permission to do this at the time of putting it in, but when the lease ended the landlord would not allow him to take it out, and an appeal was made to a court, which decided in favour of the landlord. Doubtless this decision is correct. If the glass could have been taken away without injuring the wall then it belonged to the tenant. This shows the need of putting such matters in writing; otherwise the tenant will suffer unless the landlord be a man of the highest integrity.

COMMERCIAL LAW

XVI. LIABILITY OF EMPLOYER TO EMPLOYÉS

PERSONS who are employed in mills, in erecting buildings, by railroad companies, and others, are frequently injured while pursuing their employment, and the question has often arisen whether the employer was liable for the injury thus suffered by them. The more important of these questions we propose to answer in this and the following lecture, as they are matters of every-day importance to many people.

First of all, an employé to recover anything for the loss that may have happened must show that in some way *his employer was negligent.* He cannot get something simply because he has been injured. The law in no country has ever said that he could. In all cases he must show that his employer failed in his duty in some way toward him to lay the foundation of an action against him. This is the first principle to keep clearly in mind.

Again, it is said that an employé cannot recover if the injury has happened to him in consequence of the negligence of a fellow-servant. By this is meant a person engaged in the same common employment. It is not always easy to determine whether two persons employed by the same company are fellow-servants, as we shall soon see, but the principle of law is plain enough that

in all cases where they are thus acting as fellow-servants they cannot recover for any injury. The law says this is one of the risks that a person takes when he enters the service of another. Suppose a person is at work mining coal and is injured by another person working by his side through his negligence. However severely injured he may be he cannot get anything, because the person through whose negligence he has been injured is a fellow-workman.

But many employés may have the same common employer and yet not be fellow-servants. For example, a brakeman would be a fellow-servant with the conductor and engineer and other persons running on the same train or on other trains belonging to the same company, but he would not be a fellow-servant working in the same line of employment with those who are engaged in the repair-shop of the company.

This statement is quite sufficient to show the difficulty there is sometimes in deciding whether a person is a fellow-servant or not. If a person is injured through the negligence of another employed by the same company who is not a fellow-servant, then he can recover if there are no other difficulties in the way, otherwise he cannot. It does not follow that fellow-servants are of the same grade or rank; the test is whether they are acting in the same line of employment. The brakeman's position is not so high as that of the engineer or conductor, yet all three are acting in the same line of employment, and if any one of them was injured by another in that part of the service the employer would not be liable.

In a very large number of cases, therefore, employers are not liable for accidents happening to their employés, because they are injured through the negligence of other employés engaged in the same line or subdivision of the

common service. Perhaps employers escape more frequently on this ground than on any other from paying anything for losses.

Yet there is another ground on which they often escape paying anything. An employé is supposed when making his contract with his employer to take on himself all the ordinary risks arising from his employment. These in many cases are very numerous. He does not assume extraordinary risks, but he does assume all ordinary risks that are likely to happen to him. Employés are injured every day and yet can recover nothing, because their injury is simply a common one, the risk of which they have assumed.

Would it not be possible to make an employer liable for them all? Undoubtedly an employé could make a contract of this kind if he wished and his employer was willing to do so, but if they did the employer would be unwilling to pay as high wages. The greater the risk assumed by the employé the larger is the compensation paid; the one thing is graded by the other. It was stated when considering the rights and duties of common carriers that they have been lessening their liabilities; on the other hand, they are carrying for smaller prices than they once did. Doubtless a carrier would be willing to assume more risks—every kind of risk, in short—if he were paid enough for it, but shippers ordinarily are willing to assume many risks for the sake of the lower rates and insure their risks in insurance companies. Just so the working-men prefer higher wages and assume many risks of their employment. There is nothing unfair in this. For example, the persons who are engaged in making white lead run an unusual risk in pursuing their employment. It is said nowadays that if they use the utmost care in protecting themselves from inhaling the

fumes that arise in some stages of this process, they can live quite as long as other people. But unless they do exercise every precaution their system finally becomes charged with the poison that arises from this process and their lives are shortened. They well understand this before beginning the work; they are told of the risks and are paid high wages. If, therefore, they undertake such employment, well knowing the risks, they have no right to complain if their health after a time suffers. No fraud has been practised on them, and we do not know that they do complain if they suffer any ill effects from their work.

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XVII. LIABILITY OF EMPLOYERS TO EMPLOYÉS
(*Continued*)

In our last lecture we stated some of the principles relating to the liabilities of employers to their employés; in this lesson the subject will be continued. *An employer is bound to use some care or precaution, and if he does not will be responsible for his neglect.* One of these is he must employ persons who are fit for the work they are set to do. If an employer in mining should put a man to work by the side of another to mine coal who he knew was not a skilful workman, and, in consequence of this unskilful workman's unskilfulness, other miners were injured, he would be responsible for hiring such a man. Every one will see the justice of this rule.

The employer must also give proper instructions to the person employed whenever he does not understand his duties. If a person is employed to run a laundry machine who does not understand how to work it, and other employés are injured through his ignorance, the employer would be liable. He must, therefore, tell such a person what to do; he has no right to hazard the lives of others by putting any one who has no knowledge of a machine to work without instructing him properly. Again, if a person pretends to be capable, and the employer, believing

him, engages him, and it is soon found out that he is not, then it is the duty of the employer either to dismiss him or to give him proper instructions. The rule, however, on this subject is not the same everywhere. It is sometimes said that if an employé continues to work by the side of another after knowing that this other is incompetent, it is his duty to give notice to the employer, and if the employer continues to employ him, to quit. If he does not he assumes the greater risk arising from his knowledge of the incompetency of the other.

It is the duty of the employer to furnish proper appliances for his workmen. He must furnish proper tools and machinery and safe scaffolding, and in every respect must show a reasonable degree of care in all these particulars. But the courts say that he is not obliged to exercise the *utmost* care, because the employé takes on himself some risk with respect to the tools and machinery he uses. For example, it is said that employers are not obliged to use the latest appliances that are known or appear in the market for the use of their workmen. If an employer has an older one that has been in use for years, and the employés have found out all the dangers attending its use, and a new one appears that is less dangerous to use, the law does not require the employer to throw the older one away and get the other. It is true that in many States within the last few years statutes have been passed by the legislatures requiring employers to be much more careful than they were formerly in protecting their machinery. Many injuries have happened from the use of belting, and the statutes in many cases have stated what must be done in the way of enclosing belts, and of putting screens around machinery, and in various ways of so protecting it that persons will be less liable to suffer. Furthermore, inventors have been very busy in

inventing machinery with this end in view. The old-fashioned car-coupler was a very dangerous device, and many a poor fellow has been crushed between cars when trying to couple them. A coupler has been made in which this danger no longer exists; in truth, there has been a great advance in this direction.

An employer must also select suitable materials on which to work. This is a well-known principle. If he does not, then he is responsible for the consequences. In one of the cases a person was injured while erecting a scaffolding from the breaking of a knotty timber. The testimony was that the knot was visible on the surface and if the stick had been examined the defect would have been seen. That seemed a slight defect, surely, but the consequence of using the timber was very serious, and the court rightly held that as this defect could have been seen, had the timber been properly examined, the employer was responsible for the injury to a workman who was injured by the breaking of it.

An employer must also select suitable places for his employés. In one of the cases a court said a master does not warrant his servant's safety. He does, however, agree to adopt and keep proper means with which to carry on the business in which they are employed. Among these is the providing of a suitable place for doing his work without exposure to dangers that do not come within the reasonable scope of his employment. In one of the cases a company stored a quantity of dynamite so near a place where an employé was working that he was killed by its explosion. The court held that it was negligence on the part of the company in requiring its employé to work so near the place where this explosive material was kept.

It is said that if an employé knows that a machine which he is to operate is defective when accepting em-

ployment he can recover nothing for the consequences. He assumes the risk whenever he thus engages to work. If the service be especially perilous and yet he clearly understands the nature of it and is injured when performing it, he can get nothing. Doubtless in many of these cases he is paid a larger sum for working under such conditions. Whatever may be the truth in this regard, the principle of law is well understood that, if he has a full knowledge of the risk of his situation and makes no complaint about the nature of the machinery that he is to operate, he accepts the risks, however great they may be. In one of the cases an employé was injured by the kick of a horse belonging to his employer, but he recovered nothing, because he understood the vicious nature of the animal. The horse had kicked others; in fact, its reputation for kicking was well known, and the employé began work with his eyes wide open.

This rule also applies if tools, machinery, etc., become defective and the employé continues to work after the defects are found out. Of course, every one knows that tools wear out and machinery becomes weaker, and that is one of the natural consequences of using them. And so it is regarded as one of the risks ordinarily taken by an employé, and therefore he can get nothing whenever he is injured through the operation of a defective machine caused by the natural wear and tear of time.

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EXAMINATION PAPER

NOTE.—*The following questions are given as an indication of the sort of knowledge a student ought to possess after a careful study of the course. The student is advised to write out the answers. Only such answers need be attempted as can be framed from the lessons.*

1. (*a*) What is a contract? (*b*) What is the difference between a simple and a special contract? (*c*) What contracts can be made by a minor? When and how can he ratify them? (*d*) If a person makes a contract to work for one year and breaks it after working six months can he collect six months' wages? (*e*) Give illustrations of six different kinds of contracts.

2. (*a*) When is it necessary that contracts be in writing? (*b*) In what case is a failure of consideration a good defence to a contract? (*c*) Is a consideration required to make an offer binding? (*d*) Is the delivery of goods essential to make a sale complete?

3. (*a*) What are the different kinds of warranties? (*b*) Suppose A should buy goods and pay for them, but not take them away, and afterward B should buy them and take them away—could A recover the goods from B?

4. (*a*) What is the difference between a public and a private carrier? (*b*) Must a public carrier take everything offered? (*c*) What rules of liability apply to common carriers, and how can they be modified?