

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

C.H. 63500  
S.C.C.H. 15613

IN THE COUNTY COURT  
for District Number One

Between:

GREGG HEBB

Appellant/Defendant

- and -

DAVID FRAWLEY

Respondent/Claimant

Gregg Hebb, by his father, Barrie Hebb, guardian, Appellant.  
David Frawley, by agent Peter Flett, Respondent.

1989, January 5th, Palmeto, C.J.C.C.:— This is an appeal by way of Stated Case from a decision of Daniel B. Morrison, Q.C., an Adjudicator of the Small Claims Court of Nova Scotia bearing date the 26th day of August, 1988, wherein he awarded the claimant the sum of \$1,042.37 against the defendant. The appellant appeals on the basis of error in law and denial of natural justice.

The claim involves a motor vehicle accident involving a motor vehicle of the respondent and a motor vehicle driven by the appellant and owned by his father, Barrie Hebb. The facts are as set out in the Stated Case and the learned adjudicator found the appellant liable for damages suffered by the Respondent.

I find there was no denial of natural justice upon the Stated Case as submitted to me, by which I am bound. (See Mary Lou Hagen v. Thomas Linthorne 1986 C.P. No. 11229, MacDonnell, J.C.C., District No. 5). The other ground is error in law and the appellant submits error in law on the factual situation and also raises the question that the appellant was an infant (i.e. eighteen years of age) and thus was not liable.

The Hagen case, supra, is authority for the proposition that in an appeal by way of Stated Case I cannot consider anything other than the Stated Case in determining an appeal. I cannot consider new evidence, nor should I look at any of

the exhibits submitted on the original hearing. With regard to the finding on the basis of the facts. I can find no error in law on the part of the learned adjudicator. He heard the evidence, assessed credibility, applied the appropriate law and cause to a decision. It is not for me sitting as an appeal judge to set aside such findings.

The second matter involves the infancy of the appellant. The appellant is eighteen years of age and is thus under the age of majority which is nineteen years. There is nothing in the **Small Claims Court Act and Regulations** referring to claims against infants and one must look to the **Civil Procedure Rules**. Again there is nothing therein which would prevent an action against an infant on tort. There are requirements that an infant must sue or defend by a guardian, and in this case the appellant was represented in his defence by his guardian, namely his father.

Certainly, an infant can be liable in tort. Section 222 of the **Motor Vehicle Act** reads as follows:

"222 Where owner of a motor vehicle causing or knowingly permitting a person under the age of eighteen years to operate a motor vehicle upon a highway, and any person who gives or furnishes a motor vehicle to such a person shall be jointly and severally liable with such person for any injury, loss or damage caused by the negligence of such person in the operation of such motor vehicle, and the burden of proving that such motor vehicle was operating without his knowledge or consent express or implied shall be upon the owner."

This section suggests not only is a person under eighteen liable but the owner of the motor vehicle is jointly liable. It is equally clear that a person eighteen years and over can be solely liable.

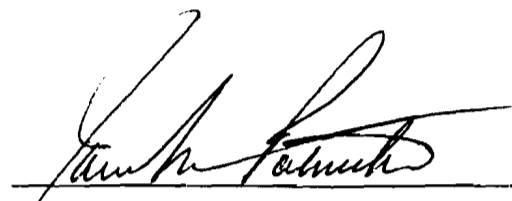
In this case, the father of the appellant was not sued although in my opinion he could have been joined as a defendant under Section 221(4) of the **Motor Vehicle Act**, which reads as follows:

"(4) Where a person operating a motor vehicle is the husband, wife, father, mother, son or daughter of the owner of the motor vehicle, such person shall be deemed to be operating such motor

vehicle as a family car within the scope of a general authority from such owner unless and until the contrary is established.

Unless and until it is established that such person was not operating such motor vehicle as aforesaid, such person shall be deemed to be the servant and agent of the owner of the motor vehicle and to be operating the motor vehicle as such servant and agent acting in the course of his employment and within the scope of his authority as such servant and agent."

Accordingly, I find no error in law on the part of the learned adjudicator and I would answer the questions posed in the Stated Case in the negative. The appeal will be dismissed and there will be no costs.



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A Judge of the County Court of  
District Number One