the right of recovery being in one case affirmed, although the servant had left the horse in order to accomplish a purpose entirely personal;[5] where the driver of a truck left it in the street at night, instead of complying with the directions he had

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See *Healy* v. *Johnson* (1905): Iowa.) 103 N.W. 92. The fact that the master had provided the servant with the means of securing the horse, and that the running was the result of the servant's having disobeyed the master's instructions to use those means, was held to be no defense to the action.

[5] *Hayes* v. *Wilkins* (1907) (194 Mass. 223) 80 N.E. 449. Discussing the facts, the court said: "He was on the way to the defendant's stable, after having completed the regular work for the day by delivering some merchandise at a freight house. While the route that he took was not the shortest, it was but little longer than the other, and the jury might have found that he chose it because the other was blocked by teams, and that therefore he was within the scope of his employment up to the time when he left the horse. He went into a pool room to get some tobacco, and this movement, treated as an independent act, was not for the master's benefit, nor within the scope of his employment as a servant. But his custody of the horse, up to the time that he left him, was in the performance of the defendant's business, and any negligence in for the consequences of which the defendant is liable. While he had the horse in custody for his master, and was charged with the duty of continuing this custody as a servant, he negligently omitted to continue it, and as a consequence the horse ran away. His purpose on going into the pool room is immaterial. His negligence occurred while he was directly engaged in his master's business, by the mere omission of that which he should have done in the business. If the attempt were to charge the master for negligence in the performance of the act of going to buy tobacco, the case would be different. If the driver had carelessly injured property in the pool room the defendant would not be liable, because his going into the pool room, considered as a positive act, was not within the scope of his employment. But the omission and failure to continue the proper custody of his horse when he had him in custody for the master, was an omission to perform his duty as a servant while he was acting for his master. This omission, quite apart from the purpose which accompanied it, was a direct and proximate cause of the plaintiff's injury. The case is different from *McCarthy* v. *Timmins*, 178 Mass. 378. 59 N.E. 1038, 86 Am. St. Rep. 490, (see § 6, note 1, post), in which the driver, for his own purposes, had driven the team away from the streets on which he should have driven it for his master, and had ceased to act within the scope of his employment before the negligent omission that caused the accident."