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Return to Writ of Certiorari.

*To the Honorable Justices of the Supreme Court
of Judicature of New Jersey:*

I, EDWARD J. KELLEHER, Clerk of the New Jersey Supreme Court, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you, the said Justices, the appointment of Commissioners, the notice relating thereto and the application therefor, with the affidavits thereto annexed and the reply affidavits thereto, relating to the matters said to be in dispute between the Counties of Morris and Essex respecting the rebuilding of the bridge across the Passaic River between said counties, known as Two Bridges Bridge, together with all things touching and concerning the same as fully and entirely as the same remain in my office and possession, as by the said writ I am commanded.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 21st day of December, A. D. 1926.

EDWARD J. KELLEHER,
Clerk.

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Writ of Certiorari.

NEW JERSEY, ss.

The State of New Jersey to Edward
(L. s.) J. Kelleher, Clerk of the New Jersey
Supreme Court, GREETING: We being
willing for certain reasons to be certified of the
appointment of three commissioners to meet sum-
10 marily, inquire into and make disposition as to
matters said to be in dispute between the Counties
of Morris and Essex respecting the rebuilding of
the bridge across the Passaic River between said
counties, known as Two Bridges Bridge, under the
provisions of Chapter 332, Laws of 1926;

We do command you that the said appointment
of commissioners, the notice relating thereto and
the application therefor, with the affidavits there-
20 to annexed and the reply affidavits thereto, to-
gether with all things touching and concerning the
same as fully and entirely as before you they re-
main, you do certify and send, under your seal, to
our Justices of our Supreme Court of Judicature,
at Trenton, on the 21st of December next, together
with this writ, that there may be done thereon
what, according to the laws of the State ought to
be done.

30 WITNESS HON. WILLIAM S. GUMMERE, Chief
Justice of our said Supreme Court at Trenton, the
1st day of December, 1926.

EDWARD J. KELLEHER,
Clerk.

CHARLES A. RATHBUN,
Attorney.

Allocatur: This writ is allowed. Let it be
sealed.

40 WM. S. GUMMERE,
C. J.

Notice.

In the Matter of the Applica-
tion of the County of Essex
for the appointment of three
Commissioners to meet, sum-
marily inquire into and make
disposition as to matters in
dispute between the

COUNTIES OF MORRIS
and ESSEX,

respecting the rebuilding of
the bridge across the Passaic
River between said Counties
known as

TWO BRIDGES BRIDGE,
in the Township of Caldwell.

Notice.

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To the Board of Chosen Freeholders of the County
of Morris:

This is to notify you that on Saturday, July 31,
1926, at 10 A. M. (Daylight Saving Time), at the
Court House, Newark, N. J., I will present a pe-
tition to William S. Gummere, Chief Justice of the
New Jersey Supreme Court, asking for the ap-
pointment of commissioners, under the provisions
of Chapter 332, Laws of 1926, to inquire into the
present relations between the Boards of Chosen
Freeholders of the Counties of Morris and Essex,
concerning the rebuilding of the bridge across the
Passaic River between the two counties, known as
the Two Bridges Bridge in the Township of Cald-
well, N. J., copy of which petition is hereto annex-
ed.

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ARTHUR T. VANDERBILT,
County Counsel of the
County of Essex.

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Newark, N. J., July 27, 1926.

Petition.

10 In the Matter of the Application of the County of Essex for the appointment of three Commissioners to meet, summarily inquire into and make disposition as to matters in dispute between the

COUNTIES OF MORRIS and ESSEX,

respecting the rebuilding of the bridge across the Passaic River between said Counties known as

20 TWO BRIDGES BRIDGE, in the Township of Caldwell.

Petition.

To the Honorable William S. Gummere, Chief Justice of the New Jersey Supreme Court:

The petition of the County of Essex, a public corporation of the State of New Jersey, respectfully shows:

30 1. That the bridge located in the Township of Caldwell across the Passaic River between the Counties of Essex and Morris, known as the Two Bridges Bridge, was constructed and is maintained at the equal joint expense of said counties.

40 2. That the County Engineers of said counties have reported to the Joint Bridge Committee of the Boards of Chosen Freeholders of said counties that said bridge is dangerous and unsafe for public traffic; that said bridge has been built for many years; that said bridge has been subjected to long

Petition.

and severe use and is wholly inadequate for the automobile traffic that now passes over it.

3. That the County of Essex on September 17, 1925, adopted a resolution prohibiting the use of said bridge for vehicles of more than two tons weight including load and prohibiting the use of said bridge for a greater speed than six miles an hour by all motor vehicles, and made provision for suitable signs of warnings and penalties at appropriate places and appointed suitable persons to be placed in special care and charge of said bridge for the enforcement of said regulations, and has taken every precaution to warn the public of the danger of the use of said bridge. 10

4. That several conferences and meetings have since been held between representatives of said counties as to rebuilding of said bridge, and the Boards of Chosen Freeholders of said counties have been unable to agree as to the manner or method of rebuilding said bridge already erected and now out of repair so that the same now remains dangerous and unsafe for public travel and constitutes a menace to the persons using it, their persons and property. 20

Your petitioner, therefore, prays that this Court shall appoint three persons as commissioners to meet forthwith and summarily inquire into said matters, giving to said commissioners all the powers conferred upon them under the provisions of Chapter 332 of the Laws of 1926. 30

THE COUNTY OF ESSEX,
PHILIP LINDEMAN,
Director of the Board of Chosen Freeholders of the County of Essex. 40

Petition.

FRANK E. WARD,
Clerk of the Board of Chosen
Freeholders of the County of
Essex.

ARTHUR T. VANDERBILT,
County Counsel.

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State of New Jersey, }
County of Essex. } ss.:

Philip Lindeman and Frank E. Ward; being
duly sworn on their oaths according to law, depose
and say that they are respectively Director and
Clerk of the Board of Chosen Freeholders of the
County of Essex; that they signed the within pe-
tition pursuant to a resolution passed by said
Board on July 22, 1926; that they are familiar with
the matters and things contained therein and the
same are true to the best of their knowledge, infor-
mation and belief.

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PHILIP LINDERMAN,
FRANK E. WARD.

Sworn to and subscribed before
me this 27th day of July, 1926.

Raymond E. Mahony,
Notary Public for New Jersey.

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Affidavit of William A. Stickel.

State of New Jersey, }
County of Essex. } ss.:

William A. Stickel, of full age, being duly sworn
upon his oath according to law, deposes and says:
I am by profession a civil engineer and have

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Affidavit of William A. Stickel.

been practicing in the State of New Jersey for the
past eleven years. During the past five years I
have been County Engineer for the County of Es-
sex and occupy that position at the present time.
I am familiar with the bridge across the Passaic
River between Essex and Morris counties known
as the Two Bridges Bridge under the control and
care of the Boards of Chosen Freeholders of said
counties. I have made numerous examinations of
said bridge for the purpose of advising the Board
of Chosen Freeholders of the County of Essex as
to the necessity for rebuilding the same, said bridge
has been subjected to the newly developed and
heavy character of transportation, so that there
has been a very rapid deterioration of said bridge
through such new and heavy transportation. I am
of the opinion and I have so reported on several oc-
casions to the Board of Chosen Freeholders of the
County of Essex and to the Joint Bridge Commit-
tee of the Counties of Essex and Morris, that said
bridge should be immediately rebuilt to meet mod-
ern traffic conditions.

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Subsequent to a report to said committee, the
County Engineer of Morris County and myself
were directed to prepare plans and specifications
for the construction of a new bridge to take the
place of the present structure pursuant to which
plans were prepared by the County Engineer of
Morris County and myself and the same were ap-
proved by resolution adopted at a regular meeting
of the Board of Chosen Freeholders of the County
of Essex held June 10, 1926, which resolution di-
rected said Joint Bridge Committee to advertise
for and receive bids for said new bridge and said
resolution provided further that the same should

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Affidavit of William A. Stickel.

not become effective until concurred in by the Board of Chosen Freeholders of the County of Morris; that a certified copy of said resolution was forwarded to the Clerk of the Board of Chosen Freeholders of the County of Morris on June 17, 1926; that the Board of Chosen Freeholders of the County of Morris has refused or failed to concur in said resolution, so that said Boards are now unable to agree as to the manner or method of rebuilding said bridge.

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WM. A. STICKEL.

Sworn to and subscribed before
me this 27th day of July, 1926.
Raymond E. Mahony,
Notary Public for New Jersey.

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Affidavit of Winfield Hopkins.

In the Matter of the Application of the County of Essex for the appointment of three Commissioners to meet, summarily inquire into and make disposition as to matters in dispute between the

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COUNTIES OF MORRIS
and ESSEX,

Affidavits.

respecting the rebuilding of the bridge across the Passaic River between said Counties known as

TWO BRIDGES BRIDGE,
in the Township of Caldwell.

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State of New Jersey, }
County of Morris, } ss.:

Winfield Hopkins, of full age, being duly sworn according to law, on his oath deposes and says:

I am the engineer for the County of Morris and have been such engineer for several years. I have read the petition addressed to the Honorable William S. Gummere, Chief Justice of the New Jersey Supreme Court, signed by Philip Linderman, in behalf of the County of Essex, and am familiar with its contents.

30

I have heretofore reported to the Board of Chosen Freeholders of the County of Morris that the bridge known as the Two Bridges Bridge extending over the Passaic River should be reconstructed. Pursuant to instructions from the Boards of Chosen Freeholders of the County of Morris and of the County of Essex, William A. Stickel, the

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Affidavit of Winfield Hopkins.

County Engineer of Essex County, and myself have prepared plans and specifications for the rebuilding of the said bridge, and which plans and specifications have heretofore been approved by the Board of Chosen Freeholders of the County of Morris, and, according to information and belief, also by the Board of Chosen Freeholders of the County of Essex. At no time has there been any conflict or disagreement between the two Boards of Chosen Freeholders as to the manner or method of rebuilding said bridge and the only question in controversy between the two Boards at the present time is the question of financing the rebuilding of the said bridge. In my opinion, the plans and specifications already prepared by William A. Stickel as County Engineer of Essex County, and myself, as County Engineer of Morris County, are adequate and will meet all the needs of the traveling public at the point where the same is to be erected for many years to come. In the preparation of the plans and specifications both the engineer of Essex County and myself as engineer of Morris County, have worked in the utmost harmony and without any conflict. Neither Board of Chosen Freeholders of the two counties has raised any objections to the plans and specifications submitted by us as engineers of the two counties. The allegation in the petition that the Boards of Chosen Freeholders of said counties have been unable to agree as to the manner or method of rebuilding said bridge is not true.

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WINFIELD HOPKINS.

Subscribed and sworn to before me this {
 9th day of November, A. D. 1926. }

40 Agnes M. Bean,
 Notary Public, N. J.
 (Seal).

Affidavit of Lewis A. Waters.

State of New Jersey, }
 County of Morris, } ss.:

Lewis A. Waters, of full age, being duly sworn according to law, on his oath deposes and says:

I am the Director of the Board of Chosen Freeholders of the County of Morris. I have read the petition of the County of Essex to the Honorable William S. Gummere, Chief Justice of the New Jersey Supreme Court, for the appointment of commissioners. I am familiar with the contents and with the facts relating thereto. Under instructions from the Board of Chosen Freeholders of the County of Morris, Winfield Hopkins, Engineer of the County of Morris, co-operated with William A. Stickel, Engineer of the County of Essex, in the preparation of plans and specifications for the rebuilding of the bridge known as the Two Bridges Bridge. The Board of Chosen Freeholders of the County of Morris had been advised by our County Engineer or the necessity of rebuilding the bridge and for that reason he was given the instructions aforesaid. At no time has there been any disagreement between the Board of Chosen Freeholders of the County of Morris and the Board of Chosen Freeholders of the County of Essex as to the manner or method of rebuilding said bridge, but the Board of Chosen Freeholders of the County of Morris has already approved of the plans and specifications prepared by the engineers of the two counties and have agreed as to the necessity of the new bridge. The only disagreement between the two Boards has been as to the proportion each county should pay. The Board of Chosen Freeholders of the County of Morris has contended that, because of the extraordinary situation, it

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Affidavit of Lewis A. Waters.

10 would be inequitable and unjust for the County of Morris to pay an equal share of the cost of rebuilding the bridge because the bridge would be of no avail without the two-county bridge between Passaic County and Morris County, being connected therewith, and if Morris County should be obliged to pay fifty per cent. of the cost of the Two Bridges Bridge and, in case of reconstruction of the bridge connecting Passaic County, a like proportion, it would, in effect, compel Morris County to pay an amount equal to the cost of one bridge, whereas the County of Essex and the County of Passaic would be obliged to pay an amount equal to the cost of only one-half of a bridge each.

20 The Board of Chosen Freeholders of Morris County has been advised that, in case the two Boards of the two counties cannot agree upon the share each should bear, the appropriate tribunal in which the same may be determined is the Court of Chancery of New Jersey and that the Board of Chosen Freeholders of Morris County is willing to have the matter submitted to the Court of Chancery of New Jersey or to a Board of Arbitrators selected by the two counties.

LEWIS A. WATERS.

30 Subscribed and sworn to before me this {
 10th day of November, A. D. 1926. }
 Edward B. Miller,
 Notary Public, N. J.
 (Seal).

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Notice.

In the Matter of the Application of the County of Essex for the appointment of three Commissioners to meet, summarily inquire into and make disposition as to matters in dispute between the

COUNTIES OF MORRIS
 and ESSEX,

respecting the rebuilding of the bridge across the Passaic River between said Counties known as

TWO BRIDGES BRIDGE,
 in the Township of Caldwell.

Notice.

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To the Board of Chosen Freeholders of the County of Morris:

This is to notify you that on Wednesday, November 10, 1926, at 10 A. M., at the Court House, Newark, N. J., I will present a petition to William S. Gummere, Chief Justice of the New Jersey Supreme Court, asking for the appointment of commissioners, under the provisions of Chapter 332, Laws of 1926, to inquire into the present relations between the Boards of Chosen Freeholders of the Counties of Morris and Essex, concerning the rebuilding of the bridge across the Passaic River between the two counties, known as the Two Bridges Bridge in the Township of Caldwell, N. J., a copy of which petition is hereto annexed.

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ARTHUR T. VANDERBILT,

County Counsel of the
 County of Essex.

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Newark, N. J., November 3, 1926.

Order Appointing Commissioners.

10 In the Matter of the Application of the County of Essex for the appointment of three Commissioners to meet, summarily inquire into and make disposition as to matters in dispute between the

COUNTIES OF MORRIS and ESSEX,

respecting the rebuilding of the bridge across the Passaic River between said Counties known as

20 TWO BRIDGES BRIDGE, in the Township of Caldwell.

Order Appointing Commissioners.

30 The County of Essex having presented its petition from which it appears that the Counties of Morris and Essex in this State are now maintaining at their joint equal expense the bridge across the Passaic River between the Counties of Morris and Essex, known as the Two Bridges Bridge, and that the Boards of Chosen Freeholders of said counties have agreed that said bridge which is now out of repair, should be rebuilt and to that end have agreed upon plans and specifications prepared by their respective county engineers for that purpose, but have disagreed as to the proportion of the cost of the said new bridge which should be borne by each county.

40 It is on this 27th day of November, 1926, on motion of Arthur T. Vanderbilt, attorney for the County of Essex, in the presence of Charles A. Rathbun, attorney for the County of Morris,

Order Appointing Commissioners.

ORDERED, pursuant to Chapter 185, of the Laws of 1918, as amended by Chapter 332, of the Laws of 1926, that David Young, Esq., of Towaco, Morris County; Edward S. Jackson, Esq., of Newark, Essex County; and Charles L. Morgan, Esq., of Elizabeth, Union County; be and they hereby are appointed commissioners to be known as JOINT BRIDGE COMMISSIONERS OF MORRIS AND ESSEX COUNTIES, to meet forthwith and summarily inquire into the matters in dispute respecting the building of said bridge, and to have such power and perform such duties as are conferred and imposed upon them by said statute.

WM. S. GUMMERE,
C. J.

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Reasons (Filed Nov. 30, 1926).
NEW JERSEY SUPREME COURT.

10	THE STATE, COUNTY OF MORRIS, Prosecutor,	}	On
	vs.		Certiorari.
	COUNTY OF ESSEX, Defendant.		Reasons.

The prosecutor presents the following reasons for setting aside the appointment of commissioners in the matter of the Two Bridges Bridge, brought before this Honorable Court by the writ of certiorari in the above-entitled cause:

First. Because the statute does not authorize the appointment of commissioners where, as in this matter, the governing bodies of the two counties have agreed as to the necessity of the reconstruction of the bridge, the material of which the same shall be constructed and the plans and specifications therefor which involve the mode and manner of construction, and the only difference of opinion and the disagreement between the two counties arises out of the question as to the share of expense each county should contribute towards the reconstruction of said bridge.

Second. Because the order appointing said commissioners direct that they shall inquire into the matters in dispute respecting the building of said bridge and, inasmuch as the only dispute is in regard to the share of expense which each county shall bear in the construction of said bridge,

Reasons.

the statute does not authorize the commissioners appointed thereunder to inquire into and pass upon the question in dispute, and therefore the appointment is illegal.

Third. Because Chapter 332, Laws of 1926 confers, or attempts to confer upon a Justice of the Supreme Court the right to appoint commissioners in case two counties shall be unable to agree as to the matters therein set forth, but the disagreement between the prosecutor and the defendant herein does not relate to any of the subject matters mentioned in the statute, and therefore the appointment of the commissioners was invalid and beyond the jurisdiction of the Chief Justice.

Fourth. Because the attempt by the legislature to delegate to commissioners appointed by a Justice of the Supreme Court the power to make contracts for the construction of bridges renders the aforesaid Act of 1926, unconstitutional.

Fifth. Because the attempt by the legislature to vest in commissioners the power to make contracts for the erection of bridges before the appropriation therefor has been made by the governing bodies of the respective counties was unconstitutional.

Sixth. Because the attempt to vest in commissioners the power to make contracts for the construction of bridges and causing the same to be constructed without regard to the bonded indebtedness of the counties is subversive of the financial policy of the State, against public policy, and unconstitutional.

Seventh. Because said proceedings are in divers

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Opinion.

other respects irregular, illegal, unjust and oppressive to the prosecutor.

CHARLES A. RATHBUN,
Attorney of Prosecutor.

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Opinion (Filed Feb. 7, 1927).

NEW JERSEY SUPREME COURT.

No. 236. JANUARY TERM, 1927.

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COUNTY OF MORRIS,
Prosecutor,

v.

COUNTY OF ESSEX,
Defendant.

On
Certiorari.

Argued January 18th, 1927; Decided February 7th, 1927.

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Under the Act concerning Counties P. L. 1918, p. 608; as amended by P. L. 1926, p. 753 which provides, "If said boards (i. e. Boards of Chosen "Freeholders) shall be unable to agree in any "respect as to the manner or method of repairing "or rebuilding any such viaduct or bridge" &c. is broad enough to include a controversy or dispute which concerns only the distribution of cost.

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For the Prosecutor: MR. CHARLES A. RATHBUN.

For the Defendant: MR. ARTHUR T. VANDERBILT.

Opinion.

The opinion of the court was delivered by BLACK, J.

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A certiorari was allowed to review an order made by the Chief Justice dated November 27th, 1926; appointing three commissioners to be known as Joint Bridge Commissioners of Morris and Essex Counties.

The order was made under P. L. 1918, p. 608; Chap. 185; as amended by P. L. 1926, p. 753; Chap. 332.

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The order and petition, under which the order was made, recite that the counties of Morris and Essex are now maintaining at their joint expense the bridge across the Passaic River, between the counties of Morris and Essex, known as the Two Bridges Bridge. The Boards of Chosen Freeholders of said counties have agreed the bridge is now out of repair and should be re-built. They have agreed upon plans and specifications prepared by their respective County Engineers for that purpose. They have disagreed, as to the proportion of the cost of the new bridge, which should be borne by each county. Hence, the concrete question presented for decision is, whether a dispute as to cost only is within the Statute under which the order was made? That Statute is the Act P. L. 1926, p. 753. It is an amendment of the Act of P. L. 1918, p. 608; which Act is entitled; "an Act Concerning Counties". It amends section 1306 and the amendment is in substance and form an amplification of that section. The Act P. L. 1918, p. 608, sec. 1306 provides "any expense incurred by "said commissioners shall, upon certification "by them, be paid in equal proportions by "the County Collectors of each of said Counties." The pertinent part of the Act P. L.

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Opinion.

1926, p. 753 out of which arose this controversy is as follows: "If said boards shall be unable to agree *in any respect* as to the manner or method of repairing or rebuilding any such viaduct or bridge, either of said boards may apply to a justice of the Supreme Court, who shall appoint three commissioners who shall meet forthwith and summarily inquire into the matter or matters in dispute."

The prosecutor writes down seven reasons for setting aside the appointment of the Commissioners. The first three challenge the power of a Supreme Court Justice to make the appointment under the Statute, when, as here, the only dispute is in regard to the share of expense, which each county shall bear in the construction of a new bridge.

We are unable to follow the argument of the prosecutor, in that, the Statute does not include within its terms a dispute involving only the question of a proper distribution and proportion of the cost. The construction of the Statute contended for is too narrow and therefore unsound. It is elementary, that the principle of construction to be applied to the act is, the act must be reasonably construed, so as, to carry into effect the legislative intention. If a dispute concerning cost is not included within the meaning of the Statute, then it must rest upon the idea "that words have no settled meaning or that language is powerless to express thought". We think that when, the Legislature used these words in the statute; "if said boards shall be unable to agree in any respect as to the manner or method of repairing or rebuilding any such viaduct or bridge". The Legislature intended to cover just such a situation as has arisen between these two counties. It certainly could not have intended to leave open, probably the most vital question in all such situations, viz.:

Opinion.

the proportion or distribution of the cost, over which, in all probability there would be a deadlock in many cases, especially so, when one county contends, that it should not bear one half of the expense.

Equally untenable and unsound are the other reasons filed for setting aside the order viz: that the Act is unconstitutional:

1st, because, it vests in commissioners the power to make contracts for the erection of bridges before the appropriation therefor has been made by the governing bodies of the counties;

2nd, because, it vests in such commissioners a power to make contracts without regard to the bonded indebtedness of the counties. These points call for no extended discussion.

The order appointing the commissioners is affirmed and the writ of certiorari is dismissed with costs.

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Rule Dismissing Writ (Filed Feb. 10, 1927).
NEW JERSEY SUPREME COURT.

10	COUNTY OF MORRIS, Prosecutor, v. COUNTY OF ESSEX, Defendant.	On Certiorari. Rule Dismiss- ing Certiorari and Affirming Order Ap- pointing Com- missioners.
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The court having inspected the return to the cer-
tiorari and having considered the reasons filed and
having heard and considered the argument of coun-
sel,

20 IT IS ORDERED that the order made by Hon. Wil-
liam S. Gummere, Chief Justice, dated November
27, 1926, appointing commissioners pursuant to
Chapter 185 of the Laws of 1918, as amended by
Chapter 332 of the Laws of 1926, be affirmed and
that the writ of certiorari herein be dismissed with
costs against the Prosecutor and in favor of defend-
ant.

Entered February 10th, 1927.

30 On motion of ARTHUR T. VANDERBILT,
Attorney of Defendant.

A true copy
Edward J. Kelleher,
Clerk.

Notice of Appeal (Filed Feb. 24, 1927).
NEW JERSEY SUPREME COURT.

10	COUNTY OF MORRIS, Prosecutor, vs. COUNTY OF ESSEX, Defendant.	On Certiorari. Notice of Appeal from Judgment of Supreme Court.
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To ARTHUR T. VANDERBILT, ESQ.,
Attorney of Defendant.

You will please take notice that the Prosecutor
appeals to the Court of Errors and Appeals from
the whole of the judgment entered in the above
stated cause on the following ground: 20

1. The Supreme Court erred in giving judgment
for the defendant instead of for the Prosecutor.

CHARLES A. RATHBUN,
Attorney for and of Counsel with Appellant.

79 MAY. 1. 1927

New Jersey Court of Errors and Appeals

THE STATE, COUNTY OF MORRIS,
Prosecutor and Appellant,

vs.

COUNTY OF ESSEX,
Defendant and Respondent.

On Appeal.

BRIEF FOR APPELLANT.

Statement.

Upon application of the County of Essex, his Honor, the Chief Justice, made an order dated November 27, 1926, appointing three commissioners to meet "forthwith and summarily inquire into the matters in dispute respecting the building of said bridge, and to have such power and perform such duties as are conferred and imposed upon them by said statute." (P. L. 1926, Chapter 332). At the same time the writ of certiorari, bringing before the Supreme Court the said order, was allowed, although the writ itself does not bear date until December 1, 1926.

The bridge in question is known as the "Two Bridges Bridge" for the reason that one bridge extends from Passaic County to a narrow neck of land lying in the County of Morris, and the bridge in question extends from Essex County to the same neck of land, thereby completing the highway across the river at that point. The engineers of both counties have agreed that the Two Bridges

bridge should be rebuilt and have prepared plans and specifications therefor, which have been approved by the Boards of Chosen Freeholders of the respective counties. The Board of Chosen Freeholders of Essex County have passed a resolution advertising for bids, but the Board of Chosen Freeholders of Morris County have not concurred in this resolution because they have insisted that, because of the unusual situation, Morris County should not bear more than one-third of the expense of constructing the bridge, while the other two-thirds should be borne by the County of Essex. In fact, this is the only question in dispute between the two counties and was so stated before his Honor, the Chief Justice, at the time the order appointing commissioners was made and re-stated on the argument before the Supreme Court.

The statute under which these proceedings have been brought is one which was passed by the Legislature April 1st, 1926 over the veto of the Governor and is found in Pamphlet Laws 1926, Chapter 332, pages 753 and 754. It amends Section 1306 of the County Act found in P. L. 1918, Chapter 185 at page 608, and it reads as follows, the italicized words being new matter:

"Whenever it shall have been determined that the public convenience requires that a viaduct or bridge be built and constructed at the joint expense of adjoining counties, or that a viaduct or bridge being maintained at such joint expense should be repaired or rebuilt, and the boards of chosen freeholders of such counties shall be unable to agree as to the location or character of such new viaduct or bridge, or as to the materials of which the same shall be constructed, or as to the character of any new viaduct or

bridge, or if said boards shall be unable to agree as to whether a viaduct or bridge already erected and out of repair shall be repaired, or shall be rebuilt, *or if said boards shall be unable to agree in any respect as to the manner or method of repairing or rebuilding any such viaduct or bridge*, either of said boards may apply to a justice of the Supreme Court, who shall appoint three commissioners who shall meet forthwith and summarily inquire into the matter or matters in dispute. To that end said commissioners shall have power to employ one or more civil engineers and other persons. *If in the judgment of said commissioners it shall be determined that the public convenience requires that such viaduct or bridge be built or constructed or repaired or rebuilt*, said commissioners or a majority of them, shall make and sign a report under their hands, determining the matter or matters in dispute, and cause a duplicate original of said report to be filed with the clerk of said boards aforesaid; *and said commissioners shall have full power to have plans, drawings, surveys and specifications prepared, to advertise for and receive bids for the doing of said work, and to award a contract or contracts for the doing of said work, and shall have power to supervise the doing of said work; such advertising and awards to be made in accordance with the provisions of the act to which this is an amendment.* Any expense incurred by said commissioners, *including the cost of such building, constructing, repairing or rebuilding*, shall, upon certification by them, be paid by the county treasurers of each of said counties in the same proportion as similar expenses relating to said viaduct or bridge shall be paid by such counties. Said commissioners shall serve as such and render their services without compensation. Said commissioners shall be known as "Joint Bridge Com-

missioners for (name of counties) Counties.’”

The old section 1306 read as follows, the bracketed parts being omitted in the new section:

“Whenever it shall have been determined that the public convenience requires that a viaduct or bridge be built and constructed at the joint expense of adjoining counties, or that a viaduct being maintained at such joint expense should be repaired or rebuilt, and the boards of chosen freeholders of such counties shall be unable to agree as to the location or character of such new viaduct or bridge, or as to the materials of which the same shall be constructed, or as to the character of any new viaduct or bridge, or if said boards shall be unable to agree as to whether a viaduct or bridge already erected and out of repair shall be repaired or shall be rebuilt, either of said boards may apply to a justice of the Supreme Court, who shall appoint three commissioners who shall meet forthwith and summarily inquire into the matter or matters in dispute. To that end said commissioners shall have power to employ one or more civil engineers and other persons. (Within thirty days after their first meeting) said commissioners, or a majority of them, shall make and sign a report, under their hands, determining the matter or matters in dispute, and cause a duplicate original of said report to be filed with the clerk of each of said boards aforesaid; (and such report, with its determination, shall be binding upon said boards). Any expense incurred by said commissioners shall, upon certification by them, be paid (in equal proportions by the county collectors of each of said counties). Said commissioners shall serve as

such and render their services without compensation. Said commissioners shall be known as ‘Joint Bridge Commissioners for (name counties) Counties.’”

Section 1311 of the County act of 1918 (P. L. 1918, page 610) has an important bearing upon the question and is set out at length.

“1311. “Whenever two or more counties contemplate the joint acquisition by gift, purchase or condemnation, or the building and construction of any viaduct or bridge over any ravine, marsh, river or stream forming in whole or in part the boundary between such counties, a proposed agreement shall be prepared setting forth the viaduct or bridge to be acquired, or the work to be undertaken, and the plans and specifications therefor, and the estimated cost thereof, and the estimated cost of maintenance and operation after acquisition or completion, and also the proportion of the original cost, and the cost of maintenance and operation thereof to be borne by each county, and any other provision deemed necessary to be inserted therein. If for any reason no proposed agreement shall have been prepared, and no agreement shall have been entered into between said counties, then all costs and charges for acquisition, construction, maintenance, repair, rebuilding and operation shall be borne equally by each of said counties.”

Section 1314 (P. L. 1918, page 612) provides that the cost of construction of bridges “may be provided by the boards of chosen freeholders of this State out of any funds of their respective counties not otherwise appropriated or by the issue and sale of bonds of the county.”

The County of Morris contends that the appointment of the Commissioners is invalid and has assigned seven reasons in support of its contention which are set forth on pages 16, 17 and 18 of the state of the case.

Grounds of Appeal.

The seven reasons filed in the Supreme Court for setting aside the order appointing commissioners may be grouped under two heads:

1. The statute does not confer upon a justice of the Supreme Court jurisdiction to appoint commissioners where the only dispute between the counties is the question as to the division of cost.
2. The amendatory statute is unconstitutional.

ARGUMENT.

I.

Lack of jurisdiction.

The statute authorizes the appointment of commissioners where the Boards of Chosen Freeholders of the respective counties are unable to agree in any one of the following situations:

1. As to the location or character of the bridge.
2. As to the materials of which such bridge shall be constructed.
3. As to the character of any new bridge (Seems to be embraced under No. 1).
4. As to whether a bridge already erected and out of repair shall be repaired or shall be rebuilt.
5. Where they are unable to agree in any respect *as to the manner or method of repairing or rebuilding a bridge.*

As has already been stated, the Boards of Chosen Freeholders of the two counties are agreed as to the location or character of the bridge; also as to the materials of which the bridge shall be constructed; also as to the character of the bridge; also as to whether the bridge already erected should be rebuilt; and also as to the manner or method of the rebuilding of such bridge.

But the County of Essex has contended that, inasmuch as Morris County insists that there should be a more equitable division of the cost than a fifty-fifty basis, this in some way or other brings the subject matter under the fifth item of disagreement which was incorporated in the amendment, viz., *in respect to the manner or method of repairing or rebuilding the bridge.* That this position is unten-

able is demonstrated by the statute itself even if the language "Manner or method of repairing or rebuilding" could be strained to embody any such interpretation. Inasmuch as the Courts have constantly held that the language of a statute must be given its usual and ordinary interpretation, it would certainly be doing not only violence to the statute itself but to the rules of construction and interpretation to say that a dispute as to the division of cost could have been intended by the Legislature to be comprehended in the words "manner or method of rebuilding." But as I have said, the statute itself clearly shows that neither by the original section, nor as amended, was it intended that a dispute as to division of cost should authorize the appointment of commissioners. The duties of the commissioners are as follows:

1. To inquire into the matter or matters in dispute. (In this case the division of cost).
2. To *that end* employ one or more civil engineers or other persons.
3. After determining that the public convenience requires the building of a new bridge,
4. To make and sign a report, under their hands, determining the matter in dispute. (In this case the division of cost).
5. File such report with the Clerk of the Boards of each County.
6. They "shall have full power to have plans, drawings, surveys and specifications prepared", regardless of what the respective Boards of Freeholders may have done in respect to said plans, drawings, surveys and specifications.
7. To advertise for and receive bids for the doing of the work.
8. To award a contract or contracts for the same.

9. To have power to supervise the doing of the work.

The only restriction upon them is that the advertising for bids and awards to be made shall be in accordance with the other provisions of the County Act of 1918.

Of the foregoing enumerated powers and duties the first five were in the original statute, but the remaining ones are new. In the original act the expense of investigating and determining whether a bridge should be repaired or rebuilt had to be borne by the respective counties. The amendment adds that the cost of building, constructing, repairing or rebuilding is to be paid "in the same proportion as similar expenses relating to said viaduct or bridge." This last clause clearly shows that any dispute relating to the division of expense is not a matter which is to be referred to the Commissioners for adjudication and, to my mind, conclusively shows that the amendment was never intended to meet the case of where a dispute had arisen as to the division of cost.

The Supreme Court fell into a grave error in asserting (Case 20, lines 35 *et seq.*),

"We think that when the Legislature used these words in the statute; 'if said boards shall be unable to agree in any respect as to the manner or method of repairing or rebuilding any such viaduct or bridge'. The Legislature intended to cover just such a situation as has arisen between these two counties. It certainly could not have intended to leave open, probably the most vital question in all such situations, viz.: the proportion or distribution of the cost, over which, in all probability there would be a deadlock in many cases, especially so, when one county contends that it should not bear one half of the expense,"

because the statute before it was amended gave the Commissioners power to "inquire into the matter or matters in dispute" and the power "to make and sign a report, under their hands, determining the matter in dispute."

And then again Section 1311 of the County act distinctly provides that where the counties cannot agree as to the division of cost, the same shall be borne equally. Therefore no additional legislation was needed and, inasmuch as that had been cared for in the County act, clearly the amendatory legislation was enacted not to determine the question of the distribution of cost but to determine the question as to the "manner or method of rebuilding." Certainly it was not necessary to appoint commissioners to determine the controversy as to the division of cost because the statute itself, as already pointed out, determines that question, and the commissioners are powerless unless the amendatory act has repealed Section 1311, set out above; and, inasmuch as implied repeal of a statute is not favored, it can hardly be said that this was the intention of the Legislature, although if this Court should declare that the commissioners appointed have the power under the law to say in what proportion the cost of constructing the bridge shall be borne by each County, and the commissioners have the power to say that, in their judgment, Morris County should only pay one-third and Essex County two-thirds, or any other proportionate share other than an equal share, the County of Morris would be perfectly content. But in view of the fact that Section 1311 distinctly declares the proportion each County shall bear in case of controversy and the rule that implied repealer is not favored, and also in view of the next paragraph of the amendatory act itself wherein it is distinctly pro-

vided that the cost of the rebuilding is to be paid "in the same proportion as similar expenses relating to said viaduct or bridge" (whatever that may mean), it seems quite evident that the judgment of the Supreme Court is erroneous, and that no commissioners can be appointed under the act of 1926 where the controversy relates only to the proportionate share of cost.

Moreover, the amendatory statute makes no provision for the raising of funds with which to meet the expense of constructing the bridge. The County Treasurer cannot pay out money for the construction of a bridge unless he has it on hand (and the County of Morris has made no provision for the Two Bridges bridge) even though the Board of Chosen Freeholders had directed him so to do. The policy of the State is indicated in the case of Chamber of Commerce vs. Essex County, 96 N. J. Law, 238, at page 242, wherein it was held that an appropriation must have been made before even a Board of Chosen Freeholders can award a contract. It is true that the County need not have the money on hand at the time of the awarding of the contract but some provision for the money must be made.

See P. L. 1917, Chapter 240, page 819, paragraph J, wherein it is expressly provided that no contract which is to be financed by the issuance of bonds or notes shall be made "unless prior thereto" there shall have been an appropriation made to carry out the contract.

P. L. 1921, Chapter 120, page 247, paragraph J, modifies the section cited in the act of 1917 by providing that the authorization of bonds or notes "shall be deemed an appropriation", but further provides that "after such appropriation has been made, contracts may be let for amounts within the amount so appropriated, notwithstanding that the

proceeds of sale of said bonds or temporary notes or temporary bonds shall not then be in hand."

From the foregoing it seems apparent that some provision for the financing of the project must be made by the Counties before the construction of the bridge could be undertaken.

II.

The amendatory act is unconstitutional.

In the next place, the statute is invalid wherein it attempts to confer upon commissioners appointed by a Justice of the Supreme Court the power to contract for and construct bridges. This is essentially a delegation of power to do an act which results in the taxation of the people by a commission. As was said by this Court in *Township of Bernards vs. Allen*, 61 N. J. Law, 228, at page 242, "a decision which would sustain this legislative action would antagonize fundamental principles of constitutional law and in effect overrule *State v. Sickels*, *State v. Koster* and *Munday v. Rahway*." At page 237 the Court said:

"Except as the Legislature of the State may confer upon political divisions powers to legislate and to provide revenue for defraying the expenses of the local governments, it has no power to delegate the power of taxation to ministerial officers or to another department of the government."

In *State v. Sickels*, 24 N. J. Law, 125, the Supreme Court held "that a resolution of a town meeting to raise for general township expenses as much as the township committee should direct, ways and means left to the committee, was illegal

as a delegation of the taxing power which the town meeting could not delegate or transfer to the township committee or any other officer," and to like effect *State v. Koster*, 38 N. J. Law, 308, and *Munday v. Rahway*, 43 N. J. Law, 339.

Speaking of these cases this Court in the case of the *Township of Bernards v. Allen*, said:

"These decisions are precedents in our own Courts, affirming the want of power in the legislative body in which the power of taxation is vested, to delegate the authority to others to determine in its judgment or discretion the amount to be raised by taxation."

In the amended act authorizing the appointment of commissioners there is no limitation as to the amount of obligations they could incur in the construction of a bridge:—Their judgment would be the sole determining factor as to the amount which the public would have to raise by taxation to meet the expense of the bridge. Clearly this comes under the ban of the decision of this Court in the case of the *Township of Bernards v. Allen*.

In *Van Cleave v. Passaic Valley Sewage Commissioners*, 71 N. J. Law, 574, all of the cases above mentioned are cited with approval and, as was pointed out at page 580, by the terms of the act then under consideration "the amount to be raised is committed solely to the commissioners, within the limit of \$9,000,000. in the matter of construction", and then follows a discussion and comparison with the case of the *Township of Bernards v. Allen*, concluding on page 583 as follows:

"Upon the authority of the case cited, this Court is unequivocally committed to the doctrine that the legislature of this State,

in which the governmental power of taxation resides, does not possess the power to delegate to another body having no governmental functions, the authority to determine, in its judgment or discretion, the amount to be raised by taxation, to which obviously must be added that such authority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion."

"Upon the authority of the Township of Bernards v. Allen, this provision of the statute under review renders the act invalid."

See also Attorney General v. McGuinness, 78 N. J. Law, 346, at page 369.

In this case the bridge to be built will cost about \$100,000., and this indicates the extent to which this non-governmental agency might go in determining the "amount to be raised by taxation", a power condemned in Bernards v. Allen, and the other cases above cited.

I respectfully submit that both the order appointing the commissioners and the amending act are invalid.

CHARLES A. RATHBUN,
Attorney of Appellant,
and of Counsel.

79 MAY. 1. 1927

New Jersey Court of Errors and Appeals

THE STATE, COUNTY OF MORRIS,
Prosecutor & Appellant,

vs.

COUNTY OF ESSEX,
Defendant & Respondent.

On Appeal.

BRIEF FOR RESPONDENT, COUNTY OF ESSEX.

Statement.

The first two paragraphs of the prosecutor's brief state the facts of the case.

The bridge in question connects land in the County of Essex with land in the County of Morris (which in turn is connected by a bridge to land in the County of Passaic, not concerned in this litigation).

The County Engineers of Essex and Morris Counties have agreed that the Two Bridges Bridge between Essex and Morris Counties is unsafe and should be rebuilt.

The bridge has been for a long period of time guarded against heavy traffic by watchmen and guards appointed and paid by the County of Essex.

The County Engineers have prepared plans and specifications for a new bridge, which have been approved by the Boards of Chosen Freeholders

of the two Counties. The Board of Chosen Freeholders of Essex County has passed a resolution for the reconstruction of said bridge, and has advertised for bids, but the County of Morris has not done either. The Board of Chosen Freeholders of Morris County, as the prosecutor states, contend that Morris County (for some reason not yet legally explained) should not bear more than one-third of the expense of constructing the bridge, and that Essex County should bear two-thirds of the expense.

The bridge was constructed, and has been for many years maintained at the equal cost of the two Counties (S. C., p. 14, l. 25). The County of Essex, therefore, contends that the proposed new bridge should be built and maintained on the same basis, i. e., at the equal expense of the two counties. The rule as to the distribution of the cost of the construction of such bridge is clearly stated in the County Home Rule Act (P. L. 1918, chap. 185, sec. 1311) as follows:

“1311. Whenever two or more counties contemplate the joint acquisition by gift, purchase or condemnation, or the building and construction of any viaduct or bridge over any ravine, marsh, river or stream forming in whole or in part the boundary between such counties, a proposed agreement shall be prepared setting forth the viaduct or bridge to be acquired, or the work to be undertaken, and the plans and specifications therefor, and the estimated cost thereof, and the estimated cost of maintenance and operation after acquisition or completion, and also the proportion of the original cost, and the cost of maintenance and operation thereof to be borne by each county, and any other provision deemed necessary to be inserted therein. *If for any reason no proposed agreement shall have been prepared,*

and no agreement shall have been entered into between said counties, then all costs and charges for acquisition, construction, maintenance, repair, rebuilding and operation shall be borne equally by each of said counties.”

The County of Morris, however, seeks to avoid its clear duty to pay one-half of the cost of the new bridge, by refusing to pass a resolution for the reconstruction of the bridge and for advertising for bids, altho it has approved the plans and specifications of its engineers and the engineers of Essex County for that purpose.

The County of Essex thereupon invoked the aid of Chapter 332 of the Laws of 1926 (P. L. 1926, p. 753), quoted at length on page two of the prosecutor's brief, as a statutory means of compelling Morris County to carry out its legal duty to maintain jointly with Essex County a bridge safe for travelling at the location of the Two Bridges Bridge. To this end, the order appointing Commissioners was made by the Chief Justice on November 27, 1926 (S. C., pp. 14-15).

The County of Morris then obtained a writ of certiorari issued out of the Supreme Court for review of said order appointing Commissioners. This writ was dismissed by the Supreme Court (S. C., pp. 18-22). From this dismissal the County of Morris appeals to this Court.

Argument.

The respondent is content to rely upon the opinion of the Supreme Court (S. C., pp. 18-20). The arguments presented to the Supreme Court may be summarized as follows:

P. L. 1926, chapter 332, pages 753-754, provide that:

“if said Board shall be unable to agree in any respect as to the manner or method of repairing or rebuilding any such viaduct or bridge, either of said Boards may apply to a Justice of the Supreme Court, who shall appoint three Commissioners, who shall meet forthwith and summarily inquire into the matter or matters in dispute.”

Morris County here disputes its obligation to pay one-half of the cost of the new bridge, and it therefore refuses to advertise for, and award the contracts for the building of such bridge. Essex County contends that there is, therefore, a disagreement under the statute in the “manner or method of repairing or rebuilding” such bridge, and that the Commissioners appointed under the statute have the power to do the work, to build the bridge in question and charge the cost to the two counties in accordance with Section 1311 of the County Home Rule Act hereinbefore quoted.

The prosecutor contends that the present situation does not come within the terms of the 1926 Amendment. The prosecutor argues that the language of the statute must be given its usual and ordinary interpretation, but neglects the principle of construction that the act must be reasonably construed to carry out the legislative intention. The Legislature certainly could not have

intended to permit deadlock to continue, such as exists in this case.

The 1926 Act was obviously intended to give the commissioners all necessary rights and powers in constructing a new bridge, to the end that the public might not be inconvenienced or endangered by a dispute between the two counties, upon which such duty devolved (such as unfortunately exists in the present case.)

Prosecutor contends that it was not necessary to appoint commissioners to determine the controversy as to the division of cost because the statute itself determines that question, and the commissioners are powerless under the act. It is amply evident that the County of Morris in this case refused to agree to the rebuilding of the bridge. In this situation there was no “manner or method” agreed upon for the rebuilding, and to relieve the situation, the commissioners were appointed to proceed with what the County of Morris refused to co-operate in doing, i. e.: the rebuilding of the bridge.

The prosecutor contends that if the commissioners built the bridge, the County Treasurer cannot meet the bill certified to him by the Commissioners in accordance with the 1926 Statute, and cites *Chamber of Commerce v. Essex County*, 96 N. J. L. 238, in support of its contention, and urges that the 1926 Amendment is unconstitutional in that it attempts to delegate the taxing power, citing *Township of Bernards v. Allen*, 61 N. J. L. (Appellant's Brief, page 12). The 1926 amendment does not involve any question of the raising of money by taxation by the commissioners, but merely provides a method of adjusting the differences between two counties as to the scope of their duties. The money for the cost of any such improvement must be raised by

the counties in the same manner as a judgment or other imposition *in invitum* would be raised.

In like manner, the other cases on pages twelve, thirteen and fourteen of the appellant's brief, which deal with the delegation of taxing power, are not in point. Here there is no attempted delegation of the taxing power. The Commission appointed under the statute will look to the respective counties to have its funds raised, just as boards of education look to the cities and counties respectively for the raising of their funds, and just as the courts, prosecutors, county board of elections, county election bureaus all look to the boards of chosen freeholders of the several counties for the raising of their funds (matters as to which in last named group the boards of chosen freeholders have absolutely no discretion as to the amount to be raised, said expenses by statute being made mandatory upon freeholders).

It is therefore respectfully submitted that the facts of the present case (as found in the order of the Chief Justice, and as affirmed by the Supreme Court) come within the terms of the 1926 Amendment as to a disagreement between Boards, "in any respect as to the manner or method of rebuilding a bridge", and that the present order should stay.

Respectfully submitted,

ARTHUR T. VANDERBILT,
Attorney for and Counsel
with Defendant-Respondent.