

**Judgment 9/2005**

**Kendrick v. States Harbour Master –  
Magistrate’s Court – 31 January, 2005**

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**Petty Debt action – personal injuries – claim in negligence – action dismissed.**

**IN THE MAGISTRATE’S COURT OF THE ISLAND OF GUERNSEY**

The 31st day of January, 2005 before John Russell Finch, Esquire, Magistrate.

In the action of LAWRENCE KENDRICK formerly of Rosewood, The Grange in the parish of Saint Peter Port and now of Hotel de Beauvoir, Room 306, Rue Cohu in the parish of Castel against THE HARBOUR MASTER of States of Guernsey Harbours, St. Julian’s Emplacement in the said parish of Saint Peter Port to pay the sum of ONE THOUSAND FIVE HUNDRED AND TWENTY ONE POUNDS TWENTY FIVE PENCE which the plaintiff claims from the defendant as shown on the statement of account attached to the cause, the plaintiff claiming interest and costs;

WHEREAS on the 30<sup>th</sup> day of November, 2004 the Court considered the Plaintiff’s applications that Magistrate J.R. Finch should recuse himself from sitting in this matter and that the Defendant’s statement of case be struck out and having heard the Plaintiff in person and Advocate G.S.K. Dawes, Counsel for the Defendant thereon;

THE COURT DISMISSED the Recusation Application and ruled that the Strike Out Application was not applicable;

WHEREAS THE COURT this day, having heard the Plaintiff in person and Advocate G.S.K. Dawes, Counsel for the Defendant, considered the Plaintiff’s application dated 27<sup>th</sup> January, 2005 for a ruling on a preliminary point regarding evidence;

THE COURT ruled that strict rules of evidence shall apply to the proceedings;

THE COURT having considered the claim for £2,021.25, the amount claimed having been amended with the agreement of the parties, and having heard the Plaintiff in person and Advocate G.S.K. Dawes, Counsel for the Defendant, and the Defendant's witnesses Mr. N.J. de Carteret, Mr. M. Kelly, Mr R. J. Coppolo and Mr. P.J. Davies, DISMISSED the claim and awarded JUDGMENT to the Defendant, in the terms of the written decision attached hereto.

M. J. TOSTEVIN  
Her Majesty's Deputy Greffier

Approved Text

**IN THE PETTY DEBTS COURT OF GUERNSEY**

**Before: John Russell Finch, Esquire, Magistrate.**

**Between:**

**LAWRENCE KENDRICK**

**Plaintiff**

**And**

**THE HARBOURMASTER, STATES OF GUERNSEY HARBOUR**

**Defendant**

Dates of Hearing: 31st January 2005

Date of Judgment handed down: 14th February, 2005

*Plaintiff appearing in Person*

*Advocate G. S. K. Dawes for the Defendant*

**Decision**

1. I heard the case for a full day on Monday, 31<sup>st</sup> January, 2005. Mr Kendrick (hereafter “P”) appeared in person and the Defendant (effectively the States of Guernsey – hereafter “D”) was represented by Advocate G. S. K. Dawes. I heard P in evidence and a total of four witnesses (three States employees and one Health and Safety consultant) for D. At the end of the hearing I indicated I would hand down a written decision, which I now do.
2. Put briefly, P alleged that on 4<sup>th</sup> July, 2004 in the afternoon he was walking along a pathway at the Castle Emplacement, St Peter Port, when he fell and suffered an ankle injury. Fortunately there was no fracture, but it was painful and inconvenient. P claims in this Petty Debts Court for damages totalling £2,021.25, as set out on the second page of his “Amended Particulars of Claim” dated 22<sup>nd</sup> September, 2004. I shall refer to documents where necessary in D’s comprehensive and helpful “Trial Bundle” by Folio number; this item is at Folio 2 of the bundle. The Defence case is that there was nothing wrong with the path in question so no ground existing for liability; that even if the area was dangerous or defective there was no negligence; and also that there would be no liability under Guernsey law in the circumstances for non-feasance on the highway. Final reference was made by D to contributory negligence should I travel far enough in my decision.
3. The Petty Debts procedure is notable for its simplicity, reminiscent of a vanished pre-1945 society. Apart from a requirement for the briefest particulars of a claim there are no pleadings, very limited provision for costs and none of the procedures available for civil cases in the Royal Court. Nevertheless the case has taken a good deal of time and effort. I had to make various preliminary rulings on 30<sup>th</sup> November, 2004 (Folio 6) and there has been a very considerable volume of paperwork, emanating from a set of facts which whilst unfortunate are not complex or unusual. In particular P has placed his views and submissions on paper to a far greater extent than in a usual case of this type. The net result was that I was faced with a formidable aggregation of paperwork that was more in keeping with a complex civil action in the Royal Court than at this humbler and normally simpler level. However

it would be churlish of me not to place on record P's unwavering courtesy to the court, the witnesses and the opposing Advocate. Advocate Dawes also deserves appreciation for his fairness and refusal to take any advantage of a litigant in person.

4. In relation to the claim I heard the following evidence. On the day in question around 3pm P was walking to the Marina area in order to take a seat and look at the ships, perhaps pausing to browse at a Chandlery en route. The bundle of photographs produced by P shows the scene. The nature of the surface is shown e.g. at photographs 6-9. The surface was more badly-flooded than depicted in the photographs and the water was muddy. P stated that it was not really clear what was below the surface and that this may have led him into a false sense of security. He stood on a stone or masonry part of the footpath surface which was insecure, went over "very, very badly" and caused a nasty sprain to his left ankle, which necessitated 5 weeks off work plus medical and physiotherapy bills. Afterwards P entered into correspondence with the Harbour Authority, but the case has now found its way to court. P claims that the road falls below the standard which a prudent person would expect and that the area poses a hazard to a pedestrian such as himself. It emerged in the course of cross-examination that P is aged 57 and this accident took place at around 3pm. P was wearing trainers and in the course of the previous seven months in Guernsey had walked in the area three or four times. The surface appeared to be safer than it really was and he was not exaggerating the flooding. P was taxed with differences between his oral evidence and his "witness statement" of 13<sup>th</sup> January, 2005 (Folio 7); in particular as to the exact route taken and the extent of the "flooding". He stated that whilst not exaggerating the flooding he accepted this statement was badly-drafted and ambiguous in part. P was unable to specify the exact area of the accident. He could have picked one "out of a hundred" places had he been dishonest, but did not do so. He added that he did not make a specific allegation about a specific stone; the road generally is poorly maintained. P explained that he did not trip but his foot became displaced on a piece of uneven surface. He considered that it was not a reasonable expectation to ask a pedestrian to identify a particular obstruction. The approximate locality of the accident is depicted in photograph 24.
5. A considerable volume of evidence (particularly by way of cross-examination) was elicited from D's witnesses. I do not consider it necessary to set it out at any length. It was established that there are 10-15 Harbour Attendants, one of whom makes a check over a day of the area for defects and matters needing repair. This exercise is carried out every 60 days. The Harbour Authority also employs Normandie, a firm of Health and Safety consultants, to advise on such matters. It was apparent from the evidence of Mr Kelly, the Deputy Commercial Manager at the Harbour, that there are normally around four accidents reported here each year, as he is the person who receives such information. Mr Kelly also told the court that no accidents had been reported since 4<sup>th</sup> July, 2004, when P had his fall. At Folio 14 details of works done at the Harbour following the 60-day inspection were produced. A meeting took place between P, Mr Kelly and Mr Coppolo of Normandie on 23<sup>rd</sup> July, 2004. Mr Kelly gave evidence that at this meeting P indicated that the area of the accident was as (now) shown on P's photograph 21 in the region of the third dark-coloured car after the first blue bollard. P did not refer to the area mentioned in relation to photograph 24.
6. On the facts I find it strange that someone who suffers a painful accident should be unable to point at the scene with more precision than shown by P. P is manifestly a painstaking and meticulous individual and this element of vagueness is unhelpful to say the least, even allowing for the obvious agony of the moment. I accept Mr Kelly's evidence as to what P said about the location of the fall, shown now in photograph 21. I also find it noteworthy that in his "witness statement" P refers (at para 2) to the pavement being "covered in small irregular shaped puddles of muddy

water”. The scale of this flooding was much enhanced in P’s oral evidence and this is a contradiction worthy of note. I do not find P was intentionally misleading in his evidence, but it is obvious that this case has assumed considerable importance to him and, in my judgment, he is wont to suffer from tunnel vision when dealing with it.

7. I take the essential components of the modern tort of negligence as set out in Charlesworth & Percy on Negligence (Tenth Edition) at para 1-23. These are (in summary form): -

- (i) the existence of a duty of care owed by D to P;
- (ii) breach of that duty; and
- (iii) causally connected damage to D.

In relation to the present case I take it that a duty of care exists for D to take reasonable care of persons on its land. The first point to consider is the standard of care. In the words of Charlesworth and Percy (*supra*) at 6-01: “Usually, the standard is proportionate to the gravity and imminence of the risk”. In this case I pay particular attention to the likelihood of injury, viz “the likelihood of that risk materializing so that an accident occurs to the particular claimant at the particular time and place.” (Charlesworth and Percy at 6-15.) Taking these matters into account I consider that the risk of P injuring himself in the way described was a small one. In the ordinary course of human activity a person using a surface of this kind would take more care than one using a modern surface of uniform level – people cross cobbles and old stone surfaces with more circumspection than pavements. On the facts this seems to me to be nothing more than an unfortunate accident. The nature of the area is such that one would expect from a mid-19<sup>th</sup> Century harbour and the reasonable pedestrian would act accordingly.

8. If I am wrong in this conclusion then it should be indicated that D had in place, on the facts, an adequate system of maintenance, together with Health and Safety advice. Defects were located and dealt with and there is nothing to show that this particular area was neglected - indeed the evidence of Mr de Carteret, the Commercial Manager, was that no repairs were needed after the accident and the surface remains unchanged.

9. Finally, for the purposes of this case, I should add that I am satisfied that the area in question is a “highway”. I am fortified in this conclusion by a line of leading cases such as HARRISON v. HILL 1932 J.C.13 (approved by Lord Widgery CJ in COX v. WHITE (1970) RTR 248 at 251). In relation to areas such as quaysides and port authority roads the same test applies, see Wilkinson (twenty-first edition) at para 1.148 and the cases cited therein. The test can be expressed broadly as to whether the general public has access at least by the tolerance of the owner. I do not consider it necessary to express any opinion on the question of contributory negligence; it does not arise in this case in my view.

10. Accordingly, the claim fails. In my judgment this decision is based upon the lack of negligence, but I have also (on wider “policy” grounds) felt it useful to contemplate Lord Steyn’s dictum in GORRINGE v. CALDERDALE MBC [2004] 1 WLR 1057 that “the courts must not contribute to the creation of a society bent on litigation, which is premised on the illusion that for every misfortune there is a remedy”. This approach echoes TOMLINSON v. CONGLETON BC [2004] 1 AC 46 – no duty to protect against obvious dangers.

11. By way of a footnote I mention that one of the Defendant’s witnesses, who was sworn to give evidence in the customary Guernsey fashion at the start of the case, was not present to give evidence. I adjourned and there was a thorough search plus other efforts to raise him. Advocate Dawes did not want to delay the case and closed it. P

indicated he would wish to cross-examine on what Mr Le Sauvage might say. I adjourned to consider what to do. I decided that there was no obligation upon a party in civil proceedings to call a witness (the position is different in a criminal case) and that taking everything into account the case should proceed without Le Sauvage. In reaching this conclusion I took note that the witness was a Harbour Attendant and that comprehensive evidence had already been received from his colleague, Mr Davies, on what was the routine of such officials and their maintenance and inspection duties at the Harbour.

12. There will be judgment for the Defendant. Costs are very restricted in the Petty Debts Court and to the extent D can claim them I would not be minded to make any order. I do not know if any claim is to be made, but take the provisional view that no order is appropriate in this case.