

New Jersey Court of Errors and Appeals.

JESSE W. STARR, JAMES P. MICHELLON and JOHN M. PASCHALL, Trustees of Liberty School District, No. 5, of Township of Newton, County of Camden,	} <i>In Error</i> <i>to</i> <i>Supreme Court.</i>
<i>vs.</i> The STATE, (JOSEPH M. KAIGHN, Prosecu- tor.)	

WRIT OF CERTIORARI, &c.

New Jersey.

[L. S.] The State of New Jersey to Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School District, No. 5, of the Township of Newton, in the County of Camden, Greeting: We being willing, for certain reasons to be certified of the resolution, and all other proceedings had by you, and the proceedings of a meeting of the taxable inhabitants of said district, held on the fifth day of April last past, relative to raising two thousand dollars in said district for school purposes, in addition to the money appropriated to said district, pursuant to the provisions of the eleventh section of a supplement to the act entitled an Act to Establish Public Schools, do command you that you certify and send to the Justices of our Supreme Court, at Trenton, on the first Tuesday in November next, all resolutions and proceedings by you or the said meeting so held, relative to raising, or ordering to be raised, the said sum of two thousand dollars as aforesaid, with all things touching and concerning the same, together

with this writ, that we may cause to be done what of right and according to law ought to be done.

Witness, Henry W. Green, Esquire, Chief Justice at Trenton, aforesaid, the fourth day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

CHAS. P. SMITH, *Clerk.*

THOMAS H. DUDLEY, *Attorney.*

ALLOCATUR

Allowed in open Court.

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STACY G. POTTS, J.

RETURN TO THE ABOVE WRIT.

We do hereby send to the Honorable the Justices of the Supreme Court of the State of New Jersey, the proceedings and resolutions had by us, and the proceedings of the meeting of the taxable inhabitants of said district, held on the fifth day of April last past, relative to raising two thousand dollars in said district for school purposes, in addition to moneys apportioned to said district and all things touching and concerning the same, as within we are commanded, as by the schedule 20 hereto annexed may more fully appear.

Witness our hands and seals,

JOHN M. PASCHALL, [L. S.]

[L. S.]

J. P. MICHELLON, [L. S.]

Trustees of Liberty School District, No. 5, Newton Township.

SCHEDULES ANNEXED TO ABOVE WRIT.

LIBERTY SCHOOL DISTRICT, NO. 5.

*Minutes of District Meeting, held at the New School House,
on Monday Afternoon, April 5th, 1858.*

A meeting of the taxable inhabitants of Liberty School District, No. 5, Newton Township, Camden County, New Jersey, was held at the new school house on Monday afternoon, April 5th, 1858, in pursuance of legal notice given.

The meeting was called to order by Mr. John M. Paschall, who nominated Mr. John R. Cunningham as Chairman, who, 10 upon motion, was elected. Mr. Anthony Michellon was elected Secretary.

The minutes of the last Annual District Meeting were read and adopted.

On motion, it was Resolved, that we go into a nomination for Trustees, in the place of Philip L. Swyler, resigned, and James P. Michellon, whose term of office expires to-day.

The following nominations were made:—Mr. Jesse W. Starr, for the unexpired term of Philip L. Swyler, (two years from this day,) and James P. Michellon for three years from this 20 day.

On motion, Resolved, that the nomination close.

The following gentlemen were elected tellers:—George Hamilton and John M. Paschall.

On motion, Resolved, that we vote by ballot.

The result of election was as follows:—

Jesse W. Starr received 25 votes, and James P. Michellon received 25.

They were then declared elected.

On motion of James P. Michellon, it was Resolved, that the 30 boundaries of the Liberty School District, No. 5, Newton Township, be altered so as to take in all the Seventh District, called Rural.

The following vote was taken, the Secretary calling the

names, and asking each whether they were favorable to the resolution; the gentlemen voted "yea," there being no "nays."

John R. Cunningham, James P. Michellon, Jesse W. Starr, John M. Paschall, George Hamilton, Jos. Smith, John Griffée, Wm. H. Griffée, Seth Griffée, Charles Scully, Charles Jewell, Joseph Blair, Thomas Githens, Isaac Wilson, Charles Griffée, J. Weston, Henry Martin, Benjamin Harris. W. Luff, L. Renuje, Ellis Heigle, John Horniff, Anthony Michellon.

On motion, Resolved, that the report of the year 1856 be
10 read; but no action taken, as report was accepted on their last meeting.

The report for the year 1857 was then read by J. P. Michellon, and approved.

On motion of Mr. Jesse W. Starr, it was Resolved, that we raise two thousand dollars by taxation, in addition to the sum apportioned to the district from the township.

An amendment was offered by Mr. James Henry, that we raise one thousand dollars.

The vote being taken on the amendment, it was lost, and the
20 original motion, by Mr. Starr, was carried unanimously.

On motion, adjourned.

MARCH 20, 1858.

A meeting was held at the school house, March 20th, 1858. Present, Starr, Paschall and Michellon.

Minutes of previous meeting read and approved.

Committee on Trees reported progress, and continued.

A communication was then made from Peter L. Voorhees, Esq., attorney for the Board in reference to the scire facias, or summons in the case of an attachment, made by Stockhams against J. J. Cox. After reading the plea presented by Mr.
30 Voorhees, and the statement of the account, it was resolved that an order be drawn in favor of Mr. Peter L. Voorhees, attorney, for one hundred and seventy-eight and twenty-four one hundredths dollars, to be paid into court, it being the amount of the balance due to Jonathan J. Cox, on his contract for school house.

On motion, Resolved, that an order be drawn in favor of H. B. Wilson, (for a half cord of wood,) for two and fifty-one hundredths dollars.

The Secretary was ordered to put up the legal notices required for the raising of money, etc., and also for the annexation of the Rural or Seventh School District, if it is declared illegal by the Town Superintendent.

On motion, adjourned.

MARCH 27, 1858.

A meeting of the Trustees was held at the school house on Saturday evening, March, 27th, 1858. 10

Present, Paschall and Michellon, (Mr. Starr sent word that he was engaged and could not come.)

Minutes of previous meeting read and approved.

Committee on Trees, not present.

On motion, Resolved, that an order be drawn in favor of Mrs. S. C. Allen, for twenty (\$20) dollars, for five weeks' services, to April 2d, 1858, inclusive.

On motion, Resolved, that an order be drawn in favor of Miss Lydia A. Bundick, for thirty (\$30) dollars, which is in full for five weeks' services, to April 2d, 1858, inclusive. 20

On motion, Resolved, that an order be drawn in favor of Mr. Joseph E. Lame, (for one month's services as teacher, to April 1st,) for thirty-three and thirty-three one hundredths dollars (\$33 $\frac{33}{100}$.)

On motion, Resolved, that an order be drawn in favor of Mr. Geo. Hamilton, for eight and thirty-four one hundredths dollars, for one month's services, to April 1st, inclusive, as janitor.

On motion, Resolved, that an order be drawn in favor of Shepperd Semple, for twenty (\$20) dollars, which is in full for one month's services as teacher, to April 1st. 30

On motion, Resolved, that an order be drawn in favor of John H. Jones & Co., for five and seventy-five one hundredths dollars, which is in full for printing bill to this date.

The Secretary reported that the legal notices for raising money had been posted by Mr. Hamilton.

Adjourned to meet on Saturday night, April 3d.

APRIL 3, 1858.

A meeting of the Trustees of Liberty School District, No. 5, was held on Saturday evening, April 3d, 1858.

Present. Starr, Paschall and Michellon.

Minutes read and approved.

Committee on Trees reported progress—continued.

On motion, Resolved, that we give to Messrs. Peter and Augustus Stutzer a note for $394\frac{36}{100}$ dollars, for the amount of their claim against J. J. Cox, contractor, which the Board agreed 10 to settle.

The Board, in the above case, ordered the Secretary to refer the entire settlement to the attorney of the Board, P. L. Voorhees, who is to take such measures as to secure the claim in case of the success of the Stockhams' suit.

On motion, adjourned.

APRIL 5, 1858:

Meeting of the Trustees held on April 5th, 1858, at the school house immediately after the adjournment of the district meeting.

20 Present, Starr, Paschall and Michellon.

Minutes of previous meeting read and approved, and also the minutes of the district meeting, which were ordered to be recorded in a book to be bought for that purpose.

The returns of the election for Trustees were also read, which was as follows:—Mr. Jesse W. Starr was elected a Trustee for two years, the unexpired term of Mr. Philip L. Swyler, resigned, and Mr. James P. Michellon was elected a Trustee for a full term, viz.: three years from date, (his term of office having expired this date.)

30 On motion, the following officers were elected for the ensuing year:—

President—Jesse W. Starr.

Treasurer—John M. Paschall.

Secretary—James P. Michellon.

The following committees were appointed:—

On Census—Michellon, Starr and Paschall.

On Finance—Starr and Michellon.

On Stationery, &c.—Michellon.

On White School—Michellon, Starr and Paschall.

On Colored School—Michellon, Starr and Paschall.

On New Certificate of Incorporation with the Seventh District addition—Starr and Michellon.

On motion, Resolved, that the census be taken immediately, and return made to the Town Superintendent.

The Secretary was ordered to have the certificate of assessment made out and ready as soon as possible.

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On motion, adjourned.

APRIL 17, 1858.

Meeting of the Trustees was held at the school house April 17th, 1858.

Present, Starr, Paschall and Michellon.

Minutes of the last meeting read and approved.

The Committee on Trees, (appointed prior to last meeting,) reported progress.

The Committee on Census reported that the duty was being done and would be accomplished in the time for the return. 20

The Committee on Certificate of Incorporation with the annexation of the Seventh District, reported that the certificate had been gotten up by the attorney and signed, and were recorded in the Clerk's Office—Committee discharged.

The Committee on Colored School reported that they had rented a one-story frame building, at the corner of Seventh and Chestnut streets, for a colored school, at \$4 per month, and that they had commenced making the alterations for the conveniences of the school.

The Committee on Trees, etc., were instructed to have the 30 front yard sodded.

The Certificate of Assessment was then signed by the Trustees, and the oaths and affirmations were taken by Moses Hammell, Esq., Justice of the Peace.

The Secretary was ordered to send the certificate to the Assessor at once.

On motion, Resolved, that an order be drawn in favor of the Trustees of the African church for three dollars, for rent of their church for colored school purposes.

On motion, adjourned.

MAY 15, 1858.

Meeting of the Trustees was held at the school house on Saturday evening, May 15th, 1858.

Present, Starr, Paschall and Michellon.

Minutes of previous meeting read and approved.

- 10 Committee on Trees and Sodding reported that the trees were in and the sodding finished, and tree boxes were put on—Committee discharged.

Committee on Census reported that their duty was performed, and the number of children in the district between the ages of five and eighteen years of age, was 243 or 253—Committee discharged.

- The Secretary reported that he had sent the Certificate of Assessment to the Assessor, Mr. Lippincott, and had received a letter from him, dated Haddonfield, April 22d, 1858, acknowledging the receipt of it.

On motion, Resolved, that the orders which were drawn up on the following dates, if not paid over, be handed to their respective owners, as soon as money is provided for the purpose.

- One in favor of Mr. Jesse W. Starr for three hundred dollars, which is for the payment of a note given by Mr. J. W. Starr and endorsed by James P. Michellon, and discounted in the State Bank, at Camden, for three hundred dollars, the nett amount of which was paid over to Mr. Hammell, Town Super-
30 intendent, to be appropriated to the payment of teachers' salaries, debts, &c., of this district.

On motion, adjourned.

REASONS FOR REVERSAL, &c.

NEW JERSEY SUPREME COURT.

The STATE (JOSEPH KAIGHN, Prosecutor,) }

vs. }

JAMES P. MICHELLON, JESSE W. STARR and
JOHN M. PASCHALL, Trustees of Liberty School
District, No. 5, of the Township of Newton,
County of Camden.*In Certiorari.**Reasons, &c.*

The plaintiff comes here, and by Thomas H. Dudley, Attorney, shows the following reasons why the assessment of two 10 thousand dollars school tax in said district, ordered by a meeting held April 5th, 1858, in the Liberty School District, No. 5, and the proceedings of said Trustees in reference to same, should be set aside and for nothing holden.

1st. Because there was not ten days' notice given to the inhabitants of the district of the meeting which decided that the tax of two thousand dollars for schools should be raised.

2d. Because the Seventh or Rural District of Newton Township was annexed, or pretended to be annexed, to the Fifth, or Liberty District, on the 5th day of April, 1858, and at same 20 meeting it was determined to raise the two thousand dollars for schools. And the certificate of the Trustees, &c., based upon the proceedings of said meeting, directs the assessor to assess the people and property of said Seventh District for the school tax of two thousand dollars, as well as the people of the Fifth District.

3d. Because the tax of two thousand dollars for schools, or a portion thereof, was ordered to be assessed and raised on the property of the people of the Seventh District before the Seventh District was annexed to the Fifth District.

4th. Because the Trustees directed the assessor to assess the 30 tax of two thousand dollars for schools on the property outside of the Liberty School District, No. 5.

5th. Because the Trustees ordered the property in Seventh District to be assessed for the two thousand dollars school tax, without the consent of the people, and against their wishes.

6th. Because the meeting held on the 5th of April, which determined the tax to be raised, was composed of the people of

the Fifth District alone, and the people of the Seventh District were not there, were not notified, were not consulted, did not participate in the meeting, and had no right to participate in its proceedings.

7th. Because the people and property of the Seventh District were taxed with the two thousand dollars school tax before they were annexed to the Fifth District.

7½. Because the certificate to the assessor to raise said tax does not show on its face that ten days' notice was given of the 10 meeting held, or how the notices were put up, where put up, or how many places, or that the statute was complied with by Trustees.

8th. Because the meeting held on the 5th of April was not properly called, and was illegal, and all its proceedings, and the proceedings of the Trustees relative to said tax under said meeting, are illegal and void.

9th. Because the proceedings of said Trustees are in divers other particulars irregular and illegal.

THOMAS H. DUDLEY, *Attorney.*

20 A true copy.

CHAS. P. SMITH, *Clerk.*

DEPOSITIONS, &c.

N. J. SUPREME COURT.

The STATE, (JOSEPH KAIGHN, prosecutor,)

vs.

JESSE W. STARR, JAMES P. MICHELLON
and JOHN M. PASCHALL, Trustees of
Liberty School District, No. 5, of the
Township of Newton, County of Cam-
30 den.

In Certiorari.

The STATE, (JOSEPH KAIGHN, prosecu'or,)

vs.

BENJAMIN BROWNING, Clerk of the County
of Camden.

Certiorari.

OCTOBER 4th, 1858.

1 pursuance of notice given in the first of above cases, I was attended by Thomas H. Dudley, attorney of Prosecutor,

and Peter L. Voorhees, Esquire, attorney of School Trustees, and proceeded to take the following affidavits:—

It is agreed by the attornies above mentioned, being the attornies in both of the above stated cases, that the affidavits taken in the case noticed, shall be used in the argument of both, without the necessity of taking the affidavits anew.

James P. Michellon, a witness produced on the part of the Prosecutor, being duly sworn, saith:—I am now, and was last Spring, one of the Trustees of the School District, No. 5, (the Liberty School District.) I have been a Trustee since the 10 organization of the school district, which was in 1854 or 55; it was April, (the first Monday in 1855.) My co-trustees, at this time, are Jesse W. Starr and John M. Paschall. Mr. Paschall was elected two years ago, last April, and Jesse W. Starr was elected the last April; the exact date was the 5th day of April, 1855. He had been a trustee before, in the place of a gentleman who had resigned, Philip L. Swyler.

Being shown a paper, being a certified copy of the Certificate of Incorporation, marked Exhibit A, on the part of Prosecutor,

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Witness says, this is a certified copy of our original Certificate of Incorporation. This district has been altered since that time; it was altered April 5th, 1858. The alteration was the annexing of a certain line of land formerly belonging to the district. The line we annexed, was known as a school district; it had been called No. 7; I believe they called it Rural. The alteration we made at that time, was to survey round and take in this district. The boundaries we made were to include the Seventh District entirely. We made and filed a certificate in the Clerk's office. It was signed by the Trustees and Mr. 30 Hammill, Town Superintendent; the certificate was dated the twelfth day of April.

The copy of the certificate annexed to the certiorari is, I presume, a true copy. I have the minutes of the Trustees with me.

The book being produced, is agreed to be in evidence without being marked as an exhibit.

I keep this book; I am Secretary of the Board. The Seventh

District was annexed by meeting of the inhabitants of the district, held April 5th, at 4 o'clock in the afternoon, in pursuance of notices put up in accordance with the requirements of the law relating to schools.

It is further agreed, that copies of the minutes taken from the minute book above referred to, may be used in the argument without being marked as exhibits.

The meeting above spoken of, was held in the school room of the school house, in the Fifth District, known as the boys' 10 school room.

The original Certificates of Incorporation, both the first and last, are to be produced in this cause, and marked Exhibits B and C, on the part of Prosecutor.

The notices of the call of meeting were put up by the janitor, George Hamilton. The notices were printed notices, with blanks. For the purpose of safety, we also furnished notices for the Rural, or Seventh District. There were seven notices altogether. The three notices which were first put up in the Rural District, were not considered necessary, but, to make 20 assurance doubly sure, we put them up. Three notices were put up in the Rural, or Seventh District, and four, I think, in the Fifth. I wrote one extra. We have always been in the habit of putting up from four to six each year. The notices, I think, were signed by Mr. Starr and myself; we signed in the capacity of Trustees. They were signed simply by the Trustees of the Liberty District, and not by the Trustees of the Rural, or Seventh District. The notices were given to Mr. Hamilton on the morning of the eleventh day prior to the meeting. They were posted eleven days before. The day was the 26th 30 of March, 1858. The notices put up were the same as those in the 44th page of the pamphlet, marked Exhibit D, except that we inserted boundaries.

There was, and is, also a typographical error in our printed bills.

The attention of the witness being called to an entry in the minute book, dated April 5th, and referring for minutes of that date, to district book, he says:—I have not this district book referred to with me; it is at my office in Philadelphia. The

minutes of that meeting are not written up yet; the Secretary of the meeting was Anthony Michellon, my brother. He is traveling in the West, but is expected back every day. I got the district book referred to since April 5th last. Prior to that time, I had kept the minutes in the minute book. The former minutes were taken out of the minute book and copied into the new district book. That is all it contains. The minutes of April 5th, when this Rural, or Seventh District, was annexed, have never been entered into the book. They are written upon a sheet of paper, and are ready to be transcribed into the book; 10 but my brother was called suddenly to go to the West, and had not time to attend to it. I have not that sheet of paper containing the minutes with me. It is with the book at my office.

Notice is given by Mr. Dudley to Mr. Voorhees, and admitted by Mr. Voorhees, to produce the paper containing the minutes last referred to.

I do not remember, exactly, how many people attended the meeting of the district. There were two votes taken at this meeting. The first vote was upon the election of Trustees, by 20 ballot. Prior to election, the decision of the Supreme Court was read; the other was a vote, when the yeas or nays were taken respecting the alteration of the school district. There was, also, a third vote respecting the raising of money. These votes were all taken at the same time, one after the other.

A paper being shown to witness, marked Exhibit E, of Prosecutor, says:—

I thing these are the names, upon this paper, of the persons who voted for the alteration of the school district. They all voted in the affirmative: There was nobody voted in the 30 negative. I presume the Secretary, in taking down the votes, has placed the words yea and nay at the top, presuming there would be some voters in the negative. But he has gone on and copied the names of all the voters under these two headings, without erasing the nay at the top. I believe that all who were present, entitled to vote, voted on this question. I do not know whether any body was there from the Seventh District, or not. I do not know but one or two persons in the

Seventh District. The persons, whose names are to this paper and who voted at that meeting, are, I believe, all residents of the Fifth District. Some of the men I do not know at all. I can't say whether the vote to raise the two thousand dollars was after the vote to alter the district, or not. There was no other act done, but that of this meeting to alter the district, and it was upon the vote of this meeting that the Certificate of Incorporation was made out. I mean, there was nothing else done by the inhabitants. The Trustees took further steps:

- 10 They ordered the notices to be put up, and ordered the certificate to be prepared, which all appears by the minutes. It was upon this vote that the certificate, of the twelfth day of April, was made out and signed. It was authorized by the people of the district, at this meeting. The names of the persons whom I do not know, on this paper, Exhibit E, are John, William H. and Seth Griffith. I know who they are. They live within the bounds of the Fifth District. I do not know Charles Scully, nor which district he lives in. I do not know Charles Griffin, nor where he lives. I presume he lives in the Fifth
- 20 District. I presume all the people who were at the meeting were from the Fifth District. If there were others, I did not know them. Those whom I do know, on this paper, are all from the Fifth District.

It is admitted that a paper, marked Exhibit F, on the part of Prosecutor, is a true copy of the certificate to the assessor, to raise the sum of two thousand dollars, signed by the Trustees of School District, No. 5, and it is agreed that it may be used in the place of the original.

- There were notices issued into the Seventh District, giving
- 30 notice of the meeting to raise this two thousand dollars, as well as to the Fifth. There was no sum of money specified in the notice. It was general, to raise money. The notice was not separate and distinct, but was the same one referred to above. There was nothing said in the notice respecting the alteration of the school district; it was all relative to the raising money. There were no notices whatever put up in relation to altering the school district and taking in District No. 7. The notices for raising money, which were put up in District No. 7, were

put up before the meeting at which the district was annexed. The ordering the sum to be raised was done the very day it was annexed, and before the certificate was made and filed. I do not know, precisely, the number of legal voters we had in District No. 5, before District No. 7 was annexed. The boundaries set out in the certificate to the assessor, (Exhibit F,) sets out the boundaries of District No. 5, after annexing and taking in No. 7. The alteration of the district and the ordering of the money to be raised was all done at one time and at one meeting. Exhibit F is a copy of the certificate we 10 served on Mr. Lippincott, the assessor. I have a letter from Mr. Lippincott, acknowledging the receipt of this certificate. The votes at the meeting referred to, were taken as follows:—the first, for election of trustees, was by ballot; the others, for raising the money and annexing the District No. 7, was by calling the yeas and nays. I think this was so; at any rate, there was no other vote by ballot. The name, J. P. Michellon, on the paper, Exhibit E, is mine. I was there and voted. The District No. 7, I have said, formerly belonged to District No. 5. That was before the incorporation of the Liberty District, 20 No. 5. It has never belonged to us since we were incorporated, until we annexed it in April last.

Cross-examination waived.

J. P. MICHELLON.

Sworn and subscribed before me, this fourth day of October, A. D., 1858.

CHARLES P. STRATTON, *Commissioner*.

George Hamilton, a witness produced on the part of the Prosecutor, being duly sworn, saith:—

I am Janitor of the school in Liberty District, No. 5. I put 30 up the notices referred to by Mr. Michellon. I put up four in District No. 5, and three in the Rural District No. 7, so far as I know the boundaries. I have no copy of these notices. I voted upon the question of annexing the Seventh District at the meeting referred to by Mr. Michellon. The name of G. H. Hamilton, if meant for me, on the paper, Exhibit E, is wrong. I have no middle name. I was there and voted for the annex-

ation. I know Charles Sculley and Charles Griffin; they both live in the Fifth District, and lived there before the Seventh was annexed. The question upon the annexation was taken by yeas and nays. I can't speak positively as to the persons who voted. I think there was in the neighborhood of thirty. The legal voters who were present, I presume, all voted.

Cross-examined.—I put up those notices on the 26th of March, 1858, eleven days before the meeting. I had strict orders to put them up eleven days before. I put them up all in one day.
10 Upon the vote, respecting the alteration of the district, at the meeting, every body voted in favor of the alteration. It was a unanimous thing.

Re-examined.—I do not know of any body being at the meeting from the Seventh District.

Cross-examined.—I do not know the number of legal voters in the Seventh District.

GEORGE HAMILTON.

Sworn to and subscribed before me, this fourth day of October, A. D., 1858.

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CHARLES P. STRATTON, *Commissioner*.

Charles Lippincott, a witness produced on the part of the Prosecutors, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, saith:—

I am the Assessor of Newton Township, and have been for the last three years. I have acted as such during all that time. I am acquainted with the school districts of the township. I know the boundaries of District No. 5, before No. 7 was annexed to it; but I did not know the boundaries of District No. 7, before that time. I know, at this time, the boundaries of what were both these districts. After the annexation of District No. 7, I received a certificate from the Trustees of District No. 5, as it purported to be, directing me to raise two thousand dollars. I have the original of that certificate with me. Exhibit F, which has been produced here, is an exact copy of that certificate. I received that certificate from James P. Michellon, who has been examined here. I cannot tell when it was, but it was before the time of assessment. I have
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no doubt I received it in April, but I cannot tell the day. The boundaries set out in the certificate sent to me, includes the old district, No. 5, and the district, No. 7, annexed to it. By virtue of that certificate, I assessed all the property mentioned in those boundaries, (including the old Seventh District,) rateable, to raise the amount mentioned in the certificate. The assessment of Joseph M. Kaighn, the prosecutor, under the assessment I then made, was seventy-three dollars and sixty cents. This is his school tax, alone, for the present year. In going over the Fifth School District, I have become acquainted 10 with the legal voters of the district and the inhabitants, to a considerable extent. The number of taxable inhabitants who were legal voters in the old school district, No. 5, was about 135. It would not vary five from this. There were that many there last April. I have gone over my duplicate for the purpose of ascertaining the number. I have made the assessment there for three years.

Cross-examined.—I have been acquainted with part of the school districts in Newton Township for three years, where special tax was required to be raised; some of them I have 20 only known for a year past, and the boundaries of two or three I do not know now. The First, or Haddon School District, the Fifth School District and the Sixth School District, have heretofore raised special tax. This year, in addition to those, the Second, or Rowandtown School District and the Seventh School District as annexed to the Fifth. I have no certificate for assessing in the Seventh District, except that which I received from the Fifth. I did not know the boundaries of the Seventh. I had seven school districts in my township before; there are six in it now. There have not been more than six 30 since April last, since the taking in of the Seventh District. The Seventh District, so far as I know, is only in existence now as it exists with the Fifth. My only knowledge of the boundaries of the Seventh District, is from the certificate given to me last year of the boundaries of the Fifth District, and that which I received this year. I know nothing of the boundaries of the Seventh District before this certificate was given to me. The amount of property assessed in the Fifth District, as it

now stands, is \$462,497 00. The rate of tax for school tax, in that district, is 42 cents to the \$100 valuation. The amount of property assessed to Joseph M. Kaighn is \$16,000, real and personal. I have three accounts against the Starrs for school tax in that district; one against Jesse W. Starr; one against John F. Starr; and a third against J. W. & J. F. Starr. The school tax of Jesse W. Starr is \$96 50; that of John F. Starr is \$73 60; that of J. W. & J. F. Starr is \$216 20. The amount of poll tax assessed in the Fifth District, as it formerly was, is 10 one hundred and thirty-five. By assessing what was formerly in the Seventh School District, there is between eight and ten poll taxes added. There are two or three of these foreigners, not naturalized. There are about six families living in that district. The others are single men. When I spoke, in my examination in chief, of there being 135 legal voters in the Fifth District, I meant that many who paid poll tax, although I do not know of but two or three among them who are not legal voters. I do not know, exactly, how many legal voters there are in the district. I know there are more than 100 20 legal voters in the Fifth District as it stood before the Seventh was annexed. I am sure there are over 100.

Re-examined in chief.—The amount of property assessed in District No. 7, as it formerly was, before being annexed, is \$92,000 and over; Starr's property was in the old district before the alteration.

Cross-examined.—I have my duplicate with me.

CHARLES LIPPINCOTT.

Affirmed to and subscribed before me, this fourth day of October, A. D. 1858.

30

CHARLES P. STRATTON, *Commissioner*.

[Note.—It is agreed by Mr. Dudley that Mr. Lippincott shall furnish for Mr. Voorhees, before argument, a list of persons paying poll tax in the old Fifth School District.]

Paul C. Lanning, a witness produced on the part of Prosecutor, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, saith:—

I live in what was known as the Seventh School District. I was at the meeting in the Seventh District, in April, for the

appointment of one Trustee. That meeting was held at my house. It was in the first part of April. It was on the day fixed by law for holding it. At that meeting, I think Joseph Kaighn was elected trustee. I did not know of a meeting being held to take our district into the Fifth District. The meeting was held at my house, pursuant to a notice of the Town Superintendent. This was last April, 1858. The other trustees for that district, were Joseph Hatch, since deceased, and James Evans. They had been elected the previous years.

10

Exhibit E being shown to witness, and the names read to him, he says:—

None of these people live in the Seventh District; I know the people of the Seventh District.

Cross-examined.—At the meeting at my house there were but very few people; not more than four or five. I cannot name them all. There were minutes of that meeting kept; Joseph Kaighn was Secretary of the meeting. We had no school house in the district. I cannot tell how long we had school there the year before. The children were schooled out. 20 I cannot tell the number of children in the district; have heard, but have forgotten. I saw the notice for the meeting in the Fifth District. It was put up at my place. I presume I read it more than once. I did not speak of it at the meeting. I refer to the notice put up by the Town Superintendent; not the notice put up by Mr. Hamilton. I do not remember ever to have seen the notice put up by Mr. Hamilton. There may have been one put up. I attend the toll gate. My son sometimes attends the gate for me. I do not know that he assisted Mr. Hamilton to put up the notice. The Rural or Seventh Dis- 30 trict has been in existence for more than three years. I remember we have held meetings for three years, pursuant to notice of the Town Superintendent.

P. C. LANNING.

Affirmed and subscribed before me, this 4th day of October, 1858.

CHARLES P. STRATTON, *Commissioner*.

Mr. Voorhees calls on Mr. Dudley to produce the minutes of the meeting, referred to by Mr. Lanning, held at his house, which notice is admitted by Mr. Dudley.

Moses Hammell, a witness produced on part of Prosecutor, being conscientiously scrupulous, &c., and being affirmed, saith:—

I am Town Superintendent for Newton Township; I have acted in that capacity since last spring, a year; I was then first elected; Jacob L. Rowand, preceded me in that office; when I was elected I found seven school districts in the township; seven so-called districts; some of these were incorporated and some were not; the incorporated districts were the First District, the Second District, Fifth and Sixth Districts; the Third, Fourth and Seventh Districts were not incorporated; I gave notice for the election of a school trustee in the Seventh District, in April, 1857; the acting trustees for that district, that year, were Joseph Kaighn, Joseph Hatch and James Evans; I gave notice for a meeting to elect a trustee, in April, 1858, for the Seventh School District; the same names were returned to me; I suppose one of the number was re-elected; I can't say which one; a certificate has been presented to me including what was formerly the Seventh District in the Fifth.

20 The original of that certificate, Exhibit C, being produced, the witness says: This is the certificate; all I did was to sign that certificate, as Town Superintendent; I did it at the request of the trustees of the Liberty School District, No. 5; no body else asked me to do it; to my knowledge, the tax payers of District No. 7, had nothing to do with annexing it to District No. 5; the trustees of this district had nothing to do with it, so far as I know; the notice I put up, to elect a trustee in School District No. 7, was for the day designated by law; on looking at the almanac, I find that day to have been the fifth of April; 30 since the election, on the fifth of April, one of the trustees, Mr. Hatch, has died.

Cross-examined.—There was a book of the office of Town Superintendent, given me by my predecessor; I have that book with me; this book contains the boundaries of the incorporated districts, but not of the others, except by maps; there are some memorandums made in it of when the districts were laid out; there is no memorandum of when the Seventh District was laid out; I have searched for it, but cannot find it; the parti-

cular boundaries of the Fifth District are not given in this book before it was incorporated; there is a map in the first part of the book, in which the districts are laid down; the Seventh District is laid down on the map; I have not altered the districts since I have been Superintendent.

Ques.—Did you consent to the alteration of the Fifth District, in April last?

I do not think I either consented or objected; I do not think I was asked; I signed the new certificate; I had no personal knowledge of the alteration that had been made in the district 10 when I signed the certificate; I knew it by hearsay and from the certificate; there has been no school in the Seventh District, so far as I know, since April last, nor, to my knowledge, since I have been Superintendent; the Seventh District, returned to me in 1857, nine scholars; in 1858, the same number was returned to me; I did not distribute the money to the trustees in 1857; I paid money in 1857, but it was for schools, previous to my coming into office; I have now six school Districts in my township.

Ques.—Did you approve of the act of the trustees of School 20 District No. 5, in your official capacity? (Objected to.)

I approved of it so far as my signature was concerned; I have regarded it as an unsettled thing since I have known it was in contention; there was no connection between the Seventh District and any other school district in any adjoining township; when I said I was in doubt about the Fifth District, I meant to say that I considered it as the Fifth District until otherwise decided by law, that is, that the Seventh was included in the Fifth; I put up notices for the election of trustees in the Fifth District, according to law; I suppose, from referring to 30 that book, that the Seventh District was once a part of the Fifth; this is only an inference, from the fact that John M. Kaighn was once a trustee in the Fifth District, and he lived where the prosecutor now does; there are 256 scholars returned to me from the Fifth District as it now stands; this number includes the Seventh District; there is no school house, so far as I know, in what was District No. 7.

Ques.—Is there a sufficient number of children in the

Seventh District, as it formerly was, to support a school? (Objected to.)

Ans.—I should think not, there being but nine.

Ques.—Did you report anything in reference to the Seventh District at the town meeting? (Objected to.)

Ans.—Yes sir; I have here the identical manuscript that I read from; after taking up the schools in rotation, when I came to the Seventh District, I said, No. 7 has but nine children and no school, and should not be suffered to exist as a
10 district; these are the very words used; I find it stated in the reports that have been made in the Town Superintendent's book, that alterations have taken place in the school districts during the preceding years, but there is no special record of such alterations in the book; I have not recorded the boundaries of School District No. 5, as it now exists in the Town Superintendent's book; I should have done it, perhaps, but for this litigation.

Re-examined in chief.—I merely signed this certificate because I deemed it my duty by law to do so; I was told that
20 the District No. 7, was to be annexed, but my consent was not asked; I did not consider that I had anything to do with it; I only considered that I had a right to alter unincorporated districts.

MOSES HAMMELL.

Affirmed and subscribed before me, this fourth day of October, A. D. 1858.

CHARLES P. STRATTON, *Commissioner.*

Adjourned to Monday next, October 11th, 1858, 10 o'clock, A. M.

30 MONDAY, OCTOBER, 11th, 1858.

Pursuant to above adjournment, attorneys met at my office, and the attorney of prosecutor offered in evidence, the following exhibits:—

Upon notice given to Mr. Voorhees by Mr. Dudley, (ante p. 5,) Mr. Voorhees produced the copy of the minutes of the last

district meeting, held April 5th, 1858; alluded to by Mr. Michellon in his depositions, and which are to be copied into the district book, marked Exhibit G, on part of prosecutor.

Prosecutor's attorney also offers in evidence a printed form of the school notices alluded to by Mr. Michellon in his deposition, and which was posted in the district, as stated by him, (marked Exhibit H, of prosecutor.)

It is admitted by Mr. Voorhees that Anthony Michellon, whom the prosecutor desires to examine, is at this time absent from the State of New Jersey and travelling in western 10 States.

Adjourned to Thursday, 14th inst., 10 o'clock, A. M:

THURSDAY, OCT. 14th, 10 o'clock, A. M.

The attorneys of parties attended before me, and offered in evidence the following exhibits:—

The prosecutor offers in evidence the original Certificate of Corporation of School District No. 5, Newton Township, marked Exhibit F, of prosecutor.

Also; the certificate of alteration of school district, marked Exhibit H, of prosecutor. 20

Adjourned to Friday, October 22d, at 2½ o'clock, P. M.

FRIDAY, OCT. 22d, 2½ o'clock, P. M.

Continued the taking of depositions in the above matter of Certiorari.

John M. Paschall, a witness produced on the part of defendant, being duly sworn, saith:—

I am a resident of Liberty School District, No. 5, in the Township of Newton; I am one of the trustees of that district; I have been a trustee since April, 1856; I am now one of the trustees; I have resided in the district since the fall of 1854; 1 30

have been in the habit of canvassing and taking the census of that district for several years; I have taken the census of the children for the last two years; I was at the meeting of the district on the 5th of April last; there was a meeting called at that time, by order of the trustees; there were notices filled up and put into the hands of George Hamilton,

Being shown a blank form of school notice, marked Exhibit No. 2, of defendants, says:—

This is the form of notice used; they were signed by the trustees and put into the hands of the janitor, Mr. Hamilton, about eleven days before the meeting; I have canvassed that district since that time; the number of legal voters living in that district, on the 5th of April last, was sixty-three: there are 119 white persons over twenty-one years of age, and out of that number, sixty-three were legal voters; some, who were living there at that time, have got their papers since, and become legal voters; and others, who had moved here from other states and were not qualified then to vote, have since become so.

20 *Ques.*—How many of the legal voters and taxable inhabitants of the district were in favor of the alteration of the district at that time? (Objected to.)

Ans.—My positive belief, in regard to the matter, is that the whole population, except two, were in favor of it; we had the assent of 39 to the alteration; we had a certificate made and signed by a number of the taxable inhabitants consenting to the alteration.

Being shown paper marked Exhibit No. 3, of the defendants, says:—

30 This is the certificate alluded to; besides these names there were others at the meeting, who voted for the alteration, whose names are not here, which, together with these, make forty-four; there are five names on this paper, of persons whom we have since heard were not legal voters; this paper was prepared either the next day or soon after the meeting; the names on the first page of this paper were signed during that week; the names on the second page have all been signed since this suit commenced; I procured the names to be signed; there are

some three or four names on this second page of persons whose names are on the first; they signed by mistake; I not thinking their names were already to the paper; I have a memorandum or list of the legal voters in the district; there are some of the legal voters I am not personally acquainted with; I know Lorenzo D. Appley, he is a legal voter; I know Sylvanus D. Applegate, he is a legal voter; I know Patrick Brown, he is a legal voter; Lewis Bowman, he was not a legal voter last spring; there is no Lewis Browman living in the district now, nor was there last spring; Samuel Bell is a foreigner, and has 10 not taken out his papers; William Bray is a legal voter; I am acquainted with him; there is not any body in the district named Edward Best; there was a colored man living there some time ago, of that name, I have understood; George Burton lives in the district, but he is a colored man; there is no white man of that name; Albert Baxter had not taken out his papers last spring; he had not lived in the district a year at that time; John Baxter is a brother of the last; he had not lived in the State a year last spring; he came from Philadelphia or Germantown; there are two John Baxters in the dis- 20 trict, living side by side; one came in June last and the other in October; Hugh Brady is a legal voter; George Cooper is an Englishman, and has not taken out his papers; John R. Cunningham is a legal voter; John Crump has not lived in the State a year; I think he moved here last August; James Connelly is a legal voter; John Caldwell does not live in the district, I could not find him there; John Carr has moved to Centreville; I heard he had moved there; he moved out of our district near a year since; Michael Allen does not live in the district; he never did live there; there was a man named 30 Michael Gillon lived in the district some time since; Daniel Deross is not a legal voter; he had not lived in the district long enough, last spring, and I do not think he is a legal voter, at any rate, his wife told me he was not; George Deal has not lived in the district long enough; they told me he moved from Camden about three months ago, I suppose along in June; John Deal has not taken out his second papers; James Deno is a legal voter, I know him; Christian Eval cannot be found, he

does not live in the district; William Edwards is a legal voter; he follows the water; Aaron Flowers was not a legal voter; he is just taking out his second papers now; John R. Fitzgerald does not live in the district; he cannot be found; there is a man living in the district named James Fitzgerald, but he is not a legal voter; Frederick W. Farrington is an Englishman, he has never taken out his second papers; Thomas B. Githens is a legal voter; John Genther has not taken out his papers; John Genther, junior, should be Jacob Genther; there is but
10 one John in the district; Jacob is not a legal voter; David Genther could not be found; there were but the two Genthers, John and Jacob; Thomas Glerm has removed from the district some time since; he was removed before the first of April last; Frederick George was not a legal voter in April last; he had not taken out his second papers; John C. Griffin is a legal voter; William H. Griffin is a legal voter. Seth Griffin is a legal voter; so are Benjamin Gaskell, Pat. Gallagher, Albert Gorn, William Howell. Charles
20 Harrison was a legal voter—he is since deceased. Benjamin Harris is a legal voter. Walter Huff does not live in the district. There was a man who moved out of the district about two months since named Walter Luff, who was a legal voter. Wm. H. Hankinson is a legal voter. Nicholas Heagle I do not know; there is a man named Elois Heagle, who is a legal voter. Christian Hazle I know; he is not a legal voter. I do not know any such man as Christopher Hagle, whose name is on the list. Edward Hunt does not live in the district; a man of that name lived there two years ago. William Hollinger does not live in the district; there is a Wm. Hofflinger, who is a legal voter.
30 John Huntzinger is a legal voter. Henry Hollingshead was not a legal voter last Spring; he has taken his papers out this Court. George Hamilton is a legal voter. Joseph Hufflinger is a legal voter. Levi Hunter has removed some time since; I think he removed in May last; I cannot say whether he was a legal voter or not; he was not in the district very long, and I think he came from Philadelphia; I cannot say about his being a legal voter. George Johnson is not a legal voter; he is an Englishman, not natu:alized. William Gimmerson was not a legal voter

in April last; he moved from the State of Delaware in October, 1857. John Leveitt and John Long are both legal voters. Lewis Law could not be found in the district; I do not think there was anybody of that name living there last Spring. Samuel Monroe and Edgar Monroe are both legal voters. Christian Myers is not a legal voter; he has not been naturalized. Patrick McGlockin or McGlaughlin is a legal voter. Patrick McGrosey is not to be found; there is no such person living in the district. Matthew McVeigh is a legal voter. Patrick McCormick is not legal; he is a foreigner, and not naturalized. John McCabe, 10 Neal McLaughlin and Elias McDowell are all legal voters. Christian Mink is not a legal voter; he is a foreigner, and unnaturalized. Samuel Miller does not live in the district; there is no such person there. John Miller lives in the district, and is a legal voter. There are two John Millers in the district; one is legal and the other is not; one has not taken out his papers. There is no Samuel Miller. Anthony Michellon and James P. Michellon are both legal voters. John Plum has removed from the district, perhaps two years ago; he was not there last April. Charles Pippett is a legal voter. W. W. Page is not in the dis- 20 trict; there is a John W. Page, who is a legal voter. There is no Alfred but an Albert W. Paschall, who was a legal voter last Spring. John Paschall should be John M. Paschall; that is myself; I am a legal voter. Frederick Pechman is a legal voter. John Roth and Lawrence Rineger are both legal voters. John Ridgely cannot be found in the district; he does not live in the district, and did not, to my knowledge, last Spring. Aaron Runions has removed from the district before April last—perhaps a year ago. George A. Rosbach, Jesse W. Starr, John F. Starr, Joseph Smith and Moses Starr are all legal voters. 30 John Smith does not live in the district; there is no such man there; there was a William Smith, but he moved away before last April. Charles Scully is not a legal voter; he is a foreigner, and unnaturalized. Philip L. Swyler is a legal voter. Thomas Shields and Christopher Shields moved out of the district two years ago. Thomas Shields, Jr., James Shields, Charles W. Starns and William C. Sloan are all legal voters. Peter Scofield is not a legal voter; he is a foreigner, and has not taken out his

papers. Thomas Lenyard and George Lenyard cannot be found in the district; there are no men of that name living there to the best of my knowledge, and I think I would know it if there were. Wm. C. Shourds is a legal voter. Jacob Stow does not live in the district; a family of colored persons of that name used to reside there. Wm. Streeper is a legal voter. Philip Schneider I cannot find; there used to be a colored man named Snyder living in the district. Conrad Spalts is not a legal voter; he was sick when we called, but his wife informed us he had not
 10 taken out his papers; he is a German. Frederick Semelar is not a legal voter; he is a foreigner, not naturalized. Samuel Suters is a legal voter. Theodore N. Stagers has not lived in the district for six or eight years; he lives in South Camden; he owns property in the district I have heard from Mr. Michellon. James Vennel, Francis Vanstavern and William Willets are all legal voters. Isaac Wilson was not a legal voter in April; he has since been naturalized. Robert Wilson is not a legal voter; he is not naturalized. Wm. J. Wilson is not a legal voter; he is a son of the other, and not naturalized; besides, I do not
 20 think he lived in the district at the time; he came from Philadelphia, and was not a legal voter if he was in the district. Joshua Wilkins moved from Philadelphia about the first of last April. William Warnock and Charles Wilson are legal voters. John Weston is not a legal voter; he moved into the district in May last, they told us at his house; his wife told me this on inquiry at his house. James Woods cannot be found; there is nobody of that name in the district; there is a man named John Woods, but he is a foreigner, not naturalized. In canvassing the district we went to every house except one; there was one
 30 place we did not go into; it is a kind of hermit place; Mrs. Grome and her son Albert live there; he is a legal voter.

The taking of depositions adjourned to Saturday, October 23d, 10 o'clock, A. M.

SATURDAY, 11 o'clock, A. M.

The examination of John M. Paschall continued.—Yesterday, on my examination, I stated that Peter Scofield was a foreigner, and had not been naturalized. I find that I was

wrong. I have been at the house since and made inquiry; the family moved from Philadelphia last Spring; I cannot say what time last Spring; I did not see Mr. Scofield himself, but I saw his wife; she told me this. I also desire to explain further in regard to visiting the houses of the district. I stated that I had visited them all with one or two exceptions. I mean this: there were houses where I knew colored people resided; I did not visit these; I did not visit the Starrs' houses, but was at their place of business; I have been to Hugh Brady's this morning; his wife told me that her husband was just getting out his 10 second papers; he told us when we saw him that he was a legal voter.

[NOTE.—All the above testimony derived from other persons, and which the witness does not know of his own personal knowledge, and all hearsay testimony objected to. And the witness himself objected to, on the ground that he is a party to the record, and therefore incompetent, and cross-examination made subject to these objections.]

Cross-examined.—Witness says: In the statements I have made above, in my examination in chief, what I have said has 20 been derived in part from my own knowledge and in part from a memorandum which was made at the time. I had a copy of that memorandum before me all the time while I was being examined in chief. I referred to it all the time to see respecting those persons with whom I was not acquainted.

The witness is called upon to produce the copy of memorandum referred to.

Mr. Voorhees objects to the marking of this memorandum as an exhibit, but permits Mr. Dudley to use it in the present examination if he desires to do so.

30

Witness says: This memorandum was drawn off from another by Mr. George; he and I went over the district together; made a memorandum which was then copied off on those sheets which Mr. Dudley holds in his hand; Mr. George made that copy; he made it from another list which we have, but which is not here; Mr. George made that list; we went together; Mr. George took the names of those entitled to vote, and I took the names of

those not entitled to vote, and afterwards he copied them off and put them all in one list; the legal voters who had not signed before, most of them signed the paper (Exhibit No. 3) as we called at their houses; at the time we went around we got the legal voters who had not signed previously to put their names to the back of this, (Exhibit No. 3.)

[NOTE.—Mr. Dudley asks to have the copy of memorandum above referred to marked as an Exhibit, to be used in the argument of this matter.

- 10 Mr. Voorhees replies, that the paper is a mere memorandum, made by the witness at the time, and declines to have it marked as an Exhibit, but says he may do so subsequently.

Mr. Dudley insists upon having the paper marked at present, to be used as evidence in the case.]

- Witness says: We went out a week yesterday (the 15th) to get the names and number of legal voters in the district; Mr. George was with me—Frederick George; the method we took was this: most of the people living in the district worked for the Messrs. Starr, so we first went to Starrs' Foundry; after
20 getting all the names we could there, and the residences of the people, we went to their houses; we went to all the houses, wherever a white person lived; we took down the names of the people as we went along; we took down the names of those entitled to vote, or, at least, they themselves signed the paper, (Exhibit No. 3,) except those who had signed it before; the names of those not entitled to vote were set down by Mr. George in a small copy book; I have not that book in my possession; Mr. George has it; he took it away from my house last night; I have not a copy of that in my possession.

- 30 [NOTE.—Mr. Dudley gives Mr. Voorhees notice to produce that book.

Mr. Voorhees admits notice, and says that he has not the book here nor in his possession.]

Witness says: We got the information that the persons whose names are mentioned in that book were not legal voters in most cases from the persons themselves; I do not recollect but one or

two cases where we got the information from the wives of the persons; there were two or three cases where we got it from the wives; I do not recollect more than three cases where we got it from the wives; we were very particular, and we went to some houses to find out four or five times; we went to one house where the woman told us her husband was a legal voter, but that he followed the water and was not at home.

Ques.—You state that Lewis Bowman, Samuel Bell, Albert Baxter, John Baxter, George Cooper, John Deal, Aaron Flowers, Frederick Farrington, John Genter, Jacob Genter, Frederick 10 George, Christopher Heagle, Henry Hollingshead, George Johnson, Christopher Myers, Patrick McCormick, Christian Mirik, Charles Scully, Conrad Spalt, Isaac Wilson, Robert Wilson and Wm. J. Wilson were not naturalized, and therefore not legal voters; will you be good enough to state how you know they are not naturalized and not legal voters?

Witness says: I know it because they told us they had not taken out their naturalization papers; some of them had taken out their first papers, but not their second; some of those persons I know about personally; the others I only can tell about 20 from what they told me; Lewis Bowman I do not know; Samuel Bell I know personally; I know he has not taken out his papers; I know it from his having said so; all my information in regard to these men not being legal voters is derived from themselves; respecting those persons who do not live in the district, I know from the fact that in some cases I was not able to find any such persons, and other cases, from the fact that I knew where those persons moved; I found persons in the district who have not been assessed there; persons whose names were not mentioned in my examination in chief; I do not recollect of 30 finding any person who lived in the district last April who had not been assessed; I do think now of one man, Wm. Hufflinger, but I suppose it means Wm. Hollinger, who is on the Assessor's list; we found a man named John W. Page, who is not on the Assessor's list, but there is a Wm. W. Page on the Assessor's list who may be the same man; these two men were living in the district last April, and were both legal voters; I am personally acquainted with 31 of the persons whose names were men-

tioned in my examination in chief, and I have a slight acquaintance with some of the others; I moved in the district in the fall of 1854, and have lived there ever since; I have lived there about four years; I moved in the district from Camden; I had lived in Camden, South Ward, about three years before this; I came from Philadelphia into Camden; I have canvassed the Fifth District twice previous to going round this time; my duties as Trustee have obliged me to go round before twice and get the names of the children of the district; at such times we have
10 taken down the names of both parents and children.

Ques.—Are you personally acquainted with John Baxter, Daniel Deross, George Deal, Levi Hunter, Wm. Gimmerson, Peter Scofield, Joshua Wilkins?

Ans.—I have no personal acquaintance with any of these persons; I do know the Baxters slightly.

Ques.—How do you know these men were not entitled to vote last Spring?

Ans.—Joshua Wilkins—I know when he moved in the district; he is a neighbor of mine; the two John Baxters moved
20 in the district, one in June of last year and the other in October of last year; they have both told me so, and I know the persons who lived in their houses previously; the two Baxters are Englishmen; they told me they had been naturalized; Daniel Deross I do not know at all personally; I think he had not taken his papers out last Spring; concerning Daniel Deross I have to go by the memorandum which I made at the time; we saw Deross himself, but I cannot tell about him except by the memorandum; I find, on examining the memorandum, that he was not entitled to vote, because he had not lived long enough in the
30 district; he told us he had not lived a year in the State previous to last April; I know that George Deal did not live in the district last April; I get my knowledge from his wife; she said they had moved over in last June; Levi Hunter removed out of the district in July last; I correct what I said in my examination in chief that he moved in May; I cannot swear whether Hunter was or was not a legal voter last Spring; William Gimmerson informed me that he had lived in Delaware up to October of 1857; Peter Scofield's wife informed us that he had moved from

Philadelphia some time during last Spring; Wilkins I have spoken of; he moved in the district in April last; I can't tell the number of houses in our district; I can't tell how many houses I visited in the district; I can't tell the number of houses I didn't visit; I can't tell anywhere near the number I did visit, or how many I did not visit; I suppose one-third of the houses in our district are the residences of black people; we visited some of these black houses; we went to two to inquire after some white people, the names of the persons in the papers; Exhibits Nos. 1 and 3 are all from the old district, No. 5, and none of them 10 from the annexed district, No. 7; Joseph Kaighn, the prosecutor in this case, lives in district No. 7; the persons who were at the meeting when this district (No. 7) was annexed to No. 5, and who voted upon the question, were all from the old district, No. 5; the names of the persons in Exhibit G, so far as I know, all live in the old Fifth District; I believe they all live in that district; there were 23 voted for the annexation; the following persons named in Exhibit G, who voted for the annexation, were not legal voters—Charles Scully and Isaac Wilson; I do not see any others on the list who were not legal voters; those men 20 have told me they thought they were entitled to vote by taking out their first papers; Lawrence Raninger I do not know; he is marked on our list as a legal voter; Charles Jewell I do not know; we did not find him on going over the district; he has moved out of the district since that time; he was a legal voter at that time; the reason I did not mention him before, I did not think of the man's name; I am mistaken about the man; however, upon reflection, I remember he does live in the district.

Ques.—Why, then, did you not put his name down on this list, and give in his name as one of the legal voters of the dis- 30 trict?

Ans.—I gave Mr. Hamilton, his father-in-law, with whom he lives, the paper to sign, and I never thought of his son-in-law; I think he is on a vessel at the present time; I have not seen him about for a month or two; this is my reason for not putting him down on the list; it was an oversight; Joseph Blair I do not know; I do not recollect finding such a man in canvassing the district; I must refer to my paper; on examining my paper

I am unable to find the name ; Thomas Githens and Thomas B. Githens are the same person ; Isaac Wilson was not a legal voter in April last ; Charles Griffin is a legal voter ; I found him in canvassing.

Ques.—Why did you not put his name on the list ?

Ans.—His name is on the list.

Ques.—Is it on the Assessor's list ?

Ans.—I am unable to find it here, (being shown Exhibit No. 4 ;) I do not know why it was not put there.

10 *Ques.*—Why did you not give in his name among the legal voters in your examination in chief ?

Ans.—I think I did so ; when I say his name is on the list I mean the memorandum or paper to which I have been referring ; it is on this list, and I know he is a legal voter ; I think I mentioned his name yesterday in my examination ; I am not positive ; I am not personally acquainted with J. Weston ; I do not think we found any such man in canvassing the district ; on our list his name is marked "not found ;" he is a man I do not know and never heard of.

20 *Ques.*—Did you not say that he moved in the district in May last, and that his wife so told you, in your examination in chief ?

Ans.—Perhaps I might have said so, since I come to think ; I remember, he lives on the Cooper's creek road, I was thinking of another person ; what I said yesterday was correct.

Ques.—Can you tell how he came to vote at your meeting on the 5th of April, when he did not move into the district till May following ?

Ans.—I cannot tell.

30 *Ques.*—Did you find Henry Martin in canvassing ?

Ans.—We did ; he lives with Mr. Starr ; he is a legal voter.

Ques.—Why did you not give in his name yesterday as a legal voter ?

Ans.—I think I did ; he is down on my list as a legal voter ; I am sure he is a legal voter ; I may not have given it in because I may not have been asked the question ; I do not know such a man as Ellis Heagle ; I know Elois Heagle ; I did not find Ellis Heagle in our district in canvassing ; John Horneff I cannot tell

about without looking at my list; I do not know the man; on looking at my list I find it is not here; it must be on the original list, from which this one is copied; I remember the name distinctly: I cannot say whether he is a legal voter or not. I now desire to explain about this. I would state that there were some names on our original list which were not on the Assessor's list. In copying the list which I have here, I have taken only those names which were on the Assessor's list.

Ques.—Will you be good enough to state how it was that, in your previous examination, you stated that you found no other 10 names than what was on the Assessor's list?

Ans.—I do not think I did state that; I think I said that I did not remember that we found any others; I now remember that we did find others; the number I cannot recollect; these names are on our original list; Mr. George had that list; he got it from me last night, since I was examined in chief; I mean Mr. George who is here sitting by my side; I mean this by our original list; I explained that part of the names were taken down in a book, and part of them are appended to that paper, (Exhibit 3;) it is the book that Mr. George has.

20

[NOTE.—Mr. Dudley now called on Mr. Voorhees and on the witness to produce the book referred to.

Mr. Voorhees replies, that the list of legal voters is already here and marked as an Exhibit, and declines to produce the book.

The witness answers that the book is not in his possession, and that he cannot produce it.

Mr. Voorhees admits notice to produce the book.]

Witness says: We made out 63 legal voters, leaving out Mr. Luff and Mr. Hunter, both of whom have removed since; the 30 names on the paper (Exhibit No. 3) which are signed twice are John Griffin and Hugh Brady; I find but these two; the names on the front page of this (Exhibit No. 3) were signed, as I said, some time ago; Mr. George Hamilton procured the names to be signed; I think it was done the same week that the election was held; all the names were signed after the election was held; the writing at the head of this Exhibit, No. 3, is James P.

Michellon's; the names on the second page were signed since yesterday was a week; last Friday week; Isaac Wilson, the first name on the first page of this paper, was not a legal voter at the time of the meeting; I believe he is now; neither were the following legal voters: Charles Scully, Andrew Scully, Aaron Flowers, Hugh Brady, Joshua A. Wilkins, George Johnson; Charles Henry Powell is not on the list we have here; I did not give in his name this morning; I cannot say whether he is a legal voter or not; we have not John H. Graham on our list; 10 he has moved out of the district; he was a legal voter at the time of the meeting; Benjamin A. Starr is not on our present list; he is not on the Assessor's list; he has moved up to his father's farm; the list of legal voters that I have furnished here is the voters of the old Fifth District, not including the 7th or annexed district.

Re-examined in chief.—We had a census taken of the Fifth District after the Seventh District was added to it; the number of children in the Seventh District which was added to the 5th was 9—that is, between the ages of 5 and 18; I procured the 20 names on the second page of this Exhibit (No. 3) to be signed while we were canvassing; these persons are not all legal voters, as we have discovered since; all these persons were in favor of the alteration of the School District.

Cross-examined.—*Ques.* How many of the persons whose names are on the second page of Exhibit No. 3 were not legal voters at the time of the meeting?

Ans.—Hugh Brady, Wm. H. Connelly, Joshua Wilkins, John W. Weston, William J. Wilson, John Baxter, John Baxter again, Wm. Gimmerson; these are all that I know or can state 30 without referring to my list; there are some names here on this paper that I cannot tell about; some of the men I do not know.

JOHN M. PASCHALL.

Sworn and subscribed before me, this 23d of October, A. D. 1858.

CHARLES P. STRATTON, *Commissioner.*

Adjourned to Monday, October 25th, at 3 o'clock, P. M.

MONDAY, OCTOBER 25th, 3 P. M.

The taking of depositions in this matter continued, according to above adjournment, in the presence of the attorneys of the parties.

Frederick George, a witness produced on part of defendants, being sworn, says: I am a resident of Liberty School District, No. 5, and have been so for six years last May; I am acquainted with the inhabitants and legal voters of that district; I have canvassed it; I did so a week ago last Friday; we commenced on Friday; we canvassed it (that is, Mr. Paschall and I) at the request of the School Trustees; we found somewhere about 63 legal voters, so far as my memory serves me; we went to most of the houses in the district; I know Lorenzo D. Appley personally; Sylvanus Applegate and Patrick Brown I do not know personally; I saw them, and I have the word of all of them that they are legal voters; I saw Lewis Bowman; I know him; he was not a legal voter on the 5th of April last; he had not resided long enough in the district; he moved from Pine street, Camden, when he came into the district; he came from Delaware to Camden; I cannot say exactly when I found Samuel Bell; he is not a legal voter; he has not his naturalization papers; he is a foreigner; we found William Bray; he is a legal voter.

[NOTE.—Witness being asked by Mr. Dudley whether he is referring to a memorandum, replies that he is. Mr. Dudley objects to the use of this memorandum, unless it be made an Exhibit in the case. Mr. Voorhees declines to have the paper marked as an Exhibit.]

Witness says: This memorandum I made as I went around from man to man; I would not undertake to speak without it, in a matter like this, for fear my memory would not serve me; I know by my recollection, assisted by this memorandum, that the facts I state are true; I could not; Edward Best—I know of no such man living in the district, and never have; I found a man named George Burton; he is a colored man; I know of no white person by that name in the district; I know Albert Bax-

ter; he is not a legal voter now, unless he has been naturalized at this term of Court; I found John Baxter; he was not a legal voter last Spring; he had not then lived long enough in the district; I can't say where he came from; the John Baxter of whom I now speak is the brother of Albert; I found the other John Baxter; he was not a legal voter last Spring, not having lived long enough in the district; he came from Germantown; I found Hugh Brady; he is a legal voter; we heard he was not a legal voter; his wife told us he had not got his papers, but
 10 she did not mean his naturalization papers, as we thought she did; I have seen him since Mr. Paschall was examined; George Cooper is an Englishman, and has not got his naturalization papers; John R. Cunningham is a legal voter; John Crump is not a legal voter, not having lived long enough in the district; John Carr has moved out of the district; I do not know when, but some time since; James Conelly is a legal voter; John Caldwell I could not find.

Ques.—Do you know of any such man residing in the district?

20 *Ans.*—I do not; I never knew of any such man residing there.

Witness says: I could not find Michael Dillon; there is no such person living in the district; a person told us there was a Michael Gillon living in the district about a year ago; this person told us he was never assessed; Daniel Deross was not entitled to vote last April; he had not lived long enough in the district; George Deal is not a legal voter; he is a foreigner, and has not got his naturalization papers; John Deal is not a legal voter; he is a foreigner, and not naturalized; James Deno is a legal voter;
 30 Christian Eval I cannot speak about; I do not recollect the name; I never found a man of that name; Wm. D. Edwards I found; he is a legal voter; I found no Wm. Edwards; there is no such man living in the district that I know of; Aaron Flowers is not a legal voter; he is a foreigner; John R. Fitzgerald I could not find; I found a man named Fitzgerald; his name was James; he was not a legal voter last Spring; he is an unnaturalized foreigner, and had not been living in the district long enough last Spring; Frederick W. Farrington is a foreigner,

and not naturalized; Thomas B. Gilliens is a legal voter; John Genther is a foreigner, and has not got his papers; I found another Genther, named Jacob; he is a foreigner also; he is a son of the other; he was not of age in April last; I could not find David Genther; I know of no such man living in the district; Thomas Glurm has removed from the district; I cannot say when he moved, but I rather think since last April; I cannot say whether he was a legal voter; Frederick George (myself) is a legal voter; I was not last Spring, but have got my papers this Court; John O. Griffin, Wm. H. Griffin, Seth Griffin, Benj. 10 Gaskell, Patrick Gallagher, Albert Gorm, Wm. Howell, are all legal voters; Charles Harris was a legal voter last Spring, but has died since the assessment; Walter Huff I could not find; there was a man named Walter Luff residing in the district last Spring who was a legal voter; Benjamin Harris and Wm. W. Hankinson are both legal voters; I did not find any man who gave his name as Nicholas Heagle; I found a man who called himself Elous Heagle; he is a legal voter; Christopher Heagle I could not find; I found Christian Heagle, but he is not a legal voter, not being naturalized; I know of no Christopher Heagle in the 20 district; I could not find Edward Hunt; I found no such man as Wm. Hollinger; I found a man named Wm. Hofflinger, who is a legal voter; I know no such man as Wm. Hollinger living in the district; John Huntzinger is a legal voter; Henry Hollingshead is not a legal voter, or was not last Spring; I think he has taken his papers out since; George Hamilton and Joseph Hofflinger are both legal voters; Levi Hunter has removed some time since; I am not prepared to say positively that he moved before April last; I know that he moved, but I don't know the time when; George Johnson is not a legal voter; he is a 30 foreigner, not naturalized; Wm. Gimmerson was not legal in April last; he had not lived long enough in the district; he came from Delaware; John Lovet is a legal voter; John Long is a legal voter; Lewis Law I could not find; I never knew of such a man living in the district; Samuel Monroe is a legal voter; Christian Myers is not a legal voter; he is a foreigner; Edward Munroe and Patrick McGlaughlin are both legal voters; I know nobody of the name of Patrick McGlochan in the dis-

trict; Patrick McGrosy I could not find; I know of no such man living in the district; Matthew McVeigh is a legal voter; John McCabe, Neal McLaughlin and Elias McDowell are all legal voters; Patrick McCormick is not a legal voter; he is a foreigner, and not naturalized; Christian Mink is not legal; he is a foreigner, and not naturalized; Samuel Miller I could not find; I know of no such man living in the district, and did not last April; John Miller, Anthony Michellon and James P. Michellon are all legal voters; John Plum has removed a long
 10 time ago from the district; before April last; Charles Pippett is a legal voter; Wm. W. Page I could not find; I found a man named John W. Page, who is a legal voter; Alfred Paschall I could not find; I found Albert Paschall, who is a legal voter; John Paschall I did not find, but found John M. Paschall, who is a legal voter; I found Frederick Pechman; he is a legal voter; I found John Roth and Lawrence Reninger; they are both legal voters; I could not find John Ridgely; Aaron Runion has removed from the district a long time since, I think before April last; George A. Rosbach, Jesse W. Starr, John F. Starr,
 20 Joseph Smith and Moses Starr are all legal voters; I could not find a man named John Smith in the district; I never knew a John Smith in the district; I knew a William Smith, but he was not a legal voter; he was a foreigner; Charles Scully is not a legal voter, being an unnaturalized foreigner; Philip L. Swyler is a legal voter; Thomas Shields removed from the district two years ago; I think Christopher Shields moved about the same time; Thomas Shields, Jr., Charles W. Starn, James Shields and Wm. C. Sloan are all legal voters; Peter Scofield is not legal; he has not lived in the State 12 months at this time;
 30 Thomas Lenyard or George Lenyard are not living in the district; I never knew anybody of that name living in the district, and I cannot find anybody that ever did; Wm. C. Shourds is a legal voter; Jacob Stow I could not find; Wm. Streeper is a legal voter; Philip Snyder I could not find; I know of no such man living in the district; Conrad Spalt is not a legal voter; he is a foreigner, and has not got his papers; Frederick Semelar is not a legal voter; he is a foreigner, and has not got his papers; Samuel Suters is a legal voter; Theo. A. Stagers removed from

the district a long time since, long before April last; James Vennel, Francis Vanstavern and Wm. Willets are all legal voters; Isaac Wilson was not a legal voter in April last; he has since got out his papers; Robert Wilson is not a legal voter; he is a foreigner, and has not got his papers; Wm. J. Wilson is not a legal voter; he has not lived in the State long enough; Joshua Wilkins is not a legal voter; he has not lived long enough in the State; Wm. Warnock is a legal voter; that is, Wm. Warnock, Jr.; John Weston moved into the district after April last; James Wood I could not find, nor anything like it; Charles Wilson is 10 a legal voter; at the time this canvass was made I went in connection with Mr. Paschall; we went from house to house, and asked the people whether they were legal voters, and asked them whether they were in favor of the annexation of the Seventh District; we showed them the petition marked Exhibit 3, and asked them if they were willing to sign it, (that is, the legal voters.) The names that are there they either wrote or put their mark to them; those that were not entitled to vote I merely made a memorandum of it; we went to nearly all the houses, except where I had seen the men at their place of business; we 20 did not call in the colored neighborhood, except to inquire whether there were any white people lived there; I was not at the meeting on the 5th of April.

[NOTE.—Mr. Dudley objects to all the testimony of this witness, of matters told to him by others, and all statements derived from other people, or hearsay testimony, and makes his cross-examination subject thereto.]

Cross-examined.—In referring to the names of the voters in this district I have made use of a memorandum which I had before me. 30

[NOTE.—Mr. Dudley desires an objection to be entered here to the whole of the foregoing testimony, because the memorandum has not been produced, and cross-examines further subject to this objection.]

Witness says: I made a list of all the white persons in the district above 21 years of age who were not legal voters; the

legal voters we met with made their own list; they wrote their names or had them written on the back part of Exhibit 3; the persons on the first page of this Exhibit did not put their names on the back of it, except in two or three instances; there are some persons whose names are on the back part of the paper who are legal voters now who were not last Spring.

Ques.—Please name those who are legal voters now who were not last Spring, (being shown Exhibit 3.)

Ans.—Wm. J. Wilson, Daniel Deross, John Baxter, John 10 Baxter again, and Wm. Gimmerson; I do not know of any others.

Ques.—What are the names of the persons in the first page who were not legal voters?

Ans.—Charles Scully, Isaac Wilson, Andrew Scully, Aaron Flowers, Joshua H. Wilkins, George Johnson; that is all, so far as I remember; this exhibit contains all the legal voters of the district, so far as I know them; that Exhibit 3 contains the names of the legal voters we found in the district; that is the back part of it; I know nothing of the front part, except that I 20 know some of the individuals; I have been to the houses of the individuals on the front part of it, and that accounts for two or three names appearing twice over; we made a memorandum of the names of every person in the district who was not entitled to vote; that is, every white person over 21 years of age; we took down their names; we took them down in a copy book; I took them down myself; the names in the copy book, and those on the back of Exhibit No. 3, and the front of it, are all the persons we found in the district—all white male persons over 21 years of age; from this I except one or two places; one place 30 there was a very savage dog, and we did not dare go in; we did not get their names; I forgot the names of the people; there is a young man there whose name is Albert something; he is a legal voter; there are no other legal voters in the district except what are on this paper, (Exhibit No. 3;) yes, there is one; his name is John Huntzinger; I do not know that there are any persons in the district who were legal voters on the 5th of April last whose names are not down on Exhibit No. 3; I think there are none; I have not got the copy book containing

the names of the persons who are not legal voters; Mr. Voorhees has it, the counsel in this case; I gave it to him to-day.

[NOTE.—Mr. Dudley again calls on Mr. Voorhees to produce the book referred to by the witness.

Mr. Voorhees says the book is not here, and cannot be produced at this time.]

Witness says: I mean Mr. Voorhees, who is here present; I gave him the book in his office, to-day.

Ques.—The counsel in the case has called your attention to certain names on the Assessor's list, (marked Exhibit No. 1;) 10 did you find any other white persons in the district over 21 years of age? If yea, state how many, and the names of such persons.

Ans.—I cannot tell the number or names; I do not know the names on the Assessor's list; I have never seen it to my knowledge.

[NOTE.—Mr. Dudley informs the witness that the names on the Assessor's list are those which were read to him by Mr. Voorhees in his examination in chief, and repeats the former question to him.]

20

Witness says: There may be one or two others, but I cannot recollect the names; there may or may not be others; if I could see the Assessor's list I could tell whether there were names on that that were not on mine.

The witness is shown Exhibit No. 1, (the Assessor's list,) and the question is repeated to him.

Witness says: I have found names in the district which are not in the Assessor's list; there is one Appley whose name does not appear on the list; I do not know whether he is a legal voter or not; I do not know where he lives now; he did live 30 with his brother; I cannot say whether this is his home or not; it may be; I cannot say whether there are any names in the copy book that were not on the Assessor's list; I cannot say; there is such a number of names I cannot tell; I made the memorandum to which I have been referring; I supposed it contained all the names in the district, but I found it was not so; I

made the memorandum from the petition (Exhibit 3) and from the list in my copy book; Mr. Paschall read off the names and I copied them down.

Ques.—Did Mr. Paschall call off the names in your copy book? and did you write down in your memorandum all the names in your copy book?

Ans.—I supposed he did, but it appears he did not; I wrote down all that he told me.

Ques.—Then the memorandum from which you have been
10 reading, and to which you referred in your examination in chief, does not contain all the names in your copy book?

Ans.—I can recollect one name which was not there—Blair; as to any other, I do not feel so certain about it.

Ques.—Do you know whether this memorandum to which you have referred is a copy from the copy book?

Ans.—I do not understand what you mean by that question.

[NOTE.—Mr. Dudley tells the witness that he desires to know whether all the names have been correctly copied out of the copy book into the memorandum.

20 Witness says: I have stated before as well as I can; I copied it as Mr. Paschall called it off, and it is as correct as Mr. Paschall called it off; we never read it over afterward.]

Ques.—From memory, can you state the number of persons (white, over 21 years of age,) in your district, or those whose names you wrote down in your copy book?

Ans.—No, sir, I cannot do that; I cannot tell what night it was that Mr. Paschall and I made that memorandum.

Witness being shown Exhibit G of prosecution, and his attention called to the list of names of persons who voted to annex
30 the district No. 7, at the meeting on April 5th, he is asked by Mr. Dudley the number and names of persons on that list who were not entitled to vote at that time.

Witness answers: Charles Scully, Isaac Wilson; these two are all that I see who were not entitled to vote at that time.

Ques.—You have said, in your examination in chief, that John Weston moved into the district after April last. Will you be good enough to state how it is, then, that J. Weston voted on

the 5th day of April at this meeting for annexing the Seventh District?

Ans.—I cannot say, for I was not there; I can only repeat what I was informed about his moving; Mrs. Weston, I believe it was, that informed us; when nobody was at home we went several times to the house; we generally asked for the wife when we could not find the husband at home.

Ques.—In swearing, then, to persons who are not legal voters in the district, you swear from the information you got from the persons themselves; and where you could not find the persons 10 themselves, from information that you got from others?

Ans.—From no other persons than their wives; we got our information either from themselves or their wives.

Adjourned to Wednesday, 3 P. M.

WEDNESDAY, OCTOBER 27, 3 P. M.

The cross-examination of Frederick George resumed.

Witness says; I desire here to make an explanation; I was laboring under a mistake in regard to the name of J. Weston; I was confounding it with another name; I went to the residence of J. Weston the other day, after the close of my examination, 20 and I found that he was a legal voter, and had lived in the district two years; I confounded his name with Wilkins or Wilkinson; I do not remember the first name of this Wilkins; there is but one on the list; I cannot tell without seeing the list; we did go to J. Weston's house while we were making the canvass, and were informed by a person, whom we took to be Mrs. Weston, that they had just moved there; the information that we got in canvassing was therefore incorrect.

Ques.—May not other information that you have got, there- 30 fore, be incorrect?

Ans.—No, sir, for I have relied upon no other information got from the wives, but have been since to the wives.

Ques.—Did you find Charles Jewell in canvassing?

Ans.—We did not; I do not know him.

Being again shown the paper marked Exhibit G, the witness

is pointed to the name of Charles Jewell appearing as a voter for annexing the Seventh District.

Ques.—Did you find the name of Joseph Blair in canvassing?

Ans.—The name of Joseph Blair is on our list; he was a legal voter last Spring; I believe he gave his name as a legal voter.

Ques.—Why did you not give in his name as a legal voter when his name was called over by Mr. Voorhees in the Assessor's list?

10 *Ans.*—I suppose it must have been omitted when the names were called over by Mr. Paschall, as I stated before; I know no other way; it was not done intentionally.

Witness says: We found Charles Griffin; his name appears on our list; we never found any Griffy in the district, but Chas. Griffin; I think there is some middle letter to the name; I cannot say positive; I cannot recollect without seeing the paper. (Being shown the paper says the name is Charles A. Griffin.) The reason I did not give in his name when Mr. Voorhees called off the names is the same as I gave in the other case; that is, 20 that Mr. Paschall omitted it in calling off the names to me; Charles A. Griffin is a legal voter; we found him in canvassing; if his name had been on the memorandum I used when I gave in my testimony I should have named it; it was not there; we found no men in the district named Griffy in our canvass; we found Henry Martin in canvassing; his name is on Exhibit No. 3; he was a legal voter last April.

Ques.—Why did you not give in his name in your examination in chief, when Mr. Voorhees called off the names?

Ans.—I did not do so because the name was not asked me; I 30 only spoke of the names that were asked me by Mr. Voorhees.

Ques.—Was it on the memorandum which you held in your hand, and from which you gave in your testimony?

Ans.—I do not suppose it was.

Ques.—How did it happen it was not there?

Ans.—The reason was, as I stated before, I suppose Mr. Paschall omitted to give it to me in calling off the names.

Ques.—Ellis Heagle—Did you find him?

Ans.—We found a man named Heagle, but I think there was some difference in the first name; I gave in a man named Heagle, but it was not Ellis Heagle; we did not find Ellis Heagle.

Ques.—John Horneff, did you find him?

Ans.—I do not recollect; if I did, his name is on the list No. 3; (being shown the Exhibit No. 3)—I find it here; I believe I found him in the foundery; these are men I am not personally acquainted with, and their names are not easy to recollect; he was a legal voter in April last.

10

Ques.—Why did you not give in his name in your examination in chief as a legal voter?

Ans.—I was not asked about him.

Ques.—Was his name on the list or memorandum from which you swore as one of the legal voters of the district?

Ans.—I suppose not, or I should have named him.

Ques.—Why was it not on the memorandum?

Ans.—The reason above states, I suppose; I put down all the names that were called to me to the best of my knowledge; I do not know how many houses there are in our district; I cannot give the names of the white persons above twenty-one years of age who are not legal voters in your district, neither of persons who are legal voters.

Ques.—When you went to a house while you were canvassing to get the voters, please state what questions you asked of the persons you found?

Ans.—We asked who lived there, and if there were any legal voters; and if they were in favor of the old School District No. 7, being annexed to our district called No. 5; this is the substance of what was asked in canvassing, both by Mr. 30 Paschall and myself; we showed them the petition, and those that could read read it over; we read it to those who could not read.

Ques.—How many of the persons on the assessor's list do you know personally?

Ans.—(Being shown the Exhibit)—I find here twenty-five or twenty-six persons I know personally.

Ques.—Do you know Joseph Kaighn, the prosecutor in this case?

Ans.—I do; he lives in the 7th district.

Ques.—Benjamin A. Starr, did you find him in canvassing?

Ans.—No sir, we did not; I do not know him personally; I know him when I see him; I cannot say whether he was or was not a legal voter in our district the 5th of April last.

Ques.—Charles Henry Powell, did you find him in canvassing?

Ans.—No sir, we did not; I do not recollect such a man; I think there was not such a man in our district on the 5th of April last; I knew a man once in our district, but he moved 10 more than two years since, I cannot say what his given name was.

Ques.—Elias McDowell, did you find him in canvassing?

Ans.—We found him; I gave his name in; he is a legal voter.

Ques.—John H. Graham, did you find him?

Ans.—He has moved out of the district, we did not find him; I do not know whether he was a legal voter last April or not.

Ques.—Levy Carney, did you find any such man?

20 *Ans.*—I found him; Edward Pearse is now a legal voter; he was not so at the time of our meeting in April; we found him; we found John Miller; I did not find David Carr; he has removed out of the district; I do not know how long since he moved.

Ques.—If David Carr has moved out of your district how came his name among the list of legal voters (No. 3.)

30 *Ans.*—I do not think it is; there is a Carr, but I do not know his name; John Carr is on our list or memorandum; John Carr has removed; I do not know when he removed; I suppose he was a legal voter; I do not know; I no not know when the assessor made the assessment; I saw a man sitting in his wagon in front of my house with a paper, writing; I heard the folks say it was the assessor; I understood it to be the assessor, I may say; I do not know Charles Lippincott, the assessor; I cannot say when it was, whether it was before or since last April that I saw him sitting in his carriage, as I said; I forgot the people who told me about John Carr having moved, but it was somebody who were personally acquainted with him.

(Being shown Exhibit No. 3) Witness is pointed to a name and asked if that is not the name of David Carr. He says it is; we found such a man.

Ques.—Is it on your memorandum from which you have been swearing?

Ans.—I do not see it there.

Ques.—Why is it not there?

Ans.—The same reason that I have given before, that the name was not given to me by Mr. Paschall.

Ques.—Samuel Scudders, did you find such a man? 10

Ans.—If we found such a man it is on that list you have (No. 3); I do not find his name on my memorandum; if we found him and his name is on that list (No. 3), he is a legal voter.

Ques.—Why is his name not on that memorandum from which you have been swearing?

Ans.—It must have been from an oversight on the part of myself, or the person who called out the names.

Ques.—William C. Shourds, did you find such a person?

Ans.—We found him.

Ques.—M. H. Creely, did you find such a man? 20

Ans.—I believe we did; the name is not on my memorandum; he is a legal voter.

Ques.—John Kempton, did you find such a man?

Ans.—Yes, his name is not on my memorandum; I know him to be a legal voter; he was so last Spring.

Ques.—Why does his name not appear on your memorandum from which you have been swearing?

Ans.—The same reason as before mentioned; it was either not given to me or I neglected to take it down; the reason is the same as respects the name of M. H. Creely. 30

Ques.—Please state how you know that Albert Baxter, Geo. Cooper, Samuel Bell, George Deal, John Deal, Aaron Flowers, James Fitzgerald, Frederick W. Farrington, John Genther, Jacob Genther, Christian Mink, Christian Heagle, Henry Hollingshead, Geo. Johnson, Christian Myers, Patrick McCormick, William Smith, Charles Scully, Conrad Spalt, Frederick Semelar, Isaac Wilson, Robert Wilson, were not naturalized or legal voters last Spring?

Ans.—I do not know that they are all foreigners.

Ques.—Do you know that they are all not legal voters?

Ans.—I know that a great many of them are not; if the names are called over I will mention which are; I do not know any William Smith living in the district: William Smith whom I do know has been removed from the district for two years; we found no man of that name;—the witness refreshes his memory from his memorandum, and says—they found no William Smith.

- 10 *Ques.*—How came you to state in your examination in chief you found a man named William Smith who was a foreigner?

Ans.—I do not remember any such statement; I saw when John Smith's name was called that there was no such man living in the district, but that there had been a Wm. Smith living there about two years before; if I did not say that, it is what I meant to say.

Ques.—These persons whom you have mentioned as foreigners, how do you know that they had not been naturalized last Spring?

- 20 *Ans.*—From their own lips, with one or two exceptions; the majority of them I know personally, and where I did not, they told me so; George Johnson, I know of my own knowledge, is not naturalized.

Ques.—How do you know he was not naturalized?

Ans.—Because he told me so; I can have no other way of knowing; some of the others whose names have been read to me I know are not naturalized; not absolutely because they told me so, but because I have seen their first papers, and I know they have not got their second.

- 30 *Ques.*—Whose first papers have you seen?

Ans.—I have seen Mr. Scully's and Mr. Flowers.

Ques.—Why do you know they were not naturalized from seeing their first papers?

Ans.—I know from the date of those papers that they could not have been naturalized; I do not remember the dates of them, but I know it had not been two years; Flowers may have had his long enough to get his second papers, but not Scully; he had not at the time we are speaking of.

Ques.—How do you know he had not them then?

Ans.—Because if he had them then he would have them now?

Ques.—How do you know he has not them now?

Ans.—Because he told me so.

Ques.—How do you know about Scully?

Ans.—I have just said that Scully's first papers were not two years old yet.

Ques.—Can you tell me the date of Scully's papers?

Ans.—I cannot; they were issued nearly two years ago from now; it will be about two years the 5th of next month; they were out of the Camden Court; I cannot tell when it was I saw his papers; I have not seen them more than once; I was not with him when he took them out; I have no other knowledge of his not being naturalized than what I have stated.

Ques.—You have stated that Joshua Wilkins, William J. Wilson, and Peter Scofield, William Gimmerson, Daniel Deross, John Baxter, John Baxter again, Lewis Bowman or Browman, were not legal voters on the 5th of April last, because they had not lived long enough in the district; please state from whom you obtained the knowledge that they had not lived long in the district?

20

Ans.—From themselves.

Re-examined in chief.—This list or memorandum to which I have referred in my examination is the same that Mr. Paschall used in his: that memorandum was made by Mr. Paschall reading off the names to me, and I put them down; I can't say whether that contains all the names we found in canvassing, or whether only what was on the assessor's list; all I know is that I wrote down the names as they were called out to me, and I suppose it contained all.

Ques.—Are the memorandum and the facts which you have stated in reference to names contained therein, correct? (Objected to.)

Ans.—To the best of my knowledge the memorandum is true, and what I have stated.

Ques.—Do you know who Charles Jewel is?

Ans.—I think I do; I think he is a son-in-law of Mr. Hamilton, and follows the water.

Ques.—Do you know Benjamin A. Starr?

Ans.—I know him by sight; I do not know whether he lives in the district or not; I heard he moved out.

Cross-examined.—These people whose names I have mentioned all live in the Fifth District; our canvassing was confined to the Fifth District.

Ques.—You have stated there were sixty-three legal voters in the district last spring; how did you get that?

Ans.—I got them from the list you have; I have never got it from the memorandum which I have; I got it from the petition Exhibit 3; I called the names out from that petition, which I considered legal, and some one else counted them.

FREDERICK GEORGE.

Sworn and subscribed, October 27, 1858.

CHARLES P. STRATTON, *Commissioner*.

Charles Lippincott, affirmed on the part of the prosecutor. says: I am the assessor for the township of Newton, in this county, for the present year (1858); I made the assessment for the Liberty District, No. 5., in the month of May last; I commenced making my assessment in the month of April last, but
20 did not make that of the Liberty District No. 5, until in May last; I think I found the family of a man named Lewis Bromand in that district; I do not remember whether I saw him or not, but I either saw him or his family, or both; I cannot say exactly how that was now, but he lived there at that time; I assessed him with personal property tax and poll tax; the tax has been paid, that is to say it is crossed off in the duplicate, and when taxes are paid they are always crossed off in the duplicates; the crossing off on the duplicate always indicates that they have been paid; the seventh name on Exhibit 1
30 is Bert and not Best; at least I intended it for Bert; he lived in the district, and was taxed with personal property and poll tax and tax for a dog; it appears by the duplicate that there were two George Burtons, one of whom was colored, and the other is taxed with poll tax and for personal property and the bill delivered; John Crump was taxed with poll tax; I found a man by the name of Caldwell, or Carwell, I do not know which; he was taxed with personal property, poll tax and dox tax, and lived at that time near Starr's factory; I

found a man of the name of John Carr; he is taxed with personal property, poll tax and dog tax, and the bill was delivered; when I say I found him, I mean to say that I found him or his family, one or the other; Michael Dallon is taxed with real estate, personal estate, poll tax, and the tax has been paid; I found Christian Evaul, he is taxed with personal property, poll and dog tax; I found, also, William Edwards; he is taxed with personal property, poll and dog tax, and the bill was delivered; I found John R. Fitzgerald; he is taxed with real estate and poll tax, and the bill was delivered; also, David Genter: he is 10 taxed with dog and poll tax, and his taxes have been paid; he lives in John M. Kaighn's house, near the meeting house; I know him; Jacob Genter lives at the same place, and was taxed with a poll tax, which has been paid; Thomas Glerm was taxed with personal property and one dog and poll tax; Walter Huff was taxed with personal property and with dog and poll tax; Nicholas Higgle was taxed with personal property, dog and poll tax, and the taxes have been paid; Christopher Higgle is taxed with personal property, poll and dog taxes, and his taxes have been paid; Edward Hunt is taxed with real estate and personal 20 property and the poll tax, and the bill was delivered; he lives on Market street near Broadway, within the district; I did not see the man, but I found the family there; they were living in the same place last year; William Hollinger is taxed with personal property, poll and dog taxes, and the bill was delivered to him; Levi Hunter is taxed with personal property and one poll tax; William Jimmerson is taxed with personal property and poll tax, and taxes paid; Patrick McGrosey is taxed with personal property and one poll tax, and the bill was delivered; Samuel Miller was taxed with personal property and one poll 30 tax; John Plum is taxed with personal property, one poll tax and with one dog; William W. Page is taxed with personal property and one poll tax, and the bill was delivered to him; Aaron Runyons is taxed with personal property, one poll tax and with one dog, and his taxes have been paid; John Ridgely is taxed with personal property and one poll tax; John Smith is taxed with personal property, one poll tax and for one dog; Thomas Shields is taxed with one poll tax, and his tax has been paid; Thomas Shields, junior, is taxed with personal property

and one poll tax; Christopher Shields is taxed with a poll tax; Jacob Stow is taxed with personal property, poll and dog tax, and the bill was delivered to him; Philip Snyder is taxed with personal property, for a dog, and with a poll tax, and his taxes have been paid; Theodore A. Stagers is taxed with real estate, but no poll tax; I think it is a mistake in regard to this man in copying on my list No. 1, as paying a poll tax. I think he does not live in the district; William J. Wilson is taxed with personal property and one poll tax, and his taxes have been
 10 paid; Joshua Wilkins is taxed with personal property and poll tax, and his taxes have been paid; John Weston is taxed with personal property and poll tax, and his taxes have been paid; James Woods is taxed with personal property and one poll tax, and the bill was delivered to him; the duplicate says he lives near Starr's factory; in making the assessment I went through the district from house to house, and made it myself; where I taxed personal property I either saw the man himself or his family; I do not recollect but three exceptions; one was the case of the occupant of a small house on the farm occupied
 20 by Starn, named John Rooh, whose inventory I got from persons living on the farm, and the case of Moses Starr and John F. Starr, the inventory or amount of whose property respectively, Jesse W. Starr furnished me at the factory. Where persons are taxed with poll and dog taxes, or either, I either obtained the information from the man himself or his family; in some cases, where I knew the person myself, I put down the poll tax without inquiring of anybody; that is, where I knew the person and knew where he resided; I do not think any one was put down in that manner in the Fifth District, however,
 30 for I was not acquainted with them. The persons whose names I have referred to in my testimony above, are within the old Fifth District; my testimony has been confined entirely to the old Fifth District; the names in Exhibit No. 1, are from the old Fifth District before the Seventh was annexed to it.

And being cross examined on the part of Defendant, says:—
 I did not go into any house in making my assessment; I sometimes found them at the gate, sometimes in the yard, but most generally I called them to the door; part of the time I sat in

the wagon and called them to the door and made my memorandum as I sat in the wagon; I did so because I found it more convenient to do my writing; have a place there to rest my book upon; I generally got my information from the wife, or mother of the person, though very often, I found the man himself; I did not always make my assessment from the person who came to the door when I called from my wagon, for sometimes a child would come to the door, and I could not make my assessment from such a person; I think I did go to some houses where the family was not at home; I do not think of 10 but one such case, and in that case I made it from a person a young man who lived there; I had reason to believe there had been no change in the property; this was Charles Starn's case; I do not think of any other instance in the district, No. 5; I think there was one case of the kind in Rowandtown also.

Ques.—Do you say, under you affirmation, that all the persons whose names are on exhibit No. 1, furnished by you, reside, or did reside at the time of the assessment, in Fifth District?

Ans.—I believe that they did with the exception of Theodore 20 A. Stagers before mentioned; I should know quite a good many of the persons named in that list, if I should see them; I am acquainted, I think, with ten or twelve of the inhabitants of that district personally; I cannot say that the names on that list are all spelled correctly; I spelled them as they gave them to me, except in some cases they spelled their last names themselves; I cannot say that the full name is given in every instance; I may have omitted in some instances the middle name or letter; I do not know whether the name of Lewis Browman is spelled correctly or not; it may have been Bow-30 man though I have it Browman, and I think it is properly Browman.

Witness, in explanation says, that, in making the assessment I very often got out of the wagon and went to the door, and called the person out, and then went to the wagon and did my writing; the person sometimes standing by the wagon while I did it. I am not acquainted with Lewis Browman or Bowman; I know his taxes are paid, because they are

crossed off the duplicate; I have no further knowledge of the fact than that.

Ques.—Do you know of your own knowledge that his taxes have been paid?

Ans.—I do not know of my own knowledge, any further than its being crossed off the duplicate; the duplicate is at present at my house; we had it there on the day of the election, and it has not been called for by Mr. Snowden since; Mr. Richard Snowden is the collector of the county; there is a mark made on the duplicate between the name and the property assessed, which designates the bill being delivered; then if the tax is paid before the return day there is a mark made across the first mark, which signifies that the tax has been paid; the marks were made by the Collector; I suppose I know that the marks mean what I have stated, because I have seen them made when I paid my own taxes and have heard the Collector say that they were intended for what I have stated.

Ques.—Do you know of your own knowledge what the 20 marks mean?

Ans.—I know this for that I have been present when the Collector has been engaged in receiving the taxes, and I have seen him make the marks I have named, and have also heard him say that one mark designated the delivery of the bills and the other that the tax had been paid.

Ques.—Question repeated?

Ans.—I have given the answer as far as I know.

Ques.—Question repeated?

Ans.—I have nothing more to say, I have said all that I 30 know.

Ques.—Do you know any thing further in regard to the marks than what Mr. Snowden has told you.

Ans.—I have seen him cross off the taxes in the manner I have stated, and have heard Mr. Snowden say what the marks were intended to show, both when I paid my own taxes and when others have paid their's in my presence; I have been present when one of the persons of the Fifth District paid his taxes; it was Chas. Cahill, I think; I am not quite certain

about the first name, but I think it is Charles; he lives in Philadelphia, I think; I do not recollect any other person of the Fifth District paying their taxes in my presence.

Ques.—Did you know what the mark you speak of meant previous to being informed by Mr. Snowden, the Collector?

Ans.—I have known the meaning of those marks for several years; I was one of the Township Committee once, and was familiar with those marks then; I was one of the committee for several years; Mr. Snowden has, I think, been Township Collector for four years past; it is some five or six years ago 10 that I was a member of the Township Committee; I only know that the tax of Lewis Browman has been paid, from the fact of its being crossed off on the duplicate; I do not know Edward Bert personally; I do not know exactly the place where he lives; I know that that he lives in the Fifth District, or did live there from what the duplicate says; I do not suppose he had a bill delivered to him; if it had been delivered it would have been marked on the duplicate; I am not acquainted with either of the George Burtons personally; I do not recollect where they reside; I do not know that they reside in the Fifth District 20 except from what the duplicate says; I am not personally acquainted with John Crump; by the duplicate it appears that he resides in the Fifth District; we mark them down as we go round but we do not mark down the particular house; I do not know John Carr personally; we very seldom see those persons when we go round to assess them; we generally see only their wives or families; I know that he resides in the Fifth District, only from his name appearing on the duplicate; when I commenced assessing in the Fifth District, I went right through with it, and marked all the persons residing all the way through 30 as the Fifth District, and did the same with No. 1 and No. 6, that I might keep the name of all the persons that resided there together by themselves, and generally examined my blotter every evening after I got home to see that I had them all properly marked; I do not know Michael Dallon personally, I only know him from his being marked on the duplicate; his taxes are marked paid; I only know Christian Eval, as I do those I have named, from his name appearing on the

duplicate; I do not know him personally; I have the name of Wm. Edwards on the duplicate—not Wm. D. Edwards; the letter D may have been omitted; I do not recollect the name of a man living there, by the name of James Fitzgerald; I have John R. Fitzgerald on the list; there may have been a mistake in taking the name; I think I recollect that Mr. Snowden had marked over the name John R. the name James, in pencil, but I cannot be positive about that; I think there were three persons, by the name of Genter, living in John M.

10 Kaighn's house, a father and two sons; there may be some mistake in the first name of one of them as marked on Exhibit No. 1; I took them down, or one of them gave them to me, but I might have made a mistake as to one of them; I think, Exhibit No. 1, is copied right from the duplicate; the paper that I have here is a copy of that, but as to the name of Jacob Genter, I think it was taken from a pencil mark made on the duplicate by Mr. Snowden; the three Genter's—David, Jacob, and John—the father and sons lived together, as I understood; I do not know Thomas Glerm personally and only know

20 that he lives in the Fifth District from his name appearing upon the duplicate; the duplicate does not indicate that the bill was delivered to him, or that his tax has been paid; I do not recollect finding any man of the name of Walter Luff, I have the name of Walter Huff; it may have been Walter Luff, but I don't know; I do not know Nicholas Higgle personally; I only know him as he appears on the duplicate; I have no recollection of such a man as Allois Higgle; I do not know Christopher Higgle personally; I did not find a man of the name of Christian Higgle; there may have been a mistake in

30 taking his name down, but I don't know it; I have seen Edward Hunt; he resides in Market street, South Camden, East of Broadway, in the Fifth District; he resided on the South side of Market street; I do not know how many of the persons whose names were on the duplicate reside on the South side of Market street; I do not know Wm. Hollinger personally; I do not recollect finding a William Hoffinger there; I do not know Pat. McGrowen personally, nor where he lives, except from the duplicate; I do not know Samuel Miller per-

sonally, nor where he lives exactly, at least I do not recollect; I know one John Plum, but I do not know if the one on the duplicate is he; I saw no one but his wife when I called there; the duplicate does not show that his tax bill was delivered; I do not recollect finding John W. Page; I have on the duplicate Wm. W. Page; there may possibly have been some mistake in taking the name down, but I cannot say there was; I do not know Wm. W. Page; nor Aaron Runyon, or that he lives in the district, except that it so appears on the duplicate; I do not know John Ridgley, nor do I know where he lives; I do not know John Smith, nor where he lives; I am not personally acquainted with Thomas Shields, nor where he resides; nor do I know Thomas Shields, Jr., or Christopher Shields, nor do I know where they live, except as they appear on the duplicate; if I had a duplicate here I could tell where some of the persons referred to live exactly, one or more at least; I do not know Jacob Stow, or where he lives; nor Philip Snyder, nor where they lived exactly; I find Joshua Wilkins on the list; if he has an H in his name, I have omitted it I suppose; I found but one Joshua Wilkins; I have no recollection of John Woods; I have the name of James Wood, living near Starr's foundery; there was a Wood living there when I made the assessment, either James or John; I think I must have assessed on both sides of Market street, that east of Broadway as for the Fifth District; I think the houses on the south side of Market street, near Broadway, were included in my assessment for the Fifth District; I think there are four or five houses there, not including the farm house.

The further taking of testimony adjourned and continued until to-morrow morning, at ten o'clock, at the same place. 30

FRIDAY MORNING, 10 O'CLOCK, NOV. 5, 1858.

Examination of Lippincott resumed in the presence of the attorneys and parties.

Witness says: I find by examining the blotter on which I made the assessment, that there was a mistake in transcribing the name of Edward Hunt from the blotter to the duplicate. His name is marked in the blotter as in the Sixth District,

which was correct, and in copying it into the duplicate, it is set down as in the Fifth District, which was erroneous. With the exception of Edward Hunt, all of the persons residing on the south side of Market street, east of Broadway, are set down correctly as residing in the Sixth District; and none of them, excepting Edward Hunt, are included in Exhibit No. 1. On finding Edward Hunt's name improperly placed on the duplicate, as residing in the Fifth District, I was afraid I had made a like mistake in regard to the other persons residing on the

10 south side of Market street, east of Broadway; but upon visiting the place this morning, for the purpose of ascertaining the fact, I found that I had placed their names correctly, as belonging to the Sixth District, and that in regard to Hunt's name, the error was in transcribing. The name Lewis Law, in Exhibit No. 1, should be Lewis Loew. He is taxed with a poll tax only, and lived with George Rosbach at the time of the assessment. In looking at my duplicate, I find that there was but one George Burton, and he is taxed as a white man with a poll tax. There is an error in Exhibit No. 1 in the name of

20 Lewis Bowman; it is there improperly spelled Lewis Browman. The persons to whom my attention has been called in this examination, would not have been taxed with personal property, or with poll tax, if I had not found them or their families residing in the Fifth District. The names as I have them on the duplicate, I believe to be correct, with the exceptions already stated. I have no reason to believe them incorrectly stated there. The young man who transcribed Exhibit No. 1 from the duplicate, has made a mistake in regard to the name of John W. Page. He has placed it in Exhibit No. 1 as Wm.

30 W. Page, instead of John W. Page, as it should have been.

Cross-examined.—I found property belonging to a person of the name of Joseph Blair, in the Fifth District. I found a man whose name is on the duplicate as John Horniff, who is taxed with a poll tax in the Fifth District. His name does not appear to be on Exhibit No. 1. I find on the duplicate the name of Charles Jewell, who is charged with a poll tax. His name does not appear to be on Exhibit No. 1. I do not find on the duplicate the name of Henry Martin. I believe all the

names on the duplicate to be correct with the exceptions I have made.

CHARLES LIPPINCOTT.

Affirmed, &c., November 5th, 1858.

RICH. W. HOWELL, *Com. of B. and A.*

Richard Snowden, a witness sworn on part of prosecutors, says: I am collector of the Township of Newton, in the County of Camden. I have been collector of that township for five years past. When I left the bills of taxes, I generally found either the persons themselves or their family. Sometimes there was no one in the house when I called, and in such case I put the bill under the door; but in these cases I always ascertained before doing so, or at the time, that it was the residence of the person against whom the bill was that I left. There is a person in the duplicate taxed with a poll tax, of the name of Geo. Burton. The bill appears to have been delivered in that case from my marks on the duplicate. I found a man taxed by the name of John Caldwell; but upon going round with the bills, I discovered that his real name was John Carwell. He was at Starr's foundry, and I delivered a bill to him. I received tax from a man by the name of Michael Dalton. There is a name of a man on the duplicate called William Edwards—the bill was delivered in his case also. I find the name of John R. Fitzgerald on the duplicate, and it appears that I delivered a bill in his case also. I am not apt to mark the names without delivering the bills. I have sometimes delivered the bills, and omitted to mark them. I find a man on the duplicate named David Genter, and it appears by the duplicate that his taxes are paid to me. I also find there the name Jacob Genter, and it also appears on the duplicate that his taxes were paid to me. This last tax was originally set down against John Genter, Sr., and I found that it was incorrectly set down, and I changed it to Jacob; the name was given to me when I left him the bill. I find also the name of Nicholas Heagle on the duplicate, which appears there to have been paid to me also. I also find there the name of Christopher Heagle, whose tax was also paid to me, as appears by my marks on the duplicate. I also find on the duplicate the name of Wm. Hollinger. It appears by

the duplicate that I delivered a bill to him of his taxes. I find a person of the name of Patrick McGrosey taxed on the duplicate, and that I delivered a bill to him. Aaron Runyon's name also appears on the duplicate, and it also appears there that he paid his taxes to me. I also find a person on the duplicate named Thomas Shields, and it also appears there that he has paid his taxes to me. I also find the name of Jacob Stow on the duplicate as taxed, and it appears there that I delivered a bill to him. I also find on the duplicate a person taxed of the name of Philip Snyder, and that he paid his tax to me. I also find on the duplicate a person taxed by the name of Wm. J. Wilson, and it appears by my mark there that I delivered a bill to him. I also find a person taxed by the name of Joshua Wilkins, and that he paid his tax to me. I also find on the duplicate the name of John Weston, and it appears by my mark there that he has also paid his tax to me. I also find on the duplicate a person taxed of the name of James Woods, and it appears by the duplicate that I rendered him a bill of his taxes. By the duplicate it appears that all the persons to whom my attention has been called above, live in the Fifth District. I delivered the bills myself, when they were delivered and marked by me as delivered. I recollect no instance to the contrary in the Fifth District. The taxes marked in the duplicate as paid were paid to me. I was not in the habit of delivering bills to non-residents except they called for them. I did not go out of the District to deliver them except in Camden City; I delivered some there; I delivered bills to several of the residents of the City of Camden, but I do not remember that I delivered bills to any of the persons whose names I have referred to in the City of Camden.

Cross-examined by P. L. V. Esq.—I delivered bills to every person whose name is on the assessor's list, if I could find them in the township. I always made it a practice, when I went to a person's house, to inquire if any other person resided there. They sometimes told me that no other person lived in the house, when I afterwards discovered that other persons did live there. I believe that I delivered the bills in the Fifth District about the last of August or first of September. I do

not know that the persons whose names have been mentioned this morning all reside in the Fifth District; nor do I know that all or any of them are legal voters. I do not know that I am acquainted with one of them; I only know that they live in the Fifth District from what I find marked on the duplicate. I did not always find the name as entered on the duplicate to be correct; with but few exceptions they were correct; there were occasionally slight variations in the manner of spelling the names. If I had found a person marked as residing in the Fifth District in any other part of the township, and delivered 10 him a bill, I would have marked the duplicate as having delivered a bill to him. I may have delivered a bill to Edward Bert, but I do not find it marked on the duplicate as having been delivered; I cannot say that I did deliver it to him. I sometimes found, when people called to pay their taxes, that they had bills, although it was not so marked on the duplicate.

The last sentence was objected to by Mr. Voorhees; insisted upon by Mr. Dudley; the witness not insisting upon its being written down.

Witness says: I think I did not find John Crump, nor deliver 20 him a bill; it is not marked on the duplicate that any bill was delivered. It does not appear by the duplicate that I found any person by the name of Christian Eval. I find by the duplicate the name of William Edwards, and that a bill was delivered to him; I do not know that his name is William D. Edwards. I do not find by the duplicate Thomas Glern; a bill delivered; I do not know that I found him. I do not know whether I found Walter Huff, or not; it does not appear by the duplicate that any bill was delivered to him. I do not know that I found a person by the name of William Hollinger; 30 it was either Hollinger or Hofflinger that I found; I do not know which; I think I delivered the bill in the name of Wm. Hofflinger, which I understood at the time to be the name; the name of Wm. Hofflinger does not appear upon the duplicate; I do not know whether I found Levi Hunter or not; it is not marked on the duplicate that a bill was delivered to him; it does not appear by the duplicate that any bill was delivered to

Samuel Miller; I do not know whether I found him or not; I do not know whether I found John Plum or not; it is not marked on the duplicate that any bill was delivered to him; I do not know whether I found John Ridgley; there is no mark on the duplicate of a bill having been delivered; I do not know whether I found John Smith or not; there is no mark on the duplicate of a bill having been delivered to him; I do not know whether I found Thomas Shields, Junior, Christopher Shields or Lewis Lowe; there does not appear to have been any bills delivered to them; the name of Thomas Shields is marked on the duplicate as having paid his tax; I am not sure whether it was Thomas Shield or Thomas Shield, Junior, but I suppose it was Thomas Shield; I have no recollection of finding any poll taxes assessed to persons improperly; there may have been, but I do not recollect any.

Re-examined by Thomas H. Dudley.—Thomas Shields, Junior's, tax does not appear by the duplicate to have been paid; if he had paid it, it would most probably have been crossed; I am not in the practice of returning those who have paid; if I had not found those persons in the township, to whom you called my attention heretofore in the examination in chief, I should not have delivered to them their bills; I do not recollect any instance of mistake in the spelling of the name of any one in the Fifth District except that of Hofflinger, before mentioned.

Ques.—You have said, in your cross-examination, that you only knew that the persons whose names were mentioned in the examination in chief resided in the Fifth District, from their being so marked on the duplicate. Did you not find the duplicate generally correct when it stated where the person resided, at least so far as the Fifth District was concerned?

Ans.—I do not know that I can answer the question exactly, for I did not observe, when delivering the bills, whether they were marked as residing in the district; did not make any bills until I called at the house of the person; I went to the house, and when I found the persons living there I made out the bills and delivered them; this is so far as the Fifth District is con-

cerned; in some instances I found that the persons at the houses did not give me correct information as to the number of persons residing there, and would afterwards learn that there were others there whose names had not been given to me.

RICHARD SNOWDEN.

Sworn, &c., November 5th, 1858.

RICH. W. HOWELL, *Com., &c.*

John M. Paschall, a witness produced on part of defendant.

[NOTE.—Thomas H. Dudley, Esq., on the part of the plaintiff, objects to the examination of the witness, on the ground 10 that he is a party to the record, and therefore interested in the case.]

Witness says: I have been examined in this case before; I used a memorandum at that time, containing the names of persons we found in canvassing the district No. 5, for the purpose of refreshing my memory; in taking down the names in that memorandum we only took the names of the persons that were on the Assessor's list which was exhibited at that time; Mr. George made the memorandum, and I read the names off to him; Mr. Frederick George; I only read off the names on the 20 Assessor's list; we had not the Assessor's list, but took the names from a copy taken by Mr. Michellon; we were present when that copy was made by him; I made this explanation in my previous examination in chief, but I think Mr. Stratton did not take it down; I am not certain whether I made the explanation on cross-examination or not.

JOHN M. PASCHALL.

Sworn, &c., November 5th, 1858.

RICH. W. HOWELL, *Com., &c.*

Defendants offered paper, marked Exhibit No. 4, on the part of the defendants, which is admitted to be a blank copy of the notice put up in the Seventh District, in Newton Township, by George Hamilton, and referred to in the testimony.

It is further admitted by the parties, that since the commencement of the examination in the above case intelligence has been received of the death of Anthony Michellon.

OPINION OF COURT.

THE STATE, (JOSEPH KAIGHN, PROSECUTOR,) v. BENJAMIN BROWNING, CLERK OF THE COUNTY OF CAMDEN.

THE STATE (JOSEPH M. KAIGHN, PROSECUTOR,) v. JESSE W. STARR, JAMES P. MICHELLON, AND JOHN M. PASCHALL, TRUSTEES OF LIBERTY SCHOOL DISTRICT NO. 5, OF THE TOWNSHIP OF NEWTON, COUNTY OF CAMDEN.

THE STATE (MARMADUKE C. COPE, STEPHEN P. MORRIS, WILLIAM M. COLLINS, AND JOSEPH M. KAIGHN, PROSECUTORS,) v. RICHARD SNOWDEN, COLLECTOR OF NEWTON TOWNSHIP, 10 CAMDEN COUNTY.

The above cases were argued together at February term 1859, before Justices HAINES and CLAWSON..

T. H. Dudley, for plaintiffs in *certiorari*.

A. Browning, and *P. L. Voorhees*, for defendants.

CLAWSON, J. The object of the first of this series of *certioraris* is to bring up the record of certificate of alteration of an incorporated school district, called "Liberty No. 5," in the township of Newton, in the county of Camden. A certificate of the alteration intended is made out, and which appears 20 among the papers brought up, dated April 12th, 1858, signed by the trustees of No. 5, and town superintendent of Newton township, the same having been sent to the defendant, the clerk of the county of Camden, to be recorded, pursuant to the statute. There is no law authorizing this certificate to be filed, and left permanently in the clerk's office, nor is there any law making the record thereof evidence, like many other records of said office. And all we have in answer to the writ is a certified copy of the certificate, not the record itself, as commanded, nor the original certificate. There seems to have been an over-30 sight in the legislature, in not making this record, or a certified copy thereof, evidence, if such was the intention. By virtue of the statute, as it now is, the clerk has a mere special and

limited possession of the certificate, for the single purpose of copying or recording it. When copied, the trustees of the corporation, or incorporated district, are again entitled to have it, they being the legal possessors thereof, and have the legal and exclusive right to its custody, for and in behalf of the corporation. The possession of the clerk whilst making the record is a mere incident; that may be done without either actual or constructive possession on his part. The original certificate being the property of the corporation which is re-

10 presented by the trustees, and they being the legal custodians of it for the use and benefit of the corporation, the writ should have been directed to them, commanding them to bring it up, and not to the clerk to send the record, or a certified copy of it.

This writ must therefore be dismissed with costs.

The command of the second of this series of writs is, to certify and send to this court all resolutions and proceedings of said trustees and of the taxable inhabitants of said school district No. 5, had at a meeting held by them on April 5th, 1858, relative to raising two thousand dollars tax for school pur-

20 poses, together with all things touching and concerning the same. By the return made, and by the papers and evicence produced, it appears that the inhabitants of No. 5 assembled on April 5th, 1858, in pursuance of legal notice, for the purpose of deciding whether the trustees of said district should be authorized to purchase land, to build a school-house thereon, and to determine whether they should raise additional funds for such purposes, and for maintaining free schools in said district by taxation, &c. By the minutes of proceedings and the resolutions of the meeting of the inhabitants, which are returned

30 with the writ, it appears that the first thing done, in pursuance of the above mentioned notice, was to resolve to alter No. 5, so as to take in and include the whole of No. 7, thus abolishing and absorbing that district altogether. Then they resolve to raise two thousand dollars, by tax, for the purposes aforesaid; it thus evidently appearing that the alteration of the district was a material part of the contemplated proceedings to raise the desired funds. These were all proceedings by No. 5, alone, not one of the inhabitants of No. 7 being present.

The object now sought is to set aside this alteration and the assessment ordered to raise the two thousand dollars. As to setting aside the whole assessment, we think it clear, upon the authority of the case of the *State v. Kingsland*, 3 Zab. 85, that it ought not to be done, and that it is unnecessary in order to give the relief asked for by the prosecutor. The principle settled in this case is not to set aside the whole assessment, although illegal, but to grant relief therefrom to those who ask it. But more of this hereafter.

No notice whatever was given by the trustees of No. 5 of 10 any intention to alter their corporate limits, either to the inhabitants of No. 5 or No. 7. Twenty-three inhabitants, twenty-one of whom are legal voters of No. 5, assembled in pursuance of the notice above specified. By the testimony, it appears that similar notices were put up in No. 7 and No. 5 eleven days prior to the fifth of April—that is, notices signed by the trustees of No. 5, who thus endeavor to assume in advance the control of No. 7, without the knowledge or consent of the trustees or any tax-payer or inhabitant thereof. No intimation, of the remotest kind, is given to the inhabitants of No. 7 that 20 they are to be abolished as a school district. We find them on the same day (April 5th, 1858,) engaged in the election of trustees for their own district, whilst No. 5 is engaged in contriving and scheming to compel them to contribute to the desired amount of funds for the school projects of their district.

There is no evidence that it was the intention of the trustees of No. 5 to add No. 7 to their district previous to the hour of meeting; but soon after organizing the meeting, the addition of No. 7 is made a preliminary and necessary part of their proceedings, to secure the necessary amount of tax for the 30 above mentioned objects. This is certainly contrary to every principle of justice,—it is but a re-enactment of the old offence of taxation without representation. It certainly is neither the meaning nor the spirit of the school law, that after a township has been divided into districts, in pursuance of the act by the town superintendent, and some of the districts, by submitting, perhaps, to heavy taxation, have possessed themselves of large and comfortable school-rooms, and all the necessary attachments

and conveniences usual in common or reef schools, that they should be absorbed or annexed by their more tardy, yet more potent neighbor, and compelled by them to contribute again to the purposes which should have been accomplished by themselves long before.

By the 41st section of the school law, an incorporated school district may be altered or abolished, with the consent of a majority of the taxable inhabitants of said district. Give to the words of this section a strict and literal signification, (this seems
10 to be the construction claimed by defendant's counsel,) and there is no protection for the rights or property of any person, or of any district, incorporated or unincorporated. Every incorporated district would at once claim the privilege and power of acting, in this respect, uncontrolled and uncontrollable. Any incorporated district may lessen or abolish any other, incorporated or unincorporated, at pleasure, by adding to itself, if this be the true construction of the section. Absolute power, under and by virtue of this provision, certainly never was intended to be given to any district, to alter or abolish another.
20 because the same right may be claimed by every other; and the exercise, or the attempt to exercise such power would necessarily result in absolute confusion.

Again, if a district has the right to alter or extend its limits, by taking in another district, or a portion thereof, at pleasure, without notice to or obtaining the consent of the inhabitants or owners of the part to be taken in, and at once tax the newly added portion to suit their wishes, may not the added district, after the design shall have been accomplished, as unceremoniously be put out again, and again left to take care of itself?
30 Suppose, for a moment, it be a portion only of an adjoining district which is added; when it is again cut loose, does it at once become a part and parcel of the district from which it was taken? or is the consent of that district first to be obtained? Suppose, again, that that consent is withheld, must this portion become another independent district, and be driven to the necessity of a third assessment for school-houses and school purposes? or may it resolve itself into an incorporated district, and, in its own good time, absorb and annex both the others?

Suppose, again, that two incorporated districts simultaneously annex each to the other, what is to be the result? These things may all occur, if the construction contended for by defendant's counsel be the correct one;—they are mere suppositions, it is true, yet they are the legitimate results of such construction. Such suppositions wear too much the semblance of realities that may occur, if they have not already occurred in fact, to warrant the sanctioning of such construction. Such injustice never was intended in the practical operation of the school law, and the protective power of this court never will be invoked in vain by 10 the weak, against such gross injustice by the strong. No. 7 has within its limits but nine children and seven taxable inhabitants. No. 5 has about one hundred legal voters. So that, so far as the numerical strength of the two districts is concerned, No. 5 would have had greatly the advantage if No. 7 had been invited to the meeting, and been allowed to participate in the proceedings. But when no notice is given of the intention to absorb them, and when, with one breath, they add No. 7, and with the next, subject them to taxation, the wrong looks doubly suspicious—it looks as if a surprise was intended; and being 20 situated, in reference to these proceedings, similarly to an opposite party in a suit, the court will always exercise its power to relieve. But we must give a more liberal construction to this section, such a construction as will secure the rights and powers of others, as well as our own. By the construction contended for by defendant's counsel, the action of the town superintendent is set at nought, because he may in one moment set off a district in any part of his township, and the next moment we find it absorbed by another district. Furthermore, such a construction would render the section itself powerless and futile. 30

Again, if this alteration was made on the fifth of April, 1858, the legal majority of inhabitants of No. 5 did not assent. It is proved that they were, at that time, about one hundred legal voters in No. 5, probably between one hundred and one hundred and six. There were but twenty-three votes in favor of it at the meeting on the fifth, and two of these were illegal. A majority of all the legal voters of the district is necessary to alter an incorporated district; and the fact, that such majority

consented, must be stated in the certificate. *State v. Deshler et al.*, 1 *Dutcher* 177. Now if this alteration was made on the fifth, only about one-fifth of the legal voters of No. 5 approved it. But it is said, the alteration was not made until the 12th of April, 1858, that being the date of the certificate signed by the trustees and town superintendent. It does not necessarily follow, that because the certificate bears date April 12th, 1858, that the alteration was made on that day; nor does it appear, by the certificate, when the alteration was made;—it fixes no
10 time,—it merely states the fact, that by the consent of a majority of the taxable inhabitants of said district, the same *has been* altered, not that it *has been this day* altered, which would be understood to be a direct reference to the date of the certificate: it leaves the time when such alteration was made altogether uncertain, to be guessed at, or to be ascertained by some other legal certificate of alteration, or the evidence in the cause. The petition (as it is called) bears no date; the minutes of the meeting, alone, fix any certain time for this alteration. If altered at some time subsequent to April 5th, 1858, still it
20 does not clearly appear, by the certificate nor by the evidence, that a majority of the legal voters, including those whose names appear on the so-called petition, assented, which should be the case. The certificate, it is true, states the fact, but the evidence proves the contrary, or at least renders it exceedingly doubtful. Again, if the alteration was not made on the 5th, but on some subsequent day, we get ourselves in the dilemma of taxing No. 7 before it becomes a part of No. 5: because there is no pretence that there was any other resolution, than the one passed on the 5th, authorizing the tax to be raised. It will
30 not do to say that the inhabitants of No. 7 had notice of the meeting to raise this tax. True it may be, that notices to the effect above mentioned, signed by the trustees of No. 5, were put up within the limits of No. 7 eleven days prior to the meeting at which the resolution was passed—at a time when the inhabitants of No. 7 were taking care of their own affairs, as they had a right to do, and when they had no reason to suppose that they had anything to do with the district meetings of No. 5 for raising school tax. They were not bound to

govern their actions by any such notice, nor could they be expected to pay any attention to it. They are presumed, at the same moment, to be looking after the interests and necessities of their own children and schools, and, perhaps, discussing and adopting a similar resolution for school tax for themselves.

As to the single resolution authorizing the tax of two thousand dollars to be raised, we see no good reason for interfering with it. Incorporated school districts, by the 11th section of the supplement to school law, approved March 14th, 1851, (*Nix. Dig.* 739, *pl.* 42,) have an undoubted right to raise, by taxation, 10 any such sum of money as two-thirds of the inhabitants assembled shall agree upon. No. 5, in pursuance of their notice, resolves to raise two thousand dollars, which they had a perfect right to do. And so far as this resolution, alone, is concerned, it is a matter, perhaps, with which we have no right in this case to interfere. Ample relief can be given to the prosecutors who complain of assessments by virtue of this resolution under the third writ of this series. The court will not set aside the whole assessment, when it can give proper relief without so doing. *The State v. Kingsland*, 3 *Zab.* 85. Nor can we, 20 in this case, relieve the prosecutor of the tax assessed against him by virtue of this resolution, because the writ does not and could not bring up the tax. Whatever view, however, may be taken with reference to the alteration attempted to be made, the whole proceeding seems to be radically defective and unjust, and must be set aside.

The object of the last of the series is to bring up the assessment of taxes upon the property of the prosecutors in the Township of Newton, County of Camden, in pursuance of the resolution above mentioned; and with regard to this, after the 30 decision of the second case, there need but little be said.

We have produced in evidence, among other papers, what is intended for the sworn certificate of the trustees of School District No. 5, directed to the township collector, notifying him that two thousand dollars had been ordered to be raised by said district for school purposes. This certificate bears date April 17th, 1858, and says, in the body of it, that the tax was ordered to be raised on *April 5th*, 1858, the day of the meeting

above mentioned, and previous to the 12th, the date of the certificate of alteration. However, without discussing this matter further, it is sufficient that the certificate is defective, in that it does not show upon its face a compliance with the requirements of the 11th section of act of 1851. *Nix. Dig.* 739. It states the fact, that notice was given of the time, place, and purpose of the meeting; but it does not state what the notice was, nor when and where copies were put up, nor the purpose of the meeting, and in this respect is clearly insufficient,
 10 according to the ruling in the case of *The State v. Hardcastle*,
 2 *Dutcher* 143.

The above reason is sufficient and fatal; but another matter upon the face of this certificate, and not attended to by counsel, might be mentioned, which is, the *jurat*, or certificate of the justice. It states that the trustees, naming all three of them, were "sworn and affirmed," and upon their "oaths or affirmations say," &c. Does he mean that they were all sworn and all affirmed? or that some were sworn, and some affirmed? if the latter, which sworn, and which of them affirmed? Could
 20 perjury be assigned upon such a paper? Let the assessments made against the prosecutor for school tax by the collector of Newton township, in pursuance of the said notice, be set aside and for nothing holden.

EXHIBITS OF PLAINTIFFS IN ERROR.

EXHIBIT No. 1.

*List of Names of Persons paying Poll Tax in Fifth District,
Newton Township, for the year 1858.*

Appley, Lorenzo D.,	Githens, Thomas B.,	
Applegate, Sylvanus,	Genter, John,	
Brown, Patrick,	Genter, David,	
Browman, Lewis,	Genter, John, jr.,	
Bell, Samuel,	Glenn, Thomas,	
Bray, William,	George, Frederick,	
Bert, Edward,	Griffin, John C.,	10
Burton, George,	Griffin, William H.,	
Baxter, Albert,	Griffin, Seth,	
Baxter, John,	Gaskill, Benjamin,	
Baxter, John, jr.,	Galag��e, Patrick,	
Brady, Hugh,	Gome, Albert,	
Cooper, George,	Howell, William,	
Cunningham, John R.,	Harris, Charles,	
Crump, John,	Harris, Benjamin,	
Conley, James,	Huff, Walter,	
Caldwell, John,	Hankinson, Wm. H.,	20
Carr, John,	Heagle, Nicholas,	
Dallon, Michael,	Heagle, Christopher,	
De Ross, Daniel,	Hunt, Edward,	
Deal, George,	Hollinger, Wm.,	
Deal, John,	Huntsinger, John,	
Deno, James,	Hollingshead, Henry,	
Eval, Christian,	Hamilton, George,	
Edwards, William,	Hoflenger, Joseph,	
Flowers, Aaron,	Hunter, Levi,	
Fitzgerald, John R.,	Jonson, George,	30
Farrington, Frederick W.,	Jimmerson, Wm.,	

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| Lovel, John, | Smith, Joseph, |
| Long, John, | Smith, John, |
| Law, Lewis, | Sculley, Charles, |
| Monroe, Samuel, | Swyler, Philip L., |
| Monroe, Edgar, | Shields, Thomas, |
| Myres, Christian, | Shields, Thomas, jr., |
| McGlocklan, Patrick, | Shields, Christopher, |
| McGrosey, Patrick, | Shields, James, |
| McVey, Matthew, | Starn, Charles W., |
| 10 McCormick, Patrick, | Sloan, William C., |
| McKabe, John, | Scofield, Peter, |
| McLowlan, Neal, | Senyard, Thomas, |
| McDowell, Ellis, | Senyard, George, |
| Mink, Christian, | Shrouds, William C., |
| Miller, Samuel, | Stow, Jacob, |
| Millen, John, | Streeper, William, |
| Michellon, Anthony, | Snyder, Philip, |
| Michellon, James P., | Spealt, Conrad, |
| Plum, John, | Semelar, Frederick, |
| 20 Pippet, Charles, | Suters, Samuel, |
| Page, Wm. W., | Stagers, Theodore A., |
| Paschall, Alfred, | Vennel, James, |
| Paschall, John, | Vanstavers, Francis, |
| Peachman, Frederick, | Willits, William, |
| Roth, John, | Wilson, Isaac, |
| Riner, Lawrence, | Wilson, Robert, |
| Runion, Aaron, | Wilson, William J., |
| Ridgley, John, | Wilson, Charles, |
| Rosteck, George A., | Wilkins, Joshua, |
| 30 Starr, Jesse W., | Warnock, William, jr., |
| Starr, John F., | Weston, John, |
| Starr, Moses, | Woods, James. |

EXHIBIT No. 2.

Blank Notice of meeting of Taxable Inhabitants of Liberty School District, No. 5.

SCHOOL NOTICE.

The Taxable Inhabitants of Liberty School District, No. 5, in the Township of Newton, County of Camden, State of New Jersey, bounded as follows:—

Commencing at the northeast corner of Broadway (or Woodbury Road) and Kaighn's Avenue (or Market Street,) and thence eastwardly along the said Kaighn's Avenue to the Haddonfield 10 Turnpike, thence across the said Turnpike in a straight line with said Kaighn's Avenue to Cooper's Creek, and thence along the said Cooper's Creek to the Bridge known as the County Bridge, adjoining the City of Camden, thence westwardly along the causeway to the said Bridge to a Road known as the Cooper's Creek (or Bridge) Road, thence along the said Road to Broadway (or Woodbury Road,) thence along the easterly side of said Broadway to the place of beginning,

Are hereby notified by the subscribers, Trustees of said incorporated District, to meet at 20

in said District, on the day of next,
at the hour of P. M., for the purpose of deciding whether the Trustees of said District shall be authorized to purchase land to build a School House thereon, also to raise additional funds for such purposes, and for maintaining free Schools in said District by taxation, as shall be agreed to by two-thirds of those present at said meeting, in conformity with the eleventh section of the supplement to the Act entitled an Act to establish Public Schools.

Witness our hands this day of 185 . 30

} Trustees of Liberty District,
No. 5, Newton Township.

EXHIBIT No. 3.

Petition or Certificate in favor of Alteration of District No. 5.

We, the undersigned, "the taxable inhabitants and legal voters" of Liberty School District, No. 5, Newton Township, Camden County, New Jersey, are in favor of the alteration of the boundaries of the Fifth School District in such a manner as will include the "Rural, or Seventh District," which is bounded as follows:—

Commencing at the north-east corner of the Mount Ephraim
 10 Turnpike, or Chew's Landing Road, and running thence southerly along the east side of said road to the boundary lines of the farms of Joseph M. (or John M.) Kaighn and Samuel Cooper, thence running east along said farm boundary lines to the Haddonfield Pike, at or near the junction of the White Horse and Haddonfield Turnpikes, thence across the said pike at right angles and in a straight line, or nearly so, to Cooper's Creek, and thence along the west bank of said creek in a northerly and westerly direction to the boundary line of the Fifth District, thence westerly along the north line of said Seventh
 20 or Rural District, to the place of beginning:—

Isaac Wilson,
 L. D. Appley,
 Charles Scully,
 Andrew Scully,
 Aaron Flowers,
 Charles Pippitt,
 John McCabe,
 George Hamilton,
 Charles Henry Jewell,
 30 ^{his} Elias × McDowell,
 ^{mark}
 Albert W. Paschall, .
 Joseph Smith,
 Joseph Hofflinger,
 John R. Cunningham,
 William Willetts,
 Wm. W. Hankinson,
 Philip L. Swyler,
 Anthony Michellon,
 John H. Graham,

Frederick Pechman,
 John M. Paschall,
 John O. Griffin,
 Hugh Bradey,
 William H. Griffin,
 William Bray,
 Thomas B. Githens,
 Joshua H. Wilkins,
 George Johnson,
 J. P. Michellon,
 Jesse W. Starr,
 Moses Starr,
 John F. Starr,
 Benjamin A. Starr,
 ^{his}
 John Routh, ×
 ^{mark}
 C. W. Starn,
 ^{his}
 John Lovett, ×
 ^{mark}
 Patrick Gallagher,

Michael T. McCarthy,
 John Griffin,
 Hugh Brady,
 John Horneff.
 Lorantz Raininger,
 Joseph Blair,
 William H. Conley,
 Joshua Wilkins,
 Christian X. Bele,
 James Conly, ^{his} ×
 mark.

Matthew McVay, ^{his} ×
 mark.
 William Hofflinger,
 Benjamin Harris,
 John W. Weston,
 Alair Higel,
 Moses Starr,

Elias McDowel, ^{his} ×
 mark.
 S. W. Applegate,

Chas. ^{his} × Wilson,
 mark.
 Wm. J. Wilson,
 Francis W. Vanstavern,
 George A. Rosback,
 Levey Carney, ^{his} ×
 mark.

Daniel Gross, ^{his} ×
 mark.
 Edward Presel,
 Johannes B. Müller,
 John Baxter,
 William Howell,
 David × Carr,
 John Baxter,
 Thomas × Shields,

James Deno, ^{his} ×
 mark.

Patrick Brown, 10
 Samuel × Scuders,
 John W. Page,
 Wm. C. Shrouds,
 Seth Griffin,
 Charles A. Griffin,
 John Long,

William ^{his} × Gimerson,
 mark.

M. H. Creely,
 James Venell, 20
 Lewis A. Bowman,
 W. Warnock,
 John Kempton,
 Samuel Monroe.

EXHIBIT No. 4.

Blank Notices of Meeting of Inhabitants set up in the Seventh District.

SCHOOL NOTICE.

The Taxable Inhabitants of Liberty School District, No. 5, in the Township of Newton, County of Camden, State of New Jersey, bounded as follows:—

Commencing at the northeast corner of Broadway (or Woodbury Road) and Kaighn's Avenue (or Market Street), and thence eastwardly along the said Kaighn's Avenue to the Haddonfield Turnpike, thence across the said Turnpike in a straight line

with said Kaighn's Avenue to Cooper's Creek, and thence along the said Cooper's Creek to the Bridge known as the County Bridge, adjoining the City of Camden, thence westwardly along the causeway to the said Bridge to a Road known as the Cooper Creek (or Bridge) Road, thence along the said road to Broadway (or Woodbury Road), thence along the easterly side of said Broadway to the place of beginning, which is bounded as follows:—

Commencing at the south-east corner of Market Street (or
10 Kaighn's Avenue) and the Mount Ephraim Turnpike (or Chew's
Landing Road), thence southerly along the east side of said
road to the line of the Fourth District, or the boundary line of
the farms of Samuel Cooper and John M. (or Joseph) Kaighn,
thence eastwardly along the said Fourth District line or farm
boundary to the Haddonfield Turnpike, thence across said turn-
pike at right angles and in a straight (or nearly so) line to
Cooper's Creek, thence along the meanderings of said creek in
a northerly or westerly course to the line of the Fifth School
District, thence along the same line, embracing the south side of
20 Market Street or (Kaighn's Avenue), to the place of beginning,
embracing and including the Seventh School District called
Rural, which was originally cut off from the said Fifth School
District, are hereby notified by the subscribers, Trustees of
said incorporated district, to meet at

in said District, on the day of next,
at the hour of P. M., for the purpose of deciding
whether the Trustees of said District shall be authorized to pur-
chase land to build a School House thereon, also to raise addi-
tional funds for such purposes and for maintaining free schools
30 in said District by taxation, as shall be agreed to by two-thirds
of those present at said meeting, in conformity with the eleventh
section of the supplement to the Act entitled an Act to estab-
lish Public Schools.

Witness our hands this day of 185 .

Trustees of Liberty District,
No. 5, Newton Township.

EXHIBITS OF DEFENDANTS IN ERROR.

EXHIBIT A.

Certified Copy of Certificate of Incorporation.

(Same as Exhibit B.)

EXHIBIT B.

Certificate of Incorporation of Liberty School District, No. 5.

To the Clerk of the County of Camden, State of New Jersey:

The subscribers, trustees of the school district hereinafter described, situate in the Township of Newton, desiring to become incorporated in pursuance of the ninth section of "A Supplement to the act entitled An Act to establish Public Schools," have adopted the name of "Liberty," and do hereby, together with the Town Superintendent of Public Schools for said Township of Newton, Camden County, certify to you the name aforesaid, as our corporate; and we do certify, that the boundaries of said School District are the following, viz:—Commencing at Cooper's Creek Bridge, and embracing all the premises bounded by the causeway, running to the said bridge, by the road known as the Cooper's Bridge road, to the corner of the said Cooper's Bridge road and Broadway, (or Woodbury road,) by the said Broadway (or Woodbury road) to the north-east corner of said Broadway and Market Street (or Kaighn's Avenue,) by the said Market Street or (Kaighn's Avenue) to the Haddonfield Turnpike, and from thence in a straight line with said Market Street in an easterly direction to Cooper's Creek, along the said creek to place of beginning.

Witness our hands this twenty-first day of April, 1855.

PHILIP L. SWYLER,	} Trustees.
JOHN R. CUNNINGHAM,	
J. P. MICHELLON,	

30

B. W. BLACKWOOD, *Town Superintendent.*

EXHIBIT C.

*Certificate of Alteration of Bounds of Liberty School District, No. 5.**To the Clerk of the County of Camden, State of New Jersey:*

The subscribers, Town Superintendent of the Township of Newton, and the trustees of an incorporated district in said township, incorporated by virtue of a certificate dated the twenty first day of April, in the year of our Lord one thousand eight hundred and fifty-five, and recorded by the Clerk of the

10 County of Camden in book of Miscellaneous Records, page 181, &c., by the name of Liberty, do hereby certify, that by the consent of a majority of the taxable inhabitants of said district, the same has been altered so that the bounds of the said district shall be and now are the following, viz.: Beginning at the West end of Cooper's Creek bridge, on the road leading from Moorestown to the City of Camden, thence westerly by the aforesaid road and the causeway leading from said bridge until said road intersects the road known as the Cooper's bridge, or

20 Brace road; thence south-westerly by the Cooper's bridge, or Brace road, until the same intersects the Broadway or Woodbury road; thence southerly by said Broadway or Woodbury road until the same intersects Market street, or Kaighn's avenue; thence easterly by said Market street, or Kaighn's avenue, until the same intersects the Mount Ephraim turnpike or Chew's landing road; thence southerly by the said Mount Ephraim turnpike, or Chew's landing road, to the line of the Fourth District being the boundary line between the farms of Samuel Cooper and John M. (or Joseph) Kaighn; thence east-

30 wardly along the line of the said Fourth District and the division line of the aforesaid farms to the Camden and Haddonfield turnpike road; thence north-easterly across said turnpike road and at right angles therewith, in a straight (or nearly so) line to the southern bank of Cooper's Creek aforesaid, the various courses thereof in a northerly and westerly direction, to the place of beginning.

Witness our hands and seals, this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

MOSES HAMMELL, [L.S.] *Town Superintendent.*

JESSE W. STARR, [L.S.]
J. P. MICHELLON, [L.S.] } *Trustees.*
JOHN M. PASCHALL, [L.S.] }

EXHIBIT D.

Pamphlet issued by State Superintendent, containing laws of State in reference to Schools, Forms, and Institutions, for 10 proceedings of Trustees of School districts.

EXHIBIT E.

Copy of Extract from Minutes of Board of Trustees of School District, No. 5.

CAMDEN, NEWTON TOWNSHIP, SCHOOL DISTRICT No. 5, }
April 5, 1858. }

"Motion, that we go into an election by ballot. Tellers, nominated and appointed, Geo. W. Hamilton, J. M. Paschall and J. P. Michellon of three years, and J. W. Starr for the unexpired term of P. L. Swyler. 20

"On motion of J. P. Michellon, we alter the boundary so as to take in all the Seventh District, in favor of

YEAS.	NAYS.	
J. R. Cunningham,	J. Weston,	
J. P. Michellon,	H. Martin,	
J. W. Starr,	B. Harris,	
J. M. Paschall,	W. Luff,	
G. H. Hamilton,	S. Romclise,	
Joseph Smith,	Ellis Higgle,	
John Griffith,	John Horneff,	30

YEAS.

W. H. Griffith,
 Seth Griffith,
 Charles Scully,
 Charles Jewell,
 Jos. Blair,
 T. Githens,
 Isaac Wilson,
 Chas. Griffen,

NAYS.

A. Michellon.

Yeas, 15.—Nays, 8.

10

EXHIBIT F.

Copy of Certificate of Trustees of Liberty School District, No. 5, to Assessor of Newton Township, for Assessment of \$2,000, for school purposes.

To CHARLES LIPPINCOTT, Assessor of Taxes, in the Township of Newton, County of Camden, State of New Jersey :

The subscribers, Trustees of a school district in said township, incorporated by the name of Liberty District, No. 5, which district is bounded, as follows: Beginning on the West
 20 end of Cooper's Creek bridge, on the road leading from Moorestown to the City of Camden; thence westerly by the aforesaid road and the causeway leading from said bridge, until the said road intersects the road known as the Cooper's bridge, or Brace road; thence south-westerly by the Cooper's bridge, or Brace road, until the same intersects the Broadway or Woodbury road; thence southerly by said Broadway or Woodbury road, until the same intersects Market street or Kaighn's avenue; thence easterly by said Market street or Kaighn's avenue, until the same intersects the Mount Ephraim
 30 turnpike, or Chew's Landing road; thence southerly by the said Mount Ephraim turnpike or Chew's Landing road, to the line of the Fourth District, being the boundary line, between the farms of Samuel Cooper and John M. or Joseph Kaighn; thence eastwardly along the line of said Fourth District and the division line of the aforesaid farms to the Camden and

Haddonfield turnpike road; thence north-easterly across said turnpike road, and at right angles therewith in a straight (or nearly so) line, to the southern bank of Cooper's Creek aforesaid; the various courses thereof in a northerly and westerly direction to the place of beginning, do certify that at a meeting of the taxable inhabitants of said district, held at the New School House, in said Fifth School District, on the fifth day of April, 1858, pursuant to notice signed by us, setting forth the time and place and purposes of such meeting, and set up in at least three public places in said district, ten days before the 10 day of meeting, it was agreed by (a unanimous vote) the vote, of two-thirds of the taxable inhabitants, so assembled, to raise by taxation the sum of two thousand (\$2,000 00) dollars, for school purposes in addition to the money apportioned to said district pursuant to the provisions of the eleventh section of a supplement to the act entitled "An act to establish public schools," and this certificate is made to the end that you may assess the said sum on the estate of inhabitants and on all lands liable to be taxed therein, as provided for by the section aforesaid.

20

Witness our hands, and seal of the district, this seventeenth (17) day of April, one thousand eight hundred and fifty-eight (1858).

JESSE W. STARR,	}	<i>Trustees of Liberty School District No 5, [L. S.] New'on Township, Camden County, New Jersey.</i>
J. P. MICHELLON,		
JNO. M. PASCHALL,		

CAMDEN COUNTY, ss.

Personally appeared before me, the subscriber, one of the Justices of the Peace for said county, Jesse W. Starr, John M. Paschall and James P. Michellon, Trustees of the School Dis- 30 trict above mentioned, and being duly sworn and affirmed upon their oaths, or affirmation, say that the above certificate by them signed, is correct and true.

Sworn, affirmed and subscribed, this seventeenth day of April, 1858, before me.

MOSES HAMMELL.

EXHIBIT G.

Minutes of District Meeting, held on 5th of April, 1858.

(Same as printed in schedule annexed to and returned with certiorari.)

EXHIBIT H.

(Same as Exhibit No. 2, of plaintiffs.)

EXHIBIT F.

(Same as Exhibit "B.")

EXHIBIT H.

10

(Same as Exhibit "C.")

NEW JERSEY SUPREME COURT, }
JUNE TERM, A. D. 1858. }

STATE, (JOSEPH KAIGHN, Prosecutor,)

vs.

JESSE W. STARR, JAMES P. MICHELLON and
JOHN M. PASCHALL, Trustees of Liberty
School District, No. 5, of the Township of
Newton, County of Camden.

} *On Application*
for
} *Certiorari, &c.*

For manifest errors in the proceedings of the Trustees of 20 Liberty School District, No. 5, of Newton Township, in ordering to be raised two thousand dollars for school purposes in said district, which being made to appear before the court, it is ordered that a writ of Certiorari do issue, directed to Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of said district, commending them to certify and send to this Court all resolutions, orders and proceedings by said Trustees, taken and made, and all proceedings and resolutions of the meeting called for that purpose, relative to raising said tax of two thousand dollars for school purposes in said district, and it

being manifest that the matters complained of are of a public character, and such as ought to be determined without delay. It is further ordered that each party have leave to take affidavits at once, to be read upon the arguments of Certiorari.

On motion of T. H. Dudley, Att'y for Pltff, &c.

NOVEMBER TERM, A. D. 1858.

The STATE, (JOSEPH M. KAIGHN, Prosecutor,)	} <i>On</i>	10
<i>vs.</i>		
JESSE W. STARR, JAMES P. MICHELLON and		
JOHN M. PASCHALL, Trustees of Liberty School District, No. 5, of the Township of Newton, County of Camden.		

Certiorari.

The writ in the above stated case having been duly returned to this term of the Court, it is ordered by the Court that the Plaintiff in said writ show cause at the first day of the next term of this Court, why the same should not be dismissed.

On motion of P. L. Voorhees, Att'y of Def't in Cert.

JUNE TERM, A. D. 1859.

The STATE, (JOSEPH M. KAIGHN, Prosecutor,)	} <i>On</i>	20
<i>vs.</i>		
JESSE W. STARR, JAMES P. MICHELLON and		
JOHN M. PASCHALL, Trustees of Liberty School District, No. 5, of the Township of Newton, County of Camden.		

Certiorari.

This cause having been argued by counsel at the last term, and the Court having advised thereon and being now of opinion that the proceedings of said Trustees and the Town Superintendent of said school district, in altering the boundaries thereof and annexing District No. 7 thereto, and the certificate by them made, dated April 12th, 1858, certifying to said altera-30 tion and the proceedings of the meeting held in the Liberty School District, No. 5, on the fifth day of April, 1858, so far as the changing of the boundaries aforesaid are concerned, are

without authority of law: it is ordered that the said certificate and the proceedings of the said Trustees and Town Superintendent in altering the boundaries of said Liberty School District, No. 5, and all the proceedings of said meeting, so far as relating to said alteration, be and the same are hereby set aside and made null and void, with costs to be taxed.

On motion of Thomas H. Dudley, Att'y of Pltff in Cert.

I, Charles P. Smith, Clerk of the Supreme Court of the State of New Jersey, do certify the foregoing to be a true transcript
10 of the Rules in the above stated cause, on the minutes of said Court.

In testimony whereof, I have bereunto set my hand and affixed the seal of said Court at Trenton, this nineteenth day of October, A. D. eighteen hundred and fifty-nine.

[L. S.]

CHARLES P. SMITH, *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS,
Of the Term of November, in the year of our Lord one thousand eight hundred and fifty-nine.

20	JESSE W. STARR, JAMES P. MICHELLON and JOHN M. PASCHALL, Trustees of Liberty School District, No. 5, of Township of Newton, County of Camden, <i>vs.</i> THE STATE, (JOSEPH M. KAIGHN, Prosecutor.)	} <i>In Error to the</i> <i>Supreme Court.</i> } <i>Assignment of</i> <i>Errors.</i>
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Afterwards, that is to say, on the third Tuesday in November, in the year of our Lord one thousand eight hundred and fifty-nine, before the Judges of the Court of Errors and Appeals, in the last resort, at Trenton, come the said Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School
30 District, No. 5, of the Township of Newton, County of Camden, by Peter L. Voorhees, their attorney, and say, that in the record and proceedings aforesaid there is manifest error in this, to wit: that the said writ of certiorari not being directed to the persons having the record of the taxes ordered to be raised in said

Liberty School District, No. 5, of Newton Township, and no record having been returned with said certiorari, the said Supreme Court refused to dismiss said writ of certiorari. There is also error in this: that on the said writ of certiorari, directed to the Trustees of Liberty School District, No. 5, of the Township of Newton, commanding them to certify and send all resolutions and proceedings by them had, or had at a meeting of the taxable inhabitants of said School District, held on the fifth day of April, Anno Domini eighteen hundred and fifty-eight, relative to raising or ordering to be raised the sum of two thousand dollars¹⁰ for school purposes, with all things touching and concerning the same, the said Supreme Court ordered and adjudged that an alteration of the bounds of said School District, No. 5, of the Township of Newton, should be set aside and reversed. There is also error in this: that the said Supreme Court ordered the alteration of the bounds of said Liberty School District, No. 5, of the Township of Newton, to be set aside and reversed, without the record and certificate of said alteration being in anywise before said Court, and without the said writ of certiorari requiring or directing the said record or certificate of alteration to be²⁰ certified to, or produced before said Supreme Court. And also, there is error in this: that the said Supreme Court gave judgment for costs on said writ of certiorari in favor of the State, (Joseph M. Kaighn, Prosecutor,) and against said Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School District, No. 5, of Newton Township. And also, there is error in this: that the judgment aforesaid, by the record aforesaid, appears to have been given for the State, (Joseph M. Kaighn, Prosecutor,) against the said Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School³⁰ District, No. 5, of the Township of Newton; whereas, by the law of the land, the said judgment ought to have been given for the said Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School District, No. 5, of Newton Township, against the said State, (Joseph M. Kaighn, Prosecutor.) And the said Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School District, No. 5, of Newton Township, pray that the judgment aforesaid, for the

errors aforesaid, and for other errors in the record and proceedings being, may be reversed, annulled and altogether holden for nought, and that they may be restored in all things which they have lost by occasion of said judgment, &c.

P. L. VOORHEES, *Atty of Plffs in Error.*

CAMDEN COUNTY, ss.

Jesse W. Starr, James P. Michellon and John M. Paschall, Trustees of Liberty School District, No. 5, of Newton Township, put in their place Peter L. Voorhees, their attorney, to
10 prosecute their writ of error against the State, (Joseph M. Kaighn, Prosecutor,) on a writ of certiorari.

JOINDER OF ERRORS IN USUAL FORM.