

direction, shying, and overturning the plaintiff and the buggy into a ditch on the east side of the road.

The appeal was heard by MEREDITH, C.J.O., GARROW, MAC-LAREN, MAGEE, and HODGINS, JJ.A.

R. S. Robertson, for the appellant.

F. W. Gladman, for the defendants, respondents.

The judgment of the Court was delivered by MEREDITH, C.J.O., who said that it was not suggested that the accident was caused or contributed to by any negligence on the part of the appellant or her son, or that the motor vehicle was not lawfully upon the road. The County Court Judge was of opinion that the road was reasonably safe for the purposes of public travel by the means in use before the advent of motor vehicles, and that the respondents, having provided such a road, were under no obligation to improve it so as to make it reasonably safe against the added danger which was or might be occasioned by its being used by motor vehicles—implying that the road was not reasonably safe for public travel under existing conditions.

The question was, was the road reasonably safe for public travel? In considering that question account must be taken of the fact that horses do shy; and a road, in the opinion of the Court, is not reasonably safe for public travel where there is close to the travelled way a ditch 4 feet 7 inches deep with but little slope to its sides, into which, in the case of a horse shying, there would be danger of a horse and vehicle being overturned, and a like danger to persons using the road at night if they should happen to drive into or too close to the ditch. If such a ditch was necessary, it should have been guarded by a railway. An open ditch, however, was unnecessary—the water might have been carried away by an underground tile drain, which would not have been a source of danger to travellers.

In the opinion of the Court, the statutory duty imposed upon the respondents required them to make the road reasonably safe for the purposes of travel, and so safe from any additional danger incident to the use of it by motor vehicles—which have been in use for several years and are a common means of transportation.

Reference to *Colbeck v. Township of Brantford* (1861), 21 U.C.R. 276, 278, 279; *Toms v. Township of Whitby* (1874), 35 U.C.R. 195, 223; *Castor v. Township of Uxbridge* (1876), 39 U.C.R. 113, 122; *Foley v. Township of East Flamborough*