[TRIANTAFYLLIDES, P. STAVRINIDES, A. LOIZOU, JJ.]

NICOS PANAYI,

Appellant,

v.

GEORGIOS S. GALATARIOTIS AND SONS LTD.,

Respondents.

(*Civil Appeal No.* 4934).

Master and Servant—Duty of master to provide safe system of work—Extent of master's duty—Injuries received by workman when binders holding together U-shaped iron bars were cut by him and the arms of one of the bars sprang open—Cause of accident not failure to provide a safe system of work but the fact that such a system, which was known to the servant, was disregarded by him—Nor can it be said that in such circumstances the master had a duty to supervise the work of the servant in order to ensure that he would not do what he well knew to be unsafe.

Safe system of work—Duty of the master etc. etc.—See supra.

The facts of this case sufficiently appear in the judgment of the Court, dismissing the appeal against the judgment of the District Court of Limassol dismissing the action brought by the appellant (servant) against the respondents (his employers) for damages in respect of injuries which he suffered in the course of his employment with them while handling a bundle of iron bars in an open-air depot of the respondents.

Held, (1). (*After reviewing the facts*) :

It is clear that the cause of the accident is not a failure to provide a safe system of work but the fact that such a system, which was known to the appellant, who had six years' experience in the work of this kind, was disregarded by him.

(2) And we are, also, of the view that in such circumstances it could not be said that the respondents had a duty to supervise the work of the appellant in order to ensure that he would not do what he well knew to be unsafe.

Appeal dismissed. No order as to costs.

Cases referred to:

Winter v. *Cardiff Rural District Council* [1950] 1 All E.R. 819, at pp. 822–823.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 10th September, 1970, (Action No. 2907/68) whereby his claim for damages for injuries he received in the course of his employment with the defendants was dismissed.

A. Lemis, for the appellant.

Chr. Demetriades with *E. Shakalli* (*Miss*), for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The appellant appeals from the judgment of the District Court in Limassol dismissing his action against the respondents for damages in respect of injuries which he suffered in the course of his employment with them while handling a bundle of iron bars in an open-air depot of the respondents.

When the binders holding together a number of U-shaped iron bars were cut by the appellant the arms of one of the bars sprang open and hit the appellant on his left leg, with the result that it was fractured.

The learned trial Judges, having referred to the following passage from the opinion of Lord Oaksey in *Winter* v. *Cardiff Rural District Council* [1950] 1 All E.R. 819, at pp. 822–823 :—

" In my opinion, the common law duty of an employer of labour is to act reasonably in all the circumstances. One of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that the employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must

exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs. It is not easy to define these spheres, but where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot."

decided that it was for the appellant to choose how to cut the binders and that as he had done so in the wrong way he was entirely to blame for the accident.

We are of the view, in the light, *inter alia*, of the *Winter* case (*supra*), that as one particular method of cutting the binders was safe and another was not, there ought to have been considered by the trial Court whether or not the accident could be attributed to any failure of the respondents, as employers, to provide a safe system of work. We have examined this issue in determining this appeal and we are of the opinion that as it has been established by the evidence of the appellant himself that he did know what was the safe method of cutting the binders, namely cutting first the binders which were holding together the arms of a U-shaped bar and then proceeding to cut the binders near the U-curve and not in the opposite sequence as the appellant did on the occasion on which he was injured, it is clear that the cause of the accident is not a failure to provide a safe system of work but the fact that such a system, which was known to the appellant, who had six years' experience in work of this kind, was disregarded by him ; and we are, also, of the view that in such circumstances it could not be said that the respondents had a duty to supervise the work of the appellant in order to ensure that he would not do what he well knew to be unsafe.

We have to deal, next, with the submission of counsel for the appellant that the respondents ought to have been found liable because of their failure to provide necessary apparatus, namely a winch : In the course of the hearing before the trial Court it was stated in evidence that no winch was provided for the purpose of lowering to the ground the bundles of iron bars which were piled on top of each other and that had a winch been available the risk of injury might have been avoided. The non-provision of

a winch was not expressly relied upon in the statement of claim ; and it can hardly be said that it falls by implication within such pleading. In any case it is to be clearly derived from the totality of the material before us that the absence of a winch is not related to the cause of the accident to the appellant, because the availability of a winch could not have prevented the arms of the U-shaped iron bar from springing open and hitting the leg of the appellant due to the wrong manner in which he chose to cut the binders which were holding together the said arms.

For the foregoing reasons we have come to the conclusion that this appeal must fail ; but in the circumstances of this case we shall not make any order as to the costs of the appeal.

Appeal dismissed ;
no order as to costs.