

In the Privy Council

No. *49* of 1931.

On Appeal from the Appellate Division of the
Supreme Court of Ontario

BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN
(DEFENDANT) APPELLANT.

—and—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
(PLAINTIFF) RESPONDENT

Record of Proceedings

MARQUIS, PEPLER & MARQUIS,
St. Catharines, Ont., Canada,
Solicitors for Appellant.

BLAKE & REDDEN,
17 Victoria Street,
London, S.W. 1.
Agents for Solicitors for the Appellant.

INGERSOLL, KINGSTONE & SEYMOUR,
St. Catharines, Ont., Canada,
Solicitors for Respondent.

LAWRENCE JONES & Co.,
Lloyd's Building,
3/4 Lime Street, London, E.C.3.
Agents for Solicitors for the Respondent.

TORONTO:
ATWELL FLEMING PRINTING COMPANY LIMITED
1931

In the Privy Council

No. 49 of 1931.

On Appeal from the Appellate Division of the Supreme Court of Ontario.

BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN
(Defendant) Appellant.

—and—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
(Plaintiff) Respondent,

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART ONE

No.	DESCRIPTION OF DOCUMENT	DATE	Page
	IN THE SUPREME COURT OF ONTARIO		
1	Statement of Case.....		1
2	Statement of Claim.....	Dec. 24, 1929	2
3	Statement of Defence.....	Jan. 14, 1930	4
4	Joinder of Issue.....	Jan. 16, 1930	6
5	Statement of Facts.....	May 20, 1930	6
6	Trial Proceedings.....	May 20 and 21, 1930	7
7	Reasons for Judgment of Honourable Mr. Justice Wright.....	June 24, 1930	10
8	Formal Judgment.....	June 24, 1930	16
9	Notice of Appeal.....	Aug. 29, 1930	17
10	Reasons for Judgment of First Divisional Court..	Jan. 12, 1931	18
	(a) Hodgins, J. A., written Judgment.....		18
	(b) Mulock, C. J. O., agreed with Hodgins J. A.....		19
	(c) Middleton, J. A., written Judgment.....	Jan. 12, 1931	20
	(d) Magee, J. A. } agree with Middleton, (e) Grant, J. A. } J. A.....		22
11	Formal Judgment.....	Jan. 12, 1931	23
12	Order admitting Appeal to His Majesty in Council.....	Feb. 16, 1931	24

PART TWO
EXHIBITS

No.	DESCRIPTION OF DOCUMENT	DATE	Page
1	Admission of Facts filed by Council at Trial.	May 20, 1929	7
2	Bill No. 97, an Act to Amend the Highway Improvement Act, assented to. (Not printed).	April 3, 1930	
3	Agreement regarding Drainage.	Jan. 30, 1923	25
4	Agreement regarding payments to be made by the County in Annual Settlement.	Jan. 30, 1923	27
5	By-law No. 807.	June 15, 1926	27
	By-law No. 824.	April 19, 1927	32
	By-law No. 846.	April 17, 1928	36
6	By-law No. 600.	Feb. 3, 1917	40
7	The Highway Improvement Act, R.S.O., 1914, Chapter 40. (not printed)		
8	The Highway Improvement Act, 1926, 16 Geo. V Chapter 15. (not printed)		
9	The Highway Improvement Act, R.S.O., 1927, Chapter 54. (not printed)		

In the Privy Council

No. 49 of 1931

On Appeal from the Appellate Division of the Supreme Court of Ontario

BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN
(Defendant) Appellant.

—and—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
(Plaintiff) Respondent,

10

STATEMENT OF CASE

No. 1
Statement
of Case.

This is an appeal from the judgment of the Appellate Division of the Supreme Court of Ontario. The Plaintiff brought this action for a declaration that it is entitled to a rebate of 75% of the amount levied against it during the years 1927, 1928, and 1929 for county road purposes and debt charges, less the cost of repairs if any done by the Defendants, upon any county road extension or connecting link, or upon any road in the said Village included in the County Road System during such previous year.

20 The action was tried before The Honourable Mr. Justice Wright on the 20th May, 1930, and Judgment was given by the said learned Judge in favour of the Plaintiff on the 24th June, 1930, for an amount to be ascertained upon a reference to the Local Master at St. Catharines. The Judgment of the learned Judge appears in his written Judgement which is set out in this Record of Proceedings.

30 The Plaintiff appealed to the Appellate Division of the Supreme Court of Ontario which appeal was heard on the 24th day of November, 1930, and Judgment was delivered on the 12th day of January, 1931, allowing said appeal and declaring that the Plaintiff was entitled to recover from the Defendant 75% of all moneys levied by the Plaintiff since The Highway Improvement Act of 1926 came into force and remitted to the Defendant County in respect of annual general rates made by the Defendant for County road purposes, whether the Defendant applied the amount so raised for constructing and improving the roads in the said County Road System or to pay annual debt charges upon debentures issued by the said Defendant for such purposes or for maintaining and superintending such roads or for such other expenditures properly chargeable to the said system.

No. 1
Statement
of Case.
—continued

Judgments were written by Mr. Justice Hodgins and Mr. Justice Middleton and appear elsewhere in this Record. The Chief Justice of the Court agreed with Mr. Justice Hodgins, and Mr. Justice Magee and Mr. Justice Grant agreed with Mr. Justice Middleton. A reference was directed to the Local Judge at St. Catharines to ascertain the amount due in case the parties can not agree.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE

Plaintiff, 10

—and—

THE CORPORATION OF THE COUNTY OF LINCOLN

Defendant.

(Writ issued 6th December 1929)

No. 2
Statement
of Claim
Dec. 24th,
1929

STATEMENT OF CLAIM

1. The plaintiff and defendant are municipal corporations, and the Village of Port Dalhousie is an urban municipality situate within the County of Lincoln and not separated therefrom for municipal purposes.

2. Under the authority of the Highway Improvement Act and of certain of its own by-laws, the defendant, prior to the year 1926, established a county road system throughout the County of Lincoln. 20

3. That, apart from grants obtained from the Province of Ontario, the cost of constructing, improving, maintaining and superintending the roads included in the said county road system and other expenditures properly chargeable to the said system are met and raised by the levy of an annual general rate upon all the municipalities, including the Village of Port Dalhousie, in the said County of Lincoln.

4. For the purpose of meeting the cost of constructing and improving the roads included in the said system the defendant, under the authority of the said Act, has from time to time issued its debentures and the annual debt charges for principal and interest upon such debentures are included in and form part of the said annual general rate levied as aforesaid. 30

5. In each of the years 1926, 1927 and 1928, the defendant levied upon the said Village of Port Dalhousie a general rate for the purposes aforesaid, and each of such rates included amounts for debt charges upon debentures issued as aforesaid, and in and for each of the said years the plaintiff paid over to the defendant the full amount so required to be and raised by it.

6. According to the provisions of the said Act it became the duty of the defendant on or before the 1st day of April in each of the years 1927, 1928 and 1929 to remit to the plaintiff seventy-five per centum of the amount so raised by the plaintiff in the previous year, namely, in the years 1926, 1927 and 1928, less the cost of repairs, if any, done by the defendant upon any county road extension or connecting link or upon any road in the said Village included in the said system during such previous year.

7. No construction or rebuilding of any such extension or connecting link in the said Village was made or in progress during any of the years 1926 to 1929 (both inclusive).

8. The said Village is not now receiving nor has it heretofore at any time received under any agreement with the defendant special grants for the purpose of road improvement in the said Village.

9. The defendant has not remitted to the plaintiff seventy-five per centum of the amount raised by the plaintiff as aforesaid in respect of the years 1926, 1927 and 1928, respectively, as provided by the said Act, and except as hereunder stated, still owes to the plaintiff the amounts of such remissions to which the plaintiff is entitled.

10. The defendant has paid to the plaintiff the sum of \$1,026.64 for the year 1926, the sum of \$531.40 for the year 1927 and the sum of \$417.17 for the year 1928, stated by the defendant to be by way of remission of such part of the amounts raised by the plaintiff in and for the said years as was applied for maintenance of the roads in the said county road system.

11. The plaintiff says that the remissions to which it is entitled under the said Act are the seventy-five per centum proportion of the full amounts raised by it for the said years 1926, 1927 and 1928, respectively, to meet the said levies of annual general rates made by the defendant for county road purposes and whether the defendant applied the amounts so raised for constructing and improving the roads in the said county road system or to pay annual debt charges upon debentures issued by the defendant for such purpose or for maintaining and superintending such roads or for other expenditures properly chargeable to the said system, and that such remissions are not to be confined solely to expenditures in respect of maintenance purposes as claimed by the defendant.

12. By reason of the methods followed by the defendant in levying the said annual general rate in each of the said years, the same being bulked and included with other county rates levied by the defendant and not separated therefrom, and by reason of the manner in which the defendant demanded of or requisitioned the plaintiff for the amount to be raised and provided by it under such levy, the plaintiff has been and is unable to determine with any accuracy or certainty the amounts of the said remissions to which it is entitled, but says that the amounts still owing by the defendant for the said three years exceed the sums so remitted to the plaintiff by several thousand dollars.

No. 2
Statement
of Claim
Dec. 24th,
1929
—continued

13. The defendant has neglected or refused to make payment of the said remissions to which the plaintiff is so entitled, and has refused to account to the plaintiff therefor or to permit any access to its books and records to enable the plaintiff to ascertain the amount to which it is entitled.

14. The plaintiff therefore claims:

(1) Payment by the defendant of the full amount of the remissions to which it is entitled under the said Act as aforesaid.

(2) A reference and an accounting to ascertain the amount to which it is so entitled.

(3) Judgment for the said amount, when ascertained, with interest. 10

(4) Its costs of action.

(5) Such further or other relief as to this Honourable Court may seem just or proper.

DELIVERED this twenty-fourth day of December, A.D. 1929, by INGER-SOLL, KINGSTONE & SEYMOUR of the City of St. Catharines in the County of Lincoln, Solicitors for the said Plaintiff.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE

Plaintiff, 20

—and—

THE CORPORATION OF THE COUNTY OF LINCOLN

Defendant.

STATEMENT OF DEFENCE

No. 3
Statement
of Defence
Jany. 14th,
1930

1. This Defendant admits paragraphs one, two, three and four of the Plaintiff's Statement of Claim, and denies all the other allegations in the said Statement of Claim, and puts the Plaintiff to the strict proof thereof.

2. This Defendant further says that the provisions of the Statute under which the Plaintiff claims remission, if it is entitled to any remissions, which the Defendant does not admit, but denies, only apply to County Road work 30 initiated and completed since the amendments to the Highway Improvement Act came into force and effect.

3. This Defendant further submits that the Sections of the Statute under which the Plaintiff claims remissions are not retroactive and that the

Plaintiff is bound to pay its share of all levies made by the Defendant in connection with the issue of debentures or other work performed for County Road purposes under the provisions of The Highway Improvement Act prior to the coming into effect of the amendments to the said Act made in 1926, 1927, and 1928, if the Plaintiff is entitled to any remissions at all, which the Defendant does not admit but denies.

No. 3
Statement
of Defence
Jan. 14th,
1930.
—continued

4. This defendant further says that to give effect to the Plaintiff's claim would impair the contractual obligations entered into between this Defendant and the holders of their debentures issued to pay for roads constructed under the said Act, prior to the years abovementioned, and would alter and change the whole scheme of the said Highway Improvement Act and compel the other municipalities of the County to bear additional burdens.

5. This Defendant further says that the amounts returned to the Plaintiff as set out in the Plaintiff's Statement of Claim, are the only amounts to which it is entitled under the provisions of the said Act, if it is entitled to any remissions, which the Defendant does not admit but denies.

6. This Defendant further says that Section 28 of the said Highway Improvement Act does not apply because the said Plaintiff has already been supplied with an improved highway.

7. This Defendant further says that if the Defendant paid the Plaintiff the moneys claimed, it would not be entitled to treat the payments as part of the expenditure in carrying out a plan of highway improvement for the purpose of ascertaining the amount of aid to be granted to the County under the Act, as they would not be allowed as payments to the Defendant under Sub-section 6 of Section 28 of the Highway Improvement Act.

8. The Defendants ask that this action be dismissed with costs.

DELIVERED this Fourteenth day of January A.D. 1930, by A. W. MARQUIS, K. C., of the City of St. Catharines, in the County of Lincoln, Solicitor for the said Defendant.

No. 4
Joinder of
Issue
Jany. 16th,
1930

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
Plaintiff,

—and—

THE CORPORATION OF THE COUNTY OF LINCOLN
Defendant.

JOINDER OF ISSUE

The Plaintiff JOINS ISSUE with the Defendant on its Statement of Defence filed herein. 10

DELIVERED this sixteenth day of January, A.D. 1930, by INGERSOLL, KINGSTONE & SEYMOUR of the City of St. Catharines in the County of Lincoln, Solicitors for the Plaintiff.

No. 5
Statement
of Facts
May 20th,
1930

PORT DALHOUSIE AND COUNTY OF LINCOLN

Admit the road through Port Dalhousie is part of a County Road System and is not an extension or connecting link within the meaning of clause B. s. s. 5, Sec. 28.

Admit the agreement dated 30th January 1923 and that the payments were commuted in 1924 by a payment by the county, \$3,296.00 or paid in satisfaction of all money claims of Plaintiff under the agreement. 20

Admit the agreement 16 July, 1923, was performed by both parties.

Admit the payments mentioned in pleadings as stated in paragraph 10 of Statement of Claim.

The County in 1926, 1927, 1928, 1929, made a general levy for maintenance of roads included in the county road system and for sinking fund and interest on outstanding debentures which debentures had been issued to raise money for construction and improvement of said roads and for construction and improvement of roads embraced under name of suburban roads.

All levies made by county have been paid.

Either party may put in copies of by-laws which are relevant. 30

No levy has been made for sinking fund or interest on debentures which may have been issued since 1925 excepting for suburban roads.

EXHIBIT No. 1,

Supreme Court, Province of Ontario, Co. of Lincoln
 Port Dalhousie
 v.
 Lincoln.

This Exhibit, the property of the parties is produced by Counsel for parties this 20th day of May, 1930.

(Sgd.) EDWIN J. LOVELACE,
 Local Registrar, S.C.O.

10

IN THE SUPREME COURT OF ONTARIO

VILLAGE OF PORT DALHOUSIE V. COUNTY OF LINCOLN

No. 6
 Trial
 Proceedings
 May 20th
 and 21st
 1930

Tried before the Honourable MR. JUSTICE WRIGHT, at St. Catharines, May 20th, and 21st, 1930.

COUNSEL:

COURTNEY KINGSTONE, K.C., for the Plaintiff.
 G. LYNCH STAUNTON, K.C., and } For the Defendant.
 A. W. MARQUIS, K.C. }

HIS LORDSHIP: It appears to me it resolves itself into the construction of the Statute. Is there anything outside of that?

20 MR. KINGSTONE: There are certain things we will have to offer. I think perhaps we can admit a great deal. The principle your Lordship will have to decide, and we may want a reference as to the amount.

HIS LORDSHIP: Are you prepared to agree, or would you be in a better position by two o'clock? Neither party would want to commit themselves to exact amounts.

MR. STAUNTON: If your Lordship comes to the conclusion the plaintiff is entitled to recover I think we will agree on the amount; there is no doubt about how much there is.

30 HIS LORDSHIP: As I understand the dispute is as to whether the works that were initiated prior to the amendment to the Statute are outside the Statute altogether, whether the Statute is retroactive or whether it applies to the date of its passing.

MR. STAUNTON: That is it.

HIS LORDSHIP: If there are any general facts you can agree upon you can get them in proper form.

(Court adjourned till 2 p.m.)

AFTERNOON SESSION—2 p.m.

No. 6
Trial
Proceedings
May 20th
and 21st
1930
—continued

HIS LORDSHIP: Have counsel agreed on a statement that will cover?

MR. STAUNTON: We have agreed to this: We admit the road through Port Dalhousie is part of a County road system and is not an extension or connecting link within the meaning of clause (d) of subsection 5 of section 28.

I do not know whether you are familiar with the Act; it speaks of connecting links and extensions. Connecting links and extensions are portions of the road which continue to belong to the municipality through which it runs. The road in question is neither a connecting link nor an extension but is part of the system. 10

We admit the agreement dated 30th January, 1923, and that the payments were commuted in 1924 by a payment by the County, \$3,296, or paid in satisfaction of all money claims of plaintiff under the agreement. We say it is for commutation or payment in satisfaction.

MR. KINGSTONE: Nothing remains to be paid.

MR. STAUNTON: We admit the agreement 16th July, 1923, was performed by both parties.

We admit the payments mentioned in the Pleadings as stated in paragraph 10 of Statement of Claim.

The County in 1926, 1927, 1928, and 1929 made a general levy for maintenance of roads. The maintenance includes everything except construction, everything we have to pay in connection with all roads included in the County roads, system, and to pay debentures, which debentures have been raised to pay for construction of the said roads, and for construction and improvement of roads embraced under the name of suburban roads. 20

We admit all levies made by the County have been paid.

MR. KINGSTONE: It does not mean debentures maturing within the year.

MR. STAUNTON: They are payable in yearly instalments.

MR. KINGSTONE: Sinking fund debentures. 30

MR. STAUNTON: For sinking fund, and interest for outstanding debentures.

HIS LORDSHIP: To meet and retire outstanding debentures.

MR. STAUNTON: The sinking fund retires both principal and interest.

MR. KINGSTONE: Interest is separate.

MR. STAUNTON: On outstanding debentures.

HIS LORDSHIP: Isn't there levied each year a certain amount which is applied to pay interest on debentures and the balance is invested so as to meet debentures when they finally fall due?

MR. STAUNTON: Yes. 40

MR. KINGSTONE: For construction and improvement of the roads. All roads improved by the County have been paid.

Either party may put in copies of by-laws which are relevant.

HIS LORDSHIP: You will file these admissions.

MR. KINGSTONE: We are putting in a certified copy of the amended Act of 1930.

HIS LORDSHIP: Have you a printed copy of the Statute?

EXHIBIT NO. 1: Filed by Mr. Staunton: Admissions.

MR. STAUNTON: I am adding a clause that no levy has been made for sinking fund or interest on debentures which may have been issued since 1929 excepting for suburban roads.

MR. KINGSTONE: You have not paid 75 per cent.

MR. STAUNTON: I thought that was covered. All the money we have paid is the money mentioned in the pleadings.

MR. KINGSTONE: They have not paid 75 per cent of the full amount levied.

10 HIS LORDSHIP: The defendants have paid only what is stated in paragraph 10 of the Statement of Claim.

MR. KINGSTONE: They have not paid 75 per cent of the full amount.

MR. STAUNTON: That is not 75 per cent of the amount that was levied.

MR. KINGSTONE: For the construction and improvement of roads, for net charges and interest.

MR. STAUNTON: What we say is this, that we paid 75 per cent in money levied for maintenance, but we have not paid 75 per cent or any sum of money levied by us for payment of our debentures.

MR. KINGSTONE: Supposing we put it this way—

20 HIS LORDSHIP: The Debentures were issued to meet the cost of construction.

MR. KINGSTONE: In the years 1926, 1927 and 1928 they levy for maintenance of the roads including the county road system for debentures, and for construction and improvement of roads and bridges on the main suburban road, and I add a clause that the county has not paid 75 per cent of the moneys levied for this purpose.

MR. STAUNTON: For debentures.

30 HIS LORDSHIP: Is it admitted the debentures were issued and applied, and the proceeds applied towards construction as distinguished from maintenance?

MR. STAUNTON: Yes, my lord.

HIS LORDSHIP: Do you want to go any further than that?

MR. KINGSTONE: The County say they are not liable and have not paid 75 per cent.

HIS LORDSHIP: They set that out in the Pleadings. That is a question for me to determine.

MR. KINGSTONE: It is not clearly that way in the Pleadings.

40 MR. STAUNTON: It is understood and admitted by us we have not paid any percentage of the money raised to pay either Sinking Fund or interest on debentures.

HIS LORDSHIP: You have not contributed in any way by raising a sinking fund to meet debentures, anything towards the construction?

MR. KINGSTONE: Have not rebated the money we paid.

MR. STAUNTON: That is understood.

HIS LORDSHIP: I should think that is clear.

MR. STAUNTON: That is all right.

No. 6
Trial
Proceedings
May 20th
and 21st
1930
—continued

MR. KINGSTONE: Certified copy of by-law amending Highway Improvement Act, 1930.

HIS LORDSHIP: When did it become law?

MR. KINGSTONE: 3rd of April, after this action started.

EXHIBIT No. 2: Filed by Mr. Kingstone: Certified copy of By-law amending Highway Improvement Act.

MR. KINGSTONE: The admissions on the Pleadings still stand as they are.

HIS LORDSHIP: They are not withdrawn. Is that all the material?

MR. KINGSTONE: Yes.

MR. STAUNTON: I want to put in the agreement regarding drainage, dated January 30th, 1923, between the parties.

EXHIBIT No. 3: Filed by Mr. Staunton: Agreement regarding drainage dated January 30th, 1923.

EXHIBIT No. 4: Filed by Mr. Staunton: Agreement regarding payments to be made by the County in annual settlement, dated 30th January, 1923.

EXHIBIT No. 5: Filed by Mr. Staunton: Copies of By-laws on levies made in 1926, 1927, 1928 and 1929.

MR. STAUNTON: That is all, my lord.

MR. KINGSTONE: I suggest 1929 be taken off.

HIS LORDSHIP: Remove the by-law of 1929.

That clears the way for the argument, or have you any evidence?

MR. KINGSTONE: No, my lord, no evidence.

(Mr. Kingstone argues.)

(Mr. Staunton argues.)

(JUDGMENT RESERVED)

10

20

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930

S. C. O.,
THE VILLAGE OF
PORT DALHOUSIE
v.
THE COUNTY OF
LINCOLN.

Copy of Reasons for Judgment of Wright J., delivered 24th June, 1930.
A. C. Kingstone, K. C., for Plaintiff.
G. S. Lynch-Staunton, K. C., and A. W. Marquis, K. C., for Defendant.

30

In this case the plaintiff Municipality seeks to recover from the defendant Municipality certain moneys to which it claims to be entitled by virtue of the provisions of The Highway Improvement Act, 1926, cap. 15, The Highway Improvement Act, R.S.O., 1927, cap. 54 and amendments.

In 1917 the County Council of the County of Lincoln passed a By-law numbered 600 under the provisions of The Highway Improvement Act, being R.S.O., 1914, cap. 40 and amendments thereto whereby a system of County highways was established and certain highways were designated as forming part of said system, among other certain streets in the Village of Port Dalhousie, the plaintiff Municipality.

By clause 5 of that by-law it was provided that funds for the construction, improvement and maintenance of such highways be raised by annual levy or by the issue of debentures from time to time or by other means authorized by the Municipal Act.

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930

—continued

Subsequently debentures were issued by the County of Lincoln to meet the cost of construction and maintenance of such county roads, as well as of certain suburban roads to which reference will be made later.

Under by-law number 807 passed on June 15, 1926, the County Council of the County of Lincoln, levied a rate on all the rateable property in the
10 County of Lincoln to raise the interest and sinking fund to meet the debentures authorized to be issued for the construction of the County Roads, and a further sum to be raised in order to pay the interest and sinking fund in respect of debentures authorized to be issued for the County's share of the construction of suburban roads.

By-laws Nos. 846 and 847 for a like or similar purpose were passed in 1927 and 1928 respectively by the same County Council.

The amounts levied against the plaintiff Municipality under these by-laws were duly paid over to the County Treasurer and the plaintiff now claims a refund or rebate of seventy-five per cent. of the amounts so paid, relying
20 on the provisions of subsection 28 of The Highway Improvement Act (R.S.O., 1927, cap. 54.)

It is admitted that the defendant repaid to the plaintiff certain moneys in respect of the levies made in 1926, 1927 and 1928, but refused to pay any proportion of the rates raised for the purpose of paying the interest or sinking fund on or in respect of the debentures issued for the construction and maintenance of county roads prior to 1926, or to rebate any sum whatever in respect of suburban roads.

Certain admissions in writing were put in at the trial of which those material are as follows, viz:—

30 (1) That the road through Port Dalhousie is part of the County Road system and is not an extension or connecting link within the meaning of clause (b) of sub-sec. 5 of section 28 of The Highway Improvement Act, R.S.O., 1927, cap. 54.

(2) That an agreement dated Jan. 30, 1923, between the parties had been performed by the payment by the defendant to the plaintiff of \$3,296. in full satisfaction of all claims under the agreement.

(3) That the defendant in 1926, 1927, 1928 and 1929 made a general levy for maintenance of roads included in the county road system and for sinking fund and interest on debentures issued to raise money for construction
40 and improvement of said roads and for construction and improvement of roads embraced under the name of suburban roads.

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930
—continued

(4) That no levy has been made for sinking fund or interest on debentures in respect of which may have been issued since 1925 excepting for suburban roads.

As a defence to the claims of the plaintiff, the defendant contends:

(1) That the provisions of sub-section 5 of sec. 28 of The Highway Improvement Act do not apply to that portion of the annual rate levied to pay interest or sinking fund in respect of debentures issued to pay for construction of county roads prior to the passing of The Highway Improvement Act, 1926, in other words that the last named Act has no retroactive effect, and that the basis upon which the rebate is calculated should not include anything expended before the passing of the Act of 1926 but only amounts expended thereafter. 10

(2) That suburban roads are not covered or affected by the provisions of sub-section 5 of sec. 28, and are not to be deemed county roads for the purposes of that section.

(3) That the agreement of Jan. 30, 1923, constitutes such an agreement as by virtue of sub-sec. 7 of sec. 28, renders inapplicable the provisions of sub-sec. 5 of sec. 28.

There is a perfect maze of legislation in respect of county roads, but I do not consider it necessary to tread through all that maze in order to discover the intention of the legislature as to the meaning of sub-section 5. 20

This sub-section was first enacted by the Act of 1926 already referred to and manifestly was intended to give relief to villages and towns in a county where a system of county roads was adopted.

In view of the decision in *Merritton v. Lincoln*, 41 O.L.R., p. 6, it would appear that the first part of sub-sec. 5 was superfluous legislation, unless for the purpose of declaring in accordance with the decision what the law was.

Sub-sec. 5 declares that urban municipalities shall be subject to the annual general levy for county road purposes under the by-law mentioned in section 12. By reference to section 12 it will be seen this contemplates a general by-law such as by-law 600 of the defendant municipality, but does not specify the manner in which the money is to be raised in the first instance. Section 14 points out the manner in which the money may be provided and these two sections ought to be read together, the latter as complementary of the former. Thus read the difficulty suggested by the counsel for the defendant disappears. 30

When sections 12 and 14 are read together, then do the provisions of sub-sec. 5 of sec. 28 apply to the facts in the present case?

The annual general levy is for county road purposes whether for present or future construction or to pay for past construction in the form of debentures or otherwise. 40

The only case cited or which I have been able to find at all helpful on the point is *Foster v. Hintonburg*, 28, O.R. 221. In that case the late Mr. Justice McMahon held that the term or expression "school rate" included not only moneys required for current purposes, but also the annual amount required to meet debenture debt maturing each year. Obviously the debentures had been issued to provide funds for past expenditure.

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930
—continued

By-laws Numbers 807, 824 and 846 and 887 state specifically that certain of the moneys authorized to be levied thereunder are to pay the interest and sinking fund authorized to be issued for the construction of county and sub-urban roads, and thus earmark the moneys for such purposes.

In my opinion support is lent to this view by the concluding part of sub-sec. 5 which provides that the cost of repairs (if any) done by the county upon any such county road extension or connecting link or upon any road in such urban municipality included in the county road system during the previous year, shall be deducted from the rebate.

This repair work would generally, if not always, be performed on county roads in the urban municipality constructed prior to the year specified. Thus the statute deals with expenditure on roads constructed before it was enacted and if so it might well be contended to deal also with the debenture rate in respect of such roads.

Clause (b) of sub-sec. 5 also appears to lend support to this view. While it deals with an extension or connecting link mentioned in sub-sec. 1, yet it provided for the rebate in years subsequent to the construction, by excluding the year during which construction or rebuilding takes place, thereby indicating the intention of the legislature to allow rebates after construction has been completed.

Thus far the provisions of the statute favour the plaintiff's contention and but for the provisions of sub-section 6 of sec. 29 of The Highway Improvement Act, 1926, now section 28 R.S.O., 1927, cap. 54, I should hold the plaintiff entitled to succeed on that branch of the case.

In my view, however, the provisions of the last cited sub-section raise an insuperable obstacle to the plaintiff's claim so far as relates to county highways.

This subsection provides that the amount so repaid by the county shall be deemed to form part of the expenditure in carrying out a plan of highway improvement for the purpose of ascertaining the amount of aid which the county should receive from the Province. Section 17 of the Revised Act requires that the County Council should annually or oftener submit a statement shewing the expenditures including payments made to towns and villages—and that the Minister may direct the payment to the County of a percentage of such expenditures.

This contemplates the payment upon construction of a share of the cost by the Province, and it would seem unreasonable that the County would be

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930

—continued

entitled to receive from the Province a proportion of the original cost, and also a proportion of the annual levy to meet the debentures issued for the purpose of paying the balance of the original cost—in other words the government would be required to make the second grant.

This would be the effect if the County of Lincoln is entitled to include in its claim from the Province a rebate granted by it to the plaintiff municipality in respect of the rate levied to meet the maturing debentures issued to defray the original cost. This would seem an unreasonable result, and if possible, to be avoided.

If the contentions of the plaintiff were given effect to, it would change the financial scheme or arrangement under which the highways were constructed and give the legislation a retroactive effect as to the rights of the respective municipalities. Such a construction should only be given effect to, unless it could not be avoided without doing violence to the language of the enactment. See Craies on Statute Law, 3rd ed. p. 326 and cases there cited. Here it is possible to construe the provisions of the Act without giving it a retrospective effect.

The argument advanced by counsel for the defendant that sub-sec. 7 concludes the matter, does not appeal to me as sound.

It provides for the case where the urban municipality receives from the county under an agreement special grants for the purpose of road improvements. The agreement referred to is that provided for in section 5 of The Highway Improvement Act, R.S.O. 1914, cap. 40. Section 9 of The Highway Improvement Act, 1920, section 27 of The Highway Improvement Act, 1926, or section 26 of The Highway Improvement Act, R.S.O., 1927, cap. 54, does not include such an agreement as that entered into between the parties to this action and dated January 30, 1923, and filed as an exhibit at the trial. This last mentioned agreement stipulated that for the use of certain sanitary and storm sewers constructed by the plaintiff Municipality the defendant should pay a yearly sum towards defraying the cost—in effect a rental for the use of such sewers, and not for the purposes of road improvement as contemplated by the Statute.

Turning now to a consideration of the contention that moneys levied by the county to pay debentures issued in respect of suburban roads are not within the purview of sub-sec. 5, it will be observed that under the several enactments relating to suburban roads these have been treated as county roads. See The Ontario Highways Act, 1915, chapter 17, sec. 12, et seq., which is the genesis of this class of road, also The Highway Improvement Act, 1926, cap. 15, sections 36 to 40, and The Highway Improvement Act, R.S.O., 1927, cap. 54.

Under these enactments suburban roads are selected from roads forming part of the county road system, and continue to be under the jurisdiction and control of the county council. The only important change in respect of these roads is that the commission appointed for that purpose shall have the direction

of the work done thereon. The county is not relieved from paying the debt created by the debentures issued to defray the cost of construction, and is entitled to include the sums expended for maintenance and construction in the statement of expenditures furnished to the Department of Highways. See section 36 of R.S.O., 1927, cap. 35.

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930
—continued

Thus to all practical intents and purposes suburban roads retain their character as county roads and as they are not expressly excluded from the operation of sub-section 5 of section 28 it must be held the rebate mentioned in that section includes a rebate of the rate levied for suburban roads as well
10 as for county roads.

The doubt involved in the construction of sub-section 5 of section 28 has been removed as to future rebates by an Act passed by the Legislature at its recent session. See The Highway Improvement Act, 1930, cap. 10, sec. 5, sub-section 2 (c) which reads as follows:

“(c) In determining the amount of such rebate payable in the year 1931 and thereafter the amount raised by the corporation of a town or village for the purpose of paying off its share of any debenture debt of the county shall not be considered.”

For the plaintiff it is contended this enactment shows an intention of the
20 legislature to change the law and therefore it ought to be presumed that prior to its enactment the law was otherwise, and applying such reasoning to the present case the law formerly was that payments in respect of debenture debts should be included.

For the defendant it was contended this enactment was merely to clarify the law and ought not to be presumed to change it.

The authorities cited on this branch of the argument were: Attorney-General v. Clarkson (1900) 1 Q.B.D., 156; Cape Brandy Syndicated v. Inland Revenue Commissioners, (1921) 2 K.B.D. 403; Ormond Investment Company (Limited) v. Betts, (1927) 2 K.B.D. 326.

30 The decision in this last cited case was reversed in the House of Lords' see (1928) A. C. 143, and the review and analysis of the previous decisions by Lord Buckmaster is very instructive. From this decision I deduce the principle applicable to be that where a statute is ambiguous and equally open to two different constructions, if the legislative body enacts other legislation based on the assumption that one of the constructions is the correct one, then such construction shall be deemed to be the proper construction.

It is not clear how this principle can be applied here. The amendment of 1930 does not assume that one of the two constructions of the previous Act is correct, nor is such amendment based on such construction. It merely
40 declares the law for the future.

In the result I hold that the only relief to which the plaintiff is entitled is in respect of the moneys levied by it and remitted to the county to pay its

No. 7
Reasons for
Judgment of
Wright, J.,
24th June,
1930

share of debentures issued in respect of suburban roads after the Act of 1926 came into force, and to ascertain what, if any, moneys are due in respect thereof there will be a reference to the Local Master at St. Catharines if the parties cannot agree upon the amount.

—continued

Success being fairly evenly divided, there will be no costs of action to judgment. Costs of reference reserved until the Master has made his report.

No. 8
Formal
Judgment
June 24, 1930

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE
MR. JUSTICE WRIGHT

}

Tuesday the twenty-fourth day of
June, A. D., 1930.

BETWEEN:

10

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE

Plaintiff,

—and—

THE CORPORATION OF THE COUNTY OF LINCOLN

Defendant

1. This action coming on for trial on the 20th day of May, 1930, before this Court at the Sittings holden at St. Catharines for trial of actions without a jury, in the presence of counsel for both parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment 20 and the same coming on this day for judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that the plaintiff is entitled to recover from the defendant in respect of the monies levied by the said plaintiff and remitted to the defendant County to pay its share of debentures issued in respect of suburban roads after the Highway Improvement Act 1926 came into force.

3. AND THIS COURT DOTH FRUTHER ORDER AND ADJUDGE that there be a reference to the Local Master at St. Catharines to ascertain what, if any, monies are due in respect thereof.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there be no costs of this action down to judgment. 30

5. AND THIS COURT DOTH RESERVE further directions and the question of costs of the said reference until after the Master shall have made his report.

IN THE SUPREME COURT OF ONTARIO

No. 9
 Notice of
 Appeal
 Aug. 29th,
 1930

BETWEEN:

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
 Plaintiff,

—and—

THE CORPORATION OF THE COUNTY OF LINCOLN,
 Defendant.

NOTICE OF APPEAL

10 TAKE NOTICE that the Plaintiff, The Corporation of the Village of Port Dalhousie, appeals to a Divisional Court from the judgment pronounced by the Honourable Mr. Justice Wright on the twenty-fourth day of June, 1930, and asks that said judgment may be set aside and that judgment should be entered in favour of the Plaintiff for the payment of seventy-five per cent. of the full amounts paid by the said Plaintiff to the Defendant for the years 1926, 1927 and 1928 including the annual debt charges upon debentures issued by the Defendant with costs upon the following grounds:—

1. The learned trial Judge erred in holding that subsection 6 of section 29 of The Highway Improvement Act, 1926, now section 28 of R.S.O., 1927, Chapter 54 precluded the Plaintiff from recovering the amount claimed in
 20 this action.

2. The learned trial Judge erred in holding that in this action the amount of the aid which the County was entitled to receive from the Province affected the rights of the Plaintiff and Defendant herein and that the plain language of sub-section 5 of section 28 of the said Act should be cut down or interfered with by the amount of the grant which the Province may or may not make to the said County.

3. The learned trial Judge was in error in holding that the effect of the remission by the County to the Village of seventy-five per cent. of the annual amount raised and levied to pay the debenture debt was not in accordance
 30 with the provisions to the Highway Improvement Act as it would be an unreasonable result and would change the financial scheme or arrangement under which the highways were constructed.

4. The learned trial Judge erred in holding that giving effect to the Plaintiff's claim would give the legislation retroactive effect as to the rights of the respective municipalities.

5. The learned trial Judge wrongly interpreted and construed the provisions of sub-section 2 (c) of section 5 chapter 10 of The Highway Improvement Act, 1930.

No. 9
Notice of
Appeal
Aug. 29, 1930
—continued

6. The learned trial Judge further erred in not giving effect to the plain and unambiguous meaning of the provisions of sub-section 5 of section 28 and in limiting the amount to which the Plaintiff was entitled to recover as remission or rebate to debentures issued in respect of suburban roads after the Act of 1926 came into force.

7. The effect of the judgment and reasons for judgment of the learned trial Judge would be to discriminate between County roads paid for by the issue of debentures and those paid for out of the rates annually and thereby deprive the Plaintiff and other towns and villages similarly situated of the rebate to which they are entitled under sub-section 5 as aforesaid. 10

DATED at St. Catharines this twenty-ninth day of August, A.D. 1930.

INGERSOLL, KINGSTONE & SEYMOUR,
Solicitors for the Plaintiff.

To:
Marquis, Pepler & Marquis,
Solicitors for the Defendant.

APPELLATE DIVISION

COPY OF REASONS FOR JUDGMENT DELIVERED
JANUARY 12TH, 1931

FIRST DIVISIONAL COURT

20

THE CORPORATION OF THE
VILLAGE OF PORT
DALHOUSIE,
vs.
THE CORPORATION OF THE
COUNTY OF LINCOLN

HODGINS, J. A.:—

I am in agreement with my brother Middleton in this case. As I understand the scheme of the Highway Improvement Act, 1927, R.S.O., as given in sec. 12, a County Council can, subject to the approval of the Lieutenant Governor in Council, initiate a plan of county road improvement by assuming roads within the County, and may with certain exceptions tax for that purpose, all municipalities in the County (not separated therefrom for municipal purposes) by a general annual rate. The money thus raised is to be expended in the construction, improvement, maintenance, and superintendence of roads in the county system. Debentures may be issued pursuant to a by-law to meet the estimated expenditure for the construction and improvement of those highways under the Act. 30

No. 10
Reasons for
Judgment
(a)
Hodgins J.
Jany. 12th,
1931

By sec. 28, sec. 5, of the same Act it is provided that a village not separated from the county for municipal purposes shall be subject to the annual general levy for county road purposes under such a by-law as I have just mentioned.

No. 10
Reasons for
Judgment
(a)
Hodgins, J.A.
Jany. 12th,
1931

But there is to be a refund made by the county to such a village of 75% of the amount raised in it by the annual rate, less the cost of repairs, if any, done upon any county road extension or connecting link, or on any road in the village included in the previous year in the county road system. Such rebate is not to be made in any year when the construction or rebuilding of any such county road extension or connecting link has been in progress (ss. 5 (b)).

—continued

This levy is made and this refund is to be given whether the village has or has not any county road extension or connection within its boundaries.

By sub-sec. 6 of sec. 28, this refund "shall be deemed to form part of the expenditure in carrying out a plan of highway improvement in the county for the purpose of ascertaining the amount of aid which may be granted to the county under this Act."

Treating the words "shall be deemed to form part of the expenditure, etc.," in the same way as the words "deemed to include" were construed by Lord Buckmaster in *Rabett v. Commissioner of Stamp Duties*, 1929, A. C. 444, at p. 447, it will be clear that while the refund so made by the County is destined to be spent by the village upon streets therein designated by the Minister of Highways (sub-sec. 5 (a)) and not upon the county highways, it is to be treated as if it were in fact spent on these county roads.

The rebate as it occurs to me, is to recoup the village for a contribution which it is compelled to make to a county road scheme from which it gets no direct benefit, i.e. whether or not it has any county road extension or connection (sec. 5). But the amount the village pays under the annual levy is necessary to enable the county to finance its road improvement, while the withdrawal of the amount which the county has to pay to the village leaves it just so much short of the estimate of the amount required for its expenditure.

Pursuant therefore to the provision that the amount repaid is deemed to be part of its expenditure for which the county may claim a grant, the county is enabled to include it when a grant is asked for, pursuant to sec. 17 of the Act is made, of one-half share of the whole expenditure including this refund which is by a legislative direction designated as being part of it.

I would, therefore, allow the appeal as proposed by my brother Middleton.

MULOCK, C. J. O.:—"I agree."
(HRL)

(b)
Mulock,
C.J.O.

FIRST DIVISIONAL COURT

No. 10
 (c) Reasons
 for
 Judgment
 Middleton,
 J. A.
 12th Jany.,
 1931

MIDDLETON, J. A.:—

Appeal by the plaintiff from the judgment of the Honourable Mr. Justice Wright pronounced on the 24th of June, 1930, by which he dismissed the claim of the Plaintiff to recover so much of the county rate as represented debenture debts for works constructed prior to 1926 and directed a reference to the Master with reference to amounts payable to the plaintiff with respect to the construction of suburban roads.

The underlying principle of the Highway Improvement Act is that it is unjust and inexpedient to cast the whole burden of main highways upon the local municipalities through which they may run. These highways serve the community at large and an attempt is made to provide for an equitable distribution of the financial burden. This is accomplished in two ways: The county is regarded as the primary unit and it receives under the Statute financial aid from the Province at large. On the other hand the small municipality, the town and the village receives assistance from the county. Before 1926 this was governed by the provisions of The Highway Act as found in section 5 of the Revised Statute (1914) cap. 40 which enabled the county to give a bonus to the local municipality and provided that the amount of such bonus should be added to the cost of the work undertaken by the county in making its demands upon the province at large. This left the local municipalities in a precarious plight the extent of aid receivable by them being dependent upon the good will of the county. The change made in 1926 was to give to the local municipality a right to definite relief from the burden of taxation created by the undertaking. This financial relief was intended to be a real and substantial thing for it was stipulated that the relief should be 50% of the cost in the case of towns and 75% in the case of the villages.

A very curious method was adopted of affording this relief: It was not given directly. The local municipalities are expressly made liable to pay in the first instance the full share due by them as part of the normal county rate. The statute as it now stands, R.S.O. (1927), cap. 54, sec. 28 (5), provides that the county "shall on or before the 1st of April in each year remit" the proportion I have already mentioned "of the amount raised by such rate (i.e. the county rate) in the town or village in the previous year" less the cost of repairs a matter not here in question. This remitted fund is not to form part of the general income of the town or village, but is to be expended by it upon streets in the municipality designated by the Minister and it is further provided that this rebate is not to be made for any year during which the work of construction or rebuilding of the road is in progress.

Subject to the considerations next to be discussed this enactment appears to be plain and unambiguous. The right of the village is to receive by way of refund 75% of the amount included in the county rate for the previous year as the cost of the construction of the county roads.

The learned trial Judge considered this prima facie and, I think, clear meaning of the Statute to be displaced by another statutory provision: A clause which is carried forward in substance from the early legislation, namely, the provision found in section 6 that the amount so repaid by the county shall be deemed to form part of the expenditure for carrying out the highway improvement scheme of the county for the purpose of ascertaining the amount of aid which may be granted to the county by the province under the provisions of the statute. The learned Judge rightly infers that this would mean that the county would receive more than one grant from the province in aid of the same work, the official grant when the work is undertaken and an additional grant when the county aids the local municipality and that this conclusively indicates that section 5 relied upon by the village cannot have its prima facie significance. I cannot in any way agree with this. I cannot understand why a right plainly conferred upon the village should be taken from it because the right conferred by the county with respect to a refund from the province is deemed to be unduly in ease of the county. The right of the village is not to be made in this way dependent upon the right of the county. Furthermore this argument ignores the very important fact that in the earlier statute of 1914 the province clearly undertook to share in the burden of the county occasioned by its aid to minor municipalities and there is no reason to suppose that when the right of the village was elevated from a claim upon the generosity and sense of fair dealing of the county to a claim as of right, the government should recede from its willingness to share in the financial relief so granted.

The argument moreover really nullifies the benefit conferred upon the minor municipality. There is nothing to prevent the county paying for the construction of the road on the cash basis and if so the municipality would unquestionably be relieved with respect to its share in the whole cost of the undertaking. The county for its own purposes issues debentures payable over a series of years and the contention of the county is that by adopting this plan the local municipality is deprived of its right of recoupment with regard to its share of the entire cost and relegated to its share of the amount payable in the first year only, a shocking injustice to the minor municipality and I should have thought a result clearly contrary to the legislative intention.

There is, however, an amendment made to the statute providing in the year 1930, cap. 10, sec. 5, which provides that in determining the amount of the rebate payable in 1931 and thereafter the amount of the debenture debts and payments on account thereof is not to be taken into consideration. This indicates the legislative will for 1931 and thereafter, but it is no indication of the true construction of the statute as it stood before that date.

There is, however, another argument pressed upon us upon the hearing of the appeal which appears to me to be more formidable. It is said that what is mainly objected to by the county is the giving of a rebate with respect to payments made after 1926 with reference to works constructed before 1926, and that this might possibly produce hardship upon a county which had

No. 10
(c)
Reasons for
Judgment
Middleton,
J. A.
12th Jany.,
1931
—continued

No. 10
 (c)
 Reasons for
 Judgment
 Middleton,
 J. A.
 12th Jany.,
 1931
 —continued

theretofore voluntarily granted relief to the local municipality under the statute of 1914. It is not suggested that any such relief had been granted in fact by this county to this village, and I do not think that the argument is entitled to prevail as against the clear words of the enactment. The refund is to be made with respect to all moneys which were paid by the local municipality for the construction of the county road. There is no distinction drawn in the Act as between payments which are made on account of debentures and payments that are made with respect to the new constructions.

The appellants also complain that the terms of the reference as to suburban roads are not sufficiently wide. Counsel for the respondent agree with this contention and the reference should be amended accordingly. 10

The result is the appeal is allowed and a declaration should be made in accordance with the above finding with the appropriate reference if the parties cannot agree upon the figures.

(d) Magee, MAGEE, J.A. } "I agree."
 J. A. GRANT, J.A.: }
 (e) Grant,
 J. A. (HRL).

IN THE SUPREME COURT OF ONTARIO

No. 11
 Formal
 Judgment
 Jany. 12th,
 1931

THE HONOURABLE THE CHIEF JUSTICE OF
 ONTARIO
 THE HONOURABLE MR. JUSTICE MAGEE,
 THE HONOURABLE MR. JUSTICE HODGINS,
 THE HONOURABLE MR. JUSTICE MIDDLETON,
 THE HONOURABLE MR. JUSTICE GRANT.

Monday the twelfth day of
 January, A.D. 1931.

BETWEEN:

10 THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
 Plaintiff,
 —and—
 20 THE CORPORATION OF THE COUNTY OF LINCOLN
 Defendant.

UPON MOTION made unto this Court on the 24th day of November, 1930, by Counsel on behalf of the Plaintiff in the presence of Counsel for the Defendant, by way of appeal from and to set aside the judgment pronounced by The Honourable Mr. Justice Wright on the 24th day of June, 1930, UPON HEARING READ the Pleadings and Proceedings in the Action, the evidence adduced at the Trial and the judgment aforesaid AND UPON HEARING what
 20 was alleged by Counsel aforesaid, this Court was pleased to direct that this Motion stand over for judgment and the same coming on this day for judgment and this Court having directed that if the Parties cannot agree as to the amount which the Plaintiff is entitled to recover from the Defendant that it be referred to the Master of this Court at St. Catharines to ascertain and state what amount the Plaintiff is entitled to recover from the Defendant, and the Parties not having agreed,

1. THIS COURT DOTH ORDER that this appeal be and the same is allowed and that the said judgment be varied and as varied be as follows:

30 (1) AND THIS COURT DOTH DECLARE that the Plaintiff is entitled to recover from the Defendant seventy-five per cent of all moneys levied by the said Plaintiff since the Highway Improvement Act 1926 came into force and remitted to the Defendant County in respect of annual general rates made by the Defendant for County road purposes, whether the Defendant applied the amount so raised for constructing and improving the roads in the said County Road System or to pay annual debt charges upon debentures issued by the said Defendant for such purposes or for maintaining and superintending such roads or for such other expenditures properly chargeable to the said system, and doth order and adjudge the same accordingly.

No. 11
 Formal
 Judgment
 Jany. 12th,
 1931
 —continued

(2) THIS COURT DOTH ORDER AND ADJUDGE THAT it be referred to the Local Master of this Court at St. Catharines to ascertain and report what sum the Plaintiff is entitled to recover from the Defendant in respect of the matters referred to in Clause 1 hereof and that the said Master do determine the question of costs of and incidental to the said Reference.

(3) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do recover from the Defendant the amount found due by the said Local Master forthwith after the confirmation of the said Master's report.

(4) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do recover from the Defendant its costs of this Action forthwith after 10 taxation thereof.

2. AND THIS COURT DOTH FURTHER ORDER that the Defendant do pay to the Plaintiff its costs of this appeal forthwith after taxation thereof.

(Sgd.) E. HARLEY,
 Senior Registrar.

Entered O.B. 117, pages 175-6.
 February 16, 1931.
 L.G.

IN THE SUPREME COURT OF ONTARIO

No. 12
 Order
 Admitting
 Appeal to
 His Majesty
 in Council
 Feby. 16th,
 1931.

THE HONOURABLE MR. JUSTICE MIDDLETON } Friday the 16th day of Febru- 20
 In Chambers. } ary, A.D., 1931.

BETWEEN:

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE
 Plaintiff;

— and —

THE CORPORATION OF THE COUNTY OF LINCOLN
 Defendant.

UPON the application of the Defendants, in the presence of counsel for the Plaintiff, for an Order allowing the Bond of the Defendants and United 30 States Fidelity & Guaranty Company, in the sum of Two Thousand Dollars, (\$2,000.00) on the Defendant's Appeal to His Majesty in His Privy Council, and also for an order declaring that the matter in controversy exceeds the sum of Four Thousand Dollars, (\$4,000.00) and upon hearing read the pleadings and proceedings in the action, together with the affidavit of Camby Wismer, filed upon this application, and upon hearing what was alleged by Counsel aforesaid:—

1. IT IS ORDERED that the Bond of the Defendant and United States Fidelity & Guaranty Company, dated the 11th day of February, A.D. 1931, in the penal sum of Two Thousand Dollars, as security that the said Defendant will effectually prosecute its appeal from the Judgment of the Appellate Division of the Supreme Court of Ontario, dated the 12th day of January, A.D. 1931, to His Majesty's Privy Council and will pay such costs and damages as may be awarded against the said The Corporation of the County of Lincoln by His Majesty's Privy Council, be and the same is hereby allowed as sufficient security on an appeal by the said Defendant from the said Judgment.

No. 12
Order
Admitting
Appeal to
His Majesty
in Council
Feby. 16th,
1931
—continued

10 2. AND IT IS FURTHER ADJUDGED that the matter in controversy exceeds the sum of Four Thousand Dollars, (\$4,000.00).

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the appeal to His Majesty's Privy Council to be taxed by the Taxing Officer at Toronto on the final taxation of costs herein.

(Sgd.) E. HARLEY,
Senior Registrar, S.C.O.

(Sgd.) W. E. M.
Entered O.B. 117, page 171.
February 16th, 1931.
L.G.

20

PART TWO—EXHIBITS

AGREEMENT made this THIRTIETH day of JANUARY, A.D. 1923.

BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN
(hereinafter called the "County")

Of the First Part:

—and—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE,
(hereinafter called the "Village")

Of the Second Part:

30 WHEREAS under the authority of By-law No. 700 of the County, the Village has constructed and completed a system of combined sanitary and storm sewers on Lock Street and Main Street, being County Highways in the said Village, at locations thereon and therein and in a manner satisfactory to and approved by the County Engineer.

AND WHEREAS it was agreed between the County and the Village that the County should have the right to make use of the said sewers for the purpose of surface drainage of such County highways and also that the County should make a grant to the Village towards the cost of constructing the said sewers.

40 AND WHEREAS it is expedient to enter into this Agreement to set forth the terms and conditions respecting the said sewers and their construction and maintenance on the said County highway, their use by the County and payment of the said grant by the County.

Exhibit
No. 3
Agreement
regarding
Drainage
Jany. 30th,
1923

Exhibit
No. 3
Agreement
regarding
Drainage
Jany. 30th,
1923
—continued

THEREFORE THIS AGREEMENT WITNESSETH as follows:

1. The County agrees that the Village shall have the right and privilege of having and maintaining the said sewers on Lock Street and Main Street, being County Highways in the said Village for the purpose of the Village and the inhabitants thereof, and for such purposes to open up and excavate in the said highways as occasion may require for any purpose in connection with the said sewers and for maintaining, repairing, renewing, replacing, and making connections with the same and also for the purpose of laying and connecting lateral sewers thereto and therewith: provided, however, and at all times that all such work shall be done in accordance with the directions of and to the approval and satisfaction of the County Engineer, and provided always and at all times that the Village shall save harmless and keep indemnified the County from and against all claims, actions, demands, proceedings and costs by reason of or arising out of the construction and maintenance of the said sewers in and upon the said highways, and any work or works performed or to be performed by the Village in respect of or in connection therewith. Save and except in respect of any works of surface drainage of the said highways belonging to or constructed or maintained by the County. 10

2. The Village agrees that the County shall have the right at all times and for so long as the said highways shall remain under the jurisdiction of the County to connect all works of surface drainage of and for the said County highways and all catch basins and surface drainage laterals, which from time to time may be installed by the County in and upon the said highways, with the said sewers of the Village and to drain all surface waters arising on and from the said County highways in and through the said sewers to the outlet thereof at the old Welland Canal: provided always that all works in connection with the said sewers for such purpose shall be made according to the directions of and to the satisfaction and approval of the Village Engineer, and provided always that the County shall save harmless and keep indemnified the Village from all actions, claims, demands, proceedings and costs arising out of the construction, maintenance, repair and condition of the said works, catch basins and surface drainage laterals and their connections for the surface drainage of said County Highways or by reason of or arising out of the same. 20 30

3. The County hereby agrees with the Village to pay to the Village on the First day of January, in each and every year for the period of twenty years from and including the year 1923, (first payment to be made on the First day of January, A.D. 1923), the sum of Two Hundred and Eighty-four Dollars, and Seventy cents, (\$284.70) by way of grant towards the cost of construction of the said sewers and such payments to be applied by the Village in meeting the debt charges of principal and interest incurred by the Village in respect of the said sewers. 40

IN WITNESS WHEREOF the Corporation of the County of Lincoln has caused these presents to be executed by the Warden and County Clerk,

and the Corporation of the Village of Port Dalhousie has caused these presents to be executed by the Reeve and the Village Clerk, under their respective corporate seals.

Exhibit
No. 3
Agreement
regarding
Drainage
Jany. 30th,
1923

SIGNED, SEALED AND DELIVERED } THE CORPORATION OF THE COUNTY OF
in the presence of: } LINCOLN.
(Sgd.) Robert H. Kemp, Warden.
(Sgd.) Camby Wismer, Clerk.
(SEAL) } THE CORPORATION OF THE VILLAGE OF
10 } PORT DALHOUSIE.
(Sgd.) J. A. Wellington, Reeve.
(Sgd.) A. Wallace, Clerk.

CERTIFICATE

I, CAMBY WISMER, of the Township of Louth in the County of Lincoln, Clerk of the Municipal Corporation of the County of Lincoln, do hereby certify that the within Agreement is a true and correct copy of an Agreement between the Corporation of the County of Lincoln and the Corporation of the Village of Port Dalhousie, dated January 30th, A.D. 1923.

Exhibit
No. 4
Agreement
regarding
Drainage
Jany. 30th,
1923

Given under my hand and seal this } (Sgd.) CAMBY WISMER.
13th day of May A.D. 1930. }

20 (SEAL)

(Copy)

BY-LAW No. 807

A BY-LAW TO RAISE THE SUM OF THREE HUNDRED AND SEVENTY-TWO THOUSAND FIVE HUNDRED AND TWENTY-EIGHT DOLLARS, AND NINETY-FOUR ONE HUNDREDTHS DOLLARS, (\$372,528.94) TO CARRY ON THE BUSINESS OF THE COUNTY FOR THE YEAR NINETEEN HUNDRED AND TWENTY-SIX.

Exhibit
No. 5
By-Law
No. 807
dated June
15th, 1926

30 WHEREAS it is necessary and expedient to raise the sum of One Hundred and Ninety-Nine Thousand, Four Hundred and Eighty-Two Dollars and Nineteen One Hundredths Dollars (\$199,482.19) to defray the General Expenses of the County of Lincoln for the year 1926.

AND WHEREAS it is necessary and expedient to raise the sum of One Thousand, Three Hundred and Sixty Dollars and Sixty-One One Hundredths (\$1,360.61) for the purpose of paying the interest and sinking fund on debentures issued on account of the Queenston and Grimsby debentures issued on account of the Queenston and Grimsby Road under the provision of By-law No. 601 of this County.

Exhibit
No. 5
By-Law
No. 807
dated June
15th, 1926
—continued

AND WHEREAS it is further necessary and expedient to raise the sum of Twenty-Six Thousand, Three Hundred and Forty-Six Dollars and Sixty-Five One Hundredths Dollars (\$26,346.65) in order to pay the interest and sinking fund on debentures authorized to be issued for Patriotic purposes, under the provisions of By-laws Nos. 567, 569, 586; 604 and 619 of this County.

AND WHEREAS it is further necessary and expedient in order to pay the interest and sinking fund on debentures authorized to be issued for the Children's Shelter, under the provisions of By-law No. 602 of this County, to raise the sum of Eight Hundred and Nine Dollars and Sixteen One Hundredths Dollars (\$809.16). 10

AND WHEREAS it is further necessary and expedient to raise the sum of Ninety-Four Thousand Ninety-Five Dollars and Thirty-Eight One Hundredths Dollars, (\$94,095.38) in order to pay the interest and sinking fund authorized to be issued for the construction of Roads in the said County under the provisions of By-laws Nos. 605, 620, 625, 637, 672, 708, 754 and 788 of this County.

AND WHEREAS it is further necessary and expedient to raise the sum of Thirty-Nine Thousand, Five Hundred and Twenty Dollars and Two One Hundredths Dollars (\$39,520.02) in order to pay the annual instalments of principal and interest on debentures authorized to be issued for the County's share of the construction of the Provincial Highways, under the provisions of By-laws Nos. 657, 678, 709, 753 and 787 of this County. 20

AND WHEREAS it is further necessary and expedient to raise the sum of Seven Thousand, Seven Hundred and Fifteen Dollars and Seventy-Five One Hundredths Dollars, (\$7,715.75) in order to pay the interest and sinking fund on debentures authorized to be issued for the County's share of the construction of Suburban Roads, as set out in By-laws Nos. 677 and 693 of this County.

AND WHEREAS it is necessary and expedient to raise the sum of Three Thousand, One Hundred and Ninety-Nine Dollars and Eighteen One Hundredths Dollars, (\$3,199.18) in order to pay the interest and sinking fund on debentures authorized to be issued for the construction of a Registry Office as set out in By-law No. 755 of this County. 30

AND WHEREAS the whole rateable property of the County of Lincoln according to the last revised assessment rolls of the local municipalities, as equalized for County purposes, is the sum of \$18,819,080.

AND WHEREAS the whole rateable property of the local municipalities liable for the maintenance of the Queenston and Grimsby Stone Road is the sum of \$15,118,208.00.

THEREFORE, the Municipal Council of the Corporation of the County of Lincoln enacts as follows: 40

(1) THAT for the purpose of defraying the General Expenditures of the County of Lincoln for the year Nineteen Hundred and Twenty-Six, there

shall be raised, levied and collected from the rateable property in the County of Lincoln over and above all costs of collections, an equal rate of 10.6 mills on the said property.

Exhibit
No. 5
By-Law
No. 807
dated June
15th, 1926
—continued

(2) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be issued for Patriotic Purposes By-laws Nos. 567, 569, 586, 604 and 619, and of providing for the sinking fund for the payment of the principal of the said debentures at their maturity, there shall be raised, levied and collected by an equal rate of 1.4 mills on all the rateable property of the County, over and above the cost of collection.

10 (3) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be issued for Children's Shelter, under By-law No. 602 of this County, and of providing for the sinking fund for the payment of the principal of the said debentures at their maturity, there shall be raised, levied and collected by an equal rate of .043 mills on all the rateable property of the County, over and above the cost of collection.

(4) THAT for the purposes of paying the interest which shall accrue on the debentures authorized to be raised for the construction of Roads in the County under the provisions of By-laws Nos. 605, 620, 625, 637, 649, 672, 692, 708, 754 and 788, and of providing for the sinking fund for the payment
20 of the principal of the said debentures at their maturity, there shall be raised, levied and collected by an equal rate of 5 mills on all the rateable property of the County over and above the cost of collection.

(5) THAT for the purpose of paying the interest on the debentures issued by the County of Lincoln under the provisions of By-law No. 601 on account of the Queenston and Grimsby Road and the providing of the sinking fund for the payment of the principal of the said debentures at maturity, there shall be raised, levied and collected by an equal rate of .09 mills on all the rateable property of the local municipalities, liable for the maintenance of the said road.

30 (6) THAT for the purpose of paying the interest that shall accrue on the debentures authorized to be issued for the construction of the Provincial Highway in the said County under the provisions of By-laws Nos. 657, 678, 709, 753 and 787, and of providing for the instalment payments for the payment of the principal of the said debentures at their maturity, there shall be raised levied and collected by an equal rate of 2.1 mills on all the rateable property of the County, over and above the cost of collection.

(7) THAT for the purpose of paying the interest on the debentures issued for the construction of Suburban Roads in the said County under the provisions of By-laws Nos. 677, and 693, and providing for the sinking fund
40 for the payment of the principal of the said debentures at maturity, there shall be raised, levied and collected by an equal rate of .41 mills on all the rateable property of the local municipalities.

(8) THAT for the purpose of paying the interest on debentures issued for the County of Lincoln for the construction of the Registry Office, under

Exhibit
No. 5
By-Law
No. 807
dated June
15th, 1926
—continued

provisions of By-law No. 755, and providing for the sinking fund of said debentures at maturity, there shall be raised, levied and collected by an equal rate of .17 mills on all the rateable property of the County of Lincoln, over and above the cost of collection.

(9) THAT the several rates imposed by this By-law shall be raised, levied and collected by the councils and officers of the Local Municipalities, severally liable therefor, and shall be paid over to the Treasurers of the several Municipalities to the Treasurer of the County of Lincoln.

(10) THAT it shall be the duty of the Clerk of the County to certify to the Clerk of each Municipality forthwith, the amount to be raised and paid over to the County Treasurer by such municipality under the several provisions of this By-law. 10

(11) THAT the amounts which shall be required to be raised, levied and collected by each municipality of the County for the several purposes mentioned in this By-law, shall be as set out in Schedule "A" to this By-law, which is incorporated with and forms part of this By-law.

PASSED in Council, this 15th day of June, A.D. 1926.

(Sgd.) R. H. JOHNSTON, Warden.

(Sgd.) CAMBY WISMER, Clerk.

COUNTY ASSESSMENTS—1926

Municipality	Assessment	Gen. Purp.	Patriotic	Child. Shelt.	Co. Roads	Sub. Roads	Prov. High.	Reg. Office	Q. & C.	Totals
Niagara Town..	\$ 798,739	\$ 8,466.63	\$ 1,118.23	\$ 34.34	\$ 3,993.69	\$ 327.48	\$ 1,677.35	\$ 135.78	\$ 15,753.50
Pt. Dalhousie.	616,377	6,533.59	862.92	26.50	3,081.89	252.71	1,294.39	104.78	\$ 55.47	12,212.25
Merritton.....	1,258,942	13,344.78	1,762.51	54.13	6,294.71	516.16	2,643.77	214.02	113.30	24,943.38
Grimsby.....	1,012,144	10,728.72	1,417.00	43.52	5,060.72	414.97	2,125.50	172.06	91.09	20,053.58
Beamsville.....	635,458	6,735.85	889.64	27.32	3,177.29	260.53	1,334.46	108.02	57.19	12,590.30
Niagara Twp...	1,893,250	20,068.45	2,650.55	81.40	9,466.25	776.23	3,975.82	321.85	170.39	37,510.94
Grantham.....	2,454,462	26,017.29	3,436.24	105.54	12,272.31	1,006.32	5,154.37	417.25	220.90	48,630.22
Louth.....	2,206,134	23,385.02	3,088.58	94.86	11,030.67	904.51	4,632.88	375.04	198.55	43,710.11
Clinton.....	2,038,159	21,604.48	2,853.42	87.64	10,190.79	835.64	4,280.13	346.48	183.43	40,382.01
N. Grimsby....	2,009,490	21,300.59	2,813.28	86.40	10,047.45	823.89	4,219.92	341.61	270.29	39,903.43
S. Grimsby....	993,792	10,534.19	1,391.30	42.73	4,968.96	407.45	2,086.96	168.94	19,600.53
Gainsboro.....	1,684,315	17,853.73	2,358.04	72.42	8,421.56	690.56	3,537.06	286.33	33,219.70
Caistor.....	1,217,818	12,908.87	1,704.94	52.36	6,089.09	499.30	2,557.41	207.02	24,018.99
Total	\$18,819,080	\$199,482.19	\$26,346.65	\$809.16	\$94,095.38	\$7,715.75	\$39,520.02	\$3,199.18	\$1,360.61	\$372,528.94

Exhibit
No. 5
By-Law
No. 807
dated June
15th, 1926
—continued

CERTIFICATE

Part
Exhibit
No. 5

I, CAMBY WISMER, of the Township of Louth, in the County of Lincoln, Clerk of the Municipal Corporation of the County of Lincoln, do hereby certify that the within By-law is a true and correct copy of By-law No. 807 passed by the Municipal Council the 15th day of June A.D. 1926.

Given under my hand and seal }
this 16th day of May, A. D. } CAMBY WISMER.
1930.

(Copy)

BY-LAW No. 824

10

Exhibit
No. 5
By-Law
No. 824
dated April
19th, 1927

A BY-LAW TO RAISE THE SUM OF FOUR HUNDRED THOUSAND AND NINETY-THREE DOLLARS AND FORTY ONE HUNDREDTHS DOLLARS (\$400,093.40) TO CARRY ON THE BUSINESS OF THE COUNTY FOR THE YEAR NINETEEN HUNDRED AND TWENTY-SEVEN.

WHEREAS it is necessary and expedient to raise the sum of Two Hundred and Thirty-Two Thousand and Thirty-Nine Dollars and Twenty-Six One Hundredths Dollars (\$323,039.26) to defray the General Expenses of the County of Lincoln for the year 1927.

AND WHEREAS it is further necessary and expedient to raise the sum of Twenty-Six Thousand, Three Hundred and Forty-Six Dollars and Sixty-Five One Hundredths Dollars (\$26,346.65) in order to pay the interest and sinking fund on debentures authorized to be issued for Patriotic purposes, under the provisions of By-laws Nos. 586, 604, and 619 of this County. 20

AND WHEREAS it is further necessary and expedient to raise the sum of Ninety-One Thousand, Two Hundred and Seventy-Two Dollars and Fifty-Four One Hundredths Dollars (\$91,272.54) in order to pay the interest and sinking fund authorized to be issued for the construction of Roads in the said County under provisions of By-laws Nos. 605, 620, 625, 637, 672, 649, 692, 708, 754 and 788 of this County.

AND WHEREAS it is further necessary and expedient to raise the sum of Thirty-nine Thousand, Five Hundred and Twenty Dollars and Two One Hundredths Dollars (\$39,520.02) in order to pay annual instalments of principal and interest on debentures authorized to be issued for the County's share of the construction of the Provincial Highways, under the provisions of By-laws Nos. 657, 678, 709, 753 and 787 of this County. 30

AND WHEREAS it is further necessary and expedient to raise the sum of Seven Thousand, Seven Hundred and Fifteen Dollars and Seventy-Five One Hundredths Dollars (\$7,715.75) in order to pay the interest and sinking fund on debentures authorized to be issued for the County's share of the construction of Suburban Roads as set out in By-laws Nos. 677, and 693 of this County. 40

AND WHEREAS it is necessary and expedient to raise the sum of Three Thousand, One Hundred and Ninety-Nine Dollars and Eighteen One Hundredths Dollars (\$3,199.18) in order to pay the interest and sinking fund on debentures authorized to be issued for the construction of a Registry Office' as set out in By-law No. 755 of this County.

Exhibit
No. 5
By-Law
No. 824
dated April
19th, 1927
—continued

AND WHEREAS the whole rateable property of the County of Lincoln according to the last revised assessment rolls of the local municipalities, as equalized for County purposes, is the sum of \$18,819,080.00.

THEREFORE the Municipal Council of the Coporation of the County of
10 Lincoln enacts as follows:

(1) THAT for the purpose of defraying the General Expenditures of the County of Lincoln for the year Nineteen Hundred and Twenty-Six there shall be raised, levied and collected from the rateable property in the County of Lincoln over and above all costs of collections, an equal rate of 12.33 mills on the said property.

(2) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be issued for Patriotic Purpose By-laws Nos. 586, 604 and 619 and of providing for the sinking fund for the payment of the principal of the said debentures at their maturity there shall be raised, levied
20 and collected by an equal rate of 1.4 mills on all the rateable property of the County, over and above the cost of collection.

(3) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be raised for the construction of Roads in the County under the provisions of By-laws Nos. 605, 620, 625, 637, 649, 672, 692, 708, 754 and 788, and of providing for the sinking fund for the payment of the principal of the said debentures at their maturity, there shall be raised, levied and collected by an equal rate of 4.85 mills on all the rateable property of the County over and above the cost of collection.

(4) THAT for the purpose of paying the interest which shall accrue
30 on the debentures authorized to be issued for the construction of the Provincial Highway in the said County under the provisions of By-laws Nos. 657, 678, 709, 753 and 787 and of providing for the instalment payments for the payment of the principal of said debentures at their maturity, there shall be raised levied and collected by an equal rate of 2.1 mills on all the rateable property of the County, over and above the cost of collection.

(5) THAT for the purpose of paying the interest on the debentures issued for the construction of Suburban Roads in the said County under the provisions of By laws Nos. 677 and 693 and providing for the sinking fund for the payment of the principal of the said debentures at maturity, there shall be
40 raised, levied and collected by an equal rate of .41 mills on all rateable property of the local municipalities.

(6) THAT for the purpose of paying interest on debentures issued for the County of Lincoln for the construction of the Registry Office, under provisions of By-law No. 755, and providing for the sinking fund of said deben-

Exhibit
No. 5
By-Law
No. 824
dated April
19th, 1927
—*continued*

tures at maturity, there shall be raised, levied and collected by an equal rate of .17 mills on all the rateable property of the County of Lincoln, over and above the cost of collection.

(7) THAT the several rates imposed by this By-law shall be raised, levied and collected by the councils and officers of the local municipalities, severally liable therefor, and shall be paid over by the Treasurers of the several Municipalities to the Treasurer of the County of Lincoln.

(8) THAT it shall be the duty of the Clerk of the County to certify to the Clerk of each Municipality forthwith, the amount to be raised and paid over to the County Treasurer by such municipality under the several provisions 10 of this By-law.

(9) THAT the amounts which shall be required to be raised, levied and collected by each municipality of the County for the several purposes mentioned in this By-law, shall be as set out in Schedule "A" to this By-law, which is incorporated with and forms part of this By-law.

Passed in Council this 19th day of April, A. D. 1927.

H. B. STRONG, Warden.
CAMBY WISMER, Clerk.

SCHEDULE "A" COUNTY ASSESSMENTS OF RATES—1927

Municipality	Assessment	Gen. Purpose	Patriotic	Co. Roads	Sub. Roads	Prov. High.	Reg. Office	Totals
Niagara Town.....	\$ 798,739.	\$ 9,848.45	\$1,118.23	\$ 3,873.88	\$ 327.48	\$1,677.35	\$135.78	\$16,981.17
Pt. Dalhousie.....	616,377.	7,599.93	862.92	2,989.43	252.71	1,294.39	104.78	13,104.16
Merritton.....	1,258,942.	15,522.75	1,762.51	6,105.87	516.16	2,643.77	214.02	26,765.08
Grimbsy.....	1,012,144.	12,479.74	1,417.00	4,908.90	414.97	2,125.50	172.06	21,518.17
Beamsville.....	635,458.	7,835.20	889.64	3,081.97	260.53	1,334.46	108.02	13,509.82
Niagara Twp.....	1,893,250.	23,343.77	2,650.55	9,182.26	776.23	3,975.82	321.85	40,250.48
Grantham.....	2,454,462.	30,263.52	3,436.24	11,904.14	1,006.32	5,154.37	417.25	52,181.84
Louth.....	2,206,134.	27,201.63	3,088.98	10,699.75	904.51	4,632.88	375.04	46,902.39
Clinton.....	2,038,159.	25,130.50	2,853.42	9,885.07	835.64	4,280.13	346.48	43,331.24
N. Grimsby.....	2,009,490.	24,777.01	2,813.28	9,746.03	823.89	4,219.92	341.61	42,721.74
S. Grimsby.....	993,792.	12,253.46	1,391.30	4,819.89	407.45	2,086.96	168.94	21,128.00
Gainsboro.....	1,684,315.	20,767.60	2,358.04	8,168.93	690.56	3,537.06	286.33	35,808.52
Caistor.....	1,217,818.	15,015.70	1,704.94	5,906.42	499.30	2,557.41	207.02	25,890.76
	\$18,819,080.	\$232,039.26	\$26,346.65	\$91,272.54	\$7,715.75	\$39,520.02	\$3,199.18	\$400,093.40

Exhibit
No. 5
By-Law
No. 824
dated April
19th, 1927
—continued

CERTIFICATE

I, CAMBY WISMER, of the Township of Louth, in the County of Lincoln, Clerk of the Municipal Corporation of the County of Lincoln, do hereby certify that the within By-law is a true and correct copy of By-law No. 824 passed by the Municipal Council the 19th day of April A. D. 1927.

Given under my hand and seal } CAMBY WISMER.
this 16th day of May A. D. }
1930.

(Copy)

BY-LAW No. 846

10

Exhibit
No. 5
By-Law
No. 846
dated April
17th, 1928

A BY-LAW TO RAISE THE SUM OF FOUR HUNDRED AND FOUR THOUSAND' SIX HUNDRED AND TEN DOLLARS AND TWENTY-FIVE ONE HUNDREDTHS DOLLARS (\$404,610.25) TO CARRY ON THE BUSINESS OF THE COUNTY FOR THE YEAR NINETEEN HUNDRED AND TWENTY-EIGHT.

WHEREAS it is necessary and expedient to raise the sum of Two Hundred and Thirty-Eight Thousand, Four Hundred and Thirty-Seven Dollars and Sixty-Eight One Hundredths Dollars (\$238,437.68) to defray the General Expenses of the County of Lincoln for the year 1928.

AND WHEREAS it is further necessary and expedient to raise the sum of Twenty-Six Thousand, Three Hundred and Forty-Seven and Five One Hundredths Dollars (\$26,347.05) in order to pay the interest and sinking fund on debentures authorized to be issued for Patriotic purposes, under the provisions of By-laws Nos. 586, 604, and 619 of this County. 20

AND WHEREAS it is further necessary and expedient to raise the sum of Eighty-Six Thousand, Five Hundred and Sixty-Seven Dollars and Seventy One Hundredths Dollars (\$86,567.70) in order to pay the interest and sinking fund on debentures authorized to be issued for the construction of Roads in the said County under provisions of By-laws Nos. 620, 625, 637, 672, 649, 692, 708, 754 and 788 of this County.

AND WHEREAS it is further necessary and expedient to raise the sum of Thirty-Nine Thousand, Five Hundred and Twenty Dollars and Two One Hundredths Dollars (\$39,520.02) in order to pay annual instalments of principal and interest on debentures authorized to be issued for the County's share of the construction of the Provincial Highways, under the provisions of By-laws Nos. 657, 678, 709, 753 and 787 of this County. 30

AND WHEREAS it is further necessary and expedient to raise the sum of Ten Thousand, Five Hundred and Thirty-Eight Dollars and Sixty-Two One Hundredths Dollars (\$10,538.62) in order to pay the interest and sinking fund on debentures authorized to be issued for the County's share of the construction of Suburban Roads as set out in By-laws Nos. 677, 693 and 837 of this County. 40

AND WHEREAS it is necessary and expedient to raise the sum of Three Thousand, One Hundred and Ninety-Nine Dollars and Eighteen One Hundredths Dollars (\$3,199.18) in order to pay the interest and sinking fund on debentures authorized to be issued for the construction of a Registry Office as set out in By-law No. 755 of this County.

Exhibit
No. 5
By-Law
No. 846
dated April
17th, 1928
—continued

AND WHEREAS the whole rateable property of the County of Lincoln according to the last revised assessment rolls of the local municipalities, as equalized for County purposes, is the sum of \$18,819,080.00.

THEREFORE the Municipal Council of the Corporation of the County of
10 Lincoln enacts as follows:

(1) THAT for the purpose of defraying the General Expenditures of the County of Lincoln for the year Nineteen Hundred and Twenty-Eight there shall be raised, levied and collected from the rateable property in the County of Lincoln over and above all costs of collections, an equal rate of 12.67 mills on the said property.

(2) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be issued for Patriotic Purposes By-laws Nos. 586, 604 and 619, and of providing for the Sinking Fund for the payment of the principal of the said debentures at their maturity there shall be raised, levied
20 and collected by an equal rate of 1.4 mills on all the rateable property of the County, over and above the cost of collection.

(3) THAT for the purpose of paying the interest which shall accrue on the debentures authorized to be raised for the construction of Roads in the County under the provisions of By-laws Nos. 620, 625, 637, 649, 672, 692, 708, 754 and 788, and of providing for the sinking fund for the payment of the principal of the said debentures at their maturity, there shall be raised, levied and collected by an equal rate of 4.6 mills on all the rateable property of the County over and above the cost of collection.

(4) THAT for the purpose of paying the interest which shall accrue on
30 the debentures authorized to be issued for the construction of the Provincial Highway in the said County under the provisions of By-laws Nos. 657, 678, 709, 753 and 787, and of providing for the instalment payments for the payment of the principal of said debentures at their maturity, there shall be raised, levied and collected an equal rate of 2.1 mills on all the rateable property of the County, over and above the cost of collection.

(5) THAT for the purpose of paying the interest on the debentures issued for the construction of Suburban Roads in the said County under the provisions of By-laws Nos. 677, 693 and 837 and providing for the sinking fund for the payment of the principal of the said debentures at maturity, there shall
40 be raised, levied and collected an equal rate of .56 mills on all rateable property of the local municipalities.

(6) THAT for the purpose of paying interest on debentures issued by the County of Lincoln for the construction of the Registry Office, under provisions of By-law No. 755. and providing for the sinking fund of said

Exhibit
No. 5
By-Law
No. 846
dated April
17th, 1928
—continued

debentures at maturity, there shall be raised, levied and collected an equal rate of .17 mills on all the rateable property of the County of Lincoln, over and above the cost of collection.

(7) THAT the several rates imposed by this By-law shall be raised, levied and collected by the Councils and officers of the Local Municipalities, severally liable therefor, and shall be paid over by the Treasurers of the several Municipalities to the Treasurer of the County of Lincoln.

(8) THAT it shall be the duty of the Clerk of the County to certify to the Clerk of each Municipality forthwith, the amount to be raised and paid over to the County Treasurer by such municipality under the several provisions of this By-law. 10

(9) THAT the amounts which shall be required to be raised, levied and collected by each municipality of the County for the several purposes mentioned in this By-law, shall be as set out in Schedule "A" to this By-law, which is incorporated with and forms part of this By-law.

Passed in Council this 17th day of April, A. D. 1928.

R. G. DAWSON, Warden.

CAMBY WISMER, Clerk.

SCHEDULE "A" COUNTY ASSESSMENTS OF RATES—1928

Municipality	Assessment	Gen. Purpose	Patriotic	Co. Roads	Sub. Roads	Prov. High.	Reg. Office	Totals
Niagara Town.....	\$ 798,739.	\$10,120.02	\$1,118.23	\$ 3,674.19	\$ 447.29	\$1,677.35	\$135.78	\$17,172.86
Pt. Dalhousie.....	616,377.	7,809.49	862.92	2,835.33	345.17	1,294.39	104.78	13,252.08
Merritton.....	1,258,942.	15,950.79	1,762.51	5,791.13	705.00	2,643.77	214.02	27,067.22
Grimsby.....	1,012,144.	12,823.86	1,417.00	4,655.85	566.80	2,125.50	172.06	21,761.07
Beamsville.....	635,458.	8,051.25	889.64	2,923.10	355.85	1,334.46	108.02	13,662.32
Niagara Towp.....	1,893,250.	23,987.47	2,650.55	8,708.95	1,060.22	3,975.82	321.85	40,704.86
Grantham.....	2,454,462.	31,098.03	3,436.24	11,290.52	1,374.49	5,154.37	417.25	52,770.90
Louth.....	2,206,134.	27,951.71	3,088.98	10,148.21	1,235.43	4,632.88	375.04	47,432.25
Clinton.....	2,038,159.	25,823.47	2,853.42	9,375.53	1,141.36	4,280.13	346.48	43,820.39
N. Grimsby.....	2,009,490.	25,460.23	2,813.28	9,243.65	1,125.31	4,219.92	341.61	43,204.00
S. Grimsby.....	993,792.	12,591.34	1,391.30	4,571.44	556.52	2,086.96	168.94	21,366.50
Gainsboro.....	1,684,315.	21,340.27	2,358.04	7,747.84	943.21	3,537.06	286.33	36,212.75
Caistor.....	1,217,818.	15,429.75	1,704.94	5,601.96	681.97	2,557.41	207.02	26,183.05
Total.....	\$18,819,080.	\$238,437.68	\$26,347.05	\$86,567.70	\$10,538.62	\$39,520.02	\$3,199.18	\$404,610.25

Exhibit
No. 5
By-Law
No. 846
dated April
17th, 1928
—continued

CERTIFICATE

I, CAMBY WISMER, of the Township of Louth, in the County of Lincoln, Clerk of the Municipal Corporation of the County of Lincoln, do hereby certify that the within By-law is a true and correct copy of By-law No. 846 passed by the Municipal Council the 17th day of April A.D. 1928.

Given under my hand and seal }
 this 16th day of May A. D. } CAMBY WISMER.
 1930.

(Copy)

BY-LAW No. 600

10

Exhibit
 No. 6
 By-Law
 No. 600
 dated Feby.
 3rd, 1917

A'By-law of the County of Lincoln to adopt a plan for the improvement of highways throughout the County under the provisions of "The Highway Improvement Acts," and amendments thereto.

WHEREAS under the Act for the Improvement of Public Highways, R. S. O. 1914, Chapter 40, the County Council of any County may by by-law adopt a plan for the improvement of highways throughout the County by assuming highways in any municipality in the County, in order to form or extend a system of County Highways, therein designating the highways to be assumed and improved and intended to form or be added to the said system.

20

AND WHEREAS the said Highway Improvement Act has been amended to permit the Council of any County with the approval of the Minister of Public Works and Highways to exercise the powers and perform the duties provided by the said Act with respect to any part of such County consisting of four or more adjoining townships;

AND WHEREAS the County Council of the County of Lincoln deems it necessary and expedient to adopt a plan for the improvement of certain highways in the County of Lincoln, which said highways are set out and described in Schedule "A" hereto attached and which is incorporated with and forms part of this by-law, in order that the County may avail itself of the benefits of the said Act;

30

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the County of Lincoln, and it is hereby enacted as follows:—

1. The several roads and highways described and set forth in Schedule "A" hereto annexed and forming part of this by-law, are hereby designated and assumed as County Roads, to be improved and maintained under the provisions of the said Highway Improvement Act, and amendments thereto.

2. The said highways shall be constructed, improved and maintained in accordance with all provisions and regulations prescribed by the said Highways Improvement Act and amendments thereto.

3. The work of construction, improvement and maintenance shall be commenced as soon as practicable after the coming into force of this by-law.

4. The County Council shall from time to time by by-laws make such grants as may be necessary and equitable for the construction, improvement and maintenance of highways or portions of highways in Villages or Towns, not separated from the County and in Townships which are extensions of, or form direct connections between different portions of County roads, but the total amount of such grants to any Village or Town or Township shall not exceed the sum of the Provincial grant thereon and the taxation paid
10 by such urban municipalities under the by-law.

5. Funds for the construction, improvement and maintenance of the roads and highways herein designated shall be raised by annual levy based upon the equalized assessments of the municipalities within the County, including incorporated Towns and Villages not separated from the County, or by the issue of Debentures from time to time, or by other means authorized by the Municipal Act, the Highway Improvement Act, or other Statute of the Province of Ontario in that regard and the rate for the payment of such debentures issued for the aforesaid purposes, or any rate levied under authority of, or by reason of, the said Highway Improvement Act, shall be levied and
20 collected upon the rateable property aforesaid, and no part of the cost of improvement and maintenance of the said roads and highways shall be borne by the Municipalities not so included.

6. All grants from the Province under the said Highway Improvement Act shall be expended solely upon the system of roads, regularly assumed and approved as County Roads under the said Act.

7. The County Council shall in each year submit to the Minister of Public Works and Highways for his approval, a general estimate or estimates of the expenditure on the said roads and highways for the ensuing season, and no expenditure in excess of the estimate or estimates so submitted and approved
30 shall be considered a charge upon the Province under the said Act.

This by-law shall not come into force until approved by the Lieutenant-Governor-in-Council in accordance with Section 12 of the said Highway Improvement Act.

Passed in Council this 3rd day of February, 1917.

C. H. CLAUS, Warden.
JOHNSON CLENCH, County Clerk.

Exhibit
No. 6
By-Law
No. 600
dated Feby.
3rd, 1917
—continued

SCHEDULE "A"

Exhibit
No. 6

By-Law
No. 600
dated Feby.
3rd, 1917

—continued

Referred to in By-law No. 600 hereto attached.

ROAD No. 1—The Queenston and Grimsby Stone Road from the western boundary of the County of Lincoln to Queenston, passing through the Villages of Grimsby and Beamsville.

ROAD No. 2—In the Townships of North and South Grimsby, the Wolverton Road from the Queenston and Grimsby Stone Road at Lot No. 15 southerly between Lots 16 and 17, to the Twenty Road in the Township of South Grimsby.

ROAD No. 3—In the Township of North Grimsby, the Ridge Road, 10
from the easterly to the westerly boundary of the Township.

ROAD No. 4—The Grimsby Park Road from Grimsby Park southerly between Lots 2 and 3, to the Concession Road between Concessions 6 and 7 of the Township of South Grimsby.

ROAD No. 5—The Twenty Road from the line between Concessions 6 and 7, of the Township of Caistor, thence northerly following the westerly townline of the Townships of Caistor and South Grimsby to the road between Concessions 8 and 9, of South Grimsby; thence easterly between Concessions 8 and 9 of South Grimsby and following the said Twenty Road through the Villages of Smithville and St. Ann's, and continuing on said road to line 20
between Lots 8 and 9, at the south town line of Clinton; thence northerly to the road between Concessions 6 and 7, and thence easterly to the east town line of Clinton, and thence northerly to the Queenston and Grimsby Stone Road.

ROAD No. 5A—In the Township of Clinton, the Campden Road, between Concessions 6 and 7, from the road between Lots 8 and 9, westerly to the line between Lots 13 and 14.

ROAD No. 5B—In the Township of Louth, the road between Lots 16 and 17, from the road between Concessions 1 and 2, southerly to the Jordan Station road, thence westerly to Jordan Station, thence southerly on the 30
given road and continuing southerly on road between Lots 18 and 19, to concession 5: thence south-westerly across lots 19 and 20 and 21, and westerly on road between Concessions 5 and 6, to the westerly townline of Louth and thence northerly to the road between Concessions 6 and 7, of the Township of Clinton.

ROAD No. 6—In the Townships of Caistor and Gainsborough from the Wentworth County Road at the west of Concession 5 of Caistor, thence southerly following the westerly Townline of Caistor to the road between Concessions 4 and 5 of Caistor, thence easterly between Concessions 4 and 5 of Caistor to the Townline of Caistor and Gainsborough, thence southerly on 40
Townline of Caistor and Gainsborough, to the road between Concessions 3 and 4, of Gainsborough and thence easterly on the line between Concessions 3 and 4 of Gainsborough to the easterly Townline of Gainsborough.

ROAD No. 6A—In the Township of Gainsborough the road between Lots 13 and 14, southerly from the Twenty Road to the road between Concessions 3 and 4.

Exhibit
No. 6
By-Law
No. 600
dated Feby.
3rd, 1917
—continued

ROAD No. 7—Commencing at the south Townline of Caistor the road between Lots 20 and 21 to the road between Concessions 4 and 5 of the Township of Caistor.

ROAD No. 8—In the Township of Caistor from the southerly townline between Lots 10 and 11 thence north-easterly across concessions 1, 2, 3, 4, 5, and 6, and part of Concession 7, to the Townline of Caistor, and Gainsborough; thence northerly on said townline to the north townline of Gainsborough; thence easterly to the road between Lots 7 and 8 of the Township of South Grimsby and thence northerly through the Village of Smithville and continuing northerly on road between Lots 7 and 8 to the road between Concessions A and 8, of the Township of South Grimsby; thence easterly to the first road running north and thence northerly along said road to the road between Concessions 6 and 7 of South Grimsby.

ROAD No. 9—In the Township of Gainsborough from the southerly townline; thence northerly through Wellandport and Bismark to the Twenty Road at St. Ann's.

ROAD No. 10—From the Twenty Road in the Township of Gainsborough thence northerly between Lots 18 and 19 of the Township of Clinton to the 6th Concession and thence to the Village of Beamsville.

ROAD No. 11—In the Township of Clinton from the easterly townline westerly between Concessions 1 and 2 to the road between Lots 16 and 17, and thence southerly to Beamsville.

ROAD No. 12—In the Township of Louth from the southerly townline at Rockway and thence north-easterly to line between Lots 8 and 9, thence northerly between Lots 8 and 9 to line between Concessions 2 and 3 thence easterly on line between Concessions 2 and 3, to line between Lots 7 and 8, and thence northerly to the Lake Shore Road and easterly on the Lake Shore Road to the Village of Port Dalhousie.

ROAD No. 12A—The Martindale Road commencing at the Lake Shore Road between Lots 2 and 3, in the Township of Louth, thence south-easterly across Concession 1, and continuing south-easterly across parts of Concessions 3, 4 and 5 of the Township of Grantham to the limit of the City of St. Catharines.

ROAD No. 13—The Pelham Stone Road from the City of St. Catharines south-westerly to the south Townline of Louth between Lots 2 and 3.

ROAD No. 14—Ontario Street from the City of St. Catharines, northerly to the Village of Port Dalhousie, and continuing through the village of Port Dalhousie, to the easterly limit of the Township of Louth.

Exhibit
No. 6
By-Law
No. 600
dated Feby.
3rd, 1917
—continued

ROAD No. 15—Niagara Street, from the City of St. Catharines to the Lake Shore Road at Port Weller, thence westerly along the Lake Shore Road to Ontario Street, in the Village of Port Dalhousie.

ROAD No. 16—The Niagara Stone Road, from the Queenston and Grimsby Stone Road at Homer to the Town of Niagara, and continuing through the Town of Niagara to the shipping point at the wharf.

ROAD No. 17—In the Township of Niagara, the Creek Road, from the southerly Townline of the Township of Niagara, through St. David's and Virgil, to the Lake Shore Road, thence easterly along the Lake Shore Road to the westerly limits of the Town of Niagara. 10

ROAD No. 18—The Hartzel Road from the Queenston and Grimsby Stone Road in the Township of Grantham, southerly between Lots 11 and 12, to the Village of Merritton, to the southerly limits of the said Village.

PASSED in Council 3rd February, A.D. 1917.

(Sgd.) C. H. CLAUS, Warden.

(Sgd.) JOHNSON CLENCH, County Clerk.

CERTIFICATE

I, CAMBY WISMER, of the Township of Louth, in the County of Lincoln, Clerk of the Municipal Corporation of the County of Lincoln, do hereby certify that the within By-law is a true and correct copy of By-law No. 600 20 passed by the Municipal Council the 3rd day of February A. D. 1917.

Given under my hand and
seal this 16 day of May
A. D. 1930. }

(Sgd.) CAMBY WISMER.

(SEAL)

EXHIBIT No. 6

Part of
Exhibit
No. 6

Supreme Court, Prov. of Ontario, Co. of Lincoln

Port Dalhousie

vs.

Lincoln.

This Exhibit the Property of Defendant is produced by Defendant this
20th day of May, 1930.

(Sgd.) EDWIN J. LOVELACE.

Local Registrar, S.C.O.

10

RECEIVED
Sept. 11, 1930.
CENTRAL OFFICE