

COURT OF ERRORS AND APPEALS,

NEW JERSEY SUPREME COURT.

The State—The People's Fire In-	}	On Certiorari,
insurance Company,		
Prosecutors,		
vs.		
Lewis Parker, Jr., Receiver of	}	to remove
Taxes in and for the City of		
Trenton, Defendant.		
		Assessment of Tax.

Writ of Certiorari.

New Jersey, ss. The State of New Jersey to Lewis
 Parker, Jr., Receiver of Taxes in and
 [L. s.] for the City of Trenton, in said State—
 Greeting :

We being willing for certain reasons to be certified of a certain assessment of taxes made against the property and estate of the People's Fire Insurance Company, in assessing the taxes in said city, for the year eighteen hundred and sixty-nine, do command you that the assessment aforesaid 10 and the duplicate thereof, in your hands, with all things touching and concerning the same, you certify and send to our Justices of our Supreme Court, at Trenton, on the first Tuesday of November next, together with this writ,

that therein may be done what of right and according to law should be done.

Witness Mercer Beasley, Esq., Chief Justice of our Supreme Court, at Trenton, this eighth day of September, A. D. eighteen hundred and sixty-nine.

CHAS. P. SMITH, *Clerk.*

EDW. T. GREEN, *Attorney.*

In pursuance of the command of the writ hereto annexed, I, Lewis Parker, Jr., Receiver of Taxes of the City of
10 Trenton, therein named, do hereby make return of the assessment of taxes for the year eighteen hundred and sixty-nine, made against the property and estate of The People's Fire Insurance Company, in said writ named, in the Second Ward of said city, and of the duplicate thereof.

The following is a copy of said assessment and the duplicate thereof, to wit:

	Personal.	Nett.	Tax.
"People's Fire Insurance Co.,	\$64,662	\$64,662	\$969 93
"1869, July 30. Paid on account			216 93
			<u>\$753 00</u>

In witness whereof, I have hereto set my hand and seal,
20 this eleventh day of September, in the year of our [L. s.] Lord eighteen hundred and sixty-nine.

LEWIS PARKER, JR.,
Receiver of Taxes.

Reasons.

And the said The People's Fire Insurance Company, by Edward T. Green, their attorney, come into court and show and assign the following reasons and causes for setting aside and reversing said assessment, that is to say:

30 *First.* Because the commissioners of appeal in cases of taxation in and for the said city of Trenton, wholly disregarded the statement made by the said Company of the capital stock and accumulated surplus of the said Company, which statement was duly verified under oath, and returned to the assessor of taxes as required by law; but in violation

of the statute in such cases made and provided, increased the said amount of capital and surplus in said statement contained, by adding thereto the sum of fifty thousand dollars, when in truth and in fact the said corporation had no such or other amount of capital stock and accumulated surplus, differing in amount from that so returned and given in as aforesaid.

Second. Because by said action of the said commissioners of appeal the said corporation is liable to pay a tax upon an alleged accumulated surplus of \$64,462.44, when in truth and fact their whole accumulated surplus amounts to \$11,462.44, as returned. 10

Third. Because the said corporation is assessed for and taxed upon a much larger sum than by law it ought to be assessed and taxed upon.

Fourth. Because the tax so assessed against the said Company is greatly in excess of the amount which by law should be assessed against them.

Fifth. Because the said assessment is inequitable and contrary to law, and in other respects erroneous. 20

EDW. T. GREEN,
Attorney for Pros.

State of the Case.

The following is agreed upon as a state of the case in the above stated cause :

Statement, May 1, 1869.

LIABILITIES.

Capital Stock paid in,	\$50,000 00
Profit and Loss (accumulated surplus),	24,462 44
Premium account,	43,986 76 30
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	\$118,449 20

ASSETS.

United States 5-20 bonds,	\$50,000 00.
New Jersey bonds—exempt,	13,000 00
Bonds and mortgages,	47,800 00
Corporation bonds,	6,000 00
Cash items,	1,649 20
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	\$118,449 20

The above statement is a true copy of the balance sheet
 10 made up from the books of the People's Fire Insurance
 Company, May 1, 1869.

The Profit and Loss account represents the net earnings
 of the Company after deducting losses and expenses, and
 includes all moneys received for interest on investments
 and earned premiums on expired risks.

The Premium account represents the amount of pre-
 miums received by the Company on unexpired risks or out-
 standing policies. No premium is considered as earned
 until the policy has expired and the risk is at an end. At
 20 the end of each month the expired risks are marked off
 and the premium account credited with the premiums
 earned for that month on the policies.

On the organization of the Company, in February, 1865,
 the whole paid in capital was invested in United States
 securities, which investment has remained unchanged up to
 the present time. The investment in New Jersey bonds
 has been made from time to time as the surplus accrued.

The treasurer of the Company within the time required
 by law, made under oath, and gave to the assessor of the
 30 Second Ward of the city of Trenton, where the company's
 office was then situated, a true statement of the capital
 stock and accumulated surplus of the Company, and claim-
 ing a deduction of such portion thereof as was invested in
 securities exempt from taxation, as follows :

Capital stock paid in,	\$50,000 00
Accumulated surplus,	24,462 44
	<hr/>
	\$74,462 44

Deduct amount invested in		
United States bonds,	\$50,000 00	
New Jersey bonds,	13,000 00	
	<u> </u>	63,000 00
Amount taxable,		<u>\$11,462 44</u>

Opinion.

VAN SYCKLE, J. The relator is a private corporation of this State, subject to be taxed at the full amount of its capital stock paid in and accumulated surplus.

What constitutes its accumulated surplus gives rise to 10 this controversy. The Company insists that this term includes only moneys received for interest on investments and earned premiums on expired risks, while on behalf of the City Receiver it is claimed to comprehend all premiums which have been received by the Company.

The policy of the tax law will be effectuated by bringing within its operation all property to which it can be fairly applied. The term surplus, as applied to an insurance company, is the fund it has in excess of its capital stock after payment of its debts.

Such fund is the accumulation of interest received and 20 premiums for insurance.

It is liable to the contingency of loss upon the policies issued, but it is as much the property of the Company, and as fully under its control as the capital stock paid in. It is asserted that the Company does not actually own these premiums, because they are subject to the risks taken until the policies expire by limitation, and that this constitutes a liability in the nature of an indebtedness against the Company.

This consideration cannot affect the character of the fund 30 as an accumulated surplus.

The liability is contingent; it may or may not actually attach, and if it does, it will reach to and affect the capital

stock, and such premiums as have been received on expired risks as fully as those received on unexpired risks.

If it is an essential element of accumulated surplus, that it be free from liability to pay losses, an insurance company can never have such surplus, for the aggregate amount insured will always be far in excess of its capital and premiums received.

There was no present loss at the time of the assessment complained of, to effect diminution of the fund, and *non*
 10 *constat* that there ever would be.

The act under which the tax was imposed was designed to promote equal taxation, and to that end to reach so much of the property of these corporations as is not represented by their capital stock.

The premiums in question have been invested on bond and mortgage, and to that extent exempt from taxation the borrowing debtors. There is no reason why these bonds which in other hands could claim no immunity from the public burden, should in the ownership of this prosecutor
 20 go free.

The capital stock of the Company is fifty thousand dollars, and the premium and interest account, \$68,449.20, amounting together to the sum of \$118,449.20; of this \$63,000 is invested in non-taxable securities, leaving a balance of \$55,449.20, to which sum the assessment must be reduced.

Rule affirming Assessment.

The parties to this cause having been heard by counsel, the court having examined and considered the assessment
 30 returned by the writ in this case and the reasons assigned, and having read the state of the case agreed upon by counsel, it is ordered that the said assessment be reduced to the sum of fifty-five thousand four hundred and forty-nine dollars and twenty cents (\$55,449.20), to which said sum the said assessment is affirmed as lawful and valid.

On motion of

G. D. W. VROOM,
Attorney of Defi.

Writ of Error.

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

Forasmuch as in the record and proceedings, and also in the giving of judgment in the matter of a writ of certiorari, issued out of our Supreme Court at the suit of the State of New Jersey (The People's Fire Insurance Company, Prosecutors) directed to Lewis Parker, Jr., Receiver of Taxes in and for the City of Trenton, and returnable in said Supreme Court, as is said, manifest error hath intervened to the damage of the State of New Jersey, and of the said prosecutors, as by their complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected and justice be done therein, do command you that if judgment be thereupon given, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, at Trenton, on the third Tuesday in June next, together with this writ: That the record and proceedings aforesaid being inspected, we may further cause to be done what of right and according to law ought to be done.

Witness, Honorable Abraham O. Zabriskie, Chancellor,
President Judge of our said Court, at Trenton, this sixth day of April in the year of our Lord eighteen hundred and seventy-one.

HENRY C. KELSEY,
Clerk.

EDW. T. GREEN,
Attorney.

Assignment of Errors.

Afterwards, that is to say, on the third Tuesday of June, in the year of our Lord eighteen hundred and seventy-one, before the said Court of Errors and Appeals, come the said plaintiffs in error, by Edward T. Green, their attorney, and say that in the record and proceedings aforesaid, and in giving judgment aforesaid, there is manifest error, in this, to wit: that the said Supreme Court reduced the said assessment to the sum of fifty-five thousand
10 four hundred and forty-nine dollars and twenty cents, and affirmed it as to that sum, whereas, by the law of the land the whole of said assessment should have been set aside, and for nothing holden.

And that there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said defendant in error and against the said plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the plaintiffs in error and against the defendant in error.

EDW. T. GREEN,
Attorney.

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Court of Errors and Appeals

THE STATE OF NEW YORK
IN SENATE
January 15, 1854.

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE
MAY 15, 1853.

ALBANY:
PUBLISHED BY
J. B. BARNES, 1854.

Court of Errors and Appeals.

*LEWIS PARKER, Jr., Receiver
of Taxes, defendant in error,*

ads.

*THE STATE, The People's Fire
Insurance Company, prosecutors,
plaintiffs in error.*

Points for defendant in error.

1. The intention of the legislature by *Act of 1866, Nixon's Digest 951*, was to tax all kinds of property.

Private corporations, by section 15th, are taxed for the amount of their capital stock and accumulated surplus.

2. The accumulated surplus of a corporation is the fund or excess of assets belonging to it, not represented by its capital stock, less its debts.

3. The premiums of this insurance company, received in the course of its business, were a part of its assets, and taxable as surplus.

4. These premiums were invested by the company on bond and mortgage, and the borrowing debtors were thereby exempted from taxation. If one party is exempted, the other party ought to pay the tax.

5. The judgment of the Supreme Court was right, and should be affirmed.

JAMES S. AITKIN,
Counsel of defendant in error.