court (A. L. Smith and Grantham, JJ.,) held that the plaintiff did not come under the definition of a workman. The court distinguished between the expressions "manual work" and "manual labour," and though conceding that a tram car driver was engaged in manual work, yet considered he could not be deemed to be engaged in manual labour.

MASTER AND SERVANT—DEFECT IN CONDITION OF WORKS—EMPLOYERS LIABILITY ACT, 1880—49 VICT., C. 28 S. 1 (O).

Thomas v. *Quartermaine*, 18 Q.B.D., 685, is another decision under the Employers Liability Act, 1880 (49 Vict. c. 28 [O].) in which the Court of Appeal affirm the decision of Wills and Grantham, JJ., 17 Q. B. D., 414, noted *ante*, vol. 22, p. 357. Lord Esher, M.R., however, dissented. In this case the plaintiff was employed in a cooling-room in the defendant's brewery; in the room were a boiling vat and a cooling vat, and between them ran a passage which was in part only three feet wide. The cooling vat had a rim raised sixteen inches above the level of the passage, but it was not fenced, or railed in. The plaintiff went along this passage to pull a board from under the boiling vat; the board, which was stuck fast, suddenly came away, so that the plaintiff fell back into the cooling vat and was scalded. Under this state of facts the court below had held that the employers were not liable, on the ground that there was no defect in the ways, works, or plant, of the brewery. As Bowen, L.J., observes, the decision is one of great importance to employers and workmen, and for this reason it may be useful to quote a passage from the judgment of Fry, L.J., at p. 700, which succinctly states the ground on which the majority of the court proceeded. After stating that independently of the Employers Liability Act, 1880, the plaintiff would have no cause of action, he proceeds to say:

"There arises the question which seemed to me to be that of the greatest difficulty in this case, viz.: has the plaintiff a right of action by force of the Act of 1880? The first section provides that when personal injury is caused to a workman by reason of any one of five things enumerated, the workman shall have the same right of compensation and remedies against his employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. If the workman is to have the same rights as if he were not a workman, whose rights is he to have? Who are we to suppose him to be? I think that we ought to consider him to be a member of the public entering the defendant's property by his invitation. Can such a person maintain an action in respect of an injury arising from a defect, of which defect and of the resulting damage he was as well informed as the defendant? I think not. To such a person it appears to me that the maxim *volenti non fit injuria* applies. . . . But again, s. 2, ss. 1, provides that a workman cannot maintain this action when arising from a defect in the ways or plant, unless the defect arose from, or had not been discovered or remedied, owing to the negligence of the employer, or of some person in his service as therein mentioned. Was there, then, in the present case any negligence, *i.e.*, any breach of duty which the defendant owed the plaintiff? In my opinion it must be determined by considering the real relation between the parties, *i.e.*, the relation of this particular master to this particular servant. The duty which a master owes to one servant may be quite different to that which he owes to another, it may vary with the knowledge, the experience, the skill, and the powers of the workman. In the present case I think that the master owed no duty in respect of the vat in question towards a workman who voluntarily continued to work on the property with a full knowledge of the defect and of the danger thence resulting.

It will thus be seen that the Court of Appeal proceeded upon a different ground to that adopted by the court below.

PRINCIPAL AND AGENT—LIABILITY OF AGENT—CUSTOM—EVIDENCE.

In *Pike* v. *Ongley*, 18 Q. B. D., 708, the Court of Appeal overruled the judgment of Day and Wills, JJ. The defendants, who were hop-brokers, gave to the plaintiffs a sold note, stating that they had sold to plaintiffs "for and on account of owner," 100 bales of hops. In an action for the non-delivery of the hops, the plaintiffs sought to make the defendants personally liable on the contract, and tendered evidence to show that by the custom of the hop trade, brokers who do not disclose the names of their principals at the time of making the contract are personally liable on it as principals, although they contracted as brokers for a principal. It was held by the Court of Appeal that this evidence was properly admissible, and was not in contradiction of the written contract.

PRINCIPAL AND AGENT — LIABILITY OF PRINCIPAL FOR REPRESENTATIONS OF AGENT.

British Mutual Banking Co. v. *Charnwood Forest Ry. Co.*, 18 Q.B.D., 714, is another decision on the law of principal and agent. In this case it was sought to make the defendants liable in respect of certain representations