The cases thus chosen for discussion are particularly interesting and important, not only because they carry us back to a very early period in the history of the general principle, Respondeat superior, but also because the element of a local deviation which many of them involve has given rise to some extremely perplexing and difficult questions which have produced a notable conflict of judicial opinion.

2. Liability predicated in the ground of the personal fault of the master.—In cases where a vehicle or riding horse used by a servant for the purpose of performing his appointed work inflicts injury upon a third person, it is clear that, irrespective of whether the evidence is or is not such as to shew a right of recovery against the master under the principle, Respondeat superior, liability may be imputed to him, if it appears that he himself was guilty of a breach of duty in respect of the aggrieved party, and that his default was a proximate cause of the injury complained of. The cases which illustrate the situation are divisible into the following classes:

(1) Those in which the injury was caused by an incompetent servant, of whose incompetency the master had notice, either actual or constructive, before the injury was inflicted.[1] In

[1]In *Wanstall* v. *Pooley* (Q.B. 1841) the substance of which is stated in a note to 6 Cl. & Fin. 910, it was held that the employment of a tipsy man by the defendant's agent was an act of negligence, rendering the defendant liable for injuries caused by the man's leaving a truck on the roadway.

In *McGahie* v. *McClennen* (1903) 86 App. Div. 263, N.Y. Supp. 692, where the evidence justified the inferences that the driver of a team of horses negligently lost control of them, or that he was not competent to drive them, and that the owner was aware of that fact, a finding that the owner was negligent was held to be warrantable.

In *D. H. Ewing & Sons* v. *Callahan* (1907: Ky.) 105 S.W. 978, evidence that the servant was about 18 years of age, had been in defendant's employ but a few months, was without previous experience in street driving, and usually drove recklessly, was sufficient to warrant an instruction which predicated liability on the master's part if the servant was incompetent, and known by the master, either actually or constructively, to be so.