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R. v. Langille

Between
Daniel Dorran Langille, appellant, and
Her Majesty the Queen, respondent

[1980] N.B.J. No. 16

New Brunswick Court of Appeal
Limerick, Bugold and Ryan JJ.A.

Heard: September 16, 1980.
Judgment: September 17, 1980.
(21 paras.)

Counsel:

Levi Clain, for the appellant-accused.
W. Stephen Wood, for the Crown.

The following judgment was delivered by

¶ 1 **THE COURT**:— The appellant, Daniel Langille, while driving his car in a southerly direction on the Colton Brook Road, legally entered the intersection of that road and the MacKay Highway, a through highway for the purpose of crossing the latter and proceeding southerly on the Colton Brook Road. At that time a traffic light signal suspended over the intersection was displaying a flashing red light to traffic on the Colton Brook Road and a flashing amber light to traffic on the MacKay Highway.

¶ 2 When the appellant's car had reached a point three to four feet north of the centre line of the through highway, a truck being driven at 50 m.p.h. by a Mr. Cook came over the brow of a hill or knoll about 200 yards to the west of the intersection. The appellant was proceeding through the intersection very slowly because he said a motor vehicle which had been proceeding northerly on the Colton Brook Road had stopped at the southerly entrance of the intersection, and the appellant anticipated the driver might turn left or westerly and cross in front of the appellant's car.

¶ 3 The appellant continued across the through highway and his vehicle was struck by Mr. Cook's truck. Mr. Cook stated he could see the flashing amber light over the brow of the hill before he crested the hill but did not apply his brakes or slow his vehicle until it was about sixty feet from the intersection.

¶ 4 As a consequence of the above events, the appellant was charged and convicted of an offence under s. 167(a) of the Motor Vehicle Act, R.S.N.B. 1973, c. M-17 which reads as follows:

> 167. Notwithstanding the provisions of section 165, the driver of a vehicle
> (a) about to enter or cross the roadway of a through highway shall yield the right-of-way to any pedestrian legally crossing the roadway and to any vehicle approaching so closely on the through highway as to constitute an immediate hazard,

¶ 5 S. 165 therein referred to provides:

> 165.(1) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle that has entered the intersection from a different highway.
> 165.(2) When two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

¶ 6 The words "notwithstanding the provisions of s. 165" must be considered when interpreting s. 167(a).

¶ 7 S. 165 is a general provision governing the right-of-way which applies at all highway intersections in the province except as otherwise stated in the Act. S-s. (1) provides that when two or more vehicles are approaching an intersection, the driver of the vehicle which first enters the intersection has the right-of-way and s-s. (2) for the case of two vehicles entering an intersection at approximately the same time.

¶ 8 S. 167(a), when applicable, overrides the general provisions of s. 165 by reason of the opening words of the first mentioned section; viz, "notwithstanding s. 165", but is s. 167 is not applicable s. 165 applies.

¶ 9 It must be noted that s. 167(a) is applicable only when two specific circumstances are present, one: when one of the intersecting highways is a through highway, and two: when there is another vehicle so closely approaching as to constitute an immediate hazard when the driver is about to enter or cross the through highway.

¶ 10 In the present case the appellant was at the relevant time crossing the through highway and not about to enter or cross that highway.

¶ 11 Counsel for the Crown contends that we should not interpret the words "about to cross" literally citing the decision of a provincial court judge in R. v. Hornstein (1973), 11 C.C.C. (2d) 197. The facts of that case are that the defendant entered a highway from a private drive-way when another vehicle was so closely approaching that it was hazardous to so enter, facts not applicable in the present case.

¶ 12 Counsel for the Crown submits that to interpret s. 167(a) to mean the duty to yield ceases upon entry into the intersection would be absurd. We do not agree. If the Legislature had so intended, it should have stated the duty to yield was imposed on the driver of the vehicle crossing or while crossing the through highway or about to cross the centre line of a through highway.

¶ 13 A driver about to cross a highway means grammatically one who has not as yet entered the highway or commenced to cross. If it had been the intention of the Legislature to extend the duty to yield, to a driver who had legally entered the intersection, it should have so stated.

¶ 14 Reading sections 165 and 167 together we interpret them, by reason of the use in s. 167 of the words "notwithstanding the provisions of s. 165" as meaning s. 167 is intended to modify or alter the provisions of s. 165 relating to the duty cast upon drivers of vehicles entering or approaching an intersection. S. 167 reverses the duty to yield where one of the intersecting highways if and only if the vehicle approaching the intersection on the through highway is so close to the intersection, at the time the vehicle on the intersecting highway is about to enter the intersection, as to make it hazardous for the latter vehicle to enter the intersection for the purpose of crossing or proceeding on the through highway.

¶ 15 Counsel, in contending it would be absurd to hold that s. 166 did not impose a continuing duty to yield on a driver, such as the appellant in the present case, who had legally entered the intersection for the purpose of crossing, was confining his consideration to the relative positions of the appellant and Mr. Cook in the present case and overlooked the circumstances where one or more vehicles could be approaching the intersection from the appellant's left.

¶ 16 If the appellant had stopped at the red flashing light before entering the MacKay Highway and no vehicle was in view approaching to his right and vehicles were approaching from his left but were far enough away so as not to constitute an immediate hazard, he would have the legal right to enter the intersection for the purpose of crossing it.

¶ 17 If, after having legally entered the intersection for the purpose of crossing, the appellant is compelled to bring his vehicle to a stop before crossing the centre line of the through highway, because of a vehicle approaching from his right, and so completely blocking the west-bound lane of traffic, he would create, by such action, an immediate hazard in respect of west-bound traffic. It would be far more reasonable to hold in such circumstances that Mr. Cook, on observing the flashing amber light over the intersection, and, on arriving at the brow of the hill and observing the appellant's vehicle crossing the through highway some 200 yards ahead, would immediately slow down, approach the intersection with caution, as required by s. 122(2) of the Act, and yield the right-of-way to the appellant, who had already entered the intersection, as required by s. 165(1) of the Act.

¶ 18 If s. 167 was intended to impose a continuing duty on a driver who had legally entered an intersection or was crossing a through highway it would have used wording such as used in s. 166 of the Act. "The driver of a vehicle within an intersection ..." rather than "about to cross".

¶ 19 The cases, Bardos v. Mooring (1975), 9 N.S.R. (2d) 178, and R. v. Brown (1962-63), 40 W.W.R. 382, relied on by counsel for the Crown are not applicable to the present case. Both cases are: concerned with the liability of the driver of a vehicle which had entered an intersection when it was hazardous to do so because of an approaching vehicle.

¶ 20 The appeal is allowed and the conviction is set aside.

¶ 21 Counsel for the applicant has applied for costs of appeal. It has not been the practice of this court to grant costs in a case such as this either for the defendant or for the Crown or in criminal cases. Except where there are extenuating circumstances we see no present reason for departing from that practice. There will be no order as to costs.

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