

A

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between

B

MICHAEL MATTHEWS

Plaintiff

v.

JAMES MONAGHAN and HELEN MURRAY

First Defendants

and

C

R. G. FALLA LIMITED

Second Defendant

And between:

D

NIGEL CHARLES KENNETH WOODWARD

Plaintiff

v.

R. G. FALLA LIMITED

Defendant

JUDGMENT ON EXCEPTIONS DE FONDS

E

Date of hearing: 20th April, 2000

Date judgment handed down: 8th May 2000

Advocate for both Plaintiffs: J. J. L. Morgan

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Advocate for the Defendant R. G. Falla Limited: P. T. R. Ferbrache

The First Defendant in the Matthews' action did not appear.

G

Introduction

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These cases involve substantial personal injuries claims brought by workmen, who are and were principally resident in the United Kingdom, both of whom suffered serious injuries as a result of accidents, which occurred when they were engaged in building the castle on Brecqhou. The Defendant R. G. Falla Limited is a well-known Guernsey company, which acted as main contractor to the project. The Defendant R. G. Falla Limited has raised Exceptions de Fonds in slightly different terms in each case.

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In the Matthews action Mr. Ferbrache pleads on its behalf as follows:-

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“Without prejudice to any other Defences that the Second Defendant may wish to file herein, the Second Defendant alleges that the Royal Court is not the proper forum for the resolution of this dispute. The alleged incident occurred on the Island of Brecqhou which is, in relation to civil matters, within the exclusive jurisdiction of the Seneschal’s Court in Sark and the Royal Court should thus decline jurisdiction and/or in any event the Royal Court is not the appropriate forum.”

B

In the Woodward action the Exception is pleaded as follow:-

C

“It is averred that by reason of L’Ordonnance Portant Règlement Quant a La Jurisdiction de la Cour de Serk of 7th June 1930 Tome V Recueil D’Ordonnance, the Royal Court of Guernsey has no jurisdiction in this matter, or alternatively that it is not the appropriate or proper forum. The court of Sark has the exclusive right to hear and Judge this Cause whereas the Royal Court, Guernsey has only an Appellate jurisdiction herein.

D

In any event the matters complained of occurred on Brecqhou and are subject to the Laws of Sark.”

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Mr. Ferbrache does not wish to pursue any argument relating to forum non-conveniens. His clients are resident here, the Plaintiffs in England and any witnesses are unlikely to be resident in Sark, the Plaintiffs being part of a non resident work force which has now dispersed.

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His case is that in civil matters arising in Brecqhou the Seneschal’s Court in Sark exclusively has jurisdiction to deal with a claim such as this and the Royal Court has what he described as only a residual jurisdiction.

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On the other hand Mr. Morgan for the Plaintiffs argues that there is a concurrent jurisdiction vested in the Royal Court.

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Mr. Morgan is correct in his submission that, applying the principles of private international law, which are regularly adopted in this Court, that a Guernsey Defendant can be actioned in the Royal Court for a tortious act committed outside the jurisdiction. Mr. Ferbrache does not quarrel with this so I need not go through the authorities for this proposition, which are to be found in chapter 35 of Dicey and Morris ‘The Conflict of Laws’ 13th Edition. In such cases it is frequently the case that the country where the tortious act was committed also has jurisdiction and any conflict between the parties as to which is the appropriate jurisdiction for an action which was capable of being brought in more than one jurisdiction should be heard is resolved by reference (inter alia) to the authorities on “forum non conveniens”.

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A Mr. Ferbrache argues that none of this has application in the case of an accident occurring in
Sark. He says that the Sark Court has exclusive jurisdiction and he has taken me in some
detail through the various stages of the development of the jurisdiction of the Sark Court. I
consider that we do not have to go further than the present statement of the law which is to
B be found in section 23 of the Reform (Sark) Law, 1952 as re-enacted in section 1 of the
Court of the Seneschal (Increase of Jurisdiction and Transfer of Prisoners) Law, 1971 Ordres
en Conseil Volume XXIII, page 200. The relevant parts of this section read as follows:-

C “23.(1) The Court of the Seneschal shall be the sole Court of Justice in the
Island with the same jurisdiction –

- (a) subject to the provisions of subsection three of this section, in
criminal matters, and
- (b) in civil actions,

D as heretofore.

(2) The right of appeal from the Court of the Seneschal in criminal
matters to the Royal Court of Guernsey sitting as a Full Court sitting as an Ordinary
Court is hereby confirmed.”

E From this it is clear that there is one Court of Law in Sark and it has unlimited jurisdiction in
civil matters. From it there is a right of appeal to the Royal Court in all matters although
there is little learning on how the Royal Court is to deal with appeals from Sark. Mr.
Ferbrache did however produce one Ordinance relating to procedure namely an Ordinance of
1832 which is found in Tome II of Ordinances at page 406 which purports to restrict the
F right of the Appellate Court to rehear evidence, a Rule not dissimilar from most other
Appellate Courts. To do justice to Mr. Ferbrache’s arguments I had better also refer to the
Law relating to the Constitution of the Island of Sark registered on the 15th July, 1922
(Ordres en Conseil, Vol VI page 412) Section 13 of that Law make similar provision to the
G later 1952 Law by saying that the Court of the Seneschal shall be the sole Court of Justice in
the island of Sark. The section went on to say that there was a right of appeal to the Royal
Court of Guernsey and in the same breath the said Royal Court was given power to
determine the jurisdiction to be exercised by the Seneschal’s Court in civil and criminal
H matters. This is a slightly difficult provision because today any power of this kind would be
exercised by Ordinance of the States of Guernsey and certainly the Chief Pleas of Sark
would be jealous of an enabling power giving the States (who have been the legislative
authority for Guernsey since 1948) the power to determine the jurisdiction to be exercised by
the Seneschal’s Court. In the event the Royal Court confirmed the unlimited civil

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A jurisdiction of the Seneschal's Court but laid down certain provisions relating to the penalties that can be imposed in criminal matters. It was presumably because it is felt safe to leave to the Royal Court power to decide how much latitude should be given to the Seneschal in the kinds of punishments he could impose that led to the Law of 1922 being
B drafted in this somewhat unusual form. The implementing Ordinance is to be found in the Ordinances of 1931 (Tome VI at page 384). As I have indicated this says that the Court of Sark will have the right to hear every cause whether concerning realty or personalty provided always that there would be an appeal therefrom to the Royal Court. I do not see that this takes the matter any further and in any event the Ordinance is of no effect now as the
C principal law under which it was made has been repealed and superseded by the Law of 1952 as amended.

D My understanding of the Laws to which Mr. Ferbrache has referred, and which in each case decree in their enacting words that they only apply to the Island of Sark, is that they are saying nothing more than that the only Court which is recognised as having power to operate on the Island of Sark is the Court of the Seneschal and that Court is given unlimited jurisdiction in civil cases (I say unlimited without having researched whether or not there
E may be certain modern laws which have removed from the Seneschal's Court jurisdiction in certain specialist areas in favour of the Royal Court. It is common ground in any event that actions for personal injuries in tort are in no way restricted.) .

F Mr. Ferbrache concedes that the Royal Court does have some form of residual jurisdiction in civil matters where the Sark Court declines jurisdiction or it is otherwise impossible for the Sark Court to adjudicate on a matter. He has drawn my attention to the case of Godfray v. the Constables of Sark [1902] AC 534. That case involved a claim brought by a person who had been under a disability to set aside certain arrangements that had been negotiated during
G his minority by his guardian concerning land owned by him near the Harbour in Sark through which a tunnel had been bored to provide access to the Harbour. The embarrassment in that case seems to have been that the Plaintiff had had as his guardian during his minority none other than the holder of the office of the Seneschal of Sark. This
H gentleman clearly could not sit on the case. We know not whether there was a Deputy Seneschal in those days. However regardless of that it seems that all the parties accepted that the case was better dealt with in Guernsey at first instance and the Royal Court assumed jurisdiction. I also reminded the parties of the decision of the Royal Court in the Law Officers of the Crown v. Alderney Meat Products and Another (1977) where in a prosecution
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A in the Court of Alderney the Defendant challenged the vires of the Building Regulations
under which it was being prosecuted. The Court of Alderney finding that issue of law hard
to resolve, referred the matter for decision in Guernsey in circumstances that were outside its
statutory powers to refer matters to Guernsey. The Royal Court of Guernsey did not demur
B at assuming jurisdiction to resolve the point referred to it. However Mr. Ferbrache argues
that this kind of residual jurisdiction is wholly different from a concurrent jurisdiction.

I now have to reach a conclusion on the points raised. In my judgment Mr. Ferbrache is
trying to read something into the various laws that have been passed concerning the
C jurisdiction of the Sark Court, which is not there. True it is the only Court in Sark and true it
has, subject to the point I made earlier, unlimited jurisdiction. However I cannot see
anything in the Laws, which suggest that the Sark Court has exclusive jurisdiction in civil
D matters and therefore the Defendant fails in its attempt to shut out the right of the Guernsey
Court to try this matter. Even if I am wrong in the interpretation of the legislation I note that
that legislation to which I have referred does not apply to the Island of Guernsey. As I have
said, all the Laws I have quoted only have effect in the Island of Sark. I cannot see how
therefore that a "Sark only" Law can in some way fetter the jurisdiction of the Royal Court
E of Guernsey at first instance when the law does not apply to Guernsey.

Even if I am wrong in my interpretation of the law I would still be minded to let this matter
to proceed in Guernsey because I consider that the Court of the Seneschal is a wholly
unsuitable place to conduct personal injury litigation of this complexity. I accept that a few
F years ago the Court of Alderney has had before it the claim of Laughton v. Main. That
matter had to be brought before the Court of Alderney as the Defendant was resident there,
but generally my comments about the difficulties faced by the Sark Court in dealing with
this kind of litigation apply to Alderney as well. With the number of accidents we have in
G Guernsey it is only exceptional circumstances that lead a case to go all the way to the Royal
Court, but accident claims cannot be settled without the parties realising that they are facing
the prospect of days in court to settle the issues of liability and quantum that arise. It is bad
enough conducting personal injury cases before the Royal Court. Invariably medical experts
H are resident in England even if their attendance is reserved months ahead they can still be
subpoenaed to another Court in the UK and be unavailable on the day of trial. Quantum here
is a matter for the judges of fact although they have the benefit of a qualified judge who will
direct them as to the issues of law. One should consider for a moment what these Plaintiffs
I would be facing if they had to bring their case in the Seneschal's Court of Sark. One should

A reflect on the time and cost of shipping over all the lawyers, the witnesses, the medical experts. If the law was as Mr. Ferbrache and R. G. Falla Limited (and/or their insurers) claim it to be in order perhaps to try and obtain some tactical advantage over these unfortunate workmen who have been so gravely injured, any right minded person would wish to see the law changed without delay. In saying this I am in no way reflecting adversely on the merits of the defence which of course remains to be drafted.

I will hear argument as to costs and the basis on which they should be assessed in due course.

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Ferbrache Morgan
JJLM
05.11.99

ROLE DES CAUSES A PLAIDER

MICHAEL MATTHEWS of 9a Elmstead Road, Bexhill-on-Sea, Sussex, TN40 2HP (hereinafter called "the Plaintiff")

ACTIONS

JAMES MONAGHAN and **HELEN MURRAY T/A JCM CONSTRUCTION** (a Firm) whose address for service is at 18-20 Smith Street, St Peter Port (hereinafter called "the First Defendants") and **R G FALLA LIMITED** whose address for service is at 1 Le Marchant Street, St Peter Port (hereinafter called the "Second Defendant") TO SEE the Court order the First Defendant and/or the Second Defendant to pay to the Plaintiff the sum of TWO HUNDRED AND SIXTEEN THOUSAND ONE HUNDRED AND FIFTY POUNDS ONLY (£216,150) the whole in the following circumstances:-

1. At all material times:-

- 1.1 The First Defendants traded as a firm involved, inter alia, in the recruitment, supply and supervision of labour from the United Kingdom to work upon a construction site of a large Gothic style castle on the island of Brecqhou.
- 1.2 The Second Defendant was the main construction contractor upon the said construction site and engaged the First Defendants to recruit and supply labour as aforesaid.
- 1.3 Any plant or equipment used by the labour supplied by the First Defendants upon the said site was provided by the Second Defendant, its servants or agents.

- 1.4 In or about April 1996 the Plaintiff was recruited by the First Defendants as a general labourer and ground worker to work upon the said site.
2. In the premises, at all material times the Plaintiff was employed by, or alternatively was the servant or agent of, the First Defendants whilst working upon the said construction site. Further, or alternatively the Plaintiff was employed by, which is not admitted, or was the servant or agent of the Second Defendant. In any event the First Defendants and/or the Second Defendant were contractors upon the said site and/or were occupiers of the same.
3. Further, it was an implied term of the contract of employment with the First Defendants and/or the Second Defendant that the Plaintiff would be provided with a safe place of work (including access thereto and egress therefrom), that he would be provided with safe plant and equipment, and that he would work with safe and competent fellow employees.
- 4.
- 4.1 On or about the 21st May 1996 at approximately 6.30 am the Plaintiff in the course of his employment entered a water purifying chamber on the said construction site in order to complete sealing works on pipes within the said chamber. The Plaintiff entered the said chamber by use of a ladder, which brought him onto a working platform from which he had access to the said pipes.
- 4.2 Whilst moving along the said working platform the Plaintiff stumbled and/or slipped and fell from the outside edge of the platform to the concrete floor of the said chamber some 12 feet in distance whereby he sustained injury loss and damage as is particularised hereinafter.

4.3 There was no adequate lighting in the said chamber and there was neither a guard rail nor toe board on the open side of the said working platform.

5. The Plaintiff's accident was caused by the negligence and/or breach of contract of the First Defendants, their servants or agents.

PARTICULARS OF NEGLIGENCE AND/OR BREACH OF CONTRACT

- (a) Failing to provide any, or any adequate, lighting in the said chamber;
- (b) Failing to provide a guard rail and/or toe board on the open side of the said working platform;
- (c) Failing to warn the Plaintiff, adequately or at all, of the hazard created by the lack of guard rail and/or toe boards;
- (d) Failing to heed or act upon, sufficiently or at all, the complaint made by the Plaintiff to Mr Thomas Hetherington, an employee or servant or agent of the First Defendants and in charge of the First Defendants' labour force, that the said working platform had neither a guard rail nor toe board on its open side;

The best particulars which the Plaintiff can provide is that the complaint was made on the 20th May 1996, the day prior to the said accident, that it was made orally and that the said Mr. Hetherington indicated that he would attend to the rectification of the absence of the toe board and guard rail.

- (e) Failing to take any or any adequate care for the safety of the Plaintiff,

- (f) Failing to provide a safe system of work;
- (g) Failing to provide or maintain for the Plaintiff safe or adequate plant or equipment;
- (h) Exposing the Plaintiff to a foreseeable risk of harm;
- (i) Failing to discharge the common duty of care as occupier to see that the Plaintiff was safe in using the said chamber and/or platform,
- (j) Failing, in all the circumstances prior to and during 1996 to heed the basic standards of safety as required by employers and contractors in the construction industry;

In support of such the Plaintiff relies, inter alia, upon Health and Safety Executive Guidance documents and upon the provisions as set out below of the Construction (General Provisions) Regulations 1961 and the Construction (Working Places) Regulations 1966 as evidence of such failure, for although the same may not have been applicable to the said construction site, the provisions thereof were well established in the construction industry in both the United Kingdom and Europe:

- (i) Failing to provide adequate and suitable lighting of the Plaintiff's working place as required by regulation 47 of the said 1961 Regulations;
- (ii) Failing to provide suitable and sufficient safe access to and egress from the said chamber as required by regulation 6(1) of the said 1966 Regulations.
- (iii) Failing to properly maintain the access and egress of the said chamber as required by regulation 6(1) of the said 1966 Regulations;

- (iv) Failing to provide any or any adequate guard rails and/or toe boards on the said working platform as required by regulation 28 of the said 1966 Regulations;

6. Further, or in the alternative, the said accident was caused by the negligence and/or breach of contract of the Second Defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE AND/OR BREACH OF CONTRACT

- (a) Failing to provide any, or any adequate, lighting in the said chamber;
- (b) Failing to provide a guard rail and/or toe board on the open side of the said working platform;
- (c) Failing to warn the Plaintiff, adequately or at all, of the hazard created by the lack of guard rail and/or toe boards;
- (d) Failing to heed or act upon, sufficiently or at all, the complaint made by the Plaintiff to Mr Thomas Hetherington, an employee or servant or agent of the First Defendants and in charge of the First Defendants' labour force, that the said working platform had neither a guard rail nor toe board on its open side;

The best particulars which the Plaintiff can provide is that the complaint was made on the 20th May 1996, the day prior to the said accident, that it was made orally and that the said Mr. Hetherington indicated that he would attend to the rectification of the absence of the toe board and guard rail.

- (e) Failing to take any or any adequate care for the safety of the Plaintiff;

- (f) Failing to provide a safe system of work;
- (g) Failing to provide or maintain for the Plaintiff safe or adequate plant or equipment;
- (h) Exposing the Plaintiff to a foreseeable risk of harm;
- (i) Failing to discharge the common duty of care as occupier to see that the Plaintiff was safe in using the said chamber and/or platform;
- (j) Failing, in all the circumstances prior to and during 1996 to heed the basic standards of safety as required by employers and contractors in the construction industry in the Channel Islands and elsewhere;

In support of such the Plaintiff relies, inter alia, upon Health and Safety Executive Guidance documents, upon the provisions as set out below of the Construction (General Provisions) Regulations 1961 and the Construction (Working Places) Regulations 1966 as evidence of such failure, for although the same may not have been applicable to the said construction site, the provisions thereof were well established in the construction industry in both the United Kingdom and Europe:

- (i) Failing to provide adequate and suitable lighting of the Plaintiff's working place as required by regulation 47 of the said 1961 Regulations;
- (ii) Failing to provide suitable and sufficient safe access to and egress from the said chamber as required by regulation 6(1) of the said 1966 Regulations;
- (iii) Failing to properly maintain the access and egress of the said chamber contrary as required by regulation 6(1) of the said 1966 Regulations;

- (iv) Failing to provide any or any adequate guard rails and/or toe boards on the said working platform as required by regulation 28 of the said 1966 Regulations;

Further, the Plaintiff shall rely upon reference to the Health and Safety at Work (General) (Guernsey) Ordinance 1987 and The Building (Guernsey) Law 1956 which, although not applicable to the said construction site the provisions of which were well established and recognised in the construction industry in Guernsey.

7. By reason of the matters aforesaid the Plaintiff who is now aged 41 years having been born on the 8th January 1958 suffered pain, injury, loss and damages.

PARTICULARS OF INJURY

The Plaintiff fell onto his right side and was rendered unconscious by his fall. He lay for some two and a half hours before being found, whereafter he was taken by boat to the Princess Elizabeth Hospital in Guernsey. The Plaintiff was found to have suffered:-

- (a) Shock and severe pain;
- (b) Intra-articular fracture of dominant right wrist;
- (c) Fracture of skull;
- (d) Fracture to ribs;
- (e) Hearing loss;
- (f) Dizziness and memory loss.,

The Plaintiff upon recovery noted some deafness in his right ear, and it was found upon examination that he had blood behind the right ear drum leading to some hearing deficit. He further suffered from and received treatment for Post Traumatic Stress Disorder.

Though the Plaintiff's fractures to his skull and ribs have healed satisfactorily, the Plaintiff still retains marked pain in his wrist, with reduced grip strength and limited range of movement. He has developed moderate osteoarthritis which is likely to progress in the future.

As a result of his injuries the Plaintiff has had to give up sporting activities. He has short term memory loss, periods of dizziness and continues to have residual hearing loss on his right side.

The Plaintiff has worked as a roofer/tiler and in the construction industry for most of his adult life. He no longer has the dexterity required to do so and the injuries he received restrict his ability to work at heights safely. He is at a severe disadvantage on the open labour market.

PARTICULARS OF DAMAGE

A	Loss of earnings from 21.5.96 to date	£62,400
B	Future loss of earnings	£123,750
C	Future handicap on the labour market	£10,000
D	Pain, suffering and loss of amenity	<u>£20,000</u>
TOTAL		<u>£216,150</u>

8. AND the Plaintiff claims interest at the rate of 10 per centum per annum or such other rate as the Court may deem fit pursuant to Section 1 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985.

AND the Plaintiff claims costs

By Act of the Royal Court dated 14th May 1999, this matter was placed on the Pleading List, the First Defendants having given their address for service as 18-20 Smith Street, St Peter Port, the Second Defendant having given its address for service as 1 Le Marchant Street, St Peter Port.

Olsen Ferbrache Morgan
JJLM
26.11.99

ROLE DES CAUSES A PLAIDER

NIGEL CHARLES KENNETH WOODWARD of 70 Lanercost Road, Southmead, Bristol BS10 6HZ whose address for service in Guernsey is at Hadsley House, Lefebvre Street, St Peter Port (hereinafter called the "Plaintiff")

ACTIONS

R G FALLA LIMITED whose address for service is at 1 Le Marchant Street, St Peter Port, Guernsey (hereinafter called "the Defendant") TO APPEAR before the Bailiff or his Deputy and the Jurats of the Royal Court at 9.30 am on Friday 26th November 1999 TO SEE the Court order the Defendant to pay to the Plaintiff the sum of **FIVE HUNDRED AND NINETY THREE THOUSAND SEVEN HUNDRED AND FIFTY NINE POUNDS TWENTY NINE PENCE (£593,759.29)** or such other sum or sums as the Court may see fit the whole in the following circumstances:-

1. At all material times the Defendant was:-
 - 1.1 The main contractor upon the construction site of a large Gothic style castle and ancillary developments on the island of Brecqhou, of which it was also occupier during the period of the construction project (Project 95).
 - 1.2 Responsible for co-ordinating the activities of its own workforce and of sub-contractors.
 - 1.3 Responsible for the health and safety of the construction project including the provision, for all of the workforce, of a safe place of work, safe access and egress

to places of work, safe systems of work, safe and competent fellow employees and safe plant and equipment.

2. On about 22nd June 1996 the Plaintiff commenced work upon the said construction site as a general labourer/fork-lift truck driver, having been recruited by an employment agency. In the premises, at all material times the Plaintiff was employed by, or alternatively was the servant or agent of the Defendant whilst working upon the said construction site. Further, or alternatively, if the Plaintiff was neither an employee or servant or agent of the Defendant, the Defendant retained a duty of care towards the Plaintiff by reason of being the main contractor and/or occupier of the site.

3. 3.1 On or about 21st August 1996 the Plaintiff was engaged as a fork-lift truck driver delivering building materials from the jetty to a helicopter landing site which was under construction on the north eastern coast of the said Island.

3.2 In order to perform his tasks the Plaintiff was provided with a Caterpillar rough terrain fork-lift truck type RTC 60. The access and egress to the helicopter landing site was via a roughly constructed roadway along the cliff edge, from which the drop down to the sea was approximately two hundred feet.

3.3 The roadway was in places only ten feet wide. The RTC 60 fork-lift was seven and a half feet wide. There was no banking, barriers, tape, bunting, or other indicators of the edge of the roadway on its edges, and in particular, on the cliff side.

3.4 The said roadway had been created with the use of top soil excavated elsewhere on site. The roadway had no foundations, was formed of unconsolidated soil, and was susceptible to depression and crumbling, particularly if used by heavy vehicles.

- 3.5 Further, there was no turning space at the said helicopter construction site for the Plaintiff's fork-lift vehicle once he had delivered his load. He was required to reverse down the roadway towards the cliff edge prior to being able to manoeuvre his truck so as to face back down the roadway.
4. At approximately 9.00 am on 21st August 1996 the Plaintiff had delivered a load of materials to the helicopter construction site and had collected some empty pallets. He was reversing his truck down the roadway in order to turn and travel down to the jetty. As he performed this manoeuvre the edge of the said roadway gave way and/or the truck tipped over the edge of the cliff and fell down the cliffs into the sea whereby the Plaintiff sustained such injury loss and damage as is particularised hereinafter.
5. The Plaintiff's accident was caused by the negligence of the Defendants, their servants or agents.

PARTICULARS OF NEGLIGENCE

- (a) Caused or permitted the construction of the roadway to be made substantially from unconsolidated top soil with no foundations and with a risk of subsidence, depression and/or crumbling, particularly if used by heavy construction vehicles;
- (b) Caused or permitted such a roadway to be constructed close to the cliff edge;
- (c) Failed to cause to be erected an earth bank and/or barriers and/or tape and/or bunting and/or guard rails, or any other warning/safety feature along the cliff edge side of the roadway;

- (d) Failed to heed the use by heavy vehicles, including the fork-lift truck of the Plaintiff, on a soil based roadway so close to the cliff edge;
- (e) Failed to heed the subsidence of the roadway when used by vehicles upon it, particularly on the cliff edge side of the roadway. In support of this allegation the Plaintiff avers that large depressions by wheels of vehicles were to be observed in the roadway near the edge of the cliff;
- (f) Failed to warn the Plaintiff of the dangers of using the said roadway either verbally, or by warning signs;
- (g) Failed to provide a roadway of sufficient width that vehicles did not have to travel close to the edge of the roadway near to the cliff edge;
- (h) Failed to provide, or cause to be provided, a suitable turning area for the fork-lift truck of the Plaintiff at the said helicopter landing site construction;
- (i) Failed to ensure that the main roadway (as opposed to the roughly constructed roadway) to the said helicopter landing site construction was clear, unobstructed and available for the use of the Plaintiff and others;
- (j) Failed to take any, or any adequate care for the safety of the Plaintiff;
- (k) Failed to provide a safe system of work and/or safe access and egress to the Plaintiff's place of work ;
- (l) Failed to provide, or maintain for the Plaintiff a safe place of work;

- (m) Exposed the Plaintiff to a foreseeable risk of harm;
- (n) Failed to discharge the common duty of care as occupier to see that the Plaintiff was safe in using the said roadway;
- (o) Failed, in all the circumstances prior to and during 1996 to heed to the basic standards of safety as required by employers and contractors in the construction industry:

In support of such the Plaintiff relies, inter alia, upon Health and Safety Executive Guidance documents and upon the provisions as set out below of the Construction (Working Places) Regulations 1966 as evidence of such failure, for although the same may not have been applicable to the said construction site, the provisions thereof were well established, since the 1960's in the construction industry in both the United Kingdom and Europe:

- (i) Failing to provide suitable and sufficient safe access to and egress from the Plaintiffs place of work as required by regulation 6(1) of the said 1966 Regulations;
- (ii) Failing to properly maintain the access and egress of the Plaintiff's place of work as required by regulation 6(1) of the said 1966 Regulations;

Further, the Plaintiff shall rely upon reference to the Health and Safety at Work (General) (Guernsey) Ordinance 1987 and The Building (Guernsey) Law 1956 which, although not applicable to the said construction site the provisions of which were well established and recognised in the construction industry in Guernsey.

6. By reason of the matters aforesaid the Plaintiff who was born on 6th July 1963 and was aged 33 years at the date of the accident, suffered pain, injury, loss and damages.

PARTICULARS OF INJURY

Injuries

The Plaintiff remained in the cab of the vehicle as it tumbled down the cliff face into the sea. He was found floating unconscious in the water. He was revived and kept in the water to stem the blood loss from his injuries. He was administered morphine to relieve the pain. After 45 minutes a vessel arrived and he was taken to the Princess Elizabeth Hospital on Guernsey where he was found to have the following injuries:-

- (a) Severe injuries to his lower right leg, requiring below the knee amputation
- (b) Severe degloving lacerations to his right thigh and front of his right knee
- (c) Severe scalp lacerations on forehead and right side of face
- (d) Fractures of ulna and radius in right forearm
- (e) Infection in lungs
- (f) Bruising to chest and shoulders

Further, the Plaintiff has subsequently suffered from a depressive illness.

Treatment

21st August 1996 to 4th September 1996

On the day of his admission he underwent surgery under general anaesthetic for the leg amputation, although the stump was not closed. He remained in Intensive Care at the hospital for two weeks during which time he underwent two further operations under general anaesthetic for inspection of his wounds and debridement and internal fixation of his right arm fracture. The lung infection was dealt with by drugs.

4th September 1996 to 17th December 1996

On 4th September 1996 he was transferred to Frenchay Hospital, Bristol where he remained for a further 3½ months until his discharge home on 17th December 1996. Whilst an in-patient he underwent a further 3 operations under general anaesthesia for trimming of bone edges and skin grafts (from the left thigh) over the stump and further skin grafts. In his right arm, which had been in cast, the bones had fused and he was restricted in rotation, requiring yet further surgical treatment.

17th December 1996 onwards

Lower right leg: The state of his stump has remained unsatisfactory for the purposes of rehabilitation. He is unable to use a prosthesis for any length of time without soreness. He has taken a number of courses of antibiotics due to infection of the stump. His walking is extremely limited even with the aid of crutches or sticks. The mobility of the Plaintiff is severely compromised and he is in pain and discomfort from the injury.

Right Arm: He retains restriction of rotation in his right arm. Further, on his right forearm he has scarring on the front (19 cms x 3 cms) and a scar on the distal aspect (6 cm).

Scarring: He is left with significant scars over his forehead to the right eye (7 cm), a zigzag scar from the top of his head to between his eyes (9 cm), and two scars on the back of his head (7 cms and 1 cm). Further, he has a scar over the right knee (12 cms) and extensive scarring on his right thigh.

Psychological: The Plaintiff was an active hard working family man prior to the accident. As a result of the injuries and the situation in which the Plaintiff now finds himself he has developed a moderate depressive disorder. It is subject to treatment but may take some 5 years or more to resolve.

PARTICULARS OF SPECIAL DAMAGE

The Plaintiff relies on the Provisional Schedule of Special Damages contained hereinafter.