horses or harness, occupied the position of a bailor with respect to the driver, and was not liable for his negligence.[11] But by two of the members of the Court of Appeal the distinction thus suggested has been pronounced untenable.[12]

The extent and character of the reciprocal rights and obligations of the owner and the driver of the vehicle is a question which has been left in no little uncertainty by the only case in which the subject has been discussed.[13]

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[11] *King* v. *Spurr* (1881) L.R. 8 Q.B. Div. (C.A.) 104, 51 L.J.Q.B. (N.S.) 105, 45 L.T.N.S. 709, 30 Week. Rep. 152, distinguishing *Powles* v. *Hider* (1856) 6 El. & Bl. 207, and *Venables* v. *Smith* (1877) L.R. 2 Q.B. Div. 279, where the proprietor owned the whole equipment and the horses.

[12] In *Keen* v. *Henry*, (C.A. 1894) (812), 1 Q.B. 202, discussing the contention that *King* v. *London Improved Cab Co.*, note 9, *infra*, was distinguishable from *King* v. *Spurr*, *supra*, and that the latter case had not been overruled, Kay, L.J., remarked: "When I look at the two cases, it seems to me impossible to say that *King* v. *Spurr* has not been overruled. Lindley, L.J., did, indeed, in *King* v. *London Improved Cab Co.*, suggest that *King* v. *Spurr* might be distinguishable, 'though the distinction may not be a very broad one, for there the cab only was hired by the driver, and the horse was his property.' But it is evident that the Lord Justice did not think the distinction a sound one."

[13] In *Fowler* v. *Lock* (1872) 41 L.J.C.P. (N.S.) 99, L.R. 7 C.P. 272, 20 Week. Rep. 672, 26 L.T.N.S. 476, where a driver sued the proprietor of the cab for injuries due to his being furnished with an unfit horse which ran away, it was contended on behalf of the defendant, on the authority of the cases of *Morley* v. *Dunscombe* (1848) 11 L.T. 199, and *Powles* v. *Hider* (1856) 6 El. & Bl. 207, that the plaintiff was the servant of the defendant, and that, within the decisions on the subject, the master was not liable to the servant for injuries sustained in the ordinary course of service. On behalf of the plaintiff it was argued that those were cases where a third party, *viz.*, one of the public, was injured; and that, although the cab owner might, by reason of statutable provisions and responsibilities to the public, be liable to a person injured when riding in the cab, yet that they were not in point as to the relations of cab owner and cab driver; that these parties were to each other as bailor and bailee on a contract of hiring. It was further contended for the defendant that, even if the latter relation was the true one, there was no implied promise by the cab owner that the horse supplied was reasonably fit for the purpose for which it was used, and, if so, the defendant was not liable. On both these reserved questions, the majority of the court were of opinion that the plaintiff was entitled to judgment. Referring to *Powles* v. *Hider* (1856) 6 El. & Bl. 207, Grove, J., said: "I think it sufficiently appears that what the court had under consideration in that case was the relation and responsibility of the cab proprietor to the public; and that it had not in view the nature of the contract between the cab owner and the driver or cabman. Indeed, this seems to be excluded by the part of the judgment last quoted. The court, it is true, considered the payment of a fixed sum as a mode of compensation for the cabman's labour: and no doubt this may be so; but the payment by the person who uses the horse and carriage to the proprietor of it, though