

### Workmen's Compensation--Master and Servant--Preservation of Public Peace (Matter of Babington v. Yellow Taxi Corp., 250 N.Y. 14 (1928))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

as they existed before.”<sup>7</sup> The intrinsic quality of a stock dividend is that of an increment to principal, though at times in furtherance of intention,—they have been regarded as income. In the instant case the trustee was privileged to treat them as capital.

As to allocations of stock dividends under trusts created in 1922 or later there is no question, the legislature having then declared the addition of stock dividends to the principal of a trust shall not be deemed an accumulation.<sup>8</sup>

WORKMEN'S COMPENSATION—MASTER AND SERVANT—PRESERVATION OF PUBLIC PEACE.—An employee of defendant, while driving one of its cabs, was ordered by a policeman who jumped on the running-board, to chase another car. He complied and while pursuing the other car, collided with a trolley sustaining injuries resulting in his death. In an appeal by defendant from an order of the Appellate Division sustaining an award of the State Industrial Board, *Held*, order affirmed. *Matter of Babington v. Yellow Taxi Corp.*, 250 N. Y. 14 (1928).

The chauffeur could not lawfully refuse to obey the police officer's command, since to do so would be a violation of the Penal Law.<sup>1</sup> The employer itself would be bound to comply, therefore, Babington, its employee, charged with control of the car for and on its behalf had to respond. Even assuming that he was not obliged to heed the officer's authority, his use of the car was not an abandonment of his employment.<sup>2</sup> Kellogg, *J.*, dissenting, claims that in aiding the police department, he became a member of that body, subject to supervision of the officer and that he ceased to be a servant of defendant.<sup>3</sup> But the general employer is liable even though the injuries were sustained at the time he was working under the direction of a special employee.<sup>4</sup> He may look to one or both for compensation.<sup>5</sup>

---

<sup>7</sup> *Williams v. Western Union Tel. Co.*, 93 N. Y. 162, 189 (1883).

<sup>8</sup> Personal Property, Secs. 10 and 17A.

<sup>1</sup> Sec. 1848.

<sup>2</sup> *Riley v. Standard Oil Co.*, 231 N. Y. 301, 132 N. E. 97 (1921).

<sup>3</sup> *Supra* 250 N. Y. 14 at p. 20 citing *Monterey County v. Rader*, 199 Cal. 221 (1926); *Village of West Salem v. Industrial Comm.*, 162 Wis. 57 (1916).

<sup>4</sup> *Matter of Dale v. Saunders Bros.*, 218 N. Y. 59, 112 N. E. 571 (1916).

<sup>5</sup> *Matter of De Noyer v. Cavanaugh*, 221 N. Y. 273, 116 N. E. 992 (1917).