

(2) The other situation occurs where it is shown that the

ordinary way by a person who appears to be a driver, the presumption is that he is authorized by the company. That presumption may be removed. In this case it was rebutted by the plaintiff's evidence, for it proved that the de facto driver was not the person authorized to drive, but a person authorized and employed to act as conductor. In such a case the onus of shewing some special authority given to the conductor to do the act which he did lies upon the plaintiff. No such authority was shewn, and no case of necessity to do the acts which the conductor did was suggested, nor do the facts lead to any presumption that a case of necessity had arisen." Vaughan Williams, L.J., said: "I think this case is somewhat on the border line. I agree, that, if on the plaintiff's evidence it was clear that the conductor was doing something outside his functions, the judgment was rightly entered for the defendants; but I do not think one has any right to assume, without any evidence being given as to what are the functions of a driver and a conductor, that it is necessarily beyond the functions of a conductor, to take charge of an omnibus in the absence of the driver. It seems to me that the company send out their omnibus in charge of a driver and a conductor, and though they have different functions to perform, it is not inconsistent with that fact that it may be within the scope of the authority of one of them temporarily to perform the duties of the other in his absence. If the evidence of the plaintiff had shewn that one journey had come to an end and another commenced, and that between these points of time the conductor had turned the omnibus round, I should have thought that there was a case for the jury, and that it would be for the defendants to shew that the act was outside the scope of the authority of the conductor to take charge during the absence of the driver. I have, however, looked through the evidence, and I find that the omnibus was not merely being turned round, but was in a side street, and was coming downhill at the rate of eight miles an hour; and it does seem on the evidence as if the conductor was not merely performing some temporary duty during the absence of the driver, and that the driver may possibly have done that which he had no right to do—that is, delegate his authority to the conductor. I think very strongly that it would be unfortunate that it should go forth to the public that, whenever a conductor is found exercising some function of the driver, no case can be made against the omnibus proprietor unless the plaintiff is in a position to call evidence to account for the temporary absence of the driver. It seems to me to be a sounder view that, where a driver and a conductor are sent out in charge of an omnibus, and complaint is made of some act done by the conductor, it should be left to the jury to say whether that act so complained of was within the authority given to the conductor. It is all very well to say that one knows that the authority given to a driver is to drive, and that given to the conductor is to conduct, but it is incorrect that one is entitled to deal with the case on that hypothesis. I cannot myself say whether at