

I think the appeal should be dismissed with costs (a).

VAN KOUGHNET, C.—I think the Court of Common Pleas rightly held that a county is liable for damages sustained in consequence of the non-repair or insufficient construction by it of a road or bridge over which it exercises control. It is true that the county is not, by the Municipal Act, in express terms made liable for such default; but I take it that a corporation charged with or assuming the custody of a road or bridge, and having funds, or the means of obtaining funds by exacting tolls or levying a rate upon the members of the corporation with which to make repairs, is at common law bound to keep such road or bridge in an efficient state. The difficulty that existed in the case of *Russell v. Men of Devon* (2 T. R. 687) does not present itself here; for the inhabitants of a county in this Province are an incorporated body or municipality, and as such possess corporate property and rights, and are subject to many duties, and can sue and be sued. The same obstacle that existed to suing the inhabitants, as such, of a county or parish, stood in the way of a suit against the justices in Quarter Sessions (supposing them to be otherwise liable), for they were not incorporated, and were a shifting body of individuals merely. Though section 341 of the Consolidated Municipal Act transfers all the powers, duties and liabilities of the magistrates in Quarter Sessions, in regard to roads, &c., to the municipal corporation of the county, it does not limit the powers or liabilities of the corporation to those conferred or imposed upon the Quarter Sessions. One reason probably, why the corporations of townships, cities, towns and villages, were in express words made liable to individuals in a civil suit for damages, was that, with rare exceptions, all roads lying within those several municipalities are under their respective control and charge. The mere fact of a road passing through and from one township to and into and through another adjoining township or other municipality, without interruption or change of line or character, does not make it a county road. Each township and other municipality controls the portion of such continuous road lying within its borders, and is responsible for it, unless the road be on other grounds a county road. The statute does not remove the common law liability, though it does not state or enact it.

I am of opinion, however, that this action must fail, because the bridge in question is not a bridge lying wholly or partly between a county and an adjoining county; not, in fact, a bridge lying between these two counties, within the meaning of sec. 327 of the Municipal Act. These two counties embrace certain townships which touch and adjoin one another, separated only by a geographical line, unsubstantial and invisible. They are not divided by any bridge, and strictly speaking nothing does or can lie between them. When you speak of something lying between two other places or things, you mean, in the accu-

(a) NOTE.—At common law, if a bridge be within a franchise, those of the franchise are to repair it. If the bridge be part within the franchise and part within the gildable, so much as is within the franchise shall be repaired by those of the franchise, and so much as is within the gildable by those of the gildable; and so it is if it be in two counties, mutatis mutandis.

rate use of language, something lying between the boundaries or limits of the other two places or things; something dividing them, or within the borders of that which does divide them. You don't in such a case employ the word "between" as meaning something common to two parties or places, as when you speak in the common ordinary terms of a well or a stable as in use between two parties, or common to both, and which, consistently with the meaning of the words thus employed, may be wholly on the premises of one of the parties. If you were asked, "Does anything in the shape of a road, bridge or river, lie between two counties?" you would not say, "Yes, there is a road or a river which passes through the one county into the other." The Legislature have made no distinction between roads and bridges in this, nor, indeed, so far as I have seen, in any other section of the Act; and perhaps the case of this bridge is a single and exceptional one, not within the thought or view of the Legislature at the time, and is therefore a *casus omissus*. That we cannot help our duty is to interpret the language of the Legislature as we find it, and not, contrary to its meaning, to employ it to cover a case which the Legislature has not provided for, or has overlooked. In this country are many roads continuous and unbroken, which, as one line of road, traverse two or more counties, running from one into the other, without any visible boundary or mark to fix the limits of the road or portion of road within any one of such counties. Take the road known in former times as "Dundas Street," which commencing, I believe, as far west as London, was continued and travelled over to the eastern boundary of Upper Canada. This road passes of course through many counties. Would it be pretended that the different counties through which this road ran, were to unite and exercise joint jurisdiction over it? If not in the case of such a road, neither, I think, in the case of a bridge, situate as this is, which does not lie between two counties, but lies partly in one and partly in another, in unbroken length, as in the case of a road running from one county into another. Each municipality, as the law stands, can alone, in my judgment, be made responsible for the maintenance and repair of so much of such a bridge as lies within its borders, as in the case of a road similarly placed, unless the road or bridge is assumed by the county; and if this in the case of a bridge be inconvenient, the Legislature must do, as they have not done, make the distinction and provide the remedy; for, as I have already said, roads and bridges are placed by them on the same footing, and this action is made to rest upon a supposed statutory liability, and not upon any liability at common law.

The Legislature have, I think, however, made their own meaning plain by the language they have employed in several sections of the statute.

In the 327th section this joint jurisdiction is given over a road or bridge lying between two municipalities, "although such road or bridge may so deviate as to be wholly or in part within one county." The Legislature, here, I think, shew clearly, that what is meant is a road or bridge running along or between the borders of two counties. The language quoted, if not entirely out of place, would be unnecessary and