

Leopoldt, John Penington, and Blanchard & Lea, book-sellers.

Mr. Price offered for publication in the Proceedings, a copy of the Opinion of the Supreme Court in the suit for taxes against the Society, with a brief communication introductory, as follows :

TO THE AMERICAN PHILOSOPHICAL SOCIETY :

I have the satisfaction to report to the Society, that the suit of the City of Philadelphia against this Corporation, claiming to tax the Hall, has been decided in favor of the Society, and against the power of the City to tax this property. The Argument of Counsel has been printed, and numerous copies of it are in possession of the Society. As the Opinion of Judge Read, which is that of all the Court, is of historical interest, as well as protective of the title and interests of the Society, I cannot but recommend that it be printed in the Society's Proceedings. For this purpose I herewith furnish a copy of that Opinion.

I am, very respectfully, &c ,

ELI K. PRICE.

SUPREME COURT. THE CITY OF PHILADELPHIA v. THE
AMERICAN PHILOSOPHICAL SOCIETY.

The Hall of the American Philosophical Society is not liable to taxation.

Eastern District. Error to the District Court of Philadelphia.
Opinion by

READ, J.—Independence Square was not one of the original squares left open for public use by William Penn in his platform of the City of Philadelphia, but consisted of various lots purchased at different times under the authority of the Legislature of the Province. The intention was to erect a State-house and other public buildings upon it, and that the residue of the square should be and remain a public green and walk forever. The old court house had been built in 1707, in Market Street above Second, and was used not only as a hall of justice, but also as a legislative hall, in which the Provincial Assemblies transacted their business, and the general elections were held there. By the direction of the Representatives of the Freemen of the Province, Andrew Hamilton and William Allen purchased certain lots on the south side of Chestnut Street, lying contiguous to each other, and bounded by Delaware Fifth and Sixth Streets, and erected thereon the present State-house, which was begun

in 1729 and finished in 1734. On the 20th February, 1735-6, the General Assembly passed an Act vesting the State-house and other public buildings, and the lots, in other trustees, to and for the use of the Representatives of the Freemen of the Province, and to and for such other uses as the said Representatives at any time or times thereafter in General Assembly met, should direct and appoint. "Provided *always*, and it is hereby declared to be the true intent and meaning of these presents, that no part of the said grounds lying to the southward of the said State-house, as it is now built, be converted into or made use of for erecting any sort of buildings thereon, but that the said ground shall be inclosed and remain a public open ground and walk forever." Another contiguous lot having been purchased by William Allen, and both he and Andrew Hamilton having died without executing the necessary assurances, the General Assembly, on the 17th January, 1762, passed an Act vesting the whole property in new trustees, for the same uses declared in the former Act, and under the same proviso, with an immaterial alteration in its phraseology, and on the 14th May in the same year, they passed another Act, authorizing the trustees to purchase the remaining lots between Chestnut and Walnut Streets, for the same uses, and appropriated five thousand pounds for that purpose. By the first of these Acts, two lots, one at the corner of Sixth, and the other at the corner of Fifth Street, were directed to be conveyed, upon the payment of fifty pounds for each, the first to trustees for the use of the County of Philadelphia, for erecting a public building for the holding of courts or common halls for the said county; and the second to the Mayor and Commonalty of the City of Philadelphia, for erecting a public building thereon for the holding of courts or common halls for the use of the said city.

On the 28th February, 1780, the General Assembly of the Commonwealth vested the State-house, and the whole lot between Walnut and Chestnut and Fifth and Sixth Streets, in the Commonwealth, to the uses and trusts theretofore appointed and limited. The legal title was therefore in the State of Pennsylvania. From a club called the Junto, originated in 1727, by Benjamin Franklin, sprung a proposition to form a society composed of *virtuosi* or ingenious men residing in the several colonies, to be called The American Philosophical Society, to be held at Philadelphia, being the city nearest to the centre of the continent colonies, communicating with all of them northward and southward by post, and with all the islands by sea, and having the advantage of a good growing library. It was made in the form

of a circular, signed by Franklin, which bore date the 14th of May, 1743, old style, corresponding in the new calendar to the 25th, which is considered as the birthday of the present institution. In 1744, the Society, so far as relates to Philadelphia, was actually formed, and had several meetings, to mutual satisfaction, of the nine original members of the Philosophical Society. Six, including the three officers, President Hopkinson, Treasurer Coleman, and Secretary Franklin, are known to have belonged to the Junto.

Out of another Junto, established in 1750, arose another body in 1756, called "The American Society for Promoting and Propagating Useful Knowledge," held at Philadelphia; and in November, 1768, the name being changed to The American Society held at Philadelphia for Promoting Useful Knowledge, Dr. Benjamin Franklin was elected its President. The first institution, The American Philosophical Society, was also revived about the same time, and on the 9th February, 1768, ex-Governor Hamilton was elected President of this body.

On the 2d January, 1769, these two institutions having merged themselves into one body, being the present "American Philosophical Society, held at Philadelphia, for Promoting Useful Knowledge," Dr. Benjamin Franklin was elected President, and Dr. Thomas Cadwalader, Dr. Thomas Bond, and Joseph Galloway, Esq., were elected Vice-Presidents. The Society, aided by the General Assembly of the Province, erected temporary observatories, one at Philadelphia, the other at the residence of Mr. Rittenhouse, in Newton township, Montgomery County, about twenty miles northwest of Philadelphia, for observing the expected transit of Venus, that was to occur on the 3d of June, 1769.

Measures were also taken for making observations at Cape Henlopen, on the Delaware Bay, where a building was found that could be used for the purpose. The observations at these different places were all successful, and the account of them, and of the results to which they led, is given in full detail in the first volume of their Transactions, published in 1771, from the press of William & Thomas Bradford, in this city.

Upon their application, the General Assembly, on the 15th March, 1780, passed an Act incorporating them, and one of its provisions, as indicative of the liberal policy, humane spirit, and wise forethought of our forefathers in the midst of a war for existence, is too remarkable to be omitted. That it shall be lawful for the "Society, by their proper officers, at all times, whether in peace or war, to

correspond with learned societies as well as individual learned men of any nation or country, upon matters merely belonging to the business of the Society, such as the mutual communication of their discoveries and proceedings in philosophy and science, the procuring books, apparatus, natural curiosities, and such other articles and intelligence as are usually exchanged between learned bodies for furthering their common pursuits." This learned Society has always preserved its high character both at home and abroad, and numbers among its members the most distinguished men of the day. Of the past it enumerates among its Presidents, Benjamin Franklin, Thomas Jefferson, Rittenhouse, Wistar, Patterson, Tilghman, Duponceau.

On the 15th April, 1782, the General Assembly transferred the property and moneys of the Silk Society to the Philosophical Society, who were to be accountable, and redeliver the same whenever a majority of the subscribers to the Silk Society shall request it, in order to revive their institution. The Philosophical Society having represented to the Legislature the necessity of their having a Public Hall, Library, and other accommodation, and prayed that they would grant to them a lot of ground suitable and convenient for erecting a hall and other buildings, an Act was passed on the 28th March, 1785, granting to them a lot on Fifth Street, being a part of the State-house square, for that purpose. The third section is in these words: "Provided always, and it is the intention and meaning of this Act, that the said lot of ground shall not *be sold, leased or transferred*, by the said Philosophical Society or their successors, to any other person or persons, or bodies corporate; nor shall the same be applied by the said Society to any other use or purpose but that of erecting buildings for the accommodation of the said Society, as hereinbefore specified." Upon a further representation from the Society, that the restriction in the preceding Act as to the letting parts of the building was disadvantageous and unreasonable, the House thought it was founded in reason, and on the 17th March, 1786, passed an Act authorizing the Society to let or lease such *vaults or cellars* as they may think proper to make under the building by them to be erected on the lot aforesaid, and to let any other parts of said building for such purposes as may have affinity with the design of their institution, and for no other; the issues and profits to be applied to the purposes for which the Society was originally instituted, and to no other.

By the Act of the 8th April, 1785, the Commissioners of the County of Philadelphia, and the Wardens of the City of Philadelphia, having respectively paid to the Treasurer of the State the sum of

fifty pounds each, the lots at the corners of Sixth and Fifth Streets were severally vested in the said parties respectively, agreeably to the Act of 1762. The Act also provided that the old gaol and workhouse should be sold, and three thousand pounds of the purchase-money be applied to the purpose of erecting the County Court-house on the northwest corner of the State-house lot; and the wardens were authorized to take out of the personal estate of the latter corporation, three thousand pounds for erecting a court-house on the northeastern corner of the said State-house lot, and if it fall short of completing the building, then such sums as shall be necessary shall be taken out of the common stock of the city in the hands of the Treasurer of the Wardens. These lots were extended in depth to 88 feet by the Act of 29th March, 1787; and by the Acts of 27th March and 29th September, 1789, a lottery was authorized to raise eight thousand dollars to defray the expenses of erecting a common hall in the city of Philadelphia. On the 11th March, 1789, the City of Philadelphia was incorporated by an Act of the General Assembly, by the name of "The Mayor, Aldermen, and Citizens of Philadelphia," its limits being the original city plot of William Penn, as delineated in Holmes's Portraiture of it: two miles in length, from river to river, and one mile in breadth, from Vine to South Street.

By an Act of the 30th September, 1791, the Governor was authorized to contract for paving the footway round the State-house square at such times as the City Commissioners shall be paving the cartways of the several streets which surround the State-house. The same Act, after reciting that it would contribute to the embellishment of the public walks in the State-house garden, and may conduce to the health of the citizens by admitting a free circulation of air, if the east and west walls of the said garden were lowered, and palisadoes placed thereon, authorized the city corporation, at their expense, to take down the wall on the east and west sides of the State-house yard, within three feet of the pavement, and to erect thereon good and substantial palisadoes of iron, fixed on a stone capping, to be placed on such wall so prepared.

The City Hall was occupied by the executive, legislative, and judicial authorities of the city; whilst the Congress of the United States, on their removal from New York to Philadelphia, in 1790, occupied the County Court-house, the use of which was offered to them by the Commissioners of the City and County of Philadelphia, for their accommodation during their residence in Philadelphia, until their final removal to Washington, in 1800. The State-house had

been used by the General Assembly of the Province and State for their place of meeting from 1735 until the removal of the seat of Government to Lancaster, in November, 1799. The Congress of the Confederation had also used it during the Revolutionary war, and continued its occupation until the 24th of December, 1784, when they adjourned to meet in the city of New York. The east room on the first floor of this building was the scene of the Declaration of Independence, on the 4th July, 1776.

By a resolution of the General Assembly of the 17th March, 1802, Charles Wilson Peale was allowed to remove his Museum into the east end of the State-house, and to use the lower story of the east end, except the room formerly occupied by the Legislature as a committee-room, and the whole of the upper story, as he might find most convenient for the arranging and displaying the said museum, during the pleasure of the Legislature; but it was provided that the citizens should hold their general elections at the State-house according to law, and he was to take charge of the State-house and State-house yard, to open the doors of the hall, and permit the citizens to walk in the yard for recreation, and pass and repass at reasonable hours. Under this *regime* I have often visited the museum, which was a favorite place of resort, and as a boy, played marbles and prison-base in the State-house yard, whilst it was still surrounded by the high brick wall. On the 8th August, 1811, an ordinance was passed to carry out the permission to take down the east and west walls of the State-house yard, and erect iron palisadoes in place thereof, granted by the Act of 1791; and on the 10th March, 1812, the Legislature passed another Act, empowering the Select and Common Councils to take down the south wall and make a similar improvement, and giving them the charge of the yard, and repealing so much of the resolution of 1802 as gave Mr. Peale the charge and care of it; and on the 23d April, in that same year (1812), an ordinance was passed to carry the Act into effect, and the City Commissioners were directed to take charge of the State-house yard, and keep it in proper order.

On the 24th March, 1812, the Legislature authorized the County Commissioners to occupy the east and west wings of the State-house for the accommodation of the public offices of the city and county, and to convert the same into fire-proof buildings, or, if found most convenient, to rebuild the same upon a more extended plan; which law was adopted; and a fire-proof, and one other suitable portion of said building was appropriated exclusively to the safe-keeping of the records of the office of the Prothonotary of this court, and for his

use; but it was provided that the title in fee simple to the lot on which said offices may stand, be reserved to the Commonwealth.

By an Act of 13th March, 1815, the Legislature authorized the County Commissioners to take charge of the State-house, and to let the rooms, giving a preference of the upper part to Mr. Peale, but no lease to exceed one year, and repealed so much of the resolution of 1802 as made it the duty of Mr. Peale to take charge of the State-house; and after the sale to the city on the 23d March, 1818, they directed the Commissioners to give up possession of the lower part to the city.

On the 11th March, 1816, the Legislature passed a very disgraceful Act, providing for the sale of the State-house and State-house yard, by running a street or streets through it, laying it out in lots, and valuing them so as to produce \$150,000, and ordering the removal of the clock to Harrisburg; giving, however, an option before a specified period, to the city corporation to purchase the whole for \$70,000 (with certain exceptions), but expressly declaring that in such case "no part of the said ground lying to the southward of the State-house, within the wall as it is now built, be made use of for erecting any sort of buildings thereon, but the same shall be and remain a public green and walk forever."

The two lots reserved and excepted out of the State-house square, were the County Court-house lot, and the lot on the northeast corner, reserved for the use of the city, and the lot on the east side of the square, granted to the American Philosophical Society under the Act of the 28th March, 1785, "and the two public offices which, by the Act of March 24, 1812, were put into the possession of the Commissioners of Philadelphia County, which said offices are thereby released from the claim of the State, and given and granted in fee simple, in lieu of the expense laid out in repairs on the State-house yard; and the offices and ground on which they stand, or on which they are allowed by the said Act to stand, are thereby granted and confirmed to the said City and County of Philadelphia forever."

By the Consolidation Act, the whole of this entire square, with all the buildings on it, with the exception of the lot of the American Philosophical Society, is vested in the City of Philadelphia, subject, of course, to the public use re-declared by the Act of 1816, as to all the ground lying south of the State-house.

By an Act of 16th March, 1847, the County Commissioners and the Select and Common Councils,—whose powers are now all merged in the consolidated city,—were severally authorized to erect a new

court-house and a new city hall on parts of the State-house square; but the authority thus given has never been exercised, and the Act of the 2d April, 1860, was never carried into effect; a fortunate circumstance in the present state of our finances.

It will be perceived by this statement, and their present occupation, that all the buildings belonging to the city on the State-house square, are devoted entirely to public purposes—to the courts of justice—including the Supreme Court, who are expressly provided for in the Consolidation Act, and to all the public offices of the county, and of the city, into which they are practically merged, and by whose authority they are provided with a local habitation.

The State, bearing in mind the services rendered to science by this Society, and at the same time determined that this lot should never be held by private owners, nor devoted to any but public uses connected with the welfare of her commercial metropolis, on the 11th February, 1842, authorized the Society to sell or lease their lot, and to make legal conveyance of the same, so that the same shall be used for the accommodation of courts of justice, and offices connected therewith, or for the public use of the City or County of Philadelphia. Under this restriction it is clear there can be only two purchasers or lessees,—the United States and the City of Philadelphia; and it is equally certain that the latter should be its owner. The proceeds of sale can only be applied to the purchase of convenient ground and buildings for the accommodation of the Society, and the residue for the furtherance of the objects for which the Society was instituted. By the second section of the Act of 13th March, 1847, the Society were further authorized to lease such portions of their buildings as may not be required for their immediate use, for such rents and in such manner as they may deem expedient; such rents to be used by them solely for promoting the objects for which they were incorporated.

On the 25th April, 1857, the Legislature gave their consent to the United States purchasing the lot and buildings in pursuance of the Act of 1842: the United States to hold the same for the purposes and business of courts of justice, and the offices and officers connected therewith. The vaults and cellars were allowed to be rented like those under the City Hall, and under many of our churches, for the storage of goods and groceries; the rooms in the lower parts were often lawyers' offices. At one time, the Athenæum was located there; and now, we believe, they are occupied solely by the United States: the issues and profits have always been applied to the fur-

therance of the scientific objects of the Society. The number of scientific men is always small, in any community, their means are generally limited, and their pursuits are of a character not to enlist the sympathies or enthusiasm of the wealthier classes of society. It would seem impolitic and unwise, therefore, for the State that fostered it, or the city which should be proud of it, to cut off their limited resources by taxation, even if it be legal, which was never dreamed of by anybody until 1853.

The taxes claimed are for city and State from 1853 to 1858, both inclusive, amounting, without interest or costs, to \$1203.

All taxes on real estate in the City and County of Philadelphia are declared to be a lien on said real estate; the nature of which real estate is to a certain extent defined by the priority given to them over any recognizance, mortgage, judgment, debt, obligation, or responsibility which such real estate may become charged with or liable to. Now the eventual legal title to the Society lot is in the Commonwealth, whilst the Society have the use of it for what may be called a public purpose, the erection of a hall, library, and other buildings, as may be necessary for their proper accommodation. This is accompanied by a provision which no private individual could impose upon a fee simple estate, to wit,—a perpetual prohibition against alienation. The Society were expressly told that it was the intention and meaning of the Act making the grant, that the said lot of ground shall not be *sold, leased, or transferred* by the said Society or their successors, to any other person or persons, or bodies corporate; nor shall the same be applied by the Society to any other use or purpose but that of erecting buildings for the accommodation of the Society, as thereinbefore specified. A more guarded method of preserving this property, the free gift of the State, from being appropriated by any act of the law or of the Society, to any other than its expressed public and patriotic purposes, could not well have been devised. This provision being found to be too severe on the Society, they were permitted by legislative action,—1. To let the vaults or cellars under the building to be erected, and to lease any other part of the building for such purposes as may have affinity with the design of their institution, and for no other; but the issues and profits arising therefrom could only be applied to the purposes for which the Society was originally instituted, *and to no other*. 2. To sell or lease the lot, and make legal conveyance thereof, so as that the same shall be used for the accommodation *of courts of justice and offices connected therewith, or for public uses* of the City or County of

Philadelphia: Provided, however, that the proceeds of any such sale shall be applied to the purchase of convenient ground and buildings for the accommodation of the Society, so far as may be necessary to the furtherance of the objects for which the Society was instituted. 3. They were permitted to lease or let such portions of their building as may not be required for their immediate use; such rents to be used by them *solely for promoting the objects for which the Society was incorporated.*

It is clear, then, that the Society could not charge this lot by any recognizance, mortgage, judgment, debt, obligation, or responsibility, nor could they create any lien upon it; because it could not be sold by any form of execution, and this being the case, no taxes could be a lien upon it, and no form of proceeding to recover the same could create a lien upon this lot, because it could not be sold under any such judgment. It seems stronger in the case of taxes levied under the authority of the very Government that has expressly prohibited any sale of it, except in the cases specially pointed out, and by the character of its public uses as expressly declared. The uses for which it was given are public, and can neither be affected nor destroyed by the adverse action and process of a court of law. The court below were therefore right, and their judgment must be affirmed.

This Society numbers amongst its members many distinguished foreigners of great scientific eminence, and it corresponds with public bodies and private individuals devoted to the pursuit of science in every country in Europe; one of its latest correspondents being a Hungarian Society, whose Transactions are published in their native language. It has a most valuable library of about 27,000 volumes, of which a complete catalogue is now preparing at a very heavy expense, including a great many manuscript letters and papers of a most valuable and rare character, relating to the early history of this province and country. A large number of the works in the library are of a scarce and rare kind, and are not to be found on this side of the Atlantic, including a complete set of the Transactions of the Royal Society of London, commencing two centuries ago. The first President of this Society was the originator of the first fire company, the first public library, the first hospital, and the first academy, now the University of Pennsylvania, a signer of the Declaration of Independence, minister to France, one of our ministers plenipotentiary who signed the provisional articles and the definitive treaty of peace

between the United States and Great Britain, and finally one of the framers of the Constitution of the United States.

This was Dr. Benjamin Franklin, the patriot and the philosopher ; and I cannot but express a confident hope that the City and the State of which he was so distinguished an ornament, will never permit the hands of the tax-gatherer to diminish the fund devoted to the interests of science in every part of the world, both in peace and in war, and belonging to a Society of which he was the founder.

Judgment affirmed.

Pending nominations Nos. 446 to 455 were read.

The special committee on the Catalogue presented a report, which on motion of Dr. Bache was adopted and the committee discharged.

On motion of Judge King, it was *Resolved*, That the Society authorize and request its officers to execute a power of attorney, to M. A. Germain, of Pontoise, notary, charged with the execution of the Will of the late M. André Michaux, constituting him the attorney at law and in fact of this Society, to maintain its rights to the legacy bequeathed to it therein ; which power of attorney is now present and read before the Society.

Mr. Foulke tendered his resignation from the Library Committee, which was accepted, and Mr. Price was appointed by the Vice-President to supply the vacancy.

And the Society was adjourned.

Stated Meeting, April 18, 1862.

Present thirty-six members.

Dr. FRANKLIN BACHE, in the Chair.

Mr. Sidney George Fisher, a new member, was presented by Mr. Fraley.

Baron Ostensacken and Mr. Kimber, members of Corresponding Societies, were introduced by Dr. Le Conte and Professor Coppée.

Mirza Alexander Casem Beg, a new member, signified his