

ever by an automobile driven by the defendant, as it was alleged, negligently. The lights carried by the machine at the time, although perhaps sufficient to comply with the requirements of the Motor Vehicle Act, 7 and 8 Edw. VII. c. 34, s. 12, were not strong enough to enable the defendant to see clearly a person walking over the crossing in front, which was in a dense shade cast by overhanging trees, and the evidence did not satisfy the trial judge that the horn had been sufficiently sounded, either to comply with section 13 of the Act or as careful conduct in the circumstances required. As to the speed at which the car was going, according to the defendant's witnesses, it was at least eight or nine miles an hour.

*Held*, that, the burden of proof that the defendant was not guilty of negligence in the matter was thrown upon him by s. 38 of the Motor Vehicle Act and that he had not satisfied it; also that the evidence shewed negligence on his part. The fact that it was so dark at the crossing and that he went over it at such a rate of speed that his lights did not enable him to see a reasonable distance ahead, itself constituted negligence in the defendant.

The defendant urged that the deceased had been guilty of negligence in that, if he had looked to the east, he would have seen the lights on the car approaching and avoided the accident.

*Held*, that, the principle that persons lawfully using a highway are entitled to rely on warnings required by statute is applicable under such circumstances, and that the usual rule of ordinary care does not impose on travellers the burden of being constantly on the lookout for automobiles and they have a right to presume that those who may be lawfully using the highway with himself will exercise a proper degree of care.

*Vallee v. G.T.R. Co.*, 1 O.L.R. 224, *Pedlar v. C.N.R. Co.*, 18 M.R. 525, and *Hennessey v. Taylor*, 189 Mass. 583, A. and E. Ann. Cas. 396, followed. Verdict for plaintiff sustained.

*Bergman and Blake*, for plaintiffs. *Whitla and Higgins*, for defendant.

Full Court.]

[Feb. 15.

VULCAN IRON WORKS CO. v. WINNIPEG LODGE NO. 174.

*Trades unions—Strikes—Combined action—Conspiracy to injure employers—Picketing and besetting—Damages—Injunction—Principal and agent—Criminal Code, s. 523.*

Appeal by plaintiffs from judgment of MATHERS, J., noted vol. 45, p. 335, dismissing the action as against two of the de-