injury was the direct result of the negligent manner in which the servants themselves constructed a temporary appliance from adequate and suitable materials furnished by the master (*a*). This rule is the counterpart of that which, in common law actions, prevents recovery under similar circumstances. See the writer's note in 54 L.R.A., pp. 136, et seq. The rule under the statute is subject to the same qualification as the common law doctrine, viz., that it does not protect the master, if the defective appliance was one which he was bound to furnish in a completed condition (*b*). From the case cited it would appear that the servant has the burden of proving the existence of such an obligation, whenever the appliance was one of an essentially temporary description, and to be used only for the particular piece of work then in progress.

Another possible qualification of the rule is that the master might be held responsible if the temporary appliance was one con-

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(*a*) The action has been held not maintainable where the cause of the injury was one of the following appliances: Two ladders selected by employes from a supply furnished by the employer, and fastened together for use in painting a building. *McKay* v. *Hand* (1897) 168 Mass. 270, 47 N.E. 124 [The Court said: "From the description of the ladder which broke it is difficult to see from the evidence that the defendant was negligent in keeping it among his lot of ladders and in permitting it to be used, and if the sole negligence was that the ladders were fastened together and improperly placed against the house, that was the fault of the plaintiff and his fellow workman, and it was known to and appreciated by the plaintiff at the time. A ladder may be a sound light ladder of sufficient strength to be used by itself, but not suitable to be made the butt of two ladders fastened together." [A temporary staging put up for the purpose of erecting a building. *Burns* v. *Washburn* (1894) 160 Mass. 457, 36 N.E. 190. A temporary staging put up by workmen themselves who are slating a roof. *Reynolds* v. *Barnard* (Mass.) 46 N.E. 703 (1897) 168 Mass. 226. A temporary staging used by painters in painting the walls of a building. *Adasken* v. *Gilbert* (1896) 165 Mass. 443, 43 N.E. 199. The master cannot be held liable as for a defect, where a scaffold falls owing to the fact that a barrel by which it was supported was placed upon some rubbish of an accidental or temporary character on the floor of the room where the plaintiff was at work. *O'Connor* v. *Neal* (1891) 153 Mass. 281. The employers' liability for injuries sustained by the giving way of a part of a staging is not established where the evidence does not tend to shew that the employers furnished the staging as a completed structure, or that they assumed to exercise any control or supervision as to how it should be built or kept or adapted for work, or that they failed to furnish a sufficient quantity of suitable materials, or that they employed incompetent workmen, but does shew that the staging in use in the building had been in the care of the workmen themselves for several months. *Brady* v. *Norcross* (1899) 52 N.E. 528, 172 Mass. 331. The gravamen of a declaration shewing that the plaintiff, a journeyman painter, was injured owing to the negligence of another painter in failing to fasten properly his end of the hanging scaffold on which they were working, is the negligence of a fellow servant in handling or using an appliance, and therefore no cause of action under the statute is alleged. *Ashley* v. *Hart* (1888) 1 L.R.A. 355, 147 Mass. 573, 18 N. East. 416

(*b*) See *Brady* v. *Norcross* (1899) 52 N.E. 528, 172 Mass. 331.