

BARS CHANGES IN BILL BANNING DAMAGE SUITS

**Department of Highways Not
to Be Liable When Cars
Crash Guard Rails or
in Off-Highway Mishaps**

OPPOSITION CRITICAL

The Hepburn Government, in a two-hours debate, yesterday resisted opposition to an amendment to the Highway Improvement Act which would bar action for the recovery of damages against the Department of Highways resulting from an accident occurring off the travelled portion of a highway.

Conservative Leader Col. George Drew charged that the section deeply concerned the principal as to how far common law rights are to be denied by arbitrary restrictive legislation. Dubbing the whole section "objectionable," Arthur W. Roebuck, former Attorney-General and only Liberal voice raised in opposition to the measure, declared, "Let us say the individual has no civil rights whatever, and be done with it."

Rule Out Amendments.

"The Cabinet has carefully considered the section and is in agreement, and we do not propose to allow any amendments," declared the Premier at one point when Colonel Drew asserted that members could not possibly be aware of the significance of its wide terms.

The Conservative Leader, by amendment, proposed to have the section read: "No action shall be brought against the department for the recovery of damages caused by the presence or absence or insufficiency of any wall, fence, guard-rail, railing or barrier," by striking out the balance of the clause. The amendment was defeated in House Committee stage and only after the longest debate so far accorded to any piece of legislation during the current session.

The balance of the section, to which Conservative speakers took such sharp objection, continued, after the word barrier "or caused by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or upon the highway lands or any part thereof not within the travelled portion of such highway."

Based on Recent Judgment.

As revealed earlier in the session by Hon. T. B. McQuesten, Minister of Highways, the section was designed to limit the department's liability, following a judgment given against the County of Wentworth by the Ontario Court of Appeal.

In this action, a woman successfully sued the county against the county as the result of an accident in which the car she was driving skidded against a guard rail, which collapsed before the impact, and the car rolled into a ravine. The driver was seriously injured, and a daughter died of her injuries. The court held the driver was not negligent and that the guard posts were rotten.

Mr. McQuesten held that neither the department nor any municipality should be required to erect guard rails of sufficient strength to withstand the impact of a motor vehicle. Moreover, he said, it was impossible to erect a barrier of sufficient strength to withstand the impact of a fast-moving motor car or heavily loaded truck. It was his interpretation that the shoulders of the roads included the "travelled portion" within the meaning of the act and that the department or municipality, was required to maintain them in repair.

"The amendment," he said, "does not affect the department's liability in respect to the travelled portion of the road."

Colonel Drew was in agreement on one point only, that the absence or insufficiency of a guard rail should not be cause of action in itself.

"We can't," said Mr. McQuesten, "establish a guard rail which would withstand the charge of a perambulator."