

The essential basis of other decisions is that the words of the provision now under discussion imply that "the defect must be one which the employer has a right to remedy if he does discover it, and of a kind which it is possible to charge a servant with the duty of setting right" (*d*). A corollary of this doctrine is that,

person having authority to make it a part of such plant. *Jones v. Burford* (Q.B.D. 1884) 1 Times L.R. 137. A complaint of which the gravamen is that the plant was defective is not sustained by evidence shewing that the plaintiff, a painter in the employ of a firm of contractors doing work on a Government building, asked his foreman for a ladder; that, being referred by the foreman to the Government official in charge of the work, he was told he might have a ladder belonging to the Government; and that the ladder which he thus obtained leave to use was so defective that it broke under him. *Perry v. Brass* (Q.B.D. 1889) 5 Times L.R. 253. The court relied mainly on the fact that the ladder did not belong to the defendants, but Denman, J., also laid stress on the fact that their foreman knew nothing about it. The correctness of this decision under the particular facts in evidence seems somewhat dubious, as it may fairly be argued that the permission of a foreman to use whatever appliance a designated person may supply should have the effect of making the appliance actually selected a part of the plant.

(*d*) *Engel v. New York & C. R. Co.* (1893) 22 L.R.A. 283, 35 N.E. 547, 160 Mass. 260, holding that a railroad track owned, maintained and repaired by a manufacturing company, and used by a railroad company only under a licence or invitation to deliver freight under a contract, is not a part of the railroad company's "ways." *Engel v. New York, P. & B. R. Co.* (1893) 22 L.R.A. 283, 35 N.E. 547, 160 Mass. 260. In delivering the opinion of the majority of the court, Holmes, J., said:—"We think that neither the language of the statute nor good sense would permit us to hold an employer liable under the act for defects which he cannot help, in a place out of his control, to which his employes once in a while may be called for a few minutes." A railroad company that only goes upon the track of another under a licence to take cars therefrom, and has no control over it, is not liable for an injury to an employe caused by its defective character. *Trask v. Old Colony R. Co.* (1892) 156 Mass. 298, 34 N.E. 6. An employe of a gas company hired to remove gas pipe from a trench dug by authority of the city has no right to expect his employer to shore the sides of the trench or make it safer than it was, for he must be taken to know that his employer had no control over it. *Hughes v. Malden & M. Gaslight Co.*, 168 Mass. 395, 47 N.E. 125. The location of the tracks of a street car company being determined by the municipal authorities, it cannot be charged with failure to provide a safe place for its conductor, for the reason that there is a tree close to the side of the car, unless it is shewn that the company had a right to remove the tree. *Hall v. Wakefield & S. St. Ry. Co.*, 59 N.E. 668. The want of a fence at the top of a declivity at one side of a public street used by the employer as an approach to his place of business, is not a defect for which he can be held liable. *Strude v. Diamond Glass Co.* (1895) 26 Ont. Rep. 270, (following *Engel v. New York & C. R. Co.*, supra). Discussing the question whether the defective condition of a public street which was used by the employer in connection with his business was a defect in a "way used in the business," within the meaning of the Ontario Employers' Liability Act, sec. 3, sub-s. 1, Boyd, C., said:—"Light is thrown upon the scope of these words by sec. 6, sub-s. 1, which provides that the workman shall not be able to recover unless the defect arose from or had not been remedied owing to the negligence of the employer. That means some defect on his premises, or on a place over which he had control that could be made right by the employer. Such is not the case in regard to a public street upon which the employer had no right to construct a fence or barrier as is here suggested. One part of the street is higher than the other, but it is the business of the corporation of the city to deal with the alleged defect in the interests of the public, or be exposed to action by injured persons." A coalmaster is not liable to a ser-