

for its application are present and their requirements have been fulfilled. The reason for the reluctance of the Courts to apply the rule in such cases is probably due to their inclination in the past to find and apply harsh rules inimical to the employe's interests.

In a New York case it is said that, "If the injured employe sues at common law and seeks to invoke the maxim, he must necessarily make proof of facts and circumstances which, under the common law, exclude every inference except that of the employer's negligence." The Court says that this is necessarily true. Why is it true? It is not required of any other litigant. With much solicitude a Court will say, as an excuse for not applying the maxim, that "It might have been due to the negligence of a fellow servant." Too many Courts have taken this position without reference to the language of the maxim or the reasons for its application. Instead of following the rule, they have offered some excuse (never a reason) for not following it.

That some of the Courts would like to avoid the consequence of erroneous precedent is indicated by the following language taken from the opinion in an Illinois case: "The existence of a rule exempting master and servant cases from the operation of the general principles of the doctrine expressed by '*res ipsa loquitur*' has been doubted and a logical reason for it is difficult often to see; but we are unable to escape from the conviction that it is the settled law of this state."

The Supreme Court of Minnesota lays down a proper rule in the following language: "The doctrine of *res ipsa loquitur* applies, the other conditions to its proper application obtaining, to the occurrence of an injury in the relation of employer and employe, when such injury arises in the use of an appliance which it is the legal and nondelegable duty of the employer to furnish and to keep in a reasonably safe condition for use."

In a Missouri case it is said that, "Where the injury to the servant is traced to a defect in a particular instrumentality or appliance being used by the servant in his work, then there are many cases holding that the proof of the occurrence and its attendant circumstances furnishes sufficient proof of actionable negligence."