

MOTOR-CAR OWNER'S LIABILITY.

The decision of the Supreme Court of Canada in *Hall v. Toronto Guelph Express Company*,¹ that the liability imposed by Section 41(1) of The Highway Traffic Act, R.S.O. 1927, Chap. 251, exists even in the absence of negligence, rather upset the ideas of most of the members of the legal profession in the Province of Ontario, and it is perhaps not surprising that the decision should be followed by amending legislation. The result is that Section 41 has been repealed and a new section substituted for it. The old section said that the owner of a motor-vehicle should be "responsible for any violation of the Act" while the new section says that he "shall incur the penalties provided for any violation of the Act," thus bringing the matter back to where it was commonly supposed to stand before the decision above referred to.

This amendment leaves the position of a motor-car owner as to responsibility for an accident on the highway as it stood at common law apart from any statutory enactment. He may have to pay penalties provided by the Act for breach of any section of it, but that is the only statutory liability imposed upon him for such breach. If under the circumstances of the particular case, the breach constituted negligence at common law, he is of course responsible, but the responsibility is no longer imposed by the Statute as it was before.

One rather important phase of the matter which is frequently brought to the attention of the profession is as to the responsibility of the owner of the motor-car for the negligent operation of the car by someone other than himself. Under the Act as now amended, he is not responsible for the negligence of another person, unless the matter can be brought within the well understood rules applicable to the relationship of master and servant.

This again bears in a very important way upon the liability of Insurance Companies, particularly in the case of privately owned cars used for "private purposes," which term is in the ordinary policy understood to include personal pleasure and family use as well as use for business calls. The standard form policy indemnifies the insured car owner against loss or damage which he shall become legally liable to pay, and unless he is legally liable to pay the Insur-

¹ [1929] S.C.R. 92.

ance Company cannot be called upon to pay, unless the policy so provides further by what is commonly known as the "omnibus" clause. Under this clause the Company agrees to indemnify any person riding in the car or legally operating it with the permission of the insured "in the same manner and under the same conditions as the insured is hereby entitled to indemnity." This is not a very satisfactory phrase, inasmuch as the insured is only indemnified where legally liable, and as far as the passenger is concerned it is hard to understand circumstances under which he would be legally liable. The main question, however, is as to whether or not there is any contractual relationship between the third person and the Insurance Company which would justify the third person in bringing an action against the Company. There is no doubt at all but that it is the intention that he should be indemnified by the Company, and it is not at all likely that any reputable Company would repudiate liability, but one can see a very great deal of room for doubt as to what form of action the third party would bring. The situation is certainly very doubtful, and if the doubt is well founded it follows that in the very ordinary case of the car being driven by a member of the owner's family through whose negligence the accident occurs, the owner not being in the car at the time, neither he nor the Insurance Company may be liable, and if it happens that the driver is financially responsible, the driver will have to pay without any recourse against the Insurance Company. It is very common for a wife to be the owner of property and to drive her husband's motor-car, insurance being in his name. He thinks that it is the car which is insured so long as used for private purposes, but this may not be the case. The subject is well worthy of careful consideration, and any person carrying such insurance will be well advised to consider the effect of his policy.

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