At no time in the past has a friendlier feeling existed between the English and French speaking people of Canada than at present. This is manifest in the sympathetic attitude in Ontario to the French request that their language may be used in the education of their children in the higher forms of the public schools; something that the Privy Council has said they have no legal right to, and which can only be brought about by persuasion and a generous and tolerant spirit actuating those in control of the Public School System in Ontario. E. R. C.

NOTES.

Car Owners and Their Civil Liability.—When the motorist, driving from Toronto towards the setting sun, reaches the western boundary of Manitoba he leaves behind him a certain freightage of care.

The point is emphasized by an examination of the recent decision in Manitoba on the liability of the car owner for whatever his car may do when driven by a stranger hand. Ontario and Manitoba are in harmony. They have extended the common law against the owners of instruments causing danger. In effect they say—Whoever drives Brown's car, unless it be a thief, Brown is answerable. No matter that Brown was absent, ignorant, and would have disapproved: Brown must make good the fines for police offences; and Brown must satisfy any claims for damages.

In *Aikens* v. *The City of Kingston*,[1] a policeman was in charge of a car owned by the corporation of his city. He drove it with rank recklessness, and at a hair-raising pace through the city streets. The city was sued not under the common law of employer and employee, but under the Motor Vehicles Act, and had to stand the shock of $1,400 civil damages to Mr. Aikens.

The Manitoba case is *Weller* v. *Conklin and Lavergne*.[2] There the relatives of a woman killed by a motor car obtained damages against the owner of the car, although that owner was neither in the car nor near the accident, nor was it driven by his chauffeur or any member of his family. It was driven by an acquaintance to whom the owner had lent it. True, the borrower had no driving licence, and he slew the victim in drunken recklessness; but the unfortunate owner would have been just as liable had his friend been a man of lofty character and equipped with triple licences. The reason is the

[1] 1923, 3 D. L. R. 869.
[2] 1924, 3 W. W. R. 67.

Motor Vehicles Act c. 131 of the Revised Statutes of Manitoba, sec. 63, which provides that a driver is liable for civil damages caused by his negligence or improper conduct, "and the owner thereof shall also be liable to the same extent as the driver unless at the time of the injury the motor vehicle had been stolen from him or otherwise wrongfully taken out of his possession or out of the possession of any person entrusted by him with the care thereof."

This salutary provision does not exist when the tourist passes the portals of Saskatchewan. The Saskatchewan car owner is at present concerned with section 43 of chap. 42 of 1924. It is dissected at length by Mr. Justice Martin of Regina in the appealed case of *Haggerty* v. *McKay*,[3] when none of the recent analogous cases from the other provinces were overlooked. The section reads:—

"(1) The owner of a motor vehicle shall be responsible for any violation of this Act by a person in charge or control of the vehicle with his consent.

"(2) If the employer of a chauffeur operating a motor vehicle is present in the vehicle at the time of a violation by such chauffeur of any of the provisions of this Act, such employer as well as the chauffeur shall be liable to conviction therefor.

"(3) When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the burden of proof that such loss or damage did not arise through the negligence or improper conduct of the owner or driver of such motor vehicle shall be upon such owner or driver."

The conclusion of the Court of Appeal on the above was that the legislature had not intended to deal with more than police offences and the general burden of proof, and that so far as concerned civil damages the owner of a destroying car had no greater enemy than the common law.

This judgment conformed to the Alberta case of *Johnson* v. *Mosher*.[4] There the Appellate Division decided that the section (21) of the Motor Vehicles Act, which purported to find the owner of the car liable for what the driver did, applied only to offences, and not to civil suits. Previously the reverse had been the law, for the old section was an Ontario one, and had been passed upon in the East; but the Alberta Legislature in 1913 and in 1917 changed the wording of the section, and the phrasing existing in 1919 was held to clear the innocent owner of that civil burden. That intention, by a subsequent touching up of the Act, has been made more definite than ever. The section now reads:—

[3] 1923, 3 W. W. R. 1288.
[4] 1919, 3 W. W. R. 1039.

"67. The owner of a motor vehicle for which a certificate of registration has been issued under the provisions of this Act shall be liable for violation of any of the provisions thereof in connection with the operation of such motor vehicle, unless such owner shall prove to the satisfaction of the justice of the peace or police magistrate trying the case that at the time of the offence such motor vehicle was not being driven by him, nor by any other person with his consent, express or implied:

"Provided that if the owner was not at the time of the offence driving the motor vehicle, he shall not in any event be liable to imprisonment."

Mark that generous proviso! The owner, if not driving, shall not be liable to imprisonment *in any event.* The owner might have been sitting beside his young daughter or guest, and encouraging her to beat the speed limit, or to hog the best (and wrong) side of the road. The mischance might have been easily preventible by the owner, were he in the car or beside the car, and he may have stirred neither hand foot nor tongue to prevent it; but in no such event is the owner liable to imprisonment. No doubt the Legislature of Alberta carefully weighed the contingencies involved, and went as far as they felt they could safely go; for which caution reckless owners may yet live to thank them.

The foregoing Alberta Act clears up another point, who is the owner of a hired car?

"Owner shall include any person renting a motor vehicle or having the exclusive use thereof under a lease or otherwise for a period of more than thirty days."

So that the harassed garagemen, who rents out a car for four weeks, has no burden on his mind as to what may happen to a pedestrian or a cow; but he suffers financial anguish for the pedestrian or the cow when his renter has contracted for a whole month. Could the garageman escape if he recalled his car regularly every four weeks and re-rented it to the same hirer? Or would he by that manœuvre suffer a like fate to the chattel mortgagee who, to avoid registration, gets his mortgage continuously renewed before the thirty days is up?

So much for the Alberta Act.

In *Boyer* v. *Moillet*[5], the Court of Appeal of British Columbia decided (though not unanimously) in terms similar to the Alberta Court. A strong inclination to follow the Ontario judges was evident throughout, but it was decided that the sections of the two statutes were sufficiently distinct. For one thing, in the tail of the British

[5] 1921, 3 W. W. R. 62.

Columbia section was the clause: "The owner of a motor for which a licence is issued under the provisions of this Act shall be held responsible for any violation of this Act, or of any regulations provided by Order of the Lieutenant-Governor-in-Council, by any person intrusted with possession of such motor"; a small enough difference from Ontario; but the B. C. statute held other slight indications that it was a narrower Act than its Eastern prototype, and more confined to police duties.

The three Western provinces are thus in harmony with themselves, though their individual statutes are by no means in unison. What will be the outcome? It would not be surprising if the legislatures of Saskatchewan, Alberta and British Columbia should one by one go over to the banner of Ontario and Manitoba. There would be the resulting inconvenience to the hirer of motor vehicles, including perhaps the hirer of petrol boats, and, later, airplanes and so on. Unless protected as in the new Alberta Act the hirer must become responsible for the follies of the party to whom he has lent the machine for the hour or the month. Yet much can be said for uniformity on so important a theory; and, if joy-riding and the unguarded use of Dad's auto by terrifying young people develop, the Western provinces could hardly refuse the lead. But at present it is by no means proved that the territories which reply on the common law are more reckless of the lives of pedestrians than the regions where the statute has cast a new burden on the car owner.

G. C. THOMSON.

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HIGHWAY TRAFFIC ACT (ONTARIO), CHAPTER 48, SEC. 54—NON-RETROACTIVITY—TIME-LIMIT FOR BRINGING ACTION.—In *Stephenson* v. *Parkdale Motors,* section 54 of the Highway Traffic Act, 1923, imposing a time limit for bringing an action for the recovery of damages occasioned by a motor vehicle, was considered. It is not an enactment regulating procedure, and so is not restrospective. This and another action were for injuries sustained by two Plaintiffs, by reason of a collision of two motor cars in the City of Toronto. The actions were tried together by Logie, J., and a jury, at the Toronto Sittings. Questions submitted to the jury were answered in favour of the Plaintiff with an assessment of damages, but the question of law arising out of the recently enacted Highway Traffic Act, 1923, was considered by the learned trial Judge, who subsequently gave a judgment,[1] in which he held that Section 54 of the Act, which provides that no action should be brought against a person for

[1] 55 O. L. R. 680.

the recovery of damages occasioned by a motor vehicle after the expiration of six months from the time when damages were sustained, is not retroactive in effect. The learned Judge considered the cases of *The Ydun*[2] and *Worrid* v. *Medland Bros.*[3] which he could not see fit to follow in view of his understanding of the decision of the Supreme Court of Canada in *Upper Canada College* v. *Smith*,[4] and that of the Ontario Court of Appeal in re *Roden and City of* Toronto.[5]

This judgment has since been considered by the Second Appellate Division.[6] This Court also feels bound by the decision of the Supreme Court of Canada, but ventures to express a hope that the matter may be taken further to that Court for ultimate decision.

* * *

GUARANTY — ACCOMMODATION ENDORSEMENTS OF PROMISSORY NOTE—REPRESENTATION AS TO PREVIOUS GUARANTEES—EVIDENCE—COMPROMISE OF CLAIM AGAINST GUARANTORS—RELEASE OR COVENANT NOT TO SUE—JOINT SURETYSHIP—CONTRIBUTION.—The case of *Molsons Bank* v. *Kovinsky*.[1] was an action tried by Mr. Justice Wright without a jury, and subsequently heard in appeal by the Second Appellate Division. While there is nothing particularly new in the law as laid down in the judgments, the points involved are of great importance to the commercial world.

The defendants were sued by the bank for the amount of a promissory note endorsed by them for the accommodation of a company, the bank being the holder of the note in due course:—

Held, upon the evidence, that the defendants could not escape liability upon the ground that the manager of one of the bank's branches had obtained their endorsement by representing to them that they would be protected by certain guaranties which the bank had taken from several guarantors, among them, *B* and *S.*, two men of considerable means, who had been released by the bank without the consent of the defendants. The representation was not in fact made.

Held, also, that the defendants were not joint sureties with *B.* and *S.*, and were not discharged nor prejudiced by the release of *B.* and *S.*

Ward v. *National Bank of New Zealand*[2] (1883), 8 App. Cas. 735, explained and distinguished.

The foundation for contribution is the common liability of the sureties for the same debt.

[2] (1899) P. 236.
[3] (1924) 26 O. W. N. 269.
[4] 61 S. C. R. 413.
[5] 25 A. R. 12.
[6] 27 O. W. N. 178.
[1] 55 O. L. R. 589.
[2] (1883) 8 App. Cas. 755.

A release of one surety with a reservation of the creditor's rights against the other sureties operates merely as a covenant not to sue the surety, and still leaves the surety liable to contribute to his co-surety.

Discussion of the principles of suretyship and contribution.

G. F. H.

PASSENGERS' LUGGAGE.

BUNCH v. *GREAT WESTERN RAILWAY CO.*
(Shirley's Lead. Cas. 9th ed. p. 312.)

With apologies to Westminster (and Locksley) Hall.

"Porter, may I leave my gladstone, while as yet 'tis early eve,
In your keeping—will it safe be—till the train is due to leave?"

"Nothing safer," quoth the varlet, nourishing a youth of crime,
I will hold it till the train comes in the long result of Time."

"Thank you, Porter! To the café I must take my famished course;
Keep my luggage till my hunger shall have spent its novel force."

Falser than all fancy fathoms, falser than all songs have sung!
For that porter 'round the station in no mute observance hung.

He took up the cherished gladstone, packed with Christmas presents tight.
Smote his corduroys with pleasure as he faded out of sight.

O, Amelia, unsuspicious! O, unhappy Amy Bunch!
O, the dreary, dreary station; O, the barren, barren lunch!

Better, Amy, thou wert sitting in the ladies' waiting-place
With thy hunger and thy gladstone in a silent, fast embrace!

Scarce her light reflection ended when shrieks loud the engine-horn.
Forth she rushes 'midst the train-men, just a target for their scorn.

Then she dipped into the gloaming far as human eye could see,
Saw no vision of the porter, nor the bag that ought to be.

Gone her bargain-counter gleanings; This is truth the poet sings,
That a woman's crown of sorrow is rememb'ring pilfered things.

On her pallid cheek and forehead came a colour and a light
Which forboded for that railway a protracted legal fight.

* * * * *

Per the LORD CHANCELLOR:

"Laches can't be charged to plaintiff, so defendant's not exempt;
It must as a carrier answer what was done in law's contempt."