

to proceed with their work when a loose rock fell, causing the accident complained of.

There can be no doubt as to the liability of McCormick, who, having knowledge of the danger, allowed the men to proceed with their work before the face of the hill had been properly scaled and made safe. Indeed, counsel for McCormick did not seriously argue that he was not responsible.

The liability of the company may be considered: (1) at common law; (2) under the contract; (3) under the Workmen's Compensation for Injuries Act.

The principal's liability is not taken away simply because the work is paid for by piece or by the day. The test is, did the master retain the power of controlling the work? *Sadler v. Henlock*, 4 E. & B. 578; *Tarry v. Ashton*, 1 Q.B.D. 314; *Piggott on Torts* (1885), p. 79. . . .

[Reference to *Gray v. Pullen*, 5 B. & S. 970; *Hole v. Sittingbourne and Sheerness R.W. Co.*, 6 H. & N. 488; *Pickard v. Smith*, 10 C.B.N.S. 470; *Reedie v. London and North Western R.W. Co.*, 4 Ex. 244; *Pendlebury v. Greenhalgh*, 1 Q.B.D. 36; *Halsbury's Laws of England*, vol. 21, p. 471, secs. 794, 795, 797; *Brady v. Giles*, 1 Mood. & R. 494; *Cuthbertson v. Parsons*, 12 C.B. 304; *Steel v. South Eastern R.W. Co.*, 16 C.B. 550; *Bennett v. Castle & Sons*, 14 Times L.R. 288; *Holliday v. National Telephone Co.*, [1899] 2 Q.B. 392; *Hughes v. Percival*, 8 App. Cas. 443; *Allan v. Hayward*, 7 Q.B. 960; *Rapson v. Vubitt*, 9 M. & W. 710; *Halsbury's Laws of England*, vol. 20, sec. 134; p. 132, sec. 260 et seq.]

The Workmen's Compensation for Injuries Act does not abolish, though it largely modifies, the doctrine of common employment. Negligence still has to be proven.

The limitation of the employer's liability where work is done under an independent contract is also fully dealt with in *Beven on Negligence*, ed. of 1909, p. 597. The learned author points out that the earlier decisions favour the view that a person is answerable for injury arising in executing the work that he has employed another to do, but that ultimately the view was adopted that limited the liability of the owner of the premises to those acts which he definitely authorises or that are in the nature of a nuisance which he permits.

After as careful a review of the cases as I have been able to give, I do not think that the nature of the work to be done was such as to render the company liable at common law, independently of the contract. While it was dangerous to proceed with the construction of the tunnel until the hill had been