

to the men below before the bales were dropped. The plaintiff was injured by a bale coming down, according to his statement, without any warning. Hawkins and A. L. Smith, JJ., held that the plaintiff was not entitled to recover because there was no evidence that the injury was caused by the negligence of a person who had any "superintendence" intrusted to him whilst in the exercise of such superintendence, or by reason of negligence of any person in the service of the defendant, to whose orders or directions the plaintiff was bound to conform.

NEGLIGENCE—EMPLOYERS' LIABILITY ACT, 1880 (49 VICT. C. 28, O.)—VICIOUS HORSE—RISK VOLUNTARILY INCURRED—"WORKMAN," "PLANT," DEFECT IN CONDITION OF.

The only other case we think it necessary to refer to in the Queen's Bench Division is *Yarmouth v. France*, 19 Q. B. D. 647, another case under the Employers' Liability Act, 1880, in which the much canvassed case of *Thomas v. Quartermaine*, 18 Q. B. D. 685, again came under consideration. The plaintiff was in the employment of the defendant, who was a wharfinger, owning carts and horses for the purpose of his business. It was the duty of the plaintiff to drive the carts, and load and unload goods carried by them. Among the horses was one of a vicious nature, and unfit to be driven even by a careful driver, which the plaintiff objected to drive, and which he told the foreman of the stable was unfit to be driven, to which the foreman replied that he must go on driving it, and if any accident happened his employers would be responsible. The plaintiff continued to drive the horse, and, while sitting on the proper place in the cart, was kicked by the animal and his leg broken, on account of which injury the action was brought. It was held by Lord Esher, M. R., Lindley and Lopes, L.JJ., sitting as a Divisional Court, that the plaintiff was a "workman" within the definition in s. 8 of the Act; but here the agreement of the Court ended.

Lord Esher, M. R., and Lindley, L. J., held that the horse which injured the plaintiff was "plant" used in the business of the defendant, and that the vice in the horse was a "defect" in the condition of such plant; on this point Lopes L. J., expressed no opinion. Lord Esher, M. R., and Lindley, L. J., were also of opinion that upon the facts the jury might find the defendant liable, because there was evidence of negligence on the part of the foreman, and the circumstances did not conclusively show that the risk was voluntarily incurred by the plaintiff. But Lopes, L. J., on the other hand, thought that there was no case to go to the jury, because he was of opinion that the evidence showed that the plaintiff, with full knowledge of the risk to which he was exposed, had elected to continue in the defendant's employment.

The view of the majority of the court on this point may perhaps be best summed up in the following passage in the judgment of Lindley, L. J.:

"If in any case it can be shown as a fact that a workman agreed to incur a particular danger, or voluntarily exposed himself to it, and was thereby injured, he cannot hold his master liable. But in the cases mentioned in the Act, a workman who never in fact engaged to incur a particular danger, but who finds himself exposed to it and complains of it, cannot, in my opinion, be held as a