

Crown Liability

Mr. Diefenbaker:—depart. There is the case of the man in Toronto who was innocent but served nine months in jail. All he receives is a certificate that he was innocent and he goes forth into the world without any compensation. When we are removing these anachronisms that deny to the individual equality with the crown, I believe that this is something that deserves the consideration of the Minister of Justice.

In addition, as the law now stands, if an action is taken against Her Majesty the Queen and production of documents is asked, all a minister of the crown has to do is to say that it is not in the public interest to produce them and the documents are not produced. In Great Britain the judge has the right to look at the documents for the purpose of ascertaining whether or not there is in fact any basis for the claim of the minister who raises the objection that production of the documents is not in the public interest. But we, under the authority of a case that came from Australia which was heard by the privy council, have not that right. I do not want to deal with any cases that have taken place in recent days when the production of documents has not been considered in the public interest, but I believe that that excuse, which lends itself to spuriousness and to circumventing justice, should not be permitted now that the right of the individual to sue the crown for tort is being established.

I do not want to see documents produced when their production is not in the public interest. Therefore I suggest that we establish under this legislation a practice similar to that which is in effect in Great Britain whereby the judge looks at the documents and determines whether or not it is in the public interest that they should be produced. Unless that provision is made in our law I can well see a minister of the crown, who is brought before the courts in an action by a citizen against the crown and asked to produce documents which would establish the citizen's right, adopting the simple expedient, with more or less justification, of saying that the production of the documents would not be in the public interest, the result of which would be, if that production was in the public interest, that justice would be denied. Therefore I suggest that in making this legislation effective provision should be incorporated so that examinations for discovery and production of documents should be placed on an equal footing in actions taken against the crown as in actions between individuals.

Finally, I should like the minister to state whether he does not consider that in these actions, being such as peculiarly involve the

consideration of facts, within limitations the trial should take place before a judge and jury. In recent days one or two judges have criticized trials by jury in civil cases. The minister will recall that recently he attended a meeting of the council of the Canadian Bar Association at Niagara Falls at which outstanding counsel were strong in upholding the need of juries in cases of fact where the experience and wisdom of jurors would enable them to come to conclusions based on their experience as men of the world. I was pleased to read the arguments advanced by those outstanding counsel. Today we are too often departing from the principle of a person being judged by his peers. Almost without exception these outstanding counsel took a stand in firm support of the jury system and the need for the preservation of that system and of assuring citizens of Her Majesty of the right to jury trial.

I suggest that when the minister replies he outline the considerations that occurred to him in making provision in this legislation for trial only by exchequer court judges when the amount involved is over \$1,000.

What I have tried to do is to place before the house a few views which I believe are worthy of consideration. They may not be agreed with in their entirety, but I have advanced them in a spirit of constructive criticism. I believe that this legislation is a step, in fact a final step, in removing an anomalous condition that goes back to the thirteenth century under which the crown was not answerable in her own courts. We have raised the dignity of the individual in his relationship to the crown to that of equality, subject of course to the qualifications in the bill itself that one or two other steps should be taken.

The reaction today to two or three of my suggestions was quite similar to the reactions to the suggestion made several years ago that this type of legislation should be adopted. There were interruptions of the same kind by those who do not believe in advancing with the times. After a period of three, four or five years ideas that at one time were regarded as being unworthy are today accepted. After all, every reform was once a heresy.

Mr. J. H. Dickey (Halifax): Mr. Speaker, I shall not detain the house long. I followed the remarks of the hon. member for Lake Centre (Mr. Diefenbaker) with a great deal of interest and I must confess with some amazement as well. I do not propose to deal fully with what he said, but it seemed to me that at one stage of his speech he was arguing that the federal authority, more particularly the Minister of Justice, should underwrite the