
ANDREW PRITCHARD (DEFENDANT) . . . APPELLANT;

AND

JOSEPH BOUCHER AND ETHEL }
BOUCHER (PLAINTIFFS) } RESPONDENTS.

1939
* June 6.
* June 27.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Motor vehicles—Negligence—Collision at street intersection—One car making left hand turn—Statutory requirements—Highway Traffic Act, R.S.O., 1937, c. 288, s. 39 (1).

The action was for damages by reason of a motor car collision at a street intersection in Ottawa, Ontario. Defendant, whose car had been going easterly on L. avenue, was turning left at the intersection to go northerly on O. street, when his car, and plaintiffs' car going westerly on L. avenue, collided. At the trial the jury found that the accident was not caused by negligence of defendant, and the action was dismissed. Plaintiffs' appeal to the Court of Appeal for Ontario was allowed, and judgment given to plaintiffs for damages to be assessed at a new trial for that purpose. Defendant appealed.

Held: The judgment at trial should be restored. No error was shown in the trial judge's charge to the jury, the case was eminently one for a jury, and the jury could on the evidence properly make the finding which they did as aforesaid.

The requirements of s. 39 (1) of the *Highway Traffic Act*, R.S.O., 1937, c. 288, discussed in regard to defendant's duty in making the left hand turn in question. After defendant had entered and come within the intersection to the right of the centre line of L. avenue, he

* PRESENT:—Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

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was obliged (besides observing the precautions required by s. 39 (1) and the law as to reasonable conduct in the circumstances) upon leaving the intersection to pass to the right of the centre line of O. street, but was not obliged, as an act necessary in itself, to continue beyond the centre of the intersection before turning to the left.

APPEAL by the defendant from the judgment of the Court of Appeal for Ontario which allowed the plaintiffs' appeal from the judgment of McTague, J., following the trial of the action with a jury, dismissing the action.

The action was for damages by reason of a motor car collision at a street intersection in Ottawa, Ontario, on May 29, 1937, at about 3.50 o'clock in the afternoon. Defendant, whose car had been going easterly on Laurier avenue, was (the green signal-light then being shown facing east and west) turning left at the intersection to go northerly on O'Connor street, when his car and that driven by the plaintiff Joseph Boucher (whose wife, the other plaintiff, accompanied him in the car), which car was going westerly on Laurier avenue, collided. At the trial, to the first question put to the jury, "Was the accident caused by the negligence of the defendant?" the jury answered "No" (and in view of that answer, they did not answer the other questions put to them); and judgment was given dismissing the action. Plaintiffs appealed to the Court of Appeal for Ontario. That Court allowed the appeal, set aside the verdict and judgment at trial, and ordered that a new trial with a jury be had, limited to an assessment of damages only, and that plaintiffs recover from the defendant the amount of the damages so assessed. Special leave to appeal to the Supreme Court of Canada was granted to the defendant by the Court of Appeal for Ontario.

T. N. Phelan K.C. and *J. D. Watt* for the appellant.

R. V. Sinclair K.C. and *Auguste Lemieux K.C.* for the respondent.

The judgment of the Court was delivered by

KERWIN, J.—This action arises out of a collision between two motor vehicles at the intersection of Laurier avenue and O'Connor street in the City of Ottawa. At the trial certain questions were submitted to the jury, to

the first of which only they found it necessary to give an answer. That answer was "No" to the question "Was the accident caused by the negligence of the defendant?" On appeal by the plaintiffs the Court of Appeal for Ontario delivered the following oral judgment:

Appeal allowed with costs here and below as far as trial is concerned and goes back for trial on question of damages alone. Mr. Justice Gillanders expressed the opinion that there should be a general trial.

By special leave of that Court, the defendant now appeals.

Several points had been taken by the plaintiffs in their notice of appeal to the Court of Appeal but before us Mr. Sinclair suggested that the real grounds upon which the Court of Appeal must have proceeded were: (1) The trial judge erred in that part of his charge to the jury where he interpreted the relevant parts of what is now section 39, subsection 1, of the *Highway Traffic Act*. While the accident occurred in 1937, no change has been made in the applicable statutory provisions, and for convenience I refer, therefore, to the Revised Statutes of Ontario, 1937, chapter 288. (2) The verdict was such as no reasonable jury doing their duty could have returned.

These two grounds may well be considered together. Subsection 1 of section 39 is as follows:

(1) Where two persons in charge of vehicles or on horseback approach a crossroad or intersection, or enter an intersection, at the same time, the person to the right hand of the other vehicle or horseman shall have the right-of-way.

(a) The driver or operator of a vehicle within an intersection intending to turn to the left across the path of any vehicle approaching from the opposite direction may make such left turn only after affording a reasonable opportunity to the driver or operator of such other vehicle to avoid a collision. 1930, c. 48, s. 8 (1), *part*.

(b) The driver or operator of a vehicle intending to turn to the right into an intersecting highway shall approach such intersection and turn as closely as practicable to the right curb or edge of the travelled portion of the highway. 1931, c. 54, s. 10, *part*.

(c) The driver or operator of a vehicle intending to turn to the left into an intersecting highway shall approach such intersection as closely as practicable to the centre line of the highway and the left turn shall be made by passing to the right of such centre line where it enters the intersection, and upon leaving the intersection by passing to the right of the centre line of the highway then entered. 1931, c. 54, s. 10, *part*; 1933, c. 20, s. 4 (1).

(d) The driver or operator of a vehicle upon a highway before turning to the left from a direct line shall first see that such movement can be made in safety, and if the operation of any other vehicle may be

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affected by such movement shall give a signal plainly visible to the driver or operator of such other vehicle of the intention to make such movement.

(e) The signal required in clause (d) shall be given either by means of the hand and arm in the manner herein specified or by a mechanical or electrical signal device which has been approved by the Department.

(f) Whenever the signal is given by means of the hand and arm the driver or operator shall indicate his intention to turn by extending the hand and arm horizontally from and beyond the left side of the vehicle. 1931, c. 54, s. 10, *part*.

In this connection it is important to note the definition of the word "intersection" in section 1 (g):

"Intersection" shall mean the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other.

As applied to the scene of the accident, the intersection means the area embraced within the prolongation of the lateral curb lines on Laurier avenue and O'Connor street. According to the evidence of the defendant, who was proceeding easterly on Laurier avenue, he stopped his vehicle before entering the intersection,—because the red traffic light situated at the southeast corner of the two streets was showing,—bringing his vehicle to a stop on the south side of Laurier avenue and close to the centre line thereof. Upon the red light disappearing and the green light showing, he stated that he passed to the right of that centre line where it entered the intersection. If his evidence on this point was believed by the jury, he had complied with the first part of paragraph (c). Being then *within* the intersection as mentioned in paragraph (a) and intending to turn to the left across the path of the plaintiffs' vehicle which he saw approaching from the east on Laurier avenue, he was entitled to make such left turn "only after affording a reasonable opportunity (to the plaintiffs) to avoid a collision." By paragraph (d), the defendant was first to see that such movement could be made in safety, and since the operation of the plaintiffs' vehicle might be affected by such movement, he was obliged (paragraph (e)) to give a signal, plainly visible to the driver of the plaintiffs' vehicle, which signal was to be given either by means of the hand and arm in the manner specified by paragraph (f) or by a mechanical or electrical signal device which had been approved by the

Department of Highways. According to the evidence of the defendant, which the jury was entitled to believe, he gave the hand and arm signal mentioned in paragraph (f) "by extending the hand and arm horizontally from and beyond the left side of the vehicle." The defendant's explanation, which the jury could weigh against the evidence of the plaintiffs, was that he saw the plaintiffs' vehicle approaching at a distance of at least one hundred feet away and considered that he had ample time to cross in safety, and the jury, therefore, might very well adopt the view that the defendant had afforded the driver of the plaintiffs' vehicle the reasonable opportunity to avoid a collision mentioned in paragraph (a).

There was no obligation on the part of the defendant, after entering the intersection and before turning to the left, to keep to the south of the centre line of Laurier avenue until he reached the very centre of the intersection and then to keep to the centre of O'Connor street. According to the evidence of the defendant, he had complied with the first part of paragraph (c) of subsection 1 of section 39 and, so far as that paragraph is concerned, the only other obligation upon him was, upon leaving the intersection, to pass to the right of the centre line of O'Connor street. Any doubt as to the correct construction of this paragraph is swept aside by a consideration of the fact that as originally enacted in 1931, by chapter 54, section 10, it read as follows:

(c) The driver or operator of a vehicle intending to turn to the left into an intersecting highway shall approach such intersection as closely as practicable to the centre line of the highway and *continue beyond the centre of the intersection before turning*;

and in 1933, by chapter 20, section 4, the words italicized were stricken out and words added so that the paragraph appears as it is now found in the Revised Statutes.

The trial judge explained paragraph (c) to the jury in this sense. He also not only called their attention to the other requirements of subsection 1 but reiterated them by saying:

Let us summarize briefly: The man intending to turn to the left may do so, but he must afford a reasonable opportunity to the other man to avoid a collision; he must exercise that care.

Secondly, he must come into the intersection in a certain way, and he must leave it in a certain way.

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Thirdly, he must take due precautions to see that he is not going to run into someone else or permit someone else to run into him; and he must make the signal which is provided in this act by extending the left hand horizontally from the car (indicating).

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He referred to the contradictions between the evidence on behalf of the parties as to whether these requirements were met by the defendant and also generally as to what was stated to have occurred. In the latter connection, in addition to having referred in the opening passages of his charge to what would be expected of a reasonable man under the circumstances as the jury would find them, he stated later:

I do wish to emphasize to you that mere observance of what the statute provides is, in certain circumstances, not the whole duty. Always persists the obligation in the circumstances of a man conducting himself as an ordinary reasonable man would do.

No error being found in the charge, the case was eminently one for a jury and, with respect, we are of opinion that in the exercise of their duty the jury could very properly come to the conclusion that the accident was not caused by the negligence of the defendant.

We have had the advantage of a very complete argument by Mr. Lemieux on the other points taken by the plaintiffs in their notice of appeal to the Court of Appeal, but, after consideration, we are unable to discover in them any adequate ground upon which that Court could have set aside the verdict and judgment at the trial.

The appeal should be allowed and the judgment at the trial restored, with costs throughout.

Appeal allowed with costs.

Solicitors for the appellant: *Henderson, Herridge, Gowling & MacTavish.*

Solicitor for respondents: *Auguste Lemieux.*
