

with respect to the liability of the proprietor for injuries caused to a third person by the negligence of the driver was followed, on the ground that the municipal ordinances of that city concerning such vehicles are substantially of the same tenor as the statutes which regulate hackney carriages in London.¹⁴

hold that the cab master is not a letter out of the cab, but a principal, and liable for the cab driver as his servant as regards third persons, and yet that he is not an employer, but an independent letter to an independent hirer, as between him and the cabman, so as to be liable to the latter as upon a warranty which is not implied between master and servant or agent, or between coadventurers. The legislation upon the subject of hackney cabs has been relied upon as justifying us in putting this double face upon the transaction; but the effect of that legislation is to recognize and stamp upon the transaction the character of an employment in which the cabman is a servant, and to make the proprietor liable for him as such. The cabman is aware, or ought to be, that he enters into such a bargain as makes him in point of law the driver of the cab master; and in acting upon that employment he acquires no greater right against his employer than if he were the coachman of a private gentleman, whose claim under like circumstances would at once have been rejected. *Priestley v. Fowler* (1837) 3 Mees. & W. 1."

On appeal ([1874] L.R. 9 C.P. 751 note, 30 L.T.N.S. 800) the court of exchequer chamber was divided in opinion as to whether, upon the imperfect statement of facts on the record, the horse and cab were intrusted to the plaintiff as servant or as bailee. Those of the judges who inclined to the opinion that the driver was a bailee were not satisfied that there was necessarily a warranty that the horse was fit for the purpose for which it was bailed; and that it might be that the plaintiff took upon himself the risks of its fitness.

A new trial being had, the jury found, in answer to questions put to them by the judge, that the horse was not reasonably fit to be driven in a cab; that the plaintiff did not take upon himself the risk of its being reasonably fit to be so driven; that the defendant did not take reasonable precautions to supply the plaintiff with a reasonably fit horse; and that the horse and cab were intrusted to the plaintiff as bailee, and not as servant. A verdict having been thereupon entered for the plaintiff, the court refused to disturb it. Lord Coleridge, Ch. J., said: "The answer of the jury to the second question virtually amounts to a finding of personal negligence on the part of the defendant; and, as there was evidence to support that finding, and the learned judge is not dissatisfied with the verdict, there will be no rule." *Fowler v. Lock* (1874) L.R. 10 C.P. 90.

The views of Willes, J., as above stated were disapproved in a recent case by Vaughan Williams, L.J. *Gates v. Bill* (1902) 2 K.B. 38.

¹⁴ *Cargill v. Duffy* (1905) 123 Fed. 721. The ordinances in question require licenses for both cabs and drivers, and provide that the cabs shall be numbered and have the name and place of business of the owner and licensee posted therein, and that every owner or driver of any hackney cab shall wear conspicuously a metal badge upon which is to be engraved the words "Licensed Hack" and the number of such licensed hackney cab, "said badge to be issued to and belong to said owner and to be issued by him to any driver representing him and for whom he shall be responsible."