

Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

THE STATE, THE CAMDEN AND BURLINGTON COUNTY RAILROAD COMPANY, prosecutors,

vs.

FRANKLIN COOK, collector of Northampton township, defendant in certiorari.

On certiorari to remove assessment of tax.

Frederick Voorhees and James Wilson, for plaintiffs in error.

E. Merritt and A. Browning, for defendants in error.

The State of New Jersey, Burlington county, ss.—
John R. Slack, of Mount Holly, in the county of Burlington, and state of New Jersey, being duly sworn according to law, saith—that he is the secretary and treasurer of “The Camden and Burlington County Railroad Company;” that the principal office of said company is located at Mount Holly, in the township of Northampton, in said county of Burlington; that, by an act of the legislature of the state of New Jersey, passed —, A. D. 1866, entitled “An act to consolidate the Burlington County Railroad Company and the Camden, Moorestown, Hainesport, and Mount Holly Horse Car Railroad Company, supplementary to the charters of said companies,” being the act under which the said above named, “The Camden and

Burlington County Railroad Company," was created and exists. The legislature, on the behalf of the state of New Jersey, entered into a contract with said company, in the words following, to wit: "And whenever the net earnings of said consolidated company shall, over expenses and interest, amount to six per centum upon its capital stock, the said company shall pay to the treasurer of this state a tax of one-half of one per cent. on the costs of said road, to be paid annually on or before the fourth

10 Monday of January. Provided, that no other tax or impost shall be levied or raised from said corporation by virtue of any law of this state." And this deponent further saith—that John Sailer, assessor of taxes for the township of Northampton, in said county of Burlington, has assessed against the said, "The Camden and Burlington County Railroad Company," for the year A. D. 1866, for the capital stock or personal property of said company, the sum of two hundred and twenty thousand six hundred and four dollars, (\$220,604;) and for real estate,

20 the further sum of seven thousand dollars, making in all, two hundred and twenty-seven thousand six hundred and four dollars, (\$227,604;) that the real estate of the said company forms part of the capital stock, and should not be added to the said capital if the said corporation be taxable. And this deponent further saith—that the said road is now in the process of construction, in a great measure unfinished; that the said corporation has no accumulated surplus, and its net earnings, over expenses and interest, do not equal six per cent. upon its capital

30 stock. And that the said corporation prays a writ of certiorari out of the Supreme Court of Judicature of the state of New Jersey, to be directed to Franklin Cook, esq., collector of taxes for the township of Northampton, to bring up the said assessment in said court, that what is right, and according to law, may be done therein.

JOHN R. SLACK.

Sworn and subscribed before me, this 9th day of October, A. D. 1866.

PHILIP F. SLACK,
Justice of the peace.

New Jersey, to wit. The State of New Jersey to Franklin Cook, collector of taxes for the township of Northampton, in the county of Burlington: We, being willing for certain reasons, to be certified of a certain assessment of taxes recently made by John Sailer, assessor of the said township of Northampton, for the year of our Lord eighteen hundred and sixty-six, for said township, against "The Camden and Burlington County Railroad Company," and of the proceedings thereon, do command you, that the assessment so made, with all things touching and concerning the same, and the proceedings had thereon, as fully as the same remains in your hands and possession, by whatever name called, you certify and send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the first Tuesday of November next, together with this writ, that we may further cause to be done thereupon, what of right, and according to law, ought to be done.

Witness Mercer Beasley, esq., Chief Justice of our said Supreme Court, at Trenton, the thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six.

CHAS. P. SMITH, *Clerk.*

EWAN MERRITT, *Attorney.*

To the Honorable, the Justices of our Supreme Court of Judicature of the State of New Jersey.

I, Franklin Cook, collector of taxes for the township of Northampton, county of Burlington, state of New Jersey, in obedience to the command of the within writ to me directed, do hereby certify and send to you, the said justices, the assessment of taxes recently made by John Sailer, assessor of said township, for the year eighteen hundred and sixty-six, for said township against the Camden and Burlington County Railroad Company, with all things touching and concerning the same and the pro-

ceedings had thereon, as fully as the same remains in my hands and possession, as within I am commanded, as appears by the schedule hereto annexed. In witness whereof, I have hereunto set my hand and seal this third day of November, eighteen hundred and sixty-six.

FRANKLIN COOK, *Collector*. [L. s.]

NAME.	Acres.	Estate.		Amount Real and Personal.	Deduction.	Amount Taxed.	Rate.	State.	County.	Township.	Military.	Poor.	School.	Road.	Am'nt.		Poll.	Dog.	Slut.	Notice.	Paid.
		Real.	Personal												Dollars.	Cents.					
Camden and Bur. Co. R. R. Co. ...	7000	220604	227604	...	227604	...	21935	183637	21209	71589	7139	26897	9000	3414	06	D	...	

I, Franklin Cook, collector of the township of Northampton, in the county of Burlington, state of New Jersey, do hereby certify the above to be a true copy of the assessment of taxes made in the said township of Northampton, by John Sailer, assessor of said township of Northampton, for the year of our Lord eighteen hundred and sixty-six, against the Camden and Burlington County Railroad Company, and of the duplicate thereof in my hands.

In witness whereof I have hereunto set my hand and seal this third day of November, in the year of our Lord one thousand eight hundred and sixty-six.

FRANKLIN COOK, *Collector*. [L. s.]

And the said prosecutors, by Ewan Merritt, their attorney, pray that the assessment of taxes made by John Sailer, assessor for the township of Northampton, in the county of Burlington, for the year eighteen hundred and sixty-six, may be set aside, reversed, and for nothing holden, for the following reasons, viz :

First. Because the said corporation is assessed with real estate, separate and apart from its capital stock.

Second. Because the said corporation has no real estate, excepting its depots, engine-houses, and line of road, 10 which are represented by the capital stock of said company.

Third. Because the said railroad is unfinished, and no statement of its cost has, or can be made.

Fourth. Because the said corporation is, by virtue of a contract with the state of New Jersey, contained in the act of the legislature, entitled "An act to consolidate the Burlington County Railroad Company, and the Camden, Moorestown, and Hainesport and Mount Holly Horse Car Railroad Company, supplementary to the charters of said 20 companies," expressly exempted from taxation, until the net earnings of said corporation shall, over expenses and interest, amount to six per centum upon its capital stock.

Fifth. Because the net earnings of the said company do not amount to six per centum upon its capital stock.

Sixth. Because the said assessment is in divers other respects uncertain, erroneous, and illegal, and ought to be set aside.

EWAN MERRITT,
Attorney of prosecutors. 30

Depositions.

[Filed November Term, 1867.]

Depositions of witnesses in the above stated case, taken before me, Franklin B. Levis, one of the Supreme Court commissioners of the state of New Jersey, at the

office of John R. Slack, esq., in the town of Mount Holly, in the county of Burlington, on Thursday, the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-seven, in the presence of Ewan Merritt, counsel for the prosecutors, and Frederick Voorhees, esq., counsel for the defendant, and taken by the consent and mutual agreement of said counsel.

John R. Slack, a witness produced on the part of the prosecutor, of Mount Holly, being duly sworn according
10 to law, on his oath saith—

I am the treasurer and secretary of the Camden and Burlington County Railroad Company, the prosecutors; I believe this company has no real estate, except such as is deemed necessary for railroad purposes; no houses or buildings, except such as are used by the company, or by their employees, for the purposes of the company. All the real estate represents a part of the capital of the company. The road between Mount Holly and Camden is not yet all graded, and there are no rails laid upon any
20 part of it; the grading is expected to be completed by the first of July next, and the iron necessary to lay the whole track has been contracted for, but has not yet been delivered; no certificate of the completion of the road has been filed; a portion of the road, as now consolidated, is now in running order, and used; that is, that part known as "The Burlington County road." The earnings of the Camden and Burlington County Railroad do not, over expenses and interest, amount to six per centum on its capital stock; that is, the earnings of the Burlington
30 county road do not amount to six per centum on the whole capital of the consolidated company, over and above the expenses and interest. There are no earnings on that part of the road between Camden and Mount Holly.

Cross-examined by Mr. Voorhees.

[The charters of the several companies composing this consolidated company are admitted in evidence.]

Quest. What are the several companies that are consolidated into "The Camden and Burlington County Railroad?"

Ans. The Burlington and Mount Holly Railroad and Transportation Company, incorporated February 11th, 1848; "The Burlington County Railroad Company," incorporated March 20th, A. D. 1857, and "The Camden, Moorestown, Hainesport, and Mount Holly Horse Car Railroad Company," incorporated March 15th, 1859.

The Vincentown branch is no part of the consolidated company. The act for the consolidation of said companies was passed February 6th, A. D. 1866; it was afterwards accepted by the companies, and certificate filed of 10 their acceptances May 2d, A. D. 1866. The principal office of the company is at Mount Holly; the president, secretary, and treasurer all live in Mount Holly. The Burlington County Railroad Company has paid the taxes heretofore assessed against it prior to the consolidation; it has paid all the taxes which have been assessed against it since I have been connected with it, prior to the consolidation; the company has but one depot in Mount Holly; it comprises about one acre of land; car buildings and depot and other buildings are erected thereon; there 20 is a coal-yard thereon, which the company rents out by the year; there is also a small tenement house thereon, which is occupied by one of the foremen of the gangs; I think the consideration of the occupancy is, the occupant acts as watchman; there is a blacksmith shop thereon, which the company now occupy; prior to the extension of the road to Pemberton, it was rented to Alexander Bailey, a blacksmith. The front of the lot on the street might be sold for building lots, by removing the blacksmith shop entirely off, which now occupies a part of it, 30 without materially interfering with the interests of the company; prior to the extension, the company occupied nearly the whole of the front, with stables and sheds; but since the extension, the stables have been taken down, and I know of no place on the ground to remove the blacksmith shop; so, if the lots were sold, the shop would have to be taken down. Some time since, the company contemplated making sale of these lots, and, I think, advertised them for sale, but were not able to obtain a bid for them. I think the front measures one hundred and 40

fifty or sixty feet, or thereabouts. The real estate that I have spoken of, all lies in the township of Northampton.

JOHN R. SLACK.

Sworn and subscribed, this 6th day of June, A. D. 1867, before me.

F. B. LEVIS, S. C. C.

Examination resumed June 11th, A. D. 1867, by consent of counsel.

John Peterson, a witness on the part of the defendant, 10 being duly sworn according to law, on his oath saith—

I was the assessor for the township of Northampton, in the county of Burlington, for the years 1860, 1861, and 1862. In the years 1860 and 1861, I did not make any assessment against the Burlington and Mount Holly Railroad Company; for these years the stock was assessed to the stockholders. In 1862, I assessed the company with the full amount of their capital stock—ninety-four thousand dollars personal, and six thousand dollars real estate; I think Charles M. Harker, treasurer of the 20 company, gave me the assessment.

JOHN PETERSON.

Sworn and subscribed, this 11th day of June, A. D. 1867, before me.

F. B. LEVIS, S. C. C.

Stephen W. Bodine, a witness produced on the part of defendant, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed according to law, on his affirmation saith—

I was the assessor for the township of Northampton, in 30 the county of Burlington, for the years 1857, 1858, and 1859. During those years, no assessment was made against the Burlington and Mount Holly Railroad Company as a company; the stock of the company was assessed to the individual stockholders, for all of those years.

STEPHEN W. BODINE.

Affirmed and subscribed, this 11th day of June, A. D. 1867,
before me.

F. B. LEVIS, S. C. C.

John B. Love, a witness produced on the part of the
defendant, being duly sworn according to law, on his
oath saith—

I was the assessor for the township of Northampton, in
the county of Burlington, for the years 1863, 1864, and
1865. During those years, I assessed the Burlington
County Railroad Company, as a company, with the amount 10
of their capital stock paid in.

JOHN B. LOVE.

Sworn and subscribed, this 11th day of June, A. D. 1867,
before me.

F. B. LEVIS, S. C. C.

Depositions here closed.

F. B. LEVIS, S. C. C.

The parties to this cause having been heard by counsel,
and the court having examined and considered the assess-
ment removed by the writ in this cause, and the evidence 20
taken and submitted therein. It is ordered, that said as-
sessment be and the same is hereby set aside, made void,
and for nothing holden.

On motion of

EWAN MERRITT,
Attorney for prosecutor.

Opinion.

ELMER, J. The Burlington and Mount Holly Railroad
and Transportation Company was incorporated in 1848,
(*Sess. Acts, p. 23,*) and was exempt from ordinary taxation. 30
In 1857, (*Sess. Acts, p. 400,*) this company was authorized

to extend its road to Pemberton, and the name was changed to the Burlington County Railroad Company, and there being no provisions in the new charter exempting the company from taxes, it was afterwards annually taxed, agreeably to the existing tax laws, as from time to time enacted. In 1859, (*Sess. Acts*, p. 400,) a horse railroad company from Camden to Mount Holly was incorporated, which contained a provision exempting it from ordinary taxation. By an act approved February 6th, 1866, (*Sess. Acts*, p. 15,) these two last mentioned roads were authorized to be consolidated, and the horse railroad changed to use steam, the new company to be called the Camden and Burlington Railroad Company. This act was accepted by the stockholders of the two companies thus consolidated, and the required certificate filed May 2d, 1866. The ninth section provides, that a statement of the actual cost of the road shall be filed in the office of the secretary of state, and that "whenever the net earnings of said consolidated company shall, over expenses and interest, amount to six per centum per annum upon its capital stock, the said company shall pay to the treasurer of the state, a tax of one-half of one per centum upon the cost of said road, to be paid annually, and such other state tax as may be assessed from time to time, by a general law applicable to all railroads over which the legislature shall have power for that purpose, at the time of the passage of such law or laws."

The existing company having been taxed by the assessor of the township of Northampton, in which its principal office is situate, upon its capital stock, amounting to \$220,604, and upon its real estate in said township, valued at \$7000, the question submitted to us is, whether it is liable to these taxes.

It is plain, I think, that the liability of the company to taxation depends entirely on the true construction of the section of the charter of 1866, before quoted. This section makes an entirely new provision respecting the taxes to be paid, different from those contained in the original charters; and, although it does not, in terms, exempt the new company from the payment of any taxes, yet, I think,

the fair implication is, that such, and such only, are to be paid as are here specified. Such was the decision of the Supreme Court of Pennsylvania, in a somewhat similar case. *The New York and Erie R. R. Co. v. Sabin*, 26 Penn. R. 242.

It was insisted by the counsel of the company, that the phrase "such other state tax," referred exclusively to a tax assessed for state purposes. But, in my opinion, taxes for county and township purposes are state taxes, as was held in the case of *Camden and Amboy Railroad Company* 10 v. *Hillyer*, 3 *Harr.* 13. The case of *The State v. Flavel*, 4 *Zab.* 370, did not overrule that decision, but held only, that an exemption which expressly distinguished between state and county taxes, must be interpreted otherwise.

The tax in question was intended to be assessed in pursuance of the fifteenth section of the tax law of 1866, (*Sess. Acts*, p. 1084,) which enacts "that all private corporations of this state, except banking institutions, and except those which, by virtue of any contract in their charter or other contracts with the state, are expressly exempted 20 from taxation shall be, and hereby are, required to be taxed at the full amount of their capital stock, paid in and accumulated surplus." This is not "a general law, applicable to all railroads over which the legislature had power for that purpose." It imposes no tax upon any railroad whose charter expressly exempts it from taxation, as was held by this court in the case of *The State v. Pan-coast*, decided at the last Term.

The case of *The State v. Miller*, 1 *Vroom* 368, which was affirmed by the Court of Errors, and other cases of a 30 like character, established the doctrine, that the legislature had power to tax all railroads, whatever exemption might be contained in their charter, which, by reason of an express provision to that effect, or by reason of the laws authorizing them having been passed since 1846, were liable to have their charters repealed or altered.

There is undoubtedly much force in the argument of the counsel for the township, that inasmuch as it cannot be said that the Camden and Burlington Railroad is expressly exempted from taxation, the fifteenth section 40

of the tax law by necessary implication, repeals the provisions relating to taxation contained in the ninth section of its new charter. But the repealing section of this tax law (*Acts 1866, p. 1091, sec. 32.*) expressly excepts "such special or local acts as shall have been approved since the year eighteen hundred and sixty-four." This is equivalent to an express legislative declaration that the ninth section of the charter of 1866 shall remain in full force, and in nowise repealed or altered. It follows, that since

10 there is no law applicable to all railroads over which the legislature has power for that purpose, authorizing a state tax to be assessed against them; the tax law of 1866 authorized no tax to be assessed against this road, and the taxes brought before us by this certiorari must be set aside.

[Filed February 21, 1868.]

New Jersey, ss—The State of New Jersey to our Justices of our Supreme Court of Judicature

20 of the State of New Jersey, greeting:

Forasmuch as in the record, and also in the giving of judgment of a plea which was in our court before you, wherein "The Camden and Burlington County Railroad Company" are prosecutors, and Franklin Cook, collector of taxes for the township of Northampton, in the county of Burlington, is defendant, on a writ of certiorari to remove the assessment of taxes against said prosecutors in said township, for the year eighteen hundred and sixty-six, as is said, manifest error hath intervened, to the great

30 damage of the said Franklin Cook, collector as aforesaid, as by his complaint we are informed, 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 thereupon given, that, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and con-

cerning the same, to our Court of Errors and Appeals, in the last resort in all cases as heretofore, on the second Tuesday of March next, wheresoever they shall be in said state, together with this, our writ, that the record and proceedings aforesaid being seen and inspected, we may further cause to be done thereupon, what of right and according to law, ought to be done.

Witness the Honorable Abraham O. Zabriskie, Chancellor and President Judge of our said court, at Trenton, this twenty-second day of January, in the year of our 10 Lord one thousand eight hundred and sixty-eight.

FREDERICK VOORHEES, *Attorney.*

H. N. CONGAR, *Clerk.*

The answer of the Justices of the Supreme Court within mentioned.

The record and proceedings within mentioned, we certify and send to the Court of Errors and Appeals, as within we are commanded in a certain schedule to this writ annexed.

MERCER BEASLEY, *C. J.* 20

Assignment of Errors.

[Filed April 6, 1868.]

Franklin Cook, Collector, &c., of the township of Northampton, in the county of Burlington,

vs.

The Camden and Burlington County Railroad Company.

*In error to
Supreme Court.*

Afterwards, that is to say, on the second Tuesday in March, in the year eighteen hundred and sixty-eight, before the said Court of Errors and Appeals, comes the said

plaintiff in error, by Frederick Voorhees, his attorney, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit, that the said Supreme Court thereby adjudged that the said assessment in the proceedings before said court mentioned, be and the same was thereby set aside, made void, and for nothing holden.

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

And the said plaintiff in error prays 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 he may be restored to all things which he hath lost by reason of said judgment.

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FREDERICK VOORHEES,

Attorney of plaintiff in error.

New Jersey Court of Errors and Appeals.

[Filed April 28, 1868.]

The State, the Camden and Burlington County Railroad Company,
prosecutors,

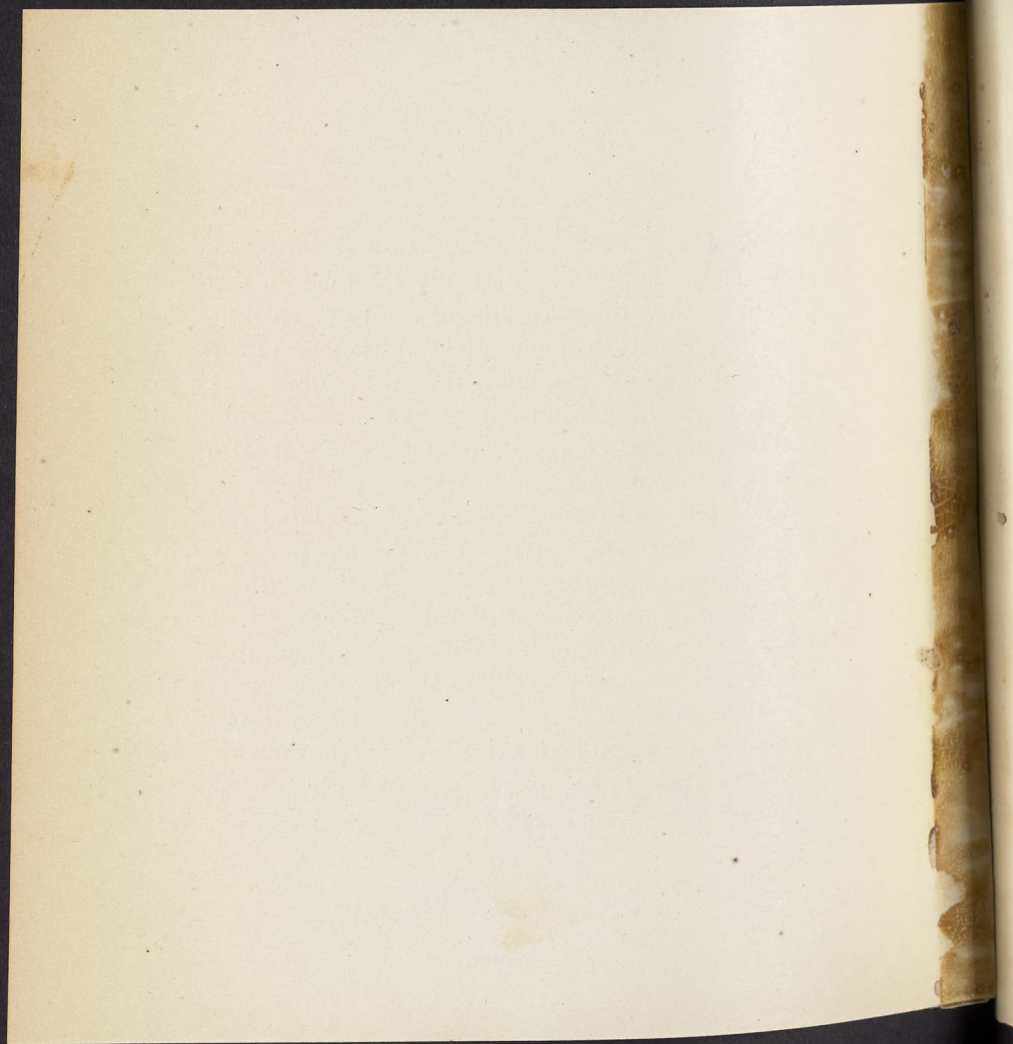
vs.

Franklin Cook, collector of Northampton, Burlington county.

} *In error.*

And hereupon the said the Camden and Burlington
30 County Railroad Company, by Ewan Merritt, their attorney; come and say, that there is no error, either in the record or proceedings aforesaid, or in the giving the judgment aforesaid; and they pray that the Court of Errors

SECTION 9. *And be it enacted,* That as soon as the said
railroad from Camden to Mount Holly shall be finished, 2
the president of the said consolidated company shall file,
under oath or affirmation, a statement of the costs of the 4
railroads of said consolidated company in the office of the
secretary of state, and annually thereafter he shall, under 6
oath or affirmation, make a statement to the legislature
of this state of the proceeds and expenses of said roads; 8
and whenever the net earnings of said consolidated com-
pany shall, over expenses and interest, amount to six per 10
centum per annum upon its capital stock, the said com-
pany shall pay to the treasurer of the state a tax of one 12
half of one per centum upon the cost of said road, to be
paid annually, on or before the fourth Monday of January; 14
and such other state tax as may be assessed from time to
time, by a general law applicable to all railroads over which 16
the legislature shall have power for that purpose at the
time of the passage of such law or laws. 18



and Appeals, in all causes of law and equity, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid, assigned for error; and that the judgment aforesaid, in manner aforesaid given, may be, in all things, affirmed, &c.

EWAN MERRITT,

Attorney of prosecutors.

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