7 pages.

ROYAL COURT

(Samedi Division)

182.

23rd November, 1990

Before: The Bailiff, and
Jurats Coutanche and Herbert

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Attorney General

- v -

S.G.B. (Channel Islands), Limited

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One Contravention of Article 5(1) of the Health and Safety at Work (Jersey) Law, 1989.
Facts admitted - Conclusions: £10,000 fine with £300 costs.
Court imposes £8,000 with £300 costs

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Advocate S.C. Nicolle, Crown Advocate.
Advocate P. de C. Mourant for the accused.

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**JUDGMENT**

BAILIFF: The Health and Safety at Work (Jersey) Law, 1989, extended the liability of contractors, not only in respect of their own employees, but also in respect of other persons.

That Law was enacted some three months before the accident, which occurred at the premises of the "Jersey Evening Post" on the 12th

February, 1990, when a birdcage scaffold collapsed because it had been insufficiently braced by the employees of the defendant company.

Mr. Mourant, quite rightly, has not sought to suggest that because the law had only been in force for a short time, that was a reason for not enforcing it, because there is a clear indication by this Court in the case of A.G. -v- Young, (1980) J.J. 28, that - and I quote from the headnote -

> "As soon as a new law comes into force in which the legislature has expressed a clear will that penalties for certain offences should be increased, then the Court has the duty at once to reflect the will of the legislature in its sentences without any prior warning to the public".

That of course applies as much to the extension of the Law as it does to the increase in the amount of fines that can be levied.

The reason for the failure sufficiently to brace the birdcage scaffold can be traced to a number of factors. There were a number of workmen erecting the scaffold on the Sunday prior to the accident. In the course of the morning two people were on the site, one was Mr. Pearson, an employee of the defendant company, and the other was an employee of the main contractor for the work at the "Jersey Evening Post" building. Mr. Pearson left the site before the men had finished and it must have been apparent to him that the birdcage was incomplete. He appears to have done nothing further in the matter.

The representative of the main contractor was perturbed at the fact that the birdcage scaffolding was not complete and endeavoured that afternoon to telephone to S.G.B. but not unnaturally could not get through because it was a Sunday. He did try the next morning and there is some suggestion that he did not mention the bracing specifically but only that some additional sheeting was required. As a result of that telephone call Mr. Pearson with his superior, Mr. Williams, went to the site and indeed climbed up the scaffolding. We find this extraordinary. Mr. Pearson should have made it his duty to ensure that the bracing was there before people were asked to go on the scaffolding

on the Monday. Secondly we find it extraordinary that neither he nor Mr. Williams noticed the absence of the bracing on the Monday. We were told by Miss Nicolle, and it was not disputed, that the number of braces needed for birdcage scaffolding of that nature was about 23; in fact there were only 2 in place. Now had there been, say, 10 in place, we could well understand - it would not have been an excuse - but we could understand that the remainder might have been missed but we find it difficult to accept that two practiced men who had been trained by the defendant company - and we were informed of and accept the careful training given to their employees - did not notice the absence of the proper bracing. As a result of their failure to notice that the bracing was not there, the scaffolding collapsed. It is a mercy - I put it as high as that - that it did not collapse suddenly, otherwise there might have been goodness knows what sort of tragedy.

However, the company, quite rightly, has not sought to evade its responsibilities; it has a good work record in the Island. Mr. Mourant pointed out the enormous amount of scaffolding that had been erected by the company. 1.4 million man hours had been worked without incident since 1976; and there has been nothing known in respect of the company since that year.

We have taken those matters into account; we think we can make a little allowance for that, perhaps not as much as you would like, Mr. Mourant. But under all the circumstances and realising that this is the first occasion on which there has been a prosecution of this nature we think (and we are making a bench mark, perhaps) that the proper fine in this case is £8,000 with £300 costs.

## Authorities

A.G. -v- Young (1980) J.J. 281.