

kind may be referred to either of the categories which are covered by this provision of the Acts and the one which will be discussed in another article.

10. "Not discovered or remedied owing to the negligence."—  
(a) *Generally*.—The qualifying declaration in this statute, by which liability is excluded unless negligence can be predicated of the failure to discover a remedy the defect which caused the injury, merely embodies, so far as the employer himself is concerned, the common law doctrine that negligence cannot be imputed to a person who is not shewn to have had actual or constructive knowledge of the abnormally dangerous conditions from which the injury resulted (a).

The converse proposition which is implied in this doctrine, viz., that a master is culpably negligent if he permits the continuance of abnormally dangerous conditions which, by the exercise of due care, he might have ascertained, suggests a reason for doubting the correctness of the decision of the Ontario Court of Appeal which is criticized on another ground in the preceding section (b). It seems not unreasonable to say that, for the purposes of sustaining the judgment, a court of review would have been warranted in construing the finding of the jury, that the defendant had made no provision for a proper inspection, as being equivalent to a declaration by the jury that the defect in question would have been discovered, if such an inspection had been made. This would be tantamount to saying that the master ought to have known of the defect and was therefore as culpable as if he had actually known of it and failed to remedy it. If this view be correct, the finding virtually attributed personal negligence to the master, and there was clearly no necessity to obtain the opinion of the jury upon the question whether the defect was known to a superior employé.

The imposition of liability for the defaults of the class of agents designated by this clause may be regarded as being, for practical purposes, a legislative adoption of that doctrine of non-delegable duties which has been evolved, independently of statutes, in most of the American States (c).

(a) See this note by the present writer in 41 L.R.A. p. 33, where this doctrine is analysed and discussed at considerable length.

(b) *Sim v. Dominion &c. Co.* [1901] 2 Ont. L.R. 69.

(c) See the note by the present writer in 54 L.R.A. pp. 33, et seq., where a complete collection of the authorities will be found.