clause 33 of the Glasgow Buildings Act of 1892 which shall deprive him of the benefit of the exception provided for by the Act of 1866. I do not see that the proviso on which Mr Craigie relies has any relation whatever to clause 372. The Act of 1866 must be looked at by itself, and if the case in question is found to be under the clause 372, we have no need to look to what is the provision or the proper interpretation of these provisions in 370 at all, or whether anything is added to them by the Act of 1892. Holding as I do, without the slightest doubt, that between 1866 and 1892 the Dean of Guild would have been bound to give this appellant a lining under his present application, I hold that the position of the Dean of Guild in the matter is not the least affected by clause 33 of the Glasgow Building Regulations Act of 1892, and that it does not in any way affect the appellant's rights under the first proviso of clause 372, and that therefore the judgment ought to be recalled and the Dean of Guild ordered to give a lining.

LORD RUTHERFURD CLARK—I think it plain that the buildings which the appellant proposes to erect fall under clause 372 of the Act of 1866. Therefore it is equally plain that they are not affected by provisions in the 370th section of the statute of 1866. The only question that remains is, whether the 372nd clause has been repealed or affected by the 33rd clause of the Act of 1892. I am clear that it has not. That clause is a clause of definition only, defining the free space, and making some exceptions from that definition.

LORD TRAYNER—I think the buildings of the appellant fall within the description given in section 372 of the Act of 1866, and it is obvious that if that is so the petitioner is entitled to his lining, unless the Dean of Guild is right in saying that section 33 of the Act of 1892 introduces a new provision in addition to and over and above the provisions as to free space contained in the Act of 1866. That is a reading of the Act of 1892 which I think is absolutely untenable, and as it is the only ground of the Dean of Guild's judgment, I agree with your Lordship that the judgment ought to be reversed.

The Court pronounced this judgment—

"Find that the buildings objected to fall within the exception contained in section 372 of the Glasgow Police Act 1866: Find that the provisions of sections 370 and 371 of said Act, and the provisions of section 33 of the Glasgow Building Regulations Act 1892 do not apply to said buildings: Therefore sustain the appeal: Recal the interlocutor appealed against: Remit to the Dean of Guild to grant the lining craved by the petitioner, and decern: Find the petitioner entitled to the expenses of the appeal and the expenses incurred by him in the Dean of Guild Court in so far as these were caused by the opposition to the prayer of the petition," &c.

Wednesday, May 27.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

M'LAUCHLAN *v.* S.S. "PEVERIL" COMPANY, LIMITED, AND MACGREGOR & FERGUSON.

Reparation—Defect in Plant—Liability of Shipowner to Stevedore's Workman—Liability of Stevedore for Failing to Inspect.

A stevedore's labourer brought actions for recovery of damages for personal injuries, sustained while employed in discharging the cargo of a vessel, (1) against the shipowners, (2) against the stevedore. He averred that while a load attached to the crane was being slung across the hold to a position below the hatchway, it struck slightly against one of the ship's stanchions; that the stanchion was unfastened and only supported in its place by the cargo immediately surrounding it, and that in consequence it gave way and fell upon the pursuer. In the first action the pursuer founded on the alleged defective condition of the stanchion, and in the second, which was laid both at common law and under the Employers Liability Act, he averred that the defect was so patent that the stevedore or his foreman ought to have known of it, and to have secured the stanchion or had it removed. *Held* (1) that the action against the shipowners was relevant; and (2) (*diss.* Lord Young) that the action against the stevedore must be dismissed as irrelevant.

Simpson and Others v. *Burrell & Son*, March 12, 1896, 33 S.L.R. 413, *followed.*

William M'Lauchlan, quay labourer, brought an action against the steamship "Peveril" company, Limited, in which he claimed damages from them for injuries sustained by him while engaged at the Queen's Dock, Glasgow as an employee of Messrs Macgregor & Ferguson, stevedores, in discharging the cargo of the "Peveril," of which the defenders were owners. He averred that on or about 21st January 1896 he was employed near the square of No. 2 hatch in collecting ingots of lead into slings so that they might be dragged under the hatchway by the winch and so up out of the hold, following what was the universal mode of discharging such cargoes in Glasgow. He further averred that another squad of men were similarly employed in another part of the hold, and that while certain ingots of lead were being slung by them they came slightly in contact with some lead surrounding a stanchion of the vessel, and that "notwithstanding that the sling only touched the lead in the slightest way possible the stanchion at once gave way and fell upon the pursuer and broke his leg." He further averred—"(Cond. 3) . . .

It is explained that the stanchion was surrounded, up to a certain height, by pieces of lead which kept it nearly upright, and, when this support was removed, it fell in the manner described, as there were no bolts in it to keep it in its place. (Cond. 4) After the accident the pursuer's fellow-workmen at once examined the stanchion and found that it had, when originally fixed, been secured by two bolts at the top and one at the bottom. Only one bolt was left in the stanchion in the hole next the keel, and after it fell this bolt was found in the hold. This bolt was old and worn and had been cracked through the centre before the stanchion fell. The rust had eaten into it so thoroughly that all the strength had been taken out of it. The bolts at the top were evidently awanting, as they could not be discovered in the hold. At any rate, the nuts of the bolts were evidently not screwed on. It is explained that the stanchions of vessels are generally specially constructed of great strength to resist the concussion of cargo being moved and shifted about in the holds, and, if properly secured they are quite strong enough to resist the force which can be put upon them by a winch of the description used in this vessel. It is explained that the full force of the aforesaid sling of lead did not come against the lead near the stanchion, and that it fell in a manner which showed that it was not supported or secured in any reasonable way. Had it been so, it could not have fallen with the slight concussion upon it which resulted from the contact between the sling of lead referred to and the lead near the stanchion, and as a matter of fact, the sling of lead, when it stopped, had not gone past the place where the bottom of the stanchion was when it fell. (Cond. 5) The pursuer has thus been injured through the gross and culpable negligence of the defenders or their servants, in respect of their having left the aforesaid stanchion in a dangerous and defective condition, and improperly secured both at the top and and bottom. It was the duty of the defenders as the shipowners to see that all the fittings, moveable and otherwise, of the the vessel are properly and securely fixed, so as to enable the stevedores engaged to do their work in a safe and proper manner. It was also their duty periodically to examine and test the stanchion referred to, but they failed to do so, and the pursuer has become injured in consequence. . . . "

The defenders pleaded, *inter alia*—"(1) The pursuer's statements are irrelevant. (4) The said accident having occurred through the dangerous manner in which the work was being done, and through the fault of the pursuer and his fellow workmen, the defenders should be assoilzied, with expenses."

In consequence of the fourth plea the pursuer brought an action against his employers — Messrs Macgregor & Ferguson—in which he craved decree for damages at common law, and alternatively under the Employers Liability Act 1880. In addition to the averments as to the method in which the cargo was being discharged and the circumstances in which he was injured above quoted, he averred that "he was working" "under the orders and supervision of the defenders' foreman, John Cunningham, whose principal duty was one of supervision, and who was not ordinarily engaged in manual labour."

He further averred—"(Cond. 4) . . . It was also the duty of the defenders' foreman to ascertain whether the stanchion above described was originally, and continued to be, properly and firmly secured during the progress of the discharge . . . As a matter of fact, although the defenders' foreman knew, or ought to have known, that the stanchion above described was practically unfastened and unsupported, except by the pig-lead around it, which kept it in its place, and off the perpendicular, he took no steps either to inform the master or officers of the ship of the dangerous condition of the stanchion, or to have the stanchion removed from the place, or properly supported. . . . He gave no warning of any description to the pursuer or his fellow workmen of the defective condition of the stanchion. It is further believed and averred that if there was a danger of the stanchion being touched or injured by the loads being dragged out of the hold by the winch, it was the duty of the defenders and their foreman to have removed the stanchion from its place until the discharge had been completed. It is believed that this is customary amongst the stevedores of Glasgow. (Cond. 5) The pursuer has thus been injured through the foreman's negligence in superintendence, through failure to ascertain and warn the captain of the defective condition of the aforesaid stanchion, or cause it to be properly supported himself. The defenders' foreman was also at fault in not causing the aforesaid defective stanchion to be altogether removed when he saw that there was danger of some of the loads coming near it so as to touch it or the lead around it."

The defenders pleaded, *inter alia*—"(1) The action is irrelevant, and should be dismissed with expenses to defenders. (4) The accident having been caused through a defect in the ship, for which defenders are not responsible, they should be absolved, with expenses."

The actions were conjoined *ob contingentiam* on 24th March 1896, and by interlocutor dated 31st March the Sheriff-Substitute (SPENS) allowed a proof before answer, adding the following note:—

Note.—"An action in the first place was raised by the pursuer against the owners of the steamship in which the accident happened. The defenders in that case lodged defences, *inter alia*, averring that the manner in which the discharge was carried on was reckless and obviously dangerous, and that the accident was due to this and the carelessness of pursuer and his fellow-workmen. This averment inferred fault on the part of the stevedore's foreman, and against the stevedore a second action was raised. The two actions were conjoined on the 24th March, and I have

now heard a debate on the conjoined actions. I consider there is some misconception as to the effect of conjunction. It is simply in my opinion (and that of one of my colleagues with whom I spoke on the subject) entirely a matter which has to do with convenience as to procedure. If the actions are separately relevant, there relevancy is in no way affected by the fact that the actions have been conjoined, even although the statements in each are not consistent. The justification to the pursuer for raising a supplementary action is found in the defenders' averments in the first case. I do not know that the averments in the second case are absolutely inconsistent with the averments in the first case, but even if they were, as I have already indicated, I do not think it affects the question *quoad* a case for proof.

"Substantially, on the case as presented, it pretty much comes to this—that it was the duty of the shipowners to see that the stanchions of the ship were in such a state that men employed in working in the hold should not be exposed to the risk of their falling from slight causes; and, in the second place, fault is averred against the stevedore's foreman in respect that if he had taken the precaution of seeing that stanchions were right, the one in question having patently something wrong with it, the accident would not have happened. Now, the agent for the shipowner argued that the proximate cause of the accident was the fault of the stevedore as averred. As I have already said, I think that each case must be taken by itself separately as regards relevancy. I am not, however, prepared to hold that the shipowners could be absolved from blame as directly contributing to the accident, if it be proved that their stanchions were defective, and that it should have been known that they were defective if there had been proper supervision, merely because there should have been a further precaution taken by the stevedore or his foreman which had been neglected. I think the proper course in this case is to have a proof before answer."

The pursuer appealed to the Court of Session for trial by jury.

Both defenders objected to the relevancy of the actions.

Argued for the defenders the s.s. "Peveril" Company, Limited—It was conceded that these defenders were liable for the sufficiency of the ship and gear, so far as necessarily and properly used by strangers. But this stanchion was knocked down by such a blow as it was never intended to withstand. It was quite sufficient to support the deck, which was all it was intended to do. It was not averred that the jar which it had received was a necessary or probable incident in unloading a ship of its cargo, and such an averment was necessary to make an action in such circumstances relevant against the shipowner.

Argued for the defenders Macgregor & Ferguson—These defenders were not liable for the sufficiency of the stanchion. The stevedore was not bound to make an inspection of the ship and gear to see that they were in safe condition—*Simpson and Others* v. *Burrell & Son and Paton*, March 12, 1896, 33 S.L.R. 413. That case ruled the present. Without inspection the alleged defect in the stanchion could not have been discovered. Even if these defenders' foreman had discovered the condition of the stanchion, he would have had no right to interfere with it or to cease discharging the vessel until it was removed.

Argued for the pursuer—The stanchion fell because it was not supported by bolts but only by the lead which was round it. Its condition was therefore clearly unsafe and defective, and for this the defenders the shipowners were liable. The defect was so patent that the defenders the stevedores were liable for not observing it and taking steps to prevent its doing injury to their workmen.

LORD JUSTICE-CLERK—As regards the case against the owners of the "Peveril," as to which Mr Ure did not say anything in reply, I think it can hardly be maintained after what we have heard that there is not a case to go to proof. A stanchion which forms part of the supports of the deck near the hatchway is alleged to have been in such a condition that a very slight force coming against it would throw it down, and as there must be workmen working in the hold who have to pass that stanchion and be near it, time after time, in the course of the day, I think it cannot be held not to be a case for evidence, at least as to whether that stanchion being in an utterly unsafe condition, the defenders are not to be held liable in respect of that unsafe condition, the result of a slight accident being that the stanchion gives way and injures one who is not in their employment but who is on duty in the ship.

The case against the stevedore is quite different, and I must say that I am surprised, and I think it is a great pity that a case against the stevedore was raised at all. I think the cases which have been cited already cover the case of a stevedore as not being called upon to look to the security of the fastenings on board a ship on which he has to work. Of course a stevedore who happened to notice anything which was seriously wrong should point it out, but he could not have any power in the management of the ship; and if the people on board the ship—the master or owner—to whom he made a complaint were to say to him "Attend to your own business; we will attend to ours; we are quite satisfied with it," I do not think he could have refused to carry on his work to the best of his ability. It does not appear to me that there is any case stated against the stevedore different from what was stated in the other cases, in which it was held that there was no relevant case against the stevedore. My opinion is, therefore, that the case against the stevedore should be held to be irrelevant.

LORD YOUNG—I have no doubt about the relevancy of the case against the shipowner, and it is probably matter of regret that

owing apparently—for I take the Sheriff's note as stating the truth—to the case maintained by the shipowners before him in debate, the second action was brought against the stevedore. I think it is probably unfortunate that that was done, although I take the Sheriff's explanation of it as quite intelligible, and really the explanation of why the pursuer, who is a labourer in the employment of the stevedore, brought the action. What was maintained was that the stanchion was patently bad, so that any stevedore could see it, and he and his foreman, who was not a man engaged in manual labour, but a person employed to see that these things were all in order, ought certainly to have known of it and have seen to it, and that if he had done his duty there would have been no such accident as that which is the ground of the action here, and therefore no claim of damages against the shipowners. That was the case maintained in argument by the agent for the ship. Then bringing this action against the stevedore the labourer in his employment says—[*His Lordship read Condescendence* 4]. Now, I think it very probable that this labourer may fail to establish that, but I think he has averred it, and I am therefore not prepared to say that I think the Sheriff is wrong in the course which he has taken of sending the case against the stevedore also to proof before answer. He says, after stating that the agent for the shipowner argued that the proximate cause of the accident was the fault of the stevedore as averred (that is, in the averment which I have read)—[*His Lordship read the last three sentences of the Sheriff-Substitute's note*]. Now, I think the Sheriff here indicates plainly enough that he reads the averments of the pursuer—and I am not disposed to differ from him—as amounting to this, that the things were defective, and that it must have been known to the stevedore. Indeed, he avers that it was known that they were defective, and certainly would have been known if there had been proper supervision. Now, I am not aware of any authority for the proposition that a stevedore is not responsible for an accident to one of his men from a defect which he should have seen to and would have discovered had he made proper supervision. I think there is authority to the effect that a very slight supervision will be sufficient on the part of the stevedore to exempt him from responsibility, and that he may assume that this, that, and the other thing are all right in a ship without making a special examination. But I cannot assent to the proposition that there would be no liability if things are wrong, which by proper supervision, without requiring anything out of the way on his part, he would have discovered so as to prevent his man going into that danger. If there is to be an inquiry before answer—a proof before answer—I think it is not judicious or in the legitimate interests of the parties that we should decide any question upon the relevancy here of the want of proper supervision on his part, whereby he would have discovered this defect before the risk was incurred or damage done. I should therefore, for my own part, be of opinion that the proper course is to affirm the judgment of the Sheriff, a jury trial not being insisted in, and send the case back to him that he may proceed with the proof before answer in both cases.

LORD TRAYNER—The proximate cause of the injury for which damage is claimed in this case was insufficiency of one of the ship's stanchions. I think there is a case at least for inquiry as regards the liability of the shipowners upon that question. I think there is no relevant case stated for inquiry as against the stevedore. I think it is settled that a stevedore is not responsible for the insufficiency of the ship's fittings, and that he is not bound before he begins his duty of discharging or loading a ship to satisfy himself with regard to the ship's fittings whether they are sufficient or insufficient. I think, further, that if the pursuer has not averred a relevant case against the stevedore, it is the stevedore's right to ask that the action should be at once disposed of, and that he is not bound to wait the result of an inquiry *re* a claim against other persons with which he has no concern.

LORD MONCREIFF—I think there is a case for inquiry as against the owners. I agree with your Lordship in the chair and Lord Trayner that no relevant case has been stated against the stevedore, because I am of opinion that there is no duty of inspection of a ship laid upon a stevedore; and that being so, I think the stevedore is entitled to absolvitor now.

The Court recalled the interlocutor of the Sheriff-Substitute, dismissed the action against the stevedores Macgregor & Ferguson, and decerned; and in the action against the s.s. "Peveril" Company, Limited, allowed the parties a proof of their averments before answer.

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Counsel for the Defender the s.s. "Peveril" Company, Limited—Ure—Younger. Agents—J. & J. Ross, W.S.

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