(*c*) *Final rejection of this doctrine.*—That doubts as to the correctness of the doctrine reviewed in the preceding sub-section had been felt by some judges even at the time when its ascendancy seemed to be most assured, may be inferred from the fact that in 1840 Lord Denman intimated that he found great difficulty in accepting it (*dd*). At length, in 1849, it was definitely repudiated by a unanimous judgment of the Court of Exchequer. In the

broad rule embodied in the English case. From a consideration of the language used in these earlier Massachusetts decisions, it is apparent that the laboured attempt which was made in *Hilliard* v. *Richardson* to defend them merely adds one more to the long list of instances in which the courts have taken pains to demonstrate that the actual rulings in cases based upon discarded doctrines were, upon the evidence, reconcilable with the doctrines afterwards adopted.

In *Stone* v. *Cheshire R. Corp.* (1849) 19 N.H. 427, 51 Am. Dec. 192, a person injured by a rock which was thrown out of a blast set off by a contractor who was building a portion of a railroad was held entitled to recover on the ground that, "where a man is in possession of fixed property, he must take care that his property is so used and managed that other persons are not injured, and that whether his property be managed by his own immediate servants or by contractors or their servants." This case is virtually overruled in *Wright* v. *Holbrook* (1872) 52 N.H. 120, 13 Am. Rep. 12, where, however, it was suggested that it might stand upon the same principle as *Lowell* v. *Boston & L.R. Corp.* (1839) 23 Pick. 24, 34 Am. Dec. 33, as that decision is explained in *Hilliard* v. *Richardson* (1855) 3 Gray, 349, 63 Am. Dec. 743. It is to be observed that, in this later New Hampshire case the court did not go to the length of categorically rejecting the doctrine that the owner of land is liable for acts which a contractor does upon that land for his benefit.

In *Wiswall* v. *Brinson* (1849) 32 N.C. (10 Ired. L.) 554, where the injury was caused by a hole in the street which a contractor employed to move a house had left uncovered, the plaintiff was held entitled to recover. The decision was put upon the ground that the stipulated work was to be done, "in respect to the defendant's property." Considering the date of this case, it is rather surprising to find in the opinion of the majority some language which indicated a more unqualified approval of *Bush* v. *Steinman* than is observable in any other case decided since *Laugher* v. *Pointer* (1826) 5 Barn. & C. 547, 8 Dowl. & R. 550, 4 L.J.K.B. 309. Ruffin, Ch.J., dissented. So far as his conclusion was determined by the doctrine as to a distinction between real and personal property, it was based upon the theory, that the liability which is predicated with reference to that distinction takes effect only when the nuisance created by the contractor is actually on the premises of his employer. In other respects his opinion emdodies what is now the generally received doctrine.

It will be noticed that, on the facts, both the New Hampshire and the North Carolina decisions might possibly be sustained on the ground that the employer was bound at his peril to see that appropriate precautions were taken to safeguard the public. See Subtitle V., post.

In *Memphis* v. *Lasser* (1849) 9 Humph. 757, the case of *Bush* v. *Steinman* was mentioned without any expression of disapproval, but the decision was really put upon the ground of a breach of a non-delegable duty.

Other American cases in which the distinction between the liabilities incident to the ownership or possession of real and of personal property is recognized more or less definitely are *Blattenberger* v. *Little Schuylkill Nav. R. & Coal Co.* (1839) 2 Miles (Pa.) 309; *Moore* v. *Sanborne* (1853) 2 Mich. 519, 59 Am. Dec. 209. The allusion to the doctrine in the latter case is somewhat remarkable, as it had been expressly condemned in *De Forest* v. *Wright* (1852) 2 Mich. 36.

(*dd*) *Milligan* v. *Wedge* (1840) 12 Ad. & El. 737, 4 Perry & D. 714, 10 L.J.Q.B. N.S. 10. The remarks of Parke, B., in *Quarman* v. *Burnett*, which had been decided earlier in the same year, were explicitly referred to.