

# THE HIGH COURT

[2022] IEHC 341

[2017 No. 1641P]

**BETWEEN:**

**LIAM WRIGHT**

**PLAINTIFF**

**AND**

**ABBEY EQUINE LIMITED TRADING AS ABBEYLEIX STUD FARM**

**DEFENDANT**

**Judgment of Ms. Justice Mary Rose Gearty delivered on the 1<sup>st</sup> day of June, 2022**

## **1. Introduction**

1.1 The Plaintiff claims damages from his employer, the Defendant stud farm, for injuries sustained when a horse kicked him in the face.

1.2 The Defendant makes two distinct cases: it relies on the unexpected nature of the incident to argue that no matter what steps were put in place, this accident was unforeseeable. This was the defence pleaded in the original defence.

1.3 In additional particulars of negligence filed this year, the Defendant argued that a system, put in place on the date of the accident to protect its employees, was safe, had been explained to the Plaintiff and was ignored by him. It also submits that the Plaintiff was an experienced horseman and therefore, if the Court finds that the system of work was unsafe, then the Plaintiff was contributorily negligent.

## **2. History and Incident**

2.1 The main witness for the Defendant company was the manager of the farm, Mr. Brian Killeen, who has managed stud farms for over 30 years. The Plaintiff, a man in his 60's at the time of the incident, was a former jockey who had worked with horses for all his adult life. They had an excellent working relationship, which continued after the incident complained of, in that the Defendant continued to pay the Plaintiff his wages since that date. The Defendant company, and Mr. Killeen, assisted the Plaintiff by allowing him to keep horses on the premises, with feed and forage as required. In turn, the Plaintiff worked overtime and had no formal additional pay for such hours or for emergencies at work that might arise from time to time.

2.2 On the 26<sup>th</sup> of September 2014, the Plaintiff and a team of grooms from the Defendant company had just returned from a trip during which they had sold several horses. That morning, the team had about four or five hours in which to prepare six yearlings for a sale the following day. The yearlings had been bred and trained for flat racing and they were to be transported to the seller's premises that afternoon. The horses were described by one witness as the gladiators of the equine world.

2.3 Mr. Stephen Cahill, a trained groom, who had worked at the farm before on occasion, had been asked to assist due to the fact that Mr. Killeen was under such pressure. One of the yearlings was a Dandy Man colt, in other words, a young stallion sired by Dandy Man, not yet named but taking his sire's name until sold and named by his new owner. This horse had been trained for ten weeks by the Plaintiff and Mr.

John Delaney who was a handyman at the premises and who had years of experience of working with horses generally. He was sent to do other work that day and did not assist in the preparations. In anticipation of sedating at least some of the horses, the vet, Mr. John Noonan, attended at the farm at 8.30am.

2.4 After sedating the first horse, the vet was called away to a nearby farm. The men proceeded to prepare the Dandy Man colt, first lunging him then leading him to be washed. While being washed and groomed by the Plaintiff, and held at the head by Mr. Cahill, the horse reared, knocking Mr. Cahill down. The Plaintiff was standing at the side of the horse, washing one of the legs. The yearling kicked out at the Plaintiff with a kick to the side, described as a cow kick. The horse then ran out of the bay. The incident was described in submissions as being akin to an explosion.

2.5 Mr. Killeen arrived quickly at the scene. There was a dispute as to where, exactly, he had been. Witnesses for the Plaintiff and the Plaintiff himself insisted they had seen him in the tack room. Mr. Killeen was certain he had been out in the fields. Either way, he was not at the scene at the wash bay but arrived within minutes.

### **3. The System – Sedate, Wash, Shoe**

3.1 The Defendant's employees had invariably used the same system on previous sale days, namely, yearlings would be exercised, washed and shod before being transported to the relevant location for sale. Some of the horses, who were described as hardy or nervous, had to be sedated before being shod. This was the same order of

events that had been employed for about 14 years, according to the Plaintiff and Mr. Delaney and that evidence was not seriously challenged. There may have been occasions when there was a variation, but this was the routine usually followed.

3.2 The defence case as originally pleaded was that this incident was unforeseeable. An amended defence claimed that a system was implemented on the day in question to ensure the safety of the employees involved. This system involved taking each horse in turn, sedating the horse, washing the horse and then shoeing the horse. This was done, in the words of the Defendant's manager, because "*a couple of hardy horses needed sedation*", and, to ensure that "*no accident would happen*". As noted, the Defendant had arranged to have a vet present at the premises from 8.30am and this was in order to carry out the new system: the vet had to be there from the outset.

#### **4. The New System - Communication**

4.1 The defence evidence was that instructions were given to the Plaintiff as to the change of sequencing in the system of work. The Plaintiff, Mr. Cahill and Mr. Delaney were adamant that they had been given no instructions as to a different sequence to that normally employed. Their evidence was they had proceeded, as usual, to lunge and wash the horses in turn, without waiting for them to be sedated.

4.2 Mr. Delaney, whose evidence was that he was in the field and never met the vet that morning, had heard nothing about a new system. Mr. Cahill had no recollection of being instructed to await the vet and asked why, if the horses were all

to be sedated first, was he asked to come into work at 8.30am, as he would have had to wait until at least one horse was sedated before he could begin to work.

4.3 Mr. Killeen gave evidence that he had employed the vet specifically for this purpose, and that he had told the Plaintiff, but not Mr. Cahill, the previous day about the sequence that should be employed. The vet could not assist in terms of the details of this instruction, as he was not present when the Plaintiff was told, but his evidence was that he had the same understanding as Mr. Killeen. However, he also says that he recalls leaving for an emergency after dealing with the first horse but telling the Plaintiff and Mr. Delaney (who was not yet about his other business but was in the wash bay with the Plaintiff, on this version of events) that the horses would be sedated then washed. Not only does the Plaintiff deny this but Mr. Delaney is adamant that he was not there and received no instruction of any kind from the vet.

## **5. Employers' Liability in the Equestrian Industry**

5.1 This incident took place at a location which is a business premises, managed by the Defendant, in which employees and contractors were engaged that day in preparing yearlings for sale. If there was any doubt about the applicability of the safety, health and welfare legislation to such activities, these were laid to rest by Mr. Justice Charleton in the case of *Quinn v Bradbury and Bradbury* [2012] IEHC 106.

5.2 Mr. Quinn was an employee of the Bradburys, who owned and managed stables. He was injured when he lost control of a horse while passing building works.

The defendant employers had directed the plaintiff to take that path, even though the same horse had previously shied at that very point days earlier. While the horse was familiar with the location, he was apparently spooked by the skip and scaffolding which had only been in place for a week or so. The Defendants were liable for the injuries caused as a result. Mr. Quinn, given his own expertise, was found to have been contributorily negligent and the award was reduced by 30% to reflect this.

5.3 Charleton J., in his judgment in *Quinn*, said at paragraph 4:

*“Horse riding is a sport. It is easy to confuse the nature of tort liability for horse riding accidents in a recreational setting with the liability of an employer in the context of an equestrian business. People who play sports take the ordinary risks associated with their sport and face difficulty establishing any liability in tort if injuries occur which are inherent and in the expected course of play in accordance with the rules and perhaps accidental and tolerable breaches of same... An employment relationship is different. An employer owes to an employee a duty to take reasonable care for his or her safety. This is set out in statutory form in s. 8 of the Safety, Health and Welfare at Work Act 2005.”*

5.4 Section 8 of the 2005 Act sets out the relevant duties of an employer:

*“(e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;*

*(g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;*

*(h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment ... or when preparing a safety statement ... and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in Schedule 3."*

5.5 Under s. 2(6) of the Act of 2005 the phrase, "reasonably practicable", means that *"an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work."*

5.6 Both parties agree that the Quinn case is a helpful authority for the Court, although the Plaintiff seeks to rely on it and the Defendant to distinguish it.

## **6. Employers' Liability: Training, Risk Assessments and Safety Statements**

6.1 The Defendant employer in this case has admitted that he breached his statutory obligations by failing to provide training to his employees and failing to review and update safety statements for his employees. The argument is made that there was no previous incident involving the Dandy Man yearling. Therefore, the Defendant submits, the incident was unforeseeable and there is no causative link between the lack of training or indeed a generally inadequate history in respect of safety statements and ongoing risk assessments. If the accident was unforeseeable, no amount of risk assessment could have prevented it. In respect of training, he further argues, the Plaintiff was very experienced and therefore it would have been difficult to identify anyone with sufficient expertise to train him. In respect of this last argument, the duty to train is one that remains with an employer no matter what the level of skill of the employee. The benefits of training are so well understood that it is a rare man indeed who would not benefit from training.

6.2 In order to succeed in an action for damages alleging injury caused by negligence or breach of statutory duty, a plaintiff must establish a duty which the defendant owes to him, a breach of that duty, and that a foreseeable injury has been caused to him by the specific breach. The standard of care expected is the ordinary standard of care one would expect from a person of like skill.

6.3 Liability arising in a workplace context has an additional element, in that employers are required to ensure that employees are trained and that their workplace



and systems of work are as safe as reasonably practicable. The legislation was intended to encourage greater safety in industrial and workplace settings by encouraging systemic and more rigorous approaches to safety. The Act provides for risk assessments and safety statements, which should be reviewed from time to time. The primary duty is that of the employer, in that the employee is not expected to create a safe environment or system, but the employee is also expected to take reasonable precautions within the context in which he is acting, namely, in carrying out his employer's instructions.

6.4 As Charleton J. put it in Quinn, at paragraph 21 of his judgment:

*“Under s 13(1)(a) of the Act of 2005 there is a duty on an employee while at work to protect his safety, health and welfare... That subsection, of itself, maintains the responsibility of an employee at common law to take reasonable care. In principle, an employee is not required or entitled to completely surrender control over his or her welfare while at work to an employer”*

## **7. Evidence: Training, Risk Assessments and Safety Statements**

7.1 The Plaintiff argues that his employer failed to train him, failed to assess risk at the premises and devised a system of work which was not safe in the circumstances.

7.2 The Court's note of the Plaintiff's evidence in relation to training and risk reads:

*In terms of training, did you have any? None ever.*

*Do you know what a risk assessment is? No*

*Was there a plan in respect of these yearlings? No*

*Did you ever hear of a safety statement? Heard of them, but have never done one.*

*Was there a document on the wall near the bay? There was, it was there for years, I think it was put up by the previous owner, a document to tell you not to stand behind the horse, something like that.*

7.3 The only aspect of this evidence that was challenged in a serious way was that the manager of the farm confirmed that it was he who put up the safety statement. It was never altered, though Mr. Killeen said he took legal advice in respect of it. It is clear from the evidence that there was no training provided to this Plaintiff, nor was there an updated safety statement, nor was there any formal review of the general risks of the business. The employees who were witnesses in this case had not had such training, their attention had not been drawn to any safety statements or risk assessments. Mr. Killeen, to his credit, did not seek to persuade the Court otherwise.

7.4 The Plaintiff was clearly a trusted and experienced employee. The horse in question was a hardy, nervous animal in that he was a yearling being trained for flat racing, and his handlers and Mr. Killeen all agreed on this characterisation. In other words, this was a young stallion. There was no other incident involving the horse previously, but he was described as *frisky* and *hardy*.

7.5 As to risk assessment, while the evidence did not reveal any ongoing formal system, there was ample evidence that the risks of this operation being carried out on this particular day had been assessed and a plan devised to minimise those risks for the employees involved. The implementation of that system will be assessed below.

## **8. Causation: Training and Safety Statements**

8.1 Given that the circumstances of the incident involved a horse “cow-kicking” a man in the face when the man was standing beside the horse rather than behind it - with all his years of experience he needed no safety statement to tell him where to stand - it is difficult to link the accident with either the lack of training provided or the lack of an updated safety statement.

## **9. Causation and Vicarious Liability**

9.1 The relevant legislation, set out above, requires an employer to determine and implement the measures necessary for the protection of the safety of his employees when identifying hazards and carrying out risk assessments. His duties include ensuring that the measures take account of changing circumstances.

9.2 The Dandy Man yearling was described by all the witnesses in similar terms, some of which have already been recited. He was nervous, fiery and hardy, he could “*jump away or knock into you*”. These were not necessarily bad characteristics in a horse being bred for flat racing. The Plaintiff had handled this horse on many occasions and the horse was at the end of about ten weeks of training prior to being offered for sale

on the day of the incident. Mr. James Delaney and the Plaintiff were both used to handling this horse and had washed the horse twice before without incident. The evidence was that no other person had been involved in the horse's training.

9.3 The Defendant submits that, unlike in the Quinn case, which turned on the specific danger presented, i.e. a difficult horse being directed to pass an obstacle which had already caused the horse to shy, there was no similar, earlier event here to flag that this horse may have been of particularly difficult temperament or which might have prompted a risk assessment or rendered the accident foreseeable. There were, however, two differences in the circumstances in which the horse was to be washed.

9.4 On the day the horses were to be sold, Mr. Delaney was sent to other duties and Mr. Stephen Cahill, employed temporarily to help with the preparation of the yearlings, helped the Plaintiff with grooming tasks. While there was a dispute about exactly where Mr. Delaney was that morning, he was not assisting with the yearling in question. The Plaintiff said that he was surprised when he was instructed to groom the horses with a new assistant, given Mr. Delaney's familiarity with the horses.

9.5 Mr. Cahill was a highly accomplished, award-winning horseman and he was the man who was holding the horse when it kicked out at the Plaintiff. His own evidence was to the effect that he had been given no instruction to await sedation and understood only that he was to help lunge and then hold the horses while the Plaintiff washed and groomed them. He had not seen the vet that morning, but had seen his car. Mr. Killeen confirmed in evidence that he had not spoken to Mr. Cahill about the

system to be employed. Mr. Cahill had limited hands on experience with such horses, having never prepared a yearling for sale. He had held mares for stallions before, but he himself did not see this as comparable, saying the mares were usually quiet. Mr. Watson, expert for the Plaintiff, agreed with this witness's own assessment in that he considered him accomplished but lacking in experience with yearlings and in particular, with no experience of this horse. Mr. Cahill's view was that he had lost control of the horse in circumstances where Mr. Delaney would not have done. If so, the Plaintiff argues, the Defendant, his employer, is vicariously liable for the accident.

9.6 The Defendant argues that Mr. Cahill, as an award-winning horseman, was far more competent than Mr. Delaney to hold a horse. The yearling would have been, and was, handled by numerous strangers in the course of the sale and the Defendant submits that a new handler was not a factor that should have caused a horse to react as this yearling did, by kicking out at his handlers. Handlers at the sales were usually experienced horsemen, almost always strangers to the horses in question. There was undisputed evidence that the horse was subsequently sold and has performed well.

9.7 To find that the Defendant is vicariously liable for a tort committed by another, that other must have committed a tort. Mr. Cahill was an impressive witness as to fact and was clearly deeply affected by the incident. He appeared to feel some responsibility as he was the man who was holding the horse at the time it exploded, to use the phrase used in submissions. This witness was not only a highly competent but also a diligent horseman. He is clearly a person who follows instructions carefully

and who has gained skill in handling horses despite coming to the work relatively late in life. There was no evidence which suggested that the accident was due to mishandling or negligence of any kind on his part and there is no evidence to support a finding of vicarious liability, therefore. This conclusion must also be read in light of the Court's overall view of the case in the analysis of the experts' evidence.

9.8 The Defendant points out that: *"if a horse explodes in this way, it does not matter who is holding him – he is going to break-out in any event."* The argument is made that this horse had been washed before without incident and that the accident was unforeseen and unforeseeable. This is to ignore the surrounding circumstances that day, however, a topic addressed by the expert evidence in the case. The key question, accepting that there is always a risk that a horse will explode, is whether or not it could have been prevented in this case by taking reasonable precautions.

9.9 Mr. Killeen was asked why he changed the personnel that day i.e. why James Delaney was doing other work when he was available to hold the yearling, a horse with which he was very familiar. He replied that this was why he had employed Stephen Cahill, an accomplished horseman, but also said that the horse was supposed to be sedated, meaning that it shouldn't have mattered who was holding him, which suggests there had been a risk assessment. Both experts also addressed this issue; the system in place that day and whether it was adequate to meet the risks of the situation.

## **10. The Horse Explodes: The Expert Evidence**

10.1 Two experts gave evidence, both with long and impressive careers in the industry. Mr. John Watson, for the Plaintiff, has had a successful eventing career and is very familiar with various kinds of work involving horses, in that he has owned horses and been involved in the industry in many ways. He has been giving evidence, instructed by both plaintiff and defendant, for many years. His report was clear and detailed and was completed after a meeting with the Plaintiff in December 2015 and a visit to the premises with the Plaintiff in February 2017.

10.2 His report dealt with several issues which emerged as the relevant matters when oral evidence was given. While his written report of the incident was more detailed than that given in evidence, the main facts (that there were 6 horses to be prepared for sale, that there were time pressures, that the twitch had been used, that the horse had kicked out while being washed, that the manager was not present monitoring progress and the vet had been asked to be present) are undisputed.

10.3 He considered it a mistake to change the team holding the horse on the morning of the sale. Mr. Watson considered that the better approach would have been to retain the team with which the horse was familiar for grooming and washing. However, his evidence was not confined to this change as the only potential cause for concern. Mr. Watson's evidence as to temperament was that a yearling being trained for flat racing was expected to be hardy and even nervous as these were potentially advantageous qualities for the sport, but it made handling them difficult. He described horses as

very receptive, sensitive creatures, saying that atmosphere is important to them. He pointed out that they are wild animals and that genetic influences remain; they are alert and suspicious as potential prey.

10.4 Mr. Watson noted that in the pressure to get 6 horses ready for a sale by lunchtime that day, not only was there no time for things to go wrong, there would have been *a buzz*, as he put it, as various parts of the operation were ongoing. He added that each horse had only been worked on individually until this point, this was first time they were all put together and that would be unfamiliar to the horses. They would be, he said, suspicious and with nerves heightened. This aspect of his evidence was not challenged. The preparation, grooming and washing of the horses, as described by this expert, appears to the Court to be a different and more potentially fraught process than previous general washing of the animal during training.

10.5 Mr. Watson was clear in his evidence, unphased by cross-examination and listened carefully to each question before answering it. He has vast experience in dealing with horses generally. It was suggested that he had insufficient experience of yearlings in flat racing, having never prepared them for sale. His evidence in this respect was to agree that he had read and talked about such work, however. This is the realm of the expert witness: to augment his own experience with study in his field of knowledge. It seemed to this Court that Mr. Watson's experience was such that his evidence as to the temperament of a yearling and the potential effect of a change in atmosphere or handler on such a horse while being washed was likely to be correct.



10.6 This expert witness went on to comment on the lack of a safety statement or risk assessment. There were objections to a non-engineer giving this evidence. The Court ruled that this witness had sufficient expertise in the industry to comment on the relevant regulations. It is not necessary, in a case about equine safety, that the relevant expert has engineering experience but that he has relevant experience. On the facts of this case, a general lack of training or failure to review safety statements was not the cause of this injury. However, the evidence was that there were no standing orders as to how the process of preparing for sale was done. His view was that a risk assessment outlines the procedures, which are important. In a business of the type and scale of this one, it is probably not reasonably practicable to expect written risk assessments or written procedures in respect of such matters, of course.

10.7 This Court concludes that it was probably unwise to change the handlers in the preparation of the yearlings, but that alone may not have been a sufficient basis for a finding that the Defendant was liable for the subsequent events. The horses were to be handled by a number of different groomsmen that day and the Defendant had no prior indication that the yearling could not be managed by a man of Mr. Cahill's evident abilities. The specific facts of this case highlight that the likely cause of the horse taking fright was a combination of this new handler with the horse being groomed alongside other animals in the unusual buzz or atmosphere described by Mr. Watson. The horses had not been prepared in groups before, the tension of time pressure was palpable and this was likely to be transmitted to these sensitive animals.

10.8 One answer, Mr. Watson concluded in his report, was sedation for this horse during grooming and shoeing. If this was the plan, he concludes, it also had to be communicated to the employees in question. He also noted that in a situation such as that presenting on the day, Mr. Killeen should have been present to ensure that the system was being implemented and was working as intended. While this might be costly and excessive in some circumstances (a view which the defence expert appeared to adopt in oral evidence), it had not only been actually adopted by the Defendant in this case, in that the vet was on site, it also made sense in terms of commercial reality: this was a significant consignment of young race-horses and it was commercially sensible to make sure that all preparations went smoothly.

10.9 The expert for the Defence was Aidan Kennedy. He too had taken part in international eventing, he had worked in stud farms around the world and had spent over 6 years preparing yearlings for sale. He acknowledged that while horses did build up relationships with those who handled them, he concluded that it was not necessary that they be handled by the same people and that the nature of the business was that they became used to different people. This expert had no qualms about Mr. Cahill's credentials and skills, describing his award as a serious achievement.

10.10 Mr. Kennedy went on to express the view in evidence that the plan to sedate and then wash the horses was one that was probably over the top, in terms of safety though he added he understood why the Defendant did it, as the sale that day was important and "*the more precautions you take, the less the chance of an accident*". This was

a new approach as Mr. Kennedy, in his written report (dated 13<sup>th</sup> January 2020), had confirmed one cause only of the accident under his heading: Conclusion. Here, the expert reported that the Defendant was managing a well-run Stud Farm, that the Manager was well aware of the risks of the task in which they were engaged that day and had employed a vet to sedate the horses, at considerable cost, and that the Plaintiff, in his words, *“had very clear instructions as to what Brian Killeen wanted done that morning. For some reason he and Mr. Stephen Cahill didn’t follow instructions”*. There is no indication here that the kick was unforeseen; on the contrary, the conclusion was that risks of an accident had been identified and addressed.

10.11 Mr. Kennedy confirmed to counsel that he had visited the premises in March of 2018 and that his report was based on that visit and what Mr. Killeen had told him on that date. In his report, he described the process that was to be followed, insofar as he was told about it, which was that the horses were to be sedated and then washed. In oral evidence, however, he offered the view that washing the horse did not appear to him to be risky as the horse was well used to water and had been washed before and had been ten weeks in preparation for this sale.

10.12 Asked about the new system, devised for that day’s sale, Mr. Kennedy said he did not know that it was a new system as he had been investigating the accident only, not the past, as he put it. He did not see the system as unusual. He also confirmed that in his written report he had not reported the system of sedation as being in excess of what was required though he was now saying that in evidence to the Court. Mr.

Killeen gave him all the information contained in his report, both about the system and naming those who, according to Mr. Killeen, had been told about it.

## **11. Assessment of the Experts' Evidence**

11.1 The evidence of the Defence Expert was undermined in several respects: in a contradiction in its substantial theses, in speculation about motive which had little basis in logic and in some comments which were not supported by any other evidence.

11.2 The thrust of Mr. Kennedy's written report was to conclude that the Plaintiff and Mr. Cahill had been given direction to follow a safe system on that day but had ignored these instructions. By the time of the hearing, this position had shifted to encompassing another view, namely that the precautions taken were excessive. Mr. Kennedy stood over this latter theory in Court also. He gave evidence that the more usual method of preparing the horses, i.e. to wash them first, was equally good. If the system of washing and then sedating was equally good, it is difficult to understand why he had endorsed this new system in his written report as the safe way to prepare these horses, effectively suggesting that it had been ignored by the employees at their peril. His report ought to have included the theory that this was an unforeseen and unforeseeable accident, if he understood it as such. But it did not. This undermined his evidence as it was not clear which theory he endorsed and they are not compatible: either this accident was foreseen and steps taken to avert it, or it was unforeseeable and the steps taken were an excess of caution which were unnecessary or, if necessary for other purposes, could not have prevented this accident.

11.3 In his report, the defence expert (having been told that the two employees had instructions to await sedation by the vet) concluded that they ignored their instructions and surmised that this may have been to hurry the process along. It made no appreciable difference to the men which system was decided upon and, had they been told to wait for the vet to sedate the horses, there is no reason why they would not do so. To say that they ignored instructions to save time makes little logical sense when their system (lunging the horses first) takes considerably more time.

11.4 The defence expert witness finished by questioning whether or not James Delaney had a good relationship with the horse, although this had appeared to be well established and accepted by all the witnesses on both sides until that point. Bearing in mind that all other witnesses knew both the horse in question and the man in question, I do not accept this suggestion.

11.5 In his report, this expert noted that “there was nothing to suggest that the yearling was anything other than straight-forward, temperamentally.” Given the undisputed evidence that yearlings such as this one, bred for flat racing, were typically hardy or nervous, and not straightforward, the comment struck a jarring note.

11.6 Finally, the expert expressed the view that the Defendant was well aware of its statutory duties under the relevant legislation but had to revise that view in court. Under cross-examination, the witness said that he had questioned Mr. Killeen, although he could not remember what he had asked him, but agreed that he had reached the conclusion that the Defendant was compliant with health and safety

regulations. When it was put to him that the Defendant clearly was not compliant with the law, in that there was no training for the employees, there was no revised safety statement – apparently, since about 1991 - and there were no formal, ongoing risk assessments for the business, Mr. Kennedy demurred that he was not an expert in health and safety regulations and had to abandon his own conclusion.

11.7 The expert report of Mr. Watson was more detailed, and his oral evidence was more precise and considered. There were fewer reversals in his position, and he gave evidence in a way that permitted other points of view, often the hallmark of a reliable witness. He considered that the change in personnel, given the difficulties of that day in terms of time pressure and number of horses being prepared, required a better strategy. Having addressed and approved sedation as a system in his report he was also cross-examined on it.

11.8 Mr. Watson agreed that sedation would have worked in the short term, but queried its effectiveness for the rest of the day. The focus of his replies in cross-examination was to the effect that he considered it as important to exercise the animals in the circumstances and sedation would, he thought, run counter to that objective if it was done too early in the process. They could not be lunged after sedation.

11.9 In terms of this particular accident, both experts appeared to accept the general proposition that sedation was a potential solution to the actual problem presenting on the day, namely, that one of the horses exploded while being groomed and washed. Mr. Killeen was adamant that this was his plan and that it was devised to reduce risk.

Mr. Noonan supported this account, confirming that this was why he had attended: to sedate all the horses. If this system was necessary, and the Defendant's manager confirmed in evidence that it was, in his view, required to make sure his employees were safe, then it would have been negligent not to employ this method or to take some similar precautions. It was clearly a reasonably practicable course as the manager had, on his evidence, decided to implement it and had hired the vet's services for the morning.

11.10 No training, risk assessment or system of work could have eliminated the general risk of a horse kicking a groom. However, sedation of the horses before washing was a system of work which could reduce that risk, and which was created to meet the exigencies of that particular situation. The Defendant argues that it was the system put in place on that day (sedation, wash, shoe) and that it would have reduced the risk of injury during preparation as far as practicable in the circumstances.

## **12. The New System – Communication**

12.1 The new system was a relatively late addition to the case having been pleaded for the first time in 2022. If the horses were to be sedated first, this had to be communicated to the Plaintiff if it was to be effective. The plan to sedate occurred to the Defendant as a sensible precaution either shortly before the incident or at least in or about March of 2018 as he outlined the same plan to the expert who gave evidence on his behalf. I accept Mr. Killeen's evidence that he did intend to implement this system and that the vet was there to sedate the horses in advance of washing. He and

the vet who gave evidence on his behalf were both able to point to a previous date on which they had arranged to sedate horses, also for safety reasons, and the vet was there early, at 8.30am, which suggests a plan to sedate at the beginning of the process and not just for the farrier, after lunging and grooming.

12.2 Mr. Killeen probably did decide to change his system in order to ensure greater safety, and the evidence of the vet supports the proposition that he had such a plan. However, the defence evidence as to how he instructed the Plaintiff is less likely to be accurate than that of the Plaintiff and his witnesses. While Mr. Killeen said he had told the Plaintiff on the Thursday, the day before, he did not recall telling Mr. Cahill, could not recall if he repeated the instruction the next day and both grooms were visibly incredulous when this was put to them. The vet's evidence was that he had not been asked to describe any of these events until 6 years afterwards. For the vet to say that he told the Plaintiff that he would be back to sedate the horses does not actually address the issue of what instructions were conveyed and in what detail. I am not inclined to place much weight on his evidence in the circumstances.

12.3 This Court finds as a fact that it is more likely than not that there was no clear instruction given to the Plaintiff or to the two witnesses who gave evidence on his behalf. If changing the system of many years standing, it was important for this instruction to be given clearly. Not only does the Plaintiff have no such recollection, but the other man involved, Mr. Cahill, had the same understanding as the Plaintiff. Mr. Killeen has a different recollection, but the Plaintiff and Mr. Cahill evinced



genuine surprise and adamantly rejected any such account when cross-examined. If there was any such instruction, it was incomplete as to timing or exact details so as to enable the men to understand and implement it.

12.4 If this new system had been explained clearly to the Plaintiff, such as to be understood by him, the implication is that by lunging the horse and then washing it, he was not only ignoring but was effectively countermanding that direction. Mr. Killeen never suggested that the Plaintiff was deliberately countering his instruction and again, this is to his credit. This case is an illustration of the messy stuff of life in which written instructions are usually impracticable but having a word about a way of working may appear to one party to be sufficient instruction but is far from clear to the other party. The responsibility in such a situation as presented here is on the employer, in my view, to make proposed changes clear to the employee concerned.

### **13. The New System – Causation**

13.1 To sedate the horses was a system that both experts and the manager of the farm gave evidence would have been safer for the process of washing. That being so, it would probably have prevented a horse exploding, or kicking out, during washing. Having been devised, it was incumbent on the Defendant to implement the safer system and I am persuaded that the Defendant failed in this respect. Mr. Killeen was not present himself, having left (according to his own evidence) to do other work in the fields. Not being present, he could not instruct the Plaintiff not to lunge the horse

nor could he advise him to await the return of the vet to sedate this horse. Nobody on his behalf gave clear instructions as to what was to be done.

13.2 Finally, Mr. Killeen agreed in evidence that he never asked the Plaintiff why he had ignored a clear instruction, or why he hadn't waited for the vet. If this plan had been decided and communicated, it was a matter for Mr. Killeen to implement. Not only did he not remain on site during this crucial operation, a large number of horses being prepared in a very short time, he did not ask in the aftermath why the men, including Mr. Cahill, had ignored his directions in a very significant respect. The Plaintiff, a conscientious employee about whom no other complaint was in evidence, proceeded as usual. His assistant, an award-winning horseman, also proceeded on the basis that the horses would be washed without sedation. I accept the evidence of these witnesses as more likely than that of the defence witnesses on this issue.

#### **14. Contributory Negligence**

14.1 The issue of contributory negligence must be considered. The Plaintiff was highly experienced, used to the horse in question and said in evidence that he was surprised when his handler, Mr. Delaney, was changed. While there were other causes of the accident, it does appear possible that this was a factor and it was something about which the Plaintiff said nothing. Nonetheless, the system that should have been employed to mitigate risk, whether of sedation or not, was a matter for the employer, not the employee. As was the choice of handler. In those circumstances and given the evidence to the effect that the handler of the horse made relatively little difference to

the circumstances on that day, I am not satisfied that the Defendant has proved more than a minimal element of contributory negligence on the part of the Plaintiff. As I have taken the view that the change in personnel was a factor, however minor, it is appropriate to reflect this in the assessment of liability as it was something the Plaintiff could have raised with Mr. Killeen, but did not.

## **15. Conclusion: Riding Two Horses**

15.1 Almost all of the witnesses accepted that a horse presents a serious risk in that animals are unpredictable, and it may be that injuries will be inflicted even in the best run stables. This is just common sense. However, in line with the judgment in *Quinn v Bradbury*, it is equally clear that an equestrian business is covered by the 2005 Act and such an employer must take steps to reduce risks, including the risk that an animal may injure an employee. Even still, this would not usually render the employer liable in the case of an unforeseen cow kick from a horse.

15.2 On the Defendant's own case, however, the risk of injury that day was not unforeseen. The Defendant was sufficiently concerned about events on the day that, on this occasion, he had decided that the safety of his employees required him to take the precaution of employing a vet so as to sedate the horses in turn to reduce the risk in question. This decision having been taken, the new system was not clearly outlined to any of the relevant men. Only the vet was privy to the new plan and he was called away before the first horse was prepared. No care was taken to ensure that the horses were handled by the men who were most familiar with them and indeed, had the plan

to sedate the horses been clearly communicated and implemented, that might not have mattered.

15.3 Mr. Watson graphically described the change in atmosphere such a day would create and the consequent heightening of everything, as he put it. A horse that was hardy or nervous would become more so. Mr. Watson went on to doubt the effectiveness or wisdom of sedating the horses as animals of this calibre and training had to be exercised regularly. He advised that lunging was the way to calm them and that they would have to be washed afterwards, which was preferable to them being sedated first, as the Defendant intended. Nonetheless, he did agree that they were less likely to be nervous if sedated. Had the Defendant's employees been clearly instructed as to the change in sequence and the planned sedation of the horses, this accident would most likely have been prevented.

15.4 Given the Defendant's insistence that Mr. Killeen had planned to sedate the hardy horses, including this yearling, and that this was to ensure the safety of those handling the animal, given the expert evidence to the effect that this would have been effective to prevent any accident during grooming and where the evidence has satisfied me that the Defendant did not communicate any such instruction effectively to the Plaintiff or his co-workers, the actions of the Defendant were in breach of the 2005 Act and were the probable cause of this accident. Having devised a new system of work which would have rendered the horses more docile, it was incumbent on the Defendant to communicate it effectively and I am satisfied, on the balance of

probabilities, that none of the witnesses affected by the sequence of events had sufficient, or indeed any, knowledge of the new system.

15.5 While it is often possible to ride two horses in court, it requires considerable skill and can be impossible if the arguments contradict each other. Here, while the skill of counsel for the defence is considerable, the horses are running in opposite directions. The incident was either unforeseeable or it was not. Most of the defence evidence points to the fact that it had been foreseen, the risks assessed, and a plan devised to minimise those risks. The evidence also established to my satisfaction that there was a failure to implement that plan.

15.6 I assess the Plaintiff's omission to request Mr. Delaney's assistance as contributing no more than 5% to the incident and measure the award to the Plaintiff as one of €95,000 accordingly.