Dubois v. the King*. In the case of the Temiskaming and Northern Ontario Railway Company an automobile had been destroyed by a train of the railway company, and although the courts of first instance had assessed the damages against the company, which is the crown, really, in the right of the province of Ontario, that decision was reversed on appeal because of no responsibility attaching to the crown.

I must, however, call the attention of the committee to the fact that if the accident had taken place on the public property of the Dominion of Canada, if it had been caused by the negligence of one of the servants or officers of the crown on a dominion public work, the victim or his representatives would have had a claim against the crown under the Exchequer Court Act, section 19(c), to which my hon. friend has referred. That section gives jurisdiction to the exchequer court to hear and determine every claim against the crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the crown while acting within the scope of his duties or employment upon any public work.

Mr. CAHAN: That action in the case of a government railway such as the Intercolonial would properly have come under section 19(f), would it not?

Mr. LAPOINTE (Quebec East): Yes. There is a special provision for the Intercolonial railway and the Prince Edward Island railway, which applies now to the Transcontinental as well, but I mean any public work of any kind.

Mr. CAHAN: I do not like to interrupt the hon. gentleman, but I say that very great difficulties have arisen with regard to the meaning and application of "public work."

Mr. LAPOINTE (Quebec East): Yes, I know that.

Mr. CAHAN: So that at the present time it is very difficult for a lawyer to advise what is a public work within paragraph (c) of section 19, to which the hon. gentleman has referred, and that was one of the points I was very anxious to clear up.

Mr. LAPOINTE (Quebec East): So far as I can remember, Mr. Justice Duff and Mr.