1982 February 5

[A. LOIZOU, J.]

LAMBROS LAZAROU,

Plaintiff,

v.

1. S. CH. IEROPOULOS & CO. LTD.,
2. MASTERS SHIPPING CO. LTD.,

Defendants.

(*Admiralty Action No.* 141/78).

Negligence—Invitee—Duty of occupier—Unusual danger—Unloading of ship—Injury to porter through collapse of insecurely placed hatch-covers—Liability of occupier.

Negligence—Master and servant—Duty of master to take reasonable care for the safety of his men exists throughout the course of their employment and does not come to an end when they are working at premises not belonging to the employer—Loading of ship—Stevedore's labourer injured through collapse of insecurely placed hatch-covers—Apparent indication that hatch-covers defective—Duty of stevedore-employer to take reasonable measures for the protection of his men.

Negligence—Apportionment of liability—Unloading of ship—Stevedore's labourer injured through collapse of insecurely placed hatch-covers—Negligence of stevedore-employer and ship owner—Apportionment of liability, 20% on employer and 80% on ship-owner.

Damages—General damages—Personal injuries—Thirty-three years' old porter sustaining severe craniocerebral injury with brain damage—Unconscious for six days—Brain damage resulting in spastic left hemiparesis and some personality and speech changes —Resumed his previous work after 4 $^1/_2$ months—Decreased libido—Non-enjoyment of certain sports—Dizziness, irritability, easy fatigue, lack of concentration and anxiety—Award of £2,000.–

Damages—Special damages—Loss of earnings—Assessment on basis of net earnings lost after decuction of income tax.

The plaintiff was one of three porters, in the employment of defendants 1, who was engaged on the quay in the loading of lorries on the ship "Ayia Sophia" which belonged to defendants 2. Whilst working on the quay he was asked by his foreman to go on board the ship to start the stalled engine of one of the lorries. When on board the ship he stepped on the wooden hatch-covers, a plank gave way and he fell into the hold of the ship and was injured.

The same plank had, also, given way before the accident when the Chief Officer of the ship stepped thereon and he was saved from falling by the foreman of defendants 1. This foreman then asked the Chief Officer of the ship to fix the planks so that there would be no similar occurrence in respect of other persons stepping thereon and the Chief Officer gave orders to the sailors to fix them. The sailors then came along and did so and some persons walked over them thereafter until the plank moved from position and the plaintiff fell into the hold.

As a result of the accident the plaintiff, who at the time of the accident was 33 years of age and married with two children sustained a severe craniocerebral injury with brain damage and remained unconscious for six days. The brain damage resulted in a spastic left hemiparesis and some personality and speech changes. He resumed his previous work $4\,^1/_2$ months after the accident but he was having difficulties in his overall performance. He was complaining of episodes of headaches which were sometimes associated with dizziness, easy fatigue, lack of concentration and anxiety. His wife stated that her husband's sexual performance was very much reduced. He was driving a car although he has had two accidents. The possibility of his developing post-traumatic epilepsy was negligible. Since the accident he has been irritable and unable to control himself when losing his temper. He was a good swimmer and used to play football before the accident, but since then he stopped playing football and he did not swim beyond the depth of the sea where he could stand. In an action for damages against defendants 1, his employers, and defendants 2, the ship-owners, defendants 1 contended (a) That the hatch-covers through which the plaintiff fell and injured himself formed part of the premises of a party other than themselves, namely defendants 2, as against whom he was an invitee once he came on

board to start the stalled engine and the accident occurred when he stepped on the wooden hatch-covers which for some reason parted and he fell through them. (b) That the foreman of defendants 1, on noticing the incident whereby the Chief Officer fell through the same hatch-covers, acted as a prudent supervisor of the stevedores and porters and did what was proper for him to do in the circumstances, that is to say, he asked the persons who had the control of the ship and who had the right to do so, to put the matter right; (c) That it was not negligence on the part of anyone working on a ship to rely upon the owner or master or Officer in Charge of such ship who has to see that his premises are safe.

Held, (1) that the question whether an employer has negligently failed to perform his duty to take reasonable care for the safety of his men depends on the circumstances of each case; that this duty exists throughout the course of their employment and it does not come to an end because the workmen are sent to work at premises which do not belong to the employer; that stevedores are in general entitled to rely upon the ship-owners for safety, subject of course to the situation where if there are apparent indications which such stevedore-employer observes or ought to observe that the structure is defective, he owes a duty to take reasonable measures for the protection of his men; that once there were apparent indications which they observed, that the structure was defective, they did not discharge the duty they owed by taking reasonable care for the protection of the plaintiff; that, therefore, defendants 1 were liable in damages to the plaintiff as they were negligent through the failure of their foreman to see that the hatch-covers were properly taken care of by the sailors after they gave way and the Chief Officer fell through them.

Held, further, that the foreman could not be held to have discharged his duty towards the plaintiff by merely asking the ship-owner's sailors to put the hatch-covers right without inspecting them thereafter and making sure that they were indeed put right and safe for the employees to step on them.

(2) That defendants 2, the ship-owners, as occupiers are liable in damages to the plaintiff as an invitee on the ground that the insecure placing of the hatch-covers created an unusual danger for the plaintiff, the risk of which he could not appreciate and

the proper inference in the circumstances is that their collapse was created by the agents or servants of the occupiers and that was a danger of which they knew.

(3) That considering the circumstances of this case liability between the two defendants will be apportioned as being 20% on defendants 1, the employers, and 80% on defendants 2, the ship-owners, there having been served on defendants 2 by defendants 1 a third party notice under section 64 of the Civil Wrongs Law, Cap. 148 (see *Smith* v. *Austin Lifts Ltd., and Others* [1959] 1 All E.R. 81).

(4) That the pain and suffering, the loss of amenities of life are a loss of a good thing in itself; that the resulting permanent incapacity of the plaintiff, under which heading there is included his decreased libido, the non enjoyment of certain sports and his irritability, and the possibility of future loss of earnings, though this latter item appears from the circumstances to be negligible, have to be made good by a sum of money which should be regarded as giving reasonable compensation, and can be assessed as a lump sum once and for all, both for the loss that has accrued before the trial and for any prospective losses; in the circumstances of this case a global sum of £2,000.- will be a fair and reasonable amount to be awarded to the plaintiff as general damages.

(5) That in assessing general damages the incident of income tax has been taken into consideration but with regard to the special damages which have to be the net earnings lost after deduction of tax, this is not an easy task to decide by merely taking judicial notice of the tax payable in respect of a given income at the material time, particularly so in view of the meagre material before this Court, which renders its task as a tax assessor a very speculative one; and that, therefore, effect will be given to this legal position by deducting from the agreed sum of the total emoluments of £1,340.- the roughly estimated amount of £100.- and so the total figure for special damages in this case will be £1,390.- after adding the amount of £150 for medical expenses.

Judgment for plaintiff against both defendants for £3,390.-

Cases referred to:

Rose v. *Ford* [1937] 3 All E.R. 359 at p. 379;

British Transport Commission v. *Gourley* [1955] 3 All E.R. 796;
Coppin v. *Butlers Wharf Ltd.* [1952] 2 Lloyds Rep. 307;
Thomson v. *Cremin & Others* [1953] 2 All E.R. 1185;
General Cleaning Contractors Ltd. v. *Christmas* [1952] 2 All E.R. 1110;
M'Quilter v. *Goulandris Bros Ltd.* 1951 SLT (Notes 75);
Smith v. *Austin Lifts Ltd. and Others* [1959] 1 All E.R. 81.

Admiralty Action.

Admiralty action for special and general damages in respect of injuries sustained by the plaintiff as a result of an accident in the course of his employment with the defendants on board the ship "Ayia Sophia".

P. Pavlou, for the plaintiff.

St. McBride, for defendants 1.

No appearance for defendants 2.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The plaintiff's claim in these proceedings is for special and general damages for the personal injuries and the damage he suffered as a result of an accident which happened whilst he was in the service of defendants 1 on or about the 15th September, 1976, on board the ship "AYIA SOPHIA" then lying in the port of Limassol and belonging to defendants 2, and which accident is alleged to have been caused by the negligence and/or breach of the statutory duties of both defendants and/or either of them and/or their servants and agents and/or by the breach of the contract of his employment with defendants 1.

The facts of the case as related by Demetris Phylactou (P.W.2) with regard to the cause of the accident have been accepted as correct by a statement made to that effect by counsel for defendants 1 and which rendered the hearing of further evidence on these issues unnecessary.

The plaintiff was one of three porters engaged on the quay with the loading of lorries and other machinery on the aforesaid ship. The lorries were brought to the quay, their engines were started and it was part of the duties of the plaintiff to drive them in a position below the winch, to tie them with hooks so that they would be lifted by the winches of the ship and be

lowered into the hold. Their engines were kept running and it has been explained that the reason for that was that when the lorries were lowered into the hold they would be driven into the appropriate position and then tied up by the sailors of the ship. When one of the lorries was lowered into the hold its engine stopped, and the foreman Andreas Pratsis (P.W.4) who was with seven stevedores on board the said ship, asked that the master key with which they were starting the engines, should be sent up from the quay, which was done; but as the stevedores could not start the engine of the lorry in question, Pratsis asked that one of the quay porters went on board the ship and started the engine himself. In compliance with these instructions the plaintiff went on board and proceeded towards the hold. He stepped on a hatch cover, a plank gave way and he fell into the second hold and suffered the injuries to which I shall refer later in this judgment when dealing with the question of damages. This plank was in such a position in relation to the direction that the plaintiff was to proceed that he had to step on it in order to pass and go near the stevedores where he had been summoned by Pratsis to go.

Before this incident, the Chief Officer of the ship stepped on the same plank which gave way and he was saved from falling into the hold by his being timely grasped by Pratsis. Pratsis then asked the Chief Officer to fix the planks so that there would be no similar occurrence in respect of other persons stepping thereon and the Chief Officer gave orders to the sailors to fix them. The sailors then came along and did so and some persons walked over them thereafter until the plank moved from position and the plaintiff fell into the hold.

It may be mentioned here that the stevedores in the hold and the quay porters, as well as Andreas Pratsis, the foreman, were all employed by defendants 1. Both groups of labourers were under the direction and orders of this foreman as they were all employed by the same employer.

On this point reference may be made to the circumstances of the employment of all these labourers. According to Eraclis Nicolaides (P.W.1), Officer in charge for the Port Workers Branch at the Labour Office at the Port of Limassol, defendants

1 applied for the allocation of serven stevedores, three quay porters and a foreman to them for loading cargo on the ship "AYIA SOPHIA".

The employment of port workers is regulated by the Port Workers (Regulation of Employment) Law, Cap. 184, as amended, and the Regulations made under section 5 thereof, which are to be found in a Schedule to the said law. (For the amendments thereof and the orders made thereunder see Index to the Subsidiary Legislation of the Republic of Cyprus, prepared by the Revision and Consolidation of the Cyprus Legislation Service 1977, page 276). Under these provisions an employer who places a request for the allocation to him of port workers must take whoever is given to him by the Labour Office as stevedores and porters are allocated by a rotation system and there is no choice for the applicant. In respect of the foreman, however, the employer can choose one from List 'A' of stevedores as it has been in this case the choice of Andreas Pratsis by defendants 1 who have been selecting him for employment with them since 1966.

Under regulation 12:

"If a port worker contravenes or fails to comply with any provisions of these Regulations or misconducts himself in the course of or in connection with his work then, without prejudice to any other liability he may incur under these Regulations or any other Law, the Board may-

(a) warn him; or

(b) suspend him from work for a period not exceeding three months and suspend his registration card accordingly; or

(c) give him fifteen days notice of cancellation of registration; or

(d) cancel his registration and registration card forthwith".

I do not intend to enter into an analysis of the circumstances under which a port worker so engaged can be dismissed, but as stated by this witness, a foreman may dismiss such a worker following a notice given to him and there exists a Disciplinary

Committee which is composed of trade union representatives and representatives of the employers under the Chairmanship of the Port Master which hears complaints from employers and adjudicates upon them.

This statutory regulation, however, of the employment of port workers does not, in my view, take away the relationship in law of master and servant between employer and employee. And this is also apparent from regulation 12 hereinabove set out, whereby the sanctions provided in respect of misconduct by a port worker in the course of or in connection with his work is without prejudice to any other liability incurred under those regulations or any other law. The whole philosophy of the aforesaid law and the regulations being to regulate employment for the purposes set out in section 3 of the law and not to change the relationship of master and servant between employers and port workers.

The plaintiff, according to the Labour Office records, resumed work on the 29th January, 1977, this time as stevedore in List 'A' which carries greater remuneration than the post he held before the accident. Although at first he could not fully carry out his work as a stevedore, yet his remuneration was full, he was paid as such as his colleagues helped him along.

The facts relevant to the issue of damages and the injuries received by the plaintiff as well as the treatment received and his final condition given by a number of witnesses and from the medical reports which have been produced with the consent of the parties as exhibits 1, 2 and 3 are as follows:-

The plaintiff, was at the time of the accident 33 years of age, married with two children, the eldest now being 15 and the youngest 11 years of age. The injuries he sustained, the treatment he received and his condition as on the 21st September 1977, (almost a year after the accident) are set out in the report, exhibit 1, of Dr. Christodoulides, at the Neurogical Department at the Nicosia General Hospital. It reads as follows:

> "This man was admitted to Limassol Hospital in the morning of 15.9.1976 being unconscious following a fall from height while at work; as his condition deteriorated he was transferred to the Neurosurgical Ward of Nicosia General Hospital on 17.9.1976.

On admission to Nicosia General Hospital Mr. Lazarou was unconscious and restless, respording to pain by localising with his right hand, he had a large haematoma on his left frontotemporal region, a left black eye, scratches and bruises over his right arm, a left sided hemiparesis and a positive babinski sign bilaterally.

An echoencephalogram which was performed showed evidence of a right sided lesion and a right carotid angiography carried out as an emergency showed evidence of cerebral oedema so that no surgical intervention was needed and the patient was treated conservatively.

Mr. Lazarou regained consciousness on 20.9.1976 but was restless, drowzy, confused and disorientated in time and place being incontinent of urine.

His condition improved gradually so that on 24.9.1976 although confused at times he was able to carry out a reasonable conversation and he was transferred back to Limassol Hospital on the same day.

Since his discharge from Limassol Hospital Mr. Lazarou was followed up as an out-patient in the Neurosurgical department of Nicosia General Hospital being complaining of episodes of headaches sometimes associated with dizziness, easy fatigue, lack of concentration and anxiety; personality changes were noted by his wife and friends; she also stated that her husband's sexual performance was very much reduced.

On his last visit in May, 1977 Mr. Lazarou's complaints were as above on an examination he still had minimal left sided hemiparesis; the changes of personality were obvious.

The electroencephalograms which were performed when Mr. Lazarou was an in-patient and also an outpatient were abnormal and showed that a degree of brain damage took place.

Conclusion: Mr. Lazarou sustained a severe head injury when he fell from height on 15.9.1976 and his life was at risk; his present complaints are due to brain con-

tusions for which the accident is entirely responsible and although expected to clear up will last for long.

Because of Mr. Lazarou's personality changes and the reduce in his sexual performance he must be examined and be under the care of a Psychiatrist; a Psychologist's opinion will be of great help.

In my opinion due to the cerebral contusions Mr. Lazarou is carrying 10% risk of post-traumatic epilepsy".

Dr. Messis after taking the history of the patient, upon examination, found that he was "overtalkative and grandiose with some scanning speech. There was also a mild left facial weakness and left spastic hemiparesis. A mild left hypalgesia was also present. The E.E.G. was mildly abnormal. His condition improved with treatment and time and when last seen on 17.3.1977 he was working, inspite of persisting mild spastic weakness on the left, the above mentioned speech and personality difficulties. Conclusion: This patient sustained a severe craniocerebral trauma with brain damage that resulted in a spastic left hemiparesis and some personality and speech changes. Little further improvement is expected. There is still 5–7 per cent chance of developing post traumatic epilepsy". (Exhibit 2.)

The last report of Dr. Messis, exhibit 3, dated the 6th December 1980, describes the condition of the plaintiff as follows:

"The above named was examined by me two more times since my last report. The last one on 3.11.1980.

His condition has shown some improvement and he now reports driving a car although he has had two accidents. He also continues to work at the port although apparently he has been having difficulties in his overall performance.

He continues to have problems in his relations with other people fighting and being argumentative. This happens both at work and at home.

His neurological condition is unchanged and he keeps complaining of decreased libido, forgetfulness and disorientation."

Dr. Messis gave evidence and confirmed his aforesaid findings and conclusions on oath under cross-examination. With regard to the question of epilepsy he said that anyone who sustains a blow or damage to the head and has as a result an injury to the brain must be medically considered as susceptible to epilepsy in some future date. But the possibility of the plaintiff developing post-traumatic epilepsy now or in the future is negligible. He was being described as being, now since the accident irritable and unable to control himself when he loses his temper, and that he was also a good swimmer and that he used to play football before the accident, but since then he stopped playing football and he does not swim beyond the depth of the sea where he can stand.

The opinions of the two doctors, as hereinabove set out supplement each other and give a complete picture of the condition of the plaintiff from the moment he was injured to the present date. The pain and suffering, the loss of amenities of life, which as expressed in the speech of Lord Roche in *Rose* v. *Ford* [1937] 3 All E.R. 359 at 379 are "..... a loss of a good thing in itself". The resulting permanent incapacity of the plaintiff, under which heading I include his decreased libido, the nonenjoyment of certain sports and his irritability, and the possibility of future loss of earnings, though this latter item appears from the circumstances to be negligible, have to be made good by a sum of money which should be regarded as giving reasonable compensation, can be assessed as a lump sum once and for all, both for the loss that has accrued before the trial and for any prospective losses.

In the circumstances of this case I have come to the conclusion that the global sum of £2,000.- will be a fair and reasonable amount to be awarded to the plaintiff as general damages. The special damages have been somehow agreed by the parties as follows:

(a) £150.- for medical expenses including hospital fees, medicines and travelling;

(b) loss of earnings for the period for which the plaintiff was out of work, that is four and a half months, but this is where I have to make a comment about it.

A statement was made by counsel for the plaintiff and accepted

by that of defendants 1, "that had the plaintiff worked for the period for which he claims to have been out of work on account of this accident, he would have received emoluments to the amount of £1,340.–." This agreed statement, however, does not simplify matters and cannot be held to be all that helpful to me inasmuch as counsel for defendants 1, has argued that income-tax that would have normally be paid on this amount should be deducted and that the incident of taxation has to be taken into account in assessing the general damages; he gave as an authority for this proposition the case of the *British Transport Commission* v. *Gourley* [1955] 3 All E.R. p. 796, which indeed has been consistently followed in Cyprus.

As far as the assessment of the general damages is concerned, no doubt this is one of the matters that have been taken into consideration, but with regard to the special damages which have to be the net earnings lost after deduction of tax, I do not think that this is an easy task to decide by merely taking judicial notice of the tax payable in respect of a given income at the material time, particularly so in view of the meagre material before me, which renders my task as a tax-assessor a very speculative one. I shall therefore give effect to this legal position by deducting from the agreed sum of total emoluments of £1,340.– the roughly estimated amount of £100.– and so the total figure for special damages in this case is £1,390.–. The total amount therefore, to which the plaintiff is entitled by way of special and general damages on a full liability basis is £3,390.–.

I turn now to the issue of liability.

It is the case for defendants 1 that the hatch-covers through which the plaintiff fell and injured himself formed part of the premises of a party other than themselves, namely defendants 2, as against whom he was an invitee once he came on board to start the stalled engine and the accident occurred when he stepped on the wooden hatch-covers which for some reason parted and he fell through them.

It was argued that the foreman of defendants 1 on noticing the incident whereby the Chief Officer fell through the same hatch-covers acted as a prudent supervisor of the stevedores and porters and did what was proper for him to do in the circum-

stances, that is to say, he asked the persons who had the control of the ship and who had the right to do so, to put the matter right, and for some time after that the hatch-covers were perfectly suitable and serviceable for the purpose they were placed there, and there was nothing in the evidence that prior to the accident defendants 1, were aware that the hatch-covers would give way once more. Moreover, the system of work employed on that day by defendants 1 was the ordinary one and there was nothing to suggest that defendants 1 were negligent by employing a system other than the ordinary one in the circumstances.

If anyone was to blame were defendants 2, the owners of the ship who had to provide safe premises and as an authority for this proposition I have been referred to the case of *Coppin* v. *Butlers Wharf Ltd.* [1952] 2 Lloyd's Rep. p. 307. In this case it was held with regard to a stevedore who was injured when his foot dropped into a hole in a ceiling—floor—concealed by straw, that there was no omission by defendants, his employers, to take any reasonable precautions, which they should reasonably be expected to take in the circumstances; that the removal of the straw was within the normal sphere of operations of the plaintiff himself and he, having made no complaint or request, defendants were not required to devise some special system for the particular occasion and that, therefore, the plaintiff's claim failed.

Mr. Justice Pearson, at p. 310, had this to say:

"The first question I have to consider is whether any liability has been established in this case, whether it is proved that this accident happened by reason of some negligence on the part of the defendants; that is to say, that they failed to take reasonable care to secure the safety of this workman at his work for them, and that such failure caused the accident.

I do not think it can now be suggested that the plaintiff has, on the evidence, any plausible argument under par. 4(a) of his statement of claim, which reads in these terms:

> Failure to take any or proper care to see that the floor of the said hold was safe for the plaintiff's work or to take any or proper steps to warn or otherwise protect

the plaintiff against dangers owing to the presence of holes in the said floor.

But the other way in which the plaintiff's case was put, and I think on the evidence it became substantially the only way in which it could be put, was this, that it is the duty of the defendants to provide a safe system of working for the employees".

And then he went on to say with regard to the argument that the straw ought to have been removed, the following at p. 311:

"It depends, to a large extent, on the evidence as to what the normal practice is, because, of course, the question whether somebody has taken reasonable care or not must depend to a considerable extent on whether he has followed the usual course or he has not, whether he has taken all such precautions as the normal employer does take. That is an important, though not necessarily decisive, consideration in determining whether reasonable care has been taken or not".

And further at p. 311 he said:

"Altogether, I think it is not a reasonable view of the matter. I think that the reasonable view of the matter was that this hole, concealed with the large quantity of straw which was on the floor, was a very dangerous object, a dangerous trap. It was a concealed danger, but that is the responsibility of the owners of the ship. It was quite plainly, as a matter of common sense, their fault that somehow or other this hole had been created in the floor, and instead of putting that right, repairing the hole in some way before they loaded that cargo, they left the hole there. They put the straw on top of the hole and then they put the fruit cargo on top of the straw and the hole. That was a most dangerous thing to do, but that is their responsibility and their liability, and I do not think, according to any reasonable view of this matter, that it could be held to be the responsibility of the defendants in any way here; nor do I think that it has been proved that there was any defect in the provision of a safe system of work, or that any pre-

caution which ought to have been taken by the defendants was omitted by them".

Then he mentioned the cases referred to by counsel and concluded by saying that his view of the matter was that:

"It depends on a finding of fact, which is a matter in the end of simple common sense, and I think, as I have said, that there was no omission by the defendants to take any reasonable precautions which they could reasonably have been expected to take in these circumstances".

Reference was also made to the case of *Thomson* v. *Cremin & Others* [1953] 3 All E.R., p. 1185. This was a case where the first respondent, Cremin, who was pursuer in the action received a serious injury while employed by the second-named respondent as a stevedore-labourer in discharging bulk grain from the hold of a ship belonging to the appellant. It was held:

"(i) The appellant owed a duty to the first respondent as an invitee to take reasonable care; the duty of an invitor to an invitee was a duty personal to the invitor and, while he was not an insurer, he warranted that due care and skill to make the premises reasonably safe for the invitee had been exercised by himself, his servants or agents, or an independent contractor, he was not excused for a failure to perform that duty merely because he had entrusted performance of it to an independent contractor, however reputable and competent, nor by the fact that the Australian government had certified that the local regulations as to shifting boards had been complied with; and, therefore, the appellant was liable to the first respondent *Wilkinson* v. *Rea, Ltd.* [1941] 2 All E.R. 50, approved.

(ii) The shifting-board, including the shore, was part of the fittings of the ship; the second respondents were on board for the special and limited purpose of unloading the cargo, and there was no duty on their part, in the absence of special circumstances of suspicion, to inspect the structure of the ship, whether permanent or temporary; there was no

evidence that the operation of discharging the cargo caused the shore to collapse; and, accordingly, no negligence on the part of the second respondents had been shown".

It is clear from the aforesaid proposition that stevedores are in general entitled to rely upon the ship owners for the safety of their men unless there are apparent indications which a stevedore observes or ought to observe that the structure is defective, in which case he owes a duty to take reasonable measures for their protection.

Counsel for defendants 1 has further argued that it is not negligence on the part of anyone working on a ship to rely upon the owner or master, or Officer in Charge of such a ship who has to see that his premises are safe as one may reasonably expect the master, etc., to comply with his legal obligations which arise under the Docks Regulations (published in the Subsidiary Legislation of Cyprus, Vol. 1, p. 528), and in particular regulation 17, with which under regulation 3(2), the owner, master or Officer in Charge of a ship has to comply, and which reads as follows:

"All fore and aft beams, and thwartship beams used for hatch covering and all hatch covering shall be maintained in good condition".

I need not really deal separately, at this stage, with the arguments advanced by counsel for the plaintiff as they will inevitably come up in the course of my conclusions which I am about to make in this judgment.

On the evidence before me I am satisfied that the plaintiff was an employee of defendants 1. This is born out by the uncontradicted evidence of all witnesses who testified on this issue and there is nothing to suggest that defendants 1 employed the plaintiff in their capacity as agents for an undisclosed principal. The question whether an employer has negligently failed to perform his duty to take reasonable care for the safety of his men depends on the circumstances of each case. This duty exists throughout the course of their employment and it does not come to an end because the workmen are sent to work at premises which do not belong to the employer.

In support of this proposition reference may be made to the case of *General Cleaning Contractors Ltd.*, v. *Christmas* [1952] 2 All E.R. 1110, and with regard to stevedores in particular to the case of *Thomson* v. *Cremin* (supra) to which reference has already been made and in which the House of Lords have held that stevedores are in general entitled to rely upon the ship-owners for safety, subject of course to the situation where if there are apparent indications which such stevedore-employer observes or ought to observe that the structure is defective, he owes a duty to take reasonable measures for the protection of his men.

Also in the Scottish case of *M' Quilter* v. *Goulandris Bros, Ltd.*, 1951 SLT (Notes) 75, "ship-repairers' men had to go along an unlighted deck, and one of them tripped over a ring-bolt, fell into an uncovered hatchway, and was killed. The employers were held liable. Lord Guthrie said:

> 'The fact that the work had to be carried out on the premises of a third party did not absolve an employer from his duty of exercising reasonable care for the safety of his workmen. The duty must still be fulfilled, although its scope is circumscribed by the fact that the work was being done on premises not within the possession and control of the employer. As the structure of the premises is outwith his control, and any defects therein beyond his power to rectify, his care for his men could only be exercised within the limits imposed by those circumstances. But he was still under the duty of exercising reasonable care to safeguard them against dangers which he should anticipate and which he had power to avert.'"

As pertinently observed in *Munkman's Employer's Liability*, 9th edition, p. 118 an important factor in this case was that lighting should have been provided.

The first question therefore that has to be answered in the present case is whether defendants 1 had exercised reasonable care to safeguard the plaintiff against the dangers which they should anticipate and which they had power to avert or as otherwise put in the *Cremin case* (supra) whether once there were apparent indications which they indeed observed, that the structure was defective they discharged the duty they owed by taking reasonable measures for the protection of the plaintiff.

The answer to this question is that defendants 1 were liable in damages to the plaintiff as they were negligent through the failure of their foreman to see that the hatch-covers were properly taken care of by the sailors after they gave way and the chief officer fell through them. The foreman could not be held to have discharged his duty towards the plaintiff by merely asking the ship-owners' sailors to put the hatch-covers right without inspecting them thereafter and making sure that they were indeed put right and safe for the employees to step on them. The obligation to inspect the structure of the ship once there were special circumstances not of mere suspicion but of knowledge that the hatch-covers were not in good condition, can be seen to exist from what was said in the *Cremin case* (supra), as well as from the case of *Smith* v. *Austin Lifts Ltd., and others* [1959] 1 All E.R. p. 81, which is also significant in relation to the duty of defendants 2, the ship-owners, who as occupiers have to be held liable in damages to the plaintiff as an invitee on the ground that the insecure placing of the hatch-covers created an unusual danger for the plaintiff, the risk of which he could not appreciate and the proper inference in the circumstances is that their collapse was created by the agents or servants of the occupiers and that was a danger of which they knew. This is the answer to the second question which has to be answered in this case regarding the liability of defendants 2.

Moreover, in the *Smith case* (supra), the apportionment of liability between the employer and the occupier which was upheld on appeal by the House of Lords was 80% on the occupiers and 20% to the employers. Considering the circumstances of the present case I will apportion the liability between the two defendants as being likewise 20% on defendants 1 and 80% on defendants 2, there having been served on defendants 2 by defendants 1 a third party notice under section 64 of the Civil Wrongs Law, Cap. 148.

In the result there will be judgment for the plaintiff against both defendants—in default of appearance in the case of defendants No. 2—jointly and severally, for the sum of £3,390.- with costs on that amount.

Judgment for plaintiff against both defendants for the sum of £3,390 *with costs.*