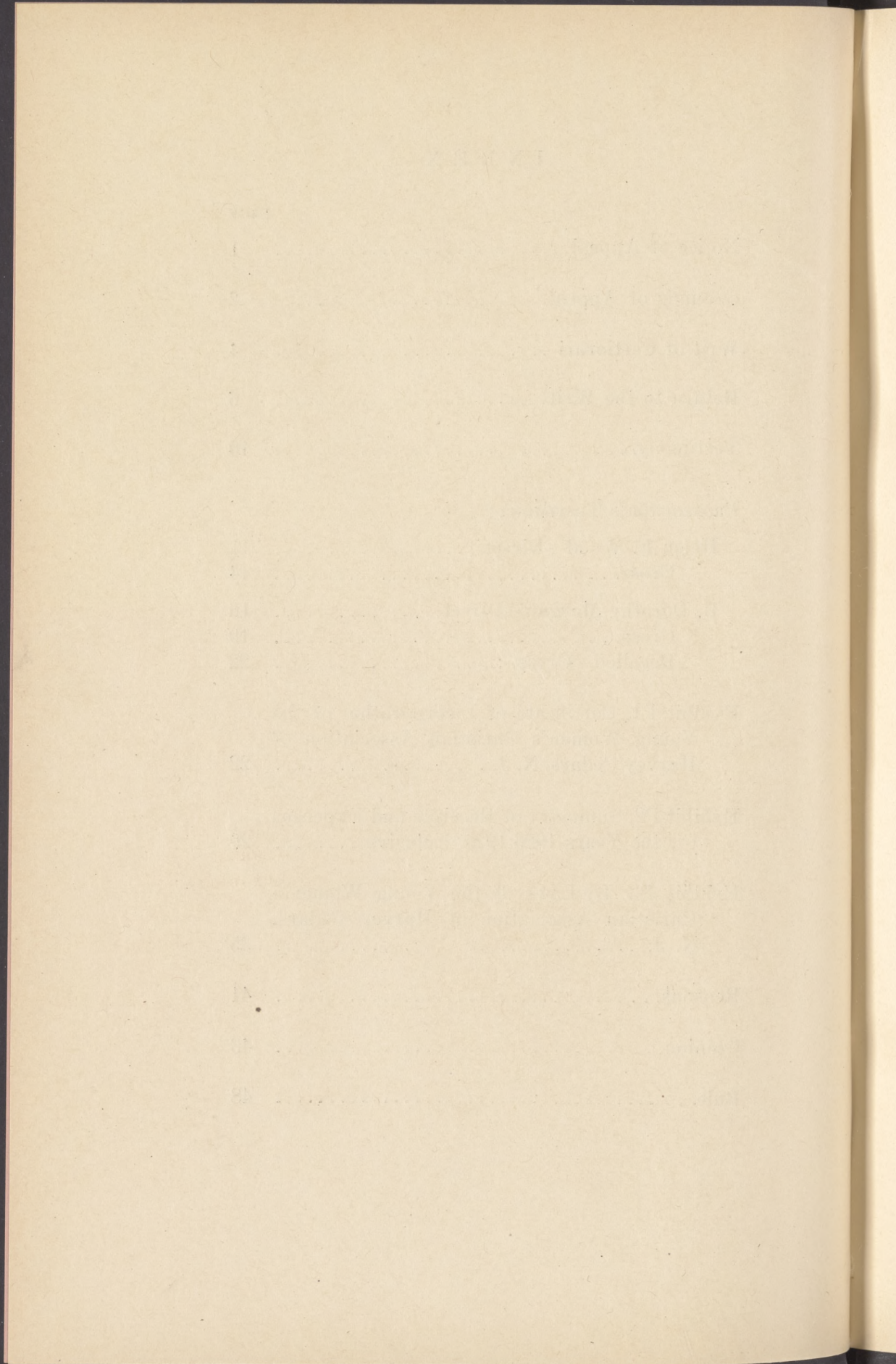


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NOTICE OF APPEAL.

(Filed March 4, 1931.)

NEW JERSEY SUPREME COURT.

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY
CEDARS, NEW JERSEY,

Prosecutor,

v.

ELSIE E. PELHAM, Collec-
tor of Taxes of the Bor-
ough of Harvey Cedars,

Respondent.

On Certiorari.
Notice of Appeal.

10

20

*To Messrs. McCarter & English, Attorneys of Prose-
cutor:*

Sirs:

Please take notice that the respondent in the above
entitled cause appeals to the Court of Errors and
Appeals from the whole of the judgment entered in
the above stated cause. 30

Dated February 26, 1931.

Respectfully yours,

HOWARD EWART,

Attorney of Respondent.

1. Because the Supreme Court erred in giving judgment partially in favor of the prosecutor-appellee instead of wholly in favor of the respondent-appellant, for the reasons that:

(a) The prosecutor-appellee is a New Jersey corporation in form only, created for the express purpose of evading taxation in the State of New Jersey, and is controlled and operated by a corporation of the State of Pennsylvania. 10

(b) The record shows the prosecutor-appellee is not a corporation organized exclusively for any of the purposes set forth in the statute under which exemption is claimed (P. L. 1927, Chap. 338).

(c) The record shows the prosecutor-appellee to be a corporation conducted at least in part for profit. 20

(d) The record shows that the land and buildings of prosecutor-appellee upon which exemption is claimed produces an income the whole of which is not used for charitable, benevolent or religious purposes.

(e) The prosecutor-appellee performs no essentially public service for the citizens of New Jersey and hence is not entitled to exemption from the common burden of taxation. 30

(f) The prosecutor-appellee is not entitled to exemption under the statute (P. L. 1927, Chap. 338).

HOWARD EWART,

Attorney for and of Counsel with Respondent-Appellant.

[ENDORSED]

Service of the within Grounds of Appeal is acknowledged this 5th day of March, 1931.

10 McCarter & English,
 Attorneys for Prosecutor-
 Appellee.

WRIT OF CERTIORARI.

20 (Filed August 11, 1930.)

NEW JERSEY, ss.

 The State of New Jersey to Elsie E. Pelham, Collector of Taxes of the Borough of (L. S.) Harvey Cedars in the County of Ocean, GREETING: We being willing for certain reasons to be certified of an assessment of taxes made against the Young Women's Christian Association of Harvey Cedars, N. J., for the year 1929, by the Assessor of Taxes of the said Borough of Harvey Cedars, do command you that the said assessment for taxes so made by the Assessor of Taxes, together with all subsequent proceedings had by you with respect to the collection thereof and all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the eighteenth day of August, next, you

30

certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, HONORABLE WILLIAM S. GUMMERE, Chief Justice of our said Supreme Court, at Trenton, this 28th day of July, 1930.

FRED L. BLOODGOOD,

Clerk. 10

McCARTER & ENGLISH,

Attorneys.

I allow the within writ. Let it be sealed. Leave to both parties to take depositions.

J. L. BODINE, 20
J.

RETURN TO THE WRIT.

(Filed August 11, 1930.)

NEW JERSEY SUPREME COURT.

10

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY
CEDARS, NEW JERSEY,
Prosecutor,

v.

ELSIE H. PELHAM, Collec-
tor of Taxes of the Bor-
ough of Harvey Cedars,
20 *Defendant.*

On Certiorari.
Return to the Writ.

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

30 In obedience to the command of the within writ,
I, Elsie E. Pelham, Collector of Taxes of the Bor-
ough of Harvey Cedars, in the County of Ocean, do
certify and send to you, the Honorable Justices of
the New Jersey Supreme Court, the assessment of
taxes made against the Young Women's Christian
Association of Harvey Cedars, N. J., for the year
1929, by the Assessor of Taxes of the said Borough
of Harvey Cedars, as the same remains of record in
the Tax duplicate of the Borough of Harvey Cedars
for the year 1929, and all subsequent proceedings

had by me with respect to the collection thereof and all things touching and concerning the same, as fully and entirely as before me they remain, as appears in the schedule hereto annexed, as I am commanded.

In witness whereof, I have hereunto set my hand and seal this 5th day of August, A. D. nineteen hundred and thirty.

ELSIE E. PELHAM (L. S.), 10
*Collector of Texas of the Bor-
ough of Harvey Cedars.*

SCHEDULE.

BOROUGH OF HARVEY CEDARS
1929 TAX DUPLICATE

Page 27, Item 124, Line 16: 20
Owners (Name and address of Persons, firm, Com-
pany or corporation assessed as Owners):
Young Women Christian Ass.
Harvey Cedars
765 Broad St.
Newark, N. J.
Location of Property:
Block or Section:
Lot or Plot Number:
Street, Avenue, or Highway: 30
Atlantic Ave
Bay Side
Description:
Description of Property Owned:
Frame Bldg. & Out Bldgs.
Size of Lot or Plot:
No. of Acres: 6

No. of Lots or Plots

Valuations:

Land: \$1800

Improvements: \$23000.

Value of Automobiles:

Value of Personal: \$1000.

Total Value Real and Personal. \$25800.

10 Exemptions:

Chap. 236 P. L. 1918 H'hold Gds.:

Chap. 338 P. L. 1927 Autos:

Total Net Value Real and Personal: \$25800.

Taxes:

Poll Tax:

No. Dogs:

Dog Tax:

Total Amount of Tax:

Memoranda:

20 1929 TAX NOTICE 1929

BOROUGH OF HARVEY CEDARS

Mr Young Womens Christian Association

Elsie E. Pelham, Collector

High Point, New Jersey.

Location of Property Atlantic Ave & Bayside

No. of Block

Acreage or Lot Nos. 6

Valuation of Land 1800

Valuation of Buildings 23000

30 Valuation of Personal 1000

Exemptions

Total Net Value 25800

Poll Tax

TOTAL TAX 1432.68

Read Other Side

Received Payment for First Half.....19....

.....

Collector

Received Payment for Second Half.....19....

.....

Collector

Discount of 2% if paid in full on or before JUNE
1, 1929

Rates Per Hundred

State Road Tax.....	.10	
State School Tax.....	.26309	10
State Soldiers' Bonus.....	.01378	
State Institutional Tax.....	.05	
County Tax.....	1.29487	
County Library	.02	
Local Tax	3.8113	

TOTAL 5.55304

TESTIMONY.

NEW JERSEY SUPREME COURT.

10

Y. W. C. A. OF HARVEY
CEDARS, NEW JERSEY,
Prosecutor,

v.

ELSIE H. PELHAM, Collec-
tor of Taxes of the Bor-
ough of Harvey Cedars,
Defendant.

20

APPEARANCES:

MESSRS. McCARTER & ENGLISH, by GEORGE W. C.
McCARTER, Esq., for the prosecutor.

FRANKLIN H. BERRY, for the defendant.

(Testimony taken before GEORGE C. LOWE, Su-
30 preme Court Commissioner, at the office of Howard
Ewart, 30 Main Street, Toms River, New Jersey,
on Thursday, September 4, 1930, at ten-thirty A. M.)

(Therese Cross Bergen sworn as stenographer.)

(It is stipulated that the signatures of the wit-
nesses be waived.)

HELEN F. WOOD, called and sworn on behalf of the prosecutor, testified as follows:

Direct examination.

By Mr. McCarter:

10

Q. Miss Wood, where do you live?

A. Wynwood, Pennsylvania.

Q. And do you hold any office in the Y. W. C. A. of Harvey Cedars, prosecutor in these proceedings?

A. I am the president.

Q. How long have you been president?

A. Two years.

Q. I show you a certified copy of the certificate of incorporation with the seal of the Secretary of State of this State, and ask you if you recognize 20 that as a copy of the certificate of incorporation of the prosecutor?

A. I do.

Mr. McCarter: I offer that in evidence.

(Received in evidence and marked Exhibit P1.)

Q. Does the prosecutor, which I shall sometimes hereafter refer to as the Association, own any prop- 30 erty in the Borough of Harvey Cedars in Ocean County?

A. Yes.

Q. What does that property consist of?

A. Consists of a building which is used for a summer camp for business and industrial young girls.

Q. For what?

A. For business and industrial women.

Q. And about what size is the property, how much land is it in a general way?

A. I cannot answer that.

Q. I will ask somebody else that. Do you know how long the Association has owned that property?

A. Well, no; it is in the neighborhood of seven or eight years. I forget exactly.

10 Q. Since before you were president anyway?

A. Yes.

Q. I suppose there is some furniture in the buildings on the premises?

A. Yes, it is completely furnished for the uses of the camp, the things are left there.

Q. How many buildings, if any, are there?

A. Well, there are some small outbuildings for the uses of the camp, but it is mainly one large building.

20 Q. Now, in a general way what is the building used for?

A. Well, it is operated as a vacation camp for women during July and August, about that period, entirely closed the rest of the year.

Q. Have you finished?

A. Do you want to know more particularly?

Q. I want as full particulars as you can give?

30 A. The women who go there pay a fee for the period of their stay, which is usually a couple of weeks; that fee is not sufficient to cover the expense of their stay at the camp. The women who go there come from various States, not simply New Jersey, New York and Pennsylvania, but some of them from more distant States, though, of course, largely from nearby States. They are almost all self-supporting women. Their stay at the camp is not simply a vacation period, there are various programs, courses in nature study, instruction in swimming, training

for qualification in life saving service, inspirational features in connection with the camp.

Q. Are there any religious services of any kind held?

A. Yes, there are religious services, not particularly formal or stated but organized by the women who are there themselves; inspirational, not sectarian or denominational in their character.

10

Q. Would you say, generally speaking, that the work carried on at the camp is the kind of work that is carried on by Young Women's Christian Associations throughout the country?

A. Well, yes, because it is distinctly in line with the present day thinking and policy of Y. W. C. A. work, which is the development for the individual, physically and intellectually and spiritual, but not connected particularly with any form of religion

20

Q. Not connected with any particular denomination, not Presbyterian or Methodist —

A. No, and even beyond that we have quite a good many Catholics and some Jewish people who participate in our work.

Q. Now, you say the sums paid by the girls as board or whatever you choose to call it are not sufficient to defray the cost of maintaining the institution there. How is the deficit made up?

A. It is made up by charitable contributions. 30

Q. From members of the public?

A. Yes.

Q. About how many girls are ordinarily accommodated at one time?

A. I think I would rather leave the answers to those questions as to figures and numbers entirely with Miss Morgan, who knows about it exactly.

Q. Now, Mrs. Wood, you have, of course, a staff of workers at the camp who run it?

A. Yes.

Q. Are any of them unpaid volunteer workers?

A. Some of them are paid and some are unpaid or only partially paid. There are varieties of relationships to members of the staff. Of course, some
10 of the members of the staff are people highly trained for their particular task in connection with the camp, and that is really a professional relationship.

Q. One more question. The Association only owns this one piece of property at Harvey Cedars?

A. Yes.

Cross-examination.

By Mr. Berry:

20

Q. Mrs. Wood, what is the amount charged?

A. I would rather refer that to Miss Morgan. We changed our rates this summer.

Q. Were you an officer of the Association at the time it took title to this property?

A. No, I have been president for two years and a half.

Q. You don't know anything about the transfer from the Philadelphia society?

30 A. No, only except by hearsay, and we have the facts with us.

Q. You mentioned that the girls came from different States. I suppose the majority of them are from the neighborhood of Philadelphia, aren't they?

A. I presume the majority of them are, but this is one of the very few seashore camps for girls and women run by any Christian Association, and for that reason it draws people from a somewhat wide

area. I presume the majority of them are from Pennsylvania.

Q. Well, how wide do you think that area would extend? It wouldn't go out into the middle west, would it?

A. Oh, there might be a woman or two coming from Pittsburgh, something like that. I couldn't tell you exactly the geographical distribution.

10

Q. Some from New York?

A. New York and New Jersey, the inland parts of New Jersey.

Q. The camp is run just during the months of July and August?

A. Well, it is run a week into the month of September this year, but really it is a two months or two months and a half period of actual occupancy by the girls and women. The property is not suitable for occupying during most of the year.

20

Q. Do any of them stay during the whole period that the camp is open?

A. I doubt whether any stay the whole period. Some come for just week-ends for a very short stay, some for a week or two weeks is the average period, but some longer, but not many; the average period is shorter.

Q. They are all girls that work and earn their own living, aren't they?

A. Yes. Or there might be some girls who are still being supported by their families, but not many at that camp. The most of them are wage-earners. There would not be any whose financial circumstances are such that they would not need to work if that is what you mean. I doubt if there would be anything more of those than negligible.

30

Q. You are not familiar with the exact rate

charged, but do you know whether or not they are all charged the same rate?

A. Yes, there is a flat rate, the figure will be given you in a minute. It is somewhere in the neighborhood of \$12 or \$13 a week. This summer we have had some girls there who were there on charitable contribution definitely. A certain amount this summer we have had the use of to send girls to our camp partly because of the very bad industrial conditions since the summer, and we have had some girls there this summer who were out of work and really without money enough to get themselves food, if we had not had a fund to send them on, but that is exceptional and temporary.

Q. What fund is that?

A. That is a member of our board, a wealthy woman who has an amount of money at her disposal and she allowed us to spend a part of it this summer for that purpose.

Q. I believe that is all.

B. DOROTHY MORGAN, called and sworn on behalf of the prosecutor, testified as follows:

Direct examination.

30

By Mr. McCarter:

Q. Miss Morgan, what is your connection with the Y. W. C. A. of Harvey Cedars?

A. I am one of its paid secretaries.

Q. And have you been connected with it since its organization?

A. Yes.

Q. You are, of course, familiar with the property that is assessed for taxes and which is up for review in this case?

A. Quite familiar with it.

Q. Do you remember when the Association acquired title to that property?

A. In 1921, I think.

Q. It acquired title from what grantor? Who 10
formerly owned the property—well, let me withdraw that question. Did it not acquire title from the Y. W. C. A. of Philadelphia?

A. Yes, the Y. W. C. A. of Philadelphia.

Q. And do you recall what year that was in?

A. That was in 1925.

Q. And do you recall that that conveyance was made upon the advice of your attorneys, Messrs. McCarter & English?

A. I do.

20

Q. Owing to the fact that there was a change in the exemption laws of the State of New Jersey by which exemptions were limited to charitable corporations organized under the laws of New Jersey?

A. For that reason.

Q. Now, can you tell us exactly what kind of work is carried on by the Y. W. C. A. of Harvey Cedars in this property which we are concerned with?

A. We aim, through the camp, to provide a health- 30
ful vacation for girls and women through furnishing a wholesome place for them to live in and wholesome food for them to eat and in addition giving them a program along educational, inspirational and spiritual lines, the thing that we give at our camp we feel is very much more than they could secure in a hotel or just any ordinary private camp; because of the nature of our aim and our work, we go into the deeper things of the development of girlhood for

better citizenship and the spiritual end of things, which is not touched by an ordinary camp or hotel.

Q. Have you a name for the camp?

A. Camp Whelen.

Q. What rate do the girls pay?

A. In 1929, the board was \$12 a week.

Q. Has it been changed this year?

10 A. Yes. \$13 because of the fact that the rate we were charging did not compensate for the expenses.

Q. Well, has the rate at any time fully compensated for the expenses of the camp?

A. It has not.

Q. Have you computed a statement of the receipts and disbursements for the camp for the years 1926-27-28 and '29?

A. Yes, sir.

20 Q. I show you a statement and ask you if that is it?

A. That is the statement.

Mr. McCarter: I offer that in evidence.

(Received in evidence and marked Exhibit P2.)

Q. Have you a copy of the by-laws of the Association?

A. That is a copy.

30

Mr. McCarter: I offer that in evidence.

(Received in evidence and marked Exhibit P3.)

Q. Are there any educational forces of any kind connected with this camp?

A. Yes.

Q. What are they?

A. Nature lore, general recreation and health program, swimming and boating and tennis, things of that nature, and what we term the Inspirational Hour, avoiding the definite term of religion, because girls usually side-track that more orthodox term and like the other word; they will fall in with the program much easier if it is known as an Inspirational Hour, or something of that nature, and, of course, through our Vesper Services and Sunday meetings we promote a very definite religious atmosphere. 10

Q. How many girls are there?

A. It accommodates 125 guests.

Q. And the season is from the 1st of July on?

A. Usually the last week in June, through Labor Day, which is generally through the first week in September.

20

Cross-examination.

By Mr. Berry:

Q. You say it accommodates 125?

A. Yes.

Q. Well, are there that many there regularly during the summer?

A. We do not average that number.

Q. What do you average?

30

A. We average probably in the neighborhood of 90, depending a great deal on the season. A warm summer will bring so many more people; that is why our statement of receipts and expenses varies to a large extent because our receipts vary as the patronage varies and that depends on many times the type of summer we have.

Q. I notice, Miss Morgan, from this statement

which has been offered in evidence from your summary of the account for the years 1926 to 1929, inclusive, that the deficit dropped from something over \$8,000 in 1926 to slightly over \$2,000 in 1927 and 1928, and to \$896.16 in 1929. You said that you raised the rate from \$12 to \$13 a week during 1930, to help remove this deficit. Did that —

10 A. Not to remove the deficit entirely but to —

Q. Well, what effect did that increase have on the deficit this year?

A. It has had no effect this year because our receipts from guests have been lower.

Q. You haven't had as many this year?

A. That is as far as I can tell. Of course, we haven't our final financial statement; we will have; but because of the general depression if it had not been for this fund that Mrs. Wood mentioned previously, we would not have had as many people using the camp; that is why I said the average number of people using it is depending on financial conditions and climatic conditions and so forth and so on.

20 Q. Are they all charged the same rate, \$13 a week?

A. They are.

Q. Do you know what the area of the ground is?

A. I think it is about seven acres.

Q. Are you familiar with the conveyance from the Y. W. C. A. of Philadelphia to the present organization?

30

A. Yes.

Q. And you have already testified in response to Mr. McCarter's question, that was done upon his advice due to change in the law concerning charitable institutions so that they might obtain exemption from taxation?

A. Yes.

Q. Do you know what consideration was paid by

the Y. W. C. A. of Harvey Cedars to the Philadelphia Association?

A. The usual consideration of one dollar in connection with a gift.

Q. Can you tell us any more definitely than Mrs. Wood, the area covered by the girls who attend your camp, that is, where they all come from?

A. I would say that Mrs. Wood had covered it very well. There are very few of them come from beyond the State of Ohio; she mentioned Pittsburgh, and the others come from Pennsylvania, New Jersey and New York, probably a few from Maryland. 10

Q. Delaware?

A. Delaware, yes; some few from the District of Columbia.

Q. Assuming that you had had the same number of girls attend the camp this year as in 1929, would the increased rate of \$13 have covered the expenses? 20

A. I wouldn't suppose that it would entirely.

Q. It would, however, decrease the deficit considerably from \$896, wouldn't it?

A. Yes, but you see another thing that we are dependent on is the amount of repairs needed. It so happens that in 1929 the repairs to the buildings were lower, but there are other years —

Q. You charge the repairs up to your operating account?

A. Oh, operating, repairs, painting and replacement of broken beds, broken bureaus, and so forth and so on. 30

Q. I think that is all, Miss Morgan.

Mr. McCarter: I don't think I need to call the other lady. I think I have all the testimony that I need.

Mr. Berry: Do you mind if I ask Miss Morgan one more question?

Mr. McCarter: No.

10 B. DOROTHY MORGAN, resumed.

By Mr. Berry:

Q. I believe the same item appears on each of these reports for the years 1926 to 1929, an item of publicity. What did that comprehend?

A. That takes in the circulars that are made up to be distributed in order to get patronage for the camp.

20 Q. That is all.

TESTIMONY CLOSED.

EXHIBIT P1.

N-3284

30 THIS IS TO CERTIFY that we, the undersigned, do hereby associate ourselves into a corporation pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act to Incorporate Associations not for Pecuniary Profit," (approved the twenty-first day of April, 1898,) and the supplements thereto, and amendments thereof, and Do HEREBY CERTIFY AS FOLLOWS:

1. The name by which such corporation is to be known in law is "The Young Women's Christian Association of Harvey Cedars, New Jersey."

2. The purpose for which the corporation is formed, is the spiritual, intellectual, social, mental, moral, and religious welfare of women, especially young women who are dependent on their own exertions for support. 10

3. The corporation is to be located, and its principal business conducted, in the Borough of Harvey Cedars, in the County of Ocean, and State of New Jersey.

4. The members of the Association shall be the undersigned, and such other women as shall be elected to membership by the Trustees. No person shall be eligible to membership who shall not, at the time of her election, be a member in good standing of the Association now known as "The Young Women's Christian Association of Philadelphia," which was incorporated by an Act of the Legislature of the Commonwealth of Pennsylvania, entitled "An Act to Incorporate the Women's Christian Association of Philadelphia." (approved the ninth day of May, 1871). 20 30

5. The number of Trustees shall be five. The Trustees for the first year shall be:

Theresa W. Paist,

Wayne, Pennsylvania

Pearl M. Snowden,

Rosemont, Pennsylvania

Catherine H. Earle,
1820 South Rittenhouse Square,
Philadelphia, Pennsylvania.

Martha L. Dempster Field,
Haverford, Pennsylvania

Edith Huggard Sharp,
54 East Oak Street,
Moorestown, New Jersey.

10

6. The corporation may have an office outside of the State of New Jersey, for the convenience of its officers and trustees, where meetings of the trustees may be held, at such places as may be determined by those trustees.

20 7. The corporation shall maintain an office in the State of New Jersey, in the building known as The Young Women's Christian Association Building in the Borough of Harvey Cedars, in the County of Ocean, and State of New Jersey, and Guerrah Maus, shall be the agent in charge thereof, upon whom process against the corporation may be served.

30 8. The limitation upon the qualification of members, as provided by paragraph 4 hereof, shall not be deemed to be a limitation upon the persons for whose benefit the purposes and objects of the corporation may be carried out. Subject to the By-laws, the purposes of the corporation, as defined in paragraph 2 hereof, may be performed for the benefit of any person or persons, whether or not a member of the corporation.

IN WITNESS WHEREOF, we have hereunto set our

hands and seals this 20th day of September, A. D. 1923.

THERESA W. PAIST	(L. s)
PEARL M. SNOWDEN	(L. s)
CATHERINE H. EARLE	(L. s)
MARTHA L. D. FIELD	(L. s)
EDITH HUGGARD SHARP	(L. s)

Signed, sealed and delivered in the presence of 10

GEORGE WOLBERT
KATHERINE A. DEMIE

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

20

BE IT REMEMREBED that on this 20th day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty-three, before me, the subscriber, a Notary Public personally appeared, THERESA W. PAIST, PEARL M. SNOWDEN, CATHERINE H. EARLE, MARTHA L. DEMPSTER FIELD, and EDITH HUGGARD SHARP, who, I am satisfied, are the persons signing the within Certificate, and to whom I first made known the contents thereof, and thereupon, they acknowledged that they signed, sealed and delivered the same, as their voluntary acts and deeds, for the uses and purposes therein expressed. 30

Theresa W. Paist
Pearl M. Snowden
Catherine H. Earle
Martha L. Dempster Field
Edith Huggard Sharp

Witness my hand and notarial seal the day and year aforesaid.

GEORGE WOLBERT

(SEAL)

Notary Public

Commission expires February 25, 1925.

1598

In the Courts of Common Pleas of Philadelphia
10 County

Acknowledgment (Notary).

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

I, MEREDITH HANNA, Acting Prothonotary of the Courts of Common Pleas of said County, which are
20 Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do Certify, That GEORGE S. WOLBERT, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a NOTARY PUBLIC for the Commonwealth of Pennsylvania residing in the County aforesaid, duly commissioned and qualified to administer oaths and
30 affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said NOTARY PUBLIC and verily believe his signature thereto is genuine, and I further certify that the

said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 25 day of September in the year of our Lord one thousand nine hundred and Twenty-Three (1923).

MEREDITH HANNA, 10
(SEAL) Acting Prothonotary.

I, BURDETTE G. LEWIS, Commissioner of the Department of Institutions and Agencies of the State of New Jersey do hereby certify that the foregoing certificate of Incorporation of the Young Women's Christian Association of Harvey Cedars, New Jersey, has been examined by me and I hereby approve 20 the same and direct that the Certificate shall be filed in accordance with law.

BURDETTE G. LEWIS,
Commissioner of Institutions and
Agencies of the State of New Jersey.
September 28, 1923.

Signed in the Absence of the Commissioner
by William J. Ellis

ENDORSED:

"RECEIVED in the Clerk's Office of the County of 30
Ocean, on the 1st day of Oct. 1923 at 10 o'clock A.
M. and Recorded in Book 4 of Corporations Page
179 &c.

JOHN A. ERNST
CLERK."

"Filed and recorded Oct 1 1923

THOMAS F. MARTIN
Secretary of State."

STATE OF NEW JERSEY.

Department of State.

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of The Young Women's Christian Association of Harvey Cedars, New Jersey, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the First day of October, A. D. 1923, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official (SEAL) Seal at Trenton, this Twenty-first day of June, A. D. 1930.

JOSEPH F. S. FITZPATRICK,
Secretary of State.

CERTIFIED COPY

OF

CERTIFICATE
of Incorporation

OF

The Young Women's Christian
Association of Harvey Cedars
New Jersey.

EXHIBIT P2.

CAMP WHELEN

Summary 1926 - 1929 inc.

	Expenses	Receipts	Deficit	
1926.....	\$16,730.93	\$ 8,345.56	\$8,385.37	10
1927.....	13,370.03	11,233.85	2,136.18	
1928.....	11,659.05	9,204.15	2,454.90	
1929.....	12,289.54	11,393.38	896.16	
Total.....	54,049.55	40,176.94	13,872.61	

Young Women's Christian Association
of Harvey Cedars

20

FINANCIAL STATEMENT

Month of Jan. 1 - Dec. 31, 1929

Camp Whelen Branch

RECEIPTS

Permanent room rent.	3,889.24	
Food	6,260.52	
Sale of supplies	1,000.88	
Recreation	160.00	30
Laundry	24.49	
Garage	15.50	
Truck	35.25	
Refund	7.50	
		11,393.38

EXPENSES

Salary	697.73
" —Food .	616.14

	Wages	1,631.71	
	“ —Food	1,022.60	
			3,968.18
	Telephone	27.70	
	Fuel	179.20	
	Auto Expense	216.60	
	Food—Ice	2,027.80	
10	Office supplies	44.77	
	Housekeeping supplies	97.32	
	Dining Room supplies	12.85	
	Store	843.13	
	Repairs	1,682.87	
	Renewals	600.11	
	Equipment	35.90	
	Publicity	134.72	
	Postage	32.03	
	Lecture	5.00	
20	Laundry	271.44	
	Recreation—Program	285.99	
	Refund	144.10	
	Maintenance	10.26	
	Magazines	2.00	
	Insurance	952.00	
	Heat & Light	115.57	
	Supervisory Overhead	600.00	12,289.54
	Difference		896.16
30	Total		12,289.54

Young Women's Christian Association
of Harvey Cedars

FINANCIAL STATEMENT

Month of Jan. 1 - Dec. 31, 1928

Camp Whelen Branch

RECEIPTS

10

Room rent	3,176.82
Store	706.17
Garage	9.25
Program fees	189.56
Refunds	51.48
Food	5,070.87

9,204.15

EXPENSES

Salary	1,070.89
“ —Food..	513.09
Wages	1,174.18
“ —Food..	759.32
	3,517.48
Telephone	22.68
Fuel	161.50
Auto Expense	152.86
Food—Ice	1,577.79
Office supplies	42.89
Housekeeping supplies	105.62
Dining Room supplies	26.93
Store	666.16
Repairs	2,992.55
Renewals	105.83
Equipment	7.75
Publicity	150.92
Postage	42.64
Carfare	41.25
Laundry	258.72

30

	Recreation—Program .	81.52	
	Refund	26.59	
	Maintenance	12.00	
	Pamphlets	1.88	
	Insurance	952.00	
	Heat & Light	111.49	
	Supervisory Overhead	600.00	11,659.05
10			
	Difference		2,454.90
	Total		11,659.05

Young Women's Christian Association
of Harvey Cedars

FINANCIAL STATEMENT

20

Month of Jan. 1 - Dec. 31, 1927

Camp Whelen Branch

RECEIPTS

	Room rent	3,326.90	
	Garage rent	9.50	
	Store	975.02	
	Telephone	1.05	
30	Program—Recreation	164.01	
	Refunds	12.95	
	Dining Room	6,744.42	
			11,233.85

EXPENSES

	Salary	1,517.22
	Wages	2,395.48
	Telephone	20.23
	Fuel	137.95

Plaintiff's Exhibits

33

Auto Expense	185.79	
Food—Ice	2,697.30	
Office supplies	36.19	
Housekeeping supplies	94.71	
Dining Room supplies	13.76	
Store	784.81	
Repairs	1,228.51	
Renewals	2,002.82	10
Equipment	28.75	
Publicity	159.73	
Postage	32.54	
Carfare	.15	
Laundry	248.76	
Recreation—Program	108.65	
Refund	52.75	
Maintenance	12.75	
Books	1.25	
Insurance	952.00	20
Heat & Light	57.93	
Supervisory Overhead	600.00	13,370.03
Difference	2,136.18	
Total	13,370.03	

30

Young Women's Christian Association
of Harvey Cedars

FINANCIAL STATEMENT

Month of Jan. 1 - Dec. 31, 1926

10

Camp Whelen Branch

RECEIPTS

Room rent	2,480.61
Store	713.43
Telephone	1.35
Program fees	112.70
Food	3,909.47
“ —Employees . .	1,128.00

8,345.56

20 EXPENSES

Salary	1,292.63
Wages	2,378.31
Telephone	20.68
Fuel	124.00
Auto Expense	224.41
Food	2,304.24
Office supplies	16.00
Housekeeping supplies	57.68
Dining Room supplies	21.86
30 Store	609.26
Repairs	6,810.83
Renewals	149.89
Equipment	633.28
Publicity	152.08
Postage	41.07
Laundry	139.61
Recreation—Program	115.51
Refund	14.25

Plaintiff's Exhibits

35

Maintenance	1.00	
Insurance	952.00	
Heat & Light	72.34	
Supervisory Overhead	600.00	16,730.93
Difference		8,385.37
Total		16,730.93

10

EXHIBIT P3.

BY-LAWS OF THE YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY CEDARS,
NEW JERSEY

ARTICLE I.

20

NAME

This organization shall be called the *Young Women's Christian Association of Harvey Cedars, New Jersey.*

ARTICLE II.

PURPOSE

30

Section 1. The purpose for which the Association is formed is the spiritual, intellectual, social, mental, moral, and religious welfare of women, especially, young women who are dependent on their own exertions for support.

Section 2. This purpose shall be accomplished through the association of young women in personal

loyalty to Jesus Christ as Saviour and Lord, through the promotion of growth in Christian character and service through physical, social, mental and spiritual training so that they may become a social force for the extension of the Kingdom of God.

- 10 Section 3. This purpose, without limitation of other methods, shall be accomplished by the conducting by the Association, at some seaside resort in the State of New Jersey, of a summer camp, summer-home, or boarding-home for young girls and women, particularly those who are self-supporting, or are girls in the grade schools and high schools.

ARTICLE III.

20

MEMBERSHIP

Any woman having the qualifications provided for in paragraph 4 of the certificate of incorporation may become a member of this Association upon being elected as such by a majority vote of the trustees at any regular or special meeting thereof. Such membership shall cease unless such members be re-elected by said Trustees at the time of the annual meeting.

30

ARTICLE IV.

DUTIES

Section 1. It shall be the duty of each member to advance the purpose of the Association.

Section 2. The Board of Trustees shall have

power to suspend, or expel, any member for conduct injurious to the Association after granting her opportunity to appear before the Board of Trustees to present her defense.

ARTICLE V.

BOARD OF TRUSTEES

10

Section 1. The business of the Association shall be conducted by a Board of five Trustees, in whom shall be vested the management of the Association, subject only to these by-laws, the certificate of incorporation, and the laws of the State of New Jersey.

Section 2. It shall not be necessary to the validity of any action of the Board of Trustees that it be 20 authorized or ratified by vote of the members.

Section 3. The first trustees named in the certificate of incorporation shall hold office until the first regular annual meeting of the members, at which meeting there shall be elected a Board of Trustees to hold office for the ensuing year. The Board of Trustees then, and at subsequent meetings, elected shall hold office for one year, or until the election of their successors. Any vacancy in the Board of 30 Trustees occurring during the year may be, by vote of a majority of the remaining members of the Board, at any regular or special meeting, filled for the unexpired term.

ARTICLE VI.

ANNUAL MEETINGS

Section 1. The annual meeting of the members of the Association shall be held on the first Monday in February in each year at the office of the Young
10 Women's Christian Association of Philadelphia, #211 Morris Building, Philadelphia, Pennsylvania. Special meetings of the members may be called by vote of the Board of Trustees upon seven days notice thereof mailed to each member at her last known post office address, as shown on the records of the Association.

Section 2. The Board of Trustees shall hold at least one regular annual meeting, which shall be held
20 at the office of the Young Women's Christian Association of Philadelphia, #211 Morris Building, in the City of Philadelphia, Pennsylvania, immediately after the adjournment of the annual meeting of the members on the first Monday in February in each year. Special meetings of the Board of Trustees may be called by the President, or upon written call signed by at least three members of the Board. Notice of a special meeting shall be delivered or
30 mailed to each member of the Board of Trustees, at her address, as shown on the records of the Association, at least seven days prior to the time specified for the meeting. All special meetings of the Board of Trustees shall be held either at the principal office of the Association in New Jersey, or at the office of the Young Women's Christian Association in the City of Philadelphia, Pennsylvania, unless the Board, in writing, unanimously agree to meet elsewhere.

ARTICLE VII.

OFFICERS

Section 1. There shall be three officers of the Association—a President, a Vice-President, and a Secretary and Treasurer, who shall be elected by the Board of Trustees from among their number at the regular annual meeting of the Board. They shall hold office for one year, or until their successors shall be elected. A vacancy in any office, occurring during the year, can be filled for the unexpired term by vote of the Board of Trustees, at any special meeting. 10

Section 2. The duties of the President shall be to preside at all meetings of the Board, and of the members, to appoint all committees thereof, which she or the Board may deem necessary, and generally to act as executive officer of the Association. 20

Section 3. The duties of the Vice-President shall be to perform the duties of the President, in case of the absence or disability of that officer, or a vacancy in the office of President.

Section 4. The duties of the Secretary shall be to attend all meetings of the members and of the Board of Trustees, to record the proceedings at such meetings in the minute books, to record and preserve a roster of the members of the Association showing their names and post office addresses; she shall have custody of the corporate seal; and she, or the President, shall affix such seal to such instruments executed on behalf of the Association, as may be ordered by the Board of Trustees. 30

Section 5. The office of Treasurer shall be held by the same person who is Secretary. The duties of the Treasurer shall be safely to keep the funds of the Association, subject to the order of the Board of Trustees, and to disburse the same under the authority of the Board of Trustees, and as ordered by the Board.

10

ARTICLE VIII.

QUORUM

At all meetings of the members, five members shall constitute a quorum. At all meetings of the Board of Trustees, three shall constitute a quorum.

20

ARTICLE IX.

AMENDMENTS

These by-laws may be amended at any regular or special meeting of the members, provided that if amended at any special meeting, the notice of the meeting shall include a copy of the proposed amendment.

Upon motion, the meeting adjourned.

30

.....

Secretary of the Meeting

Adopted—October 2, 1923.

REASONS.

(Filed August 12, 1930.)

NEW JERSEY SUPREME COURT.

10

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY
CEDARS, NEW JERSEY,

Prosecutor,

v.

ELSIE H. PELHAM, Collec-
tor of Taxes of the Bor-
ough of Harvey Cedars,

Defendant.

On Certiorari.
Reasons.

20

The prosecutor alleges the following reasons for the cancellation of the assessment brought up by the writ in this cause:

1. Because the property assessed is exempt from taxation.

30

2. Because the property assessed was and is actually and exclusively used in the work of an association and corporation organized exclusively for the moral and mental improvement of women, and for religious and charitable purposes; and the prosecutor, owner of the property assessed, is a corpora-

tion of the State of New Jersey not conducted for profit.

McCARTER & ENGLISH,
Attorneys of Prosecutor.

TO HOWARD EWART, ESQ.,
Attorney for Defendant.

10

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OPINION.

(Filed January 21, 1931.)

NEW JERSEY SUPREME COURT.

10

No. 231, October Term, 1930.

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY
CEDARS, NEW JERSEY,
Prosecutor,

v.

ELSIE H. PELHAM, Collec-
tor of Taxes of the Bor-
ough of Harvey Cedars,
Respondent.

On Certiorari.

20

Submitted October Term, 1930; decided January
20, 1931.

Before JUSTICES PARKER, CAMPBELL and BODINE.
For prosecutor, GEORGE W. C. McCARTER.
For respondent, HOWARD EWART.

30

PER CURIAM:

This writ brings up for review a tax assessment
for the year 1929 against the lands and buildings

and personal property therein contained of the prosecutor, which is a corporation organized under "An Act to incorporate associations not for pecuniary profit," approved April 21, 1898. It claims exemption under "An Act for the assessment and collection of taxes (Revision of 1918)," P. L. 1918, p. 847, Sec. 203, par. 4. The property consists of
10 about seven acres, on which is one large main building and some small out-buildings and is conducted as a summer home for working girls and without effort or intent or purpose of profit. It is open only during the summer months. A weekly charge of thirteen dollars is made and the total receipts are not sufficient to meet the expenses; the deficit being made up through voluntary donations by charitably disposed persons. Originally the prosecutor was a
20 Pennsylvania corporation, but in order to meet the requirements of the Tax Assessment Act of 1918, *supra*, it became incorporated under the laws of this State in the manner before stated and the Pennsylvania corporation conveyed to it the property in question.

We conclude that the proofs establish that the prosecutor is an association of the character entitling its lands and property to the exemptions provided for by the Tax Act, *supra*. The facts and situations seem to us to be identical with those in
30 the unreported case of *Women's Christian Association of Philadelphia v. Lippincott, Collector*, cited verbatim by the prosecutor.

While it is freely admitted that prosecutor became incorporated under the laws of this State for the purpose of meeting the requirements of our taxing Act, it should not be denied such exemption upon the ground that this was a subterfuge to escape taxation. It did not thereby change its fundamen-

tal character as a charitable or benevolent association not conducted for profit as was the situation In re: Dwight School, 51 N. J. L. 148; Montclair v. State Board, 86 Id. 34; Carteret Academy v. Board, 102 Id. 525, cited by respondent.

While we are satisfied that the buildings and personal property of the prosecutor are exempt from taxation, and, therefore, as a necessary result of 10 such finding, some part, if not all, of the lands are also exempt, yet, an insurmountable difficulty stands in the way of a complete finding in this direction. The statute relied upon provides for the exemption of all buildings coming within the prescribed use; all furniture and personal property devoted to such use, and "the land whereon any of the buildings hereinbefore mentioned are erected and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned 20 and to no other purpose, and does *not exceed five acres in extent* * * *."

The prosecutor's contention appears to be that as there are two or more buildings devoted to an exemptible use and as there are only seven acres in the tract, a proper construction of the statute requires an exemption of the entire seven acres as in no instance could there be more than five acres to any building.

The respondent seems to urge that in no event 30 more than five acres of the tract can be exempt and cites *Institute of Holy Angels v. Bender*, 79 N. J. L. 34.

The proofs before us do not show or establish, with any certainty, the total number of buildings, nor the character, uses or locations of those which are referred to as "small out-buildings." Based upon

anything appearing in the proofs before us it would be the height of speculation for us to find that all these buildings were not located upon a tract with the main building and included within five acres surrounding it or even if that should, in fact, be so that such tract of five acres was necessary to the fair enjoyment thereof. In a case of this character the burden is upon the prosecutor to establish its
10 right to exemption.

The proofs may be searched, and in vain, to find anything showing how much of the tract of seven acres is necessary to the fair enjoyment of the buildings for the charitable and benevolent purposes to which they are dedicated. Were it not for what appears to us to be an admission, in the brief of respondent, that if the lands are at all entitled to be exempt, then five acres is the total extent, we should
20 have to say and find that the record before us does not present proof warranting the exemption of any land other than that upon which the buildings are actually and physically located.

The statement in the brief of counsel of the respondent to which we refer is (p. 4):

“It is apparent that there was more than one building on the tract. It would be ridiculous to assume, as the prosecutor’s brief would apparently have us assume, that five acres of land
30 was necessary to the fair use and enjoyment of each little out-building used in connection with the main building. Especially is this true by reason of the constant repetition of the Courts that statutes such as that involved here are to be construed with the greatest strictness against the party claiming the benefits of such statutes.”

Construing this strictly against the respondent as an admission that if the prosecutor's lands and properties are entitled to exemption, at least and only five acres of land are thereby exempt and extending to the prosecutor the widest liberality in this direction we are moved to find that five of the seven acres of the tract are subject to exemption.

We, therefore, find that the buildings, personal property and five acres of the tract are subject to exemption under the statute and the assessment and tax against the same are set aside and the remaining two acres are subject to the assessment, and tax against the same and that such assessment and tax in respect to such two acres are affirmed.

20

30

RULE.

(Filed February 19, 1931.)

NEW JERSEY SUPREME COURT.

No. 231, October Term, 1930.

10

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION OF HARVEY
CEDARS,

Prosecutor,

v.

ELSIE H. PELHAM, Collec-
tor of Taxes of Harvey
Cedars,

Respondent.

On Certiorari.
Rule.

20

The Court having heard the argument of counsel and inspected the assessment of taxes removed by the writ in this case, and duly considered the reasons filed.

It is ordered that the buildings, personal property, and five acres of the land upon which the buildings are erected, are subject to exemption and the assessment of taxes against the same be and they
30 hereby are set aside and for nothing holden, and

It is further ordered that as to so much of the land owned by the prosecutor as exceeds five acres in extent, the assessment be and is hereby in all respects affirmed.

Entered February 19, 1931.

On motion of

McCARTER & ENGLISH,

Attorneys.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF
HARVEY CEDARS, NEW JERSEY,
Prosecutor-Appellee,

v.

ELSIE E. PELHAM, Collector of Taxes of the
Borough of Harvey Cedars,
Respondent-Appellant.

ON CERTIORARI.

APPEAL FROM SUPREME COURT.

BRIEF FOR RESPONDENT-APPELLANT.

INTRODUCTORY STATEMENT.

The prosecutor-appellee, The Young Women's Christian Association of Harvey Cedars, New Jersey, conducts a vacation camp for girls in a large

building which is located on a 7-acre tract of land which it owns at Harvey Cedars, Ocean County, New Jersey. On July 28, 1930, Mr. Justice Bodine allowed a writ of certiorari to review the tax assessment for the year 1929; the Association claiming exemption from taxation under the provisions of "An Act for the Assessment and Collection of Taxes (Revision of 1918)" as amended by Chap. 338, P. L. 1927.

The case was submitted on briefs at the October, 1930, term of the Supreme Court. That Court granted the exemption asked for, as to 5 acres of land and the buildings and personal property, and sustained the assessment as to 2 acres of land. The matter now comes before this Court on an appeal from the judgment entered in this cause.

ARGUMENT.

I.

The exemption here sought is said to be provided for by "An Act for the assessment and collection of taxes (Revision of 1918)" and its supplements and amendments. That Act as amended by Chapter 338, P. L. 1927, provides as follows:

"The following property shall be exempt from taxation under this Act, namely: * * * Section 203 (4) * * * all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and

children, or for religious, charitable or hospital purposes, or for one or more of such purposes: * * *; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above-mentioned and to no other purpose, and does not exceed five acres in extent: * * *; provided * * * the associations * * * are not conducted for profit * * *; provided, further, that the foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which such exemption is claimed: * * *"

It is asserted by the prosecutor-appellee that the premises in question are used exclusively for charitable purposes. We do not think that the use to which this property is put is a charitable one within the meaning of the Act. In order for property to be exempt from taxation on this ground, it must be used for "Eleemosynary purposes—purposes connected with the distribution of charity, *i. e.*, of aid to the needy." *Trustees v. Paterson*, 31 N. J. L. 420; *Sisters of Peace v. Westervelt*, 64 Id. 410; *In re Woman's Exchange of the Oranges*, 49 N. J. L. J. 148.

The fundamental ground upon which the exemption in favor of charitable institutions is based is a benefit conferred upon the public by them, and the consequent relief, to some extent, of the burden im-

posed on the State to care for and advance the interests of its citizens. *Congregational S. S. and Pub. Soc. v. Board of Review*, 290 Ill. 108.

One ground upon which exemptions from taxation of charitable institutions can be justified in a constitutional sense is that they minister to human and social needs which the State itself might and does undertake to satisfy. The ultimate obligation of the State thus is discharged by the private charity. To that extent the State is relieved of its burden. An exemption from taxation is in the nature of an appropriation of public funds, because, to the extent of the exemption, it becomes necessary to increase the rate of taxation upon other properties in order to raise money for the support of the government. *Massachusetts General Hospital v. Inhabitants of Belmont*, 233 Mass. 190.

As was said by Mr. Justice Minturn in *Carteret Academy v. State Board*, 102 N. J. L. 525:

“Exemptions from the burdens of taxation, which the great masses of the people are called upon to sustain, as a requisite of civil government, are only favored in legislation, upon the theory that the concession is due as *quid pro quo* for the performance of a service essentially public, and which the State thereby is relieved *pro tanto* from the necessity of performing, such as works of charity and education, freely and charitably bestowed, as evidenced by the legislation under consideration. Without that concurring prerequisite, an exemption becomes essentially a gift of public funds at the expense of the taxpayer, and indefensible both under our public policy of equal taxation and our constitu-

tional safeguard against illegal taxation. 2 Kent Com. 331.

Thus, says Dillon: 'As the burden of taxation ought to fall equally upon all, statutes exempting persons or property are construed with strictness, and the exemption should be denied to exist, unless it be so clearly granted as to be free from fair doubt. Such statutes will be construed most strongly against those claiming the exemption.' 4 Mun. Corp. 2443, and cases cited."

It is the contention of the respondent-appellant that the prosecutor-appellee does not fall within the limits of that portion of the statute which says, "Provided, however, in the case of all the foregoing, that said buildings, or the lands on which they stand, or the association, corporation or institutions using and occupying the same as aforesaid, are not conducted for profit." It does not matter whether or not the Association actually makes a profit; the essential element is the purpose with which the Association is conducted. *Institute of Holy Angels v. Bender*, 79 N. J. L. 34; *Montclair v. State Board*, 86 N. J. L. 497; *Princeton v. State Board*, 96 N. J. L. 335.

In the case first cited, Mr. Justice Swayze said:

"* * * it is not enough that a profit should be made; the school must be conducted for the purpose of making a profit, *i. e.*, as a commercial enterprise, in order to be deprived of its exemption."

Conversely, if the organization is conducted as a business enterprise, the mere fact that it happens

not to be profitable does not entitle it to exemption from taxation.

The Association conducts a vacation camp for girls during the months of July and August (Case 12). Some of the workers are paid and some are volunteers (Case 14). The Association has operated at a deficit which dropped from \$8,000.00 in 1926 to \$896.16 in 1929 (Exhibit P2, Case 34, 30, 29). The rate charged the girls had been \$12.00 a week (Case 18) which was increased in 1930 to \$13.00 a week, in an attempt to remove the deficit (Case 18, 20). Each year the Association includes an item in its budget for publicity, which is spent in distributing advertising matter for the purpose of obtaining patronage for the camp (Case 22).

Here, it is true that the Association charges the patrons of its summer camp a flat rate, which does not pay all the expenses. However, the deficit has decreased from year to year, and in the year 1930, the rate was increased from \$12.00 to \$13.00 a week, in an attempt to remove the deficit; a clear indication that the camp was being conducted on a business basis. That it did not show a profit in 1930 was due to the general business condition and depression throughout the country (Case, p. 20). Also, the Association sends out circulars and advertising matter every year

“in order to get patronage for the camp” (Case, p. 22).

When an organization spends money to attract patrons to a summer camp which it conducts, that organization most certainly is being operated as a

business enterprise, and is not entitled to a gift of public funds at the expense of the taxpayer.

There is no proof whatever that the young women who spend their vacations at this camp are needy or even that they could not afford to spend their vacations at a higher priced resort. The president of the Association testified (Case 12):

“They are *almost* all self-supporting women.”

And again (Case 15):

“There might be some girls who are being supported by their families, but not many at that camp. The most of them are wage-earners. There would not be any whose financial circumstances are such that they would not need to work, if that is what you mean. I doubt if there would be anything more of those than negligible.”

There certainly is nothing in any of that testimony from which it could be inferred that these girls were in need of charity and that the general public should be taxed to provide them with a vacation at the seashore.

II.

Again using the language of Mr. Justice Minturn, exemptions from taxation are only favored in legislation upon the theory that the concession is due as *quid pro quo* for the performance of a service essentially public and which the State thereby is relieved *pro tanto* from the necessity of performing.

Is the Young Women's Christian Association of Harvey Cedars performing a service essentially public and is it thereby relieving the State of New Jersey of performing such a service? We respectfully urge that such is not the situation. Certainly it cannot be said that there is any obligation resting upon the body of the public to provide summer vacations for girls, no matter what their station in life might be. In this regard it should be noted that the majority of the girls attending this camp are residents of Pennsylvania (Case, p. 15); that many of them come from other States, such as New York, Delaware, Maryland and the District of Columbia (Case, p. 21). By giving these girls a vacation under proper guidance, the prosecutor-appellee may be doing a worthy work, but surely it is not performing a public service which the taxpayers of *this* State are thereby relieved of performing.

As was said by the present Chief Justice, speaking for the Supreme Court in *Sisters of Peace v. Westervelt*, *supra*:

"But it is urged, on behalf of the prosecutors, that although the business of a boarding house is carried on at St. Michael's Villa, the property is nevertheless used for charitable purposes, because all of the profits of the business are used in the aid of the needy. This contention cannot be supported. The fact that the profits of a commercial enterprise are either in whole or in part devoted to charity, certainly does not operate to render the business itself a charity, nor is the property in which it is carried on, by reason of such appropriation of profits, used for charitable purposes. *American S. S. Union*

v. Philadelphia, 161 Pa. St. 307; *First M. E. Church v. Chicago*, 26 Ill. 482."

This case was followed by the State Board of Taxes and Assessment *In re Woman's Exchange of the Oranges, supra*. In determining that the business conducted by the exchange was a commercial enterprise, the board said:

"While the object of the appellant is a worthy one, it does not appear from the evidence that goods are sold only for those in need of charity. In fact goods are sold for some who find it inconvenient to go out and find work, yet are not actually needy."

In re Alcott Vacation House, 53 N. J. L. J. 54, the appellant to the State Board was a New Jersey Corporation, formed to operate as a charity house at Cape May, New Jersey, where business women, at a moderate cost, might spend their vacations. In dismissing the appeal (on January 14, 1930), the Board had this to say:

"There is nothing in the evidence to indicate that those who visit the house of the appellant and are entertained therein for the purpose of recreation are actually needy. The work carried on by the Alcott Vacation House, Inc., while a worthy one and deserving of praise, is in the nature of a business enterprise and it cannot be said that the building for which exemption is asked is actually and exclusively used for the purpose of charity.

A close reading of the statute fails to warrant a conclusion that the property should be relieved

from the burden of taxation. Where there is a doubt as to the intention of the Legislature in this respect an exemption must be denied. The statute must be construed strictly."

III.

It must be borne in mind that exemption is claimed under that part of Chapter 338, P. L. 1927, Section 203 (4) which reads:

"All the buildings actually and exclusively used in the work of Associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes."

To entitle the prosecutor-appellee to exemption, it must show a strict compliance with the terms of the statute. It has been repeatedly held by the Courts of this State that before a taxpayer may be granted exemption, it must show that there is no doubt as to whether or not he comes within the terms of the statute, which must be construed with the greatest of strictness against the one claiming the exemption. *Mausoleum Builders v. State Board*, 88 N. J. L. 592; affirmed, 90 Id. 163; *Carteret Academy v. State Board*, *supra*.

In the words of Chief Justice Gummere, speaking for the Court of Errors and Appeals in *Sisters of Charity v. Corey*, 73 N. J. L. 699:

"The granting of exemption from taxation, being in the nature of a renunciation of sover-

eighty (or as some jurists have expressed it, being in derogation of the sovereign authority and of common right), must invariably be construed most strictly against the grantee, and can never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require."

This principle has been declared and applied not only by the U. S. Supreme Court, but by the Courts of almost every State in the Union.

It is the primary use to which the property is put which determines the question whether it is exempt from taxation. If it is devoted primarily to the religious or charitable purposes which exempt from taxation, an incidental use for another purpose will not destroy the exemption, but an incidental use for religious or charitable purposes of property whose primary use is for another purpose will not warrant exemption. *People v. Jessamine Withers Home*, 312 Ill. 136.

In re Sisters of Charity of St. Elizabeth, 49 N. J. L. J. 88, the building was used in the summer months as a place of recreation by the Sisters of the Order when not engaged in teaching in the schools connected with the church in various parts of the State. The State Board held that there was nothing in the Act which allowed exemption from taxation of buildings, or the land whereon they were erected, when used as a summer home or a place of rest and recreation for Sisters of Charity when not engaged in their usual occupation of teaching.

The charter of the prosecutor-appellee provides that:

“The purpose for which the corporation is formed, is the spiritual, intellectual, social, mental, moral and religious welfare of women, especially young women who are dependent on their own exertions for support” (Ex. P1, Case 18).

It thus appears that the Association is not organized exclusively for the moral and mental improvement of men, women, and children, or for religious, charitable or hospital purposes. Its activities are intended to cover other fields than those mentioned in the statute—particularly social welfare, which, we submit, is the most important feature of the work of this Association. The testimony of Miss Morgan, one of the paid secretaries of the Association, shows beyond question that the principal object of the Association is to

“provide a healthful vacation for girls and women through furnishing a wholesome place for them to live in and wholesome food for them to eat” (Case 17).

It is true that Miss Morgan also testified that the girls were given a program along inspirational lines. It is patent, however, that such work is merely incidental to the providing of a vacation in the healthful atmosphere of Barnegat Bay and the Atlantic Ocean, for there is no proof sufficient to indicate a regular course of instruction or religious work.

In the words of the State Board *in re Plainfield Lions' Club*, 53 N. J. L. J. 79:

“Notwithstanding the use of the land and buildings thereon erected is for a laudable pur-

pose and a purpose in part, at least, which may be found in its charter, the statute must be construed according to its plain terms. The (Young Women's Christian Association of Harvey Cedars) is not organized *exclusively* for a purpose for which an exemption may be allowed."

IV.

The legal title to the property in question is held by the prosecutor-appellee, which is a New Jersey corporation. The organization of that corporation, however, and the transfer of the title to it was a mere subterfuge to escape taxation, which should not be countenanced by this Court. The property was formerly owned by the Young Women's Christian Association of Philadelphia, a Pennsylvania corporation (Case 17). The Young Women's Christian Association of Harvey Cedars was organized and title to the property conveyed to it in an attempt to secure exemption from taxation (Case 17, 20).

Of the five trustees chosen for the first year of the new corporation, four were residents of Pennsylvania (Ex. P1, Case 23, 24). Membership in the new corporation was restricted to members in good standing of the Pennsylvania corporation (Ex. P1, Case 23). The annual meetings of the members and of the trustees of the new association were required to be held in Philadelphia, in the office of the Pennsylvania corporation (Ex. P3, Case 38). There was no consideration paid by the New Jersey corpora-

tion to the Pennsylvania corporation for the transfer of title to it of property assessed at \$25,800.00 (Case 21). The majority of the girls accommodated are from Pennsylvania, particularly from Philadelphia (Case 14, 15).

All of these circumstances point undeniably to the fact that, in the words of Mr. Justice Parker, speaking for the Supreme Court in *Montclair v. State Board*, *supra*:

“The metamorphosis was shrewdly intended as a subterfuge to escape taxation.”

It is clearly evident that the real owner of this property is the Young Women's Christian Association of Philadelphia, a Pennsylvania corporation, and we insist that it should not be permitted to circumvent the statute in this manner, especially when to do so places an unjust and an unequal burden upon the taxpayers of the Borough of Harvey Cedars.

In *Carteret Academy v. State Board*, *supra*, the academy had changed its charter and by-laws in an endeavor to exempt its property from taxation. In that case the Court held that when such a change effected no essential difference in the organization of the corporation and the use to which its property was put, it was not entitled to exemption from taxation. The same situation again appeared in *re Princeton Preparatory School*, 53 N. J. L. J. 147, decided by the State Board of Taxes and Assessment on April 1, 1930.

In the case of *in re Dwight School*, 51 N. J. L. J. 148, the school was privately conducted for profit until June 26, 1925, when a non-pecuniary corpora-

tion was formed to take over the property and carry on the work. The State Board denied the exemption, saying:

“A careful review of the evidence leaves one in doubt as to whether the change in the organization was not intended to alter the form and save the substance. Where the right to relief is not clear the exemption is denied.”

In the instant case there is not even a doubt in favor of the prosecutor. The testimony of the secretary of the Association, its certificate of incorporation and its by-laws all point to but one conclusion.

V.

The opinion of the Supreme Court in the case *sub judice*, which is reported in Vol. IX, N. J. Misc. No. 11 at page 196, is based solely on the decision in *Women's Christian Association of Philadelphia v. Lippincott*. The latter case, which was decided in 1908, was unreported until February 14, 1931, when it was reported in Vol. IX, N. J. Misc. No. 7, page 133, at the suggestion of Mr. Justice Campbell. We contend that the Supreme Court was unjustified in resting its decision on the *Lippincott* case, for several reasons.

First, there was no proof in the *Lippincott* case, so far as the facts of that case are reported, that the Women's Christian Association of Philadelphia appropriated money each year to be spent in advertising their camp and seeking patronage for it, as

there is in the instant case. We contend that such conduct clearly shows the intent with which the camp is operated. It is a business enterprise, pure and simple, which so far has not proven profitable (although it undoubtedly soon will become so, if the present rate of improvement in the management as shown by Ex. P2, is continued). Givers of charity seldom have to advertise their wares.

Second, there was no question in the *Lippincott* case of a change in the form of the title-holding corporation for the purpose of avoiding taxation, for at the time of the decision in the *Lippincott* case the statute did not require a corporation claiming exemption to be organized under the laws of this State.

Third, so far as the record shows, there was no question in the *Lippincott* case as to whether or not the prosecutor therein, by the work it was doing, was relieving the State of an obligation which otherwise would have to be borne by it—which is, in the final analysis, the fundamental principle upon which any exemption from the common burden of taxation must be based. *Mausoleum Builders v. State Board*, *supra*; *Carteret Academy v. State Board*, *supra*.

Fourth, the opinion in the *Lippincott* case shows that girls were admitted who were too poor to pay board (which was but \$4.00 per week as contrasted with \$13.00). Thus there was some indication, at least, that girls who were actually needy were accommodated. On the contrary, the testimony of the officers of the prosecutor-appellee herein discloses

nothing of that nature prior to the assessment now under attack.

Fifth, the Women's Christian Association of Philadelphia apparently was organized exclusively for purposes for which exemption might be granted. As has already been pointed out, one of the purposes for which the prosecutor-appellee was organized was to promote the social welfare of young women, and hence it was not organized exclusively for a purpose for which an exemption might be granted, as required by the statute under consideration.

Sixth, the opinion in the *Lippincott* case was based upon the decision in *Paterson Rescue Mission v. High*, 64 N. J. L. 116. The Paterson Rescue Mission was a pure common law charity, doing an altogether different kind of work from that done by the prosecutor-appellee. As was said by the Court in that case:

"That this institution is a charity within the designation of Statute 43 Eliz., C. 4, in the comprehensive sense in which the terms 'relief of aged, impotent and poor people' have been construed, is too clear to require discussion or elucidation."

The Mission was incorporated under the provisions of "An Act to incorporate benevolent and charitable Associations," and the several supplements thereto. Gen. Stat., p. 149, *et seq.*

The Act under which the Mission was incorporated provided:

“That the sole and exclusive object of incorporations under this Act shall be to relieve or support such of the members thereof or such other persons as shall by sickness, casualty, old age or other causes be rendered incapable of attending to their usual occupation or calling; to discourage intemperance and diffuse the principles of benevolence and charity; * * * to give and extend benevolent and charitable relief and assistance to persons who are not members or incorporators; to promote religion, morality or industry by local missions or Sunday Schools or schools of a charitable nature, and other charitable objects.”

The proofs showed that the Mission was the only place in the City of Paterson offering an asylum for aged men, whose physical disabilities were such as to render them unfit for work, and was also an asylum for crippled, deformed and mentally deficient persons unable to contribute to their own support.

Thus it will be seen that the *Paterson Rescue* case, being so totally different in all its aspects from the case *sub judice*, including the nature of the organization, the type of work done and the statutory provisions under which it operated, could not possibly be used as a rational basis for a granting of exemption to the prosecutor-appellee herein.

VI.

Assuming that the Supreme Court was correct in granting the exemption, the most that could be justi-

fied would be the personal property, the buildings and the actual land on which the buildings were erected. It is axiomatic that statutes such as that involved here are to be construed with the greatest strictness against the party seeking the benefits of the statute. This is a tax exempting statute, providing for the exemption from taxation of buildings and the land on which they are erected, which might be necessary for the fair enjoyment thereof, not exceeding 5 acres in extent. Now, in this case there is not one iota of proof as to the amount of land necessary to the fair enjoyment of the buildings. Hence an exemption, if granted, must of necessity be confined to the actual land on which the buildings are erected.

The Supreme Court seized upon a statement in the brief of the respondent below, to the effect that it would be ridiculous to assume that 5 acres of land were necessary to the fair use and enjoyment of each little out-building used in connection with the main building as an admission that if any lands were exemptible, at least and only 5 acres were entitled to exemption. We respectfully insist that no such admission could logically be inferred. The Association was the party seeking the benefits of the statute, and the provisions of that statute should have been construed strictly against it, and not against the respondent-appellant.

Again quoting from the language of Chief Justice Gummere in *Sisters of Charity v. Cory*, 73 N. J. L. 699:

“The primary object of the exemption is the building. Included with it in the exemption is a certain portion of land. Not *all* the land held

in the same ownership and used for the same purpose, but only *the land whereon the building is erected*. These words are primarily words of limitation. No land of a charitable organization other than that upon which its building has been erected is exempted from taxation under this provision of the Act. * * * This limitation in the statute is just as clearly expressed, and should be given as much force as that which declares that only so much of the land upon which the building is erected as may be necessary for its fair enjoyment shall escape taxation. The statute creates a double test to be applied for the purpose of determining whether or not a given parcel of land is entitled to exemption from taxation—*First*, is it the very tract upon which the building was erected, or does it include land acquired at a period subsequent to the erection of the building? *Second*, if it is the tract upon which the building was erected, then is all of it necessary for the fair enjoyment of the building? Lands which do not meet the double test cannot escape taxation.”

VII.

The writ of certiorari should not have been allowed. This point was not raised in the Court below, but we respectfully urge that the Court may, and should, consider it here. As was said by the Chancellor in *State v. Shupe*, 88 N. J. L. 610:

“The doctrine that a party need not be heard as to a question which could have been, but was

not, raised in an intermediate court of appeals, is subject to these limitations, namely—*first*, where the question goes to the jurisdiction of the subject-matter (*Dodd v. Una*, 40 N. J. E. 672, 713), and *second*, where a question of public policy is involved. *Mass. National Bank v. Shinn*, 163 N. Y. 360.”

Again, in *McMichael v. Horay*, 90 N. J. L. 142, the Chancellor spoke as follows for this court:

“This Court held in *State v. Heyer*, 98 Atl. 413, that a question not presented and argued in the court below will be held to have been waived and abandoned, and will not be considered in an Appellate Tribunal. But this must be read in the light of our holding in *State v. Shupe*, 97 Atl. 271, where it was decided that a Court of last resort need not hear a party on a question which could have been, but was not, raised in an intermediate court of appeal, except where the question goes to the jurisdiction of the subject-matter or where a question of public policy is involved. The true doctrine is that a court of appeals need not, not that it cannot, decide a question arising on a record before it, which was not raised in a court below, whether that court be an intermediate court of appeals or a court of first instance; and it is the constant practice of Appellate Courts to notice and decide questions of jurisdiction, and especially questions of public policy, residing in records before them, without those questions having been raised below.”

The matter under review here certainly raises a question of public policy. In *Acquackanonk Water Co. v. Passaic County Board of Taxation*, 88 N. J. L. 555, the Supreme Court, speaking through Mr. Justice Minturn, said:

“The policy of the State, following the maxim ‘*interest rei publicae ut sit finis litium*,’ requires the settlement of tax controversies within a reasonable time so that the assets of the dependent interlocking political divisions of city, county and State, with their financial requirements, shall be finally and harmoniously adjusted.”

The Legislature has set up separate tribunals for the hearing of tax appeals. The channels of relief provided by the separate tribunals which have been created by the Legislature should be exhausted before resort is had to the Supreme Court. If those tribunals are to be disregarded and relief sought directly from the Supreme Court the result will be that the various governmental subdivisions will never be in a position to correctly adjust their financial requirements.

If a special tribunal has been provided by statute, redress must be sought there before a writ of certiorari will be allowed. *Draper v. Commissioners of Public Instruction*, 66 N. J. L. 54; *Board of Education of Flemington v. State Board*, 81 Id. 211; affirmed, 85 Id. 384; 11 C. J., 112.

The writ in this case was applied for and allowed more than a year after the time for appeal to the Ocean County Board of Taxation had expired; the prosecutor-appellee asserts that it was not aware of

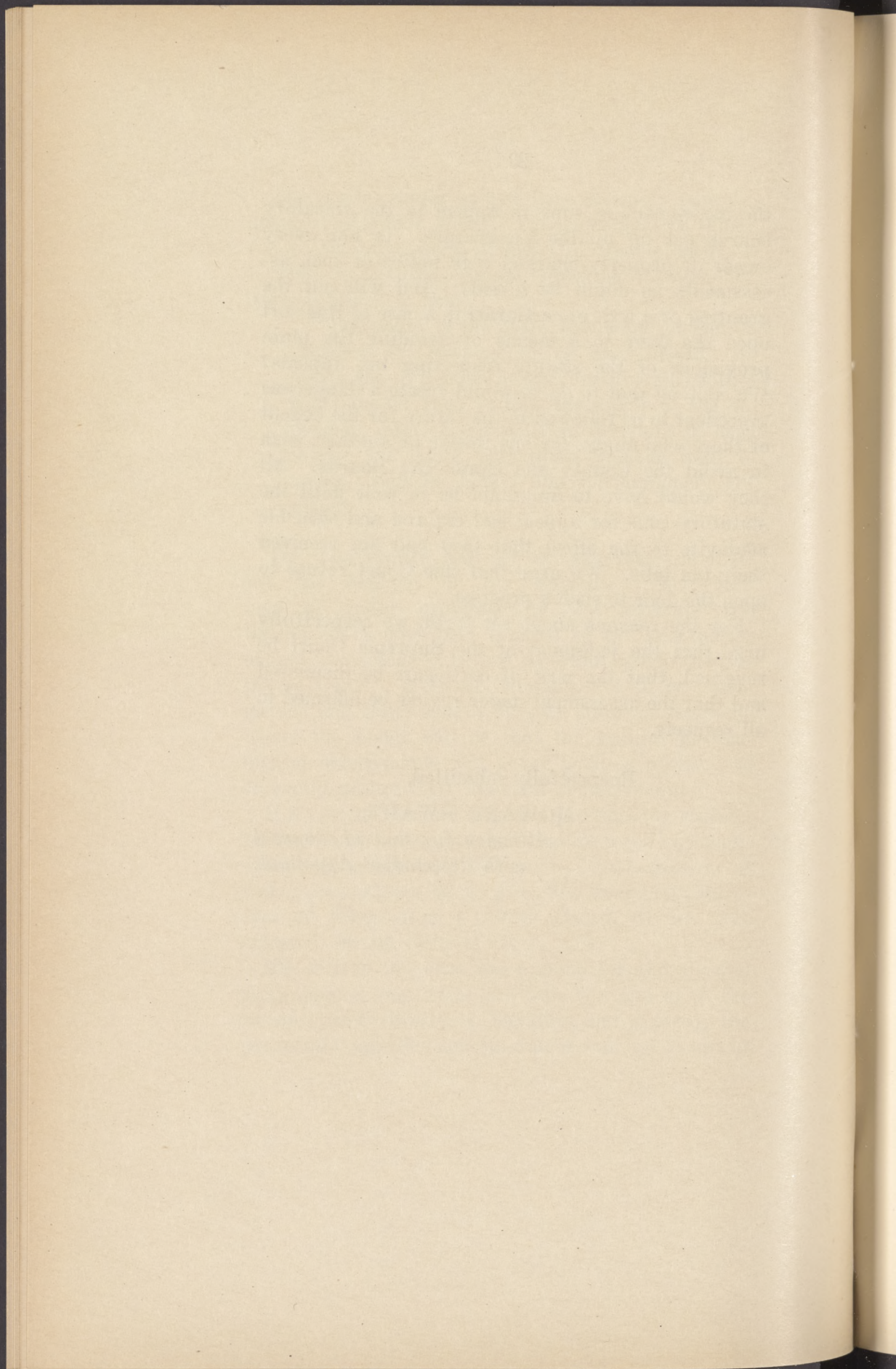
the assessment in time to appeal to the statutory boards set up by the Legislature. Is not every owner of property charged with notice of such assessments as might be levied? And will not the granting of a writ of certiorari in a case of this sort open the door to a means of avoiding the plain provisions of the statute respecting tax appeals? We contend that to do so would create a dangerous precedent to be followed in the future for the benefit of those who might, for one reason or another, wish to avoid the County and State Tax Boards. All they would have to do would be to wait until the statutory time for appeal had expired and then file affidavits to the effect that they had not received their tax bills. We urge that this Court refuse to open the door to such a practice.

For the reasons above set forth, we respectfully urge that the judgment of the Supreme Court be reversed, that the writ of certiorari be dismissed and that the assessment under review be affirmed in all respects.

Respectfully submitted,

HOWARD EWART,

*Attorney for and of Counsel
with Respondent-Appellant.*



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF HARVEY CEDARS,
NEW JERSEY,

Prosecutor-Respondent,

vs.

ELSIE H. PELHAM, Collector of
Taxes of the Borough of
Harvey Cedars,

Defendant-Appellant.

*On
Certiorari.*

BRIEF FOR RESPONDENT.

Statement.

This is an appeal in a certiorari case. The respondent was the prosecutor below and will be so called herein. The writ brings up the assessment of land, buildings and personal property used in the buildings, used by the prosecutor, which was assessed for taxes by the Borough of Harvey Cedars for the year 1929. Previously to the year 1929 the property had enjoyed an exemption from taxation, and the assessment for the year 1929 was not in fact brought to the prosecutor's attention until after the statutory time to appeal to the County Board had expired. Upon proof by affidavit of the facts having to do with this lack of notice and explaining the delay in the application for this writ, which was made to Mr. Justice Bodine on notice, he allowed the writ.

The basis for the writ is that the property assessed is exempt from taxation under section 203 (4) of "An Act for the Assessment and Collection of Taxes (Revision of 1918)." This

section was amended by Chapter 42 of the Laws of 1929, which took effect on April 2, 1929, and therefore not until after the assessment under review had been completed and took effect.

It appears from the return (Record 6) that the property assessed consists of a tract of land, on which is erected a frame building and outbuildings, in which there is some personal property.

Pursuant to the leave in the allocatur of the writ depositions were taken. A certified copy of the certificate of incorporation of the prosecutor was identified by the president (Record 11), and was marked Exhibit P. 1. From an inspection of this it appears that the prosecutor was owner of the property in question, was organized under an Act of the Legislature of this State entitled "An Act to Incorporate Associations not for Pecuniary Profit," approved the 21st day of April, 1928. Paragraph 2 of that certificate of incorporation reads: "2. The purpose for which the corporation is formed is the spiritual, intellectual, social, mental, moral and religious welfare of women, especially young women who are dependent on their own exertions for support." This purpose is elaborated in Article II of the By-Laws (Exhibit P. 3). Section 1 of this article is a duplication of the above-quoted part of the certificate of incorporation. Sections 2 and 3 read as follows:

"Section 2. This purpose shall be accomplished through the association of young women in personal loyalty to Jesus Christ as Saviour and Lord, through the promotion of growth in Christian character and service through physical, social, mental and spiritual training so that they may become a social force for the extension of the Kingdom of God.

"Section 3. This purpose, without limitation of other methods, shall be accomplished by the conducting by the Association, at some seaside resort in the State of New Jersey, of a summer camp, summer-home, or boarding-home for young girls and women, particularly those who are self-supporting, or are girls in the grade schools and high schools."

Mrs. Wood, the president, also testified:

"Q What does that property consist of?
A Consists of a building which is used for a summer camp for business and industrial young girls" (Record 11).

She also testified:

"Q Now, in a general way, what is the building used for? A Well, it is operated as a vacation camp for women during July and August, about that period, entirely closed the rest of the year.

Q Have you finished? A Do you want to know more particularly?

Q I want as full particulars as you can give. A The women who go there pay a fee for the period of their stay which is usually a couple of weeks; that fee is not sufficient to cover the expenses of their stay at the camp. The women who go there come from various states, not simply New Jersey, New York and Pennsylvania, but some of them from more distant states, though, of course, largely from nearby states. They are almost all self supporting women. Their stay at the camp is not simply a vacation period, there are various programs, courses in nature study, instructions in swimming, training for qualification in life saving service, inspirational features in connection with the camp.

Q Are there any religious services of any kind held? A Yes, there are religious services, not particularly formal or stated, but organized by the women who are there themselves, inspirational, not sectarian or denominational in their character.

Q Would you say, generally speaking, that the work carried on at the camp is the kind of work that is carried on by Young Women's Christian Associations throughout the country? A Well, yes; because it is distinctly in line with the present day thinking and policy of Y. W. C. A. work, which is the development for the individual, physically and intellectually and spiritual, but not connected particularly with any special form of religion.

Q Not connected with any particular denomination—not Presbyterian or Methodist— A No, and even beyond that we have quite a good many Catholics and some Jewish people who participate in our work.

Q Now, you say the sums paid by the girls as board or whatever you choose to call it, are not sufficient to defray the cost of maintaining the institution there. How is the deficit made up? A It is made up by charitable contributions.

Q From members of the public? A Yes'' (Record 12, 13).

The camp is run during the months of July and August and the early part of September, but it really is a two months' or two months' and a half period of actual occupancy. The property is not suitable for occupancy during most of the year (Record 15). More detailed testimony as to the nature of the work was also given by Miss Morgan, one of the prosecutor's paid secretaries:

“A We aim through the camp to provide a healthful vacation for girls and women through furnishing a wholesome place for them to live in and wholesome food for them to eat and in addition giving them a program along educational, inspirational and spiritual lines, the thing that we give at our camp we feel is very much more than they could secure in a hotel or just any ordinary private camp; because of the nature of our aim and our work, we go into the deeper things of the development of girlhood for better

citizenship and the spiritual end of things, which is not touched by an ordinary camp or hotel."

She also testified as follows:

"Q Are there any educational forces of any kind connected with this camp? A Yes.

Q What are they? A Nature lore, general recreation and health program, swimming and boating and tennis, things of that nature, and what we term Inspirational Hour, avoiding the definite term of religion, because girls usually side track that more orthodox term and like the other word; they will fall in with the program much easier if it is known as an Inspirational Hour, or something of that nature, and, of course, through our Vesper Services and Sunday meetings we promote a very definite religious atmosphere.

Q How many girls are there? A It accommodates 125 guests" (Record 17, 18).

Exhibit P. 2 is a statement of the receipts and disbursements of the camp for the years 1926 through 1929 inclusive. From this exhibit it appears that in each year there was a deficit, and the lowest deficit for any of the four years was \$896.16 (Record 29). The girls were charged at the time of this assessment four to twelve dollars a week (Record 18). The property formerly belonged to the Y. W. C. A. of Philadelphia, but was conveyed by that corporation to the prosecutor in 1925, on the advice of counsel, by reason of the change in the exemption statute limiting the exemption to property owned by charitable corporations organized under the laws of this State (Record 17).

ARGUMENT.

The material part of the statute, section 203 (4) of "An Act for the assessment and collection of taxes (Revision of 1918)" as amended in C. S. Supplement, 1911 to 1924 §208, reads:

"All buildings actually used for colleges, schools, academies or seminaries * * * all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women or children, or for religious, charitable or hospital purposes, or for one or more of such purposes * * * the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose, and does not exceed five acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; provided, however, in the case of all the foregoing, that said buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying the same as aforesaid, are not conducted for profit, *except that the exemption of the buildings and lands, used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the said building*; provided, the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes; provided, further, that the foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption, is incorporated or organized under the laws of this State, and authorized to carry out the purposes on account of which such exemption

is claimed, and either owns the property in question, or * * *." (Italics ours.)

The facts bring the case clearly within the statute. The property is used for charitable purposes, and if that adjective is not broad enough, it certainly is used in the work of the association organized exclusively for the moral and mental improvement of women. The owner of the property is a corporation organized under the laws of the State of New Jersey. Work of the very kind carried on by the prosecutor has with respect to a similar seaside home been held to entitle the property to exemption. We refer to the unreported case of *Women's Christian Association of Philadelphia v. Lippincott*, argued before the present Chief Justice and Mr. Justice Swayze, and reported 9 Misc. 133. The opinion is printed as a supplement to this brief.

Any difference between the Tax Act of 1903 and the Act in effect in 1929 is that the Act of 1929 is more favorable to exemption.

We also refer the Court to *Princeton v. State Board of Taxes*, 96 Law, 334 (Supreme, 1921). This involved property owned by a private school, the trustees of Miss Fine's School.

The borough can derive no comfort from the fact that the property is used only during the summer months. That very point was judged in favor of exemption in *Seaside Home v. State Board of Taxes*, 98 Law 110 (Supreme, 1922). In the course of delivering the opinion the Court in that case, Mr. Justice Black said, page 111:

"The state board rested its decision upon the ground that the words '*actually used*' in the statute mean in actual use on the day of the assessment, *i. e.*, the 1st day of October in each year. Pamph. L. 1918, p. 848, §202. This is too rigid and too narrow a construc-

tion of the statute in its application to the facts under discussion. It entirely ignores the spirit and purpose of the statute. The test of exemption cannot be made to turn upon the fact of an accidental closing of the home depending upon the weather sometimes earlier, sometimes later in the season. One year, on the date of the assessment, the home would be open and in actual use, then it would not be taxable. The next year it would not be open and in actual use, but closed, it would then be taxable."

A property which is adapted for use only in the summer months and during that time is used for an exempt purpose and during the rest of the year is not used for any other purpose is within the meaning of the statute actually and exclusively used for the exempt purposes, even though on the assessment day and during the non-summer months it stands vacant, awaiting its actual use during the sole period of the year for which it is adapted for use.

Counsel relies on *Carteret Academy v. The State Board of Taxes*, 102 Law, 525, affirmed 104 Law, 165. In the opinion of the Supreme Court in that case, 102 Law, at 529, Mr. Justice Minturn, in disposing of *Princeton v. State Board*, *supra*, which was cited as an authority for exemption, said:

"The adjudication in this court upon which reliance for such exemptions is quite generally predicated is *Princeton v. State Board*, 96 N. J. L., 334. But, manifestly, this court there found the statutory essentials which constitute the basis for such an application, *i. e.*, the absence of profit in those interested, and the existence of a status of self-abnegation and sacrifice upon the part of all concerned in the interest of the local public good, very much as was found in *Institute of Holy Angels v. Bender*, 79 *Id.* 34.

Per contra, in this instance, this court found, upon a former application by this prosecutor, that 'changing its corporate dress and altering its financial system so that the net income is disbursed for interest instead of dividends,' was not sufficient to warrant an exemption."

There are other instances where the State Board of Taxes and Assessment has held that the use to which the property in question in this case was put was essentially for profit. On the facts in the case at bar it is impossible to hold that the use to which the property is put is anything but a non-profit making use. The fact that fees are charged from the girls for whose benefit the camp is conducted is by the express language of the statute made not controlling upon the question of exemption. See the above quotation from the statute.

Indeed, if this property be held to be not entitled to an exemption, the same decision must be reached with respect to every Young Men's Christian Association or Young Women's Christian Association building in the State of New Jersey.

The appellant's contention that the exemption can apply only to the buildings and personal property is without merit. The Court below has found as a fact that five acres of the tract are necessary for the fair enjoyment of the buildings, and the judgment appealed from sets aside the assessment of taxes as against personal property, buildings and five acres of land. It affirms the assessment as to so much of the land as exceeds five acres. No cross-appeal has been taken from the failure to extend the exemption to the whole tract. The Supreme Court, having found as a fact that five acres are neces-

sary to the fair enjoyment of the buildings, that finding is binding on this Court and is not open to review in it. This is well settled by a number of decisions in this Court. Included among them are *Moran v. Jersey City*, 58 L., 653; *Vreeland v. Bayonne*, 60 L., 168; *Suburban Land Co. v. Vailsburgh*, 68 L., 311.

Aside from the admission in the brief of counsel for the present appellant in the Court below, upon which the Supreme Court relied (R. 46) there is ample evidence to sustain this finding. The whole tract is used as a summer camp for girls (C. 11, l. 35). The Court will take judicial notice of the fact that the Borough of Harvey Cedars is in Ocean County, and is situated on Long Beach Island, which is the island bordering directly upon the Atlantic Ocean, lying southerly of Barnegat Inlet. A summer camp cannot possibly be conducted indoors. Unless the members of the camp are to trespass on the property of others, therefore, there must be land in addition to that covered by the buildings on which the campers can roam and exercise. This camp accommodates 125 girls, and the average attendance is 90 (R. 19). Mrs. Wood testified with respect to what the women at the camp do:

“Their stay at the camp is not simply a vacation period. There are various programs, courses in nature study, instruction in swimming, training for qualification in life saving service, inspirational features in connection with the camp” (R. 12, l. 36).

Miss Morgan also testified with respect to the educational work, that it was:

“Nature lore, general recreation and health programs, swimming and boating and tennis—things of that nature.” (R. 19, l. 1.)

With evidence of this kind in the record, it certainly was open to the Supreme Court to find

that five acres of beach property on Long Beach Island was necessary for the fair enjoyment of the buildings. Indeed, we feel a finding to the contrary would have been without evidence to support it.

The appellant's contention that the writ of certiorari should not have been allowed because of laches in the application therefore, and because the prosecutor, the present respondent, did not first go through the Boards, County and State, is a matter solely for the Supreme Court, and cannot be argued here. That was distinctly held by this Court in *Atlantic City Water Works Co. v. Read*, 50 L., 665.

The Judgment Below Should Be Affirmed.

Respectfully submitted,

GEORGE W. C. McCARTER,

Of Counsel with Prosecutor-Respondent.

May Term, 1931.

SUPPLEMENT.

NEW JERSEY SUPREME COURT.

WOMEN'S CHRISTIAN ASSOCIATION
OF PHILADELPHIA,

vs.

AMOS LIPPINCOTT, Collector, &c.

On Certiorari.

For the prosecutor, David Harvey, Jr.

For the defendant, Samuel A. Patterson.

Argued before Gummere, Chief Justice, and
Justice Swayze.

Per Curiam.

This certiorari brings up a tax of \$432 assessed upon property of the prosecutor in Asbury Park. The property assessed consists of a tract of land donated to the prosecutor by James A. Bradley, and two buildings erected thereon, and paid for partly by donations made to the prosecutor and partly by moneys borrowed by it. The prosecutor is a corporation of the state of Pennsylvania. The purpose of its creation, as stated in its charter, is "The temporal, moral and religious welfare of women, especially young women, who are dependent upon their own exertions for support." The property is used as a summer home for working girls. The buildings will accommodate a maximum of two hundred and twenty. Each girl is allowed to stay two weeks. If she has a room to herself she is charged five dollars per week; if she shares her room with another girl the charge is four dollars. Girls who are too poor to pay board, but who, in the judgment of the managers of the association, are proper to be received at the institution, and who need

a vacation, are received without charge. The expense of maintaining and operating the home exceeds the receipts from the board of the girls who are received by several hundred dollars annually, the difference being made up by the managers and charitably disposed persons who contribute to the support of the institution.

Article 1, section 3, subdivision 4 of the revised tax act of 1903 (Pamph. Laws, 394) exempts from taxation, "all buildings used exclusively for purposes considered charitable under the common law, with the land whereon the same are erected, and which may be necessary for the fair enjoyment thereof, and the furniture and personal property used therein"; and this exemption is extended by the express words of the statute "to cases where the charity is supported partly by fees and charges received from, or on behalf of, beneficiaries occupying said building, provided the building is wholly controlled, and the entire income therefrom is used, by the charitable corporation for its charitable purposes."

The property upon which this tax has been assessed is clearly entitled to the exemption given by this statutory provision. The buildings are used exclusively for purposes considered charitable under the common law; the fees and charges received from the beneficiaries occupying the buildings are entirely used for its maintenance and the building is wholly controlled by the prosecutors for the charitable purposes of the association. The case in its legal aspect is, in our opinion, identical with that of *Paterson Rescue Mission v. High, Receiver, &c.*, 35 Vr. 116, and on the authority of that case the assessment now under review should be set aside.

