Held, that, assuming for the purposes of this action that the employment of the plaintiff upon this machine was a breach of the Factories Act, it was still necessary to shew that the defendant was guilty of negligence in some respect directly connected with and which caused the accident, and, no such evidence being forthcoming, the action must be dismissed.

Roberts v. *Taylor*, 31 O.R. 10, followed. *Groves* v. *Wimbourne* (1898), 2 Q.B. 402, distinguished.

Waldron, for plaintiff. *Dewart*, K.C., and *Drake*, for defendant.

Street, J.] CARSON *v.* VILLAGE OF WESTON. [Feb. 8.

Railway Company—Bridge over highway—Height above highway—Level of highway raised by road company—Liability for injury—Railway Act, 51 Vict., c. 29, s. 185 (D.)—Voluntary incurring of risk.

The plaintiff was driving a load of hay on a public highway within the limits of the village of Weston, sitting on top of his load. The Grand Trunk Railway, at a point within the village, is carried over the highway by an iron bridge, and the plaintiff, while driving along the highway under the bridge, was struck on the head by the girders and knocked off the load and injured. At the time of the accident the distance from the surface of the highway to the bottom of the girders was from eleven feet, nine inches, to eleven feet, eleven inches. The bridge was built in 1856 by the railway company, and had not since been lowered. At that time the highway belonged to a road company, and was a plank road. Later the road company put a quantity of gravel upon the top of the plank road and converted it into a gravel road. About 1896 it passed into the hands of the village corporation, and had since been repaired by them. Excavations in the road under the bridge and for a distance on each side of it shewed that from eighteen to twenty-one inches of gravel had been placed upon top of the plank road.

By s. 185 of the Railway Act, 51 Vict., c. 29 (D.), "The span of the arch of every bridge . . . carrying the railway over . . . any highway shall at all times be and be continued . . . of a height from the surface of such highway to the centre of such arch of not less than twelve feet; and the descent of the highway passing under such bridge shall not exceed one foot in twenty."

Held, that this section must be construed as compelling the railway company to construct their bridges in the first place so as to leave the required space below them to the highway and to maintain them at, at least, that height from the original surface of the highway, and not as obliging them to conform from time to time to new conditions created by the persons having control of the highway.

Gray v. *Danburg*, 54 Conn. 574, specially referred to.