Under sec. 23 of the Motor Vehicles Act, the learned Judge said, he had to determine whether or not the defendant had succeeded in proving that the driver of the car was not negligent. Section 23 means that the burden of disproving his negligence now falls as heavily upon the defendant as that of proving negligence would fall upon the plaintiff but for the section. The section is not to be confined to a mere alteration of the method of procedure at the trial; but, so soon as it is proved that the damage was sustained by reason of the motor-vehicle upon the highway, the section renders the owner liable unless he can prove that he was not negligent. In doing so, every defence which he might otherwise raise is still open to him: Bradshaw v. Conlin (1917), 40 O.L.R. 494; but he is, nevertheless, at that stage, prima facie liable.

It was not necessary to determine whether or not Harry Burtwell was complying with all the traffic laws and regulations as to speed, signals, etc. There was ample evidence, though contradicted, that he was going along the street at a high rate of speed. He was approaching a standing vehicle, and, according to his own story, tried to pass another vehicle going in the same direction as he was going. Near the standing vehicle, on both sides of the highway, there were children standing and running about; the day was a school holiday, as Harry Burtwell must have known; and children, in such circumstances and in such a neighbourhood, were likely to cross the street or to play in it. Under such conditions, it was incumbent upon drivers of motor-vehicles to exercise more than ordinary care. Mere compliance with statutory and municipal regulations was not sufficient. The defendant had failed to shew that absence of negligence which he must establish in order to escape the consequences of the accident. To the contrary, there was evidence to shew that Harry Burtwell was driving at a high rate of speed, and from his own admissions it was clear that he did not have his car sufficiently under control to avoid striking the child. He admitted that the car might have been going 10 miles an hour when it struck the child; and it can be inferred from what he said that he might have avoided the child by running into the standing vehicle.

The learned Judge, therefore, found the defendant guilty of negligence and liable in damages to the plaintiffs.

The plaintiff Eliza May Whitten, the mother, should have judgment for the amount expended by her in consequence of the injury to the child, $236.90.

The child was seriously injured for life, and should have judgment for $2,000, although a lower figure was named by the plaintiffs' counsel at the trial. The $2,000 should be paid into Court to the credit of the plaintiff Louise Whitten, to abide further order.

The plaintiffs' costs should be paid by the defendant.