[Reference to Harrison v. Duke of Rutland, [1893] 1 Q.B. 142, 146-7; Benjamin v. Storr (1874), L.R. 9 C.P. 400; Fritz v. Hobson (1889), 14 Ch.D. 542.]

In the case at bar, what the plaintiff did upon the lane inconvenienced no one; and the jury were, in our opinion, well warranted in finding that the use he was making of it was a reasonable one.

It was also contended that, the work of making the excavation having been intrusted to an independent contractor, the defendant Brandham was not liable. It is a well-established rule of law that "an employer cannot divest himself of liability in an action for negligence by reason of having employed an independent contractor, when the work contracted to be done is necessarily dangerous or is from its nature likely to cause danger to others, unless precautions are taken to prevent such danger:" Halsbury's Laws of England, vol. 21, par. 797, p. 474, and cases there cited.

The case at bar falls well within this rule of law, and the contract entered into between the defendants, by its provision as to the barricade, shews clearly that it was in the contemplation of the parties that it would be dangerous to others if the excavation were not guarded.

It was also contended that the plaintiff was guilty of contributory negligence in having unharnessed his horse in the way in which he did, and in close proximity to the excavation, which he knew was unguarded. The jury have, however, found against this contention; and we do not think that, having regard to all the circumstances, their finding should be disturbed.

There remains to be considered the question of the right of the defendant Brandham to relief over against his co-defendant. The provision of the contract as to the barricade is ambiguous. It is not, in terms at least, said that the barricade is to be maintained by the defendant Strath, nor is any provision made as to the time during which it should be maintained. The absence of any provision as to the time during which the barricade was to be maintained lends support to the contention of the defendant Strath that all he contracted to do was to erect the barricade. Though I am inclined to the opinion that the word "form" as used in the contract is synonymous with "construct," and that the defendant Strath is right in his contention, it is not necessary, in the view we take, to decide the question.

Strath testified that he kept up the barricade until the carpenters had come to work on the building, and that, when the