

or maintaining such boundary line road, or portion thereof, or of making a deviation of a portion of such county boundary line road, or of adopting a road or highway already constructed as a part or the whole of such deviation, where in the opinion of any of the said arbitrators it is impracticable to construct a road along the said county boundary line; one or more of such township councils may apply to the wardens of the bordering counties to determine jointly the amount which each township shall be required to expend on such road, either in money or statute labour, or both, and the mode of expenditure; the County Judge of the county in which the township first making the application is situate shall in all cases be the third arbitrator."

It will be seen from the above that the words "or of adopting a road or highway as already constructed as a part or the whole of such deviation" were for the first time introduced by the Act of 1906. Now the road in question is and has been for more than 50 years a road or highway, and the award adjudges that the roadway in question and therein described be adopted as a deviation of that portion of the county boundary line between the townships of Normanby and Carrick lying adjacent thereto, "it being impracticable in the opinion of the said municipal corporation of the township of Normanby to construct a road along the said portion of the said county boundary line." The award then further provides for the cost of maintenance, and appoints commissioners, and apportions the costs of the arbitration.

It is quite clear that after the Act of 1906 was passed no action was taken by the township of Normanby with a view of ascertaining whether it was possible for the interested townships to mutually agree in regard to this matter; all that had been done prior to that was the passing of a resolution by the council of Normanby declaring the county boundary impracticable, and an endeavour by their solicitors to have a meeting of the interested townships with a view of arranging the matter. The township of Carrick did not commit itself in any way, consistently taking the position throughout that there was no jurisdiction to arbitrate in the present case.

It was not contended before me that there was jurisdiction prior to the Act of 1906, and it may well be that, although the township of Carrick refused to meet the township