

breaking through a bridge, upon the road between Brampton and Cooksville alleged to have been in disrepair through the negligence of defendants.

Counterclaim by the municipality for \$250, expenses incurred in repairing said bridge, alleged to have been injured by plaintiffs' negligence and improper use.

G. S. Kerr, K.C., and G. C. Thompson, for the plaintiffs.

T. S. Blain, and D. O. Cameron, for the defendants.

HON. MR. JUSTICE KELLY:—At the close of the trial I expressed the opinion that on the evidence, the bridge in question was, at the time the accident occurred and for many months prior thereto, badly out of repair and exceedingly dangerous for those having occasion to pass over it, and that those whose duty it was to maintain and repair it had ample means of knowing—and must have known—of its unsafe condition. It is inconceivable that the defendants could have been in ignorance of its condition if reliance is to be placed on the evidence offered for the plaintiffs not only as to want of repair but also as to the length of time prior to the accident evidence of weakness and defects were apparent to those making use of it. That evidence I accept.

The road on what was the bridge is an important highway, on which there is much public traffic of all kinds usually seen on leading roads in long and well settled country places.

On the argument, counsel for defendants contended (though this defence was not expressly raised in the pleadings) that defendants were not, under the Highway Improvement Act and amendments thereto, liable for maintenance and repair.

This road was assumed by the defendants as part of a county road system under the provision of that Act, and a great deal of work of construction and repair had been done on it prior to June 22nd, 1912, when the accident happened which resulted in this action.

Defendants' engineer says that defendants performed work on the road almost up to the bridge and were working in its direction but had not reached it.