

The Legal News.

VOL. II. FEBRUARY 1, 1879. No. 5.

EMPLOYEE'S ACTION AGAINST EMPLOYER.

[Concluded from p. 37.]

To the employees, however,—the instruments by whom a part of the business is to be carried on,—the employer may be regarded as saying (in railway cases), "I wish to employ you to discharge for me, and under my direction, a part of the duty of a common carrier. I will undertake one part of this duty, and I want you to undertake another, so that between us we shall discharge the whole duty of a common carrier as to third persons, and I will pay you so much for your part of the performance." Employees who enter the employment on these terms cannot claim that the employer is a carrier with regard to them, while they are in their respective posts of duty under the employment. With respect to them he is an employer, and nothing more; and to enable him to act as a carrier to third parties, the cooperation of the employees at their various posts is needed. In this sense, it may be said that the employer is one part of a common carrier, and each employee is another part; but neither is to the other a common carrier complete, and neither owes to the other, therefore, the duties of a common carrier.

The same principle holds good in any other employment. As a general thing, the employment delegates to the employees the performance of a part of the duty owed by the employer to third parties. Each employee is privy to this delegation to himself and his fellows. He cannot, therefore, with any propriety claim to occupy toward the master the position of a stranger, to whom the duty is owed by the master as an entirety. The master will still owe the employee certain duties, but they cannot be the same duties which he owes to a stranger. These duties, whatever they are, will spring largely from the particular relation; and it will not generally

be difficult to say, from the nature of the case; what duties are fairly undertaken by the employer toward the employee, in the contract under which the relation is inaugurated. Thus, where one employs others to prosecute a dangerous undertaking for him, he must see that the business is not rendered unnecessarily hazardous though any negligence of his own; or, to put the duty affirmatively, he must use reasonable diligence in the selection of suitable machinery and appliances, and in the employment of fit fellow-servants, as well as in the promulgation of safe and reasonable orders and regulations for the conduct of the business. This duty can only be defined with accuracy in a particular case by looking at the contract. If it arose solely from the rule *Sic utere tuo ut alienum non lædas*, unaffected by the contract, we should find an arbitrary standard for the condition of tools, machinery, etc., applicable to all cases, or they would have to comply with certain scientific opinions in respect to their suitability and safety for the work in hand.

A stranger may hold me to strict account for any management of my business which injures him, in the proper and orderly conduct of his own affairs. His right is, not merely to be free from injury at my hands, but generally to be let alone. He has nothing to do with my concerns, and I cannot justify any molestation or disturbance of his business or comfort on the score of economy or convenience to myself. If I cannot conduct my business without endangering him, he may contend that I ought not to conduct it at all. The employee cannot say this; for he is a party to my dangerous act. I may provide old tools, inventions which have been superseded and improved upon, appliances which are awkward and inconvenient; and if one with full knowledge of their character undertakes to engage in the business as my employee with these tools, that is the condition agreed upon between us, and I am under no obligation to him to provide better ones. But the injury from defective machinery may result from a breach of duty on the employer's part. For example: if, when the employment is entered upon, the employee is not informed of the particular condition of the machinery, he has a right to assume that the appliances are reasonably safe and fit. In such a case, the contract is silent upon this subject, and the