C.A. No. 02823

NOVA SCOTIA COURT OF APPEAL

Cite as: Yates v. Currie, 1993 NSCA 116

Matthews, Chipman and Roscoe, JJ.A.

BETWEEN:

LOUIS YATES, doing business under the firm name and style of DOWN EAST TRUCKING

Appellant

- and -

DARRELL G. CURRIE

Respondent

- and -

ALLSTATE INSURANCE COMPANY a body corporate

Third Party

Hugh R. McLeod for the Appellant

David Farrar for the Respondent

Appeal Heard: June 17, 1993

Judgment Delivered: June 17, 1993

THE COURT: Appeal dismissed with costs to the third party to be set at $1000.00 plus disbursements per oral reasons for judgment of Matthews, J.A.; Chipman and Roscoe, JJ.A. concurring.

The reasons for judgment of the Court were delivered by:

MATTHEWS, J.A.:

The appellant, who is the plaintiff in this action, claims to have suffered damages as a result of a motor vehicle accident which allegedly occurred on December 2, 1991. The third party maintains that the accident was in fact staged by the plaintiff in cooperation with the defendant so as to defraud the third party of insurance proceeds. The third party retained Dr. Akram Kazi and Mr. J. Scott MacIntrye from the Nova Scotia Research Foundation to demonstrate that the damage sustained by the motor vehicles in the so-called accident is inconsistent with the plaintiffs's and defendant's version of the events.

A chambers judge of the Supreme Court was asked by the parties to determine whether Messrs. Kazi and MacIntyre should be qualified as experts in this matter and whether their report is admissible in evidence.

It was agreed that the chambers judge determine the issues based upon the transcript of discovery examinations of Kazi and MacIntyre and submissions of counsel.

The chambers judge rendered his decision on January 19, 1993. His final paragraph sums up that decision:

> "I am prepared to qualify them as experts in the field claimed which does not mean Accident Reconstruction, but expertise in drawing conclusions from damage to vehicles and the circumstances relating to the damage. It would be for the Court to determine what weight to place on the evidence of the witnesses and in particular Doctor Kazi in relation to actual accident reconstruction, he believes he has such skills as mentioned in quotes from his testimony."

The Order dated March 1, 1993 states:

> "1. That Dr. H. Akram Kazi and Mr. J. Scott MacIntyre be qualified in drawing conclusions from damage to vehicles and the circumstances relating to the damage.
>
> 2. That Dr. H. Akram Kazi and Mr. J. Scott MacIntyre be permitted to give opinion evidence and express the conclusions given in their joint report of September 17, 1992."

The appeal is from that decision and the order based thereon.

In **R. v. Abbey** (1992), 68 C.C.C. (2d) 394, (S.C.C.) Dickson, J. at p. 409 commented:

> "With respect to matters calling for special knowledge, an expert in the field may draw inferences and state his opinion. An expert's function is precisely this: to provide the judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate. 'An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary.' (**R. v. Turner** (1974), 60 Cr. R. 80 at p. 83, per Lawton, L.J.).

That opinion was echoed by McIntyre, J. in **Beland and Phillips** (1987), 36 C.C.C. (3d) 481, (S.C.C.) at p. 493:

> "The function of the expert witness is to provide for the jury or other trier of fact an expert's opinion as to the significance of, or the inference which may be drawn from, proved facts in a field in which the expert witness possesses special knowledge and experience going beyond that of the triers of fact. The expert witness is permitted to give such opinions for the assistance of the jury. Where the question is one which falls within the knowledge and experience of the trier of fact, there is no need for expert evidence and an opinion will not be received."

This Court, during the past few years, has had occasion to repeatedly say that it will not interfere with an interlocutory order such as this, unless wrong principles of law or patent injustice would result. See among many others **Tidewater Construction Ltd. v. Nova Scotia (Attorney General) et al** (1992), 109 N.S.R. (2d) 328 and **Nova Scotia Minister of Housing v. Langille and Roberts** (1992), 108 N.S.R. (2d) 348 and the several cases cited therein.

See also **The Law of Evidence in Canada**, where the authors, Sopinka, Lederman and Bryant say at pp. 536-537:

> "An expert is usually called for two reasons. The expert provides to the court basic information necessary for its understanding of the scientific or technical issues involved in the case. In addition, because the court is incapable of drawing the necessary inferences on its own from the technical facts presented, an expert is allowed to state his or her opinion and conclusions. The expert's usefulness in this respect is circumscribed by the limtis of his or her own knowledge. Before the court will receive the testimony on matters of substance, it must be demonstrated that the witness possesses sufficient background in the area as to be able to assist the court appreciably. The test of expertness so far as the law of evidence is concerned is skill in the field in which the witness' opinion is sought. The admissibility of such evidence does not depend upon the means by which that skill was acquired. As long as the court is satisfied that the witness is sufficiently experienced in the subject-matter at issue, the court will not be concerned with whether his or her skill was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence. In **Rice v. Sockett**, Falconbridge C.J. quoted the following explanation:
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> > "The derivation of the term 'expert' implies that he is one who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation. Hence, one who is an old hunter, and has thus had much experience in the use of firearms, may be as well qualified to testify as to the appearance which a gun recently fired would present as a highly-educated and skilled gunsmith."

The chambers judge in qualifying Kazi and MacIntyre did so in a specific fashion. He was careful to leave the determination of the weight of their evidence to the trial judge.

In so doing he applied no wrong principles nor will a patent injustice result from his decision.

We dismiss the appeal with costs to the third party which we set at $1000.00 plus disbursements.

J.A.

Concurred in:

Chipman, J.A.

Roscoe, J.A.

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REASONS FOR JUDGMENT BY:

MATTHEWS, J.A.