explanation seems to be decidedly preferable to that which is based upon the notion that, in cases of this type, "it cannot properly be said that the company reserves no control over the work, and the relation of master and servant does not exist;" that "the contract controls and directs the action which causes the injury;" and that "the contractor, in following the contract, becomes the agent or servant" of the employer(c).

A plaintiff who seeks to hold the employer liable on the ground that the injury resulted from the act which the contrac-

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injured by the fall; a man has works constructed for him, not unlawful in themselves, but which when done, by reason of their being badly or carelessly done, narrow an ancient highway, or infringe the provisions of an Act of Parliament which says that a certain space must be left between the ground and the under side of a bridge, and in consequence an accident occurs causing injury to another;—in all these cases the person ordering the work to be done is liable. He has interfered with the status quo, having no right as against his neighbour to do so, and his neighbour has suffered injury in consequence. So if a man puts up a sign projecting over a highway, and it falls by reason of imperfect construction and some one is injured. The person to whom the thing which does the mischief belongs, or who has caused it to be put, or who has maintained it, where it does the mischief, is liable, no matter whom he has employed to do it. The principle which underlies all these illustrations is that the person for whom the work has been done has failed to see to the doing of something which it was his duty to do, either by himself or by some one for him. The man who disturbs, or who fails to create, a state of things which other people have a legal right to expect at his hands, is liable for such disturbance or failure. The man who maintains an insecure weight hanging over the heads of passers-by fails in taking care that it shall not expose them to danger. The man who contracts a right of way, vertically or laterally, which the public have a right to enjoy in all its own height or width, and the man who digs a hole in a place where others have a right to expect no hole, disturbs a state of things to which they have a legal right, and does it at his peril if an accident happens by reason of what has been done. In the same way, if the hole deprives a neighbouring house of support to which it is entitled, the disturbance of the status quo is at risk of him who brings it about. But there is a broad and well-established distinction between such cases and those in which an accident has happened, not because the thing which has been ordered has been done badly, and in its bad state interferes with the rights of others, but because some process which may be natural or necessary in the course of effecting the result to be produced, forming as it were a mere incident in the train of operations and leaving no trace upon the completed work, has been carelessly done by the contractor's servant. This is what Lindley, L.J., has termed (adopting language previously used) 'casual or collateral negligence,' and, as he has pointed out, the difficulty lies rather in the application than in the enunciation of the principle." *Holliday* v. *National Teleph. Co.* [1899] 1 Q.B. 221, 228, 68 L.J.Q.B.N.S. 302. Wills, J.

That the liability of the employer under such circumstances "rests upon the idea that he is a trespasser, by reason of his directing and participating in the work done, and not on the principle or respondeat superior" was also laid down in *Kellog* v. *Payne* (1866) 21 Iowa, 575; *Atlanta & F.R. Co.* v. *Kimberly* (1891) 87 Ga. 161, 27 Am. St. Rep. 231, 13 S.E. 277.

(c) *McDonnell* v. *Rifle Boom Co.* (1888) 71 Mich. 61, 38 N.W. 681.