

County Court, and not be compelled to accept as the law the somewhat technical view taken by the Divisional Court.

The cases relied on in the judgment of the Divisional Court do not appear to support the conclusion arrived at, and apart from being distinguishable from the case to which they were applied, are hardly in accord with the modern trend of decisions dealing with the law of negligence. These cases are *Goodison Thresher Co. v. McNab*, 44 Can. S.C.R. 187, affirming the majority of the Court of Appeal of Ontario, 19 O.L.R. 188; *Roe v. Wellesley*, 43 O.L.R. 214—a single Judge decision; and the Saskatchewan case of *Etter v. Saskatoon*, 10 Sask. L.R. 415, 39 D.L.R. 1.

In *Linstead v. Whitchurch*, 36 O.L.R. 462, 30 D.L.R. 432, the *Goodison* case was virtually repudiated and a diametrically opposite view reached by the Court. It must be remembered that in the *Goodison* case both Chief Justices of Ontario (Sir Charles Moss, concurring with the trial Judge, Anglin, J.) and of Canada (Sir Charles Fitzpatrick), together with Girouard J. and the present Chief Justice of the Common Pleas (R. M. Meredith,) dissented. Meredith, C.J.O., in the *Linstead* case, after carefully weighing the reasoning in the *Goodison* case and its weight as a precedent, came to the conclusion that "owing to the conflict of judicial opinion in the (*Goodison*) case, the question presented in this (*Linstead*) case should be treated as *res integra*."

In view of the *Linstead* case, the Saskatchewan case of *Etter v. Saskatoon* should hardly have any weight as a precedent, at least so far as Ontario is concerned, apart from the fact that it is distinguishable, in that that case dealt with a statute which expressly prohibited the vehicle "to be used or operated upon a highway" unless it complied with the statutory requirements.

In *Roe v. Wellesley* the automobile, driven by an infant at a great speed, dropped into a hole at the edge of a bridge forming part of a highway. Latchford, J., said (and he might have made it the basis of his decision, on the principle of *causa causans*, or proximate cause, or ultimate negligence): "I desire to add that, in my opinion, no duty is cast upon a municipality to maintain its roads in such repair that they shall be safe for automobiles driven at the speed at which the plaintiffs were proceeding."