

MEREDITH, C.J.C.P.

JULY 2ND, 1914.

*COUNTY OF WENTWORTH v. HAMILTON RADIAL
ELECTRIC R.W. CO. AND CITY OF HAMILTON.

Highway—Toll Road Acquired by County—Expropriating By-law—Toll Roads Expropriation Act—County Road—Act for Improvement of Public Highways—County Road—Transfer of Portion to City—Powers of Ontario Railway and Municipal Board—Ultra Vires Order—Annexation of Part of Township to City—Proclamation of Annexation—Effect of—6 Edw. VII. ch. 34, sec. 1(2)—Agreement between County and Railway Company—Estoppel—Payments for Running Rights over Road—Payments Made under Mistake of Law—Costs.

Action to recover \$597.95 alleged to be a balance of money due for tolls upon two and three-tenths miles of road

G. Lynch-Staunton, K.C., and J. L. Counsell, for the plaintiffs.

A. Hope Gibson, for the defendant railway company.

F. R. Waddell, K.C., for the defendant city corporation.

MEREDITH, C.J.C.P.:— . . . A toll road company were the owners of a toll road in the county of Wentworth. The county, in the year 1902, committed itself to a comprehensive scheme for the betterment of a number of highways within its limits. This is purported to do under the provisions of an Act for the Improvement of Public Highways, 1 Edw. VII. ch. 32 (O.), though out of the eighteen roads comprised in the scheme six of them were to be improved only to the extent of freeing them from tolls, at a cost of over \$50,000; the other twelve were to be improved, in the ordinary sense, at the cost of another \$500,000 or so.

Section 5 of the enactment mentioned provided that any municipality might apply the whole or part of the moneys to which it might be entitled, under the Act, towards paying any expenses that might be incurred for the purchase of toll roads, within such municipality, or for freeing the same from tolls; and that such toll roads as were purchased should be included in the roads to be designated and assumed or improved in accordance with the provisions of the Act.

*To be reported in the Ontario Law Reports.