

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN HARDCASTLE, Collector of the township of Bridgewater in the county of Somerset, plaintiff in error,

vs.

THE STATE, (JAMES HODGE, Prosecutor,) defendant in error.

Writ of error to the Supreme Court.

CASE.

STEPHEN B. RANSOM, Attorney for plaintiff in error.

ISAIAH N. DILTS, Attorney for defendant in error.

This was a certiorari sued out of the Supreme Court, of this State, directed to John Hardcastle, collector of the township of 10 Bridgewater, to remove the assessment of a tax against the prosecutor levied for school purposes, returnable to February Term A. D. 1856. The following is the assessment brought into the Supreme Court by the writ of certiorari.

To the Justices of the Supreme Court of judicature of the State of New Jersey :

In obedience to the writ of certiorari of the State of New Jersey, to me, the collector of the township of Bridgewater, in the county of Somerset, directed, commanding me to certify and send to the Supreme Court, the proceedings touching a certain assessment of taxes, made by the assessor of the township of Bridgewater, in said county of Somerset, in assessing James Hodge, for the purpose of maintaining a Free School in Willow Grove district No. 13 in said township of Bridgewater, for the year 1855, the assessment aforesaid, as fully and entirely, with all things touching and concerning the same as it remains with me ; I do certify, that by the duplicate of assessments now in my possession, it appears that said James Hodge was assessed for the purpose of maintaining a Free School in Willow Grove District No. 13 in said township of Bridgewater, for the 30 year 1855, thirteen dollars and forty-two cents ; and I do further certify that the said assessment was made out and contain-



8th. Because two-thirds of the legal voters present did not consent to the resolution for raising money, as mentioned in said certificate.

I. N. DILTS, *Attorney of plaintiff in certiorari.*

A rule was taken in the Supreme Court to take testimony, under which the following evidence has been taken, viz :

*Supreme Court of New Jersey.*

THE STATE, (JAMES HODGE, Prosecutor,)

*vs.*

JOHN HARDCASTLE, Collector of Bridge-water township, Somerset county.

} *On Certiorari, &c.*

Examination of witnesses taken *de bona esse* before John V. Voorhees, a commissioner to take bail and affidavits in the Supreme Court, in the presence of S. B. Ransom, attorney of defendant in *certiorari*, and of I. N. Dilts, Esq., attorney of plaintiff in *certiorari*, June 2nd, A. D., 1856, in Somerville.

*Kortenius G. Schenck*, a witness produced on the part of the defendant, being duly sworn, says:—I saw one notice of a meeting of the taxable inhabitants of Willow Grove school district, No. thirteen, in the township of Bridgewater, put up at the store of William N. Adair, in the district, and in the township in which the district is situated; this was fourteen or fifteen days before the time named in the notices for the meeting. On the evening of the same day I saw another of the notices put up at the store of Joseph Ross & Son, also in the district. I saw another one put up at the hotel of Isaac J. Fisher, on the same evening, also in the district. These places are among the most public in the district.

I don't think I kept a copy of these notices; I have no recollection of having done so. I was, and still am, a trustee. This was in the month of April, A. D., 1855.

*Question*—What was the contents of these notices? Objected to by Mr. Dilts, of counsel with plaintiff.

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*Answer*—It was in substance to notify the inhabitants of a meeting to be held some fourteen or fifteen days from that time, for the purpose of making the school free by raising mo-

ney in the district for that purpose by tax. I did not give personal notice to every person in the district, but almost every one was there. The meeting was held in pursuance of these notices, and was held on the 17th of April, A. D., 1855. Being shown paper, marked exhibit A, on the part of the plaintiff says, this is the certificate showing the result of the meeting held in pursuance of these notices, and I think I handed it to the assessor of the township. It was signed by all the trustees, in my presence, and sworn to by Mr. Perrine and myself together.

Tax was levied under the certificate, and we have drawn the money and expended it in keeping the school free.

Being cross-examined, says:—I was present at the meeting called in pursuance of these notices, as well as at the meeting when it was resolved to call the meeting. The vote on the seventeenth of April, 1855, was taken by ballot. I think there was no poll list kept. There were some votes objected to; I recollect that Orson C. Cone's vote was objected to, and I think it was received. The certificate was made the same day it bears date.

Re-examined in chief, says:—James Hodge was at the meeting; John Herbert was not; William Winson and John Polhemus were there; Cornelius Van Derveer was also there.

KORTENIUS G. SCHENCK.

Sworn and subscribed before me June 2d, A. D., 1856.

J. V. VOORHEES.

30 *Daniel Talmage*, a witness on the part of the defendants, produced and sworn, says:—I was, and still am, a trustee of this school district. I did not sign the notices myself, but ordered the person who drew the notices to sign my name to them, which was done. I saw one of the notices up in the store of Mr. Ross. The purport of the notice was calling the taxable inhabitants of Willow Grove school district, No. 13, to meet at the school house on the seventeenth of April, A. D., 1855, at seven and-a-half o'clock, P. M., for the purpose of voting with reference to free school in the district. A meeting was held in pursuance of these notices at the time named in

the certificate, marked exhibit A. On consultation of the three trustees we found we had notified every taxable inhabitant in the district of the meeting; I believe every taxable inhabitant in the district understood the objects of the call. (This objected to by Mr. Dilts.) There was no objection made at the meeting to the notice of the meeting. The resolution named in the certificate was passed, and by the vote as therein stated. I signed and swore to the certificate as a trustee. There was no objection made at the meeting to any voter, with the exception of the vote of O. C. Cone, and his vote was received. 10

Being cross-examined, says:—The ground of objection to his vote was on account of non residence; he did not swear his vote in. David T. Talmage was chairman of the meeting on the seventeenth of April, 1855.

DANIEL TALMAGE.

Sworn and subscribed before me, June second, A. D., 1856.

J. V. VOORHEES.

*Orson C. Cone*, a witness on the same side, produced and sworn, says:—I was at school meeting on the seventeenth of April, 1855. I then resided in Middlebrook, in the district. I 20 saw the notices of the meeting both before and after they were put up; I saw three of them, and I think four; they were signed by the trustees, two of them, Mr Perrine and Mr. Schenck, in their own handwriting; I also heard the order given by Mr. Talmage for signing his name to them; I don't know of any copy of them being kept; the substance of these notices were that a meeting of the taxable inhabitants of the district would be held at the school house of Willow Grove school district, No. 13, in the township of Bridgwater, on the seventeenth of April, A. D., 1855, to vote whether the school should 30 be made free by taxing the property of the district. (This objected to by Mr. Dilts.) I had paid tax up to that time in this township; I have paid none since. I moved away after this; I saw one of these notices up at Middlebrook, at the store of Joseph Ross & Son, another at the school house, a third at the store of Adair & Co., at Gateville; I think there was one also on the ash tree, at the junction of the mountain road with

the turnpike, near the school house ; these places are all in the district; and are public places. There was a very large attendance at the meeting ; the voters were all out with the exception of four or five.

Being cross-examined, says :—I voted at that meeting ; my voting was objected to by Thomas Smith on the ground of non residence ; I had my home in this district for five years before this ; I had lived at David T. Talmage's house ; I was absent during that time three months ; a few days in November of 10 1854, and then the whole of December, January and February of the years 1854 and 1855 ; during that time my business was away from there ; it was in Pea Pack, in the same county, where I was teaching school, which is not in Bridgewater township.

Re-examined in chief, says :—I kept school there three months, at Pea Pack ; I returned to Mr. Talmage's, at Middlebrook ; I returned from Pea Pack to Mr. Talmage's the first of March, A. D., 1855.

O. C. CONE.

Sworn and subscribed before me, June second, A. D., 1856.

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J. V. VOORHES.

It is agreed by the attornies of the respective parties that the above evidence, and exhibit therein referred to, be used as evidence also in the cases of *The State, (John Herbert, Prosecutor,) vs. John Hardcastle, Collector, &c.*; *The State, (Cornelius Van Derveer, Prosecutor.) vs. the same* ; *The State, (William Windsor,) Prosecutor, vs. the same* ; *The State, (John Polhemus,) Prosecutor, vs. the same.*

I. N. DILTS,

*Attorney of plaintiff in certiorari.*

30 June 2d, 1856.

Certificate delivered by trustees to the assessor, marked exhibit A.

WILLOW GROVE SCHOOL DISTRICT, No. 13. }  
April 19, 1855. }

This will certify that notice was made to the taxable inhabi-

tants of Willow Grove School District, No. 13, in accordance with the act entitled "An Act to establish public schools," asking said taxable inhabitants to meet in the school house of the district to vote for or against making the school a free school.

The meeting of taxable inhabitants was held agreeable to notice on the seventeenth day of April, 1855, when the following resolution was adopted by more than a two-third vote.

"Resolved, That the trustees be empowered to raise by tax upon the property in the district two hundred and fifty dollars (\$250,) for the purpose of maintaining a free school." 10

Forty-eight votes were cast in favor of above resolution, and twenty votes against.

JOSEPH PERRINE,  
KORTENIUS G. SCHENCK,  
DANIEL TALMAGE,

*Trustees of Willow Grove School District, No. 13.*

*Somerset County, ss.*—Personally appeared before the subscriber, one of the justices of the peace of the county of Somerset, Joseph Perrine, Kortenius G. Schenck, and Daniel Talmage, who being duly sworn, on their oath's say, that the mat- 20  
ters set forth in the above certificate, and to which they have affixed their signatures, is true as there set forth.

ALFRED CAMMAN, J. P.

The following is the judgment of the Supreme Court, setting aside the assessment against the prosecutor.

*New Jersey Supreme Court, November Term, 1856.*

THE STATE, (JAMES HODGE, Prosecutor,)	} On certiorari, in matter of school tax, assessed in Willow Grove District, No. 30 13.
vs.	
JOHN HARDCASTLE, Collector of the town- ship of Bridgwater, in the county of Somerset.	

The Court having inspected the *certiorari* and other papers in this cause, and the assessment removed thereby, and the reasons assigned why said assessment should be set aside, and

heard the argument of counsel thereon at the last term of this Court, and taken time until the present term to consider thereof, and now being of opinion that said reasons are well assigned, and that said assessment is erroneous, it is ordered that said assessment be in all things set aside and for nothing holden.

On motion of I. N. Dilts, *Attorney of plaintiff in error*.

On the return of the writ of error the plaintiff in error assigned errors as follows, viz :

*New Jersey Court of Errors and Appeals.*

<p>10 JOHN HARDCASTLE, Collector of the township of Bridgwater, in the county of Somerset.</p>	<p>vs.</p>	<p>} <i>Writ of error to the Supreme Court of Judicature of the State of New Jersey.</i></p>
<p>THE STATE, (JAMES HODGE, Prosecutor,) defendant in error.</p>		<p>} ASSIGNMENT OF ERRORS.</p>

Afterwards, that is to say, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, before the judges of the court of Errors and Appeals, at Trenton assembled, comes the said John Hardcastle, by Stephen B. Ransom, his attorney, and says that in setting aside the assessment aforesaid, there is manifest error in this, that the said assessment was set aside in the Supreme Court of Judicature of the state of New Jersey; whereas, by the law of the land, the said assessment ought to have been affirmed; therefore in that there is manifest error. And the said John Hardcastle prays that the said judgment so given by the said Supreme Court, setting aside the said assessment as aforesaid, may be reversed, annulled, and altogether holden for nought, and that the said assessment may in all things be sustained and affirmed, and that he may be restored to all things which he hath lost by occasion of the said setting aside of the said assessment, &c.,

S. B. RANSOM,

*Attorney for and of counsel with the plaintiff in error.*

The defendant in error has filed the common joinder in error.

## Opinion of Potts, J.

STATE, (Hodge, Prosecutor,)

vs.

HARDCASTLE, Collector.

Certiorari.

MATTER OF TAX.

The certificate is the authority upon which the assessor proceeds to assess the tax authorized by the eleventh section of the sup. to the act to establish public schools.—*Nixon*, 739, p. 42.

It must show on its face that notices of the time and place of the meeting were signed and set up as the section prescribes.—*State v. Van Winkle*, 4 Zab. The section requires the notice to be signed by at least two of the trustees of the district—that it set forth the time and place, and the purposes of the meeting, and that it be set up in at least three public places in said district ten days before the day of meeting. The certificate simply says “that notice was made to the taxable inhabitants of Willow Grove school district, No. 13, in accordance with the act entitled ‘an act to establish public schools,’ asking said taxable inhabitants to meet in the school house of the district, to vote for or against making the school a free school.”

This is too loose. It does not appear that such notice as the<sup>20</sup> law requires was given, nor that it specified that it was to be held for the purpose of *voting a tax*, nor that the proceeding was called by authority of the supplement act which authorized it. (Set aside.)

STATE OF NEW YORK

IN SENATE

January 10, 1890

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

APRIL 18, 1889

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STATE (Hodge, Prosecutor)

Certiorari

Matter of Tax

HARDCASTLE, Collector.

The certificate is the authority upon which the assessor proceeds to assess the tax authorized by the eleventh section of the act to establish public schools. It must show on its face that notice of the time and place of the meeting were signed and set up as the section provides. It is to be signed by at least two of the trustees of the district, and the purpose of the meeting, and the time and place, and the purpose of the meeting, and that it be set up in at least three public places in said district ten days before the day of meeting. The certificate also says "that notice was made to the taxable inhabitants of Willow Grove school district, No. 13, in accordance with the act entitled 'an act to establish public schools, asking said tax the inhabitants to meet in the school house of the district to vote for or against making the school a free school.'"

This is too loose. It does not appear that each notice as the law requires was given, nor that it specified that it was to be held for the purpose of raising a tax, nor that the proceeding was called by authority of the supplement act which authorized it. (See note.)

