

venes between daylight and darkness and is popularly known as "twilight." One of these witnesses goes so far as to say that this condition exists until the sun has descended 18 degrees below the horizon, which on the night in question, according to his estimate, would occur at 10.30 o'clock. Be that as it may, this event happened during the early period of dusk, as thus defined. As the lighted lamp is, however, not required to be carried on the front of the car until "after dusk," and the wording, in view of the punitive results which depend upon it, should be strictly construed, I am of the opinion that there was no breach of this statutory regulation on the part of the defendants. As to the lamp on the rear of the car under sec. 8(3), the finding is much easier, as such is only required on a motor vehicle "while being driven on a highway:" see sub-sec. (1) of the same section.

There must be a finding, therefore, for the defendants in so far as any stipulation in this Act is concerned, if the Act itself is a factor.

In my judgment, however, what happened here is not governed by the Motor Vehicles Act. What is aimed at there is sufficiently indicated in the title of the Act itself, viz., "An Act to regulate the Speed and Operation of Motor Vehicles on Highways." A careful reading of the statute convinces me that a "dead" car placed on the side of a highway, and not being operated, as was the case here, is not contemplated in any of the sections of the Act, but they appear to be directly concerned with the operation of "live" cars on the highway, and should be read with the Highway Travel Act, R.S.O. 1914 ch. 206, which applies *inter alia* to motor vehicles.

Having eliminated the Motor Vehicles Act for the purposes of this judgment, the case must be considered under the general law governing the public use of highways. It is now generally accepted law that the public, unless the contrary be proved, has the right to use the whole space of a highway between the opposite fences. The contrary may be proved by shewing that the municipality has exercised the powers of restriction contained in certain sections of the Municipal Act, 1913, e.g.: sec. 398 (37), prohibiting the use of all vehicles on any sidewalk, or foot-path; sec. 400 (49), regulating traffic and prohibiting heavy traffic in certain streets; sec. 472(1) (*d*), and sec. 483, sub-secs. 1 and 2, for setting apart and protecting boulevards; sub-sec. 4 of the latter section, setting apart and protecting bicycle paths, etc. Upon every part of the highway not restricted under the foregoing or any other enabling statutory provision, every person