

authorities, to conceive of any possible arrangement which would enable the proprietor to relieve himself from liability to third persons for the tortious acts of the driver. Whether an agreement might not be so drawn as to place the driver in the position of a bailee in respect of their reciprocal rights and obligations is a more doubtful point.⁶

The established doctrine is that, where the essence of the arrangement between the proprietor and the driver of a cab or hackney carriage is that the latter shall pay a certain amount per diem for the use of it, and make what he can by plying for fares, the effect of the statutory clauses mentioned at the beginning of this sub-section is to render him, so far as third persons are concerned, a servant of the proprietor.⁷ The fact that the

⁶ See cases cited in note 13, *infra*.

⁷ In *Powles v. Hider* (1856) 6 El. & Bl. 207 (action for damages incurred by loss of luggage), Lord Campbell, C.J., reasoned thus: "Looking to the position of the proprietor and the driver of a cab under the circumstances proved, and to the acts of Parliament, which regulate their respective duties, we are of opinion that the driver is to be considered the servant or agent of the proprietor, with authority to enter into contracts for the employment of the cab, on which the proprietor is liable. There can be no doubt that this would be so if the driver were engaged at fixed wages, accounting to the proprietor for all the earnings of the cab. But must not the actual arrangement between them be equally considered a mode by which the proprietor receives what may be estimated as the average earnings of the cab, minus a reasonable compensation to the driver for his labour? To stimulate the industry and zeal of the driver, he is allowed to pocket all the earnings of the cab above a given sum: but it is from the earnings of the cab that this sum is paid; and it is evidently calculated on both sides that the earnings of the cab will exceed this sum, which varies according to the season of the year. This is quite different from hiring a job carriage or a carriage and horses to be driven by the hirer or his servant, where the hirer becomes bailee, and can in no sense be considered the servant of the proprietor. . . . The learned judge also observed that the acts of Parliament "always regard the proprietor and driver of the hackney cab as employer and employed, or master and servant, and clearly contemplate that the party who engages the cab under the care of the driver shall have a remedy against the proprietor." After stating the effect of § 20 (see note 5, *ante*), he proceeded thus: "The proprietor who applies for and accepts a license to which such a condition is annexed, and employs his cab under it, must be considered to hold himself out to the world as the proprietor; and he must incur the liabilities of proprietor to all who use the cab with the authority of the driver, in the ordinary course of dealing. If the proprietor does not drive it himself, he declares that the driver is his servant. Again, the sections 23, 24, 27, 28, of Stat. 6 & 7 Vict. chap. 86 (see note 5, *ante*), clearly consider that the driver is a person appointed by the proprietor, for whom, in the exercise of his employment as driver, the proprietor is answerable. It would be