

Crown Liability

minister said he was not sure. I think he will agree that that is a matter that deserves consideration.

Mr. Garson: Perhaps I had better clarify my previous statement to this extent. When my hon. friend asks me as an effort of my casual, offhand memory to relate to him the provisions of these other statutes providing for the crown's position in these cases. I am sure I could not reproduce them for him, but if he has the bill in front of him he might well look at clause 4, subsection 1, and he will see that it reads:

No proceedings lie against the crown or a servant of the crown in respect of a claim if a pension or compensation has been paid or is payable out of the consolidated revenue fund or out of any funds administered by an agency of the crown in respect of the death, injury, damage or loss in respect of which the claim is made.

Mr. Diefenbaker: That is only when a pension is payable.

Mr. Garson: Yes. Upon a little notice I could trace the process myself, although it would be a rather long one, but if my hon. friend would take that clause and match it with the clauses in the defence act, in the Aeronautics Act, in the employees compensation act and in the various other federal statutes he would find that the composite effect would be to relieve the crown from the claims of which he speaks.

Mr. Diefenbaker: If the minister can say that section does that, then my objection is withdrawn; but it does not seem to cover it so far as I am concerned.

Mr. Garson: This section was drawn in the light of a comparable British section, modified to fit our own circumstances here, and our impression is that it covers the whole thing. It may be that our opinion in that regard is wrong, but that is our opinion.

Mr. Diefenbaker: When the minister says the British section is modified to cover the hypothesis I have raised, I must say that it begs the question, as I see it, because the British not only have a section similar to section 4(1), but they have gone beyond that. They have specifically stated in sections 9 and 10 of the United Kingdom act that there is no right of action under the circumstances outlined by me, in the transmission of messages by the post office, and injuries sustained in the armed forces. Section 4(1) states simply this:

No proceedings lie against the crown or a servant of the crown in respect of a claim if a pension or compensation has been paid or is payable out of the consolidated revenue fund or out of any funds administered by an agency of the crown in respect of the death, injury, damage or loss in respect of which the claim is made.

Now let us take the case of a person to whom no pension was payable. In such a case in the armed forces would the liability still not be maintainable as against the crown for the negligence of an officer or a non-commissioned officer? I leave that question with the minister. Certainly my reading of this bill indicates to me that it is very doubtful whether under the wording of section 4 (1), or that of any other section, the situation to which the British parliament has given considerable attention has in fact been met.

If the door is open, then certainly it should be closed against the plethora of cases which will be the result. If the department is in a position where all it can say is, in common with the minister, that it believes the door is closed, then I feel that there should be some amendment which would assure that it is in fact closed.

Mr. Adamson: I am sorry I was not in the chamber during the whole discussion, and I do not know whether the question I shall ask has already been asked. This question arises from an accident to a military vehicle whose driver had stolen it from a car park, and at the time of the accident was not on military duty. He was a member of the armed forces, and he was driving a military vehicle. The accident resulted in severe injury to two other persons. The military vehicle was very much in the wrong, but the Department of National Defence ruled that because the driver was absent without leave and was not on military duty at the time, they had no responsibility and were not in any way liable for the accident. It seems to me something should be done to cover such a case.

Mr. Garson: I think in a case of that kind—and of course I am speaking offhand—the Department of National Defence would apply to the facts of that case precisely the same rule as would be applicable to all torts committed by a servant beyond the scope of his master's authority. If for example my hon. friend employs a chauffeur whom he asks to take a guest to, we will say, the city of Hamilton, and then to come home; and if the chauffeur, after taking the guest to Hamilton, fills himself up with a cargo of liquor and goes gaily off to St. Catharines, and while he is there commits a tort against someone and causes great damage, I do not think under those circumstances my hon. friend would be liable because the chauffeur is not acting within the scope of my hon. friend's instructions. The liability of a master in such cases is a liability in respect of the acts of his servant, acting within the scope of his authority. It would be an unjust result for