4. Injury inflicted on a journey undertaken in the course of the servant's duties, and prosecuted without any deviation.—Where it appears that the vehicle or horse which caused the injury in question was owned by the defendant, that its management was a

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accomplishing it? Was this act done for the purpose, or as a means, of doing what Frank was employed to do? If not, then in respect to that act he was not in the course of the defendants' business. An act done by a servant while engaged in his master's work, but not done as a means or for the purpose of performing that work, is not to be deemed the act of the master. And under this rule, in view of the testimony, the defendants were not responsible for the consequences of Frank's invitation to the plaintiff to ride upon the colt.

In *Driscoll* v. *Scanlon* (1896) 165 Mass. 348, 43 N.E. 100, it was held that the driver of a dump cart was not within the scope of his employment in inviting a boy nine years old to ride upon the cart, either for pleasure or to drive his horse, so as to make his employer liable for injuries to the boy by falling off and being run over while the driver was asleep. The court said: "It was argued that we might look only to the later moment when the plaintiff was under the wheels, that it did not matter how he got there, and that the defendant was liable for running over the plaintiff, if he would have been in case his cart had run over a third person when his driver was asleep. But it does make all the difference in the world how the plaintiff got under the wheels. The defendant was not bound to expect or look out for people falling from his cart, where they had no business to be, and persons who got into it took the risk of what might happen as against him. The driver's slumber was so intimately connected with the unauthorized act that it is impossible to separate the two. The driver would not have been asleep and the plaintiff would not have fallen but for the driver's unauthorized act, and if the plaintiff had not been driving. The plaintiff does not stand in the same position as if he had been run over when crossing the road."

In *Marquis* v. *Robidoux* (1900) Rap. Jud. Que. 19 C.S. 361, a boy, 10 years old, after having been ejected, with other boys, from defendant's delivery wagon, secretly re-entered the wagon without the driver's knowledge, and, after having been observed by him, had been tacitly permitted to remain because he was unwilling to leave him in the public road far from his father's home. The boy was injured by a collision between the wagon and a railroad train without any negligence on the part of the driver. *Held*, that the defendant was not liable for this injury as the driver was not within the scope of his duties in permitting the boy to remain in the wagon.

For other cases of a similar type in which the master's liability was denied, see *Schulwitz* v. *Delta Lumber Co.* (1901) 126 Mich. 559, 85 N.W. 1075; *Mahler* v. *Stott* (1902) 129 Mich. 614, 89 N.W. 340; *Foster-Herbert Cut Stone Co.* v. *Pugh* (1906), 91 S.W. 199, 115 Tenn. 688.