Geo. V. ch. 36, sec. 3, is not very much altered by the Act. Before the Act an owner was liable for injury done by his car unless the person in charge of it had stolen it from the owner; now the law is the same, except that the owner is not excused if the larcenous person in possession of the car is his employee.

. . .

[Reference to Wynne v. Dalby (1913), 30 O.L.R. 67.]

If the car now is in the possession of one who has taken it not larcenously but by way of civil trespass, the owner is clearly liable. Were that not the law before 4 Geo. V. ch. 36, sec. 3, we should have the extraordinary case of a liability being imposed by a clause added to introduce an exception. There can, I think, be no doubt that the Legislature by this legislation have said that without it there would have been a liability; and the addition of the excepting clause does not and cannot impose a liability not imposed by that from which it is an exception. To give full effect to the decisions, we must hold that, while the owner was not before the Act, liable for the negligence of a thief, he was for that of a mere wrongdoer, a civil trespasser.

Here there can be no pretence that there was a crime committed. To constitute larceny at the common law the animus furandi must be present: Russell on Crimes and Misdemeanours, vol. 2, p. 1177. Our statute puts it (Criminal Code, sec. 347): "Stealing is the act of fraudulently and without colour of right taking," etc. No animus furandi is possible under the facts of this case . . .; and the taking was not fraudulent—there was no "intent to steal" the car: Criminal Code, sec. 347 (2).

I think, therefore, that the appeal fails and must be dismissed with costs.

FALCONBRIDGE, C.J.K.B., agreed in the result.

LATCHFORD and KELLY, JJ., also agreed in the result, for reasons stated by each in writing.

Appeal dismissed with costs.