Common Employment

1. The first is a particular case of the general rule that a workman has contracted to take the ordinary risks incident to the work. One of these risks is that he may be injured by the negligence of a fellow-workman. If so, it was a firmly established rule of law in England that he had no redress except against the fellow workman. In a leading case, Lord Cairns said : " In the event of his (i. e. the employer's) not personally superintending and directing the work, he is bound to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. When he has done this, he has in my opinion, done all that he is bound to do. And if the persons so selected are guilty of negligence, this is not the negligence of the master " (Wilson v. Merry, L. R., 1 Sc. App. at p. 332). His liability for the negligence of the fellow-servant is in fact similar to that for a defective boiler. He must be reasonably careful in selecting both, and must take reasonable care to see that they work properly. But he does not guarantee either. Boilers will occasionally burst from mysterious causes, and servants will be careless. If injury results this is not the fault of the master. It seems rather curious that a master should be liable for an injury done to a stranger who is present on some lawful errand in his works; but not liable to one of his own workmen who is hurt by the carelessness of his fellow. But such was the law in England. It led to many fine distinctions as to who was a fellow-workman, when there were sub-contracts or several contractors engaged on the same work. Many of these difficulties were cleared up by the judgment of the House of Lords in " Johnson v. Lindsay," 1891, A.C. 371. The harshness of the law upon this point was