Where in the proper performance of a contract for the construction of a public sewer, the surface of adjoining land, no part of which was taken for the purpose of the work, cracked and settled, and buildings thereon were injured by reason of the removal of the subsoil, consisting in part of quicksand(*d*).

Where a landlord, without his tenant's consent, authorized an adjoining owner to tear down and rebuild a party wall of the store occupied by the tenant(*e*).

Where the creation of a nuisance wa a direct and necessary incident of the stipulated work as a whole(*f*). Under this head

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presumed to have been done pursuant to its directions given through its engineer. The court therefore declined to accept the contention of counsel, that the proof failed to connect the defendants with the commission of the wrong complained of, inasmuch as, for aught that appeared, the sub-contractor who did the grading was alone responsible for the depths of the cuts or excavations, and that he might, by shallower cuts, have avoided the injury for which plaintiff claimed damages.

A similar ruling was made in *Alabama M.R. Co.* v. *Williams* (1890) 92 Ala. 277, 9 So. 203, where it was held that an action lies under such circumstances, although the landowner has sold to the railroad company a right of way through his property, unless the terms of the sale or the attendant circumstances authorize the inference that the resulting damage was included in the compensation paid.

(*d*) *Cabot* v. *Kingman* (1896) 166 Mass. 403, 33 L.R.A. 45, 44 N.E. 344 (Holmes, Knowlton, and Lathrop, JJ., dissented). It was held to be immaterial that the soil was removed by means of pumps from the trench with which it had fallen by its own weight, or had been carried by percolating water. In *Uppington* v. *New York* (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91, recovery was denied for a similar injury on the ground that the damages were consequential, and the plan adopted was reasonably safe.

(*e*) *Northern Trust Co.* v. *Palmer* (1898) 171 Ill. 383, 49 N.E. 553, affirming (1897) 70 Ill. App. 93. The contract here in question was made with the adjoining owner. In the Court of Appeals the decision was put upon the ground that the stipulated work was such as would necessarily damage the tenant. In the Supreme Court the operations were viewed as a breach of an implied covenant that the lessee should quietly enjoy.

(*f*) *Peachey* v. *Rowland* (1853) 13 C.B. 182, 17 Jur. 764, 22 L.J.C.P.N.S. 81 (arg.); *Dressell* v. *Kingston* (1864) 32 Hun, 533; *Johnston* v. *Phoenix Bridge Co.* (1901) 169 N.Y. 581, 62 N.E. 1096, Affirming (1899) 44 App. Div. 581, 60 N.Y. Supp. 947 (injury resulted from the failure of the contractor to place lights to warn passers-by of the presence of an obstruction created by a barrier which he erected round a ditch dug in the street); *Ware* v. *St. Paul Water Co.* (1870) 2 Abb. (U.S.) 261, Fed. Cas. No. 1, 7, 172 (wagon overturned by obstruction in street created by trenches dug for laying water-pipes and by steam drills); *Deford* v. *State* (1868) 30 Md. 179 (cornice projecting dangerously far out into the street fell on a passer-by); *Spence* v. *Schultz* (1894) 103 Cal. 208, 37 Pac. 220 (excavation 14 feet deep in the sidewalk of a street in a city); *Earl* v. *Beadleston* (1877) 10 Jones & S. 294 (part wall weakened as a result of the taking down of a house); *Salvas* v. *New City Gas Co.* 1879; Quebec, 2 L.N. S.C. 97 (horse fell into pit