(*b*) *Vehicle owned by servant or third person.*— If the rest of the evidence is susceptible of the construction that the tortious act complained of was within the scope of the servant's employment, the mere fact that the vehicle or horse which he was managing when the injury was inflicted belonged to himself or a third person will not prevent the aggrieved party from recovering. The action is deemed to be maintainable, according as his use of those instrumentalities was or was not authorized, expressly or impliedly, by the master.[s]

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the control of the defendant, or that the relationship of master and servant existed between the defendant and the driver. The second count, however, although loosely drawn, we think may stand. It alleges that the defendant did negligently direct, consent, and allow the motor vehicle to be operated by a member of his family, and that, while such person was operating the same for the defendant, the accident was caused by the carelessness, negligence and incompetency of the person so operating the same. It in effect avers the relationship of master and servant, and that the accident was caused by the negligence of the servant while operating the motor vehicle for the master."

[s]In *Patten* v. *Rea* (1857) 2 C.B.N.S. 606, 26 L.J.C.P. 235, 3 Jur. N.S. 892, 40 Eng. L. & Eq. 329, where the general manager of a horse-dealer drove his own gig against plaintiff's horse, while he was on his way to collect a debt due to his master and afterwards to consult a doctor, the question whether the defendant was liable was held to have been properly submitted to the jury, although the vehicle belonged to the servant himself and there was no evidence of any express command from the servant himself to use it on the given occasion. Cockburn, C.J., was of opinion that any significance which might otherwise have been attached to these elements was overcome by that part of the evidence which shewed that the vehicle and horse were kept by the defendant free of charge to the servant, and ordinarily used by him in the performance of journeys about his master's business, and that the master was cognizant of the course which his servant was pursuing at the time, and did not dissent. Having regard to these circumstances and the nature of the business, the employé must be assumed to have had authority to exercise his discretion as to the mode of performing his duty to his master. Williams, J., adverting to the exception taken, that the trial judge had misdirected the jury in not leaving to them the question whether the horse and gig driven by the manager were used by him on his master's business, at the instance and express request of the defendant, observed: "It clearly is not necessary in cases of this sort that there should be any express request; the jury may imply a request or assent from the general nature of the ser-