Macdonald v. The Hamilton and Port Dover Plank Road Company.

Liability of Road Companies for accidents.

Road companies owning public highways and entitled to tolls for the use thereof, are liable for accidents arising from want of repair to the roads. They are liable to an individual sustaining special injury, as well as to the public, by indictment.

[3 U. C. C. P. Rep. 402.]

Case for injury to plaintiff's wife by the upsetting of a hired coach, in which the plaintiff and his family were travelling upon the defendants' road,—the accident having been occasioned by the bad and insufficient state of repair of such road. It was said to have been a government road, sold to the defendants under the provincial statute 12 Vic. ch. 5.

Plea—Not guilty.

The bad state of the road, and the injury in consequence, were proved.

It was objected by defendants' counsel at the trial:—

1st. That the state of the road should be proved by an engineer.

2nd. That the only remedy was by *indictment*, under sec. 35 of the provincial statute 12 Vic. ch. 81.

3rd. That defendants were entitled to notice of action.

Leave was reserved to move on these points, and the case was left to the jury, who found for the plaintiff £50 damages.

Freeman, for plaintiff, moved to set aside such verdict, and to enter a non-suit on the above grounds, and on the additional (4th) ground that the plaintiff's only remedy is against the coach proprietor, or at all events, that he alone could sue defendants.

The following cases were referred to—Russell et al. v. County of Devon, 2 T. R. 667; The Mayor, &c., of Lyme Regis v. Henley, 3 B. & Ad. 77; Crisp v. Bunbury, 8 Bing. 394; Butterfield v. Forrester, 11 East, 60; Bridge v. The Grand Junction Railway Company, 3 M. & W. 244-5; The Mayor, &c., of Lichfield v. Simpson, 8 Q. B. 65; as to double redress on statute and by action Stevens v. Leacocke et al., 11 Q. B. 731, distinguishes between common law rights infringed and those conferred by statute. Albon et al. v. Pyke, 4 M. & G. 421, S. P.; Clayards v. Detrick et al., 12 Q. B. 439; Marshall et al. v. Nichols, 21 L. J. Q. B. 343, 12 Am. Eng. 466, S. C.; Bigby v. Hewett, 5 Ex. R. 240-3; Thorogood v. Bryan, 8 C. B. 116; Booth v. Monmouth Railway Co., 17 *Law Times*, 154 Q. B.—If an act of parliament casts upon any persons the obligation to execute a public work, and the omission to execute that work inflicts an injury upon a private person, a person injured may maintain an action for the injury so sustained.

Macaulay, C. J.—The defendants, owning the road as a public highway, and the duty of repairing it being upon them, and being entitled to exact tolls for the use thereof, it appears to me that, upon the principles of the common law, they are liable in this action to an individual lawfully using the road and guilty of no fault on his own part, for a special injury received, in consequence of the defendants' permitting the road to remain out of repair, as proved in evidence. Such want of repair may have been also a public nuisance as respected the public at large, and the defendants may have incurred liability to indictment. But, independently of any such liability, they are also liable for special injury and damage sustained by a pr[illegible] individual, for the default and omission, amounting to a public nuisance. I perceive no reason to doubt their liability in this action and on the evidence, and there will be no rule.

McLean, J., concurred.

Per Cur.—Rule refused.

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THE LAW JOURNAL.

DECEMBER, 1855.

COURTS OF JUSTICE.

The recent investigations in New York, noticed in the public journals, have placed certain judicial functionaries in no enviable light before the public at large. We have no doubt that the individuals referred to are exceptions to the great body of learned and honourable men composing the New York judiciary: yet the wonder is, with the vicious system which regulates their appointment and tenure, that instances of corruption and depravity are not daily developed.

But beside fundamental defects, there are striking objections to the manner in which things are done and suffered in connection with the administration of the Law, and those who administer it. We have on several occasions witnessed the proceedings of the Courts in the United States, and were much struck with the contrast, in externals and in the mode of conducting business, between them and our own Courts. Nothing to distinguish the Judge or the Barrister from the medley of officers, Constables and Suitors present; the Judge treated not disrespectfully, it is true, but with an indecorous familiarity. The want of that quiet, orderly, dignified manner of proceeding, we have been familiar with here. Indeed, we have even heard of Judges leaving the Bench at mid-day, proceeding to a neighbouring hotel, and commonly discussing their dinners in company with suitors, constables and criers, and commenting freely upon the cases, tried or to be tried, before the Judge.