

The sidewalk was being laid by Joseph Dumond, who had been employed by the respondent to lay it, the respondent supplying the materials and the work being done by Dumond; the mixer was used for the purpose of mixing the ingredients—gravel, cement, and water—and the mixture was used to form the sidewalk.

The learned Judge found that the injury to the appellant's horse was caused by its taking fright at the mixer, and that it was "negligent and improper to have a machine operating as this one was on the highway without proper precautions being taken to prevent horses from coming near enough to prevent fright:" and he acquitted the driver of the horse of contributory negligence, but held that the respondent was not liable because, as he also found, Dumond was an independent contractor.

The findings of fact of the learned Judge are supported by the evidence, but his conclusion that the respondent was not answerable for the negligence which caused the injury was, in our opinion, erroneous.

The law is well-settled that "an employer cannot divest himself of liability in an action for negligence by reason of having employed an independent contractor, where the work contracted to be done is necessarily dangerous or is from its nature likely to cause danger to others, unless precautions are taken to prevent such danger:" Halsbury's Laws of England, vol. 21, sec. 797, and cases there cited: see particularly *Halliday v. National Telephone Co.*, [1899] 2 Q.B. 392.

It is clear upon the evidence that it was in the contemplation of the parties that Dumond would use the cement mixer in the way in which it was used. He had been doing cement work for the respondent for several years, and during the last four years before the accident he had invariably used the cement mixer.

James Martin, the Reeve, and Henry Lawrence, a member of the respondent's council, were appointed by the council to construct the sidewalk, and they made the contract with Dumond; both of them knew that the mixer would be used, and Lawrence, whose place of business was near the work, saw it in use and knew that it was an object calculated to frighten horses.

This brings the case clearly within the rule of law I have mentioned, and the respondent is answerable for the negligence which it has been found caused the injury to the appellant's horse; and it follows that the appeal should be allowed and the judgment dismissing the action as against the respondent should