

105 NOV. T. 1918

New Jersey Court of Errors and Appeals

Raritan River Railroad Company, a Corporation

Prosecutor-Appellant

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT and N. A. K. BUG-BEE, Comptroller of the Treasury

Defendants-Respondant's

—●—
On Appeal from Supreme Court
—●—
—●—

ON BRIEFS

STATE OF THE CASE

—●—

EDWARDS & SMITH
Attorneys of Prosecutor-Appellant
JOHN W. WESCOTT

Attorney General
Attorney of Defendants-Respondants

New Jersey State Library

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Writ of Certiorari.

(Dated January 31, 1918 and returnable February 18, 1918.)

STATE OF NEW JERSEY, SS.:

THE STATE OF NEW JERSEY TO THE
STATE BOARD OF TAXES AND AS- 10
SESSMENT AND N. A. K. BUGBEE,
Comptroller of the treasury:

GREETING:

We being willing for certain reasons (a proper affidavit having been presented) to be certified of the assessments and taxes for the year 1917, made and levied pursuant to an act entitled "An Act to revise and amend 'An Act for the taxation of railroad and canal property' approved April 20
tenth, one thousand eight hundred and eighty four," which act was approved March 27, 1888, and the supplements thereto and amendments thereof, on the property of the RARITAN RIVER RAILROAD COMPANY, a corporation, described in subdivisions I, III, and IV of section 3 of said act, do command you that the said assessments and taxes, the statement or statements thereof certified and reported by the State Board of Taxes and Assessment to the Comptroller of the Treasury, the final 30
determination upon said assessments and taxes by said Board, all certificates filed with said Board by the assessors of the several taxing districts of the State, together with all other proceedings and matters touching and concerning the said assessments and taxes, as fully as the same remain before you, and each of you, or under your control, you do certify and send to the Justices of our Supreme Court, at Trenton on the 40

Writ of Certiorari.

18th day of February, 1918, together with this writ, that we may cause to be done thereupon what of right and according to the laws and constitution of this State should be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our said Supreme Court at Trenton the 31st day of January, 1918.

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WILLIAM C. GEBHARDT,
Clerk.

EDWARDS & SMITH,
Attorneys.

ALLOCATUR.

I allow this writ. Let it be sealed. Upon condition that prosecutor pay within the time provided by law the taxes for the year 1917 on its property used for railroad purposes and mentioned in this writ after deducting therefrom a sum equal to one mill on each dollar of the value of said property as finally determined for assessment for said year.

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SAMUEL KALISCH,
J. S. C.

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Stipulation.**NEW JERSEY SUPREME COURT.**

RARITAN RIVER RAILROAD COMPANY,
a corporation,

Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT, and N. A. K. Bugbee,
Comptroller of the Treasury,

Defendants.

On Certiorari. **10**

IT IS HEREBY STIPULATED AND AGREED that a return to the within writ be waived, and that the valuation and assessments as shown on page hereof shall be considered as a return to said writ. **20**

EDWARDS & SMITH,
Attorneys of Prosecutor.

JOHN W. WESCOTT,
Attorney of Defendants.

SCHEDULE—

VALUATION AND ASSESSMENT.

STATE OF NEW JERSEY.

State Board of Taxes and Assessment. **30**

Trenton, N. J. November 1st, 1917.

To the RARITAN RIVER RAILROAD COMPANY:

In pursuance of the provisions of an act entitled "An act to revise and amend an act for the taxation of railroad and canal property, approved April tenth, one thousand eight hundred and eighty-four" (which revision and amendment

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Return—Schedule.

was approved March 27th, 1888), and the acts amendatory and supplementary thereto, the State Board of Taxes and Assessment, successor to the State Board of Assessors, herewith transmits to you a statement of the valuation of your property subject to taxation for State and local uses, together with the amount of tax assessed thereon.

- 10** You are notified that the State Board of Taxes and Assessment will meet at the State House, in Trenton, N. J., on Monday, the nineteenth day of November, 1917, at eleven o'clock in the forenoon, for the purpose of reviewing their assessment as directed by the following provisions of the act of March 27th, 1888;

12. AND BE IT ENACTED that the said State Board of Assessors shall meet on the third Monday of November, at the State House, in Trenton,
- 20** for the purpose of reviewing their assessment, and may adjourn from time to time till they shall have finished the hearing upon the written complaints of any company or person considering it-
self or himself aggrieved, and specifying the grievance, or of the Attorney-General or of any member of the Board, on behalf of the State, that the property of any company is assessed too low, either in the whole or in any taxing district, or that property has been omitted they shall review
- 30** the said assessment, and correct the same as shall appear just; the Attorney-General shall attend such meetings of said Board in person or by deputy; no complaint that any company or person is assessed too low, or that any property has been omitted, shall be acted upon until the company or person so assessed shall be notified of such complaint by five days' notice, to be served on such company or person by leaving the same at the
- 40** office of such company or at the usual place of

Return—Schedule.

abode of such person, if a resident of this State; the Board shall have the power to issue subpoenas and examine witnesses and call for the production of books and papers, and they shall be entitled to use their personal knowledge and judgment as to the value of property; they shall certify to the Comptroller of the State all corrections which they shall make in any assessment; the proceedings provided for by this section shall be completed before the fifteenth day of January, following the making of said assessment, and all complaints must be presented on or before the third Monday of November, or shall be deemed to have been waived. 10

L. T. RUSSELL,
President.

GEO. T. BOUTON,
ISAAC BARBER, 20
FRANK B. JESS,
State Board of Taxes and Assessment.

VALUATION AND ASSESSMENT.

STATE OF NEW JERSEY.

State Board of Taxes and Assessment.

RARITAN RIVER RAILROAD COMPANY.

Valuation and Assessment for State and Local 30
Uses for the Year 1917.

VALUATION.

Assessed valuation of the Raritan River Railroad Company:

For main stem	\$ 416,356.	
For franchise	125,000.	
For tangible personal property	228,811.	40

	Total assessable for state uses	\$ 770,167.
	For real estate used for railroad purposes other than main stem	83,373.
		<hr/>
	Aggregate assessed valuation	\$ 853,540
	TAX.	
	Tax for State uses at average tax rate of \$2.340 per \$100. valuation	\$ 18,021.91
10	Tax for uses of taxing districts on real estate used for railroad pur- poses, other than main stem, at local rates	1,847.20
		<hr/>
	Total Tax	\$ 19,869.11

Reasons.

NEW JERSEY SUPREME COURT.

20	<p>RARITAN RIVER RAILROAD COMPANY, a corporation,</p> <p style="text-align: right;"><i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE STATE BOARD OF TAXES AND ASSESSMENT and N. A. K. BUG- BEE, Comptroller of the Treasury,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>On Certiorari.</p>
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The prosecutor presents the following reasons for setting aside the assessments and taxes brought before this honorable Court by writ of certiorari in the above entitled cause:

1. Because the said taxes include a tax of one mill on each dollar of the value of prosecutor's property described in the writ of certiorari

Reasons.

in this cause, under the pretended authority of an act entitled "An Act to provide for the taxation of real and personal property in this State for State road purposes," approved March 13, 1917; whereas said property has been separately classified by statute for assessment and taxation, is not within the classification of said act and is not subject to taxation thereunder nor to the tax therein mentioned. **10**

2. Because the rate of taxation assessed and levied on prosecutor's said property includes said tax at the rate of one mill on each dollar of the value of said property; whereas the inclusion of said tax in said rate of taxation is without warrant or authority of law.

3. Because said taxes are excessive.

4. Because said assessments and taxes are in other respects erroneous, unlawful and illegal. **20**

EDWARDS & SMITH,
Attorneys of Prosecutor.

30**40**

Rule for Judgment.

(Entered July 10, 1918).

NEW JERSEY SUPREME COURT.

 RARITAN RIVER RAILROAD COMPANY,
Prosecutor,

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vs.
 STATE BOARD OF TAXES AND ASSESS-
 MENT, et al.,
Defendants.
 On Certio-
 rari.

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The Court having inspected the return and proceedings of the State Board of Taxes and Assessment, returned with the certiorari in this case, the reasons assigned for setting aside the assessment and taxation brought before this Court by said writ, and having heard the argument of counsel thereon and considered the same, do hereby order that the said assessment and taxation as returned in this Court by said writ of certiorari be in all things affirmed.

Entered July 10th, 1918,

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On motion of,
 JOHN W. WESCOTT,
 Attorney General, Attorney for Defendants.

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Notice of Appeal.

(Filed August 5, 1918.)

NEW JERSEY SUPREME COURT.

RARITAN RIVER RAILROAD COM-
PANY, a corporation,

*Prosecutor,**vs.*

STATE BOARD OF TAXES AND ASSESS-
MENT, and N. A. K. BUGBEE,
Comptroller of the Treasury,

Defendants.

On Certio- **10**
rari.

To:

HON. JOHN W. WESCOTT, Attorney General, **20**
Attorney of Defendants.

TAKE NOTICE that the prosecutors appeal to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court affirmed the assessments and taxes brought before it by the writ of certiorari in said cause, whereas said Court should have set aside or reduced said assessments and taxes for one or more of the following reasons: **30**

(a) Because the said taxes include a tax of one mill on each dollar of the value of prosecutors' property described in the writ of certiorari in this cause, under the pretended authority of an act entitled "An Act to provide for the taxation of real and personal property in this State for State road purposes," approved March 13,

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1917; whereas said property has been separately classified by statute for assessment and taxation, is not within the classification of said act and is not subject to taxation thereunder nor to the tax therein mentioned.

10 (b) Because the rate of taxation assessed and levied on prosecutors' said property includes said tax at the rate of one mill on each dollar of the value of said property; whereas the inclusion of said tax in said rate of taxation is without warrant or authority of law.

(c) Because said taxes are excessive.

(d) Because said assessments and taxes are in other respects erroneous, unlawful and illegal.

2. Said judgment affirmed said assessments and taxes, whereas said judgment should have set aside or reduced said assessments and taxes.
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EDWARDS & SMITH,
Attorneys of Appellant.

Clerk's Certificate.

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above stated cause.
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(Seal.) In testimony whereof I have set my hand and the seal of said Court at Trenton, this second day of August, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

New Jersey Court of Errors and Appeals.

RARITAN RIVER RAILROAD COMPANY, a corporation,

Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, and N. A. K. Bugbee, Comptroller of the Treasury,

Defendants-Respondents.

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On Appeal from Supreme Court.

BRIEF OF APPELLANT.

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This appeal brings up the judgment of the Supreme Court on certiorari taken by the Raritan River R. R. Co. to review the assessments and taxes for the year 1917 on property of Raritan River R. R. Co. imposed on said property under an act entitled "An Act to provide for taxation of real and personal property in this state for state road purposes," approved March 13, 1917 (P. L. 1917, p. 41).

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Section 3 of the general railroad tax act provides as follows (Comp. Stats., p. 5264):

"That it shall be the duty of the board of assessors to meet at Trenton on the first Tuesday of May in the present and each succeeding year, and as often during each year and at such places as their duties may require; they shall proceed to ascertain the true value of all property used for railroad or canal purposes of each railroad and of each canal company in the state, in-

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cluding its franchises, and they shall, in such ascertainment, ascertain:

"I. The length and value of the main stem of each railroad, and of the water way of each canal and the length of such main stem and water-way in each taxing district.

10 "II. The value of the other real estate used for railroad or canal purposes in each taxing district in this state, including the road-bed (other than main stem), water-ways, reservoirs, tracks, buildings, water tanks, water works, riparian rights, docks, wharves and piers, and all other real estate, except lands not used for railroad or canal purposes.

"III. The value of all the tangible personal property of each railroad and of each canal company.

"IV. The value of the remaining property, including the franchise."

20 The property in these subdivisions is commonly known as first class, second class, tangible personal, and fourth class railroad or canal property, respectively, and will be hereinafter referred to as such.

30 The taxes for the year 1917 on prosecutor's first class, tangible personal, and fourth class railroad property include a tax at the rate of one mill on each dollar of the value of said property, being the tax imposed on certain real and personal property under an act entitled "An Act to provide for the taxation of real and personal property in this State for State road purposes," approved March 13, 1917 (P. L. 1917, p. 41). We will refer hereafter to this act as the road tax act and to the tax provided thereby as the road tax.

40 Prosecutor's second class railroad property, although valued for assessment by the State Board of Taxes and Assessment, is taxed at the local rate of taxation (Comp. Stats., p. 5278, sec. 3). The taxes on the second class railroad property are not now in question.

The reasons assigned by prosecutor for setting aside said assessments and taxes are as follows:

1. Said taxes include a tax of one mill on each dollar of the value of prosecutor's property described in the writ of certiorari in this cause, under the pretended authority of an act entitled "An Act to provide for the taxation of real and personal property in this State for State road purposes," approved March 13, 1917, whereas said property has been separately classified for assessment and taxation, is not within the classification of said act and is not subject to taxation thereunder, nor to the tax therein mentioned. **10**

2. The rate of taxation assessed and levied on prosecutor's said property included said tax at the rate of one mill on each dollar of the value of said property, whereas the inclusion of said tax in said rate of taxation is without warrant or authority of law. **20**

3. Said taxes are excessive.

4. Said assessments and taxes are in other respects erroneous, unlawful and illegal. **30**

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I.

10 **Said taxes include the tax of one mill on each dollar of the value of prosecutor's first class, tangible personal, and fourth class railroad property under the pretended authority of the road tax act, whereas said property has been separately classified by statute for assessment and taxation, is not within the classification of said act, and is not subject to taxation thereunder, nor to the tax therein mentioned.**

The road tax act provides as follows:

20 "There shall be annually, for a period of five years from the date of the passage of this act, assessed, levied and collected in each of the municipalities of the counties of this State, a tax of one mill on each dollar of the value of all the real and personal property in every such municipality upon which municipal taxes are or shall be assessed, levied and collected. Such tax shall be assessed, levied and collected in the same manner and at the same time as other taxes upon real and personal property are now assessed, levied and collected. It shall be the duty of the collector or other officer having the custody of the collected taxes, on or before the twenty-second day of December, in each year, out of the first moneys collected, to pay to the county collector of the county such State tax required to be assessed in his taxing district, and the county collector shall pay the said State tax, which he shall have so received from the taxing districts, to the Treasurer of the State on or before the twentieth of the next January, and the said State Treasurer shall place the same in the State road fund."

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40 This Court in the cases of *Gillen vs. Essex County Board of Taxation*, *Johnson vs. City of*

Passaic and Bowen vs. The Mayor and Aldermen of Jersey City (102 Atl., 676) held that the road tax act is constitutional. Justice Bergen who wrote the opinion of the Court in those cases said:

“The prosecutors contend that the statute of 1917 does not include the first and fourth class railroad property and therefore is in violation of the constitutional requirement that property shall be assessed for taxation under general laws, and by uniform rules according to its true valuation. 10

“There is no legal rule better settled in this state than that the classification of railroad property, for the purpose of taxation by a special scheme, does not violate the foregoing constitutional requirement concerning the levying of taxes, so that if the statute of 1917 does not expressly or by implication include first and fourth class railroad property because of its classification and special method of assessment and collection by the state and the application of the entire proceeds to State uses, such exemption would not make the law unconstitutional, and if such classes are included, although subject to a different method of assessment and collection for state use, these prosecutors are not injured, because the amount of the taxes levied against their property cannot be affected by the assessment, by the State for road purposes of properly classified property, at the same rate, but by a different method. If these classes of property are not subject to the law of 1917 because of their classification, the legislature had the right to exempt them, and if it did the prosecutors have no legal ground of complaint. In either event, their rights are not affected. However, in view of the earnest argument of this phase of the case by the prosecutors, we have carefully considered it and are of opinion that the property of railroad companies classified as first and fourth classes are not within the classification of the Road Tax Act of 1917 and not subject to tax- 20 30 40

10 ation thereunder, but that their exclusion does not render that act special, one reason being that the two classes of property constitute an entity, that has strictly speaking no locality for purposes of taxation. This marked characteristic, together with the fact that such property, for the purpose of taxation, consists largely in the peculiar value imparted to it by its use under franchise renders it sufficiently unique to justify its separate classification for state taxation and its exemption from classification of property taxed for local purposes. *Long Dock Co. vs. State Board*, 78 N. J. L., 44, affirmed 79 N. J. L., 604."

20 It was said in the cases cited that first and fourth class railroad property, having been separately classified for assessment and taxation by a special method, and not being within the classification of the road tax act, are not subject to taxation thereunder. No tax can be directly levied under the road tax act upon prosecutor's first and fourth class railroad property, and inasmuch as the tangible personal property is in the same category, such tax cannot be directly levied upon that class of property.

30 These three classes of railroad property are assessed and taxed under the general railroad tax act, and the question is whether the road tax is indirectly imposed upon them by the general railroad tax act.

The taxes upon first class, tangible personal, and fourth class railroad property are regulated by a supplement to the general railroad tax act, approved April 5, 1906 (Comp. Stats., p. 5280).

40 This supplement provides that each railroad and canal company shall pay upon the assessed valuation of its first class, tangible personal, and fourth class railroad property, a tax at the "average rate of taxation," to be computed as thereafter provided.

Section 3 of the supplement is as follows:

“The ‘average rate of taxation’ shall be computed in the following manner: On or before the first day of October in each and every year, the assessor in every taxing district in the State shall prepare and forward to the State Board of Assessors a certificate, under his hand and seal, duly sworn to under oath, certifying to the State Board of Assessors the true value of all property, real and personal, located in his taxing district other than the property of railroad and canal companies, the taxation of which is provided for by this supplement, but including therein the assessed value of property of railroad and canal companies particularly described in subdivision two of section three of the act to which this act is a supplement, and shall also certify and report the rate of taxation in said taxing district for the said year. The aggregate value of all the property, real and personal, so certified, shall be deemed to be the aggregate value of the general property in the State. In each taxing district the amount obtained by multiplying the value of all the property in such taxing district by the rate of taxation therein shall be deemed to be the total taxes of said taxing district, and the aggregate of the said total taxes so ascertained shall be deemed to be the aggregate taxes of the State. The ‘average rate of taxation’ shall be computed and determined by the said board by dividing the aggregate taxes by the aggregate value of the general property in the State, which said rate so arrived at and determined, shall be entered upon the records of the board, and shall constitute the ‘average rate of taxation’ for the year.”

The assessor of each taxing district in the State included the road tax in the rate of taxation for the year 1917 certified by him to the State Board of Taxes and Assessment (successor to the State Board of Assessors), and the Board accepted and

used the rate of taxation so certified by the assessor of each taxing district, including the road tax, in computing the average rate of taxation for the year 1917. This resulted in the addition of the amount of the road tax to the average rate of taxation and the assessing and levying of the road tax on prosecutor's first class, tangible personal and fourth class railroad property.

The supplement to the general railroad tax act
10 which created the average rate of taxation contains no express provision for the levying of a state tax, such as the road tax, upon the three classes of railroad property mentioned, nor does it contain such a provision by implication.

All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. *Little vs. Bowers*, 46 N. J. L, 300; affirmed 48 N. J. L., 370; 36 *Cyc.*, 1146. The supplement to the
20 general railroad tax act, which created the average rate of taxation provides that the rate for taxation in each taxing district shall be used in computing the average rate of taxation. It follows that in order to ascertain the rate of taxation in each taxing district, within the meaning of the supplement, reference must be had to the statute or statutes then in existence, which provide for that rate.

30 At the time the supplement was enacted, taxes in taxing districts were, and they now are, assessed, levied and collected under the provisions of an act entitled "An Act for the assessment and collection of taxes," approved April 8, 1903, known as the general tax act of 1903 (Comp. Stats., p. 5075). It will be so called hereafter.

Section 22 of the general tax act of 1903, at the time the supplement to the general railroad tax act was enacted, provided as follows (P. L.,
40 1903, p. 408):

“The county board of assessors at their annual meeting, shall fill out a table of aggregates copied from the duplicates of the several successors and enumerating the following items: (1) the total number of acres or lots assessed; (2) the value of real estate assessed; (3) the value of personal estate assessed; (4) the total amount of deductions for debts claimed and allowed in each taxing district; (5) the total amount of exemptions allowed firemen, veterans and members of militia; (6) total net valuation taxable; (7) the number of polls assessed; (8) the total valuation of property exempt from taxation in each taxing district, specifying particularly and by separate items: (a) the amount of public school property; (b) the amount of other school property; (c) the amount of public property other than school property; (d) the amount of church and charitable property; (e) the amount of cemetery property and graveyards; (f) the total value of exempt property in each taxing district; (9) the amount apportioned to each taxing district for state school tax; (10) the amount apportioned to each taxing district for county expenses; (11) the tax rate per one hundred dollars of valuation in each taxing district; * * * such table of aggregates * * * shall, within three days after such meeting be transmitted to the county collector who shall file the same and cause it to be printed in its entirety, and shall transmit a certified copy of such printed table of aggregates to the state comptroller, the state board of taxation and the clerk of each municipality in such county.”

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This section as amended in 1907 provides that (Comp. Stats., p. 5103) :

“The county board of taxation, immediately upon the correction and completion of the various tax lists and duplicates, and not later than the third Tuesday in September, shall fill out a table of aggregates copied from the duplicates of the several assessors and enu-

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merating the following items: (1) The total number of acres or lots assessed; (2) the value of the land assessed; (3) the value of the improvements thereon assessed; (4) the total value of the land and improvement assessed; (5) the value of personal estate assessed; (6) the total amount of deductions for debts claimed and allowed in each taxing district; (7) total net valuation taxable; (8) the number of polls assessed; (9) the total valuation of property exempt from taxation in each taxing district, specifying particularly and by separate items: (a) The amount of public school property; (b) the amount of other school property; (c) the amount of public property other than school property; (d) the amount of church and charitable property; (e) the amount of cemetery property and graveyards; (f) the total value of exempt property in each taxing district; (10) the amount apportioned to each taxing district for state school tax; (11) the amount apportioned to each taxing district for county expenses; (12) the total amount to be raised in each taxing district for local purposes; (13) the tax rate per one hundred dollars of valuation in each taxing district. * * * Such table of aggregates shall be transmitted to the county collector, who shall file the same and forthwith cause it to be printed in its entirety, and shall transmit a certified copy of such printed table of aggregates to the state comptroller, the board of equalization of taxes of New Jersey and the clerk of each municipality in such county."

Section 23 of the general tax act of 1903 provides as follows (Comp. Stats., p. 5104):

"The State Comptroller shall on or before the first day of February in each year transmit to the State Board of Education and to the county collector of each county a statement of the amount of the tax apportioned by the state for that year and to be raised by taxation for the public schools; the state comptroller shall apportion said tax among

the several counties in proportion to the amount of taxable real and personal property of said counties respectively as shown by the last annual abstracts of ratables made out by the boards of county assessors and filed in the office of the state comptroller; the state comptroller shall also on or before the first Tuesday of August annually transmit to each county collector a statement of the amount, if any, necessary to be raised by general taxation for state purposes in said county, which the state comptroller shall apportion in the same manner as the school tax, adding thereto the deficiency, if any, of the previous year."

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Section 26 of the same act is as follows (P. L. 1903, p. 410; the amendment of 1905, Comp. Stats., p. 5105, having been repealed, see P. L. 1915, p. 91):

"Upon ascertaining the amount of tax to be raised from the property in his taxing district as herein provided, the assessor shall enter upon his duplicate in appropriate columns the net value assessed to each person for both real and personal property, the rates per dollar which shall be such as according to the valuation on the duplicate will be sufficient to produce the sums required; and the several sums assessed on the property of each person for state, state school and county taxes, and also for local, pool, dog, school district and other taxes, and shall enter the addition of the items of each column at the foot thereof, on every page, and shall within thirty days after the adjournment of the county board of assessors deliver said duplicate, complete and certified by the assessor to be a true record of the taxes assessed, to the collector of the taxing district; the duplicate shall be produced by the collector before the governing body of the taxing district or before the state board of taxation whenever required, and they may cause copies to be taken as they may direct."

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The general tax act of 1903 provides for the levying and collecting of a state tax in taxing districts but such a tax is not mentioned in the section providing for a table of aggregates nor is it given a place in the table. It follows that a state tax, if levied, is separate and distinct from the state school, county and municipal taxes and that only the state school, county and municipal taxes are included in the rate of taxation in the taxing district as provided by the act. Therefore, if the road tax can be regarded as a state tax within the meaning of the general tax act of 1903, it is not a part of the rate of taxation in each taxing district within the meaning of the supplement to the general railroad tax act.

The road tax is not a state tax within the meaning of the general tax act of 1903. The state tax contemplated by the general tax act of 1903 is for the purpose of raising an ascertained sum to be used for general purposes and apportioned by the state comptroller among the counties before the first Tuesday of August according to the amount of taxable real and personal property in the several counties as shown by the last annual abstract of ratables made out by the boards of county assessors and filed in the office of the state comptroller. The present road tax is to raise an unascertained sum to be used for a particular purpose. There has been no apportionment of it by the state comptroller. The tax is not based upon the amount of taxable real and personal property in each county as shown by the last annual abstract thereof filed prior to the first Tuesday of August but is based on the value of the real and personal property in each municipality as shown by the ratables for the current year. It is impossible to believe that the men who drafted the general tax act of 1903, or the legislature which enacted that act, contemplated such a state tax

as the road tax. The legislature which enacted the road tax act evidently did not regard the road tax as a state tax within the meaning of the general tax act of 1903 for the former is not related to the latter by way of supplement or amendment, but is an act separate and apart. Not being a state tax within the meaning of the general tax act of 1903, the road tax, of course, is not a part of the rate of taxation in the taxing districts within the meaning of the supplement to the general railroad tax act.

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The present question is not affected by the act entitled "An Act to appropriate and to provide for the payment of a portion of the State tax levied and assessed upon railroad and canal property in this State to the State Road Fund, to be used for State road purposes," approved March 29, 1917 (P. L. 1917, p. 785). The preamble of that act recites that the taxes on railroad and canal property will be increased by the road tax and that it was the legislative intent to effect such increase of taxation upon railroad and canal property. That recital can be construed to refer only to second class railroad property as that is the only class of railroad property which has been subject to taxation under the road tax act. Assuming that the act mentioned can be construed as expressing a legislative intention that the road tax should be assessed and levied on all classes of railroad property, although the act cannot be so construed, the legislature did not carry out its intention by proper statutory provision. It failed to impose the road tax upon first class, tangible personal, and fourth class railroad property by legislative enactment.

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II.

The rate of taxation assessed and levied on prosecutors' said property includes said tax at the rate of one mill on each dollar of the value of said property, whereas the inclusion of said tax in said rate of taxation is without warrant or authority of law.

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The rate of taxation in each taxing district mentioned in the supplement to the general railroad tax act is the rate of taxation in each taxing district provided by the general tax act of 1903. No taxes other than those provided by the last mentioned act can be included in the rate of taxation in each taxing district for the purpose of computing the average rate of taxation under the supplement. The road tax is not levied under the

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act of 1903, nor under any supplement thereto, nor amendment thereof, but is assessed, levied and collected under a separate and distinct act.

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The road tax act is not a supplement to, nor amendment of the general railroad tax act, and bears no relation thereto. There being no provision for including the road tax in the rate of taxation in each taxing district under the general tax act of 1903, nor for including such tax in the average rate of taxation under the general railroad tax act, the inclusion of the road tax in the rate of taxation, assessed and levied upon prosecutor's first class, tangible personal and fourth class railroad property, is without warrant or authority of law.

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III.**The taxes are excessive.**

The taxes on prosecutor's first class, tangible personal and fourth class railroad property are excessive to the extent of one mill on each dollar of the value of said property, for the reasons above stated.

We respectfully submit that said assessments and taxes should be set aside and reductions thereof directed, and the judgment of the Supreme Court reversed.

EDWARDS & SMITH,
Attorneys for Appellant.

EDWIN F. SMITH,
RAYMOND DAWSON,
Of Counsel.

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III.

The taxes are excessive.

The taxes on gas-stoves, and other articles, are excessive. The taxes on gas-stoves, and other articles, are excessive. The taxes on gas-stoves, and other articles, are excessive.

10 We respectfully submit that said assessments and taxes should be set aside and reductions thereof directed and the judgment of the Supreme Court reversed.

Attorneys for Appellants,
HOWARD & SMITH.

Attorney for Appellees,
RAYMOND DAVISON,
Of Counsel.

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