

The Ontario Weekly Notes

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TORONTO, JUNE 7, 1911.

No. 37.

COURT OF APPEAL.

MOSS, C.J.O., IN CHAMBERS.

MAY 30TH, 1911.

COUNTY OF WENTWORTH v. TOWNSHIP OF WEST
FLAMBOROUGH.

*Highway—Township Boundary Line—Deviation—Motion for
Leave to Appeal—Appeal Confined to Question whether
Road is a Deviation—Municipal Act, 1903, secs. 617, 622-624,
641, 648-653.*

Motion by the defendants for leave to appeal from a judgment of a Divisional Court, ante 1003, reversing the judgment of MIDDLETON, J., ante 360, dismissing the action.

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

Moss, C.J.O.:—The plaintiffs' claim is to recover from the defendants the sum of \$627.83, their share of the expense incurred by the plaintiffs in placing and maintaining in a fit and proper state of repair a road spoken of in the judgment of the Divisional Court as the Carroll or Guelph road. The questions in dispute at the trial were whether this road is now part of the town line between the townships of East and West Flamborough, as a deviation within the meaning of the Municipal Act, and whether, assuming it to be so, the plaintiffs complied with the provisions of the Municipal Act as to the proper preliminary proceedings necessary to entitle them to make the expenditure in question, and maintain this action for the recovery of a moiety thereof from the defendants.

The learned trial Judge did not finally deal with the latter question, but dismissed the action upon the ground that the road is not a deviation of the original town line road.

The Divisional Court differed from the learned Judge upon his view of the facts, and the law so far as a question of law