

CANADA / JUDGMENT

Gordon v. Trottier

[1974] SCR 158

COURT

Supreme Court of Canada

DECIDED

7 May 1973

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Gordon v. Trottier

Collection

Supreme Court Judgments

Date

1973-05-07

Report

[1974] SCR 158

Judges

Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora

On appeal from

Ontario

Subjects

Motor vehicles

Decision Content

Supreme Court of Canada

Gordon v. Trottier, [1974] S.C.R. 158

Date: 1973-05-07

Pauline Gordon, by her next friend, Newton Gordon (Plaintiff) Appellant;
and

Claudette Trottier, now Claudette Gauthier (Defendant) Respondent.

1973: February 27; 1973: May 7.

Present: Judson, Ritchie, Spence, Pigeon and Laskin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Motor vehicles—Negligence—Six-year-old child struck by defendant's automobile—Trial judgment in favour of plaintiff reversed by Court of Appeal—Principle governing interference by second court of appeal—Onus of proof—The Highway Traffic Act, R.S.O. 1970, c. 202, s. 133(1).

A six-year-old child was injured in an accident which occurred when she ran out into the traffic on a city street and was there struck by the defendant's automobile. The child was crossing the street from west to east at a time when there were a number of cars parked at the western curb and when a line of traffic was stationary facing south in the western traffic lane of the street, while the defendant was travelling in a northerly direction in the eastern lane which at that time was not in any way blocked by other cars.

The trial judge, having found that there was negligence on the part of the child, divided the fault and in so doing attributed negligence to the defendant on the following grounds: (1) failure to wear glasses which had been recently prescribed for her, (2) failure to keep a wary eye to her left, (3) travelling at too high a rate of speed under the circumstances, and (4) not driving her car more to the east than she did. On appeal, the Court of Appeal set aside the judgment of the trial judge and dismissed the action. From that decision the child, by her next friend, appealed to this Court.

Held (Spence and Laskin JJ. dissenting): The appeal should be dismissed.

Per Ritchie and Judson JJ.: Where a judgment upon facts has been rendered by a court of first instance and a first court of appeal has reversed that judgment, a second court of appeal should interfere with the judgment on the first appeal only if clearly satisfied that it is erroneous. In the present case the child would not have been seen by a driver keeping a reasonable look-out until it came out from between the cars and the failure of the respondent to wear her glasses was not a factor causative of the accident. The respondent, under the circumstances, was not travelling at too high a rate of speed (25 m.p.h. in a 30 m.p.h. zone), and even if the finding that the defendant was negligent in not driving more to the east be accepted, it was not one of negligence which was causative of the accident.

Where, as in the present case, the trial tribunal has come to a clear conclusion that there was negligence on the part of the driver and the Court of Appeal has reached an equally clear conclusion that there was none, the sole question for determination on appeal to this Court is whether, on a consideration of the whole of the evidence, the Court is satisfied that there was no evidence of such negligence. The "onus" provided for by s. 133(1) of The Highway Traffic Act, R.S.O. 1970, c. 202, plays no part in this process.

Per Pigeon J.: On the basis of the findings of fact of the trial judge, his conclusion that the defendant motorist had failed to prove that the accident was in no way attributable to negligence or improper conduct was not properly supported by any of the four grounds given by him.

Per Spence and Laskin JJ., dissenting: The trial judge listed various circumstances which invited a response from the defendant (not proof of negligence from the plaintiff) to discharge the statutory burden on her. What the trial judge regarded as supporting his conclusion on onus, the Court of Appeal appeared to regard as independent and exclusive grounds of liability, but based on an alleged finding that was not in fact made in view of the statutory onus resting on the respondent. The statutory onus will yield to dissipating evidence, but it must be evidence that goes beyond neutralization of the situation and be affirmatively exonerating on a balance of probabilities. In the present case, it would not be obliging the respondent to negative remote possibilities to require her to show that she could not reasonably have seen the infant plaintiff earlier; or, that she could not have avoided hitting her if she had seen her earlier. The trial judge's findings indicated that the respondent failed in these matters, and hence she was held liable. The central issue for the trial judge was not, as the Court of Appeal said, whether there was negligence "which would render the defendant liable", but rather whether the defendant could show affirmatively that she was not negligent.

[Demers v. Montreal Steam Laundry Co. (1897), 27 S.C.R. 537; Dorval v. Bouvier, [1968] S.C.R. 288; Maryland Casualty Co. v. Roy Fourrures Inc., [1974] S.C.R. 52; Winnipeg Electric Co. v. Geel, [1932] A.C. 690; Robins v. National Trust Co., [1927] A.C. 515, referred to.]

APPEAL by the infant plaintiff from a judgment of the Court of Appeal for Ontario, allowing an appeal from a judgment of Hughes J. in her favour and dismissing her action for damages for personal injuries. Appeal dismissed, Spence and Laskin JJ. dissenting.

P.B.C. Pepper, Q.C., and P.R. Jewell, for the plaintiff, appellant.

F.W. Knight, for the defendant, respondent.

The judgment of Judson and Ritchie JJ. was delivered by

RITCHIE J.—I have had the benefit of reading the reasons for judgment of my brother Laskin, but as I adopt a different approach to some aspects of the evidence and therefore reach the opposite conclusion, I find it necessary to write separate reasons.

As my brother Laskin has indicated, the accident occurred when a little six-year-old child ran out into the traffic on Goyeau Street in the City of Windsor and was there struck by the defendant's automobile. The child was crossing the street from west to east at a time when there were a number of cars parked at the western curb and when a line of traffic was stationary facing south in the western passing lane of the street, while the defendant was travelling in a northerly direction in the eastern lane which at that time was not in any way blocked by other cars. The learned trial judge accepted the evidence of the defendant's witnesses, (one of whom, Miss Lauzon, was driving the car travelling south on the west side of the street) as to the manner in

which the accident occurred, and in the course of his reasons for judgment he made the following findings in this regard:

(i) As to the manner in which the child emerged into the eastern lane—

Miss Lauzon said that there was some two or three feet between the front bumper of her car and the rear bumper of the car ahead, and that Pauline stopped for a moment, looking to her left, in other words, to the north, and that she, Miss Lauzon, was so struck by the appearance of the child, that she smiled at her, and that Pauline smiled back, whereupon Pauline darted out into Goyeau Street and was struck by the defendant's car, which at the time when Miss Lauzon first noticed it, was some two car lengths away from the point of impact. With some difficulty Miss Lauzon described Pauline's motion as a trot, but it is clear from this evidence, which I accept, that Pauline moved rapidly out from between the lines of stationary cars eastward into the path of the defendant's car, and I find that she was actually struck by the defendant's car, as the defendant said she was, at a point which was slightly to the right of the centre of the front grill and bumper, and well within the passing lane, and not as described by Mrs. Gordon and Mrs. Guenette (witnesses for the plaintiff) some three feet from the easterly curb.

(ii) As to the appellant's actions immediately before the accident—

Pauline had been warned by her mother as I find about the dangers of traffic, she had been taught about them 'and that fatal exchange of smiles with Miss Lauzon no doubt drove her habitual lessons on the subject from her mind; but there is no doubt in my mind that taking into account what a bright well-taught child might be expected to do, there was negligence on her part.

In this regard, I think it significant also that the child had only recently arrived in this country from Scotland and although she had been taught to take precautions before crossing the street, her lessons had been directed to a system of traffic whereby vehicles travel on the left rather than the right side of the road.

(iii) As to the respondent's reactions immediately before the accident—

Now I think there is no doubt that when she did see the infant plaintiff she reacted as quickly as she could. She put on her brakes at once: the evidence is all to that effect, but she said in evidence somewhat defensively, I thought, that she was going twenty-five miles an hour, and why should she not because the speed limit was thirty miles an hour.

(iv) As to the time when the child was first visible to the respondent—

I do not say that she could have seen the infant plaintiff where she was between the cars, but if she had been driving more slowly and had been more alert, she might have avoided hitting her. As it was she brought her car to a full stop only a few feet beyond the point of impact. Had she been proceeding more slowly, and more carefully she might have brought it to stop without any impact having occurred.

The Court of Appeal treated the last-quoted passage as representing a finding of fact that the defendant could not have seen the infant where she was between the cars, and although it was strongly contended on behalf of the appellant that the reference made by Mr. Justice Hughes did not amount to such a finding, he certainly made no finding to the contrary and in any event, the members of the Court of Appeal were, in my view, undoubtedly entitled to subscribe to the inference which they attributed to him and with which I agree, that the child was not visible to the respondent until she emerged from between the cars.

I am further of opinion that the evidence as a whole supports the conclusion that when the infant appellant moved “rapidly out from between the line of stationary cars eastward into the path of the defendant’s car” she would not have been visible to a driver approaching from the south and keeping a reasonably alert look-out until she suddenly presented herself in the eastern traffic lane which she did immediately after passing Miss Lauzon’s car.

Before discussing the reasons for judgment of the Court of Appeal, I think it should be stressed that the learned trial judge’s finding as to conflicting testimony are all favourable to the respondent and no question turns on credibility of the witnesses nor is there any challenge of the learned and experienced trial judge’s conduct of the trial and assessment of the witnesses. This case is accordingly one which turns upon inferences to be drawn from the evidence which was accepted at trial and in my view is to be considered in light of the caution expressed by Taschereau J. in *Demers v. Montreal Steam Laundry Co.*[1], at pp. 538-9 which appears to me to be applicable to these circumstances. The learned judge there said:

...it is settled law upon which we have often acted here, that where a judgment upon facts has been rendered by a court of first instance, and a first court of appeal has reversed that judgment, a second court of appeal should interfere with the judgment on the first appeal, only if clearly satisfied that it is erroneous: *Symington v. Symington*, L.R. 2 H.L. Sc.415.

This statement has been expressly approved in recent cases in this Court. See *Dorval v. Bouvier*[2] and per Pigeon J. in *Maryland Casualty Co. v. Roland Roy Fourrures Inc.* which has not yet been reported.

This case, of course, falls to be considered in light of the provisions of s. 106(1) (now s. 133(1)) of The Highway Traffic Act of Ontario which provides:

When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver. In commenting on this section, the learned trial judge said:

The standard of proof, of course, is no higher than it is in any civil matter. I must be satisfied on a basis of preponderance of credible evidence that the defendant was not negligent.

In the present case, as I have indicated, the learned trial judge, having found that there was negligence on the part of the child, divided the fault and in so doing attributed negligence to the respondent on four counts, the first of which was that her vision was limited by the fact that she

was not wearing glasses which had been recently prescribed for her. In my view, however, this finding loses its force when considered in conjunction with the finding that the respondent reacted as quickly as she could, put on her brakes at once and brought her car to a full stop only a few feet beyond the point of impact. The further conclusion, to which I have subscribed, that the child would not have been seen by a driver keeping a reasonable look-out until it came past Miss Lauzon's car is, in my view, quite inconsistent with the finding that failure of the respondent to wear her glasses was a factor causative of the accident.

The second ground of negligence found by the learned trial judge was that the respondent failed to keep a wary eye to her left, but as I have indicated, I do not think that a reasonable look-out would have disclosed the presence of the child until it came out from between the cars.

Thirdly, the learned trial judge found that the respondent was travelling at too high a rate of speed under the circumstances and in this regard I agree with the following finding of the Court of Appeal:

...there was no evidence of children being about; it was not a school area; and the accident occurred in the middle of a block. Having these things in mind, we simply cannot see that the circumstances called for a speed of less than 25 miles an hour. To find so, in our view, would be unreasonable, particularly having regard to the fact that the speed limit allowed in that area was 30 miles an hour. Accordingly, we find that there was no requirement of a slower speed, and that the speed at which the defendant was operating her vehicle was not an effective cause of the accident. The child darted out, creating an emergency which resulted in the impact.

Finally, the learned trial judge found that the respondent was negligent in not driving her car more to the east than she did. Even if this finding be accepted, it does not appear to me to be one of negligence which was causative of the accident because the child was struck when she was approximately mid-way in the easterly lane and the point of impact was somewhat to the right of the centre of the front of the respondent's vehicle. If the respondent had been further to the eastward it would only have meant that the child would have been struck somewhat to the left of the centre of the front of her car.

The statutory onus created by such provisions as those in s. 106(1) of The Highway Traffic Act, *supra*, was fully discussed by Lord Wright in the well-known case of *Winnipeg Electric Co. v. Geel*[3], where he said:

No doubt the question of onus need not be considered if at the end of the case the tribunal can come to a clear conclusion one way or the other, but it must remain to the end the determining factor unless the issue of negligence is cleared up beyond doubt to the satisfaction of the jury.

Speaking of the onus of proof in another connection, Lord Dunedin observed, in the course of his reasons for judgment in *Robins v. National Trust Co.*[4], at p. 520:

But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no such conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to

a determinate conclusion, the onus has nothing to do with it, and need not be further considered. In the present case the trial tribunal came to clear conclusion that there was negligence on the part of the respondent driver and the Court of Appeal reached an equally clear conclusion that there was none, so that in my view the so question for determination in this appeal whether, on a consideration of the whole of the evidence, this Court is satisfied that there was no evidence of such negligence. I do not think that the “onus” plays any part in this process.

In view of all the above, it will be seen that I am in agreement with the reasons for judgment rendered by Chief Justice Gale on behalf of the Court of Appeal. The appeal is accordingly dismissed with costs.

The judgment of Spence and Laskin JJ. was delivered by

LASKIN J. (dissenting)—There are two points in this appeal by the appellant child against a judgment of the Ontario Court of Appeal which set aside a judgment of Hughes J. in her favour and dismissed her action for damages against the respondent. The first is whether the respondent, owner and driver of a motor vehicle, was under any liability to the child, who was just under seven years of age at the time, for injuries which she suffered in a street crossing accident. The second, which arises only if there is an affirmative answer on the first point is whether the young appellant was, as the trial judge found, guilty of contributory negligence.

The respondent's liability turns on whether the trial judge could properly find that she had not satisfied the statutory onus upon her of disproving negligence. The Ontario Court of Appeal nowhere in its reasons for judgment referred to the statutory onus save by way of a statement that “the learned trial judge found that there were four grounds of negligence which were not disproved by the defendant”. In opening its reasons and again in the course of them, the appellate Court proceeded on the basis that (to quote its words) “there was no negligence suggested by the evidence which would render the defendant liable”, and, further, “we cannot see that there was any negligence attributable to the defendant in her driving on the day in question which would render her liable to the plaintiff”.

This approach, clearly suggestive of an onus upon the plaintiff, was induced, it seems to me, by references by the trial judge in his reasons to certain acts and conduct of the respondent as indicating negligence. He did preface these references by an assertion that “on the whole I have to say that the onus has not been satisfied”. What he then referred to as indicators of negligence ought to have been characterized as mere findings of fact (which they were) to support his conclusion on onus. Thus, he found that the respondent, having defective vision (both myopia and astigmatism), had failed to wear her prescription glasses. He found that there was a heavy concentration of south-bound traffic on the respondent's left in the vicinity of the accident, resulting from the picking up of employees who had finished their day's work in the Bell Telephone building on the west side of the street on which the respondent was travelling north. The child who was injured had attempted to cross to the east side of the street from her home on the west side, passing between parked cars on that side and between south-bound cars lined up at an adverse traffic light. The trial judge also found that the respondent was driving at 25 miles

per hour in a drizzle on a wet road surface during the evening rush hour, and that because of the overcast sky it was darker than usual although it was 5.30 p.m. or 5.45 p.m. on June 21, the longest day of the year. Again, he found that the child was well within the lane in which the respondent was travelling when she was struck, and that it was that part of the car to the right of the centre of the front grill which actually struck her.

In the respondent's favour were findings that the child had moved rapidly ("darted" according to the evidence) from between the lined-up cars into the path of the respondent's car, failing to look to her right, and that the respondent reacted quickly when she saw the plaintiff, putting on her brakes at once and stopping a few feet beyond the point of impact.

The real difficulty in this case, in respect of the applicable law, arose from the trial judge's further observations on what the respondent should have done. The Court of Appeal treated these observations of the trial judge as setting out grounds of negligence which, if not proved, exonerated the respondent. The trial judge said that (1) the defendant should have given more attention to her left; (2) she should have been driving more slowly; and (3) she should have been more to the east on the north-bound lane. In finding no merit in these assertions and in also rejecting the respondent's failure to wear her glasses as an effective cause of the accident, the Court of Appeal proceeded from a base of support in an alleged finding of the trial judge that "[the respondent] could not have seen [the child] before [she emerged from the line of south-bound cars]". In effect, this alleged finding concluded the case for the Court of Appeal.

So to construe what the trial judge said is to detach a few words from a context which points to a different conclusion. The three grounds of negligence which I have set out, and which the Court of Appeal rejected, are consistent only with the premise that the respondent failed to show that she could not have seen the child in time to avoid the accident. The findings of fact, referred to earlier, make this clear. What the trial judge actually said on the point was said after a consideration of the judgment of this Court in *Bédard et al. v. Gauthier*[5], a case in which a five-year-old boy had darted from behind a van and into the path of a taxicab being driven at 10 to 12 miles per hour. This Court imposed liability, holding, *inter alia*, that the driver ought to have looked to his left. The trial judge in the present case prefaced his reference to *Bédard v. Gauthier* with the statement that "under certain traffic conditions at rush hour, with people debouching from buildings the speed limit [which was 30 miles per hour] is not suitable as was pointed out... in the case of *Bédard v. Gauthier*..." He followed his consideration of *Bédard v. Gauthier* with these words:

I think that the defendant in this case also had a duty to keep a wary eye to her left and that she did not. I do not say that she could have seen the infant plaintiff where she was between the cars but if she had been driving more slowly and had been more alert she might have avoided hitting her.

This portion of the reasons does not stand alone but rather is a segment tying in with earlier statements which make clear, in my opinion, that the trial judge had in mind the statutory onus.

Properly understood in the light of what the trial judge said earlier in his reasons (and I shall come to that shortly), his statement that “I do not say that she [the respondent] could have seen the infant plaintiff where she was between the cars” means simply that the respondent had the onus of disproving this. It cannot be turned into an affirmative finding, as the Court of Appeal said, that “she could not have seen her before”. The trial judge was careful not to add “I do not say she could not have seen her” because that was for the respondent to establish and the trial judge’s findings are against such a conclusion.

I list five observations in the trial judge’s reasons preceding the contested passage to show the context in which he used the misunderstood words: (1) the failure to wear glasses which might have enabled the respondent to see the child before she did; (2) this might have enabled her to evaluate the movement made by the child; (3) the respondent should have been watchful for what actually happened; (4) she should have given more attention to her left; (5) “when she did see the infant plaintiff she reacted as quickly as she could” (the italicizing is mine).

In short, the trial judge had listed various circumstances which invited a response from the defendant (not proof of negligence from the plaintiff) to discharge the statutory burden on her. What the trial judge regarded as supporting his conclusion on onus, the Court of Appeal appeared to regard as independent and exclusive grounds of liability, but based on an alleged finding that was not in fact made in view of the statutory onus resting on the respondent. True enough, the statutory onus will yield to dissipating evidence, but it must be evidence that goes beyond neutralization of the situation and be affirmatively exonerating on a balance of probabilities. In the present case, it would not be obliging the respondent to negative remote possibilities to require her to show that she could not reasonably have seen the infant plaintiff earlier; or, that she could not have avoided hitting her if she had seen her earlier. The trial judge’s findings indicate that the respondent failed in these matters, and hence she was held liable. The central issue for the trial judge was not, as the Court of Appeal said, whether there was negligence “which would render the defendant liable” (to quote its words), but rather whether the defendant could show affirmatively that she was not negligent. I would, accordingly, allow the appeal on the first of the two points that are before this Court. On the second point, relating to the contributory negligence of the child, I do not think that the issue raised by counsel for the appellant, namely, that a subjective approach should be taken, arises in this case. The trial judge assessed the matter from the standpoint of the child’s qualities in concluding that negligence could be attributed to her. I would not disturb this determination.

In the result, the appeal should be allowed, the judgment of the Court of Appeal set aside and the order of the trial judge restored. The appellant should have her costs in this Court and in the Court of Appeal.

PIGEON J.—I have had the advantage of reading the reasons for judgment of my brothers Ritchie and Laskin and will not repeat the facts which they have stated.

The question in this Court is undoubtedly whether the Court of Appeal was justified in interfering with the conclusion of the trial judge that the defendant motorist, the respondent in this Court, had failed to prove that the accident was in no way attributable to negligence or improper conduct. Many objections have been taken to the manner in which the Court of Appeal dealt with the findings and the inferences to be made therefrom. Under the circumstances, I find it preferable to go back to the judgment at trial and consider whether the reasons for the above-mentioned conclusion are valid on the basis of the findings of fact. As stated by my brother Ritchie, the trial judge gave four reasons for which, in his view, the defendant had failed to prove that she had not been negligent. The first reason was that she was not wearing glasses which had been recently prescribed for her. In my view, any causal connection with the accident was effectively disproved when the trial judge found that “when she did see the infant plaintiff she reacted as quickly as she could”, and added “I do not say that she could have seen the infant plaintiff where she was between the cars, but if she had been driving more slowly and had been more alert, she might have avoided hitting her”.

That the accident could have been avoided if the motorist had been driving more slowly (the second reason) can be said in practically every case where a pedestrian is hit. By itself, this is not enough for saying that the driver of a car has failed to disprove negligence. There must be something to make it possible to consider his speed as improper conduct. Here, the accident occurred at the rush hour on a busy street leading to the Windsor-Detroit tunnel. Respondent was not entitled to disregard s.85 of The Highway Traffic Act, R.S.O. 1970, c. 202:

85. No motor vehicle shall be driven on a highway at such a slow rate of speed as to impede or block the normal and reasonable movement of traffic thereon except when such slow rate of speed is necessary for safe operation having regard to all the circumstances.

In the circumstances, the defendant could not properly have driven much more slowly than her admitted speed of 20-25 miles per hour unless there was a special need for her to reduce her speed.

The trial judge referred to the judgment of this Court in *Bédard et al. v. Gauthier*[6]. However, it should be noted that this was in a school zone, with children playing in the street as well as on the sidewalks. They were quite visible if the defendant had looked, which he admitted he did not. It is under those circumstances that it was held that he should have anticipated the possibility, when passing a parked truck, that children might dart across the street. However, in *Freedman v. City of Côte St. Luc*[7], the majority in this Court held that the Court of Appeal had correctly refused to apply the same requirement in ordinary circumstances. The victim in that case was also a six-year-old child and Abbott J. made the following observations (at p. 219):

In reaching the conclusion which he did, the trial judge also appears to have relied, to some extent, upon the judgment of this Court in *Bédard v. Gauthier* but, with respect, that case is clearly distinguishable on the facts. In *Bédard*, the driver of the car was proceeding along a one-way street in a school zone at a time when children had just been released from school. A five-year-old child, who had been playing on the sidewalk with other children, in the immediate

vicinity of a parked truck, ran out suddenly from in front of the said truck and was struck and injured. The driver admitted that he knew that it was a school zone and that he had not looked for children on the sidewalk who might be playing there. In these circumstances, it was held that he had failed to discharge the statutory onus. In the present case, the accident did not happen in a school zone but on a two-way through street. There was no evidence of children other than the victim, playing in the vicinity, the driver did look to his right on approaching the intersection and, as I have said, had his car under such control that he was able to stop after the accident before he had completely crossed that intersection.

It does not appear to me that in the present case it is really of any importance whether the respondent could have seen the child when she was stopped in front of Miss Lauzon's car behind the other cars stopped by the traffic light. Even if she had seen her standing there, it does not appear to me that she ought to have anticipated that she might suddenly dart across the other lane without looking for cars coming on the right. When she did that, respondent was only two car lengths away. This was clearly an insufficient distance for stopping a car going at 25 miles an hour. This disposes of the third reason.

As to the fourth reason that respondent was not driving as close to the east side of the street as possible, I fail to see how this can be considered as a negligence which she failed to disprove. On what basis could it be said that she was under a duty to so drive? The width of the street was 32 feet. There was a line of parked cars on the west side and this left just the space for two standard twelve-foot lanes for the traffic, one in each direction. There was, in my view, nothing improper for the respondent to be driving closer to the centre of the street than to the east side curb.

I would therefore dismiss the appeal with costs.

Appeal dismissed with costs, SPENCE and LASKIN JJ. dissenting.

Solicitors for the plaintiff, appellant: Ricketts, Farley, Lowndes & Jewell, Toronto.

Solicitors for the defendant, respondent: Bartlet & Richardes, Windsor.

[1] (1897), 27 S.C.R. 537.

[2] [1968] S.C.R. 288.

[3] [1932] A.C. 690.

[4] [1927] A.C. 515.

[5] [1958] S.C.R. 92.

[6] [1958] S.C.R. 92.

[7] [1972] S.C.R. 216.

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Prepared on 29 October 2026 · Esheria