

purposes and subject to the common incidents and law applicable to highways in the particular locality in which they are situated."

The question is really one of fact. The municipal corporations are charged with the duty to open up and maintain highways for the convenience of the public. The duty in the present case was jointly vested in the counties of Carleton and Renfrew, and neither of them as corporations apparently did anything, but they both knew, that is the inhabitants knew, from the beginning, that this road was being opened, and that it was gradually as the years passed assuming its final character of an apparent deviation road to avoid the river. They could have intercepted this by opening up the true boundary line or some other road in lieu of it, but they preferred, wisely I think, to do nothing, because the road now in question satisfactorily served the public purpose and so absolved them from their duty in the premises.

Must there not come a time when it is no longer a question of origin in such a case? I certainly think there must, and that that time is long past in the case of the present highway, which was, in my opinion, long ago accepted and adopted by the municipalities interested as in fact a boundary line road, although not upon the true boundary line, and a boundary line road so accepted and adopted by them for the purpose only of obtaining a better line of road than upon the true boundary line.

With deference, I think there was no good reason shewn for ordering the county of Renfrew to pay the costs of the county of Carleton. The judgment against the latter county should, in the circumstances, be without costs, and they should pay their own costs of the appeal, their appearance having been unnecessary, as they do not contest plaintiffs' claim.

The appeal of the county of Lanark should be allowed with costs and the action as against them dismissed with costs. And the appeal of defendants the county of Renfrew should be dismissed with costs, and the judgment appealed from should be varied accordingly.

MACLENNAN, J.A., gave reasons in writing for the same conclusions.

MACLAREN, J.A., also concurred.

OSLER, J.A., dissented, for reasons which he gave in writing, being of opinion that the case was one not provided for