contractor (*e*). A fortiori the employer of the principal contractor is not liable for the torts of a sub-contractor (*f*).

In one of the American States the common law doctrine has been formally adopted in legislative enactments (*g*). In another the construction placed upon a provision of a less explicit character has been determined by the assumed existence of that doctrine (*h*).

2. History of the doctrine.—(*a*) *Bush v. Steinman considered.*—The doctrine now under discussion is one of comparatively recent growth. An examination of the language used by the judges, the authorities cited, and the arguments relied upon by the defendant's counsel, in the earliest of the reported cases on the subject, which was decided towards the close of the eighteenth century, will make it apparent that at that date the responsibility of an employer for the torts of a contractor was deemed to be the same in kind and degree as his responsibility for the torts of a servant or an agent (*a*). The influence of this decision is distinctly

(*e*) *Rapson* v. *Cubitt* (1842) 9 Mees & W. 710, Car. & M. 64, 11 L.J. Exch. N.S. 271, 6 Jur. 606; *Overton* v. *Freeman* (1852) 11 C.B. 867, 3 Car. & K. 52, 21 L.J.C.P.N.S. 52, 16 Jur. 65; *Pearson* v. *Cox* (1877) L.R. 2 C.P. Div. 369; *Wray* v. *Evans* (1876) 80 Pa. 102; *Slater* v. *Merserau* (1876) 64 N.Y. 138; *Powell* v. *Virginia Constr. Co.* (1890) 88 Tenn. 692, 13 S.W. 391; 17 Am. St. Rep. 925; *Schutte* v. *United Electric Co.* (N.J. 1902) 53 Atl. 204.

(*f*) *McLean* v. *Russell* (1850) 12 Sc. Sess. Cas. 2nd Series, 887; *Cuff* v. *Newark & N.Y. R. Co.* (1870) 35 N.J.L. 17, 10 Am. Rep. 205; *Aldritt* v. *Gillette-Herzog Mfg. Co.* (1902) 85 Minn. 206, 88 N.W. 741; *St. Louis A. & T. R. Co.* v. *Knott* (1891) 54 Ark. 424, 16 S.W. 9; *Moore* v. *Sanborne* (1853) 2 Mich. 519, 59 Am. Dec. 209.

(*g*) "The employer generally is not responsible for torts committed by his employee when the latter exercises an independent business, and it is not subject to the immediate direction and control of the employer." Georgia Code, 1895, s. 3818.

(*h*) Article 2320 of the Revised Code of the Louisiana runs as follows: "Masters and employers are answerable for the damage occasioned by their servants and overseers in the exercise of the functions in which they are employed; . . . responsibility only attaches when the masters or employers, or teachers, and artisans, might have prevented the act which caused the damage, and have not done it." This provision was held not to be applicable to a case in which the injury resulted from the manner in which an independent contractor employed by the defendant had performed work over which the defendant himself had no supervisory control. *Gallagher* v. *South-Western Exp. Ass.* (1876) 28 La. Ann. 943.

(*a*) *Bush* v. *Steinman* (1799) 1 Bos. & P. 404. The facts upon which recovery was allowed were these: A. having a house by the roadside, contracted with B. to repair it for a stipulated sum; B contracted with C. to do the work; and C. with D. to furnish the materials. The servant of D. brought a quantity of lime to the house and placed it in the road, the result being that the plaintiff's carriage was overturned. The contention of defendant's counsel was that the liability of the principal to answer for his agents is founded on the superintendence which he is supposed to have over them, (1 Bl. Com. 431), and that it was not in