

owing to alleged non-repair of a highway. The plaintiff was driving a team of horses, attached to a waggon filled with wood, northward on the road leading north from the village of New Sarum, and when descending Luton hill, which is a short distance north from Edgeware road, his horses took fright at the noise made by some wood which fell off the waggon, and ran over the embankment close to the bridge which spans the west branch of Catfish Creek. The road becomes narrow as it approaches the bridge, and is rutty, and without railings. Plaintiff's ankles were both broken in the fall, and he will be permanently lame from the effects of the mishap. The trial Judge found that the roadbed at the top of the hill, near the bridge, was really 10 feet 5 inches wide, the east portion of the remaining $6\frac{1}{2}$ feet of its width, consisting of a rut or washout, one foot deep and three feet wide, running 150 feet down the hill; that the road so sloped from the east that almost invariably a loaded waggon going down would slide into the washout; that there was, about six feet from the washout, a large stone embedded in the road, against which the right wheels of the waggon struck, causing the waggon to slide into the washout, and the sudden dropping into it of the left wheels made the wood fall out, and the noise frightened the horses, which ran away; and that the condition of the road was known by defendants. He held that this case was clearly distinguishable from *Atkinson v. Chatham*, 29 O. R. 518, *sub nom.* *Bell Telephone Co. v. Chatham*, 31 S. C. R. 61; that here the *causa causans* of the accident was not the running away of the horses, but the sliding into the washout of the waggon, owing to the bad and inefficient state of the road, *Hill v. New River Co.*, 9 B. & S. 303, being in point; that the plaintiff's success did not depend on his shewing that his horses were not vicious; and that the judgment of the Supreme Court in *Bell Telephone Co. v. Chatham*, *supra*, in no way displaced the law declared in *Sherwood v. Hamilton*, 37 U. C. R. 410, and *Toms v. Whitby*, 35 U. C. R. 195.

C. Robinson, K.C., and W. L. Wickett, St. Thomas, for defendants.

T. W. Crothers, St. Thomas, for plaintiff.

The appeal was argued on December 10th, 1901, before the full Court, and judgment was delivered on January 13th, 1902, by ARMOUR, C.J.O., and LISTER, J.A. The questions presented in the case are purely questions of fact. The weight of evidence involves the degree of credibility to be attached to the statements of the different witnesses, and when such statements are conflicting, much reliance must be