

ments during the subsequent period is the gradual delimitation of the domain within which the general rule as to the non-liability of an employer for the torts of an independent contractor is controlled and overridden by the principle, that a person who is subject to an absolute duty cannot, by delegating it to another party, relieve himself from liability for injuries caused by its non-fulfilment. An examination of the cases cited in Sub-titles V., and VI., post, will show that the result of working out this principle in its application to certain situations has been the formation of several groups of precedents which, in any case involving similar facts, put a plaintiff, so far as his actual right of recovery is concerned, in a position which is very nearly, if not quite, as favourable as he would have occupied if the doctrine enounced in *Bush v. Steinman* had found a permanent place in Anglo-American jurisprudence (*k*). How far these encroachments upon the older doctrine of non-liability will be carried remains to be seen. In this respect the law is at present in a transition state. But in view of the trend of judicial opinion, as indicated by the most recent decisions, it seems perfectly safe to predict that, in some directions at least, the immunity of the employer will continue to be more and more abridged.

**3. Rationale of the doctrine.**—The doctrine enunciated in § 1, ante, is frequently put upon the ground, that the characteristic incident of the relation created by an independent contract is, that the employer has not the power of controlling the person employed in respect to the details of the stipulated work, and that it is a necessary juridical consequence of this situation that the former should not be answerable for an injury resulting from the manner in which those details may be carried out by the latter (*a*).

(*k*) It seems certain, however, that a plaintiff now suing for injury received under the same circumstances as those involved in that case could not recover under any of the more recent doctrinal developments. The work was not intrinsically dangerous, nor was there a violation of any absolute duty which the employer was bound, at his peril, to see performed.

(*a*) The employer is not liable, "because he has employed an independent person, and has not retained any control over processes or details, nor even interfered in any way with the work at any stage." Wills, J., in *Holliday v. National Telephone Co.* [1899] 1 Q.B. 221, 227, 68 L.J.Q.B.N.S. 302.

"The rule that prescribes the responsibility of principals, whether private persons or corporations, for the acts of others, is based upon their power of control. If the master cannot command the servant, the acts of the servant are clearly not his. He is not master, for the relation implied by that term is one of power, of command; and if a principal cannot control his agent, he is not an