**46. —or will necessarily cause injury.**—In a large number of decisions employers have been held responsible for the acts of independent contractors, on the ground that the stipulated work, however carefully it might be performed, would necessarily cause some definite and specific damage either to the complainant individually, or to the particular class of persons to which

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The State is liable for all trespasses committed by a contractor with the knowledge and acquiescence of its agents, in executing a contract to excavate rock from the bed of a stream in which it has no right to use the water. Its responsibility is then referable to the fact that its original entry upon the land and its direction to do the work were wrongful per se. But its liability for the act of the contractor in piling waste material upon riparian land, where it has the right to remove the rock from the stream, depends upon the fact whether or not such act was authorized, sanctioned, or directed by it. *Coleman* v. *State* (1892) 134 N.Y. 564, 31 N.E. 902.

That a person who employs an independent contractor to build a house on land on which the employer has no right to build it is jointly liable with the contractor for trespass was a doctrine treated by Willes, J., as being beyond dispute. *Upton* v. *Townend* (1855) 17 C.B. 30, 25 L.J.C.P.N.S. 44, 1 Jur. N.S. 1089, 4 Week. Rep. 56. (For the entire passage see § 43, note (b), ante.

Where the alleged ground of an action of trespass to real estate was the extension of an excavation for a cellar and foundation of a building beyond the defendant's lot upon that of the plaintiff, and it appeared that such excavations were made by the defendant's son under a very indefinite contract with the defendant for the erection of a house for the defendant, it was held, that if such trespass was committed by the direct execution of plans devised and employed by the defendant, either by his previous command or by his subsequent ratification, he would be liable for the same. *Mamer* v. *Lussem* (1872) 65 Ill. 484.

An instruction is erroneous, which embodies the doctrine that a person who contracts for the erection of a building is not responsible, where the work has been let to a contractor, although he may have told such contractor to make the building 66 feet front, and this direction may have rendered it necessary to encroach upon the adjoining premises in making the excavation for the foundations. The defendant was bound to know the width of his lot; and if he becomes a party to any encroachment upon the premises of his neighbour, and his neighbour's house is destroyed, he is a co-trespasser, and is as responsible as though he himself made the excavation. *Williamson* v. *Fischer* (1872) 50 Mo. 198 (neighbour's house fell, because deprived of lateral support).

An instruction embodying the doctrine that the independence of the contract was conclusive in the defendant's favor was held to have been properly refused, where that contract provided for the cutting of timber upon another person's land. *Orister* v. *Ott* (1894) 72 Miss. 166, 16 So. 416.

It has been held that the owner of a building is not liable for injuries to the child of a tenant because of the negligence of an independent contractor to whom such owner has surrendered possession of the premises for the purpose of improving the building, although such owner has not received the consent of the tenants to enter upon the premises. *McDermott* v. *McDaneld* (1894), 55 Ill. App. 226. The court remarked that "entering upon work without the consent of the parents of the child was no wrong to anybody else, whether a member of the family or not." But the decision seems to be of very dubious correctness.