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## Writ of Certiorari

NEW JERSEY: ss.

THE STATE OF NEW JERSEY to  
the State Board of Taxes and As-  
sessment. We being willing to be  
certified of a certain decision of the  
State Board of Taxes and Assess-  
ment, filed March 25th, 1924, in the  
matter of the application of Stevens Institute  
of Technology for the cancellation of the tax  
assessment for the years 1922 and 1923 on prop-  
erty situate in the City of Hoboken, County of  
Hudson and State of New Jersey, which decision  
affirms an assessment of the taxes by the City of  
Hoboken.

Do command you that the said decision and as-  
sessment and all things touching and concerning  
the same you do certify and send to our Supreme  
Court of Judicature of the State of New Jersey  
at Trenton on the 28th day of November next,  
together with this writ, that therein may be done  
what of right and according to the law and Con-  
stitution of the State of New Jersey ought to be  
done.

WITNESS, WILLIAM S. GUMMERE, ESQ.,  
Chief Justice of our said Supreme Court at Tren-  
ton, the 8th day of November, 1924.

JOHN MILTON      EDWARD J. KELLEHER  
*Attorney*                      *Clerk*

I allow this writ. Let it be sealed.

JAMES F. MINTURN,  
*Justice, Supreme Court.*

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## Rule for Affidavits

### NEW JERSEY SUPREME COURT

10	STEVENS INSTITUTE OF TECHNOLOGY, <div style="text-align: right;"><i>Prosecutor,</i></div>	}	On Certiorari Rule for Affidavits
	vs.		
	STATE BOARD OF TAXES AND ASSESSMENT, <div style="text-align: right;"><i>Defendant.</i></div>		

20      Writ of certiorari having been allowed in the above entitled cause, it is ORDERED that either party have leave to take affidavits, to be used upon the argument of the said writ.

Rule granted November 8th, 1924.

Actually entered November 11th, 1924.

JAMES F. MINTURN,  
*Justice, Supreme Court.*

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## Return

## NEW JERSEY SUPREME COURT

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STEVENS INSTITUTE OF TECHNOLOGY,

*Prosecutor,*

vs.

THE STATE BOARD OF TAXES AND  
ASSESSMENT AND THE CITY OF  
HOBOKEN,

*Defendants.*

---

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On Certiorari

The State Board of Taxes and Assessment doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment, memorandum and proceedings in the matter of the appeals of Stevens Institute of Technology, from the assessment of properties located in the City of Hoboken, County of Hudson, for the years 1922 and 1923, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

20

STATE BOARD OF TAXES  
AND ASSESSMENT,

30

By Frank D. Schroth,

*Secretary.*

(SEAL)

40

*Appeals*

10 In the matter of the applica-  
 tion of Stevens Institute of  
 Technology for the reduction of  
 the tax assessment for the year  
 1923 on property situate in the  
 City of Hoboken, County of  
 Hudson and State of New Jer-  
 sey.

Petition

TO THE STATE BOARD OF TAXES AND  
 ASSESSMENT:

20 Your petitioner, Stevens Institute of Tech-  
 nology residing at (P. O. address) Castle Point,  
 in the county of Hudson and State of New Jersey,  
 respectfully shows that Stevens Institute is the  
 owner of certain property situate in the taxing  
 district of Hoboken, county of Hudson, consist-  
 ing of Gymnasium field and known as Lot 33,  
 Castle Point.

30 That said property has been assessed for the  
 purpose of taxation for the year 1923 at a valua-  
 tion of Land, \$38,000; Improvement, \$————  
 Personal, \$————; Total, \$38,000, at which  
 assessment your petitioner is aggrieved, because  
 the said assessment is in excess of its true value.

That an appeal from said assessment has been  
 filed with the Hudson County Board of Taxation,  
 which appeal said Board disposed of as follows:

Affirmed without prejudice pending action by  
 State Board on same for 1922.

40 Your petitioner, has, therefore, not paid the  
 taxes so levied for the year 1923 and prays that  
 said assessment of Land, \$38,000; Impt., \$————;

*Appeals*

Pers., \$————; Total, \$38,000, for the year 1923, be reduced to the true value of the property, to wit:

Land, \$ N I L; Impt., \$————; Pers., \$————; Total, \$ Cancelled and exempted.

Dated July 27, 1923.

STEVENS INSTITUTE OF TECHNOLOGY,

(Signed) By A. Riesenberger,

Treasurer.

10

In the matter of the application of Stevens Institute of Technology for the reduction of the tax assessment for the year 1923 on property situate in the City of Hoboken, County of Hudson and State of New Jersey.

Petition

20

TO THE STATE BOARD OF TAXES AND ASSESSMENT:

Your petitioner, Stevens Institute of Technology residing at (P. O. address) Castle Point, in the county of Hudson and State of New Jersey, respectfully shows that Stevens Institute is the owner of certain property situate in the taxing district of Hoboken, county of Hudson, consisting of athletic field and known as

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Old U. V. W. part 27	17,000. folio 9
Old Q. S. T. part 27	24,100. folio 14
Old D. part 27	55,900. folio 103
Old F. part 27	45,400. folio 104

40

*Appeals*

10 That said property has been assessed for the purpose of taxation for the year 1923 at a valuation of Land, \$142,400; Improvement, \$2,000; Personal, \$———; Total, \$144,400, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Hudson County Board of Taxation, which appeal said Board disposed of as follows:

Affirmed without prejudice pending judgment by State Board on same for previous years.

20 Your petitioner, has, therefore, not paid the taxes so levied for the year 1923 and prays that said assessment of Land, \$142,400; Impt., \$2,000; Pers., \$———; Total, \$144,400, for the year 1923, be reduced to the true value of the property, to wit:

Land, \$N I L; Impt., \$ N I L; Pers., \$———; Total, \$ Cancelled and exempted.

Dated July 27, 1923.

STEVENS INSTITUTE OF TECHNOLOGY,

(Signed) By A. Riesenberger,

Treasurer.

30

40

*Appeals*

In the matter of the application of Stevens Institute of Technology for the reduction of the tax assessment for the year 1922 on property situate in the City of Hoboken, County of Hudson and State of New Jersey.

Petition 10

TO THE STATE BOARD OF TAXES AND ASSESSMENT:

Your petitioner, Adam Riesenberger (Treasurer) residing at (P. O. address) c-o Stevens Institute of Technology, Hoboken, N. J., in the County of \_\_\_\_\_ and State of \_\_\_\_\_ respectfully shows that Above Ins't is the owner of certain property situate in the taxing district of Hoboken, county of Hudson, consisting of Campus and athletic field and known as per annexed schedule. 20

That said property has been assessed for the purpose of taxation for the year 1922 at a valuation of Land, \$234,400; Improvement, \$2,700; Personal, \$ \_\_\_\_\_; Total, \$237,100, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value. 30

That an appeal from said assessment has been filed with the Hudson County Board of Taxation, which appeal said Board disposed of as follows:

Affirmed without prejudice.

Your petitioner, has, therefore, not paid the taxes so levied for the year 1922 and prays that said assessment of Land, \$234,400; Impt., \$2,700; Pers., \$ \_\_\_\_\_; Total \$237,100, for the year 40

*Appeals*

1922, be reduced to the true value of the property, to wit: cancelled and exempted as school property. Land, \$ ; Impt., \$ ; Pers., \$ ; Total, \$ NIL.

Dated Sept. 15, 1922.

10

(Signed) A. RIESENBERGER.

Property of Stevens Institute of Technology,  
2nd Ward, Hoboken.

(Folio)	Old Lot.	New Lot.	Valuations.		Total
			Land	Buildings	
9	U-V-W )		\$17,000		
14	Q-S-T )		24,100		
98	B )		14,000		
99	D-2-E-E1- )	27			
	3-4-C )				
100	P-O-N-M- )		55,900		
	L-K-J-I- )		45,400	\$2,000	
	H-G-F )				
20			\$156,400	\$2,000	\$158,400
98	X	Pt 33	30,000		
		Pt 35	25,000	700	
			\$55,000	\$ 700	\$ 55,700
98	pt 3	Pt 33	8,000		
		Pt 31	15,000		
			\$23,000		\$ 23,000
					\$237,100

Filed March 25, 1924.

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*Opinion of State Board*STATE OF NEW JERSEY,  
STATE BOARD OF TAXES AND  
ASSESSMENT.

In the matter of the application of Stevens Institute of Technology for the cancellation of the tax assessment for the years 1922 and 1923 on property situate in the City of Hoboken, County of Hudson and State of New Jersey.

10

Memorandum

For the petitioner, John Milton.

20

For the respondent, Horace L. Allen.

BY MR. JESS: The appellant claims exemption from taxation for two tracts of land owned by it in the City of Hoboken. The land is used as practice and exhibition fields in connection with the Institute's department of physical education.

The tracts of land involved are Plots 27 and 33. Plot 27 was held to be not exempt from taxation by the Supreme Court in the case of *The Trustees of Stevens Institute v. Bowes*, 78 N. J. L. 205. Plot 33 is connected with Plot 27 and is used for the same purpose. No college buildings are erected upon either plot. Unless therefore there has been some change in fact or in law which would make it inapplicable, the decision in the above cited case is dispositive of the question to be decided on this appeal.

30

The use of the property is substantially the same as it was when the Supreme Court held it to be taxable. The appellant contends, however,

40

*Opinion of State Board*

that since that case was decided it has established and maintains a course of physical education which all students are compelled to take as a part of their training, and that the land in question is used for the athletic activities incidental to this course.

10

We think that this fact does not affect the basis of the Supreme Court's finding. Mr. Justice Parker, speaking for the Court, said: "The president testifies that an athletic field is a distinct necessity in connection with the obtaining of a higher degree of efficiency in instruction. Conceding this for the sake of argument, we are unable to see that it brings the athletic field within the exemption of the statute. The exemption conferred is of land both necessary to the fair use and enjoyment of the buildings and 'whereon the same are situated.' It cannot be said that the buildings on the main block are 'situated' on land in another block which was acquired long after they were erected, nor do we think that the general athletic needs of students at an institution of learning make a neighboring athletic field necessary to the fair use and enjoyment of the buildings."

20

30

The establishment of a department of physical education accompanied by the erection on the athletic field of a building devoted to the uses of the department might create a situation to which the Court's ruling would not apply. But the mere addition to the curriculum of a course of physical training does not, in our opinion, differentiate the present status from that upon which the Supreme Court founded its decision in the earlier case.

40

Nor has there been any change in the law which might be construed to aid the appellant's cause.

*Judgment of State Board*

The exempting provision of the Tax Act applicable to the situation still imposes "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 this double test cannot escape taxation." *Sisters of Charity v. Cory*, 73 N. J. L. 699, 703. 10

It follows from the decisions cited that the action of the Hudson County Board of Taxation was right in affirming the assessment under review and the appeal must, therefore, be dismissed. 20

FRANK B. JESS.

## STATE OF NEW JERSEY

## STATE BOARD OF TAXES AND ASSESSMENT

---

In the matter of appeal of  
Stevens Institute of Technology  
from the Assessment of Prop-  
erty in City of Hoboken, County  
of Hudson, for the year 1923.

---

Judgment 30

An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by the said Board, by Stevens Institute of Technology in which it is alleged that an injustice has been done the said complainant by the assessment 40

*Judgment of State Board*

of certain property for taxation for the year 1923, located at City of Hoboken, in the County of Hudson, consisting of gymnasium field, known at Lot 33, Castle Point, and that said property is assessed higher than the true value thereof;

- 10 After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of John Milton, for the complainant, and Horace L. Allen for the City of Hoboken, and after considering the same, it is on this twenty-fifth day of March, nineteen hundred and twenty-four, at a session of the State Board of Taxes and Assessment, ORDERED, ADJUDGED and
- 20 DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$38,000, levied for the year 1923 on above described property be affirmed and the appeal therefrom dismissed.

ATTEST:

Frank D. Schroth,  
Secretary.

James Baker, President.

Frank B. Jess,

Harry W. Mutchler,

30

M. R. Margerum,

Isaac Barber,

State Board of Taxes and  
Assessment.

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*Judgment of State Board*

## STATE OF NEW JERSEY

## STATE BOARD OF TAXES AND ASSESSMENT

---

In the matter of appeal of  
Stevens Institute of Technology  
from the Assessment of Prop-  
erty in City of Hoboken, County  
of Hudson, for the year 1923.

---

Judgment

10

An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by the said Board, by Stevens Institute of Technology in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1923, located at City of Hoboken, in the County of Hudson consisting of athletic field and that said property is assessed higher than the true value thereof;

20

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of John Milton, for the complainant, and Horace L. Allen for the City of Hoboken, and after considering the same, it is on this twenty-fifth day of March, nineteen hundred and twenty-four, at a session of the State Board of Taxes and Assessment, ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment levied for the year 1923, be affirmed as follows:

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*Judgment of State Board*

Folio				Assessed:	State Bd. Action:
	9, old U.V.W. part	27		\$17,000	Affirmed
"	14, old Q.S.T.	" "		24,100	"
"	103, old D	" "		55,900	"
"	104, old F	" "		45,400	"
				142,400 Imps.	\$2,000 "

10 ATTEST:

Frank D. Schroth,  
Secretary.

James Baker, President.  
Frank B. Jess,  
Harry W. Mutchler,  
M. R. Margerum,  
Isaac Barber,  
State Board of Taxes and  
Assessment.

20

## STATE OF NEW JERSEY

## STATE BOARD OF TAXES AND ASSESSMENT

30 In the matter of appeal of  
Stevens Institute of Technology  
from the Assessment of Prop-  
erty in City of Hoboken, County  
of Hudson, for the year 1922. } Judgment

40 An appeal in writing having been filed with the  
State Board of Taxes and Assessment, duly veri-  
fied according to the rules of practice prescribed  
by the said Board, by Stevens Institute of Tech-  
nology in which it is alleged that an injustice has  
been done the said complainant by the assessment  
of certain property for taxation for the year  
1922, located at City of Hoboken in the County

*Judgment of State Board*

of Hudson, consisting of campus and athletic field as hereinafter set forth, and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of John Milton for the complainant, and Horace L. Allen for the City of Hoboken, and after considering the same, it is on this twenty-fifth day of March, nineteen hundred and twenty-four, at a session of the State Board of Taxes and Assessment, ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$237,100, levied for the year 1922, be affirmed as follows:

Folio	Old Lot	New Lot	Assessed:	State Bd. Action
9	U-V-W )		Land \$17,000	Affirmed
14	Q-S-T )		" 24,100	"
98	B )		" 14,000	"
99	D-2-E1- )		" 55,900	"
	3-4-C )	27		
100	P-O-N-M- )		Land 45,400	"
	L-K-J-I- )		Bldgs. 2,000	"
	H-G-F- )			
			\$158,400	"
98	X	Pt. 33	Land 30,000	"
		Pt. 35	Land 25,000	"
			Bldg. 700	"
			55,700	"
98	pt 3	Pt. 33	Land 8,000	"
		Pt. 31	" 15,000	"
			23,000	"
		Total assessment	\$237,100	

*Minutes*

ATTEST:

Frank D. Schroth,  
Secretary.

James Baker, President.

Frank B. Jess,

10

Harry W. Mutchler,

M. R. Margerum,

Isaac Barber,

State Board of Taxes and  
Assessment.

## MINUTES

State House, Trenton, New Jersey,  
Tuesday, October 17, 1922.

20

The Board met at 10:30 A. M. on the above  
date.Present, President Baker, Mr. Jess, Mr. Mutch-  
ler and Dr. Barber.The Board fixed the following additional dates  
for hearing appeals from local assessments:Wednesday, November 15: Court House, Jersey  
City: 71 appeals from the City of Hoboken.

30

Court House, Jersey City, New Jersey,  
Wednesday, November 8, 1922.The Board met at 10:30 A. M. on the above date  
for the purpose of hearing appeals and transact-  
ing routine business of the department.Present, President Baker, Mr. Jess, Mr. Mutch-  
ler and Mr. Margerum.

40

The Secretary laid before the Board a letter  
from Horace L. Allen, Assistant Corporation At-  
torney of the City of Hoboken, requesting an  
adjournment of hearing in the matter of appeals

*Minutes*

involving assessments in that taxing district, which appeals had been listed for hearing at Jersey City on November fifteenth, continuing to the following day if necessary. Mr. Allen stated that both John J. Fallon, the Corporation Counsel, and himself would be engaged in the trial of appeals in the matter of street improvements before Judge McCarthy from November thirteenth to November twenty-eighth. 10

The Secretary also submitted a letter from Messrs. Hopkins & Herr, counsel for a number of appellants from assessments in the City of Hoboken, whose appeals were also listed for hearing on the above named dates. The letter requested an adjournment until after the first of the year, and represented that the valuation for assessment purposes depended somewhat upon the outcome of appeals from assessments on improvements, now before the Court of Common Pleas. 20

In compliance with these requests, the Board ordered that all appeals listed for hearing at the Court House, Jersey City, on November fifteenth and sixteenth be adjourned without date.

State House, Trenton, New Jersey. 30  
Tuesday, October 9, 1923.

The Board met at 10:30 A. M. on the above date.

Present, President Baker, Mr. Mutchler, Mr. Margerum and Dr. Barber.

The Board fixed the following dates for hearing appeals from local assessments:

Wednesday, November 7: City Hall, Hoboken: Routine and 136 Hoboken cases. 40

*Minutes*

City Hall, Hoboken, New Jersey,  
Wednesday, November 7, 1923.

10 The Board met at 10:00 A. M. on the above date, for the purpose of hearing appeals and transacting routine business of the department.

Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

The following calendar of appeals was called:  
2-4. Stevens Institute of Technology vs. City of Hoboken.

Cases called and adjourned without date on request of Mr. John Milton, counsel for Stevens Institute of Technology.

20 State House, Trenton, New Jersey,  
Tuesday, November 27, 1923.

The Board met at 10:30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

The following dates were fixed for hearings

Thursday, December 13: Court House, Jersey City: All adjourned Hudson County cases, with exception of 3d class railroad property cases.

30

Court House, Jersey City, New Jersey.  
Thursday, December 13, 1923.

The Board met at 10:30 A. M., on the above date for the purpose of hearing appeals.

Present, President Baker, Mr. Jess, Mr. Margerum and Dr. Barber.

40 The following calendar of appeals was called:  
4-5-6. Stevens Institute of Technology vs. City of Hoboken.

Cases heard, Mr. John Milton appearing for

*Minutes*

the petitioner and Mr. Horace L. Allen appearing for the City of Hoboken. The Board heard the testimony of Adam Riesenberger for the petitioner and reserved decision, pending the filing of briefs.

10

State House, Trenton, New Jersey,  
Tuesday, March 25, 1924.

The Board met at 10:30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler, Mr. Margerum and Dr. Barber.

The Board took up for consideration appeals of Stevens Institute of Technology vs. City of Hoboken, and ordered judgments entered as follows:

20

1. That the assessment levied for the year 1922 on property known as campus and athletic field be affirmed as follows:

Folio	Old Lot		New Lot	Assessed:	
9	U-V-W	)		Land	\$17,000
14	Q-S-T	)		"	24,100
98	B	)		"	14,000
99	D-2-E-E1-3-4-C	)	27	"	55,900
100	P-O-N-M-L-K	)		Land	45,400
	J-I-H-G-F	)		Bldgs.	2,000
					<hr/>
					158,400
98	X	)	Pt. 33	Land	30,000
			Pt. 35	"	25,000
				Bldg.	700
					<hr/>
					55,700
98	Pt. 3	)	Pt. 33	Land	8,000
			Pt. 31	"	15,000
					<hr/>
				Total Assessment .....	\$237,100

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2. In this case the Board ordered that the assessment levied for the year 1923 be affirmed as follows:

40

*Docket*

Folio	9, old U.V.W. part	27	\$17,000
"	14, " Q.S.T.	" 27	24,100
"	103, " D	" 27	55,900
"	104, " F	" 27	45,400
			Total.....142,400 Imps. \$2,000

10      3. That the assessment of \$38,000, levied for the year 1923 on a gymnasium field, known as Lot 33, Castle Point, be affirmed and the appeal therefrom dismissed.

A memorandum was filed by Mr. Jess, setting forth the reasons for the Board's conclusions in these cases.

DOCKET

20

2727

STEVENS INSTITUTE OF  
TECHNOLOGY,  
*Petitioner.*

VS.

30

CITY OF HOBOKEN,  
County of Hudson,  
*Respondent.*

Petr's Atty. Treacy & Milton.  
Respdt's Atty. John J. Fallon.  
Assessment of 1923.  
Property: Gymnasium field,  
known as lot 33, Castle Point.  
Amount, \$38,000      Judgment \$

1923.

Aug. 1. Petition filed.

Oct. 9. Hearing fixed for November 7 at Hoboken & notice sent.

Nov. 7. Adjourned on request of counsel for petitioner.

40

Nov. 27. Hearing fixed for December 13 at Jersey City & notice sent.

*Docket*

Dec. 13. Case heard. Decision reserved, pending the filing of briefs.

1924.

March 25. Memorandum filed.

March 25. Judgment dismissing petition entered.

10

## DOCKET

2728	}	STEVENS INSTITUTE OF TECHNOLOGY, <i>Petitioner.</i>	Petr's Atty. Treacy & Milton. Respdt's Atty. John J. Fallon. Assessment of 1923. Property: Athletic field. Old U.V.W. part 27, \$17,000 folio 9 " I.S.T. " 27, 24,100 " 14 " D " 27, 55,900 " 103 " F " 27, 45,400 " 104 Amount, \$144,400 Judgment, \$ L. \$142,400 B. 2,000	20
		vs.		
		CITY OF HOBOKEN, County of Hudson, <i>Respondent.</i>		

1923.

Aug. 1. Petition filed.

Oct. 9. Hearing fixed for November 7 at Hoboken & notice sent.

30

Nov. 7. Adjourned on request of counsel for petitioner.

Nov. 27. Hearing fixed for December 13 at Jersey City & notice sent.

Dec. 13. Case heard. Decision reserved, pending the filing of briefs.

1924.

March 25. Memorandum filed.

March 25. Judgment dismissing petition entered.

40

## DOCKET

- 2379
- 10 STEVENS INSTITUTE OF  
TECHNOLOGY,  
*Petitioner.*
- VS.
- CITY OF HOBOKEN,  
County of Hudson,  
*Respondent.*
- Petr's Atty.  
Respd't's Atty.  
Assessment of 1922.  
Property: Campus and athletic field.  
(See schedule attached to petition.)  
Amount, \$237,100 Judgment \$  
L. \$234,400 (See schedule)  
B. 2,700 " "
- 1922.
- 20 Sept. 21. Petition filed.  
Oct. 17. Hearing fixed for November 15 at  
Jersey City & notice sent.  
Nov. 8. Adjourned without date.
- 1923.
- Oct. 9. Hearing fixed for November 7 at Ho-  
boken & notice sent.  
Nov. 7. Adjourned on request of counsel for  
petitioner.
- 30 Nov. 27. Hearing fixed for December 13 at  
Jersey City & notice sent.  
Dec. 13. Case heard. Decision reserved, pend-  
ing the filing of briefs.
- 1924.
- March 25. Memorandum filed.  
March 25. Judgment dismissing petition en-  
tered.

## Certificate

### STATE OF NEW JERSEY

#### STATE BOARD OF TAXES AND ASSESSMENT

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, do hereby certify that the foregoing are true copies of the petition, memorandum, judgment and proceedings in the matter of the appeals of Stevens Institute of Technology, from the assessment of property in the City of Hoboken, County of Hudson, for the years 1922 and 1923, as the same are taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the twenty-first day of Sept. and the first day of August, A. D. 1922 and 23, and other dates, and now remaining on file and of record therein. 10  
20

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-fifth day of November, A. D. 1924.

(SEAL)

FRANK D. SCHROTH,  
Secretary.

30

40

## Reasons

## NEW JERSEY SUPREME COURT

10	STEVENS INSTITUTE OF TECHNOLOGY, <div style="text-align: right;"><i>Prosecutor,</i></div>	}	On Certiorari Reasons.
	<div style="text-align: center;">vs.</div> THE STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN, <div style="text-align: right;"><i>Defendants.</i></div>		

20 The prosecutor writes down the following reasons for reversing and setting aside the judgment brought up for review by the writ in this cause.

1. The lands and buildings referred to in the petitions of appeal are exempt from taxation.

2. The buildings against which the assessments were levied, for the years 1922 and 1923, were actually and exclusively used for a college or school during the period from September 30th, 1921, to and including the year 1923.

30 3. The land surrounding said buildings is land whereon said buildings are erected and is necessary for the fair enjoyment thereof and is devoted to the purposes above mentioned and to no other purpose, and does not exceed five acres in extent.

40 4. The prosecutor since its incorporation under the Laws of New Jersey many years ago has been and is now a college or school not conducted for profit, purely educational in its purposes and practices.

*Reasons*

5. The State Board of Taxes and Assessment found that the use of the property was substantially the same for the years in question as such use was in the year 1908, despite the fact that the gymnasium, the use of which is compulsory upon the students as a part of the curriculum, and was so during the years in question, has been erected since the year 1908. 10

6. The buildings of the prosecutor, used as a college or school, are situated on the lands assessed.

7. Such lands are necessary for the fair use and enjoyment of the said buildings so situated thereon.

JOHN MILTON,  
*Attorney of Prosecutor.*

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30

40

## Testimony

### STATE BOARD OF TAXES AND ASSESSMENT.

10	STEVENS INSTITUTE OF TECHNOLOGY,  <div style="text-align: center;">vs.</div> CITY OF HOBOKEN,  (2379) (2728) (2727) (2252)	} Testimony
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Jersey City, New Jersey,  
Thursday, December 13, 1923.

20 PRESENT:  
 MR. BAKER,  
 MR. JESS,  
 MR. MARGERUM,  
 MR. MUTCHLER.

APPEARANCES:  
 HON. JOHN MILTON, *for the Petitioner*,  
 HON. HORACE L. ALLEN, *for the Respondent*.

30 ADAM RIESENBERGER, sworn on behalf of  
 the petitioner, testified as follows:

*Direct Examination by Mr. Milton:*

MR. MILTON: We offer a map of property of the Stevens Institute of Technology in the City of Hoboken, Hudson County, N. J., August, 1922, made by Beyer & Mahnken, Engineers and Contractors, and ask that it be marked.

40

*Testimony Before State Board*

*(Map above referred to received in evidence and marked Exhibit P-1).*

Q. Mr. Riesenberger, what position do you occupy with Stevens Institute? A. Registrar and Treasurer.

10

Q. How long have you been registrar and treasurer? A. Treasurer about 40 years and registrar 25 years.

Q. You are familiar with the real estate holdings of the Institute in the City of Hoboken? A. I am.

Q. The two properties under consideration in this appeal are shown on this blueprint—

MR. ALLEN: The City has an appeal from the local assessments made on the buildings in here.

20

MR. MILTON: That is in plot 23.

MR. ALLEN: I am waiting for two witnesses to appear to testify to the value of those brick buildings, and if they don't come I don't know what I will have to do.

MR. MILTON: I was proceeding to put the proof in, in the appeal of Stevens Institute, cases 4, 5 and 6. Those appeals really are exemption claims.

30

THE PRESIDENT: Yes.

Q. The two properties involved in the appeal of Stevens Institute are shown on the print or map, P-1, as plots 27 and 33? A. They are.

Q. Will you describe for the record, Mr. Riesenberger, what plot 27 consists of? A. It consists of the main athletic field, including a running track and tennis courts, also two grand stands, one on the east and one on the west.

40

*Testimony Before State Board*

Q. Those are the only structures erected on plot 27? A. Yes, that is 27.

10 Q. What is plot 33? A. There is nothing on there, that is a practice field. When boys exercise outdoors in the spring time we have baseball and LaCross going at the same time. One field is used for LaCross and the other for baseball.

Q. With what department of the Institute, if any, are buildings 27 and 33 connected? A. With the Department of Physical Education.

Q. When was the Department of Physical Education instituted? A. In 1916.

Q. What comprises the Department of Physical Education? A. You mean what kind of instruction is given?

20 Q. Yes? A. The instruction consists of the regular, what is called setting up exercises or calisthenics, swimming and wrestling and basket ball, and outdoors, baseball and football and La-Cross, also track and tennis. The boys are required to report three hours a week. Each student of the college, all four classes, is required to report three times a week throughout the year.

30 Q. What instructors are there in the Department of Physical Education? A. We have four instructors, a director, assistant director and two instructors.

Q. Are there records kept, Mr. Riesenberger, of the marks attained or given students in the Department of Physical Education? A. They are recorded there the same as in any other subject in the course.

40 Q. I hand you certain forms or blanks and ask you to state what use is made of those forms in the Institute? A. We have here form report blanks, upon which the record of the students is entered, and these are sent to the parents.

*Testimony Before State Board*

Q. Take the first blank? A. This is of the Senior class. The various subjects are entered here, mechanics, under that head is Thermodynamics and Applied Kinetics; Engineering Practice, Mechanical Engineering, Recitations and Laboratory Work, Electrical Engineering, Economics of Engineering, Structural Engineering, Report Writing and Physical Education. 10

Q. What is done with this blank? A. It is sent to the parents for their information.

Q. How frequently? A. At the end of each term. There are two regular terms in the year, and the supplementary term.

Q. So that at the end of each term the parent is advised of the standing of the son in Physical Education as well as other departments of the Institute? A. Yes. 20

Q. And that is done by— A. I might say there is no physical education instruction in the supplementary term, just as in the two regular terms. The supplementary term is only a month in length. The two regular terms are each about fifteen weeks.

Q. That report is made to the parent by means of the form which you have just described? A. Yes. 30

MR. MILTON: I ask that that be marked and I offer it.

THE PRESIDENT: It may be admitted.

(Paper marked Exhibit P-2).

Q. The three forms which I now show you are similar to the one which you have just described as sent to the parents of Seniors, and are used for 40

*Testimony Before State Board*

the purpose of advising the parents of the men in other classes. A. They are.

Q. Sophomores, Freshmen and Juniors? A. Yes.

10 Q. And in each instance at the end of the two regular terms, the parents of the student in each class are advised as to his standing in Physical Education, as well as any other subject taught in the Institute? A. That is so.

MR. MILTON: We offer these and ask that they be marked.

THE PRESIDENT: They may be admitted.

20 (Paper received in evidence and marked Exhibits P-3, 4 and 5.)

Q. What other blanks have you? A. This large card here is the permanent record card which is kept in the Registrar's office. It gives the standing of each student in each subject he takes in the course. It is the full report for four years.

30 Q. On that record which shows the career, as I understand it, it shows the career of the student from his entrance to his graduation? A. It does.

Q. In the college, there appears there a space for his standing in the Department of Physical Education in each year? A. Yes.

Q. That is correct, is it? A. That is correct.

MR. MILTON: We offer that and ask that it be marked.

THE PRESIDENT: It may be admitted.

40 (Paper received in evidence and marked Exhibit P-6.)

*Testimony Before State Board*

Q. The last form is what? A. That is used, the Freshmen before they are admitted, they have to submit to a physical examination, and the record is then made upon this blank, and they are advised what particular instruction their physical condition may not permit them to take, internal weaknesses in their physical make-up and also the full measurements of the body are on here. 10

Q. Do I understand that when each student applies for admission to Stevens Institute he receives a physical examination? A. Yes, that is correct. On the back of that,—I didn't complete my statement—

Q. I beg your pardon? A. There is the performances of the student during the term, which is also recorded there. 20

Q. When he first enters he has a physical examination? A. Yes.

Q. And the result of that examination is entered upon this card which we are now discussing? A. Yes.

Q. With a space for recommendation as to what form of exercise that student should be required to take? A. Yes.

Q. Is that right? A. That is correct. 30

Q. And on the back of the card is a form for noting the work done by the student in each year? A. Yes.

Q. From Freshman to Senior? A. Yes.

Q. In the different sub-branches of the Department of Physical Education? A. That is correct.

THE PRESIDENT: Does this physical training or education go with the entire college period of the student? 40

*Testimony Before State Board*

THE WITNESS: Yes.

THE PRESIDENT: It is a matter of every year performance?

THE WITNESS: Every year.

10 MR. MILTON: We offer this last blank and ask that it be marked.

(Paper received in evidence and marked Exhibit P-7).

THE PRESIDENT: It is a part of his training, compulsory, it is a part of his training?

MR. MILTON: I was coming to that.

20 Q. I now show you a blueprint and ask you to state what it is. A. This is the schedule of the hours that the student must attend, it gives the hours for each class in college, for each day of the week, from 8:50 to 4:30.

Q. Where, if at all, upon this print is indicated what time must be devoted by the students of the different classes to the Department of Physical Education? A. That hour is entered after the name by Davis, he is the Director of Physical Education.

30 Q. That is divided primarily into days of the week? A. Yes.

Q. Monday to Saturday? A. Yes.

Q. And then into hours? A. Yes.

Q. And the notation 1b under 8:50. A. Means a section of the Freshman class, there are four sections, a, b, c and d.

Q. And that section of the Freshman class at 8:50 is required to attend the Department of Physical Education? A. Correct.

40 Q. And that applies to all of the numerals and

*Testimony Before State Board*

characters straight across the line opposite the name "Davis"? A. Correct.

Q. Will you examine that blueprint or chart and advise us whether or not all the classes of the Institute are shown on the chart, I mean as being required to take instruction in the Department of Physical Education? A. They are all scheduled on this. 10

Q. They are all scheduled? A. Yes.

MR. MILTON: We offer that and ask that it be marked.

THE PRESIDENT: Admitted.

(Paper received in evidence and marked Exhibit P-8.)

Q. What is the rule of the Institute, Mr. Riesenberger, with respect to whether or not instruction in Physical Education is compulsory or optional? A. Compulsory. 20

Q. And if a student should refuse to take instruction in this department would he be permitted to remain in the Institute? A. He would not.

Q. In what way are the plots, 27 and 33, as shown on the Exhibit P-1 used in connection with the administration of this Department of Physical Education? A. The boys, some of the students are attending in the gymnasium building, and there are others that exercise out of doors, this is so in the fall and in the spring, and in the winter months, of course, there are no instructions given out of doors. 30

Q. Is it a recognized practice for this department to be carried on in its administration in plots 33 and 27? A. Yes.

Q. That is out of doors? A. Yes. 40

*Testimony Before State Board*

Q. And that is the regular continued practice of the department? A. It is.

*Cross-Examination by Mr. Allen:*

10 Q. In what respect, Mr. Riesenberger, have these plots changed since the decision of the Supreme Court rendered in the Stevens Institute case in 1909, I mean, as far as the actual location of these tracts is concerned. A. One of the tracts has been graded since, that practice field, plot 33, has been graded, so that it can be used for exercise outdoors.

20 Q. Well, plot 27, which is to the east of Hudson Street and north of Sixth, there has been no change in plot 27 since that decision of the Supreme Court, has there? A. No change.

Q. The location of the grand stand and the bleachers and the runways, is the same, no buildings have been added to it? A. No.

Q. No college buildings on plot 27? A. No.

Q. 33, plot 33, that is just the same as it was at the time of the decision? A. Except that it has been graded.

30 Q. Except that it has been graded, but prior to its being graded and prior to the decision in 1909, it was then used as an athletic field? A. It was not used then, it could not be used, it was too irregular on the surface.

Q. Now, prior to 1909 the athletic field was considered by the officials of your Institute as a necessity for the education of pupils, was it not? A. No, we didn't have a Physical Education Department at that time, we simply had intercollegiate athletics.

40 Q. You had the same athletics going on as you have today except now you have a department, as

*Testimony Before State Board*

you call it. A. We have a regular department which the student must attend.

Q. Prior to the creation of this department the students on plot 27 engaged in the same line of athletics that they do today? A. Not to the same extent.

10

Q. I said same kind of athletics. That is they engaged in baseball, did they not? A. Yes.

Q. And football? A. Yes.

Q. And lawn tennis? A. Yes.

Q. And those athletics prior to 1909 were considered by the Institute as being a necessity in connection with obtaining the highest degree of efficiency and instruction? A. No, I think the reason of it is all colleges have an athletic field. Without it the students will not come to the college. That is why Stevens had to have an athletic field.

20

Q. And then the only distinction between the situation prior to 1909 and that of today is that then the indulgence in athletics on plot 27 was optional and now it is required by the Institute, that is really the only distinction. A. Well, except that there is more of it. The boys if they are scheduled in the morning for physical training they go outdoors to do it, and that was not so before this department was established.

30

Q. Now, have you any land surrounding the main plant of the Stevens Institute south of Sixth Street, that is used for athletics? A. South of Sixth Street?

Q. Yes. A. No, we have not.

Q. No portion of that is used? A. No.

Q. On what plot is the Morton Laboratory?  
A. It is here, plot 26 (indicating).

40

*Testimony Before State Board*

Q. When was the gymnasium erected on plot 34? A. During the year 1915.

Q. Was that ever assessed, plot 34? A. Some part of the land was and then we appealed and got the exemption from the County Board.

10 Q. That is just as to plot 34? A. Yes.

Q. Plot 34 contains the gymnasium and land contiguous thereto? A. Yes.

Q. Necessary for it? A. Yes.

Q. And 33 is really contiguous to 27? A. Yes.

Q. And is used with 27 for LaCross and baseball? A. And outdoor exercise.

20 MR. MILTON: We don't claim it is contiguous to 34, if that is what you have in mind.

MR. ALLEN: You don't claim it is contiguous?

MR. MILTON: No, 34, that is what you are trying to exclude from the case.

MR. ALLEN: So that we don't disagree as to that, this plot 33, if it is to be exempted it must be exempted by reason of its use for this department.

30 MR. MILTON: Yes.

MR. ALLEN: And not by reason of its being part of 34.

MR. MILTON: Part of the gymnasium, no, we don't claim that.

MR. ALLEN: I think that is all.

MR. MILTON: That is all, that is our case. We ask for an opportunity to submit a memorandum.

**Depositions**  
NEW JERSEY SUPREME COURT

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STEVENS INSTITUTE OF TECHNOLOGY,

*Prosecutor,*

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN,

*Defendants.*

---

On  
Certiorari

10

Depositions taken before me, Joseph S. Parry, a Supreme Court Commissioner of the State of New Jersey, in the above entitled cause of Stevens Institute of Technology versus The State Board of Taxes and Assessments and The City of Hoboken, taken upon notice, on this twenty-second day of December, nineteen hundred twenty-four, at my offices, 84 Washington Street in the City of Hoboken, in the presence of Albert C. Wall, Esquire and John J. Mulvaney, Esquire, representing John Milton, Esquire, attorney of record, for the Prosecutor, and Horace L. Allen, Esquire, representing the Defendant. The testimony is taken by Herschel J. Huddle, a competent stenographer and transcribed into typewriting, and, by consent of the counsel of both sides, is not sworn.

20

30

*Supreme Court Commissioner.*

THE COMMISSIONER: It is stipulated between the respective parties hereto as to the time and place and date and the taking of the depositions before me as Commis-

40

*Objection*

10 sioner. It is also consented by the respective parties hereto that the signatures of the respective witnesses be waived; and it is agreed that the testimony may be taken stenographically by Mr. Herschel J. Huddle.

MR. ALLEN: I will file this objection, whatever it will amount to, to the taking of this additional testimony, I should think the matter would have to be disposed of on such evidence as was produced before the Board.

The objection referred to reads:

**Objection**

20

## NEW JERSEY SUPREME COURT

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STEVENS INSTITUTE OF TECHNOLOGY,

*Prosecutor,*

vs.

30 THE STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN,

*Defendants.*

---

} Objection.

40

I respectfully enter my objection to the taking of depositions and evidence by the prosecutor intended to be used in a review of the determination and judgment of the State Board of Taxes and Assessment, in the matter of the 1922 and 1923 assessments, for taxation against plots 27 and 33,

*Alexander Humphreys, Direct*

Castle Point, Hoboken. The City respectfully contends that the Supreme Court, upon the certiorari allowed herein, should review the evidence taken before the State Board of Taxes and Assessment in said matter rather than upon depositions and evidence now taken which the State Board of Taxes and Assessment did not have before it when they rendered their determination and judgment. 10

HORACE L. ALLEN,  
*Attorney of The City of Hoboken.*

ALEXANDER HUMPHREYS sworn.

*Direct by Mr. Wall:*

Q. You have been president of Stevens Institute now for how many years? A. Since 1902. 20

Q. And before that you were engaged in active engineering? A. Yes; and since. Originally I was with the Bayonne & Greenville Gaslight Company — that was before my graduation from Stevens; then the Pintesh Light Company; then chief engineer and superintendent of the United Gas & Improvement Company of Philadelphia; then as head of the firm of Humphreys & Glasgow of London and a little later, Humphreys & Glasgow of New York; then a little later, Humphreys & Miller of New York. I have been president of a number of gas companies, and a number of Societies also, engineering societies. 30

Q. Are you a graduate of Stevens yourself?

A. I am.

Q. Now, is Stevens fitted with a gymnasium?

A. Yes.

Q. And when was that gymnasium constructed? 40

*Alexander Humphreys, Direct*

ed? A. I will have to refresh my memory on that: I think it was in 1915.

Q. And it shows on the maps that we will offer in evidence? A. Yes.

10 Q. And it is a substantial brick building, is it?  
A. It is, strictly so; designed with great care with regard to the educational feature of that department.

Q. Who gave it to you? A. William Hall Walker gave us one hundred thousand dollars for it. It was originally designed for a gymnasium in connection with the department of physical education.

Q. What was the cost of the gymnasium? A. About a hundred thousand dollars.

20 Q. Now, did you at that time, as president of the Institution, make any change in the curriculum with reference to the position of athletics as a part of the curriculum? A. Yes; having looked forward to having some such building as soon as possible, and having in mind the plan in connection with the building of this gymnasium, we established the department of physical education.

30 Q. At that time? A. At that time, in connection with the building.

Q. How many departments have you? A. There are fifteen now.

Q. In what year was that? A. That was in 1917-1918.

Q. Well, what do you mean, Doctor, when you say it is one of the departments? A. It is one of the departments in this sense: From my experience as a practical engineer of a number of engineering plants and as demonstrated here and

*Alexander Humphreys, Direct*

abroad, I was firmly impressed with the idea that education particularly the mental side of it, should be co-ordinated with the care of the body and the development of the body for hard work and, therefore, it was my object to construct a department of Physical Education: athletics, of course, naturally would come too; with a teacher whereby these men, when they enter, would be carefully examined as to their physical qualifications. These men were, therefore, grouped into three groups, A, B, and C; men that were not in first-class physical condition—a man that might be of good mind but who was physically defective, would have to be cared for by special treatment, therefore he cannot be up to the regular routine without special treatment; then the head of this Department had to be a man trained medically or else have gone so far in that direction that he would be competent to carry on physical examinations, this constant watchfulness of the men, my idea being that these students coming to us, and our engineering examinations being severe, the proper remedy would be by keeping them up to the mark so far as their physical being is concerned and that idea has been used here—or perhaps I should say, is an actual rule ever since, and there has been none to gain-say us, and Mr. Davis, who is with us now, is a man trained in the medical profession, and he is head of that Department. His power is felt in the Board of our Institution, he is a member of the Faculty and has the full respect of that Faculty and myself, and further than that, while some faculty members are not heads of departments, Prof. Davis is head of that Department, and appears in the catalogue as head of the Department.

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30

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*Alexander Humphreys, Direct*

The schedule of studies is developed with the idea of assigning to the Department of Physical Education certain hours and certain requirements and having them lived up to just as earnestly and rigidly as any other of the other departments. To graduate and get their degrees at the end of four years or five, as some of them have, they have to conform with the requirements of that Department; for instance, take the middle of each term, they take, what is called, their Intermediate Term record, and all of these records are prepared to show how the men stand and to assist them in the future, or to check them up, for instance, to the requirements of physical education records, just as to any other requirement. Our idea is to keep in balance the physical education and the other work, and not especially athletics, which is a minor thing with us.

Q. You distinguish between athletics and physical education? A. Well, certainly.

Q. What is the distinction? A. The distinction is, that all the men have to get the physical education and conform with our requirements, and some of them develop into athletes and so go on trips, but they are not allowed to go on tours.

Q. That is, athletics is an outgrowth of the Physical Education Department? A. Yes.

Q. Now, you speak of these as your purposes and principles. Can you say how long ago the proposition to erect this gymnasium in connection with such a plan as you have outlined has occurred to your mind? A. Almost from the first minute when I took the presidency, and being an engineer and not an educator to any extent I had my own idea as to how to carry on the plan be-

*Alexander Humphreys, Direct*

cause I thought I was competent to know what the engineer ought to be.

Q. Did you consider that the teaching of co-ordination and these other qualities that you spoke of, was more important in engineering than in other branches of life work? Is there any special need for the engineer to have a fine sense of physical co-ordination? A. I think there is; and bear in mind that our course is a broad one; young men come to us with no idea that they want to become electrical engineers, civil engineers, mechanical engineers or chemical engineers. That is apt to develop later on. They are up against a pretty hard physical problem. Take my own firm in London, which is building gas works all over the world; if we had to send a man, say, for instance, to follow the work of such a firm as that, we very carefully considered not only his ability as an engineer, his ability as a manager, and ability perhaps as a business man but whether he was physically fit for his task. It is important, and, as I say, it was in my mind from the start.

Q. And your scheme did not really get to work until what year? A. 1916.

Q. Now, then, this course in physical education, is that compulsory? A. Absolutely compulsory.

Q. You spoke of athletics: Does that come under the same compulsion? A. No; not at all.

Q. Well, how about using that athletic field in connection with the gymnasium; couldn't it be made profitable by building a stadium? A. I presume it could be done, but that is in opposition to our scheme of education.

Q. Is the course at Stevens an easy course or a

*Alexander Humphreys, Cross*

hard course? A. Very hard; it is a very hard course. Perhaps I might explain about its being a hard course. I think that we are the only college in the United States that gives a single broad course in engineering. We have no optional courses.

10

*Cross by Mr. Allen:*

Q. Doctor, you refer in the catalogue to some thirteen different departments? A. Yes.

20

Q. Will you show me which ones you mentioned? A. Yes. (Indicating)—This, at this date, and is 1917 and 1918—we put it that way because we begin September, 1917, and run to September, 1918: there is the Department of Descriptive Geometry; Mechanical Drawing; Electrical Engineering; Engineering and Practice. Physical Education is that department just referred to.

Q. Now, when this Department of Physical Education was included in among the other departments of Stevens Institute was the gymnasium then used; did you have a gymnasium? A. Yes; we used it until we got the gymnasium.

30

Q. That gymnasium was there? A. Yes; and immediately we got busy. In other words, as soon as I got the gymnasium, and even before starting the actual building, I was arranging with the Organization Department, arranging for my men; it took me five months to get Director Davis.

Q. Now, what was the attendance of that department? A. Say, in 1914, was 384; the total attendance, 1915, 450; and the next year—

Q. It has been gradually increasing up to now? A. Gradually increasing.

40

Q. Please state just what the "compulsory" feature of this department consists of to these eight hundred students: what must they do? A. It's all compulsory.

*John A. Davis, Direct*

Q. Suppose I was a student there in 1922 and 1923, what would I have to do? A. Mr. Davis will explain.

Q. Now, this gymnasium: that, as I understand, was erected subsequently, that was a separate building? A. Yes.

10

JOHN A. DAVIS sworn.

*Direct by Mr. Wall:*

Q. Mr. Davis, you are Director of Physical Education of Stevens Institute? A. I am, sir.

Q. What year did you come to Stevens to assume this work? A. In December, 1915.

Q. And had you had experience in such matters? A. I had.

20

Q. What class of experience? A. I began to teach physical education in 1902 under Dr. Mahlin who was Physical Director of the Boston Y. M. C. A.; then went to Harvard Summer School and for two summers took instruction there, and the following winter, of 1903, went to Columbia University as instructor of physical education under Dr. Mahlin who then changed from the Boston Y. M. C. A. to Columbia. I was at Columbia for four years, afterwards accepted a position in the University of Cincinnati as Director of Physical Education. During the summers I taught at the University Summer School of the Y. M. C. A. Summer School at Silver Bay. In 1909 I went to the Pratt Institute of Brooklyn as Director of Physical Education of that Institute. There I had all of the men, some two thousand men. I stayed at Pratt Institute until 1915 and then came to Stevens.

30

Q. You didn't mention any experience in hos- 40

*John A. Davis, Direct*

10 pital work. A. While I was at Columbia I also took a course in Physical Education for four years and studied at the College, and at the University of Cincinnati I studied medicine for three years, all of it to better prepare myself to direct the activities of the Department of Physical Education.

Q. Now, how about swimming: does that play any part in the curriculum of the Department of Physical Education? A. Swimming is only for men who are not physically defective. We have found only one that has had such a physical defect that he could not be taught to swim. But swimming is a required subject for graduation.

20 Q. Can every one of Stevens' graduates swim? A. Yes, sir.

Q. That is, since 1915? A. Yes.

30 Q. (Showing paper) This is a paper called the Individual Record Card, and ask you what this is? A. This is our Record Card used in the Department of Physical Education and contains a complete individual record of the student from the time he registers until he is graduated. On one side is recorded the medical and physical results of the examination the student receives before he enters as a Freshman in September—you don't care to have me describe all that—

Q. No. The notations on the card are generally self-explanatory, are they not? A. Yes, they are. The purpose of this examination is to determine just what class the student is to be placed in; whether he is in group A; that means that he is already sufficiently physically endowed for that course of physical activity; that is, he probably has reached that state through over-

*John A. Davis, Direct*

emphasizing special experience in High School. Group B men are just average and who need a greater amount of attention; they are sufficiently endowed but untrained. Then, we have Group C men who possess some physical defects and they receive special instruction under a special instructor in a room that is particularly equipped for that purpose. 10

Q. Is every student in the College in one or the other of these classes? A. Every student.

Q. Are there any physical examinations other than these classification examinations? A. For the purpose of determining the degree of proficiency the student has attained and the progress he has made in his physical development two examinations are given each year; that is, these tests are based upon the kind of work that is taught the student during the term, and, like the classroom subject, he is then put to the test by a certain type of activity to determine the result. There are seven tests given throughout the four years: four of them are in February and three in June. 20

MR. WALL: I will offer that Individual Record Card.

There being no objection the Card is admitted in evidence and marked P 1, December 22, 1924. 30

Q. Now, won't you tell us, Mr. Davis, what you are trying to accomplish by this method of physical education: are you trying to make athletes out of these boys, or what are you trying to do?

A. The result of our observation over a period of years—not only before I came to Stevens but the 40

*John A. Davis, Direct*

10 result of experience in other institutions,—has evidenced the fact that our students do not come to us properly trained from High School, so far as their physical welfare is concerned. So that realizing a student going to college has the last opportunity to build himself up before he enters a business we have laid out this program of physical education, just now pretty much a universal plan among the colleges of the country, and students of the Physical Department overcome any physical defects that are possible for correction, of course, and we create in him a liking for some physical activity which he will continue to pursue after he is graduated in order to overcome sedentary habits; besides we endeavor to keep a man in a sort of training to enable him, when he is out among men, to become a leader of men; if it is necessary to take care of himself in self-defense, he should be able to box, which is a part of the Degree. In bridge construction, if a man should fall into the water he knows how to swim; he knows methods of artificial respiration in case of a fire, and he has to climb up and down heights. It is a sort of practical all-around physical development; athletics, as such, are merely an out-growth or because they are a part of our regular prescribed course, which could be better done out-of-doors, in fact, than could be done within-doors.

20

30

Q. The gymnasium opens right on the field, doesn't it? A. Yes.

Q. Describe the uses of that, Doctor. A. The use of the field during the out-door season was from September 1st to the end of November, and from April until the end of June and is used as an out-door gymnasium as far as the Department

*John A. Davis, Direct*

of Physical Education is concerned in carrying on the regular classes reporting on the field during those months each week, twenty-four classes each week.

Q. And the classes are out how much in time?

A. The full time of actual activity is twenty-five minutes, the whole time—that is, to get undressed, and ten or fifteen minutes along the path to be on their way to their classes—it is approximately twenty-five minutes. 10

Q. Where does the utility of the field begin and the utility of the gymnasium end? A. Without the gymnasium and athletic field it, of course, is impossible to carry on the activities; without the gymnasium it would be impossible to get these all-around men; without the field it would be impossible, but it is with the use of the two. I might liken it to a department of chemistry: as one who gave lectures on chemistry but hadn't any laboratory; our field is a laboratory just as much as the gymnasium. 20

Q. Has there been any change in the last fifteen or twenty years in the attitude of educators toward physical education? A. The importance and the need of this physical improving of our men has been greatly emphasized by the educator and is of great interest to the employer. I think that today the majority of men who are in charge of plants, see that the employer is looking for a man who can handle men and who had a prepossessing appearance and the ability to handle men. 30

Q. Is there any relation between the use of the body and the question of fatigue? A. There is a decided relation, as only through the development

*John A. Davis, Direct*

of a strong, healthy body is he able to carry on the physical strain of the day's work.

10 Q. As between physical education, and athletics, which do you accenuate? A. The regular course in physical education is the only thing. As far as the course in physical education is insisted on because our athletics are merely an out-  
20 growth of this spontaneous form of work and is not prescribed; our course in physical education is prescribed with students; athletics is merely extra-curriculum; it is not a part of the curriculum at all; the training is carried on after school hours and is merely directed as a period of recreation and not as a period of instruction as far as a requirement for graduation is concerned. I should say that athletics as conducted at Stevens is to supply the student with a means of enjoyment as a nonparticipant and as a means of recreation for those who are physically able to engage in them.

Q. Does this testimony that you have been giving here apply to the whole period of 1915 to date? A. It does.

30 Q. Now, how many are there in your department, how many men instructors? A. There are four instructors, including myself, with full-time instructors—rather, full-time instruction.

Q. And you give your full time to it? A. Yes, sir; I am one of the four.

Q. Now, are there ample bathing facilities in the gymnasium? A. We have twelve shower-baths, and the dressing-room below, and the students are all required to use the showers after the exercises. I might add, it is, in order that there be no misunderstanding between our athletes, it

40

*John A. Davis, Cross*

is impossible for us to carry on athletics in the sense that other institutions do because our field is constructed with the aim of carrying on the course of physical education and not provided with facilities for spectators. For instance, in the gymnasium, we have been greatly distressed as to providing room for our spectators for our games because the field was designed as a laboratory and not for outsiders; so nothing in our organization is done with the idea of accommodating mere spectators. 10

Q. The catalogues give the number of hours devoted to this class? A. Yes; they are not all given under the description of the course.

*Cross by Mr. Allen:*

20

Q. On this sheet, Exhibit P 1, I notice in different years various forms of athletics such as calisthenics, swimming, boxing — are all those three compulsory? A. I prefer not to call them athletics, they are activities and they are all compulsory.

Q. Does the entire membership of 800 pupils take up boxing? A. Yes; in the Senior Year they receive boxing instructions, in their Senior Year.

30

Q. Then it is compulsory? A. As a part of the senior class, one day a week. They are now receiving instructions in boxing. The other half of the senior class will report in two sections, Section A will receive boxing instruction; Section B will report in another room for instruction.

Q. How can you instruct 80 men? A. We are instructing half the men, and that is, 25 men boxing, a couple boxing.

Q. Well, how would you instruct 80 men in 40

*John A. Davis, Cross*

boxing; how long a time would that take? A. About twenty-five minutes.

Q. Twenty-five, one afternoon? A. One period.

10 Q. How often is the boxing period? A. A day a week.

Q. Twenty-five minutes a week? A. Yes, sir.

Q. How would you instruct 80 odd men in boxing in one period, which is limited to one boxing period a week? A. I should say this: fifteen of these young men the student will teach.

Q. They may teach, what? A. May teach men to strike; how to defend themselves. Boxing is taught by imitation practically.

20 Q. What am I getting at is, two men sparring together? A. Yes.

Q. Now, while the two are sparring together the balance of the eighty are watching? A. No, sir. I just said, in the Section of a Senior Class, Section A, we will say, has about 50 men—that means, 25 couples are boxing.

Q. Well, while 25 couples are boxing they are just enjoying the activity with the gloves, without any instruction? A. Absolutely not.

30 Q. How could one instructor fill the place of 25 couples to rectify or teach them? A. Would you like me to describe a lesson to you?

Q. How could that have been for twenty-five couples? A. The men line up according to the size of the room, and they are numbered 1, 2; the instructor will say, Number 1 left lead to the face; Number 2, block—and he will count the One; Two; and then he will say: Number 1 leads left to the body; Number 2 guards.

40 Q. That is the extent of the boxing instruc-

*Adam Riesenberger, Direct*

tion? A. And then, after they have received that instruction so they can do it piece by piece, then they go ahead and work of their own accord and the instructor passes around among them. It is extremely strenuous, and it is an extremely satisfactory way of teaching; it is the way they did in the Army during the war, myself teaching. 10

Q. Then, all these other exhibits are likewise compulsory? A. Yes. We can say that a man would learn just as well by watching mistakes in other men as by doing it himself.

PROF. ADAM RIESENBERGER sworn.

*Direct by Mr. Wall:*

Q. Professor, you are treasurer of Stevens, are you? A. I am. 20

Q. And have been, how long? A. Forty years.

Q. And these Catalogues for 1915-16 that are produced here are catalogues that were compiled under your supervision? A. Yes; I prepared the catalogues.

MR. WALL: I offer the Catalogues, the issues in the respective years of 1916, 1917, 1918, 1921, 1922, 1923 and 1924, and only such parts of said catalogues as refer to the Department of Physical Education or that show the relation of Department of Physical Education to the other Departments. 30

There being no objection the catalogues are admitted in evidence and marked. Catalogue 1916-1917, marked P 2.

Catalogue 1917-1918, marked Exhibit P 3; 40

*Adam Riesenberger, Direct*

Catalogue 1921-1922, marked Exhibit  
P 4;

Catalogue 1922-1923, marked Exhibit  
P 5;

10 Catalogue 1923-1924, marked Exhibit  
P 6.

Q. Professor, you have a map, have you not?

A. Yes, sir.

Q. And it is correct, is it? A. It is correct.

Q. And will you indicate on the map which parcels—rather, the parcels that are under appeal in question in this proceeding? A. This Block, numbered 27 and this 33. This number 33 is the Practice Field, and 27 is the Main Field.

20 Q. And these numbers 27 and 33 are the numbers on the Tax Map of Hoboken, are they not?

A. Yes. One is complicated much; there are numbers on these by the Tax Bills gave this area that I mark around now (indicating).

Q. Block 28, as taxed, is the plot including a red line, the numeral 27? A. Yes.

Q. Is that right? A. Yes. This plot, 29, is excluded; 26 is excluded.

30 Q. But otherwise the red line around "27" was, 27 as taxed by the City? A. Yes.

Q. Now, 33; how about the lines around 33?

A. That is shown here (indicating).

Q. Is that co-incident with the City's 33? A. Yes.

Q. Now, 34: is this the Gymnasium, that you testified to, did you not? A. Yes; it is.

Q. Now, do you know when the land on which the Gymnasium is now built was acquired? A. That was acquired in 1915.

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*Adam Riesenberger, Direct*

Q. And when was the land numbered 33 on this map acquired? A. The same year. We had an option several years before 1915, but when the campaign for funds was concluded in 1915 we were to purchase the property in June, 1915—meaning Plot 33.

10

Q. Was the land on which the Gymnasium was selected to build and the land which you designate as the Practice Field acquired at the same time?

A. At the same time.

Q. As one block of property? A. Yes, sir.

Q. The Field, marked 27, was acquired long before? A. Very long before, in 1904.

Q. And the rest of it, when? A. 1906—1904 most of it; these Fields along Hudson Street in 1906.

20

MR. WALL: I offer that map in evidence.

The map is admitted in evidence and marked Exhibit P 7 on the part of the Prosecutor.

Q. Professor Riesenberger, I call your attention to the frontispiece as a general view of the College Ground in Catalogue marked P 6, and ask you if the Gymnasium shows in that? A. Yes; it shows back of the Morton Laboratory.

30

Q. Is that the building that shows just under the Tower of Castle Point? A. Yes; it is.

Q. Have you any figures that would give a notion of the cost of this Physical Education Department in comparison with the costs of the Institute? A. I jotted down a few figures taken from last year's report of the Auditors. The Auditors' Report of 1923-1924: The expenses of

40

*Adam Riesenberger, Direct*

the Department were \$16,995, and the expenses of the Building, for heating and light and janitor's services, &c., \$8,621, making about something over \$25,000 for the year.

10 Q. You haven't the total cost of all the departments? A. That is, then, taking everything. The total amount of disbursements of the thirteen departments for educational purpose, \$164,321.05. Now, the disbursements for the Department of Physical Education I gave you, and of that \$11,900 represents the amount paid for salaries of instructors.

Q. And do those proportions hold fairly true for the years 1921, 1922 and 1923? A. Yes; very much the same; there might be a slight increase of salary.

20

Q. Yes. That is, in the later years? A. Yes.

Q. This blueprint that you have produced here is designated, Plan of Buildings and Grounds of Stevens Institute of Technology, Dated January 12, 1909. Was that as of that date? A. That is correct, but had been prepared from the Map made by McCann at that time, according to scale.

Q. I call your attention to the fact that the Hall Walker Gymnasium was on that? A. As a selection of a site of the Gymnasium.

30

Q. It doesn't mean that was in existence in 1909? A. No.

Q. The point of this blueprint is, it gives the acquisition of this property, when? In 1909? A. Yes.

MR. WALL: I offer the map.

There being no objection the map referred to is admitted in evidence and marked Exhibit P 8.

40

*Adam Riesenberger, Cross*

Q. You spoke, Professor, the other day about a deficit in connection with athletic activities? A. Yes.

Q. What was that deficit? A. Well, it averages somewhere about \$7,000 a year.

Q. The stands on the Athletic Field, are they expensive or otherwise? A. No; the seating capacity is about, I should say, for the two of them, 2,700. 10

*Cross by Mr. Allen:*

Q. When football and baseball games are played on this Athletic Field is an admission fee and entrance fee charged the spectators? A. Yes.

Q. Who gets that money? A. The College. 20

Q. That really goes to the College? A. Yes; if we didn't get that the deficit might be twice as large.

**Certificate**

I, Joseph S. Parry, a Supreme Court Commissioner, hereby certify that I have read and examined the testimony in the foregoing depositions of Alexander Humphreys, John A. Davis and Adam Riesenberger, taken stenographically in my presence and hearing, and transcribed by Herschel H. Huddle, a competent stenographer, and find said testimony accurate and correct. 30

*Supreme Court Commissioner.*

## Opinion

	STEVENS INSTITUTE OF TECH- NOLOGY,	} On Certiorari
	<i>Prosecutor,</i>	
	VS.	
10	STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN,	}
	<i>Defendants.</i>	

Before Justices TRENCHARD, KATZENBACH and LLOYD.

For the prosecutor, JOHN MILTON (Albert C. Wall, of counsel).

20 For the defendants, HORACE L. ALLEN (John J. Fallon, of counsel).

*Per Curiam.*

30 The prosecutor seeks in this proceeding to be relieved of taxes assessed for the years 1922 and 1923 by the assessing authorities of the City of Hoboken, confirmed on appeal by the State Board of Taxes and Assessment. The assessments are on two vacant lots used as athletic fields. In an opinion by Judge Jess, then a member of the Board, the facts are reviewed, and the opinion of Mr. Justice Parker, filed in 1909 (*Stevens Institute vs. Bowes*, 78 N. J. L. 205), denying relief on a similar application in which the conditions then existing were not greatly dissimilar from the present, held to be still controlling. We agree with this view, and for the reasons expressed the assessment is affirmed.

## Notice of Appeal

### NEW JERSEY SUPREME COURT

STEVENS INSTITUTE OF TECHNOLOGY, <div style="text-align: right; padding-right: 20px;"><i>Prosecutor,</i></div>	}	On Certiorari
vs.		
STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>		10

TO EDWARD L. KATZENBACH, Esq., <i>Attorney-General,</i> and HORACE L. ALLEN, Esq., <i>Attorney for City of Hoboken.</i>	20
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TAKE NOTICE, that Stevens Institute of Technology, Prosecutor-Appellant, appeals to the Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment of the Supreme Court entered in this cause.

Dated, November 5, 1925.

(Signed) JOHN MILTON, <i>Attorney for Prosecutor-Appellant.</i>	30
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(Signed) ALBERT C. WALL, <i>Of Counsel.</i>	
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## Grounds of Appeal

### IN THE JERSEY CITY COURT OF ERRORS AND APPEALS

10	STEVENS INSTITUTE OF TECHNOLOGY, <i>Prosecutor-Appellant,</i>	}	On Certiorari
	vs. STATE BOARD OF TAXES AND ASSESSMENT AND THE CITY OF HOBOKEN, <i>Defendants-Respondents.</i>		

20 Prosecutor-Appellant writes down the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above entitled cause:

1. The Supreme Court erred in affirming the decision of the State Board of Taxes and Assessment which upheld the assessment for taxes made by the City of Hoboken against lands of the prosecutor-appellant.

2. The Supreme Court erred in dismissing the writ of certiorari in this cause.

30

JOHN MILTON,  
*Attorney for Prosecutor-Appellant.*

ALBERT C. WALL,  
*Of Counsel.*

(Rule for Judgment.)

## New Jersey Supreme Court

STEVENS INSTITUTE OF TECH-  
NOLOGY,

Prosecutor,

*vs.*

STATE BOARD OF TAXES AND AS-  
SESSMENTS and the CITY OF  
HOBOKEN,

Defendants.

On Certiorari.

Order of  
Affirmance  
of Judgment.

This cause having been duly argued at the May Term of this court by John Milton and Albert C. Wall, of counsel for the prosecutor, and Horace L. Allen and John J. Fallon, of counsel for the defendants, and the court having considered the same and finding no error in the judgment of the State Board of Taxes and Assessment affirming the assessment of \$237,100

levied for the year 1922 by the Board of Assessors of the City of Hoboken, viz:

Folio	Old Lot	New Lot	Assessed	State Board Action
9	U-V-W	27	Land \$17,000	Affirmed
14	Q-S-T		" 24,100	"
98	B		" 14,000	"
99	D-2-El-3-4-C		" 55,900	"
100	P-O-N-M-L-K-J-I-H-G-F		" 45,400	"
			Bldgs. 2,000	"
			\$158,400	
98	X	Pt. 33	Land 30,000	"
		Pt. 35	Land 25,000	"
			Bldg. 700	"
			55,700	"
98	Pt. 3	Pt. 33	Land 8,000	"
		Pt. 31	Land 15,000	"
			23,000	"
		Total assessment,	\$237,100	

the assessment of \$38,000, levied for the year 1923 on gymnasium field, known as Lot 33, Castle Point, and the assessment levied for the year 1923 on athletic field, viz:

Folio	Assessed	State Bd. Action
9, old U. V. W. part 27	\$17,000	Affirmed
14, old Q. S. T. part 27	24,100	"
103, old D. part 27	55,900	"
104, old F. part 27	45,400	"
	142,400 Imps. \$2,000	"

It is, thereupon, ordered and adjudged that the judgment of the State Board of Taxes and As-

assessment affirming the assessment of \$237,100 levied for the year 1922 by the Board of Assessors of the City of Hoboken, viz:

Folio	Old Lot	New Lot	Assessed	State Board Action
9	U-V-W	27	Land \$17,000	Affirmed
14	Q-S-T		" 24,100	"
98	B		" 14,000	"
99	D-2-El-3-4-C		" 55,900	"
100	P-O-N-M-L-K-J-I-H-G-F		" 45,400	"
			Bldgs. 2,000	"
			<hr/> \$158,400	
98	X	Pt. 33	Land 30,000	"
		Pt. 35	Land 25,000	"
			Bldg. 700	"
			<hr/> 55,700	"
98	Pt. 3	Pt. 33	Land 8,000	"
		Pt. 31	Land 15,000	"
			<hr/> 23,000	"
Total assessment,			\$237,100	

the assessment of \$38,000 levied for the year 1922 on gymnasium field, known as Lot 33, Castle Point, and the assesment levied for the year 1923 on athletic field, viz:

Folio	Assessed	State Bd. Action
9, old U. V. W. part 27	\$17,000	Affirmed
14, old Q. S. T. part 27	24,100	"
103, old D. part 27	55,900	"
104, old F. part 27	45,400	"
	<hr/> 142,400 Imps. \$2,000	"

removed by writ of certiorari in this cause be affirmed with costs; and that the record be re-

mitted to the State Board of Taxes and Assessment to be proceeded with in accordance with this judgment and the practice in such case made and provided.

On motion of

HORACE L. ALLEN,  
Of Counsel with Defendants.

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Let the above order be entered upon the minutes nunc pro tunc as of date of November 2nd, 1925.

Dated November 4th, 1925.

For the Court

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We consent to the making of the above order.

JOHN MILTON,  
Attorney for Prosecutor.

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## New Jersey Court of Errors and Appeals

STEVENS INSTITUTE OF TECH- NOLOGY, Prosecutor-Appellant,	}	Appeal from Supreme Court.
<i>v.</i>		
STATE BOARD OF TAXES AND AS- SESSMENT AND THE CITY OF HOBOKEN, Defendants-Respondents.		

### BRIEF FOR APPELLANT.

The writ in this case brings up for review judgments of the Supreme Court affirming judgments of the State Board of Taxes and Assessment sustaining assessments for taxes by the City of Hoboken against land which the prosecutor claims to be exempt. The assessments were made for the years 1922 and 1923.

The questions before the Court are whether the Hall-Walker Gymnasium and its use in connection with the Practice Field and the Main Field as an integral of the Department of Physical Education brings the Practice Field and a part of the Main Field within the exemption of Subdivision 4 of Section 203 of the General Tax Act (Revision of 1918).

### The Statute Which Applies.

“All buildings actually used for colleges,  
schools, academies or seminaries; \* \* \*  
the land whereon any of the buildings herein-

before 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.”

### Uncontradicted Facts.

Stevens Institute of Technology, situated in Hoboken, is a school of mechanical engineering not conducted for profit.

On behalf of Stevens Institute President Humphreys, Professor Riesenberger, the Treasurer, and Professor Davis, Director of the Department of Physical Education, testified.

No evidence was offered on behalf of the City.

The properties involved in the appeal are Plots 33 and 27.

They are shown on Brown Print P-7.

Plot 33 is the Practice Field (p. 28, line 4). Its area is 2.23 acres.

Plot 27, the Main Field, contains 7.029 acres. But only 2.055 acres of it are claimed to be exempt, because:

Plot 34, which is exempt now, contains .....	.715	acres
Plot 33, the Practice Field, contains .....	2.23	“
	<hr/>	
	2.945	“
Portion of Main Field claimed to be exempt .....	2.055	“
	<hr/>	
Limit of exemption under statute	5.	“

The opinion of the State Board states (p. 9, lines 37-40) that the use of the property is substantially the same as it was when the Supreme Court held it to be taxable in 78 N. J. Law, 205. This statement could only refer to Plot 27, the Main Field, because Plot 33, the Practice Field, was not acquired until

1915, six years after the decision, and it was acquired to be used in connection with the gymnasium erected in 1915.

Upon Plot 34 is erected the gymnasium referred to in the testimony. The entrance to the gymnasium opens directly upon Plot 33 to the north; Plot 27 adjoins Plot 33 on the west, separated by a private road.

Exhibit P-8 is a map showing the area of each plot and the derivation of the title.

The land on which the gymnasium was built and the Practice Field were acquired at the same time as one block of property (Case, p. 55, lines 10 to 15). The Main Field was acquired in 1904 (Case, p. 55, line 18).

There is no question as to the land being used in connection with the Institute's Department of Physical Education. The opinion of the State Board itself says (Case, p. 9, lines 24-28) :

"The land is used as practice and exhibition fields in connection with the Institute's Department of Physical Education."

While some of the students are attending in the Gymnasium Building, others are exercising out of doors. This situation obtains in the fall and spring, but in the winter months no instructions are given out of doors. It is a recognized practice for the activities of the Physical Education Department to be carried on in the Practice Field and the Main Field (Case, p. 33, lines 27-40).

Prior to 1915 the Institute had no Physical Education Department. It had simply intercollegiate athletics (Case, p. 34, line 36). The gymnasium was erected during the year 1915 (Case, p. 36, line 2). It was designed for a gymnasium in connection with the Department of Physical Education and with regard to the educational feature of that de-

partment. It cost \$100,000. At that time the Department of Physical Education was established. The president always intended to establish the two together (Case, p. 40, lines 10-30).

The Physical Education Department is one of fifteen departments of the Institute (Case, p. 40, lines 31-34). The President, Alexander Humphreys, whose great practical experience is set forth on page 39 of the case, explains on page 41 his object in establishing the Department of Physical Education. He was impressed with the idea that education—particularly the mental side of it—should be co-ordinated with the care of the body and the development of the body for hard work (Case, p. 41, lines 1-10).

All students who enter the institute are divided into three groups, based on their physical condition. Director Davis, a man trained in the medical profession, is head of the Department of Physical Education. He is a member of the faculty (p. 41). The schedule of studies is developed with the idea of assigning to the Department of Physical Education certain hours and certain requirements and having them lived up to as earnestly and rigidly as any of the other departmental requirements. To graduate, students are obliged to conform to the requirements of the Physical Education Department. The idea of the Institute is to keep in balance physical education and the other work, and not especially athletics, which is a minor thing with the Institute. The President distinguishes between athletics and physical education. Athletics is an outgrowth of the Physical Education Department (Case, p. 42, lines 1-32).

The Physical Education Department did not really get to work until 1916. The course is compulsory (Case, p. 43, lines 28-34). The Main Athletic Field could probably be made profitable by

building a stadium, but that is in opposition to the Institute's scheme of education (p. 43, lines 35-40).

The course at the Institute is a very hard one. No courses are optional (Case, p. 44, lines 1-5). Professor Davis, Director of Physical Education, came to Stevens to assume this work in December, 1915. The breadth of his experience in such work is set out on page 45. Every Stevens graduate since 1915 is taught to swim (Case, p. 46, line 20).

Group A in the Department of Physical Education comprises those who are already sufficiently physically endowed for the particular course allotted to them. Group B are the average, who need a greater amount of education. They are sufficiently endowed, but untrained. Group C comprises those who possess some physical defects, and they receive special instruction under a special instructor in a room particularly equipped for that purpose (Case, p. 46, line 35; p. 47, line 12). Every student in the college is in one of these groups (Case, p. 47, line 15).

There are other physical examinations besides those necessary for classification. Two examinations are given each year to determine the degree of proficiency the student has attained and the progress made in his physical development. There are seven tests given throughout the four-year course (Case, p. 47, lines 15-19). The experience of the Institute is that students do not come to it properly trained from high school, so far as physical welfare is concerned, and this program of physical education, now almost universal among the colleges of the country, is laid out in order that the student may have an opportunity before he enters the actual business of life to overcome any physical defects that are subject to correction, and to create in the student a liking for some

physical activity which he will continue to pursue after he has graduated in order to overcome sedentary habits. It is particularly necessary for the engineer, who is taught to swim, instructed in methods of artificial respiration in case of fire, etc. It is a practical all-round physical development. Athletics, as such, are merely an outgrowth (Case, p. 48, lines 1-35).

The gymnasium opens right on the Practice Field. The use of the field during the outdoor seasons is from September 1st to the end of November, and from April until the end of June. It is used as an outdoor gymnasium, so far as the development of physical education is concerned, in carrying on the regular classes reporting on the field during those months each week—twenty-four classes each week (Case, p. 48, line 35; p. 49, line 9). Without the gymnasium and field it would be impossible to carry on these activities. Without the gymnasium it would be impossible to get these all-round men; without the field it would be impossible, but it is with the use of the two. "I might," says Director Davis, "liken it to a department of chemistry as one who gave lectures on chemistry, but hadn't any laboratory. Our field is a laboratory just as much as the gymnasium" (Case, p. 49, lines 15-26). "As between physical education and athletics, the regular course in physical education is the only thing." That course is insisted on, because athletics are merely an outgrowth of it. Athletics are not prescribed. Physical education is. Athletics is extra curriculum. The training is carried on after school hours, and is merely directed as a period of recreation, and not as a period of instruction, as far as the requirement for graduation is concerned. Athletics as conducted at Stevens is to supply the student with a means of enjoyment as a non-partic-

ipant and as a means of recreation for those who are physically able to engage in them. This situation applies to the period from 1915 to date (Case, p. 50, lines 20-28).

Students are all required to use the shower baths after exercise (Case, p. 50, lines 36-38). It is impossible at Stevens to carry on athletics in the sense that other institutions do, because the field is constructed with the aim of carrying on the course of physical education and not provided with facilities for spectators. There is no room in the gymnasium for spectators. Nothing is done "in our organization" with the idea of accommodating mere spectators (Case, p. 51, lines 1-15).

The total cost of all the departments of the Institute, 1923 to 1924, was \$164,321.05 (Case, p. 56, line 12), and the disbursement for the Department of Physical Education was something over \$25,000 for the year, of which \$11,900 represented the salaries of instructors, and these proportions held fairly true for the years 1922 and 1923 (Case, p. 56, lines 4 to 20). In connection with the athletic activities as distinguished from the physical education course, there is a deficit of about \$7,000 a year. It would be about twice as large if the admission fees charged spectators at football and baseball games on the athletic field were not received by the college (Case, p. 57, lines 1 to 23). The two open stands hold only 2,700 (Case, p. 57, line 12).

**POINT I.**

**The land necessary for the fair enjoyment of the gymnasium, not exceeding five acres and devoted only to the purposes of Stevens Institute, was exempt for the years 1922 and 1923 under the provisions of Section 203, Subdivision 4, of the General Tax Act (Revision of 1918).**

The pertinent provisions of the section are:

“All buildings actually used for colleges, schools, academies or seminaries; \* \* \* 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 decision of the Supreme Court does not deal with the changes brought about by the use of the gymnasium in 1915 and the lands necessary for the fair enjoyment thereof.

The opinion (Case, p. 58) affirms the opinion of the State Board (Case, p. 9), which in turn holds that an opinion of the Supreme Court rendered in 1909, six years before the erection of the gymnasium and the establishment of the Department of Physical Education, and the acquisition of Plot 27, viz.: the Practice Field, is dispositive of the present case. That opinion was *Stevens Institute v. Bowes*, 78 N. J. Law, 205.

In that case the Court dealt with one of the parcels of land, viz.: the Main Field, part of which is before the Court in the present case; but in that case the Institute sought the exemption on the ground that an athletic field in connection with the general buildings of the college was entitled to the exemption. The nearest building in that

case was the Morton Laboratory. In that case the Court said:

“Nor do we think that the general athletic needs of students at an institution of learning make a neighboring athletic field necessary to the fair use and enjoyment of the buildings.”

“It cannot be said,” the Court remarked in that case, “that the buildings on the main block are ‘situated’ on land in another block which was acquired long after they were erected.”

In the case at bar there is no such separation (see Exhibit P-7).

The decision of the Supreme Court in 1909 does not apply to the conditions brought about by the erection in 1915 of the Hall-Walker Gymnasium and the creation of the Department of Physical Education and the purchase of the Practice Field in 1915.

Since that case these changes, set forth in the facts, have taken place:

1. The gymnasium, a substantial building costing \$100,000, has been erected adjoining the Practice Field.
2. The Department of Physical Education providing for compulsory physical education as distinguished from athletics, has been established at a yearly cost of about \$25,000.
3. The Practice Field was acquired the same time as the erection of the gymnasium for use in connection therewith, viz.: in 1915.
4. The gymnasium and the two fields are all used as integral parts of the Department of Physical Education, the one taking care of the indoor activities of the department and the other the outdoor.

The opinion of the State Board leaves out of account the gymnasium and it treats the Department of Physical Education as if it were identical

with the desultory and optional use for athletics which existed before the creation of the Department of Physical Education. Physical Education is, as the uncontradicted testimony shows, one of the fifteen courses taught at the Institute. None of these courses are optional. Reports are made and students are conditioned in this course exactly as in the other courses. It is a necessity for graduation.

The opinion of the State Board in the present case (p. 10, lines 30-35) says:

“The establishment of a Department of Physical Education accompanied by the erection on the athletic field of a building devoted to the uses of the department, might create a situation to which the Court’s ruling would not apply.”

We contend that the gymnasium is on the Practice Field.

The test of the exemption turns on the *use* and not on arbitrary subdivisions by the City Tax Department or nicknames by the owners.

When the statute uses the phrase “actually used for colleges, etc., and necessary for the fair enjoyment thereof,” no other standard than *the use* is applicable, as, indeed, no other standard would be practical.

This case shows without contradiction that the fields are used in connection with the gymnasium (Case, p. 28, lines 12-15); that if the weather is good and the temperature right, the students engaged in the Physical Education course are out in the open on the fields; and when the weather does not permit, they are inside in the gymnasium.

The opinion of the State Board refers to *Sisters of Charity v. Cory*, 73 N. J. L., 699, 703, in which the Court of Errors and Appeals said that 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 this double test cannot escape taxation.

In the case at bar, the land does meet this double test. The lands on which the gymnasium is erected and on which the main field and practice field are, are all under the single ownership of Stevens Institute and form a continuous tract. One of the parcels—the main field—was acquired before the erection of the gymnasium. The other—the practice field—was acquired at the same time and for use in connection with the gymnasium.

What are the limits of a tract? The statute says—the lands necessary for the fair enjoyment, not exceeding five acres in extent. The testimony is uncontroverted that the lands here referred to are necessary for the fair enjoyment of the gymnasium. There is no controversy here as to the gymnasium; that has been held exempt, together with certain land (.715 acre) connected with it, but the boundaries of that land have been marked off arbitrarily by the City of Hoboken and designated "Tract 34." Obviously, the boundaries used by the city tax department are not the test as to how much of the lands surrounding the gymnasium is necessary for the fair enjoyment of it. The test is prescribed by the statute with an outside limit of five acres. Besides, in the case of *Sisters of Charity v. Cory*, the Prosecutor was there contending that the property of the Sisters, comprising altogether 316 acres, was exempt because the buildings were used

for charitable purposes and all the land was necessary for the fair enjoyment of the buildings. The Supreme Court, resting not upon any original investigation, but upon the decision of the Court of Errors rendered in 1890 in an earlier suit, felt itself bound by the decision of the Court of Errors, and the Court of Errors held that certain questions of fact had not been submitted to the Supreme Court for its decision. In the case at bar, the facts are not controverted, and as the case stands, this matter is one of law.

#### **POINT II.**

**The Practice Field (2.23 acres) and the Main Field to the extent of 2.055 acres, should be exempt because they are necessary for the fair enjoyment of the gymnasium and are situate on the same tract, and because the acreage, plus the acreage immediately about the gymnasium which has been exempted by the County Board, does not exceed five acres.**

#### **POINT III.**

**The decision of the Supreme Court should be reversed.**

Respectfully submitted,

JOHN MILTON,  
ALBERT C. WALL,  
Of Counsel with Appellant.

## New Jersey Court of Errors and Appeals

STEVENS INSTITUTE OF TECH- NOLOGY, Prosecutor-Appellant,  v.  STATE BOARD OF TAXES AND AS- SESSMENT and the CITY OF HOBOKEN, Defendants-Respondents.	}	Appeal from Supreme Court
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### REPLY BRIEF FOR APPELLANT.

At the argument appellant obtained leave to file a memorandum in reply to the brief of the City of Hoboken.

#### POINT I.

**As the City offered no evidence, and the facts are uncontradicted, the question is purely one of law, and the rule that the finding of the Supreme Court on questions of fact is a finality does not apply.**

Counsel for the City lays stress on the point that the State Board and the Supreme Court on certiorari have found as a fact that no buildings are erected upon Plots 27 and 33, and that such a finding is not reviewable in this Court. We agree. There are no buildings on either Plot 27 or Plot 33. The point is that the gymnasium is on Plot 34; that Plot 34 is a purely arbitrary division. It is exempt now, but the amount of exemption (not exceeding in any case five acres) is to be determined by the

use of the building, and that use extends beyond the limits of 34, and from the testimony would include 33 and such part of 27 as would not exceed the statutory limit of five acres.

### POINT II.

**The City's brief contends in Point V that the additional facts appearing in the testimony taken before a Supreme Court commissioner should not be considered. The law is to the contrary.**

The Certiorari Act, Section 11, Compiled Statutes 405, provides that

“the Court shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken upon notice or in such other manner as is according to the practice of the Court; provided either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed, which testimony shall be considered by the Court the same as if it had been taken by depositions on notice, and either party may take additional testimony.”

The rule to take the affidavits to be used upon the argument was granted by Mr. Justice Minturn on the allowance of the writ.

### POINT III.

**The appeal is meritorious, because Stevens Institute furnishes twenty free scholarships to the schools of Hoboken, and it costs the Institute more to educate each student than it receives from tuition fees.**

These facts were stated at the argument. They do not appear in the testimony, but by consent of counsel for the City I am permitted to state them here.

The following is a comparison of receipts from tuition fees, with disbursements for operating purposes, *not* including any interest on real estate, buildings and equipment.

STEVENS INSTITUTE OF TECHNOLOGY  
Comparison of Receipts from Tuition Fees with  
*Disbursements* for Operating Purpose.  
Years 1921-22 to 1924-25.

Year	Revenue from tuition fees	<i>Disbursements</i> for operating expenses*	Excess of operating expenses over tuition fees	Average enrollment	Excess of operating expenses over tuition fees per student
1921-22	\$195,683.75	\$337,782.26	\$142,098.51	727	\$195.46
1922-23	162,663.23	314,623.19	151,959.96	591	257.12
1923-24	148,158.15	307,195.11	159,036.96	509	312.45
1924-25	134,214.34	303,709.34	169,495.00	463	366.08

\*Operating Expenses include unpaid taxes.

A. RIESENBERGER,  
*Treasurer.*

Jan. 4/26.

Respectfully submitted,

JOHN MILTON,  
ALBERT C. WALL,  
Of Counsel with Appellant.



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## New Jersey Court of Errors and Appeals

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STEVENS INSTITUTE OF TECH- NOLOGY, Prosecutor-Appellant,	}	Appeal from Supreme Court.
<i>v.</i>		
STATE BOARD OF TAXES AND AS- SESSMENT and the CITY OF HOBOKEN, Defendants-Respondents.		

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### **BRIEF FOR RESPONDENT, CITY OF HOBOKEN.**

#### **Prefatory Statement.**

Stevens Institute of Technology, by this appeal, seeks to reverse the decision and judgment of the Supreme Court, which affirmed the judgment of the State Board of Taxes and Assessment, sustaining the assessments for taxes levied by the City of Hoboken for the years 1922 and 1923 against two vacant plots of ground designated as Plots 27 and 33.

Plot 27, of approximately 7.029 acres, is situated to the east of Hudson Street and north of Sixth Street. There are no college buildings upon it. It consists of an athletic field for football, baseball, lacrosse, a running track, tennis courts and grand or reviewing stands. It is the same plot that Stevens Institute of Technology tried unsuccessfully to have exempted from taxation back in 1909.

Then the Institute claimed that this athletic field was a distinct necessity in connection with the obtaining of a higher degree of efficiency in instruction, but Chief Justice Gummere and Justices Swayze and Parker, sitting in the Supreme Court, decided, in the case of *Stevens Institute v. Bowes*, 78 N. J. L., page 205, that it could not be said that the compact group of buildings of the Institute, situate in a block to the south of Sixth Street, are situated on land in another block acquired long after they were erected. They further held that the general athletic needs of students at an institution of learning did not make this neighboring athletic field necessary to the fair use and enjoyment of the buildings.

Since this decision the Institute has acquired Plot 33 of approximately 2.23 acres. There is nothing upon this plot. In the spring and fall time, when the weather is suitable, but not in the winter, it is used in connection with Plot 27 as a practise field for baseball and lacrosse. When the students exercise outdoors in the springtime and they have baseball and lacrosse played at the same time, one field is used for lacrosse and the other for baseball (Case, p. 28, lines 7-11).

Subsequent to the decision in *Stevens Institute against Bowes*, the Institute added to its courses the Department of Physical Instruction, and made it compulsory for each student to report three hours a week to some form of physical exercise.

Plot 33 is contiguous and connected with Plot 27 and the use of both plots is substantially the same as was the use of Plot 27 when the Supreme Court in 1909 held it taxable.

Since the decision in *Stevens Institute against Bowes*, the Institute erected a gymnasium on the plot or curtilage known as 34, which is exempt from taxation. The plot or curtilage 34 is of such

area as is reasonable in view of the purposes to which it is devoted, including light, air and access and incidental outside uses.

When the appellant's testimony was taken before the State Board of Taxes and Assessment it was distinctly and emphatically asserted that the Institute did not claim that Plot 33 was contiguous to Plot 34 whereon the gymnasium was built, and that exemption from taxation for Plot 33 was not claimed because it was part of Plot 34 and of the gymnasium.

After the decision of the State Board of Taxes and Assessment and the allowance of the writ of certiorari to review the judgment of the State Board, the appellants took testimony before a Supreme Commissioner. The taking of this testimony was objected to. The City took the position that the Supreme Court should review only the evidence heard by the State Board and that the Institute should not be permitted to alter and change its admission made before the State Board that Plot 33 was not contiguous to and not a part of Plot 34 and the gymnasium.

#### POINT I.

**The findings of fact by the Supreme Court on certiorari to review the assessment of taxes made by Hoboken and affirmed by the State Board are supported by the evidence and are not reviewable in the Court of Errors and Appeals.**

The State Board of Taxes and Assessment, in a memorandum or opinion rendered by Judge Jess, then a member of said Board, found the following facts, viz.:

“Plot 33 is connected with Plot 27 and is used for the same purpose. No college build-

ings are erected upon either plot. The use of the property is substantially the same as it was when the Supreme Court held it to be taxable."

The Supreme Court, on certiorari, agreed with the views of the State Board and, for the reasons expressed by them, affirmed the assessment.

Lands of Stevens Institute of Technology, to be exempt from taxation, must be land whereon any of the buildings actually used by the college are erected.

Inasmuch as the State Board and the Supreme Court, on certiorari, have found, as a fact in the case, that no buildings are erected or upon Plots 27 and 33 and there was evidence to support that finding of fact then, in this appeal, that finding is not reviewable in the Court of Errors and Appeals.

*Long Dock Co. v. State Board*, 90 N. J. L., 701;

*Borough v. State Water Supply Comm.*, 85 N. J. L., 673.

There was ample evidence that there were no college buildings upon Plots 27 and 33. Mr. Ries-berger testified:

"Q. Will you describe for the record, Mr. Ries-berger, what Plot 27 consists of? A. It consists of the main athletic field, including a running track and tennis courts, also two grandstands, one on the east and one on the west (Case, p. 27, lines 35 to 40).

"Q. Those are the only structures erected on Plot 27? A. Yes, that is 27.

"Q. What is Plot 33? A. There is nothing on there, that is a practice field. When the boys exercise outdoors in the spring time we have baseball and LaCross going at the same time. One field is used for LaCross and the other for baseball" (Case, p. 28, lines 1 to 11).

The Institute did not claim before the State Board that Plot 33 was contiguous to Plot 34 which contains the gymnasium building and the land contiguous thereto and necessary for it.

“Plot 34 contains the gymnasium and land contiguous thereto? A. Yes.

“Q. Necessary for it? A. Yes.

“Q. And 33 is really contiguous to 27? A. Yes” (Case, p. 36, lines 11 to 14).

Moreover, counsel for the Institute did not claim Plot 33 to be contiguous to Plot 34 or a part of the gymnasium as appears by the following stipulation made by counsel for the Institute which caused the City to refrain from further cross examination.

“Mr. Milton: We don't claim it is contiguous to 34, if that is what you have in mind.

“Mr. Allen: You don't claim it is contiguous?

“Mr. Milton: No, 34, that is what you are trying to exclude from the case.

“Mr. Allen: So that we don't disagree as to that, this plot 33, if it is to be exempted it must be exempted by reason of its use for this department.

“Mr. Milton: Yes.

“Mr. Allen: And not by reason of its being part of 34.

“Mr. Milton: Part of the gymnasium, no, we don't claim that” (Case, p. 36, lines 18 to 33).

**POINT II.**

**The lands in question, Plots 27 and 33, do not come within the double tests required by the statute to be applied, as defined by this Court in *Sisters of Charity v. Cory*, 73 N. J. L., 699, 703.**

To entitle Plots 27 and 33 or either of them to exemption from taxation under the statute, two questions must be answered in the affirmative.

First.—Is Plot 27 or 33 the very tract upon which the building used for the college, was erected?

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?

As neither Plot 27 or 33 have any building erected upon them (Case, p. 27, lines 36-40; p. 28, lines 1-10) there seems no need to argue the question as to whether Plots 27 and 33 are necessary for the fair enjoyment of the buildings not erected on them, or to argue whether they are necessary for the fair enjoyment of another building erected on Plot 34, which building and plot whereon it is erected is exempted from taxation.

That the Institute has, since the Supreme Court decision in 1909, added to its curriculum a department of physical education which requires all students to devote twenty-five minutes (Case, p. 49, line 10) three times a week to calisthenics or some other form of athletic activities does not render these two plots one whit more necessary for the enjoyment of any of the college buildings, because at the time of the Supreme Court decision it was conceded by the Court, for the sake of argument, that the athletic field was a distinct neces-

sity in connection with the obtaining of a higher degree of efficiency in instruction. Making calisthenics and physical education compulsory can do no more than that.

The sport indulged in today by students in playing baseball, football, tennis and lacrosse on Plots 27 and 33 is of the same necessity in connection with obtaining a higher degree of efficiency in instruction as it was prior to 1909.

The use of these plots for these purposes is substantially the same as prior to 1909. When football and baseball games are now played on the athletic field, Plot 27, an admission fee is charged the spectators that go to the College (Case, p. 57, lines 17-20).

The teaching of swimming, wrestling, boxing and calisthenics are carried on within the gymnasium building, or at least it is unnecessary to teach them or carry on their instruction outside of the gymnasium building.

The N. Y. A. C., Y. M. C. A. and other athletic clubs, with a membership many times that of the enrolled pupils at Stevens Institute have provided similar instruction for their members within the club house without requiring any vacant land. Similar physical education and training in our public schools is required by our State School Law (1917, p. 221). In our public schools no vacant land is required. The calisthenics and instructions take place within the school buildings.

Many men and women, not belonging to an athletic club and not having the use of a gymnasium are keeping fit and in good physical condition by practising calisthenics and similar exercises within their rooms to the accompaniment and instruction gathered from their radio and victrola.

The athletic instructor, Professor Davis, in stating his opinion as to the needs of this added de-

partment of physical instruction, elaborates on its necessity to kindle or create in the pupil a liking for physical activity which he will continue to pursue after he is graduated in order to overcome sedentary habits, to teach him the manly art of self-defense and also if in later life, while in bridge construction, he falls in the water, he will know how to swim (Case, p. 48, lines 16-25). All of the foregoing laudable acquirements may be taught within the gymnasium and its swimming tank.

### POINT III.

**The gymnasium is located on Plot 34 and is not erected on the Practice Field, Plot 33.**

See stipulation of Mr. Milton hereinbefore set forth (Case, p. 36, lines 18-33), and testimony of Mr. Riesenberger hereinbefore set forth (Case, p. 27, lines 35-40, p. 38, lines 1-11).

### POINT IV.

**Exemptions from taxation are not favored by the law.**

The fundamental rule pervading all exemptions from the general tax burdens of the State, is that *they are not favored by the law*, and will not be construed to exist unless the Statute invoked to support them expresses the legislative intention in clear and unmistakable terms.

*Fairview Hts., Cemetery Co. v. Fay*, 90 N. J. L., 427.

It cannot be said the legislative intention has in clear and unmistakable terms exempted Plots 27 and 33.

**POINT V.**

**The additional facts presented in the depositions taken by the appellant before a Supreme Court Commissioner, over objection interposed by the City, should not be considered. That evidence so taken was not before the State Board of Taxes and Assessment.**

The function of the writ of certiorari allowed herein is that of a writ of error to the inferior tribunal. The Supreme Court accepts the findings of the inferior tribunal if there was any legal evidence to warrant them. When the judgment of the Supreme Court is removed to the Court of Errors and Appeals, that Court in turn accepts the findings subject only to a like inquiry for some legal evidence.

*Ryer v. Turkel*, 75 N. J. L., 677.

**The judgment of the Supreme Court should be affirmed.**

Respectfully submitted,

HORACE L. ALLEN and  
JOHN J. FALLON,  
Of Counsel with Respondent,  
City of Hoboken.





