

18. Duty of servant to report defects.

- (a). *Statutory and common law doctrines compared.*
- (b). *Position of a servant who fails to report a defect.*
- (c). *Position of a servant who has reported a defect.*

1. Introductory remarks.—In this and in ensuing numbers of the CANADA LAW JOURNAL it is proposed to review the decisions respecting two of the principal provisions in the English Employers' Liability Act, and the various statutes, Colonial and American, in which its phraseology has been more or less closely copied (*a*). The collection of authorities in each of the articles to be published will be more complete than any which has hitherto been offered to the profession.

The provisions selected for discussion in the present issue are sec. 1, sub-sec. 1, and sec. 2, sub-secs. 1, 3, of the English Act, which correspond respectively to sec. 3, cl. 1, and sec. 6, cls. 1, 3, of the Ontario Act. They run as follows, the additions made in the Canadian statute to that of the mother country being indicated by the words enclosed in brackets, except as otherwise stated:—

Where [after the commencement of this Act] personal injury is caused to a workman, (1) By reason of any defect in the condition [or arrangement] of the ways, works, machinery [buildings or premises] or plant connected with, intended for or used in the business of the employer, . . . the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Sec. 2. A workman [or his legal representatives, or any person entitled in case of his death], shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say: (1.) Under sub-section 1 of section 1 [that is clause 1, of section 3 of the Ontario Act], unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person *in the service of the employer*, and [The Ontario Act omits the words italicized] entrusted by him with the duty of seeing that the condition or arrangement of the ways, works, machinery [building or premises] or plant were in proper condition. (3.) In any case

(a) Statutes similar to the English Act have been adopted in Ontario, British Columbia, Manitoba, Newfoundland, New South Wales, Victoria, Queensland, South Australia, Massachusetts, Alabama, Colorado and Indiana.