

- 22. Sufficiency of the plea.
- 23. Burden of proof.
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- 26. Appointment of assessors.
- 27. Questions which may be reviewed on appeal.

In the present article, which concludes the series of those relating to the English Employers' Liability Act of 1880 and the Colonial and American statutes on which that Act has been copied more or less closely, it is proposed to collect the cases which determine the extent of the servants' right of action under the remaining provisions of those statutes and also to note some miscellaneous points of pleading and practice which have been incidentally decided by the courts in actions brought under the statutes.

X. WHAT PERSONS ARE ENTITLED TO SUE UNDER THE ACTS.

1. **General remarks.**—The cases which turn upon the question whether the injured person is entitled to maintain an action under these statutes against the party whom he seeks to hold responsible fall into three categories: (1) Those in which the right of action is made to depend upon principles determined to be equally applicable to statutory as well as to common law actions; (2) Those in which the right depends entirely upon the specific terms of the Acts themselves; and (3) Those in which the right depends upon the answer to the question, how far common law principles are affected by these or other Acts which modify the relations between masters and servants.

2. **Servants temporarily under the control of the defendant.**—Whether the plaintiff, although regularly working for another person, was, at the time of the accident, under the control of the defendant in such a sense as to be an employé ad hanc vicem, and therefore entitled to hold the defendant accountable under the statute, is determined by tests similar to those which are applied in actions at common law (*a*).

(a) One sent by a firm of contractors to assist their workman in constructing an elevator which they have contracted to erect in a building, whose wages the owners have promised to pay, may properly be found to be a servant of such owners. *Wylid v. Waygood* [1892] 1 Q.B. 783, 61 L.J.Q.B.N.S. 391, 66 L.T.N.S. 309, 40 Week. Rep. 501, 56 J.F. 389. Lord Herschell, commenting on the conten-