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* Feb. 8, 11.
* Mar. 18.

SWARTZ BROS. LIMITED AND ANOTHER (DEFENDANTS) ..... } APPELLANTS;

AND

AUGUST WILLS (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Motor vehicle—Collision—Damages—Intersection of streets—Right of way—Liability—Statute—Interpretation—The Highway Act, B.C., 1930, c. 24, s. 21.

The respondent, who was driving his car north on Blenheim street in Vancouver, on reaching 14th avenue, looked to his right and saw the appellant's truck about 100 feet away from the intersection and coming towards it. He proceeded to cross the intersection and when nearing the opposite side the rear of his car was struck by the appellant's truck. The driver of the truck testified that he looked to his left, the direction from which the respondent approached the intersection, at a point about 50 feet east of Blenheim street, and did not see the respondent's car. He then looked to his right and did not look again to his left until he had proceeded some distance in the intersection. He then saw the respondent's car at a point just inside the intersection limit and he immediately put on his brakes. The trial judge dismissed the action, but the majority of the Court of Appeal allowed the respondent damages for an amount of $5,663.40. Section 21 of *The Highway Act,* B.C., 1930, c. 24, provides that " the person in charge of a vehicle so drawn or propelled upon a highway shall have the right of way over the person in charge of another vehicle approaching from the left upon an intercommunicating highway and shall give the right of way to the person in charge of another vehicle approaching from the right upon an intercommunicating highway; but the provisions of this section shall not excuse any person from the exercise of proper care at all times."

Held that, upon the evidence, the respondent's action should be dismissed. There is no ambiguity or obscurity in the language of section 21 of *The Highway Act;* the driver approaching an intercommunicating highway is bound to keep a lookout for drivers approaching upon the right upon that highway and to make way for them, and, in doing so, a collision is not only improbable, but hardly possible. The respondent in this case failed in this duty and such neglect of duty was the direct cause of the collision.

Per Duff C.J.—The plain and unmistakeable words of a statute should not be glossed by paraphrases based upon surmises or suppositions as to the purpose of the legislature.

Judgment of the Court of Appeal (49 B.C.R. 140) rev.

* PRESENT:—Duff C.J. and Lamont, Cannon and Davis JJ. and Dysart J. *ad hoc.*

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APPEAL from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the trial judge, Fisher J., and maintaining the respondent's action for $5,663.40 damages.

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

C. W. Craig K.C. for the appellant.

E. F. Newcombe K.C. for the respondent.

DUFF C.J.—I concur with Mr. Justice Cannon.

The statute we have to apply is in these words:

> 21. The person in charge of a vehicle so drawn or propelled upon a highway shall have the right of way over the person in charge of another vehicle approaching from the left upon an intercommunicating highway, and shall give the right of way to the person in charge of another vehicle approaching from the right upon an intercommunicating highway; but the provisions of this section shall not excuse any person from the exercise of proper care at all times. (*The Highway Act*, Stats. of B.C., 1930, ch. 24).

I can perceive no ambiguity or obscurity in this language. The driver approaching an intercommunicating highway is to keep a lookout for drivers approaching upon the right upon that highway and to make way for them. If everybody does this a collision is not only improbable, it is hardly possible. The respondent failed in this plain duty. This neglect of duty was the direct cause of the collision. The learned trial judge has, in effect, so found the facts. There is not the slightest ground for disagreeing with him.

I must add, I feel, that to gloss the plain and unmistakeable words of a statute, by paraphrases based upon surmises or suppositions as to the purpose of the legislature, is, in my humble view, a rash procedure.

The appeal should be allowed and the judgment of the trial judge restored with costs throughout.

The judgment of Lamont, Cannon, Davis JJ. and Dysart J. *ad hoc* was delivered by

CANNON J.—This appeal is submitted from the judgment of the Court of Appeal for British Columbia which, by a majority, reversed the judgment on the trial of Fisher, J.,

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by which plaintiff's action to recover damages in respect of injuries suffered as a result of a collision between two motor vehicles at a street intersection in Vancouver was dismissed. Macdonald, C.J.B.C., and McPhillips and McQuarrie, JJ.A., allowed the appeal and gave judgment for $5,663.40. Martin, J.A., and Macdonald, J.A., dissented, the first being of opinion that the accident was caused solely by the negligence of the plaintiff; and the second learned justice thought that both plaintiff and defendants were negligent and that the defendants' negligence contributed to the accident to the extent of 40%.

The collision occurred on the 2nd of January, 1934, at the intersection of 14th avenue west and Blenheim street, in the city of Vancouver, at about 12.30 o'clock in the afternoon. The respondent was driving a Nash coach northerly along Blenheim street. The defendant Hudson, in the employ of Swartz Bros. Ltd., was driving his truck westerly along 14th avenue.

According to the plan, both streets are equal in measurements as between street boundary lines, as to width of sidewalk and boulevard allowance, and width of roadway. Each street is sixty-six feet wide between boundary lines. The portion thereof used for sidewalk and boulevard on each street is approximately 20 feet on each side of the roadway; the roadway of each street is 27 feet wide. There are no stop signs at or against either street at this intersection.

At the time of the collision, it was raining and the streets were wet. When the respondent, who was driving at a speed of about twenty miles per hour, reached a point approximately twenty feet from the southerly curb stone of 14th avenue west, he slowed down to an estimated speed of fifteen miles per hour and looked to his right, where he saw the motor truck of the appellants which, he says, was about 100 feet back from the easterly curb stone of Blenheim street and was not proceeding at a dangerous rate of speed. The plaintiff then looked to his left and then to his front, accelerated his speed to proceed across the intersection and was proceeding at the rate of approximately twenty

(1) (1934) 49 B.C. Rep. 140.

miles an hour at the moment of the impact. The defendants' truck approached the intersection at a rate of speed of between 20 and 25 miles per hour. The driver Hudson says that he looked to his left, the direction from which the plaintiff approached the intersection, at a point about fifty feet east of Blenheim street and did not see the plaintiff's car. He then looked to his right, northerly, up Blenheim street. There were some bushes which partially obstructed his vision in that direction. Hudson did not look again to his left until he had proceeded some distance in the intersection and passed the east boundary of Blenheim street. He then saw the plaintiff's car on Blenheim street at a point just inside the intersection limit. He immediately put on his brakes; but it was too late to avoid the accident. The application of the brakes so reduced the speed as to lessen the force of the impact.

Although the versions of the two eye witnesses of the accident differ in some respects, one must say, after a careful perusal of the evidence, that Hudson is a more satisfactory witness than Wills; and the learned trial judge seems to have accepted in the main the facts as recited by the driver of the truck and found that Hudson approached the intersection somewhat earlier than the plaintiff and that, on account of the difference in speed, both arrived at the intersection at the same time. Under those circumstances, it being admitted that there was no excessive speed on the part of the defendant Hudson, and the plaintiff approaching from his left, Hudson was entitled to the right of way. The learned trial judge found that the plaintiff did not keep a proper look out; that he should have seen the defendants' truck approaching and not have attempted to proceed across the intersection before it.

Section 21 of *The Highway Act,* statutes of British Columbia, 1930, ch. 24, is as follows:

> 21. The person in charge of a vehicle so drawn or propelled upon a highway shall have the right of way over the person in charge of another vehicle approaching from the left upon an intercommunicating highway, and shall give the right of way to the person in charge of another vehicle approaching from the right upon an intercommunicating highway; but the provisions of this section shall not excuse any person from the exercise of proper care at all times.

But it is urged that the plaintiff's motor car was struck on the side, at the rear, when six feet of the plaintiff's car

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was passed and clear of the path of the oncoming truck; that the position of the point of impact shows that plaintiff entered the intersection first and should have been allowed to proceed by the defendant Hudson.

The learned Chief Justice, on appeal, by comparing the distances between the different points shown on the map, on the basis that both parties were travelling at that time at the same rate of speed and continued to do so, found that Wills was about 20 feet within the intersection when Hudson reached the boundary line.

This, I believe, is erroneous, as the plaintiff admits that he increased his speed, while the defendant continued to travel at the same rate until he put on his brakes. It would, therefore, seem apparent that the plaintiff travelled a greater distance than the defendant after they entered the intersection, because they were not travelling at the same speed. As my brother Davis remarked during the argument, distances must be translated into time in order to determine what are the rights of the parties. During the argument, it was conceded that the differences in the measurements that were stressed before us, when translated into time, did not amount to more than a quarter of a second of time.

The clear fact emerging from the evidence is that plaintiff, although he had seen the truck approaching, disregarded the law giving to the defendant the right of way, speeded up his automobile and took a chance. Hudson, on the other hand, as soon as he saw the plaintiff, realized the danger at about 20 feet before the impact and put on his brakes. He had the right of way and was entitled to assume that plaintiff would follow the rule.

Lord Atkinson, in *Toronto Railway* v. *King* (1), said:

> * * * traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less on the assumption that the drivers of all other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets.

Especially in a case where we have a clear cut statutory duty, it would take more than the unsatisfactory evidence of the plaintiff to set aside the rule and excuse his reckless action in crossing this intersection at an increased speed

(1) [1908] A.C. 260, at 269.

after he had seen the truck, by resorting to more or less reliable calculations of distances and of the respective speed of the two vehicles. From the time that he saw the defendants' truck, the plaintiff, after accelerating his speed and while crossing the intersection, paid no regard whatever to the defendants' truck, never looked at it again until he felt the force of the impact. If he had looked, he might have swerved to the left on that wide street and avoided the collision. He did nothing whatever to prevent the accident, although he says that he was travelling at such a rate that he could have stopped his car within fifteen feet just before entering the street, after he slowed down; and the only reason that he did not do so was that he did not see the defendants' truck which, he admits, he could have seen if he had looked again in that direction before starting to cross the intersection. He says:

Q. Now, then, I ask you again, don't you think that you looked to the right before you ever got to within 20 feet of the curb line?—A. I don't remember.

Q. You don't remember. In any event, almost immediately after you looked to the right you accelerated your speed, didn't you?—A. Yes.

Q. Yes. Now as a matter of fact, when you looked to the right, didn't you see the truck so close that you just had to try to beat it across the intersection?—A. No, it was far enough away that I thought I had time to cross.

Q. I see. You didn't change your course at all before the collision, did you? You just carried on in a straight line?—A. Yes, that is right.

* * *

Q. You did not sound your horn?—A. No.

Q. And you didn't apply your brakes before the collision?—A. No.

Q. In other words, you really didn't do anything at all to avoid the accident?—A. Well, I thought I would get across.

Q. You didn't do anything at all to avoid it, did you?—A. No, I had sufficient time to cross.

Q. Well, that is for his lordship to decide. I ask you just to answer yes or no. You didn't do anything at all to avoid this accident, did you?—A. No.

The only remaining question is whether the defendant, although he had the right of way, exercised proper care. Having observed, when he was 50 feet away from the intersection that there was no traffic approaching from his left, Hudson thought it his duty to watch for traffic on his right, to which he had to yield the right of way. He was entitled to expect that a northerly bound driver on Blenheim street, who had now reached a point 50 feet from the intersection, would keep a proper lookout and observe the rule of the

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road laid down by section 21 of *The Highway Act* above quoted. The presence of the bush obstructing his view to the right was sufficient reason for him to look more carefully and with more insistence in that direction to detect any vehicle which might have approached from there.

Where there is nothing to obstruct the vision and there is a duty to look, it is negligence not to see what is clearly visible. The respondent in this case admits that he did not see the truck after he started to cross. It was then clearly visible; and, unfortunately for the plaintiff, we must reach the conclusion that his injuries resulted from his own negligence in taking a chance to cross the intersection ahead of the truck which clearly had the right of way.

We, therefore, would allow the appeal with costs and restore the judgment of the trial court with costs throughout for the appellant.

Appeal allowed with costs.

Solicitors for the appellant: *Craig & Tysoe.*

Solicitor for the respondent: *W. H. Campbell.*