

Clerks Table

NEW JERSEY

Court of Errors and Appeals.

THE STATE--

R. J. NEVIN, et. als.,
Plaintiffs in Error,

vs.

ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
CITY OF HOBOKEN,
Defendant in Error.

JOHN C. BESSON,
Attorney for Plaintiffs in Error. 10

JAMES W. VROOM,
Attorney for Defendant in Error.

New Jersey, to wit:

[SEAL.]

The State of New Jersey
to our Justices of our Su-
preme Court, greeting.

Because in the record and proceedings, and also
in the giving of the judgment in a plaint which
was in our said Supreme Court before you, between
The State of New Jersey, R. J. Nevin, Martha B. 20

Stevens and John Stevens, of the endowment fund of the Church of Holy Innocents, in the City of Hoboken, being prosecutors, and Andrew Krollmann, Collector of Revenue of the City of Hoboken, defendant, on a certiorari issued out of our said Supreme Court to the said Andrew Krollmann, Collector of Revenue aforesaid directed, as is said manifest error, hath intervened, to the great damage of the said R. J. Nevin and others, prosecutors
 10 aforesaid, as by their 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 be done to the parties aforesaid, in this behalf do command you that if judgment be thereupon given, then you send, distinctly and openly under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals, in the last resort in all causes, at Trenton, on the
 20 third Tuesday of November instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness, Theodore Runyon, our Chancellor, and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the eight day of November, in the year of our Lord one thousand eight hundred and seventy-five.

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HENRY C. KELSEY,
Clerk.

JOHN C. BESSON,
Attorney.

The answer of the Justices of the Supreme Court of New Jeasey within named, the record and pro-
 40 ceedings 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, [SEAL.]
[*Chief Justice.*

New Jersey Supreme Court.

THE STATE—

R. J. NEVIN, et als.,

vs.

ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
CITY OF HOBOKEN.

Pros.,

Certiorari.

Writ.

Returnable November 24th, 1874.

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JOHN C. BESSON,

Attorney for Prosecutors.

Allowed in open Court November 6th, 1874.

J. D. BEDLE,

Justice Supreme Court.

New Jersey, ss.

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[L. s.]

The State of New Jersey
to Andrew Krollmann, Col-
lector of Revenue of the City
of Hoboken, greeting.

We being willing, for certain reasons, to be cer-
tified of the assessment of taxes for State, county

and municipal purpose for the year eighteen hundred and seventy-four, made on the lands and tenements of R. J. Nevin, Martha B. Stevens and John Stevens, trustees of the endowment of the Church of Holy Innocents in the City of Hoboken, and of all matters touching and concerning the same, do command you that said assessment and all matters touching and concerning the same, as fully as the same remains before you or under your control, you certify and send to the Justices of our Supreme Court at Trenton, on the fourth Tuesday of November instant, together with this writ, that we may cause to be done touching and concerning the same what of right ought to be done.

Witness, Mercer Beasley, Esquire, Chief Justice,
at Trenton aforesaid, this Sixth day of
November, A. D. eighteen hundred and
seventy-four.

BENJAMIN F. LEE, 20
Clerk.

JOHN C. BESSON,
Attorney.

*To the Honorable the Justices of the Supreme Court of
New Jersey :*

I herewith certify and send the assessment of taxes for State, county and municipal purposes, 30 for the year 1874, made on the lands and tenements of R. J. Nevin, Martha B. Stevens and John Stevens, trustees, &c., as within I am commanded, as appears in the schedule thereto annexed.

In witness whereof, I hereto set my hand and seal this 10th day of November, A. D. 1874.

A. KROLLMANN, [L. S.]
Collector of Revenue. 40

The following schedule contains the assessments and taxes mentioned in the within writ, as fully as the same remains of record in my office :

CHURCH OF THE HOLY INNOCENTS, HOBOKEN, N. J.

Bill No.	Street.	Real Estate.	Interest on City Bonds.	For City Purposes.	For Interest on Water Bonds.	For Interest on Volunt'r Bounty Loan.	Interest on Park Bonds.	For County Tax.	For State Tax.	TOTAL.
75	32 Hudson.....	\$7,000	\$4.45	\$68.32	\$3.29	\$9.80	\$.84	\$39.62	\$26.36	\$152.68
2-39	114 River.....	8,000	5.08	78.08	3.76	11.20	.96	45.28	30.12	174.48
69	220x100, River.....	30,000	19.05	292.80	14.10	42.00	3.60	169.80	112.95	654.30
789	E. S. Washington, 10th and 11th, 200x110	16,000		156 16	7.52		1.92	90.56	60.24	316.40
800	W. S. do do do 150x75	12,000		117.12	5.64		1.44	67.92	45.18	237.30
802	do do do do 10,200	10,200		99.55	4.75		1.22	57.73	38.40	201.69

A true copy from the duplicate of assessments and taxes for the year A. D. 1874.

Witness my hand and seal this 10th day of November, A. D. 1874.

ANDREW KROLLMANN, [L. S.]
Collector of Revenue.

NEW JERSEY SUPREME COURT.

THE STATE—
R. J. NEVIN, et als.,
vs.
ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
CITY OF HOBOKEN.

Pros., } *Certiorari.*
 } *Reasons.*

The said prosecutors, by John C. Besson, their 10 attorney, pray that the assessments and taxes on the property by them held in trust for The Protestant Episcopal Church of the Holy Innocents in Hoboken, situate in the City of Hoboken, County of Hudson and State of New Jersey, for the year, eighteen hundred and seventy-four, and brought up by the writ of certiorari in this cause, may be set aside, declared null and void, and for nothing holden, for the following reason, to wit :

1. Because the said property is a part of the en-20 dowment or fund of the said Church of the Holy Innocents, which is a religious society, within the true intent and meaning of an act entitled "A further supplement to an act entitled, 'An Act concerning taxes,' " approved April fourteenth, eighteen hundred and forty-six, approved April 11th, 1866, which said endowment or fund is by the said act declared exempt from taxation.

2. Because the said lands, tenements and property, the same being the endowment of a public charity, are exempt from taxation by the law of the land.

3. Because the said assessments and taxes are in divers other respects, irregular, illegal and void, and ought to be set aside and for nothing holden.

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JOHN C. BESSON,
Attorney for Prosecutors.

NEW JERSEY SUPREME COURT.

THE STATE--
R. J. NEVIN, et. als.,
vs.
ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
CITY OF HOBOKEN.

Pros. } *Certiorari.*
 } *Matter of Taxa-*
 } *tion.*

The following is a state of the case agreed upon 10
to be read and used on the argument of the above
stated cause :

1. It is admitted and agreed by the attorneys for
the respective parties that they are seized of the
lands and premises mentioned and set forth in the
return made by the said defendants to the said writ
of certiorari.

2. That the said lands and premises were con- 20
veyed to the said prosecutors in trust and that the
said prosecutors hold the said premises as trustees
by virtue of a certain deed of indenture made by
Mrs. Martha B. Stevens of the City of Hoboken.

3. That the following is a true copy of the said
trust deed.

COPY OF DEED.

M. B. STEVENS,
 to
 REV. R. J. NEVIN, M. B. STE-
 VENS and JOHN STEVENS,
 10 Trustees.

Recorded August 31, 1872, in book 247 of deeds,
 page 34.

To all whom these presents shall come or may
 concern, greeting.

Whereas, I, Martha B. Stevens, of the township
 of Weehawken, in the County of Hudson and
 State of New Jersey, desire and intend to found
 20 and endow one or more churches, and one or more
 charitable or benevolent institutions, as hereinafter
 more particularly set forth, and for such purpose
 to set apart, grant and convey the hereinafter de-
 scribed property to certain persons hereinafter
 named, to hold as trustees, with perpetual succes-
 sion, with the express injunction and restriction
 that such church or church edifices shall be used
 only for the worship of Almighty God therein, ac-
 30 cording to the forms, doctrines and usages of the
 Protestant Episcopal Church of the United States of
 America, so long as the same shall be held by the
 said trustees, or their successors, and that the said
 trustees shall always be members of and communi-
 cants in the said Protestant Episcopal Church.

Now, therefore, I, the said Martha B. Stevens,
 in consideration of the premises and of one dollar
 to me now in hand, paid by the trustees hereinaf-
 40 ter named, do grant, bargain, sell, alien, release

convey and set over to Rev. Robert J. Nevin, (now temporally residing at Rome, Italy,) Martha B. Stevens and John Stevens, and the survivors and survivor of them, as joint tenants, and not as tenants in common, and to their assigns forever, in fee simple, and absolutely, All that piece, parcel or lot of land situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and more particularly described as follows, viz.: Commencing at the southwesterly 10 corner of Willow and Sixth streets and running thence southerly and along the westerly line of Willow street one hundred and forty (140) feet: thence westerly, and at right angles to Willow street, two hundred (200) feet, to the easterly line of Clinton street, one hundred and forty (140) feet, to the southeasterly corner of Clinton and Sixth streets; and thence easterly and along the southerly line of Sixth street two hundred (200) feet, to the place of beginning. 20

Also, All that certain other tract, piece or parcel of land situate, lying and being in the city, county and State aforesaid, and described as follows, viz.: Commencing at the southwesterly corner of River and Seventh streets and running thence southerly and along the westerly line of River street two hundred and twenty (220) feet; thence westerly and parallel with Seventh street one hundred (100) feet; thence northerly and parallel with River 30 street two hundred and twenty (220) feet, to the southerly line of Seventh street; and thence easterly and along the southerly line of Seventh street one hundred (100) feet, to the place of beginning.

Also, All that certain other lot or piece of land situate, lying and being in the city, county and State aforesaid, and described as follows, to wit.: Commencing at a point in the westerly line of River street in the centre party wall, about two hundred and 40

thirty-five (235) feet and eight (8) inches northerly from the northwesterly corner of River and Third streets, and running thence westerly and for a part of the distance through the centre of the said party wall about one hundred (100) feet; thence northerly and parallel with River street about twenty-three (23) feet and two (2) inches to the line of the centre of another party wall, if the same were extended to the rear of the lot; thence easterly and
 10 for a part of the distance through the centre of said party wall about one hundred (100) feet to the westerly line of River street, and thence southerly and along the westerly line of River street about twenty-three (23) feet and two (2) inches; being the premises now known as number one hundred and fourteen (114) River street.

And also, All that certain other lot or piece of land si uate, lying and being in the city, county and State aforesaid, and described as follows, viz.:
 20 Commencing at a point in the westerly line of Hudson street in the centre of a party wall about forty-seven (47) feet and ten (10) inches southerly from the southwestly corner of Hudson and Newark streets, and running thence westerly and for a part of the distance through the centre of a party wall one hundred and ten (110) feet; thence northerly and parallel with Hudson street about twenty-two (22) feet and ten (10) inches to the line
 30 of the centre of another party wall, if the same were extended to the rear of the lot; thence easterly and for a part of the distance through the centre of the said last mentioned party wall one hundred and ten (110) feet to the westerly line of Hudson street; and thence southerly and along the westerly line of Hudson street about twenty-two (22) feet and ten (10) inches, to the point or place of beginning; being the same premises now known as number thirty-two (32) Hudson street.

40 Also, All that certain other lot, piece, parcel or

tract of land situate, lying and being in the township of Weehawken, in the county of Hudson and State of New Jersey, and described as follows viz.: Commencing at a point in the easterly line of Washington street, if the street in Hoboken called Washington street were extended northwardly in a straight line, one hundred and eighty-one feet and six inches (181.6) northerly from the northerly line of Tenth street in the City of Hoboken, and running thence northerly and along the easterly 10 line of Washington street so extended, two hundred (200) feet; thence easterly and parallel with Tenth street aforesaid one hundred and ten (110) feet; thence southerly and parallel with Washington street aforesaid two hundred (200) feet; and thence westerly and parallel with Tenth street aforesaid one hundred and ten (110) feet to the easterly line of Washington street, to the point or place of beginning.

Also, All that certain other tract or piece of land 20 situate, lying and being in the township of Weehawken, in the county and State aforesaid, and more particularly described as follows, viz.: Commencing at a point in the westerly line of Washington street aforesaid two hundred and seventy-five (275) feet northerly from the northwesterly corner of Washington and Tenth streets, in the City of Hoboken, as said streets are now laid out and improved, and running thence northerly and along the westerly line of Washington street aforesaid 30 one hundred and fifty (150) feet to what would be the southwesterly corner of Washington and Eleventh streets, if said streets in the City of Hoboken were extended northwardly and eastwardly in straight lines; thence westwardly along the southerly line of Eleventh street one hundred and fifty (150) feet, to what would be the southeasterly corner of Eleventh and Bloomfield streets, if the street in Hoboken called Bloomfield street were extended 40

northwardly in a straight line ; thence southerly and along the easterly line of Bloomfield street aforesaid one hundred and fifty (150) feet, and thence easterly and parallel with Eleventh street aforesaid one hundred and fifty (150) feet to the westerly line of Washington street aforesaid, the point or place of beginning.

Together with, all and singular, the appurte-
 10 nances, rights, privileges and advantages to the same belonging or appertaining; also all the estate, right, title and interest, property, claim and demand whatsoever of me, the said Martha B. Stevens, in and to the same and every part or parcel thereof. To have and to hold the same as joint tenants, and not as tenants in common, and to the survivor or survivors of them, their or his successors or assigns forever, in fee simple, in trust, nevertheless, upon the uses, to be managed and dis-
 20 posed for the purposes, trusts and benefits, as follows :]

First. That the said trustees shall or may forthwith, out of the same, or the proceeds of a part thereof, purchase, at their discretion, somewhere in the City of Hoboken, New Jersey, a suitable site, and erect thereon a church edifice ; or they may purchase a site with a suitable edifice thereon erected and alter the same as required, it being my
 30 wish that the same shall not cost to exceed the sum of one hundred and twenty thousand (120,000) dollars.

And said trustees are authorized and empowered now, or at any future time, to hire or otherwise procure a building to be used temporarily for the worship of Almighty God, as herein specified. Provided expressly, that said church edifice, and any and every other or hereafter obtained church
 40 edifice, whether the same shall have been purchased

by or for, or hired by said trustees, shall be used for the worship of Almighty God, according to the forms, doctrines and usages of the Protestant Episcopal Church of the United States of America, as the same are now provided, or may hereafter be provided, by the duly constituted authorities of said church.

§ 2. And said trustees, after establishing one such church, and also one charitable or benevolent institution, as herein provided, shall have authority from time to time, and as often as they see fit, in their discretion, to proceed and purchase or construct, upon any site or sites which they may purchase or procure, one or more church edifices, within what is now the Diocese of New Jersey, or elsewhere, to be used in like manner as aforesaid, for worship, according to the said forms, doctrines and usages of said Protestant Episcopal Church.

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§ 3. And upon the further trust and direction that one and all of the church edifices herein contemplated and provided for, shall be and remain free churches; that is to say, that no seats therein shall be let or rented for any consideration to be paid therefor; that all my fellow men and women shall always be permitted at all time of public worship, and invited to enter and join in the appropriate services at the time being rendered, and according to the said forms and usages of said Protestant Episcopal Church.

§ 4. It is not my intention that the said church or churches are to be supported wholly from the income of the property which has been herein appropriated thereto. But on the contrary it is my wish and desire that the worshipers therein, and other persons, shall contribute or give, bequeath or devise money or other property, from time to time as they may see fit, for the support, maintenance

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or endowment of such church or churches, and the rector or rectors, minister or ministers, or others connected therewith. And said trustees are hereby authorized and empowered to receive the same and carry out the wishes and directions of any and all such benefactors ; provided, that they shall not be inconsistent or conflict with the purposes of the trust herein contained. And said trustees shall also, in their discretion, purchase a site and building suitable to be converted, and alter the same, if it be necessary to do so, and devote and appropriate the same for such charitable or benevolent institution as such trustees may see fit in their discretion.

That said trustees shall have power and authority to manage and control such charitable or benevolent institution in such manner, and to make and enforce such rules and regulations for its management, and the same to alter and amend, from time to time, as they may seem fit, including among others the power to appoint and remove at will all agents and overseers, and fix their compensation, and to define and prescribe the charity or charities or benevolent purposes to which it shall be devoted or appropriated : provided, however, that it shall be for the use, benefit or advantage of the sick, or poor, or infirm, or aged, or afflicted, or orphan, or half-orphan, or otherwise needy of our fellow men, women or children.

And said trustees may at any time, and as often as they see fit, change or modify the purposes and objects and benevolent uses of said institution ; and thereafter carry the same on under the powers and trusts herein provided, in like manner as if the same had been originally established for such changed or modified purpose or object, and may alter the capacity or convenience of said institution or building.

And said trustees after having established one or more of the churches herein provided for, and one or more of the charitable or benevolent institutions herein provided for, shall have power and authority from time to time, and as often as they see fit, to purchase or procure a suitable site or sites, and erect thereon a suitable building, or purchase an already erected building, and appropriate and use the same, with the like powers and provisions, as to the uses and abuses thereof, as is herein made 10 in respect to charitable or benevolent institutions before provided, and as they may see fit; and in like manner regulate and manage the same, and change the management as well as the purpose thereof, as hereinbefore more particularly provided, subject to the limitations as to the objects thereof as also herein provided. To take and receive said property hereby granted and conveyed, and hold the same and all proceeds thereof, and convert so much, as from time to time may be necessary, for 20 the purchase and construction of the church edifice and the charitable or benevolent institution herein specified, including the sites thereof, with all necessary or convenient land surrounding the same, and apply the said proceeds therefor for such purposes, with full power and authority in said trustees, from time to time and at all times, to sell or dispose of, at public or private sale, in such manner and from either, for cash or on such credit as may to them seem fit, and all or any part of said 30 property herein granted or conveyed, and to re-invest the proceeds in any real estate or such personal property, including United States Government Bonds, or obligations of individuals or corporations secured by mortgage of real estate or chattels, real or personal or mixed personal and real estate or real chattels, such as the mortgages of railroad corporations and the like, as in the opinion of the trustees at the time being, shall be judicious and wise to maintain in order to produce 40

a reasonable income, and at the same time in a safe security for the principal invested. With like power to change such investments as often as the trustees shall see fit, and in like manner as aforesaid, re-invest and dispose of the proceeds during the continuance of this trust.

And upon the further trust that said trustees may at any time, with the consent and approval of
 10 all the trustees at the time capable of acting, and with the consent and approval of the Bishop or Standing Committee of the Diocese to which the property may belong, sell or otherwise dispose of any or either of the church or churches or charitable or benevolent institutions herein provided to be established, on such terms and in such manner and on such credit as they shall see fit ; provided, however, that the proceeds therefrom (if any) shall
 20 be taken and forthwith used and applied pursuant to the directions herein given and in prosecution of the trusts, objects and provisions in this instrument contained, to wit : the establishing of Protestant Episcopal Churches and Charitable or Benevolent Institutions, as herein set forth.

That said trustees shall have power to set apart and appropriate out of the property herein granted and conveyed, or any proceeds thereof or therefrom valued by them at about sixty thousand (60,000)
 30 dollars ; and the same keep and retain so long as shall be necessary—with the power to change investments as herein provided, and apply the net annual income therefrom to the salary or salaries or compensation to the Rector or Ministers who shall from time to time officiate therein, and as to said trustees may seem fit and proper.

And said trustees may also appropriate so much of the said net income as they may see fit beyond
 40 what they may decide to appropriate for the salary

or salaries or compensation to the rector or minister officiating in the above mentioned church edifice —to assist any other Protestant Episcopal Church in the said City of Hoboken or elsewhere, either by a contribution to the salary of its rector or otherwise.

That so much of the remainder of said property herein granted and conveyed to said trustees, as shall to said trustees, from time to time, seem necessary and proper, be set apart, and the net income thereof, after paying taxes and assessments, (if any) premiums of insurance and other charges or expenses incurred by said trustees in and about the charitable or benevolent institutions herein provided, shall be applied and used by said trustees for the maintenance and support of such charitable or benevolent institution (as it may be). Hereby giving full power, liberty and authority to said trustees from time to time, and any time, to alter or change the amount applicable to the support and maintenance of such charitable or benevolent institutions as they may establish, as they shall think necessary, proper or expedient.

And on the further trust that said trustees shall apply the net income of the remainder of the said property herein granted and conveyed after paying such charges or expenses as may be incidental to said fund, to the founding and establishment in like manner as hereinbefore provided, of Protestant Episcopal Churches and charitable or benevolent institutions or either thereof, either in Hoboken or elsewhere, or to assist other Protestant Episcopal Churches or charitable or benevolent institutions connected with the aforesaid Protestant Episcopal Church of the United States of America, as from time to time to the said trustees shall seem proper or advisable. It being understood that said trustees may, in their discretion, apply whatever

and as much as they may from time to time see fit, of the principal or income of the last mentioned remainder of said property or fund to the enlargement, advantage or benefit of either or all of the churches herein mentioned or provided for in the article marked "First" of this instrument, or the charitable or benevolent institution next thereafter mentioned or provided for.

- 10 And said trustees shall have power to borrow money, and if necessary, with the consent and approval of all the trustees at the time capable of acting and of the Bishop and Standing Committee of the Diocese to which the property may belong, to pledge or mortgage the trust fund or property for the use, benefit and advantage of their trust estate in order to carry out the objects contemplated by or set forth in this instrument.

It is my intention and a part of this trust that
 20 the said trustees shall so long as they shall hold the title to any church or church edifice, and appropriate the income of the said fund of sixty-thousand (60,000) dollars herein directed to be set aside to the support of said church or the salary of its rector or ministers, keep such control over the same that it shall in no way be used by any congregation who do not confirm to the religious services, rites and ceremonies prescribed by the said Protestant Episcopal Church of the United
 30 States of America. But they may, if it be conformable to the constitutions or canons of that Diocese of the Protestant Episcopal Church within whose jurisdiction such church shall at the time be located, allow the congregation who shall worship therein and be (according to said constitution and canons) entitled to vote, to choose wardens and vestrymen, who with its rector may govern and manage and conduct the same under the Bishop of the Diocese according to the law in such
 40 case made and provided.

The said trustees shall appoint or employ such superintendents, managers and servants in the conduct and management of any and all of the charitable or benevolent institutions which they may establish, as herein provided, allowing such compensation as they may see fit and from time to time remove the same at will, as they may from time to time see fit ; and may make, and from time to time alter, such by laws, rules and regulations for the management thereof as they may see fit. 10

It is my desire, and a part of this trust, that the Bishop of the said Protestant Episcopal Church of the United States of America, having jurisdiction in the Diocese wherein the present City of Hoboken shall at the time being be situated, shall have the right of visitation over any and all charitable or benevolent institutions which may be founded and established under the provisions herein contained, with the right and power at any time, by due process of law, in an Equity Court of the State of New Jersey, to compel said trustees to yield or make an account and report as to the performance of the duties herein imposed upon them, hereby subjecting said trustees to the order of such Court of Equity at the instance of said Bishop, for the purpose of maintaining and carrying out the trust herein provided. 20

It is my intent that the trustees acting under the provisions herein contained, shall act as a board of trustees, and that a majority of the said trustees meeting together (in pursuance of such rules and regulations as they may from time to time make) shall constitute a quorum for the conduct of their business. 30

And that the assent or co-operation of a majority of the trustees at the time acting, shall be sufficient for the performance of any act herein directed or 40

authorized to be done by the trustees herein provided for; hereby expressly providing, that (unless otherwise herein specifically provided) it shall not be necessary to have the consent or co-operation of each and all said trustees. And that in case of any vacancy occurring in said board of trustees by death, resignation or otherwise, the remaining trustee or trustees shall appoint a trustee or trustees to fill such vacancy or vacancies.

10

And as it is intended that the trusts herein created shall be perpetual, I authorize said trustees to obtain (if it can be done at any time) an act of incorporation, constituting them a body corporate with such powers conforming as nearly as may be with the powers herein conferred, as the Legislature may see fit to grant, and having obtained such charter they may adopt the same and act thereunder.

20

The trustees may from time to time enlarge or diminish the number of their body; provided, that the number requisite shall not be less than three (3), or more than nine (9). The trustees may be male or female, or part male and part female, as they from time to time shall see fit.

The trustees as such shall not receive any compensation for acting under this instrument. But
30 any actual expenses or disbursements incurred in this behalf shall be repaid or refunded.

And I hereby constitute and appoint the aforesaid Rev. Robert J. Nevin, Martha B. Stevens and John Stevens to be the first trustees under this instrument, giving and granting to them all the powers, privileges and authorities herein created or conferred upon the trustees mentioned.

40 IN WITNESS WHEREOF, I have hereunto set my

hand and seal this first day of July, A. D.
one thousand eight hundred and seventy-
two.

Signed, sealed and deliv- }
ered in the presence of } M. B. STEVENS. [Seal]

NOTE.—On the seventeenth page the words “To
which the property may belong,” interlined in the
original. 10

All these corrections have been }
made in the copy.—B. S. } WM. A. MACY.

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

BE IT REMEMBERED, That on this thirty-first
day of July, in the year one thousand eight hun-
dred and seventy-two, before me, Wm. A. Macy, ²⁰
a Commissioner of Deeds, in and for said County
and State, personally appeared Martha B. Stevens,
who, I am satisfied, is the grantor in the within
indenture named, and I having first made known to
her the contents thereof, she did acknowledge that
she signed, sealed and delivered the same as her
voluntary act and for the uses and purposes herein
expressed.

WM. A. MACY,
Commissioner of Deeds. 30

4. That in execution of the trust created by the
said deed, the said trustees have erected a church
edifice in the City of Hoboken, and that the said
church was duly and regularly consecrated accord-
ing to the rights and ceremonies of the Protestant
Episcopal Church of the United States, by the
name of “The Church of the Holy Innocents,” on
the 24th day of August, A. D. 1874, by the Right 40

Rev. Wm. Odenheimer, Bishop of the Diocese of New Jersey.

That a congregation regularly assembles and worships in said church, in accordance with the forms, rights and ceremonies of the said Protestant Episcopal Church.

5. That a regularly ordained minister of said
10 Episcopal Church has been lawfully installed by the Bishop of said Diocese, as Rector of said church, and that the said minister is supported by the said trustees.

6. That the said trustees have established and do maintain a free parochial school, wherein forty children are taught the common English branches of learning.

20 7. That the said trustees have established and do maintain a free reading room and library in the City of Hoboken.

8. That the said trustees have established and are maintaining a mission at Union Hill, in the County of Hudson, and are supporting a lay reader to conduct the services of said mission.

9. That plans are drawn for building a hospital,
30 dispensary and training school for nurses, which it is intended shall be free to all such persons as may need charitable assistance, to the extent of its capacity; and the said trustees are proceeding in good faith to erect, establish and support the same without delay.

10. That the said conveyance was made and the said trust created in good faith, for the uses and purposes mentioned and set forth in said deed.

40 11. That the whole of the income of said trust

estate is used and expended in supporting and maintaining the above mentioned charitable institutions.

12. That the said trustees applied at the proper time to the Commissioners of Appeal in cases of taxation, of the City of Hoboken, and prayed said Commissioners to declare said property exempt from taxation, and that said Commissioners refused to grant relief. 10

It is agreed that the foregoing statement may be read on the argument of this cause, with the same force and effect as if the allegations therein contained had been regularly proved.

FEBRUARY 19th, 1875.

JOHN C. BESSON,
Attorney for Prosecutors. 20

* JAMES W. VROOM,
Attorney for Defendants.

NEW JERSEY SUPREME COURT,

June Term, 1875.

ANDREW KROLLMANN, COL-
LECTOR, &c.

ads.

STATE—

10 R. J. NEVIN et als.

} *On Certiorari.*

The Court having heard the argument of Counsel, and inspected the proceedings removed by the writ in this cause, and duly considered the reasons filed; It is ordered that said assessment be set aside, made void and for nothing holden, with costs to defendants.

Entered August 25, as of August 19, 1875.

20 On motion of

JAMES W. VROOM,
Attorney.

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the rule in the above

stated cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand
and seal of said Court, at Trenton, this
[Seal.] eighteenth day of November, A. D.
eighteen hundred and seventy-five-

BENJAMIN F. LEE,
Clerk.

10

A true copy.

HENRY C. KELSEY,
Clerk.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE—

R. J. NEVIN, et als., Trustees,

vs.

10 ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
CITY OF HOBOKEN.

} *Assignment of
Errors.*

Afterwards, to wit: on the third Tuesday of
November, in the year of our Lord one thousand
eight hundred and seventy-five, before the Judges
of the Court of Errors and Appeals, in the last re-
sort in all causes, at Trenton, come the State of
20 New Jersey, R. J. Nevin, Martha B. Stevens and
John Stevens, trustees, &c., prosecutors, by John
C. Besson, their attorney, and say that in the rec-
ord and proceedings aforesaid, and also in the giv-
ing of judgment aforesaid, there is manifest error in
this, to wit: That the lands, tenements and prop-
erty mentioned in the said writ of certiorari, and
the return thereto, were part of the endowment or
fund of a religious society and charitable institu-
tion within the true intent and meaning of the act
entitled "A further supplement to an act entitled
30 'An act concerning taxes,' " approved April four-

teenth, eighteen hundred and forty-six, approved April 11th, 1866, and as such are exempt from taxation, whereas the said Supreme Court held and adjudged that the said lands, tenements and property did not constitute a part of the endowment or fund of the said religious society within the meaning of said act.

There is also error in this, to wit: That by the record aforesaid it appears that the judgment in 10 form aforesaid was given for the said Andrew Krollmann, Collector of Revenue, aforesaid, against the said prosecutors, whereas, by the law of the land, judgment ought to have been given for the said R. J. Nevin, Martha B. Stevens and John Stevens, trustees, prosecutors aforesaid, and the said taxes and assessments set aside, declared null and void.

Therefore the said plaintiffs, in error, pray that 20 the judgment aforesaid, by reason of the aforesaid errors and of other errors, appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and the said taxes and assessments set aside and declared null and void, and that the said plaintiffs in error may be restored to all things they have lost on occasion of the said judgment. And that the said Andrew Krollmann, Collector &c. aforesaid, defendant, may rejoin to the said errors, &c.

30

JOHN C. BESSON,

Attorney for and of Counsel with Plaintiffs in Error.

OPINION OF NEW JERSEY SUPREME
COURT.

February Term, 1875.

THE STATE—

R. J. NEVIN, et als.,

vs.

ANDREW KROLLMANN, COL-
LECTOR OF REVENUE OF THE
10 CITY OF HOBOKEN.

Pros.

On Certiorari.

J. C. BESSON,

For Prosecutors.

J. W. VROOM,

For Defendants.

SCUDDER, J. The lands of the prosecutors, held by them, as trustees for the Church of the Holy Innocents, Hoboken, N. J., outside of the buildings erected and used for public worship, and
20 the land whereon the same are situate, necessary to the fair use and enjoyment thereof, not exceeding five acres, are not exempt from taxation.

These lots, situate apart from the church edifice, do not constitute a part of the "endowment or fund" of this religious society, within the meaning of the tax law, passed April 10th, 1866. These terms do not include land, as was held by this
1 Court, (State vs. Lyon, 3 Vroom 360.) That case
30 controls this.

The assessment is affirmed as to such lands.

A true copy.

BENJ. F. LEE,

Clerk.

THE HISTORY OF THE
REIGN OF KING CHARLES THE FIRST

BY
JOHN BURNET

IN TWO VOLUMES

THE FIRST VOLUME

THE SECOND VOLUME

LONDON

NEW JERSEY

Court of Errors and Appeals.

THE STATE—
R. J. NEVIN, et al,
Plaintiffs in Error,
v.
ANDREW KROLLMANN, COLLECT-
OR OF REVENUE OF THE CITY
OF HOBOKEN,
Defendant in Error.

Points relied on by the plaintiffs in error for the reversal of the judgment below.

I.

The ruling of the Supreme Court in the case of *The State v. Lyon*, 3 Vroom, p. 360, holding that "the word endowment does not, in the sense of the act, include real estate," is erroneous and contrary to law.

(a.) By the supplement to the tax law, approved March 3, 1854, P. L. 1854, p. 296, "All buildings erected and used for religious worship, the lands whereupon the same are erected, the furniture thereof, and the personal property used therein," only are exempted from taxation.

(b.) By the supplement approved March 25, 1863, P. L. 1863, p. 50, sec. 2, "Parsonages with

lots attached, not to exceed \$500 in value, are also exempted, but the endowment or fund is not exempt.”

(c.) By the act approved April 11, 1866, Nix. Dig. 4th Ed. p. 951, not only the buildings erected and used for religious purposes, the land, &c., but also the endowment or fund of any religious society.

Ib. sec. 5, Sub-division 2.

(d.) The word “endowment” has been used from olden times to signify a gift of land.

Shelford on Mortmain and Charitable Uses,
pp. 45, 46, 69, 70, 76, 173, 174.

Statute 15, Rich. I, c. 6.

Statute 4 H. 4, c. 6.

39 Eliz. c. 5, sec. 4.

Burns' Ecclesiastical Laws.

“Church” I, vol. 1, p. 324.

Co. Litt. 119 b.

(e.) “Fund” does not simplify personal property only.

Co. Litt. 119 b.

Bouv. L. D., p. 400, 87.

Co. Litt., 5 a.

3 Shars, Bl. 209.

II.

The case of *The State v. Lyon*, 3 Vr. 360, if approved by this Court, does not control this case, as endowments or funds bestowed for the permanent use of a religious society and kept sacred for such uses, are exempted from the rule laid down in that case.

(a.) There is a deed of trust in this case which describes the property taxed as an “endowment,”

and bestows it for the permanent use of the religious society, and keeps it sacred for such uses; whereas, in *The State v. Lyon*, there was no bestowal by a definite trust deed, in writing, which limited the endowment to be kept sacred.

(b.) So far as the opinion in *The State v. Lyon* declares that land can not be an endowment, it was unnecessary for the decision of that case, and is a mere *obiter dictum*, which the Court did not intend to apply to a case where the trust was in writing, and binding on the church.

(c.) Almost all endowments and funds of religious societies do and have, from the earliest times, consisted of lands; and there are no statutes of *Mortmain* in New Jersey to prevent their becoming endowments.

III.

The whole endowment may be considered that of the church.

Whitman v. Lex, 17 S. & R., P. 88. Where a gift to a church to be laid out in bread, for the poor was so considered.

See Also *Perry on Trusts*, sec. 701.

IV.

If that part of the fund devoted to the Parochial School can not come under the head of the endowment of the church, it does come under the head of the endowment or fund of the academy or seminary of learning.

V.

In like manner the part of the fund devoted to the free reading room and library comes under the head of the endowment of a public library.

VI.

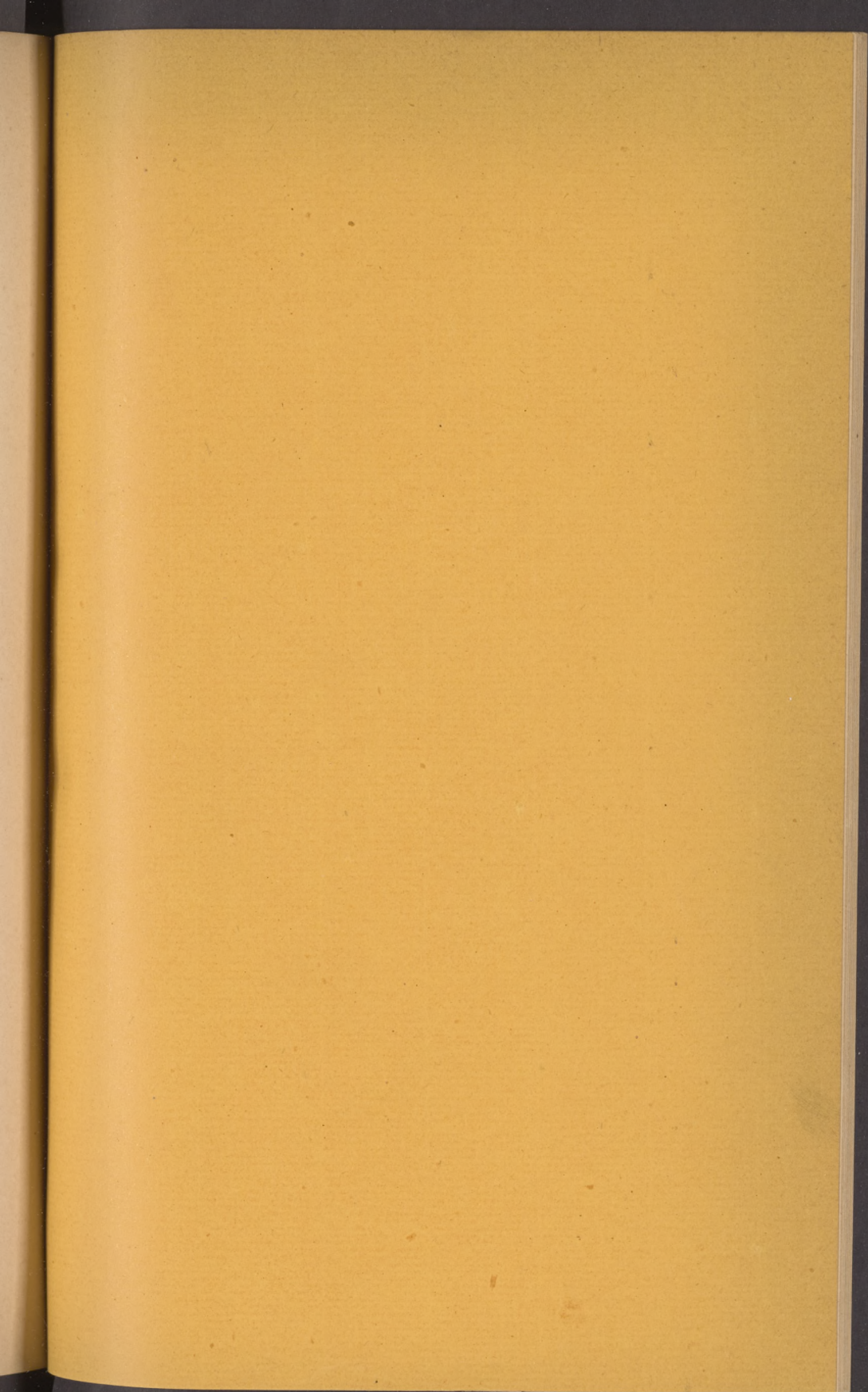
The fund devoted to the sustaining of the mission and lay-reader, is clearly part of the fund of the religious society.

VII.

The income of the whole fund is now devoted to a church, a free school and public library.

VIII.

The land taxed was by law exempt from taxation.



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