

CHIEF JUSTICE HARRISON.

guilty of negligence in taking care of the child should be determined by ascertaining whether she exercised due care for one of her age.

The conclusion reached by the majority of the Court seems to us to be against law, reason and humanity. Whether it was negligence to place the little child in her sister's charge, under the circumstances, is to be determined by her capacity to discharge the trust, and if that capacity was sufficient in law, and it was conceded to be, her failure to exercise a greater capacity was no fault of hers, or of the parent. It will not do to say that one may intrust a child properly to one of less than full capacity, but that it is negligence to do so where the person so in charge of the infant fails to exercise full capacity in guarding it against a negligent injury. Such a rule would not only debar the children of the poor from the privilege of schools, but from exercise in the open air as well. In large cities it would doom them to close confinement in dark tenement houses and filthy alleys.

And, as necessarily growing out of the above rule, that which would not be negligent towards an adult of full capacity, may be gross negligence as applied to a child. *Phila. &c., R. R. Co. v. Spearen*, 47 Penn. St. 300; *Pittsburgh, &c., R. R. Co. v. Caldwell*, 74 Penn. St. 421; *Sheridan v. Brooklyn R. R. Co.*, 36 N. Y. 39; *Mayer v. M. P. Railw. Co.*, 2 Neb. 319; *Squier v. Rail. Co.*, 36 N. Y. Superior Court Rep. 437; *Schierhold v. North Beach, &c., R. R. Co.*, 40, Cal. 447.

The doctrine of the principal case as to the exposure of dangerous machinery or structures in a place where meddlesome or thoughtless children may interfere with it to their injury, is fully sustained by the following cases:—*Railroad Co. v. Stout*, 17 Wall. 657; *Schmidt v. Milwaukee, &c., R. R. Co.*, 23 Wis. 186; *Lynch v. Nurdin*, 1 Q. B. 29; *Britton v. Great Western, &c. Co.*, L. R. 7 Exch. 180; s. c. 1 Eng. Rep. 381; *Directors Railw. Co. v. Wanless*, L. R., 7 House of Lords 12, 9 Eng. Rep. 1; *Williams v. Great Western Railw. Co.*, L. R. 9 C. P. 157. This last case was a suit by a child four and a half years old for injuries received on defendant's railroad at a point where by statute it was required to be enclosed. The failure to enclose was the only negligence shown against the company. There was no evidence to show how the child got on the track, or how he conducted himself. *Held*, that a verdict must be entered for the plaintiff upon the case reserved. Pollock, B., said:—"Now as to there being a non-performance of what was enjoined by the Act of Parliament, there is no doubt about it; and it

is not for us to speculate on what was the precise intention of the Legislature. . . . It is sufficient to say that the defendants have neglected to comply with the enactment." And see further on this point, *Chicago v. Mayor*, 18 Ill. 360; *Robinson v. Cone*, 22 Vt. 213; *Kerr v. Forgue*, 44 Ill. 482, s. c. 5 Am. 146, note; *Birge v. Gardiner*, 19 Conn. 507. But see *Mangan v. Atterton*, L. R. 1 Exch. 239; *Abbott v. Macfie*, 33 L. J. Exch. 177; *Chicago v. Starr*, 42 Ill. 174; *Brown v. European, &c., Aailw. Co.*, 58 Me. 384; *Flynn v. Hatton*, 4 Daly, 552, 43 How. Pr. 333; *Holly v. Boston Gas Light Co.*, 8 Gray, 123. M. A. L.

BIOGRAPHICAL SKETCHES.

HON. ROBERT ALEXANDER HARRISON,
CHIEF JUSTICE OF ONTARIO.

THE Honourable Robert Alexander Harrison is the eldest son of the late Richard Harrison, a well-known resident of the city of Toronto, and was born at the city of Montreal, in the Province of Quebec, on the 3rd August, 1833.

He was educated at Upper Canada College. He there obtained honours and exhibited qualities that gave faithful promise of his future success. After leaving college he was placed under articles to Mr. James Lukin Robinson for the study of the law, and in this capacity he proved himself a most diligent and useful student. He was admitted to the Law Society in Hilary Term, 1850. Shortly after this he commenced the compilation of a digest of the Upper Canada Reports, which he published under the name of "Robinson's & Harrison's Digest," Mr. Robinson then being reporter to the Court of Queen's Bench. This digest is to the present time a standard book of reference, and has always been considered valuable for its accuracy and completeness. In 1853 he entered the office of the late Hon. John Crawford, in which the present Chief Justice of the Common Pleas was then a partner. There he remained but a few months, having been selected by the Hon. John Ross, then Attorney-General, to fill the office of Chief Clerk in the Crown Law Department. Mr. Harrison was on