

THE
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NO. 11

HON. MR. JUSTICE KELLY.

DECEMBER 30TH, 1913.

TOWNSHIP OF TORONTO v. COUNTY OF PEEL.

5 O. W. N. 632.

Municipal Corporations—Highway—County Road in Township—Judgment against County for Non-repair of—Highway Improvement Act, 2 Geo. V. c. 11, s. 7, 13—Requisition under—Right of County to Charge Amount of Judgment against Township or "Good Roads Fund"—Minister of Public Works—Jurisdiction of.

KELLY, J., held, that where a township council had made application to the county under 2 Geo. V. c. 11, s. 13 to levy a special rate upon the township for the construction, improvement and maintenance of county roads within the township and a by-law passed and moneys raised for such purposes, that the county could not divert any part of such moneys to the payment of a judgment against the county arising from the negligence of the county in allowing a county road in the said township to fall into disrepair.

Action to restrain defendants from paying a sum of \$1,431.75 out of funds in their hands belonging to plaintiffs and for a declaration that that sum should be paid by defendants out of their general funds and not out of the "Good Roads Fund."

Tried at Brampton on the 21st November, 1913.

B. F. Justin, K.C., and W. S. Morphy, for plaintiffs.

T. S. Blain, for defendants.

HON. MR. JUSTICE KELLY:—This action is a result of the judgment in the action of the *Armstrong Cartage & Warehouse Co. v. County of Peel*, reported 24 O. W. R. 372, whereby defendants were held liable to The Armstrong Company for damages sustained owing to the falling of a bridge on Hurontario street, in the township of Toronto in the county of Peel, over which that company's motor truck was