

CANADA / JUDGMENT

Hill v. R.

[1975] 2 SCR 402

COURT

Supreme Court of Canada

DECIDED

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Hill v. R.

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Supreme Court Judgments

Date

1973-12-21

Report

[1975] 2 SCR 402

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Laskin, Bora

On appeal from

Ontario

Subjects

Motor vehicles

Decision Content

Supreme Court of Canada

Hill v. R., [1975] 2 S.C.R. 402

Date: 1973-12-21

Barbara Owen Hill (Plaintiff) Appellant;

and

Her Majesty The Queen (Defendant) Respondent.

1973: October 23, 24; 1973: December 21.

Present: Fauteux C.J. and Abbott, Martland, Judson, Ritchie, Spence, Pigeon, Dickson and Laskin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Motor Vehicles—Accident—Failure to remain at the scene of accident—Touching of vehicles—Whether knowledge of damage or injury relevant—The Highway Traffic Act, R.S.O. 1970, c. 202, s. 140(1)(a).

Appellant was driving behind a taxicab which stopped for a red light. On the light turning green the taxicab began to make a right turn but stopped suddenly in order to avoid a pedestrian in a crosswalk and the appellant's vehicle then touched the rear of the taxicab. There was a pause of two or three seconds and then the taxicab driver pulled over to the right of the street, which curved, and out of sight of appellant who, believing that no damage had occurred as a result of the touching, continued to drive to her home. It was subsequently shown that there was a dent in the rear bumper of the taxicab and a value of \$60 was placed on this damage. The convicting Justice found that in order to convict it was not necessary for the appellant to have had knowledge that damage occurred as a result of the touching of the two vehicles.

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

Per Fauteux C.J. and Abbott, Martland, Judson, Ritchie, Pigeon and Dickson JJ.: The departure of the taxi driver from the immediate scene does not exculpate the appellant. Further the offence of failing to remain at the scene of an accident contrary to s. 140(1)(a) of The Highway Traffic Act, R.S.O. 1970, c. 202, does not involve mens rea since it is not a crime in the real sense but is, rather, part of a comprehensive code for the regulation and control of traffic on the highways enacted in the interest of public safety.

Per Spence and Laskin JJ., dissenting: The appellant was charged with a breach of a section which only operates “when an accident occurs” and the Crown had failed to prove that an accident had occurred. The word “accident” appearing as it does in The Highway Traffic Act, R.S.O. 1970, c. 202, Part XIII should be construed to mean a chance occurrence resulting in loss, injury and damages... It may be said that the appellant could not have determined whether damage were caused unless she remained at the scene. The taxi driver first drove around the corner out of sight of the appellant and therefore it was he and not the appellant who failed to remain...but since there was no proof of damage there was no accident despite the contact.

[Fenton v. Thorley & Co. Limited, [1903] A.C. 443; R. v. Morris, (1971), 56 Cr. App. R. 175; R. v. King, [1962] S.C.R. 746; Beaver v. The Queen, [1957] S.C.R. 531; R. v. Pierce Fisheries Ltd., [1971] S.C.R. 5; Stephens v. The Queen, [1960] S.C.R. 823; Sherras v. De Rutzen, [1895] 1 Q.B. 918 referred to].

APPEAL from a judgment of the Court of Appeal for Ontario, affirming without reasons the judgment of Osler J.[1] dismissing an appeal by way of stated case from a conviction of failing to remain at the scene of an accident contrary to s. 140(1)(a) of The Highway Traffic Act, R.S.O. 1970, c. 202. Appeal dismissed, Spence and Laskin JJ. dissenting.

E.L. Greenspan, for the appellant.

C. Scullion, for the respondent.

The judgment of Fauteux C.J. and Abbott, Martland, Judson, Ritchie, Pigeon and Dickson JJ. was delivered by

DICKSON J.—The appellant, Mrs. Barbara Owen Hill, was convicted at the City of Toronto by W.P. Patterson, a Justice of the Peace, on the charge:

That Barbara Owen Hill, on the 17th day of May, 1971 at the Municipality of Metropolitan Toronto, unlawfully did, an accident having occurred on a highway, to wit on St. Clair Avenue at Avoca Street, at 3:49 p.m., while in charge of a vehicle licence no. 102535, which was directly or indirectly involved in the said accident, fail to remain at or immediately return to the scene of the accident, contrary to Section 143A, S.S. 1, “A” of the Highway Traffic Act. Thereafter, pursuant to The Summary Convictions Act, R.S.O. 1970, c. 450, Mrs. Hill applied to the Justice of the Peace to state and sign a case for the opinion of the Supreme Court of Ontario.

The facts, as found by the convicting justice, and narrated in the case stated, are:

- (1) On the 17th day of May, 1971, the appellant was travelling along St. Clair Avenue East in the Municipality of Metropolitan Toronto, returning to her home from a French lesson.
- (2) A taxicab being driven directly in front of the appellant by one Sidney Bernstein stopped for a red light at Avoca Street. When the light turned green the taxicab began to make a right turn on to Avoca Street but stopped suddenly in order to avoid a pedestrian in a crosswalk. The vehicle driven by the appellant directly behind the taxicab then touched the rear of the taxicab.
- (3) After the touching of the two vehicles, there was a pause of two or three seconds. The taxicab driver did not leave his car but drove forward and pulled over to the right of Avoca Street. At this point, Avoca Street was a curving street and the taxicab drove out of the sight of the appellant.
- (4) The appellant, believing that no damage had occurred as a result of the touching of the two vehicles continued to drive to her home.
- (5) It was subsequently shown that there was a dent in the rear bumper of the taxicab, and a value of \$60.00 was placed on this damage.
- (6) There was no damage, whatsoever, to the bumper or the vehicle of the appellant.

- (7) A police constable of 20 years traffic experience examined the appellant's car and could find no damage to, or mark upon, the vehicle driven by the appellant.
- (8) The police constable further stated that in his experience, if there had been a touching of the two vehicles producing damage of the type found upon the taxicab, there would in all probability have been a mark on the front portion of the car driven by the appellant.
- (9) The appellant knew that there had been a touching of, but did not believe that there had been any damage caused to the taxicab.
- (10) The appellant had nothing to drink on the day in question and was insured at the time for public liability and property damage in the amount of one million dollars.
- (11) I found that in order to convict the appellant upon the charge aforesaid, it was not necessary for the appellant to have had knowledge that damage had occurred as a result of the touching of the automobile driven by her and the taxicab.
- (12) Accordingly, I convicted the appellant upon the charge aforesaid.

The point of law upon which the conviction was questioned was:

Did I err in law in holding that as a matter of law, in order to support a conviction upon the charge aforesaid, there was no need for the appellant to have had knowledge that there had been damage caused as a result of the coming into contact of the vehicle of the appellant with another vehicle.

The appeal came before Osler J. who answered the question in the negative, stating:

... I am of the view that under the Section of the Act being considered, an "accident" has occurred the moment two vehicles, a vehicle and a pedestrian, or a vehicle and any object come into contact accidentally and that even without damage, the obligation to remain is immediately imposed by the Section.

An appeal from the judgment of Osler J. was dismissed by the Court of Appeal of Ontario without written reasons and, by leave, an appeal has now been taken to this Court.

Section 140(1)(a) (formerly s. 143A(1)(a) of The Highway Traffic Act of Ontario, R.S.O. 1970, c. 202, provides that "Where an accident occurs on a highway, every person in charge of a vehicle or car of an electric railway that is directly or indirectly involved in the accident shall (a) remain at or immediately return to the scene of the accident;..." The word "accident" is not defined in The Highway Traffic Act and is not easy of definition as its meaning has a certain chameleon-like quality, changing its colour with the context in which it is found. It may mean simply any chance mishap or unforeseen contingency or occurrence; it may mean something more. Counsel for Mrs. Hill maintained that for the purpose of The Highway Traffic Act an "accident" consists of two elements, "chance occurrence" and "resulting loss, injury or damage". Counsel cited *Fenton v. Thorley & Co. Limited*[2], "any unintended or unexpected occurrence which produces hurt or loss" and *Regina v. Morris*[3] at p. 178, "an unintended occurrence which has an adverse physical

result". The other view which is open is that expressed by Osler J. that an "accident" occurs the moment two vehicles come into contact accidentally and even without damage. I do not think it necessary at this time to decide whether the view held by Osler J. is the correct one for, on the facts of this case, as I understand them, the mishap which befell Mrs. Hill was productive of damage. Before Osler J. and before the Court of Appeal of Ontario the argument proceeded on the footing that there had been damage but lack of knowledge of that damage on the part of the appellant. A question raised for the first time in this Court by a member of the Court was whether the statement of facts found by the convicting justice could properly be said to comprehend a finding that Mrs. Hill was accountable for the damage to the taxicab. With due respect, I find it difficult to read the stated case, in particular the sequence of events recited in paras. 2 to 5 and para. 11, and reach any conclusion other than that the justice found the dent in the rear bumper of Mr. Bernstein's taxicab to have been caused by Mrs. Hill. Otherwise, why mention the dent? Is the appellate court to speculate, without benefit of transcript or argument, whether the damage was caused by Mrs. Hill or by some other person at some other time and place? Support for the conclusion that the justice found Mrs. Hill responsible for the damage is to be found, I believe, in the wording drafted by Mrs. Hill's solicitor, of the question of law on which the conviction was challenged. There was no reason to frame the question in terms of "damage caused as a result of the coming into contact of the vehicle of the appellant with another vehicle" unless the evidence established beyond reasonable doubt that Mrs. Hill caused damage. I have concluded that the case against Mrs. Hill includes damage and hence, there was an "accident", on any definition of the word, within the meaning of s. 140(1)(a).

I would turn now to the main thrust of the argument which was to this effect, that in the absence on the part of Mrs. Hill of knowledge of damage or injury, there was no knowledge that an accident had occurred and, therefore, her failure to remain at the scene was not a voluntary act to constitute the actus reus of the offence charged. Counsel referred to the decision of this Court in *Regina v. King*[4]. In that case the accused King, in a confused state following injection of the drug sodium pentothal by his dentist, drove his car into the rear of a parked vehicle. Taschereau J. (as he then was) said, at p. 749 of the report:

It is my view there can be no "actus reus" unless it is the result of a willing mind at liberty to make a definite choice or decision, or in other words, there must be a willpower to do an act whether the accused knew or not that it was prohibited by law.

The factual footing in *King* bears no resemblance to that in the case at bar. In *King*, the mind of the accused, through no fault of his, was unable to appreciate that he was or might become impaired. He lacked the capacity to appreciate what was occurring. That is not the present case. The mind of the appellant was in no way impaired. Nor was she without knowledge. She knew that the car she was driving had "touched" the car ahead. The only fact of which she was ignorant was the extent of the damage and she had means of readily informing herself of this through inquiry of the taxi driver or examination of the rear of the taxi. Ignorance in this case affords no greater defence than in the case of a driver who unwittingly exceeds the speed limit or inadvertently goes through a red light. The taxicab driver, who "drove forward and pulled over to

the right on Avoca Street”, was acting in consonance with s. 116(10) of The Highway Traffic Act which requires that “...no person shall park or stand a vehicle on a highway in such manner as to interfere with the movement of traffic” and his departure from the immediate scene of the accident does not exculpate Mrs. Hill.

The alternative argument was advanced that the offence requires mens rea and that Mrs. Hill, on reasonable grounds, thought she had not caused damage to the vehicle ahead; that is to say, she had an honest belief in a state of facts which, if they had really existed, would have made her act in leaving the scene non-culpable. *Beaver v. The Queen*[5] was cited. In my opinion this case is not governed by Beaver's case but by the decision of this Court in *The Queen v. Pierce Fisheries Limited*[6], in which Ritchie J. said, p. 13:

Generally speaking, there is a presumption at common law that mens rea is an essential ingredient of all cases that are criminal in the true sense, but a consideration of a considerable body of case law on the subject satisfies me that there is a wide category of offences created by statutes enacted for the regulation of individual conduct in the interests of health, convenience, safety and the general welfare of the public which are not subject to any such presumption. Whether the presumption arises in the latter type of cases is dependent upon the words of the statute creating the offence and the subjectmatter with which it deals.

The question is whether the offence created by s. 140(1)(a) of The Highway Traffic Act is a crime in the “true sense” and the answer must be that it is not. Although the act constituting the offence is proscribed under the sanction of a penalty, it is not a criminal act—*Stephens v. The Queen*[7]. It is, rather, part of a comprehensive code for the regulation and control of traffic on highways, enacted provincially in the interests of public safety. Section 140(1)(a) falls within one of the exceptions referred to by Wright J. in *Sherras v. De Rutzen*[8], approved in the *Pierce Fisheries* case, to the general rule that mens rea is an essential ingredient of a statutory offence. The exception embraces “acts which...are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty.” If mens rea is not essential, then whatever Mrs. Hill believed or did not believe is irrelevant. There was an accident on a highway in which she was directly involved; she failed to remain at or return immediately to the scene and was, therefore, properly convicted.

I would dismiss the appeal.

The judgment of Spence and Laskin JJ. was delivered by

SPENCE J. (dissenting)—I have had the opportunity of reading the reasons prepared by my brother Dickson. If I had the same understanding of the stated case submitted to the Supreme Court of Ontario by the Justice of the Peace who had registered the conviction, I would have agreed that when an accident occurred involving the appellant directly or indirectly and the appellant knew of the occurrence of that accident then, whether or not she was aware that damage had resulted, s. 143A(1) of The Highway Traffic Act (now s. 140(1) of R.S.O. 1970, c. 202) required her to remain at or immediately return to the scene of the accident. Failing such a

course, the appellant should have been convicted. This concurrence is based on the circumstance of the present case, i.e., that the appellant knew contact had occurred. Had she not been aware of such contact then I am of the view that no interpretation of the section could have cast upon her the duty of remaining or returning.

My difficulty is that the section only operates “where an accident occurs”. It is my brother Dickson's opinion that the Justice of the Peace found that there was not only contact between the taxicab and the vehicle driven by the appellant but that the rear bumper of the taxicab had been damaged to the extent of \$60 by such contact. On the other hand, as I read the stated case, which is quoted in full in the reasons of my brother Dickson, I can come to no such conclusion. The Justice of the Peace recites the contact in para. (2) then in paras. (5), (6), (7) and (8) recites the evidence of the discovery of damage to the taxicab with no mark whatsoever appearing on the appellant's vehicle and the evidence of the experienced police constable that in all probability had the taxicab sustained such damage in this contact the appellant's car would also have been marked. The Justice of the Peace made no express finding that, despite the opinion of the constable, such damage had been caused in this accident. In my view, he deliberately refrained from making such finding. Had he so intended, it would have been natural to do so in a paragraph immediately following para. (8). Rather, I am strongly of the opinion that the Justice of the Peace determined he should convict upon proof of the contact between the two vehicles, which was known to the appellant, regardless of whether damage had resulted not merely regardless of whether the appellant knew that such damage had resulted. It is evident that Osler J., upon the appeal by way of stated case, considered that such was the situation before him. After disposing of what he regarded as the main argument of the appellant's appeal as the necessity for an “actus reus”, he continued:

Despite the interesting opinion of Widdifield, County Court Judge, in *Robertson v. McAllister*, (1912) 19 C.C.C. 441, which appears to hold to the contrary, I am of the view that under the Section of the Act being considered, an “accident” has occurred the moment two vehicles, a vehicle and a pedestrian, or a vehicle and any object come into contact accidentally and that even without damage, the obligation to remain is immediately imposed by the Section.

Osler J., therefore, was in exact accord with the view of the law upon which I believe the Justice of the Peace registered a conviction and dismissed the appeal. The Court of Appeal confirmed that disposition. With respect, I am of the opinion that all courts below were in error because the appellant was charged with a breach of a section which only operated “where an accident occurs” and the Crown had failed to prove that an accident had occurred. In my respectful opinion, the word “accident” appearing as it does in a section forming part of Part XIII of The Highway Traffic Act of Ontario which deals with “Records and Reporting of Accidents” should be construed to mean a chance occurrence resulting in loss, injury or damages. As Osler J. points out, *Widdifield, Co. Ct. J.*, came to that opinion in *Robertson v. McAllister*[9], as early as 1912, in considering an appeal from a similar section which commenced with the words “If an accident occurs”. At p. 442, the learned County Court Judge said:

I assume that if the motor had merely touched the buggy in passing that would not be an “accident” within the meaning of the Act, because the Act contemplates that some one has sustained “loss or injury”. Section 140(1) makes the same reference to persons sustaining loss or injury.

In *Fenton v. Thorley & Co. Ltd.*[10], Lord Lindley, at p. 453, expressed a similar view in these words:

Speaking generally,..., but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss.

(The italics are my own.)

In *Regina v. Morris*[11], the Court of Appeal (Criminal Division) considered a section which commenced with the words “if an accident occurs owing to the presence of a motor vehicle”. Widgery L.C.J., at p. 178, cited Lord Lindley's definition, *supra*, and continued:

Sachs L.J. in the course of the argument supplied an alternative, with which the other members of the Court agree, in which he suggested that “accident” in the present context means an unintended occurrence which has an adverse physical result.

Again, the element of damage is included.

I am moved by the consideration of the enormous inconvenience which would result from Osler J.'s interpretation to believe that the legislature could not mean to have so enacted. In any large city, there are each day innumerable instances of bumpers touching in parking at the curb, in parking lots and elsewhere. In these cases, the driver of the other car is not in the vehicle and probably could not be found. Surely, the section is designed to penalize an attempt to escape civil liability for damage caused, not to needlessly impede the proper movement of traffic. It may be said that the appellant could not have determined whether damage were caused unless she had remained at the scene. It may be noted in passing that the taxi driver, as recited in para. (3) of the Stated Case, first drove around the corner out of sight of the appellant and therefore it was he and not the appellant who failed to remain. Be that as it may, and perhaps the appellant was lucky, but since there was no proof of damage there was no accident despite the contact and the appellant committed no breach of the section.

I would allow the appeal.

Appeal dismissed, SPENCE and LASKIN JJ. dissenting.

Solicitors for the appellant: Pomerant, Pomerant & Greenspan, Toronto.

Solicitor for the respondent: C. Scullion, Toronto.

[1] [1972] 2 O.R. 402.

[2] [1903] A.C. 443.

[3] (1971), 56 Cr. App. R. 175.

[4] [1962] S.C.R. 746.

[5] [1957] S.C.R. 531.

[6] [1971] S.C.R. 5.

[7] [1960] S.C.R. 823.

[8] [1895] 1 Q.B. 918.

[9] (1912), 19 C.C.C. 441.

[10] [1903] A.C. 443.

[11] (1971), 56 Cr. App. R. 175.

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