(2) A person who employs an independent contractor to perform a specific piece of work is not liable for injuries caused by any merely collateral or casual torts which he may commit while the work is in progress (*c*).

(3) An employer is not liable for an injury resulting from the performance of work deputed by him to an independent contractor, unless that work was positively unlawful in itself, or the injury was the necessary consequence of executing the work in the manner provided for in the contract, or subsequently prescribed by the employer, or was caused by the violation of some absolute, non-delegable duty which the employer was bound, at his peril, to discharge, or was due to some specific act of negligence on the part of the employer himself (*d*). It will be observed that the

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standard when completed, he is not liable for any injury which may occur to others by reason of any negligence of the person to whom the contract is let." *Vincennes Water Supply Co.* v. *White* (1890) 124 Ind. 376, 24 N.E. 747.

(*c*) "No one can be made liable for an act or breach of duty, unless it be traceable to himself or his servants or servants in the course of his or their employment. Consequently, if an independent contractor is employed to do a lawful act, and in the course of the work he or his servants commit some casual act of wrong of negligence, the employer is not answerable." *Pickard* v. *Smith* (1861) 10 C.B.N.S. 470, 4 L.T.N.S. 470.

For other statements of a similar tenor see § 39, post.

(*d*) The various qualifying elements here mentioned are not all referred to in any single judicial enouncement of the doctrine; but, as each of them embodies the effect of certain distinct groups of cases which will be reviewed in subsequent sections, they are here collected in the same statement, for the purpose of showing the full extent of the limitations to which the doctrine is subject. The following paragraphs will serve as sufficient illustrations of the language used by courts and text-writers.

In a leading case Cockburn, Ch. J., refers to the general rule, "that when a person employs a contractor to do a work, lawful in itself, and involving no injurious consequences to others, and damage arises to another party from the negligence of the contractor or his servants, the contractor, and not the employer, is liable." *Bower* v. *Peate* (1876) L.R. 1 Q.B. Div. 321.

"It is now settled in that country [i.e., England] that defendants, not personally interfering or giving directions respecting the progress of a work, but contracting with a third person to do it, are not responsible for a wrongful act done, or negligence in the performance of the contract, if the act agreed to be done is legal." *Painter* v. *Pittsburgh* (1863) 46 Pa. 213; *Edmundson* v. *Pittsburgh, M. & Y.R. Co.* (1885) 111 Pa. 316, 2 Atl. 404.

The doctrine as to the non-liability of an employer for the acts of an independent contractor "has regard to cases where the contract is entirely lawful, and where the owner of the property upon which the contract is to be executed, can lawfully commit its performance to others." *Allen* v. *Willard* (1868) 57 Pa. 374.

"Where work which does not necessarily create a nuisance, but is in itself harmless and lawful, when carefully conducted, is let by an employer, who merely prescribes the end, to another who undertakes to accomplish the end prescribed, by means which he is to employ at his discretion, the latter is, in respect to the means employed, the master. If, during the progress of the work, a third person sustains injury by the negligent use of the means employed and controlled by the contractor, the employer is not answer-