

Crown Liability

present bill will not introduce any change in the law which would help in a case of that sort. For many decades the law has been that actions against the crown based upon negligence could be launched in the exchequer court. If I mistake not, the set of facts which the hon. member posed to us this afternoon establish negligence if they establish anything.

Therefore the present bill, introducing no change in the law in that respect, would not improve the chances of my hon. friend's friend of getting compensation. But I think if he went over the facts to which he referred in such general terms with greater care—with something approaching the care with which they are gone over in a court of law, where the people who are asserting them are subject to cross-examination—he might find first of all that there was no negligence, or that there was contributory negligence, or that the servant of the crown was not in fact acting within the scope of his authority. In a great many cases of this sort where the man is in charge of a motor vehicle and is intoxicated, he is not in the course of doing the crown's business. He has usually got the business done, has tarried on the way to take one or two drinks and has gone off in some other direction, and has strayed a long way from any path upon which his responsibilities alone would have taken him. Upon facts of that sort the case would turn not upon the condition of the law as it was before this bill was passed or the condition of the law as it will be after the bill has been passed. It will turn upon these facts, and on these facts the position of the crown would be the same as the position of the Imperial Oil company; that is to say, that although a claim may be made against the servant, the master cannot be made responsible unless the servant has committed this negligence within the scope of the authority with which the master has invested him.

There is one other point upon which I should like to make a few general remarks. I refer to the proposal made by the hon. member for Lake Centre (Mr. Diefenbaker) that, if I understood him correctly—and I hope he will correct me if I have not done so—in the bill we should make some provision whereby, if the provincial authorities in the discharge of their exclusively provincial constitutional responsibility for the administration of justice bring about a miscarriage of justice, or even if it just happens that there is such a miscarriage, we should step in and pledge the treasury of the federal government to pay for the shortcomings of the provincial authorities in the administration of justice.

Mr. Diefenbaker: That is not quite correct. The point I am making is that there is a moral liability in the appointment of judges, and if in the administration of justice, in consequence of those human errors that we all commit, judges cause injury or damage we should not be playing around and saying that the responsibility is somebody else's because, after all, all citizens are citizens of Canada.

Mr. Hodgson: Who appoints the judges, and who pays them?

Mr. Garson: I am glad my hon. friend made this interjection to make it clear that our moral liability would arise because of the fact that we appoint the judges.

Mr. Diefenbaker: It could not arise in any other way.

Mr. Garson: No, it certainly could not arise in any other way. That would be our position upon the one hand. I put it to my hon. friend if it is not a fact that upon the other hand when a criminal prosecution is undertaken, it is launched either by a representative of the provincial attorney general or by a police or legal officer employed by a municipality, which is a creature of the provincial authority.

Mr. Diefenbaker: Or by the mounted police.

Mr. Garson: Or by the mounted police acting in eight of the provinces as officers of the provincial attorney general, except in those cases where they are prosecuting under federal statutes, in which cases there would be no question about our being responsible. But in all the other cases in the general administration of justice the proceedings would be initiated, carried on, continued and controlled exclusively by the provincial authorities.

In point of fact the federal government and the federal authorities would have no relationship whatsoever to these proceedings until after a conviction had been made. The first manner in which we would become concerned would be in the event of a penalty exceeding two years, when the convicted person would come into the custody of a federal penitentiary, or in the other case of a conviction under the Criminal Code or a federal statute which might come before our remissions branch for consideration of commutation and remission of sentence. Apart from that we would have no control whatsoever over these provincial proceedings and nothing whatsoever to do with them.

Under those circumstances does it seem reasonable that in a matter over which we have no control, in connection with which