APPELLATE CRIMINAL

Before Mr. Justice Shah and Mr. Justice Vyas.

STATE *v.* MESSRS. ARDESHIR B. CURSETJEE & SONS LTD.* 1955 Nov. 7

Indian Dock Labourers Act (XIX of 1934)—Indian Dock Labourers Regulations, 1948, Regs. 5, 50, 51—Expression 'use for the passage of goods or trimming', occurring in Reg. 50 (1), meaning of.

The use of a hatch, which is covered with wooden boards, in preparation for the collection and arrangement of the cargo thereon before such cargo is hoisted by the lifting machinery for discharge from the ship, or for the purpose of lowering the cargo thereon, after the cargo is brought into the ship by the lifting machinery for being loaded in the hold, does not amount to "use for the passage of goods or trimming," within the meaning of Regulation 50, sub-regulation (*1*) of Indian Dock Labourers Regulations, 1948,

CRIMINAL APPEAL against the order of acquittal passed by K. J. Khambata, Esquire, Chief Presidency Magistrate, Bombay.

The facts are sufficiently set out in the judgment.

A. A. Mandgi, Assistant Government Pleader, for the State.

B. D. Boovariwala, and *A. G. Krishnmurthy,* with *Smetham Byrne & Lambert,* for the Respondent.

Vyas J.—This is an appeal by the State of Bombay from a judgment of the learned Chief Presidency Magistrate, Bombay, acquitting the respondent company who were charged with having committed an offence under regulation 5 read with regulations 50 and 51 of the Indian Dock Labourers Regulations, 1948, framed under s. 5 of the Indian Dock Labourers Act, 1934.

A short but an interesting question which has arisen in this case is one of construction of regulations 50 and 51 of the Indian Dock Labourers Regulations, 1948, and the point which requires our decision is whether the use of a hatch, which is covered with wooden boards, for the purpose of collecting and arranging the cargo thereon, before the cargo is hoisted by the lifting machinery for being discharged out of the ship, or for the purpose of lowering the cargo thereon, after the cargo is brought into the ship by the lifting machinery for being loaded in the hold, is a "use for the passage of goods or for trimming" within the meaning of regulation 50, sub-regulation (*1*). Regulation 50, sub-regulation (1) provides:

"*Hatches not in use.*—(I) If any hatch of a hold accessible to any worker and exceeding five feet in depth, measured from the level of the deck in which the hatch is situated to the bottom of the hold, is not in use for the passage of goods, coal or

*Criminal Appeal No. 998 of 1955.

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other material, or for trimming, and the coamings are less than two feet six inches in height, such hatch shall either be fenced to a height of three feet or be securely covered and similar measures shall be taken, when necessary to protect all other openings in a deck which might be dangerous to the workers: Provided that this requirement shall not apply (*i*) to vessels not exceeding 200 tons net registered tonnage which have only one hatchway, and (*ii*) to any vessel during meal times or other short interruptions of work during the period of employment." Regulation 51 lays down:

"*Handling at intermediate decks*— No cargo shall be loaded or unloaded by a fall or sling at any intermediate deck unless either the hatch at that deck is securely covered or a secure landing platform of a width not less than that of one section of hatch coverings has been placed across it: Provided that this regulation shall not apply to any process of unloading the whole of which will be completed within a period of half an hour."

Now, the point abovementioned which has arisen for our decision has arisen in this way: The accused-respondent company are a firm of stevedores in Bombay. The ship S. S. "Steel Fabricator" was in the Bombay harbour on June 18, 1954. It was berthed at No. 19 Alexandra Docks. The respondent firm of stevedores were to discharge the cargo from the wings of the shelter deck of this ship. The prosecution contends that when the ship arrived, the beams and wooden covers of the hatch at the shelter deck were not in proper position. In other words, the hatch at the shelter deck was not securely covered. At 2.45 p. m. on June 18, 1954, one V. S. Waghchure, a tally clerk, who was sorting the goods on the shelter deck, stepped on one of the hatch covers which were not properly secured. The result was that he fell through a depth of 30 feet into the lower hold. Along with him a couple of hatch covers also fell into the hold. Mr. Waghchure was seriously injured and he was removed to the hospital. The prosecution case is that if the beams had been put in proper position and if the wooden boards which had been used for covering the hatch had been properly secured, the tally clerk would not have fallen. This clerk Waghchure had hadrly walked a few paces along the hatch-boards in order to show the goods which were to be discharged to an employee of the respondent company when one of the hatch-boards on which he had put his foot gave way and he fell down. He was seriously injured and lost consciousness immediately. When he regained consciousness, he found himself in St. George's Hospital. He had remained unconscious for nearly three days. He was unable to speak. His lower jaw-bone was fractured. Several of his teeth were knocked out of their sockets. His collar-bone was also fractured. His left leg was seriously injured. He had to

remain as an in-patient in the hospital for 18 days. He was unable to resume duty for another three months during which time he was obliged to remain at home. It would appear that as the ship had encountered inclement weather during its journey from Karachi to Bombay, the cargo stowed in the wings of the shelter deck had rolled over on to the square of the hatch. The defence contends that due to the large quantity of cargo and the dunnage which had collected on the square of the hatch in the circumstances stated above, it was not possible to see the condition of the hatch-boards and beams nor was it possible to cover securely all the sections of the hatch. The defence submission is that the covering of the hatch securely could only be done after removing all the cargo and dunnage from the square of the hatch and that was not practicable in this case. All that was possible to be done in this case, says the defence, was to clear the cargo and dunnage from only one section of the hatch. The defence further contends that the tindel of the ship had warned all the labourers and also the tally clerk of the danger of stepping on the hatch-boards. A warning was given to them that it was unsafe to walk on the sections except the section which had been cleared of the cargo and the dunnage. It is alleged for the respondent company that the tally clerk Waghchure disregarded that warning and put his foot on one of the hatch-boards and that it was a result of his own negligence and disregard of the warning that he suffered from the mishap which occurred.

The learned Chief Presidency Magistrate has taken the view that the respondent company had taken all reasonable precautions through their head foreman to see that nobody suffered from an injury as a result of the insecure condition of the hatch-covers on the shelter deck. He has further held that regulation 50, sub-regulation (*1*), was not applicable to the circumstances of this case. In his view, the two regulations, namely regulation 50 and regulation 51, are "directed towards two different sets of circumstances" and they "would not both apply to the same set of circumstances." The learned Magistrate has observed:

> "It may be mentioned that regulation 50 has a heading 'hatches not in use'; whilst regulation 51 specifically deals with the case which we have in hand, viz., 'Handling at intermediate decks' ".

He has then gone on to say:

> "When an operation is going on at an intermediate deck, which specifically falls under regulation 51, it cannot, in my opinion, be said that that hatch at that deck is 'not in use'. The hatch is in fact in use, because the cargo in the wings of the intermediate deck has got to be pushed out, or brought over to the square of that hatch and then unloaded by a sling operated by the ship's derricks or the shore-cranes."

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It is thus clear that according to the learned Chief Presidency Magistrate, the expression "the passage of goods", which is found in sub-regulation (*1*) of regulation 50, does not necessarily mean, or is not confined to, the passing of the goods vertically through the opening of the hatch. In his view, even if the goods are "to be pushed, shoved, rolled over or slided horizontally along the square of the hatch" which is covered with planks, the hatch could be said to be used for the passage of goods or for trimming. While expressing his opinion that the square of the hatch on the shelter deck in this particular case was used not only for the passage of goods but was also used for trimming, the learned Magistrate has said :

> "The word 'trim' is defined in the Shorter Oxford Dictionary as 'to stow or to arrange (coal or cargo) in the hold of a ship, or to carry it to the hatches when discharging.' When cargo is being carried from the wings to the square of the hatch for discharging, the hatch is 'used' for trimming."

In short, the learned Chief Presidency Magistrate has come to the conclusion that the square of the hatch on the shelter deck on the S. S. "Steel Fabricator" was used both for the passage of goods and also for trimming. Accordingly, his view is that regulation 50, sub-regulation (*1*), would not apply to the facts of the present case.

Then the learned Magistrate has held that the regulation which applied to this case was regulation 51 and that the said regulation was complied with. "Under regulation 51," says the learned Magistrate,

> "the obligation would be of an alternative nature, i. e. either securely to cover the entire hatch, or to afford a secure landing platform of a width not less than that of one section of the hatch cover."

As the evidence of the witnesses showed that one section of the hatch, viz., the aft or No. 4 section was secured so as to afford a secure landing platform, the learned Magistrate held that regulation 51 was complied with. It was for these reasons, namely that regulation 50 (*1*) did not apply and regulation 51 was complied with, that the learned Magistrate came to the conclusion that the respondent company had not committed any offence and ordered their acquittal. It is against this order of acquittal that the State has come in appeal.

The learned Chief Presidency Magistrate has taken the view—and in our opinion he is right in that view— that the obligations imposed by regulations 50 and 51, viz., the obligation under regulation 50 to fence the hatch to a height of 3 feet or to cover the hatch securely and the obligation under regulation 51 to cover the hatch securely or to place across the hatch a secure lending platform of a width not less than the width of one section of the hatch coverings, are absolute obligations and they have to be carried out irrespective of

whether or not all reasonable care is otherwise taken to avert an accident. The words "shall either be fenced.....or be securely covered and similar measures shall be taken" in regulation 50 sub-regulation (*1*), and the words "no cargo shall be loaded or unloaded.....unless either the hatch at that deck is securely covered....." in regulation 51 would show that the provisions of these regulations are mandatory and it would be no defence to a breach thereof to say that the labourers working on the deck were warned to be careful in view of the danger arising out of the non-compliance with these provisions.

The learned Chief Presidency Magistrate, however, was not right when he observed in paragraph 22 of his judgment that the two regulations, viz., regulations 50 and 51 were "directed towards two different sets of circumstances" and that "they could not both apply to the same set of circumstances." In the view of the learned Magistrate, if a case attracted the provisions of regulation 50, sub-regulation (*1*), it would not invite the operation of regulation 51 and *vice-versa*. In our view, the learned Magistrate is not right. The provisions of regulations 50 and 51 are not mutually exclusive. It would all depend upon the particular circumstances of a case whether they would attract the application of regulation 50 sub-regulation (*1*), only or the application of regulation 51 only or the simultaneous application of both these regulations. If a hatch is not in use for the passage of goods or for trimming and if no cargo is handled at that particular deck for loading or unloading, the provisions of regulation 50, sub-regulation (*1*), only will be attracted. Regulation 51 will not apply. If a hatch at a particular deck is in use for the passage of goods or for trimming and if no cargo is handled at that deck for loading or unloading, neither regulation 50, sub-regulation (*1*) nor regulation 51 will apply. If a hatch at a particular deck is not in use for the passage of goods and if cargo is handled at that particular deck for loading or unloading, then both the regulations 50 and 51 will apply. In such a case, since it would be obligatory to fence the hatch to a height of three feet or to cover the hatch securely under regulation 50 (*1*), it would not be necessary to comply with the latter of the two alternative requirements of regulation 51, provided that the alternative of securely covering the hatch under regulation 50 (*1*) is carried out; because in that event, the first of the two alternative safeguards required by regulation 51 would have been satisfied. As we have seen, regulation 50 (*1*) provides for two alternatives : (*a*) to fence a hatch to a height of 3 feet or (*b*) to cover the hatch securely. If the first of these two alternatives is carried out, then so far as regulation 51 is concerned, the hatch may either be securely covered

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or a secure landing platform may be placed across it. But, if the alternative of covering the hatch securely under regulation 50 (*1*) is carried out, it would be unnecessary to comply with the latter alternative requirement of regulation 51, viz. the requirement of placing secure landing platform across the hatch. The reason for this is obvious. If the hatch is securely covered under regulation 50 (*1*), the opening in the deck is covered and the covered hatch becomes perfectly safe for the purpose of handling the cargo and it becomes unnecessary and superfluous in that case to place a landing platform across the hatch. Indeed, it becomes physically impracticable to place a landing platform across an opening in a deck once the opening is securely covered with wooden boards. The point is that if a hatch at a particular deck is not used for the passage of goods out of the ship or into the ship, but if it is used for the handling of the goods for the loading or unloading thereof, then both the regulations 50 (*1*) and 51 will apply.

This leads us immediately to the question whether the hatch on the shelter deck or the intermediate deck of the S. S. "Steel Fabricator" which was covered, insecure though the covering was, was used for the passage of goods or for trimming within the meaning of regulation 50 (*1*). The learned Chief Presidency Magistrate has taken the view that it was used both for the passage of goods and also for trimming. The State contends that it was *neither* used for the passage of goods *nor* for trimming. In our view, the contention of the State is correct and must prevail.

The passage of goods, when the cargo is to be discharged out of the ship, means the process of the goods being passed through the hatchway and out of the hatch at the top deck. The passage of goods, when the cargo is to be lowered into the hold of the ship for the purpose of loading, means the process of the goods being passed through the hatch at the top deck and thereafter through the hatchway. When the cargo is to be discharged out of the ship, the process of the passage of goods does not commence until after the goods are hoisted. So long as the goods are in contact with the square of the hatch which is covered, the process of the passage of goods has not started. In the present case, as I have said, the hatch was covered; but it was not securely covered. So long as the cargo was lying on this hatch, which was covered, for being hoisted up by the lifting machinery, the process of the passage of goods had not begun. The moment the hoisting actually starts, the process of the passage of goods commences, but not until then. The goods might be placed on a lifting machinery, but so long as the lifting machinery does not start working and so long as the hoisting does not actually begin, the goods are not in passage. The placing of the goods upon

a lifting machinery is a step preliminary or preparatory to the passage of the goods, but it is not the passage itself. The learned Chief Presidency Magistrate has referred to the pushing, or bringing over, of the cargo to the square of the hatch as parts of a process of passage. But in our view he is not right. Those are things which are preliminary to, or preparatory to, the process of passage. They are not parts of the process of passage itself. A hatchway is a vertical column of space over the square of the hatch which is covered. Until the goods leave the surface of the said square of the hatch and begin ascending through the hatchway, the process of the passage of goods cannot be said to have started.

Therefore, merely the fact that the goods were collected or being arranged on the insecurely covered square of the hatch at the shelter deck of the S. S. "Steel Fabricator" for the purpose of being lifted up would not mean that the said hatch was used for the passage of goods. The goods could not pass through that hatch, because the hatch was covered. Merely the fact that the goods were pushed on to the covered hatch would not mean that the hatch which was covered was used for the passage of goods. As I just pointed out, it would be an act preliminary or preparatory to the process of passage. The point in short is that the hatch through which the goods pass, in the process of being discharged out of the ship or in the process of being lowered into the ship is a hatch which is used for the passage of goods. The hatch which is covered, however insecure the covering, through which the goods cannot pass, but which is used only for hoisting the goods or for receiving the goods which are lowered, is not a hatch used for the passage of goods.

In this construction which we have put on the expression "in use for the passage of goods", we are fortified by the language of regulation 50 (*1*) itself. Sub-regulation (*1*) of regulation 50 says that if a hatch is not in use for passage, it "shall.....be securely covered." This must inevitably and irresistibly show that if a hatch is covered, may be securely or insecurely, it cannot be used for passage of goods in the sense and the connotation in which the term 'passage' is used in the regulation. The intention of the Central Government in framing sub-regulation (*1*) of regulation 50 was clearly to direct that if a hatch was not to be used for the passage of goods, one of the obligatory safeguards to be adopted was to cover it. This must indicate that when the Central Government used the word 'passage' in sub-regulation (*1*) of regulation 50, they clearly meant passage *through* an opening or a hatch. They did not intend that the pushing of the cargo on to the wooden boards with which a hatch is covered and the arranging of the

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cargo on the said boards were to be considered as parts of the operation of passage. The Central Government could not have intended to lay down two contradictory directions such as these : (1) When there is no passage of goods, cover the hatch; (2) Cover the hatch and yet use it for the passage of goods. Thus, on a proper construction of regulations 50 (*1*) and 51, the position is that if a particular hatch is not in use for the passage of goods but is used only for the handling of goods, the provisions of both the regulations 50 (*1*) and 51 would apply. If a hatch is used for the passage of goods or for trimming, but is not used for the handling of goods, neither of the regulations 50 (*1*) and 51 would apply. If a hatch is not used either for the passage of goods or for trimming nor for the handling of goods, regulation 50 (*1*) only would apply. As the hatch on the shelter deck of the S. S. "Steel Frabricator" was covered, it was not in use for the passage of goods or for trimming, but was used only for the handling of goods. Therefore, both the regulations 50 (*1*) and 51 would apply.

Mr. Boovariwala for the respondent company has strenuously contended before us that even if we hold that the hatch on the shelter deck of this particular ship was not in use for the passage of goods, it was used for trimming at any rate and, therefore, the provisions of regulation 50 (*1*) would not be attracted in this case. We have considered this submission carefully, but we regret we are unable to see force in it. Mr. Boovariwala's submission is against the plain language of regulation 50 (*1*). Sub-regulation (*1*) says: "If any hatch..... ...is not in use.....for trimming.....such hatch shall..... be securely covered." Now, if words have a meaning, the plain and natural meaning of the above language used by the Central Government in framing sub-regulation (*1*) of regulation 50 is that if a hatch is covered, may be securely or insecurely, it would not be capable of being used for trimming in the sense in which the term 'trimming' is used in the regulations. If a covered hatch still remains capable of being used for trimming, the direction that a hatch which is not used for trimming should be covered becomes purposeless. Thus, the language of regulation 50 (*1*) would clearly show that so far as "trimming" under the regulations is concerned, the Central Government intended two things :

(1) If a hatch is not in use for trimming, it shall either be fenced to a prescribed height or be securely covered; *but*
(2) If a hatch is to be used for trimming, there is no obligation either to fence it or cover it.

Had the Central Government intended that even if a hatch is protected or safeguarded against by covering it as required by regulation 50 (*1*) it could be used for trimming, it would not

have laid down that when a hatch is not being used for trimming, it must either be fenced or covered. If trimming as contemplated by the regulations could be done irrespective of whether or not the hatch is fenced or covered, it would have been purposeless to provide for safeguards in respect of a hatch when trimming is not to be done. It is inconceivable that the Central Government would have intended to bring about two mutually contradictory positions by the same regulation, viz. (1) that if a hatch is not to be used for trimming, one of the obligations would be to cover it; and (2) that even if a hatch is covered it can be used for trimming.

After the hatch at the shelter deck of the S. S. Steel Fabricator" was covered with boards, as it was in this case, insecure though the covering was, there was not any hatch properly so called left on that deck, and, therefore, no question could arise of its being used for trimming. After an opening in a deck is closed up by covering it with boards, the space which was previously capable of bearing the description 'opening' can no longer be spoken of as an 'opening.' Regulation 2 defines a hatch as "an opening in a deck used for the purpose of processes or for trimming or for ventilation." After that opening was covered with planks, the space which was previously called a hatch could no longer be called a hatch. Accordingly, at the material time, when there was no gap, void, hollow or opening left on the shelter deck, the whole deck had become homogeneous and the heterogeneity of a part it being different in appearance from the rest of it had disappeared. As soon as the opening in the deck was covered with planks, the hatchway ended there, and where the hatchway ends, there cannot be a hatch beyond it. On the S. S. "Steel Fabricator", so far as the shelter deck at the material time was concerned, the hatchway could not pass through any opening or hatch on that deck, and the reason was that there was not in existence any hatch properly so called on that deck on that day. In other words, after the portion of the deck which once was a hatch was covered with wooden boards, it ceased to be a hatch and became a part of the deck and the hatchway came to an end there. To say that a hatch which is covered is still a hatch is contradiction in terms. It is analogous to saying that an opening which is closed is still an opening. The position thus is that the hatch at the shelter deck having been covered, in other words, the opening having ceased to exist, no question could arise of any goods being passed through it or being trimmed or carried through it.

The term 'trim' is not defined either in the Act or in the regulations. But Mr. Boorvariwala has invited our attention to the definition of "trimming" as contained in the Oxford

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Dictionary. The definition is : "'Trim' means to stow or to arrange (coal or cargo) in the hold of a ship, or to carry it to the hatches when discharging." The term 'hatches' in this definition obviously refers to openings in the upper decks, because on the deck on which the cargo is stowed and from which the cargo is to be removed for being discharged, there would be left no hatch the moment the opening is covered. In the present case, the opening in the deck on which the cargo was stowed and from which the cargo was to be removed for its dicharge was closed and there was no hatch left on that deck. Clearly thus the word 'hatches' in the definition of the term 'trim' must mean openings in the upper decks. The expression "to carry it to the hatches when discharging" would itself suggest that the word 'hatches' in the definition of the term 'trim' means hatches on higher decks. The word 'carry' would be wholly inappropriate in the context of the hatch which is covered and on which the cargo already lies before being hoisted. So long as the cargo is on the floor of the covered hatch, the operation of carrying it for discharge does not commence. Mere pushing of the cargo on to the floor of the covered hatch or mere arranging of the cargo on that floor or merely attaching the cargo to the lifting machinery by slings or other contrivances does not amount to a cariage of the cargo for discharge. When the lifting machinery starts working and when the cargo actually leaves the floor of the covered hatch and begins ascending through the hatchway towards the higher decks, the carriage of the goods for their discharge begins. So long as the passage of the goods does not begin, the carriage thereof for discharge does not also begin, and I have already pointed out above that the passage of the cargo for discharge does not commence until the cargo leaves the square of the hatch which is covered. It is, therefore, clear that the words "carry it to the hatches" in the definition of 'trim' in the Oxford Dictionary mean the carriage of the goods to the hatches in the higher or upper decks.

It is clear from the way in which regulation 50 (*1*) is worded that if a hatch is not used for the passage of goods, it cannot be used for trimming either. If a hatch which is not used for the passage of goods can still be used for trimming, the Central Government would not have framed one common regulation applicable to cases of non-user of a hatch both for the passage of goods and for trimming. The fact that the Central Government made a regulation directing that a hatch shall be covered if it is not in use for the passage of goods or for trimming would show that if a hatch is not used for the passage of goods, it cannot be used for trimming also. If a hatch not in use for the passage of goods could be used for trimming, an anomaly

would arise immediately and the anomaly would be this: What would be the position if a hatch not in use for the passage of goods is used for trimming only? Would it be obligatory to cover it or not? Regulation 50 (*1*) would have no answer to it, if a hatch not in use for the passage of goods could be used for trimming. Clearly a hatch which is required to be covered, if not in use for the passage of goods, cannot both be covered and be kept open at the same time if it is to be used for trimming. Therefore, in our view, the context in which the words "or for trimming" occur in regulation 50 (*1*) would show that, so far as the Indian Dock Labourers Regulations, 1948, are concerned, a hatch which is not in use for the passage of goods cannot be used for trimming either. It is, therefore, that I have pointed out that in the Oxford Dictionary definition of the term 'trim', the word 'hatches' in the expression "to carry it to the hatches when discharging" refers to openings on higher decks.

The words "not in use for the passage of goods" in regulation 50 (*1*) are used in relation to a hatch, and a hatch is an opening in a deck. The above quoted words cannot relate to an opening which is closed or covered, for the obvious reason that goods cannot pass through an opening which is covered. It is in relation to the same opening that the words "not in use.....for trimming" are also used in regulation 50 (*1*). It is therefore, clear that when regulation 50 (*1*) speaks of a non-user of a hatch, it is non-user both for the passage of goods and also for trimming. We must accordingly reject Mr. Boovariwala's submission that, though the hatch at the shelter deck which was covered might not have been in use for the passage of goods, it was still used for trimming.

Mr. Boovariwala has contended before us that in this particular case it was impossible to comply with the direction contained in regulation 50 (*1*) regarding covering the hatch securely. Mr. Boovariwala says that as the ship had encountered rough weather during the course of its journey from Karachi to Bombay, the cargo on the ship had been considerably disturbed and it was lying in a disorderly manner upon a section of the hatch on the shelter deck making it impossible for the workmen to go on that section for clearing the cargo and pushing it back into the wings of the deck. In this connection, Mr. Boovariwala has invited our attention to the evidence of Dominic Clement Fernandez who at the material time was a Cargo Supervisor of the B. I. S. N. Co., Ltd. Mr. Fernandez has stated in the course of his deposition that as the cargo on the S. S. "Steel Fabricator" had "fallen on the top of the square, the condition of the planks and beams of the square was not visible" and that in those circumstances

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the only thing that could be done was to start discharging the cargo. Then our attention was invited to the evidence of Mr. Azirshah Shamdadalisha. This witness has stated that "cases and dunnage and other cargo" were lying mixed up on the top of the square of the hatch and that if all the things were lying on the square of the hatch, it would not be possible to secure the planks which might be loose. In the first place, what Mr. Azirshah has stated is a hypothetical thing, viz., that in the event of all the things lying on the square of the hatch, it would not be possible to secure the planks properly. There is no evidence before us to show that the entire cargo which this particular ship was carrying had been dislodged or dislocated from its proper position and had rolled over on the square of the hatch. Mr. Fernandez has only said that the cargo was lying on the square of the hatch, and this would not justify an inference that the entire cargo had been dislodged from its position and was lying on the square of the hatch. Mr. Azirshah does not say so. Secondly, it may be noted—and this is very important—that at least one of the sections of the hatch was cleared up. This is evident from the position taken up by the respondent company in defence. Now, if some of the cargo which was lying on a section of the hatch was cleared up by being removed to the wings of the shelter deck itself, it is not understood why the rest of the cargo also could not have been similarly removed if a serious endeavour had been made in that direction. We cannot be persuaded to accept the contention that no matter how hard the authorities of the ship had tried, the cargo which was lying in a disorderly manner on the boards of the hatch covering could not have been removed and pushed back into the wings of the deck before commencing the process of disembarkation of the cargo. In our view, just as the cargo which was lying on one of the sections of the hatch coverings could be removed making it possible for the workmen to go on that section, it should also have been possible to remove the cargo from the entire covering of the hatch before the process of disembarking the goods was taken up. That being so, we are unable to see substance in Mr. Boovariwala's contention based upon the evidence of Mr. Fernandez and Mr. Azirshah that it was impossible to remove the cargo which was lying on the square of the hatch and that, therefore, it was not practicable to comply with a requirement of regulation 50 (*1*), viz. the requirement of securely covering the hatch.

For the reasons stated above this was a case to which both the regulations 50 (*1*) and 51 applied. Regulation 50, sub-regulation (*1*), was applicable because we have come to the conclusion that the hatch at the shelter deck which was covered though insecurely, was not in use for the passage of goods

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nor for trimming. Regulation 51 would apply because the goods were handled on the square of that hatch which was covered. The learned Chief Presidency Magistrate has taken the view that regulation 51 at any rate was complied with, because one section of the hatch, viz. the aft or No. 4 section, was secured so as to afford a secure landing platform. But the learned Magistrate has obviously overlooked the provisions of regulation 55, sub-regulation (2), which directs : "The beams of any hatch in use for the processes, shall, if not removed, be adequately secured to prevent their displacement." It is, therefore, obvious that although a section of the hatch was secured so as to afford a secure landing platform, the other space of the hatch, which was not securely covered, ought to have been securely covered. As that was not done, regulation 51 also was not complied with in this case.

The result, therefore is that the respondent company, which is a firm of stevedores, started to disembark the cargo from the ship, although regulation 50 (1) and regulation 51 were not complied with. This resulted in a serious accident and injury to Mr. Waghchure. The respondent company are clearly guilty of an offence under regulation 5 read with regulations 50 and 51 of the regulations framed under the Indian Dock Labourers Act, 1934. We find the respondent company guilty of the said offence, convict them of the said offence and sentence them to pay a fine of Rs. 50.

Order accordingly.

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

MAHARU BHIKA PATIL AND ANOTHERS, (ORIGINAL CREDITORS) APPLICANTS *v.* DAGA NATHU PATIL (ORIGINAL DEBTOR) OPPONENT.*

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Bombay Agricultural Debtors' Relief Act (Bom. XXVIII of 1947), s. 24 (1)—Transfer of Property Act (IV of 1882), ss. 55 (6) (b), 95, 100—Indian Limitation Act (IX of 1908) arts. 144, 148—Oral sale of immoveable property worth more than Rs. 100—Application by vendor for adjustment of debt on the ground that transaction was mortgage—Whether inquiry in nature of transaction can be made under Bombay Agricultural Debtors' Relief Act—Whether such claim made more than 12 years after transaction, barred by limitation.

A debtor made an application under the Bombay Agricultural Debtors' Relief Act, 1947, for adjustment of his debt, alleging that an oral sale

*Civil Revision Application No. 1342 of 1954.