

as not to injure anyone, and must respond in damages for the injury done.

A like principle was adopted in *Penny v. Wimbledon Council* (1898) 2 Q.B. 212; 34 C.L.J. 686. The contractor employed by the defendant to lay down a sewer in a street, left a heap of excavated soil on the highway unprotected and unlighted, over which the plaintiff in the dark stumbled and was hurt. Judgment passed for the plaintiff. At page 217 Bruce, J., is reported as saying:—"The principle of the decision, I think, is this, that when a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken cause damage to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken, and that, if the necessary precautions are not taken, he cannot escape liability by seeking to throw the blame on the contractor." The judgment of Bruce, J., was affirmed on appeal (1899) 2 Q.B. 72; 34 C.L.J. 671.

*The Lark* (1899) Q.D. 74 followed *Hardaker v. Idle District Council* and *Penny v. Wimbledon Council*.

The main proposition, that one is not liable for the negligence of a contractor employed by him is subject to the further exception, that where a statute confers a power and imposes a duty as to the manner of its execution, and by neglect injury is caused, the party aggrieved has his remedy against the employer. This branch of the law was very clearly laid down by Wilde, B., in *Hole v. The Sittingbourne and Sheerness Railway Company*, 6 H. & N. 488. In this case Parliament empowered the defendant company to construct a railway bridge across a navigable river. To do this work, the defendant employed a contractor. From some defect in its construction, it could not be opened, and the plaintiff's vessel was prevented from navigating the river. It was held the defendants were liable for the damage caused to the plaintiff. The learned Baron in his judgment said:—"The distinction appears to me to be that, when work is being done under a contract, if any accident happens, and an injury is caused by negligence in a matter entirely collateral to the contract, the liability turns on the question whether the relation of master and servant exists. But when the thing contracted to be done causes the mischief, and the injury can only be said to arise from the authority of the employer, because the thing contracted to be