

Crown Liability

broader basis means anything. It seems to me the minister is coming right back to negligence.

Mr. Garson: As I said, in an abstract sense perhaps it may be termed a species of negligence, but it is not the personal negligence of a servant of the crown. It is not the personal negligence that you can pin on any one person as in the case of a man who drives a car improperly. It is just the failure to keep one's property in proper shape so that people who go on it will not hurt themselves. Really the liability there arises from the facts. You do not have to prove that any one person, the agent or the principal, is negligent. The condition of the property speaks for itself, and your legal liability is founded upon that fact. My hon. friend's case is one of misadventure—accident, if you like—where an airplane has crashed without there being any evidence that that crash was caused by the negligence or any other tort of anybody.

Mr. Knowles: There might have been something wrong with the aircraft.

Mr. Garson: There might have been. No person knows. But I am sure my hon. friend is aware of the fundamentals of a lawsuit and understands that if you are going to make a defendant liable so as to secure a judgment against him, you must prove that he has been negligent or that he has committed some other tort. You have to bring evidence to that effect. Courts do not just take your say-so for it. You must prove it. Moreover a defendant can bring evidence to prove that it is not so, and it is not until the tort has been established that you have any foundation for legal liability.

It may be that there should be in this country a law under which the federal treasury would provide compensation every time a person was killed in an airplane accident, and do so without getting any insurance premium at all. But if we need a law of that sort it has nothing to do with this bill. That would be another measure altogether.

Mr. Green: I should like to ask the minister for a further explanation of his answer to the hon. member for Lake Centre a few moments ago, dealing with actions in the Yukon and the Northwest Territories. I understood him to say that the purpose of paragraph (c) of section 2 is to exempt claims for the negligence of, for example, an employee of the Yukon territorial council. That can only mean that if a person were run down by a car driven by an employee who happened to be paid by the Yukon territorial council, the act would not apply; whereas if he were run down by a visiting inspector from the Department of Mines and

Technical Surveys, the act would apply. Does the minister not think that is a rather fine distinction? Does he not think that people should be covered, regardless of whether an employee happens to be paid by the council or directly by the dominion government?

Mr. Garson: I do not think that is a fine distinction at all. I think the federal crown by this act should be, and will be, responsible for the actions of federal civil servants. But where, as in the case of these territorial governments, we have set them up separately—they have their own budgets, their own revenues and so on; they run their own show to quite an appreciable extent now, and we are hoping to increase the extent of their self-government—I think the responsibility for the acts of their servants should be borne by them in the same way as the responsibility for the acts of a British Columbia civil servant is that of the British Columbia government.

Mr. Green: Yes; but the difficulty is this. The dominion government apparently is not making any provision whereby the Yukon territorial council will assume a similar responsibility. The minister would be quite right if these territorial councils were going to enact measures which would make them liable in just the same way as the dominion government is now accepting liability; but if that is not the case, it seems to me there is an unfairness here. After all, in both cases the employees are dominion civil servants, are they not?

Mr. Garson: Oh, no. My hon. friend has put his finger right on the point. I can quite understand my hon. friend's argument. If he thought these were dominion employees his point would be well taken, and I would not argue the matter for a moment. But they are not dominion employees. These men are employees of the Yukon territorial government, which is a separate government by itself with power—and I think perhaps this will cover my hon. friend's point—to pass ordinances. They are a self-governing body, and they have power to pass ordinances making themselves liable in the same way as we are making ourselves liable. We do not have the power to make them liable. They themselves have the power to pass that ordinance. They have much the same jurisdiction in that respect as has Ontario, Manitoba, British Columbia or any of the other provinces. If public opinion in that territory demands this sort of legislation, they have the power to provide it. That is the distinction. They are analogous to a provincial government but without quite the same powers of self-government.