

## COURT OF ERRORS AND APPEALS.

THE STATE, THE PROTESTANT FOSTER HOME SOCIETY OF THE CITY OF NEWARK, PROSECUTORS,

*Plaintiffs in Error,*

*vs.*

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK,

*Defendants in Error.*

*On Writ of Error to Supreme Court.*

*Brief.*

This certiorari was brought to set aside two assessments for 10 benefits made against the property of the plaintiffs in error—one for grading, curbing and flagging Second avenue, and the other for opening Summer avenue.

The Protestant Foster Home was incorporated Feb. 28, 1849. Laws 1849, p. 140.

The charity was designed to supplement the relief provided by law for destitute children, and so relieve the city of Newark from the burden of supporting children who otherwise would have become charges upon it as paupers.

In order to extend the influence and usefulness of the Society, 20 the Legislature has enacted that "the property of the Society shall not be subject to taxes or assessments."—Sec. 5, Charter.

As to right to acquire and hold real estate, see Sec. 1.

Since its incorporation this Society has been sustained by voluntary contributions and the products of its property, (p. 4, printed case, l. 31,) and is now fulfilling its mission.

As to assessments for grading Second ave. and opening Summer ave., see p. 3, printed case, l. 30, p. 4, l. 6, and advertising property for sale, p. 4, l. 19.

The question is whether the property of this Society, declared not to be subject to taxes or assessments, shall be sold to pay these assessments.

The Legislature had a Constitutional right to grant this exemption.

The absolute power of the State in matters of taxation is well established. It is not limited by the Constitutional provision that private property shall not be taken for public use without compensation; nor the clause that no person shall be deprived of his  
10 property without due process of law.

*Town of Guilford vs. Cornell*, 18 Barb. 615; *People vs. Mayor of Brooklyn*, 4 Comst. 423; *Nichols vs. Bridgeport*, 23 Conn. 189; *Providence Bank vs. Bilings*, 4 Peter 514; *Kirby vs. Shaw*, 19 Penna. (7 Harris) 258; *State vs. Branin*, 3 Zab. 485.

With regard to *assessments for local improvements*, it is now well established that in the absence of any express Constitutional provision upon the subject of taxation, the power to tax implies the power to apportion the tax.

*People vs. Mayor of Brooklyn*, 4 Comst. 419; *Matter of opening*  
20 *Furman St.* 17 Wend, 649; *Extension of Hancock St.* 18 Penna. 26.

The Legislature being thus absolute in its power in all matters relating to taxes and assessments, in the absence of Statutory or Constitutional restrictions, it is evident that it has also the power to exempt from taxes or assessments.

*Brewster vs. Hough*, 10 N. H. 145; *Herrick vs. Randolph*, 13 Verm. 525; *Langdon vs. Litchfield*, 11 Conn. 251; *Nichols vs. Bridgeport*, 23 Conn. 189; *State of N. J. vs. Wilson*, 7 Cranch, 165; *Dodge vs. Woolsey*, 18 Howard 330; *State vs. Miller*, 1 Vroom 368, 2 Vroom 321.

30 It remains to consider whether by its Charter of incorporation, the Foster Home is exempt from the payment of these assessments for local improvements.

The exemption is from taxes and assessments.

It has been held that an assessment for benefits for local improvements, is, in its legal character, a tax, being levied under the power of taxation confided by the Constitution to the Legislature, and is included in the exemption from civil impositions and taxes.

*Howard College vs. Boston*, 104 Mass. 482; *Dorgan vs. Boston*,

12 *Allen* 223; *People vs. Brooklyn*, 4 *Comst.* 419; *Burnett vs. Sacramento*, 12 *Cal.* 76; *Nichols vs. Bridgeport*, 23 *Conn.* 189.

Other decisions hold that incorporated companies, exempt by their Charter from taxes, charges and public impositions, are still liable to pay assessments for local improvements.

Hence it becomes important, in this case, to ascertain what is the legal meaning of the word "tax," and what the legal meaning of "assessments."

The word "assessment," as distinguished from a tax, has a certain precise legal meaning. It signifies something entirely different from a tax; and this distinction was well drawn by judicial decisions at the time of the passage of the act. 10

*Matter of Mayor of N. Y.*, 11 *Johns* 77.

*Sharp vs. Speer*, 4 *Hill* 76.

*Bleeker vs. Ballow*, 3 *Wend.* 263.

*Sharp vs. Johnson*, 4 *Hill* 92.

*Northern Liberties vs. St. John's Church*, 1 *Harris* 105.

*Paterson vs. Soc. Useful Man.*, 4 *Zab.* 386.

*N. J. R. R. vs. Newark*, 3 *Dutch* 186.

Taxes, then, are *burdens, charges or impositions*, set on property 20 for public purposes. Assessments are properly regarded in law as *compensation* paid by a town or city to the land owner for damages for taking land for the purpose of local improvements, or for benefits paid by the land owner for the enhanced value caused by the improvement.

It is used in the latter sense in this Charter, because the property of the Society is declared not to be *subject* to taxes or assessments.

The expression "assessment of taxes," is often used, *i. e.* fixing rate or proportion of taxes. Not used in this sense in this 30 Charter, because Foster Home is also exempt from *taxes*.

The cases cited which hold that assessments for local improvements do not come within the exemption of taxes, charges and impositions, do not affect this case, because the exemption is not from taxes merely, but also from assessments.

The only meaning the word "assessments" can have in this Charter, is *assessments for benefits*.

What does city claim in this proceeding? In terms, assessments or benefits.

This distinction between taxes and assessments must have been well understood by the Legislature which passed the act. The distinction had been recognized many years previously, in Charter granted to municipal corporations.—Charter of Newark, laws 1836, p. 198, sec. 30–34 ; Charter of Jersey City, laws 1836, p. 313, sec. 1.

The Legislature then must have intended to use the word in its ordinary legal sense, which is primarily compensation for benefits. We have no right to suppose they did not intend to express *some-*  
10 *thing* by the word assessment, or that they did not intend to express *all* its meaning.

The rule is cardinal and universal, that if the statute is plain and unambiguous, there is no room for construction.

*Bosley vs. Mattingley*, 14 B. Monroe 89.

*Fischer vs. Blight*, 2 Cranch 358–399.

*Case vs. Wildredge*, 4 Indiana 51.

*Ellis vs Paige*, 1 Pick 43.

*James vs. Patten*, 2 Selden 9.

*In vs. Powers*, 25 Vermont 265.

20 *Green vs. Wood*, 7 G. B, 178, 185.

*Everitt vs. Wells*, 2 Scott (N. C.) 531.

*Putman vs. Longley*, 11 Pick 487, 90.

*Priestman vs. U. S.*, 4 Dallas 30.

In this case the wording of act is free from doubt. The claim of the city is confessedly for assessments, to which Charter says Foster Home is not subject.

No other single word would have expressed so well the intention of Legislature to exempt from just such claims.

30 Covenants in leases to pay taxes, charges, and assessments have been held to require a tenant for years to pay assessments like the present.

*Bleeker vs. Ballow*, 3 Wend. 263.

*New York vs. Cashman*, 10 Johns 97.

*Oswald vs. Giefert*, 11 Johns 443.

*Walker vs. Andruss*, 3 M. & W. 312.

*Thompson vs. Lapworth*, Law Rep. 3 C. P. 149.

The question involved in these cases was a question of construction.

The case of exemption by legislative grant from taxes and assessments is much stronger.

*Howard College vs. Boston*, 104 *Mass.* 480.

The Legislature has provided in supplement to Charter of Newark, that where commissioners for making assessments meet with land not subject to assessments, they shall estimate the benefits, and if benefits exceed the damages, *they shall not allow damages*. Laws 1868, p. 793, (compare p. 411.)

Legislature very properly thought that a corporation exempt from assessments for benefits should not receive assessments for 10 damages.

This, then, is a legislative acknowledgment of the exemption of certain lands in Newark from assessments for benefits.

Under this section the assessment for opening Summer avenue was made. (See return.) No damages were awarded—the benefits exceeding the damage.

The city, by their action, have admitted the exemption of this property from assessments.

The intention of the Legislature to exempt this property from all claims by the city was, no doubt, in view of the avowed object 20 and purpose of the Society.

Article 2, Preamble to charter; design is support and education of destitute orphan children.

Article 10. Children are to be taught precepts of morality and religion, &c.

Legislature foresaw that the State was deeply concerned in the formation and efficiency of such institutions. It was quite natural that Legislature should lend its aid to such a society, and make it as useful and efficient as possible.

And such seems to have been the policy of the State with re- 30 gard to educational, charitable and religious institutions.

*General Tax Law, Nixon's Dig., Taxes, Sec. 87; Newark Library Association, Laws 1849, p. 117; N. J. Hist. Society, Laws 1856, p. 143; Sisters of Charity of St. Elizabeth, Laws 1869, p. 413; Poor of St. Francis, Laws 1869, pp. 11, 1120, 839.*

This policy is but a branch of that general care which the State takes of indigent orphan children and the great interests of education.

It is right that the State should render private institutions

effecting objects like these as free and effective as public institutions for carrying out these designs. *They* are exempt.

In construing this statute we should consider that the Legislature foresaw that this society would relieve the city of Newark from the necessity of supporting children who otherwise would have become dependent upon it for support and maintenance.

It is admitted that such has been the result. (P. 4, printed case, l. 31.)

In this respect the city has been greatly relieved.

- 10 The trustees and managers of Foster Home are not benefited by this exemption, but the community at large.

The exemption of this society from assessments works no hardship on neighboring property-owners.

Admitted the assessments were made against property-owners according to the benefit *each* was deemed to acquire.

These assessments, if the Court shall say Foster Home is exempt, must be paid by the *city*, just as it pays assessments for improvements to alms-houses and public schools.

- 20 No tax assessment has ever been enforced against the society, though local improvements have been made.

The city has never, until now, attempted to enforce these assessments. (P. 5, l. 30.)

As to bearing of this fact upon the interpretation of the charter, see 104 *Mass.*, 488.

It is said the legality of the Belleville avenue assessment was questioned in the courts. (p. 5, printed case, l. 30.)

- 30 Foster Home never objected to legality. The question was decided in favor of the city. The city has collected assessments from others; why not from this society, unless the city has heretofore recognized the fact that the society, as the treasurer's book indicates, (p. 5, printed case, l. 30), is exempt by law from such assessments?

There may be some question as to whether the principle upon which this assessment was made was correct; and with the principle of an assessment courts may interfere.

*Leroy vs. Mayor of N. Y.*, 20 *Johns.*, 420.

Assessments were made upon this property upon the same principle as other property.

- 40 This Society being limited, from the nature of its constitution and powers, from using its property for any other purpose than

the object for which it was incorporated, cannot be said to be benefited to so large an extent as other property. The use of their land is restricted.

*Matter of Mayor of New York*, 11 Johns., 77; *In the matter of Albany street*, 11 Wend., 149.

But if this view is not correct, and the Foster Home is largely benefited, still courts should not regard the consequences of the exemption when the words of exemption are clear.

Whatever property Foster Home has, is and must be devoted to the object for which it was formed.

All its land is used, as far as possible, in carrying out the object of the society. The charity is supported by the products of its land, and by voluntary contributions. (Printed case, p. 4, l. 30.)

THE FOSTER HOME SOCIETY OF THE CITY  
 OF NEWARK, PROSECUTORS,  
 Plaintiffs in Error,  
 vs.  
 THE MAYOR AND COMMON COUNCIL  
 OF THE CITY OF NEWARK,  
 Defendants in Error.

Writ of Error  
 to the  
 Supreme Court.

Writ of Error filed May 23d, 1872.

New Jersey, ss.: *The State of New Jersey* to our Justices of the Supreme Court, Greeting:

Because in the record and proceedings, and also in the giving of judgment in a certain matter of assessments, made by order of the Mayor and Common Council of the City of Newark, against property of The Protestant Foster Home Society of the City of Newark, for opening Summer avenue and grading Second avenue in said city, which was by writ of *certiorari* removed into our Supreme Court, before our Justices thereof, at the suit of the State of New Jersey, the Protestant Foster Home Society of the City of Newark, prosecutors, against the Mayor and Common Council of the City of Newark aforesaid, manifest error has intervened, as is said, to the great damage of the said prosecutors, and by their complaint we are informed,

the object for which it was incorporated, cannot be said to have been intended to so large an extent as other property. The use of this

In construing this statute we should consider that the land is restricted to the use of the object for which it was incorporated. *Matter of Foster Home, 20 Johns. 420.* The use of this land is restricted to the use of the object for which it was incorporated. *Matter of Foster Home, 20 Johns. 420.* The use of this land is restricted to the use of the object for which it was incorporated. *Matter of Foster Home, 20 Johns. 420.*

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These assessments, if the Court shall say Foster Home is exempt, must be paid by the city, just as it pays assessments for improvements to almshouses and public schools.

20

No tax assessment has ever been enforced against the society, though local improvements have been made.

The city has never, until now, attempted to enforce these assessments. *(P. 5, 1, 30.)*

As to bearing of this fact upon the interpretation of the charter, see 104 Meas., 485.

It is said the legality of the Belleville avenue assessment was questioned in the courts. *(p. 5, printed case, 1, 30.)*

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Foster Home never objected to legality. The question was decided in favor of the city. The city has collected assessments from others; why not from this society, unless the city has heretofore recognized the fact that the society, as the treasurer's book indicates, *(p. 5, printed case, 1, 30.)* is exempt by law from such assessments?

There be some question as to whether the principle upon which this assessment was made was correct; and with the principle of an assessment courts may interfere.

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Assessments were made upon this property upon the same principle as other property.

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This Society being limited, from the nature of its constitution and powers, from using its property for any other purpose than

# NEW JERSEY COURT OF ERRORS AND APPEALS.

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NEW JERSEY, SS.: *The State of New Jersey to our Justices of the Supreme Court, Greeting:*

[L. S.]

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20

We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that, if judgment be given thereupon, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, to be held at Trenton, the third Tuesday of June next, together with this writ; that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of  
10 right and according to law ought to be done.

Witness the Honorable Abraham O. Zabriskie, our President, at Trenton, the eighth day of May, A. D., 1872.

HENRY YOUNG, *Attorney.*

HENRY C. KELSEY, *Clerk.*

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CERTIORARI TO REMOVE ASSESSMENTS.

NEW JERSEY, ss.: The State of New Jersey to the Mayor and  
Common Council of the City of Newark,  
[L. s.] greeting:—

We being willing for certain reasons to be certified of the pro-  
20 ceedings touching certain assessments made by order of the Mayor  
and Common Council of the City of Newark, against property of  
The Protestant Foster Home Society of the City of Newark, for  
opening Summer avenue and grading Second avenue, in said city,  
command that you certify and send to the Justices of our Supreme  
Court of judicature, to be holden at Trenton, on the seventh day  
of June next, the said assessments and your tax bills, with all  
things touching the same, together with this writ, that therein may  
be done, what of right ought to be done.

Witness, Mercer Beasley, Esq., Chief Justice of our Supreme  
30 Court at Trenton, this thirteenth day of April, in the year of our  
Lord one thousand eight hundred and seventy.

HENRY YOUNG,

*Atty'y of Pltffs., in Certiorari.*

CHAS. P. SMITH, *Clerk.*

## REASONS FOR REVERSAL.

Filed April 16, 1870.

And the said plaintiffs in *certiorari*, by Henry Young, their Attorney, come and for reasons why said assessments should be set aside, show as follows :

1. Because the said proceedings are not in conformity to the directions of the Charter of the City of Newark in that behalf.
2. Because said assessments upon the property of the Protestant Foster Home Society, of the city of Newark, for benefits for grading Second avenue, and opening Summer avenue in said city, are illegal. The charter of incorporation of said Protestant Foster Home Society, approved February 28th, 1849, enacts that the property of said society shall not be subject to taxes or assessments. 10
3. Even if the charter of the said society did not contain the exemption above mentioned, the said assessments for benefits were erroneously and illegally made. The property of the said society was not benefited to so large a degree by grading Second avenue and opening Summer avenue, as the property of other land owners on the line of said streets, and should not have been assessed 20 for benefits upon the same principle.

HENRY YOUNG,

*Attorney of Plaintiffs.*

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STATEMENT OF CASE AGREED ON BY RESPECTIVE COUNSEL.

The following is the state of the case in the annexed certiorari :

1. This cause is brought to set aside two assessments for benefits made against the property of the Foster Home Society of the city of Newark—one for opening Summer avenue, and the other for grading, curbing and flagging Second avenue, in the city of Newark. 30

2. That for costs and expenses of grading, curbing and flagging Second avenue, in said city, assessments were made by the City Surveyor, against property of said Protestant Foster Home Society, on the line of Second avenue, designated as lots Nos. 1, 2,

and 3, on City Surveyor's map, annexed to the returns to this certiorari, as follows:

Lot No. 1, \$3,748.01.

Lot No. 2, \$453.00.

Lot No. 3, \$3,934.56.

3. That the Commissioners appointed by the Common Council of the City of Newark, to assess the costs, damages and expenses of opening Summer avenue in said city, made assessments in accordance with the supplement to the charter of said city, approved  
10 April 6th, 1868, against the property of the said Protestant Foster Home Society, on the line of Summer avenue, designated as lots 65 and 67 on Commissioners' map, annexed to the return to this certiorari, as follows:

Lot No. 65, \$1,370.25.

Lot No. 67, \$1,381.00.

4. That these assessments were made against said Protestant Foster Home Society in like proportion as against other property on the line of said improvements.

5. That the said assessments for grading, curbing, and flagging  
20 Second avenue, and opening Summer avenue, remaining unpaid, the property of the Protestant Foster Home Society was advertised for sale to pay said assessments, April 15, 1870, in accordance with the provisions of the charter of said City of Newark.

6. That the Protestant Foster Home Society of the city of Newark, was incorporated February 28th, 1849, and by section 5 of their Charter, it is enacted that the property of said society shall not be subject to taxes or assessments. It is agreed that the charter of the Protestant Foster Home Society of the city of Newark, and the charter and ordinances of the city of Newark,  
30 may be used in the argument of this cause.

7. That the Protestant Foster Home Society of the city of Newark, has since its organization, by the use and products of its said property as hereinafter set forth, and by individual contributions made from time to time, been taking care of, supporting and educating children of the city of Newark exclusively, some of whom were taken from that class and in that condition as otherwise would have become a charge as paupers upon the said city.

8. That the property of the Protestant Foster Home Society, upon which these assessments have been made as aforesaid, were conveyed to said society in two several tracts. The first tract was conveyed August 1st, 1848, by Isaac Meeker and wife to William Pennington and others, Trustees of the said Protestant Foster Home Society, and after incorporation, the same property, containing twelve and a-half acres, was conveyed by said William Pennington and others, Trustees as aforesaid, to the said Protestant Foster Home Society of the city of Newark.

The second tract was conveyed March 23, 1853, by Jesse Baldwin and wife to the said Protestant Foster Home Society. The said last mentioned tract contains about three acres, and is situate on the corner of Belleville avenue and Second avenue. Of this property the frontage on Belleville avenue to the depth of about 100 feet is occupied by the home and garden, the balance being unimproved land.

Up to the time of opening Second avenue, all the said property was used for pasturage, and the raising of crops of corn and potatoes for the use of the said society. Since then all the above-described tract has been used as aforesaid by the said society, with the exception of the northwesterly half of lot No. 1, on City Surveyor's map, which has been lying open.

The contractors, for grading Mount Prospect avenue and Second avenue, (see City Surveyor's map,) have been and now are, by agreement with the said Foster Home Society, filling in said lot to the level of said avenue, thereby rendering it at present unfit for use.

9. That this property has been subject to but one assessment prior to this, viz.: an assessment for paving Belleville avenue, which assessment was ratified Sept. 28th, 1868, and noticed for payment Dec. 1st, 1868. This assessment has never been paid by the Protestant Foster Home Society; nor enforced by the city against them nor any of the property owners, although some have paid. The legality of the assessments for paving Belleville avenue, has been certioraried by some of the property owners on said Belleville avenue, and is now awaiting the decision of the Court of Errors and Appeals. To these proceedings the Foster Home was not a party.

In the book of assessments of the City of Newark, opposite the said assessment for paving Belleville avenue, is a memorandum

made by the Treasurer of the City of Newark, "exempt by law."

The above is admitted for the purpose of the argument of this *certiorari*, and is to answer all the ends and purposes of a return to this writ.

N. PERRY, JR., *City Counsel*.

HENRY YOUNG, *Plaintiffs' Att'y*.

October 27th, 1870.

And such proceedings were thereupon had in our said Supreme Court that afterwards, to-wit, at the term of February, A.D. eighteen hundred and seventy, it was ordered by our said Supreme Court as follows, to-wit :

## New Jersey Supreme Court.

THE MAYOR AND COMMON COUNCIL

OF THE CITY OF NEWARK,

*Defendants in Error,*

*ads.*

THE STATE, THE PROTESTANT FOS-

TER HOME SOCIETY OF THE CITY

OF NEWARK, PROSECUTORS,

*Plaintiffs in Error.*

On Certiorari.

In matter of Assess-  
ments.

Affirmance.

10

The Court having heard the argument of counsel, and duly considered the same, and inspected the matters removed by the writ in this cause, it is ordered that said assessment be in all things affirmed with costs.

On motion of Wm. H. Francis, Att'y.

Therefore, it is considered that the said "The Protestant Foster Home Society of the City of Newark," take nothing by their said writ but that the said "The Mayor and Common Council of the City of Newark," do go thereof without day, and it is further considered that the assessment of taxes aforesaid be, and the same is, by our said Court here in all things ratified and confirmed as valid and effectual in law. 20

And it is further considered that the said "The Mayor and Common Council of the City of Newark," do recover against the said "The Protestant Foster Home Society of the City of Newark," the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents for their costs and charges in this behalf laid out and expended by the Court now here adjudged to the said "The Mayor and Common Council of the City of Newark," and with their assent, and that they have execution thereof according, &c. 30

Judgment signed this ninth day of March, A.D. eighteen hundred and seventy-two.

M. BEASLEY, *Chief Justice.*

## OPINION.

WOODHULL, J.

This *certiorari* is brought to set aside two assessments for benefits made against the property of the Protestant Foster Home Society of the city of Newark, one for grading, curbing and flagging Second avenue, and the other for opening Summer avenue in  
10 the said city.

By the fifth section of the act to incorporate the said society, passed Feb. 28th, 1849, (Acts 1849, p. 140,) it is enacted that the property of the society "shall not be subject to taxes or assessments."

The sixth section provides, that the Legislature may at any time "amend, modify or repeal this act as they shall think proper."

The reason most relied on for setting aside these assessments was that they are within the exempting clause of the fifth section  
20 of the charter, and are therefore illegal. The power of the Legislature to grant the exemption claimed by the prosecutors in this case, and the force and effect of such exemption when contained in a charter subject to modification or repeal, at the will of the Legislature, were fully considered in this Court and in the Court of Errors in the case of the State *vs.* Millar, and may be regarded as no longer open questions in New Jersey.

Mr. Justice Elmer in delivering the opinion of this Court, which was afterwards adopted as the opinion of the Court of Errors, in the same case, on affirmance of the judgment below, says "that an  
30 act granting corporate privileges to a body of men, and expressly exempting them from taxation becomes, when accepted, a contract which is protected by the Constitution of the United States, from being impaired, is too well established by judicial decisions by the action of the Legislature, and the acquiescence of the people to be questioned."

But the weight of authority is equally decisive, that if the act reserved a right of repeal, the company takes the charter and the

contract thereby implied or expressed, subject to such alterations as the Legislature may deem expedient. *State vs. Millar*, 1 *Vroom* 368, 2 *Vroom* 321.

It may be assumed, then, that there is embodied in the charter of the prosecutors a contract which, until rescinded in the manner provided for in the act, furnishes a complete protection against all such burdens or impositions as were clearly intended by the Legislature under the designation of "taxes or assessments."

It may be admitted, too, that the Legislative intent to exempt the society from all such taxation, whether for state, county, 10 township or municipal purposes, as is imposed by the general tax laws of the state, is sufficiently clear.

But can it be said that these local assessments for benefits are so clearly within the meaning of the word "taxes or assessments," as used in the charter of the prosecutors, that this court would be justified in holding that they are no more liable to such assessments for municipal purposes than they are to the burdens of ordinary taxation?

Although an assessment for benefits is clearly an exercise of that power of taxation which is inherent in the state as a part of 20 its sovereignty, it has been repeatedly decided that such assessments are not *taxes* in the ordinary legislative sense of that word. In the case of the *City of Paterson vs. The Society for Establishing Useful Manufactories*, 4 *Zab.*, 385, the expenses of grading and paving a street had been assessed upon lots owned by the defendants, and such assessment was held not to be a tax within the meaning of that defendant's charter, which exempted their property from "all *taxes, charges* and impositions under the authority of this state."

Chief Justice Green, delivering the opinion of the court in that 30 case says: "The taxes, charges and impositions" specified in the charter are manifestly those imposed for public use.

The design of the charter was to relieve the corporation from such burthens only, citing and adopting the language of the Supreme Court of New York in the matter of the *Mayor of New York*, 11 *John*, R. 80, that "to pay for the opening of a street in a ratio to the benefit or advantage derived from it, is no burthen; it is no talliage or tax within the meaning of the exemption, and has no claim on the public benevolence."

In the case of *The State vs. The City of Newark*, 3 *Duch.*, 185, 40

the exempting clause in the charter of the prosecutors was "that no other or further tax or imposition shall be levied or imposed upon the said company;" and an assessment for benefits upon houses and lots of the prosecutors "in proportion as nearly as may be to the advantage each was deemed to require" by the altering and widening of a public street in the said city, was held not to be such a tax or imposition, as they were entitled to be exempted from by virtue of their charter.

10 Mr. Justice Elmer, in the opinion delivered by him in that case, speaking of the exemption in the charter of the prosecutors and other similar charters granted by the Legislature of this state, remarks, that these exemptions are connected with and partly in consideration of provisions for the payment by the companies of specified taxes into the state treasury, and have been held by our courts to include not only taxes imposed expressly for state purposes, but all county, township or city taxes. To extend them beyond such taxes as are assessed as a burthen, so as to include those which are collected upon the principle of requiring the value of benefits received to be returned, would be to disregard the  
20 obvious intention of the Legislature. Taxes of the general nature of those usually laid for defraying the expenses of the government, and such only, are to come within the fair meaning of the language used."

In the case of *The Mayor and City Council of Baltimore vs. Proprietors of Green Mount Cemetery*, 7 Md. R. 517, cited and approved by Chief Justice Green, in *The State vs. City of Newark*, the Company's charter provided that the land appropriated as a cemetery so long as used for that purpose, "should not be liable to any tax or public imposition whatever."

30 The company was, nevertheless, held not to be exempt from a paving tax, for paving a street in front of its property. LeGrand, C. J., in delivering the opinion of the court in that case says: "The words, any tax or public imposition whatever, most certainly are very comprehensive, and would, if strictly construed, apply to every possible form of taxation or imposition, and as a consequence necessarily include a paving tax. But on the fullest consideration, we are unable to satisfy our minds that the statute in question should receive such an exposition. We think the Legislature intended nothing more than to exempt the prop-  
40 erty of the prosecutors from all taxes or impositions levied or

imposed for the purpose of revenue, and not to relieve it from such charges as are inseparably incident to its location in regard to other property."

Chancellor Zabriskie, delivering the opinion of the Court of Errors and Appeals, in the case of *Cook, Collector of Northampton vs. The State*, says: "The position that no person or corporation shall be held as exempt from taxation, one of the highest and most important of the sovereign powers of the state, unless by clear and express words, or an implication as strong and conclusive as express words, is one founded on principles that are incontrovertible, and the application of which to cases like this is established by authorities which we cannot disregard." 10  
4 *Vroom* 473, and cases there referred to.

In *Penna. R. R. Co. vs. Canal Commissioners*, 21, *Penn.* 9, the language of the Court is that corporate powers can never be created by implication nor extended by construction. No privilege is granted unless it be expressed in plain and unequivocal words, testifying the intention of the Legislature in a manner too plain to be misunderstood.

In the construction of a charter, to be in doubt is to be resolved 20 and every resolution which springs from doubt is against the corporation.

An eminent jurist speaking of statutes which confer particular exemptions from general burthens, or against common and general right, says: "The statutes which fall in this class are regarded with a jealous eye, and strictly construed." *Sedg. Stat. and Con. Law*, 344. And again—"In analogy to the rules requiring a strict interpretation to be applied to all corporate grants it is held that although a contract may be made exempting a party from taxation, it must be very clear and express." *Ib.* 6, 32. 30

In a recent valuable treatise by Judge Cooley, of Michigan, the rule of construction applicable to all such cases, and the reason on which it rests, are thus well stated: "Equality of rights, privileges and capacities unquestionably should be the aim of the law; and if special privileges are granted, or special burdens or restrictions imposed in any case, it must be presumed that the Legislature designed to depart as little as possible from this fundamental maxim of government.

"The state, it is to be presumed, has no favor to bestow, and designs to inflict no arbitrary deprivation of rights. Special privi- 40

leges are obnoxious, and discriminations against persons or classes are still more so, and as a rule of construction are always to be leaned against as probably not contemplated or designed." *Cooley Con. Lin.*, p. 393.

It seems clear from these authorities that the word taxes in the exempting clause of the prosecutors' charter must, in the absence of any clear indication to the contrary, be understood to refer exclusively to the ordinary public taxes, and applying the same rule of construction which the courts have uniformly applied to other  
 10 words in a similar construction, such as *charges, imposts, impositions, lines*, it follows that the word assessments, as it stands in the clause in question, must, if it will fairly admit of such an interpretation, be understood to have exclusive reference to burdens of the same general character as those expressed by the word *taxes*.

It was urged with much ingenuity and force on the part of the prosecutors, that this interpretation of the word *assessments* involves the violation of familiar rules of construction.

1. That which requires the words of an act or a contract to be  
 20 taken in their plain and natural sense.

2. That which requires that every word shall, if possible, be made to take effect. The answer to this objection, if not already sufficiently suggested, will be found in the nature of the claim set up by the prosecutors, the strict rule of construction to be applied to it, and in the fact which a glance at our tax laws will verify, that the words taxes and assessments are not unfrequently used by the Legislature as equivalent terms, so that in the clause in question, the word assessments, following as it does, the connective "*or*," may naturally enough be understood to be used  
 30 *merely* as an alternative expression, signifying substantially the same thing as the word *taxes*.

It follows from this construction that the clause in question is not a contract exempting the prosecutors from these assessments for benefits. And as we find nothing in any other part of their charter which necessarily implies such a contract, the result is that the prosecutors have failed to show any contract of exemption except as to the ordinary public taxes.

But it is further objected on the part of the prosecutors that even if their charter does not contain the exemption which they  
 40 claim, these assessments are wrong, and ought to be set aside on

another ground, namely, that the property of the society was not benefited as much relatively, as the property of other land owners on the line of said streets, and should not have been assessed for benefits upon the same principle.

The cases relied on to support this objection, were matter of *The Mayor, &c.*, 11 *Johns. R.* 77, and matter of *Albany St.*, 11 *Wend.* 150. These cases are referred to by Mr. Justice Bronson in the matter of *William and Anthony Sts.*, 19 *Wend.*, 678, who in delivering the opinion of the court in that case says with reference to a similar objection: "As a general rule, in making these esti- 10 mates and assessments, the present use of the property and the purpose of the owner in relation to its future enjoyment, must be laid out of view. The only safe and practical course, the one which will do equal justice to all parties, is to consider what will be the influence of the proposed improvement on the market value of the property. What is it now fairly worth in the market, and what will be its value after the improvement is made?" *Furman St.*, 17 *Wend.*, 668.

In the case of churches and lands which can only be used for a cemetery, a different rule has been laid down. (*Matter of 20 Mayer* 11 *Johns. R.*, 77, *Albany St.*, 11 *Wend.*, 150.) "But it should be remarked in relation to these cases, that they proceed on the ground that the owner cannot apply the property to any new or different use. Where the owner has the unrestrained 02 power of alienation, and the property may be converted to any new use at his pleasure, it is difficult to see upon what principle an exception can be made to the rule of regarding only the market value. After the owner has escaped what would otherwise be a just burden, on the ground that he does not intend to use the property in a way which will make the improvement 30 beneficial, he may change his mind, throw the property into the market, and realize advantages for which others have been made to pay."

The rule as here stated by Judge Bronson, we understand to be the correct one.

The assessments against the prosecutors in this case appear to have been made in conformity with this rule, and the objection that they are wrong in principle is therefore not sustained:

The assessments are affirmed.

## THE RETURN.

The answer of the Justices of the Supreme Court of New Jersey within named: The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within commanded.

M. BEASLEY, *Chief Justice.* [SEAL.]

[L. s.] CHARLES P. SMITH,

*Clerk.*

## 10 STATE OF NEW JERSEY:

[L. s.] I, Henry C. Kelsey, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of a return to a writ of error issued out of the Court of Errors and Appeals, in the last resort in all causes, &c., directed to the Supreme Court, in the above stated cause, as the same is taken from and compared with the original filed in my office on the eighteenth day of June, A.D. 1872, and now remaining on file therein.

20 In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-eighth day of September, A.D. 1872.

HENRY C. KELSEY.

## New Jersey Court of Errors and Appeals.

<p>THE STATE, THE PROTESTANT FOSTER HOME SOCIETY OF THE CITY OF NEWARK, PROSECUTORS,</p>	}	<i>On Certiorari.</i>
<p><i>Plaintiffs in Error,</i></p>		
<p><i>vs.</i></p>		
<p>THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK,</p>	}	<i>Assignment of Error.</i>
<p><i>Defendants in Error.</i></p>		

[Filed July 15, 1872.]

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Afterwards, that is to say, on the third Tuesday of June, in the year one thousand eight hundred and seventy-two, before the Court of Errors and Appeals in the last resort in all causes, comes the said State of New Jersey, by Henry Young, its attorney, (the said the Protestant Foster Home Society of the city of Newark being prosecutors,) and says that in giving the judgment aforesaid there is manifest error in this that the land and real estate which was assessed for benefits as aforesaid for opening Summer avenue and grading Second avenue, in the city of Newark, in the assessments which were removed before the said Supreme Court, was the property of the said Protestant Foster Home Society of the city of Newark, and belonged to them at the time of such assessments, and was exempt from said assessments by virtue of the provisions of an act entitled "An act to incorporate the Protestant Foster Home Society of the city of Newark," approved February twenty-eight, eighteen hundred and forty-nine, and yet the said assessments were sustained and confirmed by the said judgment of the Supreme Court.

And there is also error in this that the judgment aforesaid, by the record aforesaid, appears to have been given for the said de- 30

defendants in error against the said plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs in error against the said defendants in error. And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled and altogether holden for naught, and that the said prosecutors may be restored to all things which they may have lost by reason of the said judgment.

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HENRY YOUNG,

*Attorney and Counsel of Plaintiffs in Error.*

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of Newark, and belonged to them at the time of such assessments,  
property of the said Protestant Foster Home Society of the city  
ments which were removed before the said Supreme Court, was the  
and grading Second avenue in the city of Newark, in the assess-  
was assessed for benefits as aforesaid for opening, widening and  
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said the Protestant Foster Home Society of the city of Newark  
the said state of New Jersey, by Henry Young, his attorney, (the  
found of errors and 4 pages in the last year in all cases, copies  
the year one thousand eight hundred and seventy-two, before the  
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