DAVISON & CO., PRINTERS, 27 Montgomery Street, Jersey City.

N. J. Court of Errors and Appeals.

THE STATE,
WILLIAM E. DODGE, *et als.*,
vs.
JAMES H. LOVE, CITY COLLECTOR, JERSEY CITY.

In Error.

Statement of facts and Brief for Plaintiffs.

The writ brings up for review the judgment of the Supreme Court, affirming the increase of valuation of and taxes upon lands of plaintiffs by the Board of Finance of Jersey City, acting as Commissioners of Appeals, under §146, of charter of Jersey City. P. L. 1871, p 1154.

It is submitted, that said increase was illegal, and that said judgment is erroneous and should be reversed.

I.

Because the Board of Finance had no jurisdiction and control over the assessment after confirmation and delivery to the Collector for collection, and had no power to direct complaint to be made, and because said complaint was illegal and without warrant of law.

The original assessment was confirmed by the Board of Finance, October 29th, 1884, delivered to the Collector, October 30th, 1884, (page 9, printed case). On December 16th, 1884, the Collector was directed to make complaint, (page 3, printed case).

The attention of the Court is particularly called to the fact, that there is no pretence of any re-examination of the assessment list by the Board.

The action is based upon a personal statement of one of its members, which is referred to the Collector to take action on. Attention is also called to this statement, (page 3, printed case.)

The charter of Jersey City is silent, as to examination of duplicate, and action thereon by Board of Finance, and under its provisions the general law governs.

Under the general tax law of 1846, all valuations were fixed by the County Board of Assessors, which was required to meet on the first Monday in September in each year, and to deliver, within fifteen days thereafter, a duplicate of the assessment list to the Township Collector, (Rev. " taxes," §§ 3, 5, page 1141.) The Assessors' valuations were final so far as the state and municipalities were concerned, and no means were provided for increasing their valuations. The duties and powers of the Commissioners of Appeals were confined to cases of over valuations only, and on behalf of the taxpayer only, (Rev. taxes, § 8 p 1142.)

By the Act of 1866, the time of meeting of Board of Assessors, and delivery of duplicate to Collector was the same, (§ 71 and 72, pp 1155, 1156,) but the *valuations* for his district were fixed by each Assessor, (Rev. "taxes," §69, page 1154) ; and it was final and conclusive, unless it should appear to the Board that the value of the property contained in any duplicate

was relatively less than the value of other property in the county, *when they may for the fixing and adjusting* the said proportion or quota, *and for that purpose only*, add thereto such percentage as shall appear to them just proper, but not otherwise (Rev. taxes, §72, p 1155.)

The power of the Board under this section, was simply to add such percentage to the gross valuation of duplicate as should appear just, &c. The Board had no power to change or increase individual valuations.

State, Weehawken vs. Roe, 7 Vroom, 86.

It was further provided, that the Collector immediately after receiving the duplicate, should submit the same to the committee of the Township or Common Council for examination, and authorized them to direct complaint to be made to Commissioners of Appeals (Rev. " taxes," §79, p 1158).

It was under last section the proceedings in this case were taken.

But we respectfully insist this law had been repealed by act of April 11th, 1867, (Rev. " taxes," pp 1160, 1161), and the procedure entirely changed.

It is thereby provided, that the Assessors shall thereafter finish making their assessments, on or before the third Monday in August in each year, and, on the third Tuesday, attend the Township Committee, or Common Council, (who were directed to meet for that purpose), and lay before them the duplicate to be examined (§ § 91, 92, 93, p 1160); said examination, revision and correction was to be completed on or before the last Saturday in August, and any member was authorized to issue subpœnas for witnesses and papers; said act also contained a general repealer of all inconsistant acts or parts of acts, (§ § 94, 95, 96, p 1161). That the revising board had power to increase valua-

tion, seems conceded in State vs. Mulford, 14 Vroom 550. It will be seen that the power of the revising committee to subpœna witnesses, &c., under this act is as broad as that of the Commissioners of Appeals under the act of 1866, (see Rev. taxes, §22, p 1159.)

This act applies to Jersey City, as these matters are not provided for by its charter or special laws.

We submit that the act of 1867 was a substitute for that part of the act of 1866, providing for the examination of duplicate and action thereon by municipal board.

That it was the express intention of the legislature to change the law, so that the Assessor's duplicate when presented to the County Board was complete, and final as far as his township or city was concerned; the County Board took the gross amount of the duplicate in fixing the county and state tax, unless relatively less than the gross valuations of the other duplicates, in which case it could add such a percentage to the gross amount of such duplicate, as to make the amount of that township's or city's share equal to the others. It had no control over the individual items in the duplicate. When the duplicate was delivered to the Collector, it was final and settled, as far as the state and municipalities were concerned.

The act created in express terms a board of revision, and relegated the Board of Commissioners of Appeals to its jurisdiction as originally possessed under the act of 1846, that of hearing appeals by the taxpayer. The board of revision protected the municipality and state; the county board protected the different townships and cities, and saw that the burden of taxation was equally borne by the different municipalities; the board of appeals the taxpayer.

The result was, when the duplicate was delivered to the Collector, it was revised, corrected and finished so

far as the taxing agents were concerned, and could only be changed by the judgment of the Commissioners of Appeals, and on behalf of the aggrieved taxpayer only.

This contention is doubly strong where the city of Jersey City is concerned.

Its charter provides, that the Assessors, (of the city,) shall constitute a Board of Assessors, who shall confer together for the purpose of regulating the *valuation of property* in the several districts. That city taxes shall be assessed as directed by the laws of this state, for assessing township, county and state taxes, and that all state and county taxes shall be assessed as city taxes are assessed (P. L. 1871, pp 1151, 1152, § 138, 139.)

By §141 of the charter, it is provided that the several Assessors of the city shall file with the clerk a duplicate of the Assessment on or before August 1st in each year, and also on or before that day deliver another such transcript to the Clerk of the Board of Finance *said last transcript shall be delivered to the collector, who shall proceed to collect the taxes so assessed* according to law, *and cause public notice to be given* in official newspapers of the city, *that said taxes are due and payable* (P. L. 1871, p. 1153).

The provisions of the general law, as to the delivery to collector of duplicate, do not therefore apply to Jersey City, the above provisions being substituted.

It is apparent that the above provisions were enacted with reference to the act of 1867, and are only complete when taken in connection with them.

By the act of 1866, the duplicate was not delivered to the revising board until after it had passed through the hands of the County Board and had been delivered to the collector; by the act of 1867 and the charter of Jersey City it passed directly into the hands of the Board of Finance, and from it to the collector.

The language of the law is peremptory; when the collector receives the duplicate from the Board of Finance, he "*shall proceed to collect the taxes*" * * * "*and give notice*" * * * *that said taxes are due and payable.* The legislature certainly did not intend to compel him to collect an unfinished, incomplete assessment, or to give notice that the taxes were due and payable, when they were unfinished, incomplete, and subject to alteration and revision.

By the charter of Jersey City (P. L. 1871, § 145, p. 1154), the Board of Finance performs the duties and exercises the powers of Commissioners of Appeals. To enact that after they had examined, revised and corrected the duplicate as a Board of Finance, they should again examine it, direct complaint to be made before them in another form of their protean character, would be absurd, and is in itself sufficient to prove that the intention of the legislature was that after the duplicate had been delivered to the assessor, there was no power to increase the assessment.

The Board of Finance had the power, and it was its duty, to examine, revise and correct the assessment; to summon and examine witnesses if necessary; to hear and determine. It did confirm the assessment, and remitted the record to the collector. There is no pretense that there was any fraud on the part of the plaintiffs. If it can afterwards, at its pleasure, call it back and cause complaint to be made before itself as a commission of appeals, it is clothed with powers and prerogatives that even this Honorable Court does not possess, as it has repeatedly declared since the case of King v. Ruckman.

The law authorizing the examining board to cause complaint to be made had been repealed ; there was no warrant of law for the same.

II.

Because complaint was not made at the time of meeting of the commissioners of Appeals as required by law, and the Board of Appeals had no jurisdiction over the matter.

The time fixed by law for the meeting of the Commissioners of Appeals is the fourth Tuesday in November (Rev. taxes, § 8, p. 1142), which in 1884 was the twenty-fifth of that month, and the board did meet on that day (p. 14, line 33, printed case.)

The notice that complaint would be made was not dated or served on any one till January 9th, 1885, (pp. 5 and 6, & p. 20, line 6, printed case), and the complaint was dated January 14th, 1885, but not actually made until January 24th, 1885, (see p. 5, line 33, printed case)'

We submit that all complaints must be made at the first meeting, and that the Board has no authority to entertain complaints made after that date.

There certainly must be some time when the assessment becomes fixed and settled. The power of Commissioners of Appeals to increase or diminish, to change and alter the assessment must terminate some time. It cannot continue forever. Our contention is that, the whole intention of the tax law is that the matter is fixed beyond power of change on December 20th, when the taxes become due.

The general tax law provides that a list of delinquent taxpayers shall be delivered to a justice of the peace on the 20th of December in each year, who shall within five days thereafter deliver to the constable warrants for collection of the same (Rev. §§ 12, 288, pp 1142, 1143). It is apparent that after warrants have been delivered the amount of tax cannot be changed. There is no provision anywhere for changing the

amount contained in warrant after its delivery, and the statute as to time of delivery is peremptory. Nor is there any provision for staying the issue of warrant beyond that time in those cases where complaints have been made. The matter must be determined before that time. If the Commissioners of Appeal can keep up a continuous session by adjournment, or can reconvene whenever they please, and there is no limit of time within which complaints must be made before them, the result is endless confusion, uncertainty and injustice. No taxpayer is safe. He certainly is entitled to presume that after the property has been assessed and the assessment has been examined by the revising board, after the Commissioners of Appeals have met and no complaint or objection has been made, after the date when his tax is due is passed, that the matter is determined. He may have sold his property with a warranty, or he may have leased it, acting on that presumption. And months afterwards, complaint may be made, his assessment increased, and as the increase relates back to the original assessment, he is remediless. We submit that is not the intention of the law.

III.

Because no notice of the making and hearing of said complaint was served on the plaintiffs as required by law.

The notice was served on Mr. E. K. Meigs, who was only a tenant of the premises to be affected, and in no otherwise interested in the same. There is no proof whatever of any service on plaintiffs (pp. 15, 16; p. 25, line 22).

Such service is invalid and conferred no jurisdiction.

State v. Drake, 4 Vroom, 194.

The learned judge in his opinion below (page 2 et

seq) holds that no notice is necessary to non-residents; that it is a proceeding in rem, and is not within the rule that it cannot be initiated and consummated without notice.

In this we submit he was clearly in error.

The complaint in this case was not made at the first meeting of the Commissioners of Appeals, notice of the time of which is required to be given by law, but nearly two months afterwards. It is certain that the non-resident taxpayer is not compelled to attend every subsequent adjourned meeting of the Board to find whether any complaints have been made against him. If he finds none at the first meeting of the Coard, we submit his duty is ended. If, as is claimed by the defendants, complaints may be made and heard at any time, and he must attend every meeting in order to protect himself, his whole time may be occupied in attendance on the Board. All the authorities are in accord, that there must be notice either actual or constructive in such cases.

Cooley on Taxation, pp. 266, 267.

And the same rule applies in proceedings in rem.

Waples on proceedings in rem, § 64.

We submit there was no constructive notice, because the complaint was not made at the first meeting as advertised, and that there was no notice published or posted of any subsequent meeting as required by law, (Rev. taxes, § 46, p 1148), (printed case, p 15, line 10 ; p 22, line 20).

If, therefore, while notice is required to be served personally on the resident, the non-resident is entitled to no notice, either actual or constructive, then we submit the law in this regard is unconstitutional and repugnant to the XIV amendment to the Constitution of the United States.

IV.

Because the certificate of judgment of the Commissioners of Appeals fails to show necessary jurisdictional facts.

The certificate states, " that complaint having been made to the subscribers * * * * * we, *the said* commissioners * * * * * do adjudge, &c., (page 7.)

Who " the subscribers," or " said Commissioners " are, and how many, whether a majority of the Board, or a majority of a legal quorum, or whether a quorum at all, the certificate utterly fails to show, either in the body, or by the signatures thereto.

We submit that these facts must appear upon the face of its record.

State, Little v. Newark, 7 Vroom 170.
State, Wilkinson v. Trenton, 7 Vroom 499.
State, Folwell v. Warford 3 Vroom 207, 209.

Nor are these defects supplied in any way. There is nothing whatever to show that a legal judgment has ever been rendered.

Nor can they be supplied by extraneous evidence.

State v. Jersey City, 2 Dutcher, 444, 450.

V.

Because the meeting of said Commissioners of Appeals was not held at the time required by law, nor on an adjourned day thereof, or in the manner required by law, and because no notice of said meeting was given or posted according to law.

The first meeting of the Commissioners of Appeals, was held on the fourth Tuesday in November, (pp 14, 22, printed case), as provided by law, (Rev. taxes, § 8, p 1142). The Board adjourned until November 28th, at which time no members were present, and the meeting was adjourned by the Clerk, who was not a member, (p 15); that further adjournments were made from time to time, until January 21st, when only two members were present, (p 23) and that a further adjournment was made to January 24th when complaint was made and heard.

We submit the Board could only legally meet at time fixed by law, or on a regularly adjourned day.

Den., State v. Helmes, Penn. 1051, 1059.

There being no members present at the meeting of November 28th, there could be no legal adjournment, nor was there any one present who could adjourn, and the session ran out, and could only be renewed by statutory authority.

Nor was the meeting of January 24th at which complaint was heard legal under the provisions of § 46, taxes, Rev. p 1148, for no notice at all was posted as required, (p 15, line 10; p 22, line 20).

Nixon v. Rupple, 1 Vroom, 58.

VI.

We submit the Act of 1881 does not cure these defects.

Because that Act only applies to the original assessment, and not to the proceedings of the Board of Appeals.

The original tax has been paid; there is no dispute as to that. The certiorari only brings up the judgment of the Commissioners of Appeals, and the increase made by them.

The proceedings before the Commissioners of Appeals are no more a necessary part of the ordinary and regular proceedings in levying an assessment, than the proceedings in this Court in case of a judgment obtained in a Court having original jurisdiction. In the one case, a complaint is required, in the other a writ of Error. It is, as it name states, an extraordinary tribunal, a Court of Appeals.

The learned Judge says: "The curative force of this statute is not restricted to the proceedings of the Assessor in making the original assessment.

State v. Mulford, 14 Vroom, 550.

But that case was where the township committee increased the assessment while it was before it for revision and correction under the provisions of the Act of April 11th, 1867 (Revision taxes, §§ 91, 92, 93 and 94, pp. 1160, 1161) and before the duplicate had been confirmed and delivered to the collector. The examination and revision by committee is an inseparable part of the method of taxation; under the law, the assessment is not complete until it has been done. This is an extraordinary proceeding, and not a necessity. The assessment is complete without it.

We do not claim that act is restricted to the proceedings of the Assessor in making the original assessment, but only to the original assessment when completed.

Nor is the legislative intent manifested by the fact that its operation is expressly extended to the proceedings for the collection as well as for the assessment of taxes, we submit.

If in every case the assessment had to be passed upon by the Commissioners of Appeals, the case would be different. Then it might be claimed that it could not have been intended to exclude the intermediate steps between the initial and final proceedings. But the proceedings before the Board of Appeals cannot properly be said to be an intermediate step. As well might it be claimed, that a statute providing that a judgment obtained in the Circuit Court should not be set aside or reversed for any irregularity or defect in form, &c., or in proceedings for collecting the same, would cure and validate a judgment obtained in this Court on a judgment in said Court, and increasing the amount, without warrant of law or jurisdiction.

We submit that an examination of the statute shows that this was the intention of the legislature. In no part of the act is there any mention of the proceedings before the Commissioners of Appeals, and it is a principle as old as Blackstone, that a statute that treats of things or persons of an inferior degree, cannot by any general words be extended to those of a superior.

Again, as before insisted upon, there is no legal judgment before the Court, or anything by which it can be shown to be legal. How can the Court amend it, with nothing before it, by which to amend it, or to cure its irregularities ?

VII.

The act of 1881, so far as it authorizes the Court in cases of an illegal assessment, to fix the sum for which the person or property is liable, which sum shall be the amount of tax, &c., is unconstitutional.

By the express terms of the act, the Court is thereby given full and ample authority to make a lawful levy, &c. (P. L. 1881, p. 194.)

In other words, in case the assessment is illegal *ab initio*, in case it cannot be cured or amended, in short, where there is no assessment, the Court is authorized and directed to levy a tax. We submit the result is to cast upon the Courts a purely legislative function, that of taxation, and is invalid.

Munday v. Rahway, 14 Vroom, 338, 346.
State. Gaines v. Hudson Co. Ave. Comr., 8 Vroom, 12, 19.

If the law of 1881 has the far-reaching effects claimed for it, the result is practically to repeal and render ineffective the whole tax laws as far as non-residents are concerned. In the case of the resident he has the presumption of law in his favor; in the case of the non-resident every presumption is against him (p. 3, lines 28—). He has no rights whatever. No matter, that the assessment has been examined, revised and corrected by the examining Board, that he has been notified of the meeting of the Board of Appeals, has attended it, and finds no complaint has been made, that the time when the tax is due has passed, his assessment may be increased without notice, and if he applies to the Court for relief, he is told that every presumption is against him, and the burden of proof is forced upon him.

It makes no difference by whom the increase may have been made, it may have been by a totally unauthorized person, in an equally unauthorized manner. The increase may have been made by the collector or his clerks, after the meeting of the Commissioners of Appeals, or the constable may have increased the sum named in his warrant. Lapse of time does not protect him, for the tax may be increased

for past years as well as for the present one. Payment does not protect him, for every man is supposed to know the law, and he pays his money with knowledge of the unlimited power to increase his tax. And it is certain, that the mere receipt of the money by the Collector can not be more potent to estop the municipality, than the official confirmation by the legally constituted board of revision of that municipality. Granted, that all these facts exist, if he applies to the Courts for protection, he is told that the law of 1881 is a cure all, legalizes illegality, and confers jurisdiction where none existed. That, even if the assessment or increase is absolutely and totally illegal and void from its very inception, unless he shows affirmatively that the illegal and void assessment or judgment of the Board of Appeals was unjust and oppressive, every presumption being against him, the duty is imposed on the Court of legalizing it, and that, if he does show that it is not only illegal and void, but unjust and oppressive, then it is the duty of the Court to assume the functions of the legislature and assessors, and assess the tax itself at such amount as it thinks just and legal.

Great stress is laid on the fact, that in this case there is no objection made to the amount of the illegal increase. What is the use. If this be the law, the expense of obtaining relief will be nearly as great as the exaction complained of. The taxpayer has only the choice between Scylla and Charybdis. We submit that if this be the result of the law of 1881, it is vicious legislation, and a plenary indulgence to the violation of law by, and dereliction of duty on the part of the taxing agents, and is beyond the constitutional powers of the legislature.

W. C. SPENCER,
Counsel for Plaintiffs in Error.

In Reply to Defendant's Brief.

I.

We submit that the cases cited by defendant's counsel in points I and II of his brief are not applicable to this case. They are all in regard to the proceedings of bodies having general jurisdiction over the subject mater. It has been decided time and again in this State, that the Commissioners of Appeals have only a limited and special jurisdiction, that their certificate must show on its face that they have strictly pursued the authority vested in them, and that no presumption will be made in favor of the regularity of its proceedings. The learned counsel admits that the certificate must show "that judgment was rendered thereon" (bottom of page 3, deft's brief). We claim the certificate utterly fails to show it, and there is no evidence whatever to show that judgment was legally rendered, so that it can be amended. By the charter of Jersey City the Commissioners of Appeals are granted no greater or more extensive powers than are conferred by the general laws. Section 145 of the city charter provides, "That the members of the Board of Finance and Taxation shall be the Commissioners of Appeal in cases of taxation in Jersey City, and shall perform the duties, *and exeacise the powers* which by law pertain to such commissioners," (R. L. 1871, p. 1,154), and this is the only provision on the subject.

In regard to defendant's insistment in 3d point that the fact that the Board of Finance in this case did not

pass the Collector's duplicate until the 29th day of October, and did not send it to collector until the 30th day of October, is evidence that the Board thereafter had power to call the duplicate back (p. 9, brief), would submit, that by the law of 1867, (Rev. taxes, § 94, p. 1,161), the examining board is absolutely required by law to complete the examination, revision and correction on or before the last Saturday in August in each year. It is a novel claim, that because officers have violated the law, an entirely different construction should be made of that law, from that manifestly intended.

II.

As to service of notice.

Under the will of William E. Dodge, the premises affected are vested in the plaintiffs in error as trustees. They are alone the parties interested, as far as service of notice is concerned. They are the ones whose duty it is to pay the taxes. It is certain the residuary legatees are not the ones. If the contention of defendant's counsel be correct, service on any one who may have had an interest in the proceeds of the estate, was sufficient. It might have been made on a legatee, whose legacy was made a charge on the real estate.

Mr. Meigs absolutely denies that he told Mr. Whyte that one of the executors of the estate would be over at the office next morning, and that he would give him the notice (page 27, line 10, printed case). Mr. Whyte must be mistaken in his testimony. The facts corroborate Mr. Meigs. He testifies, that he had not seen the executors once in ten years (p. 25, lines 4 and—). He had no interest in deceiving Mr. Whyte. Nor was

it incumbent on him to see that the notice was properly served. The facts of the case show that the notice was served on Mr. Meigs who was only one of the lessees of the property. That he had no interest in the premises other than as lessee, and that it was not the duty of the lessees to pay the taxes thereon. That he laid it on Mr. Cleveland H. Dodges' desk and that is all he knows of it. Mr. Cleveland H. Dodge was a member of the firm who were lessees of the property. He was not in the employ of plaintiffs, nor is there a scintilla of evidence to show he was their agent. The evidence utterly fails to show that the notice was served on any one else.

In the case of Cooper v. DeBow, 17 Vroom, 286, the notice was served on an employe of the prosecutor, and not a tenant only. In that case there was a doubt whether objection was taken to the manner of giving the notice. In this case it is admitted.

W. C. SPENCER.
Counsel for Plaintiffs in Error.

DAVISON & CO., PRINTERS, 27 Montgomery Street, Jersey City.

N. J. Court of Errors and Appeals.

THE STATE, WM. E. DODGE, *et als.*, EXECUTORS, &c.,
Plaintiffs in Error,

vs.

JAMES H. LOVE, Collector of Jersey City.
Defendant in Error.

On Error from Supreme Court In matter of Taxation.

Brief for Defendant in Error.

The writ of error in this case is brought to review the judgment of the Supreme Court, in a matter of taxation, rendered at the November term, 1885.

The writ of certiorari in this case brought up the proceedings of the Commissioners of Appeals in cases of taxation in Jersey City, by which an increased valuation was fixed upon certain real estate of the plaintiffs herein

There was and is now no objection made to the amount of the assessment so imposed, but to the manner in which it was done, to the alleged irregularity of the proceedings. The property was assessed at a valuation of $4,000 per lot, by the Assessor. The Commissioners of Appeals, after hearing the complaint

made, raised the valuation to $9,000 per lot. This proceeding below contested only the regularity of this increased valuation.

I.

The certificate of the Commissions of Appeals, as shown by the return herein is sufficient.

The first seven reasons of the Prosecutor's below went only to the sufficiency of the certificate, or judgment of the Commissioners of Appeals.

The fifty-sixth section of the general tax law, (Revision 1149), defines the power of the Commissioners of Appeals; they are there required, complaint having been made, and five days notice of such complaint given to the party interested, and " after due examination of the facts and consideration of the case to make such addition to the assessment as shall be agreeable to the principles of justice, and the judgment of the said Commissioners shall be final and conclusive, and shall be rendered within ten days after the making of said complaint."

The seventy-ninth section of the act requires ten days notice to be given to the party interested instead of five as required by the fifty-sixth section.

The certificate of the Commissioners of Appeals in such cases must show:

(1) That complaint was made.

(2) That notice was given thereof.

(3) That the case before them received due examination and consideration.

(4) That judgment was rendered thereon.

(5) That it was rendered within ten days after complaint.

The certificate need show nothing more.

State, Folwell v. Warford, 3 Vroom 209.

An examination of the Commissioners' certificate in this case, page 6-7, will show that it complies fully with all the requirements of the law.

The Commissioners communicate through their clerk to the City Collector, to whom they should make return, that they passed on Feb. 2, 1885, the resolution enclosed to him (page 7).

The certificate meets the first requirement of the law, (*i. e.*) " That complaint was made " by reciting " that James H. Love, Collector of taxes, in and for the city of Jersey City, having complained to the subscribers, Commissioners of Appeals in cases of taxation, in and for said city, that the estate of William E. Dodge, hath been assessed for the annual tax of 1884, at too low a rate on the following property, &c."

The certificate conforms to the second requirement of the law (*i. e.*) That notice was given thereof, as follows : " And it appearing that ten days notice in writing has been given of said complaint to the said estate of William E. Dodge, by the said James H. Love, and that the same would be heard on Saturday, the twenty-fourth day of January, 1885."

The certificate meets the third requirement of the law, (*i. e.*) That the case before them received due examination and consideration, by stating, " and we, the said Commissioners, having at that time heard the parties and their witnesses, after due examination of the facts and consideration of the case, &c."

The certificate of the said Commissioners fulfills the fourth requirement of the law, (*i. e.*) that judgment was rendered thereon, by asserting, "we do adjudge agreeably to the principles of justice, that the sum of five thousand dollars be added to the value of each

of said lots as heretofore assessed, for the annual tax of 1884, and that the assessment on Pier, foot of Bay Street, be confirmed."

The said certificate answers the last demand of the law, (*i. e.*) that judgment was rendered within ten days after complaint made, " by informing the Collector that their decision on this complaint was made at a meeting held on the 2d Feb., 1885, the hearing having been had on the said complaint on the 24th of January, 1885.

It further appears on page 23, that the complaint was first made to the said Commissioners, on the twenty-fourth day of January, 1885. The recital of a fact in the return of an officer or board, having full and complete cognizance of the matter before them, is *prima facie* evidence of the facts so returned, and it lies on the party injured to prove the falsity of the return.

Den. State v. Helmes, Penn. 1060.

They are entitled to the legal presumption of the proper performance of official duty—N. Y. City v. Davenport, 92 N. Y. Ct. of Ap. 605. The Commission of Appeals employs a regularly chosen clerk, keeps a record of its proceedings, acts by resolution, which record is printed in book form and in the public papers, and thereby does away with the necessity of signing their names to every measure adopted—this would not be the case where no permanent record of their proceedings was preserved. They need not sign their names to the certificate.

The Court will give such construction to the proceedings of this nature as to sustain, rather than defeat them, where no injustice is done. The plaintiffs here must show affirmatively that their rights are invaded. N. Y. Ct. Er. and App. In re Ingraham 64, page 310. The State, Wilkinson v. Trenton, 7 Vroom 503. Every presumption favors validity of assessment—

In matter of Brady, 85 N. Y. Ct of Er. & App. 268. The increased valuation in this case is not contested.

II.

The meeting of the Commissioners of Appeal at which the matter complained of was heard, was held according to law, and legal notice thereof given.

By the 8th section of the general tax law, (Revision 1142) the Commissioners of Appeal are required to meet on the 4th Tuesday of November annually, of which meeting the tax collector is required to give special notice.

The Commissioners met on the day fixed, (Nov 25th), and adjourned until Nov. 28th, and so on from meeting to meeting, until the 24th of January, 1885, when the plaintiffs' matter was heard.

The plaintiffs were bound to take notice of the statutory time for the Commission's meeting, and to present themselves before the Commissioners at that day, if they had any business, and to take notice of such adjournments as might be made.

It seems they had no business before the Commissioners of Appeals, and did not appear at any meeting until they came there by attorney on the day fixed for the hearing of the complaint herein.

Thirteen meeting of the Commissioners had been held before the plaintiffs came before them, and eleven after the adjournment of the meeting of the 28th of November. (Page 23).—The regularity of such adjournments will be presumed.—The State v. Hudson Co., 4 Zab. 720. The plaintiffs having appeared by Counsel before said Commissioners, and made no objection of the character here suggested, cannot avail themselves of it now.

The plaintiffs under their twelfth reason, insist

that by the 20th day of December, when the Collector is required to deliver list of delinquents to the Justice of the Peace, all control over the assessments must have ceased, so far as the duties of Commissioners of Appeals are concerned; that they begin their labors on the fourth Tuesday of November, and conclude them on the twentieth day of December, scarcely more than three weeks. If this view is correct, and each meeting of the Commissioners must be preceded by eight days notice, (see 46, Revision 1148), the Commissioners of Appeal will be compelled to do all the business appertaining to their office in two meetings—this in Jersey City would be physically impossible.

It is submitted that the notice required by the 46th Section refers only to the first or statutory meeting of the Commissioners, and to such other meetings only as are not held pursuant to adjournment. There must be some inherent power in the Commissioners to adjourn from time to time as the business of their office may require.

Den. State v. Helmes Penn. 1060.

The duties of the Commissioners are specifically defined by statute, to pass upon, and adjust the valuations of property, fixed by the local assessors, to lower the same upon the well founded complaint of any person aggrieved, or to raise the same in proper cases upon complaint of Collector of taxes. They have no duties beyond these, and there seems to be no reason, from the uniform character of the business before them, why the first meeting should not be continued from the first day until all the business is concluded—by adjournment.

If the commissioners were invested with any special powers, or there were any special subjects besides those above defined, which could come before them, such special matters would necessitate a special notice; but where the business of one meeting is a continuation of the preceding one, or of a precisely similiar

character, the first meeting is properly carried forward by an adjournment.

Dillon on Municipal Corp'ns. Sec. 225 and notes.

Scadding v. Lorant, 5 Eng. L. and Eq. Rep. 16.

In this case the statute required notice to be given of a meeting of vestrymen to be held for the purpose of making a rate for the relief of the poor. Such notice was given, specifying the purpose of the meeting. The meeting was held accordingly on the 12th of August, when it was resolved that a rate should be made; but as the details could not be completed, the meeting was adjourned, and at an adjourned meeting the matter of the rate was completed, but the notice of the adjourned meeting contained no mention of the purpose for which the meeting assembled. The question which the House of Lords put to the Judges in reference to the adjourned meeting was: "Supposing "the rate to be otherwise valid, was it invalid by rea- "son of the notice not stating the purpose for which "the meeting assembled." The Judges answered: "We are unamimously of opinion that the rate was "not rendered invalid by reason of the alleged defect "in the notice of the adjourned meeting. It was suf- "ficient to give notice (as required by the act) on the "church door of the purpose for which the first meet- "ing was to be held, and that notice having been duly "given, we think that the notice so given extended to "all the adjourned meetings, such adjourned meetings "being held for the purpose of completing the unfin- "ished business of the first meeting, and being in con- "tinuation of that meeting."

People v. Bachelor, 22 N. Y. Ct. of Er. and App. 128.

III.

The Board of Finance and Taxation had power and authority to direct the complaint herein, and the City Collector was warranted in making it.

By the 145th section of the charter of Jersey City, the members of the Board of Finance and Taxation are constituted the Commissioners of Appeals in cases of taxation in Jersey City, and are required to "perform the duties and exercise the powers which by law pertain to such Commissioners."

The 151st section of the charter of Jersey City, among other things, directs that "the assessors of the several districts of said city shall, on or before that day (August 31st), deliver another such transcript or duplicate to the clerk of the Board of Finance and Taxation; said last transcript shall be delivered to the City Collector, who shall proceed to collect the taxes so assessed according to law."

The Board of Finance and Taxation, acting as Commissioners of Appeal, are regulated in their duties by the general tax law, where the charter is silent. The charter says nothing about their making or directing complaint, but the tax law of 1866, sec. 21, (Revision 1158) requires the collector, after he has received the duplicate from the assessor, to submit the same to the township committee, and it shall be the duty of said committee carefully to examine the same, and if they have reason to believe that an individual or corporation has been assessed at too low a rate, or omitted to have been assessed, as required by law, shall thereupon authorize and require the collector to notify said individual or corporation that complaint will be made to the Commissioners of Appeal," &c.

The Board of Finance and Taxation is charged with the same duty in this respect in Jersey City, under the charter, as the township committee is by the general law; and in pursuance of that power, thus devolved upon them, gave directions to James H. Love, the City Collector, after consultation with the Corporation

Counsel, to make such complaint to the Commissioners of Appeals as was necessary under the general tax law.

(Printed book, page 3.)

The same section of the tax law of 1866, last quoted, made it obligatory upon the Collector to make such complaint to the Commissioners of Appeals.

This section of the law was complied with by Mr. Love, the City Collector.

(See printed case, page 5.)

It is insisted, therefore, that the action of the Board of Finance and Taxation in directing the complaint in this cause, and the action of the Collector in making it, were both in strict compliance with the requirements of the law.

It is alleged by the plaintiffs in error in their tenth reason, that the power of the Board of Finance over this subject was exhausted when it confirmed the Assessors' valuation, and delivered the duplicate thereof to the Collector, and that thereafter the said Board had no authority to direct complaint to be made, because the duplicate had then become a finality by act of confirmation. If this view of the law is correct, what becomes of the Commissioners of Appeals, and upon whom do the duties of said Commissioners rest? The Board of Finance in this instance passed the Assessor's duplicate on the 29th of October, and it was sent to the Collector on the 30th of October. The statute directs the Commissioners of Appeals to meet on the fourth Tuesday of November in each year, (which in the year 1884, was the 25th day of that month), and their duties begin on that day. If the plaintiffs' construction is correct, that the Assessor's duplicates, when they reach the Collector's hands, had passed beyond the point of disturbance or correction, and their valuations are fixed and unchangeable, what have the Commissioners of Appeals to do, and

to whom shall persons go who are aggrieved by the assessments which the Assessors have made ?

The duplicates pass during the month of August from the Assessor's hands to those of the Township Committee, (sec. 79, revision 1,158), and to the City Clerk in Jersey City, by section 141 of the charter of that city. They are there for the purposes of examination and public inspection, and if such examination and inspection develop any error, either of too high or too low a valuation, or omission to assess at all, the Township Committee is directed to authorize the Collector to notify the persons whose property is affected, that complaint will be made to the Commissioners of Appeals.

The Board of Finance, either collectively or individually, have the same right as any other citizen to make complaint to the Collector where they have reason to believe that error has been made in the Assessor's duplicates. The law does not require confirmation by the Board of Finance of the Assessor's assessments in any such sense as to estop them from making complaint, nor can any such action on the part of the Board of Finance shut off others who are aggrieved by the assessment made from making such complaints through the Collector, as they are entitled to by the law. The only effect of confirmation, if there is any confirmation at all, is to fix the date upon which taxes shall become a lien upon the property assessed.

Even, if the Board of Finance does in formal words *confirm* the Assessor's transcript or duplicate, it is evident that such action should have no effect upon the correctness of the same, for they receive the *same duplicate as the City Clerk*, and have no power to change or alter it, but simply pass it forward to the City Collector for his action, upon the valuations fixed therein by the Assessors themselves. The Board of Finance still reserves to itself the power to make complaint, and, sitting as Commissioners of Appeal, of passing upon the whole assessment and changing the same, if the complaints made justify such action

When the assessment made by the Assessors has been subjected to public inspection, and after the complaints made thereto have been heard by the Commissioners of Appeal, and the duplicates changed to correspond to the judgments of the Commissioners of Appeal, after hearing such complaints, then the Assessor's duplicates, or books of assessments, become for the first time a finality so far as the machinery of taxation is concerned.

The prosecutors' view of this matter abrogates that part of the law which relates to the power of Commissioners of Appeal to act, for they contend that the assessments are fixed before the time comes for the Commissioners of Appeals to act, the times fixed by the law in which the different taxing officers are to commence and complete their labors, the rule that requires force to be given to all parts of a statute, and a practice long and universal, are all against the view which the prosecutors here present.

IV.

Among other reasons given why the assessment in this case should be set aside is, that the prosecutors below were not served with notice of making or hearing of the complaint.

1.—In the first place they are not entitled to be served with notice. They are non-residents of this state, and are bound to take notice of public proceedings here without special service.

The notice mentioned in the seventy-ninth section of the general tax law (revision 1,158) cannot be applicable to non-residents, and there is no other notice suggested by the statutes.

The section referred to requires the collector to

notify the individual or corporation, whose property has been assessed too low, that complaint will be made to the Commissioners of Appeal, at least ten days before the meeting of said Commissioners, and he shall serve said notice by *delivering the same to said individual*, or by *leaving it at his dwelling house.*

Such a requirement would devolve upon the Collector useless burdens with no practical results. The staute, as I read it, does notcomtemplate any extra— territorial notice whatever, but leaves the non-resident to make such inquiry about his own property here, as may be necessary to protect it. The manner of the service of the notice of complaint in this section is almost in precisely the same words in which the statute directs the service of summons in a civil suit, where the party is within the territorial jurisdiction of the Court. But the service of a summons in the exact manner directed by the statute, would be absolutely without effect, beyond the geographical limits of the jurisdiction of that particular Court from which the process issued. In proceedings by attachment against non-residents we simply give public notice that legal steps have been taken, we pay no attention whatever to the whereabouts of the person against whom we are preceeding, beyond the mere ascertainment of the fact, that he is a non-resident, and is not within the reach of the processes of our Courts. He must get such notices as he can, and at his own peril. The same is true in all legal proceedings *in rem*, where the interests of residents of other states are involved, except when the statute, for peculiar reasons, directs particular notice to be given. The proceedings in matters of taxation of the property of non-residents are analogous to those in civil suits—only less harsh. The property is here, and subject to the operation of our laws, without reference to the residence of the owner, the proceeding is *in rem*, against the property, and public notice of the fact is given. There can be no injustice to a non-resident on the ground of surprise—the main reason for giving notice—for residents

and non-residents alike realize the fact, that there are few things more certain or regular than the levying of taxes. It is an annual municipal, and state necessity. It is a notorious fact that the taxes are levied yearly, that those who are charged by the law with that duty, finish their work at a given time; and it is a matter of public law of which every one is bound to take notice, that the Commissioners of Appeal in cases of taxation, (or other corresponding board), are required to meet on a certain, fixed day, to review and correct the assessments made. The publicity of the proceedings under the law itself gives sufficient and reasonable notice to every one, on the lookout for the protection of his own property. The fact of a non-resident owning property here imposes upon such owner the duty of knowing something of the local law governing it, and under which circumstances may at any time make necessary the imposition of some burden upon it.

The plaintiffs herein having seriously paid their taxes before upon this property, they knew when they were imposed, and they should have availed themselves of the numerous sources of correct information, to learn the exact condition of their own possessions in this respect.

It could not have been intended that the notice referred to in the said seventy-ninth section of said act, should be served outside of the State, for it is required to be served *personally on the individual*, or *left* at his *dwelling-house*. The statute makes no distinction between a resident of New York and New Mexico, it directs *personal* service or service at *his dwelling*, whether the person sought lives just beyond the Hudson, or just beyond the Missouri. Suppose the prosecutor in this case lived in California or Washington Territory, who would serve him at his residence? How could he get here, if he was served, in time to meet the complaint? Who would pay the expenses of such service? In how many cases would the expenses of such service exceed the tax resulting from the increas-

ed valuation? Such a construction of the law is impossible.

State, Vail's executors, Pros. v. Runyon, 12 Vroom 103; Cooley on Taxation, 266–7.

2—Again: Even if notice was required to be served on the prosecutors, the service made was sufficient in law.

The notice served is the statutory notice found on page 5 of printed case.

For the manner of its service see testimony, pages 19, 20—24, 25.

The executrix and executors of the estate of William E. Dodge, dec'd, are: Melissa P. Dodge, (widow), and the testator's sons, William Earl Dodge, Jr., and David Stuart Dodge, and in case of their death one of his other sons, Anson G. P., Charles C., Norman W., Geo. E., or Arthur M. Dodge.

By the sixteenth section of the will, page 29, all the rest, residue and remainder of the estate, both real and personal, is given, devised and bequeathed, in equal shares, to and among his widow, and such of his children and grand-children, as shall be living at the end of ten years from the testator's death.

The testimony shows (page 20), that Mr. Meigs said when served with this notice, that neither of the executors were then present, "but that one of them * * * would be in the office to-morrow morning," and that he would take the papers and hand them to the executor that would appear, * * * that he would hand it to him in the morning of the following day."

Upon that promise Mr. Whyte left the notice.

Mr. Meigs, on page 24, says, in answer to the question if he remembered that the notice was served by Mr. Whyte: "I remember now, I think it was. Mr. Andy Whyte. * * * "that I took it in the way of sending it over to the estate;" again: "that I laid

that notice on Cleveland H. Dodge's desk—my partner;" "that Cleveland H. Dodge is a son of William E. Dodge, Jr.; that he told Cleveland H. Dodge within a day after the notice was left, "that there was a notice on his desk that was left by Andy Whyte;" that he (Meigs) understood the notice "in a general sort of way;" that the estate of William E. Dodge has other real estate in Hudson County, "outside of these eight lots," and that "Mr. Arthur M. Dodge, I should say, more than anyone else, looks after the estate of William E. Dodge in Hudson County, and that he (Meigs) looks after the estate only as a lessee."

It therefore appears from the testimony,

1—That Mr. Meigs, with whom the notice was left, is a "lessee of the Estate of Dodge."

2—That he is a member of the firm of A. M. Dodge & Co; that the said firm do business in Jersey City, upon the premises upon which this tax is imposed.

3—That Arthur M. Dodge is a son of the testator, a member of the firm of A. M. Dodge & Co;—and looks after the Estate of William E. Dodge in Hudson County, and is "interested" in that estate—

4—That Cleveland H. Dodge is a grandson of the testator, son of one of the executors—is "interested" in the estate; and a member of the firm of A. M Dodge & Co.

The 56th Section of the general tax law, (Revision 1149) requires notice to be given "to the party interested by the party complaining."

It is therefore insisted that the service thus made brings it within the provisions of the statute and under the decision in the case of Cooper v. De Bow, 17 Vrom, 286.

V

The notice given of these proceedings was clear and definite. It expressly informs the prosecutors below

of the character of the complaint and the time and place of hearing thereof.

It conforms to the statutes. Sec. 79 (rev. 1,158), printed case, page 5.

The taxes of 1884 were the only taxes unpaid. (See Mr. Spencer's statement, page 81.) The prosecutors below could not have been misled by any such omission in the notice.

The Act of 1881, page 194, gives the Court ample power to amend all irregularities and informalities in matters of this kind, so that justice will be done.

But it is alleged by the plaintiffs in error in this cause that this act is one which the Legislature had no constitutional power to enact; and refer in support of that position to the cases of

Peckham v. Newark, 14 Vroom 576;
Maxwell v. Gœtschues, 11 Vroom 383.

The examination, however, of these cases will show that they do not establish the position with reference to the act in question.

The Peckham v. Newark case was a certiorari brought to review an alleged assessment for grading and curbing Chestnut street, levied under the 109th Section of the Charter of the city of Newark.

The Court, Mr. Justice Dixon, says, "this section (meaning the one under which the assessment was levied) clearly is unconstitutional, the assessment was therefore void from its inception." * * * "So much is conceded by the defendant." * * * "It consequently conferred upon the person who made this assessment no authority to do so. Hence this assessment was a judicial act void for want of jurisdiction in the tribunal which performed it.

The trial of Maxwell v. Goetschues was an action of ejectment, brought against a purchaser under commissioner's sale in partition, of an estate *in remainder*.

The sale was ordered by the Court of Common Pleas, of the County of Bergen, and was confirmed by that Court.

It had been settled by the case of Stevens v. Enders, 1 Green, 271, that with respect to estates in remainder "the Judges of the Common Pleas had no authority to make an order of sale, nor to approve of, and confirm it, and that commissioners had no authority to make sale and conveyance."

This was not controverted by the counsel for the defendants, but they contended that Gœtchues' title was made good by the curative force of the act of March 14, 1861. The Chief Justice in a learned opinion determined that the Judges of the Pleas ordering the sale, and the Court of Common Pleas confirming it had jurisdiction with respect to estates in remainder, neither over the subject matter adjudged, nor over the persons in interest, and that such acts were destitute of any legal force or value whatever, and that the act of 1861 was without power to make such void proceedings valid. It will thus be seen that the Peckham v. Newark case differs from the case now before this Court, in this, that the law of 1881 was invoked in that case to legalize and validate an assessment which never had a *legal existence* because the law under which it was laid was admittedly unconstitutional and void ; while in this case the tax is levied under an admittedly valid law, and by a body having jurisdiction of the subject matter. And the act of 1881 is applied simply to cure defects in an otherwise valid proceeding. In the Maxwell case the law of 1861 was invoked to make good a sale, which was void because the Court ordering it had *no jurisdiction over either the subject matter, nor the persons in interest*, while in the present instance the act of 1881 is invoked to cover defects in the form of proceedings had by those who had full authority and jurisdiction over both the subject itself as well as the persons. The distinction lies in the fact whether the body whose proceedings

are sought to be cured, had or had not jurisdiction over the subject.

A legislative act will cure mere defects of form or irregularities in the proceedings of bodies duly authorized to act.

The State v. Town of Union, 4 Vroom, 355.
Snowhill v. Snowhill, 2 Green, Chy, 20.
State v. Apgar, 2 Vroom 358.
State v. Demarest, 3 Vroom 528.

But the Legislature is powerless to give life and validity to a void proceeding, not because of an error in form, but because of a want of jurisdiction in the adjudging tribunal.

The general rule has often been declared that the Legislature may validate retrospectively the proceedings which it might have authorized in advance.

Cooley on Constitutional Limitations.
Chapter X, page 227.

" The very precise limit to the power to cure these proceedings is this ; they cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure want of authority to act at all. What the Legislature could not have authorized originally it cannot confirm."

Cooley, on Const. Lim. page 227.
& cases there cited.

It is for these reasons respectfully submitted that the judgment of the Court below should in all things be affirmed.

JOHN A. BLAIR,
Counsel for the defendant in Error.

N. J. Court of Errors and Appeals.

THE STATE— WILLIAM E. DODGE et als., Exrs., &c., vs. JAMES H. LOVE, Collector, City Jersey City.	In Error.

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COPY OF OPINION.

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The opinion of the Court was delivered by VAN SYCKLE, J.

The writ in this case certifies for review the increased assessessment upon lands of the prosecutors made by the Board of Finance of Jersey City, acting as commissioners of appeal in cases of taxation.

To vacate this assessment the relators who are non-residents in this State, rely upon various alleged irregularities in the proceedings before the commis- 30
sioners of appeal.

Since the passage of the act of March 23, 1881, (p. 194) it is unnecessary to consider the reasons relied upon for reversal.

The curative force of this statute is not restricted to the proceedings of the assessor in making the original assessment.

State v. Mulford, 14 Vroom, 550.

Every step taken in the course of perfecting and 40
finally adjusting the valuation is as much part of the

assessment as the act of the assessor in making the valuation originally.

The act is remedial and should be liberally construed to embrace within its scope all the steps necessarily taken in levying the public revenues.

That such was the legislative purpose is manifested by the fact that its operation is expressly extended to the proceedings for the collection as well as for the assessment of taxes.

It could not have been intended to exclude the intermediate steps between the initial and final proceedings.

The legislature has withheld from this Court the power to set aside an assessment for any irregularity or defect in form, or illegality in assessing or levying the same.

The commissioners in this case met on the day fixed by law, and adjourned from time to time until the business before them was disposed of.

If notice to the prosecutors that application to increase the assessment certified was necessary, the evidence shows that sufficient notice was given.

But in my judgment the statute does not contemplate notice to non-residents in this State.

The seventy-ninth section of the general tax law (Rev. 1158) requires the collector to notify the individual or corporation whose property has been assessed at too low a rate that complaint will be made to the commissioners of appeals, at least ten days before the commissioners meet, and that such notice shall be served by delivering the same to said individual or by leaving it at his dwelling house.

This applies to residents and not to any extra territorial notice, otherwise a duty is imposed on the collector, which he could not perform, and in most cases the attempt to increase the assessment of non-residents would prove abortive. The proceeding is in rem, and is not within the rule that it cannot be initiated and consummated without notice, where the

interests of residents of other States are involved in the absence of a statute requiring notice to be given.

The act requires notice to be served personally, or to be left at the dwelling house, no other mode of giving notice will satisfy the statute, and therefore if it applies to non-residents, the prescribed method must be observed whether the tax-payer resides in New York city, California or beyond the seas.

In respect to notice no error appears in the proceedings.

This Court is empowered if need be to ascertain and determine for what sum the property was legally liable to taxation.

No laches can be imputed to the collector in this instance.

The prosecutors were not deprived by any act or neglect of the public authorities, of the opportunity to be heard before the commissioners of appeal. It is consequently incumbent on the prosecutors to show affirmatively that the estimate of value made by the commissioners of appeal was unjust or excessive. If such evidence had been presented to the Court, relief would be granted by making the proper rebate. No such testimony having been produced in this case, the presumption must prevail, that the increased assessment is just, and that no necessity for reviewing it exists.

In the case of resident tax-payers the law provides how notice of intention to increase assessments shall be given.

The neglect to give such notice deprives the resident of an opportunity to be heard in his own behalf. He is entitled to the judgment of the appellate body after he has been heard. Therefore in the latter instance, if notice has not been given the assessment will not be supported by the presumption which upholds the former case, but it will be reduced to the valuation made by the assessor, unless evidence is taken to show that it is insufficient, and

application is made to this Court under the act of 1881 to fix a fair valuation.

This was the rule adopted by the Court in The State v. Mulford before cited.

The assessment must be affirmed.

Judgment confirming said assessment entered De-
10 cember 31st, 1885.

Writ of error in usual form issued January 5th, 1886, returnable January 18th, 1886.

Assignment of errors
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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE— WILLIAM E. DODGE et als., Exrs., &c. vs. 30 JAMES H. LOVE, Collector of Jersey City.	In Error. Assignment of Errors.

Afterwards, to wit, on the eighteenth day of January, in this said term, before the Judges of the Court of Errors and Appeals in all causes, at Trenton, come the said The State of New Jersey by William E. Dodge, E. Stuart Dodge, and Melissa P. Dodge, 40 executors and executrix of William E. Dodge, deceased, the plaintiffs therein, by William C. Spencer

their attorney, and say that in the records and proceedings aforesaid, and also in giving the aforesaid judgment, there is manifest error in this, to wit:

FIRST. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of judgment of said commissioners of appeals, did not show at the meeting at which said complaint was made and heard, was held at the time and in the place and manner required by law.

SECOND. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of judgment of said commissioners did not show that notice of the meeting, at which said complaint was made and heard, was given and posted as required by law.

THIRD. Because srid Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of judgment of said commissioners of appeals did not show that said pretended judgment and adjudication was rendered within ten days after the making of said complaint, as required by law.

FOURTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of said commissioners of appeals, and said return failed to show that said prosecutors were served with notice of the making and hearing of said complaint as required by law.

FIFTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of the proceedings of said commissioners of appeals utterly failed to show that said commissioners had complied with the requirements of the law, as to the time, place and manner of the meeting when said complaint was made and heard, as to notice of the same to prosecutors, as to the time within which their pretended judgment and adjudication was made after

the making and hearing of complaint, and because in other matters and things said certificate and transcript and return are vague, uncertain and indefinite.

SIXTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the certificate and transcript of said pretended adjudication and judgment of said commissioners returned with the abstract or duplicate of said original valuation and assessments of taxes now on file in the office of said collector, and forming part of his said return, was illegal and void, in that it is not signed by said commissioners of appeals nor any of them, and because said certificate was illegal and void in other respects.

SEVENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because it in nowise appeared in and by said certificate and transcript that said commissioners of appeal rendered any judgment whatever on said complaint or increased said valuation and taxes.

EIGHTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the meeting of said commissioners of appeal at which said complaint was made and heard was not held at the time required by law, nor on an adjourned day thereof, or in the manner required by law.

NINTH. Because the Supreme Court did not decide that said increase of valuation was illegal and void, because notice of the meeting of said commissioners of appeals at which said complaint was made and heard was not given or posted according to law.

TENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void because neither the Board of Finance nor the Board of Aldermen of said City of Jersey City, had any power or authority to direct said complaint to be made after confirming the original valuation and assessments of taxes, and after the duplicate thereof

had been delivered to the collector after such confirmation according to law

ELEVENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because said collector had no legal warrant or authority to make such complaint, and because the same was illegal and without warrant of law.

TWELFTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because said complaint was not made at the time of meeting of said commissioners required by law.

THIRTEENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because no notice of the making and hearing of said complaint was served upon said prosecutors as required by law.

FOURTEENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the alleged notice forming part of the return to said writ, was illegal, indefinite, vague and uncertain.

FIFTEENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because the actions, proceedings and judgment of said commissioners of appeal were without jurisdiction or warrant of law, and were utterly illegal and void.

SIXTEENTH. Because said Supreme Court did not decide that said increase of valuation was illegal and void, because said proceedings were in other respects, irregular, unjust and oppressive to the prosecutors.

SEVENTEENTH. Because said Supreme Court affirmed said increase of valuation and said assessment to be valid and effectual in law, whereas the same are invalid, illegal and of no effect, and should be set aside.

And the said The State of New Jersey, William E. Dodge, E. Stuart Dodge and Melissa P. Dodge, executors and executrix as aforesaid, pray that the judgment aforesaid may be reversed, annulled and for nothing holden, and that they may be restored in all things which they have lost by occasion of said judgment, &c.

WILLIAM C. SPENCER,
Attorney of Plffs.

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Joinder in error in usual form filed February 3d, 1886.

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New Jersey, ss.

The State of New Jersey to James H. Love, City Collector of the City of Jersey City, Greeting.

We being willing, for certain reasons, to be certified of the assessment of taxes for the year eighteen hundred and eighty-four upon the following lands of William E. Dodge, E. Stuart Dodge and Melissa P. Dodge, executors and executrix of William E. Dodge, deceased, viz., lots 14, 15, 16, 17, 18, 19, 20 and 21 in Block 12, in the Second Aldermanic District of said City of Jersey City, and particularly of the increase in valuation of, and of said assessment of taxes upon said above mentioned lands under and by virtue of certain pretended proceedings and adjudication of the Commissioners of Appeals of said City of Jersey City, and of all matters and proceedings of said City of Jersey City, its officers, servants and employees, of said Commissioners of Appeals touching and concerning said assessment of taxes, and said increase in valuation and said assessment, by whatsoever name or names the said William E. Dodge, E. Stuart Dodge and Melissa P. Dodge, executors and executrix as aforesaid, may be called therein, or however said assessment or said increase in valuation or of said assessment may have been made or may be called.

We command you that said assessment and said increase in valuation, and of said assessment and all matters and proceedings in any way touching or concerning the same, as fully as the same are now in your possession or under your control, you certify and send to our Supreme Court of Judicature at Trenton, the first Tuesday of June next, together with this writ, that thereon may be done what of right ought to be done.

Witness Mercer Beasley, Esquire, Chief Justice, at Trenton, this fifth day of May, eighteen hundred and eighty-five.

BENJ. F. LEE,
Clerk.

WILLIAM C. SPENCER,
Attorney.

[ENDORSED.]

NEW JERSEY SUPREME COURT.

THE STATE, WM. E. DODGE, et als., Exrs., &c., Pros., vs. JAS. H. LOVE, Coll., City, Jersey City.	On Certiorari. Writ.

Retble. June Term, A. D. 1885.
WM. C. SPENCER,
Attorney.
I allow this writ, let it be sealed.
May 5, 1885.

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

[RETURN.]

I do herewith send to the Supreme Court of the State of New Jersey the assessment for taxes of 1884, with all things touching and concerning the same as within I am commanded, as the papers hereunto annexed more fully appears.

Witness my hand and seal this eighth (8) day of May, A. D. eighteen hundred and eighty-five (1885.)

JAMES H. LOVE, [L. S.]
Coll.

JERSEY CITY, Dec. 16th, 1884.

JAMES H. LOVE, Esq.,
City Collector.

DEAR SIR—At a meeting of the Board of Finance and Taxation, held Dec. 12th, 1884, a resolution was adopted to the effect that the enclosed report be referred to you, and that you be requested to consult with the Corporation Counsel, and acting with him, make such complaint to the Commissioners of Appeals as is necessary under the general tax law.

Yours, very truly,

(Signed) GEO. F. McANENY, Clerk,
Office Board of Finance and Taxation.

To the Honorable the Board of Finance and Taxation:

GENTLEMEN—From an examination of the assessments levied upon a great portion of what is known as the "Water front of Jersey City," I have reason to believe that the same has been undervalued, and have, therefore, to ask that proper steps be taken to present to the Commissioners of Appeal in cases of Taxation, for their review, the assessments for the present year of the following described property:

* * * * * *

Block 12, lots 14, 15, 16, 17, 18, 19, 20 and 21, and pier at foot of Bay street.

I suggest that the Collector be directed to notify the owners of the property specified, that complaint will be made to the Commissioners of Appeal in cases of Taxation in accordance with the provisions of the general tax laws, and that officer be further directed not to receive any payment from such owners of the tax of 1884, upon said property unless the payer is willing to accept a receipt "on account of such tax as shall be fixed and assessed under a val-

uation to be made by the Commisioners of Appeal in cases of Taxation."

It may be that the taxes for 1884 upon some of the property mentioned, have been paid. If so, I would advise that the Commissioners of Appeal nevertheless take action.

When the assessors' books were presented to this board in October, the question of the right of the city to increase an assessment upon property after payment of the tax was discussed. I am not strong in a belief that such right exists, but as there has not been any adjudication upon the question, the interests involved merit a trial. It was at that time proposed that the board should hold the books, examine the assessments and return them with directions to alter valuations. After careful consideration, I am satisfied that such a course would have been illegal.

If the courts shall decide that commissioners are without power to increase an assessment after payment, we can at least fix values which will be instructive monuments to guide the assessors in years to come.

The work of fixing proper assessments upon the value of this property will involve the taking of considerable testimony, and should be set down for special days, upon which other appeals and complaints will not be considered.

It is necessary that strict observance be made of all statutory requirements, and the Collector should move with the advice and assistance of the Corporation Counsel.

(Signed) ALLAN L. McDERMOTT.

To the Commissioners of Appeals in cases of Taxation in and for the City of Jersey City, Hudson county :

The subscriber, the City Collector of Jersey City, hereby complains that the property assessed to Dodge & Meigs (or the exrs. of the est. of Wm. E. Dodge, decd), Second District, block 12, 14 to 21, and pier foot Bay street.

The foregoing persons, companies and corporations have been assessed by the assessors of said city at too low a rate, and I have given to the owners of said property ten (10) days notice of this complaint, do request that after due examination of the facts and consideration of the case, such addition shall be made to the assessment, *i. e.*, as shall be agreeable to the principles of justice.

Dated this fourteenth day of January, 1885.

(Signed) JAMES H. LOVE,
City Collector.

To Dodge & Meigs, or the executors of the estate of Wm. E. Dodge, deceased, Jersey City, N. J. :

You are hereby notified that complaint will be made to the Commissioners of Appeal in cases of Taxation of Jersey City in the State of New Jersey, at the City Hall in said city, on Saturday, the twenty-fourth day of January, 1885, at the hour of two o'clock in the afternoon, that you have been assessed at too low a rate, to the end that after due examination of the facts, such addition may be made to your taxes as shall be right and proper and according to law.

The property to be referred in said complaint is on block twelve (12), lot 14 to 21, and pier foot

Bay street, located in the Second Aldermanic District.

Jersey City, Jan. 9th, 1885.

Signed, JAMES H. LOVE,
City Collector,
Jersey City.

[Endorsed.]

Dodge & Meigs; served on Edward Meigs, of A. M Dodge & Co., Dec. 9, '84, at 4.45 o'c., A. D. Whyte. (Copy.)

OFFICE OF THE BOARD OF FINANCE AND TAXATION,
CITY HALL,
JERSEY CITY, Feb'y 12th, 1885.

ALLAN L. MCDERMOTT, President.
EMIL E. DATZ.
A. A. HARDENBERGH.
OTTO HEPPENHEIMER.
THOMAS D. JORDAN.

GEORGE F. McANENY,
Clerk.
JOHN T. M. KAYLAR,
Asst. Clerk.

JAMES H. LOVE, Esq., City Collector.

The following resolution was adopted at a meeting of Board of Commissioners of Appeals in cases o- Taxation, held February 2d, 1885.

Yours respectfully,
(Signed) GEO. F. McANENY, Clk.

Resolved, That the following decisions upon complaints heretofore made by the City Collector be certified to that officer :

James H. Love, Collector of Taxes in and for the City of Jersey City, having complained to the subscribers, the Commissioners of Appeals in cases of Taxation, in and for said city, that the estate of William E. Dodge hath been assessed for the annual tax of 1884 at too low a rate on the following described property, to wit : Block (12), lots 14 to 21 inclusive ; and it appearing that ten days' notice in writing hath been given of said complaint to the said estate of William E. Dodge by the said James H. Love, and that the same would be heard on Saturday, the twenty-fourth day of January, 1885, and we, the said Commissioners, having at that time heard the parties and their witnesses, after due examination of the facts and consideration of the case, do adjudge agreeably to the principles of justice that the sum of five thousand dollars be added to the value of each of said lots as heretofore assessed for the annual tax of 1884, and that the assessment on pier foot of Bay street be confirmed.

NEW JERSEY SUPREME COURT.

THE STATE,
WILLIAM E. DODGE et als., Exrs. &c.,
Pros.

vs.

JAMES H. LOVE, Collector, City, Jersey City.

On Certiorari

Application being made to me for a certiorari in above cause, it is ordered that said prosecutors pay to said Collector the amount of the original assessment of taxes on the premises in question, and that such payment, and the receipt thereof be without prejudice to either party.

(Signed) M. M. KNAPP,
J. S. C.

Owners of Property and Persons Taxable.	Map No of Lots.	Vac't Lot	Numb'r of Feet	Value of Real Est	Amt of City Tax	Amt. of Co Tax	Amt. of State Sc'l Tax	Total Amt of Taxes	Amt. paid Collector	Folio	Remarks.
											Confirmed by Bd. Finance and Taxation 8.30 P. M. October 29th, 1884.
											Received in the Office of City Collector 9.05 A, M. October 30th, 1884.
	Atla	ntic	St. Blk	12							
Estate Wm. E. Dodge.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	
				10000	224 00	4800	26 00	298 00			Added per resolution Coms. Appeals, Feby. 2, '85.
Dodge & Meigs.....	14	1	2500	~~5000~~	~~112 00~~	~~2400~~	~~13 00~~	~~149 00~~	149 00	....	
				9000	201 60	4320	23 40	269 20			
"	15	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"
				9000	201 60	4320	23 40	268 20			
"	16	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	73	"
				9000	201 60	4320	23 40	268 20			
"	17	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"
				9000	201 60	4320	23 40	268 20			
"	18	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"
				9000	201 60	4320	23 40	268 20			
"	19	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"
				9000	201 60	4320	23 40	268 20			
"	20	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"
				9000	201 60	4320	23 40	268 20			
"	21	1	2500	~~4000~~	~~89 60~~	~~1920~~	~~10 40~~	~~119 20~~	119 20	....	"

REASONS.

The prosecutors present the following reasons for setting aside all and singular, the proceedings increasing the valuation of prosecutors' lands and the assessment of taxes thereon, and for setting aside said increase of valuation and taxes brought before this Honorable Court by the writ of certiorari in above cause.

FIRST. Because certificate and transcript of judgment of said Commissioners of Appeals does not show that the meeting at which said complaint was made and heard, was held at the time and in the place and manner required by law.

SECOND. Because certificate and transcript of judgment of said commisioners does not show that notice of the meeting at which said complaint was made and heard, was given and posted as required by law.

THIRD. Because the certificate and transcript of judgment of said Commissioners of Appeals does not show that said pretended judgment and adjudication was rendered within ten days after the making of said complaint as required by law.

FOURTH. Because the certificate and transcript of said commissioners and said return fail to show that said prosecutors were served with notice of the making and hearing of said complaint as required by law.

FIFTH. Because the certificate and transcript of the proceedings of said Commissioners of Appeals utterly fails to show that said commissioners have complied with the requirements of the law, as to the time, place and manner of the meeting

when said complaint was made and heard, as to notice of the same to prosecutors, as to the time within which their pretended judgment and adjudication was made after the making and hear, ing of complaint, and that in other matters and things said certificate and transcript and return are vague, defective and uncertain.

SIXTH. Because the certificate and transcript of said pretended adjudication and judgment of said commissioners returned with the abstract or duplicate of said original valuation and assessments of taxes now on file in the office of said Collector, and forming part of his said return, is illegal and void, in that it is not signed by said Commissioners of Appeals, nor any of them, nor is it such a certificate or record as is required by law, and that said increase in valuation and assessments of taxes by said Collector was unwarranted and illegal.

SEVENTH. Because it in nowise legally appears in and by said certificate and transcript that said Commissioners of Appeal rendered any judgment whatever on said complaint, or increased said valuation and taxes.

EIGHTH. Because the meeting of said Commissioners of Appeal at which said complaint was made and heard was not held at the time required by law, nor on an adjourned day thereof, or in the manner required by law.

NINTH. Because notice of the meeting of said Commissioners of Appeal at which said complaint was made and heard was not given or posted according to law.

TENTH. Because neither the Board of Finance nor the Board of Aldermen of said City of Jersey City, had any power or authority to direct said complaint to be made after confirming the original valu-

ation and assessments of taxes, and after the duplicate thereof had been delivered to the Collector after such confirmation according to law.

ELEVENTH. Because said Collector had no legal warrant or authority to make such complaint, and the same was illegal and without warrant of law.

TWELFTH. Because said complaint was not made at the time of meeting of said Commissioners required as by law.

THIRTEENTH. Because no notice of the making and hearing of said complaint was served upon said prosecutors as required by law.

FOURTEENTH. Because the alleged notice forming part of the return is indefinite, vague and uncertain.

FIFTEENTH. Because said proceedings are in other respects, irregular, unjust and oppressive to the prosecutors.

WM. C. SPENCER,
Atty. for Prosecutors.

NEW JERSEY SUPREME COURT.

THE STATE, WILLIAM E. DODGE et als., Exrs. &c., Pros. vs. JAMES H. LOVE, Collector, City, Jersey City. Deft.	On Certiorari

The prosecutors having filed their reasons in above cause, it is ordered that they be at liberty to take affidavits to prove the facts set forth in above reasons, and that the above defendant be at liberty to take affidavits in answer thereto.

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

On motion of
WM. C. SPENCER,
Atty. for Pros.

NEW JERSEY SUPREME COURT.

THE STATE, WM. E. DODGE, et als., Exrs., &c., Pros., vs. JAS. H. LOVE, Coll., City, Jersey City.	On Certiorari. Depositions.

Depositions of witnesses in the above entitled cause taken in pursuance of rule granted in above cause before me, GEORGE W. CASSEDY, a Supreme Court Commissioner, at my office No. 1 Exchange Place, in Jersey City, on Friday, the 22d day of May, A.D. 1885, in the presence of WILLIAM C. SPENCER, counsel for prosecutors, and JOHN A. BLAIR, counsel for defendant.

GEORGE F. MCANENY, a witness produced on the part of the prosecutors, being duly sworn according to law, says:

I am Clerk of the Board of Finance of Jersey City; under the charter of the City of Jersey City the Board of Finance are also Commissioners of Appeal in cases of taxation for that city; I believe that the Commissioners of Appeals in cases of taxation held their first meeting on the fourth Tuesday in November, 1884; that meeting was adjourned, but I do not remember to what date; at that adjourned meeting I believe there was a quorum present, unless the adjourned meeting was that of November 28th; as a matter of fact, the board did adjourn from time to time after their first meeting until November 28th,

1884; there was no quorum present at the adjourned meeting of Nov. 28th; there were no members present on Nov. 28th, 1884; I adjourned the board to Dec. 1st, 1884. I am not a member of the Board of Finance, I am only Clerk of said board. With this exception, as far as I remember, there were no other adjourned meetings between the first meeting and that on which the complaint in regard to assessment of property of prosecutors was heard, when no quorum was present.

After the first meeting the board was adjourned from time to time to the meeting at which the complaint I have above mentioned was heard. After the meeting of November 28th, at which there was no quorum, there was no notice of any future meeting posted in six of the most conspicuous places, nor in any conspicuous place.

Being cross-examined:

I have not here the minutes of the Board of Commissioners of Appeal. The testimony I have given is purely from memory, except as to the meeting of November 28th, and the adjournment to December 1st, to which I testified from memorandum made. I think there was some business done and cases heard at some of the meetings between the first meeting and the one held December 1st, but I am not certain. I think the Commissioners of Appeals did not have before them the matter of the complaint in regard to assessment of property of prosecutors prior to meeting of December 1st, 1884, it was after that.

GEO. F. McANENY.

EDWARD K. MEIGS, produced on the part of the prosecutors, being duly sworn according to law, on his oath says:

I am a member of the firm of A. M. Dodge, composed of A. M. Dodge, myself and C. H. Dodge. I

think I had a notice served on me that complaint would be made to Commissioners of Appeals in cases of taxes in regard to valuation of certain lands occupied by our firm. I think this was the notice.

Notice offered in evidence, Exhibit P. 2. I do not remember date of service of that notice. Our firm occupy the water front between Bay and Morgan streets, in the City of Jersey City, lots 14 to 21, inclusive, in block 12, form part of that property.

Q. Mr. Meigs, do you, or the firm of which you are a member, own any of the property, the real estate which belonged to the estate of William E. Dodge, deceased?

A. We do not.

Q. What title or by what right, if any, do you occupy it?

A. We have a lease from the William E. Dodge estate.

Q. Do you, as a matter of fact, know to whom that property does belong?

A. It belonged to the estate of William E. Dodge, deceased.

Q. Mr. Meigs, is Mr. William E. Dodge alive?

A. He is dead.

Q. Do you know about when he died?

A. He died in February, 1883.

Q. Do you know Mr. William E. Dodge, son of William E. Dodge, deceased, and Mr. Cleveland H. Dodge?

A. Yes.

Q. Do you know whether they are living or not?

A. Mr. William E. Dodge, Jr., is.

Q. And Mr. Cleveland H. Dodge?

A. Yes.

Cross-examined by Judge BLAIR:

Q. The premises mentioned in the notice you received, how long have you occupied, Mr. Meigs?

A. A. M. Dodge & Company have occupied it five —about eight years.

Q. Do you occupy the whole of the premises described in the notice?

A. We have had a lease of it; we have sublet part of it; but we have a lease of the whole property.

Q. Do you hold by written lease?

A. Yes.

Q. Have you that lease?

A. We have, in the offices; I think that the first five years of our partnership Mr. Arthur Dodge held the lease.

Q. Do you now hold under a written lease from the estate of William E. Dodge, deceased?

A. The first lease was made to Mr. A. M. Dodge and he sublet to us.

Q. When was that?

A. Some seven or eight years ago.

Q. When did it expire—how long was it?

A. Five years; we now hold under a lease from the estate.

Q. When was that lease made?

A. That lease was made--our lease didn't expire until that; there have been several leases; this lease didn't expire until this May, I think, when we took a lease from the estate on the first day of January—gave up our old lease.

Q. Of whom did you hold it last year?

A. I am not positive whether we held it from the estate or from Mr. Arthur Dodge.

Q. You hold it now by lease?

A. Yes.

Q. Well, won't you produce those two leases?

A. Yes.

Q. You know that this property belongs to the estate of Mr. Dodge simply by hearsay; you never examined the title to see whether it is?

A. I have never examined the title.

Q. Who is Mr. Cleveland Dodge and Mr. Arthur Dodge?

A. Mr. Arthur Dodge is the son of Mr. William E. Dodge, deceased, and Mr. Cleveland Dodge is a grandson.

Q. Was this notice served upon you personally?

A. The, notice was left at the office, and I took it in the way of sending it over to the estate—it was served on me.

Q. How long does the lease on that property run?

A. Three years, subject to a defeasance clause.

Q. Who has paid the tax on that property hitherto?

A. I could not swear as a fact, I could only swear to what I believe.

Q. You don't know as a matter of fact?

A. No.

That's all?

Further direct:

Q. Mr. Meigs, has A. M. Dodge and Company ever paid them?

A. Well, if we have ever paid them we have charged it right back as a cash payment on the rent; I am under the impression that was done once?

Q. That was long ago?

A. Long ago, yes, sir.

Re-cross examination:

Q. Is there anything said in the lease about taxes, and who should pay them?

A. No; I am positive about that.

EDWARD K. MEIGS.

Statement made by Mr. Wm. Spencer, counsel for the city:

I would state that for the taxes that were in arrears at the time of Mr. William E. Dodge's death, and those that have been assessed since, with the exception of the increased valuation made by the Commissioners of Appeals, have been paid by the executors of William E. Dodge.

Adjourned to day to be agreed upon between respective counsel.

NEW JERSEY SUPREME COURT.

EXECUTORS OF DODGE,
vs.
LOVE.

Taking of testimony in the above stated cause, pursuant to adjournment, on Wednesday, the 27th day of May, A. D. 1885, before GEORGE W. CASSEDY, Esq., at his office in the City of Jersey City, N. J., in the presence of counsel for the respective parties.

ANDREW D. WHYTE, a witness produced on the part of th defendant, being duly sworn according to law, testified as follows :

Direct examination by Mr. BLAIR :

Q. (Handing witness paper marked Exhibit P. 2.) Did you ever see that notice?

A. Yes, sir.

Q. Did you ever have it in your possession?

A. Yes, sir.

Q. What did you do with it?

Counsel for prosecutor objected to any evidence in regard to any matters mentioned in the return.

A. I delivered this paper to Mr. Edward K. Meigs, of the firm of A. M. Dodge & Company.

Q. When did you deliver it to him?

It is understood that the above testimony is taken subject to objections.

A. To the best of my knowledge I delivered this on January 9th, 1885, at four o'clock and forty-five minutes P. M.

Q. The endorsement on the back—in whose handwriting is that?

A. That is my handwriting; there is my signature on that.

Q. Upon consideration, you think that is an error; it should have been January 9th when it was served?

A. Yes, sir.

Q. What did Mr. Meigs say when it was served on him?

A. I asked Mr. Meigs if either of the executors of the William E. Dodge estate were present, and he said they were not present, but that one of them—I can't call to mind which—would be in the office tomorrow morning, and that he would take the papers and hand them to the executor that would appear; he gave me the name; there were two of them; he told me which one, but I don't recall which one he mentioned; it was one of the executors, and he would hand it to him in the morning of the following day.

Q. Was that, or not, the circumstance which led you to leave the paper there?

Objected to.

A. I considered Mr. Meigs would do what he said; I knew the gentleman perfectly well; I knew the papers would be safe in his hands, and that he would deliver them, as he said.

Q. Was this served on the premises?

A. It was served in the office of A. M. Dodge & Company.

It is admitted by counsel that the executors do not live in New Jersey.

Cross-examination by Mr. Spencer:

Q. Are you positive that when you left that you saw Mr. Meigs personally?

A. Yes, sir.

Q. Didn't Mr. Meigs say, Mr. Whyte, that two of

the Dodges were there, at the office, instead of two of the executors?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Q. Who was the executor; was Mr. Arthur M. Dodge the gentleman he named as being the exector?

A. I could not say.

Q. Do you remember the name of Mr. Arthur M. Dodge and Mr. Cleveland H. Dodge; were not those the two Dodges named?

A. That I could not say.

Q. You don't remember anything about the two names mentioned?

A. No, sir.

Q. Was it in the morning or afternoon when you served this?

A. It was 4.45 P. M.

Q. And while other conversation took place than what you have mentioned, you have given all that you remember?

A. Other conversation in reference to this case or outside of it?

Q. No, I mean in reference to this matter?

A. No, I don't think; it might possibly have been that, that was the reason why I changed the notice from the heading as given there to the executors. You see it was originally made out to William E. Dodge, or something of that kind. This conversation may have caused me to write that or "the executors of William E. Dodge."

Q. You don't remember though?

A. I think this conversation led me to make that change prior to the delivery of the notice.

Q. You made that change yourself?

A. Yes, sir, in the office of A. M. Dodge & Company.

Q. You are pretty sure, you say, that he told you

that, mentioning the name of the two executors; is that the way I understand it?

A. No.

Q. Now let's get it straight?

A. He said that one of the executors would be in the office on the following day.

Q. You don't remember the name?

A. No, sir.

Re-direct:

Q. You served this for Mr. Love, the Collector.

A. I served that in obedience to a command from Mr. Love, the Collector.

ANDREW D. WHYTE.

GEORGE F. MCANENY, being recalled on the part of the defendant, testified further as follows:

Q. (By Mr. SPENCER.) When you stated in your previous examination that no notice of any subsequent meeting, to that meeting of November 28th, at which there were no members present, that there was no notice posted in any conspicuous place, you meant that there was no notice posted at all?

A. Yes, sir; you refer to the notice required by statute?

Q. Yes, sir.

A. Yes, sir.

Q. (By Judge BLAIR.) Notice as required by the statute of the first meeting of the Commissioners of Appeal on the fourth Tuesday, the 25th day of November, were regularly put up?

A. Yes, sir.

Counsel for the prosecutor objected to any and all testimony in regard to the action of the Commissioners of Appeal other than that contained in the certificate filed with the Collector.

Q. Were the meetings of the Commissioners of Appeal held regularly from the meeting of November 25th up to the time of the hearing of the cause of the prosecutor?

A. What do you mean by the term "regularly?"

Q. Well, from week to week.

A. There was no stated day of any week; they were adjourned from time to time.

Q. That is what I mean by "regularly."

A. Yes, sir.

Q. When did the Commissioners of Appeal, according to the minutes, first get notice of the Collector's complaint in this case?

A. On January 24th, 1885.

Q. When did the Commissioners meet after the first of December?

A. December 4th; they met on the first of December, and then on the 4th.

Q. And then when next?

A. December 8th and December 12th.

Q. (By Mr. SPENCER.) There were quorums at all those meetings?

A. Yes, sir; then they met December 16, 19, 23; January 5th, 8th, 12th, 17th; then the next meeting was January 21st, at that meeting two commissioners were present; the meeting was adjourned on motion, to January 24th.

Q. (By Mr. BLAIR.) At the meeting of January 24th was anything done by the Board of Finance in this matter of the prosecutors?

A. At the meeting of January 24th, the Board received a communication from the City Collector, Mr. Love, dated January 14th, 1885, complaining against several in the matter of taxation, including Dodge & Meigs; the Board heard testimony in each of these cases, and on motion of Commissioner Datz, they were referred to the President of the Board for report.

Q. Did they at that meeting pass upon the question and raise the valuation?

A. No, sir ; not at that meeting.

Q. When did they raise the valuation on this property ?

A. At the meeting of February 2d.

Q. These several meetings were held in conformity to the adjournment from the previous meeting ?

A. Yes, sir.

Cross-examination by Mr. Spencer :

Q. After that meeting of January 21st, there was no notice of the next meeting (where there were two members present), there was no notice of any subsequent meeting posted ?

A. No, sir.

GEO. F. McANENY.

EDWARD K. MEIGS, a witness produced on the part of the defendant, being duly sworn according to law, testifies as follows :

Direct examination by Mr. BLAIR :

Q. When was this notice served on you for the estate of Dodge ?

A. I can't say ; I keep no track of such things at all.

Q. You remember that it was served by Mr. Whyte ?

A. I remember now, I think it was—Mr. Andy Whyte.

Q. What did you do with the notice ?

A. I laid that notice on Mr. Cleveland Dodge's desk, my partner ; he has a desk just back of mine ; I laid it on his desk.

Q. Who is Mr. Cleveland Dodge ?

A. He is a son of William E. Dodge, Jr.; (William E. Dodge now,) and is one of the partners.

Q. Who are the executors of Mr. Dodge's estate ?

A. Mr. William E. Dodge, Mr. D. Stuart Dodge and Mrs. Melissa Dodge.

Q. Where do they live, outside of the State of New Jersey.

A. They live in New York city.

Q. How often do you see the executors?

A. Well, I haven't seen the executors once in ten years, probably.

Q. How recently have you seen them?

A. It is so long ago, I cannot remember; I never come in contact with them.

Q. Where does Mr. Cleveland Dodge live?

A. He lives in New York city.

Q. With his father?

A. No, sir.

Q. Is he a married man?

A. He is.

Q. Living by himself, keeping house?

A. Yes, sir.

Q. How far distant from his father's?

A. I could not tell.

Q. You don't know where either lived?

A. I have a general idea, but to give the exact number I could not.

Mr. SPENCER. He lives a block from the Gilsey House.

Q. Do you know whether the executors or any of them got this notice that was left with you?

A. I do not.

Q. Did you ever say anything to Cleveland Dodge about it?

A. I said there was a notice on his desk that was left by Andy Whyte.

Q. Did you understand the character of the notice?

A. In a general sort of way.

Q. Did you read it?

A. I don't think I did; it is a matter I had no interest in.

Q. When did you speak to Mr. Cleveland Dodge about this notice?

(Objected as irrelevant.)

A. Within a day after it was left on his desk.

Q. Did you employ Mr. Spencer to look after this matter?

A. I have not had anything to do with the matter.

Q. Do you know by whom he was employed?

A. I do not.

Q. Is either of the directors of the Dodge estate interested in the business of Dodge & Meigs?

A. They are not, sir; neither of them.

Q. Has the estate of William E. Dodge any other real estate in the County of Hudson?

A. I could not say, I think not.

Q. This property refers to the eight water front lots; does the estate own property besides that?

A. Yes, sir.

Q. Outside of these eight lots?

A. Yes, sir.

Q. Who looks after that, the estate of Mr. Dodge's, outside of the property you have charge of?

A. Mr. Arthur M. Dodge, I should say, more than any one else?

Q. He is one of the heirs?

A. Yes, sir.

Q. Does he come over and look at it, to see how the premises get on?

A. He is a member of the firm and comes over in a business way.

Q. Do you yourself have anything to do in looking after the property of the estate?

A. Only as a lessee.

Q. Who did you say constitute the firm of Dodge & Meigs?

A. The firm name is A. M. Dodge & Co.—Mr. Arthur Dodge, myself and Mr. C. H. Dodge.

Q. Mr. Arthur Dodge is there every day?

A. No, sir.

Q. How often is he there?

A. On an average, say every two months—not oftener than that.

Q. Where is he the balance of the time ?

A. In New York—I can't tell ; he is in Canada to-day.

Q. Have you brought these here to day ?

A. No, sir, I have not; Mr. Spencer can get them.

Cross-examination by Mr. SPENCER :

Q. Mr. Whyte stated that when he came to see you in regard to this complaint, that you told him that one of the executors of the estate would be over at the office next morning, and that you would give them the complaint ; is that so ?

A. I can swear positively that that is not so.

Q. At the time you saw Mr. Whyte you knew who the executors were ?

A. Certainly.

Q. What did you say ?

A. I told Mr. Whyte that I would put that on Mr Cleveland Dodge's desk, it was a matter of no importance or interest to me, and that he would attend to it ; that is all I remember.

Re-direct :

Q. Has the estate of Dodge any interest in that property at all except in their real estate ?

A. Yes, in a measure they have, and we have some. There are some improvements, part of the real estate have permanent improvements on it.

EDWARD K. MEIGS.

Testimony declared closed.

WILLIAM C. SPENCER, a witness produced on the part of the prosecutors, being duly sworn according to law, on his oath deposeth and saith :

I attend to most of the law business of A. M. Dodge & Co., and am their general attorney. The firm is composed of Arthur M Dodge, Edward K.

Meigs and Cleveland H. Dodge; their place of business is the City of Jersey City, and they transact their business at the foot of Greene and Bay streets in Jersey City, on property leased from the estate of William E. Dodge. They have been in business there some seven or eight years. I also know the firm of Dodge & Meigs, who were succeded by A. M. Dodge & Company. The firm of Dodge & Meigs is composed of Norman W. Dodge, T. Benjamin Meigs and George E. Dodge. I am personally acquainted with both firms and the individuals composing them. The firm of Dodge & Meigs is still in existence. They have no place of business or yard in the State of New Jersey; their office is in Wall street in the City of New York.

The firms of Dodge & Meigs and A. M. Dodge & Company are separate and distinct firms, having seperate and distinct interests.

W. C. SPENCER.

EXHIBIT

P. 1.

Last will and testament of William E. Dodge :

Recites ownership of " certain lands and mills, buildings and wharf property in Jersey City, New Jersey, for some time occupied by the firm of A. M. Dodge & Co." and other real estate; devises lot of land and dwelling house on Madison avenue, New York city, and country seat at Tarrytown, to his wife Melissa P. Dodge, and among other things provides as follows :

SECOND. I appoint my beloved wife, Melissa P. Dodge, to be executrix, and my sons William Earl Dodge, Junior, and David Stuart Dodge, to be the executors of this, my will ; and in place of each who shall die either before or after my death, I appoint as executor one of my sons, Anson G. P. Dodge, Charles C. Dodge, Norman W. Dodge, George E. Dodge and Arthur M. Dodge, according to priority of age, the first vacancy to be filled by the eldest, the second by the one next in age and so on, my purpose being that there shall continue to be three executors, notwithstanding the death of either or any of those first appointed. The action of a majority of my executrix and executors shall have the same effect as the action of all, and all power, discretion and authority which in this my will I have given to and conferred upon my executrix and executors, I hereby give to and confer upon the survivor and successor of them and a majority of them and of their survivors and successors.

SIXTEENTH. All the rest, residue and remainder of my estate, both real and personal, and wheresoever situate, I give, devise and bequeath in equal shares to and among my dear wife, Melissa P. Dodge if living,

and such of my children and grandchildren as shall be living at the expiration of ten years from my death, provided that either of my said son, George E. Dodge, or grandson, Cleveland Hoadley Dodge, shall then be living; and if not, I give, devise and bequeath the same in equal shares to and among my dear wife Melissa P. Dodge, and such of my said children and grandchildren as shall be living at the death of the longest liver of the two; provided, however, that if either of my grandchildren shall previously die, leaving issue him or her surviving, in such case their issue shall take the share to which their parent would be entitled if living.

SEVENTEENTH. And until the division of my said residuary estate as herein provided, I do hereby give, devise and bequeath all my estate, so far as the same shall be undisposed of, to my executrix and executors, in trust, to enter into and upon and to take possession of the same, and to collect and receive the rents, interest, income, issues and profits thereof, and to hold the same subject to the disposition thereof herein made, and for the purpose of carrying out the provisions of this my will.

TWENTY-FIRST. I authorize and empower my executrix and executors to sell all, or any part or parts of my real estate (except those parts devised to my said wife) in their discretion, at public or private sale, for cash or upon credit, and to make, execute and deliver good and valid deeds and conveyances thereof to the purchaser or purchasers; to lease my said real estate, or any part or parts thereof (except as aforesaid), for any lawful term of years, on such conditions and with such covenants as they may think fit; to effect insurance of my houses and buildings against fire and, in case of loss or damage, to collect and receive the insurance moneys and apply the same to repairing or rebuilding the premises destroyed or injured, in their discretion; and all the power, discretion and authority which in this my will I have given to and conferred upon my executrix

and executors, and the trustees of the trusts herein created, I hereby give to and confer upon their survivors and successors, and to and upon a majority at any time of such executrix and executors, or trustees, or of their survivors and successors.

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EXHIBIT P. 2.

Notice of complaint served on Edward Kelleys, being generally same as contained in return (p.

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