"A master, as we have already seen, is bound when employing a servant to provide for the servant a safe working place and machinery. It may be that the persons by whom buildings and machinery are constructed are servants of the common master, but this does not relieve him from his obligation to make buildings and machinery adequate for working use. Were it otherwise, the duty before us, one of the most important of those owed by capital to labor, could be evaded by the capitalist employing his own servants in the construction of his buildings and machinery. In point of fact this is the case with most great industrial agencies: but in no case has this been held to relieve the master from the duty of furnishing to his employee, material, machinery and structures adequately safe for their work. He does not guarantee that either buildings, machinery or organization should be perfect, but he is bound by the rule *sic utere tuo ut non alienum lædas* to use such diligence and care in this relation, as is usual with good business men in his line. It is not enough for him to employ competent workmen to construct his apparatus. If an expert, he must inspect their work, and if not, he must employ another competent person as expert for the purpose. If such, however, is his duty he must not only see that the structure he provides is suitable at the outset, but that it is kept in repair. And the repairer's negligence in this respect is the master's negligence."

Says Mr. Pierce in his work on Railroads, p. 370:

"The Company like any master is under an obligation to its servants to use reasonable care to provide and maintain a safe road bed and suitable machinery, engines, cars and other appointments of the railroad, and is liable to them for injuries resulting from the defects which it knew or ought to have known and could have prevented by the exercise of such care; and it is under the same duty and liability to maintain these instrumentalities in proper condition. The servant assumes the natural risks of his employment, but not those which the wrongful act of the employee has added."

The same doctrine was held by the United States Supreme Court in *Hough* v. *Railway Co.*, 100 U. S. 213, in which Mr. Justice Harlem reviews the authorities.

In a note the reporter has cited a long list of cases sustaining the doctrine. *Holden* v. *Fitchburg R. R. Co.*, 129 Mass. R., 268, also found in 2 Am. and Eng. R. R. Cases 94, is a recent case on this subject, in which the Hon. C. J. Gray, of Massachusetts, ably reviews the cases, and states the same doctrine. The editor of the latter report, has in a note to this case collected a large number of American cases in which the same doctrine has been announced. When the case of *Hard* v. *The Vermont and Canada R.R. Co.*, *supra*, was decided, the liability of the master was held to be dependent upon whether the servant whose negligence caused the injury and the servant injured were fellow servants in a common employment or work. Making this the test for determining the master's liability, the reasoning and conclusions of the late Chief Justice Pierpoint are unanswerable. But this test while determinative in a great number of cases as we have seen, has been abandoned both in England and in this country, and in lieu thereof the master's liability has been made to rest upon whether the negligence arose in the performance of a duty for the careful discharge of which he became responsible when he assumed the relation of master to the injured servant.

On these principles which, we think, furnish the true grounds upon which the master's liability rests, and on the American appli ation of them, the charge of the County Court in the particulars to which exceptions were taken contained no error. The American doctrine, holding the master liable for the negligence of his servant while discharging a duty which the master owes to a general workman, is more consonant with reason and the general safety of the travelling public than the English doctrine announced in *Wilson* v. *Merry*, *supra*. The bri ge builder and road master while inspecting and caring for the defectively constructed culvert were performing a duty which as between the intestate and defendant, it was the duty of the defendant to perform. Their negligence therein was the negligence of the defendant. Being the agents of the defendant for the performance of these duties, notice to them in regard to the defective construction of the stockade as affecting the safety of the culvert was notice thereof to the defendant. Hence the evidence to show such notice to them was properly admitted.