

that he was not liable. The judge in giving his decision said: "It may be that it would be wise in the public interest that the responsibility for an accident caused by an automobile should be affixed to the owner irrespective of the person driving it, but the law does not so provide." A very able dissenting judgment was delivered, in which it was said that: "To my mind the element of consent to the use of the instrumentality is important and controlling in the present case. It had been the habit of the defendant to allow his chauffeur to use the automobile to go to his meals, presumably to save time and expense. On the night in question the chauffeur had taken the defendant to his apartments. It was a part of his remaining duty to take the machine to the garage, for it could not be left in the street or kept in an apartment house. The chauffeur requested permission to deviate from the direct route to the garage to go uptown on some business for himself. The defendant told him that he might do that, 'but to hurry back, only be gone a short while; come right back.' The testimony of the chauffeur is to the same effect, but a little more specific in that he says the defendant told him to be careful, and if anything happened to be sure and notify the defendant at once. The chauffeur was still in the pay of the defendant, and his duty was to properly care for the machine and to properly house it for the night. Even while he was gone on business of his own this duty remained with him, and he was being paid for the performance of that duty by the defendant. It does not seem to me that the chauffeur was emancipated during the trip, notwithstanding it was for his own pleasure. I concede that if the chauffeur had taken the machine without the consent of the master and contrary to his orders his act would then have been entirely outside the scope of his employment.

"I appreciate that the case is on the border line, but it seems to me that the chauffeur was engaged in the business of the master; and deviated from the direct course to house the machine by the master's express consent, and that therefore the relation of master and servant still continued, and that the court was justified in refusing to charge as requested, or, under the proofs,