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New Jersey Court of Errors and Appeals.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Prosecutor, Plaintiff in Error, vs. DAVID BAIRD *et al.*, STATE BOARD OF ASSESSORS *et als.*	In Error to Supreme Court.

BRIEF OF GEORGE HOLMES FOR PLAINTIFF IN ERROR.

FIRST.

Chapter 82, P. L. 1906, is unconstitutional.

The separate system of taxation of property used for railroad purposes provided by the Act of 1888 was sustained upon the ground that property used for railroad purposes is a self-created, separate and distinctive class, and, as the act taxed *all* of the class, it was a general law.

The Chancellor in State Board, &c., *vs.* Central R. R., 19 Vr., p. 278, said:

"The property separated so far from being taken by mere arbitrary selection, is, all of it, so circum-

stanced by reason of the peculiar use to which it is put as to make it on that account a class by itself. To value and tax such property in the same way in which other property is valued would be unjust. * * * This peculiarity of the property in question constitutes a legitimate class for the purpose of taxation, a class which in order to deal with it fairly in the matter of taxation must be treated separately * * * a law framed in general terms restricted to no locality and operating equally upon all of a group of objects which, having regard to the purposes of legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law. Railroad and canal property has such characteristics and the act under consideration extends to and *operates equally* upon all such property. The law therefore is general, * * * Railroads by themselves constitute a class for the purpose of taxation * * * The Constitution does not take away from the Legislature the power of selecting the subjects of taxation. But it does require that all members of the class selected shall be included in the taxing law and that the rule applied thereto shall be uniform to *the whole* of the class." * * * Again, at page 281, "for as before stated the apportionment does not affect the constitutionality of the tax, and each company is to be assessed *upon the same kind of property at precisely the same rate* and by *exactly* the *same method* of *valuation*." Again, pages 282–283, "The power of taxation is in the legislative branch of the government alone. It is unbounded except as it may be limited by constitutional restraint. A law which taxes a class of property separately is not unconstitutional if it embraces all property of that class and applies to it uniform rules and taxes it according to its true value. The constitutionality of such a law is to be determined in the same way in which it would be determined if the property taxed were the only property taxed in the State."

Scudder, *J.*, *Id.*, page 290, says in voting with the majority:

"Besides the requirement that property shall be assessed for taxes under general laws it must also be assessed 'by uniform rules.' The word 'uniform' is defined as 'not variable,' 'not different,' 'having the same form or manner.' As it stands in this paragraph of the Constitution it means that rules must not be variable in their application to the subject of taxation included in the classification of property. 'The tax is uniform when it operates with the same force and effect in every place where the subject is found.'" * * * P. 291, "The rules for taxation must be uniform as to the property in the class in which it operates. As to railroad property all property in that class must be assessed for taxes by the same rules."

Justice Parker said, p. 304:

"The uniformity of rules in taxation which the Constitution requires is that uniformity which operates on the whole of a class. A tax upon property of railway corporations should be governed by uniform rules as to the property of all such companies used for railroad purposes.

"The Act of 1884 now under examination is within this rule. It operates uniformly upon the property of *all* railroad corporations used for railroad purposes being as has been already demonstrated a distinctive class by reason of inherent qualities and therefore not antagonistic to the constitutional requirement of uniformity."

In Stratton *vs.* Collins, 14 Vr., 565, Justice Dixon says:

"The direction requires and is fulfilled by such regulations as should impose the same percentage of its actual value upon all the taxable property in the township for township purposes, in the county

for county purposes and in the State for State purposes."

Attorney General Stockton, in his brief, 19 Vr., 253, said:

"A uniform rule is a rule which puts an equal burden on all subjects that may be brought in competition with each other. * * * Equal taxation is such as is uniform on the class, and the class that possesses inherent qualities which render it necessary that their taxes should be equal, to be just, are principally the individuals of a class who would suffer by competition in the same business if taxed more than others engaged in it."

Justice Read said, 19 Vr., p. 325:

"Uniformity requires an equality of operation upon all property of the same class. It means that each owner of property of the class shall bear his proportion of the tax levied upon all the property comprising the class." * * *

Justice Paterson, 19 Vr., p. 332, said:

"A general law permits classification of property, "and as that of railroads and canals all over the "State is included in the act, I fail to see by what "reasoning it can be part and not the whole of a "class. All is brought in alike and taxed, that is, "all of this particular property. It is a class by "itself, and but one part of a whole system."

Judge Depue, 19 Vr., p. 338, said:

"A railroad or canal is a peculiar kind of prop- "erty, and the appraisement and valuation of such "property, including the rolling stock, property "used in transportation, and franchises, as a unit, "by a State board of assessors, instead of an ap- "praisal of it by local assessors in detached parts,

"would be indispensable in estimating such prop-
"erty at true value."

In Sisters of Elizabeth *vs.* Chatham, 22 Vr., 89, 90, Justice Dixon said:

"The train of decisions in this State as to what
"constitutes a general law need not be cited. It is
"sufficient to note that a law cannot be general
"unless it relates to at least a class of objects and
"embraces all the members of the class. * * * As
"was held by the Court of Errors in State Board of
"Assessors *v.* Central R. R. Co., 19 Vroom, 146, the
"constitutional provision does not take away from
"the Legislature the power of selecting the subjects
"of taxation, but it requires that all the members
"of the class selected shall be included in the tax-
"ing law. If one member of the class be excepted
"from the operation of the law, the law is not gen-
"eral (Bray *v.* Hudson, 21 Vr., 82)."

In Trenton Savings Fund *vs.* Richards, 23 Vr., 156, 158, Justice Dixon said:

"It has been decided that the constitutional clause
"above cited permits property to be classified for
"the purpose of taxation, but requires that all the
"members of the class selected shall be included in
"the taxing law, and that the rules applied thereto
"shall be uniform as to the whole of the class."

In Fidelity Trust Company *vs.* Voght, 37 Vr., 86, 90, Justice Van Syckel said:

"It is within the legislative discretion to create
"classes upon a substantial basis for the conveni-
"ence of effecting the levying and collection of
"taxes. * * * But when, for a given class, an
"arbitrary mode of assessment is provided, which
"subjects to taxation a part only of the true value
"of the property classified, constitutional provision
"is disregarded."

In Tippett *vs.* McGrath, 41 Vr., 110, 112, Justice Garrison said:

" The Legislature may select certain classes of " property for taxation, or may exempt certain " classes of property from taxation, provided, in " each case, the legislative object be accomplished " by general laws and that the property so selected " be dealt with under rules that are uniform as to " all of the class."

Citing numerous cases.

In Giozza *vs.* Tiernan, 148 U. S., 667, the Court said:

" It is enough that there is no discrimination in " favor of one as against another of the same class."

Michigan Central R. R. *vs.* Powers, U. S. Supreme Court Decisions, May 1, 1905; 201 U. S., p. 462.

In Kentucky Railroad Tax Cases, 115 U. S., the Court said:

" The rule of equality in respect to the subject " only requires the same methods and means to be " applied impartially to all the constituents of the " class, so that the law will operate equally and " uniformly upon all persons in similar circum- " stances."

In Cummings *vs.* Bank, 151 U. S., 153, 159, it was said:

"Taxation by uniform rule requires uniformity, " not only in the rate of taxation, but also uniform- " ity in the mode of assessment on the taxable " valuation. Uniformity in taxing implies equality " in the burden of taxation, and this equality of " burden cannot exist without uniformity in the " mode of assessment as well as the rate of taxa- " tion. But this is not all. The uniformity must " be co-extensive with the territory to which it ap-

"plies. * * * It must be extended to all prop-
"erty subject to taxation, so that all property must
"be taxed alike equally, which is taxing by a uni-
"form rule (*Bank* vs. *Hines*, *3 Ohio State*, *115*)."

The law, to be general, must embrace all within a natural class formed by reason of distinct and inherent characteristics arising from a distinctive use of what otherwise would be but common or general property; and, when selected by the Legislature for taxation, the taxing law to be constitutional must apply to all members of the class.

The law in question applies to but three members, viz.: Main stem, franchise and tangible personal property. The members of the class are not the companies or the owners, but the various componant parts going to make up a whole property devoted to a single use—transportation of freight and passengers.

Suppose the Act of 1884 taxed main stem, franchise and rolling stock only. Could Chancellor Runyon still have used the arguments I have quoted from his opinion to sustain that act?

Chapters 82 and 280 P. L., 1906, do no more or less, for Chapter 280 returns all other property used for railroad purposes not taxed by Chapter 82 to the general mass of common property in the State, and thereby creates precisely the same situation that would have existed under the Act of 1884 if that act had taxed main stem tangible personal property and franchise only. Nor is this changed by reading Chapter 280 as part of the Act of 1888, for without the aid of the general tax Act of 1903 it is no more a provision for the taxation of property than is Section One of the Acts of 1884 and 1888, declaring that all property not used for railroad purposes shall be taxed by the localities.

That declaration did not make the Act of 1884 a general law. It was wholly unnecessary and merely left that property to be taxed by the local authorities under the general

tax law then in force. Chapter 280 doth the like as to second class property. If it is a provision for imposing taxes and has become a part of the Act of 1888 then it carries with into that act the provisions of the general tax Act of 1903, for the taxes on said property are to be assessed and taxed the same as "other property." This "other property" is taxed by the Act of 1903, so that in order to save Chapter 82 we must impart into the Act of 1888, not only that chapter and Chapter 280, but also the General Tax Law of the State, for it is by this means only that you can make the law embrace all the members of the class.

The fact is that Chapter 280 repealed "Subdivision Two of Section Three" of the Act of 1888, and it might just as well have said so in plain English. If it were in the form of a repealer it would leave the so called second class property to local taxation just as effectively, because not being taxed by another law it would not be within the exception in Section 3. Subdivision 8 of 1903, p. 396, and would clearly be taxable under Section 2 of that Act, which declares that "all property, real and personal, within the jurisdiction of this State, not expressly exempted by this act or excluded from its operation shall be subject to annual taxation."

The Court below says that "the disputed ques-
"tion about the scope of the Perkins Act (Chapter
"280) is too important to be decided until the neces-
"sity arises, and we therefore leave it undecided." Why? It seems to me that the scope of the Perkins Act is to return part of the property that classified itself, to the general mass of property of the State to be taxed like the mass just the same as if it had never been segregated therefrom by the Acts of 1884 and 1888. If I am wrong, why? If I am right, then Chapter 82 is a mere arbitrary selection of a part of property that has classified itself by peculiar use and is 'all of it so circumstanced,' * * * as to make it on that account a class by itself."

The Court below vindicates this arbitrary selection on the ground that the main stem is a peculiar use of an indispensable belt or strip of land of limited width, as a public highway. The peculiar use, however, is very frequently much more than the limit, and the indispensable belt in many places exceeds two hundred feet in order to maintain indispensable cuts and fills, water tanks, pump houses, coal trestles, signal towers, and many other appliances that are just as indispensable as the land itself. The excess in width at the bottom of a fill to maintain the slopes is just as indispensable and just as important as every cubic yard of earth within its central one hundred feet. Equally indispensable in the use of this so-called highway is the excess width in terminal depots and other points, where the very nature of the use is identical.

On the further ground that the authorized road or highway historically is limited in width by the charters of the companies.

We answer, such limitations were created years ago when the widths indicated accommodated the business of that period; they are, however, more or less arbitrary, and are really limits upon the power of condemnation. They do not restrict the use of more property for the same purpose if the companies can acquire it by purchase.

And finally on the ground, that as the bulk of second class property is in the municipalities, and has the advantage of police protection and other advantages of municipal government, it is therefore reasonable that it should contribute directly to the cost of local government.

This may be an excellent reason upon which to sustain Chapter 280, but I fail to see why it makes the seggreation of one hundred feet of what is identical in use non-arbitrary, or why the financial needs of municipalities make a law constitutional.

The decision in 19 Vr. means, if the language em-

ployed means anything, that it is constitutional to tax property used for railroad purposes by a separate law and system, provided it embraces "*all of it*," otherwise "*all of it*," must be taxed as "*other property*" is taxed. If not, then what did Chancellor Runyon (19 Vr., pp. 282, 283) mean by this language:

"The power of taxation is in the legislative "branch of the government alone. It is unbounded "except as it may be limited by constitutional re- "straint. A law which taxes a class of property "separately is not unconstitutional if it embraces "all property of that class and applies to it uniform "rules and taxes it according to its true value. The "constitutionality of such a law is to be determined "in the same way in which it would be determined "if the property taxed were the only property taxed "in the State."

I respectfully submit that if it were the only property taxed in the State, and Chapter 82 the taxing act for part of and the Act of 1903 for the other part, Chapter 82 would certainly be a mere arbitrary selection of part of a common mass of property. It is none the less so because the Act of 1903 happens to include property other than railroad.

GEO. HOLMES,
Of Counsel for The Central Railroad Company of New Jersey.

NEW JERSEY

Court of Errors and Appeals.

NOVEMBER TERM, 1907.

RAILROAD TAX CASES

Nos. 129, 131, 134, 135, 136, 140, 154.

Memorandum by William H. Corbin.

The case in New York Court of Appeals, referred to by Mr. Corbin in the argument (and of which Mr. Justice Parker asked for citation), is *Del., Lack. & W. R. R. v. Clapp, 152 N. Y., 490.*

It was referred to in connection with the argument that there is an essential "unity" in property used for railroad purposes; that it is impossible to justly value it except as a unit, including the franchise; and that it is impractical and illegal for a local assessor to segregate a part of that franchise value and add it to the fragment of tangible real estate in his taxing district to arrive at the true value thereof, although such franchise does inhere in and attach to all the tangible property.

The quotations from opinions of the Courts, read by Mr. Corbin, but not all specifically pointed out in the brief, are as follows (italics ours):

Miller, J., State Railroad Tax Cases, 92 U. S., 575. "The theory of the system is to treat the railroad track, its rolling stock, its franchise, and its capital, *as a unit for taxation*, and to distribute the assessed value of this unit according as the length of the road."

And, again, he says: "A railroad cannot be valued as so much land, iron, and personal prop-

erty, but, by virtue of this privilege or franchise this is all aggregated into a unit."

And, again, he says: "As we have already said, a railroad must be regarded for many, indeed for most purposes, as a unit."

Beasley, C. J., in *Central R. R. Co. v. State Board of Assessors, 19 Vr., 8*, says:

> "Nor do we think that the present law, in "mere point of instrumentality, is ob- "jectionable, for it plainly appears that "some unusual system of appraisal was "requisite when we note the peculiar "situation of the property to which it "relates, and that the value of such "property *as a unit*, must be ascertained "before it can be distributed into valued "parts."

Runyon, C., 19 Vr., 278, 279, 280, in reading the opinion of this Court (same case on review), said:

> "The property separated, so far from being "taken by mere arbitrary selection, is, "all of it, so circumstanced by reason of "the peculiar use to which it is put as "to make it on that account a class by "itself. To value and tax such property "in the same way in which other prop- "erty is valued would be unjust. To do "justice to the companies, and in com- "mon fairness, not only must the main "stem of a railroad and the water-way "of a canal be each valued and taxed "*as a unit, but the other property used in* "*connection therewith and for the same* "*purposes must also be valued and taxed* "*with reference to such use.* * * *

"This peculiarity of the property in "question constitutes it a legitimate "class for the purposes of taxation—a "class which, in order to deal with it "fairly in the matter of taxation, must "be treated separately. In the leading "case of Van Riper v. Parsons, 11 Vr., "123, it was held that a law framed in "general terms, restricted to no locality "and operating equally upon all of a "group of objects which, having regard "to the purposes of legislation, are dis-"tinguished by characteristics suffic-"iently marked and important to make "them a class by themselves, is not a "special or local law, but a general law. "See, also, S. C. Id., 1-8. Railroad and "canal property has such characteristics, "and the act under consideration ex-"tends to and operates equally upon all "such property. The law, therefore, is "a general law." * * * "In fact, "under our laws various methods, which "have received express judicial sanction, "are employed for the taxation of the "property of various kinds of corpora-"tions in order that such property may "be taxed at, and not beyond, its true "value. Railroad and canal property "being peculiar property, which cannot "in justice to the owner be valued in "the same way as other property of a "like nature, the Legislature was bound "to provide a proper method of valuing "it justly for the purposes of taxation. "Such method must be a peculiar one. "The machinery provided for the pur-"pose by the act—a state board of as-

"sessors—is appropriate, and such as "is necessary in view of the peculiar "character of the property."

Depue, J., (in same case), *p. 338*, said:

"A railroad or a canal is a peculiar kind of "property, and the appraisement and "valuation of such property, including "the rolling stock, property used in "transportation, and franchises, *as a* "*unit*, by a state board of assessors, in- "stead of an appraisal of it by local as- "sessors in detached parts, would be "*indispensable* in estimating such prop- "erty at true value."

Scudder, J., (same case), *p. 288, 289*, said:

"There can be no question that this law im- "poses a tax on property, and it is not a "franchise tax. By subdivision 4 of "section 3 of the act, the value of the "franchise is to be estimated and inclu- "ded in ascertaining the true value of "all property used for railroad and canal "purposes, and the tax is imposed on this "total valuation. All is designated in "the act as property, and is within the "scope of this paragraph of the consti- "tution. That the franchise of a rail- "road or canal company may be thus "valued and assessed for general taxes is "abudantly settled both by authority "and precedent in legislative acts and "in the decisions of courts. It has an "appreciable market value not in all "cases easy to measure, and not always "determinable by the same rule or "estimate. Corporate rights and privi-

"leges by grant from the government "are not mere abstractions or so involved "with the other property of the corpo- "ration that they cannot be valued. "The land, road-bed, rails, buildings and "materials of which a railroad are com- "posed have a value, and the added "worth given to them by the uses to "to which they may be applied by the "public grant of a franchise for such "uses may be approximately if not ex- "actly estimated." * * * The whole "aggregate property of the railroad is "thus to be valued and brought together "for taxation, and the assessment is laid "upon it to supply a revenue for the "government of the State."

Parker, J. (*Same case*), *p. 300, said:*

"It is not the abstract value of the rails and "ties as so much steel and wood, or of "the land on which they rest as farm "land or building lots, or of the tangible "personal property in itself considered, "which are alone to be taken into ac- "count in ascertaining the true value of "property used for railroad purposes, "but the franchise also, which puts life "into what otherwise would be compar- "atively dead property, of little value. "*The true value of property used for rail-* "*road or canal purposes cannot be arrived* "*at except by treating it as a class by* "*itself.*"

(Citing and quoting from divers decisions.)

In *Cummings v. Bank, 101 U. S., 153, 159*, the Court said:

> "Taxing by a uniform rule requires uniform-
> "ity not only in the rate of taxation,
> "but also *uniformity in the mode of the*
> "*assessment* upon the taxable valuation.
> "Uniformity in taxing implies equality
> "in the burden of taxation, and this
> "equality of burden cannot exist with-
> "out uniformity in the mode of assess-
> "ment, as well as in the rate of tax-
> "ation."

ERRATA:

There is an error in printing on p. 8, last nine lines on the page, in Mr. Charles L. Corbin's brief.

The same should read as follows:

> "So that the assessment by the Jersey City
> "Assessors in 1906 of second-class prop-
> "erty for the purpose of taxation is sev-
> "en million dollars higher than it
> "would have been if they had adopted
> "the estimate of the State Board for the
> "previous year; and if, as is likely, the
> "State Board of Assessors followed in
> "1906 their valuations for 1905 of sec-
> "ond class property in order to get a
> "basis for valuing the franchise, then
> "the aggregate valuation for 1906, upon
> "which the railroad companies are pay-
> "ing taxes, is seven million dollars
> "higher than the total value of all the
> "property; and this is the result in Jer-
> "sey City alone."

The case of Cummings v. Bank, cited on pages 9 and 16 of Mr. Charles L. Corbin's brief as being in 151 U. S., 153, should be cited as in 101 U. S., 153.

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INDEX.

NEW JERSEY, SS.:

STATE OF NEW JERSEY to the Chief Justice and other Justices of our Supreme Court of Judicature, GREETING:

[L. S.]

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature before you, between The Central Railroad Company of New Jersey, Prosecutor, and David Baird, Stephen J. Meeker, Theodore Strong and Eckard P. Budd, State Board of Assessors, and J. Willard Morgan, Comptroller of the Treasury of the State of New Jersey, defendants, on a certiorari issued out of our said Supreme Court to the said defendants, manifest error hath intervened to the great damage of the said Prosecutor as it is said; we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and affirmed, then you distinctly and openly send, under the seal of said court, the record and proceedings aforesaid, with all things touching the same to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twentieth day of September, nineteen hundred and seven, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton

aforesaid, the fourth day of September, A. D. nineteen hundred and seven.

S. D. DICKINSON,
Clerk.

GEO. HOLMES,
Attorney.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, [SEAL.]
C. J.

NEW JERSEY SUPREME COURT,

JUNE TERM, 1907.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Prosecutor,* *vs.* DAVID BAIRD *et al.*, and STATE BOARD OF ASSESSORS *et al.*, *Defendants.*	On Certiorari. Rule for Judgment.

This matter coming on to be heard at the February Term, nineteen hundred and seven, of this court, and the court having heard the arguments of counsel and considered the evidence in said cause,—

It is ordered that the tax brought up for review

in the above matter be affirmed, and the writ of certiorari issued herein dismissed, with costs.

Entered August 17th, 1907,

On motion of
ROBERT H. MCCARTER,
Attorney General.

I, WILLIAM RIKER, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above stated cause and entered in the minutes thereof.

IN TESTIMONY WHEREOF I have set my hand and the seal of said Court at Trenton, this tenth day of September, A. D. nineteen hundred and seven.

[SEAL.]

WM. RIKER, JR.,
Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Prosecutor—Plaintiff in error,

vs.

DAVID BAIRD *et al.*, STATE BOARD OF ASSESSORS and J. WILLARD MORGAN, Comptroller,
Defendants-Respondents.

Assignments of Error.

Afterwards, that is to say, on the fourteenth day of September, in the year of our Lord one thousand

nine hundred and seven, in the Court of Errors and Appeals in the last resort in all causes, comes the said The Central Railroad Company of New Jersey, by George Holmes, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. That by the record aforesaid it appears that the judgment in form aforesaid was given for the said David Baird and others, defendants, against The Central Railroad Company of New Jersey, Prosecutor, whereas, by the law of the land, judgment ought to have been given for the said The Central Railroad Company of New Jersey, Prosecutor, and against the said David Baird and others, defendants.

2. That by the record aforesaid it appears that the judgment in form aforesaid affirmed the tax brought up for review by the writ of certiorari therein referred to and dismissed the said writ of certiorari with costs, whereas, by the law of the land, judgment ought to have been given annulling, setting aside and for nothing holding the said tax and sustaining the said writ of certiorari.

3. That by the record aforesaid it appears that the tax affirmed by the said judgment was levied and imposed in violation of paragraph 12, Section 7, of Article IV of the Constitution of the State of New Jersey, which requires that property shall be assessed for taxes under general laws and by uniform rules according to its true value.

4. That by the record aforesaid it appears that the tax affirmed by the said judgment was levied and imposed in violation of the first section of the fourteenth article of the Constitution of the United States, which provides that no State shall deprive

any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

5. That by the record aforesaid it appears that the tax affirmed by the said judgment was levied and imposed under an Act of the Legislature of the State of New Jersey passed in violation of the provision of the Constitution of the State of New Jersey referred to in the third assignment of error, and of the provision of the Constitution of the United States referred to in the fourth assignment of error.

6. That there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment in form aforesaid was given for the said David Baird and others against the said The Central Railroad Company of New Jersey, whereas by the law of the land judgment ought to have been given for the said The Central Railroad Company of New Jersey against the said David Baird and others, which said writ of certiorari and returns made thereto in the said Supreme Court, the reasons therein and the affidavits and evidence taken therein, and the opinion of the Justices in the said Court and rules and orders, and other papers are not certified and returned with the writ of error depending in this court. And the said The Central Railroad Company of New Jersey prays that a writ of the State of New Jersey be directed to the Judges of the said Supreme Court to certify to the said Court of Errors and Appeals the truth of the same. And it is granted to it, etc.

Therefore the said The Central Railroad Company of New Jersey prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing on the record and proceedings aforesaid, be reversed, annulled and held for noth-

ing, and that the said The Central Railroad Company of New Jersey be restored to all things that it has lost on occasion of the said judgment, etc.

GEO. HOLMES,
Attorney for and of counsel with Plaintiff in Error.

Common joinder in error filed.

NEW JERSEY, SS.:

[L. S.] THE STATE OF NEW JERSEY TO OUR JUSTICES OF OUR SUPREME COURT, GREETING:

Whereas, a certain writ of error was by us issued, directed to you the Justices aforesaid, returnable in the Court of Errors and Appeals on the twentieth day of September, A. D. nineteen hundred and seven, directing you to certify to said Court the record of a certain judgment given in a certain plaint on a certain writ of certiorari before you depending, wherein The Central Railroad Company of New Jersey was Prosecutor, and David Baird, Stephen J. Meeker, Theodore Strong and Eckard P. Budd, State Board of Assessors, and J. Willard Morgan, Comptroller of the Treasury of the State of New Jersey, were defendants; and whereas it appears that the writ of certiorari and returns made thereto in the Supreme Court, and reasons therein, and the opinion of the Justices in said Court, and other papers in said Court in relation to the judgment and record aforesaid are not certified and returned with the writ of error depending in this Court; now, therefore, we do command you that you send under your seal to our Judges of our Court of Errors and Appeals in the last resort in all causes at Tren-

ton on the twenty-fifth day of September, A. D. nineteen hundred and seven, the said writ of certiorari and returns made thereto in the Supreme Court the reasons therein and the affidavits and evidence taken therein and the opinion of the Justices in said Court and any and all other papers in said Court in relation to the writ and judgment aforesaid with all things touching the same together with this writ.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals aforesaid the twentieth day of , A. D. nineteen hundred and seven.

S. D. DICKINSON,
Secretary of State.

GEO. HOLMES,
Attorney.

I do herewith send to the Court of Errors and Appeals of the State of New Jersey the proceedings as within commanded, under the seal of the Supreme Court of New Jersey, and my hand.

Dated September 20, 1907.

WM. RIKER, JR.,
Clerk.

[SEAL.]

Writ of Certiorari.

NEW JERSEY, TO WIT:

[L. S.]

The State of New Jersey to David Baird, Stephen J. Meeker, Theodore Strong and Eckard P. Budd, State Board of Assessors of the State of New Jersey, and to J. Willard Morgan, Comptroller of said State,

Greeting:

We being willing, for certain reasons (a proper case having been made and due notice of application for this writ having been given to the Attorney Genral) to be certified of the valuation, assessment and tax for the year 1906, made pursuant to "An act to revise and amend an act for the taxation of Railroad and Canal Property," approved April 10, 1884, which revision and amendment was approved March 27, 1888, and the acts amendatory thereof and supplemental thereto, on all the main stem and franchises and tangible personal property of the Central Railroad Company of New Jersey do command you that the said valuation, assessment and tax, the statement or statements thereof certified and reported by said Board to the Comptroller of the State of New Jersey, for the year 1906, the return made by the said company to your Board, pursuant to said acts, together with the statements or schedules accompanying the same, pursuant to the said acts,

the written complaint made by said company specifying their grievances by reason of such valuation, assessment and tax, the evidence and statements taken upon the review of said valuation, assessment and tax, and the final determination of said Board upon such review, and all corrections made by them in said valuation, assessment and tax, and the certificate made by said Board to the said Comptroller upon such review and final determination, and also all certificates returned to and filed with said Board by the assessors of the several taxing districts of the State, and any and all other evidence and information used by said Board in ascertaining the average rate of taxation of $1.801 per $100 valuation, fixed by said Board, together with all proceedings and other matters touching and concerning the same, as fully as the same remain before you, or any of you, or under your control, you certify and send to the Justices of our Supreme Court, at Trenton, on the eleventh day of February next, together with this writ, that we may cause to be done touching the same what of right should be done.

Witness, Hon. William S. Gummere, Chief Justice, at Trenton, this twenty-sixth day of January, nineteen hundred and seven.

WM. RIKER, JR.,
Clerk.

GEORGE HOLMES,
Attorney of Prosecutor.

New Jersey Supreme Court.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Prosecutor,

vs.

DAVID BAIRD, STEPHEN J. MEEKER, THEODORE STRONG and ECKARD P. BUDD, State Board of Assessors, &c., Et al,

Defendants.

Writ of Certiorari.

Returnable, February 11th, 1907.

GEORGE HOLMES,
Attorney for Prosecutor,
No. 1 Exchange Pl.
Jersey City.

I allow this Writ. Let it be sealed.

On terms that the prosecutor move the argument at the February term 1907, that the reasons be filed and served by the prosecutor on or before the return day and that the prosecutor pay or tender to the State Treasurer on or before the return day of the writ a sum equal to one-half of one per cent. upon the valuation fixed for the year 1906 by the State Board of Assessors upon the main stem, franchises and tangible personal property of the prosecutor.

WM. S. GUMMERE,
C. J.

Received Feb. 1, 1907.

Return of State Board of Assessors.

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW JERSEY:

David Baird, Stephen J. Meeker, Theodore Strong and Eckard P. Budd, constituting the State Board of Assessors, and hereinafter referred to as such, pursuant to the commands of the writ of certiorari hereunto attached and for their return thereto, do certify as follows:

I. That pursuant to the provisions of an act of the Legislature of the State of New Jersey entitled, "An act to revise and amend 'an act for the taxation of railroad and canal property', approved April tenth, one thousand, eight hundred and eighty four," (which revision and amendment was approved March 27, 1888), and the several acts amendatory thereof and supplemental thereto, the State Board of Assessors did on the first day of November, in the year nineteen hundred and six, value and assess for taxation for the year nineteen hundred and six (1906) the property of the prosecutor the Central Railroad Company of New Jersey, described in Schedule A, hereunto annexed and made a part hereof, consisting of the main stem and franchises of its railroad, and its tangible personal property necessary for and used in State commerce; and did compute, assess and impose a tax upon the assessed valuation of said property, for State uses, at the rate of $1.801 per hundred dollars of valuation, the same being the "average rate of taxation" as computed and determined by the Board in the manner provided by Chapter 82, of the Laws of 1906. The amount of said valuation, assessment and tax are set forth in said Schedule A.

In making such valuation and assessment, said Board of Assessors included in the main stem of the prosecutor's railroad only the roadbed, not

exceeding one hundred feet in width, with its rails, sleepers, and all structures erected thereon and used in connection therewith, not including however any passenger or freight buildings erected thereon.

II. That on the first day of November, nineteen hundred and six, pursuant to the statutes aforesaid, the said State Board of Assessors did certify and report in writing to the Hon. J. Willard Morgan, Comptroller of the State of New Jersey, a statement of said valuation, assessment and tax, as will more fully appear by a copy thereof hereto annexed and made a part hereof, and marked Schedule B.

III. That on said November 1st, 1906, said State Board of Assessors gave notice to the prosecutor of the said valuation, assessment and tax, and that it would meet on the third Monday in November at the State House in Trenton, for the purpose of reviewing said assessment; that the prosecutor appeared according to said notice, filed a written complaint, specifying its grievance against the said valuation, assessment and tax, and protested against the levy and assessment of said tax, and was heard thereon, whereupon the State Board of Assessors, after due consideration, confirmed the said assessment, valuation and tax, and so certified to the said Comptroller.

IV. The prosecutor made a report to the State Board of Assessors for 1906 upon blanks furnished by the State, a copy of which blanks is hereto annexed as Schedule C.

Dated Trenton, N. J., February 11th, 1907.

DAVID BAIRD
S. J. MEEKER,
THEODORE STRONG
ECKARD P. BUDD,
} State Board of Assessors.

Irvine E. Maguire,
Secretary.

Schedule A.

State of New Jersey,

DEPARTMENT STATE BOARD OF ASSESSORS.

Trenton, N. J., November 1st, 1906.

To the CENTRAL RAILROAD COMPANY OF NEW JERSEY.

In pursuance of the provisions of an act entitled "An act to revise and amend an act for the taxation of railroad and canal property, approved April tenth, one thousand eight hundred and eighty-four" (which revision and amendment was approved March 27th, 1888), and the acts amendatory and supplamental thereto," the State Board of Assessors herewith transmit to you a statement of the valuation of your property subject to taxation for State uses under the supplemental act, approved April 5th, 1906, (Chap. 82, P. L. 1906), together with the amount of tax assessed thereon.

You are notified that the State Board of Assessors will meet at the State House, in Trenton, N. J., on Monday, the ninteenth day of November, 1906, at eleven o'clock in the forenoon, for the purpose of reviewing their assessment, as directed by the following provisions of the act of March 27th, 1888.

12. *And be it enacted,* That the said State Board of Assessors shall meet on the third Monday of November, at the State House, in Trenton, for the purpose of reviewing their assessment, and may adjourn from time to time till they shall have finished the hearing; upon the written complaint of any company or person considering itself or himself aggrieved, and specifying the grievance, or of the Attorney-General or of any member of

the Board, on behalf of the State, that the property of any company is assessed too low, either in the whole or in any taxing district, or that property has been omitted, they shall review the said assessment, and correct the same as shall appear just; the Attorney-General shall attend such meetings of said Board in person or by deputy; no complaint that any company or person is assessed too low, or that any property has been omitted, shall be acted upon until the company or person so assessed shall be notified of such complaint by five days' notice, to be served on such company or person by leaving the same at the office of such company or at the usual place of abode of such person, if a resident of this State; the Board shall have the power to issue subpœnas and examine witnesses and call for the production of books and papers, and they shall be entitled to use their personal knowledge and judgment as to the value of property; they shall certify to the Comptroller of the State all corrections which they shall make in any assessment; the proceedings provided for by this section shall be completed before the fifteenth day of January, following the making of said assessment, and all complaints must be presented on or before the third Monday of November, or shall be deemed to have been waived.

DAVID BAIRD, *President*,
S. J. MEEKER,
THEODORE STRONG,
ECKARD P. BUDD.
} State Board of Assessors.

State of New Jersey.

DEPARTMENT STATE BOABD OF ASSESSORS.

CENTRAL RAILROAD OF NEW JERSEY.

Measurement of main stem for the year 1906.

	MILES.
Length of main stem in New Jersey	159,763

Length of main stem in taxing districts.

Taxing District	*Length in Miles.*
Main Line.	
HUDSON CO.	
Jersey City	4.171
Bayonne City	3.885
UNION CO.	
Elizabeth City	4.467
Union Township	.181
*Elizabeth City—Union Township	.381
*Roselle Borough—Union Township	.087
*Roselle Borough—Roselle Park Borough	1.995
Cranford Township	1.544
Garwood Borough	1.044
Westfield, Town of	1.957
Fanwood Township	.198
Fanwood Borough	1.337
Plainfield City	4.236
MIDDLESEX CO.	
Dunellen Borough	1.125
Piscataway Township	3.354
SOMERSET CO.	
Bound Brook Borough	1.230
Bridgewater Township	7.848
Branchburg Township	2.423

* Dividing line between Taxing Districts.

	Length in Miles.
HUNTERDON CO.	
Readington Township	4.584
Clinton Township	5.460
High Bridge Borough	1.814
Lebanon Township	3.222
Junction Borough	1.749
Bethlehem Township	5.586
Bloomsbury Borough	1.387
WARREN CO.	
Greenwich Township	1.655
Pohatcong Township	3.262
Phillipsburg, Town of	2.215
Total length main line	72.397

Branches.

HENDERSON STREET BRANCH.

HUDSON CO.	
Jersey City	.413

JERSEY AVENUE BRANCH.

HUDSON CO.	
Jersey City	.226

PHILLIPS STREET BRANCH.

HUDSON CO.	
Jersey City	.784

PORT JOHNSTON SPUR.

HUDSON CO.	
Bayonne City	.803

BRANCH TO INSULATED WIRE and CABLE CO.

HUDSON CO.	
Bayonne City	.490

ELIZABETH LOOP LINE.

UNION CO.	
Elizabeth City	2.918

	Length in Miles.
Newark and New York Branch	
Hudson Co.	
Jersey City (including Y) ...	2.496
Kearney, Town of	.981
Kearney, Town of (Spur to Passaic Zinc Wks) ...	.707
Essex Co.	
Newark City	2.821
Manufacturers Branch.	
Essex Co.	
Newark City	1.277
Elizabethport and Perth Amboy Branch.	
Union Co.	
Elizabeth City (including Y).	2.056
Elizabeth City (Connection with Loop Line)....	.048
Linden Township	2.919
Middlesex Co.	
Roosevelt Borough	1.364
Woodbridge Township	3.091
Perth Amboy City	2.734
Newark & Elizabeth Branch.	
Union Co.	
Elizabeth City (Including Y).	2.610
Essex Co.	
Newark City (Including Y)..	3.111
Constables Hook Branch	
Hudson Co.	
Bayonne City (Including Y).	2.263
South Branch.	
Somerset Co.	
Bridgewater Township	.737
Hillsboro Township	6.781
Branchburg Township	2.627
Hunterdon Co.	
Readington Township	3.433
Raritan Township	2.046

	Length in Miles.
HIGH BRIDGE BRANCH.	
HUNTERDON CO.	
High Bridge Borough (Including Y)	1.319
Clinton Township	.485
Lebanon Township	3.633
Tewksbury Township	1.821
MORRIS CO.	
Washington Township	6.789
Chester Township	.794
BRANCH TO INGERSOLL SERGEANT DRILL CO.	
WARREN CO.	
Phillipsburg, Town of	.700
MOUNT OLIVE BRANCH.	
MORRIS CO.	
Washington Township	2.628
CHESTER HILL BRANCH.	
MORRIS CO.	
Chester Township	1.905
HAKLEBARNEY BRANCH.	
MORRIS CO.	
Chester Township	1.058
LONGWOOD VALLEY BRANCH.	
MORRIS CO.	
Washington Township	.887
Mount Olive Township	2.878
Roxbury Township	6.062
Wharton Borough	1.152
LAKE HOPATCONG BRANCH.	
MORRIS CO.	
Roxbury Township (Including Y)	3.878
Jefferson Township	1.641
Total length branches	87.366

State of New Jersey.

DEPARTMENT STATE BOARD OF ASSESSORS:

CENTRAL R.R. OF N. J.

Valuation and Assessment for State Uses for the Year 1906.

Valuation.

Asessed valuation of the CENTRAL RAILROAD OF NEW JERSEY for main stem and franchise	$26,200,300.00
Assessed valuation of tangible personal property necessary for and used in State Commerce	$8,142,632.00
Total assessable for State uses	$34,342,932.00

Tax.

Tax for State uses, at average tax rate of $1.801 per $100 valuation	$618,516.21

Schedule B.

State of New Jersey.

DEPARTMENT STATE BOARD OF ASSESSORS.

To the Hon. J. Willard Morgan,
Comptroller of the State of New Jersey:

In pursuance of the provisions of an act entitled "An act to revise and amend an act for the taxation of railroad and canal property, approved April tenth, one thousand eight hundred and eighty-four" (which revision and amendment was approved March 27th, 1888), and the acts amendatory and supplementary thereto, we, the State Board of Assessors, hereby certify and report to you the following statement of the assessed valuation of the CENTRAL RAILROAD OF NEW JERSEY, as provided by the supplemental act, approved April 5th, 1906 (Chap. 82, P. L. 1906), and the amount of tax payable by said company for State uses, for the year 1906.

Asessed valuation of the CENTRAL RAILROAD OF NEW JERSEY for main stem and franchise	$26,200,300.00
Assessed valuation of tangible personal property necessary for and used in State Commerce	$8,142,632.00
Total assessable for State uses	$34,342,932.00
Tax for State uses, at average tax rate of $1.801 per $100 valuation,	$618,516.21

DAVID BAIRD, *President,*
S. J. MEEKER,
THEODORE STRONG,
ECKARD P. BUDD,
} State Board of Assessors.

Return of State Comptroller.

To the Chief Justice and the Associate Justices of the Supreme Court of the State of New Jersey:

I, J. Willard Morgan, Comptroller of the Treasury of the State of New Jersey, do hereby certify and send as within I am commanded, in the Schedule hereunto annexed, the statement of the valuation, assessment and tax for nineteen hundred and six (1906) upon all the main stem and franchise and tangible personal property of the Central Railroad Company of New Jersey, and the final determination of the State Board of Assessors thereon as the same remain in my office.

Witness my hand and seal, at Trenton, the eleventh day of February, nineteen hundred and seven.

J. Willard Morgan,
Comptroller of the Treasury.

(Copy.)

STATE OF NEW JERSEY.

Department State Boabd of Assessors.

To the Hon. J. Willard Morgan,
Comptroller of the State of New Jersey:

In pursuance of the provisions of an act entitled "An act to revise and amend an act for the taxation of railroad and canal property, approved April tenth, one thousand eight hundred and eighty-four" (which revision and amendment was approved March 27th, 1888), and the acts amendatory and supplementary

thereto, we, the State Board of Assessors, hereby certify and report to you the following statement of the assessed valuation of the CENTRAL RAILROAD OF NEW JERSEY, as provided by the supplemental act, approved April 5th, 1906 (Chap. 82, P. L. 1906), and the amount of tax payable by said company for the State uses, for the year 1906.

Asessed valuation of the CENTRAL RAILROAD OF NEW JERSEY for main stem and franchise	$26,200,300.00
Assessed valuation of tangible personal property necessary for and used in State Commerce	$8,142,632.00
Total assessable for State uses	$34,342,932.00
Tax for State uses, at average tax rate of $1.801 per $100 valuation,	$618,516.21

Appealed.
Assessment confirmed.

DAVID BAIRD, *President,*
S. J. MEEKER,
THEODORE STRONG,
ECKARD P. BUDD.
} State Board of Assessors.

Reasons.

The prosecutors, by GEORGE HOLMES, their attorney, write down the following reasons for setting aside the valuation, assessment and tax for the year Nineteen hundred and six, brought before this Honorable Court by the writ of certiorari in this cause:

First: Because the act entitled "An Act to revise and amend 'An Act for the taxation of railroad and canal property,' approved April tenth, one thousand eight hundred and eighty-four," approved March twenty-seventh, eighteen hundred and eighty-eight and the several supplements thereto and acts amendatory thereof, under and in pursuance of which the said valuation, assessment and tax were made, levied and imposed, and all the proceedings of the State Board of Assessors in the making, levying and imposing said valuation, assessment and tax, are unconstitutional, illegal and void.

Second: Because the said Act of March twenty-seventh, eighteen hundred and eighty-eight, and the several supplements thereto and acts amendatory thereof, and the method in which the same have been applied by the said State Board of Assessors, and the said valuation, assessment and tax are in violation of paragraph 12 of section 7 of Article IV of the Constitution of the State of New Jersey, which provides that property shall be assessed for taxes under general laws and by uniform rules, according to its true value; and are also in violation of the first section of the Fourteenth Article of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Third: Because the said Act of March twenty-seventh, eighteen hundred and eighty-eight and the said supplements thereto and acts amendatory thereof, provide a scheme for the valuation, assessment and taxation of property used for railroad and canal purposes by rules which are not uniform, contrary to Paragraph 12 of section 7 of Article IV of the Constitution of the State of New Jersey.

Fourth: Because the said act of March twenty-seventh, eighteen hundred and eighty-eight, and the said supplements thereto and acts amendatory thereof, provide a scheme for the valuation, assessment and taxation of property used for railroad and canal purposes not according to its true value, contrary to paragraph 12 of section 7 of Article IV of the Constitution of the State of New Jersey.

Fifth: Because the said act of March twenty-seventh, eighteen hundred and eighty-eight and the supplements thereto and acts amendatory thereof, under which the said valuation, assessment and tax were made, levied and imposed, are special and not general, contrary to said paragraph 12 of section 7 of Article IV of the Constitution of the State of New Jersey.

Sixth: Because in valuing, assessing and taxing the Main Stem, tangible personal property and franchises of the prosecutors, the said State Board of Assessors adopted a basis or principle and ascertained and applied a rate, which are unconstitutional, illegal and unjust.

Seventh: Because the said act of March twenty-seventh, eighteen hundred and eighty-eight, and the said several supplements thereto and acts amendatory thereof, and the levy and assessment of the tax therunder by the State Board of Assessors,

brought up by this writ, impose an arbitrary tax upon the property of the prosecutors, without regard to the necessities of the State and in excess of the needs of the State.

Eighth: Because the said act of March twenty-seventh, eighteen hundred and eighty-eight, as amended, under which the said assessment for taxes was levied, is void, in that it provides for an arbitrary segregation of a part of that class of property distinguished as "property used for railroad and canal purposes" and requires that such segregated part be assessed for taxes by a special law, and by rules differing from the rules prescribed for the assessment of all other property of said class; in violation of pragraph 12 of Section 7 of Article IV of the Constitution of the State of New Jersey, which requires that property shall be assessed for taxes under general laws and by uniform rules.

Ninth: Because the supplements passed in the year 1906 to the said Act of March twenty-seventh, eighteen hundred and eighty-eight to wit, Chapters 82, 122 and 280, of the laws of 1906, are void because they destroyed the classification of property for taxes theretofore existing under said Act of March twenty-seventh, eighteen hundred and eighty-eight, which class was distinguished as "property used for railroad and canal purposes," and set up a special law and different rules for the assessment for taxes of a part of said class of property in violation of Paragraph 12 of section 7 of Article IV of the Constitution of the State of New Jersey, which requires that property shall be assessed for taxes under general laws and by uniform rules.

Tenth: Because the said valuation, assessment

and tax are in other respects excessive, unequal, unconstitutional, illegal and unjust.

GEORGE HOLMES,
Attorney for Prosecutors.

For testimony taken, see special printed book of testimony and exhibits taken on behalf of all the Railroads and the State, on the various writs of certiorari heard herewith.

Constitutionality of Perkins Act of 1906.

OPINION FILED AUGUST 6, 1907.

NEW JERSEY SUPREME COURT.

February Term, 1907.

MAIN BRANCH.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 66.

THE PHILADELPHIA & READING RAILWAY COMPANY.
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 67.

THE LEHIGH VALLEY RAILROAD COMPANY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 100.

THE BERGEN COUNTY RAILROAD COMPANY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 101.

THE LONG DOCK COMPANY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 112.

THE TRENTON & NEW BRUNSWICK RAILROAD COMPANY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 130.

THE MORRIS & ESSEX RAILROAD COMPANY AND THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
Prosecutor,
vs.
STATE BOARD OF ASSESSORS.
No. 137.

Argued March 9 and 23, 1907.

Decided August 6, 1907.

SYLLABUS.

(1) The revised act of 1888 for the taxation of railroad and canal property, (P. L., 1888, p. 269; Gen. Stat. p. 3324,) as amended by Chapters 82, 122, and 280 of the Laws of 1906, (P. L. 1906, p. 121, p. 220, p. 571,) is constitutional.

(2) The acts referred to do not violate Art. IV, sec. VII, par. 12 of the Constitution of this state, which requires that "property shall be assessed for "taxes under general laws and by uniform rules, ac- "cording to its true value."

(3) The acts in question do not deprive the taxpayer of property without due process of law, nor deny the equal protection of the laws, within the meaning of the Fourteenth Amendment of the Constitution of the United States.

(4) Chapter 82 of the Laws of 1906 (P. L. 1906, p. 121,) which imposes upon the main stem or water-way and the tangible personal property and franchise of every railroad and canal company the "average rate of taxation," to be ascertained by computation from the taxing rates prevailing in the several taxing districts of the state, is not unconstitutional.

(5) The so-called Perkins Act (P. L. 1906, p. 571,) which requires that what is known as "second-class" railroad and canal property shall be assessed and taxed in each taxing district, in the same manner and at the same rate as other property located in such district, and that the tax thereon shall be paid to the proper officers of the several taxing districts, is not unconstitutional.

(6) The fact that all property used for railroad and canal purposes may be set apart in a class by itself, as distinguished from the general mass of property in the state, for purposes of taxation, does not negative the propriety of subdividing this general class of property into minor classes for the purpose of taxation; nor is the subclassification special, and hence unconstitutional, provided it rests upon grounds of discrimination inherent either in the character of the property or its situation and circumstances, such as to render the distinction reasonably appropriate to the purposes of the classification.

(7) The legislative purpose being to divide property used for railroad and canal purposes into two parts, upon one of which taxes are to be levied for the support of local and municipal government, either together with or separate from taxes for the support of the general state government, leaving the residue to be subjected to taxation for general state purposes only; *Held,* that the setting apart of what is known as "second-class" railroad and

canal property for local taxation, second-class property being defined in substance as including passenger and freight buildings and all other real estate used for railroad and canal purposes other than the road bed or water-way not exceeding one hundred feet in width, is reasonably germane to the purpose of the classification.

(8) In Art. IV, sec. VII, par. 12 of the Constitution of this state, the phrase "uniform rules" does not refer to those regulations that pertain to the agencies and methods employed in the assessment and collection of taxes, but only to the basic rules for taxation, which settle how the public burden is to be distributed, including the designation of the property that is to contribute and the rate or ratio by which the taxes are to be laid and apportioned.

(9) The constitutional requirement of uniform rules for taxation is satisfied by a uniformity that obtains without discrimination throughout a class of property set apart on reasonable grounds for separate treatment.

(10) Since the tax laws under consideration do not deprive the taxpayer of property without due process of law and since they conform to the constitutional requirement that property shall be assessed for taxes under general laws, "and by uni-"form rules, according to its true value," it follows that they do not deny to the taxpayer "the equal "protection of the laws."

On certiorari.

Before Justices Fort, Hendrickson and Pitney.

For the Central Railroad Company and the Philadelphia & Reading Railway Company, George Holmes and R. V. Lindabury.

For the Lehigh Valley Railroad Company, The Bergen County Railroad Company and The Long Dock Company, Collins & Corbin.

For the Trenton & New Brunswick Railroad Company, R. V. Lindabury.

For the Morris & Essex Railroad Company and

the Delaware, Lackawanna & Western Railroad Company, William D. Edwards.

For the State Board of Assessors, Robert H. McCarter, Attorney General, Bennet Van Syckel and John R. Hardin.

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

These writs of certiorari bring under review the taxes levied by the State Board of Assessors for the year 1906 upon the main stem, franchise and tangible personal property of each of the several prosecutors, under the act of March 27, 1888, entitled, "An Act to revise and amend 'an act for the taxa-" "tion of railroad and canal property,' approved "April 10, 1884, and the act amendatory and sup-"plementary thereto," (P. L. 1888, p. 269; Gen. Stat., p. 3324;) and a supplemental act approved April 5, 1906, which is chapter 82 of the laws of that year (P. L. 1906, p. 121). It appears that the State Board, in obedience to the supplemental act last mentioned, made valuation of the main stem and franchise, and also of the tangible personal property, of each of the prosecutors, so far as taxable under Chapter 82, and that they imposed thereon a tax for state uses for the year 1906 at the "average "rate of taxation," ($1.801 per $100).

The reasons assigned for the reversal of these taxes include an attack upon the act of March 27, 1888, as amended in 1906, for unconstitutionality; it being claimed to be in violation of par. 12 of sec. VII of art. IV of the constitution of this state, which requires that "property shall be assessed for "taxes under general laws, and by uniform rules, "according to its true value;" and in violation of the first section of the 14th Amendment of the Constitution of the United States, which provides that no state shall "deprive any person of life, liberty "or property without due process of law, nor deny "to any person within its jurisdiction the equal pro-

"tection of the laws." It is asserted that the act, as it now stands, provides for an arbitrary segregation of a part of that class of property which is distinguished as "property used for railroad and canal "purposes;" and requires that such segregated part be assessed for taxes by a special law and by rules differing from the rules prescribed for the assessment of all other property of said class; that three certain supplements passed in the year 1906 to the act of March 27, 1888, to wit, chapters 82, 122 and 280 of the laws of 1906, are void because they destroy the classification of property for taxes theretofore existing under the act of 1888; and that these supplements provide a scheme for the valuation, assesment and taxation of property used for railroad and canal purposes by rules which are not uniform, and for its taxation otherwise than according to its true value.

It is further alleged in the reasons that the basis adopted for taxing the main stem, franchise and taxable personal property in the cases before us, and the rate applied, were unconstitutional, illegal and unjust, and that the taxes in question are arbitrary taxes, imposed without regard to the necessities of the state and in excess of its needs. Upon the argument, however, it was not at all claimed that the particular taxes under review were imposed otherwise than in accordance with the true intent and meaning of the several acts of the legislature in question. The entire argument was rested upon the contention that chapters 82, 122 and 280 of the laws of 1906 are unconstitutional.

The questions at issue were most elaborately argued, with much learning, force and ingenuity, and counsel on both sides expressed the earnest desire that this court would give to them the fullest consideration, in spite of (perhaps because of) the avowed purpose to review our decision in the court of last resort, whatever the outcome here. In view

of the very great importance of the subject we have endeavored to comply with the desire of counsel thus expressed.

The act of April 10, 1884, for the taxation of railroad and canal property, (P. L. 1884, p. 142; Supp. Rev. 1886, p. 1,002) was sustained as constitutional by the Court of Errors and Appeals in *State Board of Assessors* vs. *Central R. R. Co.,* 19 Vr. 146.

The act of 1888, which took its place, (P. L. 1888, p. 269; Gen. Stat., p. 3,324) preserves the same general scheme, eliminating, however, certain features of the former act which had been held unconstitutional in *Central R. R. Co.* vs. *State Board,* 20 Vr. 1, and *Williams* vs. *Bettle,* 22 Vr. 512.

The act of 1888 provides that all the property of any railroad or canal company not used for railroad or canal purposes shall be assessed and taxed by the same assessors and in the same manner and at the same rate as the taxable property of other owners in the same municipal division or taxing district; that all other property of any railroad or canal company shall be assessed and taxed as in this act directed; and that the tax imposed by this act shall be in lieu of all other taxation upon the property subject to taxation under the provisions of this act. It is made the duty of the State Board of Assessors to annually ascertain the true value of all property used for railroad or canal purposes of each railroad and canal company, including its fanchise, and in such ascertainment to ascertain (1) the length and value of the main stem of each railroad and of the water-way of each canal, and the length thereof in each taxing district, ("main stem" being declared to include the roadbed, not exceeding one hundred feet in width, with its rails and sleepers and passenger depot buildings; and the term "water-way" to include the towing-path and berme-bank;) (2) the value of the other real estate used for railroad or canal purposes in each

taxing district, including the roadbed (other than main stem), water-ways, reservoirs, tracks, buildings, water tanks, water works, riparian rights, docks, wharves and piers and all other real estate except lands not used for railroad or canal purposes; this class of property is, for convenience, commonly called "second-class railroad or canal property;" (3) the value of all the tangible personal property of each railroad and of each canal company; and (4) the value of the remaining property, including the franchise.

By the act of 1888 the State Board of Assessors, having completed their valuation and assessment, were required to compute the taxes upon the entire assessed valuation of each railroad and canal company as thus ascertained; upon such valuation each company was required to pay to the state for general state purposes a tax at the rate of one-half of one per centum annually; and also to pay a tax at the local rate (as fixed and assessed for county and municipal purposes upon other property in each taxing district) upon the valuation of its property in the several taxing districts other than main stem and water-way; but the last mentioned rate was in no case to exceed one per centum of the valuation of such property. The sum of these was to constitute the tax upon each company, and was paid into the treasury of the state. The general tax of one-half of one per centum was to be applied to the uses of the state according to law, and the amounts received for taxes upon properties separately assessed in the different taxing districts ("second class property,") were appropriated to the various taxing districts, giving to each district the amount derived from the property of each company therein. This allotment of the separate tax upon second class property to the several taxing districts was provided for by section 11 of the act, (P. L. 1888, p. 276) which was amended by a later

act of the same year (P. L. 1888, p. 376; Gen. Stat., p. 3,333, p. 242) in a respect not now material.

By P. L. 1897, p. 147, and P. L. 1898, p. 59, the law was amended so as to give to the several taxing districts the total amount of tax derived from second-class property therein.

Upon the argument herein it was fully conceded that the decision of the Court of Errors and Appeals in *State Board of Assessors* vs. *Central Railroad Company,* 19 Vr., 146, which sustained the original act of 1884, establishes the constitutionality of the revised act of 1888 and its supplements thus far mentioned.

A further supplement, known as the Duffield Act, (P. L. 1905, p. 189) changed the law with respect to the taxation of second-class property, and with respect to that alone. It subjected such property to taxation by the State Board of Assessors at the local rate of taxation obtaining in each of the several taxing districts in which the property is situate, without limiting this tax to one per centum as formerly. It did away with the former tax of one-half of one per centum upon second-class property, originally imposed for state purposes and afterwards allotted to the several taxing districts by the act of 1897. And it changed the law in one further respect, viz., that while under the act of 1888 the local rate was to be determined by the other property in the taxing district, (*Williams* vs. *Bettle,* 22 Vr., 512-515) under the Duffield Act the second-class railroad and canal property was to be taken into the account in determining the local rate.

Since the argument herein the Court of Errors and Appeals has determined that the Duffield Act is constitutional. *Bergen & Dundee R. R. Co.* vs. *State Board of Assessors,* decided June 17, 1907.

We now come to the acts of 1906, which are the

subject of the present controversy. They are all supplements to the act of 1888.

Chapter 82, (P. L. 1906, p. 121) known as the "average rate law"—provides for an annual valuation to be made by the State Board of Assessors of the main stem or water way, tangible personal property and franchise of each railroad and canal company, and for the payment to the state of an annual tax thereon at the "average rate of taxation," to be computed by the State Board of Assessors by taking into consideration the true value of all property, real and personal, in each taxing district, (including second-class railroad and canal property, but excluding the main stem or waterway franchise and tangible personal property of the railroad and canal companies,) and by taking into consideration the rate of taxation in the several taxing districts. The total taxes of each district are to be determined by multiplying the value of all the property in such district by the rate of taxation therein, and the aggregate taxes of the state as thus computed and determined are to be divided by the aggregate value of the general property in the state, to be ascertained as above mentioned; the result being the "average rate of taxation," at which rate the main stem or water-way tangible personal property and franchise of each of the companies is to be taxed by the State Board. This act was approved April 5, 1906.

Next in order is chapter 122, which was approved on April 8, (P. L. 1906, p. 220). It merely modifies the definition of the term "main stem" of railroads, so that hereafter it shall be held to include "the "roadbed, not exceeding one hundred feet in "width, with its rails and sleepers, and all struc-"tures erected thereon and used in connection "therewith, not including, however, any passenger "or freight buildings erected thereon." Its most important effect is to exclude passenger depots,

which, by the act of 1888, were included in main stem.

Then comes chapter 280, which was approved May 18, 1906, (P. L. 1906, p. 571) and is known as the Perkins Act. Its first section declares that "the "taxes which shall hereafter be assessed upon the "property of railroad and canal companies, referred "to in sub-division 2 of section 3 of the act to which "this act is a supplement, shall be assessed and "taxed in each taxing district in this state in the "same manner and at the same rate as other prop- "erty located in said taxing district is assessed and "taxed, and the amount of tax derived therefrom "shall be paid to the officer of each of the separate "taxing districts of the state as shall be by law en- "titled to receive the same for the use of said tax- "ing districts." Subsequent sections repeal all acts and parts of acts inconsistent herewith, and provide that this act shall take effect immediately.

As already mentioned, the taxes now under review are those imposed by the State Board of Assessors upon main stem, franchise and tangible personal property (commonly denominated first-class property) under chapter 82—the so-called "average rate law."

Some of the reasons assigned for reversal may be briefly disposed of.

And first, it was not claimed in the argument that the taxing scheme in question deprives the taxpayer of property without due process of law, within the meaning of the 14th amendment. The act of 1888 in its 12th section (Gen. Stat. p. 3328) provides for a revision by the State Board of their assessments at a time and place mentioned in the section, with opportunity to the taxpayer to present any complaint or grievance and have the same deliberately considered by the board, with compulsory attendance of witnesses and production of documentary evidence. No complaint that any

company is assessed too low or that any property has been omitted is to be acted upon without notice to the taxpayer. And section 13 provides for a judicial review by certiorari in this court in cases where it is claimed that the amount of tax is excessive and also where it is claimed that the principle upon which the assessment is made is erroneous. The rule established by repeated decisions of the United States Supreme Court is as expressed by Mr. Justice Brewer in *Winona & St. Peter Land Co.* vs. *Minnesota,* 159 U. S. at page 537: "That "a law authorizing the imposition of a tax or as- "sessment upon property according to its value "does not infringe that provision of the Fourteenth "Amendment to the constitution, which declares "that no state shall deprive any person of prop- "erty without due process of law, if the owner has "an opportunity to question the validity or the "amount of it either before that amount is deter- "mined or in subsequent proceedings for its collec- "tion." See also *Kentucky Railroad Tax Cases,* 115 U. S. 321, 331; *Pittsburg, etc., Ry. Co.* vs. *Backus,* 154 U. S. 421, 458. There is clearly no deprivation of property without due process of law in the operation of the act of 1888.

It is contended by the prosecutors that the Perkins Act has the effect of subjecting second-class property to local taxation, subject to all the incidental features of the general tax law of the state, now found embodied in the revised act of 1903 for the assessment and collection of taxes (P. L. 1903, p. 394). Without stopping at the moment to discuss the bearing or want of bearing of that question upon the validity of the taxes assessed upon first-class property under the "average rate law," it is sufficient to say that beyond question the general tax law of the state gives ample opportunity for review, and does no violence to the "due process of law" clause.

Next, it was not claimed upon the argument that the rate of taxation imposed by chapter 82—what is called the "average rate" of taxation, to be computed by the State Board of assessors as in that chapter provided—is violative of the constitutional rights of the prosecutors. The act manifests an effort on the part of the legislature to approximate the annual burden of taxation upon first-class railroad and canal property to that which is borne generally by taxpayers throughout the state; and an intent to deal fairly with this class of property, not at all to discriminate against it in favor of other taxpayers. A Michigan statute, similar in principle, was sustained by the Supreme Court of the United States in *Michigan Central Railroad* vs. *Powers,* 201 U. S. 245. The contention of the railroad company was succinctly stated by Mr. Justice Brewer, at p. 293, as follows: "The first "and principal matter of attack is the 'average "rate.' It is contended that the fixing of the rate "of taxation is a legislative function; that in as- "certaining the average rate by the method de- "scribed there is no exercise of the legislative judg- "ment, but that it is determined by the action of "the various local assessing and taxing boards, "who, though charged with no duty of inquiry as "to the necessities of the state or the proper rate "of taxation of railroad property, are in fact the "only officials exercising any discretion and judg- "ment." After ably combating this argument, he summarizes the matter on p. 297, where he says: "It may be laid down as a general proposition that "where a legislature enacts a specific rule for fix- "ing a rate of taxation, by which rule the rate is "mathematically deduced from facts and events "occurring within the year and created without "reference to the matter of that rate, there is no "abdication of the legislative function, but, on the

"contrary, a direct legislative determination of the "rate."

Nor was any reliance placed, in the argument, upon such of the reasons assigned as challenge the taxes in question as being arbitrary, and imposed without regard to the necessities of the state and in excess of its needs. It is hardly necessary to say that the legislature is the proper judge of the amount of money required to be raised by taxation for the conduct of the government of the state, and that it is not obliged to determine in advance the necessity for raising any specific sum of money, as is required in the case of some of the municipal governments.

This brings us to the controverted questions.

The principal contention made in behalf of the prosecutors is that chapters 82 (the "average rate law") and 280, (the Perkins Act,) taken together, so modify the act of 1888 for the taxation of railroad and canal property as to destroy the generality of the classification adopted in the act of 1888, and subject different sorts of property used for railroad and canal purposes to different rules and to rules that are not uniform within the meaning of our constitution. But chapter 82 does no more (except for some modifications relating to matters of administration, which will be dealt with further on,) than to substitute for the annual tax of one-half of one per centum on "first-class property" for strictly state purposes a tax upon the same property for the same purposes at a different rate—a rate that is unexceptionable from the constitutional standpoint, as already shown. And so the Perkins Act is the chief subject of criticism. Manifestly this latter supplement modifies the scheme of the Duffield Act so far as to require second-class property to be assessed by the local assessors (still at the local rate as in the Duffield Act,) and the tax thereon to be

paid directly to the proper officer of the several taxing districts. The learned counsel for the state board of assessors contend that the modification goes no further, and that the Perkins Act still leaves second-class property in all other respects subject to the provisions of the act of 1888, including those that have to do with the mode in which the assessments are to be reviewed, how payment of the taxes is to be enforced, the penalties to be imposed for non-payment, and other details of an administrative character. Counsel for the prosecutors contend, on the other hand, that the effect of the Perkins Act is to remove second-class property entirely without the scope of the act of 1888, and to subject it to the provisions of the general tax law of the state as revised in 1903 (P. L. 1903, p. 394). This question will be dealt with in its order. Our first and most important inquiry is whether the Perkins Act destroys the generality of the classification adopted in the act of 1888 by subjecting different sorts of property to improper discriminations and non-uniform rules through the adoption of a distinction (that between first-class and second-class property,) that has no reasonable pertinency to the main object of the act, (which is, to establish the purposes for which, and the rate at which, second-class property is to be taxed,) so that the classification is rendered illusory and the law therefore special.

It is, indeed, argued by the learned counsel for the respondents, and with much force, that if this act is unconstitutional it is simply void and of no effect, so that the prior legislation stands as if this supplement had not been passed; that since the Perkins Act was enacted subsequent to chapter 82 (P. L. 1906, p. 121), under which the taxes now in question were assessed, a declaration that the Perkins Act is void would in no wise affect these taxes; that (leaving out the Perkins Act,) the

duty of the State Board was to assess both first and second-class property, while in fact they assessed first-class property only in the present cases; and that the circumstance that second-class property was omitted does not defeat the assessment upon first-class property at the instance of the taxpayer. We are inclined to agree with this view, which, if correct, would render the question of the constitutionality of the Perkins Act unnecessary to be determined in the present cases. But the latter question is of the utmost magnitude and importance; it is fairly presented and has been elaborately argued; and its prompt solution is highly desirable. Moreover, in a case that was argued together with the present cases (*United New Jersey Railroad & Canal Company, et al., Prosecutors,* vs. *W. Frank Parker, Collector, and the City of New Brunswick,*) and which is to be decided upon the present opinion, taxes locally assessed by the city assessors upon second-class property by virtue of the Perkins Act are involved, and these taxes are necessarily invalid if the Perkins Act be void. We must therefore determine the question of its constitutionality.

Now, as we understand the decisions of the Court of Errors and Appeals in *State Board of Assessors* vs. *Central R. R. Co.*, 19 Vr., 146, and in the recent case of *Bergen & Dundee R. R. Co.* vs. *State Board of Assessors,* (not yet reported,) they have the effect of settling every question that is here controverted about the subclassification of railroad and canal property that is adopted in the Perkins Act and the other supplements of 1906. The act of 1884, which was sustained in 19 Vroom, subdivided property used for railroad and canal purposes into the same two sorts, commonly called first-class and second-class property. The line of demarkation between them was not changed by the act of 1888, and is not materially changed by chapter

220 of the laws of 1906. The act of 1884, by its third section, (Supp. Rev. 1886, p. 1003,) required these two sorts of property to be separately valued. It likewise required the value of second-class property to be separately valued in each taxing district. That decision not only upheld the main classification that distinguished railroad and canal property from other property in the state, but also the sub-classification of railroad and canal property into main stem and water-way, on the one hand, and second-class property on the other. The act there sustained, like the present legislation, imposed different rates of tax, and taxes for different purposes, upon the two classes of property. Indeed, the sub-classification was established to that end and no other. By the act of 1884, as by the Duffield Act of 1905, and now again by the Perkins Act, second-class property was subjected to the local rate of taxation, and for local purposes, the only differences affecting the rate being those pointed out in the opinion in the Bergen & Dundee R. R. case, and there treated as non-essential, viz.: that in the act of 1884 there was a limitation of one per centum upon the tax that was to be imposed on this account; which limitation is now repealed; under the act of 1884 the local rate was determined by the other property in the taxing district, which by the Duffield Act (as now by the Perkins Act) the second-class railroad and canal property is to be taken into account in determining the local rate; and under the act of 1884 there was a tax of one-half of one per centum upon second-class property for state purposes, which is now omitted. The taxation of second-class property for local purposes at local rates, without the previous limitation of one per centum, was upheld in the Bergen & Dundee R. R. case. The same rule of taxation, so far as the purpose and the rate are concerned, is perpetuated in the Perkins Act. In the remaining

essential element that determines the annual burden of taxation—the valuation of the property—all these laws are alike. Upon them all the constitution imposes the rule of "true value," whether expressed in the legislation or not; unless, indeed, this standard is excluded by the words or necessary effect of the act. The contention of the prosecutors upon this point will be separately dealt with.

Passing this for the moment, what difference remains in essentials between the scheme of the Perkins Act and those that have preceded it? Can it make the least difference that the tax on second class property is now to be paid directly to the taxing district instead of being paid into the central treasury of the state and thence disbursed to the taxing district as formerly? Obviously not. State treasury and taxing district alike are but agencies of the state. Under either arrangement the moneys collected from the taxpayer are in a proper sense the moneys of the state, set apart by the general legislative authority for expenditure locally by a local agency of the state. Can't it make any difference that under the new arrangement one set of public functionaries are to value one part of the property used for railroad and canal purposes, while another set are to value the remainder? Clearly, so long as "true value" is the rule prescribed for both, there can be no difference in the result except on the theory that one officer will perform his duty while the other departs from his, or else on the theory that both will depart from their duty but in different modes or in varying degrees. But a law is not to be held unconstitutional on the theory that public officers may fail in the performance of a public duty plainly prescribed. Aside from the inevitable instances of individual error, for the correction of which reviews and appeals are provided, the presumption is that public officers will perform their duty. To quote the familiar lan-

guage of Mr. Justice Miller in *Cummings* vs. *National Bank,* 101 U. S., 161,—"A law cannot be held "unconstitutional because, while its just interpreta- "tion is consistent with the constitution, it is un- "faithfully administered by those who are charged "with its execution. Their doings may be unlawful "while the statute is valid."

But while it is conceded that the decision of the Court of Errors and Appeals in 19 Vroom establishes that property may be classified for the purpose of taxation according to its use, and that property used for railroad and canal purposes may be set apart into a class by itself, it is insisted that any rule which is adopted by the legislature for the taxation of this class must be uniform as to the whole of the class, and that in 19 Vroom the act of 1884 was sustained only because it embraced all property devoted to railroad and canal uses. It is pointed out that the decision of the court was justified, in every opinion written to uphold it, upon the ground that the use to which property is devoted constitutes a legitimate basis for classification, and that in the act under consideration the classification embraced all the property devoted to a similar use. This is quite true with respect to so much of the reasoning of the judges as dealt with the discrimination that the act established between railroad and canal property and the general mass of taxable property in the state. And it is equally true that the opinions have little to say about the subdivision of railroad and canal property into what we now call first-class and second-class property. The explanation of this is to be found in the history of the case as reported. In this court, (19 Vr., 1,) the act of 1884 was denounced by Chief Justice Beasley in a vigorous opinion as violating the constitution by making what he deemed an arbitrary discrimination between railroad and canal property, on the one hand, and other taxable property in general on

the other. Overlooking the force of the fact that the distinction was based upon the *use* to which the property was devoted, and finding nothing in the *nature or situation* of the property to warrant its being separately treated, he naturally reached the conclusion that this primary classification was illusory and arbitrary, and the law therefore special. This was the entire burden of the argument employed by him upon this topic, as the following expressions used in his opinion will show, viz. (at p. 14): "To take a part of a homogeneous mass of "property, the whole being *identically conditioned,* "and to tax such part exclusively, would be an act "of selection at will, and not a classification, and "the law authorizing it would be a special and not "a general law." And again: "A class cannot be "created at the will of the legislature, but must "arise out of the *nature* of the things classed." (On p. 16): "When the constitution declares that property shall be assessed for taxes by a general law, "it is a virtual declaration that property must be "classified upon the basis of its own *nature and* "*quality* if it is to be separately and exclusively "taxed." (On p. 19): "What we are unable to assent to is that certain property can be subtracted "from the mass of property, it being *identical in its* "*nature* with such mass, and thus, being arbitrarily "isolated, can be subjected to a tax of the same "kind." And again: "Its effect (meaning the act of "1884) simply is to segregate certain property from "the mass of *similar* property; not to put upon it "a proportionate part of a general tax, but to charge "the part so segregated with the whole amount of a "separate tax." (On p. 20:) "And so with the "lands and tangible personal property of these separate corporations, and which denominated properties do not possess, from their *nature or qualities,* any *different characteristics* from the same "kinds of property owned by other persons." It

was to combat these views that the learned judges of the Court of Errors and Appeals employed the language referred to by counsel for the prosecutors as authority for the present contention that the decision vindicated only what we may call the primary classification of the act of 1884.

As we take it, the secondary classification, or sub-classification, into first and second-class properties, was equally vindicated by the decision. *Bergen & Dundee R. R. Co.* vs. *State Board of Assessors.*

But it is further argued in effect that this sub-classification was sustained in the act of 1884 only on the ground that the tax of one-half of one per centum upon first-class property, taken together with the tax at local rates (not exceeding one per centum) upon second-class property, together constituted but a single tax. This argument seems to be rested upon a single phrase in the opinion of Chancellor Runyon, 19 Vr., at p. 282, where he said: "The fact that only part of the property is "taken into account in one part of the method "(*i. e.*, in making up the amount to be paid in re- "spect of county and municipal taxes) is of no "moment.The tax applied to State purposes, and "that applied to county and municipal purposes, "are one tax, and are to be so regarded." But a reference to other parts of the opinion shows that the expression "one tax" was not used in the sense now attributed to it by counsel, but as meaning a single scheme of taxation. The learned Chancellor had already pointed out (19 Vr., at p. 276) that the Act of 1884 fixed the same rate of taxation for State purposes which had previously existed for many years, but assessed it upon the valuation of all the property of the company used for its purposes, including the franchises, and provided for local taxation on part only of such property. On p. 278 he treated the scheme of the act as including "a tax "for State purposes and tax for county and munici-

"pal purposes." And on p. 280 he used this language: "All taxes, whether levied for State, "county or municipal purposes, are State taxes— "they can be imposed by no other authority than "that of the State. The State appropriates the "proceeds to what purposes it sees fit; but however "the proceeds may be appropriated, every tax is a "State tax." All these expressions precede that phrase which is made the basis of the argument now under examination, and throw light upon it. It seems to us plain enough that Chancellor Runyon entertained no other notion upon the subject than that held by the other judges who voted with him to sustain the Act of 1884 *in toto*. Thus, Justice Parker, in his opinion, employed the following language: (19 Vr., at p. 297) "All taxes are "in one sense State taxes. * * * Different "agencies are employed to assess and collect, and "the sums raised are applied to various public pur- "poses." And (one p. 298): "It (the legislature) "has the power and the right to enact that local of- "ficers in each taxing district shall assess and col- "lect for their respective districts the county, town- "ship and city taxes, and distribute the money with- "out its passing through the State treasury; or to "enact that a State Board shall assess and collect "all taxes, and bring all the money into the treas- "ury, in part to be distributed by the State among "the municipalities; or to provide for a State Board "to assess and collect one portion of the tax, and "local boards the residue." And Justice Scudder evidently had the notion of two taxes in his mind, when, referring to the criticisms that are contained in the dissenting opinions of Justices Dixon and Reed, he said (19 Vr., at p. 291): "Suppose, as in "this case, that the main stem, which includes the "road-bed not exceeding one hundred feet in width, "with its rails, sleepers, etc., is assessed at one rate, "and the other real estate used for railroad pur-

"poses in each taxing district is assessed at another "rate, and no good reason is assigned for such dif-- "ference. * * * These inequalities arise mainly "from the fact that some railroad corporations have "acquired more of a certain kind of property than "others, and they have extended their holding in "many cases far beyond the width of one hundred "feet for the main stem of the road as originally in- "tended and provided for in the charters. If all are "taxed alike for such excess, the rule of uniformity "is not thereby violated. Have not the legislature "the legal right to say that for the main stem of the "road one hundred feet in width, which the original "charters contemplated the railroad companies "should hold and use, they will tax at the rate of "one-half of one per centum for state purposes, "which was the amount fixed in most, if not in all "charters; but for all acquired beyond one hundred "feet in width a greater tax shall be paid, not to "exceed in the aggregate of both taxes the local "rate as fixed and assessed for county and muni- "cipal purposes?"

If we are wrong in our view that the decision in 19th Vroom settles the question of the constitutionality of subdividing railroad and canal property into "first-class" and "second-class" property for the purpose of imposing separate and distinct taxes upon the respective classes, then it seems to be necessary to discuss that question upon its merits. The recent decision sustaining the Duffield Act seems to carry us no further than does 19th Vroom; for that act still required the valuation and assessment of second-class property to be made by the State Board and tax to be imposed by them and collected by the comptroller of the state; hence it is claimed that under the scheme of the Duffield Act the combined taxes upon first-class and second-class properties constituted a "single tax" in every sense the same as before; whereas under the Per-

kins Act the tax upon second-class property is to be kept entirely separate from that upon first-class property.

Treating the question as open, therefore, our view of it is as follows:

The fact that all property used for railroad and canal purposes may properly be set apart in a class by itself, as distinguished from the general mass of property in the state, for purposes of taxation, does not at all negative the propriety of subdividing this general class of property into minor classes for the purpose of taxation. Nor is the sub-classification special and hence unconstitutional, provided it rests upon grounds of discrimination inherent either in the character of the property or in its situation and circumstances, such as to render the distinction reasonably appropriate to the purposes of the classification.

The purposes of this sub-classification is to designate a portion of the mass of real estate that is used for railroad and canal purposes, upon which portion taxes are to be levied for the support of local and municipal government, either together with or separate from taxes for the support of the general state government, leaving the residue of the property that is used for railroad and canal purposes to be subjected to taxation for general state purposes only. The line of demarkation between the two subdivisions is chosen with little reference to the use to which the property is devoted, but with especial reference to the location and situation of that which is to be locally taxed. Structures *used* in connection with the roadbed are placed on one side of the chosen line; buildings *used* for accomodating passengers or freight, on the other. So far, the line of definition follows the use. Aside from this, use has little or nothing to do with it. Practically, the line of division is: "Main stem," within one hundred feet, water-way, towing-path,

berme-bank, on the one side; these are continuous, running from end to end of the railroad or canal; all other real estate used for railroad or canal purposes goes into the other division. Is this mode of division reasonably germane to the purposes of the classification? And why?

In our legislation it has at all times been recognized that the land indispensable for the use of a railroad as a public highway is a belt or strip of limited width. To cite a few of the old special charters as typical instances; in that of the Camden & Amboy Railroad and Transportation Company, (P. L. 1830, p. 86, sec. 11) it was provided "that "the said road or its branches shall not exceed one "hundred feet in width on the surface of the road." In the case of the New Jersey Railroad & Transportation Company, (P. L. 1832, p. 98, sec. 6) the corporation was empowered to survey, lay out and construct a "railroad not exceeding sixty-six feet "in width." The charter of the Morris & Essex Railroad Company, (P. L. 1835, p. 27, sec. 6) likewise limited the width of the railroad to 66 feet. In the charter of the Somerville & Easton Railroad Company, (P. L. 1847, p. 130, sec. 6) the limitation was "not exceeding one hundred feet in width." Similar limitations were, we believe, included in most, if not all of the special railroad charters. In the general railroad law of April 2, 1873, it was provided by section 11 (Rev. 1877, p. 927, pl. 99; amended P. L. 1891, p. 129; Gen. Stat., p. 2,660, pl. 83) "that any railroad constructed un- "der the provisions of this act shall not exceed a "hundred feet in width unless more land shall be "required for the slopes of cuts and embankments." And in the revised act of 1903 concerning railroads (P. L. 1903, p. 649, sec. 7) it is declared that "the "right of way of any railroad or of any branch "thereof shall not exceed one hundred feet in width "unless more land shall be required for the slopes

"and cuts and embankments or for retaining walls, "in which case such land may be acquired as part "of such right of way."

At the same time it has always been recognized that railroad companies incorporated by special charter possess the incidental power to hold land outside of the limits fixed for its railroad, so far as such land is reasonably necessary or proper for the accomplishment of the objects of the incorporation. A power to this effect was expressly conferred by the general railroad law of 1873, section 1 of which authorizes companies incorporated thereunder "to "purchase, hold and use all such real estate or "other property as may be necessary for the con- "struction and maintenance of its railroad, and the "stations and other accommodations necessary to "accomplish the objects of its incorporation;" and also, "To lay out its road as hereby provided, and "to construct the same, and for the purposes of cut- "tings and embankments to take much more land as "may be necessary for the proper construction and "security for the road." And section 17 of the same act authorizes such companies to hold real estate at or near the termini, or at any other point on the line of the road where the directors should think proper to establish a depot, not exceeding ten acres at each place, and also to erect and build thereon houses, warehouses, work-shops, and such other buildings and improvements as they may deem expedient for the safety of their property, and for other necessary uses appertaining to their business, and receive the rents and emoluments thereof; and that all lands and real estate acquired by any such company not used by it for the immediate use and occupancy of its rails, tracks, depot and freight buildings should be subject to the same tax as the property of individuals, and said tax should be levied and collected by the local authorities where the same may lie, in the same manner as other

taxes. The revised railroad act of 1903 (P. L. 1903, p. 647, sec. 3) confers the express power to acquire and hold land necessary for terminal purposes, and for the construction and maintenance of the railroad, and stations, branches, sidings, car-yards, engine houses, repair shops, and other accommodations necessary to accomplish the objects of the incorporation.

The distinction between the continuous belt of land without which a railroad could not exist as a highway, and other sorts of railroad property, was early recognized as having something to do with the question of taxation. As pointed out in the opinion of the chancellor in 19 Yr. at p. 273, the legislature, prior to the adoption of the constitutional amendment that "property shall be assessed "for taxes under general laws, and by uniform "rules, according to its true value," passed the act of April 2, 1873, (P. L. 1873, p. 112; Rev. 1877, p. 1,166) the preamble of which recited that for the encouragement of railroad enterprise, laws creating and regulating railways in this state usually provided for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock or the cost of their works, in lieu of all other public impositions, and that it was nevertheless contended that the property of such corporations, being largely acquired for or through the growth and extension of their prosperity, *should contribute to the charges and expenditures for municipal and county purposes,* and that it was desirable in order to the avoidance of litigation and future dissatisfaction *that such municipal and county taxation should be authorized,* and that the same should be permanently fixed and regulated. The act proceeded to provide for a scheme of taxation as follows: First, that the companies should pay upon the "cost, equipment and appendages of "said railroads," respectively a state tax at the rate

theretofore fixed by law, or, in default thereof, at the rate of one-half of one per centum upon such cost; and, secondly, on all the real property by them used or owned for the purposes of their road or otherwise, *excepting their main stem or roadbed and track not exceeding one hundred feet in width, a county and municipal tax* for the benefit of the counties, townships and cities respectively where the same is situate, at the rate of one per centum upon a valuation thereof and of all improvements thereof not by way of repairs, provided that at the termini of their roads each company might hold a tract of land not exceeding ten acres in one parcel, which, with the buildings and improvements thereon, should be free from the payment of county, township and municipal taxes.

And the general railroad law of 1873, (approved on the same day with the above act) in its 19th section, provided for an annual tax of one-half of one per centum upon the "cost, equipments and appen- "dages" of the railroad, including the cost of the roadbed, and such other taxes as might be assessed from time to time by a general law applicable to all railroads over which the legislature should have power for that purpose; and further provided that the company should be regularly assessed and pay tax for the value of its real estate, (*excepting the roadbed one hundred feet in width*) improvements thereon and personal property as taxed *in the cities or townships wherein it lies,* at the same time and rate, and in the same manner, for the same purposes and by the same persons, as other taxes assessed in said municipalities.

It will thus be seen that the distinction between the strictly essential "right of way," so called, of a railroad—the strip of land without which it could not exist as a public highway and means of transportation across the state—and the remaining land of the company used for railroad purposes, is invet-

erate in our legislation. So far as the setting of these two different sorts of property into separate classes for purposes of taxation is concerned, the distinction rests, as we conceive, not so much upon the ground that they are devoted to different uses, as that the dependance of the several companies upon local police protection and the other advantages of municipal government, the benefits to be derived by them from such government, and hence the proper admeasurement of the tax that should be contributed by the companies to the respective local governments are proportioned approximately to the amount of land held by them in the several municipalities above and beyond the main stem that is indispensably necessary for their traffic. This notion is expressed in the preamble of the act of 1873 for the taxation of railroad corporations above cited; the same notion is implicit, we believe, in the railroad tax acts of 1884 and 1888.

It seems to us entirely reasonable for the legislature, upon determining that property used for railroad and canal purposes should contribute directly to the cost of local government, to require the companies to contribute to the several taxing districts in a proportion based with reasonable approximation to accuracy, upon the amount and value of the property held by them in the municipality. This was in effect done by the act of 1884 and by the revised act of 1888. And the same thing is in effect accomplished by the supplements of 1906, including the Perkins Act. No doubt the legislature might have turned over the main stem as well as the second-class property to the several municipalities for purposes of taxation. It might have reserved all railroad and canal property for taxation by the State Board for state purposes. It has chosen by the acts now under review to reserve for taxation for strictly state purposes the indispensible main stem, and

to remit the other railroad property to local taxation.

Nor can it be said that the adoption of a width of 100 feet as the limit of the main stem for the purposes of this distinction is arbitrary in any sense that renders the classification illusory and the law therefore special. The limitation by width is only one of several limitations that go to make up the statutory definition of "main stem." As defined in chapter 122 of the laws of 1906, it does not extend beyond "the roadbed with its rails and sleepers "and structures erected thereon and used in con- "nection therewith," although this be less in width than one hundred feet. It is only in places where there may happen to be a greater width that the 100 foot limitation has effect. As already pointed out, there is a historical reason for the adoption of this precise width. But, in any event, it is for the legislature to adopt such limitation as to it may seem reasonable for this purpose, and we are unable to perceive any sufficient ground for declaring it to be illusory.

It is argued that for the purpose of the distinction between first-class and second-class property the width of 100 feet applies to canals as well as to railroads. Assuming this to be so, we do not think that the adoption of this limit of width for the water-way of a canal, in order to distinguish between first-class and second-class property, is so arbitrary as to demonstrate that the classification is illusory. Of course, canals, like railroads, are necessarily of limited width; and it is permissible for the legislature to adopt a width, any excess beyond which shall require a direct contribution, by way of tax, towards the support of local government.

It is strongly urged that at many points upon our principal lines of railroad, and more especially at their terminals, the roadbed actually occupied by tracks for the purposes of through traffic extends

far beyond one hundred feet in width, and that there is no difference between the mode in which the strip called "main stem" is used and that in which the adjoining portions are used. It is pointed out that in the case of the Lehigh Valley Railroad, for miles at Jersey City, and at several other points, the railroad tracks cover the entire surface of the earth for several hundred feet in width, and are indistinguishable from each other by any physical marks; that they are constantly used for railroad purposes; that switches unite them, and they occupy the ground without any reference to whether it is main stem or adjacent property. And that in a great terminal station like that of the Pennsylvania Railroad in Jersey City, some 250 feet in width, a strip of land 100 feet in width under the station is assessed as main stem by the State Board, and the rest of the land and tracks under the station and the roof over the whole station, including main stem, are assessed by the local board of Jersey City. If the distinction between main stem and second-class property depended upon the use to which the property is devoted, these circumstances would possess much force. As already remarked, it does not depend upon that distinction, but rather upon the ground that by reason of the great extent and value of the railroad property at the points in question it is reasonable and proper that the railroad companies should contribute more largely to the cost of the local government than in other places where the amount of their property is less. Of course, all the property under consideration must be used for railroad or canal purposes respectively, else it would not be in the principal class, and therefore not in either of the subdivisions.

Upon principle, therefore, as well as upon what we deem controlling authority, we are clearly of the opinion that the subdivision of railroad and

canal property into two classes is based upon reasonable grounds that are fairly germane to the main purpose of imposing two separate and distinct taxes, one for strictly state uses at one rate upon one class, the other for local uses at local rates (either with or without a general state tax) upon the other class.

As amended in 1906, just as before those amendments, the act applies equally to all railroad and canal corporations, and treats all alike whose property is similarly circumstanced.

The law is therefore a general law.

But next, it is insisted that the act of 1888, including the amendments in question, prescribes a rule for taxation which is not uniform within the meaning of our constitutional provision.

Now, with regard to the phrase "uniform rules," as used by the constitution, we take it that two points are thoroughly established by the decision in 19 Vroom, as well as by abundant authority elsewhere. These are (1) the phrase does not refer to those regulations that pertain to the agencies and methods employed in the assessment and collection of taxes, but only to the basic rules for taxation; those that settle how the public burden is to be distributed; including the designation of the property that is to contribute, and the rate or ratio by which the taxes are to be laid and apportioned;—and (2) by the constitutional provision is satisfied by a uniformity that obtains without discrimination throughout a class of property set apart on reasonable grounds for separate treatment.

These points are not much elaborated in the prevailing opinions in the Court of Errors and Appeals in the 19th Vroom case; they seem to have been taken for granted. Chancellor Runyon, however, touched upon the second point. At p. 279 he said: "The constitutional provision does not take "away from the legislature the power of selecting

"the subjects of taxation. But it does require that "all the members of the class selected shall be in- "cluded in the taxing law, and that the rule applied "thereto shall be *uniform as to the whole of the "class,*" etc. And at p. 282: "A law which taxes "a class of property separately is not unconstitu- "tional if it embraces all property of that class, "*and applies to it uniform rules* and taxes it accord- "ing to its true value." Justice Scudder, at p. 290, referring to the definition of the word "uniform," said: "As it stands in this paragraph of the con- "stitution it means that rules must not be variable "in their application to the subject of taxation *in- "cluded in the classification of property.*"

The extract above quoted from Justice Parker (19 Vr. 298) shows that he recognized the first point. As to the second, he said (at p. 304): *"The "uniformity of rules in taxation which the consti- "tution requires is that uniformity which operates "on the whole of a class.*"

Justice Dixon, (19 Vr. at p. 310) referring to his own previous declaration in *Stratton* vs. *Collins*, 14 Vr. 562, that the uniformity clause requires that the same imposition should be made upon all the taxable property in the township for township purposes, in the county for county purposes, and in the state for state purposes, said: "This statement, "although sufficiently exact for the case then before "the court, is broader than the constitution seems, "on reflection to demand. The expression 'uniform "rules' is not of wider import than the expression "'general laws,' *and if the latter may be confined "to a class, with equal propriety may the former.* "* * * Its collocation with the words 'general "laws' indicates that it was to have a correspond- "ing meaning, and the whole sentence becomes har- "monious by holding that it requires the same regu- "lations to be applied to *every member of each class "which the general laws recognize or establish.*"

Justice Reed's dissenting opinion shows that he had both points clearly in mind. At p. 322 he said: "Must property be taxed at a uniform rate "by reason of the requirement that property shall "be taxed by uniform rules as well as by general "laws? The constitution does not require that "property shall be taxed by a single rule, but by "uniform rules. If we assent to the proposition "that property may be ranged into classes for any "purpose of taxation, and also to the proposition "that a law which includes all of a class is a gen- "eral law, *I am unable to perceive how a rule that "also applies to a class lacks uniformity of opera- "tion.* Judicial sentiment has been in favor of the "view that *the constitutional amendment was not "intended to affect mere methods of procedure in "levying or collecting taxes, but was designed to "fix the rules by which the burden of taxation was "to be distributed.* Inasmuch as all property to be "taxed is to be taxed at its true value by the express "terms of the amendment, if it is also held that all "property must be taxed at a uniform rate, then "the power of classification is a barren privilege."

And Mr. Justice Depue, in his dissenting opinion, (19 Vr. at p. 337) said, as to the first point: "The "constitutional provision does not touch the ma- "chinery by which the taxes shall be assessed or "collected. Every system of taxation consists of "two parts—the one relating to the assessment (the "designation of the persons or things which shall "be the subject of taxation, and the apportionment "of taxation among such persons or things in the "ratio prescribed by law); the other the collection "of taxes by the enforced payment thereof. The "constitutional provision in question relates only "to the assessment of taxes, and in that respect con- "cerns only such equalization of the burden of tax- "ation as would result from the designation of the "property which shall be the subject of taxation,

"and the apportionment of the taxes thereon, under "general laws and by uniform rules, according to "its true value. The mere machinery by which "taxes shall be assessed or collected is left in legis- "lative discretion."

Both points were fully conceded by Chief Justice Beasley in 19 Vroom at p. 8, for he used this language: "We perceive no reason why the legisla- "ture may not create different agencies for the valu- "ation of property and the assessments of taxes. "* * * Nor do we think the present law, in "mere point of instrumentality, is objectionable, "etc. * * * *All that the constitution calls "for in this particular, is that the rule of assess- "ment shall be uniform;* it does not require uni- "formity of mind in the application of the rule."

So, in *Fidelity Trust Co.* vs. *Voigt, Receiver*, 37 Vr. at p. 90, Mr. Justice Van Syckel said: "Differ- "ent methods of ascertaining true value may be "prescribed in such classifications, and so long as "the public burden is imposed substantially and "proximately according to true value, there will be "no infirmity in the declaration of the legislative "will."

The cases cited below from the United States Supreme Court speaks to the same effect.

If, therefore, the subdivision of railroad and canal property into two classes for the main purpose of determining the rate at which it is to be taxed and the purpose for which the tax is to be levied is justifiable, (as we have seen that it is) clearly the two subdivisions may be separately treated with respect to the rules that have reference to the mere machinery of assessment, collection and enforcement of the taxes. This disposes of the objections that were urged against chapter 82 respecting matters of administrative detail. It also disposes of the objection that under the Perkins Act second-class property is assessed by the

local assessors, while under chapter 82 "main stem" and "water-way" are assessed by a state board, with no equalization system to effect uniformity between the different assessments, and "no method of bring-"ing into operation the same mind upon the values" (to use the words of counsel) without which, it is said, there can be no uniformity. As well might it be said that there is no uniformity in the rules of law, because different judges sit in different courts and exercise different jurisdictions, sometimes dependent upon locality, sometimes dependent upon the form of the action. "True value" is the rule prescribed for the guidance of all tax assessors, and appeals and reviews are the method of correcting their errors.

For the same reason, we find it unnecessary to determine the disputed question of construction, above alluded to, viz.; whether the Perkins Act leaves second-class property still subject to the administrative features of the act of 1888, respecting the mode in which the assessments are to be reviewed, how payment of the taxes is to be enforced, and the like; or whether in these and all other respects the Perkins Act takes second-class property entirely without the scope of the act of 1888, and subjects it to the provisions of the general tax law of 1903.

Counsel for the respondents seem prepared to concede that if the Perkins Act has the latter effect, it is for this reason special and therefore unconstitutional, because it relates to part only of the property used for railroad and canal purposes. Such a concession, we think, is unnecessary; for as already seen, a justification of the classification for the main purpose of the act at the same time justifies the separate treatment of the two classes with respect to all matters of detail.

Nor are we prepared to concede the soundness of the argument of the same learned counsel, that the

title of the Perkins Act is so restrictive as to prevent its provisions from having the effect of subjecting any part of the property used for railroad and canal purposes to the operation of the tax law of 1903. The suggestion is that all property used for railroad and canal purposes was taken out of the operation of the general tax law of 1866 (predecessor of the revised act of 1903) by the acts of 1884 and 1888, so that after their enactment the act of 1866 had no relation to such property; that in the revision of the general tax law in 1903 this kind of property was expressly exempted from its operation, and for this reason cannot be brought within it except by a supplement to the latter act; that the Perkins Act is by its title a supplement to the act of 1884 as revised in 1888, and its title restricts its application to these acts, so that its provisions cannot extend the application of the act of 1903 to property used for railroad and canal purposes.

It is, of course, entirely established that under our constitutional provision (Art. IV, sec. VII, pl. 4) that "every law shall embrace but one object, "and that shall be expressed in the title," the title of a statute is not only an indication of the legislative intent, but is also a limitation upon the enacting part of the law. *Hendrickson* vs. *Fries*, 16 Vr., 555, 563. But among the numerous reported cases in which our courts have been called upon to recognize and apply this doctrine, we are unaware of a case in which it has been held that an act which is, by its title, a supplement to a former act, is limited in its scope to provisions that are consistent with the *enacting part* of the act to which it is a supplement. On the contrary, acts entitled "supplements" are the means commonly employed by our legislature to modify and amend previous legislation.

The title of the act of 1884 is "An act for the "taxation of railroad and canal property." The title of the act of 1888 is 'An act to revise and

"amend 'An act for the taxation of railroad and "'canal property,' approved April tenth, one thou-"sand eight hundred and eighty-four." The title of the Perkins Act (P. L. 1906, p. 571) is "A further "supplement to an act entitled 'An act to revise and "'amend,'" etc., (repeating the title of the act of 1888). No reason occurs to us why this supplement may not constitutionally include any provision for the taxation of railroad and canal property. Supplements (if constitutional) are, on familiar principles, to be read into the original act, and become in effect a part of it, and it would therefore seem that the "object" of a supplement, in the constitutional sense, is as broad as the object expressed in the title of the act to which it is a supplement. We find nothing in the reported cases which, when properly viewed, seems to hold otherwise. *New Brunskick* vs. *Williamson,* 15 Vr., 165; 17 Vr., 204; *Rahway Savings Institution* vs. *Rahway,* 24 Vr., 48; *Smith* vs. *Howell,* 31 Vr., 384; (see comment on this case in *Allison* vs. *Corker,* 38 Vr., 599, etc.); *Morris & Cummings Dredging Co.* vs. *Jersey City,* 35 Vr., 142; *Jones* vs. *Morristown,* 37 Vr., 488; *Walling* vs. *Deckertown,* 35 Vr., 203.

And as to the act of 1903, its title is, "An act for "the assessment and collection of taxes." There is nothing in this to exclude property used for railroad and canal purposes from the purview of the act. Their exclusion arises solely from the *enacting part,* (P. L. 1903, p. 396, sec. 3, par. 8) which is, of course, amendable; not at all from the *title.*

However, the disputed question about the scope of the Perkins Act is too important to be decided until the necessity arises, and we therefore leave is undecided.

But again, it is urged that the taxes imposed by virtue of the supplements of 1906 do not distribute the burden of taxation uniformly as between different railroad and canal companies, for two reasons.

First, because second-class property must bear as many different rates of tax as there are taxing districts, so that one company may pay a higher rate, in the average, than its competitor whose second-class property lies in different taxing districts. But local rates necessarily depend upon local conditions, and the benefits of local government presumably vary in the like proportion. Railroad and canal companies are in this respect now placed upon the same footing with other taxpayers. *Secondly,* because the percentage of the entire property of each company that is with the second class varies as between different companies. It is pointed out that of the property of the Trenton and New Brunswick Railroad Company, substantially all is "main "stem," while of the property of The Long Dock Company, more than half is second-class property. If this is a valid objection, then assuming a tax law levying one rate upon each horse and another rate upon each cow were in other respects valid, it would be rendered non-uniform and therefore unconstitutional by the circumstance that one man owned more horses than cows, while his neighbor owned more cows than horses. The point is treated in the extract already quoted from the opinion of Mr. Justice Scudder (19 Vr., 291).

There is no substance in either of these points.

The laws in question "operate uniformly upon "all property of the class. This is true of all property used for railroad or canal purposes, with respect to every rule that works a discrimination between such property and the remaining taxable property in the state. It is true of all property within each of the two subdivisons. All "main "stem" and "water-way" property is treated alike; all other property used for railroad and canal purposes is treated alike, subject only to differences arising necessarily from differences in local conditions and government, differences which likewise

affect all land taxation according to the location of the land.

Upon the whole, therefore, we entertain no doubt that the legislation of 1906 prescribes "uniform "rules" for taxation, within the constitutional intendment.

Is the third of our constitution requirements—the adoption of the standard of "true value"—excluded or rendered impossible of attainment by the necessary operation of this legislation? No more so, we think, than was the case with the previous legislation that has been judicially sustained.

The adoption of different agencies for making the valuations, with different supervision and review, certainly does not exclude it, for all agencies and tribunals are to be guided by the same standard.

Nor does the circumstance that, in such cases, as are above instanced, main stem and second-class property constitute parts of an indistinguishable whole, render it impossible, either from the legal or from the practical standpoint, for the assessing officers to arrive at a true valuation of the respective portions of the property that is used for railroad purposes. No doubt, if the State Board of Assessors, on the one hand, and the local assessors on the the other hand, were to value main stem and second-class property, respectively, without having regard to the environment of the property, absurd results would follow. The law, as we take it, contemplates no such thing. As remarked by the chancellor in the case so often cited (19 Vr., at p. 278): "To do justice to the companies, and in common "fairness, not only must the main stem of a rail-"road and the water-way of a canal be each valued "and taxed as a unit, but the other property used "in connection therewith and for the same purposes "must also be valued and taxed with reference to "such use. To make a just valuation thereof, prop-"erty used for railroad or canal purposes must be

"estimated with regard to its value for such pur-
"poses. For example: the true value for purposes
"of taxation of railroad cuts and embankments and
"canal locks is not their cost, but what they are
"worth in connection with the works of which they
"form part." Clearly, it is the duty of the State Board to value main stem with reference to the adjacent property in connection with which it is used. And it is the duty of the local assessors to have in view the main stem when valuing the adjacent property. Although the problem is no doubt more difficult, it is essentially the same problem that confronts every local tax assessor when he comes to assess a portion of a lot, or of a farm, or of a house, of which the remaining portion lies in an adjacent taxing district. Indeed, any person on properly valuing any specific parcel of land must value it in connection with its environment. If it be a city lot he values it as a part of a city, and not merely as so much soil, so much clay, so much rock, etc.

Nor is the problem of valuing the roadbed separately from the superincumbent structure, and the structure separately from the roadbed, either novel or insoluble. It is a common and most usual practice for real estate experts, in computing the valuation of improved real estate of any kind, to estimate separately, first the land as it would be worth if vacant, and then the buildings and other improvements, and to combine these estimates in order to arrive at the value of the whole. Such a separate valuation is contemplated by our general tax law (P. L. 1903, p. 398, sec. 7; p. 395, sec. 3, par. 4; P. L. 1906, p. 273). The whole business of insuring buildings against fire is based upon a valuation of them separate from the land. Litigations concerning the ownership of fixtures upon land frequently require their separate valuation while still *in situ*. Instance the mechanics' lien law, (P.

L. 1898, p. 540, sec. 7). The railroad tax laws of 1884 and 1888, in section 3, as plainly required the valuation of structures separately from the land, and *vice versa*, as do the supplements of 1906 or any of them. And in 19 Vroom at p. 292, Mr. Justice Scudder said: "The objection that the prop-"erty of railroads by this law is not assessed ac-"cording to its true value, because it can only be "truly valued as an entirety, and not in parcels, "as provided for in the act, is not well taken. The "method of determining the true value of property "must be left to the discretion of the legislature. "If this value is fixed as the basis of taxation, the "methods and the agencies to be used to ascertain "it, belong to the legislative and not to the judicial "province." To the like objection, when raised in a later case, Chief Justice Beasley said: "This sys-"tem of disjunctive valuation lies at the basis of "this act; it could not be executed on any other "plan; consequently, when the act was vindicated "on constitutional grounds, the system thus essen-"tial to it was likewise vindicated." (*Central R. R. Co.* vs. *State Board of Assessors*, 20 Vr., l. 7.)

There is nothing, therefore, in the legislation before us that excludes—nothing, indeed, to interfere with—the standard of "true value."

Having settled the questions thus far discussed, by showing that the laws under consideration do not deprive the taxpayer of his property without due process of law, and that they comply with the mandate of our own constitution respecting the assessment of property for taxes, it follows that they do not deny to the prosecutors or any person "the equal protection of the laws." The "law," to whose equal protection they are entitled, is that very provision of our constitution which requires that "property shall be assessed for taxes under "general laws, and by uniform rules, according to "its true value." But the operation of this pro-

vision is of necessity subject to the right and power of the legislature to reasonably classify property for purposes of taxation. And the United States Supreme Court holds the same view declared by our own court of last resort, that rules which pertain uniformly to property rationally set apart in a class, irrespective of the ownership of such property, satisfy such a constitutional provision.

In *Kentucky Railroad Tax Cases*, 115 U. S., 321, at p. 337, Mr. Justice Matthews said: "The rule of "equality, in respect to the subject, only requires "the same means and methods to be applied impar- "tially to all the constituents of each class, so that "the law shall operate equally and uniformly upon "all persons in similar circumstances." And again, referring to the criticism that different modes of valuation, and different procedure on appeal, existed as between railroad property and ordinary real estate, he said (at p. 338): "We have already "decided that the mode of valuing railroad prop- "erty for taxation under this statute is due process "of law. That being so, the provision securing the "equal protection of the laws does not require in "any case an appeal, although it may be allowed "in respect to other persons differently situated. "This was expressly decided by this court in the "case of *Missouri* vs. *Lewis*, 101 U. S. 22, 30. It "was there said by Mr. Justice Bradley, delivering "the opinion of the court and speaking to this "point, that 'The last restriction, as to the equal "'protection of the laws, is not violated by any di- "'versity in the jurisdiction of the several courts "'as to subject matter, amount, or finality of de- "'cision, if all persons within the territorial limits "'of their respective jurisdictions have an equal "'right in like cases and under like circumstances, "'to resort to them for redress.' The right to class- "ify railroad property as a separate class for pur- "poses of taxation grows out of the inherent nature

"of the property and the discretion vested by the "constitution of the state in its legislature, and "necessarily involves the right, on its part, to de- "vise and carry into effect a distinct scheme, with "different tribunals, in the proceeding to value it. "If such a scheme is due process of law, the details "in which it differs from the mode of valuing other "descriptions and classes of property cannot be "considered as a denial of the equal protection of "the laws."

In *Pittsburg, etc., Ry. Co.* vs. *Backus*, 154 U. S. 421, at p. 427, Mr. Justice Brewer said: "Equally "fallacious is the contention that, because to the "ordinary taxpayer there is allowed not merely one "hearing before the county officials, but also a right "of appeal with a second hearing before the State "Board, while only the one hearing before the lat- "ter board is given to railroad companies in respect "to their property, therefore the latter are denied "the equal protection of the laws. If a single hear- "ing is not due process, doubling it will not make it "so; and the power of a state to make classifica- "tions in judicial or administrative proceedings "carries with it the right to make such a classifica- "tion as will give to parties belonging to one class "two hearings before their rights are finally deter- "mined, and to parties belonging to a different class "only a single hearing."

Winona & St. Peter Land Co. vs. *Minnesota*, 159 U. S. 526, is a strong authority upon the point now under consideration, for the reason that the state law there under review based a classification of property for purposes of taxation upon the mere circumstance that it had been omitted from the tax roll in some preceding year or years; and the law established a different procedure with respect to this class of property from that which obtained respecting property in general. At p. 538 Mr. Justice Brewer said: "With respect to the next in-

"quiry, it is true there is a difference in the mode "of assessment. * * * In the one case there is "an assessment by one officer with a right to review "his action; in the other there is an assessment by "a different officer, and no provision for a review "except as the matter comes before the court in the "proceedings for the collection of taxes. But there "is nothing in this difference to affect the consti- "tutional rights of a party. The legislature may "authorize different modes of assessment for dif- "ferent properties, provided the rule of assessment "is the same." (Citing the cases from 115 U. S. and 145 U. S., above mentioned.)

See also *Bell's Gap R. R. Co.* vs. *Pennsylvania*, 134 U. S. 232, 237, 238; *Home Ins. Co.* vs. *New York*, 134 U. S. 594, 606; *Pacific Express Co.* vs. *Seibert*, 142 U. S. 339, 351; *Adams Express Co.* vs. *Ohio*, 165 U. S. 194, 228; S. C. on rehearing, 116 U. S. 185.

Weyerhaueser vs. *Minnesota*, 176 U. S. 550, sustained a statute which authorized the governor of the state to appoint a board to revalue and reassess property that had been grossly undervalued by the assessors for any county. *Winona & St. Peter Land Co.* vs. *Minnesota*, 159 U. S. 526, was relied upon and followed, Mr. Justice McKenna, at p. 557 of 176 U. S., reiterating the declaration that there was nothing in the difference in the manner of assessment, and the successive opportunities for review given to the property owner in the one case and not in the other, to affect the constitutional rights of a party, and that the legislature may authorize different modes of assessment for different properties, providing the rule of assessment is the same.

The taxes under review should be affirmed, with costs.

United N. J. R. R. & Canal Co. Irrepealable Contracts.

OPINION FILED AUGUST 7, 1907.

NEW JERSEY SUPREME COURT.

UNITED NEW JERSEY R. R. & CANAL COMPANY

vs.

STATE BOARD OF ASSESSORS.

Decided August 7, 1907.

Opinion by Fort, *J.*

SYLLABUS.

First—That by the transit act of 1869, the irrepealable contracts contained in the original charters of the several railroad and canal companies composing the United New Jersey Railroad and Canal Company, fixing transit duties in lieu of other taxes, were abolished.

Second—That, if the act of 1869 created any contract, upon its acceptance by the United Companies, it was a contract to pay the specific tax mentioned in that act, or such other tax as should be imposed upon the property of all railroad and canal corporations.

Third—That the act of 1884, as revised in 1888, and the acts of 1905 and 1906 (all supra), are general laws, within the requirements of the act of 1869.

Fourth—That a state tax is any tax imposed by legislative authority, whether assessed directly by the state itself, or by an agency of the state.

Fifth—That the taxation imposed under the act of 1884, as revised and amended in the acts of 1888 and 1906, as to the separate classes of railroad and

canal property segregated by the legislature for taxation, is a uniform state tax.

This result leads to an affirmance of the tax brought up, either under or irrespective of any contractual relation which may exist between the state and the prosecutors under the act of 1869.

The following are extracts from the opinion.

That the method of taxation provided for by the act of 1869 was substituted for that contained in the respective charters of the several companies composing the United New Jersey Railroad and Canal Companies, we have no doubt. The language of this act makes its purpose clear.

Before it was to become operative it was to be accepted by the corporations to which it might apply. It was so accepted by the United Companies, as we have seen. By this acceptance the contract for transit duties, in lieu of taxation, was by the first section of that act clearly abrogated by mutual agreement. The second section of the act substitutes for the transit duties previously imposed, a specific tax of "one-half of one per centum upon the cost of their respective works, including all their property of every description not otherwise taxed."

This we think becomes the substituted or modified contract, if any contract thereafter existed between these companies and the state, and this method of taxation became, if a contract existed, the exclusive method of taxing such companies unless and until, as the act provides, "the legislature shall by general law, impose a uniform state tax equally applicable to all railroad and canal corporations of this state, and said companies shall then pay such uniform tax."

The specific rate tax was, therefore, after 1869, the only method of taxing the property of the prosecutors in this case so long as the state failed to enact a general law imposing a uniform tax upon

the property of all railroad and canal corporations. Whenever the state saw fit to place the property of all railroad and canal companies, for the purposes of taxation, under a general law, there was nothing in the act of 1869 to inhibit its so doing.

Assuming the act of 1869 to be a contract between the prosecutors and the state, it in no way prohibits the legislature from changing the method of taxation provided in that act, if the change made shall be made by a general law applicable to all the property of all railroad and canal companies in the state, and shall establish a uniform state tax upon such property.

This leaves, as the first question to be determined, is the act of 1906, under which the assessments were laid in the case before us, a general law for the taxation of the property of all railroads and canal corporations?

We think it is.

That phase of this question is disposed of in an opinion filed by Mr. Justice Pitney, in the several cases argued together with this case.

* * * * * *

We do not construe the words "a uniform state tax" in the act of 1869, to mean a tax uniform in amount throughout all the taxing districts of the state within the entire territory of the state, but as fixing a rule of taxation which shall be uniform in its application to all railroad and canal property within the several taxing districts. The rate of taxation in the several taxing districts must, of necessity, owing to their different needs, vary, but, the variance is uniform in its application upon all railroad and canal companies owning property within the several taxing districts, and, hence, the rate of taxation in the several districts falls with equal burden upon the property of each railroad and canal company within each of the taxing districts of the state.