

When the danger is not constantly present, but recurs at intervals, the defect may be cured by giving the workmen timely warning of its approach (*l*).

(*d*) "*Person entrusted with the duty, etc.*"—To bring an employé within this description there should be evidence shewing that he was charged with the specific duty of keeping the defective instrumentality in proper condition (*m*). But it is not necessary to show that he was discharging the functions of a superintendent (*n*).

The negligence of a superior employé not charged with that duty who attempts, at the request of a servant who is using an appliance, to remedy a defect therein, is not imputed to the master (*o*). Nor is the clause applicable to an employé whose duty it is, under a rule of his master, to examine for his own security the appliances which he uses (*p*). Still less is the master liable for the negligence of a mere labourer working under or with others, even though it may be a part of his duty at some particular

---

(*l*) *Smith v. Baker* (1891) A.C. 325, Lord Watson said (p. 354) "The employer may protect himself in such cases either by removing the source of danger, or by making provision for due notice being given. Should he adopt the latter course, he will still be exposed to liability if injury results from failure to give warning through the negligence of himself or of his superintendent."

(*m*) The employer has been held liable for the negligence of the following agents: An assistant roadmaster whose duty it is to inspect cars and have them run upon the repair track when they are found to require repairs. *Somerville &c. R. Co. v. Davis* (1890) 8 So. 552, 91 Ala. 487. A supervisor and section foreman in a case where a defect in a switch caused a train to be derailed. *Kansas City M. & B. R. Co. v. Webb* (1892) 97 Ala. 157. A lineman sent out to search for and remedy a defective insulation on an electric wire. *Willey v. Boston &c. L. Co.* (1897) 168 Mass. 40: 37 L.R.A. 723. A carpenter who understands and looks after machinery, although subject to the orders of a superintendent who is also a salesman. *Copithorne v. Hardy* (1899) 173 Mass. 400, 53 N.E. 915. An employé in charge of the stables of a street car company one of whose horses was in an unfit condition to be worked. *Haston v. Edinburgh &c. Co.* (1887) 14 Sc. Sess. Cas. (4th Ser.) 621. A "fireman" of a mine whose duty it is to inspect the workings before the miners go to work, and report as to the state of the ventilation. *Cowler v. Moresby Coal Co.* (Q.B.D. 1885) 1 Times L.R. 515. In *Canadian &c. Mills v. Talbot* (1897) 27 Can. Sup. 198, it was held that evidence shewing that an employé called a "loom-fixer" whose duty it was to examine a loom, after being notified that something was wrong with it, had failed to make an examination, justified submitting the case to the jury.

(*n*) *Copithorne v. Hardy* (1899) 173 Mass. 400, where the master was held liable for the negligence of one who attended under the superintendent's orders, to the adjustment of machinery.

(*o*) *Thomas v. Bellamy* (1900) 28 So. 707, 126 Ala. 253.

(*p*) *Memphis &c. R. Co. v. Graham* (1891) 94 Ala. 545. [Conductor and brakeman denied to be "persons entrusted, etc."]