FRANK J. HEPPEL (*Proposed defendant*) . . APPELLANT;

AND

MARGARET STEWART (*Plaintiff*) . . . . . RESPONDENT;

AND

DIAS DOMINGOS and LEONARD CORDERY, both personally and as carrying on business under the firm name and style of GARDEN SPECIALTY COMPANY (*Defendants*) . . RESPONDENTS.

1968

*Feb. 9

June 3

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Limitation of actions—Motor vehicles—Collision—Alleged failure of brakes owing to faulty repair work—Application made to add repairer as party defendant—Whether plaintiff's damages were "occasioned by a motor vehicle"—Whether statutory limitation period applicable—The Highway Traffic Act, R.S.O. 1960, c. 172, s. 147(1).

This was an appeal from an order of the Court of Appeal for Ontario which allowed an appeal by the present respondent, S, and which added the appellant as a party defendant in an action in which S was the plaintiff. The action arose out of an automobile accident, which occurred on June 15, 1964, when a motor vehicle owned by the defendant C, and operated by the defendant D, ran into the back of the motor vehicle of S while it was stopped at a stop street, causing personal injuries to S and property damage to her vehicle. The defendants alleged that the brakes of C's vehicle had failed owing to faulty repair work. D stated that C's automobile had been taken to the appellant's service station two or three days before the accident with instructions to examine and, if necessary, repair the braking system. After the vehicle was returned D drove it without difficulty up to the time when the accident occurred, when the brakes failed completely.

An application made on June 3, 1966, to add the appellant as a party defendant was resisted on the ground that any claim against the appellant was barred by s. 147(1) of *The Highway Traffic Act*, R.S.O. 1960, c. 172, which provides that, subject to two provisoes not applicable here, "no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained". The judge of first instance was of the opinion that the subsection applied if the damages claimed were physically caused by the motor vehicle. The Court of Appeal held that the provision applied only if the legal basis of the claim is the use or operation of the motor vehicle.

Held (Judson J. dissenting): The appeal should be allowed and the order of the Court of Appeal reversed.

* PRESENT: Cartwright C.J. and Martland, Judson, Hall and Spence JJ.

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Per Cartwright C.J. and Martland, Hall and Spence JJ.: The subsection did not purport to apply only to causes of action of a particular nature. It did not refer to the use or operation of a motor vehicle. It stated specifically that *no action* shall be brought to recover damages occasioned by a motor vehicle. If a motor vehicle was the occasion for the damage, *i.e.*, if it was the vehicle which brought it about, then the limitation period applied.

There could be no question in this case but that the motor vehicle was the occasion for the damage sustained by the plaintiff. Any claim against the appellant would have to allege that her damage was caused by her vehicle being struck by that motor vehicle. That the nature of the negligence which would be alleged against the appellant would be different from that alleged against the other two defendants had no bearing, in view of the way in which the subsection is worded.

Dufferin Paving & Crushed Stone Ltd. v. Anger and Derbyshire, [1940] S.C.R. 174, applied.

Per Judson J., dissenting: Agreement was expressed with the reasons delivered in the Court of Appeal.

APPEAL from an order of the Court of Appeal for Ontario[1], allowing an appeal from and reversing an order of Lyons Co.Ct.J. Appeal allowed, Judson J. dissenting.

W. L. N. Somerville, Q.C., and *D. J. S. McDowell*, for the appellant.

J. Douglas Walker, for the respondent, Margaret Stewart.

N. Douglas Coo, Q.C., for the respondents, Dias Domingos and Leonard Cordery.

The judgment of Cartwright C.J. and Martland, Hall and Spence JJ. was delivered by

MARTLAND J.:—This is an appeal from an order of the Court of Appeal for Ontario[1], which allowed an appeal by the present respondent, Margaret Stewart, and which added the appellant as a party defendant in an action in which she is the plaintiff. The other respondents are defendants in that action.

The action arises out of an automobile accident, which occurred on June 15, 1964, when a motor vehicle owned by the defendant Cordery, and operated by the defendant Domingos, ran into the back of the motor vehicle of the

[1] [1967] 2 O.R. 37, 62 D.L.R. (2d) 282, *sub nom. Stewart v. Domingos et al.*

plaintiff Stewart while it was stopped at a stop street, causing personal injuries to the plaintiff and property damage to her vehicle.

The writ of summons was issued on April 21, 1965, and was served on May 3, 1965. The statement of defence was delivered on June 17, 1965, alleging that the brakes of the defendant's vehicle had failed owing to faulty repair work.

On the examination for discovery of the defendant Domingos, held on March 21, 1966, he stated that the defendant's motor vehicle had been taken to the appellant's service station two or three days before the accident, with instructions to examine and, if necessary, repair the braking system. He also stated that, after the vehicle was returned, he drove it without difficulty up to the time the accident occurred, when the brakes failed completely.

Application to add the appellant as a party defendant was made on June 3, 1966. The application was resisted on the ground that any claim against the appellant was barred by s. 147(1) of *The Highway Traffic Act*, R.S.O. 1960, c. 172. Section 147 provides as follows:

> 147. (1) Subject to subsections 2 and 3, no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained.
>
> (2) Where death is caused, the action may be brought within the time limited by *The Fatal Accidents Act*.
>
> (3) Notwithstanding subsections 1 and 2, when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the counterclaim or third party proceedings.

The only question in issue is whether the plaintiff's damages were "occasioned by a motor vehicle".

The learned judge of first instance was of the opinion that the subsection applied if the damages claimed were physically caused by the motor vehicle. The Court of Appeal held that the provision applied only if the legal basis of the claim is the use or operation of the motor vehicle.

With respect, I do not agree with this interpretation of the subsection. It does not purport to apply only to causes of action of a particular nature. It does not refer to the use

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Martland J.

or operation of a motor vehicle. It states specifically that *no action* shall be brought to recover damages occasioned by a motor vehicle. If a motor vehicle is the occasion for the damage, *i.e.*, if it is the vehicle which brings it about, then the limitation period applies.

There can be no question in this case but that the motor vehicle in question was the occasion for the damage sustained by the plaintiff. Any claim against the appellant would have to allege that her damage was caused by her vehicle being struck by that motor vehicle. That the nature of the negligence which would be alleged against the appellant would be different from that alleged against the other two defendants has no bearing, in view of the way in which the subsection is worded.

The meaning of the section of *The Highway Traffic Act* which preceded the present s. 147 (R.S.O. 1927, c. 251, s. 53, as amended by 1930, c. 48, s. 11) was considered by this Court in *Dufferin Paving & Crushed Stone Ltd. v. Anger and Derbyshire*[2]. The main question which had to be determined was as to whether the limitation section applied to a claim, founded in nuisance, for damage to a dwelling house through vibration caused by the operation of the defendant's cement mixing motor trucks in the street, in front of the house. It was held unanimously that the section applied.

The Court did not accept the contention that the section was not applicable to a claim at common law as distinct from a claim founded under the statute, or that it applied only to traffic accidents.

In holding that the section did apply, Davis J., with whom Duff C.J. and Hudson J. concurred, said, at p. 180:

> It is difficult for me, therefore, to accept the contention that the limitation section (now sec. 60) in the statute is not applicable to this action. It very plainly states that, subject to two provisoes which do not affect this action,
>
> > no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained.
>
> The rule of construction is plain:
>
> > If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in

[2] [1940] S.C.R. 174.

> their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

This is the rule declared by the Judges in advising the House of Lords in the *Sussex Peerage* case, (1844) 11 Cl. & F. 85, at 143, which was accepted by the Judicial Committee of the Privy Council in *Cargo ex "Argos"*, (1873) L.R. 5 P.C. 134, at 153, and recently referred to by Slesser, L.J., in *Birmingham Corporation v. Barnes*, [1934] 1 K.B. 484, at 500.

Crockett J. and Kerwin J., as he then was, applied similar reasoning. I would refer to what is said by the latter at p. 189:

> Taken by themselves the words used in this subsection are clear and unambiguous. In terms they are not limited to circumstances where damages are occasioned by a motor vehicle on a highway; they are not restricted to cases where damages are caused by a motor vehicle coming in contact with a person or thing; they do not state that the damages must have been occasioned by negligence in the operation of a motor vehicle or by reason of the violation of any of the provisions of the Act. It is contended on behalf of the respondents that the subsection must be construed in a narrower sense and that such a claim as the present, based as it is on an alleged nuisance at common law, is not within its purview.

He then went on, at p. 190, to reject that contention.

I agree with this interpretation of the subsection and, in my opinion, in terms, it covers the circumstances in the present case. In fact, in the present case, the plaintiff's claim against the appellant clearly is founded upon the use and operation of a motor vehicle; *i.e.*, one with defective brakes. Even if the provision applied only to damage resulting from the use and operation of a motor vehicle, this case would be within it, for there is nothing to say that its benefits accrue solely to a negligent operator, and not to someone whose negligence may have rendered such operation unsafe.

I would allow the appeal, and reverse the order of the Court of Appeal, with costs to the appellant in this Court and in the Court below.

JUDSON J. (*dissenting*):—I agree with the reasons delivered in the Court of Appeal. My opinion is that there is a valid distinction between this case and *Dufferin Paving & Crushed Stone Ltd. v. Anger and Derbyshire*[3]. This was stated by the Court of Appeal in the following terms:

> In dismissing the plaintiff's application to add Heppel as a party defendant, the learned County Judge relied on the case of *Dufferin*

[3] [1940] S.C.R. 174.

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Paving & Crushed Stone Ltd. v. Anger and Derbyshire, [1940] S.C.R. 174. In that case, the plaintiff's claim was that his house was damaged by vibrations caused by operation of the defendant's heavy trucks on the adjoining highway. In the present case, the plaintiff's cause of action against Heppel is not in relation to the use or operation of the motor car. It is for negligence in the repair of a car owned by the defendant Cordery and operated by the defendant Domingos, so that, in so far as the claim against Heppel is concerned, while the car in a physical sense was the instrument inflicting the damage, the cause of the damage in the legal sense was the negligence, if proved, of Heppel in repairing the car and delivering it to the defendant Cordery in a state in which it might cause damage or injury not only to the defendants, but to other users of the highway.

A motor car is an inanimate object that cannot cause damage unless it is used or operated. *The Highway Traffic Act* regulates the use and operation of motor vehicles and I think that the scope of s. 147(1) consistently with its setting in the Act, is limited to cases in which damage is occasioned as a result of the use or operation of a motor car and is not available to a defendant in a case such as the present one, where the allegation is that the accident was caused by the antecedent negligence of a repairer, who was neither the owner nor the operator of the motor car, any more than it would be available to a person sued for negligently shooting a motorist, whose car, as a result, caused damage to the person or property of another.

I would dismiss the appeal with costs.

Appeal allowed with costs, JUDSON J. *dissenting.*

Solicitors for the appellant: Borden, Elliot, Kelley & Palmer, Toronto.

Solicitors for the respondent, Margaret Stewart: Thompson, Brown, Proudfoot & Walker, London.

Solicitors for the respondents, D. Domingos and L. Cordery: Shearer & Coo, Toronto.