

## RECENT ENGLISH DECISIONS.

MASTER AND SERVANT—BREACH OF STATUTORY DUTY—  
VOLENTI NON FIT INJURIA—EMPLOYERS' LIABILITY  
ACT 1880 (43 AND 44 VICT. C. 42) (49 VICT. C. 28 [O.])

*Baddley v. Earl Granville*, 19 Q.B.D. 423, is another case in which the principle laid down in *Thomas v. Quartermaine*, 18 Q.B.D. 685, is again discussed. The plaintiff's husband had been employed at the defendant's coal mine. One of the statutory rules regulating the working of the mine required a banksman to be constantly present while the men were going up or down the shaft, but it was the regular custom at the mine, as the deceased well knew, not to have a banksman in attendance during the night. The plaintiff's husband was killed in coming out of the mine at night by an accident arising through the absence of a banksman. The action was brought under the Employers' Liability Act 1880 (see 49 Vict. c. 28 [O.]), and it was contended that the case came within the rule laid down in *Thomas v. Quartermaine*, and that the maxim *volenti non fit injuria* applied. But the court (Wills and Grantham, JJ.) held that the injury having arisen from the breach of a statutory duty, that maxim was not applicable, and that this distinguished the case from *Thomas v. Quartermaine*.

SALVAGE—SALVED AND SALVING VESSELS OWNED BY  
SAME PERSON—BILL OF LADING—SEAWORTHINESS,  
EXCEPTIONS QUALIFYING IMPLIED WARRANTY OF.

Proceeding now to the cases in the Probate Division, the first which claims attention is *The Cargo ex Laertes*, 12 P.D. 187. This was an action to recover salvage under the following circumstances: A steamship became disabled at sea owing to the breaking of her fly wheel shaft through a flaw in the welding existing at the commencement of the voyage, but not discoverable by the exercise of any reasonable care. The cargo on board her was shipped under three bills of lading, the first of which contained, amongst other excepted perils, the clause "warranted seaworthy only as far as ordinary care can provide;" the second, "warranted seaworthy only as far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can ensure it;" and the third, "owners not to be liable for loss, detention or damage . . . if arising directly or indirectly . . . from

latent defects in boilers, machinery, or any part of the vessel in which steam is used, even existing at the time of shipment, provided all reasonable means have been taken to secure efficiency." A vessel belonging to the same owners as the disabled vessel towed the latter into port. The action was brought by the owners, master and crew of the salving vessel against the owners of cargo in the salved vessel; and it was held by Butt, J., that the owners of the salving vessel were entitled to salvage, notwithstanding they were at the same time owners of the vessel salved, and that the owners of cargo in the salved vessel had no remedy for breach of the contract of carriage, because the exceptions in the bills of lading above mentioned constituted a limited warranty of seaworthiness at the commencement of the voyage, of which there had been no breach.

GARNISHEE—PAY OF SURGEON IN R.N.—ATTACHMENT OF  
DEBTS.

In *Apthorpe v. Apthorpe*, 12 P.D. 192, the Court of Appeal (Cotton, Lindley and Bowen, LL.J.) held that the pay of a surgeon in the Royal Navy in active service not being assignable, could not be attached.

INJUNCTION—IMITATION OF PLAINTIFF'S GOODS—  
ACCOUNT.

*Lever v. Goodwin*, 36 Chy. D. 1, was an action to restrain the defendants from selling soap in packets so closely resembling those in which the plaintiffs had been in the habit of bringing out their soap, as to be calculated to deceive purchasers. It was held by Chitty, J., that though the retail dealers who bought soap from the defendants would not be deceived, the defendants, by their imitation of the plaintiffs' packet, put into the hands of the retail dealers an instrument of fraud, and ought to be restrained by injunction. An injunction was accordingly granted, and an account directed of the profits made by defendants in selling soap in the packets in which it was held that they were not entitled. The defendants appealed, and it was held by the Court of Appeal (Cotton, Lindley and Bowen, LL.J.) that the injunction had been rightly granted, and that the account was in proper form and ought not to be limited, as the defendants contended, by excluding from it soap which the