

with 12 bags of potatoes. The father and son were sitting upon a spring seat thereon, and the father says they were going along at a "nice trot." They came to a hill that he guessed was about 10 or 12 feet high, but actual measurement shews twice that height, and rather steep for a bit. This hill sloped down towards the culvert in question, and, as they were making the descent, the fastening attached to the right end of the whiffletree, to which the trace was hooked, came off, and the horse started up at a greater rate of speed and pulled the keepers of the harness over the ends of the shafts, so that they dropped to within about a foot of the ground. The only things that then held the shafts up at all were the hold-back straps buckled to the breaching. This so disturbed the mind of the father, who was driving, that he did not observe, till just up to it, the stick of timber already referred to, and then, thinking it a sign of danger ahead, drew the horse suddenly by the left rein, and he turned, when thus drawn aside, and went over the embankment I have spoken of, before quite reaching the timber. The result was the upsetting of the waggon, the escape of the horse, and the injury to plaintiff.

I am unable to find that this accident, which took place on 7th June last about 1 o'clock in the afternoon, when a prudent driver could easily have seen the obstruction in his way, and the side road that shewed a beaten path where travellers for over a month before had been going in safety, and he should have gone, was the natural result of anything defendants had improperly done or neglected to have done.

It was caused, I find, proximately by the unfortunate condition of the harness and its attachments, and the latter coming loose when descending the hill and so disturbing horse and man that the horse was not guided as he otherwise would have been either at the spot in question, or a few steps back, into the divergent road he should have taken.

The cases cited in support of plaintiff's claim are either clearly not in point or distinguishable from this.

I have not found any case exactly like this. Bell Telephone Co. v. City of Chatham, 31 S. C. R. 60, is in many respects like it, yet not exactly it. The principle upon which the Court acted is, however, exactly that which I desire to apply here, and so applied, the plaintiff cannot recover. The American cases to which I was referred by the Am. and Eng. Encyc., pp. 467 and 474, citation, are rather against than for plaintiff.

The case of Anderson v. Sath, 42 Maine 346, which was upon a statute similar in terms to our Municipal Act, imposing upon the municipal authorities the absolute duty to