

gence where it is apparent that there is no uniform usage in regard to the subject-matter (*d*).

The statute is not construed so as to make him an insurer of his servants' safety to such an extent that he is bound to have his machinery so constructed and arranged as to provide for the contingency that one of the men whose duty it is to attend to it may, by negligently absenting himself from his post, cause it to operate in such a manner as to injure another servant (*da*).

An accident attributable to what is merely a condition of the material on which the employes were working and necessarily incident to the business in which they were engaged does not constitute a cause of action (*e*).

9. Defective system, employes liable for. — Under the various is also the case Employers' Liability Acts, as is also the case at common law, the master is "no less responsible to his workman for personal injuries occasioned by a defective system of using machinery, than for injuries caused by a defect in the machinery itself." In other words, "a master is responsible in point of law, not only for a defect on his part in providing good and sufficient apparatus, but also for his failure to see that the apparatus is properly used" (*a*).

(*d*) Failure to provide a temporary scaffold or platform around a "bleeder" used for the escape of gas above an iron furnace, on which the master mechanic could stand to repair the bleeder, does not constitute a defect in the ways etc. where such scaffold was sometimes used in furnaces, but repairs were also made by means of a ladder. *Birmingham Furnace & Mfg. Co. v. Gross* (1892) 97 Ala. 220, 12 So. 36.

(*da*) *Robins v. Cubitt* (1881) 46 L.T.N.S. 535.

(*c*) *Welch v. Grace* (1897) 167 Mass. 590, 46 N.E. 386, where the court rejected the contention that the death of an employe due to subsequent explosion of a mis-spent blast which, owing to the character of the rock in which it had been placed, failed to explode in the first instance deemed to be caused by a defect in the "ways, works, or machinery" of the employer.

(*a*) Lord Watson in *Smith v. Baker* [1891] A.C. 325, (p. 353), where a verdict was allowed to stand which found negligence in the system, where the plaintiff was injured by the fall of a stone from a crane which worked over his head intermittently, while he was engaged in drilling, and was thus prevented from being on his guard to avoid danger when, in the course of the work, the stones lifted by the crane were swung round over his head. The absence in hoisting machinery of a sufficient safeguard against such a probable occurrence as a slip in the management of the machinery, is a defect in the system. *Stanton v. Scrutton* (Q.B.D. 1893) 9 Times L.R. 236. A master cannot be held liable, as for a defective system where the evidence is that the plaintiff, a boy, was injured by the sudden starting of a brick-press while he was cleaning out the under part with his hands during a temporary stoppage of the machinery but it was also shewn that he had been warned not to use his hands for this purpose. *Race v. Harrison* (1893) 9 Times L.R. 567. One who has contracted to take down a building which