

seem that conditions which, in the first instance, are merely temporary in their nature, will, if they are allowed to become permanent, be assimilated, for the purposes of these statutes, to defects inherent in the substance of the instrumentalities themselves (f).

When the master keeps a readily-accessible stock of simple appliances he is not bound under the statute any more than at common law to see that a servant asks for a new one when that which he has been using is worn out (g). These decisions suggest that the temporary or permanent nature of the defect is not the true differentiating factor in this class of cases, and that the essential questions are rather, (1) whether the abnormal conditions were mere incidents in the progress of the work or structural, and, (2), supposing them to be of the latter description, whether they were brought about by the act, or volition of the employé who was in charge of the instrumentality to which the injury was due.

**12. Defects in temporary appliances constructed by the servants themselves, not deemed to be chargeable to the employer.**—A special application of the principle exemplified in the preceding section is the doctrine enforced in several American cases that there can be no recovery under this provision of the statute, where the

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(f) This seems to be the rationale of a Scotch case in which it has been held that a manhole at the side of a railway in a mine so obstructed with rubbish that a miner is unable to use it as a refuge when cars are approaching is a "defect in the ways" *Ferris v. Cowdenbeath* (1897) 24 Sc. Sess. Cas. (4th Ser.) 615.

(g) There can be no recovery for the death of an employé caused by the breaking of a wooden lever by which a fellow workman was helping to raise a heavy iron door on its hinges, causing the door to swing down and strike an iron lever held by deceased, driving it into his abdomen, in the absence of any evidence that the broken stick was defective, or, if so, that the defect could have been discovered. *Allen v. G. W. & F. Smith Iron Co.* (1894) 160 Mass. 557, 36 N.E. 581. The court said: "The whole matter was in the hands of the deceased. He was the person in immediate charge of the furnace. If a new stick was needed, it was his business to know it. The primary duty rested on him, not on the superior officer. Again, if a new stick had been needed, it could have been obtained of the carpenter by the deceased at any time. The defendant kept a stock of lumber of the proper size on hand, and the deceased had only to ask for what he wanted. If such a stick can be said to be part of the works or machinery, the defendant's duty to the deceased did not require it to see that he called for a proper one. It was enough that it had proper ones within convenient reach." One of a number of chains furnished for use as required is regarded, when it is applied to the purpose for which it was designed, as a permanent instrumentality and not one of those small things which go through a rapid course of wearing out and replacement, as to which the rule is that it may be left to the judgment of the workmen when one of them is to be discarded. The making of a link for such a chain, therefore, is not one of those merely transitory adjustments which the master is under no personal obligation to see carefully performed. *Haskell v. Cape Ann &c. Works* (Mass. 1901) 59 N.E. 1113.