

FIRST DIVISIONAL COURT.

JANUARY 24TH, 1916.

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

*Highway—Toll Road Acquired by County—By-law—Toll Roads  
Expropriation Act—County Road—Transfer of Portion to  
City—Powers of Ontario Railway and Municipal Board—  
Annexation of Part of Township to City—Contract—Mile-  
age Rate.*

Appeal by the defendants the Corporation of the City of  
Hamilton from the judgment of MEREDITH, C.J.C.P., 31 O.L.R.  
659, 6 O.W.N. 685.

The appeal was heard by GARROW, MACLAREN, MAGEE, and  
HODGINS, J.J.A.

H. E. Rose, K.C., and F. R. Waddell, K.C., for the appel-  
lants.

D. L. McCarthy, K.C., for the defendant railway company.

G. Lynch-Staunton, K.C., and J. L. Counsell, for the plain-  
tiffs, respondents.

GARROW, J.A., read a judgment in which he said that the  
judgment below rested upon the proposition that the Ontario  
Railway and Municipal Board had no authority to make an  
order transferring that portion of the county road in question  
which passed through the annexed territory from the county  
corporation to the city corporation. The portion of the order  
objected to as ultra vires was contained in the last two lines of  
clause 5, the whole clause being as follows: "5. The City of  
Hamilton shall pay to the Township of Barton on the 14th  
day of December, 1910, and thereafter annually during the  
currency of the good roads debentures issued by the County of  
Wentworth, the amount which would have been levied upon the  
said property to be annexed in respect of such debentures if  
the said lands had remained part of the township . . . and  
were assessed each year at the amount said lands were assessed  
for the year 1909, and a rate was struck each year at the same  
rate as fixed by the township council of Barton for the year  
1909, and all former toll roads purchased by the said county in  
the annexed territory shall vest in the City of Hamilton." The  
time fixed by the order as that at which it should come into