

and the brickwork was fresh. It appeared that at the time of the accident the piers first gave way, and then the beams broke from the strain thus cast upon them. The accident occurred on the first occasion of using the crane, and it was the first time that the plaintiff had been employed upon it. There was no evidence that there was any defect in the crane, or negligence in the mode in which it was used, or that the engine was of unreasonable or improper weight. There was no evidence of any personal privy or interference by the defendant; but his foreman or manager was present and gave the directions to hoist the engine.

The traveller was worked by six men, three at one end and three at the other. As the crane moved along it oscillated, and the foreman thinking that the men were not working it properly directed them to stop, which they did for a minute or so. He then ordered them to move on again, which they did; just before that he had ordered the plaintiff to get on the engine and clean it. The plaintiff did so, and was on it whilst in motion for the purpose, and whilst so engaged some mortar fell, the pier gave way, and the engine fell, and the plaintiff's arm was broken. Upon objection by the defendant's counsel, that there was no case to go to the jury, to fix the defendant with liability, either personally or for the act of his manager or foreman, the Lord Chief Justice reserved the question for the Court and the case went to the jury, who found for the plaintiff, with two hundred pounds damages. On the argument before us it was contended that the defendant was liable on two grounds. Firstly it was urged that the foreman or manager was an *alter ego* of the master, and not a fellow servant of the plaintiff, and that he was guilty of negligence in not ascertaining the sufficiency of the piers before he ordered the plaintiff to get upon the engine to clean it as it travelled along. Secondly, it was urged that there was evidence to fix the defendant personally with negligence, in permitting the engine to be removed by means of the piers when he might, and ought to have known, that the piers were not sufficient for the purpose. We are of opinion that the plaintiff is not entitled to succeed on either ground. We think that the foreman or manager was not, in the sense contended for, the representative of the master. The master still retained the control of the establishment, and there was nothing to show that the manager or foreman was other than a fellow servant of the plaintiff, although he was a servant having greater authority. As was said by Willes, J., in *Gallagher v. Piper*, 12 W. R. 988, 33 L. J. C. P. 33, 9 "a foreman is a servant, as much as the other servants, whose work he superintends." There was nothing in the present case to show that he was an incompetent or improper person to be employed as foreman or manager. We are unable to distinguish the case on this point from that of *Wigmore v. Jay*, 19 L. J. Ex. 360, 5 Ex. 354; *Gallagher v. Piper* and *Skip v. The Eastern Counties Railway Company*, 23 L. J. Ex. 223. We think that this case ranges itself with a great number of cases by which it must be considered as conclusively settled, that one fellow servant cannot recover for injuries sustained in their common employment by the negligence of a fellow servant, unless such fellow servant is shown

to be either an unfit or improper person to have been employed for the purpose: *Morgan v. The Vale of Neath Railway Company*, 12 W. R. 1032, 33 L. J. Q. B. 250, in error, 14 W. R. 144, 35 L. J. Q. B. 23. And this rule is not altered by the fact that the servant to whom the negligence was imputed was a servant of superior authority, whose lawful direction the plaintiff was bound to obey. It is difficult in the present case to discover any evidence that the foreman was guilty of any negligence; but it is not necessary to determine that, inasmuch as the conclusion at which we have arrived renders it unnecessary to do so.

With regard to the second ground relied upon on the part of the plaintiff, we can find no evidence of personal negligence to fix the master. There was nothing to show that he had employed unskilful or incompetent persons to build the piers, or that he did know, or ought to have known, that they were insufficient for the use to which they were to be employed. He was a maker of engines, and therefore in that sense an engineer, but not in the sense that he possessed special knowledge as to the strength or sufficiency of brickwork. We cannot, in the absence of such evidence, say there was any case fit to be submitted to the jury as to this ground of liability, and we therefore think that the rule to enter a nonsuit ought to be absolute.

Rule absolute.

CORRESPONDENCE.

Bailiffs and their fees.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

SIR,—A great deal has been already written about the duties, emoluments, &c., of the bailiffs of the Division Courts, and as you have courted discussion on this point, will you permit me to make a few remarks, thereby adding my mite to the many suggestions furnished your valuable and useful publication.

In the first place, I would allow each bailiff a fixed salary, say \$300 per annum, *in lieu of all mileage*, which will thereafter be credited to the fee fund, with a forfeiture to the bailiff of the amount of mileage if return in any case is less than the actual distance. Bailiff to be paid also upon each and every service of summons 25 cents, on executions 75 cents, and when returned *nulla bona* 50 cents; notices of sale 10 cents each, as at present; 5 per cent. commission on sales under fifty dollars, 2½ per cent. for sums over that amount, attendance at sittings of court one dollar per day. I would strongly recommend that all services of summons be domicilian, irrespective of amount of claim. I think it will be a great boon for all parties, if the domiciliary service can be effected. At present, defendants evade the service, and thus add extra expense to themselves and great inconvenience to plain-