

## THE VICE-PRINCIPAL IN PENNSYLVANIA LAW.

In order to appreciate the definition of a vice-principal, as that term is understood by the Supreme Court of Pennsylvania, it is necessary to examine the cases defining the duties which a master owes a servant in his employ.

The duties which the law imposes upon a master may be grouped under five heads.

I. The duty to provide safe premises. It is the duty of the master to provide premises, which are reasonably safe for use by those in his employ. The duty is not one of insurance, but simply a duty to exercise reasonable care, "reasonable," with regard to the general character of the business and the nature of the work, which the servant is called upon to perform: *Penna. R. R. Co. v. Zinki*, 126 Pa. 288, (1889); *Moules v. D. & H. Canal Co.*, 141 Pa. 632, (1891); *Vanessa v. Catsburg Coal Co.*, 159 Pa. 403, (1893); *Wanamaker v. Burke*, 111 Pa. 423, (1886); *O'Donnell v. Allegheny Val. R. R. Co.*, 59 Pa. 239, (1868); *Johnston v. Ott Bros.*, 155 Pa. 17, (1893); *Clough v. Hoffman*, 132 Pa. 626, (1890); *Pizzirussi v. Dyer*, 7 Montg. Co., 195, (1891); *Bennett v. Standard Plate Glass Co.*, 158 Pa. 120, (1893); *Pottstown Iron Co. v. Fanning*, 114 Pa. 234, (1886); *McCombs v. P. & W. Ry. Co.*, 130 Pa. 182, (1889); *Rick v. Cramp*, 12 Atl. Rep. 495, (1888); *Everson v. Rolinson*, 8 Atl. 194, (1887); *Rooney v. Carson*, 161 Pa. 26, (1894); *Crawford v. Stewart*, 8 Atl. 5, (1887); *Ross v. Walker*, 139 Pa. 42, (1890); *Stoltenburg v. Railroad*, 165 Pa. 377, (1895).

II. The duty to provide safe appliances. It is the duty of the master to provide his servants with appliances and tools, which are reasonably safe for the purposes of the particular business in which the master and the servants are engaged. The extent to which the term "reasonable" is used in this connection is best illustrated by the cases defining the character of the appliances to be furnished. The master is not bound to provide the newest, nor the most improved, appli-

ances—he is only bound to provide those which others in the same general line of business commonly use: *Pitts., Connellsville &c. R. R. Co. v. Sentmeyer*, 92 Pa. 276, (1879); *Kehler v. Schwenk*, 144 Pa. 348, (1891); *P. W. & B. R. R. Co. v. Keenan*, 103 Pa. 124, (1883); *Schall v. Cole*, 107 Pa. 1, (1884); *Augerstein v. Jones*, 139 Pa. 183, (1890); *Fritz v. Jenner*, 166 Pa. 292, (1895); *Murphy v. Crossan*, 98 Pa. 495, (1881); *Burrell v. Gowen*, 134 Pa. 527, (1890); *Elkins v. P. R. R. Co.*, 171 Pa. 121, (1895); *Malchert v. Smith Brewing Co.*, 140 Pa. 448, (1891).

III. The duty to provide instruction. Wherever the employment is one which is necessarily attended with danger, and the danger is not one to be apprehended by the ordinary servant, it is the duty of the master to give proper warning. The cases defining the scope of this duty have usually been cases where the injury has resulted to a servant of tender years. As a general rule, in the case of experienced workmen, fully cognizant of the dangers of the business, the master is not bound to give any warning: *Davis v. R. R. Co.*, 5 Pa. C. C. 567, (1888); *Wagner v. Jayne Chemical Co.*, 147 Pa. 475, (1892); *Lebbering v. Struthers*, 157 Pa. 312, (1893); *McMellen v. Union News Co.*, 144 Pa. 332, (1891); *Lee v. Electric L. H. & P. Co.*, 140 Pa. 618, (1891); *Zurn v. Tetlow*, 134 Pa. 213, (1890); *Kepler v. Schwenk*, 151 Pa. 505, (1892); *Tagg v. McGeorge*, 155 Pa. 368, (1893); *Neilson v. Hillside Coal & Iron Co.*, 168 Pa. 256, (1895); *Penna. Coal Co. v. Nee*, 13 Atl. 841, (1888).

IV. The duty to provide competent fellow-servants. It is the duty of the master to employ servants of the character and ability of those ordinarily employed by others in the same line of business: *Frazier v. Penn. R. R. Co.*, 38 Pa. 104, (1860); *Walton v. Bryn Mawr Hotel Co.*, 160 Pa. 3, (1894); *Weger v. Pa. R. R. Co.*, 55 Pa. 460, (1867); *Rickett v. Stevens*, 133 Pa. 538, (1890); *Trainer v. Railroad Co.*, 137 Pa. 148, (1890); *R. R. Co. v. Decker*, 82 Pa. 119, (1876).

V. The duty to provide a system of work. It is the duty of the master to provide a system of work in those cases where, on account of the number of those employed, as well as the

complicated details of the business, there is danger of injury unless some method or system is adopted. The illustration furnished by Mr. Justice Paxson, in *Lewis v. Seifert*, 116 Pa. 628, is instructive. Speaking of the duty which a railroad company owes to its servants, he said: "It is equally clear that it was its duty to frame and promulgate such rules and schedules for the moving of its trains, as would afford reasonable safety to the operatives who engaged in moving them. This is a direct positive duty, which the company owed its employees and for the failure to perform which it would be responsible to any person injured as a consequence thereof, whether such person be a passenger or an employee. It would be a monstrous doctrine to hold that a railroad could frame such schedules as would invariably, or even probably, result in collisions and loss of life:" *Payne v. Reese*, 100 Pa. 301, (1882); *McCombs v. Railway*, 130 Pa. 182, (1889); *Hahn v. Smith*, 6 Pa. C. C. 207, (1888); *Stevens v. Martin*, 23 W. N. C. 475, (1889).

In the case of *Ross v. Walker*, 139 Pa. 42, (1890), the court defines the duty of a master to his servant to be, first, the duty to provide his servants with a suitable place to work, second, with suitable tools and machinery to use and, third, with reasonably competent fellow-servants with whom to work. In addition to these, where the servant is young or inexperienced in the use of tools or machinery, it is the master's duty to see that he is instructed in these particulars and to warn him of such dangers as are peculiar to the use and care of the machinery with which his labor brings him in contact. The definition of a vice-principal is then embodied in the following statement: "If the principal be a corporation, or be unable for any reason to discharge these obligations in person, they must be discharged through an officer, agent or foreman. The person, who is thus put in the place of the principal to perform for him the duties which the law imposes, is a vice-principal, and *quoad hoc* represents the principal so that his act is the act of the principal." In other words, the vice-principal described in this case is anyone to whom the master delegates the performance of the duty to provide safe premises, safe appliances, competent fellow-servants, instruc-

tion for the ignorant or inexperienced, or a system or method of work.

Before applying this definition to the facts of the case of *Ross v. Walker*, and the cases which follow it, it may be profitable to examine some of the elementary principles governing the liability of one person for the torts of another. If one charged with the performance of a duty towards another, is negligent in the performance of that duty, and that negligence results in damage to the person to whom the duty is owed, it may be made the basis of an action. Thus, if the master is negligent in the performance of any one of the duties enumerated above, the servant who is injured thereby may recover without reference to any doctrine of the law of master and servant. If the law imposes upon A. the performance of any duty towards B., B. may recover for any damage, the legal result of A.'s neglect. See *Payne v. Reese*, 100 Pa. 301; *Rummel v. Dillworth*, 131 Pa. 509.

It is equally true, that if a person owing a duty towards another, delegates the performance of that duty to one who negligently executes it, the person owing the duty is responsible. And this rule is independent of the general principles of master and servant. It is an elementary principle of liability in tort that one charged with a duty is responsible for the negligence of one who assists him in the performance of the duty. When, therefore, it is said that anyone to whom a master delegates the performance of the five duties enumerated, is as regards the performance of these duties, a vice-principal, a new term is introduced to express an old and familiar relation. The master is responsible for the negligence of one to whom the duty is delegated, upon well settled principles of the law of Torts. See remarks of Paxson, J.: *Lewis v. Seifert*, 116 Pa. 528; *Frazier v. Pa. R. R. Co.*, 38 Pa. 104 (1860); *National Tube Works v. Bedel*, 96 Pa. 175 (1881); *Hughes v. B. & O. R. R.*, 164 Pa. 178 (1894).

With these principles in mind, it is proposed to examine critically the case of *Ross v. Walker*, 139 Pa. 42 (1890). Walker, the defendant, was engaged in erecting an iron bridge. Duffy was his foreman. Ross, the plaintiff, was a laborer,

employed with many others, in building the bridge. He was hurt by falling from a scaffold in consequence of the breaking of a stick of timber which supported it. It was in evidence that Walker had furnished proper materials and had selected, in Duffy, a competent foreman. In the construction of the scaffold, Duffy negligently selected a defective plank, which gave way under the weight of the men employed upon it.

The defendant's counsel asked the court to instruct the jury, "If they found the defendant put the work in charge of a competent foreman, and provided suitable materials for the scaffolding in sufficient quantity, then he was guilty of no negligence and the verdict must be in his favor." The learned judge refused the instruction asked for, and went on to say, that, "if Duffey was in the entire charge and control of the work of erecting the bridge, determining what materials were to be used for the scaffolding, employing and discharging men, and directing where and what materials were to be used, he was acting for Mr. Walker, as vice-principal, and his negligence would be that of the defendant." The correctness of this definition of a vice-principal was the question raised by the several assignments of error in the Supreme Court.

In considering the question, the court recognized the existence of the several duties which the master owes his servants and declared that the person to whom the master delegated the performance of any of these duties, is a vice-principal, for whose negligence the master is responsible.

If the case were one of first impression, it is submitted that it would not be unfair to assume that the definition meant to imply that a master was liable, where he delegated the performance of anyone of the positive duties, which he owes to the servant, to a subordinate who is negligent in the execution of his work.

Certainly, if a "vice principal" means anything, it means a person who so far represents the principal that the law charges the principal with liability for the acts and commissions of such person. Thus, if A., an employer, delegates to B. the duty of selecting competent fellow-servants for the other servant's in A.'s employ, and B. is negligent in the selection,

B.'s negligence is the negligence of A. to the extent that A. is liable to a servant injured by reason of such negligence: *Trainor v. R. R.*, 137 Pa. 148 (1890); *Huntington R. R. v. Decker*, 82 Pa. 119 (1876). It was this application of the principle which Mr. Justice Paxson had in mind when he said in the case of *Lewis v. Seifert*, 116 Pa. 628, (1887), "But there are some duties which the master owes to the servant, and from which he cannot relieve himself except by performance. Thus, the master owes to every servant the duty of providing a reasonably safe place in which to work and reasonably safe instruments, tools, and machinery with which to work. This is a direct personal and absolute obligation; and while the master may delegate these duties to an agent, such an agent stands in the place of his principal, and the latter is responsible for the acts of such agent. And where the master or superior places the entire charge of his business, or a distinct branch of it, in the hands of an agent or subordinate, exercising no discretion or oversight of his own, the master is held liable for the negligence of such agent or subordinate."

The court, in delivering judgment in *Ross v. Walker*, did not adopt the view of Paxson, J., in *Lewis v. Seifert*, but reversed the judgment in favor of the plaintiff upon the verdict in the court below, for the following reasons: "It was the duty of Walker as employer or principal, to provide the men employed to build this bridge with suitable machinery and appliances; to furnish materials sufficient in quantity and suitable in character; to employ men who were reasonably competent to do the work for which they were wanted, and to give them the benefit of the services of a reasonably competent foreman. All this, as we understand the evidence, was done. If so, the employer had filled the measure of his legal liability to his workmen. For an error in judgment, or for a neglect of duty on the part of anyone of his employees, from the foreman down to the humblest unskilled laborer, he was not liable. It was not material to this inquiry to know whether 'Duffey had entire charge and control of the work,' as a foreman or not; nor to know whether he selected from

the mass furnished by the employer the materials to be used for any particular purpose or not ; nor, whether he hired and discharged men or not. The inquiry is, was it the employer's duty, after having provided materials ample in quantity and quality, to supervise the selection of every stick out of the mass for every purpose? To state this question is to answer it."

It is submitted that the answer to the question put by the court might, with more consistency, have been in favor of the master's liability. It was admittedly the master's duty to furnish a reasonably safe scaffold. If he had himself negligently selected a defective piece of timber, he would have been liable ; if he had delegated to his foreman the duty of *selecting* the timber and building the scaffold for him, he would have been liable. In other words, if the master had delegated performance of the entire duty, he would have been liable to the plaintiff. Not having delegated performance of the entire duty but only of a *part*, according to the decision in *Ross v. Walker*, the master is not charged with liability for negligence in the performance of that part,—surely a startling conclusion.

Nor is it any answer to say that the duty ceased the moment the materials were delivered. The duty is a duty to furnish a reasonably safe appliance or place upon which to work. The foreman was acting as the representative of his master in the erection of the appliance, and for his negligence the master ought to be held responsible.

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