

The highways are vested in the Crown for the use of the public; they are vested in the municipalities for the purpose, and to the extent, of enabling them to perform more effectually their duties to keep them in repair for the benefit of the public.

The bridge was not the property or an asset of the township; on the contrary it constituted, and still continues to constitute, an obligation; there was and is nothing like money, or money's worth, in it for them.

I would allow the appeal.

MOSS, C.J.O. GARROW and MAGEE, J.J.A., concurred.

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DECEMBER 30TH, 1910.

ONTARIO SEWER PIPE CO. v. MACDONALD.

*Sale of Goods—Contract—Manufacture and Sale of Specific Articles—Sale by Description—Implied Warranty—Fitness for Purpose—Defects—Damages—Evidence.*

Appeal by the plaintiffs from the judgment of FALCONBRIDGE C.J.K.B., 1 O.W.N. 699, dismissing the action with costs and allowing the defendants' counterclaim for \$1,141.14 with costs.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., and J. A. Macintosh, for the plaintiffs.  
G. H. Kilmer, K.C., and J. A. McAndrew, for the defendants.

GARROW, J.A.:—The defendants were contractors for the construction of the Walkerton and Lucknow Railway, and, requiring for that purpose a quantity of tile suitable for culverts in the railway, applied to the plaintiffs, who are manufacturers, to supply the same. . . .

[The learned Judge set out part of the correspondence between the parties.]

Under the arrangement, whatever it was, a considerable quantity of pipes was delivered in 1906 and paid for by the defendants in full. The action was brought simply to recover for the pipes delivered in the month of April, 1907, to the