

Let us test the conflicting views by a hypothetical case:—

Suppose a street car to be moving east along King Street, approaching Spadina Avenue, an intersecting street, and a loaded dray to be moving south on Spadina Avenue, approaching King Street. Suppose further that the motorman and the driver of the dray each sees the other in ample time to avoid a collision, and that the driver of the dray having first reached the point of intersection proceeds to cross the track upon which the street car is approaching, notwithstanding the ringing of the motorman's gong. But the motorman also proceeds, and the street car collides with the rear end of the dray, with the result that the driver of the dray is injured and the front of the car is smashed. Then the driver of the dray brings action against the railway company, and the railway company counterclaims for damages to its car. Now let us apply the doctrine of equality of rights.

If the doctrine of equality of rights as between the motorman and the drayman is to prevail, then, clearly whichever of them was first in possession of the point of intersection was entitled to cross without molestation from the other. It follows that the drayman having been first in possession of the point of intersection had a right to cross free from interference from the motorman. More than that, the circumstances of the collision make a *prima facie* case for the drayman. The fact that the street car ran into the rear of the dray is proof that the dray was there first.

But this kind of a collision is so improbable as to be almost unheard of, for a street car motorman who approaches a loaded dray incautiously, incurs great risks both to his car and to himself. He consequently shews a profound respect for the drayman.

But, suppose that instead of a loaded dray, it is a pedestrian that is moving south on Spadina Avenue towards the car approaching on King Street. The pedestrian has the car in full view and the motorman has the pedestrian in full view. The pedestrian reaches the point of intersection of the lines of advance before the car and proceeds to cross. Then just as the