LLOYD'S LIST
LAW REPORTS

Including extended Reports of Cases appearing in
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Edited by
H. P. HENLEY
of the Middle Temple, Barrister-at-Law

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Edited by H. P. HENLEY
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VOL. 71. No. 1] THURSDAY, NOVEMBER 20, 1941. [BY SUBSCRIPTION

HOUSE OF LORDS.

July 11, 15, 17, 18, 22, 23, 24, 1941.

CREMIN v. THOMSON AND OTHERS.

Before Viscount SIMON (Lord Chancellor), Lord THANKERTON, Lord WRIGHT, Lord ROMER and Lord PORTER.

Negligence — Invitee — Responsibility of invitor — Employment of independent contractor—Personal injuries sustained by dock labourer engaged in unloading bulk grain from ship at Princes Dock, Glasgow—Dock labourer employed by stevedores under contract between them and shipowner—Fall of shore supporting shifting boards erected in Australia by independent contractors on shipowner's behalf in compliance with Australian statutory regulations — Official certificate issued that regulations had been complied with—Shore negligently fixed — Claim by dock labourer against shipowner — Stevedores brought in as second defendants —Liability of stevedores — Whether shore displaced by negligence of stevedores in discharging cargo at Glasgow —Method of discharge — Duty of stevedores.

———Held, that the shipowner, as invitor, was responsible for the safety of the structure in the ship's hold and that if adequate care was not exercised in erecting it it was no answer to say that the performance of his duty had been delegated by the shipowner to an independent contractor; that the extent of the shipowner's liability was not to be measured by compliance with Australian statutory regulations; that adequate care had not in fact been exercised; that in the absence of suspicious circumstances there was no duty of inspection of such a structure placed on the stevedore engaged in unloading the vessel; that it was not proved that the collapse of the shore was due to the method of discharge; and that therefore the shipowner was alone liable—Decision of Court of Session affirmed.

This was an appeal by Mr. Henry Murray Thomson, shipowner, of Edinburgh, against a decision of the Second Division of the Court of Session, upholding an interlocutor of the Lord Ordinary (Lord Robertson), who held him alone liable for damages for personal injuries sustained by the first-named respondent, Joseph Cremin, dock labourer, of Glasgow, while in the employment of the second-named respondents, Messrs. Andrew Main & Sons, licensed stevedores, of Glasgow. The injuries were received while Cremin was assisting in the discharge of a bulk grain cargo from a hold of the steamship *Sithonia*, which was the property of the appellant and was then lying in Princes Dock, Glasgow. In the first instance the action was brought by Cremin against appellant, but on appellant attributing the accident to the second-named respondents they were joined as defenders.

Mr. Arthur P. Duffes, K.C., and Mr. George S. Reid (instructed by Messrs. Boyd, Jameson & Young, W.S., and Messrs. Thos. Cooper & Co.) appeared for the appellant; Mr. John Wheatley and Mr. G. Stott (instructed by Mr. Wm. Thornton, Mr. Thos. J. Addly, S.S.C., and Messrs. Landons) represented the first-named respondent; Mr. G. R. Thomson, K.C., and Mr. John Bassett (instructed by Messrs. Niven, Macniven & Co., Messrs. Macpherson & Mackay, W.S., and Messrs. Lawrence Jones & Co.) represented the second-named respondents.

Mr. DUFFES, for the appellant, said that Cremin's case was that in the course of his employment with the second-named respondents he was assisting in discharging grain from No. 2 hold of the *Sithonia* on Apr. 29, 1938. A shifting board was erected in the hold from fore and aft, dividing the hold in two, and was constructed to prevent cargo such as grain from shifting about, both during the voyage and during unloading operations. This was a usual method adopted when bulk grain was being carried on board a ship, and the shifting board was kept in position by shores approximately 27 ft. by 8 in. by 6 in. To ensure that they were properly secured it was essential that they should be wedged into a socket in or bolted to the shifting board. The duty of constructing the shifting board and shores rested upon the owner of the ship. While Cremin was working at the grain plough one of the shores became dislodged, fell upon Cremin and injured him. Appellant's reply to that was that the shifting board and shores and other fittings were installed in the vessel by a firm of shipwrights at Fremantle, Australia, and that the shifting board and shores were properly and securely fitted in accordance with the regulations of the Australian Government. The shifting board and shores were surveyed before the loading of the ship and they were passed by the Australian Government surveyor and by a surveyor of the Marine Underwriters' Association.

It was further alleged by Cremin that it was the duty of the appellant to see that the hold and the shifting board and shores were in such a condition as to be safe for persons engaged in unloading the ship and that he failed in this duty. That was denied by appellant, who averred that the accident was not due to the fault of anyone for whom he was responsible, but solely to the fault and negligence of the stevedores in that they adopted a negligent and dangerous system of working and failed to have the work properly supervised. Appellant's case was that everything for which he was responsible was done in the most efficient way, as was certified by most responsible people.

The stevedores operated the elevator plough and its accessories in discharging the cargo, and appellant declared that they did not remove the shores as discharge of the cargo proceeded, which under a safe and proper system of working ought to have been done, and that the shores were left above the surface of the wheat. The result was that vibration from the engines of the elevator so affected the shores left exposed that one of them became displaced. It was the duty of stevedores to carry out the discharge of the cargo in a careful and prudent manner, and it was their failure to do so which caused the accident.

COUNSEL then read the judgment of the Lord Ordinary, and said that the case seemed to have been decided on the basis of a duty on the part of the shipowner to ensure the stability of the shifting boards and shores not only at the commencement but throughout the process of unloading. That meant that the stevedores were entitled to assume that there could be no danger unless there was something to indicate it. His submission was against that.

Lord THANKERTON: But your clients were alone responsible for the construction of the shifting boards. The point taken against you is that when the stevedores were asked to go on the ship they were entitled to rely on you having made your ship reasonably safe.

COUNSEL said that would depend on the assumption that the stevedores and their men had no duty to consider whether a thing that did not show itself to be dangerous might nevertheless be dangerous. He contested that. His submission was that the very nature of shifting boards and their attachments suggested every possibility of danger. Shifting boards and their attachments were put in for the purpose of protecting the ship, of making and keeping the ship seaworthy in relation to a particular cargo. However adequately that duty was attended to, it might happen and did sometimes happen that the shifting board proved itself insufficient. That probably did not happen very often, but as regards the attachments the position was quite different. The shores and other fittings were put in as an additional support to the primary structure, the shifting board, and in many cases particular fittings of the shifting board might become displaced. The Government surveyor, in carrying out his statutory duty, would not be expected to consider whether the whole of the structure and its fittings would remain intact.

The LORD CHANCELLOR: Does it make the thing any better when this accident happened to say that the shipowner's state of mind was that some of these struts might have become displaced?

COUNSEL said that as regards responsibility to the plaintiff in this case it

mattered a good deal. Neither the shipowner nor the ship's officer had any means of knowing that that had happened.

Lord THANKERTON: Why not, if he looked? The ship's officer has a pair of eyes.

COUNSEL said that assumed that there was a duty on him. As a practical matter he could not perform such a duty, because, when the ship arrived, the shifting boards and fittings were completely concealed. When unloading began the stevedores took over complete control. In one sense responsibility rested on the Government surveyor. If the surveyor was satisfied and expressed himself satisfied with the structure in all respects, the shipowner could say that the shifting boards and attachments were warranted all right. The Court of Session had put the onus on the wrong person. There was no duty on the shipowner when he had this erection put up in Australia to consider the possibility of a particular method being employed to discharge the cargo.

COUNSEL further said that one complaint was that the shore was not secured by long enough nails.

The LORD CHANCELLOR said that the learned Judge who tried the action appeared to have come to the conclusion on the facts before him that nothing was proved as to what happened at Glasgow which would explain this accident if the shore was originally properly fixed, and, secondly, that the inference was irresistible that the work was not well done at the Australian port.

COUNSEL said that it would be an impossible onus to put on the shipowner, if he were to be convicted of negligence unless he proved specifically that something out of the way had occurred at Glasgow to account for the accident.

As to the manner in which the shore which fell and injured Cremin was secured, COUNSEL submitted that the evidence of workmen on that point was unreliable, and that the convincing evidence was that taken on commission of men who were actually concerned with the erection of the shifting boards and shores.

Lord THANKERTON asked, assuming there had been stress on the voyage, and there was reason to suspect that some of the shores on arrival were not as secure as they should have been, whose duty it was to see whether that was so.

COUNSEL replied that it would be unreasonable and impossible for the shipowner, or the contractors who were his agents, to put up a structure so secure that it would be proper for any individual engaged to do the stevedoring work to assume that every part of the structure and fittings would be secure on arrival at the port of discharge. It was an elementary duty on the part of the stevedore at least to find out if the structure and fittings were secure.

Lord ROMER asked whether it was sufficient to erect the structure so that it would prevent the cargo shifting on the voyage, or whether there was also a duty to make it secure so that it would withstand ordinary vibration on unloading.

COUNSEL submitted that the first was the only duty. There was not the slightest reason to anticipate that vibration on unloading would come into operation at all. If the duty were so high as that, it would mean that the shipowner would have to keep himself informed of all methods of unloading the cargo which might possibly be used. That would be unreasonable. The fact that the regulations defined, at least to a large extent, what was expected of the shipowner raised the question whether it did not limit the reasonable scope of his obligation.

The LORD CHANCELLOR said that the regulations must be regarded as intended to secure that the cargo safely reached its destination. The people who made the regulations in Australia were not concerned with protecting Glasgow dockers.

COUNSEL said that he did not suggest that the mere fact that the regulations defined the shipowners' obligation in the sense he had indicated ruled out the possibility of a separate common law engagement in relation to people who came on the ship later. All he meant was that it must have been in the minds of the people who made the regulations that this structure was necessary for the primary purpose of keeping the ship seaworthy. If it were intended that the structure should be more secure than the security necessary for that primary purpose, then there should have been something about that in the regulations themselves.

COUNSEL said that he attacked the finding of fact by the Lord Ordinary. So far as the decision against him was based on the finding that the shore which fell and injured Cremin was fastened with nails that were too small, Counsel said that the

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evidence did not justify that finding. His criticism was that the evidence from Australia as to the construction of the shifting boards was of better quality than the evidence against him, which was of the poorest quality. It was said by witnesses on the other side that a chock with small nails was found. He did not suggest that Glasgow dockers were more clannish than other people, but at any rate they were not blind to the interests of their fellow-workmen. Yet there was no evidence that they did anything to bring this chock to the notice of the foreman or the ship's officer. It was not consistent with reasonable probabilities that men who knew one of their fellow-workmen had been seriously injured, and that it was caused by a serious defect in the structure, should have neglected to bring it to the notice of any responsible person. Against that there was the evidence from Australia of the contractor who erected the shifting boards and of two inspectors. Even assuming that that point was decided against him and that too small nails were used, he would still submit that that had nothing to do with the scope of his duty. If it were a breach of his duty, there was still the question of whether the stevedore was involved in joint liability for the safety of his own workmen.

Their Lordships must consider the probable effect of the stevedore's operations on the stability of a structure of this sort. There was a strong body of evidence that the stevedore's operations in putting in and working two heavy engines and a plough did in fact cause disturbance of the shores under the eyes of the man whose duty it was to watch. It was the duty of the stevedore to remove shores if necessary or to examine them to see if they were safe or needed removal, and if that argument was accepted it was irrelevant to consider whether or not the shipowner erected the shifting boards adequately. If additional precautions to prevent such an accident were necessary, the stevedore could easily and readily take precautions at Glasgow which were likely to be effective, but there were no precautions which the shipowner could readily have taken in Australia. The stevedore was not entitled to rely on the shipowner in relation to the security of the fittings in the hold. The shipowner, on the other hand, had no anticipation of what was likely to happen as the result of the stevedore's operations. Even if he had, that was qualified by the shipowner being entitled to rely on the stevedore doing his duty in relation to the risks of his own operations. In his (Counsel's) view of the situation, any defect which their Lordships might think existed in the structure and fittings of the ship at Fremantle did not involve the shipowner in a charge of negligence in relation to anyone at Glasgow.

COUNSEL said that he invited their Lordships to approach the question between the shipowner and the injured docker by considering, first, the position between the shipowner and the man who had the duty to take precautions to protect the dockers in his employ, but the same considerations to some extent operated in both matters. If there had been some failure on the part of the stevedore in relation to the precautions taken, then his submission was that the proximate cause of the injury to the docker was the failure of the stevedore.

The LORD CHANCELLOR asked Counsel to assume that there was a duty on the shipowner to see that the shores were safe, that there was a duty owed to the docker which, if unfulfilled, would cause an accident and entitle the docker to damages from the shipowner, and to assume that the stevedore had a duty to inspect the shores and ought to have found that this shore was insecure. Would those two facts put together exonerate the shipowner?

COUNSEL replied that on that assumption the shipowner would be exonerated.

Lord WRIGHT: That means that the shipowner's breach of duty was obliterated by the stevedore's breach.

COUNSEL agreed.

Lord ROMER asked whether Counsel said that the stevedore's duty to inspect the shores arose by reason of custom or arose at common law.

COUNSEL said that he relied on both. The stevedore, knowing the situation and the risks, had a duty to inspect or see that there was inspection.

Dealing with the statutory regulations in Australia about shifting boards, COUNSEL submitted that the whole duty of the shipowner was a duty laid on him by statute. It would not be a fault on the part of anybody representing the shipowner if chocks became insecure on the voyage, or in course of discharging the cargo. Compliance with the regulations might be taken as compliance with a reasonable standard of care in relation to the possibilities of the situation. If the shipowner was told what to do and did it with regard to the

structure, he was entitled to rely on that as proof of care, particularly when there were such precise and exacting requirements as under these regulations. The shipowner was entitled after doing his best in that matter to rely on the stevedore using a reasonable amount of care.

Lord THANKERTON asked what practical difficulty was in the way of the ship's officer inspecting the shores as the work of discharge proceeded.

COUNSEL said that would not be expected of the ship's officer or be tolerated by the stevedore. It might have been a breach of contract with the stevedores if the ship's officer got in the way of the work.

Counsel for respondents were not called upon.

Their LORDSHIPS reserved judgment.

Monday, Oct. 20, 1941.

JUDGMENT.

Viscount SIMON (Lord Chancellor): My Lords, on Apr. 29, 1938, the first respondent, Joseph Cremin, who was pursuer in the action, received serious injuries while employed by the second-named respondents as a stevedore's labourer in discharging bulk grain from No. 2 hold of the steamship *Sithonia*, belonging to the appellant, which was lying in Princes Dock, Glasgow, after a voyage from Fremantle, in Western Australia. A heavy wooden "shore" which stretched from the ship's side to the "shifting board" fell upon the pursuer's head while he was below propelling a grain "plough," which was being used for feeding the buckets of an elevator working from No. 2 hold to the main deck. The pursuer in the first instance brought his action against the appellant alone, alleging that, owing to the negligence of the appellant, the shore was insecurely attached to the shifting board. Upon the appellant attributing the accident to the negligence of the second-named respondents, the pursuer added them as defenders in the action and sued the appellant and the second-named respondents jointly and severally for damages in respect of the injuries which he had sustained.

The Lord Ordinary (Lord Robertson) reached the conclusion that the appellant's negligence was established, and that he was liable to compensate the pursuer in the sum of £1350. As against the master stevedores the Lord Ordinary held that negligence was not proved and he accordingly assoilzied the second-named respondents.

The present appellant appealed to the Second Division of the Court of Session, contending either that the second-named respondents were solely responsible, or at any rate that the responsibility should be shared between them. The Inner House affirmed the interlocutor of the Lord Ordinary; Lord Mackay, however, would have preferred a finding of joint responsibility, and there are indications that other of the Judges composing the Court did not in all respects agree with the mode of reasoning by which the Lord Ordinary reached his conclusion.

The case for the appellant before this House was again stated alternatively, his contentions being (a) that there was no failure of duty by him towards the injured man, but that the sole responsibility lay on the second-named respondents; (b) that, in any event, if liability was established against the appellant, fault causing the accident was also proved against the second-named respondents. This double-barrelled case was presented to us in an argument which thoroughly examined every detail of the evidence, but the House intimated that the decision already reached by the Courts in Scotland must stand, for reasons which would be given later. I have now to state, with such brevity as the subject-matter permits of, what are the reasons why I consider that the appeal should be dismissed.

The holds of a vessel which is about to undertake a voyage with grain in bulk as its cargo, require to be fitted with "shifting boards," i.e., wooden partitions running fore and aft from bulkhead to bulkhead in the centre line of the ship, so as to obviate the danger of the grain shifting in heavy weather from one side to the other. These shifting boards are for the most part supported in position by attachment to the permanent iron pillars which are fixed at intervals inside the holds; but in the way of the hatch lateral support for the shifting board is provided by "shores"—short shores stretching from the hatch coamings (with these we are not in this case directly concerned) and long shores stretching from either side of the ship at a rising angle of about 10 deg. from the horizontal. These long shores in the case of the *Sithonia* were about 27 ft. long, with a scantling of

6 in. by 8 in., and these dimensions were not challenged as inadequate.

Since the long shores meet the uprights of the shifting boards at a slope, it is important that their midship ends should be cut at such an angle as will present a flat surface for making contact with the perpendicular. The Lord Ordinary held, and the fact may be accepted, that this was done in the case of the *Sithonia*. But it is not enough that the midship ends of the long shores should be suitably shaped, or even that the shores should be pressed down so as to make solid contact; they must be so held in position as to make sure that they will remain firm. There was some difference of view as to what additional precautions were needed, but the evidence fully warranted the Lord Ordinary's conclusion that a safe construction would be provided by (1) securely nailing the midships end of a shore to the upright against which it pressed, and (2) fitting a " chock " or " cleat " of wood above the midships end of the shore by nailing it with 5-in. long No. 5 gauge nails driven through it into the upright, and thus counteracting any upward thrust of the midships end of the shore. Indeed, I understand the appellant to accept this standard. His argument on the facts was directed to establishing (a) that the shore which fell on the pursuer was securely fixed in Australia in accordance with the above construction; (b) that its fall was not due to any default in the shipowner, but was caused by the negligent operations of the second-named respondents while discharging the cargo under contract with the appellant.

As regards (a) the testimony was conflicting. The appellant relies on the evidence of three witnesses taken in Australia, where Messrs. Petterson & Co., a firm of shipwrights with a large experience of fitting grain ships with shifting boards, were employed for this purpose on the *Sithonia* in preparation for her taking on board her cargo. The partner in this firm who supervised the work gave evidence that the construction above described was duly carried out; a marine surveyor who inspected and certified the work for an underwriting association testified that the structure was properly executed—the Lord Ordinary notes that he did not state that the inboard ends of the shores were secured by nails, but, on the other hand, he declared that he would not expect the shore to be dislodged by less than repeated blows with a sledge hammer—and a Government inspector who gave the official certificate spoke more generally of the shifting boards being efficiently fitted. As against this, there is the fact that after the shore was exposed by the removal of the grain in which it was embedded during the voyage. the shore fell, and fell without the application of any violence corresponding to sledge-hammer blows; and according to the evidence of three fellow-workmen of the pursuer who were in the hold when it fell, the " chock " which should have helped to keep the shore in position became detached and fell also, when it was observed that the nails in it, instead of being 5 in. long, were short nails of about 2½ in. The details of Messrs. Petterson's bill show that a quantity of 3-in. nails were charged for in the course of the work, but no evidence was given as to the purpose for which they were used.

The erection of the shifting boards, and the fitting of shores to support them, were required by regulations made under the Navigation Act of the Commonwealth of Australia, and the *Sithonia* could not have left the port of Fremantle with her cargo of bulk grain without the official certificate that these regulations had been complied with. The appellant's Counsel contended that compliance with the regulations was the full extent of the shipowner's duty. This is plainly not the case. The regulations are for the purpose of securing that ship and cargo can safely face the dangers of the voyage, but the shipowners have undertaken, not only to carry the cargo to its destination, but to unload it there, and must have contemplated that stevedores would be employed for this purpose. As between the shipowner and the pursuer, the former must be regarded as the occupier and the latter as an invitee who comes to work in the hold in consequence of the contract made between the shipowner and the pursuer's employers. The shipowner's responsibility for the safety of the structure is not indeed absolute, but, on the principle of Indermaur v. Dames, L.R. 1 C.P. 274; L.R. 2 C.P. 311, he owes to the invitee a duty of adequate care. If adequate care was not exercised in fitting and securing the shore, it would be no answer (as the appellant's Counsel candidly admitted) to say that the shipowner employed an independent contractor at Fremantle to do the work. For this last proposition reference may usefully be made to a recent decision of the Court of Appeal in Wilkinson v. Rea, Ltd., 69 Ll.L.Rep. 147, and especially to the observations of Luxmoore, L.J., at p. 155.

I can see no ground for drawing a distinction between the permanent structure of the ship and the temporary erections put up in her holds for the purpose of the special cargo she was carrying.

The first, and crucial, question therefore is whether the fixing and securing of the shore at Fremantle were done with adequate care. This in turn largely depends on whether the "chock" was fastened by nails of adequate length, or whether the evidence as to shorter nails is to be believed. It would be difficult to imagine an issue in which the decision more completely depends on the view of the trial Judge as to the trustworthiness of the testimony given in his presence by the witnesses who asserted that the "chock" became detached by the accident, and that they found it had only been fastened with short nails. The Lord Ordinary, who alone had the opportunity of judging of their veracity at first hand, has believed what they said. It is unfortunate that neither the "chock" nor the shore were preserved after the accident so that they could be produced at the trial, but I am not satisfied that their absence helps the shipowner, to whom the pieces of wood belonged. Without throwing any doubt upon the sincerity of the Australian witnesses, it is fair to observe that they were testifying some 15 months after the accident and 18 months after the work was done. If small nails were improperly used to fasten the "chock," this must have escaped their attention, and once the mistake was made it may well be that inspection would not detect it. The four judges of the Second Division did not differ from the Lord Ordinary's view that short nails were employed, and, in such a case as this and in view of the evidence given, the House could not, in my opinion, properly set aside this concurrent finding of fact.

As regards (b), the appellant made a series of allegations of fault against the second-named respondents and contended that the proximate cause of the accident was to be found in one or other of these alleged shortcomings. First, he contended that it was the duty of master stevedores, as soon as the unloading of the cargo had proceeded far enough to expose the shores which had been buried in the grain, to remove the shores altogether and thus obviate the possibility of their falling at a later stage upon those who were working below them. The appellant's evidence in support of this view largely related to practice in a particular line of vessels where the company does its own stevedoring, and where the removal of shores might be explained because they would otherwise impede the work of discharge, or because the holds were being cleared for a return cargo other than bulk grain. I agree with the view of the Lord Ordinary that the evidence did not establish any practice of removing shores for reasons of safety or security, and, indeed, if shores are securely and properly fixed, there would seem to be no need to remove them for such reasons. The *Sithonia* met with no exceptionally severe weather on her voyage, and it is a striking fact that the fall of a shore in circumstances like the present is so unusual an event that none of the witnesses called in the case could speak to it ever having happened before. This circumstance, to my mind, strongly confirms the view that there was something faulty in the fixing of this particular shore that was the cause of the accident.

Next, the appellant contended that the second-named defenders were liable for failure to inspect the shores and to detect the weakness of this particular shore before it fell. Here, again, I agree with the view of the Scottish Courts that it was not proved to be part of the regular practice or course of duty of stevedoring firms to make such inspection; of course, if they observed that a particular shore was loose, their duty would be to take immediate precautions, but in the present case there seems no reason to think, and it certainly was not proved, that the shore which collapsed gave any appearance, before its fall, of being dangerous.

The appellant further urged that an explanation of the collapse might be found in the vibration set up by the working of the two elevators used for discharging the grain, or by a portion of this apparatus getting into actual contact with the shore, or by the wires which hauled the "ploughs" in the hold fouling the shore in some way. These arguments were developed before us at considerable length, but the short answer to them is that, though it is conceivable that one or other of these matters might bring about the accident, there is no sufficient evidence that any of them did. The method of discharging grain cargoes at Princes Dock, Glasgow, is exceptional, for the more modern and customary use of suction is not employed. But the evidence does not at all justify the conclusion that the methods of unloading employed at Princes Dock are not proper, and, as I have said, no one was able to say that an

accident of this sort had happened there before. The appellant went so far as to argue that, since Glasgow was not named in his contract as the port of discharge, he was not required to provide against the special circumstances of unloading at this port. The answer, of course, is that Glasgow was within the range of ports at which he might be required to discharge, and that in any event it is not proved that the methods employed at Princes Dock caused the shore to fall when it would not have fallen had the unloading taken place elsewhere.

My Lords, the decision in this case turns almost entirely on questions of fact, as to which the Courts in Scotland have given the fullest attention and have reached the unanimous conclusion that the appellant, and the appellant alone, is liable for this deplorable accident. There are no adequate grounds on which that conclusion could be disturbed, and I accordingly move that the appeal be dismissed with costs.

Lord ROMER authorises me to say that he has read the opinion which I have just delivered and concurs in it.

Lord THANKERTON (read by Lord PORTER): My Lords, in this action the first respondent seeks to recover damages for injuries sustained by him on Apr. 29, 1938, while employed as a stevedore's labourer by the second respondents in the discharge of bulk grain from No. 2 hold of the steamship *Sithonia*, which belonged to the appellant and was then lying alongside in Princes Dock, Glasgow. The first respondent originally raised the action against the appellant, but, in view of the defence stated by the appellant, he convened the second respondents as defenders, and now sues the appellant and the second respondents jointly and severally or severally for the damages claimed. After proof led before him, the Lord Ordinary (Lord Robertson) decerned against the present appellant for payment to the pursuer of £1350 in the name of damages, and assoilzied the present second respondents. On a reclaiming motion by the appellant, who did not challenge the *quantum* of damages awarded, the decision of the Lord Ordinary was affirmed by the Second Division of the Court of Session. The present appeal is taken against these decisions.

As in the Inner House, the appellant maintained in this House that he was entitled to absolvitor, and, alternatively, that the appellant's injuries were jointly caused by his fault and that of the second respondents, who were thus jointly liable with him. Again no question was raised as to the *quantum* of damages, if liability was established.

There is no doubt that the serious injuries sustained by the first respondent were caused by a heavy timber shore which fell on his head while he was operating a grain plough, which gathered the grain so as to feed the elevator, which raised it to the main deck. The Lord Ordinary has fully described the position and purpose of the shore in relation to the shifting boards, and the construction of the shifting boards, as also the way in which the discharge of the grain was being conducted by the second respondents, who were employed by the appellant for that purpose. The shifting boards are a necessary precaution in the case of cargoes of grain in bulk, so as to obviate the risk of the grain shifting during the voyage in heavy weather; the province of the shores is to maintain the shifting boards in position. While the shifting boards serve no purpose after the cargo has reached its destination, it is not really practicable to remove the shores until at least a substantial portion of the grain in the particular hold has been removed.

The Lord Ordinary held it proved that the amidships end of the shore in question had not been properly secured at Fremantle, in respect that the wooden chock, which was designed to prevent the shore from springing upwards, had been nailed to the shifting board by nails of an inadequate length, and that this was the cause of the accident; he held that the appellant was therein negligent, and that such negligence was a breach of the duty owed by the appellant to the first respondent. This view was affirmed by the Inner House. As regards the crucial finding of fact as to the failure of the appellant to have the shore properly secured at Fremantle, I may express my concurrence in the view of my noble and learned friend on the Woolsack in the speech which he has just delivered, which I have had the opportunity of considering, and I agree that this finding must stand. There remains the question whether such failure of the appellant constituted a breach of any duty owed by him to the first respondent, and if so, whether it can be causally connected with the accident.

My Lords, I have no doubt that the shifting boards, including the shores, were

part of the fittings of the ship. and. contrary to the views of Lord Mackay, I am of opinion that the cases of Simpson v. Paton, [1896] 23 R. 590, and M'Lachlan v. S.S. "Peveril" Company, Ltd., [1896] 23 R. 753, are directly relevant, and that unless the appellant can show special circumstances which would impose the duty of inspection on the stevedore, he is liable for the results of the unsafe condition of the shore to the first respondent, to whom he owed a duty to take reasonable care under the well-known principle of Indermaur v. Dames, (1866) L.R. 1 C.P. 274, (1867) L.R. 2 C.P. 311. While the certificate of the Australian surveyors, given under the statutory regulations of Australia, may be of some evidential value, in a case such as the present one, as to the steps taken by the appellant to secure the proper construction of the shifting boards, it cannot absolve the appellant of his duty to the first respondent; further, the ship undertook not only the carriage of the grain during the voyage, but also the discharge of the grain at any port at which it undertook the discharge by the contract of carriage or by subsequent agreement. Counsel for the appellant submitted that this would place an unreasonable burden on the ship, as the ultimate port of discharge might not be in view at the time of the construction of the shifting boards, but the answer is simple, viz., either secure adequately the shifting boards, or take steps to remove them, or make sure of their adequacy by inspection at the port of discharge by the ship itself or by arrangement with the stevedores. Of course, it might be that the practice of a particular port was so inveterate that the ship was entitled to rely, as part of their arrangement for employment of the stevedore, on the discharge of such duty of inspection by the latter, and it may be that the employees of the stevedore would be affected by such transfer of the duty of inspection, but that question does not arise for consideration in this appeal, for I am clearly of opinion that the evidence in this case falls far short of proving any such inveterate practice. If it proves anything it proves a variety of practice, and is inconsistent with the appellant's case. The same is true of the alleged practice of removal of the shores by the stevedore.

The appellant maintained that the second respondents were negligent in three respects, viz., (1) in putting in an apparatus which might foul the shore in course of the operations, (2) in the amount of vibration caused during the operation, and (3) in the operation of the ploughs, any of which caused, or might tend to cause, the loosening of the shore. But, in my opinion, these contentions are excluded by the admission of the appellant's Counsel, made in answer to a question by one of your Lordships, that nothing that was done in the present case was unusual, and that this is the first time that a shore has fallen as this one did. It is not suggested that in the present case the second respondents, or any of their employees, observed, or should have observed, prior to the falling of the shore, anything which would have warned them that the shore was loose or dangerous. The appellant's case against the second respondents fails, and it follows, in my opinion, that the Courts below were well justified in holding that the appellant's negligence in construction of the shifting boards was the cause of the accident and was in breach of the duty owed by him to the first respondent, and that he alone is liable to the first respondent. I therefore agree with the motion proposed by my noble and learned friend.

Lord WRIGHT: My Lords, I have had the advantage of considering in print the speech which my noble and learned friend the Lord Chancellor has just delivered. I agree with it and merely add a few supplementary observations on some general matters of principle which seem to me to be involved.

That the first respondent was working on the appellant's premises, the steamship *Sithonia*, as an invitee and not as a mere licensee has not been questioned. Thus the case fell within the general rule enunciated in Indermaur v. Dames, L.R. 1 C.P. 274. The rule there laid down as to the duty of the invitor to the invitee has been affirmed in several decisions of this House, whether the particular case was held to fall within or without the rule. In the present appeal, however, the failure to exercise due care for the safety of the invitee which has been found, was due not to the negligence of the appellant or his servants but to that of independent contractors, the Australian shipwrights who constructed the shifting boards before the grain was loaded. I agree with the Lord Chancellor in his approval of the decision of the Court of Appeal in Wilkinson v. Rea, Ltd., 69 Ll.L.Rep. 147, where it was held by Luxmoore, L.J., with whom MacKinnon, L.J., concurred, that the

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