BETWEEN: 1954

Jan. 21
Mar. 8

CYRIL WARD ....SUPPLIANT;

AND

HER MAJESTY THE QUEEN ....RESPONDENT.

AND

ROY BROOKS ....THIRD PARTY.

Crown—Petition of Right—Damages—Third Party proceedings—Degree of negligence—Costs—The Highway Traffic Act R.S.O. 1950, c. 167, s. 43(1)—The Negligence Act R.S.O. 1950, c. 252, s. 2(1), 4, 5 & 8—Regulations made under The Highway Traffic Act—Collision between two vehicles—Third vehicle improperly parked on highway—Apportionment of damages borne by respondent and third party—Division of costs borne by respondent and third party.

In a petition of right proceeding brought by the suppliant to recover from the respondent damages suffered by him through the alleged negligent operation on the highway of a motor vehicle by a servant of the Crown acting within the scope of his duties or employment the third party was added on application of the respondent who alleged that the third party's vehicle was improperly parked on the highway. The Court found that the operator of suppliant's vehicle contributed to the damages suffered by suppliant to the degree of thirty per cent;

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that the fault or negligence of the operator of respondent's vehicle contributed to the damages suffered by suppliant to the degree of twenty per cent and that the fault or negligence of the third party contributed to the damages suffered by suppliant to the degree of fifty per cent and assessed damages accordingly.

Held: That since the ultimate fault or negligence of any one of the parties as the direct or approximate cause of the damage to the exclusion of fault or neglect on the part of each of the others could not be determined it was necessary for the Court to find the degree in which each party was at fault or negligent in accordance with The Negligence Act R.S.O. 1950, c. 252, s. 2, ss. 1, 4, 5, 8.

2. That the suppliant should recover from the respondent his full costs of the action and that the third party should contribute to respondent fifty per cent of those costs and in addition five-sevenths of costs of the third party proceedings.

PETITION OF RIGHT by suppliant to recover from respondent damages alleged to have been suffered by suppliant due to the negligent operation of respondent's motor vehicle by a servant of respondent acting within the scope of his duties or employment.

The action was tried before the Honourable Mr. Justice Potter at Belleville.

R. E. Nourse for suppliant.

E. O. Butler for respondent.

B. W. Hurley for third party.

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

POTTER J. now (March 8, 1954) delivered the following judgment:

This is a petition of right within the Petition of Right Act, chapter 158, R.S.C. 1927, as amended, now chapter 210, R.S.C. 1952, by which the suppliant, Cyril Ward, prays that he be granted damages for damage to his motor vehicle and loss of use of the same as the result of a collision allegedly caused by the negligent operation of a motor vehicle owned by the Crown and driven by Sergeant Karl Hogan of the Hastings and Prince Edward Regiment, a servant of the Crown, while acting within the scope of his duties or employment.

A third party notice was filed herein by the respondent on the 9th day of March, 1953, and served on Roy Brooks, the third party, on the 14th day of March, 1953.

By order made herein on the 26th day of May, 1953, it was directed that the question of liability of the third party to the respondent be disposed of at the trial and that pleadings be filed and served.

Shortly before 8.30 o'clock in the evening of the 13th day of October, 1952, Douglas Ward, son of the suppliant, was driving his father's motor vehicle, which was described as a Plymouth Sedan built in about the year 1939, southwardly along the Schoharie Road in the County of Prince Edward, in the Province of Ontario. Although it began to rain later in the evening, the weather at the time was good; the road, which had a gravelled surface, was dry, the travelled portion of the same being about 24 feet wide, according to the evidence of Constable John G. Thompson of the Ontario Provincial Police, who investigated the accident, with a grass shoulder of about 6 feet in width on both sides before the scene of the accident on which cars could be parked, but, according to the evidence of the suppliant's son, with a grassy shoulder of about 1 foot or 1 foot and a half wide on the western side of the same dropping into a ditch of a depth of about 18 or 20 inches. The road was level, excepting for a slight elevation in the same, said by some witnesses to be about 300 feet to the southward of the point of collision, hereinafter described, and there was, some distance farther south, a slight curve in the road.

Slightly to the southward of the point of collision, and coming in from the eastward, was another road which intersected the Schoharie Road at about right angles. Slightly to the northward of such intersection, and on the western side of the Schoharie Road was the entrance to a narrow lane, and near the corner formed by the intersection of the northern boundary line of such lane and the western boundary line of the Schoharie Road, was the Schoharie schoolhouse.

As the driver of the suppliant's car approached the vicinity of the schoolhouse he saw on the eastern side of the road, and between one-half and three-quarters of a mile ahead, the lights of a parked vehicle and shortly after he saw, about three-eighths of a mile away, and coming from the southward, the headlights of another vehicle. The parked vehicle was afterwards learned to be that owned by

the third party and the vehicle proceeding from the southward to be one owned by the Crown, operated by Sergeant Karl Hogan of the Hastings and Prince Edward Regiment, a servant of the Crown, while acting within the scope of his duties or employment.

The driver of the suppliant's vehicle stated in direct examination, that when he saw the said parking lights he was travelling at a speed of between forty and forty-five miles an hour on his right hand side of the travelled portion of the highway and that when he saw the headlights of the Crown vehicle approaching from the opposite direction, he dimmed his lights and continued on slightly more to his right hand side of the road without reducing his speed.

In cross examination he said that he dimmed his lights before he passed the parked vehicle and was travelling about thirty miles an hour at that time.

As he approached the parked vehicle he thought that the vehicle of the Crown appeared to be stopping, but when he was within ten or fifteen feet of the parked vehicle that of the Crown turned out to its left to pass the same and the two cars collided; the left end of the front bumper of the Crown vehicle striking the left forward end of the suppliant's car damaging the length of its left side so severely that the cost of repairing it would have exceeded its market value when repaired. Following the impact the suppliant's vehicle continued on its course for about one hundred feet and came to rest with its rear end in the ditch on the western side of the road and its front end facing the same.

According to the evidence of Karl Hogan, who described himself as a motor transport sergeant, and an "instructor on wheels and track", he was, at the time and place in question, operating a Dodge "Special Design" vehicle with hydraulic brakes, designed to carry a load of about three-quarters of a ton. The vehicle weighed something over two thousand pounds and was provided with governors, connected with its carburettor, which were set and sealed for a speed of forty miles an hour.

As he was approaching the Schoharie schoolhouse, driving on his proper side of the road, at a speed between thirty and thirty-five miles an hour, he saw the bright headlights of a car coming towards him from the northward and he

dimmed his lights. As the car approaching from the opposite direction continued to come forward without dimming its lights and as he was "blinded" by them, he raised his lights for an instant and dimmed them again, and the lights of the other vehicle were then dimmed shortly after he, Hogan, had passed over an elevation in the road. At that instant, or immediately after, he saw ahead of him for the first time on his right hand side of the road, a motor vehicle which he afterwards learned to be that of the third party to these proceedings. He had not seen and did not see the tail lights of the vehicle, and upon realising that it was standing still, he decided that he had not sufficient time or distance within which to apply his brakes and stop his vehicle, and was obliged to choose between running into the rear of the same or attempting to pass to its left between it and the motor vehicle of the suppliant which was coming from the opposite direction.

When Hogan said in cross-examination that he dimmed his lights when the suppliant's vehicle was from one hundred to one hundred and fifty feet away he was evidently referring to the second time that he did so.

Other witnesses, who described the road in question, and who measured the same by travelling over it and taking the mileage recorded on the speedometer of a car estimated that there was a slight elevation in the road, about three hundred feet to the southward of the intersection of the road entering the Schoharie Road from the eastward. Sergeant Hogan, estimated the distance of the elevation in the road from the parked truck of the third party, to be about twice the width of the courtroom, or about seventy-five feet.

Assuming that the elevation in the road taken with the height of Sergeant Hogan's eyes above the level of the same prevented his seeing the tail lights of the parked vehicle, which were eighteen or twenty inches forward of and about six inches below the rear end of the platform on the vehicle, or that they were obscured by fumes from the exhaust of its motor which was running, that such elevation was, according to the evidence of other witnesses, about three hundred feet southward from the parked truck of the third party, and that the speed of Sergeant Hogan's vehicle was between thirty and thirty-five miles an hour, it follows that

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he had very little time within which to form a judgment. A speed of thirty-five miles an hour would be equivalent to fifty-one and one tenth feet a second, and a speed of thirty miles an hour would be equivalent to forty-four feet a second, which would have given him between five and seven seconds within which to form a judgment and act upon it.

Sergeant Hogan further stated that he passed so close to the parked vehicle, that the cab or the superstructure of his truck caught the rear view mirror of the parked vehicle which was projecting from the left-hand door frame of the same and, upon the collision occurring, the front end of his truck was turned to his left, and the aerial bracket, which projected from the frame of his car at the rear, grazed the truck of the third party.

Further evidence established that the truck of the third party was so parked that it was wholly on the travelled portion of the road, with a space of seventeen feet between its left side and the western side of the road, and with its rear end between two and three feet north of the northern boundary line of the road coming from the eastward and intersecting the eastern boundary line of the Schoharie Road.

Assuming the width of the Crown vehicle to have been between six and seven feet, there would have been at least ten feet of the road clear for the suppliant's vehicle with the width of the shoulder in addition.

The speed of the suppliant's car was evidently fairly high, for although it was struck on its left forward end and its left side badly damaged, it continued on its course for a distance of about one hundred feet after the impact, then slewed, and came to rest with its rear end in the ditch on the western side of the highway and its front end facing the road. The Crown vehicle on the other hand, came to rest almost immediately after the impact.

It may be thought that as the suppliant's vehicle was travelling on a course approximately parallel to the side of the highway, while the Crown vehicle was, or had been, cutting obliquely across it, the impact had a greater effect on the forward motion of the Crown vehicle than on that of the suppliant, but nevertheless, one hundred feet seems

a considerable distance for a damaged car to travel on a level road with a gravelled surface. Sergeant Hogan's evidence would, however, indicate that he had resumed a course parallel to the road before the impact for the rear view mirror on the door frame of the third party vehicle was struck by the cab of the Crown vehicle.

The third party, Charles Roy Brooks, was called as a witness and although he denied in his defence to the statement of claim of the respondent that he was the owner of a 1948 Chevrolet Stake Body truck, admitted on his examination for discovery that he and his brother together owned such a vehicle and, in his evidence, that he was operating it on the evening in question and had stopped opposite the Schoharie schoolhouse, shortly before the accident already described, for his brother who was the schoolteacher in charge of such school. He blew his horn two or three times but as his brother did not come, he parked the vehicle in question by the eastern side of the road and, leaving the motor running, went over to the schoolhouse to tell his brother that he had arrived. He said that the distance between the lefthand side of his vehicle and the western boundary of the highway was seventeen feet, which agreed with the measurement made by Constable John G. Thompson of the Ontario Provincial Police who had investigated the accident, as well as the evidence of other witnesses.

Brooks said that before leaving his truck he had turned off his headlights and left it with two parking lights on the front end of the same and two red lights on the rear end, and described them as consisting of a cluster of three, four inches apart, one of them not being lighted, and that there were reflectors on the mud flaps behind the rear wheels.

The third party did not say that it was not practicable to park the vehicle off the travelled portion of such highway and the evidence of Constable Thompson in this connection is accepted.

Section 43(1) of The Highway Traffic Act, chapter 167, R.S.O. 1950, is as follows:

43. (1) No person shall park or leave standing any vehicle whether attended or unattended, upon the travelled portion of a highway, when it is practicable to park or leave such vehicle off the travelled portion of such highway; provided, that in any event, no person shall park or leave

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standing any vehicle, whether attended or unattended, upon such a highway unless a clear view of such vehicle and of the highway for at least 400 feet beyond the vehicle may be obtained from a distance of at least 400 feet from the vehicle in each direction upon such highway.

Section 2, subsection 1, of The Negligence Act, R.S.O. 1950, chapter 252, is as follows:—

2. (1) Where damages have been caused or contributed to by the fault or neglect of two or more persons, the Court shall determine the degree in which each of such persons is at fault or negligent, and, except as provided by subsections 2 and 3, where two or more persons are found at fault or negligent, they shall be jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each shall be liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

Section 4 is as follows:—

4. In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff which contributed to the damages, the Court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively.

Section 5 is as follows:—

5. If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent.

Section 8 is as follows:—

8. Where the damages are occasioned by the fault or negligence of more than one party, the Court shall have power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just.

I am unable to determine that the ultimate fault or neglect of any one of the parties was the direct or proximate cause of the damage to the exclusion of fault or neglect on the part of each of the others and find that it was contributed to by the fault or neglect of each of the parties to the action in different degrees.

In such circumstances, the Legislature of the Province in which the accident occurred has imposed upon the Court the duty of determining the degree in which each party was at fault or negligent, although it must have anticipated that it cannot be done with mathematical precision and that such determinations can only be attempts at fair estimates.

In order of time, the third party was the first to be at fault or negligent in parking or leaving standing the vehicle which he had been operating, and of which he had charge, wholly upon the travelled portion of the highway when it was practicable to leave it off the same, in disregard of the duty to himself and others using the highway imposed by section 43(1) of The Highway Traffic Act, chapter 167, R.S.O. 1950. *Groves* v. *Wimborne* (1).

The law of the highway defines what is or is not reasonable conduct, and if an accident occurs as a result of its contravention, then *prima facie* the contravention is negligence causing or contributing to the accident.

The vehicle which was operated by the third party had been stationary for some short space of time before the vehicles of the suppliant and the respondent arrived on that section of the highway and in a case in which it were possible to find that one of the other parties had the last opportunity to avoid the accident, the third party would not be liable. But, in this case, the evidence indicates that the accident would not have occurred if the third party had complied with the statute which was evidently enacted to prevent the occurrence of such situations.

I therefore find that the fault or negligence of the third party contributed to the damages suffered by the suppliant to the degree of fifty per cent.

The operator of the suppliant's vehicle first saw the parking lights of the third party vehicle at a distance of one-half to three-quarters of a mile and the headlights of the Crown vehicle at a distance of three-eighths of a mile, but he did not dim his headlights until about to pass the vehicle of the third party or reduce his speed, which must have been high, as already indicated. He, also, disregarded duties to himself and others using the highway, imposed by statute.

The Highway Traffic Act, chapter 167, R.S.O. 1950, provides by section 10(15) as follows:—

10. (15) The Lieutenant-Governor in Council may make regulations prescribing the type and maximum strength of lights which shall be carried by vehicles, and regulating the location, direction, focus and use of such lights;

(1) [1898] 2 Q.B. 402.

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By section 3 of chapter 46 of the Statutes of Ontario, 1953, section 10(15) was repealed and a new section substituted, but the effect of that portion of the same, already quoted, was not altered thereby.

Part III of the regulations made and filed under The Highway Traffic Act, by paragraph 27(*a*) and (*b*) thereof provides in effect that motor vehicles shall be provided with headlamps having an upper or main beam so aimed and of such an intensity, as to reveal persons or vehicles at a distance of at least 200 feet ahead for all conditions of loading and also a lower or passing beam so aimed that when the vehicle is not loaded, none of the high intensity of the same which is directed to the left of the vehicle shall rise higher than a level of eight inches below the horizontal centre of the headlamp from which it comes, at a distance of twenty-five feet ahead of it.

Section 10(2) of the said Act is to the same effect.

Paragraph 28 of the said Regulations is as follows:—

28. Whenever on a highway after dusk and before dawn the driver or operator of a motor vehicle approaches an oncoming vehicle within 500 feet he shall use the lower or passing beam.

It has been held in a number of cases that failure to dim headlights under the circumstances thereof was negligence. *Tinkler* v. *Gobel* (1); *Faber* v. *Patron Oil Company* (2); *Bennett* v. *Gardewine* (3); *Rubin* v. *Steeves* (4).

Judicial notice has been taken of the fact that a motorist, after passing at night an oncoming car carrying the lights required by law, cannot see well during the short time it takes his eyes to become accustomed again to the comparative darkness. *Forrest* v. *Davidson and Malnyk* (5).

The suppliant, by failing to dim his lights at the proper time, blinded the driver of the Crown vehicle so that he was unable to see objects or low-power lights ahead of him on the road and when he did dim his lights, created a situation in which the operator of the Crown vehicle was required to make a quick, but perhaps unwise decision.

(1) [1931] 2 W.W.R. 413 (Sask.)
(2) [1941] 3 W.W.R. 836 (Sask.)
(3) [1948] 2 W.W.R. 474 (Man.)
(4) [1951] 28 M.P.R. 421 (N.B.C.A.)
(5) [1951] 4 W.W.R. (N.S.) 273 (Sask. C.A.).

The driver of the suppliant's vehicle also failed to reduce his speed after dimming his lights, which he ought to have done as a careful man, and was, as a result, travelling at a high rate of speed, when the collision became imminent and occurred.

In the emergency which the driver of the suppliant's vehicle created, the operator of the Crown vehicle could not be expected to exercise nice judgment and prompt decision. *Tatisich and Harding* v. *Edwards* (1).

I therefore find that the fault or negligence of the operator of the suppliant's vehicle contributed to the damage suffered by the suppliant to the degree of thirty per cent.

When the operator of the respondent's vehicle saw the bright headlights of the suppliant's vehicle approaching from the northward he dimmed his lights, but, as the lights of the suppliant's vehicle were not dimmed, he became blinded by them. He, no doubt, assumed that the operator of the suppliant's vehicle would, at any instant, comply with the law and dim his lights and he, therefore, continued on his course without reducing his speed and finally raised his lights and dimmed them again, when the operator of the suppliant's vehicle dimmed his.

It has been held in some jurisdictions that a driver "blinded" by the lights of another vehicle should stop or reduce his speed so as to be able to stop instantly if danger arises. *Turner* v. *Fletcher* (2); *LeBlanc* v. *Ouellet* (3); *Larose* v. *Décary* (4).

It has also been held that there is no general rule in this connection and the conduct of a driver blinded by the lights of another vehicle is to be determined in each case by the surrounding circumstances. *Turner* v. *Fletcher* (*supra*); *Armond* v. *Carr* (5).

There was no evidence of other vehicles following that of the respondent immediately before the collision or of other circumstances making it unsafe for the operator of the same to stop, and while, under the circumstances, the failure of the operator of the respondent's vehicle to remain on his

(1) [1931] S.C.R. 167, affirming 64 O.L.R. 98.
(2) [1939] 3 W.W.R. 550. [1940] 1 D.L.R. 204 (Sask.).
(3) [1948] Que. S.C. 127.
(4) [1938] 76 Que. S.C. 536.
(5) [1926] S.C.R. 575.

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right-hand side of the road in the emergency created by the negligence of the third party and the suppliant is not to be held to be negligence, he nevertheless should have stopped his car or reduced the speed of the same when blinded by the lights of the suppliant's vehicle, so that he could have stopped upon danger arising.

I therefore find that the fault or negligence of the operator of the respondent's vehicle contributed to the damages suffered by the suppliant to the degree of twenty per cent.

The pleadings of all parties, including the particulars thereof, shall be deemed to have been amended in so far as necessary for the purpose of determining the questions in controversy between them.

As to damages. No claims have been made for damage to the vehicles of the respondent or the third party.

The suppliant, by his petition, claimed $900 for the loss of his vehicle, and at the trial, a motion was made pursuant to notice, and granted, amending his petition by adding a claim for $20 for towing the damaged vehicle, and a further claim of $5.00 per week for rental of another vehicle, to be used in place of the one lost, for an indefinite period of time.

It was established that the suppliant purchased the motor vehicle in question late in the year 1950 at a price of $1,000, that it was in exceptionally good condition at that time as well as at the time of the accident in October, 1952, and that the cost of parts and the labour of installing them would have exceeded the market value of the car when repaired.

The dealer who sold the car to the suppliant valued it at $850 at the time of the accident. The vehicle filled the needs of the suppliant; he evidently had no desire to accept the prevailing market price for a used car of that type and I assess this item of his claim at $800.

The wreck of the suppliant's car had not been sold and witnesses varied in their estimates of value from $25 to $75. I fix the same at $50.

The claim for $20 for towage was not questioned and will be included in the damage suffered by the suppliant.

As to the suppliant's claim for monies paid for hire of a car in place of the one destroyed, counsel submitted no amount based on a definite period, but asked the Court to

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fix such an amount. A claim for loss of use of a vehicle for a reasonable period of time pending its repair, or pending the acquisition of another vehicle to replace it, will be allowed in a proper case, but a plaintiff is bound to take all reasonable steps to mitigate the amount of his damages.

Eight weeks should have been sufficient time within which the suppliant could have obtained another car to replace the one lost, and I fix that item of his claim at $40.

The loss suffered by the suppliant was therefore:—

One 1939 Plymouth Sedan	$ 850.00	
Less value of wreck	50.00	
		800.00
Paid for towing wreck		20.00
Eight weeks' loss of use of car at $5.00 per week		40.00
Total		$ 860.00

These damages will be apportioned as follows:—

Amount of damages apportioned to and to be borne by the Suppliant, 30 per cent of $860.00		$ 258.00
Amount of damages apportioned to the Third Party, 50 per cent of $860.00	430.00	
Amount of damages apportioned to the Respondent, 20 per cent of $860.00	172.00	
		602.00
Total		$ 860.00

As to costs. At common law:—

> The King (and any person suing to his use) shall neither pay, nor receive costs: for besides that he is not included under the general words of these statutes, (those named) as it is his prerogative not to pay them to a subject, so it is beneath his dignity to receive them. 3 Blackstone's Commentaries, 390 to 400.

Lord Advocate of Scotland v. *Lord Douglas* (1); *Smith* v. *The Earl of Stair* (2).

This rule was not, however, completely applicable to proceedings in Chancery, where the Attorney-General received costs where he had been made a defendant in respect of legacies given to charities; and even where he was made a defendant in respect of the immediate rights of the Crown in cases of intestacy. Robertson on Civil Proceedings by and against the Crown, p. 621.

(1) (1842) 9 Cl. & F. 173 at 212. (2) (1849) 9 H.L.C. 807 at 809.

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In *A. G.* v. *The Earl of Ashburnham* (1), Leach, V.C. said that:—

Although the Attorney-General, suing in discharge of his public duty, could never be made to pay costs in a Court of Equity, and that he was, therefore, obliged to name a relator in matters of charity, yet it is not the rule of a Court of Equity that he can not receive costs.

This statement was confirmed by Lord Langdale, M.R. in *A.-G.* v. *London Corporation* (2), but in the same case on appeal (3) Lord Cottenham, L.C. said:—

It is perfectly true that justice requires that the rule which has been so often acted upon, and so generally received as an axiom, should not be lost sight of, and nothing would be more unjust than in a contest in which the Attorney-General could not be made to pay costs, that he should be, under any circumstances, entitled to receive costs, for it is not putting the parties at all upon equal terms.

And at page 273:—

I have consulted with the best authorities upon the subject, and we are all of opinion that it would be well to consider, not as a rule without exception (because it is always matter of discussion to a certain extent), but as a general rule, that the principle that the Attorney-General never receives nor pays costs, may be modified in this way; namely, that the Attorney-General never receives costs in a contest in which he could have been called upon to pay them had he been a private individual.

In 1855 the Crown Suits Act (18 & 19 Vict. ch. 90) was enacted which by sections 1 and 2 provided in effect for the payment of costs to and by the Crown as between subject and subject in certain legal proceedings instituted before any court by or on behalf of the Crown, such costs to be recoverable by the Attorney-General or Lord Advocate on behalf of the Crown, and for a defendant's costs if judgment should be given against the Crown.

In *The Leda* (4), Doctor Lushington gave the practice with reference to costs against the Crown in the Courts of Common Law, Equity and Admiralty and in the Ecclesiastical Courts before and after 18 and 19 Vict. ch. 90. This statute was followed by others including the Petitions of Right Act 1860 (23 & 24 Vict. ch. 34) which provided for costs payable to and by the Crown.

Rules 260 and 261 of this Court provide in effect that costs may be awarded against the Crown and that the costs of and incidental to all proceedings in the Court shall be

(1) (1823) 1 Sim. & S. 394 at 397.
(2) (1849) 12 Beav. 171 at 178.
(3) (1850) 2 Mac. & G. 247 at 271.
(4) (1863) Br. & L. 19.

in the discretion of the Court or a Judge and Rule 239 which provides for costs upon third party notice is as follows:—

239. The Court or a Judge may decide all questions of costs, as between a third party and any other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to the costs as the justice of the case may require.

It has been the practice of the Court that a person in the position of a plaintiff who succeeds against the Crown in an action for damages based on negligence is entitled to his full costs irrespective of the fact that it may have been determined that he was to some degree at fault or negligent. But I have been unable to find any evidence of an established practice with regard to third party proceedings in which the Crown has claimed contribution, as distinguished from indemnity, and in which the damages have been caused or contributed to by the fault or neglect of the Crown and a third party in different degrees.

The respondent has asked for the costs of the third party proceedings against the third party. But it has been determined that the operator of the respondent's vehicle contributed to the damages suffered by the suppliant to the degree of twenty per cent and that the third party contributed to the same in the degree of fifty per cent.

It would seem unjust for the third party to pay the full third party costs of a party partly at fault and if an individual were in the position of the respondent it would in all probability be directed that he should pay some portion of the costs of the third party proceedings. Applying the principle laid down by Lord Cottenham in *A.-G.* v. *London Corporation* to the effect that "the Attorney-General never receives costs in a contest in which he could have been called upon to pay them had he been a private individual" it would appear to be just in the circumstances to direct that the respondent shall bear some portion of the third party proceedings.

The degrees at which the operator of the respondent's vehicle and the third party were at fault being twenty per cent and fifty per cent respectively, the respondent will bear two-sevenths and the third party five-sevenths of the third party proceedings.

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The suppliant is entitled to recover from the respondent the sum of $602, being part of the relief sought by his petition of right herein, of which sum the third party will contribute to the respondent the sum of $430; the suppliant will have his costs and the third party will contribute to the respondent fifty per cent of the same and, in addition thereto, the third party will pay to the respondent five-sevenths of the costs of the third party proceedings.

Judgment accordingly.