

inflicted the injury was neither a function with which the servant was entrusted by the terms of the contract of hiring, nor a function which, either on the ground of an emergency or for some other special reason, he was impliedly authorized to assume at the time when the injury was inflicted.¹

¹ In *Beard v. London Gen. Omnibus Co.* (1900) 2 Q.B. (C.A.) 530, 83 L.T.N.S. 362, an omnibus, belonging to the defendant company, was left by its regular driver in charge of the conductor at the end of one of its journeys. The conductor, for the purpose it was alleged of turning the omnibus round, in readiness to start on its return journey, drove it through an adjoining street, and in so doing negligently ran down and injured the plaintiff. The plaintiff brought an action against the proprietors of the omnibus, and at the trial gave no evidence as to the conductor's authority to drive, or as to the existence of an emergency. *Held*, by A. L. Smith and Romer, L.J.J., that the plaintiff had not discharged himself from the burden cast upon him of shewing that the injury was due to the negligence of a servant of the defendants acting within the scope of his employment, and that the defendants were entitled to judgment. *Held*, by Vaughan Williams, L.J., that in general, if, in the absence of the driver of an omnibus, an accident occurs while the conductor is driving, it would be for the proprietor to shew that the act was unauthorized, but that the facts of the particular case negatived the giving of authority, and that the defendants were entitled to retain the judgment. Smith, L.J., said: "I agree that on a plaintiff giving evidence that the driver of an omnibus of the defendants was guilty of negligence, there would be a *prima facie* case that the omnibus was being driven by an authorized servant of the company within the scope of his employment. But that is not this case, for it was expressly opened to the jury as a case in which the omnibus was not being driven by the driver who was employed to drive it, but by the conductor. When a case is so opened that negatived the presumption that the omnibus was being driven by the authorized agent of the company, because *prima facie* it is not the duty of the conductor to drive any more than it is the duty of the driver to take fares. My brother Romer, in the course of the argument, put the illustration of an omnibus being driven by a stranger to the defendants. In such a case it would be impossible to say that the proof that the omnibus was being driven by a stranger would raise any case against the company. The plaintiff must in such a case go on to shew that the stranger was driving with the consent or approval of the company, or on such emergency that their consent must be implied. There was no evidence on either of these points as regards the conductor; and therefore Lawrence, J., came to the conclusion—and, in my opinion, rightly—that the plaintiff had not made out a *prima facie* case." Romer, L.J., said: "I agree that the plaintiff's appeal fails. If one sees in the streets of London an omnibus admittedly belonging to the defendant company driven in the