no useful purpose would be served by accumulating authorities to demonstrate what is really beyond controversy (*a*).

(*b*) *Res ipsa loquitur.*—Whether the onus is shifted in any particular case by the operation of the doctrine of "res ipsa loquitur" is determined by the same considerations as those which are controlling in actions at common law (*b*).

24. Instructions.—To ask a jury in general words whether there was any defect by reason of which the accident happened, or any negligence on the part of an employé having superintendence is not a proper way of submitting the case to them (*a*).

(*a*) As to (1), see *Southern R. Co.* v. *Guyton* (1898) 122 Ala. 231; *Louisville &c. R. Co.* v. *Bunson* (1892) 98 Ala. 570, 14 So. 619; *Garland* v. *Toronto* (1896) 23 Ont. App. 238.

As to (2), see *Gibbs* v. *Great Western R. Co.* (1884) 12 Q.B.D. (C.A.) 208; *Garland* v. *Toronto* (1896) 23 Ont. App. 238; *Louisville &c. R. Co.* v. *Davis* (1890) 91 Ala. 487.

Mary Lee Coal & R. Co. v. *Chambliss* (1892) 97 Ala. 171, 53 Am. & Eng. Cas. 254, 11 So. 897. [Verdict set aside on the ground that there was no evidence that the failure to discover or remedy the defect was due to the negligence of the employer or his representative.]

As to (3), see *Southern R. Co.* v. *Guyton* (1898) 122 Ala. 231; *Louisville, &c. R. Co.* v. *Binion* (1892) 98 Ala. 570, 14 So. 619; *Farmer* v. *Grand Trunk R. Co.* (1891) 21 Ont. Rep. 299. [No recovery, where the evidence is equally consistent with the theory of contributory negligence on the plaintiff's part.]

(*b*) A verdict for the plaintiff will not be disturbed where the evidence is that the unsafe adjustment of a plank in a temporary staging across which he and his fellow workmen were carrying materials was the cause of the injury. The mere fact that such evidence is quite consistent with the hypothesis that some person for whose acts the master was not responsible might have moved the plank does not throw on the plaintiff the onus of proving that the defect had existed so long that it ought to have been discovered by an agent of the defendants. *Giles* v. *Thames, &c., Co.* (Q.B.D. 1885) 1 Times L.R. 469.

A finding that the defendant was not in fault as regards the adjustment of a scaffold used by workmen engaged in painting a ship is not warranted where the plaintiff's witnesses declare that the chains which supported the poles on which the scaffold rested were slung at such a distance from the ship's side that there was a likelihood of the poles tipping under the weight of the workmen, while the defendant produces evidence that the chains were slung at such a distance that no tipping was possible, but does not explain how the accident occurred. The fact that the catastrophe happened throws the weight of probability on the side of the witnesses who account for the accident, and furnishes a strong reason for accepting their testimony as correct. *Davison* v. *Henderson* (1895) 22 Sc. Sess. Cas. (4th Ser.) 448.

The mere fact that a shaft supported by brackets falls is sufficient evidence to warrant a jury in finding that its fall was due to a defect in the supports. *Copithorne* v. *Hardy* (1899) 173 Mass. 400, 53 N.E. 915.

On the other hand the mere fact that the upper compressing plate of a brick-making machine falls unexpectedly on the hand of a workman who has just arrested its movement with a scraper will not justify a finding that there was a defect in the machine. *Kay* v. *Briggs* (Q.B.D. 1889) 5 Times L.R. 233.

See, generally, on this doctrine, 1 Bev. Negl. pp. 129-148; Shearm. & Redf. Negl. sec. 59.

(*a*) *Pritchard* v. *Lang* (1809) 5 Times L.R. 639.