under the circumstances there in evidence is that alluded to in the opinion, viz., so far as regards his right of recovery for injuries which are due simply to the manner in which streets are laid out, graded, and protected, he is in the same position as any other member of the public. His remedy, if any, must be sought from the municipal body which is responsible for the creation and continuance of those conditions.

(*b*) *Structures &c., in course of erection or demolition.*—According to the most recent of the English authorities, these statutes should be so construed as to enable a servant of a contractor to recover for injuries due to abnormally dangerous conditions in the substance of a building which is in course of erection or demolition by that contractor himself. The broad principle relied upon was that premises which are in the possession of a person for the purposes of his business are to be regarded as the "works" of such person so long as he is carrying on his business there (*j*). The contention that the case of *Howe* v. *Finch* (see following sub-section), was a controlling precedent against the plaintiff was easily disposed of on the ground that the employer who was sued there was the owner, not the builder of the premises. But, singularly enough, no reference was made to the cases cited in the subjoined note, which are not distinguishable on this ground, and are directly opposed to the conclusion arrived at. The conflict of authority thus disclosed can now be adjusted in England only by a decision of the Court of Appeal (*k*).

(*j*) *Brannigan* v. *Robinson* (1892) 1 Q.B. 344, [house was being pulled down]. The doctrine of this case is in harmony with two other decisions, though this particular point was not directly raised. In *Moore* v. *Gimson* (1889) 58 L.J.Q.B. 160, an insecure wall left standing on premises where there had been a fire seems to be regarded as a part of the works of a party who took a contract for the reinstatement of the building destroyed and decided against the plaintiff on the ground that there was no knowledge, actual or constructive, of the conditions. Compare *Booker* v. *Higgs* (1887) 3 Times L.R. 618, where a wall fell on the servant of a person who, as incident to certain work on the premises, was making a hole through it. Similarly it has been held in Ontario that a railway used by contractors engaged in constructing an extension of the line is a part of their plant while the work is going on. *Romburgh* v. *Balch* (1900) 27 Ont. App. 32.

(*k*) In one case it was held that no action lay for an injury caused by the negligence of a co-servant in throwing rubbish down a lift-well of a building under construction through which, by means of ladders, the workmen were obliged to get access to the upper floors, this result not being affected by the fact that the master had not taken precautions to prevent such accident by warning the workmen to cease throwing things down, when it became necessary to use the well as a passage for the workmen. *Peagram* v. *Dixon* (1886) 55 L.J.Q.B. 447, 2 Times L.R. 603. In another a contractor was held not to be liable for maintaining an