was held not to be maintainable: (*Hutchinson* v. *The York Newcastle and Berwick Railway Company*, 5 Ex. 343.)

So where the deceased, a workman employed in the construction of the Crystal Palace, London, was killed through the neglect of a fellow-workman in letting fall an instrument called a "rymer:" (*Wigget* v. *Fox et al*, 11 Ex. 832.)

So where the servants of defendants, a railway company, were turning a truck on a turn-table, and a person assisting them was killed through the negligence of the servants of the defendants, in propelling a steam engine against him: (*Degg* v. *The Midland Railway Company*, 1 H. & N. 773.)

So where plaintiff, an engineer in the service of defendants, a railway company, engaged in running a passenger train on their line, in consequence of the neglect of a switchman, on the same line of railway, was precipitated off the line and thereby injured: (*Fearwell* v. *The Boston and Worcester Railway Company*, 4 Metcalfe 449.)

So where deceased, a miner in the employ of a mining company, was killed, while ascending a shaft of the mine, through the negligence of a fellow-servant, whose duty it was to attend to certain machinery by which the miners were let down into, and drawn up from, the mine: (*The Barton's Hill Coal Company and Reid in the House of Lords*, 4 Jur. N. S. 767.)

2. *Neglect of master.*

The neglect of the master may be either neglect to hire competent servants—to provide safe machinery—or to keep machinery in repair. The master is not under all circumstances excused from the consequences arising from the act of a fellow-servant or workman. He is only so excused when he hires competent servants. The rule is thus stated by Baron Alderson. The master is not in general responsible for an injury to a servant arising from the neglect of a fellow-servant, "when he (the master) has selected persons of competent care and skill:" (*Hutchinson* v. *The York, Newcastle and Berwick R. Co.*, 5 Ex. 351.) If the servant who caused the injury were incompetent to discharge his duty, and the injury arose from that incompetency, there is strong ground for holding the master responsible: (*The Barton's Hill Coal Company and Reid*, 4 Jur. N. S. 767). The master to discharge himself must shew at least that he used reasonable diligence in the selection of the servant: (*Tarrant* v. *Webb*, 18 C. B. 796; *Wigmore* v. *Tay*, 5 Ex. 354; *Potts* v. *The Port Carlisle Dock Company*, 2 L. T. N. S. 283.)

The question whether or not the fellow-servant or workman was competent or incompetent may become quite immaterial, if it be shewn that the machinery used was to the knowledge of the master defective, either by reason of improper construction or improper use, and that such defect produced the accident. In this case, however, the allegation of knowledge on the part of defendant must be alleged and proved or the action cannot be sustained.

Thus, where plaintiff engaged with defendant to serve on board defendant's ship as a common seamen on a special voyage, and alleged that the vessel was leaky and unseaworthy, by which the plaintiff became unwell and sustained damage—held that the declaration, in the absence of an allegation of knowledge on part of defendant, was bad: (*Couch* v. *Steel*, 3 El. & B. 402.)

So where defendant had erected a scaffold for his own use, and afterwards contracted with plaintiff to pull down a certain wall, in doing which the use of the scaffold became necessary, and one of the putlogs or cross supports of the scaffold was rotten and broke, whereby plaintiff was thrown to the ground—in the absence of proof of knowledge on part of defendant, the action was held not to be maintainable: (*McCarty* v. *Young*, 6 H. & N. 329.)

The knowledge may be brought home to the master by various circumstances, the strongest of which is personal interference: (*Ormond* v. *Hall*, 1 El. B. & E. 102.)

Thus, where defendant had employed a laborer to erect the scaffold upon which plaintiff worked. The materials of the scaffold were in a bad condition. The laborer broke several of the putlogs in trying them. One of the defendants told him to break no more—that the putlogs would do very well. This was held to be evidence to go to the jury: (*Roberts* v. *Smith*, 2 H. & N. 213).

So where plaintiff was employed in the defendant's coal pit, and in the course of his employment received an injury caused by a defect in the machinery, and it was shown that one of the defendants personally interfered in the management of the colliery (*Mellors* v. *Shaw*, 7 Jur. N. S. 845).

3. *Neglect of person injured.*

It is necessary, as a general rule, to establish not only knowledge of master but ignorance of the servant. The master cannot be held liable for an accident to his servant, simply because the master knows that machinery is unsafe, if the servant has the same means of knowledge as the master (*Williams* v. *Clough*, 3 H. & N. 258). If, after such knowledge, the servant continues in the employment, his continuance, if not negligence, is acquiescence, or perhaps more, a willingness to run all risks with his eyes open (*Assop* v. *Yates*, 2 H. & N. 768; *Skipp* v. *Eastern Counties Railway Company*, 9 Ex. 223). This rule, however, has of late been qualified. In a case where machinery by act of Parliament is required to be protected, so as to guard the persons working from danger, where a servant continues in the employment, entering upon it when in a state of safety, and in consequence of danger