

CANADA / JUDGMENT

Wellesley Hospital v. Lawson

[1978] 1 SCR 893

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Supreme Court of Canada

DECIDED

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Wellesley Hospital v. Lawson

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Report

[1978] 1 SCR 893

Judges

Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Ontario

Subjects

Statutes

Decision Content

Supreme Court of Canada

Wellesley Hospital v. Lawson, [1978] 1 S.C.R. 893

Date: 1977-04-29

Wellesley Hospital (Plaintiff) Appellant;

and

Gertrude Ivy Lawson (Defendant) Respondent.

1977: March 23, 24; 1977: April 29.

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Statutes—Torts—Mental incompetents—Injuries inflicted by psychiatric patient on non-psychiatric patient—Claim by victim against hospital—Inapplicability of statutory bar—The Mental Health Act, R.S.O. 1970, c. 269, ss. 1(k), 59.

Respondent plaintiff, a non-psychiatric patient in the appellant hospital, suffered personal injuries through an unprovoked attack upon her by a psychiatric patient. In her action for damages against the hospital, the plaintiff alleged breach of contract to provide care and protection to her and, alternatively, negligence of the hospital in permitting a mentally-ill patient, with known propensities to violence, to be at large in the hospital premises without adequate control or supervision of his movements. As well as being a public hospital, the hospital was a “psychiatric facility” under s. 1(k) of The Mental Health Act, s. 59 of which provides that “No action lies against any psychiatric facility or any officer, employee or servant thereof for a tort of any patient” and the action was dismissed when this provision was invoked on a preliminary point of law. The Ontario Court of Appeal, by a majority, reversed and ordered that the action proceed to trial but on the basis that it could succeed only if the mentally-ill patient’s misconduct was not actionable towards him.

Held: The appeal should be dismissed.

Per Laskin C.J. and Judson, Spence, Dickson and de Grandpré JJ.: It was not doubted by counsel for the parties that at common law a hospital, especially one providing treatment for mentally-ill persons, would be under a common law liability if, by reason of its failure to provide adequate control and supervision, injury occurred to third persons by reason of a patient’s conduct. The language of s. 59 should not be interpreted as relieving a psychiatric facility of liability towards visitors, towards staff in certain circumstances or towards patients, for breach of its independent duty to keep under reasonable control patients, who the hospital knows or ought to know, have propensities to violent behaviour.

The question of the liability of a mentally disturbed patient for an assault should be reserved for a case calling for such decision.

Per Martland, Ritchie, Pigeon and Beetz JJ.: The enactment under consideration is concise and precise. It is in words having a definite legal meaning “Tort” is now used only in its well-known legal meaning of a wrongful act, for which an action lies, as distinguished from a contract. The word “for” coming after “no action lies” clearly refers to a cause of action. Nothing in the text suggests that the Legislature, in enacting it, was aiming at anything else than liability for a tort of a patient. There is no reason for extending the meaning of s. 59 to actions for the hospital’s own

negligence, or that of its servants, or for breach of contract. An additional reason in favour of literal construction is the presumption against any intention to relieve from liability for negligence including vicarious liability.

It should be stated expressly that s. 59 has no application to an action against a mental facility for its own negligence or that of its servants or for breach of contract.

[Buckley v. Smith Transport Ltd., [1946] O.R. 798; Grand Trunk Pacific Railway Co. et al. v. Dearborn (1919), 58 S.C.R. 315; The King v. Dubois et al., [1935] S.C.R. 378; City of Victoria v. Bishop of Vancouver Island, [1921] 2 A.C. 384; Batary v. Attorney General for Saskatchewan et al., [1965] S.C.R. 465; National Assistance Board v. Wilkinson, [1952] 2 Q.B. 648; Re Dillon et al., [1937] O.R. 114; Agnew-Surpass Shoe Stores Limited v. Cummer-Yonge Investments Ltd., [1976] 2 S.C.R. 221, referred to.]

APPEAL from a judgment of the Court of Appeal for Ontario^[1] reversing a judgment of Phelan Co.Ct.J. dismissing an action for personal injuries against appellant hospital. Appeal dismissed. J.C. Wilkins, for the appellant.

H.D. Stewart, Q.C., and Allan Linden, Q.C., for the respondent.

The judgment of Laskin C.J. and Judson, Spence, Dickson and de Grandpré JJ. was delivered by

THE CHIEF JUSTICE—This appeal arises out of an action brought against the appellant hospital by a non-psychiatric patient who suffered personal injuries when struck in the face and knocked to the floor in the hospital building by a blow delivered by a psychiatric patient, one Rupert Coxall. The attack upon the plaintiff was unprovoked and sudden, occurring when she was walking along a corridor of the building. The action against the hospital was founded on an alleged breach of contract to provide care and protection to the plaintiff and, alternatively, on the negligence of the hospital in permitting a mentally-ill patient, with known propensities to violence, to be at large in the hospital premises without adequate control or supervision of his movements.

The hospital invoked Rule 124 (Ont.) for determination of a preliminary point of law which was framed as follows:

That this action against the Defendant Wellesley Hospital is barred on the ground that the Plaintiff is prohibited from taking action against the Defendant Hospital by reason of the Defendant being a psychiatric facility as defined in the Mental Health Act, R.S.O. 1970, Sections 59 and 1(k), against which facility no action lies for tort of any patient and as provided under the Regulation Number 576 under the Mental Health Act wherein this Defendant is designated as a Psychiatric facility.

This point of law was determined in the hospital's favour by Phelan Co.Ct.J. who, consequently, dismissed the action. His judgment was reversed on appeal by a majority of the Ontario Court of Appeal (Arnup and Dubin JJ.A.), Jessup J.A. dissenting, and it was directed that the action proceed

to trial. I need hardly say that for the purpose of proceedings taken under Rule 124 (Ont.) the allegations of fact in the statement of claim must be taken as established. It is also convenient to note at this point that the appellant hospital is both a “psychiatric facility” under The Mental Health Act and a public hospital. Section 1(k) of the Act defines a “psychiatric facility” as a facility for the observation, care and treatment of persons suffering from mental disorder, and designated as such by the regulations.

Section 59 of the Mental Health Act reads as follows:

59. No action lies against any psychiatric facility or any officer, employee or servant thereof for a tort of any patient.

This provision comes directly from The Mental Health Act enacted by 1967 (Ont.), c. 51 but it can be traced back to The Mental Hospitals Act, 1935 (Ont.), c. 39, s. 11(3) where it was associated with provisions in s. 11(1), respecting certain actions requiring the consent of the Attorney-General, and in s. 11(2), imposing a time limitation respecting certain actions. In the present Mental Health Act, there is a differently formulated limitation provision which is s. 58, and the former s. 11(1) is not found in it at all.

No issue was raised in the statement of claim of any vicarious liability of the hospital by reason of any misconduct of a patient qua patient. (Whether there could be such liability at common law if the patient, as part of some therapy, was assigned to carry out certain services or functions for the hospital need not be considered.) The issue, at least as it was developed in this Court by counsel for the parties, turns on whether the effect of s. 59 is to relieve the hospital of liability for its own breach of duty, whether arising out of contract or in tort, which would otherwise be actionable at the suit of a third person injured by some conduct on the part of a patient of the hospital. It was not doubted by counsel for the parties that at common law a hospital, especially one providing treatment for mentally-ill persons, would be under a common law liability if by reason of its failure to provide adequate control and supervision injury occurred to third persons by reason of the conduct or behaviour of a patient. The trial judge rejected the primary contention of the injured plaintiff that it was irrelevant to her cause of action whether or not the patient Coxall committed a tort (in an actionable sense) or injured her by conduct which was not actionable against him because (as the plaintiff contended) her suit was against the hospital for an independent tort or cause of action against it. It was the trial judge’s view that this would render s. 59 nugatory. The Court of Appeal, by a majority, accepted an alternative submission of the plaintiff that the word “tort” in s. 59 must be taken in its legal connotation, with the result that if Coxall did not commit an actionable wrong against the plaintiff the hospital was not relieved of its liability for its own actionable breach of duty; it would, however, be so relieved, on the view of the majority, if Coxall’s misconduct was actionable so that the plaintiff would have his liability in such a case but not that of the hospital. On this alternative view, the plaintiff could not engage the liability of both the hospital and the patient.

This assessment of s. 59 emerges clearly in the principal judgment of the majority written by Dubin J.A., as follows:

...I am inclined to the view..., that what was intended by the Legislature was not merely to relieve a hospital of liability in those cases in which at common law there would be no liability, but to bar an action which may have previously been successfully brought against the hospital where, by reason of its own negligence or breach of duty, someone suffers injury by reason of a tort of a psychiatric patient. To hold otherwise would render s. 59 of little avail, if any, to the hospital under such circumstances and would thereby render it for all practical purposes nugatory. The result that I have arrived at would give the plaintiff a cause of action against her assailant if she suffered damages as a result of his tort and against the hospital if the act complained of did not constitute a tort...

Arnup J.A. in concurring reasons expressed the same opinion in these words:

During the argument I was much attracted by this submission, which, reduced to its simplest form, may be put thus: "This plaintiff is not suing the hospital for the tort of a patient. It is suing the hospital for its own tort. Alternatively it is suing the hospital for a breach of contract (the plaintiff herself having been a patient)". The submission then proceeds: if the plaintiff is not suing for the tort of a patient, s. 59 has no application, and the action should not have been dismissed.

I have the same problem as Dubin J.A. and Judge Phelan had in acceding to this argument. If this alternative cause of action is not barred, what kind of action does s. 59 bar? The legislature obviously intended to give psychiatric facilities and their staff protection against a cause of action for which they might be liable, not against alleged causes of action for which they were never liable at common law.

Assuming the patient Rupert [Coxall] was in law capable of committing the tort of assault, that tort is an essential part of the chain of events which is alleged to lead to liability on the part of the hospital. It does not matter whether the fault of the hospital is a breach of a duty to take reasonable care to protect the plaintiff against the risk of foreseeable harm at the hand of Rupert, or whether its fault is a breach of a contractual duty to do the same thing. In either event the hospital is being sued "for", i.e. "by reason of the tort of a patient, and the language of s. 59 covers the matter. No such action lies against the hospital.

Where the trial judge differed from the majority of the Court of Appeal was in the position he took that "tort" in s. 59 was not confined to an actionable wrong but could cover misconduct for which a patient would have been liable if he or she was not, by reason of mental disorder, excused from liability. In his dissent, Jessup J.A. agreed with this position.

Underlying the views of both the trial judge and of the Court of Appeal on the effect of s. 59 is the proposition that s. 59 must be taken to have effected some alteration in the common law or in the law as it stood beforehand; it could not be taken as a mere declaration against vicarious liability because that would accomplish nothing or (according to Dubin J.A.) substantially nothing. Hence, so the reasoning went, s. 59 must be taken to have curtailed, to some degree at least, the admittedly independent liability of the hospital at common law and thus it was necessary to consider the meaning to be assigned to the word "tort" in that provision.

I do not subscribe to this approach in the present case. A Legislature may very well be found to have enacted a declaratory provision *ex abundanti cautela*. The consequence of an interpretation, whether it be the all-out one of the trial judge or the halfway house of the majority of the Court of Appeal, that would relieve a psychiatric facility of any liability towards visitors, towards its staff in certain circumstances or towards other patients, for breach of its independent duty to supervise and keep under reasonable control patients who the hospital knows or ought to know have propensities to violent behaviour, affords good ground for doubting that the language of s. 59 can carry that result. The simple words of s. 59 cannot, in my opinion, be infused with such drastic meaning or be laid on a procrustean bed and stretched as far as the trial judge would go or even the lesser distance that the Court of Appeal would go. It is incongruous to me that a hospital's liability for breach of duty of control and supervision of its mentally-ill patients should depend on their degree of mental illness (as the Court of Appeal would have it) or be denied altogether whatever the degree of mental disorder (as the trial judge would have it).

I hold therefore that the plaintiff is entitled to succeed on its principal submission, and it becomes unnecessary to determine in what sense the word "tort" is meant or what level of voluntariness or appreciation must be involved before finding that a mentally disturbed patient can be liable for a battery or for an assault. Although counsel on both sides argued this point, and referred to various lines of authority here and in other common law jurisdictions, it is preferable to await a case in which it calls for decision, one in which there is an action against a mentally-ill person.

The appeal is dismissed with costs. The judgment of Martland, Ritchie, Pigeon and Beetz JJ. was delivered by

PIGEON J.—Section 59 of the Mental Health Act of Ontario (R.S.O. 1970, c. 269) reads:

59. No action lies against any psychiatric facility or any officer, employee or servant thereof for a tort of any patient.

Phelan, Co.Ct.J., held that the defendant hospital, the appellant in this Court, being a "psychiatric facility", this enactment barred an action against it for injuries caused by a patient although this action is founded not on the allegation of any tort committed by the patient, but of negligence of the hospital and of its servants. He said:

Having in mind the legislation in which Section 59 appears, namely, the Mental Health Act, and that the protection afforded by this section is to a psychiatric facility which has the care and treatment of persons suffering from mental disorders, that is, from diseases or disabilities of the mind, if the word "tort" in that section were given a restricted meaning, covering only those situations where liability would attach to the patient, if sued, we would have the anomalous result that a psychiatric facility would have the benefit of the section if the patient were capable of the intention to commit the tort, but not otherwise. Such an interpretation would surely defeat the very purpose and spirit of the section.

The true intent meaning and spirit of Section 59 in my view is that in those cases where a plaintiff's cause of action against the psychiatric facility results from some wrongful act on the part of a patient causing damage to another, even though the patient may not be legally liable for such act, the action against the facility is absolutely barred.

To reject this reasoning it might suffice to point out that there is no anomalous result if the enactment is read literally. Accepting, as the learned judge did, that there can be no vicarious liability for an injurious act of a mental incompetent (*Buckley v. Smith Transport Ltd.*[2]), the result of the enactment is simply that the facility is declared to be in the same situation whether or not the patient is mentally incompetent: it is not liable for the tort of a patient any more than for his injurious act that is not a tort. Of course, this is of no assistance to the hospital in the instant case. But s. 59 was, in fact, read by Phelan, Co.Ct.J., as if it provided that there would be no liability for damages caused by a patient rather than for a "tort" of any patient.

The Court of Appeal correctly disagreed with the interpretation of "tort" otherwise than in its well-known legal meaning, citing the Shorter Oxford Dictionary as terming the wider meaning "obsolete". However they went along with the view that if the act of the patient was a "tort", s. 59 barred any claim against the hospital even for its own negligence. Dubin J.A. said:

Although the proposition that under no circumstances could a hospital be held vicariously liable for the tort of a patient may be overstated, I am satisfied that as a general principle it is sound. I am inclined to the view, therefore, that what was intended by the Legislature was not merely to relieve a hospital of liability in those cases in which at common law there would be no liability, but to bar an action which may have previously been successfully brought against the hospital where, by reason of its own negligence or breach of duty, someone suffers injury by reason of a tort of a psychiatric patient. To hold otherwise would render s. 59 of little avail, if any, to the hospital under such circumstances and would thereby render it for all practical purposes nugatory.

Thus, under the judgment of the Court of Appeal, the result of s. 59 would be that the hospital would be free from liability for damages caused by a patient owing to its negligence if the patient was mentally competent, but not otherwise because then it would not be a "tort" of a patient.

I consider it desirable in the present case to elaborate on the reasons why such departure from the literal meaning of the enactment is to be rejected. In the first place, this ignores the most fundamental rule that the literal meaning should not be departed from except in the case of ambiguity or absurdity. The mere fact that the result appears anomalous is no justification for departing from the clear meaning. The reason is that what may appear anomalous or inconsistent to a particular judge may be precisely what was intended by the Legislature. In *Grand Trunk Pacific Railway Co. v. Dearborn*[3] Sir Louis Davies C.J. said (at pp. 320-321):

I cannot admit the right of the courts where the language of a statute is plain and unambiguous to practically amend such statute either by eliminating words or inserting limiting words unless the grammatical and ordinary sense of the words as enacted leads to some absurdity or some repugnance or inconsistency with the rest of the enactment...and in those cases only to the extent of avoiding that absurdity, repugnance and inconsistency.

In *The King v. Dubois*[4] Duff C.J. said (at p. 381):

The duty of the court in every case is loyally to endeavour to ascertain the intention of the legislature; and to ascertain that intention by reading and interpreting the language which the legislature itself has selected for the purpose of expressing it.

... To start with presumptions as to policy is, as Lord Haldane said in *Vacher & Sons Ltd. v. London Society of Compositors* ([1913] A.C. 107, at 113), to enter upon a labyrinth for the exploration of which the judge is provided with no clue.

Before him, Lord Atkinson had said in *City of Victoria v. Bishop of Vancouver Island*[5], at pp. 387-388:

In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In *Grey v. Pearson* (1857, 6 H.L.C. 61, 106) Lord Wensleydale said: "I have been long and deeply impressed with the wisdom of the rule, now I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further." Lord Blackburn quoted this passage with approval in *Caledonian Ry. Co. v. North British Ry. Co.* (1881, 6 App. Cas. 114, 131), as did also Jessel M.R. in *Ex parte Walton* (1881, 17 Ch. D. 746, 751).

The enactment under consideration is concise and precise. It is in words having a definite legal meaning. "Tort" is now used only in its well known legal meaning of a wrongful act, for which an action lies, as distinguished from a contract. The word "for" coming after "no action lies" clearly refers to a cause of action. Therefore, I can find nothing in the text which suggests that the Legislature in enacting it was aiming at anything else than liability for a tort of a patient. Thus I can see no reason for extending the meaning of s. 59 to actions for the hospital's own negligence or that of its servants. On the other hand I find compelling reasons for not doing it.

It was the feeling in the courts below that, if the enactment was read literally, it would be nothing more than a statement of what the law would be without it. Assuming the *Buckley* case was correctly decided, there can be no vicarious liability for an act of an irresponsible patient and a mental patient, deranged but not incompetent, is not a servant of the institution. It is by no

means clear that this always holds true: having some tasks performed by patients in mental institutions is far from inconceivable. However, even on the assumption that the enactment adds nothing to the common law, this is in my view no good reason to depart from the literal meaning in order to give it some real scope. Such an approach to statutory construction is basically erroneous. The proper rule is that an enactment must be read as not altering the law beyond what it expressly states. In *Batary v. Attorney General for Saskatchewan*[6], Cartwright J., as he then was, said for the Court (at p. 476):

If I am right in the view, which I have already expressed that in 1870 the accused would not have been a compellable witness at such an inquest, it would, in my opinion, require clear words to bring about so complete a change in the law.

In *National Assistance Board v. Wilkinson*[7], Lord Goddard C.J. said (at pp. 658-659):

It may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares. In *Minet v. Leman*, Sir John Romilly M.R. stated as a principle of construction which could not be disputed that “the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched.”

Counsel for the appellant hospital relied on s. 10 of the Interpretation Act (R.S.O. c. 225):

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

There is nothing in this provision that would tend to displace the rule that the intention of the Legislature is to be gathered from the words used. I think the effect of s. 10 was ably stated by Riddell J.A. in *Re Dillon et al.*[8], at pp. 175-176: It is said that the statute is a remedial one and, consequently to be read with liberality, to effectuate what it is contended was its purpose. It is true that the statute is a remedial one; it was intended to remedy what the Legislature, in its wisdom, thought to be an injustice to those who desired to support separate school education—with the conclusion of the Legislature, of course, we have nothing to do; the legislators are responsible to the electorate, not to us.

But remedial as it is, the statute is also confiscatory. It takes away from the public school system certain moneys which theretofore that system received. There is no reason why the statute should be read in any different way from any other statute. The modern principle is to credit the legislators with knowing what they intend to enact into law, and with a knowledge of the English language which enabled them to express their meaning. A statute is, except in certain cases not necessary to be noted here, to be read giving the words employed their natural meaning, and

neither “liberally” nor “strictly”.

In the present case, there is an additional reason in favour of the literal construction; it is the presumption against any intention to relieve from liability for negligence including vicarious liability. This principle is regularly applied in the construction of stipulations excluding liability for damages in contracts (see *Agnew-Surpass v. CummerYonge*[9], it should be equally applicable in the construction of statutes. I can see no reason to presume that the Legislature intended to deny compensation to the victims of injuries inflicted by mental patients due to the negligence of the institution to which, as in this case, these patients have been involuntarily admitted for the safety of the public as well as for their own (s. 8.1(a)).

I agree with the Chief Justice that this appeal should be dismissed with costs and in the circumstances, I wish to state expressly that s. 59 of The Mental Health Act has no application to an action against a mental facility for its own negligence or that of its servants or for breach of contract.

Appeal dismissed with costs. Solicitors for the appellant: Sneath, Rapson & Associates, Toronto.

Solicitors for the respondent: Chappell, Bushell & Stewart, Toronto.

[1] (1975), 9 O.R. (2d) 677.

[2] [1946] O.R. 798.

[3] (1919), 58 S.C.R. 315.

[4] [1935] S.C.R. 378.

[5] [1921] 2 A.C. 384.

[6] [1965] S.C.R. 465.

[7] [1952] 2 Q.B. 648.

[8] [1937] O.R. 114.

[9] [1976] 2 S.C.R. 221.

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