

substantially the same as those under which work of a like nature is performed by a servant, would probably be treated as subjecting the bailor, in respect to third persons at all events, to the responsibilities of a master. If this view be sound, the decisions discussed in the following sections, although by some authorities they have been thought to rest upon a questionable construction of the statutes involved, will merit approbation on the broad ground that they have established a rule which tends on the whole to subserve the ends of justice, in a class of cases in which third persons are left virtually remediless, if the enforceability of their claims is determined with reference to the normal incidents of contracts of bailment.

(b) *Under English and Colonial statutes.* The actual decisions in all the English cases have turned upon the effect of the Metropolitan Hackney Act and similar statutes.<sup>3</sup> It has been laid down that the provisions of these acts do not necessarily create in all cases the relation of master and servant between the proprietor and the driver. The terms of the contract must still be looked to for the purposes of determining what the relation between them really is.<sup>4</sup> But the actual decision in the case in which this doctrine was announced has been overruled, as being erroneous with relation to the facts involved;<sup>5</sup> and although this general expression of opinion has never been explicitly condemned, it is not easy, having regard to the general trend of the

<sup>3</sup> 1 & 2 Wm. IV. chap. 22; 6 & 7 Vict. chap. 86. The former of these prohibits any person from keeping, using, or letting to hire any hackney carriage, within the metropolis, without a license. Section 20 requires that on the hackney carriage shall be affixed a plate, on "which there shall be painted, in letters and figures of black upon a white ground, the Christian name and surname of the proprietor or of one of the proprietors of such hackney carriage." In the latter are the following provisions: By section 21 it is enacted that the proprietor of a hackney carriage, before he permits a licensed driver to take it out, "shall require to be delivered to him, and shall retain in his possession, the license of such driver or conductor while such driver or conductor shall remain in his service." By section 28 the proprietor is made liable to a penalty for the misconduct of the driver. By section 35 he is bound, when required, to produce the driver; and on failure is himself to pay.

<sup>4</sup> *King v. Spurr* (1881) L.R. 8 Q.B. Div. 104.

<sup>5</sup> See note 11, *infra*.