

several years ago, diverted the roadway crossing over the ditch by means of a bridge to the westerly side of the ditch on to a roadway which was then laid out from the bridge northerly along this side upon land acquired for the purpose. On the roadway by which the car approached the bridge there was, at some distance to the south, a hill or incline sloping towards the north. The foot of this incline was about 200 feet southerly from the bridge, the length of the incline itself being about 300 feet. After the traffic was diverted across the bridge, a fence or barricade was thrown across the part of the roadway which thereafter ceased to be used, on a line from about the north-easterly corner of the bridge easterly to the fence forming the easterly boundary of the road allowance. The line of the road and the barricade were observable by persons coming down the incline.

When the car reached the curve westerly on the bridge, the driver, according to his own evidence, commenced to make the turn on to the bridge; but, instead of following the driveway across the bridge, the car proceeded towards and ran into the guard railing along the north side of the bridge, carried away part of it and the post by which it was supported at the north-easterly corner, and went into the ditch. The driver said that, when he came to the curve from the roadway to the bridge, he thought that the turn was too sharp to permit of his car passing over the bridge in the usual way; and, fearing that it would be thrown sideways over the edge, he made a sudden turn to the right, and thus went into the ditch.

What was complained of was, that the bridge was so narrow and the turn from the gravelled road on to it so sharp as to constitute a danger to those travelling over it; and also that the highway was obstructed by piles or logs placed thereon by the defendants; and that maintaining the bridge and highway in that condition was a breach of the defendants' duty under sec. 460 of the Municipal Act.

The learned trial Judge had in effect found that there was no negligence on the part of the plaintiff and none by the driver of the car for which the plaintiff was responsible; and that maintaining the bridge and roadway in the condition described was a breach of the statutory duty. But the trial Judge had apparently overlooked inconsistencies in the evidence for the plaintiff. The evidence to the effect that there was no difficulty in making the turn and passing over the bridge was overwhelming.

After a careful analysis of the whole evidence, KELLY, J., was convinced that the predicament in which the plaintiff and his companions found themselves on the 26th July, 1915, must be attributed to some other cause than the narrowness of the bridge, the curve from the roadway leading on to it, or the presence of the