

New Jersey Court of Errors and Appeals

PEOPLES BANK AND TRUST COMPANY,
Prosecutor-Appellant,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant-Respondent.

PEOPLES BANK AND TRUST COMPANY,
Prosecutor-Appellant,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,
Defendant-Respondent.

In Certiorari.
On Appeal
from Supreme
Court.

BRIEF FOR APPELLANT.

Statement of the Case.

This appeal brings up for review a judgment of the Supreme Court dismissing the two writs of certiorari, and affirming an assessment of taxes for the year 1914, levied upon the appellant (the prosecutor below) by the Passaic County Board of Taxation, under the provisions of Chapter 90,

Laws of 1914, regulating the taxation of bank stock (P. L. 1914, p. 141).

By a per curiam opinion the Supreme Court affirmed the assessment and dismissed the writs (p. 52).

The facts are set forth in the stipulation printed in the state of case (p. 37 to p. 48 inclusive). From the facts so stipulated it appears:

(1) That the entire taxable value of the shares of stock of the prosecutor was assessed for the year 1914 to and in the name of the prosecutor, pursuant to a resolution of its Board of Directors, a certified copy of which was duly filed with the County Board of Taxation in accordance with the requirements of Section 8 of the Statute (p. 38, ll. 12-41).

(2) That the entire taxable value of the shares of capital stock of the prosecutor was assessed for the year 1914 at \$401,761.45 (p. 38, Sec. 3) which was arrived at by deducting the assessed value of the real estate (\$72,850) from the capital, surplus and undivided profits (\$474,611.45) as shown in the statement filed by the prosecutor with the Secretary of the County Board of Taxation, pursuant to Section 3 of the Statute (p. 40, l. 18, to p. 41, l. 15).

(The subsequent further deduction from the assessment on account of real estate accidentally omitted to be mentioned in the statement filed pursuant to Section 3 of the Statute [p. 42, l. 21, to p. 43, l. 21; p. 46, ll. 23-37] does not affect in any wise the question to be argued in this brief.)

(3) That on May 20th, 1914, the prosecutor owned 151 shares of the capital stock of the Carl-

stadt National Bank and 553 shares of the capital stock of the Rutherford Trust Company (p. 43, ll. 23-30).

(4) That the capital stock, surplus and undivided profits of the two last mentioned banks had also been assessed for the year 1914 by the Bergen County Board of Taxation to and in the names of the two banks respectively (p. 43, l. 30; p. 44; p. 45, ll. 1-12).

(5) That each individual share of the stock of said Carlstadt National Bank was assessed at the sum of 221.46643 (there is a mistake in the printed book, p. 44, l. 13, where the decimal is wrongly pointed) making the pro rata amount of the total assessment levied upon the entire capital stock of the Carlstadt National Bank applicable to the 151 shares thereof held by the prosecutor, the sum of \$33,441.43, upon which the tax at $\frac{3}{4}$ of 1 per cent., amounted to the sum of \$250.81 (p. 44, ll. 10-20), and that in like manner each individual share of said Rutherford Trust Company was assessed at the sum of \$129.3362, making the pro rata amount of the total assessment levied upon the entire capital stock of the Rutherford Trust Company applicable to the 553 shares thereof held by the prosecutor, the sum of \$71,522.92, upon which the tax amounted to the sum of \$536.43 (p. 44, l. 39, to p. 45, l. 12).

(6) That the prosecutor appealed to the Passaic County Board of Taxation to reduce the assessment upon its capital, surplus and undivided profits for the year 1914, to the extent of so much of the total amounts of the aforesaid assessments upon the capital, surplus and undivided profits of the Carlstadt National Bank and the Rutherford

Trust Company respectively, as was applicable to the shares in those banks respectively held by the prosecutor, viz., to the extent of \$104,964.35, and praying for a corresponding reduction in the tax imposed upon the prosecutor, viz., the sum of \$787.24. (A deduction was also asked in respect of the real estate accidentally omitted from its statement. Reduction thus asked \$4,350; corresponding reduction in tax \$32.62. This last mentioned reduction was afterwards allowed by the Board, but that fact has no relevancy to the question to be argued in this brief, and is only mentioned in order to make clear the figures set forth in the stipulation [p. 45, l. 13, to p. 46, l. 37]).

It appears by the stipulation that the prosecutor has paid the whole of the tax levied upon it for the year 1914, with the exception of the sum of \$787.24, which is the precise amount of the tax applicable to the shares of stock in the two Bergen County banks held by the prosecutor (p. 47, ll. 1-15).

It was the refusal of the Passaic County Board of Taxation to make such reduction in respect of the appellant's shares of stock in the two Bergen County banks which the writs of certiorari brought up before the Supreme Court for review (p. 46, ll. 37 to 41); and it is the judgment of the Supreme Court affirming said assessment for taxes which it is now sought to have reviewed by the present appeal (p. 57).

The reasons assigned in the Supreme Court for setting aside the assessment were two in number:

(1) Because the assessment upon the capital, surplus and undivided profits of the prosecutor included the value assessed by the Bergen County

Board of Taxation upon the 151 shares of the Carlstadt National Bank and the 553 shares of the Rutherford Trust Company, owned by the prosecutor; and

(2) Because those assessments resulted in double taxation of the prosecutor in respect of the shares in the two Bergen County banks owned by it, contrary to the Act of 1914, as construed by this Court and by the Court of Errors and Appeals (pp. 49-51 inclusive).

The argument in behalf of the prosecutor contained in the brief filed in the Supreme Court, was based upon the provision of Section 4 of the Act, that the tax imposed upon the shares of the bank "shall be in lieu of all other state, county or local taxation upon such shares, *or upon any personal property held or owned by banks * * * the value of which enters into the taxing value of such shares of stock.*"

It was argued that the value of the shares of the two Bergen County banks had necessarily entered into the taxable value placed by the Passaic County Board of Taxation upon the shares of the prosecutor; that the taxable value of the shares of the prosecutor was ascertained by deducting the assessed value of its real estate from its capital, surplus and undivided profits; and that the assessed value of the shares of stock of the two Bergen County banks owned by the prosecutor, must necessarily have entered into the calculation, to determine the amount of the prosecutor's capital, surplus and undivided profits; that it was only possible to determine the amount of the capital, surplus and undivided profits of the prosecutor, or of any other bank or corporation by including in

the calculation every piece or parcel of every species of property owned by it, including shares of stock in other banks, if, as in the case at bar, it happened to own stock in other banks.

The argument was further based upon the assumption that the assessment could not stand if it could be shown that it had resulted in double taxation, relying on the decision of this Court in the *Commercial Trust Company* case (87 N. J. Law, 179), that double taxation is not intended to be imposed by the act.

The argument was that if the value of these shares of the Bergen County banks necessarily entered into the calculation of the amount of the capital, surplus and undivided profits of the prosecutor, then the case was one of double taxation, contrary to the intention of the act as construed by this Court in the case cited.

As an escape from that conclusion we anticipated in our brief, filed in the Supreme Court, that an argument might be made that the value of the shares of the Bergen County banks did not necessarily enter into the taxing value of the amount of the capital, surplus and undivided profits of the prosecutor, unless it could be shown that this Bergen County bank stock was a part of its capital, surplus or undivided profits, as distinguished from being a part of its deposits; that is to say, we anticipated that it might be argued that it is possible to segregate the securities owned by a bank into various groups, so that one group shall represent, for instance, the capital, another the surplus and another the deposits, etc.

And surely enough, the argument so anticipated was the only argument contained in the brief of

counsel for the defendants, in support of the legality of the assessment; and the assessment was upheld by the Supreme Court solely upon the ground that it did not appear in the case (to quote from the per curiam opinion), "that the prosecutor's investments in the capital stock of the Carlstadt National Bank and the Rutherford Trust Company were investments of its capital, surplus and undivided profits, and not investments of deposits or other moneys under its control (p. 54, ll. 20-26).

The Supreme Court, following the *Commercial Trust Company* case as authority for the proposition that double taxation was not intended by the act, conceded the prosecutor's contention that the assessment could not stand if there had been double taxation, but the Court held that it did not appear, as a fact, that there had been double taxation.

We quote from the per curiam opinion as follows:

"Whether or not there was a double taxation in the present case is one of fact. * * * The prosecutor made a statement of its financial condition to the Tax Board for the very purpose of furnishing such Board with information regarding its taxable property, as the basis of an imposition of a tax.

"In that statement the prosecutor, as is pointed out by Counsel for the Tax Board, made no separation of its investments of capital, surplus and undivided profits from its investments of other funds in its possession. We cannot, therefore, say, upon the facts before us, that the prosecutor's investments in the capital stock of the Carlstadt National Bank and the Rutherford Trust Company, are investments of its capital,

surplus and undivided profits and not investments of deposits or other moneys under its control" (p. 53, ll. 12-13; p. 54, ll. 10-26).

In other words, the Court upheld the assessment upon the ground that it could not hold that there had been any double taxation, because of its inability to determine from the facts before it, whether the shares of the Bergen County banks formed part of the investments of capital or of deposits.

The assessment was, therefore, upheld by the Supreme Court upon what, with great deference to the learned Judges who heard the case in the Supreme Court, we believe to be the clearly erroneous notion that it is possible to segregate the securities and property of banks into groups, in the manner mentioned above. The notion of such possibility is simply assumed in the per curiam opinion. The opinion contains no argument to support the notion, and no comment was made in the opinion upon the argument advanced in the prosecutor's brief, to the effect that such notion is fallacious. We submit that the fallacy of such notion is clearly pointed out in the opinion of Justice SWAYZE, in the case of *Camden v. Camden Safe Deposit Company*, 84 *N. J. Law*, 37, which was quoted at length in our former brief.

In that part of the opinion, to which we refer, SWAYZE, *J.*, said (84 *N. J. Law*, 39) :

"All the assets of the bank are commingled; none are set apart for a specific purpose as an investment of capital or of surplus or of deposits. If the bank were taxed strictly as an individual, all its tax-

able assets would be put on one side; all its debts, except those to stockholders, would be set on the other, and the balance would represent the book value of the stockholders' interest."

This balance to which Justice SWAYZE refers would be nothing more nor less than the amount of the capital, surplus and undivided profits of the bank, assuming that it had any surplus or undivided profits.

If, therefore, we can succeed in convincing this Court of the fallacy of the idea of the possibility of segregating the securities of a bank so as to be able to determine which constitute the capital and surplus and which represent the deposits, etc., we assume that the decision of the Supreme Court will be reversed and the assessment set aside; consequently this brief will be confined to an argument of that one question.

Specification of Grounds of Appeal Intended to be Urged.

1. Because the shares of the capital stock of the Carlstadt National Bank and of the Rutherford Trust Company which were owned by the appellant on the twentieth day of May, Nineteen hundred and fourteen, and which were taxed by the Bergen County Board of Taxation, as above mentioned, constituted personal property held and owned by said appellant, the value of which entered into the taxing value of its shares of stock so assessed as aforesaid by the Passaic County Board of Taxation; and the amount of the said assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided

profits of the appellant for the year 1914, was, by virtue of Chapter 90 of the Laws of New Jersey, Session of 1914, to be in lieu of all other state, county or local taxation upon such shares, or upon any personal property held or owned by the appellant, the value of which entered into the taxing value of its said shares of stock, notwithstanding which the said Bergen County banks were assessed by the Bergen County Board of Taxation for bank stock tax for the year 1914 upon the shares of the capital stock of said Bergen County banks held by the appellant, and paid said taxes, the value of which last mentioned shares entered into the taxing value of the shares of the capital stock of the appellant, which were also taxed by the Passaic County Board of Taxation, contrary to the letter and spirit of said statute.

2. Because the result was double taxation (see Grounds of Appeal, 1, 2, 3, 4 and 5, pp. 58-61).

The Argument.

The argument will be the same, with some elaboration, as that presented to the Supreme Court. No answer to that argument was attempted below by counsel for the defendants, and the argument was simply ignored by the Court, no reference being made to it in the opinion.

Our argument rests upon two propositions: (1) The act provides (Section 4) that the tax imposed "shall be in lieu of all other state, county or local taxation upon such shares, *or upon any personal property held or owned * * * the value of which enters into the taxing value of such shares of stock*"; and (2) The shares of stock in the two Bergen County banks held and owned by the ap-

pellant, did in fact enter into the taxing value of the shares of the appellant.

It is only this second proposition which calls for demonstration.

Section 1 of the act provides that the shares of capital stock of banks shall be assessed and taxed according to their true value, "to be determined in the manner hereinafter provided"; and Section 2 prescribes under the ruling in the *Commercial Trust Company* case, what is the first initial manner or method of determining that value.

Section 2 prescribes that the value of each share of stock shall be ascertained and determined by adding together the amount of the capital, surplus and undivided profits * * * and deducting therefrom the assessed value of the real property * * * and by dividing the result by the number of outstanding shares.

The question is in "adding together the amount of the capital, surplus and undivided profits," what personal property held or owned by the bank enters into the calculation; or to state the question more clearly for the purpose of the argument, is it possible to assert that a bank may own or hold any personal property which does not necessarily enter into the calculation? We can safely rest the case upon the answer to the question as stated in the latter form.

For what are the capital, surplus and undivided profits of the bank, or of any other corporation? They are simply nothing more nor less than the net assets, and the net assets are simply the difference between the gross assets and the total liabilities

other than the liability of the bank or the corporation to its stockholders.

This seemingly self-evident proposition, that the capital, surplus and undivided profits are the net assets, nothing more nor less, and that the terms are synonymous, is the keystone of the argument.

The provision in Section 2 of the act for adding together the capital, surplus and undivided profits, simply requires an arithmetical calculation of the difference between the value of all the bank's property and the amount of its total liabilities; and it is not possible to determine the amount of the capital, surplus and undivided profits in any other manner.

In fact, it is not possible to determine whether or not a bank has *any* capital, surplus or undivided profits except by deducting its total liabilities from its gross assets.

It is quite possible that it did not occur to the draftsman of the act, that a bank may exist without capital, surplus or undivided profits, but the fact is nevertheless true, as shareholders in banks which have failed, have found out to their cost when (in the case of National Banks) they have been compelled to pay assessments to satisfy the bank's liability to its depositors.

Before, then, it is possible to add together the capital, surplus and undivided profits, it is necessary to determine whether they exist, and whether they exist or not can only be ascertained by determining the value of all the assets of every character, and deducting therefrom the amount of the total liabilities. If the balance is on the favorable

side, the question of how much of the balance represents the original capital, and how much surplus or undivided profits, is merely a matter of bookkeeping.

There is a prevailing custom nowadays in organizing a bank or trust company, for it to commence business with a surplus; that is to say, with capital in excess of the total par value of its capital stock. This is accomplished by requiring the original subscribers to the stock to pay in excess of the par value of their subscriptions. Frequently this excess is equal to such par value, so that the bank will commence business with a surplus equal to the total par value of its capital stock.

The reasons for this custom are immaterial to the present case; but the custom explains the distinction between the terms "surplus" and "undivided profits," as used in the act. The term "surplus" ordinarily would denote the same thing as the term "undivided profits," both terms ordinarily referring to the balance remaining of the undistributed profits earned by the corporation. But owing to the custom of commencing business with a surplus, the term "surplus" used in the act may refer to such original surplus fund, or it may refer to a fund accumulated after the commencement of the business out of its profits and set aside as "surplus"; whereas the term "undivided profits" refers to the undistributed accumulations after the commencement of business which have not been set aside as a surplus account. But no matter how the surplus first arises, whether at or after the commencement of business, it is a fluctuating amount depending upon the fortunes of the business; for assuming that a bank commences business with a surplus, and that it invests all, or any

part of the fund paid in by its original subscribers, in securities, and that it transacts no other business, nevertheless the amount of its capital and surplus will, in that case, depend upon the fluctuations in the value of such securities. If we assume a case in which a bank invests all its original capital and surplus in a particular manner, for instance, in United States Government bonds, and then throws its doors open and commences the transaction of a banking business by receiving deposits from the public, making loans, dealing in commercial paper and otherwise investing the funds deposited by the public, then its capital and surplus will no longer consist of the original investment in Government bonds, but it will consist in the value of such bonds, together with all of its other assets, commercial paper and other securities commingled, as stated by Justice SWAYZE in the *Camden* case, less the liability to its depositors and other creditors, if any; and whether or not it has any undivided profits will depend upon determining whether or not this total value, after deducting the total liability, exceeds the original amount of capital and surplus with which the bank commenced business. If it is less, then the original capital and surplus have been to that extent impaired, and it is proved that the business has been done at a loss; if it is more, it will prove that the business has been profitable, and that profits have accrued which may be distributed in a dividend to the stockholders, or which may be set aside as a further increment to the surplus or as undivided profits.

A case might occur in which a bank incurring heavy losses due to bad loans or depreciations in investments, might have the amount of the capital with which it commenced business entirely wiped

out. Such a thing might occur, although the entire amount of the original capital and surplus had been invested in Government bonds, and every one of such Government bonds were still held by the bank. Surely no one would then attempt to argue that the bank should be taxed upon the value of the Government bonds.

Similarly in a case in which the business had been profitable so that undivided profits had accumulated, then it must necessarily be concluded that the capital, surplus and undivided profits consisted at least of something in addition to the value of the supposed original investment in Government bonds, but it would be impossible to point to any particular asset—any particular piece of commercial paper, or any other security, as distinguished from any other asset owned by the bank, as composing such accumulated profits.

The mere fact, it is submitted, that the Legislature by Section 2 of the statute, required the assessed value of the real property of the bank to be deducted from the capital, surplus and undivided profits, as the first step to ascertaining the value of each share, demonstrates that the Legislature recognized that the real property of the bank, whether it had been purchased with deposits, capital or surplus, necessarily entered into the taxing value of the stock, and that it was only just that the assessed value of the real estate should be deducted, because the bank would be itself taxed on its real estate, and it would be double taxation if such assessment was not deducted from the capital, surplus and undivided profits. If then, all real property held by banks enters into the taxing value of their shares of stock, so also must all their personal property.

Imagine a case where a bank invests all its capital in its bank house and then opens its doors—that it makes no profits and has no surplus or undivided profits. Deducting from its gross assets its liabilities, it is found that it simply possesses its original capital unchanged, neither more nor less. The assessed value of its real estate is deducted from the capital and nothing remains. There is nothing under the act to tax. Would anyone claim that it could be taxed upon any personal property it owned? Suppose it owned stock in the Bergen County banks and that it was attempted to tax it upon those shares of stock. Why should it have to pay upon that kind of a personal property any more than upon any other kind?

Suppose still another case, in which a bank commenced business with its entire capital and surplus liquid in the form of cash, to which were afterwards added the moneys deposited by the public, and that all these moneys arising from the original subscriptions of the stockholders, and from the deposits received from the public, were commingled and used in the banking business in the ordinary manner in discounting paper, etc. Suppose further that in the course of its business the bank were compelled to take certain tangible personal property, for instance, an automobile or a stock of merchandise or a pyramid containing several thousand tons of coal, in satisfaction of loans made by it, then the question of the determination of the amount of its capital, surplus and undivided profits would consist in calculating the value of all its assets so commingled, including the automobile, stock of merchandise and pyramid of coal, and deducting from the sum thereof its liabilities.

But suppose the stock of merchandise, pyramid of coal or the automobile taken in satisfaction of a

loan, were located outside the county where the bank is located, and where it is taxable; certainly that circumstance would not affect the fact that the value of the stock of merchandise or of the pyramid of coal or of the automobile had entered into the taxing value of the shares of stock of the bank, and was, therefore, exempt from taxation under Section 4 of the act; and if such merchandise, pyramid of coal or automobile were in fact taxed in the county where it was actually located, outside the county where the bank itself was located, then the bank would clearly be entitled to a corresponding reduction in the assessment upon its own shares. *The controlling fact exists in this case that since the passage of Chapter 90 of the Laws of 1914, no attempt has ever been made to tax any personal property whatever belonging to a bank, with the single exception of the tax thus imposed upon that portion of its personal property consisting of stock in other banks.*

The case last supposed, that of a bank owning tangible personal property located in another county, is that of the present appellant, except that the personal property owned by the appellant in the case at bar, the value of which entered into the taxing value of its own shares, instead of being a stock of merchandise, a pyramid of coal or an automobile, consists of an investment in the shares of two other banks, which banks were located in another county, viz., Bergen County. These investments in Bergen County property were taxed in Bergen County, and the appellant is contending for a corresponding reduction in the tax levied upon it in Passaic County.

There was not one whit more reason to require the appellant to show that its investments in Ber-

gen County personal property, viz., in the stock of the two Bergen County banks, were made out of its capital, surplus or undivided profits, than there would be to require it to show that it had paid for the stock of merchandise, pyramid of coal or automobile from the same source, if an attempt had been made to tax it specifically upon those species of personal property.

Suppose again, that the appellant had opened a branch office across the river from Passaic, in Garfield, which latter place is in Bergen County, and that the Bergen County authorities had attempted to levy a tax upon its securities or money located in their county, the question of the exemption of the bank from taxation in Bergen County would be governed by the same rules as would govern the taxation of securities or money located in the principal office in Passaic County, and it would be no more incumbent upon the bank to show that its personal property located in its branch in Bergen County formed part of its capital or surplus, than to show the same thing in regard to similar property contained in its vaults in its Passaic office.

What conceivable reason, then, is there why a different rule should govern if it should happen (as in the case at bar) that the Bergen County property of the bank consisted of the ownership of shares in two Bergen County banks?

These shares of stock in the two Bergen County banks in fact formed a part of the capital, surplus and undivided profits of the appellant to exactly the same extent, neither more nor less, that every other security or piece of personal property owned by it formed a part of the same fund.

There was no more reason why the appellant should have specifically mentioned these shares of stock in the Bergen County banks in the statement of its financial condition made to the Tax Board of Passaic County, than that it should have specifically mentioned in the same document any other securities it might have owned, and to tax which no attempt has been made. The Passaic County Board of Taxation had full notice of the appellant's claim by its petition presented to it asking for the reduction (pp. 13-20).

The confusion in the matter is due to the fact that the securities in question are shares of stock in other banks, which banks are themselves subject to the same method of taxation as the appellant; and to the further fact that each of these two banks had elected, as provided in Section 8 of the act, to request the Bergen County Tax Board, to assess to and in the name of the bank the entire taxable value of all its shares of stock, which consequently included the shares owned by the appellant.

The appellant had no means of preventing the two Bergen County banks from being taxed upon the whole of their respective capital stocks, surplus and undivided profits. The Bergen County Board complied with the request of the two Bergen County banks, as it was required to do by the act. Resolutions of the Boards of Directors of the two Bergen County banks, requesting the Tax Board to assess their shares in a lump against the bank, bound all their individual shareholders objecting to such resolution of the directors, consequently the appellant, itself a bank, was bound by the resolutions of the two other banks, in which it was an individual stockholder.

But as these shares of the two Bergen County banks were certainly a part of its personal property owned by it, whose value just as certainly in fact entered into the taxing value of its own shares, and as Section 4 of the act provides that the tax upon its own shares shall be in lieu of all other taxes upon any such personal property owned by it, "*the value of which enters into the taxing value of such shares,*" viz., its own shares; unless this provision of Section 4 is to be contravened, the appellant is entitled to some kind of relief which shall exempt it from taxation upon its shares in the two other banks. Right here lies the difficulty in the statute, because while plainly providing that personal property which enters into the taxing value of the shares, is exempt from taxation, it furnishes no form of remedy in case that provision is violated. The situation was, therefore, we submit, eminently a proper subject for a writ of certiorari.

The object of the Bank Stock Tax Act (P. L. 1914, p. 141) seems to be to assimilate the tax upon a bank to the tax upon an individual, although by a somewhat different method, so as not to discriminate against national banks.

Commercial Trust Co. v. Hudson Board of Taxation, 86 N. J. Law, 424.

The Tax Act of 1903 (P. L. 1903, p. 394, Sec. 2) provides that "*all property* real and *personal* within the jurisdiction of this State not expressly exempted by this act or excluded from its operation, shall be subject to annual taxation at its true value under this act"; but any person assessed upon his personal property is entitled to have deducted his debts from the valuation of his personal

property (P. L. 1903, p. 401, Sec. 13). *Every item* of personal property that he owns except that exempted by the act, *is taxed*, subject, however, to the deduction of his debts.

Similarly the Bank Tax Act by the method of taxation prescribed by it, taxes *every item* of personal property owned by the bank *without any exception at all*, but allows the bank to deduct its debts, that is, its debts to its depositors and others, from the valuation of said personal property. This is the precise effect of taxing it upon its capital, surplus and undivided profits. *Every item of its personal property is therefore taxed*, and in the case of the appellant, its shares in the Bergen County banks are part of the personal property thus taxed, said tax, under the provisions of the act, to be "in lieu of all other state, county or local taxation upon any personal property held or owned by said bank, the value of which enters into the taxing value of such shares of stock," and yet when the Bergen County banks themselves pay the tax upon the same stock, double taxation, prohibited by the *Commercial Trust Company* case, necessarily ensues, and if, on account of the indirect manner in which it ensues, it be deemed not to ensue at all, the provision that the tax upon the shares in the Bergen County banks held by the appellant, and taxed directly upon it by taxing it upon its capital, surplus and undivided profits, shall be in lieu of all other taxation upon said stock, is certainly violated.

To hold, as by the per curiam opinion of the Supreme Court, that it is not entitled to such exemption unless it affirmatively appears that the shares in the other banks were investments of its capital, surplus and undivided profits, is to concede in ef-

fect that it is entitled to exemption if it does so affirmatively appear.

We submit that the foregoing argument shows that only by a confusion of thought can any particular piece of property owned by a bank be considered as forming part of its capital or surplus to the exclusion of any or all of its remaining property. So that the decision of the case comes back to the question stated in an earlier part of this brief, as to the possibility of segregating the various securities and properties of a bank, so as to be able to determine that a particular parcel or piece belongs to a particular group, and the opinion of Justice SWAYZE in the *Camden* case (84 *N. J. Law*, 37) is authority for the proposition that the idea that such a thing is possible is fallacious.

Considering the matter from a practical standpoint, it will be seen how futile is the result produced by the decision of the Supreme Court so far as future taxes upon these shares in the Bergen County banks are concerned, for according to that decision, all that it will be necessary to do to obtain the desired exemption from taxation will be for the Board of Directors to go through the empty form of passing a resolution to the effect that these particular shares of bank stock shall be deemed to be investments of part of the capital or surplus or undivided profits of the appellant, and to insert in the annual statement of the amount of its capital, surplus and undivided profits required to be filed with the Passaic County Board of Taxation, a statement to the effect that these particular shares are included among the investments of such capital, surplus and undivided profits.

It is respectfully submitted that the futility of the result in regard to future taxes produced by

the decision of the Supreme Court, is an indication that such result is due to a mistaken view of the case.

We therefore respectfully submit that for the reasons attempted to be advanced in this brief, the unpaid portion of the tax \$787.24, and the assessment upon which it is based, should be set aside. That part of the tax represents, as shown in an earlier portion of the brief, the exact amount taxed by the Bergen County Board of Taxation upon the shares held by the appellant in the two Bergen County banks.

Respectfully submitted,

HUMPHREYS & SUMNER,
Counsel with the Appellant.

New Jersey Court of Errors & Appeals

PEOPLE'S BANK AND TRUST
COMPANY,

Prosecutor-Appellant,

vs.

PASSAIC COUNTY BOARD OF TAX-
ATION,

Defendant-Respondent.

In Certiorari.

*On Appeal from
Supreme Court.*

PEOPLES BANK AND TRUST
COMPANY,

Prosecutor-Appellant,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,

Defendant-Respondent.

*Brief for Re-
spondents.*

Brief Statement of Facts

This is an appeal from a judgment of the Supreme Court affirming an assessment of taxes for the year 1914 levied by the defendant-respondent, The Passaic County Board of Taxation, against the prosecutor-appellant under the provisions of Chapter 90, laws of 1914, regulating the taxation of bank stock, and dismissing two writs of certiorari issued to bring that assessment up for review. The opinion of the Supreme Court affirming the assessment and dismissing the writs

is set out in full in the State of the Case, page 52.

Pursuant to Chapter 90, laws of 1914, the defendant, The Passaic County Board of Taxation, made an assessment for taxes for the year 1914 against the shares of capital stock of the prosecutor, The People's Bank and Trust Company, and took as a basis for such assessment a statement made by the prosecutor (State of the Case, p. 6, l. 25), dated June 13th, 1914, showing that on May 20th, 1914, the books of the prosecutor showed that its capital was Two hundred thousand dollars (\$200,000), its surplus Two hundred thousand dollars (\$200,000), and its undivided profits Seventy-four thousand six hundred eleven dollars and forty-five cents (\$74,611.45), making a total of Four hundred and seventy-four thousand, six hundred eleven dollars and forty-five cents (\$474,611.45), and that the assessed value of its real estate was Seventy-two thousand eight hundred and fifty dollars (\$72,850).

The defendant, The Passaic County Board of Taxation, deducted the value of the real estate (\$72,850) from the total of the capital, surplus and undivided profits (\$474,611.45), assessed the stock of the prosecutor at Four hundred one thousand seven hundred sixty-one dollars and forty-five cents (\$401,761.45), and levied a tax against it of three-quarters of one per cent. ($3/4$ of 1%), which tax amounted to Three thousand thirteen dollars and twenty-one cents (\$3,013.21) (State of the Case, p. 12).

The whole tax was assessed against the prosecutor at its request made by a resolution of April 8th, 1914 (State of the Case, p. 5, l. 15).

The prosecutor afterward, by petition dated December 17th, 1914, and addressed to the defendant, The Passaic County Board of Taxation (State of the Case, pp. 13 *et seq.*), complained against said assessment as being "excessive and contrary to law and the provisions of the statute on that behalf provided," for three reasons:

(a) Because said assessment included the assessed value of real estate on Van Houten Avenue, Passaic, belonging to the prosecutor, and valued at Four thousand three hundred and fifty dollars (\$4,350).

(b) Because said assessment included the assessed value of one hundred and fifty-one (151) shares of the capital stock of the Carlstadt National Bank, which had then previously been assessed by the Bergen County Board of Taxation at Thirty-three thousand four hundred and forty-one dollars and forty-three cents (\$33,441.43), and a tax imposed thereon at the rate of three-quarters of one per cent., amounting to Two hundred and fifty dollars and eighty-one cents (\$250.81).

(c) Because said assessment included the assessed value of five hundred and fifty-three (553) shares of the capital stock of the Rutherford Trust Company which had then previously been assessed by the Bergen County Board of Taxation at Seventy-one thousand five hundred twenty-two dollars and ninety-two cents (\$71,522.92), and a tax imposed thereon at the rate of three-quarters of one per cent., amounting to Five hundred thirty-six dollars and forty-two cents (\$536.42).

Upon said petition the defendant, The Passaic County Board of Taxation, revised its said assessment, by deducting from the assessment previously made the assessed value of the real estate

on Van Houten Avenue, Passaic, amounting to Four thousand three hundred and fifty dollars (\$4,350), and remitting from the tax previously imposed the sum of Thirty-two dollars and sixty-two cents (\$32.62) (State of the Case, p. 28, l. 15). The remainder of the prosecutor's petition was dismissed (State of the Case, p. 28, l. 23).

The total tax levied by the defendant, the Passaic County Board of Taxation, against the shares of capital stock of the prosecutor was Two thousand nine hundred and eighty dollars and fifty-nine cents (\$2,980.59), being three-quarters of one per cent. on Three hundred and ninety-seven thousand, four hundred eleven dollars and forty-five cents (\$397,411.45) (State of the Case, p. 29, l. 39).

It is this assessment and tax that the prosecutor seeks to have reviewed.

All of said tax excepting Seven hundred and eighty-seven dollars and twenty-four cents (\$787.24), has been paid by the prosecutor (State of the Case, p. 36, l. 30).

On the twentieth day of May, 1914, the assets and liabilities of the prosecutor were as follows (State of the Case, p. 47, l. 21):

ASSETS.

Investments, Loans and Discounts,	\$1,467,844.63
Stocks and Bonds,	715,764.51
Mortgages,	272,636.77
Bank Building,	72,850.
Expense,	15,259.84
Interest Deposits,	15,797.27
Dividends,	10,000.
Cash and in Banks,	941,137.74
	<hr/>
	\$3,511,290.76

LIABILITIES.

Capital,	\$200,000.
Surplus,	200,000.
Undivided Profits,	74,611.45
Earnings,	42,438.03
Deposits and Due Banks,	2,994,241.28
	<hr/>
	\$3,511,290.76

The question involved in this suit is:

Does the tax imposed by the defendant, The Passaic County Board of Taxation, operate as a double taxation as to the shares of the capital stock of the Carlstadt National Bank and Rutherford Trust Company, owned by the prosecutor on the twentieth day of May, nineteen hundred and fourteen, the said Carlstadt National Bank and said Rutherford Trust Company, respectively, having paid the tax levied against them, on account of said stock, by the Bergen County Board of Taxation?

Argument

The question in this proceeding is one of fact. Section 4 of the act expressly provides against double taxation:

“The objection that the rule is not uniform because double taxation results where one bank holds shares in another seems untenable, in view of the provision of Section 4 that the tax imposed shall be in lieu of all other state, county, or local taxation upon such shares ‘or upon any personal property held or owned by banks, banking

associations or trust companies, the value of which enters into the taxing value of such shares of stock.' The evident intent is to tax but once."

Commercial Trust Co. v. Hudson County Board of Taxation, 92 *Atlantic*, p. 266.

"As to double taxation which also is not a constitutional question we think that the statute under review by the last clause of its fourth section expressly provides against such a result."

Commercial Trust Co. v. Hudson County Board of Taxation, 92 *Atlantic*, p. 801.

Section 2 of the act, however, sets forth the method of ascertaining the value of each share of stock of each bank and therein expressly provides that "no deduction or exemption shall be allowed or made from the value determined as herein provided."

The Legislature in framing the act under consideration had in view a complete scheme for determining the value of shares of stock of a bank and of levying a tax thereon and in that scheme sections 2 and 4 of the act are so closely related as to be inseparable. Section 2 by itself is clear and simple.

"2. The value of each share of stock of each bank, banking association, or trust company, shall be ascertained and determined by adding together the amount of the capital, surplus and undivided profits of such bank, banking association, or trust company, and deducting therefrom the assessed value of the real property of such

bank, banking association or trust company, and by dividing the result by the number of outstanding shares of such bank, banking association or trust company. No deduction or exemption shall be allowed or made from the value determined as herein provided."

In connection with section 4, section 2 is equally clear and simple and in spite of the ingenious argument of counsel for the prosecutor, sections 2 and 4 are in complete harmony. Section 4, after fixing the rate of tax upon the value as ascertained under section 2, provides "and the owners of such stock shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever." This is so whether the tax is paid by the bank or by the individual. The payment of the tax by the bank is nothing more nor less than the advancement by the bank to the stockholder of so much of his dividend as will be sufficient to pay the tax and in no way alters the situation. If the bank does pay the tax in the first instance it ultimately comes out of the pocket of the share owner.

Section 4 then provides that said tax (that is to say, the tax levied under this act) shall be in lieu of all other (that is to say other than the tax levied under this act) state, county or local taxation upon such shares or upon any personal property held or owned by banks, banking associations or trust companies, the value of which enters into the taxing value of such shares of stock (that is to say the value as ascertained under the provisions of section 2 of the act).

In other words, to support a claim for exemption, it must appear that the property taxed under this act, for which an exemption is claimed, is an actual part of the bank's capital, surplus and undivided profits and that it is also subjected to some state, county or local tax other than that authorized under the act. So far as the real property of the bank, which is specifically exempted by this act, is concerned, this is so, it being a "slow asset," a permanent investment of the bank's own funds and subject to a local tax which if interfered with would modify or confuse the entire taxing system of the state.

The prosecutor makes no attempt to show that the shares of stock of the Carlstadt National Bank and of the Rutherford Trust Company owned by it are subject to any different tax than that authorized under this act which leads us to ask:

Are the shares of stock of the Carlstadt National Bank and the Rutherford Trust Company owned by the prosecutor a part of its capital, surplus and undivided profits?

From the statement of the financial condition of the prosecutor on May 20th, 1914, which is hereinabove set forth in full, and to the correctness of which the prosecutor has stipulated, in this case (State of the Case, p. 47), we find that the prosecutor made no separation of its investments of capital, surplus and undivided profits from its investments of other funds in its possession. When the prosecutor asks this Court to reduce the assessment for the reasons it advances, it evidently desires this Court to make such a separation by deciding that the prosecutor's investments in the capital stock of the Carl-

stadt National Bank and of the Rutherford Trust Company are investments of its capital, surplus and undivided profits, and not investments of deposits or other moneys under its control.

It is obvious that this Court can do no such thing. No Court can make facts .

To show the fallacy of the prosecutor's contention it is necessary to make but one calculation. Take the item "Stocks and bonds, \$715,764.51," on the prosecutor's financial statement, and deduct therefrom the assessed valuation of the prosecutor's shares of capital stock as found by the defendant, The Passaic County Board of Taxation (\$474,611.45), and we find that on May 20th, 1914, the prosecutor owned stocks and bonds to the amount of \$241,153.06 which were not assessed at all. If we assume that included in this last amount is the value of the prosecutor's investment in the shares of capital stock of the Carlstadt National Bank and of the Rutherford Trust Company (\$104,964.35), we find that the prosecutor was, on that day, the owner of \$136,188.71 in value of stocks and bonds, which were not assessed or taxed, and which the prosecutor does not claim to be exempt from taxation under this act.

This calculation does not take into account other property of the prosecutor which is not exempt and which might well be a part of the taxable value of its shares of capital stock, viz., "Investments, loans and discounts, \$1,467,844.63" or "Cash and in banks, \$941,137.74."

"It is quite possible that the value of shares of a national bank may be in part the reflection of the value of exempt se-

curities held by the bank, but it is also possible that such exempt securities may be set off against its deposits, and regarded as investments thereof, while the capital of the bank itself may be regarded as invested in securities that would be taxable but for the peculiar method of taxation prescribed by the national banking act."

Commercial Trust Co. v. Hudson County Board of Taxation, 92 *Atlantic*, p. 268.

It appears from the financial statement of the prosecutor that if the defendant, The Passaic County Board of Taxation, erred in assessing the value of the prosecutor's shares of capital stock, it erred by making the assessment too low; by not including in such assessment the item which appears in the prosecutor's statement as "Earnings, \$42,438.03," and about which the prosecutor said nothing when it made its report to the defendant, The Passaic County Board of Taxation, under the law. This amount, taxed at $\frac{3}{4}$ of 1%, would have increased the prosecutor's tax \$318.28.

These defendants therefore respectfully submit that this appeal be dismissed and that these defendants be awarded their costs to be taxed.

FREDERICK W. VAN BLARCOM,
Of Counsel with the Respondents.

INDEX.

	PAGE
Writ of Certiorari to Passaic County Board of Taxation	1
Return to Writ	3
Writ of Certiorari to Board of Chosen Free- holders of Passaic County	32
Return to Writ	34
Stipulation	37
Reasons	49
Opinion of New Jersey Supreme Court	52
Judgment in Peoples Bank and Trust Co. v. Passaic Board of Taxation	55
Judgment in Peoples Bank and Trust Co. v. Chosen Freeholders of the County of Passaic	56
Notice of Appeal	57
Grounds of Appeal	58
Stipulation Postponing Case to June Term	62

32

33

34

35

36

37

38

39

40

41

42

43

44

New Jersey Supreme Court

PEOPLES BANK AND TRUST COM-
PANY,

Prosecutor,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,

Defendant.

10

In Certiorari.

I allow this writ. Let it be sealed.

20

JAMES F. MINTURN,
Justice Supreme Court.

Writ of Certiorari.

NEW JERSEY, TO WIT:

STATE OF NEW JERSEY

to

30

The Passaic County Board of Taxation,
Greeting:

(L. S.) We being willing, for certain reasons,
to be certified of a certain judgment and
proceedings given and made before you
on the twenty-second day of January, Nineteen
Hundred and Fifteen, correcting the assessment
made upon the property of the Peoples Bank and
Trust Company of the City of Passaic for the year
Nineteen Hundred and Fourteen, pursuant to
Chapter 90, Laws of 1914.

40

Writ of Certiorari.

We do command you, that the said judgment and proceedings aforesaid, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, on the twelfth day of March 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, Esquire, Chief Justice of our Supreme Court, at Trenton, this twentieth day of February, Nineteen Hundred and Fifteen.

20

WILLIAM C. GEBHARDT,
Clerk.

HUMPHREYS & SUMNER,
Attorneys.

A true copy of original.

WM. C. GEBHARDT,
Clerk.

30

40

Return to Writ.

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

We, the Passaic County Board of Taxation, in obedience to the command of the writ hereto annexed, to us directed, do hereby certify and send to you, the said Justices, a certain judgment and proceedings given and made before us on the twenty-second day of January, Nineteen Hundred and Fifteen, correcting the assessment upon the property of Peoples Bank and Trust Company of the City of Passaic for the year Nineteen Hundred and Fourteen, pursuant to Chapter 90, Laws of 1914, with all things touching and concerning the same as fully and entirely as by the said writ we are commanded, as appears by the schedule hereunder written.

10

20

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Passaic County Board of Taxation this eleventh day of March, Nineteen Hundred and Fifteen.

WM. L. DILL,
President of the Passaic County
Board of Taxation.

(Seal)

30

May 18, 1914.

To the President of the Peoples Bank & Trust Co.,
185 Main Avenue,
Passaic, N. J.

Dear Sir:

Please file with the Secretary of this Board, on or before the first day of July next, a true state-

40

Return to Writ.

10 ment, under the oath of the President, Cashier or Treasurer of your institution, setting forth its name and principal place of business, the names, residences and total number of its stockholders and the number of shares held by each, the amount of capital, surplus and undivided profits, as the same are indicated by the books of the company upon the twentieth day of May of this year, and the assessed value of its real estate for the preceding year.

Blanks are enclosed on which this statement should be made.

20 The law also requires that a duplicate of this statement shall be filed at the same time with the Commissioner of Banking and Insurance, to remain in his office as a public record.

Any bank or trust company which has filed with the County Board of Taxation, at least thirty days before May twentieth, a certified copy of a resolution of its Board of Directors, agreeing to pay the taxes levied against its shares, as provided in Section 8 of the Bank Stock Act, is not required to furnish a list of stockholders.

Respectfully,

30

PASSAIC COUNTY BOARD OF TAXATION,
By Wm. L. Dill,
President.

June 15, 1914.

To the Secretary of the County Board of Taxation,
Paterson, N. J.

Dear Sir:

40

I hand you herewith, pursuant to Chapter 90,

Return to Writ.

Laws of 1914, a return of the capital stock, surplus and undivided profits, as of May 20, 1914.

Very respectfully,

B. W. SPENCER, 10
President.

Copy.

RESOLVED, that pursuant to Section 8 of the New Banking Law, which reads as follows:

"8. If any bank, banking association or trust company shall by resolution of its board of directors filed as hereinafter provided, request the county board of taxation to assess to and in the name of the bank, banking association or trust company the entire taxable value of all the shares of stock therein, instead of assessing the same to and in the name of the individual shareholders owning the same, and if such bank, banking association or trust company shall promise and agree that it will pay the taxes levied against such shares at the time when due and payable, then the total amount of capital, surplus and undivided profits shall be assessed to and in the name of the bank, banking association or trust company, and no list of shareholders shall be required * * *. A certified copy of any such resolution shall be filed with the county board of taxation of the county at least thirty days before the twentieth day of May in any year and an additional copy shall be filed at the same time with the Commissioner of Banking and Insurance; such resolution shall be binding and in force until revoked; notice of revocation to be valid must be 40

Return to Writ.

similarly filed at least thirty days before assessment day in any year,"

10 the Peoples Bank and Trust Company does hereby request the County Board of Taxation to assess the capital stock in its name as provided in said act.

Adopted at a meeting of the Board of Directors of the Peoples Bank and Trust Company, held April 8th, 1914.

Attest:

F. TERHUNE,
Assistant Secretary.

20 To the County Board of Taxation,
Paterson, N. J.

Copy.

30 Return of Peoples Bank & Trust Company to the County Board of Taxation of the County of Passaic County, for the assessment of taxes for 1914 against its shares of capital stock under Chapter 90, Laws 1914:

- | | |
|--|---------------------|
| 1. Name: Peoples Bank & Trust Company. | |
| 2. Principal place of business: City of Passaic. | |
| 3. Capital as shown by its books May 20, 1914, | \$200,000 |
| 4. Surplus as shown by its books May 20, 1914, | 200,000 |
| 5. Undivided profits as shown by its books May 20, 1914, | 74,611.45 |
| 40 Total, | <u>\$474,611.45</u> |
| 6. Assessed value of its real estate, | 72,850.00 |

Return to Writ.

"The assessed valuation of the real estate of the Corporation for 1914 has not yet been fixed by the local assessors and cannot be now given. The assessed valuation of the real estate for 1913 was \$72,850. If the real estate assessed valuation for 1914 is in excess of that for 1913, it is claimed on behalf of the stockholders that the amount thereof should be deducted in fixing the value of their shares of stock for taxation for this year." 10

7. Total number of shares of stock outstanding May 20, 1914, 2,000.

8. Total number of stockholders May 20, 19xx, xxx

9. Names and residences of its stockholders and the number of shares held by each May 20, 19xx, xxx 20

This corporation has duly filed a resolution requesting the assessment of the entire taxable value of its shares of stock to the corporation.

PEOPLES BANK & TRUST COMPANY,
Bird W. Spencer,
President.

June 13, 1914.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss: 30

BIRD W. SPENCER, being duly sworn, on his oath says that he is the President of the Peoples Bank & Trust Company, the corporation making the foregoing return; that said return is true to the best of his knowledge and belief.

BIRD W. SPENCER.

Sworn and subscribed before me
this 15th day of June, 1914. 40

W. E. V. TUNISON,
Commissioner of Deeds of N. J.

Return to Writ.

**Excerpts from Minutes of Meeting Held
by the Passaic County Board of
Taxation on August 1, 1914.**

10 Pursuant to Section 6, of Chapter 90, of the Act
entitled "An Act to regulate the assessment and
collection of taxes upon the shares of the capital
stock of banks, banking associations and trust
companies incorporated under the laws of the
United States, or of this State, and engaged in
business within this State," approved March 31st,
1914, the Passaic County Board of Taxation met at
its office at the Passaic County Court House, Pat-
erson, N. J., Saturday morning, August 1st, 1914,
at 10 o'clock A. M.

20 Present: Commissioners Dill and Bateman.
President Dill presiding.
Commissioner Toole was unable to be present
on account of illness.
The minutes of the meeting held July 27th, 1914,
were read and approved.

.....
.....

30 Inasmuch as the Annual Meeting of the Passaic
County Tax Board is held on the first Tuesday of
August in each year, thereby automatically fixing
the date of the Annual Meeting of the Board for
the year 1914 as of Tuesday, August 4th, 1914, on
motion by Commissioner Bateman, the considera-
tion of the assessment upon the shares of stock of
each bank, banking association and trust company
within the purview of the act above cited, was laid
over until Tuesday, August 4th, 1914.

40 On motion by Commissioner Bateman, the Board
thereupon adjourned to meet at the Court House,

Return to Writ.

Paterson, N. J., on Tuesday morning, August 4th, 1914, at 10 o'clock.

BERNARD L. STAFFORD,
Secretary.

10

**Excerpts from Minutes of Meeting Held
by the Passaic County Board of
Taxation on August 4, 1914.**

Pursuant to Section 4, Chapter 120, of the Laws of 1906, entitled "A Supplement to an act entitled 'An act for the assessment and collection of Taxes,'" approved April 8th, 1903, the Passaic County Board of Taxation met in annual meeting this day at 10 o'clock in the forenoon at the Court House of said County with the several assessors or officers charged with the assessment of taxes in the various taxing districts in Passaic County.

20

Present: Commissioners Dill and Bateman, Assessors Maurice J. Angland, representing the First and Second Wards of the City of Paterson; Thomas H. Risk, representing the Third and Fourth Wards, City of Paterson; Franklin Boyle, representing the Fifth and Eleventh Wards, City of Paterson; Timothy Delaney, representing the Sixth, Eighth and Tenth Wards, City of Paterson; John Colfer, representing the Seventh and Ninth Wards, City of Paterson; James T. Boyle, representing the First Ward, City of Passaic; John Woods, representing the Second Ward, City of Passaic; Louis Lipchitz, representing the Third Ward, City of Passaic; Aaron Witte, representing the Fourth Ward, City of Passaic; Richard Berry, representing Acquackanonk Township; William M. Zelif, representing

30

40

Return to Writ.

10 Little Falls Township; Thomas D. Ryerson, representing Wayne Township; John M. Weaver, representing West Milford Township; Joseph C. Beam, representing Pompton Township; William Buschmann, Jr., representing Haledon Borough; Fritz Kern, representing Hawthorne Borough; George W. Mickens, representing Pompton Lakes Borough; Peter Hofstra, representing Prospect Park Borough; Henry R. Crews, representing Totowa Borough; David Smith, representing West Paterson Borough.

President Dill presiding.

20 The Board announced the result of its findings in the matter of the assessment and collection of taxes upon the shares of the capital stock of banks, banking associations and trust companies incorporated under the Laws of the United States, or of this State, or engaged in business in this State, *per* 30 *se* Section 6, Chapter 90, of the Laws of 1914, approved March 31, 1914, which were ascertained from an inspection of the statements filed and other sources of information open to the Board, the names and places of business of all banks, banking associations and trust companies; the number of shares of capital stock of each issued and outstanding; the aggregate amount of the capital surplus and undivided profits of each; the assessed value of its real property; the true value of all the capital stock of each issued and outstanding and the true value of a single share of each, determined in accordance with the provisions of Section 2 of the act aforesaid; the amount of tax levied upon the capital stock of each at the uniform rate. The amount thus ascertained and shown by the annexed table was determined upon as the tax to be levied 40 and paid in accordance with the provisions of the act aforesaid, subject to review, correction and

Return to Writ.

equalization, pursuant to the act entitled "An act for the assessment and collection of taxes," approved April 8th, 1903, and the supplements thereto and amendments thereof, except as such act may be modified by the provisions of Chapter 90, of the Laws of 1914, or are inconsistent therewith. The Board thereupon estimated the amount of such taxes which will be payable to the County and to any taxing district therein, under the provisions of said act, and it was ordered, on motion by Commissioner Bateman, that the table of aggregates be transmitted to the County Collector of the County of Passaic together with the tabulations of the tax assessed and levied as above.

10

.....

20

There being no further business the Board adjourned until two o'clock of the same day.

BERNARD L. STAFFORD,
 Secretary.

30

.....

40

EXCERPT OF TABLE OF AGGREGATES REFERRED TO IN MINUTES OF MEETING OF PASSAIC COUNTY
BOARD OF TAXATION HELD AUGUST 4TH, 1914.

APPORTIONMENT OF TAXES.

Name of Bank.	Value of Real Estate.	Total Tax- able Value.	Number Assessed of Shares.	Value Per Share.	Amount of Tax.	County of Passaic.	City of Paterson.	City of Passaic.	Township of Little Falls.
Peoples Bank & Trust Company.									
Capital	\$200,000.00								
Surplus	200,000.00								
Undivided Profits ...	74,611.45								
Total	\$474,611.45	\$72,850.00	\$401,761.45	2,000	\$200.88	\$3,013.21	\$1,506.60	\$1,506.60

*Return to Writ.***Petition.**

IN THE MATTER

OF

The Application of the PEOPLES
BANK AND TRUST COMPANY
of the City of Passaic, N. J.,
for the Reduction of State
Tax on its Bank Stock, as
fixed by Passaic County
Board of Taxation for the
Year 1914.

10

20

To the Passaic County Board of Taxation:

Your petitioner, Peoples Bank and Trust Company, a corporation incorporated under the Laws of the State of New Jersey, having its principal place of business at No. 187 Main Avenue, in the City of Passaic, in the County of Passaic and State of New Jersey, respectfully shows in the manner following, that is to say:

(1) That on the twentieth day of May, Nineteen Hundred and Fourteen (the date as of which the assessment for the tax on its bank stock hereinafter referred to was made) your petitioner had a capital stock of Two Hundred Thousand Dollars, a surplus of Two Hundred Thousand Dollars and undivided profits amounting to the further sum of Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents.

30

(2) That the entire taxable value of all the said shares of capital stock of your petitioner has

40

Return to Writ.

been assessed to and in the name of your petitioner, as set forth in a tax bill which has been rendered to your petitioner, and of which the following is a copy:

10 "Paterson, N. J., Dec. 15, 1914

Peoples Bank & Trust Company, Passaic,
To the Board of Chosen Freeholders of the
County of Passaic, Dr.

To State Tax on Bank Stock as fixed by	
Co. Tax Board,	\$401,761.45
$\frac{3}{4}$ of 1%,	\$3,013.21"

20 at which assessment your petitioner is aggrieved because the said assessment is excessive and contrary to law and the provisions of the statute in that behalf provided.

30 (3) That on the fifteenth day of June, Nineteen Hundred and Fourteen, the chief fiscal officer of your petitioner filed with the Secretary of the Board of Taxation of the County of Passaic a true statement under the oath of its President setting forth its name and principal place of business, the names, residences and total number of its stockholders and the number of shares held by each, the amount of its capital, surplus and undivided profits as the same were indicated upon the books of the Company on the twentieth day of May, Nineteen Hundred and Fourteen, and the assessed value of its real property. That a duplicate of said statement was filed at the same time with the Commissioner of Banking and Insurance to remain in his office as a public record. In addition to such report, there was kept at the principal place of business of your petitioner a full and correct list of the

40

Return to Writ.

names and residences of all stockholders thereof and of the number of shares held by each, which said lists were subject to the inspection of the Board of Taxation of the County of Passaic at all times during business hours.

(4) That by a resolution of your petitioner's Board of Directors, passed on the eighth day of April, Nineteen Hundred and Fourteen, your petitioner requested the Passaic County Board of Taxation to assess to and in the name of your petitioner the entire taxable value of all its shares of stock instead of assessing the same to and in the name of the individual shareholders owning the same, and promised and agreed that it would pay the taxes levied against such shares at the time when due and payable. That a certified copy of said resolution was filed with the County Board of Taxation of the County of Passaic on the twelfth day of April, Nineteen Hundred and Fourteen, and an additional copy was filed at the same time with the Commissioner of Banking and Insurance, and such resolution is still in force and unrevoked.

(5) That by its report filed on the fifteenth day of June, Nineteen Hundred and Fourteen, as above mentioned, it appeared (as the facts were) that the amount of the capital, surplus and undivided profits of your petitioner, as the same were indicated by the books of your petitioner upon the twentieth day of May, Nineteen Hundred and Fourteen, amounted to the sum of Four Hundred and Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents (\$474,611.45), made up as set forth in the first paragraph hereof; and that the assessed value of its real property in the County of Passaic amounted to the sum of Sev-

10

20

30

40

Return to Writ.

10 enty-seven Thousand, Two Hundred Dollars (\$77,200) made up as follows: to wit, the sum of Seventy-two Thousand, Eight Hundred and Fifty Dollars (\$72,850) the assessed value of its bank building and land, Block 147, Lot 12, Main Avenue, in the City of Passaic, and the sum of Four Thousand, Three Hundred and Fifty Dollars (\$4,350) the assessed value of land and building belonging to it on Van Houten Avenue, viz., Block 264, Lot 28, making together the said sum of Seventy-seven Thousand, Two Hundred Dollars (\$77,200).

20 (6) That in fixing the assessment upon your petitioner's said capital stock, your Honorable Board has taken your petitioner's return showing said sum of Four Hundred and Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents (\$474,611.45) as the true value on May twentieth, Nineteen Hundred and Fourteen, of your petitioner's capital stock, surplus and undivided profits, and has deducted therefrom the assessed value of its bank building, to wit, the said sum of Seventy-two Thousand, Eight Hundred and Fifty Dollars (\$72,850), making the amount of the assessment as shown by said tax bill the sum of Four Hundred and One Thousand, Seven Hundred and Sixty-one Dollars and Forty-five Cents (\$401,761.45), but your Honorable Board has omitted to also deduct from said assessment the said sum of Four Thousand, Three Hundred and Fifty Dollars (\$4,350), representing the true value of said Van Houten Avenue property owned by your petitioner, which omission is one of the grievances of which your petitioner now respectfully complains.

40 (7) That said assessment so imposed by your Honorable Board also includes the assessed value

Return to Writ.

of one hundred and fifty-one (151) shares of the capital stock of the Carlstadt National Bank and five hundred and fifty-three (553) shares of the capital stock of the Rutherford Trust Company, all of which shares were owned by your petitioner on the twentieth day of May, Nineteen Hundred and Fourteen, and the true value of which were included in your petitioner's return showing the said sum of Four Hundred and Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents (\$474,611.45) as the true value on that day of its capital, surplus and undivided profits. 10

(8) That there has already been assessed by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey of 1914, an assessment for bank stock tax upon all the capital stock, surplus and undivided profits of the Carlstadt National Bank and in the name of the Carlstadt National Bank, of which capital stock there were altogether three hundred (300) shares. That said capital stock, surplus and undivided profits of the Carlstadt National Bank were so assessed by the said Bergen County Board of Taxation at the sum of Sixty-six Thousand, Four Hundred and Thirty-nine Dollars and Ninety-three Cents (\$66,439.93) and a tax was imposed thereon at the rate of three-quarters of one per cent., amounting to the sum of Four Hundred and Ninety-eight Dollars and Thirty Cents (\$498.30). That each individual share of said Carlstadt National Bank was thus assessed at the sum of \$221,466.43, making the assessment upon your petitioner's one hundred and fifty-one (151) shares in said Carlstadt National Bank the sum of Thirty-three Thousand, Four Hundred and Forty-one Dollars and Forty-three Cents (\$33,441.43), taxed at three-quarters of one 20 30 40

Return to Writ.

per cent., the tax thus amounting to the sum of Two Hundred and Fifty Dollars and Eighty-one Cents (\$250.81).

10 (9) That there has also already been assessed by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey of 1914, an assessment for bank stock tax upon all the capital stock, surplus and undivided profits of the Rutherford Trust Company and in the name of the Rutherford Trust Company, of which capital stock there were altogether one thousand (1,000) shares. That said capital stock, surplus and undivided profits of the Rutherford Trust Company were so assessed by the said Bergen County Board of Taxation at the sum of One Hundred and Twenty-nine
20 Thousand, Three Hundred and Thirty-six Dollars and Twenty Cents (\$129,336.20), and a tax was imposed thereon at the rate of three-quarters of one per cent., amounting to the sum of Nine Hundred and Seventy Dollars and Two Cents (\$970.02). That each individual share of said Rutherford Trust Company was thus assessed at the sum of \$129.3362, making the assessment upon your petitioner's five hundred and fifty-three (553)
30 shares in said Rutherford Trust Company the sum of Seventy-one Thousand, Five Hundred and Twenty-two Dollars and Ninety-two Cents (\$71,522.92), taxed at three-quarters of one per cent., the tax thus amounting to the sum of Five Hundred and Thirty-six Dollars and Forty-two Cents (\$536.42).

(10) That unless the amounts assessed and taxed respectively in the names of the Carlstadt
40 National Bank and the Rutherford Trust Company respectively, on the shares of stock of said corpora-

Return to Writ.

tions held by your petitioner as aforesaid on May twentieth, Nineteen Hundred and Fourteen, be deducted from the amount of the assessment now sought to be reduced by your petitioner, the result will be that the said shares of stock will be twice taxed, contrary to the intent of Chapter 90 of the Laws of New Jersey, Session of 1914, as interpreted by the Supreme Court of New Jersey. 10

(11) Your petitioner has therefore not paid the said tax levied upon it for the year Nineteen Hundred and Fourteen, and prays that the said assessment of Four Hundred and One Thousand, Seven Hundred and Sixty-one Dollars and Forty-five Cents (\$401,761.45) for the year Nineteen Hundred and Fourteen, be reduced by deducting therefrom the following sums, to wit: 20

(1) The sum of Four Thousand, Three Hundred and Fifty Dollars (\$4,350), the assessed valuation on its building and land on Van Houten Avenue in the City of Passaic.

(2) The sum of Thirty-three Thousand, Four Hundred and Forty-one Dollars and Forty-three Cents (\$33,441.43), the assessment laid by the Bergen County Board of Taxation on the Carlstadt National Bank and in its name for the year Nineteen Hundred and Fourteen, in respect of your petitioner's one hundred and fifty-one (151) shares of the capital stock of the said Carlstadt National Bank, and 30

(3) The sum of Seventy-one Thousand, Five Hundred and Twenty-two Dollars and Ninety-two Cents (\$71,522.92), the assessment laid by the Bergen County Board of Taxation for the year Nine- 40

*Return to Writ.***Copy.**

December 22, 1914.

Messrs. Humphreys & Sumner,
Paterson, New Jersey.

10

Gentlemen:

In the matter of the application of the Peoples Bank & Trust Company of the City of Passaic for the reduction of State Tax on its bank stock as fixed by the Passaic County Board of Taxation for the year 1914, we beg to advise that we will be very glad to hear you on the above matter on Wednesday, January 6th, 1915, at ten o'clock A. M., at our office in the Court House, Paterson, New Jersey.

20

Yours very truly,

WM. L. DILL,
President.

30

40

Return to Writ.

Copy.

Dec. 23rd, 1914.

10 William L. Dill, Esq.,
Pres. Passaic County Board of Taxation,
Court House, Paterson, N. J.

Dear Sir:

We beg to acknowledge receipt of your letter dated December 22nd inst., fixing Wednesday, January 6th, 1915, at ten a. m. at your office in the Court House in this City for the hearing of the appeal of the Peoples Bank & Trust Company of the City of Passaic, for a reduction in the State
20 Tax on its bank stock.

Mr. Humphreys, who desires to be heard on this appeal, is associated with Judge Collins in a number of very important water cases, the trial of which is to commence on January 5th at the Court House, and which may continue for many days thereafter.

Under these circumstances we shall ask you to be kind enough to fix some later date for the hearing than January 6th and we should prefer that
30 you should refrain from fixing any day until we advise you later on that we are free to attend to the matter.

We desire to dispose of this appeal as quickly as possible but it will be impossible for Mr. Humphreys to attend to it until after these water cases are disposed of.

Yours very truly,

HUMPHREYS & SUMNER.

40

JBH.

*Return to Writ.***Copy.**

January 20, 1915.

Messrs. Humphreys & Sumner,
Paterson, N. J.

10

Gentlemen :

In the matter of the application of the Peoples Bank and Trust Company of the City of Passaic, N. J., for the reduction of State Tax on its bank stock as fixed by this Board for the year 1914, we beg to advise that the petition which you filed on December 18th, 1914, is clearly in error in so far as the same has to do with the property of the said Peoples Bank situate on Van Houten Avenue.

The report which the bank filed with us on June 15th, 1914, did not set forth that they were the owners of certain property on Van Houten Avenue, the assessed value of which was \$4,350. The language of Section 6 of your petition therefore, wherein you say "but your Honorable Board has omitted to also deduct from said assessment the said sum of \$4,350, representing the true value of said Van Houten Avenue owned by your petitioner which omission is one of the grievances of which your petitioner now complains" implies an inference that is not *borne* out by the facts.

20

30

Reference to the assessment books of the City of Passaic shows that the property on Van Houten Avenue is still vested in the Peoples Bank & Trust Company and while your client failed to make mention of that fact in the return which they filed with this Board, your petition covers their error, and the Board will be very glad to allow a remission.

So far as the other claims for remissions embodied in the petition are concerned, we would be

40

Return to Writ.

pleased to receive your brief in the case before January 30th, and we might incidentally call your attention to the recent decisions of the Supreme Court and Court of Errors of New Jersey sustaining the constitutionality of the Bank Tax Act.

10

Very truly yours,

WM. L. DILL,
President.

Copy.

Jan. 21st, 1915.

20

William L. Dill, Esq.,
Pres. Passaic County Board of Taxation,
Court House, Paterson, N. J.

*In re Appeal of Peoples Bank & Trust Company
of Passaic.*

Dear Sir:

30 Your letter of 20th inst. is received and contents noted. We regret and apologize for the fact that an error crept into the petition in alleging that the report which the Trust Company filed with you on June 15th ult. set forth that said Trust Company was the owner of the Van Houten Avenue property. That fact, as the writer has learned since drafting the petition, was erroneously omitted from the Trust Company's report, and in view, therefore, of the error being an error on the part of the Trust Company itself, and not on the part of your Honorable Board, we recognize not only the
40 justice, but the courtesy of the Board in allowing

Return to Writ.

the remission of \$4,350, the assessed valuation on the Trust Company's building and land on Van Houten Avenue, in the City of Passaic, from the tax levied upon it for the year 1914.

As to the other remissions prayed for by the Trust Company's petition, we are, of course, fully cognizant of the decisions of the Supreme Court and Court of Errors and Appeals in the case of *Commercial Trust Company of New Jersey v. Hudson County Board of Taxation*, sustaining the constitutionality of the bank tax act of 1914. We are not, however, we submit, concerned with the judgments in that case, which were unquestionably wrong on the stipulated facts. 10

The opinions only are all you or we need concern ourselves with. Those distinctly construe the act as not contemplating double taxation. 20

We quote from Judge Swayze's opinion in the Supreme Court as follows: "The objection that the rule is not uniform because double taxation results where one bank holds shares in another, seems untenable in view of the provision of Section 4 that the tax imposed shall be in lieu of all other state, county or local taxation upon such shares, or upon any personal property held or owned by banks, banking associations or trust companies, the value of which enters into the taxing value of such shares of stock. *The evident intent is to tax but once.*" 30

We also quote from Judge Garrison's opinion in the Court of Errors and Appeals on this same question, as follows:

"As to double taxation, which also is not a constitutional question, we think that the statute under review by the last clause of its fourth section expressly provides against such a result."

Now, then, in view of both of these deliverances by the Supreme Court of New Jersey and by the 40

Return to Writ.

39 Court of Errors and Appeals of New Jersey, to
41 the effect that the intention of the act was to tax
43 but once, it remains only to see whether, if the
45 deductions asked for on behalf of the Peoples Bank
& Trust Company are disallowed, the effect will or
10 will not be that the Peoples Bank & Trust Com-
12 pany will be twice taxed.

14 It appears by the petition of the Peoples Bank &
16 Trust Company of Passaic that it is the owner of
18 151 shares of the capital stock of the Carlstadt
20 National Bank, and 553 shares of the capital stock
22 of the Rutherford Trust Company, all of which
24 shares were owned by the Peoples Bank & Trust
26 Company on May 20, 1914.

28 It also appears by said petition that there has
30 been assessed by the Bergen County Board of Tax-
32 ation, under Chapter 90 of the Laws of New Jer-
34 sey of 1914, an assessment for bank stock tax upon
36 all the capital stock, surplus and undivided profits
38 of the Carlstadt National Bank in the name of the
40 Carlstadt National Bank, and the tax called for
42 by the act has been imposed thereon.

44 It also appears by said petition that there has
46 also been assessed by the Bergen County Board of
48 Taxation, under the same act, an assessment for
30 bank stock tax upon all the capital stock, surplus
and undivided profits of the Rutherford Trust
Company in the name of the Rutherford Trust
Company, and a tax imposed thereon in pursuance
of the act.

It further appears by said petition that the Peo-
ples Bank & Trust Company in like manner has
been assessed and taxed upon the entire taxable
value of its capital stock, surplus and undivided
profits, included in which, of course, were the
40 shares of stock held by it in the Carlstadt National
Bank and the Rutherford Trust Company respec-

Return to Writ.

tively, so that the result is, so far as the Peoples Bank & Trust Company is concerned, that it is being twice taxed upon the stock which it holds in these Bergen County banks.

The 151 shares which it holds in the Carlstadt National Bank have been once taxed directly in the name of the Carlstadt National Bank, and the 553 shares which it holds in the capital stock of the Rutherford Trust Company have been also once taxed in the name of the Rutherford Trust Company, and are now again taxed a second time by taxing the Peoples Bank & Trust Company upon the whole of its capital stock, surplus and undivided profits.

Applying, therefore, Judge Swayze's reasoning, and that of Judge Garrison to the situation, to the effect that the evident intent of the statute was to tax but once, the necessary conclusion, we submit, is that there should be deducted from the assessment against the Peoples Bank & Trust Company:

(1) The sum of \$33,441.43, the assessment laid by the Bergen County Board of Taxation on the Carlstadt National Bank and in its name for the year 1914, in respect of the Trust Company's 151 shares of capital stock of the said Carlstadt National Bank; and

(2) The sum of \$71,522.92, the assessment laid by the Bergen County Board of Taxation for the year 1914 on the Rutherford Trust Company and in its name, in respect of the said Trust Company's 553 shares of capital stock of said Rutherford Trust Company, making a total reduction of \$109,314.35, and a corresponding reduction in the tax imposed, amounting to the sum of \$819.86.

Yours very truly,

HUMPHREYS & SUMNER.

JBH.

Return to Writ.

10 The following decision was rendered by the Passaic County Board of Taxation at a meeting held on January 22nd, 1915, In the Matter of the Application of the Peoples Bank & Trust Company of the City of Passaic, N. J., for the Reduction of State Tax on its Bank Stock, as fixed by Passaic County Board of Taxation for the year 1914, the same being endorsed on petition filed with the Board:

“Filed December 18th, 1914.

Decision of Board:

20 Remission of \$4,350.00 allowed for property owned by Bank on Van Houten Avenue, and assessed in 1913 for \$4,350.00, making net taxable value of shares of capital stock of petitioner \$397,411.45. $\frac{3}{4}$ of 1% being \$2,980.59, thus remission amounts to \$32.62.

Remainder of appeal dismissed.

Decided January 22nd, 1915.

WM. L. DILL.

W. G. BATEMAN.

Attest:

BERNARD L. STAFFORD,
Secretary.”

30

Copy.

January 22, 1915.

Peoples Bank and Trust Company,
Passaic, New Jersey.

Gentlemen:

40 Enclosed please find certificate of reduction in the matter of the appeal of the Peoples Bank and

Return to Writ.

Trust Company of Passaic, N. J., for a reduction of tax upon bank stock for the year 1914.

Very truly yours,

BERNARD L. STAFFORD,
Secretary.

10

Copy.

PASSAIC COUNTY BOARD OF TAXATION.

No. 1.

Tax Bill No.

To the Collector of the County of Passaic, New Jersey:

This certifies that the Passaic County Board of Taxation, upon sufficient proof, have corrected the assessment made upon the property of the Peoples Bank and Trust Company of the City of Passaic, pursuant to Chapter 90, Laws of 1914, as follows:

20

Capital, surplus and undivided profits,

less assessed value of real estate....\$401,761.45

Remission allowed by County Board on

account of omission in return filed by

the Peoples Bank and Trust Com-

pany of the City of Passaic, June

16th, 1914, of the assessed value for

the year 1913 on property owned by

said Trust Company, situate on Van

Houten Avenue, City of Passaic, and

known as Block 264, Lot 28.....

4,350.00

30

Total assessed value (corrected).....397,411.45

Amount of tax at $\frac{3}{4}$ of 1% on \$401,-

761.45

3,013.21

Amount of tax at $\frac{3}{4}$ of 1% on \$397,-

411.45

2,980.59

40

Total amount of taxes remitted.....

32.62

Return to Writ.

This certificate must be presented and delivered to the Collector of the County of Passaic before any remission can be made.

Paterson, N. J., January 22nd, 1915.

10

WM. L. DILL,
President.

(Seal.)

Copy.

January 26, 1915.

20 Mr. Bernard L. Stafford, Secretary,
County Board of Taxation,
Paterson, N. J.

Dear Sir:

Yours of January 22nd, enclosing certificate of reduction in the matter of the appeal of this company, is at hand, for which please accept our thanks.

30

Very respectfully,

B. W. SPENCER,
President.

40

*Return to Writ.***Certification.**

This is to certify that the foregoing papers contain true copies of all correspondence, documents, writings, petitions, judgments, records and all other information and evidence now on file in the office of the Passaic County Board of Taxation in the matter of the application of the Peoples Bank and Trust Company of the City of Passaic, N. J., for the reduction of State Tax on its Bank Stock, as fixed by the Passaic County Board of Taxation for the year 1914.

10

Dated, March 1st, 1915.

BERNARD L. STAFFORD,
Secretary of the Passaic
County Board of Taxation.

20

(Seal)

30

40

NEW JERSEY SUPREME COURT.

10	PEOPLES BANK AND TRUST COM- PANY, Prosecutor, vs. BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF PASSAIC, Defendant.	}	In Certiorari.
----	--	---	----------------

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
Justice Supreme Court.

20 NEW JERSEY, TO WIT:

STATE OF NEW JERSEY

to

*The Board of Chosen Freeholders of
 the County of Passaic, Greeting:*

30 (L. S.) We being willing for certain reasons to
 be certified of a certain assessment and
 state tax on bank stock, made against the
 Peoples Bank and Trust Company of the City of
 Passaic for the year Nineteen Hundred and Four-
 teen, and certified by said Board to the Collector
 of the County of Passaic.

40 We do command you, that the assessment of
 taxes, pursuant to Chapter 90, Laws of 1914, so
 made by the Passaic County Board of Taxation, to-
 gether with all things touching and concerning the
 same, as fully and entirely as before you they re-
 main, to our Justices of our Supreme Court of

Return to Writ.

Judicature, at Trenton, on the twelfth day of March 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, Esquire, Chief Justice of our Supreme Court, at Trenton, this twentieth day of February, Nineteen Hundred and Fifteen.

10

WILLIAM C. GEBHARDT,
Clerk.

HUMPHREYS & SUMNER,
Attorneys.

20

A true copy of original.

WM. C. GEBHARDT,
Clerk.

30

40

Return to Writ.

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

We, the Board of Chosen Freeholders of the
County of Passaic, in obedience to the command of
the writ hereto annexed, to us directed, do hereby
10 certify and send to you, the said Justices, the cor-
rected assessment and State tax on bank stock,
made against the Peoples Bank and Trust Com-
pany of the City of Passaic for the year Nineteen
Hundred and Fourteen by the Passaic County
Board of Taxation, and certified by said Board to
the Collector of the County of Passaic, with all
things touching and concerning the same, as fully
and entirely as by the said writ we are commanded,
as appears by the schedule hereunder written.

20 IN WITNESS WHEREOF, I have hereunto set my
hand and the seal of the Board of Chosen Free-
holders of the County of Passaic, this 27th day of
February, Nineteen Hundred and Fifteen.

ISAAC WOLLENBERG,
President of the Board of Chosen
Freeholders of the County of Passaic.

(Seal)

30

40

Return to Writ.

CITY OF PASSAIC,

SECOND WARD.

1914.

Peoples Bank & Trust Company:	10
Remission allowed by County Board on account of omission in return filed by the Peoples Bank and Trust Company of the City of Passaic, June 16th, 1914, pursuant to Chapter 90, Laws of 1914, of the assessed value for the year 1913 on property owned by said Trust Company, situate on Van Houten Avenue, City of Passaic, and known as Block 264, Lot 28.....	\$4,350.00 20

PASSAIC COUNTY BOARD OF TAXATION.

No. 1. Tax Bill No.

To the Collector of the County of Passaic, New Jersey:

This certifies that the Passaic County Board of Taxation, upon sufficient proof, have corrected the assessment made upon the property of the Peoples Bank and Trust Company of the City of Passaic, pursuant to Chapter 90, Laws of 1914, as follows:

Capital, surplus and undivided profits,
less assessed value of real estate....\$401,761.45

Remission allowed by County Board on account of omission in return filed by the Peoples Bank and Trust Company of the City of Passaic, June 16th, 1914, of the assessed value for

40

Return to Writ.

	the year 1913, on property owned by said Trust Company, situate on Van Houten Avenue, City of Passaic, and known as Block 264, Lot 28.....	4,350.00
	Total assessed value (corrected).....	\$397,411.45
10	Amount of tax at $\frac{3}{4}$ of 1% on \$401,- 761.45	3,013.21
	Amount of tax at $\frac{3}{4}$ of 1% on \$397,- 411.45	2,980.59
	Total amount of taxes remitted.....	32.62

This certificate must be presented and delivered to the Collector of the County of Passaic before any remission can be made.

20 Paterson, N. J., January 22nd, 1915.

WM. L. DILL,
President.

(Seal)

Make Checks Payable to John L. Conklin, County
Collector, Court House, Paterson, N. J.

30 Paterson, N. J., Feb. 10' 1915.

Peoples Bank & Trust Co.

To THE BOARD OF CHOSEN FREEHOLDERS,
OF THE COUNTY OF PASSAIC, DR.

To State Tax on Bank Stock as fixed
by Co. Tax Board, Balance unpaid 819.86
Less reduction by Co. Tax Board 32.62

40 787.24
Received Payment.

Stipulation.

NEW JERSEY SUPREME COURT.

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant.

10

In Certiorari.
Stipulation.

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,
Defendant.

20

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the following shall be treated as the State of the Case agreed upon by the Attorneys of the respective parties, as if the facts therein agreed to were proved by legal evidence, with the right to either party to take further evidence.

30

(1) The prosecutor, The Peoples Bank and Trust Company of the City of Passaic, is a corporation of the State of New Jersey, having its principal place of business at No. 187 Main Avenue, in the City of Passaic.

(2) On May twentieth, Nineteen Hundred and Fourteen (the date as of which the assessment for

40

Stipulation.

tax on its bank stock hereinafter referred to was made), the prosecutor had a capital stock of Two Hundred Thousand Dollars (\$200,000), a surplus of Two Hundred Thousand Dollars (\$200,000) and undivided profits amounting to the further sum of Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents (\$74,611.45).

(3) The entire taxable value of all the said shares of capital stock of the said prosecutor were assessed to and in the name of the said prosecutor, as set forth in a tax bill which was rendered to said prosecutor, of which the following is a copy:

“Paterson, N. J. Dec. 15” 1914

PEOPLES BANK & TRUST CO.

TO THE BOARD OF CHOSEN FREEHOLDERS,
OF THE COUNTY OF PASSAIC, DR.

To State Tax on Bank Stock as fixed

by Co. Tax Board

\$401,761.45

$\frac{3}{4}$ of 1%

3,013.21”

(4) By a resolution of said prosecutor's Board of Directors, passed on the eighth day of April, Nineteen Hundred and Fourteen, the prosecutor requested the Passaic County Board of Taxation to assess to and in the name of said prosecutor the entire taxable value of all of its shares of stock, instead of assessing the same to and in the name of the individual shareholders owning the same, and a certified copy of said resolution was filed with the County Board of Taxation of the County of Passaic on the twelfth day of April, Nineteen Hundred and Fourteen, and such resolution is still in force and unrevoked. The following is a copy of said resolution:

Stipulation.

“RESOLVED, that pursuant to Section 8 of the New Banking Law, which reads as follows:

“8. If any bank, banking association or trust company shall by resolution of its board of directors filed as hereinafter provided, request the county board of taxation to assess to and in the name of the bank, banking association or trust company the entire taxable value of all the shares of stock therein, instead of assessing the same to and in the name of the individual shareholders owning the same, and if such bank, banking association or trust company shall promise and agree that it will pay the taxes levied against such shares at the time when due and payable, then the total amount of capital, surplus and undivided profits shall be assessed to and in the name of the bank, banking association or trust company, and no list of shareholders shall be required.
* * * A certified copy of any such resolution shall be filed with the county board of taxation of the county at least thirty days before the twentieth day of May in any year and an additional copy shall be filed at the same time with the Commissioner of Banking and Insurance; such resolution shall be binding and in force until revoked; notice of revocation to be valid must be similarly filed at least thirty days before assessment day in any year’;

the Peoples Bank and Trust Company does hereby request the County Board of Taxa-

Stipulation.

tion to assess the capital stock in its name as provided in said act.

“Adopted at a meeting of the Board of Directors of the Peoples Bank and Trust Company, held April 8th, 1914.

10

“Attest:

F. TERHUNE,
Assistant Secretary.

“To the County Board of Taxation,
Paterson, N. J.”

(5) On the fifteenth day of June, Nineteen Hundred and Fourteen, the chief fiscal officer of the prosecutor filed with the Secretary of the Board of Taxation of the County of Passaic a true statement under the oath of its President, setting forth its name and principal place of business, the number of shares of stock outstanding on May 20, 1914, the amount of its capital, surplus and undivided profits as the same were indicated upon the books of the Company on the twentieth day of May, Nineteen Hundred and Fourteen, and the assessed value of its real property. The following is a copy of said report:

30

“RETURN OF PEOPLES BANK & TRUST
COMPANY

To the County Board of Taxation of the County of Passaic County, for the assessment of taxes for 1914 against its shares of capital stock under Chapter 90, laws 1914.

40

1. Name Peoples Bank & Trust Company
2. Principal place of business City of Passaic

Stipulation.

3. Capital as shown by its books			
May 20, 1914		\$200,000.	
4. Surplus as shown by its			
books May 20, 1914		200,000.	
5. Undivided Profits as shown			
by its books May 20, 1914		74,611.45	10
		<hr/>	
Total.....		\$474,611.45	
6. Assessed valuation of its			
real estate,		72,850.	

The assessed valuation of the real estate of the Corporation for 1914 has not yet been fixed by the local assessors and cannot be now given. The assessed valuation of the real estate for 1913 was \$72,850. If the real estate assessed valuation for 1914 is in excess of that for 1913, it is claimed on behalf of the stockholders that the amount thereof should be deducted in fixing the value of their shares of stock for taxation for this year.

7. Total number of shares of stock			
outstanding May 20, 1914.....		2000.	
8. Total number of stockholders			
May 20, 19xx.....		xxx	30
9. Names and residences of its			
stockholders and the number of			
shares held by each May 20,			
19xx		xxx	

This corporation has duly filed a resolution requesting the assessment of the entire taxable value of its shares of the stock to the corporation.

PEOPLES BANK & TRUST COMPANY, 40
 Bird W. Spencer,
 President.”

June 13, 1914.

Stipulation.

"STATE OF NEW JERSEY }
 COUNTY OF PASSAIC. } SS.

10 Bird W. Spencer being duly sworn on his oath says that he is the President of the Peoples Bank & Trust Company the corporation making the foregoing return; that said return is true to the best of his knowledge and belief.

BIRD W. SPENCER.

Sworn and subscribed before me
 this 15 day of June, 1914.

20 W. E. V. TUNISON,
 Commissioner of Deeds of N. J."

30 (6) In said report, which stated that the assessed value of the prosecutor's real estate in the County of Passaic amounted to the sum of Seventy-two Thousand, Eight Hundred and Fifty Dollars (\$72,850), which was the assessed value of its bank building and land, Block 147, Lot 12 Main Avenue, in the City of Passaic, the prosecutor by an oversight omitted to include the sum of Four Thousand Three Hundred and Fifty Dollars (\$4,350) viz., the assessed value of land and building belonging to it on Van Houten Avenue, viz., Block 264, Lot 28, which, if included, would have made the assessed value of its real property in the County of Passaic amount to the sum of Seventy-seven Thousand, Two Hundred (\$77,200) Dollars.

40 (7) In fixing the assessment upon the prosecutor's said capital stock the Passaic County Board of Taxation took the prosecutor's return showing

Stipulation.

said sum of Four Hundred and Seventy-four Thousand, Six Hundred and Eleven Dollars and Forty-five Cents (\$474,611.45) as the true value on May 20, 1914, of the prosecutor's capital stock, surplus and undivided profits, and deducted therefrom the assessed value of its bank building, to-wit: the said sum of Seventy-two Thousand, Eight Hundred and Fifty Dollars (\$72,850), making the assessment as shown by said tax bill the sum of Four Hundred and One Thousand, Seven Hundred and Sixty-one Dollars and Forty-five Cents (\$401,761.45) but owing to the oversight and omission on the said prosecutor's report above mentioned, the said Board did not deduct from said assessment the said sum of Four Thousand Three Hundred and Fifty Dollars (\$4,350), representing the true value of the said Van Houten Street property owned by the prosecutor.

(8) That the prosecutor on the twentieth day of May, Nineteen Hundred and Fourteen, was the owner of one hundred and fifty-one shares of the capital stock of the Carlstadt National Bank, and five hundred and fifty-three shares of the capital stock of the Rutherford Trust Company.

(9) There had already been assessed for the year Nineteen Hundred and Fourteen, by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey of 1914, an assessment for bank stock tax upon all the capital stock, surplus and undivided profits of the Carlstadt National Bank, and in the name of the Carlstadt National Bank, of which capital stock there were altogether three hundred shares. Said capital stock, surplus and undivided profits of the Carlstadt National Bank were so assessed by the said Bergen County

Stipulation.

Board of Taxation at the sum of Sixty-six Thousand, Four Hundred and Thirty-nine Dollars and Ninety-three Cents (\$66,439.93) and a tax was imposed thereon at the rate of three-quarters of one per cent, amounting to the sum of Four Hundred and Ninety-eight Dollars and Thirty Cents (\$498.30). Each individual share of said Carlstadt National Bank was thus assessed at the sum of

10 \$221,466.43 making the assessment upon the prosecutor's one hundred and fifty-one shares in said Carlstadt National Bank the sum of Thirty-three Thousand, Four Hundred and Forty-one Dollars and Forty-three Cents (\$33,441.43) taxed at three-quarters of one per cent, the tax thus amounting to the sum of Two Hundred and Fifty Dollars and

20 Eighty-one Cents (\$250.81).

(10) There had also been already assessed for the year Nineteen Hundred and Fourteen, by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey of 1914, an assessment for bank stock tax upon all the capital stock, surplus and undivided profits of the Rutherford Trust Company, and in the name of the Rutherford Trust Company, of which capital stock there were

30 altogether one thousand shares. Said capital stock, surplus and undivided profits of the Rutherford Trust Company were so assessed by the said Bergen County Board of Taxation at the sum of One Hundred and Twenty-nine Thousand, Three Hundred and Thirty-six Dollars and Twenty Cents (\$129,336.20) and a tax was imposed thereon at the rate of three-quarters of one per cent, amounting to the sum of Nine Hundred and Seventy Dollars and Two Cents (\$970.02). Each individual share of

40 said Rutherford Trust Company was thus assessed

21. 46643

Stipulation.

at the sum of \$129.3362, making the assessment upon said prosecutor's five hundred and fifty-three shares in said Rutherford Trust Company the sum of Seventy-one Thousand, Five Hundred and Twenty-two Dollars and Ninety-two Cents (\$71,522.92), taxed at three-quarters of one per cent, the tax thus amounting to the sum of Five Hundred and Thirty-six Dollars and Forty-two Cents (\$536.42). 10

(11) The prosecutor on or about the eighteenth day of December, Nineteen Hundred and Fourteen, appealed to the Passaic County Board of Taxation by its petition bearing date the seventeenth day of December, Nineteen Hundred and Fourteen, a copy of which was returned by the Passaic County Board of Taxation in obedience to the command of the writ of certiorari, and which will be found annexed to said writ, and to which reference may be had as to the true contents thereof; praying that the said assessment of Four Hundred and One Thousand, Seven Hundred and Sixty-one Dollars and Forty-five Cents (\$401,761.45) made upon its capital, surplus and undivided profits for the year Nineteen Hundred and Fourteen, less the alleged assessed value of the real estate reported by it, might be reduced by deducting therefrom the sum of Forty-three Hundred and Fifty Dollars (\$4350), the assessed valuation on its building and land on Van Houten Avenue in the City of Passaic; and the sum of Thirty-three Thousand Four Hundred and Forty-one Dollars and Forty-three Cents (\$33,441.43) an alleged assessment laid by the Bergen County Board of Taxation on the Carlstadt National Bank and in its name for the year Nineteen Hundred and Fourteen, in respect of the prosecutor's one hundred and fifty-one (151) shares of 20 30 40

Stipulation.

capital stock of the said Carlstadt National Bank referred to in its said petition; also the sum of Seventy-one Thousand, Five Hundred and Twenty-two Dollars and Ninety-two Cents (\$71,522.92) an alleged assessment laid by the said Bergen County Board of Taxation for the year Nineteen Hundred and Fourteen on the Rutherford Trust Company and in its name, in respect of the prosecutor's five hundred and fifty-three (533) shares of the capital stock of the said Rutherford Trust Company referred to in its said petition, making a total reduction claimed for said alleged assessments of One Hundred and Nine Thousand Three Hundred and Fourteen Dollars and Thirty-five Cents (\$109,314.35) and a corresponding reduction in the tax imposed amounting to the sum of Eight Hundred and Nineteen Dollars and Eighty-six Cents (\$819.86).

(12) By its judgment bearing date the twenty-second day of January, Nineteen Hundred and Fifteen, the Passaic County Board of Taxation corrected the assessment made upon the property of the prosecutor, by remitting therefrom the sum of Forty-three Hundred and Fifty Dollars (\$4350), the amount allowed by said County Board on account of the omission in the return filed by the prosecutor on June Sixteenth, Nineteen Hundred and Fourteen, of the assessed value of the property of the prosecutor situate on Van Houten Avenue in the City of Passaic, the total amount of tax so remitted being the sum of Thirty-two Dollars and Sixty-two Cents (\$32.62), but the said Passaic County Board of Taxation declined to make any reduction in respect of the shares of stock of the Carlstadt National Bank and the Rutherford Trust Company respectively, held by the prosecutor.

Stipulation.

(13) The prosecutor has paid on account of the tax so levied upon it for the year Nineteen Hundred and Fourteen, amounting to the sum of Twenty-nine Hundred and Eighty Dollars and Fifty-nine Cents (\$2980.59) as reduced by the Passaic County Board of Taxation, the sum of Twenty-one Hundred and Ninety-three Dollars and Thirty-five Cents (\$2193.35) leaving the sum of Seven Hundred and Eighty-seven Dollars and Twenty-four Cents (\$787.24) unpaid, which it holds back pending the decision on this certiorari. 10

(14) The following is a true copy of the statement of the Peoples Bank & Trust Company under date of May 20th, 1914, of its assets and liabilities, the same being in the form called for by the banking department in statements submitted to that department: 20

"May 20th, 1914

ASSETS.

Investments Loans & Discounts,	\$1,467,844.63	
Stocks & Bonds,	715,764.51	
Mortgages,	272,636.77	
Bank Building,	72,850.	
Expense	15,259.84	
Interest Deposits	15,797.27	30
Dividends	10,000.	
Cash and in Banks	941,137.74	
	\$3,511,290.76	

LIABILITIES

Capital	200,000.	
Surplus	200,000.	
Undivided Profits	74,611.45	
Earnings	42,438.03	
Deposits & Due Banks	2,994,241.28	40
	\$3,511,290.76	

Stipulation.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands by their respective attorneys, this day of April, Nineteen Hundred and Fifteen.

10

HUMPHREYS & SUMMER,
Attorneys of Prosecutor.

FRED W. VAN BLARCOM
Attorney for Defendant
Board of Chosen Freeholders of
the County of Passaic.

20

We signed this stipulation in so far as it relates to our own acts and do not dispute its truth in other respects.

COUNTY BOARD OF TAXATION,

W. GRAFTON BATEMAN,
President.

(Corporate Seal of the Board.)

30

40

Reasons.

NEW JERSEY SUPREME COURT.

PEOPLES BANK AND TRUST
COMPANY,

Prosecutor,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,
Defendant.

In Certiorari. 10
Reasons.

The prosecutor presents the following reasons for setting aside the proceedings and assessment for bank stock tax against the Peoples Bank and Trust Company of the City of Passaic for the year Nineteen Hundred and Fourteen by the Passaic County Board of Taxation, and certified by said Board to the Collector of the County of Passaic, brought before this Honorable Court by writ of certiorari in the above entitled cause. 20

FIRST: Because the original and corrected assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided profits of the prosecutor for the year Nineteen Hundred and Fourteen included the assessed value of one hundred and fifty-one (151) shares of the capital stock of the Carlstadt National Bank and five hundred and fifty-three (553) shares of the capital stock of the Rutherford Trust Company, both banking corporations carrying on business in the State of New Jersey, all of which shares were owned by the prosecutor on the twentieth day of May, Nineteen Hundred and Fourteen, and there had already been assessed by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey 30 40

Reasons.

of the year Nineteen Hundred and Fourteen, an assessment for bank stock tax for the year Nineteen Hundred and Fourteen upon all the capital, surplus and undivided profits of the Carlstadt National Bank in the name of the Carlstadt National Bank, of which capital stock there were altogether three hundred (300) shares, including the one hundred and fifty-one (151) shares so held by the prosecutor, and there had also been already assessed by the Bergen County Board of Taxation, under the same law, an assessment for bank stock tax for the year Nineteen Hundred and Fourteen upon all of the capital stock, surplus and undivided profits of the Rutherford Trust Company in the name of the Rutherford Trust Company, of which last mentioned stock there were altogether one thousand (1,000) shares, including the five hundred and fifty-three (553) shares held by the prosecutor.

SECOND: Because the Carlstadt National Bank and the Rutherford Trust Company respectively have paid the said taxes so assessed against them respectively by the Bergen County Board of Taxation, so that unless the amounts assessed and taxed respectively in the names of the Carlstadt National Bank and the Rutherford Trust Company respectively on the shares of stock of said corporations held by the said Peoples Bank and Trust Company as aforesaid, on May Twentieth, Nineteen Hundred and Fourteen, be deducted from the amount of the assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided profits of the prosecutor for the year Nineteen Hundred and Fourteen, the same being included in the capital, surplus and undivided profits of the prosecutor which were the subject of said assessment, the result will be that the said

Reasons.

shares of stock of the Carlstadt National Bank and Rutherford Trust Company respectively will be twice taxed, contrary to Chapter 90 of the Laws of New Jersey, Session of 1914, as interpreted by the Supreme Court of New Jersey and by the New Jersey Court of Errors and Appeals.

10

THIRD: Because said proceedings are in divers other respects irregular, illegal, unjust and oppressive to the prosecutor.

HUMPHREYS & SUMNER,
Attorneys for Prosecutor.

20

30

40

(Filed January 27, 1916.)

NEW JERSEY SUPREME COURT,

JUNE TERM, 1915.

10

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant.

On Certiorari.

20 Submitted June Term, 1915. Decided Decem-
ber , 1915.

Before:

Justices PARKER, MINTURN and KALISCH.

For the Prosecutor, HUMPHREYS & SUMNER.

For the Defendant, FRED W. VAN BLARCOM.

Per Curiam:

30 The complaint made by the prosecutor is, in sub-
stance, that it has been illegally assessed on 151
shares of the capital stock of the Carlstadt National
Bank and on 553 shares of the capital stock of the
Rutherford Trust Company owned by it on May
20th, 1914.

40 The prosecutor's charge of illegality in the as-
sessment rests upon the assertion that the capital
stock, surplus and undivided profits of the two last
mentioned banks having been assessed for the year
1914, by the Bergen County Board of Taxation,
such assessment included the shares of the stock
held by it of the bank and trust company and hence
the present assessment is double taxation and con-
trary to the Act of 1914 (P. L., p. 141).

Opinion.

The prosecutor relies on the case of *Commercial Trust Company of N. J. v. Hudson County Board of Taxation et al.*, 86 N. J. L., 424; affirmed by the Court of Errors and Appeals, 87 *id.*, 179, to support its contention that the assessment is invalid.

We find nothing in the making and levying of the tax which is contrary to the provision of the Act of 1914 or the views expressed in the case above cited.

10

Whether or not there was a double taxation in the present case is one of fact.

The facts, briefly stated, are these: The prosecutor presented to the Board of Taxation a statement in writing under the oath of its president, under date of June 13th, 1914, from which it appeared that on May 20th, 1914, the books of the bank showed that its capital stock was \$200,000, its surplus \$200,000, and its undivided profits \$74,611.45, making a total of \$474,611.45, and that the assessed value of its real estate was \$72,850.

20

From the total value as given by the prosecutor the tax board deducted the last item—the value of the real estate—and levied a tax of three-quarters of 1 per cent. against the remainder of \$401,761.45, which tax amounted to \$3,013.21.

Subsequently, on the 17th day of December, 1914, the prosecutor filed a petition with the tax board, complaining that the assessment was excessive and contrary to law and the provisions of the statute on that behalf provided, for the reasons that it included real estate valued at \$4,350; that it included the assessed value of the shares of the capital stock of the Carlstadt National Bank and Rutherford Trust Company which had been taxed by the Bergen County Board of Taxation.

30

The tax board revised the assessment by deducting from the tax previously imposed the assessed value of the real estate as above given and re-

40

Opinion.

mitting therefrom \$32.62, and dismissed the prosecutor's petition as to the rest.

10 The assessed value of the shares in the Carlstadt National Bank and the Rutherford Trust Company was \$104,964.35, upon which the tax levied is \$787.24, and that is the amount of tax in dispute.

The prosecutor made a statement of its financial condition to the tax board for the very purpose of furnishing such board with information regarding its taxable property as the basis of an imposition of a tax.

20 In that statement the prosecutor, as is pointed out by counsel for the tax board, made no separation of its investments of capital, surplus and undivided profits from its investments of other funds in its possession. We cannot, therefore, say, upon the facts before us, that the prosecutor's investments in the capital stock of the Carlstadt National Bank and the Rutherford Trust Company are investments of its capital, surplus and undivided profits, and not investments of deposits or other moneys under its control.

The writ will be dismissed and the proceedings affirmed, with costs.

30

40

NEW JERSEY SUPREME COURT.

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant.

On Certiorari.

10

The Court having inspected the transcript and proceedings of the defendant, returned with the certiorari in this cause the reasons for error assigned and heard the argument of counsel thereon and maturely considered the same, do order that the assessment of taxes removed by the writ in the cause be, in all things, affirmed, and the writ dismissed, with costs.

20

Entered February 19th, 1916.

On motion of

FREDERICK W. VAN BLARCOM,
Attorney of Defendant.

30

A true copy,

WM. C. G. GEBHARDT,
Clerk.

40

NEW JERSEY SUPREME COURT.

	PEOPLES BANK AND TRUST COMPANY, Prosecutor,	} On Certiorari.
	vs.	
10	PASSAIC COUNTY BOARD OF CHOSEN FREEHOLDERS, Defendant.	

20 The Court having inspected the transcript and proceedings of the defendant, returned with the certiorari in this cause the reasons for error assigned and heard the argument of counsel thereon and maturely considered the same, do order that the assessment of taxes removed by the writ in the cause be, in all things, affirmed, and the writ dismissed, with costs.

Entered February 19th, 1916.

On motion of

FREDERICK W. VAN BLARCOM,
Attorney of Defendant.

30 A true copy,

WM. C. G. GEBHARDT,
Clerk.

Notice of Appeal.

(Filed March 1, 1916.)

NEW JERSEY SUPREME COURT.

PEOPLES BANK AND TRUST COMPANY, Prosecutor, VS. PASSAIC COUNTY BOARD OF TAXATION, Defendant.	On Certiorari. Notice of Appeal.	10
PEOPLES BANK AND TRUST COMPANY, Prosecutor, VS. BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF PASSAIC, Defendant.		20

To:

FREDERICK W. VAN BLARCOM,
 Attorney of Defendants.

30

Sir:

TAKE NOTICE that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgments entered in the above causes.

HUMPHREYS & SUMNER,
 Attorneys of Prosecutor.

40

Grounds of Appeal.

(Filed March 9, 1916.)

NEW JERSEY

COURT OF ERRORS AND APPEALS.

10

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor-Appellant,

VS.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant-Respondent.

20

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor-Appellant,

VS.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,
Defendant-Respondent.

Grounds of
Appeal.

30

The appellant states the following grounds of appeal:

1. Because the Supreme Court ordered that the assessment of taxes removed by certiorari to the said Court be, in all things affirmed, and the writ dismissed, with costs; whereas the assessment of taxes was invalid and should have been set aside by the Supreme Court.

40 2. Because the original and corrected assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided

Grounds of Appeal.

profits of the appellant for the year 1914 included the assessed value of one hundred and fifty-one (151) shares of the capital stock of Carlstadt National Bank, and five hundred and fifty-three (553) shares of the capital stock of the Rutherford Trust Company, both banking corporations carrying on business in the State of New Jersey, all of which shares were owned by the appellant on the twentieth day of May, 1914, and there had already been assessed by the Bergen County Board of Taxation, under Chapter 90 of the Laws of New Jersey of the year 1914, an assessment for bank stock tax for the year 1914 upon all the capital, surplus and undivided profits of the Carlstadt National Bank, in the name of the Carlstadt National Bank, of which capital stock there were altogether three hundred (300) shares, including the one hundred and fifty-one (151) shares so held by the appellant; and there had also been already assessed by the Bergen County Board of Taxation, under the same law, an assessment for bank stock tax for the year 1914 upon all of the capital stock, surplus and undivided profits of the Rutherford Trust Company, in the name of the Rutherford Trust Company, of which last mentioned stock there were altogether one thousand (1,000) shares, including the five hundred and fifty-three (553) shares held by the appellant.

3. Because the Carlstadt National Bank and the Rutherford Trust Company respectively have paid the said taxes so assessed against them respectively by the Bergen County Board of Taxation, so that unless the amounts assessed and taxed respectively in the names of the Carlstadt National Bank and the Rutherford Trust Company respectively, on the shares of stock of said corporations held by the said Peoples Bank and Trust Company as aforesaid, on

Grounds of Appeal.

10 May 20th, 1914, be deducted from the amount of the assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided profits of the appellant for the year 1914, the same being included in the capital, surplus and undivided profits of the appellant which were the subject of said assessment, the result will be that said shares of stock of the Carlstadt National Bank and the Rutherford Trust Company respectively will be twice taxed, contrary to Chapter 90 of the Laws of New Jersey, Session of 1914.

20 4. Because the one hundred and fifty-one (151) shares of the capital stock of the Carlstadt National Bank, and the five hundred and fifty-three (553) shares of the capital stock of the Rutherford Trust Company, both banking corporations carrying on business in the State of New Jersey, which were owned by the appellant on the twentieth day of May, 1914, and which were taxed by the Bergen County Board of Taxation as above mentioned, constituted personal property held and owned by said appellant, the value of which entered into the taxing value of its shares of stock so assessed as aforesaid by the Passaic County Board of Taxation.

30 5. Because the amount of the said assessment imposed by the Passaic County Board of Taxation upon the capital, surplus and undivided profits of the appellant for the year 1914 was, by virtue of Chapter 90 of the Laws of New Jersey, Session of 1914, to be in lieu of all other state, county or local taxation upon such shares, or upon any personal property held or owned by the appellant, the value of which entered into the taxing value of its said shares of stock, notwithstanding which the Carlstadt National Bank and the Rutherford Trust
40 Company respectively were assessed by the Bergen

Grounds of Appeal.

County Board of Taxation for bank stock tax for the year 1914 upon the one hundred and fifty-one shares of the capital stock of said Carlstadt National Bank held by the appellant, and upon the five hundred and fifty-three shares of the capital stock of said Rutherford Trust Company held by the appellant, and paid said taxes, the value of which last mentioned shares entered into the taxing value of the shares of the capital stock of the appellant which were also taxed by the Passaic County Board of Taxation, contrary to the letter and spirit of said statute.

10

HUMPHREYS & SUMNER,
Attorneys of Prosecutor-Appellant.

20

30

40

Stipulation.

(Filed March 1, 1916.)

NEW JERSEY
COURT OF ERRORS AND APPEALS.

10

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor-Appellant,

vs.

PASSAIC COUNTY BOARD OF
TAXATION,
Defendant-Respondent.

20

PEOPLES BANK AND TRUST
COMPANY,
Prosecutor-Appellant,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF PASSAIC,
Defendant-Respondent.On Certiorari.
Stipulation.

30

It is hereby stipulated and agreed that the argu-
ment of the appeals in the two above-entitled
certiorari suits shall be postponed until the June
Term of said Court of Errors and Appeals.

Dated, February 23rd, 1916.

HUMPHREYS & SUMNER,
Attorneys of Appellant.FRED W. VAN BLARCOM,
Attorney of Respondents.

40

