[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, JJ.]

EMIR AHMET DJEMAL,

Appellant-Plaintiff,

v.

ZIM ISRAEL NAVIGATION CO. LTD., AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 4667).

Admiralty—Jurisdiction—Action for negligence for personal injuries sustained by a stevedore while working on a ship—Jurisdiction of the Supreme Court—The Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) section 19(a)—Cf. section 1(f) of the English Administration of Justice Act, 1956 (4 and 5 Eliz. 2 c. 46).

Damages—General damages for personal injuries—Assessment—Findings of trial Courts on the question of the amount of such general damages—Approach of the Court of Appeal in appeals as to the quantum of general damages as aforesaid—Principles restated—The Court of Appeal will not disturb such findings unless convinced either that the trial Court acted upon some wrong principle of law, or that the amount awarded is so extremely high or so very small as to make it in the judgment of the Appellate Court an entirely erroneous estimate of the damages to which the plaintiff is entitled—General damages in the present case increased.

General Damages—Quantum—See above.

Personal injuries—Jurisdiction—Quantum of general damages—See above.

Appeal—Findings of trial Courts on the question of the amount of the general damages in personal injuries cases—Approach of the Court of Appeal to such findings—Principles restated—See, also, above.

Agent—Principal and agent—Claim on negligence for injuries sustained in the course of employment on a ship—Claim against shipowners and their agents—Liability of agents—In the instant case the agents were held not to be liable on the

ground that the plaintiff as well as the persons guilty of negligence were all servants of the shipowners—Cf. section 12(1)(b) of the Civil Wrongs Law, Cap. 148.

Civil Wrongs—Negligence—Master and servant—Liability of agent—See above.

Master and Servant—See above.

The appellant was a stevedore employed in the loading and unloading of ships in the port of Limassol. On January 12, 1964, while working on the ship 'Galila', owned by respondents 1, he was severely injured. For the loss, pain and suffering consequent upon his injuries, the appellant sued the shipowners and their local agents, respondents 1 and 2 herein, respectively, for negligence claiming special and general damages. The action was filed in the Admiralty jurisdiction of the Supreme Court, where such a claim is entertained under the provisions of section 19(a) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960). This jurisdiction was considered in several cases (*Costas Stylianou* v. *The Fishing Trawler Narkissos* (1965) 1 *C.L.R.* 291 at p. 305; *The Attorney-General* v. *M/Tanker Keisserswaard* (1965) 1 C.L.R. 433 at p. 444; *Antonis Dimitri* v. *A.L. Mantovani and Sons Ltd.* (1966) (Admiralty Action No. 10/65, *unreported*). And it is to be traced, for a claim of this nature, in section 1(f) of the Administration of Justice Act, 1956 (4 and 5 Eliz. 2 c. 46).

The trial judge delivered his judgment in October 1967 (see *Djemal* v. *Zim Israel Navigation Co. Ltd., and Another* in (1967) 1 C.L.R. 227). He found that the injuries suffered by the plaintiff (now appellant) "must be attributed to the negligent mode of operating the winch of the ship" by the servants of the shipowners (defendants 1, now respondents 1) "and to no other causes". The trial judge found also that the shipowners "were aware or ought to have been aware of this negligent system or negligent mode of using the winches". As regards the plaintiff's injuries, the trial judge made a number of findings which are not in dispute in this appeal. On the basis of those findings he assessed the general damages to the lump sum of £4,150. With regard to the two defendants—the shipowners and their local agents—the trial judge held that "the plaintiff as well as the rest *of the stevedores and winchmen* were the servants of the defendants 1" (the

shipowners, respondents 1) and, consequently, gave judgment for the plaintiff against the shipowners; and dismissed the action against the agents.

From this judgment (*ubi supra*) the plaintiff appeals complaining against the amount of the award and for the dismissal of his claim against the local agents of the shipowners (defendants 2—respondents 2). His main complaint against the award of damages is that the amount assessed *as general damages* is a completely erroneous estimate of his loss and shall be substantially increased.

Increasing, *inter alia,* the amount of general damages from £4,150 to £6,000, but dismissing the appeal as regards the liability of the agents, respondents 2, the Court:-

Held, I. As regards the issue of general damages:

(1) The approach of this Court to the question of general damages in appeals of this nature, has been repeatedly stated. This Court will not interfere with the finding of the trial Court on the question of the amount of the general damages, unless it is convinced either that the trial Court acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it in the judgment of this Court an entirely erroneous estimate of the damages to which the plaintiff is entitled. (See: *Christodoulides* v. *Kyprianou* (reported in this Vol. at p. 130 *ante); Patrick du Puch* v. *Costas Georghiou and Others* (reported in this Vol. at p. 202 *ante); Christodoulou* v. *Menicou (*1966*)* 1 C.L.R.17 *at p.* 36; *Ioannou v. Howard* (1966) 1 C.L.R. 45; M*anoli* v. *Evripidou* (reported in this Vol. at p. 90 *ante)*; *Constantinides* v. *Hjioannou* (1966) 1 C.L.R. 191).

(2)(*a*) In this case the learned trial judge found the general damages in a lump sum (*i.e.* £4,150); which he could, undoubtedly do. In making his assessment, he took into consideration the three heads of damages stated in his judgment, namely:-

(a) Continuous loss of earnings;

(b) past and future pain and suffering; and

(c) the inconvenience from sexual impotency.

(b) Now, the appellant was at the time of the delivery

of the judgment in the first instance (October 1967) 44 years of age. So from that date until the age of 60 which the judge took into account in assessing the general damages, there is a period of about 16 years; to which one may add another five to reach the age provided under the social insurance laws.

(*c*) For such a period the appellant was totally incapacitated as a stevedore; and was incapacitated to a degree of 65% for any other kind of work as admitted by the parties. At the time of the accident he was earning £39 a month. To cover this loss alone, a very large part of the amount awarded as general damages would be needed.

(3)(*a*) What would be left to cover past and future pain and suffering for such a long treatment, with several operations, and from the physical injuries, including the irreparable damage to the urethra; and also to cover the inconvenience and other serious consequences of sexual impotency for a man of appellant's age and health, would, in our view, be only a very small sum, constituting a completely erroneous estimate of appellant's loss in these respects. We, therefore, find it necessary to re-assess the general damages.

(*b*) And without going outside the matters considered in this connection by the trial judge; but looking at them in the light of the medical evidence on record we reach the conclusion that the appellant is entitled to £6,000 (instead of £4,150 as awarded) under the head of general damages.

Held, II. As to the issue of the liability of the agents (respondents 2):

(1) The appellant's claim is pleaded on the basis that he was employed for work as a stevedore on the vessel of the shipowners (respondents 1), by their agents (respondents 2), acting as such; and that it was in the course of this employment that he had been injured through the negligence of another employee (the winchdriver) of the same employer. The claim was defended on that basis, jointly by the respondents. Nowhere in the pleadings was it ever alleged that the agents (respondents 2) at the material time, were acting as independent contractors. And neither the appellant, nor the shipowners, can now

put their case on that basis.

(2) Counsel for the appellant submitted that the winch-driver, whose negligence was found to be the cause of the accident, was the servant of the agents; and not that of the shipowners. But this is not how appellant's case was put in the pleadings; and cannot now be argued on that footing. (*Jones* v. *Manchester Corporation* [1952] 2 All E.R. 125, *distinguished).*

(3) The trial judge found that the winch-driver was the shipowner's servant; and through him the judge found liability in the shipowners. Such finding was certainly open to the trial judge on the evidence before him; and in the circumstances the appellant cannot now say that the winch-driver was the servant of the agents; and that the latter were operating as independent contractors and not as agents for and on behalf of the shipowners.

Held, III. In the result the appeal succeeds as regards general damages (Note: It also succeeds partly to the extent of £150 as to the amount of special damages). But it fails as regards the liability of the agents (respondents 2). The amount of the judgment is varied accordingly. With costs as ordered by the judge at the trial; and costs for the appellant against respondents 1; but in favour of respondents 2 against the appellants; in the appeal.

Appeal partly allowed. Judgment varied accordingly. Order for costs as above.

Per curiam: The difficulty of the choice between principal and agent, in fixing their respective liability towards other parties dealing with them, is a problem which arose in numerous cases; and the answer usually depends on the facts of each particular case. By way of illustration one could refer to *Clarkson Booker Ltd.* v. *Andjel* [1964] 3 W.L.R. 466, C.A.; and for an undisclosed foreign principal to a more recent case, *Teheran-Europe Co. Ltd.* v. *S.T. Belton (Tractors) Ltd.* [1968] 3 W.L.R. 205, C.A. But this is not a matter which arises in the present appeal.

Cases referred to:

Costas Stylianou v. *The Fishing Trawler Narkissos* (1965) 1 C.L.R. 291 at p. 305;

The Attorney-General v. *M/Tanker Keisserswaard* (1965) 1 C.L.R. 433 at p. 444;

Antonis Dimitri v. *A. L. Mantovani and Sons Ltd.* (1966) (Admiralty Action No. 10/65, unreported);

Christodoulou v. *Menicou* (1966) 1 C.L.R. 17 at p. 36;

Ioannou v. *Howard* (1966) 1 C.L.R. 45;

Manoli v. *Evripidou* (reported in this Vol. at p. 90 *ante*);

Constantinides v. *HjIoannou* (1966) 1 C.L.R. 191;

Christodoulides v. *Kyprianou* (reported in this Vol. at p. 130 *ante*);

Patrick du Puch v. *Costas Georghiou and Others* (reported in this Vol. at p. 202 *ante*);

Jones v. *Manchester Corporation* [1952] 2 All E.R. 125;

Clarkson Booker Ltd. v. *Andjel* [1964] 3 W.L.R. 466 C.A.;

Teheran-Europe Co. Ltd. v. *S.T. Belton (Tractors) Ltd.* [1968] 3 W.L.R. 205 C.A.

Appeal.

Appeal by plaintiff against the judgment* of a judge of the Supreme Court of Cyprus (Hadjianastassiou, J.), exercising the Admiralty Jurisdiction of the Court, given on the 5th October, 1967, in Action No. 1/67, awarding to him an amoun of £5,628 damages in respect of injuries he sustained whilst being engaged in an unloading operation of a ship belonging to defendants No. 1 and dismissing his claim against defendants 2.

Chr. Mitsides, *A. Lemis* and *M. Youssouf* for the appellant.

M. Montanios with *L. Montanios* for respondents No. 1.

L. Demetriades for respondents No. 2.

Cur. adv. vult.

The judgment of the Court was delivered by:-

VASSILIADES, P.: The appellant was a stevedore employed

*Reported in (1967) 1 C.L.R. 227.

in the loading and unloading of ships in the port of Limassol. On January 12, 1964, while working on the ship 'Galilah' he was severely injured; and, as a result, he suffered temporary and, eventually, permanent partial incapacity; and his normal state of health was materially impaired for the rest of his life. For the loss, pain and suffering consequent upon his injuries, the appellant sued the ship owners and their local agents, the respondents herein, for negligence, claiming special and general damages.

The action was filed on February 1, 1965 in the Admiralty jurisdiction of this Court, where such a claim is entertained under the provisions of section 19*(a)* of the Courts of Justice Law (No. 14 of 1960). This jurisdiction was considered in several cases *(Costas Stylianou* v. *The Fishing Trawler Narkissos* (1965) 1 C.L.R. 291 at p. 305; *The Attorney-General* v. *M/Tanker Keisserswaard* (1965) 1 C.L.R. 433 at p. 444; *Antonis Dimitri* v. *A. L. Mantovani & Sons Ltd.* (1966) Adm. Action No. 10/65, with a similar claim, unreported). And is to be traced, for a claim of this nature, in section 1(f) of the Administration of Justice Act, 1956 (4 & 5 Eliz. 2 c.46).

The claim was defended by both defendants (the respondents herein) and it was eventually determined after a strongly contested trial, by the judgment delivered on October 5, 1967, which is the subject-matter of this appeal.

The learned trial judge, in a thorough and elaborate judgment, found that the injuries of the plaintiff must be "attributed to the negligent mode of operating the winch (of the ship) by the servants of the defendants and to no other causes". He found that the defendants "were aware or ought to have been aware, of the negligent system or the negligent mode of using the winches". And he concluded that "under the circumstances of the case, the failure to see that the winches were properly used and to take precautions was sufficient evidence of negligence".

As regards the plaintiff's injuries, the trial Judge found, mainly from the medical evidence before him, that the plaintiff, a married man of 41 years of age, with a wife and three children to support sustained: "1. Shock; 2. Concussion; 3. Fractures of the pelvis; 4. Injury to the urethra. He was hospitalized for approximately four months and underwent several operations for the management of the trauma-

tized urethra and its complications. After discharge from the clinic he stayed in bed under treatment for another three months". The Judge also found that the plaintiff "will never be able to resume his employment as a stevedore; he will never be able to do anything else but very light sitting down job, if he is lucky to find a sympathetic employer". And that as a result of his injuries the plaintiff now "has a permanent incapacity of 65%; and he will continue having pain in view of his injuries to the urethra, and that he has become permanently impotent". It may be added here that the percentage of incapacity was agreed between counsel during the trial.

On the basis of those findings the trial Judge proceeded to assess the damages. For loss of wages from the date of the accident, January 12, 1964, to the trial in April, 1967, a period of about three years and three months, the Judge found and awarded the sum of £1,521; for medicines and travelling expenses he awarded £45; and for medical fees to two doctors £130. A total of £1,696, which he awarded under the head of special damages. Under this head, the Judge did not allow an item of £500, claimed as medical fees payable to plaintiff's first doctor, referred to as Dr. Halim, because the doctor did not come to Court to explain and justify his bill. "I do not find it legally possible to include in the amount of the special damages, the fees of this doctor", the Judge said. This item was one of the points taken at the appeal; and we shall revert to it later.

As to general damages, after directing his mind to the matters which have to be taken into consideration under this head, the Judge came to the conclusion that "the right figure to award in relation to a continuous loss of earnings, for past and future pain and suffering, and also the inconvenience" resulting from impotency, would be the amount of £4,150; which he added to the £1,696 special damages, and reduced by £218 paid in the meantime by way of interim payments (subject to liability, if any), making a total of £5,628, which the trial Judge awarded against the first defendants, with costs.

As regards the two defendants—the shipowners and the agents—the learned trial Judge dealt with their respective liability in the last part of his judgment where after referring to the pleadings, the evidence and the statutory provisions

in section 12(1) *(b)* of the Civil Wrongs Law (Cap. 148) he concluded that he had "no difficulty at all" in finding that-

> "the plaintiff as well as the rest of the stevedores and winchmen were the servants of defendants (1); and that defendant (2) was merely doing what was expected of him to do under his contract of agency, acting at all times for and on behalf of his principal".

and therefore the Judge gave judgment for the plaintiff against the shipowners (first defendants) with costs; and dismissed the action against the agents (second defendants) with no order for costs in their case.

From this judgment, the plaintiff appeals complaining against the amount of the award and for the dismissal of his claim against the agents (the second defendants, and now the second respondents in the appeal). His complaint against the award is that the amount assessed as general damages is a completely erroneous estimate of his loss; and that the trial judge should not have rejected the item of £500 claimed as special damages for the remuneration of his first doctor (referred to as Dr. Halim) "because he could not attend the Court as a witness".

Both respondents defended the action together. But in the appeal they were separately represented; and took a different stand. In fact, the shipowners filed a cross-appeal contending that the judgment against them be discharged; and "in lieu thereof judgment be entered" against the agents only.

The cross-appeal was taken on the nine grounds set out in the formal notice, which, however, mostly rest on the contention that the appellant-plaintiff as well as the workmen connected with the cause of his injuries, were not the servants of the shipowners, but those of the agents who, at the material time, were acting as independent contractors for the unloading of the ship, and not as the agents of the ship-owners.

At the hearing of the appeal, however, counsel for the shipowners practically abandoned the position in the notice and argued his case on the basis that the amount awarded was sufficiently high; and that if at all liable, both respondents were jointly liable. To that extent, the ship-owners supported the claim of the appellant against the agents. They also conceded during argument, very fairly and properly in

our view, that an amount of £150 for the services of the doctor who first treated the appellant for a period of about four months, would not be unreasonable, instead of the item of £500 claimed as part of the special damages. On the other hand, counsel for the agents submitted that the trial judge rightly dismissed the claim against his clients, who were all along acting for and on behalf of their principals, the shipowners, who were therefore liable, and to whom alone, the appellant could look for such a claim.

Three matters, therefore, fall to be decided in the appeal:-

1. The amount of general damages;
2. The item for Dr. Halim's remuneration in the special damages; and
3. The liability of the agents, *vis-a-vis* the appellant.

1. *The general damages:*

The submission of learned counsel for the appellant was that the amount awarded was far too low. And after referring to several cases in Kemp and Kemp and to *Constantinides* v. *Hjloannou* (1966) 1 C.L.R. p. 191, counsel submitted that in the circumstances of this case, the plaintiff was entitled to an award in the region of £10,000.

On behalf of the respondents the submission was that the trial Judge's award was already sufficiently high; and should not be disturbed.

The approach of this Court to the question of damages in appeals of this nature, has been repeatedly stated. In *Christodoulou* v. *Menicou* (1966) 1 C.L.R. 17 at p. 36, it was put by Josephides, J. in these words:

> "Having given the matter our best consideration we are not convinced either that the court acted upon some wrong principle of law, or that the amount awarded was so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damages to which the plaintiff is entitled".

This was adopted in *Ioannou* v. *Howard* (1966) 1 C.L.R. 45 where the amount of damages was increased on appeal; and in *Manoli* v. *Evripidou* (reported in this Vol. at p. 90 *ante*) where this Court declined to disturb the amount awarded by the trial Court.

In *Constantinides* v. *Hjloannou* (1966) 1 C.L.R. 191 where the amount awarded by the trial court was increased on appeal, Triantafyllides J. put the matter in these words: (p. 197).

> "The task of this Court on appeal, in every such case, is, in effect, to ensure that such an award comes within the limits of proper restitution; if that is so, then this Court will not substitute its own views in the place of those of a trial court as regards the exact amount assessed; if that is not so, then it is this Court's duty to intervene and re-assess".

In *Christodoulides* v. *Kyprianou* (reported in this Vol. at p. 130 *ante*) where the amount awarded by the trial court, was reduced on appeal, the Court again, after reference to *Manoli* v. *Evripidou* (*supra*) approached the matter on the principle that—

> "This Court would not be justified in disturbing the finding of the trial court on the question of the amount of damages, unless it is convinced either that the trial court acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it in the judgment of this Court an entirely erroneous estimate of the damages to which the plaintiff is entitled".

The same course was followed in *Patrick du Puch* v. *Costas Georghiou and Others* (reported in this Vol. at p. 202 *ante*) where the Court dismissed the appeal against the amount of damages awarded by the trial court, as-

> "having heard counsel for the appellant with all the attention that (the Court) could give to his argument (they) were not persuaded that there was such an entirely erroneous estimate of the damages to which the plaintiff was entitled, as to justify intervention on appeal".

In this case the learned trial Judge found the general damages in a lump sum; which he could, undoubtedly do. In making his assessment, he took into consideration the three heads of damages stated in his judgment, namely:-

(a) continuous loss of earnings;

(b) past and future pain and suffering; and

(c) the inconvenience from sexual impotency.

As we have already stated, the Judge found that the appellant was 41 years of age at the time of the accident in January 1964. According to the evidence he was born on 29.3.1923. The trial took place in April, 1967; and the damages were found and awarded in October, 1967. For the period between the accident and the judgment, the Judge covered appellant's loss of earnings under the head of special damages. So from October 1967, when the appellant was 44 years of age, until the age of 60 which the Judge took into account in finding the general damages, there is a period of about 16 years; to which one may add another five to reach the age provided under the social insurance laws.

For such a period the appellant was totally incapacitated as a stevedore; and was incapacitated to a degree of 65% for any other kind of work. At the time of the accident he was earning £39 a month. To cover this loss alone, a very large part of the amount awarded as general damages, would be needed.

What would be left to cover past and future pain and suffering for such a long treatment, with several operations, and from the physical injuries, including the irreparable damage to the urethra; and also to cover the inconvenience and other serious consequences of sexual impotency for a man of appellant's age and health, would, in our view, be only a very small sum, constituting a completely erroneous estimate of appellant's loss in these respects. We therefore, find it necessary to re-assess the general damages. And without going outside the matters considered in this connection, by the trial Judge; but looking at them in the light of the medical evidence on record (particularly *exhibit 1)* we reach the conclusion that the appellant is entitled to £6,000 under the head of general damages.

2. *The item of Dr. Halim's remuneration in the claim for special damages.*

The fact that this doctor treated the appellant for some time, and was entitled to the appropriate remuneration, was never in dispute. The reason why the trial Judge did not allow anything for such remuneration under the head of special damages, is that, (as stated earlier) he did not find it "legally possible" to do so. What the Judge means, we suppose, is that the amount claimed for the item in question,

was not duly proved. If the doctor could not attend as a witness for one reason or another, surely the remuneration to which he is entitled against the plaintiff (and the latter can claim as part of his loss) could be established by other evidence. Several doctors were called as witnesses who could, probably, give evidence in that connection.

Be that as it may, however, counsel for the ship-owners conceded, very fairly, as we have already said, that £150 would be a reasonable figure under this item. In the circumstances, we think the best course is to have that sum added to the amount awarded as special damages.

3. *The liability of the agents.*

The appeal against the part of the judgment dismissing the claim against the agents (the second respondents herein) is taken on the ground that the appellant was the servant of both defendants, and therefore they are both jointly liable "to compensate him for the injuries sustained in the course of his employment". (ground 1*(b)*). In fact appellant's claim is pleaded on the basis that he was employed for work as a stevedore on the vessel of the shipowners, by their agents, acting as such; and that it was in the course of this employment that he had been injured, (paragraphs 2-5 of the amended petition), through the negligence of another employee (the winch-driver) of the same employer. The claim was defended on that basis, jointly by the respondents. Nowhere in the pleadings was it ever alleged that the agents at the material time, were acting as independent contractors. And neither the appellant, nor the ship-owners, can now put their case on that basis.

Counsel for the appellant submitted that the winch-driver, whose negligence was found to be the cause of the accident, was the servant of the agents; and not that of the ship-owners. But this is not how appellant's case was put in the pleadings and cannot now be argued on that footing. In this connection counsel sought to rely on *Jones* v. *Manchester Corporation* [1952] 2 All E.R. p. 125. That is indeed a very useful authority in dealing with the matter in hand, both on the procedural and the legal aspect. But that is no authority in support of the proposition that the appellant can have a claim both against the employer of the party who injured him, and against the employer's agent as if they were joint tort feasors.

The position boils down to the question: whose servant was the winch-driver? Was he the servant of the ship-owners or that of the agents? The appellant in his pleadings put his claim on the "and/or" type of allegation, which is not always the best or safer course. He alleged in para. 6 of his amended petition that his injuries "were occasioned .....by reason of the negligence and/or breach of statutory duty on the part of the defendants and/or either of them, their servants or agents". He declined or avoided finding out and ascertaining the facts of the case; and making up his mind where did liability lie on such facts. He chose to rest his claim on the vague and equivocal allegations on which he put it in his pleading.

But the operation of unloading the ship was a matter for the shipowners to arrange. They did so through their agents who, acting as such, engaged for them labourers, stevedores and winch-drivers to do the work on the ship-owners' vessel. The trial Judge found that the winch-driver was the ship-owners' servant; and through him the judge found liability in the ship-owners. Such finding was certainly open to the trial Judge on the evidence before him; and, in the circumstances, neither the appellant nor the ship-owners can now say that the winch-driver was the servant of the agents; and that the latter were operating as independent contractors and not as agents for and on behalf of their principals. Depending on their contract with the ship-owners, it may well be that these maritime agents were acting at the time as independent contractors. In such a case, liability could hardly attach on the ship-owners, apart of contract. But this was not the case pleaded; and it cannot now be argued or decided in these proceedings.

The difficulty of the choice between principal and agent, in fixing their respective liability towards other parties dealing with them, is a problem which arose in numerous cases; and the answer usually depends on the facts of each particular case. By way of illustration one could refer to *Clarkson Booker Ltd.* v. *Andjel* (C.A. [1964] 3 W.L.R. p. 466); and for an undisclosed foreign principal to a more recent case, *Teheran-Europe Co. Ltd.* v. *S.T. Belton (Tractors) Ltd.* (C.A. [1968] 3 W.L.R. p. 205). But this is not a matter which arises in the present appeal.

Here the trial judge has made his findings on the material

issues of fact arising from the parties' pleadings. His findings were open to him on the evidence; and have not been successfully challenged in the appeal. On such findings, he reached his decision regard ng liability, which, likewise, we think, has not been successfully attacked here, from either side.

In the result, the appeal fails as regards the liability of the second respondents; and succeeds as regards general damages; it also succeeds partly, to the extent of another £150 in the special damages. The amount of the judgment is varied accordingly from £5,628 to 7,628, as from the date of the original judgment. With costs as ordered by the Judge at the trial; and costs for the appellant against the first respondents; but in favour of the second respondents against the appellants; in the appeal.

Appeal allowed as above. Judgment varied accordingly.

Order for costs as above.