GARROW, J.A. (after setting out the facts as above) :—But for the recent legislation . . . I should, upon the evidence, have been inclined to think it very doubtful if the plaintiff had made out a case which should have gone to the jury. . . . The Ontario statute 6 Edw. VII. ch. 46, amended by 8 Edw. VII. ch. 35, by sec. 5(1) requires every motor vehicle to be equipped with a horn, to be sounded whenever it shall be reasonably necessary to notify pedestrians or others of the approach of any such vehicle. Section 10 requires the person in charge of the motor vehicle, approaching any vehicle drawn by a horse or horses, to operate, manage, and control the motor vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse or horses. . . . And sec. 18, as amended, provides that, where any loss or damage is incurred or sustained by reason of a motor vehicle on the highway, the onus of proof that such loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver of such motor vehicle.

The shifting of the onus . . . , although not unknown in criminal and quasi-criminal matters, is, I think, unique in strictly civil procedure. Its effect seems to go far towards withdrawing such cases from the control of the Court as in ordinary jury cases, so far at least as seeing, before the defendant is called on for his defence, that the plaintiff has made out a case.

There is left, of course, the preliminary question, whether the accident, upon the evidence, was really caused by the presence on the highway of the motor—a very serious question in this case. Of this, there must, of course, be reasonable evidence, or the case should not be allowed to proceed. . . .

[The learned Judge then referred to the evidence and the findings of the jury, set out above.]

There seems to be some inconsistency, if not contradiction, between the answers to the first and second questions. . . .

It seems to me, with deference, that too much was made of the circumstance that the horn was not sounded. The fact was not disputed, and it might at least, I think, considering all the circumstances, have very well been left to be dealt with under the 4th question, where the answer would have been a little less obvious. . . .

Then the 5th answer is, I think, open to some remark. A man cannot be allowed to be negligent at another's expense because the first-named person complies with a custom. From the defendant, heavily handicapped, in his effort to defend himself,