**05/83**

## SUPREME COURT OF VICTORIA

# *SCOTT v MISON*

**Lush J**

**12 October 1982**

**CRIMINAL LAW – CRIMINAL DAMAGE – INTENT TO CAUSE DAMAGE – DRUNKENNESS – EFFECT ON ABILITY TO FORM NECESSARY INTENTION: *CRIMES ACT* 1958, S197.**

M. (who is disabled and uses crutches) had been drinking in an hotel and had consumed drink to the value of $3.50. When he left the hotel, he fell over near his motor car in the hotel parking area. Whilst lying on the ground, M. heard a bang and thought that someone had collided with his vehicle. He got up, got into his own car and then saw a Valiant car leaving the hotel parking area. Believing that this car was responsible for the collision (in fact, there was no evidence to conclude that any car had struck M's car in the hotel yard at all), M pursued the Valiant. He lost sight of it, but kept driving until he spotted a Valiant in the driveway of a house. He then drove his car up the driveway striking the rear end of the Valiant, and whilst reversing, collided with another vehicle. He was later interviewed by Police and charges were laid. When the matter came on for hearing, M. pleaded guilty to the charge of criminal damage. The court dismissed the charge on the ground that H. was drunk at the relevant time and that he had not formed the necessary intention when he drove up the driveway.

**HELD: The offence of criminal damage was proved by the evidence. In determining whether H's purpose was to destroy or damage property, the state of his mind at the relevant time was to be inferred from what he did at the relevant time and from what he said about it afterwards.**

***Head v Baillieu* (1979) Vic Sup Ct, unrep. (cf. MC 9/1980) referred to.**

**LUSH J:** *[After stating the facts, His Honour continued]:* The problem which arises in this case is very similar to the problem which arose in *Head v Baillieu*, an unreported decision of the Full Court given on 26 November 1979. I was a member of that Court, and, if I may be permitted to quote from my own judgment, this passage appears at p10:

> "These authorities establish and illustrate the proposition that an order to review is not to be granted because this Court would reach a different conclusion upon the evidence from that reached by the Magistrates' Court. It must be possible to say that the decision sought by the applicant for the order is the 'only possible decision that the evidence on any reasonable view can support.' In a case in which it is said that proved drunkenness throws a doubt on the existence of intention, it may well be that the evidence of drunkenness is such that it may be possible for some minds to take one view and some another. The difficulty which I have had with this case, and to which I have already referred, lies in saying that the only reasonable view of the evidence was that it established the existence of the necessary intention."

*[After referring to a passage at p10 per Murphy and Brooking JJ, His Honour continued]:* It is of some relevance in assessing the present position to bear in mind that the Magistrate was hearing the evidence upon a plea of guilty. It must also be borne in mind that the plea was the plea of an unrepresented man, but he had, besides pleading chosen not to challenge either the evidence relating to the driving of his car in the vicinity of the house where the damage was said to have been done, or the record of interview which had been put in; indeed, he had shown no desire up to that stage to say anything at all. The evidence of drunkenness was no more than that he had been drinking. He was specific in his own assertions in the record of interview that he had consumed drink to the value of $3.50, and that he had fallen over.

It might have been felt to be possible that with his disability, the drink that he had consumed contributed to his fall, and that he had violently lost his temper upon forming the belief that his car had been struck by the vehicle which shortly afterwards left the parking area. There is nothing in the evidence of drunkenness to support in any degree the view that he did not know what he was doing, nor is there anything in that degree of drunkenness to throw any doubt on his ability to form the intention to cause damage, and indeed the reverse is the case because his admitted and displayed loss of temper goes to show that he regarded himself as having a motive for taking his revenge for a supposed injury and was disposed to take that revenge.

The admission in the record of interview that it was a spur of the moment decision to make contact with the Valiant is a plausible explanation of what happened and in my view it is not weakened by the alternative and less plausible proposition put forward in statements that the defendant's intention on entering the driveway was to speak to the driver of the Valiant. Against the plea of guilty, making all allowances for lack of representation, these inferences are all the more obvious.

This court should be reluctant to interfere with decisions of this kind by a Magistrate who has heard evidence, and indeed if the question decided can be regarded as a pure one of fact, this court should not interfere at all. The question whether a finding is open on the evidence or whether the evidence is such that a finding must as a matter of law be made, are questions of law, and in this area this court will entertain an order to review.

The learned Magistrate at one stage said that the witnesses could not give evidence of the state of mind of the defendant as he proceeded up the driveway. That, of course, is true, and it is true as a matter of law that it is not sufficient to say that the defendant must have intended the natural consequences of his actions, but when one comes to answer the question, was the defendant's purpose, or one of his purposes, to destroy or damage property, the state of his mind at the relevant time is to be inferred from what he did at the relevant time and from what he said about it afterwards.

My conclusion in this case is that the only inference which was open to the Magistrate on the evidence was an inference that the defendant did intend to cause damage, and accordingly the order nisi will be made absolute.

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