

provisions are clearly subjects which the statute was passed to provide for in respect to the safety of bridges. There is no express prohibition against the use of the highway by a truck 96 inches wide, but there is a fine imposed on anyone using a truck of that width. The learned Judge who delivered the judgment of the Divisional Court in effect lays down the broad proposition that no person, being a trespasser on a highway, has any right whatever, and that the presence of this truck on the highway was a trespass. Admitting for the moment that it was a trespass, was the truck subject to destruction by the defendants? Its destruction was the direct result of a breach of a statutory duty. The common law as well as the above statute imposes upon the municipality the obligation to provide bridges sufficient to carry loads not exceeding statutory prohibition. The plaintiff was a wrong doer, but does that make him a trespasser?

There is authority for the proposition that even to a trespasser there is a certain duty of protection: *Diplock v. Canadian Northern R. Co.*, 30 D.L.R. 240, 53 Can. S.C.R. 376, affirming, 26 D.L.R. 544. In the U.S. case of *Bourne v. Whitman*, 209 Mass. 155, 35 L.R.A. (N.S.) 701, the Supreme Court of Massachusetts, held that the breach of a statutory duty by a person using the highway does not make him a trespasser, nor liable for injuries not due to his breach of the statutory duty.

There are numerous cases in reference to rights and liabilities in connection with the breach of statutory duties. Some of these throw light on the case before us. We would refer to the following: *Davey v. London and S.W. Ry. Co.*, 12 Q.B.D. 70; *G.T.R. v. McAlpine*, 13 D.L.R. 618, 49 C.L.J. 665; *Turgeon v. King*, 51 S.C.R. 588; *C.P.R. v. Frechette*, 22 D.L.R. 356; *Watkins v. Naval Coll.* (1912), A.C. 693; *Smith v. G.T.R.*, 32 O.L.R. 380.

The result of these decisions may be summed up as follows: Where a plaintiff is suing for damages occasioned by negligence of a defendant, the breach of a statutory enactment, unless it directly promotes or causes the danger of which the plaintiff complains, does not constitute a defence to the plaintiff's claim. One is rather relieved by the presence of authorities which go to support what may be called the common sense view of the