

Middleton contended that, because of the adoption by the two counties of a deviation, the portion of the road allowance now called in question ceased to be part of the boundary-line road between the two municipalities, and that therefore it was not now liable to any of the cost of opening or maintaining it.

The two townships adjoin each other, Dereham being situated in the county of Oxford, and Middleton in the county of Norfolk. The original road allowance in question between the two townships was so cut up by streams that it was impracticable to construct upon it a good line of road, and in 1868 the two counties, by by-laws of their respective councils, adopted a deviation as a public highway, and constructed the deviated road, and continuously thereafter, for a period of over 40 years, maintained it at joint expense.

In or about the year 1910, Dereham, being desirous of opening up that portion of the original road allowance in lieu of which the two townships had provided the deviation, sought to compel Middleton to contribute towards the cost, and at the same time ceased to contribute towards the cost of maintaining the deviated road. Thereupon Middleton, in 1911, made application to the Ontario Railway and Municipal Board for an order declaring that the deviated road had, by the two counties, been established, constructed, and maintained in lieu of the original road allowance, and had thus become the county-line between the two townships, in lieu of the original county-line, and that the two townships were jointly liable for its maintenance. Thereupon the Board dealt with the application, and their order, bearing date the 11th September, 1911, declared that the deviated road "is now and has been a deviation of the county boundary-line between the township of Middleton, in the county of Norfolk, and the township of Dereham, in the county of Oxford, in lieu of the original county boundary-line, which was never opened up owing to the difficulties of construction, and this Board doth further order that the said townships of Middleton and Dereham shall keep up and maintain said deviated road in equal proportions."

The action of the respective councils of the counties of Oxford and Norfolk in adopting the deviation in question had the effect of shifting the original road allowance, whereby the deviation became the boundary-line in lieu of the original road allowance. Thus the latter ceased to exist as a road allowance between the municipalities.

Therefore, Middleton was not bound to contribute towards