

control until after the car had passed, but they became again frightened at the noise made by the car as it passed over a wooden bridge behind where they were, and they drew plaintiff over to the edge of the embankment, and fell over it. The car was going at a reasonable speed. The railway company were not negligent in not stopping the car when plaintiff's horses were seen to be restive, because plaintiff had them under control at the time the car passed. The cause of the accident was the negligence of defendants in not having a guard rail at the top of the embankment at this point.

These findings of fact are fully justified by the evidence. Apart from an agreement between the third parties and the county, the former cannot be held liable; they were lawfully using the highway for the purposes for which they are incorporated under 60 Vict. ch. 92, and they have been found not to have been guilty of any negligence in so using it.

The 3rd clause of the agreement between the parties is to be found in the schedule to that Act, as follows: "The company shall be liable to the county for, and shall indemnify the county against, all damages arising out of the construction or operation of the company's railway . . . whether such damages are occasioned while running at a speed authorized by this agreement or otherwise, and for and against the county's cost and expenses of and incident to claims for such damages."

The clause must receive a reasonable construction, and should not be so read as to make the company responsible to the county for damage occasioned not by any fault or act of theirs, but by the negligence of the county itself . . . The language must be taken to have relation to the immediate cause of the accident, which was here the absence of the guard rail, and not to its remote cause, which was the moving car.

BRITTON, J., gave written reasons for the same conclusion.
FALCONBRIDGE, C.J., concurred.

Appeal dismissed with costs.

APRIL 17TH, 1903.

DIVISIONAL COURT.

McINNES v. TOWNSHIP OF EGREMONT.

Way—Non-repair—Injury to Person—Liability of Municipal Corporation—Bridge without Railing—Notice of Accident—Requirements of—Mistake in Date—Quantum of Damages.

Appeal by defendants from judgment of County Court of Grey in favour of plaintiff in action to recover damages for