

bility as against the owner only where he himself was driving the car or authorising another to do so.

Whether an act done by an employee is done in the employment is a question for the jury: *Beven on Negligence*, 3rd (Canadian) ed., vol. 1, p. 583; and see *Whatman v. Pearson* (1868), L.R. 3 C.P. 422.

Here the chauffeur had undoubtedly taken out the car in the usual course of his employment, and within the hours of the day during which his employment continued. Notwithstanding that the charge of the trial Judge on this point was very favourable to the defendant—and contained the following statement: “It does seem to me that the evidence points strongly to the fact that this man was not acting within the usual scope of his employment at the time”—the jury have found this question of fact in favour of the plaintiff. . . .

[Reference to *Burns v. Paulson*, L.R. 8 C.P. 563.]

I am unable to see how the jury’s finding upon this question can be disturbed. This is, of course, dealing with the matter quite apart from the statute applicable to this case, and only from the point of view of the common law.

The statute in question is 2 Geo. V. ch. 48, and sec. 19 is as follows: “The owner of a motor vehicle shall be responsible for any violation of this Act or of any regulation prescribed by the Lieutenant-Governor in Council.” It is an amendment of, although similar in terms to, 6 Edw. VII. ch. 46, sec. 13. . . .

[Reference to *Mattei v. Gillies*, 16 O.L.R. 558; *Verral v. Dominion Automobile Co.*, 24 O.L.R. 511, 554; *Smith v. Brenner*, 12 O.W.R. 9, 12, 1197.]

In the present case the jury have found that the chauffeur had violated the statutory obligation involved in sec. 6 of the present Act, which requires that “every motor vehicle shall be equipped with an alarm bell, gong or horn, and the same shall be sounded whenever it shall be reasonably necessary to notify pedestrians or others of its approach.”

The owner of a motor vehicle is not obliged to employ a chauffeur; but, if he does so, he is responsible for any violation by him of the Act: sec. 19. . . . When the chauffeur is driving, the owner is constructively doing so, to the extent of being liable for such violation.

The responsibility attaching to the use of automobiles is dealt with in a comprehensive manner in a New Brunswick case, *Campbell v. Pugsley*, 7 D.L.R. 177, 180. . . .

I think the appeal must be dismissed with costs.