

# HOUSE . . . . No. 268

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## The Commonwealth of Massachusetts

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DEPARTMENT OF THE ATTORNEY GENERAL,  
BOSTON, December 31, 1930.

*To the General Court of Massachusetts.*

I am sending herewith a memorandum of finding on the small claim of Joseph Martin, which has been signed by the Attorney General. This case arose under the Small Claims Act, St. 1924, c. 395, and as the amount of damages found due is greater than the statutory limit of \$1,000, a report is made to you of the case in accordance with the statute. There was a hearing held on this matter, at which all the witnesses testified, and the liability of the Commonwealth is established.

E. K. NASH,  
*Assistant Attorney General.*

## The Commonwealth of Massachusetts

### MEMORANDUM OF FINDING.

#### IN RE SMALL CLAIM OF JOSEPH MARTIN.

This claim arises out of an automobile accident between a truck owned by the claimant, Joseph Martin of Falmouth, and car No. S87, operated by an engineer named Emes Hosback, in the employ of the Department of Public Works, on June 1, 1929, at East Falmouth. The claimant was in his truck, which was operated by an employee of his named Nunes. He was proceeding toward Falmouth on the main highway at a slow rate of speed. Just before they came to East Falmouth the claimant told the driver to slow up and pull into the driveway of one Madeiros, who lived at the right-hand side of the road. Nunes did so, and as he was just about in the opening of the driveway their truck was struck with considerable force by the State car, which was attempting to pass on its right. The truck was jammed up against a tree on the left-hand side of the driveway and was considerably damaged. The claimant was thrown through the windshield and sustained a very bad cut on his forehead. The testimony of the various witnesses who came up to the scene of the accident after it was over was that Martin's car had been at all times on the right center of the road. According to the evidence of Hosback he had been following the claimant for 600 or 700 feet. He said that he was going twenty to twenty-five miles an hour, and that Martin was going slow. He said that Martin's truck pulled out to the left of the road just as he was about to pass on its left, and then he turned back to the right, thinking that Martin was going to come to a stop on his left side of the road. Instead of doing so, Martin's truck swung to the right,

into the driveway, and his car ran into Martin's truck. From all the evidence I find that Martin's truck did not pull off to the left of the road, but was in the right center at all times before it started to turn into Madeiros' driveway.

The claimant does not remember many of the details, owing to the severe injury he received, and it was impossible to interrogate his driver, who is in a hospital for incurables in New York. The testimony of the chief of police and others shows that the wheel marks of Martin's truck were at all times on the right center of the street, and I find that to be the fact. In my opinion, this accident was caused solely by the negligent operation of Hosback, who was attempting to pass on the wrong side of the claimant's car, disregarding entirely the possibility that Martin might turn to his right. Martin says that he heard no horn blown, and Hosback says that he blew his horn before attempting to pass. It seems to me, under the circumstances, it is immaterial whether the horn was blown or not, for Hosback should not have attempted to pass on the wrong side. If he thought that Martin was going to pull over to the left and come to a stop, he should have waited until he was sure. What happened was that Hosback was in a hurry and took a chance. I find that the Commonwealth is liable for the damage resulting from this accident.

As to the damages, Mr. Martin was seriously injured. He was treated by Dr. Pattee of Falmouth, who found when Martin was brought to his office, following the accident, that Martin was covered with blood and bleeding freely from a gash over the left eye. He was cut to the bone and severed a small artery. It was necessary to take five or six stitches in this cut. Besides that, Martin had various contusions on his arms and legs. He also had a concussion of the brain. He was taken to his home from the doctor's office and was confined to bed for eight weeks. After he got up out of bed he was so dizzy for a long time that he could not stand. It was impossible for him to do any work until the last of

October. He was a farmer and depended principally on his strawberry crop to pull him through the year. He has a wife and a large family of children. On the farm he does all his own work with the aid of his two oldest boys and his wife. When this accident happened his strawberry crop was ripe for picking. It was impossible for him to pick the crop himself or to see that his boys did it properly for him. He had no money to hire other pickers, and at that time of the year it was probably impossible to get them, as all the farmers wanted them at the same time. His crop was practically a total loss. For the strawberries that were salvaged he received \$250 as against an average crop amounting to \$2,500 to \$3,000. Besides his other damage it cost him \$59.94 to have his truck repaired. I find that the claimant suffered damage to the extent of \$3,559.94, which is based on \$2,500 for his strawberry crop, \$1,000 for his personal injuries, and property damage to his truck \$59.94.

Inasmuch as this claim is more than the statutory limit of \$1,000, the Legislature will have to determine whether or not to reimburse the claimant. I recommend that the claimant be reimbursed to the extent of \$3,559.94.

JOSEPH E. WARNER,

*Attorney General.*

OCTOBER 29, 1930.