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Recommended Citation
Carnes, Charles N. (1952) "Responsibility of a Master for Assaults Made by His Collectors," Kentucky Law Journal: Vol. 41 : Iss. 1 , Article 20.
Available at: https://uknowledge.uky.edu/klj/vol41/iss1/20

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RESPONSIBILITY OF A MASTER FOR ASSAULTS MADE BY HIS COLLECTORS

The doctrine of respondeat superior is a concept which provides the grist for many a discussion or argument in legal circles. It pervades the whole field of agency in some degree or another, and just how it applies to the various principal-agent or master-servant situations presents a problem which each court must resolve to its own satisfaction, harmonizing the application of the doctrine to the particular situation with its own previous decisions. Recently in the case of Citizens Finance Company v. Walton\(^1\) the Kentucky Court of Appeals applied the doctrine to a situation involving the collection of money. The finance company had sent its servant to collect from the mother of one of its debtors. The mother had agreed to collect money due her son and hold it for the company. She told the collector she could not pay him at that time since she had not collected all of the money due her son. Words were exchanged and a scuffle ensued in which the mother's index finger was injured. She sued the company for the assault seeking to hold it responsible under respondeat superior. The court held that the mere act of sending out a collector should not make the employer liable for an assault made by the servant since the use of force is not a part of or an incident to the act of collecting money. It indicated that something more must be shown that would actually link the master with the assault, i.e., that the master ratified the act of the servant, or that he authorized or gave instructions for the use of force, or that the master was negligent in sending out a servant whom it knew would employ force in making the collection or who was in the habit of using force.\(^2\)

By this decision the Kentucky court aligns itself with the modern, and seemingly more reasonable, view of the responsibility of a master in the collection situation. From the cases it appears that the attitude of any particular court toward this situation is often a reflection of that court's general attitude toward the over-all problem of respondeat superior. The divergency in attitude arises because of a difference of opinion as to the proper place to locate the outer perimeter of the scope of employment. It is the attitude of some courts that since the

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\(^1\) 239 S.W. 2d 77 (Ky. 1951).
\(^2\) The court cited no collection cases, but cited the rule in Moore v. Ford Motor Company, 265 Ky. 575, 97 S.W. 2d 400 (1936), as applicable. In that case the defendant's foreman assaulted plaintiff in trying to get his signature on a service record. In holding the Ford Company not liable, the court ruled that an assault was not an incident to the act of procuring signatures on the company's records.
employer selects and sends out his servant to deal with the public, he should be responsible for acts, wilfull or negligent, done in the furtherance of his business.\(^3\)

An example of a strict liability attitude is shown in the Connecticut case of *Son v. Hartford Ice Cream Company*.\(^4\) In this case the defendant's servant was to deliver ice cream and collect for it. The servant made a delivery to the plaintiff who refused to accept it for the reason that it was not sufficiently frozen. The driver insisted upon leaving it and demanded payment. Plaintiff refused to pay, and the driver went to plaintiff's cash register and tried to take the money out of it. Plaintiff managed to get it closed, whereupon the driver picked up the register and tried to carry it off. In the resulting scuffle the plaintiff was hurt, and he sued the master. In holding the master liable for the servant's acts this court said:

"When the servant is doing or attempting to do the very thing which he was directed to do, the master is liable through the servant's method of doing it be wholly unauthorized or forbidden."\(^5\)

This case is indicative of how far a court can go in applying strict liability.\(^6\) Is this a reasonable result? Was the servant in this case truly attempting to do the "very thing which he was directed to do?" Can it be seriously contended that carrying off a debtor's cash drawer is a usual or customary method of collection? This would seem to be an act of force which is such a deviation from the normal practice of bill collecting as to take it completely out of the scope of bill collecting. This was an act which an ordinary employer would never authorize, or even contemplate. It was the personal and wilfull act of the driver.

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\(^1\) It appears that most, if not all, courts will hold the master not liable for purely personal acts of his servants, such as: sexual assaults, Rohmser v. House- hold Finance Corp., 231 Mo. App. 1188, 86 S.W. 2d 103 (1935); Anderson v. Metropolitan Ins. Co., 220 App. Div. 779, 218 N.Y.S. (1926); personal quarrels, Moffitt v. White Sewing Machine Co., 214 Mich. 496, 183 N.W. 198 (1921); Bergman v. Hendrickson, 106 Wis. 434, 82 N.W. 804 (1900); or where servant is pecuniarily responsible for non-collection, McDermott v. American Brewing Co., 105 La. 124, 29 So. 498 (1901); Steinman v. Baltimore Antiseptic Steam Laundry Co., 109 Md. 62, 71 Atl. 517 (1908); Magnolia Petroleum Co. v. Guffy, 59 S.W. 2d 174 (Tex. 1933).

\(^2\) In Hiroshima v. Pacific Gas and Electric Co., 18 Cal. App. 2d 24, 63 P. 2d 340 (1936), the court indicated that even if the act of the servant were not within the scope of employment, his master still might be liable if the act was intimately connected with other acts within the scope. The court relied on Gulf, C. & S. F. R. Co. v. Cobb, (Tex. Civ. App.) 45 S.W. 2d 829 (1931) for this rule.
which, though directed in attaining his master's ends, was in fact foreign to those ends. It is submitted that this rule imposes a heavy burden on the employer, and that a literal application of this rule would undoubtedly lead to harsh results in many situations.

Other courts in order to avoid such consequences have developed a different rule which has been approved by the American Law Institute in its Restatement of Agency, and by many text writers. These courts recognize the fact that the use of force is not a normal part of the employment of bill collecting. As the Missouri court said in Collette v. Rebori:

"To assault and beat a creditor [sic] is not a recognized or usual means resorted to for the collection of a debt, nor is it one likely to bring about the settlement of a disputed account."

These courts are of the opinion that a master may be liable for a servant's wilfull act, such as an assault, when done in the furtherance of the master's business, but only when such business would indicate that force might be resorted to in its accomplishment. They feel a master should not be liable for all acts of a servant done ostensibly in the furtherance of his business. They recognize that in attempting to serve his master's ends an individual servant may proceed in various ways so far removed from the customary and usual procedures of business conduct that the master would not foresee such activity when selecting and sending out the servant for the job. These courts hold as a matter of law that the task of bill collecting does not, actually or impliedly, call for the use of force. They believe that when a collector does assault a debtor, the master should not be liable under the doctrine of respondeat superior unless something more than mere employment is shown. It is necessary to show complicity or negligence on the master's part before he can be subjected to liability.

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8 107 Mo. App. 711, 82 S.W. 552, 555 (1904).
9 Id. at —, S.W. at 555.
12 "In order to hold the master for an assault and battery by a collector, it is necessary to show that the use of force was contemplated or usual in the conduct of the master's business of collecting accounts, or that the master knew, or had reasonable cause to know, that the servant was the type of person who was likely to resort to force in the course of his efforts to collect the accounts." Moskins Stores Inc. v. DeHart, 217 Ind. 622, 29 N.E. 2d 948, 949-950 (1940).
Normal bill collecting calls for tact, patience, and diplomacy, and resort to fisticuffs should never be made. Nobody loves a bill collector, and finance companies and installment sellers do not wish to encourage further public antipathy by advocating strong-arm methods of collection. Business customs indicate that negotiation is in order, not physical violence. It would seem that the view adopted by the Kentucky court meets the situation squarely and reaches the proper result. A bill collector is not sent out with any type of dangerous instrumentality to augment his efforts, as in armed guard cases.\(^8\) There is no tangible object over which the collector and debtor can engage in a struggle, as in repossession cases.\(^4\) Usually resort is made to collection in order to prevent the necessity of an action in debt accompanied by attachment or garnishment proceedings. If the collector is unsuccessful in his attempt, his employer still has these peaceful means at his command to bring about settlement of the account. The collector is sent out merely to avoid reliance upon these less desirable means of collection. As one court intimated,\(^5\) if a bill collector makes an assault upon one of his master's debtors, the assault will not usually attain the desired effect; it will enrage the debtor so that he will become more recalcitrant than before, and in addition will very likely sue the master for the assault. In many cases the altercation between a debtor and a bill collector has its origin in personal animosity between the two individuals, though it was the master's business which set the stage and brought them together. In such cases where it is of such a personal nature between the two actors the master properly should not be held responsible for it. If the debtor becomes abusive, the collector can best serve his master by adopting a conciliatory attitude and by retreating if necessary. If the collector replies in kind he is likely giving vent to his own personal sense of indignation and injustice. The master should not be held liable for such conduct. Liability with out fault, though justifiable in many cases, is at best a harsh rule, and should be imposed with great care and circumspection.\(^6\) It should not be imposed in the collection situation where

\(^8\) Where the employer furnishes, or requires the agent to carry, a gun, the employer will be held responsible for a shooting done in the course of employment. See Amer. Ry. Exp. Co. v. Tait, 211 Ala. 948, 100 So. 328 (1924); Wiley v. Pere Marquette Ry. Co., 235 Mich. 279, 209 N.W. 59 (1926). And see Craig's Admx. v. Ky. Utilities Co., 183 Ky. 274, 209 S.W. 33 (1919).


\(^5\) Supra note 8.

the use of force is not to be contemplated,\textsuperscript{17} where no dangerous instrumentality is used, and where the master is under no duty to protect the debtor from harm.\textsuperscript{18} The Connecticut rule seems too strict in imposing liability, for it makes the master liable in many case where he properly should not be. On the other hand, the Kentucky rule will not leave the debtor at the tender mercies of unscrupulous creditors, yet it will protect the master from the personal wilfull acts of his servants in situations which are often provoked by the debtor-plaintiff himself.

CHARLES N. CARNES

PUBLIC INTEREST AS A LIMITATION OF THE RIGHT TO PRIVACY

"Redress for the invasion of the right of privacy has been recognized so generally in recent years that it no longer may be questioned."\textsuperscript{19} Based on the idea that each individual has a right to lead his life unhampere by the prying fingers of publicity, this doctrine has gained more and more importance in the field of tort law, protecting those whose histories, names and likenesses have been needlessly held before the public eye.

When the right of privacy was first championed in 1890 by Samuel D. Warren and Louis D. Brandeis, the authors proposed limitations upon the right, the first of which was that "the right to privacy does not prohibit any publication of matter which is of public or general interest."\textsuperscript{20} This limitation is generally recognized today in jurisdictions which acknowledge the right of privacy.\textsuperscript{21} Therefore, one of the

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\item \textsuperscript{17} As in the cases of guards (see cases cited supra note 12), or where agent is put in charge of premises and is expected to maintain order or protect them. J. J. Newberry Co. v. Judd, 259 Ky. 306, 82 S.W. 2d 359 (1935) (Store manager); Denzert v. Dee, 308 Ky. 657, 215 S.W. 2d 575 (1948) (bar-tender); Moore v. Blanchard, (La. App.) 35 So. 2d 667 (1948) (bouncer.)

\item \textsuperscript{19} As in the case of a carrier, which is under a duty to protect passengers from assaults by its servants, strangers, or fellow passengers. Gladdish v. South Eastern Greyhound Lines, 293 Ky. 498, 169 S.W. 2d 297 (1943); Hull v. Boston & M. R. R., 210 Mass. 159, 96 N.E. 58 (1911).

\item \textsuperscript{20} Voneye v. Turner, 240 S.W. 2d 588, 590 (Ky. 1951).

\item \textsuperscript{21} Warren & Brandeis, The Right to Privacy, 4 Harv. L. Rev., 193, 214 (1890).


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