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LIABILITY FOR NEGLIGENCE OF CONTRACTOR.

The decision of the English Court of Appeal in a much debated case—*Percival v. Hughes*—is of interest, and touches a point which is likely to recur in cities where old buildings are being replaced. The defendant was the owner of a house standing at the corner of two streets, between a house belonging to the plaintiff and a house occupied by B. The defendant being desirous of rebuilding his house employed a competent architect and competent builders to rebuild it. The defendant's new house was a story higher than the old house and the basement was lower. After the house had been nearly finished, the workmen employed by the builders began to fix a stair-case. In doing this they negligently, and without the knowledge of the defendant or his architect, cut into a party wall dividing the defendant's new house and B.'s house. The consequence was that the defendant's house fell, and the girders having become displaced, injury was done to the plaintiff's house, for which he sued the defendant. The fixing of the stair-case was not in itself a hazardous operation, if it had been carried out with ordinary skill. On these facts the Queen's Bench Division held that an action was maintainable against the defendant for the injury done to the plaintiff's house. The Court said: "The case appears to us to fall within the principle of *Bower v. Peate*, 1 Q.B.D. 321, which must now be taken to have superseded *Buller v. Hunter*, 7 H. & N. 826, so far as the cases are in conflict." The defendant appealed from this decision, and the judgment has been affirmed by Lords Justices Baggallay and Brett,—Lord Justice Holker dissenting—(L.R., 9 Q.B.D. 441) It was admitted that it is no defence to an action for intentionally interfering with a right of support, that the wrong-doer employed a competent contractor; and that was the ruling in *Bower v. Peate*; but it was contended by the defendant in the case of *Percival v. Hughes*, that there was no intention to invade the neighbour's

right, and the injury was attributable to carelessness in executing a piece of work in itself harmless. Lord Justice Brett, however, did not think this distinction was sustainable. "The duty," he observed, "was so to do the work of rebuilding as not to injure the adjoining owners. The defendant was bound to take all reasonable means to avert danger. The duty began immediately after he undertook the work and ended only when the house was so built up and finished as to be a support to the plaintiff's house. During that time is the defendant liable only for the things which he has done, or at least has ordered to be done? The defendant cannot delegate his duty so as to get rid of his liability. A negligent act was committed in the course of re-building; the workmen of the contractors employed by the defendant tampered with the party-wall so as to cause injury to the plaintiff's house. The negligent act was committed long after the undertaking was commenced, in fact it was nearly concluded; but the negligent act was committed before the whole intention was carried out. The workmen did something which they were not ordered to do; but they did it with the intention of doing work for the benefit of the defendant; the result is the same as if the architect himself had ordered the act to be done; for the wall was tampered with before the whole undertaking was finished."

This decision appears to be in accordance with the rules of our Code. See, also, the case of *McRobie v. Shuter*, 25 L. C. J. 103, in which Mr. Justice Papineau, in the Superior Court, held the proprietor responsible for an accident arising from the failure of a contractor to put a railing round an excavation which was made for the purpose of laying a drain.

IMPROVEMENT OF STREAMS.

The Supreme Court, on the 28th ult., unanimously reversed the decision of the Ontario Court of Appeals in the case of *McLaren v. Caldwell*, and affirmed the decree of the Court of Chancery, which granted to McLaren an injunction restraining the defendant Caldwell from making use of the improvements on certain streams. These streams, in their natural state, where they passed through McLaren's property, were non-floatable, and could not have been used for the purpose of transporting saw