sidewalk, was a nuisance which rendered the original contractor liable for the injury to the child received while passing on the sidewalk. The Court said that while the contention of the appellant, that the independent contractor alone is liable, is the general doctrine, it does not apply to cases where the thing done or omitted to be done is of itself a nuisance, or will necessarily result in a nuisance if proper precautionary measures are not used.

Professor Bigelow puts the distinction as follows: "In *Gorham* v. *Gross*, 125 Mass. 232, Gray, C.J., said: 'Where the very thing contracted to be done is imperfectly done, the employer is responsible for it.' The distinction is between 'negligence in a matter collateral to the contract' and cases 'in which the thing contracted to be done causes mischief. The employer will be liable for the negligence of the independent contractor, or of his men, where the employer employed the independent contractor to do improper work, or to do proper work which is improperly done in the sense of being a bad job. The two kinds of negligence may together be called vice in the work."

The distinction between cases of collateral negligence and vice in the work rests on the general theory of duty, observable danger which one may avoid. Collateral negligence is not to be expected by the employed; hence danger is not observable.

It is plainly otherwise of vice in the work in either of its forms; danger is observable and harm may be avoided: Bigelow on Torts (1903) p. 337.

**VI. General Conclusions.**

1. In ordinary cases the rule would still appear to be that the employers of an independent contractor are not the employers of his servants, and therefore are not liable for their incidental, or casual, or collateral negligence.

2. But when the work is being done on or near a highway or public place, the work is in a special category. In such a case the work cannot legally be done without special precaution for