1919
*Nov. 26.
*Dec. 22.

JAMES G. RAYMOND (PLAINTIFF) .....APPELLANT;

AND

THE TOWNSHIP OF BOSANQUET (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Municipal corporation—Negligence—Repair of road—Findings of trial judge.

In an action claiming damages for personal injuries from an accident caused, as alleged, by the negligence of the defendant corporation in failing to keep in proper repair the approach to a bridge which was by a curve in the road dangerous for automobiles the trial judge *held*, that the approach was dangerous and awarded damages to the plaintiff (43 Ont. L.R. 434). The Appellate Division reversed his judgment and dismissed the action.

Held, affirming the judgment of the Appellate Division (45 Ont. L.R. 28; 47 D.L.R. 551), that the case is not one depending on the credibility of the witnesses or reliability of their testimony in which great weight is attached to the findings of the trial judge but is one for weighing the evidence as a whole and of inferences to be drawn therefrom. So dealt with the weight of the evidence is that the approach to the bridge was not dangerous and the judgment at the trial was properly set aside.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1), reversing the judgment at the trial (2), in favour of the plaintiff.

The facts are fully stated in the above head-note.

J. M. McEvoy and *E. W. Flock* for the appellants.

Hellmuth K.C. and *Weir* for the respondent.

THE CHIEF JUSTICE.—This appeal is from the judgment of the second Appellate Division of the

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*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

(1) 45 Ont. L.R. 28; 47 D.L.R. 551. (2) 43 Ont. L.R. 434.

Supreme Court of Ontario reversing the judgment of the trial judge which had held the defendant municipality liable in damages for an accident which happened to the plaintiff appellant while travelling in a motor along a highway within the municipal boundaries.

The gist of the action was the alleged want of repair of the road along which the motor was travelling and the want of repair consisted in what was for vehicular traffic an alleged dangerous curve in the road at the point where the accident happened leading up to and across a bridge. I consider that if the curve was so sharp, as contended for, as to be dangerous to vehicular, including motor, travel and was in the case in question the cause of the accident, the appeal should be allowed and the judgment of the trial judge restored.

At the hearing in which we had the assistance of two plans prepared by surveyors, one on each side, shewing the curve, the bridge and the spot where the accident happened, the main question discussed and on which alone our decision must be based was whether or not this curve in the road was so sharp as to constitute a danger to a motor properly driven with necessary and prudent care.

That is the sole and only question we have to decide and whether the accident was caused by excessive speed of the motor or by unskilful driving are ancillary questions we are not necessarily called on to determine.

At the close of the argument I had formed a very strong opinion that the appeal failed and that the judgment of the Divisional Court was right.

In deference, however, to the very strong opinion of the trial judge that the curve in the road was so sharp as to create a "want of repair" which constituted a breach of the duty of the municipality to keep in

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repair I felt myself obliged to consider most carefully the evidence given in this case.

In the first place, I find that the curve in the road and the bridge to which it led had been in the same position and condition as they were when the accident happened for the previous nine years. During all this time they had been constantly traversed by motors, as many as 50 crossing over them on one day. The only change alleged consisted in the fact that some logs had been placed on the grass alongside of the *trita* and some three feet away from its edge with the intention of widening the bridge and were there at the time. These logs, however, did not in any way interfere with or encroach upon the *trita* along which the motors were driven.

After carefully examining and considering the evidence I have without reasonable doubt reached the conclusion that the curve was not a dangerous one to any motor reasonably and with proper care driven over it. Whatever may have been the cause of the accident, whether arising from excessive speed at the curve and approach to the bridge or from unskilful or careless driving of the motor, as to which I say nothing, not being called upon to decide, I remain clearly of the opinion that the curve in question did not constitute a want of repair for which the defendant, respondent, is liable.

I partly agree with the reasons of the Court of Appeal and with its conclusions.

The fact that for some years this curve had been constantly driven over by motors without any accident having happened except perhaps on one very doubtful occasion is a very strong reason, not perhaps a conclusive one, that the curve was not a dangerous one to motors properly driven.

Looking at this curve as shewn on the plans produced and applying such common sense and common knowledge as one possesses from seeing daily motors driven without danger and without accident along the streets of Ottawa, where the streets run at right angles one to the other, giving much sharper curves for motors to take in passing from one street to another street, I cannot reach the conclusion that the curve in question was at all a dangerous one.

It is true two gentlemen did in their evidence, say that they always found it necessary and prudent as a matter of safety in traversing this curve to stop and back up before crossing the bridge. But that these two very cautious persons should have so acted, can by no means in the face of the evidence shewing that another did not find it necessary so to do but always passed by in perfect safety, overcome the mass of evidence shewing that the curve was not at all dangerous to motors properly driven. The conclusion I have reached without reasonable doubt is that the curve was not dangerous and that the accident must be attributed to some other cause or causes for which the defendant, respondent, is not liable.

I would, therefore, dismiss the appeal with costs.

IDINGTON J.—The question raised herein is not one that necessarily turns upon the relative credibility of witnesses; in regard to which, save in the exceptional cases I have frequently referred to, the learned trial judge's opinion so far as that is concerned in any given case must be observed.

It should turn, in the ultimate result, upon whether or not the road in question was in such a state of repair as defined by the judgment of the late Chief Justice

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Armour in the case cited below of *Foley* v. *Township of East Flamborough* (1), as follows:—

> I think that if the particular road is kept in such a reasonable state of repair that those requiring to use the road may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied.

If it was, then no action will lie even if an accident has resulted in damages in the course of its use; for accidents may happen merely from error of judgment on the part of him injured and he be without remedy.

The right to impute negligence in law to anyone else as the cause must rest upon other relevant facts and cannot be assumed merely from the accident and its consequences.

The question presented is one for the exercise of sound judgment, and I cannot say, though not entirely free from doubt, that the view of the majority of the court below is wrong.

Hence I must agree in dismissing the appeal with costs.

DUFF J.—I have come to the conclusion that this appeal should be dismissed.

The appellant is entitled to succeed only upon shewing that the decision in the Appellate Division to the effect that the accident, out of which the litigation arose, was not due to a failure on the part of the municipality to observe its statutory duty in respect of the repair and maintenance of highways, was an erroneous decision, I think Mr. McEvoy has succeeded in shewing that there was some misapprehension of fact on the part of Mr. Justice Kelly, as to the manner in which the car left the road, but the substance and pith of the judgment of the Appellate

(1) 29 O.R. 139.

Division lies in the weight attributed by the court to the mass of evidence consisting of the testimony of motorists of unimpeachable credit and of competent experience who had motored over this road again and again.

It is arguable, of course, and there is much to be said in support of the view, that all this testimony was before the learned trial judge and that the weight of it is not sufficient to counter-balance his finding that the car was driven with care, and the deductions that would seem almost necessarily to flow from that finding. I am not, however, entirely confident of the soundness of the conclusion reached by looking at the case in this way. I should not feel justified in holding that the Appellate Division was wrong in attaching predominant importance to the general opinion derived from the general experience that motorists were not exposed to such exceptional risks arising from the narrowness of the bridge or the sharpness of the curve in the roadway approaching it, or from the piles of wood flanking the road, as to support a charge against the municipality of neglect of its duty in respect of highway maintenance.

ANGLIN J.—Seldom have I found it as difficult as in this case to determine what upon the evidence should be held to have been the true cause of an accident. The Chief Justice of the Common Pleas, a trial judge of great experience, has attributed the misadventure here in question to the failure of the defendant municipality to maintain at the place where the plaintiff was injured a highway reasonably sufficient for the needs of the traffic over it as required by sec. 460 (1) of the "Municipal Act" (1). The narrow-

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(1) 43 Ont. L.R. 434.

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ness of the bridge over Duffus's creek or drain, the nature of the approach to it and the presence of a pile of bridge timbers or spiles on the road allowance close to the *via trita* are the features emphasized by the learned judge, the combined effect of which, as I understand his judgment, in his opinion rendered the turn on to the bridge unnecessarily and unreasonably dangerous and was a proximate cause of the accident in which the plaintiff was injured. He deals with the driving of the automobile in which the plaintiff was travelling in these terms:—

> The driver of the car and the other persons who were in it testified that in all respects the car was brought to the bridge at a very moderate rate of speed and with due care in all respects. The testimony of the witness Mr. Flock especially, who is the plaintiff's solicitor in this action, seemed to me to be given with much candour and to be worthy of credit in this respect.

On the other hand, an appellate court of five judges, with but a single dissent, has reversed this judgment. (1). Mr. Justice Kelly, who delivered the opinion of the majority, concludes his discussion of the case with this sentence:—

> After a careful analysis of the whole evidence I am convinced that the predicament in which plaintiff and his companions found themselves on July 26th, 1917, must be attributed to some cause other than the width of the bridge, the curve from the roadway leading on to it or the presence of the piles or logs on the right of way.

The force of this conclusion would seem to be somewhat weakened, however, by a summary of the learned appellate judge's reasons which immediately precedes it in these terms:—

> With great respect I am of opinion that the learned trial judge overlooked the inconsistencies in some of the evidence put forward for plaintiff, such as that of Keene, and the effect of the uncontradicted evidence of the actual and continued use of this part of the highway by all kinds of vehicles, some of which, however, witnesses for plaintiff in effect say was impossible, as well as the evidence of McCubbin

(1) 45 Ont. L.R. 28.

that this point presents the ordinary conditions found at a crossing of two roads in a rectangular system of surveys.

His explicit reference to and somewhat disparaging comment upon the evidence adduced by the defendants to prove that the approach to and crossing of the bridge presented no serious obstacle make it clear that this testimony was present to the mind of the learned Chief Justice and I cannot think that he overlooked whatever inconsistencies appear in the evidence put forward for the plaintiff. Neither does Dr. McCallum's testimony seem to be quite open to the criticism of it made by the learned appellate judge in the course of his judgment.

Mr. Justice Kelly took the same view of the duty of the municipal council in regard to the maintenance and repair of highways as that held by the trial judge, expressing it in these terms, in which I respectfully concur:

> The duty imposed by the "Municipal Act" upon municipalities in respect to keeping highways in repair is imperative and requires them to make the roads reasonably safe for the purposes of travel; and motor vehicles being now an ordinary means of tranportation this would include travel by such vehicles; *Davis* v. *Township of Usborne* (1916), (1); In *Foley* v. *Township of East Flamborough* (1898) (2), a judgment of a Divisional Court, Armour C.J. in defining what is meant by "repair" said, "I think that if the particular road is kept in such a reasonable state of repair that those requiring to use the road may, using ordinary care, pass to and fro upon it in safety, the requirement of the law is satisfied." This judgment of the Divisional Court was reversed by the Court of Appeal (3), but on altogether different grounds, the court not dissenting from the opinion of the Divisional Court which is in harmony with other decisions and may properly be applied here.

The learned trial judge based his judgment on the evidence of the plaintiff's witnesses that the narrowness of the bridge in connection with the sharp angle of the immediate approach to it and the adjacent pile

(1) 36 Ont. L.R. 148; 28 D.L.R. 397. (2) 29 O.R. 139.
(3) 26 Ont. App. R. 43.

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of timber made the turn on to it from the south dangerous, if not altogether impracticable; the majority in the appellate court on the other hand placed more reliance on the testimony of numerous witnesses for the defence who deposed that they had made the turn with different motor cars driving at speeds varying from 10 to 18 miles an hour frequently and without experiencing any difficulty.

The question presented is not one of mere credibility—and by that I understand not merely the appreciation of the witnesses' desire to be truthful but also of their opportunities of knowledge and powers of observation, judgment and memory—in a word, the trustworthiness of their testimony, which may have depended very largely on their demeanour in the witness box and their manner in giving evidence; it is rather a composite matter of credibility as to facts and of inferences to be drawn from and opinions based on facts found to be established that is involved in determining whether the highway provided met the test of reasonable sufficiency which the statute imposes. The duty of an appellate court under such circumstances has been defined in numerous cases. I mention such leading authorities as *Dominion Trust Co.* v. *New York Life Ins. Co.* (1), at page 257; *Montgomerie* v. *Wallace-James* (2), at page 75; *Wood* v *Haines* (3); and *Ruddy* v. *Toronto Eastern Rly. Co.* (4), at page 258, merely to make it clear that I have the governing principles, as indicated by our highest judicial tribunal, in mind in approaching the consideration of the problem with which we are confronted.

Having regard to the nature of the case and to the

(1) [1919] A.C. 254; 44 D.L.R. 12.
(2) [1904] A.C. 73.
(3) 38 Ont. L.R. 583; 33 D.L.R. 166.
(4) 116 L.T. 257.

conflict of opinion in the provincial courts as to the result of the evidence, I have thought it my duty to adopt the course commended by their Lordships of the Judicial Committee in *Syndicat Lyonnais du Klondyke* v. *Barrett* (1), and have made an independent examination and analysis of the evidence bearing on the question at issue. I shall not attempt to set out that analysis in *extenso* but shall merely state the conclusions to which it has led me, indicating the reasons which have influenced me in reaching them.

In the first place, I am by no means satisfied that, if sitting as the trial judge, I should have found that

> the car was brought to the bridge at a very moderate rate of speed and with due care in all respects.

A very moderate rate is a relative term and largely a matter of opinion. The learned Chief Justice does not tell us what in his opinion would have been such a rate of speed under the circumstances. Nor does he find what the actual rate of speed was, although Mr. Flock, on whose candour and credibility he places great reliance, testified that

> when we made the turn I would say he (the driver) was going 5 or 6 miles an hour, not faster than 6 miles an hour.

Raymond, the plaintiff, who would be most unlikely to exaggerate the speed, said on discovery that they were going 12 miles an hour; and at the trial he admitted having so deposed and then places the speed at from 10 to 12 miles. Keene, the driver, was not questioned on this very important point, nor was Routledge, the other passenger who gave evidence. On the other hand, Moody, a defence witness, testified that very shortly after the accident Keene said to him:

> I was going so fast that I thought I would jump right over the ditch and go down the other road,

(1) Cam. Sup. Ct. Practice (2 ed.) p. 385.

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and Keene was not called in rebuttal to contradict that statement. Having regard to all the circumstances —to the fact that Keene had not been over the road before, that the turn was visible to him for 250 or 300 feet before he reached it, that Flock sitting opposite him had warned him at that distance, saying, "that is a very sharp turn," to which he replied "yes, I see"—if the car was running 12 miles an hour when it reached the turn I should scarcely be prepared to find that such a rate of speed was "very moderate" or even moderate, or that the approach to the bridge had been made "with due care in all respects." The evidence as a whole leaves an uncomfortable impression that a speed too great under the circumstances may at least have been a contributing cause of the failure to cross the bridge in safety.

But, as the learned trial judge points out, any negligence in that regard would not be imputable to the plaintiff and as mere contributory negligence is therefore not material. Unless it can be said to have been the sole proximate cause of the accident, excluding any contributing negligence ascribable to the defendants, it cannot serve them as a defence or preclude recovery by the plaintiff. While I am not prepared to find that this has been established, enough in my opinion has been shewn to make it impossible to infer from the mere fact that Keene found himself unable to bring his car on to the bridge that the conditions of the highway constituted a danger amounting to a lack "of reasonable sufficiency for the needs of traffic." That fact, if it existed, must be otherwise established.

If, owing to the narrowness of the bridge and the sharpness of the curve which had to be made in entering upon it, it was necessary for a driver of ordinary

skill in handling an ordinary motor car to stop and back up in order to cross it safely, as three witnesses for the plaintiff have stated, I would unhesitatingly find that the highway at this point was not in a condition reasonably sufficient for the needs of the traffic over it since it could very easily have been improved and it would require more than ordinary care and skill to pass to and fro upon it in safety. Keene, the driver, says he went back and again tried to approach the bridge from the south on the afternoon of the day of the accident and then found he could not make the turn and enter on the bridge without backing up, and making a second turn. I can scarcely credit this statement, of which there is no corroboration, in view of the mass of testimony for the defence as to the facility with which the turn can be made even at comparatively high speeds and in cars having wheel bases of 112, 116 and 130 inches. Keene's Chalmers car had a wheel base of 124 inches. There is no suggestion that the cramping or turning capacity of this car was greatly or at all sub-normal. Of course, if it was unusually limited in that respect, the defendant would not be under an obligation to provide a turn which it could make. On the other hand, I can readily understand Keene's inability to make the turn on the morning in question having regard to what he tells us about the circumstances of his approach to the bridge.

Looking at either of the plans produced, which give somewhat different pictures (that of McCubbin, an engineer called by the defendants, seems to be the more precise and accurate), the making of the turn would appear to present little difficulty for a car following the gravelled roadway at its outer or right-hand side. As shewn on the plan produced by Sur-

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veyor Farncombe, called by the plaintiff, the *via trita* lies 12 feet east of the ditch, which occupies the west side of the road allowance, and the *via trita* is itself 12 feet wide. A reasonably careful driver approaching at a moderate speed and taking full advantage of the roadway thus available should find no serious difficulty in bringing any ordinary car safely on to the bridge. Even Flock admits that

> if he had made a fuller curve and the spiles were not there he (Keene) might have got around.

This leads me to a passage in Keene's evidence to which little attention seems to have been paid, but which I think probably explains why he found himself unable to make the crossing when the plaintiff was injured. He says:—

> Partly down the hill coming towards this bridge, I could see that the road made a turn, at least it came to an end and made a turn somewhere. It was a few hundred feet away, I would say. I saw that there was a turn in the road. I could not say that it was a bridge at that time. When I got close down to it, I came down the hill with the brakes on on the flat part of the road, I watched very closely for how sharp a turn it was, or how I should turn, thinking it was only a common turn in the road. Getting down closer to the bridge *I made a turn out to get past a pile of spiles* which were on my right hand side, with the bridge on the left of me. My first wheel touched the bridge, the left hand wheel touched the bridge.

This pile of timber or spiles, according to the weight of the evidence, lay in the grass on the road allowance just about opposite to where the road began to turn towards the bridge and, at its nearest point, 3 feet to the east or right hand side of the gravelled roadway, Although Flock said on cross-examination that the piles were "on the gravel"—"three or four feet out on the gravel"—this was probably a slip, since he said on examination-in-chief that they were "within three feet from the gravel," and Keene says they were three or four feet off the travelled roadway. George Jones, another witness for the plaintiff, says:

The one end I would judge to be six feet, and the other end three or four feet from the gravel, three feet anyway, away from the road where you turned down.

Neither Flock, Raymond nor Routledge says anything of the swerve to the left to avoid the piles of which Keene tells. They were not asked about it. It is quite probable that they would not have noticed it. Keene would of course know of it and would be more likely to remember it, and I therefore think it is reasonable to assume that it took place as he says—though the necessity for his making it is somewhat more difficult to appreciate since he tells us that the right wheels of his car were, if at all, only very slightly on the grass, and Mr. Flock says:—

He took the turn to the extreme right of the gravel, or possibly a little beyond that.

Coming on this pile of timber as a stranger, however, Keene may on the spur of the moment have imagined that it encroached on the *via trita*, or was closer to it than was actually the case—so much so that, especially if he was travelling, as the plaintiff says, at 12 miles an hour, he may have thought that prudence required him to turn out when passing it. Swerving to the left—probably unnecessarily, or more than was necessary—he had not time or space sufficient to enable him to recover the position at the extreme right of the travelled roadway necessary to enable him to make a proper approach to the bridge and if he tried to do so he probably got too far to the north before beginning to make the turn to the left to enter on the bridge. This seems to me to be the most likely explanation of the predicament in which he found himself when the left front wheel of his car reached the bridge and he realized that he could not cross it—that his right wheels would not be upon it.

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Otherwise, I cannot reconcile his testimony with that of the defence witnesses—and the veracity of many of them there is no reason to doubt.

There remains the question whether the presence of the pile of timber three feet from the gravelled roadway opposite the point where the driver should have begun to turn on to the bridge was a breach of the defendant's statutory duty, as above defined. It undoubtedly was if the timber obstructed the turn and made it dangerous.

It had been there for several weeks and the evidence of the Reeve establishes that the municipality was responsible for its having been placed there. But the great weight of the evidence is that it did not at all interfere with the turn on to the bridge when driving at a moderate speed. The defendant's witnesses all so testified, and Dr. Grant, a witness for the plaintiff, tells us:—

> I believe I have noticed them (the pile of spiles) but not to have them an incumbrance to me when turning.

Such an idea as that they were in a position to be of the least danger to any one never entered his head. George Jones, also called by the plaintiff, says—the stringers or timbers were not so placed as to interfere with the turn. Dr. McCallum, the plaintiff's "star" witness on the danger of the turn, had no recollection of them although he drove over the bridge more than four times a week for six weeks every summer. Important as it is now sought to make them as adding to the danger, Keene tells us that when he returned in the afternoon

> somebody had pulled them around. I was not interested in how the spiles were.

On the whole evidence I find myself unable to reach the conclusion that the presence of the pile of timber

constituted a breach of its statutory duty on the part of the defendant.

No doubt had the bridge been wider—say 22 feet instead of 13 feet, 6 inches—the accident might have been avoided. Had the curve in approaching its east end been the same as that at its west end the turn which Keene had to make would have been easier. But it does not follow that because both the bridge and the road might have been improved the municipality failed to discharge its statutory duty. On the contrary, looking at the plans and taking the evidence as a whole, if dealing with the case as a judge of first instance, I would incline to the view that the highway was in a condition reasonably safe for the passage over it of the traffic to be expected upon it and that a driver of ordinary skill proceeding at moderate speed—*i.e.*, at a speed suitable for making a right angle turn in a country road—and with reasonable care would experience no serious difficulty in making the turn in question and crossing the bridge in safety with such a car as Keene was driving. Neither could I find that the presence of the pile of timber rendered the turn unsafe or dangerous—still less that it prevented its being made at all as Keene would have us believe.

It was suggested by the learned Chief Justice in the course of the trial and by counsel for the plaintiff in argument here that the defendants should at least have set up a notice board or post at some distance warning travellers of the danger of the turn. But the absence of such a notice was not the cause of the accident now under consideration, since Keene was warned of the sharpness of the turn by Flock when several hundred feet away.

I do not place much reliance on the evidence

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given of the location of the tracks of the automobile wheels, nor do I consider it of much moment whether the corner post of the bridge was struck by the right front wheel or by the spring of the car.

On the whole case, although not entirely satisfied that if sitting in the Appellate Division Court I should have been prepared to hold that the judgment of the learned trial judge was so clearly wrong that it should be reversed, neither am I convinced that the majority in the Divisional Court clearly erred in setting it aside and still less that their conclusion upon the evidence is so manifestly wrong that we should restore the judgment of the trial court. The situation somewhat resembles that with which we had recently to deal in *Magill* v. *Township of Moore* (1), and I think the result must be, as in that case, a dismissal of the plaintiff's appeal.

BRODEUR J.—We are called upon to decide in this case whether the accident of which the appellant was a victim was caused by the bad nature of the road of the respondent corporation.

Raymond was driving in an automobile, and, having reached a place where the highway makes a curve to cross a bridge the driver of the automobile claims that he was unable, in view of the sharpness of the curve, to cross the bridge. The car went partly into the ditch and the appellant was injured.

The question is whether the bridge was of a sufficent width and if the nature of the curve did not render this highway a dangerous one for the motor cars to travel upon.

It was claimed by the appellant that piles of logs put on the highway rendered the ordinary condition

(1) 59 Can. S.C.R. 9; 46 D.L.R. 562.

of the highway more dangerous. But these piles do not seem to have been the proximate cause of the accident, and we have then to decide the case on the nature of the highway itself and we have to consider if the accident was not due to some carelessness on the part of the driver.

This road is very much frequented by automobiles. We have the evidence of a large number of persons, some with intimate knowledge of the locality and others who travelled it for the first time, who state they never experienced any difficulty in making the turn and passing the bridge. A few others however stated that they had to take extraordinary precautions to safely pass there.

In that regard, we may consider that the evidence is conflicting; but the weight of evidence is certainly in favour of the respondent.

We have at the same time the uncontradicted expert evidence of the engineer, Mr. McCubbin, to the effect that the curve along the centre of the gravelled roadway is 39 feet long and that the radius of curvature at the centre of the gravelled portion is 25 feet. These figures shew that there was ample space to make the turn for any automobile going at a moderate speed.

It was found by the trial judge that the appellant's car was going at a moderate rate of speed. Then, in view of this expert evidence, the accident must be due to some other cause than the negligence of the corporation. The *onus probandi* was on the plaintiff appellant and as he has not shewn that the decision of the Appellate Division was clearly wrong we should not interfere. The weight of evidence is that the road was kept in such a reasonable state of repair that those requiring to use the road may, using ordinary

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care, pass on the bridge in safety. *Foley* v. *East Flamborough* (1).

The appeal should be dismissed with costs.

MIGNAULT J.—After carefully reading all the evidence I fully agree with the conclusion of His Lordship the Chief Justice of this Court that the curve and the bridge were not dangerous to motors properly driven. That is the only question we have to decide. I do not think that because Keene's car went into the ditch we must conclude that the curve and bridge were dangerous. There is a great preponderance of evidence that a large number of cars crossed the bridge every day in perfect safety. The only accident in several years, outside of a rather doubtful case mentioned by one Murphy, is the one which caused the appellant's injuries. Looking at the condition of the road and bridge objectively—if I may use the term—I find that the appellant has failed to prove, as being the cause of the accident, a "want of repair," which alone could render the respondent liable. Whatever may have brought about the accident, it cannot, in my opinion, be attributed to the failure of the respondent to comply with any obligation incumbent on it.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *E. W. M. Flock.*

Solicitor for the respondents: *A. Weir.*

(1) 29 O.R. 139.