

be or become a deviation road as that term is used in the Municipal Act.

When the road in question was first opened, township boundary lines forming also county boundary lines were under the exclusive jurisdiction of county councils: sec. 12, Vict. ch. 81, secs. 39 and 41, sub-sec. 11; and C. S. U. C. ch. 54, sec. 339. And undoubtedly, if no road at all had been opened, joint action would have been necessary in the manner pointed out in the Municipal Act, which has, I think, from the beginning always contained the requisite machinery in case of disagreement to compel joint action where there was a joint duty. But this is the case of a highway already opened and in long and well established use, and the real question, in my opinion, is not so much its actual origin as its use by the public. Not is it denied that in fact the road serves the purpose of connecting, and is in fact the only means on the ground of connecting, the highways which have been opened to the east and to the west of it upon the true boundary line. And it is equally beyond question that the river is a very serious obstacle to opening up the true boundary line, quite sufficient to justify a deviation. Sec. 617, sub-sec. 2, mentions expressly a "road," not a road allowance, and this would, I think, include a road the public title to which had been acquired by dedication, or even whose legal origin was unknown, or if known was proved to have been for some temporary or merely local purpose, providing it had finally become a public highway and had in fact been adopted and accepted by the municipalities interested, and been used and was being used as a deviation of the original road allowance for the purpose of acquiring a good line of road: see *In re McBride and Township of York*, 31 U. C. R. 355; *O'Connor v. Townships of Otonabee and Douro*, 35 U. C. R. 73, at p. 85, where the same very learned Judge who decided the case of *In re McBride and Township of York* (the late Sir Adam Wilson) used this language: "A county council may accept a road as dedicated by a private person, although there was no by-law signifying such acceptance;" he having previously said in the *McBride* case, which was a case of dedication of a deviation road between two townships: "It is not necessary that the road between townships should consist of original road allowance only. Such roads may be acquired or may be added to by purchase or by dedication as in other cases, and when once established by any lawful means it is a road for all