REGINA v. HORNSTEIN

11 C.C.C. (2d) 197

Provincial Court (Criminal Division), District of Algoma, Ontario
Boyd, Prov. Ct.J.

March 12, 1973

Motor vehicles — Failing to yield right of way — Elements of offence — Duty applying to driver of any vehicle "about to enter a highway" — Whether duty ceases once any portion of vehicle enters highway — Highway Traffic Act (Ont.), s. 91 — Interpretation Act, R.S.O. 1970, c. 225, s. 19.

The words "about to enter" in s. 91 of the Highway Traffic Act, R.S.O. 1970, c. 202, requiring the driver of a vehicle "about to enter" a highway to yield the right of way should not, in view of the purpose of the legislation, be interpreted literally to mean that the duty to yield ceases once any portion of the vehicle enters the highway. Such an interpretation would lead to an absurdity, and the section should be read to apply whenever a driver "intends to enter a highway".

[R. v. Perry (1941), 77 C.C.C. 103, *not folld*; Heydon's Case (1584), 3 Co. Rep. 7a, 76 E.R. 637, *refd to*]

TRIAL of the accused on a charge of failing to yield contrary to s. 91 of the Highway Traffic Act (Ont.).

R. A. Youngson, for accused.

N. D. Gaetz, for the Crown.

BOYD, PROV. CT.J.:— A brief resume of the facts may be indicated as it relates so directly to the law. The accused, Mr. Hornstein, being the operator of a motor vehicle, pulled out of a parking lot behind the Royal Bank of Canada, which is located on the north-east corner of the intersection at Queen St. E. and Brock St. in the City of Sault Ste. Marie directly in front of one Mr. Gallagher, being the operator of a motor vehicle travelling north on Brock St. in his proper lane of traffic. Mr. Gallagher suddenly confronted with the Hornstein vehicle tried unsuccessfully to drive to the left to avoid a collision. As a result of the ensuing collision Mr. Hornstein's car was damaged completely across the front end and Mr. Gallagher's motor vehicle was damaged st the right front, mainly in the fender area from the headlight back. There was one car parked to Mr. Hornstein's left, which would place it on Brock St. facing north, just south of the parking lot entrance. At the time of collision, the whole or a very good portion of the Hornstein motor vehicle was on Brock St. and out of the parking lot.

As a result of this accident, Mr. Hornstein has been charged with failing to yield from a private road or driveway contrary to s. 91 of the Highway Traffic Act, R.S.O. 1970, c. 202, which reads: ***[page198]***

> 91. The driver or operator of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on the highway.

[Italics added.]

It is conceded that Mr. Hornstein was the "driver or operator of [the] vehicle".

It is conceded that the parking lot behind the bank is a "private road or driveway".

Counsel concede that the only point in issue is the interpretation to be put upon s. 91 and more particularly the interpretation to be put upon the words "about to enter".

In interpreting a statute it is the function of the Court to endeavour to discover the intention of Parliament by reference to the words used and the context in which they are found. Where the words are obscure, consideration must be given to the prior law and the remedy that Parliament had resolved for that law. I refer to the discussion in Craies on Statute Law, 7th ed. (1971), p. 96 et seq., and cases there cited, and in Maxwell on Interpretation of Statutes, 12th ed. (1969), p. 40 et seq. This rule was first formulated in Heydon's Case (1584), 3 Co. Rep. 7a, 76 E.R. 637, and the texts referred to discuss some of the many cases in which it has been applied, discussed and developed. This rule is commonly referred to as "the mischief rule".

Section 10 of the Interpretation Act, R.S.O. 1970, c. 225, is as follows:

> 10. Every Act shall be deemed to be remedial, whether its immediate ... or punish the doing of anything 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.

Maxwell on Interpretation of Statutes, 11th ed. (1962), p. 193, states:

> A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. Whenever the language of the legislature admits of two constructions and, if construed in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words.

Maxwell continues at p. 197: "The same argument applies where the consequence of adopting one of the two interpretations would be lead to an absurdity."

Surely, the mischief intended to be remedied was the danger ***[page199]*** created for vehicles approaching on the highway by motor vehicles suddenly exiting from private roads or driveways.

The language of s. 91 admits two constructions:

(1) to interpret the words "about to enter" in a literal sense to mean the duty imposed by the section ceases once any portion of the motor vehicle has entered upon the highway or,
(2) that when a driver intends to enter onto a highway he shall yield the right of way to approaching vehicles and should he not yield the right of way he will be guilty of an offence and be punished pursuant to s. 152 of the Highway Traffic Act.

If one takes the literal position of the words "about to enter", then in fact the legislation has created a duty in the abstract upon the driver of a motor vehicle emerging from a private road or driveway, or more simply put, how can the section be violated if once the offending motor vehicle enters any part of the highway the duty disappears.

The case of R. v. Perry (1941), 77 C.C.C. 103, a decision of the New Brunswick County Court dealing with s. 42(7) of the Motor Vehicle Act of New Brunswick, an exact replica of s. 91 seems to decide that the literal interpretation is the proper one but with great respect to Hayward, Co.Ct.J., I disagree.

I am of the opinion, applying "the mischief rule" and s. 10 of the Interpretation Act, that to interpret s. 91 or more particularly the words "about to enter" in a literal sense would not only fail to remedy the mischief intended to be remedied but also lead to an obvious injustice and to an absurdity. I therefore rule that the proper interpretation to be given to s. 91 is the interpretation stated in para. (2) above.

A conviction will be entered and the matter of sentence may now be spoken to.

Accused convicted. ***[page200]***