

Crown Liability

and by civilians of that country, on the various bases in Newfoundland. It may be contended that they should be considered as agents of the Canadian government, or that they might come under the section having to do with torts arising out of breach of duty attaching to the ownership, occupation, possession or control of property, because the ownership, occupation, possession or control of the property leased by the United States is in Canada. Such cases might be considered to come within that class. However, I am not satisfied that they do.

If they do not, then I suggest a section should be inserted in the bill to cover torts arising out of actions by nationals of the United States and by members of United States armed forces. I am thinking particularly of a couple of motorcar collisions which have caused damage to property, and where members of the United States armed forces and civilians of that country have been transferred from Newfoundland back to the United States. In such event the only procedure for the injured party is to have recourse to the unsatisfied judgments fund, which was set up in Newfoundland only within the last year. Payments have been made out of the fund to cover such eventualities, but I am not satisfied that this is a fair way of handling the matter.

As Canada is directly responsible for the occupation of the bases, I believe provision should be made to take care of any injury arising out of that occupation and caused by members of the United States forces. I am not sure whether this is covered; but if it is not I feel it should be.

The Acting Speaker (Mr. Robinson): When the minister speaks he will close the debate.

Mr. Garson: Mr. Speaker, the present debate is concerned with the principle of the bill; and as sponsor of it I cannot help being gratified by the fact that all the speakers who have taken part in the debate have supported wholeheartedly that principle. It is only in matters of detail that they disagree with the bill. I believe they would agree, one and all, that those matters of detail can be discussed more properly in committee.

Therefore I think it would be improper for me to detain the house for any length of time simply to restate a principle which has already met with complete agreement from hon. members in the opposition. However, there are one or two points which I should clear up, in the abstract, as the hon. member for Winnipeg North Centre (Mr. Knowles) has said. I do this of course without prejudice to my willingness to discuss any details hon. members may wish to have discussed when the bill reaches committee.

[Mr. Higgins.]

The hon. member for Winnipeg North Centre quoted from my remarks of January 29 when I set out the purport of this measure, and wanted to know whether, upon reflection, I still feel that what I said at that time contains a true statement of the effect of this legislation. I wish to affirm that most assuredly I do think it is a true statement, and that after this bill is passed the liability of the crown, which is now confined pretty largely to the tort of negligence, will be extended to embrace all those other torts covered by the bill. Whether or not it covers my hon. friend's case is quite a different matter, and this applies also to the hon. member for Kootenay West (Mr. Herridge) and the hon. member for Simcoe North (Mr. Ferguson). Whether a given case, which in the eyes of a layman may appear to be an eminently just case, is covered by any statute or any principle of law will depend upon whether there is any foundation for legal liability, not on the basis of the facts as stated by one party to the case but upon the real facts as established definitively.

In nearly all these cases, if any advice has been given by the Department of Justice to some other department of the government to the effect that there was no legal liability, it was because, upon the facts as we were informed of them by the statement made on behalf of the claimant on the one hand, and by the reports which we got from civil servants and crown officers on the other, the necessary facts did not seem to be established upon which legal liability could be founded.

Therefore in a case of that kind, we would advise that the department had no reason for diverting public money to the payment of a claim which was not properly founded upon legal liability. The officers of the government have not access to a treasury into which they can dip their hands to take out some money and pay it to John Jones, John Doe or Richard Roe because he has made a claim against the crown. The only basis upon which we can justify to the auditors of the crown such payment is by showing either that there is a legal liability for which we should settle or, as in some cases, the circumstances are so difficult as to make it proper that as a matter of grace the crown should pay some compensation to the claimant.

May I now refer to the case raised in very general terms by the hon. member for Simcoe North, in which he said, as I understood him, that an intoxicated servant of the crown, acting within the scope of his authority, has caused damage to another motor vehicle which damage had not been paid for as it would have been, according to his statement, had it been committed by an employee of the Imperial Oil company. I must say that the