function of the tortfeasor under the terms of his contract, and that, at the time when the injury was inflicted, he was using it at a place to which he was authorized to take it, his negligence will or will not be imputable to his master, according as the particular act from which the injury resulted was one which was incidental to his appointed work, or one which was done with a view to the attainment of some personal advantage or to the gratification of some personal desire or feeling.

For cases illustrating this rule see the following notes.

In the Nisi Prius case, *Lamb* v. *Palk* (1840) 9 C. & P. 629 (E.C.L.R. vol. 38), a van was standing at the door of A., from which A.'s goods were unloading, and A.'s gig was standing behind the van: B.'s coachman, who was driving B.'s carriage, came up, and, as there was not room for the carriage to pass, the coachman got off his box, and laid hold of the van horse's head: this caused the van to move, with the result that a packing-case fell out of the van upon the shafts of the gig, and broke them. It was ruled by Gurney, B., after consultation with some other members of the Court of Exchequer, that B. was not liable for this, as the coachman was not acting in the employ of B. at the time the accident occurred. In *Page* v. *Defries* (1866), 7B. & S. 137, the court without giving any specific reason overruled this decision.

In *Schaefer* v. *Osterbrink* (1886) 67 Wis. 495. it was held to be competent for the plaintiff to prove that, prior to the accident, the tortfeasor had been in the habit of driving his team to church and elsewhere, and also to show the extent and character of the driving, as bearing upon the nature of his service and the scope of his authority.

In *Collard* v. *Beach* (1903) 81 App. Div. 582, 81 N.Y. Supp. 619, where the plaintiff's horse was frightened by the management of an automobile owned by the defendant, it appeared that immediately before the accident the defendant, accompanied by his son and his coachman, had gone to the railway station in the automobile and had there left it; that, at the time when the accident occurred, the defendant's son and coachman were occupying it; and that the son was guiding and controlling it. It was a disputed question whether the defendant on leaving the machine had committed the custody thereof to his son or to his coachman. *Held*, that the following instruction was a proper one: "If the jury find either that the defendant left the automobile in charge of his son to take it home, or in charge of his son and coachman together to take it home, or in charge of the coachman alone, and the coachman neglected his duty in that regard and allowed the son to run the machine, and by the negligence of the son the accident occurred, without contributory negligence on the plaintiff's part, then in either case the defendant is responsible.

In *Louisville Water Co.* v. *Phillips* (1905) 89 S.W. 700, 28 Ky. L. Rep. 557 (No. off. rep.) defendant merely attempted to disprove the contention