

raised all required by the business by notes in the bank. This is of not the slightest importance; it was his money wherever and however he got it. . . . [Reference to *Rushton v. Gris-sell*, L.R. 5 Eq. 326, at p. 331.]

I think the appeal should be allowed.

The defendant counterclaims for \$558.41, being money received by the deceased in excess of the amount to which he was entitled. This was the money of the defendant, money had and received by the deceased, and I can see no reason why the defendant should not have judgment for this sum if he desires. From what was said on the argument, I assume that he will reduce the amount by \$15.80.

The defendant is entitled to his costs on the claim and counterclaim, and of this appeal, if he demands them.

MARCH 30TH, 1914.

*WESTON v. COUNTY OF MIDDLESEX.

Highway—Nonrepair—Injury to Traveller—Road “Assumed” by County Corporation—Act for the Improvement of Public Highways, 7 Edw. VII. ch. 16—Obligation to “Repair” and “Maintain”—Municipal Act, 1903, secs. 558, 606—Gravelling Done in Winter in Centre of Road—Negligence—Misfeasance—Dangerous Condition of Road—Absence of Protection or Warning—Damages—Discretion—Appeal.

Appeal by the defendants and cross-appeal by the plaintiff from the judgment of MEREDITH, C.J.C.P., 30 O.L.R. 21, 5 O.W.N. 616.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and LEITCH, JJ.

J. C. Elliott, for the defendants.

T. G. Meredith, K.C., for the plaintiff.

The judgment of the Court was delivered by LEITCH, J.:—
On the argument of the appeal, Mr. Elliott urged very strongly that, as the road in question upon which the accident happened was assumed by the County of Middlesex under the

*To be reported in the Ontario Law Reports.