

This road is in an old well-settled and prosperous township and county. It is not pretended that the municipality had not the means to put and keep it in a proper state of repair.

At the place where the accident occurred, the highway between fences was sixty-four feet wide, only sixteen feet of this or less were made available as a roadway, and the roadbed was exceedingly rounding—too rounding as I think. Alongside of it was a ditch on either side, and the ditch into which the waggon overturned and in which the plaintiff's son was killed, was 24 feet wide and 8 feet deep. This ditch was not constructed for the drainage of the highway, but in connection with a municipal drainage scheme by local assessment, primarily for the advantage of a section of the people only, and the assessment should have provided for the safeguarding of the highway as a highway. It does not follow the natural flow of the watershed. It is a cut-off ditch and diverts the water from its natural course. Even this narrow precarious roadway was encroached upon by cross cuttings made to facilitate the scraping out of the ditch. These were negligently allowed to remain there, as they happened to be made, for several years. There was no fence or guard of any kind. The horses had only swerved for a couple of feet from the beaten path, when two wheels dropping into the second of these ruts or cuts, the waggon upset and landed in the bottom of the ditch.

I have no hesitation in declaring that this road was dangerous and out of repair; the evidence upon the ground, as I might say, the cross-section filed in Court, even without the opinion testimony of the witness, would force this conclusion. The only wonder is that the municipality has been immune from damages for so long a time. But there was a lot of testimony and it was practically all one way. Some of the witnesses thought that it was "not very dangerous," that "with care and the right kind of horses it might be safe," and that you might pass along all right "*unless there was an accident* and the horses scared,"—the last proposition being hardly open to question I should think—but not one of them all ventured the opinion that it was actually safe. Aside from the question of fencing, I find as a conclusion of fact that the part of the highway available for travel was too narrow—narrower than it should have been—and narrower than, even with a municipal ditch carried along it, there