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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

ROBERT LEITCH

Plaintiff

and

LIAM REID

Defendant

NICHOLSON LJ

The Facts

[1] The plaintiff, Robert Leitch, lived at 14 Britannia Crescent in Larne, Co Antrim in 1996. His wife lived at 3 Drumcrow Road, Glenarm. They were no longer living as man and wife. But they had two small children aged seven and five. As can be seen from the photographs Mrs Leitch lived in a farmhouse. There was a farmyard with a number of outbuildings. The property, together with 57 acres belonged to the defendant who let the farmhouse to Mrs Leitch under an informal agreement for a rent of £55 per week.

[2] The plaintiff visited Mrs Leitch nearly every day. He brought the children to school in his car and brought them home. He was on friendly terms with the defendant and used one of the outbuildings to repair his car and had various tools, hammers, spanners and the like which he kept in this shed. There was an informal arrangement under which the Reids were permitted by him to use any of his tools. They had a tractor and from time to time used his tools to carry out repairs to the tractor. The defendant said that the plaintiff's tools were used not very often. The plaintiff said that he had no objection to the use of them by the defendant or his son Aiden. If something happened to the tractor or they needed the use of a hammer, they borrowed his tools and left them back at the shed door. The impression I formed from the vague evidence which was given was that his tools were used as often as they were needed by the defendant or his son and more often than was admitted.

[3] The defendant kept cattle on the land and on occasion brought an animal or two into a shed overnight, moving it the next day to the home farm for calving or the like. Cattle were kept on the land during the winter, according to the plaintiff. I accept this. The defendant kept furniture in another shed.

[4] The plaintiff had an accident on the farmyard premises on 2 November 1996. One can see a barn in the photographs to the right of the farmhouse and attached to it is an outside light which lights up the farmyard. Mrs Leitch kept coal and chickens in one of the outhouses and the light was useful to her and would have been useful to all who used the farmyard. The plaintiff took a ladder from the outhouse where the cattle were kept overnight, inspected it, as he said in evidence, considered that it was sound, rested it against the barn, climbed up it to remove a bulb which no longer provided light, in order to replace it. His wife footed the ladder. A rung about four down from the top broke and he fell to the ground injuring his shoulder badly. There was no dispute as to how the accident occurred, save in respect of the height of the ladder and its suitability for such use.

[5] The key issue in the case, so far as the facts were concerned, centred round the ladder. I am satisfied that it was put in the cattle shed by someone who worked for the defendant and put there on his behalf. The plaintiff said that there was an informal arrangement whereby he was free to use anything belonging to the defendant just as the defendant was free to use anything belonging to him. I accept that there was an explicit or implicit agreement. The plaintiff said that in fact he did not use anything belonging to the defendant until he used the ladder and that he had not seen the ladder being used by the defendant or his son before he himself used it. This is an example of his frankness. The ladder was about 15 feet in height, homemade but a good heavy ladder, he said. It was kept in a dry shed on its side on the floor, he added. I accept this evidence.

[6] The plaintiff was a diesel fitter and used ladders on a regular basis at work. There would have been a need for a ladder in the farmyard for maintenance. I am satisfied that, as he said, it was a sturdy ladder and was kept in the cattle shed in case there was a need to use it for the purposes of maintenance of the farmyard.

[7] The defendant and his son gave descriptions of the ladder. In so far as their descriptions differed from that of the plaintiff, I preferred his evidence. It may be as they said, that the ladder was made by one of the previous tenants of the farmhouse but I am satisfied that it was taken into the shed on the defendant's behalf in order to be used as a ladder for the purposes of maintenance. The defendant accepted that "it was quite possible" that the ladder had been used for the purpose of changing the bulbs. But he said that

the ladder was "dodgy", was "not 100%". I do not accept that he knew that. If he did, he should have had it taken away. But I do think that he ought to have known that it was "dodgy".

[8] His son, Aiden said that he remembered the ladder lying outside an outhouse, described it as "firewood". It was rotten, with green grass on it, left out in the rain; anyone with commonsense should not have been standing on that ladder. It was not long enough to be used for changing light bulbs, he said.

[9] He said that he used his own ladders when changing the light bulb. I reject the claim that he used his own ladders, but I accept that on at least one occasion he stood on the cab of his tractor to do so, as he said.

[10] The plaintiff was in hospital for three weeks. The defendant said that he went to look for the ladder three or four days after the accident and could not find it. His son said that the plaintiff's children may have smashed the ladder up. They were then seven and five years old. Both the defendant and his son said that the ladder was kept because it was not theirs. I do not accept this evidence. I do not believe that Mrs Leitch or her children would have disposed of the ladder. I infer, therefore, that the defendant or his son disposed of the ladder because, on examination, they saw that it was unsafe. I do not accept that they would have kept a dodgy or rotten ladder merely because it belonged to a former tenant, as they claimed. The inference which I have drawn about the disposal of the ladder is important. It was then that the defendant and his son realised it was "dodgy", not 100%. As it turned out, it was "dodgy" and should have been disposed of before the accident.

[11] The defendant's son claimed that he would have changed the light bulb, if asked. He claimed that he would have changed light bulbs in the farmhouse, if asked. I disbelieve the latter and I am inclined to the view on the evidence that the light bulb had failed some time before the plaintiff attempted to replace it. There is no evidence that the defendant or his son was asked to fix the light bulb though Mrs Leitch could have telephoned him and asked him to replace it. I have strong reservations about their willingness to fix it, if asked. The plaintiff said that it had not been working for 4-6 weeks. He said that when he came out of hospital the light was not fixed. He fixed it.

[12] I am satisfied that the ladder was not reasonably safe because the rung broke and the defendant or his son removed it from the farmyard after the accident. It was not there when the plaintiff came out of hospital.

[13] No claim was made by the plaintiff for almost two years. I am prepared to accept his evidence that he was hoping that he would make a full recovery. If he had, I believe that he would not have made a claim.

[14] I accept that the plaintiff examined the ladder before using it. He was a diesel fitter, accustomed to using ladders. This one was homemade, as he said. He said in evidence that he could not remember how well he checked it. This is a further illustration of his honesty. He said that it looked strong enough and believed that the defendant and his son used it but, as I say, never claimed that he had seen them using it.

[15] As he had not seen it being used in the farmyard, he should have checked it carefully. As it was disposed of, it is impossible to know whether he would have detected that it was faulty. But as a rung broke, it was clearly faulty.

[16] On balance I am inclined to the view that he did not examine it carefully enough, although I appreciate that there is an element of speculation in this assessment of his evidence.

[17] It is unfortunate that Mrs Leitch was unavailable to give evidence. The plaintiff told the court, and I have no reason to disbelieve him, that she is living with another man, is an alcoholic, has had her children taken away from her and that her sister has custody of them and he sees them on a regular basis. But he has not been able to get in touch with her. My impression is that she would not have come forward as a witness.

[18] Damages are agreed at £30,000, subject to liability.

[19] Mr Lockhart for the defendant submitted that the first issue was whether the defendant owed a duty of care to the plaintiff. The plaintiff could not rely on the Occupiers' Liability Act. He referred to Wheeler v Copes [1981] 3 All ER 405 to which, apparently Mr McNulty QC had drawn his attention.

[20] The ladder was a makeshift ladder, he contended. The defendant could not be made liable for it. On the evidence of Liam Reid the ladder was too short and the plaintiff would have had to stretch to take out the light bulb, risking a fall. It was common case that the ladder was homemade, there was evidence that it had lain outside. There was no evidence that it had been used by anyone. It had been there for a number of years. No request was made to use the ladder. Accordingly no duty was owed.

[21] He further submitted that it was not intended to be used, it was not in the reasonable contemplation of the defendant that it would be used. Bailment was not an issue. This was a Heath Robinson ladder. The ladder was not lent to the plaintiff. He referred to Clerk & Lindsell (18th ed) at p436.

[22] The ladder had not been used by anyone on the defendant's behalf. The ladder broke on the first occasion that it was used. If there was

negligence, there must be a finding of contributory negligence. The ladder was homemade. This put the plaintiff on enquiry. The ladder was not kept in a place where the plaintiff was likely to use it.

[23] Mr McNulty QC submitted that the inferences open to the court were that the ladder was owned by the defendant or that he had assumed responsibility for it. There was mutual acceptance that each could borrow from the other, an arrangement that was all the more likely in a rural area. He relied on the duty of a bailor to a bailee. There was disparity between the descriptions of the ladder. He relied on the disappearance of the ladder. There was a requirement for an outside light and there was a requirement for some means to reach the light.

[24] In reply Mr Lockhart said that in assessing whether there was a duty and, if so, what standard of care was owed, one must have regard to the magnitude of the risk. The ladder was in the defendant's byre; there was no history of use; no one knew of the ladder being used; the longer the passage of time the less likely it was to be used.

[25] In my view the issues are: did the defendant owe a duty of care to the plaintiff; did he fall below the standard of care required of him, if he owed the duty; if so, was the plaintiff guilty of contributory negligence. Bailment is not an issue. It was not pleaded. I consider that the defendant took control of the ladder in order that it should be available in the farmyard for purposes of maintenance. This would have included the replacement of the light bulb. I am also of the view that it was foreseeable on his part that the plaintiff would have used it in order to assist his wife. Accordingly I consider that he owed a duty of reasonable care for the safety of the plaintiff. I consider that reasonably careful examination of the ladder would have shown that it was defective and that he was in breach of his duty in failing to warn the plaintiff not to use it or in failing to remove it from the premises. I also consider that the plaintiff contributed to the accident. It occurred in failing light but an examination of it by him should have revealed that it was unwise to use it.

[26] The case of Wheeler v Copes [1981] 3 All ER 405 differs in its facts materially. Nonetheless, whilst the defendant in this case did not agree or offer to provide the ladder, I have held that he kept it in the shed for maintenance purposes and there was an explicit or implicit agreement between the parties that they could use the equipment of each other. Since the plaintiff was a diesel fitter, accustomed to using ladders and had not actually seen the ladder in use, he should have examined it with more care than he did and I find him 50% to blame for the accident.

[27] Accordingly there will be judgment for the plaintiff for £15,000 together with interest from the date of issue of the Writ at judgment interest.