own premises, he must take care to injure no man in the mode of conducting the work." In view of the later English cases, it is somewhat curious that this dictum should have recently been referred to without any expression of disapproval by Smith, L.J., in *Hardaker* v. *Idle Dist. Council* [1896] 1 Q.B. 335, 65 L.J.Q.B.N.S. 363, 74 L.T.N.S. 69, 44 Week. Rep. 323, 60 J.P. 196.

In *Dutton* v. *Amesbury Nat. Bank* (1902) 181 Mass. 154, 63 N.E. 405, Lathrop, J., made the following remark: "Until the case of *Hilliard* v. *Richardson* (1855) 3 Gray, 349, 63 Am. Dec. 743, was decided, our decisions were in a somewhat anomalous state. Compare *Sproul* v. *Hemmingway* (1833) 14 Pick. 1, 5, 25 Am. Dec. 350, with *Stone* v. *Codman* (1834) 15 Pick. 297." In the former of these cases the owner of a vessel which was being towed was held not to be liable for a collision caused by the negligence of the crew of a tug-boat. Such a decision is in harmony with the modern rule, but the court cites *Bush* v. *Steinman* with approval, remarking that "it was decided principally on the ground, that the owner of real estate must be taken to be the employer of all those, who are engaged in making repairs for him; and that having the power to control and regulate the use of his own estate, he is bound to do it, in such a manner, that others may not be injured by the mode in which it is used." It is to be observed, moreover, that the court did not regard the contract for the towing as one of employment, but one which created relations similar to those which exist between a freighter and the crew of a general ship, or between a passenger and the crew of a packet. The defendants therefore were not regarded as "independent contractors" in the restricted sense in which that phrase is ordinarily used. In *Stone* v. *Codman*, the plaintiff was allowed to recover damages for an injury to his goods caused by water which escaped from a drain which was being dug from the defendant's house to a common sewer by a mason who procured the materials, and hired the labourers, charging a compensation for his services and disbursements. The decision was put expressly upon the ground that the relation of master and servant existed between the defendant and the mason, a conclusion which, according to the opinion in *Hilliard* v. *Richardson* (1855) 3 Gray, 349, 63 Am. Dec. 743, was deduced in a great measure from the fact that there was no contract, written or oral, by which the work was to be done for a specific price, or as a job. Compare cases cited in § 20, post.

In *Lowell* v. *Boston & L. R. Corp.* (1839) 23 Pick. 24, 34 Am. Dec. 33, the defendant was held liable for the damages which the plaintiff, a municipality, had been compelled to pay to a traveller who, as a result of the negligence of a contractor's workmen in omitting to replace the barriers which the plaintiff's agents had set up on each side of a cutting which had been opened through a highway, in the course of grading the defendant's roadbed, had driven into the excavation and suffered serious injuries. The court again expressed its approval of the decision in *Bush* v. *Steinman*, and took the broad ground that, as the work was done for the benefit of the company, under its authority, and by its direction, it was to be regarded as the principal, and that it was immaterial whether the work was done under contract for a stipulated sum or by workmen employed directly by the company at daily wages. This case was explained in *Hilliard* v. *Richardson* (1855) 3 Gray, 349, 63 Am. Dec. 743, as being sustainable on the following grounds: that the corporation being intrusted by the legislature with the execution of a public work such as the building of the railway in question, was bound, while the work was in progress, to protect the public against danger; that it could not escape this responsibility by a delegation of its power to others; that the work was done on land appropriated to the purposes of the railway, and under the authority of the corporation, vested in them by law for the purpose; that the barriers, the omission to replace which was the occasion of the accident, were put up and maintained by a servant of the corporation, and by their express orders; that that servant had the care and supervision of them; and that the accident occurred through the negligence of a servant of the railroad corporation, acting under its express orders. The fact that *Bush* v. *Steinman* was expressly approved is disposed of with the passing remark that the decision of the case before the court did not involve the correctness of the rule in the case cited. The explanation thus given of the rationale of *Lowell* v. *Boston & L. R. Corp.* may be adequate to afford a justification for the decision on the special grounds enumerated. But it will be apparent to everyone who peruses p. 31 of the report in 23 Pick. that the court did not rely upon those special grounds, but upon the