

plaintiffs for the amount they paid as the result of the action of the Armstrong Company. Plaintiffs are entitled to have the whole \$30,000 expended upon the county road or county roads within that township, and should not suffer the loss to these roads that would result if these moneys or any part of them be diverted by defendants towards meeting obligations of their own which they have incurred through their negligence or default, and from which plaintiffs derive no benefit. Payment of the sum in dispute out of these moneys which were raised at plaintiffs' request for another and different purpose would be a distinct loss to the plaintiffs. The same may be said about any attempt to charge the sum in dispute against plaintiffs' portion of the other moneys which were obtained by defendants from the appropriations by the Legislature for road improvements. If it were material to the issue (and I think it is not), it might be mentioned that though plaintiffs' application to defendants in respect of the raising of the \$30,000 was to levy a rate upon the property of the township of Toronto, under sec. 13 of 2 Geo. V. ch. 11—that is for the construction, improvement or maintenance of the county roads, etc.—defendants' by-law passed in pursuance of that application, specifies that the \$30,000 shall be expended by the county in the improvement of the highways of this township. How can it be said that payment of the sum in question in the manner defendants have appropriated it is a proper application of that sum, either for improvements or for construction, improvement or maintenance of these roads.

The expenditure of these moneys is not in the hands or under the control of the township, and there being no obligation on it to construct, repair or maintain, it would be most unfair to deprive it of the full benefit of having all of its share of these moneys applied in the manner and for the purpose contemplated by the statute.

Defendants contend, too, that the decision of the matter here in dispute rests with the Minister of Public Works, under 2 Geo. V. ch. 11, sec. 7. That section draws a distinction between what are works of maintenance or repair (for which the county is made liable in the earlier part of the section), and what, on the other hand, constitutes works of construction and the purchase, maintenance and repair of road machinery, plant and equipment; and it is in cases of doubt or dispute as between these two classes of works that