

The Court being evenly divided, the appeal and cross-appeal were dismissed with costs.

SECOND DIVISIONAL COURT.

MARCH 17TH, 1916.

*TOWNSHIP OF EUPHRASIA v. TOWNSHIP OF ST.
VINCENT.

Highway—Liability for Maintenance and Repair—Attempt to Establish as Deviation from Township-line—Evidence—Municipal Act, R.S.O. 1914 ch. 192, secs. 458, 468.

Appeal by the defendants from the judgment of CLUTE, J., 9 O.W.N. 273.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

W. N. Tilley, K.C., and G. Alberry, for the appellants.

W. E. Raney, K.C., and W. D. Henry, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he referred to secs. 458 and 468 of the Municipal Act, and said that, if the legislation referred to a permanent change of locality, then the road in question could not be a deviation, for no one ever had any such intention; whilst, if the legislation embraced temporary deviation, there might be much to be said in favour of the finding of the trial Judge that the case was really one of a deviation. But there was that which was conclusive against the plaintiffs—the time had come to an end; within their rights, the defendants insisted upon opening the original allowance and ending the temporary deviation. There was no power to prevent that; all that could be done was to require the county council to determine as to the character of the work to be done, or as to the proportion of the cost of the work to be borne, by each township. The result was not unjust to the plaintiffs. For many years they had gone on improving and repairing the road as if it were entirely under their control, and they alone bound to keep it in repair. A bridge upon the road now needed rebuilding; the necessity for the payment of a considerable sum of money for that purpose had caused some research for a means of putting the burden on other shoulders; and the way grasped at was to make it out to be part of the town-line, the bridge of which the county corporation must maintain. The plaintiffs could not escape in that way.

The appeal should be allowed and the action dismissed.