Irizawa v. Corner

Between
Irizawa, and
Corner and M. Furuya Company Limited

[1939] B.C.J. No. 110

[1940] 1 D.L.R. 786

British Columbia County Court

Swanson Co. Ct. J.

December 21, 1939.

(6 paras.)

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1 **SWANSON CO. CT. J.**:-- ... The collision (or accident) happened in the morning of January 16 last on a fairly clear day, at a bend or curve in the road shown on the rough sketch plans, Exs. 1 and 4. The highway at the place of accident is quite wide - about 22 feet of a good travelling surface throughout. On the day in question there was snow lying on the ground variously estimated up to the depth of 10 inches. It was light snow quite easily travellable over by both motor vehicles in question. There is a cross-section of this roadway shown on a rough sketch plan made by provincial Corporal W.J. Butler: Ex. 5. The snow had been beaten down by traffic on the central portion being approximately 10 feet in width. At the place in question to the east of this beaten-down portion of roadway the road extended some seven or eight feet. To the west of this beaten portion the road extended three to four feet. The plaintiff and defendant in their evidence said that this roadway was about 22 feet in width at this point. I find that 22 feet is about the width of the roadway at this point.

2 Now it is clearly shown by all the evidence that all this portion of roadway 22 feet in width was easily travellable by a motor car or truck. About 10 inches of loose soft snow lay on the outer portions of this roadway.

3 [After finding that plaintiff had not moved his car after the accident, Swanson, C.C.J. concluded:] It was submitted by Corporal Butler in his evidence that the defendant's car "B" in the position in which he found it after the accident showed to him that it was on the defendant's wrong side of the "travelled portion of the highway," and that there was left sufficient space for a car travelling south (as defendant's car was) to safely pass car "A," as shown in its position on Ex. 4. But the difficulty lies in assuming that the 10 feet of beaten portion of the King's highway was what the statute calls "the travelled portion of the highway." I think the words in sec. 19 of the Highway Act cannot be so narrowly construed. I had occasion to hold in the action of Dungate v. Ferguson tried on

March 24, 1938, at Vernon that such an interpretation of sec. 19 is too narrow. The evidence is quite clear that the whole 22 feet in width of surface of the highway at this point is easily travellable by cars. To that width the King's highway has been properly "wrought for travelling," to use a judicial phrase, which is found in Judge Barron's work, "Canadian Law of Motor Vehicles," 1926, at p. 448:

> "By the centre of the road is meant the centre of that portion of the road allowance set apart by the authorities for the use of vehicles, and not necessarily the centre of the commonly travelled track, the location of which on the highway may vary from time to time. It means the centre of the travelled or wrought part of the road, and travelled part of the road has been held to mean that part which is wrought for travelling, and not to be confined simply to the most travelled wheel track."

4 And he quotes the following American cases: Daniels v. Clegg (1917) 38 Mich. 32; Baker v. Zimmerman 179 Iowa 272; Clark v. Commonwealth of Mass. (1826) 4 Pick. Mass. 125. I think that this is the decisive point in this case.

5 The plaintiff certainly did not obey the injunction of the Statute, sec. 19. He did not seasonably turn out to the right from the centre of the travelled portion of the highway, and did not accordingly allow the defendant's vehicle, so met, one-half of the travelled portion of the highway. His negligence is therefore the sole and proximate and decisive cause of the accident, and I must accordingly so find.

6 There will be judgment therefore dismissing the plaintiff's action with costs and allowing the counterclaim of the defendant Corner against the defendant in the counterclaim, M. Furuya Co. Ltd. in the sum of $137.15, being cost of repairing the damage done to defendant's car through the negligence aforesaid of plaintiff, the servant and agent at the time of M. Furuya Co. Ltd. Defendant will have also the costs of his counterclaim.

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actual military service when under 21 years of age. The beneficiary under the will would also take upon an intestacy. Robertson J. refused to regard the will as valid, and permitted an amendment to the application to ask for letters of administration without reference to the will. Thereafter, upon due proof of search for other testamentary documents (the soldier apparently having been more than 21 at the date of death) letters of administration were granted without reference to the will.

IRIZAWA v. CORNER et al.

B.C. Co. Ct. 1939.

British Columbia County Court, Swanson Co.Ct.J. December 21, 1939.

Automobiles III B—"Travelled portion of highway"—Meaning of.

The "travelled portion of the highway" within the meaning of s. 19 of the *Highway Act*, R.S.B.C. 1936, c. 116 is that portion of the road allowance which is wrought for travelling and not merely the most travelled portion. Thus if the whole width of a highway is easily travellable over after a snow-fall the whole of it is the "travelled portion of the highway" although a portion in the centre has been beaten down by traffic.

[*Highway Act*, R.S.B.C. 1936, c. 116, s. 19, consd.]

W. B. Bredin, for plaintiff.

T. F. McWilliams, for defendant.

A COLLISION occurred between two cars on a highway 22 ft. in width after a heavy snow-fall. About 10 ft. of the highway had been beaten down by traffic but the portion on either side, although covered by soft snow, was shown by the evidence to be easily "travellable over." Section 19 of the *Highway Act*, R.S.B.C. 1936, c. 116, provides:

"In case a person travelling or being upon a highway in charge of a vehicle . . . meets another vehicle . . . he shall seasonably turn out to the right from the centre of the travelled portion of the highway, allowing to the vehicle so met one-half of the travelled portion of the highway."

The question as to whose negligence was responsible for the collision in this case depended on the meaning of the phrase "travelled portion of the highway." The learned County Court Judge said that the 10 ft. of beaten portion of the highway could not be held to be the travelled portion of the highway. "I think," he said, "the words in s. 19 of the *Highway Act* cannot be so narrowly construed. I had occasion to hold in the action of *Dungate* v. *Ferguson* [unreported], tried on March 24, 1938 at Vernon, that such an interpretation of s. 19 is too narrow. The evidence is quite clear that the whole 22 ft. in width of surface of the highway at this point is easily travel-

B.C. Co. Ct. 1939.

lable by cars. To that width the King's Highway has been properly 'wrought for travelling,' to use a judicial phrase, which is found in Judge Barron's work 'Canadian Law of Motor Vehicles' (1926) at p. 448. 'By the centre of the road is meant the centre of that portion of the road allowance *set apart by the authorities for the use of vehicles*, and *not* necessarily the centre of the commonly travelled track, the location of which on the highway *may vary from time to time*. It means the centre of the travelled or wrought part of the road, and *travelled part* of the road has been held to mean that part which is *wrought for travelling*, and not to be confined simply to the most travelled wheel track.' And he quotes the following American cases—*Daniels* v. *Clegg* (1873), 28 Mich. 32; *Baker* v. *Zimmerman* (1917), 179 Iowa 272; *Clark* v. *Commonwealth* (1826), 4 Pick. (Mass.) 125. I think that this is the decisive point in this case.

Accordingly, as plaintiff had not turned out to his right on to the 7 or 8 ft. of snow-covered highway on the right of the beaten portion but merely to the right-hand side of the beaten 10 ft. of the road, the learned Judge held him solely responsible for the collision.

McGINNES v. MURPHY.

B.C. S.C. 1940.

British Columbia Supreme Court, Manson J. January 9, 1940.

Pleading I B—Action under Lord Campbell's Act—Sufficiency of particulars of parties and of cause—Form to follow.

The form of pleading which should be followed in British Columbia under s. 6 of the *Families' Compensation Act*, R.S.B.C. 1936, c. 93 is that found in Bullen & Leake on Precedents, 9th ed. p. 380, notwithstanding verbal differences in the equivalent English enactment.

[*Chapman* v. *Rothwell*, El. Bl. & El. 168, 120 E.R. 471; *Families' Compensation Act*, R.S.B.C. 1936, c. 93, s. 6; *Lord Campbell's Act*, 1846 (Imp.), c. 93, s. 4, consd.]

Damages III F—Lord Campbell's Act—Administration Act—Duplication of damages—Deprivation of privilege of caring for dependants.

In an action for damages arising from the death of a boy, $5,000 general damages were awarded to deceased's estate under the *Administration Act*, R.S.B.C. 1936, c. 5, of which sum the Judge ascribed $1,000 to deprivation of the privilege of caring for dependants, and $1,000 was allowed the dependants under the *Families' Compensation Act*, R.S.B.C. 1936, c. 93. Held, in order to avoid duplication of damages, the sum awarded to the estate must abate to the extent that deceased's dependants were beneficiaries of the portion of the sum awarded to the estate which