the plaintiffs, a chattel which they might remove at pleasure. *Wood* vs. *Hewett*, shows that if this pile when put into the bed of the river, was put into the river, not with the intention, on the part of its owner, of incorporating it with the bed of the river, but with the understanding and on the agreement that it should remain the chattel of the plaintiffs, then they are to have the right to sue any one who interferes with that which they have a right to, and which is indispensable to the enjoyment of their wharf.

CROWDER, J.—I am of the same opinion. This pile is used for mooring vessels coming up to the plaintiffs' wharf to load or unload; but the fact, it is said, of putting down this post eight feet into the bed and soil of the river, caused it to belong to the soil, and become the property of the owner of the soil as part of the realty; and therefore the plaintiffs have no right to say that it is their post, so as to bring an action for damages against a person injuring it. That was the point reserved, and now before us. I, however, am now of opinion, that it is by no means a necessary consequence of placing a pile in the bed of the river, where it is necessary for the purposes of the party placing it, having vessels which come to his wharf to moor thereto, that the pile becomes a part of the soil, and that the plaintiffs thereby lose the right of treating it as their own chattel. Here there seems to me to be ample evidence from which an inference may be drawn, that there was, in the plaintiffs, an easement to place this pile in the bed of the river for the purposes stated, and that the plaintiffs have not lost the right to the post, as a chattel, by putting it into the soil, which was only done for the purpose of the enjoyment of the wharf belonging to them.

WILLES, J.—I am of the same opinion. *Rule discharged.*

In the Court of Common Bench.

BLAKIE AND OTHERS *vs.* STEMBRIDGE.

1. Where a stevedore is appointed by the charterer to superintend the loading of a general ship, and such stevedore not acting under the orders of the master in respect of such loading, is guilty of negligence, and causes injury to goods sent to be carried on board the ship, the master is not liable for such negligence of the stevedore.

2. The Gundreda was chartered by her owner to one Gallard for a voyage from London to Port Louis for a certain freight. The captain was to be appointed by the owner; the stevedore for outward cargo was to be appointed by the charterer, but to be paid by and act under the orders of the captain. The ship being in port, but no crew, with the exception of the mate, being on board, the stevedore and his men went on board for the purpose of loading the vessel. The plaintiff having paid the broker the freight for the carriage of some sugar-pans, sent them alongside the ship. The stevedore, in loading the pans, was guilty of negligence, and injury ensued. He received no orders respecting the loading of the pans from the master, who was not on board:

Held, that the stevedore was not the servant of the master, and that the master was not liable for the negligence of the stevedore.

This was an action tried at Kingston before WIGHTMAN, J., when a verdict was found for the plaintiff, damages 14*l.*

The plaintiffs were the owners of some sugar evaporating pans, and brought the action against the defendant, the master of a vessel, for negligently loading the pans, whereby two of them became broken. The vessel had been chartered to a Mr. Gallard. The master and mate were to be appointed by the owners. The stevedore was to be appointed by the charterer, but was to be paid by and act under the orders of the master. The stevedore, in fact, attended to the receipt of and loading and stowing of the pans, the master not being on board.

Bovill, Q. C., having obtained a rule *nisi* to set aside the verdict and enter it for the defendant, on the ground that the master was not liable for the negligence of the stevedore.

Holl and *Jacobs* now showed cause, and cited *Morse* vs. *Slue*, 1 Vent. 190, 238; Story on Agency, ss. 314, to 318; Abbott on Shipping, p. 259, 10th edit. and p. 91.

Bovill, Q. C., and *C. Pollock*, in support of the rule, cited *Marquand* vs. *Banner*, 6 Ell. & Bl. 232.

WILLES, J., delivered judgment. This was an action brought by the plaintiffs, who are iron-founders, against the master of a vessel, for alleged negligence in loading some sugar-pans on board the *Gundreda*. The declaration alleged that the plaintiffs, at the defendant's request, delivered the pans to the defendant in London alongside, to be loaded by him on board the ship and carried therein from London to a port in the Island of Mauritius, and there to be delivered

by him for the plaintiffs for freight, the act of God, the Queen's enemies, and the dangers of the seas excepted; that the defendant received the pans accordingly, and two of them were broken by the negligence of himself and servants in loading them. The defendant pleaded, first, a denial that the plaintiffs delivered, and that the defendant received the pans for the purpose therein alleged; and secondly, not guilty. On these pleas the plaintiffs joined issue. At the trial before my brother Wightman, at the last Surrey assizes, it appeared that the defendant was master of the ship; that she belonged to John Hilman, and that on the 7th May 1857, she arrived in the port of London, and was then chartered by the owner to a person of the name of Gallard, for a cargo for a voyage to port Louis and back, at a certain specified rate of freight per ton; 700*l.* and odds were to be advanced on the vessel sailing from London, and the cargo was to be taken in and tendered alongside, at the charterer's risk and expense; the captain to sign bills of lading at any rate of freight not under the current rate; the ship to be consigned to the charterer's agents at the ports of loading and discharge, paying one commission of $2\frac{1}{2}$ per cent.; the stevedore for outward cargo to be appointed by the charterer, but to be paid by and to act under the orders of the captain. The charterer being thus entitled to take the cargo to port Louis, took the *Gundreda* to the agent, Mr. Thomas. At that time no crew was on board, nor had any been procured at the time the injury complained off took place; and this was alleged not to be unusual in commerce. The charterer appointed George Lock as his stevedore, and he went on board for the purpose of loading and stowing the vessel in the usual course of business. The master was aware of the terms of the charter-party; he gave the stevedore no orders, and in no way interfered, but contented himself, according to his own view of his duty, with occasionally looking into the hold to see how the cargo was being stowed for the safety of the ship. The master was not on board when the plaintiffs' pans came alongside, and he no way interfered with them unless the stevedore could be considered as his agent. The mate was on board in charge of the ship, but did not interfere with the loading. The pans in question were sent to London to go by the ship. The

agent saw the broker and arranged with him for the agreed freight for the carriage of the pans, and paid the freight, 250*l.* From the evidence of the agent, it would seem that he was aware that the ship was chartered. But it is unnecessary to rely on that circumstance, because, if he did not know it, although done, it was not the fault of the owner or the master. If he did, and there was no other ground on which to dispose of the case, we might have had to consider how far the ruling of my Lord Wensleydale, in the case reported in 7 Car. & P. 41, *Major and another* vs. *White and another*, bore upon it. To return to the facts. The pans were sent alongside in a barge, and thence were hoisted on board by means of hooks and lugs. During this operation, either by reason of the pans being lifted by the lugs, or the purchase not being perpendicular, two of the pans were broken; and it was to recover damages for this injury that the action was brought. The other pans were safely loaded and stowed, and bills of lading were given for them by the defendant. At the trial counsel for the defendant contended that upon this evidence assuming that the stevedore was guilty of negligence, the master was not answerable. The learned judge reserved this question for the opinion of the court, and left to the jury the question of negligence only, which they found for the plaintiff, who accordingly had the verdict. In Easter Term last the defendant obtained a rule to enter the verdict for him on the point reserved at the trial, and the case was argued before my brothers Williams and Byles, and myself, during last term, when we took time to consider our judgement, which I now proceed to deliver. By the maritime law, in the absence of custom or agreement, it is the duty of the master, on behalf of the owner, to receive and properly stow on board goods to be delivered to him alongside. For any damage to the goods occasioned by negligence in the performance of such duty, the owner is liable to the shipper. If the damage has arisen from the misconduct of the master, he is answerable to the owner; if it happen from the misconduct of the mate, or other of the crew, without fault on the part of the master, it has been considered by the court, and settled in the case of *P. executor* vs. *Acheson*, a case decided on the 5th Feb. 1841, that the master is not answerable to

the owners, although it appears to have been taken for granted, upon the principle asserted by Story, J., in his book, that the master in such case would have been answerable to the shipper. This duty of the master has, however, in very many cases, been modified by custom or contract. In some the cargo has been receivable or deliverable at a distance from the ship's side, as in *Cobban* vs. *Downe*, 5 Esp. 41, and in others his liability has been postponed until the goods have actually been stowed on board. In the latter class of cases, a stevedore appointed by the shipper is appointed to perform the ordinary duty of master, which consists in loading and stowing the goods, and the employment of such an intermediate agent appears to be of early origin. In the Collections des Lois Maritimes, by Pardessus, c. 192, of the edition of 1831, to be found in the second volume of his great work, p. 220, a stevedore appointed by the shipper is familiarly spoken of, and it is there laid down that when the stevedore is so appointed, the master is absolved from any liability; and the master in another clause is advised for his own indemnity to stipulate that such agent shall be present on the part of the shipper to superintend the stowage. It appears, therefore, that the stevedore has from early times been known as an agent distinct from the crew, and for his conduct, when appointed by the shipper, the master is not responsible. This was decided to be the law, and was held so in *Swainston* vs. *Garrick*, 2 L. J., N. S., 255, Ex., decided on 25th May 1833, where the ship was hired, and the charter-party stipulated that the stevedore should be appointed by the charterer; and there it was held that the master was not answerable even to the owner for damage occasioned to the cargo, the appointment of the stevedore having entirely relieved the master from the liability for bad stowage. Bayley, B. in that case made a suggestion, which probably led to the introduction in this and other cases, for the security of the owner, of the clause providing that the stevedore should act under the captain's orders. If this stipulation were not introduced, the authorities referred to show that the master would not be necessarily, and would not have been liable, and for this reason, namely, that the negligence which caused the damage was not that of the master, nor of his agents or servants. Nor,

in our opinion, could the clause, as framed, in the present case create any liability on the part of the master for the acts of the stevedore, except they were done in pursuance and in the execution of his orders. The stevedore was to be appointed by the charterer in London, to act for him, and to represent his interests. For this purpose he had the charge and custody of the goods until they were laden and stowed on board. The master, on the part of the owners, with a view to the trim of the ship and the safety of the ship, had complete control over the stevedore; but there was no stipulation that he should in any other way assist the latter in the performance of his duties. The payment of the stevedore was a matter of bargain between the owner and the charterer, and did not make the stevedore the servant of the master. Upon these grounds it appears to us that, unless the plaintiff can establish that some peculiar or exceptional rule of liability exists with respect to the master of the ship, the defendant is entitled to the verdict. Upon the argument it was contended that such a rule did exist. The authorities relied on are, however, in our opinion, inapplicable and against that view. With respect to a case of *Morse* vs. *Seue*, 1 Vent. 238, that case was founded upon a contract to carry goods actually delivered to, and in the custody of, the master on board ship, and he was bound, as he would have been here, if the bill of lading had been given for the injured pans, to deliver them in the state in which he received them, unless prevented by the act of God or the Queen's enemies. The question in this case is, from what period the goods can be considered in the custody of the master? Another authority relied upon was Story on Agency, ss. 314 to 318, in which it is stated, that the case of masters of ships is an exception to the rule previously laid down as to the non-liability of agents to third peasons for negligence and omissions of duty by themselves and their sub-agents, and it is there stated, that "the liability of the master is founded upon the doctrine of the maritime law which treats the master not merely as an agent contracting on his own behalf as well as for the owner, but which, upon the broader policy, treats him as in some sort a subrogated principal and qualified owner of the ship, possessing authority in the nature of an exercitorial power for the time

being, and his liability, founded upon this consideration, extends not merely to his contracts, but (as we have said) to his own negligences and nonfeasances, and misfeasances, as well as to those of his officers and crew. His responsibility for the officers and crew has this additional reason for its support, that he is thus induced to exercise a superior watchfulness over their acts and conduct, and if he were not so made liable for their acts and conduct, he might often by his connivance in their frauds, misfeasances and negligences or nonfeasances, subject the shippers of goods, as well as the owners of the ship, to great losses and injuries, without their having any adequate redress. The policy of the maritime law has therefore indissolubly connected his personal responsibility with that of all the other persons on board who are under his command, and are subject to his authority." Upon examination, however, of the authorities cited by the learned counsel, we find they are confined to cases of contract and collision. We have not, after diligent search, found any authority for the position, that a person sending goods to be laden on board a general ship is entitled to assume, without inquiry, that the goods are to be shipped and stowed by the master rather than by the stevedore, and so, without any contract for any wrong done by the master or the crew, to insist on holding him liable. The rule to enter the verdict for the defendant will therefore be made absolute.

In the Court of Exchequer.

THOMPSON *vs.* ROSS.

1. The plaintiff's daughter was the domestic servant of the defendant's father; the plaintiff having a contract to make shirts, similar contracts to which she had frequently, employed her daughter at the defendant's father's house, when she had finished her mistress's work, during over hours and leisure time, and with her mistress's knowledge and consent, in helping her to make these shirts. During this time, and when in defendant's father's service, she was alleged to have been seduced by the defendant.

   Held, in an action against the defendant by the mother for the seduction of her daughter, that this was not sufficient evidence of loss of service to support the action for seduction.