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Master and Servant - Joint Employers - Workmen's Compensation

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ing due regard to the advanced state of the medical profession at the time in question.

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MASTER AND SERVANT—JOINT EMPLOYERS—WORKMEN'S COMPFNSATION. *Murphy Supply Co., Appellant,* vs. *Frederickson et al, Respondent,* ___.Wis.___., 239 N.W. 420. This is an appeal from a decision affirming a judgment given by the Industrial Commission in favor of Frederickson. The point in question was whether or not one joint employer was solely liable in damages to employee injured on that employer's premises.

The Murphy Supply Co., appellant, and the Morley Co. have their respective business establishments within a half-block of each other; and neither believing that it individually could afford a night watchman agreed some twenty years ago to jointly employ a man in that capacity. The Morley Co. which occupied a larger amount of floor space than the Murphy Co. was to hire the many and pay him $105 per month; of that sum the appellant agreed to contribute $40. Fredrickson, who had been a night watchman for five or six years, commenced working for the Morley and Murphy Cos. on April 3, 1930. While he was making his rounds in the Murphy Co. he fell into an opening in the floor sustaining the injuries that resulted in his disability.

The Appellant admitted the Respondent's right to recover damages, but contended (1) that the respondent was the employee of the Morley Co. and not of appellant company; (2) that even if appellant is liable at all the Morley Co. must be jointly liable because the respondent was employed jointly by both companies.

The Supreme Court disposed of the first question in short order holding that the Morley Co. was not singly the employer because the nature of the Morley Co.'s business was not that of furnishing night watchmen, nor did they make a profit on Frederickson's services in the instant case. But as they both agreed to employ the night watchman in common, they were joint employers of the respondent.

The important point of the case, however, is the decision in regard to the appellant's second contention, the matter of joint liability of joint employers in damages to employee. In rendering its decision the court recalled the case of Borgnis vs. Falk Co., 147 Wis. 327, as saying that the intention and purpose of the Workmen's Compensation Act was to place the burden on the particular industry in which the injury occurred. That rule was inferred in the late case of Conveyor's Corp. vs. Industrial Commission of Wisconsin, 200 Wis. 512, where the Con-

veyor Corp., installing a tank of an ash conveyor for Body Corp., was held liable in damages for injury to employee of Body Corp. who was overcome rescuing an employee of Conveyor Corp. from the bottom of the tank. The Body Corp. had no legal obligation to rescue the first Corporation's employee; whereas the Conveyor Corp. did. The employee of the Body Corp. became the employee of the Conveyor Corp. by implication when he attempted the rescue.

In the instant case the companies were joint employers, but the Morley Co. was not responsible for the condition of the appellant's floors. That fact considered with the above mentioned intention of the Workmen's Compensation Act moved the Court to affirm the decision of the circuit court which as we have said affirmed the holding of the Industrial Commission that one of the joint employers may be singly liable in damages to employee injured on his premises.

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