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## Automobiles—Master and Servant

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*Le Conte v. Irvin*, 19 S. C. 554, in the same jurisdiction as the instant case goes even further and holds that the attorney for the plaintiff had the right at the foreclosure sale to purchase the property for *himself*, as he had no duty to perform that was inconsistent with the character of purchaser.

The court in the instant case, in ordering the bank to comply with its attorney's bid, said in part, "While not necessarily controlling, yet the custom of business as to what by common practice usually is expected of an attorney in the foreclosure of a mortgage of real estate, may not be wholly ignored. As a general proposition, when an attorney is employed to foreclose a mortgage of real estate, he is expected and it is the common practice at the bar of this state, not only to represent his client to the point of obtaining a decree of foreclosure and sale, but also to attend the sale, to see that his client's interest is not sacrificed or defeated, to make settlement with the officer conducting the sale, and to obtain a report and an order confirming the sale. If necessary to the protection of his client's interest, it is usual for the attorney to participate in the sale; indeed he would be derelict in his duty should he permit property to be bought for grossly inadequate amount which would result in his client's receiving nothing upon his demand." To sustain this contention the court cites *Smith v. Cunningham*, 59 Kans. 552, 53 P. 760, and *Cauthen v. Cauthen*, 76 S. C. 226, 56 S. E. 978. In the last mentioned case the court says, "It is held that the client is bound by the action of his attorney in relation to all matters within the scope of the action."

It would seem to the writer, that although the case is not supported by authorities, yet the principles upon which it is based are sound and meritorious. The case marks a step forward in the liberal interpretation of the law in keeping with the changing conditions of the times.

W. J. P. '27.

**AUTOMOBILES—MASTER AND SERVANT.**—Defendant's minor son wrongfully damaged plaintiff's automobile in collision while returning from deviating ten miles from authorized trip, for own benefit, to resume father's business. *Held*, father not liable for damages as authority of son ceased when he deviated from route for his own benefit. *Carder v. Martin*, (Okla.,) 250 P. 906.

The universal test of the master's liability for acts of his servants is: Was there authority, express or implied, for doing the act? That is, was it done in the course of and within the scope of the servant's employment? If so, the master will be liable for the act, whether negligent, fraudulent, deceitful or any act of positive malfeasance. *Tyler v. Stephans, Adm'x.* 163 Ky. 770, 174 S. W. 790. "An owner of an automobile is not liable for injuries to a pedestrian merely because he owns the car, or because the chauffeur was not engaged in the defendant's business." *Freibaum v. Brady*, 128 N. Y. S. 121, 142 App. Div. 220. As the court said in *Lotz v. Hanlon*, 217 Pa. 339, 66 Atl. 525, 10 L. R. A. (N. S.) 202, "But it comes to nothing that the driver was the defendant's servant, if it appears that at the time the accident happened he was not on the master's errand or business. If he were on an errand of his own, then so long as so engaged he did not stand in the relation of servant." This rule is not modified where the servant is the son of the master. *Lenville v. Nissen*, 162 N. C. 95, 77 S. E. 1096. Similarly, no liability on master if servant is at liberty from service pursuing his own ends exclusively. *Cincinnati, N. O. & T. P. Ry. Co. v. Rue*, 142 Ky. 694, 134 S. W. 1144, 34 L. R. A. (N. S.) 200; *Sullivan v. L. & N.* 115 Ky. 450, 74 S. W. 171. In *Coldwell v. Aetna Bottle Co.* 33 R. I. 531, 82 Atl. 388 a chauffeur was directed to drive an automobile to a garage, but deviated to take co-employee home. Court held master not liable for injury caused after deviating. Like the holding in *Steffen v. McNaughtn* 142 Wis. 49, 124 N. W. 1016, 26 L. R. A. (N. S.) 382. Distance of departure for personal errand held determining factor in *Fleischner v. Durgin*, 207 Mass. 435, 95 N. E. 801 where

master was not liable for servant who deviated several miles. Nor is employer of driver operating car on week days liable for negligence of driver on Sunday for own benefit. *Tinker v. Herst* 162 La.—, 110 S. 324. Courts have, however, held employers liable for damage caused by servants during incidental departure, the employe never having left the general penumbra of his duty. *Hayes v. Wilkins* 194 Mass. 223, 80 N. E. 449, 92 L. R. A. (N. S.) 1033. Even where driver deviated several blocks on his own mission, court held master liable for damages caused by horses running away. *Ritchie v. Waller* 63 Conn. 155, 28 Atl. 29, 27 L. R. A. 161. Same rule applied in *Loomis v. Hollister*, 75 Conn. 718, 55 Atl. 561. *Mulvihill v. Bates*, 31 Minn. 364, 17 N. W. 959. By the weight of authority, however, a master is not liable unless the servant is acting in scope of his authorized duty when accident occurs. *Johnston v. Hare*, (Arizona) 246 P. 546. E. C. F. '27.

**BIGAMY—MARRIAGE—AGE OF CONSENT.**—Defendant, who was married to a woman previously married at the age of eleven to another from whom she had never procured a decree of divorce, separated from her and contracted a second marriage. He was convicted of bigamy, and appeals. *Held*, that first marriage of first wife was voidable and not void, that marriage to defendant was a nullity, that second marriage of defendant was valid, and that therefore he must be discharged. *State v. Sellers*, (S. C. 1926) 134 S. E. 873.

The whole case turns on what constitutes an affirmance or avoidance of a marriage contracted before the age of consent. The majority opinion holds that in order for a conviction of bigamy to be sustained, the first contract must be executed or solemnized in some manner. Even a voidable marriage may be the basis for the crime of bigamy. *State v. Smith*, 101 S. C. 293, 85 S. E. 958; 3 R. C. L. 796; 71 C. J. 1159. The voidable marriage is not abrogated by mutual agreement after attaining the age of consent. There must be a court decree. This is held so because marriage is such an important institution and figures so much in the lives of the people that women should be given the utmost protection to determine what their exact status is. It is for the good of society that women and their children should not be in a position where their integrity is doubted, *State v. Sellers, supra*.

In this case there is also a powerful dissent which deserves attention. This opinion argues that the first marriage of the defendant's first wife was made a nullity by the fact that the couple separated soon after the ceremony and never reunited. It was insisted that the marriage might be disaffirmed at any time during nonage. 38 C. J. 1283. But it goes much further in saying that even if the parties did not avoid by their acts, still the first marriage of the wife was a nullity, and the defendant should be convicted. The first marriage was not voidable, but merely inchoate and imperfect, the minority says, which is as much as to say that it was void. The marriage merely had the capacity of being validated. 38 C. J. 1283. See also *Davis v. Whitlock*, 90 S. C. 233, 23 S. E. 171. C. H. L. '28.

**CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—ZONING ORDINANCE.**—Bill for injunction to restrain enforcement of municipal ordinance dividing village into zones or restrictive districts, in some of which buildings to be used for any business purposes or for apartment houses were excluded. Objection was to ordinance as entirety, on ground it decreased value of complainant's property by restricting its use. *Held*, ordinance was not unconstitutional as depriving complainant of liberty or property without due process of law, as it could be justified under police power. In considering what is reasonable exercise of police power circumstances of time and locality must be considered, and the right thing in the wrong place may be a nuisance. Exclusion of business and