

N. J. Court of Errors and Appeals.

1. THE STATE, (<i>ex rel.</i> , PHILANDER S. PIERSON, County Collector, &c.,)	} On Error to Supreme Court.	10
vs. THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK.		

2. THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX,	} On Error to Supreme Court.	20
vs. THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK,) Prosecutors.		

(Both these causes grow out of an alleged illegal assessment of a county tax, and by agreement are to be argued together in this Court, as they were below.) 30

BRIEF FOR PLAINTIFFS IN ERROR.

I.

MANDAMUS CASE.

The mandamus in this cause, (*Case*, p. 3,) after reciting that of the county taxes assessed and collected from the taxable inhabitants and property in and of the city of Newark, in and for the year eighteen hundred and seventy-nine, by order of the Board of Chosen Freehold- 40

ers of the County of Essex, for the purposes of said county, *there remains unpaid and in the hands of the Mayor and Common Council of the City of Newark the sum of \$27,752.26*, commands them that they pay the said collected taxes to the relator, the County Collector of said county, or show cause to the contrary, &c.

The defendants admit the recitals in the writ to be true; they, by their return thereto, certifying, (among other things,) as follows:

10 “The said defendants, for answer to said writ, do certify and return, that of the county taxes, assessed and collected in the city of Newark, in and for the year 1879, there remains unpaid to the above named relator, the county collector of the county of Essex, a balance of \$27,752.26, which, although collected in said city, and duly demanded by the said relator, the defendants detain from, and refuse to pay over to the said relator,” (adding, as an excuse, that, as they allege, the taxes were illegally assessed and collected.)

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POINT.

The defendants, acting in the capacity of collector of the county taxes, from the tax payers, for the use of the county, and having, in fact, collected and received the same from the tax payers, cannot lawfully detain them from the county, under any pretense of illegality in the assessment thereof.

30 “It is not the business of the collector to question the fairness or propriety of any tax which has been committed to him for collection. If the assessment is excessive, the party assessed must make the objection, and not the assessor. His duty is to collect the list committed to him, and he cannot excuse himself for any failure to exhaust his authority in collecting, on the pretense that the person taxed should not have been assessed at all, or should have been assessed otherwise than he was.”

Cooley on Taxation, 500.

Williams vs. Holden, 4 Wend., 223.

Moore vs. Alleghany City, 18 Penn. St., 55.

40 “If he receives the money to the use of the public, he should account for it; and it is immaterial that those

who have paid it might successfully have resisted the collection from them."

Cooley on Taxation, 498.

"The substantial fact is, that he has received money for the State, and, having done so, *it is not his privilege to pause and question the right of the State to receive it.* * * * Even an unconstitutional tax, once collected, the collector has no right to retain, but should account as in other cases."

Cooley on Taxation, 498.

Burroughs on Taxation, 264.

Waters vs. State, 1 Gill., 302.

Smyth vs. Titcomb, 31 Me., 272.

Bell vs. R. R. Co., 4 Wall., 598.

Commonwealth vs. Philadelphia, 27 Penn. St., 497.

High on Ex. Rem., § 143.

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II.

CERTIORARI CASE.

20

The defendants in error not only refuse to pay over to the county the taxes collected and received by them, but have sought, by these certiorari proceedings, to set aside the assessment itself—on the ground of alleged *illegality in the assessment.*

POINTS.

I. *The objection of illegality in the assessment cannot be taken by the defendants*, because, 30

(1.) They are not the parties assessed, viz: the tax payers, who alone are wronged by an illegal assessment, and who, alone, therefore, have a right to object to it.

(2.) If they have a right, (which is not conceded,) to prosecute the certiorari, it was only as the possible *agents or representatives* of the tax payers—they had not originally, and have not now, any greater or better right than their principals or constituents, (the tax payers,) *from whom such right is derived, and who have voluntarily paid* 40

the taxes, so that they, consequently, and a fortiori, those assuming to be their agents or representatives, are precluded from objecting now.

See *Cooley on Taxation*, 567, 573, 574.
Burroughs on Taxation, 266, 267.

II. *The defendants, if they ever were entitled to prosecute the writ, applied for it too late, and ought not now to be heard to object.*

10 (1.) The writ is directed to the Board of Chosen Freeholders, who simply *ordered* the assessment complained of, to be made; and yet the prosecutors delayed proceedings until the *order* had gone from the Board of Chosen Freeholders into the hands of the assessors, and until after the *assessment* had been made by the assessors in pursuance of that order, and the duplicate had gone into the hands of the collecting officers, and the moneys so ordered to be assessed were "*in process of collection.*"

20 The writ of *certiorari* itself, (*Case*, p. 2,) recites the fact that the taxes were then "IN PROCESS OF COLLECTION."

"The writ must be applied for in due season, and before the proceeding, which it is desired to review, has passed beyond the control of the tribunal in which it was taken."

Cooley on Taxation, 531.

People vs Delancy, 49 N. Y., 655.

People vs. Supervisors of Queens, 1 Hill,
195, 199.

30 III. Besides the writ of *certiorari* requires the Board of Chosen Freeholders to certify "*a certain assessment of county taxes,*" whereas there was and could be *no assessment by or before it.* It simply *orders* money to be raised for county purposes, which money is afterwards assessed by assessors, and then becomes an assessment; and not before.

The writ should have commanded the board to certify the *order* for raising the money.

40 *See *Rev. (tit. Chosen Freeholders)*, p. 128, § 4.

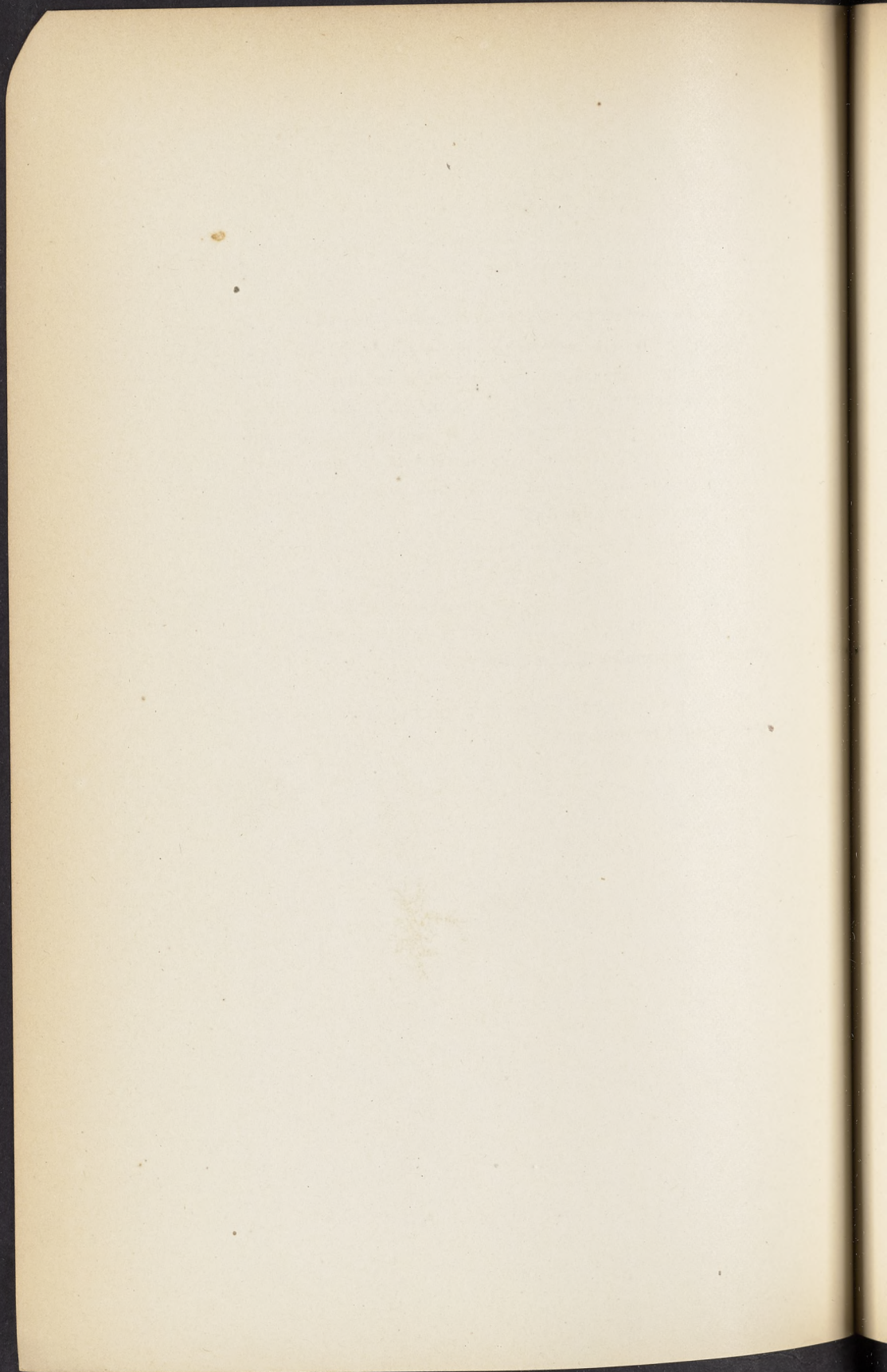
The *assessment* or "*duplicate*" must, at the time the writ issued, have been in the hands of the collecting officers, as the taxes were then "*in process of collection.*"

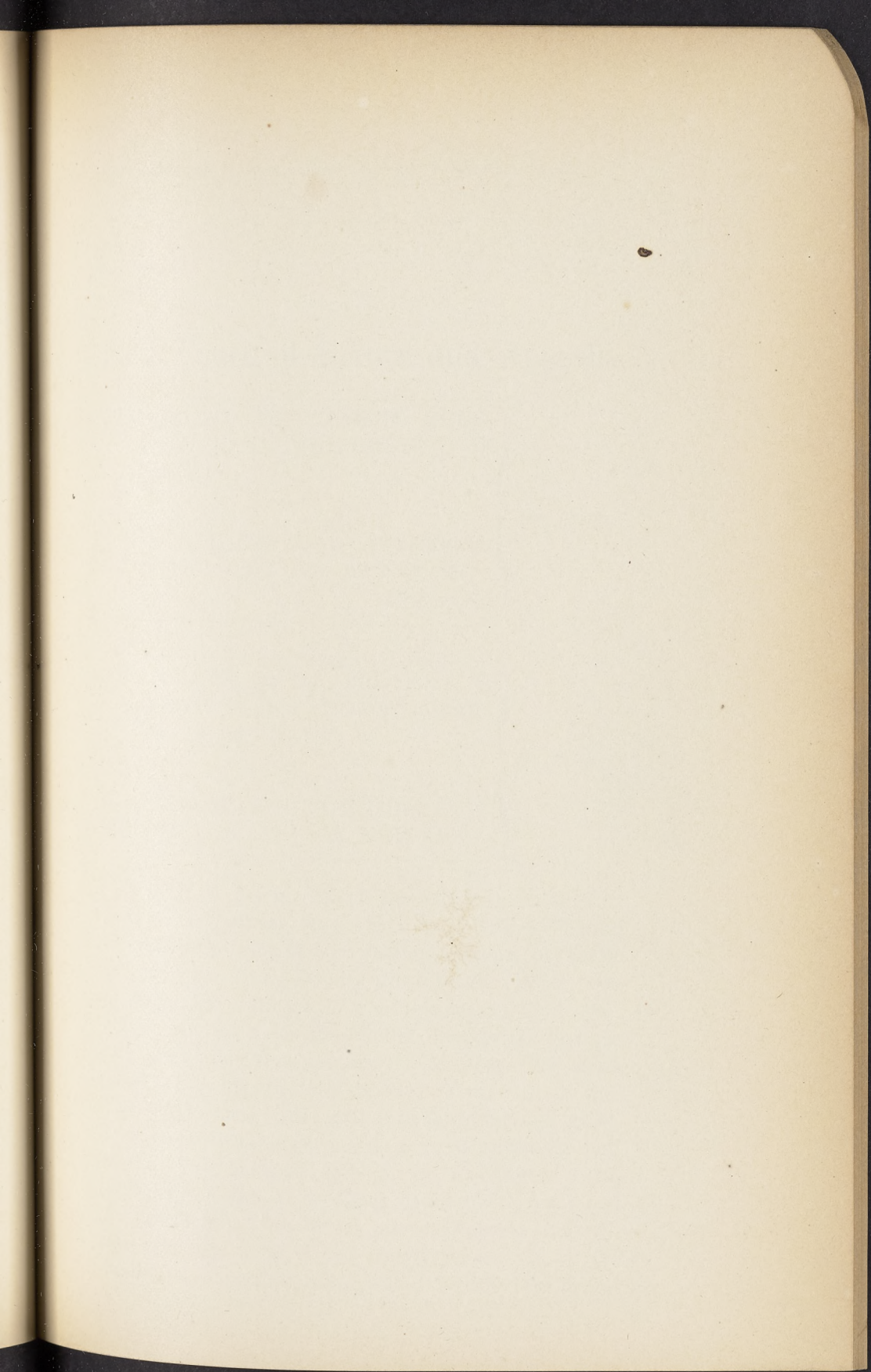
IV. *The assessment was, however, entirely legal.*

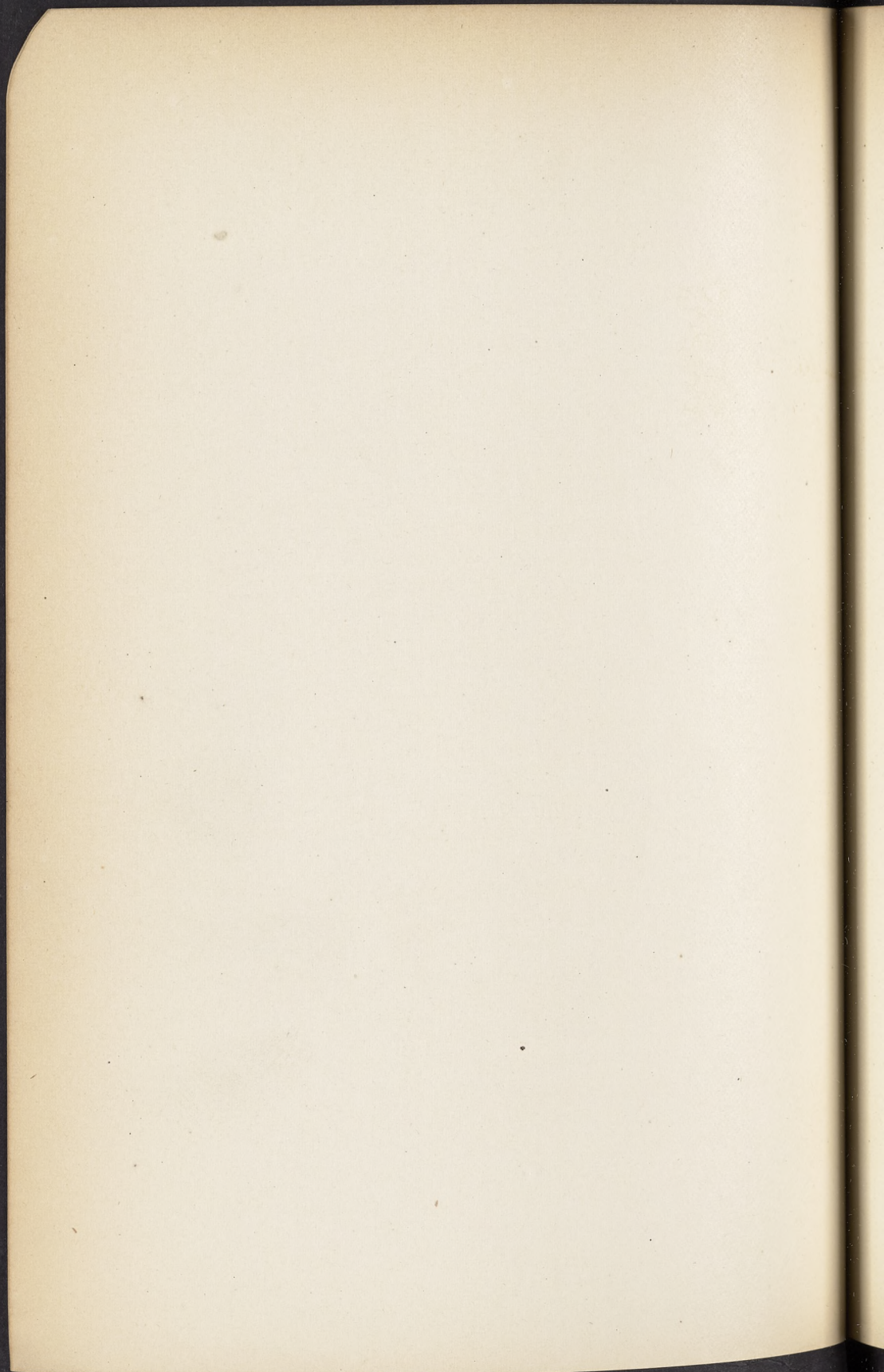
It appears by the return to the *certiorari* (*Case*, p. 5, ll. 3-10,) that the county *was compelled to raise in 1879 the sum of \$19,725.42* to meet a payment *in the nature of a judgment* in favor of the city of Newark against the county. Being "*necessary to be raised in that year,*" 10 [1879,] (see *Case*, p. 5, ll. 6 and 7,) how could the county raise it except by taxation?

It was, as said, virtually a judgment in favor of Newark against the county, which had to be paid, and necessarily by means of taxation of all the taxable property in the county, that in the city of Newark included, because it is a *member* of the county.

It is respectfully submitted that the judgments in both cases should be reversed.







N J. Court of Errors and Appeals.

THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX,	} <i>On Error.</i>	10
<i>vs.</i>		
THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors.</i>)		

THE STATE, (<i>ex rel.</i> PHILANDER S. PIERSON, COUNTY COLLECTOR OF THE COUNTY OF ESSEX,)	} <i>On Error.</i>	20
<i>vs.</i>		
THE MAYOR AND COMMON COUN- CIL OF THE CITY OF NEWARK.		

In 1877, the Freeholders of Essex county included in their general county levy, the sum of \$65,897.38, for interest on the cost of constructing avenues in Essex county by the Essex County Road Board. This item of the general county levy was objected to by defend- 30
ants in error, on *certiorari*, for the reasons, (1,) that the said interest should have been raised under the Road Board act, by apportioning the same in the ratio of one-half on the towns, cities, and townships through which said avenues were constructed, and the remaining half on the county at large; (see Section 7 of Act of 1870, page 181, supplement to Essex Road Board act;) and (2,) that the taxpayers of the city of Newark paid sev-
enty-eight per cent. of the county taxes, and, if the 40
assessment in question stood, would be called on to pay

large sums of money on account of the interest on said road board construction account, which should have been raised from the localities where said avenues were laid.

The exact amount of excessive assessment against the city of Newark, was the sum of \$47,754.24, after deducting the cost of construction of avenues by said board in the said city.

10 (See pages 3 and 4 of printed book in case of *The Freeholders vs. Newark.*)

This Court at the November term, 1878, vacated the assessment in question, and determined that the interest on the cost of constructing said avenues by said Road Board should have been apportioned in the manner indicated.

See *State, (Mayor and Common Council of the City of Newark, prosecutors,) vs. Essex County Freeholders,* 11 Vroom, 595.

20 *The effect of this decision was that the city of Newark was absolved from liability for any portion of said sum of \$47,754.25. This Court expressly said that it could not be called on to contribute one penny towards making up said amount.*

30 Still, the Freeholders of Essex, disregarding the decision of this Court, re-assessed on the city of Newark a considerable portion of this very sum from which this Court said it should be entirely exempt. They did it in this way: In 1879, they assessed of this amount \$28,028.82 upon the particular localities where the said avenues were laid, and which should have paid the whole; and the balance, being the sum of \$19,725.42, was included in the general county levy. Of this amount, Newark will be called on to pay \$15,191.87, if the assessment be sustained. And this is a part of the very sum from which this Court said it was exempt.

See page 5, same case.

40 The assessment in question was made *after protest on the part of defendants in error, and with full knowledge and notice on the part of the plaintiffs that its validity would*

be contested, and that the payment of said moneys so assessed would be resisted. (See page 6, second case.)

Shortly afterwards (see page 2, Freeholders' case,) *certiorari* was granted by the Supreme Court to review the last assessment. On argument, the assessment in question was annulled. (See page 7 of same case.)

More than two years after said tax was assessed as stated, application was made by the Collector of Essex county to the Supreme Court, for a mandamus to compel the city to pay to him the amount of this tax, thus declared to be illegal, upon the theory that however illegal the tax, still as the city had collected the amount thereof, it could not lawfully withhold it. (See page 3 of case of *Collector vs. Newark.*) 10

It is admitted that at this time sufficient moneys had been collected to pay this tax. It would be indeed strange if it had been otherwise, for the moneys first collected in the different subdivisions of the county are required to be paid to the county collector. (*Stewart's Digest*, page 1159, section 85.) But it is not admitted that at the time the writ of *certiorari* was sued out, said moneys had been so collected. 20

Upon this application, also, judgment was given for the city. (See page 8, second case.)

Two questions are thus presented for the decision of this Court: (1,) Was the assessment of tax in question a legal assessment; and (2,) if it were illegal, can the city be compelled to pay over the amount thereof, although the same has been collected by it after notice to plaintiffs of its invalidity, and after the writ of *certiorari* was sued out? 30

(1st.) No doubt can exist that the assessment was illegal. The case in 11 Vroom, 395, decided that. And no change has been since then made in the statute regulating the method of assessment. The amount assessed was, as already stated, a part of the very sum from which this Court said, in the case cited, the city of Newark should be wholly exempt. 40

The act of the Freeholders, then, was a deliberate attempt to vacate and reverse the judgment of this Court of last resort, without even the pretended authority of *subsequent* legislation justifying it.

The proposition is axiomatic that the judgment of a court of competent jurisdiction cannot be avoided or annulled, even by the legislative power. *State (ex rel. Doyle) vs. Doyle*, 5 Vroom, 240.

10 It will be contended, no doubt, that if the moneys in question cannot be lawfully raised in the manner here challenged, they cannot be raised at all; that the credit of the county may suffer thereby; and that the bonds on which the moneys to carry on this work were raised, are county obligations, on which judgments might be obtained against the county; and so it would be called on to pay the same. To which I answer:

(a.) We are dealing with this legislation *as it is*. The general law relating to county taxes does not justify this
20 assessment, for the reason that there is only one method recognized by the statute for raising the moneys in question, and that is by special assessments on the several localities benefited, (Section 7, of Road Board act, 1870, page 181.) And this special method excludes the general law which has, and can have no application to such cases.

State vs. Clark, 1 Dutcher, 54.

Cross vs. Morristown, 5 C. E. Green, 303.

State vs. Morristown, 4 Vroom, 58.

30 (b.) The question we are here discussing is *not* one between the *county and the holders of its bonds*, but, between the *county and its subdivisions*; with respect to which the act of 1870 says that the former (the county,) is the principal debtor as to one-half of the debt incurred, and the latter, (its subdivisions,) are *primarily* liable as to the other half. (See 11 Vroom, 598.) And hence it would seem to follow:

(c.) That if judgments were obtained on county obli-
40 gations issued for the construction of roads in Essex

county, by reason of inability to pay the same for lack of funds from the proper local sources, the Supreme Court would, on proper application and proof, direct that the moneys to pay the debt should be raised in the various localities, primarily liable, which had failed to contribute their proper proportions under the law. The suggestion, however, has no weight in this controversy, because, as already stated, this is a question between the county and its subdivisions, and that question is whether, as *between them*, the assessment is lawfully made. 10

It is obvious, however, that there is no impending danger that the county will default in the payment of its interest, even if the amount involved in these suits is not collected. This assessment was made in 1879, and no such calamity has yet happened, nor will it happen, for the reason that the general tax law authorizes the freeholders to include in its annual tax levy, in addition to the amounts needed for known and ascertained expenditures, such sums as they shall deem adequate and proper to meet contingent expenses. 20

But, in fact, no difficulty, except an imaginary one, exists with respect to raising, under the act of 1870, (the road board act,) the amount involved in this controversy from the different localities which should have paid the same in the first instance. No embarrassment need arise from a regard to the *equality of the annual assessments* in the several towns through which the avenues pass. Certainly none was felt as to raising, under the terms of this law of 1870, by far the larger portion of the amount 30 of the assessment which was involved and vacated in the original proceeding. More than two-thirds of this sum was assessed upon the different localities benefited in the tax levy of 1879. Then why not all? The decision of this Court was that the subdivisions of the county were *primarily liable for one-half of the debt incurred*, and the only limitation of their obligation is contained in the proviso of the seventh section of the said act of 1870, which says that "No one of the said cities, towns or townships shall be liable to a greater extent than to the 40

amount of one-half of the said costs, with the interest accruing on it, except as to its liability for its quota of the tax to be raised by the county of Essex as aforesaid." Hence, the defense of inequality in the annual assessments would seem to be unavailing. The law nowhere requires in terms actual equality in these annual assessments. But it *does*, in *precise language*, require each locality to pay one-half of the cost of avenues constructed therein, with interest thereon. I submit the assessment in question
 10 is illegal.

But, (2d,) the assessment of the tax in question being clearly contrary to law, shall the city be compelled to pay over the amount thereof to the county collector?

It is admitted that this money had been collected *when the mandamus was applied for*. It must have been collected at that time, unless the wheels of the city government were to be stopped; for the *first moneys* collected are payable to the county.

20 The position, then, was this. The city authorities had protested against the proposed tax before the assessment was completed. They had claimed it would be illegal, and notified the county officers that its payment would be resisted. They had no means of knowing—the law gives them none—that the said moneys would be really included in the general levy until it had been adopted and placed in their hands for collection. They had done all in their power to protect themselves against an unlawful exaction. Then followed, in reasonable time, the
 30 writ of *certiorari*. But the collection of taxes could not on that account be stopped. The whole governmental machinery would stop with it; and so, the taxes were collected, notwithstanding the writ was pending. Still, *this writ, by its own vigor, secured the defendants in error against the payment of the moneys in controversy, if the same were declared to have been illegally assessed*. Otherwise, of what avail to them this legal proceeding? *Its effect was to suspend all claims or demands arising from the matter involved in the discussion, until the Court had*
 40 *rendered its decision with respect thereto*. If this be not

true, then this paradox is realized, that in cases of this kind it matters not how diligent the public authorities may be in the assertion of their rights, nor how flagrant may be their violation, still the Court is powerless to do them justice.

Mandamus is a discretionary writ, and should not be granted except to enforce in proper cases a clear legal obligation.

State (Vreeland) vs. Jacobus, 2 Dutch., 135.

State (Nicholson Pavement Co.) vs. Ricord, 6 Vr. 396. 10

State (ex rel. Trustees) vs. Township Committee of Readington, 7 Vr., 66.

Waldron vs. Lee, 5 Pickering, 328.

The writ of alternative mandamus in this case is addressed, not to a mere ministerial officer, but to the Mayor and Common Council of the City of Newark, who are charged with the powers of local government and with the protection of the property of its citizens against unjust demands. In such case mandamus does not lie. 20

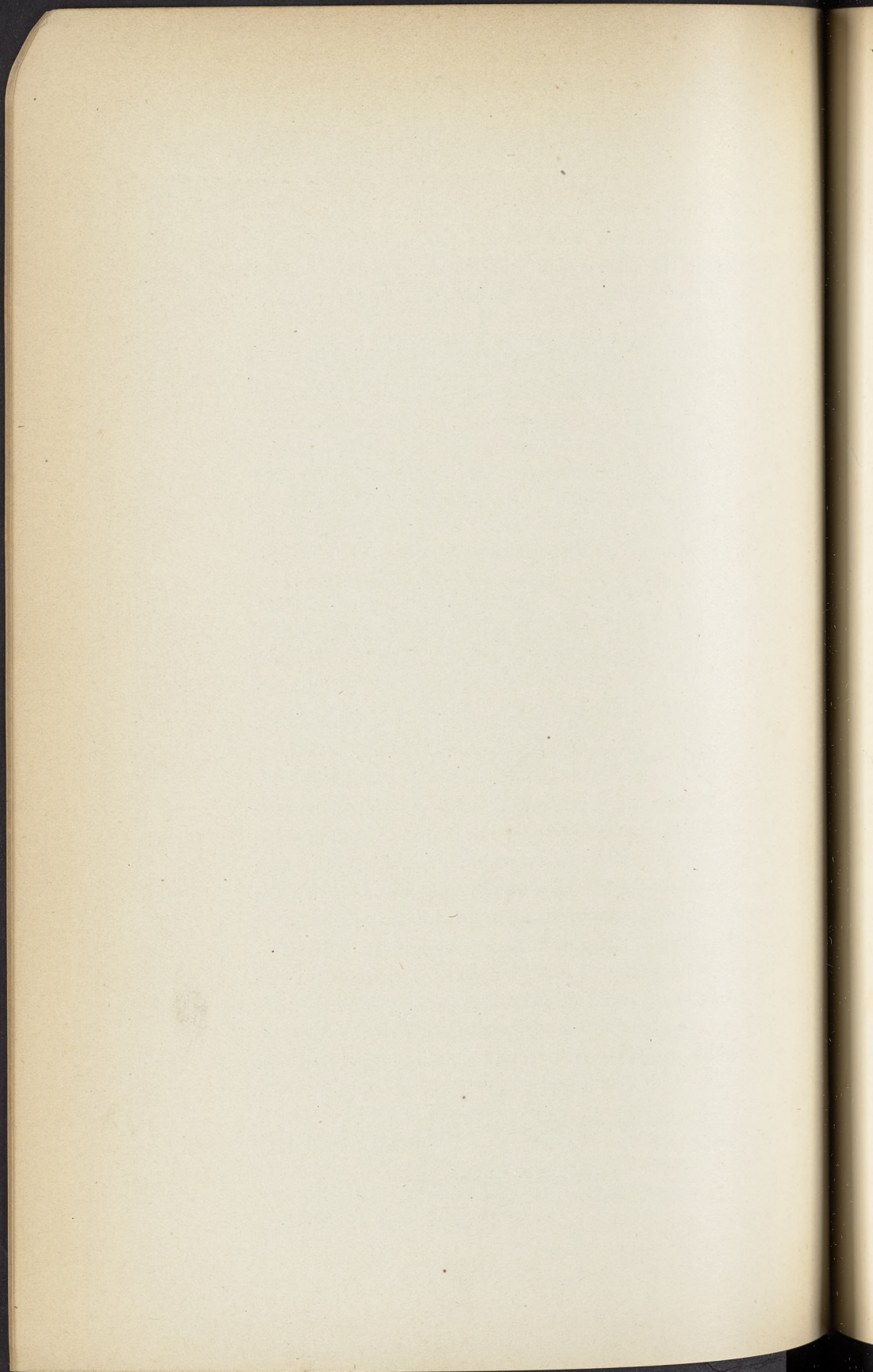
High on Ex. Leg. Remedies, Sec. 345, and following.

The Mayor and Common Council are the custodians of the funds of the people, and morally and legally bound to prevent their improper use and diversion. In cases of doubtful obligation they have unquestionably a right to withhold payment, and appeal to the courts for aid.

If it be said the money in controversy belongs, not to the city, but to the county, I answer, not so. It is the property of the citizens of Newark. They contributed it, and will reap the benefit in reduced taxation, so far as the comparatively small amount involved will accomplish that result. 30

The decision of the Supreme Court should be sustained.

HENRY YOUNG,
Counsel for Defts. in Error.



N. J. Court of Errors and Appeals.

THE STATE, (*ex rel.*)

PHILANDER S. PIERSON, *County Col-
lector of the County of Essex,*)

vs.

THE MAYOR AND COMMON COUN-
CIL OF THE CITY OF NEWARK.

10

On Error, &c.

I.

WRIT OF ERROR.

NEW JERSEY, ss :

20

The State of New Jersey to the Justices of the
[L. s.] Supreme Court of the State of New Jersey,
Greeting :

Because in the record and proceedings, and also in the
giving of judgment in a plaint which was in our Supreme
Court, before you, by our writ, between the State, (on the
relation of Philander S. Pierson, County Collector of the
County of Essex,) and The Mayor and Common Council
of the City of Newark, in a suit for mandamus, as it is
said, manifest error hath intervèned, to the great damage
of the said relator, as by his complaint we are informed ;
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, then, without
delay, you distinctly and openly send, under your seal,
the record and proceedings aforesaid, with all things
touching the same, to our Court of Errors and Appeals,
on the twenty-first day of January instant, together with 40

this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done what of right and according to law ought to be done.

Witness THEODORE RUNYON, Esquire, our Chancellor, at Trenton, the second day of January, in the year eighteen hundred and eighty-two.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Attorney.*

II.

SCHEDULE ANNEXED TO WRIT.

STATE OF NEW JERSEY, ss :

[L. s.] The State of New Jersey to The Mayor and Common Council of the City of Newark, Greeting :

Whereas, of the county taxes assessed and collected from the taxable inhabitants and property in and of the said city of Newark, in and for the year eighteen hundred and seventy-nine, by order of The Board of Chosen Freeholders of the County of Essex, for the purposes of said county, there remains unpaid, and in the hands of you, said The Mayor and Common Council of the City of Newark, the sum of twenty-seven thousand seven hundred and fifty-two dollars and twenty-six cents, which, though collected by your officers for, and due and belonging to the said The Board of Chosen Freeholders of the County of Essex, and duly demanded of you by Philander S. Pierson, County Collector of said county, you detain from, and refuse to pay over to him, contrary to your duty in that behalf, in contempt of us, and to the injury of the said County Collector, as by his complaint we are informed ;

We, therefore, being willing that due and speedy justice be done in that behalf, do command you, that, immediately after the receipt of this our writ, you do pay, or cause to be paid, to the said Philander S. Pierson, County Collector of said county, the said sum of twenty-seven thousand seven hundred and fifty-two dollars and twenty-six cents, balance due as aforesaid for county taxes ; or that you show cause to the contrary thereof, that the same complaint may not, by your default, be repeated to us ; and how you shall have executed this our writ, certify to our Supreme Court, at Trenton, on the thirtieth day of December instant, and have you then there this writ.

Witness, MERCER BEASLEY, Esquire, Chief Justice of our Supreme Court, at Trenton, the twentieth day of December, eighteen hundred and eighty-one.

BENJ. F. LEE, *Clerk.*

JOHN W. TAYLOR, *Attorney.*

III.

RETURN.

The answer of The Mayor and Common Council of the City of Newark, defendants, to the writ hereto annexed.

10 The said defendants, for answer to said writ, do certify and return, that of the county taxes assessed and collected in the city of Newark, in and for the year 1879, there remains unpaid to the above named relator, the County Collector of the County of Essex, a balance of twenty-seven thousand seven hundred and fifty-two dollars and twenty-six cents, which although collected in said city, and duly demanded by the said relator, the said defendants detain from, and refuse to pay over to, the said relator, for the reasons following, viz :

20 In 1877 the Freeholders of Essex county included in the general county levy an item of \$100,157 for interest on Essex county bonds, issued in carrying out the operations of the Essex Public Road Board. Of this amount \$35,259.62 were necessary to pay the interest on bonds which had been before then issued to pay for land condemned for the purpose of said Road Board. No question was raised as to the propriety of this portion of said levy. The remaining amount, being the sum of \$65,897.38, represented the interest on the cost of constructing avenues
 30 by said Road Board in Essex county. Shortly after the tax levy had been agreed upon by the said Freeholders, a writ of *certiorari* was applied for and granted to the Mayor and Common Council of the City of Newark, to review so much of the said item of interest account in said general county levy, as represented the amount necessary to pay the interest on said cost of constructing avenues in Essex county, for which county bonds for a like amount had before then been issued ; the insistence on the part of the city of Newark being that said interest,
 40 under the said Road Board act and its supplements, should

have been raised by apportioning the same in the ratio of one-half on the towns, cities and townships through which said avenues were constructed, and the remaining one-half on the county at large; that the tax payers of the city of Newark paid about 78 per cent. of the county taxes, and by reason of said alleged erroneous assessment the said tax payers of the city of Newark were called upon to pay a large sum of money on account of the interest on said Road Board construction account, which should have been raised from the localities where the said 10 avenues were laid.

By the decision of the Court of Errors and Appeals, pronounced at the November term, 1878, it was determined that the interest on said cost of constructing said avenues by said Road Board should have been apportioned in the manner indicated, and that so much of said assessment as represented said interest on said construction account was erroneously assessed.

Prior to the decision of this case, the comptroller of the city of Newark had paid to the county its proportion of 20 the moneys raised under the general tax levy of 1877, and also of the tax levy of 1878, (which last had been assessed in the same manner as that of 1877, already particularly referred to,) under an agreement between the parties that the county would repay to the city the amount of said disputed taxes, if the same were declared to have been illegally assessed.

Under this stipulation the county, on the 15th day of April, 1879, repaid to the city of Newark the amount of taxes so erroneously assessed and paid as assessed, being 30 the sum of \$47,754.24. This amount last referred to was the exact amount of over payment and excessive assessment by and against the city of Newark, after deducting the cost of the construction of avenues in the city of Newark by said Board.

In 1879 the Board of Freeholders of Essex County assessed the said sum of \$47,754.24 in manner following: The sum of \$28,028.82 was assessed upon the particular localities (outside of the city of Newark,) where said avenues were laid, and the balance, being the sum of 40

\$19,725.42, which was necessary to be raised in that year was included in the tax list of 1879, in the general county levy. Of this amount the city of Newark will be called upon to pay, if the said assessment be valid, the sum of \$15,191.87.

And the said defendants say, that both before and after the said assessment of \$19,725.42 was made in manner aforesaid, they, the said defendants, protested against the validity thereof as the same was finally made ; and insisted
10 that no part of said sum so declared by said Court to have been illegally assessed, should be included in the general county levy, and that payment of the same would be resisted by the defendants.

All which is respectfully submitted.

HENRY YOUNG,

Attorney of Defendants.

IV.

DEMURRER.

New Jersey Supreme Court.

THE STATE, (<i>ex rel.</i> PHILANDER S. PIERSON, COUNTY COLLECTOR, &c.,) <i>vs.</i>	} <i>On Mandamus. Demurrer.</i>	10
THE MAYOR AND COMMON COUN- CIL OF THE CITY OF NEWARK.		

And the said Philander S. Pierson, County Collector 20
as aforesaid, having heard the said writ and return read,
says that the said return and the matters therein con-
tained, in manner and form as the same are above set
forth, are insufficient in law to bar or preclude him from
having a peremptory writ of mandamus in this behalf;
and that he is not bound by law to answer the same, and
this he is ready to verify.

Wherefore, by reason of the insufficiency of the said
return in this behalf, he prays judgment, and that a per- 30
emptory writ of mandamus may issue in this behalf, &c.

JOHN W. TAYLOR,
Att'y for Relator.

V.

JOINDER IN DEMURRER.

New Jersey Supreme Court.

10 THE MAYOR AND COMMON COUN-
CIL OF THE CITY OF NEWARK,

ads.

THE STATE, (*ex rel.*

PHILANDER S. PIERSON, COUNTY COL-
LECTOR OF THE COUNTY OF ESSEX.)

*On
Mandamus.*

20 And the said defendants say that the said return, and
the matters therein contained, in manner and form as the
same are above stated and set forth, are sufficient in law
to bar and preclude the said relator from having the
said peremptory writ of mandamus, and the said defend-
ants are ready to verify and prove the same, when, where,
and in such manner as the Court here shall direct and
award; wherefore, inasmuch as the said relator has not
answered the said return, nor hitherto, in any manner,
30 denied the same, the said defendants pray judgment, and
that the said relator may be barred from having the said
peremptory writ of mandamus, &c.

HENRY YOUNG,
Att'y for Defendants.

VI.

JUDGMENT FOR THE DEFENDANTS,
AGAINST THE RELATOR, in the usual
40 form.

No opinion was delivered,

VII.

ASSIGNMENT OF ERRORS.

N. J. Court of Errors and Appeals.

THE STATE, (<i>ex rel.</i> PHILANDER S. PIERSON, COUNTY COL- LECTOR, &c.,) vs. THE MAYOR AND COMMON COUN- CIL OF THE CITY OF NEWARK.	}	<i>On Error to Supreme Court.</i>	10
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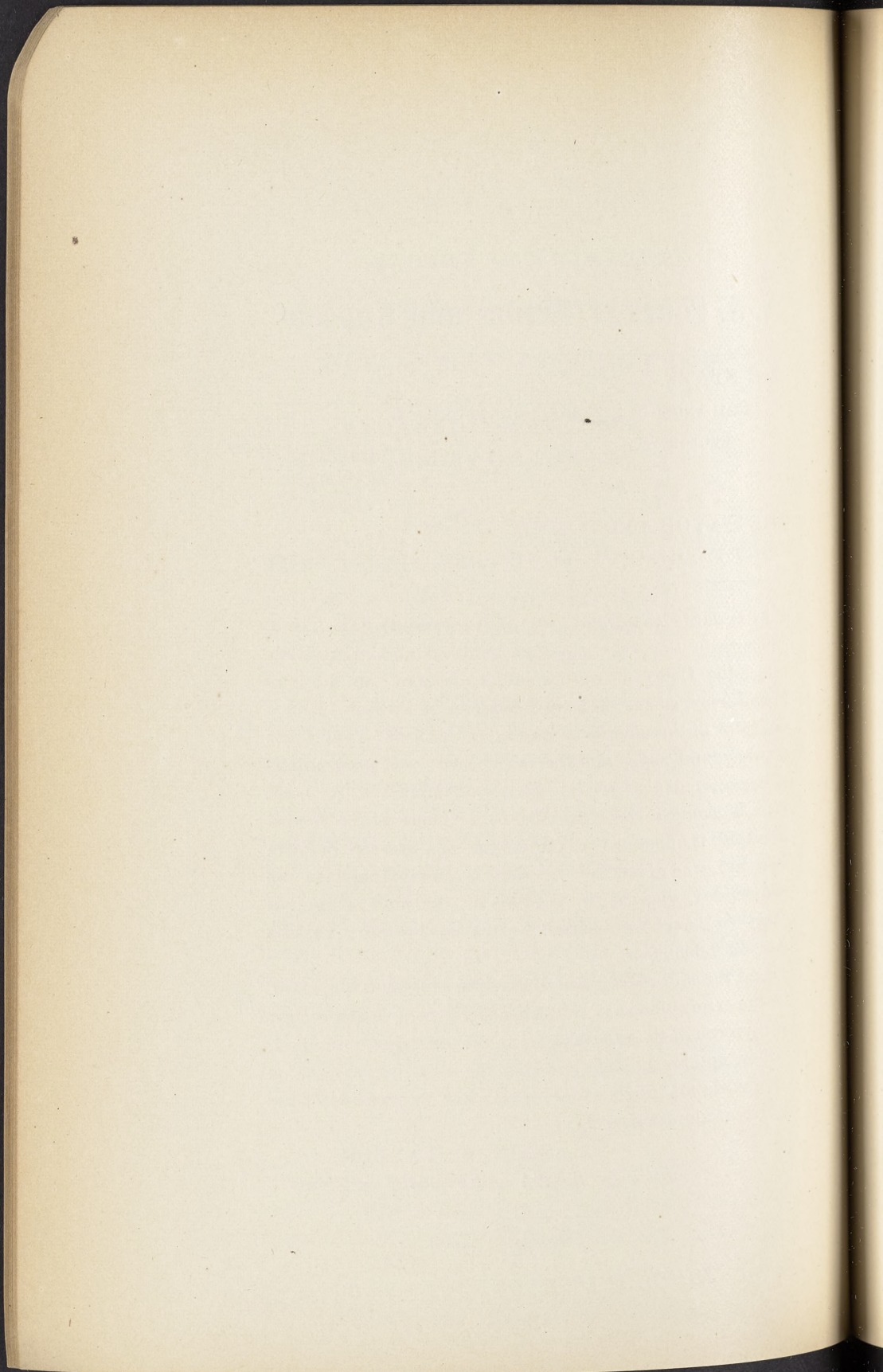
Afterwards, that is to say, on the twenty-first day of January, in the year eighteen hundred and eighty-two, before the Court of Errors and Appeals of the State of New Jersey, comes the said Philander S. Pierson, County Collector of the county of Essex, by John W. Taylor, his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the said defendants against the said relator, whereas, by the law of the land, judgment ought to have been given for the said relator against the said defendants. 20

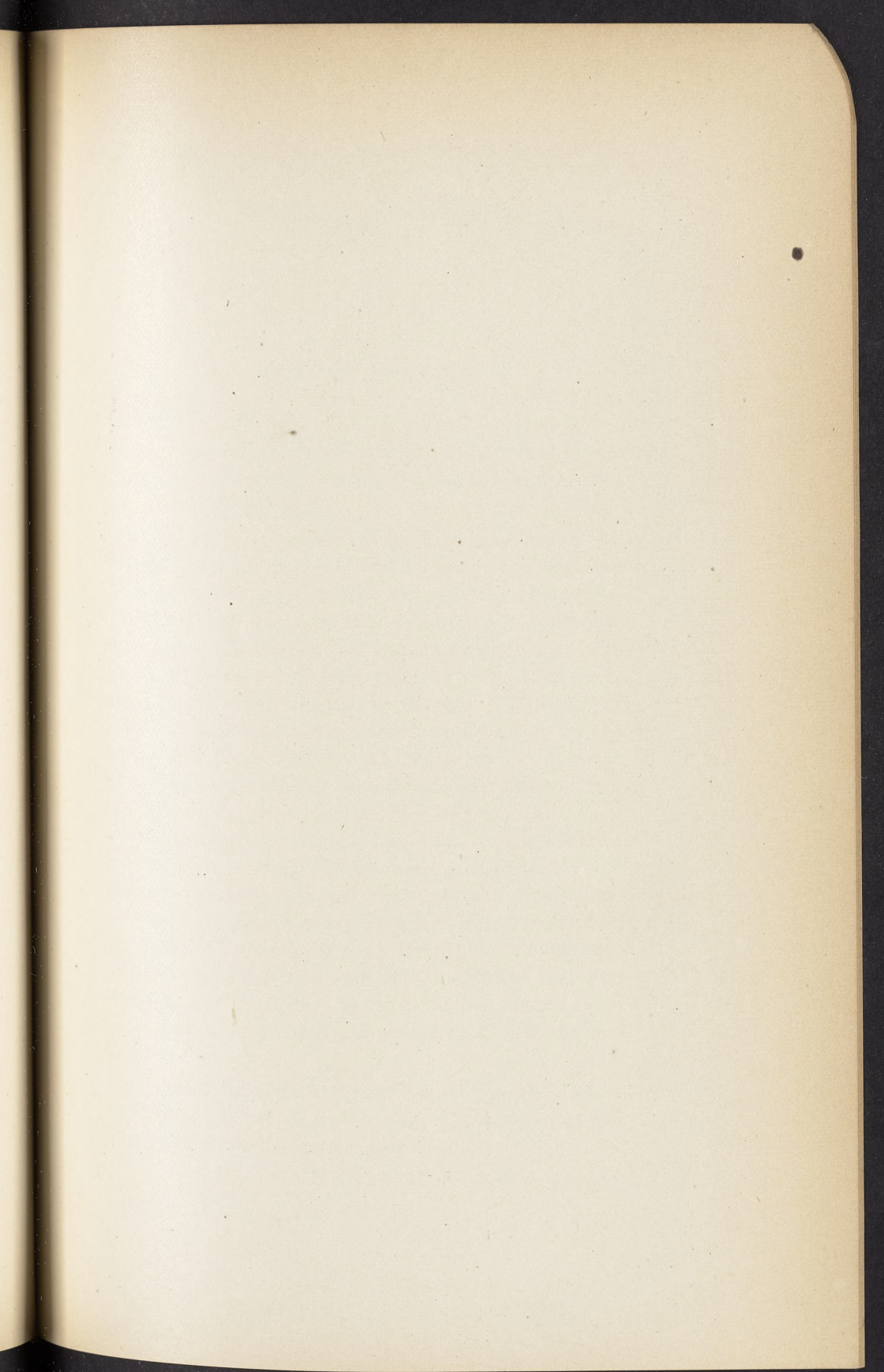
And the said relator prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said relator may be restored in all things which he has lost by occasion of the judgment aforesaid, &c. 30

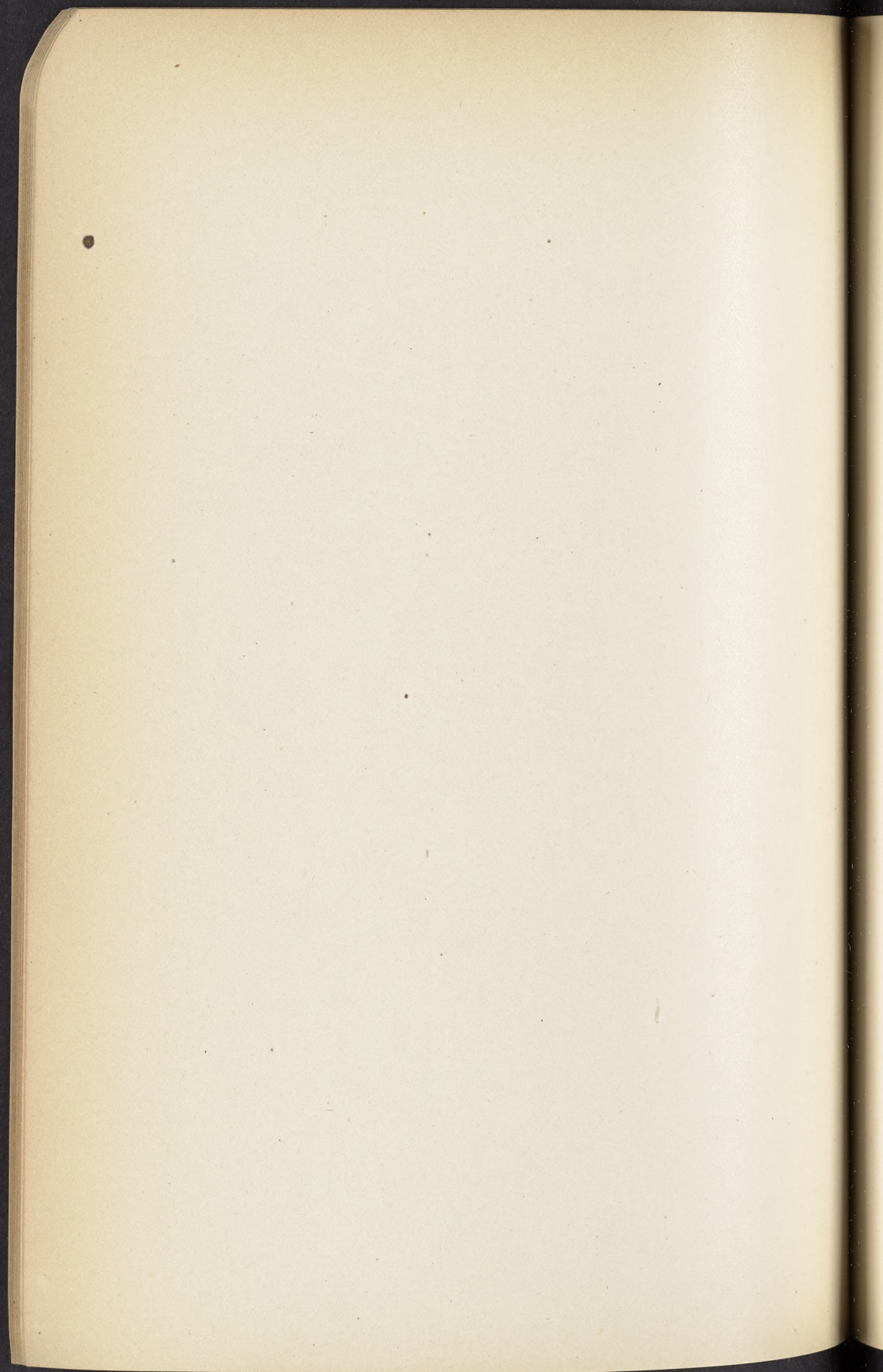
JOHN W. TAYLOR,
Att'y for Relator and Plaintiff in Error.

VIII.

JOINER IN ERROR in the usual form. 40







I.

WRIT OF ERROR.

NEW JERSEY, SS :

The State of New Jersey, to the Justices of the 10
[L. s.] Supreme Court of the State of New Jersey,
Greeting :

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our Supreme Court before you, by our writ, between the State (The Mayor and Common Council of the city of Newark, prosecutors), and the Board of Chosen Freeholders of the county of Essex, as it is said, manifest error hath intervened, to the great damage of the said •The Board of Chosen Freeholders of the county of Essex, as by its 20
complaint we are informed ; 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, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, on the sixteenth day of January next, together with this writ, that the record and proceedings aforesaid, being inspected, we may further cause 30
to be done, what of right and according to law ought to be done.

Witness, THEODORE RUNYON, Esquire, our Chancellor, at Trenton, the twenty-eighth day of December, in the year eighteen hundred and eighty-one.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Attorney.*

II.

SCHEDULE ANNEXED TO WRIT.

New Jersey Supreme Court.

10 THE STATE,

(THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,
Prosecutors,)

vs.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY
OF ESSEX.

On Certiorari.

20 NEW JERSEY, ss:

The State of New Jersey, to the Board of Chosen
[L. s.] Freeholders of the County of Essex, Greeting:

We being willing, for certain reasons, to be certified of
a certain assessment of County taxes for Road Board
purposes, made by the said Board of Chosen Freeholders
of the said County of Essex, for the year eighteen hun-
dred and seventy-nine, and now in process of collection,
do command you, that the assessment aforesaid, as fully
and entirely, with all things touching and concerning the
30 same, as it remains before you, to the Supreme Court of
Judicature, to be holden at Trenton on the first Tues-
day of June next, you do certify and send, together
with this our writ, that therein may be done what of
right and according to law ought to be done.

Witness, MERCER BEASLEY, Esquire, Chief Justice of
our said Supreme Court, at Trenton, this twenty-first
day of May, A.D. eighteen hundred and eighty.

BENJAMIN F. LEE, *Clerk.*

40 HENRY YOUNG, *Attorney.*

III.

STATE OF CASE.

New Jersey Supreme Court.

10

THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors,)</i>	}	<i>On Certiorari.</i>
<i>vs.</i>		
THE BOARD OF CHOSEN FREE- HOLDERS OF ESSEX COUNTY, <i>Defendants.</i>		20

The following is a statement of the facts in this cause, and is agreed upon by the respective counsel as a return to the writ of *certiorari* granted herein :

In 1877 the Freeholders of Essex county included in the general county levy an item of \$100,157 for interest on Essex county bonds, issued in carrying out the operations of the Essex Public Road Board. Of this amount \$35,259.62 were necessary to pay the interest on bonds which had been before then issued to pay for land con- 30 demned for the purposes of said Road Board. No question was raised as to the propriety of this portion of said levy. The remaining amount, being the sum of \$65,897.38, represented the interest on the cost of constructing avenues by said Road Board in Essex county. Shortly after the tax levy had been agreed upon by the said Freeholders, a writ of *certiorari* was applied for and granted to the Mayor and Common Council of the city of Newark to review so much of the said item of interest account in said general county levy, as represent- 40

ed the amount necessary to pay the interest on said cost of constructing avenues in Essex county for which county bonds to a like amount had before then been issued; the insistment on the part of the city of Newark being that said interest, under the said Road Board act and its supplements, should have been raised by apportioning the same in the ratio of one-half on the towns, cities, and townships through which said avenues were constructed, and the remaining one-half on the county at large; that
 10 the tax-payers of the city of Newark paid about 78 per cent. of the county taxes, and by reason of said alleged erroneous assessment the said tax-payers of the city of Newark were called upon to pay large sums of money on account of the interest on said Road Board construction account, which should have been raised from the localities where the said avenues were laid.

By the decision of the Court of Errors and Appeals, pronounced at the November term, 1878, it was determined that the interest on said cost of constructing said
 20 avenues by said Road Board should have been apportioned in the manner indicated, and that so much of said assessment as represented said interest on said construction account was erroneously assessed.

Prior to the decision of this case, the Comptroller of the city of Newark had paid to the county its proportion of the moneys raised under the general tax levy of 1877, and also of the tax levy of 1878, (which last had been assessed in the same manner as that of 1877, already particularly referred to), under an agreement between the
 30 parties that the county would repay to the city the amount of disputed taxes, if the same were declared to have been illegally assessed.

Under this stipulation the county, on the 15th day of April, 1879, repaid to the city of Newark the amount of taxes so erroneously assessed and paid as aforesaid, being the sum of \$47,754.24. This amount last referred to was the exact amount of over-payment and excessive assessment by and against the city of Newark, after deducting the cost of the construction of avenues in the city of
 40 Newark by said Board.

In 1879 the Board of Freeholders of Essex county assessed the said sum of \$17,754.24 in manner following: The sum of \$28,028.82 was assessed upon the particular localities (outside of the city of Newark) where said avenues were laid, and the balance, being the sum of \$19,725.42, which was necessary to be raised in that year, was included in the tax list of 1879, in the general county levy. Of this amount the city of Newark will be called upon to pay, if the said assessment be valid, the sum of \$15,191.87. 10

It is further agreed, that the statutes relating to the Essex Public Road Board, and the state of the case, used on the argument of said case in the Court of Errors and appeals, (11 Vroom, 595), may be referred to on the argument of this cause.

HENRY YOUNG,
Attorney of Prosecutors.

JOHN W. TAYLOR,
Attorney of Defendants. 20

IV.

REASONS.

New Jersey Supreme Court.

10	THE STATE, (THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Prosecutors,)</i>	}	<i>On Certiorari.</i>
	<i>vs.</i>		<i>Reasons.</i>
	THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.		

20 The prosecutors present the following reasons for setting aside the proceedings and assessment brought before this Honorable Court, by the writ of *certiorari* in the above entitled cause :

First. Because the assessment of the sum of \$19,725.42, (being a portion of the sum from which the Court of Errors and Appeals, in the case of *The State, (the Mayor and Common Council of the City of Newark) vs. The Board of Chosen Freeholders of the County of Essex*, decided November term, 1878, declared that the city of
 30 Newark should be entirely exempt), in the manner in which the same was made, was illegal.

Second. Because said sum of \$19,725.42, should have been raised in the particular localities (outside of the city of Newark), in which the various avenues constructed by the Essex Public Road Board, were laid, and no portion thereof should have been included in the general city levy of 1879.

Third. Because the said assessment is in other re-
 40 spects, illegal and void.

V.

JUDGMENT.

New Jersey Supreme Court. 10

NOVEMBER TERM, 1881.

THE MAYOR, &c., OF NEWARK, <i>vs.</i> THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX.	}	<i>On Certiorari.</i>
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The Court having heard the argument of counsel and 20
 inspected the proceedings removed by the writ in the
 cause, and duly considered the reasons filed ; It is or-
 dered that said proceedings, &c., be reversed, set aside,
 made void, and for nothing holden.

Entered December 22d, 1881.

On motion of

HENRY YOUNG, *Att'y.*

No opinion was delivered.

VI.

ASSIGNMENT OF ERRORS.

N. J. Court of Errors and Appeals.

10	THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX,	}	<i>On Error to</i>
	<i>vs.</i>		
	THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK.	}	<i>Supreme Court</i>

20 Afterwards, that is to say, on the twenty-eighth day of December, in the year eighteen hundred and eighty-one, before the Court of Errors and Appeals of the State of New Jersey, comes the said The Board of Chosen Freeholders of the County of Essex, by John W. Taylor, its attorney, and says, that in the record and proceedings aforesaid, and in the giving of judgment aforesaid, there is manifest error in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the said defendants against the said plaintiff, whereas, by the law of the land, judgment ought to have been given for the said plaintiff against the said defendants.

30 And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said plaintiff may be restored in all things which it has lost, by occasion of the judgment aforesaid, &c.

JOHN W. TAYLOR,

Att'y for Pl'tff in Error.

VII.

40 *JOINDER IN ERROR*, in the usual form.