

*Crown Liability*

we have no constitutional responsibility whatsoever, we should intervene and conduct an investigation—which we would have to do to provide some basis for the expenditure of public funds—into the conduct of provincial authorities in the carrying out of a provincial function. Then having reached that conclusion should we say that we condemn those provincial authorities, and because we condemn them we are going to pay some money out of the federal treasury? Does my hon. friend think that would be the sort of conduct or sort of principle that would make for harmony in relations between the federal government and the provincial authorities?

Does he think it would be a prudent expenditure of federal money to pay it out in that way? Does he not think it would be infinitely preferable in each of these cases that the provincial authorities should in their corresponding crown liability acts or in other relevant provincial legislation make some provision for protecting those who have been adversely affected by some miscarriage of justice, administered by the province?

I would point out something my hon. friend did not cover and with which I think he will agree. In order to justify the payment from one litigant to another, whether that litigant be the crown or an individual, it is first necessary under any conception of law that there must be established some foundation for the legal liability of the person against whom the judgment is to be made.

**Mr. Diefenbaker:** The minister has asked that as a question. In the first place, the province takes the attitude that the dominion is responsible.

**Mr. Garson:** If I may—

**Mr. Diefenbaker:** In Great Britain there is no legal liability, but compensation has always been paid when wrongdoing such as that is done.

**Mr. Garson:** My hon. friend is anticipating my argument and stealing my thunder.

**Mr. Diefenbaker:** We are exchanging ideas. You asked a question. If you ask me a question I will answer it.

**Mr. Garson:** Will my hon. friend not agree that as between Richard Roe and John Doe, if there is to be a judgment against the latter there must be established in the court proceedings a foundation for the legal liability which is imposed upon the defendant by the judgment of the court? In the case he is discussing, where there has been a miscarriage of justice, I think he will agree also that you may have a miscarriage of justice where the conduct of the prosecutor has been

[Mr. Garson.]

beyond question, where the judge has discharged his duties beyond question, where the jury has been conscientious and fair within the limits of human fallibility, yet where the result which is grossly unfair to an individual might almost be termed pure misadventure. Now I am not suggesting for a moment that because it is a misadventure, because there is no technical establishing of any foundation for legal liability for this result, that the injured individual should not be compensated on the ground you mention.

**Mr. Diefenbaker:** The Queen in the United Kingdom does so.

**Mr. Garson:** The United Kingdom is a unitary country and there is no division of responsibility as between federal and provincial governments. I grant that there, in cases in which it seems proper, the crown has provided for compensation. There is no reason in principle why a provision like that should not be made in this country, but I suggest that it should be made and can only properly be made, and as regards the relations between the federal and provincial authorities it will be mischievous if it is not made by the provincial authorities who have control of the matter from beginning to end.

I can remember when the case my hon. friend referred to as having taken place in Brandon was raised in the Manitoba legislature. There was no suggestion in the discussion that followed there that this was a matter the federal government had to take care of, or for which the federal parliament had to provide an appropriation. The question at issue was whether upon the facts of that particular case there was warrant for the provincial authorities making that compensation. I think upon reflection my hon. friend—

**Mr. Diefenbaker:** What was the decision on it when you were premier of Manitoba?

**Mr. Garson:** Yes, I think I was premier. The decision was that upon the facts of that case no compensation should be paid.

**Mr. Diefenbaker:** The man served nine months, and he was innocent.

**Mr. Garson:** It is very easy to make these glib references and to sum up the facts of the matter in about 25 words, the way my hon. friend frequently does. The then attorney general of Manitoba, with whom I am sure my hon. friend was well acquainted, was a most conscientious public servant, and he tendered the advice which the government accepted that payment should not be made on the facts of that case.

My hon. friend has told us of cases in the United Kingdom where compensation has