N. J. Court of Errors and Appeals.

Between Irving Lee, et al., Appellants. and The Trustees of School District Number One, in the County of Atlantic, Respondents.	On Appeal from Order of the Chancellor.

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POINTS FOR APPELLANTS.

This is an appeal from an order dismissing an order to show cause why an injunction should not issue. 20

The respondents had commenced erecting a new school-house in Atlantic City; for this purpose they had no authority from the district, or from the city council of Atlantic City. No money has been voted or appropriated for this object; the building is being erected, not by con-

tract, but by day's work, and is being paid for out of the school fund in hand for the current school purposes of the district.

The bill is filed by tax-payers to restrain the erection of the new school-house, and the payment therefor out of the unappropriated mixed school funds. The trustees alone have answered. As to the school treasurer, a decree *pro confesso* has been taken.

If the respondents are acting without lawful authority,
10 or if they are unlawfully diverting money raised or appropriated by the State for a different purpose, a court of equity will restrain them.

2 High on Inj. p. 808, Sec. 1237.
2 Dillon on Mun. Corp. 914, 916.
Bond v. Newark, 4 C. E. Gr. 385.
Schuum & Seyman, 9 C. E. Gr. 156.

This position is not controverted in the case.

The answer justifies the building on two grounds:

1. That by the charter of Atlantic City the respond-
20 ents have the necessary power to erect school-buildings; and

2. That this power is conferred on them by the act of March 31, 1882.

To consider them in this order:

1. The charter of Atlantic City does not confer on the trustees of common schools the power to erect school-houses, or any other power whatsoever.

That charter mentions this class of officers but twice; once to designate their number, viz: "three;" and once
30 to provide for their election.

If they have powers they get them elsewhere.

A creature of statute derives no special power from the absolute silence of another statute.

If the trustees of common schools have power to erect

school-houses, they derive it from the General School Law.

The act to establish public schools of April 17, 1846, creates the office of trustee of common schools, and grants and defines their powers; among these is the power to erect school-houses, provided, that for this purpose, they shall have the previous authority of two-thirds of the voters of the district.

The original act to incorporate Atlantic City was passed in 1854, and the present charter in 1866; the 10 school act of 1846, being still in force in 1867.

All that these charters of Atlantic City provide in reference to school trustees, is their number and the mode of their election. In other words, they simply provide the necessary officers to carry out the powers and duties granted to, and imposed upon, such officers, by the general law of 1846.

Hoboken v. Harrison, 1 Vroom 75

The two not only *may* stand together, but if the trustees of common schools in Atlantic City are to have any 20 power the two *must* stand together.

If a general law requires certain officers to carry it into effect, a special law simply providing for the number and election of such officers, repeals by implication only such parts of the general law as relate to the number and election of officers.

Unless a later statute is manifestly inconsistent with, and repugnant to, a prior one, both remain in force; courts are bound to uphold a prior law, if the two may subsist together. 30

1 Bl. Com. 89, note 34, (Sharswood).
Sedg. on Stat. Con. p. 98, notes.
1 Dillon. Mun. Corp. Sec. 87 and 88.
Indust. Sch. Dist. v. Whitehead, 2 Beas. 291.
State v. Plunkett, 3 Harr. 5 and 7.
N. & T. Bank v. Bridges, 1 Vroom, 112.
State v. Hammell, 2 Vr. 458.

Thus far we have considered these respondents as obtaining their powers from the General School Law of 1846.

These trustees, being simply elected to carry on the machinery of the General School Law, whether their powers remain fixed by the old law of 1846, or whether they follow the changes of the law of 1867, and the Revision is an immaterial question, as in all the General
10 School Laws the power to erect school-houses is coupled with, and made to depend upon, the previous authority of the voters of the district.

But the charter of Atlantic City is silent as to the powers of its trustees of common schools. Hence, if it be held that they do not take their powers from the General School Law of 1846, in force at the time the charters of Atlantic City were approved, then the General Law of 1867 will be held to apply. In the absence of all grant of power by the charter, the powers and provisions of the General Law will attach.

20 Even if the charter should simply contain certain powers by inference, (which it does not), the General Law being clearly intended to prescribe a uniform scheme in school matters, it would repeal the powers so implied.

1 Dillon on Mun. Corp. 87, 89.
State v. The Com. of R. R. Tax, 8 Vr. 230.
Indust. Sch. Dist. v. Whitehead, 2 Beas. 290.
The Bank v. Bridges, 1 Vr. 116.
State v. Newark, 10 Vr. 391.
State v Sheridan, 13 Vroom, 64.

30 But respondents argue they need look to no general law for their power to build school-houses because of Section 31 of their charter, which provides that City Council may raise taxes, which, together with the State revenue and the School Fund, shall be paid over to the school treasurer, and be applied to school purposes in said city.

The obvious object of which is, to provide a fund for current school expenses, to be partly raised by Council, and all held by the treasurer.

But under what conceivable course of construction can this section be made to do duty as an act to empower trustees of common schools to erect school-houses?

And when we recall the fact that city council has not authorized this act, as is admitted by respondents, and that this bill is taken as confessed against the school treasurer in this very case, the construction cannot be regarded as seriously contended for. 10

If the contention is that the City Council stands in the shoes of the voters, then the authority of Council takes the place of the electors, but that authority is admittedly withheld.

But this whole section has reference only to "*school purposes*," a term used universally, as a term of school law, to mean *current* expenses, as distinguished from extraordinary ones; that this is the meaning of it here, is enforced by the fact that it is applied to a fund composed in part of local taxes and in part of the State school fund and school revenue, a mixed fund, to be applied to *school purposes*, but the State money, by law, is confined to current expenses. P L 1871 page 96. State v Sheridan. 13 Vr. 64. 20

Revision, p. 1086, sec. 91.

Having chosen to confuse these moneys, this limitation attaches to the mixed fund.

But respondents further say, that if they be not empowered by the charter of Atlantic City to erect school houses, that this power is given them by the act of March 31, 1882. 30

That this act does not clothe trustees of common schools with power to erect school-houses is evident from the following considerations.

1. These respondents do not fall within the class men-

tioned in this act, being neither a "board of education of any city or other body having control of public schools in any city."

This act clearly contemplates such a quasi corporation or sub-municipal body of any city as by general act, special legislation or city charter shall be erected by, for or within any city. The Trustees of School District number one, in the county of Atlantic, are in no sense such officers; their territorial limit is a *school district*—a
10 subdivision of a county, which may be extended or contracted by the county superintendent; the fact that the geographical boundaries of such a district are coterminous with those of an incorporated city does not bring them within the class of special municipal bodies contemplated by this act.

2. Because the authority of the common council therein required is admitted to be wanting here.

3. Because all that the act grants to the sub-municipal
20 body there mentioned is the power to borrow and secure money.

4. Because nowhere in this act is there any grant of power to erect school houses, and a grant of power never arises by implication.

5. Because this act authorizes the *borrowing* of money and will not sustain an unlawful diversion of a fund in hand.

30 6. Because under the authority to *borrow* the respondents, admitting that they do not need to borrow, seek to derive an authority to build without borrowing.

7. The proviso, which is suppressed in respondents' answer, is fatal to their claim, as it appears in the case,

that Atlantic City is already within five hundred dollars of its charter limit of indebtedness.

If the respondents show that they possess the power to erect school-houses, as claimed by them, still they would be restrained under the circumstances of this case.

1. No taxes or school revenue can be paid in until late in December; so that upon the average of the last scholastic year, the cash in hand is all needed to meet the current expenses of the district. This being so, the erection of the new building at its estimated cost would run the city in debt beyond the limit of indebtedness fixed by its charter.

2. Because this money, both as to local taxes and State revenue, is in hand for current school purposes only, and respondents admit that no part of it has been appropriated to the purpose of erecting a school-house, (p 28, line 30 of answer.)

3. Because this money is a mixed fund as admitted by respondents (answer, p. 28, line 20,) made up in large part of the State school moneys. But by the law regulating the State school moneys it is provided (see Revision, p. 1086, Sec. 91,) as follows: "Not more than twenty "dollars annually, of the school moneys received by "any school district, except such as may be raised with-"in the district, shall be used for any other purpose than "the payment of teachers' salaries and for purchasing "fuel." P L 1871 page 96. State v Sheridan, 13 Vr. 64.

Respondents accepted the State moneys subject to this restriction; in their hands these State moneys have been confused with the local taxes. To erect a school-house out of this fund would clearly be an unlawful diversion of it.

Where a municipal body, holding money for one pur-

pose, attempts to divert it to another, they will be enjoined; they hold the money in trust.

2 High on Inj., Sec. 1237.

Hoboken v. Ivinson, 5 Dutch. 65.

Perry v. Kinnear, 42 Ill. 160.

Colton v. Hanchett, 13 Ill. 615.

Rothrock v. Carr, 55 Ind. 334.

W. C. A. J. S. Co. v. Barr, 55 Ind. 30.

10 Dent v. Cook, 45 Ga. 323.

Brown v. Concord, 56 N. H. 375.

Patton v. Stephens, 14 Bush. 324.

Sherlock v. The Village, 59 Ill. 389.

Roberts v. Mayor, 5 Ab. Pr. 41.

Lutes v. Briggs, 5 Hun. 67.

Att'y Gen. v. Aspinall, 2 Md. & Cr. 615.

GARRISON, FRENCH & CASSELMAN,
Sol'rs. for Appellants.

N. J. Court of Errors and Appeals.

Between Lee and others, Appellants. and The Trustees of School District No. 1, in the County of Atlantic, Respondent.	On Bill, &c. Respondent's Points.

1. The respondent has the power to build the school-house in question, under and by virtue of the charter of Atlantic City, without "the previous authority of a vote of the district."

Subdivision 3, of Sec. 39, of the general school law, requiring certain of the acts of school trustees to have "the previous authority of a vote of the district" does not apply to Atlantic City.

The trustees of common schools of Atlantic City are corporate officers, see Secs. 2 and 3 of the act entitled

"An act to revise and amend the charter of Atalntic City," approved March 13th, 1866, Laws of 1866, p. 314; and Sec. 31st of that act provides that City Council may direct money for school purposes to be raised by taxation, without any reference to a vote of the district; and that money so raised shall be paid to the treasurer of the trustees of common schools for the time being, and be applied to school purposes in said city, without any reference to a vote of the district; and the 3d Sec. of the supplement to the charter, approved March 19th, 1872, Laws of 1872, p. 590, enacts "That the said school treasurer shall pay out no moneys by him so received for school purposes, except upon a written order of the trustees of said city, or a majority of them, which order shall state the purpose for which it is given."

At the commencement of the building in question there was in the hands of the school treasurer upwards of $4,000, raised for general school purposes for the scholastic year ending August 31st, 1882, and required for no school purpose for that year excepting the erection of the new school-house.

That money was in the hands of the school treasurer, subject to the order of the school trustees applying it to some particular school purpose; and under the provisions of the city charter the Board had the right to apply it to the erection of the school-house in question; and its application to that purpose would in nowise increase the debt of the city.

2. Further authority to support the right of the respondent to erect a new school-house in the manner proposed will be found in the act entitled "An act to enable cities to provide additional school accommodations where the same are necessary and to borrow money for the purpose," approved March 31st, 1882, Laws of 1882, p. 250.

3. Assuming the Board to have the power claimed, its exercise in the absence of fraud, cannot be controlled by the Court of Chancery ~~to~~ or any other tribunal.

IN CHANCERY OF NEW JERSEY.

To His Honor, Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining show unto your Honor, your orators, Irving Lee, Thomas Maguire, Alvin M. Bailey, Lemuel Eldridge, Jacob Natter and Edward Wilson, all of the city of Atlantic City, in the State of New Jersey, that your orators are, all of them, freeholders, residents and tax-payers in said city and particularly interested in the welfare and prosperity of said city. 10

And that your orator, Jacob Natter, has four children who are scholars in attendance on the public schools in said Atlantic City; that your orator, Alvin M. Bailey, has one child also in such attendance, and that your orator, Thomas Maguire, also has one child in such attendance.

That by the provisions of an act of the Legislature of the State of New Jersey entitled "An act to revise and amend the charter of Atlantic City," approved March thirteenth, eighteen hundred and sixty-six, and the several acts supplementary to and amendatory of said act there are among other officers of said city "three trustees of common schools" and one "superintendent of common schools." That no powers are given by said 20

acts to said trustees, other than the powers, rights and duties prescribed by an act of the Legislature of the State of New Jersey entitled "An act to establish a system of public instruction" (revision,) approved March 27th, 1874, and the several acts supplementary to and amendatory of the same.

And your orators further show, that it is provided by said above recited act to revise and amend the charter of Atlantic City, among other things that the assessor of said city shall assess upon the persons and property within the said city, and the collector of the said city shall collect the taxes required to be assessed and collected for the support of the schools of the city, in the same manner and within the same time as the assessors and collectors of the townships of Atlantic county are or may be required to assess and collect the State and county tax in their respective townships; and that the city council of said city may direct to be raised by taxation for *school purposes* any sum not to exceed ten dollars per head for every child in said city, between the ages of five years and twenty-one; and that the said city shall be entitled to its just proportion of the annual appropriation of the school fund of this State, and to its just proportion and quota of the interest on the surplus revenue, apportioned to and received or to be received by the State of New Jersey, to be ascertained in the same manner as the proportion or quotas of the townships of the State then were or thereafter should be ascertained, which moneys should be paid immediately over to the treasurer of the trustees of common schools for the time being, and be applied to *school purposes* in said city; and that it is provided by a supplement to said act entitled "A further supplement to an act entitled an act to revise and amend the charter of Atlantic City, approved March thirteenth, eighteen hundred and sixty-six," approved March 19th, 1872, that the superintendent

of common schools of said city should be school treasurer, and receive from the tax collector of the city all moneys assessed and collected for school purposes of said city; that the city treasurer should pay over to said school treasurer all moneys which he might receive for school purposes by virtue of any law of this State, and that said school treasurer should pay out no moneys by him so received for school purposes, except upon a written order of the trustees of said city, or a majority of them, which order shall state the purpose for which it is given, and be made payable to the person entitled to receive the money and be by him or her endorsed.

And your orators further show the present "trustees of common schools" of said city are Lewis Evans, Levi C. Albertson and Daniel S. Lacy, that said city constitutes one school district, and that said trustees are a body corporate under the laws of the State of New Jersey, called and known by the name of "The Trustees of School District Number One, in the county of Atlantic," and by that name are capable of suing and being sued in all courts and places whatever; that by the third subdivision of section thirty-eight of the above recited act to establish a system of public instruction, said trustees have power to erect, enlarge, repair or improve school buildings, and purchase, lease, mortgage or sell school lots or school houses, to borrow money, with or without mortgage, and to raise money by taxation for any such purpose, or to pay debts incurred therefor, or for the current expenses of any schools, *provided that for any such acts they shall have the previous authority of a vote of the district.*

And your orators further show, that one Obed H. Crosby is the present superintendent of common schools of said city, and the school treasurer thereof; that there was raised by taxation on the property in said city for the present year, and paid to said superintendent and

school treasurer by said city, the sum of eleven thousand eight hundred dollars, or thereabouts, for school purposes, no part of which sum was appropriated for building a new school-house; and that there was also paid to him of the State tax for school purposes for the present year the sum of four thousand three hundred and seventy dollars and seventy cents, or thereabouts, no part of which has been appropriated for building a new school-house; that your orators are advised and credi-
10 ibly informed, and believe it to be true, that the balance of said sums remaining in the hands of said superintendent and treasurer is no more than is sufficient to pay the teachers' salaries and current expenses of running the schools in said city for the present year, or until the money raised for the next year is received by said superintendent and treasurer.

And your orators further show, that by a supplement to said act to revise and amend the charter of Atlantic City "A further supplement to the act entitled 'an act to
20 revise and amend the charter of Atlantic City, approved March thirteenth, eighteen hundred and sixty-six,'" approved April 8, 1875, it is provided that the debt of Atlantic City shall at no time exceed the sum of thirty-five thousand dollars; that the present debt of said Atlantic City is now thirty-four thousand four hundred and fifty dollars.

And your orators further show, that said "The Trustees of School District Number One in the county of Atlantic" have recently commenced the erection of a new school-house on the lot at the southwest corner of
30 Pennsylvania and Arctic avenues, in said city, upon which the present school edifice is erected, and have proceeded so far in the erection of the same that the foundations are completed and material is being hauled upon the ground for the superstructure; that said building is being erected by day's work and without any

authority from the legal voters of said district, or of the city council of said city, and without the previous authority of the vote of the district, upon a lot of land one hundred and fifty feet, by one hundred and fifty feet, upon which there is already erected a large school-house, accommodating some three hundred and fifty scholars, which lot is scarcely large enough for the proper accommodation and healthful exercise of said scholars, which new building will cost, when completed, as your orators are informed and believe, something over three thousand dollars, the size of such new building being twenty-six by forty feet.

And your orators further show, that they have laid said matter of the illegal building of said new school-house before the city council of said city, that the same was referred to the committee on education of said council, that said committee applied to the city solicitor for his opinion, that said solicitor gave his opinion, in writing, that said trustees have no power to build said school-house, a copy of which opinion was served upon said trustees; that your orators, or some of them, have applied to said trustees in person, and requested them to refrain from proceeding with the erection of said new school-house, stating to them that there was no appropriation for the purpose, no authority from the district or council to build the same, and no funds on hand to pay for the same, without using the money appropriated and needed for school purposes, and that the same could not be built without running the city in debt beyond the limit fixed by its charter; that one Charles Maxwell recently applied to said trustees and requested them to refrain from proceeding with the erection of said new school-house, to which request they replied that the trustees would have a meeting Tuesday evening, (July twenty-fifth, eighteen hundred and eighty-two) and consider the matter, that said meeting was held, but what

was there discussed, considered or determined, is to your orators unknown, but on the following day there commenced to be delivered at the place where said new school-house is being erected, lumber and materials for the superstructure thereof.

And your orators further show, that they are the owners of taxable real estate of considerable value in said city of Atlantic City, and pay the annual taxes and assessments imposed thereon; that if said The Trustees of School District Number One, in the county of Atlantic, are allowed and permitted to proceed with the erection of said new school-house, and said Obed H. Crosby, superintendent of common schools and school treasurer, permitted to pay out of the moneys in his hands for school purposes upon the written order of said trustees, or the majority of them, the costs and expenses of erecting said new school-house, or any part thereof, such money will be used for a purpose for which the same has not been appropriated, and there will not be enough funds to pay the current expenses of the schools of said district for the current year; the appropriation for school purposes will be overdrawn, and the said schools or part of them have to be closed for lack of funds, the indebtedness of the city increased beyond the limit fixed by its charter, the taxes to be paid by your orators largely increased, and the funds of the citizens of said city misappropriated, and the burdens of your orators and other tax-payers of said city largely increased by such misappropriation, and your orators irreparably injured in the premises.

And your orators submit, that the City Council of "Atlantic City," The Trustees of School District Number One, in the county of Atlantic, and Obed H. Crosby, superintendent of common schools and school treasurer of Atlantic City, being entrusted with the control and disposition of the municipal affairs of said city, for

the benefit and protection of your orators, should be restrained by this honorable court, the said "The Trustees of School District Number One, in the county of Atlantic, for building and erecting or attempting to build and erect said new school-house, the said Obed H. Crosby, superintendent of common schools and school treasurer of Atlantic City, from paying out of any of the moneys in his hands as such treasurer on the order of said trustees, or otherwise, the costs and expenses of erecting said new school-house, and said The City Council of Atlantic City from directing to be raised by taxation, or otherwise, or assessed upon the property of the citizens of said city, the costs and expenses of erecting said new school-house, or any part thereof, or any deficiency that may be caused by the payment of such costs and expenses out of moneys already raised and in hand.

And your orators further show, that they have frequently and in a friendly manner applied to the said The Trustees of School District Number One, in the county of Atlantic, and requested them to desist and refrain from proceeding with the erection of said new school-house, and in like manner to said Obed H. Crosby, superintendent of common schools and school treasurer of Atlantic City, and requested him to desist and refrain from paying out of any of the moneys in his hands as such treasurer on the order of said trustees, or a majority of them, or otherwise, the costs and expenses of erecting said new school-house, or any part thereof, and in like manner to said The City Council of Atlantic City, and requested them to desist and refrain from directing to be raised by taxation, or otherwise, from or assessed upon the property of your orators and others in said city, the costs and expenses of erecting said new school, or any part of such costs or expenses, or any deficiency that may be caused by the payment of such costs and expenses out of the moneys already raised and

in hand or any part thereof. And your orators well hoped that they would have complied with such reasonable requests of your orators as in equity and good conscience they ought to have done.

But now so it is, may it please your Honor, that the said The Trustees of School District Number One, in the county of Atlantic, Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, and The City Council of Atlantic City, combining and con-
10 federating together, and to and with divers other persons at present unknown to your orators, but whose names when discovered your orators pray may be inserted in their bill of complaint with apt and proper words, to charge them as defendants hereto and contriving to injure and aggrieve your orators in the premises, not only refuse to comply with such reasonable requests of your orators, but pretend and give out in speeches that they have full power and authority to build said new school-house, that there are sufficient funds on hand appro-
20 priated for that purpose to pay for the building and erecting of said new school-house, and also to pay the current expenses of running the schools for the balance of the year; that the debt of the city will not be increased by the building of said new school-house, nor render necessary the imposition or assessment of additional taxes to pay for the same; that no deficiency will be caused by the payment of the costs and expenses of the erection of said new school-house out of the funds now in the hands of said treasurer, in the appropriation for school
30 purposes, and that the said funds are sufficient to pay said costs and expenses, and also all the expenses of running the schools of the district for the current year, the contrary of all which pretences your orators charge to be true.

All which actings and doings of the said defendants and their confederates are contrary to equity and good

conscience, and tend to the manifest wrong, injury and oppression of your orators.

In tender consideration whereof, and for as much as your orators are remediless in the premises by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendants and their confederates, when discovered, may but without oath or affirmations (the necessity for such answer being 10 put in under the oaths of said defendants, or either of them being hereby waived by complainants pursuant to the statute) full, true, perfect and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, paragraph by paragraph, and they thereto particularly interrogated, and that the act of the said The Trustees of School District Number One, in the County of Atlantic, in building and erecting, or attempting to build or erect, said new school house may be declared illegal and beyond their powers, 20 and that The Trustees of School District Number One, in the County of Atlantic, be restrained from building and erecting, or attempting to build or erect, a new school-house on said lot, at the southwest corner of Pennsylvania and Arctic avenues in Atlantic City, and that the said Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, may be restrained from paying out of any of the moneys in his hands, or that may hereafter come to his hands, as such treasurer, on the order of said trustees, or a majority of 30 them, or otherwise, the costs and expenses of erecting said new school-house, or any part thereof, and that the said The City Council of Atlantic City may be restrained from directing to be raised, by taxation or otherwise, from or assessed upon the property of your orators, and others in Atlantic City, the costs and expenses of erecting said

new school-house, or any part of such costs or expenses, or any deficiency that may be caused by the payment of such costs and expenses, out of the moneys already raised and in hand, or any part thereof, and that your orators may have such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orators, not only the State's writ of in-
10 junction issuing out of and under the seal of this honorable court, to be directed to the said The Trustees of School District Number One, in the County of Atlantic, Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City and the City Council of Atlantic City, their and each of their attornies, workmen, officers, servants and agents and all persons acting under them, or by their authority or direction, restraining the said The Trustees of School District Number One, in the County of Atlantic, from building
20 and erecting, or attempting to build or erect a new school-house on said lot, at the southwest corner of Pennsylvania and Arctic avenues, in Atlantic City, the said Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City from paying out of any of the moneys in his hands or that may hereafter come to his hand as such treasurer, on the order of said trustees or a majority of them, or otherwise, the costs and expenses of erecting said new school-house, or any part thereof, and restraining the said The City Council of Atlantic City from directing to be raised by taxation, or otherwise,
30 from or assessed upon the property of your orators and others in Atlantic City, the costs and expenses of erecting said new school-house, or any part of such costs and expenses, or any deficiency that may be caused by the payment of such costs and expenses out of the moneys already raised and in hand or any part thereof; but also

the State's writ of subpœna to be directed to the said The Trustees of School District Number One, in the County of Atlantic, Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, and the City Council of Atlantic City therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty therein to be expressed, personally to be and appear before your honor, in this honorable court, then and there to answer the premises, and to stand to, abide by and perform such decree as to your honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, &c.

GARRISON, FRENCH & CASSELMAN,
Solicitors for Complainants.

CHARLES G. GARRISON,
THOMAS E. FRENCH,
Of Counsel.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY. } ss.

Irving Lee being duly sworn, on his oath saith, that he is one of the complainants in the foregoing bill; that he is a resident, freeholder and tax-payer in Atlantic City, in the county of Atlantic; that School District No. 1 of the county of Atlantic comprises the whole of Atlantic City; that the trustees of said school district are now erecting a new school building at the southwest corner of Pennsylvania and Arctic avenues, in said Atlantic City; that there is already built on the lot on which the same is being erected a school building about fifty by eighty-four feet; that said lot is, in the opinion of deponent, too small for the erection of an additional school building thereon without interfering with the necessary exercise of the school children; that there has been no meeting of the voters of said school district called, nor have said voters in any manner authorized the erection of a new school building.

IRVING LEE.

Sworn and subscribed before me, this twenty-seventh day of July, A. D. 1882.

JOS. THOMPSON, M. C. C.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY. } ss.

Edward Wilson and Lemuel Eldridge, being severally sworn, on their respective oaths depose and say that they are two of the complainants in the foregoing bill mentioned; that the facts, matters and things in said bill set forth and contained are true to the best of their knowledge and belief, and particularly is it true that the trustees of School District No. 1, in the county of Atlantic, have caused to be built the foundation for a new school building of about twenty-six feet in front by forty feet in depth, and are proceeding with the construction

of said school building on the lot of land one hundred and fifty feet square at the corner of Pennsylvania and Arctic avenues, in said Atlantic City, on which the old school house is situate; that in the opinion of these deponents the said lot is not of sufficient size for two school houses and out buildings.

EDWARD WILSON,
LEMUEL ELDRIDGE.

Sworn and subscribed before me, this twenty-seventh day of July, A. D. 1882. 10

JOS. THOMPSON, M. C. C.

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC. } SS.

Alvin M. Bailey, being duly sworn, on his oath saith that he is a resident freeholder and taxpayer in Atlantic City, in the county of Atlantic; that the trustees of School District No. 1 in said county have commenced the erection of a frame school building on a lot of land in said Atlantic City, at the southwest corner of Pennsylvania and Arctic avenues; that said lot is one hundred and fifty feet square; that there is already built on said lot a school building about fifty-two feet front, by about eighty-four feet in depth; that said school building is so situated on said lot that the erection of an additional building on said lot of the size and dimensions of the one in course of erection thereon as aforesaid will greatly interfere with the healthful exercise, comfort and convenience of the scholars. 20

And deponent further saith, that the balance of the school funds in the hands of the trustees is barely sufficient to pay the running expenses of the present school until the new appropriations are made; that no money has been appropriated by the City Council of Atlantic City for the erection of the new school-house, that said new school-house is being built by days' work and not by 30

contract, and in the opinion of deponent is being paid for out of the present school fund; and that there has been no meeting of the voters of said school district called, nor have the said trustees been authorized to build said school house.

ALVIN M. BAILEY.

Sworn and subscribed before me, this twenty-seventh day of July, A. D. 1882.

S. D. HOFFMAN, M. C. C.

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STATE OF NEW JERSEY, }
ATLANTIC COUNTY. } ss.

Joseph Thompson, of full age, being duly sworn according to law, upon his oath saith, that Charles Maxwell is the chairman of the Board of Education of the City Council of Atlantic City, and that he was informed by the said Charles Maxwell and believes to be true, that he the said Charles Maxwell was instructed by the City Council of Atlantic City to get the opinion of the City
20 Solicitor upon the right or authority of the said Board of Trustees of said city to build a new school-house at this time, and that he applied to the said City Solicitor, and that he gave him a written opinion, of which the following is a true copy:

"ATLANTIC CITY, N. J., July 22, 1882.

To CHARLES MAXWELL, Esq.,
Chair. of Committee on Education.

MY DEAR SIR: In reply to the question submitted I
30 state that the trustees have no power to build a school-house without being authorized by the legal voters and having in hand money appropriated and raised for that purpose.

Yours truly,
HARRY L. SLAPE,
City Solicitor."

And he, the said Charles Maxwell, delivered to one Levi C. Albertson, the chairman of said Trustees of School District Number One, of the county of Atlantic, a copy of said opinion on the twenty-second day of July, A. D. 1882, and deponent further says that the work upon said new school building is still progressing and in the opinion of this deponent the said trustees intend to complete the same.

JOS. THOMPSON.

Sworn and subscribed to before me, July 27, 1882. 10

WM. S. CASSELMAN, M. C. C.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY. } ss.

Thomas Maguire, of full age, being duly sworn according to law, on his oath says that he is one of the complainants named in the annexed bill, and that he is a resident and owner of taxable property in said city of Atlantic City, that the Board of Trustees of said city are erecting a new building for the purpose of a school-house (on the southwest corner of Pennsylvania 20 and Arctic avenues, in the said city of Atlantic City; that the size of the said lot is one hundred and fifty feet square, and that the erecting an additional building for school purposes on said lot will not give sufficient room for the healthful exercise of the school children; neither will there be sufficient light and air,) without first having called a meeting of the legal voters of the school district, of said new school-house, also without the city council of said city authorizing money raised for that purpose. And deponent further says that he has been 30 informed by Obed H. Crosby, the City Superintendent and Treasurer of said Board of Trustees, that the fund on hand at this time raised for school purposes is about four thousand dollars, and that it will require about two thousand dollars to pay the running expenses of the

schools in said city of Atlantic City, until December 1st, A. D. 1882. And deponent further says that he has been informed by the said Obed H. Crosby that he has already paid out, on account of said new school building, about sixty dollars, out of the funds in his hands raised for school purposes. And deponent further says that he believes that the said new building will cost, when completed, about the sum of three thousand dollars.

THOS. McGUIRE.

10 Sworn to and subscribed before me, this 27th day of July, A. D. 1882.

JOS. THOMPSON, M. C. C.

ATLANTIC COUNTY, SS.

Joseph A. Barstow, of full age, being duly sworn according to law, upon his oath saith, that he was a member of the City Council of Atlantic City during the month of September, 1881, and that the appropriation for the fiscal year is made during the said month of September, and that no appropriation was asked for by 20 the "Trustees of School District Number One, of Atlantic county," for the purpose of building a new school-house, neither was any appropriation made by the said City Council of Atlantic City for that purpose during the said year.

JOSEPH A. BARSTOW.

Sworn and subscribed to before me, July 27th, 1882.

JOS. THOMPSON, M. C. C.

A true copy,

G. S. DURYEE, Clerk.

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(Order to show cause, filed July 28, 1882.)

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IN CHANCERY OF NEW JERSEY.

Between IRVING LEE AND OTHERS, Complainants, and THE TRUSTEES OF SCHOOL DISTRICT NUMBER ONE, IN THE COUNTY OF ATLANTIC, AND OTHERS, Defendants.	ON BILL, &c. ORDER.

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It appearing by the bill and affidavits about to be filed in this cause, that the defendant, The Trustees of School District Number One, in the County of Atlantic, are, without authority from the legal voters of the District, erecting a new school-house at the southwest corner of Pennsylvania avenue and Arctic avenue, in Atlantic City, and that Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, is paying out of the moneys in his hands the costs and ex-

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penses of erecting said new school-house, on the orders of said trustees, or a majority of them, and that said money has not been appropriated for that purpose, and that the complainants will be irreparably injured by these and other acts of the defendants mentioned in said bill.

It is on this twenty-eighth day of July, eighteen hundred and eighty-two, on motion of Charles G. Garrison, of counsel with the complainants, by his honor, the Chancellor, ordered that the defendants, The Trustees of School District Number One, in the County of Atlantic, Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, show cause before the Chancellor, at the State House, at Trenton, on Tuesday, the fifth day of September next, at the hour of ten o'clock in the forenoon, or so soon thereafter as counsel can be heard, why an injunction should not issue restraining the said The Trustees of School District Number One, in the County of Atlantic, from building and erecting, or attempting to build or erect, a new school-house on said lot, at the southwest corner of Pennsylvania and Arctic avenues, in Atlantic City, and the said Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, from paying out of any of the moneys in his hands, or that may hereafter come to his hands as such treasurer, on the order of said trustees, or a majority of them, or otherwise, the costs and expenses of erecting said new school-house, or any part thereof, according to the prayer of said bill, and such further relief be granted complainants as may be just.

And it is further ordered, that in the meantime and until the further order of this Court in the premises, the said The Trustees of School District Number One, in the county of Atlantic, their servants, agents and workmen desist and refrain from building and erecting, or attempting to build or erect a new school-house on said

lot, at the southwest corner of Pennsylvania and Arctic avenues in Atlantic City, the said Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, his clerks, servants and agents desist and refrain from paying out of any of the moneys in his hands, or that may hereafter come to his hands as such treasurer, on the order of said trustees or a majority of them, or otherwise the costs and expenses of erecting said new school-house or any part thereof.

And it is further ordered that a copy of the bill filed in this cause, together with copies of the affidavits thereto annexed, be served within ten days upon The Trustees of School District Number One in the county of Atlantic, and that copies of this order to show cause be within the same time served on the said The Trustees of School District Number One in the county of Atlantic, and on said Obed H. Crosby, superintendent of public schools and school treasurer of Atlantic City.

THEODORE RUNYON, C.

Respectfully advised,

JOHN T. BIRD, V. C.

A true copy,

G. S. DURYEE, Clerk.

(Answer filed Sept. 5, 1882.)

IN CHANCERY OF NEW JERSEY.

Between 10 IRVING LEE, THOMAS MAGUIRE, ALVIN M. BAILEY, SAMUEL ELDRIDGE, JACOB NATTER AND EDWARD WILSON, Complainants, and 20 THE TRUSTEES OF SCHOOL DISTRICT NUMBER ONE, IN THE COUNTY OF ATLANTIC, OBED H. CROSBY, SUPERINTENDENT OF COMMON SCHOOLS, AND SCHOOL TREASURER OF ATLANTIC CITY AND THE CITY COUNCIL OF ATLANTIC CITY, 30 Defendants.	ON BILL, &c. ANSWER, &c.

The separate answer of the Trustees of School District Number One, in the county of Atlantic.

This defendant now and at all times hereafter, saving to itself all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says, that it admits that by the provisions of an act of the Legislature of the State of New Jersey entitled "An act to revise and amend the charter of Atlantic City," approved March thirteenth, 1866, and the several acts supplementary to and amendatory of said act, there are three trustees of common schools and one superintendent of common schools among the other officers of said city, as stated in said bill, but it denies that no powers are given, by said acts, to said trustees, other than the powers, rights and duties prescribed by an act of the Legislature of the State of New Jersey entitled "An act to establish a system of public instruction," approved March 27th, 1874, and the several supplements to and amendatory of the same as alleged in said bill.

And this defendant alleges that the said act, entitled "An act to establish a system of public instruction," does not apply in all of its terms and provisions to the city of Atlantic, or to the Trustees of School District Number One, in the county of Atlantic, and that the third subdivision of section thirty-nine of that act which gives to the board of trustees of any school district power " to erect, enlarge, repair or improve school buildings, and purchase, lease, mortgage or sell lots or school-houses, to borrow money with or without mortgage, and to raise money by taxation for any such purposes, or to pay debts incurred therefor, or for the current expenses of any schools, provided that for any such acts they shall have the previous authority of a vote of the district," does not apply to the board of school trustees elected by the voters of Atlantic

City, because by the thirty-first section of the revised charter of that city, referred to in said bill, enacts "that said city council may direct to be raised by taxation for school purposes any sum not to exceed ten dollars per head for every child in said city between the ages of five years and twenty-one; and that the said city shall be entitled to its just proportion of the annual appropriation of the school fund of this State, and to its just proportion and quota of the interest on the surplus revenue
10 apportioned to and received, or to be received, by the State of New Jersey, to be ascertained in the same manner as the proportion or quota of the townships of the State now are or hereafter shall be ascertained, which said moneys shall be paid immediately over to the treasurer of the trustees of common schools for the time being, and be applied to school purposes in said city," and thereby transfers the power of taxation for school purposes from the people to the City Council as their representatives,
20 and gives to the said trustees the power to use the money so raised for school purposes, without the previous authority of a vote of the said district, which embraces the limits of the said city.

And this defendant further shows, that the second section of the supplement to the said city charter, approved March 19th, 1872, referred to in said bill enacts, "that the superintendent of common schools of said city shall be the school treasurer thereof, and shall receive from the tax collector of said city all moneys assessed and by him collected for school purposes of said city, which
30 moneys the tax collector shall pay over to the School Treasurer and take his receipt therefor, within the time prescribed by law for collecting the same; and the City Treasurer of Atlantic City shall pay over to said School Treasurer and take his receipt therefor, all moneys which he may receive for school purposes, by virtue of any law of this State, immediately after receiving the same." And

the third section of said act further enacts "that the said School Treasurer shall pay out no moneys by him so received for school purposes, except upon a written order of the trustees of said city, or a majority of them, which order shall state the purpose for which it is given, and be made payable to the person entitled to receive the money, and be by him or her endorsed," whereby it is made the duty of the said school trustees of Atlantic City to elect and state what purpose the school moneys so raised shall be applied to by the said treasurer; and 10 this defendant further alleges and shows that under these special provisions of the charter of Atlantic City, since the incorporation of said city, it has been the invariable practice then to raise taxes for school purposes under the order and direction of City Council, and for the School Treasurer to receive the money so raised and pay it out on the written order of the school trustees, without any previous authority of a vote of the district, and in the pursuit of that practice, the said school trustees have at different times purchased and acquired and now hold 20 the title to three separate parcels of land, each one occupied with school buildings necessary for the accommodation of the scholars of that city and school district, all of which land has been acquired and the school buildings thereon erected with money raised by taxation ordered by City Council, and expended and paid out for that purpose by the said board of school trustees in and for the said city and district, upon the supposition and belief that the above previsions of the city charter authorized such a practice and that it was according to 30 law.

And the defendant further shows, that by the first section of the act entitled, "an act to enable cities to provide additional school accommodations, where the same are necessary, and to borrow money for the purpose, approved March 31st, 1882, among other things enacts,

"That if, in the judgment of any board of education of any city in this State, or other body having control of the public schools in any city of this State, it shall at any time be deemed necessary and expedient to provide additional school accommodations in such city, for the benefit of those entitled to attend the public schools in such city, it shall be lawful for the mayor and common council, or other governing body in such city, to authorize money to be borrowed for the purpose of purchasing land and the erection of suitable school buildings, and providing such school buildings with suitable school appliances and conveniences, and to secure the payment of the moneys borrowed as aforesaid by mortgage bearing annual interest at a per cent. not greater than the legal rate on the land purchased, and the building or buildings to be erected thereon in pursuance of this act, or if the city own suitable land, rendering a purchase of land unnecessary on such land and the building or buildings to be erected thereon; and in case the title to lands on which public school buildings are now erected in any city is vested by law in a board of education or other body having control of the public schools in such city, such board of education or other body having control of the public schools in such city, and not the mayor and common council or other governing body of such city, shall have the power to borrow money as aforesaid, and to secure the payment of the same by mortgage as aforesaid; provided, that not more than one school building with the necessary appliances and conveniences shall be authorized to be erected in any city in any one year in pursuance of the powers conferred by this act."

And this defendant further shows and expressly charges, that it is a corporation having control of the public schools of Atlantic City, and that as such corporation it is vested with the title to three several tracts of land at Atlantic City, each one of which is occupied

by a school building, and used for school purposes, and that the land and building mentioned and described in the said bill are one of the said three school properties above referred to.

And the defendant further answering says, it admits that the Board of School Trustees of Atlantic City is at present composed of Lewis Evans, Levi C. Albertson and Daniel Lacy, and that the said Obed H. Crosby is the present School Superintendent, and further says and alleges that they were elected to their respective offices by the legal voters of Atlantic City, under and according to the provisions of the city charter, and are corporate officers of the said city.

And the defendant further answering says, it admits the said Board of Trustees was before and at the service of the restraining order made by his Honor, the Chancellor, in this case engaged in the erection and construction of a new school-house on the lot referred to in said bill of complaint, without the previous authority of a vote of the district, and that there is at the present time a school building on the same lot of ground, adjoining or near to the site of the proposed new one; but the defendant expressly denies that without the erecting of the new school-house there is insufficient ground about the school-house already erected on the said lot for the proper accommodation and healthful exercise of the scholars that attend the school held there, and says that the said lot is one hundred and fifty feet on Pennsylvania avenue by one hundred and fifty feet on Arctic avenue, at the southwest corner of these avenues, and that the present school-house thereon consists of a two-story main building fifty feet and three and a half inches in front on Pennsylvania avenue, and forty-four feet and three inches in depth, with a back building thirty feet and three inches in width by forty feet and nine inches in depth, situate eighty-five feet and five and a half inches

from Arctic avenue, and that the proposed new building is situated on Arctic avenue distant about one hundred feet from Pennsylvania avenue, and in plan is two stories high and twenty-six feet in front by forty feet in depth, and similar to another of the school-houses of the said city, that by use and experience has been found to be most suitable for school purposes in said city, at the present time, and that according to the said plan and design of the said school trustees in the erection of the said new building, the nearest point of contact between the two school buildings will be forty-six feet, and that there will be over two thousand square yards of ground for the accommodation of the school children on said lot, outside of the said two buildings, which the defendant alleges is more than sufficient ground for the play and exercise of all the school children that will or can attend school in the two said houses there.

And this defendant further shows, that the school buildings of the said School District Number One, in and for the city of Atlantic, are at the present time entirely inadequate to properly accommodate the school children of the said city and district, that they are not sufficient to hold all the scholars without overcrowding to the discomfort of the scholars and detriment of the school system. And the defendant further says, that this want of a new school building for proper school purposes is universally admitted to exist in the said city and district, and that the present opposition to the erection of the said new building is in reality not founded upon any real motive or desire on the part of the complainants to hinder an illegal act or prohibit the expenditure or waste of the public school moneys, but arises from the fact of a local prejudice entertained by complainants, in common with some other residents, and property owners in that part of the city, against the erection of the proposed new school building, because it

is proposed by the said Board of Trustees to devote a part of the said building to the use of the smaller classes of colored scholars in said city; that the residence of Irving Lee, the first named complainant in this case, and whose affidavit is the first appended to this bill, adjoins the said school lot on Pennsylvania avenue, and he has expressed himself as strongly opposed to the said project of erecting a new building on the said lot to be used in part for the accommodation of classes of colored scholars, and that the said complainants have said and given it out in public that they would stop this suit if the trustees would agree to erect the building on some other lot.

And the defendant, further answering, admits that the opinion of the Solicitor of Atlantic City, referred to in the said bill, was brought to the attention of the said Board of Trustees, but says that the said opinion was not given at the request of the said board, and being contrary to the uniform practice in said city and district, and not appearing to cover the whole ground of the question involved, the said Board of Trustees, in the discharge of their duty, felt constrained to follow the precedents before them and their own judgment in the matter, founded upon their own careful reading and study of the city charter and the general acts above referred to relating to this subject.

And the defendant further shows, that if the interpretation of the laws by the complainants be correct and the third sub-division of section thirty-nine of the act entitled, "An Act to establish a system of public instruction," applies in all its force to the Board of Trustees of Atlantic City, and it must have the previous authority of a vote of the district before it orders the payment of the current expenses of any school, then all the public schools of the said city and district must be and remain closed until such vote can be taken, for no such vote has

ever been taken since the approval of the city charter of Atlantic City.

And the defendant further shows, that confiding in its own judgment of the law, founded upon practice and precedent and prompted by the necessities of the situation, it has not only commenced the erection of the said new building, but before it was aware that its right to do the acts in question would be controverted in a court of law or equity, it engaged an additional teacher to take charge
10 of the colored classes to be taught in the new school-house which was to be finished and opened on or before the second Monday of September instant.

And without such new building the plans for the coming scholastic year will be much disarranged, to the great disadvantage of the scholars of said city and district.

And the defendant, further answering, says it admits that there has been raised by taxation on the property in said city for school purposes, and paid to the said
20 School Superintendant and Treasurer during the last scholastic year, which commenced on the first day of September, eighteen hundred and eighty-one, and ended on the thirty-first day of August, eighteen hundred and eighty two, the sum of eleven thousand and eight hundred dollars or thereabouts, and that there has been paid to the said treasurer of the State tax during the present scholastic year for school purposes the sum of four thousand three hundred and seventy dollars and seventy cents or thereabouts, and that no part of said school
30 money has been specially designated, set apart, or appropriated for the building of a new school-house.

And this defendant, further answering, says no part of the said money was levied, raised, or paid into the said treasurer's hands for any particular school purpose, and that all the said moneys that have been used have been expended for such purposes as the said Board of Trustees

has from time to time designated by their written order to the said school treasurer.

And this defendant, further answering, denies that the balance of the said sums of money not expended for school purposes is not more than sufficient to pay the teacher's salaries and current expenses of the schools for the past year, or until the money raised for the present new year is received by the said school treasurer as stated in the said bill; but this defendant alleges that there is remaining of those moneys in the said treasurer's hands unexpended and not required or set apart for any school purpose whatever of the past year more than the sum of four thousand dollars which represents the unexpended balance in the treasurer's hands raised to be used for school purposes during the past year, with no school purpose to be applied to excepting the building of the new school-house, all the current expenses of the schools for the past year ending on the thirty-first day of August last past, having been paid and satisfied; and this defendant further answering admits that by a supplement to said act to revise and amend the charter of Atlantic City, entitled "a further supplement to the act entitled an act to revise and amend the charter of Atlantic City," approved March 31st, 1866, approved 8th, 1875, it is provided that the debt of Atlantic City shall at no time exceed the sum of thirty-five thousand dollars, as stated in said bill; and the defendant admits that the present debt of the said city now is about thirty-four thousand and four hundred and fifty dollars, and admits that the cost of the erection of the new school-house, if completed, will be about the sum of three thousand dollars, but denies that its construction will increase the city's debt beyond the limit allowed by law, because it is proposed to pay for the same out of the moneys in the school treasurer's hands, remaining there for that purpose and needed for no other.

And this defendant, further answering, respectfully submits and insists that the said Board of Trustees has not only been guided by a desire to do that which is best for the schools under its control, and acted according to its best judgement in the project of erecting the said new school-house, but that its said action has been founded upon necessity and according to the law of the land, and that it ought not to be further enjoined, restrained or hindered by the order or decree of this honorable court
10 from the further erection of the said school building; that the foundation for the same has been laid and a large amount of rough material placed upon the ground that will suffer much injury and be greatly in the way of the operation of the school if allowed to remain there in its present condition until the opening of school again, which takes place on the second Tuesday of the present month.

And this defendant, further answering, says that no other school-house has been erected in the said city or
20 school district by the said Board of Trustees, or any other body having the control of public schools within the past year.

And this defendant, further answering, denies all the unlawful combination and confederacy in the said bill charged without that that any other matter or thing material for this defendant to make answer unto, and not herein or thereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready
30 to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,
Sol'r and Counsel of Defendant.

New Jersey, ss.

Lewis Evans, Levi C. Albertson and Daniel Lacy, the members of the Board of School Trustees No. 1, of Atlantic City, being duly sworn, on their several oaths say that the matters and things set forth in the above answer of the School Trustees of School District No. 1, are true so far as they relate to their several acts and deeds, and so far as they relate to the acts and deeds of others they believe them to be true, and that they have affixed to the said answer the corporate seal of the said The Trustees of School District No. 1. 10

DANIEL S. LACY,
LEWIS EVANS,
LEVI C. ALBERTSON.

Sworn and subscribed before me, this fourth of September, A. D. 1882.

Stewart H. Shinn,
Commissioner of Deeds.

A true copy.

G. S. Duryee, Clerk.

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(Vice-Chancellor's reasons for order).

TRENTON, N. J., SEPT. 20, 1882.

D. J. PANCOAST, ESQ.

10 MY DEAR SIR:—In case of Lee v. Trustees of School District No. 1, in Atlantic City, I think the rule to show cause should be discharged. It was insisted when the order was advised (and so alleged the bill in effect) that the general law so revised on the subject of common schools prevailed over the special provisions of the charter of the city of Atlantic. I then thought there was much force in this view and advised the order.

I am now satisfied that the general law prior to the revision did not repeal any special laws, see Nix. Dig. 20 1868, page 880, sec. 82. Nor did the revision effect a repeal, see Revision 1087, sec. 100, and I think that the rules of construction respecting repeal by implication forbid the conclusion contended for by complainant. See Sedgwick on statutory construction 98, &c., and note, and the case on the same subject in Stewart's Dig.

I will therefore advise an order discharging the order to show cause.

Please show this to Mr. Garrison or a copy.

Very Respectfully,

JOHN T. BIRD.

(Order filed September 26, 1882.)

IN CHANCERY OF NEW JERSEY.

Between IRVING LEE AND OTHERS, Complainants. and THE TRUSTEES OF SCHOOL DISTRICT No. 1, IN THE COUNTY OF ATLANTIC AND OTHERS, Defendants.	ON BILL, &c. ORDER, &c.

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The matter of the rule to show cause why an injunction should not be issued in this case coming on to be augued before John T. Bird, one of the Vice Chancellors, in the presence of Garrison, French and Casselman, solicitors of the complainant, and David J. Pancoast, solicitor of the defendant, The Trustees of School District No. 1, in the county of Atlantic, and the said Vice Chancellor having heard and considered the proofs and arguments of both parties, and being of the opinion that the said complainants are not entitled to the injunction applied for, it is hereby ordered and decreed that the said order to show cause be discharged and the application for the injunction denied with costs.

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THEODORE RUNYON, C.

Dated Setember 26th, 1882.

JOHN T. BIRD, V. C.

A true copy.

G. S. DURYEE, Clerk.

(Petition of Appeal, filed Sept. 29th, 1882.)

IN CHANCERY OF NEW JERSEY.

Between IRVING LEE AND OTHERS, Complainants, and THE TRUSTEES OF SCHOOL DISTRICT No. 1, IN THE COUNTY OF ATLANTIC AND OTHERS, Defendants.	BILL FOR INJUNCTION AND RELIEF.

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20 *To the Honorable the Court of Errors and Appeals in the last resort in all causes:*

The humble petition of Irving Lee, Thomas Maguire, Alvin M. Bailey, Lemuel Eldridge, Jacob Natter and Edward Wilson, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-sixth day of September, in the year of our Lord one thousand

30 eight hundred and eighty-two, wherein your petitioners were complainants, and The Trustees of School District Number One, in the county of Atlantic, and Obed H. Crosby, Superintendent of Common Schools and School Treasurer of Atlantic City, were defendants, in this respect, to-wit: that the said order adjudges and decrees that an order to show cause why an injunction should not issue against said defendants, obtained by your

petitioners, be discharged and the application for the injunction denied with costs.

And your petitioners humbly appeal from the whole and every part of said order, discharging said order to show cause and denying said application for injunction with costs, on the ground that the same is erroneous, for that it denies to your petitioners rights and remedies to which they are entitled under said order to show cause, and that said defendants, or some of them, are acting without lawful authority in the premises, and to the injury of your petitioners and for that said order is in divers other respects erroneous, inequitable and contrary to law. 10

Your petitioners therefore pray that the said order of the said Chancellor may be reversed, set aside and for nothing holden, said order to show cause made absolute and the injunction applied for allowed.

And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

GARRISON, FRENCH & CASSELMAN, 20

Solicitors of Appellants.

C. G. Garrison,
Thomas E. French,
Of Counsel.

(Answer to Petition of Appeal, Oct. 30, 1882.)

COURT OF ERRORS AND APPEALS.

Between IRVING LEE AND OTHERS, Appellants. and THE TRUSTEES OF SCHOOL DISTRICT NUMBER ONE, IN THE COUNTY OF ATLANTIC, AND OTHERS, Respondents.	ON BILL, &c. ANSWER TO PETITION OF APPEAL.

The answer of the Trustees of School District Number One, in the County of Atlantic, to the appellants' petition of appeal in the above stated cause.

The said respondent saving and reserving to itself all and all manner of advantage of exception to the many imperfections in the said petitioners' petition of appeal, for answer thereto, denies that the said appellants were, upon their said bill of complaint, entitled to have the injunction prayed for, and avers that the said order discharging the order to show cause, and denying the application for an injunction, with costs, was rightfully and lawfully made; and the respondent respectfully asks this honorable court to dismiss the said appeal, with costs and charges to this respoddent in this behalf most wrongfully sustained.

Dated October 28th, 1882.

DAVID J. PANCOAST,
Solicitor and Counsel of Respondent.

A true copy,
HENRY C. KELSEY, Clerk.