

moment in the progress of the work to look after and attend to certain instrumentalities (q).

11. **Abnormal conditions resulting from the use of the appliances furnished by the master, how far regarded as defects.**—Injuries resulting from these abnormal conditions which, in all kinds of industrial work, are temporarily created by the user of the appliances furnished by the master are not considered to be caused by "defects" within the meaning of these statutes. "The absolute obligation of an employer to see that due care is used to provide safe appliances for his workmen is not extended to all the passing risks which arise from short-lived causes" (a). Especially

(q) *O'Connor v. Neal* (1891) 153 Mass. 281, where the court refused to hold the master liable for the negligence of a painters' assistant, who aided his principal in moving from place to place the planks and barrels from which a temporary scaffold was constructed, and adjusted one of the barrels so carelessly that the scaffold collapsed.

(a) *Whittaker v. Bent* (1897) 167 Mass. 588, denying recovery for an injury resulting from the temporary dampness of moulds used in an iron foundry, which can be ascertained only at the moment when they are set up, the reason assigned being the moulds were small and numerous, the danger transitory, and any further inspection than that of employes setting them up impracticable. The absence of stanchions on the sides of a trolley is not a "defect" where the placing of such stanchions is the duty of the servants who put on the load. *Corcoran v. East Surrey &c. Co.* (Q.B.D. 1888) 45 Times L.R. 103, 58 L.J.Q.B. 145. The liability of a bank of earth which an employer is engaged in levelling for the purpose of grading the land of a third person, and upon which labourers are at work, to fall when undermined, if not properly shored up is not a "defect in the ways" etc. *Lynch v. Allyn* (1893) 160 Mass. 248, 35 N.E. 550. A defect in the "ways" is not predicable, unless there is some alteration in the permanent condition of the way itself. Obstacles lying on or near the way which do not in any degree alter the fitness for the purpose for which it is generally employed, and cannot be said to be incorporated with it are not within the purview of this provision. *McGiffin v. Palmers &c. Co.* (1882) 10 L.R.Q.B.D. 1, denying recovery where a car in which a workman was conveying heavy iron balls struck against a piece of a substance used for lining the furnaces which had been negligently placed projecting into the roadway on which the car ran, the result being that one of the balls fell on him. The words "ways, works and machinery" do not cover a pile of lumber in the yard of a lumber dealer. *Campbell v. Dearborn* (1900) 175 Mass. 183, 55 N.E. 1042. To the same effect see the following cases where the abnormal conditions were of the nature mentioned in the memorandum of the facts appended to the citations. *Willetts v. Watt* (C.A.) [1892] 2 Q.B. 92. [Temporary removal of the cover of a catch-pit lying in the line of a path along which servants had to pass in the course of their duties]; *May v. Whittier Mach. Co.* (1891) 154 Mass. 29, 27 N.E. 768. [Employé stumbled over some small pieces of wood which had been piled against the back of a planing machine, near which he had to pass, and was hurt by his hand coming into contact with the machine]; *Kansas City M. & B. R. Co. v. Burton* (1892) 97 Ala. 240, 12 So. 88. [Car left standing on a railway track], over-ruling on this point, *Highland Ave. &c. R. Co. v. Walters*, 91 Ala. 435; *Louisville &c. R. Co. v. Bouldin* (1895) 110 Ala. 185. [Oil-box standing near the track which came into contact with plaintiff's foot while he was standing on the pilot of an engine and threw him off]; *Carrol v. Wilcut* (1895) 163 Mass. 221, 39 N.E. 1016. [The presence of a ledge stone on a scaffolding]. Both on the principle applied in these