with his whip, thereby causing them to move forward and overturn the plaintiff's carriage;[3] where the master's horses were left unfastened and unattended on a public road and ran away;[4]

and unattended in the highway, see *Page* v. *Hodge* (1885) 63 N.H. 610, 4 Atl. 805.

[3] *Croft* v. *Alison* (1821) 4 B. & Ald. 590. At the trial, it was left to the jury to determine, whether the carriages had become entangled from the moving of the horses of the plaintiffs, which, previously to the accident, were standing still and without a driver, and the judge directed them to find for the defendant, in case they thought so, and were of opinion that the whipping by the defendant's coachman was for the purpose of extricating himself from that situation. But he directed them to find for the plaintiffs, in case they were of opinion, that the entangling arose originally from the fault of the defendant's coachman. The jury found a verdict for the plaintiffs. A motion for a new trial having been made, the court laid down the law as follows: "The distinction is this; if a servant driving a carriage, in order to effect some purpose of his own, wantonly strikes the horses of another person, and produce the accident, the master will not be liable. But if, in order to perform his master's orders, he strikes, but injudiciously, and in order to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment. The case, therefore, has been properly left to the jury."

[4] *Pierce* v. *Conners* (1894) 20 Colo. 178, 37 Pac. 721.

See also the following cases in which the master was held liable in spite of a deviation by the servant: *Whatman* v. *Pearson* (1868) L.R. 3 C.P. 422, 37 L.J.C.P. 156, 18 L.T.N.S. 290, 16 Week. Rep. 649; *Ritchie* v. *Waller* (1893) 63 Conn. 155, 27 L.R.A. 361, 38 Am. St. Rep. 361, 28 Atl. 29; *Loomis* v. *Hollister* (1903) 75 Conn. 718, 55 Atl. 561; *Williams* v. *Koehler* (1899) 41 App. Div. 426.

In an action for injuries caused by a runaway team, evidence of a servant's long-continued and notorious habit of leaving his horse unhitched in the street was held to be admissible, as tending to shew that it was done with the master's knowledge and permission, and also that it was done within the scope of his employment. *Schulte* v. *Holliday* (1884) 54 Mich. 73. It is apprehended, however, that such evidence was wholly superfluous under the given circumstances, as, even apart from it, the driver might have been properly found to have been acting within the scope of his employment.

If the servant's omission in this respect constituted a breach of a duty imposed by a statute or a municipal ordinance, the master's liability will, under the doctrine accepted in most jurisdictions with regard to defaults of that description, will be inferred, as a matter of law.