

New Jersey Court of Errors and Appeals.

JOHN B. HAIGHT, *Collector, &c.*,

ads.

THE STATE,
THE MORRIS CANAL AND BANKING
COMPANY, *Pros.*

In Error.

*Points for De-
fendant.*

I.—The grant by the State to the prosecutor,
of the lands taxed, was the grant of a fee therein.

*Laws 1824, p. —, the charter of Pro-
secutor.*

Laws 1867, p. 251, Sec. 1.

Stevens vs. Paterson and Newark R. R. Co.,

5 Vroom, 532.

Ang. & Ames in Corp., Sec. 172.

2 Wash. on R. P., Sec. 2 and seq.

Coke Lit., 13. B.

1 Black. Com., 484.

II.—The lands granted by the State were capable of valuable enjoyment by the Prosecutor.

Laws 1867, p. 251, Sec. 2.

Riparian Commissioners' Map and Report.

Stevens vs. Paterson and Newark R. R. Co.,

5 *Vroom*, 532, 541; *Beasley, C. J.*

III.—Such rights of property as the prosecutor has in these lands are taxable, whether freehold or chattel.

State vs. Platt, 4 *Zab.*, 108, 120.

State vs. Sippell, 1 *Dutch.*, 530.

Jersey City Charter, Laws, 1851, p. 392,

Sec. 44.

Even, if only leasehold, it may be taxed as real estate.

Trustees of Elmira vs. Dunn, 22 *Barb.*,

402.

IV.—The Legislature has expressly provided that this property shall not be exempt from taxation, and the prosecutor has accepted it with that provision.

Laws 1867, p. 251, Sec. 2, proviso.

V.—The Charter of Jersey City required property to be assessed at its true, full, fair value.

Laws of 1851, p. 392, Sec. 44.

VI.—There is no complaint that the value imposed on this property by the assessor is exorbitant. It is the value agreed on between the State and the prosecutor.

VII.—If any other property than that granted by the State to the prosecutor under the act of 1867 has been included in this assessment, the tax on such other property is not before this Court under this certiorari.

Writ of Certiorari, printed book, page 1.

VIII.—But if other and non-taxable property is included in the description of the assessor, the value on which the tax is assessed does not exceed the value of the taxable property included in that description, and hence the substantial rights of the prosecutor are not invaded and the assessment must stand.

Laws 1852, p. 526, Sec. 3.

State vs. Jersey City, 1 Dutch., 525, 528.

IX.—All the errors assigned, except the seventh, are improperly assigned, being on the opinion of the Supreme Court and not on the record. They should therefore be stricken out.

State vs. Demarest, 3 Vroom, 528, 537.

JONATHAN DIXON,

Of Counsel for Defendant in Error.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

ESQ.

LONDON

before you by whatever name the said, the Morris Canal and Banking Company may be called in said tax, or howsoever the same may have been made or assessed, to our Supreme Court at Trenton, on the first Thursday of November next, you certify and send together with this writ, that therein may be done what of right, and according to the laws and constitution of this state ought to be done.

Witness,

MERCER BEASLEY,
Chief Justice.

10 At Trenton, this thirteenth day of June, eighteen hundred and sixty-eight.

CHAS. P. SMITH,
Clerk.

I. W. SCUDDER,
Attorney.

A true copy,
CHAS. P. SMITH, *Clerk.*

ENDORSEMENT OF WRIT.

NEW JERSEY SUPREME COURT.

THE STATE,

THE MORRIS CANAL AND BANKING
COMPANY,*Prosecutors,**vs.*

JOHN B. HAIGHT, Collector of Revenue for Jersey City.

*Certiorari to
remove tax.*

Returnable first Tuesday of November, 1868,

10

I. W. SCUDDER,

Attorney.

July 14, 1868, submitted by the collector of revenue, and referred to the corporation attorney.

JOHN E. SCOTT,

City Clerk.

TO THE HONORABLE, THE SUPREME COURT OF NEW JERSEY :

The return to this writ appears in a certain schedule under my hand and seal, which I respectfully sent to said Court.

20

Witness my hand and seal this second day of October,
A. D., 1868.JOHN B. HAIGHT, [L.S.]
Collector of Revenue of Jersey City.

SCHEDULE.

I do herewith send to the Supreme Court of the State of New Jersey, a certain tax assessed in the year eighteen hundred and sixty-seven, on south basin to line of the Central Railroad of New Jersey, south of South street, with piers, bulkhead, and water front, city map, with all the proceedings touching and concerning the same, as the same remain in my possession as within.

10 I am commanded, as by the schedule under my hand and seal hereto annexed, more fully appear.

And I hereby further return that said assessment was made to the Morris Canal and Banking Company as owner, and that at the time said assessment took effect said property belonged to and owned by the Morris Canal and Banking Company, to whom a bill for said assessed tax was sent.

Witness my hand and seal this second day of October, A. D., 1868.

J. B. HAIGHT, [L.S.]
Collector of Revenue of Jersey City.

20

Ward 1st.

MORRIS CANAL AND BANKING COMPANY,

To THE CORPORATION OF JERSEY CITY, DR.

For the annual tax, due in November, 1867, assessed for state, county and city purposes.

LOCATION OF PROPERTY.	AMOUNT OF CITY TAX.	AMOUNT OF COUNTY TAX.	AMOUNT OF STATE TAX.	AMOUNT FOR SINKING FUND.	TOTAL AMOUNT OF TAXES.
30 South basin to the line of the Central Railroad of New Jersey, south of South Street, with piers, bulkhead and water front...	\$3,936 00	\$1,038 00	\$204 00	\$300 00	\$5,478 00

Witness my hand and seal this second day of October,
A. D., 1868,

JOHN B. HAIGHT, [L.S.]
Collector of Revenue of Jersey City.

NEW JERSEY SUPREME COURT.

THE STATE,
THE MORRIS CANAL AND BANKING
COMPANY,

Prosecutors,

vs.

JOHN B. HAIGHT, Collector of Revenue for Jersey City.

10

Examination of witnesses before me, the undersigned, a Master of the Court of Chancery, of the State of New Jersey, in the presence of Isaac W. Scudder, of counsel with prosecutors, and Arch. K. Brown, of counsel with defendants, on Saturday, January 29th, 1870, by consent of respective counsels.

J. R. HARDENBERGH,
Master in Chancery, New Jersey. 20

January 29, 1870.

John Rodgers, being duly sworn, according to law, on his oath deposeth and says:

I am Secretary of the Morris Canal and Banking Company; have been such Secretary since the first day of March,

A. D. 1865; I know the property included in the supplement to the charter of Morris Canal Company, approved March 14th, 1867, and described in the certified copy of that act, marked Exhibit 1; the last named act was accepted by the Morris Canal and Banking Company, and Exhibit 2, is a certified copy of the agreement and acceptance filed in the office of the Secretary of State, June 11th, 1867; Exhibit 3, shows the property described in the said supplement, approved March 14, 1867; the beginning point is seven hundred and sixty-five feet east of the easterly line of Hudson street, extended, to the south line of South street, as laid down on Mangin's map; the beginning point is shown by a dotted black line and a dotted red line coming together at right angles; it then follows the southerly line of South street, as shown by a dotted black line, to the centre line of Washington street, extended; thence on the centre of Washington street, extended, shown by a dotted red line, to a point two hundred and sixty feet from South street; thence by a dotted red line to the easterly line of Warren street extended; thence by a dotted red line, south two hundred feet; thence easterly, at right angles to the last mentioned line, to the centre line of Washington street, extended; thence south, on the centre line of Washington street, extended, five hundred feet to the line of the property occupied by the Central Railroad Company of New Jersey; thence easterly, upon a line parallel with the southerly line of South street, seventeen hundred and thirty-five feet; thence northerly and at right angles with the last mentioned line, nine hundred and sixty feet, to the place of beginning. This property is shown on map, Exhibit 3, by the dotted red lines, the dotted black lines; except on the south, it is bounded by the property occupied by the Central Railroad Company of New Jersey; there is contained within the boundary contained in the act and mentioned by me, forty acres and two hundred and fifty-seven thousandths of an acre; the width of the gaps in the easterly and westerly ends of the bulkheads are as follows: In the easterly bulkhead the gap is two hundred feet wide; in the westerly bulkhead it is one hundred and fifty feet wide.

Q. Assuming that the gaps were each one hundred and fifty feet wide, and that they were extended that width through the length of the basin described in said act, how may acres would thereby be occupied?

(Objected to.)

A. Seven acres and six hundred and eighty-six thousandths of an acre.

Q. The water of the basin, how is it with reference to low 10 water mark, above or below low water mark?

A. It is all above low water mark, that is to say, at low water the earth in the basin is covered with water.

Q. How is the pier called Canal pier within the boundaries used?

A. It is used for the purpose of loading and unloading articles brought over the canal; it is not used for any other purpose than that used for the navigation of the canal.

Q. The pier or bulkhead marked on Exhibit 3, and which connects with the Central Railroad property, and opposite 20 Canal pier, how is that used?

A. It is not used for anything; it is an unfinished bulkhead; the western bulkhead that is not used for anything; the passage way from the front to the rear of the basin is used for purposes of navigation every day by steam-tugs, a ferry-boat which is employed in the transportation of cattle from the Central Railroad pier west of the easterly line of the property described for lighters, schooners, sloops, canal-boats and barges, and various small craft; most of these vessels do 30 not belong to the Morris Canal; once in a while one of our boats may be taken up there; our boats are never taken west of the west bulkhead; we occupy the part marked, shipping basin for the shipping of coal from our boats; our boats come through the outlet lock which crosses Washington street into the north canal basin, which comes up to the easterly side of Washington street, then they are polled through the north canal basin around the end of the canal pier, which lies between the north basin, and the shipping basin, and pass through a gap between the canal pier and 40

the north South street canal pier, into the shipping basin, where they are discharged upon the canal pier within the boundaries described, or upon the canal pier between the shipping basin and the north canal basin, or upon the bulk-head marked, "Morris Canal Company," upon the west side of the shipping basin.

Q. Since the filing of the agreement marked Exhibit 2 has the Company paid to the State the annual rental, \$25,000 a year?

10 *A.* In the year 1868 the Company paid the ratable portion of the annual rental of \$25,000, taking the 14th day of March, A. D. 1867, as the day from which the ratable proportion was to be calculated, which amounted to \$20,174 as near as I can now recollect without the books before me; in 1869 and in 1870, we paid \$25,000 each year.

Cross-examination:

Our canal empties into the tide-water some distance east of Hudson street; I so say because the basin is a part of the canal; the tide-water of the bay and Hudson river comes up
20 to the outlet lock of our canal, situated on the east side of Washington street; all the property mentioned by me in Exhibit marked Number 3, situated on the easterly side of Washington street, is subject to the ebb and flow of the tide-water of the Hudson river; part of the property mentioned by me on the westerly side of Washington street, is also subject to the ebb and flow of the tide-waters of the Hudson; the plot on Exhibit Number 3, marked, Morris Canal Company Shipping Basin, is used by the Company
30 for shipping purposes; it is used for the shipping of articles which are brought over the canal.

Q. Do I understand you to say that all of the property embraced in the description, as mentioned in your direct examination, is used for the purpose of navigation connected with the Morris Canal Company?

A. No, sir; because the two piers, one marked Morris Canal Company, on the east side of the shipping basin, and the Warren pier, marked Morris Canal Company, on the

west side of the shipping basin, are unfinished bulkheads, and cannot be used.

Q. Are all the other property embraced in your direct examination, used and occupied by the Morris Canal Company for canal purposes, except such as you have designated in your last answer?

A. It is with the single exception of a small portion of the large bulkhead on the westerly side of the basin, east of the sugar house property, which is occupied by Martin & Grant for a spar yard. 10

Re-direct.

Q. Do the tide waters of the Hudson river flow westerly and beyond the red dotted lines?

A. Yes; the tide ebbs and flows thirty-six hundred feet beyond the westerly boundary of our line.

JNO. RODGERS.

Subscribed and sworn before me, this 29th day of January, A. D., 1870, at Jersey City,

J. R. HARDENBERGH.
Master in Chancery, N. J. 20

NEW JERSEY SUPREME COURT.

THE STATE, THE MORRIS CANAL AND BANKING COMPANY,	<i>Prosecutors,</i>	} <i>On Cert.</i>
<i>vs.</i>		
JOHN B. HAIGHT, Collector of Jer- sey City,	<i>Defendant.</i>	

Examination of John Rodgers continued before me, Jona-
 10 than Dixon, Jr., Supreme Court Commissioner, at Jersey
 City, N. Jersey, on the nineteenth day of February, A. D.
 1870, in presence of I. W. Scudder, Esq., Attorney for Pros-
 ecutors, and A. K. Brown, Esq., Attorney for Defendant.

John Rodgers, being duly sworn, on his oath deposes and
 says :

The pier marked on map, which has been marked as an
 Exhibit in this cause, as Canal pier extending south into the
 Morris Canal Shipping Basin, was commenced to be con-
 20 structed October 22, 1860, and entirely finished, I think, in
 1866; we called it Bulkhead A; the pier, itself, was finished
 in 1864, but the last charge against it was in 1866; the two
 bulkheads which extend northerly from the Central Rail-
 road Company's property, and at right angles therewith,
 were constructed in 1859 and 1860, possibly extending to
 1861; the bulkhead, east of the Sugar house property, was
 commenced in 1861, and finished in 1865; since 1865, it has
 been extended westerly to the line of the State grant; this
 extension was finished in or about 1868, or, I think, 1867.

(The prosecutors offer in evidence nine deeds, marked by me Exhibit P, 3, 4, 5, 6, 7, 8, 9, 10, 11, in said cause.)

These deeds all show property delineated on Mangin's map; the Morris Canal Company claimed that it constructed the piers and bulkheads I have above spoken of, upon lands under water conveyed to it by the Jersey Associates, who were the riparian owners, and under the franchises of the charter of the company.

Q. Were they used in connection with the business of the company, prior to the State grant of lands under water to the company?

A. They were, with the exception of two cribs running north from the Central Railroad, which are still in an unfinished state; these cribs are not used for any purpose, because they are unfinished.

And being *cross-examined*, he says :

All the property that I have mentioned east of Washington street, and south of Bergen street, is subject to the ebb and flow of the tides; this includes all the property that I have mentioned as belonging to the Morris Canal Company; the Canal Company received from the Collector of Jersey City, a regular tax bill for this property for the year 1863.

JOHN RODGERS.

Inscribed and sworn to, this February 19, 1870, before me.

J. DIXON, JR.,

Sup. Ct. Com., New Jersey.

A copy of Mangin's map of Jersey City, shall be used by consent, as an Exhibit in this cause.

I. W. SCUDDER,

Attorney for the Prosecutors. 30

ARCH. K. BROWN,

Of Counsel for City.

NEW JERSEY SUPREME COURT.

<p>THE STATE, THE MORRIS CANAL AND BANKING COMPANY,</p>	}	<p><i>Prosecutors,</i></p>	<p><i>On Certiorari to Re- move Tax, &c.</i></p>
<p><i>vs.</i></p>			<p><i>Reasons for Reversal.</i></p>
<p>JOHN B. HAIGHT, Collector of Reve- nue.</p>	}		

1st. The lands under water have been assessed for taxes
10 for State, county and city purposes.

The grant by the State of the land under water to the
Morris Canal and Banking Company, by the act entitled
“A further supplement to the act entitled an act to incor-
porate a company to form an artificial navigation between
the Passaic and Delaware Rivers, passed December thirty-
first, eighteen hundred and twenty-four;” which supplement
was approved March 14, 1867, upon the condition that the
said Company should pay \$25,000 per year into the State
Treasury.

20 The tax is virtually a tax assessed by the Assessor on the
land of the State.

2d. The premises in question, except the piers and bulk-
heads, are lands under water, flowed by the tide waters of
Hudson River or New York Bay, and as such are not the
subject of taxation.

3d. The lands under water are a part of Hudson's River or New York Bay, at the terminus of a canal, and flowed by navigable waters used for purposes of navigation by vessels, which waters are a highway to reach docks, wharves and piers, and also to reach property and landing places not owned by the prosecutors, but westward from their property.

4th. The whole area or water space contains forty acres and two hundred and fifty-seven thousandths of an acre, and out of this the passage way should come, which passage way occupies seven acres and six hundred and eighty-six thousandths of an acre, and no allowance whatever has been made for this passage way, assuming that the property is taxable. 10

5th. The assessment of the taxes on this property is inconsistent with the provisions of the Charter of Jersey City, under which charter the said assessments was made in these particulars.

Because, under the said charter, real estates and chattels could be assessed.

The tide-waters in the basin cannot be assessed for taxation, they flow in and flow out every six hours, and are not real estate. 20

The lands under the said tide-waters are not real estate, they are not capable of that livery of seizin to which real estate can be subject.

Because, under the said charter, all taxes and assessments remain in lien upon lands, tenements and real estate, and can be sold to satisfy such lien; make the provision of the statute applicable to this basin, and sell the same, for the non-payment of taxes, and the state would be selling out a 30 rental of \$25,000 per year.

6th. Because, a tax cannot be laid on a water front.

7th. Because, a tax cannot be laid on a basin.

8th. Because, a tax cannot be assessed on the pier and bulkhead, the same having been constructed before the said act of the Legislature was passed, by which the said grant was made, and was a part of the original canal constructed under the charter of the said company, and under their right as riparian owners.

9th. Because, the said tax so assessed is in divers other particulars informal, illegal, erroneous and void.

I. W. SCUDDER,
Att'y for the Prosecutor.

NEW JERSEY SUPREME COURT.

STATE	}
vs.	
HAIGHT.	

The lands under tide water, granted by the State to the Morris Canal and Banking Company, by Act of March 14th, 1867, are liable to taxation.

The proviso in Sec. 2, takes them out of the exemption in the original charter.

By the true construction of this Act, a freehold, and not 10 a leasehold estate is granted.

If some of the means of collecting a tax, as by lien on land, cannot be made effectual, it does not follow that the whole assessment will be void.

If taxable and not taxable property, are joined in one assessment, if the whole amount is not greater than the value of the taxable, it will be sustained.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1871.

<p>THE STATE, THE MORRIS CANAL AND BANKING COM- PANY,</p>	<p><i>Prosecutors,</i></p>	}	<p><i>On Certiorari.</i></p>
<p><i>vs.</i></p>			<p><i>Opinion.</i></p>
<p>JOHN B. HAIGHT, Collector of Revenue of Jersey City.</p>			

10

I. W. SCUDDER, *for Plaintiff.*S. B. RANSOM, *for Defendant.*

For the annual tax due in 1867, for State, County and City purposes, one of the Assessors of Jersey City assessed the Morris Canal and Banking Company the total sum of \$5,478.00, upon "South Basin to the line of the Central Rail Road of New Jersey, south of South street, with piers, bulkheads and water front."

This assessment was certified to this Court for review, and many reasons assigned for setting it aside. These appear in
20 the opinion of the Court so far as they are material.

Scudder J. The State of New Jersey, by Statute, approved March 14, 1867, granted to the Morris Canal and Banking Company, all the right, title and interest of the State in and to certain lands under water, defined by boundaries, on condition that the gaps between the Easterly and

Westerly Bulkheads, and other structures that might be erected, should be kept open one hundred and fifty feet wide, so that the public might with all vessels freely navigate to and from the channel of the Hudson River and all places East and West of said Westerly bulkheads, without the payment of toll or charges.

The second proviso in the first section is as follows: And provided further that the said Company shall, within ninety days after the passage of this Act, execute and deliver to the Governor of this State, their promise and undertaking, 10 under seal, unconditionally to pay into the treasury of this State yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday of January in each year, during the continuance of their charter, and so long as the said Company, their successors or assigns shall continue to hold or occupy the same; the first payment of a rateable portion of which shall fall due on the first Tuesday of January, eighteen hundred and sixty-eight, it shall be lawful for the said Company instead of the said annual payment of 20 twenty-five thousand dollars, to pay into the treasury of this State at any time, the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars.

It was further enacted, that the said Company might, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses, and other structures within the limits above described and make reasonable rules and regulations for the use thereof to enable them to carry on a transportation business in and over their canal and elsewhere, which they were *thereby* empowered to do. And also to afford facilities for Commerce, "*provided that the 30 exemption of said Company in its original charter from taxation, assessments, or other legal impositions, shall not extend to the property or privileges hereby granted.*"

The Act was to be enforced during the continuance of their charter, and at the expiration of that time, the lands thereby granted, with the improvements thereon, should revert to the State on the same terms and conditions provided in the original charter of the Company respecting the transfer of the property thereof to the State.

These *terms* are, that the State at the end of ninety-nine 40

years from the passage of the act, (December 31st, 1824,) may take the canal and appurtenances at a valuation by Commissioners, and if this be not done within one year thereafter, the charter shall continue for fifty years longer; when it shall cease, and the canal and appurtenances become the sole property of the State.

Section 4 of the charter, exempts from tax generally, such estate or property as is possessed, occupied and used by the said Company for the actual and necessary purposes of said
10 canal navigation under the act, according to the true intent and meaning thereof.

June 10th, 1867, the Company executed and delivered to the Governor of this State their promise and undertaking, under seal, according to the second proviso of the first section; and have been since that time in the possession and use of said premises, paying the stipulated annual price for such possession and enjoyment.

As a general description of the situation of the property named in the grant from the State, it may be sufficient to
20 say, that the out-lock lock of the Canal Company, is at Washington street. East of *this*, and extending to Hudson street, is what is called the north canal basin, opening southerly between two piers, through an outlet, into what is known as the south or shipping basin, which extends southerly, to the northerly line of the Central Railroad Company's dock. There are two unfinished piers projecting northerly, from the Central Railroad Company's line, into this shipping basin. There are, also, two larger piers oppo-
30 site to them, on the southerly side of the north basin. And between these opposite piers are the gaps referred to that are to be left open for navigation.

The tide ebbs and flows over all the premises granted by the State to the prosecutors under the Act of 1867, and it is not *uncovered* by the water at low tide.

The peculiar quality of the property granted by the State, gives rise to the questions that are discussed. It is said, that land covered with water, where the tide ebbs and flows, is not the subject of a grant so as to make it liable to taxation in the hands of a person claiming under the State. It can
40 hardly be insisted by the prosecutors, that the State had no

right to make the transfer to them ; because it would invalidate their own title. And so long as they continue to hold and claim an exclusive right to appropriate and enjoy the premises, *they* cannot deny the only title they have or can have. The land covered by the basin and piers lies within the exterior line *defined* by the State for *improvement*, it is bounded on the north and south by docks, wharves and piers, extending out towards the Hudson River, beyond the easterly line of the description. And there can be no doubt, that to this extent, at least, the State could make such title as has 10
 been done by legislative grant. If this be so, then whoever takes under this title, holds it with the incidents of ownership, as land or any other kind of property is held. One of these incidents is the liability to taxation. In State, (Bentley, *pros. vs. Sippel*, 1 Dutch, 530,) it was decided that where a license is given to the owner of land lying on a navigable stream to wharf out below high water mark, so far as the grant extends, the property is vested in the grantees, and is liable to taxation. See also State, (Coles, *pros., vs. Plate*, 4 Zab., 108.) 20

In the present case, by express legislative action, this exclusive property and right to improve and hold, is granted to the prosecutors.

There is nothing, therefore, in the kind of property granted that excludes the right of taxation, after the title has passed from the State.

If this be so, then it remains to be considered whether there is any limitation or exception of this right of taxation by reason of the kind of estate granted by the statute.

It is said that the State is still the owner of the land and 30
 that the relation between it and the prosecutors is that of landlord and tenant ; that they hold under an annual rental, with no higher title than mere tenancy, and as such tenants are not liable to pay tax for the State's land. But the proper construction of the Act under which the prosecutors claim, makes it more than a mere lease. It is in words and in substance a grant for the whole life of the corporation, with provision for an extension beyond in case of a further continuance of the charter. The consideration is an annual 40
 payment, with the privilege to pay a gross sum in lieu

thereof—something better is intended than a mere tenancy from year to year, or for a term of years. An estate is vested in the prosecutors which is the subject of taxation. It is an estate of freehold, ending with the existence of the corporation, and the estate then reverts, as in an estate for life, at the dissolution of the corporation. Under Sec. 3 of Act of 1867.

See Ang. & Am. on Corp. 172, 195, 6th Ed. 2 Pris. Est. 44, &c.

- 10 The payment secured to be made to the State in this Act, has been likened to a quit rent. It is not so in effect, nor can it be so in law, because not the incidents of the Estate from which such rents were derived at Common law. These incidents were feudal in their origin, and no longer exist in our law.

2 Blk. Corm. 42—2 Boriv. L. D. 402.

- 20 That it was the intention of the Legislature that the premises described in the Act, and all the improvements to be made thereon by the grantees, should be taxed, seems to be clear from the proviso to the second section. This states expressly that the exemption of said Company in its original charter from taxation, assessments, or other legal impositions shall not extend to the property and privileges hereby granted. To this the Company assented when they filed a formal acceptance of this supplement. It was then clearly the understanding and intention of the parties that the property and privileges thereby granted, should be liable to taxation. If this were not so, why is there this careful exclusion of a constructive exemption?

- 30 As to the objection that there is a limitation of the enjoyment of the South or Shipping basin, because there are gaps between the piers to be kept open for the use of others, it is sufficient answer to say that such is the burden voluntarily assumed by the prosecutors, and to which they have consented by their acceptance of the Act. There is no exception of any part from taxation on this account, and no taxable estate is granted to others who may use the gaps in common with this Company.

Another reason urged is, that if these premises are real estate, then the city may have a lien for taxes and sell the same, under charter of Jersey City, laws 1851, l. 411—Sec. 48, and that thereby the consideration of the grant may be lost to the State. Not so; for only the estate and interest which the prosecutors have, *cum onere*, can be sold; and if this result should render the remedy of the City ineffectual against the land for the collection of the tax, this would not render the assessment illegal. It does not follow that the whole assessment will be void because it may happen that 10 some of the means authorized to be used for collecting the tax, cannot be made effectual.

State *v.* Platt—4 Zab. 108.

Neither will it avoid the assessment, because some of the piers and bulkheads were constructed before the grant from the State in 1867, and are within the south basin, and are a part of the property assessed. These piers, &c., in fact, cover but a small part of the large area of $40\frac{257}{1000}$ acres granted by the State to the prosecutors.

It is true, as was insisted, that it was held in State *v.* 20 Bates, 4 Zab., 556, that these improvements being property held and occupied by the Company for the actual purpose of canal navigation, are exempt from taxation; but it is also true, that upon further assurance of title by grant of the land upon which these piers are built, by the supplement of 1867, it is expressly provided that this exemption in the original charter shall not extend to the property or privileges thereby granted.

And if this were not so, if a part is not taxable, and property that is taxable is joined with it, so that all are 30 taxed together, as in the case of a person who claims lands above and below high water mark, both of which are assessed together, if the assessment is not made for an amount greater than the value of the taxable property, it will be sustained.

State *v.* Jersey City, 1 Dutch, 525.

It appears from the return and evidence in this case, that the whole premises are only taxed at the amount of the consideration to be paid by the Company for them.

There is, therefore, no excess in the valuation of the property.

This disposes of all the material reasons assigned for setting aside the assessment, and is, therefore, affirmed.

VANSYCKEL, concurred.

A true copy.

CHARLES P. SMITH,
Clerk.

NEW JERSEY SUPREME COURT.

THE STATE,

THE MORRIS CANAL AND BANKING
COMPANY,*Prosecutors,**vs.*JOHN B. HAIGHT, Collector of Revenue
for Jersey City.*On Certiorari to
remove tax.**Writ returnable
first Tuesday of
November, 1868.*

The above cause was argued by the counsel of the respective parties March term 1871, and at the term of June, 1871, the court delivered an opinion that the taxes should be affirmed.

It is thereupon ordered and adjudged by the Supreme Court, that the said taxes in the return to the certiorari set forth be affirmed.

On motion of

ARCH. K. BROWN,
Attorney.

Entered May 27th, 1872, as of June term 1871.

A true copy.

CHAS. P. SMITH,
Clerk.

COURT OF ERRORS AND APPEALS IN THE
LAST RESORT, &c.

THE MORRIS CANAL AND BANKING
COMPANY,

Plaintiffs in Error.

vs.

JOHN B. HAIGHT, Collector of Revenue
for Jersey City,

Defendant in Error.

10 Afterwards, to wit, on the third Tuesday of June, in the year of our Lord one thousand eight hundred and seventy-two, came the said the Morris Canal and Banking Company, by Isaac W. Scudder, their attorney, and say, that in the record and proceedings aforesaid, and in giving judgment aforesaid, there is manifest error in this, to wit :

That the Supreme Court did order and adjudge that the said taxes on the said basin, and on the piers and property in the said record and proceedings set forth, should be affirmed; whereas, by the law of the land, the said taxes
20 should have been set aside, and should have been declared to have been unlawfully assessed.

And there is also error in this, that the said the Supreme Court did adjudge that the lands under water in the said record and proceedings set forth, were lawfully assessed for taxes for State, County and City purposes; whereas, by the

law of the land, the said lands under water were the property of the State of New Jersey, as manifestly appears by the act entitled "A further supplement to the act entitled an act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirty-first, eighteen hundred and twenty-four, which supplement was approved March fourteenth, eighteen hundred and sixty-seven, and being the property of the State of New Jersey, leased to the said the Morris Canal and Banking Company, the said lands under water were not 10 liable to taxation.

And there is also error in this, that the said the Supreme Court, did adjudge that the lands under water in the said records and proceedings set forth, and which were flowed by the tide waters of Hudson's river, on which waters public navigation was carried on, were liable to be assessed for taxes for the State of New Jersey, the county of Hudson, and the city of Jersey City; whereas, by the law of the land, the said lands under water were not liable to be assessed for taxation as aforesaid. 20

And there is also error in this, that the said the Supreme Court did adjudge that the said South basin, to the line of the Central Railroad of New Jersey, south of South street, with piers, bulkhead and water front, was liable to be assessed for taxation for the State of New Jersey, the county of Hudson, and the city of Jersey City; whereas, by the law of the land, said basin was not liable so to be assessed for taxation.

And there is also error in this, that the said the Supreme Court did adjudge that the pier and bulkhead in the said 30 record and proceedings set forth, were liable to taxation for the State of New Jersey, the county of Hudson, and the city of Jersey City, notwithstanding said pier and bulkhead were constructed by the said the Morris Canal and Banking Company, before the passage of the said act entitled "A further supplement to the act entitled an act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers, passed December thirty-first, eighteen hundred and twenty-four," which supplement was approved March fourteenth, eighteen hundred and sixty- 40

seven, and notwithstanding said pier and bulkhead so constructed, were possessed, occupied and used by the said the Morris Canal and Banking Company for the actual and necessary purposes of the canal navigation of the said company; whereas, by the charter of the said company, and the law of the land, the said pier and bulkhead were exempt from assessment for taxation as aforesaid.

And there is also error in this, that the said the Supreme Court did adjudge that the said passage way in the said basin in the said record and proceedings set forth, was liable to be assessed for taxation; whereas, by the law of the land the said passageway being for the purpose of public navigation was not liable to be assessed for taxation.

And there is also error in this, that the said the Supreme Court did adjudge and give judgment that the said taxes in the said record and proceedings set forth, should be affirmed; whereas, by the law of the land, the said Court should have given judgment for the said the Morris Canal and Banking Company, and that the said taxes should be set aside, reversed and for nothing holden.

And the said the Morris Canal and Banking Company pray, that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings may be reversed, annulled and altogether holden for naught, and that they may be restored to all things which they have lost by occasion of the said judgments.

I. W. SCUDDER,

Att'y for and of Council with the Pl'ffs in Error.