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# Master and Servant--Federal Employers' Liability Act--Duty of Employer to Provide Medical Service to Injured Employee (Szabo v. Pennsylvania R. Co., 40 A.2d 562 (N.J. 1945))

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he had no want of understanding at the time of his marriage."

Most authorities [10] agree that an idiot is incapable of any understanding from the time of birth. Thus it would necessarily follow that an annulment could be had under Section 7 of the Domestic Relations Law, where one of the parties to the marriage is an idiot. In the *De Nardo* case, Justice Thacher in his opinion, made the following statement, "Under this section [11] a marriage may be annulled because either party is incapable of consenting to a marriage for want of understanding, and such unsoundness of mind includes both lunacy and idiocy." Therefore all that is necessary in an action commenced under Section 7 of the Domestic Relations Law and Section 1136 of the Civil Practice Act [12] to annul a marriage because of the idiocy of one of the parties would be to establish said idiocy by testimony.

L. L.

MASTER AND SERVANT—FEDERAL EMPLOYERS' LIABILITY ACT —DUTY OF EMPLOYER TO PROVIDE MEDICAL SERVICE TO INJURED EMPLOYEE.—Plaintiff-appellant invoked the Federal Employers' Liability Act,[1] seeking to recover damages for the negligent death of her husband. The deceased was a laborer employed by the defendant. In the course of his work he was rendered helpless from heat prostration. While in such condition he was not afforded any medical attention by his employer, but the foreman of his crew directed two of his men to convey him to his home where he was left unaided and unattended. Death ensued, which, it was claimed, resulted from

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[10] Bicknell v. Spear, 38 Misc. 389, 391 (1902); 1 BL. COMM. 302-304, cited *supra* note 6.

[11] DOM. REL. LAW § 7, cited *supra* note 1.

[12] CIV. PRAC. ACT § 1136: Action to annul marriage where party was an idiot. An action to annul a marriage on the ground that one of the parties thereto was an idiot may be maintained at any time during the life time of either party by any relative of idiot who has an interest to avoid the marriage.

[1] 45 U. S. C. A. § 51 (1940) provides that "Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machines, tracks, roadbed, works, boats, wharves, or other equipment."

the failure to supply adequate medical care promptly. Plaintiff sought to impose liability on two counts. The gravaman of the first cause was the breach of the defendant's duty to provide medical care and assistance consonant with the decedent's condition, since he was powerless to provide for himself. The second count asserted the failure of the defendant to discharge its duty in a careful and prudent manner, after having undertaken to care for the decedent. Defendant, in seeking to avoid liability, maintained that it owed its employee no legal duty to provide any attention, and that whatever action was taken along those lines by its other employees, co-workers of the decedent, was not within the scope of their employment and not binding upon it. A judgment in favor of the plaintiff was reversed by the Supreme Court of the State of New Jersey.[2] Appeal was thereupon taken to the Court of Errors and Appeals. *Held,* judgment of Supreme Court reversed. *Szabo v. Pennsylvania R. Co.,* 132 N. J. L. 331, 40 A. (2d) 562 (1945).

The Federal Employers' Liability Act does not define the term "negligence". In cases arising under the statute, the courts, in interpreting the term, have therefore applied the common law definition.[3] The Court of Errors and Appeals, in the instant case, reaffirmed the general common law doctrine that ordinarily, an employer is under no obligation to provide medical care and treatment to an employee injured and rendered sick on the job, even though such disability resulted in the course of the employee's activities and was due to the negligence of the employer. This principle has been long rooted in the law and is supported by a long line of decisions. It was recognized in the case of *Koviacs v. Edison Portland Cement Company*[4] which arose in the State of New Jersey. The court there determined that in the absence of statute or contract no liability exists on the part of the employer to supply medical aid or other means of cure to an employee disabled in the performance of his duties. Such too, is the common law doctrine in the State of New York. In *Voorhees v. N. Y. Cent. & H. R. R. Co.,*[5] the Appellate Division of the State of New York, Fourth Department, in commenting on the above mentioned principle, stated that "The rule is a general one that the employer is not required to provide medical attendance for his employee, unless he has agreed so to do."

But this principle of law is not without an exception born out

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[2] 131 N. J. L. 238, 36 A. (2d) 8 (1944).

[3] Beamer v. Virginian Ry. Co., 181 Va. 650, 26 S. E. (2d) 43 (1943); Bailey, Adm. v. Central Vermont Railway, Inc., 319 U. S. 350, 63 Sup. Ct. 1062, 87 L. Ed. 1444 (1943).

[4] 3 N. J. Misc. 368, 128 Atl. 542 (1925).

[5] 129 App. Div. 780, 114 N. Y. Supp. 242 (4th Dep't 1909), *aff'd,* 198 N. Y. 558 mem., 92 N. E. 1105 mem. (1909).

of its severity. It offended our fundamental concepts of humanity and fair dealing. Its impact upon our code of moral conduct demanded that its rigidity be relaxed. Prompted by these compelling reasons, the courts have invaded the rule and have circumscribed its legal effect with an exception.[6] It is this exception which the court, in the case under review, invoked in aid of the plaintiff. It imposes upon a master the legal duty to provide medical aid to a servant stricken in the course of his work and rendered helpless to care for himself. Such liability exists whether or not the disability resulted from the negligence of the master. The duty is founded upon humane instincts. It arises out of strict necessity and expires when the emergency is over.

This was the first occasion for the application of the modification of the general rule by the courts of the State of New Jersey but support therefor can be found in cases arising in other jurisdictions, primarily, in some of the midwestern states. One of the earliest cases in support of the court's decision is *Terre Haute & I. R. Co. v. McMurray*.[7] There, a brakeman in the defendant's service crushed his foot between the wheel of the train on which he was employed and a rail of the track. The accident demanded immediate surgical attention. The conductor, the highest agent of the company then present, employed a surgeon. The court ruled that he had authority to bind the company by the employment of a physician because of the emergency since there was a duty owing by the company to provide such aid to the injured employee. Similarly, the court in the later case of *Carey v. Davis*[8] adopted this exception as the nucleus of its decision. The facts there closely resembled those of the instant case. The employee was prostrated by the heat and removed without any further aid or attention. The master was held liable for failure to provide medical aid for the injured servant helpless to care for himself.

The principle invading the general rule is limited in scope. It only becomes operative where the master knew or had reason to know of the condition of his servant. If the emergency arose in the presence of the employer or if knowledge can be imputed to him, the law imposes the duty to act. Knowledge of a superior employee is notice to the employer, sufficient to charge the latter with liability. The justice of the limitation is obvious and is sanctioned by legal authority.[9]

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[6] Hunicke v. Meramec Quarry Co., 262 Mo. 560, 172 S. W. 43, L. R. A. 1915C 789 (1914).

[7] 98 Ind. 358, 49 Am. Rep. 752 (1884).

[8] 190 Iowa 720, 180 N. W. 889, 12 A. L. R. 904 (1921).

[9] Ohio & M. Ry. Co. v. Early, 141 Ind. 73, 91, 40 N. E. 257, 28 L. R. A. 546 (1895); Shaw v. Chicago, M. & St. P. R. Co., 103 Minn. 8, 114 N. W. 85 (1907).

Whether complete disability existed and whether the condition was known to the employer are ultimate questions of fact to be decided by the jury under proper instructions from the court. In the case under review, there was sufficient evidence adduced at the trial to establish all the elements necessary to charge the employer with liability under the exception and the determination of the jury in the plaintiff's favor on these questions will not be disturbed by an appellate court.

The decision symbolizes the tendency of the courts to further social and industrial relationships. It illustrates the elasticity of legal concepts and rules and indicates an attempt on the part of the courts to transform into legal duties accepted moral obligations.

G. S.

PARENT AND CHILD—CUSTODY OF CHILD WHERE FATHER OVERSEAS IN ARMED FORCES AND WIFE OPERATING BOARDING HOUSE.—A proceeding in the nature of a writ of habeas corpus was brought by Evelyn Walch to determine the custody of her child, Lorena Mae Walch, four years old. Evelyn Tiffany and Donald Walch were married when they were very young, and although his parents at first objected because of the extreme youth of the couple, they accepted the situation and received them on friendly terms. The child was born a year later. The only home of their own which the couple established was an apartment which they occupied for a very short time. They moved back and forth between the home of the husband's parents and the home of the wife's mother. Donald was a farm boy and Evelyn had been brought up in a small city, and their tastes as to recreation and the location of a home differed considerably. They parted temporarily in 1942 and Evelyn took the child first to her mother and then left her with relatives in Pennsylvania while she made a trip to California. In September of that year the Welfare Department of Pennsylvania instructed the senior Walches to go to Pennsylvania to get the child from the place where her mother had left her. In 1943 when Donald was inducted into the army Evelyn returned to him and accompanied him to various posts during his training period, leaving the child during this time, with his parents. When he went overseas she returned to his parents' home and to her child. Becoming dissastisfied with rural life, in 1944, she left the Walch home and went to Beaver Dams to her brother who, without having divorced his wife, was living there with another woman. After five weeks, during which the child was left in the care of this household, the brother, becoming enraged because of Evelyn's having stayed overnight in town with her mother, phoned