inferior federal court, and that of the few state holdings, only one, *Medical Co. v. Brace*, above, has attempted to set up a test totally different from the one adopted in the principal case. Since the Michigan case was decided sixteen years ago, it is fairly safe to assume, in the light of the Supreme Court decisions, that the holding in the instant case represents the settled law today, founded as it is on a long line of cases, beginning with *Gibbons v. Ogden*, above, in 1824. D. Y. C., '32.

JURY TRIAL—RIGHT TO WAIVE IN CRIMINAL PROCEEDING OVER OBJECTION OF THE STATE.—On an indictment for murder the accused waived a jury and moved that the cause be submitted and heard without one. The state's attorney objected and moved that the cause be tried by a jury. *Held*, that the accused may waive his constitutional right to a jury trial but it is not absolute, and the right to require a jury trial is available to the prosecution as well as to the accused although it is not expressly conferred upon the state by the constitution. *People v. Scornavache* (Ill. 1932) 179 N. E. 909.

In the absence of specific statute one charged with the commission of a felony cannot waive the right to trial by jury. *Jackson v. Commonwealth* (1927) 221 Ky. 823, 299 S. W. 983; *Michaelson v. Beemer* (1904) 72 Neb. 761, 101 N. W. 1007. Among the reasons given by the courts denying the opportunity of waiver are, public policy, *State v. Smith* (1924) 184 Wis. 664, 200 N. W. 638; *State v. Thompson* (1900) 104 La. 167, 28 So. 882; statutory prohibition, *State v. Carman* (1884) 63 Iowa 130, 18 N. W. 691; *State v. Talken* (1927) 316 Mo. 596, 292 S. W. 32; imperative constitutional provision, *Coates v. United States* (C. C. A. 4, 1923) 290 F. 134; *McPerkin v. Commonwealth* (1930) 236 Ky. 528, 33 S. W. (2d) 622; absence of jurisdiction of court to try without a jury, *Wartner v. State* (1885) 102 Ind. 51, 1 N. E. 65; *Commonwealth v. Rowe* (1926) 257 Mass. 172, 153 N. E. 536. In some instances waiver is allowed in all criminal trials even in the absence of specific statute when the consent of the court and the prosecution is obtained. *People v. Fisher* (1930) 340 Ill. 250; *Patton v. United States* (1930) 281 U. S. 276. Statutes conferring jurisdiction upon the court to try without a jury have been declared constitutional and proceedings under them held valid. *Belt. v. United States* (1894) 4 App. D. C. 25; *State v. Worden* (1878) 46 Conn. 349; *Hallinger v. United States* (1892) 146 U. S. 314.

During the early centuries of its history the jury was apparently not of great popular favor, 2 Pollock and Maitland, HISTORY OF ENGLISH LAW (2nd ed. 1921) 631, one of the probable reasons being that jurors were not infrequently punished, even as late as the seventeenth century, for returning a verdict of acquittal. *Bushell's Case* (1670) Vaugh. 135, 124 Eng. Repr. 1006. By the time of Blackstone, however, the jury had become the "glory of the English law," 3 BL. COMM. *379, and in America it was a "privilege," a "fundamental right" and an instrument of individual protection against "oppression and tyranny." 2 Story, CONSTITUTION (5th ed. 1891) sec. 1779, 1780. This revolutionary conception has persisted in modern expressions

of the courts. *Patton v. United States, supra; Belt v. United States, supra;* see *Commonwealth v. Rowe, supra.*

The principal case admits that the right of jury trial is not guaranteed to the state. Then, as the dissent points out, how can a waiver deprive the prosecution of that which it has never possessed? Furthermore, in following *People v. Fisher, supra,* the historical conception that the jury is a privilege which can be waived is accepted. These concessions are not logically compatible with the conclusion that the prosecution can prevent waiver. The real basis of the decision seems to be the conviction that it is to the interest of the state to preserve the rights of its individual citizens by not allowing the accused, alone, to entrust his life to the judgment of a single person. N. P., '34.

MASTER AND SERVANT—INJURY OUTSIDE SCOPE OF EMPLOYMENT.—By distinguishing between the capacity of a servant acting in the course of his master's employment and that in which he acts when in the exercise of a public right valuable to himself as a facility for gaining a livelihood, the defendant was held not liable for the act of a messenger boy who, for the purpose of effecting the defendant's business, dashed out of the defendant's establishment and negligently collided with a pedestrian on the sidewalk. *Ritchey v. Western Union Telegraph Co.* (Mo. App. 1931) 31 S. W. (2d) 628. A directed verdict ordered for defendant by the trial court was upheld by the appellate court.

The case is interesting in presenting the view that a master's vicarious liability under the rule of *respondeat superior* will not result from an act performed by the servant in a method or manner incident to his rights as a public citizen. That the injury results from an act done to effectuate the master's purpose becomes only of secondary importance. It is clear that when the employee acts for his own independent purpose, the master will not be liable. *Coates v. Auto Sales Co.* (1928) 106 W. Va. 380, 145 S. E. 644; *Dennes v. Jefferson Meat Market* (1929) 228 Ky. 164, 14 S. W. (2d) 408; *Martin v. Greensboro-Fayetteville Bus Line* (1929) 197 N. C. 720, 150 S. E. 501. But there is a manifest difference between the situation of an employee acting for an entirely independent purpose of his own and that when he acts in reference to the master's purpose. *Guitar v. Wheeler* (Tex. 1931) 36 S. W. (2d) 325; *Lee v. Nathan* (1924) 67 Cal. App. 111, 226 Pac. 970. When the employee used an automobile on the public streets for the furtherance of the employer's business, the fact that the employee used the street under his public right was not considered by the court in the determination of the question of whether the act was performed in the course of the employment. *Edwards v. Earnest* (1922) 208 Ala. 539, 94 So. 593; *Ricketts v. Thos. Tilling, Limited* (1915) 1 K. B. 644; *Riley v. Standard Oil of New York* (1921) 231 N. Y. 301, 132 N. E. 97, 22 A. L. R. 1382.

The decisions rendered under the Workmen's Compensation Acts of the various states dealing with the somewhat analogous problem of accidents arising out of the course of the employment indicate a holding contrary to