## APPELLATE CIVIL—FULL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice, Mr. Justice Beasley and Mr. Justice Waller.*

RALLI BROTHERS, MADRAS (RESPONDENTS), APPELLANTS,

1929, March 21.

*v.*

PERUMAL (APPLICANT), RESPONDENT.*

*Workmen's Compensation Act (VIII of* 1923), *sec.* 2 (1) (*n*) *and Sch. II (V)—"Employed for the purpose of loading"—Meaning of—Person employed in receiving goods let down by a crane in a warehouse from its upper to its lower floor—Warehouse at a distance of a quarter of a mile from quay—Workmen injured by falling of bale—If entitled to compensation for injury.*

Where a person, who was employed at a warehouse in receiving goods lowered down by a crane from the upper floor of the godown to its lower floor, which were to be there put into carts and carried to the quay by other workmen for loading in a ship at a distance of a quarter of a mile from the warehouse, was injured by the falling of a bale so lowered down, and applied to the Commissioner for compensation under the Workmen's Compensation Act (VIII of 1923) against his employers,

*Held* that the applicant was not a workman "employed for the purpose of loading a ship," within the meaning of clause 5, schedule II of the Workmen's Compensation Act (VIII of 1923), and was not entitled to compensation under the Act.

*Grant & Co.* v. *Coverdale, Todd & Co.*, (1884) 9 A.C., 470, relied on.

APPEAL against the order of the Court of the Commissioner for Workmen's Compensation, Madras, made in Application No. 151 of 1928.

This is an appeal against the order of the Commissioner for Workmen's Compensation, Madras, in which

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* Appeal against Order No. 369 of 1928.

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he granted an amount as compensation to the applicant, who was injured by the falling of a bale on him, while he was employed in the warehouse in receiving goods let down by a crane from the upper to the lower floor of the godown. The other facts and circumstances appear from the Judgment. The employers preferred this appeal.

*Nugent Grant* for appellants.—The question is whether the applicant was a workman employed in loading, within clause 5, schedule II of the Act (VIII of 1923). The warehouse is quarter of a mile distant from the quay-side, where the loading was to take place. If the destination is shipment, a person engaged in any prior stage is not a workman employed in loading. Acts ancillary to loading cannot be acts of loading. The acts must be so intimately connected as not to be merely ancillary to loading but must form part of the process of loading. This is the principle to be extracted from the English cases: See *Merritt* v. *Wilson, Sons & Co., Limited*(1), *Lyons* v. *Andrew Knowles & Sons, Ltd.*, *Stuart* v. *Nixon & Bruce*(2).

Purpose of loading means the same thing as the process of loading; purpose of loading does not cover a larger field of thought. Loading begins after everything is done by the charterer to have the goods ready for the process of loading: see *Grant & Co.* v. *Coverdale, Todd & Co.*(3).

*K. V. Krishnaswami Ayyar* and *K. V. Sesha Ayyangar* for respondent.—The Indian Act (VIII of 1923) uses language which is wider than the English Act.

The use of the words "warehouse or shed" in schedule II (V) shows that a wider class of acts than mere actual loading is included within the clause in question. The English decisions are not relevant in construing the language of the Indian Act. Remoter acts than actual slinging of the goods into the ship are covered by the Indian Act. The act of loading begins from the acts of removing from the warehouse; the transaction of loading begins there. Schedule II, clause 1 of the Act (VIII of 1923) refers to workmen under the Indian Factories Act. The latter Act refers to work "incidental to or connected with" the employment. The Indian Mines Act also uses the expression "Incidental to mining." The Act must be understood in a

(1) [1901] 1 Q.B., 35. (2) [1901] A.C., 79.
(3) (1884) 9 A.C., 470.

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popular sense; when goods are removed from the warehouse, it is under the orders of the appellant company for loading. Charter-party cases have no application to this case. See *Grant & Co.* v. *Coverdale, Todd & Co.*(1), *Hudson* v. *Ede*(2), *Lyons* v. *Andrew Knowels and Sons, Ltd.*; *Stuart* v. *Nixon & Bruce*(3). Section 30 of the Act (VIII of 1923) gives a right of appeal only on substantial questions of law. There is no such substantial question of law in this case.

## JUDGMENT.

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COUTTS TROTTER, C.J.—The facts in this case are fortunately not in dispute and are stated in the order of the Commissioner. I can shortly summarise them as follows. The applicant, the injured workman, who, it is agreed for the purposes of this case, is to be treated as being in the employment of Messrs. Ralli Brothers, the appellants before us, was employed in a warehouse which was within the premises of the Port Trust and leased by that body to Messrs. Ralli Brothers. The godown was about a quarter of a mile away from the wharf alongside which steamers are moored. Into that godown were stored various goods, the property of Messrs. Ralli Brothers, some awaiting shipment to Europe and some ready to be entrained at the neighbouring railway station to be conveyed to various destinations in British India. The injuries to the workman were caused by a bale of cotton being lowered from the upper floor of the godown by a crane to the lower floor in which he was waiting to receive it. Owing to negligent handling of the crane, the bale was lowered on to his leg and caused the injury for which he now seeks compensation. That bale was in fact destined to be put on board a ship lying alongside the quay in the harbour to be conveyed by that ship to Europe. In the ordinary

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(1) (1884) 9 A.C., 470 at 475 and 477.
(2) (1868) L.R., 3 Q.B., 412 at 414. (3) [1901] A.C., 79.

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course, the applicant on receiving that bale would have taken it out of the slings of the crane, handed it over to cartmen who would have put it on their hand-cart, taken it to the quayside a quarter of a mile away and then have handed it over to a gang of stevedores on the quay, whose duty it was to put it into the slings of the ship's crane or the Port Trust crane to be slung aboard the ship and stowed in the hold.

The question that arises under the Indian Act, VIII of 1923, is whether this applicant is a workman within the meaning of section 2 (1) (*n*) of the Act read with its second schedule. It is not questioned that, if he was a workman within the meaning of the Act, the acts which caused him injury arose out of and in the course of his employment. The material words are to be found in Schedule II (V): "Employed for the purpose of loading, unloading or coaling any ship at any pier, jetty, landing-place, wharf, quay, dock, warehouse or shed on, in or at which mechanical power is used."

Mechanical power was clearly used in lowering this bale from the upper to the lower floor of the warehouse, and therefore the only question we have to consider is, whether this man was employed for the purpose of loading a ship. If the words in Schedule II "at any pier, jetty" and so forth refer only to "ship" and do not relate back to the word "employed," the decision must clearly be against the workman, because the ship was not "at" the warehouse in which he worked which was a quarter of a mile away from the ship; and if that be the true construction of this not very clearly drafted section, there is no more to be said and his case must fail, because the schedule in that event would relate only to warehouses which are in such a position that goods could be directly slung from them straight on board the ship waiting at the quay-side. The Commissioner has

adopted another construction of the clause of the schedule and has related the words "at any pier," "jetty" and so forth back to the word "employed." I would only say in passing that it seems to be inapt language to describe a man as being employed "at" and not "in" a warehouse or shed. But I think it is advisable that we should deal with the matter on broader lines and consider whether this man can be said within the meaning of the Act to have been employed "for the purpose" of loading a ship. It is obvious that on any view of this case a line must be drawn somewhere. This particular bale of cotton came from Tinnevelly whence it was consigned by rail to Messrs. Ralli Brothers in Madras to be stored in a godown and ultimately put on board a steamer bound for Europe. No one, I think, would contend that a workman who handled the goods in a warehouse in Tinnevelly could reasonably be said to be employed for the purpose of loading a steamer in Madras. The line must be drawn somewhere and I think that in English cases the principle can be found as to where it is to be drawn. It may be true, as was said by the learned Counsel who appeared for the workman, that the trend of the highest authorities in England in interpreting the Workmen's Compensation Act of 1906 is to give a broad interpretation to the statute in the direction of favour to the workman. But there is this difference between the English and the Indian Statute that, whereas the former applies to all workmen, the latter only applies to certain defined classes of workmen and casts upon us, in my opinion, the duty of defining those classes with such precision as is possible. We are not without guidance in English cases of high authority as to what point is to be taken as that at which the process of loading begins. It has been said by both sides in turn that those cases are not

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direct authorities because they are oases relating not to any question of workmen's compensation but to the respective liability of shipper and charterer. I do not see any reason on that account to deprive myself of their guidance in determining the question when it is to be said that the process of loading begins.

The earliest case cited to us was *Hudson* v. *Ede*(1). That arose out of a charter-party which contained an exception for the running of lay days against the charterer in the event of frost preventing shipment. It was known to everybody concerned that the only possible method of shipment was to bring the goods by river for a hundred miles down the Danube to the place where the ship was then lying. It was held that the frost on the Danube which prevented this transport prevented loading within the exceptions of the charter-party. That aspect of the case was emphasised by the decision of the House of Lords in *Grant & Co.* v. *Coverdale, Todd & Co.*(2).

To that case I now turn, as it appears to me to be decisive of the case before us. The case there was that a canal which communicated with the dock where the steamer was lying was frozen over, so that until the frost broke it was impossible to bring the goods to be loaded on the ship by lighters to the ship's side by water. The expense of transporting the goods to the dock by land would have been commercially prohibitive. Nevertheless the House of Lords held that, as the dock was not frozen over, the clause did not exempt the charterers from payment of demurrage in respect of the extra lay days during which the ship was detained waiting for the cargo. The case is of cardinal importance on the present question and I propose to quote a few words

(1) (1868) L.R., 3 Q.B., 412. (2) (1884) 9 A.C., 470.

from the judgments of the learned Lords who took part in the decision. The words of exception there were "strikes, frosts, floods and all other unavoidable accidents preventing the loading." Lord SELBORNE there said :—

"If therefore you are to carry back the loading to anything" (which in the context clearly means "everything") "necessary to be done by the charterer in order to have the cargo ready to be loaded, no human being can tell where you are to stop."

His Lordship goes on to enumerate remote causes preventing the loading such as the bankruptcy of the person who is to supply the cargo, to take the most extreme instance, and sums it up thus :—

"All those things are of course practical impediments to the charterer having the cargo ready to be shipped at the proper place and time ; but is it reasonable that the ship-owner should be held to be answerable for all those things, and is that within the natural meaning of the word 'loading'? Are those things any part of the operation of loading ?"

And applying the maxim "*causa proxima non remota spectatur*," His Lordship answers his own question in the negative. He then proceeds to comment on the case of *Hudson* v. *Ede*(1) and he says this about it :—

"Where there is, in a proved state of facts, an inevitable necessity that something should be done in order that there should be a loading at the place agreed upon, as, for instance, that the goods should be brought down part of a river from the only place from which they can be brought even though that place is a considerable distance off, yet it being practically, according to known mercantile usage, the only place from which they can be brought to be loaded, the parties must be held to have contemplated that the goods should be loaded from that place in the usual manner unless there was an unavoidable impediment. And if the facts had been so about this particular wharf on the Glamorganshire canal, if that had been the only possible place from which goods could be brought to be loaded

(1) (1868) L.R., 3 Q.B., 412.

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at the East Bute Dock, that authority might have applied. But not only was that not the case, but in point of fact, cargo not only could be, but actually had been brought up by carts to the East Bute Dock and put on board ship; and I infer from the finding of the referee that the whole might have been done by carting, though I agree that it would have been at an expense which was preposterous and unreasonable if you were to look at the interest of the charterer, but if the charterer has engaged that he will do a certain thing, he must of course pay the damage arising from his not doing it."

I quote also a sentence from Lord BRAMWELL at page 478:—

"In the present case, frost did not prevent the loading; what it did was to prevent the particular cargo which the charterer had provided from being brought to the place where the loading would not have been prevented."

A suggested conflict between these cases was considered by the Court of Appeal in *Stephens* v. *Harris & Co.*, (1), and it was held that they were consistent and that *Hudson* v. *Ede*(2) might still stand as good law on the footing that it was there proved by evidence that the only possible means of access to the ship was by lighters covering a river journey over a hundred miles and that that mode of access was in fact blocked by frost.

Applying this reasoning to the case before us, as I respectfully do, it seems to me impossible to say that the only practicable mode of loading this ship was the one actually adopted in this case. If you exclude that, this man was clearly not employed in loading the ship. Lord SELBORNE clearly defines what is to be understood as ordinarily comprising the operation of loading, viz., as commencing when the ship, that is to say, its crew, begins to take part in the operation. The goods to be shipped are alongside the quay, the ship's crew or stevedores employed by the ship for the purpose are working the ship's derricks ready to receive the cargo

(1) (1887) 57 L.J., (Q.B.) 203. (2) (1868) L.R., 3 Q.B., 412.

as it is slung over the rail. In other words, the work of loading does not begin until there is contact and collaboration between the cargo-owner's servants in charge of the cargo on shore and the ship's crew or stevedores employed in their place and ready on board ship to receive the goods as they come over the ship's rail and stow them in the hold.

I feel myself constrained to follow that high authority and decide that this man was not "employed for the purpose of loading a ship." It seems to me that the words "for the purpose of" really do not amount to more than if the section had said "in loading." If they are held to mean more, we are driven to fixing a line somewhere between the workman who handles the goods at Tinnevelly and the workman who handles them on the quayside in the Madras harbour and is brought into direct contact and co-operation with those receiving the cargo on board ; and where to fix that line I know not. The intervention of the carting coolies between the task of this workman and the coolies ready to handle the bales on the quayside seems to me to be a break in the chain which is fatal to this workman. Moreover, I find it difficult to believe that it could be reasonable to conclude that a man engaged in "loading" should be in a better position than one engaged in the same place and on the same work in handling cargo "unloaded" from a ship. No one, I think, could maintain that if the same processes proved in this case were reversed, as in the case of discharging a ship's cargo, this man could possibly bring himself within the Act. The ship discharged her cargo on to the quay; when that is done she is unloaded, and so far as I can see, can have no further concern in the subsequent handling of the cargo. Having discharged her cargo, she is free to sail ; this man might have been injured exactly in the same way

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in handling her cargo on its way into the godown as he was in handling it on its way out. But I do not think it could be said that a man who was injured thus, when the ship had sailed and was truck down on the horiyon, was engaged in unloading her.

We had also cited to us the case of *Lyons* v. *Andrew Knowles and Sons, Ltd.*; *Stuart* v. *Nixon & Bruce*(1). In that case a stevedore who was employed in stowing goods into the hold of a ship was held to be continued to be employed for that purpose when the cargo was all in the hold and he was only occupied in the operation necessary to put on the hatchway cover; and in the course of doing that, he was injured. That seems to me to amount to this; that if a man is employed to pack things in a box, as part of his business he has to put the lid on the box; for, after all, a hold in a ship is nothing more than a big box. I do not think that that decision gives any real assistance in this case. It was apparently cited merely for the purpose of supporting the argument that loading is not to be limited to the mere operation of putting the cargo from the wharf into the hold and with that proposition no one desires to quarrel; but it seems to me to have no application to the present case.

I regret the result, for the reason that it presumably precludes an appeal to the Privy Council, from whom we should have welcomed further guidance if only because, as we are told, our decision affects over a million labourers in this country. The employers could and would appeal, had our decision been against them; but labour is as yet so little organized in this country, that there are no funds available, so far as I know, to take up a test case. I am glad to be told that the employers are fighting this case on principle only, and

(1) [1901] A.C., 79.

that this individual workman will be given a generous *ex gratia* payment in any event.

WALLER, J.—The respondent, at the time of the accident, was employed by the appellants at a godown rented by them from the Port Trust. He was engaged in hoisting and lowering by means of a hydraulic crane certain goods, some of which—casks of ghee—had been unloaded from a ship, others of which—bales of cotton—were about to be loaded on to another. Some bales of cotton, which were being lowered, fell on him and injured his right leg. The Commissioner found that he was a "workman" within the meaning of the Act, conceding at the same time that, if he had been injured by a cask of ghee, in respect of which the process of unloading was already complete, he would not have been entitled to the benefit of the Act. It is a curious anomaly that a man employed in handling goods for shipment by sea should be within the Act, while another employed in the same warehouse in handling goods for shipment by rail should be outside it.

The process of removing cotton from the godown to the ship is described by Mr. Wright, the appellants' godown and shipping manager, as follows: One set of workmen in this case, the appellant was one of them,—lower the bales, release them from the slings and put them aside ready for the carts. They work under maistris employed by the appellants. The bales are then placed on carts, taken to the quay and tipped on to it. They are finally loaded on to the ship by another set of workmen. These workmen as well as the cartmen are employed by the appellants' shipping contractor.

The relevant part of the Act is schedule II (5), which defines a workman—for our present purpose—as a person "employed for the purpose of loading, unloading or coaling any ship at any pier, jetty, landing place,

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wharf, quay, dock, warehouse or shed, on, in, or, at which, steam, water or other mechanical or electrical power is used." The clause is obviously susceptible of two meanings. It may mean either that the person is to be employed at the pier, jetty or other loading place or that the ship must be lying beside it. If the latter is the correct construction, the respondent is out of Court, for the godown in question is quarter of a mile away from the quay. The Commissioner preferred the former, which he thought to be the more logical of the two. I should myself have thought that the more logical construction is that which avoids the anomaly above referred to, and to say that the Act means that loading begins where unloading ends, by the side of the ship. That is, I think, the intention of the clause. It enumerates a number of loading and unloading places. All eight of them are places where the operation of unloading is carried out directly from the ship. The first six of them are places from which the operation of loading is carried out directly on to the ship. The most natural construction, in my judgment, is to hold that the last two—warehouses and sheds—are intended to be similarly situated, in juxtaposition to the ship. If it is to be held that the process of loading can begin at a warehouse at a distance from the ship, I can see no limit to the distance. In this instance, it is quarter of a mile, but the respondent might have been handling these bales in a godown at Chingleput, 36 miles away, preparatory to their being put on to carts to be driven to the quayside and I do not see how, on the construction adopted by the Commissioner, he could have been denied the benefit of the Act. In *Grant & Co. v. Coverdale, Todd & Co.*(1), Lord WATSON said that he was not prepared to assent

(1) (1884) 9 A.C., 470.

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to a construction "which would imply that the word 'loading' had as many different meanings as there were merchants or manufacturers of iron in Cardiff who happened to select different localities in order to store their iron for the purpose of shipment." He was, no doubt, considering the meaning of the word in relation to a charter-party, but I quote his observations in order to show the difficulties we shall be involved in, if we decide that a "warehouse" within the intention of clause V, can be a place, situated at a distance from a ship, where goods are stored for the purpose of shipment. If the Legislature desires to protect all workmen employed in such places—and it is conceded that, even on the Commissioner's construction, only some of them,—those employed for the purpose of handling goods for shipment by sea, are at present protected,—that can easily be done by notifying under sub-section (3) of section 2 of the Act that their occupation is hazardous.

BEASLEY, J.—I agree.

K.R.