

have thought he was not liable but here there was evidence enough to satisfy the jury that the matter was under the personal control of the defendant": *Coltman, J., Burgess v. Gray* (1845) 1 C.B.N.S. 578.

3. Where the thing contracted to be done is perfectly lawful in itself, yet if the damage is caused by the doing of it in an imperfect or improper manner, and is not caused by negligence collateral to the contract, the employer will be liable. A railway company was authorized by Act of Parliament to construct a swing bridge over a navigable river; the Act provided that they should not detain vessels navigating beyond a certain time. They employed a contractor to construct the bridge, but this, through some defect in its construction, could not be opened, and the plaintiff's vessel was detained for a long time. The railway company were held responsible: *Hole v. Sittingbourne Ry. Co.* (1861) 6 H. & N. 488.

Pollock, C.B., said: "This does not fall within that class of cases where the principal is exempt from responsibility because he is not the master of the person whose negligence or improper conduct has caused the mischief. This is a case in which the maxim "*Qui facit per alium facit per se*" applies. Where a person is authorized by Act of Parliament or bound by contract to do particular work, he cannot avoid responsibility by contracting with another person to do that work. Here the contractor was employed to make a bridge, and he did make a bridge which obstructed the navigation. Where the act complained of is purely collateral, and arises incidentally in the course of the performance of the work, the employer is not liable, because he never authorized that act, the remedy is against the person who did it. That, however, generally affords but a poor compensation to the party injured; for the wrongdoer is usually a common workman. Then comes the inquiry, who is the master? The contractor. In such cases the employer is not responsible. But when the contractor is employed to do a particular act, the doing of which produces mischief, another doctrine applies. I rest my judgment simply on this, that there