In the Royal Court of the Island of Guernsey

The 14th day of January 2000, before Andrew Christopher King Day, Esquire, Deputy Bailiff, sitting alone:

Between

NICHOLAS LAUGHTON the Appellant

and

FRANCIS WILLIAM MAIN,

TRADING AS JACKIE MAIN the Respondent

ON APPEAL FROM THE COURT OF ALDERNEY

In the appeal by the Appellant against the whole of the determination of the Court of Alderney made on the 14th day of October 1999 on the questions of the Court's power to order Interrogatories and to require a Defendant to answer a Notice to Admit Facts, in respect of the Appellant's claim against the Respondent in the sum of £432,020 (a copy of the Causes in which, and a copy of the Act of Court recording the said decision of the Court of Alderney therein, are attached hereto, together with a copy of the Cause Reformee in the revised sum of £1,261, 510.82, lodged on the 12th day of January, 2000) the grounds of which appeal are as follows:-

1. The Court of Alderney erred in law by finding that it had no power to order Interrogatories or to require a Defendant to answer a Notice to Admit Facts.

2. The Court of Alderney had power by reason of Section 22 of the Government of Alderney Law, 1948.

3. The Court ought to have exercised its power to grant the Orders sought by the Plaintiff in the particular circumstances of this case.

If the Royal Court is minded to dismiss the Plaintiff's appeal then the Plaintiff asks the Royal Court to recommend to the Court of Alderney that it exercise its powers to formulate Rules pursuant to Section 22 governing the conduct of current and future litigation before that tribunal.

THE COURT, having heard Advocate P. T. R. Ferbrache, Counsel for the Appellant, and Advocate J. P. Greenfield, Counsel for the Respondent:

UPHELD the APPEAL as respects the first and second grounds, made no order on the third ground and RULED:-

1. That the absence of any specific Rules relating to a specific subject matter does not preclude the Court [of Alderney] from making appropriate orders or giving appropriate directions on such matter. The Court [of Alderney] should have and has the power to do so.

2. That in general terms the Court of Alderney does have the power to regulate its own procedure in any particular case to the effect that litigation before it should proceed by its order or direction, in a specific way.

3. That the Court of Alderney was in error in reaching its decision that it had no power to make the requested orders. The Court would have had an inherent power in principle as master of its own procedure to make such orders even if Section 17 (2) of The Government of Alderney Law, 1987, had not been enacted, the Court having unlimited jurisdiction in civil cases.

4. That, if the question of Interrogatories should arise again, the Court of Alderney must be the proper forum in which they should be addressed.

THE WHOLE in accordance with the Judgement of the Deputy Bailiff handed down this day.

Her Majesty's Deputy Greffier.

IN THE ROYAL COURT OF GUERNSEY
Sitting as the Ordinary Court
ON APPEAL FROM THE COURT OF ALDERNEY

Nicholas Morgan Laughton — Appellant/Plaintiff
and
J.F.W. Main (trading as Jackie Main) — Respondent/Defendant

JUDGMENT OF THE DEPUTY BAILIFF
Handed down on the 14th January, 2000

Advocate P.T.R. Ferbrache appeared for the Appellant.
Advocate J.P. Greenfield appeared for the Respondent.

I am giving this Judgment with more expedition than is my norm, for reasons which are known to the parties. Consequently, it is particularly unpolished, both in substance and in form. The reasons for my decisions might have benefited from being developed more thoroughly, but I hope that, at least, the outline of such reasons is sufficient to be of some assistance to the parties. In the circumstances, I reserve the facility to make amendments or additions, without, of course, altering the conclusions.

On the 16th January, 1990, the Appellant suffered severe injuries whilst working for the Respondent on a building site in Alderney. This litigation results from that accident, and was instituted in January, 1993. (That may, or may not, have been somewhat premature, and indeed unnecessary, but understandable in all the circumstances, particularly relating to the, perhaps uncertain, state of the law of prescription, at that time, in Alderney). I do not intend to review the course of this litigation any further, save to say that it has not yet gone to trial, and that some aspects of the conduct of

the Respondent have not gone without judicial criticism. The Appellant's Cause, returnable before the Court of Alderney in July, 1996, summarises the pleadings and the progress of the litigation, as at that date; it is, I believe, also the current position. That Cause is annexed as appendix A.

On the 14th October, 1999, the Appellant applied to the Court of Alderney ("the Court") for an Order that the Respondent answer certain interrogatories and admit, or otherwise, certain facts. That application, and attachments, are annexed as appendices B, C and D, respectively.

The Court of Alderney rejected the Appellant's application. The manuscript notes of the judgment of the Court are annexed as appendix E.

The Appellant now appeals against that decision. The grounds of the appeal, as amended with my leave, and by consent, on the 10th January, 2000, I set out in full -

> "1. *The Court of Alderney erred in law by finding that it had no power to order Interrogatories or to require a Defendant to answer a Notice to Admit Facts.*
>
> 2. *The Court of Alderney had power by reason of Section 17(2) of The Government of Alderney Law 1987.*
>
> 3. *The Court ought to have exercised its power to grant the Orders sought by the Plaintiff in the particular circumstances of this case.*
>
> 4. *If the Royal Court is minded to dismiss the Plaintiff's Appeal then the Plaintiff asks the Royal Court to recommend to the Court of Alderney that it exercise its powers to formulate Rules pursuant to*

Section 17(2) governing the conduct of current and future litigation before that tribunal.".

I am grateful to both Counsel for their well-argued submissions, which have assisted me greatly in reaching my conclusions.

The essence of the Court's decision was that it had no power to require either the interrogatories or the Notice to Admit Facts to be answered. The Court further expressed its understanding that, with regard to its statutory right to regulate its own procedures by the enactment of rules (subject to review by the Royal Court), that was a process which required a reasoned assessment and measured review of any proposed addition or changes to those procedures. Further, that as there were no rules currently in existence regarding the service of interrogatories and a Notice to Admit Facts, the Appellant's application could not be granted. The Court of Alderney also expressed its great concern at the delay which had occurred in the conduct of the proceedings.

The Judgment of the Chairman of the Court of Alderney is both thoughtful and well-reasoned, and I make no criticism of it. In particular I would commend his view that Rules of Court should only be introduced after a thorough exercise in the assessment and review of any proposed (new) Rules.

However, the central question is whether the Court, in the absence of any specifically enacted Rule, can in any particular case order certain procedures to be followed, so that, in effect, it can make and apply rules during the course of litigation.

Section 17 of the Government of Alderney Law, 1987, makes provision for the enactment of Rules of Court and Procedure (both by the Royal Court and the Court of Alderney). Section

17 is annexed as appendix F. The relevant words are, in my view, contained in the middle of subsection (2), as follows:-

> *".. the Court may regulate its own procedure and may for that purpose make Rules of Court;".*

This wording, in substance, re-enacts Section 22 of the Government of Alderney Law, 1948.

This wording must envisage two situations. The first (by virtue of the second part of the quotation) is the ability of the Alderney Court to make formal Rules, which will have general application in all cases, and of which all litigants will have knowledge before litigation commences. Secondly, the Court may regulate its own procedure in any particular case by ordering that the proceedings shall be conducted in a particular manner, without, by definition, the parties having any pre-action knowledge that this might happen.

Advocate Greenfield submitted that in the latter case, this power should and could be of only limited application, for example with regard to the "timing" of different procedural matters. This, he argued, was effectively the position in the Cherub case (referred to below); accordingly, the "requirements of justice", in that context, were readily understood. For this power to be exercised on any wider basis, he argued, would produce uncertainty to litigation and be wrong. Matters as important as the ordering of interrogatories should not be dealt with "on the hoof" (to use his words) but should only be done on the basis of enacted and published rules, the ambit and interpretation of which had been properly considered. Accordingly, as no Rules regarding interrogatories had been enacted by the Court, it had no power to order them in this case.

I would now refer to a passage in the judgment of Hoffmann JA in the case before the Guernsey Court of Appeal of Cherub

Investments Limited v. The Channel Islands Aero Club (Guernsey) Limited. (Appeal No. 11 (Civil) 1982). That case was concerned, inter alia, with the question as to when Exceptions de Fonds had to be pleaded, particularly in the light of the specific wording of the relevant 1851 Ordinance. At page 6 of the judgment (at the 3rd paragraph) Hoffmann JA had this to say:-

> *"It seems to me that the correct approach to this matter is to bear in mind that the Ordinance of 1851 was part of the set of general rules made by the Court to regulate its procedure. But the Court remains master of its own procedure and can allow a departure from those rules when justice requires this to be done and I would, therefore, be inclined to accept Mr. Ferbrache's contention that the expression "établissement de la cause" means the moment when the pleadings are closed and the action enrolled on Le Rôle des Cause en Preuve. This means, I think, that once the action has been so enrolled the defendant can no longer raise an Exception de Fonds as of right but it does not, in my view, deprive the Court of its power to allow such an exception to be raised at any time before final judgment subject to appropriate orders as to costs.".*

Hoffmann JA is not alone in referring to the "requirements of justice". It is a phrase and a view which has been expressed on occasions beyond number by the most learned and distinguished of judges.

What does justice require in the instant case? To assist in that analysis, one must start by looking at the basic facts (albeit briefly).

The Plaintiff has issued a very large claim for damages for personal injuries arising, it is alleged, from the Defendant's negligence. Claims, involving liability and quantum - as

apparently in the present case - nearly always are complicated and can involve a myriad of difficult issues which have to be resolved. It is vital that the tribunal trying to decide such a case must be provided with the fullest possible relevant information before the trial proceeds. It would be impossible, or at the least extremely difficult, to try and do justice if such were not the case. That is why courts in common law jurisdictions have made provision for matters such as the filing of adequate pleadings, discovery of documents, the clarifying of the contested issues between the parties, and so on.

In this regard, I would note this. To the best of my knowledge, there do not exist in Alderney any rules relating to the filing of pleadings (other than, obviously, a plaintiff's original Cause). It would, in my view, be absurd, and a complete denial of justice, to hold that, in appropriate cases, the Court of Alderney could not insist upon the filing of, say, a defendant's statement of defences to an action, (and further pleadings if the court thought fit), on the grounds that there was no formal Rule to that effect.

This is, to the best of my belief, the first time that the Court of Alderney has been faced by a claim of the nature and potential complications of the instant case. The Court does not have, at the moment, any enacted rules to assist it in regulating how this case should proceed to trial. In my view, the Court, in those circumstances, is obliged to do the very best it can, however invidious its position. If that means making up rules "on the hoof", as Advocate Greenfield would describe it, then so be it. I am not persuaded that the absence of any specific Rules relating to a specific subject matter precludes the Court from making appropriate orders, or giving appropriate directions, on such matter. Indeed, as will already be clear, I am persuaded to the contrary, namely that the Court should and has the power to do so.

I would make some further, ancillary, comments (again briefly) out of respect to Counsel's submissions.

The fact that the ordering of interrogatories, and similar matters relating to discovery, historically originated in and were evolved by the Courts of Equity in England and Wales is, in my view, irrelevant; as it would be to become involved in refined arguments as to whether Bailiwick courts were and/or are solely courts administering the common law. I take that view because what I and the Court of Alderney have to do is to try and administer justice as best as we can.

Nor do I consider that the decision of Carey DB and his reasoning in the case of McGuire v. States of Guernsey (interlocutory hearing 23rd March, 1993) relating to pre-action discovery or inspection is of assistance (although, in passing, I would respectfully agree with Carey DB in that case). Pre-action discovery or inspection is not a useful analogy - by definition the court is not yet seized of any proceedings.

I have also been referred to the case of Morton v. Paint, GLJ 21 36, regarding the ability of the Royal Court - I believe Bailiwick courts - to develop our customary common law and the circumstances in which it might be appropriate to do so. I find this case of comfort to me in my conclusion on this general point, not least because it undoubtedly dealt with substantive matters of law, whilst I, in my view, am confined in this case to lesser matters, namely matters of procedure.

Having concluded for all these reasons in general terms, that the Court of Alderney does have the power to regulate its own procedure in any particular case, to the effect that litigation before it should proceed, by its order or direction, in a specific way, I must now address the question of the Appellant's actual application made on the 14th

October, 1999, relating to interrogatories and the admission of facts.

As already noted, argument on the 14th October was limited to the question as to whether the Court had any power to make the requested orders; and the Court's findings was necessarily limited to that point. For the reasons already given, I formally rule that the Court was in error in reaching that decision, and accordingly I find for the Appellant on the first and second of his grounds of appeal; but I would add that, in my view, the Court would have had an inherent power, in principle, as master of its own procedure, to make such orders, even if section 17(2) of the 1987 Law had not been enacted, the Court having unlimited jurisdiction in civil matters.

I would also comment on the fact that the decision may on the face of it be thought peculiar if the position in Guernsey regarding notices to admit facts was to be different. I am not convinced that it is different - I am certainly not going to give a ruling on the point - because the general principle I consider to apply in Alderney could have equal application in Guernsey. This distinction, however, must be drawn, namely that the Royal Court has enacted its own Rules of Procedure and they do not include a rule relating to notices to admit facts. That deliberate omission may well be significant.

The third ground of appeal was that Court should have exercised its power to make the requested orders in the particular circumstances of this case; and that, effectively, by this appeal, I should make the orders.

As matters have turned out during the course of argument, it is not necessary, now, for me to consider whether I should do so or not. With regard to the notice to admit facts, these matters have been resolved, or an understanding has been reached between Counsel as to how they will proceed (subject,

I must hasten to add, to any decision of a higher court in respect of my general ruling).

With regard to the interrogatories, (and subject to the same proviso) the position with regard to some of them has now been clarified, and the situation regarding the majority has changed, in that the Appellant has now served an amended Cause on the Defendant's Counsel. Proceedings must therefore take their proper course, and depending on that course, the question of interrogatories may or may not eventually arise again, and, if so, in what form it is impossible to anticipate. In that event, the Court of Alderney must be the proper forum in which they should be addressed

I therefore make no ruling on the third ground of appeal.

However, if I had had to rule on the interrogatories placed before the Court on the 14th October, I would have taken into account, in addition to the problems associated with the complicated nature of litigation such as personal injuries claims, to which I have already referred, the following additional factors, at the least. The Plaintiff is impecunious and, more importantly, has suffered severe head injuries, so that his recollection of events in January, 1990, is non-existent. I know that may or may not be a matter in issue at trial - and it is not for me to pre-judge it in any way - but for the purpose of deciding whether interrogatories should be answered, such an allegation would be a relevant factor. The Defendant, effectively, is a large insurance company. If it was defending proceedings in the United Kingdom or Guernsey, it would have to answer interrogatories, if a court thought it appropriate that it should do so. Why should this Plaintiff be in any worse position vis-à-vis this insurer, merely because its insured resides in Alderney?

That, however, is still not quite an end of the matter.

I have already referred to Advocate Greenfield's submission regarding the general principle, namely that certainty in litigation was desirable. That submission, in my view, had very considerable merit, as it must do, notwithstanding that in this particular case I have ruled against him.

He further submitted that merely to direct the Court of Alderney "to do justice" in some abstract way, without giving any kind of guidance as to how it might or should approach the question of interrogatories should it arise in due course (whether in this case or otherwise), would be undesirable. I agree; it would be irresponsible and unreasonable.

In my view, should the Court of Alderney have to address the question of interrogatories - without the benefit of its own Rules - then it should be guided (subject to its ultimate discretion) by Rule 38 of the Royal Court Civil Rules, 1989, and, in the absence of any interpretation thereof by the Guernsey Courts, by those principles to be found in the Supreme Court Practice, 1999 ("the White Book") applicable to the Guernsey Rule, and in particular in paragraphs 26/4/6 to 26/4/15 (inclusive) and paragraph 26/4/27 (personal injuries cases). The overriding principle must be that the interrogatories must relate to any matter in question between the parties in the proceedings [see Guernsey Rule 38(1)].

The Court should then apply those principles to the facts in this case, bearing in mind, I would respectfully suggest, the factors (and any others they consider to be relevant) which I have indicated might be relevant.

In the meantime, I am sure that the Court of Alderney will wish to consider enacting its own comprehensive Rules of Procedure; I am also sure that the relevant authorities in Guernsey will provide all the assistance they can if requested.

Clerk to the Alderney Court

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AT THE INSTANCE of NICHOLAS MORGAN LAUGHTON, whose address is 2 Les Mouriaux, in the Island of Alderney and whose address for service is 2 Les Mouriaux aforesaid

SUMMONS

J.F.W MAIN trading as JACKIE MAIN of Braye Street, in the Island of Alderney ("the Defendant") to appear at 2.30 p.m. on Thursday 25th July 1996 before the Chairman and the Jurats of the Court of Alderney at the Court House, Queen Elizabeth II Street in the Island of Alderney TO SEE the Court Order the Defendant to pay to the Plaintiff the sum of FOUR HUNDRED AND THIRTY TWO THOUSAND AND TWENTY POUNDS (£432,020.00) or such other sum or sums as the Court sees fit to order which the Defendant owes to the Plaintiff in the following circumstances:

1. The Plaintiff was building labourer and the Defendant is a building contractor.

2. At all material times the Plaintiff was working as a labourer for the Defendant on a building site situated at Les Houmet Herbe, Alderney.

3. It was an implied term of the Contract of Employment between the Plaintiff and the Defendant and/or it was the duty of the Defendant his servants or agents to take all reasonable precautions for the safety of the Plaintiff while he was engaged upon his work as a labourer, not to expose the Plaintiff to a risk of damage or injury of which he knew or ought to have known, to take all reasonable measures to ensure that the place where he carried out his said work was safe and to provide and maintain a safe and proper system of working.

4. On 16 January 1990 the Plaintiff was told by the foreman, Paul Richardson, to fetch a trowel. On returning with the trowel the Defendant passed a trench which was being excavated by an excavator operated by Neil MacDonald, a servant or agent of the Defendant. The excavator was operating with a point in order to break up and

excavate rocks within the trench. Further, the driver of the digger, Neil MacDonald, was being assisted by Mark Cauvain, a servant or agent of the Defendant, who was standing about six feet away from where the digger point was operating.

The Plaintiff says that MacDonald, as the driver of the excavator, could either see the point of impact of the point of the excavator at all material times or alternatively if he could not he was being directed by Cauvain as to where to place the point.

5. As the Plaintiff passed he saw that there was a crack in the rock and pointed it out to MacDonald. The Plaintiff then knelt down and pointed to the crack in the rock and MacDonald lowered the point and moved it to the left. In so doing the point or the arm of the excavator hit the Plaintiff on the side of the head, knocked him into the wall and trapped his head against the wall and caused serious injuries.

The accident was caused by the breach of the implied term of the Contract of Employment and/or the negligence on the part of the Defendant his servants or agents.

PARTICULARS

(1) Operating the excavator when he knew or should have known that the Plaintiff was in the area and could be hit by the point or the arm of the excavator.

(2) Failing to keep a proper lookout when operating the excavator to ensure that he did not injure the Plaintiff or any other personnel on the site.

(3) Operating the excavator when he was unable to see the point of the excavator.

(4) Failing to provide a lookout or a proper lookout to ensure that the driver of the excavator did not cause damage to persons and in particular, the Plaintiff while operating the excavator.

(5) Failing to ensure that there was a lookout or a proper lookout to warn the Plaintiff that he should not be in the area when the excavator was operating.

(6) Failing to provide a lookout or a proper lookout to warn the driver when there were personnel in the area who may be injured by the excavator.

(7) Failing to halt the driver of the excavator when the point of the digger was close to and approaching the Plaintiff's head.

(8) Failing to proivde safety helmets for the use of the site personnel.

(9) Failing to take any or any adequate precautions for the safety of the Plaintiff while he was working upon the site.

(10) Exposing the Plaintiff to a risk of damage or injury of which he knew or ought to have known.

(11) Failing to provide and/or to maintain a proper and safe system of working to ensure that the Plaintiff was not injured.

6. In the premises the Plaintiff has suffered loss and damage.

PARTICULARS OF INJURIES

The Plaintiff suffered a fracture at the base of the skull, a fracture of the roof of the right orbit and evidence of cerebral contusions was resulting from the injury. On 30 January 1990 a bi-frontal craniotomy was performed in order to repair the anterior fossa and prevent cerebro-spinal fluid leaking into the nose. The left orbit was explored and a fracture of the mandible was fixed with a plate (this all took place in the Wessex Neurological Centre). He was then transferred back to the surgical ward at the Princess Elizabeth Hospital on 9 February 1990 and he returned home on 12 March 1990.

Due to the brain injury the Plaintiff's mobility has left him with some clumsiness especially in the lower limbs. He has a severe impairment of day-to-day memory and is unable to remember the day or the date and has only a hazy and inaccurate recall of day-to-day events. He finds it difficult to plan a sequence of activities and to initiate new activities. He has greatly restricted understanding of the nature of his cognitive deficits. There has been a marked change in his behaviour in that he is at times unduly flippant and light hearted and makes socially inappropriate remarks to members of the opposite sex. He is irascible and loses his temper for trivial reasons. He is not able to organise his day-to-day life and is unable to work.

In consequence of the injuries sustained by the Plaintiff, his wife has had to give up her employment at the hospital to look after him and so the family have lost the benefit of her earnings.

PARTICULARS OF FINANCIAL LOSS

i	General damages for pain and suffering	£100,000.00
ii	Smith -v- Manchester	£ 40,000.00
iii	Loss of earnings from 20 July 1990 to 31 December 1992 (Note: the Defendant paid the Plaintiff his full wages until 19 July 1990) 127 weeks @ £150 per week	£ 19,050.00
iv	Loss of earnings from part time work as a barman from 16 January 1990 to 31 December 1992 at £220 per month	£ 5,170.00
v	Loss of wife's earnings from June 1990 to 31 December 1992 at £80.00 per week (130 weeks)	£ 10,400.00
vi	Loss of Plaintiff's future earnings 18 x £10,140.00	£182,520.00

vii Loss of wife's future earnings
18 x £4,160.00 £ 74,880.00

£432,020.00

The Plaintiff will give credit for one half of the industrial injury and disability benefits

And the Plaintiff claims:

(1) Damages of £432,020.00

(2) Further or other relief

(3) Interest

(4) Costs

By Act of Court dated 14th of January 1993, the action was adjourned sine die.

By Act of Court dated 25th of February 1993, the Defendant filed the following defences:-

LES DEFENSES

Exceptions de Fond

The Plaintiff's claim is prescribed by virtue of the following facts:-

1. The Plaintiff's claim relates to an incident which allegedly occurred in or about 16th January, 1990 and the Plaintiff has had sufficient knowledge of the same since that date.

2. Proceedings were not instituted until on or about 6th January, 1993.

3. The Plaintiff's alleged cause of action herein and the date of his knowledge of the same occurred more than a year and a day before the commencement of this action.

4. The Plaintiff's claim is therefore barred and prescribed under the Law of Alderney.

5. This action should be struck out and dismissed.

Exceptions de Forme

1. The Plaintiff's Cause fails adequately or at all to fully particularise his claim to enable the Defendant to file full Defences, namley:-

(a) Of Paragraph 4:

"On 16th January, 1990 the Plaintiff was told by the Foreman Paul Richardson to fetch a trowel. On returning with the trowel the Defendant passed a trench which was being excavated by an excavator operated by Neil MacDonald, a servant or agent of the Defendant".

Please explain whether the use of the word "the Defendant" in passing the trench is a typographical error. If not, please confirm it is alleged that Mr J F W Main was present at the time of this incident.

(b) Of Paragraph 5:

"As the Plaintiff passed he saw that there was a crack in the rock and pointed it out to MacDonald. The Plaintiff then knelt down and pointed to the crack in the rock and MacDonald lowered the point and moved it to the left."

Please explain precisely where the Plaintiff was standing:

(a) when he saw that there was a crack in the rock and pointed it out to MacDonald;

(b) when he knelt down and pointed to the crack in the rock; and

(c) when MacDonald lowered the point and moved it to the left.

In particular please describe specifically where it is alleged the Plaintiff was standing in relation to the trench described in Paragraph 4 of the Cause at the time the Plaintiff alleges that the excavator hit him on the side of the head.

(c) Further, who does the Plaintiff allege was aware of the precise position of the Plaintiff at the time he was hit on the side of the head.

(d) Is it contended that the Plaintiff was instructed and/or authorised by any representative of the Defendant to be in the position in which he was placed at the time he was hit on the side of the head.

Niances

1. The Defendant admits Paragraphs 1, 2 and 3 of the Cause.

2. The Defendant denies all other allegations in the Cause and puts the Plaintiff to strict proof thereof. In particular the Defendant denies being indebted to the Plaintiff in the sum claimed or at all.

Pretentions

1. The Plaintiff had been issued with a hard safety helmet by the Defendant many weeks before the incident referred to in the Cause. It is understood by the

Defendant that the Plaintiff chose not to wear it on site on the day of the alleged incident, but decided of his own choice to leave it in his works van.

2. On the date of the alleged incident the Plaintiff was working as a labourer for the Defendant's site foreman, Mr Paul T Richardson. After the lunch break on that day Mr Richardson asked the Plaintiff to fetch Mr Richardson's pointing trowel from the site hut. It is believed that the Plaintiff went through the house of the property where the works were being carried out to the site hut which was at the back of the site near the adjacent public road.

3. The Defendant's digger driver Mr N D MacDonald was operating the digger arm with a claw fixed to it in an attempt to remove a particularly large rock in a trench which was being cleared at the side of the house. The Plaintiff appeared at the corner of the house and told Mr MacDonald that there was a split in the rock which he should try to get the claw into to help move the rock out. This was acknowledged by Mr MacDonald and the Plaintiff was then told to move out of the way in order that the digger could be used to attempt to remove the large rock. The Plaintiff moved away from the corner of the building and Mr MacDonald proceeded to lower the claw of the digger into the trench. The Defendant's representatives on site were next aware of the Plaintiff when he appeared in the trench with the top part of his body slumped forward alongside the digger-claw/boom.

4. The Defendant therefore does not accept that he is responsible for the injuries allegedly suffered by the Plaintiff in the incident set out in the Cause.

5. Further, or in the alternative, the injuries allegedly suffered by the Plaintiff were wholly caused or contributed to by the negligence and/or lack of attention of the Plaintiff by reason of the following:-

PARTICULARS:-

(a) failing at all material times to wear a hard safety helmet provided to the Plaintiff by the Defendant;

(b) failing to comply with instructions given by the Defendant's servants in moving out of the way and keeping out of the way of the digger whilst it was to be used;

(c) failing to take all due care and pay proper attention to the activities on the site and therefore to take proper steps for the Plaintiff's own safety.

On 25th of May 1993, the Plaintiff lodged a Reply in the form attached hereto.

REPLY

Exceptions de Fond

It is denied that the Plaintiff's claim is barred and prescribed under the Law of Alderney. Further if, which is denied, the claim is so prescribed the Plaintiff will seek an Order from the Court extending the period of time in which these proceedings could be commenced to three years from the date of the accident being 15th January 1993.

Exceptions de Forme

Of paragraph 4

1 (a) the word "Defendant" in passing the trench is a typographical error and should read "the Plaintiff in passing the trench".

Of paragraph 5

1 (b) & (c) these requests are matters of evidence.

1 (d) The Plaintiff, as he was employed by the Defendant, was authorised to be on the building site. Unless, it is alleged by the Defendant that the Plaintiff was given specific instructions not to be where he was, there was no reason for the Plaintiff not to be on that part of the site.

REPLY

1. As to paragraph 1 of the Pretentions if, which is not admitted, the Plaintiff had been issued with a hard safety helmet, it is denied that the Defendant can avoid liability due to the fact he was not wearing it. There was a duty upon the Defendant to ensure that hard safety helmets were used if they were issued. Further it is denied that the Plaintiff's injuries would have been less even if he had been wearing a hard safety helmet.

2. As to paragraph 2 of the Pretentions it is denied that the Plaintiff was working as a labourer for Mr Paul T Richardson. The Plaintiff was working as a labourer for the Defendant albeit that he was under the supervision of Mr Richardson. Save as aforesaid paragraph 2 is not admitted.

3. As to paragraph 3 of the Pretentions it is admitted and averred that the Defendant's digger driver Mr M D McDonald was operating the digger arm. The digger arm had a point attached to it which was used for breaking up rocks. It is admitted and averred that the Plaintiff told Mr McDonald that there was a split in the rock and this was acknowledged by Mr McDonald. It is denied that the Plaintiff was told by Mr McDonald to "move out of the way" or that the Plaintiff "moved away" from the corner of the building. The Plaintiff will rely upon the fact that Mr McDonald and/or Mr Cauvain could see the Plaintiff and that had the Plaintiff moved away from the corner of the building he would not have been in the trench (which is admitted by the Defendant) when the point on the digger arm hit his head.

4. Further it is denied that the injuries suffered by the Plaintiff were caused or contibuted to by the Plaintiff's negligence.

5. Save as is herein before expressly admitted the Plaintiff denies each and every allegation set out in the Pretentions as if each were set out herein and traversed seriatim.

By Act of Court dated 24th of February 1994, the Court dismissed the Defendant's Exception de Fond.

By Act of Court dated 20th of October 1994, the Royal Court of Guernsey dismissed the Defendant's Appeal against the decision of the Court of Alderney made on 24th of February 1994.

By letter dated 24th of July, the Defendant's advocate withdrew the Defendant's Appeal against the said decisions of the Court of Alderney and Royal Court of Guernsey.

By Act of the Guernsey Court of Appeal, Civil Division, and dated 1st of August 1995, the Defendant was ordered to pay the Plaintiff's costs in respect of the Defendant's Appeal before the Court of Appeal on a full indemnity basis.

This 17th day of July 1996.

.....

Advocate

PTRF/L2472/er00606

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OZANNES
[StJAR]
14.10.99

IN THE COURT OF ALDERNEY

Estimated duration of hearing - 30 minutes

NICHOLAS MORGAN LAUGHTON **Plaintiff**

-v-

J W F MAIN t/a JACKIE MAIN **Defendant**

The Plaintiff, whose address for service is 1, Le Marchant Street in the parish of Saint Peter Port, Guernsey

APPLIES TO THE COURT

for the following orders:

1. The Defendant shall answer by way of affidavit the interrogatories attached hereto and serve the said affidavit upon the Plaintiff's Advocates within twenty-eight days of the date of this order;

2. The Defendant shall indicate in writing to the Plaintiff's Advocates within twenty-eight days of this order which of the facts in the attached notice he admits;

3. Such other directions as the Court deems appropriate;

4. The Defendant to pay the Plaintiff's costs of and relating to this application on an indemnity (alternatively standard) basis.

Dated this 5th day of October 1999.

.....

Advocate

GD/MB/L.2472/DOCS/NOT-APP

IN THE ALDERNEY COURT

BETWEEN

NICHOLAS LAUGHTON

-v-

J W F MAIN t/a JACKIE MAIN

INTERROGATORIES

On behalf of the Plaintiff for the examination of the Defendant.

1 At the time of the material accident, 16th January 1990, was Nicholas Morgan Laughton, the Plaintiff herein, employed by you?

2 When did his employment by you commence?

3 What training had you provided to him during the course of his employment in matters of health and safety at work and, in particular, working in the vicinity of excavating machinery such as that involved in the said accident?

4 Was Neil MacDonald also your employee at the time of the said accident?

5 What training had MacDonald received in operating the excavator involved in the said accident?

6 What training had you provided to MacDonald in the safe use and operation of the said machine?

7 What experience did MacDonald have of driving the said machine?

8 It is your case that a hard hat was provided to the Plaintiff for his use.

a) What was the precise make of hat?

b) When was it issued to the Plaintiff and who by?

c) What instructions were given to the Plaintiff as to the use of the hat?

d) Who gave the said instructions and when?

e) Did you know what use was in fact made by your employees of the hats you say your provided prior to the accident? What was that knowledge?

9 What instructions had you given to your employees as to how they were to remove rock from the trench which was being excavated at the time of the said accident?

10 What assessment had you made of how the said rock could be removed safely?

11 Did the Plaintiff suffer a head injury on 16th January 1990 whilst working as a labourer for you at a building site situated at Les Houmet Herbe, Alderney.

12 Was the injury caused by the Plaintiff being struck by the rear hydraulic arm of an excavating machine operated by one Neil MacDonald, a servant or agent of yours?

13 What were the gross and net earnings of a comparable employee of yours for each of the years ending 31st December since the accident and for the year to date.

Dated this day of November 1998

.....

Advocate for the Plaintiff

IN THE ALDERNEY COURT

BETWEEN

NICHOLAS LAUGHTON

-v-

J W F MAIN t/a JACKIE MAIN

NOTICE TO ADMIT

Take notice that the Plaintiff requires the Defendant to admit, for the purposes of this cause only, in writing and within 21 days of the date of this notice, the following facts set out herein.

THE FACTS TO BE ADMITTED

1 Prior to the accident of 16th January 1990 the Plaintiff was of average intelligence.

2 Prior to working for the Defendant the Plaintiff had been employed as a window fabricator and fixer by Pallot Glass Limited of Jersey between 7th August 1984 and 27th May 1988 and between 14th June 1988 and 14th November 1988.

3 When the Plaintiff left Pallot Glass he was earning £3.96 per hour.

4 As at 22/1/96 a window fixer's rate of pay at Pallot Glass was approximately £6.25 per hour with a standard 42 hour week producing an annual earnings figure of £13,650 without overtime. The Defendant is referred to Pallot Glass Limited's letter dated 22nd January 1996.

5 The Plaintiff's earnings and employment in the years 1983 to 1988 are correctly set out in a letter from States of Jersey Social Security dated 15th September 1995.

6 The benefits paid to the Plaintiff by Guernsey Social Security Authority after the said accident are correctly set out in their letter to the Plaintiff's Advocate dated 22nd November 1996.

7 The Plaintiff's wife's earnings are correctly set out in:

a) a letter from Guernsey Social Security Authority dated 3rd December 1996; and

b) in a letter from Mignot Memorial Hospital to the Plaintiff's advocate dated 5th December 1996 save that two dates in the schedule should read 19/1/90 and 26/1/90 rather than 19/1/96 and 26/1/96.

8 If the Plaintiff's wife had carried on her part-time employment at Mignot Memorial Hospital her earnings would by now be in the region of £5,490 net per annum.

9 If the Plaintiff had carried on his part-time bar work he would be earning approximately £1,640 net per annum from such employment.

10 The cost of employing a nurse to care for the Plaintiff would be approximately £8.00 per hour.

11 The cost of employing a less skilled person to care for the Plaintiff would be approximately £5.00 per hour.

12 The contents of the report of Mr Roger Allsopp, Consultant General Surgeon, dated 14th March 1990 are a correct statement of the Plaintiff's injuries, treatment and prognosis up to the date thereof.

TAKE NOTICE that the Plaintiff will seek an order for costs in respect of the wasted expense of proving such of the facts set out above which you do not admit and which the Plaintiff proves at the trial of this cause.

Dated this day of November 1998

.....

Advocates for the Plaintiff

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LAUGHTON v MAIN : Judgement 14th October 1988

THE FUNDAMENTAL ISSUE before the Court today, is NOT whether this COURT may regulate its own procedures; THAT IS ACCEPTED.

THIS COURT, TODAY, has no power to impose EITHER the service of INTERROGATORIES, OR the notice to ADMIT FACTS, upon the DEFENDANT.

IN ACCEPTING the Court's statutory right to regulate its own PROCEDURES, the JURATS are unanimous in their understanding that this requires the COURT to exercise a reasoned assessment and measured review of any proposed additions or changes to those procedures, AND, that it CANNOT, therefore GRANT THE APPLICATION UNDER THE TERMS SOUGHT TODAY.

THE COURT is greatly concerned at the DELAY which has occurred in the conduct of this ACTION, which involves a CLAIM by the PLAINTIFF arising from serious injuries and consequential incapacity.

COUNSEL for both PARTIES in this ACTION will be expected to bring a further APPLICATION before the COURT at the earliest opportunity.

THE COURT reserves its judgement as to COSTS in TODAY'S ACTION.

CHAIRMAN

[Fair copy made after Court on the day of the hearing by the Chairman]

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Rules of Court and procedure.

17. (1) The Royal Court may, from time to time, make rules of court for the Court which may, subject to subsection (3)—

(b) Ordres en Conseil Vol. XIX, p. 123.

(a) prescribe those matters which must be dealt with by a full court and those which may be dealt with by a single Jurat;

(b) prescribe any matters which may be dealt with out of court;

(c) specify any matters in which, notwithstanding section 7(2), a Jurat may act after attaining the age of 70 years;

(d) prescribe forms of summons to be used for initiating proceedings in the Court.

(2) Subject to subsection (3) and to any rules of court made under subsection (1) of this section, in the Article 61 of the Reform (Guernsey) Law, 1948(c), under section 3 of the Court of Alderney (Appeals) Law, 1969(d), under section 40 of the Arbitration (Alderney) Law, 1933(e), under section 1 or section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985(f) or under any other power of the Royal Court to make rules, the Court may regulate its own procedure and may for that purpose make rules of court; but rules made under this subsection shall, without prejudice to the validity of anything done under them or to the making of new rules under this subsection, cease to have effect—

(a) if they are disapproved by the Royal Court, immediately upon such disapproval; or

(b) if they are not, within three months after being made, approved by the Royal Court, at the expiration of those three months.

(3) Rules of court shall not—

(c) Ordres en Conseil Vol. XIII, p. 288.
(d) Ordres en Conseil Vol. XXII, p. 192.
(e) No. XIII of 1983.
(f) No. XVII of 1985.

1987.

(*a*) permit the determination of any criminal matter, the hearing of a petition under section 34(4) or the determination of any question regarding the law as to elections in Alderney otherwise than by a full court;

(*b*) permit any question concerning the grant, refusal or withdrawal of a licence to deal in intoxicating liquor to be dealt with out of court.

(4) In this section the expression "the law as to elections in Alderney" has the same meaning as in Part III of this Law.

In the Court of Alderney

In the matter Nicholas Morgan Laughton (Plaintiff) -v- Jackie Francis William Main trading as Jackie Main (Defendant).

Application by the Plaintiff for the Defendant to answer interrogatories and to admit facts.
Advocate Robilliard appearing for the Plaintiff and Advocate Greenfield for the Defendant.

WHEREAS: After hearing submissions from both advocates the Court ruled that it had no power to order the service of interrogatories and therefore could not grant the application under the terms sought.

The Court expressed concern at the delay in bringing the case forward for hearing and expressed the hope that counsel would bring an application to set a date for the hearing at the earliest opportunity. The Court reserved decision as to the award of costs.

In pursuance of the order of the COURT pronounced according to Law and recorded by the COURT,

This Act is hereby inscribed as follows:

The Application is refused.

The Court reserves its judgement as to the award of costs in today's application.

This 14th day of October 1999

Deputy Clerk of the Court

Ozannes
PTRF
(12.1.00)

NICHOLAS MORGAN LAUGHTON whose address for service is 1 Le Marchant Street, Guernsey;

ACTIONS

J.F.W MAIN trading as **JACKIE MAIN** of Braye Street, in the Island of Alderney ("the Defendant") **TO SEE** the Court Order the Defendant to pay to the Plaintiff the sum of ~~FOUR HUNDRED AND THIRTY TWO THOUSAND AND TWENTY POUNDS (£432,020.00)~~ £1,261,510.82 or such other sum or sums as the Court sees fit ~~to order~~ which the Defendant owes to the Plaintiff in the following circumstances:

1 The Plaintiff was a building labourer and the Defendant is a building contractor.

2 At all material times the Plaintiff was working as a labourer for the Defendant on a building site situated at Les Houmet Herbe, Alderney. At all material times the Plaintiff was an employee of the Defendant.

3 It was an implied term of the Contract of Employment between the Plaintiff and the Defendant and/or it was the duty of the Defendant his servants and/or agents to take all reasonable precautions for the safety of the Plaintiff while he was engaged upon his work as a labourer, not to expose the Plaintiff to a risk of damage or injury of which he and/or they knew or ought to have known, to take all reasonable measures to ensure that the place where he carried out his said work was safe and to provide and maintain a safe and proper system of working. Further, it was the Defendant's duty to provide competent and/or safe co-employees.

4 On 16 January 1990 the Plaintiff was told by the Defendant's foreman, Paul Richardson, to fetch a trowel. On returning with the trowel the Defendant passed a trench which was being excavated by an excavator operated by Neil MacDonald, a servant or agent of the Defendant. The excavator was operating

with a point in order to break up and excavate rocks within the trench. Further, the driver of the digger, Neil MacDonald, another servant or agent of the Defendant was being assisted by Mark Cauvain, also a servant or agent of the Defendant, who was standing about six feet away from where the digger point was operating. At all material times Richardson, Cauvain and MacDonald were acting within the course of their employment by the Defendant. The Plaintiff says that MacDonald, as the driver of the excavator, could either see the point of impact of the point of the excavator at all material times or alternatively if he could not he was being directed by Cauvain as to where to place the point.

5 As the Plaintiff passed he saw that there was a crack in the rock and pointed it out to MacDonald. The Plaintiff then ~~knelt down and~~ pointed to the crack in the rock and MacDonald lowered the point and moved it to the left. In so doing the point or the arm of the excavator hit the Plaintiff on the side of the head, knocked him into the wall and ~~trapped~~ crushed his head against the wall ~~and~~ causinged serious injuries.

5A The accident was caused by ~~the~~ breach of the implied term of the contract of employment and/or ~~the~~ negligence on the part of the Defendant his servants and/or agents.

PARTICULARS

Of MacDonald:

(a) Operating the excavator when he knew or should have known that the Plaintiff was in the area and could or was liable to be hit by the point or the arm of the excavator.

(b) Failing to keep a proper lookout when operating the excavator to ensure that he did not injure the Plaintiff or any other personnel on the site.

(c) Operating the excavator when he was unable to see the point of the excavator.

(d) Failing to provide a lookout or a proper lookout to ensure that ~~the driver of the excavator~~ he did not cause damage to persons and, in particular, the Plaintiff while operating the excavator.

(e) Failing to ensure that there was a lookout or a proper lookout to warn the Plaintiff that he should not be in the area when the excavator was operating.

(f) Failing to provide a lookout or a proper lookout to warn ~~the driver~~ him when there were personnel in the area who may be injured by the excavator.

(fa) If, which is not admitted, he could not see the bottom of the trench, then failing to clear any spoil from on top of the trench which obstructed his view.

(fb) Failing to take any, or any proper care for the safety of the Plaintiff when he knew or ought to have known that the Plaintiff was in the close vicinity of the excavator's arm.

(fc) Operating or attempting to operate the excavator when he was not competent to do so by reason of the fact he had had no training.

(fd) Operating the excavator carelessly; it is the Plaintiff's case that he was visible at all times and that MacDonald either failed to see him and/or failed to exercise proper control over the excavator's arm.

Of Mark Cauvain:

(g) Failing to halt the driver of the excavator when the point of the digger was close to and approaching the Plaintiff's head.

(ga) Failing to keep a proper look-out.

(gb) Failing to warn MacDonald of the presence of the Plaintiff.

Of Paul Richardson and/or the Defendant:

(h) Failing to provide safety helmets for the use of the site personnel.

(ha) Alternatively, if, which is denied, safety helmets had been provided in the past, then failing to take any or any adequate steps to ensure that they were worn. The Plaintiff's principal case is that no such helmets were provided, however, in any event no workman wore such helmets.

(hb) Failing to devise or maintain a safe system of work to excavate the trench. The Plaintiff's case is that a properly qualified excavator operator should have been employed; MacDonald ought not to have been permitted to excavate a trench he alleges he could not see; the area where MacDonald was working ought to have been roped off; a look-out should have been posted with instructions to warn MacDonald of the presence of any other workman and to prevent workmen from approaching the excavator arm. Alternatively a safe method of extracting the rock should have been devised and used; eg the use of a more powerful jack-hammer.

Of the Defendant:

(hc) Causing or permitting MacDonald to operate the excavator when he was not trained, qualified or sufficiently experienced to do so whether in the circumstances of the particular task at hand or at all.

(hd) Failing to carry out any or any proper assessment of how rock was to be removed from the said trench safely.

(he) Failing to give any or any proper instruction to his employees as to how to work safely.

(i) Failing to take any or any adequate precautions for the safety of the Plaintiff while he was working upon the site.

(j) Exposing the Plaintiff to a risk of damage or injury of which he knew or ought to have known.

(k) Failing to provide and/or to maintain a proper and safe system of working to ensure that the Plaintiff was not injured.

6 ~~In the premises the Plaintiff has suffered loss and damage.~~ By reason of the matters aforesaid the Plaintiff suffered pain and injury and sustained loss and damage.

PARTICULARS OF INJURIES

The Plaintiff, who was born on 27th April 1968, suffered a fracture at the base of the skull, a fracture of the roof of the right orbit and ~~evidence of~~ cerebral contusions ~~was resulting from the injury~~. On 30 January 1990 a bi-frontal craniotomy was performed in order to repair the anterior fossa and prevent cerebro-spinal fluid leaking into the nose. The left orbit was explored and a fracture of the mandible was fixed with a plate (this all took place in the Wessex Neurological Centre). He was then transferred back to the surgical ward at the Princess Elizabeth Hospital on 9 February 1990 and he returned home on 12 March 1990.

Due to the brain injury the Plaintiff~~'s mobility has left him~~ was left with some clumsiness especially in the lower limbs.

He has a severe impairment of day-to-day memory and is unable to remember the day or the date and has only a hazy and inaccurate recall of day-to-day events. He finds it difficult to plan a sequence of activities and to initiate new activities. He has greatly restricted understanding of the nature of his cognitive deficits. There has been a marked change in his behaviour in that he is at times unduly flippant and light hearted and makes socially inappropriate remarks to members of the opposite sex. He is irascible and loses his temper for trivial reasons. He is not able to organise his day-to-day life and is unable to work.

In consequence of the injuries sustained by the Plaintiff, his wife ~~has had to give~~ gave up her employment at the hospital to look after him and so the family ~~have~~ lost the benefit of her earnings.

The Plaintiff's condition is such that he is permanently unfit for unsheltered gainful employment. He has suffered a considerable loss of his capacity for DIY, gardening, and other chores which, but for the accident, he would have performed for himself. He requires, and will continue to require, a considerable amount of care which, to date, has been provided by his wife and her relatives. If, which is denied, he has retained any capacity for unsheltered work, then he is considerably handicapped on the labour market.

The Plaintiff has, since Spring 1999, undertaken sheltered employment. This comprises light manual labour. He requires supervision. He can follow simple instructions but cannot cope with more than two instructions at any one time. His employment will continue only for as long as there is work to do and financial support from the Supported Employment Scheme. The Plaintiff is unemployable without the assistance of the Scheme. There is no assurance that his employment will continue in any event.

PARTICULARS OF FINANCIAL LOSS

~~i~~	~~General damages for pain and suffering~~	~~£100,000.00~~
~~ii~~	~~Smith -v- Manchester~~	~~£ 40,000.00~~
~~iii~~	~~Loss of earnings from 20 July 1990 to 31 December 1992~~ ~~(Note: the Defendant paid the Plaintiff his full wages until 19 July 1990)~~ ~~127 weeks @ £150 per week~~	~~£ 19,050.00~~

~~iv~~	~~Loss of earnings from part time work as a barman from 16 January 1990 to 31 December 1992 at £220 per month~~	~~£ 5,170.00~~
~~v~~	~~Loss of wife's earnings from June 1990 to 31 December 1992 at £80.00 per week (130 weeks)~~	~~£ 10,400.00~~
~~vi~~	~~Loss of Plaintiff's future earnings 18 x £10,140.00~~	~~£182,520.00~~
~~vii~~	~~Loss of wife's future earnings 18 x £4,160.00~~	~~£ 74,880.00~~

		~~£432,020.00~~

The Plaintiff's claim is particularised in the schedule attached hereto.

The Plaintiff will give credit for one half of the industrial injury and disability benefits

7 Further, the Plaintiff claims interest at the rate of 2% on general damages from the date of service of this cause and interest at the rate of 4% on special damages from the date of the said accident, alternatively interest at such rates and for such periods as the Court deems fit.

AND the Plaintiff claims:

(1) Damages of ~~£432,020.00~~ £1,169,854.02; alternatively, damages;

(2) Further or other relief;

(3) Interest as aforesaid;

(4) Costs.

By Act of Court dated 14th of January 1993, the action was adjourned sine die.

By Act of Court dated 25th of February 1993, the Defendant filed the following defences:-

LES DEFENSES

Exceptions de Fond

The Plaintiff's claim is prescribed by virtue of the following facts:

1 The Plaintiff's claim relates to an incident which allegedly occurred in or about 16th January, 1990 and the Plaintiff has had sufficient knowledge of the same since that date.

2 Proceedings were not instituted until on or about 6th January, 1993.

3 The Plaintiff's alleged cause of action herein and the date of his knowledge of the same occurred more than a year and a day before the commencement of this action.

4 The Plaintiff's claim is therefore barred and prescribed under the Law of Alderney.

5 This action should be struck out and dismissed.

Exceptions de Forme

1 The Plaintiff's Cause fails adequately or at all to fully particularise his claim to enable the Defendant to file full Defences, namely:-

(a) Of Paragraph 4:

"On 16th January, 1990 the Plaintiff was told by the Foreman Paul Richardson to fetch a trowel. On returning with the trowel the Defendant passed a trench which was being excavated by an excavator operated by Neil MacDonald, a servant or agent of the Defendant".

Please explain whether the use of the word "the Defendant" in passing the trench is a typographical error. If not, please confirm it is alleged that Mr J F W Main was present at the time of this incident.

(b) Of Paragraph 5:

"As the Plaintiff passed he saw that there was a crack in the rock and pointed it out to MacDonald. The Plaintiff then knelt down and pointed to the crack in the rock and MacDonald lowered the point and moved it to the left."

Please explain precisely where the Plaintiff was standing:

(a) when he saw that there was a crack in the rock and pointed it out to MacDonald;

(b) when he knelt down and pointed to the crack in the rock; and

(c) when MacDonald lowered the point and moved it to the left.

In particular please describe specifically where it is alleged the Plaintiff was standing in relation to the trench described in Paragraph 4 of the Cause at the time the Plaintiff alleges that the excavator hit him on the side of the head.

(c) Further, who does the Plaintiff allege was aware of the precise position of the Plaintiff at the time he was hit on the side of the head.

(d) Is it contended that the Plaintiff was instructed and/or authorised by any representative of the Defendant to be in the position in which he was placed at the time he was hit on the side of the head.

Niances

1 The Defendant admits Paragraphs 1, 2 and 3 of the Cause.

2 The Defendant denies all other allegations in the Cause and puts the Plaintiff to strict proof thereof. In particular the Defendant denies being indebted to the Plaintiff in the sum claimed or at all.

Pretentions

1 The Plaintiff had been issued with a hard safety helmet by the Defendant many weeks before the incident referred to in the Cause. It is understood by the Defendant that the Plaintiff chose not to wear it on site on the day of the alleged incident, but decided of his own choice to leave it in his works van.

2 On the date of the alleged incident the Plaintiff was working as a labourer for the Defendant's site foreman, Mr Paul T Richardson. After the lunch break on that day Mr Richardson asked the Plaintiff to fetch Mr Richardson's pointing trowel from the site hut. It is believed that the Plaintiff went through the house of the property where the works were being carried out to the site hut which was at the back of the site near the adjacent public road.

3 The Defendant's digger driver Mr N D MacDonald was operating the digger arm with a claw fixed to it in an attempt to remove a particularly large rock in a trench which was being cleared at the side of the house. The Plaintiff appeared at the corner of the house and told Mr MacDonald that there was a split in the rock which he should try to get the claw into to help move the rock out. This was acknowledged by Mr MacDonald and the Plaintiff was then told to move out of the way in order that the digger could be used to attempt to remove the large rock. The Plaintiff moved away from the corner of the building and Mr MacDonald proceeded to lower the claw of the digger into the trench. The Plaintiff then got

into the trench which was being excavated by the said MacDonald and crouched down with the result that he was partly or wholly concealed from view. This was done without the knowledge, consent or encouragement of MacDonald who had no reason to suspect that the Plaintiff would so act. The Defendant's representatives on site were next aware of the Plaintiff when he appeared in the trench with the top part of his body slumped forward alongside the digger-claw/boom.

4 The Defendant therefore does not accept that he is responsible for the injuries allegedly suffered by the Plaintiff in the incident set out in the Cause.

5 Further, or in the alternative, the injuries allegedly suffered by the Plaintiff were wholly caused or contributed to by the negligence and/or lack of attention of the Plaintiff by reason of the following:-

PARTICULARS:

(a) failing at all material times to wear a hard safety helmet provided to the Plaintiff by the Defendant;

(b) failing to comply with instructions given by the Defendant's servants in moving out of the way and keeping out of the way of the digger whilst it was to be used;

(ba) failing to advise and/or warn the Defendant's servants or agents that he was getting into the said trench;

(bb) failing to advise and/or warn the Defendant's servants or agents of his presence in the said trench;

(bc) allowing himself to be too close to the arm of the digger;

(bd) allowing himself to be in the path of the arm of the digger;

(be) failing to watch and/or heed the movement of the arm of the digger;

(bf) failing to ensure that he was visible to the Defendant's servants or agents and in particular to the said MacDonald.

(c) failing to take all due care and pay proper attention to the activities on the site and therefore to take proper steps for the Plaintiff's own safety.

On 25th of May 1993, the Plaintiff lodged a Reply in the form attached hereto.

REPLY

Exceptions de Fond

It is denied that the Plaintiff's claim is barred and prescribed under the Law of Alderney. Further if, which is denied, the claim is so prescribed the Plaintiff will seek an Order from the Court extending the period of time in which these proceedings could be commenced to three years from the date of the accident being 15th January 1993.

Exceptions de Forme

Of paragraph 4

1(a) the word "Defendant" in passing the trench is a typographical error and should read "the Plaintiff in passing the trench".

Of paragraph 5

1(b) (c) These requests are matters of evidence.

1(d) The Plaintiff, as he was employed by the Defendant, was authorised to be on the building site. Unless, it is alleged by the Defendant that the Plaintiff was given specific instructions not to be where he was, there was no reason for the Plaintiff not to be on that part of the site.

REPLY

1 As to paragraph 1 of the Pretentions if, which is not admitted, the Plaintiff had been issued with a hard safety helmet, it is denied that the Defendant can avoid liability due to the fact he was not wearing it. There was a duty upon the Defendant to ensure that hard safety helmets were used if they were issued. Further it is denied that the Plaintiff's injuries would have been less severe even if he had been wearing a hard safety helmet.

2 As to paragraph 2 of the Pretentions it is denied that the Plaintiff was working as a labourer for Mr Paul T Richardson. The Plaintiff was working as a labourer for the Defendant albeit that he was under the supervision of Mr Richardson. Save as aforesaid paragraph 2 is not admitted.

3 As to paragraph 3 of the Pretentions it is admitted and averred that the Defendant's digger driver Mr M D McDonald was operating the digger arm. The digger arm had a point attached to it which was used for breaking up rocks. It is admitted and averred that the Plaintiff told Mr McDonald that there was a split in the rock and this was acknowledged by Mr McDonald. It is denied that the Plaintiff was told by Mr McDonald to "move out of the way" or that the Plaintiff "moved away" from the corner of the building. The Plaintiff will rely upon the fact that Mr McDonald and/or Mr Cauvain could see the Plaintiff and that had the Plaintiff moved away from the corner of the building he would not have been in the trench (which is admitted by the Defendant) when the point on the digger arm hit his head.

4 Further it is denied that the injuries suffered by the Plaintiff were caused or contributed to by the Plaintiff's negligence. For the avoidance of doubt the Plaintiff avers that contributory negligence is not and/or is no longer a defence to the Plaintiff's action as a matter of law.

5 Save as is herein before expressly admitted the Plaintiff denies each and every allegation set out in the Pretentions as if each were set out herein and traversed seriatim.

By Act of Court dated 24th of February 1994, the Court dismissed the Defendant's Exception de Fond.

By Act of Court dated 20th of October 1994, the Royal Court of Guernsey dismissed the Defendant's Appeal against the decision of the Court of Alderney made on 24th of February 1994.

By letter dated 24th of July, the Defendant's advocate withdrew the Defendant's Appeal against the said decisions of the Court of Alderney and Royal Court of Guernsey.

By Act of the Guernsey Court of Appeal, Civil Division, and dated 1st of August 1995, the Defendant was ordered to pay the Plaintiff's costs in respect of the Defendant's Appeal before the Court of Appeal on a full indemnity basis.

P T R FERBRACHE

Re-served this day of 2000 by Ozannes of 1 Le Marchant Street, St Peter Port, Advocates for the Plaintiff.

GD/L2472/docs/amended

IN THE COURT OF ALDERNEY

BETWEEN:

NICHOLAS LAUGHTON

Plaintiff

v

JACKIE MAIN

Defendant

SCHEDULE OF LOSS AND DAMAGE

---

1 Pain, suffering and loss of amenity: £200,000

In arriving at this figure it is averred that the Plaintiff's injuries fall within category 2(A)(b) of the Judicial Studies Board Guidelines 4th Edtn. The Plaintiff's other physical injuries must also be taken into account.

The Plaintiff further relies on the Law Commission report No.257 and its recommendation that damages for pain, suffering and loss of amenity be increased by a factor of up to 2.

PAST LOSS AND DAMAGE

2 Past loss of earnings:

Prior to the accident the Plaintiff was employed by the Defendant as a labourer. The Defendant paid the Plaintiff until July 1990. At the time of the accident the Plaintiff's approximate net weekly earnings were in the region of £135 per week. The Plaintiff avers that his net income is likely to have increased by, say, 10% per annum.

But for the accident his rate of earnings would therefore have been as follows:

20/7/90 - 19/7/91	52 x £135 = £7,020
20/7/91 - 19/7/92	£7,722
20/7/92 - 19/7/93	£8,495
20/7/93 - 19/7/94	£9,345
20/7/94 - 19/7/95	£10,278
20/7/95 - 19/7/96	£11,306
20/7/96 - 19/7/97	£12,436
20/7/97 - 19/7/98	£13,680
20/7/98 - 19/7/99	£15,048
20/7/99 - 19/2/00	£8,276

£103,606

In addition Mr Laughton had a second job. He earned £60 - 65 per week gross at the SeaView Hotel. The Plaintiff claims at the rate of £50 per week for 26 weeks per annum amounting to £1,300 a year. Such earnings would have increased by, say, 5% per annum. The Plaintiff claims therefore as follows:

1990	£1,300
1991	£1,365
1992	£1,435
1993	£1,507
1994	£1,582
1995	£1,661
1996	£1,744
1997	£1,831
1998	£1,922
1999	£2,018

£16,365

The Plaintiff was unemployed from the date of the accident until 22nd February 1999 when he commenced employment as a labourer with the States of Alderney Works Department through the Supported Employment Scheme. His net earnings to date *(assuming a date of c. 19/2/00)* amount to *approximately £8,230.* The Plaintiff gives credit for this amount.

The Plaintiff further gives credit for £23,368.98 being half of the material benefits he received for five years following the accident.

His net claim is therefore £119,971 - £8,230 - £23,368.98 = £88,372.02.

3 Past unpaid care:

The Plaintiff requires a great deal of care in his day-to-day life. The Plaintiff's wife gave up her part-time employment in order to look after him. She subsequently returned to part-time employment but her mother provided care in her place. The Plaintiff claims at the rate of 5 hours per day at £3 per hour, rising to £5 per hour since the date of the accident.

The loss is therefore:

1990	50 x £105 =	£5,250
1991	£5,460	
1992	£5,460	
1993	£5,460	
1994	£7,280	
1995	£7,280	
1996	£7,280	
1997	£9,100	
1998	£9,100	
1999	£9,100	
		£70,770

4 Loss of capacity for DIY, housework, gardening, and other chores:

The Plaintiff's capacity for DIY, housework, gardening, and such other like chores has been reduced considerably. The Plaintiff and his family have remained living in rented accommodation. Accordingly there is a limited obligation to maintain their existing accommodation. But for the accident they would have built their own property on land provided by the States of Alderney.

5 Incidental expenses:

Further particulars will be supplied.

FUTURE LOSS AND DAMAGE

6 Loss of future earnings:

The Plaintiff currently earns *£158.30* net per week. But for the accident he would have earned a figure in the region of *£16,500 net per annum* as a labourer and a figure in the region of *£2,120 net per annum* as a barman.

The prima facie multiplicand is therefore *£18,620*.

The Plaintiff is approaching 32 years old. The Plaintiff claims a multiplier of 23 to pension age 65 based upon a 2% rate of return (Ogden table 13).

The Plaintiff's future employment is uncertain. Whilst employed pursuant to the Supported Employment Scheme his annual loss amounts only to *£10,388 (£18,620 - £8,232)* Whilst unemployed his loss will run at *£18,620* per annum.

In the circumstances the Plaintiff claims future loss of earnings on the basis that he will be employed for approximately half of his working life to 65 and unemployed for the balance.

His loss is therefore:

(11.5 x £18,620) + (11.5 x £10,388) = £333,592

7 Cost of future care:

The Plaintiff requires a considerable amount of daily care and supervision. The Plaintiff's wife and family intend to continue providing support to the Plaintiff. Should the Plaintiff's marriage fail he will require considerably more care.

In the circumstances the Plaintiff claims 35 hours per week care at a commercial rate of, *say, £8 per hour*, amounting to £14,560 per annum.

The Plaintiff claims a lifetime multiplier of 27 based upon a 2% rate of return (Ogden table 11) discounted for care which the Plaintiff might have required in old age in any event.

Loss is therefore: 27 x £14,560 = £393,120

8 Future rehabilitation, treatment and medication:

No claim is made in this regard. The Plaintiff's condition is permanent.

9 Future loss of capacity for DIY, housework, gardening, and other such chores:

But for the accident the Plaintiff would have built himself a home with the assistance of his brother-in-law; albeit he would have required help with plumbing and electrics. The Plaintiff's loss in this regard is estimated at £60,000.

Further, the Plaintiff and his wife intend to purchase a home. The Plaintiff will incur the expense of employing others to help maintain that home. This loss is estimated at *£1,000 per annum.*

The Plaintiff claims a multiplier of 24 in this regard. The loss is therefore:

24 x £1,000 = £24,000

SUMMARY OF VALUE OF CLAIM

Pain, suffering and loss of amenity:	£200,000	
Past loss of earnings:	£88,372.02	
Future loss of earnings:	£333,592	
Past unpaid care:	£70,770	
Future care:	£393,120	
Past and future loss of capacity for DIY and the like:		£84,000
		£1,169,854.02

INTEREST

a) On £200,000 at 2% per annum for 7 years *(from date of service)* = 7 x £4,000 = £28,000; and

b) On past loss of earnings *(and incidental expenses)* and unpaid care totalling *£159,142.02* at 4% per annum for 10 years = 10 x *£6,365.68* = *£63,656.80.*

Total interest is therefore: £91,656.80

TOTAL CLAIMED:

£1,169,854.02 + £91,656.80 = £1,261,510.82.

P T R FERBRACHE

Re-served this day of 2000 by Ozannes of 1 Le Marchant Street, St Peter Port, Advocates for the Plaintiff.

GD/L2472/docs/amended