

## New Jersey Court of Errors and Appeals

PHILADELPHIA AND READING RAIL-  
WAY COMPANY,

*Prosecutor-Respondent,*

*vs.*

TOWNSHIP OF WOODBRIDGE IN  
THE COUNTY OF MIDDLESEX,

*Defendant-Appellant,*

L. M. CAMPBELL, Collector, etc.,

*et al.,*

*Defendants.*

*On Certiorari.*

*On Appeal  
from Su-  
preme Court.*

### Brief for Appellant.

A.

#### STATEMENT OF FACTS.

This suit is brought by the prosecutor to set aside a tax assessed for the year 1914 by the Township of Woodbridge, appellant, against the prosecutor, upon a quantity of railroad ties found at the plant known as Port Reading Creosoting Plant, which is operated under an agreement between the prosecutor and the Central Railroad Company of New Jersey, set out on pp. 22 to 27 of the printed case. The case (p. 18) contains an agreed statement of facts from which it appears (p. 19, line 10) that the prosecutor

“purchases in the open market the ties it requires for railroad purposes. These ties are taken to the Port Reading plant, and after being creosoted, are shipped to points on the line of the \* \* \* Company within

*and without the State of New Jersey for use for railroad purposes."*

This creosoting plant is operated jointly for the two railroad companies by an independent organization (p. 25, line 5). The operating expenses are apportioned between the railroads on the basis of the ties creosoted for each company (p. 26, line 4); each company may buy its own ties (p. 26, line 24), but (p. 26, line 27),

*"if it be considered more advantageous so to do, all of the ties and timber intended for treatment at said plant may be bought on joint account by the Purchasing Agent of READING and of CENTRAL and each Company, party hereto, charged with the ties and timber delivered by said plant to it or to any of its affiliated companies."*

The tax assessment was appealed by the prosecutor to the County Board, and was there affirmed, but no appeal was taken to the State Board of Equalization of Taxes (p. 19, lines 24-8).

The time for appeal to the State Board expired April 1, 1915. The certiorari in this case was not applied for until July, 1915; the writ being dated July 10, and the petition for the writ being sworn to June 30, 1915 (p. 6, line 17).

The prosecutor contends that these ties were used for railroad purposes and were therefore assessable only by the State Board of Assessors. This is denied by the appellant on the ground that the ties were properly assessed by the Township and were not assessable by the State Board.

## B.

## GROUNDS OF APPEAL.

The grounds of appeal relied on in this case are:

1. Because the Prosecutor failed to appeal to the State Board of Equalization of Taxes before prosecuting the writ in this cause.

2. Because the Prosecutor did not make application for the writ in this cause until after the expiration of the time for appeal to the State Board of Equalization of Taxes as limited by statute and the rules of said State Board.

3. Because the property in question was properly taxable by the Township authorities.

4. Because the property in question, or a part thereof, was properly taxable only by the Township authorities.

5. Because the property in question was not assessed for taxation, except by the assessment under review in this proceeding.

6. Because the tax now under review should be affirmed and not set aside.

## C.

## POINTS.

## I.

**This writ should be dismissed and the tax affirmed because of prosecutor's failure to appeal to the State Board.**

This for two reasons: First (comprised in the first ground of appeal), because prosecutor's contention is inequitable; second, because in resorting to this writ prosecutor seeks to escape the consequence of its failure to appeal to that

Board within the statutory time. (This is the second ground of appeal.)

Granting that the Court had jurisdiction in spite of the failure to appeal to the State Board, nevertheless, it is uniformly held that the Court should exercise its discretion to afford relief only in meritorious cases, and not for the purpose of relieving a prosecutor against the result of his own delay. In this case, it is clear that if the judgment below is sustained, the prosecutor will wholly escape payment of tax on the property in question. It has not been taxed elsewhere, so this is no case of double taxation. Prosecutor on purely technical grounds is endeavoring to escape paying any tax on this property.

Appeals from the assessment of the local assessor to the County Board of Taxation, and from the decision of that body to the State Board of Equalization of Taxes, are regulated by Paragraphs 9 and 10, Chapter 120 of the laws of 1906, (P. L. 1906, page 216. C. S., p. 5120).

Chapter 67 of the laws of 1905 creating the Board of Equalization of Taxes, sets forth the powers and duties of the Board.

Section 5 (P. L. 1905, page 126, C. S. pg. 5112) provides that when complaints shall be made to the State Board

“in writing, verified by the oath of any complainant, on or before the first day of April following the assessment of property of any kind, whether belonging to individuals, corporations, railroads or canals, said Board shall have power to review and correct the action of the local assessors or other taxing officers and of all boards of tax review, by reducing or increasing such assessment, and the corrected tax shall bear interest from

the time fixed by law under which said tax was originally levied until paid.”

Sections 9 and 10 of the 1906 act above cited, provide that the

“County Boards of Taxation shall hear and determine all appeals that may be made at such times and under such rules and regulations as it may from time to time prescribe and adopt; provided, that appeals may be made at any time prior to the twentieth day of December of the year in which such taxes are assessed and levied”;

and that

“any action or determination of any County Board of Taxation may be appealed for review to the Board of Equalization of Taxes of New Jersey, under such rules and regulations as said Board of Equalization may from time to time prescribe, and said Board of Equalization shall be authorized and empowered to review such action and proceedings and give such judgment thereon as it may think proper.”

It has been held that the State Board is without jurisdiction to act in the first instance upon appeals from assessments of the local Assessor.

The following language is used in the case of *Borough of Kenilworth v. Board of Equalization of Taxes, et als.*, 78 N. J. Law, page 302:

“It is not necessary for the purpose of this adjudication to discuss the legality of the action of the State Board in acting in the first instance upon the appeals which were pending undetermined before the County Board, but we find no legislation applicable to either of these boards which authorizes such procedure. \* \* \* On the con-

trary, it is plain that the legislative intention was to confer upon the County Board the power of hearing the appeal of the taxpayer, or the tax paying district in the first instance, and finally to authorize an appeal to the State Board, from the determination of the County Board. Such power to hear appeals in the first instance was held by the Court not to inhere in the State Board of Taxation, the predecessor of the present State Board (*Cregar v. Lebannon*, 70 N. J. Law, 598), and it is not apparent that the existing legislation has worked any change in that respect."

This point was emphasized in the case of *Town of Union v. Hudson County Board of Taxation*, 77 N. J. Law, 178.

The opinion reads as follows:

"In the case under consideration we find nothing illegal in the principle adopted, and if the result produces an excessive valuation in any instance, the property owner has his appeal—first, to the county board, and second, to the state board. The statute last referred to (*i. e.*, Chap. 67, Law 1905), requires the state board, upon appeal of any taxing district or an individual, to evidence its determination by a judgment duly signed by at least three of its members and filed with its clerk. *And in a proper case a writ may be applied for to review that judgment.*"

True it is that the Prerogative writ of certiorari is a discretionary writ, and that formerly, prior to the enactment of the legislation hereinbefore noted, it was allowed in taxation cases where no appeal had been taken to the stat-

utory reviewing body. The case of *State, Vail, Prosecutor v. Bentley*, 23 N. J. Law 532, is an example. At page 534 the opinion reads as follows:

“As a general rule, I think a certiorari ought not to be allowed, even for the decision of legal questions arising upon the tax laws, until there has been an appeal.

But because that case involved very important principles of law altogether different from these theretofore in force, and it was therefore proper that they should receive a judicial construction, the writ was not interfered with.

Similar cases are:

*State v. Betts*, 24 N. J. Law, page 555.

*State v. Haight*, 35 N. J. Law, page 279, 284.

*State v. Ramsay*, 61 N. J. Law, page 194.

In the last case, however, the property assessed for the purposes of taxation had no existence whatever, and it was upon this ground that the Court exercised its discretion, and allowed the writ.

Cases in which writs were dismissed because of the failure to take an appeal are:

*State v. Matthews*, 40 N. J. Law, page 268.

*State v. Snedeker*, 42 N. J. Law, page 76.

These cases clearly indicate that the Court gives relief only in meritorious cases where the prosecutor has failed to take advantage of statutory remedies.

A different line of cases applies an analogous principle where the court is asked to interfere in proceedings of an incorporated body or organization for alleged irregularities, before the remedies allowed by the procedure and rules of the particular body have been exhausted.

See *Lehmann v. Hudson County*, 62 N. J. L. 574 and the cases therein cited.

The same rule is followed in questions arising under the school law, which provides special tribunals to determine controversies. See

*Draper v. Commissioners of Public Instruction*, 66 N. J. Law, page 54. After referring to the pertinent provisions of the Statute, the opinion proceeds as follows:

“By these various provisions the legislature has erected a series of tribunals for the speedy and inexpensive determination of all controversies arising under the School Law, and the legislative intent is plain that, in the first instance, recourse is to be had to these tribunals for the settlement of such controversies. It seems equally manifest that it was the legislative intent that these tribunals should have exclusive jurisdiction over these matters and that the determination of each one should be final unless appealed from as provided in the act—the court of last resort being the State Board of Education.”

This rule was followed in the case of *Stockton v. Board of Education of the City of Burlington*, 72 N. J. Law, page 80, which holds that until the remedies provided by the School Act have been exhausted, the prerogative writs of the State should not be awarded.

See also *Board of Education of Flemington v. State Board of Education and others*, 81 N. J. Law, page 211.

Manifestly, the statutes quoted in these decisions are similar in context and design to the taxation statutes under discussion and the sound reasoning of these cases applies with equal force to the case at bar.

The Court is specially reluctant to allow the use of a writ of certiorari to extend complainant's time for appeal. See

*Marcus v. Graver*, 71 N. J. Law, p. 95.

The act of 1902 (P. L. page 565) providing for appeals from the District Court to the Supreme Court, requires the appellant to give notice of the appeal, and to enter into a bond within ten days after judgment. Instead of taking this appeal, a writ of certiorari was applied for and issued. It was held (p. 97) that the act of 1902 did not inhibit the allowance of a writ of certiorari to review the proceedings or a judgment of the District Court, *within the time fixed by the Act for the appeal*, and that the appeal by virtue of the Statute was a matter of right and a concurrent method of review with certiorari *within the time fixed by the Act for an appeal*, the latter being a matter of grace resting in the discretion of the Court.

The important point is that although procedure by certiorari remains concurrent with that by appeal, the opinion emphasizes the fact that the certiorari must be allowed within the time fixed by the act for the appeal. Applying similar reasoning to the case at bar, the statutory appeal from the County Board to the State Board is a matter of right, while review by certiorari can be nothing more than a matter of grace, and, it follows, only to be allowed when within the time fixed by the Statute for the appeal. In the present case the right to appeal to the State Board expired on April 1, 1915 (P. L. 1905, page 126, Sec. 5, Compiled Stat. 5112). The writ was not issued until July 10, 1915. Therefore the writ should be dismissed because it was not issued prior to April 1st, the time limited by the Statute within which to appeal.

Another method of review in cases of alleged double assessment exists by virtue of Section 28 of the Tax Act of 1888 (P. L. page 285, C. S. page 5275), providing for a determination of the question by the Supreme Court, or any three Justices thereof, to be assigned by the Chief Justice, in a summary manner, upon rule to show cause, at a time and place to be designated by the Chief Justice upon application of any of the parties interested.

Thus we see that the Legislature has created special tribunals for the speedy and inexpensive determination of controversies arising under the taxation laws, and has fixed a time limit within which appeals must be taken. The prosecutor not only elected not to invoke the summary jurisdiction of the Supreme Court but appealed in the first instance to the County Board and then permitted the time limited within which to appeal to the State Board to expire without so doing, and more than two months thereafter, sought to obtain what is substantially the same right of review which was at that time denied him by the Statute, by seeking this writ. Assuming that certiorari is a concurrent method of review, as hereinbefore noted, under similar circumstances, it has been held that it must be exercised within the time limited by the Statute for an appeal, and this is the wise rule, for some time must be fixed when the aggrieved party shall be denied the right of this concurrent method if such it be. Particularly is this so in taxation matters. Public interests demand that such controversies be promptly and expeditiously determined, and it is fair and just to require that appeals, by whatever method followed, be taken within the time fixed by the Statute.

As hereinbefore shown, it has been held that there can be no appeal directly to the State Board, and that only the County Board has jurisdiction in the first instance. Like reasoning compels the determination that the prerogative writ of certiorari should not be issued until the appeal from the County Board's decision has been determined by the State Board and the remedies afforded by the Statute exhausted.

It is the legislative intent that such should be the proceeding, as noted and approved in the cases cited. The court below in its decision (p. 31, line 31) concedes this principle but limits its application to questions of valuation. It is submitted that the authorities above quoted show that the legal rule controlling the discretion of the Court is not limited merely to questions of valuation, but includes the general question of the fairness and justice of the prosecutor's claim and the question of his laches.

## II.

### **The ties were properly taxable by the Township.**

As later shown, all property not in use for railroad purposes is assessable locally.

The agreement between the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey, under which the creosoting of the ties is done, is set forth at length in the State of the Case on pages 22 to 27. Under this agreement the creosoting is performed by an organization independent of the two companies under the name of the Port Reading Creosoting Plant. The cost of operation of the plant is divided between the companies on the basis of the ties and timber cre-

osoted for each. Either of the companies may buy its own ties and timber or all of the ties and timber intended for treatment at said plant may be bought on joint account by "The Purchasing Agent, of the Reading and of Central," and each Company be charged with the ties delivered by the plant to it.

The work then is done by an entirely independent organization, the tie treating plant is operated by "an organization independent of both said companies" (p. 25, l. 5). The identity of the property of each of the contracting companies is not maintained, and while the ties are at the plant there is confusion of the material and neither owns any particular article. Furthermore, the ties are not actually being used for railroad purposes while at the plant, and there is nothing to show that either company owns any particular ties or any particular quantity of ties, which could possibly have been included in the assessment made by the State Board of Assessors, and printed on pages 20 and 21 of the State of the Case.

It does not appear by the case that the particular ties comprised in this assessment were owned by the prosecutor, nor that they were later used by it. If these ties were being used for railroad purposes, on what railroad were they being used, or for what railroad were they intended to be used? A freight car in process of construction for one railroad may in fact be diverted to another. It cannot be said that while still under construction it is used for railroad purposes of the railroad company.

It is submitted, therefore, that none of the ties at the plant were assessed or could have been assessed by the State Board of Assessors, that the State Board of Assessors have no right

to assess them, and that they are personal property subject to assessment by the Township authorities.

As to ties intended for use outside of New Jersey (fourth ground of appeal), the case is even clearer.

The railroad ties constituting the property taxed, after being taken to the Port Reading plant and being creosoted, are shipped to points on the lines of the railroad company "within *and without* the State of New Jersey for use for railroad purposes" (p. 19, line 15).

Section 1 of the Act of 1888 (P. L. 1888, p. 269, C. S. 5260) provides that all the property of any Railroad or Canal Company not used for railroad or canal purposes shall be assessed and taxed by the same assessors and in the same manner and at the same rate as the taxable property of other owners in the same municipal division or taxing district. Section 3 of the Act (C. S. p. 5264) provides as follows:

"That it shall be the duty of the Board of Assessors to meet at Trenton on the first Tuesday of May in the present and each succeeding year; \* \* \* they shall proceed to ascertain the true value of *all property used for railroad or canal purposes* of each Railroad and of each Canal Company *in this State*, including its franchises, and they shall in such ascertainment ascertain \* \* \*

III The value of all the tangible personal property of each railroad and of each canal company; \* \* \*:

The term 'tangible personal property' shall be held to include the rolling stock, cars, locomotives, ferry boats, all machinery, tools and other tangible personal property of any railroad company, and the float-

ing, movable and other tangible personal property of any canal company and also the locomotives and cars not belonging to such railroad company but built for its use and actually used *in this State* or run under its control *in this State* by a sleeping car company or other company; but the rolling stock of other persons or corporations temporarily used on any such road, and the floating or movable property temporarily used on such canal, *but not forming part of the equipment of such road or canal*, shall not be included in said term."

The contention of the appellant is that under the quoted sections of the Statute, personal property of a railroad company actually in this State upon the day of the assessment, and intended thereafter for use for railroad purposes upon the lines of the company *without* the State of New Jersey, is taxable by the district in which the property is. The fact is that the railroad ties in question were not at the time of the assessment being used for railroad purposes at all, but were being prepared for such use at some future time. Section 3 of the Act expressly provides that it shall be the duty of the Board of Assessors to ascertain the true value of all property used for railroad or canal purposes in this State; the latter part of the section providing that locomotives and cars not belonging to the company, but built for its use and actually used in this State or under its control in this State by another company, and that the rolling stock of other corporations temporarily used on the road and the floating or movable property temporarily used on the canal, shall not be assessed by the State Board. It lays down a further and significant test "*but not forming part of the equipment of such road*

or canal." The legislative intent thus expressed is that personal property forming part of the equipment of the railroad is used for railroad purposes and is therefore assessable by the State Board, while personal property not forming part of the equipment of the road is within the limits of the first clause of Section 1 of the Act and is assessable and taxable by the taxing district in which the property is. The repeated use of the words throughout the Statute "*in this State*" precludes any other notion. It is admitted that a portion of the ties at Port Reading plant are intended for use upon the lines of the prosecutor without the State of New Jersey. It is incontrovertible that such ties so intended, did not form any part of the equipment of the road within this State, and they were, therefore, properly assessed and taxed by the authorities of the Township of Woodbridge.

The Supreme Court says (p. 31, line 10) the decisions are uniform and property intended for railroad use in the near future is to be treated as used for railroad purposes. But these decisions all concern fixed property which could not leave the State, and which was obviously in fact to be used in the State by a particular railroad. It is believed no New Jersey case holds that property which *may* be used outside of New Jersey is presently taxable as railroad property because intended some day, some where, to be used for railroad purposes.

It is conceded in the Supreme Court opinion (p. 31, line 19) that ties intended for use outside of New Jersey were not taxable under the railroad tax act. The agreed statement of facts already quoted (p. 19, lines 12-16) clearly shows that some of these ties were to be used out-

side of New Jersey. It cannot be said that any special ties were intended for use in New Jersey. Therefore it cannot be said that any of these ties were properly taxable as used for railroad purposes in this State; and if not so taxable under the railroad tax act, they are, of course, taxable by the local authorities. If any of the ties after being taxed locally on May 20th were later actually used for railroad purposes in New Jersey, they could not then be assessed as railroad property by the State Board, so as to result in double taxation. This because the State Board assessment, although made on or before the first day of November under section 2 of the act of 1906 (P. L. 1906, p. 122; 4 C. S. 5279) is based on a return to the State Board made by the company as of the first day of the preceding January, under section 1 of the 1906 act (P. L. 1906, p. 121; 4 C. S. 5279). The State Board can only assess property used for railroad purposes prior to the local assessment.

The rule obtains in assessments of taxes for general purposes, that every presumption is in favor of the regularity of the tax imposed, and the objector assumes the burden of proving their illegality.

*State, Harned, Prosecutor, v. Manning,*  
41 N. J. Law, page 275. Affirmed 42 N. J.  
Law, page 163.

It having been shown that so many of these ties as were intended for use without the State of New Jersey, are property taxable by the Township of Woodbridge; then no matter what determination may be arrived at as to the remainder of the ties the burden is upon the prosecutor to show that the assessment exceeded the value of the taxable portion of the ties. No

such attempt has been made and no such claim has been advanced, and it is, therefore, submitted that the assessment should be affirmed.

### III.

**The ties intended for use without the State of New Jersey were not assessed by the State Board.**

The valuations and assessments of the State Board for State and local use for the years 1913 and 1914 are printed on pages 20 to 21. The valuation reads as follows:

|  |              |
|--|--------------|
| Assessed valuation of tangible personal property necessary for and used in State Commerce..... | \$681,263.00 |
| Total assessable for State use.....  | \$681,263.00 |

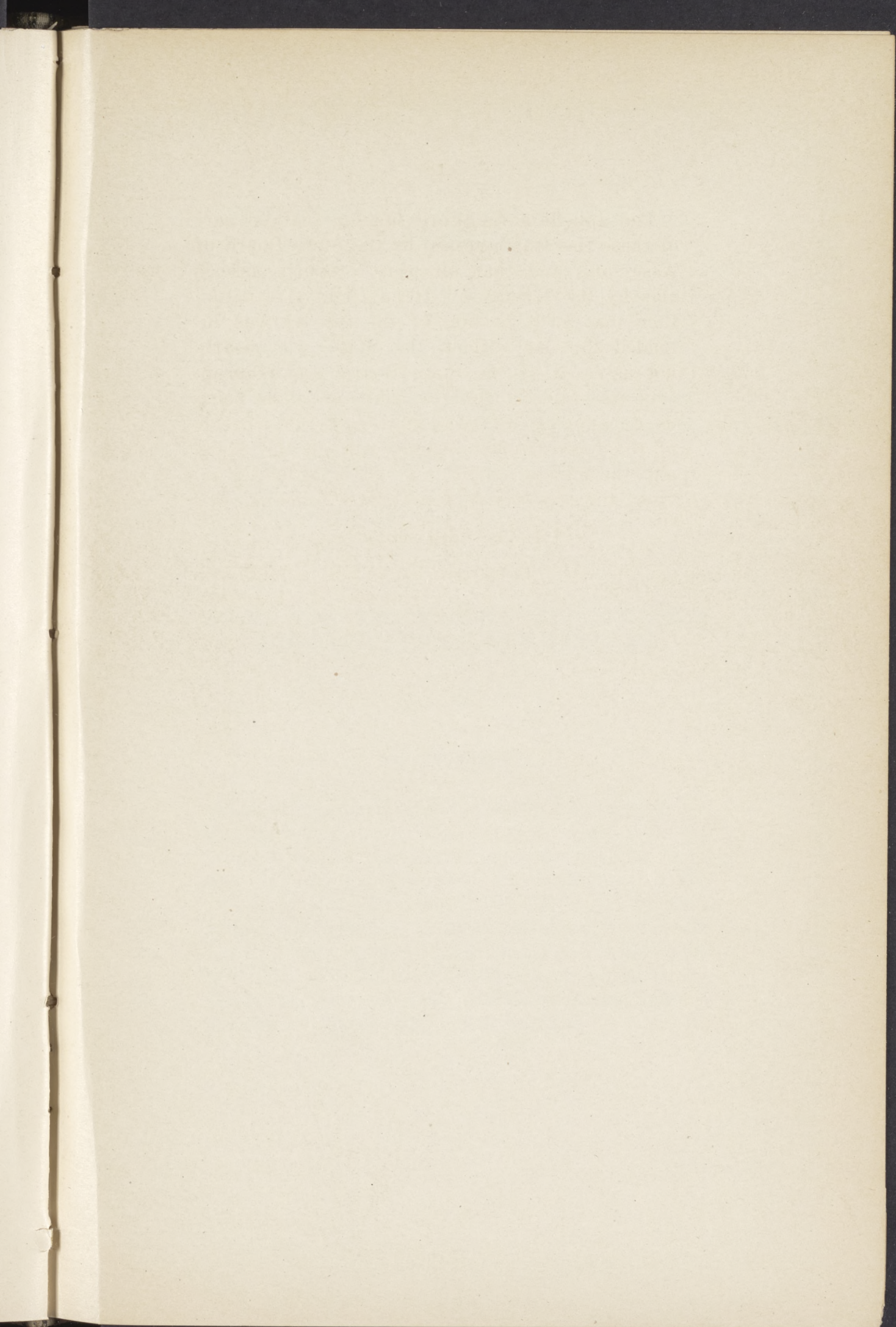
It, therefore, appears as a fact that the State Board of Assessors assessed only tangible personal property necessary for and used in State commerce and did not assess that portion of the railroad ties in question necessary for and intended for use in commerce without the State.

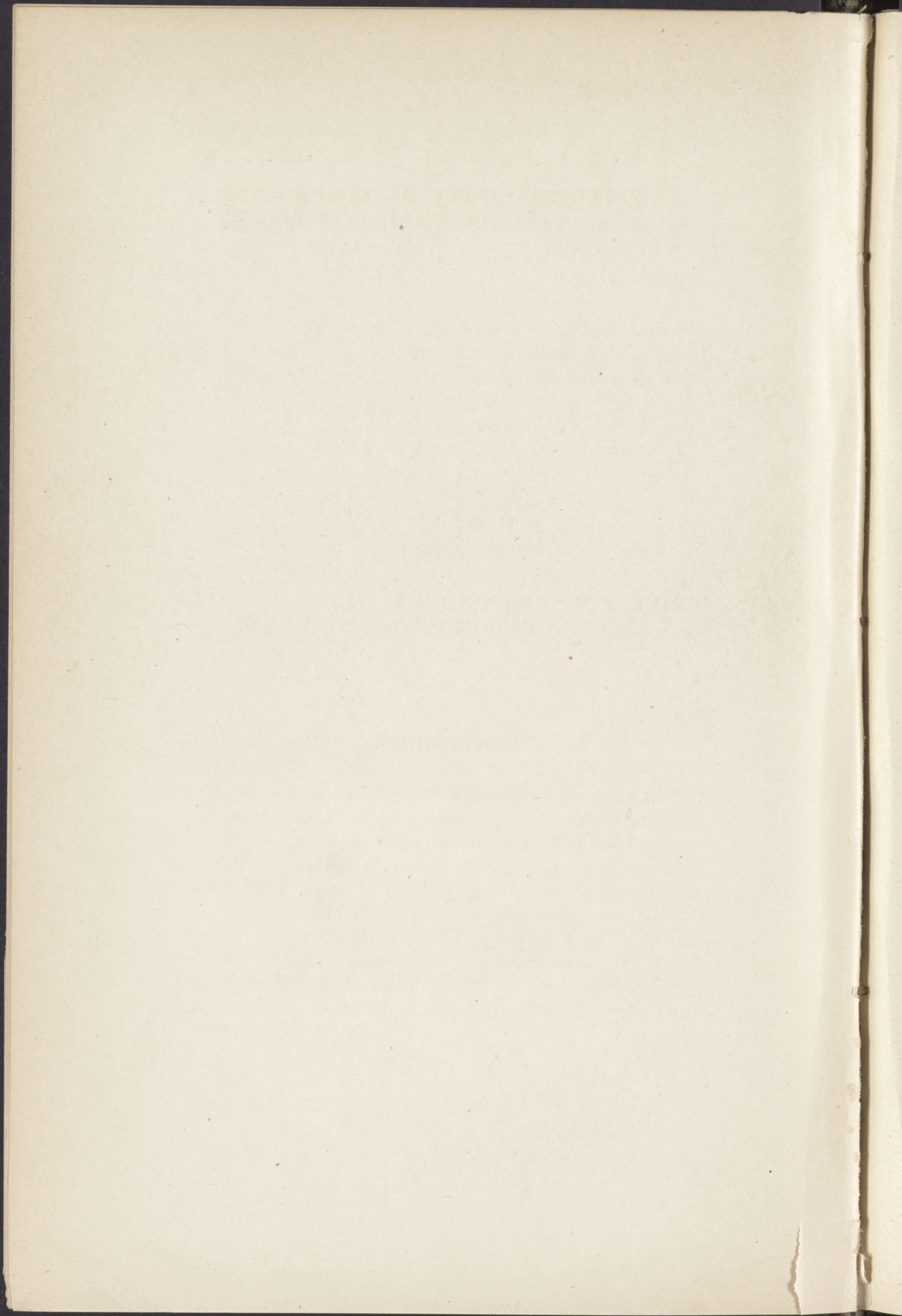
There is no evidence that any of the ties were actually assessed by the State Board of Assessors. Furthermore, there is no evidence that there was any adjustment between the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey, pursuant to Sec. 7, of the agreement of November 11, 1910, of any tax assessed against the ties and paid to the State, as surely would be presented to the Court for consideration by the prosecutor were it the fact.

The appellant therefore submits that no part of these ties was assessed by the State Board of Assessors, and that all were properly assessable by the Township. It has been shown further that such portion of the ties as was intended for use without the State, was clearly not assessed by the State Board, and is properly assessable by the Township, and there being no question as to the valuation of that portion of the ties intended for use without the State, and the amount of the tax not being under review, the assessment should be affirmed.

Respectfully submitted,

J. H. THAYER MARTIN,  
*Attorney of Appellant.*





NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

PHILADELPHIA AND READING  
RAILWAY COMPANY,  
*Prosecutor-Respondent,*

vs.

TOWNSHIP OF WOODBRIDGE  
IN THE COUNTY OF MID-  
DLESEX,  
*Defendant-Appellant.*

ON CERTIORARI.

ON APPEAL FROM SU-  
PREME COURT.

---

BRIEF FOR RESPONDENT, PHILADELPHIA  
AND READING RAILWAY COMPANY.

---

STATEMENT.

The writ of certiorari allowed in this case by Mr. Justice Bergen brought up for review before the Supreme Court the validity of an assessment for taxation made by the Township of Woodbridge, in the County of Middlesex, on 750,000 railroad ties valued at \$150,000 belonging to the Philadelphia and Reading Railway Company. The amount of the tax levied is \$4,200. The facts are set forth at length in the agreed statement of facts contained in the State of the Case. Briefly, they are as follows:

The Central Railroad Company of New Jersey and the Philadelphia and Reading Railway Company, under the agreement set forth on pages 22 to 27, inclusive, in the State of the Case, erected upon land of the Port Reading Railroad Company, at Port Reading, a plant used solely for the creosoting of railroad ties used by these two companies and the companies affiliated with them. The Philadelphia and Reading Railway Company purchases in the open market the ties it requires for railroad purposes and these ties are taken to the Port Reading plant and after being creosoted are shipped to points on the line of the Philadelphia and Reading Railway Company within and without the state of New Jersey and used for railroad purposes. It is agreed that the ties are used for railroad purposes. (Case, p. 19, line 16.)

---

#### POINT I.

**The Township of Woodbridge Had No Power to Levy Said Assessment, as the Power to Assess the Personal Property of Railroads in This State Is in the State Board of Assessors Alone.**

The General Tax Act of 1903 (Comp. Stats. of 1910, p. 5077) provides that

“the following property shall be exempt from taxation under this act, namely, \* \* \* \* \*

“8. And all property used for railroad and canal purposes, the taxation of which is provided for by any other law of this state.” (P. L. 1903, p. 396.)

The act relating to the taxation of railroad and canal property (Comp. Stats. of 1910, p. 5260) provides in the first section thereof as follows:

“That all the property of any railroad or canal company not used for railroad or canal purposes shall be assessed and taxed by the same assessors and in the same manner and at the same rate as the taxable property of other owners in the same municipal division or taxing district; all other property of any railroad or canal company shall be assessed and taxed as hereinafter directed.” (P. L. 1888, p. 269.)

Section two (Comp. Stats. of 1910, p. 5263) provides as follows:

“That all property of any railroad and of any canal company used for railroad or canal purposes shall be assessed by a State Board of Assessors.”

Section three of the said act relating to the taxation of railroad and canal property provides that the state board shall ascertain the true value of all property of each railroad in this state, and they shall in such ascertainment, ascertain

“III. The value of all the tangible personal property of each railroad and canal company.”

Subdivision four of said section three (Comp. Stats., p. 5264) declares,

“The term ‘tangible personal property’ shall be held to include the rolling stock, cars, locomotives, ferry boats, all machinery, tools, other tangible personal property of any railroad company.”

The ninth section of said act relating to the taxation of railroad and canal property provides that the board, upon the completion of their valuation and assessment, shall proceed to compute the tax upon the entire assessed value of each railroad company, as estimated by them.

From the foregoing provisions it appears clearly that the legislature has vested the state board alone with the power to assess and tax the personal property of all railroad companies.

The act of 1888 has not, in respect to the assessment of personal property, been altered by the 1906 supplement to the act for the taxation of railroad and canal property. (P. L. 1906, p. 121, Comp. Stats., p. 5279.) The 1906 act applies the average tax rate and section five expressly declares that its provisions shall not apply to any other property than that therein described.

The 1906 act moreover describes all the property that the state board has authority to tax by the act of 1888.

---

## POINT II.

### **The Local Assessor of the Township of Woodbridge Had no Power to Assess the Property in Question, Because It Was Held and Intended for Railroad Use by a Railroad Company.**

It is admitted that the ties in question, after being taken to the Port Reading plant for creosoting, are, after being creosoted, shipped to points on the line of the Philadelphia and Reading Railway Company to be used for railroad purposes. (Case, p. 19, line 12.)

In *Jersey City vs. Board of Equalization of Taxes*, 74 N. J. L. 387, our Supreme Court said,

“The act for taxation of railroad and canal property (Gen. Stat., p. 3324, sec. 1, pl. 212) enacts that all property of any railroad or canal company not used for railroad or canal purposes shall be assessed for taxes by the same assessors in the same manner and at the same rate as the taxable property of other owners in the same municipal division or tax district.

“The question, then, is whether this tunnel property is to be taxed by the State Board of Assessors or by the local assessors.

“The solution of this question depends upon whether, within the meaning of the statute, this property can be said to be used for railroad purposes.

“From the stipulated facts it appears that the property was, with reasonable diligence, being put into a shape suitable for transportation purposes for the railroad, with the intention to employ it for that purpose as soon as it assumed a usable shape. The property was in the possession of the railroad company, who were using it for that purpose alone. It is true that the company was not yet transporting passengers or freight as a common carrier. The actual transportation of freight and passengers, however, is not the only use to which railroad property is devoted. The use of the property for preparation for railroad use and for the reparation incident to transportation is as much a use for railroad purposes as is transportation itself. Some physical convulsion like an earthquake might paralyze traffic for weeks, yet no one, I imagine, would say that during this period of

time while the company was rebuilding bridges or restoring roadbeds the property was used for any other than railroad purposes.

“In the present case the property taxed was used by the railroad. It was used for some purpose. What purpose for using it other than railroad purposes can be attributed to the company? The notion that the exemption of such property from local assessment rests alone upon the fact that over it cars are running or that it is devoted to actual present use for transportation purposes, is not recognized by our cases.

“In *United New Jersey Railroad and Canal Company vs. Jersey City*, 26 Vroom, 129, the land assessed locally had not, at the time of the assessment, been employed in the operation of the road. It was, in the language of the Chancellor who delivered the opinion in the Court of Errors and Appeals, held vacant in anticipation of demand for increased trackage and other structures incident to the operation of a branch road, and for use in the process of construction of elevated tracks, and for any other purpose. It was not running or otherwise used for profit. This property was held to be exempt. The Court further defined the line which separated taxable from non-taxable property by saying that when property with a right of way not used for purposes incident to the proper construction, maintenance or management of the railroad or to the use of it by the corporation as a carrier of goods or passengers, it cannot be said to be used for railroad purposes.

“In *New Jersey Junction Railroad vs. Jersey City*, 34 Vroom, 120, a ten-acre block adjoining a

right of way, with no improvements upon it, and from which the railroad company derived no revenue, and not used for any purpose other than railroad purposes, was held to be exempt because held in anticipation of use for railroad purposes. It is true, there was a railroad in operation in each of these cases upon adjacent property, but that fact seems to have been significant only in exhibiting an intention to use the taxed property, when needed, as part of the existing railroad. The property actually taxed was no more in actual use for transportation purposes than the property taxed in the present instance, but an intention appearing that the property should be devoted to railway purposes alone, it was held exempt from local assessment.

“The same intention here appearing, I think the Board of Equalization were right in relieving the property from the tax imposed.

“It may be remarked that the fact that the company had not returned the property to the State Board of Assessors for assessment cannot affect the question under discussion.

“There should be an affirmation of the order of the Board.”

In *New Jersey Junction Railroad Company vs. Jersey City, supra*, Lippincott, J., said:

“The tests to be applied are whether these lands are now used or devoted to railroad purposes, or held for fairly anticipated railroad purposes and emergencies, and the purposes incident thereto.

“If these lands are either used for railroad purposes, or held by the railroad company solely for fairly anticipated railroad purposes,

they are then taxable only by the State Board of Assessors as railroad property, and are not subject to local taxation.

“These rules can hardly need repetition as they have so often been adjudicated. \* \* \* \*  
United Companies vs. Jersey City, 26 Vroom, 129; Currie vs. Waverly Railroad Company, 23 Id. 378; United Companies vs. Jersey City, 28 Id. 563, 569; National Docks, &c., vs. Pennsylvania Railroad Company, 28 Id. 637, 641; Delaware, Lackawanna and Western Railroad Company vs. Newark, 31 Id. 60, and cases cited in the latter case.”

The fact that in the present instance, the personal property was being prepared for use is not sufficient to take it out of the principle above laid down by the authorities. It is shown that it was purchased for railroad purposes, went to the creosoting plant to fit it for such purpose, and is taken away from the plant and actually used for railroad purposes.

---

### POINT III.

#### **Taxation of the Railroad Ties Would Result in a Double Tax Being Imposed Upon the Prosecutor.**

The General Tax Act values and assesses as of the 20th day of May of each year. The Railroad Act values and assesses as of the 1st day of November of each year.

From this it can readily be seen that the property passing through the creosoting plant, if taxed on the 20th day of May and placed in service, would

again be taxed on the 1st of November by the State Board of Assessors. Consequently, if the local assessors are permitted to tax this property, it would result in double taxation.

It is a familiar principle in the law of New Jersey that the courts will adopt that construction of tax laws that will avoid a double taxation of property, and that double taxation will only be upheld where the intent to levy a double tax is clearly and definitely apparent.

---

**POINT IV.**

In this case no appeal was taken to the state board from the Middlesex County Board of Taxation for the reason that the question involved was purely a legal question, and while an appeal could have been taken to the state board, as this was not mandatory, it was thought better to go to the Supreme Court for a writ of certiorari directed to the Middlesex County Board of Taxation, for a review of the question of law involved.

Section ten of the act establishing county boards is as follows:

“Any action or determination of any county board of taxation may be appealed for review to the Board of Equalization of Taxes of New Jersey, under such rules and regulations as said Board of Equalization may from time to time prescribe, and said Board of Equalization shall be authorized and empowered to review such action and proceedings and give such judgment as it may think proper.”

It will be observed that this language is not mandatory and does not require an appeal to the state board.

The Supreme Court in its opinion stated that as the inquiry was concerning the legality of the tax as a whole it was proper for the Supreme Court to certiorari the tax in limine, upon the same principle that certiorari will lie at the very inception of proceedings before a magistrate if it be obvious that the magistrate is without jurisdiction.

The question involved is a question of law and for that reason would have had to be decided by a Court, so that to take an appeal to the state board would have been a work of supererogation.

A great deal of stress is laid in the appellant's brief upon the point that the writ was granted after the right to appeal had expired. This was a risk the railway company took. Believing it was entitled to a writ of certiorari and the time for such application not having expired it can make no difference, and the township of Woodbridge has in no wise suffered by the fact that the writ was granted after the time to appeal had expired. The cases cited by the appellant apply only to the question as to the exercise of the discretion of the Supreme Court in granting the writ of certiorari. As it has been granted, to hold now that it was an improper exercise of the discretion of the Court would be to deny the railway company a review of the legality of the tax.

**POINT V.**

The act establishing the Board of Taxes and Assessment (P. L. 1915, p. 438) in no way changes the powers formerly exercised by the State Board of Assessors in the matter of the taxation and valuation of railroad property.

Respectfully submitted,

FRANK S. KATZENBACH, JR.,  
*Attorney for Prosecutor.*

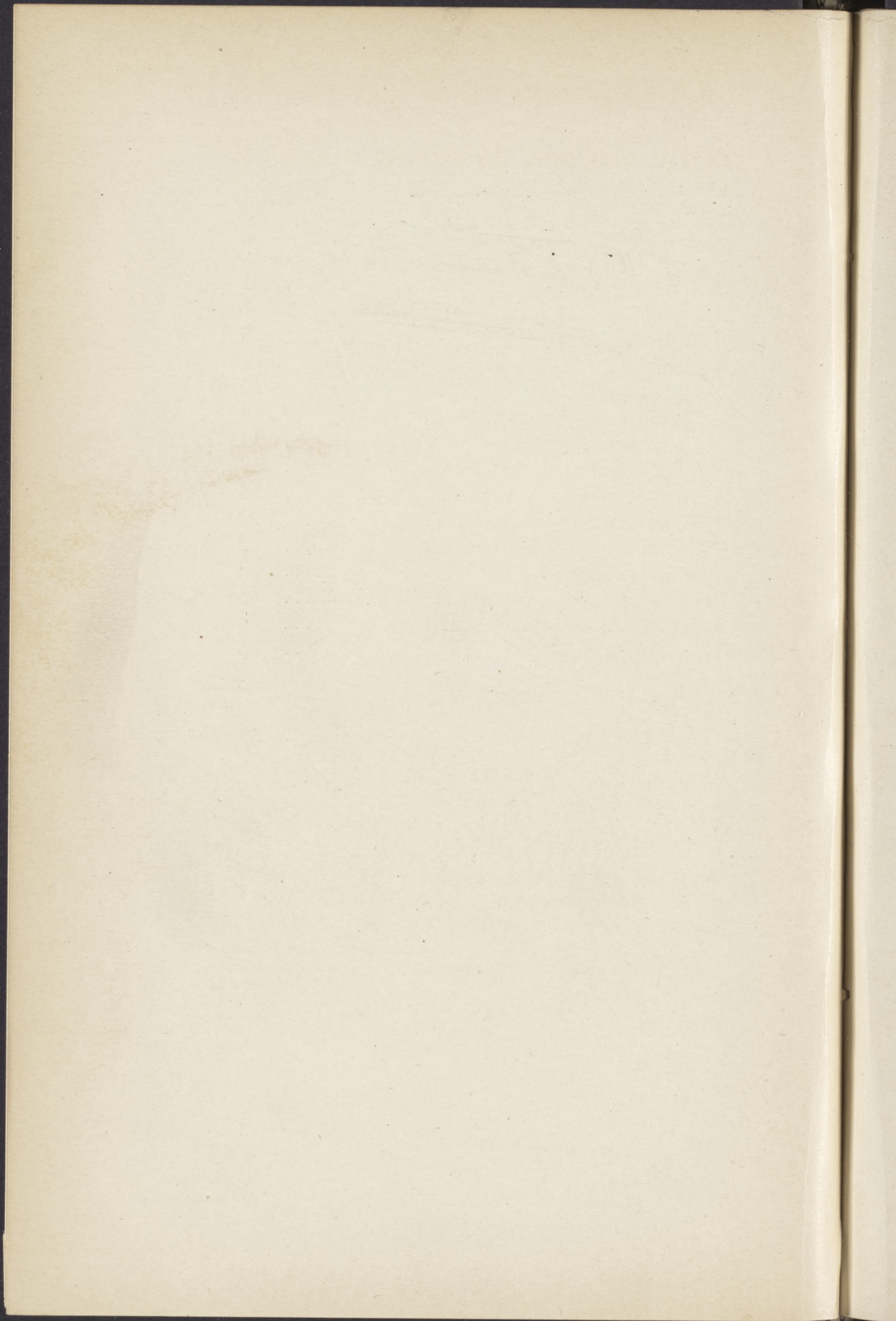
POINT

... of the ...  
... of the ...  
... of the ...

... of the ...

# INDEX.

|   | PAGE. |
|---|-------|
| Petition for Certiorari .....           | 1     |
| Tax Bill .....                          | 7     |
| Writ of Certiorari .....                | 8     |
| Return.                                 |       |
| Petition of Appeal to County Board .... | 10    |
| Minutes of County Board .....           | 13    |
| Affirmance by County Board .....        | 14    |
| Judgment of County Board .....          | 15    |
| Agreed State of Facts .....             | 18    |
| State Assessment .....                  | 20    |
| Copy of R. R. Agreement .....           | 22    |
| Reasons .....                           | 28    |
| Opinion of Supreme Court .....          | 30    |
| Judgment of Supreme Court.....          | 32    |
| Notice of Appeal.....                   | 33    |



# New Jersey Supreme Court.

PETITION FOR CERTIORARI.

*Filed July 12, 1915.*

PHILADELPHIA AND READING RAIL-  
WAY COMPANY,

*Prosecutor,*

*vs.*

TOWNSHIP OF WOODBRIDGE IN THE  
COUNTY OF MIDDLESEX, L. M.  
CAMPBELL, Collector of Taxes  
in the Township of Wood-  
bridge in the County of Middle-  
sex, and the Middlesex County  
Board of Taxation,

*Defendants.*

10

---

*To the Supreme Court of Judicature of the State of  
New Jersey:*

The petition of the Philadelphia and Reading  
Railroad Company, a corporation created by and  
existing under and by virtue of the laws of the State  
of Pennsylvania, respectfully shows:

20

First: That at Port Reading in the Township of  
Woodbridge, in the County of Middlesex and State  
of New Jersey, there is located a plant for the cre-  
osoting of railroad ties; that the title to the land up-  
on which said plant is erected is in the Port Read-

ing Railroad Company; that said property is assessed by the State Board of Assessors as property used for railroad purposes under the act for the taxation of railroad and canal property (*P. L. 1888, page 269*).

Second: That said plant is jointly operated by your petitioner and the Central Railroad Company of New Jersey for the sole purpose of creosoting railroad ties, which are used by your petitioner and  
10 the Central Railroad Company of New Jersey for the repair and extension of their railroad tracks and sidings; that each of said companies purchases in the open market the ties required for railroad purposes; that the same are then creosoted at said creosoting plant and afterwards shipped to the points on the lines of railroad of your petitioner and the said Central Railroad Company of New Jersey where the same are required for use for the purposes aforesaid.

20 Third: That in the year nineteen hundred and fourteen the local Assessor of the Township of Woodbridge, in the County of Middlesex, assessed for taxation as the property of your petitioner, seven hundred and fifty thousand railroad ties at said creosoting plant, fixing the valuation thereof at the sum of One hundred and fifty thousand dollars; that your petitioner subsequently received a bill for the amount of alleged tax imposed upon said railroad ties for the amount of Four thousand,  
30 two hundred dollars, a copy of which is hereto annexed and made a part hereof; that your petitioner took an appeal to the Middlesex County Board of Taxation, and said Board affirmed said assessment and tax without stating the grounds for its opinion.

Fourth: That for the year nineteen hundred and thirteen and the year nineteen hundred and fourteen the State Board of Assessors has assessed all tangible property necessary for and used in state commerce of your petitioner; that the assessments made by the State Board of Assessors are made as of the date of December thirty-first in each year; that the assessments by the said local Assessor of Woodbridge Township was made as of the date of May twentieth, nineteen hundred and fourteen. 10

Fifth: That your petitioner insists that the assessment of said railroad ties by the said Township of Woodbridge is unjust, erroneous, illegal, based upon an illegal and erroneous principle of law and should be set aside and cancelled for the following reasons:

A. That the township of Woodbridge had no power to levy said assessment as the power to assess the personal property of railroads of this State is in the State Board of Assessors alone. 20

B. The Township of Woodbridge, through its local Assessor, has no power to assess the property (railroad ties) in question, because it was held and intended for railroad use by your petitioner, a railroad corporation.

C. That the taxation of said property (railroad ties) in question, would result in imposing a double tax, as the general tax act under which said assessment and tax of the Township of Woodbridge purports to have been levied, assesses property as of the date of the twentieth day of May in each year; that the act for the taxation of railroad property 30

values and assesses as of the thirty-first day of December in each year; that said railroad ties, assessed as of the twentieth day of May in the year nineteen hundred and fourteen, would be again assessed as of the thirty-first day of December, in the year nineteen hundred and fourteen, for the same year.

Your petitioner therefore prays that a writ of certiorari may be issued to review and determine  
 10 the legality of the action of the Township of Woodbridge in the County of Middlesex in the making of said valuation and assessment, and the Middlesex County Board of Taxation in affirming the same.

PHILADELPHIA AND READING RAILWAY COMPANY,  
 By W. H. WHITE, *Comptroller*.

STATE OF PENNSYLVANIA, }  
 COUNTY OF PHILADELPHIA. } ss.

W. H. White, being duly sworn according to law,  
 on his oath deposes and says that he is the Comptroller of the Philadelphia and Reading Railway  
 20 Company, the petitioner named in the foregoing petition; that at Port Reading in the Township of Woodbridge, there is located a plant for the creosoting of railroad ties; that the title to the land upon which said plant is erected is in the Port Reading Railroad Company; that said property is assessed by the State Board of Assessors as property used for railroad and canal purposes, under the New Jersey act for the taxation of railroad and canal prop-  
 30 erty; that said creosoting plant is jointly operated by the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey

for the sole purpose of creosoting railroad ties, which are used by the said railroad companies for the repair and extension of their railroad track and sidings; that each of said companies purchases in the open market the ties required for its use; that the same are then creosoted at the said plant and after creosoting shipped to the points on the lines of railroad of said companies where the same are required for use for the purposes aforesaid.

And this deponent further says that in the year 10  
nineteen hundred and fourteen the local Assessor of the Township of Woodbridge, in the County of Middlesex, assessed for taxation as property of the Philadelphia and Reading Railway Company seven hundred and fifty thousand railroad ties at said creosoting plant, fixing the valuation thereof at the sum of One hundred and fifty thousand dollars; that the amount of tax imposed upon said railroad ties was Forty-two hundred dollars; that annexed to the 20  
foregoing petition is a true copy of the tax bill rendered by the Township of Woodbridge for said tax; that an appeal was taken to the Middlesex County Board of Taxation and said Board affirmed said assessment and tax without stating the grounds for its opinion.

And this deponent further says that for the years 30  
nineteen hundred and thirteen and nineteen hundred and fourteen the State Board of Assessors has assessed all the tangible property necessary for and used in state commerce of the Philadelphia and Reading Railway Company; that the assessments made by the State Board of Assessors are made as of the date of December thirty-first in each year; that the assessment made by the local Assessor of Woodbridge Township was made as of the date of May twentieth, nineteen hundred and fourteen.

And this deponent further says that he has read the foregoing petition and that the facts therein stated are true, and that he believes the said assessment of the Township of Woodbridge is unjust, illegal, erroneous, and based upon an erroneous principle of law, and that the determination and judgment of the Middlesex County Board of Taxation upon the appeal therefrom was unjust, erroneous, illegal, and based upon an erroneous principle of law, and that said assessment should be set aside and cancelled for the reasons set forth in said petition.

W. H. WHITE.

Sworn and subscribed before me a Notary Public in and for the County of Philadelphia, in the State of Pennsylvania, this 30th day of June, A. D. 1915.

C. K. KLINK,  
Notary Public.

20 My commission expires April 18, 1919.

TAX BILL FOR 1914.

Woodbridge, N. J.

Page 378.

Road District, No. 20.

Phila. & Reading Ry. Co.:

Your tax bill for 1914 is as follows:

|  |           |                       |
|--|-----------|-----------------------|
| Description of Real Estate.  |           |                       |
| 750000 ties at 20c per tie.  |           |                       |
| <hr/>  |           |                       |
| Assessed Valuation.  |           |                       |
| Real Estate .....  | \$150 000 |                       |
| Personal .....   |           |                       |
| Amount Taxable .....   | \$150 000 |                       |
| <hr/>  |           |                       |
| Woodbridge, N. J., October 1, 1914.  |           |                       |
| Taxes for 1914 are now due and payable. Taxpayers who do not pay their taxes on or before the twentieth day of December next will be proceeded against as delinquents, and interest at the rate of 7 per cent. and costs will be added.  |           |                       |
| All taxes on real estate not paid before February 1, 1915, will be returned to the County Clerk according to law and recorded as a first lien on real estate.  |           |                       |
| All appeals must be filed with the Middlesex County Board of Taxation on or before Dec. 20, 1914.  |           |                       |
| Blank appeal forms will be furnished upon application to J. Edward Harned, secretary, New Brunswick, N. J.   |           |                       |
| Taxes will be received by appointment as follows: December 11th at Loewenkopf's Hotel, Keasbey, from 10 a. m. to 12:30 p. m., December 12th, at Hotel Iselin, from 10:30 a. m. to 1 p. m.; December 14th at Clum's Store, Fords, from 1 to 3 p. m.; December 15th, 16th, 17th, 18th and 19th at Township Committee Rooms, from 10 a. m. to 4 p. m. |           |                       |
| L. M. CAMPBELL,<br>Collector.  |           |                       |
|  |           | Poll .....            |
|  |           | Dog .....             |
|  |           | State School ... 3 90 |
|  |           | County .....          |
|  |           | 7 95                  |
|  |           | Township and          |
|  |           | Police .....          |
|  |           | 3 75                  |
|  |           | Poor .....            |
|  |           | 60                    |
|  |           | Roads and             |
|  |           | Bridges .....         |
|  |           | 75                    |
|  |           | Macadamizing ..       |
|  |           | 1 05                  |
|  |           | Oiling Streets,       |
|  |           | Board of              |
|  |           | Health .....          |
|  |           | 1 05                  |
|  |           | Township School       |
|  |           | 18 75                 |
|  |           | Fire .....            |
|  |           | 1 20                  |
|  |           | Lighting .....        |
|  |           | 3 00                  |
|  |           | <hr/>                 |
|  |           | Amount .....          |
|  |           | \$4200                |
|  |           | Mos. Interest...      |
|  |           | Costs .....           |
|  |           | <hr/>                 |
|  |           | Total .....           |

.....191...  
 Received Payment,  
 Page . . . . . Collector.

## WRIT OF CERTIORARI.

NEW JERSEY, ss.

(Seal  
of  
Court). The State of New Jersey to the  
Township of Woodbridge in the County  
of Middlesex, L. M. Campbell, Col-  
lector of Taxes in the Township of  
Woodbridge in the County of Middle-  
sex, and the Middlesex County Board  
of Taxation, defendants,

## 10 GREETING:

We being willing for certain reasons to be certi-  
fied of a certain assessment for taxation made  
against the Philadelphia and Reading Railway  
Company, for the year nineteen hundred and four-  
teen, by the Assessor of Taxes of the Township of  
Woodbridge in the County of Middlesex, and to be  
certified of certain proceedings taken on appeal to  
the Middlesex County Board of Taxation, involv-  
ing the assessment of seven hundred and fifty thous-  
and railroad ties valued at the sum of One hun-  
dred and fifty thousand dollars, belonging to the  
said Philadelphia and Reading Railway Company,  
do command you and each of you that the said as-  
sessment for taxes so made by said Assessor of the  
Township of Woodbridge in the County of Middle-  
sex, and the opinion, decision and judgment of said  
Middlesex County Board of Taxation, and the  
record or the proceedings before the said Middlesex  
County Board of Taxation, together with all things  
touching and concerning the same, as fully and en-  
tirely as before you they remain, to our Justices of  
our Supreme Court of Judicature, at Trenton, on

the thirty-first day of July instant, you certify and send, together with this writ, that therein may be done what of right and according to the law of this State should be done.

WITNESS, HONORABLE WILLIAM S. GUMMERE,  
Chief Justice of our New Jersey Supreme Court,  
at Trenton, the tenth day of July, 1915.

FRANK S. KATZENBACH, JR.,  
*Attorney.*

WM. C. GEBHARDT,  
*Clerk.*

## RETURN.

## NEW JERSEY SUPREME COURT.

In the matter of the application  
of Philadelphia and Reading  
Railway Company for the re-  
duction of the tax assessment  
for the year 1914 on property  
situate in Woodbridge Town-  
ship, County of Middlesex and  
State of New Jersey.

On Certiorari.

10

*To the Middlesex County Board of Taxation:*

Your petitioner, Philadelphia and Reading Rail-  
way Company, residing at (P. O. address) Reading  
Terminal, in the County of Philadelphia and State  
of Pennsylvania, respectfully shows that it is the  
owner of certain property situate in the taxing  
district of Woodbridge Township, County of Mid-  
dlesex, consisting of a number of railroad ties \* \* \*  
and known as \* \* \* \*.

20 That said property has been assessed for the pur-  
pose of taxation for the year 1914 at a valuation of  
One hundred and fifty thousand (150,000) dollars,  
at which assessment your petitioner is aggrieved,  
because the said assessment is erroneous, the said  
railroad ties not being taxable by the township.

Your petitioner has, therefore, not paid the taxes  
so levied for the year 1914, and prays that the said

assessment of One hundred and fifty thousand (150,000) dollars for the year 1914 be cancelled.

Dated December 1914.

(Sdg.) PHILA. & READING RY. CO.,  
CHAS. E. DILKES, JR.,  
*Tax Agent.*

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA. } ss.

Chas. E. Dilkes, Jr., Tax Agent, the above named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true. 10

CHAS. E. DILKES, JR.

Sworn and subscribed before me this 4th day of December, 1914.

SEAL.

C. K. KLINK,  
*Notary Public.*

My commission expires April 18, 1915.

STATE OF PENNSYLVANIA, }  
 COUNTY OF PHILADELPHIA. }SS.

Chas. E. Dilkes, Jr., being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Andrew Keys, Township Clerk (Attorney or Clerk) of Woodbridge Township (name of taxing district) personally on the seventh day of December, 1914.

CHAS. E. DILKES, JR.

10 Sworn and subscribed before me, this 7th day of December, 1914.

SEAL.

C. K. KLINK,  
*Notary Public.*

My commission expires April 18, 1915.

(Filed December 8, 1914.)

20 I hereby certify that the foregoing is a true copy of the appeal filed by the Philadelphia and Reading Railway Company with the Middlesex County Board of Taxation in the matter of their application for the cancellation of the assessment levied by the Township of Woodbridge on Seven hundred and fifty thousand railroad ties.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Middlesex County Board of Taxation this twenty-ninth day of July, A. D. nineteen hundred and fifteen.

J. E. HARNED,  
*Secretary.*

(Seal of Middlesex County  
 Board of Taxation).

MINUTES OF MEETING OF THE MIDDLESEX  
COUNTY BOARD OF TAXATION.

The Middlesex County Board of Taxation met at the Town Hall, Woodbridge, at nine A. M. on Monday, January 11, 1915, for the purpose of hearing appeals against assessments levied in that Township for the year 1914.

There were present: W. M. Voorhees, President; W. C. Jaques and G. J. Haney.

Meeting called to order by the President.

Assessor Dunigan and Thomas H. Hagerty, Acting Attorney, were present in behalf of the Township.

The Central Railroad of New Jersey, through its attorney, George Holmes, appealed from an assessment of \$50,000 on railroad ties at the creosoting plant at Port Reading, asking for the cancellation of same and claiming that they were not assessable by the local assessor. Order laid over for further consideration.

The Philadelphia and Reading Railway Company, through its representative, Mr. Dilkes, appealed for the cancellation of an assessment of \$150,000 on similar property at the same location and gave the same reason why cancellation should be made. Ordered laid over for further consideration.

Hearing adjourned.

J. E. HARNED,  
*Secretary.*

The Middlesex County Board of Taxation met in the Surrogate's Office at the County Recording Building on January 21, 1915, at 10 A. M. to hear appeals against certain assessments in the various districts of the County.

There were present: W. D. Voorhees, President; W. C. Jaques and G. J. Haney.

The following were the appeals heard and the action taken on same, to wit:

10

## WOODBIDGE.

B. J. Dunigan, Assessor, present on behalf of the township.

The assessment of \$50,000 against the Central Railroad Co. of N. J., for ties at Port Reading creosoting plant from which an appeal had been taken and on which appeal judgment had been reserved to the hearing at Woodbridge on the 11th inst., was affirmed.

20 The assessment of \$150,000 against the Philadelphia and Reading Railway Co. for ties at the Philadelphia and Reading creosoting plant, which had also been adjourned from the hearing at Woodbridge on the 11th inst., was also affirmed.

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Middlesex County Board of Taxation touching and concerning the proceedings on the matter of the appeal of the Philadelphia and Reading Railway Company, involving the assessment of seven hundred and fifty  
30 thousand railroad ties.

In testimony whereof I have hereunto set my hand and affixed the seal of the Middlesex County Board of Taxation this 29th day of July, A. D. 1914.

SEAL.

J. E. HARNED,  
*Secretary.*

THE MIDDLESEX COUNTY BOARD OF  
TAXATION.

JUDGMENT.

---

In the matter of the appeals of  
certain taxpayers from the as-  
sessment of property in the  
Township of Woodbridge in  
the County of Middlesex for  
the year 1914. } On Certiorari.

---

Appeals in writing having been filed with the 10  
Middlesex County Board of Taxation, duly verified  
according to the rules of practice prescribed by the  
said Board, by the following named owners of prop-  
erty in said Township, in which it is alleged injus-  
tice has been done said complainants by the assess-  
ment of their respective properties for taxation for  
the year 1914, in that said properties have been as-  
sessed higher than the values thereof:

After hearing evidence produced on the part of  
said complainants, and the arguments of Thomas 20  
H. Hagerty, acting attorney, and B. J. Dunigan,  
Assessor for the tax district, and after considering  
the same; it is, on this twenty-first day of January,  
nineteen hundred and fifteen, at a session of the  
Middlesex County Board of Taxation, ORDERED,  
ADJUDGED and DECREED, under and by virtue  
of chapter 120 of the laws of 1906, that the follow-  
ing action respecting said assessments be taken, to  
wit:

That the assessment of Forty-five hundred dollars against the property of Mary Alice Keyes, consisting of a house and three acres on Rahway Avenue, be REDUCED to Thirty-six hundred dollars.

That the assessment of Two thousand dollars against the Electric Smelting & Aluminum Co., for two acres of land, and the assessment of Seven hundred dollars against said company on 3.5 acres of land be CANCELLED; also that the assessment of  
10 Ten thousand five hundred dollars against said company on factory and plot be INCREASED to Eleven thousand dollars.

That the assessment of Fifty thousand dollars against the property of the Central Railroad Co. of New Jersey, consisting of railroad ties, be AFFIRMED.

That the assessment of One hundred and fifty thousand dollars against the property of the Philadelphia and Reading Railway Company, consisting of a number of railroad ties, etc., be AFFIRMED.  
20

AND IT IS FURTHER ORDERED that this order be certified to the collector of said Township of Woodbridge, County of Middlesex.

W. D. VOORHEES,  
*President.*

SEAL.

WM. C. JAQUES,

.....  
Middlesex County  
Board of Taxation.

30 Attest:

J. E. HARNED,  
*Secretary.*

I hereby certify that the foregoing is a true copy of the judgment rendered by the Middlesex County Board of Taxation touching and concerning the proceedings in the matter of the appeal of the Philadelphia and Reading Railway Company, involving the assessment of 750,000 railroad ties.

In testimony whereof I have hereunto set my hand and affixed the seal of the Middlesex County Board of Taxation this twenty-ninth day of July, A. D. nineteen hundred and fifteen. 10

SEAL.

J. E. HARNED,  
*Secretary.*

AGREED STATEMENT OF FACTS.  
*Filed May 24, 1916.*  
 NEW JERSEY SUPREME COURT.

PHILADELPHIA AND READING RAIL-  
 WAY COMPANY,

*Prosecutor,*

*vs.*

TOWNSHIP OF WOODBRIDGE IN THE  
 COUNTY OF MIDDLESEX, L. M.  
 CAMPBELL, Collector of Taxes  
 in the Township of Wood-  
 bridge in the County of Mid-  
 dlesex, and the Middlesex  
 County Board of Taxation,

*Defendants.*

} Agreed State-  
 ment of Facts.

10

The prosecutor, the Philadelphia and Reading  
 Railway Company, is a railroad corporation created  
 under the laws of Pennsylvania; the Township of  
 Woodbridge is a municipal corporation, created  
 under the laws of New Jersey; L. M. Campbell was,  
 in the year 1914, the Collector of Taxes of said town-  
 ship; the Middlesex County Board of Taxation is a  
 Board created under Chapter 120 of the Laws of  
 1906.

At Port Reading, in the Township of Wood-  
 bridge, in Middlesex County, New Jersey, there is  
 located a plant adapted and used for the creosoting  
 of railroad ties. The title to the land on which this  
 plant is erected is in the Port Reading Railroad  
 Company, a New Jersey corporation, and is assess-

ed by the State Board of Assessors (now State Board of Taxes and Assessment) as property used for railroad purposes under the act for the taxation of railroad and canal property (*P. L. 1888, p. 269*).

This plant is operated jointly by the Central Railroad Company of New Jersey, and the Philadelphia and Reading Railway Company, for the sole purpose of creosoting railroad ties. The Philadelphia and Reading Railway Company purchases in the open market the ties it requires for railroad purposes. These ties are taken to the Port Reading plant, and after being creosoted, are shipped to points on the line of the Philadelphia and Reading Railway Company within and without the State of New Jersey for use for railroad purposes. 10

As of the date of May 30th, 1914, the local assessor of the Township of Woodbridge assessed for taxation against the Philadelphia and Reading Railway Company, 750,000 railroad ties at said Port Reading plant, fixing the valuation thereon at \$150,000; that the amount of the tax imposed thereon was \$4200; that an appeal from said assessment and tax was taken by the Philadelphia and Reading Railway Company to the Middlesex County Board of Taxation and said Board affirmed said assessment and tax and dismissed the appeal. No appeal was taken to the State Board of Taxation. 20

That the State Board of Assessors as of the date of December 21st, 1913, assessed the property of the Philadelphia and Reading Railway Company as follows: 30

PHILADELPHIA AND READING RAILWAY  
COMPANY, LESSEE.

Valuation and Assessment for State and Local Uses  
for the Year 1913.

VALUATION.

|    |   |              |
|----|---|--------------|
|    | Assessed valuation of tangible personal property necessary for and used in State Commerce ..... | \$681,263.00 |
| 10 | Total assessable for State uses.....  | \$681,263.00 |
|    | Assessed valuation of real estate used for railroad purposes, other than main stem .....        |              |
|    | Aggregate assessed valuation .....  | \$681,263.00 |

TAX.

|    |  |             |
|----|--|-------------|
|    | Tax for State uses, at average tax rate of \$1.979 per \$100 valuation.....                                      | \$13,482.19 |
| 20 | Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates |             |
|    | Total tax .....  | \$13,482.19 |

Annual Report, State Board of Assessors, 1913,  
p. 391.

That the State Board of Assessors as of the date of December 31st, 1914, assessed the property of the Philadelphia and Reading Railway Company as follows:

---

PHILADELPHIA AND READING RAILWAY  
COMPANY, LESSEE.

Valuation and Assessment for State and Local Uses  
for the year 1914.

VALUATION.

10

|   |              |
|---|--------------|
| Assessed valuation of tangible personal property necessary for and used in State Commerce ..... | \$671,149.00 |
| Total assessable for State uses.....  | \$671,149.00 |
| Assessed valuation of real estate used for railroad purposes, other than main stem .....        |              |
| Aggregate assessed valuation .....  | \$671,149.00 |

TAX.

20

|   |             |
|---|-------------|
| Tax for State uses, at average tax rate of \$2.024 per \$100 valuation.....                                       | \$13,584.06 |
| Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates. |             |
| Total tax .....   | \$13,584.06 |

Annual Report, State Board of Assessors, 1914,  
(not yet printed).

The following is a copy of the agreement between the Philadelphia and Reading Railway Company, and the Central Railroad Company of New Jersey with respect to the said plant at Port Reading, New Jersey:

10 AGREEMENT, Made this eleventh day of November, A. D. 1910, by and between PHILADELPHIA AND READING RAILROAD COMPANY, party of the first part, hereinafter called the READING, and THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, party of the second part, hereinafter called CENTRAL.

WHEREAS, the said Companies, parties hereto, have severally found it desirable to make arrangements for the creosoting of ties and timber.

20 AND WHEREAS, it is not deemed necessary or desirable that each of said Companies erect its own separate plant for such purpose, but, in the interest of economy, it is deemed desirable that a single plant be constructed for the purpose of creosoting the ties and timber which, by each of said Companies, and the Companies affiliated with them, respectively, may be required to be creosoted.

30 NOW THIS AGREEMENT WITNESSETH that said parties hereto, in consideration of the premises and the advantage to be derived by each of them from a plant so erected, have agreed and do hereby agree to and with each other as follows:

1. A creosoting plant shall be erected upon land in the vicinity of Port Reading, New Jersey, owned by the PORT READING RAILROAD COMPANY, one of the Companies affiliated with READING, which land is described as follows:

*Description of property to be leased for a tie treating plant, in the vicinity of Chrome, Woodbridge Township, Middlesex County, New Jersey.:*

Beginning at a point in the dividing line between the land of the Port Reading Railroad Company and the land of the Sound Shore Front Improvement Company, said point being six hundred (600) feet in a southerly direction measured along said line from the southern line of Woodbridge Turnpike; thence along said dividing line the five following courses, curves and distances: first S. 2° 45' E. Seven hundred (700) feet to a corner marked by a rail monument, second N. 86° 21' E. Two hundred (200) feet to a corner marked by a rail monument, third S. 0° 19' W. One thousand thirty-three and thirty-seven one hundredths (1033.37) feet to a corner marked by a rail monument, fourth in a southeasterly direction by a curve to the left with a radius of Four hundred and ten (410) feet a distance of Two hundred and seventy-eight (278) feet to a corner marked by a rail monument, and fifth S. 81° 40' E. One hundred and sixteen (116) feet to the northern right of way line of the Cartaret and Sewaren Railroad, said point being marked by a rail monument, thence along said right of way line N. 87° 07' W. Three hundred and forty-three (343) feet to a corner marked by a rail monument; thence along the western end of the right of way of said railroad also the right of way of the New Jersey

Terminal Railroad Company S.  $3^{\circ} 17'$  W. One hundred (100) feet, Fifty (50) feet of which is along each piece of right of way, to a corner marked by a rail monument; thence along the southern right of way line of the New Jersey Terminal Railroad, S.  $87^{\circ} 07'$  E. One hundred and sixty (160) feet to a corner marked by a rail monument; thence along another dividing line between lands of the Port Reading Railroad Company and lands of the Sound

10 Shore Front Improvement Company in a south-westerly direction by a curve to the left with a radius of Three hundred and ten (310) feet a distance of One hundred and ninety-two feet to a corner marked by a rail monument, thence along said dividing line south seven hundred and ninety-seven and eight tenths (797.8) feet to a point at the edge of the bank of Staten Island Sound; thence along line of Riparian Rights of the Port Reading Railroad Company S.  $23^{\circ} 19'$  W. Four hundred (400)

20 feet to the line for solid filling; thence along said line N.  $63^{\circ} 30'$  W. Five hundred and four one hundredths (500.04) feet to a corner in said line; thence through said Riparian Rights of the Port Reading Railroad Company by a line N.  $12^{\circ} 45'$  E. Three hundred (300) feet to a point; thence through lands of the The Port Reading Railroad Company the three following courses and distances; first N.  $38^{\circ} 30'$  W. Six hundred and sixty-four (664) feet to a point, second N.  $2^{\circ} 45'$  W. Two thousand one hundred and seventy (2170) feet, and third N.  $86^{\circ} 21'$

30 E. parallel with Woodbridge Turnpike Eight hundred and fifty-five (855) feet to the place of beginning, containing Sixty-three (63) acres more or less, as per plan dated October 21, 1910, hereto attached.

2. The creosoting plant to be erected is to be owned by the two Companies, parties hereto, the interest therein of CENTRAL being one-third and that of READING two-thirds.

The plant is to be operated, however, by an organization independent of both said Companies, and the Officers and Managers of the operating organization are to be appointed by the President of READING and the President of CENTRAL.

The business of the plant is to be conducted under the name of PORT READING CREOSOTING PLANT. 10

3. The land used by said plant shall have a value fixed upon it, and an annual rental shall be paid therefor, based upon 4% of this valuation, together with all taxes that may be assessed against PORT READING RAILROAD COMPANY on account of said land or the improvements thereon.

4. The contracts for the construction of said plant shall be made by READING, under and subject to the approval of the Officers and Managers of the plant appointed as hereinbefore mentioned. 20

5. The cost of the construction of said plant, and of any additions and improvements that may hereafter be made thereto or thereon, shall be paid for on the following basis, viz., one-third thereof by CENTRAL and two-thirds thereof by READING.

6. The accounts of the construction and operation of said plant shall be kept by the Comptroller of Reading, and these accounts shall be audited monthly by an auditor appointed from time to time by the Comptroller of CENTRAL. 30

7. The cost from month to month of the operation of said plant shall be divided between **READING AND CENTRAL**, and paid by them, on the basis of the ties and timber creosoted for each Company and its affiliated Companies; it being understood that at the end of each fiscal year (each fiscal year shall end June 30th) a readjustment of the operating expenses, etc. shall be made between the two Companies on the basis of the ties and timber  
10 creosoted during that year. But it is understood and agreed that operating expenses of the plant shall include only such expenses as are necessary to carry out the purposes of its erection, including, of course, taxes and rental, and compensation to the General Officers, Managers and other employees appointed in accordance with Article 2 hereof, and shall not include expenses of supervision outside of the plant.

8. For convenience of management, **READING**  
20 will pay the bills incurred by said plant and render monthly statements thereof to **CENTRAL** which will promptly pay its due proportion thereof.

9. It is understood and agreed that each company, party hereto, is to buy its own ties and timber and that no discrimination whatever will be made in favor of one or the other of the Companies parties hereto. But, if it be considered more advantageous so to do, all of the ties and timber intended for treatment at said plant may be bought on joint account  
30 by the Purchasing Agent of **READING** and of **CENTRAL** and each Company, party hereto, charged with the ties and timber delivered by said plant to it or to any of its affiliated companies.

WITNESS, the respective corporate seals of the said Companies, parties hereto, the day and year first above written.

PHILADELPHIA AND READING RAILWAY  
COMPANY,

By

GEO. F. BAER,  
*President.*

Attest:

W. R. TAYLOR,  
*Secretary.*

10

THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY,

By

GEO. F. BAER,  
*President.*

Attest:

G. O. WATERMAN,  
*Secretary.*

FRANK S. KATZENBACH, JR., 20  
*Attorney for Prosecutor.*

PETER F. DALY,  
*Attorney for Defendants.*

REASONS.  
*Filed Aug. 9, 1915,*  
 NEW JERSEY SUPREME COURT.

PHILADELPHIA AND READING RAIL-  
 WAY COMPANY,

*Prosecutor,*

*vs.*

10 TOWNSHIP OF WOODBRIDGE IN THE  
 COUNTY OF MIDDLESEX, L. M.  
 CAMPBELL, Collector of Taxes  
 in the Township of Wood-  
 bridge in the County of Middle-  
 sex, and the Middlesex County  
 Board of Taxation,

*Defendants.*

} On Certiorari.

The said prosecutor, by Frank S. Katzenbach, Jr.,  
 its attorney, comes and prays that the assessment  
 of taxes made against it by the Township of Wood-  
 20 bridge, in the matter of the assessment of 750,000  
 railroad ties for the year 1914, may be set aside,  
 reversed and for nothing holden, for the following  
 reasons:

1. That the Township of Woodbridge had no  
 power to levy said assessment on 750,000 railroad  
 ties as the power to assess the personal property of  
 railroads of this State is in the State Board of  
 Assessors alone.

2. That the Township of Woodbridge, through  
 30 its local Assessor, has no power to assess the prop-

erty (railroad ties) in question, because it was held and intended for railroad use by your petitioner, a railroad corporation.

3. That the taxation of said property (railroad ties) in question, would result in imposing a double tax, as the general tax act under which said assessment and tax of the Township of Woodbridge purports to have been levied, assesses property as of the date of the twentieth day of May in each year; that the act for the taxation of railroad property values and assesses as of the thirty-first day of December in each year; that said railroad ties assessed as of the twentieth day of May in the year 1914, would be again assessed as of the thirty-first day of December 1914 for the same year. 10

4. That the said assessment of taxes made by the said Township of Woodbridge is in divers other respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

FRANK S. KATZENBACH, JR., 20  
*Attorney of Prosecutor.*

Filed August 9, 1915.

*Opinion of Supreme Court.*

**Opinion of Supreme Court.**

Filed Nov. 10, 1916.

**New Jersey Supreme Court.**

10

June Term, 1916.

|  |     |                         |
|--|-----|-------------------------|
| PHILADELPHIA AND READING<br>RAILWAY Co., | AND | READING<br>RAILWAY Co., |
|  |     | <i>Prosecutor,</i>      |
|  |     | <i>vs.</i>              |
| TOWNSHIP OF WOODBRIDGE, <i>et al.</i> ,  |     | <i>Defendants.</i>      |

20

Argued June Term, 1916; decided November Term, 1916.

Certiorari removing tax imposed by the Township of Woodbridge.

Frank S. Katzenbach, Jr., for prosecutor.

Peter F. Daly, for defendants.

Argued before Justices Swayze, Minturn and Kalisch.

*Per Curiam:*

30

This is a case involving the right of Woodbridge Township to tax about one hundred and fifty thousand railroad ties, as personal property.

The Philadelphia and Reading and New Jersey Central Railroads maintain a creosote plant in the township, and the ties are sent there indifferently by the two companies, who share the expense of creosoting them. The ties are then used wherever they may be required, in or out of the State where the respective railroads have use for them.

40

*Opinion of Supreme Court.*

We think that the Township of Woodbridge had no right to tax this property. The railroad tax act expressly provides for the taxation of personal property in the State, excluding property assessed for railroad purposes.

The decisions are uniform that property intended for railroad use in the near future is to be treated as property used for railroad purposes, and so assessed. The only debatable factor in this case is whether that rule is applicable to the case of ties which may be used elsewhere. 10

We are not prepared to say that the case shows that all of these ties or any special ties were intended for use outside of the State. They were not taxable under the general railroad tax act, for it may well be that the railroad tax act applies only to property used for railroad purposes within the State of New Jersey, but that is a question that we need not decide here. 20

The case simply presents the fact that the ties were being put in condition for railroad use. The mere possibility that they may be used in Pennsylvania or elsewhere outside of the State does not result in changing the method of taxation.

It is argued that there should have been an appeal to the State Board of Taxation. If the case presented a question of valuation only, we would be inclined to accede to the contention. But there is no question of valuation involved, but simply an inquiry concerning the legality of the tax as a whole. It seems to us that it is proper for the Supreme Court to certiorari a tax *in limine*, upon the same principle that proceedings before a magistrate may not be taken up by the writ, until the magistrate shall have determined the case. But certiorari will lie at the very incep- 30 40

*Rule Setting Aside Tax.*

tion of the proceeding if it be obvious that the magistrate is without jurisdiction.

The tax brought up must therefore be set aside.

10

**Rule Setting Aside Tax.**

Filed Dec. 19, 1916.

## NEW JERSEY SUPREME COURT.

---

PHILADELPHIA AND READING  
RAILWAY COMPANY,

*Prosecutor,*

*vs.*

TOWNSHIP OF WOODBRIDGE IN  
THE COUNTY OF MIDDLESEX,  
*et al.,*

*Defendants.*

---

*On Certiorari.*

*Rule Setting  
Aside Tax.*

20

30

The Court having inspected the return to the Writ of Certiorari heretofore allowed in the above entitled cause, and having considered the reasons assigned for setting aside the said assessment, and having heard the argument of Counsel therein and duly considered the same,

It is ORDERED that assessment of taxes brought up by the Writ of Certiorari in the above entitled cause be and the same is hereby set aside.

Entered December 19, 1916.

On motion of

FRANK S. KATZENBACH,

*Attorney of Prosecutor.*

A true copy,

40

WM. C. GEBHARDT,

*Clerk.*

*Notice of Appeal.*

**Notice of Appeal.**

Filed Feb. 10, 1917.

NEW JERSEY SUPREME COURT.

PHILADELPHIA AND READING  
RAILWAY COMPANY,  
*Prosecutor,*

*vs.*

TOWNSHIP OF WOODBRIDGE IN  
THE COUNTY OF MIDDLESEX,  
Leonard M. Campbell, Collect-  
or of Taxes in the Township  
of Woodbridge in the County  
of Middlesex, and the Middle-  
sex County Board of Taxa-  
tion,

*Defendants.*

10

*On Certiorari.*

*Notice of Ap-  
peal from  
Judgment of  
Supreme  
Court.*

20

TAKE NOTICE, that the defendant, the Town-  
ship of Woodbridge in the County of Middlesex,  
appeals to the Court of Errors and Appeals  
from the whole of the judgment in the above  
stated cause, on the following grounds:

30

1. Because the Prosecutor failed to appeal to  
the State Board of Equalization of Taxes be-  
fore prosecuting the writ in this cause.

2. Because the Prosecutor did not make  
application for the writ in this cause until after  
the expiration of the time for appeal to the  
State Board of Equalization of Taxes as limit-  
ed by statute and the rules of said State Board.

3. Because the property in question was  
properly taxable by the Township authorities.

40

*Notice of Appeal.*

4. Because the property in question, or a part thereof, was properly taxable only by the Township authorities

5. Because the property in question was not assessed for taxation, except by the assessment under review in this proceeding.

10 6. Because the tax now under review should be affirmed and not set aside.

Dated February 2, 1917.

J. H. THAYER MARTIN,  
*Attorney of The Township of Wood-  
bridge in the County of Middlesex,  
Defendant-Appellant.*

20

30

40

