

from responsibility, and gave judgment for plaintiff for \$75 damages and costs.

The appeal was heard by FALCONBRIDGE, C.J., STREET and BRITTON, JJ.

L. C. Raymond, Welland, for defendants.

E. A. Lancaster, St. Catharines, for plaintiff.

STREET, J.—I think the evidence of negligence on the part of the defendants was sufficient to justify the finding of the learned Judge below upon that point, and that the damages found by him are reasonable. The only question is, whether the engine in question was a traction engine within the meaning of R. S. O. ch. 242, in which case it would have been the duty of the plaintiff before crossing the bridge to have strengthened it, under sec. 10 of the Act. This question is one of fact, and I think it has been properly found by the learned Judge in favour of the plaintiff. It appeared from the expert evidence given at the trial, and not contradicted, that the engine was not a traction engine within the ordinary and accepted meaning of the term, although it was constructed so as to be able to move itself and draw its tender containing fuel and water for its own use. It was explained that it was built for the purpose of furnishing power to a thresher or separator, and that the gearing which gave it the power of locomotion was entirely different from and very much lighter than that used in engines built for traction purposes.

There was no evidence that the plaintiff in moving the engine in question along the highway from farm to farm was making an unusual or improper use of the highway.

In my opinion, therefore, the judgment should not be disturbed, and the appeal should be dismissed with costs.

See *Toronto Gravel Road Co. v. Township of York*, 12 S. C. R. 517.

FALCONBRIDGE, C.J.—I concur.

BRITTON, J.—The questions are questions of fact. I agree with the findings of the learned County Court Judge.

The duty of the municipality was to have this bridge strong enough for the ordinary traffic of the highway.

In a good agricultural township like Wainfleet, with farms well cultivated, the bridge should be sufficiently safe to permit of large loads of grain and farm produce and farm machinery being taken over it without risk. It was well known to the defendants how grain is separated and cleaned up, and it seems to me to make no difference whether by horse power or steam power, and, if by steam, whether the boiler and engine are taken upon a waggon and drawn by horses or