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printers, No. 4, Chancery-court, Trenton, N. J.

## New Jersey Court of Errors and Appeals.

[Filed June 20, 1864.]

New Jersey to wit.—The State of New Jersey, to the Justices of our Supreme Court of Judicature, greeting.

Because in the record and proceedings, and also in the giving of the judgment, in a plaint which was in our said court before you between the Jersey City and Bergen Railroad Company, prosecutors, and John B. Haight, collector of revenue for the city of Jersey City, defendant, on a *certiorari* issued out of our said court, as it is said manifest error 10 has intervened to the great damage of the said Jersey City and Bergen Railroad Company, as by their complaint we are informed—we being willing that the error (if any there be) should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, you distinctly and openly send to us, under your seal, the record and proceedings aforesaid, with all things touching the same, together with this writ, to our Court of Errors and Appeals, at Trenton, on the twenty-first day of June next, that the record 20 and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to law ought to be done.

Witness, Henry W. Green, esquire, our Chancellor, at Trenton, this twenty-second day of March, in the year eighteen hundred and sixty-four.

W. S. JOHNSON, *W. S. Johnson*  
*Secretary of State.*

A. O. ZABRISKIE & SON, *Attorneys.*

The answer of the Justices of the Supreme Court within 30 mentioned.

The record and proceedings within mentioned, with all things touching the same, we certify and send to the Court of Errors and Appeals, as within we are commanded.

Witness my hand and seal, this twenty-first day of June, A. D. 1864.

M. BEASLEY, *C. J.*

State of New Jersey, ss.—The State of New Jersey to John B. Haight, collector of revenue for the city of Jersey City, greeting: We being willing, for certain causes, to be certified of the proceedings had by the assessors of the city of Jersey City, in the assessment of taxes, for the year eighteen hundred and sixty-two, upon the capital stock of the Jersey City and Bergen Railroad Company, do command you, that you send to the Justices of our Supreme Court, at Trenton, the assessment upon the capital stock aforesaid, 10 with all things touching the same, together with this writ, so that it may be before our said justices, at Trenton, on the first Tuesday in June next, that we may further cause to be done therein what we shall see fit to be done.

Witness, Edward W. Whelpley, esquire, Chief Justice of our said Supreme Court, at Trenton, this twenty-fifth day of February, eighteen hundred and sixty-three.

C. P. SMITH, *Clerk.*

A. O. ZABRISKIE & SON, *Att'ys.*

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Communicated to common council, April 7th, 1863, by 20 the collector of revenue, and referred to the corporation attorney.

GEO. W. CASSEDY, *City Clerk.*

April 14th, 1863, city attorney reported, advising the common council to refer this writ to the collector of revenue, with instructions to make a return thereto under the directions of the city attorney; which report was received, and its recommendation adopted.

GEO. W. CASSEDY, *City Clerk.*

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I do herewith send to the Supreme Court of the State of 30 New Jersey a certain tax, assessed against the Jersey City and Bergen Horse Railroad Company, called in the writ hereto annexed the Jersey City and Bergen Railroad Company, in the year eighteen hundred and sixty-two, on their

capital stock, with all the proceedings touching and concerning the same, as the same remain in my possession, as within I am commanded, as by the schedule under my hand and seal hereto annexed more fully appears.

Witness my hand and seal, this twenty-second day of April, A. D. 1863.

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

SCHEDULE.

Ward 2d.

10

The Jersey City and Bergen Horse Railroad Company to the Corporation of Jersey City debtors.

For the annual tax, due in November, 1862.

Assessed for state, county, and city purposes.

	Amount of city taxes.	Amount of county tx's.	Amount of state taxes.	Total amount of taxes.
CAPITAL STOCK, \$150,000.	\$900	<del>\$11,100</del> \$111,000	\$235.50	\$1246.50

Witness my hand and seal, this twenty-fourth day of 20 April, A. D. 1863.

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

NEW JERSEY SUPREME COURT.

The State—The Jersey City and  
Bergen Railroad Company,  
prosecutors,

vs.

The Mayor and Common Council  
of Jersey City.

On certiorari.

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[Filed July 2, 1863.]

The plaintiffs, by A. O. Zabriskie & Son, their attorneys, come and assign the following reasons why the assessment

and tax brought up by the *certiorari* in this case should be set aside and reversed.

1. Because the prosecutors are taxed upon the amount of their capital stock, when by law their capital stock is not taxable, but is exempt from tax.

2. Because they are taxed upon the whole amount of their capital stock in Jersey City, when the whole, or the greater part of their road is not situate within the said city, and when the whole or the greater part of their stockholders do not reside there, and their principal place of business or depot, where their horses and cars are kept, and from which they are started, and to which they return, is in the town of Bergen. And said capital stock cannot and ought not, by law, to be taxed wholly or at all in the city of Jersey City.

3. Because said tax and the assessment thereof are in divers other particulars irregular, illegal, and void.

A. O. ZABRISKIE & SON,  
*Att'ys for plaintiffs in certiorari.*

[From the minutes.]

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NEW JERSEY SUPREME COURT.

The State—The Jersey City and  
Bergen Railroad Company, prose-  
cutors,

*vs.*

John B. Haight, collector, &c., of  
Jersey City.

*On certiorari.*

A *certiorari* having been allowed at the last term, it is ordered, that the parties thereto have leave to take affidavits, to be read on the hearing thereof.

30 On motion of

A. O. ZABRISKIE & SON,  
*Att'ys of plaintiffs.*

[Rule taken and allowed at June term, 1863, and entered in the minutes October 28th, 1863, *nunc pro tunc.*]

## NEW JERSEY SUPREME COURT.

The State—The Jersey City and Bergen Railroad Company, prose- cutors,  <i>and</i>  John B. Haight, collector of reve- nue of Jersey City, defendant.	}	<i>On certiorari.</i>
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[Affidavits filed as of November term, 1863.]

Affidavits taken in above cause, before Washington B. Williams, a commissioner of the Supreme Court, at his 10 office in Jersey City, on Monday, October 26th, 1863, at 10 A. M., in presence of J. L. Zabriskie, esq., for prosecutors, and of R. D. McClelland, esq., for defendant, upon notice, which is duly admitted before the commissioner.

Adjourned, by consent, to October 27th, 1863, at same hour, when the parties appeared by their counsel.

*Israel Smith*, produced as witness for prosecutors.

Defendant's counsel here objects to the taking of the depositions.

1. Because the rule under which they are to be taken was 20 entered in vacation.

2. Because no return has as yet been made to the writ of *certiorari*.

The witness, being duly sworn, says—I am the engineer of the Jersey City and Bergen Railroad Company; the length of the road (including Lafayette Branch, which is 6-10 of a mile) is in all six 6-10 miles. The length of road in Jersey City, measuring the Montgomery street line and York street line, is two 52-100 miles.

Cross-examined.

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I have attended at meetings of the board of directors of the road. They have met sometimes at Mr. Zabriskie's office in Jersey City, and latterly in the depot, in the rooms of the N. J. R. R. Co. in Jersey City.

The election was held in Jersey City ; during the year 1862, the board met in Jersey City ; all their meetings were in Jersey City.

Dudley S. Gregory is the president, and he resides in Jersey City ; Walter Gregory is the treasurer, and he resides in New York ; Lansing Zabriskie is secretary, and he resides in Jersey City.

The board of directors are Dudley S. Gregory, A. O. Zabriskie, F. W. Jackson, Andrew Clerk, E. B. Wakeman, 10 Matthew Armstrong, Peter Bentley, Garret Sip, J. M. Cornelison, and J. M. Merseles.

The treasurer's office is in Jersey City.

Re-examined.

Three of the directors live in Jersey City.

ISRAEL SMITH.

Subscribed and sworn to before me, at Jersey City, October 27th, 1863.

WASHINGTON B. WILLIAMS, S. C. C.

Adjourned, by consent, to Friday, October 30th, 1863, at 20 10 A. M., at which time the parties appeared.

*Garret Vreeland*, a witness produced on the part of the defendant, being duly sworn, doth depose and say—I was an assessor for the township of Bergen in 1862 ; the Jersey City and Bergen Railroad Company was not assessed in that township in 1862 on their capital stock for any taxes, because the office of the company was not in that town—the office or place of business ; I believe their office or place of business is in Jersey City ; I have never transacted any business with that company.

30 Cross-examined.

I should judge that between two and three miles of the railroad lies in Jersey City ; I should judge the whole length of the road to be not far from ten miles, more or less.

The reason I think their office is in Jersey City is, that I was invited there by the president and directors of the company to the place of doing their business to meet the board.

I met them at their office near the ferry, in the N. J. R. R. depot; the conversation I had with them, and the business transacted there in my hearing, was on their business; the object of that meeting was to consult about the feasibility of the two routes to Bergen Point; from the fact of meeting them there, and the conversation I had with them, I considered that to be their place of business; I don't know whether it was their place of business for any other purpose than for the meetings of the board; the bids or proposals for the building of the road were opened there at one of the meetings when I was present. 10

GARRET VREELAND.

Subscribed and sworn to before me, at Jersey City, October 30th, 1863.

WASHINGTON B. WILLIAMS, S. C. C.

*John B. Haight*, a witness produced on the part of defendants, being duly sworn, doth depose and say—I am collector of revenue in Jersey City. This letter was sent to me with a copy of the charter of the Bergen R. R. Co., and I handed it to the commissioners of appeals; it purports to be signed 20 by Dudley S. Gregory. [Letter marked *Exhibit 1* for defendants—the signature of D. S. Gregory being admitted to be genuine by counsel for prosecutors.]

JOHN B. HAIGHT.

Subscribed and sworn to before me, at Jersey City, October 30th, 1863.

WASHINGTON B. WILLIAMS, S. C. C.

*Walter Gregory*, a witness produced on the part of the prosecutors, being duly sworn, doth depose and say—I am treasurer of the Jersey City and Bergen Railroad Company; 30 the actual amount of the capital stock paid in of that company is \$63,200.

Cross-examined.

My treasurer's office is in the front part of this building in Jersey City, and there the financial part of the company's business is carried on; the elections are held in the depot building of the N. J. R. R. Co. in Jersey City—rather the

election—there has been only one; the meetings of the board are held there, and were in 1862.

WALTER GREGORY.

Subscribed and sworn to before me, at Jersey City, October 30th, 1863.

WASHINGTON B. WILLIAMS, S. C. C.

[From the minutes.]

NEW JERSEY SUPREME COURT.

February Term, 1864.

10	The State—The Jersey City and Bergen Railroad Company, prosecutors,	}	<i>On certiorari.</i>
	<i>vs.</i>		
	John B. Haight, collector, &c., of Jersey City.	}	

This cause coming on to be heard in the presence of the counsel of the parties, and the court having inspected and read the *certiorari* and the return thereto made, and also the reasons for reversal, and the evidence taken, including the  
 20 charter of the prosecutors and its supplements; and being of opinion that the prosecutors are lawfully assessed upon so much of their capital stock as was paid in, but that the assessment made was erroneous, in that it assessed them on one hundred and fifty thousand dollars of capital, whereas, in fact, only sixty-two thousand three hundred dollars was actually paid in—do order and adjudge that said assessment be affirmed as to five hundred and seventeen dollars and seventy-one cents, being the tax on said amount of sixty-two  
 30 thousand three hundred dollars, and, as to the residue thereof, that the said residue of said assessment be set aside, reversed, and for nothing holden.

On motion of

A. O. ZABRISKIE & SON,  
*Attorneys for prosecutors.*

I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the *certiorari*, return, rules, testimony, and proceedings in the above stated cause, as fully and entirely as the same remain of record and on file in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Trenton, this second day of May, A. D. 1864.

CHARLES P. SMITH, *Clerk.*

Assignment of Errors.

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THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

<p>The Jersey City and Bergen Railroad Company, plaintiffs in error,</p> <p style="text-align: center;"><i>vs.</i></p> <p>John B. Haight, collector of revenue of Jersey City, defendant in error.</p>	}	<p><i>In error to Supreme Court.</i></p> <p><i>Reasons for reversal.</i></p>
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[Filed July 12, 1864.]

And the said plaintiffs in error, by A. O. Zabriskie & Son, 20 their attorneys, come and assign, as causes for the reversal of the judgment of the Supreme Court, the following reasons:

*First.* The said plaintiffs in error, by a contract in their charter, are exempt from all taxation for state, county, and city purposes, and therefore could not lawfully be assessed for such taxes.

*Secondly.* That said plaintiffs were not liable by law to be assessed for their capital stock, or any part thereof, in the city of Jersey City, and that there was no authority to assess thereon any taxes within said city. 30

*Thirdly.* Because said proceedings and judgment are in divers other respects erroneous and contrary to law.

The said plaintiffs in error therefore pray that said judg-

ment of the said Supreme Court, confirming the assessment of the said taxes, may be reversed, and that said assessment upon the plaintiffs in error removed into said Supreme Court may be declared void and for nothing holden in all things.

A. O. ZABRISKIE & SON,  
*Attorneys for plaintiffs in error.*

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Exhibit A.

JERSEY CITY AND BERGEN RAILROAD COMPANY.

10 GENTLEMEN.—Understanding that this company is taxed on its capital, I beg leave to refer you to the 14th section of the act of incorporation of 1859, which shows that it is an illegal assessment. You will please order it cancelled. We pay tax on our real estate, or the capital, to the state treasury; and on the cars, to the city.

Yours truly,

D. S. GREGORY, *Pres't.*

Jersey City, November 26, 1862.

## NEW JERSEY SUPREME COURT.

November Term, 1864.

The Jersey City and Bergen Rail- road Company,  <i>vs.</i>  John B. Haight, collector.	}	<i>On certiorari.</i>
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## Opinion of the Court by Van Dyke, J.

The object of the *certiorari* in this case is to set aside the tax assessed against the company by Jersey City.

I am not able to see any good reason for an entire reversal 10 of this assessment. The case does not come within the legal provisions adopted in the case of the Jersey City and Bergen Point Plank Road Company, decided at the present term. It is not a turnpike company in any sense, nor is it a railroad company which collects its tolls in different townships and wards. It cannot be fairly said to collect tolls at all. Toll is collected from persons who pass or travel, by their own conveyances, over the roads or bridges of another. None do this on the road of the prosecutors. The prosecutors furnish their own conveyances, and carry nothing but 20 passengers, or persons, and charge them a certain price for being carried, known as fare. But if this company is to be considered as a toll collecting company, it has no treasurer or other financial officer, authorized to discharge its general pecuniary obligations, residing in any other township or ward in the state than Jersey City. In that city all its general and business meetings are held. There its president and secretary reside, and have their offices, so far as they have any; and there is also their treasurer's office, although the treasurer himself is not a resident of this state. 30 It seems to me, therefore, that Jersey City, and there only, is the proper and legal place for the taxation of its personal

property, which, under the act of 1862, means its capital stock actually paid in, if it still has it, and its accumulated surplus, if any there be.

But the company, in this case, is assessed on a paid in capital of \$150,000, whereas it appears by the evidence of the treasurer, unquestioned by any one, that the whole amount of the capital paid in is but \$63,200.

I think, therefore, that the assessment should be affirmed, except that the amount should be reduced to conform to the 10 amount of capital actually paid in.