1984 December 1

[MALACHTOS, J.]

DEMETRIS KITROS,

*Plaintiff,*

*v.*

SALTO SHIPPING AGENCIES LTD.,

*Defendants.*

*(Admiralty Action No. 237/79).*

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*Master and servant—Unloading of ship—Employers of port-workers—No evidence that defendants had undertaken the unloading for somebody else—But evidence that the port-workers were supplied to the defendants by the Labour Office and were paid by the defendants—Such evidence sufficient to indicate that defendants undertook the unloading either as independent contractors or as agents of an undisclosed principal—Consequently port-workers were in the employment of defendants.* 5

*Negligence—Master and servant—Safe system of work—Principles applicable—Unloading of ship—Cargo covered with caustic soda—Port-worker not warned of its existence nor given protective equipment and sustaining injuries through contact with it—Employers negligent in that they failed in their duty to provide employee with a safe system of work—Employee not guilty of any contributory negligence and he has not willingly taken the risk, since he was not aware of it.* 10 15

The plaintiff, a port worker, sustained personal injuries whilst employed in the unloading of the ship "MARIA" in the port of Limassol. He was engaged in the unloading of cartons of blankets which were covered with what he took to be dust; and in order to unload them he had to step on the cartons. The dust, however, turned out to be caustic soda but plaintiff had not been told about it nor was he given any protective equipment to avoid contact with it; and his injuries were caused through contact with the said caustic soda. The plaintiff and his fellow workers were supplied by the Labour Office to the 20 25

defendants to work on the aforesaid ship; and they were paid by the defendants.

In an action for damages by the plaintiff the defendants raised the following issues:

5 1. That the plaintiff was not employed by them and thus no master and servant relationship existed; and

2. That even if they were the employers, they had no responsibility for the accident.

*Held*, (1) that there was nothing in the evidence to sub-
10 stantiate the allegation that the defendants had undertaken the unloading for somebody else; that the evidence adduced is sufficient to indicate that they undertook the unloading either as independent contractors or as agents of an undisclosed principal and, consequently, the only possible conclusion that
15 can be reached is that the plaintiff, at the time of the accident, was in their employment.

(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 possibly
20 made. but reasonably safe; that the precautions taken must be proportionate to the risk involved; that 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; that his duty is to take reasonable
25 steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation; 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
30 had the workers been warned about the existence of the caustic soda and given protective equipment or had the area been cleaned, before they started to work there, it is most unlikely that the accident would have occurred or that the plaintiff would have suffered the injuries complained of; that, therefore,
35 the defendants were negligent in that they failed in their duty to provide the plaintiff with a safe system of work; that, further, there is nothing in the evidence to suggest that the plaintiff had willingly taken the risk, since he was not aware of it, or was guilty of any contributory negligence; and that, accordingly,

judgment will be given for plaintiff in the sum of £1,500 agreed damages.

*Judgment for £1,500.*

Cases referred to:

*Pericleous* v. *Co-Marine Ltd. and Another* (1977) 1 C.L.R. 315 at pp. 321-322. 5

**Admiralty action.**

Admiralty action for special and general damages in respect of injuries sustained by the plaintiff in the course of his employment with the defendants in the unloading of the ship "Maria". 10

*C.M. HadjiPieras*, for the plaintiff.

*N. Anastassiades* with *Chr. Solomis*, for the defendants.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The plaintiff in this Admiralty Action is a port worker in Limassol and the 15 defendants are a company formed and incorporated in Cyprus with limited liability. The plaintiff has instituted the present action against the defendant company as his employers, claiming special and general damages in respect of personal injuries he sustained in the course of his employment, while unloading 20 the ship "MARIA" in the port of Limassol, on the 12th December, 1977.

In the petition the plaintiff alleges that the accident occurred as a result of the negligence and/or breach of statutory duty and/or breach of contract of employment on the part of the 25 defendants.

On the other hand, the defendants in their answer deny that they were the employers of the plaintiff and allege that they were acting as the agents of the consignees of the goods and that they had only applied to the Labour Office for labour to 30 work in the unloading of the said ship. Furthermore, they allege that they were not in any way responsible for the condition of the vessel and that the persons responsible were her owners or charterers. Finally, they deny that they were negligent and/or in breach of statutory duty and that any injuries sustained 35

by the plaintiff were entirely due to the negligence of the plaintiff himself.

On the 20th May, 1982, when this case came on for hearing, the question of general and special damages was agreed between
5 the parties at £1,500.- on a full liability basis and, so, the only remaining issue to be determined by the Court is the question of liability.

As to how the accident occurred, the plaintiff gave evidence himself and called six more witnesses, including three of his
10 fellow workers, two of whom were working with him at the material time and one who was working with the previous shift. Not only the three fellow-workers corroborated his version but the two of them, nemely, P.W.2 Panayis Demetri and P.W.5 Kyriakos Parnerou, also testified that they too had suffered
15 similar injuries themselves, P.W.2 on his back and P.W.5, who was working with the previous shift unloading caustic soda, on his right hand. The defendant company paid to P.W.5 for his injury £60.- by way of damages.

The plaintiff in giving evidence stated that on the day in
20 question he was employed by the defendants to work on the vessel "MARIA". At about 5 p.m. he went on board the ship and joined his fellow workers who were already there with their foreman Georghios Photiou. He started work immediately unloading cartons with blankets. The cargo was covered
25 with what he took to be, dust. In order to unload it they had to step on the cartons. After working for about an hour he felt itching in his left foot. He took off his shoe and sock and shook them but he saw nothing except that his foot was red, so he put them on again. Later on that day, after he finished
30 work, as his leg was still red and itching, he went to the Limassol Hospital where he was told that if the itching persisted, to visit the doctor the next day.

The following day his leg turned from red to black and so he visited the doctor and was given sick-leave which was later
35 extended and lasted for 113 days. On the same day he went to the Labour Office and saw the foreman who told him that the dust on board the ship was caustic soda and that they had forgotten to tell him. He also visited the defendants and saw a Mr. Hadjitheodossiou, to complain, where, as he claims, he

was offered, some time later, the sum of £500.- to settle his claim, which money he, however, refused.

The plaintiff admitted that though it was not strictly their job they assisted the sailors of the ship to remove the hold covers (mpoukaportes) after having been ordered to that effect by 5 their foreman. The hold covers had, on them dust which fell into the hold below on to the cartons and cases, which they subsequently unloaded. The plaintiff also stated that the cleaning of the area where they were to work was not within their duties but the duty of the sailors. 10

The main two points of the defendants' defence are:

1. That the plaintiff was not employed by them and thus no master and servant relationship existed; and

2. That even if they were the employers, they had no responsibility for the accident. 15

It is not in dispute that the plaintiff and his fellow workers were supplied by the Labour Office to the defendants to work on the aforesaid ship. It is also not in dispute that these port workers were paid by them.

There is nothing in the evidence to substantiate the allegation 20 that they had undertaken the unloading for somebody else. The evidence adduced is sufficient to indicate that they undertook the unloading either as independent contractors or as agents of an undisclosed principal and, consequently, the only possible conclusion I can reach is that the plaintiff, at the time 25 of the accident, was in their employment.

As regards the question of liability, there is clear evidence that the defendants had unloaded caustic soda from the vessel in the morning of the 12th December, 1977. It is also in evidence that there was caustic soda on the cargo which was un- 30 loaded by the plaintiff and that the plaintiff and two other employees were affected by it. Also it is not in dispute that the scattered soda had not been removed and that the workers had neither been told about it nor were they given any protective equipment to avoid contact with it. 35

In the case of *Pericleous* v. *Co-Marine Ltd. and Another* (1977) 1 C.L.R. 315, it is stated at pp. 321-322:

"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 would have made the system reasonably safe and that this failure was the cause of his accident' ".

In the present case from the evidence adduced by and on behalf of the plaintiff, which I accept as true and correct, it is clear that had the workers been warned about the existence of the caustic soda and given protective equipment or had the area been cleaned, before they started to work there, it is most unlikely that the accident would have occurred or that the plaintiff would have suffered the injuries complained of. The defendants were, therefore, negligent in that they failed in their duty to provide the plaintiff with a safe system of work. Also there is nothing in the evidence to suggest that the plaintiff had willingly taken the risk, since he was not aware of it, or was guilty of any contributory negligence.

In the light of the above, judgment is given in favour of the plaintiff for the amount of £1,500.- with legal interest thereon as from today to final payment, with costs to be assessed by the Registrar.

*Judgment in favour of plaintiff for* £1,500.- *with costs.*