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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

apartment houses from certain districts has reasonable relation to public welfare, as it tends to promote health and security of children and others, aids suppression and prevention of disorder, facilitates fire prevention and traffic regulation, reduces danger of contagion, makes repair of streets less expensive, adds to security of home life, and produces a more favorable environment for raising children. Constitutionality of particular sections of ordinance not considered, because not attacked. *Village of Euclid, Ohio, et al. v. Ambler Realty Co.*, (U. S. 1926) 47 S. Ct. 114, reversing *Ambler Realty Co. v. Village of Euclid, Ohio, et al.*, 297 F. 307.

This is the first time a general zoning ordinance has come before the U. S. Supreme Court for adjudication as to its constitutionality, though particular restrictions excluding certain industries from certain districts have heretofore been upheld by that court as valid police regulations. *Hadacheck v. Sebastian*, 239 U. S. 394, 60 L. Ed. 348, 36 S. Ct. 143, Ann. Cas. 1917 B, 927 (1915) (manufacture of bricks); *Reinman et al. v. City of Little Rock et al.*, 237 U. S. 171, 59 L. Ed. 900, 35 S. Ct. 511 (1915) (stable). But, as observed by the court, the decision is in harmony with the trend of State decisions. Among the benefits to be secured by zoning, which make it a lawful exercise of the police power, in addition to those enumerated in the principal case, the following have been included by cases in State courts: the avoidance in residential districts of actual nuisances likely to accompany business establishments, such as noise, odors, and vermin, *State ex rel. Civello v. City of New Orleans et al.*, 154 La. 271, 97 So. 440 (1923); protection of the civic and social values of the home, *Miller et al. v. Board of Public Works of City of Los Angeles et al.*, 195 Cal. 477, 234 P. 381 (1925); attraction of desirable and permanent citizens, fostering of civic pride, promotion of contentment, and stabilizing use and value of property, *State ex rel. Carter v. Harper*, 182 Wis. 148, 196 N. W. 451 (1923). It is generally agreed that aesthetic considerations alone do not justify a zoning ordinance or other building restriction, *Commonwealth v. Boston Adv. Co.*, 188 Mass. 348, 74 N. E. 601, 69 L. R. A. 817, 108 Am. St. Rep. 494 (1905), though they may enter as auxiliary to other purposes, *Welch v. Swasey*, 193 Mass. 364, 79 N. E. 745, 23 L. R. A. (N. S.) 1160, 118 Am. St. Rep. 523 (1907). But *Ware v. City of Wichita*, 113 Kan. 153, 214 P. 99 (1923) seems to justify zoning on purely aesthetic grounds. It is frequently stated that the validity of a zoning ordinance depends upon whether the particular facts of the case bring it within the legitimate scope of the police power, as having a reasonable relation to the health, safety, or morals of the community; but a minority of the courts which have passed on zoning ordinances give a much narrower scope to the police power in such cases than the majority. Missouri, Georgia, Maryland, Mississippi, New Jersey, and Texas courts have held zoning laws void insofar as they exclude business houses from residential districts. *City of St. Louis v. Evraiff et al.*, 301 Mo. 231, 256 S. W. 489 (1923); *Smith v. City of Atlanta*, (Ga. 1926) 132 S. E. 66; *Goldman v. Crowther et al.*, 147 Md. 282, 128 A. 50 (1925); *Ivy v. Evans et al.*, 132 Miss. 652, 97 So. 194 (1923); *Ignaciunas v. Risley et al.*, 98 N. J. Law 712, 121 A. 783 (1923); *Spann v. City of Dallas et al.*, 111 Tex. 350, 235 S. W. 513 (1921). The rule in these States seems to be, not to declare the ordinances void *in toto*, but to limit their application strictly to undoubted nuisances. *Franklin Contracting Co. v. Deter*, (N. J. 1923) 122 A. 600 (upholding zoning ordinance insofar as it applied to chemical plant likely to give off offensive fumes). But the trend of decisions is toward the more liberal view of the majority of States; e. g., compare *State ex rel. Lachtman v. Houghton*, 134 Minn. 226, 158 N. W. 1017 (1916), holding zoning ordinance void, with *State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N. W. 569 (1925), declaring it valid. A recent State case upholding a zoning ordinance is *State ex rel. Palma v. City of New Orleans et al.*, (La. 1926) 109 So. 916. F. W. F. '27.