(1) Where the dangerous conditions resulted from the execution of a contract which having for its object the construction or formation of a thing which had previously had no existence (*b*).

(*b*) In *Cleghorn* v. *Taylor* (1856) 18 Sc. Sess. Cas. 2d series 664, where a chimney-can fell through a skylight in the adjoining house and damaged the plaintiff's property, and it appeared that the accident was due to the unskilful manner in which it had been attached by the master tradesman employed to erect it, the judges held that the controlling principle in the case was, that every proprietor is bound to keep his property in such a condition that it shall not be a cause of injury to others. Whether therefore the tradesman was a mere servant, as was the opinion of most of the judges, or a contractor, the defendant was liable, for the reason that the work had been completed, and given over to him, and that he had become after such completion, as much responsible for the insecure condition of the chimney-can as for the ruinous state of any other part of his premises, supposing an injury to have resulted therefrom to a coterminous proprietor. Lord Wood remarked that, in all the English and other cases cited, in which the employer had been relieved from liability, the injury had been caused by the tortious act of the contractor during the progress of the work, and while, as yet the subject-matter, so far as the work was concerned, might be said to have been in possession of the contractor and his servants, for the purpose of being carried on and completed, and under his independent control. The learned judge then proceeded as follows: "It seemed to be considered extravagant to suppose that by the completion of the work, and the reception of it by the principal, any liability should attach to him for loss caused by its having been executed in an insecure and insufficient manner; but it appears to me to be the more unreasonable position to maintain that the original obligation of the proprietor should not have effect, after a work which a tradesman has been employed to perform has been finished, and is out of his hands, and the whole subject, with that work as a part of it, is again in the uncontrolled use and occupancy of the proprietor. When that takes place, I apprehend that the sound view is, that the proprietor stands, with reference to his coterminous proprietors in the same situation as to his whole property, without exception of any repairs or alterations that may have been made upon it, and that if, by the imperfect or insecure execution of the latter, loss is caused to an adjoining property, he is responsible just as much as he would be, had it been caused by defect or insecurity in any other part of his premises. In any other view, after several different repairs or improvements or a property have been made, the subject, as regards any claim for damage caused by their insecure and imperfect execution, would stand, (for years it might be), with as many separate responsibilities as there were separate and distinct pieces of work done by separate tradesmen, the proprietor all the while remaining free from all responsibility. I think such a state of things would be inconsistent with justice, and with every consideration of general policy and convenience." Lord Cowan referring to the fact upon which stress had been laid, that the work had been completed only about a month before the accident occurred, remarked that this plainly could not affect the principle of liability.

In connection with this case it will be useful to refer to another in which the proprietor of the house had been compelled to pay damages to a tenant whose goods had been injured by an overflow of water from a supply pipe which had been insufficiently closed by a plumber employed by such proprietor. The plumber was held liable to him for the expense to which he had thus been put, although the work had been done four years before the accident occurred. *McIntyre* v. *Gallagher* (1883) 11 Sc. Sess. Cas. 4th series, 64.