

New Jersey Supreme Court.

THE STATE, (JAMES REID, <i>et al</i> , <i>Prosecutors</i> ,) <i>vs.</i> JAMES T. WILEY, <i>et al.</i> , COMMISSIONERS OF TAXATION,	}	10 <i>On Certiorari.</i> <i>Writ.</i>
---	---	---

NEW JERSEY, *ss* :

The State of New Jersey to James T. Wiley,
Robert E. Chetwood and Richard Frohwein,
[L. s.] "Commissioners of Taxation" for the City of 20
Elizabeth, in the county of Union, Greeting :

We being willing for certain reasons to be certified of
your appointment, authority, organization and proceed-
ings as such "Commissioners of Taxation," do command
you that your appointment, authority, and the record or
minutes of your organization, and proceedings as such
"Commissioners of Taxation," as fully as the same re-
main before you or under your control, together with all
things touching the same, you do certify and send to our 30
Supreme Court at Trenton, on the ninth day of June,
instant, together with this writ, that we may cause to
be done thereupon what of right and according to law
ought to be done.

Witness, MERCER BEASLEY, Esquire, Chief Justice,
at Trenton, the seventh day of June, in the year eighteen
hundred and eighty-four.

BENJ. F. LEE, *Clerk.*

JOHN W. TAYLOR, *Attorney.*

RETURN.

In obedience to the command of this writ to us directed, we, the "Commissioners of Taxation" for the City of Elizabeth, do hereby certify and send to the Supreme Court of Judicature of the State of New Jersey, our appointment, authority, and the records and minutes of our organization and proceedings as such "Commissioners of Taxation," whereof mention is within made, with all things touching the same, as fully as before us they remain.

In witness whereof we have hereunto set our hands this ninth day of June, eighteen hundred and eighty-four.

JAMES T. WILEY,
RICHARD FROHWEIN,
ROBT. E. CHETWOOD,
Commissioners of Taxation.

20

The State of New Jersey to James T. Wiley, Robert E. Chetwood and Richard Frohwein, Greeting:

Reposing special trust and confidence in your integrity, prudence and ability, I have, by virtue of Chapter LVIII. of the laws of 1884, appointed you, the said James T. Wiley, Robert E. Chetwood and Richard Frohwein, to be Commissioners of Taxation, (as provided in the above recited act,) in and for the city of Elizabeth; you the said James T. Wiley, Robert E. Chetwood and Richard Frohwein, are therefore by these presents commissioned to be Commissioners of Taxation in and for the said city of Elizabeth, to have, hold and enjoy the said office of commissioners, with all the powers, privileges, fees, perquisites, rights and advantages to the same belonging or appertaining, for and during the legal time.

In testimony whereof, the great seal of the State is hereunto affixed.

Witness LEON ABBETT, Governor of the State of New Jersey, at Trenton, this fifteenth day of May, in the year

of our Lord one thousand eight hundred and eighty-four, and of the independence of the United States the one hundred and eighth.

LEON ABBETT.

By the Governor,

HENRY C. KELSEY, *Secretary of State.*

ELIZABETH, New Jersey, May 15, 1884.

Messrs. James T. Wiley, Richard Frohwein and Robert E. Chetwood, having this day been appointed by His Excellency, Leon Abbett, Governor of the State of New Jersey, "Commissioners of Taxation," in and for the city of Elizabeth, by virtue of Chapter LVIII. of the laws of the legislature of this State, approved March 20th, A.D. 1884, met at the residence of the said James T. Wiley, No. 1047 Elizabeth avenue, in said city, at 8 o'clock P.M. of this day, for the purpose of organization; and, having separately taken and subscribed the oath of office, required by said act of the legislature, before Joseph Alward, Esq., one of the Masters of the Court of Chancery of this State, and the same having been duly filed with the Secretary of State, as required by said act, 10
20

On motion of Commissioner Chetwood, Commissioner James T. Wiley was elected chairman.

On motion of Commissioner Frohwein, Commissioner Robert E. Chetwood was elected secretary.

On motion, the Commissioners adjourned to Monday, May 19th instant, at 2 o'clock P.M., at the residence of Commissioner Wiley. 30

ROBERT E. CHETWOOD,
Secretary.

ELIZABETH, May 19th, 1884.

The Commissioners of Taxation met this day at 2 o'clock P.M., at the residence of the chairman, pursuant to adjournment. All the commissioners being present. The minutes of the last meeting were read and approved. 40

On motion of Commissioner Frohwein, the following preamble and resolution were unanimously adopted :

Whereas, The assessment books of the city of Elizabeth for the year 1883 show an aggregate number of 15,400 names, as follows : 3,500 in the First ward, 3,000 in the Second ward, 2,700 in the Third ward, 680 in the Fourth ward, 3,500 in the Fifth ward, 700 in the Sixth ward, 680 in the Seventh ward, 700 in the Eighth ward, therefore, be it—

- 10 Resolved, That in the interest of economy, the Fourth ward and the Eighth ward be consolidated in one assessment district, and the assessment of property therein be made by one person ; that the Sixth ward and the Seventh ward be also consolidated in one assessment district, and the assessment of property therein be made by one person ; and that the assessment of property in each of the other wards be made by a person to be appointed for each of the said wards.

On motion of Commissioner Frohwein—

- 20 Resolved, That the compensation of the persons to be appointed to make the assessment of property in the several wards and districts, which compensation shall include the necessary field work, making out the duplicates, tax bills, and delivering the same, attending all meetings of the commissioners when requested so to do, and doing all work required of them to be done by the commissioners, shall be as follows :

- 30 For assessing the property, etc., in the First ward, \$450 ; in the Second ward, \$450 ; in the Third ward, \$450 ; in the Fourth and Eighth wards, \$350 ; in the Fifth ward, \$450 ; and in the Sixth and Seventh wards, \$350.

On motion—

Resolved, That the following named persons be appointed to assess the property in the several wards and districts :

First Ward, Reinhard Gerke.

Second Ward, John Flynn.

Third Ward, Anton Schow.

Fourth and Eighth Wards, John McGrath,
 Fifth Ward, William McCully.
 Sixth and Eighth Wards, Charles H. Ross.

On motion, the commissioners adjourned to Tuesday,
 May 20th instant, at the residence of the chairman.

ROBERT E. CHETWOOD,
Secretary.

 10

ELIZABETH, May 20, 1884.

The Commissioners of Taxation met this day at 2
 o'clock, P.M., at the residence of the chairman, pursuant
 to adjournment. All the commissioners being present.
 The minutes of the last meeting were read and approved.

The several persons appointed to make the assess-
 ment of property in the several wards and districts met
 with the commissioners, and consulted with them in
 relation to their duties and their compensation as fixed by
 the commissioners, and after such consultation retired. 20

On motion, the resolution passed at the last meeting
 of the commissioners, fixing the compensation of the
 persons appointed to make the assessment of property
 in the several wards and districts, was reconsidered.

On motion, the said resolution was laid on the table.

On motion, the following preamble and resolution was
 adopted:

Whereas, upon consultation with the persons ap- 30
 pointed to make the assessment of property in the sev-
 eral wards and districts, the commissioners are satisfied
 that the compensation for making such assessment as
 fixed by the commissioners is not a just and fair com-
 pensation for the services to be performed by such per-
 sons in making such assessment, therefore,

Resolved, That the compensation of the said persons
 appointed to make the assessment of property in the
 several wards and districts be fixed at the sum of \$500
 each, and in addition thereto, the sum of five cents a
 name for each property owner assessed. 40

On motion, the commissioners adjourned to Monday, May 26th instant, at 2 o'clock, P.M., at the residence of the chairman.

ROBT. E. CHETWOOD,
Secretary.

ELIZABETH, May 26, 1884.

The Commissioners of Taxation met this day at 2 o'clock, P.M., at the residence of the chairman, pursuant to adjournment. All the commissioners being present.

The minutes of the last meeting were read and approved.

On motion of Commissioner Frohwein, the following preamble and resolution were adopted:

Whereas, the field men appointed by this board to make assessments, declined to accept the offer of \$500 each, and five cents per name, offered them, therefore, be it

Resolved, That that the amount they unanimously said would be satisfactory to them, be and is hereby declared to be the compensation they are to receive, viz., \$500 each, and ten cents a name for each property owner assessed.

On motion, the commissioners adjourned to Monday, June 2d, at 2 o'clock, P.M., at the residence of the chairman.

ROBT. E. CHETWOOD,
Secretary.

ELIZABETH, June 2, 1884.

The Commissioners of Taxation met this day at 2 o'clock, P.M., at the residence of the chairman, pursuant to adjournment. All the commissioners being present. The minutes of the last meeting were read and approved.

On motion, the commissioners adjourned to Monday, June 9th, at 2 o'clock, P.M., at the residence of the chairman.

ROBT. E. CHETWOOD,
Secretary.

THE STATE,

(JAMES REID, *et al.*,
Prosecutors.)

vs.

JAMES T. WILEY, *et al.*, COMMIS
SIONERS OF TAXATION.

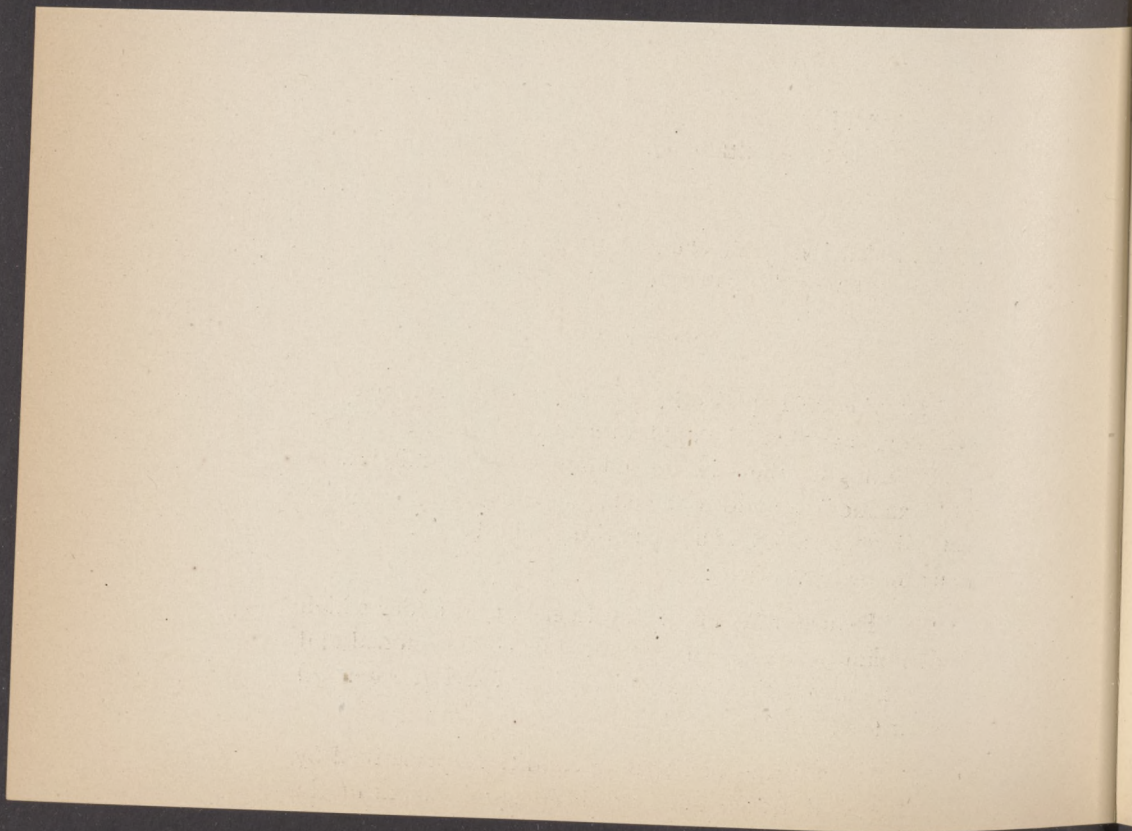
} *On Certiorari.*

REASONS.

And the said plaintiff, by JOHN W. TAYLOR, its attorney, says that the appointment or commission and proceedings of the said defendants as "Commissioners of Taxation" in and for the city of Elizabeth, should be set aside, annulled and for nothing holden, for the reasons following, to wit :

1. Because the act of the Legislature under which they claim to have been appointed or commissioned and to act, is unconstitutional and void, and is not a general law of the State.

2. Because the condition or conditions prescribed by said act, and which authorized the appointment of the



ELIZABETH, June 9, 1884.

The Commissioners of Taxation met this day at 2 o'clock, P.M., at the residence of the chairman, pursuant to adjournment. All the commissioners being present. The minutes of the last meeting were read and approved. The chairman having reported the service upon him, June 7th, of a writ of *certiorari*, against the Commissioners of Taxation to remove the appointment, authority, records and minutes of the Commissioners of Taxation to the Supreme Court, returnable this day, and the secretary 10 having made out a return in writing in accordance with the said writ of *certiorari*, the return was thereupon signed by all the commissioners.

On motion, the commissioners adjourned to Monday, June 16th, at 2 o'clock, P.M., at the residence of the chairman.

ROBT. E. CHETWOOD,
Secretary.

The argument presented on behalf of the prosecutors is, that the leading purpose of the act is the levying of taxes, in order to execute the public duties mentioned in the title, whenever the ordinary local authorities, charged with the levying of such taxes, fail to exercise their functions; that as occasions for the employment of these extraordinary means of taxation may arise in any portion of the State, such a law, to be general, must be applicable to every section; that this law appears to be inapplicable to townships, and hence is not general; and that therefore taxes upon property cannot be imposed under it, because of the Constitution, Art. IV., Sec. VII., Parag. 12, which provides that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." 10

If the leading purpose of the act be thus defeated, all the proceedings of the commissioners under it should be set aside.

State vs. Hudson Co. Av. Comrs., 8 Vroom, 12. 20

State vs. Chamberlain, 8 Vroom, 388.

State vs. Englewood, 12 Vroom, 154.

In the reasoning thus presented, an essential premise is that the law is inapplicable to townships, and, in their attempts to maintain this proposition, the prosecutors, we think, fail.

The localities in which the statute is to be operative are by it declared to be "any incorporated city, town or municipality in this State." Townships are embraced in this language. They are all incorporated, either under the general act or by special law, and they come within the definition of a municipality, *i. e.*, a body formed by the incorporation of the inhabitants of a particular place or district, established to assist in the civil government of the State, by the exercise of subordinate specified powers of legislation and regulation with respect to local and internal concerns. 30

1 *Dill. on M. C.* Sec. 19-20.

State vs. Englewood, ubi supra.

But the prosecutors insist that two features of the act indicate that it was not designed to take effect in townships. One is, that before the Governor of the State can appoint the commissioners, he must "cause a notice to be given to the Mayor of such city, town or municipality, if there be any such officer, or to the president or chairman of the legislative or governing body, if there be no Mayor, calling attention to the fact that the local authorities, boards or officers authorized to levy such taxes are
 10 not in existence and qualified to act as aforesaid, or that they have neglected, etc." The prosecutors urge that there is no legislative or governing body in townships, upon whose chairman this requisite preliminary notice can be served.

We regard it, however, as plain, that the township committee is the body intended under several statutes, which need not be here particularly cited. This committee possesses various powers of legislation and govern-
 20 ment, and it has, moreover, authority to summon a special town meeting, or to appoint an assessor, when one of these courses might be necessary to prevent a condition of things constituting an occasion for the Governor's notice under the act.

The other feature relied on, as showing that the act was not meant to operate in townships, is the provision conferring power on the commissioners to levy taxes for some purposes—*e. g.*, the extinguishment of fires and the support of police—with which townships generally are not charged.
 30

But we do not understand the act as enjoining upon the commissioners the duty of levying taxes for all the objects specified in the statute in all cases. A condition precedent to the exercise of the powers of the commissioners is a failure on the part of the regular local authorities to perform their duties; and where no duty has been cast upon these authorities it cannot be said that they have failed—whenever the local authorities are bound to levy taxes for all the purposes mentioned in
 40 the act, but proceed to levy for some only, or whenever

they are bound to levy taxes for some only of those purposes, but fail to discharge that obligation, then still a case arises for the intervention of the Governor, but the authority of his commissioners will be limited by the neglect of duty in the regular officials. Hence we see nothing in this feature militating against the idea that the statute is enforceable in townships. In the broadest sense it is a general law.

We do not wish to be understood as implying that if the act did not extend to townships it would necessarily not be a general law. 10

Let the writ of *certiorari* be dismissed, with costs.

New Jersey Supreme Court.

NOVEMBER TERM, 1884.

10	<p style="margin: 0;">THE STATE, (JAMES REID, <i>et al.</i>, <i>Prosecutors.</i>)</p> <p style="text-align: center; margin: 5px 0;"><i>vs.</i></p> <p style="margin: 0;">JAMES T. WILEY, <i>et al.</i>, COMMISSIONERS, &c. <i>Defendants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p style="margin: 0;"><i>On Certiorari.</i></p> <p style="margin: 0;"><i>Rule for Judgment.</i></p>
----	---	--

The Court having inspected the return to the writ of *certiorari* in this cause, made by the defendants, and the proceedings in pursuance thereof, and having heard the arguments of the counsel for the respective parties thereon, and maturely considered the same; and it appearing to the Court that the statute drawn in question is constitutional, and that there is no error or illegality in the proceedings of the defendants, It is hereby ordered that the said proceedings be in all things affirmed, and that the writ of *certiorari* be dismissed with costs.

Entered November 15, 1884.

30 On motion of
FRANK BERGEN, *Attorney.*

NEW JERSEY, *ss* :

The State of New Jersey to the Justices of the
 [Ls] Supreme Court of the State of New Jersey,
 Greeting :

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our
 40 Supreme Court before you, by our writ, between the

State, (James Reid and Frank Lewis, prosecutors,) and James T. Wiley, Robert E. Chetwood, and Richard Frohwein, "Commissioners of Taxation," as is said, manifest error hath intervened, to the great damage of the said James Reid and Frank Lewis, prosecutors, as by their complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, that, if judgment be thereupon given, then, without delay, you 10 distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, on the thirteenth day of December next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done what of right and according to law ought to be done.

Witness: THEODORE RUNYON, our Chancellor, at 20
Trenton, the twenty-fifth day of November, eighteen hundred and eighty-four.

BENJ. F. LEE, *Clk.*

JOHN W. TAYLOR, *Attorney.*

N. J. Court of Errors and Appeals.

<p style="text-align: center;">THE STATE, (JAMES REID, <i>et al.</i>, <i>Prosecutors</i>), <i>vs.</i> 10 JAMES T. WILEY, <i>et al.</i>, COMMISSIONERS OF TAXATION.</p>	}	<i>On Error to Supreme Court</i>
---	---	---

Afterwards, that is to say, on the thirteenth day of December, in the year eighteen hundred and eighty-four, before the Court of Errors and Appeals of the State of New Jersey, comes the said plaintiff, by JOHN W. TAYLOR, its attorney, and says, that in the record and proceedings aforesaid, and also in the giving of judgment
 20 aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the proceedings of the defendants were affirmed, with costs; whereas, the said proceedings should have been reversed and set aside.

There is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the defendants against the said plaintiff; whereas, by the law of the land judgment
 30 ought to have been given for the said plaintiff, against the said defendants.

And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and for nothing held, and that the said plaintiff may be restored in all things which it has lost by occasion of the judgment aforesaid, &c.

JOHN W. TAYLOR,
Attorney for Plaintiff in Error.

New Jersey Supreme Court.

THE STATE, (JAMES REID, <i>et al.</i> , PROSECUTORS, <i>vs.</i> JAMES T. WILEY, <i>et al.</i> , COMMIS- SIONERS OF TAXATION.	} <i>On Error to the Supreme Court</i>	10
--	--	----

BRIEF FOR PLAINTIFF IN ERROR. 20

The writ of *certiorari* herein was brought to test the constitutional validity of the act under which the defendants were appointed, and claim a right to act as "Commissioners of Taxation" in and for the city of Elizabeth, and the legality of their appointment and proceedings as such commissioners.

(See REASONS, *Case*, p. 7.)

The act is entitled as follows: "An act to provide and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police, and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities in cases where the local or municipal authorities or officers fail to provide for the performance of such duties." 30

I.

The act is in violation of Article IV. Section 7, placitum 12, of the amended Constitution, which ordains that "property shall be assessed for taxes UNDER GENERAL LAWS, and by uniform rules, according to its true value," and is, therefore, null and void.

1. The manifest object of the act is the *assessment of property for taxes*, "to provide and secure the raising of revenue" for certain purposes.

2. Whatever property shall be assessed by "Commissioners of Taxation," appointed pursuant to the act, will be assessed "UNDER" the act, within the meaning of the constitutional provision.

They are "to be known as 'Commissioners of Taxation,' whose duty it shall be UNDER THE AUTHORITY OF THIS ACT, to assess and levy the taxes specified in section five hereof," &c. (Sec. 1.)

See also *Sections 7, 9 and 12.*

3. But this act is a *special*, and not a "*general law*."

First. It is applicable only TO CERTAIN LOCALITIES, viz., "incorporated cities, towns and municipalities."

It cannot fairly be construed to apply to *townships*. They are not, properly speaking, within the meaning of the act, "incorporated municipalities," or municipal corporations.

(1.) A "municipal corporation" is defined by Judge DILLON to be "the incorporation, by the authority of the government, of the inhabitants of a particular place or district, and authorizing them in their corporate capacity to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concerns. This power of local government is the distinguishing feature of a municipal corporation proper."

1 Dillon on M. C. (3d Ed.) § 19.

(2) The act in the use of the word "municipality," means a municipality whose chief magistrate is generally, at least, a *Mayor*; for it requires the Governor, prior to the appointment of "Commissioners of Taxation," to "cause notice to be given the *Mayor* of such city, town or *municipality*." *But do townships in New Jersey have such officers as mayors?*

It is true that there is subjoined the *condition*—"if there be any such officer;" but the condition relates alike to "city, town or municipality," and is of no account in the argument. Again, the notice must be to "*the president or chairman of the LEGISLATIVE OR GOVERNING BODY, if there be no mayor.*" But although "an incorporated city, town," or borough, has a "*legislative or governing body,*" a "*township*" in New Jersey, with a "*legislative or governing body,*" would be a political curiosity.

A township committee under the general laws of this State, is not a "*legislative or governing body.*"

See *Revision*, p. 1195, pl. 12; *Id.* p. 1202, pl. 51.
Demarest vs. Inhabitants of New Barbadoes,
 11 Vr. 604.

Callahan vs. Morris, 1 Vr. 160.

(3.) It is true that there are some townships which may, under special charters, have town committees vested (like West Orange township, in Essex county,) with legislative power almost equal to that with which common councils are endowed; but these are exceptions to the rule. Townships, *qua* townships, under the general law of this State, have nothing that can with propriety be designated "a legislative or governing body."

Let us notice the ordinary powers of a town committee supposed to constitute it a "legislative or governing body."

(a) The power to *superintend the expenditure of money* raised for the use of the township, and *examining and reporting on accounts and vouchers.*

What *legislative or governmental* prerogative is involved in the power referred to?

10

20

30

40

(b) The function of *approving the collector's bond*.

Possibly there may be a *scintilla* of *judicial* power involved, but no *legislative* or *executive* power.

(c) The *power to call a special town meeting* is purely *clerical*, and implies the *absence* of the power contended for. Why should a "legislative or governing body" need to call a special town meeting?

10 (d) The power (in the chairman) to sign bonds, is merely clerical, and even of a lower grade than the power to approve bonds.

(e) The power to make contracts is a power possessed by every body of sound mind, and is vested more largely in the overseer of the highways than in the town committee.

20 (f) Without taking time or space to comment on each instance cited, of which the foregoing are fair specimens, a single remark may be made concerning the powers conferred by the act of 1880, (P. L. 199,) which constitute the nearest approach to legislative or governmental power.

It will be noticed that the powers conferred have relation to the preservation of the *peace*, the *public health* and the *public highways*, such as are possessed by justices and constables, overseers of the highway, and boards of health.

30 But can any one seriously argue that the possession of such incidental and meagre *police* powers as these, transforms a mere *committee* of the township into a "legislative or governing body," within the meaning of the act in question?

(4.) Besides, do townships need the intervention of "Commissioners of Taxation" "*for protecting property * * * from fire,*" or "*for the support and maintenance of a police force,*" or "*for keeping the highways and streets * * * in safe condition for public use*"—unless the overseer of the highways should (like the "assessor") happen to be a nullifier as well as a repudiator, and
40 decline to *warn out the inhabitants*?

(5.) It must be conceded, then, that while the act may be applicable to a few incorporated cities, towns or boroughs, it withholds its supposed benign and saving influence from the numerous townships that constitute by far the greater portion of the State.

Second. Again, the act, limited to a few localities, is applicable to *them* ONLY UNDER EXCEPTIONAL CIRCUMSTANCES AND REMOTE CONTINGENCIES, viz., "in cases where the local or municipal authorities fail to provide for the performance of such duties." 10

(See *Title* and *Section 1.*)

1. It would presumably be either such a "failure of justice," or "defect of police," as no prerogative writ of mandamus could remedy—such as would amount to "nullification," not only on the part of the "local or municipal authorities or officers," but also on the part of the great body of citizens within the limits of the "incorporated city, town or municipality"; or else it would be a *passive mode of election* provided by the act, whereby a repudiating municipality might peaceably nullify or suspend the "general laws" on the subject of taxation, and come under a *special law* more acceptable, because less burdensome. 20

2. Can an act of this character, limited to a municipality in an attitude either of defiance or nullification of "general laws," be deemed even a law ("something permanent, uniform and universal,") much less a general law? 30

3. Can there be *two* incompatible "general laws" in force in the same community, at the same time, relating to the same subject matter?

Notice section 8, which enacts "that taxes levied for the purposes enumerated and defined in this act shall be valid, notwithstanding they may be assessed or levied by said commissioners, prior or subsequent to the time fixed by EXISTING LAWS." 40

Notice a further recognition of "the *existing laws*" in section 9.

Of course the "*existing laws*" are the *general laws*, for the assessment of property, which operate, and must, in order to be constitutional, operate *throughout the whole State*, not only in cities, towns and municipalities, *but also in townships, and wherever there is property to be assessed.*

10 If, then, property is assessed under section 8, (for example,) by these commissioners "*prior or subsequent to the time fixed by existing laws,*" *i. e.* ("general laws,") is it assessed under or in accordance with "general laws"?

Third. Besides, property assessed under the act in ques-
20 *tion, is not assessed by "UNIFORM RULES," i. e. by rules uniform with those prescribed by the "general laws," in accordance with the constitutional requirement.*

1. The very object of the act is to exempt a particular "*municipality*" in certain contingencies, not only from subjection to "*general laws,*" but also from conformity to the "*uniform rules*" prescribed in those "*general laws,*" in relation to the assessment of property.

2. A perusal of the act will show how careful it is
30 to exclude the operation of the rule of uniformity in the repudiating municipality, by the frequent use of the phrase, "*in pursuance of this act,*" and "*under this act.*"

In fine, the act in question instead of being a "*general law,*" is a *special, temporary substitute* for the "*general law,*" *applicable only to a particular locality, and to that only in a possible contingency.*

It is not a general law within the meaning of the constitutional provision, as construed by any decision from
40 *Van Riper vs. Parsons*, 11 Vroom, to the latest decision

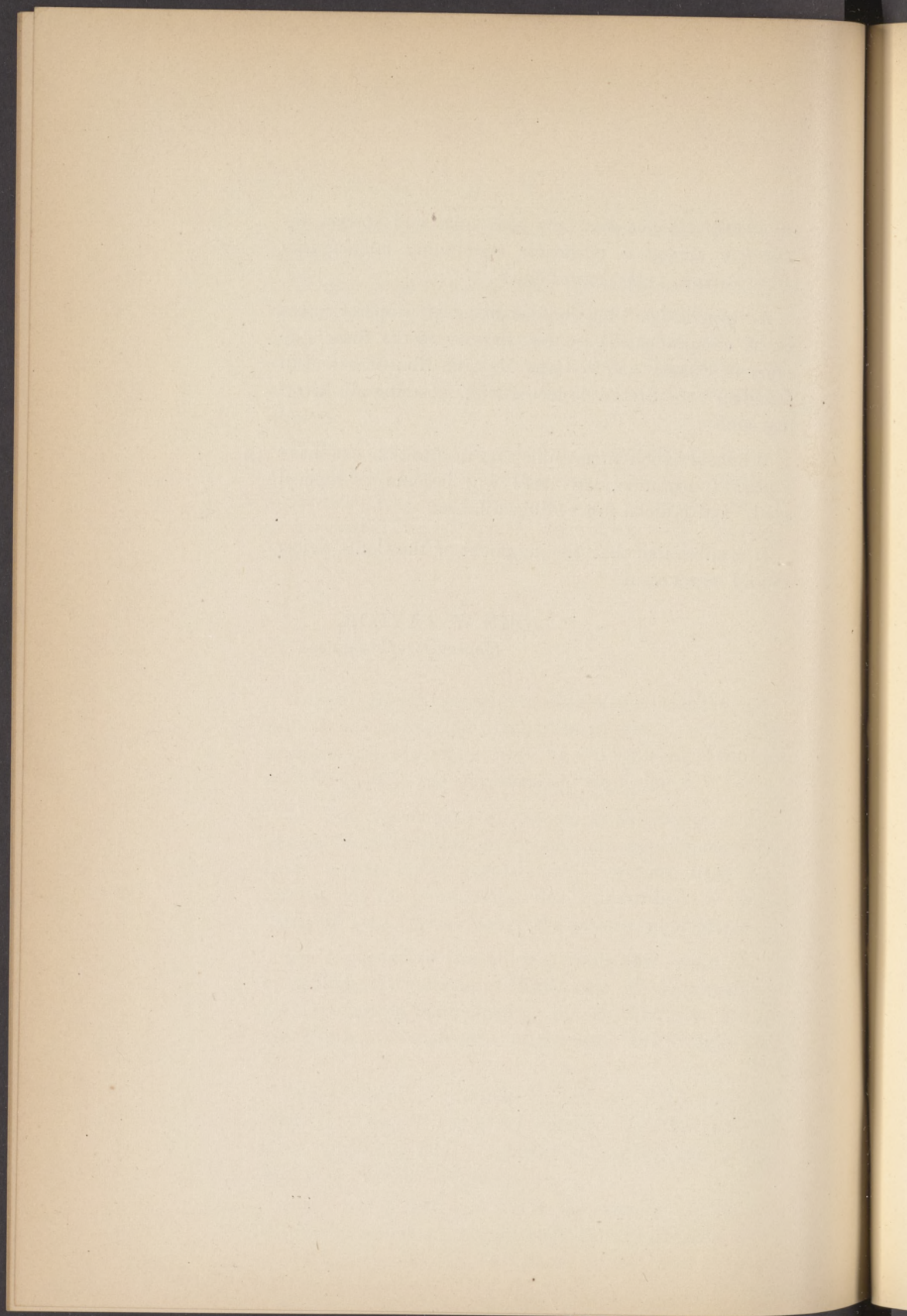
of this Court; but is an act both *local* and *special*, intended to exempt a particular repudiating municipality from obedience to the general law?

A "general law" for the assessment of property, must be as comprehensive as the territory of the State, the same in Sussex and in Cape May, in Elizabeth and in Camden, "the State's collected will," coercing all, favoring none.

Whenever such an act like that in question can have 10 a *general* operation, law itself will become a "rope of sand," and judicial proceedings a farce.

It is submitted that the judgment of the Court below should be reversed.

JOHN W. TAYLOR,
Counsel for Prosecutors.



CHAPTER LVIII OF LAWS OF 1884.

AN ACT to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities or officers fail to provide for the performance of such duties.

SECTION 1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That whenever in any incorporated city, town or municipality in this State, the local authorities, boards or officers authorized by law to assess and levy the taxes enumerated and defined in section five hereof, shall not be in existence and qualified to act at the time when by law assessments or valuations of taxable property may be commenced; or whenever such local authorities, boards or officers shall for any cause whatever neglect or fail to commence the assessment or valuation of property for the purpose of taxation for the space of ten days after the time fixed by law when taxes become a lien upon land in such city, town or municipality; or shall neglect or fail to levy the taxes specified in section five hereof at the time required by law, it shall be the duty of the Governor, in either of the said three cases, to cause a notice to be given the mayor of such city, town or municipality, if there be any such officer,

or to the president or chairman of the legislative or governing body, if there be no mayor, calling attention to the fact that the local authorities, boards or officers authorized to levy such taxes are not in existence and qualified to act as aforesaid, or that they have neglected to commence the assessment and valuation of property, as aforesaid, or that they have neglected or failed as aforesaid to levy said taxes, which notice shall further state that unless proceedings be duly taken to make the assessment, valuation or levy within ten days after the giving of the notice, that the Governor will appoint commissioners of taxation under this act to make the assessment and levy of taxes as herein provided. If the Governor at the expiration of said ten days shall be satisfied that the said vacancies still exist, or that the said local authorities or boards or officers have not commenced the assessment and valuation of property for taxation, or that said taxes have not been levied at the time required by law, it shall thereupon be the duty of the Governor to appoint and commission three freeholders, who shall be residents of such city, town or municipality, to be known as "commissioners of taxation," whose duty it shall be under the authority of this act to assess and levy the taxes specified in section five hereof, as herein provided, and to discharge all other duties required hereby.

2. *And be it enacted*, That it shall be the duty of the said Commissioners to meet and organize by the election of a chairman and secretary immediately after their appointment, and proceed to assess all the property in the city, town or municipality subject to taxation at its full and fair value; they shall tabulate and arrange lists in suitable books, which shall exhibit in alphabetical order, or otherwise, the names of all per-

sons, firms or corporations liable to be assessed to pay any tax, together with the value, enumerations and assessment of the objects subject to taxation, for which each person, firm or corporation is liable, and complete the same at a date three weeks prior to the annual meeting of the assessors of the county; and at least four weeks prior to the meeting of the assessors of the county, the said Commissioners shall give notice by advertisement in at least one newspaper, published or generally circulating in said city, town or municipality, that the books containing said lists will be open for public inspection, examination and correction, at some suitable place therein, for two weeks, being the second and third weeks preceding the meeting of the assessors of the county, during which time the said Commissioners shall consider all complaints touching such assessments, and make corrections therein; but no assessment shall be increased during said period of two weeks without a previous notice in writing of three days to the party interested; and it shall be lawful for said Commissioners to require all parties liable to taxation to render an account of their taxable property in such manner as they shall direct, and to require by summons the attendance of witnesses, and the production of books and papers, and to enforce obedience to such requirements in the manner now provided by law in such city, town or municipality.

3. *And be it enacted*, That the said Commissioners shall attend all the meetings of the assessors of the county, and immediately after the adjournment of the annual meeting of said assessors the Commissioners shall proceed to fix such a percentage upon the gross valuation of the taxable property in such municipality for the current year as will produce the amount of tax required to be raised in said year

for the purposes specified in this act, which shall be declared by them to be the rate of taxation for said year, and they shall complete the said lists and deliver the same within three weeks from the time of fixing the rate, to the officer or officers of the city, town or municipality whose duty it is to collect taxes levied therein.

4. *And be it enacted*, That it shall be the duty of the Commissioners to make out the bills or notices of demand of the payment of said taxes, and notices of the meeting of said Commissioners as hereinafter provided, and shall forthwith serve or cause to be served, such bills and notices on all resident taxpayers, and mail the same to all non-resident taxpayers whose residences are known, and the said Commissioners shall meet at the time and place stated in said notice (which shall be within thirty days after the delivery of the said books to the officer or officers whose duty it is to collect taxes), and shall hear and determine by a vote of a majority of the Commissioners, appeals from said assessments by all persons who shall make it appear by affidavit to the satisfaction of the Commissioners that they were absent from the municipality or disabled by sickness from appearing during the second and third weeks preceding the meeting of the assessors of the county, and the said Commissioners shall meet from day to day until all applications shall be disposed of, to hear said appeals, and shall deliver a particular statement of all taxes increased or remitted by them to the officer or officers for the collection of taxes.

5. *And be it enacted*, That the Commissioners appointed in pursuance of this act shall have power to levy taxes for such sums as they shall deem expedient for the following and no other purposes :

I. For the support of public schools and the repair of school houses.

II. For protecting property within such city, town or municipality from fire.

III. For the protection and maintenance of the public health within such city, town or municipality.

IV. For the maintenance and support of the poor.

V. For the support and maintenance of a police force within such city, town or municipality.

VI. For keeping the highways and streets within the limits of such city, town or municipality in a safe condition for public use.

VII. For the expenses of assessing and collecting the taxes levied under this act, and in addition thereto a sum to meet deficiencies not exceeding ten per cent. of the sums required to be raised for the above stated purposes.

All taxes levied in pursuance of this act shall be applied solely to the purposes for which they were levied ; and it shall be unlawful to appropriate or use or direct or order their appropriation or use for any other purpose or purposes whatever.

6. *And be it enacted*, That no tax levied in pursuance of this act in any one year for all purposes shall exceed one and one-fourth per cent. of the assessed value of the property subject to taxation in the same year.

7. *And be it enacted*, That all taxes levied in pursuance of this act shall be collected and received

by the appropriate officers of the municipality according to the laws in force for the collection of taxes therein, and they shall give bonds to the State of New Jersey in such sum as the Governor shall direct and with such sureties as he shall approve for the faithful performance of their duties under this act. It shall be the duty of the officers to whom warrants for the collection of taxes shall be directed and delivered to seize and sell so much of the personal property belonging to any delinquent as may be found on the premises from which any tax is due for either real or personal property, and the tenants or other persons in possession or having the care of any lands or tenements and their goods and chattels shall be and they hereby are made liable for the payment of taxes which shall be imposed on the said lands under this act; and in all cases when any tenant shall owe any rent for real estate occupied or rented by him on which any tax levied in pursuance of this act may be due, said rent shall be paid to the collector of taxes in discharge of said tax, or so much thereof as shall be necessary to satisfy the amount of tax so due; and if any such tenant or other person shall pay, or his goods and chattels shall be levied on and sold to pay any such tax, it shall be lawful for him to deduct the sum so paid out of the rent, or to recover the same from the landlord or owner by action of debt with costs.

8. *And be it enacted*, That taxes levied for the purposes enumerated and defined in this act shall be valid, notwithstanding they may be assessed or levied by said Commissioners prior or subsequent to the time fixed by existing laws.

9. *And be it enacted*, That taxes levied in pursuance of this act shall be collected, paid over, dis-

bursed, appropriated and apportioned *pro rata* among the objects herein named and expended by the same officers or bodies, and in the same manner, as if they had been levied by the board or officers whose duty it was under the existing laws to have levied the same, and all taxes levied on real estate shall be a first lien thereon prior to all other encumbrances. This act shall not be construed to repeal, modify or affect the power to collect or the mode of collecting taxes, or of selling real estate for unpaid taxes, or of paying over, holding, disbursing, appropriating, apportioning, and expending the same, except so far as is otherwise expressly provided therein.

10. *And be it enacted*, That each Commissioner appointed under this act shall, before he enters upon the duties of his office, and within ten days after his appointment, take and subscribe an oath of office faithfully to discharge his duty under this act, and file the same in the office of the Secretary of State, and he shall, unless sooner removed by the Governor, hold office for the term of one year from the date of appointment, except in case of an appointment to fill a vacancy caused by the death, resignation or removal from the city, town or the municipality of any Commissioner, and in such cases the appointment shall be for the unexpired term only, and at the expiration of one year from the time when the Commissioners shall be first appointed, and annually thereafter, they shall be eligible to re-appointment, or others may be appointed in their place, as provided in the first section of this act. The Governor shall have power to fill all vacancies, whether occasioned by death, resignation or removal.

11. *And be it enacted*, That whenever the Governor, after the appointment of such Commission-

ers, shall be satisfied that any such city, town or municipality, through its local and proper officers, has duly caused to be levied for the year the said taxes herein enumerated and defined, he shall revoke the commissions of the said "Commissioners of Taxation" for the said city, town or municipality, and shall not appoint other Commissioners until the happening of one or more of the conditions specified in the first section hereof.

12. *And be it enacted*, That when Commissioners shall be appointed and shall have levied taxes in pursuance of this act for any given year, the local officers or board of such city, town or municipality shall not for the same year levy taxes for any of the purposes for which taxes have been levied under this act.

13. *And be it enacted*, That the said Commissioners and all officers, bodies or boards who shall be concerned in the collection, holding, disbursing, paying over and expending or directing the expenditure of the taxes or the proceeds of the taxes levied in pursuance of this act, shall be for all purposes of this act, and as respects said taxes and their proceeds, the officers of the State, and any official bonds given or to be given by them shall inure to the benefit of the State as well as to any person or corporation interested therein.

14. *And be it enacted*, That the said Commissioners shall be paid for their services such compensation as the Governor shall determine, not exceeding six per cent. of the amount of taxes levied under this act in the same year, which compensation shall include disbursement for all clerical assistance, stationery and other necessary expenses; and the officers who shall collect the said taxes shall receive for their services the fees and salaries now al-

lowed to them by law for similar services in the municipality, and in lieu thereof, which compensation, fees or salaries shall be levied and paid out of the taxes collected under this act.

15. *And be it enacted*, That all acts and parts of acts, general, special or local, inconsistent with the provisions of this act, be, and the same are hereby repealed, and this act shall take effect immediately.

Approved March 20, 1884.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE,
JAMES REID *et al.*,
Pros.,
and Plaintiffs in Error, } *On Certiorari.*
vs.
JAMES T. WILEY *et al.*, Com-
missioners of Taxation,
Defendants.

Brief for Defendants.

I.

This suit, we have been told, was begun "to test the constitutional validity" of an act of the last Legislature, which was passed unanimously by both Houses, and approved by the Governor. The inquiry may have a practical character, but, if so, it has not been disclosed. The nominal prosecutors do not appear to have any interest in the question which they make bold to raise, or to care which way the Court shall decide it. No testimony has been taken, and it is not known whether "Reid *et al.*" are genuine litigants acting in good faith to defend themselves from a fancied injury, or whether they are put forward by others, who are ambitious for litigation, but do not care to appear as prosecutors in their own proper persons. There is nothing in the case to show where either of the nominal prosecutors reside. It does not appear that either of them owns a dollar's worth of taxable property in the city of Elizabeth.

The writ of *certiorari* was granted on the seventh of June last, and made returnable on the ninth. On the sixteenth of that month the affidavits on which the writ was granted had not been filed in the office of the Clerk. No copies have ever been served on, or read by, anyone connected with the defense; but if they still exist they cannot be used on the argument of this cause in the place of testimony.

Baldwin vs. Flagg, 14 Vr., 495.

State vs. Smith 15th Vr. 449-450

The case is not only destitute of evidence to exhibit its true character; but there is nothing in the return to give the prosecutors a standing in Court.

As we regard it, therefore, the first question to be disposed of is: Can *strangers* come into the Supreme Court of New Jersey, with no apparent interest at stake, and ask the Court on *certiorari* to declare an important statute to be void, which provides for raising public revenue to support the Government of the State?

When it is remembered that a writ of *certiorari* is a *supersedeas* (a faculty of the writ suspended in respect to this case), or even without this fact in mind, the question will at once appear to be of more than ordinary importance to the administration of government.

In the case of Wellington *et al.*, petitioners, &c., 16 Pick., 87, SHAW, C. J., said at page 96:

“Perhaps, however, it may well be doubted, whether a formal act of legislation can ever, with strict legal propriety, be said to be void; it seems more consistent with the nature of the subject, and the principles applicable to analogous cases, to treat it as voidable. But whether or not a case can be imagined, in which an act of the Legislature can be deemed absolutely void, we think it quite clear, that when such act is alleged to be void, on the ground that it exceeds the just limits

of legislative power, and thus injuriously affects the rights of others, it is to be deemed void only in respect to those particulars, *and as against those persons whose rights are thus affected. Prima facie*, and upon the face of the act itself, nothing will generally appear to show that the act is not valid ; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power, to pronounce it void as to him, his property, or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the Legislature, therefore, concurs with well established principles of law, in the conclusion that such act is not void, but voidable only ; and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and *not by strangers*. To this extent only is it necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, are Courts of Justice called on to interpose."

Cooley Con. Lim., 163-4.

"The validity of an act can be called in question only by those having a direct interest in the rights supposed to be injuriously affected by its provisions, and no one can interpose to ask for the interference of this Court, to declare an act void, or to prevent its full operation, except so far as may be necessary to support and protect his own property or rights from unauthorized injury or invasion."

BIGELOW, *Ch. J.*, 6 Allen, at p. 357.

On the authority of the above cases, and the cases of

State, Kean, Pros. *vs.* Bronson, 6 Vr.,
468, and

State, Montgomery, Pros. *vs.* Trenton,
7 Vr., 79,

we respectfully submit that the writ should be dismissed.

II.

If we assume that the suit is being prosecuted to avert an injury which the parties believe to be threatening, and if it shall be found that the prosecutors have a standing in Court, the question to be considered is whether Chapter LVIII, of the laws of the Legislature of 1884, is plainly in conflict with Article IV, section 7, placitum 12 of the Constitution of the State, which is relied on by the prosecutors. We think the validity of the statute in question is beyond all doubt; but even if its validity were doubtful the defendants would be entitled to a decision in their favor.

“The opposition between the constitution and the law must be such that the Judge feels a clear and strong conviction of their incompatibility with each other.”

MARSHALL, *Ch. J.*, 6 Cranch, at p. 128.

“But if I could rest my opinion in favor of the constitutionality of the law on which the question arises on no other ground than this doubt, so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt.”

WASHINGTON, *J.*, 12 Wheat., at p. 270.

“This declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.”

WAITE, *Ch. J.*, 99 U. S., at p. 718.

“When called upon to pronounce the invalidity of an act of legislation passed with all the forms and solemnities requisite to give it the force of law, Courts will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light on the subject, *and never declare a statute void*, unless the nullity and invalidity of the act are placed in their judgment, beyond reasonable doubt.”

SHAW, *Ch. J.*, 16 Pick., at p. 95.

“In determining a question whether a statute is within the legitimate sphere of legislative action, it is the duty of Courts to make all reasonable presumptions in favor of its validity. It is not to be supposed that the law-making power has transgressed its authority, or committed, under the form of law, a violation of individual rights. When an act has been passed with all the requisites necessary to give it the force of a binding statute, it must be regarded as valid, unless it can be clearly shown to be in conflict with the constitution. It is, therefore, incumbent on those who deny the validity of a statute, to show that it is a *plain and palpable violation of constitutional right*. If they fail to do so, or leave room for a reasonable doubt upon the question whether it is an infringement of any of the guaranties secured by the Constitution, the presumption in favor of the validity of the act must stand. *Besides, it is a well settled rule of exposition that in considering whether a statute is within the limits of Legislative authority, if it may or may not be valid according to circumstances, Courts are bound to presume the existence of those circumstances which will support it and give it validity.*”

BIGELOW, *Ch. J.*, 16 Gray, at p. 422.

“It is to be remembered that the finding of an uncertainty with respect to the subject under consideration is to resolve the question against the defendant. The power of the Legislature cannot be circumscribed except upon sure grounds. Such is the familiar rule of construction.”

BEASLEY, *Ch. J.*, 13 Vr., at p. 234.

Potter's Dwarris, 64-66, 80-81.

Cooley Const., Lim., 182, 183.

People *vs.* Orange, 17 N. Y., 235, 241.

Desty on Tax., vol. 1, p. 86-7.

It may be proper at this point to call to mind the difference between the power of State legislatures and of Congress.

"We look in the Constitution of the United States for *grants* of legislative power, but in the Constitution of the State, to ascertain if any limitations have been imposed upon the *complete power* with which the legislative department was invested at its creation."

Cooley Con. Lim., p. 173.

III.

TWO POINTS are urged on the part of the prosecutors.

FIRST.—The statute, it is said, is not broad enough to include townships, and, therefore, it is not a "general law" within the meaning of the constitution (Art. 4, Sec. 7, Pl. 12). It seems to be conceded that the act applies to all municipalities except townships, and it is not denied that a township is a municipality. The term "town" includes "township."

11 Vr., 555; 13 Vr., 487.

The statute in its title expressly applies to "cities, towns and municipalities," and these comprehensive words are repeated in seven of the fifteen sections of the act. In three other sections, the fourth, seventh and fourteenth, the word "municipality" is used in the broadest sense, that is, including every political corporation in the State.

But if the act did not apply to townships it would not be subject to the objection which counsel makes in this particular.

“ It has been decided in this State, that a law, to be neither special nor local, need not apply to all towns—that it will be general if it apply to a class of towns. Thus, cities have been held to be included among “towns” as here intended (11 Vr., 1, *Ib.* 550), and so are townships said to be (*Ib.* 555); and *doubtless a law embracing all cities, or all townships, would be constitutional*; for these bodies, because of their marked peculiarities, are, by common consent, regarded as distinct forms of municipal government, and so constituting classes by themselves” (13 Vr., 487.)

But the statute in question *does* apply to townships. The notice provided in the first section “shall be given to the Mayor of such city, town or municipality, if there be any such officer, or to the resident or *chairman* of the legislative or governing body, if there be no mayor.”

As the law now stands, a township committee in New Jersey is *both a legislative and governing body*.

The powers of town committees, even when most limited, were to some extent governmental powers, and were enlarged by legislation from time to time as the inconveniences of government by almost pure democracy increased. More than twenty years ago it was said by a Justice of the Supreme Court in giving an opinion :

“ The township committee are also elected under the provisions of that act, *and this committee is not made up of mere machines*, whose every possible motion is particularly presented [prescribed] and outside of which they cannot go ; but they are evidently intended to be elected at that time by the corporators, so to speak, as a kind of directors, to manage especially the financial affairs of the corporation. They are authorized to act through a quorum like most, if not all, other boards of directors. Their election is provided for in a clause of the section, apart from those which provide for the election of other officers ; and the duty is im-

posed upon this committee, not only of examining, inspecting, and reporting to the town meetings the accounts and vouchers of the township officers, but also *to superintend the expenditure of any money raised by tax for the use of the township.*"

1 Vroom, at p. 170.

"In this country, until comparatively a recent period, municipal corporations have been created singly, each with its special or separate charter passed by the Legislature of the State. These charters, in all of the States, were framed after the same general model; but in the extent of the special powers conferred, and in the peculiar constitution of the *governing body*, and the like, there was great variety."

Dillon, Munic. Corp., sec. 39.

Within recent years, and particularly in this State, very extensive powers of local government have been conferred by legislation on township committees, whereby townships have been changed from almost pure democracies to representative governments, wherein the inhabitants vote by ballot, and township committees exercise now many of the powers usually given to common councils of cities. A glance at the Revision of 1877, and the legislation since, will make it clear that a township committee *is*, as we have stated, both a legislative and a governing body. To "govern," according to WEBSTER, is "to exercise authority; *to administer the laws*; to have the control." Can it be said that a township committee is not a "body" authorized by law "to exercise authority; to administer the laws, and to have the control," especially over the financial affairs of the township?

"The committee shall have authority, and it is hereby rendered their duty, to examine, inspect and report to the annual or town meetings the accounts and vouchers of the township officers, and *to superintend the expenditure of any moneys raised by tax for the use of the township.*"

Rev. p. 1195, sec. 12.

“The said committee when duly elected, appointed and qualified, shall have power and authority to appoint one of their number to be CHAIRMAN OF SAID COMMITTEE, and one to be treasurer thereof.”

Ib. p. 1202, sec. 51; see also sec. 52 and Laws 1878, p. 374.

Hastily running over the general township law (Revision, p. 1190, &c.), it will be observed that in addition to the authority that may be exercised by township committees, to which reference has been made, they may appoint a person to fill a vacancy in a township office until the next annual town meeting (secs. 13 and 45). They may call a special town meeting whenever, in their opinion, it shall be necessary (sec. 15). The official bond of the collector shall be approved by the township committee (sec. 25). In case of a failure of the inhabitants to transact the usual business at the annual town meeting it shall be done by the committee, including the determination of the amount to be raised by tax (sec. 45). Unexpended balances of revenue remaining in the hands of any person or persons shall on demand be paid to the treasurer or township committee to be held subject to the order of the committee, “and the committee may appropriate and use the same for the benefit of said town or township as they may deem best” (sec. 53). “That whenever it is deemed expedient to issue town or township bonds for any lawful purpose, such bonds shall be issued by such committee and shall be signed by the *chairman* thereof” (sec. 54). The committee may make a contract with any aqueduct board for a supply of water” (secs. 59 and 65). They may initiate proceedings to levy assessments for local improvements (sec. 61). They may issue bonds to obtain supply of water and construct and acquire necessary works (secs. 66, 67, 68, 69).

In the year 1878 it was enacted that township committees may change the time of holding elec-

tions (L., p. 31), may levy assessments for expense of obtaining a supply of water (p. 135). They must inspect fire apparatus (p. 221), may issue bonds for school buildings (p. 255), may increase tax rate (p. 294), may levy assessments for street improvements (p. 301), may construct sidewalks and assess the expense (p. 359).

In the year 1879, town committees were empowered to renew bonds in such sums as they should determine by "ordinance or resolution" (L., p. 22), to make rules and regulations for licensing and regulating hacks, omnibuses, stages, carriages and vehicles used for the transportation of passengers and to fix the license fee for the same, and prohibit unlicensed persons from acting in the capacity of hackmen," and to *prescribe penalties* for violations of the act (p. 84). They were further authorized to purchase fire apparatus, purchase or lease lands or buildings, to "designate and appoint the members of all fire companies and organizations, who shall be continued as such members during the pleasure of the committee" (pp. 109 and 187). "It shall be lawful for the township committee of any township in this State, within thirty days after their organization in each year, to *fix by ordinance* the annual salary and compensation to be paid to each person elected by the people and time and manner of the payment thereof" (p. 219).

In the year 1880, township committees were empowered to fix the amount of penal interest to be paid by delinquent tax payers, "by a general order or resolution," and direct its collection (L., p. 40), to employ "competent engineers to make plans and specifications for sewers, drains, etc.," to issue certificates of indebtedness, to construct extensive drainage works, make awards for land taken, and cause assessments for the expenses to

be made (p. 69), to adopt "rules and regulations, altering and amending the same from time to time as may be deemed necessary respecting the use, management, care and custody of the township fire apparatus" (p. 117), to fill vacancies in the office of overseer of the highways in road districts (p. 123). Very extensive authority was conferred on township committees by an act entitled "An Act to increase the powers of township committees," approved March 11, 1880 (L., p. 199). In the second section it was enacted that for the enforcement of the foregoing provisions of the act, "the town committee may enact and pass any *ordinances*, and may in the name of the clerk of the township prosecute offenders against the provisions of this act or of the said ordinance," &c. (See also Laws of 1880, pp. 268 and 302).

Since the year 1880, other legislative and governing powers have been conferred upon township committees by the Legislature similar to those which have been indicated above. We think enough has been set out to establish the proposition that a township committee in this State is both a legislative and a governing body, having such an officer as a chairman. Further powers may be found in the general road and tax laws and in other statutes passed since 1880, which relate to the subjects indicated.

1881,	on page 135,	ordinances.
"	"	144, bonds.
"	"	274, assessments.
1882,	"	42, sidewalks.
"	"	54, public buildings.
"	"	77, appropriation of money.
"	"	163, sidewalks, assessments.
"	"	179, assessments.
"	"	212, compromise of taxes and assessments.
"	"	241, establishing grades of roads by ordinance.

- 1883, " 39, supervision of taxes.
 " " 39, employing police officers.
 " " 129, creating sinking fund.
 " " 189, controlling police.
 " " 199, changing name.
 1884, " 71, controlling roads.
 " " 90, changing name.
 " " 130, employing policemen.
 " " 161, making contracts.
 " " 168, employing police.
 " " 194, in which a township committee
 is called a "*governing body*."
 " " 210, ordinances.

THE SECOND POINT urged by the prosecutors is, that the act is not in harmony with that clause of the constitution which declares that "property shall be assessed for taxes by general laws, and uniform rules, according to its true value."

The meaning of this clause of the constitution is very plain, and has never heretofore been called in question for the reason now alleged. It does not mean, as the prosecutors' counsel seems to think, that but one general statute shall exist in New Jersey, providing uniform machinery by which all taxable property shall be assessed for taxes, and creating a uniform set of officers who shall make the assessment. If that were its meaning there is probably no city in the State in which a legal tax can be laid, except under the Act of 1884. Even the "Act for the taxation of railroad and canal property," ch. 101, L. 1884, and ch. 159 of the laws of the same year, would be invalid.

It has been held that this clause of the constitution executed itself *proprio vigore*, and repealed all inconsistent laws. (State North Ward Bank *vs.* Newark, 10 Vr., 380.) Yet it is well known that nearly all cities have different machinery provided in their various charters by which property is assessed for taxes. (L. 1869, p. 1255; 15 Vr., 467; 13 Vr., 435.)

Taxes have been assessed by these various officers and boards for eight or nine years since the clause which we have quoted became a part of the Constitution, without being questioned for the reason now alleged. The clause means only that *uniform measures of value* shall be used in making the assessment of property by all boards and officers who are authorized to act as assessors. This is the theory upon which the North Ward Bank case was decided, and it was this interpretation of the clause which repealed "the five county act" so clearly that no one ever claimed that the act remained in force after this amendment to the Constitution went into effect. It was for this reason that the adoption of the amendment was opposed in the five counties when it was submitted to the popular vote.

It is not necessary to the validity of a statute which is general in form, that it should be actually in continual practical operation everywhere throughout the State. In case of a failure to elect a township officer, for example, or in case of his death, resignation, or removal, the town committee may appoint his successor under the provisions of a general law applicable in all townships to the same state of facts. (Revision 1195, sec. 13.)

So, in case of the death of a sheriff during his official term, or when a vacancy occurs in a sheriff's office, the Governor, upon being notified in a prescribed manner, may make an appointment to fill the vacancy under a general law. (Revision 1105, sec. 37.)

Numerous statutes, such as these, exist in this State and in other States. They are undoubtedly general laws, although many years may, and often do, intervene between instances of their practical application.

The definition of a general law, within the meaning of the constitution, which is most frequently

used as a test of the validity of legislation in this respect is the following :

“ A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law.

Van Riper *vs.* Parsons, 11 Vr., 123.

In that case a statute general in terms, which in fact applied only to one city in the State, and could never apply to any other, was held to be constitutional. (L. 1877, p. 54, Rev., p. 1372.) The classification, of course, must not be arbitrary, but reasonable, and when it is reasonable the number of objects to which the law applies has no effect upon its validity. With this principle in mind the Court said of the statute under consideration in the above case :

“ The law in all its provisions is general ; broad enough to reach every portion of the State. * * * A law so framed is not a special or local law, but a general law, without regard to the consideration, that within the State, there happens to be but one individual of the class, or one place where it produces effects.” P. 125.

For the same reason an act entitled “ An Act in relation to assessments in townships,” Rev. 1204, was held to be valid, although it must have applied to a few townships only, that is, to those townships in which assessments had been laid on an illegal theory, and according to special laws.

Van Riper *vs.* N. Plainfield, 14 Vr., 349.

The statute under consideration in the present case applies, without distinction, limitation or exception, to *every* municipality in the State that now fails, or hereafter shall fail, to execute its functions as a governmental agent of the State. To hold that the act in question is invalid, would be

to declare that the State government of New Jersey has no control over its own instruments of government—that, once having delegated a part of its sovereign power to one of its own creatures for convenience of administration, it can never revoke that power, or transfer it to a more efficient agent for any reason. It would be difficult to think of a more fatal and unwarranted blow that one department of the State government could inflict upon another than to establish such a doctrine. Experience has shown that the policy of stripping a State of its sovereign powers by construction of contracts has caused much more injury than benefit. The authorities are all in favor of the power of the Legislature to pass the act now called in question by the prosecutors. No case has been cited in which the power is denied. The principle upon which the act rests is too familiar to justify discussion over it.

In the recent case of *Merriwether vs. Garrett*, 102 U. S., 472, the Court said, at page 511 :

“Municipalities are mere instruments of the State, for the more convenient administration of local government. Their powers are such as the Legislature may confer, and these may be enlarged, abridged, or entirely withdrawn, at its pleasure. *This is common learning, found in all adjudications on the subject of municipal bodies, and repeated by text writers.* There is no contract between the State and the public, that the charter of a city shall at all times be subject to legislative control; *all persons who deal with such bodies are conclusively presumed to act upon knowledge of this power of the Legislature.*”

See also,

- U. S. *vs.* R. R. Co., 17 Wall., 322, 329.
- Tinsman vs. D. B. R. R. Co.*, 2d Dutch., 148.
- Gilman vs. Sheboygan*, 2 Black, 510.
- People vs. Draper*, 15 N. Y., 532, 544.

Cooley, Const. Lim., p. 476-8.
 Dillon, Munic. Corp., sec. 66 (3d ed.),
 and cases cited.

The statute which the prosecutors ask to have declared invalid affects only the political faculties of public corporations in certain cases. It relates solely to taxation for the support of government—a subject which is the special province of the Legislative Department, and with which the judiciary is forbidden by the constitution to interfere (Art. III.).

“The Legislature must determine all questions of State necessity, discretion or policy involved in ordering a tax and in apportioning it; must make all the necessary rules and regulations which are to be observed in order to produce the desired returns, *and must decide upon the agencies by means of which collections shall be made.*”

COOLEY ON TAX., p. 34.

The object of the act is definitely stated in its title as the constitution requires.

“AN ACT to provide for and secure the raising of
 “revenue for the execution of the public duties
 “of maintaining public schools, preventing the
 “destruction of property by fire, preserving the
 “public health, supporting the poor, maintaining
 “police and keeping the highways and streets in
 “a safe condition for public use, within the limits
 “of incorporated cities, towns and municipalities,
 “in cases where the local or municipal authori-
 “ties or officers fail to provide for the perform-
 “ance of such duties.”

Argument cannot make its meaning clearer, and no provision of the constitution can be found with which it comes in conflict. The effort of the prosecutors to construe the act to mean something else than it expresses, and from such a meaning to argue against its validity must fail. “Where the

intent is plain there is no room for construction.”

2 Cranch, 386.

IV.

There are other matters stated, here and there, in the brief of the prosecutors' counsel of which the Court will find no trace anywhere in the record. To these remarks we have made no reply, not because they are true, but for the reason that the Court will not consider irrelevant statements thrown out by litigants in an effort to supply the want of argument. We appear to defend three officers of the State, who have been appointed by the Governor, in obedience to the law, for the purpose of executing a public duty of the highest importance. It is only proper, at the present time, to discuss the legal issue on the record, and now before the Court. The policy of the statute which has been attacked is not a question which is open for discussion here. (Cooley C. L., p. 186.) Both the policy and *necessity* of the act can be defended easily in a forum where all the facts are known. If the Court is not familiar with the causes which induced the Legislature to pass this statute without a dissenting voice, and which led the Governor to approve it, and appoint the defendants, that is but another reason why this action of the law-making power, and of the executive, should not meet with injury or destruction at the hands of the Court.

“It is a well settled rule of exposition that in considering whether a statute is within the limits of Legislative authority, if it may or may not be valid according to circumstances, Courts are bound to presume the existence of those cir-

circumstances which will support it and give it validity."

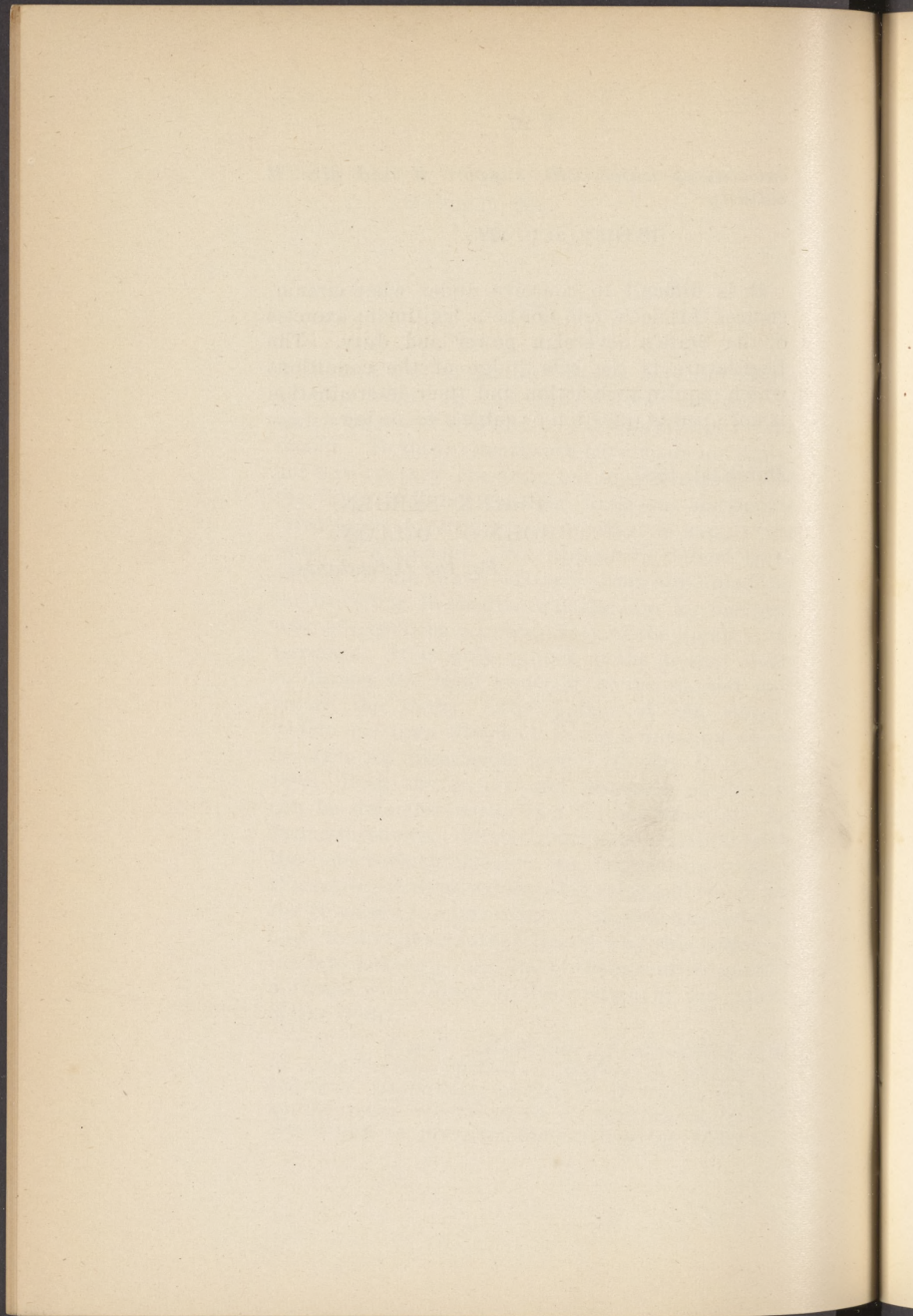
16 Gray, at p. 422.

It is difficult to conceive under what circumstances this act would not be a legitimate exercise of the State's sovereign power and duty. The Legislature is the sole judge of the conditions which require such action and their determination is not open to question or subject to review.

March 3d, 1885.

FRANK BERGEN,
JOHN F. DILLON,

For the Defendants.



New Jersey Supreme Court.

THE STATE,
(*Ex rel.* JAMES J. THOMSON,) }
vs. } *On Mandamus.* 10
THE CITY OF ELIZABETH. }

On reading and filing the affidavit of William H Reynolds and Edwin A. Rayner, and on motion of JOHN W. TAYLOR, of counsel for James J. Thomson,

It is ordered that James T. Wiley, Robert E. Chetwood and Richard Frohwein, commissioners of taxation, do show cause before this Court, on the twenty-third day of June instant, at the hour of 10 A.M., or as soon thereafter as the Court can attend to the same, at the State House at Trenton, why a writ of *mandamus* should not issue directed to them, and commanding them to assess or levy the amount due on the alias writ of execution issued out of this Court, at the suit of the said James J. Thomson against the City of Elizabeth, directed to the sheriff of the county of Union, tested on or about the seventh day of June instant, and commanding him to make or levy the sum of thirty-seven hundred dollars and eighty-one cents, besides execution fees, (less the amount credited thereon,) of the property of the City of Elizabeth, and a copy of which writ was duly served on the said commissioners; and it is further ordered that the said James J. Thomson have leave to take affidavits and other evidences to be used on the argument of this rule, and to issue subpoenas for witnesses.

Ordered in opened Court.

M. M. KNAPP, *J. S. C.*

Dated June 17, 1884.

New Jersey Supreme Court.

	THE STATE, (<i>Ex. rel.</i> THEODORE RUNYON, <div style="text-align: right;"><i>Relator.</i>)</div>	}	
10	<i>vs.</i> JAMES T. WILEY, <i>et al.</i> , COMMISSIONERS OF TAXATION, <div style="text-align: right;"><i>Defendants.</i></div>		
			<i>On Mandamus.</i>

20 Taking of depositions in the above stated cause at the office of John W. Taylor, Esq., on the 23d day of June A.D. 1884, pursuant to a notice to that effect, due and legal service of which was acknowledged by defendants' attorney, in the presence of JOHN W. TAYLOR, Esq., counsel for relator, and FRANK BERGEN, Esq., counsel for

20 defendants.

It was stipulated between the respective counsel, that the depositions should be taken stenographically by the commissioner, and the signatures of the witnesses waived, and that the testimony taken in this case be applicable also to the case of James J. Thomson, relator, *vs.* James T. Wiley, *et al.*, pending in the same Court.

A. B. C. SALMON,
Supreme Court Commissioner.

30 WILLIAM H. REYNOLDS, a witness produced on the part of the aforesaid relator, having been duly sworn, on his oath according to law deposeth and saith :

Direct examination, by Mr. Taylor :

Q Are you under sheriff of the county of Union ?

A Yes, sir.

Q The sheriff is Thomas Forsythe ?

A Yes, sir.

40 Q Were alias executions in these two causes of Runyon against the City of Elizabeth, and Thomson

against the City of Elizabeth, issued, and have you them in your possession?

A Yes, sir; received by the sheriff, June 11, 1884.

Q These are the original executions?

A Those are the aliases.

Q The original alias executions?

A Yes, sir.

Q Did you find any property in the city of Elizabeth whereon to levy?

A No, sir. 10

Q What did you do then?

A Made and served copies of each of them.

Q Upon whom?

A Upon A. B. Carlton, comptroller, June 12; John W. Whelan, treasurer, June 13; James T. Wiley, Robert E. Chetwood and Richard Frohwein, commissioners of taxation, on June 12.

Q They are acting as commissioners of taxation under the law recently passed?

A Under the act of last winter; yes, sir. 20

Q Did you see them more than once?

A Yes, sir.

Q Do you know whether they have assessed the amount?

A No, sir; I do not.

Q Did you ask them to do so?

A Yes, sir.

Q Did they say they would?

A No; made no decided answer; the first time I went I just merely went—(interrupted.) 30

Q The first time; did you go a second time?

A Yes, sir.

Q At my request?

A Yes, sir.

Q What did they say then?

A Well, they—two of them, I believe, showed us the act under which they were appointed, and said that act told them just what to do, and they didn't know whether they had a right to do anything but what they were to do under that act. 40

Q Did you say to them whether or not you would like them to intimate to you whether they would execute the law?

A I told them the reason for your requesting me to go there the second time was, that you wanted a decided answer whether they would or would not

Q What did they say?

A They said they couldn't give any decided answer.

Q Did they say whether they had been advised?

10 A They did not; I asked Mr. Chetwood that; I don't recollect just what he did say; I think he said he had not seen Mr. Bergen since I was there before.

Cross-examination, by Mr. Bergen:

Q Did you receive executions in these cases before these original executions, not aliases?

A One of them was sheriff Ryder's.

Q Did you receive it?

20 A No, sir; I served the copies of Runyon execution a few days before this alias was issued.

Q On these commissioners?

A Yes, sir.

Q Did you ever serve any execution in either of these cases on the Board of Assessment and Revision of Taxes in the city of Elizabeth?

A I did not, but—(interrupted.)

Mr. Taylor: Of course you can't state, then.

Witness: I didn't serve them.

30 Q Do you know whether or not there was a tax levied to pay these judgments, and part of it paid?

A Part of it has been paid to the present sheriff in this Runyon matter; there is a credit on both these aliases.

Q My question was—you didn't answer it entirely—the question was, whether you know, as a matter of fact, that a tax has been levied upon the city of Elizabeth to pay both these judgments?

A Yes, sir.

Q And part of it collected and paid over?

40 A Yes, sir.

Q How much on each one, do you know?

A The credit in the Thomson case is \$2,003.05; something collected since that; I don't know anything about that, how much.

Q How much in the Runyon case?

A There has been \$1,803.93.

It is admitted that in the year 1882, a tax was levied pursuant to a writ of mandamus in the city of Elizabeth to pay the Thomson judgment, and that in the year 1883, a tax was levied in the city in pursuance of a writ of mandamus to pay the Runyon judgment; and the amount credited on the executions, respectively, as has just been stated, were the amounts raised, respectively, by assessment in pursuance of those writs of mandamus, and the rest of it is still uncollected. 10

Mr. Taylor: I shall rely upon the record of the judgments and of the alias executions.

Sworn and examined before me this 23d day of June, 20
A.D. 1884. Signature waived.

A. B. C. SALMON,
Supreme Court Commissioner.

EDWIN A. RAYNER, a witness produced on the part of the aforesaid relator, having been duly sworn, on his oath according to law, deposeth and saith: 30

Direct examination, by Mr. Taylor:

Q You are an attorney at law?

A I am, sir.

Q In my office?

A Yes, sir.

Q Do you remember calling upon the so-called commissioners of taxation in the city of Elizabeth, in company with Mr. Reynolds, the deputy sheriff?

A Yes, sir; I do. 40

Q The last witness ?

A Yes, sir.

Q When ?

A On Friday afternoon—the thirteenth of this month.

Q For what purpose did you call upon them ?

A To make the demand on them that they include the amounts due on the two several writs, in the tax levy.

Q Of the present year ?

10 A Yes, sir.

Q Did you ask for a decision—whether they would not include it in the levy ?

A I did, sir.

Q Did they say they would ?

A They did not.

Q What did they say and do ?

Objected to as irrelevant.

20 Q Did they say whether they thought they could ; just state what they said ?

A Two of the commissioners, when asked the question if they would include the amount due on the various writs under the tax levy, stated that they could not see how it could be done ; they then read the certain specified objects for which they were to raise money under the act under which they were appointed, and I then asked them if their inability to give me a definite answer should be taken as a refusal to include the amounts in the tax levy ; they said they didn't wish to be regarded as saying that, but they couldn't state definitely whether they would or not, but they were willing to obey the direction of the Court, but they couldn't give a definite answer, and wouldn't.

30 Q It was a question with them under the law, was it ?

A Yes, sir.

Q Did they state whether they thought, under the law, they were at liberty to do it ?

Objected to as irrelevant.

A They—two of them, told me, sir, that they couldn't see how it could be done.

Q What law did they refer to?

A Law passed last winter, I think, referred to as bill 467.

Q Under which they were appointed?

A Yes, sir.

Q As they understood the law, they were precluded from raising money for any other objects than those particularly specified in the act? 10

Objected to as leading.

A They stated to me that in reading these several sections, they saw no provision for any such purpose—didn't see how it could be done.

Cross-examination, by Mr. Bergen:

Q You say they didn't refuse to do it?

A No, sir; they didn't refuse.

Counsel: That is all. 20

Re-direct examination, by Mr. Taylor:

Q What do you mean by saying that "they didn't refuse to do it?"

A Because I was unable to get any definite answer from them.

Q But they said they were willing to do so if a court should order them?

A Yes, sir; that is what they said to me.

Sworn and examined before me this 22d day of June, 30
A.D. 1884. Signature waived.

A. B. C. SALMON,
Supreme Court Commissioner.

Relator rests.

Mr. Bergen offers the charter of the City of Elizabeth with all the supplements thereto.

A. B. C. SALMON,
Supreme Court Commissioner.

To the Supreme Court of the State of New Jersey :

I, A. B. C. Salmon, a Supreme Court Commissioner of said Court, do hereby respectfully certify that the proceedings in the above stated cause were had as appears by the foregoing transcript; that it appeared that due and legal notice was served, of the taking of depositions, on the defendants; that the witnesses named herein personally appeared and were sworn before me and were examined and cross-examined as appears; that
10 the respective counsel consented that the testimony should be taken stenographically by the said commissioner, and afterwards transcribed and the signatures of the witnesses waived; that the evidence was declared closed on both sides by the respective counsel on this 23d day of June, A.D. 1884.

A. B. C. SALMON,
Supreme Court Commissioner.

New Jersey Supreme Court.

NOVEMBER TERM, 1884.

THE STATE, (Ex rel. JAMES J. THOMSON,)	}	<i>On Mandamus.</i>	10
<i>vs.</i>		<i>Opinion.</i>	
JAMES T. WILEY, <i>et al.</i> , COMMISSIONERS OF TAXATION.			

Argued June Term, 1884, before Justices KNAPP, PARKER and DIXON.

MR. JOHN W. TAYLOR, for the relator. 20

MR. FRANK BERGEN, and MR. WAGER SWAYNE, and MR. JOHN F. DILLON, of New York, for the respondents.

The opinion of the Court was delivered by—

DIXON, *J.*: The respondents are "Commissioners of Taxation," appointed for the city of Elizabeth, under "An act to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, 30 maintaining police, and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities fail to provide for the performance of such duties," approved March 20th, 1884, (P. L. 1884, p. 84).

The relator holds a judgment of this Court against the City of Elizabeth, and now asks for a mandamus commanding the respondents to levy a tax for the payment of his judgment. 40

In our opinion the respondents have no authority to levy such a tax. All their powers seem to us to be derived from the statute under which they are appointed. The fifth section of this act specifically enumerates all the purposes for which they may impose taxes, and declares that they shall levy taxes for no other purposes, and that the taxes levied in pursuance of the act shall be applied solely to the purposes for which they were levied, and that it shall be unlawful to appropriate or use, or
 10 order or direct their appropriation or use, for any other purpose or purposes whatever. Language could not be more explicit. The enumerated purposes do not embrace the paying of the relator's judgment.

The relator, however, urges that, in connection with this act, must be taken the supplement to "An act respecting executions," approved March 27th, 1878, (P. L. 1878, p. 182,) which devolves upon the "Assessor" of each municipal corporation of the State the duty, under
 20 certain circumstances, of levying taxes to pay judgments against the corporation, and that, by force of the two statutes together, these commissioners are charged with the duty cast upon the "Assessor."

This view cannot be adopted without doing violence to the plain words of the act of 1884, which, as we have seen, so rigorously circumscribe the commissioners' power, and there is no occasion, if even there were any warrant for violating those provisions. Long before the statute of 1878 was passed, there existed in the city of
 30 Elizabeth the office of "Assessor," to the incumbents of which the statute undoubtedly referred. That office still exists, in no wise changed by the act of 1884, and through it the relator is legally entitled to enforce his judgment.

Nor can we approve the suggestion that this limitation of the commissioners' authority under the act of 1884 is unconstitutional, as impairing the obligation of the relator's contract, or depriving him of any pre-existing remedy. The legal duty of paying his debt, and the
 40

legal means of enforcing that duty, remain untouched. It may, indeed, be true, that the necessity under which the City of Elizabeth labored, of resorting to the same machinery as the relator was entitled to employ, in order to levy some taxes which were absolutely essential to its existence, has been in great degree obviated by this Commissioners' act, and thus the probability that the relator would find this machinery ready at his hand for collecting the judgment is lessened; but this necessity formed no part of the creditor's rights, and the effect 10 which its removal produces upon his situation is but an indirect result of the act of 1884; while it is only when legislation operates directly upon the contract or the remedy that it is prohibited by the constitution. *Wolff vs. New Orleans*, 103 U. S. 358, 365.

But if the conclusion could be reached that it was unconstitutional thus to limit the authority of these commissioners, then I think the consequence would be that the whole statute must fall to the ground. For the legislature has in unmistakable terms declared that it 20 designed to create the officials for the purpose of exercising a certain measure of authority and no more; and it has used such precise and positive language to asseverate its will that their power shall not transgress the bounds prescribed, that I am led to believe that, if the question had been presented to the legislature, whether it would confer upon the commissioners the power which we are now asked to command them to exercise, or would refrain from enacting the law at all, 30 the latter would have been the course adopted. The limit of authority seems to have been intended to be an inseparable condition of the authority itself. Now, the power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature. (*Meriwether vs. Garrett*, 102 U. S. 472.) If, therefore, the legislature in an original delegation of the taxing power has declared that the power shall be wielded only in case it can be confined within designated bounds, and if the constitution forbids that it should be so confined, 40

then the logical outcome of these principles must be that the attempted delegation *in toto* fails. *State vs. Chamberlain*, 8 Vroom, 388.

The *mandamus* must be refused.

The rule for *mandamus*, allowed on the relation of Theodore Runyon, presenting the same legal questions as are above decided, must also be discharged.

New Jersey Supreme Court.

NOVEMBER TERM, 1884.

THE STATE,

(*Ex rel.* JAMES J. THOMSON,)

vs.

JAMES T. WILEY, *et al.*,

COMMISSIONERS,

Defendants.

10

On Mandamus.

The rule for a peremptory writ of mandamus heretofore issued in this cause, having been returned with the evidence of the respective parties taken therein, and the Court having heard the argument of the counsel for the parties, and maturely considered the same, and it appearing that the statute drawn in question is constitutional, and that the respondents have no power to comply with the demands of the relator, It is ordered that the said rule be discharged and the application for a writ of mandamus denied. 20

Entered November 15, 1884.

On motion of

FRANK BERGEN, *Attorney.* 30

NEW JERSEY, ss :

The State of New Jersey, to Justices of the Supreme [L. s.] Court of the State of New Jersey, Greeting :

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our Supreme Court before you by our writ, between the State (on the relation of James J. Thomson,) and James 40

T. Wiley, Robert E. Chetwood and Richard Frohwein, "Commissioners of Taxation," as it is said, manifest error hath intervened to the great damage of the said James J. Thomson, as by his complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then without delay, you distinctly and openly send under
 10 your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, on the thirteenth day of December next, together with this writ, that the record and proceedings aforesaid being inspected we may further cause to be done what of right and according to law ought to be done.

Witness, THEODORE RUNYON, our Chancellor, at
 Trenton, the twenty-sixth day of November, eighteen
 20 hundred and eighty-four.

BENJ. F. LEE, *Clk.*

JOHN W. TAYLOR, *Att'y.*

N. J. Court of Errors and Appeals.

THE STATE,

(JAMES J. THOMSON,

Prosecutor,)

vs.

JAMES T. WILEY, *et al.*,

COMMISSIONERS OF TAXATION.)

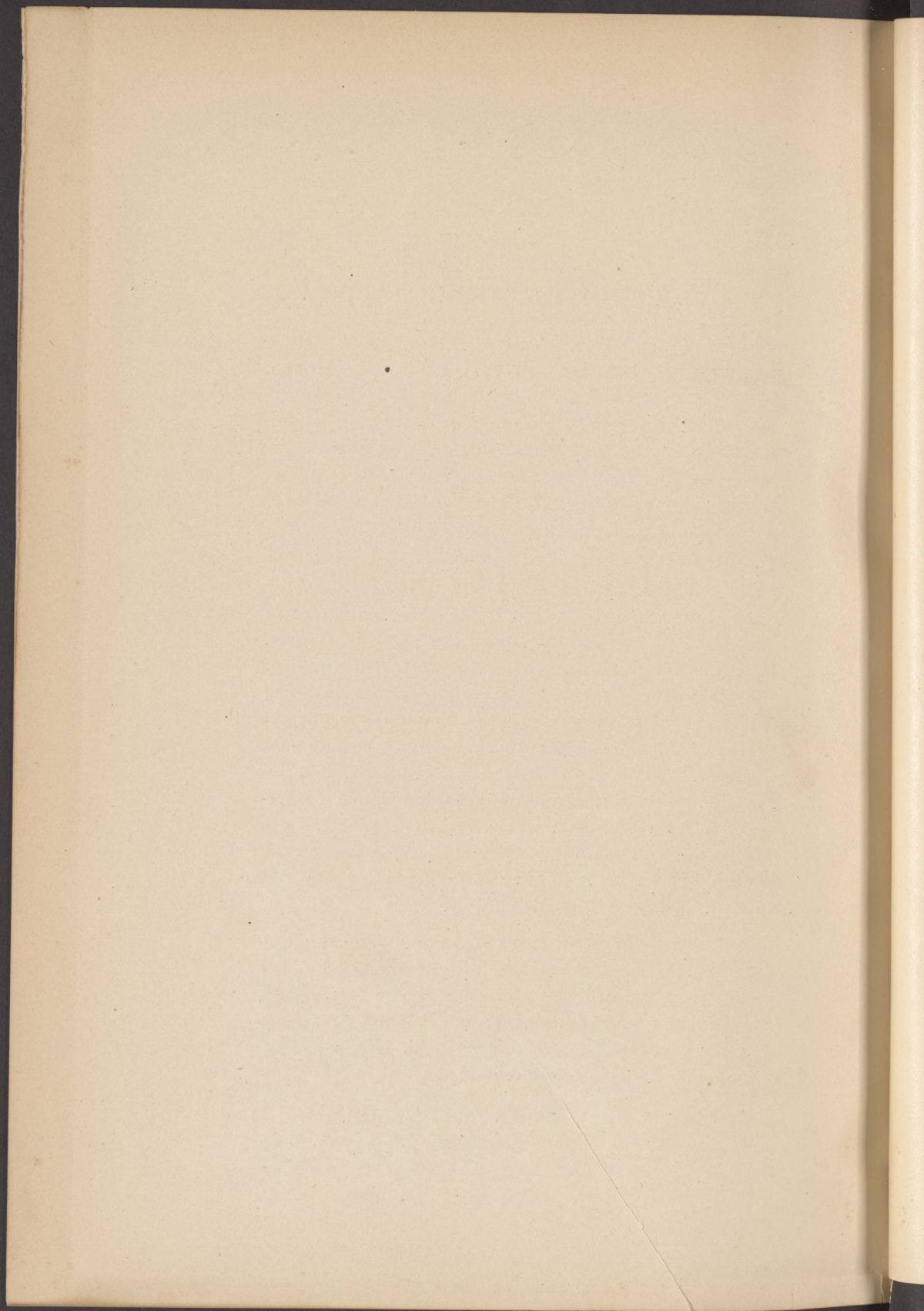
On Error to 10
Supreme Court.

Afterwards, that is to say, on the thirteenth day of December, in the year eighteen hundred and eighty-four, before the Court of Errors and Appeals of the State of New Jersey, comes the said plaintiff in error, by JOHN W. TAYLOR, his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the defendants against the said plaintiff; whereas, by the law of the land, judgment ought to have been given for the said plaintiff against the said defendants. 20

And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and for nothing held; and that the said plaintiff may be restored in all things which it has lost by occasion of the judgment aforesaid, &c. 30

JOHN W. TAYLOR,

Attorney for Plaintiff in Error.



CHAPTER LVIII. OF THE LAWS OF 1884.

(Bill No. 467.)



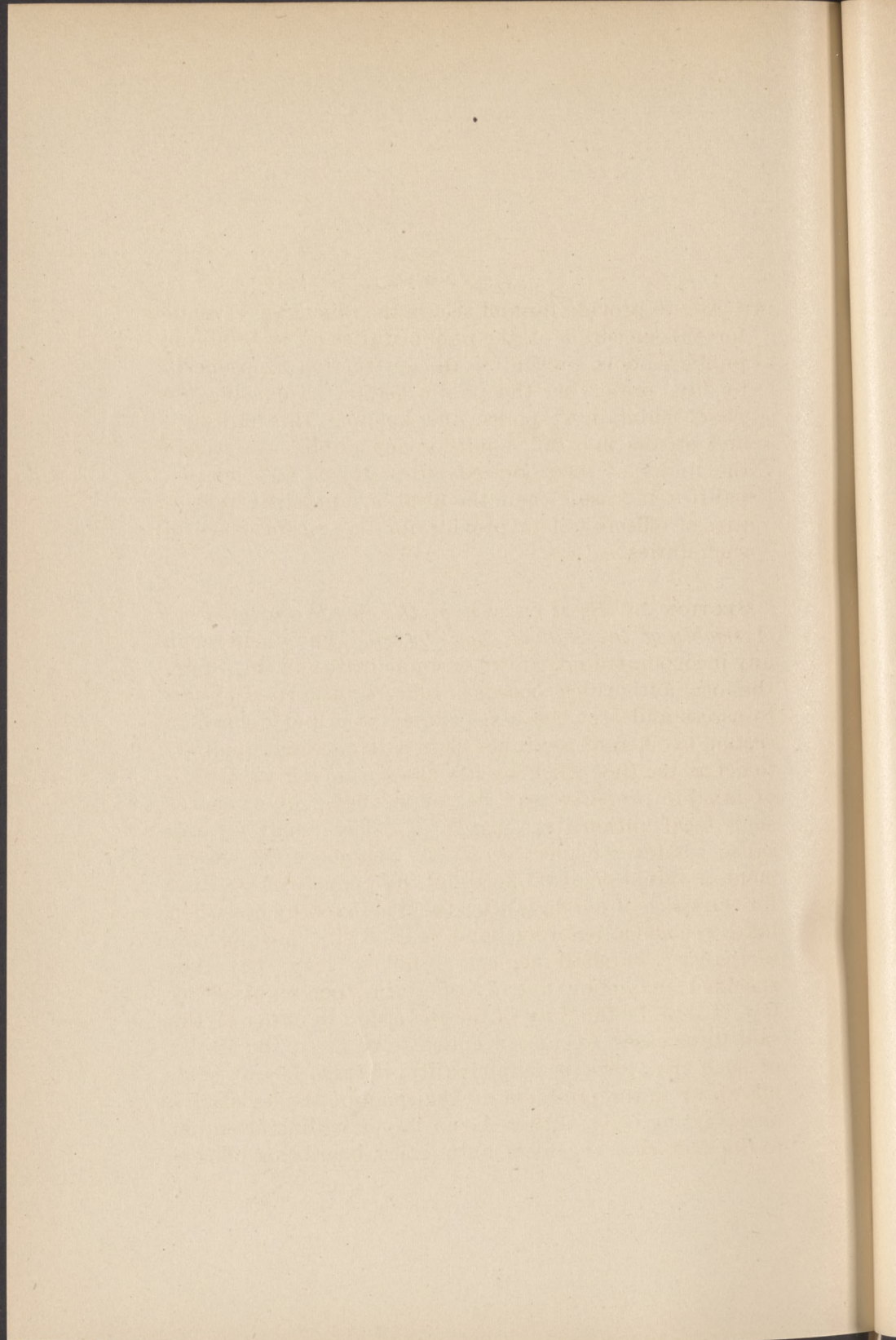
DECISIONS

OF THE

Supreme Court of New Jersey

RESPECTING THE SAME

Rendered at November Term, 1884.



AN ACT to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities or officers fail to provide for the performance of such duties.

SECTION 1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That whenever in any incorporated city, town or municipality in this State, the local authorities, boards or officers authorized by law to assess and levy the taxes enumerated and defined in section five hereof, shall not be in existence and qualified to act at the time when by law assessments or valuations of taxable property may be commenced; or whenever such local authorities, boards or officers shall for any cause whatever neglect or fail to commence the assessment or valuation of property for the purpose of taxation for the space of ten days after the time fixed by law when taxes become a lien upon land in such city, town or municipality; or shall neglect or fail to levy the taxes specified in section five hereof at the time required by law, it shall be the duty of the Governor, in either of the said three cases, to cause a notice to be given the Mayor of such city, town or municipality, if there be any such officer, or to the president or chairman of the legislative or governing body, if there be no Mayor, calling attention to the fact that the local authorities, boards or officers

authorized to levy such taxes are not in existence and qualified to act as aforesaid, or that they have neglected to commence the assessment and valuation of property, as aforesaid, or that they have neglected or failed as aforesaid to levy said taxes, which notice shall further state that unless proceedings be duly taken to make the assessment, valuation or levy within ten days after the giving of the notice, that the Governor will appoint commissioners of taxation under this act to make the assessment and levy of taxes as herein provided. If the Governor at the expiration of said ten days shall be satisfied that the said vacancies still exist, or that the said local authorities or boards or officers have not commenced the assessment and valuation of property for taxation, or that said taxes have not been levied at the time required by law, it shall thereupon be the duty of the Governor to appoint and commission three freeholders, who shall be residents of such city, town or municipality, to be known as "commissioners of taxation," whose duty it shall be under the authority of this act to assess and levy the taxes specified in section five hereof, as herein provided, and to discharge all other duties required hereby.

2. *And be it enacted,* That it shall be the duty of the said commissioners to meet and organize by the election of a chairman and secretary immediately after their appointment, and proceed to assess all the property in the city, town or municipality subject to taxation at its full and fair value; they shall tabulate and arrange lists in suitable books which shall exhibit in alphabetical order, or otherwise, the names of all persons, firms or corporations liable to be assessed to pay any tax, together with the value, enumerations and assessment of the objects subject to taxation, for which each person, firm or corporation is liable, and complete the same at a date three weeks prior to the annual meeting of the assessors of the county; and at least four weeks prior to the meeting of the assessors of the county, the said commission-

ers shall give notice by advertisement in at least one newspaper, published or generally circulating in said city, town or municipality, that the books containing said lists will be open for public inspection, examination and correction, at some suitable place therein, for two weeks, being the second and third weeks preceding the meeting of the assessors of the county, during which time the said commissioners shall consider all complaints touching such assessments, and make corrections therein ; but no assessment shall be increased during said period of two weeks without a previous notice in writing of three days to the party interested ; and it shall be lawful for said commissioners to require all parties liable to taxation to render an account of their taxable property in such manner as they shall direct, and to require by summons the attendance of witnesses and the production of books and papers, and to enforce obedience to such requirements in the manner now provided by law in such city, town or municipality.

3. *And be it enacted*, That the said commissioners shall attend all the meetings of the assessors of the county, and immediately after the adjournment of the annual meeting of said assessors the commissioners shall proceed to fix such a percentage upon the gross valuation of the taxable property in such municipality for the current year as will produce the amount of tax required to be raised in said year for the purposes specified in this act, which shall be declared by them to be the rate of taxation for said year, and they shall complete the said lists and deliver the same within three weeks from the time of fixing the rate, to the officer or officers of the city, town or municipality whose duty it is to collect taxes levied therein.

4. *And be it enacted*, That it shall be the duty of the commissioners to make out the bills or notices of demand of the payment of said taxes, and notices of the meeting of said commissioners as hereinafter provided, and shall

forthwith serve or cause to be served, such bills and notices on all resident taxpayers, and mail the same to all non-resident taxpayers whose residences are known, and the said commissioners shall meet at the time and place stated in said notice (which shall be within thirty days after the delivery of the said books to the officer or officers whose duty it is to collect taxes), and shall hear and determine by a vote of a majority of the commissioners, appeals from said assessments by all persons who shall make it appear by affidavit to the satisfaction of the commissioners that they were absent from the municipality or disabled by sickness from appearing during the second and third weeks preceding the meeting of the assessors of the county, and the said commissioners shall meet from day to day until all applications shall be disposed of, to hear said appeals, and shall deliver a particular statement of all taxes increased or remitted by them to the officer or officers for the collection of taxes.

5. *And be it enacted*, That the commissioners appointed in pursuance of this act shall have power to levy taxes for such sums as they shall deem expedient for the following and no other purposes :

I. For the support of public schools and the repair of school houses.

II. For protecting property within such city, town or municipality from fire.

III. For the protection and maintenance of the public health within such city, town or municipality.

IV. For the maintenance and support of the poor.

V. For the support and maintenance of a police force within such city, town or municipality.

VI. For keeping the highways and streets within the limits of such city, town or municipality in a safe condition for public use.

VII. For the expenses of assessing and collecting the taxes levied under this act, and in addition thereto a sum to meet deficiencies not exceeding ten per cent. of the sums required to be raised for the above stated purposes.

All taxes levied in pursuance of this act shall be applied solely to the purposes for which they were levied; and it shall be unlawful to appropriate or use or direct or order their appropriation or use for any other purpose or purposes whatever.

6. *And be it enacted*, That no tax levied in pursuance of this act in any one year for all purposes shall exceed one and one-fourth per cent. of the assessed value of the property subject to taxation in the same year.

7. *And be it enacted*, That all taxes levied in pursuance of this act shall be collected and received by the appropriate officers of the municipality according to the laws in force for the collection of taxes therein, and they shall give bonds to the State of New Jersey in such sum as the Governor shall direct and with such sureties as he shall approve for the faithful performance of their duties under this act. It shall be the duty of the officers to whom warrants for the collection of taxes shall be directed and delivered to seize and sell so much of the personal property belonging to any delinquent as may be found on the premises from which any tax is due for either real or personal property, and the tenants or other persons in possession or having the care of any lands or tenements and their goods and chattels shall be and they hereby are made liable for the payment of taxes which shall be imposed on the said lands under this act; and in all cases when any tenant shall owe any rent for real estate occupied or rented by him on which any tax levied in pursuance of this act may be due, said rent shall be paid to the collector of taxes in discharge of said tax, or so much thereof as shall be necessary to satisfy the amount of tax so due; and if any such tenant or other

person shall pay, or his goods and chattels shall be levied on and sold to pay any such tax, it shall be lawful for him to deduct the sum so paid out of the rent, or to recover the same from the landlord or owner by action of debt with costs.

8. *And be it enacted*, That taxes levied for the purposes enumerated and defined in this act shall be valid, notwithstanding they may be assessed or levied by said commissioners prior or subsequent to the time fixed by existing laws.

9. *And be it enacted*, That taxes levied in pursuance of this act shall be collected, paid over, disbursed, appropriated and apportioned *pro rata* among the objects herein named and expended by the same officers or bodies, and in the same manner, as if they had been levied by the board or officers whose duty it was under the existing laws to have levied the same, and all taxes levied on real estate shall be a first lien thereon prior to all other encumbrances. This act shall not be construed to repeal, modify or affect the power to collect or the mode of collecting taxes, or of selling real estate for unpaid taxes, or of paying over, holding, disbursing, appropriating, apportioning, and expending the same, except so far as is otherwise expressly provided herein.

10. *And be it enacted*, That each commissioner appointed under this act shall, before he enters upon the duties of his office, and within ten days after his appointment, take and subscribe an oath of office faithfully to discharge his duty under this act, and file the same in the office of the Secretary of State, and he shall, unless sooner removed by the Governor, hold office for the term of one year from the date of appointment, except in case of an appointment to fill a vacancy caused by the death, resignation or removal from the city, town or the municipality of any commissioner, and in such cases the

appointment shall be for the unexpired term only, and at the expiration of one year from the time when the commissioners shall be first appointed, and annually thereafter, they shall be eligible to re-appointment, or others may be appointed in their place, as provided in the first section of this act. The Governor shall have power to fill all vacancies, whether occasioned by death, resignation or removal.

11. *And be it enacted*, That whenever the Governor, after the appointment of such commissioners, shall be satisfied that any such city, town or municipality, through its local and proper officers, has duly caused to be levied for the year the said taxes herein enumerated and defined, he shall revoke the commissions of the said "commissioners of taxation" for the said city, town or municipality, and shall not appoint other commissioners until the happening of one or more of the conditions specified in the first section hereof.

12. *And be it enacted*, That when commissioners shall be appointed and shall have levied taxes in pursuance of this act for any given year, the local officers or board of such city, town or municipality shall not for the same year levy taxes for any of the purposes for which taxes have been levied under this act.

13. *And be it enacted*, That the said commissioners and all officers, bodies or boards who shall be concerned in the collection, holding, disbursing, paying over and expending or directing the expenditure of the taxes or the proceeds of the taxes levied in pursuance of this act, shall be for all purposes of this act, and as respects said taxes and their proceeds, the officers of the State, and any official bonds given or to be given by them shall inure to the benefit of the State as well as to any person or corporation interested therein.

14. *And be it enacted*, That the said commissioners shall be paid for their services such compensation as the

Governor shall determine, not exceeding six per cent. of the amount of taxes levied under this act in the same year, which compensation shall include disbursement for all clerical assistance, stationery and other necessary expenses; and the officers who shall collect the said taxes shall receive for their services the fees and salaries now allowed to them by law for similar services in the municipality, and in lieu thereof, which compensation, fees or salaries shall be levied and paid out of the taxes collected under this act.

15. *And be it enacted*, That all acts and parts of acts, general, special or local, inconsistent with the provisions of this act, be, and the same are hereby repealed, and this act shall take effect immediately.

Approved March 20th, 1884.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1884.

THE STATE JAMES REID <i>et al.</i> , vs. JAMES T. WILEY <i>et al.</i> , Comr's. of Taxation.	}	Pros., <i>On certiorari.</i>
--	---	---------------------------------

1. The "Commissioners of Taxation" Act, approved March 20th, 1884 (P. L. 1884, p. 84), is a general law and applicable to townships.

2. In townships, the township committee is the legislative or governing body mentioned in the first section of the act.

3. When the local authorities are charged by law with the levying of taxes for only some of the objects specified in the act, or when their failure extends to only some of those objects, the powers of the Commissioners of Taxation will be likewise circumscribed.

Argued June Term, 1884, before Justices KNAPP, PARKER and DIXON.

Mr. JOHN W. TAYLOR, for Prosecutors.

Mr. FRANK BERGEN, and Mr. JOHN F. DILLON, of New York, for the Defendants.

The opinion of the Court was delivered by

DIXON, J. The defendants are "Commissioners of Taxation," appointed for the City of Elizabeth, under the act entitled "An Act to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police, and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities or officers fail to provide for the performance of such duties," approved March 20th, 1884 (P. L., p. 84).

The object of this *certiorari*, bringing up the proceedings of these commissioners, is to test the validity of that statute.

The argument presented on behalf of the prosecutors is ; that the leading purpose of the act is the levying of taxes, in order to execute the public duties mentioned in the title, whenever the ordinary local authorities, charged with the levying of such taxes, fail to exercise their functions ; that as occasions for the employment of these extraordinary means of taxation may arise in any portion of the State, such a law, to be general, must be applicable to every section ; that this law appears to be inapplicable to townships, and hence is not general ; and that therefore taxes upon property cannot be imposed under it, because of the Constitution, Art. IV., Sec. VII., Parag. 12, which provides that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

If the leading purpose of the act be thus defeated, all the proceedings of the commissioners under it should be set aside.

State vs. Hudson Co. Av. Comrs., 8 Vroom, 12.

State vs. Chamberlain, 8 Vroom, 388.

State vs. Englewood, 12 Vroom, 154.

In the reasoning thus presented, an essential premise is that the law is inapplicable to townships, and, in their attempts to maintain this proposition, the prosecutors, we think, fail.

The localities in which the statute is to be operative are by it declared to be "any incorporated city, town or municipality in this State." Townships are embraced in this language. They are all incorporated, either under the general act or by special law, and they come within the definition of a municipality, *i. e.*, a body formed by the incorporation of the inhabitants of a particular place or district, established to assist in the civil government of the State, by the exercise of subordinate specified powers of legislation and regulation with respect to local and internal concerns.

1 Dill. on M. C., Sec. 19-20.

State *vs.* Englewood, *ubi supra.*

But the prosecutors insist that two features of the act indicate that it was not designed to take effect in townships. One is, that before the Governor of the State can appoint the Commissioners, he must "cause a notice to be given to the mayor of such city, town or municipality, if there be any such officer, or to the president or chairman of the legislative or governing body, if there be no mayor, calling attention to the fact that the local authorities, boards or officers authorized to levy such taxes are not in existence and qualified to act as aforesaid, or that they have neglected, etc." The prosecutors urge that there is no legislative or governing body in townships, upon whose chairman this requisite preliminary notice can be served.

We regard it, however, as plain, that the township committee is the body intended under several statutes, which need not be here particularly cited. This committee possesses various powers of legislation and government, and it has, moreover, authority to summon a special town meeting, or to appoint an assessor, when one of these

courses might be necessary to prevent a condition of things constituting an occasion for the Governor's notice under the act.

The other feature relied on, as showing that the act was not meant to operate in townships, is the provision conferring power on the commissioners to levy taxes for some purposes—*e. g.*, the extinguishment of fires and the support of police—with which townships generally are not charged.

But we do not understand the act as enjoining upon the commissioners the duty of levying taxes for all the objects specified in the statute in all cases. A condition precedent to the exercise of the powers of the commissioners is a failure on the part of the regular local authorities to perform their duties; and where no duty has been cast upon these authorities it cannot be said that they have failed—whenever the local authorities are bound to levy taxes for all the purposes mentioned in the act, but proceed to levy for some only, or whenever they are bound to levy taxes for some only of those purposes, but fail to discharge that obligation, then still a case arises for the intervention of the Governor, but the authority of his commissioners will be limited by the neglect of duty in the regular officials. Hence we see nothing in this feature militating against the idea that the statute is enforceable in townships. In the broadest sense it is a general law.

We do not wish to be understood as implying that if the act did not extend to townships it would necessarily not be a general law.

Let the writ of *certiorari* be dismissed, with costs.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1884.

THE STATE

Ex rel. JAMES J. THOMP-
SON,*vs.*JAMES T. WILEY *et al.*,
Comr's. of Taxation.*On Mandamus.*

1. The "Commissioners of Taxation," appointed under the act of March 20th, 1884 (P. L. 1884, p. 84), have no power to levy taxes for any purposes other than those particularly specified in the act.

2. These commissioners are not the "Assessors" intended by the supplement to "An Act respecting executions," approved March 27th, 1878 (P. L. 1878, p. 182).

Argued June Term, 1884, before Justices KNAPP, PARKER and DIXON.

Mr. JOHN W. TAYLOR for the Relator.

Mr. FRANK BERGEN, and Mr. WAGER SWAYNE, and Mr. JOHN F. DILLON, of New York, for the Respondents

The opinion of the Court was delivered by

DIXON, J. The respondents are "Commissioners of Taxation," appointed for the City of Elizabeth, under

“An Act to provide for and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police, and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities, in cases where the local or municipal authorities fail to provide for the performance of such duties,” approved March 20th, 1884 (P. L. 1884, p. 84).

The relator holds a judgment of this Court against the City of Elizabeth, and now asks for a mandamus commanding the respondents to levy a tax for the payment of his judgment.

In our opinion the respondents have no authority to levy such a tax. All their powers seem to us to be derived from the statute under which they are appointed. The fifth section of this act specifically enumerates all the purposes for which they may impose taxes, and declares that they shall levy taxes for no other purposes, and that the taxes levied in pursuance of the act shall be applied solely to the purposes for which they were levied, and that it shall be unlawful to appropriate or use, or order or direct their appropriation or use, for any other purpose or purposes whatever. Language could not be more explicit. The enumerated purposes do not embrace the paying of the relator's judgment.

The relator, however, urges that, in connection with this act, must be taken the supplement to “An Act respecting executions,” approved March 27th, 1878 (P. L. 1878, p. 182), which devolves upon the “Assessor” of each municipal corporation of the State the duty, under certain circumstances, of levying taxes to pay judgments against the corporation, and that, by force of the two statutes together, these commissioners are charged with the duty cast upon the “Assessor.”

This view cannot be adopted without doing violence to the plain words of the act of 1884, which, as we have seen,

so rigorously circumscribe the commissioners' power, and there is no occasion, if even there were any warrant, for violating those provisions. Long before the statute of 1878 was passed there existed in the City of Elizabeth the office of "Assessor," to the incumbents of which the statute undoubtedly referred. That office still exists, in no wise changed by the act of 1884, and through it the relator is legally entitled to enforce his judgment.

Nor can we approve the suggestion that this limitation of the commissioners' authority under the act of 1884 is unconstitutional, as impairing the obligation of the relator's contract, or depriving him of any pre-existing remedy. The legal duty of paying his debt, and the legal means of enforcing that duty, remain untouched. It may, indeed, be true, that the necessity under which the City of Elizabeth labored, of resorting to the same machinery as the relator was entitled to employ, in order to levy some taxes which were absolutely essential to its existence, has been in great degree obviated by this Commissioners' Act, and thus the probability that the relator would find this machinery ready at his hand for collecting the judgment is lessened; but this necessity formed no part of the creditor's rights, and the effect which its removal produces upon his situation is but an indirect result of the act of 1884; while it is only when legislation operates directly upon the contract or the remedy that it is prohibited by the constitution. *Wolff vs. New Orleans*, 103 U. S., 358, 365.

But if the conclusion could be reached that it was unconstitutional thus to limit the authority of these commissioners, then I think the consequence would be that the whole statute must fall to the ground. For the legislature has in unmistakable terms declared that it designed to create these officials for the purpose of exercising a certain measure of authority and no more; and it has used such precise and positive language to asseverate its will that their power shall not transgress the bounds prescribed, that I am led to believe that, if the question had

been presented to the legislature, whether it would confer upon the commissioners the power which we are now asked to command them to exercise, or would refrain from enacting the law at all, the latter would have been the course adopted. The limit of authority seems to have been intended to be an inseparable condition of the authority itself. Now, the power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature. (*Meriwether vs. Garrett*, 102 U. S., 472.) If, therefore, the legislature in an original delegation of the taxing power has declared that the power shall be wielded only in case it can be confined within designated bounds, and if the Constitution forbids that it should be so confined, then the logical outcome of these principles must be that the attempted delegation *in toto* fails. *State vs. Chamberlain*, 8 Vroom, 388.

The mandamus must be refused.

The rule for mandamus, allowed on the relation of Theodore Runyon, presenting the same legal questions as are above decided, must also be discharged.

N. J. Court of Errors and Appeals.

THE STATE,

(*ex rel.* JAMES J. THOMSON,)

vs.

JAMES T. WILEY, *et al.*, COMMIS-
SIONERS OF TAXATION.

} *On Error* 10
} *to the*
} *Supreme Court.*

BRIEF FOR PLAINTIFF IN ERROR.

The relator holds a judgment recovered in the Supreme Court against the City of Elizabeth, on which he has issued an alias writ of execution. For want of property belonging to the defendant, sufficient to satisfy the execution, whereon to levy, the sheriff served copies of the writ on the assessing and collecting officers of the city, pursuant to the act of March 27, 1878, (P. L. p. 182.) 20

(See depositions.)

The only "assessors" of the city are the defendants, "*Commissioners of Taxation*," appointed by the Governor under an act of the legislature, enacted March 20, 1884, and entitled "An act to provide and secure the raising of revenue for the execution of the public duties of maintaining public schools, preventing the destruction of property by fire, preserving the public health, supporting the poor, maintaining police, and keeping the highways and streets in a safe condition for public use, within the limits of incorporated cities, towns and municipalities in cases where the local or municipal authorities or officers fail to provide for the performance of such duties." (P. L., 1884, p. 84.) 30 40

POINTS.

FIRST.

The defendants were authorized "to assess and levy, in addition to the regular taxes, the amount due upon the said execution," &c. Act of 1878, R. L. 182.

1. The remedy of the relator is *only under this act*. "After its passage it embodied the statutory remedy to be pursued by all judgment creditors of municipal corporations."

Gabler vs. Elizabeth, 13 Vr. 81.

2. The act of 1878 is applicable to the "Commissioners of Taxation" of Elizabeth, who are "the assessors thereof * * * by law required to assess the taxes in and for such * * * municipal corporation."

3. These "Commissioners of Taxation" are the *only* assessors who can "assess the taxes in and for such municipal corporation."

(1.) The *nonexistence* of other assessors is conclusively implied by the *existence* of these "Commissioners of Taxation."

(a) The act itself, by its title, purports "to provide and secure the raising of revenue * * * in cases where the local or municipal authorities or officers fail to provide for the performance of such duties."

(b) It is provided by the act that "the commission of the Governor shall be conclusive evidence that the condition or conditions [as therein] prescribed, on which he is authorized to appoint and commission such commissioners, exist."

(c) These "conditions" necessarily imply an utter failure of the ordinary means and agencies for making assessments.

(d) If "the regular taxes" for revenue purposes could not be assessed otherwise than by these "Commissioners of Taxation," and by means of the act under which they were appointed, *it must necessarily be inferred that the*

amount due on the relator's execution could not otherwise be assessed.

(e) If the *State* with all its power and authority could not otherwise collect its revenue, how could the *relator* otherwise collect the amount due on his execution?

(f) Virtually, the act of 1884, under which the "Commissioners of Taxation were appointed," is a *special substitute* for the general law which is displaced by it in Elizabeth.

10

4. The words "*and no other*" before the word "purposes," in section 5, of the act of 1884, cannot naturally or properly be construed to *exclude the remedy of execution creditors given by the act of 1878*.

(1.) The object of the words in connection with the enumeration of the "purposes" for which the commissioners were authorized to levy taxes, was to limit them to the *raising of "revenue"* for the seven *public purposes* mentioned, and to prohibit them from raising "revenue" for any public purpose other than those specified.

20

(2.) The declared object of the act, as expressed in the title, is "*to provide and secure the raising of revenue for the execution of the PUBLIC DUTIES*" mentioned in the title; and it would be incongruous, if not absurd, to suppose that there was intended a limitation of purposes which were not of the general nature mentioned in the title, and specified in section 5 of the act.

(3.) If the language had been "*and other purposes*," instead of "*and no other purposes*," the "other purposes" would be held to be those of the same kind—"eiusdem generis"—with those specified.

30

Bishop on Written Laws, § 245.

Sedgwick on Construction, &c., 360 and note a.

But the word "*no*" simply *negatives* these other purposes, which are the same in either case.

5. If, however, the prohibition in section 5 against levying taxes for "other purposes" than those specified, was intended, and may be construed, to prevent the col-

40

lection of executions under the act of 1878, it is unconstitutional and void ;

(1.) Because it deprives the relator of a remedy for enforcing his judgment which he had when it was recovered.

(a) When the judgment was recovered, he had the remedy given by the act of 1878, by enforcing the collection thereof through the assessing officers of the city—
10 by whatever name called or however appointed.

(b) The prohibition in the fifth section of the act of 1884, deprives him of that remedy.

(2.) Because the deprivation of judgment creditors of the remedy given them by the act of 1878, is not one of the objects expressed in the title of the act of 1884, and, therefore, violates Art. IV. Sec. 7. pl. 4, of the Constitution.

(a) The remedy given by the act of 1878 is given
20 appropriately by a supplement to the act entitled "*An act respecting executions,*" and not by the general tax law. *It comes properly under the head of EXECUTIONS, and not of TAXES.*

(b) It cannot properly or lawfully be abolished or suspended by a supplement to, or substitute for, the general tax law.

30 But the Court below say the defendants "*have no authority to levy such a tax. All their powers seem to us to be derived from the statute under which they were appointed. The fifth section of this act specifically enumerates all the purposes for which they may impose taxes, and declares that they shall levy taxes for no other purposes, and that the taxes levied in pursuance of the act shall be applied solely to the purposes for which they were levied, and that it shall be unlawful to appropriate or use, or order or direct their appropriation or use, for any other purpose or purposes whatever. Language could not be more explicit. The enumerated purposes*
40 "*do not embrace the paying of the relator's judgment.*"

It will be seen that while the proposition is that the defendants "*have no authority to levy such a tax,*" *i. e.,* under *any* statute whatever, the reasoning of the learned Judge goes to show merely that they "*have no authority to levy such a tax,*" *under the act of March 20, 1884.*

It is conceded that "*authority to levy such a tax*" is not granted by the act of 1884, *nor by any other tax or revenue law.*

It is true that "*the enumerated purposes [of the act of 1884] do not embrace the paying of the relator's judgment;*" but it is just as true that "*the enumerated purposes [of the 'act concerning taxes,' and its supplements,] do not embrace the paying of the relator's judgment,*" or any other judgment. 10

It is true, also, that the act declares that "*the taxes levied in pursuance of the act, shall be applied solely to the purposes for which they were levied;*" but taxes levied to pay judgments are not levied "*in pursuance of the act*" of 1884, or of any other tax or revenue act, *but in pursuance of the act of 1878,* (P. L. p. 182,) and the relator insists that by that act the defendants are *authorized* to levy a tax to pay his judgment. 20

But the Court below says:

"This view cannot be adopted without doing violence to the plain words of the act of 1884, which, as we have seen, so rigorously circumscribed the commissioners' power, and there is no occasion, if even there were any warrant, for violating those provisions. *Long before the statute of 1878 was passed there existed in the city of Elizabeth the office of 'assessor,' to the incumbents of which the statute undoubtedly referred.* That office still exists, in nowise changed by the act of 1884, and through it the relator is legally entitled to enforce his judgment." 30

The argument used to fritter away the substantial constitutional right of the relator is certainly of a very nice and technical sort. It amounts to this: The act of 1878 does not authorize an assessment for the satisfaction of a judgment by an assessing officer, *unless he is named "assessor"*; the present assessing officers of Elizabeth are named "*Commissioners of Taxation,*" not 40

assessors; therefore, they are not authorized to collect the relator's judgment.

But it certainly is not true as assumed, that the act of 1878 authorizes an assessment for the satisfaction of a judgment only by assessors *named* as such.

In some of the cities of this State the assessor is such in fact but not in name.

10 It is true, too, that "long before the statute of 1878 was passed, there existed in the city of Elizabeth the office of 'assessor,' to the incumbents of which the statute undoubtedly referred"; but when the relator was entitled to have the amount of his judgment assessed there were *no such incumbents*, and it was *because* there were no such incumbents that these "Commissioners of Taxation" *were made assessors* in Elizabeth; and it is because they are in fact and in law the *assessors*—the ONLY *assessors*—of that city, that the act of 1878 now refers to them, and authorizes them to assess the amount
20 of the relator's judgment.

It sounds like judicial mockery to say that the "OFFICE still exists, in nowise changed by the act of 1884, and through it the relator is legally entitled to enforce his judgment."

What is the "office" without an *officer*? It is nothing—mere *vacancy*.

The legislature and Governor by the enactment and execution respectively, of the act of 1884, *have practically so determined*, and have *filled that vacancy with assessors*, by
30 whatever name they may be called.

SECOND.

It was the *duty* of the "Commissioners of Taxation," as the "assessors" of the city, under the act of 1878, to assess the amount of the relator's execution "in addition to the regular taxes." "*It shall be the duty*," is the
40 imperative language of the act. (P. L. of 1878, p. 182.)

THIRD.

The evidence shows a *repeated demand* for the performance of that duty.

FOURTH.

The evidence shows also a *refusal* of that demand. It is true, that the evidence likewise discloses an adroit attempt to conceal the foregone determination adverse to the relator. They, indeed, "*said they couldn't give any decided answer,*" although called on three times on behalf of the relator, *who had a right to know their decision* on the first demand. They thought to trifle with him until it would be too late to act on a refusal, by application to this Court. 10

Nevertheless the commissioners, in spite of their efforts, in words "that half reveal and half conceal the soul within,"—when asked the question, if they would include the amount due on the various writs under the tax levy, *stated that they could not see how it could be done.* 20
* * They stated to me on reading these several sections, *that they saw no provision for any such purpose—didn't see how it could be done.*" (Testimony of Mr. Rayer.)

If "they saw no provision for any such purpose—didn't see how it could be done,"—if, in their view, *unlawful to be done and impossible to be done, are we not to conclude that they had already decided not to do it?* How 30
much more time, and how many more demands, by a party *having rights* in the premises, will be necessary to warrant the inference of a refusal?

"The delay in the performance of a plain duty is equivalent to a direct refusal. To authorize the issuing of the writ, *there need not be a positive refusal to perform the duty.* If by any act of omission, an intention not to perform the duty is manifested, the writ should issue."

State vs. Common Council of Rahway, 14 Vr. 110, 111.

“There need not be a positive refusal on the part of public officers or municipal bodies, to perform a duty enjoined upon them, to authorize the interposition of this Court by mandamus.

“*It is sufficient, if there is an unreasonable delay, and a manifest intention not to perform it.*”

Cleveland vs. Board of Finance and Taxation of Jersey City, 9 Vr. 259.

- 10 “It is argued that it does not appear that the city has been requested, and has refused, to do the act sought to be enforced, and that, therefore, the writ of mandamus should not be issued. But, as Lord DENMAN observed, *it is not necessary that the word ‘refused’ or any equivalent to it should be used; but there should be enough to show that the party withholds compliance and distinctly determines not to do what is required.*”

Attorney-General vs. Boston, 123 Mass. 460, 477.

- 20 See, also, the numerous authorities cited in the opinion in the last case, including that of *State vs. Common Council of Rahway, supra.*

The cases of *The State vs. Governor, 1 Dutcher, 331,* and *Magie vs. Township of Union, 13 Vr. 531,* are not adverse to the relator.

The former held that there should be a demand and refusal, whereas the case showed none at all.

- 30 The latter held that the delay of a week, under the circumstances, did not necessarily show a refusal.

The circumstances were: (1) The committee were not (like the defendants) limited to a very short season for action. (2) The demand was made on only *one* of the committee, when the committee was not in session. They could not act, one way or the other, when not in session, and they could not be in default for not convening when only one of them (besides the clerk, not a member,) had been notified.

- 40 “*When the person or corporation against whom the writ is demanded, has clearly manifested a determination to dis-*

obey the laws, THE COURT IS NOT OBLIGED TO WAIT UNTIL THE EVIL IS DONE BEFORE ISSUING THE WRIT."

Attorney-General vs. Boston, 123 Mass. 460, 470.
See *High on Ex. Rem.* (2d Ed.) § 12, note 1.

FIFTH.

That one assessment has been made towards payment of the judgment, is no answer. That assessment was 10
unavailing and ineffectual. The mischief remains, and the remedy must be adequate to the mischief.

The supposed injustice to the prompt tax-payer, is incident to the *system* of taxation. As the revenue must be raised, so honest debts must be paid, and deficiencies must be made up by repeated levies in the one case as in the other.

"The duty of levying a municipal tax in satisfaction of a judgment against the corporation, is treated as a 20
continuing duty, and it does not terminate with the levying of a single tax, which is collected only in part, but ends only when the whole amount is collected and the judgment paid. Hence it affords no excuse for a partial performance of the duty that the municipal authorities have levied and collected a portion of the tax, but that certain tax-payers have neglected to pay their assessments."

High on Ex. Rem. § 379.

It is submitted that, for the reasons stated, the judgment of the Supreme Court should be reversed, and that 30
a mandamus should issue.

If the relator is not, under the circumstances, entitled to the writ of mandamus, then there is a grievous "disorder from a failure of justice and a defect of police," which is absolutely without remedy.

JOHN W. TAYLOR,
Counsel for Relator.

