

SHELL OIL COMPANY OF CANADA }
 LIMITED (DEFENDANT)..... } APPELLANT;

1948

*Mar. 15, 16
 *Apr. 27

AND

ROMEO LANDRY (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

*Negligence—Motor vehicle—Collision between motor vehicle and bicycle—
 Bifurcation of two streets—Presumption of fault created by section
 53 of the Quebec Motor Vehicles Act—Responsibility for accident—
 Quebec Motor Vehicles Act, R.S.Q. 1941, c. 142, s. 53.*

The respondent was proceeding West on St. Paul Street, Quebec, riding his bicycle. As he was attempting to turn left in order to enter Boulevard Charest, he collided with appellant's truck which was proceeding East on St. Paul Street. The accident occurred at a busy rush hour. Appellant admits driving at approximately 20 M.P.H. The trial judge found the respondent solely responsible but the majority of the Court of King's Bench, Appeal side, held that there had been contributory negligence. Respondent did not cross-appeal and the sole question on this appeal is whether the appellant was at fault.

Held: The appeal should be dismissed with costs.

Per The Chief Justice and Taschereau and Estey JJ.:—The appellant has not rebutted the presumption of fault created by section 53 of the Quebec Motor Vehicles Act. It was his duty to slow down his speed in order to have complete control of his truck and to stop if necessary.

Per Rand and Kellock JJ.:—The appellant did not show that the care demanded in approaching this bifurcation at a busy rush hour was exercised by the driver of its truck and that his course of action did not contribute to the accident.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), reversing (Gagné and Pratte JJ. A. dissenting) the judgment of the Superior Court, Coté J., and awarding the respondent the sum of \$2,182.40.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

Jacques de Billy, for the appellant.

L. A. Pouliot, K.C. for the respondent.

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The judgment of the Chief Justice and of Taschereau and Estey JJ. was delivered by

TASCHEREAU, J.—Le demandeur intimé Roméo Landry a été la victime d'un accident d'automobile, survenu le 21 mars 1946, à l'angle de la rue St-Paul et du Boulevard Charest, dans la cité de Québec. Alors qu'il se dirigeait vers l'ouest, et qu'il s'apprêtait à traverser en bicyclette la rue St-Paul, pour s'engager dans le Boulevard Charest, un des camions de l'appelante qui venait en sens inverse sur la rue St-Paul, le frappa et lui causa des dommages, pour lesquels il réclame la somme de \$12,613.74. L'honorable juge Côté de la Cour Supérieure de Québec a rejeté l'action avec dépens, mais la Cour du Banc du Roi, (1) MM. les juges Gagné et Pratte dissidents, a conclu qu'il y avait faute commune et après avoir évalué les dommages à \$4,364.80 a maintenu l'action pour la somme de \$2,182.40 avec dépens.

Il est certain que l'intimé ne peut pas être exonéré de tout blâme. Le juge de première instance lui attribue toute la responsabilité, de même que les honorables juges Gagné et Pratte en Cour du Banc du Roi, et la majorité des juges de cette dernière cour (1) a partagé la faute en parts égales. De cette décision, il n'y a pas de contre-appel logé par l'intimé.

Il ne reste donc qu'à déterminer si le chauffeur du camion de l'appelante a réussi à repousser la présomption de faute établie par l'article 53 de la loi des Véhicules Moteurs.

L'endroit où s'est produit l'accident n'est pas à une intersection où, après s'être croisées, deux rues se prolongent encore. C'est plutôt sur la rue St-Paul même, à quelques pieds de la ligne où commence le Boulevard Charest qui se dirige vers le sud-est, que le camion et la bicyclette sont venus en contact.

Le trafic assez dense à l'heure de l'accident, vient de l'est de la rue St-Paul, soit pour procéder droit vers l'ouest, ou pour tourner à gauche vers le Boulevard Charest; il vient également du Boulevard Charest pour s'engager dans la rue St-Paul, ou encore de l'ouest de la rue St-Paul, pour se diriger vers l'est dans cette même artère. C'est dire que les

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véhicules, les tramways et les piétons se rencontrent en tous sens, et que l'on doive faire preuve de la plus grande prudence, si l'on veut éviter des accidents.

Le bicycliste qui allait vers l'ouest, et qui devait traverser la rue St-Paul pour s'engager dans le Boulevard Charest, laissa passer deux voitures automobiles qui filaient dans le même sens, et inclina ensuite d'une façon assez prononcée vers la gauche pour passer en avant du camion de l'appelante. C'est alors qu'il était au centre de la voie ferrée, située sur la rue St-Paul, qu'il fut frappé par le camion qui venait dans la direction opposée. Evidemment, il y avait là faute du cycliste en s'aventurant ainsi devant le trafic qui venait de l'ouest, sans donner aucun signal de sa main afin d'indiquer la direction qu'il entendait suivre.

Mais si la faute de l'intimé a contribué à l'accident, je crois avec la majorité des juges de la Cour d'Appel (1) que le chauffeur du camion n'est pas exempt de responsabilité. Il dit lui-même dans son témoignage que le trafic est dense à cet endroit, et cependant, il procède à une vitesse de 20 milles à l'heure, sachant qu'il est sur le point d'atteindre un endroit, où certaines voitures doivent bifurquer à gauche et lui couper la route, tandis que d'autres doivent continuer tout droit. C'était son devoir de réduire sa vitesse de telle façon qu'il ait le contrôle complet de son camion et qu'il arrête si nécessaire. Il a eu tort comme il le dit, d'assumer que le cycliste lui céderait le droit de passage.

Nous ne sommes pas en présence d'un cas où un cycliste surgit inopinément sur la route, et rend l'accident inévitable. Le conducteur du camion voyait ou aurait dû voir le geste de l'intimé; il était à une distance suffisante pour arrêter ou pour incliner à droite, et éviter ainsi l'accident. S'il avait agi en homme prudent, il aurait dû prévoir, étant donné la circulation dense, la probabilité que des véhicules, désireux de procéder sur le Boulevard Charest, inclineraient vers la gauche, comme le cycliste l'a fait.

L'appelant n'a pas détruit la présomption édictée par l'article 53 de la loi des Véhicules Automobiles, et je suis en conséquence d'opinion que l'appel doit être rejeté avec dépens.

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Kellock J.

The judgment of Rand and Kellock JJ. was delivered by

KELLOCK J.:—According to the respondent he had been riding his bicycle westerly on St. Paul Street, about five feet from the north rail of the west bound track. Deciding to cross the street to his left to enter Charest Blvd., he allowed two automobiles, travelling a little faster than he, to pass him on his left. Then looking ahead and behind, and seeing nothing, he turned on to the tracks and at that moment saw the appellant's truck approaching from the west about four or five feet from the southerly curb and about forty or fifty feet away.

He says that he had not been able to see this truck before, owing to the fact that there were one or two trucks parked on the south side of the street, although he admits that before he got on the tracks he was able to see about 150 feet to the west on the south side of the street. On seeing the approaching truck the respondent says he applied his brakes but skidded two or three feet without, however, being able to avoid contact, with the result that his front wheel and the left front mudguard of the truck collided. He says he fell to the ground some twelve or fifteen feet from the south curb.

The appellant's driver says that he was travelling in the position the respondent says, at a speed of about eighteen or twenty miles an hour. According to him there was traffic approaching St. Paul Street on Charest Blvd. to his right as well as traffic all along the street on his left, going west, consisting of automobiles and bicycles. None of this traffic turned left or gave any signal of intention to do so. He first remarked the plaintiff when the latter was on the car tracks crossing at a sharp angle about ten or twelve feet in front of him. He immediately applied his brakes but could not avoid the accident which he agrees took place as indicated by the respondent.

Negligence on the part of the respondent was found by the learned trial judge in failing to see the truck and in crossing as he did without looking and without giving any signal. The sole question on this appeal is whether or not the finding of the learned trial judge that the appellant's

driver had met the presumption resting upon him by reason of section 53 of the *Motor Vehicles Act*, is open to attack.

The learned trial judge has accepted the evidence of the appellant's driver as to the speed at which he says he was travelling at the time and finds that it was reasonable in the circumstances. There is, however, the question as to whether or not the appellant's driver ought to have seen the respondent before he in fact did see him. His answer was that while he may have seen him he did not notice him as the respondent gave no indication of desiring to turn to his left and that he seemed suddenly to appear from behind an automobile travelling west.

It therefore appears that the appellant's truck, in the position in the street in which it was, on the evidence of both parties, left some nine or ten feet between it and the southerly rail of the west bound tracks, with the result that at least that distance and probably a foot or two more separated it from the line of traffic going west. Accordingly the appellant's driver had ample opportunity to observe the movements of approaching traffic some distance in front of him. Operators of west bound vehicles had equal opportunity of observing appellant's vehicle.

The learned trial judge rejected the evidence of the respondent that he could not see the approaching truck by reason of a truck parked on the south side of the street and held that he either did not look at all or did not look sufficiently. As to the appellant's driver two things are charged against him: (1) that his speed was in fact greater than he says and, in any event, excessive in the circumstances; (2) that he ought to have seen the respondent before he in fact did and had he done so he could have stopped or deviated had his speed been what it should have been.

I am not disposed to think on the evidence that it is open to this court to disagree with the learned judge's finding as to the actual speed. I think, however, in view of the statutory onus resting upon the driver that it has not been shown, and it was for the appellant to show that the care demanded in approaching the bifurcation here in question

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at a busy rush hour when any of the west bound traffic might turn into Charest Blvd. was exercised by the driver of its truck and that his course of action did not contribute to the accident.

Kellock J. I would therefore dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Gagnon & de Billy.*

Solicitor for the respondent: *Louis A. Pouliot.*
