DEPUTY BAILIFF: Mr. K. S. Miller is a felt roofing contractor and carries on business under the name of Channel Islands Felt Roofing Company. At the time of the incident which gave rise to the proceedings before us he employed Mr. Brian Evans, who was his senior employee, his son Mr. Terence Miller and Mr. Steven Miller another son, the plaintiff in the present actions.

Mr. K. Durbano is a building contractor. At the relevant time Mr. P. J. Rive was employed by Mr. Durbano as a carpenter at 109 Rouge Bouillon. There was a ladder on the site. It was the top half of a wooden extension ladder with metal rungs and had rubber tips on the upper end of each shaft. It belonged to Mr. Durbano. Channel Islands Felt Roofing Company was the sub-contractor employed to cover with felt a roof of a building of some six feet or so in height to the rear of the main building at 109 Rouge Bouillon. Access to the roof of that building which was to be covered with felt was by means of Mr. Durbano's ladder. Mr Durbano and Mr. Miller's company had worked together for a number of years and it was the custom between them for Mr. Miller's company to use Mr. Durbano's ladders if a convenient one was available rather than bring one of their own on to the site.

Although the plaintiff could not remember it, we are satisfied that in fact he had been on the site on the 23rd August with Mr. Evans and Mr. T. Miller and that they had almost completed the felting work. He was in charge of heating the bitumen and carrying it up to the roof in a bucket. On the 23rd August he did so without any mishap and he made some seven or eight journeys up and down the ladder. The next day the same three men returned late in the morning as it had been raining earlier to complete their work. We cannot be sure if the ladder was already in position against the wall of the low building or whether one of the three men placed it there.

It may have been left there by Mr. Rive who had been working on the roof at least on the previous day. During the first journey up the ladder with the bucket an accident happened. The foot of the ladder slipped some way back from the wall with the result that the ladder moved downwards and outwards. It had been placed on some concrete slabs which formed a paving for the area. The surface of the slabs was damp. At the time the ladder moved Mr. Miller had just placed his bucket on to the roof top and was in the act of taking his hand away from the handle. The action of the ladder caused him to plunge his hand into the bitumen and he suffered burns to his hand, wrist and forearm. He was wearing protective gauntlets supplied by his employer but because his hand went in further than the depth of the gloves themselves they failed to protect him. He was wearing soft soled moccasins at the time. He brings this action against Mr. Miller as his employer for a breach of duty to him as a servant. He has also actioned Mr. Durbano as the second defendant in the same action and Mr. Rive in a separate action for a breach of their general duty of care towards persons, including himself, whom they might reasonably have anticipated might be injured by their building activities. Both actions have been consolidated and heard together.

The duty of a master to his servant is well known and was considered by this Court in Louis v. E. Troy Limited and others in Jersey Judgments Vol. II at page 1371 and need not be repeated in detail here. It is sufficient to say that in this case the relevant head of such duty was that of providing a safe system of work.

We want to say that the Court was impressed with all the witnesses; each tried to help the Court to the best of his ability.

Mr. K. Miller is a man of long experience in roof felting. He admitted in evidence that the carrying of hot bitumen up ladders was a high risk job as hot bitumen was a highly dangerous substance. Whatever the height of the ladder if it slipped there was risk of

some splashing from the bitumen over the person carrying it. Mr. Steven Miller told us that it could catch fire. It is thus highly volatile. Although he had warned his employees including the plaintiff to be careful when climbing ladders and using bitumen, Mr. Miller Senr. had not, although Mr. Evans thought that he had, told them specifically to secure the ladders. This could be done either by tying them at the top or by placing a block of something solid like concrete at the bottom against the foot. Mr. Miller did not do this in practice unless in his words, there was a dodgy roof involved, for example something connected with the height, the access or the foundation on which the ladder was to rest. In the present case he felt that he would have used the ladder unsecured as the height was not great. That view was supported by Mr. Evans. Mr. Miller added, however, that had he thought more deeply about it he would have added a block to the bottom. He ascribed the accident to the damp state of the slabs underneath the foot of the ladder. It is significant that after the accident he placed a nearby block of concrete at the foot of the ladder In our opinion a ladder being used for the carrying of hot bitumen must be as steady as it can reasonably be made. The fact that Mr. Miller, Senr., was employing his son the plaintiff, an intelligent man with sixteen months practice in the use of the bitumen bucket as potman and some five years as a draughtsman in a building firm, is immaterial in deciding if his employer had fulfilled his duty towards him . That duty was, as Mr. Burt said for the plaintiff, to define a system of work and lay down conditions for carrying it out. His men could not be expected to improve an inherently unsafe system of work by securing the ladder only as and when it seemed right to them to do so. Accordingly we find for the plaintiff in his action against his employer.

We are unable to agree with Mr. Fiott for the first defendant that as regards the duty owed to the plaintiff by Mr. Durbano and Mr. Rive, his employee, that duty is the same as that owed to the plaintiff

by his employer. In the latter case it is much stricter. The only duty Mr. Durbano and his employee, Mr. Rive, owed to the plaintiff was not to provide a defective ladder. It does not matter therefore whether Mr. Rive placed it in position or another one of the first defendants did so.

Mr. Burt suggested that the ladder was in effect defective as the lower half of the extension part should have been used or at least the whole ladder so that there would have been rubber tips at the bottom of the ladder which would have prevented or at least reduced the risk of slipping on the wet slab surface. Mr. Valpy pointed out, however, quite rightly in our opinion, that we had heard no evidence that the bottom end of the top of an extension ladder, that is to say a part which does not have rubber tips on, ought not to be placed on the ground. He said that the ladder was a gratuitous loan by Mr. Durbano to the sub-contractor and we agree. We cannot find therefore that the second defendant and Mr. Rive were in breach of their duty to Mr. Steven Miller. Accordingly we dismiss the case against them. Having found for the plaintiff on the first ground against his employer, that is to say his failure to provide a safe system of work, we have not felt it necessary to consider the second ground advanced by Mr. Burt that Mr. Evans, as the chief foreman or in effective control of the work, failed to carry out appropriate safety measures.

There remains the question of contributory negligence in respect of the plaintiff's own actions. A leading case is that of A.C. Billings & Son v. Riden (1973) 3AER which was considered by the Jersey Court of Appeal in the Louis case reported at Jersey Judgments Vol. 2 page 2049 at page 2051. The test is what would a reasonable man have done. As the Court of Appeal said he does not have to be a paragon of circumspection. Was the plaintiff's action in using the unsecured ladder on the 24th August, 1977, unreasonable? He was, as we have said, an intelligent and experienced workman. He

had time to think about what to do. He had been told to take care when using bitumen and climbing up ladders. He had used the ladder in question some seven or eight times the day before but, as we have already said, on the 24th August the slabs were wet upon which the ladder was resting and, as we have also said, Mr. Miller, his father, attributed the slipping of the ladder to the damp underneath it. On the other hand his two co-employees had climbed up and probably down the ladder the same day, and moreover there was no established system of work for him to follow. There was no evidence before us to suggest that he slipped off the rungs of the ladder because he was wearing unsuitable footwear. In all the circumstances we have come to the conclusion that it was not totally reasonable for him to use the ladder unsecured for the purpose of carrying hot bitumen up it particularly as it was resting on a damp surface, but his responsibility for his own accident was a relatively light one and therefore the damages that will be either agreed or awarded in due course should be reduced, we consider, by 20%.