industrial development; the products of industry are all composite structures and the labouring man can look upon them and justly claim that not merely his muscle, but also his brain, his skill and his sagacity have entered into their creation. It is only to be expected, therefore, that the working man, when accidentally injured or killed, should receive a large and increasing share of attention.

(2) *The Old Rule of English Common Law Regarding Common Employment.*

Common law is a general term used to designate "those maxims, principles and forms of judicial proceeding which have no written law to prescribe or warrant them, but which, founded on the laws of nature and the dictates of reason, have become interwoven with the written laws and form a part of the municipal code of state or nation" (1).

The common law prevailed in England and so has entered largely into the legal system of the United States and Canada. According to the English practice when one man injured another he became liable for the resulting damages. In case an employee was injured through the negligence or carelessness of his employer the same conditions prevailed and the employer was held responsible. "Negligence," as used in this connection, has been defined as "the absence of that amount of care which each man in this our social state owes his fellows" (2).

From this principle of personal responsibility there developed the doctrine known as "common employment." Whether or not the employee had any legal claim for damages when he was injured, not by the negligence of his employer, but by that of his fellow-workman, was not tested in the English courts until 1837. The servant of a butcher was riding in a van which was not under his control; because the van had been too heavily loaded by the negligence of a fellow-servant it broke down and injured the workman who was riding. He brought suit to compel the payment of damages by his employer but failed, in the now celebrated case of *Priestly v. Fowler* (3). The fact that the accident was caused by the fault of a fellow employee was proven, but the Court decided that no action could be maintained against the employer.

---

(1) American and English Encyclopedia of Law, 2nd Edition.
(2) Augustine Birrell: "Four Lectures on the Law of Employers' Liability." 1897.
(3) 3 M. & W. 1.