

Washington University Law Review

Volume 12 | Issue 3

January 1927

Master and Servant—Liability of Master for Servant's Negligence While Deviating from Route Prescribed by Master

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Master and Servant—Liability of Master for Servant's Negligence While Deviating from Route Prescribed by Master, 12 ST. LOUIS L. REV. 218 (1927).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol12/iss3/20

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

to the voters and that a majority of the ballots settled the question as to whether or not the successful candidate was learned in the law, *Heard v. Moore*, (Tenn. 1926) 290 S. W. 15.

This doctrine was accepted in toto by the same court in *Morrison v. Grower*, 288 S. W. 731, rendered a week after the case under discussion. The *Heard Case* squarely follows, and quotes at length, *Little v. State*, 75 Tex. 620, where a similar statute was given a like construction. This decision seems to be based on existing custom rather than sound statutory construction. At the time the case arose, 1890, the majority of county judges in Texas were laymen, as the income derived therefrom was not sufficiently lucrative to call men from the profession, these circumstances are given great weight in the decision. A case taking the *contra* view is *Jameson v. Wiggin*, 12 S. D. 16 decided in 1899. The *Little* case, *supra*, was referred to and discussed at length, but the court decided that "learned in the law" meant a licensed attorney. In a recent Minnesota case, *State v. Schmahl*, 125 Minn. 533, the court construed a similar provision to also mean a licensed attorney. The majority of states have legislated on the subject in clear and unambiguous language, consequently, the provisions have not come before the courts for judicial determination. The Missouri statutes are silent on the subject, consequently, the majority of county judges are laymen.
W. G. S. '28.

MASTER AND SERVANT—LIABILITY OF MASTER FOR SERVANT'S NEGLIGENCE WHILE DEVIATING FROM ROUTE PRESCRIBED BY MASTER.—Hyland directed his servant to drive his service truck from A through B, C, D and E to F. The servant left the route at B, went to X at the request of his companion, and while returning toward D, a point in the route, he injured the plaintiff. Held, that the court was not, as a matter of law, justified in holding that the accident occurred while the servant was entirely on his own business and outside the scope of his employment, and that the question was one which should have been submitted to the jury. *Kohlman v. Hyland* (N. D. 1926) 210 N. W. 643.

The question raised in the instant case has troubled the courts since Baron Parke's statement that the master is not liable for acts done by a servant on a frolic of his own, but that if the servant while on the master's business takes a detour to call on a friend, the master is responsible. *Joel v. Morrison*, 6 Carr. & P. 501. Cases seem to agree that when the servant has gone on an independent journey, the master is not liable merely because he intrusted the servant with the vehicle. *Danforth v. Fisher*, 75 N. H. 111, 71 Atl. 535; *Reilly v. Connable*, 214 N. Y. 586, 108 N. E. 853; *Provo v. Conrad* 130 Minn. 412, 153 N. W. 753. Baron Parke's proposition, *supra*, rests on the assumption that the relation of master and servant is suspended at the moment when the substantial deviation commences. American courts, however, differ in their views as to what facts are necessary to constitute such a deviation. The English and some state courts have said that when the deviation occurs, and it appears beyond dispute that the purpose of the deviation had no connection with the duties of the servant, then there is no liability on the part of the master for the injuries caused by the servant. *Hatch v. London*, 15 Times L. R. (C. A.) 246; *McCarthy v. Simmons*, 178 Mass. 378, 59 N. E. 1038; *Stone v. Hill*, 45 Conn. 47, 29 Am. St. Rep. 635. Other courts have held that recovery is not precluded merely because the purpose of the deviation had no connection with the master's business; that the nature of the deviation is a question of degree; and that the question is whether the facts show mere disobedience or complete abandonment of the master's business. *Williams v. Koehler*, 41 App. Div. 426, 58 N. Y. S. 863; *Jones v. Wiegand*, 134 App. Div. 644, 119 N. Y. S. 441; *Chicago Consol. Co. v. McGinnis*, 86 Ill. App. 38. Other courts have held the master liable for

the acts of negligence of his servant committed after the personal business of the servant has been concluded, and while he is returning to the place where he departed from the designated course. *Quinn v. Power*, 87 N. Y. 535, 41 Am. Rep. 392; *Geraty v. Nat. Ice Co.*, 16 App. Div. 174, 44 N. Y. S. 659; *Jones v. Weigand*, *supra*. While other courts have said that there is a permissible zone of departures which the employer who put the vehicle in the employee's hands should probably anticipate. That whether the servant is within the permissible zone depends upon the facts. If the facts are such that reasonable minds could not differ, then the question is one of law for the court; but if reasonable minds might differ then the question should be submitted to the jury. *Healey v. Cockrell*, 133 Ark. 327, 202 S. W. 229; *Edwards v. Earnest*, (206 Ala. 1) 89 So. 729. The last mentioned rule was adopted in the instant case, *Kohlman v. Hyland*, *supra*, and seems to be justified by sound reasoning. It puts an issue of fact involving human behavior in the hands of a jury whenever the question is such that reasonable minds might differ. The Missouri cases seem to be in accord with the doctrine laid down in the instant case. Proof that the servant was operating the master's machine when the injury occurred raises a prima facie presumption that the servant was operating the machine in the master's service, and the burden is on the master to overthrow the presumption. *Long v. Nute*, 123 Mo. App. 204, 100 S. W. 511; *Guthrie v. Holmes*, 272 Mo. 215, 198 S. W. 854; *Fidelity Co. v. K. C. Ry. Co.*, 207 Mo. App. 137, 231 S. W. 277; *Urich v. Heier*, 241 S. W. 439; *Kilroy v. Crane*, 203 Mo. App. 302, 218 S. W. 425. However, the presumption takes flight on the appearance of the facts. *Guthrie v. Holmes*, *supra*; *Urich v. Heier*, *supra*; *Kilroy v. Crane*, *supra*. Slight deviations, or slight things done for the servant's own benefit while in the line of general employment will not exonerate the master from liability. *Guthrie v. Holmes*, *supra*. An unexecuted intention to deviate from the route does not make the act outside the scope of the employment. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. "Whether a servant has departed from the scope of his employment would depend upon the degree of deviation and all attending circumstances." *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Deviation may be so slight as to authorize the court to declare, as a matter of law, that the servant is still executing his master's business. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Where the deviation is marked enough to amount to a frolic of the servant the court may, as a matter of law, declare that the servant has departed from his employment. *Urich v. Heier*, *supra*; *Kilroy v. Crane*, *supra*; *Fidelity Co. v. K. C. Ry. Co.*, *supra*; *Anderson v. Nagel*, 214 Mo. App. 135, 259 S. W. 858; and the cases between the two situations involve a question of fact for submission to the jury. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Thus, we see that in Missouri, a deviation of 30 miles might not be so marked a deviation as to authorize the court to direct a verdict for the master, and might amount to a question of fact for submission to the jury. See also Vol. XII, St. Louis Law Review p. 148.

M. L. S.

NAMES—MIDDLE NAME OR INITIAL IMMATERIAL.—In a suit to try title the appellant contended that J. K. Freeland and J. R. Freeland were different persons, but introduced no evidence to substantiate his claim. *Held*, in the absence of evidence, the rule of common-law, which recognized but one Christian name, and treats middle name or names, or middle letter or letters as immaterial applied. *Bowlin v. Freeland* (Texas 1926) 289 S. W. 721.

The rule, announced by the Texas court, that the law knows but one Christian name and one surname, and that the omission or mistake in the middle name or initial is immaterial is in accord with the weight of ancient and modern authorities. 29 Cyc. 265, 6; 19 R. C. L. 1328. The rule, though probably cor-