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APPELLATE DIVISION.

OCTOBER 23RD, 1914.

BAILEY v. FINDLAY.

Highway—Improper Use of—Motor Vehicle Left Standing for Unreasonable Time—Injury to Horse—Liability of Owners of Car—Proximate Cause of Injury—Negligence—Contributory Negligence—Motor Vehicles Act, 2 Geo. V. ch. 48—“Dead” Car—Lights—“Between Dusk and Dawn”—Secs. 6(2) and 8(3) of Act.

Appeal by the defendants from the judgment of SCOTT, Co. C.J., ante 24.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and LENNOX, JJ.

Grayson Smith, for the appellants.

W. H. Stafford, for the plaintiff, respondent.

MULOCK, C.J.Ex.:—This judgment may be maintained on two grounds, under the statute and at common law. We think that sec. 8(3) of the Motor Vehicles Act applies. If it does, the onus was upon the defendants to shew that the accident was not caused by their negligence. They have not discharged that onus. *Primâ facie* they are liable. Probably at common law the defendants are equally liable. It is quite lawful for a vehicle to be on the street; and, if it is doing nothing unlawful, then the owner is not liable; but, if he allows it to be on the street an unlawful length of time, then from the time it becomes unlawful to be on the street, from the time it is unlawfully there, the owner is liable for damages caused by his illegal act.

The trial Judge has found that the motor car was on the highway an unreasonable length of time, and the owners would be liable if the accident was caused by the car being there, and it is clear it was caused by it being there, and being there in a negligent way. The accident could have been prevented if the car had been looked after in some way; a person might be there to warn people, it might have been lighted, many things