BETWEEN:

DAME JEAN PRINGLE, wife separate as to property of Joseph Christie, engineer, of the City of Westmount, and the said JOSEPH CHRISTIE, to authorize his wife ..... SUPPLIANTS;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1944
Mar. 27
Apr. 17
1946
Mar. 1

Crown—Petition of Right—Liability of Crown for damage caused by negligent operation of a motor vehicle driven by an unauthorized driver—Unauthorized driver taking over operation of vehicle from authorized driver, both drivers servants of the Crown acting within the scope of their duties or employment.

An army vehicle driven by an authorized driver was taking part in demonstrations of army material in Westmount, P.Q. A soldier of higher rank but not an authorized driver obtained the driving of the vehicle and drove it recklessly and negligently in the presence of the authorized driver, causing grievous injury to the female suppliant. The vehicle was the property of the Crown and both drivers at the material time were servants of His Majesty.

Held: That the authorized driver of the army vehicle was negligent in entrusting it to an unauthorized driver and that since both were acting within the scope of their duties or employment respondent is liable to suppliant for the damages incurred by her.

PETITION OF RIGHT by suppliants to recover damages from the Crown for loss suffered by the female suppliant due to the negligence of servants or employees of the Crown acting within the scope of their duties or employment.

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The action was tried before the Honourable Mr. Justice Angers, at Montreal.

G. B. Foster, K.C. and *A. M. Watt* for suppliants.

Hon. F. Philippe Brais, K.C. for respondent.

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

ANGERS J. now (March 1, 1946) delivered the following judgment:

The suppliant, Dame Jean Pringle, by her amended petition of right, claims from the respondent the sum of $16,229.78 for damages allegedly suffered as the result of being run down and injured by a motor vehicle owned by the respondent and driven, at the time of the accident, by an officer or servant of the Crown, to wit an enlisted officer or man of the Second Battalion, Black Watch of Canada.

The petition alleges in substance:

on June 29, 1942, at about 5.45 p.m., the suppliant was run down and severely injured by a motor vehicle, owned by the respondent and driven at the time of the accident by an officer or servant of the Crown, acting within the scope of his duties or employment, viz. by an enlisted officer or man of the Second Battalion, Black Watch of Canada;

she was run down by the said motor vehicle while she was standing on the east sidewalk of Melville avenue, in the city of Westmount, talking to the occupants of an automobile, parked along the curb on that side of the street, opposite 223 Melville avenue, between St. Catherine street and Western avenue;

the motor vehicle in question came east on St. Catherine street, made a wide turn to the left on Melville avenue, mounted the east sidewalk and on to a lawn beyond it, swung back towards its left, after travelling a distance of over thirty feet, struck the suppliant and crashed into the left side of the parked automobile;

the suppliant invokes the presumption of fault established by the Quebec Motor Vehicles Act, R.S.Q. 1941, chap. 142, s. 53;

without waiver of this presumption, the damages which the suppliant has suffered and will continue to suffer were caused by the fault, negligence and want of care and skill of the driver of the motor vehicle for whom the respondent is responsible, in that

(*a*) he was driving at a dangerous and illegal speed;

(*b*) he failed to keep control of the vehicle;

(*c*) he failed to bring it to a stop before hitting the suppliant;

(*d*) he undertook to drive a type of motor vehicle with the operation of which he was not familiar;

the said damages were also caused by the negligence of another enlisted man of the Second Battalion, Black Watch of Canada, Private Somerset, who, while acting within the scope of his duties or employment as a servant of the Crown, surrendered the jeep which caused the accident to Sergeant A. G. Martin, in disobedience to orders when he knew or should have known, as he admitted before the Court of Enquiry, that Martin was unqualified to drive the jeep and had no experience with this type of vehicle;

as a result of the accident suppliant sustained fractures of the 1st to 8th ribs inclusive on the right side, fractures of the 3rd, 4th, 5th, 8th, 9th, 10th and 11th ribs on the left side, fracture of the left humerus, fracture of the left fibula, laceration of the scalp, laceration of the left upper arm and cerebral concussion;

these injuries caused her to be confined to the Homoeopathic Hospital from June 29 to October 3, 1942, and from January 24 to February 1, 1943;

during and after these periods of confinement to the hospital she endured and still endures pain, discomfort and inconvenience from her injuries and their treatment;

she will never fully recover from the injuries sustained by her and will always be partially disabled, due to a paralysis of the left hand and arm and limitation of movement and weakness in the left knee and leg;

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she has suffered or will suffer the following damages as a result of the accident:

hospital bills	$1,083 94
nursing fees	262 00
doctors' fees to date	625 00
massage treatments to date	168 00
estimated cost of future massage	220 00
estimated future medical and X-ray expenses	300 00
cost of X-ray examinations to date	37 00
taxi fares	6 00
loss of wages to date	1,448 84
estimated future loss of wages	300 00
clothing destroyed in the accident	75 00
extra household help to date	220 00
estimated future cost of extra household help	1,000 00
pain, suffering, inconvenience and loss of enjoyment of life and movement during period of total incapacity	2,000 00
future pain, suffering and discomfort	500 00
permanent partial disability	8,000 00
Total	$16,229 78

following the accident the Officer Commanding, Second Battalion, Black Watch of Canada, C.A., held a Regimental Court of Enquiry into the occurrence and since that time suppliant's attorneys furnished the Department of National Defence with full details of suppliant's damages and she, herself, has submitted on two occasions to medical examinations by a physician, representing the Department;

respondent has nevertheless neglected to pay or offer to pay anything to the suppliant although requested so to do;

the driver of the jeep in question, Sergeant A. G. Martin, admitted verbally, after the accident, to Sergeant Charles Baker of the Westmount Police Force that he lost control of the jeep by stepping on the gas instead of the foot brake when turning north on Melville avenue from St. Catherine street;

respondent has admitted that Sergeant A. G. Martin, the driver of the jeep, was at fault and that respondent is liable for the accident by paying to John B. Pringle, on or about November 18, 1942, the full amount of the damages caused to his automobile in the aforesaid accident.

The respondent in his amended defence says in substance as follows:

he denies all and every the paragraphs of the petition of right;

the accident was not caused by the fault of any person for whom the Crown is in law responsible;

there is no fault or negligence attributable to the driver of the respondent's vehicle;

in any event the damages claimed are indirect, illegal and grossly exaggerated;

there is no lien de droit between the suppliants and the respondent;

the petition of right is unfounded in fact and in law;

Sergeant Martin was not in the exercise of his functions but on the contrary had obtained the use of the jeep for his own purpose;

Private Somerset had no authority to allow Sergeant Martin to obtain possession of the car and when so doing acted outside of the scope of his duties;

Private Somerset did not know that Sergeant Martin was not a qualified and competent driver;

at the time of the accident the vehicle complained of was not under the care or control of respondent;

any admission which may have been made by Sergeant Martin cannot bind the respondent;

any payment which may have been made to any other person than suppliants can have no bearing upon the present claim and, without limiting the foregoing, any such payment was made as a result of the condemnation of Sergeant Martin to pay the said damages upon his plea of guilty to a charge of having taken the jeep without authority;

suppliant is not entitled to plead by way of amendment to matters averred in paragraphs 5-a, 14 and 15 of the petition as the said averments, if valid in fact or in

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law, which is denied, would constitute a new cause of action, which could no longer be averred when suppliants moved to have them added to the petition of right nor can the petition of right be amended before the Court;

moreover, as it is alleged in the foregoing paragraph, the said amendments constitute a new cause of action which is prescribed.

In their amended answer to the amended defence the suppliants deny all and every the allegations of the latter.

The evidence discloses that on June 29, 1942, a jeep, the property of the respondent, was driven easterly on St. Catherine street west, in the city of Westmount, by a sergeant named Martin, of the Second Battalion, Black Watch of Canada. When arriving at Melville street on the east side of Westmount Park, it turned north thereon at an excessive speed, mounted the sidewalk on the east side of the street and on to the lawn between the sidewalk and the house, swung back towards its left and hit the suppliant, Jean Pringle, who was talking to the occupants of an automobile, parked against the curb on the said side of the street, and crashed into the side of the parked automobile.

Following the accident, the suppliant had to be taken to the Homoeopathic Hospital of Montreal for treatment, where she was confined until October 3, 1942. As a result of the accident, the suppliant suffered fractures of several ribs, of the left humerus and of the left fibula and also a laceration of the scalp and of the left upper arm. In addition she sustained a cerebral concussion.

On January 14, 1943, the suppliant underwent an X-ray examination of her left humerus, which showed that there was no union of the ends of the bone. On January 24 she was admitted to the hospital and an operation was performed on her left arm; she was released from the hospital on February 1, 1943. On April 8, 1943, an examination of her arm disclosed that there was no union of the bone. On October 19, 1943, she was again admitted to the hospital where she underwent another operation. She was discharged from the hospital on October 30, 1943. Another X-ray examination was performed on December

16, 1943, which showed that the bone was in good condition. A final examination was made on January 15, 1944, which showed that the union of the bone was complete.

According to the evidence of Dr. James Griffith, chief surgeon of the Homoeopathic Hospital, who first attended the suppliant, Jean Pringle, on June 29, 1942, her left arm is between 80 per cent and 90 per cent disabled and is rather useless in its present condition. Dr. Griffith believed that tendons could be taken to replace those which have been injured and that this would probably improve the condition of the suppliant's arm to a certain extent. He admitted, however, that he would not be prepared to guarantee the result of the operation, although he thinks that it may be worth trying. He observed that the suppliant still carries her arm in a sling and that he did not think that she could operate a typewriter. He stated that his charges to date amount to $625.

Dr. Ivan Patrick, attached to the staff of the Royal Victoria Hospital, examined the suppliant on March 7, 1944, and noticed a deformity of the humerus. He stated that the suppliant had a pain in her knee and that she cannot walk as well as she did before the accident. According to him she has a permanent loss of the use of the left arm to the extent of 90 per cent. He considered that an operation to improve her arm by putting new tendons would be difficult and perhaps not very successful. He did not believe that the suppliant could operate a typewriter.

Walter Hatch, Manager of the Homoeopathic Hospital of Montreal, filed as exhibit 1, five accounts of the hospital, one for room, board and attendance from June 29, 1942, to October 3, 1942, amounted to $1,147,59, one for similar services from January 24 to February 1, 1943, amounting to $89.06, one for similar services from October 19 to October 30, 1943, amounting to $110.05, one for physiotherapy services from April 22 to August 25, 1943, amounting to $108, and one for X-ray services in January, February, March and December, 1943, and January, 1944, amounting to $37.

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William Lyall Grey, Vice-President of Stone Franklin of Canada, Limited, testified that the female suppliant was employed with his company at the time of the accident and had been for about fifteen years. He said that she looked after the books. He asserted that as a result of the accident the suppliant lost $1,448.84 in wages. He stated that she is now back at work for part time, from eight oclock in the morning to three o'clock in the afternoon.

According to him she cannot do typing to the same extent as she did before the accident.

Mary Ellen Davidson, wife of W. J. Boyce, said that she worked as housekeeper for the suppliants from December 1, 1942, to March 31, 1943, and received in payment of her services $160. She filed as exhibit 2, a receipt for this amount.

Nellie Richards, wife of Lester A. Thomson, testified that she worked as attendant for the suppliants from October 4 to November 14, 1942, and received $60 in payment of her services. She filed as exhibit 3, a receipt for that sum.

Jean Pringle, suppliant, testified that before the accident she was in good health, that when it occurred she was fifty years old and that previous thereto she did all the housework alone. She said that since the accident she had to hire help and pay therefor between $2.50 and $3 and supply two meals a day. She declared that she paid $72 to Mrs. H. A. McKean, a physiotherapist, for massage treatments, and filed in support of her claim three accounts as exhibit 4. She said she disbursed at least $6 for taxi fares. She valued her clothing destroyed in the accident at $75. She asserted that she has not now the strength that she used to have, that her left knee hurts, that she does not sleep as well, that she has headaches, that she feels nervous, that she cannot walk as much as she formerly did, that she has to get help to dress and undress and to cut her meat.

The evidence shows that, at the time of the accident, she was working for Stone Franklin of Canada, Limited, as a typist and bookkeeper and had been in the employ of

the company for about fifteen years. She stated that she cannot do as much typewriting as she was accustomed to do because she can only use her right hand.

She declared that she was married in Montreal and has a marriage contract stipulating separation as to property. I may note that the best evidence would have been an authentic copy of the contract; however, as no objection was made against this verbal evidence, I assume that I am entitled, in the circumstances, to consider the suppliant as being separate as to property.

In cross-examination, she owned that she has been able to get along with the help of assistants but said that her mother is living with her and helping her.

Joseph Christie, husband of the suppliant, declared that he had to hire outside help to do the housework from the date his wife was injured. He said that before the accident she used to do all the housework alone.

John Pringle, owner of the automobile, a Pontiac coach, which, on the day of the accident, was parked on the east side of Melville street and was damaged by the jeep, testified that the suppliant, Mrs. Christie, was standing on the sidewalk, talking to him and to his wife. He declared that he heard a noise and noticed the jeep coming up on the sidewalk. He said that the suppliant was hit by the jeep.

He asserted that his car was damaged, that he made a claim against the Crown and that it was settled, the cheque being sent to the party who had repaired the car.

In cross-examination, Pringle admitted that he did not know who had signed the cheque, nor that Sergeant Martin had been condemned to reimburse to the Crown the amount of the damages. He filed as exhibit 5, a copy of a release given by him to the Crown in consideration of the sum of $131.59 for the damages caused to his car by the accident in question.

Andrew Lawson, constable of the city of Westmount, investigated the accident. He testified that he saw the jeep shortly prior thereto, carrying children around the block between Academy road, Park Place, St. Catherine street and Melville street. He said he was then stationed on Western avenue, a short distance west of Melville street,

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for traffic control. He declared that, on the day of the accident, there was a display of armaments given by the members of the Black Watch regiment, in Westmount Park.

According to him the accident happened on June 29, 1942, at 5.23 p.m. and the demonstration at that time was practically finished, because there were no children around then.

There were, however, quite a number of soldiers and several pieces of equipment parked north of Western avenue.

He stated that, when the accident occurred, he was talking to Major Knox of the Black Watch regiment on Western avenue, that he heard a noise and saw a cloud of dust, that he took his motorcycle and drove to the place of the accident. He added that Major Knox ran across the park.

He noticed Sergeant Martin and Privates Somerset and Jobin on the street beside the jeep. He said he saw Somerset on it several times prior to the accident but did not see Martin driving the jeep on that day.

Charles Baker, Sergeant in the Westmount Police Force at the time of the accident, said he heard the evidence of Constable Lawson.

He declared that, on the day of the accident, about five minutes after it had occurred, he spoke to Sergeant Martin who told him that he had been driving the jeep in an easterly direction on St. Catherine street, that he made a left hand turn to proceed north on Melville street, that he stepped on the accelerator by mistake instead of the brake and that he momentarily lost control if his car, which mounted upon the sidewalk and proceeded thereon for a distance of about 35 to 40 feet, striking a lady. He said that he and Constable Lawson measured the distance from the tire marks on the sidewalk.

He asserted that when he arrived on the scene of the accident the jeep was on the sidewalk, to the right of a parked automobile, opposite the apartment bearing No. 223 Melville street. He stated that a lady, whom he later found to be the suppliant, was lying on the sidewalk about ten or twelve feet ahead of two stationary vehicles, one of

which, the jeep, was on the sidewalk and the other, a private car, was in the street, parked alongside the sidewalk. He said that the lady was being attended to by a doctor and Constable Lawson.

Walter Alfred Somerset, who described himself as a Private in the army, testified that on June 29, 1942, the day of the accident, he formed part of the Black Watch regiment.

He stated that he remembered the accident with which we are concerned and that he was then riding in a jeep on his way to dinner in the messing area in Westmount Park. According to him there were three others in the jeep with him at the time and Sergeant Martin was driving. Somerset said that he was in the back seat and that Martin had been driving ten minutes at the most before the accident. He admitted that he did not know whether Martin had driven a jeep before.

Somerset declared that he got a three-week course to learn how to drive a jeep. In his opinion driving a jeep is very easy for one who is trained. Asked if he could say anything about Martin's experience with a jeep by the way he drove it, Somerset replied that he could not say very much. I deem it apposite to quote an extract from the testimony (p. 4):

Q Could you state anything about Mr. Martin's experience with a jeep, by the way he drove it, after he got it from you?

A. Not very much.

Q. What could you state? Much or little?

A. He drove a bit faster. Other than that I have no comments to make.

To the question as to how Martin had got up on the sidewalk with his jeep, Somerset stated (p. 4):

A. All I see. I believe he chose the sidewalk because he did not have room on the left to pass the parked car on the left.

Further on Somerset, asked how it happened that Martin got into that position, answered (p. 5):

A. I believe he saw a street car coming on Saint Catherine travelling west.

. . . . . .

A. And rather than be hit by the street car he drove a little bit faster than he should have perhaps around the corner.

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Somerset said he understood that Martin was going to relieve him whilst he (Somerset) had his supper. He stated that when the accident occurred Martin was driving him to the messing area.

He asserted that he had not been instructed not to give the jeep to Martin or to any other sergeant.

He said that he had a "work ticket" to drive the jeep on the day of the accident but that he had not "a driver's standing order", which he received later. He admitted that when he surrendered the jeep to Martin he did not know whether the latter had a "driver's standing order" and a "work ticket" and that he did not inquire. To the question as to why he had given the jeep over to Martin, Somerset replied (p. 7):

A. His rank was higher than mine, and I took that to be sufficient.

In cross-examination Somerset was asked to supply information about the "work order"; I believe it expedient to quote a passage from the deposition (p. 8):

Q. Now, you will have to say a little of this "work order". What is it?

A. This was signed by the motor transport officer, to move the vehicle in question.

Q. To move that vehicle described in the "work order"?

A. Right.

Q. And there is a "work order" applicable to any vehicle that must be in shape to go, and the one identified driver is permitted to drive an identified car, and nothing else in it?

A. Unless there is a change in the "work order".

Asked if the "work order" in his case gave him "the sole authority to drive that car from where to where, and back where", Somerset answered (p. 9):

A. From the motor transport garage on Saint Catherine Street to the administration area around the park. And I was to continue there, going round and round the park with these children and so on

Q. Until?

A. Until when, I do not know.

Q. Until another order was given to you?

A. That is right.

Somerset stated that he had learned since the accident that Martin had no "work order". He said he thought that his superior rank entitled him to take the wheel over from him.

He declared that Martin had driven the jeep "just the length of the park, down one block to St. Catherine, and along St. Catherine to Melville". He believed that,

contrary to what he had said previously, the time during which he had driven the car was considerably less than ten minutes.

Somerset declared that, since the accident, he understood that he had no right to allow the sergeant to drive his vehicle and that he was bound to say no to his request to let him drive.

Somerset stated that there was nothing to prevent him from continuing on with his companions and driving himself to the messing area. I may perhaps quote an extract from the deposition (p. 11):

Q. There was no reason for an emergency which caused Sergeant Martin to take it over, he took it as a whim of his own. There was no reason which would justify him to take the vehicle?

A. Nothing, except I had no dinner at the time.

Q. But you could have driven yourself, your dinners (diners?) to the messing area, with the vehicle?

A. I believe so.

Q. You need not have done it?

A. Physically no; but I was down by the order at a certain are (?), which could have been done, so I imagined.

Asked if his orders were to drive until he was relieved, Somerset admitted that he did not remember the orders and added that he was "sent out to do this job, and whether they were going to leave me to take the vehicle off the road I am not sure".

He understood that Martin was allowing him to go and have supper and that he would take over while the witness was having supper. He believed at the time that it would be feasible for Martin to continue driving the jeep while he (Somerset) was having his supper. He owned that he knows the contrary now.

He estimated that the accident occurred on Melville avenue at a distance of about fifty feet from St. Catherine street. Martin was not called as witness. I doubt whether he could have explained plausibly his unfortunate venture.

Lieutenant-Colonel Homer Morton Jacquays was examined on discovery, on behalf of suppliants and his deposition was taken as read by consent of counsel and put in evidence entirely.

He testified that in June, 1942, he was Commanding Officer of the Second Battalion of the Black Watch of Canada, then stationed at the Westmount Barracks.

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He declared that on June 29, 1942, his unit was engaged in a demonstration of various army equipment at Westmount Park for civilians. He stated that the unit was demonstrating every piece of equipment it had, including at least one jeep. He said the demonstration comprised taking members of the public for rides in the jeep.

He recalled that one of the jeeps attached to his unit was involved in an accident on June 29, 1942, on Melville avenue. He stated that as a result of this accident a Court of Enquiry was held by the regiment when he was still in command.

He did not see the accident occur, but he made it his business to find out, in view of his position of Officer Commanding, who was driving the jeep. He said he found out that the jeep was driven by Sergeant Martin, a member of the unit under his command.

He declared that Martin was on duty in the park on the day of the accident but that "his duties did not call for him to drive the jeep".

He stated that Martin was Provost Sergeant and that a Provost Sergeant has generally three or four men forming a Regimental Police. According to him the job of a Provost Sergeant is to see that the Regimental Police carry out their duties according to battalion or standing orders. He specified that the duties of a Provost Sergeant and his men are to keep an eye on the regimental canteen, to see that the men of the regiment are properly dressed on the streets and to check the equipment being taken from the unit and make sure that the proper men are driving it. He added that they may be used sometime for traffic control.

He declared that, as far as he knew, these were the duties which Martin was supposed to do at the demonstration in Westmount Park on that day.

He stated that Private Somerset was driving the jeep before Martin took it over from him.

Jacquays said that a private soldier has to take orders from a sergeant if the orders given are in his line of duty, which is for the private to determine. An extract from the deposition seems apposite (p. 7):

Q. Is it not a fact that a private soldier has to take orders from a Sergeant?

A. If the orders are in his line of duty.

Q. Does the private determine that?

A. Yes. I can give you an example. If, for example, any officer ordered the duly authorized driver of a vehicle to turn that vehicle over to the officer in question, the driver would be wrong if he did so.

Q. Suppose you ordered an authorized driver of a jeep that day to let you drive, would you not expect the private or sergeant to do so?

A. If he did he would be technically wrong.

Q. Would he not be disobeying an order of his commanding officer if he refused?

A. It would be up to the man in charge, and if I insisted that he give up the vehicle he should report the matter to someone.

Asked if the same procedure would apply to a Major if he ordered the driver to give him the machine in his charge, the witness replied that ordinarily speaking a field officer would know better. He added that if the Major did give the order, the same procedure would apply.

Counsel for suppliants asked Jacquays if the same answer would apply in case a Sergeant ordered the driver of a vehicle to give it to him; witness replied (p. 8):

A. I think if a Sergeant ordered him to do so, an experienced driver would definitely refuse.

Q. So the driver who had the jeep before Sergeant Martin was not an experienced driver?

A. No. He was not an experienced Military driver.

Jacquays stated that in a case of emergency anyone would naturally assume the driving of a vehicle. He added that, if a Provost Sergeant felt his duties required it, he could go to the Transport Officer and get a work ticket authorizing him to drive.

In cross-examination, Jacquays declared that the Provost Corps had no traffic control outside the park on the day of the accident as the regiment was not moving as a unit. According to him their job "would be mostly to move around and help a bit with the children, of which there is always a large group, and see that none of the men did anything out of the way, and preserve order and help any officers and run messages".

He stated that it was Private Somerset's duty to drive the jeep during the demonstration at Westmount Park and that no one else could drive it legally. He said that, if Private Somerset's hours were long, the Transport Officer would probably send another driver, who would have

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another work ticket to take over. He asserted that Martin had no authority to drive the jeep on the day of the accident.

Jacquays said he ascertained through the Court of Enquiry that Martin drove the jeep on the day of the accident. Asked how this came about, Jacquays replied that Martin decided to take the jeep to Westmount Barracks for his supper. He modified his answer forthwith and stated that the supper was served in the park. He intimated that Martin wanted to try driving a jeep for his own satisfaction.

To the question as to how it had come that Somerset had given the jeep to Martin, Jacquays answered (p. 13):

> Somerset being new to the Army was nervous about saying "no" to a Sergeant.

He affirmed that a Sergeant would have no disciplinary powers over Somerset if the latter refused to give up the jeep.

In answer to a question from counsel for respondent, Jacquays dealt with the findings of the Court of Enquiry regarding the accident; these findings, in my opinion, are wholly immaterial. I may note incidentally that Jacquays added to his comments the following statement (p. 15):

> Furthermore we (obviously the Court of Inquiry) also felt that Mr. J. P. Pringle was also at fault for the incorrect manner in which his car was parked.

I must say that I fail to see how the parking of a car alongside the curb on the east side of Melville avenue may have in the least contributed to the accident. Witness' claim is preposterous.

Jacquays declared that Martin must have known the rules and orders of the army concerning the authority to use a car as he had received careful instructions about his duty as Provost Sergeant and had instructed his men not to allow unauthorized vehicles out of the parking area. He added that a Provost Sergeant must instruct his men that any vehicle leaving the parking area should be stopped and the driver requested to produce a properly signed work ticket.

He stated that besides the work ticket which a driver must have to drive an army vehicle, he must further be

in possession of the drivers' standing orders. He described these standing orders as a small booklet which gives a great deal of instructions regarding the actual driving, maintenance, convoy work and so forth. He was sure that Martin did not have the standing orders at the time of the accident.

He said that Martin had passed the test which the unit give the men to make sure that they are fit to attend the trade test, but that as far as he knew Martin had no standing orders or trade test.

Jacquays admitted that, apart from this incident, Martin had always been a reliable man and one in whom he had confidence, giving as reason that the army usually picks the most reliable men as Provost Sergeants.

Jacquays believed that Somerset was in the jeep when the accident occurred and that he was sitting beside Martin. He admitted that Martin was entitled to get his supper in the mess in the park, although he could have taken it in the mess in the barracks if he so wished, since he was a Sergeant. He did not remember if the other men in the jeep, including Somerset, were going to have their supper in the mess in the park. He stated, however, that Private Jobin was going to have it there.

Jacquays said he thought that Somerset had passed his examinations to drive the jeep; after having looked at the Enquiry, he added that he passed his board I. C. class 3. He stated that he had not received the standing orders booklet but that it was being prepared for him.

He agreed that technically, according to army rules, Somerset should not have been driving. He stated, however, that, as there was a shortage of drivers, the army was forced to let a few drivers take over vehicles as soon as they had passed the tests, although they had not actually received the physical licence.

He declared that a certain number of the members of the unit were in different kinds of demonstrations in Westmount Park, among which was exhibiting the vehicles and weapons.

He stated that a Sergeant has a certain authority over a man of lower rank and that, in the present case, the

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Sergeant abused his authority. Asked if when he said "abused" he meant that he was going outside of his authority, Jacquays replied (p. 23):

> It is both. The abuse was when he told Somerset he would drive, and he went outside of his authority when he drove it.

Hector Marcotte, employed in the section of the Canadian Government Annuities of the Department of Labour, filed as exhibit A, annuity tables showing the cost of deferred and immediate annuities on the ordinary life and ten-year guarantee plans. He declared that the amount payable for an annuity of $100, payable quarterly, for a female at the age of 50 is $1,604, and at the age of 52, $1,555. I may note that this appears from the tables. He said that these figures are based on the expectation of life.

Counsel agreed that the expectation of life for a woman 52 years old is twenty years.

Gérard Nantel, legal adviser in the Army Department, District No. 4, filed as exhibit B, a copy of the Standing Orders for Drivers of M. T. Vehicles and Motorcycles, with amendments to November, 1940.

The question of negligence on the part of the driver of the jeep does not arise. The facts are such that negligence is obvious and unquestionable. The jeep was running from west to east on St. Catherine street at an excessive speed when, without moderating, it turned to its left to proceed north on Melville avenue. It was intimated by Somerset that the driver of the jeep crossed St. Catherine street from south to north speedily in order to avoid being hit by a tramway running from east to west. It is idle to say that the sensible course for the driver of the car to adopt so as not to endanger public safety would have been to slow down, let the tramway pass, turn to his left and go into Melville avenue at a reasonable speed. Martin proceeded into Melville avenue so rapidly that he evidently lost control of his car, mounted on the sidewalk and could not bring the car to a stop before violently hitting suppliant and crashing into the automobile stationed near the sidewalk.

The evidence disclosed that Martin was an incompetent and, in the present case, a very negligent and imprudent driver. I am satisfied that the accident is attributable to his negligence and incompetence. When the suppliant

was struck she was standing on the sidewalk, talking to someone in an automobile parked alongside the curb. She stood at a place where she was entitled to be and no negligence whatsoever can be imputed to her.

The respondent denied all the allegations of the petition of right and pleaded specifically that Sergeant Martin was not in the exercise of his functions at the time of the accident but, on the contrary, had obtained the use of the jeep for his own purpose and that Private Somerset, who was the only one authorized to drive the jeep, had no authority to allow Sergeant Martin to drive it and that in so doing he acted outside the scope of his duties.

The principal if not the sole question which arises is that concerning the right of Sergeant Martin to drive the jeep on the day of the accident.

It was urged on behalf of the suppliant that Sergeant Martin had the right to give orders to Private Somerset to let him drive the jeep and that a Private is not entitled to discuss the order of a Sergeant, his superior.

Jacquays, as already noted, declared emphatically that, if Sergeant Martin ordered Private Somerset, an authorized driver, to let him drive the jeep, the latter should refuse. He added that an experienced driver would definitely refuse. He admitted however that Somerset was not an experienced driver and that being new to the army he was nervous about saying no to a Sergeant.

Counsel for respondent relied on the Standing Orders and referred particularly to subsection (*f*) of section 1 and sections 15 and 16. Subsection (*f*) of section 1 provides that the drivers, when detailed for duty with a government vehicle, will have with them (*inter alia*) drivers' standing orders. The balance of this subsection is immaterial.

Sections 15 and 16 read as follows:—

15. *Authorized Drivers.*—No persons will at any time be permitted to drive a Department of National Defence vehicle except as stated hereunder:—

(*a*) Officers and Other Ranks who are qualified as drivers and belong to the unit concerned.

(*b*) Workshop personnel, of other than the unit on whose charge the transport is held employed in the repair or inspection of a vehicle necessitating road tests.

(*c*) Personnel undergoing authorized M. T. Instruction under proper supervision.

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16. *Unauthorized Driving.*—No Department of National Defence vehicle is at any time to be taken out from its garage, parking ground or vehicle standing for any purpose except by a direct or written order from the O. C. unit, or from his authorized representative.

The proof shows that, on the day of the accident, Somerset was the authorized driver of the jeep and that Martin had no authorization to drive it.

Sergeant Martin took advantage of his rank to obtain from Somerset the driving of the jeep. He drove it recklessly under the apparently apathetic eyes of Somerset and grievously injured the female suppliant.

The case is governed by subsection (*c*) of section 19 and section 50A of the Exchequer Court Act.

The material part of section 19 reads 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, in virtue whereof members of the naval, military or air forces are deemed to be servants of the Crown, assented to on July 24, 1943, is thus worded:

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 text of subsection (*c*) is plain and unambiguous: the injury must result from the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment.

This doctrine has been invariably expounded since the coming into force of the Exchequer Court Act. There are numerous decisions reported dealing therewith; it will suffice to refer to a few: *City of Quebec* v. *The Queen* (1); *Martin es qual.* v. *The Queen* (2); *Martial* v. *The Queen* (3); *Filion* v. *The Queen* (4); *Colpitts* v. *The Queen* (5); *The Alliance Assurance Company* v. *The Queen* (6);

(1) (1892) 3 Ex. C.R. 164; (1894) 24 S.C.R. 420.
(2) (1891) 2 Ex. C.R. 328; (1891) 20 S.C.R. 240.
(3) (1892) 3 Ex. C.R. 118.
(4) (1894) 4 Ex. C.R. 134.
(5) (1899) 6 Ex. C.R. 254.
(6) (1898) 6 Ex. C.R. 76.

Joubert v. *The King* (1); *Marcoux* v. *The King* (2); *Jokela* v. *The King* (3); *Yukon Southern Air Transport Limited et al* v. *The King* (4).

It is expedient to note that by the enactment of the statute 2 George VI, chapter 28, assented to on June 24, 1938, the words "upon any public work" were deleted from subsection (*c*) of section 19.

It was argued on behalf of suppliants that the fact that Somerset entrusted the driving of the jeep to Martin constitutes a negligence on the part of the former for which the respondent must be held responsible.

Several decisions were cited in support of this contention, among which are particularly the following: *Hall* v. *Johnson* (5); *Ricketts* v. *Thos. Tilling, Limited* (6); *Gillespie Grain Company Limited and Kuproski* (7); *Lockhart* v. *Stinson and Canadian Pacific Railway* (8).

The case of *Gillespie Grain Company Limited and Kuproski* is much in point and I believe apposite to quote a few extracts from the notes of the Chief Justice, Sir Lyman Duff, and of Mr. Justice Hughes. At page 15 we find the following observations by the Chief Justice:

> Colby was present in the front seat of the cab of the motor truck while Wilkie was driving. He was there in his capacity of employee of the appellant. It was within the scope of his employment and it was his plain duty to see that the truck was driven with reasonable care; to that end to keep a proper look-out and to exercise such control as might be necessary for the purpose of preventing mistakes or faults on the part of Wilkie. His failure to do so constituted negligence in his capacity of servant of the appellant; negligence for which it is, therefore, responsible. That he failed to keep a look-out, that he failed to exercise anything like proper control over the driving is plain from his own evidence, and it was, moreover, so found by Mr. Justice Ewing, the trial judge; who also found in effect that this negligence was a direct cause of the collision.

The Chief Justice then quotes an excerpt from the judgment of Lord Justice Pickford in the case of *Ricketts* v. *Thos. Tilling, Limited,* which reads as follows:

> It was admitted that the driver of this motor omnibus was alongside the man who was driving, and it is admitted that he was negligent. I entirely accept, of course, the proposition that, in order to make the owner liable, there must be negligence on the part of the person for whose

(1) (1931) Ex. C.R. 113.
(2) (1937) Ex. C. R. 23.
(3) (1937) Ex. C.R. 132.
(4) (1942) Ex. C.R. 181.
(5) (1939) R.J.Q. 66 K.B. 81.
(6) (1915) 1 K.B. 644.
(7) (1935) S.C.R. 13.
(8) (1941) S.C.R. 278.

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acts the owner is responsible—his servant, either regularly or for that occasion only . . . . In this case I say it is admitted that the driving was negligent. It is admitted that the driver was sitting by the man who was driving and he could see all that was going on—he could control what was going on. It seems to me that the fact that he allowed somebody else to drive does not divest him of the responsibility and duty he has towards his masters to see that the omnibus is carefully, and not negligently, driven.

Mr. Justice Hughes, who delivered the judgment of Cannon J., of himself and of Maclean J. *ad hoc*, at page 16 of the report expresses the following opinion:

The appellant Gillespie Grain Company Limited had in its employ as a driver the defendant George Colby. Sometime before the day of the collision, Colby had, contrary to the instructions of his employer, arranged with the defendant George Wilkie to come on the truck with him and to help by occasional driving and other work. Colby paid Wilkie from time to time small sums for these services. The reason underlying the arrangement was that Colby drank considerably and was out frequently late at night and as a result was, with his advancing years, at times too tired to do the work alone. On several occasions, Mrs. Wilkie also went along.

and further on (p. 21):

We now come to the fourth contention of the appellant that, assuming there was negligence on the part of Wilkie, it should have been held that Colby's act in permitting Wilkie to drive was outside the scope of Colby's employment, an unauthorized act, to effect a purpose of Colby for which the appellant employer was not liable. It should here be mentioned that in the province of Alberta there was not any statutory liability for damages imposed on the owner of the truck *qua* owner. Rupert Settle, an officer of the appellant, testified at the trial that one condition of Colby's employment was that he should see that nobody else should have "anything to do with that truck," that Colby was to be the sole driver and that Colby understood that clearly. Colby testified at the trial that he was in charge of the truck and Wilkie testified that every time they came back to the elevator, Colby resumed the actual driving. It must be clear, therefore, that Colby was in charge and in legal control of the truck, although the actual manipulations of the steering wheel and the gears had been temporarily turned over to Wilkie. It cannot be said that Colby had thereby freed himself, as employee of the appellant, of his ordinary duties of keeping a proper look-out, or seeing that the truck was on the proper side of the road, considering the rights of other traffic, although it may very well be that when Wilkie assumed the driving, he also assumed duties of keeping a proper look-out and keeping the truck on the proper side of the road, considering the rights of other traffic. In other words, it may be said that as the truck approached the place of the collision, Wilkie had a duty to keep a proper look-out also and a duty to drive the truck on the proper side of the road, considering the rights of other traffic; and that Colby continued to have, within the scope of his employment, a duty to keep a proper look-out and a duty to see that the truck was on the proper side of the road, considering the rights of other traffic.

We are not of opinion that Colby when he gave over the actual driving to Wilkie divested himself of the above duties or that the above duties were outside of Colby's authority merely because it was outside the scope of his authority to permit Wilkie to drive at all.

Mr. Justice Hughes then reviews certain decisions, among which is the one in the case of *Ricketts* v. *Thos. Tilling, Limited,* above mentioned.

After a careful perusal of the evidence and of the able and exhaustive argument of counsel and an extensive study of the precedents, I have reached the conclusion that Somerset was negligent in entrusting Sergeant Martin, who he knew was not a qualified and licensed driver, with the conduct of the jeep.

The contention that the driver of the jeep, whether it be Somerset or Martin, was not acting within the scope of his duties or employment in proceeding to the mess area for supper does not seem to me tenable.

The damages incurred by suppliant amount to $9,207.34 as follows:

hospital bills, including doctors' fees, nurses and X-rays	$1,491 50
household help	220 00
physiotherapy treatments apart from hospital treatments	72 00
clothing destroyed as a result of the accident	75 00
loss of wages to date of petition	1,448 84
pain and suffering, inconvenience and loss of movement during period of total incapacity	600 00
future pain and partial permanent disability estimated at 90 per cent	5,300 00
	$9,207 34

There will be judgment for the suppliants against respondent for the sum of $9,207.34, with costs.

Judgment accordingly.