VIII. LIABILITY OF EMPLOYER AFTER HE HAS ASSUMED CONTROL OF THE SUBJECT-MATTER OF THE WORK EXECUTED BY THE CONTRACTOR.

75. Generally.—In § 41, *ante*, a large number of decisions have been cited, which show that the doctrine which declares an employer to be exempt from liability for the collateral negligence of an independent contractor has frequently been applied, where the dangerous conditions to which the accident in suit was traceable were of a more or less permanent character. But it is clear that the immunity thus conceded is predicable only in respect to those cases in which the injury was received while the stipulated work was in progress. As soon as the control of the subject matter of the contract has been transferred to the employer, as a result of either of the completion or stoppage of the work, he incurs the responsibilities which the law attaches to the exercises of that control; and the mere fact that the dangerous conditions which caused the injury were originally created by the negligence, or other tortious act of a contractor, will not afford him any protection ,if he permits them to continue after it is in his power to remedy them(*a*).

Upon this ground the employer is held liable in two classes of cases:

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engaged in the work of constructing the road; he really acts for and as the corporation. . . . Doubtless, the corporation would not be bound if he transcended his authority, unless it adopted or ratified his a[illegible] but where, as here, it does adopt his act, by receiving and adopting its fruits, it is undoubtedly bound."

One of the cases in which, under the Georgia Civ. Code, of 1895, § 3819, the independence of a contract is no defence is "When the employer ratifies the unauthorized wrong of the contractor." Construing this provision in a case where a railway embankment had been so constructed by the contractor as to cause a nuisance, the court held that, as the defendant company did not take possession of the road until several months after the time when the plaintiffs received the injury from the nuisance, and there was no evidence that the nuisance had been brought to its knowledge, it could not be said that the defendant had ratified any act of the contractor which created a nuisance. *Atlanta & F. R. Co.* v. *Kimberley* (1891) 87 Ga. 161, 27 Am. St. Rep. 321, 13 S.E. 277.

(*a*) "If one employs a contractor to do a work not in its nature a nuisance, but when completed it is so, by reason of the manner in which the contractor has done it, and he accepts the work in that condition, he becomes at once responsible for the creation of the nuisance, upon a principle very similar to that which makes a principal responsible for unauthorized wrongs committed by his agent by ratifying them." *Vogel* v. *New York* (1883) 92 N.Y. 10, 44 Am. Rep. 349.

See also the cases cited in the following notes to this section, and in note (a) to the following section.