

Their Lordships' judgment was delivered by

HON. SIR WM. MULOCK, C.J.Ex. (v. v.) :—This appeal was argued yesterday. The action was brought for damages against the township of Limerick because of an accident that happened to the plaintiff's horse on a highway of that township.

The learned trial Judge found for the plaintiff. From that judgment the defendants now appeal.

It appears that there is a certain roadway between two villages in the township of Limerick, and that at one point in said roadway there has always been in winter time an accumulation of snow in a cut. The cut in question is about 40 feet in length, near the slope of a hill that falls from the south towards the north. The cut is somewhere between 10 and 20 feet wide, not stated definitely, and deep enough to admit of at least 4 feet of snow.

For many years, owing to the impassable condition of this particular spot during the winter time, it was the custom of the travelling public to go around by a private way, by a far, instead of by the highway.

Owing to a misunderstanding between the owner of that farm and the township, the farmer notified the municipality that he would not allow his farm to be used any longer for this purpose during the approaching winter. Of this the township had notice for at least six months before the accident, that the farm could not be so used.

It appears that the cut runs from the north to the south of the road, and when snow comes it caused more than the average amount of snow to stay in this cut.

On the 12th of March the plaintiff, a farmer, drove in the morning along this road with a pair of horses, sustaining no injury. To all appearances the road was then in good condition.

On returning later on in the day, one of his horses went through the surface of the snow, and in his struggle evidently broke a blood-vessel and died in his tracks.

The action is against the township for non-repair of that highway. It is no duty of the township to clean away snow that does not create a liability, but if the snow becomes dangerous then the question of liability may arise.

Here the defendants' council knew for many months that the public would not be allowed to use the private way and would be compelled to drive by this dangerous way. They