

useless in reference to a road running through or from one county into another; for it must, as a matter of course, be partly in one county and partly in the other. It could not deviate so as to be partly or wholly in some places in the one county. It must necessarily be in both counties, otherwise it would be a road having its limits entirely within the one county. When you are dealing with a continuous road passing through two counties, you would not speak of it as a road "deviating so as in some places to be wholly or in part within one of the counties." Section 339 gives the County Council exclusive jurisdiction over every road or bridge dividing different townships, "although such road or bridge may so deviate as in some places to lie entirely or in part within one township."

Section 341, which transfers to the Municipal Council the powers of the Magistrates in Quarter Sessions, provides that in case "any such road or bridge lies in two or more counties, it shall belong to the Council of such counties;" that is, as I understand it, each county shall own so much of the road as lies within its boundaries; for no joint jurisdiction is given anywhere except under the 327th section, and I have already, I think, shown that that does not apply to a road running through several counties. Now, in this 341st section the Legislature makes the distinction, as to roads which lie partly in one county and partly in another, and roads which lie between two counties. If they had meant, under the 327th section, to include roads which run from one county into another, they would have employed the word "between" in the 341st section, instead of using the words "lying in" two counties.

Again, in sub-section 3 of section 342 the language is, "roads or bridges running or being within one or more townships, or between two or more townships of the county, or between the county and any adjoining county or city, &c." This shows that the Legislature was alive to the distinction and difference in roads lying in one or more townships, and roads lying between them. I suppose no one would think of applying this section to Yonge street, for instance, which runs from and out of the City of Toronto, into the County of York, so as to treat this street as a road lying between the city and county, and thus giving the county jurisdiction over it, even in the city; which must be the inevitable result, if, under the word "between," is to be classed a road passing through two adjoining municipalities. So, again, in section 343, any township may aid any adjoining county "in making, &c. &c., any road or bridge lying between the township and any other municipality." Does this mean a road passing through and from one township into and through another? Does it mean that the township, besides maintaining the road within its own limits, shall or may also aid in maintaining it where it has passed beyond those limits and is within another municipality? Surely not. For these reasons, I think that the two municipalities, the defendants here, did not acquire under the Statute any joint authority over the bridge in question, and, therefore, could not be made jointly liable for any defect in it.

If I were prepared to agree in the premises of the learned Chief Justice, as to the limits of the counties, I would come to the same conclusion

as he has; but it seems to me that the counties must be co-extensive with the limits of the townships composing them respectively, and these by the Territorial Act meet in the middle of "The Narrows." I think each county must keep in repair the portion of the bridge lying within it.

This defence does not appear to have been urged in the Court below, nor to have been made a ground of nonsuit, nor the subject of a motion against the verdict for the plaintiff, nor is it made a distinct ground of appeal here; but it has been urged here, in argument, without objection, and I suppose under the first reason for appeal, and if available, is, I apprehend, too patent to be overlooked.

RICHARDS, C. J., HAGARTY, A. WILSON, J. WILSON, J. J., and MOWAT, V. C., concurred with DRAPER, C. J.

Per Curiam.—*Appeal dismissed, with costs.*

### COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law,  
Reporter in Practice Court and Chambers.)

#### IN RE MIRON V. MCCABE.

*Division Courts—Jurisdiction—Reduction of claim by payment or set-off—Prohibition—Stay of proceedings.*

*Held*, 1. That a balance of an account which originally exceeded \$200, but had been reduced by payment (not set-off) to under \$100, was within the jurisdiction of a Division Court.

2. Affidavits, to be used on an application for a prohibition, should be entitled in the court to which application is to be made, but should not be entitled in any cause.

3. There is no authority in this country for a judge to stay proceedings in court below pending prohibition.

[Chambers, Dec. 14, 1867.]

A summons was granted in this matter by Mr. Justice Morrison, on the 29th November last, calling upon Miron, the plaintiff in a suit in the Ninth Division Court of the County of Hastings, against McCabe, defendant, and upon the judge of the said court, to show cause why a writ of prohibition should not issue to the said judge to prohibit him from further proceeding in the said Division Court on the said plaint, and from enforcing the judgment therein, on the ground that the said court and judge had no jurisdiction of the said plaint; and that the plaintiff's claim is not within the jurisdiction of the Division Court, and so appears from the particulars thereof, being for a balance due upon an unsettled account exceeding the sum of \$200; and why the said Miron should not pay the costs of the application; and in the meantime that all further proceedings in the said court be stayed.

It appeared that the summons in the court below was issued on the 23rd October last, stating the plaintiff's claim at \$67 47½.

The particulars of claim attached to the summons claimed a balance of account, as follows:

Terence McCabe, Esq.,	
1867.	To Joseph Miron, the younger, Dr.
May. To 6 months 28½ days service, at	
the rate of \$34 per month.....	\$284 55
Cash paid men.....	2 00
	<b>\$286 55</b>

Cr. By.....	169 07½
Balance due.....	<b>\$67 47½</b>