It will be observed that, by changing the logical standpoint, the cases which have been made to turn upon this principle may without difficulty be brought within the purview of another principle which will be discussed in a later section (57), viz., that a person who is subject to a statutory duty must, at his peril, see that it is fulfilled, whether the work to which it is incident is or is not let out to an independent contractor.

45. —and where the performance of work will involve the commission of a trespass.—"Where a trespass has been committed upon the rights or property of another, by the advice or direction of a defendant, it is wholly unimportant what contractual or other relation existed between the immediate agent of the wrong and the person sought to be charged. The latter cannot shelter himself under the plea that the immediate wrongdoer did the act in execution of a contract, or that he came within the definition of an independent contractor as to the performance of the work in the execution of which the tortious act was committed. If he advised or directed the act his liability is established"(*a*).

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himself by shewing that they were approved by the officials of the civic department which exercises a supervision over such work. Such a department cannot authorize the execution of work on an illegal plan, nor absolve the defendant from his statutory duty. *Pitcher* v. *Lennon* (1896) 12 App. Div. 356, 42 N.Y. Supp. 156 (where the provisions of the New York Building Law were not complied with).

One is liable for an injury caused by the slipping of a stone which was so placed on the sidewalk of a city street, in front of his premises, in violation of an ordinance, as to constitute a nuisance, although it was placed there by an independent contractor only two or three days before. *Skelton* v. *Larkin* (1894) 82 Hun, 388, 31 N.Y. Supp. 234, affirmed in (1895) 146 N.Y. 365, 41 N.E. 90.

In *Clark* v. *Fry* (1858) 8 Ohio St. 358, 72 Am. Dec. 590, the court, while recognizing the principle exemplified in the cases above cited, reversed the judgment for the plaintiff for the reason that the trial judge had instructed the jury on the theory that an excavation made by a contractor in front of the defendant's premises was necessary unlawful, because it was not done under a license.

For other cases in which the principle stated in the text has been recognized, see *Shea* v. *River Bride & K. Drainage Board* (1880) Ir. L.R. 6 C.L. 179 (opinion of O'Brien, J., as stated in § 52, note, post); *Ware* v. *St. Paul Water Co.* (1870) 2 Abb. (U.S.) 261, Fed. Cas. No. 17, 172; *Colgrove* v. *Smith* (1894) 102 Cal. 220, 27 L.R.A. 590, 36 Pac. 411; *Wabash, St. L. & P.R. Co.* v. *Farver* (1887) 111 Ind. 195, 60 Am. Rep. 696, 12 N.E. 296; *Uppington* v. *New York* (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91; *Berg* v. *Parsons* (1898) 156 N.Y. 109, 41 L.R.A. 391, 66 Am. St. Rep. 542, 50 N.E. 957.

(*a*) *Ketcham* v. *Newman* (1894) 141 N.Y. 205, 24 L.R.A. 102, 36 N.E. 197.

A railway company is liable for the trespass of a contractor in building a portion of the road upon land not owned by it if it appears