The Employer's Liability Act of Massachusetts

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THESIS.

THE EMPLOYER'S LIABILITY ACT OF MASSACHUSETTS.

Statute 1887, Chapter 270, and Amendments, with the decisions of the Supreme Judicial Court including Volume 164, Mass. Reports.

Presented for the Degree of

BACHELOR OF LAWS

by

WILLIAM HENRY FEIKER.

CORNELL UNIVERSITY.

1896.
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CHAPTER 270.

(Section 3 amended by 1888, 155.)

AN ACT TO EXTEND AND REGULATE THE LIABILITY OF EMPLOYERS TO MAKE COMPENSATION FOR PERSONAL INJURIES SUFFERED BY EMPLOYEES IN THEIR SERVICE.

SECTION I. Where, after the passage of this act, personal injury is caused to an employee, who is himself in the exercise of due care and diligence at the time:

(1) By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or

(2) By reason of the negligence of any person in the service of the employer, entrusted with and exercising superintendence, whose sole or principal duty is that of superintendence.

(3) By reason of the negligence of any person
in the service of the employer, who has the charge or
control of any signal, switch, locomotive engine or
train upon a railroad, the employee, or in case the
injury results in death, the legal representatives of
such employee, shall have the same right of compensa-
tion and remedies against the employer as if the em-
ployee had not been an employee of, nor in the service
of the employer, nor engaged in its work.
Sect. 2. Where an employee is instantly killed or dies
without conscious suffering, as the result of the neg-
ligence of an employer, or of the negligence of any
person for whose negligence the employer is liable
under the provisions of this act, the widow of the
deceased, or in case there is no widow, the next of kin,
provided that such next of kin were at the time of the
death of such employee, dependent upon the wages of
such employee for support, may maintain an action for
damages therefor and may recover in the same manner,
to the same extent as if the death of the deceased
had not been instantaneous, or as if the deceased had
consciously suffered.
Sect. 3. The amount of compensation receivable under
the sum of Four thousand dollars. In case of death, compensation in lieu thereof may be recovered in not less than five Hundred and not more than five thousand dollars, to be assessed with reference to the degree of culpability of the employer herein, or the person for whose negligence he is made liable; and no action for the recovery of compensation for injury or death under this act shall be maintained, unless notice of the time, place, and cause of the injury is given to the employer within thirty days, and the action is commenced within one year, from the occurrence of the accident causing the injury or death. But no notice given under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury: provided, it is shown that there was no intention to mislead, and that the party entitled to notice was not in fact mislead thereby.

Sect. 4. Whenever an employer enters into a contract, either written or verbal, with an independent contractor to do part of such employer's work, or whenever such contractor enters into a contract with a sub-contractor
to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employee of such contractor or sub-contractor, by reason of any defect in the condition of the ways, works, machinery or plant if they are the property of the employer or furnished by him, and if such defect arose or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

Sect. 5. An employee or his legal representatives shall not be entitled under this act, to any right of compensation or remedy against his employer in any case where such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, who had entrusted to him some general superintendence.

Sect. 6. Any employer who shall have contributed to an insurance fund created and maintained for the mutual
purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or to any relief society formed under Chapter two hundred and forty-four of the acts of the year eighteen hundred and eighty-two, as authorized by Chapter one hundred and twenty-five of the acts of the year eighteen hundred and eighty-six, may prove, in mitigation of the damages recoverable by an employee under this act, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Sect. 7. This act shall not apply to injuries caused to domestic servants or farm laborers by other fellow employees, and shall take effect on the first day of September, 1887.

CHAPTER 125.

AN ACT TO AUTHORIZE CORPORATIONS TO JOIN CERTAIN RELIEF SOCIETIES.

SECTION I. Any Railroad corporation operating a
railroad or portion of a railroad in this Commonwealth, may, by vote of its directors, associate itself with seven or more of its employees in forming a relief society under the provisions of Chapter two hundred forty-four of the acts of the year eighteen hundred and eighty two, or may upon the invitation of any society formed under said act, become a member thereof, and may from time to time aid such society by contribution to its funds or otherwise. The by laws of such society shall provide for the manner in which the railroad corporation shall vote and be represented in said society.

Sect. 2. The funds of such relief society shall not be liable to attachment under trustee process, execution, or any other process legal or equitable, because of any debt or liability of the railroad corporation or of any member of the society.

Sect. 3. This act shall take effect upon its passage.
CHAPTER 155.

AN ACT TO AMEND AN ACT TO EXTEND AND REGULATE THE LIABILITY OF EMPLOYERS TO MAKE COMPENSATION FOR PERSONAL INJURIES SUFFERED BY EMPLOYEES IN THEIR SERVICE.

Section 1. Section three of Chapter two hundred and seventy of the acts of the year eighteen hundred and eighty seven is hereby amended by inserting after the word "death" in the thirteenth line thereof, the following words:— The notice required by this section shall be in writing, signed by the person injured or by some one in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in said section, he may give the same within ten days after such incapacity is removed, and in case of his death without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give the notice, his executor or administrator may give such notice within thirty days after his appointment.

Section 2. This act shall take effect upon its passage.
INTRODUCTION.

Before examining the provisions of and the decisions upon the "Employer's Liability Act of the Great Commonwealth of Massachusetts, it might be and undoubtedly will be of interest, (to one who reads the contents of this thesis), especially if the person so reading be a "Massachusetts man" (possibly woman) born and bred in the old Bay State, to consider some of the principal facts and peculiarities of the said State, in order to see the necessity of such legislation.

Massachusetts has an area of about 8315 square miles, and population, according to the last census of 2495345, 300 people to every square mile, who reside in 32 cities and 322 towns. A statement was once made that the Governor could see the center of the population from the State House in Boston, because of the density in Eastern Massachusetts of the population. Thirty-two percent of the entire state is under cultivation in farms; and in traveling about the State, either by railroad, or by carriage, or as at this time, by that wonderful machine called the Bicycle, which is now used so ex-
tensively by both rich and poor, one can see the vast resources of our Grand Old State. As you go skimming along, either by means of one locomotion or another, one will not wonder at all why the Massachusetts Man loves his own State so dearly. On all sides you can see the wonders of nature, and what a great part nature plays in the works of man. The country is diversified, up hill and down dale, over bridges of what you consider small brooks, but at times perfect torrents; through pasture fields rich with nutriment for the animals which so peacefully graze thereon; through vast tracts of wood-land, seeing now and then a Fram House, peacefully situated in some retired corner, where you would never expect to see it, and a brown skinned, horney handed farmer, willing to do all in his power to entertain you if you happen to stop at his abode. But I have not time nor space in this article to extol the beauties of nature in my native State.

It must be confessed that the soil of Massachusetts is not of the best in some parts, and many a farm has been abandoned, the children either taking to the cities, where they are either employed in factories or stores,
and not willing to work the "Farm", or the head of the family himself removing to some Western State, seeking a living out of a soil undoubtedly much worse than that which he so lately left, and in the end returning a much poorer but wiser man, and willing to brave the barreness of the soil and rigor of its winters, to be once more in his native State. The farmer may, as I have said, betake himself to the city and seek for some employment in a manufacturing concern, and the manufacturing industries are both numerous and extensive. There are about four thousand five hundred establishments, with a capitalization of over $450,000,000, employing upwards of 300,000 people, who work very nearly 278 days out of the 365 days of the year, which is a very good average, and the amount earned is about $435 by each. The value of the goods produced and work done probably exceeds $600,000,000 annually. The New England States, especially Massachusetts, have some of the largest manufacturing interests in the world, for instance the silk, cutlery, shoes, clothing, cotton, paper, etc etc. One has only to take a trip from New York to Springfield and from Springfield, Mass. to Brattleboro Vt., to
realize and appreciate the magnitude of the manufacturing establishments. Take for instance, such cities as Bridgeport, New Haven, Meriden, Hartford, in Connecticut, and Springfield, Holyoke, North Hampton, and Greenfield, Lowell, Worcester and many other cities in Massachusetts noted for the manufacturing establishments. Thus it is evident that the facilities for manufacturing must be great and the advantages of nature wonderful, so that when brought by the hand of man into subjection, they act as an agency by which these establishments are made to become the principal means by which a very large proportion of the wage earners of the population make a comfortable living, and the manufacturer himself becomes very wealthy, often times to the disadvantage of his employees.

The needs of so large a class of the population demand the attention of each annual legislature, and among all the recent enactments proposed for the benefit of this class, none exceeds in importance the Statute and amendments thereto, which I am about to consider, and no single statute has been the basis of so much litigation and decisions of the Supreme Judicial Court.
as this one.

There have been other similar statutes passed in the different States, and a great number of decisions thereon, but the time is too limited to compare the same with the Massachusetts Statute. The Massachusetts Statute is, as will be found on comparing the two, the same as the English Statute, with slight variations. (See 43 - 44 Vict. C. 42); therefore it is proper if not necessary, to begin by considering how the English act had been construed before our Statute was enacted. I do not suppose that any English Statutes are held to be in force in Massachusetts, yet the provisions of some of them and the provisions of the acts of Parliament for the punishment of other offences have been enacted in every Stage of our history, and in such cases as well as where English Statutes respecting civil concerns have been enacted here, it has always been held; viz.—that the construction given previously to the same terms, by the English Courts, is the construction to be given to them by our Courts. It is a common learning that the adjudged construction of a statute as to its terms is enacted as well as to the terms themselves, when an
act which has been passed by the legislature of one State or Country is afterwards passed by the legislature of another. So when the same legislature in a later statute, uses the terms of an earlier one which has received a judicial construction, that construction is to be given the later Statute; and this is manifestly right, for if it were intended to exclude any known construction of a previous statute, the legal presumption is that its terms would be so changed as to effect that presumption. (3 Gray 350.) Let us look then to the general scope. By so doing we will see that it is plain that it did not attempt to codify the whole law as to the liability of employees. It was regarded as an act passed in favor of workmen. (a) This act of parliament was passed for the benefit of workmen, and the duty of the Court is not to construe it strictly as against workmen, but in furtherance of the benefit which it was intended by parliament. It was held to be intended only to remove certain bars to their right to sue for personal injuries based on their relation to their employer. A point of very general application is (a) 12 Q.B.D. 211.
what defenses are now open to a master when sued by a workman, under the Employer's Liability Act of 1887. To determine this it is necessary to bear in mind how the law stood prior to the passing of the act.

A servant might have sought redress from a master for personal injuries subject to any defense the master might set up, in the following cases: (a) For injuries sustained by the servant by reason of the negligence of the master himself. (b) For injuries sustained by reason of the negligence of a servant acting in the scope of the master's employment. (c) For injuries sustained by reason of the master having negligently provided defective or dangerous instruments or materials.

To these causes of action the master might have set up, among others, the following defenses, viz: Traverse of the negligence and contributory negligence on the part of the plaintiff. These defenses the master had irrespective of his being master and the plaintiff being his servant. The master also had, in addition to the above named defenses, two other defenses arising from the relative position of servant and master and peculiar thereto. He had the defense of what we may
term for brevity, the defense of common employment. He had also the defense that the servant had contracted upon himself the known risks attendant upon the employment. In what way, then, has the Employer's Liability act of 1887 affected the position of the master when sued by a servant or workman under the provisions of that act. It is enacted in section one that where personal injury is caused to a workman, the workman shall be at liberty to sue his employer as to the acts designated in that section, and that in such actions the workman shall have the same rights of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work. What is the meaning of this? In my judgment it means that the workman, when he sues his master under the provisions of the act, for any of the matters designated, shall be in the position of the public suing, and shall not be in the position a servant theretofore was, when he sued his master. In other words that the master shall have all the defenses he theretofore had against anyone of the public suing him, but shall not have the special defenses he theretofore had when sued by his servant. What then is the result.
It is this, viz.-- The defense of contributory negligence is still left to the employer, but the defense of common employment and also the defense that the servant had contracted to take upon himself the known risks attending upon the engagement are taken away from him when sued by a workman under the act. The conclusion is then, that the legislature, while taking from the employer the two defenses above mentioned, has given him a statutory defense which did not exist in substance, viz: The employer when sued for a defect in the ways, works etc. may set up that the servant knew of the defect and did not communicate it to him, (the employer) or some other person superior to himself, (the workman) in the service of the employer. This, if proved, will avail the employer as a defense, and the only excuse that the workman would have for not communicating the known defect would be to establish that his master knew of it. The legislature has thus taken away two defenses of the employer, and given him one also. This is undoubtedly the true effect of the Employer’s liability act. As heretofore mentioned the Massachusetts Statute is a decided copy of the English Act, and the
Massachusetts Legislature was evidently content with the meaning expounded by the English Parliament, intending that the Supreme Judicial Court would construe it liberally in favor of employees. It will be impossible, owing to the limits of this thesis, to examine the legal relations between master and servant prior to the Statute and Judge Holmes says, discussing the provisions of the Statute: "They cannot be made clearer by discussing the principles of common law liability, or by referring to decisions upon a wholly different kind of statute". (a)

The Employer's Liability act, so called, was approved as a law by Governor Ames, May 14th 1887, and took effect, according to its section seven, on the first day of September in the same year. An excellent summary of the scope of the statute is given by Judge Holmes, in the case of Ryalls vs. Mechanics Mills, 150 Mass.190(b)1st. It was an act passed in favor of workmen, but it does not attempt to codify the whole law as to the liability of employers. 2nd. It was intended only

(b) Gilman v. Mechanics Mills, 150 Mass. 190.
to remove certain bars to the workman's right to sue for personal injuries based on his relation to his employer, only removing the bars in the cases specified, and impliedly unaffecting defenses not based upon the relation of master and servant. 3rd. The workman's Common Law rights remain unimpaired.

In 1887 it was law in Massachusetts that masters were personally bound to see that reasonable care was used to provide reasonable safe and proper machinery, so that if the duty was entrusted to another, and was not performed, the fact that the proximate cause of the harm was the negligence of a fellow servant, was no defense. (a).

Chief Justice Field has said that it is settled in this Commonwealth, that all servants employed by the same master in a common service are fellow servants, whatever their grade and rank. (b).

The rule that one servant cannot maintain an action against a common master for an injury occasioned by a fellow servant, rests upon the ground that he takes

(b) Rogers v. Ludlow Co. 144 Mass. 198-203.
upon himself the natural and ordinary risks incident to the performance of his service. The safety of each says Chief Justice Shaw, in the much cited case of Farwell v. B. & W. R.R. (a), depends much on the care and skill with which each shall perform his appropriate duty, each is an observer of the conduct of the others, can give notice of any misconduct, incapacity or neglect of duty, and can leave the service if the common employer will not take such precautions, and employ such agents as the safety of the whole party may require.

Two Statutes were passed to more fully protect employees in 1886, (b), and 1887, (c). The former required a report of accidents to employees resulting in death, or preventing a return to work in four days, to be sent to the Chief of the District Police by the employer, violation of which was punished by a fine of Twenty Dollars. The latter for bade an employer to allow children under the age of fourteen years to clean machinery in motion, or any machine dangerously near the moving part, with a fine of Fifty Dollars for violation

(b) Statutes 1886, 260.
(c) Statutes 1887, 121.
either by the owner or his superintendent.

In the discussion of the statute which follows, it will be seen that the bulk of the decisions come under the first three sections, but we will take up each clause separately, preventing needless repetition. In the cases many of the declarations were drawn with counts both at common law and under the Statute. (a). Where such counts respectively present different issues and involve different liabilities, it is within the discretion of the Court to require the plaintiff to elect whether he will have his case go to the jury on the common law counts or as framed in the Statute. (b) This is quite frequently done in practice. In all the cases the word "negligence", frequently occurs, and we may close this introduction, (which we trust will enable the reader to form an idea as to the contents of the work itself), with a definition by Judge Barker in Wilson v. Steel &c. Co. 163 Mass. 318, of the term: As that disregard without adequate reason of great and obvious danger which the law holds to be negligence.

(a) Practice act, Mass. Statutes, 167, 82.
(b) Brady vs. Ludlow Co. 154 Mass. 468.
PART ONE.

THE EMPLOYER'S LIABILITY ACT OF MASSACHUSETTS.

Statutes of 1887, Chapter 270, and amendments.

An act to extend and regulate the liability of Employers to make compensation for personal injuries suffered by Employees in their service.

BE IT ENACTED, etc. as follows:

Section 1. Where, after the passage of this act, personal injury is caused to an employee, who is himself in the exercise of due care and diligence at the time:

(1) By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer of any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or

(2) By reason of the negligence of any person in the service of the employer, entrusted with and exercising superintendence, whose sole or principal duty is that of superintendence, or in the absence of such superintendent
of any person acting as superintendent with the authority
or consent of such employer, or (3) By reason of the
negligence of any person in the service of the employer
who has the charge or control of any signal, switch,
locomotive engine or train upon a railroad, the employee,
or in case the injury results in death the legal represen-
tatives of such employee, shall have the same right of
compensation and remedies against the employer as if
the employee had not been an employee of nor in the
service of the employer, nor engaged in its work. (a) And
in case such death is not instantaneous, or is preceded
by conscious suffering, said legal representatives may,
in the action brought under this section, except as
hereinafter provided, also recover damages for such
death. The total damages awarded hereunder, both for
said death and said injury, shall not exceed Five
Thousand Dollars, and shall be apportioned by the jury
between the legal representatives and the persons if any,
entitled under the preceding sections of this act, to
bring an action for instantaneous death. If there are

(a) Amendment of 1892, Chapter 260. Section 1.
no such persons, then no damages for such death shall be recovered, and the damages, so far as the same are awarded for said death, shall be assessed with reference to the degree of culpability of the employer herein, or the person for whose negligence he is made liable. (a) A car in use by, or in the possession of a railroad company shall be considered a part of the ways, works or machinery of the company using or having the same in possession, within the meaning of this act, whether such car is owned by it or by some other company or person.

(a) Amendment of 1893, Chapter 359.
SECTION I, CLAUSE I.

The lawyer who proposes bringing an action for personal injuries, must assure himself that the relation of employer and employee actually existed at the time of the injury, (a); and that when injured, the employee was in the exercise of due care and diligence. Thus, plaintiff's intestate was a switchman, and while attending to his duties was struck by an engine and killed. The plaintiff was non-suited because there was no evidence that he was in the exercise of such care and diligence as was required of him. (b)

Where a workman was injured by the fall of a heavy bale upon him, which he was helping unload from a truck, owing to the sudden forward movement of the truck; all questions as to his due care were sent to the jury.

In many instances the plaintiff is held to have assumed the risk of injury, and though in the exercise of due care, cannot recover, as where a workman, familiar with the business of weaving, undertook to make repairs outside of his regular duty with the result that his arm was injured. The Court held that he voluntarily

(a) Dane vs. Cocrane Co., 164 Mass 457.
assumed the risk of an obvious danger. (a)

A brakeman was killed while attempting to assist in making a "flying switch". The evidence showed that there was nothing defective in the equipment, and the plaintiff could not recover because of failure to show that the acts of the deceased did not contribute to the injury. (b)

Unguarded machinery is an obvious danger, and in a recent case where the plaintiff, who was twenty-seven years of age, familiar with the business, and had worked in a certain room for four months was injured by uncovered gearing, he could not recover. (c)

But the circumstances of each case vary widely, and the question of due care is submitted to the jury, under proper instructions from the presiding judge. If an employee had a right to expect due care from his employer as to his permanent appliances, and there was evidence that he was employed to do what he was doing, and that his position was seen by his employer, and it

(a) Mahoney vs. N.Y. & N.E. Co. 160 Mass. 573.
(b) Mellor vs. Merchant's Co. 150 Mass. 362.
may be that the doing of his work required him at moments to be in the position he was in when injured, the Supreme Court cannot say as matter of law that the plaintiff was negligent in being where he was. (a)

The words, "ways, works and machinery" are broad enough it would seem, to cover any and all portions of the employer's property. There are a large number of decisions which may be most compactly grouped as to, First, What are ways, works etc.? and, Second, what are not?

First: What are Ways, Works, or Machinery?
This phrase must be understood to mean such ways, works etc. as are connected with or used in the business of the employer by his authority and subject to his control. It may not be necessary in order to render an employer liable for an injury occurring to an employee through a defect in the ways, works etc. that they should belong to him, but it should at least appear that he has the control of them and that they are used in his business, by his authority, express or implied. (b)

(a) Graham vs. Badger, 164 Mass. 48.
(b) Roberts vs. Wallace, Emp. Liab. act, 249, 250.
In a late case the plaintiff was injured by the fall of a staging, which was erected by the side of a wood pile, for the purpose of enabling the workmen to pile the wood higher. It was used in one place for a few days and then moved along. Held, That it was competent for the jury to find that the staging when erected, was a part of the defendant's ways and works. The superintendent ordered a load of wood to be placed upon the staging at one time while the custom was to put half a load. It did not appear that the plaintiff understood and appreciated the danger of injury from working on the staging so far that he could be said to have assumed the risk. (a)

A wire which is part of the electric signal system of a railroad has been held to be a part of the ways, works or machinery. In attending to his duties, the plaintiff tripped and fell over this wire, and all questions of his negligence or due care were sent to the jury. (b)

(b) Broulette vs. Conn. R.R.R.Co. 162 Mass. 198.
What are not "Ways, Works or Machinery".

A flight of movable stairs leading into and intended to furnish permanent means of access to a cellar. The plaintiff was employed by the defendants and was ordered to carry a bar of iron into the cellar. In descending the stairs he fell and was injured owing to the stairs giving away. Held, Defendants did not adopt the stairs as a "way" used in their business within the statute. (A)

Rubbish on the floor which caused a staging to tip and throw a workman has been held no defect in the "ways", and the plaintiff could not recover either at common law or under the Statute. (b)

In a similar case the plaintiff fell over a pile of unfinished work, and thrust his hand into a planer. It was held that there was no ground that any one knew or appreciated whatever danger there was more fully than the plaintiff. (c)

A projecting awning on a depot does not constitute a defect in the "ways", when the awning is in proper

(a) Regan vs. Donovan, 159 Mass. 1.
(b) O'Connor vs Neal, 153 Mass. 281.
(c) May vs. Whittier Machine Co. 154 Mass. 29.
condition, and no action could be maintained for his injuries by an experienced brakeman who struck the awning. (a)

The liability of a bank of earth to fall because not shored up does not constitute a defect in the ways and works of a permanent character. (b)

A track in the yard of a manufacturing company owned and repaired by it, used by a railroad for the delivery of freight is no part of the railroad's ways. (c)

An exploder of copper filled with fulminate of mercury designed to be discharged by electricity, is not a part of the "ways" etc. and there is no duty on the part of the employer to inspect such explosives. (d)

Where there is no defect in the material or construction of a staging, the presence of a stone upon it by the falling of which personal injuries are occasioned to a workman is not a defect within the meaning of this section. (e)

(a) Fiske vs. Fitchburg R.R. 158 Mass 238.
(b) Lynch vs. Allyn, 160 Mass. 249.
d( Shea vs. Wellington, 163 Mass. 364.
(e) Carroll vs. Wilcutt, 163 Mass. 221.
The phrase "Connected with or used in the business of the employer" cannot be taken literally, but when used in connection with "ways, works" etc. must be understood to mean ways, works, or machinery connected with or used in the business of the employer by his authority and subject to his control. Thus, the occasional use by each of two railroad companies of the track of the other in delivering or taking cars in the course of business will not, to that extent, make the track of each company part of the ways, works or machinery of the other, and it would be unreasonable to compel each company to have and take cars at the precise point of connection, at the peril, if it did not do so, of becoming liable for injuries resulting from any defect in the track of the other. (a)

The Court has intimated that the Statute does not take away the rights of parties to make such contracts as they choose which will establish their respective rights and duties, saying that they have no doubt that one may expressly contract to take the obvious risks of danger from inferior or defective machinery as well (a) Trash vs. O.C. R.R. 156 Mass. 298.
since the Statute as before. (a)

It has also been held that when a person enters the service of another, he impliedly agrees to assume all the obvious risks of the business, including the risk of injury from the kind of machinery then openly used, and it is immaterial whether he examined the machinery before making his contract or not. (b)

Whether a dangerous method of doing business constitutes a defect in the "ways, works" etc. of an employer, within the meaning of the statute, quare. (c)

EMPLOYER'S LIABILITY ACT, SECTION I, CLAUSE 2.

This clause is often discussed in suits brought under the statute, because it offers an important defense to the employer.

We may group the cases under two heads: First; Who are superintendents, and, Second; Who are not superintendents. It will be seen that the Court refuses to regard a workman as a superintendent unless he has in

(a) 158 Mass. 135.
(b) Rooney vs. Sewall Co. 161 Mass. 153.
(c) 164 Mass. 523.
fact a right to direct and control inferior employees.

WHO ARE SUPERINTENDENTS?

A foreman having authority to employ and dismiss men, who has charge of a job, gives all the directions to the men, does not work and is not expected to work with his own hands, is a person whose sole or principal duty is that of superintendence, although there is a general superintendent over him. (a)

A section foreman in the employ of a railroad, having charge of a gang of men, whose duty it is to take receipts, check freight, etc. is a person whose principal duty is that of superintendence. (b)

The foreman of a gang of men digging a sewer trench (c); the workman in charge of the blasting at a quarry, (d) are superintendents.

The person in charge of repairs on a railroad track is a person exercising superintendence, and must warn his gang of the approach of trains when they are working together, (e), but when the men are separated,

(a) McPhee vs. Scully, 163 Mass. 216.
(c) Hennesy vs. Boston, 161 Mass. 502.
(d) Malcolm vs. Fuller, 152 Mass. 160.
(e) Davis vs. N.Y. N.H. & H.R.R. 159 Mass. 532.
as in different parts of a yard, the superintendent is not required to warn each workman, but each must look out for himself. (a)

In Conroy vs. Clinton (b) the plaintiff's intestate was paid higher wages to superintend, and traced the trench himself in which he was killed. Held; there could be no recovery.

The employer is not answerable for the negligence of a person intrusted with superintendence, who at the time and in doing the act complained of, is not exercising superintendence, but is engaged in mere manual labor, the duty of a common workman. The law recognizes that an employee may have two duties; that he may be a superintendent for some purposes, and also an ordinary workman and that if he is negligent in the latter capacity, the employer is not answerable unless the act itself is one of discretion or oversight, tending to control others and to vary their situation or action because of his discretion. For the negligence of such a person in doing the mere work of an ordinary workman,

(b) 158 Mass. 318.
in which there is no exercise of superintendence, the employer is not made responsible by the Statute. (a)

WHO ARE NOT SUPERINTENDENTS.

In England, the Statute does not apply to a mere laborer working under or with others, even though it may be a part of his duty to look after and attend to certain instrumentalities. (b)

A person "at work pretty much all the time in getting out lumber, piling it up or arranging it and in operating saws", is not a superintendent. (c)

An ordinary weaver whose usual work is merely to operate a loom, is not a person entrusted with and exercising superintendence merely because it is also his duty, when his loom gets out of repair to notify the loom fixer to put it in order, because the loom fixer and weaver are fellow servants. (d)

In Dowd vs. B. & A.R.R. (e) the plaintiff was injured by being struck by a cement pipe which rolled off

(a) Cashman vs. Chase, 156 Mass. 342.
(b) See Gibbs vs. G.W.R.R. 12 Q.B.D. 208.
(c) O'Brien vs. Rideout, 161 Mass. 170.
(d) Roseback vs. Etna Mills, 158 Mass. 379.
(e) 162. Mass. 185.
from the roof of a round-house which was being repaired by the defendant's workmen, and recovery was denied because the person in charge of the repairs was not a superintendent.

Where a workman attended to fires under a boiler, sharpened tools, charged and cleared out drill holes, which acts took most of his time, the Court refused to consider him as a superintendent. Judge Lathrop said "In a sense it is undoubtedly true that superintendence is more important than manuel labor, and so if superintendence is entrusted to a man who also works with his hands, it may be said that his principal duty is that of superintendence. But if the statute had intended that every person exercising superintendence should not be considered a fellow servant with a person injured, there would have been no need of the words "whose sole or principal duty is that of superintendence". These words must have a reasonable intrepretation given to them and a majority of the Court is of the opinion that it cannot be said of a person who works at manuel labor to the extent shown in this case, that his principal duty is that of superintendence. (a)

(a) O'Neill vs. O'Leary, 164 Mass. 388.
Where a superintendent accidentally moved an iron beam which fell through a hole in the floor and injured the plaintiff, who was working below, the plaintiff was allowed to go to the jury. The Court held that the jury would be warranted in finding that the negligence of the superintendent caused the accident. (a)

The sudden jolt of an oil tank on a freight car which caught and injured the plaintiff's hand, will not permit of a recovery against the company where there is no evidence of negligence on the part of the engineer in failing to stop, start, manage or control the train properly. (b)

Where a pile of hay fell and there was no evidence that the defendant's superintendent piled it or had anything to do with it, there was nothing from which it could be inferred that it fell because of the superintendent's negligence. (c)

No action can be maintained against a city for the alleged negligence of the assistant superintendent of streets. (d)

(b) Graham vs. B.& A.R.R. 156 Mass. 4.
(c) Fitzgerald vs. B.& A.R.R. 156 Mass. 293.
(d) McCann vs. Waltham, 163 Mass. 344.
When it is a part of the ordinary duties of masons to build their staging without special orders, they cannot complain if the staging falls that the superintendent neglected to instruct them as to how it should be built. (a)

The employer is not liable under this clause for the negligence of his superintendent in furnishing his employee with a defective appliance if the employer owes no duty to his employee to have the appliance inspected in regard to its construction before use and if it is no part of the superintendent's business to make such inspection unless he assumes so to do with his employer's knowledge and consent, as a part of the work which as superintendent he is employed to do. (b)

Where the negligence of a superintendent is relied upon, the negligence must occur not only during the superintendence, but in the exercise of it. (c)

(a) Burns vs. Washburn, 160 Mass. 457.  
(b) Shea vs. Wellington, 163 Mass. 364.  
(c) 160 Mass. 248.
SECTION I, CLAUSE 3.

This clause has to do with the right of recovery for personal injuries sustained owing to the negligence of persons in charge of railroad appliances. While the life of a railroad man is dangerous, few decisions have involved the construction of this clause. The meaning of a train, as defined by the Court, is a number of cars coupled together, forming one connected whole, and moving from one point to another upon a railroad in the ordinary course of traffic, under an impetus imparted to them by a locomotive engine, although the engine may have been detached. (a) But a locomotive engine in a railroad round house for repairs, is not upon a railroad within this clause of the statute. (b)

In one case it was shown to be customary to examine trains in motion, and the plaintiff was inspecting such a train when another train came upon him suddenly and injured him. There was a brakeman on the train who should have warned the plaintiff. Held, that it was not

(b) Perry vs. O.C.R.R. 164 Mass. 296.
necessary that the person in charge be a conductor, if he had control for the time being. (a) "Charge or control" means that some person, for the time being at least, has immediate authority to direct the movements and management of the train as a whole, and of the men engaged upon it. It is not necessary that the person should be upon the train itself, and it is possible that more than one person may have charge at the same time. (b)

At the present time a car in use by or in the possession of a railroad company is a part of the ways, works or machinery of the company using or having the same in possession, whether owned by it or by some other company. Where there is evidence of too much lateral motion of the draw bars of a car which was neglected or overlooked by the inspector, the question of proper care is for the jury. (d) In an earlier case an empty freight car, while being shifted upon a connecting line, was held not to be a part of the ways, works etc. and for an injury caused by a defective brake wheel to a

Steffe vs. O.C.R.R. 156 Mass. 262.
(b) Bowers vs. Conn. R.R. 162 Mass. 312.
brakeman upon the car, no recovery could be had against
the company using it. (a) (See the amendment, Statute
1893. Chapter 359.)

PART II.

SECTION TWO. ACTION BY WIDOW OR NEXT OF KIN WHEN IN-
STANTANEOUS DEATH.

"Where an employee is instantly killed, or dies
without conscious suffering, as the result of the neg-
ligence of an employer, or of the negligence of any
person for whose negligence the employer is liable under
the provisions of this act, the widow of the deceased,
or in case there is no widow, the next of kin, provided
that such next of kin were at the time of the death of
such employee dependent upon the wages of such employee
for support, may maintain an action for damages therefor
and may recover in the same manner, to the same extent,
as if the death of the deceased had not been instantan-
eous, or as if the deceased had consciously suffered."

The Court construes the words "without conscious
suffering" strictly. The employee, if not instantly
killed, must die without recovering consciousness. In Hodnet vs. B.& A. R.R. (a), the injury was suffered at 11:10 A. M., and death followed at 1 P.M., leaving to conjecture whether he regained consciousness or not. This was held not a sufficient compliance with the statute, for it is incumbent on the plaintiff to prove that the death thus actually took place and also that she was dependent upon the wages of the deceased for support. In another case, the plaintiff's husband was crushed between two cars while he was inspecting pins, couplings etc. in the performance of his duty, owing to a car being negligently sent against those he was inspecting. The evidence showed that deceased was in the exercise of due care while the conductor was negligent. The man was crushed, but a witness testified that he took two or three steps and then fell. The court said this did not necessarily imply any voluntary action or consciousness on his part. (b)

Where a brakeman was killed by coming in contact

(a) 156 Mass. 86.
(b) Mears vs. B.& M.R.R. 163 Mass. 150.
with a bridge while riding on the top of a tall freight car because the "tell tales" were out of repair, the train running twenty miles per hour, the inference was that death was instantaneous or that he died without conscious suffering. (a)

This section gives a right of action to the widow or next of kin, without indicating anything as to the mode of assessing damages. But the fact that they are dependent upon the wages of the deceased for support must be shown, or the action cannot be maintained. There is no difficulty in showing that a widow was dependent upon the wages of a husband, and a daughter who lived with her father, receiving all his wages, keeping house for him and for her brothers, although the brothers paid her for their board, is "dependant" within the meaning of this section. (b)

In Lathrop vs. Fitchburg R.R. (c) the next of kin of a brakeman sought to recover for his death. He was killed while coupling cars on which long timbers were loaded, the ends projecting beyond the cars, and crushing

his head. It was admitted that he could have avoided the danger by stooping, and the court refused to maintain the action because he was not in the exercise of due care. In a similar case a conductor was struck on the head and killed. The accident happened before the Statute, but the Court held that having assumed the risk of what he did, no action could be maintained against the Company. (a)

The mere fact that after the accident precautions were taken to prevent a recurrence is not admissible in favor of a plaintiff whose husband was killed by the caving in of a trench, either at common law or under the Statute. (b)

In trying an action under this section where the intestate left as his sole next of kin a sister who was "dependent" upon him, and a brother who was self supporting, the action should properly be brought in the name of the sister alone. (c)

(b) Shinners vs. Proprieters etc. 154 Mass. 168.
(c) Daly vs. N.J. Co. L55 Mass. 1.
In this case the sister was unable to work regularly or to earn enough to pay her doctor's bills, and had received from her deceased brother from $30 to $35 per month for three or four years, and the Court very properly considered her "dependent".

PART III.

SECTION THREE. LIMIT AND AMOUNT OF COMPENSATION, NOTICE OF TIME, PLACE, AND CAUSE, LIMITATION OF ACTION AND INACCURACY IN THE NOTICE.

(Except in actions brought by the personal representatives, under section one of this act, to recover damages for both the injury and death of an employee) (a) the amount of compensation receivable under this act in cases of personal injury shall not exceed the sum of Four thousand dollars. In case of death (which follows instantaneously or without conscious suffering) (a), compensation in lieu thereof may be recovered in not less than Five Hundred and not more than Five Thousand dollars, to be assessed with reference to the degree (a) Amended by Statute 1888, Chap. 155.
of culpability of the employer herein, or the person for whose negligence he is made liable, and no action for the recovery of compensation for injury or death under this act shall be maintained unless notice of the time, place and cause of the injury is given to the employer within thirty days and the action is commenced within one year from the occurrence of the accident causing the injury or death. (a) (The notice required by this section shall be in writing signed by the person injured or by some one in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in said section, he may give the same within ten days after such incapacity is removed and in case of his death, without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give the notice, his executor or administra-
tor may give such notice within thirty days after his ap-
pointment), but no notice given under the provisions of this section shall be deemed to be invalid or

(a) Amended by Statute 1888, Chapter 155.
insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury, provided it is shown that there was no intention to mislead and that the party entitled to notice was not in fact mislead thereby.

The Legislature wisely put a limit to the amount which can be recovered for personal injuries. Many causes of action arise where a jury would make a heavy award of damages owing to the shocking nature of the accident and the apparent heartlessness of the corporation. In Massachusetts, the damages awarded are for "compensation" alone and in no case are vindictive or punitive damages allowed. (a)

The administrator of an employee has no right of action against the employer for causing the employee's death in addition to the right as legal representative to recover damages accruing to the intestate in his lifetime, but this section settles the amount to be recovered, first in cases under section 1, second in

cases under section 2. (a)

In bringing suit the Practice Act, so called, requires that substantial facts necessary to constitute the cause of action be stated, with substantial certainty and without unnecessary verbage. Evidence need not be set forth in the declaration for if the declaration does not give the defendant reasonable knowledge of the nature and grounds of the action, he may apply to the Court for a bill of particulars. (b)

The giving of notice to the employer is a condition precedent of the employee's right to recover. This notice need not go into details but must accurately state the time, place and cause of the injury. All notices required by the statute are not to be construed with technical strictness, but enough should appear in them to show that they are intended as the basis of a claim against the city, town (or corporation) and are given on behalf of the person who brings the suit. (c)

In Dolan vs. Alley et al, (a), the plaintiff was

(a) Ramsdell vs. N.Y.& N.E.R.R. 151 Mass. 245.
(c) Driscoll vs. Fall River, 163 Mass. 108.
(d) 153 Mass. 380.
injured by the falling in of a roof and steam pipes fastened thereto, caused by the accumulation of snow on the roof, which the defendant's superintendent had negligently failed to remove. Notice was duly given signed by the attorneys for the plaintiff. This was held sufficient by the Court and the plaintiff recovered.

The notice required may be given by some one in the intestate's behalf within thirty days from the occurrence of the accident or by his executor or administrator within thirty days after his appointment. The widow may give the notice. (a)

The appointment of the executor or administrator is made by the probate Court and it seems that the notice must be given within thirty days after the appointment, although the appointment is not complete until a bond has been filed. (b)

The intention is that the employer may know whether he must defend or settle a suit at an early date.

This question has been somewhat discussed by the

(a) Daly vs. N.J.Co. 155 Mass. 1.
(b) Smith's Probate Law. p. 108.
Court in two recent decisions. (a)

There must not be delay in serving the notice, for where the notice was not served until after the writ was made in an action for injuries, although the notice was left at the defendant's house on the same day the writ was dated, the action could not be maintained. (b)

It is not necessary to refer to the defendant's superintendent or other person in charge or to his conduct, where the cause of the injury is properly stated.

In Beauregard vs. Webb Co. (c) the notice stated that the cause of the injury was the fall of stones from a derrick on the deceased, through the negligence of the defendant or its superintendent. Held; that the notice was either sufficient in itself, or the jury might have found it sufficient on the ground that there was no intention to mislead and that in fact the defendant was not mislead by it.

   Dickerman vs. O.C.R R. 157 Mass. 52.
(b) Veginan vs. Morse 160 Mass. 143.
(c) 160 Mass. 201.
PART IV.

SECTION FOUR. LIABILITY IN CASE OF SUB CONTRACT: WHEN.

Whenever an employer enters into a contract, either written or verbal, with an independant contractor to do a part of such employer's work, or whenever such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub contractor by reason of any defect in the condition of the ways, works machinery or plant, if they are the property of the employer or furnished by him, and if such defect arose or had not been discovered or remedied through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

The purpose of this section is to enlarge the liability of an employer; otherwise it is meaningless. The inference from the section is that the employer should
be liable when a contractor does part of his work, and an employee of the contractor is injured by a defect in the condition of the ways, works, machinery or plant furnished by the employer to the contractor, which has not been discovered or remedied through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition. By the negligence of the employer, his own negligence is intended, in distinction from that of his servant or superintendent, which is included in the latter part of the sentence. (a)

PART V.

SECTION FIVE. Knowledge of Defect by Employee without Informing.

An employee or his legal representatives, shall not be entitled under this act to any right of compensation or remedy against his employer in any case where such employee knew of the defect or negligence which caused the injury and failed within a reasonable time,

(a) See opinion of Morton J. Toomey vs. Donovan, 158 Mass. 208
to give or cause to be given, information thereof to the
employer or to some person superior to himself in the
service of the employer who had entrusted to him some
general superintendence.

Section five was intended not to create conditions
precedent which the plaintiff must show have been com-
plied with before he can maintain an action, but to
give to the employer a new ground of defense. The bur-
den of showing which rests upon the defendant. (a)

It would be unjust to compel an employer to pay
for injuries resulting from defective machinery which
the employee knew about and continued to use without
complaint. The workman constantly using and witnessing
the workings of a machine, is far more likely to know
of its defects than his employer. The question of
what is a "reasonable time" after discovery of the
defect will be left to the jury.

(a) Connolly vs. Waltham, 156 Mass. 368.
PART VI.

SECTION SIX. MITIGATION OF DAMAGES WHERE EMPLOYEE RECEIVES BENEFIT FROM RELIEF FUND TO WHICH EMPLOYER HAS CONTRIBUTED.

Any employer who shall have contributed to any insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injury for which compensation may be recovered under this act, or to any relief society formed under Chapter 244 of the acts of 1882 as authorized by Chapter 125 of the acts of 1886, may prove, in mitigation of damages recoverable by an employee under this act, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employer, as a contribution of such employer to such fund or society bears to the whole contribution thereto.

If an employer's business is so hazardous that he fears that actions may be brought against him under the statute, he can protect himself under this section.

He may create and maintain an insurance fund, or
contribute to the societies mentioned in the Statute above. Statute 1882 Chapter 244 authorizes the formation of relief societies by the employees of railroad and steamboat corporations, and Statute 1886 Chapter 125 authorizes railroad corporations to join such relief societies.

No case has yet arose calling for an interpretation or construction of this section.

SECTION SEVEN. APPLICATION OF THE ACT LIMITED.

This act shall not apply to injuries caused to domestic servants or farm laborers by other fellow employees, and shall take effect on the first day of September, eighteen hundred and eighty seven.

It seems that household servants or "hired men" on a Massachusetts farm, must remain content with the common law remedy against their employer if they are injured. In a recent case a laundress who lived some distance from her employer was now and then carried by a coachman of the employer to or from her work. One morning there was not room enough on the seat,
so the plaintiff clambered onto the wagon and sat upon a camp chair en route, while the horse was being driven at a "smartish pace", as an English Judge would say. A sudden turn was made at a corner and the lady thrown out. Held; in an action against the employer for her injuries, that she was a fellow servant of the coachman and could not recover, neither was the employer liable for her carelessness in riding on such a seat and that it was her own act which caused the injury. (a)

GENERAL DECISIONS ON THE STATUTE.

Some twenty five cases must be briefly discussed under this head, which do not strictly fall under any particular section. The lawyers of the State began cautiously to bring actions under the statute, and some of the early suits failed because of failure to make out a case within the Statute. The first case was that of Ashley vs. Hart and another (a) decided in 1888.

The accident happened less than two months after the Statute took effect. The judges disposed of it with (a) McGuirk vs. Shattuck, 160 Mass. 45. (b) 147 Mass. 573.
a short opinion "by the Court", citing no authorities. The plaintiff was a painter and with another workman, was painting a house, suspended by a stage. Each looked after his end when the stage was raised or lowered, but the other workman neglected to fasten his end securely, which, giving away, threw the plaintiff to the ground. Held; that the statute does not give a right of action against the employer for the negligence of a fellow servant in using or handling a machine tool, or appliance which is itself in a proper condition. Here the injury resulted from the negligence of a fellow servant, thus failing to state a case within the statute. The next action failed because the injury had happened before the Statute took effect. (b)

In the next reported case the plaintiff was an expert machinist, who had accidentally put his hand into an exposed gearing. Held; that having assumed the risks of his employment, he could not recover, and further, no notice as required by the Statute, was given to the employer. (a)

(a) Foley vs. Pettee, Mach. Wks. 149 Mass. 294.
(b) Dunlap vs. Barney Co. 148 Mass. 51.
The old common law action for personal injuries is not barred, and it is not necessary to rely on the statute where the common law liability is clear, as where a laborer employed to unload coal from a boat fell through a hole and was injured. He had no notice of any defect, and it was held that the defendants owed him a duty not to injure him after inviting him to come on board the vessel. (a)

If the relation of Employer and employee did not exist between the parties, the action cannot be maintained. (b)

The employer is not liable either at common law or under the Statute, for injuries occasioned to any employee by reason of a defect in a machine or appliance or of the employer's failure to instruct him respecting his duties if the only defect relied on had no connection with the accident and there was no defect or danger of which it was the employer's duty to warn the employee or any particulars in which the employee should have been

(a) Coughlin vs. Boston Co. 151 Mass. 92.
(b) Dane vs. Cochrane Co. 164 Mass. 453.
instructed. (a)

In the following cases, the liability was held to be a question of fact for the jury where the injuries caused by a staging alleged as defective. (b) Where a car was left on a track so that only five tracks remained between the car and a passing train (c), and where a workman was assisting in pulling a freight car along on a track on the employer's premises with his back to the car. In crossing a newly opened ditch under the track he fell and was killed by the car. The ditch was visible but not guarded and no warning of its existence had been given. The jury must decide whether there was a defect in the ways, and whether the deceased was in the exercise of due care. (d)

If the defect or danger is apparent to the workman there can be no recovery, as when a workman had his hand drawn into a wheel or drum around which a rope was wound in the storage of ice (e); when a track in-

(a) Brady vs. Ludlow, 154 Mass. 468.
(b) Brommie vs. Hogan, 153 Mass. 29.
(c) Dacey vs. O.C.R.R. 153 Mass. 112.
(e) Carbury vs. Downing, 154 Mass. 248.
spectator chose to operate his hand car on a railroad track used by trains going either way, and proceeded without lights in his lamps (a); and when no duty rests upon a railroad to alter certain timbering or planking by which an employee was injured, the employee being familiar with the same, he is held to have assumed the risk and cannot recover. (b)

If the law of another State where a personal injury is suffered, allows a recovery, an action may be maintained for the injury in Mass., although the plaintiff could not have recovered had the accident happened here. (c). If, in an action under the statute, for causing the death of an employee, the evidence introduced is of such a nature that the questions how the accident happened and whether the deceased was using due care can be answered only by conjecture, the action cannot be maintained. (d) In Thyng vs. Fitchburg R.R. (e)

(a) Tyndale vs. O.C.R.R. 156 Mass. 503.
(b) Gleason vs. N.Y.& N.E.R.R. 159 Mass. 68.
(d) Irwin vs. Alley, 158 Mass. 249.
(e) 156 Mass. 13.
Geyette vs. F.R.R. 162 Mass. 549.
a train broke apart and killed a brakeman, owing to the negligence of those who made up the train in using too short a pin. Held; no recovery, because it was the fault of the fellow employees and not of the employer. Similar holdings were made where a plaintiff, while cleaning a car was thrown over a seat because the car was sent violently against a post. (a), and where workmen allowed a truck to fall through a hole in the floor, which injured the plaintiff below. (b)

Also where the plaintiff's intestate, with others, was putting up a telegraph pole which fell across the railroad track. In getting the pole off, the deceased was struck and killed by a train which could not stop in time to prevent the accident. Held; that there was no evidence of negligence on the part of the engineer in failing to stop sooner. (c). A city is not liable for the breaking of a defective pole to which were fastened the fire signal wires. (d)

The same case that people of ordinary prudence

(b) O'Keefe vs. Brownell, 156 Mass. 131.
(c) Chisolim vs. O.C.R.R. 159 Mass. 3.
(d) Pittingell vs. Chelsea, 161 Mass. 368.
would exercise under the same circumstances is all that is required of the plaintiff. (a) But no action either at common law or under the Statute, could be maintained for injuries to a plaintiff's intestate who voluntarily undertook to whitewash the walls and ceiling of a card room in a factory. He was cautioned to look out for the machinery, and was capable of understanding the danger, yet worked while the machinery was in motion, fell and was killed. (b)

(a) Brich vs. Bosworth, 162 Mass. 334.
(b) Connelly vs. Hamilton CO, 163 Mass. 156.
CONCLUSION.

The Employer's Liability Act has been in force for fully nine years, and as has been seen in briefly discussing the cases there have been some eighty decisions and with a number of cases undoubtedly yet unsettled.

In many counties the Tort cases are found undoubtedly on every trial list of the Superior Court, and in most of the trials, exceptions are taken, which bring the cases before the Supreme Judicial Court for determination. Almost one half of the cases arise from injuries received on Railroads, one fourth in factories, and one fourth in other employments. In some cases, perhaps the deserving plaintiff fails to recover, (owing to some technicality) for his injuries, in most cases where the Statute has been complied with the employer is held responsible for the injury.

This Statute undoubtedly makes the employer of labor more watchful, and consequently he, (the employer) uses more care and looks after the wellfare of his employees, (who are at the best not treated any too well) with due diligence and acts as a prudent man
should in protecting the life and limb of the employee.

With this we will close our subject, adding that it would seem on the whole, that the work of the Legislature in the protection of the laboring classes, has not been in vain, and that the Employer's Liability Act answers a long felt need in that direction.

William Henry Ferry
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