

being driven. Prior to the accident that part of Hurontario street had been assumed by the defendants as part of a county roads system under the provisions of the Act for the Improvement of Public Highways, and amending Acts, and defendants had participated in the sums set apart under these Acts to aid in the improvement of public highways. At the time of the accident the defendants were, and so far as the evidence shews, still are, liable for the maintenance and repair of this particular road.

The occurrence out of which The Armstrong Company's action arose happened on June 22nd, 1912. On the 8th June, 1912, By-law No. 426 of the defendants was passed providing for their expending \$30,000 in the improvement of highways in the township of Toronto, and authorizing the issue of debentures to that amount for that purpose, and the levying of a special rate annually upon the rateable property of the township to repay the amount of these debentures and interest as they should mature. This course was adopted on the authority of sec. 13 of 2 Geo. V. ch. 11, the Municipal Council of the township having made application to levy a special rate upon the township for the construction, improvement and maintenance of county roads within the township.

The defendants paid the amount of the Armstrong judgment and then sought to charge against the plaintiffs' portion of what is referred to as the "Good Roads Fund" the amount so paid and the costs which the defendants incurred in defending the action, and other items in connection with it, amounting in all to \$1,431.75. The present action is in effect to prevent defendant paying this sum out of plaintiffs' portion of the "Good Road Fund" and for repayment of it if defendants have so paid it or charged it against plaintiffs.

I fail to see on what ground defendants can successfully claim the right to charge this sum against the plaintiffs either by deducting it from plaintiffs' portion of the "Good Roads Fund" or otherwise. The occurrence in respect of which the Armstrong judgment was obtained was the result of defendants' negligence in not having done what was their plain duty to have done, namely, to maintain and repair the bridge which formed part of the road that they had assumed. There was no obligation on the plaintiffs to repair, and they were in no way responsible for what happened; nor was there anything entitling the defendants to claim over against the