

In the present case the continuance of the conditions resulting in the highway being in a state of disrepair was known to the officers of the municipality, and they took no precautions in the way of special inspection. Had such inspection taken place, the condition of the culvert would have been disclosed.

The appeal should be dismissed.

MIDDLETON, J., also read a judgment. He said that the question which had arisen upon the Municipal Acts of other Provinces did not arise upon the Ontario statute. In cases of non-repair, liability is established *prima facie* as soon as the defect is proved; and the onus is cast upon the municipality to shew such circumstances as will exonerate it from the *prima facie* liability. The liability of the defendants was well established without reference to any question of onus. There is no justification for the idea that municipal corporations are entitled to allow their roads to fall into disrepair and then escape liability on the ground that they had no notice or knowledge of the situation. Notice is of importance only when what is complained of arises out of the clear wrongdoing of some one who has no official relation with the municipality or colour of right to do what he has done. Notice in other cases may be relied on to emphasise the breach of duty by the municipality.

The appeal should be dismissed.

LENNOX, J., agreed in the result.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

JANUARY 28TH, 1921.

*RICHER v. BORDEN FARM PRODUCTS CO. LIMITED.

Judgment—Summary Judgment—Motion under Rule 57—Defence Set up by Affidavit—Defendants Prevented from Paying by Reason of Garnishment Proceedings in Quebec Court—Important and Difficult Question—Jurisdiction of Quebec Court—Question not Proper for Determination upon Summary Application—Action to Proceed to Trial in Ordinary Way—Appeal—Costs.

Appeals by the defendants in two actions from orders of the Judge of the County Court of the United Counties of Stormont Dundas and Glengarry awarding summary judgment under Rule 57, in one case for \$313.39 and in the other for \$250.90, with costs.