

The conclusion thus arrived at is clearly an inevitable deduction from the notion that a bailee belongs to the category of independent contractors. But the practical consequences to which that notion leads in cases of the type with which we are here concerned and others of a similar description, can scarcely be regarded as satisfactory. There would seem to be sufficient grounds for saying that, under a genuinely scientific system of jurisprudence, which would leave a court at liberty to determine the rights of parties with reference rather to the essential effect and operation than to the actual form of their agreements, a contract of bailment which provides for the regular and continuous performance of work, by means of instrumentalities owned by the bailor, and under conditions

not remain under the absolute direction and control of the company, and thereby cannot be said to be a servant within the meaning of the definition. The right of the master to discharge and remove the servant is incident to the relation, but in this case the abstract right did not exist. It is true the lease could be cancelled for the unexpired term, but only when the conditions thereof, or some of them, had been violated. The cancellation of the lease was a contractual right, and did not arise because of the employment relations of the parties. The driver, under the contract, had legal rights enforceable against the company and only limited by the conditions therein contained. If the company undertook to cancel the lease, or remove the driver, for a reason not set out in the conditions of letting, it would be liable in damages for breach of the contract. Then, again, as has been stated, the driver is entitled to all the proceeds derived from fares received from passengers who hire the cab. The aggregate of these fares may be \$5 or \$25 a day, but the company has no control over, or interest in, the results of the work in this most important respect. All of these things are inconsistent with the relation of master and servant, and indicate that of bailor and bailee. We have, then, under the express terms of the contract, a bailment, and this relation is supported by the inferences and results just stated. As against this admittedly *prima facie* relation of bailor and bailee, we are asked to say that, by reason of the conditions limiting the rates, fixing boundaries, prescribing kinds of uniforms, requiring cleanly and sober habits and other incidental matters, the relation is not what it appears to be on its face, but is something different. The contention is not sound. The conditions and regulations, incidents of the contract of letting, in some instances, it is true, are consistent with the relation of master and servant, but not inconsistent with that of bailor and bailee. If the company, in order to protect its property and give the travelling public modern conveniences and suitable accommodations, has deemed it advisable to embody in the contract of letting certain reasonable regulations, no legal or business reason can be properly assigned why the real relation of the parties should be changed thereby."

² *Fowler v. Lock* (1872) L.R. 7 C.P. 272. The court was divided in opinion as to the other points presented (see note 13, *infra*), but not as to this one.