Judge Trainor Gives Reasons For Judgment In Tweedy Case

The following reasons for judgment in the case of The King vs. George J. Tweedy, in which the accused was found guilty of driving to the common danger, were given by Judge C. St. Clair Trainor in the County Court Judge's Criminal Court of Queen's County, yesterday in delivering judgment:

On the 19th day of June, A.D., 1951, a Bill of Indictment for manslaughter was preferred by the Attorney-General before the Grand Jury of Queen's County at the June sittings of the Supreme Court against the accused in relation to the death of one Gerald Solomon, alleged to have been caused by the accused on the 14th day of April, 1951, while driving a motor vehicle on a highway at or near Southport in Queen's County. When the Grand Jury had intimated that they would find "No Bill" on the manslaughter charge but indicated a willingness to find a "True Bill" on a charge of dangerous driving, the indictment was thereupon amended by leave of the Court and a second Count charging dangerous driving was then added. The Grand Jury then dealt with the indictment by finding "No Bill" as to the charge of manslaughter, but a "True Bill" on the charge of dangerous driving under Section 285(6) of the Criminal Code.

On the 26th day of June, A.D., 1951, before arraignment in the Supreme Court, the accused, being on bail, appeared before me and elected Trial by a Judge without the intervention of a jury, under the provisions of Part XVIII of the Criminal Code. The trial was then set for July 10, 1951, and the accused, on the said day, appeared before this Court and was formally charged as follows: "You, George J. Tweedy, are charged for that you, on the 14th day of April, A.D., 1951, at or near Southport in Queen's County, did unlawfully drive a motor vehicle on a highway in a manner dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway and the amount of traffic which was actually at the time or might reasonably have expected to have been on such highway at the time, contrary to the Statute in such case made and provided." No objection was taken to the charge or otherwise and a plea of "Not Guilty" was made.

The foregoing charge is laid under the provisions of Sub-Section 6 of Section 285 of the Criminal Code of Canada as enacted by 1938 c.44 s16, which is as follows:

"Every one who drives a motor vehicle on a street, road, highway or other public place recklessly, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the street, road, highway or place, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on such street, road, highway or place, shall be guilty of an offence and liable

(a) upon indictment to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dollars or to both such imprisonment and fine; or

(b) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars or to both such imprisonment and fine."

In a trial such as this I find myself in the unfortunate position of having to perform the functions of both Judge and Jury. I, therefore, must direct myself as to the law involved in the case and apply that law to the facts as disclosed by the evidence.

Many authorities have been cited to me but often they gave but little help because of their application to a set of facts very different from this case. Counsel for the accused laid great stress on the case of Rex v. Greisman (1926) 4 D.L.R. 739 (Ont. C. A.) but that case, although containing references to many sound principles of criminal law, is not helpful in a case involving Section 285(6) of the Criminal Code because it fails to give consideration to the now recognized distinction in degrees in criminal negligence.

In that case a man had died as a result of a motor accident. The accused was not charged with manslaughter but was charged with a lesser offence and Middleton, J. A., delivering the Judgment of the Court at p. 743, said: "In this case death followed the alleged negligence. If the negligence was criminal at all the accused was guilty of manslaughter, and in my view he ought to have been prosecuted for this offence." The foregoing cannot be accepted as law today, for Lord Atkin in giving the judgment of the House of Lords in the case of Andrews vs. the Director of Public Prosecutions, (1937) 2 A.B.R. 552 at p. 557 says:

"But, apart altogether from any inference to be drawn from sect. 34, I entertain no doubt that the statutory offence of dangerous driving may be committed, though the negligence is not of such a degree as would amount to manslaughter if death ensued. As an instance, in the course of argument it was suggested that a man might execute the dangerous manoeuvre of drawing out to pass a vehicle in front with another vehicle meeting him, and be able to show that he would have succeeded in his calculated intention but for some increase of speed in the vehicles in front: a case very doubtfully of manslaughter, but very probably of dangerous driving. I cannot think of anything worse for users of the road than the conception that no one could be convicted of dangerous driving unless his negligence was so great that, if he had caused death, he must have been convicted of manslaughter".

The offence of dangerous driving referred to by Lord Atkin is found in Section 12 of The English Road, which is almost identical with Section 285(6) of the Criminal Code.

The Andrews case seems to have been first applied in Canada in Rex v. Carr (1937) 3 D.L.R. 537 before the enactment of the present provisions of 285(6) of the Code and when the alternative verdict on a motor manslaughter charge could be criminal negligence under Section 284. In that case Rowell, C.J.C. in delivering the judgment of the Court of Appeal said at pp. 541-2:

"There are three degrees of negligence recognized by law of which a party may be guilty in operating a motor car. The greatest is described as gross negligence, such as driving recklessly without regard to the safety of others, and if as a result of such negligence a person lost his life the jury would be justified in returning a verdict of manslaughter. A very high degree of negligence must be proven to establish the crime of manslaughter. The second is a lesser degree of negligence, such as is defined by s. 284 of the Criminal Code — driving which could not be described as reckless but still was beyond the speed limit authorized by law, or not keeping a proper look-out while driving, under circumstances where such conduct could not properly be described as gross negligence. If, as a result of such negligence, a person lost his life, a jury would be justified in returning a verdict of criminal negligence, as was done in the case at bar. The third is a lesser degree of negligence which would give rise to civil liability only, such as a mere want of care, although, of course, any degree of negligence may give rise to civil liability. The whole question of negligence in the operation of motor vehicles and criminal liability therefore is fully discussed and the law declared in the recent judgment of the House of Lords in Andrews v. Director of Public Prosecutions (1937), 26 Cr. App. R. 344. See Rex v. Bateman (1925) 19 Cr. App. R. 8.

"The negligence of the accused was not gross negligence. He was driving at a speed which at the time was contrary to the speed limit fixed by law but which is within the speed limit at present authorized by law. He turned aside for a moment to throw the butt of his cigarette out of the window and took his eyes off the road, which he should not have done. He says he did not anticipate that anyone would step off from the sidewalk and attempt to cross the road in the middle of the block, and, undoubtedly, he was less careful than he would have been had he been approaching a crossing. Motorists, however, must recognize that the street is a public highway which a pedestrian is entitled to cross, and he is not limited to crossing at intersections only, and it is the duty of the motorist to keep his eye on the road so as to avoid any accident to a pedestrian who may come upon the highway."

The Andrews case was also followed in our Supreme Court in the case of Burns v. The King, 88 C.C.C. 51, wherein Campbell C. J., held that Section 285(6) of the Code refers to two distinct offences and at p. 55 says:

"With eyes on the Andrews case, and noting Lord Atkin's remark that 'reckless' is probably the most comprehensive epithet for the fundamental conception of criminal negligence, and that 'It is difficult to visualize a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter', (p. 583) Parliament cannot be supposed to have intended to apply the expression 'recklessly' to a lesser kind or degree of negligence. It therefore seems clear to me that the expressions 'recklessly' and 'in a manner dangerous to the public' in s. 285(6) are not intended as alternative ways of describing the same offence, but refer to two distinct offences. Driving recklessly would be driving with a gross and criminal disregard of the lives and safety of others, and would therefore be appropriate to cases where death or grievous bodily harm is not proven to be caused thereby; driving in a manner dangerous to the public would involve the lesser kind or degree of negligence, but would be applicable irrespectively of the actual results.

"Thus Parliament, in following substantially the English Road Traffic Act, as distinguished by the House of Lords, transferred to the field of Dominion criminal law the offence of driving in a manner dangerous to the public, which was formerly dealt with by provincial statutes and generally known as driving to the common danger". . .

"So that, though this offence has now become 'criminal' in the sense of being enacted under the Dominion's jurisdiction in matters of criminal law, it cannot be said to be so in the sense of invoking the fundamental conception of criminal negligence. In R. v. Draper (1942), 2 D.L.R. 719, C.R. 237, 77 Can. C.C. 162, Robertson, C. J. O. in the judgment of the Ontario Court of Appeal on an unsuccessful appeal from conviction for dangerous driving under s 285(6) says (p. 721 D.L.R., p. 164 Can. C.C.): 'Counsel for appellant properly represented to the Court that appellant is a man of high character, a man of standing and ability, and an experienced driver, who has for many years driven safely. If this charge were one that involved a question of moral turpitude or a course of conduct, one would attach great importance to these matters, for it would be exceedingly difficult to convince the Court that Appellant could be guilty of any such misconduct."

"There the appellant had turned left to pass a car without making sure that the left portion of the highway was free from approaching traffic."

At page 57 the learned Chief Justice continued:

"In spite of 35 years of motoring in England under a Parliamentary law prohibiting dangerous driving, and a similar period in Canada with provincial statutes prevailing up to 1937 and with the Dominion Cr. Code s. 285(6) in force since that date, there is remarkably little affirmative definition of dangerous driving in any of the reported cases. The reasons would appear to be that, as I shall shortly indicate, the expression driving in a manner dangerous to the public is in itself so readily understandable and that the conception resolves itself almost entirely into a question of fact.

"The appellant objects that the Judge in this case has not instructed on the difference between the degree of negligence in civil cases and dangerous driving charges, and that he failed to instruct the jury regarding the distinguishing marks of originality and the high degree of negligence and the moral quality carried into the act which would be necessary to support the present verdict. Appellant's counsel very properly referred in this connection to the charge of O'Connor J. in R. v. Collison, (1941) 1 W.W.R. 362. But while Mr. Justice O'Connor's charge to the jury is a model of clarity in most respects, it is pronounced under a general direction of the applicable law to the following effect (p. 363): 'In order to convict (on a charge of dangerous driving) you must find facts which in your opinion show that the dangerous driving showed such a disregard for the life and safety of others as to amount to a crime against the state and conduct deserving of punishment.'

"If it is suggested that the expressions there used invoke the recognized fundamental conception of criminal negligence, as expounded in the Bateman and Andrews cases, and in so many cases which have followed them, such a contention is misleading as it would ignore the marked distinction drawn by Lord Atkin in the Andrews case. Unfortunately, the words used are exactly the expressions which have been authoritatively used to describe the negligence involved in manslaughter, and it has been repeatedly held that dangerous driving does not involve the same high degree of negligence nor does it involve the importation of any moral quality into the act. If, on the other hand, the expression used by O'Connor J. means merely that Parliament has made dangerous driving a statutory offence against the criminal law of the land and has prescribed punishment for those offending against the statute, such an expression would seem to be clear and obvious to the jury without any comment by the Judge. No intermediate meaning for the expression is suggested by counsel. I am again reminded of Lord Atkin's statement at p. 583 of the Andrews judgment: 'I do not myself find the connotations of mens rea helpful in distinguishing between degrees of negligence, nor do the ideas of crime and punishment in themselves carry a jury much further in deciding whether in a particular case the degree of negligence shown is a crime and deserves punishment'.

"In my view, the expression 'driving in a manner dangerous to the public' is a conception much more readily understood than either of the highly developed and often technical conceptions of criminal negligence or civil negligence. To attempt to explain dangerous driving to a jury by reference to civil negligence would be a definition per ignotius. The same offence of dangerous driving has been provincially prosecuted for many years before Magistrates and lay Justices with very little difficulty and s. 285 (6) still allows an alternative enforcement by summary conviction.

"There is, of course, an important distinction between this offence and civil negligence, as appellant's counsel properly pointed out by reference to Lord Porter's judgment in Akerele v. The King (1943) A.C. 255 at p. 264, namely that guilt here depends on the 'probable, not the actual result' of the negligence, if any.

"The same distinction is more pointedly drawn in a case before the English Court of Criminal Appeal, involving s. 11 of the Road Traffic Act, 1930, namely, Kingman vs. Seager, (1938) 1 K.B. 397, a case in which an acquittal by Justices was reversed by the Court of Appeal, a procedure (as Humphreys J. pointed out) requiring a very strong case. Lord Hewart C. J. at p. 399 says: 'The justices seem to have confounded the potential with the actual, and to have taken the view that, for the respondent to be guilty, they had to find that there was in fact danger to ascertained members of the public... The justices, as a reasonable tribunal, could not find that there was not a real, although a potential, danger to traffic which might reasonably be expected to be on the road'.

"And Humphreys J. on the following page says: 'I understand the finding of the justices to mean that a speed cannot be 'dangerous' unless some element of actual danger is proved. That is wrong'. The conception of dangerous driving is therefore seen to be at once broader and narrower than that of civil negligence but in both directions it appears to me to be more understandable than civil negligence from the point of view of the lay jury. I cannot think of any expression which would more clearly explain to a jury the conception of a probable or potential danger than the plain language of s. 285 (6). The well-known word 'dangerous' notoriously means likely or probable to cause injury, and the learned trial Judge clearly impressed on the jury that they must take into consideration all the circumstances of the case, including the nature, condition and use of the street, road, highway or place."

From the evidence it appears that on the afternoon of April 14th, 1951, Gerald Solomon of Georgetown, accompanied by his fiancee, Mary MacDonald, and one Charles Gardiner left Georgetown for Charlottetown in a 1945 Ford truck, commonly spoken of as a three-ton truck. After attending to various items of business and having had a meal at a restaurant they left Charlottetown on return to Georgetown. It is said that the lights of the truck were turned on at the Hillsborough Bridge. They followed the pavement around Southport and passed a further curve at the end of the Keppoch Road, from which point the line of road is almost straight to a point somewhat beyond where the collision hereafter referred to occurred.

From Southport corner onward there were several breaks in the pavement with the last and worst being about 429 feet west of the scene of the accident. In passing over this last rough spot or bump the tail gate of the truck became loose. The driver stopped the truck to the right of the centre of the pavement and he and Charles Gardiner got out and went to the rear of the truck to replace the tail gate.

When the truck stopped the lights were on and were left on until Solomon returned from the rear of the truck to procure a hammer for the purpose of driving the gate into place, when he turned them off. He then returned to the rear of the truck and having replaced the gate and when both men were on the ground tying it in place, a car driven by the accused suddenly ran into the truck from the rear, knocking Charles Gardiner to the right shoulder of the road and crushing Gerald Solomon to instant death.

From the evidence of Whiston Smith as to calling the R.C.M.P. and their report of the time of receiving the call, the accident probably took place about 7:20 p.m., A.S.T.

No Crown witness admits having seen the actual collision. Mrs. Isabel Seller, who was driving in the car with the accused, was called but her evidence was of a very indefinite and unsatisfactory kind. She says the first thing she noticed wrong was the car coming to a stop by the application of brakes. She felt no impact and did not see the parked truck until after she got out of the car, from which she does not remember getting. It is most difficult to understand this unless the shock from circumstances and events erased all records from her mind. She does say that it was not dark but it was dusk. Her evidence in all of the circumstances renders little help in the case.

Mrs. Bessie Duffy, whose home is near the scene and some distance south of the pavement, and who was proceeding to visit at the home of Whiston Smith, which is situated at the intersection of the paved highway and a side road called the Kinlock Road, gave evidence. She says she was about half way down across their field towards the road when she first saw the truck. She gave an estimate of the distance between her and the truck as 75 yards, which would be an under-estimate if she were but half way down. She said she had no difficulty in seeing the truck and did not notice that it had lights on. She passed along into Smith's and saw the men at the tail of the truck and as she knocked at Smith's back door she heard the screeching of brakes and she heard a crash. Whiston Smith did not hear the crash but came to the door immediately. Both hurried out to the scene about 100 feet away. Smith said it was turning dusk but he had no trouble seeing. Gordon Gay at a distance of 3/20 of a mile east of the truck said he could see it plainly and a lady in it.

Both Mary MacDonald and Charles Gardiner said lights were not necessary; they would serve as a protection. But as to their evidence, it must be remembered that they might well be confused because of excitement and shock. Oliver Hume, a disinterested witness who seems to have passed the scene very shortly after the accident, says he could see the vehicles stopped after he rounded the turn by the end of the Keppoch Road. Sheldon Smallwood whose barn is 275 yards north of the highway and whose lane is just east of the scene of the accident says he saw the truck drive up and stop and he saw the men go to do something at the rear of the truck. He went on about his work and on being told of an accident by his little girl he again looked and saw the car and truck.

The defence produced Raymond MacDonald who lives near by and who went to the scene of the accident quite some time after, at best just before the ambulance arrived, and he says it was so dark that he had to put on his car lights to turn his car in the yard. This evidence is not helpful because in the time which elapsed from the time of the accident the degree of darkness would have greatly increased. The accused says, "It was almost dark. It was 35 minutes past sunset". Now it may well be that he too suffered shock from the event and in fact the evidence of Raymond MacDonald discloses that he seemed "quite worked up". And it may be that the statement as to the degree of darkness was partially an inference drawn by him from Exhibit 2 which stated that the time of sunset was 6:45 p.m.

When Exhibit 2 was tendered by defense counsel, I expressed the view that it was of little value but admitted it with the approval of the Attorney-General. Upon a study of the matter I now feel that it is quite worthless insofar as any useful inference can be drawn from the alleged time of sunset. The exact time of sunset on April 14th was given as 6:45 p.m. (AST). But the certificate does not state whether the time quoted is of the 60th meridian, (which is the centre of Atlantic Standard time zone), or the meridian of Charlottetown which is approximately three degrees west of the 60th meridian with a time variation of approximately 13 minutes, thus leaving the time of sunset at Charlottetown at appproximately 6:58 AST. So that the time of the accident may have been only about 20 minutes after sunset instead of 35 minutes as mentioned by the accused. With this question standing in doubt the certificate renders no assistance and the degree of darkness can only be measured by the viva voce evidence of the witnesses.

There was, doubtless, some limitation of visibility due to the approaching of night and most vehicles were being operated under lights as required by the Highway Traffic Act, but it must not be forgotten that Oliver Hume, who passed the scene after the accident said he did not turn on his lights until he was near Pownal, a distance of several miles, and that Sheldon Smallwood said he saw the men get out of the truck and do something at its rear from a distance of 270-275 yards.

There was, therefore, not such a degree of darkness as would prevent the truck from being seen from a reasonably safe distance if a proper speed and a proper lookout were being maintained. This, however, does not take into consideration the question as to the effect on vision which the lights of approaching cars might have, and although the law was settled by the Judicial Committee of the Privy Council in Stewart v. Hancock (1941) 1 W.W.R. 161 when Lord Roche at p. 165 affirmed the dictum of Macnaghten, J. in Tidy v. Bateman (1934) 1 K.B. 319 where the latter said:

"It cannot, I think, be said that where there is an unlighted obstruction in the roadway, a careful driver of a motor vehicle is bound to see it in time to avoid it, and must therefore be guilty of negligence if he runs into it."

But by the same affirmation he likewise settles the law as laid down by Ostler, J. who says:

"With that passage (referring to the above quotation from Tidy v. Bateman) I respectfully agree. It might be paraphrased into a statement that negligence is a question of fact, not of law; that each case must depend on its own facts..."

Many authorities were quoted to me and I have also examined others but the facts of so many are so widely different from this case as to be of but little assistance. But the case in which the facts seem nearest the present one is the civil case of Hordal v. Beers (1941) 2 D.L.R. 240. This was an action under the Fatal Accidents Act and Prendergast C. J.M., delivering the judgment of the Manitoba Court of Appeal, said at p. 244:

"The rule seems to be that in cases of this class, where the lack of visibility of whatever degree it may be, is practically unvarying as in the ordinary course of nature and nothing intervenes to suddenly increase it, a driver must so adjust his speed with the distance from which objects on the road can be seen, that he will be able to so control his car within that distance as to avoid them.

"This is the effect of the decisions of this Court in Pronak v. Winnipeg, Selkirk & Lake Winnipek R. Co., (1926) 2 D.L.B. 725, 34 C.R.C. 261, 37 Man. R. 320 (reversed by (1929) 2 D.L.R. 81, S.C. R. 314, 35 C.R.C. 124, and affirmed by (1933), 1 D.L.R. 1, A.C. 61, 40 C.R.C. 102) and that of the British Columbia Appeal Court in McDermid v. Bowen, (1938) 3 D.L.R. 617, 53 B.C.R. 98, holding that the speed must be 'consistent with control of the car within the limits of visibility'.

"In Johnston v. Giffen (1921), 62 D.L.R. 635 at p. 637, 18 A.L.R. 312, the Court of Appeal of Alberta also holds that a driver 'has no right to assume that the road is clear, but under all circumstances ...must be vigilant and must anticipate and expect the presence of others', and the Appeal Court of Saskatchewan in Stanley vs. Nat'l Fruit Co., (1930) 2 D.L.R. 106, 24 S.L.R. 137 (revd. (1931), 1 D.L.R. 306, S.C.R. 60), that a driver must take proper precautions to guard against risks that might reasonably be anticipated to arise from time to time as he proceeds on his way.

"In the present case, this highway from Winnipeg is much travelled by trucks as by other vehicles and I would say from the thousands of trucks that we see on our streets and roads that it is common knowledge that they are of all colors and all shades."

In this case there was no unexpected change in the visibility. Any oncoming traffic there may have been was seen by the accused and its effects on his vision were known to him and, therefore, served to increase his obligation to take greater care.

As to the rate of speed of the accused's car, no Crown witness was in a position to give any evidence except Mrs. Seller whose evidence I have previously discussed and she says that the rate was not fast. Wellington MacNeill, a defence witness, says he trailed the accused from Charlottetown at a distance of approximately 429 feet and he says he travelled at a rate from 20 to 30 m.p.h. But because of his evidence on other questions upon which his chances for expressing opinion were equally good, I do not give much weight to his opinion.

There is no doubt that there was a bad bump in the road at Duffy's gate at a distance given as 429 feet from the scene of the accident and traffic crossing that bump was obliged to slow down and the accused, corroborated by Wellington MacNeill, says he did slow down. But the question of how slow is to me uncertain. For while the bump was described as very bad, it did not of certainty cross the entire width of the pavement for J. A. Reardon, a Highway Engineer, called by the defence said there might have been a foot or so left on each side, and his plan (Exhibit 1) bears this out.

This then does not exclude a possibility that, although the bump was bad in part, there was a portion of the road somewhat better and to which a car could be manoeuvred and pass over in safety at a higher rate of speed, and that the accused's estimate of his speed in passing over the bump could have been well below the actual rate. And if such were the case the results of the experimental evidence given by Borden Champion and Raymond MacDonald would not be helpful, but in any case the accused states that he did increase speed after the bump and to an estimated rate of 35 m. p.h. But again that is only an estimate.

Before dealing with the circumstantial evidence as disclosed by the results of the collision, it should be pointed out that the tragic death of Gerald Solomon has no direct bearing in relation to the charge upon which the accused is now being tried. Such, however, would not be the case in a charge of manslaughter, but the Grand Jury has already disposed of that question, Robertson, C. J. O. said in the case of Rex v. Pursley, 72 C.C.C. 318 at p. 320: "The consequences of the driving in the manner charged as dangerous are relevant only insofar as they may afford evidence that the driving was or was not dangerous". And Campbell, C.J. following the above decision, said in the case of Burns vs. The King, 88 C.C.C. 51 at pp. 63-64: "The causing of death itself, though not directly in issue, is relevant in so far as it may afford evidence that the driving was or was not dangerous."

I think it has been established that the accused's car made no backward motion after the impact because, according to police testimony substantiated by the photo, Exhibit A, the marks of the "tire burns" on the pavement could be traced right to the rear wheels of the car. That the truck did move forward is also established by the evidence of Mary MacDonald who said she felt it move forward a distance of 4 to 5 yards. Charles Gardiner says he saw it move forward. And Corporal Warner says the measured distance between the rear of the truck and the front of the accused's car was 7 feet, 8 inches. The "tire burns" on the pavement extended back a distance of 50 feet. This is positive evidence that the brakes were firmly applied for a distance of at least 50 feet. And apart from the light of experience that brakes, even when firmly applied, do not produce a "tire burn" immediately, there is the following extract from the evidence of the accused himself:

"Q. When you first noticed it, did you know what it was when you first noticed it? A. I cannot say I did. I just noticed an object on the highway. I did not know it was stopped.

Q. You did not know whether a moving object or a stationary object? A. That is right.

Q. What did you do first at that time when you did not know whether this thing was moving? A. I started to apply my brakes and reduce my speed.

Q. And what was the next? A. As I got closer to this object I noticed it was a truck on the highway, a 3-ton truck.

Q. You noticed then it was stopped? A. It was stopped.

Q. You know now there were two men at the rear of the truck. Did you notice it then at that time? A. It all happened so quick. I would think I noticed the object first. I noticed the truck, and as I got closer to it—

Q. There was a stage you realized there were two men there? A. I think there was.

Q. You say first you did not appreciate that it was a parked truck. When you appreciated it was a parked truck what did you do? A. I applied my brakes as firmly as I could."

The foregoing evidence discloses two stages of brake application by the accused; first, when he saw the object and without knowing whether it was moving or not he applied his brakes to reduce speed, and the second when he definitely appreciated a parked truck, he applied his brakes as firmly as he could. The distance therefore which the car travelled from the application of brakes to the point of impact was far in excess of 50 feet. But the car did not come to rest by the operation of the brakes alone, but by reason of its momentum not only did its rear wheels skid sideways leaving a "tire burn" on the pavement, but it drove the truck forward the given distance of seven feet, eight inches, and that on a grade of nearing two per cent, to leave at least one wheel resting on the clay and off th hard paved surface, and this after the car had wedged itself under the tail of the truck and had the force of impact in some measure reduced by striking Charles Gardiner and throwing him to the shoulder of the road and by squeezing the fully clothed body of Gerald Solomon in such a manner as to rupture his lung, his liver and right kidney, to dislocate his spine and to completely sever his spinal cord, and further to bend the both front fenders, particularly the right, back into the doors, tending to jam the doors, to bend the radiator back over the engine, to damage the front cowl, to knock the air cleaner from the carburetor, to damage the engine bonnet by rolling it back against the left side of the windshield and damage the windshield, and lastly to make an indentation in the fire wall, this latter being made by a direct blow on the end of a support for the box or rack of the truck.

Mr. Champion estimated the weight of the accused's car and occupants at 3800 pounds but he declined to estimate the weight of the truck except to say that he doubted if it would weigh 3000 pounds. Unfortunately, the actual weight of the truck was not given in evidence but I would be surprised if, with its dual wheels, solid board box and tail gate, and carrying as it did Mary MacDonald, a girl of about ordinary weight was not at least in the vicinity of 5000 pounds. However, even if the truck were of a lesser weight, the car must still have had a considerable amount of speed or momentum to move the truck forward as it did in all the circumstances above mentioned. And since the brakes must already have been applied for a distance well in excess of 50 feet, the accused's car, at the time of the application, of brakes, must have been travelling at a much higher rate of speed than estimated by the witnesses.

Defence counsel also urged that the damage from the impact lacked evidence of the scattering of objects usually found after collisions involving a high rate of speed. But I think the cushioning effect of the impact already referred to would serve to reduce that scattering effect. That there was a crash there can be no doubt because Mrs. Duffy heard it from Whiston Smith's back door and the defence witness Wellington MacNeill, heard it when he had passed over the bad bump which was 429 feet from the point of impact.

Counsel for the accused contended that if there had been no fatality in this case no prosecution would have been entered. That may well be true, but it does not assist in the solving of this case, for while every fatal accident on our highways is not the result of a crime, every crime committed on our highways does not result in a fatality, and many cases of dangerous driving do not reach the courts.

Counsel also contended that the sole cause of the collision was the negligence of the driver of the truck in leaving it on the highway without lights as required by the Highway Traffic Act. But if it were as dark as contended the accused too was guilty of an infraction of the Highway Traffic Act in meeting traffic at a speed in excess of 30 m.p.h. But the test as to whether the driving was or was not dangerous is not to be determined on the basis of its danger to the occupants of the truck, alone, but to all persons, including pedestrians and even children who might be expected to be travelling along that highway at that hour on that Saturday evening.

This judgment does not express my full analysis of the evidence nor of the questions of law involved for I have given the case my best consideration and I have viewed the evidence in the light of the burden of proof which rests upon the prosecution. I have considered the form and wording of Section 285(6) of the Criminal Code and various legal authorities dealing with it, and the rule of law relating to circumstantial evidence and lastly thy duty to acquit in the case of reasonable doubt, and I am forced to conclude that the accused is guilty of the offence as charged, and I so find him guilty.

COLKIRK, England —(CP)— Town rat cather for 40 years, 60-year-old Bert Barnaby retired because "the form filling that goes with the job these days is too much for me."

Strange But True

By F.H. MacArthur

To keep Island folk from straying away back in Colonial days a fellow named Higgins was appointed "Public Pass Officer." His job was to see that Captain of vessels did not carry away persons without a license or pass.

P. T. Barnum, the famous showman, did not coin the phrase "there is a sucker born every minute." This common saying can be found in early writings, and Barnum was not born until 1810. What P. T. B. did say was this: "The general public like to be humbugged." Horace Greeley fired a similar arrow when he asserted that "the public is one immense ass."

In pioneer days in this province coppers were used to close the eyes of the dead. The custom originated in England and was brought here by our forefathers. The coin referred to here was the large English copper coin called a penny.

What appears to be horns on the head of a giraffe are nothing but soft tufts of skin and fat.

Not all surnames begin with a capital. Take for instance, the family names ffiennes, ffalliot, and ffulkes. Two small f's are the proper way to begin these words.

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In 1776 the Lady of the Haystack, as she was called, was discovered at Bouton, England, and placed in a mental institution by Hannah Moore, who lived near the farm where the beautiful but demented girl had made her home for four years in a haystack. And strange as it may seem, the girl died in the asylum without her identity ever having been learned.

All animals except man, swim naturally when forced into water, but ordinary rabbits and hares will drown after being in the water for any length of time. Why? Because their fur and skin are not impervious to water.

The ancient Romans had noses that resembled the beak of an eagle — hence the name "Roman Nose." Julius Caesar had such a smeller.

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Don't believe the slogan "A clean tooth never decays." It does decay whether we clean it or not — that is, if we do not eat the right kinds of food. The teeth of our forefathers usually remained sound though worn down to the very gum line. In our own province, we occasionally meet persons, well advanced in years who have never used a toothbrush; yet they have pretty sound teeth.

Ever hear of the world-famed treatment for reducing fat called "Sic" which sold for $20.00 a bottle? When analyzed by government chemists it was found to contain, one pound of powdered alum, alcohol 50 per cent — ten ounces mingled with enough water to make a quart. The actual worth of these fillers is 30 cents! No wonder Horace Greeley acclaimed "The public is one immense ass."

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Thackeray crossed the ocean for the purpose of eating some Massachusetts oysters. When he saw them he asked publisher J. T. Fields, the how of putting them down. "This way," said Fields, promptly, and proceeded to dispatch his first oyster. Thackeray quickly followed suit.

Letter From England Praises Emerald Oil - Says

"I am now in England and cannot get Emerald Oil here. If you have an agent, let me know by return his address, as this is very urgent.

"I find Emerald Oil the best remedy I have ever used for all kinds of Skin Irritation." Mr. J. S., Bedfordshire, England.

If you or any relative or friend are suffering from the itching irritation of many common forms of skin diseases, get a bottle of Moone's Emerald Oil. You'll make no mistake. There's nothing finer or quicker-acting. Stainless—Greaseless—Economical, a small bottle lasts a long time. On sale wherever drugs are sold.

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OUT OUR WAY By J. R. Williams