where the workman knew of the defect or negligence which caused his injury, and failed [without reasonable excuse] within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of his employer, unless he was aware that the employer or such superior already knew of the said defect or negligence. [Provided, however, that such workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect, negligence, act, or omission, which caused his injury, be deemed to have voluntarily incurred the risk of the injury.]

2. **Effect of these provisions, generally.**—The effect of these provisions, as a whole, is to give, under the circumstances specified, a statutory sanction to a doctrine which, so far as the common law is concerned, has been greatly restricted in England and the English Colonies by the well-known case of *Wilson* v. *Merry* (*a*), but which has been fully developed and is applied in all the American States—the doctrine namely, that the master is absolutely responsible for the proper discharge of certain duties, whether he undertakes to perform them in person, or employs an agent to perform them in his stead. In other words, the injured servant is given a right to recover damages in the cases enumerated, although the abnormal conditions which caused his injury may have been created or suffered to continue through the negligence of a fellow-servant (*b*). Hence, in order to establish the allegations of a complaint framed on the theory that the master is liable under this section, it is not necessary to shew that he was himself negligent (*c*).

So far as regards the character of the actual physical conditions which warrant the inference of culpability on the part of the

(*a*) (1868) L.R. 1 Sc. App. 326. As to the precise effect of this decision see a note in 51 L.R.A. pp. 57, 572, where the present writer has collected the cases which seem to justify the inference that the doctrine of vice-principalship was left untouched by the House of Lords, so far as regards the duty of the master to see that the instrumentalities of his business are reasonably safe and suitable at the time when they are first brought into use. It is clear, moreover, that a master cannot, by the employment of a delegate, escape liability for the non-performance of any duty which is imposed by statute. See *Groves* v. *Winborne* [1898] 2 Q.B. 402.

(*b*) See the remarks of the court in *Ackley* v. *Hart* (1888) 147 Mass. 573, 18 N.E. 416.

(*c*) *Lynch* v. *Allyn* (1893) 160 Mass. 248, 35 N.E. 550. There the action was for personal injuries occasioned to the plaintiff, by the falling upon him of a bank of earth, which he was engaged in undermining by direction of the defendant's superintendent. Held, that the defendant was not entitled to a ruling that "the plaintiff could not recover under the second count of his declaration, as there was no evidence that there was any negligence on the part of the defendant."