

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, THE ELIZABETH LIBRARY ASSOCIATION, Prosecutors, Plaintiffs in Error,	}	In Certiorari. Error to Supreme Court.
<i>vs</i> WILLIAM LUSTER, Collector of Taxes, and Collector of Arrears of Taxes of the Second Ward in the City of Elizabeth, Defendant in Error.		

A writ of certiorari to remove the assessment of taxes in the Second ward of the city of Elizabeth was duly allowed by the Supreme Court, and issued to William Luster, collector of taxes, and collector of arrears of taxes of the said ward, and returned with the following return, viz:

I, William Luster, collector of taxes and collector of arrears of taxes of the Second ward of the city of Elizabeth, in the county of Union, do herewith send to the Supreme Court of Judicature of the State of New Jersey, the assessment and duplicate in the matter of the assessment of 10 taxes made by the assessor of taxes of the Second ward of the city of Elizabeth, against the Elizabeth Library Association, for the year eighteen hundred and fifty-eight, with all things touching and concerning the same, as above I am commanded, as by a copy of said assessment and duplicate hereto annexed, more fully appears, witness my hand this sixteenth day of May in the year eighteen hundred and fifty-nine.

WILLIAM LUSTER.

COPY OF ASSESSMENT, &c.

ELIZABETH LIBRARY ASSOCIATION.	LANDS.	VALUE.	TOTAL.	SCHOOL.	LAMP & WATCH.	CITY.	ROAD.	COUNTY.	
	1 p. c.		\$10,000	20	5	18	7	10	\$60 00

WILLIAM LUSTER.

Under a rule duly obtained in said Supreme Court for the examination of witnesses in said cause, the following testimony was taken, viz:

James Mitchell, being duly sworn according to law, on his oath saith, that he resides in Elizabeth; that he held the office of assessor in the Second ward of the said city in the year 1858; that he was elected in April, 1858; that as such assessor he made an assessment that year of ten thousand dollars against the Elizabeth Library Association; that that assessment was laid for the building in Broad street, put up for said Association; that that property was not assessed at its full value; that its full value in his opinion is twenty-five thousand dollars; that he does not know how much front there is on Broad street; that the front part of the lower story of the building is occupied by two stores, one a drug store occupied by A. W. Miller, and the other a tea store occupied by James B. Smith for the Canton Tea Company; on the same floor in the rear is a hall let out for concerts, lectures, &c., and used for balls, concerts and public meetings; the rest of the building is used as follows: a room in the third story used by the Lyceum Association; another room is occupied by the free mason's lodge.

The following questions were put and objected to, viz:—
On what part of the property was the assessment made by you as assessor of the Second ward of the city of Elizabeth? to which deponent answered: on the building and lot, on the whole of it without regard to the uses to which it was

applied ; in this building there was a room for a library room, and two rooms in the rear on the second floor ; one of these rooms, at the time the assessment was made, was used by the directors, and the other, at that time, or a little after, was let to Mr. Halsey as an office for the sale of sewing machines ; at the time of this assessment there was no library in the library room ; the property was not taxed at its full value because the Association had not had the full use of it at that time, and had not, before that, received a full income from it—that is, an income from the drug store, which rented for three hundred dollars a year, and the tea store for the same amount, and the rear building, or hall, the directors rented for fifteen dollars a night when they let it ; and the lyceum room, I do not know, but was told they received about one hundred dollars a year for that ; and the large room, I do not know, but have understood they got one hundred dollars, or over that, for that ; this income was the basis by which I arrived at that assessment ; the library room and the director's room had nothing to do with this assessment.

20

Being cross-examined, saith—I did not assess the property as much as I did other property, according to the cost of it ; I generally put two-thirds value or more on property I assess ; the hall is fitted up with seats, and stage, suitable for a lecture room ; the hall was fitted for use last summer ; a course of scientific lectures was delivered in it last winter by Professor Silliman ; there have been two public meetings called there by the citizens relative to their city charter ; there was a convention held there, last fall, about the election ; the mayor of the city called the first meeting of the citizens ; the library building covers the whole of the width of the ground in front ; access to the upper stories from the street is had by a wide hall from the front.

Witness being shown the collector's return attached to the writ of certiorari, the question is asked whether what

purports to be a copy of the assessment, annexed to the return of the collector, is a true copy of the assessment made and entered in his book of assessment? This question objected to, deponent answered it is a true copy; I assessed the property of the Elizabeth Library Association in the manner stated in said return; I do not recollect exactly at what time that building was finished for use; I think it was in May, 1858; Mr. Halsey did not occupy one of those back rooms for his sewing machines over three months; I made
10 the assessment in June, 1858.

Deponent being examined in chief, saith—I do not know of the Hall being at any time used for balls, or concerts, or meetings, without a charge being made for the use of it; I do not know of the use of that Hall being refused for a public meeting; the Library Building was generally finished before this assessment was made; I do not remember whether it was entirely finished, but the whole of it I think was fit for use.

Deponent being cross-examined, says—Never saw the
20 money paid for the use of the Hall; I knew of the money being paid for it last Friday night, but I do not know except from hearsay, as to money being paid at other times; I do not know of my own knowledge, of any applications being made for the use of the Hall.

Deponent further examined, in chief, says—The Mr. Pierson from whom I have heard of money being paid for the use of the Hall, is Stephen Pierson, the Agent of the Library Association.

JAMES MITCHELL.

30 Sworn and subscribed before me, at Elizabeth, N. J., this second day of June, A. D., 1859,

WILLIAM F. DAY,

Commissioner of Bail of Supreme Court, N. J.

Rosewell G. Rolston, being sworn according to law, on his oath says: In the year 1858 I was either the secretary

and treasurer, or the secretary and treasurer *pro tem*; I was not a director then; the front of the library building is occupied by two stores—one a drug store, and the other a tea and coffee store, each of which is rented at two hundred dollars per year this year, and at the rate of three hundred dollars for this last year; the rear of the library, called the lecture room, is used for benevolent and other purposes; I use the word benevolent because there is a tariff of prices according to the objects for which it is to be used; that hall has been let, during the past year, for several concerts, one 10 course of lectures by Professor Silliman, meeting of the citizens for the orphan asylum, and other purposes, three balls, and two church fairs; the charge for the use of that hall is in summer, for a single evening, for benevolent purposes, twelve dollars and a half, and fifteen dollars for other purposes; in winter, for benevolent purposes, fifteen dollars, and for other purposes twenty dollars, then these several charges include compensation for the service of a janitor, and for lighting and heating said hall; I do not know that any part of the second story was rented the last year; Mr. 20 Halsey occupied one of the rooms for a short time, but paid no rent; in the third story there are two rooms, one of which is rented to the masonic order at the rate of one hundred and fifty dollars per year, giving them the entire control of the room for the year; the other room is rented to the Union Literary Association for the sum of fifty dollars, the Elizabeth Library Association furnishing light and, I think, fuel and janitor's services, which was supposed to be about what it would cost the said Elizabeth Library Association; no other association occupies it from whom any income is de- 30 rived, except the Hibernian Benevolent Association. The Young Men's Christian Association holds its meetings there on the same terms. The Hibernian Benevolent Association also hold their meetings there for eighteen dollars a year, the Juvenile Literary Association held their meetings there but paid nothing.

Deponent being cross-examined says :—The property of the Elizabeth Library Association consists, first—of the lot of ground on Broad street, about fifty feet front, and secondly a three story brick building, covering with a one story building in the rear, attached to the main building ; the rear building used as a lecture room ; the whole front of the second story was, I think, but partly finished June, 1858, but was designed for the purposes of a library room, and was finished during the year 1858, one side of that room
 10 was shelved during the last year to receive books, and there must have been fifteen hundred or more books put therein ; the income has been expended in the payment of the debts incurred in the erection and furnishing of the building, and for no other purpose, so far as I know ; the Elizabeth Library Association must owe still, at least five thousand dollars, on the erection and furnishing of the building, and the purchase of books, which includes the heating apparatus for the building, and gas pipes and fixtures throughout.

Witness being re-examined in chief, says : I do not know
 20 how much the indebtedness is, which has been contracted by the Association on account of pamphlets, newspapers, and the current periodical literature of the day ; these books are to be for the use of the present association, and such others as may come under the general regulations relative thereto ; the members of the present association do not have the use of the books without further compensation ; the charge will be some two or three dollars a year I think ; I do not know what the intention of the Association is, as to appropriating the whole of their income in the purchase of books for the
 30 library ; the board has taken no action which would show that intention, either for or against it. R. ROLSTON.

Sworn to and subscribed before me, at Elizabeth, N. J., this second day of June, A. D., eighteen hundred and fifty-nine.

WILLIAM F. DAY,

Commissioner of Bail of Supreme Court of N. J.

And the said plaintiffs, in certiorari, by Chetwood & Magie, their Attorneys, come and say that the assessment of taxes, and proceedings therein in the above case should be set aside for the following reasons: First—because the said assessment of taxes and proceeding thereon are contrary to law. Second—because the property and estate, real and personal, of the Elizabeth Library Association is exempted, by law, from all assessments, taxes, and charges whatsoever. Third—because the Elizabeth Library Association is exempt, by law, from all taxation. Fourth—because the said taxation and proceedings thereon are illegal and contrary to law. 10

The argument of said certiorari having been heard before Edward W. Whelpley and William S. Clawson, Esquires, justices of said Supreme Court, sitting apart for the hearing of common business, afterwards upon the opinion of said justices, the following rule was entered in said court, viz:—

FEBRUARY TERM, 1860.

William Luster, Collector, &c.

ads.

The State, (The Elizabeth Library Association.)

} On Certiorari in
} matter of tax
} assessment. 20

The court having heard the argument of counsel in this case, and duly considered the matters involved therein, and being of opinion that the said, the Elizabeth Library Association is liable to pay tax, for and upon all property owned by it, and not in its immediate use and occupancy for the purposes designated in its charter, it is ordered that said assessment so far as the same accords with the foregoing opinion be confirmed, and that the same do stand in full force and effect.

Rule entered April thirtieth, A. D., eighteen hundred and thirty-sixty, on motion of

R. S. GREEN,

Attorney of Defendant in Certiorari.

No opinion in said cause was filed by said justices of the Supreme Court, although application was made by the

counsel of both parties to Judge Clawson therefor, his sickness and subsequent death having prevented his preparing such opinion.

A writ of error to the said Supreme Court having been duly allowed, and issued out of this court, and returned in said cause the following pleadings in error were filed therein:—

Afterwards, that is to say, on the eighteenth day of June, eighteen hundred and sixty-one, before the judges of the
 10 Court of Errors and Appeals, in the last resort, come the State of New Jersey, the Elizabeth Library Association, Prosecutors by Chetwood & Magie, their Attorneys, and say, that in the record and proceedings aforesaid, there is manifest error in this, to wit:—That the said the Supreme Court adjudged that the said the Elizabeth Library Association is liable to pay tax for and upon all property owned by it, and not in its immediate use and occupancy, for the purposes designated in its charter, whereas by the charter of the said the Elizabeth Library Association, granted by act of the
 20 Legislature, approved the fourteenth day of March, eighteen hundred and fifty-six, the property of the said Association is exempt from taxation; and also there is error in this, that the said Supreme Court adjudged that the real estate of the said the Elizabeth Library Association aforesaid, by the defendant in certiorari, was liable to taxation, whereas by the said charter of the said Association the real estate of said Association is exempt therefrom; and also, there is error in this, that the said Supreme Court decided and adjudged that the said assessment and proceedings thereon
 30 were legal, whereas the same are contrary to law; and also, there is error in this, that the said judgment of the said Supreme Court is in other respects illegal and contrary to law; and also, there is error in this, that the judgment of the said Supreme Court by the record aforesaid appears to have been given in favor of the defendant in certiorari, whereas it

ought to have been given in favor of the plaintiffs in certiorari, and the said plaintiffs 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 they may be restored to all things which they have lost by occasion of said judgment, &c.

CHETWOOD & MAGIE,

Attorneys of Plaintiffs.

And hereupon, the said William Luster, by Robert S. Green, his Attorney, comes and says that there is no error, 10 either in the record and proceedings aforesaid, or in giving the Judgment aforesaid: and he prays that the Court 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 in all things be affirmed, &c.

ROBERT S. GREEN,

Attorney of defendant in error.

The above case is agreed upon by the parties to the said cause.

CHETWOOD & MAGIE,

20

of Counsel with plaintiffs in error.

ROBERT S. GREEN,

of Counsel with defendant in error.

36 fo.
8
\$2.88 4

26 - 10
5
22.58 0

