

Lords in *Smith v. Baker* (l) also falls short of the extreme theory suggested by Lord Esher in *Thomas v. Quartermaine*, as it simply decides that the servant does not forfeit his right of action merely because he goes on working after remonstrating against the manner in which the master's appliances are used (m).

In Alabama it has been held that, in order to fulfil his statutory duty as to the reporting of a defect, a servant must notify either the master himself or the employé whose specific function it is to see that the instrumentality in question is kept in proper condition. It is not sufficient to notify a superior servant, who is not entrusted with that function (n). The rule is possibly more favourable to the servant in Ontario, though the point has not been directly raised in any case that has come to the writer's notice (o).

(l) [1891] A.C. 325.

(m) The testimony on the record was that one of the plaintiff's fellow-workers had, in his hearing, complained to the foreman of the danger of slinging stones over their heads with the crane, and that he himself had told the crane-driver that this was not safe. But in the various opinions delivered these facts were referred to merely as evidence tending to shew that the servant was fully aware of the risks he was running. The question whether the servant by giving notice of the abnormal danger acquires an absolute right to recover damages for such injuries as he may thereafter sustain from the existence of those conditions was not discussed.

(n) *Thomas v. Bellamy* (1900) 28 So. 707, 126 Ala. 253.

(o) In *Sim v. Dominion &c. Co.* (1901) 2 O.L.R. 69, Armour C.J.O., said that if the servant's right of action had depended on the statute it would have been necessary to send the case to a jury in order to determine where a superior employé knew of the defect—a remark which may perhaps be construed as an intimation that a notification to any superior employé would have been sufficient.

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The learned writer of the article which appeared in a previous issue on the Criminal Law of Canada, desires to note (in reference to his remark on p. 234, ante) that sec. 744 of the Criminal Code was changed by the Criminal Code Amendment Act of 1900, so as to do away with the necessity for an application to the Court of Appeal for leave to appeal under that section. The remarks of Osler, J.A., in dealing with the Code and the above amendment in the case of *Rex v. Burns*, 1 O.L.R. 336, are worthy of note. "It would almost seem that, contrary to the whole spirit of English law as it has for ages been administered in courts of justice, the Criminal Code has been so framed as to afford ground for the contention that an accused person may be placed a second time in jeopardy of life or liberty after he has been acquitted upon a trial before a competent tribunal: sec. 744 (63 & 64 Vict. c. 46 (d))."