

Crown Liability

my hon. friend, if he had to pay \$25,000 or \$30,000 damages, because his chauffeur went off, beyond his instructions, and indulged in an escapade of that kind.

Mr. Adamson: While I realize that in all probability that is the law, nevertheless I believe most prudent people carry insurance to cover that sort of thing. So despite the fact that a servant of an individual uses his master's property without his master's authority, in the light of the very peculiar situations that develop today before juries in accidents of that kind, I would hate to be a respondent in such a case.

Mr. Garson: I would be very much surprised indeed if, when my hon. friend goes home this evening or at some convenient time, he were to look at his insurance policy, and find any clause which would make his insurance company liable under the circumstances he has described. For I do not know why they would want to make themselves liable in respect of a matter for which my hon. friend himself would not be liable. Why would they?

Mr. Lesage: It would be excluded.

Mr. Higgins: Would the minister tell me if I have interpreted correctly the liability with respect to United States nationals committing torts arising out of the occupation of bases in Newfoundland? Would that come within this act?

Mr. Garson: Obviously it does not, because one of the powers we do not possess in this parliament is that of imposing any liability upon the government of the United States of America. It would be quite beyond our power to do that. If my hon. friend would raise the point when the estimates for the Department of National Defence are being considered, I think he would discover that the point he mentions is covered by the Visiting Forces Act. Even by the greatest stretch of the imagination we have no power in this parliament to create a liability upon the government of the United States.

Mr. Higgins: I am not asking for the creation of any liability. I am referring to a liability created by a member of the armed an agent of this government, when those an agent of this government, when those forces are occupying territories owned by Canada. Surely they come within the purview of some act. At the present time the Visiting Forces Act does not cover them.

Mr. Garson: Oh, yes.

Mr. Higgins: Oh, no. It does not cover them.

[Mr. Garson.]

Mr. Garson: I think it does. I have before me the act, as it is set out in chapter 28 of the 1951 statutes. I find that section 16, part III, says:

For the purposes of paragraph (c) of subsection one of section nineteen of the Exchequer Court Act, negligence in Canada of a member of a visiting force while acting within the scope of his duties or employment shall be deemed to be negligence of an officer or servant of the crown while acting within the scope of his duties or employment.

Mr. Higgins: But the minister is not dealing with the matter I have in mind. Perhaps I did not state it clearly. I am referring to an accident which happens as the result of a United States serviceman, or a United States civilian employed at a base, but who is off the base and not on duty. At the present time when accidents occur, these people may leave Newfoundland and the person who has suffered has no redress, except through the unsatisfied judgments fund. I do not think that is fair, because the fact that bases have been provided by Canada has made it possible for these accidents to happen. I feel that some provision should be extended to cover Newfoundland in a case of that kind.

Mr. Garson: My hon. friend is asking for a provision which would apply to the case of the servants of visiting forces, or the members thereof, who caused damage by their negligence while acting beyond the scope of their authority.

As was pointed out in the case which was cited by the hon. member for York West a moment ago, no provision is now made in the law that my hon. friend should be liable for the negligence of his servant acting beyond the scope of his authority. The law does not create any such liability upon my hon. friend as a master. No provision is now made for any civil servant while acting beyond the scope of his authority creating a liability upon the part of the Canadian government. No provision exists unless it is in the Newfoundland law, in which there may be a provision to that effect, that a civil servant of the Newfoundland government, acting beyond the scope of his authority can create any legal liability upon the Newfoundland government. It would be a most extraordinary proposition, it seems to me, that we should visit or attempt to visit, even by diplomatic methods, a liability upon the government of a friendly state for acts of their representatives acting entirely outside the scope of their authority while here. Then we should be applying to them for the benefit of our own people a much more onerous rule of law than is imposed upon any of our own Canadian governments.