Vale of Neath Railway Co., 13 L. T. Rep. (N. S.) 564; L. R., 1 Q. B. 149; 35 L. J. 23, Q. B., and gave judgment for the defendants, on the ground that the injury to the plaintiff was caused by the negligence of his fellow-servants acting in a common employment with him.

The plaintiff appealed.

Bucknill, for the plaintiff. In the first place, the plaintiff was not in the service of the defendants. *Swainson* v. *The North-Eastern Railway Co.*, 38 L. T. Rep. (N. S.) 201. He was in the service of Ansell, who was an independent contractor, and therefore the defendants are liable to him for the negligence of their servants. Ansell's position was something like that of a stevedore, and *Murray* v. *Currie*, 23 L. T. Rep. (N. S.) 557; L. R., 6 C. P. 24; 40 L. J. 26, C. P., shows that a stevedore is an independent contractor. The defendants did not pay the plaintiff, and were not liable to him for wages; they were only liable to pay Ansell. If the plaintiff had been guilty of negligence the defendants could not have been made liable for his negligence; only Ansell or the plaintiff himself would have been liable. Secondly, even if the plaintiff was the servant of the defendants, there was no common employment as between him and the men who were moving the barrels, so as to exempt the defendants from liability to him for their negligence. The case which appears at first sight to be most against the plaintiff on this point is *Lavell* v. *Howell*, 34 L. T. Rep. (N. S.) 183; L. R., 1 C. P. Div. 161; 45 L. J. 387, C. P.; but that case really differs from the present, for there the plaintiff had himself undertaken the particular risk by going out through a particular door, which made the case like *Degg* v. *The Midland Railway Co.*, 1 H. & N. 773; 26 L. J. 171, Ex. For the same reason *Woodley* v. *The Metropolitan District Railway Co.*, 36 L. T. Rep. (N. S.) 419; L. R., 2 Ex. Div. 384; 46 L. J. 521, Ex., is not an authority against the plaintiff. No positive general rule governing all cases of this kind can be laid down, but each case must depend on its own particular circumstances. *Rourke* v. *The Whitemoss Colliery Co.*, 35 L. T. Rep. (N. S.) 160; L. R. 1 C. P. Div. 556; 46 L. J. 283, C. P.; affirmed in the Court of Appeal, 36 L. T. Rep. (N. S.) 49; L. R., 2 C. P. Div. 205; 46 L. J. 285, C. P., is a stronger case against common employment than this; and see *Indermaur* v. *Dames*, 14 L. T. Rep. (N. S.) 484; L. R. 1 C. P. 274; 35 L. J. 184, C. P.; affirmed, 16 L. T. Rep. (N. S.) 293; L. R., 2 C. P. 311; 36 L. J. 181, C. P. *Morgan* v. *The Vale of Neath Railway Co.*, 5 B. & S. 570; 33 L. J. 260, Q. B.; affirmed 13 L. T. Rep. (N. S.) 564; L. R., 1 Q. B. 149; 35 L. J. 23, Q. B., is distinguishable, because there the plaintiff was a carpenter in the general employment of the railway company, and could have been sent to work anywhere. The plaintiff here was engaged in entirely distinct and separate work from the persons who caused the injury, and this prevents the rule as to common employment from applying. See the judgments of Lord Chelmsford in *McNorton* v. *The Caledonian Railway Co.*, 28 L. T. Rep. (N. S.) 376, cited in Smith's Master and Servant 205 (3rd ed.) and *Bartonshill Coal Co.* v. *McGuire*, 3 Macqueen, 307. *Abraham* v. *Reynolds*, 5 H. & N. 143, is an authority for the plaintiff; and *Wiggett* v. *Fox*, 11 Ex. 832; 25 L. J. 188, Ex., which is relied on for the defendants, is questioned by Cockburn, C. J., in *Rourke* v. *The Whitemoss Colliery Co.*, L. R., 2 C. P. Div. 207, 208. [Thesiger, L. J., referred to *Wilson* v. *Merry*, 19 L. T. Rep. (N. S.) 30; L. R., 1 Sc. & Div. App. 326.] In *Smith* v. *Steele*, 32 L. T. Rep. (N. S.) 195; L. R., 10 Q. B. 125; 44 L. J. 60, Q. B., the executrix of a pilot who had been employed by shipowners, where the employment of a pilot was compulsory, was held entitled to recover against the owners for the negligence of their servants which caused the testator's death. Thirdly, assuming that the plaintiff was the defendants' servant, and that there was a common employment, the defendants are liable, for it does not appear that the danger was known to the plaintiff. See the judgment of Lord Chelmsford in *Bartonshill Coal Co.* v. *McGuire*, 3 Macqueen, 308.

Day, Q. C., and *Erskine Pollock*, for the defendants.

BRETT, L. J. I cannot help saying that Mr. Bucknill has argued this case very ably, and everything has been said that could be said on behalf of the plaintiff; but, notwithstanding, I am of opinion that we must support the judgment of Lopes, J. The first point is, was the plaintiff a servant of the defendants at all? The evidence was left to Lopes, J., by agreement to draw inferences and arrive at a conclusion. He has come to the conclusion that