

AGENT OR CONTRACTOR.—In *Rogers v. Florence R. Co.*, South Carolina Supreme Court, defendant made a contract with H., a railroad contractor, for the grading of a section of its road, by the terms of which H. was to employ and pay the laborers, and do the work subject to the approval of defendant's engineer; to increase the force of laborers whenever required by the engineer; to discharge any laborer who might be offensive to defendant. If he failed to complete the work within the time stipulated, defendant was authorized to employ laborers and complete it at his expense. He agreed to remove or burn up all trees, logs, and other perishable material along the line of the road, and to be responsible for damages as between himself and defendant. Defendant's assistant-engineer was to personally direct the execution of the work.

Held, that H. was an independent contractor, and not an "authorized agent or employee" of defendant, within the meaning of the statute making railroad companies liable for damages by fires. The court said: "We have examined the numerous cases referred to by the counsel, and while there are expressions in many of them, and decisions which seem to sustain respondent's view of this contract, yet we think at last each case must rest on its own facts, with the conceded doctrine overhanging all the cases that the question of liability depends on the fact whether the company is doing the work, or whether it is being done by an independent contractor. Here we think in this case that Mr. Hardin was an independent contractor. It is said, however, that there are certain exceptions to the rule above, under one of which the case may be brought. . . . The second exception claimed to the general rule above is 'that the employer is liable where he does not release the entire charge of the work to the contractor, but retains supervision of its construction.' This is nothing more than saying that where the contractor is not an independent contractor, but is under the control of his employer, the employer is liable. In other words, instead of its being an exception to the admitted doctrine above, it seems to be nothing more than stating it in different phraseology; or rather, while recognizing the doctrine it states a certain condition where the employee would not be an independent contractor, to wit, where the employer had not released the entire charge of the work to him. etc. In *Railroad Co. v. Hanning*, 15 Wall. 649, this matter is fully discussed, both in the opinion of Mr. Justice Hunt, and in a note attached; and without incumbering this opinion with a discussion of the character of the control reserved, which will hold the employer responsible, we may say that no such control was reserved here. See the case of *Railroad Co. v. Hanning*, *supra*, the numerous cases there cited in the opinion, and the notes. The reserved control, to have that effect, must be both general and special, and not only as to what work shall be done, but also how it shall be done. See *Hughes v. Railroad Co.*, 15 Am. & Eng. R. Cas. 101, and notes attached. See also *Leshar v. Navigation Co.*, 56 Am. Dec. 495; *Bailey v. Mayor, etc.* 38 ib. 669; *Hilliard v. Richardson*, 63 id. 743, and the notes. The liability depends upon the fact whether the party is an independent contractor or an agent and servant of the company, which must be ascertained from the facts of each case."—*Albany Law Journal*.