This principle was, strangely enough, quite lost sight of in a case which recently came before the Ontario Court of Appeal (*f*). There it was correctly decided that the plaintiff was entitled to recover at common law upon a special finding that the master had made no provision for the inspection of appliances like that which caused the injury. But in the course of his opinion Chief Justice Armour took occasion to observe that, if the right of recovery had depended upon the Employers' Liability Act, it would have been necessary to send the case back to another jury to determine whether some employé superior to the plaintiff was aware that the appliances were defective. It is manifest that this theory as to the effect of the verdict is erroneous. The declaration of the jury that the defendant had made no proper provision for the inspection of the appliances in question was clearly tantamount to a declaration that his system was defective in this regard. The finding, therefore, was expressive of a fact which implied personal negligence on the part of the master himself, and it was wholly unnecessary to ascertain whether the particular defect which caused the injury was known to a superior employé.

In many instances, it will be observed, the adoption of a defective system virtually resolves itself into negligence in the exercise of superintendence. Under such circumstances a default of this

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has been gutted by fire cannot be held to have adopted an improper method of doing the work, where he arranges to remove one of the walls piecemeal by means of a scaffold constructed alongside the wall of the adjacent house. Hence a workman injured by the fall of the former wall against the latter cannot recover on the theory that the omission to shore the wall to be demolished was negligence, inasmuch as the process of shoring would have been fully as dangerous as that of erecting the scaffold. *McManus* v. *Greenwood* (Q.B.D. 1885) 52 L.T. Journ. 160. The Court of Appeal reversed the judgment of the Divisional Court (1886) 2 Times L.R. 603. The question whether the method of demolition adopted was not discussed, the reversal being put upon the ground that defendant, although he knew that there was imminent danger of the collapse of the wall, and that the workmen were ignorant of the conditions did not give them any warning. A servant injured by an explosion of gunpowder is not entitled to go to the jury on the question whether the system of work was defective, where the complaint merely alleges that the powder was stored in a magazine five minutes' distance from the work in small barrels; that, when it was desired to fire a charge, a barrel was carried from the store and opened at the place of work; and that while the plaintiff was firing a charge, a gust of wind carried a piece of fuse to a barrel from which powder had been taken, thus causing the powder to explode and injure him. Such allegations indicate rather the occurrence of an accident through the carelessness of the servant himself in not covering the barrel while the charge was being fired. *Mulligan* v. *M'Alpine* (1888) 4 Sc. Sess. Cas. (4th Ser.) 789. The common law cases on this subject are collected in a note by the present writer in 43 L.R.A., pp. 305, et seq.

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