

NEW JERSEY  
COURT OF ERRORS AND APPEALS.

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THE WARREN RAIL ROAD COMPANY,  
*Defendants in Error,*  
AND  
THE TOWN OF BELVIDERE,  
*Plaintiff in Error.*

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Points to show why the opinion of the Supreme Court should be affirmed:

1st. Because the Plaintiff in Error claimed by their writ to receive twelve per cent. interest on the Tax, when the law authorizing it had been repealed.

2d. Because the Plaintiff in Error was not under the pleadings entitled to receive the twelve per cent. interest.

3d. Because there was a general demurer to the whole answer, and if any part of it was good, demurer had to be overruled wholly, and general payment had to be given on the demurer for the Defendants in Error.

4th. Because on general demurer, the Defendants had a right to question the legality of the writ, and that being found defective in part the general demurer had to be wholly overruled, and judgment given thereon for the Defendants in Error.

5th. Because the whole tax demanded under the writ was illegal—the law under which it was assessed having been repealed.

**J. C. SHIPMAN,**  
Attorney of Defendants in Error.

THE  
COURT OF COMMONS

IN PARLIAMENT ASSEMBLED

THE REPORT OF THE SELECT COMMITTEE

APPOINTED IN 1841 TO ENQUIRE INTO THE  
MATTERS RELATIVE TO THE

MANAGEMENT OF THE

INDIAN DEPARTMENT

AND THE

PROCEEDINGS THEREON

J. C. SMITH,  
Attorney of Deeds in Law.



purposes, twenty thousand six hundred and fifty-two dollars and eighty-two cents ; making in the whole a large sum of money, to-wit : the sum of twenty-two thousand six hundred and twenty-two dollars and and seventeen cents.

And whereas, afterwards, to-wit : On the fourth Tuesday of November, in the year eighteen hundred and sixty-five, the said The Warren Railroad Company, did appeal from the said assessment, to the Common Council of the said Town of Belvidere, setting as Commissioners of Appeal in cases of taxation,  
 10 upon which appeal the said Common Council did affirm the said assessment.

And whereas, it appears that after the said assessment was so as aforesaid affirmed by the Common Council of the Town of Belvidere, and after the said The Warren Railroad Company had neglected and refused to pay the taxes so as aforesaid assessed against them within the time allowed by law for that purpose, and after payment thereof had been fully demanded, a tax warrant, in due form of law, was duly issued by William F. Wire, Mayor of the Town of Belvidere, directed to a constable of said Town of Belvidere, commanding him to  
 20 levy the taxes so in arrear, with costs, distress and sale of the goods of the said The Warren Railroad Company.

And whereas, after the allowance of the writ of certiorari hereinafter mentioned, to-wit : On the twenty-ninth day of November, in the year eighteen hundred and sixty-five, our said Supreme Court; at the request, on motion of the said The Warren Railroad Company, did make an order requiring the said Constable to desist from levying the said taxes until the further order or writ of our said Court therein ; which order was duly served upon the said Constable, and he was thereby  
 30 restrained and prevented from the execution of said warrant.

And whereas, afterwards, the said assessment, in obedience to our writ of certiorari issued at the suit of the said The Warren Railroad Company to William A. Person, Collector of taxes of the said Town of Belvidere, was duly certified into our Supreme Court of Judicature, at Trenton, at the term of February, in the year eighteen hundred and sixty-six, and such proceedings were afterwards had in our said Supreme Court, on the said writ of certiorari, that afterwards, on the eighth  
 40 day of November, in the term of November, in the year eigh-

teen hundred and sixty-six, at Trenton, the said assessment was affirmed as lawful and valid, with costs. And it was ordered that further proceedings on said writ be dismissed, and that the said Collector proceed in the collection of said taxes, according to law. And, by our said Supreme Court, it was then and there considered and adjudged that the said writ and proceedings be dismissed, in accordance with the adjudication aforesaid, and that the said Collector do proceed as is therein and thereby adjudged, and that the said William A. Person, Collector, as aforesaid, do recover against the said The War-10 ren Railroad Company, the sum of twenty-five dollars and eighty-three cents, his costs and charges in that behalf expended, by the Court then and there adjudged to the said William A. Person, Collector, as aforesaid, and with his assent. And that he have execution thereof accordingly, &c.

And whereas, the said Warren Railroad Company, by writ of error, sued out of our Court of Errors and Appeals, on the thirtieth day of November, eighteen hundred and sixty-six, directed to the Justices of our Supreme Court, returnable to our said Court of Errors and Appeals, on the first day of De-20 cember as yet of the term of November, in the year of our Lord eighteen hundred and sixty-six, at Trenton, did remove the said judgment of the Supreme Court into our Court of Errors and Appeals, and such proceedings were had upon the said writ of error, in our said Court of Errors and Appeals, that afterwards, to-wit: in the term of June of said Court, in the year eighteen hundred and sixty-seven, at Trenton, the said judgment of our said Supreme Court was, in all things, affirmed. And our said Court of Errors and Appeals did then and there consider and adjudge that the judgment aforesaid 30 be, in all things, affirmed. And our said Court of Errors and Appeals did then and there consider and adjudge that the judgment aforesaid be, in all things, affirmed, and stand in full force, strength and effect, the causes of error assigned and alleged, in any wise notwithstanding. And that the said William A. Person, Collector of the Town of Belvidere, in the County of Warren, recover against the said The Warren Railroad Company twenty-one dollars and seventy-nine cents, by the said Court of Errors and Appeals, here adjudged to the said William A. Person, and with his consent, according to the form 40

of the statute in such case made and provided, for his costs and charges by him laid out and expended in and about his defence on the said writ of error, in the said Court of Errors and Appeals, and that the record and proceedings of the said The Court of Errors and Appeals before had in the premises, were remitted by the last named Court, before the Justices of the Supreme Court of the State of New Jersey, to be proceeded on according to law, and the said judgment of the said Supreme Court.

10 And it having been made to appear to our said Supreme Court that the said taxes remain unpaid, although payment of the same has been duly demanded of the said The Warren Railroad Company ; and also, that the said The Warren Railroad Company had not, on the eighth day of November, eighteen hundred and sixty-six, and have not had at any time since, and have not now, any goods, chattels or personal property, from or of which the said taxes and the interest thereon, or any part thereof, can be levied or made, and that the said the Town of Belvidere, in the County of Warren, is with-  
20 out any adequate remedy for the collection of said taxes.

And whereas, the said William A. Person has ceased to be the collector of taxes of the said Town of Belvidere, and has ceased to reside therein.

And whereas, it appears by the act entitled " An act to incorporate the Town of Belvidere, in the Township of Oxford, in the County of Warren," March 19, 1845, that the Common Council of the said Town of Belvidere are required to choose annually a suitable person for Treasurer, who shall serve until his successor is appointed and sworn into office,  
30 whose duty it is to demand and receive all moneys and other property belonging to, or due or owing in any way, to the said corporation, (the said Town of Belvidere,) from the collector or other officers or persons who may have collected or received, or who may hold the same.

And whereas, it appears that Simon Wade is now the Treasurer of the said Town of Belvidere, and, as such Treasurer, is now entitled to receive the said taxes and the interest thereon, on behalf of and for the said The Town of Belvidere.

And whereas, the said Town of Belvidere is greatly damaged and aggrieved by the means and premises aforesaid, as  
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we have been informed by their complaint made to us in that behalf. Whereupon the said The Town of Belvidere hath humbly besought us that a fit and speedy remedy may be applied in this respect, and we, being willing that due and speedy justice should be done to the said The Town of Belvidere, (as is reasonable,) do command you, the said The Warren Railroad Company, immediately after the receipt of this, our writ, to pay to the said Simon Wade, as Treasurer of the said The Town of Belvidere, or to whoever may then be the Treasurer of the said the Town of Belvidere, for the said the 10 Town of Belvidere, the taxes so as aforesaid assessed against you, the said The Warren Railroad Company, together with interest thereon, at the rate of twelve per centum per annum, from and after the twentieth day of December, in the year eighteen hundred and sixty-five, until the said taxes shall be paid, or that you show cause to the contrary thereof, lest in your default the same complaint should be repeated to us. And how you shall have executed this, our writ, make known to us at Trenton, on the first day of July next, there returning to us this, our writ. And this you are in no wise to omit, 20 under the penalty that may fall thereon.

Witness : Mercer Beasley, Esquire, Chief Justice, at Trenton, this sixteenth day of June, eighteen hundred and sixty-nine.

CHAS. P. SMITH, Clerk.

VANATTA & DEMOTT, Att'ys.

We, The Warren Railroad Company, do most humbly certify and return that the Legislature of New Jersey, by an act approved the 12th day of February, A. D., 1851, entitled an act to incorporate The Warren Railroad Company, incorpo- 30 rated the said Company with full power and authority to construct a railroad from some suitable place on the Delaware River, not more than five miles above the Delaware Water Gap, by the most feasible route to intersect the road of the Central Railroad Company, at or near New Hampton, in the County of Hunterdon, with power to construct a bridge across the River Delaware, at some point near or within five miles of the Delaware Water Gap, as by the said act will more fully and at large appear.

And we, the said the Warren Railroad Company, do fur- 40

ther humbly certify and return, that under, and by virtue of the powers granted us by the said act, we constructed a Railroad from a point within five miles of the Delaware Water Gap, through the townships of Knowlton, Oxford and Washington, in the County of Warren, and through the Township of Lebanon in the County of Hunterdon, to the junction, where it connects with the Central Railroad of New Jersey, a distance of about eighteen miles. And that, in the construction of the said Railroad, they expended a very large sum of money, to-

10 wit: The sum of two millions of dollars, or thereabouts. That to raise that sum they sold stock to the amount of one million four hundred and ninety-eight thousand three hundred and fifty dollars, in shares of fifty dollars each, making in all twenty-nine thousand nine hundred and sixty-seven shares. That to raise the balance of the sum sufficient to complete the construction of the said Warren Railroad, they issued bonds secured by a mortgage on the said Railroad for the sum of six hundred thousand dollars, which bonds are still unpaid, and the said mortgage given to secure the same

20 is still a subsisting lien upon the said Road. And the said The Warren Railroad Company do further humbly certify and return, that they built a bridge across the Delaware River to form a connection with the road of the Delaware, Lackawanna & Western Railroad Company, a corporation created by and existing under the laws of the State of Pennsylvania, which Railroad extended from the junction with the said Warren Railroad at the Delaware River to the Great Bend in the State of Pennsylvania, a distance of one hundred and thirteen miles or thereabouts. And the said

30 The Warren Railroad Company further humbly certify and return, that the Legislature of the State of New Jersey, by an act approved the 5th day of March, A. D., 1857, authorized the said The Delaware, Lackawanna & Western Railroad Company, to lease of the said The Warren Railroad Company, the said Warren Railroad, upon such terms and conditions as the said Company might mutually agree. Under, and by virtue of which said act, the said The Warren Railroad Company, on the first day of October, A. D., 1857, by a certain indenture made and executed by and between the said

40 The Warren Railroad Company and The Delaware, Lacka-

wanna & Western Railroad Company, did, for and in consideration of the rents and covenants and agreements in the said lease mentioned and set forth, lease, grant and demise unto the said The Delaware, Lackawanna & Western Railroad Company, their successors and assigns, the said Warren Railroad, commencing at the centre of the Railroad bridge constructed across the River Delaware, as above set forth, being the point of connection between the said Warren Railroad and the said Delaware, Lackawanna & Western Railroad, and running thence through the Counties of Warren and Hunterdon, in this State, to its connection with the Central Railroad of New Jersey, in the County of Hunterdon, aforesaid, to a point known by the name of the Junction. Together with all and singular the lands belonging to the said The Warren Railroad Company, or that had been laid out or purchased for their use and benefit ; and also, the bed of the said The Warren Railroad, and all the iron rails, ties, spikes, switches, bridges, culverts, aqueducts, sluices, coal yards, docks, wharves, chutes, pockets, depots, depot buildings, water, water tanks, machine shops, car shops, blacksmith shops, boarding houses, dwelling 20 houses, shanties, and all other superstructures, buildings and fixtures, in any way connected with or relating to the said Warren Railroad, or the working or operating thereof, or the transacting of the coal or other business thereon ; to have and to hold the said Warren Railroad, lands, road bed, superstructure, buildings and fixtures, with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, unto the said The Delaware, Lackawanna & Western Railroad Company, their successors and assigns, with all the rights, privileges, immunities and franchises, for the full, free and uninterrupted use and enjoyment 30 of the same as fully to all intents and purposes as the same were vested in or might be exercised by the said The Warren Railroad Company, for and during the full term and continuance of the legal existence of the said The Warren Railroad Company. That there was no reversionary or other interest left for these defendants, and they are not entitled to any reversionary interest in the said Warren Railroad or its franchises, and that they cannot sell or dispose of the said reversion interest for any sum whatever.

In consideration whereof, the said The Delaware, Lackawanna & Western Railroad Company did, in and by the said Indenture of Lease, covenant and grant to and with the said The Warren Railroad Company, their successors and assigns, that they would pay to the persons thereto legally entitled, the interest upon the mortgage bonds which had then been issued by the said The Warren Railroad Company, amounting, in the aggregate, to the sum of six hundred thousand dollars, at the rate of seven per centum per annum, in accordance with the terms, conditions and stipulations in the said bonds ; that when the the said bonds became due they would purchase and take an assignment of the said bonds, from the holders thereof ; that they would, during the continuance of the said indenture, pay, or cause to be paid, to the legal holders of the certificates of the capital stock which had been issued by the Warren Railroad Company, and upon any further certificates of stock which might be thereafter issued by the said Tke Warren Railroad Company, under the direction of the said Delaware, Lackawanna & Western Railroad Company, for the purpose of completing the construction of the said Warren Railroad Co., interest semi-annually, on the fifteenth day of April and October, in each and every year, at the rate of five and a quarter per centum per annum, provided, that the rate of interest, thereby agreed to be paid upon the stock, should be increased, from time to time, so that the holders of the capital stock of the said The Warren Railroad Company should receive as large a rate of interest (not exceeding seven per centum per annum) as might be paid by the said The Delaware, Lackawanna & Western Railroad Company to their stockholders upon their stock ; that all the said payments should be made at the office of the Treasurer of the said The Delaware, Lackawanna & Western Railroad Company. And the said The Warren Railroad Company, hereby further certify and return, that, under and by virtue of said indenture of lease, the said The Delaware, Lackawanna & Western Railroad Company take possession of the said Warren Railroad, together with all the property mentioned and set forth in the said indenture of lease, and that the said The Delaware, Lackawanna & Western Railroad Company have ever since the execution of the said indenture of lease on the first day of October,

eighteen hundred and fifty-seven, used, occupied, possessed and enjoyed the said Warren Railroad, with all its appendages, according to the terms stipulated, and conditions of the said indenture of lease, and do now still use, occupy, possess and enjoy the same. And the said The Warren Railroad Company further humbly certify and return, that they have never used the said Warren Railroad themselves ; that they never had, or used, any rolling stock thereon ; and on the sixteenth day of June, eighteen hundred and sixty-nine, and from thence hitherto, and up to and until this day, and now, the said The 10 Warren Railroad Company have not been, and are not, the owners or possessors of any goods or chattels, rights or credits, moneys or effects, lands, tenements or hereditaments, nor have they been the owners or possessors of any goods, chattels, rights, credits, moneys, effects, lands, tenements or hereditaments, since the first day of October, A. D. eighteen hundred and fifty-seven. And the said Warren Railroad Company further hereby certify and return, that the assessment of taxes, mentioned in the said alternative writ of mandamus, purports to have been levied and assessed upon the capital 20 stock of the said The Warren Railroad Company, and upon no other species of property whatsoever. And the said The Warren Railroad Company further humbly certify and return, that at the time when the said assessment of taxes was laid upon the said Warren Railroad Company, the said The Warren Railroad Company were not the owners of any of the said capital stock of the said The Warren Railroad Company, nor any part thereof, nor have they at any time been the owners or possessors of any of said stock, nor were they then the owners or possessors, nor had they any interest whatever 30 in said stock, nor any stock issued by the said The Warren Railroad Company. And the said The Warren Railroad Company further humbly certify and return, that by the terms of the said indenture of lease, the said The Delaware, Lackawanna and Western Railroad Company must pay the interest due the persons holding the stock of the said The Warren Railroad Company, on the fifteenth days of April and October, in each and every year, and that they were to pay it to the persons themselves holding the said certificates of stock, and not to the Warren Railroad Company ; and that 40

the said Delaware, Lackawanna & Western Railroad Co. has regularly paid the persons holding the said stock their interest on the days mentioned, including the interest due on the fifteenth day of April, last past ; and that the said Delaware, Lackawanna & Western Railroad Company have never paid any part or portion of the said interest to the said The Warren Railroad Company, nor are they authorized, by the terms of the said lease, to pay any part of the said interest to the said the Warren Railroad Company ; and that they were to  
 10 pay to the persons holding the said bonds, the interest due thereon, and not to the said The Warren Railroad Company ; and that they have regularly paid to the bond holders of the said The Warren Railroad Company, their interest, according to the terms and stipulations of the said indenture of lease ; and that the said Warren Railroad Company are not now, and never at any time have been, the owners of any of the said bonds, and are not entitled to any of the interest accruing thereon.

And the said Warren Railroad Company further humbly  
 20 certify that on the sixteenth day of June, A. D. 1867, they had not, nor have they since hitherto had, nor have they now, nor have they had since the first day of October, A. D. 1867, any money or other means whatever to pay and satisfy the said assessment, as by the said writ they are commanded, and that it is impossible for the said The Warren Railroad Company to pay the said assessment, or any part or portion thereof. And that they had not, on the sixteenth day of June, A. D. 1869, nor have they since hitherto had, nor have they now, nor have they had since the first day of October, A. D. 1867,  
 30 any goods or chattels, rights or credits, moneys or effects, lands, tenements or hereditaments, which they can sell or dispose of for the purpose of paying the said assessment, in the said writ named, or any part or portion thereof ; that they cannot borrow the money necessary to pay and satisfy the said assessment, or any portion thereof, and that they have, since the sixteenth day of June, A. D. 1869, requested the Delaware, Lackawanna & Western Railroad Company to pay said assessment, which the said Company refused to do, denying altogether their liability to pay the said assessment, or any  
 40 portion thereof. And they, the said The Warren Railroad

Company, do further certify and return, that they have notified and required the said The Delaware, Lackawanna & Western Railroad Company to pay over to them the rent reserved in the said lease, in order that they might at once appropriate it to the payment of the said taxes, and that they have refused so to do. And that the said Warren Railroad Company are not able to procure the said rent to be paid over to them, except by process of law, and that they have taken the necessary steps to collect the said rents from the said The Delaware, Lackawanna & Western Railroad Com- 10 pany, but that it will take a long time to contest with and collect from the said The Delaware, Lackawanna & Western Railroad Company the said rents, and that they cannot do it in time to comply with the requirements of the said writ. And that the said The Warren Railroad Company do further certify and return, that the said Simon Wade, as the Treasurer of the Town of Belvidere, was not, on the sixteenth day of June, A. D., 1869, nor has he, as such Treasurer, at any time since, been entitled to receive the said taxes and the interest thereon, on behalf of and for the said the Town of Bel- 20 videre. And the said The Warren Railroad Company do further certify and return, that the Treasurer, of the said Town of Belvidere had not, on the sixteenth day of June, A. D., 1869, being the day on which the said writ issued, nor has he had at any time since, nor has he now, authority by law to collect the said taxes of the said the Warren Railroad Company, or from any of other persons ; that the only power or authority the said Treasurer possesses, is to demand and receive all moneys from the collectors of taxes who have collected the said taxes from individuals and corporations ; and 30 that the collector of taxes of the said Town of Belvidere was the only proper person to collect the said taxes and pay them over to the said Treasurer after they were collected. And the said The Warren Railroad Company do further certify and return, that they are not bound by law to pay twelve per cent. interest on the said taxes.

THE WARREN RAILROAD COMPANY.

[Seal.]

And the said The Town of Belvidere, as to the said return 40

of the said Warren Railroad Company to the writ of Alternative Mandamus issued, returned and filed in this case, say, that the said return and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to discharge or excuse the said The Warren Railroad Company from obeying and performing the command of the said writ, and that the said the Town of Belvidere are not bound by law to answer the said return. And this the said the Town of Belvidere are ready to verify.

10 Wherefore, by reason of the insufficiency of the said return in this behalf, the said the Town of Belvidere prays judgment that said return be granted, and a writ of peremptory mandamus against the said The Warren Railroad Company, peremptorily commanding the said The Warren Railroad Company to pay, as in and by the said writ of alternative mandamus, they were commanded to pay.

VANATTA & DEMOTT,

Att'ys of the Town of Belvidere.

And the said The Warren Railroad Company saith, that

20 the return aforesaid by them filed to the writ of alternative mandamus, and the matters therein contained in manner and form as the same is above stated and set forth, are sufficient in law to discharge and excuse the said The Warren Railroad Company, the taxes and interests mentioned in the said writ of alternative mandamus, according to the command of said writ. And this, the said The Warren Railroad Company is ready to verify, and prove the same when and where and in such manner as the said Court here shall direct and award.

Wherefore, inasmuch as the said the Town of Belvidere

30 hath not answered the said return, nor hitherto in any manner denied the same, The Warren Railroad Company prays judgment. And that the said The Town of Belvidere may be barred from having their said writ of peremptory mandamus against the said The Warren Railroad Company, to compel them to pay the taxes and interest aforesaid in the said writ of alternative mandamus mentioned, and that the said Town of Belvidere may be barred from collecting the said taxes and interest against the said The Warren Railroad Company.

J. G. SHIPMAN,

Att'y of Warren Railroad Company.

And such proceedings were thereupon had, that afterwards, to-wit : at the term of June, A. D., eighteen hundred and seventy, it was ordered and adjudged by our said Supreme Court, as follows, to-wit :

THE WARREN RAILROAD  
COMPANY, }  
                  *adsm.* }  
THE TOWN OF BELVIDERE. }  
SIMON WADE, Treasurer. }

*On Mandamus.*

A writ of Alternative Mandamus having issued out of this <sup>10</sup> Court on the sixteenth day of June, A. D., 1869, returnable on the first day of July, A. D., 1869, commanding the said Company, The Warren Railroad Company, to pay to Simon Wade, the Treasurer of the said Town of Belvidere, or to whomsoever might then be the Treasurer of the said Town of Belvidere, the taxes in the said writ of mandamus named, together with interest thereon at the rate of twelve per cent., from and after the twentieth day of December, A. D., 1865 ; and the said Warren Railroad Company having made return of the said writ with their answer thereto ; and the said <sup>20</sup> Town of Belvidere having filed a general demurrer to the said answer, and the said Company having joined in demurrer, and the matter having been argued before this Court, and the Court having taken time to consider thereof, and the Court being now of opinion that the said writ of Alternative Mandamus is defective and illegal, in that it commands the said The Warren Railroad Company to pay twelve per cent. interest on the said tax from the twentieth day of December, A. D., 1865.

Whereon, the Court do order and adjudge that the said <sup>30</sup> Company is not liable to pay any interest whatever on the said tax. And the Court do thereupon order that the said demurrer be overruled with costs, and that the said answer of the said Company to the said writ of Alternative Mandamus do stand.

On motion of

J. G. SHIPMAN, Att'y.

Entered June 17, 1870.

Therefore, it is considered that the said demurrer be over-40

ruled, and that the said the Treasurer of the Town of Belvidere aforesaid, take nothing by their said motion.

And it is further considered that the said The Warren Railroad Company do recover of the said Town of Belvidere as aforesaid, the sum of \_\_\_\_\_ for its costs and charges in this behalf expended, by the Court now here adjudged to it and with its assent, and that it have execution thereof accordingly, &c.

Judgment signed this seventeenth day of June, A. D., 10 eighteen hundred and seventy.

M. BEASLEY, Ch. Jus.

I, Chas. P. Smith, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing are true copies of the writ, return, and the judgment in the above stated cause, as the same remain in my office.

In testimony whereof I have hereto set my hand and the [Seal.] seal of said Court at Trenton, this eighth day of March, A. D., eighteen hundred and seventy-one.

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CHAS. P. SMITH, Clerk.

Filed March 8th, 1871.

HENRY C. KELSEY, Clerk.

NEW JERSEY, ss.

The State of New Jersey to our Justices of our Supreme [Seal.] Court of Judicature, Greeting :

Because, in the record and proceedings, and also 30 in the giving of Judgment in a plaint which was in our said Court before the Justices thereof, by our writ of Alternative Mandamus, on the relation of the Town of Belvidere against The Warren Railroad Company, as it is said, manifest error hath intervened to the great damage of the said the Town of Belvidere, as by its 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, then you distinctly and openly send un- 40 der your seal, the record and proceedings aforesaid, with all

things touching the same, to our Court of Errors and Appeals at Trenton, on the fourth Tuesday of November instant, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right, and according to the law of New Jersey, ought to be done.

Witness : Abraham O. Zabriskie, our Chancellor, at the city of Trenton, the tenth day of November, eighteen hundred and seventy.

HENRY C. KELSEY, Clerk. 10  
VANATTA & DEMOTT, Att'ys.

The answer of the Justices of the Supreme Court of New Jersey, within named, the Record and Proceedings whereof mention is within made, with all things belonging or concerning the same, we do certify to the Court of Errors and Appeals, in a certain Schedule to this writ annexed, as within commanded.

M. BEASLEY, [L. S.]  
Ch. Justice. 20

## SUPREME COURT.

ARGUED FEBRUARY TERM, 1870.

THE TOWN OF BELVIDERE, )  
vs. )

THE WARREN RAILROAD )  
COMPANY. )

30

VANATTA for the Plaintiff.

SHIPMAN & WILLIAMSON, Contra.

BEASLEY, Chief Justice.

This case has already been twice before this Court, and the results, on these occasions, will be found in IV Vroom, pages 40

173 and 372. In the briefs of Counsel, some of the points already decided are re-argued, but, as upon reconsideration these former conclusions appear to be correct, the arguments upon these topics will be passed without comment. I propose to consider the case exclusively in its new aspects.

The form in which these questions are presented is a demurrer to a return filed to an alternative mandamus. This mode of pleading opens for examination the contents of the writ, as well as those of the return, for in this course of proceeding the writ must be regarded somewhat in the light of a declaration. And if the prosecutor's case, as there found, be defective in law, the Court must, at this stage of the suit, so adjudge. The writ commands the defendants to pay a certain tax, which, it is alleged, was assessed by the Assessor of the Town of Belvidere, and also twelve per cent. on such tax, from the time it fell due. The defendants call in question, first, the legality of the tax itself; and, failing in this, in the second place they deny their liability to pay the interest. First, then, with regard to the body of the tax :

20 It appears from the writ that this assessment was made in and for the year 1865, by virtue of the act of the Legislature, approved 28th March, 1862. Pamp't Laws, 344. It is a tax on the capital stock of the defendants, and the ground of objection now interposed, to it : is that the act authorizing it to be laid has been repealed. Nix. Dig., 957, Sec. 32. In support of this position, the general legal rule, as found in Dwarris on Statutes, page 676, is referred to, viz. : "That when an act of Parliament is repealed, it must be considered (except as to transactions passed and closed) as if it had never  
30 existed." But even if we accept this definition as strictly correct in its application to every case, still it is not perceived how, by force of it, the present tax is to be avoided. The case seems to fall within the exception contained in the rule as just quoted. The assessment of this tax closed and ended the transaction so far as the act of 1862 was concerned. That act authorized the assessment, and appointed the mode of making it, but it had nothing to do with its collection, which was, and is, altogether regulated by other acts. When, therefore, this assessment was made, the force of the act of  
40 1862 was, with respect to it, wholly spent and exhausted ;

the thing authorized to be done was completely done ; and the consequence is that, even on the most stringent application of the rule as claimed, a repeal of the statute cannot invalidate a proceeding that was fully perfected while such statute continued in force. But it is to be remembered that the retroactive effect which is to be given to statutes is largely a question of intention, and that, although in criminal or penal matters it may be unobjectionable to require express words in the repealing act to preserve punishments and penalties, yet, nevertheless, where rights are given, either to an individual or the public, it is obvious that a somewhat less arbitrary and inflexible test should be resorted to. As a question of intention, it is certainly very improbable that the Legislature, in 1866, by the repeal of the act of 1862, intended to annul assessments which had been made under the latter act, and which remained uncollected by reason of litigation, or from any other cause. Such a supposition would be most unreasonable. The effect of it would inflict upon the public an unjust loss, and permit the corporation, where capital had been assessed, to escape all taxation for the year in question. As the tax now in controversy was assessed during the existence of the act of 1862, and as the proceedings for its collection do not depend on that act, my conclusion is, that the subsequent repeal of that statute cannot, on general principles, invalidate such assessment.

But in point of law, the legality of this tax cannot be put in dispute by these parties. The question has been concluded by judgment. From the statements of these pleadings, it is shown that this tax was assessed in the year 1865 ; that the defendants appealed to the Common Council of Belvidere, sitting as Commissioners of Appeals in cases of taxation, and that such assessment being affirmed, a tax warrant issued ; that thereupon the defendants removed the assessment into the Supreme Court, and subsequently, by writ of error, into the Court of Errors, in both of which Courts the legality of the tax was sustained. It is difficult to imagine under what pretence the force of these judgments is to be overcome. The question now sought to be mooted was necessarily involved in any consideration of the case, both before the Supreme Court and the Court of Errors. A judgment sustaining this

- tax could be rested on no other foundation than on an affirmation of its legality. No judgment could have been rendered in its favor if it had been rendered nugatory by a repeal of the law by virtue of which it had been imposed. The only answer to this objection which has been attempted by the counsel of the defendants, is founded in an error of fact. It is assumed that the argument in the Supreme Court took place before the repealing act went into effect, and that, consequently, the point now relied on could not have been raised. But this is not so.
- 10 The act, by its terms, went into immediate operation, so that it had full force at the time of the discussion in the Supreme Court. The clause giving instant effect to the law has, apparently from inadvertence, been omitted in *Nix, Digest*, a circumstance which appears to account for the error into which counsel on both sides seem to have fallen. After the repeal of this act, then the Supreme Court, in solemn form, in a proceeding between these same parties, declared this assessment to be valid and effectual, and, at a still later date, the Court of Errors affirmed that decision.
- 20 The rule of the common law, taken from that of the civil, has always been *res judicata pro veritate accipitur*. How is the present objection to be listened to, and the integrity of this principle to be preserved? The rule is more than futile if it can be now said that this matter was not raised or decided, for such a doctrine would impair the stability of every judgment. In legal theory, the conclusive presumption is, that all matters susceptible of being presented were passed upon and decided by the Court at the time of rendering judgment. The authorities are abundant, and conclusively settle
- 30 this question; and many of them will be found collected in *Broomes' Leg. Maxims*, and in the notes to the *Duchess of Queenston's case*, 2 *Smith's Leading Cases*. A single quotation from the treatise of the author first above-named will show the extent of this doctrine, as well as its appositeness to the present subject: "After a recovery, by process of law, there must be an end of litigation. If it were otherwise, there must be no security for any person, and great oppression might be done under color and pretence of law. To unravel the grounds and motives which may have led to the determin-
- 40 ation of a question once settled by the jurisdiction to which

the law has referred it, would be extremely dangerous. It is better for the general administration of Justice that an inconvenience should sometimes fall upon an individual, than that the whole system of the law should be overturned, and endless uncertainty be introduced." Broomes' [Leg. Max., 243. If there were, therefore, any substance in the point now taken, which I have already said I do not think is the case, I should still hold that it could not be now interposed, in this collateral mode, to defeat a tax which has already, in due legal course, been twice adjudged to be valid. This first objection, there- 10 fore, cannot prevail. But, in the second place, it is said that, waiving all defence to the tax itself, there is no legal ground on which the twelve per cent. interest can be exacted.

By the plain terms of the statute this is designed as a punishment. The language is "That if any person, or corporation, shall neglect or refuse to pay the tax due from such person, or corporation, by the time appointed by law for payment of the same, such delinquent shall pay interest on said tax at the rate of twelve per cent. per annum, upon the amount of such tax, from the time of such delinquency until such tax be 20 paid, &c." I can have no doubt that this is a plain demand for delinquency. It does not appear that any effort has been heretofore made to collect it, or any part of it. It was not involved in the adjudication heretofore made, with respect to the tax, in this Court, and the Court of Errors, and is now ordered to be paid, for the first time, by this mandamus. The question, therefore, is a new one in the cause. Can this penal sum be recovered after the repeal of the act which awards it?

It will be observed that this demand cannot rest on any of the grounds upon which the right to the body of the tax has 30 been placed. Before the repeal of the law nothing was done with respect to it. Hence it cannot be regarded, in the faintest degree, as a transaction ended or closed during the running of the statute. I have already said it stands unaffected by any judgment. If it is to be sustained, other principles must be superinduced than those which have been applied in support of the tax itself.

The general principle of the law on the subject is entirely clear. The repeal of a penal statute puts an end to all prosecutions under it. Seeley on Stat. and Con. Law, 129. It 40

has been held that the repeal of a law imposing a penalty, though after conviction, arrests the judgment. *Commonwealth vs. Duane*, 1 Binn, 601. The same doctrine has been repeatedly sanctioned by decisions in the Supreme Court of the United States. *Yeaton vs. United States*, 5 Cranch, 281. *Norris vs. Crocker*, 13 How., 429. Upon this point there seems to be entire unanimity among the authorities.

In view of this rule I have not been able to perceive any ground on which to sustain this demand for this penal interest. It has always been held that interest does not inhere in a tax as a legal incident. *City of Camden vs. Allen*, 2 Dutch, 399. This twelve per cent. has no existence, then, except by virtue of the act of 1862, and when that act was repealed, it fell with it. If that statute, instead of directing its collection by force of the tax warrant, had authorized a suit to be brought, such suit by the repeal of the act, according to the cases referred to, would have fallen in any of its stages anterior to final judgment. The reason for this, given in the books, is that at the time of judgment a right to the penalty must exist, which cannot be the case unless the statute is alive which created it. It is not to be denied that this same objection applies with full force at the present time, when this Court is asked to compel the payment of this penalty, which, under existing circumstances, has no satisfactory basis whatever. My first impression was that this interest might be regarded as a mere incident to the tax, and that in this mode its existence might be continued. But the defects of this theory are two-fold: First, the twelve per cent. is a penalty, and not a mere incidental part of the sum to be paid; and, in the next place, even if it should be regarded as an incident, it is altogether a statutory incident, and, consequently, would expire with the laws from which it proceeded. Nor am I able to yield to the other suggestions, that the act of 1866 preserves and keeps alive this penalty. *Nix. Dig.*, 957, sec. 27. According to my apprehension, that statute, in the section referred to, has no retrospective operation, its entire effect being to apply a similar penalty to future delinquencies. Every expression in this clause has clearly a prospective aspect, and its language cannot be strained so as to reach past transactions on account of the existence of a supposed inconvenience or a

casus omissus. The leaning of the law has always been against giving to statutes any retroactive effect by implication. "A legislative enactment," in the language of 2 Institutes, 292, "ought to be prospective, and not retrospective, in its operations." And on the presumption that this maxim prevails with the law-making power, it has ever been requisite, when the endeavor has been to apply a statute to old affairs, to show either express words indicative of such a purpose, or circumstances giving rise to a necessary intendment. In the present instance there are certainly no express 10 words for that purpose in this section, and I do not perceive any circumstances from which such a design can be inferred.

In my opinion, the interest on this tax cannot be collected

With respect to the formal objections made to the case of the prosecutors as it appears upon the record, it is not considered necessary to comment upon them in extenso. None of them appear to be well taken. It is proper that the Court, by its mandamus, should order this tax paid to the fiscal officer of the municipal corporation to which it is due. It is 20 not necessary that such tax should pass through the hands of the officers who are authorized to make collections of the taxes. The purpose of the mandamus is to supercede that usual mode of collection, on the ground, under the circumstances of the present code, of its entire inefficacy. Nor is there any solidity in the exception that there is a mistake in the corporate name of the applicant for this writ of mandamus. The existence of such an error is a mere assumption without anything now before the Court to support it. The effect of the demurrer does not reach back beyond the face of 30 the writ, and the consequence is it is not now judicially apparent who made the application for this writ. The legal principle is, that with respect to the Courts of general jurisdiction the presumption is that their proceedings are correct, and the consequence is that, looking at the present record, we must intend that this mandamus has been issued at the instance of a party who was legally entitled to ask its assistance. What the effect of the alleged error, if it had appeared to the Court, would have been, it is not necessary to adjudge.

I think this mandamus is too hard in requiring the payment of the twelve per cent. interest.

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

NEW JERSEY COURT OF ERRORS AND APPEALS.

	THE TOWN OF BELVIDERE,	} <i>In Error.</i>
	<i>vs.</i>	
10	THE WARREN RAILROAD COMPANY.	

And thereupon, afterwards, to-wit : on the twenty-fourth day of March, in the year eighteen hundred and seventy-one, before the Court of Errors and Appeals, comes the said The Town of Belvidere, by Vanatta & DeMott, its attornies, and saith : That in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit : That the said the Supreme Court of New Jersey  
20 did order and adjudge that the said writ of mandamus is defective and illegal in that it commands the said The Warren Railroad Company to pay twelve per cent. interest on the said tax, from the twentieth day of December, A. D., 1865, and that the said The Warren Railroad Company is not liable to pay any interest whatever on the said tax. Whereas, by the law of the State of New Jersey, the said writ of mandamus is not defective or illegal in that it commands the said The Warren Railroad Company to pay twelve per cent. interest on the said tax, from the twentieth day of December, A. D., 1865, and  
30 the said The Warren Railroad Company is liable to pay interest on said taxes at the rate of twelve per cent. per annum, from the twentieth day of December, 1865, until the said taxes shall be paid.

There is also error in this, for that by the said record and proceedings aforesaid, it appears that the said the Supreme Court did order and adjudge that the said demurrer be overruled with costs, and that the answer of the said The Warren Railroad Company to the said writ of mandamus do stand. Whereas, by the law of the State of New Jersey, the said de-  
40 murrer should not have been overruled, but the said answer

of the said The Warren Railroad Company should have been overruled, adjudged insufficient in law, and not have been permitted to stand.

There is also error in this, to-wit : that by the judgment and proceedings aforesaid, it is considered and adjudged that the said answer of the said Company to the said writ of alternative mandamus do stand. Whereas, by the law of the State of New Jersey, if any part of said answer should stand, it is only that part thereof which relates to the said demand of and for interest at the rate of twelve per cent. per annum. 10

There is also error in this, to-wit : that by the record and proceedings aforesaid, it appears that judgment upon the said demurrer was given in the said Supreme Court in favor of the said The Warren Railroad Company, with costs. Whereas, by the law of the State of New Jersey, the said Supreme Court, upon the said demurrer, should have rendered judgment in favor of the said the Town of Belvidere and against the said The Warren Railroad Company, with costs to be taxed.

And thereupon the said The Town of Belvidere prays that the judgment aforesaid, for the errors aforesaid, and others in 20 the record and proceedings aforesaid, may be reversed, annuled and held for nothing, and that it may be restored to all things which it hath lost on occasion of the same.

VANATTA & DEMOTT,  
Att'ys of the Pl'ffs in Error.

