

ORDE, J.

SEPTEMBER 14TH, 1920.

**\*TOWNSHIP OF SOUTH GRIMSBY v. COUNTY OF LINCOLN AND TOWNSHIP OF NORTH GRIMSBY.**

*Highway—Queenston and Grimsby Road—Liability of Township Corporation for Maintenance—Statutory Exemption—45 Vict. ch. 33 (O.)—Assessment—Legality of Levy upon Township—Action for Declaration—Previous Action in County Court—Res Judicata—Defences on Merits—Improvement of Road under Good Roads System—Highway Improvement Act, R.S.O. 1914 ch. 40—Abrogation by Township Corporation of Right of Exemption—Acquiescence—Authority of Reeve—Absence of By-law Authorising Abandonment.*

Action for a declaration that the plaintiffs, the Municipal Corporation of the Township of South Grimsby, are not liable for the levy made upon them by the defendants the Municipal Corporation of the County of Lincoln, under county by-law No. 605, in respect of the Queenston and Grimsby road; that the levy is illegal and void; and that the plaintiff corporation should not be assessed, rated, or taxed for any portion of the cost of the road under the system for the improvement of highways adopted by the county corporation under the provisions of the Highway Improvement Act R.S.O. 1914 ch. 40; and also for a declaration that the defendants the Municipal Corporation of the Township of North Grimsby are liable for all assessments in respect of the road; and for a mandamus, an injunction, and other incidental relief.

The action was tried without a jury at a Toronto sittings.

W. S. MacBrayne, for the plaintiffs.

A. W. Marquis, for the defendant county corporation.

G. S. Kerr, K.C., and G. B. McConachie, for the defendant township corporation.

ORDE, J., in a written judgment, referred to County of Lincoln v. City of St. Catharines (1894), 21 A.R. 370; Regina v. Corporation of Louth (1863), 13 U.C.C.P. 615; and Village of Merritton v. County of Lincoln (1917), 41 O.L.R. 6. All these cases had to do with the road in question.

He also referred to the Ontario Act (1882) 45 Vict. ch. 33, by which the original Township of Grimsby was divided into North and South Grimsby, and quoted sec. 8, as follows:—

\* This case and all others so marked to be reported in the Ontario Law Reports.