

who was being driven in a carriage upon the highway, it was held that the defendant was not liable in respect of such injuries.²

(c) *Relationship between an employer and a person engaged to sell goods.*—In one case it was urged that a person hired to sell goods should be regarded as a bailee for the reason that he was the owner of the horse and wagon used for the purpose of transporting the goods from place to place. This contention was rejected on the ground that, as the given contract provided for the payment of wages, its effect to place the time and labour of the employé under the exclusive control of the hirer.³

(d) *Relationship between a merchant and a master porter.*—In one case it was held that a master porter, employed by a merchant at Liverpool to hoist or lower goods, was not a bailee, but a servant, and that the party employing him was liable for any injury caused through his negligence or want of skill.⁴

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² *Smith v. Bailey* [1891] 2 Q.B. 403. The court declined to accept the contention of counsel that, because it has been held, on the construction of the acts relating to hackney carriages (see above), that a cab owner must be treated, so far as the public are concerned, as the master of the cab driver, and as such responsible for his negligence, a similar construction should be put on the locomotives act.

³ *Shea v. Reems* (1884) 30 La. Ann. 906.

⁴ *Randelson v. Murray* (1838) 3 Nev. & P. 239, 8 Ad. & El. 109, 1 W. W. H. 149, 2 Jur. 324. As regards this decision, it may be observed that, although it was unquestionably correct in so far as the master porter was denied to be a bailee, the conclusion that he was a servant in such a sense that his negligence was imputable to the merchant was, in all probability, erroneous. See the author's article in the *Canada Law Journal*, Vol. XL., p. 541.