

3. Other relationships discussed.—(a) *Relationship between the owner of an omnibus and the person driving it.* In one case the relationship of bailor and bailee was held to have been created by an agreement between a hotelkeeper and another person, under which the latter, in consideration of his driving the former's guests free to or from certain railway stations, and paying the defendant so much a day for the board of the horses at the defendant's stables, should be entitled to the use of the omnibus and horses, and to take for his own use all sums which he could earn by conveying passengers other than the defendant's guests, and by carrying luggage.¹

(b) *Relationship between the owner and the hirer of a traction engine.*—Where the defendant, who was the owner of a traction engine, to which his name and address were affixed, as required by the English Locomotives Act, 1865, §7, let it for three months, and, owing to the negligent management of the engine by the hirer, personal injuries were occasioned to the plaintiff,

¹ *Fleuty v. Orr* (1906) 13 Ont. L.R. 59 (hotel-keeper held not to be liable for the negligence of the driver). Anglin, J., said: "Apart from his contractual obligation to meet all trains and to convey Brunswick Hotel passengers to and fro free of charge, Mullen was at liberty to come and go with the bus and horses when and as he pleased; to carry what passengers and baggage he liked; and to use the 'bus and horses as he deemed best in his own interest. The accidental allusions to the receipts of Mullen, made by the defendant and by Mullen himself, as wages, are merely instances of the misuse of words by persons lacking appreciation of precise meaning and effect. Such accidental slips—while strongly indicative of honesty—in my opinion afford little assistance in determining the true legal relationship of these persons one to the other. On the other hand, all idea of improper design on the part of the defendant and Mullen in making the arrangement which they entered into being excluded, the circumstance that Mullen was to pay the defendant 70 cents a day for the board of the horses seems wholly inconsistent with the idea that Mullen was the servant of the latter. If, instead of carrying Brunswick Hotel passengers free, Mullen had agreed to pay a fixed sum approximately equivalent to their 'bus fares to the defendant, it would be scarcely possible to argue that the relationship was other than that of bailor and bailee. I cannot see how the true character of that relationship is altered by the fact that in lieu of paying to the defendant a certain sum in cash for the use of the horses and 'bus, Mullen contracts to carry certain passengers for the defendant free of charge. . . . I think all the evidence tends to prove that as to the manner and method of driving and using the 'bus and horses—subject only to his contractual obligation to carry certain passengers for the defendant) Mullen was as free and unfettered as he would have been if paying a certain sum in money for hire of the horses and the omnibus."