

Crown Liability

the result that not only was his fishing take for that year destroyed but there was also substantial damage to his nets. As a matter of fact his nets were rendered virtually useless. The concussion shattered the floats supporting the nets and, as a result, he sustained substantial damage. I recall taking the case up with the Minister of National Defence, and putting very strong evidence before him. I had a substantial number of affidavits from eyewitnesses. The attitude taken was: There is no liability here. The result was that there was no remedy open to that man, none whatever.

Whatever justification there may be in time of war for absolving the crown from any responsibility for damage inflicted by members of the armed forces under circumstances which, if the act were committed by a private individual, would be tortious and actionable, I submit most strongly that in time of peace when such acts are committed by members of the armed forces a right of action against the crown should result in favour of any citizen whose rights are thereby affected.

Mr. Garson: What was the nature of the tort committed against my hon. friend's client? Would it be the tort of trespass or the tort of negligence?

Mr. Fleming: I would not wish to define it too closely. There was an act of trespass, and negligence may be involved. However, I do not think in a case like that one need be confined by definition in the manner suggested. After all there may be damage to equipment or property. If the Minister of Justice came along and I happen to have a heap of fishing nets out in lake Ontario and he destroys them, I believe I have a right of action against him for the damage he has done to my personal property.

Mr. Garson: My hon. friend would have to bring an action in court against the defendant. I always hesitate about committing myself to a definite opinion upon the basis of just an oral presentation of the facts like this, but I would think that under the new statute my hon. friend's client would clearly have a claim against the crown under those circumstances. I would think it would be for the tort of trespass on his property so damaged. I do not think my hon. friend entertains any doubt that under this new statute he would have a claim.

Mr. Fleming: Yes, I have; because this statute is confined to torts committed by servants of the crown. The definition in section 2(c) is that a servant includes an agent, but there is no reference to its including members of the armed forces. I do not

think the members of the armed forces are treated as servants of the crown in this statute.

Mr. Garson: Yes, they are; if that is my hon. friend's difficulty, it is covered.

Mr. Fleming: Is the minister prepared to have it clearly provided for here? The definition of servant should certainly be expanded if it is intended to include members of the armed forces.

Mr. Garson: I grasp my hon. friend's difficulty now. If his difficulty as he now states it is that members of the armed forces, whom his client suspects were guilty of this wrongful act, would not be considered servants of the crown in his opinion, I would point out to him that by an amendment to the Exchequer Court Act passed in 1943, section 50A was inserted, which reads as follows:

For the purpose of determining liability in any action or other proceeding by or against His Majesty, a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the crown.

That has been the law now for nearly ten years and I think that would have taken care of my hon. friend's difficulty.

Mr. Fleming: I am not at all sure that it would, because here we are opening new ground and making provision for actions to be brought in the provincial courts as well as in the exchequer court. It seems to me that the better method to deal with this would be to expand the definition of servant in section 2(c) of this bill and provide that it shall include members of the armed forces.

Mr. Garson: Surely my hon. friend will agree that a provision in a statute does not lack force because it happens to be in one statute rather than another. Could you get anything that is clearer than this:

For the purpose of determining liability in any action or other proceeding by or against His Majesty,—

That is pretty broad.

—a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the crown.

How could you make it any clearer than that?

Mr. Robichaud: Following the main argument of the hon. member for Eglinton I am convinced that there is need for further clarification of section 3 with reference to jurisdiction. In my submission the addition