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New Jersey State Library

Filed Nov. 1, 1913.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE,
Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, ET ALS.,
Defendants.
} *On Certiorari.*

NOTICE OF APPEAL.

To Adrian Riker, Esq., Attorney for the Village of South Orange, Defendant.

Take notice, that the prosecutor appeals from the whole of the judgment entered in this cause on the following grounds:

1. Because the judgment of the Supreme Court is in violation of Article 1, Section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor, by terms of which contract the prosecutor was exempted from assessment and from taxation.

2. Because the judgment of said Supreme Court affirming the decision of the State Board of Equalization of Taxes is erroneous in that it holds that the legislative exemption from assessment and from taxation claimed by the prosecutor has been annulled both by force of the Constitutional amendment of 1875, requiring property to be assessed for taxes under general laws and by uniform rules according to its true value, and the operation of the

Act of 1903, entitled "An Act for the assessment and collection of taxes," approved April 8, 1903; and because if this Constitutional amendment and the tax act of 1903 properly construed provide that the property real and personal, of the prosecutor is taxable, then they violate Article 1, Section 10, of the Constitution of the United States, in that they impair the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

3. That the judgment of the said Supreme Court holding that the property of the prosecutor is taxable under an Act entitled "An Act for the assessment and collection of taxes," approved April 8, 1903, (Laws 1903) p. 394, Chapter 208, and the supplements thereto and amendments thereof, violates Article 3, Section 7, paragraph 3 of the Constitution of the State of New Jersey, and also violates Article 1, Section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

4. Because the prosecutor, a corporation organized for educational purposes under a supplement to its charter entitled "Supplement to an Act to incorporate Seton Hall College, approved March 8, 1861," which supplement was approved March 16, 1870, obtained an irrepealable exemption from assessment and from taxation; and since its creation in the year 1861 until the year 1911 no assessment for taxes was ever levied or attempted to be levied upon the property of the prosecutor, and the judgment of the Supreme Court holding

such legislative exemption to be repealable is erroneous.

5. Because the prosecutor performed service and duty and made expenditures as a consequence of the exercise of the privileges and franchises conferred upon it by said legislation, and has been and still is actively engaged in carrying out the purpose of its creation and fulfilling its charter obligations, and therefore the said charter exemption from assessment and from taxation is not a mere gratuity but a contract in which the necessary element of a consideration is present.

WM. J. KEARNS,
Attorney for Appellant.

Dated Oct. 17, 1913.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE,
Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, ET ALS.,
Defendants.
} *On Certiorari.*

NOTICE OF APPEAL.

WM. J. KEARNS,
Attorney for Prosecutor.

Service of the within notice of appeal is hereby acknowledged this 18th day of October, A. D. 1913.

RIKER & RIKER,
ADRIAN RIKER,
Att'ys for Village of South Orange

AFFIDAVIT OF WILLIAM J. KEARNS.

Filed Dec. 21, 1912.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE, *Prosecutor,* vs. VILLAGE OF SOUTH ORANGE, JOSEPH ARNOLD, ASSESSOR, ETC., AND STATE BOARD OF EQUALIZATION OF TAXES, *Defendants.*	*On Certiorari.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

WILLIAM J. KEARNS, being duly sworn on his oath deposes and says, that he is the Attorney of Seton Hall College, a corporation organized under a special Act of the Legislature, entitled "An Act to Incorporate Seton Hall College, approved March 8th, 1861," and a supplement thereto entitled "Supplement to an Act to Incorporate Seton Hall College," which supplement was approved March 16th, 1870; that the object of the said corporation, as declared by its charter, is the advancement of education.

That the said corporation is the owner of certain property situated in the taxing district of the Village of South Orange, County of Essex and State of New Jersey, consisting of the following tracts of land:

Tracts 126-200 inclusive on plate 15, and tracts 1-25 inclusive, on plate 17 of the assessment map of the Village of South Orange, said land and

premises being situated on South Orange Avenue, in the said taxing district. That said property was assessed for the purpose of taxation for the year Nineteen Hundred and Eleven, at a valuation of $35,500.00; from which assessment an appeal was duly taken by said corporation to the State Board of Equalization of Taxes of New Jersey, on or about the Twenty-ninth day of March, Nineteen Hundred and Twelve.

That the said supplement to the charter of said corporation enacted in the year 1870, contained a legislative exemption of the property of the said corporation, real and personal, from assessment and from taxation.

That the State Board of Equalization of Taxes of New Jersey heard the argument of Counsel both for said corporation and the taxing district.

That the said appeal to the said State Board of Equalization of Taxes was dismissed by said Board, and the assessments sustained in an opinion written by President Jess of said Board, a true copy of which is hereunto annexed. That certain stipulations were entered into between Counsel of the respective parties as to the facts in the case as indicated in the opinion of President Jess hereunto annexed, together with an affidavit made by the Right Rev. James J. Mooney, President of said Seton Hall College, which affidavit was submitted to the said State Board on the argument, but is not referred to in the said opinion of President Jess, it having been stipulated by Counsel that the said affidavit might be used with the same force and effect as if the affiant had been sworn on the

hearing and cross examination of said affiant was expressly waived. A copy of this affidavit of the Right Rev. James F. Mooney, is hereunto annexed.

That the contention of said Seton Hall College is, that by the supplement to its charter, it has a contract with the State which it accepted, and for which it has given consideration, and which is, therefore, irrepealable.

The Assessor of the said Taxing District of the Village of South Orange, under the direction of the Essex County Board of Taxation, has again levied an assessment for the year Nineteen Hundred and Twelve on the property of the said College, and the said Assessor has given notice to the said College that he will advertise and sell its lands and real estate for the taxes of the year Nineteen Hundred and Eleven, on the Seventh day of January next.

The said corporation, therefore, is desirous that a writ of certiorari shall issue out of the Supreme Court of this State to review the assessment for taxes of said property situated in the Village of South Orange, in the County of Essex, for the year Nineteen Hundred and Eleven, and to review the decision and judgment of the State Board of Equalization of Taxes in the matter of the said assessment for said year.

WM. J. KEARNS.

Sworn and subscribed to before
me this 20th day of December,
Nineteen Hundred and Twelve.

CHARLES A. SMITH,
Notary Public of N. J.

REASONS.

Filed Dec. 21, 1912.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE, a corporation, *Prosecutor,* vs. VILLAGE OF SOUTH ORANGE, JOSEPH ARNOLD, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants.*	*Reasons.*

The said Prosecutor, by William J. Kearns, its Attorney, comes and prays that the assessment of taxes made against it by the Assessor of Taxes in the Village of South Orange, in the County of Essex, for the year Nineteen Hundred and Eleven, may be set aside and reversed, and that the decision and judgment of the State Board of Equalization of Taxes for New Jersey, dismissing the appeal of the Prosecutor and affirming the said assessment of taxes, be reversed for the following reasons:

1. The Prosecutor, a corporation organized for educational purposes under a supplement to its charter entitled "Supplement to an act to incorporate Seton Hall College," approved March 8th,

REASONS.

1861; which supplement was approved March 16th, 1870, obtained an irrepealable exemption from taxation.

2. That since its creation in the year 1861, until the year 1911, no assessment of taxes was ever levied or attempted to be levied upon the property of the prosecutor.

3. That the prosecutor accepted its said charter and the supplement thereto, and in consideration thereof purchased real and personal property from time to time, erected college buildings thereon and continuously, since, has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its charter obligations, and after the supplement to its charter was passed in 1870, in consideration thereof, purchased further lands and erected further buildings.

4. That the said charter exemption from taxation is not a mere gratuity in the case of the prosecutor, but a contract in which the necessary element of a consideration is present, the prosecutor having performed service and duty, and made expenditures as a consequence of the exercise of the privileges and franchises conferred upon it by said legislation, and its legislative exemption from taxation is, therefore, irrepealable.

5. Because the said tax was erroneously and illegally levied and assessed against the property of the said prosecutor, and because the decision and judgment of the State Board of Equalization

REASONS.

of Taxes in the matter of the appeal of the said assessment are unjust, illegal and erroneous.

6. Because the said decision and judgment of the State Board of Equalization of Taxes are incorrect and erroneous inasmuch as it was proved that the said educational institution, the prosecutor, was conducted without profit and should be considered as charitable at the common law, and therefore, the said land should be exempted from taxation as necessary for the fair use and enjoyment of the buildings erected thereon, and for the purposes of the institution under the facts as stipulated, and under the affidavit of the Right Rev. James F. Mooney, which it was agreed should be used as evidence without the cross examination of the affiant, which was expressly waived in writing by the attorney of the said taxing district.

7. And because, in other respects, the said opinion and judgment of the State Board of Equalization of Taxes, are erroneous and illegal.

WM. J. KEARNS,
Attorney for Prosecutor.

Filed Feb. 18th, 1913.

ADDITIONAL REASONS.

(5a) That the judgment, decision or determination of the Board of Equalization of Taxes for New Jersey that the property of this prosecutor is taxable is in violation of article 1, section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the

grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

(5-b) That the judgment, decision or determination of the Board of Equalization of Taxes for New Jersey that the property of the prosecutor is taxable under an act entitled "An act for the assessment and collection of taxes," approved April 8th, 1903 (Laws of 1903, p. 394, Chapter 208, and the supplements thereto and amendments thereof) violate article 1, section 10, of the Constitution of the United States, by impairing the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

(5c) That if the act entitled "An act for the assessment and collection of taxes," approved April 8th, 1903 (Laws of 1903, page 394, chapter 208, and the supplements thereto and amendments thereof), properly construed provides that the property, real and personal, of the prosecutor is taxable, then it violates article 1, section 10, of the Constitution of the United States, in that it impairs the obligation of the contract arising out of the grant, acceptance and exercise of the charter powers conferred upon the prosecutor.

I hereby consent that the reasons, already filed may be amended by inserting the above additional reasons and filed as within time.

WILBUR A. MOTT,
Attorney for Village of South Orange.

WRIT.

Filed Dec. 21, 1912.

NEW JERSEY, to wit:

STATE OF NEW JERSEY

To Village of South Orange, Joseph Arnold, Esq., Assessor and Collector of Taxes in the Village of South Orange in the County of Essex, and Board of Equalization of Taxes of New Jersey, *Defendants*

Greeting:

We, being willing for certain reasons to be certified of an assessment for taxes made against Seton Hall College, a corporation of the State of New Jersey, for the year Nineteen Hundred and Eleven, by the Assessor of Taxes of the Village of South Orange, in the County of Essex, and to be certified of certain proceedings taken on appeal to the State Board of Equalization of Taxes of New Jersey by said Seton Hall College, and of the opinion, decision and judgment of the said State Board of Equalization of Taxes thereon, and all matters touching and appertaining thereto before said State Board of Equalization of Taxes:

We do command you and each of you that the said assessment of taxes so made by the said assessor of taxes, and the opinion, decision and judgment of the said State Board of Equalization of Taxes, and the record of the proceedings before the said State Board of Equalization of Taxes, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton on the fourteenth day of January next, you certify and send, together with this writ, that

therein may be done what of right and according to the law of this State should be done.

Witness, William S. Gummere, Esq., this twenty-third day of December, A. D., Nineteen Hundred and Twelve.

JOSEPH P. TUMULTY,
Clerk.

WM. J. KEARNS,
Attorney.

(Endorsed)

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE, a corporation, *Prosecutor,* vs. VILLAGE OF SOUTH ORANGE, JOSEPH ARNOLD, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants.*	*Writ of Certiorari.*

Returnable Jan. 14th, 1913.

WILLIAM J. KEARNS,
Attorney for Prosecutor,
800 Broad St.,
Newark, N. J.

Allocatur Dec. 21, 1912.

SAMUEL KALISCH,
J. S. C.

RULE STAYING SALE.

Filed Dec. 24, 1912.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE,
Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, JOSEPH ARNOLD, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY,
Defendants.

On Certiorari.

Rule Staying Sale.

A writ of Certiorari having been allowed by me in open Court on December 21, 1912, to review the assessment of taxes for the year 1911 of certain property of the prosecutor situate in the taxing district of the Village of South Orange; and it appearing that the lien for said taxes is about to be enforced by the Assessor and Collector of said taxing district.

It is hereby ordered that said writ of certiorari shall operate to stay the enforcement by sale of said lien, until the further order of this Court.

SAMUEL KALISCH,
J. S. C.

STIPULATION.

Filed Feb. 5, 1913.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE, a corporation, *Prosecutor,* vs. VILLAGE OF SOUTH ORANGE, JOSEPH ARNOLD, Assessor and Collector of Taxes in the Village of South Orange, County of Essex, and BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants.*	*On Certiorari.* *Stipulation of Attorneys.*

It is stipulated and agreed by and between the attorneys and counsel of the respective parties herein, that the stipulations and agreements of counsel used on the argument of Seton Hall College vs. the Village of South Orange, on appeal before the said State Board of Equalization of Taxes, shall be taken and accepted as a true statement of the facts involved in this controversy.

WILBUR A. MOTT,
Att'y Village South Orange.

Dated January 13, 1913.

WILLIAM J. KEARNS,
Att'y for Prosecutor.

AFFIDAVIT OF MONSIGNOR MOONEY.

Filed February 5, 1913.

In the matter of the appeal of Seton Hall College from the assessment of property in South Orange, County of Essex, for the year 1911. } *Affidavit.*

STATE OF NEW JERSEY, } ss.
COUNTY OF ESSEX. }

(Rt. Rev.) James F. Mooney, D. D., being duly sworn on his oath says that he is the President of Seton Hall College, which was duly incorporated under an Act of the Legislature of New Jersey, approved March 8, 1861, and a supplement thereto which was approved March 16, 1870; that the said Seton Hall College accepted its said charter under the said Acts, and in consideration thereof purchased real and personal property and erected buildings thereon; that the lands in question with other lands were acquired for the purposes of the College and have been so used continuously since the time of their acquisition, and expenditures of money by the College have been made thereon, in pursuance of the charter of the said college and the supplemental act of 1870.

AFFIDAVIT OF MONSIGNOR MOONEY.

That after the passage of the supplement aforesaid, to wit: after March 16th, 1870, and before January 1, 1875, Seton Hall College erected buildings, barns, stables and dwellings on its said lands, and also erected buildings on and improved its other adjacent lands.

That the lands in question and so assessed or attempted to be assessed are used solely as pasture lands for cows and the dwellings of the help on the farm; that the whole of the product of said lands, consisting of milk, butter and dairy products, are used exclusively at the table of said College, no part thereof being sold, given away, or otherwise disposed of; that without such products the College would be compelled to buy the same, and the same are absolutely essential and necessary to the use of said College; and that the said College derives no pecuniary profit from the lands in question.

Deponent further says that said College is conducted and has been conducted since its foundation for the advancement of learning, for the education of youth, and the education and preparation of young men for the priesthood of the Catholic Church; that some of the students board on the premises and pay tuition and boarding fees, but all of the receipts from these sources are used for the support and maintenance of the College, and for no other purpose; that some of the students, clerical and lay, in both the secular and ecclesiasti-

cal departments of the College, pay no tuition or boarding fees whatever, but are educated as charity students; and that the College does not conduct its business for profit, and no profit is derived therefrom.

JAMES F. MOONEY.

Sworn and subscribed before me this 10th day of July, A. D. 1912.

CHARLES A. SMITH,
Notary Public of N. J.

(Endorsed)

I agree that the within affidavit may be used with the same force and effect as if the affiant had been sworn as a witness on the hearing and had testified to the facts sworn to. Cross examination waived.

WILBUR A. MOTT,
Att'y for South Orange.
per JAY TEN EYCK.

STIPULATION BEFORE STATE BOARD.

Filed Feb. 5, 1913.

STATE OF NEW JERSEY.

BOARD FOR THE EQUALIZATION OF TAXES

In the matter of the appeal of Seton Hall College from the assessment of property in South Orange, County of Essex, for the year 1911. } *Stipulation.*

It is hereby Stipulated and Agreed by and between the parties that on the motion to re-open the judgment entered in the above matter and to affirm the tax, the following shall be considered and treated as the facts upon which said motion shall be heard.

(1) Seton Hall College was incorporated under an act of the Legislature of the State of New Jersey entitled "An Act to Incorporate Seton Hall College," Chapter 86 of the Laws of 1861, pages 198 and 199, approved March 8th, 1861.

(2) A supplement to said act was passed, being Chapter 167 of the Laws of 1870, entitled "Supplement to an Act to Incorporate Seton Hall College," approved March 8th, 1861, which supplement was approved March 16th, 1870.

(3) The act incorporating Drew Theological Seminary of the Methodist Episcopal Church, referred to in the supplement above mentioned, was approved February 12th, 1868, (Laws of 1868, Chap. 2, p. 4).

(4) That Seton Hall College accepted its charter contained in the Laws of 1861 aforesaid, and thereafter purchased real and personal property

from time to time, erected college buildings thereon and continuously since has been and still is actively engaged in carrying out the purposes of its creation and fulfilling its obligations imposed by its said charter, and has been and is exercising all the powers granted by said charter.

(5) After the supplement to its charter was passed in 1870, Seton Hall College accepted the same, and purchased further lands and erected further buildings, and has continued ever since to live up to the terms of both acts and to carry out the purposes of its creation, and has been and is exercising all the powers granted thereby.

(6) That the lands in question with other lands were acquired by the College by a conveyance dated the 17th day of October, Eighteen Hundred and Sixty-four, and recorded in the office of the Register of the County of Essex on the 21st day of February, Eighteen Hundred and Sixty-five, in Book M-12 of Deeds for said County on page 343.

(7) That no assessment or tax has been levied or imposed upon the property, real and personal, of Seton Hall College from the date of its original charter in 1861, down to the year 1911; and the tax in question, imposed in the year 1911, is the first tax imposed or attempted to be imposed upon the property of said Seton Hall College, real or personal.

WM. J. KEARNS,
Atty. for Seton Hall College,
Appellant.

WILBUR A. MOTT.
Atty. for Village of South Orange.

JAY TEN EYCK,
Of Counsel.

OPINION OF SUPREME COURT.

Filed June 11, 1913.

NEW JERSEY SUPREME COURT.

February Term, 1913.

SETON HALL COLLEGE,
Prosecutor,
vs.
VILLAGE OF SOUTH ORANGE, ET ALS.,
Defendants.

Submitted February Term, 1913; Decided June 3, 1913.

Certiorari to review a judgment of the State Board of Equalization of Taxes, affirming a tax on property of prosecutor, as to which an exemption from taxation was claimed.

The stipulation of facts shows that prosecutor was incorporated under special charter by Chapter 86 of the laws of 1861 (P. L. 198). This charter conferred no exemption from taxation.

By chapter 167 of the Laws of 1870, an amendment to said charter, it was provided:

"That the provisions of the fifth section of an act entitled "An act to incorporate the Drew Theological Seminary of the Methodist Episcopal Church," approved February 12th, 1868, in relation to the exemption of the real and personal property of said corporation from assessment and from taxation, be and the same are hereby extended to the corporation created by the act to which this is a supplement."

The provision in the fifth section of the charter of Drew Theological Seminary (Laws 1868, p. 4) reads as follows: "and the property of said corporation, real and personal, shall be exempt from assessment and from taxation."

It further appears, *inter alia,* that Seton Hall College is an educational institution and has been operating as such under its charter since 1861; that it acquired the lands on which the tax was imposed in 1864; and that no tax was levied against it until the one now in question, for 1911. The exemption is claimed by virtue of the legislation cited above and not by virtue of section 4 of the Tax Act of 1903.

The Board of Equalization of Taxes in affirming the tax filed a memorandum, which after reciting the above facts proceeds as follows:

"The property involved in this case consists of tracts of land situated in the taxing district of the Village of South Orange and owned by Seton Hall College. These tracts do not include the land upon which the college buildings are erected. The question to be decided is whether the property involved is exempt from taxation by virtue of the supplement to the act under which the appellant was incorporated. The purpose of that supplement was manifestly to grant such exemption. It is settled, however, that under the amendatory provision of the Constitution adopted in 1875, requiring property to be assessed for taxes 'under general laws and by uniform rules, according to its true value,' there can be no exemption of property from taxation by force of special or local statutes, except in the case of contracts which the amendment of

the organic law could not reach. *Sisters of Charity* v. *Township of Chatham*, 23 Vr. p. 373. The effect of the General Tax Act of 1903, was to repeal all exemptions except those expressly allowed by that act, as far as the Legislature had the power to do so. *Hanover Township* v. *Camp Meeting Asso.*, 68 Atl. 753. It follows, therefore, that the exemption claimed on this appeal has been annulled both by force of the Constitutional Amendment of 1875, and the operation of the Act of 1903, unless the supplement granting the exemption constitutes an irrevocable contract between the State and the appellant. That the Legislature may enter into an irrevocable contract as to taxation with a private corporation, which is not subject to alteration by a subsequent Legislature by virtue of the right reserved in the act of 1846, which is now section 4 of the Corporation Act (P. L. 1896, p. 277), is pointed out by Mr. Justice Swayze in the Hanover Township case. He cites the authorities establishing that rule and adds that 'the question which arises is whether in any particular case the exemption, total or partial, is a mere gratuity or whether the elements of a binding contract are present. If the exemption is a mere gratuity, it is subject to repeal.' If the act of the Legislature relied upon by the appellant constituted a binding contract, the exemption contended for must be allowed. If it was not such a contract then the claim for exemption must fail. The presumption is strongly against such a contract. It must be established by

clear and positive evidence or be implied from circumstances which leave no other conclusion open to a rational mind. *Little* v. *Bowers,* 17 V. 300; *State Board of Assessors* v. *Paterson & Ramapo R. R. Co.,* 21 V. 447. In *Cooper Hospital* v. *Camden,* 39 Vr. p. 691, Mr. Justice Pitney, speaking for the Court of Errors and Appeals, held that 'a contract that disables the State from exercising the sovereign prerogative of taxation, with respect to the property of a given corporation, is in derogation of common right, and, so far as it goes, is subversive of the power of government itself. Every reasonable intendment is against the existence of such a contract. He who comes into Court asserting its existence must be prepared to show that, in fact, it was made as alleged, and that its terms are such as to reasonably admit of no other interpretation than that claimed.' The contract claimed to exist in the case under review, does not arise from any provision in the original charter of the appellant corporation, but rests entirely upon a supplement to the act creating the corporation. This supplement was enacted long after the passage of the act of 1846, providing that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal, in the discretion of the Legislature. The right of exemption, therefore, is based upon a supplement to the charter passed at a time when the Legislature had expressly reserved to itself the right to alter, suspend or repeal every charter which it might thereafter grant. But even if it be in doubt whether the

exempting statute was not subject to repeal by virtue of the act of 1846, the question still remains whether the former statute constituted an irrepealable contract. We are unable to give it that effect. There is nothing in the language or terms of the act itself from which a binding contract may be implied. At the time of its passage the beneficiary of the act had been in existence for several years, had purchased lands, erected buildings and was carrying out the purpose of its incorporation. Conceding that its work was charitable, and that the Legislature might deem the continuance of such work a sufficient consideration for a contract of exemption from taxation, there is nothing to show that there was any prospect or likelihood of a discontinuance of such work if the Legislature should fail to grant tax immunity. The passage of the exempting act imposed no new burden or obligation upon the beneficiary, and it conferred no new benefit upon the State. True, the extension of the field of its operations by the appellant in consequence of its freedom from taxation, might increase the extent of its benefits to society, as an educational institution, but any such extension was purely voluntary and was in no case a condition to the enjoyment of the tax exemption. In the case of *Mount Pleasant Cemetery Co.* v. *Newark,* 23 Vroom, p. 539, cited in appellant's brief, the Chief Justice, speaking for the Court of Errors and Appeals, said: 'It must certainly be conceded that if an exemption from any public burthen be made as a mere privilege, it may at any time be

revoked; such a concession would be purely *nudum pactum,* and as such would not be legally binding."

"In our opinion, the exempting act relied upon by the appellant in the case under review in no case purported an intention to impose upon the State an irrepealable contractual obligation, but was a gratuitous privilege extended by the public to the corporation, and was subject to revocation. That being our view, it necessarily follows that we must sustain the assessment brought before us by this appeal."

Before Justices Trenchard, Parker and Voorhees.

For the prosecutor, William J. Kearns.

For the Village of South Orange, Wilbur A. Mott.

PER CURIAM:

The judgment of the Board of Equalization of Taxes is affirmed for the reasons given in the memorandum of that Board as set forth above.

RULE DISMISSING WRIT.

Filed Nov. 1, 1913.

NEW JERSEY SUPREME COURT.

SETON HALL COLLEGE, *Prosecutor,* vs. THE VILLAGE OF SOUTH ORANGE AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, *Defendants.*	*On Certiorari.* *Rule Dismissing Writ.*

A writ of certiorari having been heretofore allowed in the above entitled cause, to review the judgment of the Board of Equalization of Taxes of New Jersey, affirming the decision of the Essex County Board of Taxation that the property of the prosecutor is subject to taxation; and it appearing to the court that the said decision of the Board of Equalization of Taxes of New Jersey is in all respects proper and just, and that the same should be affirmed;

It is, on this first day of November, 1913, on motion of Wilbur A. Mott, attorney of defendant, Village of South Orange, ordered, that said writ be and the same is hereby dismissed nunc pro tunc as of the 16th day of June, 1913.

New Jersey Court of Errors and Appeals.

SETON HALL COLLEGE,
a corporation,
Prosecutor,

vs.

VILLAGE OF SOUTH ORANGE AND BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY, et al.,
Defendants,

On Certiorari.

BRIEF OF PROSECUTOR

WILLIAM J. KEARNS,
Attorney for and of Counsel with the Prosecutor.

The prosecutor was incorporated under the Laws of 1861, page 198, chapter 86, which act was approved March 8th, 1861.

The Drew Theological Seminary of the Methodist Episcopal Church was incorporated under the Laws of 1868, page 4, chapter 2, which act was approved February 12th, 1868; and at the foot of the fifth section of its charter is the following clause:

> "and the property of said corporation, real and personal, shall be exempt from assessment and from taxation."

In 1870 the charter of Seton Hall College was amended (Laws 1870, page 596, chapter 247, approved March 16th, 1870), and provided as follows:

> "That the provisions of the fifth section of an act entitled "An act to incorporate the Drew Theological Seminary of the Methodist Episcopal Church," approved February 12th, 1868, in relation to the exemption of the real and personal property of said corporation from assessment and from taxation, be, and the same are hereby extended to the corporation created by the act to which this is a supplement."

The result of this last mentioned supplement was to place the prosecutor on the same footing as the Drew Theological Seminary and exempt its property, real and personal, from taxation.

According to the affidavit of Monsignor Mooney (C. pp. 15, 16 and 17) it appears that after the incorporation of the prosecutor in 1861 and the passage of the supplement of 1870, the prosecutor accepted its charter under said acts, and in consideration thereof purchased real and personal property and erected buildings thereon; that the lands in question with other lands were acquired for the purpose of the prosecutor and have been used so continuously ever since, and expenditures of money by the prosecutor have been made thereon, in pursuance of said act of 1861 and the supplement of 1870; that after the passage of the supplement in 1870 and before January 1st, 1875, the prosecutor erected buildings, barns, stables and dwellings on its said lands, and also erected buildings and improved its other adjacent lands; that the lands assessed which are the subject of this controversy are used solely as pasture lands for cows and the dwellings of the help on the farm; that the whole

of the product of said lands, consisting of milk, butter and dairy products, are used exclusively at the table of said prosecutor, no part thereof being sold, given away, or otherwise disposed of; that without such products the prosecutor would be compelled to buy the same, and the same are absolutely essential and necessary to the use of said prosecutor, and the prosecutor derives no pecuniary profit from the lands in question. That the College of the prosecutor since its foundation has been conducted for the education of youth, and the education and preparation of young men for the priesthood of the Catholic Church; that some of the students board on the premises and pay tuition and boarding fees, but all of the receipts from these sources are used for the support and maintenance of the prosecutor and for no other purpose; that some of the students, clerical and lay, pay no tuition or boarding fees, but are educated as charity students; and that the prosecutor does not conduct its business for profit, and no profit is derived therefrom.

The agreement of counsel (C. p. 17) as to the use and effect of Monsignor Mooney's affidavit is embraced in the stipulation herein (C. p. 14).

The stipulation (pp. 18 and 19) is substantially to the same effect as the foregoing affidavit. It appears from the stipulation (p. 19, sixth paragraph) that the lands in question with other lands were acquired by the prosecutor in 1864.

Since the incorporation of the prosecutor in 1861 down to the year 1911 no attempt was ever made to tax the property, real or personal, of the prosecutor, it being assumed that it had an irrepealable contract exempting it from taxation. In the year 1911 the Village of South Orange assessed the prosecutor's real property for taxation; an appeal was

taken to the State Board, and the State Board, on the consent of the assessor, set aside the tax; the Village then applied to re-open this judgment, and on the hearing the prosecutor consented that the Board might proceed to hear the matter, and if it concluded that its former judgment was erroneous, it might revoke its former action and enter a new judgment. This was done by the prosecutor because it felt that perhaps the action of the assessor, in view of his relation to the Village of South Orange, might have been inadvertent, or not well considered. We state this because nowhere in the opinion is this matter explained.

Before proceeding with the pertinent questions here involved, the attention of the court is called to the opinion of the State Board of Taxation (pp. 23 and 24), which was adopted by the Supreme Court as its opinion, where the Board seems to assume the corporation act of 1846 (which provided that the charter of every corporation thereafter granted should be subject to alteration, suspension and repeal in the discretion of the legislature) as binding subsequent legislatures from granting exemptions from taxation and assessment. This proposition was decided adversely to the Board in Hanover v. Camp Meeting Association, 47 Vr. 65, on page 66, and is clearly against the elementary rule laid down in Blackstone, which is equally applicable to our legislature, that acts of Parliament derogating from the powers of subsequent Parliaments bind not.

The one question to be determined is this: Did the act incorporating the prosecutor and the supplement thereto of 1870 (which placed the College on the same footing as the Drew Theological Seminary) when accepted by the prosecutor, and buildings and lands were thereafter acquired by it in

consideration thereof, constitute an irrepealable contract that places the power to tax beyond the power of the legislature?

1.

All the decisions in this State deciding either for or against the right to tax hold that the legislature had the power to make an irrepealable contract, prior to the adoption of the amendments to the Constitution in September, 1875, notwithstanding the corporation act of 1846.

The case, therefore, can be divided into three propositions:

(1) Was there a grant of immunity from taxation?

(2) Was there an acceptance?

(3) Did the grantee give consideration therefor?

The first proposition must be decided in the affirmative. The legislative intent to grant such immunity is plain, and unless the same be *nudum pactum* is good. But to vest in the grantee the exemption granted so as to be irrevocable, there must have been an acceptance of the grant and consideration therefor, before revocation.

Mt. Pleasant Cemetery Co. v. *Newark,* 23 Vr. 539, reversing same case, 21 Vr. 66.

Hanover v. *Camp Meet. Association,* 47 Vr. 65, affirmed, 47 Vr. 827.

Home of the Friendless v. *Rouse,* 8 Wall, 430.

Washington University v. *Rouse,* 8 Wall, 439.

University v. *People,* 9 Otto, 309.

Board of Directors of Chicago Theological Seminary v. *People of State of Illinois,* 188 U. S. 662.

State, Morris and Essex R. R. Co. v. *Yard,* 95 U. S. 7.

Cooper Hospital v. *Camden,* 39 Vr. 691.

N. J. v. *Yard,* 95 U. S. 104.

2.

A REVIEW OF THE ABOVE CASES.

In reviewing the above cases care must be observed to distinguish between cases which arise under the general tax exemption act and those under an irrepealable charter.

In Mt. Pleasant Cemetery Co. v. Newark, *supra,* the Court of Errors, reversing the Supreme Court (Chief Justice Beasley writing the opinion) said at p. 540, that a charter of this kind constitutes a contract between the State and the corporation, has not and could not be denied. Since the decision of the Dartmouth College case there has been no doubt on that subject. On page 542, dealing with the question of the grant as a mere gratuity, he says: "But how is such a doctrine as this applicable to the case in hand? Here we have this legislative promise of exemption set forth in the original charter of the company; it was made while the matter was in *fieri,* and it was obviously an inducement to the corporators to accept the charter and incur the expenditures incident to the enterprise on one side, and on the other side the legislature had for its consideration the expectation of the benefits that might result from such expenditure. But such a situation has always, so far as has been observed, been held to place the public and the members of the corporation in the attitude of contracting parties; it does not seem to be possible to treat the question as an open one."

This opinion practically controls in this case.

All that could be said in favor of the tax here was said and dealt with in the opinion of Justice Van Syckle in the court below (21 Vr. 66), and his opinion was favorable to the contentions of the Village here. But the Court of Errors reversed it, laying down the doctrine that we now contend for. The cases are identical; in the Mount Pleasant case, the Cemetery was entitled to an exemption under its charter because the charter granted the exemption, and the Cemetery Company expended moneys to carry out the purpose of its existence, and was a benefit to the public. Here the supplement to the charter gave the College exemption from taxation, and it expended large sums of money in consideration thereof, as in the Mount Pleasant case. And if a cemetery for the burial of the dead is a public benefit, what must be the benefit of a College which educates young men for the Church and for business life to a community? In the one case the clergy inculcate morals and obedience to law in the youth, thus making them better citizens by the training. It is therefore of the highest importance to the State that such institutions should be maintained. And why should the State, the object of the bounty of such institutions, tax those who confer such great benefits upon it? It was these thoughts which at common law, and later in our State laws, gave to these institutions such great privileges, and they are protected even in the present tax act to some extent.

In Hanover v. Camp Meeting Association, *supra,* the court said at page 66 that the question which arose was whether in any particular case the exemption, total or partial, is a mere gratuity, or whether the elements of a binding contract are present. If the exemption was a mere gratuity, it is subject to repeal. And it cited the Mount Pleasant Cemetery case, 23 Vr. 539.

In that case it appeared that none of the buildings of the Association were actually and exclusively used for religious purposes. The court said:

> "Each case depends on its own facts. In every case there is present the element of an agreement evinced by the acceptance of the charter, and the question necessarily is whether there is such a consideration as will make the agreement a binding contract. We fail to find a consideration in the charter. The whole language speaks of privileges conferred upon the incorporators; no obligation is imposed upon them, nor is there anything to indicate that the legislature expected the State to benefit by the incorporation."

The court cited the Mt. Pleasant Cemetery case, which had been decided by the Court of Errors, and it must be assumed that it did not undertake to overrule the doctrine there laid down. The court in deciding that case decided it on the facts apparent. The building used for religious worship and five acres of land were excluded from taxation, and none of the buildings assessed was actually and exclusively used for religious purposes. As to the property that was not used for religious purposes no benefit or consideration flowed to the State, and therefore the grant in the charter as to this was a mere gratuity. In the present case, however, the whole property of the prosecutor is used for the benefit of the State, and constitutes a good consideration, and therefore it is within the doctrine laid down in the Mt. Pleasant Cemetery case.

In Home of the Friendless v. Rouse, *supra*, the U. S. Supreme Court said that the legislature of Missouri incorporated the Home of the Friendless, a charitable association, exempted its property

from taxation and renounced in its case the power retained by the general State law relating to corporations of altering or repealing charters. Afterwards the constitution was amended and the legislature imposed a tax upon the real estate of the Home. The State Supreme Court decided against the Home, and an appeal was taken. Mr. Justice Davis, in speaking for the U. S. Supreme Court, said that the important question raised by the record was whether the State of Missouri contracted with the plaintiff in error not to tax its property. "If it did so contract, it is undisputed that the assumed legislation, under authority of which the property in controversy was taxed, impairs the obligation of contract." He said: "The Home was incorporated to enable persons of the female sex who were desirous of establishing a charitable institution in St. Louis for the relief of destitute and suffering females, to carry out their lawful undertaking. It can readily be seen that a charity of this kind would be of great benefit to the people of St. Louis, and that the legislature of the State would naturally be desirous of using all proper means to promote it." * * * He then speaks of the necessity of co-operation in carrying out the design, and says: "In no other way could this co-operation be better secured than by conferring on the incorporators the authority to say to the benevolent people of St. Louis that their donations in money or lands for the relief of the suffering female poor of the city could be held by the institution undiminished by taxation." He said further: "This charter is a contract between the State of Missouri and the corporators, that the property given for the charitable uses specified in it shall, so long as it is applied to these uses, be exempted from taxation; and it follows that an attempt to tax it impairs the obligation of the contract." Speaking of the con-

sideration of a legislative contract he said further: "It is objected that there is no consideration stated in the act for the release from taxation, which it is claimed is necessary in order to uphold the contract. But this is a mistaken view of the law on this subject. There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was incorporated. These objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it. This has been the well-settled doctrine of this court on this subject since the case of Dartmouth College v. Woodward, 4 Wheat. 518." And he concluded with the statement that taxation of property exempt by contract impairs the obligation of the contract, and the judgment of the State court was reversed.

This case is directly in point, because, like a college for the education of clergy or laity, it tends to the public good; and the consideration of the contract flowing to the State is the benefit the State derives from the maintenance of the College, or other charitable institution.

See views of Chancellor Runyon on this subject. 2 Stew. 36, affirmed 4 Stew. 671.

To the same effect is Washington University v. Rouse, *supra,* where the charter was similar to that of the Home of the Friendless, but instead of being for the purpose of caring for unfortunate females, it was for the purpose of educating youth; and the court there held that Washington University had an irrepealable contract, and its property was not taxable.

In University v. People of Illinois, *supra,* the

charter provided that the property owned by the corporation should be forever free from taxation; and the United States Supreme Court held the charter to be irrepealable.

In Board of Directors of Chicago Theological Seminary v. People of State of Illinois, *supra,* the court, by a divided opinion, upheld the decision of the State court holding the property taxable, because of the peculiar language of its charter. The language of the charter was: "property belonging or appertaining to said Seminary." The court held that the property not being connected to the Seminary rendered the matter in doubt, and therefore sustained the construction of the State court. But it said: "If the language was the same as in University v. Illinois, *supra,* a different conclusion would be reached." In other words, it made a distinction between the property of the corporation and the property of the University. Justice White, with Justices Brown and Holmes dissenting, wrote a very strong opinion in favor of reversing the decision of the State court, on the ground that they could not see the nice distinction of Mr. Justice Peckham, who wrote the majority opinion, between the language "belonging or appertaining to said Seminary" and property belonging to the corporation. Here, however, there is no such doubt, as the language is that the property of the corporation shall be exempt. This opinion is also strongly against the legality of such a tax.

It would be useless to undertake to review the various decisions of our court on this subject, because, as Mr. Justice Swayze said in the Hanover case, "each case depends on its own facts." There is no conflict between them, and on one side will be found a line of authorities which are within the rule in the Hanover case, and on the other, those

which come within the rule in the Mt. Pleasant Cemetery case. The distinction in all these cases is marked, and the decisions were aligned under either case according to the facts.

The distinction between a grant of immunity from taxation to a corporation where the corporation does nothing in consideration thereof is illustrated by the case of

Christ's Church Hospital v. *Philadelphia County*, 24 How. 300;

and where, on the basis of the grant of immunity the corporation expends moneys and does other things in carrying out the purpose for which it was chartered is shown by the case of

Home of the Friendless v. *Rouse, supra.*

These distinctions are made in a number of cases in our courts and the United States courts, and we do not understand that our decisions are in serious conflict with the United States decisions.

This case falls under the rule laid down in the Mt. Pleasant case and the United States cases in the following respects:

(1) There is the legislative grant giving the exemption;

(2) There is an acceptance of the grant; and

(3) In pursuance of that grant of 1870 the prosecutor extended its charity, laid out and expended moneys, acquired property and has carried on its charitable work ever since, pursuant to the grant, thus constituting good consideration.

We, therefore, have the three concurring elements fixing the contract as irrepealable, viz., the grant, acceptance, and consideration. To hold otherwise would be violative of article one, section

ten, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

Even a State constitution is *a law* within the meaning of the Federal prohibition.

P. R. R. Co. v. *Jersey City,* 20 Vr. pp. 540-545.

3.

SETON HALL COLLEGE IS CONDUCTING A CHARITY.

Earl v. *Wood et al.,* 8 Cush. (Mass.) 430.

In this case the Supreme Court of Massachusetts said: "All gifts and grants in trust for the support of public worship and religious instruction, or for the advancement of piety, morality, and useful education, are valid as charitable trusts, and will be carried into effect by this court as a court of equity."

It is unnecessary to go further on the subject of the character of the business of Seton Hall College; it was charitable at common law, and such institutions have always been regarded in this country as being charitable; and wherever a corporation is engaged in the business set forth in the opinion of the Supreme Court of Massachusetts, its institutions are regarded as charitable and eleemosynary. As above stated, the reason of all exemptions from taxation granted to such institutions is the consideration of the great good flowing to the people by their maintenance without expense to the State or community.

4.

While to us it seems clear that the charter and supplement of Seton Hall College, under all the circumstances, constitute an irrepealable contract

which the legislature cannot alter, impair or repeal, if there is doubt on this subject the court should regard the construction placed upon the same by the State and municipal authorities for upwards of half a century, and for upwards of nine years since the act of 1903 went into effect, and decide the proposition in favor of the College and against the power of taxation, and not drive the corporation to take its funds from the charitable uses for which they are intended, to devote the same to further litigation. To tax it now after benevolent people for almost a half century have contributed to the upbuilding and support of this charity on the faith of its exemption, thus diminishing their contributions, borders on deceit, and is violative of good faith.

Where the language in a contract is indefinite or ambiguous and of doubtful construction, the practical interpretation of the parties themselves is entitled to great, if not controlling, influence in its construction.

Chicago v. *Sheldon*, 9 Wall 50.

This is the opinion of the United States Supreme Court, and there can be no doubt that the State, the Village and Seton Hall College for this long period of years gave this practical interpretation to the charter and supplement, and should not at this late day be heard to say that they were wrong in their interpretation.

It is respectfully submitted that the judgment of the Supreme Court should be reversed and the tax set aside.

WILLIAM J. KEARNS,
Attorney for and of Counsel with Seton Hall College.

New Jersey Court of Errors and Appeals.

Between:	
SETON HALL COLLEGE, a corporation, *Prosecutor-Appellant,* *vs.* VILLAGE OF SOUTH ORANGE, et al., *Defendants-Appellees.*	On Writ of Error. On Appeal from Supreme Court.

BRIEF FOR DEFENDANT-APPELLEE, VILLAGE OF SOUTH ORANGE.

POINTS OF LAW.

I.

The property of Seton Hall College, the tax upon which is sought to be set aside, is admittedly not exempt under the General Tax Act of 1903, since;

A. It is not land upon which the buildings of the college are situated;

B. Such land is not necessary to the fair use and enjoyment of such buildings;

C. Such land exceeds the amount allowed to be exempted;

D. Said land is not an endowment or fund held exclusively for the charitable purposes of the prosecutor.

Vol. 4, Comp. Stat., Taxes and Assessments, p. 5079;

State, Nevin, v. Krollman, 38 N. J. L., 574 (Ct. of E. & A.);

Institute of Holy Angels v. Bender, 79 N. J. L., 34;
Bancroft v. Magill, 69 N. J. L., 589;
State, Bd. Equalization of Taxes v. Plainfield Y. M. C. A., decision July 12, 1911;
Stevens Inst. v. Hoboken, 74 N. J. L., 81;
Stevens Inst. v. Bowes, 78 N. J. L., 205;
Sisters of Charity v. Corey, 73 N. J. L., 699 (Ct. of E. & A.);
Cooper Hospital v. Camden, 39 Vr., 691;
State, Church, Pros., v. Lyon, 32 N. J. L., 360;
State, Church, v. Axtell, 41 N. J. L., 117.

II.

The supplement to the charter of the prosecutor granting exemption from taxation has been repealed, unless it constitutes an irrepealable contract.

A. By the constitutional amendment of 1875.

Vol. 1, Comp. Stat, sec. 12, p. LXXXVI;
Sisters of Charity v. Twshp. of Chatham (Ct. E. & A.), 52 N. J. L., 374;
Sisters of St. Elizabeth v. Chatham, 22 Vr., 89;
Cooper Hospital v. Camden, supra;
State, Newark & S. O. Ry. Co. v. Clark, 53 N. J. L., 332;
Cooper Hospital v. Burdsall, 63 N. J. L., 85;
State, North Ward Nat. Bank, v. Newark (Ct. E. & A.), 40 N. J. L., 558.

B. By the General Tax Act of 1903.

Hanover Twshp. v. Camp Meeting Assn., 76 N. J. L., 65;
Public Service Ry. Co. v. Bd. Equalization of Taxes, 80 N. J. L., 533.

III.

The exemption from taxation granted in 1870 by the supplement to the charter of the prosecutor, does not constitute an irrepealable contract, and such exemption has therefore been repealed.

A. A strong presumption always exists against the exemption of property from taxation.

Little v. Bowers, 46 N. J. L., 301;
Cooper Hospital v. Camden, supra;
St. Bd. of Assessors v. Paterson, 21 Vr., 446;
Sisters of Charity v. Corey, supra;
Tucker v. Ferguson, 22 Wall., 527;
Chicago Seminary v. Ill., 188 U. S., 662.

B. The charter of Seton Hall College has incorporated in it by implication the provision that "the charter of every corporation which shall hereafter be granted by the Legislature, shall be "subject to alteration, suspension and repeal in "the discretion of the Legislature."

P. L., 1846, sec. 6, p. 16;
Little v. Bowers, supra;
State, S. O. & Newark Ry. Co. v. Clark, supra;
Cooper Hospital v. Camden, supra.

C. The unbroken line of authorities in this jurisdiction shows that the facts in this case do not constitute the charter exemption of the prosecutor an irrepealable contract.

Hanover Twshp v. Camp Meeting Assn., supra;
Bd. of Assessors v. Paterson & Ramapo R.R. Co., 21 Vr., 446;
Cooper Hospital v. Camden, supra;

Little v. Bowers, supra, affirmed in 19 Vr., 370;

New Jersey v. Yard, 96 U. S., 104;

State, Newark & S. O. Ry. Co., v. Clark, supra, affirmed in 25 Vr., 213;

Flower Hill Cemetery Co. v. North Bergen, 39 Vr., 448;

Christ Church Hospital v. Phila. Co., 24 Howard, 300;

Tucker v. Ferguson, supra;

West Wis. R.R. v. Bd. of Supervisors, 93 U. S., 598;

Mt. Pleasant Cem. Co. v. Newark, 23 Vr., 539;

Singer Mfg. Co. v. Heppenheimer, 29 Vr., 663; 33 Vr., 289.

MEMORANDUM OF LAW.

I.

The property of Seton Hall College, the tax upon which is sought to be set aside, is admittedly not exempt under the General Tax Act of 1903.

The provisions of this act applicable to the case at bar, appear in

Vol. 4, Comp. Stat., Taxes and Assessments, p. 5079,

as follows:

"The following property shall be exempt from taxation under this act, namely * * * all buildings actually and exclusively used for colleges * * * not conducted for profit * * * and the land whereon the same are situated, necessary to the fair use and enjoyment thereof, not exceeding five acres in extent for each * * * and the endowment or fund held exclusively for the charitable purposes of the corporation owning such building."

The above provisions make a triple test which must be fulfilled before such land can be held to be exempt.

A. Only such land is exempt whereon the buildings "actually and exclusively used for col-"leges" are situated.

B. Only so much of that land is exempt "as is "necessary to the fair use and enjoyment" of "the buildings actually and exclusively used for "colleges".

C. Such lands will be exempted to an amount "not exceeding five acres in extent for each."

This construction of the statute has been adopted in the following cases, among others:

State, Nevin, v. Krollman, 38 N. J. L., 574, (Ct. E. & A.);
Institute of Holy Angels v. Bender, 79 N. J. L., 34;
Bancroft v. Magill, 69 N. J. L., 589;
State Bd. of Equalization of Taxes v. Plainfield Y. M. C. A., decision rendered July 12, 1911;
Stevens Institute v. Hoboken, 74 N. J. L., 81;
Stevens Institute v. Bowes, 78 N. J. L., 205;
Sisters of Charity v. Corey, 73 N. J. L., 699 (Ct. E. & A.).

Applying the doctrine of these cases to the land in question, it will be found that such land does not meet a single one of the triple tests imposed.

First; such land is not "land whereon the same "(buildings) are situated", since the college buildings are situated on the other side of South Orange Avenue, the main and broad thoroughfare between South Orange and Newark. from the land upon which the tax is sought to be set aside. The Supreme Court in affirming the decision of the

board of equalization of taxes, specifically finds "these tracts do not include the land upon which "the college buildings are erected". (State of Case, p. 21.)

Secondly; the lands in question are not "neces- "sary to the fair use and enjoyment" of the college buildings in any way. The proof shows that such lands are used as pasturage for cattle and to raise farm produce, both of which are used by the students and other members of the college, but they are not necessary even for the fair use and enjoyment of such students. And the statute clearly does not make the use and enjoyment of the *students* a test, but the use and enjoyment of the *buildings*, the object being to allow such buildings sufficient land to afford a proper curtilage. That this is the settled law, the case of *Stevens Institute v. Bowes,* supra, will show. In that case certain property was taxed which the court found to be an athletic field. The opinion in part is as follows:

> "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 say that the building of the athletic field falls within the exemption of the statute * * * 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."

Thirdly; the lands sought to be exempted from taxation far exceed in area the amount allowed to be exempted in accordance with the statute where such land comes clearly within the other necessary tests.

Lastly; said land cannot be exempted from taxation on the plea that it is "an endowment or fund "held exclusively for the charitable purposes of the "corporation owning such buildings."

The decisions have unanimously held that such endowments or funds never include land.

State, Nevin, pros., v. Krollman, supra;
Cooper Hospital v. Camden, 39 Vr., 691;
State, Church, v. Lyon, 32 N. J. L., 360;
State, Church, v. Axtell, 41 N. J. L., 117.

Moreover, the prosecutor has never pressed the point that the land in question is exempt from taxation under the tax act of 1903; no point was made of such question in its brief before the Supreme Court; no argument was made thereon, and it is clearly understood that such point will not be raised on this hearing; the above memorandum being given merely for the information of this honorable court.

II.

The supplement to the charter of the prosecutor granting the exemption from taxation, has been repealed, unless it constitutes an irrepealable contract.

A. By the Constitutional Amendment of 1875;

B. By the General Tax Act of 1903.

A.

By the Constitutional Amendment of 1875, it was provided inter alia that "property shall be "assessed for taxes under general laws and by "uniform rules according to its true value."

In the case of

Sisters of Charity v. Twshp. of Chatham
(Ct. E. & A.), 52 N. J. L., 374,

the Court, by Chief Justice Beasley, held that an act exempting the property of the plaintiff in error from taxation:

"must be held to have been annulled by the intrinsic force of the amendatory provision of the constitution requiring property to 'be 'assessed for taxes under general laws and by 'uniform rules according to its true value'. The general rule that was deemed apposite was thus expressed in the opinion that was read in the case (in the lower court) in these words: 'That under our present constitution 'there can be no exemption of property from 'taxation by force of special or local statutes, 'except, of course, in case of some contract 'which the amendment of the organic law 'could not reach.' The general proposition thus applied and announced is, in the opinion of this court, wholly indisputable. It is but the expression of the force of a train of decisions in the Supreme Court and in this Court."

The case of *Sisters of Charity v. Corey,* supra, although overruling the above case upon another point, affirmed it upon the point stated, and the following cases are directly in accord therewith:

Sisters of St. Elizabeth v. Chatham, 22 Vr., 89; reversed on other grounds in 23 Vr., 373;

Cooper Hospital v. Camden, supra;

State, Newark & S. Orange R.R. v. Clark, 53 N. J. L., 332;

Cooper Hospital v. Burdsall, 63 N. J. L., 85;

State, North Ward Nat. Bank, v. Newark, (Ct. E. & A.), 40 N. J. L., 558.

B.

The General Tax Act of 1903, supra, has also been held to repeal all acts, general and special, inconsistent with its provisions.

In this regard, Justice Swayze, in the case of

Hanover Twshp. v. Camp Meeting Assn., 76 N. J. L., 65;

holds:

> "The act of 1903 provides that all property within the jurisdiction of this state, not expressly exempted, by this act or excluded from its operation, shall be subject to annual taxation at its true value under this act. All acts, general and special, inconsistent with its provisions, are repealed. The obvious effect of these provisions was to repeal all exemptions, except those allowed by the act of 1903, as far as the Legislature has the power so to do."

In accord with this case is the recent holding of the Supreme Court in the case of

Public Service Ry. Co. v. Bd. Equalization of Taxes, 80 N. J. L., 533.

III.

The exemption from taxation granted by the supplement to the charter of the prosecutor in 1870, does not constitute an irrepealable contract, and such exemption has therefore been repealed.

A.

A strong presumption always exists against the exemption of property from taxation.

In fact, the courts have repeatedly held that such exemption will be enforced "only when the "opposite judgment cannot be formed by a ration- "al mind."

In the case of

Little v. Bowers, 46 N. J. L., 301;

Justice Dixon says:

> "In view of the extraordinary character of this power (to exempt from taxation) of the great inconvenience consequent even upon its occasional use, of the utter destruction of

government that would follow its frequent and impartial exercise, courts must feel constrained to decide that it has been put in force only when the opposite judgment cannot be formed by a rational mind. If there is doubt whether the State has parted with any public right, it is to be resolved that it has not; certainly language can scarcely express the reluctance of courts to infer that this most important of all public rights has been surrendered."

To the same effect is the opinion of the Court of Errors and Appeals in the case of

Cooper Hospital v. Camden, supra,

as follows:

"A contract that disables the state from exercise of the sovereign prerogative of taxation with respect to the property of a given corporation, is in derogation of common right and so far as it goes is subversive of the power of the government itself. Every reasonable intendment is against the existence of such a contract. He who comes into court asserting its existence, must be prepared to show that in fact it was made as alleged, and that its terms are such as to reasonably admit of no other interpretation than that claimed."

The opinion of the court in the case of

State Bd. of Assessors v. Paterson, etc., 21 Vr., 446,

is equally as forceful. The court there says:

"Every reasonable doubt shall be resolved against it (the exemption). Where it exists it is rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession require * * * . This is the settled doctrine of the Supreme Court."

In accord with this view, see cases of

Sisters of Charity v. Corey, supra, at p. 706;
Tucker v. Ferguson, 22 Wallace, 527;
Chicago Seminary v. Ill., 188 U. S., 662.

B.

The charter of Seton Hall College has incorporated in it by implication the provision that "the charter of every corporation which shall "hereafter be granted by the Legislature, shall "be subject to alteration, suspension and repeal "in the discretion of the Legislature."

By "An Act Concerning Corporations" P. L., 1846, p. 16, Sec. 6, it is provided that "the char-"ter of every corporation which shall hereafter be "granted by the Legislature, shall be subject to "alteration, suspension and repeal in the discretion "of the Legislature". This provision now forms Section 4 of the present Corporation Act.

The Courts of this State have repeatedly held that such provision must be read into the charter of every corporation incorporated subsequent to that act, together with the supplements thereto and amendments thereof.

In the case of

Little v. Bowers, supra,

the Court said:

> "All acts of the Legislature are performed in contemplation of existing laws and repeals by implication are not favored, and hence this law of 1846 is to be considered as embodied in every corporate charter thereafter passed, unless a purpose to exclude it be plainly preserved."

To the same effect, see the cases of

State, So. Orange & Newark Ry. Co., v. Clark, supra; and
Cooper Hospital v. Camden, supra.

C.

The unbroken line of authorities in this jurisdiction shows that the facts in this case do not constitute the charter exemption of the prosecutor an irrepealable contract.

In considering the question of whether an exemption in the charter of a corporation constitutes a contract which cannot be revoked by the Legislature, the points outlined above must always be borne in mind, namely; that such an exemption would not be considered irrepealable, except when "the opposite judgment cannot be formed by a "rational mind" and that the charter of every corporation incorporated subsequent to 1846 is expressly subject to the condition that the Legislature may alter or repeal its provisions.

Keeping in mind these legal conditions, let us consider the cases where charter exemptions have been questioned by the Courts of this State. In the case of

Hanover Township v. Camp Meeting Assn., supra,

Justice Swayze in his opinion takes up in turn practically all of the cases concerning this question, and discusses their bearing thereupon and their distinguishing features. In regard to the general rule he says:

> "The question which arises is whether in any particular case the exemption, total or partial, is a mere gratuity, or whether the elements of a binding contract are present. If the exemption is a mere gratuity, it is subject to repeal * * * . In every case there is present the element of an agreement evinced by the acceptance of a charter, and the question necessarily is whether there is such a consideration as will make the agreement a binding contract. We fail to find a consideration in the present charter. The

whole language speaks of privileges conferred upon the incorporators. No obligation is imposed upon them, nor is there anything to indicate that the Legislature expected the State to benefit by the incorporation. To use the language of the Court of Errors and Appeals in the *Paterson & Ramapo Ry. Co.* case, 21 Vr., 446, 'There was no service, duty, expenditure or other remunerative condition imposed upon the corporation, either directly or as a consequence of the exercise of privileges and franchises conferred by the same Legislature.' "

To the same effect is the ruling of the Court of Errors and Appeals in the case of

Cooper Hospital v. Camden, supra.

The Court, by Pitney, J., says, page 698:

"The consideration upon which the Legislature was induced to offer this corporate franchise and the immunity from taxes and assessments was the proposed conveyance to be made by the devisees of William D. Cooper deceased and Alexander Cooper. * * * In our judgment, in order to sustain the claim that a contract had arisen, it would require something more than the mere issuance and exercise of the corporate powers; unless the devisees of William D. Cooper, deceased, and Alexander Cooper made over to the corporation or its trustees the lands and moneys *contemplated by the act* there was no such acceptance as would bind the State to refrain thereafter from subjecting the property of the corporation to taxes or assessment."

In the case at bar we find neither of the two most important elements, as stated in the opinions of Justice Swayze and Justice Pitney.

In the first place, the charter of Seton Hall College was granted and accepted nine years before the exemption from taxation was granted by the Legislature. The corporation had exercised

its franchises for that period of time without any regard to such exemption.

In the second place, when the exemption was granted, no gifts of lands or moneys were in any way contemplated; and

Lastly, there was no condition or obligation imposed upon the corporation in any way in consideration of the grant of exemption.

The Supreme Court in the case at bar has aptly remarked:

> *"The passage of the exempting act imposed no new burden or obligation upon the beneficiary, and it conferred no new benefit upon the State.* True, the extension of the field of its operations by the appellant in consequence of its freedom from taxation might increase the extent of its benefits to society as an educational institution, *but any such extension was purely voluntary and was in no case a condition to the enjoyment of the tax exemption."*

In view of the opinions in the above cases there can be no doubt that the charter exemption in this case does not constitute the irrepealable contract contended for by the prosecutor.

But the Courts of this State have gone even further in their views as to what will and what will not constitute an irrepealable charter exemption. In the case of

Little v. Bowers, cited *supra,*

on another point, an exemption from taxation was granted in the following language:

> "It shall be the duty of the treasurer of said company * * to pay to the Treasurer of this State a tax of one-half of one per centum upon the cost of said road * * * provided that no other tax or impost shall be levied or assessed upon the said company."

The Court, by Dixon, J., held that despite the

fact that the company had accepted this exemption and had acted upon it, and despite the language of the exemption itself, which almost expressly stated that there was a consideration for the exemption from general taxes, such charter provision did not constitute an irrepealable contract. The Court there distinguished the case of

N. J. v. Yard, 95 U. S., 104,

upon which great stress is laid by the prosecutor, by saying that in that case the State's right to tax the company was a vexed question prior to the passage of the exemption supplement, that the passage of such exemption supplement was, therefore, an adjustment of the dispute by contract which made a good consideration, and, furthermore, that the very language of the exemption itself was an express contract in that the exemption was declared to be "In lieu and satisfaction of all other taxation or imposition whatsoever."

This case is affirmed 19 Vroom, 370, and is cited with approval and directly followed in the case of

State, Newark, and South Orange R. R., Prosecutor v. Clark, supra, affirmed 25 Vroom, 213.

In accordance with the above doctrine we find the cases of:

Flower Hill Cemetery Co. v. North Bergen, 39 Vr., 488;
Christ Church Hospital v. Philadelphia Co., 24 Howard, 300;
Tucker v. Ferguson, supra;
West Wis. R. R. v. Board of Supervisors, 93 U. S., 598.

The only cases in this State where the charter

exemption has been held to be an irrepealable contract are those of

Mt. Pleasant Cemetery Co. v. Newark, 23 Vr., 539;
Singer Mfg. Co. v. Heppenheimer, 29 Vr., 633, 33 Vr., 289.

On these cases the prosecutor naturally lays great stress, but they are quite in accord with the rule enunciated in the cases cited above, as will be seen by consideration thereof.

In the Mt. Pleasant Cemetery case, the charter exemption was provided for in the charter itself, before such had been accepted by the cemetery company, and, therefore, the acceptance of the charter and the incurring of the obligations incident to the enterprise formed a good consideration for the contract of exemption. As the Court, by Beasley, the Chief Justice, there says:

> "Here we have this legislative promise of exemption set forth in the original charter of this company; it was made while the matter was in fieri, and it was obviously an inducement to the corporators to accept the charter and incur the expenditures incident to the enterprise, and, on the other side, the Legislature had for its consideration the expectation of the benefits that might result from such expenditure."

Furthermore, it should be remarked that the charter of the corporation was granted previous to 1846, and consequently the provision that the Legislature could alter or repeal the provisions in the charter was not made a portion of such charter.

In the Singer Manufacturing Company cases, the charter exemption provision which was incorporated in the original charter, as in the Mt. Pleasant Cemetery case, furthermore provided

that such corporation should not be liable to any tax or impost whatsoever "If and so long as the said corporation shall invest and keep invested in real estate within this State the sum of five hundred thousand dollars." This, on its very face, shows a valid consideration for the charter exemption, which, therefore, constitutes an irrepealable contract.

In view of the lack of decisions in this State favorable to his side of the case, the prosecutor has cited several cases from other jurisdictions, but these are easily shown to be quite distinguishable from the case at bar, and the authorities above elucidated. In the case of

Home of the Friendless v. Rouse, 75 U. S., 430,

the prosecutor was incorporated in 1853. A statute of the State of Missouri passed in 1845 in its seventh section provided that:

> "The charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension and repeal in the discretion of the Legislature."

The act incorporating the Home provided that:

> "The property of said corporation shall be exempt from taxation; and the sixth, seventh and eighth sections of the first article of the act concerning corporations, approved March 19, 1845, *shall not apply to this corporation.*"

The Court in its opinion says:

> "As the charter in controversy was granted in 1853, it would have been subject to this general law if the Legislature had not in its express terms withdrawn from it this discretionary authority."

This case is far from being an authority in favor of the prosecutor, and is directly opposed

thereto, inasmuch as the Court says that the charter exemption would have been subject to repeal had the Legislature not expressly stated that its power of repeal was withdrawn. The decision in

University v. Rouse, 75 U. S., 439,

rests upon exactly the same ground as in the case of *Home v. Rouse, supra,* for the charter of the University contained exactly the same provision about the freedom of the corporation from taxation, and from the liability to have its charter interfered with at the discretion of the Legislature. In the case of

Chicago Theological Seminary v. Illinois, 188 U. S., 662,

the charter exemption from taxation stated that such exemption should last "forever," such charter was accepted, expenditures made thereon, and the court consequently held that the Legislature was bound to carry out what it had promised to do. The case of

New Jersey v. Yard, 95 U. S., 109,

has been sufficiently distinguished above in the opinion of Dixon in the case of *Little v. Bowers.* In the case of

University v. The People, 99 U. S., 309, 25 U. S. Supreme Court Reporter, page 389,

not only was the charter exemption granted without either the express or implied inclusion of the power of the Legislature to alter or repeal said charter, but said charter exemption stated in express terms that such exemption was granted "forever."

Moreover, the Court (of the State) in its opinion says:

> "The Court thus concedes that there was a contract so far as the Legislative power extended. It is possible that if that question had been fully investigated and all the facts necessary to decide it were before the Court, it might not appear that all the land subjected to taxation by the judgment of the Supreme Court was bought after the date of the amended charter, or donated on the faith of that exemption."

And then continues that such lands would not be exempted from taxation.

This is exactly the case of the lands sought to be exempted by the prosecutor, for they were bought before the date of the exemption supplement, and were not donated upon the faith of such exemption.

It would consequently appear that the Supreme Court of the United States in a case cited by the prosecutor decided that lands such as the prosecutors were not entitled to exemption, even if the charter exemption were an irrepealable contract.

In conclusion, it would, therefore, appear:

First: That the prosecutor has been forced to admit that the land in question is not exempt from taxation under the provisions of the general tax act of 1903, for the reason that such land is not

a: Land whereon the buildings used for the College are situate.

b: Necessary to the fair use and enjoyment of such buildings, as distinguished from the persons dwelling therein.

c: That such land exceeds the statutory provision as to the amount which can be exempted.

d: That such land cannot be exempted as an endowment or fund held exclusively for the charitable purposes of such institution.

Second: That the exemption of such lands from

taxation in the supplement to the charter of the prosecutor has been repealed, unless such exemption is an irrepealable contract—

a: By the amendment to the constitution of 1875.

b: By the general tax act of 1903.

Third: That the charter exemption of the prosecutor is not an irrepealable contract for the reasons

a: That the clause empowering the Legislature to alter, suspend or repeal such charter is embodied in it.

b: That such an exemption will be held to be an irrepealable contract only "when the opposite judgment cannot be formed by a rational mind."

c: That the prosecutor did not accept its charter upon the condition of such exemption, did not obtain the lands in question by reason thereof, never undertook any burden or obligation because of such exemption, and was bound in no way thereby.

Fourth: We find that the prosecutor has cited a case from the United States Supreme Court, holding that even if the charter exemption is an irrepealable contract and the lands sought to be exempted, as in this case, are acquired previous to such grant of exemption and not in contemplation thereof, such lands cannot be exempted.

We, therefore, respectfully submit that the decision of the Supreme Court of this State be affirmed.

Respectfully submitted,

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