as owner for the negligence of the driver, because the latter had "stolen" the car (see the amendment made by 4 Geo. V. ch. 36, sec. 3, to sec. 19 of the Motor Vehicles Act, R.S.O. 1914 ch. 207). The driver was the foreman of a repair-shop, and the defendant had left the car there for repairs. The driver properly took the car out, after it had been repaired, to test it; but, having done that, instead of returning the car to the shop, he made an expedition in it on his own business or pleasure, and the negligence occurred while he was so using the car. In these circumstances, the learned Chief Justice said, he could not agree that the man had stolen the car.

The Parliament of Canada, by the Act of 9 & 10 Edw. VII. ch. 11, had made it a minor offence to take a motor car for use without the consent of the owner; but that did not make the taker a thief; indeed the enactment itself refuted the argument that theft was pointed at. The marginal note to the statute used the word "theft," but that did not affect the interpretation. Reference to Attorney-General v. Great Eastern R.W. Co. (1879), 11 Ch.D. 449, 461.

That the plaintiff was not entitled to recover on the ground that his injury was caused by the negligence of a servant of the defendant in the course of his employment was obvious. Reference to Halparin v. Bulling (1914), 50 S.C.R. 471.

The trial Judge had found that the driver was not in the "employ" of the defendant within the meaning of the words "in the employ of the owner" contained in the amending Act, 4 Geo. V. ch. 36, sec. 3; and in that finding the learned Chief Justice agreed.

The appeal should be allowed, and judgment entered for the plaintiff for $800, the damages assessed by the jury, with costs of the action and of the appeal.

RIDDELL and MASTEN, JJ., were of the same opinion, for reasons stated by each in writing.

LENNOX, J., concurred.

Appeal allowed.