

# In the Privy Council

No. 100 of 1931

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## ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Between:

THE MUNICIPAL CORPORATION OF THE CITY OF  
EAST WINDSOR,

Appellant,

—and—

THE MUNICIPAL CORPORATION OF THE COUNTY OF ESSEX,  
Respondent;

And between:

THE MUNICIPAL CORPORATION OF THE COUNTY OF ESSEX,  
Appellant,

—and—

THE MUNICIPAL CORPORATION OF THE CITY OF  
EAST WINDSOR,

Respondent.

(CONSOLIDATED APPEALS)

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# RECORD OF PROCEEDINGS

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FURLONG, FURLONG, AWREY, ST. AUBIN & MEIR,  
Solicitors for the Appellant, the City of East Windsor, in Main  
Appeal, and the Respondent in Cross Appeal.

RODD, WIGLE, WHITESIDE & JASPERSON,  
Solicitors for the Respondent, the County of Essex, in Main Ap-  
peal, and the Appellant in Cross Appeal.

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**In The Privy Council**  
**CITY OF EAST WINDSOR**  
**vs.**  
**COUNTY OF ESSEX**

RECORD  
In the Appellate Division of the Supreme Court of Ontario

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**RECORD OF PROCEEDINGS**

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**PART I.**

**AGREEMENT**

THIS AGREEMENT made (in duplicate) the 29th day of November, one thousand nine hundred and twenty-nine.

No. 1  
Agreement of  
Submission to  
Arbitration

10 Between:

THE MUNICIPAL CORPORATION OF THE COUNTY OF ESSEX  
(Hereinafter called the "County"),

Of the First Part;

—and—

THE MUNICIPAL CORPORATION OF THE CITY OF  
EAST WINDSOR

(Hereinafter called the "City"),

Of the Second Part.

20 WHEREAS, subject to the provisions of the Municipal Act and in pursuance of an Order of the Ontario Railway and Municipal Board the Town of Ford City was erected into a City under the name of East Windsor, and thereby separated from the said County, such separation becoming effective on the 1st day of June, 1929.

AND WHEREAS it has thereby become necessary to adjust the assets and liabilities as between the Parties hereto and also to settle the contribution of the City of East Windsor to the County of Essex for its just proportion of the costs of administration of Criminal Justice and other matters.

30 AND WHEREAS the Joint Committee representing the Two parties have conferred for the purpose mentioned in the preceding paragraph and have agreed upon a basis of settlement of certain matters which it is desired to embody in a written agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH:—

1. (a) The provisions of this paragraph are in full settlement of all current liabilities incurred up to and including December 31st, 1929, and which the City is or may be required to pay.

(b) The City shall pay to the County 14.9308% of \$493,197.08, which sum is the amount required to be levied on the various Municipalities as provided in By-law Number 689 of the County, passed in the year 1929.

(c) The County shall pay to or for the City all disbursements or payments, rebates, refunds, surplus allowances and credit allowances for which it would be obligated if the City had remained a part of the County until December 31st, 1929. 10

2. After the 31st day of December, 1929, an adjustment in other respects of the assets and liabilities of the Corporations, according to the provisions of the Municipal Act respecting the same, shall be made, such adjustment to be made as of the 1st day of June, 1929. In the event of failure of the parties to agree upon such adjustment, the determination of the matter shall be referred to His Honour Judge Coughlin, Senior Judge of the County of Essex, and his decision shall be subject to appeal. 20

3. After the final determination of the adjustment, the parties hereto shall, as they become due and payable, discharge their respective obligations arising out of such final adjustment.

4. The City of East Windsor shall pay to the County of Essex each year during the years 1930 to 1934 inclusive, a sum of Four Thousand Dollars (\$4,000.00), payable in two (2) equal instalments in each year, the first of such payments to be made on the 30th day of June, 1930, and the second instalment on the 15th day of December, to cover the City's proportion of the cost of the administration of justice during the period aforesaid. 30

5. At the end of each year a computation is to be made of the cost of the administration of justice for the year then closing and the share of the City is to be determined on the basis of user, and if this proportion of such cost is less than the sum of \$4,000.00, then the County shall refund to the City the difference, and if the share of the City exceeds the sum of \$4,000.00, the City shall pay to the County, upon demand, such excess.

6. For the purpose of determining the City's share, the Auditor of the City or such other officer or person as the Council of the City may appoint, shall have access to the books of account and records of the County relating to the administration of justice within the County. 40

7. In respect of the period commencing Jan. 1st, 1930, this Agreement and the amount payable thereunder by the City to the County shall not include Crown Witnesses, Coroners' fees, Court Stenographers' salary, conveyance of prisoners, nor the Registry Office expense, the accounts for which are to be settled annually in December of each of the said years by payment to the County by the City of its share thereof, upon demand being made, but the City shall have the same right to investigate the accounts relating to such items, as has been hereinbefore provided for in respect of the costs of the administration of justice.

10 8. It is also agreed and understood that for the sake of convenience of all Crown witnesses, whose fees may be payable by the City, the County Treasurer will advance to the said Witnesses their fees according to the pay list therefor, which sums shall be paid by the Treasurer of the City of East Windsor to the County Treasurer at least once a year, and the City of East Windsor is to pay County Witness Lists on the same condition.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by the hand of its proper officers and under the seal of the respective corporations.

20 SIGNED, SEALED AND DELIVERED  
in the presence of:—

(Signed) JAMES GOW, Warden of the County of Essex.

W. P. COYLE, Clerk of the County of Essex.

JOHN H. WIGLE, Mayor.

J. F. FOSTER, Clerk.

MUNICIPAL CORPORATION OF THE CITY OF EAST  
WINDSOR.

RECORD  
In the Appellate Division  
of the Supreme  
Court of Ontario

No. 1  
Agreement of  
Submission to  
Arbitration

Evidence taken before His Honour J. J. Coughlin, Esq., Senior Judge of the County of Essex, Arbitrator, at his Chambers in the Town of Sandwich, in the County of Essex, on the 18th day of July, A.D. 1930.

J. H. RODD, K.C., Counsel for County of Essex.

E. C. AWREY, K.C., Counsel for the City of East Windsor.  
H. G. MEIR,

### EVIDENCE FOR COUNTY OF ESSEX

HIS HONOUR—You will proceed, Mr. Rodd, with your claim in reference to the liability of East Windsor.

MR. RODD—Yes, I will call Mr. Coyle. Mr. W. P. Coyle. 10

W. P. COYLE, sworn, said. Examined by Mr. Rodd:—

Q.—Mr. Coyle, you are the Clerk of the County of Essex. A.—Yes.

Q.—And you have been for a considerable number of years? A.—  
Since 1914.

Q.—And the Town of Ford City was represented by its Reeve and three Deputies, up until what time? A.—Well, they had two Deputies, then the last two or three years they have had three Deputies.

Q.—Up to what time, the three? A.—June session of 1929 was the first session that was not represented. They were represented continuously up to the March session in 1929, but they had no representation 20  
in the June session of the County Council.

Q.—I see by your Minutes there was a March session and an April session in 1929—

MR. RODD—You have no objection to printed copies being put in instead of the actual minutes?

MR. AWREY—No.

Q.—Do the books I am going to put in then carry a report of the County minutes and the by-laws? A.—Yes, I have every reason to think so, except some typographical errors, they are assumed to be correct.

Q.—And you believe them to be so? A.—Yes. 30

MR. AWREY—If there are any errors they will be corrected?

Q.—You know of none now? A.—I know of none.

HIS HONOUR—Seeing that the record is now being taken by the reporter, you might put in the exhibits that were mentioned—

EXHIBIT 1—Copy of the Order of the Ontario Municipal Railway Board, creating the Corporation of East Windsor.

EXHIBIT 2—Copy of the Agreement of the 29th of November, 1929, between the County of Essex and the City of East Windsor.

HIS HONOUR—There was also put in, I did not know whether you

intended it for an exhibit, draft agreements, not signed, prepared by you and Mr. Awrey which were—

MR. RODD—They are not exhibits, they are simply for Your Honour's use.

HIS HONOUR—I am not numbering them.

Q.—Now the agreement entered into between the two corporations on the 9th of November, 1929, No. 689, referred to, do you remember when that was passed, June session, 1927? A.—Yes, June 21, 1929.

Q.—I am going to put in the printed copy of the proceedings of the  
10 County Council for the session of April 29, May 27 and June 17.

MR. AWREY—Only parts that are relevant—

MR. RODD—Quite so, only parts that are relevant.

EXHIBIT 3—Printed copies of by-laws and minutes.

Q.—On what page of your printed notices of the proceedings does the passing of the By-law 689 appear? A.—You mean the different readings, Mr. Rodd?

Q.—No, it was passed in the June session, on what page? A.—Page 207, passed June 21st, 1929.

Q.—And the heading is, "A by-law to levy the county rate to provide  
20 for a school inspector's salary, monies payable under the Public School Act, the Provincial Highway Act, and to provide money for accounts accruing and coming due during the year, to provide money for highways—schedule of assession showing amounts to be raised by the different municipalities for the year 1929. There are nine columns setting out the various matters—then your copy of proceedings also shows who were the members of the County Council, including the representatives from Ford City.

MR. AWREY—Not at that session.

MR. RODD—In the front of your book is shown representatives  
30 of Ford City and the meetings and sessions which they attended? A.—Yes.

Q.—I see in the April, March and May sessions consisted of a reeve and three deputies? A.—Three deputies.

Q.—And their names appear in the book? A.—Yes.

MR. RODD—I will ask you to mark that as I am going to refer to it again in a minute or two.

EXHIBIT 4—Minutes of March session of County Council.

Q.—Referring to the March session, I am putting in the printed record of that session. I first read from page 73 of this printed record under the heading, "A Notice of Motion. Mr. Rocheleau moved that he  
40 will on Wednesday introduce a by-law to provide for expenditures on the county roads—under the heading of repairs, the Highway Committee presented their report and was read, then the minority report was rejected—the next minutes are on page 75, it shows the adoption of the report as presented and the report itself appears on page 87 of the book

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and I will read part of it: "In accordance with your instructions to arrange our programme of expenditure, based on the rate of 3 mills, we submit herewith our estimates of the cost of same. We recommend the paving of 2½ miles 20 ft. concrete road on the 4th Concession Road Base Line, Township of Tilbury North, from the end of the present pavement to Comber Sideroad; 2¼ miles of 18 foot concrete on the Leamington Side Road from the end of the present pavement northerly to the 9th Concession Road, Mersea, 2½ miles from the end of the Walkerville Suburban Road southerly on the McGregor Harrow Road to the Anderdon Malden Townline. Where does the Walkerville Suburban Road reach to? A.—To the Village of McGregor—the crossings of the Michigan Central. 10

Q.—That is what they call the Walker Road? A.—Yes.

Q.—This is from McGregor Harrow Road to the Anderdon Townline? A.—To the the Pike in the Township of Malden.

Q.—Which is the boundary between Anderdon and Malden? A.—No, sir; it is one concession further south, it is Anderdon Colchester North townline to the pavement extending to the Pike Road.

Q.—To reach the Pike Road? A.—Yes, it might have originally been intended that, but the paving was done to the Pike Road. 20

Q.—Then I see the estimates are put in for construction of these roads—a total expenditure for the year \$590,500. for road purposes—the schedule itself shows what it is for—page 87. Then it shows the receipts that they were to get on account of this road building program from Windsor, Walkerville and the County at the rate of 3 mills on the subsidy which is provided—\$594,375, leaving \$3.875 for unforeseen and incidental expenses. I think that is all I need refer to in this book. Can you tell me about when tenders were advertised for in connection with these projected works? A.—If you will look in the May sessions, Mr. Rodd, on page 117, that tender—offhand I couldn't tell you the date that they were opened, but it was prior to that—they were opened that day, dealt with by the Council on page 117. I then refer to page 117, Exhibit 3, the County road program was discussed by the members—page 119, moved by Mr. Rocheleau, seconded by Mr. Gow, that the report of the Highway Committee be adopted—discussion of the report by the member, page 120, shows the report was amended by the change of one contract, Merlo, Merlo and Ray instead—it doesn't say who—121. report of the Highway Committee as to the tenders, the balance of the report be adopted as presented. A.—That is correct, yes. 30

Q.—Contract No. 2, McGregor Road, to Merlo, Merlo & Ray, \$78,351.00; No. 4, Mersea, \$55,770.56. less \$1,550 for tiling—Cadwell Co., No. 5, Essex, southerly, National Pavers, \$31,127.40; No. 6 Cottam northerly, National Pavers, \$26,609.10; Road 7, Pillette, lowest bidder, National Pavers, \$40,143.95; No. 8, Malden Road, let to National Pavers, \$91,812.10. It provides that the tiling and crocks on the Mersea job be 40

let to lower bidder, Reuben Knister, at price of \$1,271.00, instead of \$1,575.00. Total cost as per tenders, \$323,814.11.

WITNESS—But that does not include the work that was let by the Walkerville Suburban Commission or the Windsor Suburban Commission. Walkerville had let the contract for 2¼ miles from McGregor northerly to meet the previous payment.

Q.—Does the Suburban Area Commission make a program for itself?

A.—They submit it to the County Council and it is approved or rejected, the County Council have the final say.

10 Q.—Will you find out for His Honour where that is to be found in this report? A.—Just back of the January session, where they submitted their estimates and changes of the estimates for approval. In the meantime can you say whether that was done—

MR. AWREY—I don't think that is the way to suggest that—there is a way to do it and a way not to do it.

MR. RODD—I think Your Honour will permit it.

MR. AWREY—I don't want the evidence heard until the record is here.

20 HIS HONOUR—On page 87 of the March session in the estimates that are submitted by the Highway Committee, you will see—Walkerville Suburban Commission in the estimates that are submitted by the Highway Committee—\$590,500, that included the suburban estimates.

Q.—What paragraph is that? A.—First paragraph about the 8th or 9th item.

Q.—Now what roads did that estimate cover? A.—Walkerville Suburban estimate, \$69,500, was for the road end of the concrete pavement about ½ or ¼ south of Paquette Corners.

30 HIS HONOUR—Where would we be able to get the report of the Suburban Area Commission—is that anywhere in your County Council minutes? A.—Yes, it is back in 1924 or 1925, possibly.

Q.—Have you those records available in your office? A.—Yes.

HIS HONOUR—They will be filed? A.—Yes.

Q.—I see that the estimate is also for the Windsor Suburban Area Commission on the same page, \$96,000. A.—Yes, the item previous.

Q.—Where would the road or roads built by the Windsor Suburban Area Commission be to take up that \$96,000? A.—Mr. Milne is a member of the Windsor Suburban Area Commission. The pavement was constructed on the Huron Church Line, and I think some on the Tecumseh Road, but Mr. Milne will be able to give you the particulars.

40 Q.—Can you tell us when the contracts were let for these roads by the County? A.—There were reports shortly after the May session; they were let that day—you speak of the Suburban Commission.

Q.—No, I am leaving the Suburban out? I fancy that will go through their contract? A.—Yes.

Q.—I am speaking now only of the County's own contracts? A.—

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(Continued)

They were awarded at the May session.

HIS HONOUR—I presume formal contracts were drawn up and executed by the contractors? A.—Yes.

HIS HONOUR—Those are the dates Mr. Rodd wants?

WITNESS—I couldn't say that, I have a copy of the contracts on file, but the contracts were prepared in a reasonable time after.

Q.—Perhaps you will be good enough to let us have the contracts or dates? Or bring them in so that we may see them? A.—Yes, sir, I can bring a copy of the contracts.

Q.—Was there any other road building done in the County for which the County becomes liable apart from the County road system and the Suburban Area reports? A.—The Government finances two mills or a little bit more of concrete road east of Belle River on the Tecumseh which wasn't paid for until this year; that contract was let to the Cadwell people. 10

HIS HONOUR—By whom? Witness? A.—By the Government.

Q.—They financed it for the County?

MR. AWREY—A.—They constructed it.

WITNESS—They financed it for the County for a year.

HIS HONOUR—It was built under an agreement whereby the Government put up the money and built the road looking to the County for certain contributions? 20

WITNESS—Fifty per cent.

MR. RODD—Who will give me the cost of that? A.—I have the figures from the district engineer.

Q.—Will you be good enough to let us have that? A.—Yes, sir.

MR. AWREY—The contract should be here showing the liability? A.—It is a road the Government built.

MR. RODD—It isn't a Government road.

HIS HONOUR—I suggest whatever evidence we have might be submitted here, and if after looking at it you think some better evidence should be produced we will supply it then, but it is desirable to avoid the necessity of sending to Toronto if possible. 30

MR. AWREY—My learned friend took this attitude the other day—that he wouldn't tell us what he was going to prove or claim. I propose that he prove things properly, I haven't had any opportunity, this is the first I have heard of it, I want to see it before parol evidence goes in on the record. I want him to put it in in proper shape.

MR. RODD—If my learned friend is through I will go on?

MR. AWREY—Just a minute before you may go on we will have a ruling. 40

HIS HONOUR—There is no question asked before the Court.

MR. AWREY—I am asking that the evidence be stricken out of the record; my learned friend has not the evidence—

WITNESS—On page 120 of May sessions—

HIS HONOUR—What are you referring to?

WITNESS—Second last paragraph, Mr. Muir—

MR. AWREY—Read the next one.

MR. RODD—Is that the road that you refer to?

WITNESS—Yes.

HIS HONOUR—Who is Muir? A.—Chief Engineer of Municipal roads.

“Moved by Mr. Rocheleau, seconded by Mr. Woolatt—that the request of two miles of pavement over No. 12 be referred to the Highway Committee and that they will report to this Council at June session.”

MR. AWREY—From what Mr. Coyle has read it is quite apparent that this pavement has nothing to do with the arbitration—this arbitration is of the first day of June, 1929; this matter was not dealt with until after the first of June, 1929.

MR. RODD—That is argument.

MR. AWREY—It is a matter of evidence.

HIS HONOUR—There are many things in connection with this arbitration, the limits of which I am not able to define, so I am going to be very liberal on the allowance of evidence in on any point on which I am unable to say clearly that the arbitration does not extend to, I will allow the evidence in. After it is in I will determine whether it is within the scope of the evidence or not.

MR. AWREY—That doesn't get rid of the fact that you cannot give parol evidence in regard to a document—

HIS HONOUR—I will allow the evidence, Mr. Awrey.

Q.—I see that took place on May 28th, 1929? A.—Yes.

Q.—Page 119, Exhibit 3. I am just referring to the part with reference to Mr. Muir—that is just giving the date just a matter of history—my last question was whether or not the report referred to by Muir was the road which was financed by the Provincial Government? A.—Yes.

Q.—Can you tell me where it is to be found with reference to that road, highway, if any place except in the estimates—it is not in the estimates? A.—No, sir, it wasn't in the estimates.

Q.—But you say you have some documents or correspondence with the Provincial Highway Department? A.—We have their account as submitted by the District Engineer.

Q.—Was there anything, any communication between the County and the Province respecting this road after Mr. Muir's visit? A.—I can't just recall of any, Mr. Rodd.

Q.—Will you look that up? A.—Yes, I will.

Q.—I want to find out how and in what regard the County agreed to construction of the Tecumseh two mile stretch? A.—I could take a few minutes to find it.

Q.—I see there is east of Belle River on the Tecumseh Road in the

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Township of Rochester; it was referred in the next paragraph to the Highway Committee, and I would like to see what became of it? A.—Page 146, Mr. Rodd. It is moved at the December session by Poisson that this county approve of construction of approximately 2½ miles of concrete black face 20 feet—northerly and easterly along the County No. 1—from the existing Road No. 6 to the Village of Belle River, providing that the Department of Highways or other sources will finance the work for one year and the carrying out of this work be left to the Highway Committee.

MR. AWREY—June 19, 1929, third day of session? 10

WITNESS—Yes, June 19, 1929.

Q.—Your Committee will show, but perhaps you can tell us for the County, what the cost of that was, the County's share I mean? What is that you are reading from? A.—Letter from the Department of Public Highways, Mr. Eaton, District Engineer.

EXHIBIT 5—Letter.

MR. AWREY—Of course this is all subject to objection that I made with respect to this particular item? I don't want to keep objecting—

HIS HONOUR—If there is any important matter, for instance the correctness of the figures, we can arrange for a verification of that. 20

MR. AWREY—You have the paper before you, on the first of June, 1929—this is something that was undertaken on the 19th of June, when we were not part of the County—we were out, not a part of the County after the first of June. I want Your Honour to understand that I am strongly objecting to this; my submission is but for the agreement of November; we would have then had to pay some proportion possibly of the amount payable to the Government for work done prior to June, 1929, but this is work that was done after we became separated from the County entirely. We are not interested any more in it. 30

HIS HONOUR—You say it doesn't make any difference what it cost, thousands or not, you are not liable for any part? That is a matter that I cannot determine; in the meantime I am taking the evidence, therefore it is important that you should correct the accuracy of the evidence as it goes in.

MR. AWREY—And you understand the importance of my placing my objection of that admission from time to time—I don't think there is any quarrel over the figures.

Q.—From whom are these figures? A.—Mr. H. E. Eaton, Provincial District Engineer, representing the Department of Highways.

Q.—What is the date on which it was written? A.—December 31, 1929, it says—contract No. 29100, Cadwell Sand & Gravel Co., concrete pavement which totals \$57,920.34 for construction to that date. Then there are credits for cement blocks and sacks and cement not used, 40

amounting to \$68.93, leaving a net total of \$49,851.41.

Q.—Tell me whether the County contributes any part of that net total? A.—Well, the Province and the County each pay 50 per cent.

Q.—Of that net, or is that net to the County? A.—No, that is net to both.

Q.—So the County would pay  $\frac{1}{2}$  of the sum? A.—Only one-half, there might be some more work on the same contract that will be finished this year, but that was up to December 31, 1929.

Q.—This contract? A.—This one is signed by the National Pavers,  
10 June 8, 1929.

EXHIBIT 6—Contract signed by National Pavers, June 8, 1929, between the County and the National Pavers, Ltd., concrete pavement in the Township of Sandwich West, from the present pavement southerly and westerly from the Front Road, Sandwich West.

Q.—Where is that? A.—It is on the Malden Road in Sandwich West—out to the Front Road.

Q.—That is the road that goes by the Golf Club? A.—Yes. \$91,-  
812.10.

Q.—Have you the tenders? A.—Yes, they are in the office.

HIS HONOUR—Isn't what is actually material here what the work did actually cost; these may be contracts they might cost more or less.

WITNESS—Mr. Knister can give you that in his reports.

MR. AWREY—Might I suggest that Mr. Coyle and Mr. Knister would let Mr. Falls see these figures; Mr. Falls could check these figures over.

MR. RODD—I have no doubt that these gentlemen got every dollar the contracts called for—

MR. AWREY—If not more.

Q.—What contract is that that is marked on the outside? A.—  
30 That was the advertising carried that, 8—that is the Malden Road.

Q.—There is a number on the contract itself? A.—I don't know why it is there, it seems to be the form that the Department of Highways require; we take the number as the ad for the tenders.

Q.—Does that correspond with the number of the records in the May session, where they set out the award of the contracts or acceptance of the tenders? A.—No, it doesn't; it shows the contracts, page 121. Exhibit 6 is Contract No. 8.

Q.—Then I put in contract dated 11th of June, 1929, between the County and Rueben Knister, that is for that tiling, I suppose? A.—Yes,  
40 sir, that is the last paragraph.

Q.—Tiling Leamington Side Road, County of Mersea, 1271—

EXHIBIT 7—Contract re tiling Side Road.

EXHIBIT 8—Contract dated June 8, County and National Pavers Ltd., for one mile concrete pavement between the Townline Road, Col-

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chester North, and Gosfield north from Talbot Road on the Gosfield Colchester North Townline Road running directly south from the Town of Essex right up to the Malden Road in Colchester North—price for that \$31,127.40.

EXHIBIT 9—June 8th, 1929, County of Essex and the National Pavers, Ltd., for one mile of concrete pavement in the Township of Gosfield North from the Talbot Road to the 9th Concession in Gosfield North running east beyond Cottam. Total contract price \$26,609.10.

EXHIBIT 10—Contract, June 8, between National Pavers and County, 1½ mile concrete pavement, Township of Sandwich East from the Third Concession southerly to the Sandwich East, Sandwich South Townline. 10

Q.—And what is that road— A.—Pillette Road. Contact price was \$40,143.95.

EXHIBIT 11—Contract between County and Merlo, Merlo & Ray, dated 25th June, 1929, for black base pavement at price of \$78,351.

EXHIBIT 12—Contract 11th June, County with Cadwell Sand & Gravel, Mersea, 2¼ miles concrete pavement on the Leamington Side Road from the present pavement northerly to the 9th Concession Road in the Township of Mersea—\$54,220.56. 20

Q.—You say you have two contracts with respect to the Suburban Area? A.—One is already in—

Q.—Let me show you this and ask you if this is one? A.—Yes, that is the Walkerville Suburban Area—the Walker Road.

EXHIBIT 13—Contract dated June 25 between the County and Merlo, Merlo & Ray, 2¼ miles of mixed macadam pavement on the Anderdon and Colchester North Townline, from the end of the present pavement southerly to the Village of McGregor, that is not the Walkerville Suburban Area? A.—Yes.

MR. AWREY—Did the Government pay any portion of that. A.— Fifty per cent., the Town of Walkerville 25 per cent. 30

Q.—Of all the highway improvements? A.—Yes, of all the highway improvements.

(That would be Road No. 5 in this report).

Q.—Will you look at that for a moment and tell me what is this document I now hold? A.—That is the contract, Merlo, Merlo & Ray.

Q.—Suburban or County? A.—Suburban.

Q.—Windsor or Walkerville? A.—Walkerville.

(To be marked for identification, 14th Annual Report of the County of Essex for road construction and maintenance for the year 1929 for the County of Essex and put in by W. H. Knister, Road Superintendent— special report). 40

WITNESS—It is incorporated in the County's Year Book.

Q.—Will you show us in the minutes where this report was adopted?

A.—It will be in the January report of this year and which was ordered printed.

MR. RODD—We want to show that it was legally adopted.

Q.—That is the record prepared by Mr. Knister and presented by the Council? A.—Yes.

Q.—At the January session of 1930? A.—Yes.

EXHIBIT 14—Report of W. H. Knister for year 1929, January 22nd,  
10 1930—14th annual report.

EXHIBIT 15—Printed copy of the records of January, 1930, session of the County Council—

Page 18 under the headings report it says that the Road Superintendent presented his annual report of his expenditures and County roads—

WITNESS—The next paragraph—there is a motion asking for statutory grant on the expenditures under the Highway Improvement Act, 1929.

Q.—I see the Printing Committee makes a report, that is where  
20 you get your authority for having the printing? A.—It is up to the Auditor—they assume it is correct, he makes his report, there was a motion—it is never practiced by any other counties, they take the Auditor's report who makes a special report—

MR. AWREY—We can tie up in this document the contract we put in so we will know something about the cost of construction—1930 session.

Adjourned to 2.30 o'clock.

W. P. COYLE, recalled:—

MR. RODD—I thought I was through with this witness, but I  
30 think I should draw Your Honour's attention to By-law 690, Exhibit 3, page 211, for the issue of debentures for road purposes for \$185,000.

Q.—It was passed on the 21st June, 1929? A.—I think on the preceding page is equalization for 1929.

MR. AWREY—This doesn't apply to us, the equalization of 1928—

Q.—What is your equalization for 1929, is that made for 1929?

A.—It is made for 1930, we have it in the first two columns.

Q.—So the equalization that applies to 1929 was the equalization made in 1928? A.—Yes.

HIS HONOUR—That was recited in the 1929 By-law—

MR. AWREY—No, there was a by-law passed in 1928 for raising  
40 the by-law in 1929.

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MR. RODD—Perhaps I better put in this for Your Honour, I don't believe you have the printed minutes of the session of December, 1928—

EXHIBIT 16—Printed minutes of December, 1928, session.

MR. RODD—Your Honour will remember at that time there was an appeal made from the equalization on page 310 of the minutes of that session. December, 1928, is the report of the equalization from yourself and Judge Ross, Sheriff Anderson, on page 314 is the equalization as settled by the Arbitration Board.

CROSS-EXAMINED by Mr. Awrey:—

Q.—Mr. Coyle, we will look for a minute at Exhibit 4, page 87. I want to read you one paragraph from that part of the report of the Highway Committee: "We recommend that a grant of \$36,000 be made to the Town of Riverside to complete the widening and surfacing of Riverside Drive, providing the Town of Riverside enters into an agreement with the County whereby the said town waives its claim to any refund of road rates until the amount of this grant is absorbed, all subject to the Department of Public Highways." Was the grant made to the Town of Riverside pursuant to the Highways Committee report? A.—I think so, it would be in the Road Superintendent's report, page 14.

Q.—Under the heading of Grants and Refunds to Towns and Villages, that last item is town and villages, \$36,000. That is correct, is it not? A.—Yes, sir.

Q.—Then did the Town of Riverside enter into an agreement with the County whereby certain grants were to be foregone until this \$36,000 was made up? A.—I think so, Mr. Awrey, they had several agreements with the County.

Q.—The refunds to the Town of Riverside would be 50 per cent. of the levy for highway purposes? A.—Yes.

Q.—What was the levy for highway purposes in 1929 on the Town of Riverside?

HIS HONOUR—This agreement provided for the advancing of a certain amount which might extend over a number of years?

MR. AWREY—It was a grant that was paid in 1929, \$36,000, and Riverside entered into an agreement whereby they were to forego the annual refund of 50 per cent. of the highway levy—they would have been entitled to a grant of 1929 for 50 per cent. of the highway levy if it hadn't been for this; their road rate was \$7,500, \$3,375; so roughly, the County has paid out to Riverside the sum of \$32,625, which will be returned to them by the foregoing of the refund? A.—In the ordinary course of events it should be.

Q.—That is the agreement, they paid this \$36,000 in cash? A.—They paid that in Riverside in 1929, the refund would not be due and payable to them until 1930, it was a cash payment of \$36,000.

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Q.—Of that \$36,000 no part of it would have been, in the ordinary course of events, been payable until the first of April, 1930? A.—No, the refund wouldn't.

Q.—And then it would have been only something over \$3,300? A.—Yes.

Q.—That money would come back and be paid by the County eventually—

HIS HONOUR—The first levy would be payable when?

WITNESS—April 1st of the following year.

10 HIS HONOUR—The first credit you will get on the \$36,000 will be the credit that will be refunded the first of this year; Riverside is being charged up with that year by year.

WITNESS—I don't know if the Treasurer has carried it as a debit in the books; it is the understanding that we are not to receive any refund until that has been taken up.

HIS HONOUR—Is it important that you should get the amount of the first year's levy?

MR. AWREY—I think so—50%, \$6,750.00—\$3,375.00.

20 Q.—This \$36,000 was charged in your account as part of the original highways expenditure for 1929? A.—Yes.

HIS HONOUR—Raised by debenture or raised by the county rate?

WITNESS—I couldn't say; you issue debentures for a certain amount, you can't avoid it, it is for the county rate that we issue the debentures.

HIS HONOUR—Have you a copy of the actual advance of the money?

MR. AWREY—It doesn't appear to be in Exhibit 14, Nov. 22, 1929.

HIS HONOUR—I take it that the portion of the \$36,000 raised by the road levy and the proportion raised by debenture is not ascertained—

30 MR. AWREY—I understand that all money that was raised by debenture and which was raised by rate went into hodge pot—

MR. RODD—50 per cent. of that is paid by the Government, as my learned friend knows.

MR. AWREY—If that is the case I will find it from Mr. Coyle—

Q.—It was paid from monies raised in the year 1929 either by debentures or otherwise? A.—Yes.

Q.—My learned friend Mr. Rodd has suggested to you of this \$36,000 the Government pays 50 per cent.? A.—Yes.

40 Q.—That is correct. A.—Yes, sir, they recognize it as a payment, the grant was given of course subject to the approval of the department.

MR. AWREY—Yes, I want to clear this up and not leave part of it for Mr. Rodd to do afterwards—and the refund that you paid to the Municipality from year to year—does the Government pay 50 per cent. of that? A.—Yes.

Q.—That is recognized as one of the expenditures of which the Gov-

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ernment pays 50 per cent.? A.—It is statutory that you must refund to them and they recognize it as an expenditure.

Q.—The obligation is on the County to refund the money to the Municipality? A.—Yes.

Q.—And the Government, then you say, recognize that as an expenditure for highways purposes? A.—Yes.

Q.—And pays 50 per cent. of the improvement refund from year to year? A.—They pay a subsidy the same as road expenditure.

Q.—The subsidy is how paid? A.—50 per cent.

Q.—They pay now and by not having to pay they get the benefit of 50 per cent., is that it? A.—I don't quite understand that, Mr. Awrey. 10

Q.—You are not going to have to pay Riverside until they have eaten up that refund, this \$36,000? A.—Yes.

Q.—By reason of that will you claim from the Government a statutory refund, too; do they get the benefit of that—you don't have to pay it year by year? A.—No, it is all paid in one year.

HIS HONOUR—The Government made the refund in one year? A.—Yes.

Q.—I just wanted to clear that so that the County has an asset coming in, the amount of the annual refund until 50 per cent. of this \$36,000 is taken up? A.—They should if you could call Riverside an asset.

Q.—That isn't the way you talk when we have an equalization?

MR. RODD—That is another matter.

Q.—I want to draw your attention to the minutes of the May session on page 120 on Exhibit 3, that was the motion to adopt the report of the Highway Committee; have you that before you, Mr. Coyle? A.—Yes.

Q.—On the motion which adopted the report of the Highway Committee and the agreement that was an amendment which was adopted? A.—Yes. 30

Q.—The representative of Ford City voted against the adoption of that report, did they not? A.—I would have to read it over—there was some amendment.

Q.—They voted in favor of an amendment not to do any highway work? A.—Yes.

Q.—Then the amendment which was carried adopted the report as amended, they voted against it, all those that were present? A.—It shows here.

Q.—Mr. Lavasseur was not present at that meeting? A.—Mr. Bontront, Mr. Hebert and Mr. Poisson— 40

Q.—So as far as the representatives of Ford City were concerned they didn't vote in favor of adopting the report and doing the work? A.—At that time.

Q.—Then going to the June session I find that minutes record that

all the members were present except certain parties who are mentioned and the Ford City representatives are not included in the June session? A.—Well, they weren't present. And if the order was made, Mr. Awrey, I couldn't see where I had the right to say that they were members of the Council.

Q.—That is what I wanted to make clear, while the records say that all the members of the Council and the printed record give representatives of Ford City as being representatives of the County—from and after the first of June they were not members of the County Council, 10 they ceased to be? A.—They didn't sit in the County Council at any session.

Q.—These pavements which were constructed in the year 1929, take the McGregor pavement, was there any report on that? Is it necessary to have a report as to the estimated lifetime of the work or anything of that kind? A.—We have never had that. The Engineer goes and he lays out the work to the Government specifications and makes an estimate of the work.

Q.—And the lifetime of the work? A.—No, it hasn't been the custom.

Q.—The debentures are issued so that they will all be payable within 20 the lifetime of the work? A.—They have never been issued over ten years.

Q.—My learned friend put in a by-law a few minutes ago, I presume it was By-law 690, that would cover these estimates. A.—Part of it.

Q.—A portion of the cost of these works? A.—Yes.

Q.—And these works done by the Suburban Area Commission, how was the cost of those works paid? A.—Government pays 50 per cent., city or town, Windsor or Walkerville, as the case may be, 25 per cent., and the County 25 per cent.

Q.—So the County's obligation in respect to this work is 25 per 30 cent. of the actual cost of the work? A.—Yes, sir.

Q.—And in the last six years have you done any paving work other than that to which my learned friend has referred? A.—In the Suburban area?

Q.—No, in the County? A.—Yes, we have. I couldn't give you a list, but outside of the year 1926, those last eight years.

Q.—Eight years? A.—Eight or ten years, they have done on an average of 6 or 8 miles or 5 miles, but they have done a certain amount each year.

Q.—And they have paid for that out of the general highway refund 40 which each municipality; in other words, have they paid it out of current funds or issued debentures? A.—No, they have issued a number of debentures.

Q.—They have issued debentures for some of it? A.—Yes.

Q.—Just let me get this. Have they done any for which they paid cash out of the current funds? A.—That is at any one year without

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issuing debentures?

Q.—Without issuing debentures? A.—A couple of years.

Q.—When? A.—I couldn't say, Mr. Awrey, just off hand.

Q.—Could you get that for me? A.—I could give you here they issued \$120,000 worth of debentures.

Q.—That isn't what I am asking you—

MR. RODD—Let him answer.

Q.—What I am asking, Mr. Coyle, is what work was done which were paid for in cash out of the current funds? A.—That is a very large question to answer off hand. That is one of the questions you would have to go back and check the debentures each year and deduct from the amount of debentures issued and the amount of subsidy before I could tell you in cash. 10

Q.—Even if you have to go and get it we will have to have it? A.—Surely, but I wouldn't venture an opinion.

Q.—Yes, but I don't want to go back more than seven years—debentures were issued in 1921? A.—Yes, sir.

HIS HONOUR—I understand the usual procedure is to have a certain amount ascertained as being a share of all these debentures which should be imposed upon East Windsor, am I correct in that, one of the claims you have spoken to and have fixed is the amount of debenture debt for highways and other purposes, the amount which East Windsor should contribute to be fixed here, Mr. Awrey is going into the subject matter upon which the debentures are issued? A.—Yes. 20

MR. AWREY—My reason for examination on this line, on the start we had an assessment for roads, we had paid them in cash and their lifetime is not yet expired, I am trying to find out what the cost of them was, how long they have been constructed.

HIS HONOUR—I presume you intend to put forward your debenture claim by some other witness. 30

MR. RODD—Yes, they raised 3 per cent. levy for road work, that does not pay for the whole amount of the work done and for the balance they issued debentures; my learned friend wants to know what that 3 per cent. amounts to in cash.

MR. AWREY—Yes, that is a more accurate way of putting it than I put it.

HIS HONOUR—Mr. Coyle probably can give it to you in the shape of a statement.

MR. AWREY—The road expenditure, capital expenditure in maintenance, capital expenditure for each year and the amount of that that was paid by current levy and the amount that was paid by issue of debentures from monies raised by issue of debentures, can you get that for me? 40

WITNESS—Yes, Mr. Knister and Mr. Milne and myself can get it for you, it is a large order and I wouldn't like to promise too much with-

out asking assistance.

MR. AWREY—I don't want to waste a lot of time piece meal here if we can get it without.

WITNESS—You don't want it to the dollar or cent—approximately?

MR. AWREY—I suppose your books would show accurately what was raised by rate and what was raised by debenture?

WITNESS—Yes, the by-laws will show that.

MR. AWREY—If you can get that information I will just leave that subject now.

10 WITNESS—And what time?

MR. AWREY—During the course of this arbitration.

WITNESS—I will try and have it for you tomorrow.

Q.—Have you any record of when the gravel pit was purchased?

A.—There were different parts of it purchased at different times.

Q.—I am not going into the value. Have you anything to show me what the Government contributed to it, the original cost and how much the Government contributed?

HIS HONOUR—You have arrived at the value—

MR. AWREY—Yes, what the Government contributed is what I  
20 want.

WITNESS—We can get it the same way as the others. There were debentures issued for some of the gravel pit and some more was paid on the yearly payment plan, mortgage—so to speak.

Q.—You bought road making machinery, too? A.—Yes.

Q.—Did the Government pay 50 per cent. of that cost, too? A.—I think so, but Mr. Knister will be able to tell you.

Q.—Have you any correspondence or agreement or anything of that kind with respect to that matter? A.—What the County paid?

Q.—What the Government contributed? A.—A portion of the cost,  
30 we could check over any items they disallowed, we could see whether it was for road machinery or not.

Q.—What I am trying to get at is what is the exact interest in this road machinery—

WITNESS—I could tell what I think—

Q.—We want to get it from your books? A.—I can tell you this— in one gravel pit where a mortgage was given on a yearly payment, the Government has recognized payment, but they had not paid any subsidy on the interest.

WITNESS—The Government recognized the yearly payment. May  
40 I get it this way: the Government interest, is it paid from year to year as you pay on these different assets? A.—Yes, they have paid on the gravel pit, but they won't pay the interest on the subsidy on the gravel pit.

Q.—In whose name was title taken of the gravel pit? A.—I think the Corporation of the County of Essex.

Q.—Have you the conveyance? A.—We have a copy of it.

Q.—You will have that with you tomorrow morning? A.—I will try.

HIS HONOUR—You get a deed when you buy them and the deeds are kept somewhere in your office or the solicitor's office? A.—They are in the office, but I wouldn't be too sure that we got a deed for all. It seems to me that one time we got them for cash payment—

Q.—You have an agreement or something to show in whose name the property was purchased? A.—Yes.

Q.—You will have those documents with you in the morning? A.— 10  
Yes.

Q.—Now, Mr. Coyle, you made the grant to Riverside last year. Have you made similar grants to any other municipality within the County of Essex? A.—The pit property there was \$50,000, given to the Town of Riverside.

HIS HONOUR—1928? A.—Yes, sir. I think there were several grants made to the Town of Ford City for various purposes.

Q.—I would like to have all the particulars of what Ford City got out of the County.

HIS HONOUR—You don't want Mr. Coyle to write a book, do you? 20

MR. AWREY—No, they made grants to the Town of Sandwich and Leamington.

Q.—Was that the first grant, that \$36,000, to Riverside in 1928? A.—I don't think so, I think we made a grant at some previous time for resurfacing or something.

Q.—In 1928 grant was there a similar arrangement with respect to the Council's return of monies? A.—No, that was a grant outright.

Q.—That was a grant outright and you have no asset in that? A.—Yes.

Q.—You made a grant to the Town of Sandwich, did you not? A.— 30  
Yes, it was a ten year grant, \$3,000 each year, to the Town of Leamington, also.

Q.—Each year you pay so much money—all I want to get at in respect to that is do you get a credit on monies which you have paid from year to year? A.—No.

Q.—Is there any other grant other than the \$36,000 to the Town of Riverside which provided for repayment for foregoing the refund? A.—Not that I can recall, I think they were all out and out grants, that is the only grant with these conditions as far as my memory carries me. 40

Q.—That can be ascertained, I suppose? A.—Yes.

Q.—And you will ascertain it so you can tell me that tomorrow morning? A.—It is quite a large contract, but I will try.

Q.—There are only one or two places you will have to look, the County Council meets where? A.—Upstairs in the Council Chambers.

Q.—Upstairs in the Council Chambers? A.—Yes, at least that is where I officiate, I don't know where else they meet.

Q.—That is their official meeting place? They have a County Clerk's office where? A.—In the building.

Q.—In this building? A.—Yes.

Q.—Do they pay any rent for that? A.—I will have to refer you to Mr. Milne and Mr. Rodd and the City of Windsor and the Administration of Justice—whether they pay rent or not.

10 Q.—What I am coming at is from the viewpoint of the City of East Windsor we cannot get anything, of course, for building use for court house purpose and jail purpose, but there is part of the building used for county clerk's office? A.—Yes, and road superintendent.

Q.—And for council chamber for the county council? A.—Yes.

MR. AWREY—I think the simplest way would be to ask Your Honour to look at those parts of the building rather than having them described on the record—

HIS HONOUR—If you will remind me of the matter at a later stage.

Q.—Then the Court House sits on what property? A.—I think it is Lot 7.

20 Q.—One of your colleagues suggests it is Lot 8? A.—May be it is 8.

Q.—What frontage on Sandwich Street? A.—I couldn't tell you, I think it is 240 feet; it is so long since I measured it.

Q.—The County has the title in its own name I suppose? A.—I have always understood so, I have never looked at the Registry Office.

Q.—Have you got the conveyance, wouldn't it be in your custody? A.—I haven't it.

Q.—Situating on that property owned by the County are what other buildings? A.—The jail, the jailer's residence, Registry Office and that large building on the corner, the County Treasury, which is partly on that property and partly on the Town of Sandwich property.

30 Q.—It has been on the property how many years? A.—Longer than I have.

Q.—Then there is a portion of the lands vacant is there not? A.—Yes, sir.

Q.—And that would be about what, one-third? A.—That is a mathematical problem. There is a large pile of stone that occupies some of it, whether that would be an asset or not.

Q.—Is it being kept for a purpose? A.—Well, I couldn't say, it is there.

40 Q.—It is there and did the County ever try to sell it? A.—I did several years ago; I had orders to sell it. I got a bid of \$25 for it, but the man didn't complete it.

Q.—He wouldn't carry out his contract? A.—He didn't, anyway.

Q.—The furniture, what about the furniture, who does that belong to? A.—The County of Essex.

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Q.—What do you carry that on your books at? A.—I don't carry it at all, the auditors may make a valuation, I don't.

Q.—Do you know what valuation the auditors put on it? A.—No, I don't.

Q.—Typewriting and adding machine, filing cabinets? A.—Chairs.

Q.—The filing cabinets would cost what? A.—They have been in use for quite a long time.

Q.—What did they cost originally? A.—I couldn't say, we bought them at pre-war prices, which are a lot lower than now.

Q.—But even then they cost a substantial sum? A.—Not as substantial as they would now. 10

Q.—But quite a substantial sum? A.—Well, you would have to designate the word "substantial."

Q.—\$1,000? A.—No, I would think it was about \$125 or \$150.

Q.—Filing cabinets? A.—We haven't very many filing cabinets.

Q.—What do you call those cabinets that reach right up to the ceiling? A.—Those are the ones I refer to; they are not heavy, they are not fireproof; then we have a couple of other cabinets there.

Q.—They would cost what? A.—There was, I think, four sections, \$47 each; there are two. I am only giving you an approximate value. 20

Q.—Haven't you the figures, so you could give them to us in better form? A.—Yes, but it might be another day's delay.

Q.—Even so, we have to find out these costs. We have an interest in them, the desks, upstairs in the council chambers. A.—Mr. Neal around here is the oldest man in Sandwich. He might recollect when some of them were bought. I wouldn't like to put a value on them.

Q.—I am asking you if you know what they cost when they were bought? A.—We bought some the last seven or eight years, according to as our family grew. They were—

Q.—You have that somewhere? A.—If you will give me time enough. 30

Q.—I will have to give you time enough; the same applies to the rest of the furniture; you have typewriters? A.—In the room there.

Q.—Yes? A.—There is one.

Q.—Owned by the County? A.—You are speaking of the clerk's office and the road superintendent.

Q.—I am trying to get, just roughly, the furniture that the Council owns and the office equipment, and then you can give me it in more detail? A.—You mean the number of typewriters in all the offices?

HIS HONOUR—Sheriff, Registrar's office—

MR. AWREY—I think I would like those separate. 40

WITNESS—Probably if you got some second-hand dealer down here.

MR. AWREY—I thought you might do just as well.

WITNESS—Some of those typewriters were bought six or eight years ago; what they are valued at now I wouldn't suggest.

HIS HONOUR—The value—

MR. AWREY—I mean the original cost.

MR. RODD—No, no.

WITNESS—I will have to have the books brought in here—

HIS HONOUR—Another way of getting the price is to get some competent person to go around and put his value—

MR. AWREY—If you will get a list—

WITNESS—If I go through and search these up—

HIS HONOUR—The other way will be all right for our purposes,  
10 it will be only a few dollars different.

Mr. AWREY—If you give us a list of those things, that is only a simple matter.

Q.—You don't know very much, of course, about the Treasurer's books, and so on? A.—He is here to answer for himself.

MR. AWREY—You will get this other information for me tomorrow morning, you are going to get a list of the things around the Court House and other things to show the amount of money that had been expended for capital and maintenance of highways in the last 8 years or 9 years, that is starting in 1921, how much of that was raised on a special rate  
20 and how much was raised by debenture? A.—You would also want to know the amount of subsidy paid, the subsidy includes maintenance also.

MR. AWREY—If they have the rate of the subsidy—

WITNESS—Mr. Knister's books have constructions, maintenance and general, the general means the gravel pits, they pay the subsidy on the whole amount, you just carry about half the cost of the construction of the pavement only regardless of contract or anything.

Q.—If you want to put the other things in all right—try and get the figures as near right—let us have those agreements and correspondence with regard to two gravel pits.

30 WITNESS—And Riverside also.

MR. AWREY—You have told us about that. I am not particular about that, but I am particular about getting the correspondence or agreement with regard to the gravel pit and any correspondence or agreement you might have with the Government.

RE-EXAMINED by Mr. Rodd.

Q.—Take for example the grants made to Sandwich, Leamington, perhaps Ford City, were they paid out of current revenue or out of debentures? A.—It is hard to say out of debentures, debentures—you can only issue them for construction, the grant—they were paying out of  
40 the current rate.

Q.—I see that By-law 690 recites it was for road construction?  
A.—Road improvement. I think, Mr. Rodd.

MR. RODD—Purposes of building roads in the County of Essex.

WITNESS—In the fourth paragraph permission is given to County

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to issue debentures as may be required for the improvements of roads.

Q.—I am speaking of By-law 690? A.—Yes, fourth paragraph, it says for the improvement of roads.

MR. RODD—It speaks for itself in that respect.

Q.—You would issue debentures for \$3,000, given to Sandwich? A.—No, we never issued for that small amount.

Q.—Or grant to Leamington? A.—Although it was paid out of the funds and debenture issues, there was no distinction for what debentures were issued for.

Q.—I suppose the books will show how much in 1929 was paid out of the General Fund? A.—What money was collected and it was all spent, so that whatever the amount in each year—

Q.—Now I understood from what I read of the minutes of your proceedings that there was a 3 per cent. levy for road building; that was the amount set aside for the levy for the purpose of road building, and anything over that was covered by debentures? A.—No, Mr. Rodd, it was at the rate of  $2\frac{1}{2}$  mills, on page 208, third paragraph. And it is further enacted by virtue of the Highway Improvements Act and amendments thereto and in accordance with provisions thereof there shall be raised, levied and collected upon the whole ratable property of the County of Essex at the rate of  $2\frac{1}{2}$  mills on the dollar for the purpose of raising \$189,942.75, the amount required for the county road system of the County.

Q.—That was for the purpose of that by-law? A.—Third paragraph on page 208.

Q.—That isn't what I am referring to. I was referring to levy which was made and collected in 1929 for the purpose of aiding in road building? A.—That is it.

Q.—This is to cover the by-law which provides for the issue of \$185,000 and some odd dollars debentures—so instead of paying 3 per cent. it was  $2\frac{1}{2}$  that you reaped by general levy, is that what you mean?  $2\frac{1}{2}$  instead of 3 per cent.? A.—Whether you call it  $2\frac{1}{2}$  per cent. instead of 3 per cent., we always call it rate, which is  $2\frac{1}{2}$  mills.

Q.— $2\frac{1}{2}$  mills, I saw some place where you were going to spend 3 mills, but you say  $2\frac{1}{2}$  mills and the balance is paid by debentures? A.—Yes, that the subsidy included.

Q.—Yes, of course, and the amount of the County's share? A.—Yes.

JOHN J. MILNE, sworn. Examined by Mr. Rodd:—

Q.—You are the County Treasurer? A.—I am.

Q.—And have been for how long? A.—Since January, 1914.

Q.—You and the Clerk came in about the same time? A.—Yes, I was clerk until then.

Q.—And you have been continuously treasurer since? A.—Yes.

Q.—One of the claims the County made against East Windsor is a deficit of some years' standing. Will you tell His Honour what that amount is first? A.—I said there was a deficit in the current account in the neighborhood of \$15,000. Now I cannot state to the exact amount until the settlement with East Windsor is settled.

Q.—Why is that? A.—Because in putting in the assets for the current account I had put in for East Windsor \$45,278.28 we expect to get in—

10 Q.—How does that compare? A.—That was our estimate that we would get from East Windsor; now it may be true or may not.

Q.—What has that to do with this deficit of some years' standing? A.—The deficit of some years' standing started with small items between the year roll, and last year in the neighborhood of \$15,000.

HIS HONOUR—Arriving at that amount of \$15,000, you took into account certain possible estimated receipts amounting to \$45,275, and you would not know whether you are going to get that amount; it might be \$5,000 more or \$5,000 less? A.—Yes, if it is \$5,000 less the deficit will be that much more; as soon as you settle this action I can put in a definite amount and give you a definite amount. In the way of avail-  
20 able receipts, for instance, I had put in here for Windsor \$24,000. For Windsor I have a little more than that; they paid \$24,000 and interest up to the first day of December, that reduces the item. I cannot make you a correct statement until this cash item is settled between East Windsor and the County.

Q.—How is the \$45,000 which you have estimated coming from East Windsor made up? A.—It is made up from receipts and expenditures of 1929, the total expenditures to 1929 were \$728,106.33. I think from that last refund of 1928, levy of \$42,393, paid in 1929, belonged to 1928 which is levied in 1928 and payable April 1st. \$685,712.57—left to  
30 pay on 1929 contracts which were not completed, not finished, the Tecumseh Road for example, the Malden Road wasn't quite \$19,500.

Q.—Before you leave this uncompleted work or the contract, when you say the Malden Road is that included in one of the contracts I put in this morning? A.—Yes.

Q.—\$19,000 has not been paid? A.—I said it and some other contracts not completed in 1929. That is, we have \$19,500 more to pay than we have already paid—

HIS HONOUR—That the work was done but the money not paid, you treat it as a liability accrued up to the end of the year?

40 WITNESS—It may not have all been done, but the work was let and the money levied to pay it last year.

Q.—Perhaps we needed go very far into that, the debenture by-law called for \$185,000 debentures to be issued? A.—Yes.

Q.—They were issued and sold? A.—Yes.

Q.—Will the proceeds of \$185,000 debenture cover what may have

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been on the roads uncompleted? A.—Yes, \$185,000 will much more than pay.

Q.—It will more than pay? A.—Yes.

Q.—What do you mean "much more"? A.—I mean a part of the \$185,000 had already been expended. I had paid out a large part of \$185,000.

Q.—Have you expended the whole of \$185,000.00? A.—No, I haven't.

Q.—Have you enough left of the \$185,000 to pay for the cost of these uncompleted roads? A.—Yes. 10

Q.—So we needn't worry about that very much, it is covered by the \$185,000.00 debenture debt? A.—Yes.

Q.—Why do you suggest that there is \$19,000 yet payable? You don't mean in addition to \$185,000.00? A.—Not at all; you want to know how I arrive at this surplus. I am telling you that that amount paid in 1929 was so much. There is due on 1929 contracts \$19,000, a total of \$750,168.17, then we had receipts from the sale of material on the gravel pits, \$10,300, and receipts from the City of Windsor Suburban Area, \$15,600.48, and receipts from the Town of Walkerville, \$16,219.08.

MR. AWREY—And Ford, \$16,218.08— 20

WITNESS—I don't know. I have it \$16,219, and the Government subsidy, \$347,196.25, making total receipts \$389,315.53, leaving the net cost to the County, \$360,852.64. Now we raised by general levy in 1929, \$189,942.75, you will find that in the column of that by-law. We received by debenture sale—sale of debentures, \$185,000, then I have put into that—the next item I don't know whether I should have put it in, East Windsor Road—levy \$28,359.99.

Q.—What is that? A.—When they agreed to pay, as I understand, a county rate for 1929 and I divided it up into the different headings as a part of the County, now you see I don't know where I am. If they 30 are only paying a lump sum I must take that out.

HIS HONOUR—That will increase the deficit? A.—Yes.

MR. AWREY—There is a surplus is this account.

Q.—If they were a part of the County that would be the amount? A.—Yes, and I figured that way.

Q.—You were treating them as if they were to remain with the County in 1929? A.—As if they were not separated from the County as far as road and county levy.

HIS HONOUR—I don't understand what that means.

MR. AWREY—It is a 2½ mills on the claim. 40

WITNESS—On this claim we put in so much for roads and so much for this—

HIS HONOUR—To be raised for each municipality and turned into the County? A.—Yes.

Q.—That is distinctly separated from debentures? A.—Yes, this

is the current annual levy on every municipality; they do not appear in that because they were separated and originally were not put in in June because they were not a part of the County, but had they remained a part of the County that would be their share, and as I understood they were going to pay the road levy, I had to divide them into the road levy and current—by law I have to keep two ledgers, one for roads and one for current account—

HIS HONOUR—You treated that amount in this account you now read as an asset for the County? A.—Yes, for 1929, due from East  
10 Windsor and not paid. If I leave that now, there is a balance of \$42,450.10 due on the road account.

HIS HONOUR—That is not current—

WITNESS—That is under road account, that leaves \$42,450. With that added the road allowance surplus is about \$14,000.

MR. RODD—With Your Honour's permission—

Q.—I think there is a claim made by East Windsor for something like \$72,000, which the Government claims from the County for 1929. Will you tell His Honour about that? A.—The exact amount as it was given to me—\$72,141.41, you claim \$10,758.10—14.9028—

20 Q.—Where have you that? A.—\$72,000 is what the County is assessed for the Provincial Highway for the year 1929. I considered them as part of the County for 1929—

Q.—It is for road construction by the province for highways in 1929? A.—Yes, which we always bill the following year.

Q.—Each county contributes to this work? A.—Yes. All counties have to pay 20 per cent., plus engineering fees of all provincial highways in their counties.

HIS HONOUR—You say the amount that Essex County must contribute to Province for 1929 road construction is how much? A.—  
30 \$72,101.41.

Q.—The amount claimed from East Windsor, \$10,758.10; East Windsor to the whole County, 14.9208 per cent. Is that from the Government that you have before you? A.—No.

HIS HONOUR—Where did you get the figures from which you fixed the amount? A.—From the Government.

MR. AWREY—Mr. Falls has checked them? A.—We saw the demand from the Government.

Q.—There was one contract, Mr. Milne, which was not put in this morning in connection with the Windsor Suburban Area Commission?  
40 A.—Yes.

Q.—I believe you are a member of that Commission? A.—I was in 1929, yes.

Q.—Until the amendment to the Statute last year? A.—Yes.

Q.—Have you a contract for the work done in 1929 by the Walker-

ville Suburban Area or for the Windsor Suburban Area? A.—I have none.

Q.—Tell His Honour why? A.—The work done on the Tecumseh Road was done jointly by the Suburban Area and the Town of Ford, when the agreement was signed and the Township of Sandwich East—the County by that agreement or the Suburban Area was to pay for a certain amount and they for a certain amount, tenders were called, we accepted tender of Merlo, the tender as far as Sandwich East was concerned was \$47,018. We, in making contracts in the past, never signed a contract, we have always held their check for \$1,000 or more with their bid and told them to go ahead; we held that, and as soon as the work is started we are safe; we hold back 20 per cent.; we never sign a contract with any contractor. 10

Q.—Was there an acknowledgement of Ford City to pay a certain share? A.—Yes, there was, and the engineer as the work progressed use to bill Sandwich East, Ford City and the Suburban Area.

Q.—Were those shares paid? A.—Yes, we paid ours.

HIS HONOUR—Who was in charge of the work? A.—Mr. Newman. 20

Q.—For who? A.—Windsor Suburban Area.

Q.—Who passed the money to the contractor? A.—The County has to.

Q.—Does not the City of Windsor pay its share in? A.—After the year is up we have been submitting to the City of Windsor a statement of what their share was, and they paid the first of November as the Act says.

Q.—You mentioned Ford City in connection with your original statement, how is it concerned? A.—At the time Sandwich East, the Suburban Area and Ford City agreed to widen the Tecumseh Road to make the boulevard 20 feet on each side and 18 foot stripe in the centre. 30  
 The three parties signed an agreement and—

Q.—Where is that agreement? A.—I can get it for you. I presume it is in the files of the Road Superintendent.

Q.—Tell me where are the limits of the Windsor Suburban Commission? A.—It starts at the Town of Walkerville easterly along the Tecumseh Road to the River Puce.

Q.—In Maidstone? A.—Yes, on that particular road.

Q.—This was within the area? A.—It was within the area.

Q.—Do you remember when the contract was let? A.—I do not.

Q.—Perhaps the agreement will indicate to your mind about when the work commenced? A.—The contract was let a very long time before the work was started, first they were waiting for the Bell Telephone Company to move the poles. 40

Q.—How long after the agreement was signed was the contract let? A.—Several months, and then they were waiting for the electric railway

from the side of the road to the centre.

Q.—How was the money for that raised? A.—Part by general levy and part by debenture.

Q.—Is that the agreement referred to? A.—Yes.

EXHIBIT 17—Agreement 30th April, 1929, between Suburban Area and the City of Windsor.

Q.—That is signed by all the parties under the seal of the respective corporations. Can you tell me how much was expended on that road so we can get the amount of two thirds? A.—We only paid our share  
10 that the engineer gave in the estimate each year—

Q.—What was that? A.—The engineer gave his payment estimates as the work progressed, dividing and gave an estimate against the County for the County's share, gave one against Sandwich East for theirs and one against Ford City for theirs, and the respective parties paid as the work progressed.

Q.—I am asking you what the County did? A.—I can look it up.

MR. AWREY—I want the date, because the work didn't start until after August? When you are looking up look up the dates, too? A.—  
I can get it in a moment from Mr. Knister's book.

20 Q.—How long would it take you to get that information? A.—  
Not ten minutes.

Q.—You will get that? A.—All right.

EXHIBIT 18—Statement of payments and dates of payments made by the County on the Tecumseh Road.

MR. AWREY—We have agreed that the value of the gravel pit and equity shall be \$46,000. I am now asking Mr. Milne to say what the interest of the County in that gravel pit is? A.—50 per cent.

Q.—Tell His Honour why? A.—Because the Government have to  
30 pay 50 per cent. of everything which we have purchased, including gravel pits, they claim 50 per cent. interest. They use the material whenever they want to. The Provincial Highway No. 3 started from Cottam Concrete Road, into Leamington, the material came out of that gravel pit. The Government claims they own one-half; the construction of road beds, many of them are gravel. There is no charge put in for the work, all gravel. The Government says we furnish half of that gravel, you can't charge us anything. No cost put in for material, but there is for labor—putting it on the road.

HIS HONOUR—There is no charge made, however, either to the Province or the County for material taken?

40 Q.—Each pay one half of the cost and use it indiscriminately? A.—  
Yes, in the account rendered all material is put down, they pay one half, 50 per cent., and we pay the other, more than that the machines, they won't allow us to sell without their consent, we have traded a clam one

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for a railway locomotive and so on.

Q.—Can you tell us, we heard about the Government financing part of the rate, 2 mills or  $2\frac{1}{4}$  on the Tecumseh Road, do you know about that? A.—Yes.

Q.—Can you tell His Honour what the cost to the County would be for our share of the road? A.—I can not, the Tecumseh Road east of Belle River.

Q.—From Pike Creek? A.—No, the Tecumseh Road, east of Belle River.

Q.—Is that running along the Lake Shore? A.—Instead of turning 10 to the Lake at St. Joachim turn to the left, which is the old Lake Shore Road; the figures we gave to you this morning as given from the Department; I haven't seen much, all I know is I paid it.

Q.—The total debenture debt for the County is in the Auditor's Report? A.—I think so.

Q.—Before I referred to that I put in for identification a book containing the record of the Highway Department made up by Road Superintendent Knister—does that give an actual statement of the actual expenditure, Exhibit 14? A.—It does not.

Q.—Exhibit 14 you are referring to? A.—Yes. 20

Q.—You say it does not give a complete report? A.—I did.

Q.—What is it made up for, for what purpose? A.—As taken from his book it is, in addition to that the County has to finance it; we borrow money on notes, we pay interest, in fact probably in the neighborhood of \$14,000 interest, all that has to go into the road account. Mr. Knister does not deal with it because he only deals with the accounts for which the Government will pay 50 per cent., they will not pay any money on borrowed money; your Highway Committee attend on highway committees and they are in my department.

Q.—They won't pay any part of interest or attendance? A.—No. 30

Q.—Purely road building and maintenance? A.—Yes, and gravel.

Q.—I see your accounts show there are notes being negotiated or discounted at the Imperial Bank? A.—Yes, backwards and forwards.

Q.—There are sums running into over a hundred thousand dollars? A note? A.—Yes, some of them three and four.

Q.—That is the interest you have to pay? A.—Yes, and on the balance. Are you putting in the evidence as to the amount of these extra charges?

MR. RODD—No, I am not going to put in the debenture charges. I want to show that as due only referring to actual maintenance of roads 40 and not the cost of carrying charges on the money advanced on the roads; they borrow the money from the bank until the debentures are issued to pay for the road building purposes.

HIS HONOUR—When the debentures are issued they cover the amount of money they don't pay; they cover the amount they don't get

from the Department—

WITNESS—I don't get it until March or May of the following year, that is the reason I have to write notes.

HIS HONOUR—In estimating the amount which you require raised by debenture, you take into account these interest charges, the payment of attendances of members of the Highway Committee and things of that nature? A.—Yes.

Q.—And what is spent on roads and maintenance is sent by your Road Superintendent to the Highways Department and it is there audited?

10 A.—Rather they are audited here by the Government Agent.

Q.—That is true of the maintenance and cost of buildings? A.—Yes, and includes Road Superintendent's salary, no interest.

Q.—You get that from the Government when? A.—About April or May.

Q.—After the year is ended? A.—Yes.

Q.—Apparently the County finances the whole project for the year? A.—Yes.

Q.—What then will show the actual cost to the County? A.—That auditor's report, if you make the deductions for the notes.

20 Q.—Your auditor's report will show everything? A.—Yes, it is itemized.

Q.—Is that the report which you refer to? A.—Yes.

EXHIBIT 19—Auditor's Report, 1929.

Q.—Will you tell His Honour what the total debenture debt of the County is or where it may be found? A.—It may be found in this Auditor's Report.

Q.—On what page? A.—Page 271.

Q.—So as to get that on the notes—tell me what that debenture debt is for all purposes? A.—\$651,875.10.

30 Q.—And that as I understand it includes the \$185,000 issued this year? A.—It does.

Q.—Is that \$185,000 even? A.—It is.

Q.—Does your Auditor's Report show whether or not these debentures have been sold? A.—I believe so, October 1, 1929.

Q.—All sold? A.—Yes.

Q.—And you have already told us part of which cover notes, December 31, 1929? A.—Yes.

40 Q.—Does that amount appear in your amount of assets and liabilities that you read to His Honour some little time ago? A.—I show a surplus of \$42,000, and it may consist, some of it those debentures and probably some of road levy.

Q.—Would that statement contain all that you didn't receive—I think you said there was about \$1,900 yet unpaid? A.—Yes.

Q.—Unpaid on December 31st, 1929? A.—Yes.

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Q.—And does that statement schedule in that book show when those debentures are payable? A.—It does in that book and I also have one here which shows when they are payable. The schedule I gave you, I gave when it is due and when they are to be paid.

Q.—Taking the report, the Auditor's Report, it shows a ten year period? A.—Yes, equal annual payments.

Q.—So debentures dated October 13th, 1913, would be payable on that date, October 14th? A.—Yes.

Q.—So we can get the date of the payment of the debenture on the same page? A.—Yes, 27. 10

Adjourned to July 19, 1930, at 10.30.

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Q.—I have here four statements concerning road expenditures, made by you, I was wondering if these items, whether or not they would appear in the statement of Mr. Knister? A.—No, because Mr. Knister's is not itemized, otherwise they are included in Mr. Knister's books, but not in detail. He asked in particular what had been paid and the dates on the Tecumseh Road.

Q.—You handed me this statement, you say they are correct? A.—Yes.

Q.—In which one is statement of amount paid on Tecumseh Road between Drouillard Road and Pillette Road? A.—Yes. 20

Q.—You have made up a statement of the County's claim? A.—Yes, I have made up a statement of the County's claim, they have one showing that East Windsor owes us certain amounts and another statement that we owe them. I might say that Mr. Watters also made a statement of what we owed them. It was from this statement that we arrived at what we owe East Windsor.

MR. MEIR—I would understand that these statements are accounts that were passed upon by the committees? A.—Yes, this is Mr. Watters' statement. 30

Q.—Accounts that were agreed upon? A.—Yes, it covered what was agreed upon and other things as well.

EXHIBIT 20—Expenditure on Roads.

WITNESS—I was asked to put in a statement of expenditures on roads. You asked Mr. Coyle for it. I had these all pinned together.

Q.—On the roads, what year? A.—1916 to 1929, since they had road assessment, in fact before there was a Ford City.

Q.—When was there a highway system started? A.—1916.

EXHIBIT 21—Statement of what the County claims East Windsor owed them: \$73,000 interest at 6 per cent., December 20, refund to Registry Office, statement of debentures due, statement of these debentures that you mention they are to pay. 40

EXHIBIT 21—Statement setting out the various claims of the County against the City.

MR. AWREY—While it may go in as an exhibit, it is not evidence, it is merely for the purpose of assisting you. I am quite content, but it isn't going in as evidence of the statement—

MR. MILNE—I am also putting in Mr. Watters' statement, what he claims we owe the City.

MR. AWREY—These haven't anything to do with this arbitration.

HIS HONOUR—Admission of the opposite party.

10 MR. AWREY—These were included in the figures we settled.

HIS HONOUR—It is a somewhat similar statement to the one previously put in; no use except possibly as a matter of history.

MR. AWREY—They may be somewhat confusing. As I understand it we agreed on \$73,000, then we agreed that certain amount the other day was due to the City from the County; these figures were all agreed upon, there was no dispute. Mr. Milne's statement has other matters in, but these statements haven't. It may possibly lead to duplication unless there was some explanation made at the time they were going in.

MR. RODD—I don't think it makes the slightest bit of difference.

20 MR. AWREY—I don't object as long as His Honour understands this has nothing to do with the matter about which there is a dispute: it is admitted by both of us.

MR. RODD—I didn't get from you yesterday the distribution of the cost as between Ford City and the County, in accordance with that written agreement I put in; have you got that? A.—I haven't got it here, complete.

HIS HONOUR—Have you a statement? A.—I have a statement as far as what we were to pay, but as far as Ford City was to pay the agreement was if we made—

30 MR. AWREY—I think the agreement went in yesterday.

MR. RODD—Half of the Suburban Area—

MR. AWREY—Agreement 17 went in—

MR. RODD—There is only one agreement apart from this admission—

MR. MILNE—This was statement of surplus on roads.

EXHIBIT 22—Statement of expenditure on roads in connection with road building of 1929, together with statement of current account.

40 Q.—Can you give His Honour a basis upon which he can fix the deficit himself? A.—I can in this way, I can mention the things that are to be carried out in figures that I cannot put in until you determine those figures. I believe those figures are mentioned in this statement with the exception of one—that is the bill of December for the Provincial Police, a liability, I put the Old Age Pension, Mothers' Allowance, and so on.

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Q.—Will that put His Honour in position? A.—I think so.  
HIS HONOUR—The amount of the Provincial Police bill, didn't you know that? A.—I do now, it has been paid since.  
HIS HONOUR—You can add that amount definitely? A.—Yes.  
HIS HONOUR—You will get that? A.—Yes, I will.

CROSS-EXAMINED by Mr. Awrey:—

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Q.—Mr. Milne, looking at Exhibit 20, have you a copy of it? A.—I haven't before me.

Q.—They start in 1916, there were no debentures issued at that time? A.—There were not. 10

Q.—When were the first debentures issued? A.—The first debenture issued in 1919 and have been paid up.

Q.—That is paid? A.—Yes, that is paid.

Q.—Is that included in the road expenditure, Exhibit 20? A.—Yes. 1919, I can't tell you until I go back over this, it says the total construction—this statement has been taken from the early statement to the Government which we have to provide them for construction, maintenance and machinery—if the gravel pit is included it is \$143,144.

Q.—Taking the second column, what does that show? A.—The second column, East Windsor, percentage of the equalization. 20

Q.—That shows the relation of the equalization in East Windsor towards the total assessment of the County? A.—Yes.

Q.—Then the second column of roads, S.A. stands for what? A.—Suburban.

Q.—And C.? A.—County.

Q.—And S.A.P.C.? A.—Suburban Area, Provincial County.

Q.—P. C.? A.—Provincial County.

Q.—Those are the only equalizations that are included here; Provincial highways are not included? A.—No.

Q.—Then in the next column the heading is the percentage of equalization. The first item opposite 1916 is 30 per cent., what does this percentage refer to? A.—The percentage which the County has to pay. 30

Q.—Of the total cost of construction? A.—Yes.

Q.—The percentage of the amount set out in the next column? A.—Yes.

Q.—Then the next column is the general cost of construction, and one following that is the County Provincial in dollars and cents? A.—Yes.

Q.—The next or last column heading E. W. proportion is applying the percentage of the second column to the County's proportion? A.— 40  
The County's proportion in dollars and cents.

Q.—Then in the remarks column, 1921, there is an amount, \$6,500? A.—Made to Ford City by the County.

Q.—Made to Ford City by the County in 1921? A.—Yes.

Q.—At that time there was no 50 per cent. reduction? A.—No.

Q.—When did that portion of the Statute come into effect, to return a portion of the amount levied? A.—I would have to look it up, I think about five years ago. 1927.

Q.—And prior to 1927? A.—No compulsory refund required.

HIS HONOUR—What was the basis of that grant to East Windsor?

A.—No basis, it was a grant made in building the Pillette Road.

Q.—At that time there were no County roads within the Corporation Limit and they were paying for roads and getting nothing? A.—I  
10 wouldn't be sure of that, whether the Pillette Road was in the system.

Q.—It couldn't be in the County road system? A.—That was the reason the grant was made because they couldn't build the roads themselves. In 1923 Pillette Road wasn't at that time in the Town of Ford City, it was taken in afterwards, in 1923.

Q.—Then an 18 inch pavement, one mile, was laid on Pillette Road, in East Windsor? A.—At that time it wasn't in East Windsor. I presume East Windsor got all the benefit when they took it over.

Q.—At this time when any refund was made to them, grants were given to them from time to time by the County Council? A.—Or else  
20 roads built through the town, the grants were given, they were assisted.

Q.—There were no roads built through urban municipalities by the County, they couldn't give grants? A.—They did build some in the County in the Town of Essex.

MR. AWREY—And the Village of Belle River, instead of granting they built the road through.

Q.—Wasn't that built through Essex? A.—I am now speaking of the Talbot Road going to the old Naylor Mill, and the one going the other way. I am not speaking of Talbot—in lieu of a grant they built the road.

Q.—Let us get down to 1921, were there debentures issued at that  
30 time? A.—Yes, By-law 480.

Q.—Which they have paid? A.—They are not, there are one or two to be paid this year. I have a statement in how much is paid—I believe two are to pay, 1930 and 1931.

Q.—Do you know the lifetime when constructed, they were permanent pavement? A.—They were concrete roads.

Q.—Do you know what the lifetime of those roads were? A.—I do not know, it depends upon construction, some last ten years but some last more.

Q.—Your debentures are all for ten years? A.—Yes.  
40

Q.—They last ten years or more? A.—They are supposed to.

Q.—The amount issued in 1921, \$16,304.16? A.—That is equal annual payments.

Q.—Is that the equal annual payment? A.—\$120,000 was 1921—the Auditor's Report.

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Q.—You say \$120,000 was issued that year? A.—Yes.

Q.—So the difference between the County's proportion and the amount of debenture issued would be the amount that was raised in cash? A.—Yes.

MR. AWREY—This statement we have before us is construction, the amount of maintenance and so on in addition to that statement? A.—I can't tell you without going back. These figures would only be the amount of construction.

Q.—We are not dealing with maintenance at all, am I correct? A.—You are. 10

Q.—The next issue of debenture for County rates was in what year? A.—1922.

Q.—By-law 518? A.—499, I believe 518 was 1923.

Q.—Yes, it comes before, your statement shows there are three debentures to pay on that? A.—There are.

Q.—The annual amount is \$15,920.13? A.—I believe so, I haven't the statement before me and you have it there.

Q.—I am reading from it, the total amount of debentures issued in 1922? A.—\$120,000.

Q.—1922 as well as 1921? A.—I believe so, 499, September 1, 1922. 20

Q.—The difference between the County's proportion on Exhibit 20 and the \$120,000 would be the amount paid in cash? A.—Paid out of the General Highway levy.

Q.—Those were concrete roads too as you have told me, these are all concrete roads? A.—All with the exception of the last year or two—yes, they were all concrete.

Q.—With the lifetime as you have told me before? A.—Yes, I believe included in that statement are the concrete bridges as well.

Q.—I presume they would be minor items? A.—Yes.

Q.—Then in 1923 there was a debenture issued? A.—There was 30 \$100,000.00.

Q.—On that By-law 518 we have four instalments still to pay to 1923? A.—Yes.

Q.—Amounting to \$13,266.77 each? A.—Yes.

Q.—And the difference between \$100,000 debentures and the County proportion is shown on statement, Exhibit 20, would be the amount that was paid on general levy for highway purposes? A.—Yes.

Q.—Then the next debenture issue was there one in 1924? A.—There were no more issued until 1928.

Q.—Then the amount shown in 1924 for County purposes was for 40 the construction of concrete pavement and bridges? A.—Yes.

Q.—As you have told us about? A.—Yes.

Q.—With a similar lifetime? A.—Yes.

Q.—That was all paid out of the general highway levy? A.—The money in 1924 was all paid out on the highway levy, yes.

HIS HONOUR—1925, 1926 and 1927, all your construction was paid out of the County levy? A.—Yes.

Q.—And they were all of the same class of pavements we have spoken of before? A.—Yes.

Q.—And with similar lifetime? A.—Yes.

Q.—Then the next issue of debenture was in 1928, was it? A.—Yes.

Q.—In 1928 what was the amount in 1928? A.—\$160,000.

Q.—By-law 661, it has nine payments? A.—Yes.

10 Q.—And the annual payments, \$20,720.73. You have that statement Exhibit 21—look at By-law No. 661, is it 73 or 23? A.—\$20,720.73.

Q.—It is 23 on mine, then the difference between \$160,000 raised on debentures in 1928 and the amount shown in the County proportion was paid out of the general levy? A.—It was.

Q.—In the same way and for the same class of roads you have described? A.—Yes.

Q.—1929, the debenture by-law is in, is it not? A.—It is.

20 Q.—We have already put that debenture by-law, 690, on page 211, look at Exhibit 22, the first of all the items, East Windsor Road levy, \$28,359.99, taking that item with the item in current account assets in the last item, East Windsor current rate, \$45,278.28, adding them together they give you the amount shown on Exhibit 21, \$73,638.27? A.—Yes, they are.

Q.—So it has been agreed with the City of Windsor that they were to pay you under the agreement of November 29, \$73,638.27? A.—They were.

Q.—And you have apportioned these two items in the same way that you would have apportioned them had the City of East Windsor remained in part of the County of Essex? A.—I have.

30 Q.—Then you kept two separate and distinct accounts, did you not, the highway account and the current account? A.—I did.

Q.—As money is received from the various municipalities within the County a part of that money is allocated to one account and the other part allocated to the other account? A.—It is.

Q.—And the monies which are not only kept separate in the books which you keep, in your office, but you keep them separate in the bank? A.—Yes, two distinct bank accounts.

Q.—Then the deficit in your current account has been accruing I think you told Mr. Rodd, from year to year? A.—Yes.

40 Q.—And you are unable to say just the amount of that deficit at the present time? A.—I am now without certain figures.

Q.—You are now without other certain figures, but taking your highway account if you had made your highway account balance for your expenditures of 1929 you would have had to levy \$42,450.10 less from the municipalities? A.—Yes, or issue debentures for that much less.

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Q.—And the municipalities who have remained in the County will get the benefit of that \$42,450.10 on the assessment in the year 1930, is that right? A.—In the year 1930?

Q.—In the year 1930 you will have to levy that much less money? A.—Yes.

Q.—And if the County had been going out of business at the end of 1929 as a county and each municipality would look after their highways and their by-ways and their affairs separately and distinctly there would have been \$42,450.10 to divide amongst them in the proportion to which they were entitled? A.—I presume so. 10

Q.—Then the current account takes care of the current liabilities? A.—It doesn't—

HIS HONOUR—Supposed to, but it doesn't always do it.

Q.—I should have put it that way, it is supposed to, it hasn't done so for some little time, is that right? A.—It is, we try to do the best we can.

Q.—It is a County liability which the town of Ford City was obligated to pay up to the end of the year 1929, was it not? Q.—I believe so.

Q.—Do you know anything about the lifetime of the bridges or does Mr. Knister know that? A.—No, I do not; we hope that they will last forever, but they don't. 20

Q.—But they last a great many more than ten years? A.—Oh, yes.

Q.—Just so that I may have it clear in my mind, I want to get this clear with respect to the Tecumseh Road between the Drouillard Road and—that is the Suburban Area I am referring to, Exhibit 18, the amounts set out on this statement are the amounts which are paid by the County, that is the proportion of the cost which the County has to pay to the Walkerville Suburban Area? A.—No, the whole amount of the cost as against the County or Suburban Area; on the schedule are the total amounts I have paid; they wanted to know how much I had already paid. 30

Q.—I want to get this account; this statement representing the amount which the Windsor Suburban Area Commission will have to pay? A.—Yes.

Q.—The payments set opposite the various items commencing with the one of June 14th, those are payments payable by the Windsor Suburban Area Commission, the total amount? A.—Yes.

Q.—The Windsor Suburban Area claims from the City of Windsor what percentage? A.—The Government first pays 50 per cent.

Q.—The Government pays 50 per cent. of the cost of the Windsor Suburban Area? A.—They will pay it. 40

Q.—As each item is paid the Government pays 50 per cent.? A.—The account is rendered the 31st of December, itemized statement and they pay 50 per cent., then the balance is equally divided between the County and Windsor, or rather we collect from Windsor one-half of the balance or 25 per cent. of the whole.

Q.—The County first pays 50 per cent. of the total cost, then next the City of Windsor pays 25 per cent., leaving a balance of 25 per cent. which the County pays, is that it? Leaving a net balance of 25 per cent., the County's share? A.—The County pays originally the whole thing, then they get it back.

Q.—The net cost to the County is 25 per cent., plus 25 per cent. of the amount shown here? A.—Yes.

Q.—And the agreement, Exhibit 17, made between the Town of Ford City and the County provided for what was then the Town of Ford City, which is now the City of East Windsor, paying a proportion of the amount which the County is to pay? A.—No, one-third of the cost of the work—that \$40,000.00 is the Suburban Area, in the statement of East Windsor there is more than that. Sandwich East's charge is more than that, the total cost of the work.

Q.—Let me get this in my mind, the percentage which Ford City, which is now the City of East Windsor, is to pay is not included in this statement? A.—Sandwich East's payment some of this \$640,000 under a general levy, but over and above that they were assessed one-third and East Windsor one-third.

Q.—And the Suburban Area Commission one-third? A.—Yes, one-third with this addition to both Sandwich East and East Windsor, there are certain other things added that is the Government will not pay any part of the curbing, Sandwich East and East Windsor had to pay for this. The bargain was that we would pay for 20 ft. concrete, part of our share of drainage and the others pay a share.

Q.—I think I have it clear now, this exhibit includes only the Suburban Area Commission proportion payable under the agreement with the City of East Windsor and the Township of Sandwich East.

HIS HONOUR—The work itself will cost considerably more than \$40,000? A.—Yes, that is our share of the work, the cost of the work itself is almost three times that.

HIS HONOUR—How do you come to be segregating these particular pieces as belonging to Windsor Suburban Area? A.—That is all the County does when they pay it and how they pay it and that rate. There is more to pay yet.

HIS HONOUR—The Windsor Suburban Area gives an order to the County to pay certain contractors' payments on this job? A.—The Windsor Suburban Area do not handle any money, they simply handle the work and the County pays everything.

HIS HONOUR—The County must have paid many other payments than shown on this statement?

Q.—On that particular road? A.—Yes.

WITNESS—No.

HIS HONOUR—Then this statement represents the full cost of the road?

WITNESS—Almost, there is very little more to pay.

HIS HONOUR—I think you said the total cost would be three times that, three times \$40,000? A.—The three parties, Windsor Suburban Area, Sandwich East and East Windsor. To begin with, we cannot build a road wider than twenty feet, they wanted an extension of Tecumseh Road, we agreed with them that we would pay the cost of 20 ft., Sandwich East and the Town of Ford City to pay the balance. They have paid it as the work progressed, when the engineer gives an estimate it says \$5,000 is payable by The Windsor Suburban Area, \$5,000 by the Township of Sandwich East and \$5,000 by the Town of Ford; 10  
 did not advance money for any municipality; we did that once many years ago, but since that we make a bargain with the contractor, you collect the money from the corporations, we will pay our share.

MR. RODD—To what you pay the Government contributes only? A.—Yes, the Government contributes to what we pay only.

MR. AWREY—The cost of this work was a great deal more than three times \$140,751.43? A.—I can't tell you in one minute.

Q.—It was considerable more? A.—I believe so.

Q.—What was the date of that agreement, 1st of April, Bell Telephone moving poles? A.—Yes, before the road could be constructed 20  
 the Bell Telephone had to move the poles back, that was our share, I think that cost about \$15,000.

Q.—You don't know what date the work commenced? A.—I do not.

Q.—You are sure that Merlo, Merlo & Ray estimate is one in connection with this road, June 20th? A.—It is so entered in the books.

Q.—Have you the original items, those three items, April 23, May 28, and June 20, I would like to have the original account? A.—I may be wrong, but my understanding was that this work didn't commence until August.

Q.—I see the dates of the payments, but that is why I am asking 30  
 you if you could give me the original payment? A.—No, no man can, but I can change this 1929 to 1930. Only the last three items, June, October and November, 1929.

Q.—Going back to Exhibit 21, my attention has been drawn to By-law No. 321-5 to pay the Registry Office addition—it should only be 4 instead of 5— A.—That may be quite right, here is where I got my total of deficit to be paid by adding it up unpaid—we agreed it should be 4.

HIS HONOUR—I will take this statement to make it read 4 instead of 5 in respect of 321, Registry Office addition. 40

Q.—On your statement Exhibit 21, the first item of \$73,638.27, is the figure we have agreed upon? A.—I believe so, yes.

Q.—Then the refund to the County of the Registry Office? A.—That has been agreed upon.

Q.—The next item with respect to the Provincial Highway Account

is one that is in dispute? A.—That is the amount that you should pay if you should pay anything.

Q.—That is one of the accounts that is not disputed, an account which is part of the current liability for the year 1929 to receive in 1930? A.—That is right.

Q.—That is correct? A.—Yes.

Q.—Is there an item of \$14,179.98 that is the refund to East Windsor, is that shown on Exhibit 21? A.—Yes.

Q.—That is the figure we agreed upon, there is no dispute about that? A.—No dispute.

Q.—The reason I am asking you this is to get it before His Honour clearly the things that there is no dispute about? A.—No dispute.

RE-EXAMINED by Mr. Rodd:—

Q.—That is subject to the agreements that have been made, subject to the revision of the Statute, the Windsor share for the Court House over \$25,000, you mentioned it was more than \$24,000. You can get an exact figure now it has been paid by the City.

MR. AWREY—I have put down the correct figures, the principal received \$25,113.17 and also received interest of \$2,511.30 which belongs to that, which ought to go into that account too? A.—That was one of the items on the schedule from 31st December, 1927, until paid.

HIS HONOUR—When was the East Windsor Suburban Area formed? A.—There has been none formed, the County has appointed a member on the East Windsor Suburban Area, I don't know whether East Windsor has or not; there has been none formed.

HIS HONOUR—There is a special duty to form such a commission? A.—There is, the County formed theirs in June of this year.

HIS HONOUR—How it is to be determined between the County and the City of East Windsor, what particular road shall be taken over by East Windsor as being part of the Suburban Road? A.—By this commission when formed.

HIS HONOUR—How many members are to be appointed? A.—One by the County, one by East Windsor and one by the two members; if East Windsor doesn't appoint one then the Government does, then the two members appoint a third.

HIS HONOUR—Does it mean for the year 1930 if there is no commission appointed that there will be no payment made by East Windsor? A.—It does and it means also that there will be no payment made to the Provincial Highway.

MR. AWREY—This has nothing to do with this arbitration—Your Honour is dealing with this as of the first of June, 1929.

Q.—The City of Windsor is contributing to the Suburban roads and the Town of Walkerville—

MR. AWREY—We may be back again before Your Honour, but

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this is not within the scope.

HIS HONOUR—It looks to me as if it was very much in the interest of the County to see that the Suburban Area Commission was appointed—

MR. AWREY—No matter what the City of East Windsor did, I am sure the solicitor of the County will take care of the County's interests.

W. P. COYLE, recalled:—

EXHIBIT 23—Conveyance from the Township of Gosfield South to the County of Essex, December 11, 1916, registered as 5479, describing certain lands in the Third Concession, part of Lot 12, in the Township of Gosfield South; this is part of the Gravel Pit. 10

EXHIBIT 24—Conveyance of one W. Squires to the Corporation of the County of Essex, dated the 12th day of July, 1919, registered as No. 6025, describing certain lands in the Township, part of Lot 12, in the Township of Gosfield South, part of gravel pit.

EXHIBIT 25—Conveyance from A. Fox Sons & Co. to the County of Essex, dated 11 July, 1919, registered as No. 6026, describing part of Lot No. 12, 3rd Concession, Gosfield South, part of the Gravel Pit land.

EXHIBIT 26—Grant of 2nd February, 1920, from Lucy Smith to the County of Essex, registered as No. 19593, Township of Mersea, part of Lot No. 2, in the 1st Concession of the Township of Mersea. 20

EXHIBIT 27—Conveyance from James W. Smith and Lucy Smith to the Corporation of the County of Essex, bearing date July 10, 1919, registered as No. 19332, describing part of Lot No. 2, in the First Concession of the Township of Mersea (this is part of the other gravel pit). That is buying a little piece of corner to get into the gravel pit.

EXHIBIT 28—Conveyance from Ernest W. Squires to the Corporation of the County of Essex, 19th June, 1920, registered No. 6345, describing part of Lot 12, in the 3rd Concession, Gosfield South. 30

EXHIBIT 29—Copy of agreement between the Town of Riverside and the County of Essex, bearing date April 17, 1928, and with the approval of the Minister of Highways, endorsed and signed.

Q.—You are going to put a copy of this in, is this the only one you have in your office? A.—Yes.

Q.—In the second paragraph referring to the work, the sum of \$50,000 is written in and above it where it is put in figures, reads \$36,000 was the agreement amended so it should read \$36,000 instead of \$50,000? A.—No, Mr. Awrey, in the subsequent year, 1929, when the new agreement was made, it was on the same condition as this 40

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agreement, I simply put in \$36,000 to draft a new agreement from for the information of the stenographer.

Q.—This was the agreement, was it? A.—It is.

HIS HONOUR—Is that an original or a copy?

MR. AWREY—It is a copy approved by the Minister of Highways.

WITNESS—We had to send down copies for approval.

Q.—S. 5 of Section 28 of the Highway Improvement Act, Chapter 54, R.S.O. 1927, says that under this agreement the Town of Riverside received \$50,000 in cash, but they didn't get back the rebate which they otherwise would have, the refund? A.—No, there was no refund given to them that year by reason of getting that grant.

Q.—Or the next year? A.—The next year was covered by another agreement.

Q.—In 1929? A.—The refund was due the first of April.

Q.—1929? A.—It should have been.

Q.—It would have been but for this agreement? A.—Quite so.

Q.—So as a result of this agreement they didn't have that to pay in 1929? A.—The County—but I would say they didn't pay the full \$50,000 in 1928 because there was a certain amount held back, but it was paid last year.

Q.—\$50,000 was paid to them? A.—Some two or three thousand was paid to them last year—

Q.—You have another agreement made in 1929 with respect to \$36,000 payment of which you will let us have a copy? A.—Yes.

MR. RODD—What is the date of that?

WITNESS—I couldn't tell you that—

MR. RODD—I am going to ask about these deeds, you said it was procured for roadway, one parcel—

MR. AWREY—To get into the gravel pit—

WITNESS—There was a piece bought down there in Mersea Township, then we bought another piece there to square it up, or to get entrance to the gravel pit.

Q.—The other then, Fox and Squires, is for the gravel pit? A.—Yes.

Q.—What are the other deeds for that you put in those exhibits?

A.—All for gravel pits.

Q.—Do you mean to tell me that \$300 would buy a gravel pit?

A.—It might have bought a piece I spoke of to square up a point when we began to lay the track we bought another piece to put the railway, the P.P.M. on.

Q.—Is that in Mersea or Gosfield South? A.—Gosfield South.

Q.—The Mersea one is \$500, that is the one you think was for the entrance? A.—Yes.

Q.—There is another in connection with Gosfield South, that would be for gravel pit \$3,500? A.—Yes, we bought the pit—Gosfield South had bought it originally, then we repurchased.

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Q.—There is another with the consideration of \$381.81, 6345 Gosefield South, that is part of Lot No. 12, do you remember what that was for? A.—No, I would have to look at the description—I couldn't tell you the reason, it is all connected one with the other at the present time.

Q.—You think it is connected in some way with gravel? A.—Yes.

Q.—Do you know what condition those gravel pits are in? A.—No.

MR. AWREY—I put them in to show who the conveyances were to.

MR. RODD—I think there are six documents of which you are to furnish copies?

HIS HONOUR—There is nothing in these to indicate the Province's share—am I to take it as established that the Province is interested in the gravel pit 50 per cent. as conceded? 10

MR. AWREY—No, I don't concede that. I think the Province has been claiming something they don't own; if the County wants to let them get away with that sort of thing now that we are leaving the County we want our part, if we had been staying with them, we might have been more easy to get along with.

Adjourned to 10.30.

MR. COYLE, recalled. By Mr. Awrey:—

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Q.—You produce now to me agreement of 17th May, 1929, between the Municipal Corporation of the Town of Riverside and the County of 20 Essex, providing for the widening of the front road in Riverside, paragraph 2, provides cost not to exceed \$36,000 to be paid by the County, agreement is subject to the approval of the Minister? A.—Yes.

Q.—Did it receive the approval of the Minister? A.—Yes.

Q.—It is not on here? A.—No.

Q.—This is an original, Mr. Coyle? A.—I couldn't say.

Q.—Apparently this is an original, did you propose to put in a copy or put in an original? A.—Well, we could leave the original, it is in safe hands.

Q.—There may be an appeal in this matter? A.—Then I can put 30 in a certified copy.

EXHIBIT 30—Agreement dated May 17, 1929.

Q.—The \$36,000 was paid to Riverside I think you told me? A.—Yes, Mr. Knister's books will show that.

Q.—There was another matter I should have called attention to, paragraph 6, "said party of the first part agrees to waive all rights or refunds under the provisions of Sub-section 5 of Section 28, of the Highway Improvement Act, Chapter 54, R.S.O. 1927, until such time as 50 per cent. as set forth in paragraph 5 of this agreement is paid—paragraph

7, the said party of the first part—that is the Town of Riverside, further agrees with the party of the second part that in the event of the party of the first part withdrawing or separating from the County for municipal purposes, the party of the first part shall reimburse the party of the second part of the unpaid balance of grant which they agree to in Schedule 6 of this agreement.”

MR. RODD—Q.—Where is that referred to in the minutes of the Council? A.—March session, 1929.

MR. AWREY—I read it from the report of the Highway Committee  
10 which was adopted—

MR. RODD—I omitted to ask you in connection with this land that has been referred to what has it been used for during the past two years? A.—What part of vacant land?

Q.—Connecting with the Court House? A.—Parking space, principally for automobiles of people attending court.

Q.—Lawyers, litigants and witnesses? A.—Any business they would have in the building, Registry Office.

Q.—Largely or infrequently used? A.—It all depends on the difference between large and infrequent, it is used daily, every few days but  
20 what there are more or less autos parked there.

Q.—Is there any day they are not? A.—Might be on Sunday, I am not here on Sundays.

HIS HONOUR—It is used for parking place for people having business in the Court House and County offices? A.—Yes.

Q.—Is the County now making any movement in respect to the use of that property?

MR. AWREY—Just a moment—

MR. RODD—No, I am asking him—

MR. AWREY—We are dealing with it as of the first of June, 1929.

MR. RODD—I am going to put this in any way, if His Honour  
30 will permit me.

HIS HONOUR—The objection will be noted, I will allow the question.

A.—There was a committee appointed to have sketches made of the proposed addition which is to be built on that place for court purposes.

Q.—For court house purposes? A.—Yes, sir.

Q.—For court house purposes and where are the minutes referring to that to be found? A.—It is in the minutes of the June session, they are not printed.

Q.—I mean in the minute book? A.—In the June session of 1930  
40 and they were continued by a motion of the June minutes of this year.

MR. AWREY—And that court house if it is built will take the place of the one that is here now? A.—No, not altogether, this building will still be used for court purposes.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
Plaintiff's Evidence  
No. 2  
W. P. Coyle  
Recalled  
20th July, 1930  
(Continued)

No. 4  
H. Knister  
Examination  
20th July, 1930

Q.—Some part of the building? A.—I would think so, that is yet problematical.

Q.—Whether it is built or not is all problematical? A.—There is no intention of wrecking the present building, I feel quite safe in saying that.

H. KNISTER, sworn. Examined by Mr. Rodd:—

Q.—Mr. Knister, you are Road Superintendent under the Highway Improvement Act, for the County of Essex? A.—Yes.

Q.—And have been in that position how long? A.—Since 1918.

Q.—And I believe you prepared the annual report of the road construction, capital cost and maintenance? A.—Yes. 10

Q.—What was done with that when you prepared it? A.—We prepared one for the County Council and the ratepayers, and we also prepared one on forms prepared by the department, which we submitted to the Department at Toronto for their records.

Q.—Did or did not the material in the report you prepared for the County Council coincide with the report you prepared for the Ontario Government? A.—Yes, they are both made from the records in the office.

Q.—I put in one for identification and ask you to look at it, Exhibit 14? A.—That is a summary of our expenditures for the year 1929. 20

Q.—Are the figures given there accurate? A.—Substantially so, yes.

Q.—What do you mean by substantially? A.—The audit sometimes shows a slight error, a clerical error.

Q.—Apart from that? A.—Yes, apart from that it is correct.

Q.—We have been told by Mr. Milne that does not coincide with the auditor's report because it doesn't have interest or interest charges? A.—No, and we have no records to show the interest and interest charges that his books show. 30

Q.—With reference to the gravel pits, how are they owned?

MR. AWREY—Just a moment, this is not the way to prove the way the gravel pits are owned.

HIS HONOUR—Perhaps that is making Mr. Knister an expert on law; he is a better expert on expenditures and receipts.

MR. RODD—Yes, but I want to know the course of dealing with those gravel pits.

Q.—As between the Government and the County? A.—The deal is between the Government and the County, when we purchase gravel pits the Secretary of Public Highways pays 50 per cent. of the cost and they claim 50 per cent. 40

MR. AWREY—There must be a way to prove this other than what they claim, there must be some records.

HIS HONOUR—Do you know if there are any records as a basis for your claim?

MR. KNISTER—I wouldn't say they claim 50 per cent. ownership, but they do retain 50 per cent. of our receipts.

Q.—In other words, when you sell gravel what becomes of the receipts? A.—The amounts of our receipts are deducted from our expenditures.

Q.—What does the Government get from it? A.—50 per cent.

HIS HONOUR—Do they contribute anything at the time you bought? A.—50 per cent.; we must get their approval to purchase of that sand, and when they give us their approval of it, then they sell to us 50 per cent.

Q.—When you sell any land in connection with the gravel? A.—They retain 50 per cent. of the proposition.

Q.—Must you get their consent? A.—Yes, to sell.

Q.—And the price at which you can sell? A.—Yes.

Q.—The sales of gravel, to whom do you make those sales? A.—Principally to the townships, municipalities which are a part of the County—

20 Q.—For road building purposes? A.—Yes.

Q.—Any other purposes? A.—Bridge building, some sold privately for barn foundation, a small amount.

Q.—About what are the total of sales, I suppose it appears in the book what were the total sales for last year? A.—About \$10,000, that includes all receipts—

Q.—How does that compare with other years? A.—I think it is a fair average.

Q.—Then does the Government or does the Government not make use of the gravel in those gravel pits for their own provincial highways?

30 A.—They have in the past, yes.

HIS HONOUR—And so the County can take all it pleases and the Government can take away all it pleases and there is no balance kept between, it is wiped out? A.—Yes; in giving their approval for the larger acreages we have bought they made it a condition that they were to have the use of it if it was at all convenient they were to use it and they have availed themselves of it to a certain extent.

HIS HONOUR—There is no limit to the quantity that they may use? A.—No, except that circumstances would naturally limit them, they can go only so far a distance, the costs would be prohibitive in the hauling and washing except in nearby towns.

CROSS-EXAMINED by Mr. Awrey:—

Q.—You are not charged for gravel in the 20 per cent. that the County has to pay towards highways, you are not charged? A.—No, we would benefit by that.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
Plaintiff's Evidence  
No. 4  
H. Knister  
Examination  
20th July, 1930  
(Continued)

No. 4  
H. Knister  
Cross-Examination  
20th July, 1930

Q.—The purchasing of the gravel pit is part of your yearly program, the purchasing has to be approved and it goes in the same class as laying of pavements, you give them a statement at the end of the year showing your expenditures for highway purposes and they pay 50 per cent.?  
 A.—Yes.

Q.—And the gravel pits are included in that just the same as roads?  
 A.—Yes.

Q.—So far as any written documents with respect to the Government having any ownership you know of none—with respect to any written document with regard to the Government having any interest you know of none? A.—None that I know of. 10

Q.—The roads, you know the years the debentures were issued and when they were not issued? A.—I couldn't tell you off hand.

Q.—You would know? A.—Yes, I know that several years' debentures were issued.

Q.—The highway debentures was for payment? A.—Yes.

Q.—Exhibit 20, this pavement would have a life of at least ten years, or more? A.—Why I would say they should last ten years for carrying the traffic for which they were designed.

Q.—You wouldn't put a pavement down that wasn't designed to have a lifetime of ten years? A.—We did not. 20

Q.—And you expect them to exist some time longer? A.—That depends on traffic.

Q.—You expect them to? When the debentures are issued you give them for the lifetime of the work, you expect them to last that time?  
 A.—With reasonable maintenance we expect them to.

Q.—When you pave a county road that cuts this year's maintenance to some extent? A.—Oh, yes.

Q.—With the traffic, a road that is not paved, the increased traffic makes the maintenance rather expensive? A.—It is increased. 30

Q.—It is quite expensive where they are not paved, the automobile traffic tears them down? A.—It is rather expensive repairing.

Q.—It is not as expensive way out of traffic as it is where the traffic is heavy? A.—It keeps increasing.

Q.—And the cost of maintenance would keep increasing as traffic increases? A.—I wouldn't say that, you get to a certain cost your road might deteriorate in spite of maintenance.

Q.—It gets to a point where it is not practical to do anything else by pave? A.—Yes, those conditions arise.

Q.—With respect to this lot out here, do the County Council use it to park their cars when they come? A.—Every one around uses it. 40

Q.—Some people go elsewhere and use it? A.—That is possible, it is open, there is no restriction. I don't think it is used very much by those—

Q.—It is a vacant lot? A.—Yes.

RE-EXAMINED BY Mr. Rodd:—

Q.—You say it was on the written minutes with respect to the gravel pits—I would call your attention to Exhibit 14, an item where you have given the County gravel, miscellaneous, \$10,934.04 credit, out of that the Government pays \$5,467.00? A.—Yes.

Q.—Was that item taken care of in their reports? A.—Yes.

MR. CHARLES EATON, sworn. Examined by Mr. Rodd:—

Q.—You live where? A.—In Chatham.

Q.—Are you engaged with the Highway Department of Traffic?

10 A.—I am District Engineer for the Township and County roads of Essex and Kent.

Q.—For what district? A.—District No. 1, Essex and Kent.

Q.—Are you familiar with the workings of the office at Toronto?

A.—I am, yes.

Q.—Is it you who makes up the statement for the County or is it made in Toronto? A.—The statement is made up by Mr. Knister and forwarded to me, then I go over the statement, check it over and put through the amount for subsidy. Of course, it is all subject to the approval of Mr. Muir. Anything I am doubtful about, it is taken up

20 by him.

Q.—What is Mr. Muir's position? A.—Chief Engineer of the Municipal roads.

Q.—He lives in Toronto? A.—Yes.

Q.—But otherwise you make up a statement, prepare a statement?

A.—Yes.

Q.—You heard what Mr. Knister said in regard to the gravel pits and the relationship of the Government? A.—The gravel pits, yes.

Q.—Is that the statement? A.—Yes.

30 MR. AWREY—Then I make the same objection to this as to Mr. Knister's evidence.

Q.—You have heard the evidence? A.—I believe it is correct.

Q.—It is in fact the same system used in other counties? A.—Yes, all through the counties.

MR. RODD—That is all we have to offer—

MR. AWREY—Mr. Coyle was to give us a list of the chattels in the offices, it isn't ready yet?

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
Plaintiff's Evidence  
No. 4  
H. Knister  
Re-Examination  
20th July, 1930  
(Continued)

No. 5  
Charles Eaton  
Examination  
20th July, 1930

## EVIDENCE FOR CITY OF EAST WINDSOR

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
Defendant's Evidence  
No. 6  
Samuel Littler  
Examination  
20th July, 1930

SAMUEL LITTLER, sworn. Examined by Mr. Awrey:—

Q.—Mr. Littler, what is your business? A.—I am in the real estate business.

Q.—How long have you been in that business? A.—Eleven years in this country.

Q.—And are you familiar with value of property in and about the Border Cities? A.—Yes.

Q.—And are you familiar with the values of property in Sandwich? A.—Fairly well.

Q.—Have you looked at the vacant property on Sandwich Street adjacent to the County Treasurer's office? A.—Yes.

Q.—Have you made an appraisal of this? A.—Yes.

Q.—You have? A.—Yes.

Q.—What is that? A.—Per foot or the total.

Q.—Give it to me as the total first? A.—\$32,300.

Q.—And per foot, tell us first how you arrived at that figure? A.—I have taken the whole corner, at the corner of Brock and Sandwich, taken 50 feet at \$250 per foot.

HIS HONOUR—Have you a diagram showing the property? A.— 20  
Just a rough sketch.

HIS HONOUR—Does it show the different parts you are differentiating as to parcels, I wish you would show it by marking them on the diagram.

MR. AWREY—The diagram will then go in as Exhibit 31.

EXHIBIT 31—Diagram.

WITNESS—There is a total frontage of 129 feet, west of the construction of this Court House to the corner, I have taken 50 feet, the westerly point on which the County Treasurer's office is, 50 feet at \$250 per foot, fronting on Sandwich Street, which amounts to \$12,500 and the remaining 79 feet abutting the Court House at \$200 per foot, \$15,800 and then I have taken the assumption of the use of the frontage going back 100 feet, leaving a frontage on Brock Street of 40 feet, at a price or estimated value of \$100 per foot, making a total of \$4,000 for that piece—the total amount is \$32,300. 30

Q.—That valuation is as of what date? A.—At any period during the past five years.

Q.—Shown the Registry Office or just the land? A.—I have shown the land.

Q.—Is that included in your 40 feet? A.—No, sir, I left that out. 40

Q.—The building and the County Treasurer's building? A.—I haven't attached any value only site value.

CROSS-EXAMINED by Mr Rodd:—

Q.—Does the parcel of fifty (50) feet on the northwest corner take in the ground upon which the Treasurer's office is situated? A.—It is involved in that portion.

A.—And the frontage on Brock Street takes in the Registry Office? A.—No, that is apart.

Q.—You didn't value the ground upon which the Registry Office was situated? A.—No.

10 Q.—Why did you value the ground upon which the Treasurer's office was situated?

MR. AWREY—Because he was instructed to—

MR. RODD—I am going to ask it—

WITNESS—I was requested to value the land between the Court House and the corner.

Q.—So you did it because you were asked to do it? A.—Yes.

HIS HONOUR—He separated the Treasurer's site—

MR. RODD—But Your Honour sees that it is not used by the County.

HIS HONOUR—He separated it from the other—

20 MR. AWREY—He hasn't separated it, it is in fifty feet—

HIS HONOUR—The building is within that fifty feet?

MR. AWREY—He valued 50 feet on the corner, not just the land on which the Treasurer's office is situate.

MR. RODD—I would rather have the evidence from the witness than the counsel.

MR. AWREY—That is quite right.

Q.—Have you a value on the land upon which the County has a very large pile of square stones? A.—I didn't attach any value to the stones.

30 Q.—I know, did you value the land upon which the stones are placed? A.—Yes.

Q.—There is a very big pile out there? A.—Yes.

Q.—Very large natural stone? A.—Yes.

Q.—Large in size, about 4 feet long? A.—2½x3 feet wide.

Q.—Viewed by the firm of McKenzie & Co.—

HIS HONOUR—In 1788, I notice they are still good—

Q.—I suppose you have been down to Sandwich frequently? A.—Very frequently.

40 Q.—And you know that is used as a parking place for Court House workers? A.—I have seen cars there for Court House workers and also for the general public.

Q.—That is for witnesses? A.—I have never known that the vacant site was restricted to the officers of the court.

Q.—You don't know anything about that? A.—I don't.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
Defendant's Evidence  
No. 6  
Samuel Littler  
Cross-Examination  
20th July, 1930  
(Continued)

Q.—You know out there this morning there are a dozen or so machines? A.—Yes.

Q.—That is a daily occurrence? A.—Except Sundays.

MR. AWREY—Q.—Just one thing, Mr. Littler, so that we might have it clear, on the westerly fifty feet on Sandwich Street, is that covered by the Treasurer's office? A.—No.

Q.—The difference in the price between \$200 and \$250 is occasioned by what? A.—By the fact that it is on the corner, that it has two frontages and would represent from a real estate appraiser's standpoint an increased value.

Q.—Whether there is a building or not makes no difference? A.—Not for the purposes of my valuation.

HIS HONOUR—The building of the County Treasurer's office is not marked on the plan.

MR. RODD—You better mark the building on there, if you will, do you know the size of the building? A.—No, about 20 x 30.

Q.—Do you know the width of it? A.—About 20 feet, I don't know exactly, for purposes of record I will be pleased to measure it.

MR. RODD—Go and measure it up.

MR. AWREY—The rebate is paid on the 1st of April, the account sent in on the 31st of December?

MR. MILNE—The various municipalities pay to the County on the 20th of December and the rebate is payable on the first of April. They must pay 6 per cent. in the interval.

Q.—The County bears the interest in the interval? A.—Yes.

EXHIBITION 31—Plan showing location.

EXHIBIT 32—Diagram of the buildings.

EXHIBIT 33—Statement showing the date on which the debentures fall due.

MR. RODD—In the event of the House of Refuge becoming over-taxed, the argument is the Town of East Windsor may not feel like going into the addition—I would want a year's notice to make provision—

MR. AWREY—I would agree to that—

MR. LITTLER, resumed:—

Q.—You have the measurements? A.—The building of the County Treasurer's office is an L shaped building, with a frontage on Brock Street of 63 feet 9 inches, a frontage on Sandwich Street of 34 feet, 3 inches. The width of the lateral portion of the building is 16 feet 10 inches, that is the southerly boundary running east and west, the annex, the length of the annex is 42 feet by 16 feet 10 inches. The main building is 34 feet, 3 inches, frontage on Sandwich Street, 21 feet, 9 inches.

Defendant's Evidence  
No. 6  
Samuel Littler  
Resumed  
20th July, 1930

MR. AWREY—Q.—With the exception of the furniture and chattel list which Mr. Coyle was to furnish us, we can very well proceed with the argument—I was going to suggest you and I could agree on somebody to make an appraisal.

MR. RODD—Personally, I think the property is part of the Court House.

MR. AWREY—Mr. Falls has prepared a statement which I don't want to put in as evidence, but merely it might assist you in determining, perhaps, with respect to these debentures, it shows the different debentures with payment each year to be made and the total amount. It is tabulated information that you have. I am putting it in in a more convenient form.

(Mr. Rodd and Mr. Awrey agree that the Office Specialty man make valuation and put in same to the Judge).

MR. AWREY—We have agreed, Mr. Rodd and I, that the chattel property about the County offices, that being the Treasurer's office, the Road Inspector's office, the County Clerk's office, and the Council Chamber, shall be fixed at \$1,500. That does not include and we are not going to argue that we are entitled to, on this arbitration, to anything with respect to the chattels or furniture in Court House offices or court rooms.

MR. RODD—I agree.

Certified correct,

MAUD LYONS.

## REASONS FOR AWARD

### Debenture Debt of County

I have set out in Schedule 1 to my award a statement of the debenture debt of the County, showing the by-laws under which the same were contracted, the due dates of the instalments by which they are payable, the year of the final payment under each by-law, the number of annual instalments remaining to be paid, the amount of each instalment, and the total amount of all the instalments in and after the year 1930. There is also shown in said Schedule the share of East Windsor in each of the annual instalments under said by-laws and its share of the total amounts of all the instalments under each by-law payable in and after the year 1930. 10

With respect to the debt under By-law No. 557 the annual amount of \$1,624.54 payable to the County by the Separated Town of Walkerville as its share of the debt thereby created is deducted in ascertaining the share of the Town of East Windsor. With respect to By-law No. 594 there is a similar reduction of an annual amount of \$414.98 payable by the Town of Walkerville.

As will be seen by the Schedule, the instalments under the different by-laws come due at different times of the year. Under the Municipal Act, County rates become due from the Townships and other primary municipalities to the County on the 20th day of December in each year, and six per cent. interest is charged on payments in arrears. Moneys required by the County to make debenture payments before the receipt of these County rates must be borrowed from a bank or some other source. The interest charges on such borrowings must be raised by the general rate by-law of the year. Now since the City of East Windsor is no longer part of the County, no means are available for assessing against it its share of the interest charges incurred by reason of the debenture rates for each by-law not being received at the time the instalment under the by-law fall due. 20 30

I therefore find that East Windsor's share of the instalments under each of the by-laws set forth in Schedule 1 shall be paid on the due dates of the instalments as set forth in said Schedule.

As to the debts under by-laws other than road by-laws no contention existed. As to the liability of East Windsor under the road by-laws there was some dispute as to the extent of liability and therefore the liability for road debentures will be separately considered.

### Liability for County Road Debentures

In considering the matter of the claim of the County against the City for the sharing of the debenture debt for roads and the counter- 40

claim of the City against the County for an allowance to the former on the ground that its interest in permanent roads constructed in the County is an asset to be valued in this arbitration, it is important to ascertain the principle on which the road legislation of the province is based.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
No. 8  
Reasons of Arbitrator for Award  
1st August, 1930  
(Continued)

10 Under the Common Law of England it was not the State at large whose duty it was to maintain highways, but that of the local authority, parish, village or town. This became the principle of the law at a time when social conditions and habits of travel were widely different from those now prevailing in this country. The great bulk of the people depended on agriculture, they lived chiefly in hamlets or small villages, few had means of travelling, large towns and cities were not common, and therefore the preponderant use of a highway was the use made of it by persons living in the immediate vicinity for the purposes of their daily work. One can readily see how under such conditions the interest of the inhabitants of any place in the repair of roads was confined to roads in the immediate vicinity, and how it naturally followed from this that the duty of keeping in repair became a local rather than a State duty.

20 From the time that Older Ontario became settled until a few decades ago the rules of the Common Law with respect to maintenance of highways were fairly appropriate to the conditions which prevailed here. The adoption of the motor car as a common means of communication about twenty years ago made a rapid and complete change in conditions. The great increase in number of persons travelling and in distances travelled, the increase in the quantity of freight carried, the insistent demands for better highways on the part of the motor driving public, a large percentage of whom lived in Cities and Towns, all contributed to make that which was previously a matter of almost  
30 purely local interest a subject of major concern to the state.

The unfairness of the operation of the Common Law in imposing on sparsely inhabited rural areas the heavy burden of maintaining through their areas much travelled through highways the advantages of which were chiefly reaped by non-residents of the municipalities was at last noted by the Legislature and various enactments have been put on the statute books to remedy the inequality of the Common law rule and as between the rural dweller, the urban dweller and the state as a whole to arrive at some sort of equilibrium as between the advantage and the burden.

40 To some extent the common law principle still prevails and purely local roads are still the sole care and the sole expense of the local municipality. The care of back roads in the Township is the duty of

RECORD  
 In the Appellate Division of the Supreme Court of Ontario  
 No. 8  
 Reasons of Arbitrator for Award  
 1st August, 1930  
 (Continued)

the ratepayers of the Township through their Council. City streets, though used largely by non-residents, are still preponderantly used by the inhabitants of the City, and the cost of same is thus properly considered the sole burden of the City. It is where main roads running through townships and villages, but connecting or leading to either nearby cities and towns or largely used for communication between distant cities and towns, that the effects of the statutory changes become apparent.

These roads are divided into two main divisions under the names of Provincial Highways and County Roads and each of these is further subdivided into two subdivisions, one for such of the above roads as is contributed to by cities or separated towns, and which are known as Provincial Suburban Highways or County Suburban Roads, and the other not granted any special appellation by the statute, but which for identification may be called Rural Provincial Highways and Rural County Roads.

The burden imposed on each of such classes of road as between Province, County and City or Separated Town is as follows:—

Division	Subdivision	Proportion of Cost Paid by		
		Province	County	City or Separated Town
Prov. Highways	Suburban	60	20	20
	Rural	80	20	nil
County Roads	Suburban	50	25	25
	Rural	50	50	nil

This table gives the general scheme of the Highway Improvement Act. Provisions are made for various special cases which for the purposes of this arbitration are unimportant.

The above table demonstrates that for the classes of roads above described the old rule of the common law imposing the duty of construction and maintenance upon the inhabitants of the local municipality in which the road lay has been definitely abandoned.

In considering the various sections of the statute in which the details of the scheme of contribution are worked out, it is evident that what the Legislature had in mind and what it attempted to effect was a fair and equitable apportionment as between the three contributories above named, to the total cost of improved highways. During the time that a town remains a part of the County its equitable treatment in so far as County roads are concerned is secured first by its representation on the County Council and secondly by the County Road System being subject to the approval of the Highways Department. After the separation of a town from the County, the County is assured

of the continuance of a fair contribution from the separated town through the medium of the Suburban Road Commission. In theory it would seem proper that since the separation of a town from its County makes no difference in the use by its inhabitants of the roads of the County, it should likewise make no difference in the amount of its contribution. The only change to be effected would seem to be the change in the agency through which its contribution is made, namely, Suburban Roads Commission instead of County Council.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
No. 8  
Reasons of Arbitrator for Award  
1st August, 1930  
(Continued)

10 When we come to decide what is the equitable thing to do with respect to East Windsor's share of Road Debentures issued for work done prior to 1929, one may consider what its position would probably be had it been a separated town from the origination of the County Road System.

Its contribution towards Provincial Highways would have been by way of payment direct to the Province of its 20 per cent. of the cost of the portion of Provincial Highway allotted to it.

Its contribution to County Roads would have been made through the payment of its 25 per cent. share of the cost of the Suburban County roads allotted to it.

20 The system of meeting such payments might be through the imposition each year of an annual rate sufficient to pay for that year's construction or partly by such rates and partly by borrowing on debentures.

There being nothing produced in evidence to show the contrary, I assume that what has been paid by East Windsor by way of road rates and its proportionate share of what has been borrowed for road purposes on debentures represents the equivalent of what it would have paid in yearly contributions or assumed liability, for by issue of debentures had it been a separated town from the inception of the County Road and Provincial Highway System.

30 I therefore hold that East Windsor's share of the debenture debt of the County for roads up to and including 1928 is its pro rata share according to the equalized assessment on which the 1929 levy was made, namely, 14.9308 per cent.

With respect to East Windsor's liability for County Road expenditure for 1929 and for the County's liability to the Province for Provincial Highway expenditures for 1929, it is desirable to make certain findings. The Order of the Ontario Railway and Municipal Board constituting East Windsor a City became effective as of June 1st, 1929.

40 The County's road building programme for 1929 was set forth in an amended Highway Committee report presented at the May session

RECORD  
 In the Appellate Division of the Supreme Court of Ontario  
 No. 8  
 Reasons of Arbitrator for Award  
 1st August, 1930  
 (Continued)

of the County Council (see Minutes, Ex. 4, p. 92). This report was adopted by the County Council on the 14th of March, the three representatives of Ford City (the present East Windsor) then present voting for its adoption. (See Minutes, Ex. 4, p. 78).

The adoption of this report was apparently followed by the calling for tenders for the works proposed, which tenders were received at or prior to the May session of the Council. On May 29th a report of the Highway Committee recommending the acceptance of certain tenders for the construction of all the works included in the March report was, after certain amendments made thereto adopted. On the motion being put the three representatives of Ford City then present voted against the adoption of the report (see Minutes, Ex. 3, p. 120). At the time this was done but two days remained (May 30th and May 31st) before the coming into being of the new Corporation of East Windsor on June 1st. 10

Whether for lack of time or because it was not considered of any consequence, the formal contracts binding the successful tenderers to execute the works were not executed until some time after June 1st. A reference to the originals or copies put in as Exhibits 6 to 13 inclusive discloses the dating of such contracts to be in the period from June 8th to June 13th. 20

The estimates attached to the report of March 14th (see Ex. 4, p. 93) reported that the expenditures proposed of \$803,000 should be met as follows—

Windsor contribution (for County Suburban Roads) .....	\$ 24,000
Walkerville contribution (for County Suburban Roads) .....	17,375
Provincial subsidy .....	395,000

Total from sources outside the County .....

Leaving to be raised by County taxation the balance of \$366,625, which it was proposed to raise as follows:— 30

County levy for 1929 for County roads, 2½ mills .....	\$223,280
Debentures to be issued for balance of .....	143,345
	<hr/>
	\$366,625

When in the month of June the annual rate By-law No. 689 came to be passed (see Ex. 3, p. 207), it turned out that by reason of East Windsor having withdrawn from the County the proceeds of a 2½ mill rate on the rest of the County amounted to only \$189,942.75 instead of \$223,280, as estimated in March, and therefore it became necessary that the amount to be raised on debentures by By-law No. 690 instead of being \$143,345 as estimated in March should be \$185,000 (see Ex. 3, p. 211). 40

With respect to the \$189,942.75 raised by By-law No. 689 the City of East Windsor is willing to bear the same share as if it had remained in the County, this amount being covered by its agreement of 29th November, 1929 (Ex. 2), whereby it assumes its share, 14.9308 per cent., of the total amount of \$493,197.08 raised by said by-law. It now objects to assume any portion of the liability for the debentures issued under By-law No. 690 on the ground that the written contracts for the construction of works much exceeding the amount of the debentures authorized by said by-law were not executed until after the incorporation  
 10 of East Windsor on June 1st, and that as the assets and liabilities of the County are to be adjusted as of that date, these debentures should be left out of consideration as not representing an actual debt or liability on that date.

If this contention should succeed the result would be that East Windsor by withdrawing from the County would escape making any contribution towards that part of the cost of the works represented by Debenture By-law No. 690. As no suburban roads commission was appointed for East Windsor in 1929, it escaped any contribution for County roads which might otherwise be made through that channel. If, then,  
 20 East Windsor's contention prevails, it would turn out that the means instituted by the law for effecting an equitable distribution of the burden of road construction and maintenance would fail. The necessity of yielding to such a result should not, in my opinion, be too easily conceded. Sufficient reason for holding that the debenture debt under By-law 690 constitutes a liability to which East Windsor should contribute lies in the fact that prior to June 1st the tenders for the disputed works were accepted. The putting in of a tender and the acceptance thereof creates two obligations—one on the part of the tenderer to do the work, and one on the part of the Corporation to pay the stipulated price. To  
 30 that extent there was an obligation or liability of which it is fair that East Windsor should pay its share.

Another argument in favour of holding East Windsor liable is that for that part of these very works which was paid for out of the County Rates of 1929 the City of East Windsor admitted its liability by executing the agreement of 29th November, 1929, whereby it agreed to pay its full share of all County rates for that year.

I therefore hold that as to all road debentures up to and including the road debentures issued under By-law 690, the City of East Windsor must bear its proportion. This proportion is based on its equalized  
 40 assessment as compared with the rest of the County and is fixed by the agreement of 29th November, 1929, at 14.9308 per cent.

Having dealt with the road debts as a liability, I will now consider the roads themselves as an asset. I think it is too obvious to require

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argument that good roads constitute an asset. They are things of value. But as such an asset they are of value not merely to the residents of the municipalities through which they pass, but to the public generally. To the resident of East Windsor the separation of that Municipality from the County in no way reduced his right to use the County highways to the same extent as he did before.

Insofar as the County is concerned these roads constitute an asset held, as it were, in trust for the public, and in respect of which it reaps no financial advantage as a county. I therefore hold that they are not the kind of asset to be taken into account on the separation of a City from a County. 10

### East Windsor's Claim Re Riverside Grant

By an agreement between the County and the Town of Riverside made in 1929 the County agreed to grant to the said Town \$36,000 for road improvements, and the Town agreed to repay one-half of this amount, \$18,000, by permitting the County to retain from year to year thereafter the refunds of road rates otherwise payable by the County to the Town until the said amount of \$18,000 should be so repaid. (See Agreement, Ex. 30).

As to the said \$18,000 part of the \$36,000 grant the effect is that of a loan repayable by annual instalments without interest. The number and the amounts of the instalments can only be estimated as they will be governed by the amount of the annual refunds, which vary from year to year. I have therefore taken the year 1929 as a representative year, it being the only year for which the statistics were in evidence, and on that basis I have calculated that the \$18,000 will be repaid as follows: \$3,375 per year for five years, and the balance of \$1,125 in six years. Computing the present value of these non-interest bearing instalments on the basis of money being worth five per centum per annum, I find the present worth to be \$15,452.00. 30

As East Windsor is obliged by its agreement to pay its proper percentage (14.9308) of the County rates of 1929, and as I have found it responsible for the same share of the debentures under By-law 690 out of either of which sources came the money for the above grant of \$36,000, therefore East Windsor is entitled to credit for its same proper share of the above \$15,452, which I find to be \$2,307.10.

### Provincial Highways, 1929

The Province's annual claim against the County for Provincial Highway construction and maintenance for the year is not presented until after the end of the calendar year, the amount not being definitely ascertainable prior to that time. The Province's claim against the 40

County of Essex with respect to provincial highways for 1929 is \$72,101.45.

The claim not having been provided for in the County rates of 1929, it remained as a County liability at the end of that year.

It is urged on behalf of East Windsor that as none of the work on these roads was done in that Municipality, it should not bear any part of this liability.

By reason of the City not being incorporated until June 1st no allotment of Provincial Highway construction was made against it that  
 10 year, in the same way that no allotment had been made against it for County roads as mentioned above. Unless, therefore, it pays through the County, it escapes its share of contribution on this account. Therefore for the same reasons as are set out above with reference to County roads, I hold that it is liable for its share of this County liability, namely, 14.9308 per cent. of \$72,101.45, or \$10,758.10.

#### **Gravel Lands and Road Machinery**

The value of the County gravel pit and lands connected therewith and the County's road machinery was fixed by agreement of the parties in the course of the arbitration at \$46,000.

20 It was left open as to whether the County was the sole owner or whether the Province has a half interest in it.

It was established that though the conveyance was made direct to the County, the Province paid one-half of the cost of both land and machinery and has acted as part owner in taking gravel from the pit for Provincial Highway purposes without charge in the same way that the County takes without charge gravel for County road purposes.

I therefore conclude that as to a half interest in this property the County is a trustee for the Province and that its beneficial ownership extends only to a half interest.

30 East Windsor's share is therefore to be computed as 14.9308 per cent. of one-half of \$46,000, or \$3,431.79.

#### **Chattels in County Offices**

The chattels used in such of the offices at the Court House as East Windsor has no interest in being the County Council room, the County Treasurer's office, the County Clerk's office, and the Road Superintendent's office, were by agreement of the parties valued at \$1,500. I find East Windsor entitled to its share of 14.9308 per cent. of this amount, or \$223.96.

### Vacant Lands at Court House

I find that these lands are used as an appurtenance of the Court House and are therefore assets with respect to which East Windsor continues to retain an interest. For this reason their value is not to be taken into account on this arbitration.

### Adjustment of Sundry Accounts

Certain accounts between East Windsor and the County not adjusted at the date of the agreement of November 19th, 1929, were agreed upon during the course of the arbitration. They are as follows:—

Credit to East Windsor for amount paid in 1929 for Mothers' Allowances, maintenance of Jail and disbursements re Registry Office .....	\$8,393.80	10
Debit against East Windsor for amount received in respect of Registry Office fees .....	1,164.95	
	<hr/>	
Net credit on this account .....	\$7,228.85	

### County Road Account Surplus and Current Account Deficit

In the County Road Account at the end of 1929 there was a surplus of \$42,450.10.

In the Current Account there was at the same date a deficit as then shown by the Treasurer's statement (see Ex. 22) of \$22,315.53. This statement did not include the unadjusted sundry accounts of East Windsor dealt with under the last heading. These should now be included. Adding this amount of \$7,228.85 to the previous deficit of \$22,315.53 makes a total deficit in that account of \$29,544.38. Setting off the current account deficit of \$29,544.38 against the Road Account surplus of \$42,450.10 leaves a net surplus of \$12,905.72 in which East Windsor is entitled to share to the extent of 14.9308 per cent., or \$1,926.72.

### Interest on Net Balance

In Schedule 2 is set forth a statement of the adjustments as established by the award with reference to all matters other than debenture debts. The balance then found in favor of the County is \$55,095.32. 30

The major part of the items payable by East Windsor and going to make up this balance would in the event of there being no separation be payable to the County on December 20th, 1929, with interest thereafter in the event of non-payment at 6 per cent. per annum. Some minor items would not be payable for a year after. I think a fair adjustment of interest would be to allow interest at 5 per cent. per annum on the above balance from the 1st day of January, 1930, until it is paid

### **Court House, Jail, Registry Office and House of Refuge**

In the course of the arbitration it was agreed that the interest of the City of East Windsor in the County Court House, County Jail, County Registry Office and County Home for the Aged (with the lands appurtenant to each), should be fixed as of the first day of June, 1929, at 14.9308 per cent., and that such agreement should be recorded in the award.

10 It was similarly agreed to have embodied in the award the finding that East Windsor should pay 14.9308 per cent. of all capital expenditures for extensions and improvements to the said County Home until the agreement with respect to the use of the Home by the City should be terminated; also that until such agreement should be terminated the City should be entitled to have such of its indigents as it should send to said Home cared for therein and to pay for such accommodation by contributing to the total cost of the upkeep, maintenance and ordinary repairs that same proportion of the whole as the number of days of occupation of the City's inmates bears to the days of occupation of all inmates; also that such agreement should continue for five years  
20 in the event of its uniting with the City of Windsor to terminate it at the end of any calendar year by giving at least one year's previous notice, and subject to a similar right on the part of the County in the event of the accommodation becoming insufficient to take care of the inmates sent to it by East Windsor in addition to its own inmates.

### **Agreement Re Pavement on Tecumseh Road**

Pursuant to request of Counsel, I hereby state that a certain agreement between the former Town of Ford City, The Township of Sandwich East and the County of Essex with respect to the paving of a portion of Tecumseh Road lying between the two first named municipalities  
30 has not been treated as a subject of this arbitration and is not to be deemed affected by this award.  
Sandwich, August 1st, 1930.

(Signed) J. J. COUGHLIN,  
Arbitrator.

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No. 8  
Reasons of Arbitrator for Award  
1st August, 1930  
(Continued)

## FORMAL AWARD OF ARBITRATOR

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
No. 9  
Formal Award of Arbitrator  
1st August, 1930

### KNOW ALL MEN BY THESE PRESENTS:

That I, John J. Coughlin, County Judge of the County of Essex, having been appointed pursuant to a certain agreement dated the 29th day of November, 1929, to arbitrate certain matters in dispute between the County of Essex and the City of East Windsor consequent upon the separation of the said City (formerly the Town of Ford City) from the said County, have proceeded with said arbitration and have been attended by Counsel thereon on the sixteenth, eighteenth, nineteenth and twenty-first days of July, 1930. 10

And having heard the evidence adduced and what was submitted by Counsel aforesaid I find and award as follows:—

1. I find that the City of East Windsor is liable to pay to the County on its debenture debt the amounts set out with respect thereto in Schedule 1 to this award, such payments to be made on the dates set forth in said Schedule.

2. I have set out in Schedule 2 hereto a statement showing the adjustment made by me with respect to the matters therein set forth. I award that the balance of \$55,095.32 therein set out shall be paid by the said City of East Windsor to the said County in one month from the date of this award with interest from the 1st day of January, 1930, at the rate of five per cent. per annum until paid. 20

3. I find that the City of East Windsor is entitled to an interest of 14.9208 per cent. in the following County assets, viz: Court House, County Jail, County Registry Office, and County Home for the Aged, with the lands appurtenant to each, and the chattels and furnishings belonging to same other than the chattels referred to in Item 6 of Schedule 2.

4. I find that an agreement has been entered into between the County and the City that the City should pay 14.9208 per cent. of all capital, expenditures for extensions and improvements to the said County Home until the agreement with respect to the use of the Home by the City should be terminated; also that until such agreement should be terminated the City should be entitled to have such of its indigents as it should send to said Home cared for therein and to pay for such accommodation by contributing to the total cost of the upkeep, maintenance and ordinary repairs that same proportion of the whole as the number of days of occupation of the City's inmates bears to the days of occupation of all inmates; also that such agreement should continue for five years from the first day of January, 1930, subject to the right of East Windsor in the event of its uniting with the City of Windsor 30 40

to terminate it at the end of any calendar year by giving at least one year's previous notice, and subject to a similar right on the part of the County in the event of the accommodation becoming insufficient to take care of the inmates sent to it by East Windsor in addition to its own inmates.

5. I award that each party shall pay its own costs of this arbitration and award and that the fees of the arbitrator and the reporter's fees should be paid in equal shares by both parties.

In witness whereof I have hereunto set my hand this 1st day of 10 August, 1930.

Witness:

(Sgd.) ELSA H. MOTHERSELL.

(Sgd.) J. J. COUGHLIN.

RECORD  
In the Appellate Division of the Supreme Court of Ontario  
No. 9  
Formal Award of Arbitrator  
1st August, 1930  
(Continued)

## SCHEDULE 1

### Schedule showing East Windsor's share of County Debenture Debt

No. of By-law	Subject Matter	Date Payable	Final Paym't	No. of Instal- ments to Pay	Amount of Each Instalment	Total	East Windsor Share of Each Instalment	East Windsor Total
321	Registry Office .....	Oct. 15	1933	4	\$1,283.87	\$ 5,135.48	\$ 191.53	\$ 766.12
407	Patriotic Fund .....	May 1	1938	9	5,230.23	47,072.07	780.33	7,022.95
557	County Gaol .....	June 1	1945	16	11,233.96	179,743.36	1,433.75	22,940.16
572	Registry Office .....	April 1	1931	2	4,619.50	9,239.00	689.20	1,378.40
594	Gaol and Courthouse ..	Nov. 1	1936	7	5,180.18	36,261.26	710.98	4,976.86
480	Roads .....	Aug. 4	1931	2	16,304.16	32,608.32	2,432.71	4,865.42
499	Roads .....	Sept. 1	1932	3	15,920.13	47,760.39	2,375.42	7,126.26
518	Roads .....	Sept. 15	1933	4	13,266.77	53,067.08	1,979.40	7,917.60
661	Roads .....	Oct. 1	1938	9	20,720.73	186,486.57	3,091.50	27,823.50
690	Roads .....	Nov. 1	1939	10	24,543.53	245,435.30	3,661.90	36,619.00
						\$842,808.83		\$121,436.27

## SCHEDULE 2

### Statement of Adjustments on all matters other than debentures

Debits against East Windsor:

1.	Share of County rates under By-law No. 689, being 14.9308 per cent. of \$493,197.08 . . . .	\$ 73,638.27
2.	Share of County liability to Province for provincial highways charges for 1929 . . . . .	10,765.45
	Total . . . . .	\$ 84,403.72

Credits in favor of East Windsor:

10	3. Share of County Road levy for 1929 under By-law 689, being 50 per cent. of East Windsor's contribution to County Roads under the agreement of 29th November, 1929 . . . .	\$ 14,179.98
	4. Share of debt of Riverside re 1929 grant for roads . . . . .	3,431.79
	5. Interest in gravel lands and road machinery . .	2,307.10
	6. Interest in chattels in County Offices at Court House . . . . .	223.96
20	7. Balance in favor of East Windsor on adjustment of accounts re mothers' allowances, Registry Office accounts, maintenance of Gaol, etc. . . . .	7,228.85
	8. Share of net surplus in hands of County Treasurer on Current Account and Road Account at end of 1929 . . . . .	1,926.72
	Total . . . . .	29,308.40
	Balance in favor of County . . . . .	\$ 55,095.32

RECORD  
In the Supreme  
Court of Ontario  
Schedule 2  
No. 9  
Formal Award of  
Arbitrator  
1st August, 1930  
(Continued)

RECORD  
In the Supreme  
Court of Ontario  
No. 10  
Notice of Appeal by  
City of East Windsor  
4th September, 1930

## IN THE SUPREME COURT OF ONTARIO

IN THE MATTER of the Arbitration Act;

AND IN THE MATTER of a certain arbitration between the County of Essex and the City of East Windsor, pursuant to a certain agreement bearing date the 29th of November, 1929, and the award of John J. Coughlin, County Judge of the County of Essex, bearing date the 1st day of August, 1930.

Between:

THE CITY OF EAST WINDSOR,

Appellant, 10

—and—

THE COUNTY OF ESSEX,

Respondent.

### NOTICE OF APPEAL

TAKE NOTICE that a Motion will be made on behalf of the City of East Windsor to the Presiding Judge sitting in Weekly Court at Osgoode Hall, Toronto, on Thursday, the 11th day of September, 1930, at the hour of 11 o'clock in the forenoon, or so soon thereafter as the same may be heard by way of Appeal from the award of John J. Coughlin, Esquire, County Judge of the County of Essex, Arbitrator appointed pursuant to an agreement bearing date the 29th day of November, 1929, between the Appellant and Respondent upon the following grounds:— 20

1. The Learned Arbitrator erred in not giving effect to the first paragraph of the agreement, dated the 29th day of November, 1929, whereby the City of East Windsor settled its proportion of all current liabilities to which it might have been called upon to contribute in that: (a) He directed that the Appellant should pay to the Respondent the sum of \$10,765.45, being share of County liability to Province for Provincial Highway charges for 1929, as shown in Schedule 2 to the said award. (b) He held, in effect, that the Appellant should contribute a portion of the deficit in the current account of the County. 30

2. The Learned Arbitrator erred in holding that the Appellant is liable to pay its proportion of the debenture debt created by By-law No. 690, passed on the 21st day of June, 1929, in that such debt was created after the Appellant had been separated from the Respondent, and in any event if the Appellant were responsible for payment of any

part of the said debenture debt the same should have been reduced by the surplus in the Special Highway Account.

3. The Learned Arbitrator erred in not allowing the Appellant the value of the lands and buildings occupied and used by the County Treasurer and the other lands adjacent thereto held by the County upon which it was said in evidence that a Court House may be erected in the future.

4. The Learned Arbitrator erred in taking into consideration matters not within the scope of the arbitration, in determining the liability to the Appellant for County Road debentures outstanding and unpaid as of the 1st of June, 1929.

5. The Learned Arbitrator erred in finding that the sum of \$55,095.32 was owing by the Appellant to the Respondent, together with interest from the 1st of January, 1930, inasmuch as the agreement of the 29th of November, 1929, specifically provided for payment after the final determination of the adjustment.

6. The Learned Arbitrator erred in finding that the Respondent had only a fifty per cent. interest in the gravel pits and road making machinery.

7. And upon such other grounds as may appear upon the face of the evidence, the award and the reasons for the award.

AND TAKE NOTICE that in support of such Motion will be read the said award, the reasons therefore, the evidence and exhibits taken at the hearing.

DATED at Windsor this 4th day of September, A.D. 1930.

FURLONG, FURLONG, AWREY, ST. AUBIN & MEIR,  
No. 425 Ouellette Avenue, Windsor, Ontario, Solicitors for the Appellant.

To—J. H. Rodd, K.C.,  
Solicitor for the County of Essex.

RECORD  
In the Supreme  
Court of Ontario  
No. 10

Notice of Appeal by  
City of East Windsor  
4th September, 1930  
(Continued)

**REASONS FOR JUDGMENT OF ROSE, C. J.**

Delivered 15th January, 1931.

RECORD  
In the Supreme  
Court of Ontario  
No. 11  
Reasons for Judgment  
of Chief Justice  
Rose  
15th January, 1931

S.C.C.

E. C. AWREY, K.C.,

Re:—

for the City.

CITY OF EAST WINDSOR

—and—

J. H. RODD, K.C.,

COUNTY OF ESSEX.

for the County.

This is an appeal by the City of East Windsor from certain portions of the award made by His Honour Judge Coughlin, acting as arbitrator upon an arbitration held to adjust the assets and liabilities of the respective municipalities upon East Windsor's erection into a city and its consequence separation from the County. 10

By an order of the Ontario Railway and Municipal Board, made on March 5, 1929, in exercise of the powers conferred by Sec. 19 of the Municipal Act (R.S.O. 1897, c. 233), and effective on June 1, 1929, the Town of Ford City was erected into the City of East Windsor. Thereupon the adjustment of assets and liabilities provided for by Sec. 38 (5) of the Municipal Act became necessary, and the County and the City, by an agreement in writing dated November 29, 1929, proceeded to adjust certain of those assets and liabilities, leaving the others to be adjusted after December 31, 1929, but as of June 1, 1929, by agreement if possible, and, failing agreement, by His Honour Judge Coughlin, whose decision was to be subject to appeal. A hearing by the arbitrator became necessary and was had, and the learned arbitrator made his award on August 1, 1930, and gave reasons in writing for his several findings. The appeal is against some only of those findings. 20

The first finding attacked is one by which it was found that the City must pay to the County \$10,765.45, being the City's share of the County's liability to the Province in respect of moneys expended by the Province in 1929 on provincial highways. 30

By s. 61 of the Highway Improvement Act (R.S.O. 1927, c. 54) every county in which work of construction or repair and maintenance of a provincial highway (as defined by s. 52 of the Act) is carried out shall repay to the Province 20 per centum of the amount expended by the Department of Public Highways within such County, and every city shall repay to the province a like proportion of the expenditure made within the limits of the roads designated as "provincial suburban" roads adjacent to such city. The provincial bill against the County of Essex under this section for the year 1929 was \$72,101.45. It was rendered in 1930, after the departmental accounts for 1929 had been made up. 40

The learned arbitrator was impressed by the fact that, the City's incorporation dating only from June 1, 1929, no share of responsibility to the province in respect for expenditure upon "provincial suburban" roads had been allotted to the City, which, as he thought, would escape all liability in respect of the construction or maintenance of provincial highways in 1929, unless made to contribute through the County, and he came to the conclusion that the City ought to contribute towards the County's liability to the province in respect of expenditure made on provincial roads in the County during the year, whether made before  
 10 or after June 1, and he fixed something just under 15 per centum as the City's share of the County's liability, this percentage being the percentage adopted by the parties for certain purposes in their agreement of November 29, 1929.

The first clause of the agreement is as follows:—

"1. (a) The provisions of this paragraph are in full settlement of all current liabilities incurred up to and including December 31st, 1929, and which the City is or may be required to pay.

"(b) The City shall pay to the County 14.9308 per cent. of \$493.-197.08, which sum is the amount required to be levied on the various  
 20 municipalities as provided in By-law No. 689 of the County, passed in the year 1929.

"(c) The County shall pay to or for the City all disbursements or payments, rebates, refunds, surplus allowances and credit allowance, for which it would be obligated if the City had remained a part of the County until December 31st, 1929."

By-law 689, referred to in the agreement, is a by-law passed by the County Council on June 21, 1929, "to levy the County rate, to provide for school inspectors' salaries, the moneys payable under the Public Schools Act, the Provincial Highway Act, and to provide money to meet  
 30 the debentures becoming due and payable in the current year." Paragraph (b) of Clause 1 of the agreement, then, is quite understandable; the City, although in the County for only one-half of the year, undertakes to pay about 15 per centum of the County's general current expenses of the whole year, as calculated in June at the time of the passing of the by-law. The wording of Paragraph (b), however, does not seem to be as clear as that of Paragraph (a); but I do not think that the uncertainty, if there is any, as to the precise nature of the obligation undertaken by the County is of importance. In the discussion of the question of the City's liability in respect of the payments to be made  
 40 on account of the work done on the provincial highways; by the agreement the City undertakes to pay a certain sum of money to the County, the County undertakes to pay certain money "to or for" the City, and the County and the City agree that the provisions of the clause

RECORD  
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which contains these undertakings shall be "in full settlement of all current liabilities incurred up to and including December 31st, 1929, and which the City is or may be required to pay," and the claim of the Province in respect of expenditures on provincial highways seems to be one of those current liabilities. It is true that the provincial claim against the County was not presented in 1929; but the obligation of the County to the Province under S. 61 of the Highway Improvement Act arose as soon as the provincial expenditure had been made; it was therefore a "current liability incurred" in 1929, for which all property situate in the territory now comprised in the City would have been taxed if the city had not been created, and I think that the claim allowed by the arbitrator is one of the matters settled by the parties by their agreement, and that the appeal in respect of this item ought to be allowed. 10

My opinion that the settlement made by the parties disposes of the whole of the claim presented by the County in respect of money payable to the Province in respect of work done upon provincial roads in 1929, I do not enter upon a discussion of an alternative attack made by counsel for the City upon the award of the \$10,765.45, viz: whatever the case may be as regards the cost of the work done before June 1, 20 when the City was separated from the County, there is no reason why the City should contribute to the cost of work done after that day.

The second part of the award discussed by counsel is that part by which the City is found liable for a portion of the debentures debt created by By-law 690, passed by the County Council on June 21, 1929, to raise money for the building of roads under the County Highway system.

The construction of the roads had been under discussion in the County Council before June 1; tenders had been received, and, on May 29 the Council received, and amended, and, as amended, adopted a report of the Highway Committee, recommending that certain specified 30 contracts be let. This was done by resolution, no by-law being passed. Three of Ford City's representatives on the Council were present, and voted against the resolution. Afterwards, contracts were let, all of them being executed in June, after the order of the Ontario Railway and Municipal Board erecting the Town of Ford City into the City of East Windsor had become effective.

It had been supposed that it would be necessary to borrow \$143,345 to pay for the work covered by the resolution passed in June, and that the remainder of the cost would be met out of the general rate. But, as is stated by the arbitrator in the written reasons for his award, the withdrawal of the City from the County upset the calculation: the rate 40 of taxation for County roads under By-law 689 (referred to in the discussion of the award in respect of provincial highways) was  $2\frac{1}{2}$

per centum; when the construction of the roads had been under discussion earlier in the year, it had been supposed that the 2½ per cent. tax would produce all but some \$143,000 of the money required; but, the territory comprised within the limits of the City having been withdrawn, the tax upon the remaining ratable property of the County produced of course a smaller sum; and so when the Debenture By-law 690 was passed the sum authorized to be borrowed was correspondingly larger than it would have been if there had been no separation of the City from the County—it was \$185,000, instead of something over

10 \$143,000. Having this fact in mind, as well as the fact that East Windsor paid nothing in 1929 in respect of “suburban roads” (no commission having been set up under S. 35 of the Highway Improvement Act, and no portion of any County road having been designated a “suburban road”), and finding in the first clause of the agreement of November, 1929 (hereinbefore copied), what he took to be an admission by the City of a liability to pay its share of so much of the cost of the work done in 1929 on County roads as fell to be met out of the general County rate, the learned arbitrator reached the conclusion that the City ought

20 to provide a proportionate part of all the money required by By-law 690 to be levied annually upon the ratable property of the County for the repayment of the money borrowed, with interest. He thought also that, although no by-law accepting the tenders had been passed, and although no contracts for the doing of the work had been executed, before East Windsor had ceased to be part of the County, it might still be said that upon the acceptance of the tenders (by the resolution of May 29) two obligations arose, an obligation on the part of the respective tenderers to do the work and an obligation on the part of the County to pay the stipulated price, and that “to that extent there was an obligation or liability of which it is fair that East Windsor

30 should pay its share.”

I am, with much respect, unable to reach the conclusion reached by the learned arbitrator. There being no by-law accepting the tenders, and no contracts executed before June 1, 1929, it is clear, I think, upon Mr. Justice Logie’s judgment in *Donovan v. City of Belleville* (1930), 65 O.L.R. 246, and the earlier cases there referred to, that the County came under no legal liability in respect of these roads until, after the withdrawal of the City, the County entered into contracts and proceeded with the work; and I take it that it was with legal liabilities afterwards contracted, that the arbitration was concerned. And I am

40 not able to find in the contract of November, 1929, any admission by the City of Liability. It is true that, of the money required by By-law 689 to be levied, almost \$190,000 was for work done and to be done on County roads in 1929, and that by the agreement East Windsor undertook to pay some 15 per centum of that sum. But the document, after reciting the necessity of an adjustment of assets and liabilities and the

RECORD  
 In the Supreme  
 Court of Ontario  
 No. 11  
 Reasons for Judgment of Chief Justice Rose  
 15th January, 1931  
 (Continued)

fact that a joint committee has "agreed upon a basis of settlement of certain matters," goes on, without any admission of liability, merely to evidence the agreement contained in the first clause (whereby, "in full settlement" of certain liabilities, the City agrees to make a certain payment and the County undertakes certain obligations) as well as certain other agreements, and to provide for an arbitration should one be necessary. In this I can find no suggestion of an admission by the City that, apart from the agreement, the City would be liable to pay part of the cost of road-work to be done in the County after June 1, 1929, whether such cost was to be met out of the rates for 1929 or out of borrowed money. And the argument that the City must be made to share the expense incurred because otherwise the City will be at no expense for road work done in that year (except the expense assumed by the agreement), seems to me, with respect, to be unsound. One does not know what sum the City would have had to pay if the separation of the City from the County had taken place early in the year and the City had been made liable in respect of work done on roads adjacent to the City and declared to be "suburban" roads, or how that sum would have compared with the sum that the City, pursuant to the agreement, is contributing to the cost of work done on roads throughout the County. Counsel for the City is instructed, as I understood him, that the City's liability in the supposed case would have been for a smaller sum than the sum that the City is paying under the agreement; but, however that may be, what have to be adjusted are the assets and liabilities of the respective municipalities, and it seems to me to be unsafe to say that there is a liability to pay a portion of the money borrowed to meet part of the cost of the road work done throughout the County after the separation of the municipalities, merely because, unless there is such a liability, the City, having come under no liability to contribute (under S. 37 of the Act) 20 per centum of the cost of the work done close to the City limits, will get off too lightly. In the fact that the City has not come under the liability which the statute creates in respect of roads that have been designated (county) "suburban roads" there seems to me to be no justification for the statement that on June 1, 1929, there was a liability in respect of the cost of work thereafter to be done by the County upon the county roads generally; and the adjustment of liabilities has to be made as of June 1, as is expressly provided in the agreement by which the arbitrator was appointed. I think that the appeal against this part of the award must be allowed. Counsel for the City admits, and it seems to be clear (see Exhibit 22), that if the City is not liable in respect of these debentures it is not entitled to a certain credit of \$1,926.73 (item 8 of Schedule 2 to the award) explained on page 12 of the reasons for the award. The order must provide for the deletion of this credit item.

The next part of the award attacked is that by which the City is

found liable to contribute towards the sum required to be raised annually to meet the obligations created by debentures issued, before the separation of the municipalities, to raise money to pay for work done before 1929 on the county roads. The learned arbitrator did not treat the roads themselves as assets that fell to be valued upon the adjustment of assets, and no objection is taken to this ruling in that regard. But he held that there was a liability on the part of the City to pay its share of the debt represented by the debentures, and against that holding the City appeals, contending that as the County keeps the roads it alone  
 10 ought to bear the cost of their construction and improvement.

I can find no error in the holding that the City ought to meet part of the obligation created by the debentures. The roads are owned by the County, but they are public highways, just as useful to the inhabitants of the City now as before the separation; and I can find no reason in law or in equity why the City, by separating from the County, should escape liability for its share of so much of the cost of construction as had not been paid before the separation took place. The City was responsible for its share of the cost in the first instance; a portion of that cost was paid out of the money raised annually by  
 20 assessment, the territory that is now in the City contributing its quota; for convenience, the money required to pay the balance of the cost was borrowed—i.e., in effect, payment of that balance was deferred—and why the City should not pay its share of the sum required to retire the debentures I do not know.

Mr. Awrey contends that, even if the City must contribute to the fund raised annually to meet the debenture debt just discussed, it ought not to be compelled to pay as great a percentage as that for which the arbitrator has held it liable. The percentage taken by the arbitrator is that established by the latest equalization of assessments, and adopted,  
 30 for certain purposes, by the parties in the agreement of November, 1929. But this percentage is greater than the percentages fixed by earlier equalizations, and very much greater than that used in the first years of the earliest of the debenture by-laws in question, Ford City's proportion of the liability of the whole County having increased steadily pari passu with the growing importance of the City; and Mr. Awrey contends that the liability of the City ought to be fixed with reference to one of the earlier equalizations, rather than with reference to the equalization of 1929. I do not agree.

It cannot be said that Ford City's share of responsibility for any  
 40 one of the several debenture debts was fixed on the day of the passing of the by-law by which that debt was created. The City's share of the total responsibility increased from time to time as the City grew, until by June 1, 1929, that share had become almost 15 per centum of the total; and it is difficult to see what percentage other than that latest

one the arbitrator could have regarded when he was adjusting the liabilities of the respective parties as of June 1, 1929. The appeal against this part of the award fails.

The next ground of appeal argued is an objection to a ruling that certain land at the corner of Sandwich and Brock Streets is appurtenant to the Court House. By S. 38 (c) of the Municipal Act it is enacted that when a town is erected into a city the city, upon the adjustment of assets, shall not be allowed anything in respect of its interest in the Court House. Mr. Awrey does not suggest that this enactment does not extend to land which can reasonably be said to be held as appurtenant to the Court House; but he contends that some of the land which the arbitrator has treated as an appurtenance of the Court House ought not so to be treated. 10

The Court House faces Sandwich Street, its most westerly part being about 129 feet from the corner of Sandwich Street and Brock Street. At the corner of the streets is the County Treasurer's office, a building having a frontage of about 34 feet on Sandwich Street and a frontage of about 64 feet on Brock Street. There is no other building between the Court House and Brock Street. The learned arbitrator has treated the whole of the vacant land, having a frontage of about 95 feet on Sandwich Street and a depth of about 140 feet, as appurtenant to the Court House. Mr. Awrey suggests that perhaps half of it is so appurtenant, and that the other half is appurtenant to the County Treasurer's office. The evidence does not enable one to draw the line with precision. All that appears is that the land is not built upon and that many persons whose business takes them to the Court House or the Treasurer's office or the Registry Office (which is close at hand, facing Brock Street (see Exhibits 31 and 32), and, no doubt, some who have no business in any of those buildings, are in the habit of parking their motor cars on the unoccupied land. Upon this evidence, it is quite impossible to say that the learned arbitrator was wrong in treating the vacant land as appurtenant to the Court House. It seems, however, that there is no reason why the land actually covered by the County Treasurer's office should be taken to be so appurtenant. This is a small matter which, perhaps, was overlooked, and there is no way, upon the evidence furnished, of correcting the slip, if really there was one. That is to say while there is some evidence as to the value of the land (pp. 83 et seq. of the notes of evidence), there is evidence also (p. 30) that part of the land upon which the Treasurer's office stands belongs to the Town of Sandwich, so that it is impossible to fix the area or value of the County's land actually used as a site for the Treasurer's office. The only course open, therefore, is to order a reference back as to this item, if the City so desires. If there is a reference back it ought, I suppose, to extend to the value of the building used 20 30 40

as a Treasurer's office, unless that is covered by an agreement referred to in the arbitrator's reasons for the award, but not to be found amongst the exhibits or set out in the reporter's notes of the proceedings. Such a reference back is in the nature of an indulgence to the City, necessitated by the paucity of the evidence adduced, which fact, no doubt, the arbitrator will have in mind when he comes to deal with the costs of it, which ought to be in his discretion.

The next question is whether, in the adjustment of the assets, the County ought to be treated as the sole owner of certain gravel pits and  
10 roadmaking machinery.

The evidence adduced is meagre. The learned arbitrator took it as establishing "that, though the conveyance was made direct to the County, the Province paid one-half of the cost of both land and machinery and has acted as part owner in taking gravel from the pit for provincial highway purposes without charge, in the same way that the County takes without charge gravel for County road purposes"; and he found, therefore, that as to the half interest the County was a trustee for the Province, and that only one-half of the value of the assets ought to be charged to the County in the adjustment.

20 I am not sure that the evidence is sufficient to establish the trusteeship; but, as will appear, I think that, in its practical result, the conclusion reached is correct. The facts, so far as they appear, seem to be these: Under the Highway Improvement Act (ss. 17 et seq.) the County furnishes statements to the Department showing the expenditure made by the County upon county roads embraced in the County's approved plan of highway improvement, the purchase price of property, plant and equipment being part of such expenditure; the Minister of Public Works and Highways passes upon the propriety of the charges, and may authorize payment to the County by the Province of a sum  
30 equal to fifty per centum of the amount of the expenditure. In practice, the Department insists upon its approval being obtained before such property as e.g., a large gravel pit is purchased, and if gravel from the pit, or the pit itself, is sold, the Department sees to it that the purchase money goes into the County's accounts so as to reduce the net expense of highway improvement during the year. A witness seems to say that if a gravel pit is sold by the County the Province takes one-half of the purchase money; but some accounts produced make it plain that what he means is that if a pit is sold, so that the County's net expenditure for the year is reduced by the amount of the purchase price, the Province's contribution towards the net expenditure for that  
40 year is lessened by a sum equal to one-half of that purchase price. Further, the Department, before approving of some of the purchases of large gravel pits by the County of Essex, has exacted the privilege of taking gravel from those pits, without payment, for use on adjacent

provincial highways, and has availed itself of the privilege "to a certain extent."

I doubt whether, upon this evidence, it ought to be found that the County is trustee for the Province of a one-half interest, even in the larger gravel pits; and I can find nothing pointing to such a trusteeship in the case of the pits from which the Province is not privileged to take gravel, or in the case of the roadmaking machinery. But what the arbitrator had to do, under the Act and the submission, was to adjust the assets of the respective municipalities; and I do not think that that meant that he was necessarily to charge either municipality with the full value of each piece of property owned by it. And if the County sells the property now under discussion it will not be able to appropriate to itself the whole of the purchase price; for the result of the sale and the receipt of the purchase money will be merely that, after crediting the sum received from the Province, the County's net expenditure upon road improvement in that year will be less, by an amount equal to one-half of the purchase price of the things sold, than it would have been if there had been no sale. Therefore I think that, as an asset, these things ought to be taken into the account at no more than the value that the learned arbitrator has attributed to them; and that the appeal against this part of the award fails. 10

The only other matter for discussion is the day from which interest should run upon the net balance found due from the City to the County. The learned arbitrator, for reasons stated by him, fixed upon January 1, 1930. But his attention seems not to have been directed to clause 3 of the agreement of November 29, 1929, which is as follows: "After the final determination of the adjustment, the parties hereto shall, as they become due and payable, discharge their respective obligations arising out of such final adjustment." This clause seems to govern; and paragraph 2 of the award ought to be varied, accordingly. 30

The order, as to each of the matters discussed, will give effect to the opinions that have been expressed. The County must pay the City's costs of the motion. It ought not to be difficult, as part of the settlement of the minutes of the order, to make the necessary corrections in the schedules to the award; but if difficulty is experienced the matter may be spoken to.

**IN THE SUPREME COURT OF ONTARIO**

RECORD  
In the Supreme  
Court of Ontario  
No. 12  
Formal Judgment of  
Chief Justice Rose  
15th January, 1931

IN THE MATTER of the Arbitration Act;

AND IN THE MATTER of a certain arbitration between the County of Essex and the City of East Windsor, pursuant to a certain agreement bearing date the 29th day of November, 1929, and the Award of John J. Coughlin, Esquire, County Judge of the County of Essex, bearing date the 1st day of August, 1930.

THE HONOURABLE CHIEF JUSTICE      Thursday, the 15th day of  
OF THE HIGH COURT.                      January, A.D. 1931.

10    In Court.

Between:—

THE CITY OF EAST WINDSOR,

Appellant,

—and—

THE COUNTY OF ESSEX,

Respondent.

UPON motion made to this Court on the 29th and 30th days of September, 1930, by way of appeal from the Award of His Honour John J. Coughlin, Arbitrator appointed pursuant to an agreement bearing  
20 date the 29th day of November, 1929, in the presence of Counsel for both parties, upon reading the evidence adduced on the said arbitration, the Award and reasons therefor, and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct this motion to stand for judgment, and the same coming on this day for judgment.

1. THIS COURT DOTH ORDER AND DIRECT that the appeal of the City of East Windsor be allowed with respect to By-law No. 690 and that Schedule 1 of the said Award be, and the same is hereby amended by striking out of Schedule 1 to the said Award the words and figures referring to the said By-law No. 690, and by substituting for  
30 the total of \$842,808.83 where the same appears in the said Schedule, the sum of \$597,373.53, and by substituting for the East Windsor total of \$121,436.27 the sum of \$84,817.27 in the said Schedule.

2. THIS COURT DOTH FURTHER AND DIRECT that the appeal with respect to By-law Nos. 480, 499, 518 and 661, referred to in Schedule 1 to the said Award, be, and the same is, hereby dismissed.

3. THIS COURT DOTH FURTHER ORDER AND DIRECT that the appeal with respect to Item No. 2 on Schedule 2 to the said Award be allowed, and that the said Schedule 2 be, and the same is, hereby

RECORD  
In the Supreme  
Court of Ontario  
No. 12  
Formal Judgment of  
Chief Justice Rose  
15th January, 1931  
(Continued)

amended by striking out the second item on the said Schedule amounting to \$10,765.45, under the caption of "Debits against East Windsor," and by striking out the figure \$84,403.72 shown as a total under the said caption and substituting therefor the figures \$73,638.27, and that the said Schedule be, and the same is, hereby further amended by striking out Item No. 8, amounting to \$1,926.72 under the caption "Credits in Favour of East Windsor," and by striking out the figures \$29,308.40 shown as total under the said caption, and substituting therefor the figures \$27,381.68 as such total, and by striking out the figures \$55,095.32 shown as balance in favour of the County, and substituting therefor the figures, \$46,256.59. 10

4. THIS COURT HAVING DIRECTED that that part of the said Award having reference to lands occupied by the County Treasurer's office should be referred back to the Arbitrator if the City so desired, and the City having elected that it does not desire such reference back to the Arbitrator, THIS COURT DOTH ORDER AND DIRECT that the appeal with respect to the said lands be, and the same is, hereby dismissed.

5. THIS COURT DOTH FURTHER ORDER AND DIRECT that the appeal with respect to the item numbered 5 in the said Schedule 2 to the said Award be, and the same is hereby dismissed. 20

6. THIS COURT DOES FURTHER ORDER AND DIRECT that the appeal be, and the same is hereby allowed with respect to the item of interest and the said Award be, and the same is hereby amended by striking out all the words in the second paragraph following the words "set forth" where the same occur in the third line of the said paragraph and by substituting therefor the following words and figures:—

"I award that the balance of \$46,256.59 therein set out shall be paid by the said City of East Windsor to the said County forthwith after the final determination of the said adjustment."

7. THIS COURT DOTH FURTHER ORDER AND DIRECT that the County of Essex do pay to the said City of East Windsor its costs of this motion by way of appeal forthwith after taxation thereof. 30

.....

**IN THE SUPREME COURT OF ONTARIO**

IN THE MATTER OF The Arbitration Act;

AND IN THE MATTER OF a certain arbitration between the County of Essex and the City of East Windsor, pursuant to a certain agreement bearing date the 29th day of November, 1929, and the award of John J. Coughlin, County Judge of the County of Essex, bearing date the 1st day of August, 1930.

Between:

10

THE COUNTY OF ESSEX,

Appellant,

—and—

THE CITY OF EAST WINDSOR,

Respondent.

TAKE NOTICE that the above-named Appellant, the Municipal Corporation of the County of Essex, appeals to a Divisional Court from the judgment pronounced herein by the Honourable Chief Justice Rose on the 15th day of January, 1931, and asks that the said judgment may be revised by declaring:—

- 20 1. That the Learned Judge erred in relieving the above-named Respondent from liability to contribute to the Appellant the sum of Ten Thousand, Seven Hundred and Sixty-five and 45/100 Dollars (\$10,765.45) as the share of the City of East Windsor of the contribution demanded from the County of Essex by the Province of Ontario in respect of moneys expended by the Province in 1929 on provincial highways, on the ground that the said sum was never, in the contemplation of the parties, a current liability under the terms of the agreement.
- 30 2. That the Learned Judge erred in holding that the said City of East Windsor was not liable for its portion of the debenture debt created by By-law No. 690, on the ground that the work, payment for which these debentures were issued, was regularly provided for by the Council of the County of Essex prior to the time of the separation of the City of East Windsor from the County.
3. That the said sums should be restored to the schedule of sums to be charged against the City of East Windsor in the adjustment of the assets and liabilities between the corporations.
- 40 4. That the judgment of the arbitrator as set out in his award in respect of the lands appurtenant to the Court House should not have been disturbed, even to the small extent contained in the judgment appealed from, because of the fact that although a small portion of the

RECORD  
In the Supreme  
Court of Ontario

No. 13  
Notice of Appeal of  
County of Essex  
28th January, 1931

RECORD  
 In the Supreme  
 Court of Ontario  
 No. 13  
 Notice of Appeal of  
 County of Essex  
 28th January, 1931  
 (Continued)

corner is at present occupied by the Treasurer's office, the whole lands are in fact appurtenant to the Court House, and when the proposed enlargement of the Court House is completed, the Treasurer's building will be eliminated and the space occupied by it will continue to be appurtenant to the Court House.

5. That the Learned Judge erred in interfering with the award in respect to the payments of interest, on the ground that the Statutes fix the time for the commencement of interest to run in respect to the share to be paid by the contributing Municipality to the County of the ordinary levy no matter when that amount may be in fact paid, and the Highway Assessment Act and the Highway Improvement Act fixes the time when refunds are to be made, before which time interest could not run. Having this in view the award makes a favourable allowance in respect of interest so far as the City of East Windsor is concerned. 10

DATED at Windsor, Ontario, this twenty-eighth day of January, 1931.

RODD, WIGLE, WHITESIDE & JASPERSON, Suite 1102,  
 Canada Building, Windsor, Ont., Solicitors for the Municipal Corporation of the County of Essex, the Appellant 20  
 herein.

To Messrs. Furlong, Furlong, Awrey, St. Aubin and Meir,  
 Detroit Realty Building, Windsor, Ontario, Solicitors for  
 the Municipal Corporation of the City of East Windsor,  
 the Respondent herein.

**IN THE SUPREME COURT OF ONTARIO**

IN THE MATTER OF The Arbitration Act;

AND IN THE MATTER OF a certain Arbitration between the County of Essex and the City of East Windsor, pursuant to a certain Agreement bearing date the 29th day of November, 1929, and the Award of John J. Coughlin, Senior County Court Judge of the County of Essex, bearing date the 1st day of August, 1930.

RECORD  
In the Supreme  
Court of Ontario  
No. 14  
Notice of Appeal of  
City of East  
Windsor  
29th January, 1931

Between:

THE CITY OF EAST WINDSOR,

10

Appellant,

—and—

THE COUNTY OF ESSEX,

Respondent.

TAKE NOTICE that the Corporation of the City of East Windsor appeals to a Divisional Court from the Judgment of the Honourable the Chief Justice of the High Court Division of the Supreme Court of Ontario, pronounced on the 15th day of January, 1931, whereby the Appeal of the said City of East Windsor was in part dismissed upon the following grounds:—

20     1. THE said Judgment should be amended by allowing the Appeal of the City of East Windsor from the Arbitrator by directing that the City of East Windsor is not liable for any part of the debenture debts remaining unpaid in respect of debentures issued under By-laws 480, 499, 518 and 661, in respect of Roads referred to in Schedule 1 of the Award of the Learned Arbitrator.

2. THAT in any event the City of East Windsor is not liable to contribute 14.9308 per cent. of such unpaid debenture debt.

DATED at Windsor, Ontario, this 29th day of January, 1931.

30     FURLONG, FURLONG, AWREY, ST. AUBIN & MEIR,  
No. 425 Ouellette Avenue, Windsor, Ontario, Solicitors  
for the Corporation of the City of East Windsor, the  
Appellant herein.

To Rodd, Wigle, Whiteside & Jaspersen, 1102 Canada Building,  
Windsor, Ontario, Solicitors for the Corporation of the  
County of Essex, the Respondents herein.

RECORD  
In the Supreme  
Court of Ontario  
No. 15  
Reasons for Judgment of Second  
Appellate Division  
12th June, 1931

## REASONS FOR JUDGMENT OF SECOND DIVISIONAL COURT

(Latchford, C.J., Masten, Orde, J.J.A., and McEvoy, J.)

Delivered 12th June, 1931.

App. Div.

Re Arbitration

Between:

COUNTY OF ESSEX,

Appellant,

—and the—

CITY OF EAST WINDSOR,

Respondent. 10

RODD, K.C., for the Appellant.

AWREY, K.C., for the Respondent and Cross-Appellant.

MASTEN, J. A.:—This was an appeal by the County of Essex from the judgment pronounced by Chief Justice Rose, on the 15th January, 1931, and a cross-appeal by the City of East Windsor from the same judgment.

The facts and the respective contentions of the parties are fully stated in the judgment appealed from and need not be here repeated.

The case was exceedingly well argued on both sides, but, after a careful consideration of these arguments and of the cases referred to by counsel, I find myself unable to discover any error in the judgment appealed from. 20

The several arguments which were presented have been carefully discussed by my brother Rose in the court below and, agreeing as I do both with his conclusions and with the reasons which he assigned, and to which I find that I cannot usefully add, I would dismiss the appeal and the cross-appeal both with costs.

LATCHFORD, C.J.

ORDE, J. A.

FISHER, J. A.

I agree.

**IN THE SUPREME COURT OF ONTARIO**

The Honourable, the Chief Justice of the  
Second Divisional Court.

The Honourable Mr. Justice Masten.

The Honourable Mr. Justice Orde.

The Honourable Mr. Justice McEvoy.

Friday, the twelfth  
day of June, 1931.

RECORD  
In the Supreme  
Court of Ontario  
No. 16  
Formal Judgment of  
Second Appellate  
Division  
12th June, 1931

IN THE MATTER OF the Arbitration Act;

AND IN THE MATTER OF a certain Arbitration between the County  
of Essex and the City of East Windsor, pursuant to a certain agree-  
ment bearing date the 29th day of November, 1929, and the Award  
of John J. Coughlin, Esquire, County Judge of the County of Essex,  
bearing date the 1st day of August, 1930.

Between:

THE CITY OF EAST WINDSOR,

Appellant,

—and—

THE COUNTY OF ESSEX,

Respondent.

UPON MOTION made unto this Court on the 1st and 2nd days of  
20 April, 1931, by counsel on behalf of the County of Essex by way of  
appeal from the order of The Honourable the Chief Justice of the High  
Court, dated the 15th day of January, 1931, on an appeal from the  
award of His Honour John J. Coughlin, arbitrator appointed pursuant to  
an agreement dated the 29th day of November, 1929, in the presence of  
counsel for the City of East Windsor and upon motion by counsel for the  
City of East Windsor by way of cross-appeal from the said order in the  
presence of counsel for the County of Essex, upon reading the said  
award and the evidence adduced before the said arbitration and the  
said order, and upon hearing what was alleged by counsel aforesaid,  
30 this Court was pleased to direct that the said motions should stand over  
for judgment and the same coming on this day for judgment:—

1. THIS COURT DOTH ORDER that this appeal and the cross-  
appeal be and they are hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the City  
of East Windsor do recover from the County of Essex its costs of this ap-  
peal and that the County of Essex do recover from the City of East  
Windsor its costs of the cross-appeal forthwith after taxation thereof.

E. HARLEY, Senior Registrar S.C.O.

Entered O.B. 119 pages 495-6,  
40 July 22, 1931.  
E. B.

**IN THE SUPREME COURT OF ONTARIO**

RECORD  
In the Supreme  
Court of Ontario  
No. 17  
Bond of City of East  
Windsor and Fidelity  
Insurance Company  
of Canada  
July 2nd, 1931

IN THE MATTER of the Arbitration Act;

AND IN THE MATTER of a certain Arbitration between the County of Essex and the City of East Windsor, pursuant to a certain agreement bearing date the 29th of November, 1929, and the Award of John J. Coughlin, Esquire, Senior County Court Judge of the County of Essex, bearing date the 1st of August, 1930.

Between:

THE CITY OF EAST WINDSOR,

Appellant, 10

—and—

THE COUNTY OF ESSEX,

Respondent.

KNOW ALL MEN BY THESE PRESENTS that the Municipal Corporation of the City of East Windsor, in the County of Essex, and Province of Ontario, and the Fidelity Insurance Company of Canada are jointly and severally held and firmly bound to the Municipal Corporation of the County of Essex in the penal sum of \$2,000.00 of good and lawful money of Canada to be paid to the said Municipal Corporation of the County of Essex, its certain attorney, successors or assigns: for which payment well and truly to be made we bind ourselves, and each of us, our and each of our successors and assigns, firmly by these presents. SEALED with our seals. 20

DATED this second day of July, A.D. 1931.

WHEREAS by a judgment of the Second Appellate Division of the Supreme Court of Ontario, dated the 12th day of June, 1931, the said Second Appellate Division dismissed the cross-appeal of the City of East Windsor from a judgment of the Chief Justice of the High Court Division in part affirming an award made by John J. Coughlin, Esquire, an arbitrator named in an agreement bearing date the 29th day of November, 1929. 30

AND WHEREAS the Municipal Corporation of the City of East Windsor is desirous of appealing to the King's Most Excellent Majesty in Council, and it is provided by the Privy Council Appeals Act that no such appeal shall be allowed until the Appellant has given security in the sum of \$2,000.00 to the satisfaction of the Court appealed from that he will effectually prosecute the appeal and pay such costs and

damages as may be awarded in case the judgment appealed from is confirmed.

NOW the condition of the above written obligation is such that if the above bounden Municipal Corporation of the City of East Windsor, its successors or assigns, do and shall effectually prosecute the said appeal and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed, then the above written obligation is to be void; otherwise to remain in full force and virtue.

RECORD  
In the Supreme  
Court of Ontario  
No. 17  
Bond of City of East  
Windsor and Fidelity  
Insurance Company  
of Canada  
July 2nd, 1931  
(Continued)

10

FIDELITY INSURANCE COMPANY OF CANADA.

(A. E. Perry)  
Attorney-in-fact.

(Seal)

CORPORATION OF THE CITY OF EAST WINDSOR.

Bruce Williams) Mayor.  
(C. G. Hays) Clerk.

(Seal)

**IN THE SUPREME COURT OF ONTARIO**

RECORD  
In the Supreme  
Court of Ontario  
No. 18  
Order  
Mr. Justice Orde  
Allowing Appeal and  
Bond  
July 27th, 1931

(Three Law Stamps)

THE HONOURABLE MR. JUSTICE ORDE,      Monday, the 27th day of  
In Chambers.      July, A.D. 1931.

Between:

THE CITY OF EAST WINDSOR,

Appellant,

—and—

THE COUNTY OF ESSEX,

Respondent. 10

UPON the application of the City of East Windsor made this day for an order allowing the appeal of the said City of East Windsor from the order of the Appellate Division of the Supreme Court of Ontario, bearing date the 12th day of June, 1931, to His Majesty in His Privy Council, and allowing the bond of the applicant and the Fidelity Insurance Company of Canada, filed as security, upon reading the proceedings had and taken in this action and the consent of the Respondent, filed, and it appearing that the matter in controversy in this action exceeds the sum of \$4,000.00.

1. IT IS ORDERED that the application of the Appellant, the City of East Windsor, to prosecute an appeal to His Majesty in His Privy Council be, and the same is, hereby allowed. 20

2. IT IS FURTHER ORDERED that the Bond of the Appellant the City of East Windsor and the Fidelity Insurance Company of Canada, bearing date the 2nd day of July, 1931, for the sum of \$2,000.00, as security that the said City of East Windsor will effectually prosecute its appeal from the judgment of the Appellate Division of the Supreme Court of Ontario, dated the 12th day of June, 1931, to His Majesty in His Privy Council, which said Bond was filed in the Office of the Registrar of the Supreme Court of Ontario, at Osgoode Hall, Toronto, on the 27th day of July, 1931, be, and the same is, hereby allowed as good and sufficient security for the costs of the said appeal. 30

3. IT IS FURTHER ORDERED that the costs of and incidental to this motion be costs in the appeal to His Majesty in His Privy Council

CLARENCE BELL, Asst. Registrar S.C.O.

Entered O.B. 120 pages 121-2,  
July 27, 1931.  
E. B.

**IN THE SUPREME COURT OF ONTARIO**

IN THE MATTER of the Arbitration Act;

AND IN THE MATTER of a certain Arbitration between the County of Essex and the City of East Windsor, pursuant to a certain agreement bearing date the 29th day of November, 1929, and the Award of John J. Coughlin, Esquire, Senior County Court Judge of the County of Essex, bearing date the 1st of August, 1930.

RECORD  
In the Supreme  
Court of Ontario  
No. 19  
Bond of County of  
Essex and Fidelity  
Insurance Company  
of Canada  
July 25th, 1931

Between:

THE CITY OF EAST WINDSOR,

10

Respondent.

—and—

THE COUNTY OF ESSEX,

Appellant.

**BOND**

KNOW ALL MEN BY THESE PRESENTS that the Municipal Corporation of the County of Essex, in the Province of Ontario, and the Fidelity Insurance Company of Canada are jointly and severally held and firmly bound to the Municipal Corporation of the City of East Windsor in the penal sum of \$2,000.00 of good and lawful money of Canada to be paid to the said Municipal Corporation of the City of East Windsor, its certain attorney, successors or assigns; for which payment well and truly to be made we bind ourselves, and each of us, our and each of our successors and assigns, firmly by these presents. SEALED with our seals.

DATED this 25th day of July, A.D. 1931.

WHEREAS by a judgment of the Second Appellate Division of the Supreme Court of Ontario, dated the 12th day of June, 1931, the said Second Appellate Division dismissed the appeal of the Municipal Corporation of the County of Essex from a judgment of the Chief Justice of the High Court Division in part affirming an award made by John J. Coughlin, Esquire, an arbitrator named in an agreement bearing date the 29th day of November, 1929.

AND WHEREAS the Municipal Corporation of the County of Essex is desirous of appealing to the King's Most Excellent Majesty in Council, and it is provided by the Privy Council Appeals Act that no such appeal shall be allowed until the Appellant has given security in the sum of \$2,000.00 to the satisfaction of the Court appealed from that he will effectually prosecute the appeal and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed.

RECORD  
 In the Supreme  
 Court of Ontario  
 No. 19  
 Bond of County of  
 Essex and Fidelity  
 Insurance Company  
 of Canada  
 July 25th, 1931  
 (Continued)

NOW the condition of the above written obligation is such that if the above bounden Municipal Corporation of the County of Essex, its successors or assigns, do and shall effectually prosecute the said appeal and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed, then the above written obligation is not to be void; otherwise to remain in full force and virtue.

(Signed) C. A. DEWHIRST, Warden.  
 (County Seal)

(Signed) W. P. COYLE, Clerk.

FIDELITY INSURANCE COMPANY OF CANADA. 10  
 (Seal)

W. E. Perry, Attorney-in-fact.

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**IN THE SUPREME COURT OF ONTARIO**

No. 20  
 Order  
 Mr. Justice Orde,  
 Allowing Appeal of  
 County and Bond for  
 Security and Consoli-  
 dating Appeal and  
 Cross-Appeal  
 July 30th, 1931

( \$2.50 )  
 (Stamps)

THE HONOURABLE MR. JUSTICE ORDE,  
 In Chambers.

Thursday, the 30th  
 day of July, 1931.

Between:

THE CITY OF EAST WINDSOR,

Appellant, 20

—and—

THE COUNTY OF ESSEX,

Respondent.

UPON the application of The Municipal Corporation of the County of Essex, made this day for an order allowing the appeal of the said County of Essex from the order or judgment of the Appellate Division of the Supreme Court of Ontario, bearing date the twelfth day of June, 1931, to His Majesty in His Privy Council and allowing the bond of the applicant and the Fidelity Insurance Company of Canada filed as security, upon reading the proceedings had and taken in this action and the consent of the Appellant filed, and it appearing that the matter in controversy in this action exceeds the sum of Four Thousand Dollars (\$4,000.00), and it appearing that the Appellant, The City of East Windsor, has taken an appeal against the said judgment to His

Majesty in His Privy Council, and that the said appeal was allowed by an order of this Court bearing date the twenty-seventh day of July, 1931.

1. IT IS ORDERED that the application of the Respondent, The County of Essex, to prosecute an appeal by way of cross-appeal to His Majesty in His Privy Council be, and the same is, hereby allowed by way of cross-appeal and that the said cross-appeal be consolidated with the main appeal.

2. IT IS FURTHER ORDERED that the Bond of the Respondent, The County of Essex, and the Fidelity Insurance Company of Canada, dated the twenty-fifth day of July, 1931, for the sum of Two Thousand Dollars (\$2,000.00) as security that the said County of Essex will effectually prosecute its appeal from the said judgment of the Appellate Division of the Supreme Court of Ontario, dated the twelfth day of June, 1931, to His Majesty in His Privy Council, which said bond was filed in the Office of the Registrar of the Supreme Court of Ontario, at Osgoode Hall, Toronto, on the thirtieth day of July, 1931, be, and the same is, hereby allowed as good and sufficient security for the costs of the said appeal.

3. AND IT IS FURTHER ORDERED that the costs of and incidental to this motion be costs in the appeal to His Majesty in His Privy Council.

CLARENCE BELL, Asst. Registrar S.C.O.

Entered O.B. 119, page 55 1-2,  
July 31, 1931.  
L. J.

RECORD  
In the Supreme  
Court of Ontario  
No. 20  
Order  
Mr. Justice Orde,  
Allowing Appeal of  
County and Bond for  
Security and Consoli-  
dating Appeal and  
Cross-Appeal  
July 30th, 1931  
(Continued)

**PART II.**

**EXHIBITS AND DOCUMENTS**

**EXHIBIT 16**

Exhibit 16  
Extracts from Minutes of Municipal Council of the County of Essex—December, Special Session, 1928. Page 314 thereof. Schedule of Judgment of Equalization Board showing equalization for 1929

Schedule to the Judgment, dated November 17, 1928, of J. J. Coughlin, Co. J. Essex; Duncan C. Ross, Co. J. Middlesex; C. N. Anderson, Sheriff, Essex; settling the equalization of the County Municipalities of the County of Essex for 1929.

COLUMN 1	COLUMN 2	COLUMN 3 Equalized Assessment Pursuant to This Judgment	
Municipality	Equalized Assessment By-law No. 638		
Anderdon .....	\$2,605,600	\$2,605,600	
Colchester North .....	2,242,500	2,242,500	
Colchester South .....	4,790,000	4,840,000	
Gosfield North .....	2,909,300	2,909,300	
Gosfield South .....	4,402,000	4,442,000	
Maidstone .....	4,513,000	4,513,000	
Malden .....	3,306,000	3,031,000	
Mersea .....	6,028,000	6,078,000	
Rochester .....	2,869,200	2,372,100	10
Sandwich East .....	3,130,750	3,248,250	
Sandwich South .....	2,753,000	2,753,000	
Sandwich West .....	4,797,500	4,915,000	
Tilbury North .....	2,408,500	2,408,500	
Tilbury West .....	1,900,000	1,472,100	
Amherstburg .....	2,314,000	2,314,000	
Belle River .....	583,500	583,500	
Essex .....	1,398,000	1,398,000	
Ford City .....	12,750,000	13,335,000	
Kingsville .....	11,817,500	1,857,500	30
LaSalle .....	1,400,250	1,400,250	
Leamington .....	3,661,000	3,711,000	
Ojibway .....	1,288,000	1,288,000	
Riverside .....	2,700,000	2,700,000	
Sandwich .....	10,932,000	11,082,000	
St. Clair Beach .....	600,000	600,000	
Tecumseh .....	1,212,500	1,212,500	
	<hr/>	<hr/>	
	\$89,312,100	\$89,312,100	

**EXHIBIT 1****Extract from the Order of The Ontario Railway and Municipal Board  
Dated the 5th Day of March, 1929.**

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 1  
Extract from Order  
of Ontario Railway  
and Municipal Board.  
5th March, 1929

WHEREAS it is provided by Section 19 of "The Municipal Act," Revised Statutes of Ontario, Chapter 233, that the said Board may erect a Town having a population of not less than Fifteen Thousand into a City and declare the name which it is to bear;

AND WHEREAS the Corporation of the Town of Ford City, in the County of Essex and Province of Ontario, has applied to the said Board  
10 for the erection of the said Town into a City.

AND WHEREAS the said Corporation of the Town of Ford City has shown by the affidavit of the Clerk of the said Town and upon oral evidence, and to the satisfaction of the Board, that the population of the said Municipality, according to the last Municipal enumeration by the Assessor of the said Municipality, which is the latest census or enumeration in the premises, is Fifteen Thousand One Hundred and Five, and the said Town is divided into Three Wards, each having a population of over two thousand.

AND WHEREAS Notice of the Application by the said Corporation  
20 of the Town of Ford City for the erection of the Town into a City has been duly published as required by the said Act at least once a week for three months prior to the making of such application, as appears from the evidence submitted.

THE BOARD THEREFORE ORDERS AND PROCLAIMS:—

1. That the Town of Ford City be, and the same is, hereby erected into and incorporated as a City under the name of "EAST WINDSOR," and having the same boundaries as the present Town of Ford City.

4. THIS Order shall take effect on the first day of June, A.D. 1929, at the hour of twelve o'clock noon.

**EXHIBIT 4**

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 4  
Extracts from Min-  
utes of Municipal  
Council of County of  
Essex,  
Session March, 1929,  
as follows:  
(a) Page 78—Resolu-  
tion adopting minor-  
ity report of High-  
way Committee  
15th March, 1929

**Extracts from Minutes of Municipal Council of County of Essex, Session  
March, 1929, as Follows:—**

(a) Page 78. Resolution adopting minority report of Highway  
Committee.

March 14th, 1929.

**ORDER OF THE DAY**

A By-law to provide for the expenditure on the County Roads System  
was taken as read a first time.

The Highway Committee presented an amended report and was read. 10

Moved by Mr. Dewhirst, seconded by Mr. Gow, that the amended  
Highway Committee's report be adopted.

A minority report of the Highway Committee was presented and  
read.

Moved in amendment by Mr. Marentette, seconded by Mr. Rocheleau,  
that the Minority Committee's report be adopted.

A motion to lay the reports on the table until to-morrow was de-  
feated.

After discussion of the reports the amendment was voted on.

For—Messrs. Cooper, Down, Rocheleau, Holden, Ferris, Martin, 20  
Bontront, Hebert, Lavasseur, Vigneux, Woollatt, Snider, Langlois, Fer-  
rari, Lappan, Morand, Marentette, Lauzon, R. Parent, Wilson, Pillon,  
Loney, Hutchinson, H. Parent—24.

Contrary—Messrs. Wm. Poisson, Hicks, Oxley, Clifford, Fulmer,  
Beacom, Gow, Smith, Atkin, Plant, Lickman, Whittle, Settingon, Dew-  
hirst, Benoit, Warden Pearson—16.

Amendment carried. For 24, against 16.

(b) Page 80—Minutes  
adopting By-law to  
for expenditure for  
County Roads  
15th March, 1929

(b) Page 80. Minutes adopting By-law to provide for expenditure  
for County roads.

**AFTERNOON SESSION**

30

March 15, 1929.

On motion Council went into Committee of the Whole for the second

reading of a by-law to provide for the expenditure on the County Roads System. Mr. Benoit in the chair.

By-law read a second time.

Council resumed.

By-law read a third time, numbered and passed.

(c) Pages 92 to 95. Amended Minority Report of Highway Committee.

March 15th, 1929.

To the Warden and Council of the County of Essex, in Council assembled.

10 Gentlemen:—

Your Highway Committee begs leave to report as follows:—

We recommend that the following pavement be constructed this year:—

1 mile on the Belle River Road, Gosfield North, from the Talbot Road in the Village of Cottam northerly to the 9th Concession Road.

1½ miles on Pillette Road, Sandwich East, from the 3rd Concession southerly to the Sandwich East-Sandwich South Townline.

3¾ miles on the Malden Road in Sandwich West and Sandwich West-Anderdon Townline from the present pavement to the Front Road, provided that this is approved by the Highway Department.

2¼ miles on the Leamington Side Road from the present pavement northerly to the 9th Concession, Mersea.

1 mile on the Gosfield-Colchester Townline, from Talbot Road in the Town of Essex southerly to County Road No. 9.

3¼ miles on the McGregor-Harrow Road from McGregor to the Pike Road.

A total of 12¾ miles.

We recommend that a road rate of 2½ mills be raised and the balance required, namely, \$150,000.00, be raised by debentures.

30 We recommend that additional mileage approved last year be graded and gravelled where necessary.

We recommend that the matter of a refund to the ratepayers on the Front Road in the Police Village of Seacliffe be referred to the Council as a whole.

RECORD  
In the Supreme  
Court of Ontario

Exhibit 4

Extracts from Minutes of Municipal Council of County of Essex, Session March, 1929, as follows:  
(Continued)

(b) Page 80—Minutes adopting By-law to for expenditure for County Roads 15th March, 1929

(c) Pages 92 to 95—Amended Minority Report of Highway Committee 15th March, 1929

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 4

Extracts from Minutes  
of Municipal  
Council of County of  
Essex,  
Session March, 1929,  
as follows:  
(Continued)

(c) Pages 92 to 95—  
Amended Minority  
Report of Highway  
Committee  
15th March, 1929

We recommend that a grant of \$36,000.00 be made to the Town of Riverside to complete the widening and surfacing of Riverside Drive, provided that the Town of Riverside enters into an agreement with the County whereby the said Town waives its claim to any refund of road rates until 50 per cent. of the amount of this grant is absorbed. All subject to the approval of the Department of Public Highways, and subject to a clause in the agreement with the County protecting the latter in case Riverside withdraws from the County.

We recommend that the Belle River Road from the Village of South Woodslee to Highway No. 2 be graded and widened to the standard 10 width this year.

We recommend that the Front Road in the Township of Malden, from the Town of Amherstburg southerly to the 2nd Concession, Malden, be assumed as a County road when the Municipality provides the necessary 66 feet in width of right-of-way. This is recommended as part of the Lake Front Drive, as approved by your Council at your February Session, 1928; and further recommend that the Township of Malden be urged to proceed with the establishing of the necessary roadway for the completion of this road.

We recommend that the road known as the Lauzon Road, in the Township of Sandwich East, from the Tecumseh Road northerly to the Little River Road, be assumed as a County road, when the Municipality provides the standard 66 feet of right-of-way.

We recommend that the Towns of Sandwich and Leamington be refunded an amount sufficient to pay to them in cash the balance of the unpaid grants due them under agreements confirmed by By-law No. 524, less the proper amount of interest allowable for prepayment. It is understood that this will not affect the refund for the current year, all subject to the approval of the Highway Department.

We recommend that the matter of the construction of a foot bridge 30 on the Belle River bridge in the Village of Belle River be left with this Committee with power to act.

In accordance with instructions from your Honourable Body, we have examined gravel deposits adjacent to our gravel pit and recommend that this Committee be authorized to negotiate for and purchase additional acreage at prices and terms satisfactory to the Committee, subject to the approval of the Department.

We recommend that County trucks and car be insured by the Road Superintendent.

We recommend that the pay list of Committee be paid for the several 40 Committee meetings.

ESTIMATES

Maintenance .....	\$115,000.00
Gravel Pit and Machinery .....	20,000.00
Committees, Superintendence, Clerical, etc. ....	5,000.00
Bank Interest on Loans .....	12,000.00
Pavement Construction .....	344,500.00
Bridges, Culverts and Grading .....	25,000.00
Windsor Suburban Estimates .....	96,000.00
Walkerville Suburban Estimates .....	69,500.00
10 Refunds to Towns and Villages .....	40,000.00
Grant to Riverside .....	36,000.00
Grant to Leamington and Sandwich .....	40,000.00
	<hr/>
Total .....	\$803,000.00

To be provided for as follows:—

From Windsor .....	\$ 24,000.00
From Walkerville .....	17,375.00
Estimated Subsidy .....	395,000.00
20 2½ Mill County Road Rate .....	223,280.00
	<hr/>
	\$659,655.00

All of which is respectfully submitted.

Leaving \$144,345.00 to be provided by Debentures.

(Signed) A. A. MARENTETTE.

F. J. ROCHELEAU.

Sandwich, March 15th, 1929.

(d) By-law No. 684 (page 98).

A BY-LAW to provide for expenditures on the System of County Highways in the County of Essex, as provided by Order-in-Council during the year 1929.

30

Passed March 15th, 1929.

WHEREAS the regulations of the Department of Highways for Ontario require the expenditures on County Highways under the Highway Improvement Act, Chap. 15, 16 George V. 1926, shall be provided for annually by the County By-laws.

AND WHEREAS it is deemed expedient and necessary to appropriate in the current year moneys of the County of Essex for construction and

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 4  
Extracts from Minutes of Municipal Council of County of Essex,  
Session March, 1929,  
as follows:  
(Continued)  
(c) Pages 92 to 95—  
Amended Minority Report of Highway Committee  
15th March, 1929

(d) Page 98—  
By-law 684  
15th March, 1929

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 4  
Extracts from Min-  
utes of Municipal  
Council of County of  
Essex,  
Session March, 1929,  
as follows:  
(d) Page 98—  
By-law 684  
15th March, 1929

maintenance of County Suburban Highways.

NOW THEREFORE the Council of the Corporation of the County of Essex enacts as follows:—

1. That in order to provide for the construction of highways within the system of County highways of the County, other than suburban roads, there be appropriated in the current year by this Corporation the sum of Four Hundred and Fifty-eight Thousand Five Hundred Dollars (\$458,500.00), (inclusive of subsidies to be earned) and to be used for the purpose aforesaid and no other.

2. That in order to provide for maintenance and repair of highways 10 within the system of County Highways of the County of Essex (other than suburban roads) there be appropriated out of the moneys to be levied by this Corporation in the current year the sum of One Hundred and Fifteen Thousand Dollars (\$115,000.00), (inclusive of subsidies) to be expended for the said purpose.

3. That for providing and raising said moneys sufficient sums be raised by the issue of debentures or included in the estimates of the current year to provide for same, in such manner as may be decided from time to time.

4. That in order to provide for the construction of Suburban Roads 20 within the Windsor Suburban Area there be appropriated the sum of Twenty-one Thousand Dollars (\$21,000.00).

5. That there be appropriated the sum of Three Thousand Dollars (\$3,000.00) maintenance within the Windsor Suburban Area.

6. That in order to provide for the construction of suburban roads within the Walkerville Suburban Area there be appropriated the sum of Seventeen Thousand One Hundred and Twenty-five Dollars (\$17,125.00).

7. That there be appropriated the sum of Two Hundred and Fifty Dollars for maintenance within the Walkerville Suburban Area. 30

8. That for raising and providing the said moneys the sum of Thirty-eight Thousand One Hundred and Twenty-five Dollars (\$38,125.00) for construction and the sum of Three Thousand Two Hundred and Fifty Dollars (\$3,250.00) for maintenance, be included in the estimates, for the current year, said sums being the share payable by the County of Essex for Suburban Roads.

9. That this By-law shall take effect on the day of the passing thereof.

10. Passed in open Council with the assent of two-thirds of the members of the Council, representing at least one-half of the total equalization of the County of Essex, and given in duplicate under the hand of the Warden and the Clerk, and the Corporation Seal of the said Corporation on this 15th day of March, A.D. 1929.

(Signed) W. P. COYLE,  
Clerk.

(Signed) GEORGE PEARSON,  
Warden.

RECORD  
In the Supreme  
Court of Ontario  
(Continued)  
Exhibit 4  
Extracts from Min-  
utes of Municipal  
Council of County of  
Essex.  
Session March, 1929,  
as follows:  
(Continued)  
(d) Page 98—  
By-law 684  
15th March, 1929

### EXHIBIT 3

10 **Extracts from Minutes of Municipal Council of the County of Essex,  
April, May and June Sessions, 1929, as Follows:—**

(a) Extracts from pages 119 and 120 Minutes, showing proceedings adopting report of Highway Committee.

#### MAY SESSION

May 28th, 1929.

The Highway Committee presented their report.

#### Reports

Moved by Mr. Rocheleau, seconded by Mr. Gow, that the report of the Highway Committee be adopted.

Discussion of the report was taken part in by the members.

20 Mr. R. C. Muir entered the Council Chamber at this time.

On motion Mr. Muir addressed the members. Council adjourned to allow Mr. Muir to peruse the tenders.

Council re-assembled.

On re-assembling, Mr. Muir continued his address, advising the members and his opinion of the tenders submitted.

30 Moved in amendment by Mr. Marentette, seconded by Mr. Atkin, that Clause No. 1 of the Highway Committee's report be amended, awarding contract on the McGregor Road to Merlo, Merlo & Ray for black base pavement at price submitted, \$78,351.00, and the balance of the report be adopted as presented.

Moved in amendment to the amendment by Mr. Plant, seconded by Mr. Benoit, that owing to the present conditions in the rural districts which at the present time is far from encouraging, we deem it in the best interests of the County at large that the report of the Highway

Exhibit 3  
Extracts from Min-  
utes of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(a) Extracts from  
Pages 119 and 120,  
Minutes, showing  
proceedings adopting  
report of Highway  
Committee  
28th May, 1929

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 3

Extracts from Min-  
utes of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(Continued)

(a) Extracts from  
Pages 119 and 120,  
Minutes, showing  
proceedings adopting  
report of Highway  
Committee  
28th May, 1929

Committee be not accepted, and that this County Council go on record opposing all paving this year.

For: Messrs. Wm. Poisson, Hicks, Bontront, Hebert, E. C. Poisson, Fulmer, Beacom, Atkin, Plant, Lickman, Dewhirst, Bridges, Hennin, Benoit and the Warden—15.

Contrary: Messrs. Cooper, Down, Rocheleau, Holden, Ferris, Martin, Oxley, Clifford, Gow, Smith, Whittle, Settingington, Woollatt, Langlois, Ferrari, Lappan, Morand, Marentette, Lauzon, R. Parent, Wilson, Pillon, Loney, Hutchinson, H. Parent—25. Lost.

The motion to adopt the Highway Committee's report was with- 10  
drawn, as the seconder withdrew his name.

The amendment was voted on as the motion.

For: Messrs. Cooper, Down, Rocheleau, Wm. Poisson, Hicks, Holden, Ferris, Martin, Oxley, Clifford, Gow, Atkin, Whittle, Settingington, Wool-  
latt, Dewhirst, Bridges, Langlois, Lappan, Morand, Marentette, Lauzon,  
R. Parent, Wilson, Hutchinson, H. Parent and the Warden—27.

Contrary: Messrs. Bontront, Hebert, Poisson, Fulmer, Beacom,  
Smith, Plant, Lickman, Hennin, Pillon, Loney and Benoit—12.

Motion carried.

---

(b) Report of Highway Committee. Page 121.

20

#### MAY SESSION

May 29, 1929.

To the Warden and Council of the County of Essex in Council assembled.  
Gentlemen:—

We, your Highway Committee, beg leave to report as follows:—

1. That Contract No. 2 on the McGregor Road be awarded to Merlo, Merlo & Ray for black base pavement at price submitted, \$78,-  
351.00, and that balance of report be adopted as presented.

2. That Contract No. 4, Mersea, be let to the low bidder, Cadwell  
Sand & Gravel Co., at a price of \$55,770.56, less \$1,550.00 for tiling and 30  
crops let separately.

3. Road No. 5, Essex southerly. That contract be let to low bidder,  
National Pavers, Ltd., at price of \$31,127.40.

4. Road No. 6, Cottam northerly. That contract be let to low bid-  
ders, National Pavers Ltd., at \$26,609.10.

(b) Page 121—  
Report of Highway  
Committee  
29th May, 1929

5. Road No. 7, Pillette Road. That contract be let to low bidders, National Pavers, Ltd., at \$40,143.95.

6. Road No. 8, Malden Road. That contract be let to National Pavers, Ltd., at a price of \$91,812.10.

We recommend that the tiling and crocks on the Mersea job be let to a lower bidder, Mr. Reuben Knister, at a price of \$1,271.00, as against \$1,550.00.

Total cost as per tenders, \$323,814.11.

We also recommend paying of committee for committee meetings.

10 All of which is respectfully submitted.

(Signed) F. J. ROCHELEAU, Chairman.

Sandwich, Ont., May 29th, 1929.

(c) By-law No. 689. Pages 207 to 209.

JUNE SESSION

A BY-LAW TO LEVY the County Rate, to provide for School Inspectors' salaries, the moneys payable under the Public Schools Act, the Provincial Highway Act, and to provide money to meet the debentures becoming due and payable in the current year.

Passed June 21st, 1929.

20 WHEREAS it has been deemed expedient that the Council of the Corporation of the County of Essex, that there shall be raised, levied and collected in the different towns, townships and villages in the County, the several amounts set opposite their names in the Schedule hereto annexed and which forms a part of this By-law.

30 BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the County of Essex that there shall be raised, levied and collected at a rate of two and eight-tenth mills on the dollar, upon the whole ratable property in the County of Essex, for the purpose of raising the sum of Two Hundred and Twelve Thousand Seven Hundred and Thirty-five Dollars and Eighty-eight cents, being the amount estimated to cover the general expenses for the current year, the annual amounts to be levied under By-law No. 321, passed on the 13th day of October, 1913; By-law No. 407 passed on the 25th day of March, 1918; By-law No. 557 passed on the 6th day of March, 1925; By-law No. 572, passed on the 11th day of December, 1925; and By-law No. 594, passed on the 19th day of June, 1926.

Be it further enacted by the Municipal Council of the Corporation

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 3

Extracts from Min-  
utes of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(Continued)

(b) Page 121—  
Report of Highway  
Committee  
29th May, 1929

(c) Pages 207 to 209—  
By-law 689  
21st June, 1929

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 3  
Extracts from Min-  
utes of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(Continued)

(c) Pages 207 to 209—  
By-law 689  
21st June, 1929

of the County of Essex, that there shall be raised, levied and collected upon the whole ratable property in the County, the sum of Seventy Thousand Three Hundred and Thirty-four Dollars and Forty-nine Cents, the amount required to meet the annual payments levied under By-law No. 432, passed on the 21st of June, 1919; By-law No. 480, passed on the 11th day of June, 1921; By-law No. 499, passed on the 24th day of June, 1922; By-law No. 618, passed on the 9th day of June, 1923; and By-law No. 661, passed on the 23rd day of June, 1928.

And it is further enacted by virtue of the Highway Improvement Act, and amendments thereto, and in accordance with the provisions thereof, that there shall be raised, levied and collected upon the whole ratable property in the County of Essex at the rate of two and one-half mills on the dollar, for the purpose of raising the sum of One Hundred and Eighty-nine Thousand Nine Hundred and Forty-two Dollars and Seventy-five Cents (\$189,942.75), the amount required for the County Road System of the County. 10

And it is further enacted by virtue of the Provincial Highway Act and amendments thereto, and in accordance with the provisions thereof, that there shall be raised, levied and collected upon the whole ratable property in the County, the sum of Twelve Thousand Eight Hundred and Twenty-six Dollars and Eighty Cents (\$12,826.80), the said sum being the twenty per cent. of the cost of the expenditure on the said Provincial Highways during the year 1928. 20

And it is further enacted, pursuant to the Public Schools Act, that there shall be raised, levied and collected upon the whole ratable property in the County, in addition to all other rates and assessments, the sum of Sixteen Thousand Eight Hundred and Twenty-six Dollars and Sixty-six Cents (\$16,826.66), being the equivalent of that part of the Legislative grant for the year 1929, apportioned by the Minister of Education on the basis of the equipment and accommodation of the Public and Separate Schools of the rural County, such sums to be payable to the Board of Schools receiving such Legislative grant in the same proportion as the grant is proportioned. 30

And it is further enacted, pursuant to the Public Schools Act, that there shall be raised, levied and collected upon the whole ratable property in the County, with the exception of the Town of Sandwich, in addition to all other rates and assessments, the sum of Three Thousand Four Hundred and Forty-one Dollars and Sixty Cents (\$3,441.60) for the payment of Public School Inspectors and Public School Inspectors' super-annuation, which sum shall be levied and borne by the Municipalities in the County of Essex other than the Town of Sandwich, in the same proportion shown by the schedule hereto. 40

And it is further enacted that the several assessments above required

shall be apportioned amongst and be borne by the different municipalities in the proportion hereinafter mentioned, and that the several sums set opposite the names of each municipality in the schedule hereto, which schedule shall form a part of this by-law, shall be levied and collected thereon upon the whole ratable property of each municipality for the several rates for which they are designated, and shall be paid into the hands of the County Treasurer, within the time or times provided by by-law, to be by him applied for the several purposes mentioned in this by-law.

10 (Signed) W. P. COYLE,  
Clerk.

(Signed) GEORGE PEARSON,  
Warden.

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 3  
Extracts from Min-  
utes of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(Continued)  
(c) Pages 207 to 209—  
By-law 689  
21st June, 1929

**(d) SCHEDULE SHOWING EQUALIZED ASSESSMENTS. Page 210.**

**Schedule of Assessments Showing the Amounts to be Raised by the Different Municipalities in the County  
for the Year 1929, and the Equalized Value of the Rateable Property in the Said Municipality.**

Municipality	Equalization 1928	Equalization 1929	General Expenses	Rural School Grants	School Inspectors' Salaries	County Roads	Provincial Highways	Debentures and Gravel Pit
Anderdon .....	\$ 2,605,600.00	\$ 2,605,600.00	\$ 7,295.68	\$ 57.33	\$ 138.19	\$ 6,514.00	\$ 439.83	\$ 2,411.74
Colchester N. ....	2,242,500.00	2,242,500.00	6,279.00	49.30	118.93	5,606.25	378.52	2,075.62
Colchester S. ....	4,840,000.00	4,840,000.00	13,552.00	106.70	256.68	12,100.00	816.97	4,479.83
Gosfield N. ....	2,909,300.00	2,909,300.00	8,146.04	64.00	154.29	7,273.25	491.08	2,692.81
Gosfield S. ....	4,442,000.00	4,442,000.00	12,437.60	98.02	235.57	11,105.00	749.80	4,111.45
Maidstone .....	4,513,000.00	4,513,000.00	12,636.40	99.60	239.33	11,282.50	761.78	4,177.16
Malden .....	3,031,000.00	3,031,000.00	8,486.80	66.68	160.74	7,577.50	511.63	2,805.45
Mersea .....	6,078,000.00	6,078,000.00	17,018.40	134.00	322.33	15,195.00	1,025.95	5,625.75
Rochester .....	2,372,100.00	2,372,100.00	6,641.88	52.19	125.81	5,930.25	400.41	2,195.58
Sandwich E. ....	3,248,250.00	3,248,250.00	9,095.10	71.47	172.27	8,120.63	548.31	3,006.53
Sandwich S. ....	2,753,000.00	2,753,000.00	7,708.40	60.57	146.01	6,882.50	467.70	2,548.75
Sandwich W. ....	4,915,000.00	4,915,000.00	13,762.00	108.60	260.65	12,287.50	829.65	4,549.32
Tilbury N. ....	2,408,500.00	2,408,500.00	6,743.80	53.00	127.73	6,021.25	406.55	2,229.27
Tilbury W. ....	1,472,100.00	1,472,100.00	4,121.88	32.35	78.08	3,680.25	248.49	1,362.54
Amherstburg ....	2,314,000.00	2,314,000.00	6,479.20	50.91	122.72	5,785.00	390.60	2,141.84
Essex .....	1,398,000.00	1,398,000.00	3,914.40	30.70	74.15	3,495.00	235.98	1,293.99
Kingsville .....	1,857,500.00	1,857,500.00	5,201.00	40.87	98.51	4,643.75	313.55	1,719.30
LaSalle .....	1,400,250.00	1,400,250.00	3,920.70	30.80	74.26	3,500.62	236.36	1,296.08
Leamington .....	3,711,000.00	3,711,000.00	10,390.80	81.75	196.81	9,227.50	626.41	3,434.85
Ojibway .....	1,288,000.00	1,288,000.00	3,606.40	28.34	68.30	3,220.00	217.41	1,192.17
Riverside .....	2,700,000.00	2,700,000.00	7,560.00	59.40	143.19	6,750.00	454.76	2,449.12
Sandwich .....	11,082,000.00	11,082,000.00	31,029.60	245.36	....	27,705.00	1,870.61	10,257.60
Tecumseh .....	1,212,500.00	1,212,500.00	3,395.00	26.68	64.30	3,031.25	204.67	1,122.29
Belle River .....	583,500.00	583,500.00	1,633.80	12.84	30.94	1,458.75	98.50	540.09
St. Clair Beach ...	600,000.00	600,000.00	1,680.00	13.20	31.81	1,500.00	101.28	555.36
	<u>\$75,977,100.00</u>	<u>\$75,977,100.00</u>	<u>\$212,735.88</u>	<u>\$1,674.66</u>	<u>\$3,441.60</u>	<u>\$189,942.75</u>	<u>\$12,826.80</u>	<u>\$70,324.49</u>
						Ford City's Pro .....	2,250.90	
							<u>\$15,077.70</u>	

(e) By-law No. 690. Pages 211 to 213.

### JUNE SESSION

A By-law to borrow the sum of One Hundred and Eighty-five Thousand Dollars for the purpose of building roads in the County of Essex, under the County Highway System.

Whereas Essex County did by By-law No. 673, passed on the 13th day of December, 1928, adopt an amended and revised system of County Roads.

10 AND WHEREAS the Lieutenant-Governor-in-Council did approve of said County Road System and By-law No. 673 by Order-in-Council, said Order being dated the 8th day of May, 1929.

AND WHEREAS by Sec. 14, Sub. Sec. 1-2, Chap. 54, R.S.O. 1927, permission is given to counties to issue debentures, as may be required for the improvement of roads, provided the issue of debentures does not exceed five and one-half per centum, per annum, equalized value of the County.

AND WHEREAS it has been deemed necessary by the County Council to issue debentures for the building of County Roads.

20 AND WHEREAS the equalized value of the County of Essex is \$75,977.100.00.

AND WHEREAS the total debenture debt of the County on December 31st, 1928, is \$536,509.40, which amount \$319,962.06 is for road purposes, and no principal or interest is in arrears.

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the County of Essex:—

30 1. That the Warden and Treasurer of the County for the purposes aforesaid may borrow the sum of One Hundred and Eighty-five Thousand Dollars and to issue debentures of the Corporation for that amount in sums of not less than One Hundred Dollars each, with interest thereof at the rate of five and one-half per centum per annum, payable in ten equal annual payments of principal and interest, in such manner that the amount paid for principal and interest in one year shall be equal as nearly as may be to the amount paid for interest and principal for any of the other years during which the debentures have to run. The said debentures as to principal and interest shall be payable at the office of the Treasurer of the County, at the Town of Sandwich, and the Warden of the County is hereby authorized to issue, and to cause the same and the interest coupons attached thereto to be signed by the Treasurer of the County, and the Clerk of the County is hereby authorized and in-  
40 structed to attach the Seal of the Municipality to the said debentures.

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 3  
Extracts from Minutes  
of Municipal  
Council of the  
County of Essex,  
April, May and June  
Sessions, 1929,  
as follows:  
(Continued)

(e) Pages 211 to 213—  
By-law 690  
21st June, 1929

RECORD  
 In the Supreme  
 Court of Ontario  
 Exhibit 3  
 Extracts from Min-  
 utes of Municipal  
 Council of the  
 County of Essex,  
 April, May and June  
 Sessions, 1929,  
 as follows:  
 (Continued)  
 (e) Pages 211 to 213—  
 By-law 690  
 21st June, 1929

2. There shall be raised and levied in each year by a special rate on all the rateable property in the Municipality of the County of Essex a sufficient sum to discharge the several instalments of principal and interest accruing due on the said debt as the same shall become due and payable.

3. The amount to be raised annually for the payment of the said debentures and the interest thereon shall be Twenty-four Thousand Five Hundred and Forty-three Dollars and Fifty-three Cents.

4. Schedule showing the amount of principal and interest to be paid annually for a period of ten years:—

	Interest	Principal	Total	
1st year .....	\$10,175.00	\$14,368.53	\$24,543.53	
2nd year .....	9,384.73	15,158.80	24,543.53	
3rd year .....	8,550.99	15,992.54	24,543.53	
4th year .....	7,671.40	16,872.13	24,543.53	
5th year .....	6,743.44	17,800.09	24,543.53	
6th year .....	5,764.42	18,779.11	24,543.53	
7th year .....	4,731.57	19,811.96	24,543.53	
8th year .....	3,641.91	20,901.62	24,543.53	
9th year .....	2,492.33	22,051.20	24,543.53	
10th year .....	1,279.51	23,264.02	24,543.53	10

Passed in open Council on the 21st day of June, 1929, by the members of the County Council of the County of Essex, all members voting for the By-law.

(Signed) W. P. COYLE,  
 Clerk.

(Signed) GEORGE PEARSON,  
 Warden.

**EXHIBIT 2**

**Agreement Between County of Essex and City of East Windsor Settling  
Certain Adjustments and Submitting to Arbitration in Other  
Respects. 29th November, 1929.**

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 2  
Agreement between  
County of Essex and  
City of East Windsor  
settling certain ad-  
justments and sub-  
mitting to arbitra-  
tion in other respects  
29th November, 1929

AGREEMENT made (in duplicate) the 29th day of November, One  
Thousand Nine Hundred and Twenty-nine.

Between:

THE MUNICIPAL CORPORATION OF THE COUNTY OF ESSEX

(hereinafter called the "County"),

10

Of the First Part;

—and—

THE MUNICIPAL CORPORATION OF THE CITY OF  
EAST WINDSOR

(hereinafter called the "City"),

Of the Second Part.

WHEREAS subject to the provisions of the Municipal Act and in  
pursuance of an Order of the Ontario Railway and Municipal Board  
the Town of Ford City was erected into a City under the name of  
East Windsor, and thereby separated from the said County, such separa-  
20 tion becoming effective on the 1st day of June, 1929.

AND WHEREAS it has thereby become necessary to adjust the  
assets and liabilities as between the parties hereto and also to settle the  
contribution of the City of East Windsor to the County of Essex for its  
just proportion of the costs of administration of Criminal Justice and  
other matters.

AND WHEREAS the Joint Committee representing the two parties  
have conferred for the purpose mentioned in the preceding paragraph  
and have agreed upon a basis of settlement of certain matters which  
it is desired to embody in a written agreement.

30 NOW THEREFORE THIS AGREEMENT WITNESSETH:—

1. (a) The provisions of this paragraph are in full settlement of  
all current liabilities incurred up to and including December 31st, 1929,  
and which the City is or may be required to pay.

(b) The City shall pay to the County 14.9308 per cent. of \$493,-  
197.08, which sum is the amount required to be levied on the various  
Municipalities as provided in By-law No. 689 of the County, passed in  
the year 1929.

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 2  
Agreement between  
County of Essex and  
City of East Windsor  
settling certain ad-  
justments and sub-  
mitting to arbitra-  
tion in other respects  
29th November, 1929  
(Continued)

(c) The County shall pay to or for the City all disbursements or payments, rebates, refunds, surplus allowances and credit allowances for which it would be obligated if the City had remained a part of the County until December 31st, 1929.

2. After the 31st day of December, 1929, an adjustment in other respects of the assets and liabilities of the Corporations according to the provisions of the Municipal Act respecting the same shall be made, such adjustment to be made as of the 1st day of June, 1929. In the event of failure of the parties to agree upon such adjustment the determination of the matter shall be referred to His Honour Judge Coughlin, Senior Judge of the County of Essex, and his decision shall be subject to appeal. 10

3. After the final determination of the adjustment, the parties hereto shall, as they become due and payable, discharge their respective obligations arising out of such final adjustment.

4. The City of East Windsor shall pay to the County of Essex each year during the years 1930 to 1934 inclusive, a sum of Four Thousand Dollars (\$4,000.00), payable in two (2) equal instalments in each year, the first of such payments to be made on the 30th day of June, 1930, and the second instalment on the 15th day of December, to cover the City's proportion of the cost of the administration of justice during the period aforesaid. 20

5. At the end of each year the computation is to be made of the cost of the administration of justice for the year then closing and the share of the City is to be determined on the basis of user, and if this proportion of such cost is less than the sum of \$4,000.00, then the County shall refund to the City the difference, and if the share of the City exceeds the sum of \$4,000.00, the City shall pay to the County, upon demand, such excess.

6. For the purpose of determining the City's share, the Auditor of the City or such other officer or person as the Council of the City may appoint, shall have access to the books of account and records of the County relating to the administration of justice within the County. 30

7. In respect of the period commencing January 1st, 1930, this Agreement and the amount payable thereunder by the City to the County shall not include Crown Witnesses, Coroners' fees, Court Stenographers' salary, conveyance of prisoners, nor the Registry Office expense, the accounts for which are to be settled annually in December of each of the said years by payment to the County by the City of its share thereof, upon demand being made, but the City shall have the same right to investigate the accounts relating to such items, as has been hereinbefore provided for in respect of the costs of the administration of justice. 40

8. It is also agreed and understood that for the sake of convenience of all Crown Witnesses whose fees may be payable by the City, the County Treasurer will advance to the said Witnesses their fees according to the pay list therefor, which sums shall be paid by the Treasurer of the City of East Windsor to the County Treasurer at least once a year, and the City of East Windsor is to pay County Witness Lists on the same condition.

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 2  
Agreement between  
County of Essex and  
City of East Windsor  
settling certain ad-  
justments and sub-  
mitting to arbitra-  
tion in other respects  
29th November, 1929  
(Continued)

10 IN WITNESS WHEREOF the parties hereto have caused this Agree-  
ment to be executed by the hand of its proper officers and under the seal  
of the respective corporations.

SIGNED, SEALED AND DELIVERED  
in the presence of

(Signed) JAMES GOW, Warden of the County of Essex.

“ W. P. COYLE, Clerk of the County of Essex.

“ JOHN H. WIGLE, Mayor.

“ J. F. FOSTER, Clerk.

MUNICIPAL CORPORATION OF THE CITY  
OF EAST WINDSOR.

## EXHIBIT 20

### Statement of Expenditures on County Roads from 1916 to 1929 Provincial County Highways, County Roads and Suburban Area

Year	East Windsor %	Class of Roads	%	Total Construction	County's Proportion	East Windsor's Proportion	REMARKS
1916	2.121	S. A.	30%	\$ 3,848.72	\$ 1,154.61	\$ 24.48	
1916	2.121	C.	60%	4,020.52	2,412.00	51.15	
1917	3	S. A.	30%	4,045.87	1,213.76	36.39	
1917	3	C.	60%	13,713.57	8,227.80	246.83	
1918	3	S. A.	30%	8,631.20	2,589.36	77.68	
1918	3	C.	60%	15,482.44	9,289.46	278.68	
1919	3	S. A.	30%	29,329.16	8,798.75	263.96	
1919	3	S. A. P. C.	20%	9,327.00	1,865.40	55.96	
1919	3	P. C.	40%	756.50	302.60	9.06	
1919	3	C.	60%	143,134.38	85,880.40	2,576.40	
1920	4.41	S. A.	30%	31,171.72	9,351.30	412.39	
1920	4.41	S. A. P. C.	20%	79,192.87	15,838.40	698.41	
1920	4.41	P. C.	40%	26,787.56	10,714.80	472.49	
1920	4.41	C.	60%	41,615.53	24,969.00	1,101.13	
1921	5.26	S. A.	30%	156,647.55	46,994.10	2,471.89	Grant \$6,500 to East Windsor.
1921	5.26	P. C.	40%	131,814.24	52,725.60	2,773.36	
1921	5.26	C.	60%	151,756.58	91,053.94	4,689.44	
1922	6.076	S. A.	30%	2,732.05	819.60	49.76	
1922	6.076	S. A. P. C.	20%	66,465.33	13,293.00	807.68	
1922	6.076	P. C.	40%	217,738.03	87,095.20	5,291.89	
1922	6.076	C.	60%	35,008.59	21,004.80	1,276.20	
1923	6.076	S. A.	30%	63,501.21	19,050.30	1,157.48	In 1923 one mile of 18 ft. pave- ment was laid on Pilette Road at a cost of \$29,866.53, now in East Windsor.
1923	6.076	S. A. P. C.	20%	165,027.58	33,005.51	2,005.38	
1923	6.076	P. C.	40%	76,313.02	30,525.20	1,854.69	
1923	6.076	C.	60%	70,060.77	42,036.00	2,574.10	

**EXHIBIT 20—Continued**

Year	East Windsor %	Class of Roads	%	Total Construction	County's Proportion	East Windsor's Proportion	REMARKS
1924	10.789	S. A.	30%	34,856.10	10,456.80	1,128.09	In 1924 further work on Pilette Road amounting to \$6,076.12.
1924	10.789	P. C.	40%	127,730.78	51,092.00	5,512.31	
1924	10.789	C.	60%	45,191.48	27,114.60	2,925.32	
1925	14.165	S. A.	30%	7,302.24	2,190.60	310.21	Grant of \$9,562.00.
1925	14.165	P. C.	40%	263,107.09	105,242.80	14,907.52	
1925	14.165	C.	60%	14,132.07	8,479.20	1,201.05	
1926	14.165	S. A.	25%	5,555.56	1,388.89	196.61	Refund \$15,937.50.
1926	14.165	C.	50%	41,798.42	20,899.21	2,960.34	
1927	14.275	S. A.	25%	57,081.27	9,270.32	1,323.29	Refund \$15,937.50.
1927	14.275	C.	50%	204,076.80	102,038.40	14,565.92	
1928	14.275	S. A.	25%	237,301.82	59,375.45	8,475.78	Refund \$15,937.50.
1928	14.275	C.	50%	383,411.72	191,705.86	27,375.85	
1929	14.9308	S. A.	25%	115,916.20	28,979.05	4,326.79	Refund \$15,937.50.
1929	14.9308	C.	50%	367,581.84	183,790.92	27,443.31	

Road Debentures were issued in 1919 for gravel pit, \$31,000.00, all paid.  
 No. 499 in 1922 for 10 years, \$120,000.00.  
 No. 480 in 1921 for 10 years, \$120,000.00.  
 No. 518 for 1923 for 10 years, \$100,000.00.  
 No. 661 for 1928 for 10 years, \$160,000.00.  
 No. 690 in 1929 for 10 years, \$185,000.00.

**EXHIBIT 21**

**Statement of County's Claim**

**Statement Re East Windsor and Essex County Settlement**

1. East Windsor owes County for 1929 rates .....\$ 73,638.27  
Interest at 6 per cent. from December 20, 1929, until paid.  
Refund to County of Registry Office share of 1929 supplies ..... 1,164.95
2. December 31, 1929. Total principal Debentures debts ... 651,875.10  
Of which East Windsor owes 14.9208 per cent., or ..... 97,330.17  
To be paid by 14.9208 per cent. of each equal annual payment as they respectively come due until all paid, and they become due as follows:—
 

By-law 572—Registry Office, April 1 .....	\$ 4,619.50	2 to pay	
By-law 432—Pat. Donation, May 1 .....	5,230.23	9 to pay	
By-law 557—New Gaol, June 1 .....	11,233.96	16 to pay	
By-law 499—Co. Roads, Sept. 1. ....	15,920.13	3 to pay	
By-law 480—Co. Roads, Aug. 4 .....	16,304.16	2 to pay	
By-law 518—Co. Roads, Sept. 15 .....	13,266.77	4 to pay	
By-law 321—Registry Off. Add., Oct. 13 .....	1,283.87	4 to pay	
By-law 594—Gaol and Ct. House, Nov. 1 .....	5,180.18	7 to pay	20
By-law 661—Co. Roads, Oct. 1 .....	20,720.73	9 to pay	
By-law 690—Co. Roads, Oct. 1 .....	24,543.53	10 to pay	
3. Criminal Justice per agreement \$4,000.00, payable yearly, half year to be adjusted each year on actual cost basis.
4. Provincial Highway Account for 1929 of \$72,101.41 not provided for in 1929 East Windsor 14.9208 per cent., or \$10,758.10.  
County owes East Windsor—  
Half cost of patients at hospitals, June 1-Dec. 31, 1929.  
Mothers' Allowance, June 1-Dec. 31, 1929.  
For School Inspector, 7 months at \$34.36 .....\$ 240.52 30  
50 per cent. of 1929 Road Levy of \$28,359.99, or ..... 14,179.98  
Their share Essex County Gravel Pit, estimated.  
Their share House of Refuge, estimated.  
Their share County Offices.  
Not cash items.  
Their share County Gaol.  
Their share Registry Office.  
Their share Court House.

**EXHIBIT 22****Statement of Receipts and Expenditures Re Road Account and  
Current Account Assets and Liabilities**

ROADS, 1929

**Expenditures**

Page		
364	County Roads .....	\$463,182.52
367	Suburban Roads .....	122,908.27
373	General, Gravel Pit, Machinery and Repairs .....	125,506.26
10 372	Office .....	3,500.00
372	Interest .....	13,009.28
		<hr/>
		\$728,106.33
	Less Refunds of 1928 levy to Towns .....	42,393.76
		<hr/>
	Net paid for Roads in 1929 .....	\$685,712.57
	To pay on 1929 Contracts .....	19,500.00
	Towns Refunds for 1929 Levy .....	44,955.60
		<hr/>
20	Total .....	\$750,168.17

**Receipts**

	For Gravel Sold, etc. ....	\$ 10,300.00
	City of Windsor South Area .....	15,600.48
	Town of Walkerville .....	16,219.80
	Government Subsidy .....	347,196.25
		<hr/>
		389,315.53
		<hr/>
	Net Cost to County .....	\$360,852.64
	County Raised in 1929 by General Levy .....	\$189,942.75
30	By Debentures .....	185,000.00
	East Windsor Road Levy .....	28,359.99
		<hr/>
		403,302.74
		<hr/>
	Balance Credit Road Account .....	\$ 42,450.10

**Current Account Assets**

	Due from Municipalities .....	\$ 62,691.78
	Less Due for Road Rates .....	31,302.75
		<hr/>
		\$ 31,389.03
	County Registrar for 1929 .....	15,389.03
40	Registry Office Maint., Windsor and Ford .....	2,615.00
	Cash on Hand .....	660.00

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 22

Statement of receipts  
and expenditures re  
road account and  
current account as-  
sets and liabilities

RECORD  
In the Supreme  
Court of Ontario  
Exhibit 22  
Statement of receipts  
and expenditures re  
road account and  
current account as-  
sets and liabilities  
(Continued)

Windsor Share Rep. Court House .....	\$ 25,113.17	
(Estimated Interest on Windsor Addition to De- cember 31, 1929, \$2,511.30)		
Windsor Balance Crim. Just. 1929 E.W. ....	2,500.00	
East Windsor Current Rates .....	45,278.28	
	<u>72,891.45</u>	
		<u>\$122,944.51</u>

### Liabilities

Current Notes at Bank .....	\$121,156.64	10
Current Overdraft .....	18,300.99	
Coupons Unpaid .....	300.00	
Due to Schools .....	892.56	
Old Age Pensions, Mothers' Allow., etc. ....	4,609.85	
	<u>\$145,260.04</u>	
Refunds Due East Windsor Accts.		
Refunds East Windsor Other Matters.		
Prov. Police Bill for December, 1929.		

**EXHIBIT 33**

**Statement of Essex County Debentures Liability With Annual Payments of Principal and Interest**

By-law	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940 to 1945	Total
											Yearly	
321 Registry Office .....	1,283.87	1,283.87	1,283.87	1,283.87								5,135.48
407 Patriotic .....	5,230.23	5,230.23	5,230.23	5,230.23	5,230.23	5,230.23	5,230.23	5,230.23	5,230.23			47,072.07
480 Roads .....	16,304.16	16,304.16										32,608.32
499 Roads .....	15,920.13	15,920.13	15,920.13									47,760.39
518 Roads .....	13,266.77	13,266.77	13,266.77	13,266.77								53,067.08
557 Gaol (less Walkerville, 1.62454) .....	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	11,233.96	179,743.36
572 Registry Office .....	4,619.50	4,619.50										9,239.00
594 Gaol and Ct. House (less Walkerville 414.98)	5,180.18	5,180.18	5,180.18	5,180.18	5,180.18	5,180.18	5,180.18					36,261.26
661 Roads .....	20,720.73	20,720.73	20,720.73	20,720.73	20,720.73	20,720.73	20,720.73	20,720.73	20,720.73			186,486.57
690 Roads .....	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53	24,543.53		245,435.30
	118,303.06	118,303.06	97,379.40	81,459.27	66,908.63	66,908.63	66,908.63	61,728.45	61,728.45	35,777.49	11,233.96	
												<u>\$842,808.83</u>

Recapitulation

1930 .....	\$118,303.06
1931 .....	118,303.06
1932 .....	97,379.40
1933 .....	81,459.27
1934 .....	66,908.63
1935 .....	66,908.63
1936 .....	66,908.63
1937 .....	61,728.45
1938 .....	61,728.45
1939 .....	35,777.49
1940 .....	11,233.96
1941 .....	11,233.96
1942 .....	11,233.96
1943 .....	11,233.96
1944 .....	11,233.96
1945 .....	11,233.96
	<u>\$842,808.83</u>