CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports

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[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

ANTONAKIS PERENTIS,
Appellant-Plaintiff,

v.

GENERAL CONSTRUCTIONS CO. LTD. AND OTHERS,
Respondents-Defendants.

(*Civil Appeal No.* 5867).

Master and servant—Safe system of work—Duty of master—Appellant, together with other five fellow employees, pushing a scaffold underneath visible electric wires in disregard of employer's instructions—Electrocuted and injured—Employers duty as masters to take care for safety of their workmen discharged—Supervision—Whether employer, following the instructions he had given, had to stay and supervise further the performance of the work.

Breach of statutory duty—Liability for—Distinct from liability for negligence—Regulation 109 *of the Building and Works of Engineering Construction (Safety, Health and Welfare) Regulations,* 1973—*Carrying scaffold under electrically charged overhead cable—Instructions by employer to be carried horizontally to avoid contact with cables—All practicable precautions in the sense of above regulation* 109(2) *taken—No breach of the statutory*

duty created by the above regulation because of failure to place barriers.

Words and Phrases—"Practicable" in regulation 109 *of the Building and Works of Engineering Construction (Safety, Health and Welfare) Regulations,* 1973.

The appellant, a skilled metal worker, plumber and welder was injured, whilst in the employment of the respondents, when the scaffold which he was pushing together with his fellow workers came into contact with overhead live electric lines.

The trial Court dismissed appellant's action, for damages in respect of the injuries he had sustained, having found that the foreman of the respondents instructed the appellant, the senior employee for this particular operation, to remove the scaffold in question from one place to another by carrying it horizontally and that for this purpose he assigned five other employees to assist him; that there were two routes leading to the place where the scaffold was to be carried and the foreman instructed the appellant to use the short route; that for facilitating matters for this particular mode of transportation, the platforms of the scaffold were removed and the scaffold itself was placed sideways in readiness to be lifted up and be carried by the workers on their hands; that the number of persons assigned for this job was sufficient for the carrying of the scaffold sideways; that the appellant was warned at least about low overhead wire running across the short route and the instructions for the carrying on hands of the scaffold was to avoid such low wire; that the appellant, together with his assistants, did use at first the indicated short route which obviously was more convenient than using the other one; that they did not follow the instructions of carrying the scaffold in a horizontal position, and in the upright position they were pushing it, it could not pass underneath the encountered low wire; that they turned back to use the much longer route still push-rolling the scaffold; and that they were push-rolling the scaffold until they reached the overhead line when the electricity was conducted to the scaffold; and hence the accident.

The trial Court further found that there was no breach of the statutory duty created by regulation 109* of the Building

* Quoted at pp. 14–15 *post.*

and Works of Engineering Construction (Safety, Health and Welfare) Regulations, 1973, which makes provision for the placing of wooden bars for the prevention of any contact with the line wires, having held that the respondent Company by effecting the preparatory work for the removal of the scaffold horizontally, by the giving of express and clear instructions to this effect to a competent, trustworthy and sensible employee and by the assignment of the right number of persons for the due execution of these instructions, took all possible measures for avoiding any danger from live overhead lines and therefore there was no breach of the aforesaid Regulations.

Upon appeal by the appellant against the dismissal of his action:

Held, (1) (*after upholding the above findings of the trial Court*) that an employer has a general duty towards his servants to take reasonable care for his servants' safety in all the circumstances of the case; that as in this case the accident occurred in the course of a special operation which was unassociated with the normal duties and skills of the workers involved; that as it was neither difficult nor dangerous as such if performed in accordance with the instructions given by the foreman which instructions were correct and practically possible; that as it did not call for any further supervision and no special safety precautions had to be taken other than carrying the scaffold in a horizontal position; that as the presence of the live wires over the road was obvious and there was no question of any measures being taken to protect whilst passing under them; that as the method with which the scaffold had to be carried was reasonable and comprehensible and the appellant himself was the senior employee of those involved in the operation and to whom the instructions of the foreman had been given; and that as a sufficient number of persons was assigned to the job, which was not dangerous if carried horizontally in accordance with the instructions and this is not a question of law at all but a question of fact, the respondents employers had discharged their duty as masters to take care for the safety of their workmen; accordingly the appeal must be dismissed.

Held, further, *on the question whether there was adequate supervision:*

That the question of supervision varies according to the amount of risk involved in a particular work so that where the risk

is great, the employer's duty is not only to provide safety devices but also to make certain that his servants use them; that as the foreman had seen to the carrying out of the preparatory work and had given good, sound, workable and reasonable instructions to a competent senior employee for a job quite simple in nature and quite safe in execution, provided the instructions given were followed, further supervision by him was unnecessary and that what the appellant and the other labourers in that group did, could not be foreseeable by any reasonable person.

Held, on the question of breach of statutory duty:

That in actions for breach of statutory duty whether such duty is created by law or by regulations made under powers conferred by a law, liability is distinct from liability for negligence, that is to say, the breach of the common law duty of care; that the duty imposed by regulation 109 and in particular sub–paragraph 2 thereof is to take all practicable precautions to prevent such danger; that "practicable" has been defined as meaning that it is feasible, that it can be done and as meaning "capable of being carried out in action" or "feasible"; that regulation 109 by its very wording leaves room for the measures to be taken by the employer to be other than the provision of adequate and suitably placed barriers; that all practicable precautions were taken to prevent any danger for using the road and passing the scaffold in question underneath these overhead live electric cables; that by itself the overhead wires could not have been a source of danger if the prescribed manner was used by the appellant himself; that his injuries were only sustained because the appellant himself acted in complete disregard of his own safety, the respondents having done what they ought to have done in the circumstances to carry out any duty, if at all, that was cast on them under the aforesaid regulation but they have failed by reason of the appellant's conduct and nothing else; that it was appellant himself no doubt that caused the breach; that the measures taken by the respondents were in the circumstances adequately taken as found by the trial Court and there is no reason to interfere with its conclusion that there has been no breach of the aforesaid regulation.

Appeal dismissed.

Cases referred to:

Winter v. *Cardiff R.D.C.* [1950] 1 All E.R. 819 at pp. 822 and 823;

Qualcast (Wolverhampton) Ltd. v. *Haynes* [1959] 2 All E.R. 38 at pp. 44 and 45;

Caswell v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152 at pp. 177–178;

Lee v. *Nursery Furnishings Ltd.* [1945] 1 All E.R. 387;

Schwalb v. *Fass (H.) & Son Ltd.* [1946] 175 L.T. 345.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 31st May, 1978 (Action No. 5333/74) whereby his claim for damages for personal injuries sustained in the course of his employment as a result of the negligence and/or breach of statutory duty by the defendants was dismissed.

A. Eftychiou, for the appellant.

P. Ioannides, for the respondents.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court. This is an appeal from the judgment of the Full Court of Nicosia by which the claim of the appellant for damages for personal injuries received in the course of his employment as a result of the alleged negligence and/or breach of statutory duty by the respondents or their agents, was dismissed with no order as to costs.

The facts as found by the trial Court, and which we may say from the outset, that they were duly warranted by the evidence before it, and that we are not prepared to interfere with them are these: The appellant who was at the time of the accident 25 years of age, a skilled metal worker, plumber and welder, was an employee of the respondents, which is a construction company erecting at the material time pavilions at the new site of the Cyprus State Fair.

On the 9th July 1974, the appellant together with a group of other workers were pushing a metal scaffold from one pavilion to another over an unasphalted road within the State Fair. Whilst doing so the scaffold came into contact with overhead

live electric lines, conducting high pressure current running across the road, in consequence of which he received injuries by electrocution.

The clearance of these lines from the ground was reduced from 20 ft, which it ought to have been to 17 ft. 8 inches, as the road level had been raised by additional soil placed by the respondents. In that way the scaffold in question which had a height of 18 ft. 5 inches could not pass freely and safely in an upright position underneath these lines, but a sufficient number of persons could carry it on their hands sideways instead of pushing it on its wheel on an upright position, its weight being 300 kilogrammes. This scaffold was at first within one of the pavilions and it was taken out by means of a crane and after instructions given by the foreman it was placed at its side or at an angle on the ground. The pavilion to which it was to be moved was at a distance of about a hundred meters away and there were two routes leading to it. A short one and another much longer. It is the latter that was used by the workers at the time. Over the short route there was a low electric line which impeded the scaffold underneath it in an upright position, a fact known to the appellant and the other workers as well as the foreman.

The main disputed facts related to the instructions that were claimed to have been given by the foreman and to the question whether the electric live wire which came into contact with the scaffold was visible to the workers or in general.

The trial Court after examining the various versions and the evidence adduced by the two sides in support thereof, made the following findings. "The striking aspects in determining the crucial disputed issues are: First, the manner in which the scaffold was laid on the ground by the crane operator, secondly, the existence of two routes, the one by far longer than the other and the use of the longer one, and thirdly, the number of persons assigned to this operation.

It is a fact beyond dispute that the foreman gave instructions to the crane operator for the taking of the scaffold outside the pavilion and for its lying down on the ground in a position other than upright. D.W.4 said that before the scaffold was taken out of the pavilion, the platforms of it were removed by

himself assisted by another worker, obviously to make it either lighter or more convenient for its lifting-up and its placing horizontally on the ground in readiness to be carried away in this manner. There is a dispute as to whether the scaffold was being placed completely at one of its sides or at an inclined position, part of it resting on a heap of soil and part of it on two of its four wheels. In our opinion, this is not a matter of great significance; it is a matter consistent with the execution of the instructions there being no real dispute as to the actual instructions given in this particular respect which, to use the plaintiff's own words when referring to the instructions, were: "Take the scaffold outside the pavilion and ρίξε τους την χαμαί." So the instructions, as far as this aspect of the case is concerned, were to place the scaffold down on the ground sideways irrespective of whether it was not actually placed completely flat on its side. The scaffold had wheels and if it was to be removed to another place by making use of them, one starts immediately wondering why was it made lighter in the first place by the removal of the platforms and secondly, why was it placed upon express instructions to this effect in a manner clearly inconsistent with wheel ambulation and definitely involving extra effort and problems on the part of the workers to put it upright. The placing of the scaffold sideways is more consistent with its removal by lifting it up clear off the ground in a sideways manner rather than rolling it on its wheels, and this to our mind is the most probable explanation that may be attributed to this part of the instructions.

The next striking aspect is the use of the long instead of the short route. It is in evidence that the intended destination of the scaffold was another pavilion, some 60-100 meters away from the one where it originally was. However, the scaffold could not be taken there in an upright position as there was an overhead low wire about 10' ft off the ground. In spi: of that, the plaintiff and the other members of the group, attempted to use the short route by push-rolling the scaffold until they came accross the low wire whereupon they changed course and followed the long route. Of course, if no instructions were given about the route to be followed and the matter was left to the discretion of the workers, it is not surprising that they had chosen the short route and it is even to their credit that they turned back on noticing the low wire; but the matter is

not as easy as that. The plaintiff did not say that no instructions were given as to the route but went further and added, during the course of his evidence, obviously with a view to lending support to his version, that the instructions given by the foreman were express to use the longer route. This, of course, can only have one meaning which is none other than a flagrant disobedience to the original instructions alleged by the plaintiff himself to have been given to him, irrespective of whether they were practically executable or not. The foreman said that his instructions were to use the short route and if he also directed the workers to carry the scaffold on their hands, then not only it was more convenient to use the short route but also practically possible and safe provided the scaffold was to be carried sideways and provided further that the weight of the scaffold was within the cumulative weight-lifting capabilities of the six workers assigned to this job.

The next question is why six persons were assigned to the operation. At first sight, it appears to us an unnecessary large number of persons for push-rolling a scaffold the weight of which was not more than 300 kilos. P.W.1, the official of the Ministry of Labour and the investigator of this accident, said that the average weight-lifting capability of a person is 55 kilos which made the lifting and the carrying of the scaffold well within the cumulative lifting capabilities of six persons. It was said on behalf of the plaintiff that at least two of the persons involved in the operation were teenagers and could not be considered as average persons. On the other hand, it is in evidence that the so-called teenagers, despite their age, were well built and in our opinion a well built and fully developed adolescent is as far as his endurance, weight-lifting capabilities and potentials are concerned, in an equal, if not in a better position than an older person. Also, still on the aspect of the weight of the scaffold, we have the evidence of the plaintiff himself who said that they had no problems in putting the scaffold in an upright position and that three persons could easily have done so. He went on to say that the scaffold was too heavy for two persons to push-roll but four or five could do so comfortably. He did not allege that two persons could not perform this operation but only said that it would have been too tiring for them to push-roll the scaffold. It is clear from the above, that the number of workers assigned to this

operation is more consistent with the carrying of the scaffold by hand rather than by push-rolling it.

The trial Court then went on to make these further findings:-

"Our findings as to the nature of the instructions given are that the foreman, D.W.4, told the plaintiff who was the senior employee for this particular operation, to remove the scaffold by carrying it horizontally, using the short route and that for this purpose he assigned five other employees to assist him and also told him that if more men were needed he could have asked the chief foreman for them. For facilitating matters for this particular mode of transportation, the platforms of the scaffold were removed and the scaffold itself was placed outside the pavilion sideways in readiness to be lifted up and be carried by the workers on their hands. The number of persons assigned for this job was sufficient for the carrying of the scaffold sideways. We also find that the plaintiff was warned at least about the low overhead wire running across the short route and we have no doubt that the instructions for the carrying on hands of the scaffold was to avoid the said low wire. It may be that the plaintiff and the other workers were not warned about the wire the scaffold eventually touched, but this is of no consequence since the instructions were to use the short and not the long route. The plaintiff, together with his assistant, did use at first the indicated route which obviously was more convenient than using the other one. However, they did not follow the instructions of carrying the scaffold in a horizontal position, and in the upright position they were pushing it, it was obvious that it could not pass underneath the encountered low wire. So they turned back to use the much longer route still push-rolling the scaffold. According to the evidence, they were push-rolling the scaffold until they reached the overhead line. Of course, none of the persons involved in the operation said that the reason they stopped near the wire was because they noticed it and therefore, we can only infer that the reason they stopped was to have a rest. We said that the place where they stopped was near an overhead electric line for the simple reason that the scaffold was being pushed only for a few meters (according to the plaintiff) and perhaps a much

shorter distance (according to P.W.2) when the electricity was conducted to the scaffold with the known tragic results".

The thorough way with which the trial Court examined the evidence as above set out, makes unjustified any complaint about its findings of fact, that is why we said from the outset we are not prepared to interfere with them and on these facts we turn now to the law applicable. The employer's duties towards his employees are manifold but in so far as relevant to the present case they are that he must take reasonable care to establish and enforce a proper system or method of work, to provide competent staff of men, suitable machinery, adequate supervision and safe premises for work. All these constitute a general duty of an employer towards his servants to take reasonable care for his servants' safety in all the circumstances of the case. Needless to say that the question of suitable machinery and safe premises of work do not arise in this case. It is with regard to the duty to establish and enforce a proper system or method of work that we are concerned in this case. In that respect we would like to quote from *Clerk & Lindsell on Torts*, 14th Ed., para. 970, where one finds a comprehensive and concise statement of the law as emanating from the various authorities referred to therein. It reads as follows:

"A system of work is a term usually applied to work of a regular and more or less uniform kind such as is found on a railway or a mine or a factory. In this connection it means the organisation of the work, the procedure to be followed in laying it out, the sequence of the work, the taking of safety precautions and the stage at which they are to be taken, the number of men to be employed and the part to be taken by them and the provision of the necessary supervision. It can, however, be applied to a single operation. A master is under a duty to prescribe a system of work when it is necessary in the interests of safety whether the operation is a regular one or whether it is a single one. Where 'the mode of operation if complicated or highly dangerous or prolonged or involves a number of men performing difficult functions' or where it is 'of complicated or unusual character' a system should be prescribed; but this is not necessary 'in every case where a group of servants are doing the same work which may involve danger if negligently performed'. It is a question

of fact whether a system should be prescribed and in deciding this question regard must be had to the nature of the operation whether it is one which requires proper organisation and supervision in the interests of safety or whether it is one which a reasonable, prudent master would probably think could safely be left to the man on the spot. If a danger is known to exist merely on issuing orders not to do certain things may be insufficient to relieving from liability and it is certainly no defence that most other employers allow a similar method of working or that no injury has occurred for a long time".

In our case the accident occurred in the course of execution of a special operation, that is to say, the removal of a scaffold from one place of work where the ordinary routine work was performed to another such place of work. It was unassociated with the normal duties and skills of the workers involved. It was neither difficult nor dangerous as such if performed in accordance with the instructions given by the foreman which instructions were correct and practically possible. It did not call for any further supervision and no special safety precautions had to be taken other than carrying the scaffold in a horizontal position. The presence of the live wires over the road was obvious and there was no question of any measures being taken to protect whilst passing under them.

Before proceeding any further we wish to quote also the passage from the judgment of Lord Oaksey in the case of *Winter* v. *Cardiff R.D.C.* [1950] 1 All E.R., p. 819—quoted also by the trial Court—with regard to the question of the safe system of work, where at pp. 822 and 823 he had this to say:

"In my opinion, the common law duty of an employer of labour is to act reasonably in all the circumstances. One of these 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 precautions 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 foreman and workman

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 difficult functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, when 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 workman on the spot".

On the aforesaid pronouncements and on the facts of the case, we agree with the trial Court that the respondents employers had discharged their duty as masters to take reasonable care for the safety of their workmen. The method with which the scaffold had to be carried was reasonable and comprehensible and the plaintiff himself was the senior employee of those involved in the operation and to whom the instructions of the foreman had been given. A sufficient number of persons was assigned to the job which was not dangerous if carried horizontally in accordance with the instructions and this is not a question of law at all, but a question of fact and as Lord Denning put it in the case of *Qualcast (Wolverhampton) Ltd.* v. *Haynes* [1959] 2 All E.R., p. 38, at pp. 44 and 45:

" What did reasonable care demand of the employers in this particular case? That is not a question of law at all but a question of fact. To solve it, the tribunal of fact—be it judge or jury—can take into account any proposition of good sense that is relevant in the circumstances, but it must beware not to treat it as a proposition of law. I may perhaps draw an analogy from the Highway Code. It contains many propositions of good sense which may be taken into account in considering whether reasonable care has been taken, but it would be a mistake to elevate them into propositions of law".

The trial Court further examined, of course, in relation to this issue the question whether the foreman ought to have stayed there in order to make certain that his instructions were executed strictly and to supervise the whole operation and it came to the conclusion that the respondents have not failed through their foreman in the discharge of their duties towards their employee

inasmuch as the appellant himself not only he was one of the senior employees involved in the operation but also was related to the foreman, a fact from which it might safely be inferred that the foreman had good grounds outside the professional field for trusting the judgment and reliability of the appellant. Moreover, the foreman had seen to the carrying out of the preparatory work and having given good, sound, workable and reasonable instructions to a competent senior employee for a job quite simple in nature and quite safe in execution, provided, of course, the instructions given were followed and very rightly the trial Court found that further supervision by him was unnecessary and that what the appellant and the other labourers in that group did, could not be foreseeable by any reasonable person.

The question of supervision comes within the duties of an employer towards his employees. As stated in *Halsbury's Laws of England*, 3rd Ed., Vol. 25, para. 980, p. 513:

> "Since it is the duty of the master to take reasonable care not to expose his servants to any unnecessary risk, he may be under an obligation to provide effective supervision to ensure that reasonable safety precautions are carried out. Where, therefore, there is an obvious risk of injury unless a preventive safety device is used by the servant, the master's duty extends not only to providing the device but also to taking reasonable measures to see that his workmen use it".

The question of supervision varies, of course, according to the amount of risk involved in a particular work so that where the risk is great, the employer's duty is not only to provide safety devices but also to make certain that his servants use them. In the circumstances of this case the supervision offered was, as rightly found by the trial Court, more than adequate.

The next issue that has to be examined is that of the breach of statutory duty. In this respect an Inspector of Factories who had inspected the locus in quo and examined the circumstances of this accident, referred to several methods in the removal of high structures and objects under live cables, such as the placing of wooden bars preventing accidental contact with the wires. The trial Court found that these methods were not applicable in the present case as the instructions given

were not for the removal of the scaffold in an upright position but horizontally which rendered unnecessary the use of wooden bars for preventing any contact with the live wires in any way. The regulations relevant to the facts of this case are the Building and Works of Engineering Construction (Safety, Health and Welfare) Regulations of 1973. Although the appellant alleged a number of breaches of statutory duties created by several regulations, they were all dismissed as irrelevant by the trial Court and examined at some length regulation No. 109 which reads as follows:

"109(1) Πρὸ τῆς ἐνάρξεως ἐργασιῶν εἰς τὰς ὁποίας ἐφαρμόζονται οἱ παρόντες Κανονισμοί, ὡς ἐπίσης καὶ κατὰ τὴν διάρκειαν τούτων, δέον ὅπως λαμβάνωνται ὅλα τὰ δυνατὰ μέτρα πρὸς ἀποφυγὴν κινδύνου δι' ἀπασχολούμενα πρόσωπα ἐξ οἱουδήποτε ἠλεκτροφόρου ἠλεκτρικοῦ καλωδίου ἢ ἠλεκτρικῆς συσκευῆς ἥτις ἐνδέχεται νὰ ἀποτελέσῃ αἰτίαν τοιούτου κινδύνου εἴτε διὰ τῆς ἀποσυνδέσεως ἢ ἠλεκτρικῆς ἀπονεκρώσεως τοῦ τοιούτου καλωδίου ἢ συσκευῆς ἢ ἄλλως πως.

(2) Εἰς περίπτωσιν καθ' ἣν ἠλεκτρικῶς πεφορτισμένον ἐναέριον καλώδιον ἢ συσκευὴ δυνατὸν νὰ ἀποτελέσῃ αἰτίαν κινδύνου δι' ἀπασχολούμενα πρόσωπα κατὰ τὴν διάρκειαν οἱωνδήποτε ἐργασιῶν εἰς τὰς ὁποίας ἐφαρμόζονται οἱ παρόντες Κανονισμοί, εἴτε ἕνεκεν τῆς λειτουργίας ἀνυψωτικῆς συσκευῆς ἢ ἄλλως πως, δέον ὅπως λαμβάνωνται ὅλαι αἱ δυναταὶ προφυλάξεις διὰ παρεμπόδισιν τοῦ τοιούτου κινδύνου εἴτε διὰ τῆς παροχῆς ἐπαρκῶν καὶ καταλλήλως τοποθετημένων περιφράξεων εἴτε ἄλλως πως.

(3) Ἀνεξαρτήτως τῆς γενικότητος τῶν προηγουμένων προνοιῶν ἐὰν εἰς ἀπόστασιν τοὐλάχιστον 2.00 μέτρων (6 ποδῶν καὶ 6 ἰντζῶν) ἐκ τοῦ δαπέδου ἐργασίας πρὸς ἁπάσας τὰς κατευθύνσεις ἢ 2.60 μέτρων (8 ποδῶν καὶ 6 ἰντζῶν) ὑπεράνω ἐκτελουμένης ἐργασίας διέρχωνται οἱαδήποτε ἠλεκτροφόρα καλώδια ἢ σύρματα τοῦ ἠλεκτρικοῦ δικτύου, δέον ὅπως κατασκευάζηται ξύλινος φραγμὸς καὶ τοποθετῆται ἔμπροσθεν τῶν καλωδίων ἢ συρμάτων εἰς τὴν κατεύθυνσιν τοῦ τόπου ἐργασίας πρὸς παρεμπόδισιν τυχαίας ἐπαφῆς τούτων μετὰ τῶν ἀπασχολουμένων προσώπων".

The English translation of which, taken from the Building and Works of Engineering Construction (Safety, Health and

Welfare) Regulations, 1974, regulation 108 thereof, published in Supplement No. 3 to the Sovereign Base Area Gazette No. 390 of the 14th September, 1974, is as follows—with the exception that the word "ἐργασίαι" is rendered as "operations or works" in this translation:

"108(1) Before any operations or works to which these Regulations apply are commenced, and also during the progress thereof, all practicable steps shall be taken to prevent danger to persons employed from any live electric cable or apparatus which is liable to be a source of such danger, either by rendering such cable or apparatus electrically dead or otherwise.

(2) Where any electrically charged overhead cable or apparatus is liable to be a source of danger to persons employed during the course of any operations or works to which these Regulations apply, whether from the operation of a lifting appliance or otherwise, all practicable precautions shall be taken to prevent such danger either by the provision of adequate and suitably placed barriers or otherwise.

(3) Notwithstanding the generality of the foregoing provisions, if at a distance of at least 2 meters (6 feet and 6 inches) and in all directions from the floor or 2.60 meters (8 1/2 feet) above the work being carried out there pass any live cables or wires of the electricity network there shall be constructed a wooden barrier in front of the cables or wires in the direction of the working place, to prevent accidental contact of them with the employed persons".

The trial Court concluded that the respondent Company by effecting the preparatory work for the removal of the scaffold horizontally, by the giving of express and clear instructions to this effect to a competent, trustworthy and sensible employee and by the assignment of the right number of persons for the due execution of these instructions, took all possible measures for avoiding any danger from live overhead lines and therefore there was no breach of the aforesaid regulation.

Under the aforesaid regulation what is demanded of an employer is to take all practical precautions to prevent persons

employed from coming into contact with electrically charged overhead cables and this is clearly what the respondents did.

In actions for breach of statutory duty whether such duty is created by law or by Regulations made under powers conferred by a law, liability is distinct from liability for negligence, that is to say, the breach of the common law duty of care (per Lord Wright, *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152, at pp. 177–178). And as stated in The Modern Law of Employment by G. H. L. Fridman, 1963 Ed., pp. 517–518:

> " Indeed, depending upon the kind of statutory duty that is involved and the way it is formulated, there may be a breach of such a duty without any negligence at all. For statutory duties are frequently phrased in terms which create absolute obligations, not dependent for their observation upon the taking of reasonable care. In such circumstances the breach of the statutory provision or the regulation in question is itself sufficient to impose liability in appropriate cases, i.e. those in which breach of the duty can give rise to civil liability. It is sometimes said that the breach of the statutory duty or regulation is itself proof of negligence. But that may only be correct where the duty is phrased in such terms as to show that it is an absolute one. Where a statutory provision requires the taking of certain measures if it is practicable or reasonably practicable for them to be taken, it is clear that the duty is not absolute but qualified; and it may be in such cases that the failure to take the measures or precautions in question will only be wrongful, and so give rise to liability, if that failure was unreasonable in the circumstances, i.e., if there was a negligent failure to perform the duty. Much may depend upon whether the statute uses the expression 'practicable' or the expression 'reasonably practicable'. For in the latter instance the test of whether the duty has been fulfilled may depend upon the standards of the reasonable man; in the former the qualification has less scope and effect. Whether the duty is or is not qualified, liability for breach of statutory duty at least resembles liability for negligence, e.g., in relation to causation, contributory negligence by the employee, etc.".

In our case the duty imposed by the aforesaid regulation and in particular sub-paragraph 2 thereof is to take all practicable precautions to prevent such danger. "Practicable" has been defined as meaning that it is feasible, that it can be done; and in the case of *Lee* v. *Nursery Furnishings Ltd.* [1945] 1 All E.R. 387, Lord Goddard referred to the Oxford dictionary as to the meaning of the word "practicable" as being "capable of being carried out in action" or "feasible", and Hallett, J., said in *Schwalb* v. *Fass (H.) & Son Ltd.* [1946] 175 L.T. 345:

> "Clearly, the fact that the use of the appliances would slow up production does not render their use impracticable; and I have no right to substitute for the word 'impracticable' expressions such as 'difficult', 'not too easy' or 'inconvenient' or any other word".

Regulation 109 by its very wording leaves room for the measures to be taken by the employer to be other than the provision of adequate and suitable placed barriers and such measures were in the circumstances adequately taken as found by the trial Court and we see no reason to interfere with its conclusion that there has been no breach of the aforesaid regulation. All practicable precautions were taken to prevent any danger for using the road and passing the scaffold in question underneath these overhead live electric cables. By itself the overhead wires could not have been a source of danger if the prescribed manner was used by the appellant himself. His injuries were only sustained because the appellant himself acted in complete disregard of his own safety, the respondents having done what they ought to have done in the circumstances to carry out any duty, if at all, that was cast on them under the aforesaid regulation but they have failed by reason of the appellant's conduct and nothing else. It was appellant himself no doubt that caused the breach.

For all the above reasons this appeal is dismissed with costs.

Appeal dismissed with costs.