

Vol 674 = 1914

New Jersey Court of Errors and Appeals.

RAYMOND MESSINEO,
Prosecutor-Appellee,

vs.

GUY L. FAKE, MILES C. WHITE-
HEAD, CLARENCE MABIE, Com-
missioners of Adjustment, and
FRANK V. ROMAGLIA, Clerk of
said Commissioners of Adjust-
ment, and the BOROUGH OF GAR-
FIELD,

Defendants-Appellants.

*On Certiorari.
On Appeal from
Judgment of Su-
preme Court.*

BRIEF OF DEFENDANTS-APPELLANTS.

This appeal brings up for review the judgment of the Supreme Court (Swayze, J., sitting alone) setting aside certain proceedings of Martin Act Commissioners, appointed by the Bergen County Circuit Court for the Borough of Garfield.

On May 9th, 1914, the Bergen County Circuit Court, upon the application of the Borough of Garfield, appointed Guy L. Fake, Miles C. Whitehead and Clarence Mabie, Commissioners of Adjustment for the purpose of performing the duties and executing the powers conferred by an act of the Legislature of the State of New Jersey entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in towns, townships, boroughs and other municipalities except cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof, and to provide for the sale of lands subject to future taxation and assessments," approved May 18, 1898, and the supplements and amendments thereto (case, p. 5, lines 3-8).

The said Commissioners duly qualified by filing their respective oaths of office with the clerk of the Borough of Garfield (case, p. 5, line 9) and after publication of

notice of their first meeting (case, p. 5, line 18 to p. 6, line 10) they met, organized, held their first meeting and heard all persons who attended said meeting and who were interested in the re-assessment or adjustment of the taxes, assessments or water rates in arrears in the Borough of Garfield (case, p. 6, lines 10-20).

Thereupon, after due examination of the property, they proceeded to fix and adjust the arrearages of taxes, assessments and water rates, and had searches made of the various parcels of land affected by their proceedings.

The prosecutor is the record owner of Lot No. 51 in Block No. 20 as laid down on the Assessment Map of the Borough of Garfield and his taxes and assessments were adjusted at \$265.43; the sum of \$15.00 was added for search fees and cost of adjustment.

On May 15, 1915, Justice Swayze allowed a writ of certiorari to review the adjustment of the prosecutor's unpaid taxes and assessments (case, p. 1) and under a rule to take affidavits (case, p. 2, line 30) the facts were stipulated; the prosecutor filed his reasons (case, pp. 3-4) and the action was noticed for argument before Justice Swayze within fifteen days after reasons filed (case, p. 7) and was argued on August 2, 1915. The principal contention of the prosecutor was that the notice of the first meeting of the Commissioners of Adjustment was not published as required by the act, P. L. 1898, p. 442; Comp. Stat. p. 5247; the defendants conceded that the notice was not published in accordance with the requirements of the original act but claimed that the curative supplement, Chap. 333, P. L. 1915, had validated the defective notice of the first meeting of the Commissioners; after hearing argument of counsel, Justice Swayze held that the curative act did not apply to the case at bar (case, pp. 8-9) and the proceedings certified were set aside (case, p. 10); defendants thereupon served a notice of appeal, claiming that the judgment of the Supreme Court was erroneous because for no reason assigned by the prose-

utor or by the Supreme Court, should the proceedings, under review, have been set aside (case, p. 11).

POINT I.

The Supreme Court erred in holding that the Curative Act, Chap. 333, P. L. 1915, did not apply to the notice of the first meeting of the Garfield Adjustment Commissioners.

The statutory provision relative to publication of notice of the first meeting of Commissioners reads as follows:

"The said commissioners shall, within thirty days after their appointment, cause a notice signed by themselves to be published in at least one newspaper printed or circulating in the town, township, borough or other municipality for which they were appointed, making known thereby that the said commissioners will meet at a time and place to be therein designated, not more than forty or less than thirty days from the date of the first publication of the notice, to hear all persons interested in the re-assessment or adjustment under this act of the taxes, assessments or water rates in arrears in the said town, township, borough or other municipality, or in such part thereof as the said commissioners shall designate in the notice; such notice shall be continued in said newspaper at least once each week until said meeting." P. L. 1898, p. 442, Sec. 2; Comp. Stat., p. 5247, Sec. 404.

The notice published (case, p. 5, line 16 to line 10, p. 6) met all the requirements of the statute, excepting the requirement that "such notice shall be continued in said newspaper at least once each week until said meeting;" it was published within thirty days after the appointment of the Commissioners; the notice was signed by the Commissioners and published in a newspaper circulating in the Borough of Garfield (case, p. 5, lines 10-15); it specified the time, place and purpose of the meeting; the date fixed for the first meeting was not more than forty or less than thirty days from the date of the first publication of the notice; the notice was published once each week for four weeks,

i. e. it was published June first, June eighth, June fifteenth and June twenty-second, 1914 (case, p. 5, lines 10-15); if the act had been strictly followed, the notice would have been published also on June twenty-ninth and July sixth, 1914.

On April fifteenth, 1915, a curative supplement to the 1898 act was approved by the Governor and reads as follows:

“That all proceedings heretofore instituted under this act, in which the notice of the first meeting of the commissioners has been published once each week for at least four consecutive weeks preceding the time designated therein for holding the same, in at least one newspaper printed or circulating in the town, township, borough or other municipality for which commissioners have been heretofore appointed, are hereby validated and confirmed.

This act shall take effect immediately.”

Chap. 333, P. L. 1915.

If the foregoing legislation were an independent statute, purporting to cure defective legal notices generally we might agree with Justice Swayze's reasoning and say that the word “preceding,” used therein, should be held to mean “next preceding” but we cannot agree with Justice Swayze in saying that the language of the curative supplement is not limited by the provision of the 1898 act requiring that the date of the first publication of the notice be not more than forty or less than thirty days before the date of the first meeting of the Commissioners; to do so, would be to ascribe to the curative supplement the force of a general repealer (in so far as proceedings instituted under the 1898 Act before April 15th, 1915, are concerned) of the requirements of the 1898 act that the notice be published within thirty days after the appointment of the Commissioners; that the notice be signed by the Commissioners; that the date fixed for the first meeting be not more than forty or less than thirty days from the date of the first publication of the notice.

A construction limiting the application of the curative act to the requirement, of the 1898 act, that "such notice shall be continued in said newspaper at least once each week until said meeting" would be entirely in accord with our well defined rules for statutory construction; 'the ordinary meaning of the word 'supplement' doubtless is a supplying by addition of what is wanting" (Rahway Savings Inst. v. Rahway, 53 N. J. L., 51); in other words, the curative act has the logical effect of the addition of a proviso to that portion of the 1898 act relating to the giving of notice of the first meeting of the Commissioners, making it read as follows:

Comp. Stat., p. 5247, Sec. 404. "The said commissioners shall within thirty days after their appointment, cause a notice signed by themselves to be published in at least one newspaper printed or circulating in the town, township, borough or other municipality for which they were appointed, making known thereby that the said commissioners will meet at a time and place to be therein designated, not more than forty or less than thirty days from the date of the first publication of the notice, to hear all persons interested in the re-assessment or adjustment under this act of the taxes, assessments or water rates in arrears in the said town, township, borough or other municipality, or in such part thereof as the said commissioners shall designate in the notice; such notice shall be continued in said newspaper at least once each week until said meeting, *provided, however, that in proceedings heretofore instituted under this act in which the notice of the first meeting of the commissioners has been published once each week for at least four consecutive weeks preceding the time designated therein for holding the same, such notice shall be sufficient and the proceedings had thereunder shall not be invalidated by reason of the fact that such notice was not continued until the meeting.*"

The expression "*the notice,*" used in the curative act, must necessarily refer to *the notice* prescribed by the

1898 act; if the Legislature had intended to validate all proceedings in which *a* notice of the first meeting had been given, they would have used the words "*a* notice"; the evident intent of the Legislature was to dispense with the continuation of the publication until the meeting but to leave the other requisites of the notice intact; we should not attribute to the Legislature an intent to validate all proceedings in which *a notice* of the first meeting of the Commissioners was published for the four weeks immediately preceding the date thereof and to cure any and all irregularities in the proceedings anterior to the passage of the curative supplement.

The rule that a supplement is to be construed as incorporated in the original act; that the provisions of the two are, if possible, to be harmonized, and no clause of either is to be left inoperative is settled beyond dispute but for the convenience of the Court, the following cases are cited:

- Van Riper v. Essex Public Road Board, 38 N. J. L., 23;
- North Hudson County Ry. Co. v. Flanagan, 57 N. J. L., 237;
- Gaslight Co. of New Brunswick v. Borough of South River, 77 N. J. E., 494;
- Barnaby v. Bradley & Currier, 60 N. J. L., 158.

Another rule of statutory construction, applicable to this case, is that repeals by implication are not favored and that a supplement to an act repeals only irreconcilable portions of the original act.

"It is a familiar legal doctrine that an inferential repeal of a statute is a pure question of intention, and that every reasonable intendment will be made against such result, such destroying effect will be deemed to reside in the more recent statute only when it is absolutely irreconcilable with the prior one; Mr. Sedgwick thus states the doctrine of the judicial decisions: 'It is therefore, but reasonable to conclude that the legislature, in pass-

ing a statute, did not intend to interfere with or abrogate any prior law relating to the same matter, unless the repugnancy between the two is irreconcilable and hence a repeal by implication is not favored; on the contrary, courts are bound to uphold the prior law, if the two acts may well subsist together.' "

Ch. J. Beasley in *Ruckman v. Ransom*, 35 N. J. L., 566;

Ch. J. Gummere in *Terrone v. Harrison*, 94 Atl. 600.

Therefore appellants contend that the curative supplement is limited by and must be construed in connection with the 1898 act; that the only repugnancy is as to the continuance of the publication of the notice of the first meeting of the Commissioners and as the notice published by the Commissioners was in conformity with the notice prescribed by the original act, as supplemented, the adjustment of the taxes and assessments against the prosecutor should either have been affirmed by the Supreme Court or the writ of certiorari should have been dismissed.

Inasmuch as the Court may consider the other reasons for reversal, assigned and filed by the prosecutor, we will proceed to discuss them.

POINT II.

The Curative Act, Chap 333, P. L. 1915, is valid legislation

Upon the hearing of this cause before Justice Swayze, the prosecutor contended that the curative act deprived him of his property without due process of law and is retrospective and therefore invalid.

The appellants do not deny that the curative act in question is retrospective legislation but the mere fact that it is retrospective does not make it objectionable; the real question is: to what extent may the Legislature go in passing curative acts? This question can be best answered by citing decisions on the point.

"The general rule has often been declared that the legislature may validate retrospectively any proceedings *which they might have authorized in advance*; and it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which does not exist originally."

Amer. & Eng. Ency. of Law Vol. 6, p. 940.
Exchange Bank Tax Cases, 21 Fed. Rep., 99.
Thompson v. Lee County, 3 Wall. (U. S.), 327.
Cooley on Constitutional Limitations (6th ed.),
p. 457.

"Generally speaking, acts of the legislature curing defects in contracts and proceedings of municipal corporations defectively executed by counties, by cities, school districts and boards of trustees of towns, are constitutional and proper exercise of legislative power. Curing defects in the issuance of county road bonds or school bonds and in the time and manner of holding an election, or of a city council in passing ordinances, or proceedings in a board of supervisors had at a special instead of a regular meeting, is within the power of legislature."

Am. & Eng. Ency. of Law, Vol. 6, p. 942.
State v. Newark, 27 N. J. L., 185 at p. 196.
Walter v. Town of Union, 33 N. J. L., 350 at
p. 355.
School District v. Ufford, 52 Conn., 44.
Gardner v. Haney, 88 Ind., 17.
Steines v. Franklin Co., 48 Mo., 188.
Johnson v. Wells Co., 107 Ind., 15.

Unquestionably the Legislature, in passing the act of 1898, could have provided that the publication of the notice of the first meeting of the Commissioners be published once in each week for a least four consecutive weeks preceding (not next preceding) the time designated in the notice for holding the meeting, provided the other requirements of the act were complied with, without violating any constitutional rights of owners

of property to be affected by the proceedings of the Adjustment Commissioners; the Legislature could have dispensed entirely with the notice of the first meeting of the Commissioners as the hearing before the Circuit Court upon the return of the rule to show cause why the report of the Commissioners should not be confirmed gives persons affected ample opportunity to present any objection, then existing, to the proceedings of the Adjustment Commissioners.

“It is not customary to provide that the taxpayer shall be heard before the assessment is made, but a hearing is given afterwards, either before the assessors themselves, or before some court or board of review; and of the meeting of that court or board the taxpayer must, in some manner, be informed, either by personal notice or by some general notice which is reasonably certain to reach him, or, which is equivalent, by some general law which fixes the time and place of meeting, and of which he must take notice. The last is a common method of enabling him to be heard. Cooley Taxation, 266.”

Vail's Executors vs. Runyon, 41 L., 98, 103.

Wilson v. Karle, 42 N. J. L., 612.

Stewart v. Hoboken, 57 N. J. L., 330, 335.

There are a number of decisions in this State which hold that a hearing before the Commissioners is essential though a hearing before a court or board of review, after assessments have been made by Commissioners, is afforded to persons whose lands may be affected but it will be found that such decisions were made before *Wilson v. Karle*, *supra*, was decided and that the rule laid down in the earlier decisions was abrogated by the Court of Errors and Appeals in the case last cited.

“Due process of law” does not imply the right of notice and a hearing or an opportunity to be heard as to every step in a proceeding for an improvement or undertaking which results in the im-

position of a tax or special assessment, * * *
 Speaking generally, his right under the "due process of law" clause of the constitution is limited to a hearing at some stage or in some form or proceeding before the tax assessment becomes absolute or incontestible, upon the question whether his property is subject to the tax as fixed or declared by the legislature or council.

Dillon Municipal Corporations (Fifth Ed.),
 Vol. IV, p. 2369.

There are a number of New Jersey decisions on the validity of curative acts and we are unable to find any which vary the general rule laid down above; the following are extracts from the more important cases on the subject.

"The irregularities in the proceedings to be reviewed are:

1. That the ordinance was not introduced at a previous stated meeting of the council, and agreed to by at least four councilman, as required by the town charter.
2. That the records of the proceedings of council are imperfect.
3. That the map and assessments did not remain on file for the required time.
4. *That the proper notice was not given of the proceedings.*

These are substantially the imperfections sought to be remedied by the act in question.

Were these ailments beyond the reach of the curative power of legislation? Municipal corporations are mere creatures of legislation, from which they derive all the powers which they exercise. They have no inherent power to make laws or regulations of government. Their powers rest upon legislative grant, and must be expressly or impliedly conferred.

The legislature unquestionably could, by act anterior to these proceedings, have dispensed with those formalities which have not been observed, and could have prescribed a mode of procedure with which the proceedings that have been had

would have been in strict accordance. No restraint, either by expression or implication, appears upon the right of the law-giver to dispense, by subsequent legislation, with the necessity for those formalities, which might have been made immaterial by prior law.

The legislature had the right to authorize the town of Union to build the sewer, and assess the costs and expenses, without requiring an observance of the particular forms specified in the charter. The condition requiring such observance was a mere restraint upon the use of the power conferred on the corporation. The failure of the corporators to comply with these strict provisions could not impair the power of the legislature to remove the necessity of adhering to them. It is not material that the legislative act was passed while the writ of certiorari was pending in this case. The bringing of a suit vests no right to a particular judgment; the case must be determined on the law as it exists when judgment was rendered. *Butler v. Palmer*, 1 Hill, 324."

Walter vs. Town of Union, 33 N. J. L., p. 350 at 355.

State vs. Newark, 27 N. J. L., 185 at 196.

State vs. Newark, 27 N. J. L., 185 at 196.

State vs. Town of Guttenberg, 38 Law, 419.

Mayor vs. R. R. Co., 67 At., 113 at 117; 74 Law, 734.

Jones v. Landis Township, 50 N. J. L., 374.

"The power of the legislature to correct, by retroactive legislation, errors and defects in levying and imposing taxes, whether such errors or defects arose from want of power in taxing-officers or illegality or irregularities in their proceedings, or from any other cause, or to re-impose by a re-assessment taxes which were inefficacious by reason of irregularities in the proceedings for levying and collecting, or which have been swept away before collection by repeal of the law under which they were laid, is thoroughly established. *State v. Reed*, 2 Vr., 133; *Cadmus v. Fagin*, 18 Id., 549; *Stew. Dig.*, p. 822, Sec. 401.

The power to correct, amend and validate taxes

and assessments by curative legislation, or to provide for relevy or re-assessment, where the tax or assessment is inefficacious on account of illegalities in the levy or assessment, is an essential attribute of the sovereign power of legislation, and is necessarily without any limit except such as is imposed by constitutional restrictions or limitations, if the tax or assesment be one that the legislature could authorize." Cases cited.

In re report of Commissioners of Elizabeth,
49 N. J. L., 488 at pp. 496-497.

The prosecutor's contention is therefore untenable "for the act does not purport to confer on the Commissioners the legislative power of taxation. It gives them no power to levy taxes or to make original assessments. Their power is confined to taxes and assessments which had been previous levied and imposed, or attempted to be levied and imposed. Nor does the act confer the power to increase the quantum of any particular tax or assessment above the sum originally fixed, and interest, cost, and expenses. The Commissioners are empowered to deal only with the arrearages of prior taxes and assessments unpaid, the specific amount of each of which had previously been declared and levied or imposed, or attempted to be levied or imposed. The functions of these officers are to fix, adjust and determine how much of such arrearages and subsequent taxes and assessments ought, in fairness, equity and justice, to be laid, assessed and charged against and actually collected from the particular lands for and on account of such taxes, assessments and water rates, and claims for local improvement theretofore made. In discharging their functions the Commissioners may reduce the amount of such prior taxes and assessments, but cannot in any case increase the sum of the same as originally fixed, except in interest, costs and expenses." In re Commissioners of Elizabeth, 49 N. J. L., 497.

How then can the prosecutor's constitutional rights have been invaded by the fact that the Legislature had

prescribed four instead of five or six weeks for the publication of the notice of the first meeting of the Adjustment Commissioners. It is true that a search fee has been added to the amount of the prosecutor's taxes and assessments, as adjusted by the Commissioners, but the making of the search is the medium through which jurisdiction is acquired over the various owners and lienors. The Borough of Garfield stands in the position of a mortgagee who desires to foreclose his mortgage; the prosecutor has notice that there are taxes due and unpaid on his property and is presumed to know that the borough has the right to foreclose its lien. The right to charge for the search made before the service of the subpœna and without notice to the mortgagor in a foreclosure proceeding, has never been questioned and it is reasonable that it should not be questioned, for it is a part of the necessary expense of securing full and complete jurisdiction over the parties interested in the mortgaged property.

POINT III.

In order to come within the provisions of Chap. 333, P. L. 1915, it is not necessary that four full weeks intervene between the dates of the first and last publication of the notice of the first meeting of the Commissioners.

Upon the argument of this cause before Justice Swayze, prosecutor argued that the supplement (Chap. 333, P. L. 1915) to the 1898 Act cures only such defective proceedings, under that act, wherein four full weeks intervened between the dates of the first and last publication of the notice of the first meeting of the Commissioners, or, in other words, applies only to cases wherein the notice of the first meeting was published once each week for five successive weeks.

The question thus raised by the counsel for the prosecutor may be disregarded for several reasons;

First—The prosecutor must confine his argument and brief to the reasons assigned and filed.

“On certiorari to review the assessment for a

street improvement, general reasons which do not state any specific defect or error in the proceedings, will not be regarded by the court."

Simons v. Passaic, 55 N. J. L., 485;

Morris, etc., Dredging Co. v. Jersey City, 64 N. J. L., p. 609.

"A question not raised by the reasons assigned by the prosecutor will not be decided."

Suburban Land Co. v. Borough of Vailsburgh, 68 N. J. L., 311; 53 Atl., 388 (Court of E. & A.).

Stanton v. Board of Education, 68 N. J. L., 496.

Second—The contention of prosecutor's attorney is not well founded in point of law.

The curative act (P. L. 1915, Chap. 333) reads as follows:

"That all proceedings heretofore instituted under this act, in which the notice of the first meeting of the commissioners has been published once each week for at least four consecutive weeks preceding the time designated therein for holding the same, in at least one newspaper printed or circulating in the town, township, borough or other municipality for which commissioners have been heretofore appointed, are hereby validated and confirmed."

The plain intent of this act is to validate proceedings in which the notice of the first meeting of the Commissioners was published four times, once a week, preceding the meeting. The cases, cited by prosecutor's counsel will be found to be cases wherein the date of the first publication did not fall the required number of full weeks before the date of the meeting or sale or wherein the statute, prescribing publication, required a continuous publication for a certain number of weeks. Our Divorce Act requires that the notice to an absent defendant "shall, within twenty days thereafter, be

published in one newspaper published in the State, * * * , and *continued* therein for four weeks successively at least once in every week, * * * .” (Comp. Stat. 2033, Sec. 14). The construction commonly placed upon this provision of our Divorce Act is that there must be one publication within twenty days from the date of the order for publication and that the notice must be *continued* for four weeks after the first publication or once in each of five successive weeks. Our Divorce Act possibly justifies such a construction but there is nothing in the act in question which requires the notice to be published more than four times, once a week.

The same question has been raised squarely in a number of States and the decisions are uniform in holding adverse to the prosecutor’s contention.

“If the statute requires publication once a week, it is not necessary that each publication should be on the same day of each week, nor is it necessary that a given number of weeks should intervene between the first and last publication where the statute provides for publication once a week for that number of weeks.”

32 Cyc., 486.

Southern Indiana R. R. Co. v. Indianapolis,
168 Ind., 360; 81 N. E., 65;

Sweet v. Sprague, 55 Me., 190;

Alexander v. Alexander, 26 Neb., 68; 41 N.
W., 1065;

Knowles v. Summey, 52 Miss., 377;

Savings Society v. Thompson, 32 Cal., 347;

Ronkerdorff v. Taylor, 4 Pet. (U. S.), 349.

“Under a statute requiring a notice to be published for a certain number of weeks successively, a publication in that number of successive weekly issues of the newspaper is sufficient, and it is not necessary that there be an extra insertion in order to complete the full number of weeks.”

Security Co. v. Arbuckle, 123 Ind., 518; 24
N. E., 329;

Dexter v. Cranston, 41 Mich., 448;
 Martin v. Hawkins, 62 Ark., 421;
 17 Ency, of Pl. & Pr., p. 96;
 Forsman v. Bright, 69 Pac., 473; 8 Idaho, 467;
 Smith v. Collins, 112 Pac., 1070; 42 Mont. 350;
 Wells v. Kelly, 40 Pac., 705; 11 Utah, 421;
 State v. Superior Court, 33 Pac., 827; 6 Wash.,
 352.

POINT IV.

The 1898 Act does not require the Commissioners to describe in the notice of their first meeting, the various tracts of land to be affected by their proceedings.

The prosecutor's second reason for reversal is as follows:

"The notice published was insufficient in that it did not designate or describe the property against which the said Commissioners would proceed to adjust the taxes and assessments."

The statutory provision for the publication of the notice of the first meeting of the Commissioners requires that the notice shall make known that the Commissioners will meet at a time and place certain to hear all persons interested in the reassessment of the taxes, assessments and water rates in arrears in the borough or in such part thereof as the Commissioners shall designate in the notice. The Commissioners in this case, chose to consider all unpaid taxes and assessments in arrears in the Borough of Garfield and designated a time and place in their notice for the hearing of persons interested therein.

This is all that is required by statute and as unpaid taxes and assessments are matters of record, of which the various owners have constructive notice, the notice published apprised all persons interested that their unpaid taxes and assessments would be adjusted by the Commissioners of Adjustment. *Peters vs. Mayor and Council of Newark*, 31 N. J. L., 360, at p. 362.

Prosecutor's counsel fails to distinguish between a notice of a meeting of Commissioners and an advertisement of the sale of property. The Legislature could

not have intended that the notice should include a description of the various parcels of land for in many municipalities, falling within the provisions of the Martin Act, tax lists give such indefinite descriptions of the property subject to taxes that even if the descriptions, as they appear on the tax list, should be published in the notice of the first meeting, the various owners would fail to recognize the descriptions as descriptions of their property; this would be especially true where lands are assessed "owner unknown."

The data, which prosecutor's counsel insists should be incorporated in the notice of the first meeting, could not be obtained without making searches and searches could not be made until after the first meeting of the Commissioners.

POINT V.

The amount of search fees and costs, assessed against the property of the prosecutor, cannot be questioned on certiorari before the report of the Commissioners has been confirmed by the Circuit Court.

The prosecutor's third reason for reversal is that "the expenses of search and costs assessed against the property of the prosecutor, to wit, the sum of fifteen dollars, is in excess of the maximum amount which may be charged against the prosecutor's property, according to the statute in such case made and provided."

Under the terms of the act, search fees and costs do not become a lien until the report of the Commissioners has been confirmed by the Circuit Court; the Circuit Court has plenary power to and may order that the report of the Commissioners be corrected and revised by them and may correct and revise the amounts charged by the Commissioners as search fees and costs; upon the return of the rule to show cause why the report of the Commissioners should not be confirmed, of which all owners and lienors affected by the proceedings must be given personal notice, the prosecutor will have ample opportunity to present his objections to the amount so charged. (Comp. Stat., p. 5249.)

Furthermore there is nothing to prevent the Commissioners from changing the amount charged in a particular adjustment at any time before they present their report to the Circuit Court for confirmation and therefore the prosecutor's objection is premature.

"It is a rule of general application that certiorari is not an appropriate remedy if efficient relief can be, or could have been, obtained by a resort to other available modes of redress or review." 6 Cyc., 742.

"When the purpose is to review the proceedings of a special tribunal, on complaint of irregular procedure in matters legally brought within its jurisdiction, a certiorari may legally issue before final decision, but ordinarily should not be allowed until then, for haply the tribunal may correct its own error in time; when the design is to reverse proceedings of special tribunals in matters not legally brought within its jurisdiction, then the writ of certiorari may legally, and ordinarily should, be allowed when asked for, either before or after final decision, because each step in such proceedings is an unlawful vexation of the party prosecuted, against which this writ is his sole protection."

Dixon, J., in *Mowry v. Camden*, 20 Vr., 106, 109.

Under this doctrine the curative statute of 1915 may be attacked on certiorari, in advance of action by the Circuit Court on rule to show cause why the assessment should not be confirmed; but nothing else seems to be open to attack until after confirmation by the Circuit Court as it is quite evident from Comp. Stat. 5254, plac. 419, that the legislative idea was that certiorari will not issue until after the confirmation of the Commissioners' report.

Therefore, as it appears that the prosecutor's objections to the adjustment of his taxes and assessments are without legal merit and as the Commissioners have spent considerable time in a proceeding of much importance to the Borough of Garfield, it is respectfully

submitted, that the judgment of the Supreme Court should be reversed and the record be remitted with a direction to affirm the proceedings under review or dismiss the writ of certiorari.

GILBERT COLLINS,
JAMES DETURCK,
Counsel of Defendants-Appellants.



New Jersey Court of Errors and Appeals.

RAYMOND MESSINEO,
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vs.

GUY L. FAKE, MILES C. WHITE-
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and FRANK V. ROMAGLIA,
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of Adjustment, and THE BOR-
OUGH OF GARFIELD,
Defendants-Appellants.

On Certiorari.

On Appeal from
Judgment of
Supreme Court.

BRIEF OF JOSEPH H. LEFFERTS FOR PROSECUTOR AND THE BOR- OUGH OF GARFIELD, APPELLEES.

Statement.

The Prosecutor is interested as a tax-payer in the pecuniary liabilities fixed by statute to be paid by the Borough of Garfield in connection with the proceedings and expenses of the Commissioners of Adjustment. He is also interested as a property owner by reason of the imposition of a lien for taxes against his property by the Commissioners with the incidental costs and expenses.

The proceedings of the Commissioners being illegal, the Borough of Garfield would, of course, be without valid liens for the large sum of money which of necessity it must lay out for search fees in eight hundred cases and upwards of unpaid

taxes and other large pecuniary liabilities. So the Borough, nominally a defendant, to safe-guard its interests, has taken the position with the Prosecutor and his reasons against the proceedings involved and now stands for the judgment of the Supreme Court which is brought up for review.

From the beginning almost the proceedings of the Commissioners have not been according to the statutory requirements. The defendants themselves concede their neglect to meet the requirements of the statute as to the publication of the notice of their first meeting and that, therefore, their first meeting was pre-mature and with subsequent proceedings, contrary to law. The Borough of Garfield has believed that there being very great doubt as to the validity of their proceedings that it would be best for all concerned not to go ahead but to commence anew and endeavor to follow the law for the public good and the benefit of all concerned anew or in proceedings reinstituted.

The Commissioners, however, upon what is designated as a validating or curative statute approved April 15th, 1915, which is as follows:

"That all proceedings heretofore instituted under this act, in which the notice of the first meeting of the commissioners has been published once each week for at least four consecutive weeks preceding the time designated therein for holding the same, in at least one newspaper printed or circulating in the town, township, borough or other municipality for which commissioners have been heretofore appointed, are hereby validated and confirmed.

This act shall take effect immediately."

Chap. 333, P. L. 1915.

The reasoning of the Supreme Court, which finds expression in the opinion of Justice Swayze (sitting alone), shows that the proceedings involved in

the case at bar are not within the scope of the validating statute. His opinion is as follows:

OPINION.

"It is conceded that the original notice of the first meeting of the Commissioners of Adjustment was not published as the act requires, P. L. 1898, 442. The defendants rely on the curative act, chapter 333 of 1915. This validates all proceedings theretofore instituted in which the notice of the first meeting has been published once each week for at least four consecutive weeks preceding the time designated. The only question I need consider is whether the curative act applies to the present case. The notice was published June 1, June 8, June 13 and June 22, the meeting was on July 7.

The cases cited by the prosecutors are not of much assistance, since they dealt with different, though similar statutory language. The language of the Divorce Act is nearest that of the curative act in the present case, but to my mind there is a perceptible difference between the requirement of publication 'for four weeks successively, at least once in every week,' and the requirement of publication 'once each week for at least four consecutive weeks'; the former expression seems to indicate that there must be publication during the whole period of four weeks, the latter that there should be four publications, each in a separate week, *i. e.*, seven day apart. I do not dwell upon this because I have reached a result favorable to the prosecutors upon another ground. To come within the scope of the curative act, the publication must have been for at least four consecutive weeks preceding the time designated. This must mean next preceding the time designated. I am led to this result by the common practice with reference to the publication of legal notice, and by the fact that only such

notice can properly apprise the public of what is going on. Unless that construction is adopted, a notice published a year or five years in advance would suffice, for that might well be a publication for at least four consecutive weeks and would surely precede the time appointed, if by precede we mean only 'go before'. Such a publication would not comply with the act of 1898 requiring a publication not more than forty or less than thirty days before the meeting, but the curative act is not limited by that provision. Unless 'preceding' means 'next preceding', the acts of commissioners would be validated although the notice had been published the last time much more than forty days before the meeting. The curative act is not limited to the situation in Garfield; it is applicable throughout the State and, for aught we can know, may in fact reach cases like the one supposed. I ought not to attribute to the legislation such a wide scope, unless compelled to, especially in view of the fact that the original act required the publication of the notice to be continued at least once each week until said meeting. The obvious intent was that the publication whether for thirty days or forty days should next precede the time appointed."

"The failure to give the notice required is fatal and the proceedings must be set aside with costs."

To support the conclusions of Justice Swayze, I rely chiefly upon three propositions as follows:

PROPOSITIONS.

First.—The publication of the notice was not continued until the date of the first meeting of the commissioners of adjustment in the performance of their duties.

Second.—The notice was not within the meaning of the law published four consecutive weeks.

Third.—It was illegal for insufficiency in this that it did not meet the requirements of the statute which requires the designation of the property, that is to say, the parcels, or lots, or tracts affected by the adjustments and proceedings and was, in other respects, misleading. (Case, pp. 5 and 6.)

I make out of the case the following points against the validity of the proceedings at bar:

POINTS.

1.—The publication of the notice in question not being continued until the date of the first meeting, all the proceedings were pre-mature and void.

2.—There being no designation in the notice of the property affected, that is to say, the tracts, parcels or lots involved in the proceedings for the re-adjustment of taxes and assessments according to the requirements of the statute, the notice is illegal for insufficiency.

3.—To bring the proceedings within the scope of the validating statute the notice must have been published (to be within the meaning of the law), five times or four consecutive weeks.

POINT I.

The publication of the notice in question not being continued until the date of the first meeting, all the proceedings were pre-mature and void.

In the brief of defendants-appellants, counsel in concluding their discussion under their first point, namely; that "The Supreme Court erred in holding that the Curative Act, Chap. 333, P. L. 1915, did not apply to the notice of the first meeting of the

Garfield Adjustment Commissioners," declared that "the curative supplement is limited by and must be construed in connection with the 1898 act; that *the only repugnancy is as to the continuance of the publication of the notice of the first meeting of the Commissioners.*" (Brief of Appellants, p 7.)

I believe that this conclusion of counsel for the appellants is erroneous. With counsel for the appellants at this point we are irresistibly compelled to clash. Undoubtedly "*a supplement is to be construed as incorporated in the original act; that the provisions of the two are, if possible, to be harmonized, and no clause of either is to be left inoperative is settled beyond dispute.*" To support this proposition, the appellants cite very properly the following cases:

Van Riper v. Essex Public Road Board,
38 N. J. L., 23;
North Hudson County Ry. Co. v. Flanagan, 57 N. J. L., 237;
Gaslight Co. of New Brunswick v. Borough of South River, 77 N. J. E., 494;
Barnaby v. Bradley & Currier, 60 N. J. L., 158.

By reference to the supplement and the original act of which it is a part it is immediately preceptable that *the repugnancy is not as to a continuance of the publication of the notice in question up to the date of the first meeting. The repugnancy is as to the number of the publications of the notice as to the first meeting required by the statute.* The original statute required a publication of not more than forty or less than thirty days from the date of the first publication of the notice of the first meeting to hear all persons interested, etc. (Compiled Statutes, vol. 4, p. 5247.) So it is immediately preceptable that from the date of the

first publication the notice must have been published continually until the first meeting for at least thirty days. *This would make necessary six publications, one each week, until the date of the first meeting.* The supplement or what is designated as the curative act has a specific provision as to the number of the publications which is that the notice shall be published for four consecutive weeks. This is definite and is set forth by the legislature in a way which is incapable of being misunderstood. The supplement does not provide that the notice must be published not more than forty days or less than thirty days from the date of the first publication as to the first meeting but states specifically that it shall be for four consecutive weeks *preceding* the first meeting. In all other respects or particulars as to the notice the original act is unaffected by the supplement. The exact language of the statute is:

"That the commissioners shall, within thirty
 "days after their appointment, cause a notice
 "signed by themselves to be published in at
 "least one newspaper printed or circulating in
 "the town, township, borough or other municipi-
 "pality for which they were appointed, making
 "known thereby that the said commissioners
 "will meet at a time and place to be therein
 "designated, not more than forty or less than
 "thirty days from the date of the first publi-
 "cation of the notice, to hear all persons inter-
 "ested in the re-assessment or adjustment un-
 "der this act of the taxes, assessments or water
 "rates in arrears in the said town, township,
 "borough or other municipality, or in such
 "part thereof as the said commissioners shall
 "designate in the notice; such notice shall be
 "continued in said newspaper at least once
 "each week until said meeting; at the time and
 "place mentioned in said notice all persons in-
 "terested in said matters, either as taxpayers,
 "owners of assessed lands or otherwise, shall

"be entitled to appear before said commission-
 "ers and be heard either personally or by coun-
 "sel, and said commissioners shall have the
 "right to examine witnesses under oath in re-
 "lation to all of said matters, which oath any
 "one of them is hereby authorized to admin-
 "ister; after such hearing and AFTER DUE
 "EXAMINATION OF THE PROPERTY
 "MENTION IN SAID NOTICE the said
 "commissioners shall proceed as speedily as
 "may be to fix and adjust the said arrearages
 "of taxes, assessments and water rates upon
 "the principles aforesaid; and IN LIKE
 "MANNER AND UPON LIKE NOTICE
 "THE SAID COMMISSIONERS SHALL
 "PROCEED until all the arrearages of taxes,
 "assessments and water rates in such town,
 "township, borough or other municipality have
 "been received, fixed, adjusted and determined
 "as provided in this act; the amount of taxes,
 "assessments and water rates, for which cer-
 "tificates of sale have been given to and are
 "held by the said town, township, borough or
 "other municipality, whether such sales are in-
 "valid or not, shall be deemed to be in arrears
 "within the meaning of this section, and to
 "have been so in arrears from the date when
 "said taxes, assessments and water rates were
 "assessed, levied or confirmed, or attempted
 "to be assessed, levied or confirmed." (Com-
 piled Statutes, vol. 4, pages 5247-5248.)

This statutory language makes the requirements
 of the legislature as to the notice apparent. First—
 The notice must be published within thirty days
 from the date of the appointment of the commis-
 sioners. Second—It must be substantially accord-
 ing to the statute particularly as to the designation
 of the property affected. Third—It must be signed
 by the commissioners. Fourth—It must be pub-
 lished not more than forty days and not less than
 thirty days from the date of the first publication.
 Fifth—It must be continued until the date of the

first meeting. The supplement with which we are dealing does not alter or change these requirements except as to the number of publications. To bring a case within its curative or validating scope it must appear, First—That the notice was published within thirty days from the date of the appointment of the commissioners. Second—It must be substantially according to the statute particularly as to the designation of the property affected. Third—It must be signed by the commissioners. Fourth—It must be published for four consecutive weeks. Fifth—The publication must be continued until the date of the first meeting, or in other words, *the four consecutive publications must be next preceding the date of the first meeting.*

In the case at bar, for example: On May 9th, 1914, the commissioners were appointed; on June 1st there was a publication of a notice as to their first meeting on July 7th, 1914, and on June 8th, June 15th and June 22nd similar publications. There is no good reason under the sun why the first meeting should not be held following the last publication of the notice. For what conceivable reason may several weeks or even more time intervene between the date of the last publication and the first meeting. The purpose of the legislation is to bring the first meeting before the eyes of the public week by week continually until the time fixed for the beginning of the performance of their duties which are for the purpose of hearing disputes respecting taxes and assessments and making readjustments.

There is no force in the contention of appellants that to uphold the construction of Justice Swayze

“would be to ascribe to the curative supplement the force of a general repealer (in so far as proceedings instituted under the 1898 Act before April 15th, 1915, are concerned) of the

requirements of the 1898 act that the notice be published within thirty days after the appointment of the Commissioners; that the notice be signed by the Commissioners; that the date fixed for the first meeting be not more than forty or less than thirty days from the date of the first publication of the notice." (Appellant's brief, page 4.)

Justice Swayze in his opinion speaking about the number of publications required by the supplement said that to his mind

"there is a perceptible difference between the 'requirement of publication for four weeks 'successively, at least once in every week, and 'the requirement of publication 'once each 'week for at least four consecutive weeks'; the 'former expression seems to indicate that there 'must be publication during the whole period 'of four weeks, the later that there should be 'four publications, each in a separate week, 'i. e., seven days apart. I do not dwell upon 'this because I have reached a result favorable 'to the prosecutors upon another ground."

I do not subscribe to the opinion of Justice Swayze that a publication for four consecutive weeks requires only four publications once in a separate week, seven days apart. Under a subsequent point respecting this proposition I express my views. But suppose that it is only necessary, in order to meet the requirements of the supplement, to publish the notice four times, each publication being in a separate week, seven days apart. Then irresistibly we reach the conclusion that the only change wrought by the supplement in the original act is as to the time and number of the publications of the notice required. The original act requiring that the notice be published not less than thirty days and not more than forty days from the date of the first publication and continued until the date of the first meeting. The supple-

ment requiring a publication for four consecutive weeks preceding the date of the meeting. So with this construction we conclude it was the duty of the commissioners within thirty days from the date of their appointment to publish a notice substantially in accordance with the requirements of the statute and to continue the publication once each week for four consecutive weeks until their first meeting, or in other words, next preceding the date of the first meeting.

The language of the statute expressly indicated that this is the proper construction. The policy of the legislation also suggests such to have been the intention of the legislature. With this construction the public has continual notice for several weeks immediately preceding the date of the first meeting and with this construction there is no discord or clash with the general statutory and adjudicated law which requires a publication of such notices for four consecutive weeks next preceding. For example: Sales of real estate by virtue of *fi. fa.* and of such meetings involving proceedings for the sale of lands under the provisions of a statute for unpaid taxes and assessments. Such a construction of this statute is in accordance with well established and general law and what has always been in this state and throughout the country, the general practice.

Justice Swayze said, respecting the construction which we are advocating, that

"Unless that construction is adopted, a notice published a year or five years in advance would suffice, for that might well be a publication for at least four consecutive weeks and would surely precede the time appointed, if by precede we mean only 'go before'. Such a publication would not comply with the act of 1898 requiring a publication

"not more than forty days or less than thirty days before the meeting, but the curative act is not limited by that provision. Unless 'preceding' means 'next preceding' the acts of commissioners would be validated although the notice had been published the last time much more than forty days before the meeting." (Case, page 9, lines 10 to 25.)

This is very true. The supplement is silent and certainly there is no requirement of a publication of the notice for not less than thirty days and not more than forty days from the date of the first publication until the first meeting. Here is the repugnancy. *In the place of the provision requiring a continual publication of the notice for at least thirty days or not more than forty days until the date of the first meeting we have one which requires four consecutive publications preceding the first meeting of the commissioners.*

As Justice Swayze says, unless such publications which the supplement provides are "next preceding" the date of the first meeting of the commissioners, then *they may be any time preceding and the first meeting may be for years after the date of the last publication.* How contrariwise and inconsistent this is to what has always been the general practice and the law. *So the repugnancy is not as to a continuance of the publication of the notice until the date of the first meeting; but simply as to the time and as to the number of the publications of the notice.*

From the language of the statute (the original act and the supplement), it is quite apparent that the notice could not be published four consecutive weeks so that there might be a publication for not less than thirty days or not more than forty from the date of the publishing of the first notice and continuously until the first meeting. As I have said

before the publishing of a notice for not less than thirty days from the date of the first publication would require six publications, once in each week, seven days apart, during the period of time until the first meeting. The supplement could not require more than five publications. The original act requires from the date of the first publication that the notice be published for not less than thirty days and be continued until the date of the first meeting. This requires from the date the notice is first published, at least five publications and makes necessary altogether that the notice be published at least six times. This being so the obvious intention of the legislature is that the publication for four consecutive weeks (whether there be four or five), shall be next preceding the date of the *first meeting and not any time*. This is the only logical and proper construction and the only one conceivable which would be in accordance with the general practice, the policy of legislation and the settled law.

The appellants on page 5 of their brief with considerable ingenuity say that "the curative act has the logical effect of the addition of a proviso to that portion of the 1898 act relating to the giving of notice of the first meeting of the Commissioners, making it read as follows:

Comp. Stat., p. 5247, Sec. 404.

"The said commissioners shall within thirty
 "days after their appointment, cause a notice
 "signed by themselves to be published in at
 "least one newspaper printed or circulating in
 "the town, township, borough or other munici-
 "pality for which they were appointed, making
 "known thereby that the said commissioners
 "will meet at a time and place to be therein
 "designated, not more than forty or less than
 "thirty days from the date of the first publica-
 "tion of the notice, to hear all persons inter-

"ested in the re-assessment or adjustment un-
 "der this act of the taxes, assessments or water
 "rates in arrears in the said town, township,
 "borough or other municipality, or in such
 "part thereof as the said commissioners shall
 "designate in the notice; such notice shall be
 "continued in said newspaper at least once
 "each week until said meeting, provided, how-
 "ever, that in proceedings heretofore institut-
 "ed under this act in which the notice of the
 "first meeting of the commissioners has been
 "published once each week for at least four
 "consecutive weeks preceding the time desig-
 "nated therein for holding the same, such
 "notice shall be sufficient and the proceedings
 "had thereunder shall not be invalidated by
 "reason of the fact that such notice was not
 "continued until the meeting."

This product of the ingenious mind of counsel
 respecting the construction of this statute should
 be condemned and discarded. In view of the sup-
 plement and the curative act I believe the law in
 all cases which it concerns should read not as the
 appellants contend, but as follows: Compiled
 Statutes, page 5247, section 404.

"The said commissioners shall within thirty
 "days after their appointment cause a notice
 "signed by themselves to be published in at
 "least one newspaper printed or circulating in
 "the town, township, borough or other munici-
 "pality for which they were appointed making
 "known thereby that the said commissioners
 "will meet at a time and place to be therein
 "designated *for a period of four consecutive*
 "*weeks next preceding the said time and place*
 "therein so designated (or the date of their
 "first meeting) to hear all persons interested
 "in the re-assessment or adjustment under this
 "act of the taxes, assessments or water rates in
 "arrears in said town, township, borough or
 "other municipality or in such part thereof as
 "the said commissioners shall designate in
 "said notice, etc."

This is a simple statement of the law as it is, although not as counsel for the appellants would like to have it, and it means that within thirty days from the date of their appointment the commissioners must cause a notice to be published according to the requirements of the statute for a period of four consecutive weeks next preceding the time and place therein designated for their first meeting. The statute thus expressly compels a publication of a notice within thirty days from the appointment of the commissioners and continually for four consecutive weeks until the time of the first meeting. *This provision of the law compels the commissioners to hold their first meeting within sixty days approximately from the date of their appointment.* As to this the language of the statute is explicit. This is in the place of the language of the original act requiring that the notice be published for not less than thirty days or not more than forty from the date of the first publication, and so we have the explicit statement requiring a publication for four consecutive weeks. *In view of the original act which requires a continual publication up to the time of the first meeting it is very clear that the four consecutive publications required must be next preceding and not any time.*

In *Tappan vs. Dayton*, 28 Atl. Rep., page 1, Chancellor McGill speaking about the necessity of publishing such notices the weeks next preceding the date of such meetings in any proceeding respecting sales (the proceedings at bar are respecting sales for unpaid taxes, etc.), concluded that the publication *must be without even a break in the continuity up to the time of such first meeting* as the one with which we are dealing or until the time fixed for a sale. The language of the court being as follows:

"The purpose of the requirement that the publication should fit closely upon the sale is obvious to keep fresh in the public mind the dependency of the sale; and the mischief of the omission to publish within the last week may be two-fold in permitting the sale to be lost sight of and possibly impressing intended purchasers with the belief that it had been abandoned. *A strict compliance with the requirements of the statute is essential to the validity of the sale or proceedings.*"

In the foregoing case there was an omission to publish a notice during the week next preceding a sale. This expression of the law also appears substantially in *Parsons vs. Lanning*, 27 N. J. Equity, 7. *State vs. Hand*, 24 N. J. Law, 518. Examining the matter in WORDS AND PHRASES JUDICIALLY DEFINED, vol. 6, page 5494 (published by the West Publishing Company), for the purpose of getting a judicial definition of the word "PRECEDING," I find that the courts say that the word "PRECEDING" standing as it appears in this supplement always means *next before*. So in construing it I believe it must be found that there be a publication of a notice for four consecutive weeks next preceding the date of the first meeting. There is nothing in the context of this supplement which permits of any signification other than the word "PRECEDING" means next, and not any time, before the date of the first meeting.

By statute in many states it is provided that the word "preceding" when used by way of reference to any section of a statute, or title of a code shall mean the section next preceding that in which the reference is made, unless some other section is expressly designated, or unless the context requires a different construction. (See Rev. St. Tex., 1895, art. 3270; Pub. St. N. H., 1901, p. 63, c. 2, 13;

Horner's Rev. St. Ind., 1901, 240, subd. 6; Pen Code Ga., 1895, 2; Ky. St., 1903, 462; Rev. St. Me., 1883, p. 59, c. 1, 6 subd., 15; Rev. St. Wyo., 1899, 2724; Code N. C., 1883, 3765, subd. 7; Rev. St. Wis., 1898, 4971; Code W. Va., 1899, p. 133, c. 13, 17; Publ. St. R. I., 1882, p. 78, c. 24, 20; Rev. Laws Mass., 1902, p. 89, c. 9, 5 subd. 18; Gen. St. Minn., 1894, 255, subd. 12; Rev. St. Mo., 1899, 4156; V. S., 1894, 15; Code Va., 1887, 5; Gen. St. Conn., 1902, 1; Civ. Code Ala., 1896, 5; Comp. Laws Mich., 1897, 50, subd. 13; Laws N. Y., 1892, c. 677, 10; Pen. Code Tex., 1895, art. 29; *Wilkinson vs. State*, 19 Ind., 372, 373.)

In *Hodge vs. The United States Steel Corporation*, Atl. Rep., 53, page 607, Vice Chancellor Emery in a very illumination opinion construing a statute respecting the payment of dividends, etc., has made it very clear that the position I take in the case at bar is sound. His statement of the law is as follows:

"The language of the statute on this point is: 'Every corporation that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one year next preceding the meeting.' This clause would seem clearly to provide two requirements as to the payment of dividends. The first is the continuous payment of dividends. The first is the continuous payment of dividends. Payments of dividends are continuous when they are successively and regularly made according to the charter or by-laws. Plainly, no less than two payments can meet the requirements of continuous payments under the statute. The second requirement relates to the duration or length of time for which these continuous payments must be made. The provision as to these is that the continuous payments shall be made for the period of at least one year next preceding the meeting. If the continu-

"ous payments are to cover the entire period,
 "that, plainly, a payment must be made at or
 "before the beginning, and must include the
 "last of the regular or continuous payments
 "before the end of the period. In no other way
 "can the period be covered by the continuous
 "successive acts required. This is a familiar
 "construction of statutes as to the computa-
 "tion of time when a period fixed by the
 "statute is to be covered by continuous suc-
 "cessive acts, and it has been constantly ap-
 "plied in this state in construing statutes,
 "where such continuous successive acts for a
 "fixed period are to be done or performed. The
 "continuous of the acts relating to public sales
 "of real estate is an illustration of the applica-
 "tion of the principle. These acts require,
 "among other things, publication of notice of
 "sale 'at least four weeks successively, once
 "each week, next preceding the time of sale.'
 "*This has always been construed as requiring*
 "*a publication at or before the sale, as well as*
 "*in the last of the four weeks next preceding*
 "*the sale, in order that the publication may be*
 "*made 'for the period' and in each week of the*
 "*period.* In *Parsons v. Lanning* (Runyon, V.
 "C., 1876), 27 N. J. Eq., 70, the first publica-
 "tion was made 26 days before the sale; but
 "there were four publications once in each
 "week. The advertisement was held invalid,
 "as not being made 'four weeks next preceding
 "the sale.' In *Barkley v. City of Elizabeth*
 "(Supt. Ct., 1879), 41 N. J. Law, 517, an act
 "authorizing sale of lands for assessments re-
 "quired notice of the sale to be published 'for
 "the space of six weeks, at least once in each
 "week before the time appointed for sale.' The
 "notice was published six times, once in each
 "week before the sale, but the first insertion
 "was less than six weeks before the sale. Mr.
 "Justice Reed, following *Parsons v. Lanning*,
 "*supra*, said this was clearly the only rational
 "interpretation of the act. In *Pardee v. City*
 "*of Perth Amboy* (Sup. Ct., 1894), 57 N. J.
 "Law, 106, 108, 29 Atl., 587, these cases were

"relied on and the same rule of construction was applied to a similar state of facts. The publication here required was 'for at least two weeks before the time for considering the assessment.' The first publication was made within the period of two weeks. The publication was held to be invalid. In *Tappen v. Dayton* (McGill Ord., 1893), 51 N. J. Eq., 260, 265, 28 Atl., 1, the first advertisement covered the beginning of the period, but the last advertisement was made more than a week next preceding the sale, and the notice was held invalid. There can be no doubt, I think, that if I am right in considering the statutory clause now in question as providing (1) for the continuous payments of dividends, and (2) the period for which such payments shall be made, the dividends have not been continuously paid 'for the period of a year next preceding the meeting'."

Justice Swayze in his opinion said that:

"The curative act is not limited to the situation in Garfield; it is applicable throughout the State and, for aught we can know, may in fact reach cases like the one supposed. I ought not to attribute to the legislation such a wide scope, unless compelled to, especially in view of the fact that the original act required the publication of the notice to be continued at least once each week until said meeting. *The obvious intent was that the publication whether for thirty or forty days should next precede the time appointed.*"

We are not able to add anything to this strong statement of the court. It is very clear that the obvious intention of the legislature from the language of the legislation directly expressed is to require a continual publication once each week until the time of the first meeting whether for four consecutive weeks or for thirty days or for forty days and not a publication for a period preceding

any time the date fixed or appointed. The explicit language of the supplement requiring the publication for four consecutive weeks makes it apparent that the only repugnancy is not as to a continual publication up to the date of the first meeting but simply as to the number of publications or the period of time when there must be a weekly publication of a notice within thirty days from the appointment of the commissioners and the date of the first meeting.

In the case at bar the mischief has been done. For several weeks preceding the first meeting there was no publication of a notice. The public could with perfect propriety reach the conclusion that the proceedings had been abandoned. They were deprived of their statutory privilege to receive due notice of the proceedings. So it is no wonder that the prosecution of this certiorari has come to be necessary which has resulted in a judgment that the proceedings are invalid and must be set aside. The judgment of the Supreme Court under this point should be affirmed.

POINT II.

There being no designation in the notice of the property affected, that is to say, the tracts, parcels or lots involved in the proceedings for the re-adjustment of taxes and assessments according to the requirements of the statute, the notice is illegal for insufficiency.

The notice involved in the discussion of this point is as follows:

“NOTICE OF MEETING OF COMMISSIONERS.

“In the matter of the appointment of Commissioners, &c., under the provisions of an act entitled ‘An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in towns, townships, boroughs and other municipalities except cities of this state and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof and provide for the sale of lands subject to future taxation and assessment,’ approved May 18, 1898, and the supplements and amendments thereto.

“Notice is hereby given, that the undersigned, commissioners of adjustment in the above entitled matter, appointed by an order of the Bergen County Circuit Court, bearing date May ninth, Nineteen hundred and fourteen, will meet at the Borough Hall, on Somerset Street in the Borough of Garfield, Bergen County, New Jersey, on Tuesday, the seventh day of July, Nineteen hundred and

“fourteen, at eight o'clock in the evening, for
 “the purpose of hearing all persons interested
 “in the re-assessment or adjustment under the
 “above entitled act, of the taxes, assessments
 “or water rates in arrears in the said Borough
 “of Garfield.

“Dated May 29, 1914.

“GUY L. FAKE.

“CLARENCE MABIE.

“MILES C. WHITEHEAD.

“Commissioners of Adjustment.”

(Case, pages 5 and 6.)

The statute in reference to the first meeting specifically states, that:

“After such hearing and after due examination of the property mentioned in said notice, the said Commissioners shall proceed as speedily as may be to fix and adjust said arrearages of taxes, assessments and water rates upon the principals aforesaid; etc.”
 (Comp. Stat., p. 5247, section 404.)

In the preceding clause of Section 404, on page 5247, it is provided that said Commissioners may act on all property affected, or in reference to such part thereof as shall be designated in said notice. This language is explicit. It cannot be misunderstood and the object of this requirement is very apparent. It is to give the owners of property who have paid their taxes, where the same remain unpaid of record, an opportunity to appear and assert their rights and have their property discharged from such lien; and to thereby do away with the necessity of further proceedings by said Commissioners of Adjustment in connection with their property under the provisions of the Act. This would result in relieving a municipality from paying the expense entailed in connection with tracts or parcels of land where the taxes, assess-

ments or water rents have been satisfied in fact, but remain unsatisfied of record. It is also for the purpose of bringing directly to the attention of the public and persons interested in the property against which arrearages appear, a warning of proceedings which would entail large costs and expenses for search fees, etc., chargeable as a lien against their property, for which, under the proceedings of said Commissioners, such property would be sold unless payment therefor was made. Its object is also to compel delinquents to pay their taxes and to enable the Borough or other municipality to receive the moneys arising therefrom to meet its pecuniary needs. It will be noted by reference to the notice hereinbefore set forth at length that there is no reference to the property affected thereby and is therefore clearly insufficient in substance. The notice sets up merely the title of the statute and states that the Commissioners will proceed in the above-entitled matter for the purpose of hearing all persons interested. There is nothing in the notice to indicate against what property or against whom the proceedings will be made, except in the general terms that the meeting referred to therein is held for the purpose of hearing all persons interested in the re-assessment or adjustment of taxes and assessments or water rates in arrears in the said borough. *It is no notice to persons who have paid their taxes and where taxes remain unpaid of record, or who for such or other reasons are laboring under the belief that their taxes are paid. Even in such cases, if such a notice was valid, the municipality would be subject to the expense of all necessary searches and other costs provided for under the provisions of the act in question, although the property owner, or those interested might, upon the final hearing of a rule to show cause, have an opportunity to be*

relieved of the burden thus unjustly imposed upon their property.

By a careful consideration of the entire act, it will be observed that specific and definite notice to all those interested is required of each and every act of the commissioners effecting the rights of property holders, and to this end it is required that a search shall be made in order that such specific and definite notice will be given in the proceedings involving the sale of their property interests. The entire scheme of the legislation before us for consideration involves the purpose of amply and definitely notifying each and every person affected by such proceedings. We observe every year in our newspapers the publication of a list of unpaid taxes. Such lists are published with reference to the property to be affected, usually giving the lot and tract number. It is accomplished without difficulty and is the common custom even in cases where such proceedings do not involve a sale in fee simple of the property in satisfaction of a tax or assessment lien. The object of such a publication is for the public good; it works to the benefit of all. A tax-payer reading such a list, or brought in contact with such information by other agencies, is put upon definite and specific notice of the fact that his taxes are unpaid and the consequences arising therefrom. A notice arising from such a publication becomes general and common knowledge. It is a warning to all delinquents and to others directly or indirectly concerned with the property in question, and as a *result there is put into action forces which bring about the payment of delinquent taxes, to the benefit of the municipality affected.*

In the proceedings with which we are dealing, it is highly important that a notice of such specific nature, mentioning the property affected be pub-

lished, as it ultimately deals with an adjustment of the rights of the property owner and the municipality in respect to such tax or assessment lien.

To illustrate: The Commissioners of Adjustment have power to make re-assessments, to exercise judicial functions for the settlement of disputes, to hold hearings and swear witnesses and to discharge such liens. This power is vested in the Commissioners of Adjustment because there are many liens for taxes and assessments of record which have been paid or which are inequitably levied. It is the right of persons concerned in the premises to appear before these commissioners, offer their evidence in payment and obtain a discharge, or offer their evidence in respect to the equities of the case and obtain an equitable adjustment. *Any person not having knowledge of the fact that the tax, assessment or water rent is a charge against property in which he is interested, would not through reading the notice hereinbefore referred to, have any reason to believe that his property was affected because of its not being mentioned in the notice according to the requirements of the statute.*

The substantial part of the notice is contained in the last paragraph thereof and I particularly direct the Court's attention to it. I contend that such a notice is very misleading. By reading it, a person very likely reaches the conclusion that the proceedings involve as a whole, the re-assessment or readjustment of taxes, etc., in arrears. The real nature of the proceedings and the persons owning property affected thereby cannot be ascertained from the notice itself. Such information would have to be obtained independently by reference to the records of unpaid taxes, assessments, and the law under which such proceedings were contem-

plated. To persons not having obtained such knowledge the notice would have no significance.

The publication of an appropriate notice which would put all persons interested upon their guard and make known to them the fact that their property was to be dealt with for unpaid taxes pursuant to the provisions of the statute in question, would not entail any difficulty. For example the notice might be in the following form :

In the matter of the appointment of commissioners, etc., under the provisions of an act entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments or water rates in towns, townships, boroughs or other municipalities, except cities of this state, and imposing and levying a tax, or lien in lieu and instead of such arrearages and to enforce the payment thereof and to provide for the sale of lands subject to future taxation and assessment." Approved May 18, 1898, and the supplements and amendments thereto.

Notice is hereby given, that the undersigned, the Commissioners of Adjustment in the above entitled matter, appointed by an order of the Bergen County Circuit Court, bearing date May ninth, nineteen hundred and fourteen, will meet at the Borough Hall on Somerset Street, in the Borough of Garfield, Bergen County, New Jersey, on Tuesday, the seventh day of July, nineteen hundred and fourteen at eight o'clock in the evening for the purpose of hearing all persons interested in the assessment or re-adjustment under the above entitled act respecting the arrearages of the taxes, assessments or water rates in the said Borough of Garfield according to the records in the office of the collector of taxes of said Borough which appear as follows:

(Here mention property referring to number of lot and block against which arrearages appear of part thereof.)

And that after the re-adjustment and re-as-

assessment of said arrearages the said commissioners will proceed to enforce the payment of said taxes, assessments and water rates in arrears by the sale of said property according to law.

Signed

.....

Commissioners of Adjustment.

It cannot be contended that it is impractical or not possible to comply with this statute for the publication of such notice. In this matter the commissioners were dealing with eight hundred cases, involving unpaid taxes and assessments. Section 404, page 5247, provides that at the first meeting the commissioners shall take up the whole of the re-assessments or re-adjustment of taxes or such part thereof against property which they must designate in the notice. It would have been a very simple matter to publish a notice designating, or mentioning, a given number of lots or parcels of land against which arrearages of taxes appear, and on the date referred to in such notice to call a list in order to give persons interested an opportunity to be heard. In cases where no response is received to the call continue with the adjustment as provided for in the act, and thereafter to proceed with making of searches and taking the other steps required by law. In cases where a response is received to continue to hear, or set down for hearing, such cases. There is nothing impractical in such a plan.

The failure to do so gives rise to a condition where few, if any, people concerned appear at the meeting referred to in the notice, and it is for this reason that the adjustment of taxes, involving eight hundred parcels of land may be disposed of without the appearance of persons interested. In this case

the legislature requires that the property be mentioned or designated.

The courts in this State, for years, have commented upon and decided what constitutes the sufficiency of such notices, and in cases where the statute has been silent, it *has been usually held that some description by which the property may be known, though imperfect in itself, is necessary.*

The courts have decided in cases where the notice is misleading and is so framed that persons unacquainted with the premises affected, are likely to be misled, that it is insufficient and void.

Merwin v. Smith, 2 E., 182.

Rodman v. Zilley, 1 E., 320.

Cummins v. Little, 2 E., 48, 55.

Hodgson v. Farrell, 15 E., 88.

Waldron v. Letson, 15 E., 126.

Ryerson v. Boorman, 7 E., 167, 640.

See *Cox v. Halsted*, 2 E., 311.

Allen v. Cole, 9 E., 286.

The provision of the statute requiring a notice to be published, making known thereby that the commissioners will meet at a time and place to be therein designated, to hear all persons interested in the re-assessment or adjustment of unpaid taxes, etc., must be construed to require that the notice in itself be sufficient in substance to actually apprise all concerned with the exact subject and nature of the proceedings, without reference to the records of unpaid taxes, etc., or the statute.

This being the law, the commissioners could not proceed legally to re-adjust taxes or assessments in any case where the property was not mentioned or designated in the notice. They could only proceed respecting the lots and tracts which were designated. For example:

#1	John Doe, map of Garfield Park Land Company, plot 64 to 66, three lots and house.....	\$34.85
#2	Richard Roe, map of Garfield Park Land Company, plots 1 and 2, 2½ lots and house.....	\$38.16
#3	James Smith, map of Garfield Park Land Company, 6 lots and factory.....	\$68.32

It is not difficult to publish a notice numbering and setting up several hundred cases to be acted upon at a meeting of the commissioners. Surely it was their duty to at least mention in the notice, the property against which they expected to proceed. Without doing this they had no right to proceed. So it follows that the notice being without any designation whatever of the property affected, was contrariwise to the statute and that the proceedings, therefore, must be set aside.

POINT III.

To bring the proceedings within the scope of the validating statute the notice must have been published (to be within the meaning of the law), five times or four consecutive weeks.

By reference to the case you will perceive that this notice was published four times, namely; on June 1st, June 8th, June 15th and June 22nd, 1914. (Case, page 5, lines 1 to 10.)

Justice Swayze in his opinion did not decide whether or not there must be five publications in order to comply with the statute requiring that

the notice be published for four consecutive weeks. Respecting our contention that the publication must be for five weeks, he said, "to my mind there 'is a perceptible difference between the requirement of publication for four weeks successively, 'at least once in every week,' and the requirement of publication 'once each week for at least four 'consecutive weeks'; the former expression seems 'to indicate that there must be publication during 'the whole period of four weeks, the latter that 'there should be four publications, each in a separate week, i. e., seven days apart. I do not dwell 'upon this because I have reached a result favorable to the prosecutors upon another ground.'"

In *Hodge vs. United States Steel Corporation*, Atl. Rep. 53, page 606, heretofore quoted, Vice Chancellor Emery expresses an opinion for the Court of Chancery which shows that the requirement of the publication for four consecutive weeks is five publications and speaking about such statutes, the learned Vice Chancellor said:

"These acts require, among other things, 'publication of notice of sale 'at least four 'weeks successively, once each week, next 'preceding the time of sale.' This has always been construed as requiring a publication at or before the sale, as well as in 'the last of the four weeks next preceding 'the sale, in order that the publication 'may be made 'for the period' and in each 'week of the period. In *Parsons v. Lanning* '(Runyon, V. C., 1876), N. J. Eq., 70, the 'first publication was made 26 days before the 'sale; but there were four publications once 'in each week. The advertisement was held 'invalid, as not being made 'four weeks next 'preceding the sale.'"

Vice Chancellor Emery seems to have been dealing with statutes generally requiring a publication

of a notice for four consecutive weeks and he holds that such notices must be published successively to cover the entire period. This requirement is for five publications. To be consecutive a notice must follow a notice and must cover the entire period. Now in the case at bar it is very readily perceptible that the four publications did not cover the whole period of four weeks. This period of time consists of four weeks, seven days each or twenty-eight days. The period covered was for twenty-one days only. The first notice being published June 1st; the second, June 8th; the third, June 15th, and the fourth, June 22nd. From the first to the eighth of June is seven days. From the first to the fifteenth, fourteen days. From the fifteenth to the twenty-second, twenty-one days. A continuous publication of a notice for four consecutive weeks covering the entire period is not possible, so far as I am able to see, unless the notice be published five times.

To my mind "successively" and "consecutively" have the same meaning. That which is "consecutive", follows that which is gone before. That which is "successive", to me has no dissimilar meaning. I am quite sure that my views are in accordance with what has always been the general practice especially in divorce cases respecting absent defendants. Here the statute requires that the notice of the order to answer the petition must be published four weeks, once in each week. In Bidle's New Jersey Divorce Practice, page 56, it appears that five publications are necessary to meet the requirements of the statute. I am quite sure that our Chancellors have always required five publications in such cases. This has always been the general and quite familiar law. Therefore, to bring the proceedings at bar within the scope of the validating act, the notice must have been published five times. It was published only four times.

So on this ground the validating statute relied upon, fails to validate and the proceedings must be set aside.

CONCLUSION.

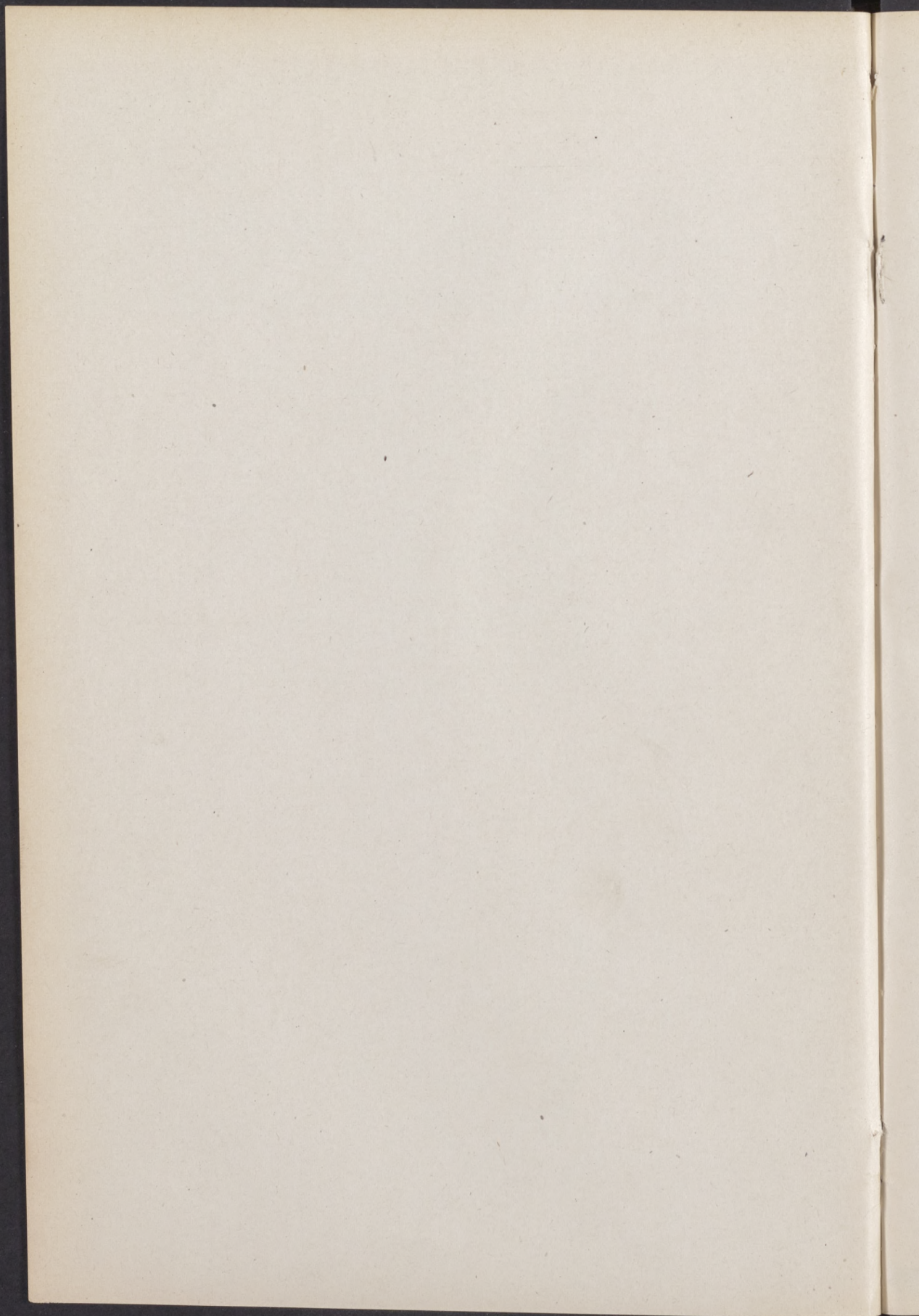
In conclusion I most respectfully submit that for the reasons stated in these proceedings the judgment of the Supreme Court against their validity was sound and should be affirmed.

JOSEPH H. LEFFERTS,

Attorney for Prosecutor and the
Borough of Garfield, Appellees.

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Writ of Certiorari.

Filed May 17, 1915.

NEW JERSEY SUPREME COURT.

RAYMOND MESSINEO, Prosecutor, <i>vs.</i> GUY L. FAKE, MILES C. WHITE- HEAD, CLARENCE MABIE, Com- missioners of Adjustment, and FRANK V. ROMAGLIA, Clerk of said Commissioners of Adjust- ment, and the BOROUGH OF GAR- FIELD, Defendants.	}	Writ of Certiorari	10
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We being willing for certain reasons, to be certified of an adjustment of taxes, assessments and water rates made against Raymond Messineo by Guy L. Fake, Miles C. Whitehead and Clarence Mabie, Commissioners of Adjustment, appointed by the Bergen County Circuit Court, on May ninth, nineteen hundred and fourteen, upon the application of the Borough of Garfield;

We do command you that the said adjustment of taxes, assessments and water rates made by said Commissioners of Adjustment, together with all things touching and concerning the same, as and entirely as before you they remain, to our Justices of Supreme Court of Judicature, at Trenton, on the fourth day of June next, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 15th day of May, nineteen hundred and fifteen.

	WM. C. GEBHARDT,
Louis A. Cowley,	Clerk.
Attorney.	

This writ is allowed. Let it be sealed.

May 15, 1915.

F. J. SWAYZE,
S. C. J.

Return to Writ.

Filed June 21, 1915.

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

10 I, Frank V. Romaglia, Borough Clerk of the Borough of Garfield and Clerk of the Adjustment Commissioners of the Borough of Garfield, in the County of Bergen, in obedience to the command of the writ hereto annexed, directed to Guy L. Fake, Miles C. Whitehead, Clarence Mabie, Commissioners of Adjustment, and Frank V. Romaglia, Clerk of the said Commissioners of Adjustment, and the Borough of Garfield, do hereby certify and send to you, the said Justices, the said adjustment of taxes, assessments and water rates made against Raymond Mes-
20 sineo by Guy L. Fake, Miles C. Whitehead and Clarence Mabie, Commissioners of Adjustment, appointed by the Bergen County Circuit Court, on May 9th, 1914, upon the application of the Borough of Garfield, with all things touching and concerning the same, as fully and entirely as the same remain in my hands and possession, as by the said writ I am commanded, as appears by the schedule hereunder written.

I witness whereof, I have hereto set my hand and seal this 4th day of June, A. D. 1915.

FRANK V. ROMAGLIA,

Clerk.

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By consent of parties the schedule annexed to the return to the writ of certiorari has not been printed. A rule for affidavits was allowed by Justice Swayze, and the parties stipulated the facts. It is agreed that the stipulation printed at page 4 *infra* covers all that is essential for the determination of this cause by way of abridgment of the return and pertinent facts in the cause.

Reasons.

Filed June 26, 1915.

NEW JERSEY SUPREME COURT.

RAYMOND MESSINEO, Prosecutor,	}	
<i>vs.</i>		
GUY L. FAKE, MILES C. WHITE- HEAD, CLARENCE MABIE, Com- missioners of Adjustment, and FRANK V. ROMAGLIA, Clerk of said Commissioners of Adjust- ment, and the BOROUGH OF GAR- FIELD,	}	
Defendants.		In Certiorari. Reasons.

The said prosecutor, by Louis A. Cowley, his attorney, comes and pleas that the adjustment of taxes and assessments made against him by Guy L. Fake, Miles C. Whitehead and Clarence Mabie, Commissioners of Adjustment for the Borough of Garfield, may be set aside, reversed and for nothing holden for the following reasons:

First: The notice of the first meeting of said Commissioners was not published the number of times and in the manner required by the Statute in such case made and provided.

Second: The notice published was insufficient in that it did not designate or describe the property against which the said commissioners would proceed to adjust the taxes or assessments.

Third: The expenses of search and costs assessed against the property of the prosecutor, to wit, the sum of fifteen dollars, is in excess of the maximum amount which may be charged against prosecutor's property, according to the Statute in such case made and provided.

Fourth: The said Commissioners of Adjustment lost

jurisdiction to proceed to adjust the taxes and assessments against prosecutor's property because before adjusting said taxes and assessments, they adjourned a meeting which they held on the fifteenth day of September, 1914, to the eighteenth day of October, 1914, without hour appointed, which adjourned day was a Sunday; that they held a meeting without notice given to prosecutor, on the twentieth day of October, 1914; that they adjourned said meeting without day appointed; that they held a meeting on the twenty-first day of October, 1914, without giving prosecutor any notice; that they adjourned last mentioned meeting without day appointed; that they held a meeting on the twelfth day of November, 1914, without giving prosecutor any notice; that they adjourned said last mentioned meeting without day appointed.

Fifth: That the said adjustment of taxes and assessments made by the said Commissioners of Adjustment for the Borough of Garfield, as aforesaid, is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

LOUIS A. COWLEY,
Attorney of Prosecutor.

Stipulation As To Facts.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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RAYMOND MESSINEO,
Prosecutor-Appellee,

vs.

GUY L. FAKE, *et als.*,
Defendants-Appellants.

On Appeal from Supreme Court Judgment on Certiorari.
Stipulation.

It is hereby stipulated and agreed that the above appeal shall be heard upon the following statement of facts:

First: That the prosecutor is a resident of the Borough of Garfield, in the County of Bergen, and is and on the seventh day of July, 1914, was the owner of Lot No.

51 in Block No. 20 as laid down on the assessment map of the Borough of Garfield.

Second: That on May 9th, 1914, the said Guy L. Fake, Clarence Mabie and Miles C. Whitehead were duly appointed commissioners of adjustment by the Bergen County Circuit Court, for the purpose of performing the duties and executing the powers conferred by P. L. 1898, p. 442 as amended and supplemented; that said commissioners duly took and filed their respective oaths of office.

Third: That the following notice of the first meeting of the said commissioners was published in the Passaic Daily Herald, a newspaper circulating in the Borough of Garfield, on June first, June eighth, June fifteenth and June twenty-second, in the year nineteen hundred and fourteen: 10

Bergen County Circuit Court.

NOTICE OF MEETING OF COMMISSIONERS.

In the matter of the appointment of Commissioners, &c., under the provisions of an act entitled "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in towns, townships, boroughs and other municipalities except cities of this state and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof and provide for the sale of lands subject to future taxation and assessment," approved May 18, 1898, and the supplements and amendments thereto. 20

Notice is hereby given, that the undersigned, commissioners of adjustment in the above entitled matter, appointed by an order of the Bergen County Circuit Court, bearing date May ninth, Nineteen hundred and fourteen, will meet at the Borough Hall, on Somerset street in the Borough of Garfield, Bergen county, New Jersey, on Tuesday, the seventh day of July, Nineteen hundred and fourteen, at eight o'clock in the evening, for the purpose of hearing all 30

persons interested in the re-assessment or adjustment under the above entitled act, of the taxes, assessments or water rates in arrears in the said Borough of Garfield.

Dated May 29, 1914.

GUY L. FAKE,
CLARENCE MABIE,
MILES C. WHITEHEAD,
Commissioners of Adjustment.

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Fourth: That the first meeting of the said commissioners was held at the Borough Hall on Somerset Street, in the Borough of Garfield, on Tuesday evening, the seventh day of July, nineteen hundred and fourteen, at eight o'clock in the evening and that Raymond Messineo, prosecutor, did not appear at said meeting, either personally or by counsel, and that he did not appear before the said commissioners at any of their meetings, held subsequent to July 7, 1914.

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Fifth: That the said commissioners kept a record of their proceedings under the aforesaid act, in which they entered their determination as to the amount to be charged and assessed upon and against each lot or tract of land, (approximately eight hundred different parcels) designating the same by block and lot numbers as shown on the assessment map of the Borough of Garfield; that the unpaid taxes and assessments on the lands of the prosecutor were adjusted by them on December 10, 1914, at \$280.43, which includes the sum of \$15.00, costs of search and adjustment.

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LOUIS A. COWLEY,
Attorney for Prosecutor-Appellee.
JOSEPH H. LEFFERTS,
Attorney for the Borough of Garfield.
GILBERT COLLINS,
Attorney for Defendants-Appellants.

Notice of Hearing.

NEW JERSEY SUPREME COURT.

RAYMOND MESSINEO,	}	
Prosecutor,		
<i>vs.</i>	}	On Certiorari. 10 Notice of Hearing.
GUY L. FAKE, MILES C. WHITE-		
HEAD, CLARENCE MABIE, Com-		
missioners of Adjustment, and		
FRANK V. ROMAGLIA, Clerk of	}	
said Commissioners of Adjust-		
ment, and the BOROUGH OF GAR-		
FIELD,	}	
Respondents.		

Take notice of the argument of the issue joined in this cause, before the Honorable F. J. Swayze, Esq., a Justice of the Supreme Court of New Jersey, on Monday, the 19th day of July, 1915, at the Court House in Hudson County, at ten o'clock in the forenoon or as soon thereafter as said Justice can attend to the same.

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Yours respectfully,

LOUIS A. COWLEY,
Attorney of Prosecutor.

Dated July 6, 1915.

To whom it may concern.

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We consent to the continuance of the above matter to August 2nd, 1915, at the same hour and place.

Dated July 19, 1915.

LOUIS A. COWLEY,
Attorney of Prosecutor.

GILBERT COLLINS,
Attorney of Respondents

Opinion of Supreme Court.

Filed August 10, 1915.

NEW JERSEY SUPREME COURT.

RAYMOND MESSINEO,

*vs.*10 GUY L. FAKE and others, Com-
missioners.Argued August 2, 1915; decided August 9, 1915. Cer-
tiorari.

Before—SWAYZE, J.

LOUIS A. COWLEY, for the Prosecutor.

JOSEPH H. LEFFERTS, for the Borough of Garfield.

20 GILBERT COLLINS, for Defendants.

SWAYZE, J.:

It is conceded that the original notice of the first meet-
ing of the Commissioners of Adjustment was not pub-
lished as the act requires, P. L. 1898, 442. The defend-
ants rely on the curative act, chapter 333 of 1915. This
validates all proceedings theretofore instituted in which
the notice of the first meeting has been published once
each week for at least four consecutive weeks preceeding the
time designated. The only question I need consider is
30 whether the curative act applies to the present case. The
notice was published June 1, June 8, June 13 and June
22, the meeting was on July 7.

The cases cited by the prosecutors are not of much as-
sistance, since they dealt with different, though similar
statutory language. The language of the Divorce Act is
nearest that of the curative act in the present case, but
to my mind there is a perceptible difference between the
requirement of publication "for four weeks successively,
at least once in every week," and the requirement of pub-

lication "once each week for at least four consecutive weeks"; the former expression seems to indicate that there must be publication during the whole period of four weeks, the latter that there should be four publications, each in a separate week, i. e., seven days apart. I do not dwell upon this because I have reached a result favorable to the prosecutors upon another ground. To come within the scope of the curative act, the publication must have been for at least four consecutive weeks preceding the time designated. This must mean next preceding the time designated. I am led to this result by the common practice with reference to the publication of legal notice, and by the fact that only such notice can properly apprise the public of what is going on. Unless that construction is adopted, a notice published a year or five years in advance would suffice, for that might well be a publication for at least four consecutive weeks and would surely precede the time appointed, if by precede we mean only "go before." Such a publication would not comply with the act of 1898 requiring a publication not more than forty days or less than thirty days before the meeting, but the curative act is not limited by that provision. Unless "preceding" means "next preceding," the acts of commissioners would be validated although the notice had been published the last time much more than forty days before the meeting. The curative act is not limited to the situation in Garfield; it is applicable throughout the State and, for aught we can know, may in fact reach cases like the one supposed. I ought not to attribute to the legislation such a wide scope, unless compelled to, especially in view of the fact that the original act required the publication of the notice to be continued at least once each week until said meeting. The obvious intent was that the publication whether for thirty days or forty days should next precede the time appointed.

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The failure to give the notice required is fatal and the proceedings must be set aside with costs.

Rule Setting Aside Proceedings of Commissioners.

Entered August 14, 1915.

NEW JERSEY SUPREME COURT.

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RAYMOND MESSINEO,
Prosecutor,
vs.
GUY L. FAKE, MILES C. WHITE-
HEAD, CLARENCE MABLE, Com-
missioners of Adjustment, and
FRANK V. ROMAGLIA, Clerk of
said Commissioners of Adjust-
ment, and the BOROUGH OF GAR-
FIELD,
Defendants.

On Certiorari.
Rule to set aside Pro-
ceedings of Com-
missioners for the
Borough of Gar-
field.

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The Court having heard the argument of counsel, and inspected the adjustment of taxes, assessments and costs removed by the writ in this cause, and duly considered the reasons filed, it is

Ordered that said adjustment of taxes, assessments and costs be set aside, made void and for nothing holden, with costs of suit to be taxed.

Entered the fourteenth day of August, nineteen hun-
dred and fifteen, on motion of

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LOUIS A. COWLEY,
Attorney of Prosecutor.

Notice of and Ground for Appeal.

Filed August, 23, 1915.

NEW JERSEY SUPREME COURT.

RAYMOND MESSINEO, Prosecutor, <i>vs.</i> GUY L. FAKE, MILES C. WHITE- HEAD, CLARENCE MABIE, Com- missioners of Adjustment, and FRANK V. ROMAGLIA, Clerk of said Commissioners of Adjust- ment, and the BOROUGH OF GAR- FIELD, Defendants.	}	On Certiorari. Notice of Appeal.	10
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To

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Louis A. Cowley, Esq.,
Attorney of Prosecutor, and
Joseph H. Lefferts, Esq.,
Attorney for the Borough of Garfield.

Take notice that the defendants, Guy L. Fake, Miles C. Whitehead, Clarence Mabie, Commissioners of Adjustment, and Frank V. Romaglia, Clerk of said Commissioners of Adjustment, appeal to the Court of Errors and Appeals from the judgment of the New Jersey Supreme Court, entered the fourteenth day of August, 1915, setting aside the adjustment of the taxes and assessments against Raymond Messineo, prosecutor, on the ground that said Judgment is erroneous because for no reason, assigned by the prosecutor or by the Supreme Court, should the said adjustment of taxes and assessments have been set aside but the same should either have been affirmed or the writ should have been dismissed.

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GILBERT COLLINS,
Attorney of Appellants.

