

very steep, about eight feet in a hundred, the total descent being about 80 feet in a short distance.

After successfully passing two curves, Miller arrived at a place where the road turns abruptly, practically at a right angle. At this point Dr. McClenahan was about 150 feet in front, and well round the curve, when Miller, failing to turn, but continuing in a straight course, broke through a guard rail and ran over a steep embankment. The automobile fell some 12 feet; Duncan Miller was killed and Fred Miller severely injured. The other passengers fortunately escaped. The automobile was badly wrecked.

These actions are brought against the county, the road being a county road, the allegation being that the guard rail was inadequate and insufficient to afford reasonable protection at the place of the accident. The defendants set up that the accident was the result of the negligence of the plaintiffs in attempting to descend the hill in the darkness and making the descent at too high a rate of speed.

I think the defendants are right, and that the action must be attributed to the negligence of the plaintiffs. Miller had ascended the hill and knew the danger. Manifestly, the undertaking to descend was most difficult and dangerous. The speed of the automobile was given as at from 8 to 12 miles an hour, and to take a vehicle of that weight down the grade in question, having regard to the sharp curves and high embankments on a dark, rainy night, was suicidal. The automobile travelling in front would necessarily be of little assistance. Duncan Miller and Fred Miller were warned of the danger and advised against making the attempt in the darkness; yet they took the chance.

At the request of both parties I viewed the place of the accident, which is well shewn in the photographs. The photographs, however, fail to give any adequate idea of the peril of the situation arising from the steepness of the grade; and neither they nor the plan put in give any indication of the difficulty arising from the curves in the road higher up on the mountain.

It is sought to distinguish the case of Fred Miller upon the ground that he was a passenger in the car and that the negligence of the late Duncan Miller would not interfere with his right to recover if negligence on the part of the municipality could be shewn. Reliance is placed upon the case of *Plant v. Normanby*, 10 O. L. R. 16; but I do not think that this can help him. It is true that the driver's