at the time of the accident in question.[1] If it appears not only that he was such owner, but also, that the tortfeasor was hired to discharge the function of management, a primâ facie presumption arises that he was acting within the scope of his employment when the injury was inflicted.[2] But evidence of the defendant's ownership is not of

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responsible for the performance of such duty by his delegated agency, can no more escape liability for such failure when it occurs through his agent's gross negligence or wilful misconduct, than he can when it is by reason of his agent's want of ordinary care. Such being the law in this state, the refusal to submit or instruct as thus requested was not error, because the jury were expressly charged, in effect, that in no event could they allow Louis any punitory or exemplary damages, nor anything more than compensatory damages. This entirely eliminated from the case the question of wilful misconduct."

In *McKay* v. *Irvine* (1882) 11 Biss. 168, a Nisi Prius case, the jury were instructed that the owner of a race horse is liable for the act of his jockey in intentionally fouling another horse in a race.

In *Hawes* v. *Knowles* (1874) 114 Mass. 518, 19 Am. Rep. 383, it was held that, where the injurious act of a servant who, in the course of his employment, drives against the carriage of another person is wanton as well as heedless, his conduct will enhance the damages against the master.

[1] In *Sibley* v. *Nason* (1907) 196 Mass. 125, 81 N.E. 887 (plaintiff while rightfully on the running board of an electric car was struck by the hub of the wheel of a wagon).

[2] In *Beard* v. *London Gen. Omnibus Co.* (1900) 2 Q.B. (C.A.) 530, 83 L.T.N.S. 362, Romer L.J., remarked: "If an omnibus belonging to the defendant company is being driven along a London street by a driver who appears to be authorized to do so, I think there is a presumption that he was authorized to drive."

In *Rumpf* v. *Fresh Food & Ice Co.* (1907) 7 New So. Wales, St. Rep. 260, 24 W.N. 50, it was proved that a boy by whose negligence in riding a horse the plaintiff was injured, was in the employ of the defendant; that the horse he rode belonged to the defendant; that he was carrying an empty milk-can; and that the defendant was carrying on business as a milkman. *Held*, sufficient evidence to throw on the defendant the onus of proving, if they could, that the boy was not at the time of the accident acting in the course of his employment.

In *Curley* v. *Electric Vehicle Co.* (1902) 68 App. Div. 18, 74 N.Y. Supp. 35, a primâ facie case was held to have been made out, where the testimony shewed that the driver of the electric cab which collided with plaintiff's horse had upon his hat a plate with the words, "Electric Vehicle" and a number; that the same words were upon a plate upon the