competent to shew that the defendant was the owner

bus." Byles, J. said: "The direction amounts to this, that if a servant acts in the prosecution of his master's business for the benefit of his master, and not for the benefit of himself, the master is liable, although the act may in one sense be wilful on the part of the servant." Blackburn, J., said: "It is admitted that a master is responsible for the illegal act of his servant, even if wilful, provided it was within the scope of the servant's employment, and in the execution of the service for which he was engaged. That the learned judge told the jury, and perfectly accurate, but that alone would not be enough to guide them in coming to a correct conclusion. . . . . No doubt what Mr. Mellish said is correct; it is not universally true that every act done for the interest of the master is done in the course of the employment. A footman might think it for the interest of his master to drive the coach, but no one could say that it was within the scope of the footman's employment, and that the master would be liable for damage resulting from the wilful act of the footman in taking charge of the horses. But, in this case, I think the direction given to the jury was a sufficient guide to enable them to say whether the particular act was done in the course of the employment. The learned judge goes on to say that the instructions given to the defendants' servant were immaterial if he did not pursue them (upon which all are agreed); and at the end of his direction he points out that, if the jury were of opinion 'that the true character of the act of the defendants' servant was that it was an act of his own and in order to effect a purpose of his own, the defendants were not responsible.' That meets the case which I have already alluded to. If the jury should come to the conclusion that he did the act, not to further his master's interest or in the course of his employment, but from private spite, and with the intention of injuring his enemy, the defendants were not responsible. That removes all objections, and meets the suggestion that the jury may have been misled by the previous part of the summing up."

In *Howe* v. *Newmarch* (1866) 12 Allen, 49, the plaintiff's evidence tended to shew that, when he was about twelve feet away from a baker's wagon which was standing on the sidewalk along which he was passing, the driver suddenly ran out of a house, threw his basket upon the wagon, and jumped to get on the seat, and that the horse immediately started and struck the plaintiff as he was trying to escape. It was held that the court had erroneously refused an instruction, that "if at the time of the injury the defendants' servant was engaged in the business of the defendant, and within the scope of his duty, as such servant, and he drove the horse over the plaintiff and did him an injury; the defendant is responsible, whether the act was done wilfully or negligently."

In *Brown* v. *Boston I. Co.* (1901) 178 Mass. 644, 59 N.E. 644, where children who had broken an ice axe belonging to defendant while the driver of defendants' ice-wagon was absent, were injured by the punishment