

main differentiating factor in cases in which the existence or absence of authority to use the defective instrumentality is not involved, as one of the determinant elements, deserves to be somewhat closely scrutinized.

It is submitted that the clause in question may, upon a perfectly reasonable construction, be made to comprehend instrumentalities over which the employer has no control. The opposite contention would doubtless be irresistible if the failure to "remedy" defects were mentioned as the sole ground of liability. But the declaration of an alternative liability for the negligent failure to "discover" defects seems to be hardly susceptible of any other interpretation than that it was intended to extend the employer's responsibility beyond the cases in which the right to apply a remedy may be predicated. Such a declaration may fairly be regarded as a recognition of the principle that the application of a remedy is neither the only duty which the law implies, nor the only method by which the master can free himself from the imputation of negligence. On the one hand, where it is in his power to apply a remedy to the defect thus actually or constructively known to him, it may conceivably be, and in fact frequently is, his duty to warn his servants as to the existence of the defect or to discontinue the use of the defective instrumentality until it has been restored to a safe condition. On the other hand, where it is not in his power to apply a remedy, the duties of warning or discontinuance become imperative, and by performing them he fully discharges his obligations to his servants. It is clear, therefore, that there are certain obligations to which he may be subject in respect to instrumentalities which are out of his control, and that the negligence which consists in the failure to discover a defect cannot be dissociated from the negligence which consists in the breach of those obligations, for the reason that they arise as soon as the defect is known, and that it is presumed to be known wherever it would have been known if due care had been exercised. It is submitted, therefore, that the balance of probability is in favour of the inference that the legislature intended to create a responsibility for injuries due to instrumentalities not controlled by the master, provided they are "connected with his business," and that, upon