

that the work was done under its direction or the contractor's action was ratified by it. *Eaton v. European & N.A. R. Co.* (1871) 59 Me. 520, 8 Am. Rep. 430.

A railroad company, by whose direction a contractor for the construction of its road enters and builds the road upon the land which it has acquired, without having condemned an existing leasehold interest, or acquired that interest in any other manner, is liable, as a joint tortfeasor with the contractor and his servants, for damages done by them, in the prosecution of the work, to the crops of the lessee. *Ullman v. Hannibal & St. J. R. Co.* (1877) 67 Mo. 118. The court said: "The right of way acquired by the defendant was subject to the leasehold interest of the plaintiff; it is clear that the defendant had no right to enter upon the land in question without the plaintiff's consent; and having no such right itself, it could confer none upon the contractor and his workmen. The contractor and his workmen were, therefore, trespassers, and having gone there at the instance and by the direction of the defendant, for the purpose of constructing its road, the defendant was also a trespasser with them, and as such was jointly liable for all damages directly resulting from the work done by them in the execution of the contract." *Clark v. Hannibal & St. J. R. Co.* (1865) 36 Mo. 202, was distinguished on the ground that the defendant had there acquired a complete and perfect right to enter upon the land of the plaintiff and construct its road, and the trespasses complained of were committed by the servants of the contractors who had engaged to do the work.

In a case where the injury complained of was that the construction of a railway was commenced before the legal condemnation of the land, the defendant company's answer was, that the acts complained of were done by sub-contractors for the construction of its road, and that, in order to construct the same, it was necessary to enter upon plaintiff's land. The court said that this was in effect an admission that the work constituting the acts complained of was done under a contract entered into by defendant, or, in other words, that the defendant had contracted for its performance, and thereby directed it to be done, and that, under such circumstances the defendant's liability was the ordinary liability of one who commands or directs the commission of a trespass. *Leber v. Minneapolis & N.W.R. Co.* (1882) 29 Minn. 256, 13 N.W. 31.

If the facts presented are such as to render the distinction material, a requested charge to the effect that a railway company is not liable for trespasses committed by a contractor for the construction of the road is properly qualified by the proviso, that, if the construction was attempted under such circumstances as to make an entry on the premises for that purpose a trespass, the defendant was liable notwithstanding the contract. *Houston & G.N.R. Co. v. Meador* (1878) 50 Tex. 77 (fences were torn down by the contractor, and the crops in a field were damaged).

The council of a city, being empowered to abate nuisances, and also to straighten, widen and otherwise improve the bed or channel of either branch of a river within the city limits, passed an ordinance declaring one branch of said river, within said limits, a public nuisance, and providing for its abatement by the excavation of a new channel across plaintiff's premises. Afterwards, pursuant to a contract let by the board of public works of said city, in its name, for the excavation of said new channel, acts were done by the contractor constituting a trespass on plaintiff's premises. Held, that the city was liable, the action of the council being within the scope of its general powers, and taken in the belief that it was exercising a lawful power for the public good. *Hamilton v. Fond du Lac* (1876) 40 Wis. 47.

When a city acting within its general power to improve streets, makes a contract for the grading of a street, by the terms of which the contractors, in consideration of doing such grading, are to receive and appropriate to their own use all the stone in the street, and, under and in accordance therewith, the contractors proceed and remove the stone, they are the agents of the city in the premises, and the city is responsible for their acts. *Rick v. Minneapolis* (1887) 37 Minn. 423, 5 Am. St. Rep. 361, 35 N.W. 2.