

ter and servant is presumed to be temporarily suspended from moment that the deviation is commenced, and the object of the

to E. Square; and, on his way back, ran over and injured the plaintiff and his wife. *Held*, that the defendants were not responsible for the consequences of the unauthorized act of the carman. Jervis, C.J., said: "I think, at all events, if the master is liable where the servant has deviated, it must be where the deviation occurs in a journey on which the servant has originally started on his master's business; in other words, he must be in the employ of his master at the time of committing the grievance." Maule, J., said: "At the time of the accident, he was not going a roundabout way to the stable, or, as one of the cases expresses it, making a detour. He was not engaged in the business of his employers. But, in violation of his duty, so far from doing what he was employed to do, he did something totally inconsistent with his duty, a thing having no connection whatever with employer's service. The servant only is liable, and not the employers. All the cases are reconcilable with that. The master is liable even though the servant, in the performance of his duty, is guilty of a deviation or a failure to perform it in the strictest and most convenient manner. But, where the servant, instead of doing that which he is employed to do, does something which he is not employed to do at all, the master cannot be said to do it by his servant, and therefore is not responsible for the negligence of the servant in doing it." Creswell, J., said: "No doubt, if a servant, in executing the orders, express or implied, of his master, does it in a negligent, improper, and roundabout manner, the master may be liable. But, here, the man was doing something which he knew to be contrary to his duty, and a violation of the trust reposed in him. The expression used by him at the time he started upon the unauthorized journey, showed that he was aware that he was doing that which was inconsistent with his duty. I think it would be a great hardship upon the employers to hold them to be responsible under such circumstances."

This case was followed in *Sheridan v. Charlack* 1872) 4 Daly. (N.Y.) 338, where the facts were quite similar.

In *Storey v. Ashton* (1869) L.R. 4 Q.B. 476, 10 B. & S. 337, 38 L.J. Q.B. 223, 17 Week. Rep. 727, a wine merchant sent his clerk with his horse and cart under the care of his carman to deliver wine and bring back empty bottles. On their return, when within a quarter of a mile from his master's stable, the carman, at the request of the clerk and for his business, drove the horse and cart in another direction, and when two miles from the stable injured a person by negligent driving. *Held*, that the master was not liable, as the act of the servant was not done in the course of his employment, but on a new and an independent journey. Cockburn, C.J., said: "The true rule is that the master is only responsible so long as the servant can be said to be doing the act, in the doing of which he is guilty of negligence, in the course of his employment as servant. *I am very*