INDEX.

Writ of Certiorari.

(Filed.)

NEW JERSEY, to wit: THE STATE OF NEW JERSEY, to the Mayor and Aldermen of Jersey City, James F. Gannon, Jr., Director of Revenue and Finance of the City of Jersey City, and Daniel O'Regan, Acting City Clerk of the City of Jersey City.

(SEAL)

GREETING:

We being willing for certain reasons to be certified of assessments of taxes made against Passaic Valley Sewerage Commissioners, a body corporate, for the years 1914 and 1915, by the Assessors of Taxes of the City of Jersey City, in the County of Hudson and State of New Jersey, on two certain lots of land known as lots 1 and 2, block 1402, on Princeton avenue, in said City of Jersey City, and of the sale of said lands by James F. Gannon, Jr., Director of Revenue and Finance of the City of Jersey City, to the Mayor and Aldermen of Jersey City, on March 22nd, 1918;

We do command you that the said assessments of taxes so made by the Assessors of Taxes, together with all things touching and concerning the same, and that said sale of said premises and the certificate of the sale thereof, 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 27th day of September instant, 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, New Jersey, this ninth day of September, A. D. 1918.

WILLIAM C. GEBHARDT,
Clerk.

RIKER & RIKER,
Attorneys.

Return to Writ.

Allocatur.

This writ is allowed. Let it be sealed.

Sept. 9th, 1918.

F. J. SWAYZE,
Justice of the Supreme Court.

Acknowledgment of Service of Writ.

Filed September 27, 1918.

Service of the Writ of Certiorari in the above entitled matter, dated the ninth day of September, 1918, is hereby acknowledged.

Dated Sept. 12th, 1918.

JOHN BENTLEY,
Attorney of Defendants.

Return to Writ.

(Filed.)

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

In obedience to the command of this writ, directed to The Mayor and Aldermen of Jersey City, James F. Gannon, Director

FOLIO 125
BOOK NO. 8 BLOCK 1402 PRINCETON AVENUE.

Owner's Name	Line No.	Lot No.	Street No.	House and Lot	Vacant Lots or Plots	Area	Value of Land	Value of Improvements	Total Value	Value of Personal Property	Poll Tax	City Tax	County Tax
25489													
Passaic Valley Sewer Comm.	1	1	3 Buildings			81.55x 130	300	2000	2300			30.98	11.57
"	2	2			1	25x130	150		150			2.02	.76

(NOTE—The above is a copy of all the matter pertaining to Lots 1 and 2, Block 1402, Princeton Avenue, contained on Folio 125 in book "No. 8, Department of Revenue & Finance, Bureau of Tax Assessments, Assessment Book 1914-1915 Blocks 1351 to 1550".)

Return to Writ.

of Revenue and Finance of the City of Jersey City, and Daniel O'Regan, Acting City Clerk of the City of Jersey City, I hereby certify and send to the Honorable Justices of the Supreme Court of Judicature the assessments of taxes made against Passaic Valley Sewerage Commissioners for the years 1914 and 1915 on two certain lots of land known as Nos. 1 and 2, Block 1402, on Princeton avenue, in the City of Jersey City, and also the sale of said lands by me, Director of Revenue and Finance of said City of Jersey City, on March 22nd, 1918, and all papers and things touching and concerning the proceedings of said assessments and sale, as fully and entirely as they remain before me.

IN WITNESS WHEREOF I have hereunto set my hand and caused to be affixed hereunto the seal of The Mayor and Aldermen of Jersey City this 7th day of October, 1918.

THE MAYOR AND ALDERMEN OF JERSEY CITY,

By JAMES F. GANNON, JR.,
Director Revenue and Finance,
Jersey City, N. J.

ATTEST:

(L. S.) DANIEL O'REGAN,
Acting City Clerk.

BOOK NO. 8
FOLIO 125

State School Tax	Total Amount of Tax	Action of County Board	Interest Allowed	Amount Paid Collector	Folio	Line No.	1913	1912	1911	1910	1909	1908	1907	1906
6.05	48.60			Sold Sale 57		1								
.39	3.17			Sold Sale 57		2								

Return to Writ.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } *ss.:*

George F. Brensinger, Commissioner of Revenue and Finance, Assessor of the Taxing District of Jersey City, do swear that the foregoing list contains the valuations made by me to the best of my ability of all the property liable to taxation in aforesaid Taxing District, in which I am the assessor, and the corrections directed by the Hudson County Board of Taxation, and that I have valued the same without favor or partiality at its full, fair and true value at such price as in my judgment it would sell for at a fair sale by private contract on the twentieth day of May last, and have made such deductions only for exemptions as are prescribed by law.

(Sgd.) GEORGE F. BRENSINGER.

Subscribed and sworn to before
me this 24th day of Nov., 1914.

(Sgd.) Jos. P. McLEAN,
Commr. of Deeds N. J.

125
BOOK NO. 8
FOLIO BLOCK 1402 PRINCETON AVENUE.

Owner's Name	Line No.	Lot No.	Street No.	House and Lot	Vacant Lots or Plots	Area	Value of Land	Value of Improvements	Total Value	Value of Personal Property	Poll Tax	City Tax	County Tax
19146 Passaic Valley Sewer Comm.	1	1		3		81.55x130	300	5000	5300			68.42	26.45
	2	2			1	25x130	150		150			1.94	.75

(NOTE—The above is a copy of all the matter pertaining to Lots 1 and 2, Block 1402, Princeton Avenue, contained on Folio 125 in book "No. 8, Department of Revenue & Finance, Bureau of Tax Assessments, Assessment Book 1915-1916 Blocks 1351 to 1550".)

Return to Writ.

HUDSON COUNTY BOARD OF TAXATION.

This is to certify that the foregoing duplicate is a true and complete record of the taxes assessed for the year 1914 in the taxing district of Jersey City, Hudson County, New Jersey, as the same is delivered to the Collector or Receiver of Taxes for said taxing district.

This certificate is made under the provisions of Section 8, Chapter 120, of the Laws of 1906.

Dated Nov. 24, 1914.

HUDSON COUNTY BOARD OF TAXATION,

(Sgd.) Philip McGovern
(Sgd.) Chas. E. Annett
(Sgd.) Thomas B. Usher

ATTEST:

(Sgd.) Jos. P. McLEAN,
Sect'y.

(NOTE: The above is a copy of the affidavits contained on Folio 298 in Book "No. 8, Department of Revenue & Finance, Bureau of Tax Assessments, Assessment Book 1915-1916, Blocks 1351 to 1550.")

BOOK NO. 8
FOLIO 125

State School Tax	Total Amount of Tax	Action of County Board	Interest Allowed	Amount Paid Collector	Folio	Line No.	1914	1913	1912	1911	1910	1909	1908	1907
13.68	108.55			Sold Sale 57		1								
.39	3.08			Sold Sale 57		2								

Return to Writ.

STATE OF NEW JERSEY, } *ss.:*
COUNTY OF HUDSON, }

George F. Brensinger, Assessor of the Taxing District of Jersey City, do swear that the foregoing list contains the valuations made by me to the best of my ability of all the property liable to taxation in aforesaid Taxing District, in which I am the Assessor, and the corrections directed by the Hudson County Board of Taxation, and that I have valued the same without favor or partiality at its full, fair and true value at such price as in my judgment it would sell for at a fair sale by private contract on the twentieth day of May last, and have made such deductions only for exemptions as are prescribed by law.

(Sgd.) GEORGE F. BRENSINGER.

Subscribed and sworn to before
me this 26th day of November, 1915.

(Sgd.) Jos. P. McLEAN,
Commr. of Deeds N. J.

HUDSON COUNTY BOARD OF TAXATION.

This is to certify that the foregoing duplicate is a true and complete record of the taxes assessed for the year 1915 in the taxing district of Jersey City, Hudson County, New Jersey, as the same is delivered to the Collector or Receiver of Taxes for said taxing district.

This certificate is made under the provisions of Section 8, Chapter 120, of the Laws of 1906.

Dated Nov. 26, 1915.

HUDSON COUNTY BOARD OF TAXATION.

(Sgd.) Philip McGovern
(Sgd.) Thomas B. Usher

ATTEST:

(Sgd.) Jos. P. McLEAN,
Sect'y.

Return to Writ.

(NOTE: The above is a copy of the affidavits contained on Folio 316 in Book "No. 8, Department of Revenue & Finance, Bureau of Tax Assessments, Assessment Book 1915-1916, Blocks 1351 to 1550.")

The following is a copy of the advertisement for Tax Sale #57, for Block 1402, Lots 1 and 2, Princeton avenue, Jersey City, N. J.:

"TAX SALE No. 57

City Collector's Office,
Jersey City, N. J.

Notice is hereby given that the subscriber, the City Collector of Jersey City, New Jersey, pursuant to the statute in such cases made and provided, under the direction of the Commission of Jersey City, will expose for sale and sell at public auction to the highest bidder on

FRIDAY, MARCH 22D, 1918

at ten o'clock in the forenoon of that day, at the Assembly Chamber, in the City Hall, in said City, certain lots, tracts and parcels of land and real estate of Jersey City, upon which either taxes have been levied or assessments have been levied and assessed after the thirtieth day of March, A. D. eighteen hundred and eighty-six, or both, and which have remained unpaid for the space of two years from and after the time, when it is due and payable.

This sale is made under the provisions of an act entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce payment thereof, and to provide for the sale of lands subjected to further taxation and assessments," passed March 30, 1886, and the various supplements thereto and acts amendatory thereof.

Further particulars of the lands to be sold may be obtained at the office of the City Collector, City Hall, Jersey City, on any week day prior to the sale, between the hours of 9 a. m. and 4 p. m., except Saturday, and on Saturdays between 9 a. m. and 12 noon.

Return to Writ.

The following list contains the lot and block numbers of the lots, tracts and parcels of land to be sold in pursuance of this advertisement, as they appear on the official tax and assessment books on file in the office of the City Collector, together with a statement of the ward of the City, as now laid out, wherein said lands are respectively situated and the amount due from each of said lots, respectively, to which interest thereon shall be added to date of sale and the taxes and assessments respectively and the non-payment whereof the said several lots, tracts and parcels are to be sold.

To the amount due on each lot or parcel, as hereinafter designated, there will be added its proportionate share of the cost of this sale, which is hereby estimated at four dollars for each item of arrearage thereon, also an additional charge of four dollars will be made against all property heretofore advertised. All lots so sold will be purchased, subject to all water rents in arrears on said premises, to all taxes levied thereon subsequently to December 20, 1915, to all assessments levied thereon after December 20, 1910, and to all prospective benefits or parcels included in this sale.

Sale No.	Ward	Supposed Owner or Person to Whom Assessed	Block	Lot	Street or Avenue	Year	Tax Arrears
23992	7	Passaic Valley Sewer Commission	1402	1	Princeton	1914	48.60
						1915	108.55
23993	7	Passaic Valley Sewer Commission	1402	2	Princeton	1914	3.17
						1915	3.08

JAMES RADIGAN,
City Collector.

Return to Writ.

The above advertisement was published in the "Jersey Journal" and "Hudson Observer" as follows:

1st insertion: February 21, 1918.
2nd " February 28, 1918.
3rd " March 7, 1918.
4th " March 14th, 1918.
5th " March 21, 1918.

CHARLOTTE STUHR, being duly sworn, according to law upon her oath, says that she is the Advertising Manager of THE JERSEY JOURNAL, a newspaper printed and published in Jersey City, New Jersey, and that advertisement ordered published by the City Collector of Tax Sale #57 to be held on Friday, March 22nd, 1918, was duly inserted in this newspaper on Feb. 21st, Feb. 28th, March 7th, March 14th and March 21st, 1918. Included in advertisement published as above did appear sale of land described as follows:

Sale No.	Ward	Supposed Owner or Person to Whom Assessed	Block	Lot	Street or Avenue	Year	Tax Arr'rs
23992	7	Passaic Valley Sewer Commission	1402	1	Princeton Av.	1914	48.60
						1915	108.55
23993	7	Passaic Valley Sewer Commission	1402	2	Princeton Av.	1914	3.17
						1915	3.08

THE EVENING JOURNAL ASS'N,

Charlotte Stuhr,
Advertising Manager.

Sworn and subscribed before me
this eighth day of October A. D.
1918.

STELLA REDMOND,
Notary Public.

Return to Writ.

68

TAX SALE NO. 57 MAR 22nd 1918

Sales Number	Ward	Supposed Owner	Block	Lot			Amount	Interest	Advertising
23992		Passaic Valley Sewer Com.	1402	1	Princeton Ave. Taxes Taxes	1914	48.60	11.87	4
						1915	108.55	16.45	4
23993		Passaic Valley Sewer Com.	1402	2	Princeton Ave. Taxes Taxes	1914	3.17	.70	4
						1915	3.08	.45	4

(NOTE—The above is a copy of all the matter pertaining to Lots 1 and 2, Block 1402, Princeton Avenue, contained on page 68 of Book 3 of Martin Act Sales.)

No. 7631

CITY OF JERSEY CITY,

SALE OF UNPAID TAXES AND ASSESSMENTS

Remaining unpaid for the space of Two Years, under the Act of March 30th, 1886, and the Supplement thereto.

CERTIFICATE OF SALE.

I, James Radigan, City Collector of the City of Jersey City, Do Hereby Certify, that at a public auction held by me at the Assembly Chamber in the City Hall in the said City of Jersey City, on the 22d day of March 1918, for the sale of any lands and real estate upon which taxes and assessments remain unpaid for the space of two years from and after the time when due and payable, under and by virtue of the provisions of the Act entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessment and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subject to future taxation and assessment, passed March 30th, 1886, and the supplements thereto, the provisions of said Act, having been duly complied with, I struck off and sold to The Mayor and Aldermen of Jersey City Lot No. 1 in Block No. 1402 as shown on the "Official Assessment Map of Jersey City, N. J., 1894, made by L. D. Fowler, Civil Engineer and Surveyor," for the sum of One hundred and ninety-three Dol-

Return to Writ.

68

Total	Surplus	Total Amount Paid	Name of Purchaser	Residence	Certificate Number	Deed Number	Remarks
64.47 129.00		193.47	The Mayor and Aldermen of Jersey City		7631		
7.87 7.53		15.40	The Mayor and Aldermen of Jersey City		7632		

lars and forty-seven cents ($193.47/100), the receipt whereof is hereby acknowledged, and which purchase will entitle the said The Mayor and Aldermen of Jersey City his heirs, devisees or assigns, upon the surrender of this Certificate of Sale, and proof of service of the notice or notices upon the persons entitled thereto, as required in and by said Act and the supplements thereto, to a deed for said land and premises, in fee simple, absolute, free from all encumbrances except taxes levied thereon subsequent to December 20th, 1915; and all assessments levied thereon subsequent to December 31st, 1911, and to all water rents thereon due and unpaid, unless the said lot, tract or parcel of land shall be redeemed in pursuance of said Act. And it is hereby covenanted and agreed, that the said, the City of Jersey City, will refund to the said The Mayor and Aldermen of Jersey City his heirs, devisees or assigns, the said amount paid for the said lot, tract or parcel of land, without interest, in case the title to the same shall prove invalid.

In Witness Whereof, I, the said City Collector of the City of Jersey City, have executed and delivered this Certificate of Sale, this 22nd day of March A. D. nineteen hundred and eighteen.

JAMES RADIGAN,
City Collector.

Return to Writ.

STATE OF NEW JERSEY, }
HUDSON COUNTY, } *ss.*

On this 9th day of July A. D. 1918, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared JAMES RADIGAN, City Collector of the City of Jersey City, who is I am satisfied, the individual described in, and who executed the within Certificate, and I, having first made known to him the contents thereof, he thereupon acknowledged to me that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein contained.

FRANK J. V. GIMINO,
Master in Chancery of New Jersey.

No. 7632

CITY OF JERSEY CITY,

SALE FOR UNPAID TAXES AND ASSESSMENTS

Remaining unpaid for the space of Two Years, under the Act of March 30th, 1886, and the Supplement thereto.

CERTIFICATE OF SALE.

I, JAMES RADIGAN, CITY COLLECTOR OF THE CITY OF JERSEY CITY, DO HEREBY CERTIFY, that at a public auction held by me at the Assembly Chamber in the City Hall in the said City of Jersey City, on the 22nd day of March 1918, for the sale of any lands and real estate upon which taxes and assessments remain unpaid for the space of two years from and after the time when due and payable, under and by virtue of the provisions of the Act entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessment and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subject to future taxation and assessment, passed March 30th, 1886, and the supplements thereto, the provisions of said Act having been duly complied with, I struck off and sold to The Mayor and Aldermen of Jersey City Lot No. 2 in Block No. 1402 as shown on the "Official Assessment Map of Jersey City, N. J., 1894, made by L. D. Fowler, Civil Engineer and Sur-

Return to Writ.

veyor," for the sum of Fifteen Dollars and Forty cents ($15.40/100), the receipt whereof is hereby acknowledged, and which purchase will entitle the said The Mayor & Aldermen of Jersey City his heirs, devisees or assigns, upon the surrender of this Certificate of Sale, and proof of service of the notice or notices upon the persons entitled thereto, as required in and by said Act and the supplements thereto, to a deed for said land and premises, in fee simple, absolute, free from all incumbrances except taxes levied thereon subsequent to December 20th, 1915; and all assessments levied thereon subsequent to December 31st, 1911, and to all water rents thereon due and unpaid, unless the said lot, tract or parcel of land shall be redeemed in pursuance of said Act. And it is hereby covenanted and agreed, that the said, the City of Jersey City, will refund to the said The Mayor and Aldermen of Jersey City his heirs, devisees or assigns, the said amount paid for the said lot, tract or parcel of land, without interest, in case the title to the same shall prove invalid.

IN WITNESS WHEREOF, I, the said City Collector of the City of Jersey City, have executed and delivered this Certificate of Sale, this 22nd day of March A. D. nineteen hundred and eighteen.

JAMES RADIGAN,
City Collector.

STATE OF NEW JERSEY,
HUDSON COUNTY, } *ss.*

On this the 23rd day of July A. D. 1918, before me, the subscriber, an Attorney at Law of New Jersey, personally appeared JAMES RADIGAN, City Collector of the City of Jersey City, who is I am satisfied, the individual described in, and who executed the within Certificate, and I, having first made known to him the contents thereof, he thereupon acknowledged to me that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein contained.

F. REGIS COYLE,
Attorney at Law of New Jersey.

Stipulation.

Stipulation.

Filed November 12, 1918.

The following facts, in addition to the return to the writ of certiorari already filed, are stipulated and agreed between the respective parties to the above entitled action:

1. The Passaic Valley Sewerage Commissioners, this prosecutor, acquired title to lots numbers 1 and 2, block number 1402, in the City of Jersey City, County of Hudson and State of New Jersey, located on Princeton avenue, in said City, being the lands involved in the present proceeding under an act entitled "An Act authorizing the appointment and defining the Powers and Duties of Commissioners in Sewage and Drainage Districts created for the purpose of relieving the streams and river therein from pollution and to provide a plan for the prevention thereof, and providing for the raising, expenditure and payment of moneys necessary for this purpose," approved March 27th, 1902, being Chapter 49, Pamphlet Laws of New Jersey of 1902.

2. That said lands are used and are to be used for the purpose of a shaft or shafts and such structures or buildings necessary and appurtenant thereto.

It is further stipulated and agreed that the above entitled cause shall be submitted on briefs by the respective parties, to be submitted to Honorable Francis J. Swayze, one of the Justices of the Supreme Court, without oral argument.

It is further stipulated and agreed that formal notice of argument is hereby dispensed with and that the prosecutor shall file its brief within twenty days from the date hereof, defendants' answering brief to be filed within twenty days from the filing of the brief of the prosecutor and the reply brief of the prosecutor if any, to be filed within twenty days from the filing of the answering brief of defendants.

RIKER & RIKER,
Attorneys of Prosecutor.

JOHN BENTLEY,
Attorney of Defendants.

Dated November 4th, 1918.

Amendment to Stipulation.

Amendment to Stipulation.

Filed November 28, 1918.

The stipulation previously filed in the above entitled action is hereby amended by adding thereto the following:

It Is Hereby Stipulated and Agreed between the respective parties to the above entitled action that (1) Passaic Valley Sewerage Commissioners (a body corporate) this prosecutor, acquired title to lots 1 and 2, block 1402, in the City of Jersey City, County of Hudson and State of New Jersey, located on Princeton avenue, in said City, being lands and premises involved in the present proceeding and mentioned in the stipulation to which this is an amendment, on February 20th, 1914.

(2) That taxes were assessed against said Passaic Valley Sewerage Commissioners on said lots for the years 1914 and 1915, by the Assessors of Taxes of the City of Jersey City, County of Hudson and State of New Jersey, as follows:

On said lot 1, taxes for 1914,	$48.60
On said lot 1, taxes for 1915,	108.55
On said lot 2, taxes for 1914,	3.17
On said lot 2, taxes for 1915,	3.08

That on March 22nd, 1918, both of said lots were sold for said taxes by James F. Gannon, Jr., Director of Revenue and Finance of said City of Jersey City, to the Mayor and Aldermen of Jersey City; that the total amount for which said lot 1 was sold, including taxes for the year 1914 and the year 1915, together with interest and advertising, was the sum of $193.47; the total amount for which said lot 2 was sold, including taxes for the year 1914 and the year 1915, including interest and advertising, was the sum of $15.40.

(3) That the following municipalities have contracted with said Passaic Valley Sewerage Commissioners for the construction of the Passaic Valley Sewer; Newark, Belleville, Nutley, Clifton, Passaic, Paterson, Prospect Park, Garfield, Wellington, East Rutherford, Rutherford, Lyndhurst, North Arlington, Kearny, East Newark and Harrison.

It Is Hereby Stipulated and Agreed that the prosecutor shall have until December 2nd, in which to serve its brief in the above matter.

Amendment to Stipulation.

It Is Further Stipulated and Agreed that all original papers on file in this matter, together with the typewritten briefs of the respective parties, may be used by the Court in lieu of a printed state of the case.

RIKER & RIKER,
Attorneys of Prosecutor.

JOHN BENTLEY,
Attorney of Defendants.

Dated November 21st, 1918.

I hereby consent that the within stipulation be filed as in time.

JOHN BENTLEY,
Attorney of Defendants.

Reasons.

Reasons.

Filed October 19, 1918.

This prosecutor relies upon the following reasons for setting aside the assessments of taxes made against it by the Assessors of Taxes of the City of Jersey City, on two certain lots of lands known as lots 1 and 2, block 1402, on Princeton avenue, in said City of Jersey City, for the years 1914 and 1915, and for the cancellation of the sale of said lands for said taxes by James F. Gannon, Jr., Director of Revenue and Finance of the City of Jersey City, to the Mayor and Aldermen of Jersey City, on March 22nd, 1918;

1. That said Passaic Valley Sewerage Commissioners, this prosecutor, is a public body corporate, and was such at the time it acquired title to the above mentioned lands on February 20th, 1914; said Passaic Valley Sewerage Commissioners is charged by law with the construction of the Passaic Valley Sewer; and that it holds the title of the above mentioned lands for the benefit of the following municipalities which have contracted with it for the construction of said Passaic Valley Sewer; Newark, Belleville, Nutley, Clifton, Passaic, Paterson, Prospect Park, Garfield, Wallington, East Rutherford, Rutherford, Lyndhurst, North Arlington, Kearny, East Newark and Harrison, and by reason thereof said lands are exempt from assessment for the aforesaid taxes.

2. That by reason of the fact that said taxes could not be legally assessed against said lands the aforesaid sale under the lien of said taxes is illegal.

RIKER & RIKER,
Attorneys of Prosecutor.

Dated September 9th, 1918.

Opinion of Supreme Court.

Filed February 18, 1919.

New Jersey Supreme Court

PASSAIC VALLEY SEWERAGE COMMISSIONERS,

vs.

MAYOR AND ALDERMEN OF JERSEY CITY, AND OTHERS,

CERTIORARI OF TAX SALE.

Before Swayze, *J.*, by consent.

Riker & Riker, for prosecutors.

Edward P. Stout, for defendants.

Opinion.

SWAYZE, *J.*:

The only question is whether real estate owned by the Passaic Valley Sewerage Commissioners was assessable for taxes by Jersey City in the years 1914 and 1915. The prosecutors claim exemption under the tax act of 1903. Section 3 of that act exempts property of the United States, the State of New Jersey, "and of the respective counties, school districts and taxing districts when used for public purposes." The property taxed is property necessary for the public work of an intercepting sewer to prevent the pollution of the Passaic River for the benefit of the municipalities in the Passaic Valley. There is no question that it is used for public purposes. It is not property of a county or school district. The only question is whether it is property of a taxing district, or taxing districts.

The Passaic Valley Sewerage Commissioners was incorporated in 1902 (P. L. 190), and their powers were defined by an act of the same date (P. L. 195). Among those powers was the power to order and cause a tax to be levied upon property within the district. These powers were further defined and amplified by the act of 1903 (P. L. 158). Litigation ensued and the Court of

Errors and Appeals ultimately held that the provisions for levying a tax for an amount depending solely on the judgment or discretion of the commissioners, rendered the act unconstitutional. The underlying reason was that the sewerage district was not a political district of the state, and that the district to be taxed was not coterminous with a district to which some right of local self government had been given. *Van Cleve* v. *Passaic Valley Sewerage Commissioners,* 71 N. J. Law, 574. Thereupon the Legislature provided a new and different scheme. P. L. 1907, 22. C. S. 5836. In substance this provided for the construction of the sewer at the joint expense of municipalities voluntarily entering into contracts for that purpose. The Passaic Valley Sewerage Commissioners, was, in fact, their agent for the purpose. The act provided for an apportionment of the cost of construction and maintenance among the municipalities entering into the contract and the payment thereof by the municipalities. It did not contain any provision authorizing the Sewerage Commissioners to levy or assess taxes. The Commissioners were to get the necessary funds from the municipalities.

Whatever might have been said in favor of the proposition that the Passaic Valley Sewerage Commissioners was a "taxing district" under the acts of 1902 and 1903, cannot be said since the act of 1907. It is urged, however, that the opinion in *Berdan* v. *Passaic Valley Sewerage Commissioners,* 82 N. J. Eq., 235, which we adopted as our own in 83 N. J. Eq., 340, recognized the Commissioners as a municipality. The opinion had no such scope. On the contrary, it was expressly held that the Sewerage Commissioners was merely an instrumentality by which the municipalities acted. No support is to be found in that opinion for the notion that the Sewerage Commissioners is a "taxing district" within the meaning of the Tax Act of 1903.

The present case is more nearly analogous to the situation presented in *Essex County Park Commission* v. *West Orange,* 75 N. J. Law, 376; 77 N. J. Law, 575. There the title to the land was in the Park Commission, as here it is in the Sewerage Commission. Justice Pitney held in the Supreme Court that it was "property of the county" within the meaning of the tax act, and although the judgment of the Supreme Court was reversed, the opinion in this respect was clearly approved; in fact, the decision of the Court of Errors and Appeals necessarily rested on this view. Justice Pitney rested the decision of the Supreme Court

upon the authority given to the Park Commission to acquire land "for the benefit of the county," and upon the provision that titles acquired by condemnation passed to the board "in trust for the county." There are no such provisions in the statutes relating to the Sewerage Commissioners. If the Legislature had meant that the property should be considered the property of the municipalities, it would surely have determined in what shares they should hold, and not left it to conjecture whether the shares should be in proportion to the amount each municipality might be required to pay for the cost of construction, or to the amount it might be required to pay for maintenance, repair and operation. The proportions are not necessarily the same.

In view of the rule that exemptions from general taxes are strictly construed, (*Sisters of Charity* v. *Cory, Coll'r*, 73 N. J. Law, 699), I think I am required to hold that this property is taxable.

Let judgment be entered for the defendants, with costs.

Rule for Judgment.

Entered February 21, 1919.

The Court having inspected the assessments of taxes removed by the writ in this cause, and duly considered the reasons filed herein for setting aside said assessments of taxes, and heard the argument of counsel thereon; and the Court being of the opinion that said assessments of taxes are valid; it is ordered that said writ of certiorari be and the same is hereby dismissed with costs.

Dated February 21, 1919.

Entered February 21, 1919.

On motion of

JOHN BENTLEY,
Attorney of Defendants.

A true copy,

ENOCH L. JOHNSON,
Clerk.

Notice of Appeal.

(Filed.)

To John Bentley, Esq., Attorney of Defendants:

Take notice that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause.

RIKER & RIKER,
Attorneys for and of Counsel with Appellant.

ENDORSED.

Due and legal service of the within notice is hereby admitted.

JOHN BENTLEY,
Attorney of Defendants.

Grounds of Appeal.

(Filed.)

New Jersey Court of Errors and Appeals

PASSAIC VALLEY SEWERAGE COMMISSIONERS, *Prosecutor-Appellant,*	*On Certiorari.*
vs.	*On Appeal.*
MAYOR AND ALDERMEN OF JERSEY CITY, AND OTHERS, *Defendants-Respondents.*	*Grounds of Appeal.*

The appellant states the following grounds of appeal in this cause:

1. Because the Court erred in dismissing the writ of certiorari.

2. Because the Court erred in determining that the lands in question were not entitled to be exempt from taxation.

3. Because the Court erred in holding that the lands in question were not the property, within the meaning of the tax act, of the different municipalities that have contracted with the prosecutor for the construction of the sewer.

4. Because the rule of strict construction should not be applied to property the legal title of which is in a public corporation and the purpose of which is for public use.

RIKER & RIKER,
Attorneys of Prosecutor-Appellant.

ENDORSED.

Due and legal service of the grounds of appeal in the above cause is hereby admitted this 15th day of April, 1919.

(Signed) JOHN BENTLEY,
Attorney of Defendants-Respondents.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

PASSAIC VALLEY SEWERAGE COMMISSIONERS, a body corporate, *Prosecutor-Appellant,* *vs* MAYOR AND ALDERMEN OF JERSEY CITY, *et als.,* *Defendants-Respondents.*	*On Certiorari.* *On Appeal.*

Brief of Prosecutor-Appellant.

Statement of Facts.

This is an appeal from the judgment of the Supreme Court dismissing the writ of certiorari obtained by the appellant which sought to have set aside the assessments of taxes made against the property of the appellant, the Passaic Valley Sewerage Commissioners, a body corporate, for the years 1914 and 1915 by the Assessors of Taxes of Jersey City on two lots of land known as lots 1 and 2, block 1402, on Princeton avenue, in Jersey City, and the sale of said lands by James F. Gannon, Jr., Director of Revenue and Finance, to the Mayor and Aldermen of Jersey City on March 22, 1918.

It is stipulated between the parties that the title to the premises in question was acquired by the appellant from the executors of James Currie, deceased, on February 20th, 1914; that these lands were subsequently assessed for taxes by Jersey City and were on March 22nd, 1918, sold for taxes for the years 1914 and 1915; that the total amount, including taxes, advertising and interest, for which the lots were sold was in the case of lot No. 1, $193.47, and of lot No. 2, $15.40. (Case, pp. 14, 15.)

It is urged by appellant that said assessments and sales should be set aside.

Argument.

Point I.

The real estate in question held by the Passaic Valley Sewerage Commission, a body corporate, is exempt by statute from taxation in the City of Jersey City and as a corollary is exempt from sale for taxes by said municipality, since the property is held for the benefit of the different municipalities and it is really the property of those municipalities within the meaning of the tax act exemption.

The appellant was organized under an act approved March 27, 1902, being Chapter 49 of Pamphlet Laws of New Jersey, 1902, page 195. It obtained title to the lands in question under Chapter 10 of the Laws of 1907, page 22, section 5, of which reads in part as follows:

> "5. Upon the making of the contract hereby authorized the Passaic Valley Sewerage Commissioners shall have full power in their own corporate name to purchase and acquire all lands, rights and interest in lands, either within or outside the territory of the joint contracting municipalities, *which may be necessary for the construction of such intercepting sewer or sewers*, and its appurtenances, and for this purpose are authorized to condemn the same in the manner provided by the general laws of this State relating to the condemnation of lands for public use."

It is stipulated between the parties (case, p. 19, ls. 36, 41), that the following municipalities have contracted with the Passaic Valley Sewerage Commissioners for the construction of the Passaic Valley Sewer: Newark, Belleville, Nutley, Clifton, Passaic, Paterson, Prospect Park, Garfield, Wellington, East Rutherford, Rutherford, Lyndhurst, North Arlington, Kearny, East Newark and Harrison.

The case of *Berdan* v. *Passaic Valley Sewerage Commissioners*, 82 N. J. Eq., 235, affirmed by this court in 83 N. J. Eq., 340, upon the opinion of the court below filed by Vice-Chancellor Backes, fixes the status of the appellant as expressed by the learned Justice in the court below (case, p. 19, l. 30):

> "*It was expressly held that the Sewerage Commissioners was merely an instrumentality by which the municipalities acted.*" (Italics ours.)

Vice-Chancellor Backes in the Berden case further says on page 244:

> "The building of this sewer is a public work of inestimable importance and necessity to all of the inhabitants of the Passaic Valley."

The appellant submits that this case fixes beyond question its character as a public body and its work in the construction of the Passaic Valley Sewer as a public work.

It is urged by the appellant that this property is exempt from taxation under the tax act of 1903, Chapter 208, P. L., 1903, section 3 of which provides as follows:

> "3. The following property shall be exempt from taxation under this act, namely:
> '(2) The property of the United States and of the State of New Jersey and of the respective counties, school districts and taxing districts when used for public purposes, but this exemption shall not include real property bought in for debts or on foreclosures of mortgages given to secure loans out of public funds or out of money in court, which property shall be taxed unless devoted to public uses.' "

Under this act Justice Pitney held in *Essex County Park Commission* v. *West Orange,* 77 N. J. L., 376, that the land the title to which was in the Park Commission was exempt from taxation, since it was the property of the county *within the meaning of the tax act,* and, as stated by the learned Justice below (case, p. 19, l. 42):

> "Although the judgment of the Supreme Court was reversed, the opinion in this respect was clearly approved; in fact, the decision of the Court of Errors and Appeals rested on this view."

As further pointed out by the learned Justice below:

> "Justice Pitney rested the decision of the Supreme Court upon the authority given to the Park Commission to acquire land 'for the benefit of the county,' and upon the provision that titles acquired by condemnation passed to the board 'in trust for the county.' "

He then attempts to distinguish between the case at bar and the Park Commission case by stating in effect that there is no statutory provision that the lands acquired by the appellant "be for the benefit of the municipalities" and "be in trust for the municipalities," and that if the Legislature had meant the property to be considered the property of the municipalities, it would have determined in what shares they should hold.

Somewhat prior in his opinion (case, p. 19, l. 12), the Justice below, in speaking of the legislative plan as set out in the laws of 1907, Chapter 10, says:

> "In substance this provided for the construction of the sewer at the joint expense of municipalities voluntarily

> entering into contracts for that purpose. The Passaic Valley Sewerage Commissioners was, in fact, their agent for the purpose. The act provided for an apportionment of the cost of construction and maintenance among the municipalities entering into the contract and the payment thereof by the municipalities. It did not contain any provision authorizing the Sewerage Commissioners to levy or assess taxes. The Commissioners were to get the necessary funds from the municipalities."

It will be noted, as twice pointed out, that the Justice below stamps the appellant as the *agent* of the municipalities. There can be no question, then, but that the very purpose of the existence of the appellant is "for the benefit of the municipalities," for an agent acts for his principal's benefit, and consequently its lands are for the benefit of the municipalities.

Further, since, as pointed out by the Justice, the municipalities are putting up the cost of the construction of the sewer (they thereby are putting up the purchase price for any lands held by the appellant), there is necessarily something analogous to a resulting trust, if it be not one technically, for it is submitted that in any court within the domain of Anglo-Saxon jurisprudence, he who pays the purchase price is the equitable owner, providing he does not intend it as a gift.

As to the point that the Legislature would have determined in what shares the municipalities hold the property of the appellant (case, p. 20, ls. 10, *et seq.*), it is submitted that at any given time, should it be desired to apportion said property, the total amount contributed by each municipality could be calculated, thus finding the equitable interest in each municipality, all of them holding the property, equitably at least, in common.

The answer to the following question easily suggests itself. Supposing it were desired to dissolve the appellant, who would be *interested* in either the operation of the sewer or its disposal or control? The municipalities that provided the cost, of course. This should dispositively show that these municipalities are the real owners.

The appellant submits that the case at bar is on "all-fours" with the Park Commission case and its property, therefore, is exempt within the meaning of the tax act.

Point II.

The rule of strict construction of exemption from taxes does not apply when public bodies or municipalities seek the exemption. Indeed, the rule is that if a public body or municipality is to be taxed, the law must plainly show an intention to tax.

In the case of *State* v. *Gaffney,* 34 N. J. L., 131, it was held by Justice Bedle that lands in Hudson City *held by the Water Commissioners of Jersey City* (somewhat analogous to the case at bar), for the Mayor and Common Council of Jersey City, although not in actual use for the purposes connected with the works for supplying Jersey City with water, were exempt under the provision which exempted lands of Jersey City held within the County of Hudson for purposes connected with the works of supplying said city with water. The rule of strict construction in this case would require the actual use of the lands in question when the assessment was made. Justice Bedle, however, held that actual use was not necessary so long as the holding was not for a speculative purpose and that the lands would come within the exemption.

Justice Depue, in speaking for this court in the case of *Trustees of Public Schools* v. *City of Trenton,* 30 N. J. Eq., 667, on page 681, says:

> "The immunity of the property of the state, and of its political subdivisions, from taxation, does not result from a want of power in the legislature to subject such property to taxation. The state may, if it sees fit, subject its property, and the property owned by its municipal diyisions, to taxation, in common with other property within its territory. But inasmuch as taxation of public property would necessarily involve other taxation for the payment of the taxes so laid, and thus the public would be taxing itself in order to raise money to pay over to itself, the inference of law is that the general language of statutes prescribing the property which shall be taxable, is not applicable to the property of the state or its municipalities. *Such property is, therefore, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intent to include it. Cooley on Taxation,* 131. Hence crown lands, and the property of the state, or its political sub-divisions, are not taxable under general statutes providing for taxation. Atty. Gen. *v.* Morris, 2 M. & W., 159; Mersey Docks *v.* Cameron, 11 H. O. L. Cas., 443; Inhabitants, &c. *v.* County Comm'rs., 4 Gray, 500; Worcester County *v.* Worcester, 116 Mass., 193; State *v.* Gaffney, 5 Vr., 131. Under the

general tax law of this state, public property, whether belonging to the state or its subordinary political divisions, such as counties, cities, towns, townships, is not liable to taxation. The city of Trenton had no power to levy a tax directly upon the mortgage of the complainants, though mortgages are expressly included in the enumeration of property liable to taxation. From the fact that the property of the state is, by implication, excepted from that part of the tax laws which prescribes the subjects of taxation, it follows logically, as a necessary sequence, that its property is not included in or affected by the other provisions of the law, which provide a mode for the collection of the taxes." (Italics ours.)

In *Newark v. Verona Township,* 54 N. J. L., p. 94, it was held by Justice Van Syckel that lands in the township of Verona purchased and held by the City of Newark for the purposes of the "Newark City Home," being reasonably necessary for the proper seclusion and employment of the boys committed to it, are not taxable. In this case it was furthermore shown that Newark realized some financial benefit which was merely incidental. Nevertheless, it was held that the purpose of the Home was public. On page 95 the Justice says:

> "By section 5 of a supplement to the General Tax Law, approved April 11th, 1866 (Gen. Stat., p. 3320, Sec. 200), it is provided that the property of the counties, townships, cities and boroughs of the state shall be exempt from taxation.
>
> Even in the absence of an express provision exempting the property of the state and its political subdivisions from taxation, such property is, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intention to exclude it. Trustees *v.* City of Trenton, 3 Stew. Eq., 667."

In *Camden County* v. *Washington Township,* 60 N. J. L., 367, it was held by Justice Collins that the property of a county held for public use outside the county territory, although acquired without specific authority of law, is, nevertheless, by the statute, exempted from taxation. The Justice says on page 369:

> "Decisions limiting general words of exemption in charters of private corporations to such property as may lawfully be held for charter purposes are not authority for the defendant's contention. In such cases the legal implication is in favor of the power to tax, while, as against municipal corporations, the legal implication is the other way. *As to individuals or private corporations, there must be express words to exempt; as to public corporations there must be express words to tax.* The argu-

ment for limitation by lawful ownership is of force against a public corporation only where the exemption itself is implied. Here it is express.

I see no reason why the plain language of the statute, exempting from taxation the property of counties, should by a forced construction be read so as to authorize taxation, upon a determination, reached by collateral inquiry, that the particular land sought to be taxed is held *ultra vires.*" (Italics ours.)

In *Newark* v. *Belleville,* 61 N. J. L., 455, it was held by Justice Collins that under the General Tax Law exempting municipal properties, the following property was exempt, using his own language:

"Some of the property is held without express authority of law; some is held for sale and meanwhile rented, its original use being no longer necessary, and none is used for any present public purpose."

The Justice says:

"*Implied exemption, from a general taxing law, of public property is, indeed, conditioned upon public use.* A municipality may have a mere proprietory ownership which would come within the law. It is otherwise as to an express exemption." (Italics ours.)

Held, that the property is exempt.

The rule enunciated in these cases was followed by Mr. Justice Gray in speaking for the U. S. Supreme Court in *Van Brocklin* v. *Anderson,* 117 U. S., 174; 6 Sup. Ct. Rep., 670. On page 682, he says:

"*General tax acts of a state are never, without the clearest words, held to include its own property, or that of its municipal corporations, although not in terms exempted from taxation.* Buckley *v.* Osborn, 8 Ohio, 180, 187; Piper *v.* Singer, 4 Serg. & R., 354; Directors of the Poor *v.* School Directors, 42 Pa. St., 21; People *v.* Doe, 36 Cal., 220; Worcester Co. *v.* Worcester, 116 Mass., 193; Trustees of Public Schools *v.* Trenton, 30 N. J. Eq., 618, 667; Rochester *v.* Rush, 80 N. Y., 302; State *v.* Hartford, 50 Conn., 89. The reasons for this have been well stated in the cases in Massachusetts and New Jersey. Mr. Justice Devens, delivering the opinion of the supreme judicial court of Massachusetts, said: 'The property of the commonwealth is exempt from taxation, because, as the sovereign power, it receives the taxation through its officers or through the municipalities it creates, that it may, from the means thus furnished, discharge the duties and pay the expenses of government. Its property constitutes one of the instrumentalities by which it performs its functions." (Italics ours.)

Justice Gray continues by quoting Mr. Justice Depue in the Trenton case.

It is submitted by the appellant that the learned Justice below erred when he applied the rule of strict construction in determining on the exemption in question (case, p. 20, ls. 18-21), for it is not disputed that the purpose of the lands is a public one.

Indeed, the appellant urges that one is constrained by the above cases to the opinion that since there is no specific intent shown by any statute to tax the lands in question, they are properly exempt from taxation because of their public purpose and nature.

Point III.

The property in question is not taxable under the supplemental tax act of 1910.

It may be contended by the appellees that the property in question is taxable under the 1910 supplement to the tax act, since they so argued before the learned Justive below. We are at a loss, however, to understand the relevancy to the present question of the supplemental tax act of 1910. Indeed, the learned Justice below does not refer to it at all in his opinion.

A. *The lands in question do not come within the* 1910 *Supplemental Act.*

Said act, on p. 5084, Comp. Stats., 1910, Sec. 4d, and on page 199, P. L. 1910, reads as follows:

> "Hereafter the lands of the respective counties, townships, cities, boroughs, towns and other municipal and public agencies of this State, *used for the purpose and for the protection of public water supply,* shall be subject to taxation by the respective taxing districts in which real estate is situated, at the true value thereof, without regard to any buildings or other improvements on such lands, in the same manner and to the same extent as the lands of private persons are subject to the taxation, notwithstanding any exemption provided for in the act to which this is a supplement." (Italics ours.)

There is not the slightest evidence in the case that the lands in question "are used for the purpose" *or* "for the protection of public water supply." The word "and" used in the statute is significant.

The appellees below argued that because the Sewerage Commission act of 1902 (P. L. 1902, p. 195), was enacted (quoting

the language of the appellees), "as expressed in its title, for the purpose of relieving the streams and rivers thereof in drainage districts from pollution and to provide a plan for the prevention thereof," and because of the act of 1907 (P. L. 1907, p. 22), "by virtue of which the Passaic Valley sewer is being constructed, declares that the purpose of building the sewer is to purify the waters of the Passaic River within the Passaic Valley Sewerage District," it unquestionably resulted in the prosecutor using the lands for the purpose and protection of the water supply of the Passaic Valley Sewerage District. It is strange logic which maintains that *to purify and protect from pollution* the waters of a river is to *use for the purpose and is for the protection of public water supply.* For all one knows, the water purified may never be used as public water supply. They certainly are not being *so used now.* Indeed, it is a matter of common knowledge, and perhaps within the scope of judicial notice, that the purpose of the sewer is to abate a nuisance.

Furthermore, even if the Passaic River were used now for public water purposes, the lands in question only by a constrained construction could be said to be used for the purpose and for the protection of the water supply, for the immediate purpose of said lands is to construct a sewer thereon. These lands are sewerage lands only if it be indeed necessary in any way to modify "lands" by an adjective describing their use.

The word "and" should also be noted in the 1910 act. It was undoubtedly the legislative intent that both conditions expressed in the statute concur; the word "or" would have been used if the alternative were meant.

B. *The* 1910 *Supplemental Tax Act is unconstitutional.*

In *Trenton Saving Fund* v. *Richards,* 52 N. J. L., 156, it was held by Justice Dixon that the exemption from taxes of all the property of savings banks, except real estate purchased under foreclosure, is not the exemption of an entire class of property, and consequently is unconstitutional and void. The Justice, on page 160, says:

> "I can find no reason for an affirmative answer to this question. *No substantial ground appears for discrimination between the real estate purchased under foreclosure and the real estate purchased under judgment or in settlement of debt.* A class formed upon any reasonable principle to embrace the latter must include the former also, and therefore an attempted exemption of the one without

> the other infringes the rule which permits the taxatio and exemption of property by classes only. If a law excludes from its operation a single member of a class which it otherwise would affect, it will be invalid. Bray *v.* Hudson, 21 Vroom, 82; Sisters of St. Elizabeth *v.* Chatham, 22 *Id.*, 89." (Italics ours.)

It is urged by the appellant that there is no substantial ground for discrimination between lands used for the purpose and for the protection of public water supply and any other lands held by a municipality or public agency for public purposes. To further define and give another aspect to this argument, let us suppose the lands were used for the purpose only and not for the protection of the public water supply, because of the word "and" in the statute, said lands would be exempt, for both conditions would not concur. It could not be successfully maintained that there was a reasonable ground for excluding such land from the class in which "lands used for the purpose *and* for the protection of public water supply" are.

Conclusion.

In conclusion, it is respectfully submitted that the assessments and sales in question should have been set aside for the reasons that:

1. The lands of the appellant are exempt within the meaning of the tax act of 1903;

2. The rule of strict construction does not apply to exemptions when they are sought by public corporations;

3. In order to tax a public corporation the statute which is claimed to impose the tax must clearly express an intent to do so;

4. The property in question does not come within the supplemental tax act of 1910;

5. Said supplemental tax act of 1910 is unconstitutional.

Respectfully submitted,

RIKER & RIKER,
Attorneys for and of Counsel with Appellant.

New Jersey Court of Errors and Appeals

PASSAIC VALLEY SEWERAGE COMMISSIONERS, a body corporate, *Appellant*, vs. MAYOR AND ALDERMEN OF JERSEY CITY, et al., *Respondents*	On Certiorari On Appeal.

BRIEF FOR RESPONDENTS:

The question involved in this appeal is, whether lands of the Appellant, situate in the taxing district of Jersey City, against which taxes were assessed by Jersey City in the years 1914 and 1915, are exempt from taxation. The facts are stipulated (Case pp. 14, 15, 16). The Court below held that these lands are not exempt from taxation, and sustained the assessments.

ARGUMENT.

Point I.

The lands of the appellant are not exempt from taxation by the Tax Act of 1903.

The provision of the Tax Act of 1903 to be considered here is that which exempts from taxation:

> "The property of the United States and of the State of New Jersey, and of the respective counties, school districts, and taxing districts, when used for public purposes, * * * " (P. L. 1903, p. 395., Comp. Stat. p. 5078).

The lands in question were acquired and are held by the Passaic Valley Sewerage Commissioners, by virtue of the following Acts:

> "3. Said State Board of Commissionners, when duly organized, shall be deemed to be and shall become a body coporate, with power to sue and be sued, and with the right to acquire, hold, and use and dispose of all such property as may be necessary for the uses and purposes for which said Board was created, and with all other necessary powers incident to corporate bodies." (P. L. 1902, p. 195, 196, Comp. Stat. p. 5831).
>
> "5. Upon the making of the contract hereby authorized, the Passaic Valley Sewerage Commissioners shall have full power in their own corporate name to purchase and acquire all lands, rights and interest in lands, either within or outside the territory of the joint contracting municipalities, which may be necessary for the construction of such intercepting sewer or sewers, and its appurtenances, and for this purpose are authorized to condemn the same in the manner provided by the general laws of this State, relative to the condemnation of lands for public use." (P. L. 1907, p. 22, 29, Comp. Stat. p. 5840).

These lands are not the property of the United States or of the State of New Jersey or of the respective counties or school districts, and the question is: Are they the lands of a taxing district?

(a) *They are not the lands of a taxing district.*

The Respondents contended below that the lands acquired and held by the Appelant were not the lands of a taxing district of this State, but were held by the Appellant as an independent corporate body.

It is to be noted that the Tax Act provides that the property of the *respective* taxing districts, when used for public purposes, shall be exempt from taxation. The word "respective" signifies "each or several"; therefore, the significant use of this word is, that the property of *each* taxing district, when used for public purposes, shall be exempt. The scheme of the Legislature, manifestly, was to exempt from taxation the property of the several political divisions or districts of the State, when used for public purposes.

The Appellant, in its Brief, contends that it is holding the lands in question for the benefit of the municipalities which have contracted with it for the construction of the Passaic Valley sewer: and that, therefore, these lands are the property of these municipalities and that they are exempt from taxation because they are the lands of these taxing districts.

The Tax Act does not exempt from taxation, lands which are jointly owned or held by several taxing districts. The Act provides that the lands of *each* taxing district, when used for public purposes, shall be exempt from taxation.

By Art. 1, Sec. 2 of the Tax Act, the term "taxing district," as used in the Act, is construed to include every political division less than a county, whose inhabitants or officers have the power to levy taxes. (P. L. 1903, p. 394).

Obviously, the lands of the appellant which are used for the construction of a sewer for 16 municipalities of this state, cannot be said to be the lands of a taxing district. These municipalities do not jointly exercise the right of local self-government, nor do they jointly have the power to levy taxes. Consequently, the lands used by them jointly are not the lands of a taxing district, within the meaning of that term, as defined by the Tax Act itself.

In *Van Cleave* vs. *Passaic Valley Sewerage Commissioners,* 71 N. J. L. 574, it was held, that the Passaic Valley Sewerage District was not a political division or district of the State. It, therefore, follows that the lands held by the Appellant are not the lands of a taxing district of this State.

Great stress is laid by the Apellant upon the case of *Berdan* vs. *Passaic Valley Sewerage Commissioners,* 82 N. J. Eq. 235 (affirmed by this Court in 83 N. J. Eq. 340) as an authority that the Sewerage Commissioners is a taxing district.

Mr. Justice Swayze, in the Court below, said (Case p. 19, 11. 24-36).

> "Whatever might have been said in favor of the proposition that the Passaic Valley Sewerage Commissioners was a 'taxing district' under the Acts of 1902 and 1903, cannot be said since the Act of 1907. It is urged however, that the opinion in Berdan vs. Passaic Valley Sewerage Commissioners, 82 N. J. Eq. 235, which we adopted

> as our own in 83 N. J. Eq. 340, recognized the Commissioners as a municipality. The opinion had no such scope. On the contrary, it was expressly held that the Sewerage Commissioners was merely an instrumentality by which the municipalities acted. No support is to be found in that opinion for the notion that the Sewerage Commissioners is a 'taxing district' within the meaning of the Tax Act of 1903."

(b) *These lands are not held by the Appellant in trust for the municipalities.*

The case of *Essex County Park Commission* vs. *West Orange,* 77 N. J. L. 376, relied upon by Appellant in the Court below and cited in its Brief here as authority for exempting from taxation, the lands in question, is clearly distinguished from the instant case in the decision of the learned Justice below. (Case p. 19, 11. 36-45; p. 20, 11. 1-17). The Court there points out that the Park Commission, by virtue of the express words of the statute (P. L. 1915, p. 169, Comp. Stat. p. 4168) is given authority to acquire land "for the benefit of the County", and that the land acquired by it in condemnation, passes to the Board, "in trust for the County." The Sewerage Commissioners, however, are vested "with the right to acquire, hold, use and dispose of all such property as may be necessary for the uses and purposes for which the said Board was created." (P. L. 1902, p. 195, 196, Comp. Stat. p. 5831.)

If the Legislature intended that the land acquired and held by the Sewerage Commissioners should be for the benefit of the municipalities, and held in trust for them, it would have so ex-

pressed itself. But, instead, the Legislature authorized the Sewerage Commissioners to acquire and hold the land as a corporate body, distinct from the municipalities, and to build, maintain, repair and operate the sewer with means furnished by the municipalities.

Manifestly, the municipalities are not the real owners of the lands acquired and held by the Appellant.

The learned Justice, in the Court below, said (Case p. 20, 11. 9-17): "If the Legislature had meant that the property should be considered the property of the municipalities, it would surely have determined in what shares they should hold, and not left it to conjecture whether the shares should be in proportion to the amount each municipality might be required to pay for the cost of construction, or to the amount it might be required to pay for maintenance, repair and operation. The proportions are not, necessarily, the same."

(c) *A grant of exemption from taxation, must be strictly construed.*

The Court below said (Case p. 20, 11. 18-21): "In view of the rule that exemptions from general taxes are strictly construed (*Sisters of Charity vs. Cory, Coll'r,* 73 N. J. L. 699) I think I am required to hold that this property is taxable."

It is to be observed that the Tax Act 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, * * * ." (P. L. 1903, p. 394.)

In *Sisters of Charity vs. Cory, Coll'r,* Supra, at 706, Mr. Chief Justice Gummere, delivering the opinion of this Court, said: that the true rule of construction of a grant of exemption from taxation is correctly stated in 12 Am. & Eng. Encycl. L. (2nd Ed.) 302, as follows:

> "A grant of exemption from taxation, being in the nature of a renunciation of sovereignty (or, as some jurists have expressed it, being in derogation of the sovereign authority and of common right), must invariably be construed most strictly against the grantee, and can never be permitted to extend, either in scope or duration beyond what the terms of the concession clearly require."

and held that "the fact that property involved in the present litigation is owned by a charitable organization, and is devoted to charitable uses, affords no ground for excluding it from the operation of this rule."

In *Mausoleum B'ld'rs of N. J.* vs. *State Board of Taxes,* 88 N. J. L. 592, 594, Mr. Justice Black said:

> "In construing statutes exempting property from taxation, it is settled beyond further discussion by a long line of adjudged cases, that such statutes granting immunity from taxation, must be construed strictly."
>
> See also *Rosedale Cemetery Ass'n* vs. *Linden,* 73 N. J. L. 421; *Cooper Hospital,* vs. *City of Camden,* 70 N. J. L. 478.

In *Trustees of Public Schools* vs. *City of Trenton,* 30 N. J. Eq. 667, 681, this Court said:

> "The State may, if it sees fit, subject its property and the property owned by its municipal divisions to taxation in common with other property within its territory."

As above stated, the Legislature, by the Tax Act of 1903, subjected all property within this State to taxation—except that expressly exempted. The lands in question not being expressly exempted, the cases cited by Appellant under Point II. of its Brief are not in point, because they apply to implied exemptions from taxation of public property.

Applying then, the rule of strict construction to express exemptions, the land in question is subject to taxation because it is not the property of a taxing district.

Point II.

The lands in question are expressly subjected to taxation by the Supplemental Tax Act of 1910.

By the Supplemental Tax Act of 1910, it is provided that:

> "Hereafter, the lands of the respective counties, townships, cities, boroughs, towns and other municipal and public agencies of this State, used for the purpose and for the protection of the public water supply, shall be subject to taxation by the respective taxing districts in which such real estate is situate, at the true value thereof, without

> regard to any buildings or other improvements on such lands, in the same manner and to the same extent as the lands of private persons are subject to taxation, notwithstanding any exemption provided for in the Act to which this is a supplement." (P. L. 1910, p. 199, Comp. Stat. p. 5840).

It cannot be doubted that Appellant is a public agency of this State, and the question presented for argument, in the instant case is whether this public agency is using the lands in question for the purpose and for the protection of the public water supply.

The Sewerage Commission Act of 1902 (P. L. 1902, p. 195, Comp. Stat. p. 5831) was enacted, as expressed in its title, for the purpose of relieving the streams and rivers in drainage districts from pollution, and to provide a plan for the prevention thereof.

The Act of 1907 (P. L. 1907, p. 22, Comp. Stat. p. 5840), by virtue of which the Passaic Valley sewer is being constructed, declares that the purpose of building the sewer is to purify the waters of the Passaic River, within the Passaic Valley Sewerage District.

The Passaic River is a public water supply of the Passaic Valley Sewerage District, and any lands used by the Sewerage Commissioners for the purpose of relieving this river from pollution and purifying its waters, is used for the purpose and for the protection of the public water supply of the Sewerage District.

Obviously, these lands are subjected to taxation by this Act of the Legislature.

The Act is constitutional because it classifies property as to use. The significant words of the

Act being, that lands of a public agency of this State, *used* for the purpose and for the protection of the public water supply, shall be subject to taxation.

Classification of property, in respect to the uses to which it is put, has been declared constitutional.

State Board vs. *Cenntral R. R. Co.*, 48 *N. J. L.* 146.

Tibbett vs. *McGrath, Collector*, 70 *N. J. L.* 110.

It is respectively submitted that the lands in question are subject to taxation by the Tax Act of 1903 and also by the Supplemental Tax Act of 1910.

The Judgment of the Court below should be affirmed.

JOHN BENTLEY,
Attorney for Respondents.

EDWARD P. STOUT,
Of Counsel.