On this day all the ice had been delivered apparently, but no trace is given of the driver's movements from the completion of his day's trip in delivery till a short time before the accident. But shortly before the collision, about 8 p.m., he was seen driving his waggon (at a good gait, galloping) west along College street towards the Junction. He drove past Clinton street and past Montrose avenue, and then turned round, crossing College street, and made a sharp, rapid cut to the north at the west corner of Montrose avenue, when his shaft struck plaintiff and his motor, as he was going west along the north side of College street. The driver was on the wrong side of the road, and should have made the crossing by a wide turn to the south of College street so as to reach the east side of Montrose avenue. He was far gone in liquor, cantankerous and full of fight. Next morning he could give the defendants no account of what had happened, and was discharged.

The defence relied on is, that defendants are not responsible for the act of the servant, as he had ceased to be acting in the course of his employment at the time of the disaster. In my opinion, all the circumstances point in this direction. The driver had forgotten the call of duty, failed to go back to the barns with his team after the day's work, drove elsewhere in search of liquor, and was seen befuddled and bellicose on a street entirely out of the homeward course, and hurrying away from his proper destination just upon the happening of the accident. The terse language of Parke, B., in Joel v. Morrison, 6 C. & P. 501, fits the situation: "He was going on a frolic of his own without being at all on his master's business." The governing law is given in the modern leading case of Storey v. Ashton, L. R. 4 Q. B. 476, which has been followed and applied in Sanderson v. Collins, [1904] 1 K. B. 628, and Cheshire v. Bailey, [1905] 1 K. B. 237, 245.

Any departure of the servant for his own purposes from the discharge of his ordinary duties would relieve the master from responsibility. From the time that the driver (having disposed of the load of ice) delayed returning to defendants' stables, and drove about to enjoy himself, he had in effect discharged himself. He was then at large on a drunken bout, and himself alone liable for his tortious acts.

Merritt v. Hepenstal, 25 S. C. R. 150, cited for plaintiff, is broadly distinguishable. There the driver, though he had