

posed bridge fell within the words of sec. 449; for, if it did not, there was no jurisdiction to make the order.

Before the date of the application to the Judge, there had been a bridge at the place indicated. The length of this bridge, including the approaches, was less than 300 feet. Owing to erosion in the banks, it fell down, and at the date of the application no bridge existed. It was proposed to erect in its stead a new bridge having a length, exclusive of approaches, of 303 or 304 feet.

The sole question was one of jurisdiction, depending on the interpretation of sec. 449. The other requirements of the section were met; the only question was whether sec. 449 applied to a case where there was not and never had been a bridge 300 feet long—"A bridge of a greater length than 300 feet . . . in a township may . . . be declared to be a county bridge." The section does not cover the case of a proposed bridge, a bridge on a plan; and there was no jurisdiction to make the order.

If there had been a bridge more than 300 feet long in actual existence, and if, after having been declared a county bridge, it had fallen, the word "maintain" in the section would be sufficient to impose on the county corporation a duty to rebuild or to share in the cost of rebuilding; and to such a situation the words of Patterson, J.A., in *Re Townships of Moulton and Canborough and County of Haldimand* (1885), 12 A.R. 503, at p. 536, apply; but the term "maintain" cannot be applied where at the date of the order there is no bridge. The section predicates an actual physical structure of greater length than 300 feet as the basis of everything.

The appeal should be allowed and the order below vacated with costs.

MACLAREN and MAGEE, J.J.A., concurred.

GARROW, J.A., died while the appeal was standing for judgment.

*Appeal allowed.*