

necessary risk. Whatever the dangers of the employment which the employed undertakes, amongst them is certainly not to be numbered the risk of the employer's negligence and the creation or enhancement of danger thereby engendered."

Mr. Newcombe relied upon the case of *Hall v. Johnson*, 3 H. & C. 589, as supporting his proposition that an underlooker, whose duty it was to examine the roof and prop it up if dangerous, is a fellow-labourer with a workman in the mine, and the latter can maintain no action against the owner of the mine for injury occasioned by the neglect of the underlooker to prop up the roof, if the owner has not personally interfered or had any knowledge of the dangerous state of the mine.

It cannot, I think, be questioned, that an "underlooker," with such duties as those mentioned, would be held to be a fellow-workman with the ordinary workmen in the mine. In that case it appeared that the mine had been worked in the ordinary course for the previous six years, and the Court of Exchequer Chamber held that, under these circumstances, the workmen "undertook to run all the ordinary risks of the service, including negligence on the part of a fellow-servant," and that the case before them was within that undertaking.

That case does not involve any question as to the primary duty of the master to provide, in the first instance, places in and materials with which workmen may safely work, or systems under which they may so work, or whether with respect to cases where such duty is not fulfilled, and an accident happens to a workman in consequence, the master can invoke the doctrine of common employment and escape liability by shewing merely that a fellow-workman's negligence was the cause of his duty being unfulfilled. My holding is that in such cases he cannot, and that he is bound to shew that reasonable and proper skill and diligence were not wanting on his part or on the part of those to whom he delegated the performance of his duty in those regards.

In view of the disuse of the mine for a period of 18 months, I deem the position on the resumption of work, as regards the mine owners' duties to their employees, to be the same as if they were then for the first time placing their men at work in the mine. Their duty to their workmen in this situation was to provide them with a reasonably safe place in which to work. When that duty has been delegated,