

to draw the said quantity of water; and it is therefore unnecessary to determine the extent of the plaintiff's rights as a riparian owner on Mascoma river.

In accordance with the provisions of the printed case, the report of the referee is recommitted for the assessment of damages.

Recommitted accordingly.

STANLEY, J., did not sit: the others concurred.

ANDREWS v. GREEN.

An employer is not liable for an act of his servant done in violation of orders, beyond the scope of his employment, and without fault on the part of the employer.

CASE. Facts found by a referee. The defendant had a number of men employed with an overseer in clearing a piece of ground adjoining the plaintiff's field, under orders to set no fire unless the plaintiff was present. In the defendant's absence, and without his or the overseer's knowledge, one of the men intentionally started a fire which spread to the plaintiff's field. Setting the fire under the circumstances was a negligent act.

A. S. Twitchell, for the plaintiff, cited *Cleghorn v. N. Y. &c. R. Co.*, 56 N. Y. 44; *Robinson v. Webb*, 11 Bush 464; *Johnson v. Bruner*, 61 Pa. St. 58; *Pickens v. Diecker*, 21 Ohio St. 212; *Smith v. Webster*, 23 Mich. 298; *Hays v. Millar*, 77 Pa. St. 238; *Southwick v. Estes*, 7 Cush. 385; *Levi v. Brooks*, 121 Mass. 501; *P. &c. R. Co. v. Derby*, 14 How. 468; *Snyder v. H. &c. R. Co.*, 60 Mo. 413; *McGlothlin v. Madden*, 16 Kan. 466; *Cosgrove v. Ogden*, 49 N. Y. 255; *Peck v. N. Y. &c. R. Co.*, 8 Hun 286; *Garretzen v. Duenckel*, 50 Mo. 104; *Ewbank v. Nutting*, 7 C. B. 797; *Althorff v. Wolfe*, 22 N. Y. 355; *Randleson v. Murray*, 8 A. & E. 109; *Rapson v. Cubitt*, 9 M. & W. 710; *Booth v. Mister*, 7 C. & P. 66.

Bingham & Aldrich, for the plaintiff, cited *Redding v. S. C. R. Co.*, 3 S. C. 1; *Higgins v. T. Co.*, 46 N. Y. 23, 27; *Duggins v. Watson*, 15 Ark. 118; *Armstrong v. Cooley*, 10 Ill. 509; *Simons v. Monier*, 29 Barb. 419; *Sleath v. Wilson*, 9 C. & P. 607; *M'Kenzie v. M'Leod*, 10 Bing. 385; *Whatman v. Pearson*, L. R. 3 C. P. 422.

Ladd & Fletcher, for the defendant, cited *Wilson v. Peverly*, 2 N. H. 548; *M'Manus v. Crickett*, 1 East 106; *Lamb v. Palk*, 9 C. & P. 629; *Mitchell v. Crassweller*, 13 C. B. 237; *Shearm. & Red.*

62	436
68	312
68	359

62	436
70	129
70	349

62	436
72	414

Neg., ss. 63-65; *Whatman v. Pearson*, L. R. 3 C. P. 422; *Bolingbroke v. Swindon*, L. R. 9 C. P. 575; *Gordon v. Rolt*, 4 Exch. 365; *Church v. Mansfield*, 20 Conn. 284; *M'Kenzie v. M'Leod*, 10 Bing. 385; *Limpus v. Omnibus Co.*, 1 H. & C. 526; Whar. Neg., s. 171.

DOE, C. J. The act of setting the fire was not within the scope of the workman's employment, and was not the defendant's act. *Wilson v. Peverly*, 2 N. H. 548.

Judgment for the defendant.

CLARK, J., did not sit: the others concurred.

STATE v. INGERSON.

62	437
68	540

A witness may be required to give his deposition in this state in pursuance of an order made by a court of another state, if it can be used in that court.

HABEAS CORPUS, on the petition of John Adden, a resident and citizen of New Hampshire. A petition was presented to the court of insolvency in Massachusetts by the assignee of an insolvent, alleging that he suspected Adden had colluded with the insolvent to defraud the creditors of the insolvent and prevent a large part of his assets from coming to the assignee, and praying for a commission to take his deposition in this state. The court ordered that Adden appear before a commissioner of Massachusetts, residing in New Hampshire, submit to examination, and answer such written interrogatories as might be propounded upon the matters set forth in the petition. A commission was issued, addressed to any commissioner of Massachusetts, justice of the peace, or other officer legally empowered to take depositions in New Hampshire, authorizing him to take the deposition of Adden in writing, and to put the interrogatories propounded in behalf of the assignee upon the matters set forth in the petition. The commission was delivered to a justice of the peace, who was not a commissioner of Massachusetts. Adden appeared before the justice, but refused to testify, and the justice committed him to the jail of which the defendant is keeper. No interrogatories accompanied the commission.

Ray, Drew, Jordan & Carpenter, for the petitioner.

W. Heywood, for the defendant.