Commutation

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NEW JERSEY SUPREME COURT.

JUNE TERM, 1874.

THE STATE, THE MORRIS AND ESSEX RAILROAD COMPANY, Prosecutors, *vs.* JAMES S. YARD, Commissioner of Railroad Taxation.	On Certiorari. In matter of Taxation.

Argued at February Term, 1874, before Justices BEDLE and DEPUE.

J. VANATTA, for prosecutors.

J. WEART and THE ATTORNEY-GENERAL, contra.

The opinion of the court was delivered by

DEPUE, J. By the third section of the supplement to the charter of the prosecutors, approved on the 23d of March, 1865, they were exempted from taxation, except the tax of one-half of one per centum on the cost of their road, which they were required to pay in lieu of all other taxes. McGavish *v.* The State, 5 Vroom 509; The State *v.* Haight, Receiver, 6 Vroom 40.

Under the provisions of an act of the Legislature, aprovped April 2d, 1873, (Acts 1873, p. 112), the Commissioner of Railroad Taxation returned to the Comptroller a valuation of property owned by the prosecutors, and used and occupied by them for railroad purposes, amounting to the sum of $2,089,520.00, with a view to subject the prosecutors to taxation on that valuation for county, township, and municipal purposes.

The property included in this return embraces the trunk line of the prosecutors from Hoboken to Phillipsburg, and is such as they were not liable to taxation upon, under the exemption in the supplement to their charter above referred to.

The question for decision is, whether the section in the company's charter, which exempts them from taxation, with the exception of the per centum to be paid to the State, is repealed by the act of 1873.

The eleventh section of the latter act declares that all acts and parts of acts inconsistent therewith are repealed. If the case rested solely on this repealing clause, The State *v.* Braun, 3 Zab. 485, and The State *v.* Minton, Ib. 529, would be decisive on the subject.

The contention of the counsel of the defendants is, that the provisions contained in the body of the act of 1873, are so inconsistent with the exempting clause of the company's charter, that a repeal of the latter results as a necessary implication, without any express declaration of an intention to repeal.

There is no rule of law which prohibits the repeal of a special charter by a general law. The Mechanics and Traders Bank *v.* Bridges, 1 Vroom 112. Nor is there any principle of law forbidding such repeal, without the use of express words declarative of the legislative intent to repeal the earlier statute. Repeals by implication are not favored. But the question is always one of legislative intent, and the intent to abrogate the particular enactment in an earlier statute by a general enactment in a later statute, is sufficiently manifested where the provisions of the two enactments are so inconsistent that they cannot stand together. The King *v.* North Leach, 5 B. & Ad. 978; Daw *v.* Metropolitan Board, 12 C. B. (N. S.) 161; The Great Central Gas Consumers Co. *v.* Clark, 13 C. B. (N. S.) 837; Conservators *v.* Hall, Law Rep., 3 C. P. 415; Industrial School *v.* Whitehead, 2 Beas. 290.

The title of the act of 1873 is, "An act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption." The act is prefaced by a preamble, which recites that, "*Whereas*, for the encouragement of railroad enterprise, laws creating and regulating railways in this State, usually provide for the payment by them, in consideration of their charter privileges, of a fixed rate upon their capital stock, or the cost of their works in lieu of all other public impositions whatever; *and whereas*, it is nevertheless contended, that the prosperity of such corporations being largely acquired for or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes; *and whereas*, it is desirable, in order to the avoidance of litigation and future dissatisfaction, that such municipal and county taxation shall be authorized, and that the same shall be permanently fixed and regulated."

By the first section it is enacted, "That all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall hereafter be made as follows: First. Such companies shall pay upon the cost, equipment and appendages of said railroads respectively, a State tax, after such rate of taxation as may have heretofore been fixed by law upon such companies, or in default thereof, after the rate of one half of one per centum upon such cost. Second. Upon all the real property by them as aforesaid occupied, used or owned for the purposes of their road or otherwise, excepting their main stem or road bed and track not exceeding one hundred feet in width, such companies shall pay a county and municipal tax for the benefit of the counties, townships and cities respectively where the same is situate, after the rate of one per centum upon a valuation thereof, and of all improvements thereon, not by way of repairs, now or hereafter to be made, which valuation shall be made as hereinafter stated; *provided*, *however*, that at the termini of their said roads, each company may hold a tract of land not exceeding ten acres, to be in one parcel, which with the buildings and improvements thereon, shall be free from the payment of county, township and municipal taxes whatsoever."

The language of this section, that "all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall hereafter be made as follows," is so general and comprehensive that the legislative intent is left in no doubt. It includes in its provisions every company operating a railroad within the State, either under a charter for that purpose, or as lessees, or under any other arrangement, as a subject for taxation, and prescribes an uniform rule for imposing such taxation. An uniform rule must necessarily be the only rule applicable to the entire class of subjects embraced within the purview of the statute. Where the legislative intent is clearly manifested to establish the only rule that should govern, it operates by necessary implication as a repeal of all prior statutes in which a different rule was adopted. Both statutes being incapable of being executed, the earlier must yield to the later. Industrial School *v.* Whitehead, 2 Beas. 290; Sedg. on Statutes 124–5.

The legislative intent to include all railroads within the scheme of taxation proposed in the first section of the act of 1873, is so clearly expressed as to admit of no doubt; and the mode of taxation therein established is so plainly repugnant to the special provisions for taxing the prosecutors under the supplement to their charter of 1865, that the power of taxation under both statutes cannot be exercised consistently with the legislative intent, as declared in the later statute. Under such circumstances the earlier statute is necessarily repealed by the later. Daw *v.* Metropolitan Works, 12 C. B. N. S., 161.

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But it was argued that the general language of the first section of the statute is qualified and limited by the tenth section of the same statute. That section is preceded by a preamble explanatory of the meaning of the body of the section. The preamble and section are in the following words: "*and whereas*, certain railroad corporations owning or occupying railroads in this State, claim exemption from all taxation, whether state, county or municipal, further than is provided for by their charters or by special laws for their benefit now existing, which claims, even if legal, subject said corporations to public ill-will, and make it their interest to forego the same and agree to the scheme of taxation hereby established; now therefore, *be it enacted*, that any such railroad corporation may, within six months from the approval of this act, make and execute under their common seal and the signature of their president, and file in the office of the Secretary of State, a declaration in writing, surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provisions of this act in lieu thereof."

The contention was that this section provided specially for the taxation of railroad corporations having special provisions in their charters on the subject of taxation, without regard to the consideration whether such provisions were repealable or not; and that, therefore, on the rule of construction that where there is a particular enactment and a general enactment in the same statute, and the latter in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment, This, in substance, is a rule of construction adopted by Sir John Romilly, M. R., in Pretty *v.* Solly, 26 Beav. 610; and De Wenton *v.* Mayor of Breacon, Ib. 533: § C 5, Jurist, N. S. 883, and is nothing more than another form of giving expression to the principle that the general legislation on a particular subject must give way to special legislation on the same subject. State *v.* Clark, 1 Dutcher 54; State *v.* Morristown, 4 Vroom 61.

But this rule is subordinate to the cardinal principle for the construction of statutes, that they are to be so construed that if possible full effect shall be given to all parts of the statute. This latter rule must be first applied to ascertain wherein language, which is specific, necessarily comes in conflict with other language which is general. The effort must, in the first instance, be to harmonize all the provisions of the statute by construing all parts together, and it is only when, on such construction, the repugnancy of specific provisions with general language is plainly manifested that the intent of the Legislature, as declared in the general enacting part of the statute, is superseded.

To give to the tenth section a construction which will embrace

lature exercises its power of alteration or repeal over the original act, a supplement, simply amendatory of its provisions, must of necessity go with it.

But, be that as it may, the supplement of 1865 was passed after the general corporation act of 1846. (Nix. Dig. 168.) By the sixth section of the latter act, it is provided that the charter of every corporation thereafter granted by the Legislature, should be subject to alteration, suspension and repeal, in the discretion of the Legislature.

It is competent for the Legislature to reserve the right of alteration and repeal by general statute; and such reservation, as to future charters, will have precisely the same effect as if inserted in the charter. Under a general statute of this description, charters of incorporated companies thereafter granted, are repealable, although there is no clause in the charter reserving such right. Story *v.* Jersey City and Bergen Plank Road Company, 1 C. E. Green 14; The State *v.* Person, 3 Vroom 134, 566; Tomlinson *v.* Jessup, 15 Wall. 454; Miller *v.* The State, Ib. 478.

The insistment of counsel is, that the sixth section of the general corporation law is only applicable to corporations created after that act was passed, and that inasmuch as the charter of this company was previously granted, that section is inapplicable to it. This construction would do violence to the plain language of the section of the general law under consideration. The language is not that the power of alteration and repeal is reserved over charters of corporations thereafter created, but that the charter of every corporation thereafter granted shall be subject to such alteration, suspension and repeal.

As applied to corporations, every grant of franchises is a charter. It may be a grant of the mere franchise of being a corporation, or a grant of powers to a corporation already in existence. In either case the grant is the company's charter to exercise the rights and privileges, and enjoy the immunities granted. Bouvier defines the word "charter" to be a grant made by the sovereign, either to the whole people, or to a portion of them, securing to them the enjoyment of certain rights. Bouvier's Law Dic., "Charter." "All franchises," says Chief Baron Comyn, "are derived from the King, and ought to be claimed by charter." Com. Dig., "Franchises," A. 71. "Besides the charter of incorporation, a body politic has granted to it other charters, by which the Crown, from time to time, adds to or modifies the powers," &c. Grant on Corp. 13.

By the supplement of 1865 the prosecutors were authorized to lay out and construct two branch roads, and to acquire lands for that purpose by condemnation, and also to construct a bridge over the Passaic river. The section concerning taxation, above referred to, is the thirty-fifth section of this act. Its provisions are not restricted to the works authorized to be constructed by the supple-

ment, but extend to roads constructed under the original charter, and prior supplements. The act in all its parts, whether relative to the construction of branch roads or to taxation on new or former roads, is the company's charter for the exercise of the powers and franchises, and the enjoyment of all the privileges and immunities thereby granted. As such the sixth section of the general corporation act became incorporated into it, and all or any of its provisions, whether they be such as authorized the construction of new roads, or such as provide for the taxation of the company on all its property, are made thereby subject to alteration or repeal.

Nor can I yield assent to the proposition that the provision that this section should not go into effect or be binding on the company until acceptance by the company gave it an additional force as against the State.

The sixth section of the corporation act is a general provision, applicable to all grants of franchises to corporations thereafter made. The object the Legislature had in view in its adoption was to retain control over legislative grants, that rights hastily granted, and without consideration, might be resumed when found to be impolitic. Its effect on subsequent grants of franchises has already been considered. Its provisions became incorporated into every grant of that kind subsequently made, unless the contrary intent clearly appears.

The power reserved is the sovereign power of legislation. The intent to relinquish this sovereign right in any particular case, and surrender it in favor of any corporation or individual, will not arise by intendment. It can only be derived from express language or unequivocal import, and it must appear that the Legislature not only intended to grant the franchise, but also to surrender the power of alteration and repeal.

Taxation of the prosecutors was in the first instance provided for by the fifteenth section of their act of incorporation. The taxation therein stipulated was subject to alteration and repeal when the act of 1865 was passed, and the consent of the company was not necessary to give effect to any new mode of taxation the Legislature might devise. The company had not then an irrepealable contract to rest upon. All the Legislature had conceded was the privilege of relief from the general taxation, so long as it abstained from imposing other taxation.

The supplement of 1865 did not alter the rate or quantum of taxation. The only change made was in making it payable when the road should be open and in use to Phillipsburg, instead of when the net proceeds amounted to seven per centum on its cost, and the option was given to the company to elect at which period payment should commence, as might be most conducive to its interests. A new privilege of choice when the tax originally prescribed should become payable, was merely accorded to the com-

in its provisions all railroad companies having special provisions in their charters on the subject of taxation, irrespective of the question whether such provisions are repealable or irrepealable, will defeat the obvious purpose of the act. It is a historical fact that nearly every corporation of this kind existing in this State, has special provision on this subject in its charter. Certainly, none are without such privileges whose property is of sufficient consequence to make it worth while to frame a comprehensive system of taxation such as is contemplated by the act of 1873, with a view to increase the public revenues.

The first paragraph of the preamble is general enough in expression to give countenance to such construction, but the succeeding paragraph shows that the mind of the draftsman was directed to corporations of that class, whose consent was necessary to effect the abrogation of the special laws enacted for their benefit, and in the body of the section provision is made, not for taxation, but for the surrender of their special privileges, and the acceptance of the provisions of the act. Contrasting the language of this section with the general preamble prefixed to the entire act, referring to the usual course of former legislation for the encouragement of railroad enterprise, to provide for the payment of a fixed compensation in lieu of other taxes, and the positive enactment in the first section, that all railroads, &c., "shall pay upon the cost, equipment and appendages of said railroads, respectively a State tax, after such rate as may have heretofore been fixed by law upon such companies, &c.," in addition to the other tax imposed in that section, it is obvious that the tenth section is applicable only to such corporations as by irrepealable contracts in their charters, are beyond the power of the Legislature to compel submission to the taxation imposed by the first section.

On this construction the Legislature must be regarded as dealing with two classes of corporations,—the one whose exemption from taxation is repealable; the other, those which have irrepealable contracts with the State on the subject of taxation. The former are made taxable by the first section of the act. To the latter the Legislature, by the tenth section, makes the offer to substitute the new mode of taxation for the former one, and to make a new contract in place of the old one if such corporations will consent to enter into the new arrangement.

Whether the proceedings under review should be affirmed or reversed, will depend then on the solution of the question, whether the prosecutors are of the first or the second of these classes of corporations.

The prosecutors were incorporated in 1835. (Acts, 1835, p. 25). In the act of incorporation was a provision against taxation beyond a per centage on the cost of the road. But, by the twentieth section, the Legislature reserved to themselves the right to alter,

amend, or repeal, whenever they should think proper. This section was repealed by the supplement to the company's charter of March 2d, 1836, in which, by the seventh section, the Legislature reserved to themselves the right to alter or amend this supplement, and the act to which it was a supplement, whenever the public good may require it. (Acts, 1836, p. 223). The power of the Legislature, under the reservation in the latter section, to repeal the provision in the original charter, exempting the company from general taxation, and to bring it within the operation of a general tax law, is settled by the decision of this court and of the Court of *Errors*, in The State *v.* Miller, 1 Vroom 368; 2 Vroom 521.

But it was argued by counsel that this power of repeal having been exercised by the tax act of 1862, was exhausted. This argument is based on a misconception of the legal effect of a provision of this kind. It has none of the characteristics of a mere power. Its effect is upon the legislative grant itself, to prevent its becoming —what it otherwise might become—a contract with the State. This is clearly shown in the opinion of the Chief Justice in The State *v.* Jersey City, 2 Vroom 275, 579. As was said by Mr. Justice Scudder, in The State *v.* Douglass, 5 Vroom 85, the expression that a charter of incorporation is a contract, must be understood to refer to a private corporation with an irrepealable charter. An act granting an exemption from taxation containing such provision for future alteration or repeal, confers a mere privilege, which is nothing more than a legislative concession voluntarily made, subject at any time to be withdrawn or modified at the will of the Legislature. Rector of Christ's Church *v.* Philadelphia, 24 How. 300; The People *v.* The Comm. of Taxes, 47 N. Y. 501.

It was further contended that by the supplement to their charter, passed March 23d, 1865, the prosecutors obtained a contract with the State, which is unalterable by subsequent legislation without their consent.

The third section of the supplement of 1865, provides that the tax of one-half of one per cent., stipulated in the original act of incorporation, shall be payable at the expiration of one year from the time the road shall be open and in use to Phillipsburg, and annually thereafter, and shall be in lieu of all other taxation. By a proviso annexed, it was provided that this section should not go into effect or be binding upon the said company until the said company, by an instrument duly executed under its corporate seal, and filed in the office of the Secretary of State, shall have signified its assent thereto. (Acts, 1865, pp. 555, 961.) This act must be construed in connection with the original act of incorporation, which, by express reservation, the Legislature had power to alter and repeal. In any case it will be difficult to give to a supplement to a charter, in express terms repealable, the quality of irrepealability which the original act does not possess. It would seem that when the Legis-

pany. There is not, in the language used in these provisions, anything indicating an intent to make the new arrangement more permanent than the former one, much less that clear and decisive expression of legislative intent, which is necessary to effect a surrender of the sovereign power of legislation, especially on the subject of taxation. The additional language, that such tax "shall be in lieu and satisfaction of all other taxation or imposition whatsoever, by or under the authority of this State, or any law thereof," in legal effect is the same as the proviso annexed to the fifteenth section of the act of incorporation. In numerous cases it has been held in this State that similar language has not the effect to create a contract in charters in which a power of alteration and repeal is reserved. As has already been shown, the effect of the sixth section of the general corporation act upon charters passed after its adoption, is to save to the Legislature the same power of alteration as if its provisions were expressly embodied in such acts.

The prosecutors not having an irrepealable contract with the State on the subject of taxation, are liable to taxation under the first section of the act of 1873, and the proceedings should be affirmed.

Bedle J., concurred.

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N. J. Errors & Appeals

No 3

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Louis C. Vogt, Law Printer, Morristown, N. J.

New Jersey Supreme Court.

THE STATE, (The Morris & Essex Railroad Company, Prosecutors), *vs.* JAMES S. YARD, Commissioner of Railroad Taxation.	*Certiorari.*

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NEW JERSEY :—*ss.* THE STATE OF NEW JERSEY TO ALBERT

SEAL. L. RUNYON, Comptroller of the Treasury of the State of New Jersey. GREETING : 30

We being willing for certain reasons to be certified touching a certain statement of, and valuation upon, certain real property owned by the Morris and Essex Railroad Company made, certified and returned to you by James S. Yard, Commissioner of Railroad Taxation, in the year eighteen hundred and seventy-three, and now with you as Comptroller as aforesaid, do command you, that the state- 40

New Jersey State Library

ment and valuation aforesaid, as fully and entirely with all things touching and concerning the same, as they remain with you, by whatever name the same may be called, to our Supreme Court, to be held at Trenton, on the fourth Tuesday of November, instant; you certify and send, together with this writ, under your hand and and seal, that we may further cause to be done what of right and according to the laws and Constitution of this State ought to be done.

10 Witness, Mercer Beasley, Esquire, Chief Justice of our Supreme Court, at Trenton, the twelfth day of November, eighteen hundred and seventy-three.

BENJ. F. LEE, *Clk.*

JACOB VANATTA, *Att'y.*

STATE OF NEW JERSEY,
Office of Commissioners of R. R. Taxation,
TRENTON, June 30th, 1873.

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To HON. A. L. RUNYON, *Comptroller of the Treasury of New Jersey:*

In accordance with my duty I herewith transmit a report of the real estate owned, used or occupied by the several railroad companies of this State therein specified, the valuation of which appended thereto I do hereby certify to be correct, to the best of my knowledge, information and belief.

30 (Signed) JAMES S. YARD,
Commissioner.

MORRIS & ESSEX R. R. COMPANY.

HUDSON COUNTY.

JERSEY CITY.—2D ALDERMANIC DISTRICT.

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	No. of acres.
Lying easterly of solid filling—piers,	1.37

No. acres, *carried over.*	1.37
Water,	3.97
Between bulkhead and solid filling piers,	1.94
Water,	4.82
Between line of bulkhead and original high water mark,	50.55
West of original high water mark,	8.58
Total No. of acres,	71.05
Deduct 100 feet of road bed,	2.64
	68.41
Sixty-eight 41-100 acres, valued at	$1,539,225 00
Parts of three piers valued at	170,000 00
	$1,709,225 00

JERSEY CITY.—FOURTH ALDERMANIC DISTRICT.

Lots Nos. 37, 39 and 40 on city map, Meadow street,	$5,000 00
Lot No. 41,	600 00
	$5,600 00

TOWN OF HARRISON.

Lot of land, 1½ acres at junction with N. J. Railroad,	$1,200 00
Tract of land 15 96-100 acres known as "borrowing pit," north of M. & E. R. R. and east of the Gilbert place @ $1,000 per acre and building @ $500,	16,460 00
Five 53-100 acres exclusive of streets in East Newark, equal to 96 city lots, average value $200,	19,200 00
	$36,860 00

ESSEX COUNTY.

CITY OF NEWARK.

	Depot at Division street,	$20,000 00
	Freight house at Spring street,	6,000 00
	Car house " " "	10,000 00
	Two-story frame dwelling, No. 79 Spring street,	1,500 00
	" " " No. 74 Spring,	2,000 00
10	" brick, 30 Division,	800 00
	Land and coal sheds at M. & E. R. R. Ave.,	15,000 00
	1½-story frame house, No. 70 Spring St.,	3,000 00
	3-story brick " " 68 "	4,200 00
	2-story frame " " 66 "	3,200 00
	1½ " " " " 64 "	3,300 00
	3 " brick " " 446 Broad St.,	11,000 00
	2 " " " " 29 Cross "	3,200 00
	2 frame stables, Ogden St., 185 feet river front,	17,000 00
	2-story frame house, No. 398 Ogden street,	2,600 00
20	Building and ground, No. 405 Ogden street,	3,500 00
		$106,300 00

WARREN COUNTY.

BOROUGH OF WASHINGTON.

	Freight house,	$1,000 00
30	Passenger depot and gangway	3,500 00
	Turn-table,	200 00
	Trestle-work, coal shutes and switches,	4,000 00
	Two switches, north of railroad,	5,000 00
	Four switches, 1½ miles,	30,000 00
	Half a mile of double track connecting M. & E. R. R. with Warren R. R.,	35,000 00
	Seventy acres of land @ $200.	14,000 00
		$92,700 00

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WASHINGTON TOWNSHIP.

About thirty-five (35) acres of land, known as the "Hess property,"	$2,500 00
About five acres of land known as the "Wykoff lot,"	1,000 00
A tract of land known as the "Mattison lot,"	600 00
	$4,100 00

MANSFIELD TOWNSHIP.

Five acres of land,	$2,000 00
Freght depot,	1,000 00
Passenger depot,	400 00
Two water tanks,	1,500 00
One cattle pen,	100 00
Eight acres of land on Cregar Hill,	400 00
Three buildings (shanties) along the road bed,	1,000 00
	$6,400 00

BOROUGH OF HACKETTSTOWN.

Passenger depot, Main street,	$2,667 00
Freight depot,	2,667 00
Engine house,	2,667 00
Lot of land, 200 by 900,	2,000 00
Small tenant house,	134 00
	$10,135 00

MORRIS COUNTY.

MONTVILLE TOWNSHIP.

Fifty acres of land with two dwelling houses and one barn,	$5,000 00

ROXBURY TOWNSHIP.

Round house at Port Morris,			$40,000 00
Trestle-work for dumping coal at Port Morris,			50,000 00
Boarding house and lot	"	"	2,000 00
" " "	"	"	1,000 00
About 75 acres of land	"	"	7,000 00
			$100,000 00

CHATHAM TOWNSHIP.

Passenger depot at Chatham station,				$1,800 00
Freight	"	"	"	800 00
Blacksmith shop,				150 00
Vacant lot, over one acre,				1,500 00
Dwelling house and lot at Chatham,				1,000 00
Round house,	"	"		4,500 00
Passenger depot at Madison,				1,600 00
Freight depot and store house at Madison,				1,200 00
Two acres land at Chatham,				500 00
Half acre lot, (Bond lot),				150 00
				$13,200 00

Total Morris & Essex Railroad, $2,089,520 00

STATE OF NEW JERSEY,
Office of Comptroller of Treasury,
TRENTON, November 14th, 1873.

I certify that the above is a true copy of the report made to this department, June 30th, 1873, by James S. Yard, Commissioner of Railroad Taxation for the State of New Jersey of the valuation made by him of the real estate owned, used or occupied in this State by the Morris & Essex Railroad Company.

(Signed) A. L. RUNYON,
Comptroller.

A true copy :—BENJ. F. LEE, *Cl'k.*

NEW JERSEY SUPREME COURT.

THE STATE (The Warren Railroad Company,) Prosecutors, *vs.* JAMES S. YARD, Commissioner of Railroad Taxation.	*Certiorari and Return.*

NEW JERSEY, SS :

The State of New Jersey to Albert L. Runyon, Comptroller of the Tresury of the State of New Jersey, Greeting :

We being willing for certain reasons to be certified touching certain statements and valuations of certain lands and real estate, occupied, used, or owned by the Warren Rail Road Company, made by James S. Yard, Commissioner of said Rail Road taxation, in the year eighteen hundred and seventy-three, and by him certified and returned to you as Comptroller as aforesaid, and on file or of record in your office, do command you that the statements and valuations aforesaid as fully and entirely with all things touching and concerning the same, as they are in your office, or with you by whatever names the same may be called, to our Supreme Court, to be held at Trenton on the fourth Tuesday of November instant, you certify and send together with this writ under your hand and seal, that we may further cause to be done therein what of right and the Constitutions and laws ought to be done.

Witness, Mercer Beasley, Esquire, Chief Justic of our Supreme Court at Trenton, the twelfth day of November, eighteen hundred and seventy-three.

BENJ. F. LEE, *Clk.*

JACOB VANATTA, *Att'y.*

ENDORSED.

NEW JERSEY SUPREME COURT.

THE STATE (The Warren Railroad Company, *Prosecutors.* vs. JAMES S. YARD, *Commissioner of Railroad Taxation.*	*Certiorari.*

Returnable 4th Tuesday of November, 1873.
JACOB VANATTA, *Att'y.*

Allowed in open Court.
J. D. BEDLE, *Jus. Sup. Ct.*

STATE OF NEW JERSEY,
Office of Commissioner of Railroad Taxation,
TRENTON, June 30, 1873.

To HON. A. L. RUNYON, *Comptroller of the Treasury of New Jersey.*

In accordance with my duty I herewith submit a report of the real estate, owned, used, or occupied, by the several railroad companies of this State therein specified, the valuation of which appended thereto I do hereby certify to be correct to the best of my knowledge, information and belief.

(Signed) JAMES S. YARD,
Commissioner.

Warren Railroad Company,

Warren County,

Borough of Washington.

Item	Value
Twenty acres of land at $200,	$4,000 00
Twelve (12) dwelling houses at $200,	2,400 00
Two (2) office buildings at Coal Yard,	2,000 00
Trestle work and coal shute,	5,000 00
Five switches to coal shutes,	20,000 00
Trestle work and coal shutes,	5,000 00
Total Warren Railroad Co.,	$38,400 00

State of New Jersey,
Office of Comptroller of the Treasury,
Trenton, November 14, 1873.

I certify that the above is a true copy of the report made to this department June 30th, 1873, by James S. Yard, Commissioner of Railroad Taxation, for the State of New Jersey, at the valuation made by him of the real estate owned, used, or occupied in this State by the Warren Railroad Company.

(Signed) A. L. RUNYON,
Comptroller.

A true copy.
Benj. F. Lee, Clerk.

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NEW JERSEY SUPREME COURT.

THE STATE (The Chester Railroad Company, *Prosecutors.* vs. JAMES S. YARD, *Commissioner of Railroad Taxation.*	*Certiorari.*

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NEW JERSEY, ss:

{ SEAL. } The State of New Jersey, to Albert L. Runyon, Comptroller of the Treasury of the State of New Jersey, Greeting:

30

We being willing for certain reasons to be certified touching certain statements and valuation of certain lands and real estate occupied, used, or owned by the Chester Railroad Company, made by James S. Yard, Commissioner of Railroad Taxation, in the year eighteen hundred and twenty-three, and by him certified and returned to you as Comptroller as aforesaid, and on file or of record in your office, do command you that the statements and valuations aforesaid, as fully and entirely with all things touching and

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concerning the same, as they are in your office, or with you, by what names soever the same may be called, to our Supreme Court to be held at Trenton on the fourth Tuesday of November instant, you certify and send together with this writ, under your hand and seal, that he may further cause to be done, therein, what of right and according to the Constitutions and laws ought to be done.

Witness, Mercer Beasley, Esquire, our Chief Justice of our Supreme Court, at Trenton, the twelfth day of November, eighteen hundred and seventy-three. 10

BENJ. F. LEE, *Cl'k.*

JACOB VANTTA, *Att'y.*

STATE OF NEW JERSEY,
Office of Commissioner of Railroad Taxation,
TRENTON, June 30th, 1873.

To HON. A. L. RUNYON, *Comptroller of the Treasury of New Jersey.* 20

In accordance with my duty I herewith submit a report of the real estate owned, used, or occupied, by the several railroad companies of this State, therein specified, the valuation of which appended thereto, I do hereby certify to be correct to the best of my knowledge, information and belief.

(Signed) JAMES S. YARD,
Commissioner.

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CHESTER RAILROAD COMPANY,

MORRIS COUNTY.

CHESTER TOWNSHIP.

Five acres of land,	$1,000 00
Depot building at Chester,	1,000 00
Freight " " "	200 00

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Engine house " "	600 00
One dwelling house,	600 00
One " "	600 00
	$4,000 00

ROXBURY TOWNSHIP.

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Gravel pit of forty acres at or near McCainsville,	$5,000 00
Total for Chester Railroad,	$9,000 00

STATE OF NEW JERSEY,
Office of the Comptroller of the Treasury,
TRENTON, November 14, 1873.

20 I certify that the above is a true copy of the report made to this department June 30th, 1873, by James S. Yard, Commissioner of Railroad taxation for the State of New Jersey, of the valuation made by him of the real estate owned, used or occupied in this State, by the Chester Railroad Company.

(Signed) A. L. RUNYON.
A true copy, *Comptroller.*
BENJ. F. LEE, Cl'k.

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To James S. Yard, Esquire, *Commissioner of Railroad Taxation for the State of New Jersey:*

Below: The Morris and Essex Railroad Company and its lessors, the Delaware, Lackawanna and Western Railroad Company, furnish you with a statement of all the real property by them occupied, used, or owened, for the purpose of their or either of their railroad or otherwise, exclusive and extra of their main stem or road bed and track, not exceeding one hundred feet in width, and situate in the

, and of the valuation placed thereon by said companies.

By making this or any similar statement, said companies do not nor does either of them intend to accept or indicate any acceptance of on their or either of their part, or an assent to or acquiesence in the act of the Legislature of the State of New Jersey, entitled "An act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption." Approved April 2, 1873. Each of said companies denies that said act applies to it, and also denies its liability to be taxed for any purpose on any property under or according to the provisions of said act.

Each one of said companies denies your right to demand or require, and its liabilith to furnish the information hereinafter contained, but as you courteously requested the information, it is hereby furnished, under protest, and with a full reservation of the right to dispute and to resist by lawful means, the enforcement against them or either of them said act or any part thereof.

Said lands are as follows:

The lands above mentioned are owned by the Morris and Essex Railroad Company in fee simple. They are in the possession of the Delaware, Lackawanna and Western Railroad Company, under a lease by the former to the latter.

JACOB VANATTA,
Attorney.

June 27, 1873.

NEW JERSEY SUPREME COURT.

THE STATE (The Morris and Essex Railroad Company, *Prosecutor*. *vs.* JAMES S. YARD, *Commissioner of Railroad Taxation.*	*On Certorari.*

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And the said Prosecutor by Jacob Vanatta, its Attorney, comes and asigns the following as reasons why the said statement and valuation made by the said commissioner should be set aside, made null and void, and for nothing holden.

30 1. Because the said commissioner had no right or power to make the said statement and valuation.

2. Because the act of April 2d, 1873, entitled "An act to establish just rules for the taxation of railroad corporations and to induce their acceptance and uniform adoption," does not apply to or include the prosecutor or include its charter.

3. Because if the said act does in terms apply to the prose-

40 cutor and its charter, it is contrary to and violative of the

Constitution of the United States, and of the State of New Jersey, and therefore null and void.

4. Because the said statement and valuation are without any sufficient legal authority, contrary to law, and violative of the vested rights of the prosecutors, and erroneous in form and substance.

JACOB VANATTA,
Att'y. of Prosecutors.

In each of the other cases above stated the reasons filed are the same as the foregoing. 10

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