1950

June 14, 15 & 16

Nov. 15

BETWEEN:

TREVELYN SPENCE .....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Crown—Petition of Right—Collision—Driver of army truck acting within scope of his duties even if journey made pursuant to orders of superior officer given without authority—Damages.

Suppliant claims damages for injuries suffered by him as a result of a collision between a taxicab driven by him and an army truck owned by the respondent and driven by Corporal Ryan, a servant of the respondent in the Royal Canadian Armoured Corps (Reserve), who was driving the truck pursuant to the order of his commanding officer.

The Court found no negligence on the part of suppliant and found that the negligence of the driver of the army truck was the sole cause of the accident and found further that the use of the truck for the purpose used was contrary to army regulations and that Ryan's commanding officer had no authority to use it for such purpose. The Court found also that on the day the accident occurred Ryan was on duty with the military category of driver and that it was within the scope of his duties to drive military vehicles when directed to do so by his commanding officer and that it was not open to him to question the authority of that commanding officer. The scope of his duties was not lessened by the fact that the orders of his commanding officer were given contrary to the regulations for military operated vehicles.

Held: That the driver of the army vehicle was acting within the scope of his duties or employment at the time suppliant was injured and the respondent is liable for the damages sustained.

PETITION OF RIGHT by suppliant to recover from the Crown damages for injuries suffered by suppliant because of the alleged negligence of an officer or employee of the Crown, acting within the scope of his duties or employment.

The action was tried before the Honourable Mr. Justice Cameron at Charlottetown.

R. R. Bell, K.C. and *G. R. Foster* for suppliant.

Honourable A. W. Matheson, K.C., J. L. Nicholson and *K. E. Eaton* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. now (November 15, 1950) delivered the following judgment:

This is a Petition of Right in which the suppliant claims damages for personal injuries sustained on July 24, 1947, when a taxicab operated by the suppliant was in collision with an Army truck, the property of the respondent and driven by Corporal H. W. Ryan, admittedly a servant of the respondent in the Royal Canadian Armoured Corps (Reserve), at a point on the St. Peter's Road a short distance southwest of Mt. Stewart in Queen's County, Prince Edward Island.

For the suppliant it is contended that the collision occurred solely through the negligence of Corporal Ryan in that he drove at an excessive speed, failed to keep a proper lookout, was on the wrong side of the road, failed to have proper control of his truck, did not have proper brakes or lights or failed to use them in the proper manner, and was otherwise negligent under all the circumstances.

For the Crown it is submitted that Ryan was not negligent in any manner; that the collision occurred solely through the negligence of the suppliant in that he was travelling at an excessive rate of speed, was on the wrong side of the road, did not keep a proper lookout, did not have good and sufficient brakes, and that otherwise he contravened the provisions of The Highway Traffic Act of the Province of Prince Edward Island, 1936, c. 2, as amended. Alternatively, he alleges contributory negligence on the part of the suppliant. He also submits that at all material times Corporal Ryan was not an officer or servant of the Crown acting within the scope of his duties or employment. A counter claim is also made for the damages caused to the Army truck, the repairs costing $131.89.

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St. Peter's Road is a provincial highway leading in a northeasterly direction from Charlottetown to Souris. Ex. "E" is a plan and profile of part of the road where the accident occurred, prepared by J. A. Reardon, P.L.S. The vertical line AA thereon is about 600 feet southwesterly of the road leading southerly to Mt. Stewart and the collision occurred at or about that line and about seventeen miles from Charlottetown. The asphalt pavement is 18 feet in width. On each side of the road is a drainage ditch with level shoulders between the road and the ditch, the shoulders on the north and south sides being respectively 6 feet and 5 feet in width. That part of the road shown on the plan extends for about 2,300 feet and, as will be seen, it is for all practical purposes a straight road. From the point of the collision westerly it is also a level road, but easterly thereof there is a slight grade of $2\frac{1}{4}$ per cent. It is not suggested that this slight grade had anything to do with the accident. The weather was fine and the pavement dry.

The suppliant had been driving a taxi for some years and was licensed as an operator and taxi driver. His story of the events leading up to the collision is as follows. He had been hired by L. Feehan to drive to Mt. Stewart. When he left Charlottetown about 1.20 a.m., Feehan and his friend A. MacDonald were in the rear seat. In the front were Spence, who was driving, his friend Rita Sherren, and her brother Roland Sherren.

When he first saw the lights of the approaching truck some 200 yards away, he was travelling at about 40 m.p.h. and, as was his practice, he lowered his lights, but noticing that the truck lights—which he described as extra bright—were not lowered, he raised his lights again momentarily and at once re-lowered them. As the vehicle approached he slowed down somewhat, driving his vehicle on the right edge of the paved part of the road, keeping his position there by watching the shoulder of the road at his right. No horn was sounded by either vehicle. He says that the truck lights were so bright that he could not tell precisely where the truck was on the road but he expected no collision until just before the impact when he realized that the truck was coming directly towards him. When slowing up he

used his brakes but could not say that they had been fully applied at any time. He was rendered unconscious by the collision, but upon recovering shortly thereafter found himself lying on the road near its centre and adjacent to his car which was between him and the south ditch, entirely on the south side of the road facing about parallel to the road but with the rear right wheel off slightly on the shoulder. He had been driving with his left elbow out of the window and that arm was so badly injured that the following day it was amputated just below the elbow. His eyesight was normal and he did not wear glasses.

Corporal Ryan, the driver of the Army truck, gave the following account. He had served in the Army overseas and had "standing orders," which apparently means that he had the permanent status of a driver and he had had considerable experience with driving trucks and jeeps. Following his discharge he joined the 17th Prince Edward Island (Recce) Regiment, which regiment formed part of the 21st Armoured Brigade (Reserve Force), and his training included the driving of Army vehicles and trucks. His brother, C. E. Ryan, who was then a sergeant in the Regiment and in charge of its transport, gave him instructions to take the 60 cwt. truck and to transport a ball team from the Knights of Columbus house in Charlottetown to Souris where they would play a ball game. The game was played in the early evening and was followed by a dance. The truck left Souris to return to Charlottetown about 12.15 a.m. Ryan was driving and at his left was Corporal McFarlane who was in charge of the team. In the open truck at the rear were the boys comprising the team and three men who represented the Knights of Columbus organization which sponsored the team. Ryan was travelling at about 25 m.p.h., but as he entered the intersection at Mt. Stewart he geared down to lessen his speed. When he was about the top of the slight grade west of Mt. Stewart Road and at the point marked "X" on Ex. E, he first noticed the lights of the approaching car which was then about the point marked "Y" on the plan. He was unable to estimate the car's speed but thought it was travelling fast. He said the car lights were dimmed and raised but not again lowered. He had his truck in

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second gear as he came over the hill and kept it in that position travelling at about 10 to 15 m.p.h. and gradually losing speed. He states that his truck was entirely on its own side of the road, with its right wheels just at the shoulder; that the truck had a right-hand drive and he could observe and did observe his position on the road when the lights on the approaching car were first dimmed, by looking out of the right door. He saw no pavement at his right at all. He did not apply his brakes or sound his horn at any time. When the impact occurred he felt a tug to the left on his steering wheel and the truck veered in that direction. When the truck came to rest it was considerably in rear of the car with part of the front over the centre line of the road.

Constable Warbey of the R.C.M.P. was called to the scene of the accident and it is admitted that the truck and car had not been moved prior to his arrival. I accept his evidence as to the size of the vehicles and their position on the road and as to certain other matters that his investigation disclosed. The truck is an unusually large one having a carrying capacity of 60 hundred weight, being one of the largest trucks in use on the roads of the province. The car has an overall length of about 16 feet and a width of 6 feet. It was entirely on the south half of the road with the front wheels close to the centre. Both rear wheels were on the south shoulder and the car was not quite at right angles to the road, and facing about northeast. He found scattered glass from the car on the south half of the road at the left side of the car, and mud under the car. He could not say definitely that the mud had come from the car but seemed to be of the opinion that it had been knocked from it by the impact, and added, "if the mud came from the car it had not proceeded far after the crash."

He found the truck about 50 feet to the rear of the car on the "wrong" side of the road facing generally towards Charlottetown, but angled to the south. North of it there was sufficient room on the road itself for a car to pass safely. The left front wheel was $2\frac{1}{2}$ feet from the south edge of the road. The truck was of solid steel construction with a large open steel box. It had an overall length of 20 feet with a width at the front of 84 inches, the box at

the rear having an overall width of 90 inches; the wheel base was 7 feet. The centre of the front lights on the truck was 4'4" above the ground, that of the car being about 2'6". The left front wheel of the truck was damaged; the left 16 inches of the front bumper and the left part of the front axle were bent back; the front shackles of the longitudinal springs were torn loose and the retaining bolt broken off.

I find, also, that neither driver sounded his horn. Further there is no evidence that the brakes of either vehicle were defective. There is no evidence that the truck at any material time was travelling at a speed in excess of 15 m.p.h. I find, also, that the suppliant at the time was not travelling at an excessive speed or that he was in breach of the requirements of section 35(4) of The Highway Traffic Act, 1936, which provides that anyone driving at a speed in excess of 30 m.p.h. when meeting another vehicle between sunset and sunrise shall prima facie be deemed to be driving in other than a careful and prudent manner. Spence says that before seeing the lights of the truck he was travelling at 40 m.p.h. but that he immediately lowered his speed and continued to do so until the crash. The passengers in his car corroborate him on this point. Ryan could not estimate the suppliant's speed in miles and McFarlane, who was in the cab with Ryan, could not say anything at all about it.

Moreover, the damage caused to the vehicles would indicate that the impact was not "head-on," but rather in the nature of "a side swipe," and had the suppliant been travelling at any great speed his car would have gone forward a considerable distance thereafter. I am quite satisfied that it did not move forward more than a very few feet. Spence was thrown out of the car and was found at its left side, as was also the broken glass from the car itself. The mud which was observed by Warbey was under the car and may have been dropped at the moment of impact.

The truck lights were described by Spence as "extra bright" and the passengers in his car were all of the same opinion. Ryan had never examined the lights and could give no opinion as to how they would affect the driver

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of an approaching car. McFarlane, who saw them only from his seat in the cab of the truck, described them as medium or normal. They were fixed lights and the beam could not be lowered by the driver. As I have said above, they were much higher from the road than those of a car and this may have been the reason why they were described as "extra bright." The beam was probably of much greater length than that of a motor car. Spencer said they "dazzled" him only while looking towards the truck but did not prevent him from observing the side of the road where he was travelling.

As to the lights on the suppliant's car, I accept the statement of Spence that he lowered his lights immediately on noticing the truck lights; and that as the truck lights were not lowered he signalled the driver of the latter to do so by raising his own momentarily and immediately relowering them. That was the normal course to follow and the passengers in Spence's car said it was done. Ryan, however, said they were not lowered a second time and McFarlane said merely that he did not notice them relowered. In any event, Ryan does not suggest that the car lights, whether raised or lowered, affected his driving in any way. I do not think that the use of the lights on either vehicle contributed in any way to the collision.

The one remaining factor to be considered in this connection is the position of the vehicles relative to the centre of the road. The applicable provisions of The Highway Traffic Act of the Province of Prince Edward Island are as follows:

> 46. (1) Drivers of vehicles proceeding in opposite directions shall pass each other on the right, each giving to the other at least one-half of the main travelled portion of the roadway as nearly as possible, but if a driver finds it impracticable to give to the other at least one-half of the main travelled portion of the roadway, he shall immediately stop and if required shall assist such other driver to pass in safety.

I think it is well established that the suppliant's car at the time of the impact and at all material times was on its own side of the road and very close to the south side of the paved part thereof. Spence said that he could see his position on the road quite clearly, could distinguish the shoulder and that he drove in such a manner as to keep his right wheels as close to that shoulder as possible. All

his passengers gave evidence to the same effect although one or two had stated earlier in reports to the R.C.M.P. that they had not observed the position carefully. Ryan did not say that the car at any time was north of the centre line of the road, in fact he said nothing about its position on the road whatever. McFarlane, who was in the cab with Ryan (and was called as a witness for the respondent) and who was the only passenger in the truck who could say anything about the position of the car, stated, "As the car approached us *it seemed to me to be well over on its side of the road,* but I cannot give its speed." He was in a most favourable position to observe the approaching car and had observed it from the moment when the truck was approaching the Mt. Stewart side road. He had no interest whatever in the outcome of these proceedings and I accept his statement in that regard as being entirely correct. Moreover, as I have said above, the car did not move any appreciable distance after the impact and then it was entirely on the south side. Spence was thrown out of the left front door and when picked up was on the north side of the car and south of the centre line. The damaged glass was all on the south side. I find nothing in the evidence or any inference to be drawn from the accepted facts which would even suggest that the car or any part of it was at any material time north of the centre line of the road.

On the other hand, I find very convincing evidence that the truck at the moment of impact was in part south of the centre line. Spence could not say exactly where the truck was but at the last moment knew that "it was coming directly for me—a direct head-on." Roland Sherren said that just before the crash it looked to be fairly well over on the centre of the road. Rita Sherren who was also in the front seat said it was in the middle of the road. Feehan said that, "It is hard to say but I think the lights (of the truck) were pretty well in the centre of the road." McDonald, who was seated behind Spence, could not see where the truck was on the highway. Ryan said that when he first saw the car lights dimmed several hundred yards away, he glanced to the right through the door and could see no pavement there; and that he could see the road

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ahead without any trouble. He did not identify his position on the road beyond stating that when he looked out on that one occasion he could see the north shoulder but no pavement. McFarlane stated that Ryan drove very carefully. He could not say whether the truck had previously been travelling in the centre of the road, adding that there was no reason for it to travel on the side. He was not watching Ryan and did not see him glance toward the shoulder. He estimated that as the truck came down the slope its right wheels would be about 6 inches from the north side of the pavement and that there was a distance of about 9 feet from his left side to the south side of the road at the time when the car lights were first dimmed several hundred yards away.

Weighing this conflicting evidence, I can reach no other conclusion than that the truck at the moment of impact was on the south half of the road. McFarlane's estimate—and it was that only—placed the left side of the cab of the truck at the centre line, and the box, being wider, would then be over the centre line. McFarlane was not accustomed to driving in this unusually wide truck and he could quite easily have underestimated its width, as I think he did, and could also have erred in estimating the distance from the left side of the truck to the south side of the road at 9 feet. The weight of the evidence is that the truck was in part south of the centre line. If my finding that the car was well over on its south side of the road and very close to the south side is correct, there can be no doubt that the truck was south of the centre line or otherwise the collision would not have occurred. I find, therefore, as a fact that such was the case and that Ryan's failure to observe the requirements of section 46(1) of the Provincial Highway Traffic Act constituted negligence and was the only negligence which caused or contributed to the accident. I am quite unable to find that the suppliant was in any way negligent.

That, however, does not dispose of the matter. The respondent, while admitting that Ryan at the time was a servant or officer of the Crown denies that he was then acting within the scope of his duties or employment.

The claim is based on the provisions of section 19(*c*) of the Exchequer Court Act, R.S.C., c. 34, as amended, which is as follows:

19. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:

(*c*) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

Section 50A of the said Act as added by c. 25, Statutes of Canada, 1943, is as follows:

50A. For the purpose of determining liability in any action or other proceeding by or against His Majesty, a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the Crown.

The question for determination is whether Corporal Ryan was at the time of the accident "acting within the scope of his duties or employment." It now becomes necessary to set out in some detail the evidence as to the purpose of the trip from Charlottetown to Souris and the manner in which it is said to have been authorized.

Brigadier W. W. Reid gave evidence on behalf of the suppliant. In 1947 he was a Lieutenant-Colonel commanding the 17th Prince Edward Island Reconnaissance Regiment (to be referred to herein as "the Regiment"). The 60 cwt. truck was a military vehicle which had been issued to the 28th Light Anti-Aircraft Regiment, the commanding officer of which had loaned it to the officer commanding the P.E.I. Regiment for the purposes of the trip. It was not on the charge of the P.E.I. Regiment but Reid assumed responsibility for it while it remained with his unit.

Colonel Reid desired to build up the strength of his unit by securing recruits from his area, in which was included Souris, a small town about fifty-three miles from Charlottetown. He thought it would be a good plan to show the young men of that district that the Army was interested in many activities, including sports, and thereby encourage them to become recruits. He therefore arranged for a baseball match to take place at Souris in which it was planned that a team in the junior Charlottetown League, sponsored by the Regiment, would play the young men

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from Souris. The team sponsored by the Regiment was called "the Recce team" and was made up in part of men from the Regiment (about 1/5 of the total), the remaining consisting in part but not entirely of cadets from the Queen's Square School Cadet Corps which was affiliated with the Regiment. For some reason, that team could not make the trip and Col. Reid decided to substitute for it another team in the same league, namely, the Knights of Columbus team, the average age of its boys being sixteen to seventeen years. He said, "My reason for that, being that they were in the same league, with our own boys in the city, and members of the team were from our affiliated cadet corps, Queen's Square School, and the acting principal of the Queen's Square School at the time, was a cadet instructor, and was making the trip, and the team itself was in charge of one of our band corporals, Corporal McFarlane." Later he said that in his opinion the trip was "official" because it was for the purpose of securing recruits for the Canadian Army. That was his main object, but another purpose was to give the Souris boys and the boys from Charlottetown some recreation. Reid had no personal knowledge as to the boys who made up the Knights of Columbus team that day and did not see the team at any time.

However, James McCallum, Vice-Principal of Queen Mary School and instructor of the Cadet Corps, went with the team to Souris and gave evidence as to its composition. Queen Mary's School is one of four schools under the control of the Charlottetown Board of Education. It is a combined high and elementary school for boys. It had its own Separate School baseball team quite apart from the Knights of Columbus team and the school had no affiliation whatever with the Knights of Columbus organization. McCallum's son was captain of the junior Knights of Columbus baseball team and so the witness knew for a day or so that that team would make the trip. He accompanied it on his own initiative and without any request from any one, his status being completely unofficial. As far as he was concerned, neither Col. Reid nor the Army had anything to do with the trip except that a military truck was provided for purposes of transport. The team con-

sisted of twelve or thirteen boys, most of them members or ex-members of the Queen Mary's School Cadet Corps. He said that four were not cadets but whether they were ex-cadets does not appear.

McFarlane, whose evidence has been previously referred to, was then a trooper in the Regiment and was also manager of the Knights of Columbus ball team. He says that Col. Reid called him, *as manager of the team,* and instructed him to go on the trip. He had no knowledge as to whether the members of the team were or were not cadets.

L. J. Butler and Preston Curley, members of the Knights of Columbus, accompanied the team, the former as its coach and the latter as a member of its baseball committee. Neither were veterans or had anything to do with the Army. They paid most of the expenses incurred by the team that day and were reimbursed by the Knights of Columbus. All the witnesses are in agreement that the team at Souris wore distinctive Knights of Columbus baseball uniforms, that no one (including the truck driver) wore military uniforms; and that apart from the use of a military vehicle as a means of conveyance, nothing took place at Souris to indicate to any one in any way that the Army had sponsored the trip. As Butler said, "We went out to play ball. There was nothing of a military nature took place. There were no banners or speeches and the only thing connected with the Militia was that there was a military truck." Curley said, "I know that the Army had nothing to do with the trip. Nobody told me so and I saw nothing which would lead me to believe it."

Col. Reid said that Corporal McFarlane "up to a point" was authorized to take the trip. He explained that by saying, "Corporal McFarlane, being manager of the team, and I was interested in him and he was interested in the Regiment, and I was definitely interested in the boys under his charge, and he, being a member of the Regiment, would be in possession of a uniform, on normal duty, and when instructed, would have authority to wear it." Later Reid said that he instructed McFarlane to take the trip as the *Manager of the Knights of Columbus baseball team in the League.*

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Corporal Ryan received his authority to operate the truck on that trip by a transport work ticket, of which Ex. 1 is a certified copy. The original could not be found but Ex. 1 by consent was admitted as a true copy. It bears the signature of Col. Reid as that of the officer authorizing the journey and was made out for a trip from Charlottetown to Souris, the "service performed" being indicated as "sports." Nothing is said thereon as to what persons or teams were to be conveyed but there is no doubt that Col. Reid gave the work ticket to Sergeant Ryan with instructions that the Knights of Columbus team was to be conveyed to and from Souris and that Sergeant Ryan in turn passed on these instructions to the driver, Corporal Ryan.

Counsel for the respondent submits that Corporal Ryan in driving the truck from Charlottetown to Souris for the purpose of conveying the Knights of Columbus ball team to a ball game was not acting within the scope of his duties or employment, inasmuch as the regulations in effect for the use of military vehicles prohibited its use for such a purpose. A copy of King's Regulations and Orders for the Canadian Army, 1939, was filed (Ex. H). Authority for making such regulations by the Governor-in-Council is contained in section 139 of the Militia Act, R.S.C. 1927, ch. 132. By section 11 of K.R.O. the duties at Army Headquarters respecting the administration of the Canadian Militia shall be as apportioned by the Minister; and by Appendix VI of the said regulations, the Quartermaster General is charged with:

> Control of employment (subject to requirements of C.G.S.) of all load-carrying vehicles, both regimental and administrative, in order to ensure that the most economical use is made of militia transport as a whole.

Ex. A is a pamphlet entitled "Regulations for Military Operated Vehicles, 1947, Part I." It provides regulations for the control, operation and employment of such vehicles and is for the convenient use of all drivers. It gives in a summary way the effect of the existing regulations in regard to such matters and while the particular pamphlet filed was issued in 1949, it is established that the regulations to which I shall refer were all based on regulations and directions laid down by the Quartermaster General in

various general orders, all of which were circulated to the various district commands, and in turn passed down by their orders to all officers commanding units in the area—including the Commanding Officer of the 17th P.E.I. Regiment. Such regulations as I shall refer to were all in effect on July 23, 1947—the date of the accident.

These regulations are:

20. Military transport vehicles are to be used for official purposes only. Exception is permitted in the case of officers of the rank of brigadier or higher, when required to carry out semi-official duties, on account of their appointment and official position. On these occasions this privilege will be extended to the wives of officers concerned.

22. Military transport vehicles may be used to transport service personnel to sports fields, playgrounds and recreational centres, subject to the following conditions:

(*a*) That vehicles and drivers are available, and that their use will not prejudice or interfere with training, administration or other official duties.

(*b*) Recreational transport will only be used in the case of properly authorized and organized military sports

(*c*) (i) Unit transport may be used on the authority of the OC for journeys to and from places which are within a radius of 20 miles from the barracks or offices of the Unit concerned.

(ii) Pool transport may be used on the authority of the officer responsible for the control and employment of MT at Army, Command or Area HQ for distances as in (i) above.

(iii) Use of transport for recreational purposes for distances in excess of 20 miles will only be allowed on the authority of the QMG at AHQ, or the GOC of the Command concerned.

(*d*) Under no circumstances will civilians or persons other than service personnel be transported.

23 No unauthorized persons will be allowed to ride in military vehicles.

25. It is forbidden:

(*d*) For civilans to ride in military vehicles except:—

(i) Civilians employed by the army will be permitted to use military vehicles on official duties when vehicles have been specially detailed for such service. In such cases, the driver of the vehicle will be issued a pass by the officer detailing the transport, which will show the names of those authorized to travel and the nature of the duty to be performed. This pass will be turned in with the Transport Work Ticket by the driver upon completion of the detail.

(ii) Civilians while employed by the army or by a contractor engaged on work under the supervision of the army may, if necessary in the course of their duties, ride in military vehicles without written authority providing they do so only within the boundaries of the project on which they are employed.

26. Prospective army recruits may be permitted to ride in military transport vehicles if required in connection with any phase or procedure preliminary to enlistment, provided the driver of the vehicle is issued a

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pass by the officer detailing the transport. Such pass will show the names of those authorized to travel, and the nature of the duty to be performed. The pass will be turned in with the Transport Work Ticket by the driver on completion of the detail.

27. Members of the Royal Canadian Cadet Corps may be permitted to ride in military transport vehicles when required to do so in connection with a duly authorized parade or authorized training activity.

28. As the transportation of cadets in a military vehicle at any other time is not authorized, should the cadet be injured or killed while being transported other than on a parade or in the course of training as set out above, sections 73 to 80 inclusive of the Regulations for the Cadet Services of Canada, 1942, would not apply to provide compensation and medical treatment as set out therein. The liability of the Department in such a case would be merely that of the owner of a vehicle to a gratuitous passenger.

I do not think it is necessary to outline in detail the opinions expressed by the various witnesses as to the meaning and effect of these regulations. In my view, the only possible support that could be provided for Col. Reid's opinion that the trip was authorized under the regulations would be that the team was composed of members of the Royal Canadian Cadet Corps. Sections 27 and 28 of the regulations are particularly applicable to the use of military vehicles by members of that corps and section 28 makes it abundantly clear that only under section 27 are they allowed to ride in military vehicles. No other section has any application to members of the Cadet Corps. Their use of vehicles is strictly limited to occasions "when required to do so in connection with a duly authorized parade or authorized training activity," and by section 28 their transportation in military vehicles at any other time is not authorized.

Colonel Reid admitted at once that the trip could not be considered an "authorized parade" but considered it to be something in the nature of an authorized duty. There is no evidence whatever that it was an authorized training activity. One would expect that the details of an authorized training activity would be found in General Orders or at least in a syllabus of training activities laid down for the training of the Cadet Corps by the commanding officer of the battalion to which it was attached, or by Command Headquarters. Nothing of that sort was produced or even suggested. It was the Knights of Columbus ball team which assembled that day; the Queen Mary's School Cadet Corps as such was not in any way concerned with the

matter and it is shown that some of the players were not, in fact, members of the Cadet Corps. It will be noted, also, that in regard to the transport of service personnel of the Regiment itself for recreational purposes, military vehicles could be used by authority of the officer commanding only within a radius of twenty miles from the barracks. For distances in excess of that, authority would have to be secured from Army or Command Headquarters. It is admitted that no such authority was asked for or granted and I think it is clear that had it been requested for the purpose of this trip permission would have been refused, in view of the existing regulations.

I find, therefore, that the use of the vehicle for the purpose I have described was contrary to the regulations and that Colonel Reid had no authority to use it for such purposes. I do not question his good faith in the matter. At the time he was busily engaged in an effort to secure recruits for his regiment, and doubtless thought that an exhibition baseball game, between a team sponsored by the Regiment and the young men of Souris, would assist in recruiting. He says that later on recruits were obtained from that area, but it is difficult to agree with his opinion that the game actually played by the Knights of Columbus team had anything to do with the matter.

I have already found negligence on the part of Ryan, and the inquiry as to whether that negligence was within the scope of employment must be directed so as to ascertain what was the scope of *his* duties or employment. Ryan was a member of the Reserve Army and as such it was his duty to give implicit obedience to the orders and directions of his Commanding Officer, unless, of course, such orders were clearly contrary to law. He was undoubtedly on duty that day and it is shown that for his day's work he received a day's pay from Army sources. Having the military category of a driver it was within the scope of his duties to drive military vehicles when directed to do so by his Commanding Officer. Reid was his Commanding Officer and gave the order for him to take the truck, to pick up the Knights of Columbus team and to take them to and from Souris.

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Even if he had had actual knowledge of the existing regulations regarding the use of military vehicles—and it is not shown that he had—it was not open to him to question the order of his superior officer or to demand proof that the order so given was within the authority of his Commanding Officer. One can readily envisage the chaotic results which would flow if an enlisted man under such circumstances could question the authority of his superior. The control of military vehicles on charge, the power to direct who should operate them and where and in what manner they are to be used, are matters which in my opinion an enlisted man would have the right to assume as coming under the authority of his Commanding Officer. Ryan had been on active service for some years and realized fully that the orders of a commanding officer were of such a nature that they were to be obeyed and not challenged.

What effect, then, have these regulations on the scope and employment of Ryan, keeping in mind that Ryan was bound to and did obey the orders of his Commanding Officer on a matter which quite obviously Ryan would consider came within the control of the latter? I consider that the answer thereto is to be found in the general law applicable to master and servant.

Reference may be made to *Irwin* v. *Waterloo Taxi-Cab Co. Ltd.* (1). The facts in that case were as follows:

Action was brought by the plaintiff to recover damages for personal injuries sustained by him in consequence of the negligence of the defendants' servant, Bird, while driving a taxi-cab. The defendants carried on business as the proprietors of taxi-cabs; one Black was their general manager, and Bird was employed by them as a driver, whose duty it was to obey the orders of the general manager. In pursuance of the orders of Black, Bird drove him in a taxi-cab of the defendants to see his private friends and not upon any business of the defendants. Black had no authority from the defendants to use any of their taxi-cabs in this way. The defendants had agreed with one of their customers that he should have the exclusive use of this taxi-cab for a specified period which was still current. Bird had no reason to suppose that Black was acting improperly in ordering him to drive him in this taxi-cab on the occasion in question. While Bird was thus driving Black the plaintiff was injured owing to his negligent driving.

At the trial, judgment was entered for the plaintiff and the Court of Appeal dismissed an appeal from that judgment. Fletcher Moulton, L.J. said in part at p. 592:

The defendants are a company which carries on the business of letting out motor cars for hire. Their general manager was a man named

(1) (1912) 3 K.B. 588 (C.A.)

Black, who was in the car at the time of the accident. Bird, the driver of the motor car, was in their employment, and there was evidence which justified the jury in coming to the conclusion that driving was a part of his duties. He was, of course, under the orders of Black as general manager, and therefore the jury were entitled and, I think, bound to find that at the time of the accident Bird was driving the car as servant to the defendant company to the knowledge and by the direction of Black, whose orders in such matters he was bound to obey.

The ground on which the defendants contest their liability is that Black was guilty of a breach of duty in thus ordering Bird to drive him in the motor car. They say, in the first place, that Black was driving to see a private friend and not on the business of the company, and that he had no right to use the car for such purposes without previously providing for the fare. In the second place, they say that Black had no right to make use of that particular car because the defendant company had contracted with a customer to give him the exclusive use of it. There is evidence to support both these allegations and they must be taken to be facts. At the same time there is no evidence that Bird knew anything about these matters, and the jury were justified in finding that he was wholly unaware that Black was acting improperly in ordering him to drive him.

And at p. 593 he continued:

Under these circumstances I am of opinion that Bird was acting within the scope of his employment and under the order of his masters, the defendant company, when he was guilty of negligence. If a master directs a servant to take his orders in respect of matters within his contract of service from A.B., such orders, when given, become the orders of the master. A master can always delegate his authority and he does so when either expressly or impliedly he designates a person as authorized to give orders for him and on his behalf. In the present case the fact that Black was the general manager implied that it was the duty of a servant in the position of Bird to obey the orders given to him in the ordinary matters of his service. His driving the car on this occasion was thus in fulfilment of his duty of obedience to his masters, the defendant company, and therefore he was at the time their servant doing what he was engaged upon by their orders. Nothing more than this is needed to make the principle respondeat superior apply.

A little consideration will make it clear that the contrary view would not only be unjust but would lead to endless confusion. Suppose that the general manager of a railway company wires orders to a stationmaster to send a special train to a certain station and in going there it runs over a member of the public by the negligence of the servants of the company. Could the company be allowed to raise as a defence that the general manager gave the order improperly, say, because he intended to use the train for his private ends? For the convenience, I might even say for the necessities, of working its system, the company orders all its servants to obey implicitly the orders of the general manager, and therefore in obedience to the command of the company itself all its staff and plant are at his orders. If the company takes the advantage of this arrangement, it cannot say that one of its servants who in matters appertaining to his service obeys an order of the general manager is doing otherwise than obeying an order of the company itself. An accident happening to the servant under such circumstances would unquestionably be an accident

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arising out of and in the course of his employment and would entitle him to compensation, and conversely a negligent act by him, which caused damage to a third party, would be done in the course of his employment in carrying out his master's orders and the master must bear the consequences of it.

The principles laid down in the *Irwin* case seem to me to be particularly applicable to the case at bar. Colonel Reid as Commanding Officer was designated by the respondent as one authorized to give orders for him and on his behalf to Corporal Ryan. Further, it was the duty of one in the position of Ryan to obey the orders of Reid given to him in the ordinary matters of his service, and driving military vehicles was one of such ordinary matters. His driving the truck to Souris was thus in fulfilment of his duty of obedience to his master, the respondent, and therefore he was at the time the servant of the respondent doing what he was required to do by the respondent's orders given through Reid. I am of the opinion that while Reid committed a breach of the regulations regarding the use of military vehicles, in using the truck for this purpose, such breach did not narrow the scope of Ryan's duties or employment. His duties included that of driving a truck when and where his Commanding Officer directed him, and that is what he did.

I find, therefore, that Corporal Ryan, who at the time of the accident was admittedly a servant or officer of the respondent, was then acting within the scope of his duties or employment. The principle respondent superior therefore applies and the respondent is liable for the damages sustained.

I turn now to the question of damages. The suppliant at the time of the accident was twenty-five years of age and was employed as a taxi driver in Charlottetown. He was attended at the scene of the accident by a local physician and it was found that he was bleeding and in considerable pain, and that his left arm was badly damaged. He was taken to the Charlottetown hospital and there it was found necessary to amputate his left arm just above the elbow. He made a quick recovery and was released from hospital in ten days, although for a short time thereafter he was required to return there for treatment. He purchased an artificial arm but says that while it is of some assistance he

cannot use it in operating a car. As a result of the accident he was incapacitated from doing any work for about four months and was out of work for one year. He says he could not return to his former occupation of taxi driving as he thought that he could not secure the necessary chauffeur's licence, but made no inquiries in regard thereto. He then became a part-time life insurance salesman in Charlottetown but did not succeed very well, his income for the balance of 1949 being only $200. In the early part of 1950 he became a salesman for the Fuller Brush Company and has been earning about $35 per week out of which he has to pay the costs of operating his car for which he now has an operator's licence. He is continuing his insurance business part time.

His parents reside in the country at Honey Harbour and he spends part of his time there assisting with the farm work. Prior to his accident he was employed as a taxi driver at intermittent periods only, a considerable part of his time being spent on his parent's farm. His earnings as a taxi operator were said to average about $35 per week but that was merely a rough estimate, no adequate records being kept by him or his employer. His education is limited, his formal schooling not having extended beyond the second grade in high school. He has no means of his own and is entirely dependent on his earnings. He complains that at times he still has some pain in the stump of his left arm, particularly when fatigued or when the weather is damp.

For loss of wages he claims $35 per week for forty-five weeks. That claim in my opinion is excessive. His recovery was speedy and I have no doubt had he desired to do so he could have taken up some form of employment much earlier than he did. As I have said his employment previous to the accident was very irregular but when not employed in Charlottetown he worked on his father's farm, taking in return only what his father gave him. No record of such receipts was kept and I think it improbable that he had more than his support and spending money. In 1944 he worked until October on the farm. From then until August, 1945, he drove a taxi-cab in Charlottetown and from the latter date until the accident in 1947

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he had no regular employment except for one month prior to the accident when he operated the taxi. I consider that he could have taken up some gainful employment six months from the time of the accident and therefore he will be allowed for loss of wages the sum of $910, being twenty-six weeks at $35 per week.

For his other special damages, the following items are allowed:

Hospital Account	$ 67 85
Doctors' and Surgeons' Account	125 00
Ambulance	10 00
Nurses' Accounts	38 00
Cost of Artificial Arm	168 00
	$408 85

His pain and suffering were of short duration. The loss of his arm is a serious one but it has not prevented him from earning a living. It is a permanent disability which to some extent will hinder his prospects in life and limit the nature of the work which he can undertake. Taking all the evidence into consideration, I award him for general damages, including pain and suffering, the loss of his arm, disability and loss of earning power incidental thereto, the sum of $9,000.

There will therefore be judgment declaring that the suppliant is entitled to be paid by the respondent the sum of $10,318.85, being part of the relief sought in the Petition of Right. The suppliant is also entitled to his costs after taxation. Inasmuch, however, as counsel for the suppliant in this case were the same as counsel appearing for the suppliant in certain other proceedings taken in this Court by Bradshaw (the owner of the damaged car), I direct that on the taxation of costs in the two cases only one set of counsel fees will be allowed.

The counter claim of the respondent will be dismissed without costs.

Judgment accordingly.