

ROYAL COURT

18th January, 1989

Before: Commissioner D.R. Le Cras, and  
Jurats Blampied and Bonn

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Her Majesty's Attorney General

- v -

Cosgrove (1969) Limited

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Infraction of Regulation 82(5)(c) of the  
Construction (Safety Provisions)(Jersey)  
Regulations, 1970, as amended.

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Advocate C.E. Whelan, the Crown Advocate  
Advocate R.J. Michel for the Defendant Company.

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**JUDGMENT**

THE COMMISSIONER: On the 17th December, 1987, Mr. Milligan fell off a roof of the property, "West View". Following the fall, a prosecution was brought under Article 82(5)(c) of the Construction (Safety Provisions)(Jersey) Regulations, 1970, the effective parts of which read as follows:-

"(5) Crawling ladders and crawling boards provided in pursuance of paragraph (3) or (4) of this Regulation shall be - ..."

"(c) securely fixed or anchored to the sloping surface or over the roof ridge or securely fixed in some other effective way, so as, in every case, to prevent slipping".

It was perfectly clear that a short wooden roofing ladder which had been built by the company and later cut down, was on the roof, and that it was not fixed in such a way as to prevent slipping. The question, therefore, which is before us for decision is whether the ladder was 'provided' within the terms of the Regulation.

We should say at once that the Court is not fully satisfied either that Mr. Milligan was told to use the ladder, nor that Mr. Gillies, the foreman/director of the company saw it in use on the roof. There is some confusion as is always likely to be the case, especially after some thirteen months, as to what ladders were provided and when they were provided. What is entirely clear, however, is that the ladder was on the roof on the day in question and was being used on the south side of the roof whence it fell.

It was clear in evidence that the ladder in question had been used previously on this roof by Mr. Mackintosh, a carpenter employed by the company, for a particular purpose, and that it had been cut down for that purpose, and it had thereafter been laid down at "West View" and not returned to the company's store. Whilst it was there, that is on the site at "West View", it was passed up to the roof in the ordinary course of events, by Mr. Dyce. Other ladders, that is one extension ladder and two metal roofing ladders, were brought to the site, though when the second metal roofing ladder came, we are not entirely sure.

In these circumstances Advocate Whelan for the Attorney General contends in effect that the ladder was provided if it were left in a place where it came easily and obviously to the hand of the workmen and that in each case it is a question of fact and degree.

Mr. Michel on the other hand for the company urged upon us that merely because it was used it was not provided within the meaning of the terms of the Regulation and it is on this point that the result of the prosecution turns. Mr. Michel submitted very strongly that there had to be

some positive active provision and that it was not sufficient that Mr. Dyce or Mr. Milligan found the ladder and put it to a useful purpose.

A good many precedents have been cited before us, all of them dealing, curiously, with the question of whether means of protection were provided rather than as here, as to the provision or otherwise of a defective article.

It would seem to us on the authorities cited that there is no hard and fast meaning of the word "provided". I refer first to the case of Farquhar -v- Chance Bros Ltd (1951) 2 T.L.R. p.666 where the headnote contains the following passages:

"A workman in a factory was required to work at a platform 16 ft. from the ground. In trying to reach it by climbing from the top of a girder slightly lower than the platform across a gap of 4 ft. 6 ins., he lost his balance, fell to the ground and was killed. At the time of the accident no ladder was actually in position for the purpose of reaching the platform, but there were stores some 50 and 100 yards away at which an adequate supply of ladders was kept. The justices before whom the occupiers of the factory were charged with failing to provide a safe means of access to the platform held that the occupiers had provided an adequate supply of suitable ladders within a reasonable distance of the platform and they dismissed the information".

The point of law is dealt with first by Goddard, L.C.J., where he says on p.668:

"But for the doubts which have been expressed by Hilbery, J., during the argument I should have thought that this was a reasonably clear case. Here was a platform on a scaffold and the ordinary method of reaching a platform on a scaffold is by going up a ladder. There were ladders available which Woodbine could have fetched and if to save himself the trouble of fetching a ladder he chose to go through some acrobatic feat which is not very easy to understand but which involved his crossing a gap where he was liable to fall, I find it

difficult to say that the factory occupiers have committed a breach of a section. Section 26(1) provides: "There shall so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work". The means of access may be very varied, and there may be many means of the access. To a particular place like a platform on a scaffold, the ordinary means of access is a ladder. The magistrates found that the ladders were reasonably accessible to the workmen; they were situated within a reasonable distance to the platform.

No one supposes that the method adopted was one which the respondents had either directed the workman to use, or had provided for his use. They had provided ladders, and if he did not choose to use a ladder, which he could have fetched himself, I do not think it could be said that the respondents had failed to provide a reasonably safe means of access. I agree that to a great extent it is a question of degree and fact, and I think that on the facts as found by the magistrates it is impossible to interfere. For myself, I would dismiss this appeal".

The question of degree and fact was dealt with by Hilbery, J. on p.669, the first paragraph on that page:

"In my view, bearing in mind always that these provisions of the Factories Act are intended to safeguard workmen as far as it is practicable, and to safeguard them even although they may be foolish on occasions, I should have thought, if I had been free to find it, that it would be right to say that you do not provide an article as a safe means of access to a place of work where work has to be done at a particular time, if you merely provide an article which can be made into a safe means of access. An article which can be made into a safe means of access is not the same thing as a safe means of access. A ladder in a store, however well maintained it may be, or however well kept up, is merely a ladder, and, perhaps, one of many which would be suitable for use as a means of access to a place of work. In my view, it does not become a means of access to a particular place of work until it is placed in such a position as is appropriate for its

use as a way of getting to that place of work; and that is a question of degree".

And again, Ormerod J., at p.670:

"I agree and wish to add nothing to what has been said already except to say that I am satisfied that in each case it is bound to be a question of degree".

Amongst the numerous other precedents cited to us on which counsel have clearly done a great deal of work, was a passage in Redgrave's Health and Safety in Factories 2nd Edition (1982) p.p. 939-941, 17 & 194:

"(F) **Provide.** Where there is a duty to provide an article for the protection of a person at work, that duty is not fulfilled unless the article is so placed that it comes easily and obviously to the hand of the person for whom it is to be provided or, at the very least, unless he is given clear directions where he is to obtain it".

The cases cited are those of Finch -v- Telegraph Construction and Maintenance Co Ltd [1949] 1 All E.R. 452; Ginty -v- Belmont Building Supplies Ltd [1959] 1 All E.R. 414. Turning to the case of Finch as cited at p.454 at (e) comes this paragraph:

"In those circumstances I have to consider whether that was a "providing of goggles" within the meaning of s. 49 of the Act of 1937. I have listened to the careful argument of counsel for the defendants, but I have come to the conclusion that it was not a "providing". Of course, goggles would be "provided" if they were given to each man individually. I do not think that is the only way in which they could be "provided", but, in my view, in order to "provide" them within the meaning of the Act it would be necessary either that they should be put in a place where they come easily and obviously to the hand of the workman who is about to grind, or, at the very least, that he should be given clear directions where he is to get them".

The case of Ginty, I refer to the passage at p.422 G:

"I do not think that there is any hard and fast meaning of the word "provided"; it must depend on the circumstances of the case as to what is "provided" and how what is "provided" is going to be used".

I refer also to the case of Norris -v- Syn'di Manufacturing Co Ltd [1952] 1 All E.R. at p.935, at the passage p.939 D:

"We were reminded in this case that the Factories Act, 1937, creates criminal offences and that any ambiguity should be resolved in favour of the accused. I find it more helpful, however, to remember that the Act is intended to prevent accidents to workmen, and I think it should be construed so as to further that end".

There was a further reference made by Mr. Whelan the learned Crown Advocate to a passage in Munkman on Employer's Liability 10th Edition p.p. 204-206:

**"Strict construction of penal statutes**

Breaches of the Factories Act and of the Coal Mines Act are criminal offences which render the offender liable to penalties. There is authority for saying that statutes creating penalties must be construed strictly, so that the benefit of any doubt must be given to the alleged wrongdoer Tuck & Sons -v- Priester (1887) 19 Q.B.D. 629. But this does not mean that the plain meaning of the statute can be cut down by artificial doubts A.G. -v- Lockwood (1842) 9 M & W 378; According to Denning L.J., in McCarthy -v- Coldar Ltd (1951) 2 T.L.R. 1226; Dyce -v- Elliott (1872) L.R. 4 P.C.184:

'So far as the Factories Act is concerned, the rule is only to be applied when other rules fail. It is a rule of last resort'.

In another case Harrison -v- National Coal Board [1951] A.C. 639 at 650, [1951] 1 All E.R. 1102 at 1107, Lord Porter said:

'It was suggested ... that the Coal Mines Act 1911, is a measure imposing criminal liability, and, therefore, should be interpreted as throwing no greater burden on the employer than its words compel. - It has, however, to be remembered that this Act is also a remedial measure passed for the protection of the workmen and must, therefore, be read so as to effect its object so far as the wording fairly and reasonably permits'."

In our view, this is a question of degree and fact, and merely because the ladder may not have been put in the hand of the workman, or that the workman was not told to use it, does not permit the company ipso facto to escape. In our view, the wooden ladder was 'easily' and 'obviously' to the hand of the workman and we have no hesitation in finding that it was within the wording of these particular Regulations, 'provided'. We therefore find that the company is guilty of the infraction, as charged.

### Authorities

- Construction (Safety Provisions) (Jersey) Regulations, (1970), as amended  
Regulation 82, 3.
- Safeguarding of Workers (Jersey) Law, 1956, as amended: Article 6.
- Farquhar -v- Chance Bros Ltd (1951) 2 T.L.R. 666.
- Words and Phrases Legally Defined 2nd Edn. (1969) p.211.
- Potts or Riddell -v- Reid (1942) 2 All E.L.R. 161.
- A.G. -v- Thatcher Ltd and E.I.M.E. Ltd (1971) J.J. 1957.
- Finch -v- Telegraph Construction and Maintenance Co Ltd (1949) 1 All  
E.R. 452.
- Nolan -v- Dental Manufacturing Co Ltd (1958) 1 All E.R. 449.
- Ginty -v- Belmont Building Supplies Ltd (1959) 1 All E.R. 414.
- Norris -v- Syndi Manufacturing Co Ltd (1952) 1 All E.R. 935.
- Donaghey -v- Boulton & Paul Ltd (1967) 2 All E.R. 1014.
- Gibby -v- East Grinstead Gas (1944) 1 All E.R. 358.
- Munkman on Employer's Liability, 10th Edn. p.p. 204-206.
- Maxwell on the Interpretation of Statutes 12th Edn. p.199.
- Redgrave's Health and Safety in Factories 2nd Edn. (1982) p.p. 939-941,  
172 & 194.
- Harrison -v- National Coal Board (1951) A.C. 639 at 650, (1951) 1 All  
E.R. 1102.