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Case of Lehigh Valley Railroad Company of New Jersey.

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Case of Lehigh Valley Railroad Company, Lessee of Morris Canal and Banking Company.

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WRIT OF CERTIORARI.

(Allowed November 24, 1923, Returnable
December 14, 1923.)

NEW JERSEY, ss.

The State of New Jersey to the
(L. s.) State Board of Taxes and Assessment 10
and Newton A. K. Bugbee, Comptrol-
ler of the Treasury, GREETING:

We being willing, for certain reasons, to be
certified of the assessments of taxes for the year
1923, made pursuant to an act of the legislature
of the State of New Jersey entitled "An Act to
revise and amend 'An Act for the taxation of
railroad and canal property,' approved April
10th, one thousand eight hundred and eighty-
four," which revising and amending act was 20
approved March 27, 1888, and the amendments
thereof and supplements thereto, on certain prop-
erty of the LEHIGH VALLEY RAILROAD
COMPANY OF NEW JERSEY, a corporation,
enumerated as follows:

MAIN-STEM

MAIN LINE—JERSEY CITY, HUDSON COUNTY

Description of Property	Area in Acres	Assessed val- ues for the year 1923	
Jersey Avenue to 160 feet west of Van Vorst Street	5.941	\$ 237,640	30

REAL ESTATE OTHER THAN MAIN-STEM

MAIN LINE—JERSEY CITY, HUDSON COUNTY

Land outside main-stem, north and south of main-stem from a point 160 feet west of the west line of Van Vorst Street, extended, to center line of Jersey Avenue, extended	22.543	901,720	
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Lehigh Valley Railroad Company of New Jersey.

Land outside main-stem, portion of
 "Morris Canal Grant," from the south-
 erly line of Morris Canal property on
 the north to the northerly line of
 C. R. R. of N. J. on the south, and
 from the center line of Washington
 Street easterly to the exterior line for
 piers, including the basin area be-
 tween Washington and Warren
 Streets, exclusive of main-stem..... 38.380 2,494,700

10

Do command you that the said assessments
 of taxes and the valuations upon which the same
 are based, the statement or statements thereof
 reported and certified by said Board to said
 Comptroller of the Treasury, the written com-
 plaint by said company against the same, the
 evidence and statements before said Board on
 review thereof, the final determination of said
 Board thereon, all corrections made by said
 Board therein, and the final report and certifica-
 tion thereof by said Board to said Comptroller,
 together with all proceedings and matters touch-
 ing and concerning the same, as they remain be-
 fore you, or either of you, or under your con-
 trol, you certify and send to the Justices of our
 Supreme Court, at Trenton, on the 14th day of
 December, 1923, together with this writ, that
 therein may be done what of right and accord-
 ing to the laws and constitution of this State
 ought to be done.

20

30

WITNESS, WILLIAM S. GUMMERE, Esq., Chief
 Justice, at Trenton, this 24th day of November,
 1923.

EDWARD J. KELLEHER,
 Clerk.

COLLINS & CORBIN,
 Attorneys.

40

Writ of Certiorari.

Allocatur.

I allow this writ. Let it be sealed. Upon
 condition that prosecutor shall, within the time
 required by law, pay the taxes for the year 1923,
 on its property in the State of New Jersey, so
 far as they are based upon the property de- 10
 scribed in this writ, shall be upon the values
 thereof as determined by the New Jersey Su-
 preme Court for assessment for the year 1922,
 the area of the parcel last mentioned therein
 to be reckoned as 25.839 acres.

Dated, November 24, 1923.

CHARLES W. PARKER,
 J. S. C.

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Lehigh Valley Railroad Company of New Jersey.

RETURN OF STATE BOARD OF TAXES AND ASSESSMENT.

Filed December 14, 1923.

10 **New Jersey Supreme Court**

THE LEHIGH VALLEY RAILROAD
COMPANY OF NEW JERSEY,
Prosecutor,

vs.

20 THE STATE BOARD OF TAXES AND
ASSESSMENT, NEWTON A. K.
BUGBEE, Comptroller of the
Treasury and the MAYOR AND
ALDERMEN OF JERSEY CITY,

*On
Certiorari.*

*Return to
Writ.*

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

30 The State Board of Taxes and Assessment,
complying with the commands of the Writ of
Certiorari hereto attached, and for its return
thereto, does certify as follows:

40 1. That, pursuant to an Act of the Legisla-
ture of the State of New Jersey entitled "An
Act to revise and amend 'An Act for the taxation
of railroad and canal property,' approved April
10th, one thousand eight hundred and eighty-
four," which revision and amendment was ap-
proved March 27, 1888, and the acts amendatory
thereof and supplementary thereto it, the said
State Board of Taxes and Assessment, did value
and assess for purposes of taxation for the year

Return of State Board of Taxes and Assessment.

1923, certain property of the Lehigh Valley Rail-
road Company of New Jersey, the within named
prosecutor, used for railroad purposes.

2. That, pursuant to the statutes aforesaid,
the said State Board of Taxes and Assessment
did certify and report to the Comptroller of the
Treasury of the State of New Jersey a state-
ment of said valuation, assessment and tax. 10

3. That the said State Board of Taxes and
Assessment gave notice to the prosecutor of the
said valuation, assessment and tax, and that it
would meet on a date fixed, at the State House
in Trenton, for the purpose of reviewing said
assessment.

4. That the prosecutor filed a written com-
plaint, or complaints, specifying its grievance
against said valuation, assessment and tax, and
protested against the levy and assessment of said
tax, and was heard thereon, whereupon the State
Board of Taxes and Assessment, after due con-
sideration, adjusted and corrected the said valua-
tion, assessment and tax as to said Board seemed
equitable and just, which said corrected valua-
tion, assessment and tax was duly certified to the
Comptroller of the Treasury. 20

5. And the State Board of Taxes and Assess- 30
ment does further certify and report that it has
hereunto appended, under appropriate headings:

EXHIBIT A. Items complained of in Main Stem
Assessment, 1923.

EXHIBIT B. Items complained of in Second
Class Property Assessment, 1923.

EXHIBIT C. Complaint and Protest.

Lehigh Valley Railroad Company of New Jersey.

EXHIBIT D. Correction in valuation and tax.

EXHIBIT E. Abstract of Minutes of State Board of Taxes and Assessment.

EXHIBIT F. Final Determination.

10 STATE BOARD OF TAXES AND ASSESSMENT,

FRANK D. SCHROTH, Secretary.

Trenton, N. J., December 14, 1923.

Exhibit A.

20 Disputed Assessment for 1923 on Main Stem LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY.

Jersey City, Hudson County.

(MAIN STEM—ASSESSMENT 1923)

Description of Property	Area	Assessed Value
Jersey Avenue to 160 feet west of Van Vorst Street	5.941 ac.	\$237,640.00

40

Return of State Board—Exhibit B.

Exhibit B.

Disputed Assessments for 1923 on Second Class Property

STATE OF NEW JERSEY.

State Board of Taxes and Assessment

LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY

Taxing District of Jersey City (Cont'd), County of Hudson

Valuation and Assessment of Real Estate other than Main Stem, for the year 1923.

Description of Property	Value *	Total Value	Local Tax Rate	Tax for Taxing District
Land outside main stem, north and south of main stem from a point 160' west of the west line of Van Vorst Street, extended, to the center line of Jersey Ave. extended	\$ 22,543 Ac.			
Land outside main stem, portion of "Morris Canal Grant," from the southerly line of Morris Canal property on the north to the northerly line of the C. R. R. of N. J. on the south, and from the center line of Washington Street, easterly to the exterior line for piers, including the basin area between Washington and Warren Streets, exclusive of main stem	\$ 901,720.00			
		2,494,700.00		

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Lehigh Valley Railroad Company of New Jersey.

Exhibit C.

Complaint of Lehigh Valley Railroad Company of New Jersey and Lehigh Valley Railroad Company, Lessee.

10 BEFORE THE STATE BOARD OF TAXES AND ASSESSMENT.

In the Matter of the Assessment of the Property of the Lehigh Valley Railroad Company of New Jersey, a Corporation, for the Year 1923.

Complaint and Protest.

20 To the State Board of Taxes and Assessment, Trenton, New Jersey.

Gentlemen:

30 The Lehigh Valley Railroad Company of New Jersey, a corporation, and Lehigh Valley Railroad Company, a corporation, its lessee, are aggrieved by the valuations and assessments of their property in the State of New Jersey, used for railroad purposes, for the year 1923, and specify their grievances as follows:

1. The valuations of said property, and of each class thereof, for assessment for said year are in excess of the true value of the property.

2. The principles upon which said valuations and assessments were made are erroneous.

3. Said assessments are in part on property not used for railroad purposes.

Return of State Board—Exhibit C.

4. Said property was not valued for assessment for said year under general laws and by uniform rules, and, therefore, said assessments are in violation of the provisions of Paragraph 12 of Section VII of Article IV of the Constitution of the State of New Jersey.

5. The assessments for said year of said property described as real estate used for railroad purposes (other than main stem) situated in the respective taxing districts, are at a rate in excess of the rate of assessment upon property of like character and similarly situated, and are not in the same relative proportion of true value as that by which other property in the same taxing district was assessed, and are in excess of and disproportionate to the assessments placed upon the property of other owners in said taxing district, and by reason thereof the companies are denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

6. Said valuations and assessments are without warrant or authority of law.

7. Said valuations and assessments are in other respects wrongful, erroneous, unlawful, illegal and unconstitutional, and the statutes under which they were made are unlawful, illegal and unconstitutional.

Said companies complain against said valuations and assessments for the reasons hereinbe-

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Lehigh Valley Railroad Company of New Jersey.

fore set forth and request your Honorable Board to review and correct the same.

Dated, June 15, 1923.

LEHIGH VALLEY RAILROAD COMPANY
OF NEW JERSEY,

10 LEHIGH VALLEY RAILROAD COMPANY, Lessee.

By R. D. VAN DUZER,
General Land & Tax Agent.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. }ss.

20 R. D. VANDUZER, of full age, being duly sworn according to law, on his oath says that he is the General Land and Tax Agent of the LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, and LEHIGH VALLEY RAILROAD COMPANY, Lessee, named in the foregoing complaint and protest, and that the matters stated therein are true to the best of his knowledge and belief.

R. D. VAN DUZER.

30 Sworn to and subscribed at New York, N. Y., this 15th day of June, 1923, before me, the subscriber, a Notary Public, in and for said County and State, duly commissioned and sworn as witness my hand and official seal.

40 (SEAL) ROLLAND A. HAAG,
Notary Public, Kings Co. No. 39.
Kings Co. Register's No. 4037.
Certificate filed in N. Y. Co. No. 42.
N. Y. Co. Register's No. 4068.
My commission expires Mar. 30, 1924.

Return of State Board—Exhibit D.

Exhibit D.

Assessments Corrected by State Board.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENTS 10

Trenton, N. J., Oct. 25, 1923.

To the LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY:

I hereby certify that at a meeting of the STATE BOARD OF TAXES AND ASSESSMENT, held at Trenton, New Jersey, October 9, 1923, the original assessment levied by said Board upon the property of above-named Company for taxes for 1923, having been reviewed, was by resolution, corrected as follows: 20

* * * * *

*Jersey City,
Hudson County.*

Land outside main stem, excess north and south of main stem, from a point 160' west of west line of Van Vorst Street, extended, to center line of Jersey Avenue, extended reduced from 25.673 acres to 22.543 acres, and value from.....\$1,026,920.00 to \$901,720.00 30

Lehigh Valley Railroad Company of New Jersey.

Net reduction in	
valuation	\$ 88,988.00
* * * * *	

Corrected Tax

	For State uses	\$ 735,562.83
10	For Local uses	476,467.02
		<hr/>
		\$1,212,029.85

Respectfully,
FRANK D. SCHROTH,
Secretary.

Exhibit E.

ABSTRACTS FROM MINUTES
of the
STATE BOARD OF TAXES AND
ASSESSMENT.

Meeting of Monday, June 18, 1923.

President Baker announced that this was the date fixed by statute for receiving appeals of railroad companies from assessments made by the Board against railroad property for the year 1923.

Appeals were received from the following companies:

- Pennsylvania Railroad System,
- Central Railroad of New Jersey System,
- Long Dock Company (Erie Railroad System),
- Delaware, Lackawanna & Western Railroad System,

Return of State Board—Exhibit E.

- Lehigh Valley Railroad System,
- New York Central Railroad System,
- East Jersey Railroad & Terminal Company,
- Hudson & Manhattan Railroad Company,
- Raritan River Railroad Company,
- Trenton, Lakewood & Seacoast Railroad Company.

On motion, the Board directed that these appeals be turned over to the Chief Engineer for his report as to whether or not, in their adjustment, hearings be necessary.

Meeting of Tuesday, June 26, 1923.

The Secretary laid before the Board the report of the Chief Engineer on his examination of the petitions of appeal of the following railroads from assessments on first and second class property, filed with the Board Monday, June eighteenth:

- Pennsylvania Railroad System,
- Central Railroad of New Jersey System,
- Long Dock Company (Erie Railroad System),
- Delaware, Lackawanna & Western Railroad System,
- Lehigh Valley Railroad System,
- New York Central Railroad System,
- East Jersey Railroad & Terminal Company,
- Hudson & Manhattan Railroad Company,
- North Jersey Rapid Transit Company,
- Raritan River Railroad Company,
- Trenton, Lakewood & Seacoast Railroad Company.

Mr. Focht reported that hearings would be required on all appeals except those of the East Jersey Railroad & Terminal Company, the Rari-

Lehigh Valley Railroad Company of New Jersey.

tan River Railroad Company and the Trenton, Lakewood & Seacoast Railroad Company. * * *

It was also ordered that the other appeals be held for hearing on a date to be fixed later.

Meeting of Tuesday, July 31, 1923.

10 The report of the Chief Engineer on the appeal of the Delaware, Lackawanna & Western Railroad Company, 1923 assessment (first and second class property) was laid before the Board. The report was received and ordered filed.

Meeting of Tuesday, July 31, 1923.

20 Upon motion the Board directed that the assessment of \$56,028 on a coal thawing shed owned by the Delaware, Lackawanna & Western Railroad Company at the head of Pier No. 5, Jersey City be reduced to \$27,021, the original assessment being a typographical error.

The report of the Chief Engineer on the appeal of Central Railroad Company of New Jersey, 1923 assessment (first and second class property), was laid before the Board. The report was received and ordered filed.

30 Upon motion the Board directed that the assessment against this company be corrected in accordance with the detail as shown by the statement accompanying the Chief Engineer's report, the said adjustment resulting in a reduction of \$84,713.

40 The report of the Chief Engineer on the appeal of the Pennsylvania Railroad Company, 1923 assessment (first and second class property), was laid before the Board. It was accompanied by a detailed list embracing thirty-five items. The Board ordered that the report be received and filed.

Return of State Board—Exhibit E.

Upon motion it was ordered that the assessment against the Pennsylvania Railroad Company be adjusted in accordance with the recommendations of the Chief Engineer, said adjustment resulting in a reduction of \$63,767.

Meeting of Tuesday, September 11, 1923. 10

The Secretary laid before the Board the deputization by Attorney-General Thomas F. McCran of Edward P. Stout, as Deputy Attorney-General to attend the meetings of the State Board of Taxes and Assessments in the review of its assessments for the year 1923, on railroad and canal property. The Board directed that the deputization be received and filed, and that Deputy Attorney-General Stout be notified of all hearings of the Board in connection with these 20 appeals.

Meeting of Tuesday, September 18, 1923.

The report of the Chief Engineer on his investigation into the Erie Railroad Company's appeal (main stem, 1923) was laid before the Board. It was received and ordered filed.

In the matter of the appeal of the Erie Railroad Company from the 1923 assessment, main stem, the Board directed that the item of \$99,792 for the main stem of the Long Dock Company between Grove and Henderson streets, Jersey City, be reduced to \$81,312, that it might harmonize with adjacent values. 30

Meeting of Tuesday, October 2, 1923.

The following calendar of appeals from assessments on first and second class railroad property was called for hearing: 40

Lehigh Valley Railroad Company of New Jersey.

1. PENNSYLVANIA RAILROAD SYSTEM.

Case called, Mr. Albert C. Wall appearing on behalf of the petitioner, and Mr. Edward P. Stout, Deputy Attorney-General, representing the State. Mr. Wall stated that the appeal would be submitted on the record made in the 1922 appeal, to which Mr. Stout consented on behalf of the State.

Meeting of Tue. October 2, 1923.

2. CENTRAL RAILROAD OF NEW JERSEY SYSTEM.

3. ERIE RAILROAD SYSTEM.

Cases called, Mr. Robert J. Bain appearing on behalf of the petitioner, and Mr. Edward P. Stout, Deputy Attorney-General, representing the State. Mr. Bain stated that these appeals would be submitted on the record made in the 1922 appeals, to which Mr. Stout consented on behalf of the State.

4. DELAWARE, LACKAWANNA & WESTERN RAILROAD SYSTEM.

The Secretary laid before the Board a letter from Mr. M. M. Stallman, counsel for the petitioner in this appeal. The letter agreed to the same proposition as that entered into by the other railroads, namely, that the appeal be submitted on the record made last year.

5. LEHIGH VALLEY RAILROAD SYSTEM.

Case called, Mr. Robert J. Bain appearing on behalf of the petitioner and Mr. Edward P. Stout, Deputy Attorney-General, representing the State. Mr. Bain stated that this appeal would be submitted on the record made in the 1922 appeal, to which Mr. Stout consented. Mr. Bain

Return of State Board—Exhibit F.

also submitted that there should be an adjustment of the tax in this appeal, because of the taking of title to property of the Morris Canal and Banking Company by the State of New Jersey. He laid before the Board for its consideration a proposed distribution of the assessment against this property. Mr. Stout requested an opportunity to examine Mr. Bain's proposition. In case Mr. Stout desires to be heard in this matter the Board fixed Tuesday, October ninth, at the State House, Trenton, as the date of hearing. It was agreed that Mr. Stout should notify the Board and Mr. Bain by the end of the present week as to his intentions in this respect.

Exhibit F.*Final Determination of State Board.*

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J. Oct. 25, 1923

In re—"Railroad Assessment 1923"

Hon. N. A. K. Bugbee,

Comptroller of the Treasury.

Dear Sir:

I am directed to notify you that the Board, at its meeting Tuesday, October 9, dismissed the appeals of the Railroads from the assessment of 1923, and confirmed the valuations under consideration, excepting such minor adjustments and corrections as heretofore certified to you.

Very truly,

FRANK D. SCHROTH,

Secretary.

Lehigh Valley Railroad Company of New Jersey.

RETURN OF COMPTROLLER.

STATE OF NEW JERSEY

OFFICE OF THE COMPTROLLER OF THE
TREASURY

10 Trenton, Dec. 14, 1923.

I, N. A. K. Bugbee, Comptroller of the Treasury, pursuant to the command of the writ of certiorari hereunto attached, and for a return thereto, do certify and return that the annexed Schedule is a true copy of the assessment made by the State Board of Taxes and Assessment, against the Lehigh Valley Railroad Company of New Jersey for the year A. D. nineteen hundred and twenty-three, as returned to me, as remains
20 of record in my said office.

N. A. K. BUGBEE,
Comptroller of the Treasury.

Comptroller's Schedule.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

30 *To the Hon. N. A. K. Bugbee,*
Comptroller of the State of New Jersey:

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

Return of Comptroller—Schedule.

certify and report to you the following statement of assessed valuations of the LEHIGH VALLEY RAILROAD CO. OF NEW JERSEY pursuant to the provisions of said act, and of the separate valuation of property in each taxing district, as made by us; the amount of tax payable by said company with respect to its property separately
10 valued in each taxing district, and the aggregate assessed valuation, and the total tax levied upon said company, for the year 1923.

Assessed valuation of the LEHIGH VALLEY
RAILROAD CO. OF NEW JERSEY

For Main Stem, \$14,111,517.00	
For Franchise, 1,447,000.00	\$15,558,517.00
For tangible personal property necessary for and used in State Commerce	5,097,558.00
	<hr/>
Total assessable for State uses	\$20,656,075.00
For real estate used for railroad purposes, other than main stem	12,337,562.00 12,492,639.00
	<hr/>
	32,993,637.00
Aggregate assessed valuation.	\$33,148,714.00

Tax for State uses, at average tax rate of \$3.561 per \$100 val- uation	\$ 735,562.83	30
Taxes for uses of taxing districts on real estate used for rail- road purposes, other than main stem at local rates.....	476,467.02 482,319.29	

	<hr/>	
	1,212,029.85	
Total Tax	\$ 1,217,882.12	

Lehigh Valley Railroad Company of New Jersey.

STATE COMPTROLLER
JUNE 1, 1923.

JAMES BAKER, *President,*
FRANK B. JESS,
HARRY W. MUTCHLER,
M. R. MARGERUM,
10 ISAAC BARBER,
State Board of Taxes and Assessment.

Revised Return
STATE COMPTROLLER
Oct. 23, 1923.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

20

Schedule showing valuation of property of the
LEHIGH VALLEY RAILROAD COMPANY
OF NEW JERSEY used for Railroad purposes,
other than Main Stem, in the taxing Districts of
the State of New Jersey, together with the tax
thereon, for Local uses, for the year 1923.

30

County	Taxing District	Value	Local Tax
Warren—			
	Phillipsburg, Town of.....	\$ 99,591.00	\$ 3,645.03
	Pohatcong Township	5,194.00	164.65
	Alpha Borough	6,239.00	207.76
	Greenwich Township	317.00	10.05
Hunterdon—			
	Bloomsbury Borough	6,377.00	223.20
	Bethlehem Township	5,149.00	211.62
	Union Township	13,295.00	541.11
	Franklin Township	6,785.00	261.22
	Clinton Township	469.00	16.37
	Readington Township	6,545.00	303.69
	Raritan Township	17,355.00	598.75
Somerset—			
	Branchburg Township	2,076.00	56.47
	Hillsborough Township	12,939.00	370.06
	Bound Brook Borough	14,569.00	608.98

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Return of Comptroller—Schedule.

Middlesex—		
Middlesex Borough	\$ 2,181.00	\$ 66.30
	315,234.00	12,104.99
Piscataway Township	279,022.00	10,714.44
Raritan Township	5,151.00	233.86
Union—		
Clark Township	15,699.00	284.15
Scotch Plains Township	370.00	11.51
Cranford Township	3,378.00	124.65
Roselle Borough	1,157.00	36.56
Roselle Park Borough.....	24,891.00	813.94
Union Township	13,566.00	427.33
Hillside Township	10,900.00	380.41
Essex—		
Newark City	455,538.00	17,128.23
Hudson—		
Hudson City	5,910,530.00	222,117.72
Jersey City	6,035,730.00	226,822.73
	6,955,495.00	260,948.61
Total for Main Line.....	\$7,044,483.00	\$264,263.07

ANDOVER BRANCH

Warren—		
Phillipsburg, Town of.....	\$ 209.00	\$ 7.65

MUSCONETCONG BRANCH

Hunterdon—		
Bethlehem Township	\$ 203.00	\$ 8.34
Holland Township	6,781.00	227.84
	\$ 6,984.00	\$ 236.18

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Lehigh Valley Railroad Company of New Jersey.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

10 Schedule showing valuation of property of the LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY used for Railroad purposes, other than Main Stem, in the taxing Districts of the State of New Jersey, together with the tax thereon, for Local uses, for the year 1923.

County	Taxing District	Value	Local Tax
PITTSTOWN BRANCH			
Hunterdon—			
	Franklin Township	\$ 5,574.00	\$ 214.60
CLINTON BRANCH			
Hunterdon—			
	Franklin Township	\$ 207.00	\$ 7.97
	Clinton, Town of.....	8,414.00	298.70
20		<u>\$ 8,621.00</u>	<u>\$ 306.67</u>
FLEMINGTON BRANCH			
Hunterdon—			
	Raritan Township	\$ 147.00	\$ 5.07
	Flemington Borough	12,153.00	523.79
		<u>\$ 12,300.00</u>	<u>\$ 528.86</u>
BLOODGOODS BRANCH			
Union—			
	Clark Township	\$ 387.00	\$ 7.00
CENTRAL R. R. OF N. J. CONNECTION			
30 Union—			
	Cranford Township	\$ 1,066.00	\$ 39.34
	Roselle Borough	263.00	8.31
		<u>\$ 1,329.00</u>	<u>\$ 47.65</u>
IRVINGTON BRANCH			
Union—			
	Hillside Township	\$ 1,333.00	\$ 46.52
Essex—			
	Irvington, Town of.....	130,563.00	4,256.35
40		<u>\$ 131,896.00</u>	<u>\$ 4,302.87</u>

Return of Comptroller—Schedule.

NEWARK BRANCH

Essex—			
	Newark City	\$ 177,190.00	\$ 6,662.34

NEWARK & PASSAIC BRANCH

Essex—			
	Newark City	\$ 61,603.00	\$ 2,316.27

EDGEWATER BRANCH

Hudson—			
	Jersey City	\$ 6,092.00	\$ 228.94

NATIONAL DOCKS BRANCH

Hudson—			
	Jersey City	\$ 561,088.00	\$ 21,085.69
	Bayonne City	9,318.00	291.56
		<u>\$ 570,406.00</u>	<u>\$ 21,377.25</u>

COMMUNIPAW BRANCH

Hudson—			
	Jersey City	\$ 75,266.00	\$ 2,828.50

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

20 Schedule showing valuation of property of the LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY used for Railroad purposes, other than Main Stem, in the taxing Districts of the State of New Jersey, together with the tax thereon, for Local uses, for the year 1923.

County	Taxing District	Value	Local Tax
NATIONAL STORAGE BRANCH			
Hudson—			
	Jersey City	\$2,534,938.00	\$ 95,262.97
KILL VON KULL BRANCH			
Hudson—			
	Bayonne City	\$ 29,429.00	\$ 920.83
PERTH AMBOY BRANCH			
Middlesex—			
	Piscataway Township	2,052.00	78.80
	Raritan Township	68,141.00	\$ 2,616.61
	Raritan Township	6,552.00	297.46
	Metuchen Borough	2,308.00	96.47
	Woodbridge Township	2,774.00	144.25
	Perth Amboy City	1,728,524.00	78,820.69
		<u>1,742,210.00</u>	<u>79,437.67</u>
		\$1,808,209.00	\$ 81,975.48
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Lehigh Valley Railroad Company of New Jersey.

RARITAN BRANCH

Middlesex—			
	Woodbridge Township	\$ 4,620.00	\$ 240.24
	Raritan Township	7,372.00	334.69
		<hr/>	<hr/>
		\$ 11,992.00	\$ 574.93

MIDDLESEX BRANCH

Middlesex—			
10	Perth Amboy City.....	\$ 5,641.00	\$ 257.23
		<hr/>	<hr/>
		12,337,562.00	476,467.02
	Total for Main Line and		
	Branches	\$12,492,039.00	\$482,319.29

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REASONS.

Filed December 19, 1923.

NEW JERSEY SUPREME COURT.

THE LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, <i>Prosecutor,</i>	} <i>On Certiorari. (State As- sessments, 1923.) Reasons.</i>	10
<i>vs.</i>		
THE STATE BOARD OF TAXES AND ASSESSMENT, NEWTON A. K. BUGBEE, Comptroller of the Treasury and THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendants.</i>		20

The prosecutor presents the following reasons for setting aside the valuations and assessments of taxes brought before this honorable Court by the writ of certiorari in the above entitled cause:

1. Because said valuations are in excess of the true value of the lands assessed, according to the legal evidence before the State Board of Taxes and Assessment.

2. Because said assessments were determined by said Board upon an erroneous principle in that said valuations are based upon the prices paid for other lands with which the lands assessed are not lawfully comparable in value.

3. Because said assessments were determined by said Board upon an erroneous principle in that said Board considered only the highest prices paid for other lands in certain vicinities and disregarded lower prices paid for lands in the same vicinities.

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Lehigh Valley Railroad Company of New Jersey.

4. Because said assessments were determined by said Board upon an erroneous principle in that said valuations are based upon a supposed general increase in the value of all lands along the shore of the Hudson River and New York Bay in Hudson County, regardless of the location, condition and use of such lands.

5. Because there was no legal evidence before said Board which supports or justifies said valuations and assessments.

6. Because said valuations and assessments are contrary to the clear weight of the evidence before said Board.

7. Because said Board upon the hearing of the complaint of prosecutor against said valuations and assessments admitted illegal testimony against the objection of prosecutor and based its determination of said valuations and assessments thereon.

8. Because said Board upon the hearing of the complaint of prosecutor against said valuations and assessments excluded legal evidence against the objection of prosecutor.

9. Because said Board determined said valuations and assessments arbitrarily and not upon the legal evidence before it.

10. Because said assessments are excessive and erroneous in principle.

11. Because for the reasons above stated, or one or some of them, and in other respects, said valuations and assessments are erroneous, unconstitutional, unlawful and illegal.

COLLINS & CORBIN,
Attorneys for Prosecutor.

OPINION.

Filed April 1, 1925.

NEW JERSEY SUPREME COURT.

January Term, 1925.

UNITED N. J. R. R. &c. CO., PA. R. R. CO., Lessee,	Prosecutor,	No. 235.	10
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	
THE LONG DOCK CO., THE ERIE R. R. CO., Lessee,	Prosecutor,	No. 225.	
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	20
DELAWARE, &c., R. R. CO.,	Prosecutor,	No. 254.	
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	
LEHIGH VALLEY R. R. CO. of N. J.,	Prosecutor,	No. 224.	
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	30
CENTRAL R. R. CO. of NEW JERSEY,	Prosecutor,	No. 233.	
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	
NEW YORK BAY R. R. CO., PA. R. R. CO., Lessee,	Prosecutor,	No. 236.	
	v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als.,	Defendants.	<i>Certiorari.</i>	40

Lehigh Valley Railroad Company of New Jersey.

Argued, January 7, 1925; decided, March 31, 1925.

1.

Under the Certiorari Act P. L. 1907, p. 95; 1
Comp. Sts. of N. J., p. 406 s. 11 and the Railroad
10 Tax Act, 4 Comp. Sts. of N. J., p. 5278, sec. 16;
P. L. 1888, p. 280.

The Supreme Court on a review by certiorari
of the assessments levied against railroad prop-
erty by the State Board of Taxes and Assess-
ment is required to reverse or affirm, in whole or
in part, for "palpable error" made by the State
Board of Taxes and Assessment, in making the
valuations. There are twenty-five tracts of land
involved in these cases under review. The testi-
20 mony analyzed compared and held, the assess-
ments on twenty of the tracts of land are af-
firmed, as not excessive, and on five of the tracts
of land the assessments are reduced, as excessive,
in which there is palpable error.

2.

The testimony of the prosecutors must so pre-
ponderate, as to overcome, the judgment of the
State Board of Taxes and Assessment and the
30 testimony that supports it, before the Supreme
Court can or should reduce, alter or modify the
assessments.

3.

Each assessment of property for taxation is a
separate entity distinct from the assessment of
the previous or subsequent years. Assessments
are made each year.

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Opinion of the Supreme Court.

4.

The valuations are to be completed by the
first day of November following the day fixed
for filing reports of railroad and canal property
with the State Board in each year. The property
to be assessed is to be taken and valued in the
10 actual condition in which the owner holds it. The
statements to be made by the railroad companies
are required to set forth the property as it ex-
isted on the first day of January.

Before Justices Kalisch, Black and Campbell.

For the prosecutors, Messrs. Maximillian Stall-
man, Albert C. Wall and Robert J. Bain.

For the defendants, Mr. Edward P. Stout.

The opinion of the Court was delivered by
BLACK, J. 20

No. 235. The properties of the United N. J.
R. R. & Co., Pa. R. R. Co., lessee.

The properties involved in this appeal, taxes
for 1923, are four tracts of land.

1ST TRACT—30.564 acres assessed at
\$95,000 per acre total assessment..\$2,903,580

2ND TRACT—3.623 acres assessed at
\$95,000 per acre total assessment..\$ 344,195

3RD TRACT—98.835 acres assessed at
\$88,100 per acre total assessment..\$8,707,363 30

4TH TRACT—6.682 acres assessed at
\$88,100 per acre total assessment..\$ 588,684

No 225. The properties of the Long Dock Co.,
the Erie R. R. Co., lessee.

The properties involved in this appeal, taxes
for 1923, are five tracts of land.

1ST TRACT—16,555 acres assessed at
\$87,00 per acre total assessment..\$1,440,285 40

Lehigh Valley Railroad Company of New Jersey.

- 2ND TRACT—67.830 acres assessed at
\$90,000 per acre total assessment. . \$6,104,700
- 3RD TRACT—2.816 acres assessed at
\$90,000 per acre total assessment. . \$ 253,440
- 4TH TRACT—3.164 acres assessed at
\$90,000 per acre total assessment. . \$ 284,760
- 10 5TH TRACT—called the elevator tract land outside of main stem. Block 16 Lot B-1. 10.298 acres assessed at \$87,000 per acre. This was assessed by the local assessors prior to 1922. Total assessment \$897,200.

This tract is contiguous to the 1st tract of 16.555 acres in Block 16 B 6.

- No. 254. The properties of the Delaware, &c. R. R. Co., 1923, are five tracts of land.
- 20 1ST TRACT—131.840 acres assessed at
\$95,000 per acre total assessment. \$12,524,800
- 2ND TRACT—40.068 acres assessed at
\$96,000 per acre total assessment. . \$3,846,528
- 3RD TRACT—1.525 acres assessed at
\$75,000 per acre total assessment. . \$ 114,375
- 4TH TRACT—3.240 acres assessed at
\$95,000 per acre total assessment. . \$ 307,800
- 30 5TH TRACT—3.728 acres assessed at
\$96,000 per acre total assessment. . \$ 357,888

No. 224. The properties of the Lehigh Valley R. R. Co. of N. J.

The properties involved in this appeal, taxes for 1923, are these tracts of land:

- 1ST TRACT—5.941 acres assessed at
\$40,000 per acre total assessment. . \$ 237,640
- 2ND TRACT—22.543 acres assessed at
\$40,000 per acre total assessment. . \$ 901,720

Opinion of the Supreme Court.

This tract is described on the map and in the testimony as 25.673 acres. Corrected by the State Board.

3RD TRACT—38.380 acres assessed at
\$65,000 per acre total assessment. . \$2,494,700

This is a portion of the "Morris Canal Grant" called the Big Basin. The parcel is 38.380 acres. 10
It includes the land of a public waterway 250 feet wide having an area of 12.541 acres. The point made by the company is, that it is not liable for this tax. Its area should be deducted from the assessed area leaving 25.839 acres, for which the prosecutor claims it is liable for the taxes of 1923, at \$65,000 per acre = \$1,679,535. A waterway 250 feet wide through the Big Basin was to be conveyed to the State of New Jersey under an agreement dated Nov. 29, 1922, in pursuance 20
of the Statute P. L. 1922, p. 367. This point is disposed of in our opinion this term, in case No. 232, *Lehigh Valley R. R. Co., lessee v. State Board of Taxes and Assessment.*

No. 233. The properties of the Central R. R. Co. of N. J.

The properties involved in this appeal, taxes for 1923, are six tracts of land.

- 1ST TRACT—6.302 acres assessed at 30
\$40,000 per acre total assessment. . \$ 252,080
- 2ND TRACT—71.300 acres assessed at
\$40,000 per acre total assessment. . \$2,852,000

Reduced by the Supreme Court to \$28,000 per acre for the taxes of 1922. Affirmed at that figure.

- 3RD TRACT—84.724 acres assessed at
\$30,000 per acre total assessment. . \$2,541,720

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Reduced by the Supreme Court to \$20,000 per acre for the taxes of 1922. Affirmed at that figure.

4TH TRACT—96.049 acres assessed at
\$25,000 per acre total assessment..\$2,401,225

10 Reduced by the Supreme Court to \$17,500 per acre for the taxes of 1922. Affirmed at that figure.

5TH TRACT—28.718 acres assessed at
\$40,000 per acre total assessment..\$1,148,720

6TH TRACT—24.613 acres assessed at
\$40,000 per acre total assessment..\$ 984,520

The assessments on the 1st, 5th and 6th tracts of land are affirmed.

20 No. 236. The properties of the New York Bay R. R. Co., Pa. R. R. Co., lessee.

The properties involved in this appeal, taxes for 1923, are two tracts of land.

1ST TRACT—12.731 acres assessed at
\$20,000 per acre total assessment..\$ 254,620

Reduced by the Supreme Court to \$16,000 per acre for the taxes of 1922. Affirmed at that figure.

30 2ND TRACT—343.137 acres assessed at
\$20,000 per acre total assessment..\$6,862,740

Reduced by the Supreme Court to \$15,000 per acre for the taxes of 1922. Reduced to \$16,000 per acre.

These properties, as to location and description may be divided into three groups, by way of further identification.

Opinion of the Supreme Court.

FIRST GROUP No. 235. The four tracts of land of the United New Jersey &c. Co., Pa. R. R. Co., lessee: No. 225. The five tracts of land of the Long Dock Co., Erie R. R. Co., lessee. These tracts lie between the Pa. R. R. and the Delaware, &c. R. R. systems: No. 254. The five tracts of land of the Delaware, &c. R. R. Co., 10 fourteen tracts of land. They are contiguous. They are located at the pier head of deep water on the Hudson River. They extend from Exchange Place in Jersey City to Ferry street in Hoboken, something over a mile. They lie opposite New York City between Cortlandt and Christopher streets. They are bounded on the south by Exchange Place and Montgomery street, on the west by Henderson street in Jersey City, on the north by Ferry street in Hoboken, 20 on the east by the Hudson River. They can be reached from all these streets, by the Hudson Tubes, by the electric trolley and auto bus transportation lines and from all parts of Jersey City and Hudson County. Assessments from \$96,000 to \$75,000 per acre.

SECOND GROUP No. 224. The three tracts of land of the Lehigh Valley R. R. Co. No. 233. The six tracts of land of the Central R. R. Co. of N. J. Nine tracts of land. These tracts of land 30 lie contiguous to each other. They are located in part back from the Hudson River and in part on New York Bay. They lie opposite Battery Park in New York City, from a half to three-quarters of a mile from the nearest point of the United New Jersey, &c. Co. lands in Group No. 1. They are bounded on the north by the Tide Water Basin which extends from the Hudson River to the westerly end, at Jersey avenue, of the 22.543 acre tract of the Lehigh Valley R. R. Co., on the 40

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east by other lands of the companies facing the Hudson River and New York Bay, on the south by other lands of the Central R. R. Co. of N. J., and on the west by Jersey avenue and other lands of the Central R. R. Co. of N. J. Access to these tracts of land from Jersey City is by way of Johnson avenue, a well paved street running from Grand street to the Central R. R. Co.'s ferry; it runs between the first and sixth tracts of land of the Central R. R. Co.; and by Jersey avenue. Assessments from \$40,000 to \$25,000 per acre.

THIRD GROUP No. 236. New York Bay R. R. Co. Pa. R. R. Co., lessee. Two tracts of land. They are from $2\frac{1}{2}$ to $2\frac{3}{4}$ miles from the nearest point of the lands of the Central R. R. Co. of N. J. in Group No. 2. They lie west of Caven Point and the lands of the National Storage Docks. They are near the Bayonne City line. They extend from the Morris Canal south into New York Bay something over a mile. There is no practical access to these lands across the Morris Canal from Jersey City. They are assessed at \$20,000 per acre.

There are eleven reasons filed for reducing the assessments.

They all, however, turn substantially upon one point, viz. The valuations are in excess of the true value of the lands, according to the legal evidence, before the State Board of Taxes and Assessment.

The Supreme Court is, therefore, called upon in the exercise of its duty, not only under the *Certiorari Act*; P. L. 1907, p. 95; 1 Comp. Sts. of N. J., p. 406, sec. 11, but, also, under the *Railroad Tax Act*, 4 Comp. Sts. of N. J., p. 5270,

Opinion of the Supreme Court.

sec. 13, P. L. 1888, p. 277, sec. 13, to examine and analyze the evidence to reverse or affirm, in whole or in part, for "palpable error" appearing in the record.

Long Dock Co. v. State Board of Assessors, 89 N. J. L. 110, affirmed 90 *Ib.* 701. To ascertain whether the amount of the tax is excessive or insufficient, or whether the principles upon which the assessments are made are erroneous.

Long Dock Co. v. State Board of Assessors, 86 N. J. L. 592;

Long Dock Co. v. State Board of Assessors, 82 N. J. L. 21.

We proceed, therefore, to examine, compare and analyze the evidence under which the State Board fixed the values and made the assessments. The evidence consists of two classes viz., the opinion of witnesses as experts and the sales of other lands. What is legal evidence and the rules under which the evidential value of such testimony may be determined have been clearly stated by the Court of Errors and Appeals, in the case of *Brown v. New Jersey Shore Line R. R. Co.*, 76 N. J. L. 795. In that case, it is said, a knowledge of such sales is of value in qualifying a witness to give opinion evidence. So, such sales are also competent evidence. The evidential value is a question of fact. Many factors are involved, such as length of time and distance, area, depth and shape of the tracts of land compared. All surrounding circumstances and conditions should be considered by the witnesses in forming an opinion. All of these elements doubtless were considered by the State Board in the performance of its duty "using their personal knowledge and judgment," as

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directed by the statute, in fixing the value of the tracts of land under investigation.

We have considered all these elements in our examination, comparison and analysis of the testimony in the record.

10 *Long Dock Co. v. State Board of Assessors*, 86 N. J. L. 592.

20 The State called three opinion witnesses. Mr. Frederick Dunham, who lives in Jersey City, has been a civil and harbor engineer of Jersey City since 1912, and has had experience in the sale and appraisal of shore front properties in Hudson County since 1882. Mr. Thomas P. Graham, who lives in Paterson, is a real estate broker, specializing in commercial water fronts all around New York Harbor. Mr. Charles Singer, Jr., who lives in the Town of Union, Hudson County, is in the real estate business and has devoted twelve years to shore front property. The testimony of these witnesses covers 513 pages of the printed record.

30 The prosecutors called four opinion witnesses. Mr. Robert Huntley, who lives at Ridgewood, N. J., is a real estate broker and appraiser in New York City. Mr. Thomas A. Ryer, who lives in Jersey City and is also in the real estate business. Mr. Charles W. Morrison, who is a valuation engineer and land appraiser, and in the general real estate business. Mr. Floyd S. Corbin, who lives in 86th street, and is a real estate broker in New York City. The testimony of these witnesses covers 762 pages of the printed record. The testimony of the experts is made into schedules attached to and returned with the printed books. It is quite apparent from reading the testimony of these witnesses,

40

Opinion of the Supreme Court.

that different conclusions may be drawn, as to its evidential value.

Nearly all the witnesses agree and testify, that lands in all parts of Hudson County have been increasing in value since 1916, and, when the testimony was taken, the price level or peak of prices had not then been reached. 10

The sales of other lands from which a comparison is made with the lands under investigation are made into schedules *Exhibit P. 24*, p. 1657. Those of the prosecutors, called Hudson River Waterfront Sales, are twenty-one in number; in point of time, they run from the years 1911 to 1920, in price, from \$14,316 to \$68,200 per acre in area, from 4.396 acres to 81.130 acres. Most of these sales, the lands lie in Weehawken, West New York and North Bergen, Hudson County. Weehawken is 1½ miles from the nearest point of the lands in Group No. 1, West New York three miles and North Bergen 4½ miles. 20

Kill Von Kull Waterfront Sales. Nine in number, in point of time, they run from the year 1911 to 1918; in price, from \$56,380 to \$25,128 per acre, in area, from 1.117 to 13.800 acres.

The New York Bay Waterfront Sales. There are five of these, in point of time, they are all in 1916, in price, they range from \$3,457 per acre to \$7,709, in area, from 6.32 acres to 289.62. 30

Lehigh Valley Harbor Terminal Ry. Co. There are three of these. They are all in 1916, in price, they range from \$5,340 to \$8,853 per acre, in area, from 13.20 to 289.62 acres.

The schedules for the State Exhibit P. 15, Record, page 1623, called sales of lands back of water front Bayonne, N. J., thirteen in all, in point of time, they run from 1915 to 1920, in 40

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price, from \$8,370 to \$16,883 per acre, in area, from 0.221 to 21.020 acres.

Back of Newark Bay six in all, in point of time, they run from 1914 to 1921, in price, from \$3,778 to \$15,873 per acre, in area, from 0.165 to 8.700 acres.

10 Sales of lands back of waterfront, Jersey City, N. J., and back of New York Bay, fifteen in all, in point of time, they run from 1913 to 1921, in price from \$3,000 to \$15,000 per acre, in area from 0.230 to 28.063 acres.

Back of Hudson River, twenty-eight sales in all, in point of time, they run from 1914 to 1921, in price from \$23,800 to \$134,000 per acre. These include seven sales within the bounds of Group No. 1; as follows: \$134,000; \$108,000; \$95,900; 20 \$93,200; \$81,200; \$72,800; \$72,700 per acre. Manifestly widely different conclusions will be drawn from a use of these sales in comparing the lands to be valued, unless, caution and good judgment are used in their application.

In Nos. 225, 235, 254. The first group. The tracts of land on the pier line of the Hudson River.

The State's witnesses valued these lands from \$130,000 to \$108,000 per acre.

30 The witnesses called for the railroad companies valued the lands from \$83,520 to \$41,547 per acre. By subdividing the tracts, Morrison valued 4.172 acres of the 67.830 acres of the second tract of the Long Dock Co. at \$95,000 per acre and 3.24 acres of the 40.068 acres the second tract of the Delaware, &c. R. R. Co. at \$87,000 per acre. Morrison valued 6.85 acres of the 30.564 acres, the first tract of the United R. R. of N. J. at \$87,000 per acre, Corbin at \$87,000 per acre for 6.674 acres. Ryer valued 40 6.735 acres of the 30.564 acres, the first tract of

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the United R. R., &c. Co. at \$87,120 per acre and 8.978 acres of the third tract at \$87,120 per acre. There are in the schedule of sales, Exhibit P. 15, p. 1624—of lands back of Hudson River, sales in 1918 at \$95,900, \$108,000, \$72,700 per acre, in 1920 at \$134,000 and \$93,200 per acre, in 1917 at \$81,200 per acre, in 1915 at 10 \$72,800 per acre.

In Nos. 224 and 233. The second group. Those of the Lehigh Valley and Central R. R. Co. of N. J.

The State's witnesses valued these lands from \$76,230 to \$35,000 per acre.

The witnesses called for the railroad companies valued these lands from \$25,000 to \$15,000 per acre.

In No. 236. The third group. Those of the 20 New York Bay R. R. Co. The Pa. R. R. Co., lessee.

The State's witnesses valued the lands from \$30,492 to \$25,000 per acre.

The witnesses called for the railroad company valued these lands from \$15,000 to \$12,000 per acre.

It seems quite difficult to apply this conflicting testimony and it becomes most confusing, when an attempt is made to harmonize it. 30

The companies are required to make returns to the State Board. The *Statute P. L.* 1918, p. 1078, sec. 2, provides, that, on or before the first day of March in each year, statements or schedules setting forth the property of the railroads or canals as it existed on the first day of January preceding, shall be returned to the State Board, but such returns shall not be conclusive, the State Board shall ascertain the necessary 40 facts from the best information they can obtain

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“using their personal knowledge and judgment”
 4 Comp. Sts. of N. J., p. 5272, sec. 460; P. L.
 1888, p. 280, sec. 16. By P. L. 1922, p. 14, sec. 5,
 the Board shall complete their valuations by the
 first day of November following. Each annual
 assessment of property for taxation is a separate
 10 entity, distinct from the assessment of the pre-
 vious or subsequent years. Assessments are
 made each year. *Liquidating Commissioners v.*
Marrero, 106 La. 130, 132. The assessments must
 relate to the day in each year when by law the
 assessments are to be commenced. *Shippen v.*
Harden, 34 N. J. L. 79.

The property to be assessed is to be taken and
 valued in the actual condition in which the
 owner holds it, the question is not what would
 this or that part of it sell for, if separated from
 20 the rest, but what would the property as it is,
 as the owner actually holds it, sell for at a fair
 private sale, *Colwell v. Abbott*, 42 N. J. L. 111,
 115.

Our reading of the record leads us to the
 conclusion that the assessments in Group No. 1,
 are not in excess of their true value. They are,
 therefore, affirmed.

The assessments are below the values fixed by
 the expert witnesses for the State. There are
 30 sales of land at \$134,000; \$108,000; \$95,900;
 \$93,200; \$81,200; \$72,800 and \$72,000 per acre in
 the immediate vicinity and within the bounds
 of Group No. 1. Exhibit P. 15, pp. 1624, 1625.
 These lands so compared are not on the water-
 front of the Hudson River.

We cannot reverse in whole or in part such
 assessments, either under the *Certiorari Act*,
 P. L. 1907, p. 95, 1 Comp. Sts. of N. J., p. 406,
 sec. 11, or under the *Tax Railroad Act* of P. L.

Opinion of the Supreme Court.

1888, p. 277, 4 Comp. Sts. of N. J., p. 5270, sec.
 457, because, “the amount of tax is excessive,”
 or because the “principle upon which the assess-
 ment is made is erroneous.”

We cannot alter or annul these assessments, to
 use the expressive language of Chief Justice
 Beasley, in the case of the *Central R. R. Co. v.* 10
State Board of Assessors in 49 N. J. L., p. 9,
 “except for palpable error,” or to use the
 language of Mr. Justice Garrison, speaking for
 this court, in the case of *Long Dock Co. v. State*
Board of Assessors, 82 N. J. L. 23. We are
 unable to say that the latter testimony (*i. e.* of
 the prosecutors) so preponderates, as to over-
 come the judgment of the Board and the testi-
 mony that supports it. The assessments are
 supported by the evidence. *Long Dock Co. v.* 20
State Board of Assessors, 89 N. J. L. 108, af-
 firmed 90 *Ib.* 701.

Long Dock Co. v. State Board of Assessors,
 86 *Ib.* 592. As there are 43,560 square feet in
 an acre of land, measured by units of city lots
 25 x 100 feet, the assessments are at the rate of
 from \$5,000 to \$5,600 per city lot.

In Group No. 2. The two tracts of land of the
 Lehigh Valley R. R. Co. and three of the tracts
 of land of the Central R. R. Co. of N. J. Each 30
 assessed at \$40,000 per acre. The assessments
 are not excessive. In addition to what was said
 in Group No. 1 of the twenty-eight sales of land
 back of the Hudson River in Exhibit P. 15, pp.
 1624, 1625, there are eighteen sales in excess
 of \$40,000 per acre. They run from \$68,000 to
 \$47,100 per acre. In the twenty-one sales of
 land of Hudson River Waterfront, prosecutor's
 Exhibit P. 24, p. 1657, there are eleven sales of
 land in excess of \$40,000 per acre. They run 40
 from \$68,200 to \$40,600 per acre.

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These tracts of land are contiguous to each other. The 22.543 tract of land of the Lehigh Valley R. R. Co., is on the Tide Water Basin. It has adjacency, proximity and accessibility to tide water, which is an element of value. *Long Dock Co. v. State Board of Assessors*, 89 N. J. L. 108, 112, affirmed 90 *Ib.* 701. It is reached from the Hudson River through the Tide Water Basin and from Grand street by way of Jersey avenue, two of the main traveled arteries of Jersey City, Grand street running east and west, Jersey avenue north and south. Next to this is the 5.941 acre tract, main stem of the Lehigh Valley R. R. Co. Next to this is 24.613 acre tract. Then next to this is the 6.302 acre tract main stem and next to this is the 28.718 acre tract of land of the Central R. R. of N. J. These tracts of land are also reached from Jersey City by Johnson and Jersey avenues. Johnson avenue running between the first and sixth tracts of the Central R. R. Co. The assessments of these five tracts of land are affirmed. Measured by units of city lots 25 x 100 feet, the assessments are at the rate of something less than \$2,500 per city lot.

The remaining three tracts of land in Group No. 2 of the Central R. R. Co. of N. J. They can be reached only from New York Bay and by crossing other tracts of the Central R. R. Co. The 71.300 acre tract assessed at \$40,000 per acre was reduced by the Supreme Court for the taxes of 1922 to \$28,000 per acre; the 84.724 acre tract assessed at \$30,000 per acre was reduced by the Supreme Court to \$20,000 per acre. These two tracts of land are contiguous. The 96.049 acre tract assessed at \$25,000 per acre was reduced by the Supreme Court to \$17,500

Opinion of the Supreme Court.

per acre. These reductions as made by the Supreme Court were affirmed by the Court of Errors and Appeals, 1 N. J. Adv. R. P. 596; 2 N. J. Adv. R., p. 1052. The valuations of these three tracts of land are excessive. They are reduced to the figures fixed by the Supreme Court for the taxes of 1922 and affirmed by the Court of Errors and Appeals. When so reduced and measured by units of city lots 25 x 100 feet, the assessments will be at and above \$1,000 a city lot.

No. 236. The third group, the two tracts of land of the New York Bay R. R. Co., Pa. R. R. Co., lessee.

The 343.137 acre tract and the 12.731 acre tract each assessed at \$20,000 per acre. The 12.731 acre tract was reduced by the Supreme Court for the taxes of 1922 to \$16,000 per acre and affirmed by the Court of Errors and Appeals, 1 N. J. Adv. R. 596; 2 N. J. Adv. R., p. 1052. These two tracts of land are contiguous to each other. There is no substantial difference in value between these two tracts of land as shown by the evidence.

The valuations made by the State Board are excessive. They are reduced to \$16,000 per acre for each tract of land. These reductions will make the assessments, measured by units of city lots 25 x 100 feet, at substantially or a trifle less than \$1,000 per city lot.

An order may be entered in accordance with the views herein expressed.

Lehigh Valley Railroad Company of New Jersey.

RULE FOR JUDGMENT.

Entered April 15, 1925.

NEW JERSEY SUPREME COURT.

10 LEHIGH VALLEY RAILROAD COM-
PANY OF NEW JERSEY,
Prosecutor,

vs.

STATE BOARD OF TAXES AND
ASSESSMENT, NEWTON A. K.
BUGBEE, Comptroller of the
Treasury, and THE MAYOR
AND ALDERMEN OF JERSEY
CITY,
20 *Defendants.*

*On
Certiorari.
Rule for
Judgment.*

The Court having inspected and reviewed the valuations and assessments of taxes for the year 1923, of prosecutor's property and the proceedings thereon and final determination, certificate and report of the State Board of Taxes and Assessment in respect thereto returned with the certiorari in this cause, and duly considered the reasons filed and heard the argument of counsel thereon, and finding no error in said valuations and assessments, the proceedings thereon and final determination, certificate and report of the State Board;

It is ORDERED, that said valuations and assessments of taxes as fixed and determined by the

Rule for Judgment.

judgment of said State Board of Taxes and Assessment be in all things affirmed.

Entered, April 15, 1925.

On motion of

EDWARD P. STOUT, 10
Attorney for Defendants.

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Lehigh Valley Railroad Company of New Jersey.

NOTICE OF APPEAL.

Filed May 14, 1925.

NEW JERSEY SUPREME COURT.

10 LEHIGH VALLEY RAILROAD COM-
 PANY OF NEW JERSEY, a cor-
 poration,
Prosecutor-Appellant,

vs.

20 THE STATE BOARD OF TAXES AND
 ASSESSMENT, NEWTON A. K.
 BUGBEE, Comptroller of the
 Treasury, and THE MAYOR
 AND ALDERMEN OF JERSEY
 CITY,
Defendants-Respondents.

*On
 Certiorari.
 Notice of
 Appeal.
 (State As-
 sessments
 for year
 1923.)*

To HON. EDWARD L. KATZENBACH, Attorney-Gen-
 eral, attorney of defendants, The State Board
 of Taxes and Assessment and Newton A. K.
 Bugbee, Comptroller of the Treasury, and
 THOMAS J. BROGAN, Esq., attorney of defendant,
 The Mayor and Aldermen of Jersey City.

30 TAKE NOTICE, that the prosecutor in the above-
 entitled cause appeals from the whole of the
 judgment entered in said cause, to the New Jer-
 sey Court of Errors and Appeals, on the follow-
 ing grounds:

Said judgment is erroneous in that it affirmed
 the valuations and assessments of taxes as fixed
 and determined by the judgment of the State
 Board of Taxes and Assessment, brought before
 the Supreme Court by the writ of certiorari in

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Notice of Appeal.

said cause, whereas said court by its judgment
 should have set aside said valuations and assess-
 ments of taxes for one or more of the reasons
 filed in that court.

COLLINS & CORBIN,
 Attorneys of Prosecutor-Appellant. 10

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Lehigh Valley Railroad Company, Lessee, &c.

WRIT OF CERTIORARI.

(Allowed November 24, 1923, Returnable
December 14, 1923.)

NEW JERSEY, ss.

10 The State of New Jersey to the
(L. s.) State Board of Taxes and Assessment
and Newton A. K. Bugbee, Comptroller of the Treasury, GREETING:

We being willing, for certain reasons, to be certified of the assessments of taxes for the year 1923, made pursuant to an act of the legislature of the State of New Jersey entitled "An Act to revise and amend 'An Act for the taxation of railroad and canal property,' approved April 20 tenth, one thousand eight hundred and eighty-four," which revising and amending act was approved March 27, 1888, and the amendments thereof and supplements thereto, on the property of LEHIGH VALLEY RAILROAD COMPANY, lessee of the Morris Canal and Banking Company, do command you that the said assessments of taxes and the valuations upon which the same are based, the separate value of the waterway of the Morris Canal extending from 20 the centre line of Washington street to the East Bank of the Hackensack River in Jersey City and 30 from the south side of Main street to the Delaware River in Phillipsburg, the written complaint of said Company against the same, the evidence and statements before said Board on review thereof, the final determination of said Board thereon, all corrections made by said Board therein, and the final report and certification thereof by said Board to said Comptroller, together with all proceedings and matters touching 40 and concerning the same, as they remain

Writ of Certiorari.

before you, or either of you, or under your control, you certify and send to the Justices of our Supreme Court, at Trenton, on the 14th day of December, 1923, together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done. 10

WITNESS, William S. Gummere, Esq., Chief Justice, at Trenton, this 24th day of November, 1923.

EDWARD J. KELLEHER,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

I allow this writ. Let it be sealed. Upon condition that prosecutor shall, within the time required by law, pay taxes for the year 1923 on the water-way of the Morris Canal extending from the center line of Washington street to the East Bank of the Hackensack River in Jersey City at a value of \$375,000, and on the water-way of the Morris Canal from the south side of 30 Main street to the Delaware River in Phillipsburg, at a valuation of \$12,900.

Dated, November 24, 1923.

CHARLES W. PARKER,
J. S. C.

Lehigh Valley Railroad Company, Lessee, &c.

RETURN OF STATE BOARD OF TAXES AND ASSESSMENT.

Filed December 14, 1923.

NEW JERSEY SUPREME COURT.

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LEHIGH VALLEY RAILROAD Co.,
Lessee of the Morris Canal
and Banking Co.,
Prosecutor,

vs.

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THE STATE BOARD OF TAXES AND
ASSESSMENT, NEWTON A. K.
BUGBEE, Comptroller of the
Treasury, THE MAYOR AND AL-
DERMEN OF JERSEY CITY and
THE MORRIS CANAL AND BANK-
ING Co.,
Defendants.

*On
Certiorari.
Return to
Writ.*

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

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The State Board of Taxes and Assessment,
complying with the commands of the Writ of
Certiorari hereto attached, and for its return
thereto, does certify as follows:

1. That, pursuant to an Act of the Legisla-
ture of the State of New Jersey entitled "An
Act to revise and amend 'An Act for the taxa-
tion of railroad and canal property,' approved
April tenth, one thousand eight hundred and
eighty-four," which revision and amendment was
40 approved March 27, 1888, and the acts amenda-

Return of State Board of Taxes and Assessment.

tory thereof and supplementary thereto it, the
said State Board of Taxes and Assessment, did
value and assess for purposes of taxation for
the year 1923, certain property of the Morris
Canal and Banking Co., the within named prose-
cutor, used for railroad purposes.

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2. That, pursuant to the statutes aforesaid,
the said State Board of Taxes and Assessment
did certify and report to the Comptroller of the
Treasury of the State of New Jersey a state-
ment of said valuation, assessment and tax.

3. That the said State Board of Taxes and
Assessment gave notice to the prosecutor of the
said valuation, assessment and tax, and that it
would meet on a date fixed, at the State House
in Trenton, for the purpose of reviewing said
assessment.

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4. That the prosecutor filed a written com-
plaint, or complaints, specifying its grievance
against said valuation, assessment and tax, and
protested against the levy and assessment of said
tax, and was heard thereon, whereupon the State
Board of Taxes and Assessment, after due con-
sideration, adjusted and corrected the said valua-
tion, assessment and tax as to said Board seemed
equitable and just, which said corrected valua-
tions, assessment and tax was duly certified to
the Comptroller of the Treasury.

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5. And the State Board of Taxes and Assess-
ment does further certify and report that it has
hereunto appended, under appropriate headings:

EXHIBIT A. Assessments for 1923.

EXHIBIT B. Certification to State Comptroller.

EXHIBIT C. Complaint and Protest.

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Lehigh Valley Railroad Company, Lessee, &c.

EXHIBIT D. Abstract of Minutes of State Board of Taxes and Assessment.

EXHIBIT E. Final Determination.

STATE BOARD OF TAXES AND ASSESSMENT.

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FRANK D. SCHROTH,
Secretary.

Trenton, N. J., December 14, 1923.

Exhibit. A.

Assessments for 1923.

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STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

LEHIGH VALLEY RAILROAD COMPANY,
LESSEE OF THE MORRIS CANAL &
BANKING COMPANY.

Measurement of the Main Stem for the Year 1923.

LENGTH OF WATER WAY IN NEW JERSEY.....Miles
108.760

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LENGTH OF WATER WAY IN TAXING DISTRICTS

Taxing District Length in Miles

MAIN CHANNEL

Hudson County, Jersey City	8.396
Town of Kearny	1.061
Essex County, Newark City	6.991
Belleville, Town of	0.632
Town of Bloomfield	3.854
*Town of Bloomfield and Town of Nutley	0.578
Passaic County, Clifton City	4.252
Paterson City	1.903
West Paterson Borough	2.087
Little Falls Township	2.025
*Totowa Borough and Wayne Township	1.805
Wayne Township	1.603

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Return of State Board—Exhibit A.

LENGTH OF WATER WAY IN TAXING DISTRICTS

Taxing District	Length in Miles
Morris County, Lincoln Park Borough	2.862
Montville Township	4.563
Boonton, Town of	2.540
Boonton Township	1.537
Denville Township	3.087
Rockaway Township	0.707
Rockaway Borough	1.955
Randolph Township	0.615
Dover, Town of	2.111
Wharton Borough	1.839
Roxbury Township	7.894
Netcong Borough	0.608
Sussex County, Stanhope Borough	0.550
Morris County, Mount Hope Township	2.598
Sussex County, Byram Township	0.858
Warren County, Allamuchy Township	3.115
Allamuchy Township and Hackettstown, Town of	1.058
*Hackettstown, Town of, and Independence Twp.	3.038
*Independence Township and Mansfield Township	1.104
Mansfield Township	6.898
Washington Township	3.887
Washington Borough	1.393
Franklin Township	5.284
Greenwich Township	3.409
Lopatcong Township	1.315
Pohatcong Township	0.209
Phillipsburg, Town of	2.377

Total length, Main Channel.....102.648

LAKE HOPATCONG FEEDER

Morris County, Roxbury Township

0.695

POMPTON FEEDER

Passaic County, Wayne Township

5.417

Total length, Main Channel and Feeder.....108.760

*Dividing Line between Taxing Districts.

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STATE OF NEW JERSEY.
State Board of Taxes and Assessment.

MORRIS CANAL & BANKING COMPANY.

Taxing District of Jersey City, County of Hudson.

Valuation and Assessment of Real Estate Other than Water Way for the Year 1923.

Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Land outside water way, excess Block 1746, Plot B-1.....	\$ 1,000.00			
Vacant, building, Morris Basin, 27' x 12'.....	75.00			
Dwelling house, Morris Basin, 24' x 34'.....	214.00			
Engine house and machinery, east bank of Hackensack River, 56' x 36'.....	2,140.00			
Dwelling house, Hackensack River, 18' x 20'.....	300.00			
Barn, Hackensack River, 24' x 30'.....	54.00			
	<u>\$</u>	3,783.00	\$3.758	\$ 142.17
Taxing District of NEWARK CITY, County of ESSEX				
Lock tender's dwelling, Passaic River, 34' x 18'.....	\$ 321.00			
Lock tender's dwelling, east of Perry Street, 48' x 17'.....	374.00			
Barn, east of Perry Street, 26' x 18'.....	215.00			
Lock tender's dwelling, Warren Street, 17' x 16'.....	215.00			
	<u>\$</u>	1,070.00	\$3.76	\$ 40.23

Lehigh Valley Railroad Company, Lessee, &c.

Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of TOWN OF BLOOMFIELD, County of ESSEX				
Land outside water way, excess near Plane #11, East, lot at Plane Street 1.000 Ac. \$	240.00			
Land outside water way, excess near Plane #11, East, between Plane Street and Canal1.800 Ac.	324.00			
Lock tender's dwelling, 16' x 34'.....	214.00			
Store house, Plane #11, East.....	33.00			
Plane tender's dwelling, Plane #11, 30' x 30'.....	374.00			
Barn, Plane #11.....	75.00			
	<u>\$</u>	1,260.00	\$2.82	\$ 35.53
Taxing District of CLIFTON CITY, County of PASSAIC				
Land outside water way, excess width at Richfield.....0.700 Ac. \$	168.00			
Land outside water way, lot near Passaic and Essex County Line 5.900 Ac.	1,416.00			
	<u>\$</u>	1,584.00	\$3.04	\$ 48.15
Taxing District of WAYNE TOWNSHIP, County of PASSAIC				
Land outside water way, excess width along Pompton Feeder...17.000 Ac. \$	1,020.00			
Land outside water way, excess south of Canal, east of Pompton River 1.500 Ac.	90.00			
Land outside water way, excess south of Canal, west of Pompton River 0.200 Ac.	12.00			
Land outside water way, excess north of Canal, west of Pompton River 3.000 Ac.	180.00			
Dwelling house at aqueduct, 34' x 20'.....	321.00			
Dam on Pompton Feeder.....	2,140.00			
	<u>\$</u>	3,763.00	\$2.21	\$ 83.16

Return of State Board—Exhibit A.

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	Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
	Taxing District of MOUNT ARLINGTON BOROUGH, County of MORRIS				
	Land outside water way, land overflowed, flowage rights and land acquired by deed at Lake Hopatcong.....57.700 Ac.	\$ 13,848.00	\$ 13,848.00	\$4.48	\$ 620.39
	Taxing District of JEFFERSON TOWNSHIP, County of MORRIS				
	Land overflowed and flowage rights at Lake Hopatcong.....114.560 Ac.	\$ 13,747.00	\$ 13,747.00	\$3.33	\$ 457.78
	Taxing District of LINCOLN PARK BOROUGH, County of MORRIS				
	Land outside water way, north of Canal, and east of Lincoln Park, Plane #10, East	0.300 Ac. \$ 18.00			
	Land outside water way, south of Canal, and west of Lincoln Park, Plane #10, East	4.400 Ac. 264.00			
	Land outside water way, between Canal and D., L. & W. R. R. and west of Lincoln Park	6.000 Ac. 360.00			
	Land outside water way, north of D., L. & W. R. R. and west of Lincoln Park	4.800 Ac. 288.00	\$ 930.00	\$5.02	\$ 46.69
	Taxing District of MONTVILLE TOWNSHIP, County of MORRIS				
	Plane tender's dwelling, Plane #10 East.....	\$ 214.00			
	Barn, Plane #9 East.....	107.00			
	Plane tender's dwelling	187.00	\$ 508.00	\$5.48	\$ 27.84

Lehigh Valley Railroad Company, Lessee, &c. 56

40	30	20	10		
	Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
	Taxing District of BOONTON, TOWN OF, County of MORRIS				
	Lock tender's dwelling, Lock #13 East.....	\$ 107.00			
	Building	80.00			
	Dwelling, Plane #7 East	187.00	\$ 374.00	\$5.15	\$ 19.26
	Taxing District of ROCKAWAY BOROUGH, County of MORRIS				
	Vacant building, Plane #6 East	\$ 54.00			
	Dwelling, Plane #6 East	187.00	\$ 241.00	\$5.44	\$ 13.11
	Taxing District of BOONTON TOWNSHIP, County of MORRIS				
	Lock tender's dwelling, Lock #10 East.....	187.00	\$ 187.00	\$3.84	\$ 7.18
	Taxing District of DENVILLE TOWNSHIP, County of MORRIS				
	Land outside water way, excess width between Canal and Rockaway River 6.800 Ac.	\$ 204.00	\$ 204.00	\$3.65	\$ 7.45
	Taxing District of TOWN OF DOVER, County of MORRIS				
	Land outside water way, basin property.....4.000 Ac.	\$ 1,200.00			
	Dam east of Lock #6 East.....	642.00			
	Lock tender's dwelling, Lock #6 East.....	321.00	\$ 2,163.00	\$4.67	\$ 101.01

Return of State Board—Exhibit A. 57

Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of WHARTON BOROUGH, County of MORRIS				
Land outside water way, land overflowed on south side of Canal at Port Oram				
Plane tender's house, Plane #5 East..... 13.500 Ac.	\$ 1,620.00			
Dwelling, Plane #5 East.....	187.00			
	161.00			
		\$ 1,968.00	\$6.27	\$ 123.39
Taxing District of ROXBURY TOWNSHIP, County of MORRIS				
Land outside water way, land overflowed and acquired by deed at Lake Hopatcong	5.700 Ac.	\$ 1,368.00		
Land outside water way, flowage rights at Lake Hopatcong.....	52.000 Ac.	12,480.00		
Land outside water way, land acquired by deed and partially overflowed at Stanhope Reservoir	87.800 Ac.	13,170.00		
Land outside water way, excess width at Drakesville, Plane #2 East	5.400 Ac.	324.00		
Plane tender's house, Plane #4 East.....	214.00			
Waste weir west of Plane #4.....	375.00			
Plane tender's house, Plane #3 East.....	187.00			
Plane tender's house, Plane #3 East.....	214.00			
Plane tender's house, Plane #2 East.....	214.00			
Plane tender's house, Plane #1 East.....	187.00			
Waste weir, west of Plane #1 East.....	375.00			
Plane tender's house	187.00			
Lock tender's house, Lake Hopatcong Feeder.....	214.00			
		\$ 29,509.00	\$3.96	\$1,168.56

Lehigh Valley Railroad Company, Lessee, &c. 58

Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of NETCONG BOROUGH, County of MORRIS				
Land outside water way, land acquired by deed and partially overflowed at Stanhope Reservoir	82.325 Ac.	\$ 12,349.00		
		\$ 12,349.00	\$4.86	\$ 600.16
Taxing District of STANHOPE BOROUGH, County of SUSSEX				
Land outside water way, land acquired by deed and partially overflowed at Stanhope Reservoir	175.600 Ac.	\$ 26,340.00		
Barn, Lock #1 West.....	267.00			
House, Lock #1 West.....	187.00			
Plane tender's house, Plane #2 West.....	187.00			
Barn, Plane #2 West.....	266.00			
Blacksmith shop, Plane #2 West.....	107.00			
		\$ 27,354.00	\$4.342	\$1,187.71
Taxing District of MOUNT OLIVE TOWNSHIP, County of MORRIS				
Land outside water way, excess width at Plane #3 West	2.800 Ac.	\$ 168.00		
Land outside water way, excess width at Waterloo	4.200 Ac.	252.00		
Lock tender's house, Lock #2 West.....	214.00			
Plane tender's house, Plane #3 West.....	214.00			
		\$ 848.00	\$3.27	\$ 27.73
Taxing District of HOPATCONG BOROUGH, County of SUSSEX				
Land outside water way, land overflowed, flowage rights and land acquired by deed at Lake Hopatcong	173.100 Ac.	\$ 20,772.00		
		\$ 20,772.00	\$4.714	\$ 979.19

Return of State Board—Exhibit A. 59

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Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of BYRAM TOWNSHIP, County of SUSSEX				
Land outside water way, land overflowed and acquired by deed at Lake Hopatcong10.400 Ac.	\$ 1,248.00			
Land outside water way, flowage rights at Lake Hopatcong52.000 Ac.	6,240.00			
Land outside water way, flowage rights at Cranberry Lake83.000 Ac.	9,960.00			
Land outside water way, land acquired by deed at Bear Swamp.....69.000 Ac.	8,280.00			
Land outside water way, flowage rights at Bear Swamp.....20.000 Ac.	2,400.00			
Dam and waste weir, Lock #3, West.....	749.00			
		\$ 28,877.00	\$4.680	\$1,351.44
Taxing District of ALLAMUCHY TOWNSHIP, County of WARREN				
Lock tender's house, Lock #4 West.....	\$ 187.00			
Lock tender's house, Lock #4 West.....	187.00			
Dam and waste weir, Lock # 5 West.....	749.00			
House, Lock #5 West.....	214.00			
House, Lock #5 West.....	188.00			
		\$ 1,525.00	\$3.47	\$ 52.92
Taxing District of HACKETTSTOWN, TOWN OF, County of WARREN				
Land outside water way, excess in Hackettstown.....5.200 Ac.	\$ 624.00			
Barn	268.00			
		\$ 892.00	\$2.84	25.33

Lehigh Valley Railroad Company, Lessee, &c.

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Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of MANSFIELD TOWNSHIP, County of WARREN				
Barn at Plane #6 West.....	\$ 87.00			
Supply House, Plane #6 West.....	97.00			
Shed, Plane #6 West.....	97.00			
Barn, Plane #6 West.....	226.00			
House, Plane #6 West.....	107.00			
Barn, Plane #6 West.....	75.00			
		\$ 689.00	\$4.43	\$ 30.52
Taxing District of WASHINGTON BOROUGH, County of WARREN				
House (brick) east of Plane #7 West.....	\$ 535.00			
Collector's office, east of Plane #7 West.....	535.00			
		\$ 1,070.00	\$4.19	\$ 44.83
Taxing District of WASHINGTON TOWNSHIP, County of WARREN				
Land outside water way, excess at Port Colden.....12.000 Ac.	\$ 1,440.00			
House at Plane #6 West.....	215.00			
House at Plane #6 West.....	187.00			
House at Lock #6 West.....	75.00			
House at Lock #6 West.....	214.00			
Lock tender's house, west of Lock #6 West.....	214.00			
Barn, west of Lock #6 West.....	75.00			
Plane tender's house, Plane #7 West.....	214.00			
Store house, Plane #7 West.....	80.00			
House, Plane #7 West.....	187.00			
Store house, Plane #7 West.....	187.00			
		\$ 3,088.00	\$2.90	\$ 89.55

Return of State Board—Exhibit A.

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Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of FRANKLIN TOWNSHIP, County of WARREN				
Stable at Lock #7.....	\$ 214.00			
Lock tender's house, Lock #7 West.....	187.00			
	<u>\$</u>	401.00	\$2.68	\$ 10.75
Taxing District of GREENWICH TOWNSHIP, County of WARREN				
Land outside water way, near Stewartville, between Canal and D., L. & W. R. R.0.400 Ac.	\$ 29.00			
House, Plane #8 West	214.00			
Tool house, Plane #8 West.....	107.00			
Plane tender's house, Plane #8 West.....	187.00			
Stable, Plane #9 West.....	91.00			
House, Plane #9 West.....	187.00			
House, Plane #9 West.....	187.00			
	<u>\$</u>	1,002.00	\$3.17	\$ 31.76
Taxing District of LOPATCONG TOWNSHIP, County of WARREN				
House, Plane #10 West.....	\$ 187.00			
Tool house, Plane #10 West.....	75.00			
	<u>\$</u>	262.00	\$2.92	\$ 7.65
Taxing District of POHATCONG TOWNSHIP, County of WARREN				
Lock tender's house, Lock #8 West.....	\$ 161.00			
	<u>\$</u>	161.00	\$3.17	\$ 5.10

Lehigh Valley Railroad Company, Lessee, &c.

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Description of Property	Value	Total Value	Local Tax Rate	Tax for Taxing District
Taxing District of PHILLIPSBURG, TOWN OF, County of WARREN				
Land outside water way, north of canal	6,500 Ac. \$ 7,800.00			
Land outside water way, between canal and P. R. R.....	1,300 Ac. 390.00			
Shop and fixed machinery.....	2,140.00			
Shop, 100' x 35'.....	963.00			
Shop, 100' x 40'.....	1,070.00			
Stable	214.00			
Store room	428.00			
Three old buildings on dock.....	375.00			
Boat dock	1,070.00			
Grain house	375.00			
Stable, Port Delaware.....	749.00			
Stable, Port Delaware.....	535.00			
Store house	267.00			
Collector's office, 30' x 20'.....	374.00			
	<u>\$</u>	16,750.00	\$3.66	\$ 613.05
Total for Canal		<u>\$191,179.00</u>		\$7,999.59

Return of State Board—Exhibit A.

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Lehigh Valley Railroad Company, Lessee, &c.

MORRIS CANAL AND BANKING CO.
(L. V. R. R. Co., LESSEE.)

STATE OF NEW JERSEY
State Board of Taxes and Assessment

Valuation and Assessment for State and Local Uses for the Year 1923

VALUATION

Assessed valuation of the Morris Canal and Banking Co. (L. V. R. R. Co., Lessee)

For Main Stem, \$2,780,035.00
For Franchise, 1,000.00

For tangible personal property necessary for and used in State Commerce..... \$2,781,035.00
27,200.00

Total assessable for State uses..... 2,808,235.00
For real estate used for railroad purposes, other than main stem..... 191,179.00

Aggregate assessed valuation..... \$2,999,414.00

TAX

Tax for State uses, at average tax rate of \$3.561 per \$100 valuation.....\$ 100,001.25
Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates..... 7,999.59

Total Tax\$ 108,000.84

Return of State Board—Exhibit B.

Exhibit B.

Certificate of State Board to Comptroller.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

To the Hon. N. A. K. Bugbee,
Comptroller of the State of New Jersey.

10

In pursuance of the provisions of an act entitled "An act to revise and amend an act for the taxation of railroad and canal property, approved April tenth, one thousand eight hundred and eighty-four" (which revision and amendment was approved March 27th, 1888), and the acts amendatory and supplementary thereto, we, the State Board of Taxes and Assessment hereby certify and report to you the following statement of assessed valuations of the MORRIS CANAL AND BANKING CO. (L. V. R. R. CO., LESSEE), pursuant to the provisions of said act, and of the separate valuation of property in each taxing district, as made by us; the amount of tax payable by said company with respect to its property separately valued in each taxing district, and the aggregate assessed valuation, and the total tax levied upon said company, for the year 1923.

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Assessed valuation of the MORRIS CANAL AND BANKING CO. (L. V. R. R. CO., LESSEE)

For Main Stem, \$2,780,035.00
For Franchise, 1,000.00

\$2,781,035.00

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Lehigh Valley Railroad Company, Lessee, &c.

	For tangible personal property necessary for and used in State Commerce	27,200.00
	Total assessable for State uses.	\$2,808,235.00
10	For real estate used for railroad purposes, other than main stem	191,179.00
	Aggregate assessed valuation.	\$2,999,414.00
	Tax for State uses, at average tax rate of \$3.561 per \$100 valuation.	\$ 100,001.25
	Tax for uses of taxing districts on real estate used for railroad pur- poses, other than main stem, at local rates	7,999.59
20	Total tax	\$ 108,000.84

JAMES BAKER, *President.*
FRANK B. JESS,
HARRY W. MUTCHLER,
MAHLON R. MARGERUM,
ISAAC BARBER,
State Board of Taxes and Assessment.

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Return of State Board—Exhibit B.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT.

Schedule showing valuation of property of the
LEHIGH VALLEY RAILROAD COMPANY,
LESSEE OF MORRIS CANAL & BANKING
COMPANY, used for Railroad purposes, other
than Main Stem, in the taxing Districts of the
State of New Jersey, together with the tax
thereon, for Local uses, for the year 1923.

County	Taxing District	Value	Local Tax
Hudson—			
	Jersey City	\$ 3,783.00	\$ 142.17
Essex—			
	Newark City	1,070.00	40.23
	Bloomfield, Town of	1,260.00	35.53
Passaic—			
	Clifton City	1,584.00	48.15
	Wayne Township	3,763.00	83.16
Morris—			
	Mount Arlington Borough	13,848.00	620.39
	Jefferson Township	13,747.00	457.78
	Lincoln Park Borough	930.00	46.69
	Montville Township	508.00	27.84
	Boonton, Town of	374.00	19.26
	Rockaway Borough	241.00	13.11
	Boonton Township	187.00	7.18
	Denville Township	204.00	7.45
	Dover, Town of	2,163.00	101.01
	Wharton Borough	1,968.00	123.39
	Roxbury Township	29,509.00	1,168.56
	Netcong Borough	12,349.00	600.16
Sussex—			
	Stanhope Borough	27,354.00	1,187.71
Morris—			
	Mount Olive Township	848.00	27.73
Sussex—			
	Hopatcong Borough	20,772.00	979.19
	Byram Township	28,877.00	1,351.44

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Lehigh Valley Railroad Company, Lessee, &c.

County	Taxing District	Value	Local Tax
Warren—			
	Allamuchy Township	1,525.00	52.92
	Hackettstown, Town of.....	892.00	25.33
	Mansfield Township	689.00	30.52
	Washington Borough	1,070.00	44.83
	Washington Township	3,088.00	89.55
	Franklin Township	401.00	10.75
	Greenwich Township	1,002.00	31.76
10	Lopatcong Township	262.00	7.65
	Pohatcong Township	161.00	5.10
	Phillipsburg, Town of	16,750.00	613.05
	Total for Canal.....	\$ 191,179.00	\$ 7,999.59

Exhibit C.

Complaint of Lehigh Valley Railroad Company.

20 BEFORE THE STATE BOARD OF TAXES AND ASSESSMENT.

In the Matter of the Assessment of the Property of the Morris Canal and Banking Company, for the year 1923. *Complaint and Protest.*

30 *To the State Board of Taxes and Assessment, Trenton, N. J.*

Gentlemen:

40 The Lehigh Valley Railroad Company, a corporation, is aggrieved by the valuations and assessments for the year 1923 of certain property in the State of New Jersey used for railroad and canal purposes formerly owned by the Morris Canal and Banking Company and its lessee, and now owned by said Lehigh Valley Railroad Company, and specifies its grievances as follows:

Return of State Board—Exhibit C.

1. The valuations of said property, and of each class thereof, for assessment for said year are in excess of the true value of the property.

2. The principles upon which said valuations and assessments were made are erroneous.

3. Said assessments are in part on property not used for railroad and canal purposes. 10

4. Said property was not valued for assessment for said year under general laws and by uniform rules, and, therefore, said assessments are in violation of the provisions of paragraph 12 of Section VII of Article IV of the Constitution of the State of New Jersey.

5. The valuations for said year of said property described as real estate used for railroad and canal purposes (other than main stem) situated in the respective taxing districts, are at a rate in excess of the rate of assessment upon property of like character and similarly situated, and are not in the same relative proportion of true value as that by which other property in the same taxing district was assessed, and are in excess of and disproportionate to the assessments placed upon the property of other owners in the same taxing district, and by reason thereof said Company is denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. 20 30

6. Said valuations and assessments are without warrant or authority of law.

7. Said property should be assessed separately from the other property of the Morris Canal and Banking Company, said Lehigh Val- 40

Lehigh Valley Railroad Company, Lessee, &c.

ley Railroad Company not being liable for the taxes on the other property of said Morris Canal and Banking Company under an agreement made by Frank H. Sommer, Louis Focht and Edward L. Young, Commissioners acting on behalf of the State of New Jersey, under and by virtue of the authority of an Act of the Legislature of the State of New Jersey, known as Chapter 212, of the Laws of 1922 (p. 367), said Morris Canal and Banking Company, a corporation of the State of New Jersey, and said Lehigh Valley Railroad Company, a corporation, dated November 29, 1922, whereby it was agreed that said Lehigh Valley Railroad Company should not be responsible for any taxes assessed for the calendar year of 1923 or for any period after January 1, 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of said agreement. All of the canal property of said Morris Canal and Banking Company as assessed for the year 1923 was conveyed to the State of New Jersey under said agreement, except the right of way of the canal in the City of Jersey City from the center line of Washington street to the Hackensack River and the two-mile strip of right of way of the canal in the Town of Phillipsburg.

8. Said valuations and assessments are in other respects wrongful, erroneous, unlawful, illegal and unconstitutional, and the statutes under which they were made are unlawful, illegal and unconstitutional.

Said Lehigh Valley Railroad Company complains against said valuations and assessments for the reasons hereinbefore set forth and re-

Return of State Board—Exhibit C.

quests your Honorable Board to review, correct and apportion the same.

Dated, June 15, 1923.

LEHIGH VALLEY RAILROAD COMPANY,

By R. D. VAN DUZER, 10
General Land and Tax Agent.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

R. D. Van Duzer, of full age, being duly sworn according to law, on his oath says that he is the General Land and Tax Agent of the LEHIGH VALLEY RAILROAD COMPANY, named in the foregoing complaint and protest, and that the matters stated therein are true to the best of his knowledge and belief. 20

R. D. VAN DUZER.

Sworn to and subscribed at New York, N. Y., this 15th day of June, 1923, before me, the subscriber, a Notary Public, in and for said County and State duly commissioned and sworn as witness my hand and official seal.

(SEAL) ROLLAND A. HAAG. 30
Notary Public, Kings Co. No. 39.
Kings Co. Register's No. 4037.
Certificate filed in New York Co. No. 42.
N. Y. Co. Register's No. 4068.
My Commission expires March 30, 1924.

Lehigh Valley Railroad Company, Lessee, &c.

Exhibit D.

Minutes of State Board.

Meeting of Tuesday, June 12, 1923.

10 Chief Engineer Focht submitted to the Board the basis of the agreement reached between the Morris Canal & Banking Company and the Lehigh Valley Railroad Company on the one hand, and the Morris Canal Commission for the State, involving the disposition of the property of the Morris Canal & Banking Company. The statement of the Chief Engineer showed that the ownership of the stock of the Morris Canal & Banking Company is held by the State of New Jersey and the Lehigh Valley Railroad Company, and the Chief Engineer definitely asked the instructions of the Board as to how to proceed in the matter of the assessment against the property owned in the name of the Morris Canal & Banking Company.

20 Upon motion of Mr. Jess, seconded by Mr. Margerum, the Chief Engineer was directed to include this property in the assessment of railroad and canal property levied by the Board. This motion was unanimously passed.

30 *Meeting of Tuesday, October 9, 1923.*

The Secretary laid before the Board a letter from Deputy Attorney General Edward P. Stout, relative to the apportionment of the Board's assessment against first and second class property of the Morris Canal and Banking Company, for the year 1923. At the hearing on Tuesday, October second, Mr. Robert J. Bain, representing the Lehigh Valley Railroad Company, submitted to the Board a request for apportionment of the assessment on property of the Le-

Return of State Board—Exhibit D.

high Valley Railroad Company for the year 1923 upon the basis of the agreement entered into between the Morris Canal Commission, on one hand, and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, on the other. It was the contention of Mr. Stout that the Board had no power to make this adjustment. He took the position that the Board could only consider the status of the property in question as it existed January 1, 1922, the date as of which it was assessed for the taxes of 1923. He further contended that it was not within the scope of the power of the Morris Canal Commission to cancel or apportion any taxes due or to become due upon the property of the Morris Canal & Banking Company, as it existed on January 1, 1922.

20 The Board directed that the Chief Engineer and the Secretary lay these facts before the Attorney General for his opinion as to the legal force of the respective claims of the Deputy Attorney General and Mr. Bain. The Secretary was further directed to request of the Attorney General a formal opinion.

The opinion of the Attorney General, returned immediately to the Board, follows:

Meeting of Tuesday, October 9, 1923.

30 "I am in receipt of your letter of the 9th instant, requesting opinion upon the situation that has arisen involving the 1923 assessment on the first and second class property of the Lehigh Valley Railroad Company.

"I understand from your communication that it is contended on the part of the Lehigh Valley Railroad Company that pursuant to the agreement entered into between the Morris Canal

Lehigh Valley Railroad Company, Lessee, &c.

Commission, on the one hand, and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, on the other hand, whereby the property of the Lehigh Valley Railroad Company was transferred to the State of New Jersey, and then reinvested by act of the
 10 Legislature in the Morris Canal and Banking Company, the assessment of the property thus transferred should be eliminated from the original assessment levied against the Lehigh Valley Railroad Company, and that there is objection to the same by Edward P. Stout, who has been deputized as Deputy Attorney General to appear in behalf of Jersey City, and who raises the question that the State Board can only consider
 20 the status of the property in question as it existed January 1, 1922, the date as of which the property is assessed for the taxes of 1923; and he further contends that it was not within the scope of the Morris Canal Commission to cancel or apportion any taxes due or to become due upon the property of the Morris Canal and Banking Company, as it existed January 1, 1922.

“I have examined Article 12 of the agreement entered into between the Commissioners in behalf of the State of New Jersey, and the corporation, and I ascertain that Paragraph 12 does contain
 30 such a condition. Also the act of 1922 confers great powers upon the commission in its negotiations with the corporation for the acquisition of this property. There is a question whether any agreement made by the Commissioners can change or modify a statutory duty imposed upon your Board, and where there is a doubt, the benefit should be resolved in favor of the State and its agencies, leaving it to subsequent judicial
 40 proceedings to determine the question. The

Return of State Board—Exhibit D.

duties imposed by the statutes under which your Board acts are well defined, and under the circumstances it is my opinion that the Board ought to treat the situation as it existed upon the first day of January, 1922, irrespective of the agreement entered into between the Commissioners and the Lehigh Valley Railroad Company, leaving it to the Lehigh Valley Railroad Company to take such action as it may deem advisable to relieve itself of the taxes assessed, or any portion thereof.” 10

The opinion of the Attorney General was received and ordered filed.

The report of the Chief Engineer in the matter of the appeal of the Lehigh Valley Railroad Company from the 1923 assessment (first and second class property) was laid before the Board. 20
 The report was received and ordered filed.

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Lehigh Valley Railroad Company, Lessee, &c.

Exhibit E.

Final Determination of State Board.

STATE OF NEW JERSEY.

10 STATE BOARD OF TAXES AND
ASSESSMENT.

Trenton, N. J., Oct. 25, 1923.

In re—"Railroad Assessment 1923"

Hon. N. A. K. Bugbee,
Comptroller of the Treasury.

Dear Sir:

20 I am directed to notify you that the Board, at
its meeting, Tuesday, October 9, dismissed the
appeals of the Railroads from the assessment
of 1923, and confirmed the valuations under con-
sideration, excepting such minor adjustments
and corrections as heretofore certified to you.

Very truly,

FRANK D. SCHROTH,
Secretary.

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Return of Comptroller—Schedule.

RETURN OF COMPTROLLER.

STATE OF NEW JERSEY.

OFFICE OF THE COMPTROLLER OF THE TREASURY

Trenton, Dec. 14, 1923.

10 I, N. A. K. Bugbee, Comptroller of the Treas-
ury, pursuant to the command of the writ of
certiorari hereunto attached, and for a return
thereto, do certify and return that the annexed
Schedule is a true copy of the assessment made
by the State Board of Taxes and Assessment,
against the

Morris Canal & Banking Company
for the year A. D. nineteen hundred and twenty-
three, as returned to me, as remains of record
in my said office. 20

N. A. K. BUGBEE,
Comptroller of the Treasury.

Comptroller's Schedule.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT 30

To the Hon. N. A. K. Bugbee,

Comptroller of the State of New Jersey:

In pursuance of the provisions of an act en-
titled "An act to revise and amend an act for
the taxation of railroad and canal property,
approved April tenth, one thousand eight hun-
dred and eighty-four" (which revision and
amendment was approved March 27th, 1888), and
the acts amendatory and supplementary thereto,
we, the State Board of Taxes and Assessment 40

Lehigh Valley Railroad Company, Lessee, &c.

hereby certify and report to you the following statement of assessed valuations of the MORRIS CANAL AND BANKING CO. (LVRR. CO. LESSEE) pursuant to the provisions of said act, and of the separate valuation of property in each taxing district, as made by us; the amount of tax payable by said company with respect to its property separately valued in each taxing district, and the aggregate assessed valuation, and the total tax levied upon said company, for the year 1923.

10	Assessed valuation of the MORRIS CANAL AND BANKING CO. (LVRR. CO. LESSEE)	
	For Main Stem,	\$2,780,035.00
	For Franchise,	1,000
		<hr/>
20		\$2,781,035.00
	For tangible personal property necessary for and used in State Commerce	27,200.00
		<hr/>
	Total assessable for State uses	\$2,808,235.00
	For real estate used for railroad purposes, other than main stem	191,179.00
		<hr/>
30	Aggregate assessed valuation..	\$2,999,414.00
	Tax for State uses, at average tax rate of \$3.561 per \$100 valuation..	\$ 100,001.25
	Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates	7,999.59
		<hr/>
40	Total Tax	\$ 108,000.84

Return of Comptroller—Schedule.

JAMES BAKER, *President,*
 FRANK B. JESS,
 HARRY W. MUTCHLER,
 M. R. MARGERUM,
 ISAAC BARBER,
State Board of Taxes and Assessment.

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STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT.

Schedule showing valuation of property of the LEHIGH VALLEY RAILROAD COMPANY, LESSEE OF MORRIS CANAL & BANKING COMPANY, used for Railroad purposes, other than Main Stem, in the taxing Districts of the State of New Jersey, together with the tax thereon, for Local uses, for the year 1923.

20

County	Taxing District	Value	Local Tax
Hudson—			
	Jersey City	\$ 3,783.00	\$ 142.17
Essex—			
	Newark City	1,070.00	40.23
	Bloomfield, Town of.....	1,260.00	35.53
Passaic—			
	Clifton City	1,584.00	48.15
	Wayne Township	3,763.00	83.16
Morris—			
	Mount Arlington Borough.....	13,848.00	620.39
	Jefferson Township	13,747.00	457.78
	Lincoln Park Borough.....	930.00	46.69
	Montville Township	508.00	27.84
	Boonton, Town of.....	374.00	19.26
	Rockaway Borough	241.00	13.11
	Boonton Township	187.00	7.18
	Denville Township	204.00	7.45
	Dover, Town of.....	2,163.00	101.01
	Wharton Borough	1,968.00	123.39
	Roxbury Township	29,509.00	1,168.56
	Netcong Borough	12,349.00	600.16

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Lehigh Valley Railroad Company, Lessee, &c.

County	Taxing District	Value	Local Tax
Sussex—			
	Stanhope Borough	27,354.00	1,187.71
Morris—			
	Mount Olive Township.....	848.00	27.73
Sussex—			
10	Hopatcong Borough	20,772.00	979.19
	Byram Township	28,877.00	1,351.44
Warren—			
	Allamuchy Township	1,525.00	52.92
	Hackettstown, Town of.....	892.00	25.33
	Mansfield Township	689.00	30.52
	Washington Borough	1,070.00	44.83
	Washington Township	3,088.00	89.55
	Franklin Township	401.00	10.75
	Greenwich Township	1,002.00	31.76
	Lopatcong Township	262.00	7.65
	Pohatcong Township	161.00	5.10
	Phillipsburg, Town of.....	16,750.00	613.05
	Total for Canal.....	\$ 191,179.00	\$ 7,999.59
20	Total for Lehigh Valley Railroad System ...	\$12,688,124.00	\$ 490,480.70
		\$12,533,047.00	\$ 484,628.52

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REASONS.

Filed December 19, 1923.

NEW JERSEY SUPREME COURT.

<p>LEHIGH VALLEY RAILROAD COMPANY, Lessee of Morris Canal and Banking Company, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE STATE BOARD OF TAXES AND ASSESSMENT, NEWTON A. K. BUGBEE, Comptroller of the Treasury, THE MAYOR AND ALDERMEN OF JERSEY CITY, and MORRIS CANAL AND BANKING COMPANY, <i>Defendants.</i></p>	<p><i>On Certiorari.</i> <i>(State Assessments, 1923.)</i> <i>Reasons.</i></p>	<p>10</p> <p>20</p>
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The prosecutor, Lehigh Valley Railroad Company, presents the following reasons for setting aside the assessments brought before this Honorable Court by the writ of certiorari in the above-entitled cause:

1. Because said assessments erroneously include taxes on property conveyed and transferred to the State of New Jersey under the terms of an agreement in writing, dated November 29, 1922, made by and between Frank H. Sommer, Louis Focht and Edward L. Young, Commissioners acting on behalf of said State under and by virtue of the authority of an act of the Legislature thereof, known as Chapter 212 of the Laws of 1922, the Morris Canal and Bank-

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Lehigh Valley Railroad Company, Lessee, &c.

Lehigh Valley System and the Erie System, are against the same assessments as those complained against for the preceding year, 1922. I have a schedule of those assessments for each system here which I will leave with the Board.

10 The Board will recall, as Mr. Wall said, that the matter was reviewed at length last year and we don't want to waste time repeating what was then said. We would like to offer and have considered on these complaints the record on review of the assessments for 1922 so far as it applies to the companies I represent, if that is satisfactory to Mr. Stout.

Mr. Stout: That is satisfactory to the State.

20 Mr. Bain: Of course the purpose is that if anything is done by the Supreme Court with regard to the 1922 assessments before this Board takes its final action, we ought to have suitable relief here on the present assessments, and if later we are entitled to further relief, why we expect to get it, of course.

30 There are in addition one or two matters that I want to call to the Board's attention. The Lehigh Valley Railroad Company calls attention to the fact that on review of the local assessments by Jersey City for the years 1921 and 1922 the area of lot 41 A in block 2145 as assessed by Jersey City was 4.73 acres. All but 1.6 acres was second-class railroad property and assessed by the State Board. This Board finally determined as to local assessments that the area assessable locally was 4.73 acres as assessed by the City. In the 1923 State assessments now before the Board, the portion of the plot in excess of 1.6 acres has again been assessed as second-class railroad property. There is therefore a
40 double assessment on that property and we ask that the State assessment be cancelled, the local

Minutes of Hearing before State Board.

assessment having been sustained. I don't think that Mr. Stout will raise any serious question about that.

Mr. Stout: Whatever the record shows. If the record of the State Board shows the property to be assessed as second-class, why we certainly don't want to have this assessment. 10

Mr. Bain: My information is that the State Board schedule shows an assessment on that property as second-class railroad property, whereas the Board has said it ought to be assessed locally and has sustained the local assessment.

Another matter to which I want to call attention is the necessity for apportioning the assessment on property formerly owned by the Morris Canal & Banking Company part of which has been conveyed to the Lehigh Valley Railroad Company under the agreement made between the Morris Canal Commissioners appointed under Act of the Legislature and the Morris Canal & Banking Company and the Lehigh Valley Railroad Company dated November 29, 1922. There should be an apportionment of the assessment on the canal property. Paragraph 12 of the agreement is as follows: 20

30 "The said companies hereby withdraw any and all protests heretofore made respecting taxes heretofore paid by the said companies to the State of New Jersey or to any municipality of the State on the Canal property. This withdrawal, however, shall not extend to or affect pending appeals involving the assessments for taxes for the years 1921 and 1922 on the 'Little Basin' property, and the Lehigh Valley Railroad Company hereby agrees with respect to such assessments for taxes for the years 1921 and 40

Lehigh Valley Railroad Company, Lessee, &c.

1922 on the 'Little Basin' property to pay such taxes as may finally be determined on said appeals to be due. Said companies shall not, nor shall either of them, be responsible for any taxes assessed for the calendar year 1923 or for any period after January 1, 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of this agreement."

Under the agreement there ought to be an apportionment of the taxes on the canal property so that the Railroad Company can pay taxes on that part of the property which has been conveyed to it, leaving the Morris Canal and Banking Company to take care of the taxes on the remainder of the property. I don't think there can be any question about that under the agreement.

Mr. Jess: How will you determine that, Mr. Bain, the apportionment?

Mr. Bain: Why, the apportionment should be applied to the taxes payable in this year, 1923; that is, to the taxes based on the assessments now before the Board.

Mr. Jess: Yes.

Mr. Bain: There ought to be an apportionment of those taxes. The schedule which I have and am leaving, shows the portion of the property which has been conveyed to the Lehigh Valley Railroad Company. The schedule states:

"The property of the Morris Canal and Banking Company was assessed for the year 1923 at a total valuation of \$2,999,414. In accordance with the agreement with the Commissioners acting on behalf of the State of New Jersey, dated November 29, 1922, the Lehigh is not liable for taxes on property turned over to the State. The

Minutes of Hearing before State Board.

assessment should be reduced to two items as follows:

- "25.8 acres, Town of Phillipsburg, \$500, per acre\$12,900
- "Morris Canal strip in Jersey City between Washington street and Hackensack River, 66.8 acres.....\$375,000"

Then, relative to the Basin in Jersey City, the statement is:

"This parcel was assessed for the year 1923 as 38.380 acres at a valuation of \$2,494,700, which is at the rate of \$65,000 per acre. The area of this plot includes the 250 foot waterway. The true area of this plot should be 25.839 acres, which at the rate of \$47,400 per acre, produces a true valuation of \$1,224,768."

That \$47,400 practically is the valuation for which we have heretofore contended.

The Board will recall that under the agreement, the old waterway channel of 150 feet has been widened up to 250 feet; so that instead of a hundred and fifty foot channel through the Basin now there is a two hundred and fifty foot channel.

Mr. Jess: When was the property transferred to the State?

Mr. Bain: Why, I am not sure of the exact date, but whenever it was conveyed the agreement provides that the company shall not be liable for taxes.

Mr. Jess: For 1923?

Mr. Bain: Yes. The company shall not be liable for any taxes assessed for the calendar year of 1923 or for any period after January 1, 1923.

Lehigh Valley Railroad Company, Lessee, &c.

Mr. Jess: And you think the agreement, of course, is binding on this Board as being an agreement made between the Commissioners for the State and the—

10 Mr. Bain: Why, certainly, it binds the State and as this Board is part of the administrative system of the State it would be binding on this Board. I think the Board would have to take judicial notice of it.

Mr. Jess: That is, the State has agreed that they shall not be liable for any taxes on that portion of the property transferred for 1923.

20 Mr. Bain: Exactly. Now, the State knows what portion has been transferred because the State has a deed to it for the property which has been—I assume it has a deed, am I right about that, Mr. Van Duzer?

Mr. Van Duzer: Yes.

Mr. Bain: Yes, the State has a deed for that portion of the property which has been conveyed to the State and the State has given a deed for that portion which was conveyed to the Lehigh Valley Railroad Company.

30 Mr. Jess: What I am getting at, Mr. Bain—in an ordinary case I suppose if the State were not involved the date of the transfer would be decisive as to whether the taxes were due or not, regardless of the agreement, isn't that true?

40 Mr. Bain: No, because we have an agreement, an absolute agreement relative to the taxes. If there had been no agreement, then the date of conveyances would be controlling and there would have to be an apportionment of the taxes as between the seller and the purchaser under the recent act without regard to this Board. It is the agreement that is now controlling and the

Minutes of Hearing before State Board.

agreement is that there should be no liability for the taxes for the year 1923, regardless of when the conveyances were made. But as a matter of fact I think the conveyances were made in March, weren't they?

Mr. Van Duzer: January 1st.

Mr. Bain: As of January 1, 1923.

Mr. Stout: This is the property that was listed on January 1, 1922, isn't it?

Mr. Jess: Yes, 1922.

Mr. Bain: But as to that, that is only a date fixed for the determination of the value of the property; the taxes are actually levied in this year, 1923.

Mr. Stout: It is the value of the property and the owner of the property—assess the owner.

20 Mr. Jess: That is what I am getting at, Mr. Stout. I am only wondering whether this being an agreement between the State, whether of course it isn't binding. We couldn't attempt to repudiate the agreement of the State.

Mr. Bain: I don't think there is any question that it is binding.

Well, we want to ask for that apportionment. I can leave with the Board copies of the agreement.

30 Mr. Jess: Have you got the apportionment figured out, or what you contend for?

Mr. Bain: We have got the apportionment figured out in acres and our contended valuation. They appear on this schedule. I am sure that Mr. Focht is familiar with this; that is, he must know of the apportionment, of course.

Mr. Stout: I would like to have a little time to consider this.

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Lehigh Valley Railroad Company, Lessee, &c.

Mr. Bain: Certainly, as much time as you like.

If the Board desires, I will leave copies of the agreement.

10 Mr. Stout: Have you additional copies of that?

Mr. Bain: Have you additional printed copies of that agreement?

Mr. Van Duzer: No, but they are available.

Mr. Bain: We can get one.

20 The only other matter to which I want to call attention is the fact that we complain this year for the first time so far as the State assessment is concerned against the assessment on the so-called Erie Elevator property, in Jersey City, known as lot B-1 in block 16. Up to this year that property was assessed locally. We complained against the local assessment last year and the Board heard much testimony in respect to the value of that property. So far as this year's assessment is concerned, we would claim the same relief with respect to that property as we get on the assessment against the adjoining property. I don't care to put in any additional evidence at this time on that.

30 I think that concludes all that I have to say in regard to these assessments, so long as it is understood that we have before the Board the record on review of the same assessments for last year.

40 Mr. Stout: Well, the position of the State is in respect to the property of the Central Railroad Company of New Jersey and the Erie Railroad system that the valuations as of January 1, 1922, are found in volume 3 of the State of the Case of the 1922 valuations; and those sched-

Minutes of Hearing before State Board.

ules of values are shown on pages 1708 to 1751 inclusive. We rely upon those valuations shown by those schedules as the valuations of these properties as of January 1, 1922.

Mr. Bain: I understand that we put in on our side all of the testimony and schedules and appraisals— 10

Mr. Stout: Yes, everything.

Mr. Bain: —produced by the railroad companies, and the State puts in the schedules, appraisals and testimony—

Mr. Stout: That is right.

Mr. Bain: —produced upon its part, so that the entire record is before the Board.

I think I ought to say for Mr. Stallman that I talked with him by telephone and he desires to follow the same plan that Mr. Wall and I have outlined in his case, to have the matter determined upon the record on review of the assessments for last year. 20

Mr. Schroth: He submitted a letter, Mr. Bain, to that effect and said that he would follow your plan.

Mr. Bain: Yes. I might also say that there appear on these schedules numerous other items of complaint but those items have all been adjusted up to this time by conference with the Board's engineer. 30

Mr. Wall: Ought not the determination be held until the opening of the Supreme Court on the chance—

Mr. Jess: We can't do that, Mr. Wall, we are limited by the statute.

Mr. Wall: Is it the 15th of October or the 15th of November?

Mr. Jess: 15th of October. 40

Lehigh Valley Railroad Company, Lessee, &c.

Mr. Bain: That is, the Board has finally got to determine—

Mr. Jess: Yes.

Mr. Bain: It certifies the taxes on the 5th of November, that is it?

10 Mr. Jess: Yes.

Anyone else present who wishes to be heard? (No response.)

Mr. Schroth: North Jersey Rapid Transit Company? (No response.)

Mr. Jess: That is all, then, gentlemen.

Mr. Stout: We would like to have the hearing adjourned so that we may have the opportunity to—

20 Mr. Jess: Yes. Next Tuesday, then, if you wish to be heard on that.

Mr. Bain: Next Tuesday, at 11?

Mr. Jess: Yes.

Mr. Schroth: The understanding will be that Mr. Stout will let the Board know as to whether or not he wishes to be heard.

Mr. Stout: That will be the better way.

Mr. Schroth: By the latter part of this week.

Mr. Stout: Yes.

30 Mr. Bain: The understanding being that Mr. Stout won't want to put in anything except possibly as to the apportionment of the Morris Canal Company.

AGREEMENT RELATIVE TO MORRIS CANAL.

AGREEMENT made this twenty-ninth day of November, 1922, between Frank H. Sommer, Louis Focht and Edward L. Young, Commissioners acting on behalf of the State of New Jersey, under and by virtue of the authority of an Act of the Legislature of the State of New Jersey known as Chapter 212 of the Laws of 1922 of said State (p. 367), party of the first part, and Morris Canal & Banking Company, a corporation of the State of New Jersey, and Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, parties of the second part. 10

The parties hereto, in pursuance of and in accordance with the authority conferred by said Act, agree as follows: 20

FIRST: On behalf of the State of New Jersey the said Commissioners agree as follows:

(1) To cause to be executed and delivered a proper instrument in writing conveying to the Lehigh Valley Railroad Company all the right, title and interest, present and reversionary, of the State of New Jersey of, in and to all of the lands, lands under water and premises located in Jersey City, Hudson County, New Jersey, referred to in said Chapter 212 of the Laws of 1922 as the "Big Basin" and more particularly described in Chapter CXXXIII of the Laws of 1867 of the State of New Jersey (p. 251) excepting therefrom, however, a strip of land under water for a public highway as hereinafter provided for in Paragraph 4 of the undertakings of the parties of the second part. 30 40

Lehigh Valley Railroad Company, Lessee, &c.

(2) To cause to be conveyed by proper instruments in writing all the right, title and interest, present and reversionary, of the State of New Jersey of, in and to all lands, lands under water and rights of way of the Canal Company in Jersey City and Bayonne between the center line of Washington street in Jersey City and the Hackensack River at the point where said canal enters said river, but the said cities of Jersey City and Bayonne shall have the right to maintain and replace sewers, water pipes and other sub-surface structures now on said premises, subject, however, to the terms of any existing agreement or agreements relating to the same, and said cities shall have the further right to construct additional sewers, water pipes, and other sub-surface structures across and under said premises at their own expense respectively, but free from any liability to pay compensation or damages; provided, however, that said cities respectively in such case shall enter into a proper instrument in writing with the Lehigh Valley Railroad Company agreeing to indemnify said Company against the results of any defective or improper construction or negligent use of any such sewer, water pipe or other sub-surface structure.

(3) To cause to be conveyed, by proper instruments in writing, all the right, title and interest, present and reversionary, of the State of New Jersey of, in and to all lands, lands under water and rights of way of the Canal Company in the Town of Phillipsburg from the southerly line or side of Main street adjacent to Green's Bridge over the Morris Canal to the point where the Morris Canal enters the Delaware River, but the Town of Phillipsburg shall

Agreement Relative to Morris Canal.

have the right to maintain and replace sewers, water pipes and other sub-surface structures now on said premises, subject, however, to the terms of any existing agreement or agreements relating to the same, and said Town shall have the further right to construct additional sewers, water pipes and other sub-surface structures under said premises at its own expense, but free from any liability to pay compensation or damages; provided, however, that said Town in such case shall enter into a proper instrument in writing with the Lehigh Valley Railroad Company agreeing to indemnify the said Company against the results of any defective or improper construction or negligent use of any such sewer, water pipe or other sub-surface structure.

(4) To consent, and they do hereby consent, that the Provident Life & Trust Company of Philadelphia, Trustee, release the properties hereinbefore referred to from the lien of the mortgage of the Morris Canal & Banking Company securing the issue of bonds in the amount of \$500,000 hereinafter referred to.

(5) To institute and prosecute to completion, when requested in writing by the Lehigh Valley Railroad Company, proceedings for the condemnation of any stock, consolidated or preferred, of the Morris Canal & Banking Company, the cost and expense of such proceedings, including the payment of the award for such stock, to be borne by said Railroad Company. Notice of the institution of any such condemnation proceeding shall be given to said Railroad Company and said Company shall be permitted to participate through its attorneys in the conduct thereof.

Lehigh Valley Railroad Company, Lessee, &c.

SECOND: Said Companies agree as follows:

(1) The Lehigh Valley Railroad Company will pay to the State of New Jersey in cash the sum of eight hundred and seventy-five thousand dollars (\$875,000) in five equal annual instalments, the first instalment to be paid on the
10 fifteenth day of December, 1922; subsequent instalments to be paid on the fifteenth day of December in each year thereafter until said principal sum is fully paid. Interest shall be paid annually on the fifteenth day of December in each year subsequent to December 15, 1922, at the rate of five per cent. (5%) per annum upon such part of the principal sum as remains unpaid.

(2) The Companies will convey or cause to
20 be conveyed in fee, except as hereinafter noted, to the State of New Jersey by deed of bargain and sale, with covenant by the Lehigh Valley Railroad Company against its own acts and the acts of the Morris Canal & Banking Company, all of the lands, lands under water and premises comprised within the Canal Terminal Basin in Jersey City, commonly called the "Little Basin," with the docks, wharves, slips and improvements appurtenant thereto, owned by said Companies
30 or either of them, described as follows:

Beginning at a point in the center line of Essex street extended distant 185 feet easterly at right angles from the center line of Hudson street, running thence (1) easterly along the center line of Essex street extended 790.03 feet more or less to the exterior line for piers in the Hudson River as now established; thence (2) southerly along said exterior line for piers 591.63 feet more or less to a point in the northerly line
40 of the tract of land hereinbefore referred to as

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the "Big Basin"; thence (3) westerly along said line a distance of 1866.3 feet more or less to the center line of Washington street; thence (4) northerly along the center line of Washington street 360 feet; thence (5) easterly on a line parallel with Essex street and distant 230 feet
10 southerly from the center line thereof a distance of 650 feet to a point; thence (6) northerly at right angles to Essex street 100 feet; thence (7) easterly parallel with Essex street and Essex street extended 471 feet more or less to a point 185 feet easterly at right angles from the center line of Hudson street; thence (8) northerly at right angles to Essex street extended 130 feet to the center line of Essex street extended, the point of beginning; containing approximately
20 20.7 acres; together with the right, title and interest of the said parties of the second part in and to any lands, lands under water and easements lying in the Hudson River in front of the said premises; subject, however, to any public streets or highways; provided, however, that as to such part of said tract included within the lines of Essex street extended the Companies convey their right, title and interest. Nothing herein, however, shall operate as a dedication or the
30 recognition of the dedication of any street, highway or public place.

(3) The Lehigh Valley Railroad Company will extend the present branch of its railroad now running to Warren street, Jersey City, from said Warren street to said "Little Basin" along the present right of way of the canal, when requested to do so by the Board or authority having control or management of said "Little Basin," and subject to necessary State and Municipal consent.
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Lehigh Valley Railroad Company, Lessee, &c.

The Lehigh Valley Railroad Company agrees that in traffic service to be accorded by the said Company with respect to the "Little Basin," the Jersey City and New York rates shall apply, with switching charges to be absorbed in the through rates to and from all connecting lines in Hudson County under tariffs to be approved by the Interstate Commerce Commission.

(4) The Companies will convey to the State of New Jersey by like deed with like covenant, for the purposes of a public waterway, all their right, title and interest in and to a strip of land and land under water located in Jersey City and partly within the limits of the "Big Basin" and bounded and described as follows:

Beginning at a point in the center of Washington street, said point being 260 feet south of the southerly boundary of the "Little Basin"; thence northerly along the center line of Washington street, 50 feet to a point 210 feet south of the southerly boundary of the "Little Basin"; thence eastwardly, parallel with and distant southerly 210 feet from the southerly boundary of said "Little Basin," 1845.5 feet more or less to the pierhead line on the Hudson River as now established; thence southerly along said pierhead line, 251 feet, more or less, to a point; thence westerly along the northerly line of the existing piers of the Lehigh Valley Railroad Company 2,261 feet, more or less, to a point in the easterly line of Warren street, extended; thence northerly, along the said easterly line of Warren street, extended, 200 feet to a point; thence eastwardly along a line parallel with and 260 feet south of the southerly boundary of the said "Little Basin," extended, 440 feet to the

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place of beginning, containing 12.541 acres more or less.

Until the present 200 foot public waterway running west from Washington street to Warren street shall be widened to a width of 250 feet by public authority, the Lehigh Valley Railroad Company shall have the right without cost to use the waters of the northerly 50 feet of the 250 foot public waterway hereinbefore described for the purpose of mooring boats.

Nothing herein contained shall be construed to create any obligation on the part of the State of New Jersey to incur any expense in dredging or otherwise maintaining the said waterway.

(5) The Companies will convey, or cause to be conveyed, to the State of New Jersey by like deed with like covenant all lands and right of way of the Canal Company between the westerly shore or bank of the Hackensack River in the Town of Kearny and the southerly line or side of Main street adjacent to Green's Bridge in the Town of Phillipsburg aforesaid, and further, all the right, title and interest of said Companies or either of them or any subsidiary company of, in and to all that part of the canal property and its feeders between the said westerly shore or bank of the Hackensack River in the Town of Kearny and the southerly line or side of Main street adjacent to Green's Bridge in the Town of Phillipsburg, together with all the lands which said Companies last mentioned own which are appurtenant to or used in connection with the aforesaid part of the canal and its feeders, and also all lands, land under water, water and water rights, rights of flowage, pondage and diversion of water appurtenant to the canal, together with all rights of the Canal Company and of its

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Lehigh Valley Railroad Company, Lessee, &c.

lessee, the Lehigh Valley Railroad Company, or of anyone claiming under them or either of them, appurtenant to, or used in connection with the canal, to take, use, impound, divert, sell and dispose of water. The deed to be given to the State to embrace the surrender to the State by the Morris Canal and Banking Company and the Lehigh Valley Railroad Company of all the right and title acquired by or vested in said Companies or either of them to impound, divert or take water at any point within the State for any use or purpose in any way incident or pertaining to the canal or to the operation of the canal, its feeders, works or appurtenances.

The aforesaid conveyance shall be subject to the terms of the release given by the Morris Canal & Banking Company and its said lessee to the Mayor and Aldermen of Jersey City, dated May 12, 1909, and subject to the right of said Mayor and Aldermen of Jersey City continuously to maintain its drains, pipes and conduits down and along the inclined plane at Boonton and to conduct the same along the canal at a point below the first lock east of said plane so as to protect the water supply of said City from pollution; and also subject to the provisions of two certain contracts, namely, one made between the Lehigh Valley Railroad Company, the East Jersey Water Company, the Newark Aqueduct Board and the Mayor and Common Council of the City of Newark, dated September 24, 1889, relating to a supply of water for the City of Newark, and the second between the Morris Canal & Banking Company, the Lehigh Valley Railroad Company, and Patrick H. Flynn, dated November 21, 1898, relating to a supply of water for the City of Jersey City.

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(6) The said Companies will assign, transfer and set over to the State of New Jersey all personal and mixed property of the said Companies used in connection with said canal.

(7) The Lehigh Valley Railroad Company will, at its own expense, maintain the said Morris Canal as a canal in the usual manner until the first day of March, 1923.

(8) The Lehigh Valley Railroad Company will assign, transfer and set over to the State of New Jersey, or its nominees, on or before December 30, 1922:—

(a) All of the shares of the capital stock of the Morris Canal & Banking Company owned by said Lehigh Valley Railroad Company, being 9,921 shares of consolidated stock and 11,399 shares of preferred stock.

(b) All of the outstanding bonds of the Morris Canal & Banking Company, which said bonds are owned by said Lehigh Valley Railroad Company and have an aggregate par value of \$500,000.

(c) All of the outstanding preferred scrip of the Morris Canal & Banking Company, which said scrip is owned by the said Lehigh Valley Railroad Company and has an aggregate par value of \$42,080.50.

(9) The Lehigh Valley Railroad Company will acquire and assign, transfer and set over to the State of New Jersey all of the remaining outstanding stock, consolidated and preferred, of the Morris Canal & Banking Company not now owned by said Lehigh Valley Railroad Company. If the said Lehigh Valley Railroad Company cannot, on or before March 1, 1923, purchase such remaining outstanding stock at a price sat-

Lehigh Valley Railroad Company, Lessee, &c.

isfactory to it and it therefore becomes necessary to condemn said shares of capital stock in order to acquire the same, said company shall request the Board of Conservation and Development of the State of New Jersey to bring proceedings in the name of the State to condemn
 10 said stock, and said proceedings shall be taken in accordance with subdivision 5 of the first section of this agreement and in conformity with the provision of Chapter 212 of the Laws of 1922 aforesaid.

Pending the acquisition, by purchase or condemnation, and the transfer of said remaining outstanding shares of consolidated and preferred stock of the Morris Canal & Banking Company, the said Lehigh Valley Railroad Company will
 20 continue to pay the dividends thereon in accordance with its existing guaranty.

The Lehigh Valley Railroad Company will further, upon request by the Board of Conservation and Development of the State of New Jersey, deliver the resignations of all officers and directors of the said Morris Canal & Banking Company.

(10) The said companies will assign, transfer and set over, or cause to be assigned, transferred and set over to the State of New Jersey by a
 30 proper instrument in writing all existing leases, licenses and undertakings covering any part of any of the property to be conveyed or transferred to the State of New Jersey, and will deliver, or cause to be delivered, to the State of New Jersey all documents, maps, records, deeds and muniments of title relating to any of the property to be conveyed or transferred to the
 40 State of New Jersey.

Agreement Relative to Morris Canal.

(11) The Lehigh Valley Railroad Company will execute and deliver to the State of New Jersey on or before March 1st, 1923, a proper instrument in writing releasing any and all claims of every nature and description which the said company has, or may have, against the
 10 Morris Canal & Banking Company.

(12) The said Companies hereby withdraw any and all protests heretofore made respecting taxes heretofore paid by the said companies to the State of New Jersey or to any municipality of the State on the canal property. This withdrawal, however, shall not extend to or affect pending appeals involving the assessments for taxes for the years 1921 and 1922 on the "Little Basin" property, and the Lehigh Valley Railroad Company hereby agrees with respect to
 20 such assessments for taxes for the years 1921 and 1922 on the "Little Basin" property to pay such taxes as may finally be determined on said appeals to be due. Said companies shall not, nor shall either of them, be responsible for any taxes assessed for the calendar year 1923 or for any period after January 1, 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of this agreement.
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(13) The said Companies agree that any rents collected by them, or either of them under existing leases, undertakings or licenses, covering or relating to any of the property to be conveyed or transferred to the State of New Jersey under the terms of this agreement for any period extending beyond January 1, 1923, shall be apportioned as of that date; rents for any leasehold period prior to January 1, 1923,
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Lehigh Valley Railroad Company, Lessee, &c.

shall be collected by and be the property of the Lehigh Valley Railroad Company.

10 (14) The Lehigh Valley Railroad Company will, in each of the several deeds of conveyance and instruments of transfer to be delivered here-
under by said company to the State of New Jersey, covenant that the property and rights to be conveyed or transferred are free from encumbrances, except as the same may be encumbered by rights created by and existing under the leases, agreements and other writings enumerated in the schedule attached hereto and marked "Schedule A," and except the mortgage securing the payment of bonds in the amount of five hundred thousand dollars (\$500,000) herein-
before referred to, and except encumbrances otherwise specifically set forth in this agreement.

20 There shall be excepted from the said several covenants against encumbrances and from the several covenants against grantor's acts which said Lehigh Valley Railroad Company has herein undertaken to enter into, the rights created by and existing under the leases, agreements and writings enumerated in the said Schedule A and said mortgage securing an issue of bonds in the amount of five hundred thousand dollars
30 (\$500,000) and any other encumbrances specifically set forth in this agreement.

(15) It is the intent of this agreement to vest in the Lehigh Valley Railroad Company all present and reversionary rights of the State of New Jersey in the properties referred to in Section 1 hereof, and to vest in the State of New Jersey all other property and rights of every description acquired by the Morris Canal & Banking Company and by the Lehigh Valley
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Agreement Relative to Morris Canal.

Railroad Company as its lessee, with the exceptions herein specifically provided.

(16) The Lehigh Valley Railroad Company covenants at its own expense to continue in possession and operate the canal and to maintain the same as hereinbefore provided under the existing lease until March 1, 1923, and the Morris Canal & Banking Company and the State of New Jersey covenant that the existing lease shall on that day be cancelled; the obligations of the Lehigh Valley Railroad Company for the payment of dividends on the outstanding stock to continue as hereinbefore provided.

(17) The Lehigh Valley Railroad Company hereby covenants that all debts of the Morris Canal & Banking Company have at the time of the execution hereof been paid and satisfied, except the liability for the payment of an issue of five hundred thousand dollars (\$500,000) par value of bonds and an issue of scrip as hereinbefore referred to, and that no indebtedness shall be incurred by said Morris Canal & Banking Company subsequent to the execution hereof and prior to the delivery to the State of New Jersey of the outstanding capital stock of said Morris Canal & Banking Company now owned by the Lehigh Valley Railroad Company, and the said Lehigh Valley Railroad Company further covenants to indemnify and save the Morris Canal & Banking Company and the State of New Jersey harmless from any claim or liability arising out of the operation of the canal property prior to March 1, 1923.

(18) The deeds of conveyance, instruments of assignment and transfer and other writings, to be executed and delivered by the parties hereto in performance hereof, shall be approved as to
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Lehigh Valley Railroad Company, Lessee, &c.

form by the Attorney General of the State of New Jersey and shall be mutually delivered together with all documents, maps, records, deeds and other muniments of title at the office of the Board of Conservation and Development of the State of New Jersey in the City of Trenton on
 10 the first day of March, 1923, between the hours of 10 o'clock in the forenoon and 3 o'clock in the afternoon, except as any other time or times may hereinbefore have been specifically designated with respect to the delivery of any such conveyance, instruments of transfer and other writings.

(19) The Morris Canal & Banking Company covenants to execute and deliver to the Lehigh Valley Railroad Company a proper instrument
 20 of conveyance of all of its right, title and interest, free from any lien or encumbrance created subsequent to delivery to the State of New Jersey of stock of the Morris Canal & Banking Company, now owned by the Lehigh Valley Railroad Company, in the lands, lands under water and other canal property in respect of which the right, title and interest, present and reversionary of the State of New Jersey is, under the terms of this agreement, to be conveyed to the
 30 Lehigh Valley Railroad Company.

IN WITNESS WHEREOF the parties hereto have duly executed this instrument in quintuplicate the day and year first aforesaid.

FRANK H. SOMMER,
 LOUIS FOCHT,
 E. L. YOUNG,
 Commissioners acting on behalf
 of the State of New Jersey.

Agreement Relative to Morris Canal.

MORRIS CANAL & BANKING COMPANY,

By E. E. LOOMIS,
President.

(SEAL)

Attest:

D. G. BAIRD,
Secretary.

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LEHIGH VALLEY RAILROAD COMPANY,

By E. H. BOLES,
Vice-President.

(SEAL)

Attest:

D. G. BAIRD,
Secretary.

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Lehigh Valley Railroad Company, Lessee, &c.

SCHEDULE A

This schedule, attached to the original contract, contains an itemized list of agreements relating to wires, pipes, leases, easements and other miscellaneous privileges (1) affecting the canal property between Hackensack River and Green's Bridge, Phillipsburg, as of November 1, 1922; (2) affecting the Little Basin at Jersey City, N. J.; and (3) affecting waterway between Hackensack River and the south side of Main Street, adjacent to Green's Bridge, in the town of Phillipsburg, in respect of covenants in deeds as to existing bridges, etc.

[NOTES—Original contract filed December 1, 1922, in the office of the Secretary of State of the State of New Jersey, Trenton, N. J., and duplicate original filed December 1, 1922, in the office of the State Board of Conservation and Development, Trenton, N. J.]

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OPINION.

Filed April 1, 1925.

NEW JERSEY SUPREME COURT.

No. 232, January Term, 1925.

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LEHIGH VALLEY R. R. Co., Lessee of Morris Canal & Banking Company, <i>Prosecutor,</i>	}	<i>No. 232.</i>
<i>vs.</i> STATE BOARD OF TAXES AND AS- SESSMENT, <i>et als.,</i> <i>Defendants.</i>		<i>Certiorari.</i>

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Submitted January term, 1925; decided March 31, 1924.

An agreement dated November 29, 1922, providing for the conveyance to the prosecutor and to the State of New Jersey certain properties therein described, under the provisions of the Statute P. L. 1922, p. 367, as follows:

“said companies shall not, nor shall either of them, be responsible for any taxes assessed for the calendar year 1923, or for any period after January 1, 1923, on the property conveyed.”

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HELD, the agreement does not apply to taxes levied under a statute, which requires the valuations to be complete and a lien to take effect on the first day of November, 1922.

The words in the agreement “taxes assessed for the calendar year 1923” described the act

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Lehigh Valley Railroad Company, Lessee, &c.

of laying the tax, the word "Assessed" is synonymous with the word levy. It means an official valuation of property for taxation. It does not mean simply the computation of the tax.

10 Before Justices Kalisch, Black and Campbell.

For the State, Mr. Edward P. Stout.

For the prosecutor, Messrs. Collins and Corbin, Mr. Robert J. Bain.

The opinion of the Court was delivered by BLACK, J.

20 The certiorari was allowed in this case to review the assessment made by the State Board of Taxes and Assessment, for the so-called taxes of 1923, on the waterway of the Morris Canal, extending from the center line of Washington street in Jersey City to the East Bank of the Hackensack River in Jersey City valued at \$375,000 and on the waterway of the Morris Canal from the south side of Main street in Phillipsburg to the Delaware River valued at \$12,900. This property was to be conveyed to the Lehigh Valley R. R. Co. by a deed dated February 28, 1923, under the agreement dated November 29, 1922.

30 The point involved in the case is a question of law. It is the same point raised, as in the 38,380 acre (3rd) tract of land of the Lehigh Valley R. R. Co., in Case No. 224, in which a public waterway or channel of 250 feet wide having an area of 12,541 acres through the Big Basin was to be conveyed to the State of New Jersey on February 28, 1923, under the agreement of November 29, 1922. The claim is made under the Statute P. L. 1922, p. 367,

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Opinion of Supreme Court.

approved March 11, 1922, under which, the respective claims of the State and the parties were to be settled on the abandonment of the Morris Canal. Under that statute, an agreement was made by the Commissioners for such a settlement dated November 29, 1922. Deeds of conveyance were to be made in pursuance of that agreement, dated February 28, 1923, as above stated. The twelfth paragraph of the agreement provides as follows: "Said companies shall not, nor shall either of them, be responsible for any taxes assessed for the calendar year 1923, or for any period after January 1, 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of this agreement."

20 The assessments were made under the *Railroad Tax Act* P. L. 1888, p. 269, as amended by P. L. 1918, p. 1078 and by P. L. 1922, p. 14. Those statutes provide, that statements or schedules must be returned to the State Board by the companies, on or before the 1st day of March, 1922; stating the property of the companies, as it existed on the 1st day of January 1922. So, in P. L. 1905, p. 189. By the Statute P. L. 1922, p. 14, sec. 5, the State Board shall complete their valuations by the first day of November following, the date fixed for filing the reports by the companies, *i. e.*, by the 1st day of November, 1922. So, in the Act P. L. 1888, p. 269, sec. 9, the lien shall take effect on the first day of November.

Under this statement of facts, the prosecutor now seeks to have the taxes on the property adjusted or annulled and set aside. The point was made by proofs and exceptions on the appeal, before the State Board, as the proper practice,

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Lehigh Valley Railroad Company, Lessee, &c.

as pointed out in the case of the *Central R. R. Co. v. State Board of Assessors*, 49 N. J. L. 1. The State Board denied the application. Hence, the legal question involved for solution.

10 By the Act P. L. 1922, p. 15, sec. 4, the State Board shall certify and report to the Comptroller of the State on or before the first day of June following the completion of their proceedings for review. So, the taxes shall be due and payable into the State Treasury on any day between the 1st day of June and the 1st day of December following, P. L. 1922, p. 14, sec. 4. So, in P. L. 1921, p. 366, sec. 3.

20 By the original Railroad Tax Act, that of 1884, P. L. 1884, p. 142, the State Board of Assessors was required to meet on the first Monday of July, to complete their assessments by the first day of November, a copy of the valuations to be served upon the companies within ten days after the first day of November. So, the Board was required to certify on or before the first day of December in each year, a statement of the assessed valuation of the property of each company and the amount of tax payable. The tax was payable on any day between the first day of November and the first day of February following. The Board was required to meet on 30 the third Monday in November for the purpose of reviewing their assessments. The Board could adjourn from time to time till they had finished their hearings.

40 These provisions were carried into the act as re-drafted and re-enacted in 1888, p. 269. Thus, it will be seen by the original Railroad Tax Act, and, as re-drafted in 1888, p. 269, the assessments were made and completed within the calendar year. The law so stood until the Act P. L. 1918,

Opinion of Supreme Court.

p. 1078, was passed. The provision was carried into that act, which requires the State Board to complete the valuations by the first day of November, as in the earlier acts: So, in P. L. 1922, p. 15, sec. 5. These later acts, P. L. 1918, p. 1078; P. L. 1921, p. 365; P. L. 1922, p. 14, simply gave the State Board further time in which to 10 hear the complaints, as to the valuations to make the computations, applying the tax rates computed as provided in the statute, certify the same to the Comptroller of the State, and extend the time of payment to a period, between the first day of June and the first day of December following the completion of the valuations. But the Statute P. L. 1922, p. 14, requires the valuations to be completed on the first day of November preceding. The State Board to meet on the 20 third Monday in June to conclude their hearings before the fifteenth day of October following. The State Board shall certify to the Comptroller of the State all corrections which they shall make in any assessment on or before the fifth day of November, P. L. 1922, p. 15, sec. 6. It is provided in P. L. 1888, p. 277, sec. 12. All complaints must be presented to the State Board on or before the third Monday of November or they shall be deemed to have been waived. 30 But in practice this point is treated as being repealed by P. L. 1922, p. 15, sec. 6.

All that comes after the completion of the valuations on November first in each year is largely ministerial and administrative work, except perhaps, the hearing of the complaints; mostly computations.

So, that, while the taxes are now spoken of as of the year in which the State Board certifies the taxes to the Comptroller of the State, with 40

Lehigh Valley Railroad Company, Lessee, &c.

the amount of the tax that is due (in this case 1923). The taxes in point of fact are those, for which the companies are liable under the statute, which provides, the Board shall complete their assessments and the lien shall take effect the previous November 1st, *i. e.*, 1922. At that time, the situation had arrived, when the liability of the companies became fixed, so, what the commissioners did by their agreement of November 29, 1922, providing for a conveyance on February 28, 1923, is immaterial, so far as the taxes under investigation are concerned. So, it has no application to the valuations, which by the statute must be completed on or before the first day of November, 1922. Any other construction of the clause in the agreement, probably, would render it in conflict with the constitution Art. 4, sec. 7, par. 12. But it is not necessary to discuss or decide this point. The words "Taxes assessed for the calendar year 1923" used in the agreement of November 29, 1922, describe the act of laying the tax, the word assessed is synonymous with the word levy, that was completed on November 1, 1922. *New Jersey Midland R. R. Co. v. Mayor, &c. Jersey City*, 42 N. J. L. 99. It means an official valuation of property for taxation. It does not mean simply the computation of the tax. Vol. 1 *Words and Phrases*, p. 547.

So, we conclude the taxes involved in this appeal and the taxes levied on the third tract of land in Case No. 224, should be affirmed as they are not affected by the agreement of November 29, 1922.

RULE FOR JUDGMENT.

Entered April 15, 1925.

NEW JERSEY SUPREME COURT.

LEHIGH VALLEY RAILROAD COMPANY, Lessee of Morris Canal and Banking Company,

*Prosecutor,**vs.*

THE STATE BOARD OF TAXES AND ASSESSMENT, NEWTON A. K. BUGBEE, Comptroller of the Treasury, THE MAYOR AND ALDERMEN OF JERSEY CITY, and MORRIS CANAL AND BANKING COMPANY,

*Defendants.**On Certiorari.**Rule for Judgment.*

The Court having inspected and reviewed the valuations and assessments of taxes for the year 1923 of prosecutor's property and the proceedings thereon and final determination, certificate and report of the State Board of Taxes and Assessment in respect thereto, returned with the certiorari in this cause, and duly considered the reasons filed and heard the argument of counsel thereon, and finding no error in said valuations and assessments the proceedings thereon and final determination, certificate and report of the State Board:

It is ORDERED, that said valuations and assessments of taxes as fixed and determined by the

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Lehigh Valley Railroad Company, Lessee, &c.

judgment of said State Board of Taxes and Assessment be in all things affirmed.

Entered, April 15, 1925.

On motion of

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EDWARD P. STOUT,
Attorney for Defendants.

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NOTICE OF APPEAL.

Filed May 14, 1925.

NEW JERSEY SUPREME COURT.

LEHIGH VALLEY RAILROAD COMPANY, Lessee of Morris Canal and Banking Company,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, NEWTON A. K. BUGBEE, Comptroller of the Treasury, THE MAYOR AND ALDERMEN OF JERSEY CITY, and MORRIS CANAL AND BANKING COMPANY,
Defendants-Respondents.

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On Certiorari.

Notice of Appeal.

(State Assessments for Year 1923.)

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To HON. EDWARD L. KATZENBACH, Attorney-General, attorney of defendants, the State Board of Taxes and Assessment, Newton A. K. Bugbee, Comptroller of the Treasury, and Morris Canal and Banking Company, and

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THOMAS J. BROGAN, Esq., attorney of defendant, the Mayor and Aldermen of Jersey City.

TAKE NOTICE, that the prosecutor in the above-entitled cause appeals from the whole of the judgment entered in said cause, to the New Jersey Court of Errors and Appeals, on the following grounds:

Said judgment is erroneous in that it affirmed the valuations and assessments of taxes as fixed

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Lehigh Valley Railroad Company, Lessee, &c.

and determined by the judgment of the State Board of Taxes and Assessment, brought before the Supreme Court by the writ of certiorari in said cause, whereas said court by its judgment should have set aside said valuations and assessments of taxes for one or more of the reasons filed in that court.

COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

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New Jersey Court of Errors and Appeals

LEHIGH VALLEY RAILROAD COMPANY OF
NEW JERSEY,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND AS-
SESSMENT; NEWTON A. K. BUGBEE,
Comptroller of the Treasury; and
the MAYOR AND ALDERMEN OF JERSEY
CITY,
Defendants-Respondents.

On Appeal from
Supreme Court.
(State Assess-
ments for
1923.)

LEHIGH VALLEY RAILROAD COMPANY,
Lessee of Morris Canal and Bank-
ing Company,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND AS-
SESSMENT; NEWTON A. K. BUGBEE,
Comptroller of the Treasury; the
MAYOR AND ALDERMEN OF JERSEY
CITY; and MORRIS CANAL AND BANK-
ING COMPANY,
Defendants-Respondents.

On Appeal from
Supreme Court.
(State Assess-
ments for
1923.)

**BRIEF FOR LEHIGH VALLEY RAILROAD
COMPANY OF NEW JERSEY, AND LE-
HIGH VALLEY RAILROAD COM-
PANY, LESSEE, APPELLANTS.**

1.

Statement of the Cases.

These two appeals are by the Lehigh Valley Railroad Company of New Jersey and the Le-

high Valley Railroad Company, Lessee of the Morris Canal and Banking Company, respectively, from judgments of the Supreme Court affirming taxes assessed for the year 1923, under the provisions of the act for the taxation of railroad and canal property, upon their property in conjunction with other property formerly owned by them but conveyed to the State of New Jersey under an agreement relating to the Morris Canal dated November 29, 1922, between commissioners appointed by an act of the legislature, the Lehigh Valley Railroad Company and the Morris Canal and Banking Company.

No questions as to property values or methods of valuation are involved in the appeals. They deal only with the construction and application of the agreement mentioned.

This agreement was made under an act of the legislature, approved March 11, 1922, authorizing the acquisition of the Morris Canal by the State of New Jersey and providing for a commission to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, owner and lessee, respectively, of the canal property, which act provided as follows; (P. L. 1922, p. 367):

“Said commissioners are authorized, in behalf of the State of New Jersey, to make such terms of settlement and agreement between the State and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company as they may deem advisable to secure the transfer of said Morris Canal as hereinbefore defined, in whole or in part, to the State of New Jersey, subject to the limitations hereinafter provided. Such settlement and agreement may include the grant by the State of any of said canal property, or the State’s rights therein, to the Lehigh Valley Railroad Company, in

“consideration of the release by said company of its rights in the remainder of said Morris Canal property, or upon other consideration in whole or in part; provided, that said commission shall not be authorized to make any settlement obligating the payment of any sum of money by the State to the Lehigh Valley Railroad Company or said Morris Canal and Banking Company or any other person.”

The commissioners appointed by this act entered into an agreement in writing with the Morris Canal and Banking Company, and the Lehigh Valley Railroad Company, dated November 29, 1922, wherein it was provided that the following property should be conveyed to the Lehigh Valley Railroad Company; (Case, pp. 93-108):

1. The Big Basin in Jersey City which was granted by the State to the Morris Canal and Banking Company in the year 1867 and subsequently leased to the Lehigh Valley Railroad Company, excepting therefrom a strip of land under water 250 feet wide for a public waterway.

2. The lands of the Canal Company in Jersey City and Bayonne between the center line of Washington Street in Jersey City and the Hackensack River.

3. The lands of the Canal Company from the southerly line or side of Main Street adjacent to Green’s Bridge to the Delaware River in the Town of Phillipsburg.

The agreement also provided for conveyance of the following portions of the canal property to the State of New Jersey:

1. The Little Basin of the canal in Jersey City.

2. The lands under the waters of a channel 250 feet wide extending from the Hudson River through the above mentioned Big Basin.

3. The lands and rights of way of the Canal Company between the westerly shore of the Hackensack River in the Town of Kearny and the southerly line or side of Main Street adjacent to Green's Bridge in the Town of Phillipsburg, together with the feeders and water rights between those points.

It was provided in and by this agreement that; (Case, p. 103, ll. 24-30):

“Said companies shall not, nor shall either
“of them, be responsible for any taxes as-
“sessed for the calendar year 1923 or for any
“period after January 1, 1923, on the prop-
“erty conveyed and transferred or to be con-
“veyed and transferred to the State of New
“Jersey under the terms of this agreement.”

The Little Basin of the canal in Jersey City was taxed locally by Jersey City and the assessment upon it is not in dispute on the present appeals.

The question on the appeals is with respect to the assessments on the lands in the channel through the Big Basin in Jersey City and the canal property between the westerly shore of the Hackensack River in the Town of Kearny and the southerly line or side of Main Street adjacent to Green's Bridge in the Town of Phillipsburg, which were conveyed to the State under the agreement.

The Big Basin in Jersey City, including the lands in the channel 250 feet wide, which was conveyed to the State under the agreement, contains 38.38 acres of land. The State Board of Taxes and Assessment valued this entire area at the rate of \$65,000. an acre or \$2,494,700. for taxation for the year 1923 and imposed taxes thereon accordingly. Exclusive of the lands in the channel, the Big Basin has an area of 25.839 acres, which, valued at the same rate per acre, would produce \$1,679,535. as its taxable value for the year men-

tioned. The Lehigh Valley Railroad Company of New Jersey, to which the Big Basin was assessed, contends that the lands in the channel should have been excluded from the assessment on the Big Basin and the taxes thereon reduced.

The canal property from Jersey City to Phillipsburg, including the parts conveyed to the Lehigh Valley Railroad Company and those conveyed to the State under the agreement, were taxed for the year 1923 as a unit, although separately valued in each taxing district. The last named company contends that its property should have been separately assessed.

The taxes in question were determined by the State Board of Taxes and Assessment some time between April 1st and June 1st, 1923, and became due on December 1, 1923. The State Board certified the amounts of these taxes to the Comptroller of the Treasury on June 1, 1923, for collection, and shortly thereafter gave notice thereof to the Lehigh Valley Railroad Company of New Jersey and the Lehigh Valley Railroad Company. The companies, upon discovering that they had been taxed for the property conveyed to the State as well as their own property, complained to the State Board against the assessments, pursuant to the provisions of the act for the taxation of railroad and canal property, and asked the State Board to eliminate the property conveyed to the State from the assessments on their property (Case, pp. 810; pp. 68-71; p. 85, l. 17; p. 90, l. 14). The State Board refused such relief and the assessments were reviewed by the Supreme Court on writs of certiorari and affirmed, the Supreme Court holding, in effect, that the agreement of November 29, 1922, did not apply to the taxes in question because they were based upon valuations of the property involved which had been made by the State Board on November 1, 1922, and became

a lien on that date under section 9 of the original act for the taxation of railroad and canal property.

2.

Grounds of Appeal.

The several reasons presented to the Supreme Court for setting aside or reducing the assessments and taxes in question, and which are here submitted, can, for the purpose of brevity, be stated as follows:

The assessments of taxes for the year 1923 on the railroad and canal property of the Lehigh Valley Railroad Company of New Jersey and the Lehigh Valley Railroad Company erroneously include taxes upon certain property which was conveyed to the State of New Jersey under the agreement of November 29, 1922, and, therefore, the assessments are excessive and in violation of the agreement.

3.

Brief of the Argument.

The taxes in question were assessed for the year 1923 under the provisions of the act for the taxation of railroad and canal property and were designated as the taxes for the year 1923 by that act. They are the taxes mentioned in the agreement of November 29, 1922, and the agreement applied to them.

A supplement to the act for the taxation of railroad and canal property, approved March 5, 1918, provided as follows (P. L. 1918, p. 1082; Supp. to Comp. Stat., p. 3549):

“The assessment and collection of taxes
“upon the property of railroads and canals
“for the year nineteen hundred and eighteen,

“and all proceedings and remedies relating
“thereto, shall be taken, completed and availed
“of as now provided by law. The assessment
“and collection of such taxes for the year
“nineteen hundred and nineteen, and all pro-
“ceedings and remedies relating thereto,
“shall be conducted, completed and availed
“of within the calendar year of nineteen hun-
“dred and nineteen, at the times specified in
“this act, the same as if the assessment of
“such taxes had been made by November
“first, previous; and for the purpose of en-
“abling such assessment and collection of
“taxes for the year nineteen hundred and
“nineteen, and all proceedings and remedies
“relating thereto, to be conducted, completed
“and availed of within said calendar year of
“nineteen hundred and nineteen, the assess-
“ment of such taxes shall be made on the fif-
“teenth day of January, nineteen hundred
“and nineteen, and shall be considered to
“have been finally reviewed and determined
“by the State Board of Taxes and Assess-
“ment on that date, and shall be based upon
“the valuation of the property in question in
“the year nineteen hundred and eighteen;
“and all proceedings, acts and remedies in
“relation to the said taxes and to the pay-
“ment thereof for the year nineteen hundred
“and nineteen, subsequent to the assessment
“made on January fifteenth, nineteen hun-
“dred and nineteen, as aforesaid, shall be in
“accordance with the dates fixed for the do-
“ing and taking of such acts, proceedings and
“remedies under this act. It being the intent
“of this act that the proceedings relating to
“the taxes upon the property of railroads
“and canals for the year nineteen hundred
“and eighteen shall be conducted and com-
“pleted in accordance with the present exist-
“ing law; the proceedings relating to taxes
“upon said property for the year nineteen
“hundred and nineteen, and to the payment
“of said taxes, conducted and completed with-
“in the calendar year of nineteen hundred
“and nineteen, as nearly as may be in ac-

“cordance with the schedule of dates fixed in this act; and the proceedings relating to taxes upon said property for the year nineteen hundred and twenty and subsequent years conducted and completed entirely in accordance with the schedule of dates fixed in this act.”

The schedule of dates fixed in the supplement of 1918 was as follows:

- March 1. Railroad and canal companies report their property to the State Board of Taxes and Assessment as it existed on the first day of January, preceding.
- First Tuesday of March. Meetings of State Board of Taxes and Assessment begin for the purpose of ascertaining the value of railroad and canal property.
- First Monday of July. Meeting of State Board of Taxes and Assessment for purpose of giving a hearing to parties interested in valuations and assessments.
- November 1. Limit of time for completion of valuations and computation of taxes by State Board of Taxes and Assessment.
- November 10. Limit of time for service of statements of assessed valuations and amounts of taxes by State Board of Taxes and Assessment on companies.
- Third Monday of November. Meeting of State Board of Taxes and Assessment for purpose of reviewing assessments on written complaint of any party interested.
- February 15. Limit of time for completion of review of assessments by State Board of Taxes and Assessment.

March 1. Limit of time for certification of assessed valuations and amounts of taxes by State Board of Taxes and Assessment to Comptroller of the Treasury; also for certification of assessed valuations by State Board of Taxes and Assessment to county boards of taxation and local assessors for inclusion in ratables.

April 15-December 1. Taxes payable.

The supplement of 1918 was approved on the fifth day of March of that year. The first date in the schedule contained therein is the first day of March when reports of railroad and canal property to the State Board of Taxes and Assessment are required, and the last date is the first day of December in the following year when taxes become due. No taxes could have been assessed for the year 1919 according to such schedule and the legislature provided that taxes for the year 1919 should be assessed on January 15, 1919, according to valuations for the year 1918, made on the first day of November, 1918.

Reports of railroad and canal property to the State Board of Taxes and Assessment for taxation for the year 1920, were, however, required on March 1, 1919. The valuation of such property for taxation for the year 1920, was completed by the State Board on November 1, 1919, the taxes for the year 1920, were computed by the State Board and certified to the Comptroller of the Treasury on March 1, 1920, for collection, and the taxes for that year were payable between April 1st and December 1st, 1920.

The taxes for the year 1921, were based on valuations made on November 1, 1920, were certified by the State Board of Taxes and Assessment to the Comptroller of the Treasury on March 1,

1921, for collection, and were payable between April 1st and December 1st, 1921.

Thus, the proceedings relating to the taxes for the years 1919, 1920 and 1921 were, and the proceedings relating to the taxes for subsequent years would be, according to the schedule of dates provided by the supplement of 1918, completed in the year for which the taxes were assessed, although based on valuations made on the first day of November in the preceding year.

There was, however, a flaw in the schedule of dates provided by the supplement of 1918. The value of second class railroad and canal property (real estate used for railroad and canal purposes, respectively, other than main stem or water way), is included in local ratables for the purpose of ascertaining local rates of taxation which are applied to such property. Local rates are determined by county boards of taxation on or before the tenth day of March of the year for which local taxes are levied under the provisions of the general tax act of 1918 (P. L. 1918, p. 867; Supp. to Comp. Stat., Vol. 2, p. 3496, sec. 508). By the supplement of 1918 to the act for the taxation of railroad and canal property, the State Board of Taxes and Assessment was required to compute the taxes on all railroad and canal property, including second class property, on or before the first day of November of the year preceding that for which the taxes on railroad and canal property were levied. It followed that the taxes on second class railroad and canal property for each year would be levied according to local rates for the preceding year.

For the purpose of overcoming this difficulty, the supplement of 1918 was amended and supplemented by an act approved February 14, 1922, which changed the schedule of dates contained in the supplement of 1918 and made it as follows,

the changes being shown by italics (P. L. 1922, p. 14; Supp. to Comp. Stat. pp. 3547, 3549):

- March 1. Railroad and canal companies report their property to the State Board of Taxes and Assessment as it existed on the first day of January, preceding.
- First Tuesday of March. Meetings of State Board of Taxes and Assessment begin for the purpose of ascertaining the value of railroad and canal property.
- First Monday of July. Meeting of State Board of Taxes and Assessment for purpose of giving a hearing to parties interested in valuations and assessments.
- November 1. Limit of time for completion of valuations by State Board of Taxes and Assessment. *No computation of taxes.*
- December 10. Limit of time for certification of assessed valuations of second class railroad and canal property by State Board of Taxes and Assessment to county boards of taxation and local assessors.*
- June 1. Limit of time for certification of assessed valuations and amounts of taxes by State Board of Taxes and Assessment to Comptroller of the Treasury.*
- June 10. Limit of time for service of statements of assessed valuations and amounts of taxes by State Board of Taxes and Assessment on companies.*
- Third Monday of June. Meeting of State Board of Taxes and Assessment for purpose of reviewing assessments on written complaint of any party interested.*

- October 15. *Limit of time for completion of review of assessments by State Board of Taxes and Assessment.*
- November 5. *Limit of time for certification of corrections in assessments by State Board of Taxes and Assessment to Comptroller of the Treasury.*
- December 1. Taxes due.

The amendment and supplement of 1922 was approved on February 14, 1922, and provided as follows:

“This act shall take effect immediately and apply to the valuation and assessment of railroad and canal property for taxation for the year nineteen hundred and twenty two, including any and all proceedings now pending in respect of the taxation of such property for said year.”

The taxes on railroad and canal property for the year 1922 were, therefore, those certified by the State Board of Taxes and Assessment to the Comptroller of the Treasury on June 1st, 1922, and which became due on December 1st, 1922, although based on valuations made on November 1st in the preceding year.

Then followed the assessment of taxes for the year 1923 which began with reports of railroad and canal property to the State Board of Taxes and Assessment on March 1st, 1922. Such reports were followed by valuations on November 1st, 1922, and certification of taxes by the State Board to the Comptroller of the Treasury on June 1st, 1923, for collection. The taxes for the year 1923 became due on December 1, 1923.

The taxes on railroad and canal property which were certified by the State Board of Taxes and Assessment to the Comptroller of the Treasury

on June 1, 1923, for collection, and which became due on December 1, 1923, were plainly the taxes assessed for the year 1923 under the provisions of the act for the taxation of such property, and were so designated by that act. With respect to the present cases, they were the taxes assessed for the calendar year 1923 mentioned in the agreement of November 29, 1922, and the agreement applied to them.

The agreement could not have applied to the last preceding taxes which became due on December 1, 1922, for they were in no sense the taxes assessed for the year 1923. Nor could the agreement have applied to the next succeeding taxes which became due on December 1, 1924, the entire assessment of which was subsequent to the date of the agreement. Regardless of the provision in the agreement, the two railroad companies would not have been liable for the latter.

The Supreme Court, however, concluded that the word “assessed” in the agreement of November 29, 1922, was synonymous with the word “levy”, and that the words “assessed for the calendar year 1923” in the agreement described the act of laying the tax which, in these instances, was done on November 1, 1922, when the official valuation of the property involved for the purpose of taxation in the year 1923 was completed and the taxes became a lien under section 9 of the original act of 1888 for the taxation of railroad and canal property. For these reasons, the Supreme Court held that the agreement did not apply to the taxes in question (Case, pp. 109-114).

The conclusions of the Supreme Court overlooked the provisions of the supplements of 1918 and 1922 to the act for the taxation of railroad and canal property and, we submit, were erroneous in other respects.

The words "assessed" and "levied" are not synonymous in law, and the word "assessed" as used in the agreement of November 29, 1922, was not synonymous with the word levy; nor did the words "taxes assessed for the calendar year 1923" in the agreement describe only the act of laying the tax. Properly construed, the words "taxes assessed for the calendar year 1923" mean the taxes for the year 1923 prescribed by legislative act and assessed in the manner provided by the legislature.

The difference in the meaning of the words "assessed" and "levied" with respect to taxation was pointed out in the case of *Township of Bernards et al. v. Allen et al.*, 61 N. J. L. 228-238, as follows:

"Every system of taxation consists of two parts—one the levying of taxes, the imposition of taxes on persons or property; the other, the assessment and collection of taxes. The first is a legislative function controlled by constitutional prescriptions; the other, the assessment and collection of taxes, is mere machinery by which the legislative purpose is effectuated. * * *

"The legislature, having prescribed a rule of taxation, may entrust the assessment and collection of taxes, in conformity with prescribed rules, to officers appointed by other authority. The acts providing for taxation of railroads and canals are precedents of this import. The legislature prescribed that certain designated property of these corporations should be taxed at an assessed valuation at an annual state tax of one-half of one per cent. The valuation of the property with respect to which taxes were imposed, and the computation of the amount of taxation thereon, were matters committed to a state board of assessors appointed by the governor. The legislature, in this instance, prescribed the rule by which taxation should be made, and committed to the

"state officers the ministerial duties of ascertaining by valuation, computation and assessment, the amount of tax to be paid by these companies."

This distinction between the levying and assessment of taxes was recognized in the case of *American Woolen Co. v. Edwards et al.*, 90 N. J. L. 69; affirmed 293.

The case of *New Jersey Midland R. R. Co. v. Mayor and Aldermen of Jersey City*, 42 N. J. L. 99, cited in the opinion of the Supreme Court in the present cases is not controlling. The question in the case cited was whether provisions for a state tax and "that no other tax or impost shall be levied or assessed upon said company" in the charter of the New Jersey Midland Railroad Company exempted that company from assessments for local improvements. It was there held that the word "assessed" as used in the charter was synonymous with the word "levy." The difference between the wording of the statute in the case cited and that of the agreement in the present cases is apparent.

Furthermore, in the later case of *American Woolen Co. v. Edwards, supra*, Justice Swayze, who delivered the opinion of the Supreme Court, said:

"Although levied and assessed are not always used in our statutes with nice distinction as to the difference of meaning, and the conjunction *or* might conceivably be used to connect synonymous words, I think that construction is not permissible in the present case. A little more than two years before the act of 1900 was passed, the Court of Errors and Appeals, in the very important case of *Township of Bernards v. Allen*, 61 N. J. L. 228, 238, had sharply drawn attention to the distinction between the levy and the assessment of taxes, and had said

“that the levy was a legislative function, the assessment mere machinery to effectuate the legislative purpose. We must assume that thereafter the words were used in our statutes with this judicial definition in view.”

The word “assessed” as used in the agreement of November 29, 1922, in the present cases was, therefore, not synonymous with the word “levy” and referred to the proceedings for levying the taxes rather than to the act of laying them.

The distinction between the levying and assessment of taxes is, however, immaterial in the present cases because the substantial question is whether the taxes involved were those for the year 1923 prescribed by the legislature or levied by legislative act, either expressly or by necessary implication.

The Supreme Court was of opinion that the taxes in question were not those for the year 1923 because they were based on valuations completed on November 1st, 1922, and became a lien on that date under section 9 of the original act of 1888 for the taxation of railroad and canal property.

The taxes in question were not levied on November 1st, 1922, when the valuations therefor were completed for the reason that the amount thereof was not then determined and the assessment completed. There was no levy until the taxes were certified to the Comptroller of the Treasury on June 1st, 1923, for collection. Nor did the taxes become a lien on November 1st, 1922, the provisions of section 9 of the original act of 1888 for the taxation of railroad and canal property with respect to lien having been superseded by the supplements of 1918 and 1922 to the act.

It was said in the case of *American Woolen Co. v. Edwards, supra*, that

“These considerations, however, are far from conclusive, since it may well be con-

“tended that there is no levy until the amount is ascertained (*Hohenstatt v. Bridgeton*, 62 N. J. L. 169), and the real question for solution is when the levy may be said to be completed. * * * The statute does not, however, require payment in advance at the beginning of the year, but only in June after the ascertainment of the amount. By analogy to the rule as to property taxes, this would indicate that the liability as to payment depends on the situation at the time the amount is certified to the comptroller. *Jersey City v. Montville*, 84 N. J. L. 43, affirmed, 85 Id. 372.”

In the case of *Hohenstatt v. Bridgeton*, 62 N. J. L. 169, it was said

“The phrase ‘levy and assessment’ in the tax legislation now before us, means the doing of whatever things are required to be done in order to authorize the collector to gather the tax. This is the meaning that must have been given to a like phrase by this court in *Poillon v. Rutherford*, 29 Vroom 113.”

The taxes in question did not become a lien on November 1, 1922.

Section 9 of the original act of 1888 for the taxation of railroad and canal property provided as follows (P. L. 1888, p. 274; Comp. Stat., p. 5268):

“That the state board of assessors shall, upon the completion of their valuation and assessment, proceed to compute the tax upon the entire assessed valuation of each railroad company and of each canal company, as ascertained by them; * * * the sum of the estimates or computations for each company shall constitute the tax to be paid by each company and shall be a lien paramount to all other liens upon all of the lands and tangible property and franchise of such company in this state; such lien shall take effect on the first day of November.”

Under this section of the act as it originally stood, the state board of assessors were required to compute the taxes on railroad and canal property on or before November 1st and the *taxes so computed* constituted the lien which became effective on that date. Thus, the legislature recognized the rule of law that the amount of the tax must be determined before the tax could become a lien (37 Cyc., p. 1139. Cooley on Taxation; Fourth Edition; Vol. 3, p. 2453, sec. 1230; p. 2455, sec. 1232).

Section 9 of the original act of 1888 was, however, changed by the supplement of 1922 to the act which provides as follows (P. L. 1922, p. 15; Supp. to Comp. Stat., pp. 3547-3549):

"5. The State Board of Taxes and Assessment shall complete their valuation by the first day of November following the date fixed for filing reports of railroad and canal property with said board."

"3. On or before the tenth day of December following the completion of their valuation in each year the State Board of Taxes and Assessment shall certify the value of the real estate used for railroad or canal purposes in each taxing district in this State, separately valued and assessed under the provisions of subdivision two (2) of section three (3) of the act to which this act is a supplement (commonly known as second class railroad or canal property), to the county boards of taxation in the several counties and to the assessors in the several taxing districts in which said property is situated. The value of such property so certified shall be included in the amount of ratables to be taxed in the several taxing districts, and the necessary tax rate and the amount of the ratables for such districts shall be ascertained by the county board of taxation in each county and certified to the State Board of Taxes and Assessment on or

"before the first day of April in each year, whereupon the State Board of Taxes and Assessment shall include in the taxes to be assessed by it upon railroad and canal property, a tax upon the property described in this section at the rate in each taxing district that is so as aforesaid certified to said board by the county boards of taxation, and said property shall not be subject to any other tax."

"8. The State Board of Taxes and Assessment shall certify and report to the Comptroller of the State on or before the first day of June, and within ten days thereafter, serve upon the treasurer of each company or leave at his office a statement of the assessed valuation of the property of each company in the State, and of the separate valuation of property in each taxing district, as made by them, the amount of tax payable by such company with respect to its property separately valued in each taxing district, and the aggregate assessed valuation, and the total tax levied upon each company; * * * and the amount of tax payable by each company, as shown by the said statements, shall be due and payable into the State treasury on any day between the first day of June and the first day of December following; * * * if the taxes of any company, or any portion thereof, remain unpaid on the first day of December following the levying thereof, such company shall be considered in default, and such taxes, or such unpaid portion thereof, shall thenceforth bear interest at the rate of one per centum for each month until paid," etc.

The time for computation of the taxes on railroad and canal property was thus extended from November 1st to June 1st in the following year in order to permit certification of local ratables and local tax rates for the year for which railroad taxes are levied, by county boards of taxation to

the State Board of Taxes and Assessment, such ratables and rates being determined by the county boards on March 10th under the provisions of the general tax act of 1918 (P. L. 1918, p. 867; Supp. to Comp. Stat. p. 3496, pl. 208-66d).

The lien created by section 9 of the original act of 1888 for the taxation of railroad and canal property was for the *taxes on such property computed by the State Board of Taxes and Assessment on or before November 1st* in each year. Under the supplement of 1922, no taxes are computed by the State Board on or before that date. They are not computed until sometime between April 1st and June 1st following, when the State Board is informed of local ratables and local rates by the county boards of taxation.

Section 9 of the original act of 1888 did not contemplate the computation of taxes on railroad and canal property from five to seven months after completion of the valuations on November 1st, and the lien created thereby has no reference to taxes levied subsequently to the supplement of 1922 for the reason that the assessment and levying of the taxes, which include determination of their amount, must antedate any lien therefor.

It is stated in 37 Cyc., p. 1139, that

“In order that a tax may attach as a lien upon particular property it is necessary that there shall have been a valid assessment of it, complete in all essentials, and certain and definite in respect to describing the property, the owner and the amount of the tax.”

In Cooley's treatise on the law of taxation it is stated that (Fourth Ed., Vol. 3, p. 2453, sec. 1230; p. 2455, sec. 1232):

“A valid tax assessment is essential to a valid tax lien.”

“The time when a tax becomes due does not necessarily fix the time when it becomes a lien, but there is no lien until the amount of the tax is ascertained.”

The effect of section 9 of the original act of 1888 for the taxation of railroad and canal property in regard to the date of the lien of taxes levied and assessed under that act, was destroyed by the supplement of 1922 to the act, and since the enactment of the supplement there being no statutory date for attachment of lien, it accrues, as in other cases of like character, when the assessment of the taxes has been completed and they are ripe for collection *Hohenstatt v. Bridgeton, supra*.

If such is not the case and some effect must be given to the provision of section 9 of the original act of 1888 with respect to lien, the lien attaches on the first day of November following determination of the amount of the taxes and certification thereof to the Comptroller of the Treasury on June 1st, which in these cases was November 1, 1923.

The premises upon which the Supreme Court based its conclusion that the taxes in question were not those for the year 1923 are contrary to the letter of the supplements of 1918 and 1922 to the act for the taxation of railroad and canal property and otherwise unsound. These taxes were plainly those for the year 1923 prescribed by legislative act and levied by act of the legislature. The agreement of November 29, 1922, applied to them and no others.

The Supreme Court suggested that if the provisions of the agreement of November 29, 1922, were construed to apply to the taxes in question, the agreement would be in conflict with Article 4, section 7, paragraph 12 of the Constitution of the State of New Jersey. This point was,

however, neither discussed nor decided by the Supreme Court, and it is doubtful if it could have been, since the legality of the agreement could not have been attacked in the present cases. Its legality could only have been tested by the Attorney-General on direct proceedings for that purpose.

In any event, Article IV., section VII., paragraph 12 of the Constitution of this State, provides only that "property shall be assessed for "taxes under general laws, and by uniform rules, "according to its true value."

Application of the provisions of the agreement of November 29, 1922, to the taxes in question would not be in violation of this clause of the constitution.

The taxes in question are property taxes. *Central Railroad Company of New Jersey v. State Board of Assessors et al.*, 48 N. J. L. 1.

Assuming that the property conveyed to the State under the agreement of November 29, 1922, was reported to the State Board of Taxes and Assessment on March 1st, 1922 as railroad and canal property according to its condition on January 1st preceding, that the status of such property was then fixed for taxation for the year 1923, and that its elimination from other railroad and canal property for taxation for that year, would be in violation of the above mentioned clause of the constitution, the answer is that the agreement of November 29, 1922, did not provide for such elimination. It merely provided that the railroad companies should not be responsible for the taxes.

The railroad companies do not contend that the property conveyed to the State was exempt from taxation for the year 1923 by virtue of the agreement. That is a claim for the State to make if it would.

The agreement of November 29, 1922, with respect to taxes was like any other agreement between purchaser and seller in regard to payment of taxes on the property to be conveyed and was fully authorized by the legislature.

We respectfully submit that the Lehigh Valley Railroad Company of New Jersey and the Lehigh Valley Railroad Company, respectively, were not responsible for the taxes in question on the property conveyed to the State under the agreement of November 29, 1922, and that the taxes should be reassessed to the end that a separate assessment will be made on the property of said companies.

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New Jersey Court of Errors and Appeals

LEHIGH VALLEY RAILROAD COMPANY
OF NEW JERSEY,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT; NEWTON A. K.
BUGBEE, Comptroller of the Treas-
ury; and THE MAYOR AND ALDER-
MEN OF JERSEY CITY,
Defendants-Respondents.

On Appeal
from
Supreme Court.

(State
Assessments
January 1st
1922.)

LEHIGH VALLEY RAILROAD COMPANY,
Lessee of the Morris Canal and
Banking Company,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT; NEWTON A. K.
BUGBEE, Comptroller of the Treas-
ury; THE MAYOR AND ALDERMEN OF
JERSEY CITY; and MORRIS CANAL
AND BANKING COMPANY,
Defendants-Respondents.

On Appeal
from
Supreme Court.

(State
Assessments
January 1st
1922.)

BRIEF FOR RESPONDENTS.

These appeals bring up for review the judgments of the Supreme Court, affirming State Assessments for taxes made as of January 1st, 1922, of certain first and second class railroad properties, then owned by appellants.

Statement of the Cases.

The State Board of Taxes and Assessment, in compliance with the "Act for the taxation of railroad and canal property" (P. L. 1888, p. 269), assessed as of January 1st 1922, certain first and second class railroad properties of Lehigh Valley Railroad Company of New Jersey and Lehigh Valley Railroad Company, Lessee of the Morris Canal and Banking Company, appellants in the above-entitled causes (Case, p. 7; pp. 52-64), which properties had been reported by these companies to the State Board on or before March 1st 1922, pursuant to the supplement to the Railroad Tax Act (P. L. 1918, p. 1079). The State Board, following the procedure of the Act on or about November 1st 1922, completed its valuations of these properties; on or before June 1st 1923, certified and reported to the Comptroller of the State the assessed valuations of these properties and the amount of the taxes payable by appellants; and, on or before June 10th 1923, served a statement thereof on these companies.

In respect to the instant appeal of the Lehigh Valley Railroad Company of New Jersey, the appellant filed with the State Board on or before the 3rd Monday in June, 1923, a complaint as to the assessments of its second class railroad properties located in Jersey City, which included the "Big Basin" consisting of 38.380 acres (Case, pp. 8-10) here under consideration; and, in respect to the instant appeal of the Lehigh Valley Railroad Company (Lessee of the Morris Canal and Banking Company), the appellant filed with the State Board on or before that date, a complaint as to the assessments of its canal properties formerly owned by the Morris Canal and Banking

Company and then owned by appellant (Case, pp. 68-71). In the latter complaint appellant specified its grievance to be excessive valuations, and that as to the portion of these canal properties agreed to be conveyed to the State of New Jersey under an agreement dated November 29th 1922, made between the Canal Abandonment Commissioners under and by virtue of an Act of the Legislature of the State of New Jersey (Chapt. 212 of the Laws of 1922, p. 367), and the Lehigh Valley Railroad Company and the Morris Canal and Banking Company, referred to in the Agreement as "the companies" (Case, pp. 99-107), same should be assessed separately from appellant's other canal properties because the agreement contained a provision (Case, p. 70), as stated in the complaint, that:

"said Lehigh Valley Railroad Company should not be responsible for any taxes for the calendar year of 1923, or for any period after January 1st 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of said agreement."

As to the properties involved in the complaint of the Lehigh Valley Railroad Company of New Jersey, first-above-mentioned, no reference was made to the agreement nor was there any grievance specified that a separate assessment should be made of that portion of the "Big Basin" property agreed to be conveyed by appellant to the State.

Under the agreement, the conveyances to the State were to be made on March 1st 1923 (Case, pp. 105, 106).

The State Board, after reviewing the assessments upon these complaints, dismissed the appeals and confirmed the valuations of these properties and judgments were entered accordingly (Case, pp. 17, 76).

Appellants then brought these assessments of their properties before the Supreme Court on certiorari; and, as to the "Big Basin" property, along with other of its second class railroad property, appellant questioned the valuations only, and assigned no reasons for setting aside the assessment on that portion thereof agreed to be conveyed to the State (Case, pp. 25, 26); but, as to the canal properties, appellant raised no question as to valuations but claimed that it was not liable for the taxes on the portion thereof agreed to be conveyed to the State (Case, pp. 81, 82). The Supreme Court held that the taxes as assessed were not affected by the agreement and affirmed the assessments (Case, pp. 109-114).

The exact language of the provision of the agreement, upon which appellants rely to be relieved of the taxes in controversy, is as follows:

"Said companies shall not, nor shall either of them, be responsible for any taxes assessed for the calendar year 1923, or for any period after January 1st, 1923, on the property conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of this agreement."

THE QUESTION INVOLVED IS, Whether this provision of the agreement relieved the companies of responsibility for the taxes validly assessed and imposed as of January 1st, 1922, on that portion of these properties thereafter conveyed by them to the State of New Jersey.

ARGUMENT

POINT I.

The taxes in controversy were assessed as of January 1st 1922 and, therefore, the agreement does not apply.

Taxes, under our statutory scheme of taxation, are not assessed for a calendar year, but on a particular day; and, in respect to State Assessments, that day is January 1st and has been so since the enactment by the Legislature of the Act entitled "An Act for the taxation of railroad and canal property" (P. L. 1884, p. 142; 4 Comp. Stat. N. J., p. 5260; 2 Cum. Supp. to Comp. Stat. p. 3547).

In *State v. United N. J. R. R. & C. Co.*, 76 N. J. Law 72, 78, Mr. Justice Swayze said:

"It is a mistake to regard taxes as assessed for a particular period of a year in duration, as if they accrued from day to day like interest. They are, in practice, imposed only once a year, but they constitute a single burden imposed on the day fixed by law. The legislature may impose a tax each month, if it adheres to the constitutional rights of equality and uniformity. The payment of one tax a year does not necessarily secure exemption from a further burden during the year."

In *Jersey City v. Montville*, 84 N. J. Law 45, Mr. Justice Swayze, citing the above case, again said:

"Under our statutory scheme, taxes are imposed, not for a particular year, calendar or fiscal, but on a particular day, and that day, in the case of the general property tax, is May 20th."

In the instant cases the taxes were assessed and imposed as of January 1st 1922 and, under the above authorities, became a burden imposed upon these properties on that date.

It may also be said that under the authorities of this State, that the word "assessed" as used in the agreement is synonymous with "imposed" and "levy", and means the time when the tax assessment is made and the liability for the tax is determined.

In *New Jersey v. Anderson*, 203 U. S. 483; 51 L. Ed. 284, it was held by Mr. Justice Day: that a capital stock tax imposed under the New Jersey Franchise Tax Act, based upon the amount issued and outstanding on January 1st 1903, although the assessment was not completed until July 1st 1903, was legally due and owing at the time the defendant company was adjudicated a bankrupt on April 23rd, 1903;—thereby indicating that the tax liability was fixed as of January 1st 1903, although the amount of the tax was not then determined.

In *American Woolen Co. v. Edwards*, Comptroller, 90 N. J. Law 293, cited by appellants, this Court said:

"It may well be argued that in contemplation of law, the annual (corporation) tax is levied on the first day of January, being the date as of which the taxable status of the corporation is ascertained; and so the United States Supreme Court seems to have thought. *New Jersey v. Anderson*, 203 U. S., 483, 494. We do not decide the point, as it has not been fully argued, and is not necessary to an affirmance of the judgment below, but content ourselves with reservation of the question for decision if and when it is squarely raised." (Word in parenthesis ours.)

It was held in *New Jersey Midland R. R. Co. v. Jersey City*, 42 N. J. Law 97, 99, that: taxes and

imposts are assessed, and that the word "assessed" described the act of laying the tax or impost, and is synonymous with the word "levy".

Mr. Justice Black, in the Court below (Case, p. 114), said:

"The words 'taxes assessed for the calendar year 1923' used in the agreement of November 29th 1922, describe the act of laying the tax, the word assessed is synonymous with the word levy that was completed on November 1st 1922. *New Jersey Midland R. R. Co. v. Mayor, &c., Jersey City*, 42 N. J. L. 99. It means an official valuation of property for taxation. It does not mean simply the computation of the tax. Vol. I *Words and Phrases*, p. 547".

It should also be borne in mind that the taxes in question were a lien on appellants' properties at the time of the making of the agreement.

Although tax liens, in some states, attach at the time of assessment and not at the time of the levy. *Cooley on Taxation*, 4th Ed. Vol. 3, p. 2456, Sec. 1232.

In this state, however, taxes become liens on property solely from express legislation.

Linn v. O'Neill, 55 N. J. Law 58;

Booth Brothers v. City of Bayonne, 85 N. J. Eq. 281;

Archibald v. Maurath, 92 N. J. Eq. 357.

and, as to railroad property, it is November 1st (P. L. 1888, Sec. 9, p. 274); and in the instant cases November 1st 1922, prior to the making of the agreement.

Appellants devote a great part of their brief in arguing that the words "assessed" and "levy" are not synonymous, and that the taxes assessed as of January 1st 1922, were not a lien upon ap-

pellants' property on November 1st 1922, in accordance with Sec. 9 of the Railroad Tax Act, *supra*.

We submit, however, that under the above authorities the words "assessed", "imposed" and "levy" are synonymous and that the court below rightfully decided that these taxes were a lien on the companies' properties on November 1st 1922 (Case, p. 114), and that there is no merit in appellants' contention to the contrary. But the question here for consideration is, not whether the words "assessed", "imposed" and "levy" are synonymous, or whether the taxes in question were a lien on appellants' properties on November 1st 1922, or when the taxes became a fixed liability and were payable;—the question here for determination is, "When, under the Railroad Tax Act, these taxes were assessed?" As we have pointed out, they were assessed as of January 1st 1922, and not for the calendar year 1923.

Therefore, on November 29th 1922, the date of the making of the agreement in the instant cases, the properties in question were then subject to the taxes assessed as of January 1st 1922, and the companies were then liable for the taxes. If, by this agreement, the Canal Abandonment Commissioners intended to relieve these companies from the taxes assessed as of January 1st 1922, why did they not so state in the agreement? It would have been very simple to have had the agreement provide that:

"these companies shall not be liable for the taxes assessed as of January 1st 1922."

It is also significant to note that the agreement does not relieve the *properties* of the taxes assessed, but attempts to relieve the *companies* from

the responsibility of any taxes assessed for the calendar year 1923, the language being:

"Said *companies* shall not nor shall either of them be responsible for any taxes assessed for the calendar year 1923 or for any period after January 1st 1923, on the properties conveyed and transferred or to be conveyed and transferred to the State of New Jersey under the terms of this agreement." (Italics ours.)

Obviously the Canal Abandonment Commissioners did not intend to relieve the companies of the taxes assessed as of January 1st 1922, but they intended to relieve the companies of responsibility for the taxes to be assessed as of January 1st 1923,—using the language of the agreement, "for the calendar year 1923, or for any period after January 1st 1923". The latter being their intention, then the properties remained subject to the taxes imposed as of January 1st 1922, and the companies remained responsible and liable for the payment thereof.

POINT II.

The agreement could only apply, if at all, to the taxes which were to be assessed as of January 1st 1923.

As pointed out above, the taxes in controversy were not assessed for the calendar year 1923, but were the taxes assessed as of January 1st 1922, pursuant to the statute.

It is insisted that the words "taxes assessed for the calendar year 1923" mean the official valuation of the properties for taxation for that year; and, therefore, do not apply to the taxes assessed as of January 1st 1922, which was the offi-

cial valuation of the properties for taxation for the year 1922.

Obviously the parties to the agreement did not intend that it should apply to the taxes assessed as of January 1st 1922, because they make the words "for the calendar year 1923" mean the same as "for any period after January 1st 1923."

It is submitted, therefore, that the only reasonable interpretation that can be placed upon the words "taxes assessed for the calendar year 1923" is, "taxes assessed for any period after January 1st 1923".

On the question of intention, reference is also made to the agreement which provides (Case, pp. 105, 106) that:

*"the deeds, instruments of agreement, and transfers and other writings to be executed and delivered by the parties hereto in performance hereof shall be approved as to form by the Attorney General of the State of New Jersey, and shall be mutually delivered together with all documents, maps, records, deeds and other muniments of title, at the office of the Board of Conservation and Development of the State of New Jersey, in the City of Trenton, on the 1st day of March, 1923 * * *."* (Italics ours.)

This clearly indicates the reason for the provision that the *companies* should not be responsible for any taxes assessed for the calendar year 1923. The companies were still to be the owners of these properties on January 1st 1923 and, under the statute, the taxes would be assessed against them as the owners. Hence, the provision to relieve the *companies*, as between the parties to the agreement, of responsibility for the taxes assessed for the calendar year 1923 or for any period after January 1st 1923.

POINT III.

The parties to the agreement could not relieve the companies of responsibility for the taxes assessed as of January 1st 1922.

Appellants say in their brief (Page 22) that the legality of the agreement could only be tested by the Attorney General, in direct proceedings for that purpose. Respondents are not questioning the legality of the agreement, as between the parties, but contend that it has no place in the instant cases and can have no application to taxes legally assessed under the law of this State.

The constitution of New Jersey (Art. IV, Sec. 7, Par. 12) and the Act for the taxation of railroad and canal property, *supra*, require the State Board of Taxes and Assessment to assess all first and second class railroad properties as they existed on January 1st 1922. The railroad companies which owned the properties involved in the instant cases on January 1st 1922, were personally liable for the taxes assessed on that date as a debt, under the Railroad Tax Act (P. L. 1888, Sec. 9, p. 274), which provides that:

"Said tax shall be a debt due from such company to the State on that date (November 1st) for which an action at law or in equity may be maintained * * *." (Words in parenthesis ours.)

To relieve the companies of these taxes would be tantamount to exempting them and eliminating their properties from taxation. This would be clearly in violation of the Constitutional mandate which requires that:

"property shall be assessed for taxes under general laws and by uniform rules according to its true value."

Although the legislature may create different agencies, methods and machinery for the tax assessment or exemption of the different classes of property, an Act of the Legislature authorizing a State agency to make an agreement with a railroad company to exempt or relieve from taxation, property of that railroad company, which had been legally assessed with other railroad property, or which would exempt or relieve the railroad companies from paying the taxes legally imposed upon its railroad properties, we submit would be clearly unconstitutional.

In making the assessment of appellants' properties, the State Board was required to consider their status as they existed on the assessing date, namely, January 1st 1922. These properties were then owned by appellants and were so assessed.

Furthermore, under the Act, *supra*, authorizing the acquisition by the State of a portion of the Morris Canal properties, and the appointment of the Commissioners, and defining their powers (Chapt. 212, P. L. 1922, p. 367) there was no express authority given to the Commissioners to relieve the appellants from the payment of the taxes which would accrue from the assessments made as of January 1st 1922 on the first and second class railroad properties of appellants thereafter to be conveyed to the State.

Nor should it be assumed that it was the intention of the legislature in the passage of this Act for the abandonment of the Morris Canal to empower the Canal Abandonment Commissioners to relieve the appellants from taxes legally assessed against them and due to the State of New Jersey.

It is contended on behalf of the respondents that there is no distinction in legal force and effect between taxes which have been duly assessed in accordance with the law and taxes which are due and payable.

If the legislature undertook to authorize the Canal Abandonment Commissioners to cancel and annul the taxes legally assessed as of January 1st 1922, or to relieve the appellants from paying these taxes, it could not be accomplished under our Constitution without authorizing the canceling and annulling of the taxes assessed as of January 1st 1922, against all railroad property or relieving the owners thereof from paying the taxes so assessed as of that date.

It is, therefore, contended by respondents that the agreement could have no legal effect on the taxes assessed as of January 1st 1922, or relieve the companies of the responsibility of paying them. In support of this contention it is interesting to follow appellants' argument, which clearly demonstrates that the agreement has no application to these taxes.

On page 5 of their Brief they show that the taxes in question were legally imposed, and then say that:

"upon discovering that they had been taxed for the property conveyed to the State, as well as their own property, complained to the State Board against the assessments, pursuant to the provision of the Act for the taxation of railroad and canal property, and asked the State Board to eliminate the property conveyed to the State from the assessments on their property."

Appellants did not ask in their complaints to have the property, agreed to be conveyed to the State, *eliminated* from taxation. In the one complaint (Case, pp. 8-10) they made no reference to the agreement; and in the other (Case, pp. 68-71) they asked to have the properties, agreed to be conveyed to the State, "assessed separately" from their other property.

On page 6 of their Brief, they state as their ground of appeal that:

“The assessments of taxes for the year 1923 of their properties erroneously included taxes upon certain property which was conveyed to the State of New Jersey under agreement of November 29th, 1922, and therefore the assessments are excessive and in violation of the agreement.”

On page 26 of their Brief, they say that: the agreement

“merely provided that the railroad companies should not be responsible for the taxes,”

and that they

“do not contend that the property conveyed to the State was exempt from taxation for the year 1923 by virtue of the agreement.”

If that be their position, then why are they questioning the validity of these taxes?

We submit that appellants' inconsistent statements and contentions manifest that there is no merit to these appeals. First, they show the taxes were legally imposed; then, they say they discovered they had been taxed for the property which they owned on January 1st 1922, and which they had reported to the State Board for the purpose of taxation and which, under the law, was taxable to them; then they asked the State Board to have the portion of their property conveyed to the State which had been legally assessed, assessed separately from their other property; then, they say these properties were erroneously assessed for taxes, and in violation of an agreement of which the State Board knew nothing until June, 1923, long after the assessments were made; then,

they say the agreement merely provides that they should not be responsible for the taxes; and, finally, they say that they do not contend that the properties conveyed to the State were exempt from taxation by virtue of the agreement.

If, as appellants now contend, the validity of these taxes involved is not brought in question by these appeals, then we submit that there is nothing before this court for consideration. If the sole question is, whether the agreement relieves the companies from the payment of the taxes, but recognizes the validity of the taxes, that question should not be considered on these appeals but when the State undertakes to collect these taxes the companies may then invoke the provision of the agreement to relieve them from payment, if it be valid and effective.

Respondents, in summary of their contentions, say that the taxes in controversy were not assessed for the calendar year 1923; that it was not the intention of the parties to the agreement to attempt to relieve the companies of the taxes assessed as of January 1st 1922; that the provision of the agreement as to relieving the companies from these taxes is meaningless because taxes are not assessed for a calendar year or for any period of time; that, if this provision of the agreement undertook to relieve the companies from the responsibility of the taxes assessed as of January 1st 1922, it would be void and of no effect; and, lastly, that the taxes assessed against the first and second class railroad properties of appellants, as

of January 1st 1922, are valid, and the appellants are liable to pay the whole taxes as assessed.

It is respectfully submitted that the judgments of the Supreme Court should be affirmed.

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