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Names—Middle Name or Initial Immaterial

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the acts of negligence of his servant committed after the personal business of the servant has been concluded, and while he is returning to the place where he departed from the designated course. *Quinn v. Power*, 87 N. Y. 535, 41 Am. Rep. 392; *Geraty v. Nat. Ice Co.*, 16 App. Div. 174, 44 N. Y. S. 659; *Jones v. Weigand*, *supra*. While other courts have said that there is a permissible zone of departures which the employer who put the vehicle in the employee's hands should probably anticipate. That whether the servant is within the permissible zone depends upon the facts. If the facts are such that reasonable minds could not differ, then the question is one of law for the court; but if reasonable minds might differ then the question should be submitted to the jury. *Healey v. Cockrell*, 133 Ark. 327, 202 S. W. 229; *Edwards v. Earnest*, (206 Ala. 1) 89 So. 729. The last mentioned rule was adopted in the instant case, *Kohlman v. Hyland*, *supra*, and seems to be justified by sound reasoning. It puts an issue of fact involving human behavior in the hands of a jury whenever the question is such that reasonable minds might differ. The Missouri cases seem to be in accord with the doctrine laid down in the instant case. Proof that the servant was operating the master's machine when the injury occurred raises a prima facie presumption that the servant was operating the machine in the master's service, and the burden is on the master to overthrow the presumption. *Long v. Nute*, 123 Mo. App. 204, 100 S. W. 511; *Guthrie v. Holmes*, 272 Mo. 215, 198 S. W. 854; *Fidelity Co. v. K. C. Ry. Co.*, 207 Mo. App. 137, 231 S. W. 277; *Urich v. Heier*, 241 S. W. 439; *Kilroy v. Crane*, 203 Mo. App. 302, 218 S. W. 425. However, the presumption takes flight on the appearance of the facts. *Guthrie v. Holmes*, *supra*; *Urich v. Heier*, *supra*; *Kilroy v. Crane*, *supra*. Slight deviations, or slight things done for the servant's own benefit while in the line of general employment will not exonerate the master from liability. *Guthrie v. Holmes*, *supra*. An unexecuted intention to deviate from the route does not make the act outside the scope of the employment. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. "Whether a servant has departed from the scope of his employment would depend upon the degree of deviation and all attending circumstances." *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Deviation may be so slight as to authorize the court to declare, as a matter of law, that the servant is still executing his master's business. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Where the deviation is marked enough to amount to a frolic of the servant the court may, as a matter of law, declare that the servant has departed from his employment. *Urich v. Heier*, *supra*; *Kilroy v. Crane*, *supra*; *Fidelity Co. v. K. C. Ry. Co.*, *supra*; *Anderson v. Nagel*, 214 Mo. App. 135, 259 S. W. 858; and the cases between the two situations involve a question of fact for submission to the jury. *Fidelity Co. v. K. C. Ry. Co.*, *supra*. Thus, we see that in Missouri, a deviation of 30 miles might not be so marked a deviation as to authorize the court to direct a verdict for the master, and might amount to a question of fact for submission to the jury. See also Vol. XII, St. Louis Law Review p. 148.

M. L. S.

NAMES—MIDDLE NAME OR INITIAL IMMATERIAL.—In a suit to try title the appellant contended that J. K. Freeland and J. R. Freeland were different persons, but introduced no evidence to substantiate his claim. *Held*, in the absence of evidence, the rule of common-law, which recognized but one Christian name, and treats middle name or names, or middle letter or letters as immaterial applied. *Bowlin v. Freeland* (Texas 1926) 289 S. W. 721.

The rule, announced by the Texas court, that the law knows but one Christian name and one surname, and that the omission or mistake in the middle name or initial is immaterial is in accord with the weight of ancient and modern authorities. 29 Cyc. 265, 6; 19 R. C. L. 1328. The rule, though probably cor-

rect in early times when the population was small, is a proper subject for investigation and criticism today. The Missouri courts have uniformly adopted the common-law rule. Omission of or mistake in the middle letter between the Christian name and surname is immaterial. *Arme v. Shephard*, 6 Mo. 606; *King v. Clark*, 7 Mo. 267. Where Mary Ann Byers was described as Mary E. Byers in an order of publication, the court said, "She was properly notified, as the middle name is no part of her name in law." *Beckner v. McLenn*, 107 Mo. 277; also *Keaton v. Jorndt*, 22 Mo. 117. "Its insertion or absence does not affect the question of identity one way or the other." *Phillips v. Evans*, 64 Mo. 17. Writing initials of middle name *Mc* instead of *M* was no variance. *Campbell v. Wolf*, 33 Mo. 459; also 107 Mo. 277. In a criminal cause, it was immaterial that John L. Black, was indicted under the name of John D. Black. *Missouri v. Black*, 12 Mo. A. 531. The United States Supreme Court has adopted a similar view in civil cases. *Keene v. Meade*, 3 Pet. 1, 7 L. Ed. 581; *Games v. Stites*, 14 Pet. 322, 10 L. Ed. 476. For similar cases in other jurisdictions, see 19 R. C. L. 1328, 29 Cyc. 265, 6, 14 Encyc. of Pl. & Pr. 276 n. 1, 21 Am. Rep. 181, 132 A. L. R. 567, 14 L. R. A. 690.

A contrary view seems established in Mass., Minn., and Maine and is to be found in scattered cases in other jurisdictions. In *Com. v. Beechley*, 145 Mass. 181, an indictment for threatening Frank E. White was not sustained by proof that Frank A. White was the one threatened. Justice Holmes saying, "It is settled in this Commonwealth that a middle name or initial is part of the name, and a variance in regard to it is fatal." "It cannot be said as a matter of law, that A, and E are the same." Same rule in Minnesota. *D'Autremont v. Anderson Iron Co.*, 104 Minn. 165, 17 L. R. A. N. S. 216. *Dutton v. Simmons*, 65 Mo. 538. The Massachusetts doctrine seems more in accordance with the exigencies of modern society. No department store or post-office would consider two names with different initials as identifying the same person. Total omission of a middle name or initial is no variance. *State v. Ross*, 7 Mo. 464. Since the use of middle names and initials is common, and in view of the size of our population, a factor making numerous duplications in names, it would seem that the better rule would be that in the absence of evidence to the contrary the court cannot presume as a matter of law that two names with different middle initials identify one and the same individual. M. L. S. '27.

STATUTE OF FRAUDS—WHEN A VERBAL SALE IS NOT WITHIN THE STATUTE.—Defendant who is sued in trespass, purchased property by verbal contract, entered into possession, and made improvements using the premises as his home. Held, verbal sale of realty, taken possession of by vendee, improving same, and paying purchase price, is not with Statute of Frauds. *Hofheinz v. Wilson et al.*, (Texas) 286 S. W. 958.

The doctrine of part performance is purely equitable. *Aylor v. McTurf*, 184 Mo. App. 691, 171 S. W. 606. At law no amount of part performance except complete and full performance by at least one party thereto will take the case out of the Statute. *Sursa v. Cash*, 171 Mo. App. 396, 156 S. W. 779; *Shaklett v. Cummins*, 178 Mo. App. 309, 165 S. W. 1145. A law court may, however, give remedy on an implied promise as in *Hubbard v. Glass Works*, 188 Mo. 18, 86 S. W. 82, where the plaintiff upon entering possession made improvements. Improvements, however, as grounds for specific performance must have been made with the expectation that the contract would be fulfilled, and not after it was known that it would be. *Parke & Barron v. Lecwright*, 20 Mo. 85. In *Carney v. Carney*, 95 Mo. 353, 8 S. W. 729, two sons by oral agreement took care of their parents in contemplation of receiving the property. They, having performed their part, the court carried out the contract on implied