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## ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.*

THE BOMBAY TRAMWAY COMPANY, LIMITED, PLAINTIFFS,  
v. KHAIRAJ TEJPALL, DEFENDANT.\*

1883  
January 12.

*Master and servant—Liability of master for negligence of servant—Bailor and bailee—Proprietor and driver of public conveyance—Bombay Act VI of 1863.*

The plaintiffs sued the proprietor of a buggy for damages sustained by them by reason of the negligence of the driver of the buggy. It was proved that the arrangement between the defendant and the driver was that the driver should be entrusted with the buggy and the use of two horses for the day to be used entirely at the driver's discretion for the purpose of plying for hire. The driver was to pay three rupees a day for the use of the buggy and horses. All that he made above that sum was his perquisite for his labour, and any deficiency he had to make good.

*Held* that the relation between the proprietor and driver of the buggy was that of master and servant, and that the proprietor was liable for the driver's negligence.

The relation between the proprietor and driver of a public conveyance established by Bombay Act VI of 1863 is similar to that existing in England under the English Acts.

"CASE stated for the opinion of the High Court of Judicature under section 617 of the Code of Civil Procedure (Act X of 1877).

"This was an action brought by the Tramway Company against the defendant to recover damages according to the following particulars of claim :—

"For that your buggy-driver, Sulleman Hussen, did, on the 16th April, 1882, at about 9-30 P.M., carelessly and negligently drive your buggy along the Parell Road, so that it ran against one of the plaintiffs' horses at that time harnessed to plaintiffs' car No. 77, whereby it sustained injuries terminating in tetanus, which caused its death on the 30th April, 1882, to the damage of the plaintiffs of Rs. 462.

"The defendant holds a license from the Commissioner of Police, under section 2 of Bombay Act VI of 1863, to keep, and let on hire public conveyances, and is the owner of the buggy and horse which caused the accident.

"The driver of the buggy also held a license from the Commissioner of Police under section 3 of the same Act.

\* Suit No. 11739 of 1882.

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"It was proved before me that, when the accident occurred, the driver of the buggy was drunk and driving recklessly between the tramway rails. Although warned he neglected to pull up, and collided against the horse, the car being at the time stationary to pick up a passenger. One of the shafts of the buggy entered the horse's chest, and the horse died some days afterwards from the injuries he then received. The driver, it was stated, has since absconded from Bombay.

"The arrangement between the defendant and the driver was that the driver should be entrusted with the buggy and the use of two horses for the day, to be used entirely at the driver's discretion, for the purpose of plying for hire. The driver was to pay three rupees a day for the use of the buggy and horses; all that he made above that sum was his perquisite for his labour, and any deficiency he had to make good.

"On behalf of the defendant it was contended by Mr. Gilbert that under the above arrangement the relation between the owner of the buggy and the driver was that of bailor and bailee, and not of master and servant, and that, therefore, the defendant was not liable for the negligence of the driver. Mr. Gilbert cited the cases of *Powles v. Hider* (1), *Fowler v. Locke* (2) and *Venables v. Smith* (3); and he argued that in England, where the cab-owner has been held liable for the negligence of the driver, the decisions were based on the English Hackney Carriage Acts, the provisions of which alter what would otherwise be the relation of the proprietor and driver, and for the protection of the public produce the result that, as regards mischief done by the driver, who is selected by the proprietor, the relation of master and servant so far exists as to render the proprietor responsible for the acts of the driver. Mr. Gilbert contended that, independently of the Acts of Parliament, the proprietors would not have been held responsible, and that as there was no similar provision in the Bombay Act (VI of 1863) for the regulation of public conveyances, the defendant in this case was not liable.

"I was of opinion that the judgment of the Court of Queen's Bench in *Powles v. Hider* (4) was based on two grounds: first, on

(1) L. J., 25 Q. B., 331.

(3) L. R., 2 Q. B. Div., 279.

(2) L. R., 7 C. P., 272.

(4) L. J., 25 Q. B., 331.

the ground that the arrangement between the proprietor and driver was merely a mode of remunerating the driver for his services, and did create the relation of master and servant; and, secondly, on the ground that the Acts of Parliament also made the owner liable to the public for the negligence of the driver. The first of these grounds appeared to me to have met with the approval of Willes, J., in *Fowler v. Locke* (1) and of Mellor, J., in *Venables v. Smith* (2). Following the decision in *Powles v. Hider* (3) I gave judgment for the plaintiffs for Rs. 442, the damages proved. On the application of the defendant's advocate that judgment has been given contingent on the opinion of the High Court on the following question:—

“Was the driver of the buggy, under the circumstances above set out, the servant of the defendant, and is the defendant, liable for his negligence?”

*B. Tyabji* for the defendant.—The question is whether the relation between the owner of the buggy and the driver was that of master and servant or that of bailor and bailee, and this point depends on whether there is any distinction between the law in England and in Bombay. The Courts in England have, no doubt, decided that the relation between the proprietor and the driver of a public conveyance is that of master and servant where there is an arrangement between them such as existed here. These cases, however, are decisions upon the effect of the Statutes in force in England. The Act in force in Bombay is Bombay Act VI of 1863, and we submit that the provisions of this Act have not the same effect.

The English Act requires the name of the owner to be painted on the conveyance, and prohibits a driver from allowing another person to drive. There are no such provisions in the Bombay Act. The English Acts make the owner liable to compensate for injuries done by the driver, while section 23 of the Bombay Act provides that the driver may be ordered to pay damages. Counsel commented on the various sections of the Act and on *Powles v. Hider* (4); *Fowler v. Locke* (5); *Venables v. Smith* (6).

(1) L. R., 7 C. P., 272.

(2) L. R., 2 Q. B. Div., 279.

(3) L. J., 252 B., 331.

(4) 25 L. J. Q. B., 331.

(5) L. R., 7 C. P. 272.

(6) 2 Q. B. D. 279; see p. 282.

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*Farran*, for the defendants.—At the time the Bombay Act was passed the proprietor of a cab in England was clearly liable for damage done by the driver, and this Court will not be easily satisfied that the Legislature in framing the Bombay Act intended to make the law here different. The Bombay Act no doubt does not require the name of the owner, but it requires the number to be painted on the conveyance. Counsel specially relied on sections 26 and 27 of the Bombay Act, and cited the English authorities above mentioned.

SARGENT, C. J.—We think the questions put to us by the First Judge of the Small Cause Court must be answered in the affirmative, and that the proprietor of the buggy is liable in this suit.

*Fowler v. Locke* (1) Willes, J., stated that the effect of the corresponding Acts in force in England upon the subject was ‘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 question is whether there is any material difference between the English Acts and the Bombay Act VI of 1863 which would justify us in holding that the relationship established here between the proprietor and the driver of a cab is different from that existing in England.

In *Powles v. Hider* (2) Lord Campbell considered the effect of the English Statutes, and referred particularly to sections 23, 24, 27 and 28 of Stat. 6 and 7 Vic., c. 86, as showing that the driver of a cab was to be considered as the servant or agent of the proprietor for whom, in the exercise of his employment as driver, the proprietor was answerable. Now, although the language of the Bombay Act is not precisely the same as that of the English Act, we are of opinion that sections 26 and 27 of the former indicate the relationship which the Legislature intended to exist between the proprietor and the driver of a public conveyance as decidedly as the sections upon which Lord Campbell relies. Section 26 makes the proprietor as well as the driver liable for any offence committed by the driver in the exercise of his vocation. It requires the proprietor to appear and to produce the driver to answer the complaint; and section 27 provides that if a driver fails to pay

(1) L. R., 7 C. at p. 285.

(2) 25 L. J. Q. B., 331.

any fine imposed upon him, the proprietor may be compelled to pay it. It appears, therefore, that the proprietor is liable for the driver, and existence of that liability is only consistent with the relationship between them being that of master and servant.

We should not consider ourselves justified in departing from the English rulings on this subject, unless we could see that there was a substantial difference in the legislation of the two countries. It appears to us, however, that it is essentially the same, and that the present case is governed by the authority of *Powles v. Hider* (1).

Attorneys for plaintiffs.—Messrs. *Tobin and Roughten*.

Attorneys for defendant.—Messrs. *Payne and Gilbert*.

(1) 25 L. J. Q. B., 331.

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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.*  
RAMAPA (ORIGINAL PLAINTIFF), APPELLANT, v. UMANNA (ORIGINAL  
DEFENDANT), RESPONDENT.\*

1882  
December 11.

*Evidence—Registration—Receipt by mortgagee—Act III of 1877, Sec. 17.*

The defendant tendered in evidence a receipt for Rs. 250, to show that the interest of his co-mortgagee (the plaintiff) in the mortgage had been extinguished. The receipt was objected to on the ground that it had not been registered.

*Held* that the receipt being tendered to show that the interest of the plaintiff in the mortgage had been extinguished, required registration, was inadmissible without registration.

*Shidlingapa v. Chenbasapa* (1) distinguished.

THIS was an appeal from the decision of E. Hosking, Senior Assistant Judge of Belgaum at Kaladgi in Original Suit No. 3 of 1880.

The facts of the case are stated in the judgment of the High Court.

*Manekshah Jehangirshah* for the appellant.—The case is governed by *Mahadaji v. Vyankaji* (2) and *Basawa v. Kalkpa* (3) and not by *Shidlingapa v. Chenbasapa* (4).

\* Second Appeal. No. 81 of 1881.

(1) I. L. R., 4 Bom., 235.

(3) I. L. R., 2 Bom., 489.

(2) I. L. R., 1 Bom., 197.

(4) I. L. R., 4 Bom., 235.

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