

IF a servant, lastly, by his negligence does any damage to a stranger, the master shall answer for his neglect: if a smith's servant lames a horse while he is shoeing him, an action lies against the master, and not against the servant. But in these cases the damage must be done, while he is actually employed in the master's service; otherwise the servant shall answer for his own misbehaviour. Upon this principle, by the common lawⁱ, if a servant kept his master's fire negligently, so that his neighbour's house was burned down thereby, an action lay against the master; because this negligence happened in his service: otherwise, if the servant, going along the street with a torch, by negligence sets fire to a house; for there he is not in his master's immediate service, and must himself answer the damage personally. But now the common law is, in the former case, altered by statute 6 Ann. c. 3. which ordains that no action shall be maintained against any, in whose house or chamber any fire shall accidentally begin; for their own loss is sufficient punishment for their own or their servants' carelessness. But if such fire happens through negligence of any servant (whose loss is commonly very little) such servant shall forfeit 100*l*, to be distributed among the sufferers; and, in default of payment, shall be committed to some workhouse and there kept to hard labour for eighteen months^k. A master is, lastly, chargeable if any of his family layeth or casteth any thing out of his house into the street or common highway, to the damage of any individual, or the common nuisance of his majesty's liege people^l: for the master hath the superintendence and charge of all his household. And this also agrees with the civil law^m; which holds, that the *pater familias*, in this and similar cases, "*ob alterius culpam tenetur, sive servi, sive liberi.*"

ⁱ Noy's max. c. 44.

^k Upon a similar principle, by the law of the twelve tables at Rome, a person by whose negligence any fire began was bound to pay double to the sufferers; or if he was

not able to pay, was to suffer a corporal punishment.

^l Noy's max. c. 44.

^m *Ff.* 9. 3. 1. *Inst.* 4. 5. 1.