immediate actor, whether he be the master himself or an employé, the evidential pre-requisites to establishing a right to indemnity are essentially the same under the statutes as at common law. See secs. 8, 9, post.

3. Master not liable, unless the defect alleged was the proximate cause of the injury.—Upon the general principles of the law of negligence, as well as by the express terms of the statutes, the injured servant cannot maintain an action unless he shews that the defect alleged was the proximate cause of his injury (*a*). Thus he cannot recover if his injuries are due to an occurrence which was a mere accident (*b*), nor if the negligence of a fellow-servant in the use of the defective appliance was the actual efficient cause of the injury (*c*), nor if the defect in question would not have caused any injury, if he had not himself been guilty of negligence in dealing with the defective appliance (*d*).

But proof that a defect for the existence of which the master was responsible was the sole proximate cause of the injury is not a condition precedent to recovery. It is only requisite to shew that it was one of the efficient causes (*e*).

(*a*) *Southern R.W. Co.* v. *Guyton* (1898) 122 Ala. 231.

(*b*) *McManus* v. *Hay* (1882) 9 Sc. Sess. Cas. (4th ser.) 425. A freight brakeman cannot recover for personal injuries alleged to have been caused by defects in a brake which he was trying to let loose, causing the brake to stick or be retarded in its revolutions, and throwing him from the top of a box car, in the absence of proof that the brake was defective, or that his falling was not due to his slipping or to some other cause wholly unconnected with any defect of the brake. *Louisville & N. R. Co.* v. *Binion* (1892) 98 Ala. 570, 14 Sc. 619. In *Hamilton* v. *Groesbeck* (1890) 18 Ont. App. 437, aff'g. 19 Ont. R. 76, the Court of Appeal held the action not maintainable for the reason that the proximate cause of the injury was not the unguarded condition of the saw by which the pliantiff was hurt, but the fact that he tripped over a pile of staves.

(*c*) The fact that a defect existed, and that the plaintiff had to be assigned to the work of remedying it is not the proximate cause of an injury received by him in consequence of a fellow servant negligently setting machinery in motion while he is engaged in the work. *Mackay* v. *Watson* (1897) 24 Sc. Sess. Cas. (4th ser.) 383.

(*d*) A defect in the machinery is not the cause of an injury received by a workman in consequence of his using it in an unsafe manner when he knew how to use it with safety to himself. *Martin* v. *Connah's Quay, etc., Co.* (1885) 33 W.R. 216, where the plaintiff knew that a car brake was bent and did not see that it was in its proper position before signalling to the engineer to move the car. See also *Milligan* v. *M'Alpine*, as stated in sec. 9, note (*a*), post

(*e*) A plaintiff is entitled to retain a verdict in his favour where the jury find that the injury was caused by a defect in the plant and also by the negligence of a fellow servant. *Bean* v. *Harper* (1892) 18 Vict. L.R. 388. For common law cases to the same effect, see the writer's note in 54 L.R A., pp. 167, et seq.