

way was out of repair, by reason of the negligence of defendants, the Corporation of the Township of Mersea.

M. Wilson, K.C., and W. T. Easton, for plaintiff.

J. H. Rodd, for defendants.

HON. MR. JUSTICE LENNOX:—The plaintiff exercised reasonable care. The horses, though young, were shewn not to be vicious, and, on the contrary, the way they acted when the disaster culminated and all were in the bottom of the ditch, shews that they were not. The circumstance that with his boy lying dead, the plaintiff took blame to himself, thinking that possibly he might have got the boy out of the wagon, proves nothing. Who of us when an accident befalls and calamity overwhelms us is there who does not feel and exclaim that we might have done something that we did not do and had not at the moment the power to think of doing?

The plaintiff had never before been upon this highway. It is enough, as I find the fact to be, that he is a competent and careful driver; was proceeding along the highway with reasonable care, and, unexpectedly placed in a situation of peculiar difficulty, acted as a prudent man might be expected to act. If the defendants were negligent, and their negligence was the cause of the peril; if they created an emergency calling for immediate action, what right have they to demand of the plaintiff the exercise of extraordinary judgment or exceptional intelligence or forethought? And the defendants were guilty of gross negligence in the construction and care of the highway in question.

Every municipal corporation is bound to keep the highways they have opened for traffic, in such a state of construction and repair as to be reasonably safe and sufficient for the requirements of the particular locality; regard being had, of course, to the means at the command of the council; the ordinary purposes for which they are likely to be used and the varying conditions which are likely to arise. They must not altogether overlook that the highways are liable to be used by the comparatively unskilled as well as the skilful driver, by the old and the middle aged and the young; by the stranger as well as the resident, and by night as well as by day. They should be made reasonably safe for all persons likely to have occasion to use them. *Lucas v. Township of Moore*, 3 A. R. 602; *Toms v. Whitby*, 37 U. C. R. 100; *Walton v. York*, 6 A. R. 181; *Plant v. Normandy*, 10 O. L. R. 16.