

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Boyd, C., Falconbridge, C.J.K.B., Teetzel, J.]

[April 23.

MATTEI v. GILLIES.

Motor-car—Negligence of chauffeur—Owner's liability—Scope of employment.

Action by plaintiff for damages on account of an accident arising from the alleged negligence on the part of the servant of the defendant who was at the time in charge of the motor-car. The case was tried before MABEE, J., and a verdict given for \$450 damages. Appeal to Divisional Court. The finding discredited the evidence of the chauffeur, and if this was correct there was no question as to the propriety of the verdict.

BOYD, C.:—It has been more than once noticed that the idea prevails among some motor-drivers that when once they have sounded the horn they are justified in going at any rate of speed, and that people are bound to get out of their way: see per Lord Alverstone in *Troughlin v. Manning*, 69 J.P. 207; whereas the more salutary rule would be as recommended by the "Considerate Drivers' League," "Assume that it is your business and not the other man's to avoid danger": Pettit on Motor-cars, p. 81.

The facts in this case were such as to require the intervention of a jury to decide whether the injury occurred while the driver was acting within the scope of his authority. The chauffeur, who was employed by Gillies and paid solely for the purpose of attending to the automobile, had general charge and care of it, and, having express permission to take it out on the afternoon of the day in question, he was on his master's business, though he made a detour to give a ride to his friends, according to the doctrine of *Ford v. Morrison*, 6 C. & P. 501, which stands approved in many cases: *Whatman v. Pearson*, L.R. 3 C.P. 422, and *Burns v. Paulson*, L.R. 8 C.P. 567. As said