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ROYAL COURT

8th November, 1991 165

Before: The Bailiff, and

Jurats Blampied and Hamon

Attorney General

- v -

Charles Le Quesne (1956) Limited

OFFENCE:

Contravention of Article 5(1) of the Health and Safety at Work (Jersey) Law, 1989.

PLEA:

Guilty.

DETAILS OF OFFENCE:

15 concrete blocks fell 10 ft. 6 ins. through inadequate plywood protection onto a public pavement - glancing blow to passerby - no other injury.

DETAILS OF MITIGATION:

Unforeseeable and unusual facts. Very large company with 500 to 600 persons under its control. Very clear and extensive booklet on safety given to all employees. Problem rectified immediately.

PREVIOUS CONVICTIONS

1973 Construction Safety Regulations: 17 Counts: £1155 plus costs.
1980 Construction Safety Regulations: 2 Counts: £200 plus costs.

1987 Safeguarding of Workers Law: 2 Counts: £1500 plus costs.

CONCLUSIONS:

£8000 plus £500 costs.

SENTENCE AND OBSERVATIONS OF THE COURT:

Not on all fours with SGB case. Was foreseeable. Record not serious for size of the company. Good safety attitude. £6000 plus £500 costs.

J.A. Clyde-Smith, Esq., Crown Advocate;

Advocate M. St. J. O'Connell for the defendant.

JUDGMENT

BAILIFF: The duty of employers in cases of this nature is clearly laid down in the Law and there is no doubt that it was reasonably practical for the defendant company to have put scaffolding boards up - which they did after the accident. The Court takes the view that it was the responsibility of the company to foresee that a careless employee could stand on the two-brick wall and destabilize it. It is admitted by Mr. O'Connell for the company that although there is nothing inherently unstable in the wall, the bonding is not ideal and therefore something had to happen before it became unstable and he suggested that an employee might have stood on it. In that case that is something which in our opinion could have been reasonably foreseen by the company.

However, we have taken into account as Mr. O'Connell has urged, all the circumstances of the occurrence and the previous record of the company. It is quite true the company has been

convicted of previous infractions, but the Crown Advocate does not regard them as serious and neither to we.

We have taken into account the measures that were taken to put the site right immediately after the accident and we have also taken into account the attitude of the company generally as regards safety matters, particularly its brochure and the policy which it has made known through its Managing Director's letter of the 1st November, 1989. We express the hope that other building companies have been as careful.

However, we cannot overlook the fact that although this case is not on all fours with the SGB case, at the premises of the Jersey Evening Post, it is more serious than the accident in the Ready Plant case.

We are satisfied that these blocks are heavy; that if there had been anybody walking underneath a most serious injury could have occurred and it is fortunate that only a slight glancing blow was caused.

As the Crown Advocate has said, we must not approach this, and we have not approached it, on an emotional level. We have looked at the mischief which the Law said should be avoided. The defendant company has said that it accepts that it was in breach, but we consider Mr. O'Connell's suggestion of a fine of £2000 is far too low for an offence of this nature, even taking into account the mitigating circumstances, which we certainly have done.

Under all the circumstances we have come to the conclusion that the appropriate fine in this case for this company is one of £6000 with £500 costs.

Authorities

A.G. -v- SGB Limited (23rd November, 1990) Jersey Unreported.

A.G. -v- Ready Plant (11th October, 1991) Jersey Unreported.