

ment was entered; and, when the matter came up before me on the 5th March, Mr. MacMurchy, having given notice to the plaintiff's counsel, who was also present, requested that the case might be opened and he be permitted to argue the question of the liability of his clients to the plaintiff. On consent of the plaintiff's counsel the request was granted, and the question of the liability, as well as contribution, argued.

Upon the argument counsel for the railway company urged that that company had nothing to do with the shifting of the vessel; that they simply lent their appliances to the Inland Lines Limited, upon the express understanding that they were not to be in any way responsible; and that, even if they were liable to the plaintiff, they were entitled to indemnity from their co-defendants, the Inland Lines Limited; and he relied on *Rourke v. White Moss Colliery Co.* (1876-7), 1 C.P.D. 556, 2 C.P.D. 205; *Donovan v. Laing Wharton and Down Construction Syndicate*, [1893] 1 Q.B. 629; *Coughlin v. Gillison*, [1899] 1 Q.B. 145; *Blakemore v. Bristol and Exeter R.W. Co.* (1858), 8 E. & B. 1035; *MacCarthy v. Young* (1861), 6 H. & N. 329; *Jones v. Scullard*, [1898] 2 Q.B. 565.

This argument proceeds upon the ground that there was a gratuitous bailment of the plant owned by the railway company and of the men in their employ for the removal of the vessel. I think it clear, upon the evidence in this case, and find as a fact, that there was no bailment of the plant, and the men of the railway company assisting in the removal did not enter the employ and were not under the control of the Inland Lines Limited.

The foreman, Charles Eberts, in charge of the elevator and men employed in and about it, retained the oversight and control of those men and of the plant belonging to the railway company used in assisting the removal of the vessel. The power was applied and directed and controlled by Eberts as foreman, and under his immediate control and authority the clamp for connecting the cables was made and joined to the ship's cable with the assistance of the ship's men; and Eberts had knowledge that such connection was defective by reason of the bolt being only one quarter the strength of the cables; so that, in my opinion, the cases cited have no application.

But, assuming that there was a gratuitous bailment of the plant and transfer of the men to the Inland Lines company, the cases cited are, in my opinion, distinguishable from the present. They are referred to in *Halsbury's Laws of England*, vol. 1,