

FIRST DIVISIONAL COURT.

FEBRUARY 18TH, 1921.

*TOWNSHIP OF SOUTH GRIMSBY v. COUNTY OF LINCOLN AND TOWNSHIP OF NORTH GRIMSBY.

COUNTY OF LINCOLN v. TOWNSHIP OF SOUTH GRIMSBY.

Highway—Queenston and Grimsby Road—Liability of Township Corporation for Maintenance—Statutory Exemption—45 Vict. ch. 33, sec. 8 (O.)—Assessment—Legality of Levy upon Township—Action for Declaration—Previous Action in County Court—Improvement of Road under Good Roads System—County By-laws—Highway Improvement Act.

The appeal in the first action was by the plaintiff township corporation from the judgment of ORDE, J., 48 O.L.R. 211, ante 56.

The appeal in the second action was by the defendant township corporation from the judgment of the County Court of the County of Lincoln in favour of the plaintiff county corporation in an action to recover the sum of \$453.43 levied by the county corporation against the township corporation by a by-law in respect of the Queenston and Grimsby road.

The appeals were heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

W. S. MacBrayne, for the appellant corporation.

A. W. Marquis, for the county corporation, respondent.

G. S. Kerr, K.C., for the Corporation of the Township of North Grimsby, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said, after stating the facts, that the question of res adjudicata was not important now that the judgment in the County Court action was in appeal before the Court, and the only question was, whether or not the principle of the decision in *Village of Merritton v. County of Lincoln* (1917), 41 O.L.R. 6, was applicable to the case at bar.

With great respect, the learned Chief Justice was of opinion that this case was not governed by the *Merritton* case, and that the principle of that case was not applicable. In that case, the liability from which certain municipalities were relieved was "any liability or expenditure connected with the assumption by the Corporation of the County of Lincoln of the Queenston and Grimsby road as a county road;" and the ratio decidendi was that the liability under the Highway Improvement Act was not a