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ROYAL COURT

27th June, 1988

Before: the Bailiff,
assisted by
Jurats Baker and Orchard

Between: **Terence Allen** Plaintiff

And:

The Parish of St Helier Defendant

Advocate C.M.B. Thacker for the Plaintiff
Advocate C.J. Dorey for the Defendant

JUDGMENT

BAILIFF: This action arises from an accident that occurred on the morning of Thursday the 4th December, 1986. The plaintiff was employed by the Parish of St Helier (the defendant) as a 'Grade E' labourer or mason. He had worked for the Parish for some three years and therefore was an experienced workman. On the morning in question he presented himself for work wearing ordinary shoes and not the special protective steel-capped shoes that had been provided for him and were provided, not only for him but for all the other labourers in the Parish taskforce. The reason he was not wearing these special boots, to which I shall return in a moment, is that he said (and he was not controverted on this) that only the previous Monday he had started to wear a new pair which had been provided for him in September and that by the time Thursday had come, the top of each foot had been blistered and was bleeding and so sore that it would have been

impossible for him to wear the new boots. In fact, at one stage he had two pairs of these protective boots in his possession because he received the replacement pair in September, 1986, before his existing pair had worn out. He continued to wear the existing pair until he discarded the old pair a few days before the accident.

On reporting for duty that morning he was expecting merely to point some of the granite slabs which had been relaid in order that they would not be slippery for people to walk on. However, due to the illness of one of the gang - and I should say here that there are a number of working gangs divided into groups normally consisting of four persons, and that this was one of them - he was told that instead of pointing, he would have to assist the chargehand, Mr Gough, to move two kerb and two tramstones across to the other side of the street where the work had been started. In order to move these stones (and it was the first stone that was moved when the accident occurred) a sack truck was provided. We were told that sack trucks were normally provided for this sort of work and one had been provided earlier (which we will call number one) but that had had to be taken out of service as one of the wheels had been broken. That truck, itself we were told, was a replacement for another sack truck which had been stolen from the site. Be that as it may, on the morning in question the plaintiff was using what we will call number two sack truck. That sack truck differs from the other two by having a solid base, whereas number one and number three (which was used after the accident for similar work) has bars across the bottom. We were told that the presence of those bars makes it easier for the kerb stones to get a grip and that they are therefore less likely to slip off numbers one and three, whereas, as I have said, number two had a solid base.

Having, with the assistance of Mr Gough, put the stone on the sack truck the plaintiff wheeled it across the road and attempted to tip it in the proper place where he had been told. Unfortunately for him, as he attempted to tip the sack truck it turned slightly and the stone slipped off the base and fell onto his left toe causing injury.

The plaintiff alleges that the Parish of St Helier was in breach of its Common Law duty in that it failed to provide adequate plant because the sack truck was of inadequate proportions and unsuitable for the task undertaken by reason of its construction and that it failed to provide the plaintiff with proper fitting safety boots; it failed to operate a safe system of work, and it failed generally to provide adequately, if at all, for the safety of the plaintiff or for adequate supervision. Allegations 3, 4 and 5 amount to an overall allegation of not providing a proper safe system of work.

The question we have had to ask ourselves was first of all whether we found that the sack truck was suitable for the work for which it was designed. We heard evidence from a number of witnesses, some of whom were employees of the Parish at the time and some of whom were not employees in the sense of working on site, but were supervisory employees. The only criticism of sack truck number two was that it was said that there was a tendency for stones on the truck to slip off the bottom. Evidence was given not only by Mr Gough, who was a chargehand of many years' experience, but also by a Mr Scott also a chargehand and equally of many years' experience, called by the defendant, who also thought that number two sack truck would cause a stone to slip.

On the other hand, we heard the evidence of Mr Barr, who was an expert called by the Parish of St Helier regarding the suitability of the sack truck for the work it was designed to do. Although his evidence might have been stronger had he experimented and seen a Jersey kerb stone or tramstone, we are satisfied that the truck was designed properly for the work it had to do; it conformed to the proper British Standards and it was not defective in design, manufacture or the state it was in at the time of the accident.

Before I announce our findings on the question of the truck, we come to the law in this matter which is that the Parish has a duty to exercise reasonable care towards its employees and that of course includes the plaintiff. The question of reasonable care is a matter of fact for each tribunal and it is difficult to relate cases decided on quite different facts to the particular facts of the instant case. Although counsel very kindly on

both sides referred us to a number of authorities, in effect we had before us very much the words of Lord Denning in Qualcast (Wolverhampton) Ltd -v- Haynes, (1959) 2 A.E.R. 38, where he rightly warns against imputing legal authority to particular facts. He says at page 45, letter 'F': "What is "a proper system of work" is a matter for evidence, not for law books. It changes as the conditions of work change. The standard comes up as men become wiser. It does not stand still as the law sometimes does".

We have no doubt that it is a question of degree. Now, applying that test which has been used in this Court many times and I need not refer to local judgments, it is a well known legal principle, we have come to the conclusion that the Parish did not fail in its duty of providing a safe system of work in relation to the sack truck. The fact that two members of the working staff would have preferred to have had a slightly different truck does not make it unsuitable for the work for which it was designed to do and therefore we find against the plaintiff on that aspect. But of course that is not the end of the matter. Having failed on that first point, Mr Thacker then puts his second point which is that the Parish failed to provide safety boots, although they did of course make them available and indeed they did provide them, he could not say they did not, because as I said, the plaintiff had a new pair some two or three months before the accident. It is said that when the plaintiff complained, as he said he did, to Mr Rault, (although Mr Rault denied having any such complaint about the bad fitting boots) the Parish should have found something else for him to wear, or alternatively have been alerted to the fact, through his chargehand, Mr Gough, that having been taken off pointing, he should have been wearing his boots for the other work. Here there is a further conflict of evidence. It is suggested by the plaintiff that it was not necessary to wear these safety boots for pointing because there was no danger involved. As against that, whilst it may be accepted that the witnesses for the Parish agreed that there would be no actual danger in that work, it was rightly pointed out, as indeed happened in this case, that a workman could be called upon at very short notice, even on the morning when he reports for work, to start different work from that which he had originally thought he had been ordered to do and this is indeed what happened to the plaintiff. He reported for work having been told the previous evening that he was going to be engaged on pointing and he was moved to assisting Mr Gough in moving the

stones. Therefore, we do not find that the fact that he had not been wearing his boots for pointing necesssarily absolved him from having to seek out replacements for the boots if they were uncomfortable, or at least to explain to his supervisor when he was moved the following day. That would be more in point were we to come to the question of contributory negligence. But we had to ask ourselves whether the Parish fulfilled its duty which again, I repeat, has to be a reasonable duty in providing the boots, as it did, and in being able to rely on its supervisors, the experience of its workmen and the co-operation of the workmen in seeing that the rule is carried out.

There is some conflict of evidence. Mr Gough was not quite so firm as to the need for these boots to be worn; Mr Rault, who was senior to Mr Gough but under Mr Walsh, and Mr Walsh himself were both quite sure that they should be worn, it was a rule; and so, of course, was the Town Surveyor. Certainly the gang of Mr Scott was required to wear these boots all the time and we find on the balance of probabilities that it was a rule that the boots should have been worn all the time and that if the plaintiff was not in fact wearing them, that is not something that could be attributed to a breach of duty by the Parish.

In the headnote to the Qualcast case which was cited to us by the plaintiff, it says that: "A failure of duty on the part of the appellants as employers of the respondent, had not been established, because the respondent was an experienced moulder and by making protective spats available to him, to his knowledge, the appellants had on the facts of this case sufficiently provided proper protective clothing and had fulfilled their duty to take reasonable care for his safety, despite the fact that they had not brought pressure to bear on him to wear the spats". Again of course that case can be distinguished from this one because there was pressure put on the workmen. Indeed, according to Mr Walsh they were hauled up before him if he had seen them without their boots and as a last resort before Mr Gray.

Furthermore, in Woods -v- Durable Suites Ltd (1953) 2 A.E.R. at 391 C.A., which was a dermatitis case, it was held that: "The duty of the defendants was to take reasonable care for the safety of their workmen and

not to subject them to any unnecessary risk, but they were under no duty to provide a foreman, constantly watching, to ensure that a workman of age and experience such as the plaintiff took the precautions which he had been instructed to take, and, as they had given the plaintiff proper instructions and provided him with the requisite materials and facilities for his protection, they were not liable for any failure to provide a safe system of working or so to carry on operations as not to subject the plaintiff to unnecessary risk". That is a very clear statement in the headnote. In the judgment of Morris L.J., at page 396, he says: "The obligation of an employer towards his servants includes an obligation to exercise due care and skill to provide a proper system of work, and to provide effective supervision. If an employer allows safety precautions to lapse and to fade away into desuetude, it may well be that, on the facts of a particular case, there may be proof that there has been a failure to exercise due care and skill and provide a proper system of work, but each case must depend on its own exact facts".

We are not able to find, in spite of Mr Thacker's urging, that the Parish had allowed the safety precautions to lapse and to fade away into desuetude as regards the wearing of these boots. I go on: "The duty to exercise due care to provide effective supervision does not involve that an employer must provide a corps of overseers to ensure that some process, in regard to which there has been faithful and ample coaching, is at all times properly carried out". And quite rightly his Lordship said and I stress: "Again, each case must depend on its own facts". He does go on to say, however: "If a time comes when there is knowledge of the neglect of, or the rejection of, safety precautions then, on the facts of the particular case, it may be that it can be established that there has been a failure to take reasonable care to supervise the smooth working of a safe system". In the opinion of this Court there has not been that failure; there has not been a failure either to provide the necessary boots, or a failure of supervision or control; the system was there, and the Parish cannot be found to be at fault for the plaintiff's own fault in not wearing those boots which were so provided. There has therefore not been a failure of the duty of care which the defendant owes the plaintiff and the action is dismissed with costs.

Authorities referred to in the Judgment:

Qualcast (Wolverhampton) Ltd -v- Haynes 1959 2 A.E.R. 38 the headnote and at p.45 - letter F.

Woods -v- Durable Suites Ltd 1953 2 A.E.R. 391 - the headnote and at p.396.

Other authorities referred to:

Halsbury's Laws of England, 4th Edition, Volume 16, paragraphs 560-567.

Smith -v- Scott Bowyers [1986] CLY 2282 [1987] CL 251.

Mackray -v- Stewarts and Lloyds Ltd [1964] 3 A.E.R. 716.

Clifford -v- Charles H. Challen & Sons [1951] 1 A.E.R. 72.

James -v- Hepworth & Grandage Ltd (1967) 2 A.E.R. 829.