the master's favour, as a matter of law, the usage appealed to must be, in a reasonable sense, a general one. Evidence which merely goes to shew that he conformed to the practice of a few well-regulated concerns of the same description as his own will not justify a court in pronouncing him to be free from culpability (*cc*). On the other hand, if usage is the controlling factor in the case, a jury will not be permitted to find him guilty of negli-

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given of the occurrence of any previous accident. *Claxton* v. *Mowlen* (C.A. 1888) 4 Times L.R. 756. The failure of an ironmaster to fence in about ten feet of the lower end of a shaft through which ore was raised to a furnace gangway will not render him liable for injuries to a workman struck by a piece of the ore which fell through the opening if it is shewn that it was usual in the trade to leave so much of these shafts unfenced. *Murray* v. *Merry* (1890) 17 Sc. Sess. Cas. (4th Ser.) 815. No negligence can be inferred, where a scaffold alleged to be defective was the ordinary kind of scaffold used by masons, and as strong as they are usually made. *Thompson* v. *Dick* (1892) 19 Sc. Sess. Cas. (4th Ser.) 804. A trap-door without a railing such as is commonly maintained in factories is not a "defect." *Moore* v. *Ross* (1890) 17 Sc. Sess. Cas (4th Ser.) 796. A projecting set-screw in a shaft, being a common device for the purpose for which it is used, is not of itself a defect. *Donahue* v. *Washburn &c. Co.* (1897) 169 Mass. 574; *Demers* v. *Marshall* (1899) 172 Mass. 548, 52 N.E. 1066; same case (1901) 59 N.E. 454; *Ford* v. *Mt. Tom Sulphite &c. Co.* (1899) 172 Mass. 544, 52 N.E. 1065. [In the last case recovery was denied though the screw had been placed on the shaft after the servant had entered the employment]. Nor is a key-way with sharp edges in a shaft. *Connelly* v. *Hamilton Woolen Co.* (1895) 163 Mass. 156. An engineer employed in fitting up the boilers in a steamer in course of construction cannot recover for injuries caused by falling into an open manhole, while threading his way between decks in a dim light, on the theory that the master was bound to protect the manhole. *Forsyth* v. *Ramage* (1890) 18 Sc. Sess. Cas (4th Ser.) 21. In a later case the court explained that this decision was based upon the ground that the risk in question was an ordinary one incidental to the work undertaken, and disclaimed the intention of laying any such general rule as that a workman on a ship in course of construction cannot recover for injuries due to the dangers of the place of work. *Jamieson* v. *Russell* (1892) 19 Sc. Sess. Cas. (4th Ser.) 898, where the representative of an employé killed by failing into an open tank was allowed to recover for the reason that the tank was usually covered and lighted, and that neither of these precautions had been observed on the occasion when the accident occurred. A workman injured through the slipping of some planks out of the loop in a hempen rope by means of which they are being lowered to the bottom of a trench cannot recover on the ground that a wire rope should have been used, where it appears that hempen ropes were ordinarily used for such a purpose. *Pack* v. *Hayward* (Q.B.D. 1889) 5 Times L.R. 233. In the case of a machine of a simple character the plaintiff is not entitled to go to trial merely upon averment that the machine was dangerous and that it was usual to fence such machines. *Cameron* v. *Walker* (1898) 25 Sc. Sess. Cas. (4th Ser.) 409; following *Milligan* v. *Muir* (1891) 19 Sc. Sess. Cas. (4th Ser.) 18. As to unfenced machinery, see also sec. 7 (c), ante, and the majority opinion in *Walsh* v. *Whitely*, as quoted in the last note.

(*cc*) *Louisville &c. R. Co.* (Ala. 1901) 30 So. 586. [Charge held erroneous, which proposed as a standard test, the custom of eight railway companies to use ratchet jack-screws for holding up the body of a derailed car]; *Richmond &c. R. Co.* v. *Weems* (1892) 97 Ala. 270. [Charge held erroneous which assumed the usage of five railway companies to be a decisive test].