

Crown Liability

Mr. Higgins: But at the same time the minister will bear with me in this case. I think the minister is aware of the general provisions of the funds set up for unsatisfied judgments in motorcar accidents. It does not seem quite fair to me when quite a large number of visiting Americans, both civilians and members of the armed forces, are in Newfoundland with the complete concurrence and I presume in some cases at the express wish of the Canadian government. If these United States citizens or army men have a judgment against them and are transferred, as has happened on a number of occasions, then the fund that has been established is going to be completely eaten up.

Inasmuch as the Canadian government has to a large extent made it possible for numbers of Americans to be in this country, I feel that some care should be taken to see to it that the province is not penalized in such cases. Under the provisions of the act an ordinary citizen has certain penalties assessed against him. He cannot drive any more until he makes good the damages, and there are other similar penalties, as the minister well knows.

Mr. Garson: Of course, as a lawyer my hon. friend is aware—not that I am suggesting that it might be of any value—that so far as the individual whose negligence is the cause of the accident is concerned, he can be proceeded against as a person within the jurisdiction. I will grant you that is not much satisfaction because in most cases you cannot recover your execution from him.

Mr. Higgins: You cannot proceed outside the country.

Mr. Garson: No, you cannot proceed against him if he is outside the country. In those cases I admit that it does impose a burden upon the unsatisfied judgments fund, if that is the right term, of Newfoundland. But the same type of problem is encountered in several of the other provinces of Canada. In the province of Ontario, for example, there are tens of thousands of United States tourists who come here; and if any of them become involved in an accident here caused by their negligence, then any judgment recovered against them as citizens of another country may not be exigible. In such a case the judgment creditor in Ontario will have recourse, I presume, against the Ontario unsatisfied judgments fund and the fund will have to bear that burden. That is a burden which I suggest is not very great in total and is part of the price we pay for having in the one case visiting forces and in the other case tourists in our country who make somewhat of a contribution to our economy and whose presence most provinces

—I think this would be true of Newfoundland also—rather welcome.

Mr. Higgins: I agree entirely as far as the benefits are concerned, but in spite of that fact I still say that these bases are a major industry in Newfoundland, and I still do not think it quite right that the fund should be made to bear the entire responsibility.

Mr. Adamson: I wish to say to the minister that I realized that I would not be liable if my car were stolen or taken by somebody else without my knowledge, and an accident ensued. I am pointing out what I might call a *de facto* situation. If a servant of mine were involved in an accident, with our courts as they are constituted at the present time and with the strange prejudiced attitudes of juries, on the one hand I can see myself being held liable for the accident yet having the insurance company at the same time saying that they had no responsibility. I can see myself in those circumstances being caught and found liable in a court and at the same time having the insurance company deny responsibility. It is the *de facto* situation that exists.

Mr. Garson: It is indeed a *de facto* situation but, with respect, it is not open to the interpretation, if I may say so, that my hon. friend puts upon it. Would he not agree that a contract of insurance is a contract of indemnity? They agree to indemnify you in respect of your liability. Your liability is based upon the general law which applies to everybody and is based also upon the facts of the particular case in which you become involved. If the jury is able in its verdict to so connect those facts with the requirements of the law as to establish liability against you, then your insurance company will have to pay the judgment under the indemnifying terms of your insurance policy.

But what I am saying is that to these cases the general law that the master is not responsible for the acts of his servant committed outside the scope of his authority will apply. A marginal case, perhaps, as considered by a jury, may be decided against my hon. friend, but the usual run of cases of this sort will not be, and in these the insurance company will not have to pay. I venture to say that my hon. friend will not see any clause in his policy which says that the insurance company will protect him against liability arising from acts of his servants committed beyond the scope of their authority.

Mr. Adamson: Oh, yes; that is so.