5. Significance of the qualifying phrase, "connected with or used in the business of the employer."—(*a*) *Instrumentalities temporarily used by the defendant's servants in the transaction of his business.*—The mere fact that the defendant did not own the defective instrumentality which caused the injury will not protect him if, as a matter of fact, it was being used in his business at the time of the accident (*a*). Whether there was such use within the meaning of the statutes is determined with reference to various considerations.

In some cases the essential question is whether or not he himself or his agent had, at the time when the injury was received, adopted the instrumentality as a part of the plant by means of which the plaintiff was expected to perform his duties. If such adoption is shewn, he is considered to have assumed, as regards this temporary addition to his plant, a liability which, it would seem, is of precisely the same character and extent as that to which he is subject as regards his own property (*b*). Manifestly no adoption within the meaning of this doctrine can be inferred, where the plaintiff or his fellow-workmen took and made use of the defective instrumentality without any authority, either express or implied, from the employer himself or his agent. Under such circumstances no liability can be predicated from the fact that there was a defect and that a proper inspection would have disclosed it (*c*)

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the carts and wagons are not 'plant.' Can it be said that the horses, without which the carts and wagons would be useless, are not? To same effect, see *Haston* v. *Edinburgh &c. Co.* (1887) 14 Sc. Sess. Cas. (4th Ser.) 621; *Fraser* v. *Hood* (1897) 15 Ct. of Sess. Cas. (4th Ser.) 178.

(*a*) *Coffee* v. *New York &c. R. Co.* (1891) 155 Mass. 21; *Engel* v. *New York &c. R. Co.* (1893) 160 Mass. 260. *Louisville &c. R. Co.* v. *Davis* (Ala. 1890) 80 So. 552.

(*b*) Lack of ventilation of the hold of a vessel belonging to a navigation company in which coal is shipped by contractors to supply coal to a railway at another port where such contractors have to unload the coal, in consequence of which one of their employés is injured by an explosion of gas accumulating in the hold, is a defect in the plant of such contractors. *Carter* v. *Clarke* (Q.B. 1898) 78 L.T.N.S. 76. It has been laid down, without qualification, that a defect in a cart hired temporarily to carry a load is not a defect in the plant. *Allmarch* v. *Walker* (Q.B.D. 1885) 78 L.T. Journ. 391. But this ruling seems to be inconsistent with the one last cited, and to be unjustifiable in general principles. The report is so meagre that it is impossible to say precisely what the standpoint of the court may have been.

(*c*) A verdict for the plaintiff has been set aside where the injury caused by the giving way of a ladder which the workmen themselves had taken and used simply because they found it lying on the premises where they were sent to work, and which had not been borrowed, so as to become a part of the plant, by any