

**Gray Vs. Fiddian**

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**SooperKanoon Citation :** [sooperkanoon.com/784775](http://sooperkanoon.com/784775)

**Court :** Chennai

**Decided On :** Oct-06-1891

**Reported in :** (1892)ILR15Mad73

**Judge :** Muttusami Ayyar and ;Parker, JJ.

**Appellant :** Gray

**Respondent :** Fiddian

**Judgement :**

1. In Civil Revision Petition No. 303 of 1890:-In this case the plaintiff, an hotel proprietor, sued to recover from defendant the value of a filter broken by defendant's servant while defendant was resident in the hotel. The Subordinate Judge found that defendant's servant was not acting under any express or implied authority from his master when he broke the filter, and hence that defendant was not liable for the act of his servant. Inasmuch, however, as defendant had offered Rs. 30 to plaintiff as compensation for the loss of the filter and to avoid litigation, the Subordinate Judge decreed that amount against defendant without costs. Both plaintiff and defendant have applied to the Court to revise this decree.

2. The learned Counsel for the plaintiff has correctly stated the rule of law that a master is liable for the acts of his servant, provided they were within the scope of the employment, and also if they are intentionally done in the interest and for the benefit of the master. In the case before us there is no evidence that the servant,

when he broke the filter, was doing anything for the benefit of his master or upon his master's business, and the question therefore is whether he was acting within the scope of his employment. The Subordinate Judge, after hearing the evidence, has decided that he was not so acting, and the contention before us is that the Judge was in error upon this point. We think that in revision we are bound to accept the finding of the Judge upon this question. The question of scope of authority was a question of fact, as to which the evidence was conflicting. In England such a question would have been left to the Jury, and the Judge would have been bound by the finding, the evidence being conflicting--Stevens v. Woodward 6 Q.B.D. 318 In revision, therefore, we must accept the finding, unless it is open to some legal objection. We cannot hold, as a matter of law, that for any act done by defendant's servant, the master should be held responsible, though the act was wholly outside the scope of the servant's employment, and in no way an incident of it, We must, therefore, dismiss the plaintiff's petition with costs.

3. In Civil Revision Petition No. 408 of 1890:-Upon the question raised by the defendant, we are clearly of opinion that the Subordinate Judge could not decree to plaintiff a sum of money which defendant had merely offered as a matter of grace and without acknowledgment of liability (but merely to avoid litigation) and which offer the plaintiff had refused to accept. We must allow the petition, and reverse the decree of the Subordinate Judge and dismiss the suit with costs throughout.

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