Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Union Steamship Company, Limited, v. *Edward Thornton Claridge, from the Court of Appeal of New Zealand; delivered 3rd February* 1894.

Present:
LORD WATSON.
LORD HALSBURY.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.
LORD JUSTICE DAVEY.

[*Delivered by Lord Watson.*]

The Appellant Company are owners of the steamship "Orowaiti" which arrived at Lyttleton Harbour, in August 1891, with a cargo of coal. They contracted with the Canterbury Stevedoring Association Limited, for the discharge of the cargo into a hulk; and, in the course of that operation, the Respondent, whilst working as a lumper in the employment of the Association, was severely injured by the fall of a basket of coal. He thereupon instituted this suit for damages against the Company, upon the allegation that his injuries were occasioned by the negligence of one or more of the crew of the "Orowaiti."

The case went to trial before Mr. Justice Denniston, and a special jury of twelve. It appears from the evidence then led, that the "Orowaiti" had four hatches, at all of which

78213. 100.—2/94. A

the process of unloading was carried on simultaneously, and in the same way. There were, at each hatch, four labourers, servants of the stevedores, in the hold, their duty being simply to fill the coal baskets and hook them on to the rope by which they were lifted, and to unhook the empty baskets as they were let down. The lifting tackle was actuated by steam from the ship's boilers, and was attended to by two men, who were members of her crew, and received their wages from the appellants. One of these men worked the winch. The other was stationed beside the hatch; and it was his business to give the winchman notice whenever a loaded basket was ready for raising, and also to steady and guide the basket in its ascent by means of a rope called a bullrope. A man named John Eames acted as foreman or ganger on board the Orowaiti, in the interest of the stevedores.

By the witnesses for the respondent his injuries were attributed to the negligent conduct of the winchman in first raising a loaded basket, without notice from the bullrope man, and before the latter was ready, and in then letting go the winch, and allowing the load to fall back into the hold, where it struck the respondent.

At the close of the evidence, the jury were asked to determine the quantum of damage, which they assessed at £1600. With the exception of that point the case was withdrawn from the jury, under an arrangement, which was thus noted by the presiding judge, "negligence admitted. Agreed to leave question of common employment to Court."

It must therefore be taken against the appellants that the mishap which befell the respondent was due to the winchman, for whose negligence they are responsible, if, at the time when it occurred, he was employed by them, and was acting within the scope of his employment.

They maintain, however, that the winchman, and the bullrope man also, in assisting to unload the vessel, were not employed in their behalf, but were engaged in doing work which the stevedores had contracted for, subject to the orders and control of the foreman appointed by the contractors. Whether that was the case or not is a question of fact, upon which the parties prefer the verdict of the Court to that of a jury.

That the servant of A may, on a particular occasion, and for a particular purpose, become the servant of B, notwithstanding that he continues in A's service and is paid by him, is a rule recognised by a series of decisions. Their Lordships do not find it necessary for the purposes of this appeal, to examine these authorities. It is possible that, in some cases, questions of nicety might arise in the application of the rule to the facts, and that the opinions expressed by learned judges in these authorities might aid in their solution. But no such questions appear to their Lordships to arise upon the evidence in this case.

The contract under which the cargo of the "Orawaiti" was discharged did not provide that the whole work was to be done by the stevedore. On the contrary, whilst the contractor was bound "to supply all labour for filling buckets "or baskets, working tramways, &c.," the Company expressly undertook to provide one winch-driver and one hatchman, for each hatch being discharged, the hatchman to attend yard arm tackle, bull rope, or tramway, according to the method of working adopted by the contractor. There is nothing to suggest that the contractor was to have any control over the men discharging the duties of winchman and bullrope man. The inference which their Lordships would naturally derive from the terms of the contract is, that, as they admittedly did in the

case of their engineer who supplied the motive power, the shipowners desired to retain control over those members of their crew who worked the tackle of the ship used for the purpose of discharging her cargo. That inference is certainly not displaced by the evidence led before the jury, which shews that, in point of fact, the stevedores and their foremen never gave any orders to the men at the winch or the bullrope men, or attempted to exercise any control over them.

In these circumstances, their Lordships have had no hesitation in preferring the view taken by the Court of Appeal to that which commended itself to the learned judge who presided at the trial; and they will therefore humbly advise Her Majesty to affirm the judgment appealed from. The costs of this appeal must be paid by the appellants.