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TORTS- MASTER AND SERVANT- DUTY NOT TO EXPOSE THINLY-CLAD SERVANT TO THE ELEMENTS

TORTS — MASTER AND SERVANT — DUTY NOT TO EXPOSE THINLY-CLAD SERVANT TO THE ELEMENTS — The plaintiff, a 15-year-old boy, was employed by the manager of the defendant's store in delivering merchandise and in peddling bills. One cold day the manager asked the plaintiff to accompany him in the truck and deliver orders. Despite the boy's objection that it was "too stormy," the manager told him that he must go, that he would not have time to go home after warmer clothing, that he would be gone but a short time, and that "he would be all right." As a result of this trip, the plaintiff became seriously ill and now sues for damages on the ground of negligence. *Held*, the plaintiff can recover. *La Pointe v. Chevrette*, 264 Mich. 482, 250 N. W. 272 (1933).

Owing to the fact that workmen's compensation acts[1] have been adopted by substantially all of the States, there are very few recent cases which discuss the duty that a master owes to his servant to protect him from injury. The instant case was tried on the theory that the parties were in no way affected by the workmen's compensation law, since the boy was paid no regular wages and his employment was only casual.[2] The general rule seems to be that he who engages in the employment of another takes upon himself the natural and ordinary risks and perils incident to the performance of the services.[3] It has been held that a master has no duty to protect his servants from the elements[4] or to provide food

[1] For the Michigan Workmen's Compensation Act, see MICH. COMP. LAWS (1929), sec. 8407.

[2] See Hartman v. Village of St. Clair Shores, 246 Mich. 603, 225 N. W. 493 (1929).

[3] Hough v. Ry., 100 U. S. 213 (1879); Farwell v. Boston and Worcester R. R., 4 Metc. (Mass.) 49 (1842).

But there are some well-defined exceptions, one of them being that an employer is under the duty of providing a reasonably safe place to work and reasonably safe appliances. Gillette v. Grand Trunk Western Ry., 192 Mich. 113, 158 N. W. 111 (1916); Leopard v. Beaver Duck Mills, 117 S. C. 122, 108 S. E. 190 (1921); Warner v. Pittsburgh-Idaho Co., 38 Idaho 254, 220 Pac. 492 (1923).

[4] King v. Interstate Consolidated Street Ry., 23 R. I. 583, 51 Atl. 301, 70 L. R. A. 924 (1902); Yazoo City Transportation Co. v. Smith, 78 Miss. 140, 28 So. 807 (1900). See Louisville and Nashville R. R. v. Williams, 165 Ky. 386, 176 S. W. 1186, L. R. A. 1915E 613 (1915), to the effect that the master is under no duty to prevent his servant from becoming overheated at his work resulting from atmospheric or weather conditions.

However, some courts seem to feel that a master has a duty to see that the servants are protected from the elements in the place where the work assigned must be

and shelter for them, unless there is a custom[5] or an understanding[6] to the contrary. However, a master by his conduct toward his servant may assume a duty where none existed before.[7] Some courts in following this rule have said that by assurances of safety to the servant, the master assumes the duty of protecting him in the manner assured.[8] It has been held that there is no difference between assurances against danger from the defects in machinery, where courts almost universally admit that the master is liable if he does not provide against the danger,[9] and assurances against danger from being extraordinarily exposed to the rigors of bad weather.[10] Since in the instant case after the boy protested about being sent out into the storm dressed as he was the master assured him that he would be all right, it would seem that the master assumed the duty of providing against the danger.[11] The court considered the age of the boy and his tendency to defer to the judgment of his superior as another factor in determining negligence.[12] In this regard, it may be said that the mere fact of minority does not necessarily impose on the master any greater degree of care in respect to the minor than would be the case if the servant had attained full age, but the duty of persons who employ minors to take notice of their lack of judgment must be taken into consideration in determining whether due care has been exercised.[13] Despite the liberalizing effect that the workmen's compensation acts are supposed to have, the Michigan court, contrary to some decisions in other States,[14] has held that a servant under the statute cannot recover at common law for injuries from exposure to the elements.[15] Does the principal case indicate that perhaps

done. Reames v. Jones Dry Goods Co., 99 Mo. App. 396, 73 S. W. 935 (1903). Also see Gulf and Ship Island R. R. v. Bryant, 147 Miss. 421, 111 So. 451, 52 A. L. R. 901 (1927).

[5] Lemos v. Madden, 28 Wyo. 1, 200 Pac. 791 (1921).

[6] Clifford v. Denver, S. P. and P. Ry., 9 Colo. 333, 12 Pac. 219 (1886). See also Schumaker v. St. Paul and D. Ry., 46 Minn. 39, 48 N. W. 559, 12 L. R. A. 257 (1891).

[7] Bresnaban v. Lonsdale Co., (R. I. 1900) 51 Atl. 624. See 3 COOLEY ON TORTS, 4th ed., sec. 478 (1932), where, at page 366, it is said, "The voluntary assumption of an undertaking which is not imposed as a duty . . . does render the one who undertakes it liable for an injury which results from an improper performance of it." 3 COOLEY ON TORTS, 4th ed., sec. 478 (1932).

[8] In this connection compare King v. Interstate Consol. St. Ry., 23 R. I. 583, 51 Atl. 301 (1902), with Carll v. Interstate Consol. St. Ry., 23 R. I. 592, 51 Atl. 305 (1902).

[9] See 4 LABATT, MASTER AND SERVANT, 2d ed., c. 57 (1913).

[10] Hyatt v. Hannibal and St. Joseph R. R., 19 Mo. App. 287 (1885).

[11] On duty of a master to furnish protection to servant whose work requires exposure to cold, see 70 L. R. A. 924 (1906) and 52 A. L. R. 904 (1928).

[12] See Belmer v. Boyne City Tanning Co., 160 Mich. 669, 125 N. W. 726 (1910).

[13] On this subject see 3 LABATT, MASTER AND SERVANT, 2d ed., secs. 912 and 913 (1913); 39 C. J. 283 (1925).

[14] See 13 A. L. R. 974 (1921); 16 A. L. R. 1038 (1922); 25 A. L. R. 146 (1923); 46 A. L. R. 1218 (1926); L. R. A. 1918F 936.

[15] Klawinski v. Lake Shore and Michigan Southern Ry., 185 Mich. 643, 152 N. W. 213, L. R. A. 1916A 342 (1915) (lightning); Savage v. City of Pontiac, 214 Mich. 626, 183 N. W. 798 (1921) (exposure to cold); Hagrove v. Arnold Construction Co., 229 Mich. 678, 202 N. W. 918, 40 A. L. R. 398 (1925) (exposure to

the court in the near future will adopt a more liberal view in cases under the compensation act and allow a man injured by the elements to recover?

J. W. C.

cold); Mauch v. Bennett and Brown Lumber Co., 235 Mich. 496, 209 N. W. 586 (1926).