

risk that can be considered one of those which the workman must be assumed to have accepted. On the contrary, he in his position as a member of the public has a right to assume that his employer will fulfil the duties which the statutes impose upon him. But we are not left to decide this question only as a matter of principle. There is clear authority to the same effect. In the case of *Groves v. Lord Wimborne* this Court decided that the defence of a common employment is not applicable in a case where injury has been caused to a servant by the breach of a duty imposed on the master.

And in the last case of the three, Lords Kinnear and Shaw, at pp. 160, 162 and 174 of the reports, expressly approve of the decision in the last-mentioned case, and Lord Loreburn apparently concurred with them. Indeed it appears to their Lordships that the above mentioned decisions on this point are but applications of the principle laid down in 1856 by the then Lord Chancellor and approved of by the other noble lords in the House of Lords in the case of the *Bartonshill Coal Company v. Reid*, 3 Macqueen 266, at pp. 276, in these words:—

“With reference to the law of England, I think it has been completely settled that in respect of injuries occasioned to one of several workmen engaged in a common work (and I know of no distinction whether the work be dangerous or not dangerous) the master is not responsible if he has taken proper precautions to have proper machinery and proper servants employed.”

Such being the position and rights of Jones, the deceased, and such the evidence in the case, the learned Judge who presided at the trial left to the jury the following questions, and received from them the following replies:—

1. Were the defendants guilty of negligence that caused the death of Gilbert Jones? A. Yes.

2. If so, what was the negligence? A. By not having a competent employee in charge of snow-plough-train.

3. Did the defendants permit Weymark to engage in the operation of the train on which Jones was when he came to his death without first requiring such employee to pass an examination in train rules and undergo a satisfactory eye and ear test by a competent examiner? A. Yes.

4. Did the plaintiff suffer the damage complained of thereby? A. Yes.