BETWEEN Ronald Henry Guillaume Plaintiff

and

Clark John Associates Limited Defendant

This case arises out of an accident which occurred at the Corbière premises of the defendant company on the 5th October, 1978. The plaintiff in this action is a compositor by trade, that is to say he places the type face and sets up the type which is to be used in whatever printing is required, but he was occasionally called upon by the company to operate, as a machine minder, one of the printing presses which, in this case, was a Thompson printing press. We have had a good deal of technical evidence as to how that printing press works, but it will be sufficient if I say that there is a flat metal platen, which, with paper placed on it by mechanical means, comes into contact in a vertical position from a horizontal position with the type face, which has been pre-inked by rollers, which themselves then rise vertically as the platen comes into the vertical position and brings the paper into contact with the print surface. It is clear therefore, from what I have said, that there is very close contact, We have looked at photographs and it appears to us to be a heavy machine and it is clear to us that anything caught between the platen and the printing face will suffer considerable injury. I think that is all I need say as to that part of the mechanical evidence which we have heard, or the evidence about the mechanical working of that machine.

In order to drive the machine there is a fly wheel which has a disc in it and that disc has a corresponding disc set very close to it, some one ten thousandth of an inch, and therefore it requires very careful adjustment. That second disc when brought into contact with the disc on the fly wheel allows the power generated by the

fly wheel to operate the press. There are also shoes which act as a brake on the fly wheel turning and the shoes and the second disc are controlled by a lever in the form of a clutch to the left of the machine which, when it releases the second disc so that the two discs touch, allows the machine to utilise the power from the fly wheel and thus to operate. In order for the machine to be stopped the clutch lever has to be disengaged in the sense that it has to be moved a short distance to the left by the operator so that a little latchet clicks at the bottom of it and that indicates that the two discs have been disengaged, that therefore the source of power has been disconnected from the machine and the platen ceases to rise and fall up to and away from the print face. There is also a foot pedal on the left hand side of the machine close to the clutch lever or gear lever and if used, it has the same effect as moving the gear lever to the left that is to say the lever clicks automatically into place and shuts off the power. To start the machine again, the gear lever has to be moved back to the right but before doing so a small catch at the top of it has to be lifted so that the ratchet at the bottom disengages and allows the two discs once more to meet, and the power therefore to be put through the machine. I have expressed myself perhaps rather crudely from an engineering point of view but I think I need not go into greater technical detail.

On the 5th October, 1978, the plaintiff was engaged as a machine operator and he noticed that a piece of paper was out of place on the platen and therefore he stopped the machine by using the gear lever in the manner I have described, and he alleges that as he leant over, or round, the machine to the right to extract the piece of paper, having disengaged the clutch, the platen being apparently at rest, as he was doing this he says the discs momentarily came into contact with each other the clutch slipped and the platen rose and caught the plaintiff's hand between it and the print face and he suffered an injury.

Now the law on this matter is very clear and it is really not in

dispute. We had referred to us extracts from the well-known book "Employers' Liability" by Munkman and whether one uses the 5th or any other edition after that, they seem to be the same. I quote first from page 77:-

> "It is the duty of an employer acting personally or through his servants or agents to take reasonable care for the safety of his workmen and other employees in the course of their employment. This duty extends in particular to the safety of the place of work, the plant, machinery and the method and conduct of the work but it is not restricted to these matters."

That passage has received the approval of the Jersey Court of Appeal in Shales -v- Jersey Granite and Concrete Company Limited (1 JJ 655) and it therefore represents the law which we have to apply and of course the operative word in that passage is "reasonable". The question of reasonableness is a matter of fact for each Court in each particular case to decide having regard to the facts before it. There is only one other section that I need quote from the same work and it is to be found on page 109:-

> "Failure to remedy known defects. Liability is conspicuously clear when an employer has received notice of a defect and has failed to do anything to remedy it."

There are numerous cases to illustrate the point.

We had to ask ourselves these four questions:-

The first question is this; was the machine dangerous, inasmuch as did it have a tendency to what has been called in the course of this case, to "creep"; that is to say, after the lever had been moved to the left and the two discs disengaged, did the machine, without warning, start up again so that the platen could catch an operator unawares? We are satisfied, from the evidence which I will come to in a moment, that the machine did "creep" and it is admitted by the defendant company, that if we came to that conclusion, in fact "creeping" was a dangerous attribute of such a machine. Secondly, did the defendant company know of that defect, (because it is a defect if it has that attribute), in the machine? Here of course there is a conflict of

evidence and we heard from a Mrs. Dauny who had been an employee of the defendant company, and here I will digress for a moment. We know from the evidence that the defendant company only acquired the business in June, 1978, whereas the managing director of the defendant company, Mr. Emberson, had been concerned with this particular Thompson printing press from January of the same year. If it is the duty of a company, as I have said, to take reasonable care for the safety of its workmen and other employees in the course of their employment, and that means having reasonably safe plant and machinery, that is a continuing duty and if a defendant company acquires some machinery and does nothing to satisfy itself as to the condition of that machinery, whether it is safe for its employees to use, then that could be, in certain circumstances, a breach of its duty but we are not called upon to decide that. We are only really called upon to decide whether, at the time the accident happened, or shortly before it, the company had the information that there was this tendency to "creep" in the particular Thompson machine.

I return to the evidence. Mrs. Dauny told us that she in fact told Mr. Emberson about it on two occasions, and those two occasions were, according to her, after June, 1978, when, as I have said, the defendant company acquired the business. Mr. Emberson has denied that he was told any such thing but he did admit in evidence that he might have been told.In considering whether we can rely on Mrs. Dauny's evidence or whether to prefer her evidence to that of Mr. Emberson, we have to take note of Mr. Emberson's evidence in two other respects. First he has told us that in May, 1979, when he obviously knew of the accident and another incident involving a Mr. Renouf, he asked a Mr. Selby to look at the machine. Mr. Selby is an engineer who services a different type of machine, an Intertype machine, and is not, in fact, qualified to deal with a Thompson machine but he said that he would have looked at the Thompson machine had he had time but he did not. When he was asked to look at the Thompson machine by Mr. Emberson

he was not told that there had in fact been two incidents concerning "creeping"..It may be that Mr. Emberson - he was not asked - did not consider this important. He did tell us that he would have told Mr. Selby had Mr. Selby come back to look at the Thompson machine. As I say, he may have thought it unimportant because he told us, and we accept this part of his evidence, that immediately after the accident to Mr. Guillaume he tested the machine with Mr. Renouf and it did not "creep" at all. It may be that he did not think that an important matter. However it is quite clear that the machine did "creep" subsequent to the accident to Mr. Guillaume because Mr. Renouf had an unpleasant experience, but fortunately one which had no serious consequences for him. Secondly, Mr. Emberson has disputed the evidence of the plaintiff because he says that in the evening of the accident he telephoned Mr. Guillaume - very properly - to enquire how his employee was, and he asked him how he thought the accident could have happened. He said that the plaintiff replied, "Well, I might have kept my hand on the gear lever while reaching around". To be fair to Mr. Emberson, he did not say that Mr. Guillaume said that he did do that, but only that, according to Mr. Emberson, the plaintiff said he might have done that. On the other hand, Mr. Guillaume was quite clear that that was not how it happened and he was therefore unlikely to have said that. Mr. Emberson went on to say that not only did Mr. Guillaume say that on the night of the day on which the accident happened but on the following Saturday when Mr. Emberson very kindly took the wages round to Mr. Guillaume for his week's work he repeated again his statement that he might have had his hand on the lever. Now, Mr. Guillaume has denied that categorically and we accept his evidence. We have looked at the photographs and as I have said, there is a little catch on the gear lever which has to be lifted in order that the fly wheel may be re-engaged and the two discs brought together again so that the power can be transmitted. We think it unlikely that Mr. Guillaume would have done that and as we accept his evidence we find that he did not.

Therefore we come to the conclusion that the defendant knew that the machine had this dangerous attribute, and we are quite satisfied that no steps were taken to remedy this defect. By steps we do not mean merely allowing the ordinary machine minder to maintain the machine in its ordinary day-to-day running, but the proper steps would have been to send for the Thompson engineer to strip down the appropriate clutch area and put it right, because as Mr. Selby pointed out, it was a very fine adjustment and "creeping" could happen at any time, in view of the way in which the machine was put together.

The third question which we asked ourselves is: were any proper steps taken to remedy the defect? They were not. It is interesting to look at the letter which was produced by the plaintiff which was adressed to Mr. Selby's firm and written by Mr. Emberson on behalf of the defendant company of the 14th March, 1980. There the company seems to be giving up the servicing of the Linotype (or the Intertype machine) because it says that machine was not being used very much. Nevertheless it was perhaps indicative of the company's attitude to its obligations in servicing the machines under its control and which were being used by its employees.

It is quite true, of course, that when Mr. Green, who is an experienced printer and whose opinions were respected by Mr. Selby, examined the machine on the 25th November, 1980, it did not "creep" then, but even so the machine was only fifty to sixty per cent efficient in other respects.

We have had regard to the evidence of Mr. Copp who is an Accident Prevention Officer, who, on the 15th December, conducted an examination of the premises and he said in his report that investigations into the cause of the accident revealed that Mr. Emberson had found that, although only a slight adjustment could be made to the clutch, there was a considerable amount of oil in the housing which may have been sufficient for the clutch to slip. Now if Mr. Emberson's evidence is to be accepted by us as to what he says Mr. Guillaume told him,

we find it strange that he did not tell Mr. Copp about this conversation, something along the lines, for example, that really the machinery was alright, there might have been some oil and there might have been a problem there, but really the employee himself had said that that he might have caused the accident by keeping hold of the gear lever whilst he put his hand between the platen plate and the print face. It was not said, or if it was, it was not recorded in Mr. Copp's report.

We have come to the conclusion, therefore, that the question whether all reasonable steps were taken for the safety of this plaintiff by the defendant company must be answered in the negative and we accordingly find for the plaintiff with costs.