the part of the master or the agents for whose defaults he is answerable (*a*).

(*a*) In *Walsh* v. *Whitely* (C.A. 1888) L.R. 21 Q.B. 371, the trial judge left it to the jury to say whether there was a defect in the condition of the machine was indicated by evidence that the accident would not have happened if the disc of the wheel of a carding machine had been solid, and instructed them that to be defective a machine must be such as a reasonable, careful, experienced man, reasonably careful of the safety of his workmen, would not use. The jury found that there was a defect, but the Court of Appeal held that the evidence did not warrant this conclusion. The following passage shews the position taken by the majority of the Court, (Lindley and Soper L.JJ.): "To determine the meaning of the words 'defect in the condition of the machinery' we must look, not only at sec. 1, sub-s. 1, but also at s. 2, sub-s. 1. Reading these sections and sub-sections together we think there must be a defect implying negligence in the employer. The negligence of the employer appears to be a necessary element without which the workman is not to be entitled to any compensation or remedy. It must be a defect in the condition of the machine having regard to the use to which it is to be applied or to the mode in which it is to be used. It may be a defect either in the original construction of the machine or a defect arising from its not being kept up to the mark, but it is essential that there should be evidence of negligence of the employer or some person in his service entrusted with the duty of seeing that the machine is in proper condition. It must be a defect in the original construction or subsequent condition of the machine rendering it unfit for the purposes to which it is applied when used with reasonable care and caution, and a defect arising from the negligence of the employer. What evidence is there of this? Is there any evidence of the machine being defective even in the abstract? It was perfect in all respects. It was not impaired by use. It had been properly kept up to the mark. The only suggestion is that the wheel which might have been solid had holes in it, and that, if the wheel had been solid, the plaintiff could not have put his thumb where he did, and the accident would not have happened. There was, however, no evidence worth mentioning of improper construction in this respect. But the plaintiff had used the same kind of machine for thirteen years and had sustained no injury. It is to our mind clear that he would have suffered no injury on the present occasion if he had used proper care and caution. In these circumstances we can see no evidence of any defect in the condition of the machine even apart from negligence of the employer. It may be that a solid wheel would have been safer, but it would be placing an intolerable burden on employers to hold that they are to adopt every fresh improvement in machinery. We do not believe that such was the intention of the Legislature, nor do we think it was intended to relieve workmen from the exercise of that care and caution without which most machinery is dangerous. But in our opinion the defect in the condition of the machinery must be such as to shew negligence on the part of the employer. It seems to us that in this case there is not a particle of evidence of any defect arising from the negligence of the employer. It was a machine generally used, used by the plaintiff for thirteen years without any complaint or mischief arising, perfect and unimpaired, and never thought by the plaintiff himself to be unsafe. It is said there is evidence of the machine being dangerous. So are most machines, so is even an ordinary sharp knife, unless used with care, but that does not make it defective in its condition, nor does it imply negligence in the employer if an accident happens." Q.B.D. 371, 377. The following passage from the dissenting opinion of Brett, M.R., shews the theory adopted by that eminent judge: "Remembering that this is a statute passed to extend the liability of the employer in favour of the workmen and for their greater safety, I do not think that, in considering what is a defective machine, we can confine that consideration to the question of the purpose for which it is used. The defect contemplated by the Act is not, in my opinion, a defect with reference to the purpose for which the machine is employed, but a defect with reference to the safety of the workmen using it; and that defect may be either in the original construction of the machine or in the use to which the machine is put. Upon the findings of the jury and the true construction of the