

COURT OF ERRORS.

The State, (Edward Tatum and others, Prosecutors), vs. Joseph McChesney, Collector, &c., Third Ward, Millville.	} On Certiorari Points.
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This certiorari involves the construction of the 20th Section of the tax law 1866, (Nixon's Digest, 955, pl. 102), which prescribes that from the assessed value of property in this State shall be deducted debts due from the individual to creditors residing in this State; the tax payer to make a statement of the total amount of his real and personal property, including mortgages held, and other debts due and owing to such individual.

The word individual is used in the act to indicate the person or persons by whom the tax is to be paid, who may be a corporation or a firm.

Property taxable is all the real or personal estate within this State, (Act 1866, p 2), which as to personal estate may be in this State, either actually, or constructively, by reason of domicil.

The plaintiffs in this case are a non-resident firm, domiciled in the State of Pennsylvania, but having a glass factory at Millville in this State.

Looking at the meaning and object of the act the particular statement of this real and personal estate required, means property situate in this State, and subject to taxation; such statement entitles them to the deduction of the debts due on account of this factory to resident creditors. It cannot mean a statement of the total amount of their property in the State of Pennsylvania, with which this State has no concern.

T. P. CARPENTER,
Attorney of Plaintiffs in Court.

COURT OF ERRORS

The State, Edward Patten and
Others, Plaintiffs at Law, vs.
McCleenny, Callahan, & Co.,
Trustees of the State.

This action involves the construction of the 20th section of the law 1866, which provides that the new section of property in this state shall be valued after the 1st day of January next, and the value of the real and personal property, including mortgages, shall be ascertained and owing to each individual. The word individual is used in the act to indicate a person or persons whom the tax is to be paid, and may be a corporation or a firm. Property taxable is all the real or personal estate within this State, and which is situated in this State, or in the State, which actually or constructively, by reason of donation, or otherwise, is owned by a non-resident. The plaintiffs in this case are a non-resident firm, admitted in the State of Tennessee, but having a place of business at Nashville in this State. Looking at the meaning and object of the act, the particular statement of the real and personal estate required means property situate in the State, and subject to taxation; such statement rather than to the value thereof the debt, the account of this debt to the resident creditor. It cannot mean a statement of the total amount of their property in the State of Tennessee, and with which the State has no concern.

T. P. CARPENTER,
Attorney of Plaintiffs in Court.

COURT OF ERRORS AND APPEALS.

THE STATE, (WHITALL TATUM & Co., PROSE- CUTORS,)	}	Matter of tax.
VS.		In error to
JOSEPH MCCHESENEY, COLLECTOR OF 3D WARD OF MILLVILLE.	}	Sup. Court.

Defendant's Points.

1. The power of taxation, in this state, is vested in the legislature, and it is for them to decide what property shall be taxed, and on what terms and conditions the tax shall be assessed and paid.

2. The statute under which the tax in question was assessed, provides that debts may be deducted from the assessed value of the property of the tax payer, only upon compliance with certain conditions. The prosecutors have not complied with such conditions, and cannot, therefore, have the benefit of the deduction.

3. The prosecutors, "Whitall Tatem & Co.," cannot properly be held or considered non-residents of this state.

J. WILSON,
Attorney of defendants.

REAR VIEW

WRIT OF CERTIORARI.

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[SEAL.] NEW JERSEY, ss. The State of New Jersey to Joseph McChesney, Collector of Taxes for the Third Ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, GREETING.

We, being willing, for certain reasons, to be certified of the assessment, made in said Third Ward, of the City of Millville, upon the property of Edward Tatum, James Whitall, J. Wistar Evans, and R. Pearsall Smith, trad- 20 ing under the name and firm of "Whitall, Tatum & Co.," in assessing the taxes for the year, one thousand, eight hundred and sixty-eight, and of the duplicate thereof in your hands, and also of the proceedings thereon, &c., do command you, that the assessments and duplicate thereof, with all things touching and concerning the same, you certify and send to our Justices of our Supreme Court, at Trenton, distinctly and plainly, under your hand and seal, on the Fourth Tuesday of February, instant, together with this our writ, that therein may be done what of right, and according to the Laws and Constitution of 30 this State, ought to be done.

WITNESS, the Honorable Mercer Beasley, Chief Justice of our Supreme Court, at Trenton, this Fourth day of February, in the year of our Lord, one thousand eight hundred and sixty-nine.

C. P. SMITH, *Clerk.*

T. P. CARPENTER, *Att'y.*

ENDORSEMENT ON WRIT.

SUPREME COURT, (CUMBERLAND.)

The State,

10	<p>[Edward Tatum, James Whitall, J. Wistar Evans, and R. Pearsall Smith, trading, &c., Prosecutors.]</p> <p style="text-align: center;"><i>vs.</i></p> <p>Joseph McChesney, Collector of Taxes for Third Ward of the City of Millville, &c.</p>	}	<i>Certiorari.</i>
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T. P. CARPENTER, *Att'y.*

Ret. February Term, 1869.

20 Allowed by order of George S. Woodhull,
one of the Justices, &c., this 4th day of
February, 1869.

RETURN.

30 MILLVILLE, February 20, 1869.

I, Joseph McChesney, Ex-Collector of the Third Ward, City of Millville, County of Cumberland, State of New Jersey, do hereby certify that enclosed copy of the duplicate is correct, and that the schedule of real and personal property is the original copy made out and returned to our Assessor Wm. T. Thackara, by Messrs. Whitall, Tatum & Co., for the year 1869.

J. MCCHESNEY,
Ex-Collector Third Ward, City of Millville.

SCHEDULE.

City of Millville, County of Cumberland, N. J., ss :

Messrs. Whittall, Tatum & Co., of the City, County, and State aforesaid, saith that the actual value of all his personal property, excepting United States Securities, 10 Bonds of this State exempt from taxation, Stocks of Banks and other private corporations of this State, Deposits in Savings Banks in this State, and property and stocks in other States, upon which tax has been assessed and paid within twelve months, is as follows :

	VALUE.
Promissory Notes, Book Accounts, Debts, &c.,	\$5,503 97
Material and goods with manufacturer, or in store,	66,449 90
Total,	\$71,953 87

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The following is a just and true statement of debts due and owing by him to creditors residing in this State, with the names and residences of said creditors :

Names of Creditors.	Residence of Creditors.	Amount of Debt.
Jacob Bethell, W. K. Bethell, Benj. Bard, Andrew Beebe, Eph. Beebe, Saml. Bassett, William Curless, Jr., Edwin Conover, Ira J. Campbell, &c., &c., &c., etc.,	Millville, N. J.	\$42,651 27

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R. PEARSALL SMITH.

And the following is a true statement of all my real estate, description of the same, where situate, and the value thereof:

DESCRIPTION OF PREMISES.

Factories,	}
Store Houses,	
Dwellings.	

WHERE SITUATE.

Third Ward, }
 Millville, N. J. }

VALUE.

10 \$43,224.20. }

I, R. Pearsall Smith, do solemnly affirm, that I will true answer make to all such questions as shall be put to me touching the taxable property of myself, or of Whitall Tatem & Co., and therein I will speak the truth, the whole truth, and nothing but the truth.

R. PEARSALL SMITH.

Copy of the Duplicate, Third Ward, City of Millville,

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WHITALL, TATUM & CO.

JAMES M. WHITALL,
 EDWARD TATUM,
 J. WISTAR EVANS,
 R. PEARSALL SMITH.

No. of acres, 15.

Value,.....\$ 43,224
 Value Personal Property,..... 71,953

Total value,..... 115,177
 Deduction for Debts,.....

30 Net Value Assessed,..... 115,177
 Rate, \$2 per \$100.

State 5c. on \$100,.....\$ 37.58
 County, 30c. on \$100,..... 345.53
 School, 50c. on \$100,..... 575.87
 City, \$1.15 on \$100,..... 1,324.56
 Dog, Poll,.....

Total, \$2,303.54
 Correct, J. McCHESNEY.

SUPREME COURT,
(Cumberland.)

The State, (Edward Tatum,
and others, Prosecutors.)

vs.

Joseph McChesney,
Collector of Taxes, &c.,
Third Ward, of the City of
Millville, &c.

On Certiorari.

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The plaintiff, in certiorari, [Edward Tatum, and others, prosecutors,] comes into court, and says the tax complained of, was erroneously assessed, and the said assessment should be set aside; because

1. The assessor did not deduct from the valuation of the property of the Prosecutors, the amount of the debt or debts, or any debt or debts *bona fide*, due and owing from the Prosecutors to creditors residing within this State. 20
2. That the Assessor made said assessment illegally and for a higher value than the law authorized.
3. That the said assessment is in other respects irregular and illegal.

T. P. CARPENTER,
Attorney of Prosecutors, &c.

STATEMENT OF THE CASE.

(Entitled.)

The firm of "Whitall, Tatum & Co.," have their principal place of business in Philadelphia, where they have storehouses, &c., being partners in the manufacturing and sale of glassware, &c., and own large factories in the City of Millville, Cumberland County, N. J. All the parties reside in the City of Philadelphia, and there control the general affairs and the operations of the firm, except one partner, who resides in Millville and superintends the manufacturing operations, and another now in the City of New York, where he superintends an agency for the sale of the glassware of the firm. That the business of the said firm at the time of the making of the assessment mentioned in the said writ of certiorari was transacted in the City of Philadelphia, except that the manufacture of its glassware was conducted in the said City of Millville—and except also its mere agency for the sale of its glassware in the City of New York. That the property of the said firm of "Whitall, Tatum & Co.," situate in the said City of Millville, and there liable to taxation, consists of real estate, glass factories with their appurtenances, houses for superintendent, employees, &c., manufactured glass—materials for making glass, &c., debts due to the firm by solvent debtors arising out of, or connected with the business of the firm in New Jersey, &c., the said property being assessed in the Third Ward, of the said City of Millville, at the sum of about \$115,177. That the tax assessed against the said firm of "Whitall, Tatum & Co.," upon the said valuation of their property, amounts to about the sum of \$2,303.54. That at the time of said assessment the said firm was justly indebted to workmen and others for work done, merchandise supplied, &c., furnished to said firm for the use of its manufacturing business in the said City of Millville, to the amount of \$42,651.—All said indebtedness of the

said firm to the said amount, being to persons residing in the County of Cumberland, and State of New Jersey. That the said firm being advised by counsel, that they were entitled to have the amount of said indebtedness deducted from the valuation of the real and personal estate of said firm, by their said resident partner, at the time of the assessment, made and signed a true statement 10 in writing of the said debts owing by the said firm to their said creditors residing in the State of New Jersey, to whom owing and where resident, and also made and signed a statement of the total amount of all the real and personal estate of said firm, in the State of New Jersey, and delivered the same to the assessor, and requested him to deduct from said valuation the amount of said debts, and make the assessment against the said firm only on the excess of said valuation over and above said debts. That the assessor refused to comply with said request, unless said statement should embrace all the personal 20 property and assets of said firm out of the State of New Jersey, upon which taxes were not paid by said firm. That the Commissioners of Appeal, on appeal made, confirmed the decision of said assessor. It is then hereby agreed (it being admitted that the application for said deduction was in all respects regular as to form,) that it be submitted under the writ of certiorari in this case, to the Supreme Court whether the said firm were entitled to such deduction on a statement of the total amount of all the property or assets in the State of New Jersey, or whether such statement must embrace all the personal 30 property and assets of the said firm wherever situate, as well out of the State of New Jersey as elsewhere.

(Signed,)

T. P. CARPENTER, *Atty. of Pros.*

JNO. T. NIXON. *Atty. of Defs.*

Dated, February 24, 1869.

OPINION PER WOODHULL, J.

10 The prosecutors, having been assessed as a firm for their partnership property in the Third Ward of the City of Millville—a mode of assessing such property which is understood to be not unusual, at least, in the southern counties of the state, and to which no objection is made in this case—claim the deduction authorized by the 20th section of the tax law of 1866, without stating the total amount of real estate and of personal property of the firm, including mortgages held and other debts due and owing to the firm from solvent debtors, on the ground that being a non-resident firm, that part of the act has no just application to their case. Whether their claim is well founded or not depends upon the true construction of the 20th Sec. of the act of 1866, just referred to. Nix. Dig., 955-956.

20 That section prescribes in very clear and imperative terms the conditions on which assessors and commissioners of appeal may deduct from the valuation of the real and personal property of any individual, the debts owing by him to creditors residing in this State.

The language is as follows: "After making the valuation of the real and personal estate for which any individual shall be assessed, it shall be lawful for the assessor or for the commissioners of appeal in cases of taxation, to deduct from such valuation any debt or debts bona fide due and owing from such individual to creditors residing in this state; *Provided*, that no deduction shall be made from the full and fair value of the real or personal estate of any individual, unless such individual shall make and sign a true statement in writing under oath or affirmation, that the same is just and true of the several debts owing by such individual which he desires to have deducted, to whom owing and where the creditor resides, and also a statement of the total amount of real estate and of personal property of such individual, including

mortgages held and other debts due and owing to such individual from solvent debtors, and shall deliver the same to the said assessor, on or before the time limited by law for closing the assessment, &c., and in case any assessor or commissioner of appeal shall make any such deduction, without having first delivered to him as aforesaid such statement, &c., the said assessor, &c., shall 10 be deemed guilty of a misdemeanor, and liable to a fine not exceeding two hundred dollars, &c. The counsel for the prosecutors arguing from the course of legislation upon the subject of deductions for debts, from the theory and policy of the act of 1866, and from the character of the statement required in the 20th Section, contended that the intention of the legislature was that the deduction provided for in the 20th Section should be allowed to all individuals assessed, whether residents or not; that to require from non residents a statement of their property, real and personal, not liable to taxation in this State 20 would be useless, vexatious and unreasonable, and could not have been intended by the legislature; and their conclusion was, that the legislature intended that non-resident tax-payers should be allowed the deduction provided for in the 20th Section, without stating the particulars enumerated in the second branch of the proviso.

Admitting for the present that the counsel for the prosecutors have succeeded in establishing their first proposition, namely, that it was the intention of the legislature to give the privilege of deducting for debts to non-residents as well as residents, I am compelled to 30 think that their construction cannot be maintained without doing great and manifest violence to the language of the act.

By what rule or principle of interpretation could we be justified in holding that the legislature intended that there might, in some cases, be a deduction without the statement specially provided for in the 20th Section, when they have, in the same section, in language too plain to admit of two constructions, declared that *no de-*

deduction shall be made, unless the individual desiring it shall make the very statement therein prescribed? The language of this part of the act being entirely free from obscurity and applying equally to all classes of individuals assessed, the conclusion seems to me unavoidable that if the legislature intended that non-residents should in any case be allowed the deduction provided for in the 20th Section, the legislature must also have intended that they should in no case be allowed that deduction without complying with the prescribed conditions. In this view of the case it can make no difference whether the prosecutors are held to be residents or non-residents. Having failed to make the statement called for by the act, they have failed to show themselves entitled to the deduction which they claim. But in another aspect of the case the prosecutors—admitting them to be non-residents—are met by an objection which seems to me to be fatal, not only to their present claim, but to their right to a deduction in any case—and that is, that the provisions of the 20th Section of the act of 1866, were intended by the legislature to apply to inhabitants or residents of this State, and to no others.

The second section provides that all real and personal property within this State shall be liable to taxation at its full and actual value. In a clause of the seventh section, is found the only reference in the whole act to non-residents:—“And in case the owner or owners of personal estate, shall be non-resident of this State, then and in that case, the said personal estate shall be taxed in the township or ward where the same may be situate.” The 20th Section and no other part of the act, makes provision for a deduction from the assessed valuation of the real or personal estate. The terms on which this deduction may be allowed, are specifically set forth in the same section, and to make the deduction without a compliance with such specified terms is not only positively prohibited, but made penal and indictable. These terms are such as the legislature cannot reasonably be

supposed to have required from non-resident tax-payers. As applied to them such terms would be, as the counsel for the prosecutors so earnestly insisted, not only useless, but inconvenient, vexatious and unreasonable. Now what is the true inference from all this? Not, surely that the legislature intended to allow the deduction to non-residents on some other terms than those specified in the act, but that the provisions of the 20th Section were not designed by the legislature to be applied to non-residents at all either as to the privilege of deducting for debts, or the terms upon which such deduction may be allowed. If that part of the section which prescribes the conditions does not apply to them, neither does that part which allows the privilege. The conclusion is that there is no provision in the 20th section, nor in any other part of the act by which a non-resident owner of real or personal estate, situate in this State, may be allowed a deduction for debts due and owing by him to creditors residing within this state. 10 20

I cannot see that the construction contended for on the part of the prosecutors finds any support in the course of legislation upon the subject of deducting for debts.

The policy of allowing such a deduction was first introduced into this state by the act of March 14, 1857, and has been retained in some form, in every general tax law passed since that time. In some of these acts the language is broad enough to include non-residents and the provisions such as might without absurdity be held to apply to them. 30

In others the language and the provisions are wholly irreconcilable with the idea that they were designed for any but inhabitants of the state. In no one of these acts is the right to deduct for debts extended in terms to non-residents. In one of them—the act of March 5, 1853, they are expressly excluded from such right. Acts 1853, p 329, Sec. 7.

On the whole, considering the character and object of the several acts just referred to, it may well be doubted whether the provisions of any one of them allowing a deduction for debts, can properly be held to apply to non-residents. For the reasons above stated, I think that the assessment should be affirmed.

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AFFIRMANCE IN SUPREME COURT. 10

JOSEPH MCCHESENEY, *Collector, &c.*,
of Third Ward, City of Millville.

ads.

The State, EDWARD TATUM, JAMES

WHITALL, J. WISTAR EVANS, and

R. PEARSALL SMITH, *trading, &c.*

On Certiorari
In matter of Tax.

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The Court having heard Counsel in this case, and inspected the assessment returned with the writ therein, duly considered the reasons assigned.

It is now ordered, that said assessment be affirmed as valid and lawful, and said certiorari dismissed with costs to be assessed.

On motion of

JOHN T. NIXON, *Atty. of Deft.*

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WRIT OF ERROR.

NEW JERSEY, *ss.* The State of New Jersey to our Justice of our Supreme Court of Jurisdiction of the State of New Jersey.

- 10 GREETING: Forasmuch as in the record and proceedings, and also in the giving of judgment in a matter of writ of certiorari, issued out of our said Supreme Court, at the suit of the State of New Jersey, [Edward Tatum, James Whitall, J. Wistar Evans, and R. Pearsall Smith, trading as Whitall, Tatum & Co., Prosecutors,] directed to Joseph McChesney, Collector of Taxes for the Third Ward of the City of Millville, in the County of Cumberland, and returnable in said Supreme Court, as is said, manifest error hath intervened to the damage of the State of New Jersey [and of the said Prosecutors] as by their complaint we are informed: We being willing that the error, if any there be, should in due manner be corrected and justice be done therein, do command you that if judgment be thereupon given, then without delay you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals at Trenton, on the eighth day of March next, 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.

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WITNESS, Honorable Abraham O. Zabris-
kie, Chancellor, Judge of our said Court of
Errors and Appeals at Trenton, this Eleventh
day of January, in the year of our Lord one
thousand eight hundred and seventy.

H. N. CONGAR, *Clerk.*

T. P. CARPENTER, *Att'y.*

WHAT IS THE STATE OF NEW YORK?

NEW YORK, the Empire State, is the most populous and powerful of the States of the Union. It is the seat of the State Government, and the residence of the Governor, the Senate, and the Assembly. The State is bounded by the Atlantic Ocean to the east, the State of Connecticut to the south, the State of Pennsylvania to the west, and the State of Vermont to the north. It is divided into five principal regions: the Hudson River Valley, the Mohawk Valley, the Adirondack Mountains, the Finger Lakes, and the Western and Southern Plains. The Hudson River Valley is the most densely populated and the most fertile, and is the seat of the State Government. The Mohawk Valley is the most fertile and the most populous, and is the seat of the State Government. The Adirondack Mountains are the most rugged and the most beautiful, and are the seat of the State Government. The Finger Lakes are the most fertile and the most populous, and are the seat of the State Government. The Western and Southern Plains are the most fertile and the most populous, and are the seat of the State Government.

T. F. Chamberlain, Jr.

