

KELLY, J.:—The defendant Adams, on the 2nd May, 1912, ordered in writing from the defendant the McLaughlin Carriage Company Limited a motor car, at the price of \$1,400, of which \$500 was payable on the 6th May, 1912, and the balance by monthly payments of \$90 each on the first of every month. The written order contained this provision: "It is agreed that the right and title to the goods shipped under this order shall remain in the McLaughlin Carriage Company Limited until the price thereof, and any cheque, bill, or note given therefor, or any part thereof, is paid in full." The order was accepted in writing by the company, and the receipt of a \$50 cheque as deposit was acknowledged on the same date. For the unpaid instalments Adams made promissory notes to the company, which was therein called the vendor. There was added to these notes a term that Adams agreed and understood that "the express condition of the sale and purchase of the vehicle or property for which this note is given is such that the title or ownership thereof does not pass from the vendor until this note and any and all renewals thereof or of any part thereof be fully paid." At the time of the accident referred to later on, the purchase-price had not been paid in full.

On the 10th June, 1912, the plaintiff, Lillian Wynne, when about to board a street car on Queen street, in Toronto, was struck by this motor car, which was being driven by the defendant Dalby. She was knocked down and had her ankle broken.

The license for this car for the year 1912, as required by the Motor Vehicles Act, was issued to Dalby and in his name; and this action, as originally constituted, was against him as the only defendant. The action was begun on the 4th July, 1912, after which it was learned that Adams was the purchaser of the car; that Dalby was operating it under arrangement with Adams or as his servant; and that the company from which it was purchased had still an interest therein, as it had not been paid the full contract-price thereof.

By order of the 19th November, 1912, Adams and the McLaughlin Motor Car Company Limited were added as parties defendant—that company being added on the assumption that it was to it that the order of the 2nd May was given by Adams.

The defendant Dalby's statement of defence having been struck out on the 12th October, 1912, judgment against him, for damages to be assessed, was signed on the 12th December, 1912. The action, as against the parties then defendants, came down to