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[PART 1

COURT OF APPEAL.

Tuesday, Jan. 14, 1958.

LAWLER v. A. E. SMITH COGGINS,
LTD.

Before Lord Justice HODSON, Lord
Justice MORRIS and Lord Justice
PEARCE.

**Master and servant—System of working—Loading
of vessel—Gunwale door opened on to deck—
Dock worker's fall through gap in gunwale
while "overhauling fall" of married gear—
Liability of employers.**

Personal injuries sustained by plaintiff dock worker when he fell overboard on to save-all from gunwale door on which he was standing while "overhauling fall" of married gear used in loading of cased cars on to vessel in Birkenhead dock—Claim by plaintiff against employers, alleging that they were negligent in that gunwale door was opened and lowered on to deck during loading operations, leaving side of ship unfenced—Plaintiff's allegation that fall required "overhauling" (i.e., manual application of force to return fall to quay quickly) owing to friction caused by fair-leads used to hold line to booms—Whether a special feature requiring provision of additional precautions—Alleged lack of supervision—Decision of Glyn-Jones, J., dismissing plaintiff's claim, that it was the general practice to work such a cargo with the gunwale door down; that that practice did not give rise to unnecessary risk; that there was no special feature which involved defendants in a duty to depart from the general practice and which necessitated a man of experience requiring the additional protection of having the gunwale door closed; and that plaintiff had failed to prove lack of supervision—Appeal by plaintiff alleging that learned Judge was wrong in concluding that it was right to lower gunwale door at all, and that, even if it were justifiable to have lowered gunwale door, defendants'

foreman should have appreciated the risk and should have raised the gunwale door—Foreseeability of risk—Whether necessary for plaintiff to stand on gunwale door.

—Held, that there were ample grounds upon which the learned Judge could find that, in the circumstances, it was the general practice to lower the gunwale doors and that, in this case, there was no special feature requiring additional precautions; that the learned Judge had correctly considered the foreseeability of the risk and the duty to take precautions; and that therefore plaintiff's appeal failed.

The following cases were referred to:

Morris v. West Hartlepool Steam Navigation Company, Ltd., [1956] 1 Lloyd's Rep. 76;

Speed v. Thomas Swift & Co., Ltd., [1943] K.B. 557; (1943) 75 Ll.L.Rep. 113.

This was an appeal by the plaintiff, Mr. Michael Charles Lawler, a dock worker, from a judgment of Mr. Justice Glyn-Jones, at Liverpool, dismissing plaintiff's claim for damages for personal injuries against his employers, A. E. Smith Coggins, Ltd., stevedores, of Liverpool. Plaintiff claimed that he was standing on a lowered gunwale door and overhauling a fall (expediting the return of a fall to the quay) on the motor vessel *City of Chester* which was being loaded with cargo by means of married gear, at Birkenhead, on Apr. 8, 1955, when he fell over the ship's side, sustaining serious injuries. Plaintiff alleged that defendants and/or their servants were negligent and/or in breach of duty in working the cargo with the gunwale door down.

Defendants denied negligence and/or breach of duty in failing to provide a safe system of work and alleged that the

accident was due to plaintiff's own negligence in walking too close to the side of the ship.

According to the facts found by Mr. Justice Glyn-Jones, the plaintiff was a dock worker and he met with an accident on Apr. 8, 1955, when he fell from the deck of a ship, on which he was at work, down to the quayside. He landed on a safety board which was put between the quay and the side of the ship and suffered a severe injury.

The plaintiff was one of a gang of dock workers who were loading cargo into a vessel, the *City of Chester*, which was at the Vittoria Wharf, Birkenhead. The plaintiff was one of four men on deck. Of those four, one acted as winchman; one was the hatchman, who stood by the hatch coaming to signal to the winchman what to do, because he could see down into the hold; and another was the railman who, looking over the ship's side, could signal to the winchman when the empty sling was taken off the hook and a fresh load hung upon it. In fact these men relieved one another from time to time, and the way they did that was for one man to take over the duty of both hatchman and railman, and that was the state of affairs at the time the plaintiff met with this accident—he was acting both as hatchman and as railman.

The loading was being done by the use of married gear and both booms of the ship's derricks were in use. The starboard derrick was in the up and down position, and was rigged over the hatch. The port derrick was rigged outboard.

When these men came on to the ship to load the cargo at that hatch, members of the gang stripped the hatch boards. They removed some of the hatch boards and some of the hatch beams which supported the hatch boards, and these they placed according to the general practice: the hatch beams on the port side of the ship between the hatch coamings and the ship's side, and half of the hatch boards which they removed they put on the port side of the hatch coamings and the other half on the starboard side.

That was done by the gang of which the plaintiff himself was a member, and, in doing as they did, the gang followed what was the general practice. It was desirable that the working side of the ship should be kept as clear as possible from obstruction, but since the ship's derricks had to be used to lift the hatch beams, though not

the hatch boards, it was necessary for them to be put on the port side of the ship, because it was on the port side of the ship that the ship's derricks were at work, and it would not have been practicable to use the derricks to handle these hatch beams on the starboard side of the ship without re-rigging the derricks.

Having stripped the hatch coverings in that way, the men started work. The vessel had solid bulwarks of steel extending above the deck to a height of about 3 ft. and forming part of the ship's side. Opposite the hatches, the section of the gunwale was hinged so that it could be folded down to lie flat, and, when so folded down, the gunwale door or section of the ship's side formed a platform about 16 ft. in length. It was a little less than 4 ft. wide, and when lowered it formed a firm, solid, level platform about 9 in. above the level of the deck.

The gunwale door was lowered for the purpose of the loading operation.

Plaintiff alleged that the gunwale at the ship's side was a protection to the men against the danger of falling over the ship's side and therefore the gunwale door ought never to be let down unless the nature of the work being done made it necessary to do so and, even then, that it ought not to be considered necessary if the nature of the work being done made it necessary or likely that the dock labourers on deck would have occasion to go near to the ship's side at the point where the gunwale door was lowered.

His Lordship said that he was satisfied that it was the general practice to work with the gunwale door down rather than up, and that those gunwale doors were made hinged with the intent that they should be lowered. Apart altogether from any question of safety to life and limb, there was the risk of damage to the cargo, and working with the gunwale door up meant that there was a risk that as cargo was being swung outboard or inboard it might be banged against the gunwale, and by lowering the gunwale door, the risk of injury in that way was very markedly diminished.

It was possible that if some accident should happen to a man as a result of the gunwale door being left up, as for example the cargo catching in it or a portion of the cargo falling out on to a man on the quay below or on the deck inboard, it might be alleged against the stevedore or shipowner

that he was obviously negligent and had not taken advantage of the fact that the gunwale door, being hinged, could be laid flat and that that kind of accident would not have happened. As a general rule there was nothing blameworthy in the practice of working with the gunwale door lowered, and Mr. Johnson, who was an area port supervisor of the trade union to which the plaintiff belonged (the Stevedores and Dockers' Union), in evidence, conceded that where cargo of considerable size was being loaded it would be necessary or desirable to work with the gunwale door down.

His Lordship said that whether or not he was right in saying that it was the general and proper practice to work with the gunwale door down if there was a a hinged gunwale door, he was quite satisfied that in this case, the nature of the cargo being loaded, namely, cased cars, made it desirable that the gunwale door should be down.

It was pointed out that when working with married gear the higher the load was lifted, the nearer it went to the jib, and the greater was the transverse strain upon the tackle. That was another reason for so far as possible reducing the height from which the cargo was to be lifted by lowering the gunwale door, and that was particularly relevant in the case of large cargo, because, the larger the piece of cargo which was being lifted, the higher above the deck the hook must be from which that piece of cargo was suspended.

His Lordship found that, in general, the practice of loading and unloading cargo, such as that which was being loaded on this day, with the gunwale door down was not unusual or improper in any way.

Plaintiff said that the tackle which was being used was a little unusual in that the boom or jib of each derrick had fitted to it between the two pulley blocks at the top and bottom of the jib two devices which were called fair-leads. A fair-lead was a device consisting of a bracket through which the rope running from the drum of the winch through the pulley blocks was reeved, but the value of the fair-lead was that, when the rope was slack, the fair-lead would keep the rope close to the boom instead of allowing it to belly out. The objection to it was that it added a little more friction to the free passage of the rope. There was a certain amount of friction at each end of the jib at the point where the rope was passing over the pulley

blocks. The pulley blocks might not be running absolutely freely, and they to some extent hampered the free running of the rope, and these fair-leads, it was said, still further hampered the free running of the rope. The result was that, after depositing the load of cargo, the inboard starboard winch was used to raise the fall, and the next step was that the port winch was operated so as to haul in the rope on the port side derrick, and that drew the rope from the inboard winch with its shackle and hook at the end of it towards and over the side of the ship. In order for that to happen, slack had to be paid out from the inboard starboard winch, and, if the rope did not run freely, the passage of the hook towards the side of the ship was held back. It was said that, on this particular job, there was more tendency than usual for the movement of the hook towards the side of the ship to be held back by the fact that the rope on the starboard derrick was not running freely, and, to get over that and to get the fall out over the ship's side more quickly, the railman used to catch hold of the fall leading from the inboard derrick and give it a pull. That was known as overhauling the fall.

At the time of the accident, the plaintiff stood on the lowered gunwale door, because he found it more convenient to reach the fall in that position. He got hold of the fall from the derrick and gave it a pull so as to thrust the hook over the side, and his accident happened when he was actually doing that. He did not know how it happened. Nobody else apparently saw him fall; whether he slipped or whether he stumbled and lost his balance and accidentally slipped over the ship's side he did not know, but somehow, while he was in the act of pulling on this fall, he went over the side.

Plaintiff said that the circumstances were so unusual as to put the defendant company, by their hatch foreman or by their ship's foreman, on notice of the fact that the stevedores, including the plaintiff, were being exposed to unreasonable risk of danger, and, knowing that, they ought, either to have, in this instance, worked with the gunwale door up, or to have taken some steps to ensure that the rope ran more freely, so as to obviate the need for the railman to step on the gunwale door in order to reach the fall.

It was further said on behalf of the plaintiff that he had to step on to the