

"From and after the . . . last Monday of December, 1882, any rate, tax, liability or expenditure whatsoever, which, but for the passing of this Act, would have been assessable, ratable and taxable against the said original Township of Grimsby, in respect or on account of the road known as the Queenston and Grimsby road, shall be assessed, rated and taxed against the . . . Township of North Grimsby, and shall be borne and paid by the said Township of North Grimsby solely, and the said Township of South Grimsby shall not thereafter be liable or be rated, assessed or taxed therefor."

The defence of *res judicata* was raised upon a judgment of a County Court recovered by the county corporation against South Grimsby for \$453.43 levied in 1917 by county by-law 605, the levy in question in this action. The learned Judge was of opinion that the binding effect of the County Court judgment must be limited to the cause of action which merged in that judgment, and that the plaintiffs in this action were not concluded from seeking in the Supreme Court of Ontario a determination of the broad question of their liability under the good roads by-laws of the County of Lincoln for assessments subsequent to the year 1917: *Davis v. Flagstaff Silver Mining Co.* (1878), 3 C.P.D. 228; *Webster v. Armstrong* (1885), 54 L.J.Q.B. 236; *Midland R.W. Co. v. Martin & Co.*, [1893] 2 Q.B. 172.

The first defence upon the merits was, that the exemption accorded to the plaintiffs by sec. 8 of the Act of 1882 did not apply to the Queenston and Grimsby road, now that it had become part of the good roads system under the Highway Improvement Act. The learned Judge felt bound by the decision of the Appellate Division in the *Merritt* case, *supra*, to decide in favour of the defendants upon this defence.

The other ground of defence upon the merits was, that the plaintiffs, through their representative, had agreed to abrogate their right to exemption, in consideration of an allotment of certain additional mileage of road. There was evidence that, in the course of the negotiations leading up to the adoption of the good roads system by the county council, the Reeve of the Township of South Grimsby had acquiesced in the allotment of some additional mileage to his township because the inclusion of the Queenston and Grimsby road in the system would necessitate the township corporation's contributing to the maintenance of that road. There was no evidence that the Council of South Grimsby ever formally authorised its Reeve to make any such bargain, or that what he did was ever ratified by that council. No authority was cited to support the contention that the Reeve of a township can forgo a statutory right to exemption in this loose way; and,