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General discussion of the nature of the relationship of employer and independent contractor

[Cumulative Supplement]
The reported cases for this annotation are Lutenbacher v. Mitchell-Borne Const. Co., 136 La. 805, 67 So. 888, 19 A.L.R. 206 (1915); Nichols v. Harvey Hubbell, Inc., 92 Conn. 611, 103 A. 835, 19 A.L.R. 221 (1918); and Westover v. Hoover, 88 Neb. 201, 129 N.W. 285, 19 A.L.R. 215 (1911).

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I. Introductory

§ *1.* Meaning of the term "independent contractor;" judicial definitions

The language in all the judicial and judicially approved definitions of the term "independent contractor" is expressive of the notion that the word "contractor" bears the special and restricted signification of a person whose "contract has relation to the performance of work of some description." But the phraseology used for the purpose of explaining the connotation of the epithet "independent" exhibits certain diversities, some of which are not unimportant in a practical point of view.

One of the categories into which the definitions are divisible consists of statements in which the absence of any right, on the part of the employer, to control the manner in which the stipulated work is to be done, is treated as the sole indicium of the independence of the contract.

An independent contractor is one who "carries on an independent employment, in pursuance of a contract by which he has entire control of the work and the manner of its performance."[1]

An independent contractor is "one who carries on an independent business, and in the line of his business is employed to do a job of work, and, in doing it, does not act under the direction and control of his employer, but determines for himself in what manner it shall be done."[2]

"When the person employed is in the exercise of a distinct and independent employment, and not under the immediate supervision and control of the employer, the relation of master and servant does not exist."[3]

"One who undertakes specific jobs of work as an independent business, without submitting himself to control as to the petty details," is an independent contractor.[4]

"One who contracts to do a specific piece of work, furnishing his own assistants, and executing the work either entirely in accordance with his own ideas or in accordance with a plan previously given to him, … without being subject to the orders of the [employer] in respect to the details of the work, is clearly a contractor, and not a servant."[5]

"When a person lets out work to another, reserving no control over the work or workmen, the relation of contractor and contractee exists, and not that of master and servant."[6]

"An 'independent contractor' is one who is independent of his employer in the doing of his work, and may work when and how he prefers. A 'servant' is one who is employed by another, and is subject to the control of his employer."[7]

"If the contractor 'furnishes his own assistants, and executes the work, either entirely according to his own ideas, or in accordance with the plans previously given to him by the person for whom the work is being done, without being subject to the orders of the latter in respect to the details of the work,' the person engaged to do the work will be regarded as an independent contractor."[8]

"The relation of the parties under a contract of employment is determined by the answer to the question: Does the employee in doing the work submit himself to the direction of the employer, both as to the details of it and the means by which it is accomplished? If he does, he is a servant, and not an independent contractor. If, on the other hand, the employee has contracted to do a piece of work, furnishing his own means and executing it according to his own ideas, in pursuance of a plan previously given him by the employer, without being subject to the orders of the latter as to details, he is an independent contractor."[9]

If the employer "merely prescribes the end, and contracts with another to accomplish the end by such means or methods as such other may in his discretion employ, the latter is, as to such means and methods, not a servant, but a master."[10]

"Where a person is employed to perform a certain kind of work which requires the exercise of skill and judgment as a mechanic, the execution of which is, because of his superior skill, left to his discretion, without restriction upon the means to be employed in doing the work, and employs his own labor, which is subject alone to his own control and direction, the work being executed either according to his own ideas, or in accordance with plans furnished him by the person for whom the work is done, such a person is not a servant under the control of a master, but an independent contractor."[11]

The following statements of legal authors have been judicially approved:

> "One who contracts to do a specific piece of work, furnishing his own assistants, and executing the work either entirely in accordance with his own ideas, or in accordance with a plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter in respect to the details of the work,

is clearly a contractor, and not a servant."[12] Another definition formulated by the same author is given in the next section.

"When a person lets out work to another to be done by him, such person to furnish the labor, and the contractee reserving no control over the work or workmen, the relation of contractor and contractee exists, and not that of master and servant."[13]

"One who contracts to do a specific piece of work, furnish his own assistants in executing the work, either entirely in accordance with his own ideas or in accordance with the plan previously given to him, and without being subject to the orders of the latter in respect to the details of the work, is an independent contractor and not a servant."[14]

§ *2*. Same subject further discussed

In the statements belonging to another category, two distinctive elements are specified, viz., the absence of any right on the employee's part to control the manner in which the work is to be done, and the circumstance that the person employed does not represent, or is not subject to the will of, the employer, except in respect of the results of the stipulated work.

"If one renders service in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished, it is an independent employment."[1] Having regard to the signification which is ordinarily attached to the expression "independent employment" (see § 8, infra), the phraseology of the last clause of this statement seems to be ill chosen, to say the least.

"An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, and without being subject to the control of his employer, except as to the result of his work."[2]

"An independent contractor is one exercising an independent employment under a contract to do certain work by his own methods, without subjection to the control of his employer, except as to the product or result of the work. When the person employing may prescribe what shall be done, but not how it is to be done or who is to do it, the person so employed is a contractor, and not a servant."[3]

"Generally stated, an independent contractor is one who, in the exercise of an independent employment, contracts to do a piece of work according to his own methods, without being subject to his employer's control, except as to the results of the work."[4]

"An independent contractor is said to be one who, exercising an independent employment, contracts to do a piece of work according to his own judgment and methods, and without being subject to his employer, except as to the result of the work, and who has the right to employ and direct the action of the workmen, independently of such employer, and freed from any superior authority in him to say how the specified work shall be done or what the laborers shall do as it progresses."[5]

"An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of his work."[6]

"One is an employee of another when he renders service for him, and what he agrees to do, or is directed to do, is subject to the will of that other in the mode and manner in which the service is to be done and in the means to be employed in its accomplishment, as well as in the result to be attained. If one carries on work for another, and in mode, manner, and means is independent of that other's control, he is an independent contractor."[7]

"Where one who contracts to perform a lawful service for another is independent of his employer in all that pertains to the execution of the work, and is subordinate only in effecting a result in accordance with the employer's design, he is an 'independent contractor."[8]

Phraseology expressive of the same motion is also found in many other cases.[9]

The following statements of textwriters have been judicially approved:

"An independent contractor is one who, exercising an independent employment contracts to do a piece of work according to his own methods, and without being subject to the control of his employer, except as to the result of his work."[10]

"An independent contractor may be defined as one who, in the course of an independent occupation, prosecutes and directs the work himself, using his own method to accomplish it, and representing the will of the company only as to the result of his work."[11]

"An independent contractor is one who undertakes to produce a given result, without being in any way controlled as to the method by which he attains that result."[12]

If the principal, using due care in the selection of the person, enters into a contract with a person exercising an independent employment, by virtue of which the later undertakes to accomplish a given result, being at liberty to select and employ his own means and methods, and the principal retains no right or power to control or direct the manner in which the work shall be done, such a contract does not create the relation of principal and agent, or master and servant, and the person contracting for the work is not liable for the negligence of the contractor, or of his servants or agents, in the performance of the work. The employment is regarded as independent, when the person renders service in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished."[13]

"An independent contractor is one who undertakes to produce a given result, but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified" beforehand.[14]

"One who contracts to do a specific piece of work, furnishing his own assistants, and executing the work either entirely in accordance with his own ideas, or in accordance with a plan previously given to him by the person for whom the work is done, without being subject to representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished."[15]

"An independent contractor, within the meaning of this rule, is one who renders service in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished."[16]

"Generally speaking, an independent contractor is one who, in rendering services, exercises an independent employment or occupation, and represents his employer only as to the results of his work, and not as to the means whereby it is to be accomplished."[17]

"An independent contractor is one who, carrying on an independent business, contracts to do a piece of work according to his own methods, and without being subject to the control of his employer as to the means by which the result is to be accomplished, but only as to the result of the work."[18]

"One who contracts to do a specific piece of work, furnishing his own assistants, and executing the work either entirely in accordance with his own ideas, or in accordance with a plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter in respect to the details of the work, is an independent contractor and not a servant."[19]

§ *3*. Comments upon these definitions

The definitions quoted in the preceding sections seem to be open to criticism in some respects.

One objection, applicable to both the categories as tabulated, is that the theory which is indicated by the ascription of a decisive significance to the element of an absence of a right on the employer's part to exercise control with regard to these particulars which are variously denominated "means," or "method," or "manner," or "mode," or the "several steps" in the performance of the work, cannot be reconciled with a large number of cases in which the independence of contracts has been affirmed.[1] Any defining formula which is inconsistent with those cases is manifestly wanting in comprehensiveness and accuracy. The inconsistency is doubtless traceable to the ambiguity of the expressions by which the particulars in question are designated. The scope of those expressions, as used in the formulae, is no doubt to be considered as being theoretically the same as that of the term "details." But, merely as a matter of verbal construction, they are also susceptible of being understood on a broader sense, and, so far as regards the cases just referred to, it is evidently this wider connotation that has been ascribed to them. The difficulty created by this ambiguity has been occasionally adverted to.[2] Apparently, it can be overcome only by making the conception which is imported by the term "details" an integral part of a defining formula. That term has acquired, with relation to contracts for the performance of work, a precise and well-settled meaning which renders it entirely suitable for the purposes of a general definition. It connotes those minor particulars in respect of which a master is entitled to exercise control over his servant, and is, therefore, the only satisfactory diagnostic mark by which an independent contract can be accurately differentiated from one of hiring and service.

The defect inherent in every statement from which the term "details" is omitted cannot, it is apprehended, be cured by the introduction of the notion which forms a part of the definitions quoted in § 2, supra, viz., that an "independent contractor" is a person who stipulates merely to produce a certain result, and is not subject to control except as regards that result. Language of this tenor clearly does not constitute any substantial addition to formulae of the type of those tabulated in § 1, for it merely imports a situation which must, by necessary implication, exist whenever the employer is not entitled to exercise control over the manner in which the work is performed. But its superfluousness is not the only objection to which it is open. The theory that the quality of "independence" is predicable whenever the undertaking of the person employed is simply for the production of a certain "result" cannot, in its unqualified form, be reconciled with those cases, referred to at the beginning of this section, which proceed upon the doctrine that an employer may reserve a large measure of control over the work without destroying the independence of the contract. It is true that every piece of work, unless it is of the very simplest character, is divisible into a certain number of distinct portions, and that the word "result" may, with perfect propriety, be applied to each of these, when completed, as well as to the whole work in its finished condition. This aspect of the matter is not brought out at all in the definitions which include that word, and in that respect, at least, they are lacking in comprehensiveness. But even if phraseology for remedying this defect is introduced into the formulae, the enlarged statements will still remain open to the objection that the word does not furnish any precise criterion with reference to which those subdivisions of the work to which it applies are to be distinguished from operations which are the subject-matter of that full measure of control which is the indicium of the relationship of master and servant.[3] It is apparent, therefore, that, in this point of view also, we are led to the conclusion that no defining formula can be deemed complete unless it embraces the expression "details of the work."

An examination of the formulae quoted in §§ 1 and 2, supra, will show that in some of them the factor of an "independent employment," "occupation," or "business," or "calling" is treated as one of the attributes of an independent contract, and that in others there is no specific reference to that factor. It is impossible to say how far these variations in the phraseology are merely accidental, and how far they are to be viewed as betokening a real disagreement concerning the essentiality of the factor as

a part of a definition. The inference that it is not essential is strongly, if not conclusively, indicated by the consideration that freedom from control as respects the details of the work is ordinarily treated by the courts as the characteristic feature of the position of an independent contractor. See § 6, infra.

Certain other factors which are mentioned in some of the formulae are clearly not essential for the purposes of a general definition —such as the lawfulness of the work; the character of the work as one which requires the exercise of special skill; and the furnishing of the necessary means, whether labor, materials, or appliances, for the performance of the work.

§ *4*. Definition proposed

Having regard to the foregoing considerations, it is apprehended that the following brief and simple formula, which, as regards its essential features, is amply supported by the authorities, is sufficient for the purposes of a general definition, and at the same time more accurate than most of those tabulated in §§ 1 and 2, supra:—

An independent contractor is a person employed to perform work on the terms that he is to be free from the control of the employer as respects the manner in which the details of the work are to be executed.

In cases involving independent contractors, the courts use various pairs of correlative expressions, such as "employer" and "person employed,"[1] "employer" and "independent contractor;"[2] "employer" and "contractor;"[3] "contractee" and "contractor."[4]

The first of these would seem to be the most suitable for cases in which the character of the relationship is a disputed issue. But in some connections the last mentioned is more convenient, and it has been frequently used by the courts. There is some authority for using the word "employee" in the sense of "independent contractor."[5] But it is now so generally treated as a synonym of "servant" that this is the only juristic signification which can with propriety be ascribed to it at the present day.

§ *5*. Comparison between the relative positions of employer and independent contractor with respect to the stipulated work

Considered from one point of view the situation contemplated when a person is employed on the footing indicated by the various statements which are tabulated in §§ 1 and 2, supra, implies that the employer has nothing to do in respect to the work, except to see that it is done according to the terms of the contract;[1] or that he has merely a right to see that the contract is performed in pursuance of its terms, conditions, and specifications.[2]

Considered from another point of view, that situation implies that the person employed is to have the independent use of his own skill, judgment, means, and servants in the execution of the work;[3] or that he is to have the exclusive direction and control of the manner in which the work is to be done;[4] or that he is to have full control of the work and workmen;[5] or that the execution of the work is to be left entirely to his discretion;[6] or that he is to be free to exercise his own judgment and discretion as to the means and assistance that he may think proper to employ about the work;[7] or that he is to be left entirely free to do the work as he pleases;[8] or that the work is to be done according to his own methods;[9] or that he is to procure labor and materials in his own way, provided they are such as the contract demands, and use such machinery and appliances as he deems proper, provided they do not unnecessarily injure the subject-matter of the contract, or interfere with work done by others.[10]

§ *6*. Extent of employer's right as regards control of work, character of contract determined by

Although, as has been explained, the statements made by the courts in regard to the meaning of the expression "independent contractor" appear, when tested with reference to certain classes of cases, to be somewhat defective, if not inaccurate, it is

clear from the decisions as a whole that the existence or absence of a right on the employer's part, to exercise control over the details of the work in question is deemed to be the appropriate and decisive test by which it is to be determined whether the person employed is or is not an independent contractor.[1] In the reports qualified statements are not infrequently found, which on their face are inconsistent with the theory that the criterion specified in the preceding paragraphs is absolutely decisive.[2] But ordinarily this criterion has been treated by the courts as being so entirely conclusive that it prevails against and overrides the effect of any antagonistic evidence that may be introduced.

An examination of the judicial statements quoted in the notes to present and preceding sections shows that, as was pointed out in the case cited below, many authorities simply specify "control" of the person performing work as the means of differentiating service from independent employment. But this form of expression is lacking in precision. The test of "control" means "complete control." Moreover, in weighing the control exercised, we must carefully distinguish between authoritative control and mere suggestion as to detail or the necessary co-operation, where the work furnished is part of a larger undertaking.[3]

Manifestly, "it is not essential that one who engages a contractor to produce a given result should reserve, or should interfere and take, complete or exclusive control over all features of the work, to render him liable as a master of the contractor's servants."[4] All that need be shown in order to affect him with such liability is that he was entitled to, or actually did, control that particular portion of the stipulated work to which the injury complained of was incidental.

If the evidence shows that the person employed submitted himself to the control of the employer, so far as the details of work were concerned, the inference that he was a servant is not rebutted by the mere fact that he used his own means and methods, in the sense that he used the special knowledge and experience which he himself possessed as a skilled artisan, and which his employers did not possess.[5]

§ *7*. Right of control as contrasted with exercise of control

In every case which turns upon the nature of the relationship between the employer and the person employed, the essential question to be determined is not whether the former actually exercised control over the details of the work, but whether he had a right to exercise that control.[1]

On the one hand, therefore, the independence of the contract is not necessarily inferable from the fact that the employer refrained from actually exercising this species of control, while the person employed was engaged in performing the stipulated work.[2] On the other hand, the independence of the contract is not negatived by testimony that the employer gave directions as to the manner in which the work was to be performed, unless it is also shown that he did this as a matter of right.[3] Such testimony, however, tends more or less decisively to prove that he was empowered by the terms of the contract to give the directions.

§ *8*. Exercise of "independent employment," or "calling," or "occupation," or "business."

The fact that this element is mentioned in a portion of the defining formulae quoted in §§ 1 and 2, supra, would seem to involve, by reasonable implication, the inference that the courts by which those formulae were framed regarded it as being an integral and indispensable attribute of the status of an independent contractor. For this view as to the juristic significance of the element there is also some positive authority, more or less definite.[1]

On the other hand, the element is not referred to in many of the formulae, and from this omission it is an apparently warrantable deduction that the courts in question did not consider it to be essential to the existence of an independent contract. For this theory, also, some positive support may be found in judicial statements.[2] The consequence of accepting this theory is that the industrial position indicated by the expressions specified in the heading of this section will be viewed as constituting an evidential factor

of high probative value, in the sense that, if established, it tends strongly to show that the person employed was an independent contractor,[3] and that, if it is not established, its absence points strongly to the conclusion that the contract was one of hiring and service.[4] It may be observed that the courts have occasionally used language which, on its face, seems to embody the idea that the connotation of the expression "independent contractor" is identical with that of the expression "independent employment," or its variants, as stated above.[5] But presumably such statements are merely examples of a want of precision. It is clear that they cannot be reconciled with such cases as those adverted to in the next section.

§ *9*. Same subject further discussed

Whichever of the antagonistic doctrines referred to in the preceding section may be the correct one, it is at all events clear that the remedial rights of the claimant must be determined on the theory that the contract was not an independent one, if the evidence shows affirmatively that the employer was entitled to exercise control in respect of the details of the work. In most of the instances in which this rule has been recognized, it has been propounded in the form of a qualification of the general principle which declares an employer to be exempt from liability for injuries caused by the torts of an independent contractor.[1] But it is, of course, equally applicable as regards all classes of cases in which the character of the relationship is a material issue.[2]

If, in respect of one particular portion of the work, the person employed is subjected by the terms of the agreement to the control of the employer, the necessary inference is that the employer acts as a master in exercising the power so reserved.[3]

§ *10*. Position of contractor in respect of extra work performed by him

Where the employer's agent, acting under a power expressly reserved to "vary, extend, or diminish the quantity of work during its progress," orders the performance of additional work which is connected with the work covered by the contract, the inference is that, while the additional work is in progress, the relations between the parties, and the obligations and responsibilities to which they are subject, are identical with those which are deducible from the provisions of the contract.[1]

Whether an additional piece of work performed by an independent contractor after the completion of his contract was performed by him in the same capacity is a question of fact.[2]

§ *11*. Position of a minor employed by his father

In the case cited below, the doctrine under which a minor is presumed to be subject to the control of his father was treated as a decisive reason for declaring the defendant to be liable for negligence of which his minor son had been guilty, while engaged in the performance of a contract entered into with himself, although the terms of the contract were such that, if it had been made with a person of full age, he would have been prima facie an independent contractor.[1] It was laid down broadly that "a son, not of full age, who undertakes to do work for his father cannot be regarded as an independent contractor in such a sense as to shield the father, who employs him to do work, from injuries resulting from his negligence." But this statement obviously requires some qualification in respect of contracts made with emancipated minors. It would seem, moreover, to be open to discussion whether an emancipation ad hanc vicem may not warrantably be inferred from the mere fact of a father's having intrusted the performance of work to his minor child, on terms which, if he had engaged an adult, would have constituted the person employed an independent contractor.

§ *12*. Character of employment as a determinant factor in cases involving the liability of the employer for injuries sustained by third persons

The largest single category of cases in which the question whether the person employed to perform the stipulated work was an independent contractor is a determinant factor is that which is concerned with the applicability of the doctrine that an employer is not liable to a third person for an injury caused by the collateral or casual torts of such a contractor. A discussion of that doctrine under its general aspects, and a summarized statement of the effect of the cases in which it has been held to preclude a claimant from maintaining an action against the employer, will be found in the monograph appended to Press v. Penny, 18 A.L.R. 794.

Ordinarily, of course, the servants of the contractor are, for the purpose of determining the applicability of that doctrine in a given instance, identified with him. But in this connection it should be pointed out that the circumstances are frequently such as to raise the question whether the actual tort-feasor, although regularly in the service of a person proved or conceded to be an independent contractor, was temporarily under the control of the principal employee at the time when the tort was committed. If the latter situation is established by the evidence, liability in respect of the tort is manifestly imputable to the principal employer.[1]

In an action brought by a servant of a contractor against the principal employer to recover damages for an injury caused by the negligence of persons under the control of a party, engaged in the same work as the plaintiff's master, and alleged by the defendant to be an independent contractor, the remedial rights of the plaintiff are obviously determinable on the same footing as if he had no connection with the work in question.[2]

§ *13*. — in other classes of cases

Various classes of cases in which the question whether a contract of employment is one of an independent quality may be a determinant factor are the following:

(a) Cases in which a servant of the contractee is seeking to hold him liable for an injury resulting from a tort committed by the contractor, or by a servant under his control. In a case belonging to this class, if the evidence shows that the person employed was an independent contractor, the claimant is obviously in the same position as a member of the public, so far as regards his inability to recover; except in so far as the circumstances may be such as to entitle him to maintain the action on the ground that the tort complained of involved a breach of a nondelegable duty owed to him by the contractee.

(b) Cases in which it is sought to hold the contractee liable for injuries sustained, while the contract was in course of performance, by a workman in the employ of the contractor. Where it is proved or conceded in a case belonging to this class that the person employed was an independent contractor, the following consequences are predicable:

1. Recovery cannot be had on the theory that the injury complained of was caused by the nonperformance of one of those specific duties which are imposed by the common law or by statutes upon masters, with respect to the safeguarding of their servants. See Labatt, Mast. & S. § 38.

2. Recovery cannot be had upon the theory that the contractor was a vice principal of the employer.

3. There is no such relation of coservice between the injured person and the servants of the principal employer as will constitute a bar to the action.[1]

4. The injured person is not entitled to enforce against the principal employer a claim under the provisions of a workmen's compensation act.

On the other hand, if the evidence shows that the relationship between the contractee and contractor was that of master and servant, the injured person is, so far as respects his remedial rights, in the position of a servant of the contractee, and the enforceability of his claim is determined with relation to that fact.

(c) Cases in which it is sought to hold the contractee liable for an injury received by the contractor while he was engaged in the performance of his contract. Where it is proved or conceded, in a case belonging to this category, that the person employed was an independent contractor, the following consequences are predicable:

1. Recovery cannot be had upon the theory that the tort which caused the injury constituted a violation of one of those specific duties which are imposed by the common law or by statute upon masters, with respect to the safeguarding of their servants.[2]

2. If the actual tort-feasor was a servant of the defendant, there is no such relation of coservice between the plaintiff and such tort-feasor as will render the defense of common employment available.

3. The injured person is not entitled to enforce against the employer a claim under the provisions of a workmen's compensation act.

4. The injured person is entitled to recover if the negligence of the contractee which caused the injury complained of is of such a nature that a member of the public would, under the circumstances, be entitled to maintain an action against him.[3]

(d) Cases in which a servant of the contractee is seeking to recover from the contractor damages for injuries occasioned by the negligence of persons in the service of the latter. If in a case belonging to this category the remedial rights of the plaintiff are determinable with reference to common-law rules, the defense of common employment will constitute a bar to the action, whenever the evidence shows that the relationship between the contractee and the contractor was, in point of fact, that of master and servant, and consequently that the plaintiff and the tort-feasors were fellow servants.[4]

(e) Cases in which a servant of the contractor is seeking to hold the contractee liable for his wages. The general rule applicable to such cases is that, in the absence of some special agreement for his benefit, or of some statutory provision enlarging his common-law rights, a servant of an independent contractor cannot look to the principal employer for the payment of his wages.[5]

(f) Cases involving the question whether the personal estate of a deceased contractee is liable in respect of the amount due for work done after his death by the contractor.[6]

(g) Cases involving the right of the contractor to recover compensation in respect of a partial performance of the contract in question.[7]

(h) Cases involving the question whether the contractor is entitled to rights allowed by a statute regulating procedure.[8]

(i) Cases in which it is sought to hold the contractee liable for the price of commodities sold to the person employed.[9]

(j) Cases in which the contractee has been compelled to pay damages for an injury caused to a third party by the negligent performance of the stipulated work, and is seeking to recover an indemnity from the contractor.[10]

(k) Cases in which an action is brought on a policy insuring the contractee against damages which he is compelled to pay in respect of injuries sustained by his "employees."[11]

(l) Cases in which the question whether the defendant was affected with notice of a certain fact is material.[12]

(m) Cases in which the contractor demands an accounting from the contractee.[13]

(n) Cases in which it is sought to hold the contractor liable in respect of a tort committed by himself or his servants. In so far as the circumstances are such as to bring the case within the scope of the rule that a servant is liable for injuries caused by misfeasance on his part, but not for those caused by mere nonfeasance, the remedial rights of the claimant manifestly

depend upon whether the tort-feasor was a servant or an independent contractor.[14] The scope of the application of that rule is fully discussed in Labatt's Master & Servant, §§ 2586 et seq. That independent contractors are liable in respect of torts of all descriptions has never been disputed.

(o) Cases in which the action is brought by the contractee to recover damages from a third party for inducing the contractor to abandon his contract.[15]

(p) Cases involving the scope of statutes. Numerous decisions proceed upon the theory that the statutes in question had relation only to servants, and by consequence were not applicable to independent contractors.

II. Independent contractors distinguished from servants and agents

a. General discussion of the subject

§ *14*. Distinction between independent contractors and servants

As stated in § 6, supra, a person employed to perform work is deemed to be a servant or an independent contractor, according as he is or is not under the control of the employer in respect of the details of the stipulated work.[1] On the one hand, the independence of the contract is negatived, if it appears that this right was reserved by the employer. On the other hand, such independence is inferable, where the evidence shows that the party entitled to exercise this right was the person employed, and not the employer.

§ *15*. Distinction between independent contractors and agents; subject considered with reference to the English decisions

In a case which turned upon the question whether the defendant was a "servant," within the meaning of an embezzlement act, Bramwell, B., remarked: "It seems to me that the difference between the relations of master and servant, and of principal and agent, is this: A principal has the right to direct what the agent has to do, but a master has not only that right, but also the right to say how it is to be done."[1] Under the theory reflected in this statement, the absence of a right on the employer's part to control the details of the stipulated work is treated as the characteristic feature of the relation of principal and agent. Such a theory manifestly involves the corollary that the employer's possession or nonpossession of that right cannot be employed as a criterion for the purpose of distinguishing an agent from an independent contractor.[2]

That the English courts, although they have not, so far as the writer is aware, explicitly recognized this logical situation, have in effect assumed its existence, is apparent from the cases in which they have treated the general rule concerning the responsibility of a principal for the torts of his agent as being applicable in respect of various classes of agents, who, in the discharge of the functions intrusted to them, are manifestly no less free from control as regards details than independent contractors. Thus, the rule has been held controlling with regard to an attorney at law,[3] and it is noteworthy that, in one instance, the status of such an agent was expressly distinguished from that of an independent contractor.[4] So, also, it has been held that a principal is liable for the fraud of a factor beyond the sea,[5] and of a house agent;[6] and that a bank, which undertakes to procure for a customer the collection of commercial paper in a city other than the one in which it is received, is chargeable with any loss that may be occasioned by the negligence of the party employed to make the collection.[7]

It is observable however, that the decisions referred to appear, in so far as they exemplify the liability of principals for the acts of agents not under their control in respect of details, to be essentially inconsistent with a recent case in which it was held that the negligence of an auctioneer was not imputable to his employer.[8] As the ground upon which this decision proceeded was that an auctioneer belongs to the category of independent contractors, it supports even more definitely than the other cases mentioned the statement, made above, that the circumstance of freedom from control is not regarded by the English courts as

an element with reference to which a differentiation between agents and independent contractors can be effected. But it seems to be essentially inconsistent with those cases, in so far as it may be supposed to rest upon the broad theory that a principal is not responsible for the acts of an agent who is free from control as respects the manner in which he performs the stipulated services. For this reason its soundness as a precedent, with regard to the immunity of a principal under such circumstances as those involved, is open to question. The only authority cited by the court was a case which turned upon the nature of the relationship created by the contract of a stevedore for the unloading of a ship; and, according to ordinary usage, the designation of "independent contractor" is applicable to a person engaged for such work, whenever he is, in point of fact, free from the control of his employer in respect of the manner in which it is to be performed. Such a case, it is submitted, was not in point. On the other hand, the attention of the court was not—so far, at least, as the report shows—directed to any of the cases in which the liability of principals for the torts of agents, who, in respect of their freedom of control, belong to the same general category as auctioneers, has been affirmed.

§ *16*. Subject considered with reference to the general statements of American judges

The views of Bramwell, B., concerning the ground upon which a servant is to be distinguished from an agent, and the difficulties which it raises with respect to the segregation of the categories of agents and of independent contractors, have not, so far as is known to the present writer, engaged the attention of any court in the United States. The theory reflected in the language used in many of the American cases in which those categories have been explicitly differentiated seems to be that the person employed is to be regarded as an agent, or an independent contractor, according as he is subject to, or free from, the control of the employer with respect to the details of his work.[1] Under this theory, the categories of "servant" and "agent" become coextensive—so far, that is to say, as their equivalence is determinable by the nature of the control exercised by the employer. Such a conception, however, is plainly inappropriate, so far as regards cases in which the agent was not subjected to the principal's control in respect of the details of his work. See § 18, infra.

§ *17*. Subject considered with reference to the actual purport of various American decisions

In all the cases involving the character of the relationship existing between the employers and persons belonging to the following categories, the rights and liabilities of the parties were determined with reference to the question whether the contract under review invested the employers with the right of controlling the details of the stipulated work.

(a) Architects. So far as regards the performance of his supervisory functions with respect to a building under construction, an architect ordinarily acts in the capacity of an agent of the employer.

(b) Persons employed to discharge supervisory functions with regard to the construction of buildings.[1]

(c) Persons employed to discharge supervisory functions in respect of work in manufacturing or other plants.[2]

(d) Persons employed under contracts providing for the performance of services involving various descriptions of manual labor.[3]

(e) Persons employed to sell property.[4] As all persons belonging to this category are indisputably agents, in the sense that their essential function is that of representing their employers with regard to the making of contracts,[5] every case in which their status has been discussed may appropriately be cited in this place, irrespective of whether the specific ratio decidendi, as indicated by the language of the court, was the distinction between independent contractors and agents, or the distinction between independent contractors and servants.

(f) Auxiliary railroad companies organized for the purpose of constructing local lines on behalf of the companies organizing them.[6]

(g) Union depot companies.[7]

(h) Elevator companies receiving grain at the request of railroad companies by which it has been transported.[8]

(i) Business companies participating in the transactions of other companies.[9]

(j) Manager of department of large store.[10]

Some decisions regarding the status of persons engaged in the performance of work in which municipalities were interested may be cited in this connection. But, as they turned upon special considerations arising out of the particular circumstances involved, they do not throw any light upon the general questions now under discussion.[11]

§ *18*. American decisions further discussed

The character of a portion of contracts of employment specified in ¶¶ (a)–(j) of the preceding section is obviously such that it is impossible to postulate, with respect to them, the existence of an intention on the part of employer and employee that the former should be entitled to control the details of the work. To this extent, therefore, the cases cited may be regarded as demonstrating the inaccuracy of the judicial statements in § 16, supra, which treat the exercise of such control as the indicium of the status of an agent as opposed to that of an independent contractor. The theory embodied in those statements is also inconsistent with a large number of other cases in which the distinction between agents and independent contractors was not directly presented. Some of the decisions which illustrate that inconsistency may advantageously be adverted to.

Many courts hold that the obligation of a bank with which commercial paper is deposited for the purpose of being collected in a city other than the one in which the bank is doing business is limited to the exercise of reasonable care in choosing a suitable party to make the collection, and that it is consequently not responsible for the defaults of that party in discharging the functions so devolved. This doctrine is considered to be an appropriate deduction from the consideration that the depositor is presumed to know that, under the circumstances, it will be necessary for the bank to intrust the collection to a correspondent, unless it has an office of its own in the city to which the paper is to be transmitted.[1]

In the view of other courts, the receiving bank is to be regarded, in the absence of an express stipulation to the contrary, as having undertaken to do everything that may be necessary to make the collection, and, consequently, as having assumed a full liability for any negligence of which its correspondent may be guilty.[2] It is observable that the conflict of opinion upon this subject reflects simply a difference of theory respecting the implied terms of the contract between the depositor and the receiving bank. It has never been even suggested, much less seriously contended, that a liability on the part of the receiving bank might be predicated on the ground of its being entitled to control its correspondent with regard to the details of the collection.[3]

So far as regards the status of the receiving bank itself, there is explicit authority for the doctrine that it is not subject to such control. The Supreme Court of the United States has declared that the effect of the second group of cases, referred to above, is that, "where a bank, as a collecting agency, receives a note for the purposes of collection, its position is that of an independent contractor, and that the instruments employed by such bank in the business contemplated are its agents, and not the subagents of the owner of the note."[4] For the purposes of the present discussion, this form of phraseology is particularly significant, for the reason that it indicates how, in this instance as in many others, there is, so far as respects the element of freedom from control, an overlapping between the domains connoted by the terms "agent" and "independent contractor."

Additional examples of such overlapping, so far as it has reference to the element of freedom from control, are furnished by the cases in which attorneys at law have been held liable to their clients for the negligence of distant agents employed to make

collection;[5] in which the liability of collecting agencies for the defaults of subagents has been affirmed;[6] in which the tortious acts of attorneys at law have been held to be imputable to their clients;[7] and in which detective agencies have been treated as being independent contractors.[8]

§ *19*. General remarks with regard to the distinction between agents and independent contractors

The conclusion to which a survey of the cases, English and American, which are reviewed in the foregoing sections, conducts the inquirer, is that there is, in point of fact, no universally applicable criterion with reference to which agents and independent contractors can be differentiated. But those cases also show that, for some purposes, such a differentiation is feasible, and, as the distinction between them is frequently a matter of controlling importance, it will be proper to make some general remarks upon the subject.

In one point of view, any contract which has reference to the performance of services constitutes the person performing them the agent of the person for whom they are performed, irrespective of the character of the stipulated work, and of the degree of control which is to be exercised over its details by the employer. This conception as to the nature of agency is reflected in such statements as those quoted below.[1] In another point of view both of these elements are taken into account for the purpose of determining the status of the person employed. When used in its more comprehensive sense, the term "agent" connotes each and all of the following categories:

(a) Agents who are under the control of their principal with respect to the details of the stipulated work, and who perform functions of the various descriptions that are ordinarily associated with the position of a servant. Such agents are essentially servants, and are preferably designated by that expression.[2]

(b) Agents whose relationship to their principals is, so far as respects their subjection to control, identical with that of the class of agents specified under (a), but whose functions are concerned, either entirely or mainly, with the formation of contracts on behalf of their principals. These are agents in the more restricted sense which is ordinarily attached to that term.

(c) Agents whose functions are of the same character as those specified under (b), but who are not subject to the control of their principals in respect of the details of the stipulated work. To this category belong such classes of agents as attorneys at law, auctioneers, factors, brokers, and all public agents of the higher grades.

(d) Agents who, like those included in the last-mentioned category are free from control in respect of details, but whose functions have reference to work of the same character as that which is performed by servants. The agents which belong to this category are almost invariably described as independent contractors. For this reason the notion that their functions are the result of a delegation of authority is one which seldom emerges in judicial language. But the theoretical appropriateness of that notion is manifest.[3]

(e) Agents employed to discharge supervisory functions with relation to those more important kinds of construction work which are ordinarily intrusted to independent contractors. Agents of this type may, according to circumstances, be either independent contractors, or representatives for whose acts their employers are responsible. See § 17, ¶ (c), supra.

The foregoing classification of the various descriptions of persons to whom the general term "agent" is applicable brings out clearly the fact that this term, when used in its narrower and specialized sense, embraces two categories, one of which corresponds, so far as a portion of its incidents is concerned, to that of servants, while the other is allied in the same manner to that of independent contractors. It is also apparent from that classification that, as the absence of a right on the employer's part to exercise control over the details of the stipulated work is an incident which is common to categories (c), (d) and (e), a complete segregation of independent contractors from other descriptions of agents is possible only in respect of categories (a) and (b).

By some of the authorities it has been assumed that agents and independent contractors may be differentiated on the footing which is indicated by the consideration that the normal function of an agent is that of representing his principal in transactions arising out of business, trade, or commerce,[4] while the normal function of an independent contractor is that of performing work which is predominantly physical in its nature. It may be conceded that the significance of this contrast is not necessarily destroyed by the circumstance that the discharge of his function by an agent may also involve the performance of a certain amount of manual labor, by himself or others, in dealing with material substances. Such operations are merely incidental to his function; whereas they ordinarily constitute the specific subject-matter of the undertaking of an independent contractor. But it is manifest that the process of differentiation cannot be effected on this basis, without disregarding the broader connotation of the term "agent."[5]

§ *20*. Concurrent existence of two relationships

In most instances, the effect of evidence which shows that the relation of employer and independent contractor existed between two persons is to exclude entirely the inference that the relation between them was that of master and servant, or that of principal and agent. But the former and latter relations are not so essentially incompatible that they cannot exist together with regard to different portions of the same work.[1] In cases where such concurrent existence is established, the enforceability of the claim, whatever it may be, depends upon whether, at the time when the circumstances to which the claim has reference supervened, the person employed was acting in the capacity of an independent contractor, or of a servant, or of an agent.[2]

§ *21*. Change in the character of the relation during the progress of the stipulated work

Whether the relation created by the original contract of employment had been altered before the time to which the claim has reference is a question of fact.[1]

§ *22*. Independent contractor and partner, distinction between

Where it is provided by the contract that the person undertaking the work is to receive a certain percentage of the profits accruing therefrom, the rights and liabilities of the parties to the contract, and of third parties, are susceptible of being considered with reference to the question whether the relation created is a partnership. A few cases involving this situation have been reported.[1]

In one case, where the ratio decidendi was that the contract under review did not create a partnership, the point so determined seems to have been unnecessarily raised, inasmuch as the evidence from which the inference was drawn that the person employed was not a partner of the employer would also have warranted the conclusion that he was a servant.[2]

CUMULATIVE SUPPLEMENT

Evidence that products company referred to its local representative as its district manager and as a salesman, that stationery office supplies, and stamped envelopes bearing company return address were furnished by company, and that compensation claimant hired by representative did work pertaining exclusively to the handling of company merchandise, supported findings of the Industrial Commissioner and the trial court that claimant was an employee of the company and not of representative as an independent contractor. Code 1939, § 1361 et seq. (I.C.A. § 85.1 et seq.) Jensen v. Diamond Products Co., 299 N.W. 443.

Evidence that compensation claimant agreed to remove screens and wash and put on storm windows of an apartment at certain price per window, that claimant could do the work at odd times and not in his regular employment, that owners of apartment furnished equipment needed to do the work, could dismiss claimant at any stage of the work, and that the job amounted to only $32.60, sustained finding that compensation claimant was an employee of apartment owners, and did not compel a finding that

he was independent contractor, and hence claimant was entitled to compensation for a broken ankle sustained while engaged in his work. Fisher v. Manzke, 294 N.W. 477.

The right to control is the principal test of whether a relationship is that of master and servant or contractor and contractee. Schlichting v. Radke, 291 N.W. 585.

The primary test, in determining whether relationship of independent contractor or relationship of master and servant exists, is whether the employer has a right of control, and whether he exercises it or not is immaterial. La Bree v. Dakota Tractor & Equipment Co., 288 N.W. 476.

If, as to the result, and in the employment of the means, a person acts entirely independently of his employer, he must be regarded as an independent contractor, rather than an employee. Reynolds v. Skelly Oil Co., 287 N.W. 823.

A servant is one employed to perform service for another subject to other right of control with respect to physical conduct, or details of performance whereas an independent contractor is one who undertakes specific work without submitting himself to control as to details of the work, or renders service in course of independent employment, representing the contractee only as to result of work and not means by which it is accomplished. Wicklund v. North Star Timber Co., 287 N.W. 7.

The basic test of whether workman is entitled to compensation or was an independent contractor is whether employer right of control extended only to the results to be accomplished, and fixed price for the work and specific and limited character of the work are not conclusive. Stevenson v. Antrim Iron Co., 283 N.W. 632.

In determining whether one is an employee or an independent contractor with respect to right to compensation, the dominant test is whether employer has right to control details of the work, though other things such as place of work, time of employment, method of payment, and right of summary discharge are to be considered. St.1935, § 102.01 et seq. (W.S.A.) Montello Granite Co. v. Industrial Commission, 278 N.W. 391.

The term independent contractor signifies one who contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work. Peterson v. Brinn & Jensen Co., 277 N.W. 82.

In compensation proceeding, whether claimant was an employee and entitled to compensation for injuries sustained while moving lath mill and not independent contractor was a question of fact where claimant, though having control over milling operations, was told by employer when to suspend milling operations and enter into other work where he admittedly functioned as employee, men working on milling operations were removed by employer without claimant consent, and employer signed up under the NRA for milling operations. Tiffany v. Industrial Commission, 273 N.W. 519.

As respects right to compensation under Workmen Compensation Act, independent contractor is person who renders service in course of independent occupation, representing will of employer only as to result of work, and not as to means by which it is accomplished. Comp.St.1929, § 48-101 et seq., as amended. Prescher v. Baker Ice Mach. Co., 273 N.W. 48.

One of most important tests in determining whether workman is an employee or independent contractor is whether person for whom work is done has right to control not merely result, but manner in which work is done and method used. Janneck v. Workmen's Compensation Bureau, 272 N.W. 188.

Where partnership was formed by former employees of monument company who leased company premises to carry on its business as independent contractor, not subject to compensation law, partner who like other partners was skilled workman and controlled his own hours of work held independent contractor, and not entitled to compensation for injuries, even though company manager had right to see that work conformed to order and consulted workman respecting the work. St.1933, § 102.01 et seq. (W.S.A.) York v. Industrial Commission, 269 N.W. 726.

As regards liability of employer for tort of employee, independent contractor is person who, carrying on independent business, contracts to do piece of work according to his own methods, and without being subject to control by employer as to means by which result is to be accomplished, but only as to result of work, and actual interference with control need not be shown if right to exercise control exists. Holloway v. Nassar, 267 N.W. 619.

Term independent contractors refers to those who carry on an independent business and contract to do work according to their own methods, subject to employer control only as to results. Baer v. Armour & Co., 258 N.W. 135.

If master retains control and direction of men, with right to fix pay and to discharge them as he pleases, and with power of control over employees, relationship of independent contractor is not created. Niemann v. Iowa Elec. Co., 253 N.W. 815.

Whether person is employee or independent contractor depends on whether employer has right to interfere with or give directions concerning manner of his performance of duties. McKesson-Fuller-Morrison Co. v. Industrial Commission, 250 N.W. 396.

Whether one is independent contractor or servant depends on whether he or person employing him has right of control, which must be determined by contract. Sprecher v. Roberts, 248 N.W. 795.

Whether compensation claimant is employee or independent contractor must be determined from facts of particular case. Comp.St.1929, § 48-101 et seq. Standish v. Larsen-Merryweather Co., 245 N.W. 606.

Whether compensation claimant is employee or independent contractor must be determined from facts of particular case. Comp.St.1929, § 48-101 et seq. Cole v. Minnick, 244 N.W. 785.

Right to control, as to result and as to means to be used, is decisive in determining whether agency or independent contractor relationship exists. Marchand v. Russell, 241 N.W. 209.

Independent contractor carries on independent business and contracts to do work according to own methods, subject to employer control only as to results. Burns v. Eno, 240 N.W. 209.

Power to control, and not fact of control, is test which determines whether one is independent contractor or employee within Compensation Act. Slessor v. Board of Ed. of City of Kalamazoo, 240 N.W. 13.

Writings attempting to define status of parties and surrounding circumstances must be treated together to determine whether injured person was independent contractor or employee. St.1929, § 102.07(4) (W.S.A.) Nestle's Food Co. v. Industrial Commission, 237 N.W. 117.

Where compensation claimant had right to control work under written contract with alleged employer, that alleged employer interfered with such right did not change claimant from independent contractor to employee. Comp.Laws 1929, § 8407 et seq. McCormick v. Sears, Roebuck & Co., 236 N.W. 785.

Whether person is servant or independent contractor depends largely on degree or power of control which employer has retained as to manner of performing details of work. Kruse v. Weigand, 235 N.W. 426.

Independent contractor is one carrying on independent business and contracting to do piece of work according to own methods, subject to employer control only as to result. Mallinger v. Webster City Oil Co., 234 N.W. 254.

Usually right to control is test whether person charged with negligence is employee or independent contractor. Robertson v. Olson, 232 N.W. 43.

Where one represents another as to result and himself selects means, he is an independent contractor. Code 1927, § 1421, subd. 3 (I.C.A. § 85.61). Arthur v. Marble Rock Consol. School Dist., 228 N.W. 70.

In determining whether workman was independent contractor, principal test is right to control details of work, though place of work, time of employment, method of payment, and right of discharge are also considered. Workmen Compensation Act. Habrich v. Bent, 227 N.W. 877.

Right to control performance of work and to discharge workman are generally controlling in determining whether workman is independent contractor or servant. State ex rel. Woods v. Hughes Oil Co., 226 N.W. 586.

Owner requiring contractor to take out compensation insurance is not employer. Comp.St.1922, § 3039. Matthews v. G.A. Crancer Co., 223 N.W. 661.

Independent contractor is one contracting to do work according to own methods without being subject to employer control as to means. Wight v. H.G. Christman Co., 221 N.W. 314.

Compensation Law does not apply where injured person is independent contractor. Dennis v. Sinclair Lumber & Fuel Co., 218 N.W. 781.

Portable mill owner sawing for one having right to control work and terminate contract held employee rather than independent contractor. Krause v. Bodin, 215 N.W. 838.

Truck farmer, attempting to negotiate automobile trade, driving own automobile bearing dealer license plates, held independent contractor. St.1925, § 85.05. Buchholz v. Kastner, 213 N.W. 329.

Independent contractor is one rendering service in course of independent employment, representing employer will only as to results, and not as to means. Angell v. White Eagle Oil & Refining Co., 210 N.W. 1004.

One representing master as to result of work only is independent contractor, not employee, within Workmen Compensation Act. In re Amond's Estate, 210 N.W. 923.

Employer is not released from duty, under St.1923, § 101.06 (W.S.A.), to provide reasonably safe place to work by employment of independent contractor. Carlson v. Chicago & N.W. Ry. Co., 200 N.W. 669.

One injured while cutting timber under a contract and receiving pay by the cord, upon measure made every two weeks, furnishing his own tools and being master of his own time, under no control by company, who could quit when he wanted to and hire others to help him, held an independent contractor, and not within Workmen Compensation Act. Laws, Ex.Sess.1912, No. 10. Donithan v. Michigan Iron & Chemical Co., 199 N.W. 607.

One contracting with a county to furnish tools and labor and to gravel a designated highway for a sum per cubic yard, who may perform the work himself or hire others, employ as much assistance as he pleases, hire or discharge men, fix their wages and hours of labor, and is liable for their compensation, and who has the power to direct their work, is, within the Workmen Compensation Law, an independent contractor. Potter v. Scotts Bluff County, 199 N.W. 507.

A stevedore contractor, who in performing work for a dock company employed his own men and discharged them at will and was paid a lump sum and in turn paid his own men, held an independent contractor, to whose employee the dock company was not liable for injuries as his employer. Machae v. Fellenz Coal & Dock Co., 197 N.W. 198.

One who undertakes a specific job of repair work furnishing his own assistants and working according to his own ideas and plans and without being subject to orders of any one else as to the details of the work is an independent contractor and not a servant. Kutchera v. Minneapolis, St. P. & S.S.M. Ry. Co., 197 N.W. 140.

One who sold cars on commission and was obliged to own and maintain a car at his own expense, for demonstration purposes, held an independent contractor (the principal distinguishing characteristic of which relation is freedom from control as to the manner in which the details of the work is to be done), for whose negligence the one for whom he sold was not liable. James v. Tobin-Sutton Co., 195 N.W. 848.

A night watchman over property belonging to several firms, under an agreement signed by the various firms which provided for a certain compensation per night from each firm, held an employee, within the Workmen Compensation Act, and not an independent contractor. Sargent v. A.B. Knowlson Co., 195 N.W. 810.

Truck owner who was engaged in the general business of hauling, and who delivered coal for coal dealer for specified price per ton, without being steadily engaged in such service, and without receiving from dealer special directions, as to how the coal was to be delivered, held an independent contractor, and not an employee of the coal dealer. Svoboda v. Western Fuel Co., 193 N.W. 406.

Where deceased, a painter who did other jobs but always did the work himself, agreed with a village to clean and paint a bridge for a specified price, under a contract permitting him to do the work in his own way at his own convenience, he furnishing his own brushes and the village furnishing the paint, but reserving no control over the details of the work, held, that he was an independent contractor and not an employee within the Workmen Compensation Act. Village of Weyauwega v. Kramer, 192 N.W. 452.

One who was hired by the owner of a lot to dig a trench in the street in front of the lot for a sewer connection, and who was to be paid by the day for his work, and was not shown by the agreement for employment or by any evidence to be free from the control of the lot owner, is merely an employee, and not an independent contractor, so that the lot owner is liable for his negligence. Spurling v. Incorporated Town of Stratford, 191 N.W. 724.

One injured while cutting wood under a verbal contract according to specifications at a fixed price per cord for that cut by himself and others whom he hired, using his own tools, and controlling the hours of work and the amount of work done, held an independent contractor, and not an employee within Workmen Compensation Act. Gross v. Michigan Iron & Chemical Co., 189 N.W. 4.

An independent contractor as distinguished from an employee is a workman who is independent in his employment and who contracts to do a particular piece of work according to his own methods and is not subject to the control of his employer except as to the results of his work in which case he is not a servant and cannot be controlled by the employer in the manner of doing the work except to the extent that the employer has the right to give such directions as may be found necessary to insure compliance of the contract. Petrow & Giannou v. Shewan, 187 N.W. 940.

Where contract between railroad and contractor for work on railroad tracks did not reserve rights in railroad to direct method of work, or manner in which it should be done, but only authority to supervise to extent of assuring performance, relation created was that of independent contractor and not master and servant. Orange v. Pitcairn, 280 Ill.App. 566.

An independent contractor is one who renders services in the course of his occupation representing the will of the person for whom the work is done only as to the result of his work and not as to the means by which it is accomplished. Meece v. Holland Furnace Co., 269 Ill.App. 164.

In pedestrian action against owner of building for injuries suffered when chisel used in painting building fell on pedestrian, evidence held to establish that painting contractor who hired and paid employee to paint building for lump sum, was an independent contractor. Andronick v. Daniszewski, 268 Ill.App. 543.

An independent contractor is one who contracts to do a specific piece of work, furnishing his own assistants and executing the work entirely in accordance with his own ideas or in accordance with the plan previously given him by the person for whom the work is done, without his being subject to the orders of the latter in respect to the details of the work. Scharfenstein v. Forest City Knitting Co., 253 Ill.App. 190.

Test, in determining whether workman is independent contractor, lies in degree of supervision and control which party for whom work is being performed has in relation to manner and method of doing work. Myers v. Newport Co., 17 La. App. 227, 135 So. 767 (1st Cir. 1931).

Statute making right to control manner of doing work test whether independent contractor relation exists merely declares existing law. Act No. 20 of 1914, § 3, as amended by Act No. 85 of 1926, § 3, subsec. 8, LSA-R.S. 23:1021, 23:1038 et seq. James v. Hillyer-Deutsch-Edwards, 15 La. App. 71, 130 So. 257 (1st Cir. 1930).

Evidence established that farmer, employed to do general work requiring use of team in constructing pipe line, was employee, not independent contractor. Act No. 20 of 1914 as amended, Act No. 85 of 1926, § 3, par. 8, LSA-R.S. 23:1021 et seq., 23:1044. Armes v. Williams Bros., 17 La. App. 555, 136 So. 160 (2d Cir. 1931).

Question whether employer furnishes tools and mode of payment are matters to consider in determining independence of contractor. Goetschel v. Glassell-Wilson Co., 13 La. App. 424, 127 So. 81 (2d Cir. 1930).

If the interest of an employer is only in the result and he does not control and has no right to control the means of accomplishing the result, the employee is an independent contractor, under Pennsylvania law. Waggaman v. General Finance Co. of Philadelphia, 116 F.2d 254 (C.C.A. 3d Cir. 1940).

An independent contractor is one who, exercising independent employment, contracts to do work according to his own judgment and methods, without being subject to control of employer except as to result of work and who has right to employ and direct action of workmen independently of employer and free from any superior authority in him to say how specified work shall be done or what laborers shall do as it progresses. War Emergency Co-op. Ass'n v. Widenhouse, 169 F.2d 403 (C.C.A. 4th Cir. 1948).

Construction contract, contemplating payment of costs plus percentage to contractor, is not inconsistent with relation of independent contractor. J.B. McCrary Engineering Co. v. White Coal Power Co., 35 F.2d 142 (C.C.A. 4th Cir. 1929).

Though one was independent contractor under his contract, his employer would nevertheless be liable for his negligence if, in doing the work, he did not really carry it on as an independent contractor, but as a mere employee. Swift & Co. v. Bowling, 293 F. 279 (C.C.A. 4th Cir. 1923).

An "independent contractor" is one who contracts to perform a certain work for another according to his own means and methods, free from control of his employer in all details connected with the performance of the work except as to its product or result. Schramm v. Foster, 341 F. Supp. 2d 536 (D. Md. 2004), related reference, 2004 WL 1882628 (D. Md. 2004).

In action by workmen compensation insurance carrier to set aside awards of Industrial Accident Board in favor of defendants as result of collision which occurred when one of defendants and intestates of other defendants were returning from their place of employment, wherein it appeared that one of intestates had, pursuant to request of employer, procured crew to load spinach in accordance with agreement for payment to crew at certain amount per car loaded, plus sum for transportation to place of

loading evidence warranted finding that injured defendant and intestates were employees and were being transported pursuant to employment agreement at time of accident, and that intestate who procured crew was not acting as independent contractor. Great Am. Indem. Co. v. Ortiz, 193 F.2d 43 (5th Cir. 1951).

The decisive consideration in determining whether contract creates relationship of master and servant or that of master and independent contractor, is employer right to control details of the work, and actual interference with or regulation of details by employer is not of importance, except as it may constitute evidence, the test being the right to control. Bartle v. Travelers Ins. Co., 171 F.2d 469 (5th Cir. 1948).

Where owner of truck agreed to haul logs for sawmill company as independent contractor, furnishing his own hauling equipment and employing his own help, manner of payment of truck owner did not affect their relationship as owner and independent contractor. Alexander v. Frost Lumber Industries, 88 F. Supp. 516 (W.D. La. 1950), judgment aff'd, 187 F.2d 27 (5th Cir. 1951).

Where owner of truck agreed to haul logs for sawmill company as independent contractor, furnishing his own hauling equipment and employing his own help, manner of payment of truck owner did not affect their relationship as owner and independent contractor. Alexander v. Frost Lumber Industries, 88 F. Supp. 516 (W.D. La. 1950).

Under Texas law, if employer of independent contractor reserves right of supervision and control and right to direct manner in which servants of independent contractor performed their work, he is under duty to exercise reasonable care for their safety. Allbritton v. Sunray Oil Corp., 88 F. Supp. 54 (S.D. Tex. 1949), judgment modified, 187 F.2d 475 (5th Cir. 1951), reh'g denied, 188 F.2d 751 (5th Cir. 1951).

Under Texas law, if employer of independent contractor reserves right of supervision and control and right to direct manner in which servants of independent contractor performed their work, he is under duty to exercise reasonable care for their safety. Allbritton v. Sunray Oil Corp., 88 F. Supp. 54 (S.D. Tex. 1949).

Where employer assigned crane operator to assist crew of independent contractor in the dismantling of overhead travelling crane at employer plant, and crane operator, in performing such work, was under sole direction of independent contractor foreman, employer could not be held liable for crane operator alleged negligence resulting in injury to member of independent contractor crew. McAndrews v. E. W. Bliss Co., 186 F.2d 499 (6th Cir. 1951).

Under Ohio law, a person who renders service to another in the course of an occupation representing the will of his employer only as to the result of his work, and not as to means by which it is accomplished, is an independent contractor and not an employee of his employer. Smith v. Price Bros. Co., 131 F.2d 750, 25 Ohio Op. 481 (C.C.A. 6th Cir. 1942).

Independent contractor is one whom employer does not, and has no right to, control as to method or means for producing result. Howard W. Luff Co. v. Capece, 61 F.2d 635 (C.C.A. 6th Cir. 1932).

Whether employer and independent contractor relationship exists depends on nature and extent of work, method of paying compensation, and control over details. Pittsburgh Valve Foundry & Const. Co. v. Gallagher, 32 F.2d 436 (C.C.A. 6th Cir. 1929).

Under Illinois law, test of whether one is independent contractor or employee is extent of employer's right to control manner and method in which work is to be carried on. Sotelo v. DirectRevenue, LLC, 384 F. Supp. 2d 1219 (N.D. Ill. 2005).

One whom employer does not control and has no right to control as to method or means by which he produces results contracted for is independent contractor. P. F. Collier & Son Co. v. Hartfeil, 72 F.2d 625 (C.C.A. 8th Cir. 1934).

Under Arkansas law, if contract does not show an intent on part of an employer to retain control or direction of means or methods by which party claiming to be independent shall perform work, and no direction relating to physical conduct of contractor or his

employees in execution of his work, relation of independent contractor is created, but if control of work reserved by employer is control not only of result, but also of means and manner of performance, then relation of master and servant exists. American Cas. Co. v. Harrison, 96 F. Supp. 537 (W.D. Ark. 1951).

The relationship of master and servant exists whenever the employer retains the right to direct the manner in which the work shall be done, as well as the result to be accomplished. Robinson v. Levy, 20 N.J. Misc. 444, 28 A.2d 651 (Dept. of Labor 1942).

Where claimant was employed as an assemblyman by employer doing general assembly work for so much per hour and in addition was permitted by employer to sell milk and soda water to other employees on a commission basis, claimant while engaged in the latter occupation was not an independent contractor so as to be barred from recovery of compensation for an injury while so employed. N.J.S.A. 34:15-1 et seq. Manigian v. Breeze Corp., 20 N.J. Misc. 443, 28 A.2d 650 (Dept. of Labor 1942).

The distinction in the relationship between master and servant, entitling servant to protection of the Workmen Compensation Act, and independent contractor, entitled to no such protection, is that in the former case the employer maintains supervision and control over the one doing the work. Chmizlak v. Levine, 20 N.J. Misc. 339, 27 A.2d 629 (Dept. of Labor 1942).

Independent contractor is one who, carrying on independent business, contracts to do work according to his own methods and without being subject to control of employer as to means by which result is to be accomplished, but only as to result of work. Gildersleive v. Burlington Textile Mills, 13 N.J. Misc. 643, 180 A. 497 (Dept. of Labor 1935).

Whether relation of independent contractor or of employee exists depends upon whether person for whom one is working has control over means and agencies by which work is done or over means and agencies by which result is produced. Code 1940, Tit. 26, §§ 262, 311. Western Union Telegraph Co. v. George, 239 Ala. 80, 194 So. 183 (1940).

Test in determining whether one is an employee or independent contractor depends upon the peculiar facts. Moore-Handley Hardware Co. v. Williams, 238 Ala. 189, 189 So. 757 (1939).

Failure of contract of hire to provide for supervision and control of employee was not of itself determinative of question whether relation established between parties was that of employer and employee or that of independent contractor. Code 1940, Tit. 26, §§ 262, 263. Tuscaloosa Veneer Co. v. Martin, 233 Ala. 567, 172 So. 608 (1937).

Where there was nothing in opinion of Court of Appeals to indicate duration of contract or right of defendant to terminate it at pleasure or for cause, question of duration of contract or right to terminate it was not before Supreme Court on certiorari. Great Atlantic & Pacific Tea Co. v. Donaldson, 229 Ala. 276, 156 So. 865 (1934).

Whether relation of independent contractor or that of servant exists depends upon whether person for whom one is working has control over means and agencies by which work is done, or over means and agencies by which result is produced. Code 1940, Tit. 26, §§ 262, 310. Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74 (1933).

Whether one is independent contractor depends on whether other contracting party has right to exercise supervision. Martin v. Republic Steel Co., 226 Ala. 209, 146 So. 276 (1933).

Collection agency held to be independent contractor for whose acts creditor was not liable. Lynch Jewelry Co. v. Bass, 220 Ala. 96, 124 So. 222 (1929).

Whether employer has control over means and agencies is determinative of relation as against relation of independent contractor. General Exchange Ins. Corporation v. Findlay, 219 Ala. 193, 121 So. 710 (1929).

Relation of master and servant may exist between corporations as between individuals. Alabama Power Co. v. Bodine, 213 Ala. 627, 105 So. 869 (1925).

Where a duty to the public exists in the manner of executing the work undertaken, a contractor, who places the performance of such duty in the hands of another, is liable for the other negligence. Thomas v. Saulsbury & Co., 212 Ala. 245, 102 So. 115 (1924).

One contracting to furnish clay, for which he was paid by load, to mud mill of foundry company, which saw that clay delivered was of right sort, required, in general way, that enough be furnished to keep mill at work, and employed engineer, who occasionally looked over digging of clay, held independent contractor. United States Cast Iron Pipe & Foundry Co. v. Fuller, 212 Ala. 177, 102 So. 25 (1924).

One who has work done which is intrinsically dangerous cannot avoid responsibility in its execution by letting or subletting the work to an independent contractor. Wright-Nave Contracting Co. v. Alabama Fuel & Iron Co., 211 Ala. 89, 99 So. 728 (1924).

A mechanic holding possession of an automobile for the purpose of repairing it in his own way by the job, and free from direction or control of the owner as to details or manner, was an independent contractor, though he charged by the hour, and the owner was not liable for injuries by the mechanic operation of the car. Freeman v. Southern Life & Health Ins. Co., 210 Ala. 459, 98 So. 461 (1923).

One employed to open and operate a coal mine, under an arrangement by which he was to be assisted with his pay roll and supplied with timbers and a car for the coal mined, held an independent contractor for whose negligence his employer exercising no control over the work was not responsible to the men employed. United States Cast Iron Pipe & Foundry Co. v. Caldwell, 208 Ala. 260, 94 So. 540 (1922).

In absence of other controlling circumstances, servant who has sole right to control manner of doing the work is independent contractor and not agent of employer, notwithstanding employer actual interference. Philabert v. Frazier, 35 Ala. App. 549, 51 So. 2d 381 (1950).

An agent is an "independent contractor," rather than an employee, if the employer or principal exercises no control over and has no right to exercise control over how the agent performs its service. Rand v. Porsche Financial Services, 167 P.3d 111 (Ariz. Ct. App. Div. 1 2007).

The best single test to determine whether one is an employer or employee or independent contractor is whether employer retains supervision or control of the work. Haggard v. Industrial Commission, 71 Ariz. 91, 223 P.2d 915 (1950).

In order to apply statutory test for determination whether one is an independent contractor or is an employee over whom the employer retains supervision or control courts look for a variety of signposts or indicia, none of which are in themselves conclusive, but which, when taken together and applied to a particular set of facts, aid in making the line to be drawn more clear. Blasdell v. Industrial Commission, 65 Ariz. 373, 181 P.2d 620 (1947).

The statute providing that contractor over whose work employer retains supervision or control and contractor employees and subcontractors and subcontractor employees are employees of original employer within coverage of Workmen Compensation Act, does not use quoted words as meaning that employer may direct the thinking or technical manner of performing the work of a physician, attorney, engineer, etc., employed under contract, yet lack of direction in such respects does not change their status under Workmen Compensation Act. A.R.S. §§ 23"901, 23"902. Industrial Commission v. Navajo County, 64 Ariz. 172, 167 P.2d 113 (1946).

An employee, as distinguished from an independent contractor, is one who works for a wage fixed by contract or by law and who does not run risk of loss by undertaking to work for too little. Capital Const. Co. v. Industrial Commission, 61 Ariz. 214, 146 P.2d 902 (1944).

Whether person is employee or independent contractor within Workmen Compensation Act, depends on answer to question whether alleged employer retained supervision or control over work. A.R.S. §§ 23"101 et seq., 23"901 et seq. L.B. Price Mercantile Co. v. Industrial Commission, 43 Ariz. 257, 30 P.2d 491 (1934).

Where alleged employer procures third party to do work for him which is part or process in former trade or business, test to determine whether third party is independent contractor is whether alleged employer retains supervision and control over work. A.R.S. § 23"902. U.S. Fidelity & Guaranty Co. v. Industrial Commission, 42 Ariz. 422, 26 P.2d 1012 (1933).

A person may occupy the dual status of employee and independent contractor, and only in the former capacity is he covered by the workmen compensation law. Lockeby v. Ozan Lumber Co., 219 Ark. 154, 242 S.W.2d 115 (1951).

In determining whether a workman is an employee covered by Workmen Compensation Act, or is an independent contractor, the Act is to be given a liberal construction in favor of workman and any doubt is to be resolved in favor of workman status as employee. Ark.Stats. § 81"1301 et seq. Farrell-Cooper Lumber Co. v. Mason, 216 Ark. 797, 227 S.W.2d 444 (1950).

Although written contract by which lumber company employed truck driver to haul logs created relation of employer and independent contractor and not relation of employer and employee, such relation could be destroyed by conduct of company through direction of means and methods of producing physical results, and it would be a question for jury as to whether there was any substantial evidence to show that company conduct changed relationship to that of employer and employee, so as to render company liable for injuries sustained by third persons as result of driver negligence. Ozan Lumber Co. v. McNeely, 214 Ark. 657, 217 S.W.2d 341, 8 A.L.R.2d 261 (1949).

An independent contractor is one who, in course of an independent occupation, prosecutes and directs the work himself, using his own methods to accomplish it, and represents the will of the company only as to the result of his work. Capitol City Lumber Co. v. Cash, 214 Ark. 35, 214 S.W.2d 363 (1948).

An independent contractor, within Workmen Compensation Act, is one who in the course of independent occupation, prosecutes and directs work himself, using his own methods to accomplish it, and represents will of employer only as to result of work. Acts 1939, Act 319, § 2. Wren v. D.F. Jones Const. Co., 210 Ark. 40, 194 S.W.2d 896 (1946).

The most important test in determining whether person employed to do certain work is independent contractor or mere servant is control reserved by employer over work. Acts 1939, Act 319. Parker Stave Co. v. Hines, 209 Ark. 438, 190 S.W.2d 620 (1945).

Where employer reserves control of means of performance, as well as result, of employe work, relation of master and servant follows, but if such control be lacking and employer does not direct manner of work, relation of independent contractor exists. Acts 1939, Act No. 319. Ozan Lumber Co. v. Garner, 208 Ark. 645, 187 S.W.2d 181 (1945).

In determining whether a workman is an employee or an independent contractor, the Workmen Compensation Act is to be given a liberal construction in workman favor, and any doubt is to be resolved in favor of his status as an employee, rather than as an independent contractor. Irvan v. Bounds, 205 Ark. 752, 170 S.W.2d 674 (1943).

Trucker who agreed with gas company to unload pipe from railroad car at a specified price per car, and who for that purpose hired his own help and used his own equipment, was an independent contractor for whose negligence in unloading car gas company was not liable. Arkansas-Louisiana Gas Co. v. Tuggle, 201 Ark. 416, 146 S.W.2d 154 (1940).

If a contract does not show an intent on part of an employer to retain control of means or methods by which party claiming to be independent shall perform the work, and does not contain any directions relating to physical conduct of contractor or his employees in execution of work, relation of independent contractor is created, but if control of the work reserved by employer is control not only of result but of the means and manner of performance, relation of master and servant exists. Arkansas Fuel Oil Co. v. Scaletta, 200 Ark. 645, 140 S.W.2d 684 (1940).

Where employer interferes with work and superintends and controls its performance, relation of independent contractor is destroyed. Humphries v. Kendall, 195 Ark. 45, 111 S.W.2d 492 (1937).

One who undertakes to do work for another is independent contractor, not employee, where person for whom work is done has no control or management thereof. Mississippi River Fuel Corp. v. Young, 188 Ark. 575, 67 S.W.2d 581 (1934).

Independent contractor is one who, exercising independent employment, contracts to do work according to his own methods, without being subject to employer control, except regarding result. Mississippi River Fuel Corp. v. Morris, 183 Ark. 207, 35 S.W.2d 607 (1931).

Coal mine machine operators neglecting to prop roof, injuring loader, held not independent contractors. New Union Coal Co. v. Sult, 172 Ark. 753, 290 S.W. 580 (1927).

Where a lessee of a sawmill employed his own labor, bought his own material, and used his own methods in producing the output, under a lease requiring him to pay the taxes and to maintain the plant in good repair, the fact that lessor who advanced the money to meet pay rolls made out on its forms reserved the right to control the kind of output and the right to cancel the lease, should lessee create offensive conditions, did not make the lessor liable for damages from a fire originating from sparks blown from a burning sawdust pile; lessee being an independent contractor, which is one who, in the course of an independent occupation, prosecutes or directs work himself, using his own methods to accomplish it. Harkins v. National Handle Co., 159 Ark. 15, 250 S.W. 900 (1923).

"Independent contractor" under California law is one who renders service in course of independent employment or occupation, following his employer's desires only as to results of work, and not as to means whereby it is to be accomplished. U.S. v. Sierra Pacific Industries, 879 F. Supp. 2d 1117 (E.D. Cal. 2012) (applying California law).

Under California law, an independent contractor is one who renders service in the course of an independent employment or occupation, following his employer's desires only as to the results of the work, and not as to the means whereby it is to be accomplished. U.S. v. Sierra Pacific Industries, 879 F. Supp. 2d 1096 (E.D. Cal. 2012) (applying California law).

Factors to be considered in determining whether employer-employee relationship exists for purpose of awarding compensation, or whether employee has a distinct occupation or business, are whether the work is usually done under direction or without supervision, the skill required, who supplies the tools and place of work, length of time required, method of payment, whether the work is a part of principal regular business, and whether the parties believe they are creating such relationship. West Ann.Labor Code, §§ 3353, 5705(a). Perguica v. Industrial Acc. Commission, 29 Cal. 2d 857, 179 P.2d 812 (1947).

Factors to be considered in determining whether employer-employee relationship exists for purpose of awarding compensation, or whether employee has a distinct occupation or business, are whether the work is usually done under direction or without supervision, the skill required, who supplies the tools and place of work, length of time required, method of payment, whether the work is a part of principal regular business, and whether the parties believe they are creating such relationship. West Ann.Labor Code, §§ 3353, 5705(a). Perguica v. Industrial Acc. Commission, 29 Cal. 2d 857, 179 P.2d 812, 12 Cal. Comp. Cas. (MB) 73 (1947).

A material and generally conclusive factor in distinguishing between independent contractor and employee is employer right to exercise complete and authoritative control of the manner in which work is done. St.1937, p. 267, West Ann.Labor Code, § 3353. Baugh v. Rogers, 24 Cal. 2d 200, 148 P.2d 633, 152 A.L.R. 1043 (1944).

An independent contractor is one who renders service in the course of an independent employment or occupation, following his employer desires only in the results of the work and not the means whereby it is to be accomplished. Riskin v. Industrial Acc. Commission, 23 Cal. 2d 248, 144 P.2d 16 (1943).

An independent contractor is one who renders service in the course of an independent employment or occupation, following his employer desires only in the results of the work and not the means whereby it is to be accomplished. Riskin v. Industrial Acc. Commission, 23 Cal. 2d 248, 144 P.2d 16, 8 Cal. Comp. Cas. (MB) 278 (1943).

An independent contractor is one who renders service in course of independent employment or occupation, following employer desires only in results of work, and not in the means whereby it is to be accomplished. Burlingham v. Gray, 22 Cal. 2d 87, 137 P.2d 9 (1943).

An independent contractor is one who renders service in course of independent employment or occupation, following employer desires only in results of work, and not in the means whereby it is to be accomplished. Burlingham v. Gray, 22 Cal. 2d 87, 137 P.2d 9, 8 Cal. Comp. Cas. (MB) 105 (1943).

An employer is generally liable for negligent acts of employee performed within scope of employment, but, if an independent contractor rather than master and servant relationship exists, independent contractor usually is alone liable for such negligent acts. Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941).

An independent contractor not entitled to a compensation award is one who renders service in the course of an independent employment or occupation following his employer desires only in the results of the work and not in the means whereby it is to be accomplished. S.A. Gerrard Co. v. Industrial Acc. Commission, 17 Cal. 2d 411, 110 P.2d 377 (1941).

An independent contractor not entitled to a compensation award is one who renders service in the course of an independent employment or occupation following his employer desires only in the results of the work and not in the means whereby it is to be accomplished. S.A. Gerrard Co. v. Industrial Acc. Commission, 17 Cal. 2d 411, 110 P.2d 377, 6 Cal. Comp. Cas. (MB) 47 (1941).

In determining whether person injured is an employee or an independent contractor, essence of issue is whether the employer has right of authoritative control and direction over employee by reason of agreement between them and not what regulation some independent authority may impose on contracting parties. Drillon v. Industrial Acc. Commission, 17 Cal. 2d 346, 110 P.2d 64 (1941).

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In compensation proceeding, determination of question whether claimant was an employee or independent contractor depends on facts of each particular case. St.1917, p. 831, as amended (West Ann.Labor Code, § 3201 et seq.) Schaller v. Industrial Acc. Commission, 11 Cal. 2d 46, 77 P.2d 836 (1938).

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Where owner of steam shovel contracted with federal government for use of steam shovel and crew on Works Progress Administration project of which city was cosponsor, but owner had no contract with city, owner was an independent contractor, notwithstanding that city exercised some control over crew and federal government expressly contracted that crew were not government employees. Workmen Compensation Insurance Act, St.1917, p. 831, as amended (West Ann.Labor Code, § 3201 et seq.); Federal Emergency Relief Appropriation Act of 1935, 15 U.S.C.A. § 728 note. City of Los Angeles v. Industrial Acc. Commission, 9 Cal. 2d 705, 72 P.2d 540 (1937).

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Ordinarily, unless but one inference can reasonably be drawn from facts, question whether workman is employee is for Industrial Commission whose finding is conclusive. San Bernardino County v. State Indus. Acc. Commission, 217 Cal. 618, 20 P.2d 673 (1933).

As respects compensation paper carrier injured delivering papers for lessee of paper route held not employee of newspaper publisher who was not party to the lease, and who paid lessee no wages, but merely sold lessee papers which he circulated under responsibility to publisher only for result accomplished. St.1917, p. 835, § 8(a) (West Ann.Labor Code, § 3351 et seq.) State Compensation Ins. Fund v. Industrial Acc. Commission, 216 Cal. 351, 14 P.2d 306 (1932).

Purchaser had burden of proving that aviator delivering plane for him for agreed compensation was independent contractor and not employee. St.1917, p. 835, § 8(b) (West Ann.Labor Code, § 3351 et seq.) Murray v. Industrial Acc. Commission, 216 Cal. 340, 14 P.2d 301 (1932).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Globe Indem. Co. v. Industrial Acc. Commission of State of Cal., 208 Cal. 715, 284 P. 661 (1930).

That certain freedom is inherent in nature of work does not change character of employment, where employer has general control over work. Ryan v. Farrell, 208 Cal. 200, 280 P. 945 (1929).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. York Junction Transfer & Storage Co. v. Industrial Acc. Commission of Cal., 202 Cal. 517, 261 P. 704 (1927).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Hillen v. Industrial Acc. Commission, 199 Cal. 577, 250 P. 570 (1926).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Fidelity & Cas. Co. of New York v. Industrial Acc. Commission of Cal., 191 Cal. 404, 216 P. 578, 43 A.L.R. 1304 (1923).

Where a bridge contractor arranged with the owner of wagons and horses to haul sand from a designated place to the bridge, to be paid for on the basis of the cubic yard for the amount hauled, and gave no directions other than to show the place from which it was to be taken and where delivered, and exercised no supervision over the wagon owner movements, such owner was an independent contractor, and not an employee, within the Workmen Compensation Act. Stephens v. Industrial Acc. Commission, 191 Cal. 261, 215 P. 1025 (1923).

The power of the employer to terminate the employment at any time is incompatible with the full control of the work usually enjoyed by an independent contractor, and is a strong circumstance to show the subserviency of the employee. Press Pub. Co. v. Industrial Acc. Commission of Cal., 190 Cal. 114, 210 P. 820 (1922).

One furnishing his own appliances and selecting his own assistants, sharing in his pay for the work of unloading automobiles from a freight car for a dealer who exercised no control over the work paid for at the regular rate of $1.50 for each machine, held an independent contractor whose assistant injured in doing the work was not the dealer employee within Workmen Compensation Act, St.1917, p. 831, as amended (West Ann.Labor Code, § 3201 et seq.) Freiden v. Industrial Acc. Commission of Cal., 190 Cal. 48, 210 P. 420 (1922).

An "independent contractor" is one who renders service in the course of an independent employment or occupation, following his employer's desires only in the results of the work, and not the means whereby it is to be accomplished. Varisco v. Gateway Science and Engineering, Inc., 166 Cal. App. 4th 1099, 83 Cal. Rptr. 3d 393 (2d Dist. 2008).

The essence of the test for whether a worker is an employee or an independent contractor is the control of details, that is, whether the principal has the right to control the manner and means by which the worker accomplishes the work. Estrada v. FedEx Ground Package System, Inc., 64 Cal. Rptr. 3d 327 (Cal. App. 2d Dist. 2007).

For statute requiring employers to indemnify employees for their expenses and losses in discharging duties, drivers for package delivery company were "employees" of company, rather than "independent contractors," notwithstanding drivers provided their own trucks and related equipment and parties' operating agreement identified drivers as independent contractors; company controlled drivers' appearance, drivers were required to wear uniforms and use specific computer scanners and forms for packages, all provided by company and marked with company's logo, many standard employee benefits were provided, drivers worked full time with regular schedules and routes, terminal managers were the drivers' immediate supervisors and could reconfigure drivers' routes without regard to drivers' resulting loss of income, customers were company's customers, and drivers were paid weekly rather than by job. West's Ann.Cal.Labor Code § 2802. Estrada v. FedEx Ground Package System, Inc., 64 Cal. Rptr. 3d 327 (Cal. App. 2d Dist. 2007).

Whether injured workman was an independent contractor or employee within coverage of Workmen Compensation Act is ordinarily a question of fact for Industrial Accident Commission. West Ann.Labor Code, §§ 3351, 3353. California Compensation Ins. Co. v. Industrial AccidentCommission, 86 Cal. App. 2d 861, 195 P.2d 880 (1st Dist. 1948).

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When a person performing work for another is subject to the control of such other and is liable to be discharged for disobedience, he is not an independent contractor but an employee, and, where the contract contains no terms relating to power of control, such power must be determined from inferences to be drawn from the circumstances, the relationship, character of the parties, nature of the work to be done, the time within which it is to be completed, and the conduct of the parties toward each other. Yucaipa Farmers Co-op. Ass'n v. Industrial Acc. Commission, 55 Cal. App. 2d 234, 130 P.2d 146 (2d Dist. 1942).

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Yucaipa Farmers Co-op. Ass'n v. Industrial Acc. Commission, 55 Cal. App. 2d 234, 130 P.2d 146, 7 Cal. Comp. Cas. (MB) 257 (2d Dist. 1942).

The chief consideration which determines one to be an independent contractor is the fact that the employer has no right of control as to the mode of doing the work contracted for. Guth v. Industrial Acc. Commission of Cal., 44 Cal. App. 2d 762, 112 P.2d 969 (3d Dist. 1941).

The chief consideration which determines one to be an independent contractor is the fact that the employer has no right of control as to the mode of doing the work contracted for. Guth v. Industrial Acc. Commission of Cal., 44 Cal. App. 2d 762, 112 P.2d 969, 6 Cal. Comp. Cas. (MB) 138 (3d Dist. 1941).

The relationship of one operating shooting gallery as independent concession in conjunction with carnival shows and owning all apparatus connected with such gallery, as well as means of transporting equipment thereof, to owner of such shows, was that of independent contractor. Basye v. Craft's Golden State Shows, 43 Cal. App. 2d 782, 111 P.2d 746 (3d Dist. 1941).

Independent contractor is one who, exercising independent employment, contracts to do work according to his own methods and without being subject to control of employer, except as to result. Lee v. Nanny, 38 Cal. App. 2d 90, 100 P.2d 832 (2d Dist. 1940).

Independent contractor is one who, exercising independent employment, contracts to do work according to his own methods and without being subject to control of employer, except as to result. Lee v. Nanny, 38 Cal. App. 2d 90, 100 P.2d 832, 5 Cal. Comp. Cas. (MB) 90 (2d Dist. 1940).

A master and servant relationship exists so as to charge master for acts of servant if one has the right to select and control another to perform a service and direct his method or mode of doing the service, but if he has no right to direct method of accomplishing the result by the other, then the other is an independent contractor. Civ.Code, § 2009 (repealed. See Labor Code, § 3000). Chinnis v. Pomona Pump Co., 36 Cal. App. 2d 633, 98 P.2d 560 (4th Dist. 1940).

Independent contractor is one who in rendering service exercises independent employment and represents employer only as to rsults. Phillips v. Larrabee, 32 Cal. App. 2d 720, 90 P.2d 820 (3d Dist. 1939).

The burden of proof as to questions relating to independent contractors is upon the employer in a workmen compensation proceeding. Pagones v. Industrial Acc. Commission, 23 Cal. App. 2d 261, 72 P.2d 888 (2d Dist. 1937).

The burden of proof as to questions relating to independent contractors is upon the employer in a workmen compensation proceeding. Pagones v. Industrial Acc. Commission, 23 Cal. App. 2d 261, 72 P.2d 888, 2 Cal. Comp. Cas. (MB) 159 (2d Dist. 1937).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Lillibridge v. Industrial Acc. Commission, 4 Cal. App. 2d 237, 40 P.2d 856 (4th Dist. 1935).

Independent contractor is one who in rendering service exercises independent employment and represents employer only as to rsults. Weinberg v. Clark, 120 Cal. App. 362, 8 P.2d 164 (4th Dist. 1932).

Workman, engaged for agreed sum to gather brush resulting from pruning orchard, held independent contractor, owner exercising no supervision; hence injury was not compensable. La Franchi v. Industrial Acc. Commission, 298 P. 44 (Cal. App. 3d Dist. 1931), hearing granted, (May 28, 1931) and rev'd, 213 Cal. 675, 3 P.2d 305 (1931).

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Not exercise of control, but right of control, is important in determining whether relation of master and servant exists. Smith v. Fall River Joint Union High School Dist., 118 Cal. App. 673, 5 P.2d 930 (3d Dist. 1931).

Burden rests on person served to establish that one serving was acting as independent contractor. Peters v. California Building-Loan Ass'n, 116 Cal. App. 143, 2 P.2d 439 (4th Dist. 1931).

Whether a person was employee or independent contractor is usually determined by power of control as to result of work, means, and method. Provensano v. Division of Industrial Accidents and Safety of Dept. of Indus. Relations of Cal., 110 Cal. App. 239, 294 P. 71 (1st Dist. 1930).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Royal Indem. Co. v. Industrial Acc. Commission, 104 Cal. App. 290, 285 P. 912 (4th Dist. 1930).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Johnson v. Department of Industrial Relations, Division of Industrial Accidents and Safety, 101 Cal. App. 1, 281 P. 440 (2d Dist. 1929).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. George v. Chaplin, 99 Cal. App. 709, 279 P. 485 (1st Dist. 1929).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. Preo v. Roed, 99 Cal. App. 372, 278 P. 928 (1st Dist. 1929).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. May v. Farrell, 94 Cal. App. 703, 271 P. 789 (1st Dist. 1928).

Independent contractor is one exercising independent occupation and representing employer only as to results of work. Charles R. McCormick Lumber Co. v. O'Brien, 90 Cal. App. 776, 266 P. 594 (2d Dist. 1928).

Agent of newspaper employed to distribute papers held not independent contractor, and newsboy distributors were servants of the newspaper within Compensation Act. Workmen Compensation, Insurance & Safety Act of 1917. St.1917, p. 831 (West Ann.Labor Code, § 3201 et seq.) Call Pub. Co. v. Industrial Acc. Commission of Cal., 89 Cal. App. 194, 264 P. 300 (1st Dist. 1928).

Whether a person was employee or independent contractor is usually determined by power of control as to result of work, means, and method. Ocean Acc. & Guarantee Corp. v. Industrial Acc. Commission, 87 Cal. App. 290, 262 P. 38 (2d Dist. 1927).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. Curran v. Earle C. Anthony, Inc., 77 Cal. App. 462, 247 P. 236 (1st Dist. 1926).

Where defendant did not attempt to state any directions to party offering to tow her disabled car, and he did not consult her nor ask for any directions or consent to be governed by any if they were given, his relationship to defendant was that of an independent contractor, and not that of an employee for whose acts defendant was liable. Walton v. Donohue, 70 Cal. App. 309, 233 P. 76 (1st Dist. 1924).

One chopping wood at a certain amount per cord, who fixed his own time and hours of work, employer exercising no direction or control over work, except to designate place for cutting, and not furnishing tools, but giving him those which another had left when quitting, was an independent contractor, not entitled to benefit of Workmen Compensation Act, St.1917, p. 831, as amended (West Ann.Labor Code, § 3201 et seq.) Valente v. Industrial Acc. Commission of Cal., 68 Cal. App. 151, 228 P. 667 (1st Dist. 1924).

Motor truck owner who did hauling for company and pursued his work as he saw fit, using his own means and judgment to accomplish result, receiving as compensation full hauling charge imposed by company on purchaser of material hauled, held not employee within Workmen Compensation Act, but independent contractor. Whiting Mead Commercial Co. v. Industrial Acc. Commission of Cal., 67 Cal. App. 618, 228 P. 352 (1st Dist. 1924).

One employed to blast out holes who was paid at the rate of 1 1/4 cents per hole, and furnished nothing but his labor, and who was not required to work any certain number of hours, being free to come and go as he wished, and free to discontinue his work at any time without legal liability, held to be an employee within Workmen Compensation, Insurance, and Safety Act and not an independent contractor. Helmuth v. Industrial Acc. Commission of Cal., 59 Cal. App. 160, 210 P. 428 (1st Dist. 1922).

A brick mason, employed by a building contractor, furnishing all the materials to build fireplaces of a specified size, who furnished his own tools and engaged the men working with him and charged only union scale of wages and the usual foreman fee, held an employee within the Workmen Compensation Act, and not an independent contractor. Jensen v. Industrial Acc. Commission of Cal., 57 Cal. App. 680, 207 P. 1019 (1st Dist. 1922).

A motor truck owner in the trucking business, who contracted to haul milk daily for a dairy man at a specified price, having complete charge of the hauling, paying the expenses thereof, guaranteeing timely transportation, and free to haul for others, was an independent contractor not a servant or employee within Civ.Code, § 2009 (repealed. See West Ann.Labor Code, § 3000), and the Workmen Compensation Act, and therefore not entitled to compensation under the act and West Ann.Const. art. 20, § 21. Hall v. Industrial Acc. Commission, 57 Cal. App. 78, 206 P. 1014 (2d Dist. 1922).

Claimant engaged on an hourly basis and furnished with materials for construction of small building for operator of used automobile lot was not an independent contractor but an employee within Workmen Compensation Act. Laws 1947, P. 638, § 1(a, b). Neely-Towner Motor Co. v. Industrial Com'n, 123 Colo. 472, 230 P.2d 993 (1951).

Where drainage contractor was engaged by country club to dig manholes along sewer line on country club property for fixed amount of money and country club retained no control over the work and no time limit was fixed for its completion, contractor was independent contractor and not employee within Workmen Compensation Act, as respects benefits for his death caused by electrocution while engaged in digging holes. 5 C.S.A. c. 97, § 328. Meyer v. Lakewood Country Club, 122 Colo. 110, 220 P.2d 371 (1950).

In distinguishing between employee and independent contractor, controlling element is right of terminating relation without liability. Industrial Com'n of Colo. v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934).

How one is paid is not necessarily controlling as to whether he is servant or independent contractor. Farmers' Reservoir & Irrigation Co. v. Fulton Inv. Co., 81 Colo. 69, 255 P. 449 (1927).

An independent contractor in compensation cases is one who, exercising an independent employment, contracts to do piece of work according to his own methods and without being subject to control of his employer except as to result of work, with decisive test being whether contractor has right to direct what shall be done and when and how it shall be done. Gen.St.1949, § 7416. Bourgeois v. Cacciapuoti, 138 Conn. 317, 84 A.2d 122 (1951).

A person may be a contractor as to part of his service and a servant as to another part, and in the absence of controlling circumstances the question of the relationship is one of fact. Scorpion v. American-Republican, 131 Conn. 42, 37 A.2d 802 (1944).

An independent contractor is one who, exercising an independent employment, contracts to do piece of work according to own methods and without being subject to control of employer, except as to result of work. Caraher v. Sears, Roebuck & Co., 124 Conn. 409, 200 A. 324 (1938).

Neither the method of determining claimant compensation for services he rendered, whether by fixed wages or commission, and whether computed by the day or job, nor that claimant used his own automobile maintained by himself in performing his work are controlling in determining whether claimant was independent contractor rather than employee. Bourget v. Overhead Door Co., 121 Conn. 127, 183 A. 381 (1936).

Independent contractor is one exercising independent employment and contracting to do work by his own methods, without employer control, except as to result. Welz v. Manzillo, 113 Conn. 674, 155 A. 841 (1931).

That experienced builder was not given orders as to how he should repair tobacco shed would not necessarily indicate that employer had no right to control work. Manning v. Woodland Tobacco Co., 113 Conn. 282, 155 A. 61 (1931).

In determining whether driver of automobile was employee or independent contractor, method of determining compensation and ownership of automobile is not controlling. Hall v. Sera, 112 Conn. 291, 152 A. 148 (1930).

Whether a person was employee or independent contractor is usually determined by power of control as to result of work, means, and method. Tortorici v. Sharp Moosop, Inc., 107 Conn. 143, 139 A. 642 (1927).

Independent contractor is one who, exercising independent employment, contracts to do work by his own methods, without subjection to employer control, except as to result, while employee is one rendering service subject to employer will in mode and manner of performance and means employed, as well as result attained. Lassen v. Stamford Transit Co., 102 Conn. 76, 128 A. 117 (1925).

For purposes of workers' compensation, an "independent contractor" is defined as one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of his work. Compassionate Care, Inc. v. Travelers Indem. Co., 147 Conn. App. 380, 83 A.3d 647 (2013).

In workmen compensation case, the expression independent contractor is entirely descriptive and suggests a class or group and designates a relationship under which, when established certain rights and liabilities attach, and usually the expression is applied to one who is engaged to do work in an independent manner, accountable only as to the results obtained, and not subject to control or supervision of the employer. Rev.Code 1935, § 6071 et seq., as amended. Gooden v. Mitchell, 41 Del. 301, 21 A.2d 197 (Super. Ct. 1941).

Right to control method of work is one of principal considerations in determining whether employee is independent contractor or servant. Gulf Refining Co. v. Wilkinson, 94 Fla. 664, 114 So. 503 (1927).

At common law, an employer generally was not liable for torts committed by an independent contractor. Dekle v. Southern Bell Tel. & Tel. Co., 208 Ga. 254, 66 S.E.2d 218 (1951) (overruled in part by, Peachtree-Cain Co. v. McBee, 254 Ga. 91, 327 S.E.2d 188 (1985)).

At common law, an employer generally was not liable for torts committed by an independent contractor. Dekle v. Southern Bell Tel. & Tel. Co., 208 Ga. 254, 66 S.E.2d 218 (1951).

In determining whether the relationship of parties under a contract for performance of labor is that of employer and servant or that of employer and independent contractor, the chief test lies in whether the contract gives, or the employer assumes, the right to control the time, manner, and method of executing the work as distinguished from the right merely to require certain definite results in conformity to the contract. Cotton States Mut. Ins. Co. v. Kinzalow, 634 S.E.2d 172 (Ga. Ct. App. 2006).

The test distinguishing an employee from an independent contractor is whether the employer assumed the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results in conformity to the contract. West's Ga.Code Ann. § 51–2–4. Cooper v. Olivent, 610 S.E.2d 106 (Ga. Ct. App. 2005), reconsideration denied, (Feb. 10, 2005).

In action by pedestrian for injuries sustained in fall into excavation, petition alleging that telephone company employed an independent contractor to dig the excavation, but failing to allege any of the requirements of the statute enumerating instances in which an employer is liable for the negligence of an independent contractor, failed to state a good cause of action against telephone company. Code, § 105"502. Southern Bell Tel. & Tel. Co. v. Dekle, 83 Ga. App. 261, 63 S.E.2d 275 (1951), judgment aff'd, 208 Ga. 254, 66 S.E.2d 218 (1951) (overruled in part by, Peachtree-Cain Co. v. McBee, 254 Ga. 91, 327 S.E.2d 188 (1985)).

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Finding of fact by board of workmen compensation when supported by any competent evidence is on appeal controlling on superior court and the Court of Appeals in absence of fraud. Ga.Code Ann. § 114"101 et seq. Bituminous Cas. Corp. v. Southwell, 78 Ga. App. 609, 51 S.E.2d 729 (1949).

Test to be applied in determining whether relationship of parties under contract for performance of labor is that of employer and servant, or that of employer and independent contractor, lies in whether contract gives, or employer assumes, right to control time, manner, and method of executing work, as distinguished from right merely to require certain definite results in conformity to contract. Code, § 114"710. Bituminous Cas. Corp. v. Wilkes, 77 Ga. App. 764, 49 S.E.2d 916 (1948).

In compensation proceedings, in determining whether a claimant is an employee and subject to the compensation act or an independent contractor and not so subject, any doubt is to be resolved in favor of his status as an employee. Code, § 114"710. Glens Falls Indem. Co. v. Clark, 75 Ga. App. 453, 43 S.E.2d 752 (1947).

Whether employee is servant or independent contractor depends on whether contract gives, or employer assumes, the right to control time, manner and method of executing work, as distinguished from right to require definite results. Maryland Cas. Co. v. Stewart, 74 Ga. App. 839, 41 S.E.2d 658 (1947).

In determining whether relationship of parties under contract for performance of labor is that of employer and servant within meaning of compensation act or that of employer and independent contractor, test is whether contract gives, or employer assumes, right to control time, manner, and method of executing work, as distinguished from right merely to require certain

definite results in conformity to contract. Code, § 114"101 et seq. Macon Dairies v. Duhart, 69 Ga. App. 91, 24 S.E.2d 732 (1943).

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The test of whether a person employed is a servant or an independent contractor, as respects right to compensation, is whether employer has the contractual right to direct the time, manner, methods and means of execution of the work, as distinguished from the right to insist upon production of results according to the contract. Code 1933, § 114"101 et seq. Banks v. Ellijay Lumber Co., 59 Ga. App. 270, 200 S.E. 480 (1938).

If an employer has or assumes the right to control how work shall be done, as distinguished from the mere right to require certain definite results in conformity to the contract, the relation is that of employer and servant rather than that of employer and independent contractor. Elliott Addressing Mach. Co. v. Howard, 59 Ga. App. 62, 200 S.E. 340 (1938).

Evidence authorized finding that compensation claimant was employee of steel erection work contractor, entitled to compensation for injury, rather than independent contractor not subject to Workmen Compensation Act, although claimant and his co-workers were to be paid lump sum for doing of specific work. Liberty Mut. Ins. Co. v. Henry, 56 Ga. App. 868, 194 S.E. 430 (1937).

In compensation proceeding, widow circumstantial evidence to establish that deceased employee employer was a refining company and not a distributor for whom employee made deliveries was insufficient to show that distributor was not an independent contractor, and hence there could be no recovery as against company. Indemnity Ins. Co. of North America v. Lamb, 56 Ga. App. 492, 193 S.E. 76 (1937).

Test in determining whether contracting party is servant or independent contractor is whether employer has right to control manner of executing work. Liberty Lumber Co. v. Silas, 49 Ga. App. 262, 175 S.E. 265 (1934).

Salesman employed at fixed monthly salary and traveling and hotel expenses held employee, not independent contractor. Mitchem v. Shearman Concrete Pipe Co., 45 Ga. App. 809, 165 S.E. 889 (1932).

Deceased traveling salesman, receiving only commissions and operating automobile at own expense, where employer exercised control, held employee and not independent contractor within Workmen Compensation Act. Laws 1920, p. 167, as amended. Employers' Liability Assur. Corp. v. Montgomery, 45 Ga. App. 634, 165 S.E. 903 (1932).

One contracting to have work done, without reserving control except to require results conforming to contract, sustains relation of contractee to independent contractor. Acts 1920, p. 167, as amended. Cooper v. Dixie Const. Co., 45 Ga. App. 420, 165 S.E. 152 (1932).

Test for determining whether employee is independent contractor is whether contractor has right to control time and manner of executing work, as distinguished from right merely to require results in conformity to contract. Massee & Felton Lumber Co. v. Macon Cooperage Co., 44 Ga. App. 590, 162 S.E. 396 (1932).

Test in determining whether contracting party is servant or independent contractor is whether employer has right to control manner of executing work. Home Acc. Ins. Co. v. Daniels, 42 Ga. App. 648, 157 S.E. 245 (1931).

Person employed to drill well by employer not controlling manner of performance is independent contractor. Civ.Code 1910, § 4414. Edmondson v. Town of Morven, 41 Ga. App. 209, 152 S.E. 280 (1930).

Plaintiff employer doing carpentry work subject to authority of builder empowered to detail work held not independent contractor, and hence builder was not liable for plaintiff injuries. Civ.Code 1910, §§ 4414, 4415. Davis v. Starrett Bros., 39 Ga. App. 422, 147 S.E. 530 (1929).

Captain operating fishing boat owned by canning company under contract to sell fish exclusively to company having power to discharge captain at will held employee of company, not independent contractor. Maryland Cas. Co. v. Grant, 39 Ga. App. 285, 146 S.E. 792 (1929), rev'd, 169 Ga. 325, 150 S.E. 424 (1929), conformed to, 41 Ga. App. 505, 153 S.E. 447 (1930) and vacated, 41 Ga. App. 505, 153 S.E. 447 (1930).

Captain operating fishing boat owned by canning company under contract to sell fish exclusively to company having power to discharge captain at will held employee of company, not independent contractor. Maryland Cas. Co. v. Grant, 39 Ga. App. 285, 146 S.E. 792 (1929).

Collector, not subject to employer control, exercises independent business, and where work is not unlawful or dangerous, employer is not liable for contractor acts. Civ.Code 1910, § 4414. Calvert v. Atlanta Hub Co., 37 Ga. App. 295, 139 S.E. 917 (1927).

Whether one is servant or independent contractor depends on whether he uses own methods without being subject to employer control. Maryland Cas. Co. v. Radney, 37 Ga. App. 286, 139 S.E. 832 (1927).

Where owner of automobile truck was employed by day to haul men and materials for employer, and performed all duties incident to employment under employer direction, he was, when operating pursuant to employment, servant, and not independent contractor. Postal Telegraph-Cable Co. v. Tucker, 33 Ga. App. 525, 126 S.E. 860 (1925).

When employer liable for negligence of independent contractor stated; independent contractor chargeable with knowledge of ordinary hazards pertaining to premises surrendered by owner, who must retain control to be liable for latent hazards. Central of Georgia Ry. Co. v. Lawley, 33 Ga. App. 375, 126 S.E. 273 (1925).

In a proceeding under the Workmen Compensation Act, where the evidence showed that the workman for whose death compensation was sought was not an employee of insured company in the work in which he was engaged when killed, but was an employee of an independent contractor, held, that it was error to sustain an award against the insurance company. U.S. Fidelity & Guaranty Co. v. Corbett, 31 Ga. App. 7, 119 S.E. 921 (1923).

Except as provided in Civ.Code 1910, § 4415, or in case of estoppel, employer engaging another to do particular work and retaining no right or power to direct or control manner, means, or method of accomplishing result is not liable for contractor acts. Gulf Refining Co. v. Harris, 30 Ga. App. 240, 117 S.E. 274 (1923), aff'd, 157 Ga. 411, 121 S.E. 242 (1924).

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When corporation contracts with individual, exercising independent employment, to do work not in itself unlawful or dangerous, and to be done according to the contractor own methods, and not subject to the employer control or orders, except as to results, the employer is not liable for wrongful or negligent acts of the contractor or his servants. Malin v. City Council of Augusta, 29 Ga. App. 393, 115 S.E. 504 (1923).

Whether a person employed to do certain work is an independent contractor or an employee turns on the amount of control the employer reserves over the individual. Melichar v. State Farm Fire and Cas. Co., 152 P.3d 587 (Idaho 2007).

General test as to whether a party to a contract is an employee or an independent contractor is whether other party has right to control and direct details of work to be performed and to say whether work shall stop or continue. I.C. § 72"101 et seq. Wilcox v. Swing, 71 Idaho 301, 230 P.2d 995 (1951).

The chief consideration in determining whether one is independent contractor for compensation purposes is whether employer has right of control as to mode of doing the work contracted for. I.C. § 72"101 et seq. Ohm v. J.R. Simplot Co., 70 Idaho 318, 216 P.2d 952 (1950).

General rule for determining whether one is a general contractor or employee is right to control and direct activities of employee, or power to control details of work to be performed and to determine how it shall be done, and whether it shall stop or continue, and where employee comes under direction and control of person to whom his services have been furnished, the latter becomes his temporary employer and liable for compensation. Laub v. Meyer, Inc., 70 Idaho 224, 214 P.2d 884 (1950).

Where alleged employer did not employ claimant to haul logs and had nothing at all to do with cutting and hauling the logs before they reached alleged employer boom, and other alleged employer arranged for claimant to haul the logs for a specified price, claimant was an independent contractor and not an employee and hence was not entitled to compensation when injured during the performance of the contract. Barker v. Russell & Pugh Lumber Co., 64 Idaho 45, 127 P.2d 772 (1942).

Where deceased had been furnished with axes, wedges and sawing tools and directed to cut timber on a designated strip of land for a compensation of $1 per thousand board feet, deceased was an employee, not independent contractor, within meaning of statute authorizing state to recover $1,000 for the industrial administration fund on the death of an employee who left no dependents. Code 1932, § 43"1101, subd. 6, as amended by Laws 1935, c. 147. State ex rel. Wright v. Brown, 64 Idaho 25, 127 P.2d 791 (1942).

In action against newspaper company for injuries sustained by plaintiff who was struck by motorcycle operated by newspaper carrier, evidence that carrier was company servant and not independent contractor was sufficient to present prima facie case for plaintiff and require denial of nonsuit. Joslin v. Idaho Times Pub. Co., 60 Idaho 235, 91 P.2d 386 (1939).

As respects compensation, mode of payment is not a decisive test by which to determine whether injured or deceased party is an employee or an independent contractor, but test is whether contract reserved to alleged employer the power of control over injured or deceased party. Code 1932, § 43"901 et seq., as amended. In re Black, 58 Idaho 803, 80 P.2d 24 (1938) (overruled by, Hite v. Kulhenak Bldg. Contractor, 96 Idaho 70, 524 P.2d 531 (1974)).

As respects compensation, mode of payment is not a decisive test by which to determine whether injured or deceased party is an employee or an independent contractor, but test is whether contract reserved to alleged employer the power of control over injured or deceased party. Code 1932, § 43"901 et seq., as amended. In re Black, 58 Idaho 803, 80 P.2d 24 (1938).

Compensation claimant status as employee or independent contractor, is determinable from written contract and from all circumstances established by evidence (C.S. § 6213 et seq., as amended). Hansen v. Rainbow Min. & Mill. Co., 52 Idaho 543, 17 P.2d 335 (1932).

Independent contractor defined. Moreland v. Mason, 45 Idaho 143, 260 P. 1035 (1927).

Person contracting to load lumber and his partner held independent contractors, precluding recovery by partner for injury (C.S. § 5819; EmployersLiability Act). E.T. Chapin Co. v. Scott, 44 Idaho 566, 260 P. 172 (1927).

That work to be done by a party under an oral contract of employment was to be done under the supervision of the agent of the employer, or that the employer inspected the work to see that it was performed according to the contract, does not change the relation from that of an independent contractor to that of a mere servant. (Per McCarthy, C.J.) Goble v. Boise-Payette Lumber Co., 38 Idaho 525, 224 P. 439 (1924).

The right to control the manner in which work is performed is considered the "hallmark of agency"; conversely, an independent contractor undertakes to produce a certain result, but is not controlled as to how that result is achieved. Simich v. Edgewater Beach Apartments Corp., 306 Ill. Dec. 535, 857 N.E.2d 934 (App. Ct. 1st Dist. 2006).

Generally, an independent contractor is one who contracts to do a specified piece of work, furnishing his own assistants and executing work either entirely in accordance with his own ideas or in accordance with plan previously given him by one for whom work is done, without his being subject to latter orders in respect to details of work. S.H.A. ch. 48, § 138 et seq. Immaculate Conception Church v. Industrial Commission, 395 Ill. 615, 71 N.E.2d 70 (1947).

In determining meaning of terms employee and independent contractor within Workmen Compensation Act, each case must largely depend on its own facts. Lickhalter v. Industrial Commission, 383 Ill. 527, 50 N.E.2d 729 (1943).

The determining factor in deciding whether decedent was employee within Workmen Compensation Act or independent contractor is existence of employer right to control decedent work, not exercise of such right. Murrelle v. Industrial Commission, 382 Ill. 128, 46 N.E.2d 1007 (1943).

One who is not under control of employer in performance of work, is an independent contractor. Postal Telegraph Sales Corp. v. Industrial Commission, 377 Ill. 523, 37 N.E.2d 175 (1941).

One who undertakes to produce a given result in accordance with the will of the person for whom the work is done but who is free to exercise his own judgment and discretion as to means and appliances is an independent contractor for whose negligence that person is not liable, though there may be actual interference with the methods of doing the work, whereas one who is subject to control as to the manner in which the work is to be done is an employee. Darner v. Colby, 375 Ill. 558, 31 N.E.2d 950 (1941), mandate conformed to, 311 Ill. App. 352, 35 N.E.2d 952 (2d Dist. 1941).

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The principal consideration which distinguishes an employee from an independent contractor is the right to control the manner of doing the work. Olympic Commissary Co. v. Industrial Commission, 371 Ill. 164, 20 N.E.2d 86 (1939).

Term employee in provision in Workmen Compensation Act making any one engaged in extrahazardous business who directly or indirectly engaged contractor, whether principal or subcontractor, liable to pay compensation to employees of such contractor or subcontractor, meant any workman rendering service on subject-matter of contract, regardless of by whom he may have been immediately employed or who had direct right to discharge him. S.H.A. ch. 48, § 168. Baker & Conrad v. Chicago Heights Const. Co., 364 Ill. 386, 4 N.E.2d 953 (1936).

Independent contractor is person rendering service in course of his occupation representing will of person for whom work is done only as to result and not as to means. Stellwagen v. Industrial Commission, 359 Ill. 557, 195 N.E. 29 (1935).

One contracting to clear weeds from right of way at stipulated sum per acre and to furnish tools, labor, and expenses, held not employee of contractor, but independent contractor, so as to entitle dependents to compensation for his death, although his

laborers were carried on contractor pay roll. S.H.A. ch. 48, §§ 141, 142. Thompson v. Industrial Commission, 351 Ill. 356, 184 N.E. 633 (1933).

Principal consideration in determining relationship as employee or independent contractor is right to control manner of work. Meyer v. Industrial Commission, 347 Ill. 172, 179 N.E. 456 (1931).

Independent contractor is one rendering service representing will of person for whom work is done only with respect to result. Ferguson & Lange Foundry Co. v. Industrial Commission, 346 Ill. 632, 179 N.E. 86 (1931).

Independent contractor is one rendering service in course of occupation, representing will of person for whom work is done only as to result, not as to means. Hartley v. Red Ball Transit Co., 344 Ill. 534, 176 N.E. 751 (1931).

Length of time deceased was employed is immaterial in determining whether he was employee or independent contractor. Van Watermeullen v. Industrial Commission, 343 Ill. 73, 174 N.E. 846 (1931).

In determining whether workman is employee or independent contractor, principal consideration is right to control work. Lutheran Hospital v. Industrial Commission, 342 Ill. 325, 174 N.E. 381 (1930).

Right to control manner of work is important in determining whether worker is independent contractor. Besse v. Industrial Commission, 336 Ill. 283, 168 N.E. 368 (1929).

Right to control manner of doing work is principal consideration in determining whether worker is employee or independent contractor. Nelson Bros. & Co. v. Industrial Commission, 330 Ill. 27, 161 N.E. 113 (1928).

Where a company employing a person to make an excavation for the purpose of erecting a building on a cost-plus basis controlled the work in all essential respects and gave orders or made requests with the force of orders as to the purchase of materials and the employment and discharge of employees and its officials exercised direction over the work, the person doing the work was not an independent contractor. Best Mfg. Co. v. Peoria Creamery Co., 307 Ill. 238, 138 N.E. 684 (1923).

One who undertakes to produce a given result in accordance with the will of person for whom the work is done, but who is free to exercise his own judgment and discretion as to means and appliances and is not subject to control as to method by which he attains result, is an independent contractor. Rasmussen v. Clark, 346 Ill. App. 181, 104 N.E.2d 325 (2d Dist. 1952).

Factors to be considered in determining whether one acting for another is a servant, or independent contractor are extent of control by master, whether one employed is engaged in a distinct occupation or business, kind of occupation with reference to whether, in the locality, the work is usually done under direction of employer or by specialist without supervision, skill required, whether employer or workman supplies instrumentalities, length of time for which person is employed, method of payment, whether or not work is part of regular business of employer, and whether parties believe they are creating relationship of master and servant. Lees v. Chicago & N. W. Ry. Co., 339 Ill. App. 227, 89 N.E.2d 418 (1st Dist. 1950), cause remanded, 409 Ill. 536, 100 N.E.2d 653 (1951) (overruled in part by, Bowman v. Illinois Cent. R. Co., 11 Ill. 2d 186, 142 N.E.2d 104 (1957)).

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If person for whom service is rendered retains right to control the details of the work and the method or manner of the performance of the work, the relation of employer and employee exists. Springer v. Illinois Transit Lines, 318 Ill. App. 403, 48 N.E.2d 206 (3d Dist. 1943).

When a person employing may prescribe what shall be done, but not how it is to be done or who is to do it, the person so employed is a contractor and not a servant; and fact that work is to be done under direction and to satisfaction of certain persons representing employer does not render the person who contracted to do the work a servant. Nash v. Meguschar, 228 Ind. 216, 91 N.E.2d 361 (1950).

A subcontractor is one who agrees to do something for another, but who is not controlled or subject to the control of the other in the manner or method of accomplishing the result contracted for, and an agent is one who is subject to the control of his principal with respect to details of work assigned to him. Gross Income Tax Division v. Fort Pitt Bridge Works, 227 Ind. 538, 86 N.E.2d 685 (1949), reh'g denied, 227 Ind. 538, 87 N.E.2d 721 (1949).

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As a general rule, an "independent contractor" controls the method and details of his task and is answerable to the principal as to results only. Snell v. C.J. Jenkins Enterprises, Inc., 881 N.E.2d 1088 (Ind. Ct. App. 2008).

Where truck driver owned tractor under conditional sales contract from trucking company, leased it back to trucking company to haul cargo provided by company on routes and to destinations assigned by company, paid own traveling expenses, fuel and maintenance costs on tractor, was paid by trucking company on basis of freight carried and mileage traveled, and had workmen compensation insurance carried for him by company on basis of his earnings, but either party could terminate relationship at any time, truck driver was employee of trucking company and not independent contractor. Jackson Trucking Co. v. Interstate Motor Freight System, 122 Ind. App. 546, 104 N.E.2d 575 (1952).

In action by widow of bulldozer operator to recover compensation, burden was on general contractor to prove defense that operator was an independent contractor. BurnsAnn.St. § 40 "1701(b). Crane v. Pangere & Logan, 121 Ind. App. 97, 95 N.E.2d 216 (1950).

Evidence that employer relied upon painting contractor to see that painting was done, and was indifferent as to whether contractor or contractor employees did the work, that contractor furnished his tools and equipment, and decided who should work, and when and how work should be done, and that employer had no control thereover, and was not present while work was progressing, sustained finding that contractor was an independent contractor not within the Workmen Compensation Act and not an employee. Vincent v. Pursley, 119 Ind. App. 53, 83 N.E.2d 431 (1949).

The mode of payment and right to terminate relationship by discharge are each a circumstance to be considered with other relevant facts in determining whether compensation claimant is an independent contractor or an employee, but neither is alone decisive, and decisive test is the power or right to command the act and to direct or control the means, manner, or method of performance. Allen v. Kraft Food Co., 118 Ind. App. 467, 76 N.E.2d 845 (1948).

In construing definition of employee, as used in compensation act, a measure of liberality is indulged to the end that in doubtful cases an injured workman or his dependents may not be deprived of benefits of provisions of compensation plan, and doubt as to whether claimant is an employee or independent contractor is resolved in favor of former status. BurnsAnn.St. § 40 "1701(b). Sprout & Davis v. Toren, 118 Ind. App. 384, 78 N.E.2d 437 (1948).

In determining whether compensation claimant was an employee at time he sustained injury, the real test is whether claimant at time of his injury was under power and control of alleged employer and subject to its orders and directions in doing of the work at hand. Board of Com'rs of Allen County v. Gable, 115 Ind. App. 102, 57 N.E.2d 69 (1944).

Where salesman for garment and manufacturing companies called on customers as he saw fit, and was paid a weekly wage by garment company and commission by manufacturing company which reserved certain control over him with reference to granting of credit and representations to customers, evidence sustained determination that salesman was an employee of manufacturing company, rather than an independent contractor, and that his death in automobile accident while on his way to call on customer was result of compensable accident arising out of and in course of employment. BurnsAnn.St. § 40 "1201 et seq. Shelby Mfg. Co. v. Harris, 112 Ind. App. 627, 44 N.E.2d 315 (1942).

Evidence that trucker, engaged by timber buyer to haul logs to company to which logs had been sold, furnished his own equipment, and that method of doing work rested exclusively with trucker, supported finding that trucker was an independent contractor, and not an employee of either timber buyer or company to which logs were being delivered, and hence trucker was not entitled to compensation for injuries sustained while delivering logs. Wilson v. Porter Handle & Cooperage Co., 112 Ind. App. 287, 44 N.E.2d 518 (1942).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Petzold v. McGregor, 92 Ind. App. 528, 176 N.E. 640 (1931).

One carrying on independent business and contracting to do work according to own methods, subject to employer will only as to results, is independent contractor.. Makeever v. Marlin, 92 Ind. App. 158, 174 N.E. 517 (1931).

One using wife truck in hauling material for construction company, which paid him by load and could discharge him, held not contractor within Workmen Compensation Act, but employee of company. Grace Const. Co. v. Fowler, 85 Ind. App. 263, 153 N.E. 819 (1926).

Owner not liable for negligence of independent contractor. Zainey v. Rieman, 81 Ind. App. 74, 142 N.E. 397 (Div. 2 1924).

Independent contractor within Workmen Compensation Act is one who has the right to determine for himself the manner in which the specified results shall be accomplished. I.C.A. § 85.61, subd. 3, par. c. Taylor v. Horning, 240 Iowa 888, 38 N.W.2d 105 (1949).

Where case was before Supreme Court on clerk transcript of record which showed that accused was charged with conspiracy, entered plea of guilty, and was sentenced for a term of years, and examination of record disclosed no error, conviction was affirmed. State v. Wolf, 6 N.W.2d 286 (Iowa 1942).

Whether workman compensation claimant was an independent contractor or employee depended on the facts and circumstances of the particular case. Gen.St.1935, 44"501 et seq. Schroeder v. American Nat. Bank, 154 Kan. 721, 121 P.2d 186 (1942).

Generally, when a person lets out work to another, the contractee reserving no control over work or workmen, a contractor and contractee relationship exists, and not a master and servant relationship, and the contractee is not liable for negligence or improper execution of the work by contractor. Smith v. Brown, 152 Kan. 758, 107 P.2d 718 (1940).

It is not the actual exercise of direction, supervision, or control over a workman which determines whether he is an independent contractor or a servant within Workmen Compensation Act, but the right to exercise such direction, supervision, or control. Gen.St.1935, 44"501 et seq. Davis v. Julian, 152 Kan. 749, 107 P.2d 745 (1940).

An independent contractor is one who contracts to do something for another but who is not controlled by the other or subject to other right to control with respect to his physical conduct in performance of the undertaking. Hurla v. Capper Publications, 149 Kan. 369, 87 P.2d 552 (1939).

A cement company engaged in quarrying work, which rented certain blasting equipment used in its quarries, and loaned men from its quarries to an ice company, for purpose of blasting rock in a sewer ditch being constructed generally under the supervision of the ice company, was not an independent contractor, so as to be solely liable for compensation to its workman who was injured while blasting in a sewer ditch. Gen.St.1935, 44"501 et seq. Mendel v. Fort Scott Hydraulic Cement Co., 147 Kan. 719, 78 P.2d 868 (1938).

Where dairy company, selling milk at wholesale, permitted distributors to paint company name, telephone number, and milk permit number on distributorsdelivery trucks, but retained no control over distributors, distributor held independent contractor and not servant; hence company was not liable for truck driver negligence. Brownrigg v. Allvine Dairy Co., 137 Kan. 209, 19 P.2d 474 (1933).

Telephone company trimmer of trees designated on blueprint held not independent contractor, relieving company from liability for cutting undesignated trees. Nordgren v. Southwestern Bell Telephone Co., 125 Kan. 33, 262 P. 577 (1928).

A salesman who operates an automobile at his own expense, whose movements are not controlled by his employer, except that he shall make his territory once each week, is, as to operation of the car, an independent contractor, and his employer is not answerable for injuries caused by his negligent operation. Dohner v. Winfield Wholesale Grocery Co., 116 Kan. 237, 226 P. 767 (1924).

Where individual was engaged to clear portion of a company right of way with compensation fixed on a per mile basis and he was to furnish necessary tools, labor, and transportation of laborers, he was an independent contractor for purposes of determining the company liability for damage caused by fire which was started on the right of way by such individual employee. Kentucky Utilities Co. v. Carter, 296 Ky. 30, 176 S.W.2d 81 (1943).

Generally, the owner of property is not liable for injuries resulting from the acts of an independent contractor, unless work to be done by the independent contractor is in itself a nuisance, or necessarily results in a nuisance, or unless the work or the instrumentality for doing it, is inherently dangerous. Jennings v. Vincent's Adm'x, 284 Ky. 614, 145 S.W.2d 537 (1940).

An independent contractor is one who contracts to do specific piece of work, furnishes his own assistants, and executes work entirely in accordance with his own ideas or plans previously given him by person for whom work is done, without being subject to latter orders in respect to details of work. Ruth Bros. v. Roberts, 270 Ky. 339, 109 S.W.2d 800 (1937).

Where one represents another only as to result of work, and not as to means whereby work is to be accomplished, he is independent contractor, for whose negligence or wrongdoing such other is not liable. Leachman v. Belknap Hardware & Mfg. Co., 260 Ky. 123, 84 S.W.2d 46 (1935).

Where highway subcontractor rendered the services in accordance with contract with subcontractor own labor and means, and general contractor was concerned only in result of work, subcontractor held independent contractor, so that general contractor was not liable for damage to residence caused when subcontractor exploded excessive amount of dynamite in removing culvert, though subcontract required general contractor to carry compensation insurance for subcontractor employees and public liability insurance. Harris v. Stone, 256 Ky. 737, 77 S.W.2d 18 (1934).

Manner in which wages are paid, whether by day, by piece, or quantity of work is not conclusive but merely fact to be considered in determining whether relation is that of master and servant or that of independent contractor. Knight, Knight & Clark v. McCoin, 255 Ky. 9, 72 S.W.2d 705 (1934).

Company employed to build railroad was independent contractor, though contractee retained right to stop work if it was not progressing properly; such right being for contractee protection and not for protection of others. Slusher v. Asher, 250 Ky. 88, 61 S.W.2d 1057 (1933).

Person may be servant as to one part of undertaking and independent contractor as to other parts. American Sav. Life Ins. Co. v. Riplinger, 249 Ky. 8, 60 S.W.2d 115 (1933).

One contracting to do specific piece of work according to his own ideas and not subject to employer orders is independent contractor. Kentucky & West Virginia Gas Co. v. Wireman, 241 Ky. 18, 43 S.W.2d 183 (1931).

Principal held not liable under Workmen Compensation Law for compensation to injured servant of independent contractor. Ky.St. §§ 4880 "4987. Vires v. Dawkins Log & Mill Co., 240 Ky. 550, 42 S.W.2d 721 (1931).

Independent contractor is one who is doing his own work in his own way. Bowen v. Gradison Const. Co., 236 Ky. 270, 32 S.W.2d 1014 (1930).

Fact that clay miner employees signed mine owner workmen compensation register held not controlling on question whether miner was independent contractor. General Refractories Co. v. Mozier, 235 Ky. 252, 30 S.W.2d 952 (1930).

Generally, one employed to execute work and having right to select own assistants and direct manner of work is independent contractor. Yellow Creek Coal Co. v. Lawson, 229 Ky. 245, 16 S.W.2d 1043 (1929).

One agreeing to deliver logs to sawmill at specified foot rate, with own employees, teams, and equipment, held independent contractor. Workmen Compensation Act. Wright v. Wilkins, 222 Ky. 144, 300 S.W. 342 (1927).

To create relation of master and servant, master must control work. Glover's Adm'r v. James, 217 Ky. 572, 290 S.W. 344 (1927).

Owners of teams employed by one contracting with defendant held independent contractors. Structure Oil Co. v. Chambers, 208 Ky. 30, 270 S.W. 458 (1925).

A fair association, giving fireworks exhibition for which admission is charged, is liable to spectator for injuries caused by explosion, if exhibition would necessarily or probably become source of danger unless guarded against, and defendant failed to take reasonable precautions in that respect, or failed to exercise ordinary care in selecting a skilled and reliable exhibitor, in either of which events defense of independent contractor is inapplicable. Blue Grass Fair Ass'n v. Bunnell, 206 Ky. 462, 267 S.W. 237 (1924).

When one contracts to do a specific piece of work, furnishes his own assistants, and executes the work in accordance with a plan previously given him by the contractee, without being subject to the orders of the latter in respect to the details, he is an independent contractor, but whenever the employer retains the right, not only to direct what shall be done, but how it shall be done, then the relationship of master and servant exists. Smith v. Howard, 201 Ky. 249, 256 S.W. 402 (1923).

Injured independent contractor who returned to make repairs had burden to prove that he then was employee. Act No. 85 of 1926, p. 111, § 3, par. 8, LSA-R.S. 23:1021, 23:1044. Hatten v. Haynes, 175 La. 743, 144 So. 483 (1932).

Where defendant employed C. to do repair work on a house at a weekly or daily wage and allowed C. to employ plaintiff, also on a daily or weekly wage, which was to be paid by defendant, there was no independent contractor, and plaintiff, claiming compensation under EmployersLiability Act (LSA-R.S. 23:1021, et seq.), was in defendant employ. Shipp v. Bordelon, 152 La. 795, 94 So. 399 (1922).

When the relation of principal and independent contractor exists, there accrues to the contractor a right to demand something of value from the principal, and the relation does not exist where the converse is true. Brown v. City of Shreveport, 15 So. 2d 234 (La. Ct. App. 2d Cir. 1943).

Owner of truck who was to receive certain sum for each unit of pulpwood delivered, was obligated to furnish his own truck, pay for fuel consumed, and to hire and pay his own helpers, and who was not restricted as to time nor as to daily quantity of wood he should haul, was not an independent contractor but an employee, and recovery could be had under the compensation act from employer of owner of truck for death of owner of truck. Collins v. Smith, 13 So. 2d 72 (La. Ct. App. 2d Cir. 1943).

Truck driver, owning truck-trailer, who hauled cottonseed for oil mill at a stated price per ton, and who was permitted to haul only such quantities and kinds of seeds and at such times as the oil mill officials directed, and who was dependent on such officials for daily work, was an employee and not an independent contractor of oil mill, and his death while in course of his employment was compensable. Act No. 20 of 1914 (LSA"R.S. 23:1021 et seq.) Litton v. Natchitoches Oil Mill, 195 So. 638 (La. Ct. App. 2d Cir. 1940).

It is fundamental to the existence of independent contractor relationship that there be an absolute independence of action on part of contractor in execution of the work assumed by him, and, if contractee has power to interfere with or control manner of execution or performance, then contractor ceases to be independent and his status degenerates into that of an employee or servant. Coon v. Monroe Scrap Material Co., 191 So. 607 (La. Ct. App. 2d Cir. 1939).

In determining whether a workman is an independent contractor and without the protection of the workmen compensation law, it must be determined whether service is rendered for a specified recompense for a specified work either as a unit or a whole and whether person rendering service retains control and direction over means and methods employed by him in accomplishing the work. Act No. 85, of 1926, p. 111, § 3, subsec. 8, LSA"R.S. 23:1021, 23:1044. Rodgers v. City of Hammond, 178 So. 732 (La. Ct. App. 1st Cir. 1938).

One contracting to do certain work according to plans and specifications prepared by contractee, but who exercises full control as to method of doing work, save that it must be up to certain standard, is an independent contractor, for whose actions contractee is not liable, though he exercises some supervision over work to see that it is done according to contract. Crysel v. Gifford-Hill & Co., 158 So. 264 (La. Ct. App. 2d Cir. 1935).

Whether one performing service for another occupies status of independent contractor must be determined from nature of contract, character of labor performed, and facts and circumstances bearing upon undertaking. Act No. 85 of 1926, p. 113, LSA-R.S. 23:1021, 23:1031, 23:1038 et seq. Vascocue v. Collins, 150 So. 414 (La. Ct. App. 2d Cir. 1933).

Control over work to be done is important in determining whether one rendering services is independent contractor. Moritz v. K.C.S. Drug Co., 149 So. 244 (La. Ct. App. 2d Cir. 1933).

One employed to haul logs with his own truck with privilege to quit at will and having no particular job to perform held not independent contractor so as to prevent his recovering under Employer Liability Act. Act No. 20 of 1914, as amended, LSA-R.S. 23:1021 et seq. Felts v. Singletary, 143 So. 68 (La. Ct. App. 1st Cir. 1932).

Person contracting for alteration or repair of building is independent contractor for whose faults owner is not responsible. Giacona v. Orleans Ice Mfg. Co., 5 La.App. 259.

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Rev.St.1930, c. 55, § 2. Murray's Case, 130 Me. 181, 154 A. 352, 75 A.L.R. 720 (1931).

An independent contractor is one who carries on an independent business, and, in the line of his business, is employed to do a job of work, and, in doing it, does not act under the direction and control of his employer, but determines for himself in what manner the work shall be done. Clark's Case, 124 Me. 47, 126 A. 18 (1924).

One employed to move a boiler from place to place in a quarry and to haul water whenever required, under the direction of the superintendent, and for a specified rate per hour for himself and his team, held not an independent contractor, but an employee within Workmen Compensation Act, § 1, par. 2. Mitchell's Case, 121 Me. 455, 118 A. 287, 33 A.L.R. 1447 (1922).

Independent contractor is one who contracts to perform certain work for another according to his own means and methods, free from control of employer in all details connected with performance of work except as to its product or result, and he is not an employee within coverage of Workmen Compensation Act. Code Supp.1943, art. 101, § 80. Williams Const. Co. v. Bohlen, 189 Md. 576, 56 A.2d 694 (1948).

Relation of independent contractor does not require that contractor be employer of workmen but test lies in power of control or superintendence over promisor or contractor in performance of work; relation of employer and employee not arising if promisee or contractee has no power of control or superintendence. Code Pub.Gen.Laws 1924, art. 101, § 1 et seq., as amended. Supervisors of Elections of Maryland v. Balser, 172 Md. 187, 190 A. 822 (1937).

In determining status of one whose injury is basis of claim for compensation, test most frequently applied to determine whether claimant is employee within scope of Compensation Law or independent contractor is that of control. Code Pub.Gen.Laws 1924, art. 101, § 1 et seq., as amended. Moore v. Clarke, 171 Md. 39, 187 A. 887, 107 A.L.R. 924 (1936).

General contractor held not liable for injury to subcontractor employee on breaking of joist of temporary structure, which joist was of same grade as customarily used. M.A. Long Co. v. State Acc. Fund, 156 Md. 639, 144 A. 775 (1929).

That one contracting to drive piles in constructing pier did not definitely agree to drive all piles needed did not conclusively show he was not independent contractor. North Chesapeake Beach Land & Imp. Co. v. Cochran, 156 Md. 524, 144 A. 505 (1929).

Independent contractor is one contracting to work according to own methods, without employer control except as to result. Bell v. State, 153 Md. 333, 138 A. 227, 58 A.L.R. 1051 (1927).

Owner is not liable for negligence of independent contractor constructing building. Bernheimer-Leader Stores v. Burlingame, 152 Md. 284, 136 A. 622 (1927).

A landlord is liable for injuries to a tenant caused by the former neglect to remedy defects in, or by his improper management of, appliances of which he retains control; nor can the landlord obligation to exercise diligence in this respect be delegated to an independent contractor so as to relieve him from liability. Kinnier v. J.R.M. Adams, Inc., 142 Md. 305, 120 A. 838 (1923).

In determining whether a person is a servant or employee or an independent contractor, the method of payment is not controlling, although it may be important. Stratis v. McLellan Stores Co., 311 Mass. 525, 42 N.E.2d 282, 142 A.L.R. 1393 (1942) (overruled in part by, Tindall v. Denholm & McKay Co., 347 Mass. 100, 196 N.E.2d 631 (1964)).

In determining whether a person is a servant or employee or an independent contractor, the method of payment is not controlling, although it may be important. Stratis v. McLellan Stores Co., 311 Mass. 525, 42 N.E.2d 282, 142 A.L.R. 1393 (1942).

If work that contractor resurfacing sidewalk authorized independent contractor to do was not inherently dangerous and its performance would not necessarily endanger persons in street, and if injury to pedestrian was due to negligence of independent contractor in improperly performing a detail of work and such negligence could not have been reasonably contemplated by

contractor, then contractor was not liable even if work was being performed in a public street. Kunan v. De Matteo, 308 Mass. 427, 32 N.E.2d 613 (1941).

Right of control is essence of distinction between employee and independent contractor. Case of McDermott, 283 Mass. 74, 186 N.E. 231 (1933).

Store manager using wife car in employer business with employer consent held employee, and hence accident when so engaged arose out of employer business. G.L. c. 152, § 26, as amended St.1930, c. 205 (M.G.L.A.). Manley's Case, 280 Mass. 331, 182 N.E. 486 (1932).

Test of whether one is independent contractor is whether work is, regarding manner and detail of performance, under higher control or whether work is to produce result according to worker discretion. Strong's Case, 277 Mass. 243, 178 N.E. 637 (1931).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Case of Child, 274 Mass. 97, 174 N.E. 211 (1931).

Employee must be subject to employer control as to both means and result for relation of master and servant to exist. Khoury v. Edison Elec. Illuminating Co., 265 Mass. 236, 164 N.E. 77, 60 A.L.R. 1159 (1928).

Employer held liable for negligence of independent contractor in failing to guard manholes in street. McGinley v. Edison Electric Illuminating Co., 248 Mass. 583, 143 N.E. 537 (1924).

Evidence that trucker was hired to use his truck to make daily deliveries for defendant, and was paid weekly wages and truck rental and worked exclusively for defendant and handled no other freight, sustained award granting compensation for trucker death as result of accident which occurred while he was making trip for defendant, on ground that trucker was an employee of the defendant and was not an independent contractor. Heatherly v. Michigan Tri-State Motor Exp., 304 Mich. 303, 8 N.W.2d 75 (1943).

Whether a workman is independent contractor or employee depends on right of person hiring him to control manner of doing work, rather than actual exercise of such control. Janofski v. Federal Land Bank, 302 Mich. 124, 4 N.W.2d 492 (1942).

The right of control as to details of execution of the work to be performed is the test of whether a person is an employee within the Workmen Compensation Act or an independent contractor. M.S.A. § 176.01 et seq. Oestreich v. Lakeside Cemetery Ass'n, 229 Minn. 209, 38 N.W.2d 193 (1949).

The test of whether person is independent contractor or employee is whether asserted employer, under his arrangement with such person, has any authoritative control over him respecting manner and means of performing details of his work. Judd v. Sanatorium Commission of Hennepin County, 227 Minn. 303, 35 N.W.2d 430 (1948).

A servant is a person employed to perform service for another subject to employer right of control with respect to performance of the service; whereas, an independent contractor does a specific piece of work without submitting himself to control as to details. Sayre v. Johnson, 218 Minn. 586, 17 N.W.2d 76 (1944).

A servant is person employed to perform service for another, subject to employer right of control with respect to servant physical conduct or details in performance of service, while independent contractor is one undertaking to do specific piece of work, without submitting himself to contractee control as to details thereof, or one rendering service in course of independent employment, representing contractee only as to result of work, not means of accomplishing it. Korthuis v. Soderling & Sons, 218 Minn. 342, 16 N.W.2d 285 (1944).

Independent contractor is one rendering service in course of occupation representing will of employer only as to results, and not as to means of accomplishing it. McDonald v. Hall-Neely Lumber Co., 165 Miss. 143, 147 So. 315 (1933).

Independent contractor is one representing employer only as to result of work, and not as to means of doing it. Louis Werner Sawmill Co. v. Northcutt, 161 Miss. 441, 134 So. 156 (1931).

Independent contractor is one who renders service in course of occupation representing will of employer only as to result. Hutchinson-Moore Lumber Co. v. Pittman, 154 Miss. 1, 122 So. 191 (1929).

Control is essential to relation of master and servant. Crescent Baking Co. v. Denton, 147 Miss. 639, 112 So. 21 (1927).

Evidence that company engaged in business of roofing, siding, and insulating buildings contracted with carpenter to do specified carpenter work, that carpenter was directed and controlled by company as to work to be done, and that on day of injury of carpenter he was specifically directed to quit one phase of the work, and to assume another, sustained findings of Industrial Commission in compensation proceedings that claimant was an employee within meaning of the compensation act and not an independent contractor. Harper v. Home Imp. Co., 235 S.W.2d 558 (Mo. 1951).

Whether a person having work done under contract should be deemed an employer liable under Workmen Compensation Act for injury or death of such contractor, his subcontractors, or their employees must be determined upon the particular facts of each case. V.A.M.S. § 287.040. Viselli v. Missouri Theatre Bldg. Corp., 361 Mo. 280, 234 S.W.2d 563 (1950) (abrogated by, Bass v. National Super Markets, Inc., 911 S.W.2d 617 (Mo. 1995)).

Whether a person having work done under contract should be deemed an employer liable under Workmen Compensation Act for injury or death of such contractor, his subcontractors, or their employees must be determined upon the particular facts of each case. V.A.M.S. § 287.040. Viselli v. Missouri Theatre Bldg. Corp., 361 Mo. 280, 234 S.W.2d 563 (1950).

An independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other right to control with respect to his physical conduct in the performance of the undertaking. Smith v. Fine, 351 Mo. 1179, 175 S.W.2d 761 (1943).

An independent contractor is a person who contracts with another to do something for him, but who is not controlled by the other nor subject to the other right to control with respect to his physical conduct in the performance of the undertaking. McKay v. Delico Meat Products Co., 351 Mo. 876, 174 S.W.2d 149 (1943).

An independent contractor is a person who contracts with another to do something for him, but who is not controlled by the other or subject to the other right to control with respect to his physical conduct in performance of the undertaking. Mattan v. Hoover Co., 350 Mo. 506, 166 S.W.2d 557 (1942).

The test in determining whether person employed to do certain work is an independent contractor or a servant is the control over the work which is reserved by the employer and whether one is an independent contractor depends on the extent to which he is independent in performing the work, and it is not the fact of actual exercise of control by the employer but the existence of the right to control which renders one a servant rather than an independent contractor. Tokash v. General Baking Co., 349 Mo. 767, 163 S.W.2d 554 (1942).

An independent contractor is a person contracting to do something for another but not controlled nor subject to right of control by employer as to contractor physical conduct in performance of undertaking. Bass v. Kansas City Journal Post Co., 347 Mo. 681, 148 S.W.2d 548 (1941).

An independent contractor is a person who contracts with another to do something for him, but who is not controlled by the other, nor subject to the other right to control with respect to his physical conduct in the performance of the undertaking. State ex rel. Chapman v. Shain, 347 Mo. 308, 147 S.W.2d 457 (1941).

While existence of relation of independent contractor ordinarily excludes that of principal and agent or master and servant, employee may be independent contractor as to certain work and mere servant as to other work for same employer. Vert v. Metropolitan Life Ins. Co., 342 Mo. 629, 117 S.W.2d 252, 116 A.L.R. 1381 (1938).

Where evidence discloses no contract between parties, relationship of parties which is alleged to be that of employer and independent contractor must be determined from consideration of facts and circumstances in evidence, nature of business involved, and conduct of parties. Cotton v. Ship-By-Truck Co., 337 Mo. 270, 85 S.W.2d 80 (1935).

Independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control of his employer, except as to result of his work. Rutherford v. Tobin Quarries, 336 Mo. 1171, 82 S.W.2d 918 (1935).

Independent contractor is one who, exercising independent employment, contracts to do work according to own methods, without being subject to control of employer, except as to result of work. Coul v. George B. Peck Dry Goods Co., 326 Mo. 870, 32 S.W.2d 758 (1930).

Whether injured employee employer doing excavating was independent contractor held for jury. Mallory v. Louisiana Pure Ice & Supply Co., 320 Mo. 95, 6 S.W.2d 617 (1928) (overruled by, Zueck v. Oppenheimer Gateway Properties, Inc., 809 S.W.2d 384 (Mo. 1991)) and (abrogation recognized by, Dillard v. Strecker, 255 Kan. 704, 877 P.2d 371 (1994)) and (overruled by, Scott v. Edwards Transp. Co., 889 S.W.2d 144 (Mo. Ct. App. S.D. 1994)).

Whether injured employee employer doing excavating was independent contractor held for jury. Mallory v. Louisiana Pure Ice & Supply Co., 320 Mo. 95, 6 S.W.2d 617 (1928).

Theory of independent contractor held not to excuse installing uninsulated guy wire. Smith v. St. Joseph Ry., Light, Heat & Power Co., 310 Mo. 469, 276 S.W. 607 (1925).

In context of workerscompensation, an independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer, except as to the final result of his work. Chouteau v. Netco Const., 132 S.W.3d 328 (Mo. Ct. App. W.D. 2004).

An independent contractor within Compensation Act is one who is engaged by another to do a specific piece of work for a specific recompense. Ramsey v. Gross & Janes Co., 241 S.W.2d 777 (Mo. Ct. App. 1951).

If the work being done at time of injury is not an operation of or in the usual course of business which employer customarily carries on upon his premises but is only incidental thereto, the contractor, subcontractor or employee injured while engaged in such work is not a statutory employee and owner of the premises having the work done under contract is not the employer of such injured party, so as to render him liable under the compensation act for such injury. V.A.M.S. §§ 287.010 et seq., 287.040. Rucker v. Blanke Baer Extract & Preserving Co., 162 S.W.2d 345 (Mo. Ct. App. 1942).

One who owns property that may become dangerous cannot delegate a duty and escape liability for injury incident to his proprietorship, but if injury occurs by sole negligence of an independent contractor and is not due to or connected in any way with the premises, the owner is not generally liable for negligence of the independent contractor. Galentine v. Borglum, 235 Mo. App. 1141, 150 S.W.2d 1088 (1941).

A master is a principal who employs another to perform services in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service, a servant is a person employed by the master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master, and an independent contractor is a person who contracts with another to do something for him, but who is not controlled by the other nor subject to the other right to control with respect to his physical conduct in the performance of the undertaking. Knudsen v. Kansas City Public Service Co., 141 S.W.2d 252 (Mo. Ct. App. 1940).

Where one who carries on independent business, or calling, contracts to do a piece of work according to his own methods subject to control of other party only as to final result and not as to means or details by which result is to be accomplished, such party is an independent contractor. Miller v. St. Louis Realty & Securities Co., 103 S.W.2d 510 (Mo. Ct. App. 1937).

Independent contractor is person who renders service in course of occupation representing will of employer only as to result of work and not as to means by which it is accomplished. Young v. Sinclair Refining Co., 92 S.W.2d 995 (Mo. Ct. App. 1936).

Independent contractor is one who, exercising independent employment, contracts to work according to own methods, without control of employer, except as to result. Heisey v. Tide Water Oil Co., 92 S.W.2d 922 (Mo. Ct. App. 1936).

Independent contractor is one carrying on independent business and contracting to do piece of work according to his own methods, subject to employer control, only as to result, not means of accomplishing it. Fuqua v. Lumbermen's Supply Co., 229 Mo. App. 210, 76 S.W.2d 715 (1934).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. Manus v. Kansas City Distributing Corp., 228 Mo. App. 905, 74 S.W.2d 506 (1934).

Where lease authorized lessee to make repairs and entitled lessee to credit on rent for cost thereof, but lessor exercised no supervision over work, or control over workmen, lessee held independent contractor; hence lessor was not liable for death of workman engaged in making repairs. V.A.M.S. § 287.040. Davis v. Moller, 75 S.W.2d 610 (Mo. Ct. App. 1934).

Independent contractor is one contracting to do work according to his own methods, being subject to employer control only as to result. Ward v. Scott County Mill. Co., 47 S.W.2d 250 (Mo. Ct. App. 1932).

Independent contractor is one who exercises independent employment or occupation in rendering services, and represents employer only as to results of work, not means of doing it. Greene v. Spinning, 48 S.W.2d 51 (Mo. Ct. App. 1931).

Relationship is that of independent contractor and not servant, where contractor does work by his own methods without being subject to control. Andres v. Cox, 223 Mo. App. 1139, 23 S.W.2d 1066 (1930).

Independent contractor is one contracting to do work according to his own method and subject to control of other party only as to final result. Mattocks v. Emerson Drug Co., 33 S.W.2d 142 (Mo. Ct. App. 1930).

Whether truck owner hauling clay for brick company was independent contractor held for jury, under facts. Chase v. American Press Brick Co., 31 S.W.2d 246 (Mo. Ct. App. 1930).

Independent contractor is one contracting to do work, subject to control only as to result. Clayton v. Hydraulic Press Brick Co., 27 S.W.2d 52 (Mo. Ct. App. 1929).

Relation between employer and alleged independent contractor is for jury, where contract is oral and different inferences may be drawn. Klaber v. Fidelity Bldg. Co., 19 S.W.2d 758 (Mo. Ct. App. 1929).

Independent contractor is one contracting to do work, subject to control only as to result. Gorman v. A. R. Jackson Kansas City Showcase Works Co., 19 S.W.2d 559 (Mo. Ct. App. 1929).

One contracting with another who exercises independent employment without control except as to results of work, not of itself dangerous, is not answerable for wrongs of contractor. Kiehling v. Humes-Deal Co., 16 S.W.2d 637 (Mo. Ct. App. 1929).

Generally one contracting with person exercising independent employment is not answerable for wrongs committed in prosecution of work. Wendt v. Holbrook-Blackwelder Real Estate Trust Co., 299 S.W. 66 (Mo. Ct. App. 1927).

Independent contractor is one contracting to do work, subject to control only as to result. Aubuchon v. Security Const. Co., 291 S.W. 187 (Mo. Ct. App. 1927).

Independent contractor may be subject to control as to result of work. Burgess v. Garvin, 219 Mo. App. 162, 272 S.W. 108 (1925).

Whether one delivering newspapers to dealers independent contractor or servant of publisher, question for jury. Semper v. American Press, 217 Mo. App. 55, 273 S.W. 186 (1925).

In determining whether a party is acting for himself or as agent for an employer, the right to control details of the work and not actual interference or control distinguishes between an independent actor and a servant. Borah v. Zoellner Motor Car Co., 257 S.W. 145 (Mo. Ct. App. 1923).

Evidence held to warrant submission to jury on humanitarian doctrine of right to recover for injuries by automobile. Thomassen v. West St. Louis Water & Light Co., 251 S.W. 450 (Mo. Ct. App. 1923), aff'd in part, rev'd in part, 312 Mo. 150, 278 S.W. 979 (1925).

Evidence held to warrant submission to jury on humanitarian doctrine of right to recover for injuries by automobile. Thomassen v. West St. Louis Water & Light Co., 251 S.W. 450 (Mo. Ct. App. 1923).

That a city had an engineer merely to see that a company contracting to construct a water plant for it did the work according to the contract does not affect the company status as an independent contractor. Lofty v. Lynch-McDonald Const. Co., 215 Mo. App. 163, 256 S.W. 83 (1923).

One in charge of an oil company oil station, working for a commission and having charge of the distribution in three counties, who employed two truck drivers to work under him, and whose entire supplies except the chassis of his two trucks, were furnished by the oil company, held the company agent for whose negligence, causing a fire, the company was liable. Buchholz v. Standard Oil Co. of Indiana, 211 Mo. App. 397, 244 S.W. 973 (1922).

Under contract for employment of newspaper carrier, whereby carrier agreed to buy papers, deliver papers within a certain time, solicit subscriptions, and report to employer, but was free to furnish his own method of securing delivery, carrier was an independent contractor rather than a servant, and hence newspaper was not liable for injuries caused by carrier negligence in driving motorcycle. Greening v. Gazette Printing Co., 108 Mont. 158, 88 P.2d 862 (1939).

Agent not subject to control respecting manner of executing agency is independent contractor respecting principal liability for agent negligence. Harrington v. H.D. Lee Mercantile Co., 97 Mont. 40, 33 P.2d 553 (1934).

One rendering service in course of occupation and therein representing employer will only as to result of work, not as to means of accomplishing it, is usually independent contractor; and if in performance of such work, necessary or probable result of work

will be injury to third person, both contractor and contractee will be liable, latter under doctrine of respondeat superior. Ulmen v. Schwieger, 92 Mont. 331, 12 P.2d 856 (1932).

An independent contractor is one who renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. Neyman v. Pincus, 82 Mont. 467, 267 P. 805 (1928).

An independent contractor is one who renders a service in course of an independent occupation, representing will of his employer only as to result of work, and not as to means by which it is accomplished. Wilds v. Morehouse, 152 Neb. 749, 42 N.W.2d 649 (1950).

An independent contractor must have contracted to do a specified work and have the right to control the mode of doing it. Riggins v. Lincoln Tent & Awning Co., 143 Neb. 893, 11 N.W.2d 810 (1943).

Whether one is an employee or an independent contractor within meaning of Workmen Compensation Law must be determined from the facts in the particular case rather than from any particular feature of the employment or service. Comp.St.1929, § 48"101 et seq. Nollett v. Holland Lumber Co., 141 Neb. 538, 4 N.W.2d 554 (1942).

An agreement between corporate dealer and person employed by it to install oil burning stove that such person should be an independent contractor and not agent of dealer did not relieve dealer from responsibility to buyers of stove for negligent installation causing damage, where buyers had been led to believe that agency existed between the parties. Montgomery Ward & Co. v. Stevens, 60 Nev. 358, 109 P.2d 895 (1941).

Whenever employer retains right to direct manner of work as well as results to be accomplished, relation of master and servant exists. Cappadonna v. Passaic Motors, 136 N.J.L. 299, 55 A.2d 462 (N.J. Sup. Ct. 1947), judgment aff'd, 137 N.J.L. 661, 61 A.2d 282 (N.J. Ct. Err. & App. 1948).

Whenever employer retains right to direct manner of work as well as results to be accomplished, relation of master and servant exists. Cappadonna v. Passaic Motors, 136 N.J.L. 299, 55 A.2d 462 (N.J. Sup. Ct. 1947).

Where employer retains right to direct manner in which work shall be done as well as result to be accomplished, a master and servant relationship exists, but where one employed contracts to do work according to his own methods and is not subject to control as to means by which such result is to be accomplished, but only as to result of the work, employer and independent contractor relationship exists. El v. Newark Star-Ledger, 131 N.J.L. 373, 36 A.2d 616 (N.J. Sup. Ct. 1944).

Evidence sustained finding that employer gave compensation claimant directions as to manner and means of performing carpentry work, and hence claimant was entitled to benefits under compensation act for injury sustained in course of employment. Wadge v. Crestwood Acres, 129 N.J.L. 400, 29 A.2d 896 (N.J. Ct. Err. & App. 1943).

In seeking intention of parties to contract of general hiring, which was controlling consideration in determining employee right to compensation under Compensation Act, regard was to be had to attendant circumstances and object in view, and course of practice of parties in execution of contract. N.J.S.A. 34:15-1 et seq. Fury v. New York & L.B.R. Co., 126 N.J.L. 25, 16 A.2d 544 (N.J. Sup. Ct. 1940), aff'd, 127 N.J.L. 354, 22 A.2d 286 (N.J. Ct. Err. & App. 1941).

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Independent contractor is one who, carrying on independent business, contracts to do work according to his own methods and without being subject to employer control, except as to result of work. Errickson v. F. W. Schwiers, Jr., Co., 108 N.J.L. 481, 158 A. 482 (N.J. Ct. Err. & App. 1932).

Supervision to see that work is done in accordance with contract did not prevent employee from being independent contractor. Giroud v. Stryker Transp. Co., 104 N.J.L. 424, 140 A. 305 (N.J. Ct. Err. & App. 1928).

One driving motor truck over fixed route to sell ice cream on commission held not independent contractor. Dunbaden v. Castles Ice Cream Co., 103 N.J.L. 427, 135 A. 886 (N.J. Ct. Err. & App. 1927).

Salesman, devoting whole time to business of employer retaining control and paying automobile expenses besides salary, held servant and not independent contractor. Auer v. Sinclair Refining Co., 103 N.J.L. 372, 137 A. 555, 54 A.L.R. 623 (N.J. Ct. Err. & App. 1927).

Where work of repairing sidewalk is done by independent contractor, such work not being nuisance, contractor alone is liable for injury from negligence of himself or his servants, unless landowner was in default in selecting skillful and proper contractor. Bush v. Margolis, 102 N.J.L. 179, 130 A. 525 (N.J. Ct. Err. & App. 1925).

Where contractee actively interferes with and participates in work contracted for by independent contractor, and cause of an injury to latter employee is the independent negligence of both contractee and the contractor, both are liable. Riley v. Jersey Leather Co., 100 N.J.L. 300, 126 A. 457 (N.J. Ct. Err. & App. 1924).

When a landowner undertakes to do work, which in the ordinary mode of doing it is a nuisance, he is liable for any injury resulting, though the work is done by an independent contractor; but, if the work is not in itself a nuisance and injury results from the negligence of such contractor or his servants in the manner of executing it, the contractor alone is liable, unless the owner is in default in employing an unskillful person as contractor. Sarno v. Gulf Refining Co., 99 N.J.L. 340, 124 A. 145 (N.J. Sup. Ct. 1924), aff'd, 102 N.J.L. 223, 130 A. 919 (N.J. Ct. Err. & App. 1925).

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An independent contractor is one who, carrying on an independent business, contracts to do a piece of work according to his own methods, and without being subject to his employer as to means by which result is to be accomplished, but only as to result of work. O'Brien v. Washington Nat. Ins. Co., 17 N.J. Super. 549, 86 A.2d 310 (County Ct. 1952).

Conflicting evidence established that workman was not an independent contractor or member of a partnership but was an employee of roofing company, and as such entitled to compensation for injuries received during employment. Hutchinson v. Storm Proof Roofing Co., 21 N.J. Misc. 81, 32 A.2d 719 (C.P. 1943).

Where carpenter merely worked at his trade under direction of president and superintendent of owner of realty in construction of house, and plans and specifications were given to the carpenter only piecemeal as the work went along, the relationship was that of master and servant and carpenter was not an independent contractor and hence was entitled to compensation under the compensation act for injuries sustained in the work. N.J.S.A. 34:15-1 et seq. Wadge v. Crestwood Acres, 20 N.J. Misc. 188, 26 A.2d 279 (C.P. 1942), judgment aff'd, 128 N.J.L. 551, 27 A.2d 148 (N.J. Sup. Ct. 1942), judgment aff'd, 129 N.J.L. 400, 29 A.2d 896 (N.J. Ct. Err. & App. 1943).

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Employee differs from independent contractor in that employer, in case of employee, has right to control, not only the results of work, but methods of performance thereof; right of control, not exercise thereof, being test of relationship. Bland v. Greenfield Gin Co., 48 N.M. 166, 146 P.2d 878 (1944).

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In workmen compensation proceeding evidence presented a question of fact for Board as to whether claimant was an independent contractor of alleged employer. Schweitzer v. Goldsmith, 279 A.D. 687, 107 N.Y.S.2d 894 (3d Dep't 1951).

In proceeding under the compensation act by paperhanger to recover compensation for injuries sustained when he fell over a dog lying on floor at home of his employer while he was working, evidence sustained finding of the Workmen Compensation Board that paperhanger was an employee, so as to be entitled to compensation, rather than an independent contractor. Jewell v. Fournier, 277 A.D. 820, 97 N.Y.S.2d 58 (3d Dep't 1950).

In determining whether claimant is an employee coming within protection of Workmen Compensation Law or an independent contractor, payment based upon quantity of work done is not necessarily test requiring it to be found that relationship was based on independent contract. Rogers v. Bissell Lumber & Supply Co., 275 A.D. 1015, 91 N.Y.S.2d 708 (3d Dep't 1949).

In workmen compensation proceeding, evidence that gardner who died of myocarditis induced by heat prostration which was brought on by deceased working continuously for half a day mowing lawn, was paid by owner of estate, and that owner furnished tools, except a lawn mower, and owner admission that deceased was an employee, sustained Board finding that deceased was an employee instead of an independent contractor. Altieri v. Morris, 275 A.D. 1009, 91 N.Y.S.2d 674 (3d Dep't 1949), order aff'd, 301 N.Y. 522, 93 N.E.2d 77 (1950).

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Evidence that circus clown was employed under written contract classifying him as independent contractor, but was working in circus at time of leg injury while under some degree of supervision by alleged employer, justified compensation award on ground clown was an employee. Challis v. National Producing Co., 275 A.D. 877, 88 N.Y.S.2d 731 (3d Dep't 1949).

Variety artist, a ballet dancer, subject to employer supervision and control as to time and placement of her presentation and in co-operating with its musical accompaniment, and in view of provisions of employment contract for one week at a stipulated sum and rules and regulations of labor union incorporated therein by reference, was an employee within meaning of Workmen Compensation Law, rather than an independent contractor, and could recover compensation for injuries sustained while performing her act as a part of floor show at employer night club or restaurant. Workmen Compensation Law, § 1 et seq. Berman v. Barone, 275 A.D. 867, 88 N.Y.S.2d 327 (3d Dep't 1949).

Where employer may prescribe what may be done, but not time, place, or manner in which it may be done, one employed is an independent contractor to whom compensation law does not apply, and to constitute person employed an employee employer must retain some degree of direction and control over the means and manner of performance. Gordon v. New York Life Ins. Co., 275 A.D. 135, 89 N.Y.S.2d 83 (3d Dep't 1949), order rev'd, 300 N.Y. 652, 90 N.E.2d 898 (1950), motion denied, 300 N.Y. 742, 92 N.E.2d 318 (1950) and remittitur amended, 301 N.Y. 570, 93 N.E.2d 453 (1950).

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Where two carpenters, not partners, were engaged by greenhouse proprietor to perform carpentry and painting in construction of living quarter additions to place of business, and were separately paid for their hours of work at equal rates, carpenter was an employee for whose accidental death in course of employment his dependents would be entitled to compensation, and not an independent contractor, in view of evidence of reservation of control by employer and absence of proof of non-liability to discharge at any time. Norris v. Kaempfer, 274 A.D. 857, 81 N.Y.S.2d 808 (3d Dep't 1948).

The control of the work reserved in an employer which effects a master and servant relationship is control of the means and manner of performance of the work as well as of the result, and an independent contractor relationship exists where the person doing the work is subject to the will of the employer only with respect to the result but not with respect of the means or manner of accomplishment. Mace v. Morrison & Fleming, 267 A.D. 29, 44 N.Y.S.2d 672 (3d Dep't 1943), order aff'd, 293 N.Y. 844, 59 N.E.2d 438 (1944).

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Pedestrian who while walking on sidewalk was struck by pipe which was being brought up cellar stairway by helper of independent contractor who was engaged in making repairs in basement could not recover from owner of premises for injuries sustained, in absence of uncommon danger inherent in the nature of the work being performed. Farrell v. Utica Lincoln Realty Corp., 25 N.Y.S.2d 847 (App. Term 1941).

Where owner of gasoline pump entered into contract with a painting contractor to paint gasoline pump, and contractor, without notice to or knowledge of owner of pump, left hose line of gasoline pump lying on sidewalk and motorist in alighting from automobile stepped on the hose line and fell and was injured, owner of pump was not liable for injuries. Levy v. Socony-Vacuum Oil Co., 260 A.D. 1044, 24 N.Y.S.2d 641 (2d Dep't 1940).

Where owner of tract of land sold lots, financed erection of houses thereon for purchaser and engaged in constructing houses on premises and employed a number of carpenters and laborers, evidence sustained finding of State Industrial Board that workman injured while working on house being constructed for a purchaser was an employee and not an independent contractor. Reinhardt v. Tobey, 260 A.D. 968, 23 N.Y.S.2d 224 (3d Dep't 1940).

The definition of employee within the Workmen Compensation Law is not inimical to, and does not disturb the distinctions established in the common law between a servant or employee and an independent contractor, but rules which demarcated the relation of master and servant from that of employer and independent contractor are operative in consideration of claims, and an independent contractor is not within its protection. Workmen Compensation Law, § 2, subd. 4. Manning v. Whalen, 259 A.D. 490, 20 N.Y.S.2d 364 (3d Dep't 1940).

Embalmer who had office in his house, his own letterheads and listing in telephone book, worked for company on flat basis of $10 for each job, and billed company for services once a month, held employee of company, entitled to workmen compensation, not independent contractor, although he worked for any one who desired his services. Henault v. Joseph Endres Co., 251 A.D. 758, 295 N.Y.S. 179 (3d Dep't 1937).

Evidence held to sustain finding of State Industrial Board that claimant was employed by landowner for purpose of erecting bungalows on land, and that while so engaged claimant received injury, as against contention that claimant was independent contractor or employee of independent contractor. Clark v. Barr, 251 A.D. 755, 295 N.Y.S. 621 (3d Dep't 1937).

Claimant who was employed by one employer as watchman and another as janitor, and who was injured while engaged in work as janitor, held not an independent contractor, as respects right to compensation for injuries against both employers. Stevens v. Hull Grummond & Co., 249 A.D. 870, 292 N.Y.S. 768 (3d Dep't 1937), aff'd as modified, 274 N.Y. 227, 8 N.E.2d 498 (1937).

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Road building contractor is liable for compensation to sub-subcontractor injured employee, where neither contractor nor sub-subcontractor carries compensation insurance. Workmen Compensation Law, § 3, subd. 1, group 3, and § 56. Passarelli v. Baker & Yettman, 241 A.D. 639, 269 N.Y.S. 203 (3d Dep't 1934).

Person in possession of automobile under agreement to sell it for owner for commission of amount received over specified price, with no other compensation or allowance for expenses, was independent contractor, and owner was not liable for his collision with another automobile. Potchasky v. Marshall, 211 A.D. 236, 207 N.Y.S. 562 (3d Dep't 1925).

A repair man, in possession of another automobile for repairs, is an independent contractor, and not an employee of the owner, and the owner is therefore not liable for his negligence while driving the car, whether at the time of the accident he was testing it, or returning it to the garage designated by the owner, since the contract was not complete until delivery to owner. McCloskey v. Nagel, 206 A.D. 467, 202 N.Y.S. 34 (2d Dep't 1923).

An owner of a building in the course of construction which collapses when practically completed, injuring a contractor workman therein, may be held liable with the building contractors for such collapse, where he has not committed the supervision of construction to an architect, but has assumed to do the work himself. Sheridan v. Rosenthal, 206 A.D. 279, 201 N.Y.S. 168 (2d Dep't 1923).

In prosecution for failure to secure compensation insurance for employees, fact that workman was to be paid a lump sum upon completion of the job and that he came whenever he wanted and was not compelled to stay upon the job and was to be paid by the square for shingling did not show that workman was an independent contractor for whom insurance was not required rather than an employee. Workmen Compensation Law, § 50. People v. Manzo, 26 N.Y.S.2d 566 (County Ct. 1941).

Retention of bare supervision by employer over contractor does not make an independent contractor servant of employer so that employer may be held liable for contractor negligence. Kuhn v. P.J. Carlin Const. Co., 154 Misc. 892, 278 N.Y.S. 635 (Sup 1935), aff'd, 248 A.D. 582, 288 N.Y.S. 1110 (1st Dep't 1936), judgment modified, 274 N.Y. 118, 8 N.E.2d 300 (1937), reargument denied, remittitur amended, 277 N.Y. 651, 14 N.E.2d 204 (1938).

Retention of bare supervision by employer over contractor does not make an independent contractor servant of employer so that employer may be held liable for contractor negligence. Kuhn v. P.J. Carlin Const. Co., 154 Misc. 892, 278 N.Y.S. 635 (Sup 1935).

An insurance policy taken out by vendee, stating the relationship of the parties to a sale contract and made payable in case of loss as their interests appear, held a sufficient compliance with a provision of the contract to insure the property and assign the policy as collateral security to the contract, in view of the provisions of a standard policy; but vendee should have possession of the policy. Conners v. Winans, 122 Misc. 824, 204 N.Y.S. 142 (Sup 1924).

One who exercises an independent employment and contracts to do certain work according to his own judgment and methods without being subject to his employer except as to the result of his work is an independent contractor. G.S. § 97"1 et seq. McCraw v. Calvine Mills, 233 N.C. 524, 64 S.E.2d 658 (1951).

The retention by employer of right to control and direct the manner in which the details of work are to be executed and what laborers shall do as the work progresses is decisive, in determining whether they are employees within meaning of the Workmen Compensation Act, and when such appears, the relationship of master and servant or employer and employee within meaning of the act is created. G.S. § 97"1 et seq. Roth v. McCord & Dellinger, 232 N.C. 678, 62 S.E.2d 64 (1950).

An independent contractor is one who exercises an independent employment, contracts to do specified work for another by his own methods without subjection to control of his employer, except as to result of his work, and who has the right to control manner or method of doing the work. Scott v. Waccamaw Lumber Co., 232 N.C. 162, 59 S.E.2d 425 (1950).

An independent contractor is one who exercises an independent employment and contracts to do work according to his own judgment and method, without being subject to his employer except as to the results of his work. Cooper v. Colonial Ice Co., 230 N.C. 43, 51 S.E.2d 889 (1949).

The right or power of control retained by person for whom the work is being done is the essential criterion for determining whether workman is an employee or an independent contractor. Brown v. L. H. Bottoms Truck Lines, 227 N.C. 299, 42 S.E.2d 71 (1947).

Generally, an independent contractor, excluded from benefits of compensation act, is one who exercises an independent employment and contracts to do a piece of work according to his own judgment and method without being subject to his employer except as to the results of his work. G.S. § 97"1 et seq. Smith v. Southern Waste Paper Co., 226 N.C. 47, 36 S.E.2d 730 (1946).

The vital test in determining whether a person is a servant or employee or independent contractor is whether employer has retained right of control or superintendence over contractor or employee as to details. G.S. § 97"2. Hayes v. Board of Trustees of Elon College, 224 N.C. 11, 29 S.E.2d 137 (1944).

Where a contractor has undertaken to do a piece of work according to plans and specifications furnished, the relation of independent contractor is not affected or changed because the right is reserved for the engineer, architect, or agent of the owner or proprietor of the premises to supervise the work to the extent of seeing that it is done pursuant to the terms of the contract. Economy Pumps v. F. W. Woolworth Co., 220 N.C. 499, 17 S.E.2d 639 (1941).

An employee, who was hired by landlord agent to make repairs on demised premises who worked by the hour and who was shown by agent what repairs were to be made, was not an independent contractor but a servant. Livingston v. Essex Inv. Co., 219 N.C. 416, 14 S.E.2d 489 (1941).

A mill owner against which action had been brought for wrongful death of employee of subcontractor assisting in addition to mill could not be held liable for negligence of construction company with which mill owner contracted, or of subcontractor, where they were independent contractors. C.S. § 160. Mack v. Marshall Field & Co., 218 N.C. 697, 12 S.E.2d 235 (1940).

Independent contractor is one who undertakes to produce given result, but so that in actual execution of work he is not under order or control of person for whom he does it, and may use his own discretion in things not specified. Kesler Const. Co. v. Dixson Holding Corp., 207 N.C. 1, 175 S.E. 843 (1934).

One who represents another only as to results and not as to means of accomplishing work is independent contractor not covered by Workmen Compensation Act (Pub.Laws 1929, c. 120, as amended). Bryson v. Gloucester Lumber Co., 204 N.C. 664, 169 S.E. 276 (1933).

Lumber company furnishing skidding machine to contractor loading cars owed duty to contractor employee to furnish safe appliances. Moore v. Rawls, 196 N.C. 125, 144 S.E. 552 (1928).

Person letting contract and having no control over contractor employees is not liable for their torts. Inman v. Gulf Refining Co., 194 N.C. 566, 140 S.E. 289 (1927).

Evidence that injured workman was not employee of independent contractors held sufficient to go to jury. Lilley v. Interstate Cooperage Co., 194 N.C. 250, 139 S.E. 369 (1927).

Mode of payment provided in contract, while sometimes important in determining whether party is independent contractor, is not controlling. North Carolina Lumber Co. v. Spear Motor Co., 192 N.C. 377, 135 S.E. 115 (1926).

One for whom work is done is not master of independent contractor. Greer v. Callahan Const. Co., 190 N.C. 632, 130 S.E. 739 (1925).

Principle of master and servant applicable between company furnishing timber loader to independent contractor and his workmen. Paderick v. Goldsboro Lumber Co., 190 N.C. 308, 130 S.E. 29 (1925).

One of the most important tests to be applied in determining whether a person who is doing work for another is an employee or an independent contractor is whether the person for whom the work is done has the right to control, not merely the result, but the manner in which the work is done as well as the method used. Newman v. Sears, Roebuck & Co., 77 N.D. 466, 43 N.W.2d 411, 17 A.L.R.2d 694 (1950).

One of the most important tests to be applied in determining whether relationship of employer and employee exists, so that the Workmen Compensation Act is applicable, is whether the person for whom the work is done has the right to control not merely the result, but the manner in which the work is done and the methods used in its performance, and an important factor in determining the right of control is the power of the employer to terminate the employment at any time without liability. R.C.1943, § 65.0901 et seq. Bernardy v. Beals, 75 N.D. 377, 28 N.W.2d 374 (1947).

The test to determine whether one is an independent contractor or an employee under the Workmen Compensation Act is the employer retained power of control or superintendence over the contractor or employee. Laws 1919, c. 162, as amended. Starkenberg v. North Dakota Workmen's Compensation Bureau, 73 N.D. 234, 13 N.W.2d 395 (1944).

Whether an individual performing service for another does so as an independent contractor or as an employee is ordinarily a question of fact, the deciding factor being in whom is vested the right of control or superintendence as to the details of the work, for if the right to control the manner or means of performing the work is in the person for whom the service is performed, the relationship is that of employee and employer but if the control is delegated to the person performing the service, the relationship is that of independent contractor. Behner v. Industrial Commission, 154 Ohio St. 433, 43 Ohio Op. 360, 96 N.E.2d 403 (1951).

The chief test in determining whether one is an employee or independent contractor is right to control manner or means of performing work. Bobik v. Industrial Com'n, 146 Ohio St. 187, 32 Ohio Op. 167, 64 N.E.2d 829 (1946).

In determining whether one is an independent contractor or in service under Workmen Compensation Act principal test to be applied is that, if employer reserves right to control manner or means of doing work, the relation created is that of master and servant, while, if manner or means of doing work is left to one who is responsible to employer only for the result, an independent contractor relationship is thereby created. Gen.Code, §§ 1465"60, 1465"61. Firestone v. Industrial Commission, 144 Ohio St. 398, 29 Ohio Op. 570, 59 N.E.2d 147 (1945).

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The ultimate test in determining whether a person employed to do a certain work is an independent contractor or an employee, within compensation act, is the right of control reserved by employer over the work. Gen.Code, §§ 1465"60, 1465"61. Industrial Commission of Ohio v. Laird, 126 Ohio St. 617, 186 N.E. 718 (1933).

Generally, independent contractor within Compensation Law is one who exercises independent judgment and contracts to do work according to his own methods. Industrial Com'n of Ohio v. McAdow, 126 Ohio St. 198, 184 N.E. 759 (1933).

Plumbers summoned to building when escaping gas was detected held independent contractors, not agents of owner, as regards recovery from gas company after explosion and fire, where owner exercised no control over their work. Northwestern Ohio Natural Gas Co. v. First Congregational Church of Toledo, 126 Ohio St. 140, 184 N.E. 512 (1933).

Corporation contracting with another without retaining right to control or direct work is not liable for injuries to third persons from neglect of contractor employee. Gen.Code, §§ 1465-98, 1465-101. Klar v. Erie R. Co., 118 Ohio St. 612, 6 Ohio L. Abs. 358, 162 N.E. 793 (1928).

Alleged requirement that truck driver use tanker truck to deliver sodium silicate did not control manner or means of driver's hauling work and thus did not support finding that driver was employee, not independent contractor, for purposes of determining whether to impose vicarious liability on buyer or seller of sodium silicate for personal injuries and deaths of motorists in motor vehicle accident involving driver; tanker truck was only trucking means to haul sodium silicate, which was a liquid. Bookwalter v. Prescott, 168 Ohio App. 3d 262, 2006-Ohio-585, 859 N.E.2d 978 (6th Dist. Lucas County 2006).

Generally employer is exempt from liability for injuries to an employee of an independent contractor resulting from negligence of independent contractor, but employer is liable where injury is caused by his wrongdoing or meddling with work performed by independent contractor or where injury is caused by failure to keep premises in proper condition, by neglect of orders given for protection of injured employee or where injury results while employer has assumed control and direction of work. Robinson v. Republic Steel Corp., 50 Ohio L. Abs. 257, 78 N.E.2d 381 (Ct. App. 8th Dist. Cuyahoga County 1948).

In determining whether one is an independent contractor or in service under workmen compensation law, principal test is that, if employer reserves right to control manner or means of doing work, relation is that of master and servant, while if manner or means is left to one who is responsible for result, independent contractor relationship is created. Gen.Code, § 1465"61. Clifton v. Industrial Commission, 52 Ohio L. Abs. 144, 82 N.E.2d 754 (Ct. App. 1st Dist. Hamilton County 1945).

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Ohio L. Abs. 132, 61 N.E.2d 906 (Ct. App. 8th Dist. Cuyahoga County 1945), judgment aff'd, 146 Ohio St. 187, 32 Ohio Op. 167, 64 N.E.2d 829 (1946).

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A store owner by employing an independent contractor is not relieved of liability for the creation and maintenance of a nuisance in the public street. Gen.Code, § 13421. Pitzer v. Sears, Roebuck & Co., 66 Ohio App. 35, 19 Ohio Op. 292, 31 N.E.2d 450 (7th Dist. Trumbull County 1940).

The ultimate test in determining whether a person employed to do a certain work is an independent contractor or an employee, within compensation act, is the right of control reserved by employer over the work. Gen.Code, §§ 1465"60, 1465"61. McDonald v. Industrial Commission, 30 Ohio L. Abs. 33, 67 N.E.2d 806 (Ct. App. 2d Dist. Montgomery County 1939).

Where alleged employer reserves right to control not only result of work, but means and manner of performance, person doing work is employee, but where person doing work represents alleged employer will merely as to result, but not as to means or manner of accomplishment, he is independent contractor. Fisher Body Co. v. Wade, 45 Ohio App. 263, 14 Ohio L. Abs. 44, 187 N.E. 78 (6th Dist. Huron County 1933).

One representing will of employer only as to result of work, and not as to means of accomplishment, is independent contractor. Snodgrass v. Cleveland Co-op. Coal Co., 31 Ohio App. 470, 167 N.E. 493 (8th Dist. Cuyahoga County 1929).

Independent contractor defined. Post Pub. Co. v. Schickling, 22 Ohio App. 318, 4 Ohio L. Abs. 612, 154 N.E. 751 (1st Dist. Hamilton County 1926), aff'd, 115 Ohio St. 589, 5 Ohio L. Abs. 29, 155 N.E. 143 (1927).

Independent contractor defined. Post Pub. Co. v. Schickling, 22 Ohio App. 318, 4 Ohio L. Abs. 612, 154 N.E. 751 (1st Dist. Hamilton County 1926).

Principal test in determining whether one is an independent contractor or an employee, within meaning of Compensation Act, is that, if employer reserves right to control manner or means of doing work, workman is an employee, while, if manner or means of doing work is left to workman and he is responsible to employer only for result, he is an independent contractor. Gen.Code, § 1465"61. Marrie v. Industrial Commission, 37 Ohio Op. 384, 81 N.E.2d 300 (C.P. 1947).

The line of demarcation between relationship of employer and employee and that of principal and independent contractor is not always clear so that each case must be decided in light of surrounding facts and circumstances. State ex rel. Herbert v. Commercial Motor Freight, 27 Ohio Op. 98, 37 Ohio L. Abs. 475, 11 Ohio Supp. 31 (C.P. 1942), aff'd, 37 Ohio L. Abs. 480, 48 N.E.2d 898 (Ct. App. 2d Dist. Franklin County 1942).

The line of demarcation between relationship of employer and employee and that of principal and independent contractor is not always clear so that each case must be decided in light of surrounding facts and circumstances. State ex rel. Herbert v. Commercial Motor Freight, 27 Ohio Op. 98, 37 Ohio L. Abs. 475, 11 Ohio Supp. 31 (C.P. 1942).

An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control of his employer, except as to result of work. Keeling v. Schuman Bros. Lumber Co., 1951 OK 75, 204 Okla. 277, 229 P.2d 193 (1951).

An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to result of the work. Thompson v. Braselton Federal Insulating & Bldg. Materials Co., 1950 OK 264, 203 Okla. 510, 223 P.2d 527 (1950).

An independent contractor is one who contracts with another to do something for him, but is not controlled by him nor subject to his right to control with respect to contractor physical conduct in performance of undertaking. Cities Service Oil Co. v. Kindt, 1947 OK 219, 200 Okla. 64, 190 P.2d 1007 (1948).

The controlling test in determining whether agent is an employee or independent contractor is whether principal has the right to control the physical details of the work to be done by agent or whether agent represents principal only as to the result to be accomplished. Yellow Cab Co. v. Wills, 1947 OK 305, 199 Okla. 272, 185 P.2d 689 (1947).

An independent contractor is one who is engaged to perform a certain service for another according to his own manner and method, free from the control and direction of his employer in all matters connected with the performance of the service except as to the result or product of the work. Hawk Ice Cream Co. v. Rush, 1946 OK 236, 198 Okla. 544, 180 P.2d 154 (1946).

The test of whether relation between principal contractor and another engaged in work on subject matter of contract is that of master and servant or principal and independent contractor is whether principal contractor reserves the power to control the other. State Highway Com'n v. Brewer, 1945 OK 253, 196 Okla. 437, 165 P.2d 612 (1945).

A contractor whose remedy against the possessor of land for injuries sustained while inspecting work on the premises is not limited to relief under Workmen Compensation Act, is one who, as an independent business undertakes to do special jobs of work without submitting himself to control as to petty details. 85 Okl.St.Ann. § 1 et seq. Long Const. Co. v. Fournier, 1942 OK 83, 190 Okla. 361, 123 P.2d 689 (1942).

Whether a workman is an employee or an independent contractor is ordinarily a question of law when but one conclusion can be drawn from the evidentiary facts. 85 Okl.St.Ann. § 1 et seq. Mason v. State Indus. Com'n, 1941 OK 97, 188 Okla. 566, 111 P.2d 814 (1941).

Where employer owned all tools and equipment, made all contracts, assumed all responsibility, and paid all bills by his own check, including wages of his son and claimant, and claimant was to receive one-fourth of the gross profits derived from the contract, claimant was not an independent contractor but was an employe, and was entitled to compensation for injuries sustained while pulling rods and tubing from well on oil and gas lease. 85 Okl.St.Ann. § 3, subd. 4. Smittle v. Rutherford, 1941 OK 90, 188 Okla. 555, 111 P.2d 480 (1941).

An independent contractor who cannot recover compensation under the Workmen Compensation Act is one who engages to perform a certain service for another, according to his own manner and method, free from control on direction of the other in all matters connected with the performance of the service except as to the result or product of the work. 85 Okl.St.Ann. § 1 et seq. Taylor v. Langley, 1941 OK 67, 188 Okla. 646, 112 P.2d 411 (1941).

If an employer does not have the right to control the manner by which another does work, and does not exercise that right, but has only the right to demand specified results, the relationship is that of independent contractor and contractee. Sawin v. Nease, 1939 OK 546, 186 Okla. 195, 97 P.2d 27 (1939).

An independent contractor is one who engages to perform a certain service for another, according to his own manner and method, free from control and direction by his employer in all matters connected with the performance of the service, except as to result or product of the work. Blackwell Cheese Co. v. Pedigo, 1939 OK 479, 186 Okla. 159, 96 P.2d 1043 (1939).

Where facts were in dispute upon issue of whether workman was an independent contractor or an employee, that question was one for determination of State Industrial Commission. 85 Okl.St.Ann. § 1 et seq. Briscoe Const. Co. v. Miller, 1938 OK 631, 184 Okla. 136, 85 P.2d 420 (1938).

Where party contracting to perform task has full power and authority to select means method, and manner of performing work and is responsible to party for whom work is being performed only for results, the party performing work is independent contractor and party for whom work is being performed is not liable for negligence of contractor servant. Texas Pipe Line Co. of Oklahoma v. Willis, 1935 OK 518, 172 Okla. 148, 45 P.2d 138 (1935).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Southland Cotton Oil Co. v. Pritchett, 1933 OK 662, 167 Okla. 6, 27 P.2d 819 (1933).

Independent contractor is one who, exercising independent employment, contracts to do work according to his own methods and without being subject to control of employer, except as to result. Getman-MacDonell-Summers Drug Co. v. Acosta, 1933 OK 90, 162 Okla. 77, 19 P.2d 149 (1933).

Messenger employed by operator of general delivery service held independent contractor not covered by Workmen Compensation Act. 85 Okl.St.Ann. §§ 2, 3. Evans v. State Indus. Com'n, 1933 OK 40, 161 Okla. 288, 18 P.2d 885 (1933).

Truck owner, engaged by paving contractor, to haul materials at rate per load, held independent contractor, not employee, within Compensation Act. 85 Okl.St.Ann. § 1 et seq. Porter Const. Co. v. Burton, 1932 OK 129, 156 Okla. 72, 8 P.2d 64 (1932).

Independent contractor is one who, exercising independent employment, contracts to do work according to his own methods and without being subject to control of employer, except as to result. City of Muskogee v. McMurry, 1932 OK 71, 155 Okla. 203, 8 P.2d 670 (1932).

Evidence sustained finding that claimant employed to remove trash from building was employee, not independent contractor, as respects compensation for injuries. Sherbon v. Evans, 1931 OK 396, 150 Okla. 170, 1 P.2d 153 (1931).

One receiving newspapers under contract for carrying and delivering papers, who worked at his risk, according to his own methods, held independent contractor. 85 Okl.St.Ann. § 1 et seq. Oklahoma Pub. Co. v. Greenlee, 1931 OK 312, 150 Okla. 69, 300 P. 684 (1931).

Contract for drilling of oil well will be considered as a whole to determine whether relationship of employer and independent contractor was created. 85 Okl.St.Ann. § 11. Constitutional Indem. Co. v. Beckham, 1930 OK 313, 144 Okla. 81, 289 P. 776 (1930).

Owner of lease is secondarily liable for injuries to employee of independent contractor mining coal, on contractor failure to insure. 85 Okl.St.Ann. § 11. Tahona Smokeless Coal Co. v. State Indus. Com'n, 1927 OK 482, 128 Okla. 188, 261 P. 941 (1927).

Lessor contracting with another to drill oil well who fails to carry insurance protecting employees is secondarily liable for injuries to employee. 85 Okl.St.Ann. § 11, subd. 1. Green v. State Indus. Com'n, 1926 OK 660, 121 Okla. 211, 249 P. 933 (1926).

The test as to whether a person hired as an independent contractor is the right of his control as to the means or methods of the work but not as to the results, and, if such control exists, then the person hired is not an independent contractor. Kaw Boiler Works v. Frymyer, 1924 OK 469, 100 Okla. 81, 227 P. 453 (1924), opinion recalled, vacated and reentered, 1924 OK 1151, 105 Okla. 177, 231 P. 1059 (1924).

The test as to whether a person hired as an independent contractor is the right of his control as to the means or methods of the work but not as to the results, and, if such control exists, then the person hired is not an independent contractor. Kaw Boiler Works v. Frymyer, 1924 OK 469, 100 Okla. 81, 227 P. 453 (1924).

Master and servant relation is created by contract, express or implied. Moore & Gleason v. Taylor, 1924 OK 180, 97 Okla. 193, 223 P. 611 (1924).

The question as to whether one is an employee or an independent contractor is a question of fact, and finding by the Industrial Board, when sustained by competent evidence, is final. Federal Min. & Smelting Co. v. Thomas, 1924 OK 166, 99 Okla. 24, 225 P. 967 (1924).

An innkeeper, who undertakes to transport the baggage of a guest to the station, is not relieved from the liability imposed by 15 Okl.St.Ann. § 501, for the loss of such baggage, because the delivery of the baggage was intrusted to an independent contractor. Huckins Hotel Co. v. Clampitt, 1924 OK 142, 101 Okla. 190, 224 P. 945 (1924).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Producers' Lumber Co. v. Butler, 1922 OK 307, 87 Okla. 172, 209 P. 738 (1922).

Principal purpose of contract, independent employment of injured person and whether he was employed to do a particular piece of work according to his own methods without control, except as to results, whether any control was in fact exercise, whether injured workman determined his own hours of employment, payment by the hour or the piece, whether he used his own equipment and had the right to or did employ his own assistance, whether he rented equipment at his own expense and furnished supplies and made repairs on equipment at his own expense, and the rights of the parties to terminate employment are significant tests of the existence of employer-employee relationship within coverage of Workmen Compensation Act. ORS 656.002 et seq., 656.124. Butts v. State Indus. Acc. Commission, 193 Or. 417, 239 P.2d 238 (1951).

The fact that a trucker is engaged in the performance of a specific piece of work is ordinarily strong evidence that he is an independent contractor, whereas if the contract does not call for performance of a specific piece of work, the relationship of employer and employee is indicated. ORS 656.002, 656.004, 656.124. Bowser v. State Indus. Acc. Commission, 182 Or. 42, 185 P.2d 891 (1947).

The relation of master and servant exists when employer retains right to direct not only what shall be done, but how it shall be done, by employee. Knapp v. Standard Oil Co. of California, 156 Or. 564, 68 P.2d 1052 (1937).

Lather held independent contractor and not employee of building contractors. Vient v. State Indus. Acc. Commission, 123 Or. 334, 262 P. 250 (1927).

In an action for damages for negligence of defendantsagent in driving a car, where evidence showed that agent was hired to solicit orders, but company retained no authority as to where or how he should travel the defendant motion for nonsuit should have been granted. Ramp v. Osborne, 115 Or. 672, 239 P. 112 (1925) (overruled in part by, Casto v. Hansen, 123 Or. 20, 261 P. 428 (1927)).

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Duty to furnish safe place in which to work, and safe appliances with which to work, is that of contractor employing workmen, and not of owner of premises on which they work. Warner v. Synnes, 114 Or. 451, 235 P. 305 (1925).

Owner right to inspect contractor work as it progresses, to determine whether it is being completed according to plans and specifications, does not create relation of master and servant (within EmployersLiability Act) between owner and contractor employees engaged on such work. Warner v. Synnes, 114 Or. 451, 230 P. 362, 44 A.L.R. 904 (1924), adhered to on reh'g, 114 Or. 451, 235 P. 305 (1925).

The term workman in the Workmen Compensation Act means, as the act states, one who engages to furnish services subject to the control of an employer, and the relation necessary to constitute one an employer and another a workman under the act is the relation of master and servant originating in a contract for personal services, subject to complete control of the details of the work and the mode of its performance, a workman status being different from that of an independent contractor, one who generally exercises an independent employment, contracting to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of the work. Landberg v. State Indus. Acc. Commission, 107 Or. 498, 215 P. 594 (1923).

One contracting to paint a porch and pergola for $7.50 a day, subject to the direction and control of his employer, held a workman as defined by the Workmen Compensation Law, Or.L. § 6619, ORS 656.002, and not an independent contractor, meaning one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control except as to results. Streby v. State Indus. Acc. Commission, 107 Or. 314, 215 P. 586 (1923).

One who with his associates performed grading work on a railroad according to specifications under a written contract providing for payment at a stated rate per station on completion of the whole, without any control as to method of doing the work or as to the employment or discharge of other workmen, held an independent contractor, and not a workman, within Workmen Compensation Act, Or.L. §§ 6616, 6619, ORS 656.002, 656.152, 656.154, the term workman being defined in the statute as one engaging to furnish services subject to the control of the employer, which implies a relation of employer and employee created by a contract of employment. Anderson v. State Indus. Acc. Commission, 107 Or. 304, 215 P. 582 (1923).

The vital test in determining whether workman is servant of person engaging him is whether he is subject to such person control or right of control with regard to both work to be done and manner of performing it. Thomas v. Bache, 351 Pa. 220, 40 A.2d 495 (1945).

Payment of wages is not decisive factor in determining who is employer within compensation act, and person may be employee of one other than person hiring and paying him. 77 P.S. §§ 21, 22. Venezia v. Philadelphia Electric Co., 317 Pa. 557, 177 A. 25 (1935).

Window cleaning company with whom tenant entered into contract to clean windows of premises at stated intervals for specified consideration with manner in which work was to be done being left to judgment of company held independent contractor, as respects liability of tenant for injuries sustained by employee of company. Nettis v. General Tire Co. of Philadelphia, 317 Pa. 204, 177 A. 39 (1935).

Employer may exercise limited control over work or reserve right to supervise and inspect it during performance without rendering contractor mere servant. Weaver v. Foundation Co., 310 Pa. 310, 165 A. 381 (1933).

Payment of compensation and period of employment are circumstances considered in determining whether there is independent contract. Bojarski v. M. F. Howlett, Inc., 291 Pa. 485, 140 A. 544 (1928).

Property owner does not become contractor, within Workmen Compensation Act, because he lets contract for work to be done on premises. Workmen Compensation Act, §§ 203, 302(b), being 77 P.S. §§ 52, 462. Brooks v. Buckley & Banks, 291 Pa. 1, 139 A. 379 (1927).

Where employer reserves no control over means of accomplishing work, relation is not that of master and servant. Flaharty v. Trout, 290 Pa. 315, 138 A. 863 (1927).

Trover and conversion held not maintainable against builder whose architect, independent contractor, used another architect ideas. MacKay v. Benjamin Franklin Realty & Holding Co., 288 Pa. 207, 135 A. 613, 50 A.L.R. 1164 (1927).

Independent contractor must have exclusive control of work. Campagna v. Ziskind, 287 Pa. 403, 135 A. 124 (1926).

One hiring, paying, discharging, and controlling workmen is liable for their torts even if his status is not precisely that of an independent contractor. Eckert v. Merchant's Shipbuilding Corporation, 280 Pa. 340, 124 A. 477 (1924).

Where deceased was a member of a partnership which contracted to lay bricks for a borough at a stated rate per hour for each employee furnished, the difference between the amount paid to employees and the amount charged defendant or others being firm profits, and complete control over the means and manner of performance being left to contractor firm, held, that deceased, while repairing the borough streets, was an independent contractor and not an employee, and hence borough was not liable for compensation for his death or injury. Swartz v. Hanover Borough, 278 Pa. 134, 122 A. 215 (1923).

The test as to whether a person hired is an independent contractor is the right of his control as to the means or methods of the work but not as to the results, and, if such control exists, then the person hired is not an independent contractor. Burkett v. Van Tine, 277 Pa. 567, 121 A. 498 (1923).

Where a contract for the excavation of an engine pit in railroad yards gave the railroad company no control over the means or manner of accomplishing the work, the other parties to the contract were independent contractors. Turner v. Robbins, 276 Pa. 319, 120 A. 274 (1923).

A provision in the contract of employment, reserving to the employer only the control necessary to guarantee ultimate performance of the work in accordance with the agreement, does not prevent the employee from being a contractor, so that the employer was not a master liable under the Workmen Compensation Act. 77 P.S. § 1 et seq. Simonton v. Morton, 275 Pa. 562, 119 A. 732 (1923).

Where a contract is let for work to be done by another and in the contract the contractee reserves no control over the means of the accomplishment of the work, but merely as to the result, the employment is an independent one establishing the relationship of a contractee and contractor and not that of master and servant, and the Compensation Act does not apply. 77 P.S. § 1 et seq. Gearhart v. Summit Fast Freight, 167 Pa. Super. 481, 75 A.2d 606 (1950).

Power of an employer to terminate employment at any time is incompatible with full control of the work, which is usually enjoyed by an independent contractor, and is strong circumstance tending to show subservience of employee. Gadd v. Barone, 167 Pa. Super. 477, 75 A.2d 620 (1950).

The vital test in determining whether workman is an employee of person who engages him for work within Workmen Compensation Act is whether he is subject to such person control or right of control, not only with regard with work to be done, but also with regard to manner of performing it. 77 P.S. §§ 21, 22. Felten v. Mellott, 165 Pa. Super. 229, 67 A.2d 727 (1949).

That owner of building who employed carpenter to shingle roof paid men employed by carpenter to assist in work when asked by them to do so did not establish that carpenter was an employee within meaning of Compensation Act even if such manner of payment was the custom. 77 P.S. § 1 et seq. Thomas v. Bache, 155 Pa. Super. 224, 38 A.2d 551 (1944), judgment rev'd, 351 Pa. 220, 40 A.2d 495 (1945).

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Whether fact that workman was covered by compensation insurance and that employer made payments on his behalf under unemployment compensation law and Social Security Act established employer-employee relationship within Workmen Compensation Act was for Workmen Compensation Board. 43 P.S. § 751 et seq.; Social Security Act § 1 et seq., 42 U.S.C.A. § 301 et seq. Bradley v. Chester Materials Co., 151 Pa. Super. 485, 30 A.2d 206 (1943).

Whether one is an independent contractor or is merely an employee, so that the Compensation Act is applicable, depends on the degree of control in any given situation, rather than whatever one may be termed. 77 P.S. § 1 et seq. Shields v. William Freihofer Baking Co., 147 Pa. Super. 455, 24 A.2d 54 (1942).

For the purpose of determining whether a person for whose injury compensation is claimed was a servant or an independent contractor, the rule is that where a contract is let for work to be done by another, in which the contractee reserves no control over the manner of its accomplishment, but merely as to the result, the employment is an independent one establishing the relation of a contractee and contractor rather than that of master and servant. 77 P.S. § 1 et seq. Myers v. Maurer & Myers, 144 Pa. Super. 385, 19 A.2d 579 (1941).

A blacksmith engaged by coal company to shoe mules and to do repair work on company premises as directed by foreman for a compensation fixed on an hourly basis was an employee within meaning of Compensation Act and not an independent contractor, notwithstanding that blacksmith brought to service of company superior skill and some of his own tools. 77 P.S. § 1 et seq. Beals v. State Workmen's Ins. Fund, 131 Pa. Super. 418, 200 A. 178 (1938).

A person is not liable for the negligent acts of another unless the relation of master and servant or principal and agent exists between them, and ordinarily, when an injury is done by a person exercising an independent employment, the party employing him is not responsible. Baier v. Glen Alden Coal Co., 131 Pa. Super. 309, 200 A. 190 (1938), judgment aff'd, 332 Pa. 561, 3 A.2d 349 (1939).

A person is not liable for the negligent acts of another unless the relation of master and servant or principal and agent exists between them, and ordinarily, when an injury is done by a person exercising an independent employment, the party employing him is not responsible. Baier v. Glen Alden Coal Co., 131 Pa. Super. 309, 200 A. 190 (1938).

In compensation proceeding, company which hired trucks and drivers from another company held employer of drivers who were subject to its orders and instructions, notwithstanding that right to hire and discharge drivers remained in the other company which also paid salaries. 77 P.S. § 1 et seq. McGorry v. Sterling Supply Corporation, 116 Pa. Super. 563, 176 A. 808 (1935).

Master and servant relation exists where employer can select and discharge employee, and can direct both the work and manner of working but, where contractee reserves no control as to work to be done except as to result, relation is that of contractor and contractee. Mooney v. Weidner, 102 Pa. Super. 411, 157 A. 23 (1931).

One employing independent contractor is liable for injury resulting from doing of work, not from negligent manner of its performance. Silveus v. Grossman, 102 Pa. Super. 365, 156 A. 716 (1931), aff'd, 307 Pa. 272, 161 A. 362 (1932).

One employing independent contractor is liable for injury resulting from doing of work, not from negligent manner of its performance. Silveus v. Grossman, 102 Pa. Super. 365, 156 A. 716 (1931).

As regards compensation, defendant claiming decedent was independent contractor must show defendant exercised no control over work, being interested only in result. Young v. Goldsmit-Black, 102 Pa. Super. 291, 156 A. 571 (1930).

Person contracting to do work, retaining control over assistants and details of work, held independent contractor, not servant. Henry v. Mondillo, 49 R.I. 261, 142 A. 230 (1928).

Where pulpwood dealer obtained loans from paper company to purchase tracts of timber and agreed to sell company pulpwood for certain amount a cord, and dealer contracted with producer to cut and haul wood for commission to be paid by dealer, and company rented truck to producer to use in the work, and producer paid for gasoline and oil and wages of laborers, producer was not an employee of the company within meaning of the compensation law, but was an independent contractor. Code 1942, § 7035"2(b). Miles v. West Virginia Pulp & Paper Co., 212 S.C. 424, 48 S.E.2d 26 (1948).

In determining whether one is an employee within compensation act, or an independent contractor, the test is one of control by one for whom the work is done over the one doing the work. Act July 17, 1935, 39 Stat. at Large, p. 1232, § 2(b). Carter's Dependents v. Palmetto State Life Ins. Co., 209 S.C. 67, 38 S.E.2d 905 (1946).

In determining whether one is an employee within the Workmen Compensation Act or is an independent contractor, the principal test is always the right of employer to control manner and continuance of the particular service. SDC 64.0101 et seq. Bandt v. Farmers Co-op. Elevator Co. of Revillo, 69 S.D. 17, 5 N.W.2d 897 (1942).

Whether given contract establishes employer-employee status or that of independent contractor depends on right of control irrespective of whether right is exercised. Brademeyer v. Chickasaw Bldg. Co., 190 Tenn. 239, 229 S.W.2d 323 (1950).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Mayberry v. Bon Air Chemical Co., 160 Tenn. 459, 26 S.W.2d 148 (1930).

Contract for cutting timber held not to create relation authorizing recovery of compensation by injured employee of contractors against owner; direction. Odom v. Sanford & Treadway, 156 Tenn. 202, 299 S.W. 1045 (1927).

Relationship of responsible principal is distinguished from that of employer of independent contractor by reservation of right to control. Gulf Refining Co. of Louisiana v. Huffman & Weakley, 155 Tenn. 580, 297 S.W. 199 (1927).

An independent contractor is one who contracts to work according to his own methods without being subject to control of employer, except as to result of work, and who has right to employ and direct action of workmen independent of employer, and free from any superior authority in employer to say how specified work shall be done, or what laborers shall do as work progresses. General Shale Products Corp. v. Reese for Use and Ben. of U.S. Fidelity & Guar. Co., 35 Tenn. App. 423, 245 S.W.2d 788 (1951).

The general rule is that where the contract is for result, with no control by the person hiring over the acts of the person hired in procuring the contracted result, then the person hired is an independent contractor, and if the employer retains the right to direct the manner in which the business shall be done, as well as the result to be accomplished, then the person hired is a servant. Tennessee Valley Appliances v. Rowden, 24 Tenn. App. 487, 146 S.W.2d 845 (1940).

Reservation of right of control of essential details distinguishes responsible principal from employer of independent contractor. Texas Co. v. Ingram, 16 Tenn. App. 267, 64 S.W.2d 208 (1933).

One who contracts to do a specific piece of work for another and furnishes and has absolute control of his assistants is an independent contractor and not an employee within Workmen Compensation Act, if work is done in accord with his own ideas or a previously agreed plan, without being subject to employer orders with regard to details of work, but if he and his assistants are subject to control of employer with respect to details and method of doing the work, he is an employee. Vernon Ann.Civ.St. art. 8306 et seq. Halliburton v. Texas Indem. Ins. Co., 147 Tex. 133, 213 S.W.2d 677 (1948).

One entrusting work to independent contractor may retain such control over doing of part of work as to create relation of master and servant respecting such part. Standard Ins. Co. v. McKee, 146 Tex. 183, 205 S.W.2d 362 (1947).

The tests as to whether one is an independent contractor are the independent nature of his business, his obligation to furnish necessary tools, supplies, and material to perform the job, his right to control progress of work, except as to final results, the time for which he is employed, and method of payment, whether by time or by job. Industrial Indem. Exchange v. Southard, 138 Tex. 531, 160 S.W.2d 905 (1942).

When one has the right to control the end sought to be accomplished, but not the means and details of how it should be accomplished, the person employed acts as an independent contractor and not as an agent. Olympia Capital Associates, L.P. v. Jackson, 247 S.W.3d 399 (Tex. App. Dallas 2008).

The test for determining whether an employment or an independent contractor relationship exists is whether the purported employer has a right to control the details of the person's work. City of Paris v. Floyd, 150 S.W.3d 224 (Tex. App. Texarkana 2004).

The common law test for determining whether someone is an employee rather than an independent contractor is whether the alleged employer has the right to control the progress, details, and methods of operation of the work. City of Roman Forest v. Stockman, 141 S.W.3d 805 (Tex. App. Beaumont 2004).

If under terms of contract the employer has not the right to control the manner of performance of details of contract and employee is only obliged to achieve the end of contract for it, in his own manner, employee is an independent contractor, and ordinarily the employer is not responsible for the acts of an independent contractor. Farmers' Gin Co-op. Ass'n v. Mitchell, 233 S.W.2d 948 (Tex. Civ. App. El Paso 1950), writ refused n.r.e., (Oct. 11, 1950).

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The test to determine relation of master and servant or independent contractor relates to retention and exercise by the master of the power to control and direct, not merely the ends sought to be accomplished but also the means and details of the accomplishment. Elder v. Aetna Cas. & Sur. Co., 230 S.W.2d 1018 (Tex. Civ. App. San Antonio 1950), judgment rev'd, 149 Tex. 620, 236 S.W.2d 611 (1951).

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Whether decedent was an employee or an independent contractor would depend upon the terms of the contract, and if the relation cannot be determined from the terms of the contract then the manner in which the work was carried on and all other surrounding circumstances should be investigated. Vernon Ann.Civ.St. art. 8306 et seq. Williams v. Texas Emp. Ins. Ass'n, 218 S.W.2d 482 (Tex. Civ. App. San Antonio 1948), writ refused n.r.e..

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An independent contractor is a person employed to perform work on terms that he is to be free from control of employer as respects manner in which details of work are to be executed. Bowman v. Traders & General Ins. Co., 208 S.W.2d 420 (Tex. Civ. App. Austin 1948), writ refused n.r.e..

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A contractor is any person who, in the pursuit of an independent business or occupation, undertakes to do a specific piece of work for other persons, using his own means and methods, without submitting himself to their control in all its details, and representing the will of employer only as to the result of work and not as to the means by which it is accomplished. Hart v. Traders & General Ins. Co., 185 S.W.2d 605 (Tex. Civ. App. Dallas 1945), judgment aff'd, 144 Tex. 146, 189 S.W.2d 493 (1945).

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Where decedent was an employee of logging contractor who furnished his own truck and paid his hands from compensation paid him by partnership and no control was exercised over contractor as to the manner in which he did his work or as to his employees, contractor was an independent contractor and decedent was contractor employee and not an employee of the partnership, and was not covered by workmen compensation policy issued to partnership. Federal Underwriters Exchange v. Cupit, 172 S.W.2d 105 (Tex. Civ. App. Beaumont 1943), writ refused w.o.m., (July 7, 1943).

Where decedent was an employee of logging contractor who furnished his own truck and paid his hands from compensation paid him by partnership and no control was exercised over contractor as to the manner in which he did his work or as to his employees, contractor was an independent contractor and decedent was contractor employee and not an employee of the partnership, and was not covered by workmen compensation policy issued to partnership. Federal Underwriters Exchange v. Cupit, 172 S.W.2d 105 (Tex. Civ. App. Beaumont 1943).

Individual who hauled logs for lumber company at so much per thousand feet, and who paid all the expenses of operating his truck, was not precluded from recovering under compensation act on ground that he was an independent contractor, where he operated truck under detailed instructions of company, was charged a doctor fee just as other employees of company, was required to attend company safety meetings and to haul feed for company teams, to haul company employees to and from work in woods, and to supervise cutting of timber, and his work was controlled by company to same extent that company controlled work of employees who drove company trucks by the hour. Federal Underwriters Exchange v. Morton, 167 S.W.2d 267 (Tex. Civ. App. Beaumont 1942), writ refused w.o.m., (July 22, 1942).

Individual who hauled logs for lumber company at so much per thousand feet, and who paid all the expenses of operating his truck, was not precluded from recovering under compensation act on ground that he was an independent contractor, where

he operated truck under detailed instructions of company, was charged a doctor fee just as other employees of company, was required to attend company safety meetings and to haul feed for company teams, to haul company employees to and from work in woods, and to supervise cutting of timber, and his work was controlled by company to same extent that company controlled work of employees who drove company trucks by the hour. Federal Underwriters Exchange v. Morton, 167 S.W.2d 267 (Tex. Civ. App. Beaumont 1942).

If one for whom work is being done does not, by contract, relinquish right of control by conferring such right on person doing work, or another, person doing work is an employee rather than independent contractor. Maryland Cas. Co. v. Stewart, 164 S.W.2d 800 (Tex. Civ. App. Eastland 1942), writ refused w.o.m., (Nov. 4, 1942).

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The relation of master and servant within meaning of the Compensation Act, exists where the master retains or exercises the power of control in directing, not merely the end sought to be accomplished by the employment of another, but as well the means and details of its accomplishment, and not only what shall be done, but how it shall be done. Vernon Ann.Civ.St. art. 8309, § 1. Traders & General Ins. Co. v. Wood, 148 S.W.2d 975 (Tex. Civ. App. Amarillo 1941), writ dismissed, judgment correct.

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An independent contractor is person employed to perform work on terms that he is to be free from employer control as to manner in which details of work are to be executed. Conner v. Angelina County Lumber Co., 146 S.W.2d 1093 (Tex. Civ. App. Beaumont 1940).

The determining factor in ascertaining whether one is an employee or an independent contractor under Workmen Compensation Act is whether the employer has right to exercise control of the worker in doing the material things in performance of work to be done. Southern Underwriters v. Samanie, 130 S.W.2d 1090 (Tex. Civ. App. Beaumont 1939), judgment rev'd, 137 Tex. 531, 155 S.W.2d 359 (Comm'n App. 1941).

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An independent contractor is one who contracts with another to perform some service for him, but who is not controlled by the other nor subject to the other right to control with respect to his physical conduct in the performance of the undertaking. Davis v. General Acc. Fire & Life Assur. Corp., 127 S.W.2d 526 (Tex. Civ. App. Beaumont 1939).

An independent contractor is a person employed to perform work on the terms that he is to be free from the control of the employer as respects the manner in which the details of the work are to be executed. McCombs v. Stewart, 117 S.W.2d 869 (Tex. Civ. App. Eastland 1938).

The supreme test in determining whether the relation of master and servant exists within Compensation Act or whether an individual is an independent contractor is the right to control, but, in determining the relationship, the court must look to all of the elements affecting the question as a whole. Vernon Ann.Civ.St. art. 8306 et seq. Dennis v. Texas Emp. Ins. Ass'n, 116 S.W.2d 492 (Tex. Civ. App. Texarkana 1938), dismissed.

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Existence of master servant relationship is not controlled by determination of who pays employee, but by determination of who has right to control work employee is to perform. Texas Reciprocal Ins. Ass'n v. Latham, 72 S.W.2d 648 (Tex. Civ. App. Beaumont 1934), writ dismissed.

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Employer has right to exercise such control over independent contractor as is necessary to secure proper performance of contract, without thereby creating relation of master and servant, if employer does not control contractor in manner of performance of work. Carter Publications v. Davis, 68 S.W.2d 640 (Tex. Civ. App. Waco 1934), writ refused.

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If one for whom work is being done does not by contract relinquish right of control by conferring such right on person doing work, or another, person doing work is employee rather than independent contractor. Liberty Mut. Ins. Co. v. Boggs, 66 S.W.2d 787 (Tex. Civ. App. Eastland 1933), writ dismissed.

If one for whom work is being done does not by contract relinquish right of control by conferring such right on person doing work, or another, person doing work is employee rather than independent contractor. Liberty Mut. Ins. Co. v. Boggs, 66 S.W.2d 787 (Tex. Civ. App. Eastland 1933).

To make injured worker independent contractor, employment contract must, as against presumption that worker was employee because performing service for employer, take right of control of worker or of his work, except as to result, away from employer. Traders' & General Ins. Co. v. Williams, 66 S.W.2d 780 (Tex. Civ. App. Eastland 1933).

If employer actually exercises, or has right to exercise, control over employee, and direct employee in material details as to how work is to be performed, employee is servant and not independent contractor. American Nat. Ins. Co. v. Denke, 65 S.W.2d 522 (Tex. Civ. App. Waco 1933), rev'd, 128 Tex. 229, 95 S.W.2d 370, 107 A.L.R. 409 (Comm'n App. 1936) (abrogation recognized by, Darensburg v. Tobey, 887 S.W.2d 84 (Tex. App. Dallas 1994)).

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Decisive test in determining issue of independent contractor is whether employer has right of control of person employed as to details of work. Moreman v. Armour & Co., 65 S.W.2d 334 (Tex. Civ. App. Amarillo 1933), writ refused.

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That person, for whom work is being done, inspects or oversees it and directs workmanlike performance thereof does not make workman mere employee, instead of independent contractor. Royal Indem. Co. v. Blankenship, 65 S.W.2d 327 (Tex. Civ. App. Galveston 1933), rev'd, 128 Tex. 26, 95 S.W.2d 366 (Comm'n App. 1936).

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Ultimate test as to whether one is employee or independent contractor is extent of control which employer has right to exercise over conduct of other party, and mode and manner of doing work latter has engaged to perform. Dave Lehr, Inc., v. Brown, 58 S.W.2d 886 (Tex. Civ. App. Waco 1933), rev'd, 127 Tex. 236, 91 S.W.2d 693 (Comm'n App. 1936).

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Nature of relationship between employer and employee, as respects question of agency, is determined by whether employer had right to exercise control over details of work. Baldridge v. Klein, 56 S.W.2d 897 (Tex. Civ. App. Eastland 1932), writ granted.

Nature of relationship between employer and employee, as respects question of agency, is determined by whether employer had right to exercise control over details of work. Baldridge v. Klein, 56 S.W.2d 897 (Tex. Civ. App. Eastland 1932).

Relation of master and servant exists where one party retains or exercises power to control, not merely end to be accomplished, but means of its accomplishment. Vernon Ann.Civ.St. arts. 8306-8309. Security Union Ins. Co. v. McLeod, 36 S.W.2d 449 (Tex. Comm'n App. 1931).

Contractor refers to person undertaking specific job in pursuit of independent business, using own means without submitting to control as to details. Evans v. Bryant, 29 S.W.2d 484 (Tex. Civ. App. Eastland 1930), writ refused, (Oct. 29, 1930).

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Employer of one injured while delivering cotton seed to mill held independent contractor, not employee of millowners within Compensation Act. Workmen Compensation Act, Vernon Ann.Civ.St. art. 8306 et seq. Planters' Cotton Oil Co. of El Paso v. Woods, 25 S.W.2d 188 (Tex. Civ. App. El Paso 1930), writ refused, (Oct. 29, 1930).

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Defendant receiving salary while repairing building, but exercising complete control over his workmen, paid by owner, plaintiff employer, was independent contractor liable to plaintiff for injuries (Vernon Ann.Civ.St. art. 8306, § 3; art. 8307, § 6a). Taylor v. Haynes, 19 S.W.2d 850 (Tex. Civ. App. San Antonio 1929), writ granted, (Nov. 27, 1929) and rev'd, 35 S.W.2d 104 (Tex. Comm'n App. 1931), reh'g denied, 38 S.W.2d 1101 (Tex. Comm'n App. 1931).

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Whether one is employee or independent contractor depends on whether employer reserved right to control him in material details of employment. Vernon Ann.Civ.St. art. 8309. Southern Sur. Co. v. Shoemake, 16 S.W.2d 950 (Tex. Civ. App. Austin 1929), writ granted, (May 15, 1929) and rev'd, 24 S.W.2d 7 (Tex. Comm'n App. 1930).

Whether one is employee or independent contractor depends on whether employer reserved right to control him in material details of employment. Vernon Ann.Civ.St. art. 8309. Southern Sur. Co. v. Shoemake, 16 S.W.2d 950 (Tex. Civ. App. Austin 1929).

Employer is not liable to third persons for acts of independent contractor. T.J. Mansfield Const. Co. v. Gorsline, 292 S.W. 187 (Tex. Comm'n App. 1927).

Whether injuries, sustained by truck driver while making change in truck en route, were received in course of employment held for jury. Texas Emp. Ins. Ass'n v. Owen, 291 S.W. 940 (Tex. Civ. App. Amarillo 1927), writ granted, (May 4, 1927) and rev'd, 298 S.W. 542 (Tex. Comm'n App. 1927).

Whether injuries, sustained by truck driver while making change in truck en route, were received in course of employment held for jury. Texas Emp. Ins. Ass'n v. Owen, 291 S.W. 940 (Tex. Civ. App. Amarillo 1927).

Operator of railroad gravel pit held independent contractor. Ray v. St. Louis Southwestern Ry. Co. of Texas, 289 S.W. 1030 (Tex. Civ. App. Waco 1926), writ refused, (Mar. 16, 1927).

Operator of railroad gravel pit held independent contractor. Ray v. St. Louis Southwestern Ry. Co. of Texas, 289 S.W. 1030 (Tex. Civ. App. Waco 1926).

Work held not inherently dangerous so as to make employer liable for injuries from acts of independent contractor. Dixon v. Robinson, 276 S.W. 770 (Tex. Civ. App. Amarillo 1925).

Failure to take precautions renders owner liable for injuries to servant of independent contractor. Continental Paper Bag Co. v. Bosworth, 276 S.W. 170 (Tex. Comm'n App. 1925).

That person removing fence causing damage to crop was independent contractor held not to defeat claim against railroad. Gulf, C. & S.F. Ry. Co. v. Stephenson, 273 S.W. 294 (Tex. Civ. App. Galveston 1925).

Jury finding that status of master and servant existed will not be set aside, except evidence shows the contrary, as matter of law. Galloway v. King, 272 S.W. 807 (Tex. Civ. App. Texarkana 1925), rev'd, 284 S.W. 942 (Tex. Comm'n App. 1926).

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Control test of relation. McKinney v. Sherwin-Williams Co. of Tex., 271 S.W. 133 (Tex. Civ. App. Texarkana 1925).

One for whom work is done is not liable to employees of independent contractor for injuries caused by negligence of contractor. Mashburn v. Tex-Ken Oil Corporation, 261 S.W. 460 (Tex. Civ. App. El Paso 1924).

A carpenter injured while surfacing floors with his own machine under a contract with a building contractor, who had no control over the work except to accept or reject it, held an independent contractor and not an employee within Workmen Compensation Act, Vernon Ann.Civ.St.Supp.1918, arts. 5246-1 to 5246-91, art. 5246-82 (Vernon Ann.Civ.St. art. 8306-8309, § 5), defining an employee as one in the service of another under a contract of hire though he was on the pay roll for labor and was subject

to discharge. Western Indem. Co. v. Shannon, 242 S.W. 774 (Tex. Civ. App. Texarkana 1922), writ granted, (Oct. 25, 1922) and aff'd, 257 S.W. 522 (Tex. Comm'n App. 1924).

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A gin company salaried general manager, to whom was delegated the power to employ and discharge other employees, was not an independent contractor, so as to be barred from recovery under Workmen Compensation Act. Vernon Ann.Civ.St. art. 8306 et seq. Cook v. Millers' Indem. Underwriters, 240 S.W. 535 (Tex. Comm'n App. 1922).

An abutting property owner is not liable for the negligence of an independent contractor in leaving a ditch across the sidewalk unguarded, unless the work such contractor was engaged to do necessarily constituted a dangerous obstruction or defect in the street. Harris v. Farmers' & Merchants' State Bank of Ranger, 239 S.W. 1027 (Tex. Civ. App. El Paso 1922).

An independent contractor is one who renders services in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished, and who in the actual execution of the work is not under the order or control of the employer (citing 2 Words and Phrases, Second Series, p. 1037). Prairie Oil & Gas Co. v. Wright, 238 S.W. 974 (Tex. Civ. App. Fort Worth 1921).

In proceedings by underground miner under the Occupational Disease Statute to recover compensation for silicosis, evidence sustained finding of Industrial Commission that miner was an employee of mining company, so as to be entitled to compensation, rather than an independent contractor. U.C.A.1943, 42-1a-14. Commission of Finance v. Industrial Commission, 121 Utah 83, 239 P.2d 185 (1952).

Crucial factor in determining whether an applicant for workmen compensation is an employee, or is an independent contractor and therefore not within Workmen Compensation Act, is whether person for whom the services were performed had right to control the execution of work. Sommerville v. Industrial Commission, 113 Utah 504, 196 P.2d 718 (1948).

An agent can be an employee for a limited purpose and an independent contractor for other purposes. Christean v. Industrial Commission, 113 Utah 451, 196 P.2d 502 (1948).

Evidence that owner of building apartment house engaged plumber to lay pipe in trench at $1 per foot, that plumber employed and paid assistants, that plumber furnished tools and equipment, and that owner exercised no supervisory control over plumber, warranted denial of compensation for death of plumber, who was killed in cave-in, on ground that plumber was independent contractor and not employee of owner. Ewer v. Industrial Commission, 112 Utah 538, 189 P.2d 959 (1948).

In determining whether employer has right to control execution of work so as to give rise to relationship of employer and employee within Workmen Compensation Act, skill possessed by or business engaged in by workman is of vital consideration, and right of control does not exist where workman is engaged in independent calling while accomplishing the result for which he has been employed. Utah Code 1943, 42-1-40. Parkinson v. Industrial Commission, 110 Utah 309, 172 P.2d 136 (1946).

One hauling gravel in truck owned by third person for gravel company, which paid such driver agreed sum per yard for gravel hauled, gave him no directions as to route to be traveled, hours of work or speed of truck, or number of loads to be hauled per week or month, and exercised no control over his work except right to direct where to load and unload, was not employee of gravel company but independent contractor so as to preclude recovery of compensation for his death under Workmen Compensation Act. Kinder v. Industrial Commission, 106 Utah 448, 150 P.2d 109 (1944).

Among tests of servanthood under common law was method of payment, right to discharge, nature of work, whether employment was for definite piece of work, and above all right of control as to means and method of performance of work. Intermountain Speedways v. Industrial Commission, 101 Utah 573, 126 P.2d 22 (1942).

Though the manner and basis of payment is one element to be considered in determining whether an individual is an independent contractor or any employee under the compensation act, it is by no means conclusive. Rev.St.1933, 42-1-1 et seq. Stover Bedding Co. v. Industrial Commission, 99 Utah 423, 107 P.2d 1027, 134 A.L.R. 1006 (1940).

It is principal right to exercise control and not exercise of that right which determines whether person performing service is employee or independent contractor. St.1917, p. 835, § 8(b). Utah Fire Clay Co. v. Industrial Commission, 86 Utah 1, 40 P.2d 183 (1935).

Painter employed to paint smokestack using employer tools, working under employer direct supervision, paid hourly wage, and who had performed same type of service on other occasions, held not independent contractor, so as to preclude widow recovery of compensation for his death from injuries received while at work. Rev.St.1933, 42-1-40, 42-1-41. Capitol Cleaners & Dyers v. Industrial Commission of Utah, 85 Utah 295, 39 P.2d 681 (1935).

Whether one engaged in service for another is employee or independent contractor, is jurisdictional question, requiring court to determine status from facts submitted from preponderance of evidence and apply facts to law in case. Luker Sand & Gravel Co. v. Industrial Commission, 82 Utah 188, 23 P.2d 225 (1933).

Independent contractor is one who in rendering service exercises independent employment or occupation, and represents his employer only as to results of his work and not as to means of accomplishment. Gogoff v. Industrial Commission of Utah, 77 Utah 355, 296 P. 229 (1931).

Test whether one is independent contractor or employee is whether employer retained power of control or superintendence. Le Blanc v. Nye Motor Co., 102 Vt. 194, 147 A. 265 (1929).

In proceedings under the Workmen Compensation Act, where the immediate employer of the injured employee claimed that he, himself, was an employee of a corporation to which the employee must look for compensation under G.L. 5758, evidence that he was paid by the quantity, and not by the day, was evidence tending to show that he was an independent contractor, and not an employee, which supports a finding to that effect. Morgan v. Gould, 96 Vt. 275, 119 A. 517 (1923).

If employer has right to control the doing of the work, the workman is an employee of employer for compensation purposes and is not independent contractor. Brown v. Fox, 189 Va. 509, 54 S.E.2d 109 (1949).

The ordinary test to determine whether one is an employee or an independent contractor is to ascertain who can control and direct servants in performance of their work. Nolde Bros. v. Chalkley, 184 Va. 553, 35 S.E.2d 827 (1945), opinion adhered to on reh'g, 185 Va. 96, 38 S.E.2d 73 (1946).

The ordinary test to determine whether one is an employee or an independent contractor is to ascertain who can control and direct servants in performance of their work. Nolde Bros. v. Chalkley, 184 Va. 553, 35 S.E.2d 827 (1945).

The most significant test in determining whether one is an independent contractor or an employee is, who has power to control and direct servants in performance of their work. Craig v. Doyle, 179 Va. 526, 19 S.E.2d 675 (1942).

In determining whether one is a servant or an independent contractor, the inquiry is not whether employer exercises power of control but whether he has such power, and, if he has, it is an indicium of the relationship of master and servant. Texas Co. v. Zeigler, 177 Va. 557, 14 S.E.2d 704 (1941).

Where the question at issue is whether one is a servant of another or an independent contractor, if there is no conflict of evidence as to the relationship, the relationship becomes a matter of law. Costan v. Smith, 143 Va. 348, 130 S.E. 235 (1925).

The law defines an independent contractor to be a person who is employed to do a piece of work without restriction as to the means to be employed, and who employs his own labor and undertakes to do the work according to his own ideas, or in accordance with plans furnished by the person for whom the work is done, to whom the owner looks only for results. Boyd, Higgins & Goforth v. Mahone, 142 Va. 690, 128 S.E. 259 (1925).

An independent contractor is one who, in course of an independent occupation, prosecutes and directs the work himself, using own methods, and in absence of negligence in selecting him his employer is not liable for his wrongful acts or negligence. Davis Bakery v. Dozier, 139 Va. 628, 124 S.E. 411 (1924).

An independent contractor may be defined as one who in the course of an independent occupation prosecutes and directs the work himself, using his own methods to accomplish it. Talley v. Drumheller, 135 Va. 186, 115 S.E. 517 (1923).

In hotel clerk action against employer for foot injury sustained when stalled elevator suddenly moved, whether elevator company engaged by employer to service and repair elevator was guilty of negligence imputable to employer, and whether such negligence was proximate cause of clerk injury were questions for the jury. Myers v. Little Church by the Side of the Road, 37 Wash. 2d 897, 227 P.2d 165 (1951).

Person who works on premises of another is presumed to be a servant, and burden is upon one on whose premises work is being done to establish that independent contractor relationship exists. Lane v. Department of Labor and Industries, 34 Wash. 2d 692, 209 P.2d 380 (1949).

The term independent contractor designates a person who, in pursuit of an independent business, undertakes to perform a specified piece of work or to render a particular service for another without submitting to control in the manner of performance. Smith v. Ludwig, 16 Wash. 2d 155, 132 P.2d 735 (1943).

Generally, an independent contractor is one who, in exercising an independent employment, contracts to do certain work according to his own methods, and without being subject to the control of the employer, except as to the product or result of his work. Clausen v. Department of Labor and Industries, 15 Wash. 2d 62, 129 P.2d 777 (1942).

Whether in a given case an independent contractor is a workman within the compensation act depends on the provisions of the contract, the nature of the work to be performed, the situation of the parties, and other attendant circumstances. Rem.Rev.Stat. §§ 7674—1, 7675. Haller v. Department of Labor and Industries, 13 Wash. 2d 164, 124 P.2d 559 (1942).

An independent contractor is one who, carrying on independent business, contracts to do a piece of work according to his own methods, without being subject to his employer control as to means of accomplishing result, but only as to result itself in sense of a production or product, not a service. Carmin v. Port of Seattle, 10 Wash. 2d 139, 116 P.2d 338 (1941).

An independent contractor is one who, while rendering service in the course of an independent occupation, represents the will of his employer only as to the result of the work, and not as to the manner or means by which it is accomplished. Rem.Rev.Stat. § 7675. Hubbard v. Department of Labor and Industries, 198 Wash. 354, 88 P.2d 423 (1939).

The general test which determines the relation of independent contractor is that he shall exercise an independent employment and represent his employer only as to the results of his work and not as to the means whereby it is to be accomplished, the chief consideration being that the employer has no right of control as to the mode of doing the work, but a reservation by employer of right to supervise work for purpose of merely determining whether it is being done in accordance with contract, does not affect the independence of the relation. White v. J. R. Watkins Co., 1 Wash. 2d 466, 96 P.2d 456 (1939).

The test to determine whether a relation is that of master and servant or independent contractor is whether employer retains the right, or has the right under a contract, to control the mode or manner in which the work is done. Femling v. Star Pub. Co., 195 Wash. 395, 81 P.2d 293 (1938), judgment set aside on reh'g, 195 Wash. 395, 84 P.2d 1008 (1938).

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Contractor representing will of owner only as to result of work is independent contractor. Patent Scaffolding Co. v. Roosevelt Apartments, 171 Wash. 507, 18 P.2d 857 (1933) (abrogated by, Crown Controls, Inc. v. Smiley, 110 Wash. 2d 695, 756 P.2d 717 (1988)).

Contractor representing will of owner only as to result of work is independent contractor. Patent Scaffolding Co. v. Roosevelt Apartments, 171 Wash. 507, 18 P.2d 857 (1933).

General test in determining relationship of independent contractor is that employees represent employer only as to result and not as to means whereby to accomplish it. Amann v. City of Tacoma, 170 Wash. 296, 16 P.2d 601 (1932).

Neither method of payment nor right to discharge is decisive of whether person is independent contractor. Leech v. Sultan Ry. & Timber Co., 161 Wash. 426, 297 P. 203 (1931).

Whether a person was employee or independent contractor is usually determined by power of control as to result of work, means, and method. Burchett v. Department of Labor & Industries, 146 Wash. 85, 261 P. 802 (1927), aff'd, 146 Wash. 85, 263 P. 746 (1928).

Whether a person was employee or independent contractor is usually determined by power of control as to result of work, means, and method. Burchett v. Department of Labor & Industries, 146 Wash. 85, 261 P. 802 (1927).

Corporation formed by defendants to remove timber held not independent contractor, but agent of defendants. D. Dierssen, Inc. v. May Valley Logging Co., 138 Wash. 263, 244 P. 564 (1926).

The test as to whether a person hired is an independent contractor is the right of his control as to the means or methods of the work but not as to the results, and, if such control exists, then the person hired is not an independent contractor. Dishman v. Whitney, 121 Wash. 157, 209 P. 12, 29 A.L.R. 460 (1922), modified, 124 Wash. 697, 215 P. 71 (1923).

The test as to whether a person hired is an independent contractor is the right of his control as to the means or methods of the work but not as to the results, and, if such control exists, then the person hired is not an independent contractor. Dishman v. Whitney, 121 Wash. 157, 209 P. 12, 29 A.L.R. 460 (1922).

Generally, if one let work, lawful within itself, to an independent contractor and retains no control over manner of its performance, he is not liable on account of negligence of contractor or contractor employees, but if the work is intrinsically dangerous, or is of such character that injury to third persons, or to their property, might reasonably be expected to result directly

from its performance, if reasonable care should be omitted, employer is not relieved from liability by delegating performance of work to the independent contractor. Law v. Phillips, 136 W. Va. 761, 68 S.E.2d 452, 33 A.L.R.2d 95 (1952).

Where services are being rendered by one for another, ordinarily, it is considered that employer and employee and not employer and independent contractor relationship exists, if employer retains right to supervise services, direct manner of their execution, and summarily discharge person rendering services. Crowder v. State Compensation Com'r, 115 W. Va. 12, 174 S.E. 480 (1934).

If employer has right to supervise work, workman is servant; but if employer does not have such right, workman is independent contractor. Oakley v. Thornbury, 114 W. Va. 188, 171 S.E. 426 (1933).

Where one having work done has right to supervise work, relation of master and servant exists; but where right to supervise is not present, relation is that of employer and independent contractor. Rogers v. Boyers, 114 W. Va. 107, 170 S.E. 905 (1933).

The defense of independent contractor has no application, where a resulting injury, instead of being collateral and flowing from the negligent act of the employee alone, is one that might have been anticipated as a direct or probable consequence of the performance of the work contracted for, if reasonable care is omitted in the course of its performance. In such case the person causing the work to be done will be liable, though the negligence is that of an employee of the independent contractor. Trump v. Bluefield Waterworks & Imp. Co., 99 W. Va. 425, 129 S.E. 309 (1925).

Whether an engineering company employed by a coal mining company to do certain surveying in the coal company mine was an employee or an independent contractor depends upon the nature and terms of the contract. Smith v. Donald Coal Co., 92 W. Va. 253, 115 S.E. 477 (1922).

A person who contracts to perform services for another but is not a servant is an "independent contractor." Kerl v. Dennis Rasmussen, Inc., 2004 WI 86, 682 N.W.2d 328 (Wis. 2004).

One who had been in interior decorating and painting business for many years and had complete tools and equipment was an independent contractor and was not a statutory employee, within Workmen Compensation Act, when he was injured while painting hotel lobby for lump sum under contract requiring him to assume responsibility for injury, where hotel company did not control or direct details of his work, he worked at his own convenience and at times chosen by himself, and while lobby was in process of decoration he did jobs for other persons in their homes and shops. St.1947, § 102.07(8). Conrad v. Industrial Commission, 254 Wis. 574, 37 N.W.2d 60 (1949).

A plasterer hired by a plastering contractor and paid a lump sum which more or less represented a division of profits on the job but which was enough to save him from loss, who provided some of his own equipment and helpers and who was not subject to control as to details such as hours of work and supervision by the employer was an independent contractor and not an employee under the Workmen Compensation Act. St.1945, § 102.01 et seq. Ebner v. Industrial Commission, 252 Wis. 199, 31 N.W.2d 172 (1948).

A cheesemaker hired by a dairy and paid according to amount of cheese produced and who provided his own assistants and who had considerable discretion in making cheese, and whose compensation was a specified sum per hundredweight was an employee within the compensation act and not an independent contractor, where the cheesemaker activities were subject to the right of control by the dairy and its officers at all times though they did not see fit to exercise it. Green Valley Co-op. Dairy Co. v. Industrial Commission, 250 Wis. 502, 27 N.W.2d 454 (1947).

The principal test for determining for purposes of compensation act whether school janitor was an employee or an independent contractor is the right of school board to control details of janitor work. St.1939, § 102.07(8). Woodside School Dist. No. 8, Town of Brookfield v. Industrial Commission, 241 Wis. 469, 6 N.W.2d 182 (1942).

Predominant indicium of an independent contractor is whether the worker, rather than the employer, has the right to control the details of his or her performance. Acuity Mut. Ins. Co. v. Olivas, 2006 WI App 45, 712 N.W.2d 374 (Wis. Ct. App. 2006), review granted, 2006 Wis. 39 (2006).

The fact that workman was not required to haul any definite quantity or for any definite time indicated a contract for service, rather than the relationship of independent contractor, as affecting right to workmen compensation. W.C.S.1945, § 72-101 et seq. Standard Oil Co. v. Smith, 56 Wyo. 537, 111 P.2d 132 (1941).

Generally, principal test in determining whether tort-feasor is servant or agent rather than independent contractor is whether employer has right to control details of work. Stockwell v. Morris, 46 Wyo. 1, 22 P.2d 189 (1933).

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[END OF SUPPLEMENT]

Footnotes

1 Smith v. Simmons (1883) 103 Pa. 32, 49 Am. Rep. 113; Smith v. Belshaw (1891) 89 Cal. 427, 26 Pac. 834.

2 Keys v. Second Baptist Church (1904) 99 Me. 308, 59 Atl. 446, 17 Am. Neg. Rep. 526.

3 Linton v. Smith (1857) 8 Gray (Mass.) 147.

4 Carlson v. Stocking (1895) 91 Wis. 432, 65 N.W. 58—quoted in Madix v. Hachgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189.

5 Linquist v. Hodges (1911) 248 Ill. 491, 94 N.E. 94—quoting the language of the opinion in Hale v. Johnson (1875) 80 Ill. 185.

6 Laffery v. United States Gypsum Co. (1910) 83 Kan. 349, 45 L.R.A.(N.S.) 930, 111 Pac. 498, Ann. Cas. 1912A, 590; Pottorff v. Fidelity Coal Min. Co. (1912) 86 Kan. 774, 122 Pac. 120.

7 Messmer v. Bell & C. Co. (1909) 133 Ky. 19, 117 S.W. 346, 19 Ann. Cas. 1; Williams v. National Cash Register Co. (1914) 157 Ky. 836, 164 S.W. 112.

8 Ballard & B. Co. v. Lee (1909) 131 Ky. 412, 115 S.W. 732; Bellamy v. F. A. Ames Co. (1910) 140 Ky. 98, 130 S.W. 980.

9 Allen v. Bear Creek Coal Co. (1911) 43 Mont. 269, 115 Pac. 673.

10 Bailey v. Troy & B. R. Co. (1884) 57 Vt. 252, 52 Am. Rep. 129.

11 Richmond v. Sitterding (1903) 101 Va. 352, 65 L.R.A. 445, 99 Am. St. Rep. 879, 43 S.E. 562, 13 Am. Neg. Rep. 616—adopting statements in Emerson v. Fay (1896) 94 Va. 60, 26 S.E. 386.

12 Shearm. & Redf. Neg. § 77 (165) —quoted in Foster v. Wadsworth-Howland Co. (1897) 168 Ill. 514, 48 N.E. 163; Hale v. Johnson (1875) 80 Ill. 185; Chicago Hydraulic Press Brick Co. v. Campbell (1904) 116 Ill. App. 322; Galatia Coal Co. v. Harris (1904) 116 Ill. App. 70; Mason & H. Co. v. Highland (1909) — Ky. —, 116 S.W. 320; Barg v. Bousfield (1896) 65 Minn. 355, 68 N.W. 45, 16 Am. Neg. Cas. 188; Pickens v. Diecker (1871) 21 Ohio St. 212, 8 Am. Rep. 55; Cunningham v. International R. Co. (1879) 51 Tex. 503, 32 Am. Rep. 632.

13 Wood, Mast. & S. p. 593—adopted in Faren v. Sellers (1887) 39 La. Ann. 1011, 4 Am. St. Rep. 256, 3 So. 363; Smith v. State Workmen's Ins. Fund (Pa.) post, _____.

14 26 Cyc. 970—quoted in Peters v. St. Louis & S. F. R. Co. (1910) 150 Mo. App. 721, 131 S.W. 917.

1 Harrison v. Collins (1878) 86 Pa. 153, 27 Am. Rep. 699. This statement was reiterated in Karl v. Juniata County (1903) 206 Pa. 633, 56 Atl. 78, and in Smith v. State Workmen's Ins. Fund (Pa.) post, _____.

2 Alexander v. R. A. Sherman's Sons Co. (1912) 86 Conn. 292, 297, 85 Atl. 514—quoted in Nichols v. Harvey Hubbell (reported herewith) ante, 221.

3 Prest-O-Lite Co. v. Skeel (1914) 182 Ind. 593, 106 N.E. 365, 7 N.C.C.A. 724, Ann. Cas. 1917A, 474; Vincennes Water Supply Co. v. White (1890) 124 Ind. 376, 24 N.E. 747.

4 Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632. For other instances of this form of statement, see Pottorff v. Fidelity Coal Min. Co. (1912) 86 Kan. 774, 122 Pac. 120; Flori v. Dolph (1917) — Mo. —, 192 S.W. 949; Bodwell v. Webster (1915) 98 Neb. 664, 154 N.W. 229, Ann. Cas. 1918C, 624; Chicago, R. I. & P. R. Co. v. Bennett (1912) 36 Okla. 358, — A.L.R. —, 128 Pac. 705.

5 Embler v. Gloucester Lumber Co. (1914) 167 N.C. 457, 83 S.E. 740.

6 Powell v. Virginia Constr. Co. (1890) 88 Tenn. 692, 17 Am. St. Rep. 925, 13 S.W. 691—statement approved in Humpton v. Unterkircher (1896) 97 Iowa, 509, 66 N.W. 776, 14 Am. Neg. Cas. 595.

7 Kinsman v. Hartford Courant Co. (1919) 94 Conn. 156, 108 Atl. 562.

8 Smith v. Simmons (1883) 103 Pa. 32, 49 Am. Rep. 113—statement adopted in Miller v. Merritt (1905) 211 Pa. 127, 60 Atl. 508, and in Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632.

9 An independent contractor has also been described as a person who is "answerable to his employer only as to the results of the work, and not in the details of its management, or the incidents of its prosecution" (St. Louis, Ft. S. & W. R. Co. v. Willis (1888) 38 Kan. 330, 16 Pac. 728), and as one who is "left to produce the desired result in his own way" (Bennett v. Truebody (1885) 66 Cal. 509, 56 Am. Rep. 117, 6 Pac. 329.

See also:

United States
Casement v. Brown (1893) 148 U.S. 615, 37 L. ed. 582, 13 Sup. Ct. Rep. 672
Alabama
Tennessee Coal, Iron & R. Co. v. Hayes (1892) 97 Ala. 201, 12 So. 98
Caldwell v. Atlantic B. & A. R. Co. (1909) 161 Ala. 395, 49 So. 674
Alabama Western R. Co. v. Talley-Bates Constr. Co. (1909) 162 Ala. 396, 50 So. 341
Rome & D. R. Co. v. Chasteen (1889) 88 Ala. 593, 7 So. 94
Merriweather v. Sayre Min. & Mfg. Co. (1909) 161 Ala. 441, 49 So. 916
Arkansas
St. Louis, I. M. & S. R. Co. v. Gillihan (1906) 77 Ark. 551, 92 S.W. 793
Homewood Rice Land Syndicate v. Subs (1920) 142 Ark. 619, 219 S.W. 333
California
Brown v. Industrial Acci. Commission (1917) 174 Cal. 457, 163 Pac. 664
Georgia
Atlanta & F. R. Co. v. Kimberly (1891) 87 Ga. 161, 27 Am. St. Rep. 231, 13 S.E. 277
Illinois
Jefferson v. Jameson & M. Co. (1897) 165 Ill. 138, 46 N.E. 272
Iowa
Overhouser v. American Cereal Co. (1902) 118 Iowa, 417, 92 N.W. 74
Hoff v. Shockley (1904) 122 Iowa, 720, 64 L.R.A. 538, 101 Am. St. Rep. 289, 98 N.W. 573

Parrott v. Chicago Great Western R. Co. (1905) 127 Iowa, 419, 103 N.W. 352
Storm v. Thompson (1919) 185 Iowa, 309, 170 N.W. 403
Kentucky
Ballard & B. Co. v. Lee (1909) 131 Ky. 412, 115 S.W. 732
Louisiana
Robideaux v. Hebert (1907) 118 La. 1089, 12 L.R.A.(N.S.) 632, 43 So. 887
Lutenbacher v. Mitchell-Borne Constr. Co. (1915) 136 La. 805, 67 So. 888
Maine
Boardman v. Creighton (1901) 95 Me. 154, 49 Atl. 663
Michigan
Wright v. Big Rapids Door & Blind Mfg. Co. (1900) 124 Mich. 91, 50 L.R.A. 495, 82 N.W. 829
Missouri
McGrath v. St. Louis & H. Constr. Co. (1908) 215 Mo. 191, 114 S.W. 611
Kipp v. Oyster (1908) 133 Mo. App. 711, 114 S.W. 538
New York
Uppington v. New York (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91, 9 Am. Neg. Rep. 115
Wood v. Watertown (1890) 58 Hun, 298, 11 N.Y. Supp. 864
North Carolina
Craft v. Albemarle Timber Co. (1903) 132 N.C. 151, 43 S.E. 597
Young v. Fosburg Lumber Co. (1908) 147 N.C. 26, 16 L.R.A.(N.S.) 255, 60 S.E. 654
Gay v. Roanoke R. & Lumber Co. (1908) 148 N.C. 336, 62 S.E. 436
Midgette v. Branning Mfg. Co. (1909) 150 N.C. 333, 64 S.E. 5
Hunter v. Southern R. Co. (1910) 152 N.C. 682, 29 L.R.A.(N.S.) 851, 136 Am. St. Rep. 854, 68 S.E. 237
Beal v. Champion Fiber Co. (1910) 154 N.C. 147, 69 S.E. 834
Embler v. Gloucester Lumber Co. (1914) 167 N.C. 457, 83 S.E. 740
Oregon
Oregon Fisheries Co. v. Elmore Packing Co. (1914) 69 Or. 340, 138 Pac. 862
Pennsylvania
Smith v. Simmons (1883) 103 Pa. 32, 49 Am. Rep. 113
Edmundson v. Pittsburgh, M. & Y. R. Co. (1886) 111 Pa. 316, 2 Atl. 404
Texas
Cunningham v. International R. Co. (1879) 51 Tex. 503, 32 Am. Rep. 632
Drennon v. Patton-Worsham Drug Co. (1908) — Tex. Civ. App. —, 109 S.W. 218
Washington
Larson v. American Bridge Co. (1905) 40 Wash. 224, 111 Am. St. Rep. 904, 82 Pac. 294
Seattle Lighting Co. v. Hawley (1909) 54 Wash. 137, 103 Pac. 6
North Bend Lumber Co. v. Chicago, M. & P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1017
Watson v. Hecla Min. Co. (1914) 79 Wash. 383, 140 Pac. 317
Johnston v. Seattle Taxicab & Transfer Co. (1915) 85 Wash. 557, 148 Pac. 900
Wisconsin
Madix v. Hochgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189
As to the meaning of the word "result" in this form of statement, see opinion in Jensen v. Barbour (1895) 15 Mont. 582, 39 Pac. 906.

In one case it was laid down that "a contractor is not the agent or servant of his employer, except as to the specific results which he undertakes to accomplish." Holt v. Whatley (1874) 51 Ala. 569. But, in view of the importance of differentiating as far as possible between independent contractors and agents (see §§ 15 to 19, infra), this mode of stating the nature of the relationship is scarcely to be commended.

It is manifest that such a statement as the following is lacking both in accuracy and perspicuity: "While performing his contract and complying with its terms, he [i. e., an independent contractor] is not subject to the rule and control of the employer, who cannot interfere save to require the performance as agreed. The relation is one of contract, under which the contractor retains some degree of independence, while the laboring man follows the employer's direction, and is not independent in the sense of the independent

contractor's independence." Holmes v. Tennessee Coal, Iron & R. Co. (1897) 49 La. Ann. 1465, 22 So. 403, 3 Am. Neg. Rep. 174.

10 2 Cooley, Torts, 3d ed. 1098—quoted in Alexander v. R. A. Sherman's Sons Co. (1912) 86 Conn. 292, 85 Atl. 514; Patton-Worsham Drug Co. v. Drennon (1910) — Tex. Civ. App. —, 123 S.W. 705.

11 Elliott, Railroads, § 1063—adopted in Norfolk & W. R. Co. v. Stevens (1899) 97 Va. 631, 46 L.R.A. 367, 34 S.E. 525.

12 Jaggard, Torts, § 73—quoted in Rosenbaum Bros. v. Devine (1915) 271 Ill. 354, 111 N.E. 97.

13 Mechem, Agency, § 747—quoted with approval in Bibb v. Norfolk & W. R. Co. (1891) 87 Va. 711, 14 S.E. 163.

14 Pollock, Torts, 11th ed. p. 80—quoted in Young v. Fosburg Lumber Co. (1908) 147 N.C. 26, 16 L.R.A. (N.S.) 255, 60 S.E. 654; Gay v. Roanoke R. & Lumber Co. (1908) 148 N.C. 336, 62 S.E. 436.

15 Shearm. & Redf. Neg. § 164—adopted in Rome & D. R. Co. v. Chasteen (1889) 88 Ala. 591, 7 So. 94; Alabama Western R. Co. v. Talley-Bates Constr. Co. (1909) 162 Ala. 396, 50 So. 341; Callahan Constr. Co. v. Raybun (1915) 110 Miss. 107, 69 So. 669 (where the court delivered the phraseology from 4 Words & Phrases, 3542); Smith v. State Workmen's Ins. Fund (Pa.) post, _____; Glover v. Richardson & E. Co. (1911) 64 Wash. 403, 116 Pac. 861, 2 N.C.C.A. 484.

16 2 Thomp. Neg. 1st ed. § 22, p. 899; 2d ed. § 622—adopted in Crenshaw v. Ullman (1892) 113 Mo. 633, 20 S.W. 1077; Fink v. Missouri Furnace Co. (1884) 82 Mo. 276, 52 Am. Rep. 376; Finkelstein v. Balkin (1907, App. T.) 103 N.Y. Supp. 99; Cary v. Sparkman & M. Co. (1911) 62 Wash. 363, — A.L.R. —, 113 Pac. 1093; North Bend Lumber Co. v. Chicago, M. &. P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1017.

The similar language in § 621 of the same treatise was approved in Wilkinson v. Detroit Steel & Spring Works (1889) 73 Mich. 405, 41 N.W. 490; Loth v. Columbia Theatre Co. (1906) 197 Mo. 345, 94 S.W. 847; O'Hara v. Laclede Gaslight Co. (1912) 244 Mo. 409, 148 S.W. 884; Peters v. St. Louis & S. F. R. Co. (1910) 150 Mo. App. 721, 131 S.W. 917; Johnson v. J. I. Case Threshing Mach. Co. (1915) 193 Mo. App. 198, 182 S.W. 1089; Vickers v. Kanawha & W. V. R. Co. (1908) 64 W. Va. 474, 20 L.R.A.(N.S.) 793, 131 Am. St. Rep. 929, 63 S.E. 367.

17 16 Am. & Eng. Enc. Law, 2d ed. 187—quoted in Engler v. Seattle (1905) 40 Wash. 72, 82 Pac. 136, 19 Am. Neg. Rep. 49; Glover v. Richardson & E. Co. (1911) 64 Wash. 403, 116 Pac. 861, 2 N.C.C.A. 484; North Bend Lumber Co. v. Chicago, M. & P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1021.

The similar phraseology in 14 Am. & Eng. Enc. Law, 830, was adopted in Long v. Moon (1891) 107 Mo. 334, 17 S.W. 810.

18 26 Cyc. 1546—quoted in Williams v. National Cash Register Co. (1914) 157 Ky. 836, 164 S.W. 112; Reisman v. Public Service Corp. (1911) 82 N.J.L. 464, 38 L.R.A.(N.S.) 922, 81 Atl. 838; Oregon Fisheries Co. v. Elmore Packing Co. (1914) 69 Or. 340, 138 Pac. 862; Glover v. Richardson & E. Co. (1911) 64 Wash. 403, 116 Pac. 861, 2 N.C.C.A. 484.

19 26 Cyc. 970—quoted in Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632; North Bend Lumber Co. v. Chicago, M. & P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1017.

1 The extent to which the courts have gone in denying by implication the differentiating force of the particulars mentioned is shown by decisions affirming the independence of written contracts embracing clauses which provided that the work should be "carried on in such manner as the employer should direct" (United States v. Driscoll (1877) 96 U.S. 421, 24 L. ed. 847; Erie v. Caulkins (1877) 85 Pa. 247, 27 Am. Rep. 642; Hayes v. Chicago, O. & P. R. Co. (1916) 203 Ill. App. 472); and that, if the contractor should not comply with the directions of the employer's engineer in regard to the *manner* of performing the work, the contract was to be

forfeited (Hughes v. Cincinnati & S. R. Co. (1883) 39 Ohio St. 461; Thomas v. Altoona & L. Valley Electric R. Co. (1899) 191 Pa. 361, 43 Atl. 215, 6 Am. Neg. Rep. 383).

2 In Erie v. Caulkins (1877) 85 Pa. 247, 27 Am. Rep. 642, the court thus commented on language used in Painter v. Pittsburgh (1863) 46 Pa. 213: "*Manner* must, in such case, mean the power to control the work, not only as to its character, but also as to the particular means used to accomplish it. … A stipulation for general supervision of the work does not reduce the contractor to the grade of an agent, although necessarily, in such case, the engineer must, to some extent, control the manner in which the contract is performed. … The word 'manner' must be construed with reference to the contract in which it is found."

3 This difficulty cannot be satisfactorily met by such reasoning as that employed in Jensen v. Barbour (1895) 15 Mont. 582, 39 Pac. 906, where a person who had made with the owner of a street car line a contract under which, for a specified amount per month, he was to haul a car over the line once a day, and to furnish a driver, was held not to be an independent contractor. The decision was based mainly on the consideration that the defendant's agent had been accustomed to give him directions concerning the performance of the work. But the court also declared that there was no force in the contention of defendant's counsel that the person employed represented the will of his employer only as to the result of his work, and not as to the manner of its performance; or, in other words, that he contracted to deliver to his employer the result of putting the car over the track once a day by his own methods. In answer to the latter point, the court said: "So it might be argued that one's coachman contracts to produce the result of conveying his master from his house to his office, or wherever he may wish to go, or one's cook contracts to produce the result of placing before his master his daily food. But such is not the sense in which the word 'result' is used in the rule. We think that the word 'result,' as so used, means a production or product of some sort, and not a service. One may contract to produce a house, a ship, or a locomotive; and such house, or ship, or locomotive, produced, is the 'result.' Such 'results' produced are often and probably generally, by independent contractors. But we do not think that plowing a field, mowing a lawn, driving a carriage or a horse car, for one trip or for many trips a day, is a 'result' in the sense that the word is used in the rule. Such acts do not result in a product. They are simply a service." So far as the writer is aware, there is no authority for the distinction here taken between "production" and "service"—using the latter word in its broader sense.

1 Forsyth v. Hooper (1865) 11 Allen (Mass.) 419; McCarrier v. Hollister (1902) 15 S.D. 366, 91 Am. St. Rep. 695, 89 N.W. 862, 11 Am. Neg. Rep. 641.

2 Rigby, L. J., in Hardaker v. Idle Dist. Council [1896] 1 Q. B. (Eng.) 335, 65 L. J. Q. B. N. S. 363, 74 L. T. N. S. 69, 44 Week. Rep. 323, 60 J. P. 196.

3 Lawrence v. Shipman (1873) 39 Conn. 586; State, Redstrake, Prosecutor, v. Swayze (1889) 52 N.J.L. 129, 18 Atl. 697, affirmed for reasons given below in (1890) 52 N.J.L. 414, 21 Atl. 953.

4 Crompton, J., in Sadler v. Henlock (1855) 4 El. & Bl. 570, 119 Eng. Reprint, 209, 3 C. L. R. 760, 1 Jur. N. S. 677, 24 L. J. Q. B. N. S. 138, 3 Week. Rep. 181; Thompson v. Twiss (1916) 90 Conn. 444, L.R.A.1916E, 506, 97 Atl. 328; Laffery v. United States Gypsum Co. (1910) 83 Kan. 349, 45 L.R.A.(N.S.) 930, 111 Pac. 498, Ann. Cas. 1912A, 590; Pottorff v. Fidelity Coal Min. Co. (1912) 86 Kan. 774, 122 Pac. 120; Faren v. Sellers (1887) 39 La. Ann. 1011, 4 Am. St. Rep. 256, 3 So. 363; Linton v. Smith (1857) 8 Gray (Mass.) 147; Brackett v. Lubke (1862) 4 Allen (Mass.) 138, 81 Am. Dec. 694; Troka v. Halliday (1916) 39 R. I. 119, 97 Atl. 965, Ann. Cas. 1918D, 961.

5 Moore v. Sanborne (1853) 2 Mich. 519, 59 Am. Dec. 209.

1 Martin v. Tribune Asso. (1883) 30 Hun (N.Y.) 391.

2 Scammon v. Chicago (1861) 25 Ill. 424, 79 Am. Dec. 334.

3 Blake v. Ferris (1851) 5 N.Y. 48, 55 Am. Dec. 304.

4 Harrison v. Collins (1878) 86 Pa. 153, 27 Am. Rep. 699; Corbin v. American Mills (1858) 27 Conn. 275, 71 Am. Dec. 63; Smith v. Belshaw (1891) 89 Cal. 427, 26 Pac. 834.

5 Allen v. Willard (1868) 57 Pa. 374.

6 Hexamer v. Webb (1886) 101 N.Y. 377, 54 Am. Rep. 703, 4 N.E. 755.

7 Deford v. State (1868) 30 Md. 179.

8 McCarthy v. Second Parish (1880) 71 Me. 318, 36 Am. Rep. 320.

9 Wiese v. Remme (1897) 140 Me. 289, 41 S.W. 797, 3 Am. Neg. Rep. 222.

10 Hughbanks v. Boston Invest. Co. (1894) 92 Iowa, 267, 60 N.W. 640.

1 "The test is whether the defendant retained the power of controlling the work." Crompton, J., in Sadler v. Henlock (1855) 4 El. & Bl. 578, 119 Eng. Reprint, 212, 24 L. J. Q. B. N. S. 138, 1 Jur. N. S. 677, 3 Week. Rep. 181, 3 C. L. R. 760.

"The test, I think, always is, Had the superior personal control or power over the acting, or mode of acting, of the subordinate?" Per Lord Gifford, in Stephens v. Thurse Police Comrs. (1876) 3 Sc. Sess. Cas. 4th series, 535; statement referred to with approval in Atlantic Transp. Co. v. Coneys (1897) 28 C. C. A. 388, 51 U.S. App. 570, 82 Fed. 177.

"The test of one's liability for the negligent act or omission of his alleged servant is his right and power to command and control his imputed agent in the performance of the causal act or omission at the very instant of its performance or neglect. Standard Oil Co. v. Parkinson (1907) 82 C. C. A. 29, 152 Fed. 681 (syllabus of court).

"The right to control the negligent servant is the test by which it is to be determined whether the relation of master and servant exists." Pioneer Fireproof Constr. Co. v. Hansen (1898) 176 Ill. 100, 52 N.E. 17.

"In every case the decisive question is, Had the defendant the right to control, in the given particular, the conduct of the person doing the wrong?" Thomp. Neg. p. 909; statement adopted in Powell v. Virginia Constr. Co. (1890) 88 Tenn. 692, 17 Am. St. Rep. 925, 13 S.W. 691.

The test of the character of an employee as an independent contractor, or as servant, is "whether Smith was in the exercise of a distinct and independent employment, using his own means and methods for accomplishing his work, and not being under the immediate supervision and control of his employer." Morgan v. Smith (1893) 159 Mass. 570, 35 N.E. 101.

"The decisive test is whether the employer retained authority to direct and control the work, or had given it to the person employed." McAllister's Case (1918) 229 Mass. 193, 118 N.E. 326.

"The test by which to determine whether the person who negligently causes injury to another was acting as an agent or employee of the person sought to be charged, or as an independent contractor, is, Did the person so sought to be charged have the right to control the conduct of the wrongdoer in the manner of doing the act resulting in such injury?" Gahagan v. Aermotor Co. (1897) 67 Minn. 252, 69 N.W. 914, 1 Am. Neg. Rep. 92; Corrigan v. Elsinger (1900) 81 Minn. 42, 83 N.W. 492, 8 Am. Neg. Rep. 262.

"The later cases do not make either the mode of payment, or the right to discharge, or the power to employ assistants or pay them, the decisive test whether the person is an independent contractor or a servant, but look to the broader question whether he was in fact independent, or subject to the control of the person for whom the work was done, as to what should be done and how it should be done." Messmer v. Bell & C. Co. (1909) 133 Ky. 19, 117 S.W. 346, 19 Ann. Cas. 1.

"The test is: Which party controls the work while it is progressing? Who has charge of the management and control of the forces, and who controls the movement and location of the material used in the construction? Who hires the workmen, buys the material, arranges the details, directs and superintends the labor, and is responsible for all failures which do not meet the requirements of the contract, or fulfil the specifications? Who alone is responsible for results produced by separate and independent management? Who has control of the mode and manner of doing the work, subject only to a provision that it must be equal to a fixed rule, or a certain degree of excellence? When that is determined, liability is fixed." St. Louis, Ft. S. & W. R. Co. v. Willis (1888) 38 Kan. 330, 16 Pac. 728. Having regard to the theory embodied in the closing sentences of this passage, the reference to the other elements enumerated was clearly superfluous.

"The real test as to whether a person is an independent contractor or a servant is whether the person alleged to be the master, under his arrangement with the other party, has or has not any authoritative control of the latter with respect to the manner in which the details of the work are to be performed; and, therefore, this test or element 'must, in the last analysis, always determine what was the essential nature of the relationship between the person who performed the given work and the person for whom it was performed.'" Barton v. Studebaker Corp. (1920) — Cal. App. —, 189 Pac. 1025. The concluding passage in this statement is quoted from Labatt's Master & Servant, § 18.

For cases in which the employer's possession or nonpossession of this right was expressly declared to be the differentiating test, see Merriweather v. Sayre Min. & Mfg. Co. (1909) 161 Ala. 441, 49 So. 916; Williams v. National Cash Register Co. (1914) 157 Ky. 836, 164 S.W. 112; Lutenbacher v. Mitchell-Borne Constr. Co. (reported herewith) ante, 206; Davis v. John L. Whiting & Son Co. (1909) 201 Mass. 91, 18 A.L.R. 782, 87 N.E. 199; State ex rel. Virginia & R. Lake Co. v. District Ct. (1914) 128 Minn. 43, 150 N.W. 211, 7 N.C.C.A. 1076; Coolidge v. State (1908, Ct. Cl.) 61 Misc. 38, 114 N.Y. Supp. 553.

In a case where the question was whether the owners of a steamboat were liable for the negligence of the persons operating it, the trial judge was held to have erred in sustaining objections to the introduction of evidence tending to show a transfer of control by such owner. Gulzoni v. Tyler (1883) 64 Cal. 334, 30 Pac. 981.

It is error to give an instruction from which the jury may infer that the mere employment and payment of another to perform a given piece of work is the test by which to determine whether the relation of master and servant exists. Andrews v. Boedecker (1885) 17 Ill. App. 213, where the jury were charged that it was legal and proper for the defendant to employ and pay the negligent person to do the work in question, and that in such case that person would be the servant of the defendant in doing that work.

In one case certain requested instructions to the effect that, if the defendants employed an experienced carpenter to erect the building in question, they were not liable, were held to be defective, in not requiring the jury to find that the building was being erected under an independent contract which gave the carpenter exclusive control over the work. Hearn v. Quillen (1901) 94 Md. 39, 50 Atl. 402.

In Brown v. McLeish (1887) 71 Iowa, 381, 32 N.W. 385, an instruction stating that the employer "is responsible for any damages resulting from any negligence on the part of the servant or his employee," if the act complained of be "within the scope and in the course of the employment,—that is, if it is a thing necessary to be done to carry out or complete the work about which the servant was employed,"—was held erroneous, as it "extends the rule respondeat superior to the act of a servant or employee when the master or employer, by the terms of the employment, has no authority to control and direct the manner of the execution of the work." This ruling was clearly correct, but the use of the terms "servant" and "employee," in the passage explaining the ground on which it was made, was curiously inapposite.

In one case the court expressed its disapproval of a doctrine stated to have been put forward by some of the authorities, viz., that "the existence of actual present control and supervision on the part of the employer is the test" to be applied for the purpose of ascertaining whether his relation to the employee is that of a master. Such a circumstance, it was declared, "is only a circumstance to be considered, though one of much weight." The court then proceeds to state in the following words what it regarded as the correct theory: "To

get at the truth we must look further, and see if the person said to be a hired servant and agent is acting at the time for, and in the place of, his master, in accordance with and representing his master's will, and not his own. It must be strictly his employer's business that he is doing, and not in any respect his own. If we find this to be the case, we may safely conclude, as a general rule, that the relation of master and servant exists, so as to render applicable the rule of law that the employer must indemnify and protect the agent he employs." Corbin v. American Mills (1858) 27 Conn. 275, 71 Am. Dec. 63, 13 Am. Neg. Cas. 735. The doctrinal position of the court is not very clearly indicated. If it is intended to deny the crucial character of the test supplied by the existence or absence of control, the case is manifestly opposed to the general current of the authorities. The latter part of the quotation seems to suggest that the person employed must always be pronounced to be a servant, if it is found that he represented the will of his employer. But, according to the generally received view, this inference should be drawn only when the employer's will is represented as to the means used in performing the stipulated work. See cases cited in § 2, supra.

2 "An important test of liability [is] that the employer reserves the power not only to direct what shall be done, but how it shall be done." New Orleans, M. & C. R. Co. v. Hanning (1873) 15 Wall. (U.S.) 649, 657, 21 L. ed. 220, 223.

"The test oftenest resorted to, in determining whether one is an employee or an independent contractor, is to ascertain whether the employee represents the master as to the result of the work, or only as to the means. If only as to the result, and he himself selects the means, he must be regarded as an independent contractor." Pace v. Appanoose County (1918) 184 Iowa, 498, 168 N.W. 916, 17 N.C.C.A. 682.

"Independence of control in employing workmen and in selecting the means of doing the work is the test usually applied by courts to determine whether the contractor is independent or not." Uppington v. New York (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91, 9 Am. Neg. Rep. 115.

"The question in these cases, whether the relation be that of master and servant or not, is determined mainly by ascertaining from the contract of employment whether the employer retains the power of directing and controlling the work, or has given it to the contractor." Forsyth v. Hooper (1865) 11 Allen (Mass.) 419.

"The right to control the manner of doing the work is the principal consideration which determines whether the worker is an employee or an independent contractor." Decatur R. & Light Co. v. Industrial Bd. (1916) 276 Ill. 472, 114 N.E. 915—a statement reiterated in Meredosia Levee & Drainage Dist. v. Industrial Commission (1918) 285 Ill. 68, 120 N.E. 516. See also Cinofsky v. Industrial Commission (1919) 290 Ill. 521, 125 N.E. 286, where the degree of control was declared to be the "principal test."

Whether the relation be that of master and servant, so as to invoke the rule of respondeat superior, depends "mainly on whether the employer retains direction and control of the work, or has given it to the contractor." Andrews v. Boedecker (1885) 17 Ill. App. 213.

"A satisfactory test in determining this question [i. e., whether the person employed was a servant] is said to be: Who has the general control of the work? Who has the right to direct what shall be done, who shall do it, and how it shall be done? If the answer to these queries shows that this right remains in the employer, the relation of independent contractor does not exist between the contractor and employer." Mason & H. Co. v. Highland (1909) — Ky. —, 116 S.W. 320.

In one case it is laid down that "the question of control over the work, while not conclusive in all cases upon the question of service, is to be regarded as a test of the greatest importance." State, Redstrake, Prosecutor, v. Swayze (1889) 52 N.J.L. 129, 18 Atl. 697, affirmed for reasons given below in (1890) 52 N.J.L. 414, 21 Atl. 953.

"Who is an independent contractor? Or, rather, is he an independent contractor, or only an agent or representative of the employer in the particular case? A test which has been proposed, and generally an adequate one, or as good a test put in a few words as can be suggested, is: Had the defendant the right to control, in the given particular, the conduct of the person doing the wrong? If he had, the employer is liable;

if not, he is not liable, for the reason that the one doing the act is an independent contractor." Carrico v. West Virginia C. & P. R. Co. (1894) 39 W. Va. 86, 24 L.R.A. 50, 19 S.E. 571.

"The right to supervise, control, and direct the work is one of the tests for determining whether a person is an independent contractor or an employee; but it is not the sole and only test." Barrett v. Selden-Breck Constr. Co. (1919) 103 Neb. 850, 174 N.W. 866.

"As to whether one engaged in doing work is a servant or independent contractor depends upon many things, the most important, perhaps, being the control which the respective parties have over the work being done." Kirkhart v. United Fuel Gas Co. (1920) 86 W. Va. 79, 102 S.E. 806.

"A number of tests have been suggested as more or less decisive in determining whether a given relation is that of a servant or agent, or of an independent contractor, but none has been found that can be regarded as wholly satisfactory or conclusive as applied to all cases. The most significant indicium of an independent contractor, however, is his right to control the details of the work." Madix v. Hochgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189.

For other statements in which the existence or absence of the right of control is adverted to as being merely the "chief" of the considerations which determine the character of the relationship, see De Palma v. Weinman (1909) 15 N.M. 68, 24 L.R.A.(N.S.) 423, 103 Pac. 782; Patrick v. Giant Lumber Co. (1913) 164 N.C. 208, 80 S.E. 153; Morrissey v. Cincinnati (1911) 33 Ohio C. C. 541, 14 Ohio C. C. N. S. 19—quoting the language of 16 Am. & Eng. Enc. Law, 2d ed. 187; Larson v. American Bridge Co. (1905) 40 Wash. 224, 111 Am. St. Rep. 904, 82 Pac. 294; Glover v. Richardson & E. Co. (1911) 64 Wash. 403, 116 Pac. 861, 2 N.C.C.A. 484; Johnston v. Seattle Taxicab & Transfer Co. (1915) 85 Wash. 557, 148 Pac. 900.

3 Western Indemnity Co. v. Pillsbury (1916) 172 Cal. 807, 159 Pac. 721.

A general contractor erecting a building, in a sense, controls a subcontractor to whom he has, for example, sublet the job of plumbing. In a particular case he might be excused for compelling him to stop the work and to vacate the premises; not, however, in the exercise of the reserved right of interference with the servant's actions which the master possesses. Woodhull v. Irwin (1918) 201 Mich. 400, 167 N.W. 845.

4 Kansas City M. & O. R. Co. v. Loosley (1907) 76 Kan. 103, 90 Pac. 990.

5 Poor v. Madison River Power Co. (1909) 38 Mont. 341, 99 Pac. 947.

1 "It is this unlimited right of control, whether actually exercised or not, which, in my opinion, is the condition for inferring the responsibility of a master." Hardaker v. Idle Dist. Council [1896] 1 Q. B. (Eng.) 353, 65 L. J. Q. B. N. S. 363, 74 L. T. N. S. 69, 44 Week. Rep. 323, 60 J. P. 196, per Rigby, L. J.

"The tendency of modern decisions is … not to regard as an essential or absolute test so much what the owner actually did when the work was being done, as what he had a right to do." Atlantic Transp. Co. v. Coneys (1897) 28 C. C. A. 388, 51 U.S. App. 570, 82 Fed. 177, where it was held that a carpenter, engaged in repairing the fittings of a steamer for cattle and freight, was not an independent contractor, where the captain and superintendent had the right to direct the extent and manner of the alterations and repairs, although such right was not often exercised because of the confidence in the ability of such carpenter and his knowledge of what would be required, and separate bills were made out for the separate kinds of work upon each vessel and the materials furnished for each job.

In order to constitute the person employed a servant, it is not necessary that his employers should, in fact, exercise such control. "If they had the authority to the extent indicated, the fact that they chose to leave the details to his discretion would not alter the relation of the parties." Pickens v. Diecker (1871) 21 Ohio St. 212, 8 Am. Rep. 55.

In another case it was remarked that, while defendants might not have exercised power of control over the work of the alleged contractor, yet, if they retained the right to exercise such power during the progress of

the work, then he was their servant, and not their contractor. Goldman v. Mason (1888) 18 N.Y.S.R. 376, 2 N.Y. Supp. 337.

In a charge by a trial judge, which was approved by the court of review as being a correct statement of principles, the following remarks were made with reference to the evidence which had been introduced as to the actual control which the employers exercised over the work: "That is all proper and competent evidence for you in considering the matter, yet that the absolute test is not the exercise of power of control, but the right to exercise power of control. If, for instance, there was nothing in the case but this contract, and there was no question that the parties were acting under it,—if that is the view you take of it, and that the injury was occasioned by the negligence of Elston,—then, although the trustees should be across the Atlantic, nevertheless, under the instructions I give you, if they retained the power to control and direct the work, they would be liable; because it is the possession of the right of interference, the right of control, that puts upon a party the duty of seeing that the person who stands in that relation does his duty properly." Linnehan v. Rollins (1884) 137 Mass. 123, 50 Am. Rep. 287.

"The test is not whether the defendant did in fact control and direct plaintiff in his work, but is whether it had the right under the contract of employment, taking into account the circumstances and situation of the parties and the work, to so control and direct him in the work." Chicago, R. I. & P. R. Co. v. Bennett (1912) 36 Okla. 358, — A.L.R. —, 128 Pac. 705 (evidence of defendant's agent that he did not control or direct the method or detail of plaintiff's work was held. with reference to this rule, to be nonconclusive).

"If the right of control is in the employer, it is immaterial whether he actually exercised it." Kniceley v. West Virginia Midland R. Co. (1908) 64 W. Va. 278, 17 L.R.A.(N.S.) 370, 61 S.E. 811.

In Corrigan v. Heubler (1914) — Tex. Civ. App. —, 167 S.W. 159, an instruction stating that if the defendant (a principal contractor) "exercised, or had the right to exercise, control of the manner in which the work was to be done," then the person engaged to perform that work was not an independent contractor, was held to be erroneous, on the ground that it told the jury in effect that the employer's exercise of control operated so as to destroy the independence of the contract, irrespective of whether he had a right to exercise such control.

The doctrine laid down in the text is also sustained by the following cases:

Connecticut
Norwalk Gaslight Co. v. Norwalk (1893) 63 Conn. 495, 28 Atl. 32
Illinois
Hamill v. Territilli (1915) 195 Ill. App. 174
Michigan
Tuttle v. Embury-Martin Lumber Co. (1916) 192 Mich. 385, 158 N.W. 875, Ann. Cas. 1918C, 664
Opitz v. Hoertz (1916) 194 Mich. 626, 161 N.W. 866
New Mexico
De Palma v. Weinman (1909) 15 N.M. 68, 24 L.R.A.(N.S.) 423, 103 Pac. 782
New York
Hawke v. Brown (1898) 28 App. Div. 37, 50 N.Y. Supp. 1032
Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632
North Carolina
Beal v. Champion Fiber Co. (1919) 154 N.C. 147, 69 S.E. 834
Patrick v. Giant Lumber Co. (1913) 164 N.C. 208, 80 S.E. 153
Ohio
Morrissey v. Cincinnati (1911) 33 Ohio C. C. 541, 14 Ohio C. C. N. S. 19
Texas
Smith v. Humphreyville (1907) 47 Tex. Civ. App. 140, 104 S.W. 495
Wisconsin
Madix v. Hochgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189

In Crudup v. Schreiner (1901) 98 Ill. App. 337, the ground upon which the court refused to accept the contention that certain oral evidence as to the acts of the contractor indicated his assumption of the powers of a master was that, at the most, the evidence merely showed that he had exercised more authority than the written contract conferred upon him. The theory of a possible modification of the contract was not adverted to.

That the relation of master and servant exists whenever the master possesses the right of control, although he may never exercise such control, was laid down in Ballard & B. Co. v. Lee (1909) 131 Ky. 412, 115 S.W. 732.

2 Chicago, R. I. & P. R. Co. v. Bennett (Okla.) supra.

"The fact that there was no right of control cannot be predicated upon an absence of the exercise of it in practice, if the contract in fact allows the right. The employer would be very likely to refrain from exercising a direction or control over an employee as to whom he had the undoubted right of control, merely because the employee had a greater knowledge concerning the nature of the work to be done than did the employer himself. Nothing more seems to have been the case here." Rosedale Cemetery Asso. v. Industrial Acci. Commission (1918) 37 Cal. App. 706, 174 Pac. 351.

3 Carleton v. Foundry & Mach. Products Co. (Mich.) post, _____.

1 Wood v. Cobb (1866) 13 Allen (Mass.) 58, the discussion related to a temporary transfer of a workman's service to a person "who exercised an independent employment, in no way subject to the command or control of the defendants as to the mode in which the work should be carried on."

In Ruehl v. Lidgerwood Rural Teleph. Co. (1913) 23 N.D. 6, L.R.A. 1918C, 1063, 135 N.W. 793, Ann. Cas. 1914C, 680, we find the following remarks: "There is much confusion in the authorities as to what is and what is not an independent contract. Some hold that the service must be rendered in the course of an independent occupation, and that the work done must be done by one whose independent business it is to do it. Cooley, J., for instance, defines the term 'independent contractors' as follows: 'Persons following a regular, independent employment, in the course of which they offer their services to the public to accept orders and execute commissions for all who may employ them, in a certain line of duty, using their own means for the purpose, and being accountable only for final performance.' Cooley, Torts, p. 549."

In North Bend Lumber Co. v. Chicago, M. & P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1017, it was laid down that "a contractor, to be independent, must exercise an independent employment."

In Mullich v. Brocker (1905) 119 Mo. App. 332, 97 S.W. 549, where the action was brought in respect of an injury caused by the negligence of a boy of sixteen, who had been engaged to break a horse, the grounds upon which it was held that a demurrer to the petition had been improperly sustained were thus stated: "Without attempting to lay down a general rule for ascertaining when the law will treat a person doing work as a contractor, and when the relationship of master and servant will be inferred, we think it apparent that the court below was in error in holding as a conclusion of law that Schoenborn was an independent contractor, for this reason; so far as appears he had no regular vocation, and hired to the defendant as the result of soliciting casual employment. We find no countenance for the proposition that a person not especially qualified for a particular service, but ready to undertake any job which may be offered to him that he thinks himself able to perform, becomes, when hired for some job, an independent contractor, simply because the employer relinquishes control over the work and trusts to the employee's discretion. It looks like the employee must have a calling in which it is fair to presume he has developed skill, before he will be regarded otherwise than as a servant. We do not say he must have a trade or profession—be a skilled mechanic, doctor, or lawyer; but he must hold himself out as having an occupation with which he is familiar." The intimation in this passage that the independence of the contract would have been an improper inference, even if an entire absence of control on the employer's part had been actually proved, is essentially inconsistent with the general doctrine which treats that fact as being conclusive proof of such independence. It is submitted that the right of recovery was not considered from the correct point of view, and that the decision would have been more appropriately referred to the conception that, having regard to the character of the stipulated

work, a jury would have been warranted in finding that the right to exercise control over its details had been impliedly reserved to the master.

In Powley v. Vivian & Co. (1915) 169 App. Div. 170, 154 N.Y. Supp. 426, 10 N.C.C.A. 835, one of the facts upon which the court based its conclusion that the contracting party was "exercising an independent calling," and was not an "employee" within the meaning of a workman's compensation act, was that the right of controlling the stipulated work was vested wholly in him. Clearly the ultimate inference to which the fact pointed was that the party in question was an "independent contractor," and the case should have been determined with relation to that consideration *alone.*

The doctrine of the French law, as administered in the Canadian province of Quebec, is indicated by the following extract: "Their practice [of the defendants] was to hire licensed carters for delivery of soft coal and to issue a bond for the carriage of each load, which any person might obtain the cash for on presentation to their cashier. These carters were free to accept as few or as many loads as they liked. Facts of this kind overthrow the adverse presumption and prove defendants not to have been the owners of the cart. This being so, the person delivering the coal was not a servant of the defendants, but a contractor in the nature of a private carrier. From the standpoint of responsibility the louage d'ouvrage dominated and effaced that of mandat. The general rule is that responsibility does not reach back to the commettant unless his préposé is subject to his instructions and orders, and to his surveillance in the execution of the mandat. 2 Sourdat, No. 885." Loiselle v. Muir (1889) 5 Montreal L. Rep. S.C. 155.

2 "It would seem that, where the person employed to do the work in his own way, and free from the control of the employer, is engaged in an independent calling, it is but just that persons who contract with him, either as employees or otherwise, should look to him for compensation. We do not mean to say that the exception is confined to work done by one engaged in an independent calling. It is certainly much more difficult to fix the limits of the exception when this element is absent." Midgette v. Branning Mfg. Co. (1909) 150 N.C. 333, 64 S.E. 5.

The theory adverted to in the text is reflected in such statements as these:

An independent contractor is "ordinarily one who carries on an independent employment." Thompson v. Twiss (1916) 90 Conn. 444, L.R.A. 1916E, 506, 97 Atl. 328 ("characteristic suggestive, but not controlling").

An independent contractor is "usually engaged in carrying on an independent employment or business." Madix v. Hochgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189 ("significant characteristic").

3 The circumstance that the person whose relationship to his employer was in question was exercising an "independent employment," or "calling," or "business," or "occupation" has been frequently specified as a portion of an aggregate of evidence which tended to repel the conclusion that he was a servant. A few of the numerous cases in which these different descriptive expression s have been used are cited below.

"Independent employment."
California
Smith v. Belshaw (1891) 89 Cal. 427, 26 Pac. 834
Connecticut
Alexander v. R. A. Sherman's Sons Co. (1912) 86 Conn. 292, 85 Atl. 514
Iowa
Humpton v. Unterkircher (1896) 97 Iowa, 509, 66 N.W. 776, 14 Am. Neg. Cas. 595
Maine
Keyes v. Second Baptist Church (1904) 99 Me. 308, 59 Atl. 446, 17 Am. Neg. Rep. 526
Maryland
Deford v. State (1869) 30 Md. 179
Massachusetts
Linton v. Smith (1857) 8 Gray, 147
Michigan

De Forrest v. Wright (1852) 2 Mich. 368

Missouri

McGrath v. St. Louis & H. Constr. Co. (1908) 215 Mo. 191, 114 S.W. 611

New Hampshire

Carter v. Berlin Mills Co. (1876) 58 N.H. 52, 42 Am. Rep. 572

North Carolina

Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632

Embler v. Gloucester Lumber Co. (1914) 167 N.C. 457, 83 S.E. 740

Ohio

Pickens v. Diecker (1871) 21 Ohio St. 212, 8 Am. Rep. 55

Tennessee

Powell v. Virginia Constr. Co. (1890) 88 Tenn. 692, 17 Am. St. Rep. 925, 13 S.W. 691

Virginia

Bibb v. Norfolk & W. R. Co. (1891) 87 Va. 711, 14 S.E. 163

England

Sadler v. Hemlock (1855) 4 El. & Bl. 570, 119 Eng. Reprint, 209, 3 C. L. R. 760, 1 Jur. N. S. 677, 24 L. J. Q. B. N. S. 138, 3 Week. Rep. 181

This is the expression used in Georgia Civ. Code 1910, § 4414 (3818).

"Independent business."

Allen v. Hayward (1845) 7 Q. B. 960, 115 Eng. Reprint, 749, 15 L. J. Q. B. N. S. 99, 10 Jur. 92, 4 Eng. Ry. & C. Cas. 104; Bogle v. Weber (1914) 189 Ill. App. 184, 9 N.C.C.A. 351; Williams v. National Cash Register Co. (1914) 157 Ky. 836, 164 S.W. 112; McCarthy v. Second Parish (1880) 71 Me. 318, 36 Am. Rep. 320; Uppington v. New York (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91, 9 Am. Neg. Rep. 115; Deyo v. Kingston Consol. R. Co. (1904) 94 App. Div. 578, 88 N.Y. Supp. 487; Kelly v. New York (1905) 106 App. Div. 576, 94 N.Y. Supp. 872.

"Independent calling."

Winters v. American Radiator Co. (1915) 128 Minn. 508, L.R.A.1915D, 476, 151 N.W. 277; Midgette v. Branning Mfg. Co. (1909) 150 N.C. 333, 64 S.E. 5.

"Independent occupation."

Hubbard v. Coffin (1914) 191 Ala. 494, 67 So. 697; Caldwell v. Atlantic, B. & A. R. Co. (1909) 161 Ala. 395, 49 So. 674; Myers v. Holborn (1895) 58 N.J.L. 195, 30 L.R.A. 345, 55 Am. St. Rep. 606, 33 Atl. 389; Norfolk & W. R. Co. v. Stevens (1899) 97 Va. 631, 46 L.R.A. 367, 34 S.E. 525.

4 For cases involving this situation, see Bodwell v. Webster (1915) 98 Neb. 664, 154 N.W. 229, Ann. Cas. 1918C, 624 (syllabus of court); Midgette v. Branning Mfg. Co. (1909) 150 N.C. 333, 64 S.E. 5; Muldoon v. City Fireproofing Co. (1909) 134 App. Div. 453, 119 N.Y. Supp. 320.

"The fact that the alleged servant never serves more than one person, and has no independent occupation, should be strongly persuasive that the relation of master and servant exists." Southern Cotton Oil Co. v. Wallace (1899) 23 Tex. Civ. App. 12, 54 S.W. 638.

5 In Milligan v. Wedge (1840) 12 Ad. & El. 737, 113 Eng. Reprint, 993, 10 L. J. Q. B. N. S. 19, 4 Perry & D. 714, it was laid down, arguendo, by Williams, J., that, "where the person who does the injury exercises an independent employment, the party employing him is clearly not liable."

It is "difficult to distinguish between the relation of servant and that of a person exercising an independent calling." Hopkins v. Empire Engineering Corp. (1912) 152 App. Div. 570, 137 N.Y. Supp. 478.

In Murray v. Dwight (1900) 161 N.Y. 301, 48 L.R.A. 673, 55 N.E. 901, affirming (1897) 15 App. Div. 241, 44 N.Y. Supp. 234, 2 Am. Neg. Rep. 206, where a truckman was assumed to be an independent contractor, and the actual question discussed was whether one of his servants was a fellow servant ad hanc vicem of the truckman employer, the court made the following remarks, arguendo: "A servant is one who is employed

to render personal services to his employer otherwise than in the pursuit of an independent calling. The truckman who transports the traveler's baggage or the merchant's goods to the railroad station, though hired and paid for the service by the owner of the baggage or the goods, is not the servant of the person who thus employs him. He is exercising an independent and quasi public employment in the nature of a common carrier, and his customers, whether few or many, are not generally responsible for his negligent or wrongful acts, as they may be for those of other persons in their regular employment as servants. A contract, whether express or implied, under which such special jobs are done or such special services rendered, is not that of master and servant within the law of negligence." The authority cited for the law as thus laid down was Jackson Architectural Iron Works v. Hurlburt (1899) 158 N.Y. 34, 70 Am. St. Rep. 432, 52 N.E. 665. But as the point there discussed was whether a truckman was subject to liability as a common carrier, or merely as a carrier for hire, the precedent seems somewhat inapt.

See also Wabash, St. L. & P. R. Co. v. Farver (1887) 111 Ind. 195, 60 Am. Rep. 696, 12 N.E. 296, where the phrase "exercising an independent employment" was used as the equivalent of "independent contractor."

1 "The mere fact that the work was done by one who carried on a separate and independent employment does not absolve the defendants from liability. If such were the rule, a party would be exempt from responsibility even for the negligent acts of his domestic servants, such as his cook, coachman, or gardener. This point was distinctly adjudicated in Sadler v. Hemlock (1855) 4 El. & Bl. 570, 119 Eng. Reprint, 209, 24 L. J. Q. B. N. S. 138, 1 Jur. N. S. 677, 3 Week. Rep. 181, 3 C. L. R. 760." Brackett v. Lubke (1862) 4 Allen (Mass.) 138, 81 Am. Dec. 694.

"In every case the decisive question in determining whether the doctrine of respondeat superior applies is, Had the defendant the right to control, in the given particular, the conduct of the person doing the wrong? If he had, he is liable. On this question the contract under which the work was done must speak conclusively in every case, reference being had, of course, to surrounding circumstances. If defendant had such control, the mere fact that the agent who did the injury carried on a separate and independent employment will not absolve his principal from liability. If this control existed, it makes no difference whether the person doing the injury was the 'servant' of the defendant, in the popular sense of that word, or a person merely employed to do a specified job or piece of work." Rait v. New England Furniture & Carpet Co. (1896) 66 Minn. 76, 68 N.W. 729.

"If the proprietor retains for himself or for his agents (e. g., architect and superintendent) a general control over the work, not only with reference to results, but also with reference to methods of procedure, then the contractor is deemed the mere agent or servant of the proprietor, and the rule of respondeat superior operates to make the proprietor liable for his wrongful acts or those of his servants, whether the proprietor directly interfered with the work, and authorized and commanded the doing of such acts, or not." Thomp. Neg. § 659 — quoted with approval in Beal v. Champion Fiber Co. (1910) 154 N.C. 147, 69 S.E. 834, and in Johnson v. Carolina, C. & O. R. Co. (1911) 157 N.C. 382, 72 S.E. 1057.

In a case where plaintiff's counsel contended that the circumstances brought it within an alleged exception to the general rule, viz., "that the employer is liable where he does not release the entire charge of the work to the contractor, but retains supervision of its construction," the court observed: "This is nothing more than saying that where the contractor is not an independent contractor, but is under the control of his employer, the employer is liable. In other words, instead of its being an exception to the admitted doctrine above, it seems to be nothing more than stating it in different phraseology. Or, rather, while recognizing the doctrine, it states a certain condition where the employee would not be an independent contractor, to wit, where the employer had not released the entire charge of the work to him." Rogers v. Florence R. Co. (1889) 31 S.C. 378, 9 S.E. 1059.

"Where the employer retains the control and direction over the *mode* and *manner* of doing the work, and an injury results from the negligence or misconduct of the contractor, or his servant or agent, the employer is placed under a liability equal and similar to that which exists in the ordinary case of principal and agent." Cincinnati v. Stone (1855) 5 Ohio St. 38.

The employer may be held liable for injuries inflicted, where, although the work has been let to an independent contractor, he has "retained control of the manner of doing it, so that he has the right to give directions as to the steps which shall be taken to produce the result." In that case, as the employer "has control of the acts done by the contractor, and may prevent any negligence on his part," he is held to be liable for any negligence which the contractor is guilty of, because he has not prevented it. White v. New York (1897) 15 App. Div. 440, 44 N.Y. Supp. 454, 2 Am. Neg. Rep. 213.

"It may be regarded as settled that, if the employer keeps control of the mode of the work, his liability for the acts of a contractor and servant is the same." Reynolds v. Braithwaite (1889) 131 Pa. 416, 18 Atl. 1110.

"If the employer reserves to himself, or to his representatives, the right to control at his pleasure the manner and means by which the work contracted for is to be accomplished,—if the employer may stand by and tell the person undertaking the work where, when, and how it shall be performed, —such person is the agent and servant of the employer, and not an independent contractor." North Bend Lumber Co. v. Chicago, M. & P. S. R. Co. (1913) 76 Wash. 232, 135 Pac. 1022.

"Employment under a contract, defining not only what is to be done, but also the manner in which the work is to be executed, is not independent, and, if injury to a third person result from the performance of the work in conformity with such contract, and the thing done or the manner of its performance is wrongful or negligent, the employer is liable." Walker v. Strosnider (1910) 67 W. Va. 39, 67 S.E. 1087, 21 Ann. Cas. 1 (syllabus of court).

The general rule is that, "if an employer keeps control of the mode of work, there is no distinction between his liability for a contractor and a servant." Harold v. Montreal (1867, Q. B.) 11 Lower Can. Jur. 169.

For other explicit statements of a similar tenor, see Fuller v. Citizens' Nat. Bank (1882) 15 Fed. 875; Faren v. Sellers (1887) 39 La. Ann. 1011, 4 Am. St. Rep. 256, 3 So. 363; McCarthy v. Clark (1911) 115 Md. 454, 81 Atl. 12; Corrigan v. Elsinger (1900) 81 Minn. 42, 83 N.W. 492, 8 Am. Neg. Rep. 262; Lawver v. McLean (1881) 10 Mo. App. 591; Perry v. Ford (1885) 17 Mo. App. 213; Edmundson v. Pittsburgh, M. & Y. R. Co. (1885) 111 Pa. 316, 2 Atl. 404; Morgan v. Bowman (1856) 22 Mo. 538; Veazie v. Penobscot R. Co. (1860) 49 Me. 119, and many of the cases cited in the succeeding sections.

By one of the subdivisions of Georgia Civ. Code 1895, § 3819, Code 1911, § 4415, the employer is declared to be liable for the negligence of the contractor, "if the employer retains the right to direct or control the time or manner of executing the work." See Atlanta & F. R. Co. v. Kimberly (1891) 87 Ga. 161, 27 Am. St. Rep. 231, 13 S.E. 277; Wilson v. White (1883) 71 Ga. 506, 51 Am. Rep. 269.

In Holliday v. National Teleph. Co. [1899] 2 Q. B. (Eng.) 392, 68 L. J. Q. B. N. S. 1016, 81 L. T. N. S. 252, 47 Week. Rep. 658, 15 Times L. R. 483, the finding of the trial judge to the effect that the plumber whose negligence caused the injury was not an independent contractor, but that he acted under the supervision of the defendants, who retained the control of the work, was held to be fatal to the defendants.

In Northern P. R. Co. v. Tillotson (1915) 84 Wash. 678, 147 Pac. 423, a complaint in an action brought by a railroad company to recover for damages caused to its telegraph wires and track by the blasting and felling of trees by a subcontractor on a highway, which the defendant county had employed the defendant Tillotson to construct, was held not to be demurrable, where it included averments to the effect that the defendant county, its officers, agents, and employees, including Tillotson, contractor, well knew that the construction of said highway according to plans and specifications of said contract was "inherently and intrinsically dangerous in and of itself, and would necessarily result in damaging the plaintiff's right of way, railway tracks, and telegraph wires adjacent thereto, and would necessarily result in endangering the operation of the plaintiff's trains; and that the county, "at all times during the construction of the highway, controlled the manner of doing the work." The court was of opinion that these allegations of the complaint brought the case within the rule that, where the employer reserves to himself or to his representative the right to control the manner and means of doing the work, the person employed by him is his servant, and not an independent contractor. But it is not apparent what relation the first averment had to the question of independence. The ruling is

suggestive of some confusion of thought. The complaint clearly specified two distinct grounds upon which recovery might be had, viz.: (1) That the intrinsic danger of the work imposed a nondelegable duty upon the county, and (2) that it exercised control over the details of the work.

2 See § 13, infra.

3 The reservation by a railroad company, in a contract for the construction of its road, of the right to designate the points at which crossings shall be put in on public or private roads, the contractors having no right even to close up a road until it has been passed upon by the company's engineer, makes it responsible for injuries to the traveling public from the improper construction of a crossing designated by it in the exercise of its reserved power. Dublin v. Taylor, B. & H. R. Co. (1899) 92 Tex. 535, 50 S.W. 120. The court remarked: "While it is true that a reservation of control over that part of the work would not alone make the railroad company liable as master for the whole work, yet, in respect to crossings at intersections of all roads, it acted as master in exercising the reserved powers, and will be held responsible for the consequences." By the decision on the former appeal in (1895) 88 Tex. 642, 32 S. W. 868, the company's liability was put upon the ground of a breach of a non-delegable duty. A later appeal before the court of civil appeals is reported in Taylor, B. & H. R. Co. v. Warner (1900) — Tex. Civ. App. —, 60 S.W. 442.

1 Charlock v. Freel (1891) 125 N.Y. 357, 26 N.E. 262. The court remarked that the additional work, as it came between the completion of the sewer and the repaving of the street, and was designed to make the drainage better, was cognate in its nature to the principal undertaking, and that the effect of its assumption was to continue the contract relations between the parties, with all the obligations and responsibilities which, either expressly or by legal implication, were imposed by that contract.

2 In Swart v. Justh (1905) 24 App. D.C. 596, where the plaintiff was injured by some of the waste materials which were being thrown from the roof of the defendant's buildings by the servants of a person who had just completed the performance of a contract for the construction of a skylight, it was laid down that, if the removal of the material had been undertaken by the contractor in *obedience to the directions of the defendant,* "the jury were correctly charged that he was acting as the agent or employee of the defendant in such manner as to render the latter liable for his negligent performance, whether or not he had himself been present and in actual direction of the work." It may be doubted whether the circumstance stated in the words italicized would be regarded by all courts as being sufficient of itself, and, without any reference to other considerations, to warrant the inference that the additional work was performed by the contractor in the capacity of a servant. The defendant was, however, clearly liable on the ground that the injury complained of was occasioned by a breach of his non-delegable duty to see that travelers were protected against such a risk as the one in question.

In Re McNally v. Diamond Mills Paper Co. (1918) 223 N.Y. 83, 119 N.E. 242, a claimant under a workmen's compensation act had agreed to move an engine from the railroad to the defendant's plant, for $225. After that contract had been fully performed, he was asked by one of the defendant's officers to assist in the work of installation. He was to be paid by day labor. He brought with him two of his own hired men, and his own blocking, rigging, and jacks. Two of the permanent employees of the mill, and two others hired for the job, worked with him. In charge of them all was the engineer who had been furnished by the manufacturers of the engine to superintend its installation. The court said: "We think there is evidence to sustain the finding that the claimant, when injured, was an employee, and not an independent contractor. That he was a contractor while engaged in transporting the engine from the railroad to the mill may be conceded. But when that contract had been performed, he assumed a new relation. He was then employed by the day to work as a laborer with others. He was not in control of the job; he had no power of superintendence or direction; he had no other rank than the regular employees of the mill who were with him; he took his orders from the engineer whom the mill had placed in charge. In this situation, the distinctive tokens of the independent contractor are lacking. The claimant for the purposes of this job was an employee, and nothing more. What he may have been at other times and for other purposes does not concern us."

1 Teagarden v. McLaughlin (1882) 86 Ind. 476, 44 Am. Rep. 332. There the minor had, while performing a contract to clear a parcel of land for a designated price, set out a fire which destroyed the plaintiff's property situated on the land. At the time the contract was made, the minor was living with his father and was treated as a member of his family. An instruction to the effect that if the work had been let to the son as an independent contractor, and the injury resulted from his negligence, the plaintiff could not recover, was held to have been properly refused. The court said: "It would be pushing the rule absolving an employer from liability for the negligence of an independent contractor to an unwarrantable extent, to extend it to the case of a father who contracts with his minor son. The reason upon which rests the rule holding employers not liable for the negligence of independent contractors fails where the contractor is the infant child of the employer. The reason supporting the rule is that the employer has no control over the acts of the contractor in the performance of the work, and ought not to be held responsible for that over which he has no authority or power. The right to control is the test by which to determine whether the relation of employer and contractor exists. 2 Thomp. Neg. 906. In legal contemplation, the minor child is within the control of the parent, and there can be no doubt that, as a general rule, the theory of the law corresponds with the actual fact. Not only does the principle we have referred to require that it should be held that a father cannot evade responsibility for the negligent manner in which his minor son does an act which he commanded to be done, but there are other strong reasons leading to the same conclusion. If a man were permitted to escape liability upon the ground here relied on, it would be easy to perpetrate great wrongs, and leave the injured person to proceed against irresponsible persons under legal disabilities; and it would also open a way for unscrupulous persons to evade liability for torts committed in their behalf, by wrongfully shifting the responsibility to those subject to their commands. The general rule is that a father is not responsible for the torts of his minor child; but this rule does not apply to cases where the tort is committed by the child while engaged in performing work directed by the father. Where a child is engaged in the father's service, and in doing work authorized or commanded by him, he is responsible for loss resulting to others from the negligence of the child."

1 The authorities on this subject are fully reviewed in Labatt's Master & Servant, §§ 52 et seq.

In Turner v. Great Eastern R. Co. (1875) 33 L. T. N. S. (Eng.) 431, where the plaintiff was injured by the negligent management of moving railway cars, while he was working for a man who had contracted to discharge coal from cars standing on a siding, the discussion centered wholly upon the question whether the defendant company exercised such a control over the plaintiff and his fellow workmen as to make them its own servants ad hanc vicem. Grove, J., in his judgment, remarked: "No doubt the cases do not necessarily depend on the term 'contractor,' because the man may stand in different relations to the person with whom he contracts and those whom he employs."

For a recent case in which the evidence examined was held sufficient to warrant a submission to the jury of the question whether the servants of a refrigerator company were in the employ of, or acting under the direction of, the defendant railway company at the time when the plaintiff was injured by reason of their negligence in setting a car in motion, see Gulf, C. & F. R. Co. v. Beasley (1917) — Okla. —, 168 Pac. 200.

2 See, for example, Linquist v. Hodges (1911) 248 Ill. 491, 94 N.E. 94, where the principal employer was held liable.

1 See, for example, Eaton v. Woburn (1879) 127 Mass. 270; Oulighan v. Butler (1905) 189 Mass. 287, 75 N.E. 726; Norman v. Middlesex & S. Traction Co. (1905) 71 N.J.L. 652, 60 Atl. 936, 18 Am. Neg. Rep. 549; Kniceley v. West Virginia Midland R. Co. (1908) 64 W. Va. 278, 17 L.R.A.(N.S.) 370, 61 S.E. 811.

2 For cases in which the employer's liability was either affirmed or denied with reference to the consideration thus indicated, see the following:

United States
Nyback v. Champagne Lumber Co. (1901) 48 C. C. A. 632, 109 Fed. 732
Alabama
Hubbard v. Coffin (1914) 191 Ala. 494, 67 So. 697
Alabama Fuel & I. Co. v. Smith (1919) 203 Ala. 70, 82 So. 30

Connecticut
Ennis v. Baumann Rubber Co. (1917) 91 Conn. 425, 99 Atl. 1031
Nichols v. Harvey Hubbell (reported herewith) ante, 221
Illinois
Shaw v. Dorris (1919) 290 Ill. 196, 124 N.E. 796
Kentucky
Keen v. Keystone Crescent Lumber Co. (1909) — Ky. —, 118 S.W. 355
Maine
Mayhew v. Sullivan Min. Co. (1884) 76 Me. 100
Michigan
Lewis v. Detroit Vitrified Brick Co. (1911) 164 Mich. 489, 129 N.W. 726
New York
Horton v. Vulcan Iron Works Co. (1897) 13 App. Div. 508, 43 N.Y. Supp. 699, 1 Am. Neg. Rep. 495
Matthes v. Kerrigan (1886) 21 Jones & S. 431
Wisconsin
Rankel v. Buckstaff-Edwards Co. (1909) 138 Wis. 442, 20 L.R.A.(N.S.) 1180, 120 N.W. 269
In a recent case we find the following remarks: "The rule which entitles an employee to rely upon the prevision and superior knowledge of his employer in the matter of providing a safe place wherein the employee is to do his work is inapplicable to the relations which subsist between an independent contractor and the person with whom he contracts. Ordinarily, the independent contractor is expected to determine that matter for himself; and, if he chooses to work in an unsafe place, when a safe place would be provided for the asking, he does so at his own risk." Ryland v. Harve M. Wheeler Lumber Co. (1920) 146 La. 787, 84 So. 55. But it is questionable whether so broad a statement is warrantable, in view of the doctrine concerning the absolute duty which a person in control of fixed property owes to invitees.

3 See, for example, Isnard v. Edgar Zinc Co. (1910) 81 Kan. 765, 106 Pac. 1003.

4 Miller v. Merritt (1905) 211 Pa. 127, 60 Atl. 508.

5 See § 50 of the monograph appended to Chesson v. Richmond Cedar Works, L.R.A.1918F 79.

6 In Russell v. Buckhout (1895) 87 Hun, 46, 34 N.Y. Supp. 271, an action was held to be maintainable against an administrator, for reasons thus stated: "There was nothing 'personal' in this contract in suit. It was a mere contract to do certain work for a stipulated price. The plaintiffs were not to perform it personally, but, at least in part, through their workmen. No relation of master and servant existed between the parties." Dykman, J., dissented on the ground that the contract was dissolved by the death of the contractee (Lacy v. Getman (1890) 119 N.Y. 112, 6 L.R.A. 728, 16 Am. St. Rep. 806, 23 N.E. 452), and that the administratrix was liable only for the amount due when that death occurred.

7 For a case turning upon this point, see Homewood Rice Land Syndicate v. Suhs (1920) 142 Ark. 619, 219 S.W. 333.

8 In Berger v. Mandel (1898) 25 Misc. 766, 54 N.Y. Supp. 987, it was held that a woman who was paid by the piece for labor performed, who carried on her work in a room rented by her, and employed and paid three girls to assist her, at weekly wages, was not an employee, but a contractor, and hence was not entitled to extra costs as in an action for wages (N. Y. Consol. Act, § 1424; Code Civ. Proc. §§ 3131, 3222), or to an execution against the person of the employer (Code Civ. Proc. § 3221).

9 See, for example, Scales v. First State Bank (1918) 88 Or. 490, 172 Pac. 499.

10 For a case in which the right to an indemnity was denied, on the ground that the person employed was an independent contractor, see Corbin v. American Mills (1858) 27 Conn. 275, 71 Am. Dec. 63, 13 Am. Neg. Cas. 735.

11 For an instance of such a case, see Employers Indemnity Co. v. Kelly Coal Co. (1913) 156 Ky. 74, 49 L.R.A.(N.S.) 850, 160 S.W. 914, where recovery was allowed on the ground that the person employed was a servant, not an independent contractor.

12 For cases in which notice was held not to be imputable, for the reason that the alleged agent was an independent contractor, see Pittsburgh, C. C. & St. L. R. Co. v. Templeton (1918) 210 Ill. App. 377; Dillon v. Sixth Ave. R. Co. (1882) 16 Jones & S. (N.Y.) 283.

13 See Lord v. Spielmann (1898) 29 App. Div. 292, 51 N.Y. Supp. 534.

14 For a case in which an action against the defendant was held not to be maintainable, because he was a "dependent contractor," see Herrington v. Booth (1916) 252 Pa. 70, 97 Atl. 178.

In Charlock v. Freel (1891) 125 N.Y. 357, 26 N.E. 262, the court observed, arguendo: "He [the contractor] was not in the employment or under the direction of the municipal authorities in any such sense as to exempt him from a liability for the consequences of his negligent or unskilful acts, or those of his employees."

In Scharff v. Southern Illinois Constr. Co. (1905) 115 Mo. App. 157, 92 S.W. 126, the liability of the tort-feasor was affirmed, because he was an independent contractor.

In Tanco v. Booth (1891, C. P.) 39 N.Y.S.R. 82, 15 N.Y. Supp. 110, persons operating a line of steamships ostensibly as agents of the company by which they were owned, but in fact as general partners of the firm by which the line was operated, were held to be independent contractors and principals, and not merely servants of the company, and consequently to be personally liable in replevin for their refusal to deliver goods shipped by the line, on demand by one entitled to them.

15 For a case in which the right to maintain such an action was denied on the ground that the person employed was a "contractor," not a servant, see Barron v. Collins (1873) 49 Ga. 580.

1 The following statements, made elsewhere by the present writer, have been judicially approved:

"Where one person is employed to do certain work for another, who, under the express or implied terms of the agreement between them, is to have the right of exercising control over the performance of the work, to the extent of prescribing the manner in which it shall be executed, the employer is a master, and the person employed is his servant." Labatt, Mast. & S. § 2—quoted in Callahan Constr. Co. v. Rayburn (1915) 110 Miss. 107, 69 So. 669.

"The accepted doctrine is that, in cases where the essential object of an agreement is the performance of work, the relation of master and servant will not be predicated, as between the party for whose benefit the work is to be done and the party who is to do the work, unless the former has retained the right to exercise control over the latter in respect to the manner in which the work is to be executed." Labatt, Mast. & S. § 64 — quoted in Embler v. Gloucester Lumber Co. (1914) 167 N.C. 457, 83 S.E. 740; Lutenbacher v. Mitchell-Borne Constr. Co. (reported herewith) ante, 206.

The distinction between a servant and an independent contractor may also be expresed by phraseology similar to that used in the defining formulae which are tabulated in § 2, supra. "One who represents and carries out the will of the master in the prosecution of the work, not only as to the result to be accomplished, but also as to the means to be employed, is a servant, and not an independent contractor." Clinton Min. Co. v. Bradford (1917) 200 Ala. 308. 76 So. 74.

1 Reg. v. Walker (1858) 27 L. J. Mag. Cas. N. S. (Eng.) 208. These words are not found in the other reports of the case; but, as they embody the doctrine applied in the decision itself, they may be taken as being expressive of the views of the whole court. The evidence presented was as follows: The prosecutors were manure manufacturers. The prisoner kept a refreshment house at B., and the prosecutors, while he was so doing, engaged him to get orders for the manure, on which orders they supplied it from the stores. The prisoner was to collect the money, and to pay it at once to them; he was also to send them weekly accounts,

showing what he had sold and what he had received. He was to be paid by a commission. It did not appear that he had undertaken to give any definite quantity of time or labor to the business, but he was to act in a particular district; and in the printed forms given to him, on which to make his returns, he was called agent for the B. district. The evidence of the prosecutor was: "He was to go through the county, and see the farmers and get orders; he was to be continually, during the season, among the farmers." After a certain date the following alteration took place in the mode of dealing, viz.: In place of the prosecutors supplying customers on the prisoner's orders, they sent large quantities of manure to stores at B., of which they paid the rent. These stores were under the prisoner's control, and from them he supplied the customers whose orders he obtained. This mode of transacting the business partly existed before, and it did not appear but what the first mode, or the mixed mode, might have been resorted to by the prosecutors, if they found it convenient; the relations between the parties, evinced as above, continued for some time, when the following took place: A proposal was made to a guaranty society to insure the prosecutors in respect of their connection with the prisoner. This proposal was signed by him. It was on a printed form, issued by the society, and contained a notice that some amount of salary must be payable, or the society would not insure. The proposal, signed by the prisoner, stated that his salary was £1 a year, besides commission, which was stated to be estimated at £65 per annum. The prosecutors swore that at this time they agreed to give the prisoner a salary of £1 a year. The prisoner was allowed to get in arrear; that is to say, he retained in his hands money he acknowledged he had received, and was treated by the prosecutors as a debtor in respect of it. The alleged embezzlement consisted in this: that he fraudulently returned the names of three persons as having had manure without paying for it, when, in fact, he had received the sums from them. Held, that the conviction could not be sustained, as the evidence rather led to the conclusion that the relation between the parties was that of principal and agent.

If the full measure of control, which is the diagnostic mark of the relationship of master and servant, was, as a matter of fact, exercised over him,—and this is primarily a question for the jury,—a commercial traveler, even though he is paid by commission, is a "servant" within the meaning of the embezzlement statutes. Reg. v. Tite (1861) Leigh & C. C. C. (Eng.) 29, 30 L. J. Mag. Cas. N. S. 142, 7 Jur. N. S. 556, 4 L. T. N. S. 259, 9 Week. Rep. 554, 8 Cox, C. C. 458; Reg. v. May (1861) Leigh & C. C. C. (Eng.) 13, 30 L. J. Mag. Cas. N. S. 81, 7 Jur. N. S. 147, 3 L. T. N. S. 680, 9 Week. Rep. 256, 8 Cox, C. C. 421; Reg. v. Bailey (1871) 12 Cox, C. C. (Eng.) 56, 24 L. T. N. S. 477.

In Rex v. Carr (1811) Russ. & R. C. C. (Eng.) 198, a person employed upon commission to travel for orders, and to collect debts, was held to be a "clerk" within 39 Geo. III. chap. 85, although he was employed by many different houses in each journey, and paid his own expenses out of his commission on each journey, and did not live with any of his employers, or act in any of their countinghouses.

In Reg. v. Hughes (1846) 2 Cox, C. C. (Eng.) 104, it was held that a jury would be justified in finding that a person, who, upon his representing to the prosecutor that he had a little spare time which he would like to occupy in collecting debts, was engaged to do such work, was a "servant" within the meaning of the Embezzlement Act 7 & 8 Geo. IV.

For cases in which a person collecting parish rates on a commission footing was held to be a "servant," see King v. Ward (1819) Gow. N. P. (Eng.) 168; Reg. v. Callaghan (1837) 8 Car. & P. (Eng.) 154.

A bare authority to get orders and collect moneys on commission does not constitute a "clerk" or "servant," within the meaning of the New Zealand Larceny Act 1867. Reg. v. Clifford, 3 New Zealand J. R. N. S. S. C. 51.

2 The language used by Bramwell, B., was apparently overlooked by Mr. Bowditch, when he framed the statement that "the difference between an agent and an independent contractor is that an agent undertakes to act, in the matter of the agency, subject to the directions and control of his employer, whereas an independent contractor does not, but contracts to perform certain specified work, or to produce certain specified results, the manner and means of production being left to his discretion, except so far as they are specified by the contract." Law of Agency, p. 3, note (a); Enc. Laws of England, sub voc. Principal & Agent, p. 338. This assertion may be correct as regards some classes of agents; but it is clear that others, such as attorneys at law,

factors, brokers, and auctioneers, ordinarily possess quite as much liberty of action in respect of "manner and means of performance" as is accorded to independent contractors.

3 Barker v. Braham (1773) 2 W. Bl. 866, 96 Eng. Reprint, 510, 3 Wils. 368; Bates v. Pilling (1826) 6 Barn. & C. 38, 108 Eng. Reprint, 367, 9 Dowl. & R. 44, 5 L. J. K. B. 40; Jarmain v. Hooper (1843) 6 Mann. & G. 827, 134 Eng. Reprint, 1126, 1 Dowl. & L. 769, 7 Scott, N. R. 663, 13 L. J. C. P. N. S. 63, 8 Jur. 127; Smith v. Keal (1882) 9 L. R. Q. B. Div. (Eng.) 340, 47 L. T. N. S. 142, 31 Week. Rep. 76.

As to the liability of a principal for the acts of a law agent, see Burnes v. Pennell (1849) 2 H. L. Cas. 497, 9 Eng. Reprint, 1187.

4 In Collett v. Foster (1857) 2 Hurlst. & N. 356, 157 Eng. Reprint, 149, Pollock, C. B., remarked: "I think there is a great distinction between employing an attorney who represents the parties in a suit, and employing a contractor to do work, such as building a house. In the latter case the employer is not liable for the acts of the contractor; the contractor is responsible, and the employer is not; but it certainly has always been held — and I am not aware that in any textbook, or in any case, there will be found a single exception to the rule— that a person is liable for the acts of his attorney in the conduct of a suit at law, brought under his authority. He gives to the attorney the right to represent him, and he is responsible for whatever the attorney does."

5 Holt, Ch. J., in Hern v. Nichols (1707) 1 Salk. 289, 91 Eng. Reprint, 256.

From the historical point of view, it is not undeserving of notice that in Bush v. Steinman (1799) 1 Bos. & P. 404, 126 Eng. Reprint, 978, this case was cited by Heath, J., as a precedent for the doctrine that an employer is answerable for the torts of an independent contractor. For a detailed analysis of this case, see § 12 of the monograph appended to Press v. Penny 18 A.L.R. 821.

6 See Cornfoot v. Fowke (1840) 6 Mees. & W. 373, 151 Eng. Reprint, 456, 9 L. J. Exch. N. S. 297, 4 Jur. 919; Wilson v. Fuller (1843) 3 Q. B. 68, 114 Eng. Reprint, 432, 3 Gale & D. 570. In both of these cases the liability of the defendant was denied for special reasons, not germane to the matter now under discussion.

7 Van Wart v. Woolley (1824) 3 Barn. & C. 439, 107 Eng. Reprint, 797, 5 Dowl. & R. 374, Ryan & M. 4, 3 L. J. K. B. 51; Mackersy v. Ramsays (1843) 9 Clark & F. 819, 8 Eng. Reprint, 628, 3 Eng. Rul. Cas. 763.

Compare the cases which proceed upon the doctrine that there is no privity of contract between a client of a country attorney and the London agent of the latter. See Gray v. Kirby (1834) 2 Dowl. P. C. (Eng.) 601; Robbins v. Fennell (1847) 11 Q. B. 248, 116 Eng. Reprint, 468, 17 L. J. Q. B. N. S. 77, 12 Jur. N. S. 157; Cobb v. Becke (1845) 6 Q. B. 930, 115 Eng. Reprint, 350, 14 L. J. Q. B. N. S. 108, 9 Jur. 439.

The American decisions as to the liability of the receiving bank are conflicting. See § 18, infra.

8 Walker v. Crabb (1916, Q. B. D.) 33 Times L. R. (Eng.) 119. There the auctioneer in question had been employed to hold a sale of horses in the defendant's yard. The plaintiff, who attended the sale, was kicked by one of the horses, in consequence, as he alleged, of the negligence of the auctioneer in running the horses up and down in too narrow a space. In the summary of the judgment of Atkin, J., he is reported to have said: The position of an auctioneer was that he was a "skilled agent of the person who employed him, and he was given complete control of the operations by the owner of the goods. The owner … retained no control over the action of the auctioneer, who was not his servant. It would be a remarkable position, if, in such circumstances, the owner were responsible for the negligence of the auctioneer. Murray v. Currie (1870) L. R. 6 C. P. (Eng.) 24, 40 L. J. C. P. N. S. 26, 23 L. T. N. S. 557, 19 Week. Rep. 104, laid down the correct principle. … There was a complete delegation in respect of control of the chattels, to the auctioneer, who came within the category of independent contractors."

In McDonald v. Dickinson (1897) 24 Ont. App. Rep. 31, where an action against two of the members of a township council, who had been appointed a committee to rebuild a culvert, and against a man whom they had employed as overseer, was held not to be maintainable for the reason that they were servants, one of the points unsuccessfully submitted was that the defendants were independent contractors. The overseer

was doubtless a servant, but it is difficult to see upon what principle the members of a committee of this sort can be regarded as occupying any other position than that of agents. The circumstances involved were essentially different from those presented in the cases cited in § 16, note 3, infra.

1 In United States v. Driscoll (1877) 96 U.S. 421, 24 L. ed. 847, it was declared that a stipulation in the contract under review, subjecting the person employed to a penalty for every day that he was in default as regards the performance of his contract, was "incongruous with the idea of the person employed being an agent, and not a contractor."

In Arthur v. Texas & P. R. Co. (1905) 71 C. C. A. 391, 139 Fed. 127, where a cotton compress company was held to be an independent contractor, it was remarked that "the doctrine of respondeat superior rests upon the right and duty of the principal to direct and control the conduct and action of the imputed agent." But it is obvious, from the following passage of the opinion, that the distinction which the court really had in mind was that which exists between servants and independent contractors: "Where the party sought to be held responsible as master for the negligence of the servant is without the authority to direct the time and manner of doing the work, or to select or direct the employees engaged therein, the doctrine of respondeat superior has no application. In short, to fix this obligation of accountability upon the party as master, he must have the right to direct the manner in which the business shall be done; 'not only shall be done, but how it shall be done.'"

In Fiske v. Framingham Mfg. Co. (1833) 14 Pick. (Mass.) 493, the expressions "agent" and "servant" are used interchangeably in the opinion.

In Delmonico v. New York (1848) 1 Sandf. (N.Y.) 222, the term "agent" is applied to a person engaged under a contract which subjected him completely to the control of his employer.

In Arnold v. State (1914) 163 App. Div. 253, 148 N.Y. Supp. 479, the fact that the tort-feasor had not "absolute control" of the work was adverted to as one which showed that he was an "agent."

In Barclay v. Puget Sound Lumber Co. (1908) 48 Wash. 241, 16 L.R.A.(N.S.) 140, 93 Pac. 430, where the person employed was denied to be an independent contractor, he was declared to be an "agent," because the employer had "retained control as to the manner and mode of doing the work."

In Solberg v. Schlosser (1910) 20 N.D. 307, 30 L.R.A.(N.S.) 1111, 127 N.W. 91, the court stated its conclusion as follows: "It clearly appears that the relation of principal and agent did not exist between the defendant and the drainage board by virtue of the contract. A reading of that contract shows that the defendant independently contracted to dig the drain in accordance with plans and specifications which were made a part of the contract. The drainage board exercised no control or supervision over the work, or over the defendant while engaged in doing the work."

"If the proprietor retains for himself, or for his agent (e. g., architect and superintendent), a general control over the work, not only with reference to results, but also with reference to methods of procedure, then the contractor is deemed the mere agent or servant of the proprietor." Harmon v. Ferguson Contracting Co. (1912) 159 N.C. 22, 74 S.E. 632.

"If such right [i. e., to control details] remains in the employer, whether exercised or not, the relation will be held, in the absence of other controlling circumstances, to be that of master and servant, or principal and agent, and not of employer and independent contractor." Madix v. Hochgreve Brewing Co. (1913) 154 Wis. 448, 143 N.W. 189.

See also Standard Oil Co. v. Parkinson (1907) 82 C. C. A. 29, 152 Fed. 681 (sales "agent" held to be "servant," not "independent contractor"); Martin v. St. Louis, I. M. & S. R. Co. (1892) 55 Ark. 510, 19 S.W. 314 (laying it down that, where the person employed is an independent contractor, "no relation of principal and agent, or master and servant, arises"); Parrott v. Chicago G. W. R. Co. (1906) 127 Iowa, 419, 103 N.W. 352 (independent contractor differentiated from "servant or agent"); Good v. Johnson (1907) 38

Colo. 440, 8 L.R.A.(N.S.) 896, 88 Pac. 439 (relationship of "agency, or master and servant," constituted by provision giving the employee control of the work); Corbin v. American Mills (1858) 27 Conn. 275, 71 Am. Dec. 63, 13 Am. Neg. Cas. 735 (persons employed not "servant or agent"); Wright v. Goldheim (1918) 184 Iowa, 1041, 169 N.W. 343 (term "agent" used as synonym of "servant"); Lutenbacher v. Mitchell-Borne Constr. Co. (reported herewith) ante, 206 (person employed not an "agent"); Uppington v. New York (1901) 165 N.Y. 222, 53 L.R.A. 550, 59 N.E. 91, 9 Am. Neg. Rep. 115 (persons employed to construct sewer held not to be "servants or agents" of the employer); Omaha Bridge & Terminal R. Co. v. Hargadine (1904) 5 Neb. (Unof.) 418, 98 N.W. 1071 (held error, in view of the terms of the contract, to instruct the jury that it created the relationship "of principal and agent," or "master and servant"); Lewis v. National Cash Register Co. (1913) 84 N.J.L. 598, 86 Atl. 345 (sales "agent" held to be "servant," not "independent contractor"); Kirby v. Lackawanna Steel Co. (1905) 109 App. Div. 334, 95 N.Y. Supp. 833 (engineering company occupied position, not of "agent or servant," but of independent contractor); Gay v. Roanoke R. & Lumber Co. (1908) 148 N.C. 336, 62 S.E. 436 (in the opinion, "independent contractor" is contrasted sometimes with "agent," sometimes with "servant"); Chas. T. Derr Constr. Co. v. Gelruth (1911) 29 Okla. 538, 120 Pac. 253 (person employed described as "agent" of municipal corporation under whose control he was proved to be); Oklahoma City Constr. Co. v. Peppard (1914) 43 Okla. 121, 140 Pac. 1084 (employer reserving "power to direct what shall be done, and how it shall be done, is principal or master"); Giaconi v. Astoria (1911) 60 Or. 12, 37 L.R.A.(N.S.) 1150, 113 Pac. 855, 118 Pac. 180 (contractor held not to be "agent" of city, as he alone had charge of the improvement in question); Miller v. Merritt (1905) 211 Pa. 127, 60 Atl. 508 (question for determination was stated to be whether the person employed was an "agent," while the conclusion finally reached was that he was not a "servant"); Louisville & N. R. Co. v. Cheatham (1907) 118 Tenn. 160, 100 S.W. 902 (work done by A. and C. "as contractors, and not as agents and servants").

In Ziebell v. Eclipse Lumber Co. (1903) 33 Wash. 591, 74 Pac. 680, 15 Am. Neg. Rep. 457, the fact that no control was exercised over the tort-feasor seems to have been the ground upon which he was held to have been an "independent contractor," and not an "agent." But the opinion is not clear with regard to this point.

In Curry v. Addoms (1915) 166 App. Div. 433, 151 N.Y. Supp. 1017, rehearing denied in (1915) 168 App. Div. 925, 152 N.Y. Supp. 1106, where the complaint was held to have been properly dismissed in an action which a woman, whom the janitress of two of defendant's houses had, without his knowledge, hired as an assistant, had brought to recover damages for an injury caused by a defective flight of steps, one of the grounds of the decision was that the janitress was not the defendant's "authorized agent, or contractor," there being no evidence from which it could be inferred that she had "express or apparent authority to employ the plaintiff, so as to impose upon the defendant a duty concerning her in the matter of the steps. If the plaintiff employed someone to help her, it was her own affair." The use of the term "contractor," in this connection, seems to be somewhat inapposite, to say the least—especially in view of the fact that another contention, rejected by the court, was that the janitress was not an "independent contractor" within the meaning of § 200 of the Labor Law, but merely a "servant."

In Horan v. Strachan (1890) 86 Ga. 408, 22 Am. St. Rep. 471, 12 S.E. 678, it was contended that Strachan & Company, who had entered into a contract with the captain of a vessel to extinguish a fire which had broken out upon it, and to do anything else that might be required for its protection, were simply agents of the owner of the vessel, and consequently might be discharged at any time, at his option. But the court said that "they were employed to do a particular thing, and were contractors, instead of agents, in the general understanding of agency." They were also declared to be "contractors, servants, or hirelings of the plaintiff, to do this particular job." The phraseology here used can scarcely be commended either for accuracy or for precision.

1 **Independence of contract denied.**

Connecticut

Nichols v. Harvey Hubbell (reported herewith) ante, 221

Illinois

American Steel Foundries v. Industrial Bd. (1918) 284 Ill. 99, 119 N.E. 92

Iowa

Hughbanks v. Boston Invest. Co. (1894) 92 Iowa, 267, 60 N.W. 640

Wright v. Goldheim (1918) 184 Iowa, 1041, 169 N.W. 343

Massachusetts

Trepannier v. Cote (1911) 207 Mass. 484, 93 N.E. 796

Michigan

Opitz v. Hoertz (1917) 194 Mich. 626, 161 N.W. 866

Minnesota

Carlton County Farmers Mut. F. Ins. Co. v. Foley Bros. (1912) 117 Minn. 59, 38 L.R.A.(N.S.) 175, 134 N.W. 311

Nebraska

Bodwell v. Webster (1915) 98 Neb. 664, 154 N.W. 229, Ann. Cas. 1918C, 624

Oregon

Harvey v. Corbett (1915) 77 Or. 51, 150 Pac. 263

Independence of contract affirmed.

Rosenbaum Bros. v. Devine (1916) 271 Ill. 354, 111 N.E. 97, reversing 192 Ill. App. 30; Wolf v. American Tract Soc. (1898) 25 App. Div. 98, 49 N.Y. Supp. 236, modified in (1900) 164 N.Y. 30, 51 L.R.A. 241, 58 N.E. 31, 8 Am. Neg. Rep. 296, on another ground.

2

Independence of contract affirmed.

Latorre v. Central Stamping Co. (1896) 9 App. Div. 145, 41 N.Y. Supp. 99; Kirby v. Lackawanna Steel Co. (1905) 109 App. Div. 334, 95 N.Y. Supp. 833; Ziebell v. Eclipse Lumber Co. (1903) 33 Wash. 591, 74 Pac. 680, 15 Am. Neg. Rep. 457.

Independence of contract negatived.

Fehrenbacher v. Oakesdale Copper Min. Co. (1911) 65 Wash. 134, 117 Pac. 870; Indiana Iron Co. v. Gray (1897) 19 Ind. App. 565, 48 N.E. 803; Swain v. Kirkpatrick Lumber Co. (1918) 143 La. 30, 78 So. 140; Barg v. Bousfield (1896) 65 Minn. 355, 68 N.W. 45, 16 Am. Neg. Cas. 188; Andrews Bros. Co. v. Burns (1901) 22 Ohio C. C. 437, 12 Ohio C. D. 305; Southern Cotton Oil Co. v. Wallace (1899) 23 Tex. Civ. App. 12, 54 S.W. 638; Barclay v. Puget Sound Lumber Co. (1908) 48 Wash. 241, 16 L.R.A.(N.S.) 140, 93 Pac. 430.

3

Construction work.

Solberk v. Schlosser (1910) 20 N.D. 307, 30 L.R.A.(N.S.) 1111, 127 N.W. 91; Giaconi v. Astoria (1911) 60 Or. 12, 37 L.R.A.(N.S.) 1150, 113 Pac. 855, 118 Pac. 180; Eastern Townships Bank v. De Kérengat (1907) Rap Jud. Quebec 17 B. R. 232.

Work in quarries.

Stricker v. Industrial Commission (1920) 55 Utah, 603, — A.L.R. —, 188 Pac. 849.

For a case in which a person who had employed the plaintiff in getting out stone for a bridge to be built by a town was held on evidence not stated to have been a principal in the transaction, and not an agent, and consequently to be liable for negligence by reason of which the plaintiff was injured, see Bulduzzi v. James Ramage Paper Co. (1905) 140 Fed. 95, affirmed in (1906) 77 C. C. A. 393, 147 Fed. 151.

Logging.

In Scales v. First State Bank (1918) 88 Or. 490, 172 Pac. 499, a man who undertook to drive logs by river to a certain place was held to be an independent contractor. An examination of the evidence in this case indicates that the theory of an agency was relied upon solely for the reason that the alleged cause of action sounded in contract, and not in tort.

Transportation work.

In Bleecker v. Satsop R. Co. (1891) 3 Wash. 77, 27 Pac. 1073, where one Pritchard, the manager of a tug, being unable to comply with the request of the defendant railway company to send it with a scow to transport certain hay, engaged the proprietor of another tug to perform the work of transportation, the ground upon which the defendant was held not to be liable for damage sustained by the scow on which the hay was transported by the person so engaged was that Pritchard had exceeded his authority in hiring a subagent. The actual decision in this case was undoubtedly correct, but it is plain that, if ordinary usage is to be taken as

the test, Pritchard and the person engaged by him were independent contractors, and not agent and subagent respectively.

Work with respect to vehicles.
In Brown v. Freeman (1913, Err. & App.) 84 N.J.L. 360, 86 Atl. 384, a man employed to remove an automobile from a ditch, and to care for it until called for, was held to be the agent of the employer, and not an independent contractor.

Loading and unloading ships.
Charles v. Taylor (1878) L. R. 3 C. P. Div. (Eng.) 492, 38 L. T. N. S. 773, 27 Week. Rep. 32 (person employed was held to be a foreman); Maryland use of Goralski v. General Stevedoring Co. (1914) 213 Fed. 51, affirmed in 135 C. C. A. 497, 219 Fed. 827 (person employed held to be an independent contractor).

In Quinan v. Standard Fuel Supply Co. (1920) 25 Ga. App. 47, 102 S.E. 543, the action was brought to recover for an injury received by the plaintiff, while he was checking certain piles which his employers had agreed to unload from a lighter, then being used for the work of constructing a wharf. There was evidence to the effect that the immediate employer of the persons whose negligence occasioned the injury was one Powers, and that the defendant company, which had undertaken to build the wharf, had employed him to perform the work, on the terms that it was to furnish him with a lighter, and that he was to furnish everything else required, and receive half the profits, and bear half the losses ("fifty-fifty basis"). Some witnesses testified that they understood that Powers was in charge of the work as foreman. … Held that, on this conflicting evidence, it was for the jury to say whether Powers was such a foreman, or an independent contractor.

In Hass v. Philadelphia & S. Mail S. S. Co. (1879) 88 Pa. 269, 32 Am. Rep. 462, the question whether a stevedore was an agent of the employing shipowner, or an independent contractor, was held to be for the jury.

4 **Real property.**
Brown v. Industrial Acci. Commission (1917) 174 Cal. 457, 163 Pac. 664.

Personal property.
United States
Singer Mfg. Co. v. Rahn (1899) 132 U.S. 518, 33 L. ed. 440, 10 Sup. Ct. Rep. 175
Standard Oil Co. v. Parkinson (1907) 82 C. C. A. 29, 152 Fed. 681
Arkansas
Terry Dairy Co. v. Parker (1920) 144 Ark. 401, 223 S.W. 6
California
Barton v. Studebaker Corp. (1920) — Cal. App. —, 189 Pac. 1025
Indiana
Premier Motor Mfg. Co. v. Tilford (1916) 61 Ind. App. 164, 111 N.E. 645
Iowa
Goodrich v. Musgrave Fence & Auto Co. (1912) 154 Iowa, 637, 135 N.W. 58
Kentucky
Williams v. National Cash Register Co. (1914) 157 Ky. 836, 164 S.W. 112
Minnesota
Gahagan v. Aermotor Co. (1897) 67 Minn. 252, 69 N.W. 914, 1 Am. Neg. Rep. 92
New Jersey
Lewis v. National Cash Register Co. (1913) 84 N.J.L. 598, 87 Atl. 345
Ohio
Pickens v. Diecker (1871) 21 Ohio St. 212, 8 Am. Rep. 55
Oregon
Houston v. Keats Auto Co. (1919) 85 Or. 125, 166 Pac. 531

5 As to this indicium of agency, see § 19, infra.

6 Atchison, T. & S. F. R. Co. v. Davis (1885) 34 Kan. 209, 8 Pac. 530.

7 In Floody v. Chicago, St. P. M. & O. R. Co. (1909) 109 Minn. 228, 134 Am. St. Rep. 771, 123 N.W. 815, 18 Ann. Cas. 274, where a passenger on a train controlled by one of several railroad companies which had organized a union depot company was injured through the negligence of a switchman in the employ of that company, the liability of the company in control of the train was, in the opinion, predicated on the ground that the depot company was its servant. In its opinion the court said: "That the depot company was brought into existence by the railroad companies for their convenience, and is under the joint control of the railroads using it, is sufficient to show that it is not, in this case, to be considered an independent contractor, but rather in the common employment of the Omaha and other railway companies." But the preferable view of the juristic situation seems to be rather that which is reflected in the statement in the syllabus of the court that the servants of the depot company were the servants of the railroad company with respect to the operation of the switches in depot yards.

8 In Pittsburgh, C. C. & St. L. R. Co. v. Templeton (1918) 210 Ill. App. 377, it was held that, where the consignee of grain directs it to be consigned to him at the elevator of an elevator company, pursuant to the request of the carrier's agent that he should send there such grain as needed treatment, the elevator company is an independent contractor, and not the agent of the consignee in such a sense that notice given to the company as to the arrival of the grain is imputable to the consignee. (Only an abstract of this case is reported.)

9 State ex rel. Downey-Farrell Co. v. Weigle (1918) 168 Wis. 19, 168 N.W. 385, a company engaged in the trading stamp business was considered to be "more an independent contractor with the plaintiff, than an agent, servant, or employee through whom the plaintiff, as a corporation, must necessarily perform its lawful transactions." The conclusion drawn was that so far as the plaintiff issued coupons redeemable in cash, but only through such a corporation, it was violating chap. 480 of Wisconsin Laws 1917, and was not entitled to any restraining order as against the defendant in that regard.

10 For a case in which a person of this description was held to be an independent contractor, see Lord v. Spielmann (1898) 29 App. Div. 292, 51 N.Y. Supp. 534.

11 In Teeters v. Des Moines (1915) 173 Iowa, 473, 154 N.W. 317, Ann. Cas. 1918C, 659, the plaintiff was injured through the overturning of a wagon which he was emptying on an embankment, in compliance with the orders of the foreman, who, as the representative of a county board of supervisors, was overseeing certain work on one of the defendant's streets, which the board had, by the direction of the city council, undertaken to grade. The right of recovery turned both on the question whether the board of supervisors was the agent of the defendant, and on the effect of § 1530 of the Iowa Code, which provided that the board of supervisors of each county should levy a tax for the county road fund, and that the portions collected within cities or incorporated towns should be expended upon the streets of such cities or towns, or on roads adjacent thereto, "under the directions of the city or town council." It was held that the trial court had properly directed a verdict for defendant, on the ground that the supervisors were performing the work as independent contractors, and not as the agents of the city.

In Gardiner v. Boston & W. R. Corp. (1852) 9 Cush. (Mass.) 1, involving a claim for damages to plaintiff's land, it was held that a railroad corporation, which had proceeded under Rev. Stat. chap. 39, § 67, after notice to the mayor and aldermen of a city, and on terms agreed upon between the corporation and the mayor and aldermen, to raise a street so that its railroad might pass under the same, acted by virtue of its independent corporate powers, and not as the agent or servant of the city. The corporation was, therefore, primarily liable to third parties, for damages thereby caused to their estates.

In Detroit v. Michigan Paving Co. (1878) 38 Mich. 358, where it was held that an action of assumpsit for the value of certain sand left on the street by a paving contractor, after he had forfeited his contract, could not be maintained, the court reasoned thus: "It would have been no tortious act whatever in the city or its contractors to remove this sand from the street, and it was the clear duty of defendants in error to take it out of the way. Nothing but a distinct sale, therefore, by the city, could, under the facts of this case, amount to a conversion by the city. Use by the contractors on any other footing than as grantees of the city would be

an independent act of their own, for which the city could not be responsible. They were not city agents, but independent contractors, receiving pay for both work and materials furnished by themselves. If the city did not sell them the sand, they got no title to it; and if the city did not sell it, there was no municipal act that injured defendants in error at all, or that interfered with their sand. The court erred in not so charging."

In Reed v. Syracuse (1909) 83 Neb. 713, 120 N.W. 180, where an employee hired by the water commissioner of the defendant municipality was injured by an explosion of gasolene in the pumping pit of the waterworks, the contention that the plaintiff was not entitled to recover, because the relation of master and servant did not exist between him and the defendant, was rejected on the ground that the charter act under which the defendant was organized provided for the appointment of a water commissioner, concerning whom it was enacted that he should, under the supervision of the board of trustees, have general management and control of the system of waterworks. Neb. Comp. Stat. 1903, chap. 14, art. 1, § 69, subd. 15. The court said: "That the city paid the water commissioner a gross salary, out of which he paid the plaintiff, does not alter the case. The status of the water commissioner was fixed by law. He cannot, therefore, be an independent contractor."

In 4 Dillon on Mun. Corp. 5th ed. § 1655, we find the following statement: "It may be observed, in the next place, that when it is sought to render a municipal corporation liable for the acts of servants or agents, a cardinal inquiry is whether they are the servants or agents of the corporation. If the corporation appoints or elects them, can control them in the discharge of their duties, can continue or remove them, can hold them responsible for the manner in which they discharge their trust, and if those duties relate to the exercise of corporate powers, and are for the peculiar benefit of the corporation in its local or special interest, they may justly be regarded as its agents or servants, and the maxim of 'respondeat superior' applies. But if, on the other hand, they are elected or appointed by the corporation, in obedience to the statute, to perform a public service, not peculiarly local or corporate, but because this mode of selection has been deemed expedient by the legislature in the distribution of the powers of the government,—if they are independent of the corporation as to the tenure of their office and the manner of discharging their duties,—they are not to be regarded as the servants or agents of the corporation, for whose acts or negligence it is impliedly liable, but as independent public or state officers with such powers and duties as the statute confers upon them, and the doctrine of respondeat superior is not applicable."

1

United States

Bank of Washington v. Triplett (1828) 1 Pet. 25, 7 L. ed. 37

Alabama

Eufaula Grocery Co. v. Missouri Nat. Bank (1897) 118 Ala. 412, 24 So. 389

Colorado

German Nat. Bank v. Burns (1889) 12 Colo. 539, 13 Am. St. Rep. 247, 21 Pac. 714

Connecticut

Lawrence v. Stonington Bank (1827) 6 Conn. 528

East-Haddam Bank v. Scovil (1837) 12 Conn. 303

Illinois

Aetna Ins. Co. v. Alton City Bank (1861) 25 Ill. 243, 79 Am. Dec. 328

Drovers' Nat. Bank v. Anglo-American Packing & Provision Co. (1886) 117 Ill. 100, 57 Am. Rep. 855, 7 N.E. 601 (receiving company here held liable for selection of unsuitable agent)

Waterloo Mill. Co. v. Kuenster (1895) 158 Ill. 259, 29 L.R.A. 794, 49 Am. St. Rep. 156, 41 N.E. 906, affirming (1895) 58 Ill. App. 61

Wilson v. Carlinville Nat. Bank (1900) 187 Ill. 222, 52 L.R.A. 632, 58 N.E. 250

Indiana

Irwin v. Reeves Pulley Co. (1897) 20 Ind. App. 101, 48 N.E. 601, 50 N.E. 317

Downey v. National Exch. Bank (1911) 52 Ind. App. 672, 96 N.E. 403

Iowa

Guelich v. National State Bank (1881) 56 Iowa, 434, 41 Am. Rep. 110, 9 N.W. 328

Kansas

Bank of Lindsborg v. Ober (1884) 31 Kan. 599, 3 Pac. 324

Kentucky

Farmers' Bank & T. Co. v. Newland (1895) 97 Ky. 464, 31 S.W. 38
Commercial Nat. Bank v. First Nat. Bank (1914) 158 Ky. 392, 165 S.W. 398
Maryland
Jackson v. Union Bank (1823) 6 Harr. & J. 146
Massachusetts
Fabens v. Mercantile Bank (1839) 23 Pick. 330, 34 Am. Dec. 59
Dorchester & M. Bank v. New England Bank (1848) 1 Cush. 177
Warren Bank v. Suffolk Bank (1852) 10 Cush. 582
Lord v. Hingham Nat. Bank (1904) 186 Mass. 161, 71 N.E. 312
Mississippi
Planters' Mercantile Co. v. Armour Packing Co. (1915) 109 Miss. 470, 69 So. 293
Missouri
Daly v. Butchers' & D. Bank (1874) 56 Mo. 94, 17 Am. Rep. 663
American Exch. Nat. Bank v. Metropolitan Nat. Bank (1897) 71 Mo. App. 451
Nebraska
First Nat. Bank v. Sprague (1892) 34 Neb. 318, 15 L.R.A. 498, 33 Am. St. Rep. 644, 51 N.W. 846
North Carolina
Bank of Rocky Mount v. Floyd (1906) 142 N.C. 187, 55 S.E. 95
Pennsylvania
Mechanics' Bank v. Earp (1833) 4 Rawle, 384
Merchants' Nat. Bank v. Goodman (1885) 109 Pa. 422, 58 Am. Rep. 728, 2 Atl. 687
South Dakota
Fanset v. Garden City State Bank (1909) 24 S.D. 248, 123 N.W. 686
Tennessee
Bank of Louisville v. First Nat. Bank (1874) 8 Baxt. 101, 33 Am. Rep. 691
Second Nat. Bank v. Cummings (1890) 89 Tenn. 609, 24 Am. St. Rep. 619, 18 S.W. 115
Winchester Mill. Co. v. Bank of Winchester (1907) 120 Tenn. 225, 18 L.R.A.(N.S.) 441, 111 S.W. 248
Wisconsin
Stacy v. Dane County Bank (1860) 12 Wis. 629
In Dorchester & M. Bank v. New England Bank (Mass.) supra, the court thus commented on the reversing judgment in Allen v. Merchants' Bank (1839, Ct. of Err.) 22 Wend. (N.Y.) 215, 34 Am. Dec. 289 (see note 2, infra): "This reversal is opposed to a number of decisions of great authority, and is not, as we think, well founded in principle. If the bank in that case acted in good faith, in selecting a suitable subagent, where the bills were payable, there seems to be no principle of justice or public policy by which the bank should be made liable for the neglect or misfeasance of the subagent. And it is admitted by Mr. Senator Verplanck, who states the grounds of the reversal of the judgment, that the bank would not have been liable if there had been an understanding or agreement, express or implied, that the bills were to be transmitted to another bank for collection. Now, we think, in that case, as in this, there was manifestly such an understanding. There is another view of that case taken by the learned Senator in which we cannot concur. He makes no distinction between the neglect of the officers of the bank where the bills were deposited, and that of the bank to which they were transmitted for collection. We think the distinction is obvious. We agree, however, with the learned Senator, that the decisive question in such cases is, What was the understanding of the parties as to the duties the collecting bank undertook to perform?"

The decision in Farmers State Bank v. Union Terminal Bank (1919) 42 N.D. 449, 173 N.W. 789, was based on an explicit agreement that the receiving bank should not be liable.

In Wingate v. Mechanics' Bank (1848) 10 Pa. 104, where it was held that the receiving bank is not liable if it takes the paper of a customer merely for the purpose of transmission, the court seems to have been of opinion that it could have been subject to a larger responsibility if it had assumed the duties of an agent for collection. But the present position of the court is shown by the later case cited above.

For cases in which a receiving bank or other collecting agency was held not to be liable for the negligence of a notary employed by it, see American Exp. Co. v. Haire (1863) 21 Ind. 5, 83 Am. Dec. 334; Baldwin

v. Bank of Louisiana (1855) 1 La. Ann. 13, 45 Am. Dec. 72; Hyde v. Planters' Bank (1841) 17 La. 560, 36 Am. Dec. 631; Citizens Bank v. Howell (1855) 8 Md. 530, 63 Am. Dec. 714; Tiernan v. Commercial Bank (1843) 7 How. (Miss.) 649, 40 Am. Dec. 83; Agricultural Bank v. Commercial Bank (1846) 7 Smedes & M. (Miss.) 592; Bowling v. Arthur (1851) 34 Miss. 41; First Nat. Bank v. Butler (1885) 41 Ohio St. 519, 52 Am. Rep. 94; Bellemire v. Bank of United States (1839) 4 Whart. (Pa.) 105, 33 Am. Dec. 46.

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United States

Exchange Nat Bank v. Third Nat. Bank (1884) 112 U.S. 276, 28 L. ed. 722, 5 Sup. Ct. Rep. 141

Taber v. Perrot (1815) 2 Gall. 565, Fed. Cas. No. 13,721

Hyde v. First Nat. Bank (1876) 7 Biss. 156, Fed. Cas. No. 6,970

Kent v. Dawson Bank (1876) 13 Blatchf. 237, Fed. Cas. No. 7,714

California Nat. Bank v. Utah Nat. Bank (1911) 111 C. C. A. 218, 190 Fed. 318

Smith v. National Bank (1911) 191 Fed. 226

Arkansas

Second Nat. Bank v. Bank of Alma (1911) 99 Ark. 386, 138 S.W. 472, 2 N.C.C.A. 737

Florida

Brown v. People's Bank (1910) 59 Fla. 163, 52 L.R.A.(N.S.) 608, 52 So. 719

Georgia

Bailie v. Augusta Sav. Bank (1894) 95 Ga. 277, 51 Am. St. Rep. 74, 21 S.E. 717

Louisiana

Martin v. Hibernia Bank & T. Co. (1910) 127 La. 301, 53 So. 572

Michigan

Simpson v. Waldby (1886) 63 Mich. 439, 30 S.W. 199

Minnesota

Streissguth v. National German-American Bank (1870) 43 Minn. 50, 7 L.R.A. 363, 19 Am. St. Rep. 213, 44 N.W. 797

Ft. Dearborn Nat. Bank v. Security Bank (1902) 87 Minn. 81, 91 N.W. 257

Montana

Power v. First Nat. Bank (1887) 6 Mont. 251, 12 Pac. 597

New Jersey

Titus v. Mechanics' Nat. Bank (1871, Err. & App.) 35 N.J.L. 589

New York

Allen v. Merchants Bank (1839, Ct. of Err.) 22 Wend. 215, 34 Am. Dec. 289, reversing (1836) 15 Wend. 482

Bank of Orleans v. Smith (1842) 3 Hill, 560

Montgomery County Bank v. Albany City Bank (1852) 7 N.Y. 459

Commercial Bank v. Union Bank (1854) 11 N.Y. 203, reversing (1850) 8 Barb. 396

Naser v. First Nat. Bank (1889) 116 N.Y. 492, 22 N.E. 1077

St. Nicholas Bank v. State Nat. Bank (1891) 128 N.Y. 26, 13 L.R.A. 241, 27 N.E. 849

National Revere Bank v. National Bank (1902) 172 N.Y. 102, 64 N.E. 799

McBride v. Illinois Nat. Bank (1910) 138 App. Div. 339, 121 N.Y. Supp. 1041

McBride v. Illinois Nat. Bank (1914) 163 App. Div. 417, 148 N.Y. Supp. 654

Ohio

Reeves v. State Bank (1858) 8 Ohio St. 465

South Carolina

City Nat. Bank v. Cooper (1911) 91 S.C. 91, 74 S.E. 366

Harter v. Bank of Brunson (1912) 92 S.C. 440, 75 S.E. 696

Texas

Waggoner Bank & T. Co. v. Gamer Co. (1919) — Tex. —, 6 A.L.R. 613, 213 S.W. 927 modifying judgment in Sagerton Hardware & Furniture Co. v. Gamer Co. (1914) — Tex. Civ. App. —, 166 S.W. 428

State Nat. Bank v. Thomas Mfg. Co. (1897) 17 Tex. Civ. App. 214, 42 S.W. 1016

First Nat. Bank v. Quinby (1910) 62 Tex. Civ. App. 413, 131 S.W. 429

First Nat. Bank v. City Nat. Bank (1914) 106 Tex. 297, L.R.A.1918E, 336, 166 S.W. 689

In Exchange Nat. Bank v. Third Nat. Bank (U.S.) supra, the court argued thus: "Its [the receiving bank's] undertaking is to do the thing, and not merely to procure it to be done. In such case, the bank is held to agree to answer for any default in the performance of its contract; and whether the paper is to be collected in the place where the bank is situated, or at a distance, the contract is to use the proper means to collect the paper, and the bank, by employing subagents to perform a part of what it has contracted to do, becomes responsible to its customer. This general principle applies to all who contract to perform a service. … The distinction between the liability of one who contracts to do a thing, and that of one who merely receives a delegation of authority to act for another, is a fundamental one, applicable to the present case. If the agency is an undertaking to do the business, the original principal may look to the immediate contractor with himself, and is not obliged to look to inferior or distant undercontractors or subagents, when defaults occur injurious to his interest. Whether a draft is payable in the place where the bank receiving it for collection is situated, or in another place, the holder is aware that the collection must be made by a competent agent. In either case, there is an implied contract of the bank that the proper measures shall be used to collect the draft, and a right, on the part of its owner, to presume that proper agents will be employed, he having no knowledge of the agents. There is, therefore, no reason for liability, or exemption from liability, in the one case, which does not apply to the other. And, while the rule of law is thus general, the liability of the bank may be varied by consent, or the bank may refuse to undertake the collection. It may agree to receive the paper only for transmission to its correspondent, and thus make a different contract, and become responsible only for good faith and due discretion in the choice of an agent. If this is not done, or there is no implied understanding to that effect, the same responsibility is assumed in the undertaking to collect foreign paper and in that to collect paper payable at home. On any other rule, no principal contractor would be liable for the default of his own agent, where, from the nature of the business, it was evident he must employ subagents." It would seem that the only ground upon which this decision can be reconciled with that in Bank of Washington v. Triplett (1838) 1 Pet. (U.S.) 25, 7 L. ed. 37, is to regard the earlier one as being founded upon an assumption that, under the circumstances in evidence, the parties must have contracted upon the understanding that the paper in question was received merely for transmission. But it is difficult to escape the conclusion that the two cases reflect essentially different theories as to the character of the receiving bank's obligation.

The reasoning of the United States Supreme Court in the extract quoted is largely based upon the following remarks made by Senator Verplanck in the much-discussed opinion which he delivered in Allen v. Merchants Bank (1839) 22 Wend. (N.Y.) 215, 34 Am. Dec. 289, reversing (1836) 15 Wend. (N.Y.) 482, supra. "The contract itself is to perform certain duties necessary for the collection of the paper and the security of the holder. But neither legal construction nor the common understanding of men of business can regard this contract, unless there be some express understanding to that effect, as an appointment of the bank as an attorney or personal representative of the owner of the paper, authorized to select other agents for the purpose of collecting the note, and nothing more. There is a wide difference made, as well by positive law as by the reason of the thing itself, between a contract or undertaking to do a thing, and the delegation of an agent or attorney to procure the doing of the same thing—between a contract for building a house, for example, and the appointment of an overseer or superintendent, authorized and undertaking to act for the principal in having a house built. The contractor is bound to answer for any negligence or default in the performance of his contract, although such negligence or default be not his own, but that of some subcontractor or underworkmen. Not so the mere representative agent, who discharges his whole duty if he acts with good faith and ordinary diligence in the selection of his materials, the forming his contract, and the choice of his workmen. Now, in the case of the deposit for collection of a domestic note or bill payable in the same town, no one can imagine that this, instead of being a contract with the bank to use the proper means for collecting the paper, is a mere delegation of power to act as an attorney for that purpose. If this were so, and it should happen that, by the fraud, the carelessness, or the ignorance of a clerk or teller, the only responsible parties were discharged, or the note itself lost or destroyed, it would be a sufficient defense for the bank, if it could show that the directors had employed ordinary care and caution in selecting their officers; or any similar defense which would be good in the mouth of an attorney in fact, or a steward acting in good faith for his principal, who had been defrauded in any transaction. If such were the understanding of this business, and the merchant had to look to the responsibility of the teller or clerk through whose hands his paper may pass, and not to that of the bank which employs them, few deposits for collection would be made, and it would

soon be found expedient to deal only with banks or bankers who would guarantee their officers. But the natural and general understanding of men of business is surely not this; it is that of an implied agreement with the bank itself, of whose officers and agents they have no knowledge, and with whom they have no privity of contract."

In Tyson v. State Bank (1842) 6 Blackf. (Ind.) 225, 38 Am. Dec. 139, the liability imputed to the receiving bank was that of one of its own branches to which a check had been sent for collection. The case, therefore, does not show the position of the court with regard to the general question discussed in the above cases. For recent decisions of the court of appeals, denying the liability of the receiving bank, see note, supra.

The subject of negligence on the part of the receiving bank in sending checks directly to the drawee bank is discussed in the notes to Anderson v. Rodgers, 27 L.R.A. 248; Farley Nat. Bank v. Pollak, 2 L.R.A.(N.S.) 194, and Winchester Mill. Co. v. Bank of Winchester, 18 L.R.A.(N.S.) 441.

For cases in which collecting banks were held to be liable for the negligence of notaries, see Davey v. Jones (1880) 42 N.J.L. 28, 36 Am. Rep. 505; Downer v. Madison County Bank (1844) 6 Hill (N.Y.) 648; Ayrault v. Pacific Bank (1872) 47 N.Y. 570, 7 Am. Rep. 489; Hoover v. Wise (1875) 91 U.S. 308, 314, 23 L. ed. 393, 395.

3 A discussion of the respective merits of the antagonistic theories illustrated by the cases collected in notes 1 and 2, supra, would be out of place in the present connection. But it may be permissible for the author to express, in passing, the opinion that the doctrine adopted by the Supreme Court of the United States and the New York court of appeals (which is also that of the English courts— see § 15, note 7, supra), is to be preferred for this reason, if for no other, because it almost certainly represents the views of the great majority of business men who have not had occasion to ascertain the effect of the judicial decisions. If this is actually the situation, it would seem to be warrantable, for juristic purposes, to entertain a prima facie presumption that any particular member of that class of persons, when he deposits commercial paper for collection, does so on the understanding that the bank is to make good any loss resulting from the negligence of its correspondent. The same conclusion is apparently indicated by broad considerations of expediency and justice. It is submitted that the contingency of being compelled to seek a remedy against an unknown party in a distant city, or even in another country, ought not to be treated as an incident of the contract, unless the consent of the depositor to incur such an onerous risk is established by affirmative evidence.

4 Hoover v. Wise (1875) 91 U.S. 308, 23 L. ed. 393.

5 Pollard v. Rowland (1826) 2 Blackf. (Ind.) 22; Bradstreet v. Everson (1872) 72 Pa. 124, 13 Am. Rep. 665.

In Riddle v. Poorman (1831) 3 Penr. & W. (Pa.) 224, an attorney gave the following receipt: "Lodged in my hands a judgment bill granted by M. to H., for the sum of $1,200 due, etc., which is entered up in B. county, which I am to have recovered, if that can be accomplished." Held, that this document imported that he intended to collect in person the amount of the judgment, and that, having intrusted the collection to another attorney resident in B. county, by whose negligence the money was lost, he must indemnify his client.

The point decided in Abbott v. Smith (1853) 4 Ind. 452, was that an attorney receiving a claim for collection is liable for the negligence of another attorney, employed by him without any authority from his client.

6 Hoover v. Wise (U.S.) supra; Morgan v. Tener (1877) 83 Pa. 305; Siner v. Stearne (1893) 155 Pa. 62, 25 Atl. 826. The two cases last cited, as well as the one cited in the preceding note, seem to be essentially inconsistent with the other Pennsylvania cases referred to in note 1, supra.

7 Pearl v. West End Street R. Co. (1900) 176 Mass. 177, 49 L.R.A. 826, 79 Am. St. Rep. 302, 57 N.E. 339; McAvoy v. Wright (1884) 137 Mass. 207; Newberry v. Lee (1842) 3 Hill (N.Y.) 523.

8 Clinchfield Coal Corp. v. Redd (1918) 123 Va. 420, 96 S.E. 836 (agency was assumed, for purposes of case, to be an independent contractor).

1 "One who is employed to do any act for the benefit of another is an agent." Story, Agency, § 1.

"An agent is a person duly authorized to act on behalf of another," Evans, Agency, § 1—quoted in Metzger v. Huntington, 139 Ind. 501, 37 N.E. 1084, 39 N.E. 235; Walton v. Dore (1901) 113 Iowa, 1, 84 N.W. 928.

An agent is "one who acts in the place of another." Rowe v. Rand (1887) 111 Ind. 206, 12 N.E. 377; Wynegar v. State (1901) 157 Ind. 577, 62 N.E. 38; State v. Hubbard (1897) 58 Kan. 797, 39 L.R.A. 860, 51 Pac. 290.

"The relation of agency arises whenever one person, called the 'agent,' has authority, express or implied, to act on behalf of another, called the 'principal,' and consents so to act." Bowditch, Laws of England, sub. voc. "Agency."

For similar definitions, see Anderson, Law Dict., quoted in Crowley, C. & Co. v. Sumner (1901) 97 Ill. App. 304; Katzenstein v. Raleigh & G. R. Co. (1881) 84 N.C. 688; Peters v. St. Louis & S. F. R. Co. (1910) 150 Mo. App. 721, 131 S.W. 922.

In Davids v. Harris (1848) 9 Pa. 501, where Davids was made garnishee in respect of a certain sum of money which she had already paid over to contractors employed to erect a house, for the purposes of which an existing party wall was utilized, the ground upon which it was held that she, and not the contractors, was liable, under the Pennsylvania Act of February 24, 1721, for a moiety of the charge of the well, was that "an agent is a substitute for another," and that the contractors were "the substitutes" of the person who caused the house to be built.

2 Cases relating to agents who belong to this category are reviewed in § 17, supra.

3 In Murray v. Currie (1870) L. R. 6 C. P. (Eng.) 26, 40 L. J. C. P. N. S. 26, 23 L. T. N. S. 557, 19 Week. Rep. 104, Willes, J., remarked that stevedores, "in one sense, may be said to be agents" of their employer.

In Bower v. Peate (1876) L. R. 1 Q. B. Div. (Eng.) 321, 45 L. J. Q. B. N. S. 446, 35 L. T. N. S. 321, a building contractor was spoken of as an "agent" in respect of the act which caused the injury complained of.

Compare also the phraseology used by Atkin, J., in Walker v. Crabb (1916, Q. B. D.) 32 Times L. R. (Eng.) 119, [1916] W. N. 433, reviewed in § 15, note 8, supra.

In Bigelow v. Weston (1825) 3 Pick. (Mass.) 267, a man employed to rebuild a bridge, on terms which seem to have placed him in the position of an independent contractor, was referred to as the "agent" of the defendant town. But the early date at which this case was decided renders this nomenclature less significant than it would have been, if used after the differentiation of independent contractors from agents and servants had been completely effected.

In Nashville v. Brown (1871) 9 Heisk. (Tenn.) 1, 24 Am. Rep. 289, a contractor was designated as a quasi agent in respect of the performance of the non-delegable duty of a municipal corporation, to keep the streets under its control in safe condition.

In Bianki v. Greater American Exposition (1902) 3 Neb. (Unof). 656, 92 N.W. 615, the argument of the court proceeded upon the theory that, under the allegations of the complaint, the tort-feasor was the agent of the defendant corporation, and that it was consequently liable for the injury in question, "unless it was relieved from such liability by the fact that the tort-feasor was an independent contractor." The position thus taken would seem to justify the inference that, in the view of the court, the category of "agents" theoretically includes "independent contractors," as well as "agents" for whose torts their principals are held responsible.

4 This particular indicium of the relation is emphasized in the definitions of "agent" which are given in 2 Kent, Com. p. 784; Whart. Agency, § 1; Mechem, Agency; Huffcut, Agency, 2d ed.

5 See note 1, supra.

1 In Detroit v. Corey (1861) 9 Mich. 165, 80 Am. Dec. 78, where a person was injured by falling into an open sewer left unguarded by contractors, the court said: "In the case before us, both relations exist, and must necessarily exist, from the peculiar character and circumstances of the case. The contractors not only acted for themselves, but at the same time as agent for the city, under the power given it to construct sewers in its streets which are public highways. They had no right to make the excavation they did, except as agents for the city; and, had they been proceeded against by indictment for creating a public nuisance, they could not have justified in their own right, but would have had to justify as agents of the city under their contract."

2 In Knight v. Fox (1850) 5 Exch. 721, 155 Eng. Reprint, 316, a railway company entered into a contract with A. to construct a branch line, who contracted with B. to erect a tubular bridge, a part of the work. B. had a surveyor, C., whom he paid a salary of £250 a year to attend to his general business, and, after obtaining the contract for the bridge, he contracted with C. to provide the necessary scaffolding, for which he was to receive £40 irrespective of his salary, B. to furnish the requisite materials, including lights. One of the poles of the scaffold rested on a highway, and, owing to the want of sufficient light to warn the passer-by, D. stumbled over the pole and was injured; subsequently to which, additional lights were placed on the spot, and B. paid for them. Held, that B. was not liable, and that D's remedy lay against C. During the argument of counsel the following remarks were made: Parke, B.: "But, as to this contract, in the management of the erection and fitting up the scaffolding, he was not their servant. It is like the case of a gentleman who enters into a particular and distinct contract with his servant to supply him with job horses." Alderson, B.: "Suppose this contract had been with a third person, instead of with Cochrane, there would be no doubt, in such case, that the defendants could not be liable for this accident. Then how does the fact of Cochrane being their general servant or surveyor make any difference." The former judge also made the following remarks: "The act complained of was not an act done by Cochrane in the character of a servant of the defendants. It may be too much even to say that he was their servant in any point of view, for he acted as a contractor or surveyor for them, at a yearly salary of £250, which he received in lieu of payment for each separate piece of work. Therefore, the case, which rests upon the negligence arising out of the construction of the scaffold, is precisely the same as it would have been if the defendants had entered into a contract with some third party to perform that work." The significance of the fact that the lights were placed by the defendants after the accident was thus discussed by Pollock, C. B.: "This case is distinguishable from Burgess v. Gray (1845) 1 C. B. 578, 135 Eng. Reprint, 667, 14 L. J. C. P. N. S. 184. There, a single matter—an admission by the defendant, which was unexplained by other testimony—was put to the jury; and possibly, if we knew nothing more of these lights than that the defendants paid for them when they were put up after the accident, it might be some slight evidence for the jury of the liability of the defendants. But, upon the evidence here, that fact is explained by the circumstances that Cochrane was not to find any of the materials for the bridge, and that he had made a contract that the defendants were to find the materials for it, but that he was to furnish the labor, and was to receive a specific sum for that job; and that this particular contract formed no part of, and had nothing to do with, his general employment by the defendants; and that those lights were so paid for, as forming part of the materials supplied."

In Standard Oil Co. v. Parkinson (1907) 82 C. C. A. 29, 152 Fed. 681, where the defendant company was held liable for the death of an engineer, who had been killed by an explosion of oil resulting from the collision of his engine with a wagon used for the purpose of transporting the oil, by a man whom the defendant had employed to sell it within a certain district, one of the aspects of the evidence was thus commented upon: "It is true he [the tort-feasor] might have been the servant of the company in the care, delivery, sale of, and collection for the oil and gasolene, and his own master in the selection of the routes over which, and the times and manner in which, he would drive his team to deliver the goods. But the latter acts are ordinarily within the scope and course of the employment of an agent to sell and deliver goods, and to collect and remit their proceeds, and if, in this case, they were separated from the sales, deliveries, and collection, persuasive evidence is requisite to establish that fact, because it is out of the ordinary course of commercial dealings. The fact that Perry's compensation was agreed to be paid, and was paid, in solido for all that he did, including his hauling of the oil and gasolene, and his sales, deliveries, collections, and remittances, indicates that all these acts were bound together and performed in the same relation, and the evidence that they were, either by agreement or in fact, so separated that he was an independent contractor in the performance of the former, and the agent of the company in his relation to the latter, is not so conclusive or convincing that all reasonable

men in the exercise of an honest and unprejudiced judgment would agree that at the instant, and in the act of driving upon the railroad, Perry was his own master, or without the command and direction of the company, while in the care, sale, delivery, and collection of the price of the oil and gasolene, he was its agent."

In Hedge v. Williams (1901) 131 Cal. 455, 82 Am. St. Rep. 366, 63 Pac. 721, 64 Pac. 106, defendant's farm superintendent, who was also a member of a hardware firm, directed an employee of the firm to go to the farm and repair a leak in a distillate tank, one of the appliances of the farm. By reason of the negligence of such employee in lowering a light into the tank, an explosion occurred, by which plaintiff's decedent, a farm servant of defendant, was killed. Held, that the hardware firm, notwithstanding the connection of defendant's superintendent therewith, was an independent contractor.

In Burke v. Norwich & W. R. Co. (1867) 34 Conn. 474, 13 Am. Neg. Cas. 662, where the weighmaster of a railroad company had undertaken to discharge certain coal from vessels at so much per ton, it was held that he was an independent contractor, in that he was performing this work "under a particular agreement, in a business entirely distinct from his regular employment, and for a separate compensation."

In Kipp v. Oyster (1908) 133 Mo. App. 711, 114 S.W. 538, it was held that "there was no inconsistency that reasonably might be implied between the fact that, as to the carpenter work on a building, one Casey was an independent contractor, and the further fact that he rendered other services to the owners in the preparation of plans and estimates, and the purchase of materials, etc., for which he received no compensation."

In Wolf v. American Tract Soc. (1898) 25 App. Div. 98, 49 N.Y. Supp. 236, it was laid down that, even if it should be regarded as a legitimate inference from the testimony that the principal contractor was acting as the agent of the employer in negotiating certain subcontracts, including that which was made with the person whose negligence was the cause of the injury, the mere fact that the principal contractor undertook such functions would not enlarge the liability of the employer for the negligence of those subcontractors, since it was also shown that, in making the subcontracts, the employer dealt directly with the subcontractors themselves.

In Powley v. Vivian & Co. (1915) 169 App. Div. 170, 154 N.Y. Supp. 426, 10 N.C.C.A. 835, the plaintiff, who had entered into a dredging contract with the Vivian Company, was injured while operating a motor launch, which the company had hired from a third person, with the view of using it for the transportation of supplies, as well as for other purposes connected with the dredging work. The grounds of a decision to the effect that, at the time when the injury was sustained, the claimant was an employee within the intent of the Workmen's Compensation Law, were thus stated by the court: "Vivian Company was obligated by the agreement to furnish these supplies. The launchman was its employee, and it was its duty to furnish a man to run the launch. In performing that duty Vivian Company failed, and, as the claimant says, 'I had to get the supplies myself.'"

In Samyn v. McClosky (1853) 2 Ohio St. 536, it was held that the employee in question was a contractor for the carpentry work, only on a building, and that, as to the residue of the work, he was merely the superintendent or agent of the defendant, the uncontradicted testimony of the employee himself being to the effect that the defendant engaged him to put up the entire building, employ all the men, and indorse all their bills; that he engaged to do the carpentry work at 27 cents on the bill, and employ all the mechanics, etc.; that the defendant employed no one about the building; that he gave the employee possession of the ground, which he was to keep until the contract was executed; that the defendant was at the place of work once or twice a day, and gave him directions to keep everything safe; and that he had nothing to do with the mechanics.

In Stagg v. Taylor (1916) 119 Va. 266, 89 S.E. 237, one of the grounds upon which Stagg, a contractor, was held not to be liable for the death of a workman employed by one Flournoy, whom he alleged to be a subcontractor, was that, even if "there was enough evidence to carry to the jury the question whether Flournoy was the servant of Stagg, and not an independent contractor under him, in the mere supervision of the work, there was clear and uncontradicted proof that Flournoy had the contract for the part of the work

which Taylor was doing, and that Taylor was Flournoy's and not Stagg's employee; and it was competent for Flournoy to be a servant as to the former, and an independent contractor as to the latter, class of work."

Compare also the ruling that the fact that the master of a ship is charterer and owner pro hac vice does not necessarily deprive him of his power to create a lien on the ship in case of necessity. Thomas v. Osborn (1856) 19 How. (U.S.) 22, 15 L. ed. 534.

1 In Barnes v. Evans [1914; C. A.] W. C. & Ins. Rep. (Eng.) 109, 7 B. W. C. C. 24, where the claimant had been engaged by the respondent, a contractor, to do certain slating work on terms which placed the former in the position of a subcontractor, the evidence showed that the respondent's employers had complained of delay in the execution of this work; that the respondent had thereupon sent a slater and two laborers, for the purpose, as he informed the claimant, of "pushing the work on," and that the claimant at first objected to this arrangement, but eventually agreed to work with the men sent, and did so. Held, that these facts did not prove that the claimant had ceased to be an independent contractor when he consented to the new arrangement, and that he was consequently not entitled to compensation under the Workmen's Compensation Act, for an injury received while that arrangement was in force.

In Swart v. Justh (1905) 24 App. D.C. 596, where the injury complained of was caused by certain waste material which a contractor for the construction of a skylight had thrown down after the skylight itself was completed, one of the issues raised was whether he had undertaken the removal of the waste material at the request of the defendant, or in obedience to his directions. Held, that the jury were properly instructed that, if he had done this work in the capacity of a servant or agent, the defendant was liable.

In Washburn-Crosby Co. v. Cook (1918) 70 Ind. App. 463, 120 N.E. 434, it was held that a special finding to the effect that the person employed owned and controlled the teams at the time the plaintiff was kicked by one of the horses did not conclusively prove that he was an independent contractor, where other findings, and the facts provable under the issues, showed that defendant had control or management of the horses in whole or in part, and that the person employed was subject to the orders of defendant in matters pertaining to the details of the stipulated work.

In Charlock v. Freel (1891) 125 N.Y. 357, 26 N.E. 262, affirming (1888) 50 Hun, 395, 3 N.Y. Supp. 226, the evidence showed that, after the completion of the sewer which the defendant had undertaken to construct, but before the repaving of the street was done, he was directed to raise the grade of the street at a certain intersection with another street; that, after raising the curbstones, he left the adjoining portions of the sidewalk flagging disarranged; that a storm occurred, and water collected in the spot left open by the removal of the flagstones, and that the workmen dug away the earth, so as to permit the water to escape through the curb into the sewer basin, the consequence being the formation of the hole into which the plaintiff fell. It was argued that in the performance of the particular work, in the course of which the conditions were created which caused the accident, he was not acting as an independent contractor, but as a mere servant or agent of the city. But this contention did not prevail. The court said: "It is true that the contract primarily or principally related to the building of a sewer in the street, but by one of its provisions the power was reserved 'to vary, extend, or diminish the quantity of work during its progress,' and it was therein provided that 'the engineer shall also fix the price to be paid for all work that may be necessary to be done that is not included in the contract.' This provision may not have been obligatory upon the contractor as to work not related to, or in connection with, the principal plan of his agreement; but when, at the request of the chief engineer of the city, he undertook the work of raising the street grade, the contract was thereby extended so as to include it. Coming between the completion of the sewer and the repaving of the street, and being designed to make the drainage better, it was work which was cognate in its nature to the principal undertaking, and the effect of its assumption was to continue the contract relations between the parties, with all the obligations and responsibilities that contract imposed, expressly or by legal implication. Nor could it, in my opinion, affect the question of the defendant's liability, if the department, or city engineer, had ordered him to do this particular work, and it could not be deemed to be comprehended within any of the provisions of his contract. The contractor assumed its performance, and was doing it with workmen employed by him. The direction of

the city officers had nothing to do with the manner of the performance, and there was no interference with the workmen engaged under the defendant in the detail work."

In Mandatto v. Hudson Shoring Co. (1919) 190 App. Div. 71, 179 N.Y. Supp. 458, the claimant was a man with whom the general contractor for the erection of a building had made a subcontract for the excavation of the cellar. He made a verbal agreement with the Hudson Shoring Company, the subcontractor for the shoring up of an adjacent building, that each would assist the other; that he might use the blocking and timbers of the company and that the company might use his derrick. While his derrick was being used, his foot became caught in the slack end of a rope, and badly crushed. The court said: "The claimant was rendering service to the Hudson Shoring Company at its request. While there was no agreement to pay him in money for the service rendered, yet he was to receive the use of blocking and timbers as the consideration therefor. He was not engaged in the performance of any work for himself, nor upon his contract for excavating; but, while rendering such service, he was an employee of the Hudson Shoring Company, within the meaning of the Workmen's Compensation Law." The decision was reversed in (1920) 229 N. Y. 624, 129 N. E. 933, where the court adopted the views thus stated in the dissenting opinion delivered in the lower court: "In this case the claimant had no general employer, and, having none, his services were not loaned by such an employer. A new relationship of master and servant was not created, for the reason that the claimant was to receive no wages, and in no wise subjected himself to the orders of the Hudson Shoring Company, as a subordinate servant subjects himself to the orders of a superior master."

In Hartell v. T. H. Simonson & Son Co. (1916) 218 N.Y. 345, 113 N.E. 255, reversing (1914) 164 App. Div. 873, 148 N.Y. Supp. 433, where the plaintiff's intestate was killed through the negligence of a man whom his general employer had, upon request, sent with a team to act as driver for a loaded truck, the ratio decidendi, in one point of view, was that the complaint had been wrongly dismissed, because there was evidence from which the temporary transfer of the driver to the service of the defendant might be inferred. The following passage, however, reflects what seems to be a somewhat questionable theory of the situation created by the despatch of the driver: "In the case under consideration, Durr, the truckman, did not stand in the relation of an independent contractor to the defendant. He did not undertake to deliver lumber for the defendant. He simply furnished a team and driver to enable the defendant to do its own work. The case is the same as if the defendant had bought a team and hired a driver to aid in its business." On general principles, there would seem to be no reason why, under the circumstances shown, Durr should not have been regarded as an independent contractor in respect merely of the particular work of hauling the truck.

1 The material facts presented in Marsh v. Hand (1890) 120 N.Y. 315, 24 N.E. 463, 1 Am. Neg. Cas. 390, affirming (1886) 40 Hun, 339, are thus stated in the opinion: "Hand and one Congdon, as executors of the will of Stephen D. Hand, deceased, entered into an agreement in writing with Buell Cumber, by which the latter agreed to occupy for one year, from the 1st day of April then next, a farm of which the testator died seised, and to work and cultivate it in proper manner, to keep the fences in good repair, and to take care of all the stock left on the farm by them, he to furnish a team to do the work. Each party to have one half of the produce and one half of the value of the growth and increase of the stock. The team to be fed from the common product, and each party to furnish one half the seed. The executors having the right to go on the farm, but not to damage the crops or to interfere with the work or interests of Cumber. He to sustain any loss or damage to the stock occasioned by his neglect, and any loss or damage unavoidably occurring to the stock should be equally borne by the parties to the contract. And Cumber should 'leave on the farm as large a quantity of hay and stock, and as good, as he found on taking possession, or pay the' other parties 'the cash value of the same,' and to keep nothing on the farm in which the other parties should have an interest." The decision to the effect that the Hands were not liable for personal injuries resulting from an attack made by a ram, which, with other sheep, had escaped from the farm occupied under the contract, on to the adjoining farm of the plaintiff, was based on two grounds thus stated: Cumber's "service in working the farm was an independent one, and not subject to the control of the other parties. … He was an independent contractor in the sense that he had the right to be controlled solely by his own judgment, without interference by the other parties. … Nor was the work a joint enterprise in the sense sought to be applied to it. The Hands were in no manner engaged with Cumber in carrying forward the work. While they furnished and left the stock on the farm, and were to have a share in the products, he had the entire responsibility of carrying on the business

of working it, and accounting for their share in the results. He was the contractor who undertook to do all this, subject only to the terms of the contract he had made with them to do it." The cases cited in support of the theory of a "joint enterprise" (Champion v. Bostwick (1837) 18 Wend. (N.Y.) 175, 31 Am. Dec. 376, and Stroher v. Elting (1884) 97 N.Y. 102, 49 Am. Rep. 515), were declared not to be precedents in point, because they involved an element not present in the case under review, viz., "participation in the service from which the fund to be divided was derived." The court said: "Cumber, by the contract, undertook to occupy and work the farm and manage the stock left there in his own way, with a view to results and without any contribution of the defendants Hand to the service, with the performance of which they had nothing to do. The practical effect of the contract was that the executors should have a share of the products by way of compensation for the use of the property, and that Cumber was entitled to the other share as compensation for his labor in performing the contract. No negligence of the latter in the performance of the work, to the prejudice of third parties, could charge the Hands with liability."

In Thomas v. Springer (1909) 134 App. Div. 640, 117 N.Y. Supp. 460, 134 App. Div. 982, 119 N.Y. Supp. 463, reversing (1909) 118 N.Y. Supp. 475, it was held that the plaintiff, a spectator at a play performed in the defendant's theater, could not recover for injuries caused by the fall of a spotlight. The contention unsuccessfully advanced was that the Fischer Company, by which the performance was being given, was a copartner of the defendant under its contract, which provided that it was to present the play for a stipulated percentage of the gross receipts. The court said: "It seems to me that the contract is precisely as though the compensation had been fixed at a definite sum. It is unnecessary to cite authority upon the proposition that the essential requisite of a copartnership is an agreement to share profits and losses as such. Here the Fischer Company was to receive a percentage of the gross receipts, not as its share of profits, as such, for its contribution to a joint enterprise, but as compensation for presenting a play in the defendant's theater. It is quite true, as the respondent contends, that the contract did not create the relation of landlord and tenant. The defendant retained possession and control of the theater; but the Fischer Company was an independent contractor, not a copartner, and its servants were not his servants."

In Rice v. Smith (1902) 171 Mo. 331, 71 S.W. 123, where the plaintiff's husband was employed by one Raynes to work for him in the mine in which he was killed by the fall of a rock, Upon the trial the plaintiff's evidence tended to show these facts: Defendants were licensees of the mine in question, and had been operating it before the accident. The contract between them and Raynes was to the effect that Raynes, at his own expense, was to do all that was necessary to be done underground to mine the ore, put it in the tub, and attach the tub to the hoisting apparatus; that the defendants were then to see to the hoisting it, preparing it for sale, and selling it; that Raynes, for his share, was to have half the proceeds; and that he was to have full control of all operations underground. As a witness for plaintiff, he testified that he "rented" the ground from the defendants, that he was to hire his own men and pay them; that he employed Rice for daily wages, and that the defendants had nothing to do with employing him. A judgment based on the theory that Raynes was an independent contractor operating the mine on his own account, and that the deceased was his servant, was reversed. Commenting upon the testimony of Raynes that he had "rented" the ground, the court said: "That is more in the nature of a conclusion drawn by the witness than the statement of a fact. That is his opinion as to the effect of the contract, and, whilst it may be correct in a certain aspect, yet it is not entirely correct as affecting the law of this case. If Raynes was simply a renter, then the defendants had no interest, except their rents—no interest in the operation of the mine. Although Raynes and the defendants are, by the terms of the contract, to share equally the profit of the operation of the mine, yet they are not thereby made partners in the full sense of that word. Raynes is to a certain extent an independent contractor, and has his duties to perform, for neglect of which he alone is responsible, and likewise the defendants are to a certain extent independent contractors, and have their duties to perform, as to which they alone must account. But there are also a community of duty and a community of responsibility arising out of his contract. Raynes was to do the underground work, and as to this he was alone responsible. If one of his employees should be injured through his negligence in reference to that part of the work, he alone would be liable. And, on the other hand, if one of the employees of the defendants, engaged in hoisting the ore or preparing it for market, should suffer by the negligence of the defendants in reference to that part of the work, they only would have to respond. But the complaint here made does not relate to the independent duty that Raynes was to perform, nor to the independent duty that the defendants were to perform, but it relates to the condition of the mine,

which is the subject in which there was a community of interest in both contracting parties. The contract, as stated in detail by Raynes in his testimony, does not mean that the mine is rented to him, although he uses that term; it means that he and the defendants are to work it for their joint account, and share the profits. Raynes, for his share of the burden, undertook all the underground work, leaving to defendants only the lighter and less dangerous part, and, to compensate for the greater burden in the operation that was thrown on Raynes, the defendants contributed to the joint concern the usufruct of the mine, and thus the investments were equalized. So far as the underground operation is concerned, the case may be stated thus: Raynes was to furnish the labor, and defendants were to furnish the mine, and they were to share the profits. In that state of the case the duty devolved on the defendants to see that the mine they so furnished was in a reasonably safe condition for men to work in."

2 American Steel Foundries v. Industrial Bd. (1918) 284 Ill. 99, 119 N.E. 902.

In Wright v. Fissell (1921, Ch. Ct.) 92 N.J. Eq. 508, 113 Atl. 699, the plaintiffs in a suit for an accounting had undertaken to use their "best efforts, influence, and endeavors" to obtain contracts for the defendant from the United States government, and were to receive, in consideration of their services, one half of the profits on any and all contracts which they might procure. "They were not attorneys, agents, or employees, nor were they other than independent contractors, dealing with the defendant for half his profits in consideration of their influence, and the enlisted influence of others with the government's officials." The court was of opinion that they "were not copartners … with the defendant, promoting a common enterprise. They were not to share losses as well as profits, and there was no privity between them and the government." The bill was dismissed on the ground that the agreement was against public policy. Riggs v. Standard Oil Co. (1904) 130 Fed. 199.

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