Volume 37
Issue 4 *Dickinson Law Review - Volume 37, 1932-1933*

6-1-1933

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negotiability, so that the business of the commercial world could be conducted in conformity to a law that was itself certain. That the states were desirous of accomplishing this purpose is shown by the general and speedy adoption of the act. If we are to follow the decision in Marion Wood v. Thomas R. Heyward, supra, allowing the Federal courts to exercise their independent judgment whenever a matter of commercial law arises, thus establishing a common law of the United States separate from the state law, then the purpose of the N. I. L. fails.

In Savings Bank of Richmond v. National Bank of Goldsboro, 3 Fed. (2nd) 970, 39 A. L. R. 1374, the court said:

> "The interpretation placed by a state's highest court upon its statutes will be accepted and followed by the Federal courts though questions of commercial law and general jurisprudence may be involved or incidentally arise, and especially where the statute is one enacted in the interest of uniformity in commercial law as a Uniform Negotiable Instruments Act".

In light of the considerations above, it would seem that the Federal courts are bound to follow the interpretation of the act as pronounced by the appellate courts of Florida. But, since there has been no interpretation of the act by an appellate court of Florida, the Federal courts are bound to follow the interpretation of the act as laid down in First National Bank of Miami v. Bosler, 297 Pa. 353.

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LIABILITY OF A MASTER FOR A LOANED SERVANT

It is a well established principle that one having a servant in his general employ may lend or hire the servant to another person for a particular piece of work.[1] When a

[1]Milwaukee Loco. Mfg. Co. v. Point Marion Coal Co., 294 Pa. 238 (1928); Tarr v. Hecla Coal & Coke Co., 265 Pa. 519 (1920); Standard Oil Co. v. Anderson, 212 U. S. 215.

servant is loaned to a third person he no longer is in the employment of his original employer so far as that particular piece of work is concerned, but he becomes the servant of the third person and the third person becomes liable to persons injured by the servant's negligence[2] and to the servant or his dependents for injuries sustained while in the master's employ.[3] In view of this liability that attaches to the master it often becomes important to determine which of two persons was the master in a particular transaction.

The relation of master and servant arises out of contract as distinguished from law, hence unless it can be shown that the employee has assented to become the servant of the third person the latter would not be responsible as a master because there was no contract giving rise to the relation. This assent need not, however, be expressed but may be implied from the conduct of the parties.[4]

It seems that the same rules should apply to determine the existence of the relationship of master and servant whether it is sought to charge the alleged master with liability for injury to some third person by the employee's negligence or for injuries sustained in the employ, for in either case, the same question must be answered, that is, for whom was he working?

It is impossible to lay down any rule that will cover all cases. The test that is most frequently stated in the cases is, "whether, in the particular service which the servant is engaged or requested to perform, he continues liable to the direction or control of his original master or becomes subject to that of the person to whom he is lent or hired, or who requests his services. It is not so much the actual exercise of control which is regarded as the right to exercise such control."[5] This test is unsatisfactory because it merely suggests the further question of how can you tell who has the right to exercise control over the acts of the serv-

[2]Bojarski v. Howlett Inc., 291 Pa. 485 (1928).

[3]Robson v. Martin, 291 Pa. 426 (1928); Tarr v. Hecla Coal & Coke Co., 265 Pa. 519 (1920).

[4]18 R. C. L. 493; Sames v. Borough of Perkasie, 100 Pa. Super. Ct. 402 (1930).

[5]39 C. J. 1276.

ant? There are numerous facts that may be considered in determining the right to control but none are conclusive.[6] Some of these are, who pays his wages,[7] who tells him what to do and how to do it,[8] where to go, the ownership of the tools or appliances used by the employee in his work, the type of work being done, the degree of skill required to do the work,[9] and the type of business in which the general employer is engaged.[10] It seems that the one fact which has more weight than any other in determining who is the master is the right to discharge the servant and hire someone else to do the work in his place.[11] It is not sufficient to establish the relation of master and servant merely to show that the one party had control over the result to be accomplished but he must have control over the manner in which it is to be accomplished.[12]

The question of who had control of the servant arises frequently in cases where a vehicle is furnished by one person to another and a servant is supplied to drive it. The courts have aided us in this type of case by giving certain presumptions which will control in the various situations that arise. These presumptions are not conclusive but may be rebutted.

"Where a truck or car is used for business purposes and is identified as the property of the owner a presumption arises that the truck was engaged in the master's business,"[13] for instance, if the X Baking Company owned a truck on which was printed the name, "The X Baking Company", there would be a presumption that the truck was

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[6]See Braxton v. Mendelson, 223 N. Y. 122, 133 N. E. 198 (1922).

[7]Booker v. Penna. R. R., 82 Pa. Super. Ct. 588 (1924); Tarr v. Hecla Coal & Coke Co., 265 Pa. 519 (1920).

[8]Robson v. Martin, 291 Pa. 426 (1928).

[9]Festi v. Proctor & Schwartz, (Pa. Super. Ct.) 163 Atl. 354 (1932).

[10]Thatcher v. Pierce, 281 Pa. 16 (1924).

[11]Lewis v. S. M. Byers Motor Co., 102 Pa. Super. Ct. 434 (1931).

[12]Byrne v. Hitner's Sons Co., 290 Pa. 225 (1927).

[13]Thatcher v. Pierce, 281 Pa. 16 (1924); Sonnor v. McCandless, 84 Pa. Super. Ct. 307 (1925).

being used by the company in connection with its business.

Similarly if the owner of the car is in the business of hiring cars there is a presumption that the driver of the car remains in the employ of the owner of the car.[14] For this presumption to apply it seems that the negligent act of the servant must have been in the driving, loading or unloading the vehicle. If the servant undertakes to do something not directly connected with driving, loading or unloading the vehicle under the direction of the person to whom the vehicle was furnished, the latter will be liable as master and not the owner of the vehicles.[15]

Generally the presumption is different if the owner of the car is not in the business of hiring cars or if the car is loaned by the owner. In such cases it is presumed that the driver of the car is the servant of the person to whom the car was furnished.[16]

In a recent case[17] the Supreme Court of Pennsylvania holds that a servant may serve two masters at the same time. There the S. M. Byers Motor Car Co. was endeavoring to sell Hazlett a motor truck for use in the latter's business of selling and delivering gasoline. The truck was to be used by Hazlett for a while on trial and during this trial period the Motor Car Co. agreed to furnish a man to operate the truck. During this trial period and while making a delivery of a truck load of gasoline the driver of the truck negligently caused the death of the plaintiff's husband.

The plaintiff brought suit against both the Motor Car Co. and Hazlett. In the lower court a verdict was rendered against both defendants and later the court entered judg-

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[14]Thatcher v. Pierce, supra.

[15]Pullman v. Cab Co., 259 Pa. 393 (1918); Thatcher v. Pierce supra; see note in L. R. A. 1918 E 121.

[16]Dunmore v. Padden, 262 Pa. 436, 105 Atl. 559 (1918); see note 42 A. L. R. 1446. Contra, Boroughf v. Schmidt (Mo.) 259 S. W. 881 (1924) where the servant was presumed to be in the control of the owner although the latter was not in the business of hiring cars.

[17]Gordon v. S. M. Byers otor Car Co., 309 Pa. 453, 164 Atl. 334 (1932).

ment n.o.v. as to Hazlett and granted a new trial as to the Motor Co. Both the judgment n.o.v. and the order granting a new trial were reversed and judgment was given on the verdict against both defendants. In reversing the court below the Supreme Court said, "The employment involved a double service: (a) To Byers Company; (b) to Hazlett." The court, to support its decision relies on the theory that the servant was furthering the business of both defendants and to that extent both were benefitted and since both were benefitted both should share the liabilities arising out of the service. As demonstrator of the truck he was in the service of the Motor Co.; as deliverer of the gasoline he was in the service of Hazlett.

In every case it is a question for the jury to determine who is the master unless the facts are clear and uncontradicted.[18]

If the relation of master and servant has terminated between the servant and the general employer it becomes necessary to determine sometimes when the relationship is resumed. This is particularly true in cases where a vehicle has been hired or loaned. It has been held that as soon as the particular work for which the servant was loaned has been completed the relation of master and servant is resumed between the general employer and the servant. In a Pennsylvania case[19] the owner of a truck hired it out and furnished a driver. Each evening the truck was returned to the owner's garage and taken out again the next morning. It was held that the owner became the master immediately at the end of each day's work and was responsible as master while the truck was being returned to his garage although during the day the person for whom the work was being done occupied the position of master.

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[18]42 A. L. R. 1418.

[19]Vile v. Chalfant, 69 Pa. Super. Ct. 53 (1917).