

Clerks Table 109

1878

N. J. Court of Errors and Appeals.

THE STATE,

(THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK.)

Plaintiffs in Error,

vs.

THE BOARD OF CHOSEN FREE-HOLDERS OF THE COUNTY OF ESSEX,

Defendants in Error.

In Error.

BRIEF OF HENRY YOUNG,

Counsel for Plaintiffs in Error.

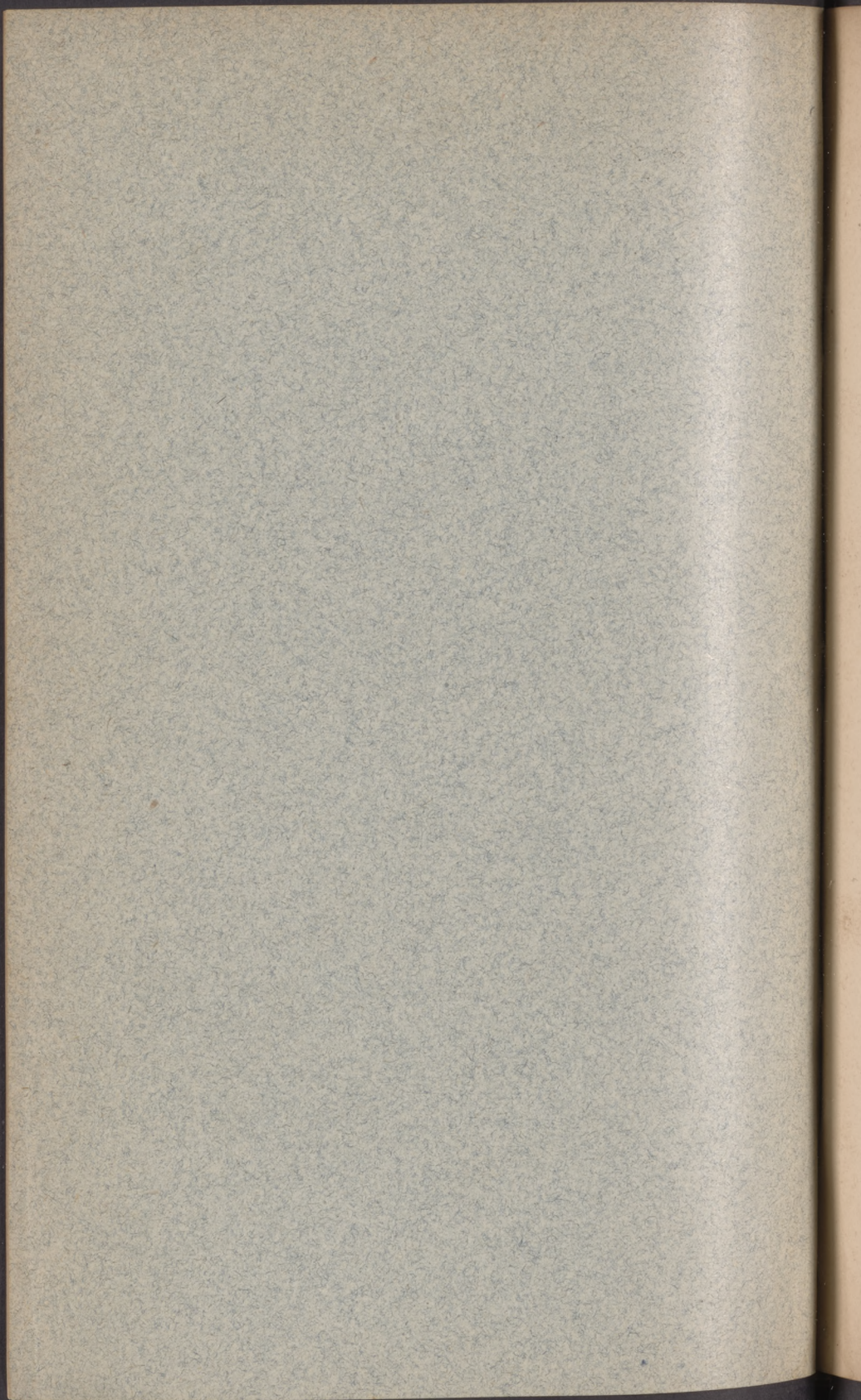
JOHN W. TAYLOR,

Counsel for Defendants in Error.

NEWARK, N. J.:

WARD & TICHENOR, Law Case Printers, 832 and 834 Broad Street.

1878.



NEW JERSEY SUPREME COURT.

THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK,)	}	10
<i>vs.</i>		<i>Certiorari.</i>
THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.	}	

NEW JERSEY, *ss.*

* * L. S. * *	The State of New Jersey, to The Board of Chosen Freeholders of the County of Essex, Greeting:	20
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We being willing, for certain reasons, to be certified of a certain assessment of county taxes for Road Board purposes made by the said Board of Chosen Freeholders of the said county of Essex, for the year eighteen hundred and seventy-seven, and now in process of collection, do command you that the assessment aforesaid, as fully and entirely with all things touching and concerning the same as it remains before you, to the Supreme Court of Judicature, to be holden at Trenton on the fourth Tuesday of February next, you do certify and send, together with this our writ, that therein may be done what of right and according to law ought to be done. 30

Witness, MERCER BEASLEY, Esquire, Chief Justice of our said Supreme Court at Trenton, this ninth day of February, A.D. eighteen hundred and seventy-eight.

B. F. LEE, *Clerk.*

HENRY YOUNG, *Attorney.*

New Jersey Supreme Court.

10	<p style="text-align: center;">THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors</i>,)</p>	<p style="text-align: center;">} <i>On Certiorari.</i></p>
	<p><i>vs.</i></p>	
	<p style="text-align: center;">THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.</p>	

The prosecutors present the following reasons for setting aside the proceedings and assessment brought before this Honorable Court by the writ of certiorari in the above entitled cause :

20 *First.* Because the whole amount of the interest accruing during the year eighteen hundred and seventy-seven, on bonds issued by the Freeholders of Essex county in the construction of public roads in Essex county, should have been assessed upon the county at large, one-half thereof should have been assessed upon the property at large, and the remaining half upon the towns, townships and cities through which the avenues constructed by the Essex Public Road Board are laid, in accordance with the terms of section 7 of an act entitled " An act constituting a Public

30 Road Board for the laying out, constructing, appropriating, maintaining and improving public carriage roads in the county of Essex, approved March 31, 1869," which said supplement was approved February 16, 1870.

Second. Because the said assessment of taxes is in other respects illegal and void.

HENRY YOUNG,
Attorney of Prosecutors.

New Jersey Supreme Court.

THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors</i> ,) <i>vs.</i> THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.	}	<i>On Certiorari.</i> 10
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STATE OF THE CASE.

The following facts are agreed upon by the attorneys of the parties hereto, respectively, to be used as the return to the writ in this cause, and on the argument thereof:

1. The defendants, in the year 1877, directed to be assessed, and there was assessed accordingly, for that year, the sum of \$94,139.42, (being one-tenth of the aggregate cost of construction, &c., of avenues in charge of the Essex Public Road Board,) pursuant to the seventh section of the supplement to the charter of said Essex Public Road Board, approved February 16, 1870. (See Laws of 1870, p. 181.) One-half of this amount was assessed upon the whole county, and the remaining half upon the cities, towns and townships where the avenues were constructed. 20

2. The defendants also, at the same time, directed to be assessed, and there was assessed accordingly, for the same year, the sum of \$101,157, to pay the annual interest on bonds issued by the defendants, pursuant to the provisions of the charter of said Essex Public Road Board, and the supplements thereto. 30

See Laws of 1869, p. 957, sec. 16.

Laws of 1870, p. 181, secs. 7 and 20.

Laws of 1871, p. 175, sec. 1.

(See Essex Public Road Board Acts, pl. 16, 30, 43 and 50.) 40

3. The whole of said sum of \$101,157, raised to meet the annual interest on said bonds, (including the sum of \$65,897.38, hereinafter referred to), was assessed as ordinary county taxes are assessed.

4. Prior to the time of the levying of said taxes, and after the sixteenth day of February, 1870, bonds had, from time to time, been issued by the defendants, pursuant to said charter and supplements, to the amount of \$1,445,100, payable in ten years from their respective
10 dates, with interest at seven per cent., payable semi-annually, for the various purposes or objects mentioned in said section sixteen of said charter, including the cost of constructing avenues or sections thereof, under the charge of the said Essex Public Road Board; but none of said bonds were issued specifically for any of said purposes or objects.

5. At the time said sums were ordered by the defendants to be raised, as aforesaid, the aggregate cost of construction of public avenues in Essex county, under the charge of
20 the Essex Public Road Board, was the sum of \$941,394.20, which amount shows what portion of the proceeds of said bonds was used to pay the costs of constructing said avenues, the interest on which is the sum of \$65,897.38, which forms a part of the \$101,157 mentioned in the schedule as "interest on Road Bonds."

6. The schedule hereto annexed, marked A, shows (among other things,) the cities, towns and townships in which the said constructed avenues and sections thereof
30 are situated, and the mode of apportionment of the tax assessed under said section sixteen, and is made a part hereof.

7. About eighty per cent. of the whole general county tax is assessed and collected in the city of Newark.

8. The cost of construction of the portions of said avenues within the city of Newark, at the time said assessment was ordered, was \$70,950.20.

HENRY YOUNG, *Attorney of Prosecutors.*

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JOHN W. TAYLOR, *Attorney of Defendants.*

[Schedule A.]

TAXES FOR 1877.

The Essex County Board of Chosen Freeholders have fixed the amount of county tax for the current year at \$854,972.71, in addition to the \$3 poll tax provided by law for the sinking fund for the redemption of the war debt.

The assessors are required to meet at the Court House, on the fourth Monday in July (23d), at 10 o'clock A. M., to apportion this amount to the various wards and townships. 10

Also the following additional special township taxes for Road Board :

Newark,	\$1,455 31	for Frelinghuysen avenue,	
Newark,	1,202 04	" Central avenue,	
Newark,	890 16	" Bloomfield avenue,	
Clinton,	3,458 35	" Frelinghuysen avenue,	
Clinton,	3,549 85	" Springfield avenue,	
South Orange,	8,763 59	" South Orange avenue,	
South Orange,	2,007 69	" Springfield avenue,	
East Orange,	390 89	" South Orange avenue,	20
East Orange,	3,865 49	" Park avenue,	
East Orange,	1,168 10	" Central avenue,	
Montclair,	2,850 85	" Bloomfield avenue,	
Bloomfield,	5,221 28	" Bloomfield avenue,	
Belleville,	48 04	" Bloomfield avenue,	
Belleville,	1,702 17	" Washington avenue,	
Belleville,	1,513 64	" Washington ave, Sec. No. 2,	
Orange,	511 50	" Park avenue,	
Orange,	593 35	" Park avenue telfording,	
Orange,	214 05	" Central avenue,	
Orange,	706 39	" Central avenue, No. 2,	
Franklin,	695 18	" Washington avenue,	30
Caldwell,	3,305 19	" Bloomfield avenue,	
Caldwell,	895 75	" Bloomfield avenue, No. 2.	
Millburn,	1,946 24	" Springfield avenue,	
West Orange,	114 61	" Central avenue,	

\$47,069 71

The same being fixed by law, to be raised in said cities and townships by special tax, for the construction of said avenues by the Essex Public Road Board, being one-half of one-tenth of the cost thereof.

OBA WOODRUFF, *Clerk.* 40

Taxes for 1877, \$854,972.71, are as follows:

State Regular Tax,	\$184,278 00
State School Tax,	245,704 00
Salaries Road Board,	5,000 00
Current Expenses Road Board,	5,000 00
Repairs to Roads,	15,000 00
Interest Road Bonds,	101,157 00
Interest Free Bridge Bonds,	2,450 00
Sinking Fund Bonds,	3,500 00
Interest War Bonds,	120,414 00
10 Current expenses, including balance on hand,	125,400 00
Special County Road Tax,	47,069 71
	<hr/>
	\$854,972 71

OPINION.

The Essex Public Road Board was created a public corporation by an act of the legislature passed in 1869, for the purpose of laying out, opening, constructing, improving and maintaining certain public avenues in the county of Essex; Acts 1869, page 957. The Board in its constitution, in the nature and scope of its powers and duties, was made a department of the county government. The moneys required for defraying the costs and expenses of the improvements authorized, were to be furnished to the Road Board by the Board of Chosen Freeholders of the county. 10

By the sixteenth section of Act of 1869, and the twentieth section of a supplement passed February 16, 1870, and an amendatory act passed February 2, 1871, the county was authorized to issue bonds on which to raise money for the purposes aforesaid, which bonds were to be payable in ten years, with interest thereon. Under this legislation the Board of Chosen Freeholders issued bonds of the county, with coupons attached, for the interest at the rate of seven per cent., payable semi-annually. 20

In the apportionment of taxes for the year 1877, the Board of Assessors included in the general county tax the sum of \$101,157 for the interest on the said bonds, and apportioned the quota of the taxes to be laid to raise that sum among the several townships and wards in said county in proportion to the respective valuations of taxable property in the several townships and wards, in conformity with the thirteenth section of the general tax act. Nix. Dig. 953, section 95. 30

The city of Newark contends that this mode of apportionment is erroneous; that the expenditure incident to the construction of these avenues is by special provisions contained in the Road Board acts, to be raised by 40

taxation on an apportionment in the ratio of one-half upon the county and the other half on the cities, towns and townships in or through which the several avenues pass. This suit is prosecuted with a view of presenting this question for adjudication.

- These bonds are made in the name of the Board of Chosen Freeholders of the county of Essex, and sealed with the corporate seal of the county, and are payable to the bearer. As between the holders of these bonds and the county, the promise to pay is absolute, unqualified and unconditional. In a suit thereon the plaintiff would not be required to prove that the means of reimbursing the county under the special provisions of the Road Board acts had been made avoidable to put the county in funds wherewith to pay, nor could the county defend such action on the ground that the means of payment had not been realized from the sources from which it was contemplated that they should ultimately be derived. *Knapp vs. Mayor of Hoboken*, 9 Vroom, 371; *State vs. Parker*, 4 Vroom, 312.
- The judgment on an obligation of this character would be a general judgment, and the execution thereon would be enforceable in the same manner as executions for other debts of the county.

- By section sixteen of the act of 1869, it was made the duty of the county collector to deposit in a bank to be selected by the Road Board, and to the credit of the Essex County Road Board, the moneys necessary to defray the cost and expenses of the improvements in such sums as the Board might from time to time require and direct, and to enable the collector to do so the Board of Chosen Freeholders of the county of Essex was authorized and empowered to issue bonds payable in five years, with interest at such rates as the Board of Chosen Freeholders should designate. By section twenty of the supplement of 1870, it was enacted that the bonds required to be issued by the sixteenth section of the act of 1869 should be payable in ten years in equal annual instalments with the interest thereon; Acts 1870, p. 191. By the supplement of 1871, the twentieth section of the act

of 1870 was amended by striking out the words "in equal annual instalments;" Acts 1871, p. 175.

The general tax law of the State provides the method of raising money by taxation for county purposes. By the thirteenth section the Board of Assessors is required to compute and ascertain the whole value of real and personal estate (after deducting debts), in the several townships and wards, and to fix and adjust the proportion or quota of tax to be levied and collected in each township or ward in proportion to said value; Nix. Dig. 958, 10 s. 13. The apportionment of the amount to be raised being made and the quota being assigned to each township and ward, then by the aid of the township and ward assessors and collectors the assessment and collection can be completed.

But the thirteenth section of the general tax law is part of a general statute, and no rule of construction is more firmly established than that where a general law and a law which applies only to a limited district, as a city or county come in conflict, the general law yields to the special. General legislation on a particular subject, must give way to special legislation on the same subject. *State vs. Clark*, 1 Dutch., 54; *Cross vs. Morristown*, 5 C. E. Green, 303; *State vs. Morristown*, 4 Vroom, 58. 20

It is contended by the City Counsel, that this precise condition of affairs is presented by the seventh section of the act of 1870; that that section prescribes a special mode of apportionment which excludes the operation of the general law; an apportionment of one-half to the county and one-half to the cities, towns and townships in or through which the avenues pass. It must be conceded that the fourth section of the act of 1870 provides a method of apportionment inconsistent with that of the general law, and that whenever the two methods come in conflict the former must prevail. 30

Nor can it be successfully controverted that this section applies to the entire expenditures arising out of the operations of the Road Board. The subject matter of apportionment is declared to be the money necessary to pay the costs and expenses of executing this act and of laying 40

out, opening and constructing the said avenues, and also the amount of rebates for benefits, together with the interest on the said several moneys. Interest on money borrowed under legislative authority for present use is as much part of the costs and expenses of the improvements as money paid to contractors for work done. *State vs. City of Elizabeth*, 8 Vroom, 142. The Road Board act manifestly contemplated that the money to pay for its improvements should be procured by loans on county bonds rather than be provided by present taxation.

10 But does the seventh section prevent the raising of money as a general county tax to pay the interest on bonds which have been issued under the act? In my judgment it does not.

In the first place the county must pay the interest on its obligations, as it accrues from year to year, in full. In the seventh section interest is included in the gross computation of cost and expenses which is to be paid in ten annual installments. The annual interest accruing on
 20 the bonds is incapable of division and distribution in such fractions, and a levy of taxes in that proportion would not provide the means of payment. The money adequate for this necessary annual disbursement can be obtained only by a levy as a general county tax.

Second.—The apportionment by this section of the gross sum to be raised in ten parts “to be paid in ten annual instalments,” implies an equality in the parts approximately. The object of this apportionment was to distribute the burden through the specified term of years,
 30 that it might be more easily borne. The principal money of the bonds is not payable until 1884. The annual interest accruing meanwhile is a comparatively insignificant sum. If a tax laid to raise money to pay interest be reckoned as a levy of one of the ten annual instalments, the consequence would be that the first nine of these levies would be measurably small, and the whole principal sum, now amounting to \$1,353,600, would fall upon the taxpayers at one assessment. Such a construction would defeat the purpose the legislature had in view in dividing

the burden into ten parts and parceling it out in ten annual instalments.

Third.—The twentieth section of the act of 1870, which authorized the issuing of these bonds, expressly enacts that “it shall be lawful to raise by taxation, as part of the county tax of said county of Essex, money to pay said bonds or any portion thereof or the interest thereon.”

The two sections (the seventh and the twentieth) are contained in the same act and must be so construed, if possible, that both may stand. In my judgment there is no conflict between them. Each has in the legislative plan its office, which it may execute without clashing with or infringing upon the other. 10

The twentieth section was designed to furnish the means to enable the county promptly to meet its engagements with its creditors. It provided, so to speak, a temporary expedient for the payment of its obligations without resorting to an extraordinary and unusual method of taxation, such as is created by the seventh section. The means adopted were a county tax—a form of taxation well understood, and to be apportioned, assessed and collected by the simple machinery of the general tax laws. The object of the seventh section was to provide a method of dividing the whole cost and expenditure between the county at large and the several cities, towns and townships in or through which the avenues were laid, and which it was supposed would be specially benefited by the improvements. 20

While it may be true that the whole of the principal and interest of these bonds will enter into the sum which will be subject to that decision, yet that circumstance will not prevent the laying of a county tax to raise money to meet the exigencies of the occasion and enable the county to fulfil its obligations to its creditors. An unjust or perhaps an unreasonable use of this power of provisional taxation could be effectually curbed by mandamus or injunction. But so long as the county uses its power to lay a county tax reasonably and under circumstances fairly warranting such a course, its power to do so is adequate. 3

The apportionment in the present instance was properly made and should be affirmed. 4

New Jersey Supreme Court.

10	THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors</i> .)	}	<i>On Certiorari</i>
	<i>vs.</i>		
	THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.	}	

20 This cause coming on to be heard, in the presence of Henry Young, of counsel for the prosecutors, and of John W. Taylor, of counsel with the defendants, the proofs being read, and the arguments of counsel being heard thereon,

It is ordered, that the assessment made against the prosecutors be and the same is hereby confirmed.

JOHN W. TAYLOR,
 June 10, 1878. *Att'y for Defendants.*

NEW JERSEY, TO WIT:

30 The State of New Jersey to our Justices of our Supreme [L. s.] Court, greeting:

Because in the record and proceedings, and also in the giving of the judgment in a plaint which was in our said Supreme Court before you, between the State of New Jersey (the Mayor and Common Council of the city of Newark being the prosecutors), and the Board of Chosen Freeholders of the county of Essex, defendants, on a certiorari issued out of our said Supreme Court to the said the Board of Chosen Freeholders of the county of Essex directed, as is said, manifest error hath intervened to the
 40 great damage of the said the Mayor and Common Council

of the city of Newark, the prosecutors as aforesaid, as by their said complaint we are informed; we being willing that the error, if any there should be, should be in due manner corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send, distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof, on the third Tuesday of June next, and this writ, that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the laws of the State of New Jersey ought to be done. 10

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, this eleventh day of June, eighteen hundred and seventy-eight.

HENRY C. KELSEY, *Clerk.* 20

HENRY YOUNG, *Attorney.*

The answer of the Justices of the Supreme Court of New Jersey, within named: The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [SEAL] 30

N. J. Court of Errors and Appeals.

10	<p style="text-align: center;">THE MAYOR AND COMMON COUN- CIL OF THE CITY OF NEWARK, <i>Plaintiffs in Error,</i></p>	<p style="text-align: center;">) <i>In Error.</i></p>
	<i>vs.</i>	
20	<p style="text-align: center;">THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX, <i>Defendants in Error.</i></p>	<p style="text-align: center;">) <i>Assignment of Errors.</i></p>

20 Afterwards, to wit, on the eighteenth day of June, eighteen hundred and seventy-eight, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes of law, at Trenton, comes the said the Mayor and Common Council of the city of Newark, by Henry Young, their attorney, and say that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit:

First.—Because the Supreme Court refused to set aside so much of the assessment of taxes against the corporation, plaintiffs in error, as involved the mode in which the interest accruing on bonds of Essex county, issued to pay the costs of construction of public roads in said county, was assessed.

30 *Second.*—Because the judgment of the Supreme Court should have been in favor of the said corporation, plaintiffs in error, and the tax assessment concerning which this proceeding was taken set aside entirely.

Third.—Because the assessment to vacate, which this proceeding was instituted, was illegally made.

HENRY YOUNG,
Attorney of Plaintiffs in Error.

N. J. Court of Errors and Appeals.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX,

ads.

THE STATE,
(THE MAYOR AND COMMON
COUNCIL OF THE CITY OF
NEWARK, *Prosecutors.*)

In Error. 10

And thereupon afterwards, to wit: on the 20th day of June, eighteen hundred and seventy-eight, the said the Board of Chosen Freeholders of the county of Essex, by John W. Taylor, their attorney, came into Court and say that there is no error either in the record and proceeding aforesaid, or in giving the judgment aforesaid, and they pray here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. 20

JOHN W. TAYLOR,

Attorney and of Counsel with Defendants in Error.

N. J. Court of Errors and Appeals.

THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK,)	} In Error.	10
<i>Plaintiffs in Error,</i> <i>vs.</i>		
THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX,	} <i>Defendants in Error.</i>	
<i>Defendants in Error.</i>		

BRIEF OF HENRY YOUNG, CITY COUNSEL.

20

This case was argued before his Honor Justice DEPUE, in February last, with the understanding that his decision should stand as the decision of the Supreme Court.

I ask the Court to vacate so much of the county tax levy of 1877 as relates to the mode of *assessing interest* accruing during the year 1877, on bonds of Essex county, issued in the construction of public roads in the county.

The Essex Freeholders have assessed the whole amount 30 of *interest* on the cost of constructing roads in Essex county, amounting in the year 1877 to \$65,897.38, upon the county at large.

I insist that *one-half* of the interest on such cost of construction should have been assessed, under the provisions of the Road Board acts, upon the whole county, and the remaining half upon the cities, towns and townships through which said avenues have been laid, proportionately to the expense of the said work in the several localities.

40

It appears from the statement of facts agreed on by the counsel that the whole cost of *constructing avenues or sections thereof*, (in Essex county) which had been completed when said taxes were levied, was the sum of \$941,394.20.

Under the acts to which I shall call your attention, this amount is to be raised by taxation *in ten annual installments*. Hence one-tenth, being the sum of \$94,139.42, is to be raised each year for ten years, and the mode of
 10 raising the same, pointed out by the Road Board acts, has been adopted by the Freeholders in the assessment for 1877. (I speak now of the annual installment of the *principal*.) They have assessed each year, since the issue of these bonds, on the county at large, one-half of said annual installments of principal, (*i. e.*, one-twentieth,) and the remaining one-half, (*i. e.*, one-twentieth,) on the cities, towns and townships in which the avenues are constructed. By this mode of assessment sufficient funds will have been realized at the expiration of ten years to meet
 20 the bonds at maturity.

The schedule referred to and attached to the agreement of facts, shows that in accordance with this plan the Freeholders assessed, in 1877, \$47,139.42 on the county at large. This was one-half of the principal to be raised during that year, and the remaining half of the principal was assessed upon the several localities where the roads were constructed. (See Schedule "A.")

The amounts last referred to and appearing in the schedule attached to the statement of facts represent the sums to
 30 be raised for that year in the particular localities where the roads were constructed. So far their assessment was unquestionably right.

The INTEREST on the cost of the construction of these avenues was, however, not assessed in the same manner, but was assessed as a general county charge.

This interest should have been assessed under the law, just as the principal was assessed, namely, one-half thereof on the whole county and the remaining half in the several localities through which the several avenues had been
 40 laid.

The question is of great importance to the citizens of Newark. If the assessment of interest accruing during the year 1877 were made, as we contend it should have been, the *general county tax* for interest on Road Board construction bonds would have been reduced one-half, that is, one-half of \$65,897.38, of which amount Newark pays about eighty per cent.; (see facts agreed on). The amount which the people of Newark are called on then by this mode of assessment to pay, as we contend illegally, is eighty per cent. of \$32,948.69, amounting to \$26,358.95. 10

It further appears from the statement of facts that the amount of work done by the Essex Public Road Board in Newark is comparatively small, (\$70,950.20,) the half interest on which for the year 1877, amounts to \$2,483.25. This amount should be properly deducted from the amount of the over assessment against Newark, to wit, \$26,358.95, leaving the amount which the citizens of Newark are illegally called on to pay by this assessment as \$23,875.70.

It should be observed that the item of \$101,157 referred to in the schedule as "interest on Road Bonds," 20 includes the amount of \$65,897.38 for interest on Road Board construction bonds, and also on bonds issued in payment of damages for land taken in opening avenues and for other purposes authorized by said acts. The Judge in his opinion speaks of this whole amount as interest on construction bonds; this is an error. *We complain only of the assessment of interest on bonds issued for the construction of avenues in Essex county; the interest on bonds for opening and other purposes is properly laid on the whole county.* 30

At the outset the Court will observe that no city officer could raise a valid objection to the *amount* which the county officers determined to raise for county purposes at any time before the taxes became a lien.

The mode of proceeding is this. The freeholders determine the amount of the county tax levy, and how much thereof shall be raised in each locality in cases where the tax does not fall equally on all parts of the county. They certify their conclusion to the Board of County Assessors. 40

After this the officers of the city of Newark are called on to act in conjunction with the Board of County Assessors.

The Board of County Assessors meet on the fourth Monday in July of each year. (Act of 1866, p. 446.) The Board of Assessment and Revision of Taxes of Newark is a component part thereof. (Laws of 1866, Chap. 172, section 2.)

10 What is the duty of this Board? The laws of 1866, page 1078, section 12 and 13, indicate: It is "to fix and adjust the quota of tax to be levied and collected in each township or ward in proportion to values." In other words, this Board fixes the *county tax rate*.

The mere fact then that no objection was made at the time of the meeting of the County Board of Assessors to so much of the county tax as we now object to, is of no significance in this controversy.

20 Some suggestion was made in the argument that relief by certiorari is not proper, on the ground that the real objection is to the amount of the assessment, and this objection ought to have been raised before the Commissioners of Appeal.

I do not so read the law. *Cooley on Taxation*, page 528, says: "While the assessors have the list in their hands, they may no doubt abate any assessment when satisfied that it is wholly or partially unjust or illegal. But where the tax is illegal, one is not obliged to apply for an abatement, but he may contest the tax when an attempt is made to collect it."

30 We insist that this tax is not excessive merely, but illegal—based on erroneous principles, and that the Board of Freeholders had no power to make the assessment in the manner indicated. Of course the illegal part may be easily severed and the rest stand.

Again, *Burroughs on Taxation*, p. 436, says: "Certiorari is now generally used to correct errors of any inferior tribunal in the Courts of general jurisdiction. It is conceded that if it appears from the record that this inferior tribunal has exceeded its jurisdiction, or if the assessor
40 has not kept within the limits prescribed by the statute,

such question may be reviewed and the errors corrected." In *Camden vs. Mulford*, 2 Dutcher, 49, the Court say: "The jurisdiction of the Court is very high and transcendent. Among others it has the superintendence of all inferior courts, both civil and criminal, of all corporations in the exercise of their corporate powers, and of all public commissioners in the exercise of their special authorities and public trusts. Of this kind of jurisdiction are all tribunals established by law for the execution of public trusts, such as Boards of Freeholders, Boards of Assessors, and all corporations of every kind in the execution of their corporate functions," 10

So certiorari will lie to correct and revise an assessment of taxes, although the freeholders did not apply to the Commissioners of Appeal for relief.

State vs. Bently, 3 Zab., 532.

State vs. Mutz, 3 Vr., 199-203.

State vs. Haight, 6 Vr., 279-284.

The question then is, has the assessment of the accruing interest for the year 1877 on *Road Board construction bonds* been properly made? It has been made upon the county at large. Should not one-half thereof have been assessed upon the whole county, and one-half on the cities, towns and townships in which the several avenues are laid? 20

The question is one of construction. The Essex Public Road Board was created in 1869, by act of the Legislature, for the purpose of laying out, opening, constructing, improving and maintaining certain public avenues in Essex county. Laws of 1869, p. 957. This Board was made a department of the county government. All moneys necessary in carrying out its works were required to be furnished by the Board of Freeholders. 30

Section 16, of the Act of 1869, provides generally for the issue of bonds by the Board of Freeholders of Essex county, to raise moneys to pay damages for land condemned, and also the cost of any work done in surveying, locating, laying out, opening, regulating, grading, con- 40

structing, reconstructing, maintaining or otherwise improving any road, or any part or parts thereof, in Essex county, the construction or maintenance of which by law is under the direction, control or management of said Road Board, &c.

See also sections 7 and 20, of the supplement to the act approved February 16, 1870, page 181, and section 1 of another supplement, approved February 2, 1871, page 175.

- 10 An examination of these statutes shows that the bonds authorized to be issued by the Board of Freeholders for Road Board purposes are payable *in ten years from their date*, and it is admitted that the bonds, the interest on which is in controversy in this case, were issued after the supplement of February 16, 1870, went into effect.

- 20 In the apportionment of taxes for 1877, the Board of Freeholders included in the general county tax levy the sum of \$65,897.38 for the interest on Road Board construction bonds, and apportioned the quota of the taxes to raise that amount among the several townships and wards in said county in proportion to the respective valuations of taxable property therein. (General Tax Act, Nixon's Digest, 953, Sec. 95.)

This mode of assessment, with respect to the particular matter in controversy, was erroneous, for the reason that Section 7 of the supplement of February 16, 1870, page 181, prescribes a special mode of assessment which excludes the general law.

- 30 *State vs. Clark*, 1st Dutch., 54.
Cross vs. Morristown, 5 C. E. Gr., 303.
State vs. Morristown, 4 Vroom, 58.

- This section in terms provides that "the money necessary to pay the cost and expenses of executing the act, and of laying out, opening and constructing said avenues, &c., together with the interest on said several moneys, shall be paid in *ten annual installments*, one-half thereof by the county of Essex, to be raised by county tax in the same manner as other county taxes are raised in said
 40 county, and the other half by the several cities, towns

and townships in or through which the several avenues pass, to be levied and collected by the same officers in the same manner and at the same time that the other city, town and township taxes are levied and collected; but the officers so collecting said moneys shall pay the same to the county collector, under the same provisions and regulations as county moneys are now paid by them to the county collector; *provided*, that no one of the said cities, towns or townships shall be liable to a greater extent than to the amount of one-half of the said costs, 10 expenses and amounts, *with the interest accruing on it*, except as to the liability for its quota of the tax to be raised by the county of Essex as aforesaid."

An examination of this provision of the law and its immediate context, will convince that the mode of apportionment indicated relates only to the cost of *construction* of public avenues, and not to the means of raising funds to pay for *land condemned* for Road Board purposes. The words used in the seventh section are "laying out, opening and constructing said avenues." These words 20 include surveying, locating avenues, regulating them, grading them, indeed the whole work of *construction* thereof, and it is the cost of *this work* which is directed to be thus apportioned. An entirely different mode is provided for raising moneys to meet bonds issued to pay for land condemned by the Road Board. Section 6, of the same supplement immediately preceding, provides that the "moneys paid for land or property taken shall be raised by assessing so much thereof as shall be equal to the peculiar benefit upon lands so benefited, and if the 30 moneys *so expended* shall exceed the amount of benefits conferred, *such excess shall be borne by the public at large of the county of Essex.*" See also Section 1, of supplement approved March 17, 1870, p. 714; and Section 7, of supplement approved February 2, 1871, p. 175.

Keeping this distinction in mind, the Court will observe that section (7) specifically and positively fixes the mode in which the cost of constructing said public roads and *the interest accruing thereon*, shall be assessed. It says the cost of constructing said avenues, and *the in-* 40

terest on the cost, shall be raised in ten years, (to meet the ten year bonds when they mature) and the installments of principal and *the interest on the cost of construction* shall be raised, one-half from the county at large and one-half from the cities, towns and townships through which the said avenues are constructed, and lest any doubt should remain as to the mode in which the assessment should be made, the legislature say further, in the *proviso* of said section, that no one of said cities, towns and town-
 10 ships shall be liable to a greater extent than to the amount of one-half of the costs, expenses and amounts, *with the interest accruing on it, (i. e., the interest accruing on one-half of the cost during the running of the bonds.)*

*The Freeholders have disregarded the plain language of this statute. No question of inconvenience in the application of the principle of assessment can arise in the face of such unequivocal language. Nor can any such inconvenience arise, as I shall presently demonstrate. The state of facts shows that this mode of assessment was not
 20 followed, so far as the interest on these bonds is concerned.

Further, the words "interest on said several moneys," used in said Section 7, mean, of course, interest on the whole cost during the time that the bonds which represent the cost are outstanding. They do not mean that *one-tenth* of the interest on the cost of construction should be apportioned each year in the manner designated. The language can bear no such interpretation. It is, "The money necessary to pay the cost of construction, &c., with
 30 the interest thereon, shall be paid in *ten annual installments.*" The bonds which represent this cost are ten year bonds. The interest thereon for *ten years* (at seven per cent. per annum,) will be *seventy per cent.* of the principal. The *annual* installment of this interest (to be raised each year) will be, of course, one-tenth thereof, or *seven per cent.* on the bonds issued, and it is this *annual installment* which is directed to be apportioned between the county at large and the several localities where the roads are laid.

This view is strengthened by considering the *proviso* contained in Section 7. It is that "no one of the cities or towns in which the avenues are constructed shall be liable to pay more than one-half of the cost *with the interest accruing on it,*" (that is, accruing on one-half of the costs,) "except as to the liability for its quota of tax to be raised in Essex county." *The direction is plain that one-half of the interest maturing each year on one-half of the whole cost of construction, should be paid by the several localities in which the roads are constructed.* To say that one-tenth only of the interest accruing each year should be raised in the particular manner designated, is against the spirit and language of the act. 10

The theory of the legislation is, that the public at large in the county receive a benefit, represented by one-half of the cost of the improvements, while the particular localities where the roads are laid are *specially* benefited, and so should pay more than the proportion which otherwise would fall upon them as parts of the county. Hence the legislature has said that these particular localities must pay one-half of the cost of the construction of said avenues and the accruing interest on one-half of said cost, as well as their quota of the amount put upon the county at large; in other words the particular localities specially benefited must discharge one-half of the *whole* cost of construction therein, including *all interest* thereon. 20

The Court cannot disregard the plain language of this enactment, *and it should be observed that it is the only provision contained in any of the Road Board acts which states particularly how moneys expended in the construction of these avenues shall be raised by taxation.* 30

But apart from the express language of the act quoted, *interest* on money borrowed under legislative authority for present use is as much part of the costs and expenses of the improvement as moneys paid to the contractors. *State vs. Elizabeth*, 8 Vroom, p. 42.

The act plainly says that one-half of the *cost* of these avenues shall be borne by the municipalities through which the avenues are constructed. I submit that *with-* 40

out express legislative enactment, the accruing interest on such part of the cost would fall naturally and legally on such localities. This interest is a part of the cost with which they are properly charged.

But it is said that the section quoted (7) does not in terms refer to "bonds," or interest on "bonds," that it does not say in terms the money to pay the *bonds* and *interest* on the *bonds* issued for the construction of avenues, &c., should be raised in the manner designated. This is
 10 true, but the objection has no substance. If the bonds have been honestly issued, as they undoubtedly have been, *the amount of the issue of the bonds corresponds exactly in amount with the cost of construction.* The Board of Freeholders have no power to issue bonds under the provisions of this act except for the purposes designated therein.

That the issue of *bonds* for construction purposes correspond with the *cost* of construction, appears from the facts agreed on in the case, (page 4, printed case, paragraph 5,) and a comparison of Section 16 of the original
 20 Act of 1869, (page 957,) with Section 7 of the Act 1870, will convince that it *must* be so. Section 16 of the Act of 1869, says in general terms, "to enable the collector of the county of Essex to raise money to pay for the cost of *laying out, opening, regulating, grading and constructing avenues or parts of avenues in Essex county, &c.,* the Board of Chosen Freeholders is authorized to borrow moneys from time to time in the name of the Board of Freeholders of the county of Essex *on issues of bonds,*
 30 signed by the director and countersigned by the collector, &c."

Section 7 of the Act of 1870, to which I have referred, says "the money necessary to pay the *cost of laying out, opening and constructing the avenues, together with the interest thereon,* shall be paid in ten annual installments;" the moneys to pay such cost of construction are to be raised in ten annual installments, because the *bonds* are payable in *ten years.* (Sec. 20, Act 1870.)

Hence it appears clearly that bonds are authorized to
 40 be issued under the provisions of the original act to pay

the costs and expenses of constructing these avenues, that no other method is provided in the acts by which the cost of construction can be paid as the work progresses, and that though no bonds may have been issued, specifically, to pay such cost, still bonds *have been* issued which represent *exactly* in amount the cost of such construction.

The opinion of his Honor Justice DEPUE is to the same effect. He says: "The subject matter of apportionment is declared to be the money necessary to pay the costs and expenses of executing this act and of laying out, opening and constructing the said avenues, and also the amount of rebates for benefits, together with the interest on the said several moneys." "The Road Board Act manifestly contemplated that *the moneys to pay for its improvements should be procured by loans on county bonds rather than be provided by present taxation.*" 10

But it is said that bonds are not issued specifically for cost of construction, by which is meant that the bonds do not show on their face for what particular purpose they were issued. It would be singular if they did. They are county bonds, sold on the market for authorized objects. But this fact cannot change the mode of assessment provided by the statute to raise moneys to meet them at maturity. Nor can it alter the fact that the bonds issued on construction account are for a precise and undisputed amount. This is apparent because Section 16 of the original Act of 1869, enacts that the *order* of the Road Board upon the *county collector* for moneys for authorized purposes "*must specify* for what particular purpose or purposes or upon what particular work or proceeding said moneys are required." 20 30

By reason of this provision of law, the counsel for the county is able to agree positively to the statement that the amount of moneys expended on construction account is \$941,394.20, even though no bonds known specifically as construction bonds were issued. (See *Statement of Facts*, paragraph 5.)

The defendants have further given a practical construction to Section 7 of the Act of 1870. They have applied 40

one-half of it. Look at the schedule attached to the statement of facts. They have assessed one-half of the *principal* to be raised during the year 1877 upon the county at large, and the remaining half upon the several localities through which the roads are constructed. Can they apply one-half of the act and not the whole? Yet the language which directs the *accruing interest* on the cost of the construction to be assessed in the manner I have suggested, is quite as plain as it is with reference to

10 the apportionment of the *principal*.

I very respectfully submit to the Court, that the mischiefs which his Honor Justice DEPUE seems to anticipate from the construction contended for cannot arise.

Justice DEPUE says: "The apportionment by this section of the gross sum to be raised in ten parts, to be paid in ten annual installments, implies an equality in the parts approximately. The object of this apportionment was to distribute the burden through the specified term of years that it might be more easily borne."

20 The view I contend for carries out this very idea. So long as the amount of the outstanding bonds remains as now, each year, *exactly the same amount* of principal and interest will be raised until all are discharged. If this view is adopted, (and it is the command of the statute), the burden of taxation from this source will be distributed *equally* throughout the specified term of years. Each year one-tenth of the principal will be paid, and each year the full amount of maturing interest; and this will remain true so long as one of the bonds which are now out-

30 standing is unpaid. The amount of principal and interest raised each year will be *exactly* the same. I am at a loss to understand how the learned Judge could have reached a different conclusion.

He says: "The principal money of the bonds is not payable until 1884. The annual interest accruing meanwhile is a comparatively insignificant sum." (During the year 1877 it is \$65,897.78.) "If a tax laid to raise money to pay interest be reckoned as a levy of one of the ten annual installments, the consequence will be that

40 the first nine of these levies would be measurably small,

and the whole principal sum would fall upon the tax payers at one assessment."

I respectfully suggest that so far from this being the fact, the very opposite would be true. One-tenth of the whole cost and the whole interest maturing would be raised each year, and the last payment would be no greater than the first, and besides the statute would be obeyed.

But it is said that Section 20, of the supplement of February 16th, 1870, in terms authorizes a different mode 10 of assessment from that which is suggested. It says: "The bonds authorized and required to be issued by the Board of Chosen Freeholders of the county of Essex, by virtue of the sixteenth section of the act to which this is a supplement, shall be payable in ten years with the interest thereon; and it shall be lawful to raise by taxation, as a part of the county tax of the said county of Essex, money to pay said bonds, or any portion thereof, or the interest thereon."

The first portion of this section is entirely consistent 20 with the provisions of the seventh section to which I have referred. It says that bonds shall be payable in *ten years*—formerly they were payable in five—(Section 16, Act of 1869.) Section 7, of the Act of 1870, says that "money to pay the cost of construction shall be collected in *ten annual installments*." Hence at expiration of ten years there would be funds in hand to meet the bonds on maturity. This comparison shows a unity and consistency of design on the part of the Legislature. So far Section 20 is entirely in harmony with Section 7. 30

But it is said that the latter portion of Section 20 authorizes the Freeholders to raise by taxation as a *part of the county tax of Essex county*, the money to pay the said bonds, or any portion thereof, and that the interest in question is assessed under the provisions of this section. The Court should observe that this provision is contained in the same act as Section 7, to which I have referred, and *which prescribes a specific mode of assessment*. The two sections must of course be so construed that both may stand. There is no real inconsistency between the two 40

sections. The *apparent* inconsistency is entirely reconcilable, by adding to Section 20 the words "in the manner already indicated," so that the section will read, "and it shall be lawful to raise by taxation, as a part of the county tax, money to pay said bonds, or any portion thereof, or the interest thereon, in *the manner already indicated.*" Reading it in the light of the prior section this is unquestionably the proper construction. If *you adopt a different construction you expunge from the law the entire prior*

10 *section (7).*

With great respect I submit that the view of Judge DEPUE, if it prevail, will produce this very result—so far as the apportionment of interest on the costs of construction is concerned, the 7th section will be completely annulled. The learned Judge shows that the two sections (7 and 20) must be construed so that both may stand, and adds: "The twentieth section was designed to furnish the means to enable the county

20 promptly to meet its engagements with its creditors. It provided, so to speak, a temporary expedient for the payment of its obligations, without resorting to an extraordinary and unusual method of taxation, such as is created by the seventh section. The means adopted were a county tax—a form of taxation well understood, and to be apportioned, assessed and collected by the simple machinery of the general tax laws. The object of the seventh section was to provide a method of dividing the whole cost and

30 expenditure between the county at large and the several cities, towns and townships in or through which the avenues were laid and which it was supposed would be specially benefited by the improvements." He further says: "While it may be true that the whole of the principal and interest of these bonds will enter into the sum which will be subject to that decision, yet that circumstance will not prevent the laying of a county tax to raise money to meet the exigencies of the occasion, and enable the county to fulfil its obligations to its creditors."

To which I reply, that when moneys have *once* been

40 raised to pay the interest on bonds issued in payment of

the construction of avenues in Essex county by a *general county tax*, the Board of Freeholders have no further power with reference to the subject matter; they cannot afterwards *raise it over again* by the method of taxation, (provided in the 7th section.) How an *apportionment* of the interest so raised can *afterwards* be made is entirely beyond my comprehension.

Take an example: suppose the moneys directed to be raised during the year 1877, by the Freeholders of Essex county, to pay the interest and principal on Road Board construction bonds had been paid to the county collector. Would not the power of the Freeholders over that particular matter be forever gone so far as raising the same money by taxation in the future is concerned? Certainly. How then could an apportionment ever be made in the manner which the seventh section commands? The construction adopted in the Court below I insist expunges entirely Section 7 from the statute. *If the city of Newark is compelled to pay this tax, there is no mode provided in these acts by which it can ever be reimbursed by the county.* 10 20

Now the Court will observe that the tax imposed in the manner designated by *Section 7, is a county tax*. So far there is no inconsistency between it and Section 20. It is a county tax because the *county* officers fix the amount to be raised. The money is raised in the *county generally* and in the particular localities where the roads are constructed. The taxes when raised are by the terms of the act directed to be paid to the *county collector* under the same provisions and regulations as county moneys are now paid to him. 30

Further, the Court will observe that the county officers under our system never collect taxes in the sense of receiving them from the tax payer. The different municipalities throughout the county by its receiving officers do that. Yet the moneys collected by these officers are county taxes. Section 7 provides how these taxes shall be collected in the different sub-divisions of the county, and enacts that the moneys when so raised shall be paid

to the county collector. The taxes are of course county taxes.

It should be further observed, that the assessment of taxes in the mode commanded by *Section 7* of the act to which I have referred, will put the county in funds to pay the maturing interest on its bonds *as surely and promptly as though the tax were imposed upon the county at large*. This is manifest from the fact that the county receives *all its taxes from the different municipalities throughout its limits*—(it collects these taxes in no other way)—and the provision of law now in force is that the moneys *first collected* in these different localities shall be paid to the county collector. (See Nixon's Digest, page 956, Sec. 107.)

Again, the position I contend for is sustained by legislation subsequently to 1870. (See supplement of 1872, to Road Board act, page 1269, Section 1st.) This section authorizes the Essex Public Road Board to macadamize certain avenues in the county, (which power it had not possessed before) and says further: "the cost thereof, including all expenses connected therewith, *shall be assessed and paid in the same manner* as now provided by law in respect to the laying out, opening and constructing of the said avenues; provided, however, that *such part of said cost and expenses* as shall be raised and paid in the city of Orange, shall be certified by said Road Board unto the Board of Assessment of said city, and shall thereupon be assessed and collected, and shall be a lien upon lands and real estate in the same manner as assessments for laying out and opening streets in said city are or shall be made."

The inquiry will naturally present itself why a particular locality should be authorized to make a special assessment, if the amount paid by it were a general county burden. The only object of this provision is to reimburse the treasury of the special locality for the excessive amount paid by it in the construction of these avenues, by special assessment on property owners benefited.

So in 1873, page 622, the same provision was made with reference to Newark.

I respectfully submit to the Court that so much of the assessment as relates to the assessment of the interest on the Road Board construction bonds should be vacated.

I answer to the argument of counsel for the defendants, (or so much thereof as has not already been discussed herein) as follows: 10

First. The mode of taxation provided in Section 16, in the original act of March 31, 1869, is repealed by the supplement of February 16, 1870, and especially by Section 7 therein, and if such construction be adopted, the assessment of the defendants is illegal, as I have already contended.

All the bonds issued by the Road Board for constructing avenues were issued after the act of February, 1870, 20 went into effect, and for the cost of constructing the avenues specified in Section 1 of said supplement. See schedule in agreement of facts.

Second. If no bonds called construction bonds had been issued by defendants, still the cost of construction of public avenues in Essex county under these acts must and does correspond exactly with the aggregate of the bonds issued to pay therefor. I have already elaborated this idea. 30

The books of the Freeholders *should* show exactly how much the construction of the avenues had cost, and what bonds, their number, &c., had been issued to pay therefor. Of course bonds were issued and negotiated only as their proceeds was needed to pay for work as it advanced. It will not do for the Freeholders to say, "We have never issued bonds called construction bonds, and so our assessment is right."

But the statement of facts shows exactly how many bonds had been issued to pay the *cost of construction*. 40

Third. Though in a suit on these bonds a general judgment would be obtained against the county, yet that fact does not aid the *interpretation* of the laws under discussion. If *no mode* had been provided in these acts to pay the bonds, a general judgment might still be obtained against the county.

Fourth. I deny the insistent of counsel for the defendants that Section 16 of the original act, and Section 20 of the supplement of 1870, are the only sections of the Road Board acts which relate to the issuing of bonds and provide for raising by taxation moneys to pay them. If this be true, how do the defendants justify the apportionment of the principal of these bonds? The statement of facts shows that the principal of the cost of construction (that is, of the bonds issued to pay the cost of construction) has been apportioned between the county and the several localities where the roads are laid.

On the other hand, we say that Section 7 of the supplement of 1870 is the only section which provides particularly and specifically the mode of taxation; and further, that this section, considered in connection with the *proviso*, indicates that the cost of construction (which equals, of course, the issue of bonds for that purpose,) with the interest *accruing* each year on said cost, should be apportioned. That is what the section says, and should not be construed away by the negligence of the Freeholders in the management of their business, or by the argument of counsel. The object of the law as a whole was that the county should pay one-half of the whole expense of constructing these avenues, and the other half should be borne by the different municipalities where the roads were laid. Yet the interpretation of the counsel for the defendants would put one-half of the original cost on the county at large, and all the interest on the cost, amounting in ten years (while the bonds are outstanding) to seventy per cent. additional to the original cost.

Fifth. The contention of the counsel for defendants that the interest referred to in Section 7 means interest

accrued when the assessment commenced, is not justified by the language of the act. If that amount is to be apportioned, how would it be possible that any city or town should bear more than one-half of the cost and "interest accruing on it" (that is one-half the cost)? If this were the intention, what ~~connection~~, what occasion for the proviso in Section 7?

Sixth. The statement of counsel that the tax of 1877 has been collected does not appear in the case. Our main purpose in this suit has been, and is, to get a construction of these acts. The payment referred to was made for the accommodation of the county, and under an agreement that it should be refunded if this Court should hold the assessment wrong. 10

The form in which relief is sought—that is, in the name of the Mayor and Common Council of Newark—I will not discuss. Originally the writ was in the name of a tax-payer, but was put in this form at the suggestion of Mr. Justice DEPUE. 20

Before the Justice delivered his opinion he directed, as counsel for the defendants knows, the writ to be drawn in this form.

Court of Errors and Appeals.

THE STATE,
(THE MAYOR AND COMMON
COUNCIL OF THE CITY OF
NEWARK, *Prosecutors*.)

vs.

THE BOARD OF CHOSEN FREE
HOLDERS OF THE COUNTY OF
ESSEX.

On Error. 10

BRIEF FOR THE DEFENDANTS IN ERROR.

THE QUESTION.

On the 31st day of March, 1869, the legislature passed an act entitled "An act constituting a Public Road Board for the laying out, constructing, appropriating, improving, and maintaining public carriage roads in the county of Essex," (*Laws of 1869*, p. 957.) Since, several supplements have been passed, which, with the original act, are included in the pamphlet accompanying the *state of the case*, "and herein cited as *Road Board Acts*." 20

In order that the Road Board so constituted might be able to meet the expenses incident to its operations, including the salaries of the officers and employes, awards of damages for land taken, &c., it was provided in the 16th Section of the original act referred to, that the collector of the county should deposit to the credit of the Board so constituted, viz., the "Essex Public Road Board," "any and all such sum or sums of money, as said Board might from time to time require and direct to be so deposited, for payment of the following various classes of items of expenses, viz: 30

1. Assessments or awards of damages for land taken.
2. Costs of surveying, locating, and constructing roads and avenues. 40

3. Costs of maintaining and improving avenues when constructed.

4. Incidental costs and expenses of said Board.

10 "To enable the collector to raise such money and to deposit it as aforesaid," the defendants were by the same section (16,) authorized and required to borrow, from time to time, in their name, by the issue and negotiation or sale of bonds of the county, "any and all such sum or sums of money as might be necessary to pay all such damages, costs and expenses incurred or to be incurred as aforesaid," and ~~that~~ the interest on such bonds was to be certified by the collector to the defendants, as soon as the same should be ascertained by him, and to be by the defendants "included and raised in the then next annual tax levy for annual taxes in the county of Essex, and be applied to the final and full redemption of said bonds, and the interest thereon."

(See "Road Board Acts," pl. 16.)

20 By Section 20 of a supplement approved February 16, 1870, (*Laws of 1870*, p. 181, "Road Board Acts," pl. 43,) it is provided, that the bonds so authorized should be payable in ten years, (instead of *five*), with the interest thereon, and that it should be "*lawful to raise by taxation, as a part of the county tax of the said county of Essex, money to pay said bonds, or any portion thereof, or the interest thereon.*"

30 By Sections 1 and 2 of a further supplement, approved February 2, 1871, (*Laws of 1871*, p. 175, "Road Board Acts, pl. 50 and 51,) the provision for payment of the bonds in annual installments was struck out, and the bonds were made a tender in payment of assessments.

Under these enactments, the "Essex Public Road Board" proceeded to lay out and construct roads or avenues, and the defendants (the Board of Chosen Freeholders,) issued the bonds of the county, which were from time to time sold or negotiated, as was necessary, and the
40 proceeds were deposited to the credit of the Road Board,

and drawn on by the latter whenever needed to pay any of the various classes or items of expenses mentioned in Section 16, above referred to. As shown by the "state of the case," paragraph 4, the aggregate amount of bonds issued, pursuant to the act above mentioned, had reached \$1,445,100 in the spring of 1877.

These bonds were all of the same character and tenor, and issued for the same general purpose of raising money to meet indiscriminately the several different items of expense mentioned in said Section 16. None of the bonds 10 are distinguished or known as "construction bonds," (as seems to be assumed by the counsel for the plaintiff in error,) but all are known simply as "Road Bonds."

For years past, the defendants have, without objection, ordered (pursuant to said Section 16,) the accruing annual interest on these bonds to be "included and raised in the next annual levy for annual taxes in the county of Essex."

The annual interest on the aggregate principal of these "Road Bonds" (being, as before stated, \$1,445,100,) 20 required to be raised in 1877, was the sum of \$101,157.

The whole of this interest was not only ordered to be levied, "as a part of the county tax" in the year 1877, but was actually *assessed and collected* during that year, from the tax-payers of the county of Essex—not from "the Mayor and Common Council of the city of Newark,"—the prosecutors of the writ of certiorari, brought up by the writ of error.

It has been ascertained, by calculation, that of the whole sum, \$1,445,100, realized on these Road Bonds, \$941,394.20 thereof was expended in the construction of 30 avenues, the interest on which part, at seven per cent., would, of course, be \$65,897.38.

These facts are admitted in the state of the case, although it is difficult to see what legal bearing they can have on the decision of the question.

POSITION OF THE PROSECUTORS.

"The Mayor and Common Council of the city of Newark," the prosecutors of the writ of error, as well as of the certiorari below, do not allege or insist that it was ille- 40

gal to assess any portion of the interest (\$101,157), accruing on the "Road Bonds" on the county at large; but they do contend that it was illegal to assess more than \$35,259.62 (about one-third) thereof, on the county at large; and insist that the residue of such interest, (being \$65,897.38,) should be assessed as follows, viz.: one-half thereof on the county at large, and the other half thereof upon the cities, towns, and townships through which the avenues were constructed.

- 10 The Supreme Court held the proceeding valid, for the reasons stated in the opinion of Mr. Justice DEPUE.

POINTS.

The judgment below was right and should be affirmed.

I.

- 20 The original act authorizing the issuing of the "Road Bonds," provided that the "interest thereon," should "be by the said Board of Chosen Freeholders, *included and raised in the then next annual levy for annual taxes in the county of Essex, and be applied to the final and full redemption of said bonds and the interest thereon.*"

(*Laws of 1869*, p. 957, § 16; *Road Board Acts*, pl. 16.)

And the supplement of 1870, provided that it "shall be lawful to raise by taxation, *as a part of the county tax of the said county of Essex, money to pay said bonds, or any portion thereof, or the interest thereon.*"

Laws of 1870, p 181, § 20; *Road Board Acts*, pl. 43.

- 30 These enactments, so plain and pointed, would seem to settle the question. There is no ambiguity or obscurity in the language, therefore no ground for construction; no occasion of resorting to other sections of the Road Board acts, which do *not* relate to Road Bonds or to the mode of taxation to pay the principal or interest thereon.

II.

- 40 All these bonds are obligations of the county at large, and the county at large must pay the principal as well as the interest thereon.

1. If sued by the holders for the interest or principal, *can there be any doubt that a general judgment could be recovered against the county?*

2. If the defendants, upon the recovery of such a judgment, should refuse to pay it, would the Court hesitate to compel them to levy a general county tax to raise money to pay the same, if necessary?

III.

But the prosecutors, avoiding the only sections of the Road Board acts, which relate to the issuing of bonds and provide for the payment of the principal and interest thereon, and *assuming*, (what is utterly untrue), that enough of these bonds to equal the present aggregate cost of construction, (viz. the said sum of \$941,394.20) were really issued, and the proceeds devoted specifically to pay such cost, and *calling* them "*Construction Bonds*," and identifying or rather confounding them with the so-called "*cost of construction*" itself, authorized to be assessed in a peculiar mode, by Section 7 of the supplement of 1870, (*Laws of 1870, p. 181; "Road Board Acts," pl. 30.*) insist that the interest thereon should be assessed, pursuant to the provisions of that section.

PROVISIONS OF SECTION SEVEN.

That section (*Road Board Acts, pl. 30*) provides a special mode of taxation for raising the money to pay a certain portion of the expenses incurred in the operations of the Road Board, the items of which are as follows, viz: 30

1. "*The costs and expenses of executing this act;*" that is, the supplement of February 16, 1870.

2. The costs and expenses of "*the laying out, opening, and constructing the said avenues;*" that is, the avenues mentioned in that supplement.

3. "*The amounts of rebates allowed upon assessments for benefits,*" as provided in that supplement.

4. "*Together with the interest on said several moneys;*" that is, the moneys in the three prior items referred to. 40

The aggregate of *these four items* is the amount to be assessed; and it is to be collectible or payable "*in ten annual installments,*" one-half thereof by the county of Essex, to be raised by county tax, in the same manner as other county taxes are raised in said county, and the other half by the several cities, towns and townships in or through which the several avenues pass.

1. Now it is quite clear that nothing can be assessed in the special mode provided by this section, except the
10 four classes of items therein mentioned.

2. While the language of the first and second items is comprehensive enough, perhaps, to include the compensation awarded for land and other property taken for avenues laid out and constructed, yet it must be excluded, as another mode is provided for raising and paying that compensation.

(See "*Road Board Acts,*" pl. 29.)

3. Neither does it include the cost of *maintaining* and
20 keeping in repair the avenues when constructed, inasmuch as it is enacted that they shall be maintained and kept in repair at the expense of the county.

(See "*Road Board Acts,*" pl. 20.)

4. No mention is made in the section, of bonds or "interest thereon;" although Section 20 of the same act does mention both, and provide "that it shall be lawful to raise by taxation, *as part of the county tax* of the said county of Essex, money to pay said bonds or any portion
30 thereof, *or the interest thereon.*"

(See "*Road Board Acts,*" pl. 43.)

It is therefore certain that money to meet the *interest on all the bonds* issued, must be raised by annual taxation on the county at large.

(See "*Road Board Acts,*" pl. 16, 43.)

The counsel for the prosecutors remarks, in respect to the seventh section, as follows, viz. :

40 "The words '*interest on said several moneys,*' used in said Section 7, mean, *of course,* interest on the whole

cost during the time that the bonds which represent the cost are outstanding."

On the contrary I insist that those words can have no such meaning.

The *interest* there referred to can include only such interest as may happen to have accrued and been paid on any of the "said *several* moneys," at the time *when the aggregate of the four classes of items* was made up for the purpose of beginning the assessment; that is, in other words, *when the first of the annual installments was to be assessed.* 10

The *amount to be assessed* (though collectible in ten annual installments,) *does not draw interest.* The tax payer is *allowed* ten years to pay the whole amount assessed. He is permitted to pay the whole amount in *equal* annual installments. There is no *penalty*, therefore, imposed on him, (in the form of *interest*) for the delay of payment, expressly granted to him.

5. The item of interest (being the fourth item mentioned in Section 7,) stands on the ~~same~~ footing with the other three, and when added to ~~them~~ the aggregate of the four items is divided into ten equal parts, and one of those equal parts assessed each year until the whole aggregate is collected. After the aggregate is made up no interest can accrue, and none is imposed. 20

6. But the city counsel relies largely on the language of the proviso in that section, "that no one of the said cities, towns or townships shall be liable to a *greater* extent than to the amount of one-half of the said cost, expenses and amounts, with the interest *accruing* on it," &c. 30

But it may be observed in respect to the proviso—

(1) That it is negative entirely, and really does not add to or qualify the positive language of the purview.

(2) If it has any effect whatever, it is merely to *limit* and *lessen* the extent of taxation against the cities, towns and townships. 40

(3) The language, "*with the interest accruing on it,*" evidently means nothing more nor less than interest accruing on the half of the "said several moneys," in the purview mentioned.

7. Whatever view may be taken as the meaning of the phrase "interest on said several moneys," or the parallel one in the proviso, it is certain that it forms part of the aggregate amount to be assessed, (as hereinbefore shown,) and that but *one-tenth* of it could be raised in any one year, while the *whole* annual interest on the bonds *must* be paid every year.

But the counsel for the city, in order to make the section consistent with his theory, insists that the interest which *may* accrue hereafter during the whole period of ten years the bonds are to run, shall be computed in the aggregate, and then be divided by ten. That, certainly, would be more likely to ensure the collection of enough interest annually to answer the purpose, and it would be *mathematically* right, because *one-tenth* of *ten* years' interest is just equal to the *whole* of *one* year's interest, on any given sum; ~~and~~ while the problem would be solved, the law would be flagrantly violated, for the "interest" to be assessed, according to either the purview or the proviso, must be interest that has *accrued*, not interest that *may hereafter* accrue.

8. It is said that "*interest* on money borrowed under legislative authority, for present use, is as much a part of costs and expenses of the improvement as moneys paid to contractors."

Granting this proposition, it goes to show only that after *interest has been paid* by the county, it may be computed in one of the first three items mentioned in said section seven, in making up the aggregate to be assessed in ten annual installments. But the interest must be first paid on the bonds, and in order that it may be paid promptly, it must be raised by tax annually on the county at large, as the defendants insist should be done.

It seems unnecessary to argue further in support of the validity of the action by the defendants, which is sought to be set aside. ✓

The opinion of Mr. Justice DEPUE is thoroughly conclusive. *The county must pay the interest on its bonds promptly, absolutely, and at all events, and the legislature has therefore provided a sure means of accomplishing that object, by an annual tax levy on the county at large. Whatever else may be erroneous the inclusion in the tax levy of \$101,157, to meet the interest on "Road Bonds" is according to law.* 10

In conclusion, I would enquire by what right the city of Newark objects to the action of the defendants, after the money has been assessed and *collected*, and has come into the hands of her officers? If the proceeding was erroneous, the *tax-payers* of the city, not the corporation or corporate authorities, are the ones to complain.

I submit that the judgment of the Court below should be affirmed. 20

JOHN W. TAYLOR,
Counsel for the Defendants in Error.

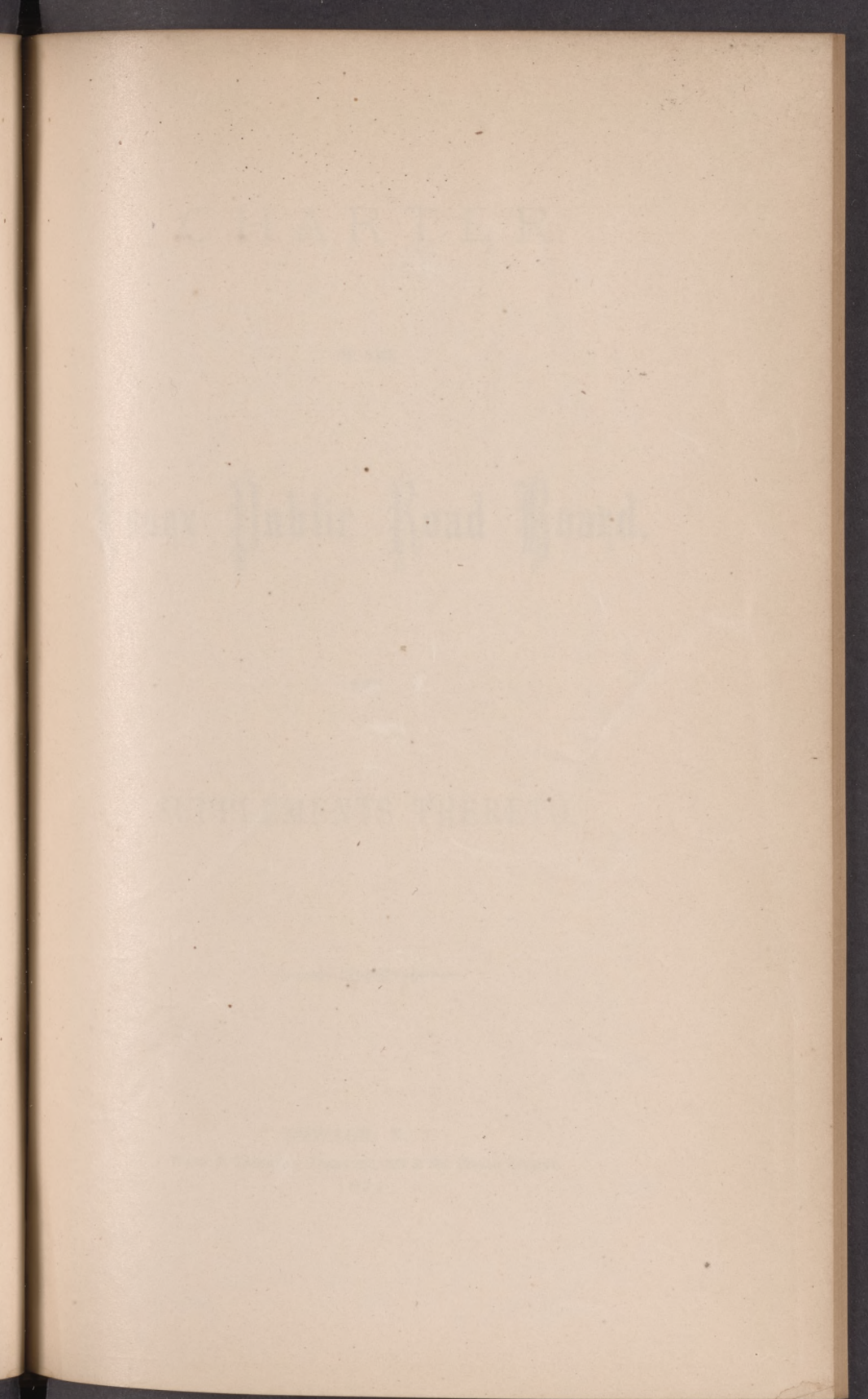
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concerned.
J. W. T.*

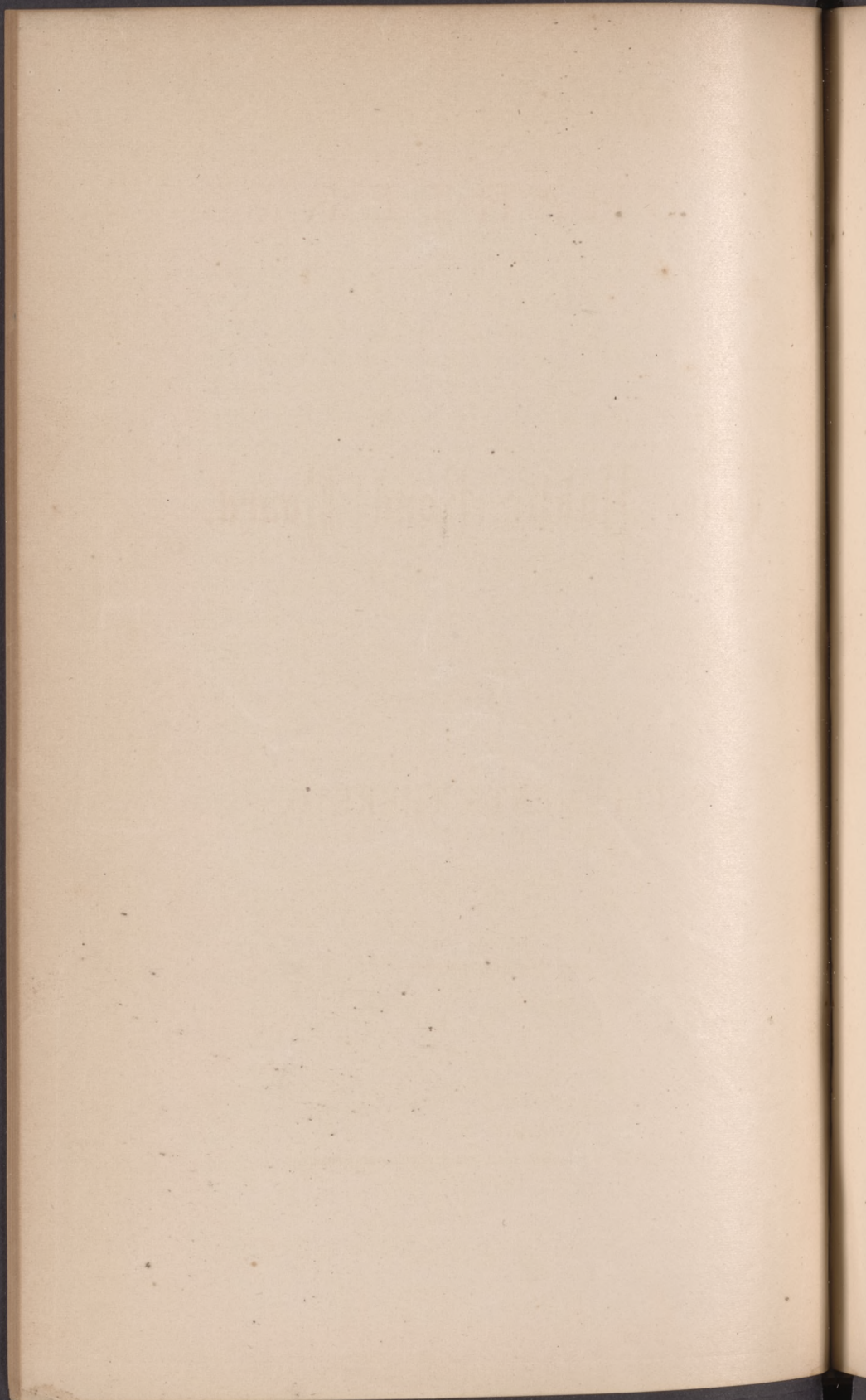
The first movement is in a minor key and is characterized by a somber and melancholy mood. The melody is simple and direct, with a strong sense of purpose. The harmony is rich and textured, with a variety of chordal colors. The rhythm is steady and unchanging, with a clear emphasis on the downbeat. The overall effect is one of quiet strength and emotional depth.

The second movement is in a major key and is characterized by a bright and cheerful mood. The melody is more complex and melodic, with a strong sense of movement. The harmony is lighter and more transparent, with a focus on the melodic line. The rhythm is more varied and rhythmic, with a clear emphasis on the upbeat. The overall effect is one of joy and optimism.

The third movement is in a minor key and is characterized by a somber and melancholy mood. The melody is simple and direct, with a strong sense of purpose. The harmony is rich and textured, with a variety of chordal colors. The rhythm is steady and unchanging, with a clear emphasis on the downbeat. The overall effect is one of quiet strength and emotional depth.

The fourth movement is in a major key and is characterized by a bright and cheerful mood. The melody is more complex and melodic, with a strong sense of movement. The harmony is lighter and more transparent, with a focus on the melodic line. The rhythm is more varied and rhythmic, with a clear emphasis on the upbeat. The overall effect is one of joy and optimism.





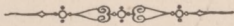
CHARTER

OF THE

Essex Public Road Board,

AND

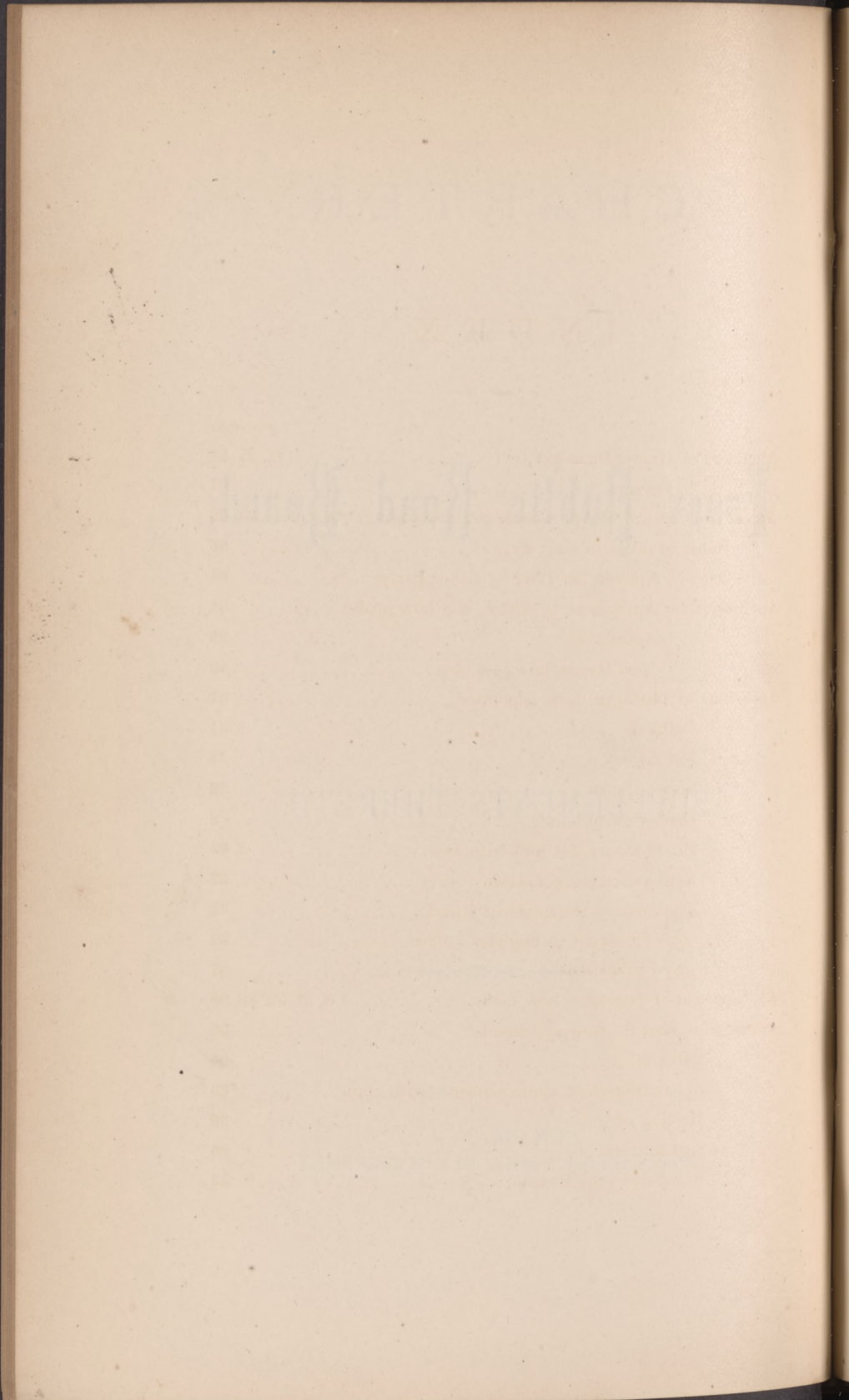
SUPPLEMENTS THERETO.



NEWARK, N. J. :

WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.

1877.



I N D E X .



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ACT OF INCORPORATION.

AN ACT CONSTITUTING A PUBLIC ROAD BOARD FOR THE LAYING OUT, CONSTRUCTING, APPROPRIATING, IMPROVING AND MAINTAINING PUBLIC CARRIAGE ROADS IN THE COUNTY OF ESSEX. APPROVED MARCH 31ST, 1869.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Aaron B. Baldwin, George Peters, William H. Murphy, Jesse Williams and Robert M. Hening, and their successors to be appointed and elected as hereinafter provided, be and they are constituted a Board of Commissioners to be known and designated as "The Essex Public Road Board," for the purpose of laying out, constructing, appropriating, improving and maintaining free carriage roads in the county of Essex; that the acts of a majority of said Commissioners shall be deemed the acts of the Board; and that each of said Commissioners, and their successors, shall, before entering upon the duties of his office, take and file in the office of the County Clerk of said county an oath or

Names of
Commis-
sioners.

Each Com-
missioner
to take and
file oath,
&c.

And give
bond.

affirmation, to act faithfully and impartially in the execution of the trust imposed in him by this act, and each shall give bond to the County Collector of said county in the sum of ten thousand dollars, with three sufficient sureties to be approved by the finance committee of the Board of Chosen Freeholders of said county, conditioned for the faithful performance of his duties under this act, which bond in case of forfeiture shall be prosecuted by said County Collector for the use of the said county.

Section 2 repealed.

May enter
upon lands.

3. The said Board, their agents, engineers, surveyors, and others in their employ, shall have full power to enter at all times upon lands for any of the purposes contemplated by this act.

And take
any lands
deemed
necessary.

4. Any lands and real estate deemed necessary by the said Board for the laying out, constructing, widening, straightening, or other improvement, of any road, may be taken therefor and damages shall be allowed, and benefits assessed by the said Board to and against the persons owning the lands so taken and benefited respectively, as hereinafter provided.

Damages
and Bene-
fits to be
assessed.

Office, and
time of
keeping
open.

5. The said Board shall have an office in some convenient place in the city of Newark for the transaction of their business, and for the reception and safe custody of their books, maps and other documents, which office shall be kept open on all ordinary business days, between the hours of ten and three o'clock, and which books, maps and other documents, shall, between the hours above named, be always open to the examination of parties claiming to be interested therein.

Section 6 repealed.

Section 7, (providing for the appointment of five freeholders, to assess damages and benefits,) repealed and supplied by 31-35.

8. The said five freeholders so appointed, or a majority of them, shall give at least twenty days' notice in two daily newspapers of the said county, of the time and place of their meeting, to make such assessments of damages and benefits, and that no other notice to parties interested shall be required; [*the above provisions as to notices superseded. See post, 32, 34, 36, 45,*] and when so met the said freeholders or a majority of them shall view the premises, and shall have power to examine witnesses, upon oath or affirmation, (to be administered by any one of their own number), and to adjourn from time to time, and that after a full investigation, they, or the said majority of them, shall make such assessments separately, and in favor of or against the said owner or owners of said lands and real estate, as the case may be, and shall make a report thereof, in writing, to the said Board without unnecessary delay;—[and that after the like notice of the time, place and purpose of the meeting, (no other or further notice being required) the said Board shall review and consider the said assessments, and every one of them, and shall and may by the resolution, and by vote of a majority of their whole number, adjust, ratify and confirm the same, with or without alteration, as to them may seem fit, and shall then cause the same to be recorded in the minutes of their proceedings; and that at said meeting of said Board, it shall be their duty to receive and consider any objections to said assessments, or any of them that may be presented in writing by any

Appraisers
may examine
and
swear
witnesses.

Power of
Commissioners
to
alter
and
ratify
assessm'ts.

person or persons claiming to be aggrieved thereby;] —(see 32, 36,)—and that in assessing said damages the said freeholders, and the said Board, shall have due regard both to the value of said lands and real estate so taken, and the injury to the said owner or owners thereof, without making any deduction or allowance for benefits, because or by reason of the laying out, constructing, reconstructing, widening, straightening, or other improvements of said road, or said part or parts thereof. (See 31, 36.)

Section 9 repealed.

When assessments are confirmed, a map shall be made with names of owners.

10. When any such assessments shall be so adopted, ratified and confirmed, the said Board shall cause to be prepared, and shall carefully file in their office, a map, showing all the lands and real estate upon or by reason of which the said assessment hath been made, with the boundary lines of the several parcels, and the names of the several owners thereof, as far as the said Board have been able to ascertain the same; *provided*, however, that none of the proceedings to be had under this act shall be held to be invalid because of any unintentional defect or error in the said map or any part thereof. (See 32, 36.)

Damages for alteration of grade to be assessed.

11. If in widening, straightening, constructing, reconstructing, or otherwise improving, and maintaining any existing public road, or any part or parts thereof in said county, any alteration of the grade of said road shall be made, the damages which may have been occasioned thereby to the owner or owners of any lands and real estate upon the line of said road, shall be ascertained and assessed by five freeholders, or a majority of them, in the same way as damages for lands and real

estate taken in the laying out of a new road; and that such damages for the alteration of the grade shall be added to and form a part of the cost aforesaid, and be assessed, and borne and paid in the same manner. (See 27.)

Section 12 repealed.

13. The said damages for lands and real estate taken, or for the alteration of the grade of any road, when so assessed, shall become due and payable to the several owner or owners of said lands and real estate so taken or damaged, at the expiration of six months from the time when said assessment shall have been adopted, ratified and confirmed by the said Board; and interest shall become due and payable thereon from and after the expiration of the said six months, unless the said Board shall sooner enter upon and take possession of the said lands and real estate, in which case interest shall accrue from and after the date of such entry and taking possession; and that in the event of said damages and interest not being paid on demand after the expiration of the said six months, the said owner or owners may sue for and recover the same, with costs, from the said Board (see 41) in an action on the case, in any court having cognizance thereof; and that the proceedings of said freeholders and said Board shall be held and taken in said action as conclusive against the defendants therein.

Lands taken to be paid for in six months after the adoption of the assessment.

Section 14 repealed.

15. Any and all assessments which may be made under and by virtue of this act (except only assessments of damages for lands and real estate taken, and for the alteration of the grade of any road), shall be and

Assessments shall be liens upon the lands until paid.

Assess-
ments pay-
able in four
annual in-
stallments.

Lands may
be sold at
auction.

How
advertised.

remain liens upon the lands and real estate benefited as aforesaid, from and after the time or times, when the said assessments were so adopted, ratified and confirmed by the said Board, until the same shall be fully paid or collected; and that every assessment made as aforesaid shall be payable and collectible in four equal annual installments in one, two, three and four years respectively, from the date of such assessment, unless the person or persons assessed shall elect to pay the same sooner and in one payment, in which case he or they shall be at liberty so to do, and shall be allowed a proper rebate of interest thereon, (see 42); that if any installment of such assessment shall remain unpaid in whole or in part for six months after the same shall become due and payable, the whole or any balance of such assessment, notwithstanding anything hereinbefore contained, shall thereupon become due and collectible, and may be sued for and collected by said Board in their corporate name, in an action on the case, against the owner or owners of such lands and real estate respectively, in any court having cognizance of the amount sued for, or the said Board may proceed to advertise said land and real estate upon which said assessment may be a lien, to be sold at public auction, at the Court House of said county, on some day not less than two months distant, between two and five o'clock in the afternoon; that such advertisement shall be published for the space of time aforesaid next preceding the sale, in at least three newspapers of said county, at least once in each week; that said advertisement shall be the only notice required, and shall contain the names of the land owners in default, if the

same be known, together with the amounts due by them respectively, and a short description of their said land and real estate, so assessed as aforesaid; that at the time of said sale the several parcels of said land and real estate shall be openly sold to the person or persons who will take the same for the shortest period of time, not exceeding fifty years from the day of sale, and shall pay to the Board, before the close of the sale, the full amount due upon said unpaid assessment, with interest thereon from the time of the same being made, at the rate of seven per centum per annum, and also such sum as the Board shall determine to be a fair proportion of the expenses of advertising and conducting the sale; that in the event of any purchaser neglecting to make such payment as aforesaid, he shall forfeit all claim to said land and real estate, and the same shall be re-sold by the Board at their convenience upon such advertisement as aforesaid; that the Board may adjourn the sale from time to time by making public proclamation thereof at the time of such adjournment; that as soon as practicable after the close of the sale, the Board shall make and deliver to any purchaser thereat who shall have made such payment as aforesaid, a certificate of sale, under their hands and seals, and duly acknowledged according to law, setting forth, as concisely as may be, the facts of said assessment, advertisement and sale, together with a description of the lands and real estate so sold, the amount actually paid therefor by said purchaser, and the length of time for which he shall have so purchased the same; that said certificate shall, before its delivery, be recorded in one of the books to be kept by the Board for such purpose;

How sold.

When re-sold.

Certificate of sale to purchaser.

Certificate to be recorded.

Lands may be redeemed in three years after sale.

Fifteen per cent. may be charged on unpaid assessments.

Declaration of sale to be recorded.

Declaration of sale evidence of regularity of sale.

that said certificate may be assigned, by deed of assignment under seal duly acknowledged as aforesaid, and that such assignment may be recorded in the books of said Board, upon the payment of a fee of one dollar therefor; that if at the end of three years from the day of sale, said land and real estate shall not have been redeemed by said owner or owners, his, her, or their legal representatives, or any mortgagee, or mortgagees thereof, or any judgment creditor or creditors, or any other person or persons, having a legal or equitable interest therein, by the payment to the said Board for the benefit of said purchaser, his heirs or assigns, of the amount originally paid by said purchaser, and any other tax or assessment which he may have paid and of which he may have given written notice to said Board, together with interest on such payments, at the rate of fifteen per centum per annum, the Board shall upon the surrender of said certificate execute and deliver to said purchaser, his legal representatives or assigns, a declaration of sale, under their hands and seals, and duly acknowledged as aforesaid, briefly stating the facts of said assessment, advertisement and sale, together with a description of said land and real estate, and a statement of the time for which the same has been so sold; that said declaration of sale shall be recorded in the books of said Board, and also in the records of deeds in the office of the register of said county, upon the payment of a fee of one dollar in each case; that until the recording of such declaration, the time for redeeming said land and real estate as aforesaid shall remain open, notwithstanding the said term of three years may have expired; that such declaration shall be presump-

tive evidence in all courts and elsewhere that such sale and proceedings were regularly made and had, according to the provisions of this act; and such purchaser or purchasers, and his, her, or their legal representatives shall, by virtue thereof, lawfully hold and enjoy such lands and real estate, with the rents, issues and profits thereof, for his, her, or their own proper use against the owner or owners thereof, and all persons claiming under him, her, or them until the term shall be completed and ended for which the purchaser or purchasers shall have agreed to take the same as aforesaid, and no longer; being liable for any injury or waste done or committed in the same manner as a tenant for a term of years; but no mortgagee whose mortgage shall have been recorded or registered before any such sale, shall be divested of his rights in and to said land and real estate, unless six months' notice of such sale shall be given to him, in writing, by such purchaser or any person or persons claiming under him, which notice shall be served personally, if said mortgagee be a resident of the said county, and if not, shall be addressed to his place of residence as stated in said mortgage or assignment thereof; that if any such land and real estate shall be so redeemed by any judgment creditor or mortgagee, he shall have a lien on said land and real estate for the amount actually paid by him as aforesaid, with legal interest thereon, to be collected and recovered in the same manner and at the same time as if included in the mortgage or judgment; and that no assessment or sale shall be set aside or declared invalid, because of any error in the name of any land owner or because of the omission to name him or her when un-

Purchaser
liable for
waste.

Rights of
mort-
gagees.

Assess-
ments not
to be set
aside on ac-
count of
any error
in name.

known to the Board, or because of any slight error or inaccuracy in the description of said land and real estate in any of the proceedings, provided the same be so described as to be easily identified.

Collector of
the County
to deposit
funds to
the credit
of the Road
Board.

16. The Collector of the county of Essex is hereby authorized and directed to deposit to the credit of the "Essex Public Road Board," with such bank or trust company as shall be designated by any order of the said Board, any and all such sum or sums of money as said Board may from time to time require and direct to be so deposited, for payment of any assessment of damages as aforesaid, or for payment of the cost of any work, services or material, done or furnished under any contract, proceeding or otherwise, for surveying, locating, laying out, opening, regulating, grading, constructing, reconstructing, maintaining or otherwise improving any road, or any part or parts thereof, the construction or maintenance of which by law is or shall be under the direction, control and management of said Road Board, or for payment of any incidental costs and expenses of said Board, specifying in their said order upon said Collector, for what particular purpose or purposes, or upon what particular work or proceeding said money is required; and to enable the said Collector to raise such money and to deposit it as aforesaid without delay, the Board of Chosen Freeholders of the said county is hereby authorized, empowered and required to borrow from time to time in the name of the Board of Chosen Freeholders of the county of Essex, by the issue of bonds to be signed by the Director and countersigned by the Collector, and payable at any time not exceeding five years (Sec. 43), and bear-

Board of
Chosen
Freehold'rs
may issue
bonds.

ing such rate of interest as said Board of Chosen Freeholders may deem proper, not exceeding seven per centum per annum, any and all such sum or sums of money as may be necessary to pay all such damages, costs and expenses incurred or to be incurred as aforesaid; and whenever such damages, costs and expenses, or any part thereof, is afterwards collected by assessment from the property benefited by such improvement, the proceeds of such assessments, so to be laid and collected for each and every such improvement, are hereby pledged for the redemption of the bonds so to be issued, and the remainder or deficiency necessary for the redemption of said bonds; and the interest thereon shall be certified by said Collector to the said Board of Chosen Freeholders as soon as the same shall be ascertained by him, and be by the said Board of Chosen Freeholders, included and raised in the then next annual levy for annual taxes in the county of Essex, and be applied to the final and full redemption of said bonds and the interest thereon; and that it shall be the duty of the said Road Board to pay to the said Collector all moneys collected or received by them for assessments for benefits, as soon as the same shall be so collected or received.

Assessments pledged for redemption of bonds.

17. The said Commissioners shall receive a salary of one thousand dollars each, to be paid quarterly by the County Collector, and shall hereafter be elected and appointed as follows, that is to say, one of them shall be annually appointed by the Board of Chosen Freeholders of said county, at their stated annual meeting on the second Wednesday in May, eighteen hundred and seventy, to hold office for the term of one year; and

Salaries of Commissioners.

Appointment of one Commissioner by the Board of Chosen Freeholders

Two Commissioners to be annually elected.

the other four shall be elected by the legal voters of said county at the same time and in the same manner as members of the General Assembly are elected; and at the election for members of the General Assembly in the year eighteen hundred and seventy, two Commissioners shall be elected to serve one year, and two to serve for two years, the ballots to be separate and to designate the time of service; and at the election for members of the General Assembly, to be held in the year eighteen hundred and seventy-one, and every year thereafter, there shall be elected two Commissioners, each of whom shall hold office for the term of two years, and no ballot shall be counted in any election for Commissioners, which shall contain the name of more than one person to serve as such Commissioner; the two persons who shall receive the highest number of votes shall be declared duly elected; the five Commissioners so appointed and elected in the year eighteen hundred and seventy, shall enter on the discharge of their duties on the first Monday of January, eighteen hundred and seventy-one; and the terms of office of those subsequently elected and appointed shall commence on the first Monday in January next after their election and appointment; and any vacancy that may occur in said Board, by death, resignation, or otherwise, shall be filled by the said Road Board at a meeting called for that purpose; the appointment made shall be only for the residue of the term of office so vacated. (Sec. 44.)

Board may fill vacancies.

Compensation to Court and Freehold'rs

18. The following and no other fees shall be allowed and taken for the hereinafter mentioned services, namely: to the Justice of the Supreme Court or of the

Inferior Court of Common Pleas, for any appointment of freeholders, and for administering to them the oath or affirmation herein required, the sum of five dollars; and to each freeholder so appointed, the sum of three dollars for every day's service by him rendered.

19. The said Road Board shall lay before the Director of the Board of Chosen Freeholders of said county annually, on or before the first day of May, a full and detailed account or report of the receipts and disbursements of said Road Board for the year preceding, to the end that the same may be submitted by said Director to said Board of Chosen Freeholders.

Annual
Report.

20. All roads constructed or reconstructed by the said Board, whether laid out or appropriated, and taken in charge by them, shall thereafter be maintained and kept in repair by them at the expense of the said county.

Cost of
maintain-
ing roads
by the
County.

Sec. 21 repealed.

Sec. 22 repealed.

23. The act entitled "An act constituting a Public Road Board, for the laying out, constructing, appropriating, improving and maintaining public carriage roads in the county of Essex," approved April seventeenth, eighteen hundred and sixty-eight, and all other acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

Repealer.

[LAWS OF 1870, PAGE 181.]

Supplement Approved February 16, 1870.

Commissioners to lay out certain avenues.

24. SEC. 1. The Commissioners and their successors, constituting, by the act to which this is a supplement, "The Essex Public Road Board," are hereby authorized and empowered to lay out, construct, appropriate, improve and maintain, for the purpose of free carriage roads in the county of Essex, the following named avenues in the county of Essex, namely:

Frelinghuysen avenue.

I. Frelinghuysen avenue, beginning at Astor street, in the city of Newark, and running thence through the said city of Newark and the township of Clinton to the line of the county of Union.

Springfield avenue.

II. Springfield avenue, beginning in Market street, in said city, and running thence through said city, and the townships of Clinton, South Orange and Millburn to the line of the county of Union.

South Orange avenue.

III. South Orange avenue, beginning at Springfield avenue, in said city, and running thence through said city and the townships of East Orange, South Orange, Millburn and Livingston to the line of the county of Morris.

Park avenue.

IV. Park avenue, beginning at Bloomfield avenue, in said city, and running thence through said city of Newark and the township of East Orange, the town of Orange, and the townships of West Orange and Livingston to the line of the county of Morris.

V. Bloomfield avenue, beginning at Belleville avenue in the city of Newark, and running thence through said city and the townships of Woodside, Bloomfield, Montclair and Caldwell to the line of the county of Morris.

Bloomfield
avenue.

VI. Washington avenue, beginning at Belleville avenue, in the city of Newark, and running thence through the townships of Woodside and Belleville to the line of the county of Passaic, shall not exceed in width seventy-five feet, (Sec. 47); and that so much of said act as authorizes or empowers the said Board to lay out, construct, appropriate, improve or maintain any other road or roads in said county, (except upon the application of property owners, as hereinafter provided for,) be and the same is hereby repealed; *provided*, that it shall not be lawful for the said Road Board to lay out, construct, appropriate or maintain such parts of said avenues or any of them as lie within the city of Newark, until the said Board shall have given notice for twenty days in two newspapers published in said city, of their intention to lay out and construct said avenues within the said city; and if within the period of ninety days from the first publication of said notice the Common Council of the city of Newark shall, by resolution of said Council, declare it to be their intention to lay out, open, construct, and maintain, for the purposes mentioned in this act, so much and such parts of the said avenues as lie within the limits of the said city, it shall then be their duty to lay out, construct, appropriate, improve, and maintain, so much of the said avenues as lie within the limits of said city, and the said Common Council shall thereupon proceed to

Washing-
ton avenue

No other
roads to be
laid out by
Board ex-
cept upon
application
of property
owners.

Not to lay
out ave-
nues in city
of Newark
except
after twenty
days'
notice.

Common
Council
may lay
out the ave-
nues within
City of
Newark,
when.

lay out, open and construct said avenues in the manner now provided by law for laying out, opening, vacating, straightening, altering and widening streets, roads and highways in the said city; but if the said avenues shall not be laid out and constructed as aforesaid, within the said city, by the Common Council of the city of Newark, within six months from the date of the passage of said resolution, the said Road Board shall proceed to lay out, construct, appropriate and maintain the said avenues within the limits of the city of Newark, the same, and to all intents and purposes, as if this proviso had not been enacted; *provided*, that it shall not be lawful for said Board to alter the present lines of said avenues within the limits of the city of Newark.

Board to lay out the avenues in Newark, when.

Powers of the Board.

25. SEC. 2. The said Board are hereby authorized and vested with all the rights and powers necessary and expedient to survey, lay out, locate, construct, reconstruct and maintain the said avenues and roads, and to vacate such part or parts of existing roads as may be necessary therefor, in the county of Essex, for the convenience of public travel by carriages and other vehicles in said county, which said avenues shall be deemed and taken to be public roads or highways, and shall be of such width as to the said Board may seem advisable; *provided*, that such parts of said avenues as extend west of the summit of the First Mountain, shall not exceed in width seventy-five feet, and the residue of said avenues shall not exceed in width one hundred feet.

Width of avenues.

Surveys and maps.

26. SEC. 3. The said Board shall cause to be made an accurate survey or surveys of the said avenues, with a map or maps thereof, showing the termini and

routes of said avenues, including the courses and distances and the various improvements through which the same will pass, and also the names of the several owners or reputed owners of the lands through which said avenues pass, and also the names of the several owners of land proposed to be taken therefor, so far as the same can be conveniently ascertained, and showing also where the present streets and roads as now used are coincident with, or fall within the lines of the avenues hereby authorized to be constructed, and also where those streets and roads which are now in actual use do cross said avenues; and the said Board shall at their discretion appoint a place or places and day or days when, between certain hours, the said map or maps will be open to public inspection, either at their office in the city of Newark, or at some place or places in the vicinity of said avenues; that the Board shall give previous notice of such appointment by an advertisement published for at least ten days in two daily newspapers printed in said county; that in such advertisement only such short description of said avenues as proposed shall be required as shall be sufficient to identify the same; that no notice to land owners or other parties interested shall be necessary, other than that contained in said advertisement; that the Board may adjourn and continue such public inspection of said map or maps from time to time as they may appoint and publicly declare at any meeting; and they shall attend such meeting or meetings, and shall examine and inquire into any complaint or objection presented by any land owner or taxpayer for the purpose of ascertaining and determining as to the best manner of laying

Board to
appoint
places and
times when
maps will
be open for
public in-
spection,
by ten days
notice in
two news-
papers.

May ad-
journ in-
spection.

out, locating, widening or straightening the said avenues or any of them; that the Board after such full inquiry shall lay out, locate, construct, widen or straighten said avenues, with or without alteration of the original survey, as to them may seem fit, and that such determination of the Board shall be by a resolution entered upon the minutes of their proceedings, setting forth the courses and distances of said avenues in words at full length; *provided*, however, that in case of any alteration of the original survey or surveys, a new and corrected map or maps shall be prepared in the manner aforesaid, and shall, after being signed by a majority of the said commissioners, be deposited in their said office, and also that a duplicate of such original or corrected map or maps, as the case may be, shall, within thirty days after such determination of the Board, be filed by them in the office of the Register of the said county.

Maps to be deposited in office of the Commissioners, and in the Register's office.

How Avenues constructed.

27. SEC 4. The said Board shall construct said avenues by excavating and removing earth, rocks, trees, stumps, buildings, and all other impediments or improvements; and disposing of such portions thereof as are not needed in the construction of said avenues, to the best advantage, at public auction; and filling up any low parts of the route, and otherwise preparing the premises for said avenues, and by building all bridges on said avenues, and all necessary culverts pertaining to the same; *provided*, the said avenues shall not be constructed upon any grade different from that established by the municipal authorities (if any has been established) without the consent of such municipality, and in such case compensation shall be made to

Grade established by municipal authorities not to be altered without their consent, and compensation to persons injured.

the person or person injured (if any there shall be who are injured by such alteration of grade); and that such damages for the alteration of grade shall be estimated as part of the money necessary to pay the compensation in this act directed to be made, and shall be raised, assessed and collected as hereinafter mentioned; the construction of said avenues shall be in such substantial manner as will combine hardness, evenness and durability with economy; *provided*, that nothing herein contained shall be construed as authorizing the said Board to macadamize or pave any of the said avenues.

Not to be paved or macadamized.

[These avenues, or certain portions thereof, may now be macadamized.] (See 63.) The said Board, or their successors in office, shall determine the width of the carriage way and of the sidewalks, except all such avenues and streets as lie within the corporate limits of the city of Newark, and relay in their proper place, and so as to conform to the Board's plans, all curbing and flagging that they shall take up in constructing said avenues; but the local authorities are to curb and flag the other sidewalks which it shall be proper to curb and flag, as the said several municipalities are now authorized to do with reference to said sidewalks, and to keep the same in repair. (See 63.)

Width of sidewalks and carriage way.

28. SEC. 5. The owners of that part of the lands over which said avenues are authorized to be laid, which is not already lawfully in public use, shall be entitled to compensation for the use thereof hereby authorized, and the owners of every building or part thereof, or other improvement which it shall be necessary to remove, take down or destroy, shall be entitled to compensation

Owners of land, &c., entitled to compensation.

for such building or part thereof so to be removed, taken down or destroyed.

Moneys to pay for lands taken to be raised by assessing lands benefited.

29. SEC. 6. The moneys necessary to pay the compensation in this act directed to be made for land or property taken, shall be raised by assessing so much thereof, as shall be equal to any peculiar benefit conferred upon any lands in the county, whether adjacent or not to said avenues, upon such lands so peculiarly benefited, in proportion to the benefit received; if said moneys shall exceed the value of the benefits conferred upon the lands last mentioned, such excess (if any) shall be borne by the public at large of the county of Essex, and shall be raised by tax, as other taxes are levied and raised in said county, and shall be paid by the County Collector. (See 46 and 56.)

Cost of laying out avenues, &c., to be paid in ten annual installments, one-half by the county of Essex and the other half by the townships, &c.

30. SEC. 7. The money necessary to pay the costs and expenses of executing this act, and of the laying out, opening and constructing the said avenues, and also the amounts of rebates allowed upon assessments for benefits, as hereinafter provided, together with the interest on said several moneys, shall be paid in ten annual installments, one-half thereof by the county of Essex, to be raised by county tax in the same manner as other county taxes are raised in said county, and the other half by the several cities, towns and townships in or through which the several avenues pass, to be levied and collected by the same officers, in the same manner, and at the same time that the other city, town and township taxes are levied and collected; but the officers so collecting said moneys shall pay the same to the County Collector under the same provisions and regulations as county moneys are now paid by them to

the County Collector; *provided*, that no one of the said cities, towns or townships shall be liable to a greater extent than to the amount of one-half of the said costs, expenses and amounts, with the interest accruing on it, except as to the liability for its quota of the tax to be raised by the county of Essex as aforesaid; and *provided*, that if the Common Council of the city of Newark shall lay out and construct so much of said avenues as lie within the limits of the said city as aforesaid, the damages and entire costs of laying out, opening and constructing said avenues in the said city of Newark, shall be levied, raised, assessed, collected and paid as is now provided by law for the laying out and opening of streets in said city.

So much of said avenue as laid out by city of Newark to be paid for by it.

31. SEC. 8. It shall be the duty of the Court of Common Pleas in and for said county, upon the application of said Board, from time to time, and after ten days' notice of such application by an advertisement in two daily newspapers of said county, to appoint five disinterested freeholders residing in said county appraisers, who shall, after having severally taken and subscribed before a judge of said court, an oath or affirmation to act fairly and impartially in the matter intrusted to them, according to the best of their skill and judgment, be empowered to make a fair, just and impartial appraisal of the damages sustained by the owner or owners of any lands and real estate or buildings, to whom compensation is to be paid as provided in this act.

Court of Common Pleas to appoint five appraisers of damages for lands, &c. taken.

32. SEC. 9. The said Board shall from time to time give ten days' notice to the proper appraisers and to the persons entitled to compensation, on what day and at

Ten days' notice to be given to the appraisers and the persons entitled to compensation.

what hour and place they will ask the said appraisers to hear evidence, as to the compensation for the land or buildings of the persons so notified, and at such time and place and any other time and place to which said appraisers may adjourn, they shall hear the Board and the parties interested if they appear, and the witnesses of the Board and of said parties, and determine the compensation that ought to be paid to the persons so notified, and openly and publicly declare the amount thereof, and then or afterwards by writing signed by them or a majority of them, make a statement of their proceedings and said adjudication, which statement shall be filed in the office of the Register of the county of Essex ; and it, as well as said notices, shall contain a carefully prepared description of the boundaries of the land for which compensation is to be made, and state whether there are any, and what kind of building or part of building thereon, for which also compensation is to be made.

Statement
by apprais-
ers to be
filed in Reg-
ister's
office.

What to
contain.

Proceeding
upon ap-
peal.

33. SEC. 10. If the person to whom such compensation shall be awarded, is, or the said Board are, dissatisfied with the amount thereof, either party may appeal from the said adjudication to the Circuit Court of the county of Essex, which is hereby given jurisdiction to rehear the said matter, and to cause a proper issue to be framed to try the question of compensation, and to have the same tried by a jury, as an issue out of the Supreme Court in a civil action is tried in the said court, but such appeal shall not restrain the Board from constructing said avenues over said lands and removing said buildings, if said compensation found by said appraisers shall have been tendered ; if the jury shall

find more than the appraisers, the costs of such appeal shall be paid by the Board, but if the jury find less or confirm said amount, the costs of appeal shall be paid by the owner; in case any parties entitled to compensation cannot be found to whom to pay the same, or are unknown, or labor under legal disabilities, payment of such compensation in the Circuit Court of the county of Essex, shall be equivalent to the payment of the parties entitled to the same.

34. SEC. 11. All notices required by this act, unless otherwise provided, shall be in writing, and shall, if the person reside in the county of Essex, be served personally upon the party entitled to notice or left at his or her usual place of abode; or if such party does not reside in the county, or is an infant, or a lunatic, or an idiot, such notices shall be published in such newspapers, published in the county of Essex, as the Board shall determine, for double the length of time that notice personally served is required; and in case the persons entitled to notice, or any of them are unknown, a general notice to those whom it may concern shall be published in like manner; and in the case last mentioned, there shall also be a notice posted on some part of the premises of the party interested of the effect of such notice last mentioned.

Notices to be in writing.

How served and published.

35. SEC. 12. The said Court of Common Pleas on request of said Board, shall appoint five honest, competent and judicious freeholders, assessors, to perform the duties required of the said assessors, under this act; said application and appointment shall be filed in the Clerk's office of the county of Essex.

Court of Common Pleas to appoint five freeholders to assess benefits.

36. SEC. 13. The said Board shall cause to be laid

Proceedings by the assessors.

To give ten days' notice of their meeting.

To report to the Board their assessments.

Report and maps to be filed.

before the said assessors a copy of all the appraisements made under the ninth section of this act, with proper maps; and the said assessors, after taking an oath to honestly and justly perform the duties required of an assessor under this act, shall proceed to consider and determine what lands in said county (see 46) are peculiarly benefited by the laying out of said avenues, and the amount that each lot or parcel is so benefited, and shall assess the same in proportion to the benefit received; and said assessors shall give at least ten days' public notice of their meeting to perform the duties required of them by this act, specifying therein generally the purpose of said meeting, and being once met, the said assessors may adjourn from time to time, until the purpose of those assembling may have been accomplished, but no notice of any adjourned meeting shall be necessary; they shall make a report to said Board in writing, of their said determinations and assessments, and shall accompany the same with at least one map, and at least one schedule for every city, town or township in which said benefits shall be assessed; and the names of the owners or reputed owners of the lots shall be written upon the lots or parcels as laid down in said maps, or it shall be stated that the owners are unknown, and there shall be as many duplicates of said report as there are cities, towns and townships, in which benefits are assessed, in the Clerk's office of each one of which said report shall be filed, and there shall be a duplicate of each of said maps and schedules, one of which said duplicate maps and schedules shall be filed in the Clerk's office of the city, town or township to which it relates, for the examination of the public; the

original report and maps and schedules shall be temporarily lodged in the office of the Clerk of the county of Essex for the examination of the public; and the said clerks of said cities, towns and townships shall respectively, within ten days thereafter, give notice of the filing of said reports, and maps and schedules in their said offices, by posting for two weeks notices in five public places in their city, town or township; and said Commissioners shall give a like notice by advertising the same in two newspapers published in said county for two weeks in every issue of such newspapers; and the notice of said Board shall also state a time and place, when and where the said Board will meet, to receive objections in writing to said report, assessment and determination; if any person or corporation aggrieved by said assessments and determinations, by any act or thing upon which the same are, or is founded, shall not give to said Board notice of his said grievance or complaint and of the grounds thereof, in writing within twenty days after the filing of said report, he, she, or it shall be deemed to have waived such ground of complaint, and the said Board shall receive and consider the said objections so made in writing, and if any of them appear to be well founded, they shall require the said assessors to review the said assessment and make a new report upon the same, readjusting the assessment; but in making such review or readjustment, said assessors shall not readjust any assessment on any land lying outside of the city, town or township in which the land lies, the assessment on which they are required to review and readjust; the said assessment shall be a lien on the said lot or parcel of land

Notice of filing to be given.

Board to give notice of meeting to receive objections to report.

Notice of objections to be given to Board in twenty days after filing report.

Assessment a lien on the land assessed.

Proceed-
ings on
review.

until the same shall be paid, from and after the date that the said Commissioners shall approve of such assessment, and said Board shall approve all of said assessment, that they do not require said assessors to review and readjust, and as to that part of said assessment, they shall approve of that, so soon as the assessment shall have been reviewed and readjusted, if the same shall appear to have been readjusted properly; and in case the said assessment or any act of said assessors shall be removed to any court of review, the said assessment shall not be set aside for any excess of assessment, unless it appear that the said assessment was greater than the actual benefit the said laying out and opening of said avenue was to any lot or parcel of land on which said reviewed assessment may have been made, and the said court of review, in case they set aside such assessment, shall appoint the same or other assessors to review the said assessment, and readjust the same and re-assess the lands, the assessment upon which shall so have been reviewed before the said court, and said assessors so appointed by said court shall add to the assessment the costs and expenses of such review in said court, and of said re-assessment.

How as-
sessments
collected.

Board may
appoint
collector.

37. SEC. 14. The assessments for the benefits required to be paid by this act shall become due and shall be collected as is provided in the fifteenth section of the act to which this is a supplement; and the said Board may, in their discretion, appoint a collector to receive any moneys, due for assessments, and may require such collector to give a bond to the said Board, in such sum and with such sureties as they may designate, for the faithful performance of the duties of his office, and the

said Board shall, by resolution, fix the amount of compensation to be paid to such collector; the said Board shall also have power to appoint such other agents and officers as they shall deem necessary for the purpose of carrying into effect the purposes of this act.

38. SEC. 15. In addition to the powers conferred by this act, it shall be lawful for the said Board, and their authorized agents, to use and exercise, for the purpose of this act, all the powers and privileges belonging or appertaining to overseers and surveyors of the highways, under any general law or laws of this State, so far as the same may be used and exercised consistently with the foregoing provisions of this act.

Board to have the powers of overseers and surveyors of highways.

39. SEC. 16. The said Board is hereby authorized and empowered to purchase or take (compensation being first made), any turnpike road in said county, or such part or parts thereof as may be necessary for the purposes of this act, and the damages sustained by the taking of any turnpike road, or any part thereof, shall be ascertained upon like application, and in the same manner as is hereinbefore directed where any lands or buildings are taken for the purposes of this act, and the compensation paid or damages appraised shall be assessed upon the lands peculiarly benefited, and otherwise collected, paid and raised in the same manner, and to all intents and purposes as is hereinbefore provided for the assessing, collecting and paying for lands or buildings taken for the purposes of this act.

Turnpike roads may be taken.

Compensation to be made.

40. SEC. 17. The said Board may, at their discretion, and in pursuance of this act and of the act to which this is a supplement, lay out, construct, appropriate, improve and maintain, for the purposes of free

How other roads may be laid out.

carriage roads as aforesaid, any existing road, or may lay out and construct any new road, whenever application in writing shall be made to the said Board for that purpose by the owners of [more than one-half in lineal measurement of the land fronting] on the line of any such road now existing, or proposed new road; but the money necessary to pay the expenses of laying out, opening, and constructing any such roads, and the compensation in this act directed to be made to property owners for lands or buildings taken, shall to the amount and in proportion to the benefit received, be assessed upon the lands in said county peculiarly benefited thereby, in the manner hereinbefore provided for; if the amount of the said costs, expenses and compensation shall exceed the value of the benefits conferred upon the lands assessed for such benefits, such excess (if any) shall be borne, raised and paid by the county as hereinbefore provided for in relation to said avenues; and the proceedings in and for the laying out, constructing, appropriating, improving and maintaining any such roads, shall be the same in all respects as are provided in respect to the laying out, constructing, appropriating, improving and maintaining the said avenues.

When suit may be brought against the county.

41. SEC. 18. In the event of the damages and interest mentioned in the thirteenth section of the act to which this is a supplement, not being paid as therein provided for, a suit for the same with costs may be brought against the said county, and not against the said Board as is in said section provided.

42. SEC. 19. If any person or persons assessed for benefits in pursuance of this act and of the act to

which this is a supplement, shall elect to pay the assessment against him or them in one payment, within three months from the date of such assessment, he, she or they shall be entitled to a rebate of twelve per centum upon the amount assessed against him, her or them.

Persons paying assessments in three months entitled to rebate of 12 per cent.

43. SEC. 20. The bonds authorized and required to be issued by the Board of Chosen Freeholders of the county of Essex, by virtue of the sixteenth section of the act to which this is a supplement, shall be payable in ten years, with the interest thereon, and that it shall be lawful to raise by taxation as a part of the county tax of the said county of Essex, money to pay said bonds or any portion thereof, or the interest thereon. (See 16, 50, 51.)

County bonds when payable.

44. SEC. 21. The Commissioners now constituting the Essex Public Road Board shall respectively hold their office for the term of [four] years from the first Monday in January, eighteen hundred and seventy, and their successors in office shall be appointed and elected in the year eighteen hundred and seventy-three, at the same times, in the same manner and for the same terms as is now provided by the act to which this is a supplement, for their appointment and election in the year eighteen hundred and seventy; and their subsequent appointments, election and term of office shall be at the same time, in the same manner, and for the same term as is provided in the seventeenth section of said act; and the said Commissioners shall receive an annual salary of one thousand dollars each, to be paid quarterly by the County Collector.

Term of office of commissioners, their appointment, election

45. SEC. 22. The second, sixth, seventh, ninth, twelfth, fourteenth and twenty-second sections of the

Repealer.

act to which this is a supplement, and such other parts of said act as are inconsistent with the provisions of this act, and all other acts and parts of acts inconsistent with this act, be and the same are hereby repealed, and this act shall take effect immediately.

[LAWS OF 1870, PAGE 714.]

Supplement Approved March 17, 1870.

46. SEC. 1. No lands in any city, town or township, in which any avenue—named in the supplement to the act to which this is a further supplement, approved the sixteenth day of February, eighteen hundred and seventy—shall be laid out by said Board, shall be liable to be assessed for benefits to pay the compensation to be made for land or property taken which shall not lie within such city, town or township; but the lands in any city, town or township, through which any of the said avenues shall be laid out, which shall be peculiarly benefited thereby, shall be liable to the extent and in proportion to the benefit received for the lands or property taken therein only; but in all other respects except as herein provided, the moneys necessary to pay the compensation for lands or property taken shall be raised as in said supplement directed.

No lands to be assessed for benefits except for land taken in same township, &c., where said lands are situated.

47. SEC. 2. The first section of the supplement to the above entitled act, approved February sixteenth, eighteen hundred and seventy, be amended in reference to Washington avenue by striking out the words "shall not exceed in width seventy-five feet."

First section of supplement of February 16, 1870, amended.

48. SEC. 3. It shall be lawful for the said Board to lay out and construct said avenues or any of them in sections, of so much of said avenues or any of them, as

Avenues may be constructed in sections.

is embraced in any city, town or township; and any of said sections may, in the discretion of the said Board, be first laid out and constructed, and the damages for land and property taken therefor, may be appraised, and the benefits assessed and collected in pursuance of the said supplement before the residue of any of the said avenues shall be constructed or worked.

Twenty-first section of act of March 31st, 1869, repealed.

49. SEC. 4. The twenty-first section of the act approved March thirty-first, eighteen hundred and sixty-nine, to which this is a further supplement, be and the same is hereby repealed, and this act shall take effect immediately.

[LAWS OF 1871, PAGE 175.]

Supplement Approved February 2, 1871.

50. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the twentieth section of the act supplemental to the above entitled act, which supplemental act was approved February sixteenth, eighteen hundred and seventy, be, and the same is hereby amended by striking out therefrom the words "in equal annual installments," and that the bonds heretofore issued by the Board of Chosen Freeholders of the county of Essex, payable on the first day of July, one thousand eight hundred and eighty, and bearing date the first day of July, one thousand eight hundred and seventy, and such bonds as the said Board of Chosen Freeholders shall hereafter issue payable at any time not exceeding ten years, with interest, and signed and countersigned as provided in the sixteenth section of said act, to enable the Collector of the county of Essex to raise money for the purposes in said act and supplemental act mentioned, shall be and they are hereby declared to be valid, and shall be paid as is provided for in said acts for the payment of the bonds therein mentioned, which said bonds it shall be lawful for the said Board of Chosen Freeholders of the county of Essex, to sell and negotiate at public or private sale for the best price that can be obtained therefor.

Repealer.

Certain bonds heretofore issued made valid.

Terms of
sale or ne-
gotiation
bonds.

51. SEC. 2. AND BE IT ENACTED, That the said bonds shall be received by said Road Board at par, in payment of the benefits assessed in pursuance of the said act, when the same shall be tendered in sums not exceeding the amount in any one case assessed, and the bonds so tendered and received shall be delivered and paid to the Collector of the county of Essex, and shall be received by him at par, and he shall return to the said Board of Chosen Freeholders the said bonds so paid and received for benefits, which said Board shall thereupon cancel the same.

52. SEC. 3. AND BE IT ENACTED, That the fourth section of the said supplemental act be, and the same is hereby amended by striking out the words "excepting Bloomfield avenue, which shall be macadamized."

Bridges
and cul-
verts to be
made at ex-
pense of
county..

53. SEC. 4. AND BE IT ENACTED, That all bridges and culverts built and constructed by the said Road Board shall be built and constructed at the expense of the county of Essex.

Board may
curb side-
walks when
requested
in writing.

54. SEC. 5. AND BE IT ENACTED, That the said Road Board shall have power to curb the side-walks on any of the said avenues or section of any avenue mentioned in said supplemental act, when requested in writing so to do by the owners of the majority of the land, counting by lineal measurement on the line of any of the said avenues or section of an avenue, to prescribe the manner in which the said work shall be performed, and to cause the expense thereof, to be assessed on the adjoining lots, whether improved or unimproved, and collected as hereinafter mentioned; and it shall be lawful for the said Board to curb one side of any of said avenues or a section thereof, when requested by the

owners of a majority of the land on the line of the side of the avenue or section intended to be curbed; and the said Road Board, when they shall curb any avenue or section or side thereof, shall ascertain the whole amount of the costs and expenses of such curbing, and shall make a just and equitable assessment thereof upon the owners of the lands and real estate on the line of said avenue or section or side of an avenue, giving ten days' previous notice in two newspapers published in the county of Essex, of the time and place when the said Board will meet to make such assessment, stating generally in said notice the avenue or such section or side thereof as they may intend to curb; and the said assessment when made shall be and remain a lien upon the lands and real estate so assessed until paid, and shall be collected in the same manner as is provided in said act for collecting assessments for benefits.

Expense,
how as-
sessed and
collected.

55. SEC. 6. AND BE IT ENACTED, That the said Road Board shall have power to locate the tracks of any horse railroad which may be hereafter constructed or relaid over any of the said avenues, and the tracks of such railroad shall be laid on such part of said avenues as said Board shall direct; and all trees shall be planted on said avenues, and all gas and water pipes shall be laid thereon, under the direction and supervision of said Board.

Board may
locate
tracks of
horse rail-
roads on
avenues.

56. SEC. 7. AND BE IT ENACTED, That the sixth section of the said supplemental act be, and the same is hereby amended by striking out therefrom the words "provided such benefit shall not exceed fifty per cent.

of the assessed value of any property for the year eighteen hundred and sixty-nine," and said proviso is hereby repealed.

57. SEC. 8. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1871, PAGE 947.]

Supplement Approved March 28, 1871.

58. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the Essex Public Road Board, in pursuance of said act, and the several supplements thereto, is hereby authorized and empowered to lay out, construct, appropriate, improve and maintain for the purpose of free carriage roads in the county of Essex, the following named avenues in the county of Essex: ESSEX AVENUE, beginning at the Newark and Pompton Turnpike, in the village of Montclair, opposite the junction of Church street and Fullerton avenue, and running thence through the township of Montclair to Walnut street, at or near the western line of land conveyed by Matilda H. Crane to the Montclair Railway Company; and thence to Watching avenue, at a point about twelve hundred feet westward of the highway known as the Telegraph road, and said Board may extend the said avenue to the Mount Hebron road, at or near its intersection with said Telegraph road; MIDLAND AVENUE, beginning in the northern line of said township of Montclair, at the intersection therewith of the western boundary of lands of Amos Broadnax; and running thence to said Watching avenue, at the eastern boundary of land formerly of F. Martel; thence to Church street in said township, about two hundred feet eastward from the public flag

Board may
construct
new av-
enues.

Essex
avenue.

Midland
avenue

staff, near the public school house in said village; thence to Park avenue, in the town of Orange, or in the township of West Orange; thence to South Orange avenue, in the township of South Orange; and thence to Springfield avenue, in the township of Millburn;

Ridgewood
avenue. RIDGEWOOD AVENUE, beginning at Main street, or at Park avenue, in the town of Orange, and running thence through the townships of East Orange and Bloomfield to the line of the county of Passaic; also

Lincoln
avenue. LINCOLN AVENUE, beginning at a point on the stage road to Paterson, in the township of Bloomfield, about one hundred feet south of the south line of land of Cecile G. Dunscomb; and running thence to the angle in a highway which was laid out across lands of the Montclair Railway Company and of Eliza C. Wilde, on the twenty-ninth day of June, eighteen hundred and seventy; thence westward through and along said highway; and thence to the highway known as the old road leading from Bloomfield to Montclair; *provided*, that the money necessary to pay the expenses of laying out, opening and constructing said avenues, and the compensation by the said acts directed to be made to property owners, shall in all respects be raised, assessed, and paid as is provided in the seventeenth section of the act supplemental to the above entitled act, which supplemental act was approved February sixteenth, one thousand eight hundred and seventy; and the proceedings in and for the laying out, constructing, appropriating, improving and maintaining said avenues, shall be as therein provided for in relation to the roads therein mentioned. (See 40, 61.) *And provided further*, that the expense of maintaining said avenues after the

Expense,
how as-
sessed and
paid.

How to be
laid out, &c.

same shall have been laid out, opened and constructed, shall be paid by the respective townships through which the same may be laid out.

59. SEC. 2. AND BE IT ENACTED, That the said seventeenth section of the said supplemental act be amended by striking out the words "two-thirds of the land," and substituting in lieu thereof the words "more than one-half in lineal measurement of the land fronting."

60. SEC. 3. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1872, PAGE 1,096.]

Supplement Approved April 3, 1872.

61. SEC. 1. BE IT ENACTED, *by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for "The Essex Public Road Board" to lay out and construct the avenues named in and authorized by the act supplemental to the act to which this act is a further supplement, which said supplemental act was approved March twenty-eighth, eighteen hundred and seventy-one, or any or either of them, in sections of so much of said avenues, or any of them, as the said Board may determine upon; and any of said sections may, in the discretion of the said Board, be first surveyed, laid out, constructed, appropriated and improved; and the damages for the land and property taken therefor may be appraised, and the benefits assessed and collected as provided by law in respect to the whole of said avenues, before the residue or remaining part of parts of any or either of them shall so be surveyed, laid out, constructed, appropriated, or improved; *provided*, that it shall not be lawful for said Board to lay out or construct any or either of the avenues in said supplement authorized, or any part or parts thereof, within the limits of the town of Orange, or township of South Orange, nor to assess any property in said town or township, for the laying out, constructing, appropriating, improving or maintaining thereof.

Avenues authorized by Act of 1871, may be constructed by sections.

Proviso.

62. SEC. 2. AND BE IT ENACTED, That all acts and parts of acts, so far as they conflict with the provisions of this act, be and the same are hereby repealed, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

[LAWS OF 1872, PAGE 1,269.]

Supplement Approved April 4, 1872.

63. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for the Essex Public Road Board, and the said Board is hereby authorized and empowered to macadamize, according to the Telford process, to a width of not more than twenty feet upon each, so much and such parts of the carriage-ways of the several avenues mentioned and defined in the first section of the act supplemental to the above entitled act, which said supplemental act was approved February sixteenth, eighteen hundred and seventy, as lie within the following bounds, to wit: the carriage-way of Frelinghuysen avenue, from the Newark city line to the Union county line, of Springfield, South Orange, Park and Bloomfield avenues, severally, from the Newark city line to the summit of the first mountain, and of Washington avenue, from the Newark city line to the Passaic county line, in such manner and with such materials as the said Board shall judge best for the public interest; and that the cost thereof, including all expenses connected therewith, shall be assessed and paid in the same manner as now provided by law in respect to the laying out, opening and constructing of the said avenues, *provided*, however, that such part of said cost and expenses as shall be raised and paid in the city

Board may
macadam-
ize certain
avenues.

Cost there-
of, how
assessed.

Proviso as
to city of
Orange.

of Orange, shall be certified by said Road Board unto the Board of Assessments of said city, and shall thereupon be assessed and collected, and shall be a lien upon lands and real estate, in the same manner as assessments for laying out and opening streets in said city are or shall be made.

64. SEC. 2. AND BE IT ENACTED, That whenever a petition in writing shall be presented to said Board, signed by the owners of a majority of the land, counting by lineal measurement, on the line of any of the portions of said avenues designated in the first section of this act, or upon any portions or sections thereof as may lie between two points named in said petition, requesting to have so much of the carriage-way as lies between the said points named, as may not be macadamized or determined so to be by said Board at the date of said petition, macadamized, the said Board may proceed to macadamize the same, and to prescribe the manner in which said work shall be performed, and to cause the expense thereof, when the same shall have been ascertained, to be assessed on the adjoining land, the basis being the lineal measurement thereof lying between the points designated in said petition; and the proceedings for the collection of said assessment shall be the same as is provided in the fifth section of the act supplemental to the act to which this is a supplement, which said supplemental act was approved February second, eighteen hundred and seventy-one, in relation to the assessments therein provided for.

Cost of macadamizing, when petitioned for, may be assessed on adjoining land.

65. SEC. 3. AND BE IT ENACTED, That it shall and may be lawful for said Board, whenever in their judgment it shall be advisable or conducive to the public

Board may contract for removal of buildings without the intervention of appraisers.

May contract and pay for gores and parcels of land omitted in survey.

May agree with owners as to damages for alteration of grade.

Appeals from appraisements to be within sixty days.

Notice of trial may be by either party.

interest, to contract with the owner or owners of any buildings or parts of buildings which it is or may become necessary for them to remove in the prosecution of their work, for the removal of the same by the said Board without the appointment of appraisers to assess the damage sustained by such owner or owners on account of the removal of any such buildings or parts of buildings, and to pay such damage agreed upon to such owner or owners out of any moneys set to the credit of the said Board for the purposes mentioned in the sixteenth section of the act to which this act is a supplement; and the said Board may in like manner contract with and pay the owners thereof for any parcels or gores of land which have been or may be inadvertently omitted in the surveys of said Board, and which it is or may become necessary for them to acquire, and may also in like manner contract with and pay damages to the owners of land and other property which may be damaged by reason of the alteration of the grade on any of said avenues by said Board.

66. SEC. 4. AND BE IT ENACTED, That all appeals which may hereafter be taken from the awards of appraisers or commissioners who have been or who may hereafter be appointed to assess damages under any of the provisions of the act, to which this is a supplement, or the several supplements thereto, shall be so taken within sixty days from and after the date of the filing of the report of any such appraisers or commissioners, and either party to any appeal so taken may notice the same for trial.

67. SEC. 5. AND BE IT ENACTED, That the said Board shall have power, before construction, to make partial

alterations in the surveys and location of any of said avenues, in any such part or parts thereof, as to the said Board may seem desirable; and in case said Board shall make any such alteration or re-location, they shall cause a map of such alterations to be filed in the same manner and in the same office or offices as the original survey is required to be filed, and shall be marked and designated as an amended survey, and from the time of such filing shall supersede the original survey; and it shall be lawful for the said Board, in case they shall discover any oversights, defects or omissions on the part of appraisers in returns of appraisements by them made, to recall such appraisers, and thereupon said appraisers shall proceed as under their original appointment and oaths, to make appraisements of and in respect to such matters as were omitted or defective in their original report, and to file a supplemental report of such new appraisements.

Board may alter surveys before construction.

May recall appraisers to correct oversights, &c.

68. SEC. 6. AND BE IT ENACTED, That the second proviso contained in the first section of the act supplemental to the act to which this act is a further supplement, which said supplemental act was approved March twenty-eighth, eighteen hundred and seventy-one, be and the same is hereby repealed.

Repealer.

69. SEC. 7. AND BE IT ENACTED, That the twenty-first section of the act supplemental to the act to which this act is a further supplement, which said supplemental act was approved February sixteenth, eighteen hundred and seventy, be and the same is hereby amended, by striking out the word "three" first occurring in said section, and substituting in lieu thereof, the word "four."

Term of office changed.

Central
avenue.

70. SEC. 8. AND BE IT ENACTED, That this act and the provisions of the original act, to which this act is a further supplement, and all the supplements to said original act, except the supplement approved March twenty-eighth, eighteen hundred and seventy-one, shall be, and they hereby are, extended and made applicable in all respects to the avenue known as "Central Avenue," from the boundary line of the city of Newark, to its present terminus at Valley Road, in the township of West Orange.

Repealer.

71. SEC. 9. AND BE IT ENACTED, That all acts and parts of acts so far as they conflict with the provisions of this act, or the act to which this act is a supplement, or of the several supplements thereto, be and the same are hereby repealed; *provided*, that nothing in this section shall be held or construed to alter or effect any of the provisions contained in the charter of Bloomfield Cemetery Company; and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

[LAWS OF 1873, PAGE 424.]

Supplement Approved March 26, 1873.

72. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That nothing in the provisos contained in the first section of the supplement to the act to which this is a further supplement, and which supplement was approved the sixteenth day of February, one thousand eight hundred and seventy, shall be construed to prohibit the Essex Public Road Board from causing to be assessed upon the lands within the territory formerly constituting the township of Woodside, (but now forming a part of the Eighth Ward of the city of Newark,) the damages or compensation awarded by appraisers, pursuant to said act, and the several supplements thereto, for lands and buildings taken for the laying out of Washington avenue within said territory; but that said damages or compensation shall and may be assessed, become a lien, be enforced and collected in the same manner in all respects as if said territory had not been annexed to the said city of Newark.

73. SEC. 2. AND BE IT ENACTED, That the power and authority vested in said Board by the first section of the supplement to said act (to which this is a further supplement), which supplement was approved the fourth day of April, one thousand eight hundred and seventy-two, shall extend and apply to Central avenue, and all the avenues in said first section mentioned, throughout the whole course thereof in the county of Essex.

The compensation for right of way for Washington avenue in Woodside may be assessed on lands benefited therein, notwithstanding its annexation to Newark.

Power to macadamize conferred by the first section of the supplement of April 4, 1872 shall extend and apply to Central avenue and all the avenues in said section mentioned, throughout their whole course.

Board may prescribe the kind of rail to be laid on any of their avenues when horse railroad tracks are authorized thereon.

When damages shall be increased on appeal, after they shall have been assessed by way of benefits, the Board may assess the excess and also the costs adjudged.

Damages awarded on any supplemental appraisal or re-appraisal may be assessed by Board on lands benefited.

74. SEC. 3. AND BE IT ENACTED, That whenever any horse railroad track shall be laid on any avenue under the charge or control of said Board, the kind of rail used in the laying thereof shall be such as said Board shall prescribe

75. SEC. 4. AND BE IT ENACTED, That whenever the damages awarded by appraisers for property taken or injured, or for change of grade, pursuant to the act to which this is a supplement, or to any supplement thereto, shall have been assessed by assessors, upon lands deemed to be benefited, agreeably to said act, or any of its supplements, before the determination of any appeal taken by any party from said award, and upon such appeal, the damages shall be increased, the said Board shall thereupon, without the intervention of appraisers, apportion or assess the said excess or increase, including any costs adjudged, ratably upon the same lands so assessed by said assessors, and on the basis of their assessment; and such excess or increase shall be and remain a lien on said lands, and be enforced and collected in the same manner as the original assessments; and in case any of said original assessments shall remain unpaid, in whole or in part, shall be added thereto, form a part thereof, and be payable at the same time therewith; and any damages awarded under any re-appraisal or supplemental appraisal, made in pursuance of said acts, or of the order of any competent court, shall be apportioned or assessed by said Board on the same basis, in the same manner, and be and remain a lien, and be enforced, collected, and payable in the same manner as such increase or excess adjudged on appeal.

[LAWS OF 1873, PAGE 622.]

Supplement Approved April 3, 1873.

76. SEC. 1. BE IT ENACTED *by the Senate and General*

Assembly of the State of New Jersey, That such part of the costs and expenses authorized by and incurred under the second section of the supplement to the above entitled act, which supplement was approved March twenty-sixth, one thousand eight hundred and seventy-three, as shall be raised and collected in the city of Newark, shall be certified by the said Board to the Common Council of said city, and shall thereupon be assessed and collected and be a lien upon lands and real estate, in the same manner, so far as practicable, as assessments for paving streets in said city are or shall be made; and that all assessments for benefits made under the act to which this is a further supplement, or any supplement thereto, shall be payable with lawful interest from the time of the making thereof, and that this act shall take effect immediately.

The costs and expenses of macadamizing the avenues in Newark to be certified to Common Council thereof, and thereupon to be assessed, &c., in the same manner as costs of paving therein are assessed and collected.

Assessments for benefits to draw lawful interest from the time they are made.

[LAWS OF 1873, PAGE 777.]

Supplement Approved April 4, 1873.

The Board instructed to report to the next Legislature an accurate map of such portions of Essex county as are included within the limits of their improvements, together with suggestions in relation to a system of parks connected by boulevards or drives for health and recreation.

77. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the Essex County Public Road Board are hereby instructed to report to the next session of the Legislature an accurate map of such portions of the county of Essex as are included within the limits of the improvements heretofore authorized to be made by them under acts of the Legislature already passed, together with such suggestions as they may deem proper to make in order to establish an economical system of public parks connected by boulevards or public drives, so as to furnish suitable grounds and drives for the purposes of health and recreation.

78. SEC. 2. AND BE IT ENACTED, That this act shall be deemed and taken to be a public act, and shall take effect immediately.

[LAWS OF 1874, PAGE 389.]

Supplement Approved March 21, 1874.

79. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That so much and such parts of any and all acts supplementary to the act to which this is a further supplement, as relates to or authorizes the laying out and construction of the avenues known and designated as "Essex avenue," "Midland avenue," and "Lincoln avenue," be and the same are hereby repealed.

Repealer.

80. SEC. 2. AND BE IT ENACTED, That no contract for the construction or macadamizing of any avenue, or of any section thereof, shall be made by the Essex Public Road Board, unless a certified copy of the resolution of said Board, providing for such construction or macadamizing, shall be submitted to, and such resolution shall be approved by the Board of Chosen Freeholders of the county of Essex.

Board of Freeholders to give approval before construction.

81. SEC. 3. AND BE IT ENACTED, That whenever, in the widening or straightening of any road or avenue, or section thereof, the damages awarded by appraisers for property taken or injured, pursuant to the act to which this is a supplement, or to any supplement thereto, shall have been assessed by assessors upon lands deemed to be benefited, agreeably to said act or any of its supplements, and in the course of the reconstruction or improvement thereof, there shall

Board may apportion upon lands, after assessment, damages appraised for alteration of grade, during construction.

be an alteration of grade and a subsequent appraisal of damages therefor, or by reason thereof, pursuant to the eleventh section of the act to which this is a further supplement, the said Board shall thereupon, without the intervention of assessors, apportion or assess the last-mentioned damages ratably upon the same lands so assessed by said assessors, and on the basis of their assessment; and the same shall be and remain a lien on said lands, and be enforced and collected in the same manner as the said original assessment; and in case any of said assessments shall remain unpaid in whole or in part, shall be added to the unpaid portion thereof, and be payable and collectible therewith.

Writ of certiorari must issue within sixty days after approval.

82. SEC. 4. AND BE IT ENACTED, That [no] writ of certiorari [shall issue] to review any assessment for benefits, or any order or proceedings preliminary thereto under the act to which this is a supplement, or any supplement thereto, unless such writ shall be allowed and issued within sixty days after the said assessment shall have been approved by said Board.

83. SEC. 5. AND BE IT ENACTED, That this act shall be deemed to be a public act, and shall take effect immediately.

[LAWS OF 1874, PAGE 540.]

Supplement Approved March 27, 1874.

84. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the public notice required by the act approved February sixteenth, one thousand eight hundred and seventy, and supplementary to the act to which this is a further supplement, of the first meeting of the assessors of benefits, shall be given by publication thereof in two daily newspapers of the said county, daily, Sundays excepted, for the space of ten days, and that such notice shall be sufficient, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

Notice of first meeting of Assessors to be given in two papers.

[LAWS OF 1874, PAGE 750.]

An Act for the Relief of the Township of Millburn, Approved March 27, 1874.

Springfield
avenue to
be laid out
before Jan-
uary 1, 1877.

85. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall be the duty of the Essex County Public Road Board, and they are hereby directed and required to proceed with and complete the laying out, opening and construction of the avenue known as Springfield avenue, through the township of Millburn to the boundary line of the county of Essex, so that the same shall be constructed and completed on or before the first day of January, one thousand eight hundred and seventy-seven.

Township
exempt
from taxa-
tion or as-
sessment.

86. SEC. 2. AND BE IT ENACTED, That in case the said Springfield avenue shall not be constructed and completed in and through said township of Millburn, that then and thereafter, that is to say, from and after the said first day of January, one thousand eight hundred and seventy-seven, the said township of Millburn, and the inhabitants thereof, and all property in said township shall be exempt from all liability to taxation or assessment, or contribution, on account of any expenditures, indebtedness, or outlay made and created, or which shall be hereafter made and created by the said Essex County Public Road Board, or for or by

reason of any work or expenditure under their supervision.

87. SEC. 3. AND BE IT ENACTED, That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and this act shall take effect immediately.

[LAWS OF 1875, PAGE 292.]

Supplement Approved March 17, 1875.

Townships
to be al-
lowed dam-
ages when
macadam-
ized roads
are appro-
priated.

88. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That whenever the Essex Public Road Board shall hereafter enter upon and appropriate any portion or portions of any highway, which has been heretofore graded and macadamized by the legal authorities of any town or township through which it passes, they shall first cause an appraisement to be made of the value to the county of such grading and macadam, in the same manner as is provided for the appraisement for damages, in sections eight, nine, ten and eleven, of the supplement to the act to which this a supplement, which said supplement was approved February sixteenth, one thousand eight hundred and seventy.

89. SEC. 2. AND BE IT ENACTED, That the said appraisement, when it shall have been confirmed, in accordance with the provisions of said sections of said supplement, shall form a part of the construction account of said avenue or avenues, and shall be paid over by the said Road Board, to the legal town or township authorities having jurisdiction over the highways, so entered upon and appropriated, in the same manner and time as is provided for the payment of damages for land taken by the said road.

90. SEC. 3. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1875, PAGE 420.]

Supplement Approved March 31, 1875.

91. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the said Board shall have power, before construction, to reduce the width of any avenues, or any part thereof, if they shall deem it expedient, in which case they shall cause to be filed a map of the avenue of part thereof so reduced in width, in connection with the original map or survey of such avenue.

Board shall have power to reduce width of avenues.

92. SEC. 2. AND BE IT ENACTED, That section three of the supplement to said act, which supplement was approved March seventeenth, eighteen hundred and seventy, be amended by striking out therefrom the words "of so much of said avenues, or any of them, as is embraced in any city, town or township."

Amendment.

93. SEC. 3. AND BE IT ENACTED, That where an assessment for benefits shall have been made, or shall hereafter be made under said act, or any supplement thereto, upon or against any lot or tract of land in the name or names of any several owner or joint owners thereof, and the owner or owners thereof shall desire any portion of such lot or tract released from the lien of such assessment, or shall desire to have the whole amount of such assessment apportioned upon specific portions of such lot or tract, it shall be lawful for said Board to release any such portion from the lien of any

Board may apportion assessments in certain cases, and release portions upon payment.

such assessment, upon being paid or secured a ratable proportion of the whole assessment, and also to make an apportionment and division of such assessment, so that any specified portion of the whole lot or tract shall be held and liable only for a definite proportion of the whole assessment, and be discharged therefrom upon the payment of such proportion.

Amend-
ment.

94. SEC. 4. AND BE IT ENACTED, That section four of the supplement approved March twenty-first, eighteen hundred and seventy-four, to the act to which this is a further supplement, be amended by striking out the word "any," where it first occurs in said section, and inserting in lieu thereof, the word "no," and by inserting next after the word "certiorari," the words "shall issue."

Board may
purchase
at sale.

95. SEC. 5. AND BE IT ENACTED, That such lands and real estate as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, shall be struck off to said Board by its corporate name, for the term of fifty years, and may be held and sold, assigned and disposed of by said Board for the use of the county, with all the rights and privileges of a purchaser at such sale, and subject to the same conditions and limitations.

96. SEC. 6. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1875, PAGE 458.]

Supplement Approved April 7, 1875.

97. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That where any assessment made under said act or any supplement thereto has been or shall be set aside, only as to the prosecutor or prosecutors of any writ or writs of certiorari, by any Court of review, the Court or any judge thereof shall thereupon order a new assessment and appoint the same or other assessors to re-assess the amount of the assessments so set aside, together with the lawful interest accrued thereon, the costs and expenses of such review, and of such re-assessment, to be estimated and laid before them by the Essex Public Road Board; and said assessors so appointed shall proceed as provided in respect to the original assessment, and report to the said Board; but in making such re-assessment, no tracts or lots of land originally assessed for the benefits of the said improvement, and the original assessments upon which shall not have been set aside, shall be liable to be re-assessed, but the same shall be exempt from such re-assessment, and that this act shall take effect immediately.

Re-assessment to be made when assessments are set aside.

Lands originally assessed to be exempt from re-assessment.

