

had employed competent persons to do his work is not enough.

Lord Cranworth points out that the two previous decisions of the House of Lords, *Paterson v. Wallace*, 1 Macqueen, p. 748, and *Brydon v. Stewart*, 2 Macqueen, p. 30, "turned not on the question whether the employers were responsible for injuries occasioned by the carelessness of a fellow-workman, but on a principle established by many preceding cases, namely, that when a master employs his servant in a work of danger he is bound to exercise due care in order to have his tackle and machinery in a safe and proper condition so as to protect the servant against unnecessary risks." The question in the former case of *Paterson v. Wallace*, he said, "was not as to an injury occasioned by the unskilfulness of a fellow-workman, but an injury occasioned by the fall of part of the roof," and in the other case of *Brydon v. Stewart*, the jury had found that "the death arose from the pit not being in a safe and sufficient state," and Lord Cranworth said, p. 288: "Your Lordships came to the conclusion that the men had a right to leave their work if they thought fit, and that their employers were bound to take all reasonable measures for the purpose of having the shaft in a proper condition so that the men might be brought up safely," and so a verdict was directed to be entered for the pursuer.

Defective places in which to work, defective machinery with which to work, and defective systems of carrying on work, are none of them, I hold, within the exception grafted upon the rule holding an employer liable for the negligence of the men in his employ. That exception as defined by Lord Cairns in his celebrated dictum in *Wilson v. Merry*, L. R. 1 H. L. Sc. 326, does not cover the duties owing by the employer to the employed in these respects, but does cover all risks which the workmen assume when they enter into their master's employment against the wrongful acts or negligences of their fellow-servants.

As Lord Herschell says, at p. 362, of *Smith v. Baker* (1891), A. C. p. 362:—

"It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances and to maintain them in a proper condition and so to carry on his operations as not to subject those employed by him to un-