

**b. Independent contractors.**—(See also sec. 8 (i), post.) These Acts have no application to a man who is conducting his own business; and the fault, if any, is imputable to himself (*a*).

**6. Servants of independent contractors.**—(See also sec. 8 (i), post.) Under the English, Colonial, and Alabama statutes, which contain no special provision modifying the general rule of law on the subject, it is clear that the servants hired by a contractor or sub-contractor cannot sue the principal employer, unless there is evidence to shew that the control which he exercised over them was the same in kind and degree as that exercised by a master (*a*). Similarly the servant of a subcontractor cannot recover in a suit against the principal contractor (*b*).

Under the Acts of Massachusetts, Ontario, British Columbia and Massachusetts, the principal employer is made liable to servants of contractors or subcontractors for defects in the condition of the ways furnished by him for the purpose of executing the work contracted for. Whether the instrumentality which caused the injury was one of those to which this provision applies is a question of fact in each instance (*c*).

(*a*) *Bruce v. Barclay* (1890) 17 Sc. Sess. Cas. (4th Ser.) 811.

(*a*) The miners who take service under the middlemen known in England as "butty" men are liable to dismissal by the principal employer, and are therefore regarded as his servants in such a sense as to be entitled to the benefits of the Employers' Liability Act of 1880. *Brown v. Butterly Coal Co.* (1885) 53 L.T.N.S. 964, 50 J.P. 230. The relationship of a mine-owner to the men hired by an independent contractor to assist him in sinking a shaft is not changed to that of a master by the fact that under the Coal Mines Regulation Act of 1887, and the rules of the mine in question, the manager exercised such control over all persons in the mines as might be requisite for the purpose of enforcing the prescribed regulations for carrying on without danger the mining operations. *Marrow v. Flimby & B. Moor Coal & Fire Brick Co.* (1898) 2 Q.B. 588, 67 L.J.Q.B.N.S. 976. Nor does a workman employed by a person who has contracted with a colliery owner to sink a shaft become the servant of such owner merely by reason of the fact that he enters into a collateral agreement with the owner to conform to certain "Conditions of employment," the general effect of which is to provide for the safety of the persons working in the mine. *Fitzpatrick v. Evans* (1901) 17 Times L.R. 253, following case last cited. See also *Milligan v. Muir* (1891) 19 Sc. Sess. Cas. (4th Ser.) 870, where the general rule in the text was applied. Whether the immediate employer of the plaintiff was an independent contractor or in the service of the defendant is a question for the jury, where the evidence is that such employer took work from the defendant; that he hired the plaintiff as well as other boys, and paid them their wages; that the plaintiff went to work when the company wanted him; and that the company repaired the machinery used, whenever it went out of order. *Masters v. Jones* (1894) 10 Times L.R. 403.

(*b*) *Nicholson Macandrew* (1888) 15 Sc. Sess. Cas. (4th Ser.) 854.

(*c*) A workman employed by a sub-contractor to do work outside the mill cannot recover from the owner of the mill, where he passes through the mill to get a drink of water, and in returning goes out of his way to assist a millhand