received from dangerous surroundings, which it is not necessary he should appreciate for the purposes of his work, merely by having gone on with the work he was engaged to do with the risk from which he receives the injury full in front of him."

On the other hand, Sir F. Pollock thus states his conclusion as to the effect of the decision: "In *Smith* v. *Baker*, as I read it, the danger was not the necessary danger involved in stones being swung over the workmen's heads, but (according to the finding of fact not open to review) the unnecessary danger of their being less firmly secured in some way than they might and ought to have been." The difficulty about Sir F. Pollock's view, however, seems to be that the unnecessary danger he refers to as constituting the cause of action would appear to have been the result of the negligence of fellow-servants, which would not give any cause of action to the servant injured against his employers, either at Common Law or under the Employers' Liability Act.

At the risk of being thought presumptuous in a case where such eminent doctors differ, we venture to suggest a *tertium quid*, and that is this: that the plaintiffs were found liable because the system on which they carried on their business was one that was unnecessarily dangerous to the plaintiff as one of their employees, and therefore they were liable to the plaintiff at common law, quite independently of the statute, and that the plaintiff could not be presumed to have assented to run this unnecessary risk because he continued in the defendants' employment after knowledge that the defendants' system of carrying on their business exposed him to danger.

The statement of the case shows, and Lord Halsbury, L.C., explicitly states, that "from some cause not explained, and not attempted to be explained, the stone slipped from the crane." It was argued in the House of Lords that there was no evidence of negligence, but their lordships refused to entertain that point because it was not taken at the trial. The key of the case, we think, is found, not in the fact that there was any actual negligence in fastening the stone, but that the swinging of stones over the heads of other workmen was *per se* an unnecessarily dangerous mode of carrying on the work; and the observations of Lord Halsbury later on seem to us conclusive that on that ground, and that alone, the decision really rests, so far as the question of negligence is concerned. He says: "I think the cases cited at