stitutional provision, or to legislation to provide for the preservation and practical security of such right, and for influencing and governing the judgment and conscience of all legislators and magistrates, who are thus required to recognize and respect such rights.

In answer to the second question proposed, we are of opinion that the Act of Congress above cited, as to all matters therein provided for, except so far as it may have been changed by subsequent Acts, has such force in this Commonwealth, independently of and notwithstanding any State legislation, that all officers under State government, civil and military, are bound by its provisions.

RECENT ENGLISH DECISIONS.

The Court of Exchequer.

CORNMAN *vs.* THE EASTERN COUNTIES RAILWAY COMPANY.

1. In an action against a railway company for negligence, in consequence of which the plaintiff has suffered injury, it is for the judge to decide whether there is any reasonable evidence of negligence proper to be left to the jury.
2. A railway company kept at their station a weighing machine on a platform close to the railway. On a particular occasion the plaintiff, being there to receive a parcel, was thrown against the weighing machine and injured:—Held, that whether there was evidence that the company were guilty of negligence in keeping the weighing machine where they did, was to be determined by the judge, on consideration of all the circumstances of the case.

The declaration alleged that the defendants were owners and proprietors of a railway for the carriage and conveyance of passengers and parcels for hire and reward, and were possessed of a railway station and platform abutting on it, upon, along, and over which all persons lawfully being at the station were used and accustomed and authorized by the defendants to pass and repass; that the plaintiff was expecting and about to receive a parcel then carried and conveyed by a certain train by the defendants at their request for reward, and to receive which parcel the defendants had authorized him to go and pass and repass upon, along, and over the plat-

form, the same being then the regular, usual and accustomed way for him to go and pass and repass for the purpose aforesaid. It then alleged that the defendants carelessly, negligently, and improperly suffered and permitted a certain weighing machine to be and remain upon the platform in an unreasonable and improper place, and a place that was highly dangerous to persons going, passing, and repassing upon, along, and over the platform, in case the same should be greatly crowded with persons, and then suffered and permitted the platform to be so greatly crowded, without taking or using due, reasonable, proper, or any means or precautions to prevent accidents or injuries arising or happening to the plaintiff and the other persons who were then lawfully upon the platform, whereby the plaintiff, whilst upon the platform, while there with the license and consent of the defendants, became and was, solely on account of the careless, negligent, and improper conduct of the defendants, and for want of such due, reasonable, and proper steps, means, and precautions, &c., cast and thrown upon and over the weighing machine, down to the ground, and was greatly hurt, &c. Plea, not guilty. At the trial, before Channell, B., it appeared that the defendants had a railway station at Shoreditch, the platform of which was of solid earth and soil. Upon the platform, and close up to the railway, and out of the way of the persons coming in from the gates of the station, the defendants had placed a large weighing machine for goods, which had stood there for five years previous to the occasion in question, during all which period no complaint had ever been made of the weighing machine being placed where it was, although on one occasion a gentleman had been slightly injured by falling back upon it. On Christmas day the plaintiff went to the station to receive a parcel which was expected to come by a train, on the arrival of which, being either pressed by the number of perpersons who had alighted from the train, or owing to some misfortune of his own, the origin of which did not appear, he fell against the weighing machine and met with an injury. On this evidence the plaintiff obtained a verdict, the judge reserving leave to enter a nonsuit if the court should think there was no evidence of negligence proper to be left to the jury. A rule having been obtained, it was this day argued, when

Parry, Serjt., and *H. James* showed cause, citing *Barnes* vs. *Ward*, 9 C. B. 392; *Martin* vs. *The Great Northern Railway Company*, 16 C. B. 179; *Toomey* vs. *The Brighton Railway Company*, 3 C. B. N. S., 146; and *Southcote* vs. *Stanley*, 1 H. & Norm. 247.)

Ballantine, Serjt., and *Holland*, who appeared to support the rule, were stopped by the court.

MARTIN, B.—I have no hesitation in declaring that, in my judgment, there was no case for the jury. In the declaration there are several averments relative to the plaintiff having been lawfully at the place when the accident happened, &c., as to the effect of which I give no opinion, for, even supposing them unnecessary averments, unnecessary averments produce no effect. In all cases of this nature the primary question to consider is, was there *any* evidence of negligence at all? and that question is to be determined by the judge. If the defendants had left an open place into which a man might fall and be hurt, that would be evidence of negligence; but there is nothing of the sort here, and on the whole of the case I can see no evidence of negligence by the defendants. If so, the present action does not lie, for if the injury which the plaintiff received was the result of misfortune, he must bear it. Although, as I understand, my Brother Parry at the trial avoided commenting to the jury about the defendants being a railway company, the mischievous effect on the minds of the jury is fully produced by the bare statement that they are a railway company. Suppose this injury had been done in a timber yard, no jury would find negligence against the owner of it; but with these unhappy railway companies it is different, for jurors and many others think that if an accident happens within the gate of a railway company's premises, there should always be a verdict against the company. This rule to enter a nonsuit must therefore be made absolute.

BRAMWELL, B.—I had considerable doubt in this case at first, though certainly not from disinclination to take care of railway companies, which I agree with my Brother Martin, are often ill-used

by juries; but I am now satisfied there was no evidence for the jury, and consequently, that this rule should be made absolute. I am disposed to adopt the language of Williams, J., when delivering judgment in *Toomey* vs. *The Brighton Railway Company*, 3 C. B., N. S., 146, and which is in accordance with that used to-day by my Brother Martin: "It is not enough to say that there was *some* evidence. . . . A scintilla of evidence, or a mere surmise that there may have been negligence on the part of the defendants, clearly would not justify the judge in leaving the case to the jury; there must have been evidence on which they might reasonably and properly conclude that there was negligence." Every person of any experience in courts of justice knows that a scintilla of evidence against a railway company is enough to secure a verdict for the plaintiff. I was once in a case before a most able judge, the late Chief Justice Jervis, in which I was beaten, I dare say rightly, in consequence of an observation of his—"Nothing is so easy as to be wise after the event." No human being ever suggested that any mischief was likely to arise from a weighing machine placed as this was, and how, therefore could the company anticipate any? On the contrary, they might fairly expect that there would be none, when for year after year company after company had had weighing machines in similar positions, and no harm ever resulted from them.

WATSON, B.—I am of the same opinion. It is necessary for a railway company to have a weighing machine, and this one was close up to the railway itself, and quite out of the transit from the gates of the station. Possibly a great number of persons may have come like an eddy and swept up to the plaintiff when standing by the weighing machine, and so produced the injury, but the cause of it was the weighing machine standing there. Was that, then, a negligent act on the part of the defendants? if it was, the same might be said of the parcel office, in case a number of persons had twisted the plaintiff round and knocked him against it. The injury here really arose out of the constitution of the place itself, from an object which in the daylight every person with his eyes about him

could see. If there had been a pitfall there it would be a totally different thing, for a company have no right to put pitfalls in the way of persons who go to their premises on business.

CHANNELL, B.—In some particular cases it is often a most difficult question to determine whether there is a scintilla of evidence for a jury. My impression at the trial was, that there was none in this case, and the discussion of to-day has fully satisfied me that that view was correct. The plaintiff was lawfully on this platform, close by this weighing machine, which had been in that place for five years, during which no accident occurred, for although on one occasion a gentleman was hurt by falling against the weighing machine, no complaint was made about it. If this platform, instead of being of solid earth and soil, were a flooring, not sufficient to bear the weight of persons who came on Christmas day, or when excursion trains were starting or arriving, there would be a clear case of negligence against the company. Here there was none.—*Rule absolute.*

In the Court of Common Pleas—Hilary Term.

LANCASTER AND ANOTHER *vs.* EVE AND ANOTHER.

1. It is a question of evidence, depending on circumstances and the intention of the parties, whether A's chattel, fixed on B's soil, becomes part of the soil, or remains the chattel of A.
2. Piles fixed in the bed of the Thames, in front of a wharf, for the purpose of mooring vessels making to the wharf, and long enjoyed for such purpose without interruption by the crown or the conservators of the river, will be taken to have been put down in the exercise of an easement, and to remain as chattels in the owners of the wharf, so as to give them a right of action against any one injuring the piles.

The declaration stated that at the time when, &c. the plaintiffs were, possessed of a wharf near to and adjoining the river Thames, and of a certain pile of wood lawfully driven into the ground near thereto, and in and by the side of the said river; and the defendants were possessed of a barge, and had, by their servants, the care, manage-

ment, and direction of the same, and were navigating and using it on the said river; yet the defendants, by their said servants, took so little and such bad and improper care of their said barge, and governed, managed, navigated, and directed the same in so careless, negligent, and improper a manner, that the same, by and through the carelessness, negligence, and unskilfulness, misdirection, mismanagement, and improper conduct of the defendants, by their said servants in that behalf, then, with force and violence, came and ran foul of and upon and against the said pile, and thereby broke, damaged, and injured the said pile, whereby the plaintiffs were put to and incurred great expense in repairing the said damage and injury, and in placing and fixing a new pile in the ground in lieu of the said pile so broken and damaged as aforesaid, and they were and are otherwise injured thereby. Pleas—first, not guilty; secondly, not possesed of the pile; thirdly, that the pile was at the same time when, &c., unlawfully driven and fixed into the soil and bed of the said river Thames, the same being a public and common navigable river and a common highway, and into and on a part thereof where the said river was so public and common and navigable, and such common highway as aforesaid, and where all the liege subjects, &c., at the said time when, &c., had a right to, and lawfully ought to and might, pass and repass with, and navigate and conduct, their vessels, and barges, at their free will and pleasure, at all times of the year; and that the said pile of wood, so there driven and fixed, was unlawfully and improperly obstructing the passage of the said part of the said river and highway; and that the defendants having occasion for their said barge to pass in and along the said part of the said river, as they were lawfully entitled to do, the said barge, against the will of the defendants and their said servants, was carried and driven by the force and pressure of the tide and stream, thereupon, and against the said pile of wood so there unlawfully being, and the same then being old, infirm, and decayed, and unfit to be left in that position by the plaintiffs, of which the defendants and their said servants had no notice, the same became and was broken and injured, as in the declaration mentioned, and that the damage and injury arose and was occasioned by means of the premises in this plea mentioned,

and not otherwise. Issues on all the pleas. The case came on to be tried, at the sittings after Trinity Term, 1858, at Guildhall, before Crowder, J., when a verdict was found for the plaintiffs on the issue on the second plea. In Michaelmas Term, 1858,

Dowdeswell obtained a rule, calling on the plaintiffs to show cause why the verdict should not be set aside, and instead thereof a verdict be entered for the defendants on such plea, or why a nonsuit should not be entered pursuant to leave reserved, on the ground that the pile in question was permanently fixed in the bed of the river, and the plaintiffs had not established that they were possessed of the said pile, so as to entitle them to sustain the verdict on that plea.

Jan. 26.—*Lush*, Q. C., (with him *Talfourd Salter*,) now showed cause. The defendant must make out that if I place a pile in the soil of a navigable river, though I prove it to be necessary for my business as a wharfinger, nevertheless, though forty years have passed since I put it there, still it is unlawfully there, and the possession of it has passed out of me. This is a pile put down in front of a wharf, and necessary to the navigation of the river as regards the wharf. A person may prescribe for property in the soil even of a public river as against the crown; and so may one prescribe for an easement in the soil of the bed of a public river as against the crown. A chattel does not lose its chattel character by being placed on the soil of another; the instances of gas-pipes laid down, and the pipes of water companies, are familiar proofs of the contrary. The maxim, "Quicquid plantatur solo, solo cedit," is only a presumption; and here, it is contended, the court will presume what is most for the benefit of the public. No one can put in the bed of a navigable river, for his own profit, an obstruction to the navigation; but this pile was proved to be no obstruction, but an advantage to the navigation; and the only question is, whether, under all the circumstances, the pile ceases to be the property of the wharfinger as against a stranger and a wrongdoer. *Hubert* vs. *Groves*, 1 Esp. 148.

Pigott, Serjt., and *Dowdeswell*, for the defendants. There was no proof to support the notion that this was a case in which the

crown had allowed the easement of having fixed a pile in the soil for the purpose of the better carrying on the trade of a wharfinger. Assuming (of which there was no proof) that the plaintiffs put it there, it was a pile driven eight feet into the soil; thus it plainly became part of the soil; (Amos & Ferard, on Fixt. 241; Britt. c. 33, there cited; and Bract. c. 3, ss. 4, 6); and, whilst it remains there, it belongs to the owner of the soil; and if the plaintiffs had also an easement in the pile, the owner of the soil might sue for the whole value, if it were taken away, and also the plaintiffs for the whole value. That, then, is the test; the pile cannot belong to both parties. There are no authorities opposed to the defendants' view.

COCKBURN, C. J. *Wood* vs. *Hewett*, 8 Q. B. 913, was a case where two or three of the judges expressed opinions to the contrary of that view. COLERIDGE, J., asks, "might the plaintiff not acquire the easement of having his fender on the defendants' land?" And Lord DENMAN, C. J., says, "It might be understood by both parties that the fenders should be deemed a separable chattel. The question is whether, because the fender in this case has been placed on the defendants' soil, it became his property as a necessary consequence. I am of opinion that such a consequence never follows of necessity when the chattel is separable." And PATTESON, J., says, "The general rule respecting annexations to the freehold is always open to variation by agreement of the parties." On the other hand, a mill-stone, though disannexed, has been held to be part of the soil; and so a part of a steam-engine has been taken to be. WILLES, J. This pile is put down for the purposes of navigation, for the improvement of the navigation; if it be removed, the next tide washes away all traces of its having been there; no property can pass to the owner of the soil in such a case. Here it has been part of the soil for the last thirty years at least.

COCKBURN, C. J.—I am of opinion that this rule must be discharged. Not for a single moment do I mean to question the general proposition; but there may be circumstances, as where the thing annexed is such as to be severable without injury to the soil, and where there may have been an agreement between the owners of the soil and of the chattel, that it shall be severable at the will

and pleasure of the latter. In this case I think it may be, and that there are circumstances to show it may be, that this pile was allowed to be put down in the bed of the river, not with the intention of its becoming permanently attached to the freehold, and a part of it, but in consequence of an easement to that effect given to the plaintiffs, or those through whom they claim, with the permission of the crown, in the bed of the river; and I say so because it seems to have been admitted that the plaintiffs, or those who preceded them, had fixed the pile in the bed of the river without any interruption on the part of the crown or the conservators of the river, of the right. The pile has been so fixed in the enjoyment of an easement; it was never intended by the parties that a right should be acquired in it by the owner of the soil; it remains, therefore, the property of the plaintiffs, and that is sufficient to support the verdict for them on the traverse of the plea of not possessed.

WILLIAMS, J.—I am of the same opinion. There is no doubt but that "quicquid plantatur solo, solo cedit," is true in general; but putting one's chattel on the soil of another does not of itself prove that one parts with the ownership of the chattel; there must be such a fixing to the soil, as leads to the inference that it was the intention, that the thing should become part of the soil. Here was not only a wharf for the purpose of mooring vessels coming to which the pile was put down, but there were also steamers coming down the river; and it was made out, in fact, that persons who take the benefit of the navigation of the river are accustomed to make the most of the navigation for all legitimate purposes connected with the navigation; that was the evidence; and I know nothing in the law to prevent those who have wharves, along the river, from having posts and piles put down in the bed of the river connected with the navigation of the river. I see, however, no necessity at present to consider that point; but I quite agree with the Lord Chief Justice, that there is, in the history of this case, sufficient to show an accrual to the plaintiffs of the right to put down this pile, by the allowance of the crown or conservators, for the purposes of the user of the wharf, for mooring off or at it, but not on the terms of the post acceding to the soil, but of remaining the property of

the plaintiffs, a chattel which they might remove at pleasure. *Wood* vs. *Hewett*, shows that if this pile when put into the bed of the river, was put into the river, not with the intention, on the part of its owner, of incorporating it with the bed of the river, but with the understanding and on the agreement that it should remain the chattel of the plaintiffs, then they are to have the right to sue any one who interferes with that which they have a right to, and which is indispensable to the enjoyment of their wharf.

CROWDER, J.—I am of the same opinion. This pile is used for mooring vessels coming up to the plaintiffs' wharf to load or unload; but the fact, it is said, of putting down this post eight feet into the bed and soil of the river, caused it to belong to the soil, and become the property of the owner of the soil as part of the realty; and therefore the plaintiffs have no right to say that it is their post, so as to bring an action for damages against a person injuring it. That was the point reserved, and now before us. I, however, am now of opinion, that it is by no means a necessary consequence of placing a pile in the bed of the river, where it is necessary for the purposes of the party placing it, having vessels which come to his wharf to moor thereto, that the pile becomes a part of the soil, and that the plaintiffs thereby lose the right of treating it as their own chattel. Here there seems to me to be ample evidence from which an inference may be drawn, that there was, in the plaintiffs, an easement to place this pile in the bed of the river for the purposes stated, and that the plaintiffs have not lost the right to the post, as a chattel, by putting it into the soil, which was only done for the purpose of the enjoyment of the wharf belonging to them.

WILLES, J.—I am of the same opinion. *Rule discharged.*

In the Court of Common Bench.

BLAKIE AND OTHERS *vs.* STEMBRIDGE.

1. Where a stevedore is appointed by the charterer to superintend the loading of a general ship, and such stevedore not acting under the orders of the master in respect of such loading, is guilty of negligence, and causes injury to goods sent to be carried on board the ship, the master is not liable for such negligence of the stevedore.

2. The Gundreda was chartered by her owner to one Gallard for a voyage from London to Port Louis for a certain freight. The captain was to be appointed by the owner; the stevedore for outward cargo was to be appointed by the charterer, but to be paid by and act under the orders of the captain. The ship being in port, but no crew, with the exception of the mate, being on board, the stevedore and his men went on board for the purpose of loading the vessel. The plaintiff having paid the broker the freight for the carriage of some sugar-pans, sent them alongside the ship. The stevedore, in loading the pans, was guilty of negligence, and injury ensued. He received no orders respecting the loading of the pans from the master, who was not on board:

Held, that the stevedore was not the servant of the master, and that the master was not liable for the negligence of the stevedore.

This was an action tried at Kingston before WIGHTMAN, J., when a verdict was found for the plaintiff, damages 14*l.*

The plaintiffs were the owners of some sugar evaporating pans, and brought the action against the defendant, the master of a vessel, for negligently loading the pans, whereby two of them became broken. The vessel had been chartered to a Mr. Gallard. The master and mate were to be appointed by the owners. The stevedore was to be appointed by the charterer, but was to be paid by and act under the orders of the master. The stevedore, in fact, attended to the receipt of and loading and stowing of the pans, the master not being on board.

Bovill, Q. C., having obtained a rule *nisi* to set aside the verdict and enter it for the defendant, on the ground that the master was not liable for the negligence of the stevedore.

Holl and *Jacobs* now showed cause, and cited *Morse* vs. *Slue*, 1 Vent. 190, 238; Story on Agency, ss. 314, to 318; Abbott on Shipping, p. 259, 10th edit. and p. 91.

Bovill, Q. C., and *C. Pollock*, in support of the rule, cited *Marquand* vs. *Banner*, 6 Ell. & Bl. 232.

WILLES, J., delivered judgment. This was an action brought by the plaintiffs, who are iron-founders, against the master of a vessel, for alleged negligence in loading some sugar-pans on board the *Gundreda*. The declaration alleged that the plaintiffs, at the defendant's request, delivered the pans to the defendant in London alongside, to be loaded by him on board the ship and carried therein from London to a port in the Island of Mauritius, and there to be delivered

by him for the plaintiffs for freight, the act of God, the Queen's enemies, and the dangers of the seas excepted; that the defendant received the pans accordingly, and two of them were broken by the negligence of himself and servants in loading them. The defendant pleaded, first, a denial that the plaintiffs delivered, and that the defendant received the pans for the purpose therein alleged; and secondly, not guilty. On these pleas the plaintiffs joined issue. At the trial before my brother Wightman, at the last Surrey assizes, it appeared that the defendant was master of the ship; that she belonged to John Hilman, and that on the 7th May 1857, she arrived in the port of London, and was then chartered by the owner to a person of the name of Gallard, for a cargo for a voyage to port Louis and back, at a certain specified rate of freight per ton; 700*l.* and odds were to be advanced on the vessel sailing from London, and the cargo was to be taken in and tendered alongside, at the charterer's risk and expense; the captain to sign bills of lading at any rate of freight not under the current rate; the ship to be consigned to the charterer's agents at the ports of loading and discharge, paying one commission of $2\frac{1}{2}$ per cent.; the stevedore for outward cargo to be appointed by the charterer, but to be paid by and to act under the orders of the captain. The charterer being thus entitled to take the cargo to port Louis, took the *Gundreda* to the agent, Mr. Thomas. At that time no crew was on board, nor had any been procured at the time the injury complained off took place; and this was alleged not to be unusual in commerce. The charterer appointed George Lock as his stevedore, and he went on board for the purpose of loading and stowing the vessel in the usual course of business. The master was aware of the terms of the charter-party; he gave the stevedore no orders, and in no way interfered, but contented himself, according to his own view of his duty, with occasionally looking into the hold to see how the cargo was being stowed for the safety of the ship. The master was not on board when the plaintiffs' pans came alongside, and he no way interfered with them unless the stevedore could be considered as his agent. The mate was on board in charge of the ship, but did not interfere with the loading. The pans in question were sent to London to go by the ship. The

agent saw the broker and arranged with him for the agreed freight for the carriage of the pans, and paid the freight, 250*l*. From the evidence of the agent, it would seem that he was aware that the ship was chartered. But it is unnecessary to rely on that circumstance, because, if he did not know it, although done, it was not the fault of the owner or the master. If he did, and there was no other ground on which to dispose of the case, we might have had to consider how far the ruling of my Lord Wensleydale, in the case reported in 7 Car. & P. 41, *Major and another* vs. *White and another*, bore upon it. To return to the facts. The pans were sent alongside in a barge, and thence were hoisted on board by means of hooks and lugs. During this operation, either by reason of the pans being lifted by the lugs, or the purchase not being perpendicular, two of the pans were broken; and it was to recover damages for this injury that the action was brought. The other pans were safely loaded and stowed, and bills of lading were given for them by the defendant. At the trial counsel for the defendant contended that upon this evidence assuming that the stevedore was guilty of negligence, the master was not answerable. The learned judge reserved this question for the opinion of the court, and left to the jury the question of negligence only, which they found for the plaintiff, who accordingly had the verdict. In Easter Term last the defendant obtained a rule to enter the verdict for him on the point reserved at the trial, and the case was argued before my brothers Williams and Byles, and myself, during last term, when we took time to consider our judgement, which I now proceed to deliver. By the maritime law, in the absence of custom or agreement, it is the duty of the master, on behalf of the owner, to receive and properly stow on board goods to be delivered to him alongside. For any damage to the goods occasioned by negligence in the performance of such duty, the owner is liable to the shipper. If the damage has arisen from the misconduct of the master, he is answerable to the owner; if it happen from the misconduct of the mate, or other of the crew, without fault on the part of the master, it has been considered by the court, and settled in the case of *P. executor* vs. *Acheson*, a case decided on the 5th Feb. 1841, that the master is not answerable to

the owners, although it appears to have been taken for granted, upon the principle asserted by Story, J., in his book, that the master in such case would have been answerable to the shipper. This duty of the master has, however, in very many cases, been modified by custom or contract. In some the cargo has been receivable or deliverable at a distance from the ship's side, as in *Cobban* vs. *Downe*, 5 Esp. 41, and in others his liability has been postponed until the goods have actually been stowed on board. In the latter class of cases, a stevedore appointed by the shipper is appointed to perform the ordinary duty of master, which consists in loading and stowing the goods, and the employment of such an intermediate agent appears to be of early origin. In the Collections des Lois Maritimes, by Pardessus, c. 192, of the edition of 1831, to be found in the second volume of his great work, p. 220, a stevedore appointed by the shipper is familiarly spoken of, and it is there laid down that when the stevedore is so appointed, the master is absolved from any liability; and the master in another clause is advised for his own indemnity to stipulate that such agent shall be present on the part of the shipper to superintend the stowage. It appears, therefore, that the stevedore has from early times been known as an agent distinct from the crew, and for his conduct, when appointed by the shipper, the master is not responsible. This was decided to be the law, and was held so in *Swainston* vs. *Garrick*, 2 L. J., N. S., 255, Ex., decided on 25th May 1833, where the ship was hired, and the charter-party stipulated that the stevedore should be appointed by the charterer; and there it was held that the master was not answerable even to the owner for damage occasioned to the cargo, the appointment of the stevedore having entirely relieved the master from the liability for bad stowage. Bayley, B. in that case made a suggestion, which probably led to the introduction in this and other cases, for the security of the owner, of the clause providing that the stevedore should act under the captain's orders. If this stipulation were not introduced, the authorities referred to show that the master would not be necessarily, and would not have been liable, and for this reason, namely, that the negligence which caused the damage was not that of the master, nor of his agents or servants. Nor,

in our opinion, could the clause, as framed, in the present case create any liability on the part of the master for the acts of the stevedore, except they were done in pursuance and in the execution of his orders. The stevedore was to be appointed by the charterer in London, to act for him, and to represent his interests. For this purpose he had the charge and custody of the goods until they were laden and stowed on board. The master, on the part of the owners, with a view to the trim of the ship and the safety of the ship, had complete control over the stevedore; but there was no stipulation that he should in any other way assist the latter in the performance of his duties. The payment of the stevedore was a matter of bargain between the owner and the charterer, and did not make the stevedore the servant of the master. Upon these grounds it appears to us that, unless the plaintiff can establish that some peculiar or exceptional rule of liability exists with respect to the master of the ship, the defendant is entitled to the verdict. Upon the argument it was contended that such a rule did exist. The authorities relied on are, however, in our opinion, inapplicable and against that view. With respect to a case of *Morse* vs. *Seue*, 1 Vent. 238, that case was founded upon a contract to carry goods actually delivered to, and in the custody of, the master on board ship, and he was bound, as he would have been here, if the bill of lading had been given for the injured pans, to deliver them in the state in which he received them, unless prevented by the act of God or the Queen's enemies. The question in this case is, from what period the goods can be considered in the custody of the master? Another authority relied upon was Story on Agency, ss. 314 to 318, in which it is stated, that the case of masters of ships is an exception to the rule previously laid down as to the non-liability of agents to third peasons for negligence and omissions of duty by themselves and their sub-agents, and it is there stated, that "the liability of the master is founded upon the doctrine of the maritime law which treats the master not merely as an agent contracting on his own behalf as well as for the owner, but which, upon the broader policy, treats him as in some sort a subrogated principal and qualified owner of the ship, possessing authority in the nature of an exercitorial power for the time

being, and his liability, founded upon this consideration, extends not merely to his contracts, but (as we have said) to his own negligences and nonfeasances, and misfeasances, as well as to those of his officers and crew. His responsibility for the officers and crew has this additional reason for its support, that he is thus induced to exercise a superior watchfulness over their acts and conduct, and if he were not so made liable for their acts and conduct, he might often by his connivance in their frauds, misfeasances and negligences or nonfeasances, subject the shippers of goods, as well as the owners of the ship, to great losses and injuries, without their having any adequate redress. The policy of the maritime law has therefore indissolubly connected his personal responsibility with that of all the other persons on board who are under his command, and are subject to his authority." Upon examination, however, of the authorities cited by the learned counsel, we find they are confined to cases of contract and collision. We have not, after diligent search, found any authority for the position, that a person sending goods to be laden on board a general ship is entitled to assume, without inquiry, that the goods are to be shipped and stowed by the master rather than by the stevedore, and so, without any contract for any wrong done by the master or the crew, to insist on holding him liable. The rule to enter the verdict for the defendant will therefore be made absolute.

In the Court of Exchequer.

THOMPSON *vs.* ROSS.

1. The plaintiff's daughter was the domestic servant of the defendant's father; the plaintiff having a contract to make shirts, similar contracts to which she had frequently, employed her daughter at the defendant's father's house, when she had finished her mistress's work, during over hours and leisure time, and with her mistress's knowledge and consent, in helping her to make these shirts. During this time, and when in defendant's father's service, she was alleged to have been seduced by the defendant.

   Held, in an action against the defendant by the mother for the seduction of her daughter, that this was not sufficient evidence of loss of service to support the action for seduction.

This was an action brought by the plaintiff, Mrs. Thompson, for the seduction of her daughter by the defendant. The plaintiff's daughter was in the service of the defendant's father as a domestic servant, and living in his house. The plaintiff had a contract with the Messrs. Nicolls, of Regent street, for making shirts, an employment in which she had been by them engaged for some time. Her daughter, in the evenings after she had finished her work for Mrs. Ross, her mistress, used to help (with her mistress's knowledge and consent) her own mother in the making of these shirts. The alleged seduction by the defendant was said to have been when she was the domestic servant of the defendant's mother, and occasionally occupied for her own mother in the making of those shirts. The cause was tried in Middlesex before the Lord Chief Baron, when a verdict was found for the plaintiff, damages 50*l.*, leave being reserved to the defendant to move to set the same aside and enter a nonsuit, or a verdict for the defendant on the second issue, that the daughter of the plaintiff so alleged to have been seduced was not the servant of the plaintiff. A rule *nisi* having been obtained accordingly.

Pearce showed cause. The question in this case is, whether the assistance rendered by the plaintiff's daughter to the plaintiff in helping her, with her mistress's knowledge and consent, to make these shirts at her leisure time, or after she had done her mistress's work of an evening, was not such work as to make the defendant liable to the plaintiff for the loss of service by seduction. In actions of this kind the slightest evidence of any service done, has been held sufficient, even that of making tea or milking cows. POLLOCK, C. B. Those were cases where the party lived in the house of those whose servant she was called. WATSON, B. Suppose the master or mistress of a domestic female servant allowed her to go home for an hour or so in the evening, and when at home the servant does, either for her own inclination, or her parents' pleasure, some trifling act, is she to be considered their servant? For the purpose of supporting such an action as this, she may then be deemed their servant; the inclination of the courts of law has been to hold the smallest act of service sufficient to enable plaintiffs, under such circumstances, to maintain actions for seduction, making tea, for instance. In

Bennett vs. *Allcott*, 2 T. R. 167, Buller, J. says: "It is not material whether the servant be or be not hired for a year, or whether she has any wages:" it being sufficient that she is a servant *de facto*." And in *Irwin* vs. *Dearman*, 11 East, 23, damages *ultra* the mere loss of service having been given against the defendant for debauching the adopted daughter and servant of the plaintiff by which he lost her service, the court refused to set aside the inquisition. Lord Ellenborough said, this has always been considered as an action *sui generis* where a person standing in the relation of a parent, or *in loco parentis*, is permitted to recover damages for an injury of this nature *ultra* the mere loss of service. In this case the plaintiff's daughter rendered her mother material assistance in the course of her engagement and contracts to make the shirts, and it was such a service as would enable her mother to support this action against the defendant for his seduction of the daughter, and the loss to the mother of the daughter's service.

D. D. Keane, contra, in support of the rule, was not called upon.

POLLOCK, C. B.—I am of opinion this rule should be made absolute. There was really no service in this case rendered by the daughter to the plaintiff that can enable her to support an action, even such an action as this against the defendant, for what is called the loss of service, slight evidence of service would do no doubt, but then it must have been a true genuine service, such as a master or mistress may command. This was, to make the most of it, but a mere helping of her mother with the consent of the lady who was at that time her real mistress; she lived with Mrs. Ross, the mother of the defendant; and the point mentioned by my brother Watson during the discussion of the case seems to me to be decisive of it in the defendant's favor. Suppose a female domestic servant, on a Sunday evening, was permitted by her master and mistress to go home, and she went home, and when there made her father's tea; that would be a similar case, but surely not enough to constitute such service as would enable her father to maintain an action of this kind as for the loss of service. Here the service performed for her mother might, at any moment, have been withdrawn from her mother by her master or mistress, and Mrs. Ross could have claimed her

entire time. It may be a hard case on both mother and daughter; but I do not think the service of the daughter to her mother is here sufficient, under the circumstances, to enable the plaintiff to support this action, and the result is that a nonsuit should be entered.

BRAMWELL, B.—I quite agree with the Lord Chief Baron, our duty is to administer the law as we find it; and the law is, in actions for seduction, that there should be an actual loss of service by the plaintiff of the party seduced, and the character of master and servant must exist between them. The question here is, was there any such relation of master and servant with the mother and daughter? Certainly there was no evidence of any such arrangement existing; on the contrary, the evidence shows that the girl was the servant of Mrs. Ross, the defendant's mother, but who allowed her sometimes to assist the plaintiff in the way that has been mentioned. I do not mean to say that a person may not agree to renper service to one person for one part of a day, and perform other service for another at a different part of the day, and that either of such services may be sufficient to maintain an action on an occasion of their loss; but here there was no evidence of any such special contract, and in this case the plaintiff's daughter was the entire servant of Mrs. Ross altogether.

WATSON, B.—I am entirely of the same opinion; the action is founded upon the loss of service to the party bringing the action. Now what is the loss really sustained here? Not of service, but of the permission of the defendant's mother, her mistress, to go home, or occasionally to do at her mistress's house a little needlework for her mother. I think the rule should be made absolute.

CHANNEL, B.—I am of the same opinion.

Rule absolute to enter a nonsuit.

In the Court of Probate.

IN THE GOODS OF BERKLEY WESTROPP, DECEASED.

The testator, having in one clause of his will left all his personal property to his wife absolutely, by a subsequent clause gave her only a life interest therein. Under these circumstances a special grant was ordered to issue, which, after reciting the two clauses of the will, should authorize the widow to take administration as the party named in them.

Mr. Berkley Westropp, of Sheen, in the county of Surrey, duly executed his will, in which, after directing the payment of his debts and funeral expenses, he continued—"I give, devise and bequeath all the property whatsoever, and wheresoever situate, which I may possess at my death, to my wife, Eliza Isabella Westropp; and as to all the rest and residue of my property, I give it to my two executors, in trust to allow my wife to have the annual dividend and produce of the same during the term of her natural life, and afterwards I give and bequeath the same amongst all my children," &c.

C. M. Roupell applied to the court, under the stat. 21 Hen. 8, c. 5, s. 3, to grant administration with the will annexed to Mrs. Westropp, as widow of the deceased, the executors refusing to act.

Sir C. CRESSWELL —Supposing the grant to issue to Mrs. Westropp as the residuary legatee for life, would her interests be affected thereby in the Court of Chancery?

C. M. Roupell thought not, but Mrs. Westropp was unwilling to any step which seemed to recognize the inferior title.

Sir C. CRESSWELL.—It has always been the practice in the Prerogative Court, in case two residuary clauses were found in a will, which were inconsistent with one another, to give effect, in granting probate, to the last disposition. The widow is not entitled to administration until the residuary legatees have been disposed of. I think the difficulty may be avoided by your taking a special grant, in which, after a recital of both clauses, administration may be committed to Mrs. Westropp as the person named in both of them.