INDEX

TESTIMONY FOR PROSECUTORS

TESTIMONY FOR DEFENDANT

EXHIBITS

Stipulation

(Filed Apr. 10, 1934)

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*, *Prosecutors*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Stipulation

It is mutually agreed upon by the parties hereto that the proceedings in this action are identical as to nine causes, viz.:

HARRY J. RUHLE,
Prosecutor,
v.

EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

HARRY J. RUHLE,
Prosecutor,
v.

EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

NORTHERN VALLEY FINANCE CORP.,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

EVELYN D. BRADLEY,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

ARNOLD S. BERTELS,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

MAY MCKINNEY,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

ENRICO A. SFERRA and VIOLA T. SFERRA,
Prosecutors,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

C. Paul Carlson,
Prosecutor,
v.

Edwin C. Caffrey, Judge of the
Bergen County Circuit Court,
Defendant.

C. Paul Carlson,
Prosecutor,
v.

Edwin C. Caffrey, Judge of the
Bergen County Circuit Court,
Defendant.

That identical Writs of Certiorari were granted in each of the nine causes and the writ printed herein, in the case of Arnold S. Bertels, is the true form thereof.

That the Notice of Appeal as printed herein is identical in form with the notice filed in each of the cases, all having been served and filed on the same date, October 11, 1933, with the exception of that in the case of Arnold S. Bertels, which was served and filed on October 13, 1933, these dates being within the statutory period.

That the Return as made to the Writ by the defendant is identical as to all of the causes herein.

That the affidavit of Harold W. Gammon, Jr., as printed herein is identical as to all of the causes, except that of Arnold S. Bertels, which is also printed.

That the order dismissing the appeals as made by the defendant is identical as to each of the causes in the form printed herein.

That the statement of reasons filed by the prosecutors is identical as to each of the causes in the form printed herein.

That the Order of Continuance made by Justice Bodine is identical as to each of the causes in the form printed herein.

That the opinion filed by the defendant is identical as to each of the causes in the form printed herein.

SEUFERT & ELMORE,
Attorneys for Prosecutors.

ABRAM A. LEBSON,
Attorney for Defendant.

Affidavit of Harry J. H. Ruhle

(Filed Feb. 7, 1934)

State of New Jersey, }
County of Bergen, } ss.:

HARRY J. H. RUHLE, of full age, being duly sworn according to law, upon his oath deposes and says:

1. He is a citizen and taxpayer of the Borough of Tenafly, County of Bergen and State of New Jersey.

2. That he is the owner of Lots 1 and 2 in Block 82 C (Sussex Road), as shown on the assessment maps of the Borough of Tenafly, against which the Mayor and Council of the Borough of Tenafly, through their assessment commissioners have levied an assessment, for street improvements.

3. That he was aggrieved at the amount of the assessment levied and employed counsel for the purpose of making an appeal to the Circuit Court of Bergen County, in the manner provided in the statute, for the making of such appeals.

4. That the deponent says that so far as he knows these proceedings were in proper form and that service of the notice of appeal was made, as provided by law, and there is attached a copy of the notice of appeal as filed in the office of the Clerk of the County of Bergen, together with a copy of affidavit made by Harold W. Gammon, Jr., showing service upon the municipal authorities, as required by the statute.

5. Deponent further says that on the Ninth day of December, 1933, Honorable Edwin C. Caffrey filed his order dismissing the aforesaid appeal, that a copy of said order is hereto annexed.

6. Deponent further says that he is unable to determine on what basis the Judge dismissed the appeal from the assessment of his property.

7. Deponent has been advised that there was no evidence presented on the application for dismissal, which justifies the dismissal of his appeal.

8. Deponent further says that to carry out the order of the Judge of the Bergen County Circuit Court will destroy his right to appeal from the assessment, which is given him by statute, and will subject him to an unjust burden.

Deponent, therefore, prays that a writ of certiorari may be allowed on his behalf, to review and set aside the said order of the Judge of the Circuit Court of the County of Bergen, dismissing the appeal filed in his behalf, and that his appeal be reinstated in full force and effect.

HARRY J. H. RUHLE.

Subscribed and Sworn to before me this 6th day of February, 1934.

VINCENT J. AIKEN,
Attorney at Law of New Jersey.

Affidavit of Charles Fishberg

(Filed Feb. 7, 1934)

State of New Jersey, }
County of Bergen, } ss.:

CHARLES FISHBERG, being duly sworn upon his oath according to law, deposes and says:

That he is an attorney in the employ of Seufert & Elmore and as such he had charge of the legal work in connection with the making of the appeal from the assessment of the Borough of Tenafly, Bergen County, New Jersey, for the improvement of Sussex Road, lots 1 and 2, Block 82C on the Assessment Map of the Borough of Tenafly, to the Circuit Court of the County of Bergen.

Deponent further says that he attended the hearing on a notice to dismiss the aforesaid appeal on divers grounds before Judge Edwin C. Caffrey of the Bergen County Circuit Court and from an examination of the evidence pro-

duced upon such hearing in his opinion there was no evidence adduced which would justify a dismissal of the assessment appeal.

Deponent, as attorney for Harry J. Ruhle, prays that a Writ of Certiorari may be granted upon behalf of Harry J. Ruhle, to review and set aside the order of Judge Caffrey of the Bergen County Circuit Court dated December 8, 1933 ordering the dismissal of the appeal from the assessment of the Borough of Tenafly as set forth in the notice of appeal hereto annexed because under the order the said Harry J. Ruhle will be deprived of his rights to have the assessment reviewed as provided in the statute and further because the order of the said Judge of the Circuit Court is for divers other good and sufficient reasons invalid, illegal, oppressive and unjust.

CHARLES FISHBERG.

Subscribed and Sworn to before me this 6th day of February, 1934.

ISABEL E. COLLINS
Notary Public of New Jersey

Notice of Appeal with Affidavit of Service

(Filed Oct. 11, 1933)

To the Mayor and Council of the Borough of Tenafly, in the County of Bergen and State of New Jersey, P. S. Delehanty, Collector of Taxes of the Borough of Tenafly and N. M. F. Dennis, Clerk of the Borough of Tenafly.

TAKE NOTICE that the undersigned, Harry J. Ruhle, the owner of lots numbered 2 and 3 in Block 82 C on the Assessment Map of the Borough of Tenafly, appeals to the Circuit Court of the County of Bergen, from the assessment of said property for supposed benefits conferred thereon by reason of the improvement of Burlington Road as the said assessment was altered, adopted and confirmed by resolution of the Mayor and Council of the Borough of Tenafly, passed September 12, 1933 and which assessment is for the sum of $2013.24, as follows:

Lot 2 in Block 82 C being assessed $203.75
Lot 3 in Block 82 C being assessed $1809.49, making a total of $2013.24.

The address of this appellant where notice of further proceedings may be served on him is No. 396 Walnut Street, Englewood, New Jersey.

All such notices, in lieu of service on appellant, may be served upon my attorneys, Seufert & Elmore, No. 1 Engle Street, Englewood, New Jersey.

Respectfully yours,

HARRY J. RUHLE,
By SEUFERT & ELMORE,
Attorneys for Appellant.

State of New Jersey,
County of Bergen, } ss.:

HAROLD W. GAMMON, JR., being duly sworn according to law, on his oath deposes and says:

That on the Eleventh day of October, A. D., 1933 he served the within Notice of Appeal upon P. S. Delehanty, Collector of Taxes of the Borough of Tenafly, by serving a copy of the attached notice of appeal upon Mary E. Delehanty, who was in charge of the Tax Collector's Office at 97 Magnolia Avenue in the Borough of Tenafly, New Jersey, at 3:35 o'clock in the afternoon.

That on the Eleventh day of October, A. D., 1933, he served a duplicate thereof upon N. M. F. Dennis, Clerk of the Borough of Tenafly, personally, at his office in the Borough Hall, Borough of Tenafly, Bergen County, New Jersey at 3:30 o'clock in the afternoon.

HAROLD W. GAMMON, JR.

Subscribed and Sworn to before me this 11th day of October, 1933.

ISABEL E. COLLINS
Notary Public of New Jersey

Writ of Certiorari

(Filed Feb. 7, 1934)

(SEAL) The State of New Jersey, To the Honorable Edwin C. Caffrey, Judge of our Bergen County Circuit Court,

GREETING: We, being willing, for certain reasons to be certified of a certain order and de-

termination of you, the said Judge of the said Bergen County Circuit Court, dismissing a certain assessment appeal, made by Arnold S. Bertels, against the assessment of the Mayor and Council of the Borough of Tenafly, and the Tax Collector of the Borough of Tenafly, by reason of the improvement of Sussex Road, which assessment was adopted and confirmed by the Mayor and Council of the Borough of Tenafly, on September 12, 1933, affecting premises known as Lots 35, 36 and 37 in Block 82 C, as set forth in the notice of appeal annexed hereto, which order was filed December 9, 1933, DO COMMAND you that the said order together with all matters touching the same, and together with all matters touching and concerning the appeal from the assessments levied, and all testimony and exhibits, together with all matters touching the same, you do, distinctly and openly send together with this, our writ, to our Justices of our Supreme Court of Judicature, at Trenton, on the 27th day of February, 1934, that we may further cause to be done therein what of right and according to law as we shall see fit to be done.

WITNESS, THOMAS J. BROGAN, Esq., Chief Justice of our Supreme Court, at Trenton, this 7th day of February, in the year One Thousand Nine Hundred and Thirty-four.

FRED L. BLOODGOOD,
Clerk.

SEUFERT & ELMORE,
Attorneys for Prosecutor.

Writ of Certiorari

To the Mayor and Council of the Borough of Tenafly, in the County of Bergen and State of New Jersey, P. S. Delehanty, Collector of Taxes of the Borough of Tenafly, and N. M. F. Dennis, Clerk of the Borough of Tenafly.

TAKE NOTICE that the undersigned, Arnold S. Bertels, the owner of lots numbered 35, 36 and 37 in Block 82-C, on the Assessment Map of the Borough of Tenafly, appeals to the Circuit Court of the County of Bergen from the assessment of said property for supposed benefits conferred thereon by reason of the improvement of Sussex Road as the said assessment was altered, adopted and confirmed by resolution of the Mayor and Council of the Borough of Tenafly, passed September 12, 1933, and which assessment is for the sum of $2985.00 as follows:

Lot 35, Block 82-C being assessed for $995.00
Lot 36, Block 82-C being assessed for $995.00
Lot 37, Block 82-C being assessed for $995.00, making a total of $2985.00.

The address of this appellant where notice of further proceedings may be served on him is No. 10 Serpentine Road, Tenafly, New Jersey.

All such notices, in lieu of service on appellant, may be served upon my Attorneys, Seufert & Elmore, No. 1 Engle Street, Englewood, New Jersey.

Respectfully yours,

ARNOLD S. BERTELS,
By SEUFERT & ELMORE,
Attorneys for Appellant.

A true copy,
FRED L. BLOODGOOD,
Clerk.

(Endorsed):

I allow the within writ. Let it be sealed.

Depositions may be taken on two days' notice.

Service of a copy of writ and all papers and notices in the matter may be served upon A. A. Lebson, Attorney for the Borough of Tenafly.

Dated: Feb. 7, 1934

J. L. Bodine
Justice of Supreme Court.

FILED
Court Division
Feb 24 1934

James W. Mercer
County Clerk

FILED
Mar 6—1934

Fred L. Bloodgood
Clerk

Order Extending Time

(Filed Feb. 26, 1934)

NEW JERSEY SUPREME COURT

ARNOLD S. BERTELS,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

Order
On Certiorari

This matter being opened to the Court on motion of Abram A. Lebson, Attorney for the Defendant, and it appearing that the Honorable Joseph L. Bodine, Justice of the Supreme Court allowed a Writ of Certiorari in the above entitled matter and ordered that it be sealed;

AND IT FURTHER APPEARING that the return to said Writ was to be filed at Trenton on the 27th day of February, 1934;

AND IT FURTHER APPEARING that the defendant requires additional time within which to prepare said return;

IT IS, on this 26th day of February, 1934, ORDERED that the time to file the return on said Writ to the Justices of our Supreme Court of Judicature at Trenton be extended from the 27th day of February, 1934 until March 9th, 1934.

J. L. BODINE,
Justice.

We consent to the entry of the above Order.

SEUFERT & ELMORE,
Attorneys for the Prosecutor.

Return to Writ

(Filed Mar. 6, 1934)

NEW JERSEY SUPREME COURT

NORTHERN VALLEY FINANCE CORP., MAY MCKINNEY, EVELYN D. BRADLEY, C. PAUL CARLSON, ENRICO A. SFERRA, and VIOLA T. SFERRA, ARNOLD S. BERTELS, HARRY J. RUHLE, C. PAUL CARLSON, and HARRY J. RUHLE, *Prosecutors,* *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Return to the Writ

I, Edwin C. Caffrey, Judge of the Circuit Court of the County of Bergen, do herewith send to the Supreme Court of the State of New Jersey, the judgment, order and all proceedings had before the said court, wherein the said court heard and determined the appeals of the Northern Valley Finance Corporation, *et als.,* against the assessment of the Mayor and Council of the Borough of Tenafly and the Tax Collector of the Borough of Tenafly, by reason of the improvement of Sussex Road, Burlington Road and Westervelt Court, together with all papers and things touching and concerning the same, as by the Writs of Certiorari sealed the Seventh day of February, 1934, before the Hon. Joseph

Return to Writ

L. Bodine, Justice of the Supreme Court, I am commanded to do.

I certify I am the Judge of the Circuit Court in the County of Bergen and that the following are true copies of all proceedings, judgments, orders, etc. of the said Mayor and Council and Tax Collector of the Borough of Tenafly, and that together they constitute the entire record of the proceedings in the above entitled actions.

Signed this 27 day of February, 1934.

EDWIN C. CAFFREY,
Judge, Bergen County Circuit Court.

(*Return to Writ*)

Notice of Appeal

(Filed Oct. 13, 1933)

To the Mayor and Council of the Borough of Tenafly, in the County of Bergen and State of New Jersey, P. S. Delehanty, Collector of Taxes of the Borough of Tenafly, and N. M. F. Dennis, Clerk of the Borough of Tenafly.

Take notice that the undersigned, Arnold S. Bertels, the owner of lots numbered 35, 36, and 37 in Block 82-C, on the Assessment Map of the Borough of Tenafly, appeals to the Circuit Court of the County of Bergen from the assessment of said property for supposed benefits conferred thereon by reason of the improvement of Sussex Road as the said assessment was altered, adopted and confirmed by resolution of the Mayor and Council of the Borough of Tenafly, passed September 12, 1933, and which assessment is for the sum of $2985.00 as follows:

Lot 35, Block 82-C being assessed for $995.00
Lot 36, Block 82 C being assessed for $995.00
Lot 37, Block 82-C being assessed for $995.00,
making a total of $2985.00.

The address of this appellant where notice of further proceedings may be served on him is No. 10 Serpentine Road, Tenafly, New Jersey.

All such notices, in lieu of service on appellant, may be served upon my Attorneys, Seufert & Elmore, No. 1 Engle Street, Englewood, New Jersey.

Respectfully yours,

Arnold S. Bertels,
By Seufert & Elmore,
Attorneys for Appellant.

(Return to Writ)

Affidavit of Service

(Filed October 13, 1933)

State of New Jersey,
County of Bergen, } ss.:

HAROLD W. GAMMON, JR., being duly sworn according to law, upon his oath deposes and says:

That on the Thirteenth day of October, 1933, he served the within Notice of Appeal upon P. S. Delehanty, Collector of Taxes of the Borough of Tenafly, by serving a copy of the attached notice of appeal upon Mary T. Delehanty who was in charge of the Tax Collector's Office at 97 Magnolia Avenue in the Borough of Tenafly, New Jersey, at 11:15 o'clock in the morning.

That on the Thirteenth day of October, 1933, he served a duplicate thereof upon N. M. F. Dennis, Clerk of the Borough of Tenafly, by serving the same upon Louise Springer who was in charge of the Clerk's Office at the Borough Hall, Borough of Tenafly, New Jersey, at 11:20 o'clock in the morning.

HAROLD W. GAMMON, JR.

Subscribed and sworn to before me
this 13th day of October, 1933.

ISABEL E. COLLINS,
Notary Public of New Jersey.

(*Return to Writ*)

Motion to Dismiss

(Filed Oct. 30, 1933)

BERGEN COUNTY CIRCUIT COURT

In the Matter
of

The Appeal of ARNOLD S. BERTELS, EVELYN D. BRADLEY, NORTHERN VALLEY FINANCE CORP., MAY MCKINNEY, C. PAUL CARLSON, HARRY J. RUHLE, ROBERT H. SCHOLL, KATHERINE P. SCHOLL, ENRICO A. SFERRA and VIOLA T. SFERRA, from the Assessments levied by the Borough of Tenafly on account of the Improvement of Sussex Road, Burlington Road and Westervelt Court,

Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF TENAFLY, in the County of Bergen and State of New Jersey; P. S. DELEHANTY, Collector of Taxes of the Borough of Tenafly, and N. M. F. DENNIS, Clerk of the Borough of Tenafly,

Defendants.

} Notice of Motion

To: SEUFERT & ELMORE, Esqs.,
Attorneys for Appellants,
1 Engle Street,
Englewood, N. J.

SIRS:

TAKE NOTICE that on the Third day of November, 1933 at ten o'clock in the forenoon, or as

soon thereafter as counsel can be heard, I shall appear before the Hon. Edwin C. Caffrey, Judge of the Bergen County Circuit Court in his chambers at the Court House, Hackensack, New Jersey for an Order dismissing the appeals filed in the above entitled causes for the following reasons:

1. The Notices of Appeals are defective and irregular in that they are not signed by the Appellants.

2. The Proof of Service of the Notices of Appeals filed in the Office of the Clerk of the Bergen County Circuit Court fails to set forth legal statutory service.

3. The service of the Notices of Appeals alleged to have been made upon the Collector of Taxes of the Borough of Tenafly, New Jersey, was illegal and not in accordance with the Statute in such case made and provided.

4. The service of the Notice of Appeals alleged to have been made upon the Clerk of the Borough of Tenafly, New Jersey, was illegal and not in accordance with the Statute in such case made and provided.

5. No Notices of Appeals were served upon the Collector of Taxes of the Borough of Tenafly, New Jersey, as provided by law.

Yours,

ABRAM A. LEBSON,
Attorney for the Defendants.

(Return to Writ)

Motion to Dismiss

(Endorsed):

BERGEN COUNTY CIRCUIT COURT

In the Matter

of

The Appeals of ARNOLD S. BERTELS, EVELYN D. BRADLEY, NORTHERN VALLEY FINANCE CORP., MAY MCKINNEY, C. PAUL CARLSON, HARRY J. RUHLE, ROBERT H. SCHOLL, KATHERINE P. SCHOLL, ENRICO A. SFERRA and VIOLA T. SFERRA, from the Assessments levied by the Borough of Tenafly on account of the Improvement of Sussex Road, Burlington Road and Westervelt Court,

Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF TENAFLY, in the County of Bergen and State of New Jersey; P. S. DELEHANTY, Collector of Taxes of the Borough of Tenafly, and N. M. F. DENNIS, Clerk of the Borough of Tenafly,

Defendants.

NOTICE OF MOTION

ABRAM LEBSON
Attorney for Defendants,
39 Park Place,
Englewood, N. J.

(Return to Writ)

Order Dismissing Appeal

Service of the within Notice of Motion is hereby acknowledged this 28th day of October 1933

SEUFERT & ELMORE
Attorneys for Appellants.
18811

Rec'd in Bergen Co
Clerk's Office
Court Division
Oct 30 1933 9 29 A. M.

Order Dismissing Appeal

(Filed Dec. 9 1933)

BERGEN COUNTY CIRCUIT COURT

In the Matter
of
The Appeal of ARNOLD S. BERTELS, from the assessment levied by the Borough of Tenafly on account of the improvement of Sussex Road,
Appellant,
v.
THE MAYOR AND COUNCIL OF THE BOROUGH OF TENAFLY, in the County of Bergen and State of New Jersey; P. S. DELEHANTY, Collector of Taxes of the Borough of Tenafly, and N. M. F. DENNIS, Clerk of the Borough of Tenafly,
Defendants.

Order Dismissing Appeal

The matter coming on to be heard in the presence of Abram A. Lebson, Attorney for the De-

fendants, and Seufert & Elmore, attorneys for the appellant, On motion to Dismiss the Appeal of Arnold S. Bertels from the Assessment for benefits conferred by reason of the improvement of Sussex Road, which assessment was adopted and confirmed by the Mayor and Council of the Borough of Tenafly on September 13, 1933, affecting premises known as Lots No. 35, 36 and 37 in Block 82-C;

And it appearing that the Proof of Service of the Notice of Appeal filed herein fails to set forth legal statutory service upon the Tax Collector and the Clerk of the governing body as provided by the Statute in such case made and provided;

It is therefore, on this 8th day of December, 1933, Ordered, that the aforesaid Appeal be and the same is hereby dismissed against the Appellant.

EDWIN C. CAFFREY,
Judge of the Bergen County
Circuit Court.

(Return to Writ)

Order Dismissing Appeal

(Endorsed):

BERGEN COUNTY CIRCUIT COURT

In the Matter

of

The Appeal of ARNOLD S. BERTELS, from the assessment levied by the Borough of Tenafly on account of the improvement of Sussex Road,

Appellant,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF TENAFLY, in the County of Bergen and State of New Jersey; P. S. DELEHANTY, Collector of Taxes of the Borough of Tenafly, and N. M. F. DENNIS, Clerk of the Borough of Tenafly,

Defendants.

ORDER DISMISSING APPEALS

ABRAM A. LEBSON,
Atty for Defendants,
39 Park Place,
Englewood, N. J.

FILED
Court Division
Dec. 9, 1933

JAMES W. MERCER
County Clerk

18816

(Return to Writ)

Opinion

(Filed Feb. 24, 1934)

BERGEN COUNTY CIRCUIT COURT

In the Matter

of

The Appeals of ARNOLD S. BERTELS, EVELYN D. BRADLEY, NORTHERN VALLEY FINANCE CORP., MAY MCKINNEY, C. PAUL CARLSON, HARRY J. RUHLE, ROBERT H. SCHOLL, KATHERINE P. SCHOLL, ENRICO A. SFERRA and VIOLA T. SFERRA, from the Assessments levied by the Borough of Tenafly on account of the Improvement of Sussex Road, Burlington Road and Westervelt Court,

Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF TENAFLY, in the County of Bergen and State of New Jersey; P. S. DELEHANTY, Collector of Taxes of the Borough of Tenafly, and N. M. F. DENNIS, Clerk of the Borough of Tenafly,

Defendants.

Opinion

CAFFREY, *J.*

This is a Motion to dismiss several appeals taken to review assessments levied by reason of the improvements of Sussex Road, Tenafly. The Notices of Appeal to this Court are challenged on the grounds:

(Return to Writ)

Opinion

(1) The Notices of Appeal are defective and irregular in form in that they are not signed by the Appellants.

(2) The Proof of Service of the Notices of Appeals filed in the Office of the Clerk of the Bergen County Circuit Court fails to set forth legal statutory service.

(3) The service of the Notices of Appeals alleged to have been made upon the Collector of Taxes of the Borough of Tenafly, New Jersey, was illegal and not in accordance with the Statute in such case made and provided.

(4) The service of the Notices of Appeals alleged to have been made upon the Clerk of the Borough of Tenafly, New Jersey, was illegal and not in accordance with the Statute in such case made and provided.

(5) No Notices of Appeals were served upon the Collector of Taxes of the Borough of Tenafly, New Jersey, as provided by law.

In the present case the statute in question relating to assessments for benefits to lands and the proceedings to be followed in such an Appeal are set forth in Paragraph 42, Article 20 of the Home Rule Act. This Section of the Home Rule Act provides that a written Notice of Appeal shall be served within thirty days upon the Tax Collector and a duplicate upon the Clerk of the governing body of the municipality and a copy of the Notice of Appeal, with verification of

service thereof, shall be filed in the office of the Clerk of the Circuit Court within one week after service thereof and the Notice shall state the address of the Appellant.

In the cases at bar the written Notices of Appeal were filed with the Clerk of the Circuit Court and a copy of the Notice of Appeal was served on the wife of the Collector. The Notices of Appeals were not signed by the Appellant. The Appeals, therefore, do not follow the statute.

It might be well said that the purpose of these provisions are to give Notice to the municipalities of the Appeal and a failure to comply strictly with the Statutory provisions would be of no moment. The difficulty with the conclusion, however, is apparent if we consider Section 23a of Article 20 of the Home Rule Act which provides that an Appeal may be served upon the Clerk of the governing body either personally or by leaving the same at his office or place of abode. While it is true Section 23a relates to Appeals from awards from lands taken for making improvements, it is to be noted that the Legislature has made a distinction with respect to the service under Section 42 Article 20 and Section 23a, Article 20 and we must contemplate that the Legislature recognized the two distinct methods to be followed in the Appeals provided for in the same act. Giving strict interpretation to the language of Section 42 Article 20, the Appellants have not complied with the requirements of the Statute.

(Return to Writ)

Opinion

In Progressive Land *v.* Caffrey, 112 Law, 239, it was held that service of Notice of Appeal from Assessment upon the daughter of the Township Clerk is not legal service. In Proprietors of Morris Aqueduct ads. Jones 36 Law, 206, affirmed in 37 Law 556, the Court decided that when the words of a statute directing the mode or time for the doing of an act are clear, the provision cannot be deemed merely directory unless the literal interpretation will lead to a result so absurd or highly inconvenient as to demonstrate that such could not have been the legislative intent. See also State Highway *v.* Repole, 111 N. J. Law, 462.

There is no inherent right in a property owner to appeal on the question of assessments for benefits. Whatever right he has must come through legislation.

In keeping with the language differentiating between the methods of appeals under Section 42, Article 20 and Section 23a, Article 20 of the same Act, I must assume that the Legislature intended a strict compliance with the language set forth in Section 42 Article 20.

The Appeals filed in this cause have not met the requirements prescribed in the Act and will be dismissed.

Reasons

(Filed March 15, 1934)

NEW JERSEY SUPREME COURT

ARNOLD S. BERTELS, *Prosecutor,* *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Reasons

The said prosecutor, by his attorneys, comes and prays that the action of the Judge of the Bergen County Circuit Court may be set aside, reversed, and for nothing holden, for the following reasons:

1. The Judge of the Circuit Court of the County of Bergen erred in dismissing the appeal of the prosecutor.

2. The evidence submitted before the Judge of the Bergen County Circuit Court did not justify, in law, the dismissal of the appeal of the prosecutor.

3. The said action of the said Judge of the Bergen County Circuit Court is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden, and the service of the Notice of Appeal declared to be good and effective service.

Reasons

4. The purpose of the Statute is to give property owners the right to be heard in a legal tribunal as to the property assessed and the action of the Judge of the Bergen County Circuit Court in dismissing the appeal of the prosecutor, deprives the prosecutor as a property owner of the right to possess and enjoy his property, in violation of Article I of the Constitution of New Jersey and in violation of the Constitution of the United States.

5. The attorney for the Borough of Tenafly by his appearance in the case did enter a general appearance and thereby waived any defect, if any there might be, in the service of the Notice of Appeal.

6. The Judge of the Circuit Court of the County of Bergen dismissed the appeal because of certain finding of fact, for which there was no justification for said finding in the evidence before the Court.

7. The Judge of the Circuit Court of the County of Bergen erroneously dismissed the appeal because of facts not supported by any evidence.

8. The Judge of the Circuit Court of the County of Bergen erred in dismissing the appeal on the ground that the appeal was not signed by the appellant prosecutor.

SEUFERT & ELMORE,
Attorneys for Prosecutor.

Affidavit of Service

NEW JERSEY SUPREME COURT

ARNOLD S. BERTELS,
Prosecutor,

v.

EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari
Affidavit

State of New Jersey, }
County of Bergen, } ss.:

VINCENT J. AIKENS, being duly sworn according to law, upon his oath deposes and says:

That he did, on March 16th, 1934, serve a copy of the within reasons, upon the County Clerk of Bergen County, by leaving the same with Lester S. Mathis, the Deputy County Clerk, who was in charge of the office, in the Court House, Hackensack, New Jersey, at or about 12:00 o'clock noon.

VINCENT J. AIKENS.

Sworn and subscribed to before me }
this 17th day of March, 1934. }

JEANIE E. STEPHEN,
Notary Public of New Jersey.

Order of Consolidation

(Filed March 15, 1934)

NEW JERSEY SUPREME COURT

HARRY J. RUHLE,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

HARRY J. RUHLE,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

NORTHERN VALLEY FINANCE CORP.,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

EVELYN D. BRADLEY,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari Order

ARNOLD S. BERTELS,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

MAY McKINNEY,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

ENRICO A. SFERRA and VIOLA T. SFERRA,
Prosecutors,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

C. PAUL CARLSON,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari Order

Order of Consolidation

NEW JERSEY SUPREME COURT

C. PAUL CARLSON,
Prosecutor,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari
Order

This matter being opened to the Court on motion of Seufert & Elmore, attorneys for the prosecutors, and it appearing that a return has been made by the defendant in the above-stated causes; and it further appearing that the prosecutors desire to consolidate all of the above-entitled actions pursuant to the rules of the Court; and it further appearing that all the above-entitled actions involve a common question of law and fact which arise out of the same transaction;

It is, therefore, ORDERED, that the above-entitled actions be consolidated in an action entitled:

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*,
Prosecutors,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari

and that all further proceedings in the above-entitled actions shall be carried on in the new title to the end that justice may be done each of the prosecutors as though the several cases had proceeded in separate manner.

J. L. Bodine,
Justice.

I consent to the entry of the above Order.

Abram A. Lebson,
Attorney for Defendant.

NEW JERSEY SUPREME COURT

Harry J. H. Ruhle, *et als.*, *Prosecutors*, *v.* Edwin C. Caffrey, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Affidavit

State of New Jersey, }
County of Bergen, } ss.:

Vincent J. Aikens, being duly sworn according to law, upon his oath deposes and says:

That he did, on March 16th, 1934, serve a copy of the within Order of Consolidation, upon the County Clerk of Bergen County, by leaving the same with Lester S. Mathis, the Deputy

County Clerk, who was in charge of the office, in the Court House, Hackensack, New Jersey, at or about 12:00 o'clock noon.

VINCENT J. AIKENS.

Sworn and subscribed to before me this 17th day of March, 1934.

JEANIE E. STEPHEN,
Notary Public of New Jersey.

Notice of Depositions

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*, *Prosecutors*,

v.

EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*

On Certiorari

Notice

To: ABRAM A. LEBSON, Esq., Attorney of Defendant, in the above-entitled cause.

Dear Sir:—

Please take notice that the prosecutors in the above-entitled cause will, pursuant to an Order of the Court heretofore made in the above-stated cause, take depositions and introduce exhibits on their part, before Howard Mackay, Esq., a

Supreme Court Commissioner, at his office at 241 Main Street, Hackensack, at two o'clock, on the Twenty-second day of March, 1934.

Respectfully yours,

SEUFERT & ELMORE,
Attorneys of Prosecutors.

Dated:—March 16, 1934.

Service of a copy of the within notice is hereby acknowledged, this 17th day of March, 1934.

ABRAM A. LEBSON,
Attorney of Defendant.

Depositions

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*,
Prosecutors,

v.

EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari

Transcript of testimony taken before me, Howard Mackay, a Supreme Court Commissioner, in the above entitled cause, at my office at #241 Main Street, Hackensack, New Jersey, at two o'clock in the afternoon, on Thursday,

the twenty-second day of March, 1934, in the presence of counsel for the respective parties, as follows:

MESSRS. SEUFERT & ELMORE, by CHARLES FISHBERG, Esq., for the Prosecutors.
ABRAM A. LEBSON, Esq., for the Defendant.

Mr. Lebson: Please, your Honor, this is in return of a notice we received to take depositions as permitted by Justice Bodine on Writs of Certiorari allowed in nine cases, consolidated into one case under the heading of Harry J. H. Ruhle, *et als.*, against Edwin C. Caffrey, Judge of the Bergen County Circuit Court.

I would like to object to the taking of depositions for the following reasons: First, this is a Writ of Certiorari taken because the Prosecutors feel that the Judge of the Circuit Court —Judge Caffrey—erred in dismissing the appeals heretofore filed for the Prosecutors. Immediately after the notice of appeals were served upon the defendants, a notice of motion was applied for in behalf of the Borough of Tenafly, requesting that the notices of appeal be dismissed because, among other reasons, of faulty service.

Judge Caffrey heard the motion on the writ and decided the motion only upon the information before him at that time, the notices of appeal, the affidavits of service annexed thereto and listened to the respective arguments of counsel based on the notice of motion filed by the attorney for the municipality.

I, therefore, feel that in view of the fact that the Judge decided that the appeals should be dismissed because of faulty service and other

reasons, and because he decided for dismissal upon just the information before him at the time, I feel that they are only not necessary, but irrelevant, because it would tend to introduce into the matter now before the Court facts which were not before the Judge of the Circuit Court at the time of the hearing of the motion and for dismissal.

Mr. Fishberg: On behalf of the Prosecutors, depositions are taken for the reason that Judge Caffrey rendered an opinion based entirely upon the evidence which he claims was represented by the record. In order to place the matter before the Court, with all the facts as they were, it is quite evident that depositions are necessary in order that justice may be done.

Mr. Mackay: I understand that there is no question about the notice being given, nor as to the time of service?

Mr. Fishberg: I have an acknowledgement of service (showing the same to Mr. Mackay).

Mr. Lebson: I will stipulate as to the Notice to Take Depositions being properly served on us within time.

HAROLD W. GAMMON, called as a witness on behalf of the prosecutors, being duly sworn, testified as follows:

Direct examination by Mr. Fishberg:

Q. Mr. Gammon, what is your business? A. I am a lawyer in the employ of Seufert & Elmore, Englewood.

Q. Did you on the 11th day of October, 1933, make service of Notices of Appeal of Harry J. H. Ruhle, Northern Valley Finance Corp., May

McKinney, Evelyn D. Bradley, C. Paul Carlson, Enrico Sferra and Viola T. Sferra from assessments levied by the Borough of Tenafly on property owned by each of them, respectively, upon the Collector of Taxes of the Borough? A. I did.

Q. Where did you make that service? A. I made the service at the office of the Tax Collector in the Borough of Tenafly.

Q. Where was that office located? A. That office was located at 97 Magnolia Avenue, Borough of Tenafly.

Q. What did you serve at that time? A. I served a notice which was a duplicate original in each one of these cases. The duplicate original I refer to is the duplicate of the original notice which was filed in the County Clerk's Office in Hackensack.

Q. Did you on that same day make service of a Notice of Appeal from each of the parties upon the Borough Clerk? A. I did.

Q. Did you serve the Borough Clerk, personally? A. I did.

Q. In all the cases? A. I did.

Q. In addition to those mentioned heretofore, did you serve a Notice of Appeal in the case of Arnold S. Bertels? A. I did.

Q. When was that made and upon whom? A. On the 13th day of October, 1933. The service of the notice on the Tax Collector was made in the same manner as before stated. The service on the Borough Clerk was made by leaving the same with Miss Louise Springer for Mr. Dennis.

Q. Are you familiar with the papers which you served? A. I am.

Q. How were the notices signed? A. They were signed in ink by Mr. Elmore, in my pres-

ence, just prior to the time that I made the service.

Q. And who is Mr. Elmore? A. The junior member of the firm of Seufert & Elmore, attorneys for the proponents in these actions.

Q. Were each of the Notices of Appeal which you served upon the Collector's Office and upon the Clerk's Office signed by Mr. Elmore, personally? A. They were.

Q. Was each of the notices which you served upon the Clerk a duplicate of the notices which you served upon the Collector? A. Yes, they were.

Q. You say that you served the Collector by leaving the notice with whom? A. Mrs. Delehanty, who was in charge of the Collector's Office.

Q. Did you make any inquiry as to whether or not she was in charge of the Collector's Office? A. Not on this particular occasion, but in the course of my employment with Seufert & Elmore I have had occasion to visit the Tax Collector's Office on many occasions and, to the best of my recollection I have been informed by Mrs. Delehanty on at least one or two occasions that she was in charge of that office in the absence of Mr. Delehanty. I have never seen any other person acting in that capacity in that office.

Q. You made service upon Mr. Dennis, the Clerk, personally in all the cases except that of Arnold B. Bertels, and in that case you made service upon Louise Springer, is that right? A. Yes.

Q. Did you make inquiry as to whether she was in charge of the Clerk's Office when you made such service upon her? A. I did.

Harold W. Gammon, cross

Q. What did you ascertain? A. I ascertained that Mr. Dennis was away for the remainder of that day and that Miss Springer could handle any office business in his absence. I informed her of the contents of the notice and left the same with her for Mr. Dennis.

Cross examination by Mr. Lebson:

Q. Mr. Gammon, after you served each of these notices of appeals you prepared the affidavits of service, did you not? A. I did.

Q. That affidavit of service is the same affidavit of service which is annexed to the original notice of appeal which is filed in this cause? A. That is correct.

Q. You would say that, now, that the facts contained in that affidavit are true? A. Yes.

Q. In other words they are true notwithstanding anything to the contrary that you may have testified today? Is that correct, notwithstanding anything to the contrary that was contained in the original affidavit? A. Yes.

Q. I show you copies of these notices of appeal and ask you whether they are the ones that you served on the Clerk? A. I cannot designate these as that particular set as there were two identical sets served.

Q. Now, I show you another group (exhibiting group of papers with a letter of the Collector of Taxes attached) which appear to be carbon copies of the same that I just asked you to identify, and I ask you if these are the group which was served on someone at the Collector's Office? A. Yes.

Q. Then you would say that this other one is the group you served on the Clerk? A. Yes.

Q. Referring again to the group you served on the Clerk's Office, I ask you whether the names that appear on the bottom, for instance on this first one, Arnold S. Bertels and Seufert & Elmore, were both Arnold S. Bertels and Seufert & Elmore written underneath signed by Mr. Elmore? A. I will say in so far as the name of Seufert & Elmore is concerned, yes.

Q. Were all of those written by Mr. Elmore? A. Yes.

Q. And the same applies on this batch you say which was left in the Collector's office? A. Yes.

Q. You say that those were all signed by Mr. Elmore? A. Yes.

Q. As far as you know all of the writing of the names that appear on the bottom of these nine notices alleged to be served on the Clerk and the Collector's Office were signed by Mr. Elmore? A. So far as the name Seufert & Elmore is concerned, yes.

Q. They were signed by Mr. Elmore? A. Yes.

Q. Mr. Gammon, was the original Notice of Appeal served by you on anyone at all? A. It seems that I should be testifying to a conclusion. After all, that seems to be——

Q. I will withdraw the question. Showing you again these notices which you identified, in every instance all of the nine in this one batch you left with the Collector's Office and these left with the Clerk's Office are carbon copies? A. I would say duplicate originals.

Q. And what happened to the originals of the entire batch? A. That was filed at the County Clerk's Office.

Q. You can say, truthfully then, that the original was not served upon the Tax Collector? A. I can't say that, Judge.

Q. You say that the original was served on the County Clerk, then it was not served on the Tax Collector, but what you claim to have served on the Tax Collector was a duplicate original? A. Yes. In contemplation of these terms, I would say that the original was filed and the duplicate original served upon the others.

Q. Whom did you serve first, the person in the Tax Collector's Office or the person in the Borough Clerk's Office? A. I first served the batch in the Borough Clerk's Office.

Q. And then you served the person in the Tax Collector's Office? A. That is right.

Q. Now, when you went to the Tax Collector's Office, did you inquire for the Tax Collector? A. Not on this occasion.

Q. On any occasion when you went to serve any of the papers—notices of appeal, did you inquire for the Tax Collector? A. Not to the best of my recollection.

Q. Whom did you find at the Tax Collector's home? A. At 97 Magnolia Avenue, I saw Mrs. Delehanty, the wife of Mr. Delehanty.

Q. The wife of the Tax Collector? A. Yes.

Q. And was it upon Mrs. Delehanty that you served these papers? A. That is correct.

Q. Did you at the time you served her, ask her whether she was in charge of the Tax Collector's Office? A. Not at this particular time; it was my understanding that she was.

Q. Did you at any time you attempted to serve these notices of appeals, ask her whether she

was in charge of the office? A. Not on this occasion.

Q. When you went to the Clerk's Office, did you find the Borough Clerk in? A. I did, with the exception of one case.

Q. On the occasion of the one case, the Borough Clerk was not in? A. That is correct.

Q. You were told that he would be out for the rest of the day? A. That is correct.

Q. And the person whom you say you saw was Miss Louise Springer, the Borough Stenographer? A. I do not know what her capacity is. I left it with her and explained the conditions.

Q. Did you ask her at that time, on this occasion, whether she was in charge of the Clerk's Office? A. I asked her if she was in a position to take these notices for Mr. Dennis.

Q. What was her response? A. Her response was that she could take them and would give them to Mr. Dennis.

Q. Wasn't her response this, that she could take whatever papers were left and that she would give them to Mr. Dennis when he came in? A. I couldn't say that it was.

Q. But you wouldn't say that it was not? A. No.

Q. That was on October 13. Wasn't it a fact, Mr. Gammon, that you were mainly concerned in serving these notices that day because it was supposed to have been the last day for serving the notices? In other words, weren't you particularly interested in getting these notices served because you knew it was the last day?

Mr. Fishberg: I object to that question on the ground that it is not material.

A. I was mainly concerned in making proper service, yes.

Q. And you knew that it was the last day? A. That is in regard to October 13th. I knew that was the last day.

Q. No further questions.

Redirect examination by Mr. Fishberg:

Q. Mr. Gammon, the notices of appeal which you served you call duplicate originals, is that so? A. That is correct.

Q. Would you then say that all the copies that were served were original copies—that each one was an original copy? A. Each was a duplicate original.

Q. Duplicate original? A. Yes, they were the same in every respect except that carbon paper was between when they were typed.

Q. That is all.

Recross examination by Mr. Lebson:

Q. You will say that as far as you know, that none of these duplicate originals that you identified before were signed by the appellants in this cause but were signed by Mr. Elmore for the firm of Seufert & Elmore, the attorneys? A. To the best of my knowledge.

PATRICK S. DELEHANTY, called as a witness on behalf of the prosecutors, being duly sworn, testified as follows:

Direct examination by Mr. Fishberg:

Q. Mr. Delehanty, what is your position in the Borough of Tenafly? A. Collector of Taxes.

Q. And where is your office? A. 97 Magnolia Avenue.

Q. Is that generally known as your business office? A. That is where the tax collector's office is.

Q. And is it open between definite hours? A. No definite hours, it is a part time job, you see.

Q. Is it possible for anyone to pay taxes during the day? A. Yes. If anyone comes to pay taxes either my wife or my daughter takes care of them to save the trip back to the office.

Q. Do you keep the records? A. Yes.

Q. Does your wife keep any part of the records? A. No.

Q. Does she give receipts for taxes paid? A. She has receipted for taxes, yes.

Q. When she gives receipts for taxes does she make entries in the books? A. She has, yes.

Q. I show you a form of assessment bill rendered in the case of Evelyn D. Bradley, one of the prosecutors in this action, and ask you whether that is a bill as forwarded by your office? A. That is.

Q. That bill reads—will you read the heading on the bill as to the office and office hours? A. (Witness reading from form of bill given him by Mr. Fishberg.) Nine A. M. to five P. M. every business day and nine to twelve Saturdays. 97 Magnolia Avenue.

Q. Is it preceded by the words "Office of the Collector"? A. That is right.

Q. What is your occupation other than that of Collector? A. I am with Edwin Demarest, coal and mason materials, Tenafly.

Q. That is your business? A. Yes.

Q. Does that business necessitate your traveling in any way? A. Only to the office and back home.

Q. Other than that? A. You mean out of town?

Q. Yes. A. No.

Q. What time do you devote to your business? A. You mean my regular business, not that of Collector?

Q. Yes. A. Say from 7:30 until about 5:00 in the afternoon.

Q. Every day A. Yes.

Cross examination by Mr. Lebson:

Q. Mr. Delehanty, how far is that place of your employment from your home, that is Demarest's coal yard? A. I would say about, roughly, four blocks.

Q. And is it not true that most of the Tax Collector's business is conducted by mail and in the evening? A. The larger part.

Q. And if anybody wants to make a payment of taxes during the day your wife or your daughter will accept it? A. Right.

Q. And you spend every evening working on the books? A. I do.

Q. Were you served with any notices of appeal in these nine cases? A. None of the appeals, no.

Q. Did anybody call and see you at either your home or the Edwin Demarest Co. on October 11 or 13, 1933 pertaining to these appeals? A. No.

Q. Do you have any person designated by the Mayor and Council to assist you? A. No, I have no assistant.

Q. Have you any person which holds the job as assistant collector? A. I have not.

Q. There are no assistants or clerks of any kind designated to assist you? A. No.

Q. That is all.

Redirect examination by Mr. Fishberg:

Q. Mr. Delehanty, since you are away all day and it is a fact that your office is open from nine to five P. M. each business day, you would say that someone was left in charge? A. I haven't designated anyone directly in charge. As I stated before, my wife or daughter accepts the taxes and gives whatever information they can.

Q. And receipt tax bills? A. Yes.

Q. And make entries? A. Well, most of the entries are made by myself. They make no entries.

Q. When was the first time you say that you saw these notices of appeal? A. I couldn't say the exact date. One evening when I came home from the office they were on the desk.

Q. Did you inquire about them? A. No, only when my wife said "These notices were left for you today."

Q. That is all.

Mr. Lebson: That is all.

NATHANIEL M. F. DENNIS, called as a witness on behalf of the prosecutors, being duly sworn, testified as follows:

Direct examination by Mr. Fishberg:

Q. Mr. Dennis, I believe is your name? A. Yes, sir.

Q. Where is your office located? A. Washington Avenue, Tenafly.

Q. What are your office hours? A. From nine to five on week days and Saturdays, nine to twelve.

Q. Is yours a full or part time job? A. Full time.

Q. Are you ever out? A. Yes, to transact official borough business, to the bank or something like that.

Q. Do you leave the office in charge of anyone? A. No.

Q. You don't leave the office in charge of Miss Springer? A. Miss Springer is our official borough stenographer, I do not leave it in her charge.

Q. You don't lock the door when you go out, do you? A. No, I don't. Naturally, I don't want to lock her in.

Q. Is she there to take such information for you and take care of such things as might come up during your absence? A. No, I don't think she is. Not that she hasn't the qualifications, but that is not a part and parcel of her work.

Q. The office is left in charge of her when you go away? A. No, she is the official Borough Stenographer.

Q. What are her duties? A. To take care of her own work for the Mayor and Council.

Q. Does she do your work? A. No.

Q. No part of your work? A. No, no part.

Q. Is there anyone else in your office? A. No one.

Q. Just you two? A. Yes, sir.

Q. Is hers a full time job? A. Yes.

Q. Would she then be the only one in the office when you were out of the office? A. Just what do you mean by that? We have other people working there at times, they may be there, or do you mean as desk room?

Q. When you are out is she the only one with a permanent desk in the room in which you are? A. That is right.

Q. Does she take messages for you? A. Yes, sure—naturally.

Q. When you were served with a subpoena to appear here yesterday, did you state to the process server something to the effect that one of the two of you must stay there and that you could not both go out at the same time? A. I did say that in a joke. I even said that so long as the fine was only $50.00, I didn't want to appear.

Mr. Lebson: I object on the grounds that it is not material.

Mr. Fishberg: It gives some indication that Miss Springer was left in the office during his absence.

Q. You received all the notices in the cases except the one in the Bertels matter? A. To the best of my knowledge and belief, yes.

Q. Were you handed the Bertels notice by Miss Springer when you came in? A. I can't say with any degree of certainty, it might have been on my desk.

Q. When did you see it, the day of service or the day after? A. I couldn't say whether I was in the office or not on that day.

Q. That is all.

Cross examination by Mr. Lebson:

Q. Mr. Dennis. you are the Borough Clerk of Tenafly and you have been the Borough Clerk for how many years? A. Nearly twelve years.

Q. There is no such person as an assistant clerk? A. No.

Q. Miss Louise Springer is the official Borough Stenographer? A. Yes, sir.

Q. And she is appointed annually by the Mayor and Council? A. Yes, sir. The records will all prove that.

Q. Does she take dictation from you? A. Yes, sir.

Q. And have you at any time, or has the Mayor and Council at any time designated anybody to act in your place and stead during your absence? A. No, sir.

Q. I show you these nine notices of appeal and ask you whether they represent the notices which were served upon you with the exception of the Bertels case? A. I couldn't say with any degree of certainty.

Q. They look like them? A. Yes, sir.

Q. And during the month of October, 1933, as near as you can recall, you were in the office almost every day, were you not? A. Yes, sir. Yes, I was there every day.

Q. If you were out on the 13th of October, can you tell me, now, where you were? A. Last year I took my vacation in half days, I might have been down to a ball game, I don't know.

Q. You are not sure? A. No.

Q. You were not out all day? A. I don't think so.

Q. Did anyone at any time attempt to serve the Bertels notice on you? A. I can't say that for certain. I know that I got the first batch.

Q. But not the last one? A. No.

Redirect examination by Mr. Fishberg:

Q. Would you have taken your vacation in half days if Miss Springer were not in the office?

Mr. Lebson: I object on the ground that it is not a proper question and has no bearing on this cause.

A. Yes.

Q. That is all.

Recross examination by Mr. Lebson:

Q. How many years has Miss Springer been the Borough Stenographer? A. About six years.

Redirect examination by Mr. Fishberg:

Q. Whom do you leave in charge when you go away? A. Nobody. I am just on vacation.

Q. And what happens when you go away when not on vacation? A. There is no one.

Q. Who is in charge today? A. The Mayor.

Q. If you never leave anyone in charge of the office while you are away, why did you leave the Mayor in charge today? A. Because he said he would stay there when we found that we would have to be away.

Q. And he said he would take your place? A. Yes.

Q. Is it essential that someone be there? A. Yes.

Q. It sounds like good business? A. Yes.

Q. As a matter of fact you have so provided yourself with Miss Springer for that reason? A. No, sir, she is the Borough Stenographer. She has no power to do anything that I do.

LOUISE SPRINGER, a witness called in behalf of the prosecutors, being duly sworn, testified as follows:

Direct examination by Mr. Fishberg:

Q. Miss Springer, your position with the Borough of Tenafly is what? A. Stenographer.

Q. Where is your office located? A. Borough Hall, Washington Avenue, Tenafly.

Q. In the same room with the Borough Clerk? A. Yes.

Q. How long have you been in that room with the Borough Clerk? A. I think maybe it is four or five years.

Q. Has the Borough Clerk required you on occasions to take letters dictated by him? A. Yes.

Q. About how many letters are dictated during the week? A. It varies.

Q. There is something to do every day? A. Yes, surely.

Q. What do you do? A. Write minutes, letters for Borough Officials.

Q. The minutes of the Borough meetings are dictated by the Borough Clerk? A. No, I attend the meetings.

Q. You make stenographic records of the meetings? A. Yes.

Q. Are you there in the morning before the Borough Clerk? A. I am there from nine to five.

Q. Are you there before the Clerk? A. Very seldom.

Q. Do you open the mail in the morning? A. Yes, I do.

Q. You read the mail? A. Yes.

Q. Do you sort it? A. Yes.

Q. And you give the Borough Clerk the mail that comes to him? A. Yes.

Q. Is there anybody else in the office except yourself and the Borough Clerk? A. Not in my office, no.

Q. When the Borough Clerk is absent, do you receive telephone calls for him? A. Yes, sir.

Q. Do you give any information within your knowledge of the Borough Clerk's office? A. Yes, sir.

Q. Do you recall Mr. Gammon, of the office of Seufert & Elmore, delivering a notice of appeal in the Bertels case to you on the 13th day of October? A. I couldn't say it was the 13th.

Q. Do you recall any conversation with Mr. Gammon? A. If I remember right, knowing that there was litigation, I asked if it was all right for me to take it.

Q. Did he inquire from you whether you were in charge of the office? A. I don't believe he did.

Q. Would you say you were sure? A. Yes, I think so.

Q. Was there anybody in the office except yourself and Mr. Gammon? A. I think not. Of course, there may have been.

Q. You don't know for sure just what happened? A. As I remember it, I asked if it was all right to take it and he said it was all right to take it.

Q. Did he tell you what it was? A. Yes. I knew what it was, having been at the meetings.

Cross examination by Mr. Lebson:

Q. Miss Springer, besides being Borough Stenographer you are also doing some work for the Board of Education? A. Yes.

Q. And what is your official title there? A. I don't know as I have any title.

Q. Whatever work you have to do for the Board of Education you also do in the same office as for the Mayor and Council? A. Yes.

Q. From time to time the Mayor dictates letters to you, does he not? A. Yes.

Q. And other members of the official family? A. Yes.

Q. You compile information from the books for the auditor? A. Yes.

Q. In other words you are stenographer to the Clerk particularly, but to the others as well? A. To any Borough Official, yes.

Q. No further questions.

Redirect examination by Mr. Fishberg:

Q. In your testimony, Miss Springer, I believe you said that you asked Mr. Gammon whether it would be all right for you to accept them? A. Yes.

Q. Did you say that you would give them to Mr. Dennis when he came in? A. I imagine that was taken for granted.

Q. Did you hand them to him? A. I can't remember if I handed them to him; I told him about it.

Recross examination by Mr. Lebson:

Q. Can you recall whether the paper that was given to you was an original or a duplicate copy of the original? A. I cannot.

VINCENT J. AIKEN, a witness called in behalf of the Prosecutors, being duly sworn, testified as follows:

Direct examination by Mr. Fishberg:

Q. What is your business? A. Law.

Q. And where are you working? A. In the office of Seufert & Elmore.

Q. And did you on the 19th day of March, 1934, go to the office of P. S. Delehanty for the purpose of serving a subpoena to appear for depositions in this matter? A. I did.

Q. Did you inquire for Mr. Delehanty? A. I did.

Q. And of whom did you inquire? A. Mrs. Delehanty.

Q. And what were you told? A. Mrs. Delehanty told me that he was probably on the road as he goes on the road every afternoon. She said, "I will call him on the telephone if I can get him." She called and then she told me "He is down at Mr. Blackwell's office."

Q. About what time of day were you at the Delehanty office? A. About two o'clock.

Q. While you were there did you see any business transacted by Mrs. Delehanty of the nature of Tax Collector? A. Yes, I did. An elderly woman entered just before I went in there and produced monies to the extent of about $240.00 and paid her tax bills and Mrs. Delehanty took the money, counted it and gave her a receipt for those monies.

Q. Did that occur while you were present? A. While I was there.

Cross examination by Mr. Lebson:

Q. Mr. Aiken, after you were informed Mr. Delehanty was at Blackwell's office, did you go and serve him? A. Yes.

Q. How far away might that be from Mr. Delehanty's? A. Quite a long walk, about a half mile.

Q. It was in the Borough of Tenafly? A. Yes.

Q. Where you found Mr. Delehanty was in the village? A. Yes, and Mr. Delehanty's office is in the outskirts.

Q. Would you call it the "outskirts"? A. Yes, it is way out from the village.

Q. You had no trouble serving Mr. Delehanty? A. Not when I found him, no.

Q. You hadn't attempted to serve Mrs. Delehanty for her husband so far as this subpoena was concerned? A. No, I had one for her.

Q. You didn't want to leave Mr. Delehanty's with her?

Mr. Fishberg: I object on the ground that it is immaterial.

Mr. Lebson: You had one for Mrs. Delehanty and one for Mr. Delehanty. You didn't leave Mr. Delehanty's with Mrs. Delehanty when you were informed that he was not there?

A. Not when I was informed where he was, otherwise I would have left it with her.

MARY E. DELEHANTY, a witness called in behalf of the Defendant, being duly sworn, testified as follows:

Direct examination by Mr. Lebson:

Q. Mrs. Delehanty, you are the wife of Patrick S. Delehanty? A. Yes, sir.

Q. Do you remember Mr. Gammon coming to your home and serving you with some notices of appeal? A. Yes.

Q. Did he ask for Mr. Delehanty? A. Yes, he did.

Q. Where did you tell him Mr. Delehanty was? A. I said he wasn't in just then.

Q. Did he ask where Mr. Delehanty was? A. I don't remember that he did.

Q. You don't remember that he did? A. No.

Q. Did he leave some papers with you? A. Yes.

Q. And those are the papers which you subsequently turned over to me? A. Yes.

Q. Do you remember on the 11th and 13th of October, 1933 where Mr. Delehanty was at the time Mr. Gammon made the service? A. I couldn't say.

Q. He wasn't home at the time? A. No.

Q. Have you ever been designated by the Mayor and Council as assistant collector? A. No.

Q. Have you any duties of any kind? A. No.

Q. Have you ever been designated any authority in the Tax Collector's Office? A. No.

Q. Do you receive any compensation from the Mayor and Council? A. No.

Q. Do you receive any portion of your husband's salary directly for any work that you do there? A. Yes.

Mary E. Delehanty, cross

Q. What did you do with these notices of appeal after you received them? A. I believe I dated them and gave them to Mr. Delehanty.

Q. Do you remember Mr. Aiken coming on the 19th of March, 1934? A. Yes.

Q. Was anybody in your home at the time? A. My daughter and Mrs. Hill.

Q. An elderly lady? A. Yes.

Q. They were both there when Mr. Aiken came in? A. Yes.

Q. What did Mr. Aiken do? A. He asked for Mr. Delehanty.

Q. While Mrs. Hill was there? A. Yes.

Q. What did you tell him? A. I said that he wasn't in just then and that I thought he was out on the road, but I would try to locate him. I first called the coal office and found that he had gone to Mr. Blackwell's office where the Mayor was.

Q. Mr. Blackwell is the associate engineer? A. Yes.

Q. You located him? A. Yes.

Q. Did Mrs. Hill or anybody else pay some taxes approximately $240.00 while Mr. Aiken was there? A. No.

Cross examination by Mr. Fishberg:

Q. Who was Mrs. Hill? A. She came to pay taxes and it took so long for her to get her money sorted out that she said I had better wait on the gentleman. He gave me my subpoena and I made two telephone calls, and when he went out Mrs. Hill paid me.

Q. And you gave her the receipt? A. Yes.

Q. Your home and the Collector's Office are identical places, are they not? A. Yes.

Mary E. Delehanty, cross

Q. Are you at your home every day from nine to five? A. Not always. If I am not there, my daughter is.

Q. What business do you transact for your husband? A. Just as an accommodation I take the taxes if he is not there.

Q. You collect the taxes? A. Yes.

Q. Do you make any entries? A. I receipt the bills and help him with the work in the evening.

Q. Did Mr. Gammon, who served the first papers on you, explain the contents of the papers to you? A. I don't remember that he explained them to me, he just told me that they were notices of appeal on the Joyce property.

Q. You understood what they were? A. Yes.

Q. And you turned them over to your husband? A. Yes.

Q. Do you receive all the mail that comes to the office? A. The mailman leaves it there and we accept it together.

Q. You take out the checks from the mail and send back receipted tax bills? A. Yes.

By stipulation a form of assessment bill annexed hereto and marked Exhibit P-1 is placed in evidence to indicate the publication of the Collector's address and office hours.

It is further stipulated that Mrs. Mary E. Delehanty and Miss Louise Springer, as well as all those who testified in this proceeding are all over the age of twenty-one and were so when the papers were served.

Certificate of Commissioner

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*, *Prosecutors*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Certificate of Commissioner

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony taken before me in the above entitled cause at my office at #241 Main Street, Hackensack, New Jersey, on Thursday, March 22, 1934, at two o'clock in the afternoon.

Respectfully submitted,

HOWARD MACKAY,
Supreme Court Commissioner of
New Jersey.

Stenographer's Oath

NEW JERSEY SUPREME COURT

HARRY J. H. RUHLE, *et als.*, *Prosecutors*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Defendant.*	On Certiorari Stenographer's Oath

State of New Jersey, County of Bergen, } ss.:

ISABEL E. COLLINS, being duly sworn on her oath, doth depose and say:

That she will faithfully and truly take stenographically and reproduce in typewriting the testimony to be given in the certain cause now pending in the New Jersey Supreme Court wherein Harry J. H. Ruhle, *et als.*, are Prosecutors, and Edwin C. Caffrey, Judge of the Bergen County Circuit Court, is defendant.

ISABEL E. COLLINS.

Subscribed and sworn to before me this 22nd day of March, 1934.

HOWARD MACKAY,
Master in Chancery of New Jersey.

Exhibit P-1

NOTICE:—Read this Bill Carefully.

Office of the Collector, 97 Magnolia Avenue.
Phone Eng. 3-0628

9 A. M. to 5 P. M. Each Business Day, and 9 to 12 M. on Saturdays

BOROUGH OF TENAFLY

M .....

.....

.....

TO THE BOROUGH OF TENAFLY, DR.

Bergen County, New Jersey

Assessment..... Ord. No.....

Payable in.....Installments

Confirmed..... Due.....

Block..... Lot No.....

Amount of Assessment.....

Received Payment .....

Collector.

Exhibit P-1

"Assessments shall bear interest at the rate of Six (6%) Per Centum per Annum. Failure to pay any installment when due shall cause the full amount of assessment to become delinquent and thereafter interest at the rate of Eight (8%) Per Centum per Annum shall be charged." (Chapter 237 P. L. 1928 as amended.)

Make Checks or Money Orders Payable to Borough of Tenafly.

P. S. DELEHANTY, Collector.

IMPORTANT

Please do not detach this stub.

I desire to pay the above Assessment in .....Installments.

Name .....

Block..... Lot.....Ord. No.....

Amount, $.....

New Jersey Supreme Court
Harry J. H. Ruhle, et als,
Prosecutors,

—vs—

Edwin C. Caffrey, Judge of the
Bergen County Circuit Court,
Defendant

Exhibit P-1 on the part of the Prosecutors

HOWARD MACKAY
Supreme Court Commissioner

Opinion of Supreme Court

(Filed August 14, 1934)

NEW JERSEY SUPREME COURT

No. 213 May Term, 1934

HARRY J. RUHLE, *et als.*,
Prosecutors,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

Argued May 1, 1934; decided August 14, 1934.

On certiorari.

Before Justices TRENCHARD, HEHER and PERSKIE.

For the prosecutors: SEUFERT & ELMORE, CHARLES FISHBERG, of counsel.

For the defendant: ABRAM A. LEBSON.

The opinion of the court was delivered by HEHER, *J.*

The writs of certiorari allowed herein bring up orders entered in the Bergen County Circuit Court dismissing the several appeals of seven landowners from individual assessments, made by the Mayor and Council of the Borough of Tenafly and the tax collector thereof, against their respective tracts of land, for benefits

assertedly conferred by reason of the improvement of public highways laid out in that municipality. After the making of the return, an order of consolidation was entered. The returns are substantially alike, and the questions raised are common to all, with one exception to be hereinafter noted.

The court below concluded that the appeals should be dismissed, for the reasons that (1) the several notices of appeal were not signed by the appellants; and (2) service thereof upon the borough collector was irregular and ineffective, in that it consisted, in each case, of the delivery of a copy thereof to his wife.

The first ground upon which the dismissals were based is clearly untenable. Section 42 of Article XX of the act concerning municipalities (Pamph. L. 1917, pp. 319, 392), as amended by Chapter 347 of the Laws of 1933 (Pamph. L. 1933, p. 904), provides for the taking of the statutory appeal by the service and filing of a "written notice" thereof, without more except that it "shall state the address of the appellant where notice of further proceedings may be served upon him." This appellate proceeding is wholly statutory, and it is fundamental that a substantial compliance with the provisions of the statute is a prerequisite to jurisdiction in the appellate court. Compare Proprietors of Morris Aqueduct ads. Jones, 36 N. J. L. 206, affirmed sub nom. Jones *v.* Morristown Aqueduct Co., 37 N. J. L. 556.

The law, however, looks upon appeals with a favorable eye, and statutes prescribing the procedure will be liberally construed. There is no express requirement in the statute that the appel-

lant shall append his signature to the notice of appeal, and such a legislative purpose will not be implied. In the absence of provision to the contrary, the notice of appeal may be given by the appellant, or his authorized agent or attorney. Here each notice was signed in the name of the appellant by his attorney, who is a duly licensed attorney at law of this State. His authority in the premises will be presumed. Kaufman *v.* Jurczak, 102 N. J. Eq. 66.

The point made by respondent that the notice of appeal "left at the house of the tax collector" was not the "original notice," as distinguished from a signed manifold, is frivolous. There was a substantial compliance with the statutory requirement in this respect, and this, as we have pointed out, satisfies the statute.

But there was a fatal failure to comply with the directions of the statute as to service of the notice. Concededly, personal service of the notice was not made upon the tax collector. The affidavit of service sets forth that the notice was served upon the tax collector "by serving a copy of the (attached) notice of appeal upon Mary T. Delehanty who was in charge of the Tax Collector's Office * * *." There was personal service of the notice upon the borough clerk, except in the case of appellant, Bertels. In the latter case service was made by delivering a duplicate to a subordinate in charge of the clerk's office. It is not suggested that personal service upon these public officers was impossible. Personal service, as we shall see, was required, and thus the act, in one of its essential provisions, was not substantially complied with.

Section 42 of the Act provides that the landowners affected "may * * * appeal * * * by

serving written notice of such appeal * * * upon the tax collector and a duplicate upon the clerk of the governing body." The question at issue is essentially one of statutory construction, and we are led to the conclusion that the legislative concept was personal service, as distinguished from substituted service. The law provides for two methods of service of process: the one actual, and the other constructive. "Actual service of process" is made by reading the original process to the defendant, or by delivering to him a copy thereof; and constructive service, which is a substituted service, is made by leaving a copy of the process at the defendant's residence when he is absent, or by posting or publishing notice of the pendency of the suit, and mailing a copy of the notice posted or published to the defendant, if his post-office address is known. 21 R. C. L. 1269. Personal service ordinarily means actual delivery of the process to defendant in person, and does not include service by leaving a copy at his usual place of abode, or at his home or his office, or by delivery to someone else for him. 50 C. J. 468. The general rule in regard to the service of process, established by centuries of precedent, is that process must be served personally, within the jurisdiction of the court, upon the person to be affected thereby. Substituted service, when provided by statute, is in derogation of such general rule, and, consequently, the direction thereof must be strictly construed and fully carried out to confer jurisdiction. Erickson *v.* Macy, 231 N. Y. 86, 131 N. E. 744, 16 A. L. R. 1322. It is a corollary of this that if the manner and mode of service is not provided for, personal service is requisite.

This is the generally accepted rule. Haj *v.* American Bottle Co., 261 Ill. 362, 103 N. E. 1000; Hardenbergh *v.* Thompson, I Johns. 61; 3 C. J. 1235.

It is to be presumed that the Legislature was familiar with this firmly established rule of construction that a provision for service of process or notice, without a specification of the manner or mode, connotes personal service, and, that being so, it is our plain duty to apply it, in the absence of language clearly evincing a contrary purpose, to the statute under consideration. But if there were any doubt as to the legislative intention and purpose, it is dispelled by the provision of Section 23-A of Article XX of the act (Pamph. L. 1921, p. 511, 513) that, when an appeal is taken from an award for lands taken for a public improvement by virtue of an ordinance adopted under Section 23, notice thereof shall be served on the chief executive officer or the clerk of the governing body of the municipality, "either personally or by leaving the same at his office or place of abode." The same statute amended Section 42 of Article XX, but there was a significant omission of a like provision for substituted service where an appeal was taken from an assessment for benefits or an award of damages incidental to the improvement. The affirmative provision for substituted service in the one case implies the negative as to this mode of service in the other.

While it is difficult to understand why the legislature provided for substituted service in the one case and not in the other, we must take the act as it is, and assume that the omission of such provision in the one case was purposeful

and not inadvertent. This was a question of legislative policy, and where the lawmakers' purpose is expressed in unmistakable language, the provision must be enforced by the court as it is written, without regard as to its wisdom or utility. Baader *v.* Mascellino, 116 N. J. Eq. 126. Compare Proprietors of Morris Aqueduct ads. Jones, supra.

The fact that the service is made upon the collector in his official capacity, and the circumstance that the subject-matter of the appeal involved his official action, are of no consequence or significance, unless made so by the statute. It is the intention of the Legislature, as expressed in the act, that controls. Clearly, it is the service upon the officer, and not the filing of the notice in his office, that is required.

The question of waiver of irregular service, by voluntary submission to the jurisdiction of the court, is not presented. There was a timely application to dismiss upon the ground of noncompliance with the statutory provision for service of the notice of appeal. No action was taken by the municipality, or its officers, that implied submission to the jurisdiction of the court below.

Orders affirmed.

A true copy.

Fred L. Bloodgood,
Clerk.

Supreme Court Judgment

(Filed Aug. 28, 1934)

NEW JERSEY SUPREME COURT

BERGEN COUNTY

HARRY J. RUHLE, *et als.*,
Prosecutors,
v.
EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court,
Defendant.

On Certiorari
Judgment

This cause having been argued at the May Term of this Court by Seufert & Elmore, Esqs., of counsel for Prosecutors, and Abram A. Lebson, Esq., of counsel for the Defendant, and the Court having considered the same and finding no error in the record or proceedings of the Bergen County Circuit Court:

IT IS THEREUPON, on this 28th day of August, 1934, ORDERED AND ADJUDGED, that the Judgment and proceedings of the Bergen County Circuit Court removed by Writ of Certiorari in this cause, be affirmed and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Let the above Order be entered on the minutes.

Entered Aug. 28, 1934.

On motion of
ABRAM A. LEBSON
Abram A. Lebson
Of Counsel for Defendant.

August 16th, 1934.

Notice of Appeal

(Filed Sept. 26, 1934)

NEW JERSEY SUPREME COURT

HARRY J. RUHLE, *et als.*, *Prosecutors-Appellants*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Respondent-Appellee.*	On Appeal from Supreme Court Notice of Appeal

To: ABRAM A. LEBSON, Esq.,
Attorney of Appellee.

SIR:

TAKE NOTICE, that the Prosecutors-Appellants hereby appeal to the Court of Errors and Appeals of New Jersey, from the whole of the judgment entered in the above cause, whereby it affirmed a certain order of Edwin C. Caffrey, Judge of the Bergen County Circuit Court, bearing date the 8th day of December, 1933.

Dated Sept. 24, 1934.

SEUFERT & ELMORE,
Attorneys of Prosecutors-Appellants.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 25th day of September, 1934.

ABRAM A. LEBSON,
Attorney of Appellee.

Grounds of Appeal

(Filed Oct. 4, 1934)

NEW JERSEY COURT OF ERRORS AND APPEALS

HARRY J. RUHLE, *et als.*, *Prosecutors-Appellants*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Respondent-Appellee.*	On Appeal from Supreme Court Ground of Appeal

The prosecutors-appellants, Harry J. Ruhle, Northern Valley Finance Corp., Evelyn D. Bradley, Arnold S. Bertels, May McKinney, Enrico A. Sferra, Viola T. Sferra and C. Paul Carlson, state the following ground of appeal:

1. Because the Supreme Court erred in giving judgment for the respondent instead of the appellants, in that the Supreme Court affirmed certain Orders of Edwin C. Caffrey, Judge of the Bergen County Circuit Court, dated December 8, 1933, whereby he dismissed the certain appeals from and concerning assessments for benefits conferred by reason of the improvement of Sussex Road, Burlington Road and Westervelt Court, in the Borough of Tenafly, County of Bergen and State of New Jersey, which assessments were appealed to the said Judge of the Bergen County Circuit Court and which appeals were dismissed; whereas the said Supreme Court

should have reversed and set aside the said Orders of the said Edwin C. Caffrey, Judge of the Bergen County Circuit Court, for the reasons alleged before said Supreme Court.

Dated Sept. 28, 1934.

SEUFERT & ELMORE,
Attorneys of Prosecutors-Appellants.

Service of a copy of the within Ground of Appeal is hereby acknowledged this 29th day of September, 1934.

ABRAM A. LEBSON,
Attorney of Appellee.

BAR PRESS, INC., 47 WEST STREET, NEW YORK. BO. 9 – 0157-8

New Jersey Court of Errors and Appeals

HARRY J. RUHLE, *et als.*, *Prosecutors-Appellants*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Respondent-Appellee.*	ON CERTIORARI

BRIEF ON BEHALF OF PROSECUTORS-APPELLANTS

The above matter was brought before the Supreme Court by Writ of Certiorari to review an Order of the Bergen County Circuit Court dated December 8, 1933. By reason of a stipulation entered into between the respective attorneys, nine separate assessment appeals brought by seven property owners were consolidated, and the printed record has been reduced by reason of similar papers served and filed in all of the cases except one and in that one case (Bertels) the affidavit of service differed and is printed in the State of Case, page 17.

Although there were five distinct grounds in the original application for dismissal of the appeals before the Circuit Court, the Supreme Court concluded that there were but two definite reasons for the opinion of the lower Court, namely, (1) that the several notices of appeal were not signed by the appellants, and (2) serv-

ice thereof upon the Borough Collector was irregular and ineffective. The first reason in the opinion of the Supreme Court was not justified (State of Case, p. 66). The second, however, was, in its opinion, fatal.

Résumé of Facts

The several prosecutors in the above action are residents of the Borough of Tenafly, in Bergen County. This Borough, by virtue of an ordinance, made a local improvement on Sussex Road, Burlington Road and Westervelt Court and subsequently caused an assessment to be made for benefits conferred by virtue of that improvement.

These assessments were levied on lands of the several prosecutors and they, feeling aggrieved, and in accordance with the statute (Sec. 42, Art. 20 of the Home Rule Act, as amended by the Laws of 1925 at p. 233), within the time limited, proceeded to perfect their appeals.

The prosecutors were met with a motion to dismiss the appeals on five separate grounds, to wit:

1. The Notices of Appeal are defective and irregular in that they are not signed by the appellants.

2. The proof of service of the Notices of Appeal filed in the office of the Clerk of the Bergen County Circuit Court fails to set forth legal statutory service.

3. The service of the Notices of Appeal alleged to have been made upon the Collector of Taxes of the Borough of Tenafly, New Jersey, was irregular and not in accordance with the statute in such case made and provided.

4. The service of the Notices of Appeal alleged to have been made upon the Clerk of the Borough of Tenafly was irregular and not in accordance with the statute in such case made and provided.

5. No Notices of Appeal were served upon the Collector of Taxes of Tenafly, as provided by law.

On December 8, 1933, Judge Caffrey, by his Order dismissed the appeals taken by the prosecutors and rendered an opinion (S. of C. p. 24), in which he set forth the reasons for the dismissal, to wit:

1. The several Notices of Appeal were not signed by the appellants.

2. The service as made upon the Borough Collector was irregular and ineffective in that it was not made in accordance with the requirements of the statute.

A Writ of Certiorari was allowed by the Chief Justice and argued before the New Jersey Supreme Court. The Supreme Court filed an opinion on August 14, 1934, sustaining the second reason set forth by Judge Caffrey and discharged the Writ and affirmed the Order of the defendant (S. of C. p. 71).

Notice of Appeal to this Court was then duly served (S. of C. p. 72), and the matter is now brought on before this Court.

The Evidence

The following facts may be considered as uncontroverted. The prosecutors retained the firm

of Seufert & Elmore of Englewood and the Notices of Appeal were all signed by J. Laurens Elmore, one of the partners of the firm, on behalf of the firm as attorneys (S. of C. pp. 8, 11 and 13).

Service of the notices was made by Harold W. Gammon, Jr., an attorney at law and an associate of the office of Seufert & Elmore, by serving Mary T. Delehanty, who was in charge of the Tax Collector's office at 97 Magnolia Avenue, in the Borough of Tenafly, New Jersey (S. of C. p. 9). Mary T. Delehanty is the wife of P. S. Delehanty, Collector, and the office address is the home address as well (S. of C. p. 43).

The exhibit (S. of C. p. 63) is a copy of the assessment bill of the Borough of Tenafly and thereon is printed:

> "Office of the Collector, 97 Magnolia Avenue, 9 A. M. to 5 P. M. each business day and 9 to 12 M. on Saturdays."

On examination of Mr. Delehanty and Mrs. Delehanty, they admit the receipt of the appeal notices (S. of C. p. 60).

The office of Tax Collector in the Borough of Tenafly is a part-time job (S. of C. p. 46), and the Collector, Patrick Delehanty, was employed in the coal and mason material business from 7:30 A. M. to 5:00 P. M. every day, away from his home and office (S. of C. pp. 46, 47). He admits that his office is at his home, 97 Magnolia Avenue, and that either his wife or daughter take care of it when he is away and that part of the Collector's salary is paid to the wife (S. of C. p. 58).

In the case of the service made upon Louise Springer, when the Borough Clerk was away,

the evidence indicates that she was retained by the Borough of Tenafly to take charge of the offices in the Borough Hall, in the absence of Borough officials (S. of C., p. 53).

The defendant contends that the statute provides that it was essential to find the Collector and make service upon him by handing the notices over, in person, wherever he might be and this contention was upheld by the Supreme Court.

Grounds of Appeal

The prosecutors-appellants, under the practice, set down one ground of appeal, to wit:

That the Supreme Court erred in giving judgment for the respondent instead of the appellants, in that the Supreme Court affirmed the Orders of Judge Caffrey when it should have reversed and set aside the Orders of Judge Caffrey. Under this reason, the determination of the Supreme Court will be argued.

The first ground set forth by Judge Caffrey in his opinion of dismissal was "because the Notices of Appeals were not signed by the appellants." The Supreme Court, however, in its opinion said "this ground is clearly untenable" and stated further that the point made that the Notice of Appeal was not the "original notice" as contradistinguished from a manifold is frivolous. The Court said, "There was a substantial compliance with the statutory requirement, in this respect, and this as we have pointed out, satisfies the statute."

Therefore, we feel that our contention having been sustained in the Supreme Court, we can pass this ground by.

The second ground, upon which the appeal was dismissed and which was confirmed in the findings of the Supreme Court, was that, "Service thereof (meaning Notices of Appeal) upon the Borough Collector was irregular and ineffective in that it consisted in each case of the delivery of a copy thereof to his wife."

The affidavit of service as filed in each of the cases is set forth in the State of Case on page 9, and being short, is here set forth in full:

"State of New Jersey, }
County of Bergen, } ss.:

HAROLD W. GAMMON, JR., being duly sworn according to law, on his oath deposes and says:

That on the Eleventh day of October, A.D., 1933, he served the within Notice of Appeal upon P. S. Delehanty, Collector of Taxes of the Borough of Tenafly, by serving a copy of the attached notice of appeal upon Mary E. Delehanty, who was in charge of the Tax Collector's Office at 97 Magnolia Avenue in Tenafly, New Jersey, at 3:35 o'clock in the afternoon.

That on the Eleventh day of October, A.D., 1933, he served a duplicate thereof upon N. M. F. Dennis, Clerk of the Borough of Tenafly, personally, at his office in the Borough Hall, Borough of Tenafly, Bergen County, New Jersey at 3:30 o'clock in the afternoon.

HAROLD W. GAMMON, JR.

Subscribed and Sworn to before me this 11th day of October, 1933.

ISABEL E. COLLINS,
Notary Public of New Jersey."

This affidavit was the same in each case except that of Bertels, wherein the second paragraph reads:

> "That on the 13th day of October, 1933, I served a duplicate thereof on N. M. F. Dennis, Clerk of the Borough of Tenafly, by serving the same upon Louise Springer, who was in charge of the Clerk's Office, at the Borough Hall, Borough of Tenafly, at 11:20 o'clock in the morning."

The Home Rule Act provides, in Section 42, that the landowners affected "may * * * appeal * * * by serving written notice of such appeal * * * upon the Tax Collector and a duplicate upon the Clerk of the governing body." There is no question but that actual service was made in all the cases but one upon Mr. Dennis, the Borough Clerk (Affidavit, *supra*).

POINT I

The Supreme Court erred in upholding the Circuit Court Judge because the law, as established in New Jersey, did not justify a dismissal of the appeals.

The Supreme Court reached the conclusion that the statute in question required "personal service." However, in seeking a proper conclusion, the learned Court failed to follow the rule already established by your Honorable Court for such service. "Personal" service has been determined to be either delivery to a duly accredited agent to receive such notice or from circumstances justifying an inference of actual

delivery. The leading case on this point is the case of *Wilson* v. *Trenton,* reported in 53 N. J. L. 645. This case, decided by the Court of Errors and Appeals, is decisive on the question of personal service required by a statute, wherein no method of service is prescribed. In the *Wilson* v. *Trenton* case (*supra*) the common council of Trenton had caused a notice of assessment to be served upon every person affected under the statute, namely, section 83, of an act to provide for the more efficient government of the City of Trenton. This section, in part, directed the common council:

> "to cause a notice of the proportion of said assessment and costs to be served upon every person * * * against whom the same is made" (P. L. 1874, p. 331, sec. 83).

In the Supreme Court, on certiorari, objection was made to the assessment on the ground that the notices had not been given as required by law. The Court of Errors and Appeals held:

> "The Legislature may prescribe how such notices may be given. The notice prescribed must be strictly followed and the proceedings must show the prescribed notice. * * * *When no mode of giving notice has been prescribed it was also conceded that what is called personal service is required and must appear."* (Italics ours.)
>
> * * * * * *
>
> "Personal service, within the meaning of such acts, is to be distinguished, on one hand, from what may be called official service, such as the personal service of a summons in an action at law, which is required to be made by the officer on the defendant in person; and, on the other hand, from substituted or constructive service, which is such as by law conclusively results from the performance of

> certain prescribed acts, such as publication, posting and the like. The service required by this and similar statutes need not be made by an official or in a particular mode; *if the required notice is conveyed to the person to be affected thereby, it is sufficient.*" (Italics ours.)

And on page 650, the learned Justice MAGIE (afterward Chancellor) continues for the Court of Errors and Appeals:

> "While, therefore, I conclude that the contention in behalf of plaintiff in error, that the service of the notices in question upon him and other residents of Trenton must appear to be of that sort which is called personal must be sustained, *I do not agree that such service will only appear by a statement of actual delivery thereof to them in person.* On the contrary, I deem that such service would appear either from the fact of delivery to a duly accredited agent to receive such notice or from circumstances justifying an inference of actual delivery." (Italics ours.)

May we point out that the evidence of actual delivery is clear. In the State of the Case, on page 48, on examination of Mr. Delehanty, the Tax Collector, the evidence is as follows:

> "Q. When was the first time you say that you saw these notices of appeal? A. I couldn't say the exact date. One evening when I came home from the office they were on the desk.
>
> "Q. Did you inquire about them? A. No, only when my wife said 'These notices were left for you today.' "

And again when Mrs. Delehanty was examined (S. of C. p. 60):

> "Q. Did Mr. Gammon, who served the first papers on you, explain the contents of the

papers to you? A. I don't remember that he explained them to me, he just told me that they were notices of appeal on the Joyce property.

"Q. You understood what they were? A. Yes.

"Q. And you turned them over to your husband? A. Yes.

"Q. Do you receive all the mail that comes to the office? A. The mailman leaves it there and we accept it together.

"Q. You take out the checks from the mail and send back receipted tax bills? A. Yes."

By stipulation (S. of C. p. 60), Mrs. Delehanty was over the age of 21, when the papers were served on her.

On page 56 (S. of C), Vincent J. Aiken, under examination, was asked as to a visit he made to the office of the Tax Collector:

"Q. About what time of day were you at the Delehanty office? A. About two o'clock.

"Q. While you were there did you see any business transacted by Mrs. Delehanty of the nature of Tax Collector? A. Yes, I did. An elderly woman entered just before I went in there and produced monies to the extent of about $240.00 and paid her tax bills and Mrs. Delehanty took the money, counted it and gave her a receipt for these monies.

"Q. Did that occur while you were present? A. While I was there."

The authority of *Wilson* v. *Trenton* (*supra*) was carefully followed in the case of *McKenna* v. *Harrington,* 96 E. 700, in which the Court of Errors and Appeals again sustained personal service to be shown when

"the required notice be conveyed to the person affected thereby"

and although there was denial of the receipt of a registered letter, the fact that the registry slip was signed was taken to be sufficient service of notice to be "personal service within the meaning of the statute."

Again in the case of *Alexander* v. *Rekoon* (104 N. J. L. 1) the *Wilson* case was cited with approval at the May Term of the Supreme Court, 1927. This case involved a real estate broker's notice for commissions. The statute required:

> "The notice provided for shall be served either personally or by forwarding the same to the person to be served, by registered mail, to the last known post office address of such person."

There was no personal service of the notice and the letter as mailed to the defendant was concededly not registered. The Court affirmed the judgment for the broker on the ground that:

> "Where a statute provides for personal service of a notice, requiring it to be made by an officer or in a particular mode, the depositing of the notice with an agency of the Federal Government for the purpose of having it delivered, and the actual delivery thereof by such agency to the person to whom the notice is addressed, constitutes a *personal service.*" (Italics ours.)

The attention of the Court is respectfully directed to the fact that the learned Justices of the Supreme Court lost sight entirely of the above line of cases, but rather relied on what they ascertained to be the general law from Corpus Juris (Opinion, S. of C. p. 68). However, the same general law is made more specific in Volume 46 of Corpus Juris on page 558, where it says:

> "Personal service is, properly, service directly upon the person to be served. It has been held that, where a statute provides for notice, *but does not prescribe the manner of service,* it is sufficient if actual notice to the person to be affected is given; and that, where a statute directs that notice in writing shall be given but prescribes no method of service, it is ordinarily sufficient to show that the party to be notified actually received written notice and that the method is unimportant." (Italics ours.)

The case cited in the notes, *Brost* v. *Whitall-Tatum Co.,* 89 N. J. L. 531, affirms the *Wilson* case (*supra*). The *Brost* case involved the statutory requirement of a notice from either the employer or the employee as to the provisions of the Workmen's Compensation Act and the Court held that the Workmen's Compensation Act:

> "does not prescribe the form of notice to be given by or to the parent or guardian of a minor employee to prevent the operation of the Act upon the contract of hiring nor of the manner of service of such notice. It appears, therefore, that actual notice is all that is necessary to bring the given contract within the purview of the statute.
>
> "In Wilson *v.* Trenton, 53 N. J. L. 645, this Court had before it the question of service of a notice of an assessment for the laying out and opening of a street in Trenton, the charter of which city requires that notice be served upon residents. It is not perceived that a statute, requiring the giving of a notice of an assessment for the laying out and opening of a street, differs in regard to the manner of service from one requiring notice that the Workmen's Compensation Act is not to apply in a given case, the method of service not being provided for in either statute. In Wilson *v.* Trenton, Justice

> MAGIE (afterwards Chancellor) speaking for this Court, observed (at page 648) that: 'if the required notice is conveyed to the person to be affected thereby, it is sufficient.' In the case at bar, as already shown, the notice was actually conveyed to and received by the boy's father. We are of the opinion that there was due service in this case of the notice that the Workmen's Compensation Act should not apply, and, therefore, the plaintiff's suit was properly brought at common law."

A very interesting sidelight on the attitude of the New Jersey courts to the question of personal service, as provided by statutory construction is furnished by the case of *Kearny* v. *Cleary* (6 Misc. R. 442). In this case the Supreme Court was asked to review an order of the Judge of the Hudson Circuit Court correcting assessments for local improvements in the Town of Kearny upon appeal under Section 42 of the Home Rule Act. It was contended that the Order of the Circuit Court Judge should be set aside for the reason, among others, that the order:

> "Does not direct that a certified copy thereof be served upon the Tax Collector and Clerk of the municipality as required by Section 42 of the Home Rule Act" (Kearny *v.* Cleary, *supra*).

The Supreme Court refused to set aside the order and held that although the order was lacking in respect to the service required:

> "Such omission is not fatal if the order is otherwise valid and justified."

Here, the requirement as to the notice of appeal is identical with the requirement for the

order of the Court, both being incorporated in the same section of the statute and if the learned Court finds that it was not the intention of the Legislature to make this a necessary requirement, then certainly a substantial compliance with the directions for the notice of appeal should be sufficient, especially where the appeal is taken within time and reaches the person or municipal corporation as intended.

POINT II

The Supreme Court erred in finding a failure to comply with the directions of the statute.

Justice HEHER, in the opinion of the Supreme Court, says for the Court:

> "* * * the law looks upon appeals with a favorable eye and statutes prescribing the procedure will be liberally construed" (Opinion, S. of C. p. 66).

The statute in question is Section 42 of Art. XX of the Act concerning Municipalities (P. L. 1917, pp. 319 and 392) as amended by Chapter 347, Laws of 1933 (P. L. 1933, p. 904). This provides that the landowners affected "may * * * appeal * * * by serving written notice of such appeal * * * upon the Tax Collector and a duplicate upon the Clerk of the governing body."

The clear intent of the Legislature was to provide an aggrieved property owner with "his day in Court." It was the intention to prescribe a procedure whereby a municipality could be apprised of the desire of a taxpayer to be heard

on the fairness of an assessment. The Court should endeavor to give effect to the intention of the Legislature.

> "It is a fundamental rule of construction of statutes that the court should endeavor to ascertain and give effect to the intention of the Legislature. Borquist *v.* Ferris, 164 Atl. 38; Morris Canal & Banking Company *v.* Central Railroad Company, 16 E. 419; Thompson *v.* Egbert, 17 N. J. L. 459; Commercial Trust Company of New Jersey *v.* Hudson County Board of Taxation, 86 N. J. L. 424, aff. 87 N. J. L. 179; O'Neill *v.* Johnson, 99 N. J. L. 317; State *v.* Cortese, 104 N. J. L. 312; Clarkson *v.* Ley, 106 L. 380."

The learned Justice makes a point of the fact that the legislative intent was contrary to the contention of the appellants because Section 23A of Article XX (P. L. 1921, pp. 511, 513) prescribed for notice on the "chief executive officer or the clerk of the governing body, either personally or by leaving the same at his office or place of abode."

The statute is silent as to substituted service in Section 42 of Article XX. May it not be just as indicative of the intent of the Legislature that having spoken in one section of the manner of service on a public body that the intention was to carry through the same kind of service, in other paragraphs following. The fact that Section 23A precedes Section 42 would certainly spell out such an intention.

The important thing is that the Legislature intended notice to come to the municipality of the fact that a court proceeding has been instituted. The proceeding is not one to be defended by the Tax Collector, nor to be defended by the

Clerk. The municipal governing body is the only body charged officially with the duty of adopting and upholding its assessments.

It is not improper to suggest to the Honorable Court that the determination of the Supreme Court, would, we believe, give sanction to a municipal body in preventing appeals from any improvement ordinances by the mere subterfuge of giving a vacation for thirty days to the particular officers on whom service must, in person, be made. The Supreme Court said:

> "It is not suggested that personal service upon these public officers was impossible" (S. of C. p. 67, Opinion).

The statute merely provides for "serving written notice of such appeal * * * upon the tax collector." Any determination as to how the service should be made to fit the requirement of the statute must, of course, be followed in all cases and the impossibility of service would, therefore, be no excuse for non-service within the statutory period. The Supreme Court, in its opinion, brushes this aside. It is hardly conceivable that the Legislature intended that service should be made only on the tax collector and clerk, as individuals, and not in their official capacities. The absurdity of this contention is apparent when you consider that the taxpayer would be deprived of his rights in case the officer or either of them were ill, absent or on a vacation and carrying it to its extreme limits could deprive the taxpayer of his appeal and rights to the extent that the municipality, because of political or any other reason, could have the officer or officers conceal themselves or the officer might conceal himself through personal animosity.

If the tax collector is sick, away or on a vacation, or conceals himself, what did the Legislature intend the appealing taxpayer to do? Isn't it the intention of the Legislature to serve them in their official capacity and give the municipality notice of the appeal?

It will be noted that there was absolutely no claim that the borough did not have notice and by making the motion for dismissal the Borough demonstrated that it had received notice. It is shown that the officers were not at their place of municipal business during business hours and it should not be necessary to find them either within or without the State. In many instances, here in Bergen County, where municipalities are small and part-time appointments are made, the municipal officers are privately employed in New York City and attend to their official business in the evenings, although the municipal buildings are open all through the day and as in this case, the public is advised of day time office hours.

It is true, also, that in large municipalities the taxpayer would frequently be deprived of his rights in view of the fact that it would be impracticable to make service upon the municipal officers personally.

In the opinion of the Supreme Court (S. of C. p. 66) the cases relied on and cited with particularity were those of *Prop. of Morris Aqueduct ads. Jones,* 36 N. J. L. 206, affirmed 37 N. J. L. 556 and *Baader* v. *Mascellino,* 116 N. J. Eq. 126. Both of the above cases were pointed out as expressive of the general rule that it is fundamental that a substantial compliance with the provisions of the statute is a prerequisite to jurisdiction in the appellate court and further where the lawmakers' purpose is expressed in

unmistakable language, the provision must be enforced by the Court as it is written, without regard as to its wisdom or utility.

The case in point differs entirely from the state of facts set up in either of the above cases. In the *Baader* v. *Mascellino* case (*supra*) there was the failure to comply with a statutory requirement for the filing of a notice of intention. There was complete failure to file such a notice and the statute was entirely disregarded. The learned Justice said there was "not even a substantial compliance with the statute."

In the case of *Prop. of Morris Aqueduct ads. Jones* (*supra*) the notice of appeal required by the statute was not filed within the time set by the statute, and the requirement as to time was held by the Court to be "fixed with entire certainty and precision." The notice having been filed out of time, the appeal was dismissed on the ground "that the notice was not given within the time prescribed by statute." It is generally understood to be fundamental law that where a statute prescribes a manner of service or time of service, to fail in either case is fatal. We respectfully submit to the Court that the statute under construction in this case does fix a *time* of service but fails to prescribe the *manner* of service. This is also the finding of the Supreme Court. Therefore, the case is governed by the ruling in *Wilson* v. *Trenton* (*supra*). Concededly, the notices in every case were served in time and filed with the Clerk of the Court in time. Since there was no procedure set forth as to the manner of service, the determinations made in the cases of *Baader* v. *Mascellino* and *Prop. of Morris Aqueduct ads. Jones* are not at all in point in this case.

In the *Prop. of Morris Aqueduct ads. Jones* decision (*supra*) Justice BEASLEY, for the Supreme Court, made a dicta as follows:

> "I am sure that the following proposition is established by the large majority of these authorities, viz.: that every requirement of the act must have the full effect the language imposes, unless such interpretation of the words will lead to great inconvenience, injustice or a subversion of some important object of the act."

It is also settled:

> "that where there are two permissible constructions of a statute, one working injustice and the other equity and fairness, the latter will be adopted upon the presumption that the Legislature did not intend to work injustice" (Association of Jersey City *v.* Davidson, 29 N. J. L. 415).

which is cited with approval in *Borquist* v. *Ferris,* 164 Atl. page 38, and

> "in construing a statute where literal interpretation may lead to absurd results, resort may be had to the principle that the spirit of the law controls the letter." (Jensen *v.* Woolworth Co., 92 L., p. 34.)

In the early case of *State, Chambers, Pros.* v. *Dwyer,* 41 L., p. 93, service of a writ of certiorari was questioned as to its sufficiency because it was served on the Clerk of the Road Commissioners who was employed to keep a record of their proceedings and do such other work as they desired him to do. The Commissioners were not an organized body with a Clerk as their official representative upon whom service of ordinary process might be made. The Supreme Court held that:

> "Service of ordinary process upon him would not be legal service upon the commissioners. If the regularity of the proceedings in these suits depended solely upon the legal effect of the service of these writs on Symmes (the clerk), they would be fatally defective. But it appears that all the writs were delivered by Symmes to Paxton (one of the commissioners) * * * before the return day * * * It also appears that Symmes communicated the fact of the service of the writs to the other commissioners. * * * This was sufficient service to make it obligatory on the defendants to obey the command of the writs in making return thereto. * * * If the original is in fact delivered to the persons to whom it is directed, in such a manner as to communicate the information that they are required to obey it, the service is sufficient. The court will not allow its process to be disregarded or evaded on mere technical grounds, citing High on Ex. Rem., Sections 517, 732; Haring *v.* Kaufman, 2 Beas. 397, Endicott *v.* Mathis, 1 Stockt. 110."

To permit the ruling of the Judge of the Circuit Court to stand would work an extreme hardship on the prosecutors by depriving them of an opportunity to be heard due to no fault of their own. Owners should not be deprived of rights. The statute limits the time for appeals to thirty (30) days from the adoption by the local governing body of the assessment rolls. The ruling of the Circuit Court, as well as the Supreme Court has deprived these owners of their opportunity to make a new service if such could be made. Owners should not be deprived of their rights through no fault of their own.

In the *Heilman* v. *Clouney* case, decided in the Supreme Court, 90 N. J. L. 87, 107 Atl. 687; and

authoritatively cited by Justice MINTURN in *Kostrob* v. *Riley,* 143 Atl. 863, the Statute of Limitations had run and plaintiff had in good faith begun an action within time. The defendant was not brought into court because of the mistake or default by the officer charged by law with the duty of serving the summons. Justice PARKER, speaking for the Court, said:

> "The statute of limitation has run and where a plaintiff in good faith has begun an action within time, and has failed to bring defendant into court because of mistake or default by the officer charged by law with the duty of serving the summons, the court should save the right of action if it can be done without working manifest injustice. Two methods are open (1) to order a new summons to issue under section 53 of the Practice Act of 1903, which may be done even after the limitation has expired (Mut. Ben. Life Ins. Co. *v.* Rowland, 26 E. 389—rev. on another pt. 27 E. 604) or to direct new service of the original summons under a practice analogous to enlarging the return day. (Stellmacher *v.* Kloepping, 36 L. 176) McCracken *v.* Richardson, 46 L. 50; County *v.* Borax Co., 68 L. 273; Walnut *v.* Newton, 82 L. 290."

In the *Kostrob* v. *Riley* case (*supra*) the Supreme Court also allowed a new summons to be issued although the statute had run for the reason that it was not the fault of the plaintiff but the fault of his attorney. Justice MINTURN, in drawing attention to *Heilman* v. *Clouney* (*supra*), said:

> "In that case (above) the failure to comply with the requirement of the Procedure Act was due, in the language of the decision, to 'mistake or default by the officer charged by law with the duty of serving the sum-

> mons.' In the present instance quite manifestly the error which resulted was caused by the mistake or default of an attorney of this court, who also may be classed as an officer of the law, charged with the duty not of serving the summons, but of drawing the same in proper and legal form, so that the rights of his client might be fully protected."

To summarize then, the statute failed to set forth the manner of service. The Court has ruled in the case of *Wilson* v. *Trenton* (*supra*) that where this is the case, then if the notice is shown to have come to the proper person it constitutes lawful and proper service. These facts were amply shown by the testimony and the prosecutors-appellants should not be deprived of their day in court by mere technical objections.

We, therefore, contend that the Circuit Court erred in dismissing the appeals and that the Supreme Court erred in not reversing the order of the said Circuit Court for the reasons set forth herein.

It is, therefore, respectfully submitted that the judgment of the Supreme Court should be reversed to the end that the orders of the Judge of the Bergen County Circuit Court may be set aside and the appeals of the prosecutors may proceed to a proper conclusion.

Respectfully submitted,

SEUFERT & ELMORE,
Attorneys for Prosecutors-Appellants.

CHARLES FISHBERG,
Of Counsel.

BAR PRESS, INC., 47 WEST STREET, NEW YORK. BO. 9 – 0157-8

New Jersey Court of Errors and Appeals

HARRY J. H. RUHLE, *et als.*, *Prosecutors-Appellants*, *v.* EDWIN C. CAFFREY, Judge of the Bergen County Circuit Court, *Respondent-Appellee.*	ON CERTIORARI

BRIEF ON BEHALF OF RESPONDENT-APPELLEE

Statement of Facts

The Borough of Tenafly, in Bergen County, by virtue of an Ordinance, made a local improvement on Sussex Road, Burlington Road and Westervelt Court, in that municipality, and subsequently caused an assessment to be made for benefits conferred by virtue of that improvement. The work was completed in December, 1927, and the Report of the Commissioners of Assessment was approved and adopted in July, 1928. Some of the then property owners were aggrieved as to the assessment, and obtained a Writ of Certiorari from the Supreme Court to review the assessment, and in 1931, the Supreme Court set that assessment aside for the reason that when the Mayor and Council held one of their hearings on the Report of the Assessment Commis-

sioners, some of the property owners were not properly notified. It was also alleged by the Prosecutors in that proceeding, that the assessment ought to have been set aside because the improvement dealt with three separate streets and the Borough regarded it as one improvement when in fact it should have been dealt with as three separate improvements. The Supreme Court, however, in that proceeding refused to pass on the question as to whether or not the joining of three streets in one improvement was harmful to the then property owners.

Subsequently, and pursuant to the decision of the Supreme Court, the Borough of Tenafly caused a re-assessment to be made. The municipality proceeded to re-assess the property, separated the cost of each improvement as it related to each street, and proper notices of every step in the proceeding were given to the property owners and the new assessment was made in strict compliance with the statute. The property owners then had thirty days under the law within which to question the reasonableness of the amounts then assessed against them. On the thirtieth day, which was the last day, seven property owners, owning but nine lots of the approximate 100 lots involved in the assessment, attempted to appeal the reasonableness of the amounts assessed against them by appealing to the Circuit Court of Bergen County for that purpose.

The Borough of Tenafly, through its counsel, on a motion duly made as to the procedure adopted by the Prosecutors, urged the dismissal of the appeals before the Bergen County Circuit Court, on several grounds, one of which was that the Notices of Appeals were not served in

accordance with the statute in such cases made and provided. The Honorable Edwin C. Caffrey, Judge of the Bergen County Circuit Court, on December 8th, 1933, concurring with that view, dismissed the appeals on the grounds, first, that the appeals were not signed by the property owners, and secondly, that proper service according to the statute was not made on the Tax Collector or Borough Clerk of the Borough of Tenafly. The Court's opinion, appears in the State of Case at page 24, and the Order Dismissing the Appeals, State of Case, at page 21.

The seven property owners, feeling aggrieved at the decision of Judge Caffrey in the Bergen County Circuit Court, then obtained a Writ of Certiorari to review the decision of the Circuit Court Judge, and the matter was argued before the Supreme Court at the May 1934, Term. The Supreme Court, in its opinion (State of Case, p. 65), affirmed the Orders of Dismissal as theretofore decided by Circuit Court Judge Caffrey. It is from this decision of the Supreme Court that this appeal is now presented by the prosecutors-appellants.

The Evidence

The prosecutors were aggrieved with the assessments levied against them by the Borough of Tenafly and attempted to file their appeals by virtue of Section 42, Article XX of the Home Rule Act as amended by P. L. 1925 at page 233.

It must be mentioned at the outset, that it has long been the established practice under the statutes of this State, to permit municipalities to make

certain improvements and to assess the benefits upon the property owners whose property abuts and receives benefits by virtue of that improvement. Formerly and prior to the statutes which now make up the Home Rule Act, the decision of the municipality in setting forth definite assessments and definite amounts as liens against the respective properties, was the final action in assessments. Property owners or persons alleged to have received benefits thereby, were deprived of any rights of appeal. The Legislature of the State of New Jersey, thereupon realizing that a method of appeal should be provided for, undertook, in the Home Rule Act, to set forth a definite procedure under the terms of which aggrieved property owners could appeal to the Circuit Court. Realizing therefore that no right existed either at common law or prior to the enactment of the statutes above referred to, it thereupon conferred upon the persons aggrieved, the right to proceed with an appeal only upon definite conditions and in strict compliance with the law.

The Home Rule Act, by its passage, was intended to consolidate and codify the law to govern municipalities and to set up a definite method as to procedure. Article XX of the Home Rule Act as above referred to, deals particularly with the manner and procedure as to improvements generally.

Where any owner is interested in appealing the assessments for benefits from an improvement, he must, of necessity, look to Section 42 of Article XX of the Home Rule Act as amended by the laws of 1925, at page 233, and especially the pertinent part of the statute involved, which reads as follows:

> "Any owner of any property assessed for benefits or awarded damages as incidental to the improvements *as distinguished from damages for land to be taken under this act,* may, within thirty days after confirmation of such assessment or award, appeal from the same to the Circuit Court of the county wherein such municipality is located by serving written notice of such appeal within such thirty days upon the tax collector and a duplicate upon the clerk of the governing body. A copy of such notice, together with verification of the service thereof, shall be filed in the office of the Clerk of said court within one week after service thereof, or such appeal shall be considered waived. Such notice shall state the address of the appellant where notice of further proceedings may be served upon him." (Italics ours.)

There is no inherent right in a property owner to appeal on the question of assessments for benefits. Whatever right he has must come through legislation. It will be noted that the statute just referred to above allows an owner to appeal by serving written notice of the appeal upon the Tax Collector and a duplicate upon the Clerk of the governing body. Inasmuch as the Legislature has definitely set forth the procedure, the procedure must be followed definitely. The appeals therefore in this case do not follow the statute.

The testimony of Harold W. Gammon (State of Case, pp. 38 to 45) who served the Notices of Appeal, clearly shows that he did not serve them upon the Tax Collector, but served Mary Delehanty, who happens to be the wife of the Collector of the Borough of Tenafly (State of Case, p. 43, l. 34).

The testimony of the same witness also shows (State of Case, p. 43, ll. 22 to 29) that when he

went to serve the Notice of Appeal, he did not even inquire for the Tax Collector, but merely left the papers with the Collector's wife.

A further reference to the State of Case, at page 58, lines 32 to 39, shows that Mrs. Delehanty has never been designated with any authority in the Tax Collector's Office and receives no compensation from the municipality for any work in the Tax Collector's Office.

The brief of the prosecutors-appellants, at page 5, also states that Louisa Springer was retained by the Borough of Tenafly to take charge of the offices in the Borough Hall in the absence of the officials (refer to State of Case, p. 53). A reading of the entire testimony of the said Louisa Springer (State of Case, pp. 53 to 55) will show that statement to be incorrect and also fails to show that her position with the Borough of Tenafly was that of anything other than that of a stenographer and she was never in charge of the offices of the Borough and certainly holds no position which places her in any authority in the Borough Clerk's Office or in anywise acting for him.

POINT I

The Supreme Court did not err in upholding the Circuit Court Judge because the law as established in New Jersey, justified a dismissal of the appeals.

As outlined above, in order for the prosecutors to appeal from the decision of the Assessment Commissioners to the Circuit Court, they must

follow the statute. The Section of the law which gives the prosecutor the right to appeal is known as Section 42, Article XX, Chapter 152 of the Laws of 1917, known as the Home Rule Act, together with its amendments and supplements.

In the very same Act referred to above, but in Section 23a thereof (which section refers to awards for lands taken and not assessments for benefits imposed upon improvements) the following appears:

> "An appeal under Section 23 of this Article shall be taken by serving a notice thereof on the chief executive officer, *or* upon the clerk of the governing body of the municipality *either personally or by leaving the same at the office or place of abode.* Such notice shall state the award, or part thereof from which the appeal is taken, the name and address of the person appealing, and proof of service thereof shall be filed in the office of the clerk of the court to which the appeal is taken within seven days after such service, or the right to appeal shall be considered waived." (Italics ours.)

It is apparent, if we consider this section and Section 42, that the Legislature apparently intended different procedure to be followed in different types of appeals. The Legislature made a distinction with respect to the service under these two sections and we must contemplate and construe that the Legislature recognized the two distinct methods to be followed in the appeals provided for in the same Act. As the learned Judge of the Bergen County Circuit Court said, (State of Case, p. 26):

> "Giving strict interpretation to the language of Section 42, Article XX, the appellants had not complied with the requirements of the statute."

And then again on page 27, State of Case, the Court said:

> "In keeping with the language differentiating between methods of appeals under Section 42, Article XX, and Section 23a, Article XX of the very same Act, I must assume that the Legislature intended a strict compliance with the language set forth in Section 42, Article XX. The appeals filed in this cause have not met the requirements prescribed in the Act and will be dismissed."

A municipality has the right to assume that no appeals from assessments for benefits conferred upon property will be allowed unless such appeal is made according to the method definitely set forth in the statute allowing such appeal. In the recent case of *West Essex Building & Loan Association, et al., Prosecutors, against the Borough of Caldwell,* reported in 112 New Jersey Law, at page 466, the Supreme Court set aside an ordinance because the statute had not been strictly followed as to the procedure in adopting and approving the ordinance. At page 469 thereof, the Court states,

> "Approval of the ordinance in one of the statutory modes was essential to its validity."

If it is essential to the validity of an ordinance that it be approved in one of the statutory modes before it becomes valid, certainly must it be essential that in order for an appeal from an assessment to be valid, the statutory modes outlined in the procedure of appeals must be exactly followed. To decide otherwise would result in confusion as then a municipality would be unable to determine when its assessments were safe from

appeal. In an assessment, as in this case, involving approximately $100,000.00 and affecting over one hundred different pieces of property, it is of the utmost importance to a governing body that where seven owners feel aggrieved, they should at least, before being given an opportunity to present their appeal to the Circuit Court, follow the definite requirements of the statute.

In Article 37 of the Home Rule Act, at Section 26, which is the very last paragraph of the Home Rule Act, the Legislature concluded by saying,

> "And in construing the provisions of this Act, all courts shall construe the same most favorably to the municipality, * * *".

It is interesting to note the history and chronology of Section 23a of Article XX, and compare and distinguish it from Section 42 of Article XX of the Home Rule Act. Section 23a of Article XX sets forth the procedure when an appeal is made from an award for lands taken as provided for in Section 23 of Article XX. In the original Act, namely, Chapter 152 of the laws of 1917, Section 23 of Article XX provided for an appeal from awards for land taken by a municipality where the owner felt himself aggrieved by the municipality's action. No provision whatever was made in that Act that determined on which officer of the municipality notice of such an appeal should be served, and this defect was corrected by Chapter 163 of the Laws of 1918, where a new section, known as 23a, was added to Article XX. Section 23a as adopted by the Laws of 1918, provided that notice of appeal should be served upon the chief executive officer of the municipality, either personally

or by leaving the same at his office or last known place of abode. In 1921, by Chapter 195 of the Laws of 1921, the Legislature further amended Section 23a of Article XX by providing that Notice of Appeals under Section 23 should be served upon the chief executive officer, or upon the clerk of the governing body of the municipality, either personally or by leaving the same at his office or place of abode.

The Home Rule Act, which is Chapter 152 of the Laws of 1917, contains also Section 42 in Article XX, which provides for appeals by owners where the question of assessments is involved, and prescribes the manner of appeals from those assessments. Originally such an appeal went to the Court of Common Pleas of the county wherein the municipality was located, and service thereof was to be made on the Tax Collector within ten days after the confirmation of the assessment. Chapter 163 of the Laws of 1918, which added Section 23a as above stated, also amended Section 42 of Article XX and provided therein that Notice of Appeal from assessments could be made by serving written notice of such appeal on the Tax Collector within 30 days, instead of ten days, after the confirmation of the assessment. That law was again amended by Chapter 195 of the Laws of 1921, to make the law thereafter that notice of appeals from assessments should be served within 30 days after the confirmation of the assessment, on the Tax Collector and a duplicate thereof should be served upon the Clerk of the governing body.

Chapter 228 of the Laws of 1924, repealed Section 42 of Article XX as it was originally passed in 1917. By Chapter 71, the Laws of 1925, the Legislature amended Section 23 of

Article XX but made no change in Section 23a and by the same Act an entirely new section, namely, 42, was added, which provided that the owner of property assessed for benefits incidental to improvements *as distinguished from land to be taken,* could appeal within thirty days after the confirmation of the assessment to the Circuit Court of the County, by serving notice of the appeal upon the Tax Collector and a duplicate thereof upon the Clerk of the governing body.

How anyone reading or examining the various amendments to the Home Rule Act, to which reference in detail is hereinabove made, can determine or believe that the Legislature of the State of New Jersey did not mean and deliberately intend that appeals such as is involved in the case now before this Court, could be instituted in any way other than that expressly set forth in the various statutes, is unbelievable. The Legislature intended to make a definite distinction between the procedure for appeals where land is taken and awards are to be made therefor, and that where property owners are aggrieved because of the assessment levied against their property. This is the entire contention of the respondent-appellee in this case. The Legislature stated that the Notices of Appeals must be served upon the Tax Collector. Certainly, service upon his wife was not intended by the Legislature and such service upon her is clearly defective. This was determined by the Circuit Court Judge and in that contention he was confirmed by the Supreme Court.

As the learned Justice of the Supreme Court in his opinion (State of Case, p. 69, l. 36) said:

> "While it is difficult to understand why the Legislature provided for substituted service in the one case and not in the other, we must take the Act as it is and assume that the omission of such provision in one case was purposeful and not inadvertent. This was a question of legislative policy and where the lawmakers' purpose was expressed in unmistakable language, the provision must be enforced by the Court as it is written, without regard as to its wisdom or utility. Baader *v.* Mascellino, 116 N. J. Eq. 126. Compare Proprietors of Morris Aqueduct, *supra*" (36 N. P. L. 206, affirmed *sub nom.;* Jones *v.* Morristown Aqueduct Co., 37 N. J. L. 556.)

The following is almost universally accepted as a clear statement of the law relating to the service of process:

> "Where a particular method of process is prescribed by statute, that method must be followed and the rule is especially exacting in reference to corporations. If the manner of service is not provided for, personal service is requisite. 21 Ruling Case Law, page 1269."

Personal service ordinarily means actual delivery of process to the defendant in person and does not include service by leaving a copy at his usual place of abode, or at his home, or his office, or by delivery to someone else for him (see 50 C. J. 468).

The general rule in regard to the service of process established by centuries of precedent, is that process must be served personally within the jurisdiction of the Court upon the person to be affected thereby. Substituted service, when provided by statute, is in derogation of such gen-

eral rule, and consequently the direction thereof must be strictly construed and fully carried out to confer jurisdiction.

Erickson v. *Macy,* 231 N. Y. 86, 131 N. E. 744, 16 A. L. R. 1322.

It is a corollary of this that if the manner and mode of service is not provided for, personal service is requisite. This is the generally accepted rule.

See:

Haj v. *American Bottle Co.,* 261 Ill. 362, 103 N. E. 1000;
Hardenberg v. *Thompson,* 1 Johns. 61, 3 C. J. 1235.

The prosecutors herein take the position that only a substantial compliance with the requirements for the notice of the appeal should be sufficient. In this connection, the acts of the municipality are acts in the name of sovereignty. The privilege to appeal from an assessment is in the nature of a renunciation of that sovereignty. The courts of New Jersey have for years followed the doctrine enunciated in the case of *Sisters of Charity* against *Cory,* 73 N. J. L. 699, to the effect that anything that is in the nature of a renunciation of a sovereignty must be strictly construed against the one claiming the renunciation, and can never be permitted to extend either in scope or duration beyond what the terms of the concession clearly required.

The prosecutors argue that substantial compliance is all that is required in this particular type of case. To follow this doctrine would mean that an appeal filed thirty-one days after the con-

firmation of the assessment should be allowed and tolerated, or that notice of the appeal served on the Chief Executive Officer instead of the Borough Clerk would be substantial compliance. If the argument of the prosecutor prevails, we might well have a situation where an appeal would be allowed to be taken where the service was not made on the officer designated by the statute, within the time designated by the statute, nor within the manner designated by the statute. Regardless of how much the prosecutor disagrees with the Acts of the Legislature, it is still the body provided for by our Constitution to enact legislation and wherever it is possible, our courts are bound by their constitutional limitations and by a long list of precedents to give to the Acts of the Legislature the ordinary meaning of the words used by the Legislature.

POINT II

Where the legislative purpose is expressed in unmistakable language, it must be enforced by the courts as it is written, without regard to its wisdom or utility.

Time and again the Courts of New Jersey have been confronted with the proposition that the Legislature did not mean what it seemed to mean when it enacted certain laws. The answer to this proposition has universally been the same.

The Supreme Court, in deciding the matter which is now before this Court on appeal, quoted the case of *Baader* v. *Mascellino,* 116 N. J. E. 126. This case was an appeal from a decree in

the Court of Chancery which was made in a creditors suit to set aside conveyances. Depositions were requested by one of the parties. The act relating to the Court of Chancery provided that where such depositions were intended to be used at the final hearing, the party intending to use the same should file with the Clerk of the Court within twenty days after the filing of such depositions, a written notice of his said intentions. Despite the objection to the admission of the depositions in evidence, the Vice-Chancellor admitted them as evidence on the ground that they were admissions of a party to the suit. The Court reversed the decree, saying,

> "the language of the statute is clear and positive. The intention is distinctly expressed. The legislative purpose was to make the notice of intention a *sine qua non* of the right to introduce, at final hearing, the depositions so taken. That is the very essence of the provisions in question. Where the legislative purpose is expressed in unmistakable language it must be enforced by the Courts as it is written without regard to its wisdom or utility."

On this question, see also *In re Freeholders of Hudson County,* 105 N. J. L. 57, at page 64, where the Court said:

> "The concensus of judicial opinion, not only in this State, but in sister States, is to the effect that the reasonableness or unreasonableness of a legislative enactment is not subject to judicial review or control."
>
> "The legislative body is the sole judge of the reasonableness of its enactment. The court is wholly without power to nullify a legislative act because of its being unrea-

> sonable. To attempt to do so would be to encroach upon the legislative prerogative under the Constitution. In Douglass *v.* Chosen Freeholders of Essex County, 38 N. J. L. 214, 216, Chief Justice Beasley, speaking for the Supreme Court, said: 'Where that which is directed to be done is within the sphere of legislation, and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience, or even absurdity of the result is out of place. It is no province of the courts to supervise legislation, and keep it within the bounds of propriety and common sense, so that even if in this case it could be demonstrated that the regulation in question was incommodious, or even hurtful, an appeal for relief to the judicial power would be utterly in vain.' This view has been repeatedly adopted in the following cases: Bullock *v.* Briggs, 78 N. J. L. 63; Island Heights Co. *v.* Brooks (Court of Errors and Appeals), 88 Id. 613; In re City of Passaic, 94 Id. 386; Weinstein *v.* Sheer (Court of Errors and Appeals), 98 Id. 514; Doherty *v.* Spitznagle, 139 Atl. Rep. 426."

Doherty v. *Spitznagle,* 104 N. J. L. 38, at 42, also discussed this proposition, where the Court said regarding legislative enactments, the following:

> "It may be this kind of legislation is unwise, as creating a tangled skein of statutes that is difficult and most perplexing to unravel. It certainly is not a desirable method of changing municipal officials. But, as has been said by this court, where that which is directed to be done is within the sphere of legislation, and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience, or even absurdity of the result, is out of place. It

> is no province of the courts to supervise legislation, and keep it within the bounds of propriety and common sense. Douglass *v.* Board of Chosen Freeholders, 38 N. J. L. 214, 216."

Douglass v. *Freeholders of Essex County,* 38 N. J. L. 214, involved the construction and interpretation of the charter of the City of Belleville, granted by the Legislature. Under the terms of the charter, Freeholders elected from the City, could not enter upon the discharge of their duties unless, within twenty days after election or appointment, they subscribed an oath of office. In this case the oath of office was filed within a few days after the twenty day period. The Court said:

> "The law-makers, with respect to the point involved, have expressed their purpose in language so plain that no argument derived from induction can be of any avail. Where that which is directed to be done is within the sphere of legislation, and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience, or even absurdity of the result, is out of place. It is no province of the courts to supervise legislation, and keep it within the bounds of propriety and common sense, so that even if in this case it could be demonstrated that the regulation in question was incommodious or even hurtful, an appeal for relief to the judicial power would be utterly in vain."

Council for the prosecutor refers to *Wilson* v. *Trenton,* 53 N. J. L. 645; *McKenna* v. *Harrington,* 96 N. J. E. 700; *Brost* v. *Whitall-Tatum Co.,* 89 N. J. L. 531; *Kostrob* v. *Reilly,* 143 Atl. Rep. 863 and *Heilemann* v. *Clowney,* 90 N. J. L.

87. It is unnecessary to particularly refer to those cases except to mention that a quick perusal of each of those cases will clearly indicate their inapplicability to the case at bar.

The prosecutors argue that to dismiss the original appeals would work an extreme hardship by depriving them of an opportunity to be heard, due to no fault of their own. It was certainly not the fault of the municipality that the prosecutors found themselves in the position they are now in. Had they followed the statute and made service of the Notice of Appeal as provided therein, this question would not have been before the Court. To say that the result is harsh or absurd, is beside the point. The prosecutors contend they are without remedy. That certainly is not the fault of the municipality. It is certainly not the fault of the Legislature. The prosecutors are no more without remedy than a person who waits longer than the time set forth in the Statute of Limitations for his alleged wrongs or cause of action. As a matter of fact, the alleged notices of appeals were filed on the last day permitted under the statute and the prosecutors should not be now heard to complain that proper service could not have been made within the time permitted by the statute. Incidently, nothing appears in the record to indicate that the Tax Collector or the Borough Clerk were absent at the time service was attempted to be made. To the contrary, the testimony of the witness, Harold W. Gammon (State of Case, p. 43, line 25) shows that when he went to the Tax Collector's office, he did not even inquire for the Tax Collector.

The prosecutors had twenty-nine days before they attempted to serve the Tax Collector to try

to make service upon him and if they decided to do nothing for the first 29 days and then on the very last day attempted to make service and could not in accordance with the statute, it would not be fair for them to now complain that they did not have enough time to make service. The Legislature apparently had that very thing in mind when it granted aggrieved property owners 30 days within which not only to decide whether they wanted to take an appeal, but within which time they were to file and serve the notice of appeal in accordance with the statute.

The Legislature in the Home Rule Act, has provided a tribunal for an appeal from an assessment for benefits and has nominated the Circuit Court of the respective counties as that tribunal. In addition, the Legislature has described the definite pathway by which that tribunal may be reached. How can the Court permit an appeal, as the prosecutors attempt, to reach the tribunal set up by the Legislature by a pathway of their own choosing? If the prosecutors herein did not avail themselves of the remedy given them, they should not now be heard to complain.

A municipality has the right to rely upon its assessments if they are made according to the statutes in the various cases made and provided. It should also have the right to believe that any attack on or appeal from assessments made, will be made in the method prescribed by the Legislature. If the prosecutors are sustained in their contention, municipalities can no longer rely upon the fact that appeals from assessments must be made according to the statute and as a result the entire financial structure of a municipality might be totally wrecked because of un-

certainty and no definite assurance that the time for appeals had finally terminated to those who had not properly followed the statute.

Counsel for the prosecutors, on page 20 of his brief, refers to the early case of *St. Chambers* v. *Pros. Dwyer,* 41 N. J. L. 93. This case is certainly inapplicable to the case at bar because that was a case which referred to the validity of the service of one of the Court's own Writs, and a short glance at that case will also show how and why it should have no bearing here.

On page 20 of the prosecutor's brief they state that owners should not be deprived of their rights through no fault of their own. It is therefore assumed that for the purpose of that argument, counsel for the prosecutors attempts to shoulder the responsibility for improper service. It is only necessary to refer to page 15 of the prosecutor's brief in the Supreme Court action and to repeat here as they stated there:

> "where an attorney represents a client, he is presumed to have authority to file papers in his behalf. An attorney is a representative of his client and can only file papers in the name of his client by presuming to have authority to do so. Kaufman *v.* Jurzcak, 102 N. J. E. 66.
>
> "Counsel stands in the place of client, McDowell *v.* Perrine, 36 N. J. E. 632. See also Supreme Court rule No. 26."

State Highway Commission v. *Repole* involved an interpretation of the Eminent Domain Act. The respondents made a motion to dismiss the appeal of the Highway Commission upon the ground that it had not been taken, perfected or prosecuted in accordance with the provisions and directions in the Eminent Domain Act.

The Court of Errors and Appeals, in an opinion in the above case, 111 N. J. L., page 462, affirmed the action of the Court below, stating:

> "The Court acquires jurisdiction by virtue of the provisions of the statute. When the words of a statute, directing the time for the doing of a particular act, are clear, the provision cannot be deemed merely directory."

Conclusion

To summarize the entire case, not only from the facts but from the evidence and the law, it is clear and evident that the Supreme Court did not err in upholding the Circuit Court Judge because the law, as established in New Jersey, justified a dismissal of the appeals.

It is therefore respectfully submitted and urged that the judgment heretofore entered by the Supreme Court should be affirmed.

Respectfully submitted,

ABRAM A. LEBSON,
Attorney for Respondent-Appellee.

ABRAM A. LEBSON,
Of Counsel.

BAR PRESS, INC., 47 WEST STREET, NEW YORK. BO. 9 – 0157-8