

done is imperfectly performed, there the employer must be taken to have authorized the act, and is responsible for it. The present defendants were authorized to take land for the purpose of their railway, and to build a bridge over the swale. Instead of erecting the bridge themselves, they employed another person to do it. What was done was under their authority. In the course of executing their orders, the contractor, by doing the work imperfectly, obstructed the navigation. It is the same as if they had done it themselves. It is not distinguishable from the case where a land owner orders a person to erect a building upon his land which causes a nuisance. The person who ordered the structure to be put up is liable, and it is no answer for him to say that he ordered it to be put up in a different form." In 1864, the like doctrine was held in *Gray v. Hubble* 5 B. & S. 970. The defendant was authorized by constituted authority to cut a trench across a highway, for the purpose of making a sewer from his premises. The plaintiff fell into the trench and was injured. It was held the defendant was liable, notwithstanding he had employed an independent contractor to do the work, on the ground that a statutory obligation was imposed upon him and the duty rested with him to see it properly executed.

A further exception to the general rule arises where the act is wrongful or unlawful, and mischief arises from the negligence or misconduct of the contractor. In such a case the employer is liable for the injury done. Lord Campbell, C.J., in delivering judgment in *Ellis v. The Sheffield Gas Consumers Company* 2 E. & B. 767, 1853, said:—"But in the present case the defendants had no right to break up the street at all; they employed Watson Brothers to break up the streets and in so doing to heap up the earth and stones so as to be a public nuisance; and it was in consequence of this being done by their orders that the plaintiff sustained damage. It would be monstrous if the party causing another to do a thing were exempted from liability for that act, merely because there was a contract between him and the person immediately causing the act to be done."

The following rules may be fairly drawn from the decided cases on this branch of the law:—

1. That an employer, who engages an independent contractor to do work for him, is not, as a general proposition, liable for the contractor's negligence in its execution, if a third person sustains