CHRISTOS PERICLEOUS,

Plaintiff,

v.

1. COMARINE LTD.,
2. AMATHUS NAVIGATION CO. LTD.,

Defendants

(*Admiralty Action No.* 70/75)

Master and servant—Safe system of work—Common law duty of employer to provide a safe system of work—Nature of—Loading of ship—Loading system—Involving use of wooden frames—No fault or omission by employers, in the circumstances of this case, in connection with the system of work used to the effect that it was not reasonably safe—Long established practice in the trade strong evidence of reasonableness.

Admiralty—Ship—Loading of—Who is responsible for loading depends on the facts of each case—Defendant 2 paying stevedores and their dues for various funds—Notifying defendant 1 to get cargo ready for loading—Held to have been doing the loading as independent contractors or as agents for an undisclosed principal.

Negligence—Loading of ship—Injury to quay porter through fall of axle affixed on sling—Negligence of winchman or hatchman or either of them.

Costs—Unsuccessful action by employee against employer—No costs against plaintiff-employee.

Ship—Loading of—Safe system of work—Who is responsible for loading—Negligence—See, also, "Master and Servant"; "Admiralty"; "Negligence".

The plaintiff was engaged as a quay porter for the loading of the ship "Esperos" with crates of citrus fruit. The crates were in lorries and they were piled up on a wooden frame. The loading was done by means of a winch and the plaintiff was standing on the lorry and assisting in the preparation of loads for the sling of the winch. Whilst the winch was coming

for a load and was over the lorry, one of the two axles, which was affixed at the end of one of the ropes of the sling, knocked on top of the load of crates, which was about 5½ to 6 ft. high from the floor of the body of the lorry, got unhooked and fell and hit the plaintiff on the left big toe which was fractured.

Hence the present action by the plaintiff for special and general damages which was instituted against both defendants, as his employers and/or as independent contractors and/or as agents for undisclosed principals. The winch of the ship was manned by a winchman who was instructed and guided by a hatchman.

The question of special and general damages was agreed at the amount of £525 on a full liability basis and the issues that remained for consideration in the action were the following:

(a) Whether the winchman and the hatchman or either of them were negligent.

(b) Whether the system of work was defective.

(c) Whether the winchman and the hatchman were in the employment of defendants 1 or 2 or of both.

The system of loading was provided by defendant 1; it involved the use of wooden frames and was the one used by all loading agencies except one, which was using a system with iron frames. This latter system was better.

Both the winchman and the hatchman were paid by defendants 2 and the person responsible for the loading on board the said ship was their employee. Defendant 2 notified defendant 1 to get the cargo ready for loading and the stevedores employed for the loading were paid by defendants 2; they were allocated by the Government Labour Officer in their name who also recorded them as responsible for the payment of the contributions to the various funds.

Held, (1) that the accident occurred due to the negligence of the winchman and the hatchman, or either of them, who were operating the winch of the ship at that time; and that no contributory negligence can be attributed to the plaintiff.

(2) That the duty of the employer to prescribe a safe system of work is not an absolute duty but a relative one in that he is not bound to provide a system as safe as it can be possi-

bly made, but reasonably safe; that in deciding what is reasonable, long established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in respect of reasonableness; that the system with wooden frames, used by defendant 1, has been in use for a long time by all the other agencies in Cyprus with only one exception of an agency which is using a system with iron frames; that though this latter system eliminates to a certain extent the dangers of the operation its use would cause unnecessary inconvenience and the time and expenses required for the operation will necessarily be increased; and that plaintiff failed to show any fault or omission on the part of his employers in connection with the system of work used to the effect that it was not reasonably safe.

(3) That as to who is responsible for the loading or unloading of a ship depends on the facts of the particular case; that in the present case the fact that defendant 2 notified defendant 1 to get the cargo ready for loading, that the allocation form for stevedores and the relevant receipt for payment of dues of the various funds were issued in their name without any protest on their part, that the person responsible for the loading on board the ship was their employee, and that no evidence was adduced on their part to disprove the allegation that the stevedores were paid by them, give sufficient indication that they were doing the loading either as independent contractors or as agents for an undisclosed principal; that, therefore, they are in law liable for the accident in question; and that, accordingly, judgment is given for the plaintiff against defendant 2 only in the sum of £525.- with costs and the action against defendant 1 is dismissed.

(4) That taking into consideration that the plaintiff had to institute the present proceedings against defendant 1 as his employer, this Court is free to deviate from the general principle that costs follow the event and makes no order as to costs, as between plaintiff and defendant No. 1.

Judgment and order for costs as above.

Cases referred to:

Caulfield v. Pickup Ltd., [1941] 2 All E.R. 510;

Roberts v. Dorman Long & Co. Ltd. [1953] 2 All E.R. 428 at p. 436;

General Cleaning Contractors Ltd., v. Christmas [1953] A.C. 180.

Admiralty Action.

Admiralty action whereby plaintiff claimed special and general damages against the defendants, as his employers and/or as independent contractors and/or as agents for undisclosed principals, for injuries sustained by him in a loading operation.

A. Anastassiades, for the plaintiff.

Fr. Saveriades, for defendant No. 1.

P. Schizas, for defendant No. 2.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The plaintiff in this admiralty action is a port worker in Limassol, and the two defendants are shipping agencies carrying on business also in Limassol. On the 11th January, 1975 the plaintiff while being engaged as a quay porter in loading the ship "ESPEROS", which was anchored along the quay at the new port of Limassol, met with an accident as a result of which he sustained personal injuries. He instituted the present proceedings claiming special and general damages against both defendants as his employers and/or as independent contractors and/or as agents for undisclosed principals.

On the 1.3.77, when this case came on for hearing, the question of special and general damages was agreed for the amount of £525.- on a full liability basis and so the only remaining issue was the question of liability. As regards this question the two defendants in their separate defences deny liability and allege that the accident was due to the negligence and/or contributory negligence of the plaintiff himself.

Furthermore defendant No. 2 alleges that at no time was concerned or had to do in any way or capacity whatsoever with any of the acts or events or transactions or with the accident in question.

As to how the accident occurred the plaintiff gave evi-

dence and called one witness, namely, Costas Christodoulou, a fellow worker, who was at the time working with him.

The plaintiff in giving evidence stated that he is 41 years of age and he has been a port worker since 1952. On the 11th January, 1975, he was employed by defendant No. 1 at the new port of Limassol, in loading citrus fruit on the ship "ESPEROS". He started work at 5 p.m. The lorries with crates of citrus fruit were arriving at the port next to the ship and he was working on the said lorries with two other quay porters. The crates on the lorries were piled up on a wooden frame (telaro) which at its four corners had holes. Each lorry was carrying about 8 loads of these wooden frames. Their job was to insert two iron axles through the holes of the wooden frame from one corner to the other. These axles at their two ends, which were protruding as being longer than the wooden frame, had also holes. Through the holes of the axles they were inserting the hooks of the sling, which sling consisted of four ropes, each rope having a hook at the one end and at the other end all four ropes were joined in one hook, which they hooked on the hook of the winch of the ship and the load was then lifted and carried into the ship's hold. The wooden frame remained in the hold and the sling with the two axles, after being disconnected, from the load by the stevedores, were returning back for the repetition of the same process. The two axles when returning back to the lorry were hooked only from their one end by the hook of one of the ropes of the sling. In the meantime, in view of the fact that there were four axles available, the men on the lorry were preparing another load by inserting the two axles in another wooden frame awaiting for the sling to come back in order to hook it.

According always to the evidence of the plaintiff, this job was repeated till 8.30 p.m. of the same day when the accident happened. At that time when the winch was returning for another load and was over the lorry, one of the two axles which was affixed at the end of one of the ropes of the sling knocked on top of the load of crates which was about 5½ to 6 ft. high from the floor of the body of the lorry, got unhooked and fell and hit him on the left big toe which was fractured. From there he was transported to the Limassol hospital for treatment. The winch of the

ship is manned by the winchman. On that day the winchman was a certain Miltiades Solomou, who was paid by defendant 2. A certain Costas Avgousti was the hatchman. He was also in the service of defendant 2. The hatchman is the man who instructs and guides the winchman. This system of loading was provided by defendant 1. Another system is to use iron frames instead of wooden ones. The difference between the two is that the iron frames have no axles and have got rings at their four corners in which the four hooks of the ropes of the sling are hooked and so when the winch is returning back, returns only with the four ropes and nothing else. This system of iron floors is better. The only one who uses this system is a certain Giovanni.

To the same or similar effect is the evidence of Costas Christodoulou, the fellow worker who at the time of the accident was on the quay.

I must say from now that as to how this accident occurred I accept the evidence of the plaintiff, which is supported by the evidence of his fellow worker P.W.2, namely, Costas Christodoulou, whose evidence I also accept as true and correct. In fact, their evidence stands uncontradicted on this issue.

It can be reasonably inferred from the evidence, as I have accepted it, that the accident occurred due to the negligence of the winchman and the hatchman, or either of them, who were operating the winch of the ship at that time. No contributory negligence can be attributed to the plaintiff.

Evidence was adduced on behalf of the plaintiff in order to render defendant No. 1 liable for the accident in that the sysem of work, which was admittedly provided by the said defendant, was defective in that another system of using iron frames instead of wooden ones is better, as no axles are used, and that it would be safer if forklifts were used in order to unload the loads from the lorries on to the quay, before preparing the sling for lifting them up by the winch to the ship's hold.

The duty of the employer to provide a safe system of work is a common law duty and/or a statutory one.

When the operation to be carriad out is one specifically dealt with by statute or statutory regulation non compliance with the statutory requirements renders the employer liable for negligence. Compliance of the employer with the statutory requirement is evidence, although not conclusive, that the common law duty has been fulfilled. (*Caulfield v. Pickup Ltd.* [1941] 2 All E.R. 510 and *Roberts v. Dorman Long & Co. Ltd.* [1953] 2 All E.R. 428 at page 436). However, in the present case we are only concerned with the common law duty of the employer to provide a safe system of work. The duty of the employer to prescribe a safe system of work is not an absolute duty but a relative one in that he is not bound to provide a system as safe as it can be possibly made, but reasonably safe. The precautions taken must be proportionate to the risk involved. Where some commercial necessity requires that an employer will expose a workman to some risks, he may avoid liability for his failure to guard against such dangers. His duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation. In deciding what is reasonable, long established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in respect of reasonableness. In the case of *General Cleaning Contractors Ltd. v. Christmas* [1953] A.C. 180, a House of Lords case, Lord Tucker at page 194 had this to say:

> "This form of action is frequently spoken of as being based on 'a failure to provide a safe system of work', but this language is misleading since it omits what is an essential element in the cause of action, *viz.* negligence. Window cleaning is obviously a hazardous operation and—except in the case of the absolute obligations imposed in certain circumstances under the Factory Acts—there is no absolute obligation upon employers to device a system for their employees which will be free of risk. Their only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation. In deciding what is reasonable, long-established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in support of reasonableness.

It was said by Goddard L.J. in the Court of Appeal and by Viscount Simon in this House in the case of *Colfar v. Coggins & Griffith (Liverpool) Ld.* [1943] 76 Ll.L. Rep. 1, 4 (C.A.); [1945] A.C. 197 203 that in these cases the plaintiff must allege and prove specifically what is the defect in the system of which he complains. In other words, it is not sufficient that the system adopted was in fact unsafe, he must show something which could reasonably have been done or omitted which would have made the system reasonably safe and that this failure was the cause of his accident".

In the present case it is in evidence that the system with wooden frames, used by defendant 1, has been in use for a long time by all the other agencies in Cyprus with only one exception that of Giovanni who is using a system with iron frames. No doubt the use of forklifts to unload the loads from the lorries on to the quay before preparing the sling for lifting them up to the ship's hold, eliminates to an extent the dangers of the operation. This, however, would cause unnecessary inconvenience and the time and expenses required for the operation will necessarily be increased. On the evidence adduced the plaintiff failed to show any fault or omission on the part of his employers in connection with the system of work used to the effect that it was not reasonably safe.

The next and last point to be considered is as to who was the employer of the winchman and the hatchman in this case.

Port workers, whether stevedores or quay porters, are engaged by the various agencies and merchants in Limassol through the Labour Office.

Andreas Ioannides, an employee in the office of defendant 1 in giving evidence for defendant 1 as D.W.1, stated that on the 11th January, 1975, he was notified by defendant 2 company to arrange the cargo for loading. Upon that he instructed a certain Diogenis Christodoulou, the employee of defendant 1 responsible for the loading of cargo at the quay, for the necessary arrangements. The loading of a ship is always done by the agents who engage the stevedores. The quay porters are engaged by the merchants or their representative.

This witness also stated that only the plaintiff, together with two other quay porters were employed by defendant 1. The responsibility of defendant 1 was to bring the cargo along side the said ship.

Heraclis Nicolaides, an Assistant Labour Officer, in charge for the allocation of port workers in Limassol, in giving evidence as D.W.2 stated that an application for stevedores for overtime work was made on 11.1.75 for the ship "Esperos". This application, which has been produced as *exhibit* 1, is signed by the Scandinavian Near East Navigation Co. Ltd., SNEAL, (Cyprus) Ltd., as agents. This company has no registered office in Limassol and is housed in the office of defendant 2. The object of an application of this kind is to secure payments of various contributions of employers of port workers to the various funds, such as, Social Insurance and Termination of Employment. According to the evidence of this witness, in order to proceed with the allocation of port workers, the confirmation of the foreman of the company applying for is necessary.

In the present case, upon receiving confirmation of a certain Kyriakos Erodotou, whom the witness considered as the foreman of defendant 2, he recorded defendant 2 as responsible for the payment of the various contributions and allocated eleven stevedores in its name. A photo copy of this allocation form, which was produced as *exhibit* 2, contains the name of defendant 2 as the employer and the names of the 11 stevedores, including the winchman and the hatchman. The name of the said Kyriakos Erodotou appears also on the said form.

A similar photo copy of this form was also produced by this witness where defendant 1 appears as the employer of three quay porters, including the plaintiff.

This witness also stated that the contributions were paid by defendant 2 and the relevant receipt was issued in its name.

Diogenis Erodotou in giving evidence as D.W.3 for defendant 1 stated that upon instructions from his employers he proceeded to the Labour Office and applied for three quay porters. After securing the quay porters he went to

the ship where he met the person responsible for the loading, a certain Claudios, who is an employee of defendant 2 and who indicated to him the hold of the ship in which the crates were to be placed.

The only witness called by defendant 2 was Dinos Panayides, an officer of the Customs and Excise Department, who produced a form (*exhibit* 4) dated 7.1.75 where it appears that the master of the ship "Esperos" appointed SNEAL (Cyprus) Ltd. as his agents. This is the usual form which the master of a ship on arriving at a Cyprus port usually is filling up in accordance with the Importation and Exportation by Sea Regulations 1968 and appoints an agent to make a report inwards as required by section 23 of the Customs and Excise Laws 1967 to 1973 and under the terms given by the Director of the Department of Customs and Excise by virtue of section 45 of the said laws, the said agent is authorised by the master to act for him in all matters relating to the clearance outwards of the ship. Subsections 1 and 2, the relevant parts of section 23 of the Law read as follows:

"23.-(1) Report shall be made in such form and manner and containing such particulars as the Director may direct of every ship and aircraft to which this section applies -

(2) This section shall apply to every ship arriving at port -

(a) from any place outside the Republic; or

(b) carrying any goods brought in that ship from some place outside the Republic and not yet cleared on importation".

The relevant parts of section 45 of the Law are also subsections 1 and 2 which read:

"45.(1) Save as permitted by the Director, no ship or aircraft shall depart from any port or customs airport from which it commences, or at which it touches during, a voyage or flight outside the Republic until clearance of the ship or aircraft for that departure has been obtained from the proper officer at that port or airport.

(2) The Director may give directions -

(a) as to the procedure for obtaining clearance under this section;

(b) as to the documents to be produced and the information to be furnished by any person applying for such clearance".

It is clear from these sections of the Law that the authority of such agent is related to the preparation of the report inwards or clearance outwads of a ship and has nothing to do with any other business of the ship, such as her loading or unloading. As to who is responsible for the loading or unloading of a ship depends on the facts of the particular case. In the present case the fact that defendant 2 notified defendant 1 to get the cargo ready for loading, that *exhibit* 2 and the relevant receipt for payment of dues of the various funds were issued in their name without any protest on their part, that the person responsible for the loading on board the ship was their employee, and that no evidence was adduced on their part to disprove the allegation that the stevedores were paid by them, give sufficient indication that they were doing the loading either as independent contractors or as agents for an undisclosed principal and, therefore, they are in law liable for the accident in question.

For these reasons judgment is given for the plaintiff against defendant 2 only in the sum of £525.- with legal interest at 4% per annum on the above sum as from today to final payment, with costs to be assessed by the Registrar.

The Action against defendant 1 is dismissed.

Taking into consideration that the plaintiff had to institute the present proceedings against defendant 1 as his employer, I consider myself free to deviate from the general principle that costs follow the event and to make no order as to costs, as between plaintiff and defendant No. 1.

Judgment against defendant 2 in the sum of £525. Action against defendant 1 dismissed.
Order for costs as aforesaid.