

The actual travelled roadway had been formed by an embankment that raised it above the road allowance on both sides. This elevation began at the hill down which plaintiff came, and increased gradually in its height above the adjacent road allowance till it reached the culvert, where it was 7 feet 2 inches above the level of the water in the stream. At a distance of 65 feet from the culvert it was 3 feet 8 inches in height, and that I find to be the point at or about which the accident took place. . . . It is not possible, from the evidence, to be mathematically correct. A few but only a few feet either way from this point, 65 feet from the culvert, I have no doubt, and so find, was the point where plaintiff's father turned aside.

Defendants' engineer made a measurement and gave in evidence a cross-section of this embankment at the point where he was, as I think erroneously, shewn, shortly before the trial, that the stick of timber had been placed. That point was 94 feet from the culvert, and the grade given there to be passed over in turning off from the travelled road shews a gradual slope. I infer as a fact that this gradual slope obtained all the way along the side, in question, of this embankment, and that with such a slope the 3 feet 8 inches in height could, if attempted slowly and with care, have been descended from the travelled road to the temporary side road without serious results. This descent could not, however, have been made in safety travelling down it at "a nice trot."

I find that the stick of timber was thrown across the road at this point, and that the travelled part of the road there was 18 feet wide. The stick, being 24 feet long, was placed obliquely for the purpose of preventing the ends extending over the edge of the embankment. . . .

Defendants were discharging their duty in clearing this part of the highway, and I find that the divergent side road intended for temporary use was sufficient for that purpose. It was an old beaten path that was, to any one keeping a look-out, plainly discernible. The obstruction that was furnished by the stick of timber was, in daylight, quite sufficient to turn aside safely all careful travellers going at a moderate rate of speed. It was quite inadequate for such a purpose at night, and defendants for that reason ought not to have relied upon it.

Now, what happened to plaintiff, who was an infant about 3 years of age, is told by his father. The father, having this boy with him, drove in a light waggon, to which was attached a pair of shafts and a whiffletree that appeared, when starting, to be in good order, though not closely inspected at the part that afterwards gave way. The conveyance was loaded