this. From the nature of case, a railway employé has no opportunity of knowing the exact extent of the risk he assumes when he enters the service. Generally speaking, he has neither the skill nor the opportunity to inspect a railway track several hundred miles in length, nor its numerous sidetracks, bridges and grounds, nor the numerous locomotives and cars, partly belonging to the particular company, and partly coming from other roads, which will be employed upon it. Suppose, for instance, a railway brakeman, out of employment, presents himself to the master-mechanic of a particular railway company for a "job." The master-mechanic, who is here in law the vice-principal of the company, knows that a bridge over which the brakeman will have to pass is dangerous; he knows that on some portions of the track over which he will have to pass the ties are rotten and the rails liable to spread; he knows that some of the engines are old, rickety and dangerous, and that some of the cars which are still in use are worn out and ought to be condemned. From the nature of the case he cannot inform the applicant of the exact extent of these dangers, and he takes him into the service of the company without apprising him of them. Now, it is to this state of facts, which is the usual state of facts which presents itself in such cases, that the language before quoted applies. The brakeman, on entering the service rightfully assumes that the railway company has not been so far wanting in ordinary social duty as not to have made reasonable provisions for the safety of its employés. And under such a state of facts it may well be said that the legal implication is that it has done this.

This is but an illustration of the fact that you cannot generalize any set of legal rules so as to make them apply in all situations. The law is not, and never can be made, an abstract science. Its rules must always be viewed in the concrete. They can never be divorced from the particular subjects to which they have been declared applicable. There is no better illustration of this than the very subject we are considering. A mechanic on entering service in a manufacturing establishment, where his practised eye may, in an hour, take in all the "seen dangers" of the service, may well be held to have accepted the risk of those dangers, when, for the reasons already stated, no such implication would arise in the case of one entering the service of a railway company.

It is under the influence of such considerations as these that we find a tendency on the part of several authoritative courts to hold railway companies, in respect to the safety of their employés, to a liability similar in kind, though not so strong in degree, as that which they are under to passengers on their trains. Thus, the Supreme Court of Pennsylvania has declared that a railroad company is under an obligation to keep a sound track for the safety of all persons who are transported over it, whether passengers or servants. This is deemed a direct and immediate duty, the non-performance of which will not be excused by the remote negligence of its servants, who fail to report its condition or to put it in repair. If the substructure carrying the rails is suffered to lie until it has becomes rotten and unsafe, this is deemed the negligence of the company itself, and not merely that of its servants. Casualty from such a cause is not one of the ordinary perils which presumptively every one incurs who takes service with the company. It is not likened to the breaking of a rail from mere accident, or from some cause immediately traceable to the negligence of another employé. Another court has said that duty of such a company is to furnish good, well-constructed machinery, adapted to the purpose for which it is used, of good material, and of the kind that is found to be most safe when applied to use; it is not required to seek and apply every new invention, but must adopt such as is found by experience to comcine the greatest safety with practical use.

The Supreme Court of Tennessee has said, speaking of the obligation of a railway company to its employés, "The general doctrine is, that in proportion to the importance of the business, and the perils incident to it, is the obligation of the company to see that the engines and apparatus are suitable, sufficient, and 'as safe as care and skill can make them;'" which, no doubt, expresses correctly the extent of their obligation to passengers, but not to their servants.

The Supreme Court of Illinois declares that the result of previous rulings is, not to hold these companies as insurers that their road, appurtenances, and instrumentalities are safe and in good condition, but that they will do all that human care, vigilance, and foresight can reasonably do, consistent with the modes of conveyance and the practical operation of the road, to put them in that condition to keep them so. "The duty owing by a railroad company," said Breese, J., "to the public, as well as to those in their employment, is that their road, and bridges and other appurtenances, shall be constructed of the best material, having in view the business to be done upon it. In their construction they should equal those of the best roads doing an equal amount of business, and the utmost care and vigilance [should be] bestowed upon keeping them in a safe condition. The law will not allow them to be out of repair an hour longer than the highest degree of diligence requires. And, further, it is their duty to keep a sufficient force at command, and of capacity sufficient to discover defects and apply the remedy. Neglecting to keep it in the best condition, if injury or loss occurs thereby, the companies will be liable, and they ought to be so liable. From this responsibility they cannot be relieved except by showing that the defect was one which could not be discerned or remedied by any reasonable skill or foresight." Accordingly, an instruction which leaves out of view this strong obligation, but places the liability of the company upon actual knowledge of the defective construction, is held erroneous. There may be cases where the question, whether it was the duty of a locomotive engineer to inspect the track, will be a question for the jury. It was so held where, in passing trains over the tracks of two other railroads, temporary rails had been laid down as often as required, of which the engineer of a construction train, who was injured in consequence of his engine running off the track at this point, had notice.

Such a company has been held responsible in damages to an employé for an injury resulting, without his negligence, from a tank or other appendage of the road, so negligently constructed as to subject the employé to unnecessary and extraordinary danger, which he could not reasonably anticipate or know of, and of which he, in fact, was not informed. But a railway company is under no legal obligation to build its bridges so high that a man may pass under them safely while standing upon the top of a box-car; and if one of its servants is killed or injured by being struck by such a bridge while standing upright on such a car or nearly so, he being acquainted with the height of the bridge, his misfortune will