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NEW JERSEY

Court of Errors and Appeals

BOROUGH OF LONGPORT, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY,
Prosecutor.

vs.

MAX AND SARAH BAMBERGER
SEASHORE HOME,
Defendant.

On Certiorari.

WRIT.

(Filed August 29, 1916.)

10

SUPREME COURT OF NEW JERSEY.

NEW JERSEY, ss. The State of New Jersey to the State
[SEAL.] Board of Taxes and Assessment of the
State of New Jersey, GREETING:

We being willing for certain reasons, appearing by the affidavit of the Director of Revenue and Finance of the Borough of Longport, a municipal corporation of the State of New Jersey, filed in this matter, to be certified of a certain judgment, together with the facts and certain grounds upon which said judgment was based and reached, rendered by the State Board of

20

Taxes and Assessment in a proceeding wherein the Max and Sarah Bamberger Seashore Home was petitioner and the Borough of Longport defendant:

We therefore command you, the said State Board of Taxes and Assessment, that the judgment, together with the facts submitted to you, as well as the grounds of your determination in reaching said judgment rendered by you in the said proceeding wherein the Max and Sarah Bamberger Seashore Home was petitioner and
 10 the Borough of Longport defendant, together with all matters and things touching and concerning the same as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, on the 25th day of August, 1916, you certify and send, together with this writ, that therein may be done what of right and according to the laws of the State should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, the 7th day of Au-
 20 gust, in the year of our Lord one thousand nine hundred and sixteen.

HARRY WOOTTON,
Solicitor.

WM. C. GEBHARDT,
Clerk.

Due and legal service acknowledged.

C. L. COLE,
Attorney for Defendant.

Service acknowledged this fifteenth day of August,
 1916.

30

FRANK D. SCHROTH,
*Secretary, State Board of
 Taxes and Assessment.*

RETURN.

The State Board of Taxes and Assessment doth herewith send to the Supreme Court of New Jersey the petition, judgment, memorandum and proceedings in the matter of the appeal of the Max and Sarah Bamberger Seashore Home from the assessment of property located in the Borough of Longport, County of Atlantic, for the year 1915, as within it is commanded, as by the transcript under the seal of said Board hereto annexed **10** more fully appears.

STATE BOARD OF TAXES AND ASSESSMENT,

[SEAL]

By FRANK D. SCHROTH,

Secretary.

In the matter of the application of Max
and Sarah Bamberger Seashore Home
for the cancellation of the tax assess-
ment for the year 1915 on property } Petition. **20**
situate in the Borough of Longport,
County of Atlantic and State of New
Jersey.

To the State Board of Taxes and Assessment:

Your petitioner, Max and Sarah Bamberger Seashore Home, a purely charitable corporation of the State of New Jersey, respectfully shows that it is the owner of certain property situate in the taxing district of the Borough of Longport, County of Atlantic and State of New Jersey, consisting of land and buildings thereon erected. **30**

That said property has been assessed for taxes for the year of nineteen hundred and fifteen, at which assessment your petitioner is aggrieved because the whole of said property is exempt under the provisions of tax law of the State of New Jersey, for the following reasons:

Petitioner is a corporation not for profit, organized and conducted solely and exclusively for charity and charitable purposes and the buildings were at the time of the assessment and have ever since been used exclusively for charitable purposes, and that the land whereon the same is situate were and are necessary to the fair use and enjoyment thereof and no not exceed five acres in extent.

That an appeal from said assessment has been filed
 10 with the Atlantic County Board of Taxation, which appeal said Board disposed of by ruling that said property was not exempt from taxation for the year of nineteen hundred and fifteen because the same was not being actually used on the twentieth day of May, nineteen hundred and fifteen, at the time the assessment was made, which allegation petitioner denies.

Your petitioner has therefore not paid the taxes so levied for nineteen hundred and fifteen, and prays that the said assessment may be vacated and set aside.

20 Dated January 28, 1916.

MAX AND SARAH BAMBERGER SEASHORE HOME,
 [SEAL.] By S. BELLE COHN,
 Sec'y.

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

S. Belle Cohn, being duly sworn according to law, upon her oath says that she is the Secretary of the Max and Sarah Bamberger Seashore Home, the petitioner herein; that she has read the petition and knows the
 30 contents thereof, and that the statements set forth and contained therein are true.

S. BELLE COHN
 Sec'y.

Sworn and subscribed to before me this 31st day of January, 1916.

[SEAL.] JOSEPH H. GALLAGHER,
 Notary Public.

Commission Expires Feb. 20, 1919.

STATE OF NEW JERSEY,
COUNTY OF ATLANTIC, ss.

C. L. Cole, Jr., of full age, being first duly sworn according to law, upon his oath says that on the 2d day of February, 1916, he served on Harry Wootton, Esquire, Solicitor of the Borough of Longport, and on Franz Voelker, secretary of the Atlantic County Board of Taxation, a copy of the foregoing petition by hand in gthe same to them personally.

C. L. COLE, JR. 10

Sworn and subscribed to before me this 2d day of February, 1916.

W. M. CLEVINGER,
M. C. C.

Endorsed:

In the matter of the application of Max and Sraha Bamberger Seashore Home for the cancellation of the tax assessment for the year 1915 on property situate in the Borough of Longport, County of Atlantic and State of New Jersey. 20

PETITION.

Filed February 3, 1916.

For amount of assessment see amendment subsequently filed.

Atty. for Borough,
Harry Wootton,
1 S. Tennessee Ave.,
Atlantic City. 31

C. L. Cole,
Counsellor at Law,
Guarantee Trust Building,
Atlantic City, N. J.

Wootton, for the Borough of Longport, and after considering the same, it is on this eighteenth day of July, nineteen hundred and sixteen, 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 and Chapter 244 of the Laws of 1915, that the assessment of \$15,000 on land and \$45,000 on buildings levied for the year 1915 be cancelled for the reason that the same are exempt; being actually used for charitable purposes.

10

And it is further ordered, That this order be certified to the Collector or Receiver of Taxes of Borough of Longport, County of Atlantic.

L. T. Russell, President,
 Geo. T. Bouton,
 Frank B. Jess,
 Isaac Barber,
 Frederic A. Gentieu,

State Board of Taxes and Assessment.

Attest:

20

Frank D. Schroth,
 Secretary.

Endorsed:

State of New Jersey,
 State Board of Taxes and Assessment.
 In re Appeal of
 Max and Sarah Bamberger
 Seashore Home

vs.

Borough of Longport,
 County of Atlantic.
 For the year 1915.

30

Judgment.

Decided and Filed July 18, 1916.

Frank D. Schroth,

Secretary.

State Board of Taxes and Assessment.

State of New Jersey,
State Board of Taxes and Assessment.

- In the matter of the application of
 Max and Sarah Bamberger Sea-
 shore Home for the cancellation of
 the tax assessment for the year
 1915 on property situate in the
 Borough of Longport, County of
 Atlantic and State of New Jersey. } Memorandum.
 10 For the petitioner, Clarence L. Cole.

For the respondent, Ralph E. Harcourt and Harry Wootton.

- 20 The property involved in this appeal is situate in the Borough of Longport in the County of Atlantic, and is known as the Max and Sarah Bamberger Seashore Home. It is owned by a corporation organized under the laws of Pennsylvania providing for the formation of corporations not conducted for profit. The object of its founders was "to afford to children an opportunity to have ten days or two weeks along the seashore in the summertime without any charge whatever." The building is admittedly used for charitable purposes. The sole question is whether it was in actual use for such purposes on May 20, 1915.

- 30 The land was purchased and the building erected thereon in pursuance of the directions of the will of Max Bamberger. The land was acquired in 1914 and the building completed in March, 1915.

Up to about the 1st of March the builder kept a watchman on the ground, at the expense of the owner, and about the first of March the owner put in a man and his wife as caretakers. The building was partially furnished at that time for the accommodation of the caretakers, and about the first of May the rest of the furniture began to arrive. The building was actually opened for use by the children either the last week in June or on the first day of July. It was originally in-

tended that the building should be kept open at least six months in the year and, if possible, through the entire year. But during the first year of its existence the funds available for the use of the home permitted it to remain open only nine or ten weeks; that is, children were actually there for that period.

The Borough insists that the building does not meet the test of actual use for charitable purposes in view of the fact that there were no children in the home on May twentieth. The case of *Institute of Holy Angels v. Fort Lee*, 80 N. J. L., p. 545, is relied upon to sustain this position. We do not regard the rule laid down by the Supreme Court in that case as applicable to the state of facts under review. A building in the course of erection is in an entirely different situation from a building actually completed and in charge of caretakers. When the building involved in this appeal was completed, turned over to the caretakers, and furniture put in for the purposes of the charity, the building, in our judgment was in actual use even though the children it was intended to house were not received until sometime later.

To deny the petitioner's appeal in this case would be equivalent to holding that charities seasonal in operation, or which are conducted only during the summer months, are excluded from exemption. We do not believe that the statute requires such a finding. The assessment, therefore, should be cancelled.

Endorsed:

State of New Jersey.

State Board of Taxes and Assessment.

In re

Max and Sarah Bamberger Seashore
Home

vs.

Bor. of Longport.

MEMORANDUM.

Filed July 18, 1916.

DOCKET.

Max and Sarah Bamberger	}
Seashore Home,	
Petitioner,	
vs.	
Borough of Longport,	
County of Atlantic,	}
Respondent.	

10 1916.

Petr's Atty. C. L. Cole.
 Respdt's Atty. Harry Wootton.
 Assessment of 1915.

Property: Land and buildings claimed to be exempt
 from taxation.

Amount, \$60,000.

Land, \$15,000.

Bldg., 45,000.

Judgment, Assessment cancelled.

20

Feb. 3. Petition filed.

Feb. 19. Amendment filed, giving amount of assess-
 ment.

Apl. 18. Hearing fixed for June 2 at Atlantic City
 and notice sent.

June 2. Case heard, briefs to be filed.

July 18. Memorandum filed and judgment entered.

MINUTES.

30

State House, Trenton, New Jersey,
 Tuesday, April 18, 1916.

The State Board of Taxes and Assessment met at
 10:30 A. M. on the above date.

Present, President Russell, Mr. Bouton, Mr. Jess,
 Dr. Barber and Mr. Gentieu.

* * * * *

The Board fixed the following date for hearings:

* * * * *

Friday, June 2: Atlantic City, to hear Atlantic County appeals.

* * * * *

Guarantee Trust Building,
Atlantic City, New Jersey,
Friday, June 2, 1916.

The Board met at 10:30 A. M. for the purpose of hearing appeals from Atlantic County. 10

Present, President Russell, Mr. Bouton, Dr. Barber and Mr. Gentieu.

The following calendar of appeals was called:

* * * * *

Max and Sarah Bamberger Seashore Home vs. Borough of Longport.

Case called, Mr. C. L. Cole appearing for the petitioner, and Mr. Harcourt on behalf of Mr. Harry Wootton, representing the Borough. The Board received as exhibit P-1 a transcript of the testimony of William J. Turner before the Atlantic County Board of Taxation on December 28, 1915. Decision was reserved pending filing of briefs. 20

* * * * *

State House, Trenton, New Jersey,
Tuesday, July 18, 1916.

The State Board of Taxes and Assessment met at 10:30 A. M. on the above date.

Present, President Russell, Mr. Bouton, Dr. Barber, Mr. Jess and Mr. Gentieu. 30

* * * * *

The Board took up for consideration pending appeals from local assessments, and ordered judgments entered as follows:

* * * * *

Max and Sarah Bamberger Seashore Home vs. Borough
of Longport.

In this case the Board ordered that the assessment of \$60,000, being \$15,000 on land and \$45,000 on improvements, levied for the year 1915 on the property known as the Max and Sarah Bamberger Seashore Home, be cancelled. A memorandum was filed, setting forth the grounds of the Board's decision in this case.

* * * * *

10

BEFORE THE ATLANTIC COUNTY BOARD OF TAXATION.

IN THE MATTER OF THE APPLICATION
OF THE MAX AND SARAH BAMBERGER
HOME. }

Hearing before the Atlantic County Board of Taxation, at the Board of Trade Room, Bartlett Building,
30 Atlantic City, New Jersey, December 28, 1915.

Appearances—CLARENCE L. COLE, ESQ., for the Max and Sarah Bamberger Home; RALPH A. HARCOURT, ESQ., for the Borough of Longport.

William J. Turner, a witness produced on behalf of the applicant, being first duly sworn, testified as follows:

Direct examination, by Mr. Cole:

Q. Now, Mr. Turner, you are a member of the Philadelphia bar, are you not?

30 A. I am.

Q. Are you Trustee of the Max and Sarah Bamberger Home?

A. I am. I was one of the executors of Mr. Bamberger's will which built the home, under which the home was built.

Q. When did this home acquire title to the land which is in question here?

A. My recollection is in the early part of 1914.

Q. And when was the construction of the building on the ground began?

A. Contract was awarded in June, 1914, to Thomas Little and Sons, Philadelphia, and work was started immediately afterwards.

Q. And when was the—when were the buildings completed?

A. Substantially completed before the thirty-first of December, within the contract time, about the twentieth 10 of December we concluded that we wanted one or two little changes made, and that took a short time after that to finish them.

Q. Did you have anyone in charge of the buildings thereafter before they were actually opened to receive children?

A. Yes, sir.

Q. During what time did you have a caretaker or watchman, or what not?

A. Up to about the first of March the builder kept a 20 watchman there at our expense, and while they were finishing up some trifling things, and about the first of March we put in our own caretakers, a man and his wife.

Q. Building furnished?

A. It was partially furnished at that time for their accommodation, and then later on the large quantity of furniture began to be sent down from Philadelphia.

Q. Do you recall about when you began to put the furniture in? 30

A. About the first of May.

Q. And when was the building actually opened for use by the children?

A. I don't recall whether it was the last week in June or the first day of July.

Q. Now, what is the character of this home? What is its mission and object?

A. Simply to afford to children an opportunity to

have ten days or two weeks along the seashore in the summer time without any charge whatever.

Q. Is there a plan as to the time when the home opens and closes?

A. The only limitation about the opening and closing are the funds at the disposal of the home. Unfortunately, when Mr. Bamberger died, his estate, he thought his estate was much larger than it actually turned out to be through the depreciation in the value of
10 a great many securities. It was intended to keep the home open at least six months in the year, and, if possible, through the entire year on a reduced schedule, if I may use that term, but last summer the funds at the command of the home did not allow it to remain open for more than, I think, nine or ten weeks at most. That is to say, the period the children were there, the cleaners were there probably a month before, and two or three weeks afterwards.

Q. Now, is there any profit whatever ever derived
20 by this home from its operation?

A. None whatever.

Q. And is it wholly charitable in its object?

A. Absolutely so. The income of the home last year was not sufficient to take care of the children during the period, and I, among others, contributed a substantial sum to make up the deficit, no revenue whatever being received from any source at all, only from the fund.

Q. Now, are there less than five acres of ground in this tract?

30 A. Yes, sir, much less than five acres.

Q. Is all the land and are all the buildings used wholly for this charitable object?

A. All of them.

Q. And no profit derived from any part of the land that has been assessed?

A. None whatever. Constant source of expense on account of the sea and other things.

Cross-examination, by Mr. Harcourt:

Q. Mr. Turner, did you say that this was a home for children?

A. Yes, sir.

Q. What is the value of the property?

A. The value of the property?

Q. Roughly?

A. My recollection is that we paid twenty-five thousand dollars for the lot and the contract for the buildings is approximately fifty thousand dollars, would be 10 seventy-five thousand dollars, and then there was the expense incident to the construction of the sea-wall and other items that I don't recall.

Q. Do you know that the property was not open and receiving children until, say June first?

A. I have stated that it opened either the last week in June or the first day of July for the reception of children.

By Mr. Cole:

20

Q. Mr. Turner, I don't know whether it is clear or not, but was this land secured and were the buildings constructed upon it solely for the purpose of carrying out this charitable object?

A. Solely so.

Q. That was what was in view at the time the land was bought and the buildings constructed?

A. Only possible purpose, sir.

Q. And that is the real object of the incorporation of this company, as I understand it?

30

A. Real object, sir, as soon as we are able to get sufficient funds to keep it going, for the object is to keep it open the entire year, or the best part of the year.

By Mr. Harcourt:

Q. Mr. Turner, is the organization or the association incorporated in this State?

A. The Max and Sarah Bamberger Seashore Home is

a corporation of what I think is called in Pennsylvania a corporation of the first class, organized not for profit, not by virtue of a charter from the State, but by virtue of a petition filed with the Court of Common Pleas.

Q. It is an association, then, of the State of Pennsylvania?

A. That is true.

By Mr. Cole:

10 Q. And a corporation under the provisions of the law that includes only a corporation where there is no profit involved?

A. No profit involved, not for profit.

Testimony closed.

I hereby certify that the above testimony is a true and correct transcript taken in the above-entitled cause.

A. K. LITTLEFIELD,
Official Stenographer.

20

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, judgment, memorandum and proceedings in the matter of the appeal of the Max and Sarah Bamberger Seashore Home from the assessment of property in the Borough of Longport, County of Atlantic, for the year 1915, as the same are
30 taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the third day of February and other dates, A. D. 1916, and now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed the official seal of
[SEAL.] the board, at Trenton, this twenty-fourth day of August, A. D. 1916.

FRANK D. SCHROTH,
Secretary.

NEW JERSEY SUPREME COURT.

BOROUGH OF LONGPORT, <i>Prosecutor,</i> <i>vs.</i> MAX AND SARAH BAMBERGER SEASHORE HOME, <i>Defendant.</i>	}	On Certiorari.
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REASONS.

(Filed September 5, 1916.)

The prosecutor assigns the following reasons why the judgment under review should be reversed and set aside. 10

1. The property of the defendant was not actually used for charitable purposes on or before May 20, 1915.

2. The property of the defendant was not actually used for charitable purposes until July 1, 1915.

3. The purpose for which the property of the defendant was used on May 20, 1915, is not the purpose contemplated by the provisions of the Tax Act of 1903 and Section 4 of Chapter 278, P. L. 1913. 20

4. The Act of 1903 and the Act of 1913 restricts the exemption of property to such property actually used for charitable purposes on May 20th in each year.

5. The judgment under review favors the exemption of the property of defendant and fails to construe the statute strictly and rigidly against the exemption.

6. The judgment under review is contrary to the provisions of the Tax Act of 1903 and Section 4, Chapter 278, P. L. 1913.

HARRY WOOTTON, 30
Attorney for Prosecutor.

Due and legal service acknowledged.

C. L. COLE,
Attorney for Defendant.

NEW JERSEY SUPREME COURT.
November Term, 1916.

BOROUGH OF LONGPORT,
Prosecutor,)
vs.)
MAX AND SARAH BAMBERGER)
SEASHORE HOME,)
Respondent.)

(Filed March 15, 1917.)

10 Argued, November Term, 1916. Decided, February Term, 1917.

Henry Wootton, for prosecutor.

C. L. Cole, for respondent.

Argued before Justices Swayze, Minturn and Kalisch.

PER CURIAM:

The property of the respondent was assessed for taxes, by the Assessor of the Borough of Longport, in the sum of sixty thousand one hundred and twenty-nine dollars and ten cents, from which assessment the

20 respondent appealed to the Atlantic County Board of Taxation, on the ground that the institution maintained by the respondent was a charitable institution, and exempt from taxation by virtue of Chapter 278 of P. L. 1913.

That board determined that the property was not exempt, and sustained the assessment. The respondent then appealed to the State Board of Taxation, which determined that the property in question was actually used for charitable purposes on May 20, 1915, and

30 ordered the assessment cancelled.

Section 4, Chapter 278, of the Laws of 1913, exempts from taxation all buildings and land owned by charitable institutions *actually* used for charitable purposes, at the time fixed by law for the assessment of taxes.

The testimony shows that the petitioner acquired title to its lands in Longport in the early part of 1914, that buildings were erected thereon and completed before December 31, 1914; that the institution was not actually opened and in use until July 1, 1915.

The inquiry therefore is as to the construction of the words "*actually* used for charitable purposes," contained in the Act of 1913.

However we might feel predisposed to favor the claim for exemption in this case, we cannot but be mindful of the fact that our solution of the inquiry is not at all fancy free, but that our judgment must be guided and controlled upon the principle of *stare decisis*, which brings us inevitably to a denial of the validity of the respondent's claim. **10**

The Act of 1913, under which the tax is laid, and upon the terms of which the exemption must be demanded and supported, is not before us for the first time.

The case of *Holy Angels v. Fort Lee*, 80 N. J. L. 20 545, settled the construction of the act adverse to the contention of the respondent, and the rule was there laid down that "where a building is in course of erection, intended to be used for a charitable purpose, but not actually used therefor, it is not exempt from taxation."

This Court there dealt with the construction to be given the words "*actually used*," as contained in the Act of 1903, and since the language is the same in the Act of 1913, the disposition of the application now before us must be made upon the ruling in that case. **30**

The facts in this case make it apparent that the building of the respondent on May 20, 1915, was not in actual use as a charitable institution, and therefore the rule applied in the former case leaves us no basis for construction here.

The result is the tax must be affirmed, but without costs.

NEW JERSEY SUPREME COURT.

BOROUGH OF LONGPORT,
Prosecutor, }
vs. } On Certiorari.
 MAX AND SARAH BAMBERGER }
 SEASHORE HOME, }
Defendant. }

10 The Court having inspected the transcript and proceedings in the State Board of Taxes and Assessments returned with the certiorari in this cause, the reasons for reversing the judgment below, and heard the argument of counsel thereon, and having duly considered the same, do order that the judgment of the State Board of Taxes and Assessment be reversed, set aside, made void and for nothing holden, and the tax affirmed, and that the said plaintiff in certiorari be restored in all things wherein it hath lost by reason of said judgment.

20 Dated May 11, 1917.
 Entered May 11, 1917.

On motion of

HARRY WOOTTON,
Attorney of Prosecutor.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed, and also of a rule entered in the minutes of the court in the above-stated cause.

10

In testimony whereof, I have set my hand and the seal of said court at Trenton, this [SEAL.] sixteenth day of May, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

BOROUGH OF LONGPORT, <i>Prosecutor,</i> <i>vs.</i> MAX AND SARAH BAMBERGER SEASHORE HOME, <i>Defendants.</i>	}	On Certiorari.
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SPECIFICATIONS OF PROSECUTOR'S POINTS. 10

(Filed November 4, 1917.)

To Clarence L. Cole, Attorney for Max and Sarah Bamberger Seashore Home, defendant, and to the State Board of Taxes and Assessments:

In conformity to Paragraph "E" of Rule 155 of the Rules of the Supreme Court, as amended June 20, 1916, notice is hereby given to you that the prosecutor will rely upon the following points at the argument of the above-stated cause in the Supreme Court:

1. The property of the defendant was not actually used for charitable purposes on or before May 20, 1915. 20
2. The property of the defendant was not actually used for charitable purposes until July 1st, 1915.
3. The purposes for which the property of the defendant was used on May 20, 1915, is not the purpose contemplated by the provisions of the Tax Act of 1903 and Section 4 of Chapter 278, P. L. of 1913.
4. The Act of 1903 and the Act of 1913 restrict the exemption of property to such property as is actually used for charitable purposes on May 20 in each year. 30
5. The judgment under review favors the exemption of the property of the defendant and fails to construe the statutes strictly and rigidly against the exemption.
6. The judgment under review is contrary to the

provisions of the Tax Act of 1903 and Section 4, Chapter 278, P. L. of 1913.

HARRY WOOTTON,
Attorney for Prosecutor.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>THE BOROUGH OF LONGPORT, <i>Prosecutor-Respondent,</i> <i>vs.</i> MAX AND SARAH BAMBERGER 10 SEASHORE HOME, <i>Defendant-Appellant.</i></p>	}	<p>On Appeal from Supreme Court.</p>
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NOTICE OF APPEAL.

(Filed March 28, 1917.)

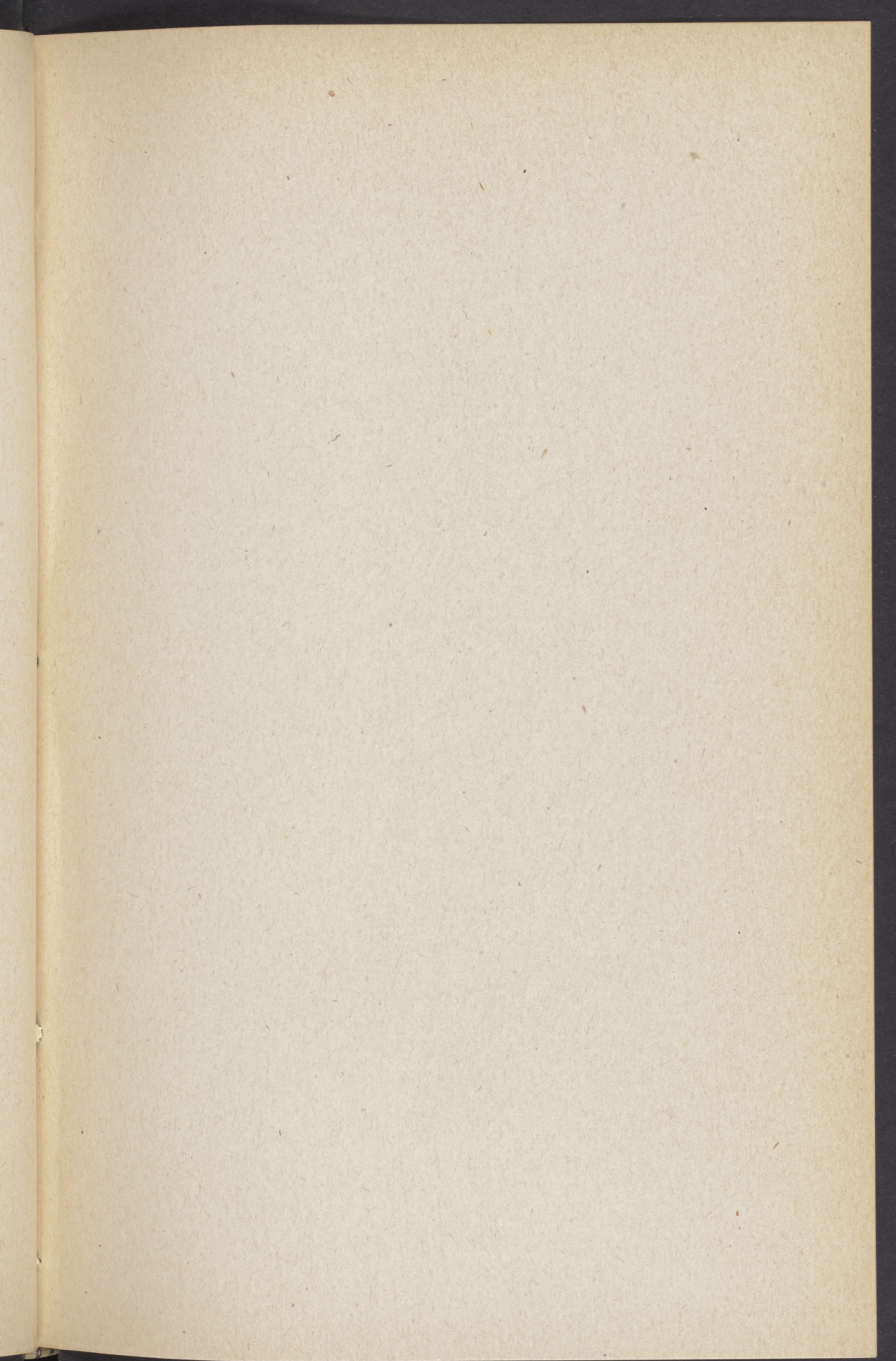
To the Borough of Longport:

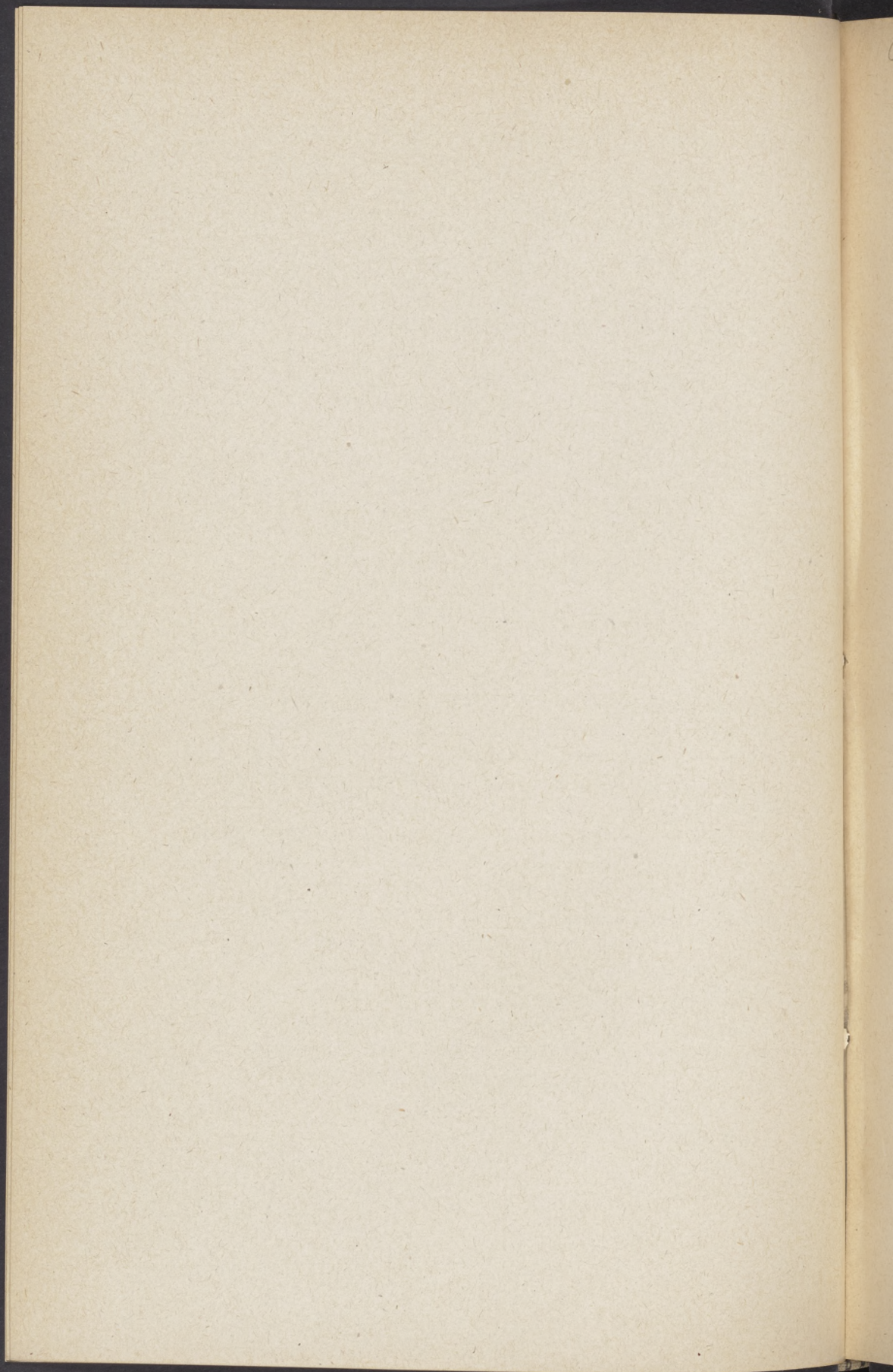
Notice that the Max and Sarah Bamberger Seashore Home appeals from the whole and every part of the rule for judgment, and judgment in this cause to the Court of Errors and Appeals, upon the following grounds:

- 20 1. The Supreme Court affirmed the tax under review when it should have affirmed the judgment of the State Board of Taxation and set aside the tax.
2. The Supreme Court held that the property of the appellant was not exempt from taxation when it should have held that it was exempt.
3. The Supreme Court held that the property of the appellant was not actually in use within the meaning of the Exemption Act in May of 1915, when it should have held that it was actually in use within the meaning and contemplation of the act.

30

C. L. COLE,
Attorney for Appellant.





NEW JERSEY Court of Errors and Appeals

THE BOROUGH OF LONGPORT,
Prosecutor-Respondent,

vs.

MAX AND SARAH BAMBERGER
SEASHORE HOME,
Defendant-Appellant.

} On Appeal from
Supreme Court.

Appellant's Brief.

The appellant is concededly a charity within the meaning of the Tax Act, and would have been entitled to exemption from taxes for the year 1915 if its property had been in actual use on May 20th of that year. The local assessors assessed, the County Board affirmed, the State Board reversed, and the Supreme Court affirmed the tax. This appeal is from the order of the Supreme Court affirming the tax.

The facts are not in dispute. The Home purchased the land for the purpose of constructing a building and administering the charity. The land was purchased in 1914 and construction of the building immediately begun. On May 20th the building was completed, furnished, and in charge of a caretaker ready for use when the season opened for the administration of the charity.

The Supreme Court held in effect that because there were no children in the Home on May 20th to receive the benefit of the charity it was not being actually used for such charity within the meaning of the act, and it relied upon *Holy Angels v. Fort Lee*, 80 *Law*, page 545. That case is not in point. The opinion says, at page 546:

“This building was in course of construction during the year in which the tax was imposed, and was not yet in use at the time the evidence was taken under this writ during the present year.”

It will be seen that at no time during the tax year was the building used for charitable purposes. In the case under consideration it was used as soon as the season for use opened.

We submit that the reasoning of the State Board, at page 8, is more in consonance with the plain spirit of the Tax Act. To give the act the literal interpretation suggested by the Supreme Court would defeat exemption in every case where there were no objects of the charity in the building on May 20th. In other words, you must write the words “continuously used” into the statute to give it the meaning ascribed by the Supreme Court. No seasonal charity is entitled to the benefit of the act under the Supreme Court’s interpretation. Very few of the charities along the coast are open except during the summer months, and it is not intended they should be. Since they are not in actual use on May 20th, they are not entitled to the exemption if the word “actual” is made to mean someone receiving the benefit of the charity on May 20th. On the other hand, if there happens to be someone receiving the benefit of the charity on May 20th, then the property would be exempt even though it should be closed the rest of the year. In short, any untoward event which might find the building or land not actually in use on May 20th would defeat the exemption. The evident

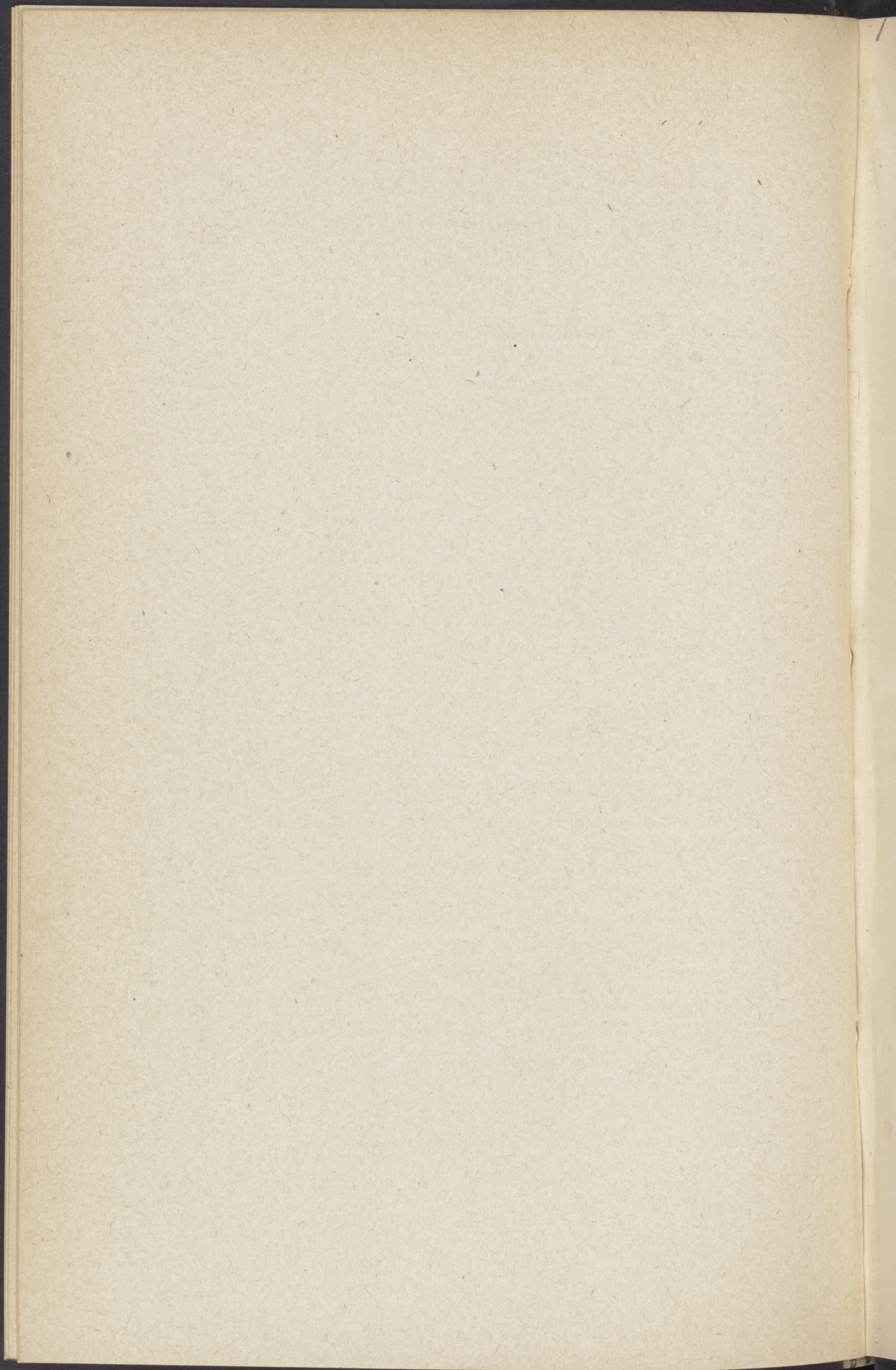
purpose of the insertion of the words "actually used" into the act was to prevent societies from getting the benefit of the exemption when there was neither use nor intention to use. This society will never be entitled to exemption on the reasoning of the Supreme Court, because, first, it is not sufficiently endowed to administer charity throughout the year; and, second, it is not designed to care for children except during the heated months of the summer.

The construction of the Supreme Court is entirely too narrow, and is unnecessary in order to carry out the evident spirit and purpose of the act.

The judgment of the Supreme Court is erroneous, and the order under review should be set aside, with costs, and the tax vacated.

Respectfully submitted,

C. L. COLE,
Attorney for Appellant.



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Brief

New Jersey Court of Errors and Appeals

THE BOROUGH OF LONG-
PORT,
Prosecutor-Respondent,

vs.

MAX AND SARAH BAM-
BERGER SEASHORE
HOME,
Defendant-Appellant.

ON APPEAL FROM
SUPREME COURT.

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BRIEF OF RESPONDENT.

1.

Section 4, Chapter 278, of the laws of 1913 exempts from taxation all buildings and land owned by charitable institutions actually used for charitable purposes, at the time fixed by law for the assessment of taxes.

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The testimony shows (Case page 13) that the petitioner acquired title to its lands in Longport in the early part of 1914, that buildings were erected thereon and completed before December 31, 1914; that the institution was not actually opened and actually in use for charitable purpose or any other purpose until July 1st, 1915.

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In its determination of the question of exemption, therefore, the court below was limited in its consideration of the subject, to the construction of the words "actually used for charitable purposes" contained in the Act of 1913, and in the consideration of this appeal this court is necessarily confined to the construction and application given those words by the court below.

2.

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In the case of *Holy Angels vs. Fort Lee*, 80 N. J. L. 545, the court dealt with the construction to be given the words "actually used" and the rule was there laid down that "where a building is in course of erection intended to be used for a charitable purpose but not actually used therefor it is not exempt from taxation."

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It is not necessary in this case to appeal to the canon of strict construction of an exemption from taxation which has been affirmed by this Court in *Sister of Charity vs. Cory*, 44 Vroom 699, for in this case the natural construction of the language forbids the exemption. In order to be exempt the building must be actually used and it has been held under the Tax Act of 1866 prior to the revisions of 1903 and 1913 that a building intended to be used but not yet used for charitable purposes was not exempt from taxation. *Presbyterian Board vs. Fisher*, 39 Ib. 143.

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In the case last cited the doubt expressed as to the taxability of property where preparations were be-

ing made before or at the time of the assessment to appropriate and use the property for the charitable purpose was held to be removed by the change in the language of the act and the insertion of the words "actually used," *Holy Angels vs. Fort Lee* (above cited).

3.

The appellant's brief lays much stress upon the fact that the construction placed upon the statute by the lower Court will result in defeating forever its claim to exemption because the Home is never open for the administration of charity upon the day when assessments are made. With subsequent assessments we are not concerned. The testimony clearly shows that the property never had been used for charitable purposes or in fact any purpose up to and including May 20, 1915. Whether the administration of charity for a short season brings an institution within the class entitled to exemption is not before this Court now. The proper time to raise such a question is when the respondent endeavors to levy an assessment upon the appellant for a year when such a condition has existed.

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4.

The facts in this case as revealed by the testimony of the appellant make it apparent that the building of the appellant was not in actual use as a charitable institution on May 20th, 1915, and therefore if this Court adopts the construction given the statute by the Court below this appeal must fail.

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In its consideration of this case this Court must also be guided and controlled by the principal of stare decisis.

The respondent asks that the appeal be dismissed with costs.

HARRY WOOTTON,
Attorney for Respondent.

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