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 Jun. 28, 29  
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 May 3  
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**BETWEEN :**  
**VALENTINE ARIAL** ..... **SUPPLIANT;**  
  
**AND**  
**HIS MAJESTY THE KING** ..... **RESPONDENT.**

*Crown—Petition of Right—Negligence of operator of Army vehicle—Contributory negligence—Determination of degree of negligence—Assessment of damages—Highway Traffic Act, R.S.O. 1937, c. 288, s. 39 (2) (c) and (d)—Highway Traffic Amendment Act, 7 Geo. VI, c. 10, s. 3—An Act respecting Contributory Negligence (Ontario) 20 Geo. V, c. 27, ss. 4 and 5—Doctrine of contributory negligence applicable when cause of action arises in Ontario.*

Suppliant's infant son was struck and killed by a motor vehicle the property of respondent and operated by a member of the armed forces of Canada acting within the scope of her duties or employment. The Court found negligence on the part of the driver of the motor vehicle and also that suppliant's son was negligent and that such negligence contributed to the accident which caused his death.

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

*Held:* That the doctrine of contributory negligence as established in the Province of Ontario in virtue of chapter 27 of the Statutes of Ontario for the year 1930 entitled An Act respecting Contributory Negligence is applicable and that both parties being equally responsible for the accident the respondent should pay to suppliant one half of the damages suffered by her.

PETITION OF RIGHT by Suppliant claiming damages from the Crown for the death of her infant son alleged to have been caused by the negligence of an officer or servant of the Crown in the performance of her duties.

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

*W. Guertin* and *J. P. Labelle* for suppliant.

*R. Forsyth, K.C.*, and *C. Stein* for respondent.

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

ANGERS J. now (May 3, 1946) delivered the following judgment:

The suppliant claims from His Majesty the King the sum of \$5,203.62, with interest and costs, for damages allegedly suffered by her as mother of François Arial, an infant under the age of 21 years, who was struck and killed by an automobile a short distance east of the intersection of Dalhousie and St. Patrick streets, in the city of Ottawa.

The suppliant, who describes herself as the widow of J. B. Arial, plumber, in her petition of right, alleges in substance as follows:

the suppliant is the lawful mother of François Arial, an infant now deceased, who resided with her and was under her care at the time of his death;

there is no executor or administrator of the said François Arial and the suppliant is entitled under the Fatal Accidents Act of the Province of Ontario (R.S.O. 1937, chap. 210) to act as suppliant herein;

1946  
ARIAL  
v.  
THE KING  
Angers J.

on November 5, 1943, at about noon, the said François Arial was proceeding on foot on the sidewalk on the easterly side of Dalhousie street, in the city of Ottawa, in a northerly direction and, after proceeding to cross the said street (should evidently be St. Patrick street), at its intersection, the green light being on, was violently struck in the course of such crossing by a motor truck and hurled a considerable distance easterly on St. Patrick street causing fatal injuries;

the said motor vehicle bearing licence No. 2997F, which struck the said François Arial, was the property of His Majesty the King as vested in the National Defence Department (Naval Service) and was being driven by one Frances M. Thompson, a female soldier of His Majesty serving in the Naval Service, in the course of her duties;

as a result of the said motor vehicle striking the said François Arial, the latter suffered severe injuries on the head, the arms and chest, which caused his death on the same day;

the accident resulted from the negligence of the aforesaid Frances M. Thompson within the meaning of section 19, subsection (c) of the Exchequer Court Act and amendments thereto;

the negligence of the said Frances M. Thompson consisted *inter alia*:

- in driving at a too great rate of speed;
- in ignoring traffic signals;
- in disregarding the provisions of section 39 of the Highway Traffic Act of the Province of Ontario (R.S.O. 1937, chap. 288) and amendments thereto;
- in not keeping a proper lookout within the meaning of the said Highway Traffic Act;

as a result of the death of the said François Arial, the suppliant had to pay the sum of \$203.62 for funeral expenses;

the said François Arial, at the time of the accident, was 10 years old, was a healthy, strong boy, well developed and intelligent and industrious; he had special aptitudes for the plumbing and tinsmith trade; at the time of his death, he was being supported by the suppliant, was

attending primary school and would have completed his course at the age of twelve years owing to his brilliant and successful studies;

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

the suppliant is 55 years of age, is the widow of J. B. Arial, plumber and tinsmith, and she has three other children at home which she supports;

the deceased was rendering valuable services for the suppliant and was instrumental in obtaining for her a sum of \$10 a week from the firm of J. B. Arial and Sons, plumbers and tinsmiths, on account of said services;

the deceased, as soon as his studies were terminated, would have devoted most of his earnings to help the suppliant for an indefinite time; these earnings would have amounted to \$40 a week and would have been paid by the said firm of J. B. Arial and Sons; the suppliant estimates at the sum of \$5,000 the pecuniary benefits which she might reasonably have expected to receive from the said François Arial.

In his statement of defence the respondent pleads in substance as follows:

he does not deny that the suppliant is the lawful mother of François Arial now deceased, who resided with her and was under her care at the time of his death;

he admits that on November 5, 1943, a motor vehicle owned by the respondent and driven by Frances M. Thompson, a member of His Majesty's Naval Forces, was proceeding easterly on St. Patrick street, in the city of Ottawa, and after passing the intersection of St. Patrick and Dalhousie streets a boy, said to be François Arial and the son of the suppliant, ran from the sidewalk on the south side of St. Patrick street directly into the path of the respondent's vehicle when he was struck and injured;

he denies all the other allegations contained in the petition of right;

the accident was due entirely to the negligence of the suppliant's son, who attempted to run across the street between intersections without exercising due care and caution;

the respondent's vehicle, at the time of the accident, was operated by the said Frances M. Thompson properly, lawfully and with care and caution;

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

the suppliant's son had the last opportunity of avoiding the accident.

The suppliant filed a joinder of issue.

A brief summary of the evidence seems apposite.

The suppliant Valentine Arial, widow of Jean-Baptiste Arial, plumber, testified that her son François was 10 years old on April 1, 1944, that he was in good health and strong and that he was intelligent.

She declared that, at the time of the accident, she had four minor children to support, the eldest of whom, a boy, was 19 years old.

She stated that she owns the house in which she is living and which is valued at \$6,000. She said that her husband left an insurance policy of \$2,000 and that she spent this amount to pay his debts, as he had been ill for two years. She added that she also owns furniture to the value of \$500.

She asserted that her son François had special aptitudes for his father's trade, viz. plumbing and tinsmithing.

She said that her son, who is 19 years of age, is not educated and that the other son, who is 16 years old, and a girl of 13 years are still at school.

She declared that she paid \$153.62 for the funeral of her son François.

In cross-examination she testified that she gave the good will of her husband's trade to two married sons and that the latter give her \$40 per month, being \$10 for each of the four children at home.

She declared that François would have remained at school until the age of sixteen. She believed that he would have drawn a salary of \$10 per week as apprentice as soon as he would have started to work for his brothers.

She said that she has much difficulty in having both ends meet.

Jean Arial, a son of the suppliant, associated with one of his brothers in the plumbing business, testified that they give to their mother \$10 a month for each of the children living at home.

He declared that, at the time of his father's death, the trade was not prosperous because his father had been sick for a long while and because labour was scarce.

He asserted that his brother François had natural dispositions for the trade of plumber, that he often came to the shop and that he seemed interested in the work. He stated that when François would have started to work in the shop as an apprentice he would have drawn a salary of between \$10 and \$15 a week.

1946  
 ARIAL  
 v.  
 THE KING  
 —  
 Angers J.  
 —

In cross-examination the witness declared that before the death of his father he had worked in the shop for thirteen years. He said he is now 29 years old, having started to work at the age of 16.

Roger Tassé, operator for the Ottawa Electric Company, driving tramways and buses, testified that on November 5, 1943, around noon, he was walking north on the west side of Dalhousie street, that, when he reached St. Patrick street, he saw the green light on the north-east corner of Dalhousie and St. Patrick streets and that he had gone about four or five feet across St. Patrick street when he noticed a truck proceeding thereon from west to east at a speed of about 35 miles an hour. He asserted that he had just about time to back up one step and that otherwise he would have been struck; he added that the truck just missed him. He said he heard the squeak of brakes and tires and noticed that the truck was stopped a little past the intersection; about five feet from the east edge of the cross-walk on the east side of Dalhousie street. He stated that he walked towards it and noticed the body of a child lying on the pavement on St. Patrick street, about fifteen to twenty feet from the inside line of the sidewalk on the east side of Dalhousie street and about three feet from the front of the truck.

He estimated that Dalhousie street is about fifty feet wide and that the truck is between twelve and fifteen feet long.

He asserted that the child was François Arial, whom he knew very well, and that the car was a naval truck.

Daniel Patenaude testified that on the day of the accident he was walking down Dalhousie street towards St. Patrick street, that he crossed the latter and that the light was green. He stated that he heard noise behind him,

1946  
ARIAL  
v.  
THE KING  
Angers J.

turned round and noticed a blue truck stopped on the intersection. He specified that the rear of the truck was on Dalhousie street at the place where the tramways turn.

He said that it was the time when the children leave school and that there were many of them on the street.

He declared that he saw a sailor and another man pick up a child.

He denied having stated at the coroner's inquest that he had seen the child running and that he felt sure that he would be struck.

Austin Carkner, a city constable, testified that at about noon on November 5, 1943, he was on duty at the corner of Dalhousie and Murray streets, the latter being the first street south of St. Patrick. He said he is always there at that time when school children go out, to look after the traffic on the street.

He declared that a child ran up to him and told him that there had been an accident. He proceeded onto St. Patrick street, where the accident had occurred, and found out that a boy had been hit by a truck and that the rear of the truck, after it had stopped, was slightly past the cross-walk on the east side of Dalhousie street. He said he first went to the south-east corner of Dalhousie and St. Patrick streets and he took the child to the hospital in a jeep, which was then on the north-west corner of Dalhousie and St. Patrick streets. He asserted that the child was unconscious and that a doctor in the hospital examined him and declared that he was dead. He stated that the traffic was then very heavy and that at this time of the day it always is.

In cross-examination he declared that he had made tests to find out in what distance the truck could be stopped and that on the first test, with a Tapley machine, he stopped it in fifteen feet at a speed of twenty miles an hour and that on a second test, at the same speed, with the foot brake he made the stop in seventeen feet.

Counsel for suppliant put in evidence a part of Dr. Klotz's testimony taken before the Coroner, which shows that the child died as a result of the accident.

Frances Thompson, heard on behalf of the respondent, testified that she is in the Naval Service as motor transport driver and has been for fourteen months, that she has driven

cars for thirteen to fourteen years and that on the day of the accident she was driving a truck from west to east on St. Patrick street towards Dalhousie street at a speed of twelve to fifteen miles an hour.

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

She swore that, when she reached the intersection of Dalhousie street, the light was green and that it changed to amber "just as I started to cross", later changing her version to say: "After I had started to cross". She then specified: "four or five feet passed (sic) the corner."

She stated that she was five or six feet away from the curb of the sidewalk and twelve or fifteen feet east of the cross-walk on the east side of Dalhousie street when she hit the boy. She asserted that she saw the boy appear on her right side running diagonally from the rear across St. Patrick street and that he must have been running faster than the truck; she added that she was slowing down as she intended to stop. She said that at the time of the accident she was going at a speed of about ten miles an hour.

In cross-examination she declared that there were many people, including children, standing on all four corners of St. Patrick and Dalhousie streets but that she did not see Tassé nor Patenaude.

She said she felt safe to cross because the green light was in her favour. She repeated that the light turned to amber after she had started crossing Dalhousie street. She declared that she kept on going over the intersection at a speed of twelve to fifteen miles an hour.

She said she had a passenger with her in front of the car and that others were in the rear.

She asserted that the boy was about ten feet east of the cross-walk on the east side of Dalhousie street when he was hit and that she had then slowed down to about ten miles an hour.

She declared that there were a lot of people standing on the south side of St. Patrick street east of Dalhousie street and that she could not notice the boy. She stated that she saw him for the first time when he was one foot ahead of the right fender of her truck. She said that she did not blow the horn but that she put on the brakes.

She admitted that at the coroner's inquest she had testified that she saw the boy running across St. Patrick



1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

street in the path of her car and that he was about four feet ahead of the truck when she first noticed him. Asked which is the correct answer, the one given now mentioning a distance of one foot or the one given at the coroner's inquest mentioning a distance of four feet, the witness, again changing her estimate, replied (p. 35):

Well, it happened so long ago I cannot remember exactly the distance. I suppose it might be between two and three feet.

George Ross Culley, a member of the Canadian Navy, testified that on November 5, 1943, he was driving with Miss Thompson in a truck proceeding east on St. Patrick street.

He asserted that, when the car entered the intersection, the light was green and that, when the truck had crossed about three-quarters of Dalhousie street, the light changed to amber. He declared that the truck was about ten or fifteen feet from the curb of the sidewalk on St. Patrick street when it struck the boy. He said that the boy was going in the same direction as the truck, that he was hop-skipping in the street about five feet from the sidewalk, that he went towards the sidewalk and later ran in front of the car.

In cross-examination Culley declared that, when he first noticed the boy, the truck had crossed the intersection and that the boy was then about seven or eight feet ahead of it, a little to the right. He said that the boy made two or three steps when hop-skipping, that he went near the sidewalk and then ran in front of the car and that the car ran over him.

Adrien Aubin, operator at the Water Works Department, testified that on the day of the accident he was driving his car from east to west on St. Patrick street and that, when approaching the intersection of Dalhousie street, he saw a navy truck hit a small boy. He declared that the truck started to cross the intersection on the green light and that the latter changed to amber before the truck had finished crossing.

He said that he first noticed the boy on the sidewalk and that the latter began to cross St. Patrick street from south to north at a distance of about  $2\frac{1}{2}$  to 3 feet east of the cross-walk. He stated that the victim was running with

another boy on Dalhousie street towards St. Patrick street and that he started to cross the latter and ran right in front of the truck.

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

He asserted that the truck was going at a speed of 12 to 15 miles an hour, at a distance of about 3 feet from the sidewalk on the south side of St. Patrick street, and that the driver put on the brakes immediately.

In cross-examination Aubin somewhat modified his version and declared that the victim "started from the sidewalk to the path"—obviously meaning the cross-walk—"and right across".

He explained, or at least tried to explain, that the boy had been hit  $2\frac{1}{2}$  feet east of the cross-walk because he was hit from the curb. I may say that this explanation is not very satisfactory.

Later Aubin again changed his story by saying (p. 40): "He was hit not directly on the cross-walk but one foot or two feet right this way"—indicating the east—"and he made a little jump to escape that truck".

He said he first saw the naval truck coming towards him when it was at a distance of 15 to 20 feet.

Contrary to what he had declared at the coroner's inquest and which he stated was wrong, Aubin asserted that his car had come to a stop when the accident occurred. He also said that his declaration before the coroner that when he first noticed the movements of the child he was about 200 yards away is wrong and that in fact he was near the curb of the sidewalk on the east side of Dalhousie street.

He said he was interviewed in the afternoon of the accident by a lieutenant and refused to say anything.

Reverting to the question of the distance at which he was when he first saw the navy truck, he repeated that the mention he had made of 200 yards was a mistake and that now his answer is that the distance was between 15 and 20 feet. He admitted that at the time of the inquest he was all wrong in the estimation of the distance.

He declared that the right front fender of the truck hit the child on the left side and that the latter was projected on the pavement; he could not say at what distance the child was thus projected. He stated that the right front

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

wheel of the truck went over the body of the child and that he was able to make this statement because he had seen the body underneath the car behind the wheel.

He estimated that the truck must have gone a distance of 10 feet at the most from the curb of the east sidewalk of Dalhousie street after it hit the boy.

He asserted that, when he first saw the truck, it was "right in the middle of the intersection", but later added that it might have been a little more to the west. He stated that the green light was still on when the truck was getting in the intersection and that it turned to amber while the truck was crossing.

He declared that the truck maintained its speed of 12 miles an hour more or less at the time it entered the intersection.

Asked what there was, if anything, to prevent the driver of the truck from stopping in the distance of 15 feet between the car and the child, the witness replied (p. 54): "Maybe he did not see the kid."

He stated that, as the truck approached the intersection, the light in front of him changed to amber and that that was the reason why he had to stop. It may be noted that the light facing the driver of the truck was of the same colour as the one facing the witness.

Re-examined Aubin declared that when the light changed to amber the truck was on the west side of Dalhousie street and added that "it was just coming into the intersection on the green light when it turned to amber."

The evidence is conflicting, as could be expected. Moreover the testimonies of two of the respondent's witnesses, Frances Thompson and Adrien Aubin, are inconsistent and contain contradictory versions concerning material incidents. A brief review of these discrepancies seems proper and expedient.

Frances Thompson first declared that she reached the intersection as the light facing her was green and that it changed to amber *just* as she started to cross. She then modified her version, saying that the change in the light occurred "after I had started to cross". Later she specified that she was "four or five feet past the corner" when the

light turned to amber. These changes were evidently made with a view to establishing that there was no negligence on her part.

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

I may note that, regarding the distance covered by the truck in the intersection, Culley stated that it had crossed about three-quarters of Dalhousie street when the light changed to amber.

Aubin testified that the truck started to cross the intersection on the green light and that the light changed to amber before the truck had finished crossing. He does not mention what portion of Dalhousie street the truck had crossed when the light turned to amber. His version on that point corroborates to a certain extent that of Culley, although not quite so precise.

Relating to the manner in which the boy got in the way of the truck, his version differs from that of Miss Thompson and of Culley. He first declared that the victim was running with another boy on Dalhousie street towards St. Patrick street and that he started to cross the latter and ran right in front of the truck. In cross-examination Aubin changed his version and stated that the Aerial boy "started from the sidewalk to the path"—evidently the cross-walk—"and right across". I have no reason to doubt Aubin but I am inclined to believe that he did not pay a very close attention to the events preceding the accident.

On the other hand, we have the evidence of Tassé, an independent and disinterested witness, who testified that he started to cross St. Patrick street from south to north on the west side of Dalhousie street with the green light in his favour and that he had gone four or five feet across St. Patrick street when he saw a truck proceeding thereon from west to east at a speed of about thirty-five miles an hour, that he just had time to back up one step and that the truck just missed him. It seems evident that if Tassé was crossing St. Patrick street on the green light the truck must have entered the intersection with the red light facing it. Tassé's version is corroborated by Patenaude.

I am satisfied that the truck started to cross Dalhousie street when the red light was against it and that it was then travelling at an excessive speed. If the driver of the

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

truck had reduced its speed, when it reached the intersection, to the limit prescribed by the statute, she could have come to a stop before hitting the child.

See The Highway Traffic Act, R.S.O. 1937, chap. 288, section 39, subsection 2, clauses (c) and (d), and An Act to amend the Highway Traffic Act, 7 Geo. VI, chap. 10, section 3.

It seems convenient to quote clauses (c) and (d) of subsection 2 of section 39, as amended by 7 Geo. VI, chap. 10, section 3:

(c) When a red signal-light is shown at an intersection every driver or operator of a vehicle or car of an electric railway which is approaching the intersection and facing such light shall bring his vehicle or car to a full stop immediately before entering the nearest cross-walk at such intersection, and shall not proceed until a green light is shown, provided that such driver or operator may turn to the right after bringing such vehicle or car to a full stop.

(d) When green and amber signal-lights are shown simultaneously at an intersection, the driver or operator of a vehicle or car of an electric railway which is approaching the intersection and facing such lights, shall bring his vehicle or car to a full stop immediately before entering the nearest cross-walk at the intersection, provided that where any such vehicle or car cannot be brought to a stop in safety before entering the intersection, it may be driven cautiously across the intersection.

The first paragraph of subsection 3 of section 39, as enacted by 7 Geo. VI, chap. 10, section 3, reads thus:

(3) The operator or driver of every vehicle or car of an electric railway shall before entering or crossing a through highway bring the vehicle or car to full stop immediately before entering the nearest cross-walk.

Dalhousie street is a through highway as designated by by-law of the City of Ottawa duly approved by the Department of Highways. See by-law No. 9080, section 20.

If the victim started to cross St. Patrick street on the cross-walk or two or three feet east of it as has been stated by Aubin with the green light facing him he did not commit an act of negligence. If rather he ran on St. Patrick street, hop-skipping as mentioned by one witness, he was negligent and his negligence very likely contributed to the accident which caused his death.

The doctrine of contributory negligence made its appearance in the province of Ontario somewhat belatedly. It became law in 1930 in virtue of the statute entitled An Act respecting Contributory Negligence assented to on April 3,

1930, being the statute 20 Geo. V, chap. 27. The doctrine however had occasionally been applied prior to the enactment of the statute: *Tabb v. Grand Trunk Railway Co.* (1); *Potvin v. Canadian Pacific Railway Co.* (2); *Downing v. Grand Trunk Railway Co.* (3); *Moran v. Burroughs* (4).

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

I may cite sections 4 and 5 of the Act which are relevant:

4. In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff which contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively.

5. If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent.

After carefully perusing the evidence and considering the argument of counsel I have reached the conclusion that I should assess one-half of the responsibility on the suppliant's child, who was old enough to know that he ought not to have run in the street without paying attention to the traffic, and one-half on the driver of the truck who failed to stop when she reached Dalhousie street notwithstanding by-law 9080 and the red light facing her, proceeded at an excessive speed across the intersection and did not give proper attention to the pedestrian traffic, particularly children who were numerous as usual at the time of the day when the accident happened owing to the exit from the schools for the noon recess.

Regarding the responsibility of children the following decisions may be consulted with benefit: *Yachuk v. Oliver Blais Company Ltd. et al.* (5); *Downing v. Grand Trunk Railway Co. (ubi supra)*; *Bouvier v. Fee* (6); *Tabb v. Grand Trunk Railway Co. (ubi supra)*; *Germain v. Canadian National Railway Co.* (7); *Potvin v. Canadian Pacific Railway Co. (ubi supra)*; *Makins v. Piggott & Inglis* (8); *Rowland v. Corporation de la paroisse de Rawdon et al.* (9); *Morin v. Lacasse* (10); *Burke v. Provencher* (11);

(1) (1904) 8 O.L.R. 203.

(2) (1904) 4 O.W.R. 511;  
4 Can. Ry. Cas. 8.

(3) (1921) 58 D.L.R. 423;  
(1921) 49 O.L.R. 36.

(4) (1912) 27 O.L.R. 539.

(5) (1944) 3 D.L.R. 615;  
(1945) O.R. 18.

(6) (1932) S.C.R. 118.

(7) R.J.Q. (1943) S.C. 226.

(8) (1898) 29 S.C.R. 188.

(9) (1939) R.J.Q. 77 S.C. 477.

(10) R.J.Q. (1931) 69 S.C. 280.

(11) R.J.Q. (1929) 67 S.C. 500.

1946  
 ARIAL  
 v.  
 THE KING  
 Angers J.

*Desroches v. St.-Jean* (1); *Normand ès-qual. v. Hull Electric Company* (2); *Figiel v. Hoolahan* (3); *Marquis v. Prévost et al.* (4); *Légaré ès-qual. v. Quebec Power Company* (5); *Lauzon v. Lehouiller* (6); *Moisan v. Rossini* (7); *Beauchamp v. Cloran* (8); *Houdelman v. Numeroff* (9); *Delàge v. Delisle* (10).

The amount of the damages remains to be determined. In my opinion the suppliant has the right to recover the funeral expenses of her son and the loss of revenue she could reasonably expect from him from the time he left school, presumably at the age of sixteen years, to the time when he would have attained the full age of majority, to wit a period of five years.

The evidence shows that the funeral expenses amounted to \$153.62; this sum must accordingly be granted. See *Johnson v. Antle* (11); *Bégin Limitée v. Morin* (12); *Epiciers Modernes Limitée v. Sivitz* (13); *Le Roi v. Savard et al.* (14).

I estimate the loss suffered by the suppliant as a consequence of the premature death of her son computed on the net earnings, after deduction of his living expenses, he would have devoted to his mother, the suppliant, to \$2,600. From this sum must be deducted the cost of the upkeep and education of the child from the age of ten years to that of sixteen, which I estimate at \$1,400, less however the wages which the latter would have earned as apprentice during his holidays and spare time which I deem reasonable to fix at \$720. The amount to be deducted is accordingly \$680, leaving a net loss of \$1,920. See *Barnett v. Cohen et al.* (15); *Taff Vale Railway Co. v. Jenkins* (16); *McKeown v. Toronto Railway Co.* (17); *Roy v. Piette* (18); *Simoneau v. McLean* (19).

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| (1) R.J.Q. (1928) 44 K.B. 562.  | (11) R.J.Q. (1940) 78 S.C. 203. |
| (2) R.J.Q. (1909) 35 S.C. 329.  | (12) R.J.Q. (1942) K.B. 549.    |
| (3) R.J.Q. (1939) 78 S.C. 179.  | (13) R.J.Q. (1944) K.B. 229.    |
| (4) (1939) R. de J. 494.        | (14) R.J.Q. (1944) K.B. 328.    |
| (5) R.J.Q. (1939) 77 S.C. 552.  | (15) (1921) 2 K.B. 461.         |
| (6) (1944) R.L. 449.            | (16) (1913) A.C. 1.             |
| (7) (1935) 41 R.L. n.s. 300.    | (17) (1908) 19 O.L.R. 361.      |
| (8) (1866) 11 L.C.J. 287.       | (18) (1939) 45 R.L. 57.         |
| (9) R.J.Q. (1936) 74 S.C. 498.  | (19) (1939) 46 R.L. 168.        |
| (10) R.J.Q. (1901) 10 K.B. 481. |                                 |

Since I have reached the conclusion that there was negligence both on the part of the driver of the truck and of the victim, I deem it fair and reasonable to apportion the responsibility equally between them. As the damages total \$2,073.62, the respondent will pay to the suppliant one-half of this amount, to wit \$1,036.81.

1946  
ARIAL  
v.  
THE KING  
Angers J.

The suppliant will be entitled to her costs.

*Judgment accordingly.*