

persons passing along the highway were not injured by the negligent performance of the work."

Lord Justice Smith, at page 400, gave his opinion that :—" Since the decision of the House of Lords in *Hughes v. Percival*, 8 A. C. 443, and that of the Privy Council in *Black v. Christchurch Finance Co.* (1894) A. C. 48, it is very difficult for a person who is engaged in the execution of dangerous works near a highway to avoid liability by saying that he has employed an independent contractor, because it is the duty of a person who is causing such works to be executed to see that they are properly carried out so as not to occasion any danger to persons passing by on the highway. I do not agree that this was a case of mere casual and collateral negligence within the meaning of that term, for it was negligence in the very act which Higmore was engaged to perform."

In considering the cases on this branch of the law, the following general rules should be borne constantly in mind :—First—When a contractor is employed by a principal to do a work, lawful in itself, not necessarily involving injurious consequences to others, and damages result to another, from the negligence of the contractor or his servants, the contractor and not the employer is liable. Second—On the other hand, if the work to be done is of such a description as requires the consent of constituted authority for its performance, or of such a nature as injurious consequences must be expected to arise, unless means are adopted to prevent them, the employer is bound to see to the doing of that which is necessary to prevent the mischief, and cannot escape liability, if injury is sustained by a third party, by a transference of that duty.

Collateral negligence as a distinct branch of law did not take shape and become definitely settled until 1840, in the leading case of *Quarman v. Burnett* 6 M. & W. 499. Lord Blackburn in reviewing the cases in *Dalton v. Angus* thus refers to it :—" Ever since *Quarman v. Burnett*, it has been considered settled law that one employing another is not liable for his collateral negligence, unless the relation of master and servant exists between them." A consideration of the leading cases, during the past hundred years, shows how gradually its underlying principles have been evolved, until now they are firmly bedded in our legal system. In *Bush v. Steinman*, (1799) 1 B. & P. 404, the owner of a house employed a surveyor to do some work upon it ; the surveyor in