

places and found it between two and one and three-quarters inches above the level of the tread rail; the side was worn flat and the edge very sharp. At a point ten feet from where the guard rail began it was two inches; ten feet further along it was one and three-quarter inches. The latter was quite near the point on the plan which the plaintiff fixed as the place of the accident. The witness measured thirty-five feet from his starting point and found it one and three-quarter inches. I pass by what he said about the class of rail. I have no means of testing the accuracy of his measurements.

Clarence Longard heard of the accident, and a few days afterwards saw and examined the rails there, and found the guard rail very sharp, and thought it was at least two inches above the main rail. He drove over it safely, but, knowing of the accident, used extra care.

Dr. Ross, a week after the accident, while walking his horse over the curve, was upset; he endeavoured to cross at right angles, and turned his horse to the southward for that purpose, but the runner caught on the guard rail and the sleigh upset. He was evidently mistaken in saying his high runner struck; that could not be unless his horse's head was pointed into Oxford street. Moreover, a witness who saw the affair said the sleigh upset to the southward, thus shewing it was the off runner struck. Dr. Ross examined the guard rail and said it was fully two inches above the main rail.

Arthur J. Dove, a driver of long experience, crossed the curve a few days before plaintiff's mishap; he approached it at about six miles an hour, and turned his horse to the southward so as to take the curve as much as possible at right angles. The off runner struck the guard rail, broke the runner itself, and bent the shoe into a V shape, beginning about eighteen inches from where the curve of the runner commenced. The force of the blow was undoubtedly great to do that. He examined the guard rail then, and found it was considerably higher than the level of the main rail, and he attributed his accident to such height.

Dr. MacAulay drove in a sleigh over the place the day after plaintiff's accident and looked at the rail there, and said the guard rail was about two inches above the other. When returning into town and driving slowly, not much if anything faster than walking, he turned his horse southward,