

The evidence supports the findings of the Chief Justice; and it is manifest that no accident would have occurred had the motor been running within the statutory rate of speed. The accident was in the city of Toronto, at the junction of McCaul street with Queen street, and happened at two in the morning, when the demonstrator employed by the defendants was out with a party of friends on pleasure bent.

The provisions of the special legislation indicate pretty plainly that the mind of the Legislature was to abrogate to some extent the common law rule that the master of a vehicle is exempt from responsibility if his servant does an injury with the master's vehicle, when, outside of the duties of his master's employment, he is out at large on an errand or a frolic of his own. The Legislature has intended that this dangerous use of these licensed vehicles, when the statute has been violated, should be compensated for to those who suffer by the proprietor of the vehicle. As between him and the public who use the highways, he is the responsible party, and it behooves him to use all necessary safeguards to prevent this abuse. It is one of the requirements of the statute (sec. 14) that every motor shall be provided with a lock, key, or other device to prevent it being set in motion; and, though that is primarily intended to secure it when left in the street or other public place, it suggests an easy way by which it may be secured at night in the owner's own premises from being mishandled and misused by his own employees.

The Chief Justice rightly found that no precautions were taken in the care of this vehicle to keep it from being taken out at the whim of the driver or demonstrator who was in his service. As a machine capable of doing mischief in careless hands, the defendants should so regulate its custody as to secure its being used only for legitimate purposes. The Legislature has seen fit, I think, to impose this restriction in the use of motors, and the permission to use them at all is subject to these salutary conditions. There must be no negligence in the care, custody, and user of these dangerous vehicles in the public streets.

I am of opinion that the defendants are liable in a dual aspect; first, they are responsible to answer the damages brought about by the use of their vehicle in contravention of the statutory rate of speed (secs. 6 and 13); and, secondly, because the vehicle was allowed to be handled recklessly by the demonstrator in his service, on the highway (sec. 18).

The judgment should be affirmed with costs.