

The appellant's witnesses were: his servant who was driving the horse at the time; another servant who was there too at the time; and a third person who happened to be upon the highway in front of the appellant's place of business at the time, and who saw all that occurred, and who seemed to be an entirely disinterested person. The respondents did not call any witnesses or give any evidence at the trial. The appellant's two servants and the horse and sleigh were employed, at 8 o'clock in the morning, in removing a heavy load of crockery from his stable to his store, a short distance from the stable, but it could be reached only by going through a lane to the highway, and then along the highway to the store. For about 50 feet before reaching the highway, the lane runs uphill, the worst part of the incline being at the top upon the highway where the respondents' track is; and the difficulty of thus getting out of the stable-yard into the highway had been, at the time in question, increased by the respondents having swept the snow from their track so that it was piled up on each side of it to such an extent that the horse and sleigh coming out of the lane could not turn either to the right or left upon the highway until they had crossed the track. The horse was stopped about 50 feet from the highway, so that the driver might look and listen for cars on the respondents' track. From this point on to the road there was a bridge obstructing the view of the track. There being neither sight nor sound of a car, the driver went on, starting "the horse up with as much force" as he could "in order to make the hill." The driver's story was, that, when he came through the gate of the lane into the highway, he saw the car coming, and that it was then about 300 feet away. The distance from the gate to the track is 15 feet. The driver said he knew he had a tight pull there, that it would be all he could do to make the track, and that he put up his hand as a signal to the driver of the car to stop; but the car came right down, apparently no effort to stop being made; when he saw what was likely to happen he commenced to whip his horse to get her across the track; he could not turn on account of the snow which the respondents had put on both sides of the track, and he could not get any speed—the horse was going "an inch at a time." The car came on and struck the horse about her shoulder, carrying her 115 feet before stopping, and soon after stopping the horse dropped down dead. The other servant and the bystander corroborated the driver of the horse.

There was evidence of excessive speed of the car, and the more so as the knowledge was with the respondents, and they gave no evidence.