

good repair is not whether such a duty exists, but whether it has been performed, or, in other words, whether the parties admitted to be responsible for the condition of the highway have exercised that degree of care which the law requires. Upon this question, so far as it concerns the drivers of horse-drawn vehicles, much light has been thrown by a large number of decisions, especially in the United States, but up to the present time very little progress has been made towards defining the principles upon which the Courts should be guided in determining whether a cyclist, under a given set of circumstances, can or cannot hold the authorities responsible for an injury caused by a defect in a road. In fact, so far as our researches extend only one Court of review has so far had an opportunity of dealing with the subject. In 1894 it was laid down by the Supreme Court of New York that, under the Highway Laws of that State, the commissioners of highways are not subject to any higher obligations by reason of the fact that a bicycle rider on an ordinary country road is exposed to greater danger than a person in a vehicle drawn by horses, and are, therefore, only bound to maintain such a road in a condition which makes it reasonably safe for general traffic. (b) The circumstances in this case, however, did not call for the enunciation of any such sweeping principle, for the road was twenty-five feet in width, and the accident was due to the fact that the bicyclist, finding the centre of the roadway to be too soft for easy riding, undertook to ride close to the edge of a gutter, with a vertical side and about eighteen inches in depth, and that the soft soil gave way under the wheel and allowed it to drop into the excavation. The Court remarked that "the accident was unusual and incidental to the character of the vehicle he was riding," and, therefore, "not one which was within the anticipation of a prudent man," or which called for "extraordinary precautions to prevent." But this point of view seems to be erroneous. Such an accident, it is clear, would be more likely to happen to the wheels on one side of a heavy wagon than to a bicycle, and the mere fact that, by reason of the different construction of the two types of vehicles, the results of the subsidence of the soil at the edge of the ditch would not be exactly the same is not a sufficient reason for maintaining that a different rule of responsibility rests upon the highway authorities in the two cases. Plainly the ground upon which

(b) *Sutphen v. North Hempstead* (1894) 80 Hun. 409.