

BETWEEN :

SECURITIES & MONEY TRANS-
PORT INC.

} SUPPLIANT,

1943
Dec. 14
1945
Jan. 5

AND

HIS MAJESTY THE KING..... RESPONDENT.

Crown—Collision—Street intersection—Traffic lights—Driver crossing with green light in his favour has right of way—Negligence—Driver crossing against red light—Army convoy not given right of way independently of traffic light—Liability of Crown.

Suppliant's truck, in charge of one of its employees, while being driven in a northerly direction on St. Hubert Street in the city of Montreal, P.Q., approached Sherbrooke St., and as the traffic light there situated facing the driver of the truck was green, he proceeded to cross the intersection. When the crossing had been nearly completed the truck was struck by another truck owned by the respondent and operated in the service of His Majesty's armed forces and in charge of one of His Majesty's servants, a private in the Toronto Scottish Regiment, which truck was proceeding on Sherbrooke St. in a westerly direction.

Suppliant seeks to recover from the respondent for damage done to the truck and also for loss of its use while being repaired.

Respondent contended that the army truck was one of a convoy three cars of which preceded the one with which suppliant's truck collided, and that suppliant's truck attempted to cut through the convoy and that respondent's truck had the right of way.

The Court found that the traffic light on Sherbrooke St. facing the driver of suppliant's truck was green when it entered the intersection and also that the army convoy was proceeding without an escort.

Held: That cars in an army convoy do not have the right of way in crossing an intersection independently of the traffic light facing them; the fact that the first car of the convoy has crossed the intersection on the green light does not entitle the following cars to cross if the light has changed.

2. That a driver entering an intersection or crossroads when the traffic light is in his favour has the right of way over vehicles entering the same intersection or cross-roads from his right or left.

PETITION OF RIGHT by suppliant herein to recover from the Crown damages for loss resulting from a collision between suppliant's vehicle and one owned by the Crown due to the alleged negligence of an officer or servant of the Crown acting within the scope of his duties or employment.

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The action was tried before the Honourable Mr. Justice Angers, at Montreal.

Hugh O'Donnell, K.C. for Suppliant.

Leon Garneau, K.C. for Respondent.

The facts and questions of law raised are stated in the reasons for judgment.

ANGERS J. now (January 5, 1945) delivered the following judgment:

By its petition of right the suppliant claims from His Majesty the King the sum of \$318.31, representing damages suffered as the result of a collision between a truck owned by it and a truck belonging to the respondent, on February 14, 1942, at about one o'clock p.m., in the circumstances hereinafter related.

The suppliant in its petition alleges in substance:

on February 14, 1942, at about one p.m., when the streets were clear and the weather fine, a truck owned by the suppliant and then in charge of one of its employees, a competent chauffeur, was being driven in a northerly direction on St. Hubert street, in the city of Montreal, at a moderate speed and in a prudent manner, in compliance with the provisions of the Motor Vehicles Act of the Province of Quebec and all regulations concerning traffic;

as the suppliant's truck approached the intersection of St. Hubert and Sherbrooke streets at low speed, the traffic light situated thereat facing the driver of the suppliant's truck was green and accordingly the said driver drove his truck into the said intersection and proceeded to cross it, the said truck being then in second gear;

the suppliant's truck had almost completed the crossing of the intersection, being near the northeast corner thereof, when it was struck on the right front side by another truck, the property of the respondent, bearing Ontario license No. 694F (1941), then operated in the service of His Majesty's armed forces and in charge of one of His Majesty's servants, viz. B-76885, Private Boorman, A.E., Toronto Scottish Regiment (MG) C.A. Att'd. C.M.G.T.C.,

A-17 Staff, acting within the scope of his duties as a servant of His Majesty under the supervision of the Department of National Defence;

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at the time of the collision His Majesty's truck was proceeding from east to west on Sherbrooke street at a reckless rate of speed, having entered the intersection suddenly, without warning and against the direction of the traffic light which was showing red, and struck the suppliant's truck throwing it towards the west;

the said collision and all damages resulting therefrom are wholly attributable to the negligence, imprudence, lack of care or want of skill of His Majesty's servant, an incompetent and reckless driver inasmuch as:

- (a) he was operating His Majesty's truck at a reckless and illegal rate of speed when approaching and entering the said intersection;
- (b) he entered the said intersection when the traffic light was showing red against him;
- (c) he did not have his truck under control and was not keeping a proper lookout;
- (d) notwithstanding the fact that the suppliant's truck had the right of way, he endeavoured to proceed across the intersection;
- (e) he did not immediately stop his truck when the danger was apparent;
- (f) the brakes of His Majesty's truck were defective and the said truck was not in a good state of repair and mechanical condition;

immediately after the collision, the driver of the respondent's truck acknowledged that the traffic light was showing red against him as he approached the intersection and claimed that he was entitled to cross it notwithstanding this fact;

as a result of said accident, the suppliant has suffered damages in the amount of \$318.31, as the frame of its truck was badly twisted and the radiator, radiator grill, headlights and bumper were broken and bent and the motor block cracked, repairs thereto having been effected in the said amount.

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In his statement of defence the respondent denies all the allegations of the petition of right and pleads in substance as follows:

on the date in question the motor car belonging to the respondent was being driven as part of a convoy proceeding westward on Sherbrooke street;

the suppliant's car was being driven on St. Hubert street from south to north;

there were three cars in such convoy preceding the one with which the suppliant's car collided;

the person in charge of suppliant's car, had he kept a proper lookout, could not help seeing the several cars forming the convoy proceeding westward on Sherbrooke street;

such cars, and in particular that which collided with the suppliant's car, were travelling at a distance of about 15 to 20 feet apart on the right side, i.e. the north side of Sherbrooke street, at a moderate speed, in accordance with traffic regulations;

instead of waiting until all the cars composing the convoy had passed St. Hubert street, the person in charge of suppliant's car attempted to cut through such convoy in violation of the rules of traffic and of elementary prudence and his car ran into and struck the respondent's car;

moreover it is untrue that, at the time suppliant's car attempted to cross Sherbrooke street, there were green lights allowing him to make such crossing;

the respondent's car had the right of way and the suppliant's car should have stopped before attempting to cross Sherbrooke street;

the suppliant's car was proceeding at an illegal and reckless speed and gave no warning of its approach;

if suppliant's car was damaged as a result of the collision, the suppliant has only itself to blame;

the accident was caused by the sole fault, imprudence and lack of skill of the person driving suppliant's car;

the respondent is not liable towards the suppliant for any damages that may have been caused to its car and, in any event, the amount claimed is exaggerated;

the respondent reserves his right to recover from the suppliant the damages suffered by his car.

In its reply the suppliant admits the allegation of the defence that its car was being driven on St. Hubert street from south to north, denies or joins issue with the other allegations thereof and says that the reserve by the respondent of his right to recover from suppliant the damages suffered by his motor car is irrelevant, the suppliant averring that the respondent has suffered no damages.

I deem it apposite to summarize briefly the evidence.

Frederick Russell, manager of the Three Rivers branch of the suppliant company, testified that on February 14, 1942, he was in charge of a truck on a run for the Provincial Bank of Canada and that, at about a quarter to one o'clock, he was going north on St. Hubert street. He said that he came up St. Hubert hill, between Ontario and Sherbrooke streets, on second gear, that he was travelling at a speed of about ten miles an hour and that, as he arrived at the intersection of Sherbrooke street, the light was green.

He said that, when he was at the southeast corner of Sherbrooke and St. Hubert streets, he saw, at a distance of approximately 50 feet, a truck proceeding west on Sherbrooke street.

He stated that, whilst he was crossing Sherbrooke street, his truck was hit at the back of the right front wheel. He asserted that after the collision he noticed that the traffic light was still green.

Russell declared that he got out of his car and asked the driver of the army truck why he had not stopped and that the latter replied that he was not obliged to stop because he was in a convoy. The witness observed that with a convoy there is generally an escort and said that on the day of the accident there was none.

Russell stated that the impact was very heavy and that, after the accident, his truck was facing west. He added that he tried to avoid the collision by turning to the left.

He said that he had seen three army trucks crossing St. Hubert street on the green light but that, when he reached Sherbrooke street, the light had turned green in his favour.

According to him the collision took place near the north-east corner of Sherbrooke and St. Hubert streets.

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Russell stated that after the collision his truck was taken to the International Harvester Company of Canada Limited for repairs. He produced as exhibit 1 two bills of the latter, dated April 6, 1942, one being for \$292.31 and the other for \$3.04. He also produced as exhibit 2 a bill of Peel-Windsor Garage Inc., dated February 1942, for \$26. Russell said that while his truck was being repaired the suppliant had to rent a car and that the bill exhibit 2 is for the rental.

He declared that the army truck did not moderate its rate of speed when arriving at the intersection of St. Hubert street and that it did not give any signal.

In cross-examination Russell said he did not think that the respondent's truck formed part of a convoy. He admitted that he saw three cars passing, but stated that there was no car behind the one involved in the collision. He asserted that the traffic light was green for him. He denied having tried to cut through a convoy, as he did not think it was a convoy. According to him a convoy is generally escorted and there was no escort on that occasion. He submitted that he had the right to cross Sherbrooke street as the light was in his favour.

Russell said that, when he was coming up the hill of St. Hubert street, he was going at a rate of from 8 to 12 miles an hour. He admitted that he gave evidence before a military tribunal in the winter of 1942 and that he may have stated that his truck was going at a rate of from 12 to 15 miles.

Re-examined Russell declared that the army truck which struck his car was behind the other trucks of the so-called convoy; that it had lost the convoy by about 200 feet and that it was trying to catch up with it.

Michael J. Cassin, serviceman of International Harvester Company of Canada Limited, declared that the suppliant is a customer of his company.

Shown the invoices exhibit 1, he said that he saw the suppliant's truck when it was brought to the garage for repairs. He stated that the truck, before the collision, was in good working condition and that, after the collision, the frame was bent. In his opinion, the impact must have been heavy. He asserted that the truck was hit at the rear

of the right front wheel and that the only repairs made by his company were those rendered necessary by the collision. He stated that the truck was in his company's garage for four or five days.

In cross-examination, Cassin said that his company towed the truck to the garage as it could not be driven on its own power.

Albert Boorman, truck driver of the city of Toronto, province of Ontario, testified that on February 14, 1942, he was in the army, being a member of the "Toronto Scottish", a machine gun unit, and that on that day he was truck driver in a convoy, which was his ordinary post at that time.

He admitted that, on the day in question, he had a collision at the corner of Sherbrooke and St. Hubert streets, in Montreal, whilst driving an army truck. According to him, the truck was a Ford, but he could not remember whether it was a 30 cwt. or a 15 cwt. He was driving west on Sherbrooke street. He said that the collision took place at the intersection of St. Hubert and Sherbrooke streets, shortly after midday; he could not tell the exact time. He asserted that he did not see the suppliant's truck as he approached the intersection and added that he did not see it until his own truck had been struck. He emphasized the fact that his truck did not hit the suppliant's truck, but that it was the latter which hit his own. I think preferable to quote a passage from the witness' deposition:

Q. You saw the truck that you struck, as you approached the intersection?—A. No, sir; I never saw the truck until after I had been struck.

Q. You did not see the truck until after you had hit it?—A. Until after he had hit me.

Q. Well,—after the collision?—A. That is right.

Q. You did not see the truck before the collision?—A. No.

Q. Where were you looking?—A. Where I was going.

By the Court:

Q. You were going into the truck. You should have seen it?—A. Going into the truck? No, sir, I didn't go into the truck.

Q. Well, you hit it?—A. The truck hit me.

Asked if the front part of his car came into contact with the right front side of the suppliant's truck Boorman replied:

The left front fender of my truck was hit on the outside of the fender.

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And later:

Well, it was the left outside part of the front fender of my truck.

After the witness had restated that he had not seen the suppliant's car "until after he had hit", counsel asked him where he was looking; Boorman answered: "Where I was going, ahead."

He admitted that Sherbrooke street is about eighty feet wide at the intersection. He agreed with counsel that the suppliant's truck came from nowhere in front of him and he added:

The light was green when I was going across. Therefore, I didn't have to look right or left. The red light should be on for him. I had the green.

Counsel asked the witness if it is not a fact that the light was red when he started to cross the intersection; the latter consistently replied: "No, sir".

Boorman denied that he had an argument with the driver of suppliant's truck immediately after the collision. He stated that he offered him to tow the truck "off the intersection out of the road of the traffic" and that the latter refused.

Counsel reverted to the conversation between witness and the driver of suppliant's car and asked Boorman to relate it; I think it advisable to quote an excerpt from the witness' testimony:

Q. What was the discussion about the light being red against you?
—A. It wasn't red against me.

Q. What was the discussion you had with the driver of the other truck, right after the collision? Do you remember that? You don't answer. You don't remember?—A. No, I can't say that I remember arguing about the light.

Q. You remember talking to him right after the accident, don't you?
—A. Yes.

Q. But you don't remember what the discussion was about the light?—A. No.

Q. You don't swear that you did not talk about the light, do you?
—A. No, sir.

Boorman declared that he was travelling at a speed of between 8 and 15 miles. I may say, as I observed it at the trial, that his estimate is very accurate.

He stated that his truck was at a distance of from 12 to 15 feet behind the car immediately ahead of him.

Asked if he was serious in that statement, Boorman replied affirmatively and supplemented his answer with these comments:

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Because the Army sets a rule for convoys. You have got to stay a certain distance behind the truck ahead of you, and you are "brought up" if you don't.

He denied that he was considerably further than the distance mentioned behind the last of the military cars in front of him and that he was trying to catch up with them.

He also declared untrue the statement that he went into the intersection "at a good, fast clip". Asked how far his car had pushed the other one, i.e. the suppliant's truck, toward the west he replied: "It didn't push it very far".

Counsel pressed the point; I believe it expedient to quote a passage from the witness' deposition:

Q. Well, how far did it push it? Would you say fifteen feet?—A. No.

Q. Ten feet?—A. No, nor ten either.

Q. How many feet, then, according to you?—A. Well, I never stopped to measure it.

Q. Was it a light blow or a heavy blow?—A. It was only light.

This version does not agree with the previous statement of the witness that it was the suppliant's truck that hit his car.

In the circumstances I saw fit to ask Boorman which car had struck the other one. He corrected himself and modified his story, stating: "I would say, sir, the other car struck me".

Asked if his car came into contact with the other one, viz. the suppliant's truck, back of the right front fender of the latter, Boorman replied in the negative. He asserted that the damage to the suppliant's truck was on the front of the right front fender and not on the back of it. He said that he looked at the truck after the collision and that the only damage which he could see was "on the right front fender and around the radiator". According to him, the suppliant's truck was not seriously damaged and the blow was very light.

In cross-examination Boorman said that there were four or five cars ahead of his in the convoy and thought that

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there was one behind. He added that they were all military cars proceeding west on Sherbrooke street in a procession, with a distance of 12 to 15 feet between each.

He declared positively that when he reached St. Hubert street the light on Sherbrooke street was green and he contended that all the cars ahead of him crossed St. Hubert street on that green light.

Counsel for respondent asked him what traffic light was showing when the three or four cars—I may note that witness had previously mentioned four or five cars—ahead of him crossed St. Hubert street and he replied, eluding the question or perhaps missing the point: “When I crossed the intersection the light was green”. Replying however to counsel for respondent, Boorman said that the other cars had preceded him and that all the cars were going at about the same rate of speed.

Boorman stated that the car which struck his car came on St. Hubert street from the south side of Sherbrooke street and that it struck the left front fender of his car.

He said that, judging from the impact, the truck which hit his car was going at 20 or 25 miles an hour.

Asked about his experience as a driver, Boorman declared that he had driven trucks for the last eight years.

Re-examined Boorman said that there were four or five cars ahead of him which crossed the intersection before he arrived there and that in order to do so the light must have been green. He repeated that the cars were going at a speed of between 8 to 15 miles an hour and admitted that the traffic light changes once in a while. He denied however that the light was red when his turn came to cross St. Hubert street.

He insisted that the speed of the car which came into contact with his was, at the time of the collision, judging from the impact, 20 to 25 miles an hour and that he had not seen it at all before the collision. Notwithstanding this speed, he reasserted that the impact was very light.

Raoul Giroux, heard on behalf of the respondent, testified that he had knowledge of the accident. He said that his car formed part of the convoy which included 9 or 10 trucks, and that he was the fifth or sixth one. According to him Boorman drove the truck which preceded his.

He stated that, when the first truck of a convoy reaches an intersection on a green light, it crosses and that the trucks which follow also cross.

He declared that his truck was at a distance of about fifteen feet behind the one driven by Boorman.

According to him the light was yellow when Boorman's truck crossed St. Hubert street, but it was green when the car reached the intersection.

He contended that the distance between Boorman's truck and the one which preceded it was fifteen feet. I do not think that the witness was in a position to so precisely estimate the distance.

He asserted that he saw the truck coming up St. Hubert at a speed of twenty-five miles an hour and does not believe that it reduced its speed when it reached Sherbrooke street. He added that it did not decrease its rate judging from the manner in which it struck Boorman's truck. He said that the suppliant's truck hit Boorman's truck on the front left fender and that the latter had reached the middle of St. Hubert street when the collision occurred.

In cross-examination the witness repeated that, when Boorman started to cross St. Hubert street, the light was green.

He asserted categorically that no one is supposed to cut across a convoy, adding that, even though the traffic light may change to red, all the cars of a convoy cross an intersection. He was evidently in a mood to pass judgment.

He restated that the light on Sherbrooke street turned yellow as Boorman's truck reached the middle of St. Hubert street.

He admitted that the convoy had no escort. Albert Boorman, already examined on behalf of the suppliant, was recalled by the respondent.

He stated that the approximate distance between the truck he drove and the one which preceded him in the convoy was from 12 to 15 feet and that the distance between his truck and the one behind driven by Giroux was about 15 or 20 feet. He said that the statement made by one of the witnesses that there was a distance of 200 feet between his car and the one which was ahead of his is wrong.

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Asked if just before the accident all the trucks were following each other by short distances, witness replied in the affirmative and added that "all the convoy all the way through kept their same distance".

He asserted that the green light was on when he "hit the intersection". He stated that the light turned amber after the driver of suppliant's car had hit his truck. He contended that, at the time of the impact, he looked at the light and noticed that it was amber. He insisted that the light turned amber as soon as the suppliant's truck had hit his car.

He declared that the front of his car was just over the centre of the intersection when the impact took place.

He denied positively having told Russell, after the accident, that he did not have to stop for red lights.

Boorman said that he offered Russell to tow his car off the road and that the latter refused his assistance and told him that he would move it himself. He affirmed that the suppliant's car moved on its own power.

Shown the bill exhibit 1 and asked if all the work mentioned therein had to be done the car could have run on its own power. the witness replied in the negative, adding that it would have to be towed.

In cross-examination Boorman declared that he had operated a garage and heard of running a car on its battery for a few feet. He admitted that the suppliant's truck could have been moved off the intersection on its battery.

He noticed that the radiator of the suppliant's car was broken but he could not say if the engine block was also broken. He said that he did not look at it.

Counsel for the suppliant repeatedly asked the witness how far or how long before the accident he had made his last stop and was unable to obtain a satisfactory reply. The witness started to say that he could not name the street at which he had stopped because he did not know the city. Asked if it was two or three blocks to the east, that is before reaching St. Hubert street, he replied that he could not say how far it was.

Questioned as to the time or the distance his truck had been running when the collision occurred, whether it was ten minutes or two minutes or a mile or a quarter of a

mile, Boorman replied that he could not tell, adding "we kept going along". He finally stated that his last stop had been made more than five minutes before the collision; it seems convenient to quote a passage from his testimony (p. 20):

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Q. Well, before the collision can you tell us, in time, how long you had been going,—two minutes or five minutes?—A. No, I would say the last stop I had made was more than that.

Q. It was more than five minutes?—A. Yes.

Q. Would it have been ten minutes away, to the east?—A. You are getting on the other side.

Q. No,—you were coming from the east, travelling west, weren't you?—A. Yes.

Q. And you hadn't stopped for five minutes or more before the collision?—A. I could not tell you just how long it was that I had not stopped; it is quite a while back now, and I just couldn't tell you.

Q. Could you tell his lordship whether it was five minutes or longer? You know what five minutes is?—A. Yes, I know five minutes.

Q. Well, had you been running more than five minutes before you had the collision?—A. Yes.

Boorman said that he was coming from the Three Rivers barracks on the day of the accident and that he had stopped at different places. He could not tell the distance between the site of the accident and the place of his previous stop.

He stated that, according to the standing rules of the army, the cars were supposed to stop for the red light and obey the traffic policeman's signals. Asked why, in this case, he had insisted he was entitled to go through the red light, he replied that he had not said that and that he had never insisted.

He admitted that drivers of military cars are taught to obey all the traffic laws in a city and are supposed to stop when the lights are against them or follow the policeman's signals.

He stated that, with the condition indicated by the bill exhibit 1, he would agree that the suppliant's truck would have to be towed to a garage. He added that with the damage shown in the said bill he could not see how the truck could have been "moved on its own power from the centre of the road to the side of the road". He admitted that, according to exhibit 1, the damage was very serious.

In rebuttal Frederick Russell declared that his truck did not move from the place of the collision to the side of the

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road on its own power, but that it was moved by means of a battery; from there the truck had to be towed to the garage.

The evidence is conflicting, particularly with regard to the traffic lights at the intersection of Sherbrooke and St. Hubert streets.

Russell, manager of the Three Rivers branch of the suppliant company, who, on the day of the accident, was driving the suppliant's truck involved in the collision, says that he was going up the hill of St. Hubert street, between Ontario and Sherbrooke streets, at a rate of about ten miles an hour, and that when arriving at the intersection the light facing him was green and that he consequently proceeded to cross Sherbrooke street.

On the other hand Boorman who was driving the army truck, forming part of a convoy proceeding from east to west on Sherbrooke street, which was involved in the said collision, asserts that when he reached the intersection the light facing him was green, that he accordingly started to cross St. Hubert and that on having come to the middle of the intersection the light turned amber.

Which of these two versions is to be accepted?

I must say that if Russell appeared to be an honest and trustworthy witness, Boorman left me with a rather unfavourable impression: he was often evasive or forgetful; at times he was very precise and accurate in matters which could help his case. He was occasionally inclined to argue rather than testify. On two or three occasions he was aggressive, nay, provocative. I may say that I do not attach much importance to this last attitude of the witness, which may likely originate in his temperament or his breeding. The other aspects of the witness' testimony, of which I have on trial taken copious notes and which, after getting a transcription thereof, I have read carefully, so as to test the merits of my impression at the hearing, have cast in my mind very grave doubts as to its veracity.

The evidence of Boorman is, to a certain extent, corroborated by Giroux who drove the truck immediately following that of Boorman. He is the witness who said that the suppliant's truck was coming up the hill of St. Hubert

street, which is fairly long and steep, at a rate of twenty-five miles an hour and that it did not moderate its speed when it reached Sherbrooke street, judging by the way it hit the respondent's truck. I am sorry to say that I cannot believe this story; it does not seem to me plausible. I cannot conceive that a sensible man would attempt to cross Sherbrooke street, a wide thoroughfare with a dense traffic, at a speed of twenty-five miles an hour, particularly at the time at which the accident happened.

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The statement by Russell that the respondent's truck hit his car is supported by the damages caused to the latter. The suppliant's truck was hit at the rear of the right front wheel, as stated by an independent and disinterested witness, Cassin, serviceman of the International Harvester Company of Canada, Limited, to whose garage the car was taken immediately after the accident for repairs, and as shown by the company's invoices filed as exhibit 1.

Counsel for the respondent, in his argument, relied on paragraph 7 of section 36 of the Motor Vehicles Act (R.S.Q. 1941, chap. 142), which reads as follows:

7. At bifurcations and at crossings of public highways, the driver of a vehicle on one of the roads shall give the right of way to the driver of a vehicle coming to his right on the other road. However, the drivers must conform to the regulations in force in a city respecting the right of way of one vehicle over another, or the right of way of a pedestrian over the vehicle, or respecting the direction that vehicles must follow on certain streets, provided, however, that such derogation from this act be, by the city, indicated thereon by a proper signboard or by a traffic officer.

Counsel further relied on article 83 of by-law 1319 of the city of Montreal, which is thus worded:

83. The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection. When two vehicles enter an intersection at the same time, the driver of the vehicle on the left shall yield to the driver on the right.

The evidence discloses that the drivers of the two trucks arrived at the intersection almost simultaneously. I am satisfied however that the traffic light was favourable to the driver of the suppliant's truck and that, in the circumstances, he had the right of way. Paragraph 7 of section 36 of the Motor Vehicles Act and article 83 of by-law 1319 were in the present case inapplicable.

Counsel for the suppliant, in support of his contention that his client had in the circumstances the right to cross

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the intersection inasmuch as the light facing him was green, cited the following decisions: *City of Montreal v. Montreal Tramways Company* (1); *Stanley Brock Limited v. Montreal Tramways Company* (2); *Shell Oil Company of Canada Limited v. Anley et al* (3).

The headnote in the case of the *City of Montreal v. Montreal Tramways Company (ubi supra)*, which contains a fair summary of the judgment, reads thus:

Where a police radio car belonging to the City of Montreal crashes into a tramcar at the intersection of two streets, an action in damages instituted by the City against the Montreal Tramways Co. should be dismissed if it appears that the police vehicle was being driven at high speed, that no signal of its approach to the corner was given and that the driver of the car failed to recognize the right of way of the tramcar inasmuch as the traffic light was favourable to the tramway.

Mr. Justice E. M. W. McDougall in his judgment referred to certain observations made by Scott L.J. in the case of *Joseph Eva, Limited v. Reeves* (4) which are quite pertinent. I deem it expedient to quote an extract from these observations (p. 404):

...possibly it may be helpful if I still express in my own way some part of what I had intended to say. I do so, because of the extreme importance in the cause of safety on the roads of bringing home to drivers as definitely and even as graphically as possible what the law now is as to traffic at cross-roads controlled by lights without police. Nothing but implicit obedience to the absolute prohibition of the red—and indeed of the amber, subject only to the momentary discretion which it grants—can ensure safety to those who are crossing on the invitation of the green. Nothing but absolute confidence in the mind of the driver invited by the green to proceed, that he can safely go right ahead, accelerating up to the full speed proper to a clear road in the particular locality, without having to think of the risk of traffic from left or right crossing his path, will promote the free circulation of traffic, which next to safety is the main purpose of all traffic regulation. Nothing again will help more to encourage obedience to the prohibition of the lights, than the knowledge that, if there is a collision on the cross-roads, the trespasser will have no chance of escaping liability on a plea alleging contributory negligence against the car which has the right of way. Finally, nothing will help more to encourage compliance with the summons of the green to go straight on than the knowledge of the driver that the law will not blame him if unfortunately he does have a collision with an unexpected trespasser from the left or right.

It seems to me apposite to cite a passage from the judgment of McDougall J. (p. 259):

Upon the evidence thus appearing, the Court can scarcely resist the conclusion—even the conviction that this accident was due to the heedless lack of attention of the police officer in charge of the plaintiff's motor

(1) (1941) R.J.Q. 79 S.C. 258.

(2) (1942) R.J.Q. 80 S.C. 234.

(3) (1934) R.J.Q. 72 S.C. 364.

(4) (1938) 2 K.B. 393.

vehicle. Whether he regarded his mission in responding to the direction to report at the corner of St. Lawrence Blvd. and Beaubien Street as so paramount as to excuse him from compliance with ordinary traffic regulations is not important. The speed at which he approached the crossing of these streets admittedly without giving warning of his approach, and apparently ventured into the intersection (certainly reprehensible in any other driver) cannot be excused simply because he was a police officer in the discharge of a duty. The subject of the privilege accorded to public vehicles, such as fire apparatus proceeding in response to an alarm has been discussed by the undersigned in *Lapointe v. Bonnier* (1935, 73 S.C. 373, 376). At page 376, a citation from the remarks of the learned Chief Justice of the Court of King's Bench in *Cité de Granby v. Dufort* (No. 228—S.C. 595—Nov. 29, 1929) is given as follows:

Ai-je besoin d'ajouter que les pompiers d'une corporation municipale sont assujettis à la loi des véhicules automobiles, tout comme les autres citoyens de la province? La loi ne fait aucune exception pour eux, et elle n'autorise pas la Cour à en faire, ce qui, du reste, ne me paraîtrait pas désirable.

See also *Wray v. Déchaux Frères* (1925, 63 S.C. 300); *Létourneau v. London & Lancashire Guarantee* (1930, 49 K.B. 110).

To dash headlong into a tramcar, relying upon a supposed right of way, is indefensible.

The headnote in the case of *Stanley Brock Limited v. Montreal Tramways Company (ubi supra)* is thus worded:

Lorsqu'un garde-moteur poursuit sa course dans le croisement de deux routes sur un signe de l'agent de la circulation, malgré le feu rouge, cette manœuvre ne saurait constituer un motif d'excuse si le tramway heurte une automobile.

The judgments in the cases of the *City of Montreal v. Montreal Tramways Company* and *Stanley Brock Limited v. Montreal Tramways Company*, particularly the first one, are favourable to the contention of counsel for the suppliant, assuming of course, as I do, that the traffic light was, at the time of the collision, favourable to the driver of the suppliant's truck.

As to the decision in the case of *Shell Oil Company of Canada Limited v. Anley et al. (ubi supra)*, I do not think that it has any bearing on the present case.

In my opinion, Giroux' contention that all cars in a military convoy are entitled to cross an intersection independently of the traffic light facing them, provided the first car has crossed it on a green light, is untenable. Moreover I may note that this convoy, contrary to custom, was not escorted, so that there was nothing to indicate to Russell that it was a convoy, the more so since the truck driven

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by Boorman was at a distance of some fifty feet east of St. Hubert street when the suppliant's car reached Sherbrooke street.

After a careful perusal of the evidence and of the arguments of counsel, including naturally the authorities cited and a review of the few precedents relevant herein, I have come to the conclusion that Boorman, the driver of the respondent's truck, was solely responsible for the accident, which is attributable to his negligence in attempting to cross St. Hubert street against a traffic light showing red.

The amount of the claim is not contested.

Sassin declared that all the repairs mentioned in the bills exhibit 1 were necessitated by the collision. These bills total \$295.35 (\$292.31 plus \$3.04). The suppliant however in his petition omitted the amount of the second bill (\$3.04) and claims only \$292.31. In the circumstances I can only grant to the suppliant for repairs the sum of \$292.31. I may note that according to Cassin the truck before the accident was in good operational condition.

The sum of \$26 included in the bill filed as exhibit 2, representing the rental of a car paid by the suppliant during the time its truck was in the International Harvester Company's garage for repairs, seems to me fair and reasonable. I am disposed to allow the suppliant this sum of \$26.

There will be judgment against respondent for \$318.31, with costs.

Judgment accordingly.
