

O. L. Lewis, K.C., and W. G. Richards, for the plaintiffs.

M. Wilson, K.C., and J. M. Pike, K.C., for the defendants the township corporations.

J. G. Kerr, for the defendant company.

BOYD, C.:— . . . The *causa causans*—the proximate cause of the accident—was the upset of the buggy, which was facilitated at least by its overcrowded and top-heavy condition. So far as the central travelled highway was concerned, it had nothing to do with the misfortunes, by reason of want of repair. If the impact was upon the iron pipe, that was, no doubt, an obstruction on the pedestrian part of the way, but it was placed there as a means of public utility, though left exposed on the surface. I find nothing just in point in the authorities, though this case more nearly approaches *Bell Telephone Co. v. City of Chatham*, 31 S. C. R. 61, than it does *Pow v. Township of West Oxford*, 11 O. W. R. 115, 13 O. W. R. 162.

The obstruction at the roadside was not the cause of the injury, but it may be taken to have occasioned its serious extent. It cannot be held, I think, that the company in the buggy and the driver were in the exercise of reasonable care for their own safety when they started on this journey on a pitch-dark, rainy night in an overcrowded vehicle. Nor can it be held that the municipalities failed to exercise proper care for the safety of horses and carriages and travellers thereon by permitting the pipe to lie uncovered at the place next the fence at the side of the road and inside of the well beaten foot-path. It could not be anticipated as a likely result that such a mishap as this would occur, and that one could be thrown from the travelled road, which was in good repair, upon this obstruction, in the place intended for pedestrians.

Costs were multiplied in this case as to pleadings and witnesses and separate defences. Taking it that the plaintiffs were hurt on the iron pipe, which should have been covered with soil, I think that their condition should be considered in dealing with the costs. I would, therefore, while dismissing the action, do so without costs.

Should the case go further, it may be well to say that, had damages been, in my opinion, recoverable, I would have given the man \$600 and his wife \$100.