

56/82

SUPREME COURT OF VICTORIA

GRACE v FRASER

King J

7 June 1982 — [1982] VicRp 105; [1982] VR 1052

MOTOR TRAFFIC – COLLISION BETWEEN TWO MOTOR VEHICLES – COLLISION OCCURRED WHILST DRIVER NOT PRESENT – DAMAGE CAUSED TO VEHICLES – CHARGED WITH FAILING TO REPORT ACCIDENT – WHETHER "PERSON DRIVING A MOTOR CAR" – CHARGE FOUND PROVED – WHETHER COURT IN ERROR: MOTOR CAR ACT 1958, S80.

When a motorist returned to his parked car he found minor damage, consistent with it being struck by the bumper bar of another car. Two witnesses gave evidence that they had heard a bang, then saw a car with no-one in it, facing the wrong way in close proximity to the first car. One said the cars were touching. He saw two women get into the second car and one of them drive it away. The other witness identified the defendant as one of the women in the car when it was driven away, and that he pointed out to one of the women that the other car had been damaged. A Constable gave evidence that the defendant told him she had left her car in "park" with the handbrake on. When she returned, her car was further east but on the other side of the road. It had come to rest against another car which was parked on the opposite kerb. There was no driver in the other car, and she did not exchange names and addresses or leave any note, because she and her passenger could not see any damage either to her car or the other car, that a man spoke to them and agreed there was no damage to the other car. It was submitted there was no case to answer on the grounds that there was no evidence that the defendant was "the person driving the motor car" at the time of the alleged offence, and there was no proof that the defendant's car had caused any damage. The Justice of the Peace who was Chairman of the Court rejected the submission and said the Court found the matter proven. The defendant then gave evidence substantially in accordance with what she had told the Constable. Defendant's Counsel submitted that the duty that was imposed on a driver was a duty that could only apply if a driver had some knowledge or belief that damage existed as the result of a collision. He also relied on his previous "no case" submission. After the Chairman announced that the charge was proven he was asked to give formal reasons. He said the defendant was the person in charge of the car. Upon appeal on the following grounds:-

1. That the Justices were wrong in law in that they held that the section under which the applicant had been charged applied to a person when that person was in charge of the vehicle.
2. That the Justices were in error in ruling that the section applied to the applicant when she was not driving a motor car.
3. That the Justices were in error in ruling that the section applied to the applicant when it was not proved that her vehicle was either involved in a collision, or if it was involved in a collision, that collision caused damage to the other vehicle.
4. That the Justices did not give proper consideration to the applicant's state of mind at the time of the applicant's discovery of her vehicle in its altered position, namely, that they failed to take into account whether she honestly and reasonably believed that no accident occurred, or that if an accident had occurred, no damage resulted.
5. That the Justices were in error in that they held that the charge had been proven against the applicant before the applicant gave evidence.
6. That the Justices were in error in finding that the section under which the applicant had been charged had any application to her in the circumstances.

HELD: Conviction set aside. Remitted for further determination.

The requirement that a person "shall immediately stop the motor car" makes it clear that if a person leaves a motor car parked beside a highway with no-one in it, and its presence or behaviour while away from it causes damage to another vehicle, that person is in no position to stop it immediately. Accordingly, the court was in error in finding the charge proved.

KING J: Mr Weinberg, who appeared before me for the applicant, submitted that grounds 1, 2 and 6 raised the one point, namely, that the applicant was not "the person driving the motor car" at the relevant time. He pointed to the fact that s80 of the *Motor Car Act* sets out a number of actions which in the circumstances provided for by that section the person driving the motor car must take. One of these is the action which the applicant has been convicted of not taking.

(paragraphs (a) to (e) of s80 set out).

Mr Weinberg submits that these paragraphs set out a number of distinct offences, and because they are joined by the conjunction "and" the general words preceding them must be given one meaning which has effect in respect of each paragraph. Thus, he says, the prosecution could not properly succeed in this case because if a person leaves a car parked beside a highway with no-one in it, and its presence or behaviour while he is away from it causes damage to another vehicle, he is in no position to stop it immediately upon the damage taking place. He submits also that a penal statute should be construed strictly, and that the words 'the person driving a motor car' should be interpreted literally so as to affect a person who is driving a car on a highway when damage is caused ... *[His Honour referred to the English case of Jones v Prothero (1952) 1 All ER 434 which had been relied on by Counsel for the respondent in which the expression "driver of the motor vehicle" was considered and continued]* ... "It is easier to interpret the words "driver of a motor vehicle" as meaning the person in charge of that vehicle, especially if he is still in the driver's seat than it is to give that meaning to the words "person driving a motor car". I think that the requirement that such person "shall immediately stop the motor car" makes it clear that Mr Weinberg's submission is correct. I find thus that the applicant succeeds on grounds 1, 2 and 6.

"I think that grounds 3 and 4 must fail, as there was evidence ... on which the Magistrates' Court could decide that the applicant's vehicle was involved in an accident and that it caused damage to property and that the applicant knew that a collision had taken place ... As to ground 5, I think that the Chairman's statement complained of was a slip of the tongue and was so understood. The defendant's counsel must have so regarded it, as he did not raise the point before the Magistrates' Court. I think that the Justices went on to hear and determine the case in a proper manner, and in this context I am not prepared to find that they had finally made up their minds at the close of the evidence for the prosecution.

[It was ordered that the case be remitted to the Magistrates' Court with a direction that it be dismissed with such order as to costs as the Magistrates' Court thinks fit.]
