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Notice of Appeal.

New Jersey Supreme Court.

MAYOR AND ALDERMEN OF JERSEY  
CITY,

Prosecutor-in-Certiorari below,  
Respondent,

vs.

LEWIS P. HUBER, as Collector of the  
Borough of Secaucus,  
Defendant-in-Certiorari below,  
Appellant.

On Appeal  
to Court of 10  
Errors and  
Appeals.

Notice of  
Appeal.

To:

JOHN BENTLEY, Esq.,  
Attorney of Mayor and  
Aldermen of Jersey City,  
Respondent.

20

SIR:

TAKE NOTICE that the defendant-in-certiorari  
appeals to the Court of Errors and Appeals from  
the whole of the judgment entered in this cause  
on the following grounds: 30

1. Because the Supreme Court by its judgment  
vacated the taxes assessed for the years 1912, 1913  
and 1914 against the property of Mayor and Al-  
dermen of Jersey City situate within the limits of  
the taxing district of the Borough of Secaucus  
when as a matter of law said taxes were correct  
and should have been affirmed.

2. Because the Supreme Court decided that the  
personal property of the Mayor and Aldermen of 40

*Notice of Appeal.*

Jersey City situate within the limits of the taxing district of the Borough of Secaucus for the years 1912, 1913 and 1914 were unlawfully and unjustly assessed because said personal property was exempt from taxation by reason of the provisions of an act entitled, "A supplement to the Act entitled, 'An Act for the assessment and collection of taxes,' approved April 8th, One thousand nine hundred and three," Chapter 118 of the Laws of 1910, page 199, when as a matter of law said act of the Legislature was unconstitutional and void in that it violated the provisions of Placitum 12, Section 7, Article 4 of the New Jersey State Constitution which requires that "property shall be assessed for taxes under general laws, and by uniform rules according to its true value."

10  
20

3. Because the Supreme Court decided to vacate the taxes assessed for the years 1912, 1913 and 1914 against the personal property of the Mayor and Aldermen of Jersey City situate within the limits of the taxing district of the Borough of Secaucus when as a matter of fact said municipal corporation was using said property for the purpose of carrying on the business of purveying water not only to its own inhabitants but to persons in taxing districts outside the limits of the Mayor and Aldermen of Jersey City and when as a fact the said municipal corporation was engaged in a private business enterprise.

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4. Because the Supreme Court decided to vacate the taxes assessed for the years 1912, 1913 and 1914 against the property of Mayor and Aldermen of Jersey City situate within the limits of the taxing district of the Borough of Secaucus when

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*Notice of Appeal.*

said municipal corporation was using said property for the purpose of carrying on a water supply business which was a private enterprise.

5. Because the Supreme Court decided to vacate the taxes assessed for the years 1912, 1913 and 1914 against the property of Mayor and Aldermen of Jersey City situate within the limits of the taxing district of the Borough of Secaucus when said property was in fact not improvements as contemplated by section 1, chapter 118, P. L. 1910, page 199. 10

6. Because the Supreme Court by its judgment decided to vacate the taxes assessed for the years 1912, 1913 and 1914 against the property of Mayor and Aldermen of Jersey City situate within the limits of the taxing district of the Borough of Secaucus when such property was used for the purpose of affecting the storage, distribution and sale of water by the said Mayor and Aldermen of Jersey City in a private enterprise which was a private business used for the benefit and profit of the Mayor and Aldermen of Jersey City and by the laws of the State of New Jersey was not exempt from taxation. 20 30

7. Because the Supreme Court by its judgment vacated the taxes assessed for the years 1912, 1913 and 1914 against the property of Mayor and Aldermen of Jersey City situate within the limits of the taxing district of the Borough of Secaucus under an erroneous principle that the said property was exempt from taxation by reason of the provisions of an act entitled, "A Supplement to the act entitled 'An Act for the assessment and 40

*Notice of Appeal.*

10 collection of taxes,' approved April 8th, One thousand nine hundred and three'' Chapter 118 of the Laws of 1910, page 199, when in fact said law was so inartistically and ambiguously drawn as to be ambiguous and uncertain in its language and for that reason to be unenforceable and to afford no authority for the exemption of said property from taxation.

8. Because the judgment of the Supreme Court in this cause was erroneous and should be reversed.

HARLAN BESSON,  
Attorney of Appellant.

20 [Endorsed:]—New Jersey Supreme Court—  
Mayor and Aldermen of Jersey City, Prosecutor-in-Certiorari below, Respondent, *vs.* Lewis P. Huber, as Collector of the Borough of Secaucus, Defendant-in-Certiorari below, Appellant.—On Appeal to Court of Errors and Appeals.—Notice of Appeal.—Service of *the* a true copy of the within notice of appeal is hereby acknowledged.—Dated, January 15, 1917.—John Bentley, Atty. of Respondent.—Harlan Besson, Lawyer, Hoboken, N. J.—Filed Jan. 15, 1917.—Wm. C. Gebhardt, Clerk.

30

*Amended Rule for Judgment.*

## NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MAYOR AND ALDERMEN OF JERSEY CITY, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">LEWIS P. HUBER, Collector, &amp;c., Defendant.</p>	}	<p>On Cer- tiorari.</p> <p>Amended Rule for Judgment.</p>	<p>10</p>
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The Court having inspected the transcript of proceedings returned with the certiorari in the above entitled cause, and the reasons for vacating the assessment, and having heard the argument of counsel therein, duly considered the same; 20

It is, on this 16th day of December, A. D., 1916, Ordered, that the assessments for taxes for the years 1912, 1913 and 1914 assessed against the municipal corporation known as Mayor and Aldermen of Jersey City, which property is situate in the Borough of Secaucus, County of Hudson and State of New Jersey, be and the same are hereby vacated. 30

Entered December 18, 1916,

On motion of JOHN BENTLEY,  
Attorney for Prosecutor.

*Amended Rule for Judgment.*

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

10 IN TESTIMONY WHEREOF, I have set my  
hand and the seal of said Court  
at Trenton, this fifteenth day  
[SEAL] of January, A. D., nineteen hun-  
dred and seventeen.

WILLIAM C. GEBHARDT,  
Clerk.

A true copy,

WM. C. GEBHARDT,  
Clerk.

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*Opinion.*

## NEW JERSEY SUPREME COURT,

JUNE TERM, 1916.

MAYOR AND ALDERMEN OF JERSEY  
CITY,

Prosr.,

10

vs.

LEWIS P. HUBER, Collector, etc.,  
Deft.

Argued June Term, 1916.

Decided November Term, 1916.

20

Certiorari removing assessments imposed by  
the Borough of Secaucus, on property of prose-  
cutor.

JOHN BENTLEY and JOHN MILTON, for Prosecutor.  
HARLAN BESSON, for Defendant.

Argued before Justices SWAYZE, MINTURN and  
KALISCH.

30

*Per Curiam:*

The assessment by the Borough of Secaucus,  
upon the pipe line is illegal. The Statute C. S.  
5084, 4A, authorizes the taxation of real estate  
without regard to any buildings or other im-  
provements on such lands. This was meant to  
exclude from the valuation the value added by  
the improvements.

The statute authorizes the levying of a tax 40  
upon the land only, of another municipality.

4. C. S., 5085.

*Opinion.*

It is argued that the laches of the officials of Jersey City in failing to attack these assessments, must result in a denial of the City's claim upon that ground. But the rule is otherwise in the public interest, and the doctrine is settled that the laches of an official, charged with the performance of a public duty, cannot operate to bar the municipality he serves from asserting its legal rights.

Jersey City *v.* North Jersey St. Ry. Co.,  
43 Vr., 392.

The result is that the assessments for taxes for the years in question must be vacated.

[Endorsed:]—New Jersey Supreme Court, June Term, 1916.—Mayor and Aldermen of Jersey City, Prosr. *vs.* Lewis P. Huber, Collector, etc., Deft.—*Per Curiam*.—Filed Dec. 4, 1916.  
—Wm. C. Gebhardt, Clerk.

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## Writ.

NEW JERSEY, to wit:

STATE OF NEW JERSEY TO LEWIS P. HUBER, ESQ.,  
AS COLLECTOR OF TAXES IN THE BOROUGH OF  
SECAUCUS, IN THE COUNTY OF HUDSON AND  
STATE OF NEW JERSEY, GREETING:

[L. S.]

We being willing for certain reasons to be  
certified of certain assessments of taxes made  
against the MAYOR AND ALDERMEN OF JERSEY CITY  
for the years Nineteen hundred and twelve,  
Nineteen hundred and thirteen, and Nineteen  
hundred and fourteen, by the assessor of taxes  
of the said Borough of Secaucus.

WE DO COMMAND YOU, that the said assessments  
of taxes so made by the assessor of taxes, to-  
gether with all things touching and concerning  
the same, as fully and entirely as before you  
they remain, to our Justices of our Supreme  
Court of Judicature, at Trenton, on the 30th day  
of October, inst., you certify and send together  
with this writ, that herein may be done what of  
right and according to the laws of this State  
should be done.

WITNESS, WILLIAM S. GUMMERE, ESQ., Chief  
Justice of our Supreme Court, at Trenton, this  
11th day of October, Nineteen hundred and fif-  
teen.

JOHN BENTLEY,  
Attorney.

WM. C. GEBHARDT,  
Clerk.

**Return.**

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

I, LEWIS P. HUBER, Collector of Taxes in the Borough of Sacaucus, in the County of Hudson, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you, the said Justices, the assessments of taxes made against the property of the Mayor and Aldermen of Jersey City, lying within the taxing district of the Borough of Secaucus, for the years Nineteen hundred and twelve, Nineteen hundred and thirteen, and Nineteen hundred and fourteen, made by the assessor of taxes of the Borough of Sacaucus for the years mentioned, with all things touching and concerning the same, as fully and entirely as the same remains in my hands and my possession, as by the said writ I am commanded, as appears by the schedule hereunder written.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this eleventh day of October, A. D. Nineteen hundred and fifteen.

LEWIS P. HUBER,  
Collector of the Borough of Secaucus.

TAX ASSESSMENT FOR NINETEEN HUNDRED AND TWELVE.

30 Mayor and Aldermen of Jersey City (Water Pipes).

Personal Property	Total	State School Tax	County Tax	Borough Expense Tax	Special School Tax	Total
\$30,000	30,000	79.50	170.40	69.60	117.30	\$436.80

TAX ASSESSMENT FOR NINETEEN HUNDRED AND THIRTEEN.

Mayor and Aldermen of Jersey City.

Personal Property	Total	State School Tax	County Tax	Borough Expense Tax	Special School Tax	Total
\$30,000	30,000	80.70	158.10	73.80	122.10	\$434.70

TAX ASSESSMENT FOR NINETEEN HUNDRED AND FOURTEEN.

40 Mayor and Aldermen of Jersey City (Land and Pipe Line).

Land	Total	State School Tax	County Tax	Borough Expense Tax	Special School Tax	Total
\$30,000	30,000	80.70	155.10	128.10	143.70	\$507.60

## Testimony.

## NEW JERSEY SUPREME COURT.

MAYOR AND ALDERMEN OF JERSEY  
CITY,

Prosecutor,

vs.

LEWIS P. HUBER, Collector of Taxes  
in the Borough of Secaucus,  
Respondent.

On Cer-  
tiorari. 10  
Depositions.

Depositions in the above entitled cause taken on behalf of the Prosecutor, before me, JOHN FRANCIS GOUGH, a Supreme Court Commissioner, 20 at my office, 15 Exchange Place, Jersey City, New Jersey, this twenty-fifth day of October, 1915, at three o'clock in the afternoon, pursuant to agreement of counsel; in the presence of

JOHN MILTON, Esq., for Prosecutor;  
HARLAN BESSON, Esq., for Respondent.

It is stipulated by and between counsel for the respective parties that the depositions may be 30 taken stenographically and the signatures of witnesses waived.

*David Carroll—for Prosecutor—Direct.*

DAVID CARROLL, being duly sworn as a witness on the part of the Prosecutor, on his oath testified as follows:

Direct Examination by Mr. Milton:

Q. Mr. Carroll, where do you live? A. 329 Center Avenue, Secaucus.

10 Q. Do you occupy any official position in Secaucus? A. Yes, sir.

Q. What is it? A. The Assessor.

Q. How long have you been Assessor? A. This is my second year.

Q. When did you take office? A. In 1914 I was elected.

Q. You were elected in 1914? A. Yes, sir.

Q. And you have been Assessor since 1914 and 20 are to-day? A. Yes, sir.

Q. Who was Assessor before you? A. John Possehl, Sr.

Q. I show you, Mr. Carroll, an assessment made by the Borough of Secaucus against Jersey City, for the year 1912, which is taken from page No. 77, Bill No. 28, Mayor and Aldermen of Jersey City, which assessment is levied upon water pipes, the value of personal property being \$30,000, the total valuation \$30,000, amount of taxes being \$436.80? A. Well, that was previous to my 30 time.

Q. Yes, but that is a correct copy of the assessment as it stands in your office? A. Well, I changed it this year to land and pipe.

Q. Now, for 1912, it was on the pipe? A. I believe it was; I don't know; I couldn't tell you for sure.

40 Mr. Besson: I admit that, because it is already in the return, anyway.

*David Carroll—for Prosecutor—Direct.*

Q. Jersey City, Mr. Carroll, so far as you know, has no personal property in the Borough of Secaucus other than these pipes? A. No.

Q. And had none in 1912 that you know of? A. Only the pipes that I know of.

Q. Now, I show you assessment for 1913, being page 78 of your ledger, bill No. 28, Mayor and Aldermen of Jersey City, value of personal property \$30,000, total valuation \$30,000, amount of taxes being \$434.70; that is likewise assessed upon the pipes? A. That is assessed upon the land and pipes, I presume, the whole thing combined; that is what it states, on pipes. 10

Q. And the only personal property that you know of in the Borough of Secaucus is the pipe?

A. That is all I know of.

Q. Now, Mr. Carroll, in 1914 you say the assessment was made upon land and pipe? A. Yes. 20

Q. And the same value, of \$30,000, put on it? A. Yes, sir.

Q. That assessment is, so far as the land is concerned, levied upon the right of way of Jersey City for its water pipe line running through Secaucus, and there was no attempt made to differentiate between the value of the land and the value of the pipe? A. No, sir. 30

Q. It was one assessment, both the land and pipe together? A. It was.

Q. Do you know, Mr. Carroll, whether Jersey City has made any effort to have, what it calls, a proper assessment made? There has been a dispute about this question going on? A. Yes; I got letters home and all the papers; I would have brought them down if I had more notice.

Q. At any rate, you had some correspondence, perhaps from me? A. From you, no; I don't re- 40

*David Carroll—for Prosecutor—Direct.*

member; I had quite a number from the officials of Jersey City.

Q. Ever since these taxes were levied Jersey City has been maintaining that the taxes are wrong and that they should be assessed only on the land? A. Yes, sir; that is it.

10 Q. Jersey City has offered to pay the proper assessment on the land? A. On the land, that is true.

Q. I show you a letter dated April 9, 1915, addressed to the Tax Assessor of the Borough of Secaucus, written by John Milton, Corporation Counsel of Jersey City; do you recall this letter? A. I think I do now, yes.

20 Mr. Milton: I offer that letter in evidence and ask that it be marked.

(Without objection the letter was admitted in evidence and marked Exhibit P-1 in evidence.)

A copy of Exhibit P-1 is as follows:

“April 9th, 1915.

Tax Assessor,  
Borough of Secaucus,  
Hudson County, N. J.

30 Dear Sir:—

Jersey City for sometime has been endeavoring to get from your Borough a fair assessment upon its property. We have written you before on the matter, but have received no satisfaction. Unless an assessment is made in accordance with the law, I am directed to say that proceedings will be taken to certiorari and set the whole assessment set aside.

40

Yours very truly,

JOHN MILTON.”

*David Carroll—for Prosecutor—Direct.*

Q. I show you a letter addressed to David Carroll, dated January 13, 1915, and ask you if you got that letter? A. I don't know as you referred to that as the land.

Q. The only point I want to prove is that the letter was sent to you; you recall this letter? A. I do, yes.

10

Mr. Milton: I offer that letter in evidence, and ask that it be marked.

(The letter was thereupon admitted, without objection, and marked Exhibit P-2 in evidence.)

A copy of Exhibit P-2 is as follows:

“Jan. 13th, 1915.

David Carroll, Esq.,

Tax Assessor,

Borough of Secaucus,

New Jersey.

20

Dear Sir:—

The matter of the assessment of 1914 upon property of Jersey City's pipe line in the Borough of Secaucus has been turned over to this Department for reply.

Under the law no assessment can be levied upon the personal property or improvement of one municipality by another. The land is all that can be assessed. Jersey City has no objection to paying a fair assessment upon its right of way and if you will send a separate bill upon the land, check will be sent you immediately, otherwise action will have to be taken to set aside the assessment.

30

Yours very truly,

JOHN MILTON.”

40

*David Carroll—for Prosecutor—Direct.*

Q. Do you recall a letter being sent to you under date of December 2, 1913, signed Henry Byrne? A. I did receive a letter from that man.

Mr. Milton: I offer that letter in evidence and ask that it be marked.

10 (The letter was thereupon admitted, without objection, and marked Exhibit P-3 in evidence.)

A copy of Exhibit P-3 is as follows:

“Dec. 22, 1914.

Mr. D. Carroll,  
Tax Assessor,  
Borough of Secaucus, N. J.

Dear Sir:

20 Referring to tax bill, p. 72, Bill No. 10, in name of Mayor and Aldermen of Jersey City:

Won't you kindly answer the following questions:

(1) Is the \$30,000 assessment on land only? Yes or no.

(2) If it is on land only, what is the area (in acres) assessed? Is it assessed on the same basis as adjoining property?

30 (3) If this assessment included land and improvements, how much has been assessed for land and how much for improvements?

(4) What is the assessment, per acre, for land adjoining pipe line?

An early response will be greatly appreciated.

40 Respectfully yours,  
(Signed) HENRY BYRNE,  
Director.”

*David Carroll—for Prosecutor—Direct.*

Q. And the reply to it under date of January 9th? A. Yes, that is true.

Mr. Milton: I offer that letter in evidence and ask that it be marked.

(The letter was thereupon admitted, without objection and marked Exhibit P-4 in evidence.)

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A copy of Exhibit P-4 is as follows:

“Secaucus, N. J., Jan. 9, 1915.

HON. HENRY BYRNE, Director,  
Department of Street and Public Improvements.

Dear Sir:

Replying to your favor of Dec. 22, *in re* property located in Secaucus, belonging to Jersey City, would say that the answers to your questions are as follows:

20

(1) The assessment of \$30,000 is on land including pipe line laid therein, and also upon the pipe within the Borough limits of Secaucus extending under properties to which Jersey City has no title; that is, the pipe from the center of the Hackensack River to the high-water mark on the east side of the Hackensack River, where the pipe line was laid under State Riparian License, and also the pipe line extending from the easterly end of the right of way owned by Jersey City where same intersects County Avenue; thence extending easterly by easement to the center line of Pen Horn Creek.

30

(2) Being assessed as explained above, it is unnecessary to answer this question.

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*David Carroll—for Prosecutor—Cross.*

(3) The assessment as described in answer one does not include a separate item of improvements as a pipe line under the law is not assessed as improvements.

(4) The assessment per acre for land adjoining the pipe line would average between \$600 and \$700 per acre.

10

Yours respectfully,

DAVID CARROLL,  
Assessor."

Q. Jersey City and Secaucus have never arrived at a satisfactory solution of this tax problem? A. No, sir; they never did.

20

Q. Well, Mr. Carroll, it isn't your idea that the land which is located in Secaucus, apart from the pipe, is worth \$30,000, is it? A. I don't think so.

Q. You don't think it is? A. No.

Q. It is the value of the pipe and the land together that makes up the \$30,000 which you assessed in 1914? A. Yes, sir.

Cross-Examination by Mr. Besson:

30

Q. What is the value of the real estate, Mr. Carroll, on which this pipe line is? A. In 1912 it was, in my opinion, \$6,600; in 1913, \$6,600; in 1914, \$6,600.

40

*Edward B. See—for Prosecutor—Direct.*

EDWARD B. SEE, a witness called by and on behalf of the Prosecutor, after being duly sworn on his oath, testified as follows:

Direct Examination by Mr. Milton:

Q. Mr. See, you occupy an official position in Jersey City? A. Yes, sir.

Q. What is it, please? A. Chief Clerk of the Department of Streets and Public Improvements. 10

Q. And you have been such since June, 1913? A. Yes, sir.

Q. Prior to that time you were Chief Clerk of the Board of Street and Water Commissioners? A. Yes, sir.

Q. The Department of Streets and Public Improvements corresponding to the Board of Street and Water Commissioners? A. Yes, sir. 20

Q. Since the adoption of the Commission Government Act? A. Yes, sir.

Q. When did Jersey City acquire the water plant, Mr. See? A. October 10, 1911.

Q. Since that time the city has been running the plant itself? A. Yes, sir.

Q. Have you produced the correspondence between your department and the Borough of Secaucus in relation to the assessments of certain taxes? A. Yes, sir. 30

Q. Since October, 1912, there has been a controversy going on between the Borough of Secaucus and Jersey City as to the regularity or validity of certain taxes that were imposed by the Borough of Secaucus upon property of Jersey City? A. Well, I have only knowledge of it from the 17th of June, for the reason that the tax matters in the Water Works were handled by the Superintendent of Water prior to that time. 40

*Edward B. Sec—for Prosecutor—Direct.*

Q. You do find, however, in the files, some correspondence between the Superintendent of Water and the Tax Collector of Secaucus? A. Yes, sir.

10 Q. I show you a letter dated October 28, 1912, addressed to E. A. Kiesewetter, Tax Collector of Secaucus—of course, you have no personal knowledge as to whether that letter was sent? A. No, I have not.

Mr. Milton: Are you willing to admit that that is a copy of the letter that was sent?

Mr. Besson: Yes.

Mr. Milton: I offer that letter in evidence and ask that it be marked.

20 (The letter was thereupon admitted, without objection, and marked Exhibit P-5 in evidence.)

A copy of Exhibit P-5 is as follows:

“October 28, 1912.

Mr. E. A. Kiesewetter,  
Tax Collector,  
Secaucus, N. J.

Dear Sir:

30 Herewith I mail you a copy of letter received by me from the Corporation Counsel of Jersey City. You will kindly note that I do so at the suggestion of said Counsel.

40 The letter is self-explanatory; stating the position taken by the City of Jersey City relating to the question of taxes in your District; also showing our readiness to co-operate in any manner looking to the

*Edward B. Sec—for Prosecutor—Direct.*

speedy determination of the question by  
the Courts.

Yours very respectfully,

J. W. GRIFFIN,

Sup't Water."

Q. I show you carbon copy of a letter, Mr. 10  
See, dated December 22, 1913, addressed to John  
Milton, Corporation Counsel, signed James J.  
Ferris, Director, that letter was sent by Mr. Fer-  
ris to Mr. Milton? A. Yes, sir.

Mr. Milton: I offer that in evidence.

(The letter was thereupon admitted  
without objection, and marked Exhibit P-6  
in evidence.)

A copy of Exhibit P-6 is as follows:

20  
"December 22, 1913.

Hon. John Milton,  
Corporation Counsel.

Dear Sir:

I herewith enclose tax bills of the Bor-  
ough of Secaucus, for years 1912-13, for  
such action as you may deem proper.

Please note that the tax is for *personal* 30  
property—that is, water pipes.

Respectfully yours,

JAMES J. FERRIS,

Director."

Q. And the letter dated December 27, 1913,  
from John Milton, Corporation Counsel, to E. A.  
Kiesewetter, Collector of Taxes? A. Yes, sir.

Mr. Milton: I offer that in evidence.

(The letter was thereupon admitted, 40

*Edward B. Sec—for Prosecutor—Direct.*

without objection, and marked Exhibit P-7 in evidence.)

A copy of Exhibit P-7 is as follows:

“Dec. 27th.

E. A. Kiesewetter, Esq.,  
Collector of Taxes,  
Secaucus, N. J.

10

Dear Sir:

The Department of Streets and Public Improvements of Jersey City has turned over to this Department for adjustment, taxes of Secaucus for 1912-13. According to the tax bills the assessments is upon the value of personal property. Under the law, Jersey City is not liable for any assessment for improvements. We are willing to pay a fair assessment upon any land which forms part of our Water Works and which lies in your jurisdiction, but we cannot pay the personal assessment. If you will have this assessment corrected so as to show a fair charge upon the land and send us the bill we will remit promptly.

20

Very truly yours,

30

JOHN MILTON,  
Corporation Counsel.”

Q. I show you letter dated January 7, 1914, Mr. See, addressed to E. A. Kiesewetter, Collector of Borough of Secaucus, signed James J. Ferris, asking for tax bills for 1911 with interest up to January, 1914; that letter was sent by you?  
A. Yes, sir.

40

Mr. Milton: I offer that letter in evidence.

*Edward B. Sec—for Prosecutor—Direct.*

(The letter was thereupon admitted, without objection, and marked Exhibit P-8 in evidence.)

A copy of Exhibit P-8 is as follows:

“January 7, 1914.

Mr. E. A. Kiesewetter, Collector,  
Borough of Secaucus, 10  
N. J.

Dear Sir:

On the 22nd ult., I wrote and asked for bill for taxes against the City of Jersey City for year 1911, together with interest and costs up to Jan. 1st, 1914, on property owned by Jersey City in the Borough of Secaucus, but up to the present time I have not received said bill. Won't you kindly look into this and send the bill as soon as possible, as I am desirous of having this matter disposed of. 20

Respectfully yours,

JAMES J. FERRIS,  
Director.”

Q. I show you a letter dated April 11, 1914, addressed to Lewis P. Huber, Collector of Taxes, Borough of Secaucus, signed James J. Ferris, requesting that all tax bills for unpaid taxes be forwarded; that letter was sent? A. Yes, sir. 30

Mr. Milton: I offer that letter in evidence.

(The letter was thereupon admitted, without objection, and marked Exhibit P-9 in evidence.)

A copy of Exhibit P-9 is as follows: 40

*Edward B. Sec—for Prosecutor—Direct.*

“April 11, 1914.

Mr. Louis P. Huber, Collector of the Borough of Secaucus, Borough Hall,  
Secaucus, N. J.

Dear Sir:

10

Will you please advise as to whether or not there are any unpaid taxes against the City of Jersey City upon property owned by Jersey City in the Borough of Secaucus? If so, kindly send bill, with interest, up to May first, and oblige,

Very truly yours,

JAMES J. FERRIS,

Director.”

20 Q. Likewise the letter of May 9th, to the same purport, referring to letter of April 11th, signed by you; that letter was sent? A. Yes, sir.

Mr. Milton: I offer that letter in evidence.

(The letter was thereupon admitted, without objection, and marked Exhibit P-10 in evidence.)

A copy of Exhibit P-10 is as follows:

30

“May 9, 1914.

Mr. Louis P. Huber,  
Collector of the Borough of Secaucus,  
Borough Hall,  
Secaucus, N. J.

Dear Sir:

40

Won't you kindly refer to letter of former Director Ferris of this department, under date of the 11th ult., and advise if there is any unpaid taxes against the City

*Edward B. See—for Prosecutor—Direct.*

of Jersey City upon property owned and used by Jersey City in the Borough of Secaucus?

Respectfully yours,  
EDWARD B. SEE,  
Chief Clerk."

Q. A further letter, dated May 25, 1914, signed Edward B. See, addressed to Lewis P. Huber, Collector of Taxes, acknowledging receipt of tax bill for 1913; that letter was sent by you to Mr. Huber? A. Yes, sir. 10

Mr. Milton: I offer that letter in evidence.

(The letter was thereupon admitted, without objection, and marked Exhibit P-11 in evidence.) 20

A copy of Exhibit P-11 is as follows:

"May 25, 1914.

Mr. Louis P. Huber, Collector,  
Borough of Secaucus,  
Borough Hall,  
Secaucus, N. J.

Dear Sir:

I beg to acknowledge receipt of tax bill for year 1913, amounting to \$434.70, on an assessed valuation of personal property—Jersey City Water Works. While I am glad to have this bill, yet it does not cover exactly what I want; what I would like to have is a statement as to whether or not there are any unpaid bills against Jersey City on account of our property in Secaucus, and, if so, kindly send me bills covering same. Your early attention to this 30 40

*Edward B. See—for Prosecutor—Direct.*

will be greatly appreciated, as I am very anxious to have this matter closed out.

Respectfully,

EDWARD B. SEE,  
Chief Clerk.”

- 10 Q. I show you a letter dated June 5, 1914, addressed to Edward B. See and signed Lewis P. Huber, that letter was received by you from Mr. Huber? A. Yes, sir.

Mr. Milton: I offer that letter in evidence.

(The letter was thereupon admitted, without objection, and marked Exhibit P-12 in evidence.)

- 20 A copy of Exhibit P-12 is as follows:

“Borough of Secaucus,  
June 5, 1914.

Edward B. See,  
Dept. Streets & Public Improvements.

Dear Sir:—

- 30 Referring to your letter of May 25th, 1914, I wish to state that the tax against Jersey City on property in Secaucus, N. J. for the year 1911 amounting to \$399.60 with interest, and 1912 amounting to \$436.80 with interest, are still unpaid; also that of 1913, amounting to \$434.70 with interest.

Hoping to have this matter settled,

I remain,

- 40 LEWIS P. HUBER,  
Collector of Taxes.”

*Edward B. See—for Prosecutor—Direct.*

Q. I show you a letter dated June 9, 1914, signed Edward B. See, addressed to Lewis P. Huber, Collector of Taxes, and ask you if that letter was sent to Mr. Huber? A. Yes, sir.

Q. Requesting the cancellation of taxes? A. Yes, sir.

Mr. Milton: I offer that letter in evidence. 10

(The letter was thereupon admitted, without objection, and marked Exhibit P-13 in evidence.)

A copy of Exhibit P-13 is as follows:

“June 9, 1914.

Mr. Louis P. Huber,  
Collector of Taxes,  
Borough of Secaucus,  
Borough Hall,  
Secaucus, N. J. 20

Dear Sir:—

Referring to your letter of the 5th inst., regarding amount of taxes against Jersey City.

I have been advised by the Corporation Counsel of this City that Jersey City is not liable for these taxes, and I would, therefore, request that you cancel the same of record. Won't you kindly advise when this has been done, and oblige, 30

Respectfully,

EDWARD B. SEE,  
Chief Clerk.”

Q. I show you a letter signed David Carroll, Sr., Assessor, dated October 13, 1914, addressed to Edward B. See, Chief Clerk; that was received by you from Mr. Carroll? A. Yes, sir. 40

*Edward B. See—for Prosecutor—Direct.*

Mr. Milton: I offer that letter in evidence.

(The letter was thereupon admitted, without objection, and marked Exhibit P-14 in evidence.)

A copy of Exhibit P-14 is as follows:

10

“Borough of Secaucus,  
October 13, 1914.

Mr. E. B. See,  
Chief Clerk.

Dear Sir:

I have placed \$30,000 against your land and pipe line in the Borough of Secaucus, N. J., \$30,000, \$16.92 per M—\$507.60.

20

Respectfully yours,

DAVID CARROLL, SR.,

Assessor.”

30 Q. Mr. See, during all this time has Jersey City had any personal property located in the Borough of Secaucus exclusive of the pipe? A. I think there are two gate houses that are attached to the pipe, part of the pipe line, two gate houses with the meters in, one at Secaucus Road and one out on the river.

Q. Then the only property that Jersey City has had during the years 1912, 1913 and 1914 in the Borough of Secaucus is the right of way?

A. Yes, sir.

Q. Buried in which are the pipes through which the water is transported into Jersey City? A. Yes, sir.

40 Q. Jersey City has had no personal property of any kind in the Borough of Secaucus other than that during these years? A. No, sir.

*Edward B. See—for Prosecutor—Cross.*

Q. Have you had any success in arriving at a satisfactory settlement or solution of this controversy between Jersey City and the Borough of Secaucus? A. No, sir.

Cross-Examination by Mr. Besson:

Q. How do these pipes lay on this land, do you know? A. Do you mean whether they are on piles? 10

Q. Are they on the surface? A. No, they are right on the meadow surface, then they are covered over for, in some cases, three or four feet above the meadow surface.

Q. What supports them? A. They are right on the meadow.

Q. On piles? A. No, they have some kind of a cribbing work underneath and laid right on top. 20

Q. They are not fastened to the land, that is, imbedded in the land, are they? A. No, they are just laid on the meadow, then covered with earth.

Q. How deep are they covered with earth? A. Why, in some places I should judge six or seven feet.

Q. Aren't there other places where the pipe is exposed and you can walk on the pipe? A. On the pipe itself? 30

Q. Yes. A. There is only one place that I know of, and that is just as it dips down from the meadows to go under the river where it is exposed for perhaps 15 or 20 feet, that is all, just before it syphons to go under the river; that is the only place that I know of.

Q. Well, Jersey City, or, at least, the Mayor and Aldermen of Jersey City, sell this water that is conveyed through these pipes, to corporations and individuals outside of Jersey City, don't 40

*Edward B. See—for Prosecutor—Cross.*

they, as well as to inhabitants of Jersey City?

A. Oh, yes.

Q. About how much water do they sell outside of Jersey City? A. I can't tell you just off-hand; about three million gallon a day.

10 Q. That is sold to customers outside of the inhabitants of Jersey City? A. Well, that is what comes through, but it is not all used by inhabitants outside of Jersey City; only a percentage of it.

Q. What percentage is used by inhabitants outside of Jersey City? A. That I couldn't tell you exactly.

Q. Well, it is a considerable amount, is it not? A. Not such a great deal.

20 Q. Who are your chief customers, outside of the inhabitants of Jersey City? A. Well, we have the Lackawanna shops at Kingsland, and North Arlington.

Q. What is North Arlington, a borough? A. The Borough of North Arlington; and the Township of Union; they don't use a great deal of water; that takes in Lyndhurst, Nutley and all those places.

30 Q. There are no large customers that you know of? A. No—you mean outside of them?

Q. And railroads that are not actually in Jersey City? A. Well, the Lackawanna doesn't; that water is used in Hoboken.

Q. The Delaware, Lackawanna & Western Railroad? A. That is included in the three million a day.

40 Q. Jersey City derives a profit or pay for the water that it distributes to those customers that you have mentioned, who are not inhabitants of Jersey City? A. Yes, sir.

*Edward B. See—for Prosecutor—Cross.*

Q. So that really Jersey City is in the business, to some extent, of storing and selling water? A. Selling water.

Q. And the pipe in Secaucus through which this water passes is part of the system that is used for the storing, selling and distribution of water for money by the Mayor and Aldermen of Jersey City? A. Well, I wouldn't say storage; it is for distribution. 10

Q. Well, it is part of the system? A. Part of the system; yes, sir.

Q. Is this system of storing, selling and distributing water conducted by the Mayor and Aldermen of Jersey City a profitable system? A. Yes, sir.

Q. And these pipe lines that pass through Secaucus, that have been described, are not used exclusively then for water supply purposes for the Mayor and Aldermen of Jersey City? A. Well, I would say yes, they are. 20

Q. Well, it is also used to supply water to other people and other institutions outside of Jersey City, that are in no way connected with Jersey City? A. Except that they are bound to Jersey City by contracts. 30

By Mr. Milton:

Q. What you mean is, that water is taken through there that is not consumed in Jersey City by the inhabitants of Jersey City? A. Yes, that is true.

It is admitted by Mr. Milton, corporation counsel of the Mayor and Aldermen of Jersey City, that water passes through the pipe lines in Secaucus, which are owned by the Mayor and Aldermen of Jersey City, 40

*Reasons.*

which is sold and distributed to customers who are not inhabitants of Jersey City, reserving the right to object to the materiality and relevancy of the testimony.

To the Chief Justice of the Supreme Court of New Jersey:

10

I do certify that the foregoing depositions were taken before me, in my immediate presence and hearing, by Harry Schirmer, a stenographer selected by me and sworn: and I do further certify that they fairly and impartially state the testimony so taken.

JOHN FRANCIS GOUGH,  
Supreme Court Commissioner.

20

**Reasons.**

## NEW JERSEY SUPREME COURT.

30	MAYOR AND ALDERMEN OF JERSEY CITY, <p style="text-align: right;">Prosecutor,</p>	} On Cer- tiorari. Reasons.
	vs. 	
	LEWIS P. HUBER, as Collector of Taxes in the Borough of Secaucus, <p style="text-align: right;">Defendant.</p>	

40

The said Prosecutor, by John Bentley, its Attorney, comes and prays, that certain assessments of Taxes made by the Assessor of Taxes of the Borough of Secaucus against the Mayor and Aldermen of Jersey City for the years 1912, 1913

*Reasons.*

and 1914 may be set aside, reversed and for nothing holden, for the following reasons:

FIRST: Because the taxes are illegal and are contrary to the provisions of Section 1, Chapter 118, P. L. 1910, Page 199, 4 Compiled Statutes, Page 5085.

SECOND: Because in each of these assessments, the personal property of the Prosecutor is assessed for taxes when as a matter of law it is exempt from taxation. 10

THIRD: Because in the assessment for 1914, an effort is made to assess the land of the Prosecutor situate within the Borough of Secaucus together with the personal property of the Prosecutor used for water supply purposes and situate in said Borough, when it is unlawful to assess such personal property for taxes. 20

FOURTH: Because the said assessments of taxes are each and every one of them, unlawfully, illegally and incorrectly assessed.

JOHN BENTLEY,  
Attorney for Prosecutor. 30

Received of the Treasurer of the  
Board of Education the sum of  
\$100.00 for the year ending  
June 30, 1875.

(1)

Received of the Treasurer of the  
Board of Education the sum of  
\$100.00 for the year ending  
June 30, 1875.

(2)

Received of the Treasurer of the  
Board of Education the sum of  
\$100.00 for the year ending  
June 30, 1875.

(3)

Received of the Treasurer of the  
Board of Education the sum of  
\$100.00 for the year ending  
June 30, 1875.

(4)

Received of the Treasurer of the  
Board of Education the sum of  
\$100.00 for the year ending  
June 30, 1875.

## New Jersey Court of Errors and Appeals

MAYOR AND ALDERMEN OF JERSEY  
CITY,

Respondent,  
Prosecutor below,

vs.

LEWIS P. HUBER, as Collector of  
the Borough of Secaucus,

Appellant,  
Respondent below.

On Appeal  
From New  
Jersey Su-  
preme Court.

10

20

### BRIEF FOR APPELLANT.

#### Introduction.

This is an appeal from a judgment of the Supreme Court in a certiorari proceeding vacating taxes levied for the years 1912, 1913 and 1914, assessed against property of the Mayor and Aldermen of Jersey City, situate within the Borough of Secaucus.

30

#### Statement.

Some time in 1911, the Mayor and Aldermen of Jersey City, a municipal corporation, purchased from the Jersey City Water Supply Company a number of pieces of property used by that company in purveying water to Jersey City and other

40

municipalities, and now operates its own water supply. A length of water pipe passes through the Borough of Secaucus. The pipe is laid upon the surface of the land in the Borough, and Jersey City owns the strip of land upon which the pipe lays. The pipe is covered with earth, except at the point where it emerges from the Hackensack River.

10

Previous to the time of its purchase and when it was owned by the Jersey City Water Supply Company, the land and water pipe, situate within the Borough of Secaucus, was regularly taxed by the Borough authorities.

The Borough Assessor has assessed taxes against this property for the years 1912, 1913 and 1914, as is set forth on page 10 of the case book.

20

Jersey City claimed exemption from taxation in so far as the pipe line was concerned because of the provisions of Chapter 118, page 199, of the Laws of 1910, as follows:

30

“Hereafter the lands of the respective counties, townships, cities, boroughs, towns and other municipal and public agencies of this State, used for the purpose and for the protection of public water supply, shall be subject to taxation by the respective taxing districts in which such real estate is situated, at the true value thereof, without regard to any buildings or other improvements on such lands, in the same manner and to the same extent as the lands of private persons are subject to taxation, notwithstanding any exemption provided for in the act to which this is a supplement.”

40

The Supreme Court, in a per curiam opinion, held that the taxes were illegally assessed and that

only the land used by Jersey City, exclusive of the improvements, was taxable (C. B., 7 and 8).

The appellant has assigned a number of reasons for the reversal of this judgment (C. B., 1 to 4, incl.).

### POINT I.

**The land and pipe line taxed were not used exclusively for the purpose of public water supply.**

Jersey City claims its exemption from taxation by virtue of the provisions of Chapter 118, P. L., 1910, page 199, supra. It is important to note that this statute uses the significant language, "*used for the purpose and protection of public water supply.*"

The testimony taken in the certiorari proceeding, developed that Jersey City was in the habit of selling water to corporations and individuals outside of the limits of the taxing district of Jersey City (C. B., 29, line 39, etc.), among the principal customers were the D., L. & W. R. R. Co., at its shops at Kingsland, the Borough of North Arlington and the Township of Union (C. B., 30, line 19, etc.).

The Court's attention is further directed to the fact that Mr. Milton, Corporation Counsel of Jersey City, made the following admission on the record:

"It is admitted by Mr. Milton, corporation counsel of the Mayor and Aldermen of Jersey City, that water passes through the pipe lines in Secaucus, which are owned by the Mayor and Aldermen of Jersey City, which is sold and distributed to customers who are not in-

habitants of Jersey City, reserving the right to object to the materiality and relevancy of the testimony."

10 It is contended that property used for the storage and sale of water by a municipal corporation to individuals and corporations residing outside of its limits is not property "used for the purpose and protection of public water supply." It is further argued that the legislature did not intend to exempt this property from taxation under the circumstances.

20 It is contended that the use of the word "public" to qualify the expression "water supply" is intended to make a line of demarcation between a water supply used by a municipal corporation exclusively for public purposes and a water supply used by a public corporation for "private purposes." The mere possession, ownership and operation of land and improvements thereon by a municipal corporation for use as a water supply, does not make such water supply a public water supply. The testimony offered, it is urged, revealed that Jersey City was using its water supply property for private and public purposes and that it was used as a means of making pecuniary profit, as well as a means of supplying its inhabitants with water for public and domestic use. It is 30 contended that the property of Jersey City is taxable, at least, to the extent that such property is used for pecuniary profit.

The question of whether the property of a municipal corporation, situate within another taxing district and not used for governmental purposes, is exempt from taxation under exemption acts excluding the property of municipal corporations from taxation generally, has been considered in a

number of cases in the Supreme Court, notable among which are the following:

- Newark vs. Belleville Township, 61 N. J. L., 455.  
 Hackettstown vs. Conover, 63 N. J. L., 191.  
 Perth Amboy vs. Barker, 74 N. J. L., 127. 10

The writer has been unable to find a case in which this question has been litigated in the Court of Errors and Appeals.

In *Boonton vs. Boonton Water Supply Company*, 69 N. J. Eq., 23, at page 33, V. C. Pitney enters into a discussion as to the meaning of the expression "public" as in regard to a supply of water for a municipal corporation. His interpretation of this language resulted from a construction which the determination of this cause required him to make of a contract for water supply entered into between Boonton and the Boonton Water Supply Company. The learned Vice Chancellor says, *inter alia*: 20

"The preamble provides for a supply of water 'for domestic purposes, the extinguishment of fires and other lawful uses,' and in the third clause, the covenant is 'for the extinguishing of fires and other public and domestic uses and purposes of the inhabitants of the Town of Boonton.' Counsel relies upon the word 'public.' 30

I am clearly of the opinion that, taken in connection with the subject-matter, the words 'public use' cannot be extended to mechanical purposes or manufacturing purposes. Those uses are what is termed private uses. The term 'public use,' in that connection, means 40

such uses as benefit the inhabitants of the municipality at large, as distinguished from those that benefit the individuals of a class, such as street sprinkling and washing and the extinguishment of fires, and perhaps lawn sprinkling."

10 This case was subsequently affirmed in the Court of Errors and Appeals, opinion being reported in 70 N. J. Eq., at page 692.

The determination of the extent to which the property of Jersey City used for water supply purposes, as exempt from taxation, is dependent upon the construction to be given the expression "*property used for the purpose and protection of public water supply.*"

20 The construction to be given such exemption clauses in legislative enactments, it is contended, is that which was adopted by this Court in the case of *State vs. Newark*, 26 N. J. L., at 523, in which Mr. Justice Ogden quoted, with approval, *State vs. The Commissioners of Mansfield*, 3 Zabriskie, 510, saying:

30 "There must be a limit somewhere to this incidental power of the company to enlarge its operations and extend its property without taxation under this exemption clause; and that limitation, we think, must be fixed where the necessity ends, and the mere convenience begins. The necessary appendages of a railroad and transportation company are one thing, and their appendages, which may be convenient means of increasing the advantages and profits of a company, are another thing."

40 It was said by the Court of Errors and Appeals, in an opinion delivered by the Chief Justice, in

the case of *Sisters of Charity vs. Corey, Collector*,  
73 N. J. L., at 706:

“The true rule upon this subject is accurately stated in 12 Am. & Eng. Encycl. L. (2nd Ed.), 302, as follows: ‘A grant of exemption from taxation, being in the nature of a renunciation of sovereignty (or, as some jurists have expressed it, being in derogation of the sovereign authority and of common right), must invariably be construed most strictly against the grantee, and can never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require.’ It has been declared and applied, not only by the United States Supreme Court, but by the Courts of almost every state in the union, as will appear by a reference to the foot note in the American and English Encyclopedia of Law, which contains a citation of the decisions. We ourselves had declared this to be the true rule of construction prior to the promulgation of the decision in the *Chatham case*. *Nevin vs. Krollman, Collector*, 9 *Vroom*, 574; *State Board vs. Morris and Essex Railroad Co.*, 20 *id.*, 193; *State Board vs. Paterson, etc., Railroad Co.*, 21 *id.*, 446.”

It is contended that the property of Jersey City used for water supply purposes was intended to be exempted from taxation only to the extent that it was used to supply water sufficient for the necessities of Jersey City. It is not believed that the legislature intended that a municipal corporation could enter the business of supplying water to private customers resident without its limits, and thereby compete with private corporations, subject to the burden of taxation, who are engaged in the

10 same business. It is contended that the property of Jersey City used for water supply purposes is taxable, at least, to the extent that such property is used as a private enterprise for the pecuniary profit of the municipal corporation of Jersey City. In the case of Newark vs. Clinton Township, 49 N. J. L., 370, it was held in substance that where a city purchased a farm, situate in another municipality, although for the purpose of obtaining a place for burying the poor who died in that city, and used the bulk of the premises for farming purposes to derive pecuniary profit therefrom, the whole property would not be exempted from taxation, but only such reasonable quantity thereof had been set apart and was used for the burial of the dead.

20 See

Newark vs. Clinton Township, 49 N. J. L., page 370.

30 The writers do not believe that the legislature intended that Jersey City should be permitted to conduct tax free or substantially tax free, an enterprise for its pecuniary profit. Any property in excess of that required for the water supply purposes of the inhabitants of Jersey City should be taxed. The Supreme Court determined that the taxes should be vacated (C. B., page 8). It is urged that the taxes should not have been vacated, but should have been readjusted, and that testimony should have been taken for the purpose of determining the exact extent of the property owned by Jersey City in excess of that required for purposes of water supply.

**POINT II.**

**If the taxes were illegally assessed, they should not have been vacated but should have been re-adjusted.**

It appeared from the testimony taken in the certiorari proceedings that the strip of land upon which the pipe line laid was valued at \$6,600, and that it had that value in the years 1912, 1913 and 1914 (C. B., page 18, line 28). Pursuant to the provisions of Section 38 of the Tax Act, 4 Comp. Stat., page 5121, it is urged that the Supreme Court had jurisdiction to correct the assessments, if they were illegal. 10

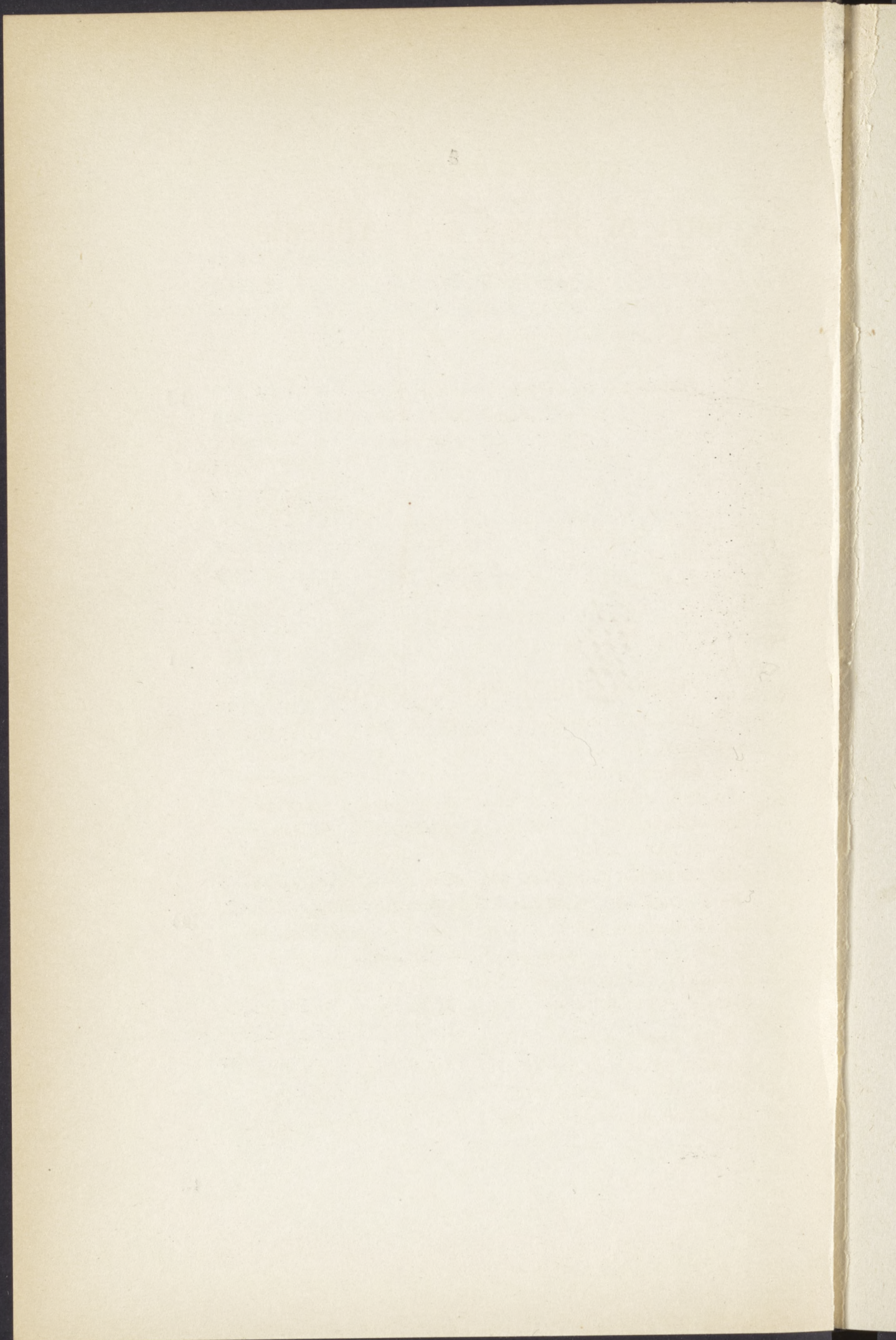
If the contention of the appellant is correct that the property of Jersey City is to some extent taxable in excess of the actual land value without improvements by reason of its use as an enterprise for pecuniary profit, then such a readjustment is necessary. 20

**POINT III.**

**The judgment of the Supreme Court should be reversed or modified.** 30

Respectfully submitted,

HARLAN BESSON,  
LUTHER SHAFER,  
of Counsel with the Appellant.



NEW JERSEY

Court of Errors and Appeals.

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THE MAYOR AND ALDERMEN OF  
JERSEY CITY,  
*Prosecutor in Certiorari below,  
Respondent,*

vs.

LEWIS P. HUBER, AS COLLECTOR  
OF THE BOROUGH OF SECAUCUS,  
*Defendant in Certiorari below,  
Appellant.*

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*On Appeal  
from  
Supreme Court.*

**MEMORANDUM FOR RESPONDENT.**

Jersey City obtains its supply of water for its inhabitants from the Rockaway River Watershed. The waters of that river are impounded by means of a dam at Boonton, and after a certain purification treatment the water is transported to Jersey City through a seventy-two inch steel pipe. This pipe traverses the State, part of it running through the borough of Secaucus. That municipality levied an assessment for taxes upon the pipe line of Jersey City for the years 1912, 1913 and 1914, the amount of the tax for those years being as follows: 1912, \$436.80; 1913, \$434.70; 1914, \$507.60.

The assessments for 1912 and 1913 were levied upon personal property of the supposed valuation of \$30,000 for each year. The assessment for 1914 is for the same amount, but was levied upon land

and pipe (see case, p. 10, l. 30; and p. 18, testimony of Carroll, l. 20, et seq.).

After the assessments had been levied and the tax fixed, Jersey City undertook, by negotiation, to have a proper assessment made. Failing in that, a writ of certiorari was issued out of the Supreme Court to review the legality of the assessments in question.

It was conceded that the taxes for the years 1912 and 1913 were upon personal property—the pipe line—and that Jersey City in those years did not have any personal property within the taxing district other than the pipe line.

So far as the assessment for 1914 is concerned, the borough attempted to levy the tax upon both land and pipe line, although the Assessor Carroll says, at p. 13:

“Q. That assessment is, so far as the land is concerned, levied upon the right of way of Jersey City for its water pipe line running through Secaucus, and there was no attempt made to differentiate between the value of the land and the value of the pipe? A. No, sir.

“Q. It was one assessment, both the land and pipe together? A. It was.

Case, p. 18:

“Q. Well, Mr. Carroll, it isn't your idea that the land which is located in Secaucus, apart from the pipe, is worth \$30,000, is it? A. I don't think so.

“Q. You don't think it is? A. No.

“Q. It is the value of the pipe and the land together that makes up the \$30,000 which you assessed in 1914? A. Yes, sir.

“Q. What is the value of the real estate, Mr. Carroll, on which this pipe line is? A. In 1912

it was, in my opinion, \$6,600; in 1913, \$6,600; in 1914, \$6,600."

The Supreme Court found that the assessment was illegal under the authority of C. S. 5084, 4A. That statute authorized the taxation of real estate of one municipality by another without regard to any buildings or other improvements on such lands. The Court says:

"This was meant to exclude from the valuation the value added by the improvements."

The grounds of appeal in the notice of appeal are, briefly stated, as follows:

1. Said taxes were correct and should have been affirmed.
2. The statute in question is violative of the mandate of the constitution that "property shall be assessed for taxes under general laws, and by uniform rules according to its true value."
- 3-4. The prosecutor, in the supplying of water to persons or corporations outside of the corporate limits of Jersey City, was engaged in a private business enterprise.
5. "Said property" was in fact not improvements as contemplated by the statute.
6. The pipe line in question is not exempt from taxation because used by the prosecutor in a private enterprise.
7. The statute in question is unenforceable because of its ambiguity.

## I.

**As to the constitutionality of the statute.**

The statute in question provides:

“Hereafter the lands of the respective counties, townships, boroughs, towns and other municipal and public agencies of this state used for the purpose and for the protection of public water supply shall be subject to taxation by the respective taxing districts in which said real estate is situated at the true value thereof without regard to any buildings or other improvements on such lands in the same manner and to the same extent as the lands of private persons are subject to taxation.”

It seems to be settled that the Legislature may exempt certain property from taxes on account of the use to which it is devoted, where there is a substantial basis for the classification, such as the exemption of property used for the purposes of religion, education or benevolence.

This Court, through Chancellor Runyon, shortly after the adoption of the Constitution of 1876, held that the mandate of the Constitution did not require that

“*all* property should be assessed for taxes, but that property when assessed for taxes, or in other words, such property as shall be assessed for taxes shall be assessed under general laws, etc. Certain property has been exempt from taxation ever since the amendment to the Constitution was adopted and such exemption has received the judicial sanction. The property is of the same kind as that which is taxed but the use to which it is devoted—the purposes of religion, education, benevo-

lence, etc.—makes it a class and justifies the exemption. The constitutional provision does not take away from the Legislature the power of selecting the subject of taxation.”

Citing cases.

State Board of Assessors v. Central Railroad Co., 48 N. J. L., 146.

See also Fidelity Trust Company v. Vogt, Receiver, 66 N. J. L., 86.

## II.

### As to the use of the water in a private enterprise.

It is conceded that the water which passes through the pipe line, made the subject of assessment, is used not only for the purpose of supplying the inhabitants of Jersey City, but as well is sold to water customers not resident in or inhabitants of the city. Notwithstanding the fact that some of the water so transported through Jersey City through said pipe is sold by Jersey City to outside customers, the pipe line, it seems to us, constituted an improvement upon lands belonging to a municipality and which lands are devoted to “the purpose and for the protection of public water supply.” A very inconsiderable quantity of water so carried to Jersey City is sold to outside consumers and the great volume is distributed by Jersey City to and among its own people. The statute does not make it a condition precedent to exemption that the lands or improvements shall be *exclusively* used for the purpose of supplying water to the inhabitants of a municipality.

## III.

**Whether pipe line constituted improvement upon land.**

It seems to us that the appellant is foreclosed from raising that question in this Court. The Supreme Court must have found as a fact that the pipes laid upon or buried in the right-of-way were improvements in fact.

## IV.

**Ambiguity of Statute.**

While, perhaps, the statute is not as scientifically drawn as it might be, nevertheless it is intelligible and capable of understanding.

It is therefore respectfully insisted that the assessments in question were clearly illegal, being in contravention of the statute in question—and this is true of the 1914 assessment, notwithstanding the fact that it purports to be upon land. It is evident that land and its improvements were taxed together. The judgment of the Supreme Court brought here for review should be affirmed.

JOHN MILTON,  
Of Counsel.

JOHN BENTLEY,  
Attorney of Respondent.

