

the evidence adduced by the appellant failed to make a case entitling her to have this question submitted to the jury.

The appellant also entirely failed to shew that the derrick and boom were improperly constructed or that they were not well fitted to perform the work they were intended to do, had they been properly managed and controlled by means of the appliances with which they were provided for that purpose.

If I am right thus far, the appellant's case as presented in her pleadings failed, but it was attempted to be supported at the trial and on the argument before us on another ground, viz., that the respondent had undertaken the duty of making fast the fourth guy rope, and that he had failed to perform that duty, and that this was the cause of the accident.

This contention also, in my opinion, failed; the testimony adduced for the purpose of shewing that the respondent undertook this duty and failed to perform it was, I think, quite insufficient to warrant a finding against him.

I have searched in vain for anything to indicate that those in charge of the work had delegated that duty to the respondent or that they relied on him to perform it. On the contrary, the witness Soper, one of the bargemen engaged on the work, according to his testimony, saw that the fourth guy rope was not tied, and apparently did and said nothing, although he knew that the result would be danger that the derrick might fall; if it was necessary to avoid that danger that the rope should be securely fastened, he would, had the respondent been the person who had undertaken the duty of doing this, either have called his attention to his neglect of his duty, or have called the attention of some one else connected with the barge to it; that he did not do so would seem to be attributable only to the fact that he did not suppose that this duty had been intrusted to or had been undertaken by the respondent.

I have assumed that, had this branch of the case been made out on the facts, the respondent would have been liable for the consequences of his failure to perform the duty he had undertaken. It is not, however, necessary to consider how far such an assumption is well founded, for on the facts, in my opinion, the appellant's case failed.

Having come to this conclusion, it follows that the ruling and judgment of the learned Chief Justice were right and the appeal fails and should be dismissed with costs.

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