

*Crown Liability*

of a few words after the word "liable" in line 3 of subsection 1 would make the section much clearer. I have listened with much interest to the explanation given by the minister to the effect that in the Exchequer Court Act there is no such specific provision.

**The Deputy Chairman:** Do I understand that the hon. member is introducing an amendment to section 3?

**Mr. Robichaud:** I am not introducing an amendment, I am simply referring to the argument put forth by the Minister of Justice when he said there was nothing specific—and he is right, and that is the very point—in the Exchequer Court Act. He said there was no necessity of having more specific words in section 3 of the bill. I submit that under the Exchequer Court Act any actions in tort in all the provinces, that is actions arising from negligence, are now triable in one forum only, the exchequer court. Nevertheless it was felt necessary to provide in the general rules and orders of the exchequer court that when such suits or actions arose in common-law provinces then the practice had to conform with and be regulated by the practice and procedure in force at the time in His Majesty's supreme court of judicature in England. When a matter arose in the province of Quebec it had to be regulated, as to practice and procedure, by the laws in force in His Majesty's superior court for the province of Quebec, or in the absence thereof by the laws in force in His Majesty's supreme court of judicature in England. In the rules and orders different provisions are therefore made for cases that might arise in the common-law provinces and, on the other hand, in the province of Quebec.

Under this bill tortious acts are triable in all provinces of Canada. I agree with the point raised by the hon. member for Eglinton, that unless more specific provisions are embodied in the section there will be room for argument and certainly room for confusion. If words such as "under the laws of the province where the tort or offence was committed" were added after the word "liable" in the third line of section 3, in my submission it would cure every possible confusion in the section. We would then have in the section specific words making the laws of each province applicable to the tort in issue. I bring this, with due respect, to the attention of the minister.

Subsection agreed to.

**The Chairman:** When I left the chair we were on section 3, subsection 1 and were passing on to subsection 2. Have subsections 2 and 3 been carried?

**Some hon. Members:** Carried.

[Mr. Robichaud.]

Subsections 2, 3, 4, 5 and 6 agreed to.

Section 3 agreed to.

On section 4—*Special provisions respecting liability.*

**Mr. Fleming:** Will you follow the same procedure and call the subsections seriatim?

**Some hon. Members:** Agreed.

On section 4, subsection 1—*No proceedings lie where pension payable.*

**Mr. Fleming:** Does not the minister think that in a case of this kind it would be fair to extend the right of choice to the individual concerned? Here we have the provision that if pension or compensation has been paid or is payable out of the consolidated revenue fund in respect of the tort in question, there is no right of action.

**Mr. Garson:** That has been considered, Mr. Chairman, but the purpose of the pension act, where there is a pension act, is to treat every one of a class of people in respect of death or injury, etc., on an equal basis. We think that upon balance it is preferable to leave them to rely on their pension rights. Then everyone in that group of people is treated on an equal basis.

**Mr. Browne (St. John's West):** But I wonder if the minister has thought this out very carefully.

**Mr. Dickey:** He has.

**Mr. Browne (St. John's West):** Supposing a person has only been in employment a short time. He would not have paid very much into the fund and not very much of a pension would be payable, yet he might have an action for several thousands of dollars in damages. Is that not so? I am thinking there might be a case where an employee of the government, through some neglect on the part of his fellow servants of the crown, received an injury that resulted in death. His widow would therefore have an action in tort against the crown which might run into several thousand dollars whereas the pension to his widow would be insignificant. Would you not be prepared to give this further consideration on these grounds?

**Mr. Garson:** I am speaking from memory now, but I think in a case of that sort there would not be any pension payable to the widow which would interfere with the action in tort.

**Mr. Browne (St. John's West):** Is the pension not in itself a bar? Because a widow would have a right to pension might she not be debarred from taking action in court, if she were entitled to a pension under this clause?