

## N. J. Court of Errors and Appeals.

THE ESSEX PUBLIC ROAD BOARD,	}	10
<i>Appellant,</i>		
<i>and</i>		
THE STATE,	}	
<i>(ex rel. JAMES A. SPEER, et al.)</i>		
<i>Respondent.</i>		

The Essex Public Road Board was constituted by the act of 1869. (Pam. Laws, 1869, p. 957.) This act prescribed an unconstitutional mode of assessing benefits, 20 but the defect was sought to be remedied by a supplement, (Laws 1870, p. 181,) the sixteenth section of which authorizes the condemnation of turnpike companies, and directs "That the compensation paid or damages appraised, shall be assessed upon the lands peculiarly benefited."

By a further supplement, (Pam. Laws, 1870, p. 714,) it is provided that no lands shall be liable to be assessed for benefits \* \* \* which shall not lie within the city, town or township, in which the avenue 30 shall be laid out.

In the case in hand, appraisers of damages were appointed April 10, 1871. They reported June 12, 1871, awarding \$22,000 to the turnpike company. They apportioned this award February 6, 1872. This apportionment was permitted to lie unacted upon, so far as Caldwell township was concerned, until October 25, 1881, when commissioners to assess benefits were appointed. They made a report which was ratified by the Road Board June 5, 1882. 40

## POINTS.

## I.

The attempted apportionment of the damages awarded to the Newark and Pompton Turnpike Company, among the different townships, was without warrant of law, and therefore nugatory and void.

No legislative warrant to make this apportionment can be found. The report shows it to have been a purely  
 10 arbitrary one. The appraisers were, under the acts of legislature referred to, appointed only to *appraise* damages; when they did that they were *functi officio*. If they went further they acted outside of the law; their act was not simply irregular, but *coram non judice*, and of no legal effect. It formed no basis upon which to found the subsequent assessment of benefits; and if the commissioners to make such assessment subsequently adopted it, the adoption was, in fact, a new determination on their part that out of the whole amount of damages awarded, Cald-  
 20 well's share was to be \$7,515.64. A determination of this sort they had no power to make.

## II.

Conceding that the apportionment of \$7,515.64 to Caldwell township was legal, the imposition of any part of this sum upon the individual land owners was unconstitutional and void.

The case of *Carter vs. Wright*, 3 Dut. 76, is a decision  
 30 in point. There ejectment was brought to recover possession of a lot on which stood a toll-house. The *locus in quo* had formerly been part of a public road, which was subsequently appropriated by the Trenton and Crosswicks Turnpike Company under legislative sanction. When appropriated the company built a toll-house on a portion of the old highway, and the question was whether it had the right to do so without making compensation to the adjacent land owners. The Court held, 1st, that the land was  
 40 subject to the same easement after it had been taken

by the company as before, and that therefore the owner suffered no damage, so far as the change in the title to the road-bed was concerned; that nothing was taken from him that he had before. 2d, that the building of a toll-house imposed no additional easement upon the land, and that consequently the owner was not injured or his rights abridged by its erection.

On the case being carried to the Court of Errors, the second of these rulings was reversed on the ground that the erection of the toll-house imposed a new burden on the land, and the land owner was entitled to compensation for that; but the rule as laid down on the first point was concurred in. This appears from the following cases:

*State vs. Laverack*, 5 Vr. 207.

*Freeholders vs. Red Bank*, 3 C. E. Gr. 91.

The ground of this ruling was that the easement remained the same after its acquisition by the turnpike company as it had been before. Says GREEN, C. J.: 20  
 "The title of the soil is not changed; it remains as it was before, in the owner of the adjoining soil. He has precisely the same right to and control over the soil that he had before the passage of the act. *The land was subject to the easement or right of way before the passage of the act, [creating the turnpike company], and continues subject to the same burthen still.*"

Now, if in the present case the easement remain the same, whether it be in the public or in the company, as the adjacent owner can suffer no damage by its transfer 30  
 to the company, neither can he be benefited by its retransfer from the company to the public or to its representative, the Road Board.

If it be contended that some benefit might possibly arise from a transfer to the Road Board of the easement, with the right to take tolls, then it must be admitted that some damage might, by possibility, have been incurred in the transfer of the Crosswicks road to the turnpike company; but the contrary was held in *Wright vs. Carter*.

If it be suggested that the extinguishment of the right to take toll is a benefit to the adjacent land owner, then it necessarily follows that the grant of such a right is a damage to him, for which he is entitled to compensation, but this position, too, is directly contrary to the rule as laid down in that case.

10 If it be suggested that the legislature has the right to make an assessment in respect merely of the *taking* of lands for a public road before such lands have been  
 actually laid out and made fit for use as a road, I answer that the reason that is so, is because by the *taking*, the public acquires the easement; though for the enjoyment of that easement, it may become necessary to improve the road-bed. The public by the mere act of taking acquires that which it did not have before, while in the case in hand the easement existed and was enjoyed as fully before the condemnation as afterward.

20 We must be careful to distinguish between the right to assess the price of the franchise and the right to assess for all improvements made subsequently to the acquisition of the road; this latter right is undisputed.

The case, then, stands thus: Appraisers of damages condemn the franchise of the turnpike company and make an award of damages to it; thereupon the easement, viz., the right of way—passes to the Road Board, or to the public, which thereby acquires exactly the same easement the Road Board had—nothing more—  
 30 nothing less. After the transfer the Road Board, it is true, may go on and improve the old roadway; if they do, the adjacent land owners must pay for the improvement; if they do not, the road remains as it always was. But whether they improve it or not, is a matter which has no relevancy to the present inquiry, which is simply what legal benefit has thus far accrued to the owner by what *has* been done. The case of *Wright vs. Carter* decides that the easement remains the same whether held by the public or the company, and the  
 40 conclusion is irresistible that the owner, having gained

nothing by the transfer, cannot be assessed for benefits in respect of it.

If there were even a possibility of benefit, then it must be admitted that in *Wright vs. Carter* there must have been a possibility of damage, in which view the question would have been one for the jury; but the Court, as a matter of law, held that in that case there was no damage. In this case, therefore, the Court must, as a matter of law, hold that there is no benefit. If the right to take toll has been extinguished, the cost of repairs must be provided for by tax, and the case of *Wright vs. Carter* expressly decides that the right to take toll is no additional burden or servitude upon the land upon which to base a claim for damage. 10

Now, it seems very clear that Section 16 is a legislative affirmation that there are lands peculiarly benefited by the mere purchase of the franchise. If the legislature supposed that there were no such lands, why direct an assessment upon them? This assessment is directed to be made "upon the lands peculiarly benefited, 20  
 "and otherwise collected, paid and raised in the same  
 "manner, 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." The direction referred to is contained in Section 6 of the act, (P. L. 1870, p. 181,) which provides that the moneys necessary to pay the compensation to be made for property condemned, "shall be raised by assessing  
 "so much thereof as shall be equal to any peculiar bene- 30  
 "fit conferred upon any lands in the county, whether  
 "adjacent, or not, to said avenues, [improved] upon such  
 "lands so peculiarly benefited in proportion to the bene-  
 "fit 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." From this it is apparent that the legislature  
 deals with the question of how to raise money to pay  
 for the corporate franchise, in precisely the same way  
 that it deals with the question of how to raise money to 40

pay for land condemned for road purposes. The scheme is precisely the same for both, and it is idle to say that the legislature did not intend to assess any land owner for any part of the cost of acquiring the franchise for the turnpike company, when the act says, in so many words, that it did.

10 If, however, this act did not, in fact, authorize an assessment upon the class of land owners assessed, or upon any land owners whatever, then the assessment made upon them was not an assessment made under the act. It was nothing but an arbitrary assumption of jurisdiction on the part of the assessors to do that which no statute countenanced. The proceeding, not being authorized by any statute, would, of course, derive no protection from that clause of the supplement to the act in question, which provides that "no writ of *certiorari* shall issue to review any assess-  
 20 "ment for benefits, \* \* \* under the act to "which this is a supplement, or any supplement thereto, "unless" the writ be allowed within sixty days after approval of such assessment. (Section 4 of act of 1874, p. 389, as amended by Section 4 of act of 1875, p. 420.)

Where the objection is to the constitutionality of the law, the statute imposing a limit is no bar.

*Traphagen vs. West Hoboken*, 10 Vr. 232 ;

*State vs. Elizabeth*, 12 Vr. 152 ;

*Kirkpatrick vs. Commissioners*, 13 Vr. 510 ;

*Culver vs. Jersey City*, 16 Vr. 257.

30 The chief argument of counsel of the Road Board has been that though the adjacent land owners may not have been benefited by the mere condemnation of the franchise, they will, in the language of counsel, "be benefited by the improvement contemplated, as the result of the condemnation." By this I suppose counsel means that the Road Board contemplates improving the highway after it has secured the franchise by condemnation, and that the land owner will in the end, and as the result of its labors, be benefited.

40 This argument implies that the Road Board is by their charter compelled to make permanent improvements or

betterments as contradistinguished from repairs. If it does not, it is worthless, because if the Board, after having acquired the franchise, is not compellable to do anything more than repair—a duty equally incumbent on the turnpike company—it follows that the land owner may never have anything more than he has always had. But the implication that the Road Board is compellable to make such improvements is utterly without foundation. The statute nowhere commands the Board, after having acquired the franchise, to change the character of the highway. There may be no necessity for doing so. The road may, when acquired, be found to be just suited to the wants of the neighborhood. And even if the assumption that the legislature must go on and improve were true, it would in nowise alter the case in hand. It does not appear from the record of this proceeding, nor from evidence, that in fact anything more has been done than merely to condemn the franchise, and for this, as has been demonstrated, no assessment can be imposed. I go a step further, and assert that even if it appeared that any permanent improvements had been made, special benefits could be assessed only for those improvements. As the property was not, in a legal sense, specially benefited by the condemnation of the franchise and could not be assessed for that, how would it be possible to assess for anything more than the improvements? Unless the whole may be greater than the sum of its parts, it is not conceivable how, when the legal benefits arising from the condemnation are zero, and the benefits assessable in respect of the improvements are a sum of money ascertainable by certain definite and well established rules, the benefits resulting from both sources can exceed that sum.

FREDERIC W. STEVENS.

*November Term, 1885.*



## N. J. Court of Errors and Appeals.

THE ESSEX PUBLIC ROAD BOARD,

*Plaintiff in Error,*

*vs.*

THE STATE,

(JAMES A. SPEER, *et al.*, Prosecu-  
tors,)

*Defendant in Error.*

10

*On Error  
to the Su-  
preme Court.*

### BRIEF FOR THE PLAINTIFF IN ERROR.

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#### CASE.

1. This case involves the question of the constitutional validity of the sixteenth section of an act of the legislature, approved February 16, 1870, entitled "A supplement to 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 March 31, 1869.'" (See P. L. of 1870, p. 181,) which section enacts as follows:

"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 40

and to all intents and purposes, as hereinbefore provided for the assessing, collecting and paying for lands or buildings taken for the purposes of this act." (P. L. of 1870, p. 181.)

2. The Court below held the section to be "unconstitutional and void," and set aside the assessment, &c., founded thereon.

CASE, pp. 17 and 18.

10 3. The assessment was made by "assessors," duly appointed for the purpose, and was confirmed by the Board June 5, 1882.

CASE, pp. 3-5.

4. It was made upon lands in the township of Caldwell, in the county of Essex, adjudged to have been "peculiarly benefited by \* \* \* the laying out of Bloomfield avenue in said township."

20 5. The amount so assessed upon said lands was \$5,439.34, being a portion only of the "damages, (\$7,515.64 in all,) appraised as compensation for the taking of the turnpike road of the Newark and Pompton Turnpike Company, in said township, for the construction of said avenue in said township."

CASE, p. 5, lines 10-30.

6. The assessments on lands of the three prosecutors of the certiorari, (Speer, Campbell and Baldwin,) amount, in the aggregate, to only \$271.59.

CASE, p. 6.

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## POINTS.

### I.

*The section in question is constitutionally valid.*

1. The section is but a part of a legislative scheme for the construction and maintenance, under the supervision of a county board, constituted for the purpose, of six first-class public avenues, extending from the city of Newark, in different directions, to the lines of  
40 neighboring counties. It will therefore be necessary to

consider the general scope and principal features of the act of which this is a subordinate portion, and which, as before stated, is found mainly in the Laws of 1870, p. 181, and is entitled, "*A supplement to 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 March 31, 1869.'*"

The main provisions of the act, and those necessary to be considered in this connection, are as follows: 10

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:*

I. FRELINGHUYSEN AVENUE, beginning at Astor street, in the city of Newark, and running thence through the city of Newark and the township of Clinton to the line of the county of Union. 20

II. SPRINGFIELD AVENUE, beginning in Market street, in said city, and running thence through said city, and the townships of Clinton, South Orange and Milburn to the line of the county of Union.

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, Milburn and Livingston to the line of the county of Morris. 30

IV. PARK AVENUE, beginning at Bloomfield avenue, in said city, and running thence through the 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, 40

Bloomfield, Montclair and Caldwell to the line of the county of Morris.

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. \* \* \* \*

10 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,*  
20 and the residue of said avenues shall not exceed in width one hundred feet.

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, &c.

30 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*  
40 *been established,) without the consent of such municipi-*

pality, and in such case compensation shall be made to the person or persons 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.* \* \* \* \* \*

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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. [And by a supplement of April 4, 1872, (P. L., p. 1269,) as modified by another supplement of March 26, 1873, (P. L., p. 424,) the said Board was "*authorized and empowered to MACADAMIZE, ACCORDING TO THE TELFORD PROCESS, to a width of not more than twenty feet upon each \* \* the carriageways of the several avenues \* \* in such manner and with such materials as the said Board shall judge best for the public interest.*"]

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

SEC. 6. *The moneys necessary to pay the compensation in this act directed to be made for land or property taken,* 40

shall be raised by assessing so much thereof as shall be equal to any peculiar benefit conferred upon any lands in the [township,] 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  
 10 by the County Collector.

\* \* \* \* \*

[Section in question.]

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 applica-  
 20 tion, 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.

(See ante, Sec. 5.)

30 2. It is manifest, from the language of the act, in connection with its very significant title:

(1.) That the legislature intended to provide for a system or series of superior county highways or avenues;

(2.) That it contemplated not only the construction of new highways, where none existed before, but also, the appropriation and re-construction or transformation of existing highways;

(3.) That where the pre-existing highways available  
 40 and desirable for the purpose, were owned by chartered

companies, it provided for the extinction of such ownership, by purchase or condemnation ;

(4.) That the necessary expense of the right of way or road-bed for any avenue acquired by condemnation or purchase, either (in case of original construction,) from individual owners, or (*in case of re-construction,*) from private corporations, should, to the extent of the peculiar benefits accruing to lands in any township from the IMPROVEMENT, whether by original construction or by re-construction, be assessed upon those lands ; 10

(5.) That no lands can be assessed, unless "*peculiarly benefited*" by the improvement ;

(6.) That they cannot be assessed for more than the peculiar benefits accruing to them from the improvement ;

(7.) That the whole expense of the improvement (including the cost of the road-bed or right of way,) must be met by taxation, unless the lands are peculiarly benefited by the improvement ; 20

(8.) That there is no legislative declaration, that the lands will be peculiarly benefited to any extent, or that they shall be assessed at all events ;

(9.) That, at most, it is contemplated that the lands might be benefited to some extent ;

(10.) That whether any land would be so benefited, and if so, to what extent, is left to the judgment of a tribunal of "Assessors."

3. But it is said by the prosecutors, that "*no lands could be benefited by the condemnation of the Newark and Pompton turnpike, the owners of the land lying along and near said road having enjoyed the full benefit of adjacency to that public highway for over fifty years, and the condemnation amounting to nothing more than a mere change in the ownership of said highway and its mode of regulation.*" 30

(CASE, p. 7.)

And the Court below says : "This case turns upon the question whether there can be, in legal contemplation 40

tion, any special benefit conferred upon the adjacent land owners *by such transfer of the turnpike franchise.*"  
(CASE, p. 14, lines 16-19.)

Again it is said: "*The legislative grant in Section 16, of the right to assess damages FOR THE MERE TRANSFER OF THE FRANCHISE, is an authority to lay a burden where no possible benefit can accrue, and is to this extent unconstitutional and void.*"

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## REPLY.

(1.) It may be conceded that "no lands could be benefited *by the condemnation of the Newark and Pompton turnpike*" for the purpose of laying out an avenue over it; and so may it be conceded that "no lands could be benefited" *by the condemnation of lands* for the purpose of laying out an avenue over them.

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(2.) The supplement of 1870, (*supra*) section 13, under which assessments for benefits are made (and under which the assessment in question was made,) provides that they shall be made upon lands "*peculiarly benefited BY THE LAYING OUT OF SAID AVENUES,*" not by the condemnation of lands or turnpikes for such avenues, as seems to be assumed by the prosecutors and also by the Court below.

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(3.) The act does, however, provide that *after the avenues have been laid*, the expense of acquiring the road-bed or right of way—whether by condemnation of *lands* or of a *turnpike road*—shall be assessed *as a necessary part of the cost of the improvement*, on lands peculiarly benefited thereby, to the extent of the benefits.

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(4.) Accordingly, the report of the "assessors" in this case, (see CASE, p. 5,) shows that the assessment was of a *part of this cost*, on lands "*peculiarly benefited by said improvement*, that is to say, *the laying out of Bloomfield avenue;*" and the same report, (CASE, p. 3,) shows that they were appointed "*to consider and determine what lands are peculiarly benefited by the laying out by the said Road Board, of Bloomfield avenue*, in accordance with the

act entitled "An act constituting a Public Road Board," &c.; the term "*laying out*" in this connection, as well as in section 13, authorizing assessments, having manifestly its broader signification, "embracing all that series of acts which are made necessary to the complete establishment of a highway," (*Abbott's Law Dict.*), and the assessment in this case having been made long after the completion (including the macadamizing) of the avenue, and at an expense of more than \$17,000, aside from the cost of right of way, *the cost of construction or re-construction*, being in all cases met by taxation, and not by local assessment. 10

(5.) It hence appears that the Court below labored under a misconception of the pivotal point in the case, when it declared that it turned "upon the question whether there can be in legal contemplation any special benefit conferred upon the adjacent land owners *by such transfer of the turnpike franchise.*"

(CASE, p. 14, lines 16-19.)

Nor did the counsel for the Board contend that the condemnation or purchase of a turnpike, *ipso facto*, conferred a special or peculiar benefit. 20

(6.) It is apparent that the Court erred also in construing section 16, (*supra*), as "a legislative grant of the right to assess damages for the MERE TRANSFER of the franchise," and therefore declaring it "unconstitutional and void."

It might, for precisely the same reason, hold the corresponding section 6, (quoted *supra*), as "a legislative grant to assess damages for the *mere taking of land or property*" for the same purpose, and declare it, likewise, "unconstitutional and void." 30

(7.) Both sections, 16 and 4, providing for the condemnation of lands and turnpikes for these avenues, are *parts* only of a system or organic plan, and are to be construed in connection with the other parts, and especially in connection with section 13 of the same act, above referred to, which provides for assessments on account of benefits. 40

(8.) The cost of obtaining lands or a turnpike road, on which to construct an avenue, is certainly as much a necessary part of the cost of the avenue, as the cost of obtaining money, with which to construct it; and yet it is settled that where bonds have been sold by legislative authority at less than par, to meet the expense of an improvement, the *discount can be included in the estimate of the cost.*

*State vs. Elizabeth*, 8 Vr. 142.

10 See also, *State vs. Clinton*, 10 Vr., 656.

*State vs. Town of Guttenberg*, 9 Vr. 419.

And yet nobody would pretend that the payment of discount or interest in itself conferred any special benefit on the lands assessed.

So the cost of *grading*, being necessary before paving can be done, *is assessable as a part of the cost of paving.*

*State vs. Council of Elizabeth*, 1 Vr. 365.

20 The cost of grading, *per se*, did not confer any special benefit, but it had to be done as a condition of the work of paving. So, also, in assessing the cost of a street, the expense of necessary surveys, &c., may be included.

*State vs. Town of Guttenberg, supra.*

Therefore, *a fortiori*, the cost of getting a *road-bed*—being *fundamentally* necessary to a highway—must certainly be considered as a part of the cost of the highway.

30 (9.) I am unable to see how the decision in *Carter vs. Wright* can affect this case. That case involved a different question, viz., whether or not the conversion of an ordinary highway into a turnpike road by legislative authority, worked a destruction of the easement. The Court held that it did not; that it continued to be a public highway, with the immaterial difference, that it was thereafter maintained by the corporate owners from tolls received, instead of in the ordinary manner.

40 The Court in that case virtually held that the transmutation of a common into a toll road did *not injure* the owner of the land *covered* by the highway; and the prosecutors in this case wish the Court to hold, as a necessary

inference from the decision of the former case, that the conversion of a toll road into a common highway, *confers no benefit*—not on the owner of the land *covered by it*, but—on the owner *adjacent to it*.

It is not claimed that any peculiar benefit is wrought by the mere change of ownership and mode of maintenance; but it is insisted, and with confidence, that the change was a *sine qua non* to the IMPROVEMENT contemplated by the legislature, and that, therefore, the necessary cost of the change is assessable on lands peculiarly benefited by the improvement. 10

There was, indeed, a highway there before, but that highway has been vastly *improved* by widening, grading, and macadamizing, at a large expense; so that presumably it has conferred *some* benefit to the lands adjacent to it.

The improvement of an old highway by paving it, is an improvement for the expense of which the owners of adjacent lands may be assessed, to the extent of benefits. *A fortiori* the cost of an improvement which consists of widening and grading, as well as paving, may be assessed under like conditions. 20

## II.

*The proceedings to which the certiorari relates were, in other respects, legal.*

The only question decided or considered by the Court 30 below, was the constitutional one, above discussed; but as the reasons are directed to another matter, I will answer them briefly here:

1. It was competent for the "appraisers" to make the report, and the proceeding was one "under the act."
2. If not competent for the "appraisers" to make the report complained of, it was certainly competent for

the "assessors" to assess a fair proportion of the whole amount in Caldwell township; or at least, for the Board to apportion it and order it to be assessed; and *this was virtually done.*

3. The real question is, whether the assessors assessed more than a due proportion on lands in Caldwell township. It does not appear that they did, and the presumption is that they did not.

## New Jersey Supreme Court.

THE STATE,

(*ex rel* JAMES A. SPEER, *et al.*)

*vs.*

THE ESSEX PUBLIC ROAD BOARD.

On  
*Certiorari.*

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Application having been made to the Supreme Court, at the June term thereof, in the year of our Lord one thousand eight hundred and eighty-four, for the allowance of a writ of *certiorari*, in the above stated case,

It is ordered that a rule be entered allowing such writ, with leave, however, to the defendant to move to dismiss such writ, on the ground that the same was not applied for within the time allowed by law. 20

Dated August 12, A.D. 1884.

M. M. KNAPP,  
*J. S. C.*

The writ accordingly issued, and has been duly returned. It brings up two reports of Commissioners, as follows: 30

*Report of the Appraisers of Damages for Bloomfield Avenue.*

The Commissioners appointed to award the damages for widening Bloomfield avenue, having awarded the sum of twenty-two thousand dollars to the Newark and Pompton Turnpike Company, as compensation for the franchise of their turnpike from the Newark city line to the line of Morris county, at Pine brook bridge, do apportion the said twenty-two thousand dollars on the 40

different townships through which said turnpike passes, in the following amounts, viz :

The township of Belleville, two hundred and twenty-four dollars and forty cents. (\$224.40.)

The township of Bloomfield, eighty-two hundred and seventy-six dollars and forty cents. (\$8,276.40.)

The township of Montclair, fifty-nine hundred and eighty-three dollars and fifty-six cents. (\$5,983.56.)

10 The township of Caldwell, seventy-five hundred and fifteen dollars and sixty-four cents. (\$7,515.64.)

*To the Honorable "The Essex Public Road Board."*

GENTLEMEN: The appraisers appointed by the Court of Common Pleas for the County of Essex, upon the application of The Essex Public Road Board, to appraise the damages to the owners of land along the line of Bloomfield avenue, and through which said avenue is located, and taken in the widening and straightening of  
 20 the same and the buildings thereon, between the New-ark city line and the toll gate at Mount Prospect, beg leave to submit the following statement of their proceedings and adjudications of awards of damages to the parties entitled to damages, as follows:

*	*	*	*	*	*
\$149,366.41—lands, &c.,					
22,000.00—turnpike.					

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\$171,366.41—total.

*	*	*	*	*	*
---	---	---	---	---	---

30 Having carefully examined the several pieces of property as set forth in the foregoing statement, and heard the views of the parties interested therein, and also of The Essex Public Road Board, in accordance with the ninth section of the supplement to 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," which supplement was approved February 16, 1870, we hereby  
 40 declare the foregoing to be a fair, just and impartial

appraisement of the damages for the lands and buildings taken in the laying out and construction of that part of Bloomfield avenue, extending from the Newark city line to the township line of Caldwell, and we have this day openly and publicly declared the amounts thereof.

Respectfully submitted,

JOSEPH BOOTH,  
 THOMAS O. WOODRUFF,  
 THOMAS A. REEVE,  
 EBENEZER F. CONDIT, 10  
 THOMAS R. WILLIAMS,

*Commissioners of Damages for Bloomfield avenue.*

Newark, N. J., Feb. 6, 1872.

REVISED REPORT of the Assessors of Benefits, arising from the laying out of that portion of Bloomfield avenue which lies in the township of Caldwell.

*To The Essex Public Road Board :*

20

Whereas, The Court of Common Pleas of the county of Essex, at the request of The Essex Public Road Board, did on the twenty-fifth day of October, A.D. 1881, appoint Harrison Van Duyne and Benjamin F. Crane, of the city of Newark, George Booth and Thompson C. Munn, of the township of East Orange, and Charles H. Harrison, of the township of Clinton, being five disinterested freeholders, residing in the county of Essex and State of New Jersey, assessors to consider and determine what lands are peculiarly benefited by the laying out by the said Road Board of Bloomfield avenue, in said county, in accordance with the act of the legislature of the State of New Jersey, 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 March 31, 1869, and of the second supplement thereto ;

30

And whereas, We the aforesaid assessors having first severally taken an oath honestly and justly to perform the duties required of an assessor under the supplemental

40

act of February 16, 1870, and having given at least ten days previous public notice of our meeting hereinafter mentioned, for the performance of our said duties, specifying in said notice the purpose of said meeting, pursuant to said supplemental act, did accordingly meet at the office of the Essex Public Road Board, Nos. 810 and 812 Broad street, in the city of Newark, New Jersey, on the twentieth day of December, 1881, and thereupon proceeded to consider what lands in the township of Caldwell, in the county of Essex, are peculiarly benefited by the laying out of said avenue, and the amount that each lot or parcel is so benefited, and to assess the same in proportion to the benefits received ;

And whereas, The said Board having duly laid before us a copy of all the appraisements made under the said supplemental act in respect to the said avenue, and with proper maps, whereby it appeared to us that the aggregate amount of damages appraised as compensation for the taking of the turnpike road, of the Newark and Pompton Turnpike Company in said township of Caldwell, for the construction of said avenue in said township, was the sum of \$7,515.64 ; and having viewed the premises, and considered, adjudged and determined what lots of land in said township are peculiarly benefited, and to what amount the same were so benefited, and having assessed the amount to which the said lots of land in said township were so benefited upon the said several lots, designating the said lots by number and by the names of the owners thereof respectively, and specifying the amount to which each several lot was benefited, and having made our report thereon to The Essex Public Road Board, bearing date March 20, A.D. 1882, containing a statement or schedule of the lots so assessed, as by reference thereto will appear ;

And whereas, Upon the presentation of our said report to said Board, the said Board in consideration of objections made thereto, some whereof appeared to said Board well founded, and of clerical errors and informalities appearing therein, did require us, the said assessors, to review the said assessments, and make a new report

thereon readjusting the same and correcting the clerical errors and informalities therein ;

Now, therefore, We, the said assessors, having given at least ten days public notice of our meeting hereinafter mentioned, for the performance of our duties, by virtue of said requirements and in pursuance of the statutes in such case made and provided, did accordingly meet at the offices of the said Essex Public Road Board, in the city of Newark, in the State of New Jersey, on the twenty-second day of April, in the year eighteen hundred and eighty-two, and thereupon proceeded to review and correct the said assessments and to consider and determine what lands in the said township of Caldwell were peculiarly benefited by said improvements, that is to say, the laying out of Bloomfield avenue in said township, and the amount that each lot or parcel is so benefited, and to assess the same in proportion to such benefits received as justly and equitably as might be, and it appearing to us from the copy of said appraisal of damages and the said maps so laid before us by the said Board, that the aggregate amount of damages appraised as compensation for the taking of the turnpike road of the Newark and Pompton Turnpike Company in said township of Caldwell, for the construction of said avenue in said township, was the sum of \$7,515.64, and having reviewed the said assessments, and it appearing to us, and we having considered, adjudged and determined that the lots of land hereinafter mentioned and in said township, were peculiarly benefited to the extent of five thousand four hundred and thirty-nine  $\frac{34}{100}$  dollars,

We did, therefore, assess the same upon the several lots hereinafter mentioned, and designated by number and names of the owners thereof respectively, as far as known to us, in proportion to the peculiar benefit received as justly and equitably as might be, after hearing all the parties interested who appeared before us. *And we do certify and report* that the following is a correct statement or schedule of the lots so assessed, designated by numbers corresponding to the numbers of said lots respectively marked on the map accompanying this

report, together with the names of the owners or reputed owners thereof respectively, as far as could be ascertained, and the amounts assessed upon or against the same respectively as aforesaid, that is to say, we have assessed upon—

Lot No.			
	" "	* * * * *	* * *
	" "	2. Lilius M. Stiles, . . . . .	\$1.50
	" "	* * * * *	* * *
10	" "	17. William H. Baldwin, . . . . .	20 53
	" "	* * * * *	* * *
	" "	166. R. Cleveland Campbell, . . . . .	71.93
	" "	* * * * *	* * *
	" "	182. R. Cleveland Campbell, . . . . .	6.85
	" "	* * * * *	* * *
	" "	187. R. Cleveland Campbell, . . . . .	2.74
	" "	* * * * *	* * *
	" "	230. James A. Speer, . . . . .	70.44
	" "	* * * * *	* * *
20	" "	430. James A. Speer, . . . . .	99.10
	" "	* * * * *	* * *

Signed: T. C. MUNN,  
 BENJ. F. CRANE,  
 GEO. BOOTH,  
 C. W. HARRISON,

*Assessors of Benefits for the laying out of Bloomfield  
 avenue in the township of Caldwell.*

The foregoing report was accepted and ratified by The  
 Essex Public Road Board at their regular meeting held  
 30 June 5, 1882.

GEO. B. CORNISH, *Clerk.*

It is admitted that the Newark and Pompton Turn-  
 pike Company was built by a turnpike company, which  
 was incorporated by act of legislature of February 24,  
 1806, and had been actually open for public travel  
 through Caldwell township, and used as a highway  
 therein thirty or forty years prior to its condemnation as  
 40 aforesaid.

## New Jersey Supreme Court.

THE STATE, (JAMES A. SPEER, WILLIAM H. BALD- WIN AND RICHARD C. CAMPBELL, <i>Prosecutors,</i> )	}	<i>On Certorari.</i> 10
<i>vs.</i>		<i>Reasons.</i>
THE ESSEX PUBLIC ROAD BOARD.		

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

*First.* Because section 16 of an act entitled "A 20  
 supplement to the act entitled 'An act constituting a  
 Public Road Board for the laying out, constructing, ap-  
 propriating, improving and maintaining public carriage  
 roads in the County of Essex;' approved March 31st,  
 1869," is unconstitutional.

*Second.* Because the scheme by which turnpike roads  
 in said county of Essex were to be condemned, and the  
 compensation paid or damages appraised therefor were  
 to be assessed, contemplated as an essential part of said  
 scheme an assessment for benefits upon the lands lying 30  
 along or near the line of said road, and inasmuch as no  
 lands could be benefited by the condemnation of the  
 Newark and Pompton turnpike, the owners of lands  
 lying along and near said road having enjoyed the full  
 benefit of adjacency to that public highway for over fifty  
 years, and the condemnation amounting to nothing more  
 than a mere change in the ownership of said highway and  
 its mode of regulation, such scheme is unconstitutional,  
 and could not be carried into effect in the mode intended  
 by the legislature, and is therefore void. 40

*Third.* Because the direction in said 16th section contained, to assess the damages or compensation paid for the taking of said turnpike road upon the lands peculiarly benefited in the same manner as is provided in said act for the assessing, collecting and paying for lands or buildings taken for the purposes of said act, is a legislative-assertion that some lands in said county, whether adjacent or not to said avenue, were, and are, benefited by said taking, and is therefore a legislative direction to assess  
10 said lands, which direction is unconstitutional and void.

*Fourth.* Because the appraisers of damages appointed by the Court of Common Pleas on April 10th, 1871, to lay out and widen Bloomfield avenue, by their report, dated the 12th day of June, 1871, not only proceeded to condemn the Newark and Pompton Turnpike Company, and the franchises thereof, for the sum of twenty-two thousand dollars, but likewise in a subsequent report, dated on the 6th day of February, 1872, sought to apportion said sum of twenty-two thousand dollars on the  
20 different townships, through which said turnpike passes, in a purely arbitrary manner, on no legal or other principle of apportionment, and without having any statutory warrant to make the same, viz. :

On the township of Belleville,	. \$ 224 40
On the township of Bloomfield,	. 8,276 40
On the township of Montclair,	. 5,983 56
On the township of Caldwell,	. . 7,515 64

and that such an attempted apportionment was illegal,  
30 unconstitutional and void.

*Fifth.* Because if such last mentioned apportionment was made pursuant to any provision of any act relative to said Essex Public Road Board, such provision in not prescribing in terms or by necessary implication the principle of apportionment to be in proportion to and not in excess of special benefits, was unconstitutional and void.

*Sixth.* Because the Commissioners appointed to assess benefits by their report, approved June 5th, 1882,  
40 adopted as the foundation of their assessment of benefits

the said apportionment, and proceeded to and did assess the sum thus apportioned, or the greater part thereof, upon the owners of lands lying along or in the neighborhood of said road, and such apportionment constituting the basis of said assessment, the said assessment is wholly void.

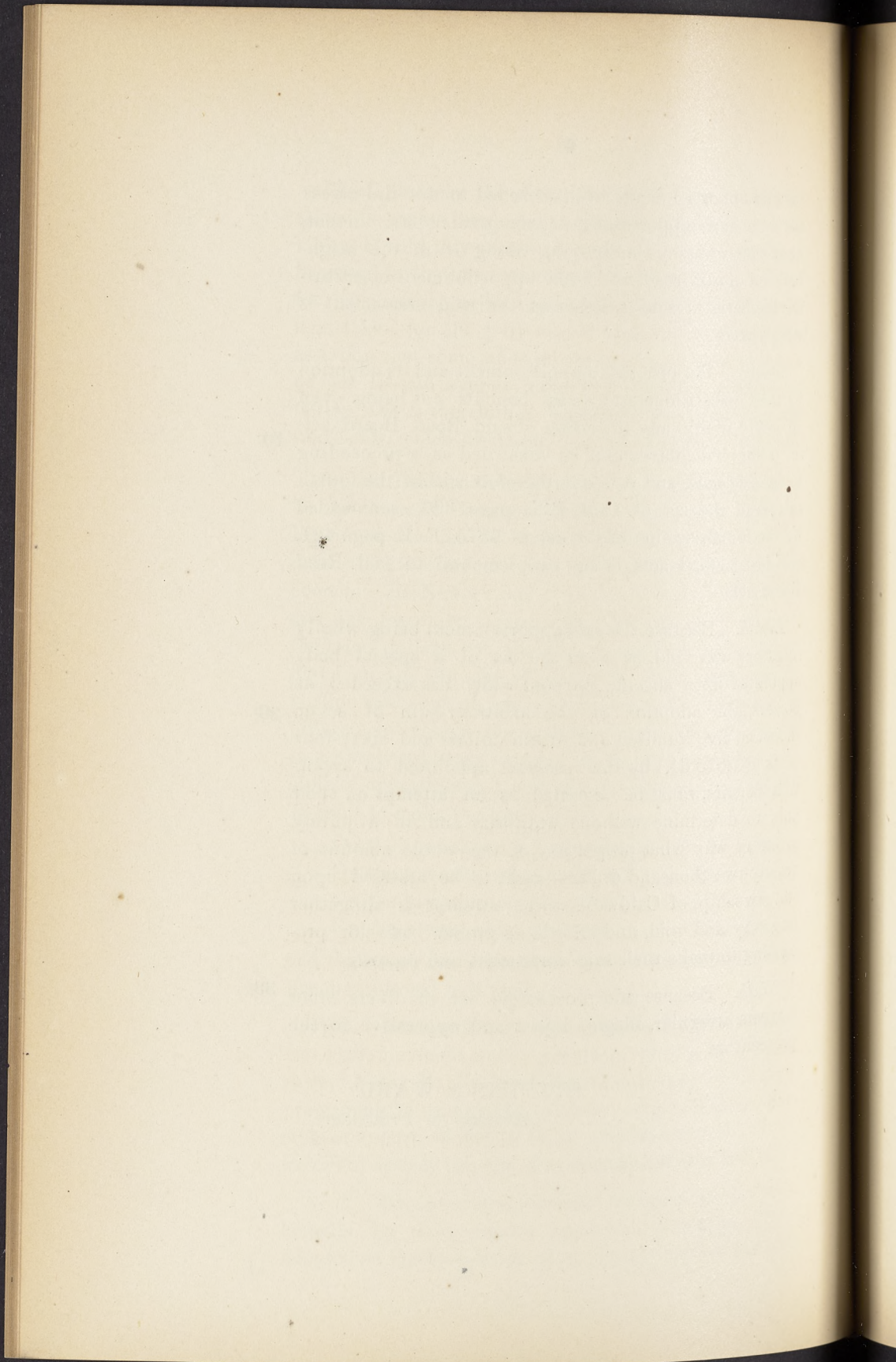
*Seventh.* Because said apportionment and its adoption by the Commissioners to assess benefits not being even colorably within any provision of said Road Board act, or its supplements, cannot be construed as a proceeding under said acts, and it is not therefore within the fourth section of the act of 1874, P. L. page 390, as amended by the fourth section of the act of 1875, P. L. page 421, said last named acts being supplemental to said Road Board act. 10

*Eighth.* Because the said apportionment being wholly nugatory and void, as being the act of a special body appointed for a specific purpose which has exceeded its powers, the adoption of the arbitrary sum of seven thousand five hundred and fifteen dollars and sixty-four cents, (\$7,515.64,) by the assessors appointed to apportion benefits, must be regarded as an attempt on their part to determine without authority and in a purely arbitrary way what proportion of the whole amount of twenty-two thousand dollars ought to be assessed upon the township of Caldwell, which attempt is altogether nugatory and void, and affords no proper basis for proceeding to make their said assessment and report. 20

*Ninth.* Because said proceedings are, in divers other respects, irregular, illegal, unjust and oppressive to the prosecutors. 30

STEVENS & WARD.

*Attorneys for Prosecutors.*



*WRIT OF CERTIORARI.*

NEW JERSEY, ss:

The State of New Jersey to "The Essex Public  
[L.s.] Road Board," Greeting:

We being willing, for certain reasons appearing by the affidavits of James A. Speer and William H. Baldwin, filed in this cause, to be certified of a certain assessment of benefits made by (The Essex Public Road Board on the report of commissioners,) assessors, and approved June fifth, eighteen hundred and eighty-two, in the laying out and widening Bloomfield avenue, so far as the same lies within the township of Caldwell, and also of a certain report, dated on the sixth day of February, eighteen hundred and seventy-two, of the appraisers of damages appointed to lay out and widen said avenue, by which report it was sought to apportion their award of damages on the different townships through which the Newark and Pompton turnpike passed;

We command you that the said assessment and reports, and the action of the said Road Board thereon, and all matters touching and concerning the same as fully as the same remain before you or under your control, to our Supreme Court of Judicature, at Trenton, on the first Tuesday of November next, you certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done.

Witness MERCER BEASLEY, Esq., Chief Justice of our said Supreme Court, at Trenton, this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

BENJ. F. LEE, *Clerk.*

STEVENS & WARD, *Attorneys.*

## RETURN.

*To the Justices of the Supreme Court of the State of*  
 [L.S.] *New Jersey :*

10 "The Essex Public Road Board" do herewith send  
 to the Supreme Court of the State of New Jersey, the  
 certain assessment of benefits made by said Board on the  
 report of commissioners, approved June fifth, eighteen  
 hundred and eighty-two, in the laying out and widening  
 Bloomfield avenue, so far as the same lies within the  
 township of Caldwell, and the certain report dated on the  
 sixth day of February, eighteen hundred and seventy-  
 two, of the appraisers of damages appointed to lay out  
 and widen said avenue, by which their award of dam-  
 20 ages is apportioned on the different townships through  
 which the Newark and Pompton turnpike passed, and  
 the action of the said Board thereon, and all matters  
 touching and concerning the same, as fully as the same  
 remain before said Board, or under their control, as with-  
 in they are commanded, and as by the schedule hereto  
 annexed, more fully appears.

Witness the hand of James Peck, the president, and  
 also the seal of the said Board, on this thirty-first day of  
 October, in the year one thousand eight hundred and  
 eighty-four.

JAMES PECK, *President.*

# New Jersey Supreme Court.

FEBRUARY TERM, 1885.

THE STATE,

(*ex rel.* JAMES A. SPEER, *et al.*.)

*vs.*

THE ESSEX PUBLIC ROAD BOARD.

*Certiorari.* 10

Argued before Justices VAN SYCKEL and KNAPP.

J. W. TAYLOR, for defendant.

F. W. STEVENS, for plaintiff.

The opinion of the Court was delivered by VAN SYCKEL, *J.*:

The writ in this case brings up the report of appraisers 20  
of damages for Bloomfield avenue, awarding \$22,000 to  
the Newark and Pompton Turnpike Company, as com-  
pensation for the franchise of their turnpike from the  
Newark city line to Morris county line, and apportioning  
\$7,515.64 as the share to be paid by Caldwell township.

It also certifies for review the revised assessment of  
February 6, 1872, against the relators for the special  
benefits alleged to accrue to them by reason of the  
transfer of the said franchise to the Essex Public Road  
Board.

30

The act of 1874, page 389, as amended by the act of  
1875, page 421, provides that writs of *certiorari* shall be  
brought within two months after ratification of the  
assessors' report.

The writ in this case was not prosecuted until August,  
1884, and therefore the plaintiff by his laches has lost  
his remedy, unless the assessment is wholly without  
authority and void.

If any benefit could have been conferred upon the re-  
lators by the transfer of the turnpike franchise from the 40

turnpike company to the Road Board, the judgment of the assessors cannot be disturbed.

Section 16, of the supplement of 1870, to the Road Board Act (Laws of 1870, page 181,) empowers the said Board to purchase or take (compensation being first made,) any turnpike road in said county, or such part thereof as may be necessary, and the damages sustained by the taking shall be ascertained as is directed in case of taking lands, and the compensation paid the turnpike  
 10 company shall be assessed upon lands peculiarly benefited.

Under this provision the franchise of the turnpike company was condemned by the Essex Public Road Board, and the turnpike company awarded \$22,000 therefor.

This case turns upon the question whether there can be, in legal contemplation, any special benefit conferred upon the adjacent land owners by such transfer of the turnpike franchise.

20 If not, the legislative act, in the respect that it authorizes an assessment against the relators for supposed benefits, is unconstitutional and void.

In *Carter vs. Wright*, 3 Dutcher, 76, which was an action of ejectment, Chief Justice GREEN held that the land was subject to the same easement after the turnpike company took it as before, it having been a laid-out road. That, therefore, the land owner suffered no damage, so far as the change in the title to the franchise of the road was concerned. Nothing was taken from him  
 30 that he had before the transfer.

In the Court of Errors, the view of the Court below was concurred in, although the judgment was reversed on another point; 5 Vr. 207.

In delivering the opinion of the Supreme Court, Chief Justice GREEN said :

“The title of the soil is not changed ; it remains as it was before, in the owner of the adjoining soil. He has precisely the same right to and control over the soil that he had before the passage of the act ; the land was sub-  
 40 ject to the easement or right of way before the passage

of the act, and continues subject to the same burthen still. It cannot, therefore, be said that the property of the plaintiff was, by virtue of the act, taken for public use without just compensation—nothing was in fact taken from the plaintiff; as before the passage of the act, so after, the title to the soil remained in the plaintiff—the right of way in the public. All that the legislature granted to the turnpike company was the easement of the use of the ancient highway for the purposes of their road.” 10

So in this case, the easement after its acquisition by the Essex Public Road Board did not lose its identity, or in anywise change its character. It was neither diminished or enlarged in its extent, and it constituted no additional burden or servitude.

If, therefore, the easement remains the same in the ownership of the Road Board, and no damage by such change falls upon the land owner, how can any benefit accrue to the land owner by the transfer? 20

If some benefit could accrue by reason of abolishing tolls in this case, then in *Wright vs. Carter*, some damage might have ensued to the land owner by the conversion of the public way from a free to a toll road.

If the extinguishment of the right to toll is a benefit to be assessed, then the grant of a right to take toll must be a damage for which the land owner is entitled to compensation.

Such right in the land owner was expressly denied in *Wright vs. Carter*. 30

The condemnation of the franchise by the Road Board is not an improvement of the highway.

Until work or reparation is done upon it, it in no respect undergoes improvement. It simply vests the franchise in a new owner, so that improvements may be projected and carried out if desired.

The legislature may authorize an assessment against land owners for benefits conferred by taking land not before constituting a road bed, because by such taking the advantage of a highway not before in *esse* is acquired. 40

But here the easement was enjoyed as fully before the condemnation as afterwards.

The right to assess for the mere transfer of the franchises is one thing; the right to assess for improving it is another, and very different thing. The latter right is not controverted.

If there is any possible benefit to the relators in this case, there must have been a possible damage in *Wright vs. Carter*, in which event it must have been submitted to a jury.

But the Court in that case held as matter of law that there could be no resulting damage to the land owner.

If the right to take toll has been extinguished by the transfer of the franchise to the Road Board, the costs of repairing must be provided by tax, to which the relators must contribute. The tax will stand in the place of the toll, and the change from one burden to the other will constitute no basis for an imposition upon the relators according to the views expressed in the case cited.

20 The legislative grant, in section 16, of the right to assess damages for the mere transfer of the franchise, is an authority to lay a burden, where no possible benefit can accrue, and is to this extent unconstitutional and void. It sanctions the taking of private property for public use without compensation.

In such case the prescribed limitation of the time within which a writ of *certiorari* must be sued out, is inoperative.

30 *Traphagen vs. West Hoboken*, 10 Vr. 232.  
*State vs. Elizabeth*, 12 Vr. 152.  
*State vs. Comrs.*, 13 Vr. 510.  
*Culver vs. Jersey City*, 16 Vr. 256.

The assessments for benefits based upon the mere transfer of the turnpike franchise to the Road Board should be set aside.

## New Jersey Supreme Court.

JUNE TERM, 1885.

THE STATE, (JAMES A. SPEER, <i>et al.</i> , <i>Prosecutors.</i> ) <i>vs.</i> THE ESSEX PUBLIC ROAD BOARD.	}	<i>On Certiorari.</i>	10
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This case coming on to be heard at the February term of this Court, in the year of our Lord one thousand eight hundred and eighty-five.

Whereupon, and on examining a certain assessment of benefits made upon the report of Thompson C. Munn, Benjamin F. Crane, George Booth and Charles H. Harrison, the assessors appointed by the Court of Common Pleas of the county of Essex, to determine what lands in the township of Caldwell, in said county, were peculiarly benefited by the laying out by the said Road Board of Bloomfield avenue, and the records of said board, and the proceedings bought up for review by the writ of *certiorari* in this case; and on hearing FREDERIC W. STEVENS, Esq., for the prosecutors, and JOHN W. TAYLOR, Esq., for the defendants, and the Court having taken time until the June term of this Court to advise thereon, and it appearing to the Court that the sixteenth section of an act, approved February 16th, 1870, entitled "A supplement to 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 March thirty-first, eighteen hundred and sixty-nine;" which section directs that the compensation paid, or damage appraised for the purchase or taking of any turnpike road, shall be assessed upon the lands peculiarly ben- 20 30 40

efited, is unconstitutional and void, for the reason that no special benefit can, in legal contemplation, accrue to lands by the mere conversion of a turnpike road into one vested in, or purchased, or taken by the Essex Public Road Board, and that said report of said assessors, and the confirmation and approval thereof, and all proceedings of said Road Board founded thereupon, are illegal and void ;

10 It is, on this third day of June, in the year one thousand eight hundred and eighty-five, ordered that said proceedings be set aside and for nothing holden, with costs of printing.

Entered June 3, 1885.

On motion of

FREDERIC W. STEVENS,

*Of Counsel with Prosecutors.*

NEW JERSEY, ss :

The State of New Jersey to the Justices of the  
[L.S.] Supreme Court of the State of New Jersey,  
Greeting :

Because in the record and proceedings, and also in the  
giving of judgment in a certain plaint, which was in our  
said Supreme Court before you, between the State of 10  
New Jersey, (James A. Speer and others, prosecutors,)  
and The Essex Public Road Board, on a certain writ of  
*certiorari*, issued out of our said Supreme Court, manifest  
error has intervened, as is said, to the damage of the  
said The Essex Public Road Board, as by its complaint  
we are informed ;

We being willing that the error, if any there be,  
should in due manner be corrected, and full and speedy  
justice done to the parties aforesaid in this behalf, do 20  
command you that if judgment be given thereupon, then  
without delay, you distinctly and openly send, under  
your seals, the record and proceedings aforesaid, with all  
things touching the same, to our Court of Errors and  
Appeals, to be held at Trenton, on the third Tuesday of  
June instant, together with this writ, that the record and  
proceedings aforesaid being inspected, we may further  
cause to be done thereupon what of right and according  
to law ought to be done.

Witness THEODORE RUNYON, Esq., our Chancellor at  
Trenton, aforesaid, the twelfth day of June, A.D. eigh- 30  
teen hundred and eighty-five.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Attorney.*

## N. J. Court of Errors and Appeals.

	THE ESSEX PUBLIC ROAD BOARD,	
	<i>vs.</i>	
10	THE STATE, (JAMES A. SPEER, <i>et al.</i> , <i>Prosecutors.</i> )	}
		<i>On Error.</i>

20 Afterwards, that is to say, on the sixteenth day of June, in the year eighteen hundred and eighty-five, before the Court of Errors and Appeals of the State of New Jersey, comes the said plaintiff, by JOHN W. TAYLOR, its attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the proceedings of the said The Essex Public Road Board were set aside and for nothing holden, with costs; whereas, the said proceedings should have been affirmed with costs. There is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid was given for the defendants against the said plaintiff; whereas, by the law of the land, judgment ought to have been given for the said plaintiff, against the said defendants.

30 And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed and for nothing held, and that the plaintiff may be restored in all things which it has lost by occasion of the judgment aforesaid, &c.

JOHN W. TAYLOR,  
*Att'y for P l'tff in Error.*

[Joinder in Error.]