

BETWEEN:

HER MAJESTY THE QUEEN, on the } Information of the Deputy Attorney } General of Canada }	PLAINTIFF;
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1955 } June 14, 15 1956 } Jan. 20
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AND

JOSEPH CYR DEFENDANT.

AND BETWEEN:

JOSEPH CYR SUPPLIANT;

AND

HER MAJESTY THE QUEEN in the } right of Canada }	RESPONDENT.
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Crown—Negligence—Motor car collision at street intersection—No proof intersection that of “through” street with “stop” street—Implied duty on driver of one car to obey stop sign and yield right-of-way belonging to other—The Motor Vehicles Act (N.B.) 1934, c. 20, s. 42 A (3) as amended.

Following a collision between a motor car owned by the Crown and driven by its servant and a motor car owned and driven by C, an action in damages for negligence was brought by each party against the other. The collision occurred in the City of Saint John at the intersection of Delhi street with City Road. Delhi street runs north and south and City Road, which forms part of a Provincial Highway, east and west. There was a “stop” sign erected at the southwest corner of the intersection and just around the corner on City Road a “speed limit 25 miles” sign. It was established at the trial that C was proceeding along Delhi street toward the intersection when, because of the downward slope of the street and the icy condition of the pavement he was unable to stop his car, and seeing no approaching traffic, continued on into the intersection. The driver of the Crown vehicle, an R.C.M.P. constable, testified he was proceeding easterly along City Road at a speed of from 25 to 30 m.p.h. and was 15 or 20 feet from the intersection when he saw C’s car, that he applied his brakes and attempted to swerve to the right but was unable to avoid the collision. It was contended for C that it had not been proven that City Road was a “through”, or Delhi street a “stop” street, or that the stop sign had been erected by the Provincial Highway Department or pursuant to a valid city by-law, and that as C’s vehicle was to the right of the Crown’s and had entered the intersection first, he had the right-of-way notwithstanding his failure to stop before entering it.

Held: 1. That although it was not established that City Road was a “through” street or Delhi street a “stop” street, traffic signs are placed on highways for safety and guidance and should be observed and relied on. *Gibbons v. Fortune* [1935] M.P.R. 355; *Nelson v. Dennis* [1930] 3 D.L.R. 215.

1956
 THE QUEEN
 v.
 CYR
 —
 CYR
 v.
 THE QUEEN
 —

2. That a driver about to enter a through highway from a stop street is required, by s. 42A(3) of the New Brunswick *Motor Vehicles Act*, to yield the right of way to any vehicle approaching on such through highway. C saw the "stop" sign and knew not only that he was required to stop but that City Road was a through street and his negligence was the *causa causans* of the collision.
3. That the speed at which the Crown vehicle was driven did not cause or contribute to the accident and under the circumstances its driver was not negligent. *Walker v. Brownlee* [1952] 2 D.L.R. 450 at 460.

ACTION FOR DAMAGES.

The actions were tried together before the Honourable Mr. Justice Cameron at Saint John.

A. W. Whelley, C. F. Whelley and K. E. Eaton for the plaintiff and respondent.

K. P. Lawton for the defendant and suppliant.

CAMERON J. now (January 20, 1956) delivered the following judgment:

By consent of counsel, these two matters were heard together. At about 1:30 p.m. on December 5, 1954, a 1953 Royal Canadian Mounted Police Meteor car owned by the Crown and then driven by Constable H. K. Parsons was in collision with a 1947 Chevrolet panel truck owned and then operated by Joseph Cyr, at or near the intersection of City Road and Delhi Street, in the city of Saint John, New Brunswick. In the Information, the Crown seeks to recover the sum of \$345.92 for damages caused to the police vehicle, alleging that the collision was caused solely by the negligence of Cyr. In the Petition of Right, Cyr alleges that the collision was caused solely by the negligence of Parsons and claims \$720 for damages to his car and for loss of its use.

Certain of the facts are not in dispute. City Road is a main traffic artery running east and west; it carries the traffic on No. 2 Highway—a main provincial road—through the city of Saint John. The travelled portion is 45 feet wide. Delhi Street, which runs north and south, crosses it at right angles and its travelled portion is about 27 feet wide. Snow had fallen and both roads were slushy and slippery as may be seen from the photograph Exhibit 3; some rain was falling at the time, but visibility was reasonably good. A "stop" sign was erected on a post on Delhi Street near the southwest corner of the intersection as may

be seen in the photograph Exhibit 5. On another post and just around that corner on City Road there was a sign "speed limit 25 miles", as shown on Exhibit 3.

1956
 THE QUEEN
 v.
 CYR
 ———
 Cyr
 v.
 THE QUEEN
 ———
 Cameron J.

Constable H. K. Parsons is a member of the Royal Canadian Mounted Police stationed at Saint John. He was employed as a driver for six years and in that time had been in only one minor traffic accident when driving his own car. At about 1:15 p.m. on December 5 he received instructions to drive to the scene of an accident. As he entered City Road and observed the condition of the street, he tested the braking power of his brakes and, while he found that on account of road conditions they did not hold as well as they normally would, there was fairly good traction on that much-travelled road. The brakes had been fully checked a few days previously and there is no doubt that they were in excellent condition. The rear snow tires were new and the front tires almost new. As Parsons approached the intersection of City Road and Delhi Street from the west, the road was somewhat upgrade as shown on Exhibit 6. At that time he was travelling on the south side of the road at a speed which he estimated at about 25-30 miles per hour. He knew the road well and knew that Delhi Street was marked with a "Stop" sign. When he was about 15 to 20 feet west of the intersection, he noticed Cyr's panel truck entering from Delhi Street at his right and about to cross into City Road. He observed that it did not stop before entering City Road; he immediately applied his brakes, but, realizing that he could not stop in time to avoid a collision, turned his wheel to the right, hoping to pass behind Cyr's truck. The panel truck, however, was moving at such a slow speed that he did not succeed in avoiding it and the collision followed. He estimated the speed of Cyr's vehicle at not over 10 miles per hour. After the accident, he checked the brakes on Cyr's car and found them in working order; he made no check of its steering wheel. His view of traffic on Delhi Street at his right was blocked to some extent by a rocky bluff shown on Exhibit 7, and also to some extent by a line of motor cars parked at the right side of City Road as shown in Exhibit 3. He observed that Cyr "cut the corner short" as he turned left into City Road in

1956
 THE QUEEN
 v.
 CYR
 ———
 THE QUEEN
 v.
 Cameron J.
 ———

front of his vehicle. Parsons was of the opinion that if Cyr had speeded up his car or if he had turned to the right instead of the left, there would have been no collision.

Joseph Cyr lives in Saint John County and was proceeding to work in the city of Saint John in his panel truck which he had acquired by exchange that year. He had a passenger in the vehicle but at the time of the trial he could not be located. His version of the accident is as follows. As he came down Delhi Street, which sloped downwards toward City Road, his vehicle was slipping due to road conditions and he therefore put his motor in second gear. His intention was to stop before entering the intersection and then to turn to the left on City Road, and proceed westerly thereon. He was familiar with the area and knew that there was a stop sign. He knew also that it was a stop street and that he was always required to bring his vehicle to a full stop at all such streets. Due to the snow and ice on the road, he found that he could not stop before reaching City Road. He was "busy trying to stop" but says that while he looked both ways on City Road for approaching traffic, he saw nothing. His view to the west was blocked somewhat by the line of parked cars. Finding that he could not stop, he "stepped on the gas" and "tried to get ahead". He says that about 5 feet of the front of his car was on City Road when he thought he could stop and that about one-half of the length of his car was on City Road when it was struck by the police car. He states that while he tried to get out of its way, he had no opportunity to do so. Earlier he stated that he did not see the police car until his car was struck. In cross-examination he says he could have put his engine in low gear but had not attempted to do so. He also said that when his truck was on City Road, he saw no vehicle approaching from his left and that when he found he could not stop he decided "to cut right across and go up City Road".

Charles Gobang of Saint John was called as a witness by the Crown. He was working on his car which was parked just off City Road about 30 feet from the point of collision. He saw both cars approaching the intersection, the Crown car travelling east on City Road and Cyr's truck travelling north on Delhi Street. He said, "the police car was not

travelling fast", and estimated its speed at not more than 30-35 miles per hour; it was following the line of traffic and on its own side of the road. He saw that its brakes were applied and that the driver swerved to the right in an effort to avoid the collision. He estimated the speed of the Cyr truck at from 10-15 miles per hour; he thought its brakes had been applied as he saw it slipping as it approached and entered the intersection. He observed that when the truck apparently could not be stopped, the driver speeded up and proceeded further into the intersection. He saw the collision and at that time the truck had crossed about one-quarter of the intersection. He was of the opinion that Cyr, as he approached the corner, could have seen traffic on City Road had he looked, and that while Delhi Street slopes somewhat, Cyr could have stopped his vehicle before entering City Road had he been travelling more slowly, notwithstanding road conditions. He saw the truck turn to the left in order to proceed westerly on City Road when it reached the intersection. When struck, it was entirely on the latter street and about at the centre of the road. He first saw the truck when it was about 25 feet south of the corner. This independent witness was close to the scene of the accident, had an excellent view of both vehicles, and I find no reason for rejecting any of his evidence.

Constable H. A. Clow of the Royal Canadian Mounted Police, was called to the scene of the accident at 1:30 p.m. and arrived there about fifteen minutes later for the purpose of taking photographs. Exhibits 1-8 are photographs taken then by him, showing from various angles the position of the vehicles as he found them, the intersection and its approaches. There is no evidence to suggest that either vehicle had been moved after the collision and I can assume, therefore, that the photographs correctly indicate their position after they came to rest. From these photographs it is clear that the left front portion of the police car struck the left door of the truck. Exhibits 5 and 7 indicate that the police car had not, in fact, entered any part of the road intersection when the collision occurred; there is no evidence that it was pushed backwards by reason of the impact.

Staff Sergeant N. G. McKenzie of the Royal Canadian Mounted Police, was also called to the scene of the accident

1956
 THE QUEEN
 v.
 CYR
 —
 CYR
 v.
 THE QUEEN
 —
 Cameron J.

1956
 THE QUEEN
 v.
 CYR
 v.
 THE QUEEN
 v.
 Cameron J.

for the purpose of making an investigation. He says that Cyr told him that he was unable to stop his truck before entering City Road owing to the slippery condition of the street and that, therefore, he continued to cross the intersection although he knew he should have stopped. The witness also said that Cyr admitted responsibility for the accident, but this is denied by Cyr. The witness also stated that City Road was a main traffic artery and a "through" street and there is no evidence to the contrary.

The witness also took measurements of the two roads and the position of the two vehicles in relation to two poles, one on either side of City Road. His measurements are contained in a sketch (not drawn to scale) prepared by Constable Clow. These measurements indicate that the police car was entirely on the south half of City Road, although at somewhat of an angle; and that the truck, also at an angle, had its front end about the centre of the road. Exhibits 2, 3, 5 and 7 indicate the relative position of the two vehicles on the road.

Mrs. Stella Campbell was called as a witness on behalf of Mr. Cyr. She stated that she saw the accident from a window in Saint John Hospital where she was employed. She saw the Cyr truck approaching the intersection; it was going down slowly and apparently tried to stop at the corner; she thought it slowed down somewhat but did not seem able to stop on account of the icy condition of the road. She said "it was cutting across", and when it was turning to its *right* on City Road, she saw the police car "going quite fast" and then the vehicles collided. While she first saw the police car just before the impact, she thought it was going "about three times as fast as Cyr's vehicle". She said that when Cyr's truck was struck it was about half-way across the intersection and at an angle and that its front wheels were turned to the *right*. The evidence of this witness did not impress me. On her own evidence she had no opportunity to estimate the speed of the police car. She was quite mistaken in her evidence that the Cyr car had turned to the right on entering City Road; she had twice stated that that was so, but later admitted that it had turned to the left.

From the evidence as a whole the following additional facts are clearly established: (a) Cyr did not stop his truck

before entering City Road; (b) his truck was almost stopped after it had entered a short distance (perhaps 5 feet or more) upon the intersection; (c) Cyr deliberately made up his mind when he found he could not quite stop, to carry out his original plan of turning left and proceeding westerly on City Road; in so doing, he speeded up somewhat and "cut the corner" sharply to the left directly in front of the Crown vehicle; (d) Cyr's truck entered the intersection when the Crown car was a short distance (perhaps 15 or 20 feet) westerly thereof; (e) the collision occurred when both vehicles were on the south half of City Road, the front of the Crown vehicle being close to the westerly boundary of the intersection but not having entered thereon.

1956
 THE QUEEN
 v.
 CYR
 CYR
 v.
 THE QUEEN
 Cameron J.

I also find as a fact that Cyr did not look for traffic approaching from his left. Had he done so as he neared or entered upon the intersection, he could not have failed to observe the Crown vehicle approaching but a few feet away. I do not believe his statement that he made an effort to get out of its way; he admitted that he did not see it until the moment of impact.

I find also that Parsons at all times was keeping a proper lookout for traffic; that he knew Delhi Street was marked as a "Stop" street, that when he was about 15 or 20 feet from the intersection, he first saw the Cyr truck entering it directly in front of him and that his speed at that time was about 30 miles per hour; that he immediately applied his brakes and turned his wheel to the right in an effort to avoid a collision. I find, also, that the Crown vehicle was in every respect in excellent mechanical condition.

Which driver, under these circumstances, had the right-of-way? Counsel for Cyr submits that it is not proven that City Road was a through street or that the stop sign on Delhi Street was erected either by the Provincial Highways Department or pursuant to any valid by-law of the city of Saint John; and that, as Cyr's vehicle was to the right of the Crown vehicle and entered the intersection first, he had the right-of-way notwithstanding his attempt and failure to stop before entering.

By consent of counsel for both parties, there was filed a certified copy of a by-law of the city of Saint John entitled "A Law to Regulate Street Traffic in the City of Saint

1956
 THE QUEEN
 v.
 CYR
 —
 CAMERON J.
 —

John", dated May 28, 1937, together with amendments thereto. S. 55(1) of the *Motor Vehicles Act*, Province of New Brunswick, makes provision for such municipal enactments not inconsistent with the provisions of that Act or the *Highway Act*. By s. 55(2) thereof it is provided, "The regulations mentioned in this section shall come into force only when approved by the Governor-in-Council". At the trial, counsel for Cyr took the position that as there was no proof that the regulations contained in the by-law and its amendments had received the approval of the Governor-in-Council, they were of no effect. In supplementary written argument, however, he referred to an Act relating to by-laws of the city of Saint John, being c. 58 of the 1913 Statutes of the province, s. (1) of which provides:

Notwithstanding anything in the Charter of the City of Saint John, or any Act of Assembly contained, by-laws duly made and ordained by the City of Saint John shall not require allowance or confirmation, nor be subject to disallowance by the Lieutenant-Governor-in-Council.

S. 3 of that Act further provided that a copy of any such by-law of the City of Saint John, certified under the hand of the Common Clerk of the City, should be *prima facie* evidence in every Court of the contents of such by-law. Counsel for Mr. Cyr now submits that while the by-law in question and its amendments are valid and sufficiently proven, there is no evidence that the requirements of such by-law relating to the establishment of stop streets and through streets have been complied with; he says, therefore, that City Road is not proven to have been a "through" street, nor Delhi Street a "Stop" street.

S. 2 of Article XIII of the by-law as amended and as in force at the date of the accident, gave authority to the Director of the Police Department to make regulations designating stop streets, through streets and one-way streets. S. 3 of the Article provided that such regulations should come into force within ten days after the Common Council had approved thereof and after public notice had been given in the daily newspapers. It is the contention of counsel for Cyr that in the absence of proof—and there is none in this case—of the approval of such regulations by the Common Council, or their advertisement, there is nothing to establish that City Road was validly declared to be

a through street or Delhi Street a stop street; he submits, therefore, that Cyr was not required to stop before entering the intersection.

1956
 THE QUEEN
 v.
 CYR
 —
 THE QUEEN
 v.
 Cameron J.
 —

I was not referred to any case in which such a submission was upheld. On the contrary, there are several reported cases in which it has been held that where a stop sign has been erected, it should be obeyed even though there might be some possible flaw in the by-law authorizing it, or perhaps in the proof that all its prescribed requirements have been complied with. In the case of *Gibbon v. Fortune* (1), a decision of the Appeal Division of the Supreme Court of New Brunswick and a case which is similar in many ways to the instant one, the headnote is as follows:

On August 15th, 1953 during daylight hours the appellant's truck was being driven northerly on Carmarthen Street in the City of Saint John and the respondent Fortune was driving his car westerly on Leinster Street, and at the intersection of the two streets the vehicles collided. The learned trial judge found that there was a stop sign on Leinster Street at its intersection with Carmarthen Street, but that the stop sign had no significance in the absence of proof of a by-law authorizing such sign. He held that because both parties failed to keep a proper lookout then they were both negligent. From this judgment the appellant appealed.

Held: A stop sign should be obeyed. Although there was no evidence of a by-law authorizing such a stop sign both parties knew that Leinster Street was a stop street at its intersection with Carmarthen. The appellant had the right to expect that the respondent would yield the right of way. It would be a most unfortunate thing if the drivers of motor vehicles could ignore stop signs in a city because there might be some flaw in the by-law authorizing them. If the sign is placed irregularly, the remedy is to have it removed, but while it remains it should be obeyed. The respondent was entirely to blame. The appeal should be allowed with costs. Cases judicially noted: *Henderson v. Dosse*, 46 B.C.R. 401; *Nelson v. Dennis*, [1930] 3 D.L.R. 215.

In that case Harrison J., with whose judgment Richards C.J. concurred, said at page 358:

This case becomes important in view of the fact that the learned trial judge held that the stop sign had no bearing on the question of negligence since it was not proved that there was a by-law authorizing such sign. To my mind a stop sign should be obeyed. In this case both Preston, the driver of the plaintiff's truck, and Fortune, driver of the defendant's car, knew that Leinster Street was a stop street at its intersection with Carmarthen. The result of that was that Preston had a right to expect that Fortune would yield him the right-of-way, and Fortune, on the other hand, was bound to see that there was no car near the intersection before he entered it,—in other words that he could cross the intersection safely.

(1) (1955) 35 M.P.R. 355.

1956
 THE QUEEN
 v.
 CYR
 —
 CYR
 v.
 THE QUEEN
 —
 Cameron J.

In my opinion it would be a most unfortunate thing if the drivers of motor vehicles could ignore stop signs in a city because there might be some flaw in the by-law authorizing them. If the sign is placed irregularly, the remedy is to have it removed, but while it remains it should be obeyed.

In this case, therefore, I consider the defendant Fortune was entirely to blame. He had no right to enter the intersection when the plaintiff's truck was approaching and distant such a short space that the two cars collided in the middle of the intersection, when the plaintiff's truck was travelling at the most at 20 m.p.h. I agree that on entering an intersection the driver of each vehicle should look both to the right and to the left, but the driver who comes in from a stop-street is in the same position as one who comes in from a private road, in which case the Motor Vehicles Act provides: "He shall yield the right-of-way to all vehicles approaching on such highway."

The effect of the stop sign on Leinster Street was to make Carmarthen Street a through street at that point. Therefore, even if the plaintiff had been negligent—and as stated above I do not consider he was—still the entire responsibility for the accident was that of the defendant Fortune.

In the case of *Nelson v. Dennis* (1), a decision of the Court of Appeal of Manitoba, Dennistoun J.A., in his judgment, with which Fullerton and Trueman J.J.A. agreed, said at page 217:

But it seems to me that if the defendant had seen the plaintiff before the plaintiff's car reached the "Stop" signal he would have assumed, and would have had a right to assume, that the "Stop" signal would be obeyed and the plaintiff's car brought to a standstill.

And at page 218:

Mr. Deacon urges that the police authorities of the City of Winnipeg have no authority to set up "Stop" signs which override the statutory right of way. That point may arise hereafter and need not be decided now. So long as the stop signals are in position, in my humble judgment, the public have a right to rely on them, and persons who decline to obey them are guilty of actionable negligence if injury is caused by their so doing.

With respect, I agree with the conclusion arrived at in those cases. Traffic signs are placed on our highways for the safety and guidance of motorists and others and in my opinion should be observed and may be relied upon as long as they are in position. In this case, Cyr saw the sign and knew, not only that he was required to stop, but also that City Road was a through street. I agree, also, with the opinion of Harrison J. in *Gibbon's* case that under the provisions of the *Motor Vehicles Act* of New Brunswick, a driver who is about to enter a through street from a stop street is required "to yield the right-of-way to all vehicles

(1) [1930] 3 D.L.R. 215.

approaching on such highway” (s. 42A (3)). The provisions of the city by-law are to the same effect, although its terms are somewhat broader as will be seen from the definitions of “Stop street” and “Through street” contained in section 1 as follows:

1956
THE QUEEN
v.
CYR
CYR
v.
THE QUEEN
Cameron J.

(g) The expression “Stop Street” shall mean and include a street or portion of a street, all traffic on which shall come to a full stop at the intersection of a “Stop Street” and a “Through Street” before entering a “Through Street”.

(h) The expression “Through Street” shall mean and include a street or portion of a street, on which all traffic shall have the right-of-way over traffic entering such “Through Street”, from intersecting “Stop Streets”.

It follows, therefore, that as the Crown vehicle was driving on a through street and was approaching the intersection, its driver had the statutory right-of-way. It was Cyr’s duty, therefore, to stop his truck before entering the intersection and to refrain from entering upon it until Parsons’ car had completed its crossing. His failure to do so and his failure to look out for approaching traffic, and his entry upon and deliberate crossing of the intersection under the circumstances, constituted actionable negligence for which he is liable. It is beyond doubt that had he stopped and looked, as he was required to do, he would have seen the Crown car approaching and would not have attempted to cross. His negligence, in my opinion, was the *causa causans* of the collision.

It is submitted, however, that he was unable to stop owing to the slope in the road and the condition of the road surface and that, therefore, the accident was unavoidable. I cannot give effect to this submission. Cyr had travelled a number of miles before reaching the scene of the accident; he was therefore fully acquainted with weather and road conditions. He knew that he would be required to stop before entering City Road. It was his duty to drive with particular care and to have his car under complete control so that under the existing conditions he could bring it to a stop when required to do so. In my opinion, he was travelling at too great a speed under the existing circumstances and in the result found that as he neared the intersection he could not then control his car in time to come to a stop. I am not satisfied that the accident was unavoidable.

1956
 THE QUEEN
 v.
 CYR

On this point reference may be made to the cases mentioned on pages 28 to 33 of Hall's *Automobile Accident Cases*, 3rd Ed.

CYR
 THE QUEEN
 v.
 Cameron J.

The next question is whether Parsons also was negligent. Particulars of his alleged negligence are found in the Statement of Defence to the Petition of Right. I have already found that he had the right-of-way; it is clear also that he had his car under control at all times; that he was keeping a proper lookout for traffic, that his brakes were in good condition, and that he applied them immediately upon seeing that the truck was not stopping before entering the intersection. I find, also, that he attempted to avoid the collision by swerving his car to the right, but was unable to avoid striking the truck which was then speeding up and "cutting the corner" directly in front of him.

It is alleged, also, that his speed was excessive under the circumstances. The evidence is that he was following in the line of traffic; estimates of his speed—and they are estimates only—vary from 25 to 30 miles per hour. Parsons is an experienced driver and his own estimate was from 25 to 30 miles per hour. I was impressed by his manner of giving evidence and as he was in the best position to know his speed, I am prepared to find that his speed did not exceed 30 miles per hour before he applied his brakes on seeing the truck. Under the Provincial Act the maximum rate of speed for other than commercial vehicles is 50 miles per hour. By section 1 of Article IV of the city by-law, it is provided:

Section 1. No person shall operate a motor vehicle on any street at a greater rate of speed than is reasonable and proper, having regard to the traffic and use of the highway or so as to endanger the life or limb of any person, or the safety of any property. It shall be *prima facie* evidence of a rate of speed greater than is reasonable and proper as aforesaid, if a motor vehicle is operated at a greater rate than twenty-five miles per hour.

As I have stated above, the traffic sign on City Road also stated that 25 miles per hour was the maximum speed on that highway. While a breach of the statute or by-law regarding speed limits may be evidence of negligence, its violation does not impose liability for an accident unless it actually contributed to the happening of such accident. In this case I am satisfied that the speed at which Parsons was travelling did not cause or contribute to the accident in

any way. When it is realized that the Cyr truck came into the intersection when the Crown vehicle was only about 15 or 20 feet from the crossing and that Cyr's truck cut sharply to the left directly in front of Parsons, it is obvious that had Parsons been travelling at 25 miles per hour, the collision would have occurred in almost precisely the same way that it did and that there would have been no greater opportunity on Parsons' part to avoid the truck than there actually was when he was travelling at 30 miles per hour.

1956
 THE QUEEN
 v.
 CYR

 CYR
 v.
 THE QUEEN

 Cameron J.

I am satisfied on the whole of the evidence that under the circumstances Parsons was not negligent in any manner whatever. On the contrary, I think he operated his vehicle in a careful and prudent manner throughout, was observant of all traffic and was entitled to approach an intersection in the belief that drivers approaching from his right would obey the law and stop before entering City Road. In the emergency created by Cyr, he acted promptly, and the fact that the vehicles collided was not attributable to any fault on his part.

Reference may be made to the summary of the law on this point by Cartwright J. in the Supreme Court of Canada in the case of *Walker v. Brownlee* (1), where he says:

The more difficult question is whether Harmon should be found to be to blame in part. The difficulty arises not so much in stating the applicable principles as in applying them to the particular facts.

The duty of a driver having the statutory right-of-way has been discussed in many cases. In my opinion it is stated briefly and accurately in the following passage in the judgment of Aylesworth J.A., concurred in by Robertson C.J.O., in *Woodward v. Harris*, [1951] O.W.N. 221 at p. 223: "Authority is not required in support of the principle that a driver entering an intersection, even although he has the right of way, is bound to act so as to avoid a collision if reasonable care on his part will prevent it. To put it another way: he ought not to exercise his right of way if the circumstances are such that the result of his so doing will be a collision which he reasonably should have foreseen and avoided."

While the judgment of the Court of Appeal in that case was set aside and a new trial ordered [[1952] 1 D.L.R. 82] there is nothing said in the judgments delivered in this Court to throw any doubt on the accuracy of the statement quoted.

In applying this principle it is necessary to bear in mind the statement of Lord Atkinson in *Toronto R. W. Co. v. King*, 7 C.R.C. 408 at p. 417, [1908] A.C. 260 at p. 269: "Traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less upon the assumption that the drivers of all the other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets."

(1) [1952] 2 D.L.R. 450 at 460.

1956
 THE QUEEN
 v.
 CYR
 v.
 THE QUEEN
 Cameron J.

While the decision of every motor vehicle collision case must depend on its particular facts, I am of opinion that when A, the driver in the servient position, proceeds through an intersection in complete disregard of his statutory duty to yield the right-of-way and a collision results, if he seeks to cast any portion of the blame upon B, the driver having the right-of-way, A must establish that after B became aware, or by the exercise of reasonable care should have become aware, of A's disregard of the law B had in fact a sufficient opportunity to avoid the accident of which a reasonably careful and skilful driver would have availed himself; and I do not think that in such circumstances any doubts should be resolved in favour of A, whose unlawful conduct was *fons et origo mali*.

In the case at bar I agree with what I understand to be the view of the majority of the Court of Appeal that it is not necessary in deciding this case to take into consideration the fact that Hugel Ave. was a through highway. Obviously the fact that it was known to Harmon to have been so designated cannot worsen his position. Leaving this fact aside, an examination of all the evidence brings me to the same conclusion as that reached by Roach J.A., that, even had Harmon been observing the appellant's car, when the time arrived at which he could reasonably have been expected to realize that the appellant was not yielding him the right-of-way it would have been too late for him to do anything effective to prevent the collision.

The cost of repairing the damage occasioned to the Crown vehicle has been proven at \$327.89. In the Information, there will be judgment for the Crown against the defendant, Joseph Cyr, for \$327.89, together with taxed costs. In the Petition of Right proceedings, there will be a declaration that the suppliant is not entitled to any of the relief sought therein and dismissing the Petition of Right with costs.

In case the matter should go further, I should state my conclusion as to the damages sustained by the Cyr vehicle. It was a 1947 Chevrolet panel truck which Cyr had acquired earlier in 1954 in exchange for a 1941 Pontiac car, the exchange being without other consideration. It was in fair condition only. A witness estimated the sale value before the collision at \$600 and the cost of repairs at the same amount. The repairs were not carried out; Cyr had lost his operator's licence and could not afford to have the repairs made and the truck apparently was therefore abandoned. The evidence is insufficient to establish precisely the amount of his damages. I am satisfied, however, that if the repairs contemplated had been made, the truck would have been in somewhat better condition than it was prior to the accident. I think Cyr could have realized something from the sale of

the truck or parts of the truck had he made any attempt
to do so and that he could thereby have minimized his loss.
Doing the best I can under the circumstances, I would have
fixed his loss at \$400.

1956
THE QUEEN
v.
CYR

Judgment accordingly.

THE QUEEN
v.
Cameron J.