

Crown Liability

indicate that I have misunderstood him. My understanding of his statement of the facts is that in this instance the law officers of the Department of National Defence, not the Department of Justice, have informed the Minister of National Defence that, after going into the facts of the case, there was no evidence of any negligence which contributed to that accident. That being the case, to expect compensation in respect of the death of any individual in that airplane accident would be tantamount to asking the federal treasury to provide accident insurance for all airplane passengers without any premiums being paid.

In reply to my hon. friend's question as to whether this bill will make any change in the legal position of a case of that sort, I would say "No". If there were any foundation for legal liability upon the facts he has stated surely it would be upon the basis of negligence. If negligence is not established, then there would not be any claim either under the old law or under the new. In this context the main thing which the new bill does is to add a number of other claims in tort in addition to those based upon negligence. Unless the claimant in the particular instance of which my hon. friend is speaking could bring his case under the heading of negligence or some of these other torts, this present bill would not be of any assistance to him.

I think my hon. friend will see that if it is to be the responsibility of the government to pay compensation to people who have been killed in airplane accidents where there is no negligence that would be an obligation to which, in the taxpayers' interest, we would have to give careful thought before we embarked upon it. If he examines it carefully I think he will see that what he has said has nothing to do with torts at all, because it would be only in the event of the facts disclosing negligence that a question of tort could arise.

Mr. Knowles: Are we not being taken around in a circle? May I make it clear that this was not just any aircraft, but was an aircraft owned by the government. The minister puts his hand up in a strange fashion; but one of the points it seemed to me, as a non-lawyer, he was trying to make was that the basis of claim was broadened so that it would include more than negligence and would include torts arising out of ownership, occupation, possession or control of property, including motor vehicles.

May I put this question to the minister. Is it not a fact that he has now told us that the value of this legislation is that it broadens

[Mr. Garson.]

the basis so that it goes beyond negligence? But the minute I bring up a case which involves something other than negligence he says that the claim has no basis unless negligence can be established. In that case would he tell us, abstractly or concretely, what is the value of this supposedly broadened basis?

Mr. Garson: Well, Mr. Chairman, I am afraid we will have to transform ourselves into a law school for just a minute. Let us leave the crown out of this for the time being. In order for John Doe to get a judgment against Richard Roe under the circumstances outlined by my hon. friend, negligence must be shown. Where John Doe is riding in Richard Roe's airplane and Richard Roe's airplane crashes without any negligence on the part of Richard Roe, John Doe has no claim for compensation. For the only way in which John Doe can get a judgment is by showing that that accident was due to the negligence of Richard Roe. Clearly, if I am driving along the street and ask my hon. friend if I can give him a lift home, and then when we are on the way home some accident takes place which is no fault of mine at all and he is in the car with me and gets killed, I am not liable for damages.

Mr. Knowles: It would look extremely suspicious.

Mr. Garson: No, I do not think so. You cannot dispose of court actions upon suspicions of that sort. When my hon. friend says that it extends to torts arising out of ownership and possession of property, may I say that if he will just suspend his judgment in this regard until we get into those sections dealing with torts arising out of the ownership and possession of property he will see that they do not include or cover the set of facts that he has named.

The type of tort arising out of the possession of property is this. If I have a house, and if I have a broken step in the front of it; then if some total stranger comes along, his ankle goes down into this hole and he breaks his leg, that is the type of tort referred to. It is a species of negligence, if you like. But certainly does not cover the case where you have an airplane accident take place without any negligence, because that is pure misadventure. There is no foundation for legal liability there at all.

Mr. Knowles: In the case which the minister just mentioned—

Mr. Garson: May I continue?

Mr. Knowles:—that is the case of the person who breaks his ankle, has the minister there not come right back again to negligence? For the moment I am dealing in the abstract. I should like to see whether this supposedly