

excavated in street of city); *Seymour v. Cummins* (1889) 119 Ind. 148, 5 L.R.A. 126, 21 N.E. 549 (action held maintainable where the injury charged was, that a drainage ditch obstructed the plaintiff's access to his premises; that the soil of his lot fell into it; and that stagnant and filthy water was allowed to remain in it).

In *Blake v. Thirst* (1863) 2 Hurlst. & C. 20, 32 L.J. Exch. N.S. 188, 8 L.T.N.S. 251, 11 Week. Rep. 1034, where the plaintiff was injured by falling at night into an unfenced and unlighted sewer, which a sub-contractor had been employed to excavate, Pollock, C.B., expressed the opinion, during the argument of counsel, that the principal contractor was liable on the ground that the injury was caused by the thing contracted to be done. In his judgment he put his decision on the ground that "the act which caused the mischief was done by the order and under the immediate directions of the defendant."

In *Hole v. Sittingbourne & S.R. Co.* (1861) 3 Hurlst. & N. 488, 30 L.J. Exch. N.S. 81, 3 L.T.N.S. 750, 9 Week. Rep. 274, a contractor employed by a railway company to build a drawbridge over a navigable river executed the work so unskillfully that it was found impossible to open the bridge for vessels passing up and down. The company was held to be liable for damages caused by the obstruction to the navigation which had thus been created. Pollock, C.B., said that he rested his judgment "simply on the ground that there is a distinction between mischief which is collateral and that which directly results from the act which the contractor agreed to do." Wilde, B., said: "The present defendants were authorized to take land for the purpose of their railway, and to build a bridge over the Swale. Instead of erecting the bridge themselves, they employed another person to do it. What was done was done under their authority. In the course of executing their order, the contractor, by doing the work imperfectly, obstructed the navigation. It is the same as if they had done it themselves. It is not distinguishable from the case where a landowner orders a person to erect a building upon his land which causes a nuisance. The person who ordered the structure to be put up is liable, and it is no answer for him to say that he ordered it to be put up in a different form." As the act which authorized the company to build the bridge in this case provided that it should not be lawful to detain any vessel navigating the river for a longer time than was sufficient to enable any carriages, etc., ready to traverse, to cross the bridge, it would seem that the defendant might have also been held liable on the ground of the contractor's having infringed a statutory duty. See § 57, post.

A canal company is liable to a landowner adjoining the line of the canal for damages caused by a contractor's scraping off the surface of his field to obtain material for the banks of the canal, where the contract, as drawn, cannot be executed without doing the work in this manner. *Williams v. Fresno Canal & Irrig. Co.* (1892) 96 Cal. 14, 31 Am. St. Rep. 172, 30 Pac. 961.

In *Skelton v. Fenton Electric Light & P. Co.* (1894) 100 Mich. 87, 58 N.W. 609, it was held that the plaintiff, a worker in marble, would be entitled to recover upon proof of the facts set out in a declaration which alleged that his monuments were injured by large quantities of soot and other substances which collected on the defendant's iron smokestack, and were blown on to the monuments on the plaintiff's premises. As the injury was the natural result of erecting such a smokestack at that place, the defendant was precluded from raising the defence that it had been erected by an independent contractor.

In *Carlson v. Stooking* (1895) 91 Wis. 432, 65 N.W. 58, the liability of the employer was held to be a question for the jury, where the plaintiff's land was flooded by the water which escaped through a dam belonging to the employer, when it was opened by the contractor to give a passage for the logs which he had agreed to drive to a certain point.

On the express ground that the fact that some of the garbage which had been deposited in a lake was carried against a fishing net by the ordinary movement of the water was not a necessary or natural result of