

tor agreed to do has the burden of proving that that act was inherently wrongful and that it was authorized by the employer(d).

44. Employer liable where the stipulated work is illegal.—Where the necessary authority to undertake the specified work has not been obtained, or where it cannot be performed without violating an express legislative enactment, the mere fact that it is entrusted to an independent contractor will not relieve the person for whose benefit it is done from liability for such injuries as its execution may produce(a).

(d) Where it is fairly inferable that the work "could have been done in a lawful manner, it is to be presumed that the contractor was employed to do the work in a lawful, and not in a negligent or unlawful manner." *Harrison v. Kiser* (1887) 79 Ga. 588, 4 S.E. 320.

(a) "If the thing complained of,—that is, the work which the defendants procured to be done,—could not be done otherwise than in an unlawful manner, no doubt they would be responsible for the consequences." *Peachey v. Rowland* (1853) 15 C.B. 182, 22 L.J.C.P.N.S. 81, 17 Jur. 764, per Maule, J.

In *Ellis v. Sheffield Gas Consumers' Co.* (1853) 2 El. & Bl. 787, 2 C.L. Rep. 249, 23 L.J.Q.B.N.S. 42, 18 Jur. 146, 2 Week. Rep. 19, the plaintiff, while passing along a street, fell over a heap of stones which had been left on the footway by the servants of a firm which had contracted to open trenches in order that the defendant might lay gaspipes. The trenches had been opened without any authority, and constituted a public nuisance. It was objected, for the defendants, that the cause of the accident was the negligence of the servants of the contractors, for which the defendants were not responsible. It was answered that the contract was to do an illegal act, viz., to commit a nuisance; and, that being so, that the defendants were responsible. Discussing the contention of defendants, counsel, Lord Campbell said: "He argues for a proposition absolutely untenable, namely, that in no case can a man be responsible for the act of a person with whom he has made a contract. I am clearly of opinion that, if the contractor does the thing which he is employed to do, the employer is responsible for that thing as if he did it himself. I perfectly approve of the cases which have been cited. In those cases the contractor was employed to do a thing perfectly lawful: the relation of master and servant did not subsist between the employer and those actually doing the work: and therefore the employer was not liable for their negligence. He was not answerable for anything beyond what he employed the contractor to do, and, that being lawful, he was not liable at all. But in the present case the defendants had no right to break up the streets at all; they employed Watson Brothers, to break up the streets, and in so doing to heap up earth and stones so as to be a public nuisance: and it was in consequence of this being done by their orders that the plaintiff sustained damage. It would be monstrous if the party causing another to do a thing were exempted from liability for that act, merely because there was a contract between him and the person immediately causing the act to be done." The remarks of Wightman, J., were to the same effect: "It seems to me, as it did at the trial, that the fact of the defendants having employed the contractors to do a thing illegal in itself made a distinction between this and the cases which have been cited. But for the direction to break up the streets, the accident could not have happened: and, though it may be that if the workmen employed had been