

Crown Liability

Mr. Garson: Perhaps I did not make myself clear, but where a civil servant should happen to injure another civil servant there is no pension payable in respect of that injury and therefore there would be a claim for damages in tort, with no offsetting pension payment to complicate the matter in a case of that kind.

Mr. Browne (St. John's West): Then supposing an employee on a government ship is injured and is entitled to compensation, for instance a merchant seaman's compensation. He might have an action for many thousands of dollars, which would be superior to the pension he would receive or that his widow would receive in case of death. His widow only receives \$50 a month, so would it not be right in such a case to give an election to the person concerned?

Mr. Garson: If my hon. friend is asking my personal opinion I would think not. The parallel I would draw there is where, in those provinces that have workmen's compensation acts, the amount of pension that is payable to workmen in industry for different types of accident or death, without any lawsuits or difficulties of that sort, is received by him at the cost of not having any action for damages against his employer on the basis of employers' liability.

We have in our own government service here what we call the Government Employees Compensation Act which is the same as the workmen's compensation act in the provincial sphere. It applies only to our own civil servants. These are cases of one not being able to have his cake and eat it too. If a fund is set up to compensate people for injury or losses of one kind or another, the justification for devoting tax moneys to the support of such a fund is that the problem is taken care of by that payment of such compensation, and any rights which the injured person may have to recover damages from the person responsible for his injury are at the same time extinguished.

Subsection agreed to.

On section 4, subsection 2—*Liability for acts of servants.*

Mr. Fleming: On subsection 2, and the same remarks apply to subsection 3, are we to understand that the second part of the subsection following the word "unless" has reference to the provincial law?

Mr. Garson: Yes.

Mr. Fleming: Again I am saying that I think appropriate words ought to be inserted there not only for the sake of clarity but I think to carry out the intent that has been

expressed and is generally shared. I think it would be highly desirable to have in subsection 2 after the word "would" in the fourth line such words as "under the law of the province". Similarly in subsection 3, the same words might be inserted after the word "unless" in the fourth line. I am not at all sure that difficulty is not going to arise over this question of provincial law in ways that we may now not be able fully to take account of here. It is so easy to pass these enactments without seeing the opportunities for dispute over them later on when people come to determine their legal rights in the light of the words we are using.

I just offer the suggestion again, and I am only trying to make this measure as effective as possible for the purpose which has been described and which all members of the house support. I think words such as I have suggested would make it much clearer.

Mr. Garson: I appreciate indeed my hon. friend's solicitude in the matter and acknowledge the helpfulness of his suggestions. However, I would not want him to think that these points he has named, and some others that he has not yet named, had been ignored when the words of this section were being considered by the draftsmen.

There are a number of problems that arise which perhaps have not occurred to him. For example, what would the situation be if the tort took place on a Canadian ship on the high seas? What provincial law would apply in a case of that sort? What if the incident took place on Sable island? If you say that the law of the province applies, is it the law at the time this present bill is passed here, or is it the provincial law as that law may be amended in the future? If any amendments are passed to our law, how do they dovetail into amendments to relevant provincial amendments which are also passed?

When one weighs considerations, and others, I think my hon. friend would agree that if they were put on one side of the scales, and on the other side of the scales was placed the section I quoted from the Exchequer Court Act, which is in simple language and has stood the test of time for a number of years without any of these difficulties which my hon. friend speaks of having occurred, then on balance the prudent thing to do is to follow the successful precedent in the case of the Exchequer Court Act and adopt the simple language we have here.

In recent years, amongst other things, since we set up the drafting branch in the Department of Justice we have been trying where possible to simplify our laws and thereby make them a lot easier for everyone to read.