

the account all items charging or discharging the executor with respect to such assets and their administration.

It seems that the domiciliary executor has the duty of exercising due diligence to hold the ancillary administrator to the performance of his duties in Massachusetts, and it is supposed that there might be cases where the legatees could hold the executor liable on his bond here for failure of that duty. But even if that were not so, it is believed that the Probate Court for Cheshire County, upon proper petition and proof of such failure, has the power to remove the executor and appoint an administrator with will annexed whose duty it may be to take steps in Massachusetts to have any liability of the ancillary administrator determined there and any balance in his hands turned over for administration here.

*Case discharged.*

ALLEN, C. J., did not sit: the others concurred.

Sullivan, }  
Dec. 3, 1940. } No. 3202.

RUTH C. WHITHAM, *Adm'x v.* MORRIS A. GELLIS.

*Norris Cotton and Atlee Zellers*, by brief, for the plaintiff.

*Albert D. Leahy*, for the defendant, filed no brief.

*Per Curiam.* While the decedent's errand was not a part of his work, the finding that it was a natural incident of it is construed to mean that it was not a departure from it. Taking into account the nature of his errand which called for no time or distance amounting to an absence in breach of the terms of his employment, the conclusion is that the accident arose out of as well as in the course of the employment. It was his duty to be on hand, and it was while on duty and in connection with the duty that the accident occurred. While engaged in employment an employee's conduct in matters of a personal nature reasonably to be undertaken and not expressly forbidden is as much in the course of the employment as when he is actually performing the work of the employment, and accidents sustained in such conduct arise as much out of the employment as when he is actually doing the work for which he is hired. The service is not interrupted. One, though not the only, cause of the decedent's accident was his employment within the course of which he was acting at the time. The case of *Gallienne v. Company*, 88 N. H. 375, affirmed in *Snook v. Portsmouth*, 90 N. H. 441, supports this view of the incidents of an employee's service. The case of *Perkins v. Company*, ante 211, is also in accord on this point.

*Case discharged.*