

position thus taken is that the quality of the deviation is "always

delivering a parcel of his own, and, while making that detour, drove over the plaintiff. Erskine, J., thus directed the jury: "It is quite clear, that, if a servant, without his master's knowledge, takes his master's carriage out of the coach-house, and with it commits an injury, the master is not answerable; and on this ground, that the master has not intrusted the servant with the carriage. But, whenever the master has intrusted the servant with the control of the carriage, it is no answer that the servant acted improperly in the management of it. If it were, it might be contended, that, if the master directs his servant to drive slowly, and servant disobeys his orders, and drives fast, and through his negligence occasions injury, the master will not be liable. But that is not the law; the master in such a case will be liable; and the ground is, that he has put it in the servant's power to mismanage the carriage, by intrusting him with it. And in this case I am of opinion that the servant was acting in the course of his employment, and till he had deposited the carriage in the Red Lion stables, in Castle Street, Leicester Square, the defendant was liable for any injury which might be committed through his negligence." (As reported in 9 C. & P. 607.)

This statement of the law has approved in the following cases, among others; *Mitchell v. Crassweller* (1853) 13 C.B. 237; *Phil. & Read. R.R. Co. v. Derby* (1852) 14 How. U.S. 486; *Quinn v. Pover* (1882) 87 N.Y. 535. But in *Storey v. Ashton* (1869) L.R. 4 Q.B. 476, (note 1, supra) the judges declined to adopt the unqualified proposition of Erskine, J., that, "whenever the servant has entrusted the servant with the control of the carriage, it is no answer that the servant acted improperly in the management of it." It was considered that this proposition held good only in respect of acts done in the course of the servant's employment. This criticism was clearly well founded. But, with all deference, it may be suggested that the circumstance of the learned judge's having wrongly explained the rationale of a master's liability for the negligence of a driver, does not entirely nullify the value of his ruling as a precedent. The essence of that ruling was simply, that the driver was to be regarded as being engaged in the appointed duty until the horses should have been lodged in the stables, and that his master could not escape liability on the mere ground of his having not having performed that duty in the manner prescribed. This is one possible view regarding the legal effect of such circumstances as those under consideration, and its adoption does not necessarily involve, or depend upon the acceptance of the erroneous notion which was disapproved.

In *Whatman v. Pearson* (1868) 37 L.J.C.P. 156. L.R. 3 C.P. 422, 18 L.T.N.S. 290, 16 Week. Rep. 649. the defendant, a contractor under a district board, was engaged in constructing a sewer, and employed men with horses and carts. The men so employed were allowed an hour for dinner, but were not permitted to go home to dine or leave their horses and carts. One of the men went home about a quarter of a mile out of the direct line