

December 1933

## Master and Servant--Workmen's Compensation--Going To and From Work on Public Streets or Highways

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### Recommended Citation

Edward S. Bock Jr., *Master and Servant--Workmen's Compensation--Going To and From Work on Public Streets or Highways*, 40 W. Va. L. Rev. (1933).

Available at: <https://researchrepository.wvu.edu/wvlr/vol40/iss1/16>

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come.<sup>19</sup> If P can show such peculiar damage to himself he could obtain an injunction on any of the above-mentioned theories plus a money decree for past damage.<sup>20</sup> Thus a representative suit to protect his franchise has distinct advantages for P.

—RICHARD F. CURRENCE.

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MASTER AND SERVANT — WORKMEN'S COMPENSATION — GOING TO AND FROM WORK ON PUBLIC STREETS OR HIGHWAYS. — The plaintiff, an employee of the defendant taxi company, having finished his day's work, left his taxi in the defendant's garage and started home. The jury found that he was struck by one of the defendant's taxis while on the sidewalk immediately in front of the entrance to the defendant's garage. *Held*: The common law right of action for negligence lies against the employer since the employee was not in the course of his employment within the meaning of the Workmen's Compensation Act. *White v. Checker Taxi Company*.<sup>1</sup>

The common law did not recognize the right of an employee to recover from his employer for injuries occurring in the course of his employment, on the theory that what risks there were, were assumed by the employee himself.<sup>2</sup> Changing social and economic values, eventually dictated legislation which would insure the workman, in case of accident, compensation that was certain, prompt and reasonable, and which would place upon the employer a higher degree of responsibility for the safety of his employees.<sup>3</sup> This compensation, however, has been "conditioned in most of the workmen's compensation acts and in the English act upon the disability being due to an accidental injury which arose 'out of' and 'in the course of' the employment."<sup>4</sup>

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<sup>19</sup> *Puget Sound Traction Co. v. Grassmeyer*, *supra* n. 3; *In re Debs*, 158 U. S. 564, 593, 15 S. Ct. 900, 39 L. Ed. 1092 (1895). (To call into exercise the injunctive powers of the court there must be an actual or threatened interference with property rights of a pecuniary nature and such jurisdiction is not destroyed by the fact that interference is a violation of criminal law.)

<sup>20</sup> *Mason v. Harpers' Ferry Bridge Co.*, 17 W. Va. 396 (1880).

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<sup>1</sup> 137 N. E. 49 (Mass. 1933).

<sup>2</sup> *Farwell v. Boston and Worcester Railroad Corporation*, 4 Metc. 49 (Mass. 1842).

<sup>3</sup> *Borgnis v. Falk Co.*, 147 Wis. 327, 133 N. W. 209 (1911).

<sup>4</sup> Italics ours.

<sup>5</sup> SCHNEIDER, WORKMEN'S COMPENSATION LAWS (1932) 734, § 262; MASS. GEN. LAWS, c. 152; W. VA. REV. CODE (1931) c. 23, art. 4, § 1: ("in the course of and resulting from the employment").

Where the injury arises out of and in the course of the employment, the

Employees injured on their way to and from work have not been regarded as being injured in the course of their employment.<sup>6</sup> This rule is subject to four recognized exceptions. First, if the employee is using a conveyance furnished by the employer to carry employees to and from work, injuries suffered as a result of the use of the conveyance arise in the course of the employment.<sup>7</sup> Second, an employee going to and from work on the premises of the employer, if such premises are the place of his labors, as a means of ingress and egress therefrom, is considered as being in the course of the employment.<sup>8</sup> Third, an employee is in the course of his employment when he is going to and from work on the premises of a third party if such premises are the place of his labors.<sup>9</sup> Fourth, when going to and from work on such immediately adjacent premises as are customarily with the express or implied consent of the employer, used as a place of ingress or egress to the place of the employment.<sup>10</sup> This exception, however,

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common law right of action is abolished; otherwise the employee may recover for negligence of the employer at the common law. *McDonnell Admr'x v. Berkley St. Ry. Co.*, 243 Mass. 94, 137 N. E. 268 (1922); *Craig v. Bondouris*, 241 Ill. App. 392 (1926); *Imbesi v. American Ice Co.*, 101 N. J. L. 182, 127 Atl. 182 (1925); *Sullivan v. Booth and Flenn, Ltd.*, 122 Misc. Rep. 288, 203 N. Y. Supp. 807 (1924); *McVey v. Chesapeake and Potomac Tel. Co.*, 103 W. Va. 519, 138 S. E. 97 (1927); *Wall v. Studebaker Corp.*, 219 Mich. 434, 189 N. W. 58 (1922); *contra*: *Kinneill Channel and Coking Coal Co., Ltd., v. Waddell*, (1931) A. C. 575 (The English act provides for an election of remedies).

<sup>6</sup> *Bell's Case*, 238 Mass. 46, 130 N. E. 67 (1913); *Edwards v. Wingham Agriculture Implement Co.*, (1913) 3 K. B. 596, 105 L. T. N. S. 50; *Mankins v. Industrial Accident Commission*, 198 Cal. 698, 247 Pac. 202 (1926); *Lampert v. Siemons*, 235 N. Y. 311, 139 N. E. 278 (1923); *Hartford Accident and Idemnity Co. v. Lodes*, 22 Pac. (2d) 361 (Okla. 1933); *Kent v. Virginia-Carolina Chem. Co.*, 143 Va. 62, 129 S. E. 330 (1925).

<sup>7</sup> *Schultz v. Beaver Products Co.*, 250 N. Y. 569, 166 N. E. 326 (1929) (The claimant's son was using a boat provided by the employer in returning to the mainland from an island, where he had been taken by the employer, when the boat capsized and the claimant's son was drowned.); *In re Donovan*, 217 Mass. 76, 104 N. E. 431 (1914); *Harlan v. Industrial Accident Commission*, 194 Cal. 352, 228 Pac. 654 (1924); *Campagna v. Ziskind*, 287 Pa. 403, 135 Atl. 124 (1926).

<sup>8</sup> *Favorite v. Kalamazoo State Hospital*, 283 Mich. 566, 214 N. W. 229 (1927) (The employee was injured on an icy sidewalk leading to the nurses' home where she was going after leaving duty.); *Kasari v. Industrial Commission of Ohio*, 125 Ohio St. 410, 181 N. E. 809 (1932); *Union Starch and Ref. Co. v. Industrial Commission*, 344 Ill. 77, 176 N. E. 303 (1931); *Gillette v. Rochester Vulcanite Paving Co.*, 249 N. Y. 608, 164 N. E. 602 (1928); *Hager v. State Compensation Commissioner*, 112 W. Va. 492, 165 S. E. 668 (1932).

<sup>9</sup> *Hoffman v. Knisely Brothers*, 199 Ill. App. 530 (1916) (An employee, on leaving a building after quitting time, where he was working on the premises of a third party, was killed by a fall down the stairs.); *Menkins v. Industrial Accident Commission*, *supra* n. 6.

<sup>10</sup> *Wabash Ry. Co. v. Industrial Commission*, 294 Ill. 119, 128 N. E. 290 (1920) (A railroad roundhouse mechanic was killed by a switch engine after

has seldom been applied to injuries sustained on public streets or highways.<sup>21</sup> Compensation is denied in this situation on the theory that the risk or hazard is not increased as a result of the employment<sup>22</sup> — the general public bearing the same risk — and because the employee is free from the employer's control.<sup>23</sup> West Virginia permits recovery in this situation on the theory that the act is a necessary one and thus incidental to the employment.<sup>24</sup> This, however, is true of the physical acts of agents, and yet, in the situation under consideration, it is well settled that the principal is not responsible.<sup>25</sup> Indeed, the result of the instant case appears desirable, for special liability under the statute must cease at some point and the point fixed by this case is a predictable one. It affords the employee protection *qua* employee; it does not impose upon the employer an unusual responsibility based upon a relationship which has ceased.

—EDWARD S. BOCK, JR.

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**OFFICERS — DISQUALIFICATION FOR OFFICE — CONVICTION OF FELONY.** — The relator was duly elected to the office of constable. By a writ of mandamus he seeks to compel the county court of Raleigh County to permit him to qualify for office. He had previously been convicted of two felonies and had served his terms

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he had finished his day's work and while he was walking along the tracks on the railroad premises where according to the known custom he intended to catch a train on which he and other of the employees were allowed to ride home.); *Bountiful Brick Co. v. Giles*, 176 U. S. 154, 48 S. Ct. 221 (1928); *In re Sundine*, 218 Mass. 216, 105 N. E. 433 (1914); *Starr Piano Co. v. Industrial Accident Commission*, 181 Cal. 433, 184 Pac. 860 (1919); *Procaccino v. Horton and Son*, 95 Conn. 408, 111 Atl. 594 (1920).

<sup>21</sup> *State ex rel Gallet v. Clearwater Timber Co.*, 47 Idaho 295, 274 Pac. 802 (1929) (Employee driving his own automobile was fatally injured at a public crossing of a railroad. Recovery denied.); *N. K. Fairbank Co. v. Industrial Commission*, 285 Ill. 11, 120 N. E. 457 (1918); *Paulauskis' Case*, 126 Me. 32, 135 Atl. 824 (1927); *Reed v. Bliss and V. A. Lumber Co.*, 225 Mich. 164, 196 N. W. 420 (1923); *Harris v. Henry Cheney Hammer Co.*, 221 App. Div. 199, 223 N. Y. Supp. 738 (1927); *Dellepiani v. Industrial Accident Commission*, 211 Cal. 430, 295 Pac. 826 (1931); *contra: Cudahy Packing Co. v. Parramore*, 263 U. S. 418, 44 S. Ct. 153 (1923).

<sup>22</sup> *State ex rel. Gallet v. Clearwater Timber Co.*, and cases cited, *supra* n. 11.

<sup>23</sup> Judge Hatcher's dissent in *Canoy v. State Compensation Commissioner*, 170 S. E. 184 (W. Va. 1933).

<sup>24</sup> *Canoy v. State Compensation Commissioner*, *supra* n. 13; *Cudahy Packing Co. v. Parramore*, *supra* n. 11; *Barnett v. Britling Cafeteria Co.*, 225 Ala. 462, 143 So. 813 (1932); *Kent v. Virginia-Carolina Chem. Co.*, *supra* n. 6.

<sup>25</sup> *Singer Manufacturing Co. v. Rahn*, 132 U. S. 518, 10 S. Ct. 175 (1889) (A master is liable to third persons injured by an act of his servant which is incidental to the employment.).