

the statute by directing the repair of a bridge and paying for it; for which they would be liable only if the road were a deviation for a town-line within the statute.

The defendant corporation had refused to contribute; and, after demand had been made, a petition was signed by some of the inhabitants and others asking the county council to direct that the town-line be opened. This the county council refused to do.

The finding should be that the road was a deviation within the meaning of the statute, and that the defendant corporation was responsible with the plaintiff corporation for its maintenance.

The defendant corporation should not be held liable for repairs prior to the demand made, shortly before action brought. Under the Municipal Act, sec. 455, where there is a joint liability there is joint jurisdiction for maintenance. The expenditure theretofore made was made at the sole instance of the plaintiff corporation; and it was not equitable that the defendant corporation should, at this distance of time, be called upon to pay these arrears.

There should be a declaration that the deviation road falls within sec. 458 of the Municipal Act, and that the two township corporations are liable hereafter for its maintenance in due proportion; if the councils fail to agree as to the proportion of the expense to be borne by the corporation, the same may be determined by arbitration under sec. 455.

Reference to *Township of Fitzroy v. Township of Carleton* (1905), 9 O.L.R. 686; *County of Wentworth v. Township of West Flamborough* (1911-2), 23 O.L.R. 583, 26 O.L.R. 199.

The plaintiff corporation to have the costs of the action.

MIDDLETON, J.

DECEMBER 10TH, 1915.

*BURMAN v. ROSIN.

*ROSIN v. BURMAN.

Set-off—Mutual Debts—Right of Assignee of one—Debts Due and Payable before Assignment—Judicature Act, sec. 126—Conveyancing and Law of Property Act, sec. 49—Equity Prevailing over Right of Set-off—Date of Assignment—Date of Commencement of Action.

Summary application by Burman, upon originating notice, for an order determining the right to \$95 paid into Court.