

If the defect in work accepted from the contractor was caused, after its completion, by the manner in which other work, not embraced in the contract, was done by the workmen of the employer, this fact is sufficient to render the employer liable

Q.B. Div. 314, 45 L.J.Q.B.N.S. 260, 24 Week. Rep. 581, 34 L.T.N.S. 97, Blackburn, J., said: "It appears that the defendant came into occupation of a house with a lamp projecting from it over the public thoroughfare, which would do no harm so long as it was in good repair, but would become dangerous if allowed to get out of repair. It is therefore not a nuisance of itself. But if the defendant knowingly maintained it in a dangerous state he would then be indictable for the nuisance. . . . I do not wish to decide more than is necessary; and if there were a latent defect in the premises, or something done to them without the knowledge of the owner or occupier by a wrongdoer, such as digging out the coals underneath and so leaving a house near the highway in a dangerous condition, I doubt—at all events, I do not say—whether or not the occupier would be liable. But if he did know of the defect, and neglect to put the premises in order, he would be liable. He would be responsible to this extent, that as soon as he knew of the danger he would be bound to put the premises in repair or pull them down. So also the occupier would be bound to know that things like this lamp will ultimately get out of order, and, as occupier, there would be a duty cast upon him from time to time to investigate the state of the lamp. If he did investigate, and there were a latent defect which he could not discover, I doubt whether he would be liable, but if he discovers the defect and does not cure it, or if he did not discover what he ought on investigation to have discovered, then I think he would clearly be answerable for the consequences. Now in the present case there is ample evidence that in August the defendant was aware that the lamp might be getting out of repair, and, it being his duty to put it in repair, he employs Chappell to do so. We must assume, I think, that Chappell was a proper person to employ; and I may observe that he was clearly not the defendant's servant, as the jury say, but an independent contractor. But it was the defendant's duty to make the lamp reasonably safe, the contractor failed to do that; and the defendant, having the duty, has trusted the fulfilment of that duty to another who has not done it. Therefore the defendant has not done his duty, and he is liable to the plaintiff for the consequences. It was his duty to have the lamp set right; it was not set right."

Lush, J., said: "The question is, what is the duty of a person having a lamp projecting from his premises over the highway for his own purposes? Is it his duty to maintain it in a safe state of repair, or only to employ a proper person to put it in repair? Surely the mere statement is enough to shew that the duty must be in the first proposition. A person who puts up or continues a lamp in that position, puts the public safety in peril, and it is his duty to keep it in such a state as not to be dangerous; and he cannot get rid of the liability for not having so kept it by saying he employed a proper person to put it in repair."

This case was cited and followed in one where trespassers pulled down a wall at the end of a road, so as to open a passage to a piece of land which had been laid out in building lots, and left six or eight inches of the wall standing. The court laid down the general rule that, where property abutting on a highway becomes, through the wrongful act of strangers a nuisance to the public lawfully using the highway, the owner of such property has a duty cast upon him, from the moment he becomes aware of the danger to take steps to prevent his property from becoming a source of injury to the public. *Silverton v. Marriott* (1888) 59 L.T.N.S. 61, 52 J.P. 677.