SUPREME COURT OF THE FICTIONAL COMMONWEALTH

No. 1895-SCFC-0001

Traveller v. Crown

1 F.C. 1 (1896)

On review of the Multiversal Circuit · Decided May 1896 · Thrice, J., for the Court, joined by Inkwell, C.J., and Brushstroke and Storyboard, JJ. · BRUSHSTROKE, J., concurring · STORYBOARD, J., concurring · LUMEN, J., dissenting

Facts inspired by Wells, The Time Machine (1895); law inspired by Macleod v. Attorney-General for New South Wales (P.C. 1891) and Strassheim v. Daily (U.S. 1911).

FICTIONAL LEGAL SATIRE. NOT LEGAL AUTHORITY.

SYLLABUS

Petitioner, a gentleman of Richmond whose name the record does not disclose, constructed a machine and traveled in it to the year 802,701, where he found the human line divided into the Eloi above ground and the Morlocks below. Pursued through a forest by night, he struck several Morlocks with an iron bar and set a fire that consumed the wood and, by his own account, many of its inhabitants. He returned to his own house eight days after his departure by the calendar and roughly eight days older by his own reckoning, and recounted these events at dinner. He produced two white flowers, given to him by an Eloi named Weena who did not survive the fire.

The Crown indicted him in the Thames District for manslaughter of persons unknown and for arson. The District Court dismissed the indictment for want of a case or controversy, reasoning that the conduct charged had not occurred and the victims did not exist. The Court of Appeals for the Multiversal Circuit reversed, holding that the criminal law of a traveler's origin accompanies him through time as it accompanies a sailor across the sea.

Held: the judgment is reversed and the indictment ordered dismissed. (1) Under Charter art. III, § 1 and amend. IX, conduct is governed by the law of the place and moment in which it occurs. The record discloses no law among the Morlocks and none among the Eloi; (2) A court of the Unreal sits to redress harms that exist within its present. Conduct in another time is cognizable upon return only where its effects persist in the forum: a victim still injured, property still taken, a world still altered. Where the traveler returns with nothing but a narrative, the forum has nothing to adjudicate; (3) The two flowers are a gift and prove the journey, not a crime. Petitioner's injuries are harms to himself. Neither satisfies the test; (4) The Court does not decide whether a Morlock is a Person under Charter amend. I.

HEADNOTES

[1] 40GAG2(1) · **Conflict of Laws: Law of the moment.** Conduct is governed by the law of the place and moment in which it occurs. An act lawful where and when done is not made a crime by the actor's going home.

[2] 140GAG5(1) · **Jurisdiction: The Persistence Test.** A traveler answers at home only for harms that persist at home: a victim still injured, property still taken, a world still altered. A narrative is not a harm.

[3] 140GAG5(3) · **Jurisdiction: Proof of journey is not proof of crime.** A gift proves the giver's hand, not the recipient's crime. Injuries to the traveler himself do not satisfy the test.

[4] 90GAG21(2) · **Criminal Law: Attempt.** Intent formed and a substantial step taken in the forum are punishable there though the completed act lies beyond its reach (Storyboard, J., concurring).

[5] 170GAG1(4) · **Persons: Reserved.** Whether a Morlock is a Person under Amendment I is not decided.

OPINION · THRICE, J., FOR THE COURT, JOINED BY INKWELL, C.J., AND BRUSHSTROKE AND STORYBOARD, JJ.

¶ 1 THRICE, J., delivered the opinion of the Court. A man went forward eight hundred thousand years, did violence there, and came back to Thursday dinner. The Crown would try him for it. The question is whether the courts of 1895 have anything before them to try. We hold that they do not.

¶ 2 The facts are taken from the petitioner's own account, which is the only account there is. A narrator who dined with him has reduced it to writing, and the Crown offers it as a confession. We assume its truth, as the courts below did, and as we must on a motion to dismiss.

¶ 3 The petitioner built a machine in his laboratory at Richmond and rode it into the future. He stopped in the year 802,701. The people he found there were of two kinds. The Eloi lived in the sun, small and gentle and without industry. The Morlocks lived beneath, pale and nocturnal, and came up at night. Whether the Morlocks ate the Eloi the petitioner believed, and the Crown does not contest. When the Morlocks took his machine he went looking for it. In a wood by night they surrounded him, and he struck at them with an iron lever until they fell, and he lit a fire. The fire spread. He says that many Morlocks died in it, blundering about in the light they could not see by. Weena, who had followed him, was lost. In the morning he recovered his machine and returned.

¶ 4 He arrived home eight days after he had left. His clothes were torn, his feet were cut, and in his pocket were two white flowers which Weena had put there. He told the story. The Crown had him indicted.

¶ 5 The District Court dismissed. The Court of Appeals reversed, in an opinion that reads well and reasons badly. It said that a man's law is like his skin: he takes it with him wherever he goes and brings it back with him. We granted review because the question will recur, and because the answer the Court of Appeals gave would make every laboratory in Richmond a port of entry for the criminal courts.

II. THE LAW OF THE MOMENT

¶ 6 The Charter is explicit about what law governs an act. "A world's physics is its substantive law." Art. III, § 1. "No person shall be convicted except under a definite penal law in force at the place, time and branch of reality of the conduct." Amend. IX. These are not two rules but one, stated for space and then for time.

¶ 7 The Court of Appeals thought the rule did not reach so far. It reasoned that a traveler carries the law of his origin as a ship carries the law of its flag. But a ship is a piece of its country afloat; a man is not a piece of 1895 walking about in the year 802,701. When he stepped off the machine he stepped into another world's law, and if that world had any, it bound him. The record says it had none. The Eloi had no magistrates and the Morlocks no statutes. The petitioner was asked at argument what law he broke in the wood, and his counsel answered, candidly, that he broke the law of 1895. That is the answer of a man who has never left Richmond.

¶ 8 We could stop here. An act that was lawful where and when it was done is not made a crime by the actor's going home. But the Crown presses a second theory, and the Court of Appeals adopted it in the alternative, so we address it.

III. THE PERSISTENCE TEST

¶ 9 The second theory is that the forum may punish a returning traveler under its own law, whatever the law of the moment, because the forum has an interest in the character of the men who live in it. The argument has force. No one wants Richmond to become a place from which gentlemen ride ahead to commit murders and ride back to commit none.

¶ 10 But the argument proves too much and asks too little. It proves too much because it would make every act in every time an offense against 1895. It asks too little because it never asks what is before the court.

¶ 11 A court is not a confessional. It sits to redress a harm. Amendment IX states the rule: a traveler may be prosecuted on return only where the conduct was a crime where and when

committed and its harm persists in the forum's present. The test is not whether the act has happened. In some sense it has, for the petitioner remembers it. In another sense it has not, for the wood is unplanted and the Morlocks unborn. Courts do not do well with metaphysics, and we decline the invitation. The test is whether the effects of the act are here.

¶ 12 The Morlocks are not dead. They are not alive. They are eight hundred thousand years from being either. No body lies in a Thames mortuary; no widow petitions for support; no landlord is out a wood. The thing the Crown would punish is a story.

¶ 13 The Crown answers that the story is the harm: that the petitioner has returned a changed man, and that his changed character walks the streets of Richmond. But the law punishes acts, not characters, and it has never punished a man for what he remembers. If it did, the dock would be very full.

¶ 14 The Crown then points to the flowers. We have looked at them. They are small, white, and drooping. They were a gift. A gift proves the giver's hand, not the recipient's crime. The flowers show that the petitioner went where he says he went. They do not show that he killed anyone, and if they did, they would not bring the killing here.

¶ 15 The Crown points last to the petitioner's injuries: the torn feet, the bruises, the bite. These are harms to himself, and a man may not be prosecuted for being hurt.

IV. THE DISSENT'S OBJECTIONS

¶ 16 The dissent fears that our rule rewards the careful criminal, who leaves the proceeds behind. It is true that the rule distinguishes between the traveler who returns with the loot and the traveler who returns with nothing. We think the distinction is the right one. He who returns with the proceeds returns with the crime, and the forum may try him, because the theft is in his pocket. He who returns with nothing but a narrative returns with a narrative. The Crown may indict a narrative only in a court of literature.

¶ 17 Nor is the future unprotected. Amendment IX reserves to the courts of 802,701 their own jurisdiction over what was done in their time. If the Morlocks ever establish courts, those courts may send for the petitioner, and we would honor the writ. That they are unlikely to do so is a fact about the Morlocks, not a defect in the law.

¶ 18 The dissent asks what deters the man who means to go forward and do wrong. The same thing that deters him now: the law of the place he goes to, and the law of the place he comes back to, applied to what he brings back. Amendment IX adds that attempt remains punishable. A man who leaves Richmond announcing that he goes to kill may be tried for the attempt before he reaches the machine. The petitioner left to see what the future held. That is not a crime in any century.

V. THE QUESTION RESERVED

¶ 19 We do not decide whether a Morlock is a Person under Amendment I. The question is serious, and it was argued, and we may have to answer it when a Morlock is a party. It is not necessary to the judgment, and the Court does not answer questions for exercise.

¶ 20 The judgment of the Court of Appeals is reversed, and the case is remanded with instructions to dismiss the indictment.

¶ 21 It is so ordered.

CONCURRENCE · BRUSHSTROKE, J.

¶ 22 BRUSHSTROKE, J., concurring. I join the Court's opinion in full. I write separately because the dissent's reading of Amendment IX deserves a plainer answer than the Court, in its courtesy, has given it.

¶ 23 Amendment IX permits prosecution on return where the conduct "was a crime where and when committed." The dissent says that phrase means the act was wrong "by the law that the actor carried in his conscience." With respect, that is not what the words say. It is not what any words say. "Where and when committed" fixes a place and a time; "a crime" means an offense against the law of that place and time. If the drafters had meant the law of the traveler's origin, they had a word for it, and they used it in the same amendment: "the origin time." They distinguished the two. The dissent would collapse them.

¶ 24 The dissent's rule has a pedigree, I grant, and the pedigree is the one the dissent names: sailors, soldiers and colonists. But those men carried their law with them because a statute said so. The Crown's criminal jurisdiction over its subjects abroad has always been a creature of enactment, and the enactments say where they reach. Nothing in our Charter says that 1895 reaches 802,701. If the Commonwealth wishes it to, the Commonwealth may say so. Until then the "law of the conscience" is not law. It is the dissent's preference, wearing a wig.

¶ 25 One more point. The dissent warns that the Court's rule "teaches" travelers to kill rather than steal. Perhaps. The law teaches many things to those who study it for loopholes. But a court does not read a charter to defeat the lessons a clever man might draw from it; it reads the charter. If the lesson is bad, the remedy is amendment, which belongs to the Commonwealth and not to four Justices.

CONCURRENCE · STORYBOARD, J.

¶ 26 STORYBOARD, J., concurring. Imagine a different traveler. He builds the same machine in the same laboratory. But before he climbs aboard he writes in his diary: “I go to the year 802,701 to kill whatever lives there.” He goes. He does it. He comes back with nothing in his pockets and sits down to dinner. The dissent says the Court’s rule leaves this man untouched. It does not, and I write to explain why, because the point will matter more than the case.

¶ 27 The Court holds that a returning traveler answers at home only for harms that persist at home. That is the holding, not an aside; the Court reached it because the Crown pressed it and the court below rested on it in the alternative, and I would not have a later panel pretend otherwise. But the holding governs the completed act. It says nothing about the attempt, and Amendment IX says a good deal: “Attempt is still punishable.” My diarist attempted murder in Richmond. He formed the intent there, he took the substantial step there (he built a machine and boarded it), and the attempt was complete before the machine left the room. The fact that the completed crime lies beyond the forum’s reach does not pardon the part of it that happened on the forum’s floor.

¶ 28 The dissent answers that intent is rarely announced. True. But that is a problem of proof, not of law, and it is the same problem in every attempt case. Juries have been inferring intent from conduct for as long as there have been juries. A man who departs with a rifle, a map and a list is not saved by his silence.

¶ 29 So the Court’s rule is narrower than the dissent fears and wider than the petitioner hopes. It leaves the past and future to their own courts. It leaves the proceeds of a crime to ours. And it leaves the man who plans a crime here, and goes elsewhere to finish it, exactly where he has always been: in the dock, for what he did before he left.

¶ 30 The petitioner did not plan anything. He went to look. The Court is right that looking is not a crime, and I join its opinion.

DISSENT · LUMEN, J.

¶ 31 LUMEN, J., with whom PENCILER and PLUMB, JJ., join, dissenting. The Court today holds that a man may purchase immunity with a machine. He may go where no witness can follow, do what no court can see, and return to a present that his own act has not yet reached, and the law of his home will take no notice because the wound is not yet open. I cannot agree, and I think the Court has mistaken the nature of the harm with which the criminal law is concerned.

I. WHAT THE PETITIONER DID

¶ 32 Let us be clear about what the petitioner did. He did not stumble into violence. He went armed into a wood with an iron bar, and when the creatures of that wood surrounded him he struck them down, and when striking did not suffice he set the wood alight and watched them burn. He left behind the one creature of that age who had shown him kindness. He came home, and he told the story over dinner as a man tells a story of a hunt. These are the facts the Court assumes. I would hold them sufficient to state an offense.

II. THE LAW OF THE MOMENT

¶ 33 The Court rests first on Amendment IX: the law of the moment governs. I accept the rule. I do not accept the Court's use of it. The Court finds that the year 802,701 had no law, and concludes that the petitioner broke none. But the absence of law in a place does not make that place a license. A man who sails to an island without magistrates and kills its people is not acquitted because they had no code. He is tried where he can be found, under the law that made him. The Charter says as much. Article I, § 1 extends the Commonwealth to "every world in which a story has been told," and Amendment IX allows prosecution in the origin time where the conduct "was a crime where and when committed." The Court reads "where and when committed" to mean "under the positive enactments then in force." I read it to mean what every court has always meant by the phrase: that the act, judged by the law that the actor carried in his conscience, was wrong when he did it. The petitioner knew that it was wrong to burn a wood full of living creatures. He knew it in 1895 and he knew it in 802,701. The law he knew is the law that governs.

III. PERSISTENCE

¶ 34 The Court rests second on persistence. The harm, it says, is not here. I think the harm is here, and that the Court has looked for it in the wrong place.

¶ 35 The Court looks for a body. There is none. It looks for stolen property. There is none. It looks at the flowers and finds a gift. But the criminal law has never been concerned only with bodies and property. It is concerned with the order of the community, and the order of this community was breached the moment a man who had killed sat down at its table and was received as if he had not. The harm the Crown asserts is not the death of the Morlocks. It is that Richmond now contains a man who kills when he is frightened and burns when he is cornered, and who has learned that there is a country where he may do so without answer. That harm is here. It came back on the machine. It sits in the petitioner's chair.

¶ 36 The Court answers that the law punishes acts, not characters. But the act is proved; the Court has assumed it. The only question is whether the forum may take notice of a proved act because its physical traces lie elsewhere. We take notice of acts committed in other

countries every day. We take notice of acts whose victims have died, and of acts whose victims have forgiven. The Court's rule would hold that a man who kills in Calais and returns to Dover may be tried, but a man who kills in Calais eight hundred thousand years hence and returns to Dover may not. The difference is not in the act or the actor. It is in the calendar. I do not think the calendar should be a defense.

IV. WHAT THE RULE TEACHES

¶ 37 Consider what the Court's rule teaches. It teaches the traveler who means harm to leave the proceeds behind. It teaches him to kill rather than to steal, since the dead do not travel and goods do. It teaches him to choose his victims from among those who have no courts. The Court says that the future may send for him. The Court knows that it will not. The Court says that attempt remains punishable. But attempt is punishable only where intent is announced, and the traveler who keeps his own counsel announces nothing. The Court has built a rule that protects exactly the man it should not.

¶ 38 I would adopt the rule of the Court of Appeals, which is the old rule of the common law: that the law of a man's home follows him, and that he answers at home for what he does abroad, in space or in time, where the act would have been a crime had it been done at home and where no law of the place where it was done made it lawful. That rule has governed sailors and soldiers and colonists. I see no reason it should not govern a gentleman with a machine.

V. WEENA

¶ 39 One word more. The petitioner left Weena in the wood. She had followed him, and she was burned, and he did not go back. The Court does not mention her except to say that she gave him flowers. I mention her because the law of this Court has long held that danger invites rescue and that one who leads another into peril owes something to the one who follows. Whether that duty sounds in crime or only in conscience I need not decide today. But I would not have the first opinion of this Court on the law of time be one in which the person who died is a footnote and the flowers are the evidence.

¶ 40 I would affirm. I respectfully dissent.

EDITOR'S NOTE

Drafted by machine in the voice of Justice Thrice. Edited and entered for the Court by A. Marchbanks , a member of the bench and bar.

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