omnibus conductor (*jj*); nor by a driver of a tram car (*kk*); nor by a grocer's assistant (*ll*); nor by a waiter at a restaurant (*mm*); nor by a skilled engineer in charge of the machinery of a ferry-boat (*oo*). In line with these decisions is one to the effect that a guard of a goods train, whose main duty is to guard and conduct the train and marshal the cars, but is also required to assist at times in coupling and uncoupling the cars and unloading, is not entitled to the benefits of the Truck Acts (*pp*).

On the other hand the phrase has been held to embrace a man in the service of a wharfinger whose duties were to drive a horse and trolley and load and unload the trolley (*qq*); a man engaged as "potter's printer, overlooker, and mixer" (*rr*); a stevedore working on a ship attached to a wharf (*ss*).

The mere fact that the employé, for the sake of speed and convenience, hired a certain number of assistants, whom he paid

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(*kk*) *Cook* v. *North Metropolitan Tramways Co.* (1887) 18 Q.B.D. 683, 1 Times L.R. 523. "I cannot see," said Smith J., "the distinction between driving and other occupations which involve no manual labor though they do involve manual work. Had the legislature intended to include coachmen they would have included them among the specific instances."

(*ll*) *Bound* v. *Lawrence* (1892) 1 Q.B. (C.A.) 226 (228). Fry, L.J., said "It appears that the appellant was employed as a grocer's assistant in a shop, and his business was to take orders from the customers and to carry them out. In doing this he may have to shew goods, and if the customers take away the goods he has to make up the parcels. In doing this he has to use his hands, and the question is whether that makes him a manual labourer. There can be no manual labour without the use of the hands: but it does not at all follow that every user of the hands is manual labour, so as to make the person who does it a manual labourer. Now, the principal part of the appellant's employment is selling to the customers across the counter. That is his substantial employment, and if he has to do other things which involve physical exertion, we must see whether that is not incidental to his real employment. In this case I cannot doubt that that is so. The findings of the fact to me to negative the idea that the work described was any part of his real and substantial employment." Brett, M.R., also laid stress upon the fact that, in the occupation of the appellant, the knowledge and skill required in selling the goods to customers was more important than the manual work that he did, and that the latter was an incident of his employment.

(*mm*) *Smithwhite* v. *Moore* (1898) 14 Times L.R. 467.

(*oo*) *Frory* v. *Balwain Steam Ferry Co.* (1886) 7 New So. Wales L.R. (L) 147. [Injured by the starting of the machinery while he was making some repairs.]

(*pp*) *Hunt* v. *Great Northern R. Co.* (1891) 1 Q.B. (C.A.) 601.

(*qq*) *Yarmouth* v *France* (1887) 19 Q.B.D. 647. Lord Esher said (p. 651) "He is a man who drives a horse and trolley for a wharfinger. We must take into account what his ordinary duty was. He had to load and unload the trolley. That is manual labour. His duty may be compared to that of a lighterman who conducts a barge or lighter up and down the river. The driving the horse and trolley and the navigating the lighter form the easiest part of the work; his real labour, that which tests his muscles and his sinews, is the loading and unloading of the trolley or the lighter."

(*rr*) *Granger* v. *Aynsley* (1880) 6 Q.B.D. 182.

(*ss*) *Hallen* v. *King* (1896) 17 New So. Wales L.R. (L) 13.