

N. J. COURT OF ERRORS, &C.

THE STATE, CORNELIUS VAN WINKLE, Prosecutor,
 vs.
 PETER S. MASSAKER, Collector of Taxes, for the Township of Manchester, in Passaic County.

In Error to Supreme Court.

We agree upon the following statement and facts as the case in above entitled cause :

W. GLEDHILL, Att'y for Pltf.
 H. A. WILLIAMS, Att'y for Deft.

The Defendant above named was collector of taxes for the Township of Manchester, in Passaic County, in the year 1855; in which year the Prosecutor's taxes amounted to \$657 95-100, upon an assessment of which the following is a copy :

CORNELIUS VAN WINKLE.

Acres of Land,	\$265 00	
Value of Real Estate,	\$13,250 00	
Value of Personal Estate,	75,000 00	
Debt,		
Poll tax 1, No. of Dogs 2,		4
Tax on Real and Personal Estate,	657 45	
Poll tax,	50	
Dog tax,	1 00	
Amount of County tax,	379 47	
" " School "	22 06	
" " Poor "	105 90	
" " Road "	150 02	5
" " all taxes except road tax	508 93	

Copy of Duplicate.

This assessment was removed by Certiorari to the Supreme Court for review, the Prosecutor moving to quash the assessment for reasons following :

Reasons.

6

NEW JERSEY SUPREME COURT.

THE STATE, CORNELIUS VAN WINKLE, Prosecutor,

vs.

PETER S MASSAKER, Collector of Taxes for the Township of Manchester, in Passaic County.

} *In Certiorari. Reasons.*

7

The Plaintiff in the Certiorari above stated, by Wm. Gledhill, Attorney, prays that the assessment of Taxes made against Prosecutor in said Township, for the year 1855, may be set aside and for nothing holden for the following reasons :

1st. Because said assessment was made contrary to law.

2d. Because the same was made without authority in law.

3rd. Because no deduction was made for debts due and owing by Prosecutor to creditors in this State.

8

4th. Because Prosecutor was assessed for bonds and mortgages to the amount of \$70,000, of which mortgages at the time of said assessment, a part, amounting to \$60,000, was on lands in the State of New Jersey and out of said Township, and owned by persons residing out of said Township and in said State.

5th. Because of \$70,000 of the bonds and mortgages assessed to Prosecutor, \$60,000 of the bonds were at the time of said assessment secured by mortgages on lands in said State and County, and out of said Township of Manchester.

9

6th. Because the said sum of \$60,000, the amount of the bonds aforesaid, was secured by mortgages on lands in said County, and out of said Township, and owned by persons residing in said State, and out of said Township, but was not deducted by the Assessor in said year, from the amount of the personal property of Prosecutor.

10

WILLIAM GLEDHILL,
Att'y for Plaintiff.

Depositions, &c.

DEPOSITIONS AND AGREEMENTS.

C. S. Van Wagoner, of the city of Paterson, a witness produced on the part of the prosecutor, being duly sworn on his oath, deposes and saith, that :

11

He knows Cornelius Van Winkle, the prosecutor in the above case ;

That within a few weeks he has drawn an assignment of a bond

and mortgage from said Cornelius Van Winkle to some other person, that other person was D. K. Allen;

That Platt Rogers had executed said bond and mortgage; 12

That his impression is that that the bond and mortgage had been executed to Cornelius Van Winkle;

That the assignment which deponent drew was executed by Cornelius Van Winkle;

That the principal of the bond and mortgage was eight thousand dollars;

That the property upon which said mortgage was given is in the city of Paterson and known as Congress Hall; 13

That he does not know where said assignment now is, but knows that D. K. Allen expressed his intention of having it recorded;

That the mortgage had been standing some years; how many exactly he does not know.

C. S. VAN WAGONER.

Sworn and subscribed before me, }
this 31st day of May, 1856. }

14

HENRY A. WILLIAMS.

Peter I. Sturr, of the Township of Manchester, in the county of Passaic, a witness produced on the part of the prosecutor, being duly sworn on his oath, deposeth and saith;

I was assessor in the Township of Manchester, in the County of Passaic and State of New Jersey, during the year eighteen hundred and fifty five. 15

I made the assessment upon the different inhabitants of said Township for that year. I ascertained the amount of County and Township Taxes, to be levied upon each inhabitant of said Township for that year.

I assessed upon Cornelius Van Winkle the County and Township taxes, assessed upon him for that year. 16

I cannot tell the total amount of taxes assessed upon Cornelius Van Winkle for that year. I know Cornelius Van Winkle the prosecutor in this certiorari.

He has lived for the last two or more years in Manchester Township, and still lives there.

I went to his residence preparatory to making my assessment upon him, in eighteen hundred and fifty five. 17

On going to his residence to make my assessment, I first asked the number of acres of land he owned.

When I went there I went for the purpose of learning what taxable property he had.

18 He told me how many acres of land he owned, and I fixed a value upon said land.

I inquired of him the amount of his personal property. He first gave me an account of his personal property in the Township. I mean his stock on the farm, horses, cattle, furniture farming utensils, and money on bond and mortgage in the Township.

I put down the money with the other personal property in the Township, and assessed the whole at four thousand dollars.

19 I do not remember exactly the amount of the money in the Township, but think it was fifteen hundred dollars.

Question.—How much money was stated by him to you, to be due him on bond, or otherwise secured by mortgages on land out of the Township of Manchester?

Objected to.

20 *Answer.*—I cannot say positively how much he did state to me but I think it was sixty or sixty five thousand dollars. I cannot say whether he said it was all or mostly in the city of Paterson, but it strikes me that he did.

Question.—Was anything said by him to you, or by you to him about your right to assess him for those sixty or sixty-five thousand dollars on mortgages?

Objected to.

21 *Answer.*—He asked me what I intended to do about those mortgages—whether I meant to assess them or not. I told him that I was ordered by the Township to go to its Attorney, and to act according to his advice. Mr. Van Winkle denied my right to assess his mortgages on property in the city of Paterson. I took legal advice on the subject and assessed the mortgages.

22 The assessment I made upon Mr. Van Winkle in the year eighteen hundred and fifty five, was upon his lands in the Township of Manchester, his personal property upon his farm, his money in the Township, and his mortgages upon land out of the Township.

I made a duplicate of the above assessment and delivered it to the collector of the Township. The collector that year was Peter S. Massaker.

Cross Examination :

Mr. Van Winkle did not tell me how much money he had upon bond and mortgage out of the State; but that he had money in business out of the State. Mr. Van Winkle at no time made oath or affirmation to me, as to the value of his real and personal estate; 23

I made no deduction in my assessment for debts due and owing by Mr. Van Winkle.

The mortgages out of the Township of Manchester upon which I taxed Mr. Van Winkle, were upon land in the city of Paterson.

When I went to make my assessment in eighteen hundred and fifty five, Mr. Van Winkle said that he had made affidavit as to the value of his personal property, in eighteen hundred and fifty three, before Albert Van Dien, the assessor for that year. 24

I referred to the duplicate of the assessment for eighteen hundred and fifty three.

Mr. Van Winkle was there assessed for his personal property to the amount of seventy-five thousand dollars. 25

Examination in chief renewed :

Mr. Van Winkle said that Albert Van Dien required him to make the above mentioned affidavit.

I made my assessment upon Mr. Van Winkle's personal property for eighteen hundred and fifty-five, by taking the valuation of Albert Van Dein, the assessor in eighteen hundred and fifty three.

I considered the mortgage in the city of Paterson as part of the seventy-five thousand dollars. 26

I considered the four thousand dollars assessed for personal property in the Township of Manchester, as also part of the seventy-five thousand dollars.

During the year eighteen hundred and fifty-five. I lived about three miles from Mr. Van Winkle, and about four miles from Mr. Van Dein. 27

Mr. Van Winkle said something to me about being indebted to somebody; however I do not remember to whom or what amount.

Cross Examination renewed :

I made the assessment of eighteen hundred and fifty five upon the valuation of eighteen hundred and fifty three, because Mr. Van Winkle told me that he had made affidavit to said valuation, and I thought it a true account of his personal property. 28

Chief Examination renewed :

Mr. Van Winkle did not tell me the amount of the valuation of his personal property, sworn to before Mr. Van Dein.

PETER I. STURR.

Sworn and subscribed before me, }
this 31st day of May, 1856. }

HENRY A. WILLIAMS.

29

It is agreed by counsel in the above case, that in the year eighteen hundred and fifty five, and at the time of the assessment under review in this case, the prosecutor, Cornelius Van Winkle, owned bonds secured by mortgages upon lands out of the Township of Manchester, and in the city of Paterson to the amount of \$59,311 00; in the Township of Aquackanonck to the amount of \$800 00; in the Township of Franklin, in Bergen County, to the amount of \$1,250 00; and in the County of Morris, to the amount of \$200 00; and that said bonds and mortgages were executed by persons residing in the State of New Jersey.

30

It is also agreed between the parties, that the taxes for the year eighteen hundred and fifty five were levied and assessed in the city of Paterson, upon the property therein against the owner, occupied or possessed, at the full value thereof, without making any deduction for debts or encumbrances on the same by mortgage or otherwise.

31

And that the above depositions be used in the argument of the above stated certiorari.

At the June T. 1856 the Court after argument affirmed the assessment and delivered the following opinion:

BY THE COURT, ELMER, J. The first objection to the tax assessed against the prosecutor was, that he has been assessed more than the value of all his land and taxable personal property. It does not appear, however, that he appealed, or that he made an oath of the value of his property, as authorized by the tenth and eleventh sections of the supplement of 1854. (*Nix. Dig.* 803). If this was the only objection to his tax, I should be of opinion that the certiorari ought to be dismissed.

33

It was insisted, by the prosecutor's counsel, that inasmuch as, by the first and second sections of the act concerning taxes (*Nix. Dig.* 794) the prosecutor was bound to render a full and true account of his property under the penalty of double taxation, the assessor, unless he imposed the double tax, was bound to assess only such property

as was contained in the account rendered, and that this court will presume that the account was correct, unless the contrary is shown. I cannot agree to this construction of the act. It was held at the last February term of this court, in the case of *The State v.* 34

that the assessor has no power to assess a double tax, the second section being virtually repealed. The eighth section of the supplement of 1854 prescribes that the assessor shall ascertain, by diligent inquiry and according to the best of his ability, all the taxable property in his township or ward, and set it down in his duplicate, according to the best information in his power. If he sets down too great a value, the person assessed has the means of correcting the error, by making the required oath before the assessor, or by his own oath or other proof before the commissioners of appeal. This court has power by virtue of the second section of the act of 1852, (*Nix Dig* 804) to amend an assessment, if the value assessed is too great; but I do not think we ought to interfere, under ordinary circumstances, unless the prosecutor has first done what was within his own power to have a correct assessment. In this case, it has not been shown that he has been assessed for more property than he really owns. 35 36

The case states, that the prosecutor held bonds secured by mortgages on land situate in other townships and counties, which were undoubtedly exempt from taxation; but it does not satisfactorily appear that he was taxed for these bonds, or if he was, that he was in the aggregate taxed too much. 37

The objection principally relied on was, that it appears the prosecutor was assessed for a large amount of money due to him on bonds secured by mortgages upon lands in the city of Paterson. This money, it is insisted, was exempt from taxation, by virtue of the following provisos to the seventh section of the act of 1854, *Nix. Dig.* 802; "*provided*, that in all cases where the holder of a mortgage shall not reside in the same township or county where the mortgaged premises lie, the tax on the money secured by the said mortgage shall be assessed against and be paid by the mortgagor in the township where the lands lie, and the receipt of the collector shall be a legal payment for so much of the interest of said mortgage, and be allowed and deducted therefrom by the mortgagee; *provided*, that in such case the said mortgagee shall not be assessed for such mortgage in the township or county in which he or she resides." 38 39

By an act, approved March 30, 1852, *Pamph. L. 540*, lands and real estate, goods and chattels, in the city of Paterson, together with all public stocks and stocks of incorporated companies, belonging to residents, are to be taxed at their actual value, and debts due upon bonds or mortgages, or otherwise are not taxable. The supplement of 1854, it is agreed, does not repeal that act, and the question now is, whether the above quoted provisos apply to the prosecutor's mortgages upon lands in Paterson.

The first section of the supplement enacts, that all real and personal estate within this state shall be liable to taxation; but great solicitude is shown to prevent a double taxation. The eighth section provides, that from the valuation of all the taxable property owned by any person shall be deducted the whole amount of debts due and owing by the owner thereof, excepting debts due and owing to creditors not residing in this state. Standing alone, this section would require all mortgage debts to be deducted. But construed, as it must be, in connection with the first proviso above quoted, it must be understood, that if a debt due and owing by the owner of real estate is secured by a mortgage on such estate, held by a person residing in another township or county of this state, the amount of that debt is not to be deducted from the value of such real estate. A mortgage debt, so held, is to be taxed to the mortgagor; and this will be the effect of omitting to deduct it from the value of the property mortgaged. The second proviso is, that "in such case" the mortgagee shall not be assessed for such mortgage in the township or county in which he resides.

What is meant by the phrase "in such case," as here used? On the one side, it is insisted, that it means, in every case where the holder of a mortgage does not reside in the same township or county where the mortgaged premises lie, and then it applies to the prosecutor's case. On behalf of the township, it is insisted, and I think correctly, that it means a case, not only where the holder of the mortgage does not reside in the same township or county where the mortgaged premises lie, but a case where the tax on the money secured by the mortgage has been or will be assessed against and be paid by the mortgagor, so that the receipt for the same will be a legal payment for so much of the interest of said mortgage. The obvious design was to preserve to the township or ward in which mortgaged lands lie the taxes upon the full value of such lands, and at the same time prevent the mortgagors from being taxed beyond the

net value of their property, by empowering them to deduct the tax on the mortgage debts from their interest, and to compensate the mortgagees by exempting their debts from any tax. In the case of mortgaged lands situate in a township or city where land is taxed at its full value without regard to debts, this object entirely fails. The moneys secured by the prosecutor's mortgages were not and could not be either actually or virtually assessed in the city of Paterson. The owner of encumbered property pays there the same tax as if it be unencumbered. It follows, therefore, that if the prosecutor's personal property, due upon bonds and mortgages given in that city, is not assessed in the township where he resides, it will not be assessed anywhere, contrary to the plain words and intent of the statute. Nor is he in the least injured by such an assessment, because the mortgagors can make no claim against him to deduct any part of the taxes they have paid from his interest.

I am, therefore, of opinion that the taxes assessed against the prosecutor must be affirmed. 47

Justices Potts and Vredenburg concurred.

The Judgment of affirmance removed unto this Court by Writ of Errors, and the following assignment of Errors made with prayer for judgment, to which assignment there was joinder by defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS, 48

Of the Term of March, in the year of our Lord one thousand eight hundred and fifty-seven. Assignment of Errors.

THE STATE, CORNELIUS VAN WINKLE, Prosecutor, vs. PETER S. MASSAKER, Collector of Taxes, for the Township of Manchester.	}	<i>On writ of Error to Supreme Court.</i> Assignment of Errors.	49
---	---	--	----

And the said Plaintiff, by Wm. Gledhill, Attorney, comes and says that in the record and proceedings aforesaid and in giving the judgment aforesaid, there is manifest Error in this:

- 1st. That the Supreme Court decided that the assessment of Taxes made upon the Prosecutor was lawfully made, and was a legal assessment, whereas the same was not lawfully made and was not a legal assessment. 50

- 2d. And in this, that the Supreme Court decided that the assessment made on the Prosecutor for monies secured by mortgages on land in Passaic county, but out of said Township of Manchester and not in the City of Paterson, was a valid and lawful assessment, whereas the same was not a valid and lawful assessment.
- 51
- 3rd. And also in this, that the Supreme Court decided that the assessment made upon the Prosecutor for monies secured by mortgages upon lands in the City of Paterson was a valid and lawful assessment, whereas the same was not a valid and lawful assessment.
- 52
- 4th. And also in this, that the Supreme Court decided that a mortgagor residing in the City of Paterson could not require the mortgagee to deduct from interest due a mortgagee residing in Manchester, on monies secured by mortgage on lands in said City, the tax on monies secured by such mortgage, whereas such mortgagor can lawfully require said mortgagee to make such deduction.
- 53
- 5th. And also in this, that the Supreme Court decided that the monies secured by the Prosecutor's Mortgages on lands in the City of Paterson, were not and could not be either actually or virtually assessed in the City of Paterson, whereas the same was and could be virtually so assessed.
- 6th. And also in this, that the Supreme Court decided that the assessment against the Prosecutor should be affirmed, whereas the same should have been set aside.
- 54
- And the said Plaintiff by Wm. Gledhill, Attorney, prays that the Judgment aforesaid for the Errors aforesaid and for other Errors on the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that the Plaintiff may be restored to all things by Plaintiff lost by occasion of the said judgment.

WILLIAM GLEDHILL, Att'y,
And of Counsel with Plaintiff.



