

C. A.

APRIL 12TH, 1905.

TOWNSHIP OF FITZROY v. COUNTY OF CARLETON.

*Way—Substitute for Boundary Line between Counties—
Deviations—Declaration—Mandamus.*

Appeals by defendants the corporations of the counties of Renfrew and Lanark against the judgment of FALCONBRIDGE, C.J., 3 O. W. R. 280, in favour of plaintiffs, declaring certain highways to be deviation highways, and directing the appointment of arbitrators to ascertain and decide the amount of the liability of defendants for the proper care and maintenance of a bridge over a stream called the Wawa, which crossed the deviation road in the township of Fitzroy. The corporation of the county of Carleton were also defendants, but did not contest plaintiffs' claim.

The appeal was heard by OSLER, MACLENNAN, GARROW, MACLAREN, JJ. A.

A. B. Aylesworth, K.C., for defendants the county of Renfrew.

J. A. Allan, Perth, for defendants the county of Lanark.

D. H. Maclean, Ottawa, for defendants the county of Carleton.

G. F. Shepley, K.C., and R. V. Sinclair, Ottawa, for plaintiffs.

GARROW, J.A.:—The physical facts are somewhat peculiar. No less than three township and the same number of county boundaries are involved, in consequence of the difficulties in road construction caused by a sharp bend in the river Madawaska where these several boundaries meet. The township of Fitzroy is in the county of Carleton, the township of McNabb in the county of Renfrew, and the township of Pakenham in the county of Lanark. The boundary line between Fitzroy and Pakenham runs northerly to the southerly limit of McNabb, which forms the northerly boundary to both Fitzroy and Pakenham at the place in question.

The river in its course towards the Ottawa river flows easterly in the township of McNabb until about a mile westward from the junction of the boundary line between Pakenham and Fitzroy with that between these townships and