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Liability of Corporations for the Torts of Their Agents

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LIABILITY OF CORPORATIONS FOR THE TORTS OF ~~THE~~^{THEIR} AGENTS.

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THESIS PRESENTED FOR THE DEGREE OF BACHELOR OF LAWS

BY

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SCHOOL OF LAW.

1896.

LIABILITY OF CORPORATIONS FOR THE TORTS OF ^{THEIR} ~~THE~~ AGENTS.

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CHAPTER I.

MASTER AND SERVANT.

A master is responsible for the wrongful act of a servant even if it be willful, or reckless, or malicious provided the act is done by the servant within the scope of his employment, and in the furtherance of his master's business, or for his master's benefit. But if the servant, at the time he does the wrong is not acting in the execution of his master's business and within the scope of his employment as a servant but is carrying into effect some exclusive object of his own, the master will not be answerable for his act. Thus it is said in Noys Maxims "If I command my servant to destrain and he ride on the distress he shall be punished and not I" so "If my servant contrary to my will chase my beast into the soil of another, I shall not be punished and if my servant without my knowledge put my beast in anothers land my servant is the trespasser and not I because by the voluntary putting of the beast there without my assent he gains a special property right in them for the time and so to this purpose they are his beasts."

But where the servant though acting contrary to his duty

to his master is nevertheless acting in the course of his employment the master will be answerable for his misconduct. Thus in *Seymour v Greenwood*, 6 H. & N. 359, where a partially intoxicated passenger in an omnibus refused to get out and pay his fare when the omnibus arrived at its destination, and the conductor dragged him out violently and recklessly causing him to fall under the wheel of a passing cab, it was held that there was evidence for the jury of the wrongful act having been done by the servant in the course of his employment about the master's business, and the omnibus owner was made responsible for the injury.

In applying this rule to a corporation it is of course necessary to take into consideration its character and organization, the scope of the authority of the agent who has committed the tort, and the character of the business for which he is employed must likewise be taken into consideration.

CHAPTER II.

GENERAL LIABILITY FOR TORTS OF AGENTS AND SERVANTS.

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The general rule is that corporations are liable for torts of all descriptions committed by themselves or by their duly authorized agents in the course of their duty and with their authority and not involving intention on the part of the wrongdoer.

Corporations are not created, it is no part of their business to commit torts nevertheless courts of law have decided that they must be held liable for the torts committed by their agents and servants acting within the scope of their authority upon the same principle and by precisely analogous reasoning as they have been made responsible for fraud. Thus an action for trespass to the person or for trespass to the property in any of the numerous ways in which this is done, trover will lie against the corporation as against an individual. The agent of the corporation must of course be acting within his authority and upon this point difficult questions arise as to first, where the agent can be deemed to have acted as such so as to bind his principal and secondly, as to the extent of his authority and more especially his implied authority.

The general proposition may be laid down that corporations are liable for torts committed by their agents about the corporate enterprise, if acting in the usual manner of carrying out their duty even though acting contrary to particular and specific instructions.

In the case of Philadelphia & Reading R. R. Co., v Derby, 14 Howard 468, the plaintiff brought action against the railroad company for injuries received in a collision. The railroad company set up as a defense that the engineer having control of the colliding locomotive was forbidden to run on the track at that time and had acted in disobedience to such order, and that they were not liable for his acts. The court held, that this was no defense, that a master is liable for the tortious acts of his servant when done in the course of his employment, although they may be done in disobedience of the master's orders.

This proposition holds good as a general statement but is subject to certain limitations. First, the agent must have general authority founded on the ordinary mode or custom of performing his duty; secondly, he must have acted with bona fides and believing and intending that he was carrying out his duty as agent; and thirdly, the special instruction must be

really so definite and pointing to particular matters, and not amount to a general limitation of authority.

In *Betts v De Vintre*, L. R. 3 Ch. 429, 441, it was decided that it was no answer to a suit against the directors of a company for infringement of a patent to allege that the acts were done by workmen employed by the directors contrary to their orders. The judge in delivering the opinion said "I will assume that the orders not to work in a particular manner were given, and that the disobedience of those orders was secret, although the evidence hardly warrants such a conclusion, but granting all this to be the case I shall still hold the directors liable."

Likewise in the case of *Bayley v Manchester etc. R.R.Co.*, L. R. 8 C. P. 148, the plaintiff a passenger on the defendant's railroad sustained injuries by being violently pulled out of the car after the train had started by one of the defendant's porters who acted under the impression that the plaintiff was a trespasser. On the trial it was shown that each porter was furnished with a set of rules which stated that under no circumstances was a passenger to be permitted to leave a car while the train was in motion. And the defendant claimed the porter was outside his employment, but the court held that al-

though he had neglected his directions nevertheless he was in the scope of his employment and the defendant was liable.

CHAPTER III.

LIABILITY FOR THE WILFUL AND MALICIOUS TORTS
OF AGENTS AND SERVANTS.

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In regard to the ultra vires acts committed by agents, the English rule differs from the generally accepted American doctrine.

The English rule as generally understood is an agent has no implied authority to commit , and cannot on that ground merely, bind his principal, a corporation, by committing an ultra vires tort. But semble, if a corporation expressly directs an ultra vires tort or proceedings necessarily causing such a tort, it is liable therefor.

In England at present this question remains without precise decision. It was discussed in *Herman v Tappenden*, 1 East 555 and *Maund v Monmouthshire, etc. Canal Co.*, 2 Dowl. (N.S.) 113. But neither of these cases involve exactly the point in question. In *Mill v Hawker*, L. R. 9 Ex. 309, the point arose on argument though not an actual decision and in the strong dissenting opinion by Kelly, C. B.

The American doctrine is that a corporation is liable for the wilful torts of its agents when committed in the appar-

ent scope of their corporate powers, some text writers say in the apparent scope of their employment.

Liability for the Acts of Ministerial Agents.

General Superintendent. The general superintendent is the immediate representative of the company and the company is liable for an injury resulting from his negligence in giving an improper order the same as if such order had emanated directly from the corporation. Washbourn v Nashville etc. R.R. 3 Head. 638.

Directors and Managers. A corporation may be said to be liable for the acts of the directors and managers when acting in the discharge of their official duties and within the scope of their authority as managers of the company. In the case of Catchpole v Amborgate etc. R.R.Co., 1 Ell. & Bl. 120, where the plaintiff set forth that he was entitled to certain "ear marked shares" in a railroad company that these shares had wrongfully been declared forfeited, that the forfeiture had been confirmed at a general meeting of the shareholders of the company and the shares directed to be sold, it was held that there was a good cause of action against the company. So, where the directors had been guilty of a wrongful act of omission in not registering the plaintiff's name in their books whereby the plaintiff was deprived of the ordinary privileges

of a shareholder and of any profits that might have arisen upon the shares, it was held that the company was responsible for the wrongful acts of the directors.

But where the directors have acted beyond the scope of their authority the company is not responsible for their acts, but the directors themselves are the parties to be made personally responsible in damages; thus, where the directors have signed false and fraudulent reports of the state and circumstances of the company such directors and not the company are the proper parties to be sued for damages resulting from the misrepresentation. No body of shareholders can authorize the directors to put forward fraudulent representations and false accounts of transactions of the company so as to render the company at large responsible for the fraud. That is a course which no body of shareholders could sanction against a single dissenting or a single absent shareholder. In *Davidson v Tulloch*, 3 Macq. 783, where false reports of the actual condition and circumstances of a joint stock company were knowingly and designedly printed and circulated by the defendants and others in concert with them with their signatures appended, and the plaintiff relying upon the representations contained in those reports of the flourishing state of the concern, bought shares

in it and lost his money and encouraged serious liability, it was held that he was entitled to maintain an action for damages against the defendant.

Liability for Torts of General Agents and Servants.

As a general rule a corporation is liable for any wrongful or negligent acts, or omission on the part of any of its servants or agents which causes a violation of any duty or obligation owed by the corporation to the injured person; and this is true whether the corporation owes to the injured person special duties arising from contract, so that the tort occasions a breach of contract, or whether it be a duty owed to the injured person merely as a member of the community, a duty mainly based upon the maxim "Sic utere tuo ut alienum non laedas".

First what is the liability of a corporation for their breach of duty arising out of contractual relations? This has mainly to do with common carriers. The general rule is that the rule relieving a master from liability for a malicious injury inflicted by his servant when not acting within the scope of his employment does not apply as between a common carrier of passengers and a passenger. Such a carrier undertakes to protect the passengers against any injury arising from the negligence or wilful misconduct of its servants while engaged in per-

forming a duty which the carrier owes to the passenger.

In *Stewart v Brooklyn C. T. R. R.*, 90 N. Y. 588, defendant was a railroad corporation owning and operating a street railroad in the city of Brooklyn. The plaintiff was a passenger on defendant's horse car having no conductor, the driver being the only person in charge of the car acting both as driver and conductor. While the plaintiff was on the car a newsboy jumped on it and was ordered off by the driver; the boy got off, the driver stopped his car, tied the reins around the brake handle, climbed over the front dashboard, ran after the boy, caught him, and beat him. The passengers interfered to protect the boy. Afterwards the driver returned to the car and started it, but, being excited began to abuse the passengers calling them bastards etc. and finally entered the car, seized the plaintiff by the coat, pushed and knocked his head against the panels of the window at the same time striking him across the head with the butt end of his whip thus beating the plaintiff severely. The court held that although it was clearly outside the scope of his employment and not for the master's benefit, nevertheless the master was liable as he owed the duty to protect his passengers from all injuries during their stay in his cars.

In *Higgins v Watervliet Turnpike Co.*, 46 N. Y. 23, the plaintiff was a passenger in defendant's horse car. He had paid his fare and was forcibly thrown from the car by defendant's conductor and driver who claimed that he was drunk and disorderly. Held, that the company was liable. So, also, where there was justifiable cause for ejection but excessive force was used. This case lays down the rule, a master is responsible civiliter for the wrongful acts of his servant if such acts were committed in the business of the master and within the scope of the servant's employment and this though in doing it he departed from the instructions of the master.

Now in regard to the liability of the corporation where it owes no special duty, except the duty it owes to the whole world, "*Sic utere tuo ut alienum non laedas*". It may be said that the corporation will be held liable for all injuries and losses occasioned to any one by the negligence of its employees in any matter connected with their employment.

In *Palmeri v The M. R. Co.*, 133 N. Y. 261, plaintiff purchased a ticket of one of the defendant's agents and after some altercation about the amount of change, passed through the gate to take a train. The agent followed her out upon the platform charging her with having passed upon him a counterfeit

twenty-five cent piece and demanded another in its place. She refused, insisting that her money was genuine and refused to give back the change received. The agent called her a counterfeiter and a common prostitute, placed his hand upon her and told her not to stir until he had procured a policeman to arrest and search her. He detained her on the platform for a while but on getting an officer let her go. Held, that an action for damages was maintainable, that in the acts complained of the agent was engaged about the defendant's affairs endeavoring to recover and protect its property and so it was responsible for his acts.

In the case of Cohen v The D. D. E. B. and B. R.R.Co., 69 N. Y. 170, plaintiff while travelling in a buggy along a street in the city of New York was stopped by a blockade of vehicles just as he had crossed defendant's tracks. The rear of his buggy was so near the tracks that a car could not pass without hitting it. A car came up, the driver of which after waiting a moment or two ordered the plaintiff to "get off the track". Plaintiff was unable to move either way and so notified the driver who replied with an oath that he was late and if the plaintiff did not get off he would put him off and immediately thereafter drove on, striking and upsetting the defendant's

buggy and injuring him. In an action to recover damages, it was held, that a master who puts the servant in a place of trust or commits to him the management of his business or care of his property is justly held responsible when the servant through lack of judgment or discretion or from infirmity of temper or under the influence of passion aroused by the circumstances and occasion goes beyond the strict line of duty or authority and inflicts an unjustifiable injury upon another.

Wade v Thayer, 40 Cal. 578.

Drew v Sixth Ave. R. R. Co., 26 N. Y. 49

Weed v Panama R. R. Co., 17 N. Y. 363.

Sanford v Eighth Ave. R. R. Co., 23 N. Y. 343.

Goddard v G. T. R. R. 57 Me. 202.

A corporation is held liable where the act done was in the apparent scope of the agent's authority even though his employment was for an entirely different object.

In Flick v C. & N. R. Co., 68 Wis. 469, a ticket agent left another employee in charge of the ticket office who failed to return the proper change and upon being asked therefor by the purchaser assaulted and struck the latter. The court held in this case that even though this employee had no authority from the company to sell tickets and that the railroad company

was liable.

As to when the corporation is not to be held liable for the torts of its agents and servants, it may be said that a corporation is not liable for the acts of its servants and agents when they act wholly without the scope of their employment.

In *Central R. R. v Peacock*, 69 Md. 257, plaintiff was a passenger of defendant's street car to whom the the driver who was also conductor used profane and insulting language. The plaintiff replied "When we get to the office of the company I will report you", the office being at the stables where the cars stopped to change horses. Before reaching the stables where the car stopped to change horses the plaintiff got off intending as he said, to go to the office of the company and report the drives while the horses were being changed and then to resume his seat in the car but such intention was not communicated to the driver. The driver seeing the plaintiff going towards the office of the company, stopped the car and jumping off went across, intercepted the passenger on the sidewalk and violently assaulted him. In an action against the railroad company to recover damages it was held, that when the assault was committed the contract of carriage had ceased, that the

wrongful act of the driver was not within the line and scope of his employment and the railroad company, his employer was not liable.

In the *E. & C. R. R. Co. v Baum*, 26 Ind. 72, Frazer, J. in delivering the opinion of the court said, "A master is responsible ordinarily for the consequences resulting to others from the negligence or want of skill with which his employees do his business. This responsibility results from the duty he owes to others as a member of the community to employ careful and skilled servants to the end that his fellow men may not suffer by the negligence or ignorance with which the master's business is done. It is but a reasonable requirement easily fulfilled and the law in this respect requires merely the performance of that which the proper care of third persons would demand. But a wilful and malicious trespass of the servant not commanded or ratified by the master but evidently perpetrated to gratify the private hate or malignity of the servant under the mere color of discharging the duty which he had undertaken for his employer has been held by uniform and unbroken current of decisions ever since *Mc Manus v Cricket*, 1 East. 106, to give no right of action against the master.

A corporation is excused from liability for the torts of

its agents when the person injured brings the injury upon himself by his own act and through his own fault. In *Scott v Central Park &c. R. R. Co.*, 53 Hun 414, the action was brought to recover damages from the defendant for an assault committed upon the plaintiff by the driver of one of the cars of the defendant while plaintiff was a passenger thereon. The evidence upon the part of the defendant in this action showed that the plaintiff got upon the front part of one of the cars owned by defendant. Upon boarding the car, he commenced an altercation with the driver using language which was very abusive, insulting and liable to bring about a personal encounter which result followed to the detriment of the plaintiff. The court held that it was clear that the act of the driver was not in the course of his employment and that the defendant can only be held under the rule that as a passenger must submit himself to the custody of the employees of the carrier the carrier must be responsible for the acts of the employees that constitute a trespass against the passenger even though they be malicious and wilful. But the reason of such a rule has no application to a case where the trespass is brought about by the improper behavior of the passenger which caused the assault of which he complains. The duties of the carrier and the passenger are

reciprocal. The carrier is bound to protect the passenger and the passenger, in order to entitle himself to this protection, is bound to behave in a decent and orderly manner.

In the case of the *Little Miami R. R. v Whetmore*, 19 Oh. St. 110, the plaintiff after purchasing a ticket as a passenger applied to the agent of the defendant charged with the duty of checking baggage to have his baggage checked to his place of destination and by his importunate conduct and abusive language towards the servant provoked a quarrel in which the servant to gratify his personal resentment struck the plaintiff. Held, that the wrongful act in striking the plaintiff cannot be regarded as authorized by the master nor as an act done in the execution of the service for which he is engaged by the master. And the fact that the blow was inflicted with a hatchet furnished by the master to be used for a wholly different purpose in connection with the servant's business is immaterial as respects the liability of the master.

Steamboat Ohio v Stunt, 10 Ohio. St. 582, in effect holds that the master is not responsible for an assault by a servant with which assault the master was in no way connected.

Also in the case of *Steamboat Messenger v Preston*, 13 Oh. St. 255, the court in delivering its opinion said, "Where a ser-

vant goes outside of his employment and while not acting pursuant of the authority given him inflicts a wilful injury upon one not entrusted to his care by the master or on one to whom the master owes no duty the act will be that of the servant alone and the master cannot be held liable.

In regard to when the corporation is excused from liability for torts of agents, a clear statement is given by Judge Cooley in his work on "Torts" at page 535. He says, "The liability of the master for the intentional acts which constitute legal wrong can only arise when that which is done is within the real or apparent scope of the agent's authority and for the master's benefit. It does not arise when the servant has stepped aside from his employment to commit a tort which the master neither directed in fact nor could be supposed from the nature of his employment to have authorized or expected his servant to do." He illustrates "So if the conductor of a train of cars leaves his train to beat a personal enemy or from mere wantonness to inflict any injury, the difference between this case and that in which a passenger is ejected from the cars is obvious. The one is a trespass he has stepped aside to commit, the other is committed in the scope of his employment".

This statement of law by this eminent jurist seems to be

supported by direct decisions.

Crooker v New London R. R. , 24 Conn. 249.

Pittsburg &c. Pass. R.R.Co. v Donohue, 70 Pa. St. 119.

Wright v Wilcox, 19 Wend. 343.

Mott v Consumer's Ice Co., 73 N. Y. 543.

Chicago and Eastern R.R. v Flexman, 103 Ill. 546.

Isaacs v Third Ave. R. R. Co., 47 N. Y. 123.

Richmond Turnpike Co. v Vanderbilt., 1 Hill 480.

affirmed 2 Comst. 482.

Hibbard v Erie R. R. Co., 15 N. Y. 45.

Frazer v Freeman, 43 N. Y. 566.

Roe v Birkenhead, etc. R. R. Co., 7 Exch. 36.

Moore v Sanborn, 2 Mich. 519.

In conclusion we may say as a general test that where the liability of the corporation is not measured by contractual relations to the person injured the corporation is always liable for the wilful and malicious torts when committed within the scope or the apparent scope of the agent's authority about the master's business and for his benefit.

This test cannot be applied in the case of common carriers who hold the peculiar contractual relation with the outside world and their liability is very sweeping.

The corporation is not liable when the agent or servant acts wholly without his authority for his own personal interests and also in the case where the injured person brings on his injury through the result of his own wrongful act.

TABLE OF CASES.

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- Bayley v Manchester etc. R. R., L. R. 8 C. P. 148.
- Betts v De Vintre, L. R. 3 Ch. 429, 441.
- Catchpole v Amborgate etc. R. R. Co., 1 Ell. & Bl. 120
- Central R. R. v Peacock., 69 Md. 257.
- Chicago & Eastern R. R. v Flexman, 103 Ill. 546.
- Cohen v The D. D. E. B. & B. R. R. Co., 69 N. Y. 170.
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- E. & C. R. R. v Baum, 26 Ind. 72.
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