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REPORTS AND NOTES OF CASES.

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Dominion of Canada.

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SUPREME COURT.

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Ont.] GOODISON THRESHER CO. v. McNAB. [Dec. 23, 1910.

*Ontario Municipal Act—Construction—Bridges—Crossing by engines—Condition precedent.*

R.S.O. (1897) 242 as amended by 3 Edw. VII, c. 7, s. 43 and 4 Edw. VII, c. 10, s. 60, provides as follows:—

10. (1) Before it shall be lawful to run such engines over any highway whereon no tolls are levied, it shall be the duty of the person or persons proposing to run the same to strengthen, at his or their own expense, all bridges and culverts to be crossed by such engines, and to keep the same in repair so long as the highway is so used.

(2) The costs of such repairs shall be borne by the owners of different engines in proportion to the number of engines run over such bridges or culverts. R.S.O. 1887, c. 200, s. 10.

(3) The two preceding sub-sections shall not apply to engines used for threshing purposes or for machinery in construction of roadways of less than eight tons in weight. Provided, however, that before crossing any such bridge or culvert it shall be the duty of the person or persons proposing to run any engine or machinery mentioned in any of the sub-sections of this section to lay down on such bridge or culvert planks of such sufficient width and thickness as may be necessary to fully protect the flooring or surface of such bridge or culvert from any injury that might otherwise result thereto from the contact of the wheels of such engine or machinery; and in default thereof the person in charge and his employer, if any, shall be liable to the municipality for all damage resulting to the flooring or surface of such bridge or culvert as aforesaid. 3 Edw. VII, c. 7, s. 43; 4 Edw. VII, c. 10, s. 60.

*Held*, affirming the judgment of the Court of Appeal (19 O.L.R. 188), FITZPATRICK, C.J., and GIROUARD, J., dissenting, that the strengthening of a bridge or laying of planks over it is a condition precedent to the right to run an engine over the same and any engine crossing without observing such condition is unlawfully on the bridge and liable for injury resulting therefrom.