

driver's compensation is the amount by which his receipts exceed a fixed sum does not make any difference in the character of his

most inconvenient and unjust towards the public if an action such as the present, brought against one who proclaimed himself to be the actual proprietor of the cab when it was engaged by the plaintiff, and actually was so, could be defeated by evidence of a secret agreement between the proprietor and the driver with respect to the remuneration of the driver, and the proportions in which the earnings of the cab are to be divided between them. On such considerations *Morley v. Dunscombe* (1848) 11 L.T. 199 [a *nisi prius* case], appears to have been decided. This decision is expressly in point; and we think that we ought to abide by it."

This decision was followed in *Venables v. Smith* (1877) L.R. 2 Q.B. Div. 279, where the arrangement was similar, and the proprietor was held liable for injuries caused by the negligent manner in which the driver handled the cab.

"In *Playle v. Kew* (1886) 2 Times L.R. 849, a *nisi prius* case, *Venables v. Smith*, was followed.

In *King v. London Improved Cab Co.* (1889) 23 Q.B.D. (C.A.) 281, the effect of the Act was again carefully considered, and the court reached the conclusion that it puts the driver, "so far as regards the public, in the position of servant, and the proprietor in the position of master, with the liabilities that attach to that position." Lopes, L.J., from whose judgment these words are quoted, repeated them in *Keen v. Henry, infra*.

In *Gates v. Bill* (1902) 2 K.B. (C.A.) 38, the liability of the proprietor of the vehicle was again affirmed. Romer, L.J., one of the members of the court, observed: "The law appears to me to have become perfectly well settled to the effect that the proprietor of a London cab, who employs a driver on the terms upon which the driver in this case was employed, is, so far as the general public are concerned, by virtue of the statute in the position of the master of that driver." But Vaughan Williams, L.J., made the following remarks (pp. 41, 43): "I cannot say that I consider the decisions which have been given on this subject altogether satisfactory. . . . It cannot, I think, be said that the grounds of decision in the various cases have been altogether identical; and, as regards the effect of the enactments in relation to hackney carriages, I must confess that had this matter come before me as a new matter with regard to which there had been no previous decisions, I should have hesitated to draw from the provisions of the statute the inference that the Legislature meant to assume the existence of any relation between the cab proprietor and the cab driver, or to impose any liability on the former, otherwise than in respect of the matters expressly dealt with by §§ 28 and 35 (of the Act of 6 & 7 Vict.). But I am not at liberty to deal with this matter as *res integra*."

In *Bombay Tramway Co. v. Khairaj Tejpal* (1883) Indian L.R. 7 Bombay Ser. 119 (buggy and two horses hired for a daily payment), the Bombay Act VI. of 1863 was held to require the same construction as the English one.

A by-law which was held to be within the powers of a city council, under the licensed carriages statute, 1864, of Victoria (Australia), provided that no owner of a licensed carriage should intrust that carriage to another person as driver except as that owner's servant. It has been held that every owner licensed under this by-law, and employing a driver, is to be presumed, until the contrary is proved, to have complied with the by-law. As the existence of such a presumption constituted some evidence, though not conclusive, that the driver was the owner's servant, it was held error to direct a verdict for the owner, in an action brought to recover for injuries caused by the negligence of the driver. *Clutterbuck v. Curry* (1885) 11 Vict. L. Rep. 810.