

SECOND DIVISIONAL COURT.

FEBRAURY 7TH, 1919.

*SERCOMBE v. TOWNSHIP OF VAUGHAN.

Highway—Bridge Breaking under Weight of Loaded Motor-truck—Excessive Width of Vehicle—Load of Vehicles Act, 1916, sec. 6—Vehicle Unlawfully on Highway—Dismissal of Action for Damages for Injury to Vehicle—Counterclaim for Damages for Injury to Bridge Allowed.

Appeal by the defendants from the judgment of COATSWORTH, Jun. Co. C.J., in favour of the plaintiff for the recovery of \$338.82 damages in an action in the County Court of the County of York, and dismissing the defendants' counterclaim.

The appeal was heard by RIDDELL and LATCHFORD, JJ., FERGUSON, J.A., and ROSE, J.

William Proudfoot, K.C., for the appellants.

H. A. A. Newman, for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said that the plaintiff, the owner of a motor-truck of dead weight 11,100 lbs., was running it on a public highway in the township of Vaughan, well within 8 miles an hour, when it broke through a bridge in the highway. The truck was loaded with merchandise weighing about 8,000 lbs. The plaintiff sued for damages for the injury caused to his truck and merchandise, and the defendants counter-claimed damages for the injury to the bridge.

The Load of Vehicles Act, 1916, 6 Geo. V. ch. 49 (O.), provides, by sec. 6, that "no vehicle shall have a greater width than 90 inches except traction engines." "Vehicle," by sec. 2 (b), includes a motor-vehicle such as the plaintiff's. It was proved that this vehicle, not being a traction engine, was almost 96 inches wide. The plaintiff had no right to have such a vehicle on the highway at all, and in respect thereof he was a mere trespasser. The defendants owed him no duty except to refrain from setting traps for him and from maliciously injuring him—he must take the road as he finds it.

Reference to Goodison Thresher Co. v. Township of McNab (1910), 44 Can. S.C.R. 187; Etter v. City of Saskatoon (1917), 39 D.L.R. 1; Roe v. Township of Wellesley (1918), 43 O.L.R. 214.

That the extra width had or might have had nothing to do with causing the accident had no significance—the truck should not have been there at all.

* This case and all others so marked to be reported in the Ontario Law Reports.