JERSEY / JUDGMENT

# Northedge v Le Sech [2003] JRC 160 (12 September 2003)

[2003] JRC 160

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## judgment

the bailiff: 1. This is an unhappy case. It results from an incident at a Christmas party in December 1999, when the plaintiff and a number of others were gathered in a small private dining room at a local restaurant. A number of pre-prandial drinks had been consumed and the luncheon had progressed to the end of the first course, so that some wine had also been drunk. It was the festive season and the atmosphere was merry. 2. There has been no suggestion of any argument or aggressive behaviour. Some twelve people were gathered around an oval - or round - table. As a result of the incident the plaintiff, Mr Ronald Northedge , suffered a dislocated shoulder. He has been obliged to undergo surgery and medical treatment and has suffered financial loss. 3. He claims damages from Mr Ashley Le Sech , the defendant, who was the cause, he asserts, of the injury. Damages have been agreed at £12,500 and the only issues for us turn on liability and causation. How did the plaintiff sustain his dislocated shoulder and is the defendant responsible in law? 4. It is not in dispute that, at the material time, the defendant left his seat to go to the toilet. It was necessary to pass behind two or more of the diners and because space was restricted the defendant had to squeeze past the chairs. As he moved past the chair occupied by the plaintiff there was a physical exchange to which we shall return, as a result of which the plaintiff's shoulder was dislocated. 5. The defendant was at that time unaware of the injury and continued to the toilet. He returned to the table and found the plaintiff looking white and holding his shoulder. Although there was conflicting evidence as to when and how the plaintiff got to hospital it is agreed that the defendant took him there and waited with him for two hours until the plaintiff was able to receive treatment. 6. The Court heard evidence from four witnesses as to fact, namely the parties to the action and Mr Charles Prouten and Mr Helier Lucas who were also at the table when the incident occurred. 7. The evidence of the plaintiff was that there were four people seated at the table between him and the defendant. When the defendant got up to go to the toilet, he was, according to the plaintiff tapping people playfully on the heads as he walked past. The plaintiff did not want to be touched on the head and put up his hand to protect himself. He said that the defendant caught hold of his wrist and pulled it up, as a result of which he felt incredible pain and passed out. 8. In his order of justice it is alleged that the defendant "grabbed hold of the plaintiff's right arm and wrenched and or lifted it up and as he did so a serious injury was sustained to the plaintiff's shoulder". The plaintiff was aged 73 when the incident took place.

9. The defendant's account was very different. He denied tapping people on the head as he went past and said that the only person seated between him and the plaintiff was a Mr Le Feuvre who was his employer. Because of this relationship, he would not in any event have thought it appropriate to tap Mr Le Feuvre on the head, playfully or otherwise. 10. The defendant alleged that as he was going past the plaintiffs' chair the plaintiff turned to be at an angle of some 45 degrees to him and caught hold of his torso. He conceded, in cross-examination, that this was a slightly different account from that pleaded in his answer, where it was asserted that the plaintiff had gripped his arms and middle torso. 11. The defendant thought that he would lose his balance and fall on top of the plaintiff and on to the dining table. He accordingly put his hands down through the plaintiffs' arms and forced them upwards in order to break the grip. He denied that he had done so violently. It was all over in a second or two and he continued on his way to the toilet. 12. Mr Charles Prouten gave evidence for the defendant whom he regards as a friend. Mr Prouten knows the plaintiff as an acquaintance who occasionally drinks at the same public house. He remembered the defendant squeezing himself past two or three people to get to the toilet. He saw the plaintiff lift up his arm towards the defendant as if "to mess him about" in a playful way leaning back in his chair as he did so. Mr Prouten saw the defendant push the plaintiff forward in order to get past. He thought that this was done by pushing the plaintiff's hand down but with the passage of time he could not be sure. It was in any event, Mr Prouten said, not an aggressive movement. He had not seen the defendant tapping anyone on the head. 13. Mr Helier Lucas also gave evidence for the defendant whom he knew well. He had met the plaintiff only once or twice. Mr Lucas was the organiser of the lunch party which was, he said, an annual event. He had not expected the plaintiff to be present but he had arranged for an extra place to be laid once he saw that the plaintiff had arrived at the restaurant. Despite the unexpected appearance of the plaintiff, Mr Lucas said that there was no animosity towards him. He had been sitting directly opposite the plaintiff and saw the defendant pass behind talking as he did so to someone else across the table. He was positive that the defendant had not been tapping people on the head. As the defendant moved behind the plaintiff's chair, the plaintiff leant back playfully and raised an arm to grab the defendant. The defendant had brushed him away. 14. Mr Lucas described the whole incident as being something and nothing. He saw no lifting up or wrenching. The movements had been fairly gentle and he had thought nothing of it until the defendant told him later that the plaintiff had suffered an injury. He thought it was highly unlikely that the plaintiff had passed out. Mr Lucas is a St John's Ambulance trained paramedic and would have noticed if the plaintiff had fainted and would have done something about it. 15. The Court also heard evidence from two expert witnesses, namely Mr James Kernohan and Mr David Pring both distinguished Consultant Orthopaedic Surgeons. We intend no disrespect to the them if we do not describe their evidence in any detail. Both Mr Kernohan and Mr Pring stated in their reports that with regard to causation they doubted that Orthopaedic Surgeons could determine analytically the exact mode of injury. Although both experts, in giving evidence, offered their views as to the most likely explanation for the injury, those views are inevitably based to a greater or lesser extent on appreciation of the strength or weakness of other evidence which is, of course, a matter for the Jurats . 16. What is not in doubt from the expert evidence is that a dislocation occurs almost always when the arm is above the horizontal and in

external rotation. The trauma most likely to occur when the arm is lifted and twisted backwards. The shoulder of a man aged 73 was easier to dislocate than that of a younger man. This was particularly the case when alcohol had been consumed and muscles were relaxed. 17. We remind ourselves that the burden of proof is on the plaintiff and that he has to satisfy the Court, on a balance of probabilities, that his case is made out. We observe in passing that it is now nearly four years since the incident took place, and it is hardly surprising that memories are not as fresh as they were. This delay is regrettable and has no doubt contributed to the different recollections of the witnesses. 18. We think that the plaintiff gave his evidence honestly but we believe that his recollection of events, affected perhaps both by the passage of time and by the trauma that he experienced, is mistaken. His claim is that the defendant recklessly grabbed his right arm and wrenched it upward causing the injury to be sustained. This allegation is not supported by any of the other evidence of those who were present. In particular the evidence of Mr Prouten and Mr Lucas, which in our judgment was given honestly and objectively, does not support that contention. We think it more likely that the plaintiff did playfully reach backwards to impede the defendant's passage to the toilet and in the physical encounter which resulted found his arm twisted or moved backward sufficiently to cause the dislocation. 19. We are satisfied that this was not the result of any recklessness or negligence on the part of the defendant. It was in our judgment an unhappy and unfortunate accident. It follows that the plaintiff has not satisfied us on a balance of probabilities that his claim is made out and the order of justice must accordingly be dismissed. 20. As counsel will know, costs are a matter for the presiding judge and it is a matter of regret that costs in this case have been allowed to escalate to an extent that they are quite out of proportion to the matters in dispute between the parties. It is regrettable - but as counsel for the defendant accurately said in his last submission - this does not seem to me to amount to an exceptional circumstance that would justify the making of anything other than the usual award, which is that costs follow the event. I accordingly order the plaintiff to pay the defendant's costs on the standard basis. Authorities Clerk and Lindsell on Torts (18 th Ed'n ): pp.680-683. Page Last Updated: 18 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII


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