

across the road with his head well to the southward before he could do so.

The north side of the roadway, east of the junction of the named streets is quite narrow, and was at that time not in use by teams owing to its lumpy and uneven condition, and while perhaps not actually unsafe was yet in such a state as to justify drivers taking the opposite side as they all did.

The plaintiff followed the usual beaten track and started to cross the curve, and when nearing the curve turned his horse towards the south so that he would as nearly as might be strike the outer side of the curve at a right angle. He was travelling quite slowly at the time; the off runner struck the guard rail and caught so sharply as to stop the sleigh and upset it and caused the injuries complained of. There was only enough snow at the time to make good sleighing, and this raised the surface at the outer side of the main rail somewhat and reduced correspondingly the height of the guard rail; made it less high than in the absence of snow. The surface of the street where the sleigh was at the time of the contact was practically level, solid and well beaten down to a width of about two sleighs, or say eight feet or so.

Contributory negligence was not imputed to the plaintiff during the trial, or on the argument at the close, some days later. There was no ground for such a contention. The only point made against the plaintiff was that he attempted to cross at a wrong angle.

It was conceded by both parties that the height of the guard rail was practically the only question necessary to be considered on the subject of negligence. I shall, therefore, summarise the evidence upon it.

The plaintiff did not measure its height, but he says when he got on his feet he looked at it and it seemed very high and sharp where he struck it, and that the snow where he crossed was at least two inches above the outer rail. The latter is too high an estimate, because, otherwise, it would have entirely overcome the height of the guard rail even taking the highest estimate or measurement given of it. He was scarcely in a condition to observe very closely then.

The plaintiff's son, a student of civil engineering, examined the rails and the surface at and near the locus two or three days after the accident and found the tread rail level with the street. He measured the guard rail in several