ROYAL COURT (INFERIOR NUMBER)

Before: Sir Frank Ereaut, Bailiff
Jurat L.V. Bailhache
Jurat R.H. Le Cornu

Between: Arthur Malcolm Milon, Plaintiff

And

Between: John Edward Phillips and Teresa Louise Surcouf, his wife, Trading as Multina Riding School. Defendants.

Advocate B.E. Troy for the Plaintiff
Advocate P.R. Le Cras for the Defendants

On the afternoon of 12th March, 1978, the plaintiff, together with members of his family and friends, hired horses from the defendants and went riding as a group. They were accompanied by Miss Taylor, an instructress employed by the defendants, who was in charge of the group. During the ride the plaintiff's horse bolted or galloped away, and he was thrown to the ground, suffering injuries. The plaintiff alleges that immediately before the horse bolted the left rein either snapped at, or became detached from, the ring at the bit, and that his injuries were therefore caused by the fault and negligence of the defendants in failing to ensure that the reins and other tack used on the horse were in good and satisfactory condition and fit for the purpose for which they were intended. He therefore claims damages.

The defendants deny liability and claim that the left rein was broken as a result of the horse stepping on it after the plaintiff had fallen off. In the alternative, they allege contributory negligence in that the plaintiff failed to inspect the tack before mounting and he encouraged the horse to gallop. In the further alternative, they put forward the defence of "volenti non fit injuria".

By agreement the Court is concerned at this stage only with issue of liability; and by further agreement the Court is asked in the first instance to decide solely the issues of fact, that is to

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say, how and when the left rein broke or became detached, and whether the breaking or detachment of the rein caused the plaintiff to fall from his horse, thus leaving aside for further argument, if such is appropriate in the light of our decision, the alternative defences put forward by the defendants.

Before considering the evidence, we should note that in his Order of Justice the plaintiff alleged that "the left rein snapped at the point where the rein meets the bit in the horse's mouth", but in the Further and Better Particulars supplied by him at the request of the defendants the plaintiff alleged that "the rein at one end was not properly secured to the ring at the bit and became detached under pressure from the rider". This latter allegation was a reference to the fact that the end of the rein was, or should have been, attached to the ring by being looped over it and the loop was then secured to the rest of the rein by a hook or billet inserted in a hole in the rein. There is a considerable difference between, on the one hand, the rein snapping, and on the other hand, the rein becoming detached from the ring through the billet not being properly secured, but because, firstly, the rein in question was not before the Court (having been thrown away by the defendants soon after the accident), secondly, there was a dispute as to whether the rein had snapped or become detached, and thirdly, counsel argued that whichever was the case the defendants must have been negligent in providing defective reins and tack, we were asked to consider both alternatives in coming to our decision, and this we do.

Shortly before the accident, the party entered a lane leading to Grève de Lecq. It was agreed that Miss Taylor and the female members of the party would walk their horses some 200 yards down the lane and then wait for the male members of the party, including the plaintiff, to canter down to them. The latter did so, but the plaintiff, who was in front, became afraid that he might not be able

to stop in time to prevent a collision with the female members of the party waiting in the lane, and therefore, although he felt fully in control of the horse, he decided to guide it through a nearby open gate into field 432, where he intended to bring it to a halt.

He told us that once in that field he then pulled on both reins as hard as possible to stop the horse, and when he did so the left rein became detached from the ring at the bit. His left hand flew back and he lost control, the horse bolted up the field, beginning a slow turn to the right, jumped over a small bank or hedge into field 428 and when it refused at a point where the field slopes to a lower level he was thrown over its head and injured. The cause of the accident was the left rein becoming detached, or snapping, as soon as he had entered field 432.

Our conclusion in this case depends upon our answers to two main questions:

1. The manner of the plaintiff's riding after, as he alleges, the left rein became detached (or snapped) as he entered field 432.
2. Did the left rein become detached or snap, and if the latter, at what place on the rein?

We consider the evidence on the first main question. The plaintiff told us that after the left rein became detached the horse bolted up field 432. He was still pulling on the right rein to try to stop the animal, and he also held onto the saddle with both hands. The horse made a slow right-hand turn, but it did not reduce speed and it jumped the hedge or bank into field 428 and he was then thrown off. At no time did the rein become entangled in the horse's feet.

Mr. Gouyette, a member of the party, saw the plaintiff in field 432 and formed the opinion, from the way he was sitting, that he had lost control. He saw him disappear over the hedge at the top of the field.

Mr. Barry Rawlinson, another member of the party, said that the

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plaintiff's speed in the lane was more of a gallop, and he continued at that speed up the field. He was not in control at any time. After the accident the plaintiff told him: "The horse took off - the rein broke - I fell off".

Mr. Gary Rawlinson, another member of the party, said that they all went fast down the lane, and he saw the plaintiff go up the field and out of sight. Mrs. P.J. Rawlinson saw the plaintiff swerve into field 432 from the lane at a speed which frightened her.

The only other witness to the plaintiff's riding in the field was Miss Taylor. She told us that as the plaintiff cantered down the lane towards her he seemed to be in control. He seemed to guide the horse into field 432, much to her annoyance, as it was contrary to her instructions. As he entered the field she was some five yards away, and both reins were intact then. She shouted to him to turn the horse in a circle, but he did not do so. After entering the field the plaintiff's horse gathered speed and went straight up the field "at a rate of knots". He seemed to be urging the horse on by using his legs. Although the horse, Blue Danube, was quiet-natured, it was very willing and would respond to pressure to go quickly.

Miss Taylor said that she saw no sign, as the plaintiff went up field 432, that he had lost a rein. He seemed to be in control, and he appeared to be seated in the normal position. He had his back to her, but she could see that he was holding both reins. She did not see his left hand move back, nor did she see him jar backwards or the horse go to the right as she would have expected if the left rein had suddenly snapped or become detached.

The plaintiff jumped the bank at the top of field 432, and she saw the top half of his body circle round to his left quite fast about twice, and he then disappeared. The fact that the horse circled to the left suggested to her that the plaintiff was using his left rein, which must therefore have still been intact. She went up to field 428 and found that the left rein had broken. The plaintiff

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told her that the rein had broken when he tried to pull the horse up.

There is a bank with trees bordering the right of field 432 and Miss Taylor agreed that that feature could cause a horse to veer away, but she saw no sign of the animal veering away - it went straight up the field.

We turn now to the evidence on the second main question, which is, did the left rein become detached or snap, and if the latter, at what place on the rein?

The evidence was conflicting. The plaintiff at first said that it had become detached from the ring, but later admitted that he was not sure if it had pulled out or had snapped. Mr. Gouyette met the plaintiff walking back with the horse after the accident, and he (Mr. Gouyette) claimed to have knotted the left rein onto the ring, but he could not say if it had broken or the loop had pulled out from the ring. .

Mr. Gary Rawlinson, however, claimed that it was he who had replaced the rein. He told us that the loop had become detached because the rein had split across at the point where the billet is secured in the hole. The end bit of rein, beyond the hole, was missing.

Miss Taylor gave a different account. She found that the left rein had broken across, some six inches from the ring. That six inches of rein was still attached to the ring. There was no break at the billet, to which the loop was still attached. She took both pieces of the left rein to her employer, Mr. J.E. Phillips, who with his wife owns the riding school. He told us that he was handed by Miss Taylor on the evening of the accident the whole of the left rein. It was in two parts. The smaller, some six or seven inches long, was the part which had been attached to the ring and contained the loop. The rein was not broken at the billet. The next day he threw both pieces of the rein away, as he did not then appreciate that the plaintiff would make a claim. He had probably kept the right-hand rein, but he could not now identify it.

/Mr.

Mr. Phillips made several points in his evidence.

1. Blue Danube, the horse in question, was a good riding school type of horse, which, because of its quiet nature, was used by handicapped children. It was easy to control. (That opinion was supported by Miss Taylor, and by two witnesses, Miss Peta Philo and Mr. Brian Perrée, both of whom had ridden the horse on a number of occasions).

2. The horse had already been on two rides on the morning of the day in question and so would not have been entirely fresh.

3. If the left rein had become detached because the loop had not been properly secured by the billet (which he was sure was not the case), the rein would have come away from the ring as soon as pressure was exerted, for example, when mounting the horse. The same tack had been used on the horse in the morning and there had been no trouble (Mr. Perrée, who had ridden the horse that morning, confirmed this).

4. Although he had had fifteen years' riding experience he had never known a rein to break across at the billet, and the rein in question had not done so. There was not much strain on a rein at that point.

5. All tack at his school was in good condition, and although he had no regular inspection programme, all tack was taken apart for cleaning fairly regularly and any wear would be noticed then.

6. The common cause of a rein breaking was when it was allowed to fall on the ground and the horse stepped on it. When the horse shook his head up, the rein snapped.

We also heard evidence from Commander C.F.T. Poynder, who is an Associate Member of the Master Saddlers, and who, because of this and other qualifications, was put forward as an expert witness. He made the following points.

1. If the billet on the left rein had not been properly secured before the first ride of the day in question, it would have become detached before the afternoon ride, and probably on the first morning ride.

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2. It was virtually impossible for a rein to break across at the billet when the horse was being ridden.

3. If a rider fell off a horse, then unless a martingale had been fitted (Miss Taylor said that none had been on the horse in question) the reins were likely to go over the animal's head and it would be almost bound to stand on them. If it did so, it would probably snap the reins, and in such case the break would be within an inch or so of the point where Mr. Phillips claimed the left rein in question had broken, or at the buckle.

4. The weakest part of a rein is not at the billet, but where it joins the ring, because of the friction between steel and leather.

5. He had supplied some saddlery to Mr. Phillips. It was the better English quality, which was unusual for a riding school.

Having considered the evidence on both the main questions we have posed, we find that the evidence on each helps us to answer the other.

We are satisfied that the left rein did not become detached, in the sense of the loop pulling out from the ring. From the technical evidence we have heard, and from the demonstration we observed in Court, we are sure that if it had not been secure it would have come undone earlier that day or certainly earlier in the ride. Moreover, there is the factual evidence of Miss Taylor.

We are satisfied, therefore, that the rein broke or snapped, and the question is, at what point on the rein? Mr. Gary Rawlinson said that it was broken at the billet and that the end piece was missing. Mr. Gouyette's evidence would suggest that he did not see any piece of the rein still attached to the ring. Mr. Phillips and Miss Taylor were adamant, however, that no part of the rein was missing and that the break was six inches from the end. Mr. Rawlinson and Mr. Gouyette would have had only a brief look at the rein, with no particular reason then to note details, whereas Mr. Phillips and Miss Taylor were able to examine it at leisure and with a professional interest. It is true, of course, that Mr. Phillips, and possibly Miss Taylor also because she is an employee of the defendants, have an interest in the outcome of this case, but we have no reason to think that they were giving false evidence. Their recollection on this matter is, therefore, to be preferred.

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Moreover, their recollection is supported by the expert evidence of Commander Poynder, who expressed the view that it would be virtually impossible for a rein to break across at the billet when the horse was being ridden.

We therefore conclude that the rein did not break at the billet but at the point, some six inches from the ring, as testified by Mr. Phillips and Miss Taylor. Mr. Phillips said that this was consistent with the reins having been dropped on the ground and the horse having stood on them. Commander Poynder entirely supported that opinion; indeed he went so far as to say that a break in a rein at that point was "symbolic" of a horse having stepped on a rein after getting loose.

That is strong presumptive evidence in support of the defence ·bmission that the rein broke, not when the plaintiff tried to pull the horse up in field 432, but after he had fallen off in field 428, but it is not conclusive and we have to consider whether it is substantially rebutted by the evidence of what happened in those fields.

The plaintiff claimed that the left rein broke very soon after he entered field 432 and thereafter he was forced to continue fast up the field holding the right rein and with both hands holding the saddle. Two of his witnesses said that he clearly appeared to be out of control (which, however, was disputed by Miss Taylor), but no witness saw a loose ·in, nor, apparently, any sudden jerking back as common-sense would suggest must have occurred if the plaintiff had been pulling as hard as he could on the left rein when it suddenly gave way.

There is no doubt that the plaintiff rode up the field very fast. Counsel for the plaintiff suggested that something must have happened to cause this and to give the impression to two witnesses that he was out of control. Miss Taylor, on the other hand, claimed that he was urging the horse on with his legs, which would account for the sudden increase in speed.

Of special significance is the fact that no other witness said that he or she saw the horse veer to the right despite the claim by the plaintiff that he was holding only the right rein and that he began a slow turn to the right. Counsel for the plaintiff answered this by arguing that the horse would have veered away from the trees on the right, but keeping a

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straight course does not seem consistent with a horse which, on the one hand, is being pulled to the right, and, on the other hand, is veering to the left.

There is a conflict of evidence as to what the plaintiff did in field 428. Miss Taylor said that he circled to the left, which he clearly could not have done unless the left rein was still intact at that point. The plaintiff denied that he circled to the left. No other witness saw how the horse behaved in that field. Miss Taylor, as the person in charge of the group, had a particular interest, and indeed duty, to watch the behaviour of the horse in so far as she was physically able to do so, taking into account the lie of the ground, and we think that her evidence on this point is to be preferred to that of the plaintiff, who at this stage was losing control, if indeed he had not already lost it.

We have come to the conclusion that the evidence on the question which we have just been considering tends to support the strong presumptive evidence on the other question, namely, that the rein broke, not when the plaintiff tried to pull the horse up in field 432, but after he had fallen off in field 428. Although no one saw the horse step on the left rein, we know that there was no martingale and we know from the plaintiff's own evidence that he went over the horse's head. It is reasonable to assume that the reins must also have gone over the horse's head on to the ground when the plaintiff fell, and it would then have been easy for the animal to have stepped on the left rein and to have broken it at the point where we have found that it was broken.

Counsel for the plaintiff reminded the Court that his client had told Miss Taylor that the rein broke when he was trying to pull up the horse, and that because that explanation was given immediately after the accident, at a time when he was dazed and hurt from his fall, it was unlikely that he would have been making it up. We also recall the evidence of Mr. Barry Rawlinson that the plaintiff said to him: "The horse took off - the rein broke - I fell off". We have understood counsel's argument, and we have considered carefully whether the effect of the plaintiff's own explanation, because of the circumstances in which it was given, is sufficiently strong to counter all the evidence which

is inconsistent with that explanation. We have come to the conclusion that it is not.

Assuming that the defendant's contention as to what happened is correct, then the plaintiff had disobeyed Miss Taylor's instructions and had ridden rashly, ending up with a fall, for which he had only himself to blame. There was evidence that Miss Taylor was annoyed and had shouted her annoyance to the plaintiff after he had entered field 432, although he claimed that he had not heard her. We think it by no means unreasonable to take the view that the plaintiff, despite the fact that he was recovering from a fall which had occurred a few minutes earlier, was perfectly capable of giving an immediate explanation in self-justification of his conduct to Miss Taylor and to Mr. Rawlinson, by aming his fall on the rein.

For all the above reasons, we find on a balance of probability that the left rein broke in the manner and in the circumstances contended by the defendants, that is to say, at a point some six inches from the bit when the horse stepped on the rein after the plaintiff had fallen off. It further follows that we find on a balance of probability that the plaintiff's fall was not caused by the rein breaking or becoming detached.

We think it necessary to end with a brief reference to the maxim "res ipsa loquitur", because counsel for the plaintiff argued that the axim applied in this case since there was a dispute as to how the rein had broken and that breaking was more consistent than not with the negligence of the defendants.

Clerk and Lindsell on Torts (13th Edition) says at paragraph 966 that the maxim is -

> "... no more than a rule of evidence and states no principle of law "

The rule applies only -

> "... where the circumstances giving rise to the cause of the accident are unknown ... where all the facts are known it cannot have any application " (Lord Porter in Bolton v. Stone (1951) 1 All E.R. 1078 at page 1081).

and Clerk and Lindsell adds, at paragraph 967 -

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> " The doctrine applies (1) when the thing that inflicted the damage was under the sole management and control of the defendant, or of someone for whom he is responsible or whom he has a right to control; (2) the occurrence is such that it would not have happened without negligence. If these two conditions are satisfied it follows, on a balance of probability, that the defendant, or the person for whom he is responsible, must have been negligent. There is a further negative condition: (3) there must be no evidence as to why or how the occurrence took place. If there is, then appeal to res ipsa loquitur is inappropriate, for the question of the defendant's negligence must be determined on that evidence. "

The maxim was considered in Dale v. Dunell's Limited (1976) J.J.291, where a swinging gate at the entrance to a car park swung out across a public highway and caused damage to a passing car. There was no evidence as to how the gate got into the road. The Court held that the maxim applied.

That was a classic case of the application of the maxim. The present case is, however, quite different. None of the three conditions mentioned above is satisfied, and in particular there is evidence as to why and how the occurrence took place. The maxim does not, therefore, apply.