

MASTER AND SERVANT—FELLOW SERVANTS.

"her majesty the queen?" (—initial letters all small, according to the principles of democracy, if not of orthography, the strong point of the article being that we spell Judges with a capital J.), expressed an interest in Mr. Orton: of the difficulty the next "claimant" will have in finding a counsel, &c. These things show an acquaintance with the character and institutions of the English which is really surprising. When we read them we are irresistibly reminded—we say it in all good-nature—of a certain passage in that famous book, "Martin Chuzzlewit."

"Hush! Pray, silence!" said General Choke, holding up his hand, and speaking with a patient and complacent benevolence that was quite touching. "I have always remarked it as a very extraordinary circumstance, which I impute to the nature of British institutions and their tendency to suppress that popular inquiry and information which air so widely diffused, even in the trackless forests of this vast continent of the Western Ocean, that the knowledge of Britishers themselves on such points is not to be compared with that possessed by our intelligent and locomotive citizens. This is interesting, and confirms my observation. When you say, sir," he continued addressing Martin, "that your Queen does not reside in the Tower of London, you fall into an error, not uncommon to your countrymen, even when their abilities and moral elements air such as to command respect. But, sir, you air wrong. She *does* live there!"

SELECTIONS.

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We (*Central Law Journal*) publish elsewhere in this number the opinion of the Supreme Court of the United States on the general subjects indicated in the title, which was recently given in the case of the *Union Pacific Railroad v. Fort*, and in a note thereto the opinion of the same court in the case of the *Northwestern Union Packet Co. v. McCue*. Both opinions were prepared by Mr. Justice Davis, and they will be read with great interest by the profession, who will not fail to approve the sound, salutary and liberal doctrine so clearly declared in *Fort's* case.

We avail ourselves of the occasion to make some editorial observations on the more important aspects of the general subject of the Liability of Masters to Servants. The courts of Great Britain and America have established the general doctrine of the non-liability of the employer for an injury to one servant caused by the negligence of another servant in the same common employment. In England this doctrine has been affirmed time and again by every court in Westminster Hall, and finally by the House of Lords after full argument by able counsel and upon the most deliberate consideration.—*Bartonshill Coal Co. v. Reid*, 3 Macqueen App. Cas. 266. The first case was *Priestley v. Fowler*, 3 M. & W. 1. In *Holmes v. Clarke* (itself an important case on this subject), 7 H. & N. 937, 947, 1862, Mr. Justice Byles remarks: "The case of *Priestley v. Fowler* introduced a new chapter into the law, but that case has since been recognized by all the courts, including the Court of Error and the House of Lords. So that the doctrine there laid down, with all the consequences fairly deducible from it, are part of the law of the land.

In a very recent case this rule is said to be "conclusively settled." *Feltham v. England*, L. R. 2 Q. B., 33, 1866. In this case Mellor, J., says that "this rule is not altered by the fact that the servant to whom the negligence is imputed was a servant of superior authority, whose lawful direction the plaintiff was bound to obey."

In another case it is said: "A foreman is a servant as much as the other servants whose work he superintends." Per Willes, J., in *Gallagher v. Piper*, 111 Eng. C. L. 669, 1864. Further, as to who are "fellow-servants" within the rule, see *Wigmore v. Jay*, 5 Wellsby Hurl. & Gord. 354, 1850; *Skipp v. Eastern Counties Railway Co.*, 9 ib. 221; *Wiggett v. Fox*, 11 ib. 832; *Bartonshill Coal Co. v. Reid*, 3 Macq. H. L. Cas. 266; *Waller v. South, etc., Railway Co.*, 2 H. & C. 102; *Gallagher v. Piper*, 111 Eng. C. L. 669; *Morgan v. Vale, etc., Railway Co.*, 5 B. & S. 570, 736; *Turney v. Midland, etc., Railway Co.*, Law Rep. 1 C. P. 291; *Lovegrove v. London, etc., Railway Co.*, 16 C. B. N. S. 669. See *Murphy v. Smith*, 19 C. B. N. S. 361, as to servant being considered as the mas-