

LLOYD'S LIST LAW REPORTS

Editor :

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1953

Volume 1

PRINTED AND PUBLISHED BY LLOYD'S
AT LLOYD'S, LONDON. ENGLAND

1953

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LLOYD'S LIST LAW REPORTS

Editor : H. P. HENLEY

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Of the Middle Temple, Barrister-at-Law

[1953] Vol. 1]

FRIDAY, MARCH 20, 1953.

[PART I

QUEEN'S BENCH DIVISION.

Jan. 14 and 15, 1953.

DAWSON v. EUXINE SHIPPING COMPANY, LTD.

Before Mr. Justice McNAIR.

**Docks Regulations, 1934—Safe means of access—
Ship's gangway from ship to quay—Obliga-
tion under Regulation 9—Whether gangway
in fact unsafe.**

Personal injuries sustained by plaintiff lighterman—Fall upon ship's gangway from defendants' ship to quay—Allegation by plaintiff that cross-treads were badly worn and that gangway was in consequence unsafe—Claim by plaintiff alleging common law negligence and/or breach of statutory duty in that defendants had failed to provide safe means of access under Regulation 9, which provided:

If a ship is lying at a wharf . . . for the purpose of loading . . . there shall be safe means of access for the use of persons employed at such times as they have to pass from the ship to the shore or from the shore to the ship as follows:—

(a) Where reasonably practicable the ship's accommodation ladder or a gangway or a similar construction not less than twenty-two inches wide, properly secured, and fenced throughout on each side to a clear height of two feet nine inches by means of upper and lower rails, taut ropes or chains or by other equally safe means . . .

(b) In other cases a ladder of sound material and adequate length which shall be properly secured to prevent slipping.

Whether regulation satisfied by provision of ship's accommodation ladder or gangway of requisite dimensions—Evidence as to condition of gangway.

Held, that the words contained in pars. (a) and (b) of Regulation 9 were not words of limitation but prescribed what was required in addition to the provision of a safe means of access, and that it was accordingly no answer to a charge of breach of statutory duty under Regulation 9 to show that a gangway satisfying par. (a) had been provided; but that as it was shown that the gangway was in fact in good condition and provided a safe means of access, plaintiff's claim at common law and for breach of statutory duty failed.

The following case was referred to:

London Graving Dock Company, Ltd. v. Horton, [1951] A.C. 737; [1951] 1 Lloyd's Rep. 389.

In this action, Mr. Edwin Francis Dawson, a lighterman and waterman, of Hounslow, Middlesex, claimed damages against the Euxine Shipping Company, Ltd., of London, E.C., for personal injuries resulting from an accident on Feb. 22, 1951, when he slipped on a gangway leading from the ship's rail of defendants' steamship *Henze* to the deck of Symon's Wharf, London, where she was loading cargo from barges alongside.

Plaintiff alleged that defendants were negligent and/or in breach of the Docks Regulations, 1934, in that there was no safe means of access provided.

Defendants denied negligence or breach of statutory duty.

Mr. W. G. Wingate (instructed by Messrs. Pattinson & Brewer) appeared for the plaintiff; Mr. Montague Berryman, Q.C., and Mr. Peter Dow (instructed by

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[Q.B.]

Messrs. Botterell & Roche) represented the defendants.

Plaintiff's case was that he was a lighterman, employed by Silvertown Services, Ltd., and he was in charge of barges from which cargo was being discharged into the *Henzee*. Shortly before noon, he was going ashore down a gangway which the defendants had provided as the means of access to and from their vessel, when, owing to the negligence of the defendants and/or owing to a breach by the defendants of the Docks Regulations, 1934, the plaintiff slipped on worn treads of the gangway, and, in attempting to save himself from falling, he retained hold of the gangway rope and thus severely wrenched his right shoulder.

Plaintiff alleged that the defendants, their servants or agents, were negligent in that they provided a gangway the treads of which were worn, narrow and unsafe to walk upon, and which was too short for the purpose to which it was being put at the material time, in that, owing to its inadequate length, the gangway was raised to a steep angle by the flooding of the tide at the wharf, and, at such angle, failed to provide secure foothold; and failed to warn the plaintiff of the unsafe condition of the gangway, of which the defendants knew or ought to have known.

Plaintiff further alleged that the defendants were in breach of Regulation 9 of the Docks Regulations, 1934, in that they failed to provide a safe means of access to and from their vessel for the use of persons employed, such as the plaintiff, at such times as they had to pass, as did the plaintiff, from ship to shore.

Defendants denied that they were negligent or in breach of their statutory duty. They further denied that the treads of the gangway were worn, and contended that, if the treads were worn, their condition was obvious to the plaintiff.

Defendants contended that any injury which may have been sustained by the plaintiff was caused or, alternatively, contributed to by the plaintiff's own negligence in that he did not hold on to both hand ropes of the gangway; did not look where he was stepping; failed to place his feet either squarely on the treads, or between them; and took no care for his own safety.

JUDGMENT.

Mr. Justice McNAIR: In this case the plaintiff, Mr. Edwin Francis Dawson, who

was a licensed lighterman in the Port of London and a Freeman of the river, employed by Silvertown Services, Ltd., brings a claim against the Euxine Shipping Company, Ltd., as owners of the steamship *Henzee*, claiming that on Feb. 22, 1951, he suffered an accident when he slipped on a gangway leading from the ship's rail to the deck of Symon's Wharf, by reason whereof he tore the supraspinatus tendon of his right shoulder, with the result that he was unable to do any work at all from Feb. 23 until Oct. 1, 1951, and was rendered incapable ever thereafter of performing his work as a lighterman.

The basis of his claim against the defendants is two-fold. He first relies upon a breach of statutory duty, the statutory duty being contained in Regulation 9 of the Docks Regulations, 1934. Alternatively, he alleges a breach of the common law duty owed by the defendants as occupiers of the *Henzee* towards him as an invitee. But, whichever way the claim is put, the real issue in the case, as it seems to me and as has been agreed by Counsel, is as to the state of the cross-treads in this gangway, which, at the material time, ran from the deck of Symon's Wharf to the ship's rail, at an angle of about 45 deg.

The plaintiff, as I say, was a licensed lighterman employed by Silvertown Services, Ltd. On Feb. 22, 1951, he went on board the *Henzee* which was then loading outwards at Symon's Wharf. His duty on board was to marshal the barges which were bringing bagged sugar up to Symon's Wharf, and he, remaining on board the ship, was responsible for seeing that the barges were put in the right position at the holds which were being worked; attending to the ropes from time to time; and generally superintending the loading of the bagged sugar from the barges into the ship; superintending in this sense, that it was his responsibility to see whether the bags that came out from the barges were leaking and damaged before they reached the ship, in which case he would return them to the barge; and superintending in the sense that it was his function to receive the receipts for the cargo from the ship's clerk. The actual physical operation of loading was performed by stevedores and shore cranes.

The first question which was raised was whether the lighterman so engaged was a person employed within the meaning of

the definition in the definition section of the Docks Regulations, 1934. It was submitted by Counsel for the plaintiff that the plaintiff was such a person, and it is conceded—and I think clearly rightly conceded—by Counsel for the defendants that the plaintiff did fall within that definition.

The accident occurred in this way. The plaintiff, who had been on the wharf in the early morning at the beginning of the day's work, had come on board by a gangway on one or two occasions during the early part of the morning, and he remained at the other side of the ship where the loading was going on until, I think, somewhere about 11 30 a.m. He then had occasion to go ashore on his employers' business in order to speak to the office, I think, and, when he came to the gangway, he found that it was, by reason of the fact that the tide was by that time about $2\frac{1}{2}$ hours flood, down to the wharf at an angle of 45 deg. He stepped on to the gangway in a manner which I will have to describe more particularly hereafter and slipped at the top. He hung on with his right hand to the rope which runs down the right-hand side of the gangway looking down and threw extra strain on the muscles and tendons of his right shoulder, and, although at the time he did not think that the injury was in any way serious—indeed, he was able to continue his work during that day—it so turned out that he had damaged his shoulder severely and was off work in the way I recounted. He went down to the bottom of the gangway, and in due course the accident was reported.

The first question is whether there has been a breach of Regulation 9 of the Docks Regulations, 1934, which provides:

If a ship is lying at a wharf . . . for the purpose of loading . . . [—I am omitting immaterial words—] there shall be safe means of access for the use of persons employed at such times as they have to pass from the ship to the shore or from the shore to the ship as follows:—

(a) Where reasonably practicable the ship's accommodation ladder or a gangway or a similar construction not less than twenty-two inches wide, properly secured, and fenced throughout on each side to a clear height of two feet nine inches by means of upper

and lower rails, taut ropes or chains or by other equally safe means . . .

(b) In other cases a ladder of sound material and adequate length which shall be properly secured to prevent slipping.

The gangway in question was a gangway which, by reason of its dimensions, satisfied par. (a). The gangway was 24 ft. long; it was 2 ft. 6 in. wide, and, as appears from the plan which has been put in, there were, across the floor of the gangway, cross-treads, 12 in. apart and composed of battens which were said to be battens of hardwood $1\frac{1}{4}$ in. square. Along each side of this gangway there were iron stanchions some 3 ft. apart, and, through those iron stanchions at the top, through a ring at the top, there ran a rope, and through rings half way down there ran a second rope. That gangway, by reason of those dimensions, as I have said, satisfied par. (a) of Regulation 9.

The first question which was debated was whether, by satisfying par. (a), the defendants had wholly satisfied the obligation imposed upon them by Regulation 9. It seems to me that that submission is not well founded. The obligation imposed by Regulation 9 is that "there shall be safe means of access." True that it is followed by the words "as follows," and then there are set out pars. (a) and (b); but I think, applying a reasonable construction to it, that those words are not words of limitation, but are words which prescribe what has to be done in addition to the provision of a safe means of access. In other words, where reasonably practicable, a ship's accommodation ladder or a gangway of the dimensions set out must be provided, and, where that is not reasonably practicable, that is, "in other cases," a ladder of sound material and adequate length must be provided. But, whichever of those paragraphs is applicable, the means of access must, in order to satisfy the regulation, be safe within the meaning of the regulation.

I think that that construction follows from the ordinary reading of the words, and it conforms with the whole scheme of these Regulations and similar regulations made under the Act, to which reference has been made. Of course, when considering whether a means of access is safe, one has to have regard to the persons for whose protection the provision is made.

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[Q.B.]

Accordingly, in my judgment, the defendants do not escape the charge of breach of statutory duty merely by proof that they had provided a gangway which satisfied par. (a) of Regulation 9.

The main issue, however, in the case, as I have indicated, is whether or not the treads of that gangway were at the material time in a safe condition. Upon that there has been an acute conflict of evidence. The plaintiff says quite specifically that the treads were worn and in an unsafe condition. He is supported in that by the evidence of a fellow workman, a Mr. Berry, another experienced lighterman, who deposed to the fact that on the next day he himself slipped at the top of this gangway, and he says that the first two or three treads were very worn indeed. In addition to that, there has been put in in evidence a statement made by another fellow lighterman, Mr. Maynard, in a letter written to the plaintiff's solicitors, in response to their request as to the circumstances of the accident, which was put in without objection, because Mr. Maynard, unfortunately, has died since the accident. In that letter Mr. Maynard says that he remarked on the condition of the gangway on the morning of the accident, as it was well worn and in a bad condition.

On the other hand, I have had called before me the chief officer, Mr. Bolding, who had served as chief officer on the *Henzee* from December, 1950, and continued to serve on board the *Henzee* until August, 1951. He, as chief officer, was responsible for the condition of these gangways, and, indeed, responsible for seeing that they were put out in a proper position when there was occasion to use them. The *Henzee* was a ship of some 2000 gross tons, which had been built in 1948. During the time that Bolding was on board, this particular gangway, which he referred to as "the Board of Trade gangway," had been used quite frequently at the ports at which it was impossible to use the ship's accommodation ladder. The ship also occasionally carried passengers. Throughout the time that Mr. Bolding was on board there must have been a constant stream of persons—crew, stevedores, passengers—using this gangway at all times of day and night and at all stages of tide. Mr. Bolding says that on no occasion had there been any complaint of the condition of this gangway. Furthermore, he says that apart from one instance, I think in

June, 1951, when the bottom tread of the gangway was damaged by some heavy article falling upon it, it had never been necessary to repair these treads. He says that the cross-pieces were in good condition, but showed some signs of wear in the middle, but not to an extent to cause any danger or harm at all. The gangway was, in his view, perfectly safe for use, as was shown by the fact that passengers and other persons not familiar with the ship had used it without any difficulty throughout this time.

After the accident the ship went to sea, and on her next return to this country in April, 1951, the plaintiff's claim having been notified by the plaintiff's solicitors as a claim based upon an allegation that the treads were worn, the gangway was surveyed by Captain Gilham, who was also called before me. He was an experienced marine surveyor, who had held a master's certificate for very many years. Mr. Bolding having said that no repairs had been done during the interval between the accident and Captain Gilham's survey, the condition as spoken to by Captain Gilham is relevant, if I accept, as I do, Mr. Bolding's statement that no repairs had been done in the meantime.

Captain Gilham, after describing the dimensions of the gangway and the treads, said it was a good solid gangway, well constructed and well kept up; with the treads as he saw them, it was quite safe at the angle of 45 deg. at which the gangway was resting; and that, although in certain of the treads, the sharp corner of the wood had been worn as if chamfered off, there was no substantial wear; the treads were not dishd in the middle so as to be level with the planking as had been suggested by Mr. Berry, and the measurement of wear which he made indicated that, although there had been about an eighth of an inch of wear at the upper edge of the treads, there was practically no wear on the surface of the treads at all.

With that acute conflict of evidence, I have to make up my mind as to which view of this matter I accept. I have no difficulty at all in coming to the conclusion that I ought to accept the view of this matter put forward by Mr. Bolding and Mr. Gilham.

I should mention in passing that Mr. Bolding's evidence was also supported by that of his wife, Mrs. Bolding, who.