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New Jersey Court of Errors and Appeals.

William V. Scudder, Collector
of the Township of Princeton, &c.

vs.

The State—Elias C. Baker, and
others, Relators.

*Error to the Supreme
Court.*

*Writ Ref'ble 2d Tues.
Mar. 1867, and duly
returned.*

The record brings up a Certiorari issued out of the Supreme Court, directed to William V. Scudder, Collector of the Township of Princeton, in the County of Mercer, commanding him to certify a certain Tax Warrant, issued by Hezekiah Mount, Justice of the Peace in said County, on 10 the 13th day of April last, requiring him to levy and make of the goods and chattles of the said Baker and others, certain taxes therein represented to have been assessed against them, and his proceedings thereon: in obedience to which the said Collector returned and certified said warrant with the proceedings thereon—pro ut the same.

STATE OF THE CASE.

New Jersey Supreme Court.

ELIAS C. BAKER, et. al.	}	<i>Certiorari in matter of taxation.</i>
Relators.		
<i>vs.</i>		
WILLIAM V. SCUDDER,	}	<i>State of the Case.</i>
Collector.		

The following is agreed upon, by and between the respective Attorneys of the parties to the above stated Certiorari, as the State of the Case.

That the assessment for the collection of which the warrant (brought up by this Certiorari,) was issued by the said Relators, as Delinquents, &c., was made on the 1st day of March, A. D., 1866, in pursuance of the provision of a statute of New Jersey, entitled, "An Act to authorize the Township of Princeton, in the County of Mercer, to raise money by taxation, and to issue bonds to pay the indebtedness incurred in filling the quotas of said Township." Approved March 22, 1865, for the year 1866 :

That a Supplement to said Act, was passed April 2, 1866, after the said tax assessed became due and payable, but before the said Relators became Delinquents, and before the issuing of the said warrant, by the said Justice, (which statutes together with said warrant, are made a part of this Case) :

That the said assessment was made and the said warrant was issued according to the provisions of the act of 1865, and not according to the provisions of the Supplement of 1866. Nor has any assessment been made under said Supplement :

That the Relators were not soldiers : That the question submitted to the Court is : Whether the provisions of the

Supplement of 1866, which took effect immediately, and before the Relators became Delinquents, so far repealed or modified the statute of 1865, as to preclude the collection of the said assessment made on the 1st day of March, 1866, under the provisions of the act of 1865, by said warrant, subsequent to its passage.

It is further agreed by the Attorneys, that if the Court be of opinion that the said warrant was unlawfully issued, because of said Supplement, judgment shall be entered in favor of the Relators; if not, that the judgment shall be entered in favor of the Defendant herein, according to law.

("Signed,") THOMAS G. LYTLE,
Attorney of Relators.

JOHN F. HAGEMAN,
Attorney of Defendants.

Dated October 27, 1866.

OPINION.

New Jersey Supreme Court.

ELIAS C. BAKER,
and others, Relators,

vs.

WILLIAM V. SCUDDER,
Collector of Princeton.

*Certiorari in matter of
Taxation.*

The opinion of the Court was delivered by
DALRIMPLE, J.

The Township of Princeton, in the County of Mercer, by an act passed the 22d day of March, 1865, (*Laws of 1865, page 471*), was authorized to raise by tax the sum of \$75,000, to pay the indebtedness incurred, for filling the quotas of said township, under the several calls then recently made

for troops by the President of the United States. The Assessment was to be as follows: \$25,000 were to be assessed and collected immediately on the passage of the act: \$25,000 and accrued interest on the first day of March, 1866, and the remainder on the first day of March, 1867. These several sums were to be raised by levying first a personal bounty tax of ten dollars upon each male inhabitant, between the ages of 21 and 45, and \$5.00 upon each other male inhabitant whose name should appear upon the tax
 10 duplicate of the year next preceding the assessment; and the remainder upon the real and personal property of the inhabitants of said township. Within ten days after the first day of March, 1866 and 1867, respectively, the assessor was required to deliver to the Collector of said township a duplicate of such assessment, of which notice was to be immediately given by writing set up in three of the most public places in the township and a demand of payment within twenty days after receipt of duplicate, made by the Collector on each tax payer. A failure to pay the tax thus
 20 assessed within four weeks after the public notice, rendered the tax payer delinquent, and the Collector was thereupon required to make return of such delinquents to a Justice of the Peace, who was required in three days thereafter to issue his warrant against such delinquents, in the form and to the effect pointed out by the general tax law.

The first instalment of \$25,000 was assessed and levied in the year 1865, in accordance with the Act. On the first day of March, 1866, an assessment was made to raise the second instalment of \$25,000, and accrued interest. The relators
 30 and their property were included in this assessment. They bring this *Certiorari* to set aside the tax warrant issued against them therein. Before the relators had become delinquent a Supplement to said act was passed. That Supplement was approved April 2d, 1866, (*Laws of 1866, page 902,*) and it is thereby enacted that the said assessment, authorized to be made on the first day of March, 1866, and on the first day of March, 1867, should be levied as follows: first by a personal bounty tax of \$2, upon each single male

inhabitant, and of \$1 upon each married male inhabitant of said township whose names should appear upon the last preceding tax duplicate, instead of the poll tax of \$10 and \$5, as authorized by the original act, and the remainder should be levied on real and personal estate as aforesaid, with a proviso that all persons who then were or had been in the military or naval service of the United States, and received an honorable discharge, should be exempt from the payment of any personal bounty tax whatever. All provisions of the original act inconsistent or in conflict with said 10 supplement, were thereby expressly repealed. The Supplement took effect immediately upon its passage.

The precise question presented to the Court is, whether the act of April 2d, 1866, directing that the assessment to be made on the first day of March, 1866, should be levied on a new and different basis, rendered illegal all proceedings subsequently taken under the original act. The object of the supplement was to reduce the amount of personal tax to be collected as well in the year 1866 as 1867. Besides, the Legislature deemed it equitable and just that all 20 soldiers and sailors then in service, or who had been honorably discharged, should be wholly exempted from the poll tax. The effect was to throw a larger proportion of the burden upon the taxable property of the township. The apparent incongruity in the phraseology of the Supplement has probably arisen from the fact that it was introduced prior to the first of March, but not passed and approved till after that day.

The construction contended for by the defendant would render the Supplement wholly inoperative and void, so far 30 forth as the tax of 1866 is concerned. In express terms the Supplement refers to the tax of 1866, substitutes a new basis of assessment and repeals every inconsistent and conflicting provision of the original act. The right of the township to make or enforce such an assessment as originally provided is taken away. This must be so or as already stated the Supplement is a dead letter in respect to the tax of 1866. Its object clearly was to change the mode

of assessment as well for 1866 as 1867. The tax of 1866, though rightly assessed in accordance with the original act, cannot be enforced without defeating the end, aim and object of the Supplement. Every provision of the original act authorizing the collection of a higher personal bounty tax than provided in the Supplement, or the collection of any personal bounty tax of a soldier or sailor then in service or honorably discharged, is in conflict with the Supplement and repealed. The assessment having been rightly
 10 made may stand. Its operation and effect are however destroyed. Any proceeding to enforce it would be in direct conflict with the object of the Legislature, as expressed in a statute subsequently passed. It is the duty of the Court to construe this statute "that the whole may (if possible) stand." We do no violence to the language used when we say that the effect of the statute is to suspend the collection of the tax assessed on the first day of March, 1866. It is said that this construction makes the statute act retrospectively. If this be so the statute is nevertheless valid.
 20 Courts will not construe a law as retrospective unless such clearly appears to have been the intention of the Legislature. This is not a retrospective law within the proper meaning of that term. It unsettles no right, does not purport to operate upon any contract already made. It does not even affect any passed proceedings. It simply substitutes one principle of taxation for another. It is not now necessary to decide whether upon the passage of the Supplement a new assessment for 1866 might not immediately have been made. Nor whether the collection of the tax of
 30 1866 having been suspended, makes it necessary to assess the instalment of 1866 as well as 1867 in the latter year. The act under which the assessment was made, having been repealed, before the assessment could have been enforced, there was no authority for any further proceeding under it after such repealer.

Let all proceedings upon the assessment subsequent to the passage of the act of April 2, 1866, be set aside.

JUDGMENT.

New Jersey Supreme Court.

FEBRUARY TERM, 1867.

The State—Elias C. Baker,
and others, Relators,

vs.

William V. Scudder, Collector, &c.,
of Princeton Township, Mercer Co.

*On Certiorari to
Remove Tax
Warrant.*

This case having been heard at the last term, and the Court having taken time to advise thereon: It is now ordered that the Tax Warrant issued for the collection of certain taxes, as set forth in said writ of Certiorari and all proceedings had thereon by the said defendant, be set aside 10 and for nothing holden.

On motion of Thos. G. Lytle, Attorney for the Plaintiffs in Certiorari.

I, Charles P. Smith, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment of said Court as entered in the minutes thereof.

[L. S.] In testimony whereof, I hereto set my hand and the seal of said Court, at Trenton, this 12th day of March, A. D. 1867. 20

CHAS. P. SMITH, *Ck.*

ASSIGNMENT OF ERRORS.

Court of Errors and Appeals.

William V. Scudder, Collector, &c.,

vs.

The State, (Elias C. Baker, and
others, Relators.)

*On Certiorari to
Remove Tax Warrant,
&c.*

Afterwards, that is to say on the twelfth day of March, A. D. eighteen hundred and sixty-seven, before the Court

of Errors and Appeals, came the said William V. Scudder, Collector as aforesaid, by his Attorney, John F. Hageman, and says that in the record and proceedings aforesaid, and the giving of the said judgment aforesaid there is manifest error in this, to wit:

That the judgment aforesaid, by the record aforesaid, appears to have been given against the said William V. Scudder, Collector, &c., ordering that the said Tax Warrant issued for the Collection of certain taxes as set forth in said writ of Certiorari, and all proceedings had thereon by the said William V. Scudder, be set aside and nothing holden; Whereas by the law of the land the said judgment ought to have been given for the said William V. Scudder, Collector, &c., and against the said Relators—affirming the validity of said Tax Warrant, and all the proceedings had thereon, by said Collector. And the said William V. Scudder, Collector, &c., prays that the judgment aforesaid for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

JOHN F. HAGEMAN,

Attorney and of Counsel for Plaintiff in Error.

Common Joinder in Error by Thomas G. Lytle, Attorney of the Defendants.

N. J. Court of Errors and Appeals.

William V. Scudder, Collector, &c.	}	<i>Error to Supreme Court.</i>
<i>vs.</i>		
The State—Richard Runyan and others, in ten complaints consolidated by order of the Court.	}	<i>Like Writ and Return.</i>

These are cases similar to the one above, and it is agreed by Counsel, that like judgment shall be entered.