This criterion has been applied under the following circumstances:—where the plaintiff's injury was caused by the faulty driving of the defendant's vehicle;[2] where

that decedant was killed by its servants, without giving any evidence to show that, if the killing was done by its servants, it was not done when engaged in its business, and plaintiff proved that defendants' inspector was the person who drove over decedant, and that the vehicle was the vehicle of defendant, and it was shewn that the inspector's vehicle was never used, except in the service of the company. *Held*, that a prima facie case authorizing a recovery was established, and that an instruction that, if decedant was killed by the inspector, who was pursuing his own ends exclusively, defendant was not responsible, was properly refused.

[2]In *Jones* v. *Hart* (1699) 2 Salk, 441 (apparently the same as an anonymous case reported in 1 Ld. Raym. 739), Holt, C.J., thus stated the effect of two earlier decisions which were not cited by name: "The servant of A. with his cart ran against another cart, wherein was a pipe or sack, and overturned the cart, and spoiled the sack. An action lay against A. So, where a carter's servant run his cart over a boy; it was held, the boy should have his action against the master, for the damage he sustained by his negligence."

In *Young* v. *South Boston Ice Co.* (1890) 150 Mass. 527, where the driver of a delivery wagon passed over to the wrong side of the highway for the purpose of passing a stationary vehicle and ran into the plaintiff's carriage, the trial judge refused to instruct the jury, as requested by the defendant, that if there was sufficient space to drive said ice-cart to the right and avoid a collision, and it was not necessary for the defendant's servant to drive said ice-cart across said middle of the travelled part of the highway in order to transact his master's business, such act of the servant, if the injury complained of was thereby inflicted, was not one for which the defendant could be held responsible. *Held*, that the defendant had no ground of exception. The court said: "If all the facts were proved according to the assumption in the defendant's request, we think they were not necessarily inconsistent with the plaintiff's theory. Upon the question raised, the jury might consider all the evidence, and it was competent for them to find that, at the time of the collision, the driver drove against the plaintiff's carriage in trying to do the defendant's business, and that he was acting within the general scope of his employment. The request for instructions was rightly refused."

In *Wolfe* v. *Mersereau* (1855) 4 Duer, 473, the ground upon which a motion for a new trial was made was that the trial judge had given a charge to the effect "that, if there was no negligence on the part of the plaintiff in regard to his wagon being where it was, and, if the defendants' servant ran against that wagon to save himself from greater peril, the defendant was liable, even if the act was a prudent one in order to stop the horses." The court said: "Although the instructive impulse of self-pre-