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From the [illegible] [illegible]

Notice of Appeal.

New Jersey Supreme Court

BOARD OF COMMISSIONERS OF THE  
CITY OF HOBOKEN (MAYOR AND  
COUNCIL OF THE CITY OF HOBOKEN), a Municipal Corporation  
of the State of New Jersey,  
Prosecutor,

vs.

STATE BOARD OF TAXES AND ASSESSMENTS and HOBOKEN BANK  
FOR SAVINGS, a Savings Bank  
Corporation of the State of  
New Jersey,  
Respondents.

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On Certiorari.  
Notice of  
Appeal.

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*To: Pierson, Schroeder & Brand, Esqs., Attorneys  
for Defendant-Respondent, Hoboken Bank  
for Savings, a Savings Bank Corporation of  
the State of New Jersey;*

30

*and*

*To: William A. Stevens, Esq., Attorney General  
of the State of New Jersey, and Attorney for  
the Defendant-Respondent, The State Board  
of Taxes and Assessments.*

*Gentlemen:*

PLEASE TAKE NOTICE that the prosecutor-appellant, Board of Commissioners of the City of Ho-

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*Notice of Appeal.*

10       Hoboken (Mayor and Council of the City of Hoboken), a municipal corporation of the State of New Jersey, prosecutor-appellant in the above entitled cause, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause, and writes down the following grounds of appeal, to wit:

20       1.—Because the Supreme Court erred in giving judgment for the respondent, the State Board of Taxes and Assessments, and the Hoboken Bank for Savings, a Savings Bank Corporation, instead of giving judgment for the prosecutor, Board of Commissioners of the City of Hoboken (Mayor and Council of the City of Hoboken), a municipal corporation of the State of New Jersey.

      2.—Because the Supreme Court erred for one or more of the reasons filed by the prosecutor on certiorari in said Court and brought up with the record.

Dated: August 13th, 1930.

Respectfully yours,

30                       WILLIAM A. KAVANAGH,  
Attorney for Prosecutor-Appellant,  
Board of Commissioners of the  
City of Hoboken (Mayor and  
Council of the City of Hoboken).

**Opinion of Supreme Court.**

NEW JERSEY SUPREME COURT.

#232—JANUARY TERM, 1930.

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN (Mayor and Council of the City of Hobo- ken), a municipal corporation of the State of New Jersey, Prosecutor,	10
<i>vs.</i>	
THE STATE BOARD OF TAXES AND ASSESSMENTS and HOBOKEN BANK FOR SAVINGS, Respondents.	20

Argued January Term, 1930. Decided August 3, 1930.

On Certiorari.

Appearances:

For Prosecutor: WILLIAM A. KAVANAGH. 30

For Respondent State Board of Taxes and Assessments: WILLIAM A. STEVENS.

For Respondent Hoboken Bank for Savings: PIERSON, SCHROEDER & BRAND.

Before Justices TRENCHARD, LLOYD and CASE.

LLOYD, J.:

The certiorari in this case is to review the action of the State Board of Taxes in reducing an 40

*Opinion of Supreme Court.*

assessment made by the Board of Assessors of the City of Hoboken against the Hoboken Bank for Savings in that city on personal property owned by the bank. The city assessors had made an assessment on \$300,000 as moneys on hand October 1, 1927. The State Board reduced this to \$191,264, the amount actually then possessed by the bank.

The prosecutor does not contend that the assessment did not truly appraise the moneys actually held on the day in question, but claims that the bank had, for the purpose of reducing its taxable funds, just before that date purchased \$400,000 of United States bonds (which, of course, were not subject to assessment), and shortly thereafter sold these bonds and reconverted them into money, and that this was with intent to defraud the city.

It is conceded that the actual moneys in hands and taxable were in the amount found by the State Board, and assuming that a purpose as above indicated would taint the transaction so as to render that which was ordinarily non-taxable taxable, the burden was on the prosecutor to establish that this sum did not truly represent the sum available for taxation by reason of some fraudulent device or manipulation, whereby the moneys were for that purpose converted into non-taxable securities. The proofs were insufficient for this purpose. The records of the bank were produced showing the sundry sums on hand at various times and the bond transactions of the bank for a considerable period of time. The president of the bank was called and his testimony was to the effect that he had substantially entire charge of the bank's investments; that it was customary to change these investments from time to time and

*Opinion of Supreme Court.*

particularly in government bonds; that the bonds in question were purchased as part of the routine of the bank's investment system and that when sold, as they were later on, they were sold in accordance with this routine and that they yielded a small profit. His further testimony was that the purpose of the transaction was not to defeat the taxing power of the municipality, but for the purpose of keeping the bank's funds invested in the securities which were legal for the purpose.

10

We think the State Board was justified in its finding of the moneys subject to taxation and we find that the earlier conversion of the moneys into bonds and the subsequent sale of the bonds was not shown to be part of a plan or purpose to evade the taxation of any moneys that should have been in hand on October 1, 1927.

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As an abstract proposition of law we think, however, the exercise of a legal right by the conversion of taxable property into that which is non-taxable, even for the purpose of avoiding the tax, where the conversion is in good faith and complete without reservation, would not subject either the non-taxable property thus purchased to taxation, or create a fiction whereby such property should be regarded as resolved into the purchase price with which it was bought for purposes of taxation, and so much counsel for the prosecutor seems to concede, but attacks the good faith of the transaction here involved, a contention with which we do not agree.

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A number of cases are cited to us, such as the exchange of taxable moneys into greenbacks, which latter were not taxable, and immediately after the taxing date the re-exchanging of the same greenbacks back into ordinary forms of money. They all, however, involved a colorable transac-

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*Opinion of Supreme Court.*

tion only, and not one that was *genuine* and without reservation. In the present case the bonds were purchased on September 28, 1927, a few days before the taxing date (October 1, 1927); \$200,000 of them were sold on October 14, following and on October 25th, 1927, the remaining \$200,000 were sold. The sale of the bonds as stated by the president of the bank was made for the purpose of paying for utility and railroad bonds and to meet withdrawals during that month.

Counsel for the prosecutor conceding the right to purchase and hold government bonds even though the purpose be thereby to escape taxation, it would seem to follow that, so long as the transaction is *bona fide*, an equal right to again change such securities must exist, and where, as here, it appears that the transaction was in the first place an outright purchase of bonds whereby the moneys with which they were purchased were absorbed into that security, the moneys with which the bonds were purchased cannot be taxed as an asset, nor can the subsequent reconversion of the bonds into money recreate a fund which would be subject to taxation as of the first of October.

The order is affirmed with costs.

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## Writ.

## NEW JERSEY SUPREME COURT.

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN (Mayor and Council of the City of Hobo- ken), a municipal corporation of the State of New Jersey, Prosecutor,	10
<i>vs.</i>	
THE STATE BOARD OF TAXES AND ASSESSMENTS AND HOBOKEN BANK FOR SAVINGS, a savings bank corporation of the State of New Jersey, Respondents.	20

On Certiorari.  
Writ.

## NEW JERSEY—SS.:

*The State of New Jersey to The State Board  
of Taxes and Assessments, Greeting:*

WE BEING WILLING for certain reasons to be cer-  
tified of a certain order, judgment and determina-  
tion of The State Board of Taxes and Assess-  
ments modifying and reducing a certain assess-  
ment of Three hundred thousand Dollars (\$300,-  
000) on personal property for the year 1928,  
levied on or about October 1st, 1927, by the Board  
of Assessors of the City of Hoboken against the  
aforesaid Hoboken Bank for Savings of the City  
of Hoboken, a savings bank corporation of the  
State of New Jersey, on personal property owned  
by the said Hoboken Bank for Savings and of

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*Writ.*

the value of Three hundred thousand Dollars (\$300,000), together with all proceedings and matters touching and concerning the said modification and reduction of the aforesaid assessment, as fully as they remain before The State Board of Taxes and Assessments;

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Do COMMAND YOU that the order, judgment and determination modifying and reducing the aforesaid assessment, including the valuations upon which the same are based, the statement or statements thereof, the written complaint or appeal of the said Hoboken Bank for Savings against the said assessment, the statements, testimony, evidence and exhibits before The State Board of Taxes and Assessments on review thereof, all corrections made by the said Board thereon, the original judgment, order and determination of the said Board affirming the said assessment, as well as the second and final judgment, order and determination of the Board modifying and reducing the same, together with all proceedings and matters touching and concerning the same, as they remain before you, to our Supreme Court at Trenton, on the 22nd day of November, A. D. 1929, 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.

30

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our said Court, at Trenton, this 2nd day of November, in the year of Our Lord One thousand nine hundred and twenty-nine.

FRED L. BLOODGOOD,  
Clerk.

40 WILLIAM A. KAVANAGH,  
Attorney.

This writ is allowed this 2nd day of November, 1929.

SAMUEL KALISCH,  
J. S. C.

**Affidavit for Issuance of Writ.**

(Filed November 2, 1929.)

## NEW JERSEY SUPREME COURT.

BOARD OF COMMISSIONERS OF THE  
CITY OF HOBOKEN (Mayor and  
Council of the City of Hobo-  
ken), a municipal corporation  
of the State of New Jersey,  
Prosecutor,

*vs.*

THE STATE BOARD OF TAXES  
AND ASSESSMENTS and the HOBOKEN  
BANK FOR SAVINGS, a sav-  
ings bank corporation,  
Respondents.

10

On Certiorari.

Affidavit for  
Issuance of  
Writ.

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STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

WILLIAM H. GILFERT, of full age, being sworn  
on his oath according to law, deposes and says:  
That he is the Commissioner of Revenue and  
Finance of the City of Hoboken and has held such  
office for the past three years; that under the law  
the said Department of Revenue and Finance has  
charge of the handling of the revenue and finances  
of the said City, and also under the jurisdiction  
of said Department is carried out the statutory  
imposition of the levying, assessing and collecting  
of taxes on both real and personal property held  
and owned within the taxing district of the City  
of Hoboken.

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*Affidavit for Issuance of Writ.*

That the Hoboken Bank for Savings in the City of Hoboken was incorporated as a savings bank pursuant to an Act of the Legislature of the State of New Jersey, approved March 20, 1857, and is governed by the laws regulating savings banks. Said Hoboken Bank for Savings is a mutual savings bank and has no stock.

Deponent further says that the Board of Assessors of the City of Hoboken assessed the said Bank's personalty for the year 1927 at the sum of \$300,000; that the said Bank appealed requesting a reduction to the sum of \$250,000, but afterwards, before the said appeal was heard, withdrew the said appeal and was obliged to pay taxes to the City of Hoboken based on an assessment of \$300,000 in personal property.

Deponent also further says that the next year the Hoboken Bank for Savings conceived the idea that it would, a day or so before October 1st, 1927, deplete its ordinary cash on hand and the sums of money which it theretofore carried, and by investing its cash in government bonds, the Bank would thereby escape taxation and not be taxed as it had been for the previous year, 1927, when its personalty had been assessed at \$300,000, and it had been obliged to abandon and withdraw its appeal, and had paid taxes on that amount. That this idea it carried into effect and on September 28, 1927, only two days prior to October 1st, 1927, it purchased with its funds \$400,000 of United States Bonds, so that when the Assessors called at the Bank on October 1st, they would find that the Bank, instead of having its usual cash on hand, which deponent says had always been close to one-half million dollars and much more than the City's assessment of \$300,000, only had \$191,264.05. A few days later the Bank, its purpose

*Affidavit for Issuance of Writ.*

having been attained, in order to restore its cash on hand, sold these \$400,000 of United States Bonds, to wit: on October 14, 1927, it sold \$200,000 thereof and on October 25, 1927, it sold the remaining \$200,000 thereof. Therefore, it appears that the Bank had \$200,000 of its actual cash on hand invested in United States Government Bonds for the short period of time, to wit: from September 28, 1927, to October 14, 1927, viz.: 16 days, and \$200,000 thereof from September 28, 1927, to October 25, 1927, viz.: 27 days. 10

Deponent also further says that during every month, from September, 1926, to and including August, 1928, the said Bank always carried and had on hand more than the \$300,000 for which it was assessed, excepting the months of September, 1927, and September, 1928. 20

Deponent further says that this transaction of depleting its cash two days before October 1st, 1927, and placing \$400,000 of its cash in United States bonds for the few days which it did, was initiated and carried through for the avowed and express purpose of escaping the burden of taxation.

Deponent also further says that in the above matter the taxing authorities of the City of Hoboken do not contend that United States bonds are not exempt from taxation, but it is strongly maintained, asserted and contended that in the case in hand the holding of these \$400,000 of United States bonds for a few days prior and subsequent to October 1st was not actual and *bona fide*, but was only colorable and fraudulent; that the personal property of the Bank was temporarily concealed by this purchase of \$400,000 of United States bonds on September 28; that this concealment of the Bank's personalty was unclocked as 30 40

*Affidavit for Issuance of Writ.*

10 soon as the visit of the Assessors had been made, for a few days after October 1st, the \$400,000 of United States bonds were sold and the Bank's cash restored; that such a palpable fraud upon the revenue of the City and State should not be permitted whereby the Bank may escape paying its clear proportion of the public expenses and impose them upon others.

Deponent also further says that The State Board of Taxes and Assessments affirmed the aforesaid assessment of \$300,000 on personalty owned by the Hoboken Bank for Savings for the year 1928, but later, after a rehearing, on September 3, 1929, reduced the said assessment to \$191,264.05.

20 Deponent makes this affidavit for the purpose of the issuance of a writ of certiorari out of the Supreme Court to review the order, judgment and determination of The State Board of Taxes and Assessments.

WILLIAM H. GILFERT.

Sworn and subscribed to before me }  
this 25th day of October, 1929. }

30 EDWARD HUNTER  
Notary Public of New Jersey

[SEAL]

**Affidavit of Service.**

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

THOMAS J. McALEER, JR., of full age, being duly sworn according to law upon his oath deposes and says: 10

That on November 7, 1929, he served the original Writ of Certiorari, a copy of which is hereto attached, upon Anna E. Mason, Principal Clerk in the Office of the State Board of Taxes and Assessments at the State House, Trenton, N. J.

THOMAS J. McALEER, JR.

Sworn and subscribed to before me }  
 this 29th day of November, 1929. } 20

J. H. BREITMEYER,  
 My Com. Expires Jan. 14/1930.

(NOTARIAL SEAL)

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**Affidavit of Service.**

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

10 THOMAS J. McALEER, JR., of full age, being duly sworn according to law upon his oath deposes and says:

That on November 8, 1929, he served a duplicate of the original Writ of Certiorari, a copy of which is hereto attached, upon Helen Verducchio, a stenographer in the Law Offices of Pierson, Schroeder & Brand, 84 Washington Street, Hoboken, N. J., Counsel for the Hoboken Bank for Savings.

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THOMAS J. McALEER, JR.

Sworn and subscribed to before me }  
 this 29th day of November, 1929. }

J. H. BREITMEYER,  
 My Com. Expires Jan. 14/1930.

(NOTARIAL SEAL)

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**Reasons.**

(Filed November 29, 1929.)

NEW JERSEY SUPREME COURT.

<p>BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN (Mayor and Council of the City of Hobo- ken), a municipal corporation of the State of New Jersey, Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> <p>THE STATE BOARD OF TAXES AND ASSESSMENTS and HOBOKEN BANK FOR SAVINGS, a savings bank corporation of the State of New Jersey, Respondents.</p>	<p>Certiorari to review a certain order, judgment and determination of the State Board of Taxes and Assessments modifying and reducing an assessment for personal taxes.</p> <p style="text-align: center;">Reasons.</p>	<p>10</p> <p>20</p>
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The said Prosecutor, Board of Commissioners of the City of Hoboken (Mayor and Council of the City of Hoboken), a municipal corporation of the State of New Jersey, by William A. Kavanagh, its Attorney, comes and prays that a certain judgment, order and determination of The State Board of Taxes and Assessments made and entered by the said The State Board on September 3, 1929, modifying and reducing a certain assessment of \$300,000, levied by the taxing authorities of the City of Hoboken on personal property (monies on deposit in bank) belonging to the Hoboken Bank for Savings, a savings bank corporation of the State of New Jersey, for the year 1928, to the sum of \$191,264.05, which said order, judg-

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*Reasons.*

10 ment and determination reversed a certain other order, judgment and determination made and entered by The State Board of Taxes and Assessments on June 25, 1929, affirming the said assessment of \$300,000 on the aforesaid personalty of the said Hoboken Bank for Savings for the year 1928, may be reversed, set aside and for nothing holden for the following:

## REASONS.

20 1. Because the said The State Board of Taxes and Assessments having on June 25, 1929, dismissed the Appeal of the Hoboken Bank for Savings on the said assessment of \$300,000 and having affirmed the said assessment of \$300,000 levied by the Taxing Authorities of Hoboken for the year 1928 on personal property belonging to the Bank, the said The State Board of Taxes and Assessments was without any legal power or authority whatsoever to grant a rehearing to the said Bank on its said Appeal, and on September 3, 1929, grant the said rehearing and on said date reverse its order, judgment and determination of June 25, 1929, by which order, judgment and determination the said Board modified and reduced  
30 the said assessment of \$300,000, which it heretofore had affirmed on June 25, 1929, to the sum of \$191,264.05; especially since on July 19, 1929, the Taxing Authorities of the City of Hoboken had been notified by the said State Board that the assessment of \$300,000 had been affirmed and the Appeal of the Hoboken Bank for Savings therefrom had been dismissed.

40 2. Because the Taxing Authorities of the City of Hoboken assessed the personalty of the Hoboken Bank for Savings for the year 1927 at the

*Reasons.*

sum of \$300,000, from which the said Bank appealed, requesting a reduction to the sum of \$250,000, but later withdrew its appeal and was obliged to pay taxes to the City of Hoboken based on the said assessment of \$300,000 on personal property.

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3. Because the action of the Hoboken Bank for Savings and the authorities thereof, a few days before October 1, 1927, in depleting its ordinary cash on hand and the sums of money which it always theretofore carried, and investing its cash in Government Bonds to a very large amount, which Government Bonds were later resold a short period after October 1, 1927, was done for the patent purpose of escaping its just share of taxation, was not bona fide, was a subterfuge by means of which it sought to have its assessment on personalty reduced to a very low figure, and moreover was a palpable fraud upon the revenue of the City and the State.

20

4. Because the action of the Hoboken Bank for Savings and the authorities thereof in purchasing two days prior to October 1, 1927, with its funds \$400,000 of United States Bonds, and thereby very greatly depleting its usual cash on hand on October 1, 1927, which cash on hand in former months had been close to One-half Million Dollars, and a week or so after October 1st, the date of the visit of the Taxing Authorities for the purpose of levying an assessment on the funds held by the Bank, selling the said \$400,000 of United States Bonds and restoring its cash on hand, was a scheme to escape its just share of taxation, was a temporary concealment of \$400,000 of its cash, was moreover not an actual and bona fide purchase and holding of these \$400,000 of United States Bonds, but was

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*Reasons.*

a sham, colorable and fraudulent purchase and sale concocted for the sole purpose of escaping its just and clear proportion of the public expenses and by such scheme devised and planned imposing them on others.

10       5. While in the above connection the City of Hoboken does not contend that United States Bonds are not exempt from taxation, nevertheless because of and on account of the means employed by and the scheme devised by the said Hoboken Bank for Savings for the purpose of holding \$400,000 out of its cash on hand a few days prior to October 1st and purchasing there-  
20       with United States Bonds exempt from taxation with the said money and holding same over the first day of October and for a week or so thereafter and then selling said bonds, it is urged that such action on the part of the Bank and its authorities is a fraud and a cheat on the City, and the Bank should be considered as the owner of such \$400,000 as of October 1st, free and clear of any purchase of United States Bonds which are exempt from taxation.

30       6. Because the action and proceedings of The State Board of Taxes and Assessments of the State of New Jersey in reducing and modifying the assessment of \$300,000 to \$191,264.05 in this case are in divers other respects irregular, illegal, unjust and oppressive to the Prosecutor, and should be set aside and be for nothing holden.

Dated: November 27, 1929.

WILLIAM M. KAVANAGH,  
Attorney for Prosecutor.

40   A true copy.

FRED L. BLOODGOOD,  
Clerk.

## Return to Writ.

## NEW JERSEY SUPREME COURT.

BOARD OF COMMISSIONERS OF THE  
CITY OF HOBOKEN (Mayor and  
Council of the City of Hobo-  
ken), a municipal corporation  
of the State of New Jersey,  
Prosecutor,

*vs.*

THE STATE BOARD OF TAXES  
AND ASSESSMENT and HOBOKEN  
BANK FOR SAVINGS,  
Defendants.

10

On Certiorari.

20

The State Board of Taxes and Assessment doth  
herewith send to the Supreme Court of the State  
of New Jersey the petition, judgment and pro-  
ceedings in the matter of the appeal of The Hobo-  
ken Bank for Savings in the City of Hoboken,  
from the assessment of property located in the  
City of Hoboken, County of Hudson, for the year  
1928, as within it is commanded, as by the tran-  
script under the seal of said Board hereto an-  
nexed more fully appears.

30

STATE BOARD OF TAXES AND ASSESSMENT,

By CHAS. E. COOK,  
Secretary.

(SEAL)

40

**Petition of Appeal.**

IN THE MATTER

*of*

10 The application of THE HOBOKEN  
BANK FOR SAVINGS IN THE CITY  
OF HOBOKEN for the reduction  
of the tax assessment for the  
year 1928 on personal property  
in the City of Hoboken, County  
of Hudson and State of New  
Jersey.

Petition of  
Appeal.

20 *To the State Board of Taxes and Assessment:*

Your petitioner, The Hoboken Bank for Savings in the City of Hoboken, doing business at 84 Washington Street, in the City of Hoboken, County of Hudson, and State of New Jersey, respectfully shows that:

30 Your petitioner is a savings bank chartered under the laws of the State of New Jersey and is a mutual savings bank without stock; that the said bank was and is the owner of certain personal property situate and taxable in the taxing district of the City of Hoboken, County of Hudson, and State of New Jersey, consisting of cash on hand, cash on deposit in bank and bills receivable referred to in the assessment complained of as "Cash on hand".

40 Your petitioner also owns certain real estate which was taxed separately and the tax shown on a separate tax bill, the first half of which for the year 1928 had been paid, to the valuation of which there was no appeal made.

*Petition of Appeal.*

The said personal property referred to as cash on hand has been assessed for the purpose of taxation for the year 1928 at a valuation of \$300,000, at which assessment your petitioner is aggrieved because the said assessment is in excess of its true value and is in excess of the taxable personal property of your petitioner for the year 1928.

10

That an appeal from said assessment has been filed with the Hudson County Board of Taxation, which appeal said board disposed of as follows:

“Your appeal has been considered by this board and the valuation of your property has been confirmed as assessed after hearing.

Hoboken Bank of Savings, Taxing District  
Hoboken, Block 1st W, lot Folio 43.”

Your petitioner alleges that its taxable personal property for the year 1928 was not \$300,000 but was \$133,385.17.

20

Your petitioner, therefore, prays that said assessment of \$300,000 for personal property described as “cash on hand” for the year 1928 be reduced to the true valuation of the said taxable personal property described as “cash on hand”, to wit: \$133,385.17.

Dated, September 19, 1928.

30

THE HOBOKEN BANK FOR SAVINGS  
IN THE CITY OF HOBOKEN

by FREDERIC J. MEYSTRE,  
President.

40

*Petition of Appeal.*

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

10 FREDERIC J. MEYSTRE, of full age, being duly sworn according to law on his oath deposes and says that:

He is the president of the above named petitioner and has signed the said petition in behalf of said petitioner; that he has read the above petition and knows the contents thereof and that the statements set forth and contained therein are true.

FREDERIC J. MEYSTRE.

20 Sworn and subscribed to before me }  
 this 20th day of September, 1928. }

JOHN J. CARROLL,  
 Notary Public of New Jersey,  
 Commission expires Apr. 28.

(SEAL)

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

30 JOHN D. PIERSON, being duly sworn, according to law on his oath deposes and says that he served a copy of the above petition and affidavit on Horace L. Allen, attorney of the City of Hoboken, personally, this twenty-first day of September, 1928.

JOHN D. PIERSON.

40 Sworn and subscribed to before me }  
 this 21st day of September, 1928. }

HILMA E. PIERSON,  
 Notary Public of New Jersey.

*Petition of Appeal.*

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

JOHN D. PIERSON, being duly sworn, according to law on his oath deposes and says that he served a copy of the above petition and affidavit on Joseph P. McLean, Secretary of the Hudson County Board of Taxation, personally, this twenty-first day of September, 1928. 10

JOHN D. PIERSON.

Sworn and subscribed to before me }  
 this 21st day of September, 1928. }

HILMA E. PIERSON,  
 Notary Public of New Jersey. 20

ENDORSED:

In the Matter of the Application  
*of*

THE HOBOKEN BANK FOR SAVINGS IN THE CITY  
 OF HOBOKEN

for the reduction of the tax assessment for the year 1928 on personal property in the City of Hoboken, County of Hudson and State of New Jersey. 30

Filed, Sept. 24, 1928.

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PETITION OF APPEAL

---

PIERSON, SCHROEDER & BRAND,  
 Attorneys for Petitioner, 40  
 O. & P. O. Address,  
 84 Washington Street,  
 Hoboken, N. J.

**Stipulation.**

BEFORE THE STATE BOARD OF TAXES  
AND ASSESSMENT.

10

IN THE MATTER

*of*

20

The Application of THE HOBOKEN  
BANK FOR SAVINGS IN THE CITY  
OF HOBOKEN for the reduction  
of the tax assessment for the  
year 1928 on personal prop-  
erty in the City of Hoboken,  
County of Hudson and State  
of New Jersey.

Stipulation.

It is hereby stipulated by and between The Hoboken Bank for Savings in the City of Hoboken and The Mayor and Council of the City of Hoboken that the following are facts and that each and every statement herein is proven and established as a fact, to wit:

30

The Hoboken Bank for Savings in the City of Hoboken was incorporated as a savings bank pursuant to an act of the legislature of New Jersey approved March 20, 1857, and is governed by the laws regulating savings banks. It is a mutual savings bank and has no stock.

40

Appellant, The Hoboken Bank for Savings in the City of Hoboken, had on hand and not invested in securities, exempt from taxation, on the last day of each of the following months, the following respective sums consisting of cash on hand, money on deposit in banks and trust companies and loans secured by collateral, viz.:

*Stipulation.*

On September 30, 1926.....	\$543,732.90	
On October 31, 1926.....	562,162.96	
On November 30, 1926.....	539,591.88	
On December 31, 1926.....	576,688.61	
On January 31, 1927.....	641,887.92	
On February 28, 1927.....	677,231.43	
On March 31, 1927.....	569,010.46	
On April 30, 1927.....	427,429.16	10
On May 31, 1927.....	641,056.32	
On June 30, 1927.....	603,633.55	
On July 31, 1927.....	450,429.94	
On August 31, 1927.....	472,267.79	
On September 30, 1927.....	191,264.05	
On October 31, 1927.....	525,512.86	
On November 30, 1927.....	539,311.01	
On December 31, 1927.....	488,798.40	
On January 31, 1928.....	348,557.89	

On the last day of each of the following months, The Hoboken Bank for Savings had in its vault and on deposit in the following banks, viz.: First National Bank of Hoboken, Second Bank and Trust Company of Hoboken, Hudson Trust Company of Hoboken, Union Trust Company and the Farmers' Loan and Trust Company, moneys aggregating the following sums: 20

September 30, 1926.....	\$529,872.90	
October 31, 1926.....	556,727.96	
November 30, 1926.....	519,456.88	
December 31, 1926.....	531,658.61	30
January 31, 1927.....	634,892.92	
February 28, 1927.....	660,526.43	
March 31, 1927.....	541,844.44	
April 30, 1927.....	412,562.16	
May 31, 1927.....	628,064.32	
June 30, 1927.....	549,321.55	
July 31, 1927.....	436,947.94	
August 31, 1927.....	457,945.79	
September 30, 1927.....	160,652.05	
October 31, 1927.....	514,020.86	
November 30, 1927.....	524,836.01	40
December 31, 1927.....	462,298.40	

*Stipulation.*

	January 31, 1928.....	\$337,977.89
	February 28, 1928.....	382,504.27
	March 31, 1928.....	463,113.22
	April 30, 1928.....	424,642.89
	May 31, 1928.....	301,382.66
	June 30, 1928.....	341,162.76
10	July 31, 1928.....	442,840.15
	August 31, 1928.....	510,911.46
	September 30, 1928.....	198,765.87
	October 31, 1928.....	239,742.22
	November 30, 1928.....	280,446.78
	December 31, 1928.....	494,553.97

The said bank had cash on hand, cash on deposit in bank and trust companies and cash invested in collateral loans at the opening of business on October 1, 1927, the sum of \$191,264.05, made up as follows:

20	Cash on hand in the bank vault	\$ 58,799.94
	Amount on deposit in First National Bank of Hoboken, N. J.	13,850.58
	Amount on deposit in Second Bank & Trust Co. of Hoboken, N. J. ....	10,218.93
	Amount on deposit in Hudson Trust Co. of Hoboken, N. J. ....	61,424.76
	Amount on deposit in Farmers' Loan & Trust Co. of New York City .....	16,357.84
30		<hr/>
		\$160,652.05
	Collateral loans secured by bonds .....	\$ 620.00
	Collateral loans secured by stocks .....	350.00
	Collateral loans secured by Pass-books .....	28,590.00
	Collateral loans secured by Adjusted service certificates..	1,052.00
40		<hr/>
	TOTAL.....	\$191,264.05

*Stipulation.*

The said bank had cash on hand, cash on deposit in banks and trust companies and invested in collateral loans at the close of business on October 1, 1927, the sum of \$133,385.17, made up as follows:

Cash on hand in the bank vault..	\$ 60,273.63	10
Amount on deposit in First National Bank of Hoboken, N. J.	13,850.58	
Amount on deposit in Second Bank & Trust Co. of Hoboken, N. J. ....	10,218.93	
Amount on deposit in Hudson Trust Co. of Hoboken, N. J. ....	20,997.19	
Amount on deposit in Farmers' Loan & Trust Co. of New York City .....	16,357.84	
	<hr/>	
	\$121,698.17	20
Collateral Loans Secured by Bonds .....	620.00	
Collateral Loans Secured by Stocks .....	350.00	
Collateral Loans Secured by Pass-Books .....	9,665.00	
Collateral Loans Secured by Adjusted service certificates....	1,052.00	
	<hr/>	
TOTAL.....	\$133,385.17	

The bank had in addition to the foregoing on October 1, 1927, real estate used for banking purposes and chattels used in connection with its banking business which were assessed separately at their assessable value, the tax upon which was satisfactory and was paid and is not involved in this appeal. 30

The tax rate for the year 1928 was \$48.67 per thousand.

The said bank had on hand in addition to the foregoing on October 1, 1927, both at the opening 40

*Stipulation.*

and close of business, tax exempt securities aggregating \$14,056,525.00. In addition to this it had on hand at the opening of business bonds secured by mortgages on real estate and exempt from taxation aggregating \$10,415,968.43, and at the close of business an amount in such bonds and mortgages aggregating \$10,374,118.43.

The Appellant is allowed 3% interest on average daily balances on deposit.

The Appellant bank did not have on said day any other property or assets of any kind.

On the last day of each of the following months said The Hoboken Bank for Savings had the following sums of money invested in tax exempt United States Government Bonds, viz.:

20	On September 30, 1926.....	\$1,983,950.00
	On October 31, 1926.....	1,983,950.00
	On November 30, 1926.....	1,983,950.00
	On December 31, 1926.....	1,983,950.00
	On January 31, 1927.....	1,983,950.00
	On February 28, 1927.....	1,983,950.00
	On March 31, 1927.....	2,083,950.00
	On April 30, 1927.....	2,083,950.00
	On May 31, 1927.....	2,083,950.00
	On June 30, 1927.....	2,083,950.00
	On July 31, 1927.....	2,083,950.00
	On August 31, 1927.....	2,083,950.00
30	On September 30, 1927.....	2,483,950.00
	On October 31, 1927.....	1,966,650.00
	On November 30, 1927.....	1,916,650.00
	On December 31, 1927.....	1,916,650.00
	On January 31, 1928.....	2,116,650.00

Between the months of October, 1926, and January, 1928, inclusive, The Hoboken Bank for Savings invested the following sums of money in tax exempt United States Government Bonds, viz.:

*Stipulation.*

<i>Year</i>	<i>Months of</i>	<i>U. S. Bonds Par Value</i>	
1926	October .....		
	November .....		
	December .....		
1927	January .....		
	February .....		
	March .....	\$ 459,400	10
	April .....		
	May .....		
	June .....		
	July .....		
	August .....		
	September .....	400,000	
	October .....		
	November .....	300,000	
	December .....		
1928	January .....	200,000	
		<hr/>	
		\$1,359,400	20

These United States Bonds were purchased on the following respective days, viz.:

1927	March 3 .....	\$ 100,000	
	March 30 .....	359,400	
		<hr/>	
		\$ 459,400	
1928	September 28 .....	400,000	
	November 25 .....	300,000	
	January 6 .....	200,000	
		<hr/>	
		\$1,359,400	30

United States Bonds were sold by The Hoboken Bank for savings on the following respective days, viz.:

1927	March 30 .....	\$ 359,400	
	October 5 .....	117,300	
	October 14 .....	200,000	
	October 25 .....	200,000	
	November 25 .....	350,000	
		<hr/>	
		\$1,226,700	40

*Stipulation.*

The Bank purchased from October 14, 1927 to October 31, 1927, inclusive, municipal bonds, railroad bonds and public utility bonds, having a par value of \$249,000, and invested during that period on bond and mortgage \$18,000, making a total of investments of \$267,000.

10

During each of the following months, from October, 1926, to and including January, 1928, the depositors deposited with said The Hoboken Bank for Savings in their saving accounts and Christmas Club accounts, and drew out of said accounts the following sums of money, to wit:

<i>Year</i>	<i>Month</i>	<i>Deposited</i>	<i>Withdrawals</i>
1926	October .....	\$482,612.94	\$585,984.38
"	November .....	317,774.98	309,511.88
"	December .....	360,337.11	295,615.62
20 1927	January .....	845,221.68	719,495.35
"	February .....	352,140.16	328,284.53
"	March .....	460,683.71	342,225.38
"	April .....	514,007.55	761,457.41
"	May .....	379,607.67	384,539.20
"	June .....	400,272.67	321,313.46
"	July .....	656,774.22	764,151.48
"	August .....	360,060.92	398,295.32
"	September .....	370,243.61	275,760.20
"	October .....	525,159.89	691,446.22
"	November .....	317,614.24	325,625.07
"	December .....	371,384.03	299,849.74
30 1928	January .....	847,662.42	760,944.59

The United States bonds purchased on September 28, 1927, and sold in October, 1927, were purchased and sold at the following net prices:

*United States Bonds Purchased.*

September 28, 1927

40	\$200,000 U. S. Treas. 3½% Notes due Sep. 15, 1930/32@99-31/32	\$199,537.50
	\$200,000 U. S. Treas. 3½% Notes due Sep. 15, 1930/32@100.....	200,000.00
	Total Cost of the above U. S. Bonds .....	\$399,937.50

*Stipulation.**United States Bonds Sold.*

October 14, 1927	
\$200,000 U. S. Treas. 3½% Notes	
due Sept. 15, 1930/32 @ 100.....	\$200,000.00
October 25, 1927	
\$200,000 U. S. Treas. 3½% Notes	10
due Sept. 15, 1930/32 @ 100.....	200,000.00
	<hr/>
Total Selling Price of the	
above U. S. Bonds.....	\$400,000.00

PIERSON, SCHROEDER & BRAND,  
Attorneys for Appellant.

HORACE L. ALLEN,  
Attorney for City of Hoboken. 20

ENDORSED:

BEFORE THE STATE BOARD OF TAXES AND  
ASSESSMENT

In the Matter of the Application of THE HOBOKEN  
BANK FOR SAVINGS IN THE CITY OF HOBOKEN for  
the reduction of the tax assessment for the year  
1928 on personal property in the City of Hobo-  
ken, County of Hudson and State of New  
Jersey. 30

STIPULATION

PIERSON, SCHROEDER & BRAND,  
Attorneys for Appellant.

O. & P. O. Address,  
84 Washington Street,  
Hoboken, N. J.

40

**Notice of Motion for Rehearing.**

STATE BOARD OF TAXES AND  
ASSESSMENT.

10

IN THE MATTER

*of*

20

The Application of THE HOBOKEN  
BANK FOR SAVINGS IN THE CITY  
OF HOBOKEN for the reduction  
of the tax assessment for the  
year 1928 on personal property  
in the City of Hoboken, County  
of Hudson and State of New  
Jersey.

Notice of Motion  
for Rehearing.

To:

HORACE L. ALLEN, corporation attorney  
of the City of Hoboken,  
84 Washington Street, Hoboken, N. J.

*Sir:*

30

PLEASE TAKE NOTICE that we shall apply to the  
State Board of Taxes and Assessment at the State  
House, in the City of Trenton, State of New Jer-  
sey, on Thursday, August 1st, 1929, at 10:30  
o'clock in the forenoon of that day, Daylight Sav-  
ing Time, or as soon thereafter as counsel can be  
heard for a re-hearing of the above matter.

Dated: Hoboken, N. J., July 24, 1929.

Yours, &c.,

40

PIERSON, SCHROEDER & BRAND,  
Attorneys for The Hoboken Bank for  
Savings in the City of Hoboken,  
Appellant.

*Notice of Motion for Rehearing.*

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

JEANNE IMPOMENI, of full age, being duly sworn according to law, on her oath deposes and says, that she is a stenographer in the office of Pierson, Schroeder & Brand, attorneys for The Hoboken Bank for Savings in the City of Hoboken; that on July 24, 1929, she served a true copy of the within notice of motion for rehearing on Horace L. Allen, corporation attorney of the City of Hoboken, by leaving the same with a person in charge of his office. 10

JEANNE IMPOMENI.

20

Sworn and subscribed to before me }  
 this 26th day of July, 1929. }

HILMA E. PIERSON,  
 Notary Public of New Jersey.

30

40

*Notice of Motion for Rehearing.*

ENDORSED:

STATE BOARD OF TAXES AND ASSESSMENT

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10

In the Matter of the Application

*of*

THE HOBOKEN BANK FOR SAVINGS  
IN THE CITY OF HOBOKEN

20

for the reduction of the tax assessment for the  
year 1928 on personal property in the City of  
Hoboken, County of Hudson and State of  
New Jersey.

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NOTICE OF MOTION FOR REHEARING.

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30

PIERSON, SCHROEDER & BRAND,  
Attorneys for The Hoboken Bank  
for Savings in the City of  
Hoboken, Appellant,  
O. & P. O. Address,  
84 Washington Street,  
Hoboken, N. J.

40

**Judgment.**

(Decided and filed September 3, 1929.)

STATE OF NEW JERSEY,  
STATE BOARD OF TAXES AND ASSESSMENT.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;"><i>of</i></p> <p>Appeal of THE HOBOKEN BANK FOR SAVINGS IN THE CITY OF HOBOKEN from the Assessment of Property in the City of Hoboken, County of Hudson, for the year 1928.</p>	<p style="font-size: 4em;">}</p> <p>Judgment.</p>	<p>10</p> <p>20</p>
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An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by said Board, by The Hoboken Bank for Savings in the City of Hoboken in which it is alleged that an injustice has been done the said complainant by the assessment of personal property for taxation for the year 1928, located at the City of Hoboken, in the County of Hudson, consisting of cash on hand in the bank vault, cash on deposit in various banks and bills receivable assessed as "cash on hand", and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Pierson, Schroeder & Brand for the complainant, and Horace L. Allen for the City of Hoboken and after considering the same, it is on

*Judgment.*

10 this third day of September, nineteen hundred and  
 twenty-nine, at a session of the State Board of  
 Taxes and Assessment, ORDERED, ADJUDGED AND  
 DECREED, under and by virtue of Chapter 67 of the  
 Laws of 1905, Chapter 244 of the Laws of 1915,  
 and Chapter 236 of the Laws of 1918, that the as-  
 20 sessment of Three Hundred Thousand (\$300,000)  
 Dollars for personal property assessed as "Cash  
 on hand" be reduced to the sum of \$191,264.05.

F. D. WEAVER,  
 President.

20 D. H. AGANS,  
 J. WM. HUEGEL,  
 GEORGE COMPTON,  
 State Board of Taxes and Assessment.

Attest:

CHAS. E. COOK,  
 Secretary.

30

40

## Docket.

5916	THE HOBOKEN BANK FOR SAVINGS, Petitioner, <i>vs.</i> CITY OF HOBOKEN, Co. OF HUDSON, Respondent.	} <ul style="list-style-type: none"> <li>Petr's Atty.</li> <li>Pierson, Schroeder &amp; Brand.</li> <li>Respdt's Atty.</li> <li>Horace L. Allen.</li> <li>Assessment of 1928.</li> <li>Property: "Cash on hand".</li> <li>Amount, \$300,000.</li> <li>Judgment, \$191,264.05.</li> </ul>	10
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## 1928

Sept. 24	Petition filed.	
Oct 9	Hearing fixed for December 6 at Jersey City and notice sent.	
Dec. 6	Adjourned.	20

## 1929

Jan. 8	Hearing fixed for Feb. 14th at Jersey City.	
Feb. 14	Stipulation filed. Hearing adjourned.	
Feb. 19	Hearing fixed for March 21 at Jersey City.	
March 21	Case heard. Briefs to be filed.	
June 18	Request for extension of time for filing brief on behalf of pet'r denied.	30
June 25	Appeal dismissed and assessment affirmed.	
Aug. 1	Application for re-opening granted. Hearing fixed for Sept. 3, at Trenton.	
Sept. 3	Case heard. Judgment entered.	

**Minutes.**

STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, OCTOBER 9, 1928.

The Board met at 10:30 A. M. on the above date.

- 10 Present, Commissioners Barber, Huegel and Margerum. Absent, President Baker and Commissioner Weaver.

\* \* \* \* \*

The Secretary informed the Board that 745 appeals had been filed from the action of the County Boards of Taxation on local assessments for the year 1928. The Board fixed the following dates for hearing these appeals:

- 20 \* \* \* \* \*

Thursday, December 6: Court House, Jersey City, 38 Miscellaneous Hudson County cases

\* \* \* \* \*

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COURT HOUSE, JERSEY CITY, NEW JERSEY,  
THURSDAY, DECEMBER 6, 1928.

- 30 The Board met at 10:30 A. M. on the above date for the purpose of hearing appeals.

Present, President Baker, Commissioners Barber and Huegel.

Minutes.

The following calendar of appeals was called:

18	}	THE HOBOKEN BANK FOR SAVINGS IN THE CITY OF HOBOKEN	10
		<i>vs.</i>	
		CITY OF HOBOKEN.	

Case called and adjourned without date.

\* \* \* \* \*

20

STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, JANUARY 8, 1929.

The Board met at 10:30 A. M. on the above date.

Present, President Baker, Commissioners Barber, Huegel and Weaver. Absent, Commissioner Margerum.

\* \* \* \* \*

30

The Board fixed the following dates for hearing adjourned appeals:

\* \* \* \* \*

Thursday, February 14th: Court House, Jersey City, Miscellaneous Hudson County cases.

\* \* \* \* \*

40

*Minutes.*

COURT HOUSE, JERSEY CITY, NEW JERSEY,  
THURSDAY, FEBRUARY 14, 1929.

The Board met at 10:30 A. M. on the above date for the purpose of hearing appeals.

10 Present, President Baker, Commissioners Barber and Huegel.

The following calendar of appeals was called:

\* \* \* \* \*

8

THE HOBOKEN BANK FOR SAVINGS  
IN THE CITY OF HOBOKEN

20

*vs.*

CITY OF HOBOKEN.

Case called, Mr. John D. Pierson, of the firm of Pierson, Schroeder & Brand, appearing for the petitioner, and Mr. Horace L. Allen appearing for the City of Hoboken. A stipulation of facts was presented to the Board by counsel. Hearing of the appeal was adjourned without date.

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\* \* \* \* \*

STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, FEBRUARY 19, 1929.

The Board met at 10:30 A. M. on the above date.

40 Present, President Baker, Commissioners Barber, Huegel, Margerum and Weaver.

\* \* \* \* \*

*Minutes.*

The Board fixed Thursday, March twenty-first, at the Court House, Jersey City, for the hearing of adjourned Hudson County appeals.

\* \* \* \* \*

10

COURT HOUSE, JERSEY CITY, NEW JERSEY,  
THURSDAY, MARCH 21, 1929.

The Board met at 10:30 A. M. on the above date for the purpose of hearing appeals.

Present, President Baker, Commissioners Barber and Huegel.

The following calendar of appeals was called:

\* \* \* \* \*

20

29

THE HOBOKEN BANK FOR SAVINGS  
IN THE CITY OF HOBOKEN,

*vs.*

CITY OF HOBOKEN.

30

Case heard, Mr. Julius Lichtenstein appearing for the petitioner and Mr. Horace L. Allen appearing for the City of Hoboken. The Board heard the testimony of Frederic J. Meyster and Harry E. Pickenbach on behalf of the City of Hoboken, and reserved decision pending the filing of briefs.

\* \* \* \* \*

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*Minutes.*

STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, JUNE 18, 1929.

The Board met at 10:30 A. M., Advanced Time,  
on the above date.

- 10 Present, President Baker, Commissioners Barber, Margerum and Weaver. Absent, Commissioner Huegel.

\* \* \* \* \*

A letter from I. H. Brand, attorney for the petitioner, requesting an extension of time for filing his brief in the appeal of Hoboken Bank for Savings *vs.* Hoboken was laid before the Board by the Secretary.

- 20 On motion of Commissioner Weaver, the request for an extension was denied, and the Secretary was directed to advise Mr. Brand that if the brief was not filed on or before June twenty-fifth, the Board would decide the case on that date.

\* \* \* \* \*

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STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, JUNE 25, 1929.

30

The Board met at 10:30 A. M., Advanced Time,  
on the above date.

Present, President Baker, Commissioners Barber, Huegel, Margerum and Weaver.

\* \* \* \* \*

40

The Board took up for consideration the appeal of Hoboken Bank for Savings *vs.* City of Hoboken. It was ordered that the assessment of

*Minutes.*

\$300,000, levied for the year 1928 on cash on hand, cash on deposit in bank and bills receivable, referred to in the assessment complained of as "Cash on hand" be affirmed and the appeal therefrom dismissed, President Baker and Commissioners Barber and Huegel voting for its affirmance and Commissioners Margerum and Weaver not voting. 10

\* \* \* \* \*

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STATE HOUSE, TRENTON, NEW JERSEY,  
THURSDAY, AUGUST 1, 1929.

The Board met at 10:30 A. M., Advanced Time, on the above date for the transaction of routine business, and for the purpose of equalizing assessments between the several counties of the State in accordance with the provisions of Chapter 31, P. L. 1917, as amended by Chapter 115, P. L. 1927. 20

Present, President Weaver, Commissioners Agans, Compton and Huegel. Absent, Commissioner Margerum.

\* \* \* \* \*

The Secretary presented to the Board the application of Messrs. Pierson, Schroeder & Brand, counsel for the petitioner, for the reopening of the judgment entered *in re* Hoboken Bank for Savings *vs.* City of Hoboken so that additional testimony may be presented. There was no appearance on behalf of the City of Hoboken. The Board granted the application and fixed Tuesday, September third, at the State House, Trenton, for the taking of additional proof in this case. 30

\* \* \* \* \*

40

*Minutes.*

STATE HOUSE, TRENTON, NEW JERSEY,  
TUESDAY, SEPTEMBER 3, 1929.

The Board at 10:30 A. M., Advanced Time,  
on the above date.

10 Present, President Weaver, Commissioners  
Agans, Compton, Huegel and Margerum.

\* \* \* \* \*

The following appeal was called for hearing:  
The Hoboken Bank for Savings *vs.* City of Ho-  
boken.

20 Case heard, John D. Pierson appearing and pre-  
sented argument for the petitioner and Horace  
L. Allen for the City of Hoboken. The Board  
ordered that the assessment of \$300,000, levied for  
the year 1928 on cash on hand, cash on deposit in  
bank and bills receivable, be reduced to \$191,-  
264.05.

\* \* \* \* \*

30

40

**Affidavit of Chas. E. Cook.**

## STATE OF NEW JERSEY

## STATE BOARD OF TAXES AND ASSESSMENT

I, CHAS. E. COOK, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY, 10  
 that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of The Hoboken Bank for Savings in the City of Hoboken, from the assessment of property in the City of Hoboken, County of Hudson, for the year 1928, as the same are taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the twenty-fourth day of September and other dates, A. D. 1928 and 1929, and now remaining on file 20  
 and of record therein.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton this twenty-second day of November, A. D. 1929.

CHAS. E. COOK,  
 Secretary.

(Seal)

30

40

**Testimony.**STATE BOARD OF TAXES AND  
ASSESSMENTS.

10	<p style="text-align: center;">THE CITY OF HOBOKEN, Petitioner,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">HOBOKEN BANK FOR SAVINGS, Respondent.</p>	}	Testimony.
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20 Transcript of testimony taken in the above entitled cause before the State Board of Taxes and Assessments at the Court House, Jersey City, New Jersey, on Thursday, the twenty-first day of March, 1929, at ten-thirty o'clock in the forenoon.

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Appearances:

HORACE L. ALLEN, Esq., for the City of Hoboken.

30 PIERSON, SCHROEDER & BRAND, Esqs., by Mr. Lichtenstein, for the Respondent.

JOHN F. TRAINOR, Court Reporter.

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Mr. Lichtenstein: There is a little correction to be made in the stipulation, just a few words to be added and if you don't mind Mr. Allen and I will add just a few words to that stipulation.

40 Mr. Baker: There was one point you were going to take testimony on today, everything was settled except that one point:

*Testimony.*

Mr. Allen: As to why the investment was made.

Mr. Lichtenstein: I don't know what the testimony is to be. We can submit a little memorandum on it.

Mr. Baker: Will there be any testimony?

Mr. Allen: Yes. According to the stipulation, the Hoboken Bank for Savings bought four hundred thousand dollars worth of tax exempt securities on September 28, 1927, a few days before October first, and then on October 14, 1927, they sold two hundred thousand dollars worth and on October 25th, 1927, they sold the remaining two hundred thousand dollars worth. That is, they sold the four hundred thousand dollars worth a few days after they bought them. The only profit they made was sixty-two dollars and a half in selling them. I do not know whether the bank contends that they had a perfect right to make this investment for the purpose of avoiding taxation, I don't know whether they will go that far, but I desire to prove, if I can, why they just happened to buy four hundred thousand dollars worth of tax exempt securities a day or two before October first and then dispose of them a few days after October first. Having put in the stipulation, I don't see the need of any evidence except just the question of why that investment was made.

Mr. Lichtenstein: I think that we have. This stipulation is rather elaborate and contains everything Mr. Allen wanted. We just gave him a copy of our books and allowed him to put in everything he desired before and after the date, October first. It is true we did invest four hundred thousand dollars in tax exempt securities and that we had many hundreds of thousands of other tax exempt securities, in fact, twenty-four million dollars worth of tax exempt securities, so it wasn't

*Testimony.*

an unusual thing for us to buy securities from time to time. As a matter of fact, some of these securities we purchased just before October first were sold within the next month but we also purchased within that same month that we sold these tax exempt securities, other securities to the extent of two hundred and sixty-seven thousand. We don't buy securities and keep them. It is a matter of investing and keeping them from time to time and disposing of them whenever we consider it necessary to dispose of them. That is a matter of management of the Directors of the Bank. We do not admit that we had no right to make these investments even though it was just prior to the first of October. As a matter of fact, we had on hand at all times and afterwards, sufficient money. Of course, all these facts are admitted in the stipulation which show on their face what happened. In other words, what we had for approximately a year before and a year afterwards and on October first and prior thereto.

Mr. Allen: So there is absolutely no need of testimony along those lines.

Mr. Lichtenstein: I don't consider testimony is needed on that subject.

Mr. Allen: All I want to show is why you made the purchase of four hundred thousand dollars' worth of tax exempt securities on October first.

Mr. Lichtenstein: We consider it was proper for us to do it.

Mr. Allen: That would be in dispute by the City and so it is a matter of calling Mr. Pickenbach or someone else that knows about it from the bank and having him testify to that.

*Frederick J. Meystre—Direct.*

FREDERICK J. MEYSTRE, sworn for the City of Hoboken.

*Direct examination by Mr. Allen:*

Q. Mr. Meystre, you are President of the Hoboken Bank for Savings? A. Yes, sir.

10

Q. And you were such President in the month of September, 1927? A. Yes, sir.

Q. And who has to do with the investment of the bank's money? A. It is done through an investment committee consisting of the President, Treasurer and one other member. I act as Chairman of that Committee and as a matter of practical operation the investments are made, I present the matter, prepare the matter and submit them and the investments are made in accordance therewith.

20

Q. You really do it then, that is, the other members agree to your suggestion? A. Sometimes they agree and sometimes they don't always agree.

Q. Who are the other members of the committee? A. Mr. G. H. Coven was the Treasurer, he has since died and at that time W. L. E. Keuffel was the other member of the Finance Committee.

30

Q. Now, in the preceding year the Hoboken Bank for Savings took an appeal to the State Board from the assessment that the city had made of three hundred thousand dollars against the bank's personalty? A. There was an appeal made, yes, sir.

Q. And that appeal was abandoned? A. Yes, sir.

Q. So that the assessment of three hundred thousand dollars on the personalty for the preceding year was allowed to stand? A. Yes, sir.

40

*Frederick J. Meystre—Direct.*

Q. Now, at that time when you were obliged to abandon your appeal did you not determine to invest in government notes or tax exempt securities just before October first, 1927?

10 Mr. Lichtenstein: I object to that question as being incompetent, irrelevant and immaterial. It has nothing to do with the issue involved in the appeal as to what the intention of the man was.

20 Mr. Allen: I have been able to find a decision of the United States Supreme Court in the case of Mill against the Commissioners of Leavenworth County, where a bank did exactly what I think this bank did, and according to the decision in that case the Court speaks of the facts that a few days prior to the first day of January, the moneys of the bank were invested in tax exempt securities with the intention of avoiding taxation, and they had in the previous year been obliged to abandon their tax appeal and at that time they had determined they wouldn't get caught in the same boat. It is exactly an analogous case. If it is binding it will be the law applicable in this case. Here is a part of the decision to show it is relevant, that the reconver-

30 sion——

Mr. Lichtenstein: That was an equity case.

40 Mr. Allen: We have a right to go into that. These plaintiffs testified that the institution when compelled the year previous to pay taxes upon the capital investment in the business, declared they would avoid to do so in the future by investing a few days

*Frederick J. Meystre—Direct.*

prior to every succeeding day of assessment, so long the lines of that case I desire to ascertain, if possible, what was the real purpose in making this peculiar investment of four hundred thousand dollars in bonds at the end of September, 1927, and selling them a few days after October first. I think it is a matter that while the City may lose this case it will be extremely beneficial, if we do lose, to the average taxpayer, the man on the street, to do the same as this bank has done. If there is a way of doing something a few days before October first to escape taxation, let's find out. 10

Mr. Lichtenstein: The case that Mr. Allen cited, my recollection is, is one which was in equity, not before the Board and not before a law court. Isn't that correct, wasn't it by way of injunction? 20

Mr. Baker: Just a moment, a question has been asked and objected to; after conference with my associates, we incline to the conclusion that the question should stand and that the objection is overruled.

Q. Now, at that time when you were obliged to abandon your appeal did you not determine to invest in government notes or tax exempt securities just before October first, 1927? A. No, sir. 30

Q. Why did you on September 28, 1927, just a few days before October first, why did you happen to take four hundred thousand dollars of the bank's money and buy these tax exempt securities? A. We had sufficient funds on hand to make the investment at that time. All our investments—we are forced by law to make certain investments as specified for us and they are all tax exempt. Whether they are government bonds or 40

*Frederick J. Meystre—Direct.*

whether they are municipal bonds or utility bonds or railroad bonds, they are tax exempt.

Q. The bank practically had on hand a half million dollars each and every month during the year 1927? A. Practically that.

10 Q. And had just a few days before October first? And you took four hundred thousand dollars and bought these tax exempt securities, why did you just happen to do that? Wasn't it done to escape taxation, didn't you have that in mind? A. We had occasion to make an investment at that time. It is logical we don't keep an overdue balance at that time.

20 Q. But you never did this any other month. A. Our cash balance is running right along with two hundred and fifty, two hundred and sixty thousand.

Q. At the end of September, 1926, you had over a half million dollars on hand? A. 1926.

30 Q. And the same with October, 1926, and the same with November, 1926, the same with December, 1926, and so on down all the months and then after September 30, 1927, take the following month, October 31, 1927, the end of October you had a half million dollars on hand. A. Yes, it is reasonable we would not carry an overdue amount of cash on that day.

Q. Why was it just a couple of days before October first you took out of your half million dollars, four hundred thousand dollars and bought tax exempt securities, wasn't it done to escape taxation? A. Not to escape taxation.

40 Q. You had to abandon your appeal the previous year and stand for an assessment of three hundred thousand dollars, you didn't like that, did you? A. Well, we haven't any objection to pay-

*Frederick J. Meystre—Direct.*

ing a reasonable amount but I don't think we ought to be forced to pay on an unreasonable amount.

Q. And so having that in mind did you not determine to purchase four hundred thousand dollars worth of tax exempt securities on September thirtieth and at the time you bought them didn't you intend to reconvert and sell those bonds during the following month? A. No, sir, that we didn't do. We reconverted that, sold it, to the best advantage we could. If you will notice we made repeated investments during that same month of other bonds. All our securities, all our purchases are tax exempt, we are not allowed to make an investment in any other security. All that money that we sold as fast as we bought higher income producing bonds we would realize on the lower ones in order to pay for them. 10 20

Q. Well, the particular four hundred thousand dollars worth of bonds that you bought on September 28, 1927, you disposed of those no later than the following month, October? A. We sold them at a profit.

Q. At a profit? A. Yes, sir.

Q. Of sixty-two dollars and a half? A. That is at the rate of about twenty percent per annum, just figure it. 30

Q. That was your only profit, wasn't it? A. We found an opportunity to invest in other tax exempt securities, railroad bonds or some public utility bonds principally.

Q. Wasn't this purchase that was made on September twenty-eighth and the sale on October 14th and 25th, wasn't that initiated and carried through with the express purpose of escaping taxation? A. To reduce it to a reasonable amount. 40

*Frederick J. Meystre—Direct.*

Q. What you consider it should be? A. Yes, sir.

10 Q. In other words, when you made that purchase you had in mind that you would make the purchase and effect the sale the following month, or a short time thereafter, in order to have the amount of your assessment fixed at such an amount as you consider proper? A. To reduce the amount. So as to avoid carrying an over due amount of cash on that day.

Q. To avoid carrying an over due? A. Yes, an excessive amount of cash.

Q. On the last day of every other month you were willing to carry a half million dollars on hand, were you not? A. You have the figures, I don't remember the exact figures we had there.

20 Q. According to your stipulation filed here every month except this one month of September, you had a half million dollars on hand? A. Yes.

Q. You always carried a half million dollars on hand, didn't you, Mr. Meystre? A. Not always.

Mr. Lichtenstein: That is not so.

A. We are carrying a lesser amount by far.

30 Q. You know on September 30, 1926, you had five hundred and forty-three thousand dollars on hand? A. That is a large amount.

Q. You had it on hand that month according to your stipulation. A. Whatever is in the stipulation is so.

Q. On October first, 1926, you had five hundred and sixty-two thousand dollars on hand? A. Yes, and what did we have on the other months?

40 Q. November 30, 1926, you had five hundred and thirty-nine thousand dollars on hand, not invested in tax exempt securities, isn't that right?

Mr. Lichtenstein: He doesn't know without looking at the sheet.

A. Whatever is in the stipulation is correct.

*Frederick J. Meystre—Direct.*

Q. Inasmuch as the stipulation shows that on every month you have on hand over three hundred and forty thousand dollars except this one month, why was it that on September 28, 1927, you figured you should have one hundred and ninety thousand dollars?

10

Mr. Lichtenstein: I object. That isn't a correct statement of fact, look at your second sheet.

Question repeated by stenographer.

A. I can only answer that by saying we made investments. We had the cash and we took the opportunities and made investments.

By Mr. Baker:

20

Q. Who does this, you, or is it the work of the bank committee? A. It is practically myself. I take the responsibility of it. The work is intended to be done by this committee and I function as President of the bank, I function as President of the Committee and I am active in the bank and I watch the books from day to day and hour to hour and we are buying bonds—I won't say daily—but we are making investments rapidly.

Q. This work is done exclusively by you? A. 30  
Not exclusively. I make suggestions to the Committee and they generally sanction it.

By Mr. Huegel:

Q. How often does your finance committee meet? A. The way it operates practically is this: As the opportunity presents itself I will pick up the telephone and call up Mr. Keuffel, who is in his office, and tell him what I have in mind and if

40

*Frederick J. Meystre—Direct.*

it is satisfactory to him he will O. K. it. That is practically the way of its operation.

Q. That was observed in this particular instance, was it? A. Yes.

10 Q. The judgment of two? A. And probably Mr. Coven was called in also. When it comes to a transaction as large as that, I will call them up and say, "We have five hundred and fifty thousand, suppose we buy two or three hundred or four hundred of Libertys." It is a secondary reserve. It is the next thing to liquidous cash and in order to meet the contingencies of the business we are compelled to keep a large reserve.

20 Q. Did you call up Mr. Keuffel in this case when you bought four hundred thousand dollars' worth of bonds, did he have anything to do with it? A. Probably so, Mr. Allen. I can't remember that particular time, but I very seldom make investments of that amount without consulting the members of the committee.

Q. When you failed in getting your reduction of the 1927 taxes, didn't you then determine to make this investment a few days before October first? A. No, I am not ready to say that. I will answer it this way, it is our policy and always has been of cash on that day, it is a—

30 Q. On what day? A. On the first day of October, that is a perfectly reasonable procedure.

Q. Why, why do you carry this amount on hand from time to time during the other months of the year? A. We carry a different amount on every month. It fluctuates, I am not speaking of dollars, I am speaking of amounts from two hundred and fifty to five hundred and fifty thousand dollars, a big margin.

40 Q. I can take up time by reading these figures contained in the stipulation, but why do you carry

*Frederick J. Meystre—Direct.*

a substantially different amount on the end of September, the day before October first, than on any other day? A. I think today we only have about two hundred and forty-five thousand, that isn't materially different from one hundred and ninety thousand.

Q. Since this appeal, why do you carry a different amount on the first of October, is it to escape taxation? A. So as to not throw ourselves—so as to not make it necessary for the tax board to tax us in a large amount, they would be obliged if we carried a million dollars in cash in the bank, we are obliged to make a return for a million dollars. That is our privilege. 10

Q. Let us stand on your privilege and not try to put it in some other light. You felt on September thirtieth it was your privilege to buy four hundred thousand dollars' worth of tax exempt securities which you could reconvert within a few days afterward? A. No, I say it was our privilege to buy four hundred thousand dollars' worth of tax exempt securities on that day. 20

Q. Why did you buy them on September twenty-eighth?

Mr. Baker: Hasn't he answered that question? 30

A. We bought it because we had that amount of money to invest.

Q. For instance, what were they? A. Public utility and railroad bonds and some mortgage investments. We are lending money on mortgages continually.

Q. At the time you bought these bonds, wasn't it with the intention of reconverting them into cash shortly after October first? A. No specific time, we are carrying seven million dollars in government bonds. 40

*Frederick J. Meystre—Direct.*

Q. You gave the word to sell these bonds in October, didn't you? A. I did, probably.

Q. Did you consult Mr. Keuffel or anybody else? A. Probably.

Q. Well, did you? A. I don't remember that.

10 Q. You did it all yourself, didn't you? A. I will say practically I take the responsibility of it, I said that before.

Q. Why was it you only held those bonds those few days? A. We probably—if you will refer to your stipulation, I believe you will find we invested in public utility and railroad bonds and I will answer your question further, you will find we invested in those bonds—the way these bonds  
20 come to us they are bought sometimes in large lots, sometimes in small lots as the bankers in New York happen to pick them up they make the offers to us and we buy as we find these opportunities are advantageous.

By Mr. Baker :

Q. Is that a very active line of your work, Mr. Meystre? A. It is an active part of our business. We are repeatedly investing and re-investing. You see there is a matter of twenty-four million dollars involved and this money just keeps rolling  
30 around.

Q. What was there unusual in this transaction other than like transactions, it is a matter of mechanics almost every day, is it? A. At certain times, yes, sir.

Q. It don't seem to be according to the stipulation. A. We have an itemized list of the transactions during that month, I think, that will give you the best information.

40 Q. They always carried from September thirtieth, 1926, up to and including January 31, 1928,

*Frederick J. Meystre—Direct.*

with the exception of this one month, they always had from \$348,000 on up to \$640,000 and then after the first of the year they continued to carry on hand at the end of each month such sums as \$382,000.00, \$463,000.00, \$424,000.00, \$301,000.00, \$341,000.00, \$442,000.00, \$510,000.00, until they get to September 30, 1928, when again they come down to \$198,000.00; at the end of October they have \$239,000.00 and November, 1928, they have \$280,000.00 and at the end of December, 1928, \$494,000.00. With the exception of the end of September that was the only month where you had such a small amount of money on hand. A. Yes, I have answered that for you that it is perfectly reasonable and our privilege to keep a low amount on hand. 10

Q. Is this just a coincidence or is it that you made use of your privilege? 20

Mr. Lichtenstein: I object to the statement that it is a mere coincidence. I don't think where there are twenty-eight million dollars in an institution the matter of twenty or forty or a hundred thousand or two hundred thousand dollars would make any difference.

Mr. Baker: We are inclined to sustain that objection as to its being a mere coincidence. 30

Q. Why didn't you buy these four hundred thousand dollars worth of bonds some other month? A. We bought bonds there during some other time. We have bought bonds amounting to a great deal more than four hundred thousand dollars.

Q. During that year? A. I don't remember that year. Yes, we must have. I don't remember 40

*Frederick J. Meystre—Direct.*

what our investments in bonds were during that year or on mortgages.

Q. I am speaking about these United States Bonds that were purchased? A. I can't remember, you will have to look over your list.

10 Q. You think you did buy it in other months?  
A. Yes.

Q. When before October first, 1927, did the bank ever allow its cash to get below three hundred thousand dollars? A. I can't answer those questions, Mr. Allen.

Q. You never did, did you? A. Probably we did.

20 Q. Don't you know, Mr. Meystre, you never did prior to October first, 1927, allow the funds you had on hand to go below three hundred thousand dollars? A. No. No, sir, I am not ready to say that at all. I think it did.

Q. Did you authorize Mr. Pickenbach to make the tax appeal for the previous year? A. I suppose that was done, yes.

30 Q. When you withdrew your appeal that you had taken from the assessment of three hundred thousand dollars for the previous year, didn't you then determine to buy these bonds that would be tax exempt a day or two before October first? A. No, sir, I answered that in the beginning.

Q. Didn't you intend to sell them a short time after October first? A. No.

Q. Did Mr. Keuffel know about these bonds being sold in October? A. He probably did.

40 Q. Probably? A. I can't remember every time I called Mr. Keuffel up on the telephone about a transaction on government bonds, there is no reason entailed to it and sometimes we would make those investments or transactions without con-

*Frederick J. Meystre—Cross.*

sulting him, knowing that he would endorse our action.

Q. Why did you sell them such a short time after October first? A. I think I replied to that before, we did it in order to pay for some utility or railroad bonds we bought during the same month and incidentally I believe we had heavy withdrawals that month. 10

Mr. Allen: That is all.

*Cross-examination by Mr. Lichtenstein:*

Q. Mr. Meystre, the purchase of the four hundred thousand dollars of Libertys spoken of, was that an actual purchase for cash? A. Yes, sir, we had physical possession of the bonds. 20

Q. In other words, were they purchased through a broker or purchased through other channels? A. Dealer.

Q. A dealer? A. Yes.

Q. And for cash as you have said? A. Yes, sir.

Q. And the bonds were actually delivered into your possession? A. Yes, sir.

Q. Was there any understanding between you or any broker or dealer that these bonds were to be resold or reconverted? A. Not at all, they were investments we made and we sold them at different times. We buy and sell on a thirty-second of a point. 30

Q. Can you tell us whether on October first and the day before and the day after and for a month before and after, whether you had sufficient funds on hand and available, that is, in cash, for the purpose of transacting the business of the bank in a business-like manner? A. Yes, sir.

Q. Were you on October first or either before or after October first ever in a position where you 40

*Frederick J. Meystre—Cross.*

could not meet your ordinary demands? A. No, sir.

10 Q. Now in the stipulation you were asked whether you could recall whether you had purchased any securities in 1927 to the extent of four hundred thousand dollars, your stipulation indicates on page four that in the month of March, 1927, you invested as much as four hundred and fifty-nine thousand dollars. A. That is quite likely.

20 Q. And what in 1927 was approximately the total amount of investments of the bank in tax exempt securities? A. I should—let me see, in tax exempt securities? It is the entire assets of the bank excepting the building, money invested in the building and cash.

Q. That would amount to? A. And I believe a small amount in collateral loans, it ought to be about twenty-one or twenty-two million dollars.

Q. And is it your habit to watch the market from time to time and take advantage of any benefit that might accrue by reason of your investment? A. We watch it daily.

30 Q. Can you recall when you sold these Libertys in the month of October and whether the securities you purchased for the proceeds of those bonds brought a greater rate of interest? A. They did, about one and a half percent more.

Q. At the time you purchased these Libertys, approximately four hundred thousand dollars of Libertys, did you have any intention of disposing of them, that is, within any particular time? A. No, we bought them not knowing when we would dispose of them.

40 Q. In the purchase of these Libertys were they purchased the same as you would purchase any

*Frederick J. Meystre—Cross.*

other tax exempt securities? A. Yes, sir, all our securities are tax exempt.

Q. Do you recall the amount of investments that you made in the month of November, 1927?

A. I will have to refer you to the list.

Q. Do you recall the sheet I show you being made up? A. Yes, sir, those are the amounts. 10

Q. How much?

Mr. Allen: November, 1927?

A. Three hundred thousand was purchased in United States Bonds in November.

Q. In other words you purchased in the very next month more than three hundred thousand dollars' worth of bonds? A. Yes, sir, United States Bonds. 20

Q. And you sold in October, bonds totalling approximately four hundred thousand dollars? A. Yes, sir.

Mr. Allen: What year is that?

The Witness: 1927.

Q. The three hundred thousand dollars' worth of bonds that you spoke of in November, they were U. S. bonds, were they not? A. Yes, sir.

Q. Did you in October make a purchase of any other bonds or securities? A. We bought municipal bonds. 30

Q. To the extent of how much? A. Twenty-three thousand.

Q. That is in October? A. Yes, sir.

Q. In addition to the four hundred thousand of U. S. Libertys? A. Yes, sir.

Q. Did you in the month of October purchase any other securities? A. We bought one hundred and nine thousand dollars of railroad bonds. 40

*Frederick J. Meystre—Re-direct.*

Q. And any other securities? A. One hundred and thirty-nine thousand of public utility bonds and bond and mortgage we invested in that same month thirty-four thousand in bond and mortgage.

Q. That was all during the month of October, 1927? A. Yes, sir.

10

Q. Is that right? A. Yes, sir.

Q. And in the month of November, 1927, in addition to the three hundred thousand that you invested in U. S. Securities did you invest in any other securities? A. We had four thousand in railroad bonds, six thousand one hundred and seventy-five dollars was loaned out on collateral loans and eighty-six thousand five hundred dollars was put into bond and mortgages.

20

Q. In the management of the business you say you watch the prices of securities from day to day? A. Yes, sir.

Q. And for what purpose? A. For the purpose of buying or selling according to the market, as we may find it advisable.

Mr. Lichtenstein: I think that is all.

*Re-direct examination by Mr. Allen:*

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Q. You have referred to your sheet as to your purchases, if you refer to your records here will it not appear that on October 31, 1927, the end of that month, you had on hand five hundred and fourteen thousand dollars? A. I grant whatever is in the stipulation.

Q. And on November 20, 1927, you had five hundred and twenty-four thousand dollars on hand? A. I grant, I say, whatever you have in the stipulation.

40

Q. And on December 31, 1927, you had four hundred and sixty-two thousand dollars on hand

*Harry E. Pickenbach—Direct.*

and January 31, 1928, you had three hundred and thirty-seven thousand on hand?

Mr. Lichtenstein: He says whatever is in the stipulation he admits.

Mr. Allen: The Board will refer to that?

Mr. Baker: Surely. 10

Mr. Allen: That is all.

Mr. Lichtenstein: That is all.

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HARRY E. PICKENBACH, sworn for the City of Hoboken.

*Direct examination by Mr. Allen:*

Q. Mr. Pickenbach, you as Secretary of the Hoboken Bank for Savings took an appeal to this Board from the assessment that had been levied against the personalty of the bank of three hundred and twenty-seven thousand for the year 1927, that is right? A. I believe so. 20

Q. And then you abandoned that appeal, withdrew it? A. Yes, I believe that is so.

Q. That is for the year 1927? A. Yes.

Q. At that time did you state that you wouldn't get caught in the same plight again and have on hand three hundred thousand dollars? A. What is that, caught in what? 30

Mr. Lichtenstein: I object.

Q. Caught or be caught in the same boat? A. That is foreign language, Mr. Allen, I don't know what you mean.

Q. You don't know what I mean. Did you have any discussion with anybody with reference to 40

*Harry E. Pickenbach—Cross.*

the 1927 appeal? A. I think you and I had some discussion.

10 Q. Did you then say to me you would see to it that on October first the following year you wouldn't have three hundred thousand dollars on hand? A. No, I couldn't see to it. I didn't have the authority to say to you anything like that.

Q. You have no authority to handle an appeal or talk about it even? A. Not to reduce the bank's funds. I am not on the finance committee, I couldn't do that.

Q. You have nothing to do with the investment of the bank's moneys? A. No, sir.

20 Q. And you had nothing to do with the purchase of four hundred thousand dollars worth of bonds? A. No, sir.

Q. Who did? A. The finance committee.

Q. And the finance committee is Mr. Keuffel and Mr. Meystre? A. Yes.

Mr. Allen: That is all.

*Cross-examination by Mr. Lichtenstein:*

Q. Mr. Pickenbach, can you give me this little information? A. Yes, sir.

30 Q. How much cash do you carry, have you been carrying for the last, say, six months? A. Off-hand—

Mr. Allen: Isn't that in the stipulation?

Mr. Lichtenstein: I don't think so.

A. I might say, counselor, I do not prepare those daily statements, but I should say somewhere around two hundred thousand dollars, about.

40 Q. From your knowledge of the business is two hundred thousand dollars ample for the purpose of the conduct of your business in the regular

*Harry E. Pickenbach—Re-direct.*

course? A. Absolutely, I thought years ago we carried entirely too much cash. I told Mr. Schultz, the old President, that. I was only expressing an opinion. I think that judgment is justified.

Q. In other words, you had been carrying more than— A. More than necessary. 10

Q. More than what you found from actual experience was really necessary? A. I always thought so.

Q. And you say for at least six months or so you have been carrying approximately the same amount, about two hundred thousand dollars? A. Approximately.

Q. And that is ample for the conduct of your business? A. Quite enough. 20

Q. Are your assets greater now than they were in 1927? A. Yes, sir.

Mr. Lichtenstein: That is all, sir.

*Re-direct examination by Mr. Allen:*

Q. One minute, Mr. Pickenbach. Mr. Lichtenstein has interrogated you about the last six months and you state that at the end of each of the last six months you had on hand how much money? 30

Mr. Lichtenstein: I didn't say at the end of each month.

A. I didn't understand Mr. Lichtenstein to ask me as to the last six months, he said over a period of six months and I take it that means every day.

Q. But you do not refer to a specific month? A. No.

Q. You are taking the period of the last six months? A. Yes, approximately. 40

*Harry E. Pickenbach—Re-direct.*

Q. You mean during the six months you have on hand two hundred thousand dollars? A. Somewhere around that figure.

Q. And more than that? A. Perhaps, slightly.

10 Q. How much slightly, what do you call slightly? A. Twenty-five thousand.

Q. Only twenty-five thousand? A. Twenty-five to fifty thousand; I don't prepare the cash statement.

Q. Then you don't know anything about it? A. Very little.

Q. Prior to the six months that you have answered Mr. Lichtenstein's question, do you know how much you had on hand? A. Of course not.

20 Q. You don't dispute the facts set forth in the stipulation, do you? A. Why no.

Mr. Lichtenstein: No one disputes it.

Q. When the bank had on hand more than half, more than approximately a half million dollars, in your opinion, they were carrying too much money? A. That is my personal opinion.

Q. But you had nothing to do with the investment? A. Oh, no.

30 Q. And while you took the appeal and withdrew the appeal for the previous year, you had nothing to do with handling the bank's funds in order to cover this appeal, did you? A. No.

Mr. Allen: That is all. I will call Mr. Keuffel.

Mr. Lichtenstein: Mr. Keuffel isn't here.

Mr. Allen: I subpoenaed him here.

Mr. Lichtenstein: We can have him here in ten minutes if you want him.

40 Mr. Allen: I guess there is no question but what Mr. Meystre made the investments?

*Harry E. Pickenbach—Re-direct.*

Mr. Baker: Is that all?

Mr. Allen: That is all.

Mr. Lichtenstein: That is all, that is our case, too.

Mr. Allen: I will submit to the Board this decision. I think it is quite pertinent and relevant to our situation. 10

Mr. Lichtenstein: What is that?

Mr. Allen: The Mill case.

Mr. Lichtenstein: We will submit authorities if you want to submit any authorities.

Mr. Baker: I suppose if they contain anything that is illuminating or instructive we ought to have them.

BOTH SIDES REST. 20

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**Secretary's Certificate.**

10 I, CHAS. E. COOK, Secretary of the State Board of Taxes and Assessment, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true and correct transcript of the evidence given before the said Board upon the hearing of the appeal of The Hoboken Bank for Savings in the City of Hoboken, from the assessment of taxes made by the City of Hoboken for the year 1928, said evidence having been submitted at the hearing on Thursday, March twenty-first, 1929.

20 [SEAL] IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-second day of November, 1929.

CHAS. E. COOK,  
Secretary.

30

40

**Stenographer's Certificate.**

I, JOHN F. TRAINOR, the stenographer designated by the State Board of Taxes and Assessment to report stenographically the evidence given before said Board upon the hearing of the appeal of The Hoboken Bank for Savings in the City of Hoboken, from the assessment of taxes made by the City of Hoboken for the year 1928, do hereby certify that the foregoing is a true and correct transcript of the evidence given before said Board at the hearing on Thursday, March twenty-first, 1929.

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[SEAL] IN WITNESS WHEREOF, I have hereunto set my hand and seal, this twenty-second day of November, 1929.

JOHN F. TRAINOR.

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## New Jersey Court of Errors and Appeals

BOARD OF COMMISSIONERS OF THE CITY  
OF HOBOKEN (MAYOR AND COUNCIL  
OF THE CITY OF HOBOKEN) a municip-  
al corporation of the State of New  
Jersey,

Prosecutor-Appellant,

*vs.*

THE STATE BOARD OF TAXES AND ASSESS-  
MENTS and HOBOKEN BANK FOR SAV-  
INGS, a savings bank corporation of  
the State of New Jersey,

Respondents.

### BRIEF IN BEHALF OF PROSECUTOR- APPELLANT.

Writ of Certiorari was allowed on November 4th, 1929, to review a certain Order, Judgment and Determination of The State Board of Taxes and Assessments modifying and reducing a certain assessment of Three Hundred Thousand Dollars (\$300,000) on personal property for the year 1928, levied on October 1st, 1927, by the Board of Assessors of the City of Hoboken against the Hoboken Bank for Savings of the City of Hoboken, on personal property owned by the said Hoboken Bank for Savings and of the value of Three Hundred Thousand Dollars (\$300,000), representing monies on deposit in said bank on or about October 1st, 1927. From this levy and assessment the Hoboken Bank for Savings took an appeal to The State Board of Taxes and Assessments, and the said appeal came on for a

hearing on June 25th, 1929, before The State Board of Taxes and Assessments, whereupon the said Board dismissed the said appeal of the Hoboken Bank for Savings and affirmed the said assessment of Three Hundred Thousand Dollars (\$300,000) levied by the Taxing Authorities of Hoboken for the year 1928 on the said monies held by the Hoboken Bank for Savings. Thereafter on September 3rd, 1929, the said The State Board of Taxes and Assessments granted a rehearing on its said appeal to the said Hoboken Bank for Savings and on the aforesaid date, September 3rd, 1929, reversed its Order, Judgment and Determination of June 25th, 1929, affirming the said assessment of Three Hundred Thousand Dollars (\$300,000), and reduced the said levy and assessment to the sum of One Hundred and Ninety-one Thousand Two Hundred and Sixty-four Dollars and Five Cents (\$191,264.05). To review said Order, Judgment and Determination of The State Board of Taxes and Assessments in reversing itself and modifying and reducing the levy and assessment of Three Hundred Thousand Dollars (\$300,000) to One Hundred and Ninety-one Thousand Two Hundred and Sixty-four Dollars and Five Cents (\$191,264.05) a Writ of Certiorari was issued out of the Supreme Court. The Supreme Court affirmed the Order, Judgment and Determination of the State Board of Taxes and Assessments. The case comes to this Court on appeal to review the judgment of the Supreme Court.

### **Facts.**

By the stipulation of facts made between the Hoboken Bank for Savings and the City of Hoboken (S. C., p. 19), it appears as a fact that said Bank had on hand on the last days of each

of the following months, the following sums of money:

September, 1926 .....	\$543,732
October, 1926 .....	562,162
November, 1926 .....	539,591
December, 1926 .....	576,688
January, 1927 .....	641,887
February, 1927 .....	677,231
March, 1927 .....	569,010
April, 1927 .....	427,429
May, 1927 .....	641,056
June, 1927 .....	683,633
July, 1927 .....	450,429
August, 1927 .....	472,267
.....	.....
October, 1927 .....	525,512
November, 1927 .....	539,311
December, 1927 .....	488,798
January, 1928 .....	348,557

Also that on the last days of the following months, in the year 1928, said Bank had on deposit in various banks the following sums of monies (S. C., p. 20):

February .....	\$382,504
March .....	463,113
April .....	424,642
May .....	301,382
June .....	341,162
July .....	442,840
August .....	510,911
.....	.....
October .....	239,742
November .....	280,446
December .....	494,553

The City of Hoboken assessed the Bank's personalty for the year 1927 at the sum of \$300,000. The Bank appealed requesting a reduction to the sum of \$250,000, but withdrew its appeal and was obliged to pay taxes to the City based on an assessment of \$300,000 in personal property.

The next year the Bank conceived the idea that it would, a day or so before October 1st, 1927, deplete its ordinary cash on hand and the sums of money which it always theretofore carried, and by investing its cash in Government bonds the Bank would thereby escape taxation and not be taxed as it had been for the previous year 1927, when its personalty had been assessed at \$300,000, and it had been obliged to abandon and withdraw its appeal and pay taxes on that amount.

This idea it carried into effect, and on September 28, 1927, but two days prior to October 1, 1927, the date when the tax collector would call and the assessment for the year was to be levied, it purchased with its funds \$400,000 of United States Bonds, so that when the assessor called on October 1st he found that the Bank, instead of having its usual cash on hand, which had always been close to one-half million dollars and more than the City's assessment of \$300,000, only had \$191,264.05. A few days later the Bank, its purpose having been attained, in order to restore its cash on hand, sold these \$400,000 of U. S. Bonds, to wit: On October 14th, 1927, it sold \$200,000 thereof, and on October 25, 1927, it sold the remaining \$200,000 thereof. It therefore appears that the Bank had \$200,000 of its usual cash on hand invested in U. S. Government Bonds for the short period of time, to wit: From September 28, 1927, to October 14, 1927, viz., sixteen (16) days, and \$200,000 thereof from September 28, 1927, to October 25, 1927, viz., twenty-seven (27) days.

During every month, from September, 1926, to and including August, 1928, the Bank always carried and had on hand more than the \$300,000 for which it was assessed, excepting the months of September, 1927, and September, 1928.

### POINT ONE.

A mere glance at the column of figures showing the amount of cash on hand held by the Bank during every month of the years 1927 and 1928, with the exception of September, 1927, and September, 1928, indicates beyond any peradventure that this transaction of depleting its cash two days before October 1, 1927, and placing \$400,000 of its cash in U. S. Bonds for the few days which it did, was initiated and carried through for the express and avowed purpose of escaping the burden of taxation.

It is respectfully contended before this Honorable Court if the Bank, by this subterfuge, may have its assessment on its personalty reduced to \$191,264.05, it may cause the assessment on its personalty to be made at such figure as suits its avariciousness. It may just as well, each year on September 28th, invest all of its cash on hand in United States Bonds and a few days later sell such bonds and reconvert the same into cash. By so doing it may thus escape all taxation on its personal property notwithstanding the fact that it usually carries each and every other month at least one-half million dollars.

It is respectfully submitted that such a palpable fraud upon the revenue of the State should not and will not permit the Bank to escape its clear proportion of the public expenses and thus impose them upon others.

In the matter in question the City of Hoboken does not contend before this Honorable Court that United States Bonds are not exempt from taxation, but it strenuously asserts, urges and maintains that in the case at bar the holding of these \$400,000 of United States Bonds by the

Hoboken Bank for Savings for a few days prior and subsequent to October 1, 1927, was not actual and bona fide, but was only colorable and fraudulent. The personal property of the Bank was temporarily concealed by its purchase of \$400,000 of United States Bonds on September 28, 1927, and this concealment by the Bank of its said personalty was uncloaked as soon as the visit of the Tax Collector had been made on October 1st. A very few days after the said October 1, 1927, the \$400,000 of United States Bonds were sold by the Bank's officials and the Bank's cash restored to its coffers.

Prosecutor respectfully urges this Honorable Court to look through the sham of the aforesaid transaction and measure the rights of the parties by the real nature of the transaction. The City of Hoboken confines itself to the contention that where the capital of the respondent Hoboken Bank for Savings, said capital used throughout the year in the conduct of its business, is converted for a few days into Government securities for the express end and purpose of defeating or attempting to defeat the imposition of any or all taxes on such personalty, that that conversion or investment is colorable and tainted with fraud and the Bank's capital remains taxable to the same extent and in the same manner as if such conversion or investment had never taken place at all, more so when this conversion or investment was made by the Bank's officials only two days before the visit of the Tax Assessor on October 1st.

It is respectfully urged that in the case under discussion the terms by which the Hoboken Bank for Savings held \$400,000 in United States Bonds over the first of October is a fraud and a cheat on the City of Hoboken, that such terms should be disregarded and the Bank should be consid-

ered as the owner of that much property, which for the moment it attempted to hide beneath the protection of the general Government. If the Bank may succeed by this subterfuge, then all that is required of any taxpayer to escape taxation is for him to put his money into United States securities on September 28th or 29th and reconvert these tax exempt securities on October 2nd or 3rd.

The prosecutor begs to say to this Honorable Court that it does not admit that the United States Bonds which were purchased and obtained by the officials of the Hoboken Bank for Savings on September 28, 1927, were purchased and obtained in good faith, solely as a pure out-and-out investment, but that the \$400,000 of the Bank's cash was converted into Government securities for the sole purpose of having the Bank avoid and escape its just proportion of taxation on the date in question, October 1st, 1927, and thus shift the burden on some other taxpayer who is less able to shoulder and bear the burden.

### The Law.

In the case of *Howard Savings Institution vs. Newark*, 63 Law 65, Justice Depue, in stating the facts of that case, said: That the bank had on hand on the day fixed by law for levying assessments of taxes, among its assets, as part of its current funds, United States Notes called Greenbacks, U. S. Treasury Notes and U. S. Gold and Silver Certificates, which were held to be exempt from taxation. It was considered sufficiently important in the case for Justice Depue to make mention of it that "*it is admitted that said property and securities were not purchased or obtained by the Institution with intent to avoid or escape taxation but in good faith*".

An analogous case is that of *Mitchell vs. Commissioners of Leavenworth County*, reported in the Central Law Journal of February 11th, 1876, page 102. Mitchell took his appeal to the United States Supreme Court, 91 U. S. 206, but the decision of the Kansas State Court was affirmed.

In Kansas personal property was listed as of March 1st in each year. Mitchell, on Feb. 28, 1870, had a balance in Bank of \$19,350 in current funds. That day gave his check payable to himself in U. S. Notes. They were paid him, he enclosed them in a sealed package, placed them in vault and on March 3rd withdrew package and deposited notes to his credit. This was done for sole purpose of escaping taxation upon his money on deposit.

Mr. Chief Justice Waite, in the decision of the U. S. Supreme Court, said:

“We think the decision in this case was correct. U. S. Notes are exempt from taxation by or under state or municipal authority; but a court of equity will not knowingly use its extraordinary powers to promote *any such scheme as this plaintiff devised to escape his proportionate share of the burdens of taxation.*”

A case similar and on all lines like this one is that of the *Holly Springs Savings & Insurance Company vs. Board of Supervisors of Marshall County*, reported in 52 Miss. 281-285. In this case the scathing words found in the opinion of the Court may, with the utmost propriety, be applied herein.

In the opinion found in this case, it is stated that the Holly Springs Savings & Insurance Company seeks to escape payment of taxation of \$32,000 of its capital stock, upon the ground that the same was on the 1st day of January, 1873,

invested wholly in U. S. Treasury Notes and Bonds, which are non-taxable. By the law then in force, taxes were to be assessed upon all property, subject to taxation, held by the owner on the 1st day of January preceding the assessment. It seems, in the case at bar, to have been established to the satisfaction of the Board of Supervisors and of the Circuit Court on appeal, and to our satisfaction, that the investment in the Government securities was made by the Savings Institution a few days before the 1st day of January, for the express purpose of avoiding taxation, and these securities were, a few days after the 1st day of January, reconverted into current funds and re-embarked in the business of the concern. \* \* \*

The question presented is, therefore, whether a banking institution can avoid taxation by an investment of its means in the non-taxable securities of the Government, where it is admitted and satisfactorily established that such investment was neither intended to be permanent nor to continue until the interest or the will of its managers should dictate a change, but with the sole intention of escaping taxation and with the predetermined purpose of reconverting its means as soon as practicable after the day of assessment.

The enormity of the attempted fraud renders the case unusual. Addressing ourselves to the main question in the case, as hereinabove stated, we think that the Court below did not err in holding the capital stock of plaintiff-in-error to be taxable under the state of facts disclosed by the record. As before remarked, it was made satisfactorily to appear that the means of the institution were invested in Government securities a few days prior to the 1st of January and were reconverted a few days thereafter; that the reconversion was contemplated and fully intended at the time of the purchase of the bonds and treas-

ury notes. That the entire transaction was initiated and carried through for the express and avowed purpose of escaping the burden of taxation. The President of the institution, when compelled the year previous to pay taxes upon the capital invested in its business, declared to the Tax Collector that he would pay such burdens no longer and that he would avoid doing so in future by an investment of its means in Government securities a few days prior to each succeeding day of assessment. The cashier testified that he made the investment by order of the directory and that the main argument used in the board *for making the order was to escape taxation.*

When the State imposes the burdens of taxation upon the property possessed by the citizens, it means both that of which he is the open holder and that which he has secreted and concealed. His cunning may in practices defeat the imposition upon the latter, but it is legally no less liable to the burden, and, when discovered, the duty will be exacted, no matter what the shifts and devices which may have been resorted to in order to escape.

That a party can derive no advantage in any court from a fraud *confessed or exposed* may be considered axiomatic. Shall the State alone be debarred from asserting against a fraudulent taxpayer this wholesome principle which protects the rights of the private litigant? Was not the conduct of the plaintiff-in-error in the case at bar a palpable fraud upon the revenue of the State and is the State powerless to guard against it?

It is shown by the proof that the Savings Institution has embarked in its business \$32,000 which it keeps constantly employed at a profit throughout the year of 12 to 18 percent. For a few days it invests these means in Government securities and claims thereby to escape taxation for the

whole year, confessing at the same time that this momentary investment was made with no other view than that of escaping its duty of contributing to the support of the State government.

That such conduct is a fraud in fact, as well as in intention, seems too plain for argument.

It is urged, however, that the non-taxability of the national securities is guaranteed by the Federal Government; that their exemption from taxation constitutes one of the main ingredients of their value and that this cannot be infringed by the State no matter what are the circumstances under which they are held.

This is freely conceded as a general proposition, and yet it is not believed to affect the question involved because there still remains power in the courts to investigate whether the holding is actual and *bona fide*, or colorable only and fraudulent. If held in the latter aspect and as a mere representation of property temporarily concealed, which is to be uncloaked as soon as the visit of the tax collector shall have been made, the courts will look through the sham and measure the rights of the parties by the real nature of the transaction.

We must not be understood as holding that Government bonds are taxable merely because the motive of their purchase was to escape taxation. Neither do we intimate that they must be held for any particular time or be bought with any intention of holding them for any period whatever. They may be bought solely because of their non-taxable character and disposed of at the very earliest practicable moment and such purpose will not subject them to taxation. *We confine* ourselves to the point at issue and limit our decision to the facts before us; and we declare that when the capital of a banking institution used throughout the year in the conduct of its business is con-

verted for a few days into government securities, for the express purpose of defeating the imposition of any or all taxes, such investment is colorable and fraudulent and its capital remains taxable to the same extent and in the same manner as if such conversion had never taken place. In such case the terms by which they are held, being a fraud and a cheat, will be disregarded and the bankers will be considered as still the owners of that property which, for the moment, they have attempted to hide beneath the protection of the general government. If this constructing of the law be not the true one, then the bankers of the country, by a judicious shifting of these securities from city to city and from state to state, so as to meet in each the day of assessment, may enormously multiply their exempting quality, and thereby escape in the aggregate the burdens of taxation upon property to an amount infinitely beyond the total sum of these securities in existence. We cannot think that such was the intention or desire of the Federal Government or that the States are powerless to protect themselves against such a scheme.

*Crowder vs. Riggs, Auditor, 153 Ind. 158.*

In this case the appellants were in the banking business, and unsuccessfully sought to escape taxation by exchanging large sums of money for "greenback" currency of the United States.

*Ranson vs. City of Burlington, 111 Iowa 77.*

In this case the conveyance was held to be but an artifice, which did not pass title and did not exempt plaintiff's property from assessment.

The case of *Shotwell vs. Moore, Treasurer, Harrison County, Ohio, 129 U. S. 590-601*, is likewise

analogous and pertinent to the evasion of taxation attempted by the Hoboken Bank for Savings. Shotwell, as a general depositor, had on deposit in Bank various sums of money, in the years 1881, '82, '83, '84 and '85. On the Saturday preceding the second Monday of April, in each of these years, he checked out his balance standing to his credit and had the same paid to him in United States Securities, commonly called "Greenbacks". These Greenbacks he enclosed in a package which was placed in the Bank's safe for him and in the early part of the next week, in each of said years, he opened the package and had the amount placed to his credit as a depositor.

The Supreme Court of Ohio affirmed the decision of the Circuit Court upholding the tax imposed. Shotwell appealed to the United States Supreme Court and assigned as error that the tax levied was upon notes of the United States which is forbidden by the Revised Statutes of the United States in the following language:

"Sec. 3701. All stocks, bonds, Treasury Notes and other obligations of the United States shall be exempt from taxation by or under State or municipal or local authority."

Mr. Justice Miller, in delivering the opinion of the Supreme Court of the United States in this case, among other things, said:

"Arguing from the proposition that the assessment for an entire year, under the Laws of Ohio, must be made on the particular day mentioned in the statute, and that these greenbacks were his property on that day, it is insisted, with great earnestness by counsel, that the amount of the package thus on special deposit on that day could not be taxed by the state authorities. To this general proposition there does not appear to be any valid objection if the thing done had been in the

ordinary course of business, and the conversion of his general deposit in the bank into a private package of greenbacks, exempt from taxation, *were free from illegal purpose or fraudulent motive.*

\* \* \* \* \*

It does not need the finding of the court below as a fact to show that this was an evasion, and a discreditable one, of the taxing laws of the State, if it could be made successful.”

Justice Miller cites the case of *Poppleton vs. Yamhill Co.*, 8 Oregon 337, and quotes from that case the following language:

“If a taxpayer, having a large amount of notes and mortgages, in order to escape the payment of taxes on the same, borrows a sum of money of a person residing out of the county, and deposits with his creditor such notes and mortgages, for the purpose of avoiding the payment of taxes on the same, such notes are taxable in the county where such taxpayer resides; and such deposit or transfer is a fraud on the revenues of the county.”

In this case Justice Miller states that this Court, in *Mitchell vs. Leavenworth County*, 91 U. S. 206, denounced conduct precisely similar to that of the plaintiff-in-error in this case and said:

“The circumstances of that case are precisely like those in the case before us. The taxpayer converted, in the same manner as Shotwell did, about nineteen thousand dollars in current funds on general deposit in his bank into the same value in greenbacks, and placed them in a package which he put in the vault of the bank for safe keeping. This was on February 28. On March 3, following, he withdrew this package, and deposited the notes to his general credit. This was done for the sole purpose of escaping taxation upon his

money on deposit in the bank. That case only differs from the one at bar in the fact that the revenue officer proceeded to collect the tax assessed by distress, which compelled the defendant to resort to a court of equity to enjoin the proceedings; but this court held that the transaction was so inequitable that it would not be sustained in a Court of Chancery.

Instead of pursuing that method of collecting the tax in the present case, as the Treasurer of the County had a right to do under the Laws of Ohio, he brought an action at law against the taxpayer. It is now asserted that although the opinion of the Court in *Mitchell vs. Leavenworth County* holds that the party assessed can have no relief in a Court of Equity, still he might have, when sued at law, or in any manner where the issue could be heard in a Court of Law as distinguished from a Court of Equity.

All these decisions show that the Courts look upon *this transaction as indefensible, and consider it an improper evasion of the duty of the citizen to pay his share of the taxes necessary to support the Government which is justly due on his property.*"

Prosecutor respectfully contends before this Honorable Court that the underlying motive that the Bank had in view in buying these \$400,000 of Government Bonds and holding them for such a short space of time was a bold and hidden attempt to cheat and defraud the City and the State of their just dues accruing from taxation and by such means to insure and to enable the Bank to escape the just burden that society imposes upon it. Surely under all the circumstances and facts respecting the buying of the Government Bonds and their being held for approximately two weeks after the date of the taxing period, it is fair to assume that such was the purpose and motive of the Bank, and it is respectfully submitted that this Court should not lend its sanction or aid for the accomplishment of any such purpose.

**POINT TWO.**

The State Board of Taxes and Assessments having on June 25, 1929, affirmed the said assessment of \$300,000 on personalty belonging to the Hoboken Bank for Savings for the year 1928, and having notified the City of Hoboken of such affirmation, was without any legal power and authority to order a rehearing of the said appeal and thereafter reverse its former order, judgment and determination affirming said assessment and reduce and modify the said affirmed assessment of \$300,000 to \$191,264.05.

**POINT THREE.**

1. Because the Supreme Court erred in giving judgment for the respondent, the State Board of Taxes and Assessments, and the Hoboken Bank for Savings, a Savings Bank Corporation, instead of giving judgment for the prosecutor, Board of Commissioners of the City of Hoboken (Mayor and Council of the City of Hoboken), a municipal corporation of the State of New Jersey.

2. Because the Supreme Court erred for one or more of the reasons filed by the Prosecutor on certiorari in said Court and brought up with the record.

It is respectfully submitted that the judgment under review should be reversed and the original assessment of \$300,000 should be sustained and affirmed.

WILLIAM A. KAVANAGH,  
Attorney for Prosecutor-Appellant.

## New Jersey Court of Errors and Appeals

BOARD OF COMMISSIONERS OF THE  
CITY OF HOBOKEN (Mayor and  
Council of the City of Hobo-  
ken), a municipal corporation  
of the State of New Jersey,  
Prosecutor-Appellant,

*vs.*

THE STATE BOARD OF TAXES AND  
ASSESSMENT and HOBOKEN BANK  
FOR SAVINGS, a savings bank  
corporation of the State of  
New Jersey,  
Respondents.

On Appeal from  
the New Jersey  
Supreme Court.

### BRIEF IN BEHALF OF RESPONDENT, HOBOKEN BANK FOR SAVINGS.

#### Statement.

The appeal in this cause is brought to review a judgment of the New Jersey Supreme Court, affirming the act of the State Board of Taxes and Assessment in reducing an assessment levied by the City of Hoboken against this respondent, Hoboken Bank for Savings in the City of Hoboken, for the year 1928.

The bank was assessed \$300,000 "Cash on Hand".

The bank was also assessed for real estate owned for banking purposes and chattels used in connection with its banking business, which were assessed separately at their assessable value and

are not involved in this issue. It also had on hand on October 1, 1927, (the day used as a basis for taxation) tax exempt securities and mortgages exempt from taxation aggregating over \$24,000,000 (See Stipulation on p. 27 at bottom and p. 28 of Case).

The bank also had on October 1, 1927, cash on hand, cash on deposit in bank and trust companies and cash invested in collateral loans \$191,264.05 (See Case, p. 26, where these amounts are itemized). It had on that date no other property or assets of any kind.

The bank was assessed \$300,000 "Cash on hand". This was reduced by the State Board to the said sum of \$191,264.05.

The prosecutor-appellant does not ask the Court to set this judgment aside because the bank had a larger amount of cash on hand on October 1, 1927, but on the ground that a purchase of \$400,000 of United States Bonds on September 28, 1927, was made under circumstances that justified their taxation.

The matter came before the State Board on a stipulation of facts and oral testimony reduced to writing, both of which are printed in the State of the Case.

### **Method of Taxation.**

*A savings bank having no stock is assessed as an individual.*

The respondent bank has no stock, but is a mutual savings bank (See Stipulation, p. 24 of Case, l. 33).

The corporation act, Section 110, excepts savings banks and the act for the assessment of bank stocks only relates to those banks which have stock. Savings banks are expressly excepted.

Cum. Supp. to Comp. Stat., p. 3563, Secs. 208-500 a (11).

The General Tax Act, Cum. Supp. to Comp. Stat., p. 3490, Sections 208-66 d (305), provides that corporations shall be assessed as individuals. There seems to be no dispute between counsel that the bank should be so taxed.

The prosecutor does not deny the fact that the bonds in question were exempt from taxation both by State and Federal enactments.

U. S. Code, Tit. 31, Section 742;  
P. L. 1927, p. 790, Sec. 203, (1) (a).

*Exemption from taxation.* Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority (R. S., Sec. 3701).

U. S. Code, Title 31, Section 742.

## POINT I.

### **The questions raised are now *res adjudicata*.**

It seems to us that the issues in this cause on this question have now become *res adjudicata*. The reasons expressly relied upon by the prosecutor in the Supreme Court for a reversal of the judgment of the State Board of Taxes and Assessment involved questions of fact. These were decided adversely to the prosecutor both by the State Board and by the Supreme Court. The reasons filed in the New Jersey Supreme Court are printed commencing at page 15 in the State of the Case. An examination of these will show that, except for an alleged informality in the entry of the judgment, the gist of the prosecutor-appellant's complaint was an alleged fraudulent invest-

ment of its funds for the express purpose of escaping taxation, which is particularly shown by the following language in reasons 3, 4 and 5. The reasons say in paragraph 3 (p. 17, l. 18) referring to the purchase of Government bonds that this "was done for the patent purpose of escaping its just share of taxation, was not bona fide, was a subterfuge by means of which it sought to have its assessment on personalty reduced to a very low figure, and moreover was a palpable fraud upon the revenue of the City and the State".

In a similar connection the prosecutor states in the fourth reason (p. 17, l. 36) that its act "was a scheme to escape its just share of taxation, was a temporary concealment of \$400,000 of its cash, was moreover not an actual and bona fide purchase and holding of these \$400,000 of United States Bonds, but was a sham, colorable and fraudulent purchase and sale concocted for the sole purpose of escaping its just and clear proportion of the public expenses and by such scheme devised and planned imposing them on others".

In the fifth reason the prosecutor used the following language (p. 18, l. 21): "It is urged that such action" (referring to the purchase and sale of the bonds) "on the part of the Bank and its authorities is a fraud and a cheat on the City, and the Bank should be considered as the owner of such \$400,000 as of October 1st, free and clear of any purchase of United States Bonds which are exempt from taxation."

An examination of appellant's brief in this court will show that this is its contention here. See pages 5, 6 and 7, where the following expressions are interspersed: "Subterfuge", "palpable fraud", "colorable and fraudulent", "colorable and tainted with fraud", "a fraud and a cheat on the City of Hoboken".

It can be seen, therefore, that the whole gist of the case in behalf of the City was and is based on an allegation of lack of good faith and of fraud and that the purchase was so colorable that it should be considered and treated as if it had not existed, but that the purchase price had remained in the hands of the bank.

The State Board of Taxes and Assessment in reducing the assessment levied by the City of Hoboken to the amount of cash actually on hand, although it filed no opinion, must have found these facts adversely to the prosecutor. This finding was not binding on the Supreme Court.

Section 11 of the certiorari act, 1 Comp. Stat., page 405, provides as applicable to the present proceeding as follows:

“In all cases of writs of certiorari now pending or hereafter brought to remove any tax \* \* \* the Court shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed, which testimony shall be considered by the court the same as if it had been taken by deposition on notice, and either party may take additional testimony.”

The Supreme Court took into consideration this contention of the prosecutor and clearly and distinctly found adverse to it. See State of Case, page 4, line 12, where the Court used the following language:

“The prosecutor does not contend that the assessment did not truly appraise the moneys actually held on the day in question, but claims that the bank had, for the purpose of reducing its taxable funds, just before that

date purchased \$400,000 of United States Bonds (which, of course, were not subject to assessment), and shortly thereafter sold these bonds and reconverted them into money, and that this was with intent to defraud the city.

“It is conceded that the actual moneys in hands and taxable were in the amount found by the State Board, and assuming that a purpose as above indicated would taint the transaction so as to render that which was ordinarily non-taxable taxable, the burden was on the prosecutor to establish that this sum did not truly represent the sum available for taxation by reason of some fraudulent device or manipulation, whereby the moneys were for that purpose converted into non-taxable securities. The proofs were insufficient for this purpose. The records of the bank were produced showing the sundry sums on hand at various times and the bond transactions of the bank for a considerable period of time. The president of the bank was called and his testimony was to the effect that he had substantially entire charge of the bank's investments; that it was customary to change these investments from time to time and particularly in government bonds; that the bonds in question were purchased as part of the routine of the bank's investment system and that when sold, as they were later on, they were sold in accordance with this routine and that they yielded a small profit. His further testimony was that the purpose of the transaction was not to defeat the taxing power of the municipality, but for the purpose of keeping the bank's funds invested in the securities which were legal for the purpose.

“We think the State Board was justified in its finding of the moneys subject to taxation and we find that the earlier conversion of the moneys into bonds and the subsequent sale of the bonds was not shown to be part of a plan or purpose to evade the taxation of any moneys that should have been in hand on October 1st, 1927.”

ON APPEAL THIS COURT WILL NOT REVIEW QUESTIONS OF FACT DETERMINED BY THE SUPREME COURT.

This removes such contention by the appellant from consideration by this Court, as it is too well settled to need citation of authority, that the Court of Errors and Appeals will not consider questions of fact determined by the Supreme Court, where there is any evidence upon which to base the facts.

“In cases of *certiorari*, in which the Supreme Court is empowered to determine disputed questions of fact as well as of law, under the provisions of Section 11 of the revised *Certiorari* act of 1903, the adjudication of that court on questions of fact is final, and not open to review on writ of error, if there appear facts on which its conclusion could be based.”

*Yellow Pine Co. vs. Board of Assessors*,  
72 N. J. L. 182.

The foregoing case cites and follows a number of authorities under a similar section of the former *certiorari* act.

This decision has been consistently followed, particularly in the cases of *George vs. Board of Excise*, 74 N. J. L. 816; *Lehigh & Wilkes-Barre Coal Co. vs. Junction*, 75 N. J. L. 922, and *Hoboken Ferry Co. vs. State Board*, 103 N. J. L. 148. .

This phase of the case would not, therefore, seem to need any further discussion. We are sure that a consideration of the facts will show not only that there was evidence upon which the State Board of Taxes and Assessment and the Supreme Court might base their finding, but that no other conclusion could have been reached.

A brief review of the facts will now therefore be proper.

### Summary of Facts.

This purchase is shown on page 30 of the case, l. 34, and at the top of page 31. \$200,000 of these were sold on October 14, 1927, and \$200,000 on October 25, 1927. The net result of the transaction was a slight profit.

*It was the duty of the bank to invest all surplus cash not necessary for its current payments and expenses.*

The Savings Bank Law provides in Section 36, Supp. to Compiled Statutes, page 3151, that "the managers of every savings bank, as soon as practicable, shall invest the moneys deposited with them in the securities named in the thirty-third section, except that for the purpose of meeting current payments and expenses in excess of the receipts, there may be kept an available fund of not exceeding ten per centum of the whole amount of deposits with such bank". The following section provides in part (4 Comp. Stat., p. 4706) that whenever it shall appear to the commissioner of banking and insurance that the managers of any such savings bank are violating the spirit and intent of the provisions of this and the preceding section, by keeping permanently uninvested all or any undue proportion, of the moneys received by them, he shall report the facts to the attorney-general, who shall proceed against such bank, under the provisions of section fifty-two of this act. Section 52 provides for action upon complaint of the commissioner by the attorney-general.

*The proofs show conclusively that the sum so invested was no part of the working capital of the bank but consisted of those funds which it was its duty to invest.*

The president and secretary of the bank both testified that the sum retained was more than am-

ple for the current needs of the bank (See Case, p. 61, l. 34, and p. 67, l. 15, *et seq.*). There was no evidence to the contrary. An examination of the data furnished in the stipulation will show that this estimate was very conservative.

It appears that during the period covered by the stipulation the amount of government bonds owned by the bank, the most liquid securities there are, was never below \$1,916,650 (See Stipulation, p. 28 of Case), with some \$12,000,000 of other high class collateral. The appellant bank constantly carries large balances in other banks, and, with its assets, could, if there was any unusual emergency, get money at any time during the business day inside of a few minutes. It must, therefore, be considered established beyond any shadow of question, that the bank in no sense impaired its working capital but only invested what by law it was bound to invest.

Mr. Meystre, the Bank President, who practically has control of these investments, testified that the purchase of \$400,000 of bonds was no unusual occurrence. This frequently happens. He further testified that the bank made large purchases frequently and they watched the market daily for favorable sales and purchases (See his testimony, p. 58, l. 24 of Case).

“By Mr. Baker:

Q. Is that (referring to investments) a very active line of your work, Mr. Meystre?

A. It is an active part of our business. We are repeatedly investing and re-investing. You see there is a matter of twenty-four million dollars involved and this money just keeps rolling around.

Q. What was there unusual in this transaction other than like transactions; it is a matter of mechanics almost every day, is it?

A. At certain times, yes, sir.”

The President was the City's witness and what he testified to is thoroughly borne out by facts produced in evidence. For instance, in March, 1927, United States Bonds were purchased of the par value of \$459,400; in September, 1927, \$400,000; November, 1927, \$300,000, and January, 1928, \$200,000 (p. 29 of Case). This shows conclusively that this was not an unusual practice.

It appears further that this was not a purchase merely made before the taxing period to be turned into cash again and put back where it had been before and intended so to be. Mr. Meystre, president of the bank, emphatically testified that this was an outright purchase for cash without any understanding as to re-purchase, without any intention of re-converting at any particular time and without any knowledge as to when the bonds would be re-converted (p. 61 of Case beginning at l. 16). As a matter of fact they were sold in the following month at a profit, but the disposition of the proceeds can be accounted for. The bank purchased in October immediately after the taxing period municipal bonds of the par value of \$23,000; railroad bonds of the par value of \$109,000; public utility bonds of the par value of \$139,000; and loans on bond and mortgage \$34,000, making a total of \$305,000 (see Case, p. 63, l. 30 to p. 64, l. 10); better paying investments than the government bonds (see Case, p. 62, l. 27).

In November, 1927, the following month, the bank purchased United States Bonds at the par value of \$300,000; railroad bonds at the par value of \$4,000 and loaned \$86,500 on bond and mortgage making a total of \$390,500 (Case, p. 64, ll. 11 to 19, and p. 63, l. 12).

In addition to this an examination of the statement of withdrawals and deposits will show that in October, 1927, the withdrawals exceeded the deposits by \$166,286, and in November, 1927, by

\$8,011, amounting for the two months to over \$174,000 (see stipulation, p. 30 of Case) while in September when the \$400,000 was invested, the deposits exceeded the withdrawals by \$94,483. What happened immediately before the taxing period as compared with what happened immediately after the taxing period is nothing unusual.

Let us assume that instead of a banking institution, we had the case of an individual taxed under the same principles who had in September, 1927, \$591,264.05, which is the total of the amount of bonds purchased at par by the bank and the cash on hand October 1, 1927. Later in the month, let us say, he invested \$400,000 in Government bonds. In the month of October he sold these and invested \$305,000 in various railroad and municipal bonds and other tax exempt investments of the same character as those in which the bank invested, and, in addition, paid out \$166,287 in some form of indebtedness for which he was not taxable, the latter being equivalent to the amount paid out by the appellant bank in October to depositors in excess of the amount received for deposit. This would reduce the taxable property of this taxpayer on the first of November to \$119,977.05. This would be the exact parallel of the bank, but manifestly none of the decisions would hold that under a law similar to that in force in this State such an individual should be taxed to the full extent of \$591,264.05. It is true that the bank had on hand on October 31 more than \$119,977.05, but it was due to matters entirely aside from this bond transaction. This was due partly to income received from investments and part to collection of accrued tax exempt investments. This can have no effect upon the principle involved.

The bonds sold were re-invested and absorbed by the extra-heavy withdrawals.

See testimony of Mr. Meystre, the president of the bank (Case, p. 61, l. 3).

“Q. Why did you sell them such a short time after October first? A. I think I replied to that before, we did it in order to pay for some utility or railroad bonds we bought during the same month and incidentally I believe we had heavy withdrawals that month.”

This brings us to another phase disclosed by the stipulation. The amount of taxable assets or cash on hand was lower on September 30, 1927, and on October 1, 1927, than on corresponding days of other months. Prosecutor stresses this. This fact of itself can afford the City no relief.

Let us assume that it may be found as a matter of fact from the figures deduced and the testimony that an investment was made at this time in order to get a part of the assets of the bank, not needed for its daily business, in tax exempt securities. It is respectfully submitted that this is no violation of the spirit of the tax act; and that the reason for it is not a matter of competent inquiry by the taxing authorities. We think the cases cited abundantly support this doctrine. It changed in no way the amount of money available for taxation. There is not the slightest suspicion or evidence that this purchase was designed to put the cash where it could not be reached. For all that appears it may have been taxed by the City in the hands of someone else.

The best explanation of the right to make this investment is found in the statute quoted. It was the duty of the managers, performed by the President in their behalf, to invest as soon as possible the moneys deposited with them, except an available fund which we have shown was kept. The law makes the securities purchased exempt. Certainly no evil intent can be imputed to a lawful act. The City has no complaint because the law

was complied with. The performance of an act required by law is not fraudulent.

To invest closely was certainly sound banking. The secretary of the bank testified that he had been long contending with the former president of the bank and with the present president, that the bank kept too much money on hand, that this for some months had been remedied and that the results justified his judgment (p. 66 of Case, at bottom). Carrying Three or Four Hundred Thousand Dollars of excess assets, mostly in banks at 3% interest, when investments in bonds and mortgages, the best paying, or in railroad and public utility bonds, the next best paying were not immediately available, even though in violation of the spirit of the law, will not result in much loss to the bank over government bonds. At 3½% on \$400,000, this loss of one-half per cent. would be only \$2,000 per year. For the managers of the bank to permit some \$400,000 of property, that ought to be invested in tax exempt securities, and which the law requires that managers shall so invest, to be left uninvested and assessed at the rate of \$48.67 per thousand (p. 27, l. 37) so that the taxation would be \$19,468, when they could be invested in tax exempt securities at a higher rate of interest, would subject them to most deserved criticism.

The City has not produced a scintilla of evidence to show that the purchase of bonds was not absolute and *bona fide* on the market or that they were bought with the intent that they should be sold at any particular time. When they were sold they were sold at a profit. There is not the slightest evidence that they would have been sold until payable, had not opportunity to make investments at higher rates and the withdrawal of deposits made sale necessary.

**Law.**

It is submitted that under the facts shown the assessment as fixed by the State Board should stand.

**POINT II.****Fraud is never presumed, but must be proved.**

*Sherron v. Humphreys*, 14 N. J. L. 217;  
*Summerill v. Summerill*, 83 N. J. E. 3,  
 aff'd on opinion below at p. 350;  
*Guerber Engineering Co. v. Stafford*, 96  
 N. J. L. 280;  
 12 R. C. L., p. 424, sections 172, 173, 174;  
 27 C. J., p. 44, sec. 170.

“The charge against the deceased defendant is one of fraud. This is a charge which is not lightly to be presumed but must always be proved. It is sometimes said that it is never presumed. Of course, it may be inferred from facts, but the facts must clearly establish the inference.”

*Summerill v. Summerill*, 83 N. J. E. at page 5.

“The law presumes that business transactions are honest. In other words, fraud is never presumed, and where a party to the transaction alleges its existence, the burden rests upon him of proving the truth of his allegation.”

*Guerber Engineering Co. vs. Stafford*, 96 N. J. L., at page 281.

The Supreme Court assumed this to be the law and found the facts adversely to the appellant. Its language will be found on page 4 of the case, line 23, and is as follows:

“It is conceded that the actual moneys in hands and taxable were in the amount found by the State Board, and, assuming that a purpose as above indicated would taint the transaction so as to render that which was ordinarily non-taxable taxable, the burden was on the prosecutor to establish that this sum did not truly represent the sum available for taxation by reason of some fraudulent device or manipulation, whereby the moneys were for that purpose converted into non-taxable securities. The proofs were insufficient for this purpose.”

### POINT III.

#### **Discussion of cases cited by prosecutor-appellant.**

The cases cited in behalf of appellant need but little comment. They are based on an assumption of facts which does not exist. All the cases cited in the present brief were cited in the brief before the Supreme Court and were disposed of by that Court in the following language in page 5 of case, line 34:

“A number of cases are cited to us, such as the exchange of taxable moneys into greenbacks, which latter were not taxable, and immediately after the taxing date the re-exchanging of the same greenbacks back into ordinary forms of money. They all, however, involved a colorable transaction only, and not one that was *genuine* and without reservation. In the present case the bonds were purchased on September 28, 1927, a few days before the taxing date (October 1, 1927); \$200,000 of them were sold on October 14, following, and on October 25th, 1927, the remaining \$200,000 were sold. The sale of the bonds as stated by the president of the bank was made for the purpose of paying for utility and railroad bonds and to meet withdrawals during that month.”

Even if we assume that such cases applied correct principles of law to the facts before them, an examination of the cases will show that the facts of those cases and the one at issue are not at all parallel. If the law as found in those cases was applied to the facts as disclosed by the evidence and as found both by the Supreme Court and the State Board of Taxes and Assessments, the cases cited would be authorities for the respondent and would justify the prior decisions. We may note the following among other quotations that might be selected as printed on page 11 of appellant's brief and taken from the case of *Holly Springs Savings and Ins. Co. vs. Board of Supervisors*, 52 Miss. 281:

“We must not be understood as holding that Government bonds are taxable merely because the motive of their purchase was to escape taxation. Neither do we intimate that they must be held for any particular time or be bought with any intention of holding them for any period whatever. They may be bought solely because of their non-taxable character and disposed of at the very earliest practicable moment and such purpose will not subject them to taxation.”

#### POINT IV.

**The respondent relies upon the following cases:**

Cooley on Taxation, 4th Ed., Sec. 1072;  
*Stillwell, Administratrix, v. Corwin*, 55  
 Ind. 433;  
*People v. Ryan*, 88 N. Y. 143;  
*Holly Springs Savings and Ins. Co. v.*  
*Board of Supervisors*, 52 Miss. 281;  
*People v. McComber*, 7 N. Y. S. 71;

*State v. Buder*, 271 S. W. 508, 308 Mo. 237;

*Draper v. Hatfield*, 124 Mass. 53;

*Gardner v. Brookline*, 181 Mass. 165.

*It is insisted that the foregoing cases not only justify the decision of the Supreme Court on the evidence produced before it, but that they are authority for that decision upon any conclusion that may be claimed from the undisputed facts in the case.*

There is not a particle of evidence to dispute the testimony offered in behalf of the bank that the purchase of these bonds was an actual purchase upon the market, for cash, resulting in delivery of the bonds without any understanding or agreement as to their repurchase. The cases clearly hold that where there is an actual, bona fide purchase of tax-exempt bonds, no matter when made and no matter when sold, they are exempt from taxation in the hands of the owner.

The Supreme Court took that view and urged it as an additional ground for affirming the opinion of the State Board (p. 5 of Case, ll. 21 to 35).

“A man may lawfully change his residence from one municipality to another at pleasure; and though the purpose in changing be to avoid taxation in the town he removes from, yet the fact cannot be taken notice of for the purpose of continuing his taxation in that town. A man has a right to exchange money, which is taxable, for United States securities, which are not taxable, even though the sole purpose in the exchange is to avoid the tax. If he gives his note for United States securities for the like purpose, he is nevertheless entitled to be allowed the amount of the note in reduction of his assessment. And if the owner of personalty changes it into real estate, and then executes leases for years thereon in order to avoid taxation on such

personalty, the assessment must nevertheless be governed by the legal position of the property at the time it is made. In each of these cases the party is only exercising a right, which the law allows to him; he may choose his own place of residence at pleasure, and he may select, as seems most for his interest, between taxable and non-taxable property; and it is no concern of others, or even of the state, which by its laws allows the choice, what may be the motive on which he acts."

Cooley on Taxation, 4th Ed., Sec. 1072, citing cases.

"Any person has a right to exchange money on deposit in a bank for bonds of the United States, at any time, even if the express purpose in the transaction was to exchange money which was taxable, for bonds which were not taxable."

*Stilwell, Admr. v. Corwin, Admr.*, 55 Ind. 433.

In the case of *People v. Ryan*, 88 N. Y. 143, the following facts appear: A man gave his promissory note for money borrowed to buy U. S. bonds and gave the bonds as collateral to the note and then deducted the note as a debt. The assessors rejected and assessed. The Court held error. The Court said:

"That the property purchased with its proceeds stands as security for its payment and is itself non-taxable, cannot alter the result. This attribute of exemption was impressed upon it to promote its salability, and no doubt entered into and enhanced the price paid.

Nor do we perceive how, by a purchase in the manner narrated in the return, the buyer evades our law of taxation. The law does not prohibit it, therefore does not apply, and in such case there can be no evasion (*Smale v. Burr*, L. R., 8 C. P. 64)."

The Court also said:

“The respondent is entitled to judgment; and so he would be, although the transaction of which the \$25,000 note formed a part was, as the learned counsel for appellant says ‘a device to escape assessment and taxation’ (*Stilwell v. Corwin*, 55 Ind. 433). We are referred to no statute which prohibits a property owner from choosing between the embarrassment of a debt and submission to a burden, justly indeed imposed on all, and which, if he escapes, must altogether fall upon his neighbors.

“The assessors, therefore, exceed their necessary duty when, by inquisition, they so pressed the relator as to call from him a disavowal of that purpose and his innocence of intention to circumvent ‘the tax laws’.”

“It is not suggested that the act of the relator in exchanging mortgages into leases was illegal. He had a right to invest in any form he saw fit, so long as he violated no law. His purpose in making investments in such a way as to escape personal taxation is immaterial.”

*People v. McComber*, 7 N. Y. S. 71, 73.

“In every case cited by respondent and the *amici curiae*, taxable property was manipulated in a way to avoid taxation. Here, there was no concealment. There is no fraud in doing a lawful act. A man may change his residence to avoid taxation; he may change the form of his property by putting his money in non-taxable securities, or in the form of property which would be taxed less, and is not guilty of fraud. *Draper v. Hatfield*, 124 Mass. 53; *Stilwell v. Corwin*, 55 Ind. 433, 23 Am. Rep. 672; *Griffin v. Heard*, 78 Tex. 607, 14 S. W. 892; *Commonwealth v. Y. M. C. A.*, 116 Ky. 711, 76 S. W. 522, 105 Am. St. Rep. 234. One cannot be guilty of fraud by doing what he has a legal right to do. A court does not inquire into one’s motive for doing a lawful act. 27 C. J. loc. cit. 632-633; *Bank v. Fry*, 216 Mo. 34, 115 S. W. 439.

Government, state and municipal bonds, and the like, are made non-taxable in order to save to people who must pay them the payment of more taxes. If they were taxed, the increased interest which they would bear would have to be paid by higher taxes. This without any corresponding revenue from the taxation of such securities. It is a matter of common knowledge that taxable securities, although bearing a higher rate of interest, are the most artful tax dodgers known to the collector.”

*State v. Buder*, 271 S. W. 508, 308 Mo. 237, 252.

“It is well settled that a man may change his habitancy or domicile from one town to another merely because he wishes to diminish the amount of his taxes. If he really intends to change his residence, and does so change it, the motive which prompts him to do so is not material.”

*Draper v. Hatfield*, 124 Mass. 53, 56, followed in *Gardner v. Brookline*, 181 Mass. 162, 165.

## POINT V.

**The judgment of the State Board of Taxes and Assessment under review was legally rendered and should stand.**

The appellant urges in its Point Two that the State Board was without power to order a rehearing. No authority or reason is set forth to support this contention. An examination of the points as stated on the last page of the appellant's brief will show that it is not based on a true conception of the facts. The State Board did not reverse its former order or judgment. An examination of the minutes of the State Board as con-

tained in the return of the writ will show that a vote was taken on June 25th (See p. 42 of Case), and the Board then voted to affirm. It clearly appears, however, that no judgment was entered. There was, therefore, no order or judgment and no final determination except this mere vote. Although in both reason 1 (p. 16 of Case) and Point Two (last page of brief) prosecutor states that it was notified of this affirmation, there is no proof of this, and it is quite clear that there was no official notification, although it appeared on the minutes and could have been unofficially ascertained, and could have been unofficially communicated.

The matter was then subsequently opened and reheard, and the board ordered the assessment to be reduced, and upon this order final judgment was entered (Case, p. 35). This is the only judgment that was entered and is the judgment brought up for review. If that judgment is erroneous as based on the facts produced before the board, this Court can remedy it. If it is a correct judgment rendered upon the facts, then it should stand.

The right of appeal to the State Board is given by section 208-66d (704), 2 Cum. Supp., page 3506, which provides that the State Board shall hear and determine such appeals and render its judgment. It has the matter entirely within its hands at least until judgment is rendered.

It is not considered necessary to trace the history of the present State Board of Taxes and Assessment. It will be found summarized in Black on Taxation, section 319, and its early history in note to 4 Comp. Stat., page 5110. The present State Board was formed by a consolidation of The State Board of Assessors and the Board of Equalization of Taxes of New Jersey and was given power and authority to exercise all the powers and perform all the duties exercised, conferred

or imposed upon both the constituent bodies (2 Supp. to Comp. Stat., p. 3481, sections 13, 14 and 15, P. L. 1915, p. 438).

The powers of the said Board of Equalization are shown in 4 Comp. Stat., page 5110, Secs. 37-a *et seq.*, and may be summarized as follows:

1. Has a clerk.
2. Power to subpoena witnesses.
3. Power to keep record of proceedings.
4. Power to punish for contempt for failure to appear and testify.
5. Has appellate jurisdiction.
6. Has original jurisdiction of some matters.
7. Has power to make rules.
8. Has power to examine witnesses or cause witnesses to be examined before it under oath.
9. All matters before the board shall be decided by vote and three votes shall be required for the decision in any matter. The determination of the Board upon any matter shall be evidenced by a judgment which must be signed by at least three members of the board and filed in the office of the Board. This is embodied in Rule 5 of the present board.

*It is clear from the foregoing powers that this board acts as a judicial body and that its proceedings are judicial.*

“The decision of a State Board of Equalization acting within its jurisdiction, is judicial in character and therefore not open to collateral impeachment although it may be reviewed or enjoined if fraudulent or illegal.”

37 Cyc. 1078;

*Ill. & St. Louis L. R. & Coal Co. vs. Stookey*, 122 Ill. 358, 13 N. E. 516;

*Mayor, Aldermen &c. vs. Davenport*, 92  
N. Y. 604;  
*McLeod v. Receiver*, 71 Fed. 455, 18 C.  
C. A. 188.

It follows then that the State Board of Taxes and Assessment could order and permit a rehearing as a judicial body. See 4 C. J. 621, where the matter is discussed generally, and cases cited.

See also 2 R. C. L., page 172, Title, Appeal and Error, Sections 148, 149 and 150.

The decision of the Court as to the propriety of allowing a rehearing is final. See 4 C. J., page 622, Section 2478, where the following appears:

“Except in cases provided for by statute, a rehearing is not a matter of right, but a privilege given by the appellate court, and governed and limited by its rules. Accordingly it is held that an application for a rehearing of an appeal addresses itself to the discretion of the court, and its decision in the matter is final.”

The right to allow a reargument at least before the record has been remitted to the Court below is recognized in New Jersey in *King v. Ruckman*, 22 N. J. E. 551.

This right would seem to be conclusively determined by the Court of Errors and Appeals in the case of *State v. Crosley*, 36 N. J. L. 425. In that case

“the agent of the prosecutor presented his affidavit to the commissioners; that some days afterwards, being the last day of their sitting, his attorney again called their attention to the appeal; that the commissioners consulting with each other, determined to make the deduction of debts, and without announcing their intention, marked, privately, such allowance on a sheet of paper which contained memoranda relating to other appeals, and

that in the afternoon of the same day they reconsidered the subject and allowed the assessment to stand in its original form.

This course of proceeding seems to me unobjectionable. All bodies, possessing a judicial capacity, have the competency to consult, resolve and reconsider, and they are not bound by their conclusions until such conclusions have been promulgated by their authority. In the present instance there was nothing to prevent the further action of the Board but an unannounced opinion, formed while in private consultation. It is true that the agent of the prosecutors testified that one of the commissioners told him that the board had determined to make the deduction which was claimed. But it is not pretended that such information was communicated to him while he was before the board, or by their authority. It does not even appear when or where this intelligence was conveyed. A single member could not bind the board by an unauthorized intimation of its purpose. Under the circumstances, I see nothing wrong or illegal in the act of the commissioners in changing their views before such views had been officially announced or made known by them.

The judgment of the Supreme Court should be affirmed with costs."

But if the State Board has not the powers of an ordinary court of original and appellate jurisdiction, it can certainly exercise the functions of an assessor or taxing board.

*Before the completion and delivery of the assessment lists or rolls, the assessors have authority to correct mistakes.*

37 Cyc. 1018;

*State v. Silvers*, 41 N. J. L. 505, 506;

*People v. Westchester Co.*, 15 Barb. 607,  
3 How. Pr. 343;

*Bridgeport Glass Co. v. Drew, Collector*, 128 A. 413, 102 Conn. 206.

The following appears in *State v. Silvers*, 41 N. J. L., at page 506:

“Until the assessor has so entered his determination of the amount of the tax to be levied upon each, he has judicial control of the whole subject, and may reconsider his valuations, deductions and any other matters involved in his final decision. It is only this ultimate judgment, officially announced, that is unalterable.” Citing *Shreve v. Crosley*, 36 N. J. L. 425.

But if the State Board has not the authority of a court nor the privileges of a board of assessors, it must be a deliberative body, and it is elementary that such a body can reconsider.

The Board had jurisdiction of the subject matter and the parties. The prosecutor did not contest the motion for a rehearing, appeared without objections at the rehearing and was heard (Case, p. 44). Even if it could be found that the proceedings were irregular, the prosecutor must be held to have waived this irregularity.

“But it is objected that the Commissioners met at an improper place. If they did so, the error was cured by the plaintiff appearing before them, and making no objection to their jurisdiction, on that ground; but it was his own tribunal, and he cannot complain that they met at a wrong time or place, unless he was prejudiced by their doing so.”

*State v. Thomas, et al., Commissioners of Appeal*, 17 N. J. L. 160.

A party who appears at the meeting of a board, objecting to the legality of the meeting on the ground that it is not held at the proper place or on proper notice, and yet submits voluntarily to the board, offering evidence and asking for a de-

cision in his favor on the merits, waives by his subsequent action the objections taken.

*State v. Cooper, Town Clerk*, 59 Wis. 666,  
18 N. W. 438.

The judgment of the State Board under review was regularly entered and was correct in principle. The judgment of the Supreme Court in affirming it should stand.

Respectfully submitted,

PIERSON, SCHROEDER & BRAND,  
Attorneys of Respondent, The Hoboken  
Bank for Savings in the City of  
Hoboken.

JOHN D. PIERSON,  
Of Counsel.

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*State v. Cooper, Iowa Court, 59 Wis. 861,  
18 N. W. 436.*

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Respectfully submitted,

FRENCH, SCHUMMER & BRAND,  
Attorneys of Respondent, The Hoboken  
Bank for Savings in the City of  
Hoboken.

JOHN D. FRENCH,  
Of Counsel.