language used by the judges, however, it is quite apparent that recovery was allowed for the reason that the person engaged to do the work and his servants were deemed to have been in the service of the defendant while the work was in progress (*i*). That such a conclusion would not be drawn by any court at the present day from similar evidence, would seem to be a reasonable inference from many of the decisions cited in § 12, post; though it must be admitted that the authorities are not entirely uniform. See § 23, post. But whether this surmise is correct or not, it is at all events manifest that the case is not one which exemplifies any theory respecting the limits of an employer's liability for a person who is determined to be an independent contractor (*j*).

(*e*) *Subsequent development of the law.*—From the foregoing review it will be apparent that, about the middle of the nineteenth century, almost every court which had had an opportunity of expressing its views had definitely discarded not merely the broad principle embodied in *Bush* v. *Steinman*, viz., that a person must answer for the torts of all those who are in his employ, whether they are servants or contractors, but also the qualified doctrine upon which it had been for some time supposed that that decision could be supported, viz., that a responsibility of this extent is imputable wherever the injury resulted from the execution of work on, near, or in respect to real property belonging to the employer. What may be regarded as the characteristic, as it is certainly the most important, feature of the doctrinal develop-

(*i*) That this was the standpoint of the court is also shewn by the following comment which was made upon the decision by Lord Denman in *Milligan* v. *Wedge* (1840) 12 Ad. & El. 737, 4 Perry & D. 714, 10 L.J.Q.B.N.S. 19; "The work was in effect done by the defendant himself at his own warehouse; if he chose, instead of keeping a porter, to hire one day by day, he did not thereby cease to be liable for injury done by the porter, *while under his control.*" This explanation, which, it should be observed, proceeded from a member of the court which decided the case, shews that Parke, B., misapprehended the rationale of the case when, in *Quarman* v. *Burnett* (1840) 6 Mees. & W. 499, 9 L.J. Exch. N.S. 308, 4 Jur. 969, he intimated that it might be classed with those in which the occupiers of land or buildings have been held responsible for acts of "others than their servants," done upon, or near, or in respect of their property.

(*j*) It is not easy to determine what was the precise point of view from which Pollock, C.B., was speaking, when he remarked in *Murphy* v. *Caralli* (1864) 3 Hurlst & C. 462, 34 L.J. Exch. N.S. 14, 10 Jur. N.S. 1206, 13 Week. Rep. 165, that "the case of *Randleson* v. *Murray* seems at variance with current of authority." He may have intended to express his disapproval of the decision as being an apparent recurrence to the doctrine of *Bush* v. *Steinman*, or he may merely have stated his opinion that, on the facts, the relation of master and servant was improperly inferred.