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[40995]

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New Jersey Supreme Court.

CARTERET ACADEMY, AN ASSO-
CIATION NOT FOR PECUNI-
ARY PROFIT, INCORPORATED
UNDER THE LAWS OF NEW
JERSEY,

Prosecutor,

On Certiorari.

vs.

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

Defendant.

10

WRIT OF CERTIORARI.

(Filed September 25, 1925.)

20

NEW JERSEY, ss.

THE STATE OF NEW JERSEY TO THE STATE
[L.S.] BOARD OF TAXES AND ASSESSMENT,
AND CITY OF ORANGE, GREETING:

We being willing for certain reasons to be certified of
and concerning a certain order, judgment and decree,
made on the 23d day of June, 1925, affirming the assess-
ments made by the City of Orange for the purpose of
taxation for the years 1923 and 1924 against Carteret

30

Academy upon the lands and buildings, known as Block No. 95, Lot 1, dimensions 400 x 336, Central Avenue, Orange, N. J.; Block 91 B, Lot 36, dimensions approximately 265 x 282, No. 342 Carteret Place, Orange, N. J.; Block 91 B, Lot 54, dimensions 100 x 334, Reynolds Terrace, Orange, N. J., and certain personal property contained in said buildings, and dismissing the appeal by Carteret Academy, any and all things touching and concerning the same, do command you that the said order, judgment and decree together with all proceedings had and taken by the State Board of Taxes and Assessment upon which the same is founded, together with all the testimony of witnesses and other evidence taken thereon, as fully as before you they appear and remain, and also all the facts submitted to you and the grounds, reasons and legal principles upon which you proceeded in your order and judgment and decree and all things affecting and concerning the same, you certify and send under seal to our Justices of our Supreme Court at Trenton on the 6th day of October next, that we may cause to be done thereon what according to law and the Constitution of New Jersey, ought to be done.

WITNESS, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this 5th day of August, 1925.

EDWARD J. KELLEHER,
Clerk.

McCARTER & ENGLISH,
Attorneys.

Allocatur:
WM. S. GUMMERE, C. J.

Service of within writ is acknowledged for City of Orange, August 6, 1925.

WM. A. CALHOUN,
City Council.

Service acknowledged.

August 12, 1925.

STATE BOARD OF TAXES AND ASSESSMENT,
FRANK D. SCHROTH,
Secretary.

NEW JERSEY SUPREME COURT.

CARTERET ACADEMY, AN ASSOCIATION NOT FOR PECUNIARY PROFIT, INCORPORATED UNDER THE LAWS OF NEW JERSEY, <i>Prosecutor,</i>	} On Certiorari.	10
<i>vs.</i>		
THE STATE BOARD OF TAXES AND ASSESSMENT, AND THE CITY OF ORANGE, <i>Defendant.</i>		20

RETURN TO WRIT.

(Filed September 25, 1925.)

The State Board of Taxes and Assessment doth herewith send to the Supreme Court of the State of New Jersey the petitions, judgments, memorandum and proceedings in the matter of the appeals of Carteret Academy, Incorporated, from the assessment of property located in the City of Orange, County of Essex, for the years 1923 and 1924, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

STATE BOARD OF TAXES AND ASSESSMENT,
[SEAL] By FRANK D. SCHROTH,
Secretary.

IN THE MATTER OF THE APPLI-
 CATION OF CARTERET ACAD-
 EMY, INCORPORATED, FOR THE
 REDUCTION OF THE TAX AS-
 SESSMENT FOR THE YEAR 1923
 ON PROPERTY SITUATE IN THE
 TAXING DISTRICT OF THE CITY
 OF ORANGE, COUNTY OF ES-
 SEX AND STATE OF NEW JER-
 SEY.

10

PETITION.

To the State Board of Taxes and Assessment:

Your petitioner, Carteret Academy, a corporation of
 New Jersey, having its principal office in the County of
 Essex and State of New Jersey, respectfully shows that
 it is the owner of certain property situate in the taxing
 district of the City of Orange, County of Essex, con-
 sisting of Block No. 95, Lot 1, dimensions 400 x 380,
 Central and Essex Avenues, Orange, New Jersey, and
 Block 91 B, Lot 36, dimensions approximately 265 x
 282, No. 308 Essex Avenue, Orange, N. J., and Block
 91 B, Lot 54, dimensions 100 x 349, Reynolds Terrace,
 Orange, N. J., and known as 308 Essex Avenue—corner
 Central and Essex Avenue—Reynolds Terrace, Orange,
 N. J.

20

That said property has been assessed for the purpose
 of taxation for the year 1923 at a valuation of land,
 \$39,700; improvement, \$47,000; personal, \$2,000; total,
 \$88,700; at which assessment your petitioner is ag-
 grieved, because the said property is in whole or in part
 exempt.

30

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

Affirmed said assessment.

Your petitioner has, therefore, not paid the taxes so
 levied for the year 1923, and prays that the said assess-

ment of land, \$39,700; improvement, \$47,000; personal,
 \$2,000; total, \$88,700, for the year 1923, be vacated and
 set aside in accordance with law.
 Dated October 1st, 1923.

CARTERET ACADEMY,
 By HEDLEY V. COOKE,
 Secretary.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.

Hedley V. Cooke, Secretary of the above-named
 petitioner, being duly sworn according to law, on his
 oath says that he has read the above petition and knows
 the contents thereof, and that the statements set forth
 and contained therein are true.

HEDLEY V. COOKE,

Sworn to and subscribed before me this 22d day of
 October, 1923.

M. E. WOARDELL,
 Notary Public, Kings County No. 348.
 Certificate filed in N. Y. County No.
 219. Kings County Register's No.
 5128. N. Y. County Register's No.
 5226. Commission expires March 30,
 1925.

[SEAL]

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

Harry E. Young, being duly sworn according to law,
 on his oath says that he served a copy of the above
 petition and affidavit on William A. Calhoun, Attorney
 of Orange Taxing District, personally, this 5th day
 of November, 1923.

HARRY E. YOUNG.

Sworn and subscribed before me this 5th day of
 November, 1923.

J. V. DAVIS,
 Att'y-at-Law of New Jersey.

10

30

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

Harry E. Young, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on James A. Mungle, Secretary of the Essex County Board of Taxation, personally, this 5th day of November, 1923.

HARRY E. YOUNG.

10 Sworn and subscribed before me this 5th day of November, 1923.

J. V. DAVIS,
Att'y-at-Law of New Jersey.

Endorsed:

In the matter of the application of Carteret Academy, Incorporated, for the reduction of the tax assessment for the year 1923 on property situate in the taxing district of the City of Orange, County of Essex and State of New Jersey,

PETITION.

Filed, November 9, 1923.

Osborne, Cornish & Scheck,
Kinney Building,
Newark, N. J.

30 I hereby consent to the filing of the within petition as within the time limited by law.
Oct. 24/23:

WM. A. CALHOUN,
Attorney of City of Orange.
JAMES A. MUNGLE,
Sec'y Essex Co. Board of Taxation.

Nov. 1/23.

STATE OF NEW JERSEY,
STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER OF THE APPLI-
CATION OF CARTERET ACAD-
EMY, INCORPORATED, FOR THE
REDUCTION OF THE TAX AS-
SESSMENT FOR THE YEARS 1923
AND 1924 ON PROPERTY SIT-
UATE IN THE CITY OF ORANGE,
COUNTY OF ESSEX AND STATE
OF NEW JERSEY.

10

MEMORANDUM.

(Filed June 23, 1925.)

For the petitioner, Osborne, Cornish & Scheck.
For the respondent, William A. Calhoun.

20

The Board—Appeals have been filed with the Board requesting that assessments levied against the real and personal property of the Academy as of October 1, 1922, and October 1, 1923, be cancelled pursuant to Chapter 276 of the Laws of 1922. A previous assessment against the same property was sustained by the Courts. *Carteret Academy v. State Board*, 120 Atl. 736.

No change has taken place in the status of the Acad-
emy between the previous assessment and that of Octo-
ber 1, 1922, and there is no reason why the assessment
of this last mentioned date should be disturbed.

30

A doubt has arisen over the assessment made October 1, 1923. On June 29, 1923, the Charter of the Academy was changed, evidently, to meet the objection that the Academy did not appear to be fundamentally philanthropic or charitable in its purpose. We do not think that conditions in and about the operation of the

Academy have been materially changed and in view of the findings of the Court of Errors and Appeals in the previous case, we conclude the doubt must be resolved against the appellant.

The action of the Essex County Board of Taxation is affirmed.

10 STATE OF NEW JERSEY,
STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER OF APPEAL OF
CARTERET ACADEMY, INCORPORATED,
FROM THE ASSESSMENT OF PROPERTY IN THE CITY OF ORANGE, COUNTY OF ESSEX,
FOR THE YEAR 1923.

20 JUDGMENT.
(Filed June 23, 1925.)

30 An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by said Board, by Carteret Academy, Incorporated, in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1923, located at Orange in the County of Essex, consisting of Block 95, Lot 1, 400 x 380, Central and Essex Avenues; Block 91 B, Lot 36, approximately 265 x 282, No. 308 Essex Avenue; Block 91 B, Lot 54, 100 x 349, Reynolds Terrace, and known as 308 Essex Avenue, corner Central and Essex Avenues, and that said property is exempt from taxation.

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Osborne, Cornish and Scheck for the complainant, and William A. Calhoun for the City of

Orange, and after considering the same, it is on this twenty-third day of June, nineteen hundred and twenty-five, at a session of the State Board of Taxes and Assessment, ordered, adjudged and decreed, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$88,700, being \$39,700 on land, \$47,000 on improvements and \$2,000 on personalty, levied for the year 1923 on the above described property, be affirmed and the appeal therefrom dismissed. 10

Endorsed:

CARTERET ACADEMY, INCORPORATED,
Petitioner,
vs.
CITY OF ORANGE, COUNTY OF ESSEX,
Respondent. 20

Petr's Atty., Harry V. Osborne.
Respdt's Atty., William A. Calhoun,
Assessment of 1923.

Property: Block No. 95, Lot 1, 400 x 380 ft., Central and Essex Avenues; Block 91 B, Lot 36, approx. 265 x 282 ft., No. 308 Essex Avenue, and Block 91 B, Lot 54, 100 x 349 ft., Reynolds Terrace, 308 Essex Avenue. 30

Amount, \$88,700. Judgment, \$
L. 39,700
B. 47,000
P. 2,000

1923.
Oct. 30. Letter from counsel for pet'r laid before Bd. requesting that petition be filed as within time, by consent of taxing dis-

- trict. Told petition would be filed if Co. Bd. also consents. Returned for service.
- Nov. 9. Petition filed. Listed for Nov. 21 at Newark and notice sent.
- Nov. 20. Adjourned without date. 1924.
- Oct. 6. Hearing fixed for November 12 at Newark and notice sent, hearing to continue to following day, if necessary.
- 10 Nov. 12. Case heard. Decision reserved, pending the filing of briefs. 1925.
- June 23. Memorandum filed, and judgment dismissing petition entered.

STATE BOARD OF TAXES AND ASSESSMENT.

20 IN THE MATTER OF THE APPLI-
 CATION OF CARTERET ACAD-
 EMY, INC., FOR THE REDUC-
 TION OF THE TAX ASSESS-
 MENT FOR THE YEAR 1924
 ON PROPERTY SITUATE IN
 THE TAXING DISTRICT OF
 THE CITY OF ORANGE, COUN-
 TY OF ESSEX AND STATE OF
 NEW JERSEY.

30

PETITION.

To the State Board of Taxes and Assessment:

Your petitioner, Carteret Academy, a corporation of New Jersey, having its principal office in the County of Essex and State of New Jersey, respectfully shows that it is the owner of certain property situate in the taxing district of the City of Orange, County of Essex, consisting of Block 95, Lot 1, dimensions 400 x 380, Cen-

tral and Essex Avenues, Orange, New Jersey, and Block 91 B, Lot 36, dimensions approximately 265 x 282, No. 308 Essex Avenue, Orange, N. J., and Block 91 B, Lot 54, dimensions 100 x 349, Reynolds Terrace, Orange, N. J., and known as 308 Essex Avenue, corner Central and Essex Avenues, Reynolds Terrace, Orange, N. J.

That said property has been assessed for the purpose of taxation for the year 1924 at a valuation of land, \$39,700; improvements, \$47,000; personal, \$2,000; total, \$88,700; at which assessment your petitioner is ag-
 10 grievied, because the said property is in whole or in part exempt.

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

Affirmed said assessment.

Your petitioner has, therefore, not paid the taxes so levied for the year 1924, and prays that the said assess-
 20 ment of land, \$39,700, improvements, \$47,000, personal, \$2,000, total, \$88,700, for the year 1924 be vacated and set aside in accordance with law.

Dated, 1924.

CARTERET ACADEMY,
 By HARRY V. OSBORNE,
 President.

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

Harry V. Osborne, President of the above-named
 30 petitioner, being duly sworn according to law on his oath says that he has read the above petition and knows the contents thereof and that the statements set forth and contained therein are true.

HARRY V. OSBORNE.

Sworn and subscribed to before me this second day of August, 1924.

HARRY E. YOUNG,
 An Attorney-at-Law of New Jersey.

STATE BOARD OF TAXES AND ASSESSMENT.

Endorsed:

In the Matter of the Application of Carteret Academy, Inc., for the Reduction of the Tax Assessment for the Year 1924 on Property Situate in the Taxing District of the City of Orange, County of Essex and State of New Jersey.

PETITION.

10

Osborne, Cornish & Scheck,
Kinney Building,
Newark, N. J.

Filed August 8, 1924.

Service of the within Petition is acknowledged this fourth day of August, 1924.

ESSEX CO. BOARD OF TAXATION,
JAMES A. MUNGLE,
Secretary.

20 WM. A. CALHOUN,
City Counsel,
Orange.
Aug. 6/24.

STATE OF NEW JERSEY,
STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER OF THE APPLI-
CATION OF CARTERET ACADE-
MY, INCORPORATED, FOR THE
REDUCTION OF THE TAX AS-
SESSMENT FOR THE YEARS 1923
AND 1924, ON PROPERTY SITU-
ATE IN THE CITY OF ORANGE,
COUNTY OF ESSEX AND STATE
OF NEW JERSEY.

10

MEMORANDUM.

(Filed June, 23, 1925.)

For the petitioner, Osborne, Cornish & Scheck.
For the respondent, William A. Calhoun.

The Board: Appeals have been filed with the Board requesting that assessments levied against the real and personal property of the Academy as of October 1, 1922, and October 1, 1923, be cancelled pursuant to Chapter 276 of the Laws of 1922. A previous assessment against the same property was sustained by the Courts. *Carteret Academy v. State Board*, 120 Atl. 736. 20

No change had taken place in the status of the Academy between the previous assessment and that of October 1, 1922, and there is no reason why the assessment of this last mentioned date should be disturbed.

A doubt has arisen over the assessment made October 1, 1923. On June 29, 1923, the Charter of the Academy was changed, evidently, to meet the objection that the Academy did not appear to be fundamentally philanthropic or charitable in its purpose. We do not think that conditions in and about the operation of the Academy have been materially changed and in view of the finding of the Court of Errors and Appeals in 30

the previous case, we conclude the doubt must be resolved against the appellant.

The action of the Essex County Board of Taxation is affirmed.

STATE OF NEW JERSEY,
STATE BOARD OF TAXES AND ASSESSMENT.

10 IN THE MATTER OF APPEAL OF
CARTERET ACADEMY, INCORPORATED,
FROM THE ASSESSMENT OF PROPERTY IN THE CITY OF ORANGE, COUNTY OF ESSEX,
FOR THE YEAR 1924.

JUDGMENT.

(Filed June 23, 1925.)

20 An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by said Board, by Carteret Academy, Incorporated, in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1924, located at Orange, in the County of Essex, consisting of Block 95, Lot 1, 400 x 380, Central and Essex Avenues; Block 91-B, Lot 36, approximately 265 x 282, No. 308 Essex Avenue; Block 91-B, Lot 54, 100 x 349, Reynolds Terrace, and known as 308 Essex Avenue and corner Central and Essex Avenues, and that said property is exempt from taxation.

30 After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Osborne, Cornish and Scheck, for the complainant, and William A. Calhoun, for the City of Orange and after considering the same, it is on this Twenty-third

day of June, nineteen hundred and twenty-five, at a session of the State Board of Taxes and Assessment, ordered, adjudged and decreed, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$88,700, being \$39,700 on land; \$47,000 on improvements and \$2,000 on personalty, levied for the year 1924 on the above-described property be affirmed and the appeal therefrom dismissed.

ENDORSED.

10

CARTERET ACADEMY, INC.,
Petitioner,
vs.
CITY OF ORANGE, COUNTY OF ESSEX,
Respondent.

Petitioner's Attorney, Osborne, Cornish & Scheck. 20
Respondent's Attorney, Wm. A. Calhoun.
Assessment of 1924.

Property: Block 95, Lot 1, 400 x 380, Central and Essex Aves.; Block 91-B, Lot 36, approximately 265 x 282, No. 308 Essex Ave.; Block 91-B, Lot 54, 100 x 349, Reynolds Terrace, No. 308 Essex Ave., cor. Central and Essex Avenues.

Amount, \$88,700 Judgment, \$.
L. \$39,700
B. \$47,000 30
P. \$2,000

1924.

Aug. 8. — Petition filed.
Oct. 6. — Hearing fixed for November 12, at Newark, and notice sent, to continue to following day, if necessary.
Nov. 12. — Case heard. Decision reserved, pending the filing of briefs.

1925.

June 23. — Memorandum filed.

June 23. — Judgment dismissing petition entered.

MINUTES.

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, OCTOBER 30, 1923.

10

The Board met at 10.30 A. M. on the above date.
Present: President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * *

A petition of appeal, received from Harry V. Os-
borne, as counsel for the Carteret Academy of Orange,
to review the assessment for the year 1923 on the prop-
erty of the Carteret Academy in the City of Orange,
20 was laid before the Board. This petition was accom-
panied by a letter from Judge Osborne, stating that the
City of Orange had consented to the filing of the appeal
as within time. The petition bore no evidence of serv-
ice on the taxing district or the County Board.

Upon motion, the Board instructed the Secretary to
inform Judge Osborne that the petition would be re-
ceived as within the proper time, provided that the
County Board joined in the consent to file, and that the
appeal show proper service on the taxing district and
30 the County Board.

* * * * *

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, NOVEMBER 20, 1923.

The Board met at 10.30 A. M. on the above date.
Present: President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * *

The action of the Secretary in allowing the request
of Harry V. Osborne, attorney for the petitioner in
the appeal of Carteret Academy v. City of Orange,
for an adjournment of hearing in this appeal, listed
for November twenty-first at Newark, was approved
by the Board. The Board did not, however, grant the
request of Counsel in this case that the appeal be held
for a year, so that it could be heard together with the
proposed appeal from the assessment of 1924.

10

* * * * *

STATE HOUSE, TRENTON, NEW JERSEY,
MONDAY, OCTOBER 6, 1924.

The Board met at 10.30 A. M. on the above date,
for the purpose of transacting routine business of the
department and the hearing of argument in appeals
from assessments on first and second class railroad
property.

Present: President Baker, Mr. Margerum, Dr. Bar-
ber, Mr. Huegel and Mr. Weaver.

* * * * *

The Board fixed the following schedule of hearings:
* * * * *
Wednesday, November 12: Court House, Newark,
Routine and 78 Essex County cases.
Thursday, November 13: Court House, Newark,
Continuation of Hearing.

30

* * * * *

COURT HOUSE, NEWARK, NEW JERSEY,
WEDNESDAY, NOVEMBER 12, 1924.

The Board met at 10.30 A. M. on the above date
for the purpose of hearing appeals and transacting
routine business of the department.

Present: President Baker, Mr. Margerum, Mr. Weaver and Mr. Huegel.

* * * * *

The following calendar of appeals was called:

1-2. *Carteret Academy, Inc.*, v. *City of Orange.*

10

Cases heard, Mr. Edwin G. Adams, of the firm of Osborne, Cornish & Scheck, appearing for the petitioner, and Mr. William A. Calhoun, appearing for the City of Orange. The Board heard the testimony of Hedley V. Cooke, Harry V. Osborne and Louis F. Reed on behalf of the petitioner. Decision was reserved pending the filing of briefs in two weeks by counsel for both sides.

* * * * *

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, JUNE 23, 1925.

20 The Board met at 10.30 A. M., Advanced Time, on the above date.

Present: President Baker, Dr. Barber, Mr. Weaver and Mr. Huegel.

* * * * *

The Board took up for consideration the appeals of Carteret Academy v. City of Orange, and ordered that judgments be entered as follows:

30

That the assessment of \$88,700, being \$39,700 on land, \$47,000 on improvements and \$2,000 on personalty, levied for the years 1923 and 1924, on Block 95, Lot 1, Central and Essex Avenues; Block 91 B, Lot 36, No. 308 Essex Avenue, and Block 91 B, Lot 54, Reynolds Terrace, be affirmed for each of said years, and that the appeals therefrom be dismissed.

A memorandum was filed by the Board setting forth the reasons for its conclusions in these appeals.

* * * * *

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 petitions, judgments, memorandum and proceedings in the matter of the appeals of Carteret Academy, Inc., from the assessment of property in the City of Orange, County of Essex, for the years 1923 and 1924, as the same are taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the thirtieth day of October and other dates, A. D. 1923 and 1924, and now remaining on file and of record therein.

10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-fourth day of September, A. D. 1925.

[SEAL.]

FRANK D. SCHROTH,
Secretary. 20

STATE BOARD OF TAXES AND ASSESSMENT.

CARTERET ACADEMY, INC.,
Appellant,
vs.
CITY OF ORANGE (3105) (3119),
Respondent.

TESTIMONY.

(Filed September 25, 1925.)

NEWARK, New Jersey, November 12th, 1924. 30

Present—Mr. Baker, Chairman; Mr. Weaver, Mr. Huegel, Mr. Margerum.

Appearances—Edwin G. Adams, Esq., for the Appellants. William A. Calhoun, Esq., for the City of Orange.

1-2. CARTERET ACADEMY vs. CITY OF ORANGE (3105)

Assessment of 1923 on property known as Block 95, Lot 1, 400x380, Central and Essex Avenues; Block 91B, Lot 36, approximately 265x282, No. 308 Essex Avenue; Block 91B, Lot 54, 100x349, Reynolds Terrace, and known as 308 Essex Avenue, corner Central and Essex
10 Avenues, Reynolds Terrace, assessed:

<i>Assessed:</i>	<i>Wants Reduced to:</i>
Land, \$39,700	
Imps., 47,000	
Pers., 2,000	CANCELLED.
<hr/>	
\$88,700	

Appeal to Co. Bd. dismissed.

See note under Case 2.

20

(3119) Assessment of 1924 on property known as Block 95, Lot 1, 400x380, Central and Essex Avenues; Block 91B, Lot 36, approximately 265x282, No. 308 Essex Avenue; Block 91B, Lot 54, 100x349, Reynolds Terrace, and known as 308 Essex Avenue, corner Central and Essex Avenues, Reynolds Terrace, assessed:

<i>Assessed:</i>	<i>Wants Reduced to:</i>
Land, \$39,700	
30 Imps., 47,000	
Pers., 2,000	CANCELLED.
<hr/>	
\$88,700	

NOTE: This property was before the Board from the assessment levied for the year 1921, which was affirmed by the State Board. Carried to the Supreme Court and the Court of Errors, and affirmed by both Courts.

Mr. Adams—If the Board please, I appear for the Appellant in the case of the Carteret Academy against the City of Orange. There are two appeals, one from the 1923 tax, and one from the 1924 tax. The difference between the two is that on May 28, 1923, the Academy amended its charter. The amendment to the charter was to this effect, that "it shall not be conducted for profit or gain to any corporation or individual." Then, if this Board should determine that the taxes of 1924—that the school is exempt from the taxes of 10 1924, then the question would arise whether the taxes of 1923 could or could not be apportioned, as to whether it would be exempt from the later part of that tax. That is the only question in the 1923 appeal. I would suggest that we try these two cases together.

Mr. Weaver—Can the assessment of 1923 be subdivided? The question is what the condition was on the first day of October, 1923.

Mr. Adams—Yes, I know what the Tax Act provides in that regard, but I would like to submit authorities to 20 the Board as to whether it could be divided if it was a school conducted not for profit. There is no dispute about the facts. So that if there is no objection on the part of counsel, I would suggest the two cases be tried together. Of course, there could be no subdivision unless it was exempt from May, 1923.

Mr. Calhoun—If the Board please, I think the two cases can be disposed of together by a stipulation to the effect that a certificate of amendment of charter of Carteret Academy of Orange, New Jersey, was filed 30 with the Secretary of State on the 29th day of June, 1923, and that the tax was assessed as of October 1st of the preceding year. That is all there is to that, isn't it, Mr. Adams?

Mr. Adams—There is more than that to it, because there is testimony to be offered as to the purpose for which the school is formed, and what it has done in the last two or three years. As I see it, it is a question of whether it is or is not an organization for profit. I

think that testimony must relate to the 1923 assessment as well as the 1924 assessment, assuming that the assessment can be apportioned. That is the only question of law in the case, so far as I can see. What is your ruling?

Mr. Weaver—Yes, the laws would indicate that the assessment could be apportioned.

Mr. Adams—Well, to be frank with the Board, I have not been in the case long enough to make an examination of that question. It is true that if we are not
10 entitled to an exemption for 1924, we would not be entitled to an exemption for 1923 under any circumstances. But if the Board should find that we are entitled to an exemption for 1924, why then we want to raise the question on 1923. The facts in the case will be the same, except as to when the amendment to the charter was made.

Mr. Calhoun—That cannot be the only question as to 1923, and prior to that. This case has been all heard
20 by the Court of Errors and Appeals, and that court has held, or affirmed the opinion of the Supreme Court that this Carteret Academy was not entitled to an exemption. Now they claim an amendment to their charter, so that the only question here is whether this amendment to the charter was after the date fixed for the levying of the taxes and could have any bearing on the taxes assessed for that year.

Chairman Baker—That is all there is?

Mr. Calhoun—That is all there is in the 1923 case,
30 because it should not be confused with the 1924 case, because this amendment may be concerned for the year 1924.

Mr. Adams—Mr. Calhoun is very largely right. There are facts that we can offer in the 1923 case to show that we were not organized for profit, which is another question from whether we are exempt or not.

Mr. Weaver—Now won't we save time by hearing both cases together, if he is correct in his interpretation of the law?

Mr. Calhoun—But the Court has passed on whether this is a philanthropic institution. Now my thought is to try them separately, so as not to confuse the two issues. It seems to me that the 1923 case should be heard as an entirely distinct case. There is only one question, and I think we can stipulate as to that.

Chairman Baker—And what is that, please?

Mr. Weaver—Will you gentlemen agree on a stipulation?

Mr. Adams—The facts of 1924 will be offered in 10 1923.

Mr. Weaver—I think the cases should be tried separately.

Mr. Adams—Now I think the Board is quite well informed as to what the case is. The difference between these cases and the cases that were before the Board before is that there has been an amendment to the charter which will be offered in evidence, wherein it was distinctly provided that this Academy be organized
20 solely for educational, philanthropic or charitable purposes, and there are other provisions there, provisions to the same effect, and also since that time there has been a continuing operation of the Academy, and there are other facts to be brought out. The endowment fund has been increased, and other things have happened. We will offer evidence to show that the corporation is organized not at all for profit, but it is a philanthropic institution.

30

Hedley V. Cooke, called as a witness on behalf of the appellant, being duly sworn, testified as follows:

Chairman Baker—Now these cases will be heard separately?

Both Counsel—Yes, sir.

Direct examination, by Mr. Adams.

Q. Mr. Cooke, what connection have you with the Carteret Academy, the appellant in this case?

A. I am one of the Trustees, a member of the Executive Committee and Secretary.

Q. And where do you live?

A. I live at 412 Lawn Ridge, Orange.

Q. And your business is what?

A. A lawyer.

Q. And practicing where?

A. In New York.

Q. And how long have you been a member of the
10 Board of Trustees?

A. Since the beginning, or since my election.

Q. And that is since the incorporation of this corporation.

A. Yes, sir.

Q. And did you have children in the school at the time the corporation was organized.

A. I had a son, yes, sir.

Q. And now do you know how long this school, as a school, has been in existence?

20 A. The school was incorporated about 1901, I am not sure of the exact year, under the title of the Kennedy & Mead Company. The Kennedy & Mead Company built or erected a school building on the west side of what was then Essex Avenue, now Carteret Place, and occupied it, I think, from the year 1901 until about ten years later, when the name was changed to the Carteret Academy. In 1913 the bond issue, which had theretofore been \$35,000, was increased to \$70,000, and the capacity of the school about doubled, that is,
30 the old building was enlarged, and it ran along like that until 1919, when a very great dissatisfaction arose in the conduct of the school in the parents generally.

Three meetings were held in the spring of 1919, and there was a thorough discussion of the situation. Among other things it was very seriously proposed that a competing school should be started by the parents. However, that matter was dropped, and in its place a committee was appointed at the last meeting of ten of the parents. I was one of those. The corpo-

ration at that time was a school corporation for profit.

The stock consisted of \$10,000, par value. It was owned by Charles A. Mead, the Headmaster, one-half; Newman B. Waffl, one-fourth, Associate Headmaster; Arthur H. Soule, one-fourth, another Associate Headmaster. They, as stockholders, consenting to this committee, and acting as an advisory body. The committee appointed an Executive Committee, and that Executive Committee had meetings every month, until in March, 1920, when the teachers and the Headmaster concluded the arrangement was not a workable one,
10 and they asked this committee of the parents to buy them out. They offered to sell for the sum of \$75,000, \$40,000 of which was to go to Mr. Mead, because of his long connection with the school, while others had been there a comparatively short time and they were willing to accept for their stock \$7,500 each.

Q. It was \$7,500 or \$1,500?

A. \$7,500 each.

Mr. Calhoun—Isn't that wrong? I think that
20 is in the opinion, Mr. Adams.

The Witness—This matter was very carefully considered by the Executive Committee and a full committee of the parents generally, and finally the offer was accepted, not at this time, but several weeks later, and the proposition was to be strictly a cash one. The stock was bought, and with the property thus acquired, the property of the old school was to be transferred to the new school—a corporation to be organized
30 not for profit. In other words, the parents, as a continuing body, were to take over this school without any expectation of profit.

Mr. Weaver—Mr. Adams, what has this to do with the assessment as of October 1, 1922, relating to exemptions?

Mr. Adams—As I have said to the Board before, the question is whether this Academy was exempt in 1923. Now it may well be, as Your

Honor suggests, that the question is whether it was exempt on October 1, 1922. It may be that they became exempt in May, 1923, and that that tax would have been enforceable.

Mr. Weaver—But there is no way that tax could be enforceable before the first of October, is there?

10 Mr. Adams—At any rate we have the—I do not know how we are going to get the facts before this Board, or before the Court of Errors, unless we get it at this hearing. Of course, the Board may very well say if it regards the tax as being fixed as of October first, that the exemption is to be determined as of October first for the purpose of taxation on October first, or the Board may say, of course, that its decision is already fixed by the decision rendered. Now the Court of Errors pointed out the Endowment Fund and some others, which we propose to show
20 were under way then and are under way now, and that have grown and developed since then.

Mr. Weaver—You mean the alteration of the charter made a difference as to October 1, 1922, when this corporation was not organized in such a way as to be exempt, as provided or set out by this decision of the Court of Errors?

Mr. Adams—I think we can, if we can show these facts that were not developed in the first case.

30 Mr. Weaver—You mean when you altered your charter?

Mr. Adams—No, sir, that will occur later.

Mr. Weaver—But according to our laws, if a corporation is not organized in such a manner as would bring it within the statute, why, we are powerless to give relief. So why was the assessment any different on this date than in 1900 or in 1920?

Mr. Adams—But there is nothing in the decision that holds that it could not be a corporation not organized for profit because of its charter. In fact, the original charter of this corporation showed that when it was organized it was for no pecuniary profit. The Court put its decision on the ground that the original Headmasters were still there and were receiving a salary. Mead made a contract for a considerable salary, and they said he was receiving a part of the
10 profits of the school, and it was not organized for profit. But whether the original charter was one for pecuniary profit, it was not on account of the charter they determined we were entitled to an exemption, but it was on other grounds. And if we are to present the facts, in order to do that we have to give evidence, because it comes up as a new case.

Chairman Baker—Do you really think that the vicissitudes of this corporation are essential?
20

Mr. Adams—I think the history of the case must come before the Court.

Chairman Baker—But the early history of this matter, I think we gain more expedition where the inquiry takes the form of question and answer, because the average witness, and I think I may include myself, develops a predeliction to prolixity which is sometimes a discomfort to those who have to listen to him.

Q. Mr. Cooke, this committee of parents of ten that
30 you spoke of, that acted as an advisory committee when the school was previously owned by this former corporation, what were they called at that time?

A. Called, I think, the Board of Trustees.

Q. And did you have any powers at all in regard to the management of the school or corporation?

A. Absolutely none.

Q. That was the old corporation?

A. Yes.

Q. Now they acted as an advisory committee for how long?

A. From the spring of 1919 to—well, for about a year.

Q. And prior to the organization of the present corporation in June, 1920, had there been any new negotiations among the parents, or conferences among the parents, as to what should be done in regard to this or some other school for the children?

10 A. Yes.

Q. And what was considered at these conferences?

A. Yes, sir, the main thing that was considered was the establishment of a new school.

Q. And at those conferences did the purchase of this school occur?

A. Yes.

Q. And the corporation was organized. Now, you have testified, by the parents, or a committee of the parents, of the pupils in the school and some others?

20 A. I think that all of the incorporators were parents.

Q. Well, I do not care who the technical incorporators were, those interested in the formation of the new corporation?

A. Some of the bonds were sold to other than parents.

Mr. Weaver—This is the corporation of 1920?

Mr. Adams—Yes, sir, the present corporation, except that there has been an amendment to the charter.

30 Q. And what interest had these persons who organized this corporation in 1920 in purchasing this school?

A. Simply to get a better managed school for the sake of their children and the community.

Q. And did they propose to endeavor to make it a profit institution?

A. The idea was that it was not to be for profit.

Q. Now the three headmasters, you testified, I think, regarding Mr. Mead, Mr. Soule and Mr. Waffl, did they have any financial interest in the new corporation?

A. They had, in this way: That after the committee and the other officers of the school had been working for several weeks to sell these bonds—

Q. Excuse me a minute, we haven't gotten to the bonds yet. We have gotten to the organization. Were these three men interested in the organization of the corporation? 10

A. I don't know what you mean by interested.

Q. Were they stockholders?

A. They were not stockholders, because there was no stock.

Q. Were they members of the corporation?

A. Yes, they were members.

Q. By virtue of what?

A. By virtue of bonds, holding the bonds.

Q. They were not incorporators, were they?

A. No. 20

Q. And the new corporation took over the property of the old corporation, did it?

A. Yes.

Q. And what was the nature of the transaction, did they buy the property, did they buy the stock, or what?

A. The new corporation bought the stock of the old corporation, and with the control thus acquired, transferred the property of the corporation, that is, of the old corporation, to the new.

Q. That is, the new corporation purchased all of the 30 shares of the capital stock of the old corporation?

A. That is right.

Q. And they purchased those from these three men?

A. Yes.

Q. And what amount did they pay these three men for the stock or the property of the old corporation?

A. The contract was for \$75,000.

Q. And did they purchase the property subject to any liens?

A. Subject to a mortgage of \$70,000, the bonds of which, \$2,000, were in the Sinking Fund.

Q. Leaving \$68,000 bonds net?

A. Yes.

Q. Now how was the money raised for the new corporation?

A. By a bond issue created by the new corporation.

Q. That is, you sold bonds?

A. Yes.

10 Q. And the bonds were secured by what, if anything?

A. By a mortgage second to the \$70,000 mortgage on the old property and a first mortgage on the new property, which was bought for the purpose of enlarging the school.

Q. The new property was across the street from the old property, was it?

A. Nearly across the street.

Q. And that was to be used for what purpose?

A. For a Junior School.

20 Q. And to whom were these bonds sold of the school, this paper?

A. Most of them were sold to the parents of the pupils in the school, and a few of them to friends of the school.

Q. Now under the new organization then, or under the incorporation of 1920, what body administered the affairs of the school?

A. A Board of Directors.

Q. How were they selected?

30 A. At a general meeting of the members.

Q. And was there any distribution as to the trustees among classes? Were they classified in any way?

A. Not the first year.

Q. Have they been since then?

A. Yes, sir, divided into five classes, three of each so-called class to be elected in each year.

Q. That is only as to their term of office, then?

A. Yes.

Q. Now who votes for the trustees?

A. The members of the corporation.

Q. And how does a person become a member?

A. By requesting it of the Secretary.

Q. And do they have to have any qualifications?

A. They must either be a parent of a present pupil or the parent of a past pupil, or an alumnus—not an alumnus, no—or bondholder.

Q. And you said you were a bondholder, Mr. Cooke?

A. Yes.

Q. Now when the new corporation was organized 10 you purchased the property of the old school and you purchased the property across the way for the Junior School, across the street, was the entire purchase made at that time or about the time of the organization of the new school?

A. Not that I recollect. The new property was fitted up at an expense of about \$10,000 for boys' school purposes.

Q. And what connection have the three gentlemen who formerly owned the school had with this new cor- 20 poration?

A. They were continued as a part of the teaching staff.

Q. And are they still there as part of the teaching staff?

A. Oh, I think so, they are still there. Mr. Soule has resigned.

Q. About when?

A. I think that was about two years ago. With the Board's permission, I want to correct an answer that I 30 made to a question a little while ago.

Q. And what was that, Mr. Cooke?

A. I said that the amount that was to be paid to Mr. Waffl and Mr. Soule was \$7,500 each. It should have been, as you said, \$15,000 each. What I had in mind was that the bonds which they were given were \$7,500 and the cash each \$7,500.

Q. In other words, they received \$7,500 each in cash and \$7,500 each in bonds?

A. That is right.

Q. Is that right?

A. That is right.

Q. Now the new corporation has been operating the school since the purchase in June, 1920?

A. Yes.

Q. And what connection have these three gentlemen, if any at all, had with the management of the school, the three former owners?

10 A. Nothing except what actually goes with the position of Headmaster.

Q. And for a time they each had one vote as a bondholder, along with the other bondholders?

A. Each had one vote for the members elected.

Q. And how many bondholders are there, approximately?

A. I should judge there are fifty. No, there must be more than that. I have two sheets of them.

Q. And each individual bondholder has one vote, no matter how many bonds he holds?

20 A. That is correct.

Q. Now in the amendment of the charter in 1923, which I am going to offer in evidence, it was provided that no person in receipt of a salary of the institution shall be disqualified from voting as a member of this organization—

Mr. Calhoun—I object if this relates to the 1923 taxes.

30 Mr. Weaver—How do you sustain that? It has nothing at all to do with the assessment that I can see.

Mr. Adams—Well, of course, if the Board should be wrong in its ruling, we have no relief.

Mr. Weaver—Yes, but you could get a rule to take depositions.

Mr. Adams—I do not know whether I should take an exception or not. Suppose I note an exception on the record.

Exception noted.

Mr. Adams—I will offer in evidence at this time the charter, or a certified copy of the charter, which has been received before.

(Certified copy of charter received in evidence and marked *Exhibit A-1.*)

Mr. Adams—I also offer in evidence a certified copy of the amendment to the charter, filed in the Secretary of State's Office on June 9, 1923.

Mr. Weaver—And that was objected to?

Mr. Calhoun—No objection to its being put in 10 evidence, no. My objection is that it is too late as effecting the 1923 assessment, which was levied on October 1, 1922. It seems to me it is immaterial.

Mr. Weaver—But the objection was to the question, and not to the introduction of the charter.

Mr. Calhoun—I do not object to the amendment going in evidence.

Chairman Baker—But your former objection 20 was to the question, wasn't it?

Mr. Calhoun—I did not object to the last question, and I do not object to this going in evidence.

Mr. Adams—You objected to the question as to whether these two men had voted since the amendment to the charter.

Chairman Baker—And now the charter is offered, the charter and the amendment?

Mr. Adams—Yes, sir.

30

Chairman Baker—They may be admitted. (Amendment to charter received in evidence and marked *Exhibit A-2.*)

Mr. Adams—I desire to offer in evidence the by-laws of the Academy. They were proved before—

Mr. Calhoun—That is a copy of the by-laws?

Mr. Adams—I assume so.

Mr. Calhoun—And these have not been amended or changed since the former case?

Mr. Adams—Yes, they have. These are the by-laws prior to the amendment in 1923, as near as I can tell, without comparing them.

Mr. Calhoun—Then I object unless the witness identifies these as the by-laws.

The Witness—But can't we put them in subject to correction?

10 Mr. Adams—By consent of counsel I will offer in evidence the printed by-laws that were in the state of the case in the previous case, as the by-laws prior to June, 1923.

(By-laws received in evidence and marked *Exhibit A-3.*)

Q. Has there been an amendment to these by-laws, Mr. Cooke?

A. Yes.

Q. And adopted when?

20 A. I think it was May 28, 1923, it appears to me.

Q. And are these the minutes you produce of that meeting (paper shown witness)?

A. Yes.

Mr. Adams—I offer in evidence the amendment of the by-laws made at that meeting.

(Amendment to by-laws received in evidence and marked *Exhibit A-4.*)

30 Q. I show you a printed circular entitled "Carteret Academy, Plan for the Development and Elimination of Private Ownership." When was that gotten out and for what purpose?

A. Well, it was simply a bond circular.

Q. Gotten out when the new corporation was offering these bonds?

A. In the Spring of 1920.

Q. And among whom was it circularized?

A. Everybody that had ever shown any interest in the Carteret Academy got a circular.

Q. Largely the parents of pupils present and former?

A. Yes, for the most part among the parents.

Q. And any other particular class of people?

A. Well, all the former bondholders got it, the people in Orange who had displayed an interest in the welfare of the community.

Mr. Calhoun—Is that offered in evidence?

Mr. Adams—I will offer it in evidence.

(Circular received in evidence and marked *Exhibit A-5.*)

10

Cross-examination, by Mr. Calhoun.

Q. And what caused dissatisfaction with the conduct of the school in 1919, Mr. Cooke?

A. Failure to produce results, I think.

Q. And was the attendance of the pupils falling off at that time?

A. I can't tell you that. They had about 160 boys at that time.

Q. In 1920 when you purchased the former corporation it was owned actually by Messrs. Mead, Waffl and 20 Soule, was it not?

A. The stock was; the corporation owned the property.

Q. And what was the amount of that, of the outstanding stock, at that time?

A. \$10,000, par value.

Q. And do you know whether any dividends had ever been paid upon it?

A. I do not.

Q. Did you ever hear of any dividends being paid 30 upon it?

A. No, I never have.

Q. And for that stock you paid \$40,000 in bonds and \$35,000 in cash, did you not?

A. We made a written contract to purchase the stock for \$75,000 in cash. They were to receive that amount in cash. So afterwards they were paid, the three stock owners, to the extent of \$25,000. Mr. Meade had \$7,-

500 and each of the others, the agreement being to take these amounts in bonds.

Q. What did you actually pay for the old corporation?

A. We actually paid \$35,000 in cash and \$40,000 in bonds—

Q. When you purchased the property?

A. —at par.

Q. And when you purchased the property of the old corporation it was encumbered by a mortgage of which
10 there remained \$68,000 of principal due, was it not?

A. Yes.

Q. So that the total purchase price was \$148,000 in cash and bonds?

A. I think that is right, the difference, yes, sir.

Q. \$68,000 plus \$75,000?

A. Yes.

Q. And has any change been made in the rates of tuition charged by the Academy since the new corporation was formed in 1920?

20 A. Yes.

Q. And what have those changes been, an increase, or decrease?

A. An increase.

Q. And they were first increased in 1921, were they not?

A. I can't give you the facts of those changes, I do not recollect them. The Year Book will undoubtedly show the correct figures.

Q. I show you the Year Book for 1924-1925. Does
30 that show the increase from the former rate of tuition?

A. I can give you a comparison of these rates. I have the former ones, but I cannot answer you because I did not charge my mind with these details.

Q. You know they have not been lowered?

A. I think I am safe in saying it.

Q. You know that some increases have been made?

A. Yes, sir, I do know that.

Q. But you are not sure as to the amounts?

A. No.

Q. That is all, Mr. Cooke.

Harry V. Osborne, called as a witness on behalf of the Appellant, being duly sworn, testified as follows:

Direct Examination, by Mr. Adams.

Q. Judge Osborne, are you connected with this present corporation, the Carteret Academy?

A. I am.

Q. Are you one of the Trustees? 10

A. Yes.

Q. And what other office do you hold?

A. President, I succeeded Mr. Colgate and Mr. Bramhall.

Q. And you have been one of the members of the corporation since it was organized in 1920?

A. Yes, from its beginning.

Q. And one of the Trustees?

A. And one of the Trustees. I was a party to the proceeding in the instances which led up to the formation
20 of the present nonprofit corporation and I know all about it.

Q. And you were one of the members of this advisory committee that we have called the Board of Trustees?

A. I was.

Q. Under the old corporation?

A. Yes, sir.

Q. Composed of parents?

A. Yes.

Q. Now can you tell us how this new corporation
30 came to be, what brought it about?

Mr. Calhoun—It has already been testified to by the previous witness, that there was dissatisfaction.

The Witness—I think it is necessary, because it is quite apparent that neither this Board nor the Court has any real understanding of this situation, it is to be assumed unless somebody gives it to them.

Mr. Adams—I do not know whether the witness is trying to supersede me or not. I would like to have the witness testify as to what has brought this about.

Chairman Baker—I think we are wasting time. You had better ask him the question.

Q. Just tell us what brought it about, if you please.

A. The old Carteret Academy, as it was then conducted, under private ownership, was suffering from dry rot, that is to say, they did not have the proper training in the schools. They were not getting results. Many of us who had children had difficulty because of the inaccessibility in a suburban community in getting to the public schools and were utilizing this private school. But they apparently were unable to progress and keep abreast of the times. Dissatisfaction arose, indignation meetings were held among the parents and a new school considered and various things discussed. A temporary expedient was worked out in the form of a Parents' Advisory Committee, with only advisory powers, because it was a privately owned corporation at that time. That did not work out satisfactorily. The suggestion was made that a corporation be formed by the parents under the act providing for the incorporation of nonprofit organizations, and that the school be acquired and taken over from the then owners and run by the parents. That was carried out and an offer was made for the property and it was purchased by the new corporation. While it is true the capital stock was only \$10,000, it represented a real value of very much more. Of course, you gentlemen realize, as most everybody ought to, that the assets of a corporation are not financially measured by the par value of its capital stock. I mention that because Mr. Calhoun seems to make a point of it. I know, and everybody knows, who is connected with the institution, that it was never the intention to make it a profit corporation. By no possibility can it be converted into a profit corporation. There is no method by which any member of the corporation can make a profit. The

only connection that the old owners have with the school is, first, in a teaching capacity. They were good teachers, they had established a good reputation as teachers in the community, and we retained them because we wanted to get the benefit of their services as teachers, and we paid them salaries which we thought would compare with the salaries of other private schools, and much lower than those in public schools holding similar positions, and much lower than some private schools paid for their Headmasters. The only other capacity in which they have any connection with the school whatever is when we did not have the cash, or could not raise the cash, we had to get them to take bonds in lieu of cash, as part of the purchase price.

Q. Now none of the officers of the corporation receives any salary?

A. Oh, absolutely not.

Q. And none of the Trustees?

A. No.

Q. And nobody except the teaching staff and the janitor?

A. There is a janitor and a stenographer and a clerk paid.

Q. Now, was there any amount of legal work in the forming of this corporation?

A. There was considerable legal work.

Q. And in the bond issue.

A. Yes, sir.

Q. And who performed that?

A. Mr. Cooke and myself.

Q. And were you compensated for doing that in any way?

A. No, that was our contribution, among other contributions, to the good and welfare of the school.

Q. Now, prior to the formation of the corporation and after the formation of the Parents' Committee was formed, did that committee of parents, working through this committee, contribute any money or furnish any contributions or anything to the school?

A. Oh, yes, there were very considerable contributions of money made to the school, voluntary contributions.

Q. That was before the present corporation?

A. Yes, and since.

Q. I am asking you now, before the present corporation.

A. Yes, the school has never been able to get by without passing the hat.

10 Q. And what about a man named Taylor?

A. He was employed at a time when we were very much dissatisfied, at a salary, my recollection is, of \$7,000 a year. That money was raised by voluntary contribution by the parents. His intention was to put some pep into the school, put some life into it, and shake out the dust.

Q. That was by the new corporation in 1920?

A. Yes.

Q. That is, this Parents' Committee?

20 A. Raised \$7,000 and hired this man as an expert.

Q. As an expert?

A. Yes, sir, as an expert, and paid him out of their own funds.

Q. And he did not receive any bonds of the new corporation.

A. No, I think he bought a few. The records would show that. I do not know. He was not paid any bonds, I know. He got \$7,000 in cash.

30 Q. Was there anybody interested in this school except the parents and the public-spirited citizens of Orange?

A. Apparently not. So far as I know, nobody is.

Q. And do you find it easy to finance the school?

A. No, we find it very difficult. Everything is going up. We have had to raise our tuition, and tried to attempt a foundation. If we had more pupils, we would have more income, but we find it difficult to raise enough money from our tuitions and fees to run the school as we are trying to run it.

Q. And how have you raised the money?

A. Well, aside from tuition, it is by voluntary contribution from people interested in the school who want to see a private school there and are willing to help.

Cross-examination, by Mr. Calhoun.

Q. Are you familiar with the raising of the tuition fees since the new corporation was formed, Judge?

A. I am.

Q. And will you state what they have been?

A. I could not do that. While I am familiar that there have been raises, and maybe increasing costs because of conditions which have been existent everywhere, and raises made necessary by the fact that we are trying to make a better school there, I am not familiar with the exact amount, but I would refer you to the catalogue. Of course, there have been raises. Why shouldn't there be? 10

Q. Do you know what salaries are paid the teachers?

A. Paid our teachers?

Q. In school, yes.

A. Well, I have known. I have passed on them as a member of the Executive Committee and a member of the Board, but I have no recollection at the moment. Mr. Reed, the Treasurer, will furnish a salary list. 20

Q. You do not know of your own knowledge?

A. I have no recollection. No, I have not of my own knowledge.

Q. You do not know that?

A. I have no recollection now of the exact amount. I know they are smaller, much smaller, than we wish they were. 30

Q. That is all.

Mr. Adams—May I ask that this testimony, if it is of any value to the Board at all, that it be used in both of these cases? It will be absolutely the same in both cases.

Chairman Baker—If we reach that point.

Mr. Adams—Now the reason I ask that—

Mr. Weaver—Why can't you stipulate that the testimony given in this case be used in the subsequent case?

Mr. Calhoun—If the Board decides it is material to the 1923 case, I have no objection at all to its going in.

Mr. Weaver—But I understand we are trying the 1923 case. That is the first case on the calendar.

10 Mr. Calhoun—It is material to the 1923 case.

The Witness—Take the testimony of the 1924 case, so much of it as is material to the 1923 case.

Mr. Weaver—You may do that.

Mr. Calhoun—There will be no objection, if it is decided that it is material to the 1923 case, they may be used together.

Mr. Weaver—But hasn't the testimony all been adduced as to the 1923 case?

20 Mr. Calhoun—There is no objection to admitting that in the 1924 case?

Mr. Adams—No.

The Witness—Then there is no use for me to wait.

Mr. Adams—No, sir.

Louis F. Reed, called as a witness on behalf of the appellant, being duly sworn, testified as follows:

Direct examination, by Mr. Adams.

30 Q. Mr. Reed, you live where?

A. I live in Orange.

Q. And your address, please?

A. Reynolds Terrace, about a block from the school.

Q. And what is your business?

A. I am a lawyer.

Q. Practicing where?

A. In New York.

Q. And you are a member of the present corporation of the Carteret Academy?

A. I am. I was a member of the Board of Trustees, and have been so since the inception of the corporation, a member of the Executive Committee, and I have been Treasurer since April 1, 1921.

Q. And were you a member of that advisory committee of the parents?

A. I attended their meeting. I do not remember whether I was a member of it or not.

Q. You were one of the parents who was interested?

A. Yes, sir.

10

Mr. Weaver—Now just a minute. I see that there are witnesses who are going away. Now when the objection was sustained in regard to the testimony that was given as to what happened in June, 1923, it was ruled out on the theory that we were trying the 1921 assessment, and it had nothing to do with the assessment of October 1, 1922. Now then, if this assessment is all to be used in the 1924 assessment, you should have the right to examine these 20 witnesses in respect to that matter as relating to 1924.

Mr. Adams—I thank you for your suggestion; I thank you very much.

Q. You acted with this so-called Board of Trustees which was solely an advisory board?

A. I attended the meeting.

Q. Of the advisory committee?

A. Yes, sir.

Q. Now, you have heard what Mr. Cooke and Judge 30 Osborne have testified to?

A. Yes.

Q. As to how that Academy—how they came to buy this stock that was taken over at the organization of the corporation by the parents of the pupils in the school?

A. Yes.

Q. And does that accord with your recollection of the facts?

A. Absolutely.

Q. And you attended the conferences of the parents?

A. Yes, sir.

Q. And you were active in that matter, were you?

A. Well, it didn't need any activity on my part. There was so much fire from the various parents that I sat back and listened and agreed with the parents in what they said.

Q. You were one of the incorporators, Mr. Reed?

10 A. No, sir, I was not an incorporator. I was named as a Director in the Certificate of Incorporation.

Q. And you have been the Treasurer all the time since then?

A. Since April 1, 1921. From July, 1920, to April 1, 1921, another man was Treasurer.

Q. Now, under this present corporation the Board or the members of the Board are called Trustees and not Directors; is that right?

A. That is right.

20 Q. And can you tell us since the new corporation was organized whether it has actually operated at a loss or at a profit?

A. It has actually operated at a loss. In the first year of the existence of the corporation, which has its fiscal year from July first to July first, that is, July 1, 1920, when the corporation was organized, to July 1, 1921, the operating loss in the school was \$6,989.16. In the second year, that is, from July, 1921, to July, 1922, the operating loss was \$177.69. That, however,
30 did not include any expenses for taxes, as we had been advised that the corporation was tax free, on account of being the eleemosynary institution, no entries were made in the books showing expenses for taxes in that year. However, for the year and a half which preceded the end of the second fiscal year these taxes amounted to \$5,585.31, and they have been included in here. In the third year, from July, 1922, to July, 1923, including the taxes which were paid, the deficit in operating the school was \$8,670.41. In the fourth year, from July 1,

1923, to July 1, 1924, the operating deficit was \$1,867.67. The aggregate interest on the whole tax was \$796.23; making the deficit for the operation of the school for the four years of \$24,089.47.

This deficit was offset to a certain extent in the following way: In the first year, that is, from 1920 to 1921, there was income from Endowment Fund of \$60.00. In the second year there was income from Endowment of \$60.00. In the third year, from July 1, 1922, to July 1, 1923, the Endowment had materially
10 increased and there was an income from Endowment of \$965.00. There were gifts from various ones interested in the school for athletic equipment and things necessary to be used by the boys in playing, amounting to \$440.00. There were solicitations made in the community, not only among the parents but also among those known to be charitably inclined, and who had some money that could be given up, solicitations to make up a part of the deficit of about \$8,885, was raised in that year by voluntary contributions from different members
20 of the community. I have a list of just who gave, and how much, and it runs from \$10.00 up to \$750.00. If it is desired, I can furnish it.

Q. And how many contributors, approximately?

A. Oh, two pages. I suppose it will amount to within the neighborhood of 100. I have the bills.

Q. Somewhere in the neighborhood of 100?

A. Yes, sir, the bills will give it. It may be 150 and it may be 75. It is a material number. I have a list of the amounts here if you desire. Then in the fourth
30 year—I might say that the total gifts to the institution in this third year, July 1, 1922, to July 1, 1923, amounted to \$10,750, exclusive of the Endowment gifts, which I will mention later. Now, included in this \$10,750 is an item of \$460.00. That came about in this way: There was some money in the sinking fund on the first mortgage of \$540.00, and one of the members turned in \$1,000 in bonds, which showed a profit in that year on that bond of \$460.00, which is included in these

figures. In the fourth year, that is, from July 1, 1923, to July 1, 1924, the income from the Endowment was \$1,902. We received gifts for the current expense deficit of \$2,760, and for athletic equipment of \$20.00. So that in these four years, outside of the gifts to the Endowment Fund, the school has received in money and gifts amounting to \$15,552.00. These dates are given as of the time when the cash was actually received. What happened was this: Knowing that the scholars of the school were soliciting pledges from parents, and they signed pledges possibly over a period sometimes running as long as a year, and in keeping the books, I only entered these as we actually got the money, so that these pledges antedated the actual receipt of the money by a very considerable amount. I suppose accurate bookkeeping would put this particular amount in a year and carry them as accounts receivable for these pledges, something of that sort.

Q. And have the pledges all been paid?

A. There is one pledge of \$100 that has not been paid.

Q. Now what about the Endowment Fund, Mr. Reed?

A. The Endowment Fund now amounts to \$33,603.25. I might say that the Endowment Fund, with the exception of \$3.25, consists of bonds of the first issue, or the second issue, which have been delivered to the Treasurer to constitute an Endowment Fund under the requirement that the Fund shall be held for educational purposes and administered under the Board of Trustees of the Carteret Academy for educational purposes. That is the broad general term of the Endowment.

Now that \$3.25 is the result of the sale of Shifter buttons by the kids, some of the kids started a sale of Shifter buttons, or Shifter bonds. That included the bonds and they raised the money in that way.

Q. These contributions to the Endowment Fund came from different people?

A. Yes, sir. I have a list of all those who contributed and the amounts. They came from a very substantial number of different people.

Q. Fifty? How many? One hundred? How many?

A. I can count them up for you in a minute.

Mr. Weaver—Oh, approximately, is all.

The Witness—I would say 25 or 50, perhaps it would be more than that.

Q. And were there any other gifts to the schools other than those you have already mentioned?

A. Yes, there were two gifts of \$500 each, which were given to found a prize Endowment. The Endowment for one of these \$500 funds is to be used for prizes for the best debater in the school, and the other one is for the one who passes best in mathematics. I would not be absolutely sure of that, of either one.

Now there is another thing I should submit or speak about in explanation of the figures I have given. In these figures for the past year there are included items which total about \$6,000, and which I have included as income, but were really gifts, for this reason: When it came to the middle of the year, that is about January, 1924, it was learned that the school was going to run behind for the year very materially. In January we asked that the parents pay ten per cent. additional tuition for the year. There was no compulsion on their part to pay it, but practically all of them did pay it, and that amounted to about \$6,000. Of course, we printed our catalog, which showed the tuition rates for the year, and we had no right to increase these rates after we had entered into an agreement with the parents to furnish schooling to the youngsters at these given rates. But finding that these rates would not cover the expense of operation, we asked them to contribute each ten per cent. to the annual tuition paid, and that was done, so that that \$6,000 is really a gift rather than earnings of the school.

Q. And that appears in these figures as income?

A. Yes, sir, as income.

Q. Have there been any other gifts to the school?

A. Oh, yes, there have been a number of gifts to the school. In the Kindergarten, of course, there are other gifts that do not come through the Treasurer's hands. In some instances the committee of parents would get together and take up a collection and buy equipment for the school, or some of the parents would give a set of blocks. In one instance there was a very fancy set of blocks, costing \$100 or \$150, given to the Junior
10 School, or that had something to do with the Kindergarten work. Several hundred dollars have been given to the school in that way which did not go through the Treasurer's books at all, but was raised by committees of parents or by the boys for special purposes. Included in that, there is included quite a substantial sum raised for a library for the school, and none of that went through the Treasurer's office. It was raised by the boys and some of the parents, and the books were purchased and put into the school without going through
20 my books at all.

Q. Now, you have given your time as Treasurer of the school since April first?

A. I have a stenographer and she works a half a day on it a week, another week it has taken a whole day. I have supervision of the finances of the school and I have all the books for the school to keep over in my office, and I have my own bookkeeper to pay and I personally have to pay for it. I have solicited bond sales. I have solicited donations to the Endowment Fund, and
30 done a lot of work in the effort to raise this Endowment Fund. That started back in the fall of 1920, and while results do not show so materially in the early years, the results we have gotten for the receipt of bonds in 1923 and 1922 were very largely the result of efforts and pledges made in the earlier years. Now, the dates which I have here are the dates I actually got the things and put them in the safety deposit, or the date I actually deposited the money in the bank. As a matter of fact, there was a

constant effort to get these things, to get bond subscriptions, to get endowment subscriptions and to get subscriptions to take care of the current expense deficit, and this was a considerable period prior to the actual receipt of the money.

Q. Now, is there much work in supervising the finances and keeping the books?

A. There certainly is.

Q. And has the school paid anybody for any of that work?
10

A. No; I think it takes my bookkeeper from a half day to a full day every week to handle that.

Q. Now, besides the officers, that is, Judge Osborne, as President, Mr. Cooke, as Secretary and you as Treasurer, have there been any other persons who have given their services to the school?

A. Oh, yes. In the first place, there are numerous committees that have been doing work to raise money for the endowment, to raise money for the deficit, and take care of the operating deficit. In addition to that, Mrs.
20 Dane has looked after the lunch room there. I imagine nearly all the schools have trouble with lunch room conditions, and we had our troubles. Mrs. Dane, who is one of the leaders of Orange society, a very able woman and very energetic, personally undertook to run that lunch room without any compensation to herself. She goes down and not only supervises the business end of it, but she oversees the serving of the lunches and she goes down there pretty nearly every day and personally waits on the kids, and they serve actually three
30 meals a day there. There is luncheon served to the children in the Junior School at recess, consisting of crackers and milk, and there is luncheon served in the Senior School at recess of sandwiches, milk and cake.

Chairman Baker—While this is interesting, it is hardly of any value any more than this was clearly the eleemosynary activity of a woman who is connected with this institution, I think we are more interested, possibly, in the question as to

whether she joined the great majority who a week ago Tuesday cast their vote for Calvin Coolidge.

Mr. Adams—I want to show what services are being given.

Chairman Baker—I think it is pretty far fetched to introduce that.

Mr. Adams—It is merely a factor.

Q. Mrs. Dane was one of the Trustees?

10 A. Mrs. Dane was one of the Trustees.

Chairman Baker—Is it necessary for us to go into all of these matters? I am inclined to think it is not. We have a reputation for being pretty tolerant. Most of us emulate that distinguished person named Job. I think we have about reached that stage.

Q. Now can you tell us the salaries that are paid, just about the salaries, if you don't mind?

A. The salaries of what?

20 Q. The Headmaster and the other teachers.

A. The salaries of the Headmasters during the first four years were \$3,000 a year. The salaries of the teachers in the first year were:

Benham,	\$2,500
Whiting,	2,400
Thompson,	2,300
Battis,	2,100
Katerman,	2,000
P. E. Brown,	2,400
30 C. W. Brown,	2,400
Claycomb,	2,400
Mrs. Dyke,	2,500

And then there were some women assistants who had lower salaries. In the following year the salaries were—

Q. You need not give them to us for that year. Give them to us the present year, this year and last.

A. In the next year Brayson was paid \$3,800, the physical director. The other salaries of the teachers were raised, but the salary of the Headmaster was not

raised. That same applied in 1923 and 1924. The salaries of the Headmasters was \$3,000. Boyson was raised to \$4,000, and the general average of the other teachers was about \$2,500 or \$2,600.

Q. What position did Boyson hold?

A. He was the physical director.

Q. And do you know how those salaries compare with those of other private schools?

A. We know that we have had teachers taken away from us by other schools who pay them more salary to 10 get the teachers.

Q. And do you know how the Headmaster compared with Headmasters of other schools?

A. They are much lower than any private school that I know of, and I know of a number.

Q. Now are there any scholarships?

A. Yes, sir, the school pays or provides for six scholarships, for free tuition of deserving boys whose parents cannot afford to pay the tuition to the school, and in addition to that one of the men in Orange, who is a 20 friend of the school, personally pays for from four to six boys—that is, pays the tuition of from four to seven boys—some years he pays more and some years he pays less. That is practically a gift to the school, and that amounts to a very considerable amount.

Q. Now the Board of Trustees look after the actual management of the school in every particular?

A. Absolutely. They have not only to look after the finances of the school, directing the school education, supervising the school curriculum, but they engage the 30 Headmasters and engage the teachers. I think there is hardly a case where a teacher has ever been engaged who has not been interviewed by the Board of Directors and the Board has fixed the salary in each case.

Mr. Adams—I will offer in evidence, with the consent of counsel on the other side, a map of the school property, with the explanation, also consented to, that the property lying on the north side of Carteret Place constitutes the Senior

School, being property purchased from the old corporation, and the grounds surrounding. The property on the southerly side of Carteret Place constitutes the Junior School, being a property actually acquired by this corporation.

(Map offered in evidence and marked *Exhibit A-6.*)

Q. For what purpose are the grounds around the old school, the Senior School used?

10 A. They are used for a general playground for the boys, a place where they have gymnastic exercises, races, exercises and afternoon play.

Q. And for what purpose are the grounds surrounding the Junior School used?

Mr. Adams—There is a question about this as to the extent of the ground around the combined plot, is it five acres?

Mr. Calhoun—It is 5.75. It shows more than five anyhow.

20 A. The ground around the Junior School is not only used for play, for a place for the children where they can race and conduct school exercises, but it is also used for garden plots. Each little kid over there has a small garden that they cultivate and plant seeds in and look after and raise flowers and a few vegetables, and the ground is used in several connections.

Mr. Adams—Now on that Junior School property, or buildings on the tax map it is assessed in two tracts.

30 Mr. Calhoun—Two tracts, yes.

Q. Is it or is it not all used as one building?

A. It is all used as one building by the school.

Q. And there is a barn on the piece fronting on Reynolds Terrace?

A. On the Junior School property, there is a barn.

Q. And what is that used for?

A. That is used for general storage purposes. Some of the teachers keep their Fords in there when they come to school from a distance. They keep their Fords in

there, but no charge is made for that storage or for anything else.

Q. Now, is there any way, Mr. Reed, whereby anybody can make any profit out of this school?

A. None whatever.

Q. And is it the object of the Trustees to operate the school for the benefit of the community solely?

A. Absolutely. It is an effort to get enough out of the tuition to simply cover the necessary expenses of the schools, together with what the income is from the Endowment Fund. 10

Mr. Adams—That is all, Mr. Reed.

Cross-examination, by Mr. Calhoun.

Q. What is the present total bonded indebtedness of the school, Mr. Reed?

A. There is \$65,000 of the first mortgage bonds in the hands of the public.

Q. Five per cent bonds?

A. Five per cent bonds—I say in the hands of the public—they are in the hands of the public and in the hands of the Endowment Committee, and a number of these bonds are held by Trustees as a part of the Endowment Fund. 20

Q. And as I understand it, they still remain uncanceled?

A. Yes, sir, they remain uncanceled.

Q. Are there any other bonds outstanding, Mr. Reed, besides this first issue?

A. A second mortgage bond issue, which is a six per cent issue. There are \$122,600 of these second mortgage bonds. The others—that is, outstanding and uncanceled, but a large number of them are in the hands of the Trustees of the Carteret Academy for the Endowment fund. 30

Q. Do any of the regular teachers donate their services?

A. Well, the music teacher donated her services, having had no pay for months at a time. Then at other

times she goes in there a few days at a time on special occasions. I don't know whether you would call it a regular teacher, because she was not a paid teacher. She is the only teacher we have had for the music in the Junior School for some years past.

Q. And how do the salaries of the teachers compare with those paid in other leading private schools in the east?

10 A. That is rather a broad question, but the schools that I know of, so far as those are concerned, I think we pay just about the market rate. We want to pay enough to get good teachers, but we cannot compete with some of the very high-priced schools, expensive private schools, in bidding for teachers. We have had two or three very good teachers taken away from us by reason of being offered better salaries.

Q. And have the rates of tuition been raised since the new corporation was formed?

A. Yes.

20 Q. And when was the first increase made?

A. If you want it, I can give you those right off for each year.

Q. I wish you would, please.

A. In 1920-1921, that is, July, 1920, to July, 1921:

Kindergarten, first year, ..	\$150.00
Kindergarten, second year,	157.00
Form E,	200.00
Forms C and D,	220.00
Form B,	250.00
Form A,	285.00
30 First and Second Forms, ..	315.00
Third, Fourth, Fifth and	
Forms,	340.00

In addition to the charge in the forms, Form A to the Sixth Form, there was an additional charge of \$6.50 for athletic expenses.

In the year from July 1, 1921, to July 1, 1922, the method of designating forms was changed a little and was as follows:

Kindergarten,	\$175.00
First Grade,	200.00
Second Grade,	225.00
Third and Fourth Grades,	250.00
Fifth Grade,	275.00

In the Senior School:

Form A,	\$300.00
First and Second Forms, .	340.00
Third, Fourth, Fifth and	
Sixth Forms,	350.00

10

The athletic assessment was \$6.50.

Then in the year from July, 1922, to July, 1923, the Kindergarten was \$185.00—

Q. If you will refer, Mr. Reed, there was no decrease in 1923 in rates?

A. I would have to check one against the other. There was no decrease. Well, wait a second. There may have been in the lower Forms.

Q. Have you given 1924-1925, the one for the present year? 20

A. There is one in between.

Q. Well, give it.

A. That is 1922-1923.

Kindergarten,	\$185.00
First Grade,	210.00
Second Grade,	240.00
Third and Fourth Grades,	265.00
Fifth Grade,	290.00
Form A,	315.00
Advanced A,	340.00
Forms 1 to 6,	360.00

30

With \$6.50 additional for athletic equipment.

Q. Now the present year.

A. That is 1923-1924.

Kindergarten,	\$185.00
First Grade,	210.00
Second Grade,	240.00
Third and Fourth Grades,	265.00

Fifth Grade, 290.00
 A Form, 315.00

Q. Is that 1923 and 1924?

A. That is the current year, 1924-1925, I am giving you now.

Q. I thought you had the wrong book. Now will you start on 1924 and 1925?

A. Advanced A, \$340.00
 Forms 1 to 6, 360.00

10 Athletic assessment, \$6.50.

1924-1925—I don't know what that has to do with it, because there are for all of them:

Kindergarten, \$200.00
 Grade 1, 240.00
 Second Grade, 275.00
 Third and Fourth Grades, 300.00
 Fifth Grade, 325.00
 A Form, 350.00
 Advanced A, 350.00
 Forms 1 to 6, 400.00

20 With \$3.50 for athletic equipment.

Q. And were these six scholarships entitling the students to free tuition in existence?

A. I think there are six each year.

Q. And has the school any source of income besides tuition fees?

A. Well, theoretically there is a small profit on the books bought by the school, and sold to the pupils. As a matter of fact, while that appears to occur, a very
 30 small profit, at the end of the year we always show a loss on that business transaction. It is the same way with the lunches. Theoretically there is supposed to be a profit, but at the end of the year we always have a loss. While in some years there may be a very small profit from one of these sources, it would be purely nominal and it is usually on the other side.

Q. And with these two exceptions, is there any other source of income except the tuition?

A. Well, receipts from the Endowment Fund, and these receipts from the two \$500 prize funds, for prizes. The Endowment income now amounts to nearly \$2,000 a year and, of course, the very large gifts that are contributed from time to time.

Q. Well, will the school have a deficit for the coming school year?

A. Well, it is a little bit early to estimate that, but I would rather think it would depend largely on whether we have to pay taxes or not. There would be
 10 a part of a deficit which might be made up by income from the Endowment, and contributions, if the Endowment is not large enough.

Q. And the rates of tuition that you have given, are they for the entire school year or semi-annual payments?

A. For the entire school year.

Mr. Calhoun—That is all, Mr. Reed.

By Mr. Weaver.

20

Q. Mr. Reed, when did your year, your fiscal year, end?

A. The first of July.

Q. And do you keep your books by a double entry method?

A. No, no, we keep a single entry set of books, a
 cash book, journal and ledger.

Q. Well, is it a double entry system?

A. I don't know that there is any difference in the
 ledger between the single entry system and the double
 entry system. The difference between the two systems,
 30 as I understand it, is that in the double entry system you have no cash book, and we have a cash book. That is the only difference. I am not an accountant or an expert bookkeeper.

Q. You kept these accounts?

A. Yes, sir. I know about the accounts, but I don't know about the names of the systems.

Q. And did you take a trial balance on the 30th day of June, 1923?

A. Oh, yes.

Q. And did you on the 30th day of June close your books and take off a statement of your assets and liabilities after closing?

A. Yes, sir.

Q. Then you must keep your books on the double entry system. And did you then find that that state-
10 ment of assets and liabilities disclosed a deficit?

A. Yes.

Q. Of what, on June 30th, 1923?

A. Our trial balance does not separately give the profit and loss deficit prior to that year, or of that year as a separate item. The profit and loss item for the whole period up to that time is given in one item and that was \$10,552.57.

Q. And is it carried as an asset or a liability?

A. Well, it has to be carried on the asset side, because
20 there is a deficit. If there was a profit it would be on the other side.

Q. And it was a deficit?

A. Yes, sir.

Q. And it was carried on the debit side of your book?

A. Yes, sir.

Q. And how was that made up, by contributions the following year?

A. Yes, very largely. During that year there were
30 contributions of \$10,750 given to us, so that the contributions for that particular year were greater than the deficit for that particular year, but these contributions were not specifically for the deficit in that year, but for the deficit existing in that year and prior years.

Q. And how was the deficit which existed on the first of June, 1923, made up, by contributions the following year from July 1, 1923, on to the present day?

A. Well, it is not really definitely made up. When we get in a hole we go around and solicit contributions from people in the Oranges and ask them to make up the

deficit. It is not a drive for the deficit for one particular year, but to help generally. Sometimes instead of giving a contribution to make up the deficit they will give us a bond toward the Endowment Fund.

Q. And what have you before you there, the balance of June, 1923, a statement of the assets and liabilities after closing the books?

A. Both—

Q. Turn to the statement of assets and liabilities after closing the books and find out whether the real estate is
10 carried as an asset.

A. We carried the Junior School as a whole, which includes the equipment that went into it, to that school, at \$41,930.08. The actual cost of that property, when we purchased it from the Williams Estate, was \$25,000. The difference is made up in the ~~books~~ and the alterations which have been necessary to fit the building for a school building. The Senior School, we carried that Senior School, including the equipment, at \$149,430.69,
20 which is the cost to the school.

Mr. Weaver—Well, Mr. Adams, What I
meant, that a statement should be submitted of
the liabilities and assets as of June 30, 1923.
That is all.

I would like to call your attention to this fact. In whom was the legal title to this property on the first day of October, 1923, or the first day of October, 1922? Where is that proof?

Mr. Adams—It depends on what the Board
considers legal proof. We understand the facts
so well between counsel, that we have simply had
Mr. Cooke testify that this real estate was in the
new corporation at the time of its incorporation
in 1920.

Mr. Weaver—It was not questioned that the legal title was in them?

Mr. Calhoun—Well, we have assessed it to this body, Your Honor, and they have not denied it. I think there is proof of ownership in that way.

They admit they are the owners. The only question is that they say here that they are entitled to an exemption?

Mr. Weaver—Yes, but the burden is on you, and that you will have to sustain, that the legal title to this property was in the Carteret Academy Corporation on the first day of October, 1922, and also on the first day of October, 1923, to sustain your appeal. Of course, as to 1922, that question has been—

10

Mr. Adams—I think we can stipulate as to that.

Mr. Calhoun—I don't think there is any doubt about that at all, I will admit that. The corporation named the Carteret Academy.

Mr. Weaver—A corporation organized in 1920 by the Carteret Academy Corporation. Now, then, we must have some proof from Mr. Adams that this corporation held this property on the first day of October, 1923.

20

The Witness—I can so testify.

Mr. Adams—We have proved that by Mr. Cooke, who had charge of the transaction, and it is stipulated by the other side that that is a fact.

Mr. Weaver—Is it any trouble to produce the deeds?

Mr. Osborne—We will produce deeds, or certified copies, if given an opportunity to do so. There may be some confusion in the name "Carteret." The old company was called "Carteret." That name was considered an asset, and in order to make it available for the new corporation, under the terms imposed by the act, the old company had this name left in the office of the Secretary of State, and that left the files free, so that when we came to settle on a new name for the Carteret Academy there was no objection to our assuming it.

30

Mr. Weaver—Now, then, did this corporation have title to the Carteret Academy Corporation?

Mr. Osborne—Yes, when we acquired it—the *modus operandi* used was to acquire the stock to ourselves as Trustees—Mr. Cooke and I held the stock. Then we voted to convey the property of that corporation, to the new corporation, without any profit, and we kept alive the old corporation now known by the name of the new corporation, because of one clause of the default clause in the mortgage, which provided—that was in the first mortgage—that if the corporation ceased to exist the mortgage became due. In order to avoid that we kept the shell alive. I think the stock was handed to Mr. Cooke and was held by Mr. Cooke and myself.

10

Mr. Weaver—Well, you will produce certified copies?

Mr. Adams—Now, so that there will not be any confusion on the record, I think that Commissioner Weaver, in referring to the Carteret Academy, referred to it as the Carteret Academy Corporation.

20

Mr. Weaver—What was the name of the old corporation, the corporate name?

The Witness—It was incorporated under the name of Kennedy & Mead.

Mr. Weaver—But in this opinion of the Supreme Court, the court refers to it in 1920 as being the Carteret Academy Corporation.

30

Mr. Adams—Well, apparently, that is an error. I desire to offer in evidence a paragraph from the Academy Booklet for 1921-1922, on page five, which we will mark for the stenographer. I will also offer in evidence the Booklet for 1923-1924, on page five, which is a statement by the Trustees of the objects of the Academy. Have you any objection?

Mr. Calhoun—That is objected to as being, in each instance, immaterial and irrelevant, and that it is a self-serving statement to offer the history of the Academy.

Chairman Baker—It will do no harm, it is rather innocuous. It may be admitted.

Both sides rest.

10 Mr. Adams—I would prefer to submit a memorandum, if the Board is willing, rather than to argue it at this time.

Chairman Baker—And within what time will you do that?

Mr. Adams—If we can have the record I can submit that within a week or ten days after the receipt of the transcript.

Chairman Baker—All right, two weeks from this date.

20 Mr. Adams—And I will serve my brief on Mr. Calhoun. How much time does he have?

Chairman Baker—Two weeks from the date of service.

(Extracts from Booklets marked A-7 and A-8.)

(Extract from Booklet 1921-1922.)

Carteret Academy, founded in 1901 by Mr. David A. Kennedy and Mr. Charles A. Mead, enters its twenty-first year with enlarged facilities and broadened organization. Its steady growth, which rendered necessary a 30 large increase in the building in 1914, has continued and a Junior School has been added.

In 1919, the increased interest of its patrons led to the appointment of an Advisory Board of Trustees.

These Trustees, in co-operation with the Headmasters and owners of the corporation formerly known as Carteret Academy, formed a new educational corporation, also known as Carteret Academy, the ownership of which is vested in Trustees elected by the patrons, the Alumni and the bondholders of the various loans, in

this way, private ownership has been completely eliminated. This corporation has acquired all the property owned by the former corporation, and in addition a large residence, with extensive ground, nearly opposite the Senior School. This has been remodeled for the use of the Junior School. It contains a well-equipped Kindergarten and primary grades. Carteret Academy now supplies a complete course from the Kindergarten to the University.

This separation of the younger pupils enables the 10 Academy to provide a programme better adapted to the need of each department. The change has resulted in a greatly increased enrollment. More teachers are employed and the policy of using men teachers only, except in the Kindergarten and the two following grades will be continued.

(Extract from Booklet 1923-1924.)

In the Fall of 1923, Carteret Academy will begin its twenty-third year. It was founded in 1901 by Mr. David A. Kennedy and Mr. Charles A. Mead. In 1914, 20 the steadily continued growth rendered necessary a large addition to the building. A non-profit association of parents and bondholders was formed in 1920, which took over the former corporation. It manages the school through its Trustees. The school has thus become a community institution with private ownership entirely eliminated.

A further outgrowth of this movement is the beginning of an endowment. It is recognized that constantly 30 increasing costs of operation will soon make it necessary to supplement the tuition fees by income from endowment in order to avoid advancing charges to a point which will exclude desirable boys.

I, Herbert L. Murdock, the stenographer designated by the State Board of Taxes and Assessment to report stenographically the evidence given before said Board upon the hearing of the appeal of the Carteret Academy, Inc., from the assessments of taxes made by the City of Orange for the years 1923 and 1924, do hereby certify

that the foregoing is a true and correct transcript of the evidence given before said Board at the hearing on Wednesday, November twelfth, 1924.

In Witness Whereof, I have hereunto set my hand and seal, this twenty-fourth day [SEAL.] of September, 1925.

HERBERT L. MURDOCK.

10 I, Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true and correct transcript of the evidence given before the said Board upon the hearing of the appeals of Carteret Academy, Inc., from the assessments of taxes made by the City of Orange for the years 1923 and 1924, said evidence having been submitted at the hearing in Newark on Wednesday, November twelfth, 1924.

20 In Witness Whereof, I have hereunto set my hand and affixed the official seal of the [L. S.] Board, at Trenton, this twenty-fourth day of September, 1925.

FRANK D. SCHROTH,
Secretary.

NEW JERSEY SUPREME COURT.

30 CARTERET ACADEMY,
Prosecutor, }
vs. } On Certiorari.
THE STATE BOARD OF TAXES }
AND THE CITY OF ORANGE. }

REASONS.

(Filed August 18, 1925.)

Now comes Carteret Academy, an association not for pecuniary profit, incorporated under the laws of the State of New Jersey, prosecutor in the above-entitled

matter, and assigns the following reasons in support of the certiorari issued in the above-entitled cause, namely:

1. Because the said prosecutor is an association not for pecuniary profit and is exempt from taxation by the provisions of section 3, subdivision 4, Chapter 296 of the Laws of 1920, *as amended by Chapter 320, Laws 1921 & Chapter 276 Laws 1922*

2. Because the property belonging to the prosecutor, the taxation of which was, by the orders of the State Board of Taxation, affirmed, was actually used by the prosecutor in such manner as to make it exempt from taxation by reason of the provisions of section 3, subdivision 4, Chapter 296 of the Laws of 1920, *as amended by Chapter 320, Laws 1921 & Chapter 276, Laws 1922*

3. Because the said property, whose taxation was affirmed by the orders of the State Board of Taxation, here under review, was actually used for a school, academy, or seminary, and belonged to the prosecutor, which was a corporation organized exclusively for the moral and mental improvement of men and women, and was not conducted for profit and was, therefore, exempt from taxation.

4. Because the orders of the said State Board of Taxation, instead of affirming the orders of the Essex County Board of Taxation, which, in turn, confirmed the taxes for the years 1923 and 1924 theretofore assessed upon said property, should have reversed the said orders of the State and County Boards, and have held that the said property was exempt from taxation.

5. Because the said orders are in other respects illegal and improper.

McCARTER & ENGLISH,
Attorneys of Prosecutor.

Service of a copy of the within reasons is acknowledged this 11th day of August, 1925.

For City of Orange,
WM. A. CALHOUN,
City Counsel.

Service acknowledged August 13th, 1925.

STATE BOARD OF TAXES AND ASSESSMENT,
FRANK D. SCHROTH,
Secretary.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed July 2, 1926.

NEW JERSEY SUPREME COURT.

No. 283. January Term, 1926.

CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the laws of New Jersey,

Prosecutor,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, and THE CITY OF ORANGE,

Defendant.

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On certiorari to review judgments of the State Board of Taxes, etc.

Argued January Term, 1926; decided April Term, 1926.

Robert H. McCarter for prosecutor.

William C. Calhoun for the City of Orange.

Argued before Parker, Minturn and Black, *JJ.* 30

The opinion of the Court was delivered by Minturn, *J.*

This is a certiorari to review an assessment of taxes imposed upon the land and buildings owned by the prosecutor and occupied by it as a school. The premises are in the City of Orange. A similar assessment for the year 1921 was reviewed and sustained by this Court, in *Carteret Academy v. The State Board of Taxes* 40

Opinion of Supreme Court.

and Assessments, 120 Atl. Rep. 736, affirmed by the Court of Errors and Appeals, *Id.*, page 737. That opinion held that the proofs then adduced did not satisfy the Court that the purpose and objects of the school were fundamentally charitable or philanthropic and hence the Court sustained the finding of the State Board of Taxes to the same effect.

10 It is now contended by the prosecutor that the facts elicited demonstrate that this school during the years for which this assessment was imposed, was directly within the exemption allowed by the statute to schools; that the charter and by-laws have been amended to demonstrate the facts that the school is not intended to operate for profit, but that the school has in fact been run at an annual loss, which has been met in part by voluntary contributions from its friends and patrons. The entire management is in the hands of trustees organized by bondholders and parents, who give their time and services without any compensation. The officers of the company are not paid; the teaching force is paid as much as the school can afford to pay in competition with other good schools. Contributions have voluntarily been made from time to time to make up the annually recurring deficit, and an endowment has been created. A few pupils are taught without expense, and persons interested in the school assist at the lunch counter without compensation.

30 Since the determination of the last case, involving a similar claim, 98 N. J. L. 868, affirmed on the opinion of this Court, the Carteret Academy underwent the following change in its factual and legal condition, but no change in its property status: On June 29, 1923, it filed with

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Opinion of Supreme Court.

the Secretary of State an amendment of its charter, in which it stated that its objects were fundamentally philanthropic, charitable and educational, and that it should not be conducted for profit or gain of any corporation or individual, and that in the event of receipts for tuition being greater than its expenditures at any time the excess should be used to reduce the cost of tuition, to provide free scholarships, or for other educational, philanthropic and charitable purposes, and that if it should cease to conduct a school, the property or funds then remaining in its possession should be devoted by its trustees to educational purposes, which should be charitable in character, and in no event should they be devoted to the profit or gain of any member of the corporation or of any other person.

20 It also, on May 28, 1923, amended its by-laws so that no person in receipt of a salary from the corporation should be entitled to vote as a member at any meeting of the corporation, and that in the event of the corporation ceasing to conduct a school for the general education of boys, any property or funds then remaining in its possession shall be devoted by the trustees to educational purposes, which shall be charitable in character, and in no event shall such property or funds be devoted to the profit or gain of any member of the corporation or of any other person.

30 Upon this state of facts the State Board of Taxes and Assessment affirmed assessments for taxes upon this property for the years 1923 and 1924. From this assessment the prosecutor appeals, claiming exemption under the provisions of section 203, sub. 4 of the Tax Act of 1918, as

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Opinion of Supreme Court.

amended by Chapter 276, P. L. 1922, exempting schools, colleges, etc., under certain circumstances from taxation. Exemption from taxation is a privilege accorded by the people to an institution in recognition of the fact that the institution as *quid pro quo* for the concession is practically performing a public work, essentially of service to the State, without hope or expectation of remuneration for the service thus performed. When an institution functions as a business concern, with the economic factor of profit, instead of the legislative conception of philanthropy as the basis for its existence, it *ipso facto* eliminates itself from the legislative purview of exemption. The Legislature has emphasized this essential by the language employed in describing the exemption, viz.: "provided the same are not conducted for profit."

This Court and the Court of Errors and Appeals have elucidated that principle and refused the exemption in various school cases, in which the claim for exemption was presented upon a basis equally as cogent and compelling as the present case.

Stevens Inst. *v.* Bower, 78 N. J. L. 205;
 Montclair *v.* State Board, 86 N. J. L. 497;
 Carteret Academy *v.* Orange, 98 N. J. L. 868.

The last case cited presents the factual status of this prosecution before this Court, and the Court of Errors and Appeals, when its previous claim for exemption was made, and where we stated our conclusion to be that "The present case is in its main and controlling features akin" to the Montclair case, where the assessment was upheld.

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Opinion of Supreme Court.

We are unable to perceive that the present amendment to the Certificate of Incorporation, and the by-laws, has been sufficiently radical and potent to give to this school the philanthropic essential which was lacking in its last claim for exemption, and without which as the dominating characteristic of its purpose and organic life, it can lay no claim to philanthropy as the moving cause of its existence.

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

2 Kent's Com. 331.

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

4 Mun. Corp. 2443 and cases cited.

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Opinion of Supreme Court.

To the same effect are *Y. M. C. A. v. Orange*, 128 Atl. 580; *Mausoleum Builders v. State Board*, 88 N. J. L. 592, affirmed 90 N. J. L. 163.

10 The adjudication in this Court upon which reliance for such exemptions is quite generally predicated in *Princeton v. State Board*, 96 N. J. L. 334. But manifestly this Court there found the statutory essentials which constitute the basis for such an application, *i. e.*, the absence of profit in those interested, and the existence of a status of self-abnegation and sacrifice upon the part of all concerned in the interest of the local public good, very much as was found in *Institute of Holy Angels v. Bender*, 79 N. J. L. 34. *Per contra*, in this instance, this Court found upon a former application, by this prosecutor, that
20 "changing its corporate dress and altering its financial system, so that the net income is disbursed for interest instead of dividends," was not sufficient to warrant an exemption. Viewed in this light, we observe no difference essentially, except in form, between the former situation and that now presented, and the case therefore becomes *res judicata*. As to the 1923 tax, no valid claim can be made, since the assessment under the Tax Act was imposed upon the first
30 day of October of 1922, and the changes in the charter and by-laws of the prosecutor were not effective until the months of May and June of 1923. As to the tax for 1924, for the reasons advanced, we observe no substantial difference in the philanthropic or charitable aspect for taxation purposes between the former and present status of the prosecutor.

The judgment of the State Board will therefore be affirmed.

Rule for Affirmance.

RULE FOR AFFIRMANCE.

NEW JERSEY SUPREME COURT.

CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the laws of New Jersey,	}	10
<i>Prosecutor,</i>		<i>On Certiorari.</i>
<i>vs.</i>		<i>Rule of</i>
THE STATE BOARD OF TAXES AND ASSESSMENT, and THE CITY OF ORANGE,	}	<i>Affirmance.</i>
<i>Defendant.</i>		

The Court having heard the argument of counsel and inspected the assessments of taxes for the years 1923 and 1924 removed by the writ in this cause, and duly considered the reasons filed, it is ORDERED, that said assessments of taxes be affirmed and the writ of certiorari allowed in this cause be dismissed. 20

Entered July 6, 1926,

On motion of

WILLIAM A. CALHOUN, 30
Attorney of The City of Orange, Defendant.

Notice of Appeal.

NOTICE OF APPEAL.

Filed August 12, 1926.

NEW JERSEY SUPREME COURT.

10	CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the laws of New Jersey, <i>Prosecutor,</i>	}	<i>On Certiorari.</i> <i>Notice of Appeal.</i>
	<i>vs.</i> THE STATE BOARD OF TAXES AND ASSESSMENT, and THE CITY OF ORANGE, <i>Defendant.</i>		

20 To William A. Calhoun, Esq., attorney of defendant, The City of Orange, 284 Main street, Orange, N. J., and The State Board of Taxes and Assessment, Trenton, New Jersey.

SIRS:

30 TAKE NOTICE, that the prosecutor appeals from the judgment entered in this cause to the Court of Errors and Appeals.

McCARTER & ENGLISH,
Attorneys for Prosecutor.

Service of the within notice is hereby acknowledged this 22nd day of July, 1926.

WM. A. CALHOUN,
Atty. for Defendant, The City of Orange.

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Notice of Appeal and Grounds.

Service of the within notice is hereby acknowledged this 24th day of July, 1926.

CHARLES E. COOK, Secy.,
The State Board of Taxes and Assessment.

NOTICE OF APPEAL AND GROUNDS.

Filed August 12, 1926.

NEW JERSEY SUPREME COURT.

20	CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the laws of New Jersey, <i>Prosecutor,</i>	}	<i>On Certiorari.</i> <i>Notice of Appeal and Grounds.</i>	20
	<i>vs.</i> THE STATE BOARD OF TAXES AND ASSESSMENT, and THE CITY OF ORANGE, <i>Defendant.</i>			

To William A. Calhoun, Esq., attorney of defendant, The City of Orange, 284 Main street, Orange, N. J., and The State Board of Taxes and Assessment, Trenton, New Jersey. 30

SIRS:

TAKE NOTICE, that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following grounds:

1. Because the said prosecutor is an association not for pecuniary profit and is exempt from 40

Notice of Appeal and Grounds.

taxation by the provisions of section 3, subdivision 4, Chapter 296 of the Laws of 1920, as amended by Chapter 320, Laws of 1921, and Chapter 276, laws of 1922.

10 2. Because the property belonging to the prosecutor, the taxation of which was, by the orders of the State Board of Taxation, affirmed, was actually used by the prosecutor in such manner as to make it exempt from taxation by reason of the provisions of section 3, subdivision 4, Chapter 296 of the Laws of 1920, as amended by Chapter 320 of the Laws of 1921, and Chapter 276 of the Laws of 1922.

20 3. Because the said property whose taxation was affirmed by the orders of the State Board of Taxation, here under review, was actually used for a school, academy or seminary, and belonged to the prosecutor, which was a corporation organized exclusively for the moral and mental improvement of men and women, and was not conducted for profit and was, therefore, exempt from taxation.

30 4. Because the order of the New Jersey Supreme Court, instead of affirming the orders of the said State Board of Taxation, confirming the taxes for the years 1923 and 1924 theretofore assessed upon the said property, should have reversed the said orders of the State and County Boards, and have held that the said property was exempt from taxation.

5. Because the said orders are in other respects illegal and improper.

McCARTER & ENGLISH,
Attorneys for and of Counsel with Appellants.

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Notice of Appeal and Grounds.

Service of a copy of the within notice of appeal and grounds is hereby acknowledged this 2nd day of August, 1926.

CHARLES E. COOK,
Secretary,
State Board of Taxes and Assessment.

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Service of a copy of the within notice of appeal and grounds is hereby acknowledged this 29th day of July, 1926.

WM. A. CALHOUN,
Attorney of the City of Orange.

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New Jersey Supreme Court.

CARTERET ACADEMY, AN ASSO-
CIATION NOT FOR PECUNI-
ARY PROFIT, INCORPORATED
UNDER THE LAWS OF NEW
JERSEY.

Prosecutor,

vs.

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

Defendant.

On Certiorari.

10

EXHIBITS.

EXHIBIT A 1.

11/12/24M.

20

CERTIFICATE OF INCORPORATION OF
CARTERET ACADEMY
of Orange N. J.

The undersigned, desiring to associate themselves into a corporation, pursuant to an act of the Legislature of the State of New Jersey, entitled "An Act to incorporate associations not for pecuniary profit," approved April 21, 1898, and the several supplements thereto and acts amendatory thereof, hereby certify:

30

1. The name or title by which such corporation is to be known in law is "Carteret Academy".

2. The purpose for which the corporation is formed is, to conduct a preparatory school or academy for boys and young men in which they may receive elementary, preparatory, academic, scientific, industrial, business, military, moral, physical and other forms of training and education essential to a sound and thorough preparation for colleges, professional and technical schools and business life.

3. The place where the academy is to be located is the City of Orange, County of Essex, State of New Jersey.

The location of the principal office in this State is at No. 291 Essex Avenue, in the said City of Orange, and the name of the agent in charge thereof, upon whom process against this corporation may be served, is Charles A. Mead.

4. The number of trustees of the corporation shall be fifteen, provided, however, that the number of trustees may be increased or diminished to a number not less than three at any time by a majority vote of the members of said corporation.

The names and residences of the trustees selected for the first year are

NAME.	Address
Sidney M. Colgate,	363 Centre St., Orange, N. J.
Jacques Bramhall,	283 Berkeley Avenue, Orange, N. J.
Hedley V. Cooke	16 Lawn Ridge Road, Orange, N. J.
Henry B. Closson	99 Cleveland Street, Orange, N. J.
Mary Findlay Allen	41 Ridgewood Road, South Orange, N. J.
Josephine A. Lane	257 Warwick Avenue, South Orange, N. J.
Borden D. Whiting	Llewellyn Park, West Orange, N. J.
Harry V. Osborne	3 Mosswood Avenue, South Orange, N. J.
William F. Dix	Tillou Road, South Orange, N. J.
Emanuel P. Scheck	196 Lehigh Avenue, Newark, N. J.
Farnham Yardley	Llewellyn Park, West Orange, N. J.
Percy H. Bradshaw	26 Tremont Place, Orange, N. J.
Louis F. Reed	57 Reynolds Terrace, Orange, N. J.
Carl Kroeh	196 Centre Orange, N. J.
J. Harbeck Meeker	8 Summit Street, East Orange, N. J.

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5. The business of the corporation shall be conducted by the trustees, who shall be elected in such manner and for such terms as shall be prescribed by the by-laws. The trustees shall pass by-laws for the management of the property of the corporation and the regulation of its affairs.

6. The qualifications of members and the manner of their election shall be prescribed by the by-laws.

7. The duration of the corporation shall be perpetual and it shall have such powers as are conferred by law.

In Witness Whereof, we have hereunto set our hands and seals this tenth day of June Nineteen Hundred and Twenty.

SIDNEY M. COLGATE	(L. S.)	
JACQUES BRAMHALL	(L. S.)	
HEDLEY V. COOKE	(L. S.)	
HENRY B. CLOSSON	(L. S.)	
MARY FINDLAY ALLEN	(L. S.)	
JOSEPHINE ATTERBURY LANE	(L. S.)	
BORDEN D. WHITING	(L. S.)	20
HARRY V. OSBORNE	(L. S.)	

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

Be It Remembered, that on this tenth day of June, Nineteen Hundred and Twenty, before me the subscriber, a Master in Chancery of New Jersey, personally appeared Sidney M. Colgate, Jacques Bramhall, Hedley V. Cooke, Henry B. Closson, Mary Findlay Allen, Josephine Atterbury Lane, and Harry V. Osborne, who I am satisfied are the persons named in and who executed the foregoing Certificate, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

BORDEN D. WHITING
Master in Chancery of New Jersey.

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

Be It Remembered, that on this tenth day of June, Nineteen Hundred and Twenty, before me the subscriber, a Master in Chancery of New Jersey, personally appeared Borden D. Whiting, who, I am satisfied is one of the persons named in and who executed the foregoing Certificate, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

H. V. OSBORNE
Master in Chancery of New Jersey.

ENDORSED:

"Received in the Clerk's Office of the County of Essex, on the 14 day of June A. D. 1920: and recorded in Book U of Miscellaneous for said County. Page....

JOHN H. SCOTT
Clerk."

20 "Filed and Recorded Jun 16 1920
THOMAS F. MARTIN
Secretary of State."

STATE OF NEW JERSEY
DEPARTMENT OF STATE

I, Thomas F. Martin, Secretary of State of the State of New Jersey do hereby Certify that the foregoing is a true copy of the Certificate of Incorporation of "Carteret Academy," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Sixteenth day of June, A. D. 1920, and now remaining on file and of record therein.

30 In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Second day of March, A. D. 1921.

[SEAL]

THOMAS F. MARTIN,
Secretary of State.

EXHIBIT A 2.

11/12/24M.

CERTIFICATE OF AMENDMENT OF CHARTER
OF
CARTERET ACADEMY OF ORANGE,
NEW JERSEY

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Carteret Academy, a corporation organized under and pursuant to an Act of the Legislature of the State of New Jersey entitled "An Act to incorporate associations not for pecuniary profit, (approved April 21st, 1898,) and the several supplements thereto and Acts amendatory thereof", does hereby certify:

1. That the location of the principal office of the corporation in this State in at No. 291 Essex Avenue, in the City of Orange, County of Essex and State of New Jersey, and that the agent therein, in charge thereof, and upon whom process against the corporation may be served is Charles A. Mead.

2. That the Board of Trustees of the said corporation, at a meeting duly convened and held on the 28th day of May, 1923, passed a resolution declaring that the changes and amendments in the certificate of incorporation hereinafter set forth are advisable and calling a meeting of the members to take action thereon.

3. That a copy of such resolution of the Board of Trustees is hereto appended.

4. That thereafter, on the 28th day of May, 1923, pursuant to such call of the Board of Trustees, and upon notice having been given to each member as provided in the by-laws, a special meeting of the members of the corporation was held, at which meeting a majority of the members present (see by-laws) voted in favor of such changes and amendments, such changes and amendments being as follows:

20

The amendment of Paragraph 2 to said certificate of incorporation to read as follows

10 "The purpose for which the corporation is formed is to conduct a preparatory school or academy for young men and boys in which they may receive elementary, preparatory, academic, scientific, industrial, business, military, moral, physical and other forms of training and education essential to a sound and thorough preparation for the best colleges, professional and technical schools and business life.

The objects and purposes of the corporation are fundamentally philanthropic, charitable, and educational, and it shall not be conducted for profit or gain to any corporation or individual.

20 In the event of its receipts for tuition being greater than its expenditures at any time, such excess shall be used to reduce the cost of tuition, to provide free scholarships or for other educational, philanthropic or charitable purposes.

In the event of the corporation ceasing to conduct a school or academy, any property or funds then remaining in its possession shall be devoted by the trustees to educational purposes, which shall be charitable in character, and in no event shall such property or funds be devoted to the profit or gain of any member of the corporation or other person.

30 Any person in receipt of a salary from the institution shall be disqualified from voting as a member of the association."

In Witness Whereof, the Trustees of Carteret Academy, or a majority of them, have hereunto set our hands and seals this 28th day of May, Nineteen Hundred and Twenty-three.

- HARRY V. OSBORNE (L. S.)
- ALICE C. DANE (L. S.)
- LOUIS F. REED (L. S.)
- WILLIAM H. LANE (L. S.)
- HEDLEY V. COOKE (L. S.)
- CORA D. SCOTT (L. S.)
- PERCY H. BRADSHAW (L. S.)
- JOSEPHINE ATTERBURY LANE (L. S.)
- BORDEN D. WHITING (L. S.)

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

Be It Remembered, that on this 28th, day of May, Nineteen Hundred and Twenty-three, before me, the subscriber, an attorney at law of New Jersey, personally appeared, Harry, V. Osborne, Alice C. Dane, Louis F. Reed, William H. Lane, Hedley V. Cooke, Cora D. Scott, Percy H. Bradshaw, Josephine Atterbury Lane, and Borden D. Whiting, who I am satisfied are the persons named in and who executed the foregoing Certificate

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first
cate, and I having/made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

30

CHARLES HOBBY BASSFORD,
Attorney at Law
State of New Jersey.

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

Sidney Colgate and Hedley Y. Cooke, being duly sworn on their respective oaths, depose and say, that they are respectively the President and Secretary of Carteret Academy, a corporation organized under and pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate associations not for pecuniary profit (approved April 21st, 1898), and the several supplements thereto and Acts amendatory thereof"; that the foregoing certificate of charter of Carteret Academy of Orange, New Jersey, was submitted to the members of the said association, present at a special meeting of said association, held on Monday, the twenty-eighth day of May, Nineteen Hundred and Twenty-three, duly called pursuant to the provisions of the by-laws of the said association; that the execution, recording and filing thereof by the trustees of said association was authorized by the vote of a majority of the members present at such meeting.

Sworn to and subscribed before me this 29th day of May, 1923.

SIDNEY W. COLGATE
HEDLEY V. COOKE.

HARRY V. OSBORNE,
*Master in Chancery
of New Jersey.*

Endorsed:

"Received in the clerk's office of the county of Essex, on the 1st day of June A. D. 1923: and recorded in Book W of Miscellaneous for said County.

John H. Scott
Clerk."

"Filed and Recorded
Jun 29 1923
Thomas F. Martin
Secretary of State."

STATE OF NEW JERSEY
DEPARTMENT OF STATE

I, Thomas F. Martin, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of Certificate of Amendment of the Certificate of Incorporation of Carteret Academy of Orange, New Jersey, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-ninth day of June, A. D. 1923, and now remaining on file and of record therein.

[SEAL]

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-ninth day of June, A. D. 1923.

THOMAS F. MARTIN,
Secretary of State.

EXHIBIT A-3.

11/12/24M.

BY-LAWS

of

CARTERET ACADEMY

ARTICLE I.

Qualification of Members.

The parents of any present or former pupil of Carteret Academy; any person who shall have at the time of his attendance stood in *loco parentis* to any such pupil; and any holder of the bonds of this corporation or of Carteret Academy incorporated in 1901 shall be

eligible to membership in this corporation, and shall, upon application to the Secretary for enrolment as such, become a member.

ARTICLE II.

Annual Meeting.

1.

10 A meeting of the members shall be held annually at the registered office of the corporation on the first Tuesday in May for the purpose of electing trustees, and for the transaction of any other business authorized or required to be transacted by the members.

2.

Notice of Annual Meeting.

20 Notice of the time and place of the annual meeting shall be mailed at least ten days prior to the meeting to each member at his or her address, as the same appears on the books of the corporation.

3.

Special Meetings.

30 Special meetings of the members for any purpose or purposes shall be held at the registered office of the corporation whenever called by resolution of the Board of Trustees or of the Executive Committee, or by written request of ten or more members addressed to the Secretary.

4.

Notice of Special Meetings.

Notice of special meetings, stating the time and place and in general terms the purpose or purposes thereof, shall be mailed at least ten days prior to such meeting to each member at his or her address, as the same appears on the books of the corporation.

5.

Quorum.

At any annual or special meetings of the members fifteen members present in person shall constitute a quorum.

6.

Adjournments.

If at any annual or special meeting a quorum shall fail to attend, a majority of those attending at the time and place of such meeting may adjourn the meeting from time to time without further notice until a quorum shall attend, and thereupon any business may be transacted which might have been transacted at the meeting as originally called had the same been then held.

7.

Organization.

20 The president, or, in his absence, the vice-president, or, in his absence, a chairman appointed by the members present, shall call the meeting to order and act as chairman thereof. The secretary of the corporation shall act as secretary at all meetings of the members; and, in his absence, the presiding officer may appoint any person to act as secretary.

8.

Order of Business.

30 The order of business at all meetings of members shall so far as may be applicable be as follows:

1. Roll call—a quorum being present.
2. Reading of minutes of preceding meeting.
3. Reports of officers and trustees.
4. Reports of committees.
5. Election of trustees.
6. Unfinished business.
7. New business.

9.

Voting.

At each meeting of the members every member present in person shall be entitled to one vote. Voting for trustees, and, upon demand of any member, on any question at any meeting shall be by ballot.

10

10.

Polls.

At all elections for trustees the polls shall remain open for at least one half hour, unless every member has sooner voted or in writing has waived the right thereto.

11.

Inspectors.

20 At all elections of trustees the polls shall be opened and closed, and all questions touching the qualifications of voters and the acceptance or rejection of votes shall be decided, and all ballots shall be received and counted, by two inspectors, who shall be appointed by the presiding officer at the meeting, and shall be sworn to faithfully perform their duties and shall, in writing, certify to the returns. No candidate for election as a trustee shall be appointed or act as inspector.

30

ARTICLE III.

1.

Trustees.

All of the business and affairs of the corporation shall be managed and controlled by a Board of Trustees, fifteen in number.

2.

Term of Office.

The Board of Trustees shall be constituted and elected at the annual meeting of the members in the following manner: At the first annual meeting of the members three trustees shall be elected for the term of one year, three for the term of two years, three for the term of three years, three for the term of four years and three for the term of five years. At each annual meeting thereafter three trustees shall be elected for the term of five years. The trustees shall serve for the period for which they were respectively elected, or until their successors shall be elected and accept the election.

3.

Vacancies.

In case of any vacancy among the trustees through death, resignation, disqualification, or other cause, the Board of Trustees, by the affirmative vote of a majority of the remaining members, whether or not constituting a quorum, may elect a successor to hold office for the unexpired portion of the term of the trustee, whose place shall be vacant, until the election of and acceptance by his successor.

4.

Place of Meeting.

The trustees may hold their meetings and may have an office and keep the books of the corporation at such place as the board may from time to time determine.

5.

Meeting of Board.

After the annual meeting of the members, the trustees shall meet for the purpose of organization, election of

officers, and the transaction of such other business as may properly come before the meeting, at such place and time as shall be fixed by resolution of the old Board or by written consent of all the members of the new Board. If a majority of the trustees be present at such place and time the meeting shall be deemed to be duly held without prior notice.

6.

Regular Meetings.

10 The regular meetings of the board of trustees shall be held at such time and place as may be fixed by resolution of the board and no notice thereof shall be required to be given.

7.

Special Meetings.

Special meetings of the Board of Trustees shall be held whenever called by direction of the president, or one-third of the trustees for the time being in office.
20 Unless otherwise specified in the notice thereof, any and all business may be transacted at a special meeting.

8.

Notice of Special Meeting.

The secretary shall give notice to each trustee of special meetings by mailing same at least three days before the meeting, or by telegraph or telephone or personally not later than the day before the meeting. If every trustee shall be present at, or waive notice of, any
30 special meeting any business may be transacted without previous notice thereof.

9.

Quorum.

Five trustees shall constitute a quorum for the transaction of business, but a majority of those present at the time and place of any regular or special meeting,

although less than a quorum, may adjourn the same from time to time without notice until a quorum be had.

10.

Order of Business.

The order of business at the meeting of the Board of Trustees shall be as follows, unless otherwise determined:

1. Roll call—a quorum being present.
2. Reading of minutes of preceding meeting.
3. Reports of officers. 10
4. Reports of committees.
5. Unfinished business.
6. Miscellaneous business.
7. New business.

11.

Presiding Officer.

At all meetings of the Board of Trustees the president of the board, or, in his absence, the vice-president, or, in the absence of both, a chairman to be chosen by the
20 trustees present shall preside.

12.

Duties of Trustees.

The Board of Trustees shall be charged with the duty of supervising the affairs of the corporation, appointing headmasters, assistants and instructors, supervising courses of study and all other matters connected with the conduct and administration of the school.
30

ARTICLE IV.

OFFICERS

1.

Executive Officers.

The executive officers of the corporation shall be a president, a vice-president, a secretary and a treasurer.

The office of secretary and treasurer may be held by the same person. All officers shall be elected by the Board of Trustees and hold office until the next Annual Meeting of the Board, unless sooner removed by a two-thirds vote of the trustees present at a duly convened meeting.

2.

Subordinate Officers.

10 The Board of Trustees may appoint an assistant Secretary and assistant Treasurer who need not be members of the corporation, and such other subordinate officers and agents as it shall deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by the Board. Subordinate officers shall hold office for such period as may be provided for by the Board.

3.

President.

20 The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members, and of the Board of Trustees. He shall, with the secretary, execute all authorized bonds, contracts or other obligations in the name of the corporation, and, with the treasurer, shall sign all notes or bills in the name of the corporation. He shall do and perform such other duties as may from time to time be assigned to him by the Board.

30

4.

Vice-President.

The Vice-President shall have such powers, and perform such duties as may be assigned to him by the Board. In the absence or disability of the president, the duties of the office shall be performed by the vice-president unless the Board shall otherwise determine. The performance by the Vice-President of any duties primarily de-

volving upon the President shall be conclusive evidence of the absence or disability of the President at the time.

5.

Treasurer.

The Treasurer shall have the custody of all the funds and securities of the corporation which may come into his hands. When necessary and proper he shall endorse for collection, on behalf of the corporation, checks, notes 10 and other obligations and shall deposit the same together with all funds received in other ways to the credit of the corporation in such bank, banks or depositories as the Board may from time to time designate. He shall sign receipts and vouchers for payments made to the corporation, but the Board may assign the said duty to other officers or to the Headmaster of the Academy. With such other person as the Board may designate, he shall sign all checks made by the corporation. He shall sign with the President, or such other person, or persons 20 as may be designated by the Board, all bills of exchange and promissory notes of the corporation. Whenever required by the Board, he shall render a statement of his accounts. He shall enter regularly on the books of the corporation to be kept by him for that purpose, full and accurate accounts of all moneys received and paid by him on account of the corporation, and he shall perform all duties usually incident to the position of the Treasurer, subject to the control of the Board. The treasurer shall give such bond as the Board of Trustees 30 may require.

By resolution the Board may provide that the assistant treasurer may sign checks, or perform such other duties of the treasurer as may be provided for in such resolution. The assistant treasurer shall give such bond as the Board of Trustees may require.

6.

Secretary.

The Secretary shall keep the minutes of all proceedings of the Board, and of the members. He shall attend to the giving and serving of all notices of the corporation. He shall sign, with the president, in the name of the corporation, all contracts authorized by the Board or the Executive Committee, and when so ordered by the Board or Executive Committee, shall affix the seal of the corporation thereto. He shall have charge of such books and papers as the Board may direct, and shall in general perform all the duties incident to the office of secretary, subject to the control of the Board. In the absence or disability of the treasurer, the secretary shall perform the duties of the treasurer. He shall be sworn to the faithful discharge of his duty.

By resolution the Board may provide that the assistant secretary may perform such duties of the secretary as may be designated in such resolution.

ARTICLE V.

1.

Executive Committee.

There shall be an Executive Committee composed of six members to be elected by the Board of Trustees from their own number, who shall have full power to act for the Board during intervals between regular meetings of the Board, except that such Committee shall have no power to remove or appoint the Headmasters of the Academy or to buy or sell real estate on behalf of the corporation. All of the acts and proceedings of the Executive Committee shall be subject to later approval by the Board of Trustees, except in so far as rights of third persons have in the meantime vested in reliance upon the action of the Executive Committee taken pursuant to this Article.

ARTICLE VI.

1.

Seal.

The Board shall provide a suitable seal containing the name of the corporation and the year of its creation.

ARTICLE VII.

Notice and Waivers.

1.

Any notice required to be given by these by-laws may be given by mailing the same, addressed to the person entitled thereto, at his or her address as shown on the books of the corporation, unless by him or her otherwise requested, and all notices shall be deemed to be given at the time of such meeting.

2.

Waiver of Notice.

Any member, trustee or officer may waive in writing any notice required to be given by these by-laws.

ARTICLE VIII.

Registered Office.

The registered office of the corporation shall be at No. 291 Essex Avenue in the City of Orange, in the State of New Jersey.

ARTICLE IX.

Amendments.

All by-laws shall be subject to amendment, alteration or repeal by the members at any annual meeting, or at any special meeting called for that purpose.

ARTICLE X.

Disposition of Property.

In the event of the corporation ceasing to conduct a school or academy for the general education of boys as provided for in its certificate of organization, any and all property which it shall own or possess shall be devoted to educational uses on such terms and in such manner as may be provided for by resolution at any annual or special meeting of the members.

EXHIBIT A-4

11/12/24M.

RESOLUTIONS OF MEETING OF MEMBERS

OF CARTERET ACADEMY HELD

ON MAY 28, 1923.

On motion duly seconded and unanimously passed it was

Resolved that Article I. of the By-Laws of the corporation be amended by adding thereto the words "provided that no person in receipt of a salary from the corporation shall be entitled to a vote as a member at any meeting of the corporation."

On motion duly seconded and unanimously passed it was

Resolved that Article X. of the By-Laws of the corporation shall be amended so as to read when amended as follows, to wit:

ARTICLE X. *Disposition of Property.* In the event of the corporation ceasing to conduct a school or academy for the general education of boys as provided for in its certificate of organization, any property or funds then remaining in its possession shall be devoted by the

trustees to educational purposes which shall be charitable in character and in no event shall such property or funds be devoted to the profit or gain of any member of the corporation or other person.

EXHIBIT A-5.

11/12/24M.

CARTERET ACADEMY

PLAN FOR ITS DEVELOPMENT AND

ELIMINATION OF PRIVATE

OWNERSHIP

Carteret Academy has reached a stage in its growth where enlargement of its opportunities for usefulness has become highly desirable if not a practical necessity. This means more space and more teachers. With increased facilities a much larger attendance seems assured. A waiting list is a good advertisement, but a demand for service fully met is a better. Since the first meeting of parents and others interested about a year ago the school has made history. A Board of Trustees officially recognized by the existing corporation is an accomplished fact. New blood in the teaching staff, new methods of holding the attention of pupils and securing the interest of parents, have been successfully introduced. Mr. Charles K. Taylor, whose diversified experience in the education and training of boys and whose infectious enthusiasm well fits him for the post, has been installed as Dean of the Academy. The Trustees, the Headmasters and the Dean are working in cordial co-operation. Most of the administrative difficulties incident to the war have been overcome. Notwithstanding a necessary increase in the tuition fees the attendance has nearly reached the capacity of the present plant. There seems to be no reason why, with

adequate facilities, a roster of from 250 to 300 pupils should not eventually be secured. With a populous and prosperous community to draw from, Carteret Academy should be one of the foremost day schools in the country.

In considering plans for development the Board of Trustees regard two preliminary steps, suggested by the Headmasters and Mr. Taylor, as of prime importance: *First*, separate housing of the lower forms. *Second*, elimination of private ownership. With these ends in view the Board has arranged for the purchase, at prices deemed fair, of property belonging to the Estate of Elizabeth Williams fronting on the east side of Essex Avenue and the south side of Reynolds Terrace, and of all the stock of the present corporation. To finance these purchases and meet general expenses, the following plan is offered.

FINANCIAL PLAN

An educational corporation without capital stock will be organized, under the laws of New Jersey, by the Trustees and other incorporators selected from the purchasers of bonds and parents of pupils. The name Carteret Academy will be used by consent of the present corporation. The new corporation will purchase the Williams property for the use of the four lower forms. This property has an area of about two acres and contains a house of fourteen rooms. An expenditure not exceeding \$10,000 will fit the building and grounds for school use. The new corporation will purchase the stock of the present corporation and, through the control thus acquired, will secure the transfer to itself of the present school property, subject to the existing mortgage bonds aggregating \$70,000 of which \$2,000 are held in the sinking fund. The value of the combined properties after improvement as planned has been estimated as follows:

Present land,	\$ 90,000
Present building,	63,000
Improvements to present building,	10,000
Present equipment,	6,000
New property,	25,000
Improvements to new property, ..	10,000
	<hr/>
	\$204,000

The new corporation will create an issue of 25 year 6% bonds secured by mortgage which will be a first lien on the new property and a lien, subject to the existing mortgage, on the old property. \$225,000 principal amount of bonds will be authorized and appropriated as follows: \$68,000 will be reserved for refunding when possible the existing mortgage debt; \$75,000 will be used for the purchase of the stock of the old corporation—\$40,000 in bonds and \$35,000 in cash; \$35,000 will be sold for the purchase and improvement of the new property and \$10,000 for improvement of the present plant; \$5,000, or such part thereof as may be necessary, will be issued to defray expenses of reorganization and meet other miscellaneous requirements; the balance of \$32,000 will be issuable only against improvements and additions to the properties, in amounts equal to the expenditures, and with the additional restriction that the earnings over operating expenses for any twelve-month period in the fourteen calendar months immediately preceding the application for issuance must have been twice the interest requirements on all outstanding bonds of both issues and on those to be issued at the time of the calculation. The Trustee of the mortgage will be The Trust Company of Orange. The bonds will be dated June 1st, 1920. Interest will be payable June 1st and December 1st. Any part or all of the bonds will be redeemable at par and accrued interest at any time on 30 days' notice. They will be issued in denominations of \$1,000, \$500 and \$100 and will be registerable as to principal. Provision will be made for a sinking fund.

It is hoped that the consummation of these plans will result within a comparatively short time in securing 225 to 250 pupils. With tuition fees on the scale now being adopted by all the leading boys' schools in the East 225 pupils should produce an annual income substantially in excess of operating expenses, interest requirements on both mortgages and sinking fund on the first mortgage. Investors may, it is believed, confidently expect a regular interest return on their bonds and their eventual payment. The added reputation which the Academy will acquire from its development under these plans will work a benefit in many ways to all sections of the Oranges; in the accomplishment of which it is thought that all public-spirited citizens will be glad to co-operate.

HISTORY OF THE ACADEMY

Carteret Academy was founded in 1901 by Dr. David Kennedy and Mr. Charles A. Mead, both well-known in the community. They purchased the present tract of land—about $3\frac{1}{4}$ acres—bounded by Central Avenue, Essex Avenue, and Lighthipe Place and erected the original building. The land not needed for the building has been used for an athletic field—tennis courts, running tracks, baseball diamond and football gridiron. The purchase and improvement were in part financed by a bond issue, \$35,000 in amount, which was refunded in 1913. Dr. Kennedy was obliged to give up his work in Orange in 1906. He was succeeded by Mr. Oscar A. Beverstock, to whose devotion as one of the Headmasters until his death in 1916, the school owes much. Carteret from the first attracted a high class of patronage. Her alumni have stood on the honor rolls of many colleges. Nearly all who have reached the requisite age are pursuing successful business careers.

In 1913 an emergency similar to that which exists at present arose. The Academy had outgrown its home and it was found necessary to enlarge the school building. The cost of the building operations was met by

an additional issue of 5% bonds to the amount of \$35,000. At the same time the 1901 bonds were refunded so that there is at present one issue of bonds, \$70,000 in principal amount, which will mature in 1938. The wisdom of this venture has been amply proved. There are now 160 pupils and better prospects of a constantly increasing patronage than ever before. The interest requirements of both mortgages have always been promptly met.

Orange, May 1, 1920.

SIDNEY M. COLGATE	JOSEPHINE A. LANE
HENRY B. CLOSSON	MARY F. ALLEN
WILLIAM F. DIX	HARRY V. OSBORNE
BORDEN D. WHITING	JACQUES BRAMHALL
C. H. LOUTREL	HEDLEY V. COOKE

The Headmasters and Dean of Carteret Academy hereby endorse the foregoing plan.

CHARLES A. MEAD	ARTHUR H. SOULE
NEWMAN D. WAFFEL	CHARLES K. TAYLOR

CARTERET ACADEMY

SUBSCRIPTION

for First and Refunding 6% Bonds

The subscribers hereto and to other counterparts hereof, do hereby severally agree to and with each other and with the Board of Trustees of Carteret Academy, that they will take when, as and if issued, and they do hereby severally subscribe to the principal amount set opposite their respective names of First and Refunding 6% Bonds of Carteret Academy (to be organized as an educational corporation under the laws of New Jersey) substantially as described in circular originally attached hereto dated May 1, 1920 and entitled "*Carteret Acad-*

emy—A Plan for Its Development and Elimination of Private Ownership"; and agree to pay therefor at the face amount thereof with accrued interest from June 1st, 1920, on written call by The Trust Company of Orange.

Dated, _____, 1920.

	NAME	P. O. ADDRESS	PRINCIPAL AMOUNT OF BONDS
10			
20			

Checks should be made payable to The Trust Company of Orange.

EXHIBIT A 6.

11/12/24M.

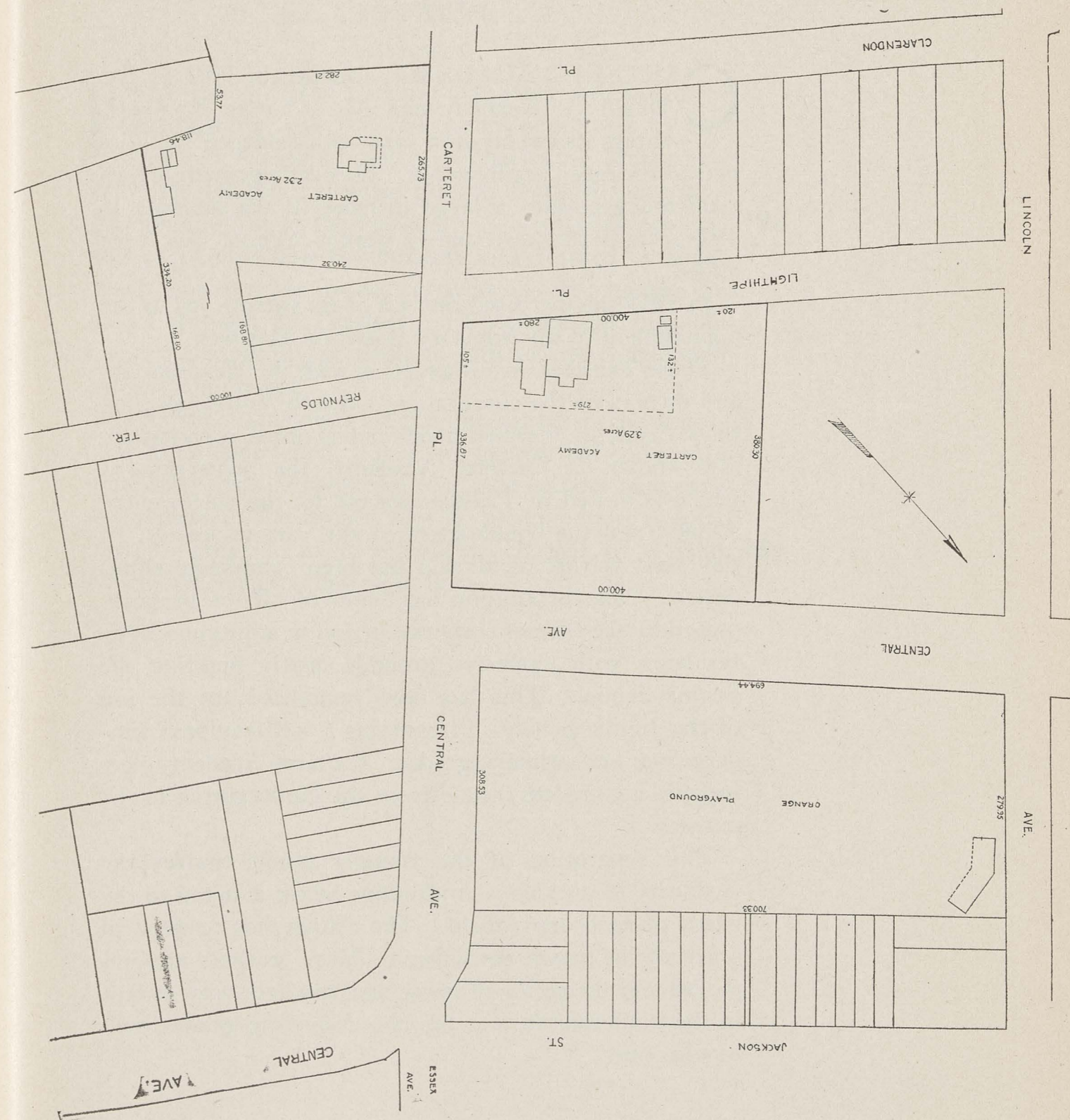


EXHIBIT D. 1.

Map of Property
Carteret Academy and Orange Playground
Office of City Engr. Orange, N. J., June, 1921
Scale 1"=50'

EXHIBIT A-7

11/12/24M.

CARTERET ACADEMY, founded in 1901 by Dr. David A. Kennedy and Mr. Charles A. Mead, enters its twenty-first year with enlarged facilities and a broadened organization. Its steady growth, which rendered necessary a large increase in the building in 1914, has continued and a Junior School has been added.

In 1919 the increased interest of its patrons led to the appointment of an Advisory Board of Trustees.

These Trustees, in co-operation with the Headmasters and owners of the corporation formerly known as Carteret Academy, formed a new educational corporation, also known as Carteret Academy, the ownership of which is vested in Trustees elected by the patrons, the Alumni and the bondholders of the various loans. In this way, private ownership has been completely eliminated. This corporation has acquired all the property owned by the former corporation and in addition a large residence with extensive grounds nearly opposite the Senior School. This has been remodeled for the use of the Junior School. It contains a well-equipped kindergarten and primary grades. Carteret Academy now supplies a complete course from the kindergarten to the university.

This separation of the younger pupils enables the Academy to provide a programme better adapted to the needs of each department. The change has resulted in a greatly increased enrollment. More teachers are employed and the policy of using men teachers only, except in the kindergarten and the two following grades, will be continued.

EXHIBIT A-8

11/12/24M.

HISTORY

IN the fall of 1923 Carteret Academy will begin its twenty-third year. It was founded in 1901 by Dr. David A. Kennedy and Mr. Charles A. Mead. In 1914 the steadily continued growth rendered necessary a large addition to the building. A non-profit association of parents and bondholders was formed in 1920, which took over the former corporation. It manages the school through its Trustees. The school has thus become a community institution with private ownership entirely eliminated.

A further outgrowth of this movement is the beginning of an endowment. It is recognized that constantly increasing costs of operation will soon make it necessary to supplement the tuition fees by income from endowment in order to avoid advancing charges to a point which will exclude desirable boys.

New Jersey Court of Errors and Appeals

CARTERET ACADEMY, an Associa-
tion Not for Pecuniary Profit,
Incorporated Under the Laws
of New Jersey,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT, and THE CITY OF
ORANGE,
Defendants-Respondents.

*On
Certiorari.*

*On Appeal
from
Supreme
Court.*

BRIEF FOR PROSECUTOR-APPELLANT.

This is a review of a judgment dismissing a *certiorari* to review assessments of taxes imposed upon the land and buildings owned by the prosecutor and occupied by it as a school. The premises are in the City of Orange. A similar assessment for the year 1921 was reviewed and sustained by the Supreme Court, in *Carteret Academy v. The State Board of Taxes and Assessment*, and affirmed by the Court of Errors and Appeals upon the opinion below, 98 Law 868. That opinion held that the proofs then adduced did not satisfy the Court that the purposes and objects of the school were fundamentally charitable or philanthropic. In other words, that it was not plain to the Court that the school was not operating at a profit, and hence the Court sustained the finding of the State Board of Taxes to the same effect.

It is our contention that the facts in this case elicited, demonstrate beyond peradventure that this school, *during the years for which this assessment was imposed*, was directly within the

exemption allowed by the statute to schools. Not only have the charter and by-laws been amended to demonstrate and make permanent the fact that the school is not intended to, and is not in fact operated for profit, but the school has in fact been run at an annual loss, which has been met in part by voluntary contributions from friends and patrons of the school. Some of the teaching is done without compensation. The entire management is in the hands of trustees organized by bondholders and parents, who give their time and services, which is shown to be considerable, without any compensation. The officers of the company, who devote much time to its management, are not paid. The teaching force is paid as much as the school can afford to pay in competition with other good schools, but at least one satisfactory teacher has been lost because of a higher salary offered in another school. In addition to the contributions that have voluntarily been made from time to time to make up the annually recurring deficit, a considerable endowment has been created. A few pupils are taught without expense. Persons interested in the school assist at the lunch counter, without compensation, so that it may truthfully be said that the enterprise is one conducted wholly for the purpose of securing a first-class education, without the expectation of ever receiving any profit whatever from the enterprise.

The history of the school as shown by the proofs is as follows:

Prior to July, 1920, Carteret Academy was a private business enterprise. It had been organized as the Kennedy-Mead Company, under the General Corporation Law in 1901, to conduct a boys' school in Orange. Immediately after its organization that corporation purchased, in one

plot, all of the land on the west side of Essex avenue, the taxation of which, as well as of an additional tract, is involved in this proceeding. The area of this plot is about 3.29 acres. A building to meet the increasing demands of the enterprise was first built and later enlarged on this tract. To defray the cost of all this, a mortgage was placed upon the property, the outstanding amount of which was \$68,000. The corporate name was subsequently changed to "Carteret Academy." In 1919 a movement took place which ultimately resulted in the change of the corporate status. At this time the stock of the corporation, amounting to \$10,000, was owned one-half by the headmaster, Charles A. Mead, and one-quarter each by the assistant headmasters, Newman D. Waffl and Arthur H. Soule.

In the spring of 1919 a considerable number of parents of pupils became dissatisfied with the work of the school. A public meeting of parents of the pupils was held, at which were discussed ways and means for bettering conditions or organizing a new school. A committee of parents was finally appointed to confer with the owners of the school. This committee entered into negotiations with Messrs. Mead, Waffl and Soule, and, as a result, the corporation amended its by-laws to provide for an advisory board and the committee continued to act as an advisory board, meeting at regular intervals, until early in 1920. This advisory board consisted of ten persons elected, seven by the parents of pupils, two by the Alumni Association and one by the trustees of the mortgage. The advisory board selected an executive committee, which held monthly meetings as such until the new corporation came into existence, when the same persons were selected as an executive committee of the

new Board of Trustees. This board was simply advisory and had no legal control over the school.

This arrangement, having been found unsatisfactory, negotiations were entered into on behalf of the parents and others interested in the school for the purchase of the school. As before stated, the outstanding stock had a par value of \$10,000, but the company owned the property above referred to, which was worth very much more (p. 38, l. 30), the land and building alone being appraised, without including the improvements to the building, at \$153,000 (Exhibit A. 5, page 23 of Exhibits), from which, deducting the mortgage of \$68,000, left an equity of \$85,000, which was represented by the stock above mentioned. For Mr. Mead's half interest in this stock he was paid \$40,000, of which \$15,000 was in cash and \$25,000 in bonds of a new issue that was provided for. Mr. Soule and Mr. Waffl each received for their respective one-quarter interests \$15,000, of which half was in cash and half in bonds. The plan likewise included the acquisition on the opposite side of the street of another house and lot to provide for smaller children, and to take care of the hoped-for increase of patronage, and the remodeling of the house to fit it for school purposes, the making of certain improvements to the old building, the organization of a new corporation under "An Act to Incorporate Associations Not for Pecuniary Profit"; the purchase by that corporation of the new property and the old, subject to the \$68,000 mortgage, and the creation of a six per cent. bond issue to take care of the necessary financing. The program was carried out as thus planned in 1920, and through the diligent efforts and influence of the persons interested in this project a market

was found for \$122,000 of this second issue of bonds, of which \$40,000 went to the former owners of the business company (Case, p. 53, l. 30).

This fundamental change in the scheme of this school did not originate with the then owners as a ruse to avoid the payment of taxes, as was found by this Court to be the fact in the case of *Town of Montclair v. The State Board of Equalization*, 86 N. J. Law 497. Judge Osborne, one of the patrons of this school, and the president of the corporation, as well as one of its trustees, on page 38 thus testifies:

"The old Carteret Academy, as it was then conducted, under private ownership, was suffering from dry rot; that is to say, they did not have the proper training in the schools. They were not getting results. Many of us who had children had difficulty because of the inaccessibility in a suburban community in getting to the public schools and were utilizing this private school. But they apparently were unable to progress and keep abreast of the times. Dissatisfaction arose, indignation meetings were held among the parents and a new school considered and various things discussed. A temporary expedient was worked out in the form of a parents' Advisory Committee, with only advisory powers, because it was a privately owned corporation at that time. That did not work out satisfactorily. The suggestion was made that a corporation be formed by the parents under the act providing for the incorporation of non-profit organizations, and that the school be acquired and taken over from the then owners and run by the parents. That was carried out and an offer was made for the property and it was purchased by the new corporation. While it is true the capital stock was only \$10,000, it represented a real value of very much more. Of course, you gentlemen realize, as most everybody ought to, that

the assets of a corporation are not financially measured by the par value of its capital stock. I mention that because Mr. Calhoun seems to make a point of it. I know, and everybody knows, who is connected with the institution, that it was never the intention to make it a profit corporation. By no possibility can it be converted into a profit corporation. There is no method by which any member of the corporation can make a profit. The only connection that the old owners have with the school is, first, in a teaching capacity. They were good teachers, they had established a good reputation as teachers in the community, and we retained them because we wanted to get the benefit of their services as teachers, and we paid them salaries which we thought would compare with the salaries of other private schools, and much lower than those in public schools holding similar positions, and much lower than some private schools paid for their headmasters. The only other capacity in which they have any connection with the school whatever is when we did not have the cash, or could not raise the cash, we had to get them to take bonds in lieu of cash, as part of the purchase price."

The original charter, as well as the original by-laws, are in evidence in this case, and are respectively found on pages 1 and 9 of the book of exhibits. The second section of the original certificate of incorporation thus describes the purpose of the corporation:

"The purpose for which the corporation is formed is to conduct a preparatory school or academy for boys and young men in which they may receive elementary, preparatory, academic, scientific, industrial, business, military, moral, physical and other forms of training and education essential to a sound and thorough preparation for colleges, professional and technical schools and business life."

Article I of the original by-laws provided as follows:

"Qualification of Members.

The parents of any present or former pupil of Carteret Academy; any person who shall have at the time of his attendance stood in *loco parentis* to any such pupil; and any holder of the bonds of this corporation or of Carteret Academy incorporated in 1901, shall be eligible to membership in this corporation, and shall, upon application to the Secretary for enrolment as such, become a member." (Exhibits, page 9.)

As the tax which was before the subject of review by this Court was imposed on the first of October, 1920, the new enterprise (the certificate—only having been filed on June 16, 1920, Exhibits, page 4), had hardly had time in which to demonstrate that it was what it appeared on the surface to be, not conducted for profit, and really was fundamentally charitable or philanthropic.

The opinion of the Supreme Court here under review states:

"*Per contra*, in this instance, this Court found upon a former application by this prosecutor, that 'changing its corporate dress and altering its financial system, so that the net income is disbursed for interest instead of dividends,' was not sufficient to warrant an exemption. Viewed in this light, we observe no difference essentially, except in form, between the former situation and that now presented, and the case therefore becomes *res judicata*."

This view entirely ignores the further changes that have since been made in both the charter and by-laws of the corporation, and the important facts with reference to the conduct of the enterprise, all of which show an entirely different situation, and which, of course, therefore

could not have been before the Court at the time of the previous decision. As subsequently appears, the operating losses for the year 1922 were largely in excess of any previous year, and, on the other hand, the income from endowments, which in 1920 only amounted to \$60, in 1923 was \$965 and in 1924 was \$1,902. There was no gift over and above the endowment fund for the year 1920, and in the year 1923 this amounted to \$9,325, and in 1924 it amounted to \$2,780. These figures are exclusive of the \$6,000 paid in by parents to provide for the deficit for that year. Neither did it appear in the other case that services at the lunch counter or instruction in music, etc., were given *gratis*. The later and further amendments to both by-laws and charter were made, so far as possible, to bring the association within the language of this Court's former opinion. Everything was done that was possible to be done to have the association fly its flag, and it is thus manifestly an error to say that the situation that existed in the years 1923-1924 is the same as in 1920. Hence, the statement that the subject matter of this controversy is *res judicata* is, I earnestly believe, incorrect. Since the time involved in the previous decision

Since the time involved in the previous decision four years have elapsed, and the history of those four years, as displayed in the proofs, makes it plain, I think, that the corporation during the years 1923 and 1924, the taxes for which are here under review, was not conducted for profit, or, in other words, was fundamentally charitable or philanthropic. In the first place, paragraph 2 of the charter above quoted has been amended to read as follows (Exhibits, p. 5):

“The purpose for which the corporation is formed is to conduct a preparatory school or academy for young men and boys in which

they may receive elementary, preparatory, academic, scientific, industrial, business, military, moral, physical and other forms of training and education essential to a sound and thorough preparation for the best colleges, professional and technical schools and business life.

“The objects and purposes of the corporation are fundamentally philanthropic, charitable, and educational, and it shall not be conducted for profit or gain to any corporation or individual.

“In the event of its receipts for tuition being greater than its expenditures at any time, such excess shall be used to reduce the cost of tuition, to provide free scholarships or for other educational, philanthropic or charitable purposes.

“In the event of the corporation ceasing to conduct a school or academy, any property or funds then remaining in its possession shall be devoted by the trustees to educational purposes, which shall be charitable in character, and in no event shall such property or funds be devoted to the profit or gain of any member of the corporation or other person.

“Any person in receipt of a salary from the institution shall be disqualified from voting as a member of the association.”

In the next place, Article I of the by-laws (page 20 of Exhibits, line 25) has been changed by adding thereto the words

“provided that no person in receipt of a salary from the corporation shall be entitled to a vote as a member at any meeting of the corporation.”

Article X of the original by-laws reads as follows:

“Disposition of Property.

“In the event of the corporation ceasing to conduct a school or academy for the general education of boys as provided for in

its certificate of organization, any and all property which it shall own or possess shall be devoted to educational uses on such terms and in such manner as may be provided for by resolution at any annual or special meeting of the members."

It has likewise been amended so that it reads:

"Disposition of Property. In the event of the corporation ceasing to conduct a school or academy for the general education of boys as provided for in its certificate of organization, any property or funds then remaining in its possession shall be devoted by the trustees to educational purposes which shall be charitable in character and in no event shall such property or funds be devoted to the profit or gain of any member of the corporation or other person." (Exhibits, p. 20.)

We have, then, everything possible stated, so far as the company's charter and by-laws are concerned, to indicate the real purpose and object of the corporation, and the small voice, namely, three votes which the three headmasters formerly had as bondholders in the management of the enterprise (which was one of the features of the plan adverted to by this Court in its previous opinion), no longer exists. Indeed, Mr. Soule, one of the former headmasters, has resigned (p. 31).

In the Montclair case, the opinion is careful to point out that Mr. MacVicar, the former owner of the school, not only was in receipt of a very large salary, but controlled the whole corporation, except that his wife and father each had one share. Just before taxing time, the corporation, whose stock was thus held, transferred its property to a corporation under the act to incorporate associations not for pecuniary profit, paying no cash, but giving a purchase money

mortgage of \$100,000, which was immediately assigned to MacVicar, and, to quote the opinion:

"The school pursued the even tenor of its way, with the same principal, same teachers and staff at the same compensation, same tuition fees and business methods. The only difference in dealing with the income derived from tuition fees in excess of what was needed for running expenses and interest on the prior mortgages, was that instead of being applicable to dividends on stock, this excess, as well as what was to be saved by the proposed tax exemption, would become applicable to interest on MacVicar's mortgage."

The evidence of Mr. Reed, who is the treasurer of the corporation, should be read. I epitomize some of it as follows:

Since the corporation's existence, the operating losses of the school have been as follows:

1st year, 1920, to July, 1921.....	\$6,989.16
2nd year, July, 1921, to July, 1922, without figuring taxes.....	177.69
Taxes for 1½ years amounted to...	5,585.31
3rd year, July, 1922, to July, 1923, including taxes assessed for that year	8,670.41
4th year, July, 1923, to July, 1924, including taxes	1,867.67
Interest accrued on old taxes was..	796.23

Deficit for the four years amounted
to\$24,086.47

This deficit was offset as follows:

1st year—Income from Endowment Fund	\$60		
2nd year—Income from Endowment Fund	60		
3rd year—Income from Endowment Fund..	\$965		
Gifts for Athletic Equipment	440		
Gifts for current expenses	8,885		
Discount on Sinking Fund bond purchase	460	\$10,750	
<hr/>			
4th year—Income from Endowment Fund..	1,902		
Gifts for current expenses	2,760		
Gifts for Athletic Equipment	20	4,682	15,552.00

Leaving a deficit July 1, 1924, of.... \$8,534.47

These cash gifts towards making up the shortage from operation amount to \$12,105 and the gifts came not only from parents, but from the citizens who were interested in the school only because of their wish to better the educational facilities of the city.

During this period gifts had been made to the Endowment Fund amounting to \$33,603.25 and two prize funds were endowed for scholarship prizes. These funds amounted to \$500 each.

In figuring the operating receipts for 1923-1924 there was included what amounted to gifts to the amount of about \$6,000, which came about in this way: In the middle of the year it was discovered that the tuitions would not pay the expenses of the year and although the school

had contracted with the parents to furnish the education at a fixed amount of tuition a request was made that each parent pay 10% in addition to the tuition fee for the year. This was not obligatory and could not have been collected, but it was met by nearly all of the parents and amounted to a gift to the school of about \$6,000.

In addition to the above gifts there have been numerous gifts made of equipment and books. These gifts did not go through the treasurer's hands and do not appear on his books, but they amount in value to several hundred dollars.

In addition to the gifts of money the services of the Board of Trustees has been given, the services of Mr. Cook and Judge Osborne have been without any compensation. Among many other duties they negotiated for the purchase of the properties, examined the titles to the properties, arranged for the new bond issue, prepared the mortgage to secure the bond issue, arranged with the Orange Trust Company to act as trustee and supervised the whole transaction.

Mr. Reed has been treasurer since April 1, 1921, and has given not only his own services, but borne all the expense of the bookkeeping, which involves a very substantial amount of work. A mother of two of the boys in the school has undertaken, gratis, the operation of a lunch room. In addition another lady devotes a great deal of time to musical instruction of the children, without compensation. The school in its early history provided for six scholarships, which have been continued each year, which give six boys free tuition in the school. These scholarships are used to give a free education to worthy boys whose parents cannot afford to pay the tuition. In addition to these scholarships, one of

the friends of the school in the interest of the school, and to provide for more scholarships, has paid for the education of from four to seven boys each year.

During these four years there have been gifts for the permanent endowment fund amounting to \$33,603.25, besides gifts of \$12,105, for the current expenses, making a total of \$45,708.25—a considerable amount to be given to a small school in four years.

The continuing purpose to have the school operated as a philanthropic or charitable institution is evidenced by the continuing of increasing gifts of moneys for its endowment, for its deficits in operation and very large gifts of time and services by the officers and trustees and by the others above mentioned. It would seem that it could properly be argued that although a number of the gifts enumerated were made after the 1923 assessment was imposed, yet they were made in the furtherance of the philanthropic or charitable purposes of the school.

The salaries of the headmasters and teachers are shown on page 50 of the State of Case, for the year 1920. Following a practice that has obtained throughout the State owing to the times, the salaries of the teachers the next year were raised, but those of the headmasters were not raised. The same is true of 1923 and 1924, when the salaries of the teachers averaged \$2,500 or \$2,600.

Surely the fact that the teachers are paid a living wage in no way interferes with the conclusion that the institution is conducted without profit. The headmasters (p. 51) have lower salaries than any private school that Mr. Reed knows of, and as we have already seen, one of

them has quit. The charges for tuition for the four years are given on pages 54 to 56, inclusive, and as in every department of life, show a slight increase. As we have already seen, the tuition fees are quite insufficient to pay the operating expenses of the school, and the deficit arising therefrom has been partially met by large gifts and the income of endowments. Of course, the mere fact that tuition is charged in no way of itself converts this enterprise into a profit-making one.

In *Holy Angels v. Bender*, 79 N. J. Law 34, the Court, speaking through Justice Swayze, said:

“The contention of the defendant is that the school is conducted for profit because a tuition fee is required and a charge is made for board of the pupils. But, clearly, the charge for board would not make the school one conducted for profit unless it was shown, as it is not, that the charge was in excess of the cost. We do not mean to say that even if that had been proved, it would suffice to bring the school within the words of the statute; it is not enough that a profit should be made; the school must be conducted for the purpose of making a profit, *i. e.*, as a commercial enterprise, in order to be deprived of its exemption. The argument is quite as clear in the case of the charge for tuition as in the case of the charge for board. Unless the tuition charges are so fixed as to evince a purpose to make a profit over and above the cost of tuition, the school is exempt. Princeton University and Rutgers College, like all our endowed institutions of learning, make a charge, sometimes not an inconsiderable charge, for tuition; and it is quite probable that in individual cases the tuition fee may exceed the actual cost of the instruction; yet no one would suggest that either institution was conducted for profit. The reason is that such institutions upon the

whole give more than they get and make up the deficiency of the tuition fees to pay for the actual cost of the instruction, in part by the self-sacrificing devotion of the teachers, and in part by the bounty of past generations."

With the limited experience of the school that was before this Court in the previous case (from June to October, 1920) it reached the conclusion that the prosecutor did not belong to the class of cases of which the *Institute of Holy Angels v. Bender*, 79 N. J. Law, 34; *Mayor of Princeton v. The State Board*, 96 *Id.* 334, were examples, but rather came under the *Town of Montclair v. The State Board*, 86 N. J. Law, 497. In the Montclair case, it appeared that the school had simply "by changing its corporate dress and altering its financial system so that the net income is disbursed in the form of interest instead of dividends," had succeeded in turning an institution that theretofore was conducted for profit into one that was not conducted for profit. The opinion in that case shows that the school's whole source of income was the tuition fees; that there was nothing to show either a deficiency of tuition fees or an endowment or that any teachers were serving as an act of charity or philanthropy. The conclusion was:

"The school is, as it always has been, a business proposition, conducted to make an adequate living for its real owner."

How different is the situation in the case at bar, as it had developed and existed in the years 1923 and 1924, the taxes for which are here under review. Here not only the real owners are not making or designing to make a cent out of the enterprise, but are constantly compelled to put their hands in their pockets to contribute to its maintenance. They are giving of their time,

ability and learning to its maintenance and support. The Trustees and the Executive Committee actually run the school. They examine and employ the teaching force. One of the old headmasters, who formerly owned the school, has retired, and the other two have absolutely no voice in the management, and own a small proportion of the outstanding bonds. The deficiencies in operating expenses are partially made up by voluntary contributions and interest on the endowment. How this institution could be more fundamentally philanthropic or charitable I fail to see.

The situation seems to be precisely that which existed in the case of *Princeton v. The State Board*, 96 N. J. Law, 334. There Justice Trenchard, in an able opinion, in speaking of the Montclair case, said:

"There the principal not only received an exorbitant salary, but really owned and controlled the finances of the school. Certainly the school in the present case cannot be said to be 'conducted for profit' merely by reason of the moderate salaries paid to the principal and teachers."

This being so, it is our contention that the school possesses every characteristic required by the statute under section 3, subdivision 4, Chapter 296 of the Laws of 1920, as amended by Chapter 320, Laws 1921, and Chapter 276, Laws 1922, which so far as applicable provides as follows:

"All buildings actually used for colleges, schools, academies or seminaries; * * *

"The land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose, and does not exceed five acres in

extent; the furniture and personal property in said buildings for use in and devoted to the purposes above mentioned" (are exempt); "provided, however * * * that said buildings, or the lands on which they stand, or the associations, corporations, or institutions using and occupying the same as aforesaid, are not conducted for profit; * * * , provided further, that the foregoing exemption shall apply only where the association, corporation or institution claiming the exemption, is incorporated under the laws of this State and authorized to carry out the purpose on account of which such exemption is claimed, and either owns the property in question or has such an equitable control or ownership as to use," etc.

It is respectfully contended that the judgment of the Supreme Court should be reversed.

Respectfully submitted,

ROBERT H. McCARTER,
Counsel for Petitioner.

October Term, 1926.

New Jersey Court of Errors and Appeals

CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the Laws of the State of New Jersey,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT and THE CITY OF ORANGE,
Defendants-Respondents.

*On
Certiorari.*

*Appeal from
Supreme
Court.*

BRIEF FOR RESPONDENT, THE CITY OF ORANGE.

Abstract of the Case.

This appeal brings up for review a judgment of the Supreme Court affirming two judgments of the State Board of Taxes and Assessment in which they affirmed assessments for taxes for the years 1923 and 1924 levied by The City of Orange upon property belonging to appellant.

These assessments were made as of October 1, 1922, and October 1, 1923, under the Statute, P. L. 1918, page 859, Section 401. The total assessments for each year amounted to \$88,700 of which \$39,700 was on the land, \$47,000 on improvements and \$2,000 on personal property.

Prosecutor claims exemption under the provisions of Section 203, Sub-division 4 of the Tax Act of 1918 as amended by Chapter 276, P. L. 1922. The pertinent provisions of this Statute provided for exemptions of colleges, schools, academies or seminaries, together with the lands on which they are erected and which may be

necessary for the fair enjoyment thereof and devoted to the purposes of said schools, etc., which lands are not to exceed 5 acres in extent, together with the furniture and personal property in said buildings devoted to the purposes of said schools, etc., provided they are not conducted for profit and provided further that the exemptions shall apply only where the corporation claiming exemption is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which such exemption is claimed.

The prosecutor was incorporated under the Act to incorporate associations not for pecuniary profit in June, 1920, and at that time purchased the property of a former corporation of the same name, which was incorporated in 1909 under the General Corporation Act, with a capital stock of \$10,000. All of this stock was owned in 1920, at the time of its purchase, by the Headmaster and two associate Headmasters of the academy, Messrs. Mead, Waffl, and Soule. There was also outstanding and a lien upon the property at this time, \$68,000 of 5 per cent. Mortgage Bonds.

The purchase from the old corporation was accomplished by the new corporation authorizing the issuance of \$225,000 of 6 per cent Bonds from the proceeds of the sale of which they paid the former proprietors of the academy \$35,000 in cash and \$40,000 in the new issue of Bonds, and took the property of the old corporation subject to a mortgage encumbrance on which there remained due \$68,000 of principal money. The total purchase price of the property was \$143,000. (Case, pp. 35-36, and Exhibit A. 5, pp. 22-23.)

The treasurer of the prosecutor testified at the hearing of this case before the State Board

that there was outstanding at that time \$65,000 of the 5 per cent. Bonds and \$122,600 of the issue of the Second Mortgage 6 per cent. Bonds. (Case, p. 53.)

The prosecutor purchased an additional property located diagonally opposite the old buildings of the academy for the sum of \$25,000 which property was known as the "Williams Property." (Exhibit A. 5, pp. 22-23.) The "Williams Property" consists of a tract of 2.32 acres and the old property of the academy consists of a tract of 3.29 acres, making the total acreage owned by the Academy, 5.61 acres. (Exhibit A. 6, p. 27.) These two properties are diagonally opposite, being separated by Carteret Place.

The prosecutor appealed from the tax levied by the City for the year 1921 and this Court unanimously affirmed the decision of the Supreme Court, which held that it was not entitled to an exemption; this decision being reported in 98 N. J. L. 868.

On June 29, 1923, prosecutor filed with the Secretary of State, an amendment to its Charter in which it stated that its objects were fundamentally philanthropic, charitable and educational, and that it should not be conducted for profit or gain of any corporation or individual, and that in the event of receipts for tuition being greater than its expenditures at any time, the excess should be used to reduce the cost of tuition, to provide free scholarships or for other educational, philanthropic and charitable purposes and that if it should cease to conduct a school, the property or funds then remaining in its possession should be devoted by its trustees to educational purposes which should be charitable in character, and in no event should they be de-

voted to profit or gain of any member of the corporation or any other person. (Exhibit A. 2, p. 5.)

It also on May 28, 1923, amended its by-laws so that no person in receipt of a salary from the corporation should be entitled to vote as a member at any meeting of the corporation and that in the event of the corporation ceasing to conduct a school for the general education of boys, any property or funds then remaining in its possession should be devoted by the trustees to educational purposes which should be charitable in character, and in no event should such property or funds be devoted to the profit or gain of any member of the corporation or any other person. (Exhibit A. 4, pp. 20-21.)

It would appear that this case would be *res judicata* unless the amendment to the certificate of incorporation and the by-laws since the previous decision of this Court, have been such as to completely change the appellant's status. This would appear to be largely a question of fact, and the State Board in a memorandum it filed in deciding the two present cases stated, "No change has taken place in the status of the academy between the previous assessment and that of October 1, 1922, and there is no reason why the assessment of this last mentioned date should be disturbed." (Case, p. 7, l. 30 and p. 13, l. 24.)

POINT ONE.

The lands on which the buildings of this academy are erected are greatly in excess of the amount necessary for the fair enjoyment thereof.

Exhibit A. 6, shows the two tracts owned by the academy, one of which contains 3.29 acres and the other 2.32 acres or a total of 5.61 acres.

An examination of this exhibit shows that the greater portion of these two tracts consists of vacant ground which in the case of the property situated on the West side of Carteret Place is used by the academy as an athletic field, the tract on the West side being the one purchased from Messrs. Mead, Waff and Soule.

In the case of *Stevens Institute v. Bowes*, 78 N. J. L. 205, the Supreme Court in construing exemption under the 1903 Tax Act, which contains provisions very similar to the one contained in the 1922 Act above quoted, stated that the general athletic needs of students at an institution of learning did not make a neighboring athletic field necessary to the fair use and enjoyment of the buildings. This decision is particularly applicable to the present case in view of the fact that the City of Orange maintains a large public playground immediately opposite the athletic field of the prosecutor and separated therefrom only by the width of Central avenue, which playground contains a field used for baseball and football, a cinder path, tennis courts, etc.

Even if it was conceded that the academy required a playground, it certainly would not require two, as the building occupied by it on the East side of Carteret Place is diagonally opposite the main building and in close proximity

to it, and it is apparent from an examination of the exhibit last referred to that one ground could be used for both buildings.

An examination of the various taxing acts shows a tendency on the part of successive Legislatures to increase from year to year the property exempt from taxation with the result that the remaining properties are now burdened to an undue extent in carrying the exemptions, and the municipalities find it increasingly difficult to keep their tax rates within reasonable bounds and furnish the service properly demanded by their citizens.

The Supreme Court said in the case of *Y. M. C. A. v. Orange*, 128 Atl. 580, that "It is settled beyond further discussion that statutes granting immunity from taxation must be construed strictly," citing *Mausoleum Builders of New Jersey v. State Board*, 88 N. J. L. 592, affirmed 90 N. J. L. 163.

POINT TWO.

Prosecutor is not entitled to exemption for the year 1923 by reason of changes in its charter and by-laws.

Under the Tax Act of 1918, previously stated, taxes are assessed as of October first, for the following year.

The amendment to the academy's charter did not become effective until June, 1923, and the changes in its by-laws until May 28, 1923. It is apparent that these two amendements would not be retroactive and that the tax for 1923 was properly assessed by the City on October first of the preceding year, under the existing statutes.

The question as to whether there have been any other changes in the corporation which would make it fundamentally philanthropic or charitable applies also to the 1924 assessment and will be treated in discussing the assessment for that year.

POINT THREE.

The Supreme Court found as a fact that appellant was not fundamentally philanthropic.

In delivering the opinion of the Supreme Court now under review, Justice Minturn said "We are unable to perceive that the present amendment to the certificate of incorporation and the by-laws has been sufficiently radical and potent to give to this school a philanthropic essential which was lacking in its last claim for exemption, and without which as a dominating characteristic of its purpose and organic life, it can lay no claim to philanthropy as a moving cause of its existence."

It is well settled in this State that where there is evidence to support the finding of facts made by the Supreme Court in affirming a decision made by the State Board of Taxes and Assessment, that its finding is not reviewable in this Court. The following cases sustain the above proposition. *Pennsylvania Railway Co. v. State Board of Taxes and Assessment*, 98 N. J. L. 283; *Long Dock Co. v. State Board of Taxes and Assessment*, 90 N. J. L. 701; *Chatham v. Sisters of Charity of Saint Elizabeth*, 92 N. J. L. 409.

POINT FOUR.

Prosecutor is not entitled to exemption under the statutes of this State.

Prosecutor claims that the fact that its charter and by-laws have been amended, so that any profits which it may obtain from tuition shall be used for charitable and educational purposes, and the further fact that for some years it has operated at an annual loss, entitled it to an exemption from taxes under the existing statutes.

The mere amendment of the charter and by-laws, in itself, would clearly not entitle it to an exemption; there is nothing to prevent it at any future time from further amending both of these instruments or striking out the existing amendments.

The duration of the academy according to its charter is perpetual (Exhibits, p. 3, l. 10) so that the prospect of its ceasing to conduct a school, and being obliged to devote any property or funds then remaining in its possession to educational purposes, charitable in character, as provided in the amendment, is at least remote.

Before indulging in the philanthropic objects outlined in these amendments, it will be necessary for it to take care of the interest on its two issues of bonds and ultimately to see that they are retired. The aggregate amount of these bonds outstanding is \$187,600 of which \$122,600 are six per cent. bonds of the new issue. When we contrast this with the former corporation which prosecutor purchased and which at the time of purchase had outstanding only \$68,000 of five per cent. bonds, and \$10,000 of capital stock upon which apparently no dividends were ever paid, it may be readily seen that the reason for

the academy's poor financial showing is the fact that too large a proportion of the fees received for tuition, are obliged to be devoted to its overhead expenses.

Under date of May 1, 1920, the academy issued a "Plan for Its Development and Elimination of Private Ownership" (Exhibit A. 5, p. 21). A reading of this plan fails to disclose any philanthropic or charitable objects; it shows that it expected to adopt tuition fees on the same scale as charged by the leading boys' schools in the East, and it advises investors that they may expect a regular interest return on their bonds and their eventual payment (Exhibits, p. 24).

Apparently it was a pure business proposition when it was founded, and remained so until it was discovered that it had to pay taxes, even though incorporated under the Act Not for Pecuniary Profit, when an attempt was made to make it appear as an eleemosynary institution by making the above-mentioned amendments, which are not apt to cost the prosecutor anything or to prove of any benefit to the community, for at least a number of years to come.

The appraisal of the school property at \$153,000 (Exhibit A. 5, p. 23) at the time of its purchase in 1920 by prosecutor, was greatly in excess of its true value, at least for school purposes; this is proven by the fact that prosecutor has never been able to earn a fair return upon its investment.

The former academy was suffering from "Dry Rot" (Case, p. 38) and was at this period a very much run-down institution.

Its owners, Messrs. Mead, Waffl and Soule, exchanged their \$10,000 of non-dividend paying

stock for \$75,000 in cash and six per cent. bonds upon the sale of the academy to prosecutor, which sale was made subject to a mortgage on which there remained due at that time \$68,000 (Case, pp. 29-30), and continued in their positions, with the exception of Mr. Soule who resigned about two years ago (Case, p. 31).

The regular teachers are paid the market rate for their services (Case, p. 54, l. 10).

Stress has been laid upon the services donated to the school by two ladies, one of whom has supervised the lunch room and "Goes down there pretty nearly every day," and the other donated her services as a music teacher who "Goes in there a few days at a time on special occasions" (Case, p. 49, l. 20 and pp. 53-54), and to the fact that a considerable endowment has been created. The evidence fails to show how much of their time was given by these ladies, who appear to have served only when the spirit moved them; and to have been mere volunteers. The fact that the school has been gradually increasing its endowment, is not as yet reflected in its rates of tuition, which show a steady increase from year to year (Case, pp. 54, 55, 56) and are on a par with those charged by other schools of the same character; and the books and lunches furnished its pupils are supposed to yield a small profit (Case, p. 56, l. 30).

In the year 1924, the parents of the pupils were asked to pay ten per cent. additional tuition over the rates charged for that year, and practically all of them complied, the school receiving an additional amount from this source, of about \$6,000 (Case, p. 47, l. 20).

Attention is directed in appellant's brief to the various services donated by Mr. Cook and Judge

Osborne to the academy, which services are enumerated at considerable length and appear to have been rendered in 1920 at the time of the re-organization of the academy, and were brought to the attention of this Court upon the argument of its former appeal, from the 1921 assessment.

From the facts above cited, it does not appear that prosecutor "Gives more than it Gets," which is the test that it must meet in order to entitle it to the exemption asked for; under the decisions of this Court.

Changing its corporate dress and altering its financial system so that the net income is disbursed for interest, instead of dividends, is not sufficient to give it exemption; *Montclair v. State Board*, 86 N. J. L. 497.

The testimony shows that the school provides six scholarships giving free tuition to deserving boys (Case, p. 51). These same scholarships were in existence when the case involving the 1921 tax was brought before this Court, and they were at that time brought to its attention. Their cost has been more than met by the increased tuition paid from year to year by the parents of the other boys, who appear to be the real philanthropists, and who in 1924 contributed ten per cent. additional tuition amounting to about \$6,000 at the request of the academy, which sum alone would provide for the scholarships for two and one-half years.

Prosecutor claims that the academy has operated at a loss and a summary of its financial condition is given on pages 11 and 12 of its brief. This loss for the period extending from July, 1922, to July, 1924, was more than offset by the additional income which it received from various sources. Whether it operated at a profit or at

a loss, is not however, the point at issue. It must prove, in order to entitle it to an exemption, that it is fundamentally philanthropic. If it was merely necessary to prove financial loss in order to escape taxation, a large proportion of the tax-payers of the State would be exempt during years in which there were a protracted period of hard times.

Nothing new has been adduced on the second appearance of the prosecutor before this Court, except the fact that its endowment has increased; notwithstanding this fact it has continued to steadily increase its rates of tuition.

From the facts previously stated, it appears, that there is a marked difference between the facts of this case and those shown in the cases of *Institute of Holy Angels v. Bender*, 79 N. J. L. 34, and the recent case of *Mayor, etc. of Princeton v. State Board*, 96 N. J. L. 334.

In the case of *Institute of Holy Angels v. Bender*, the Supreme Court in speaking of this institute and similar institutions of learning said: "That such institutions upon the whole give more than they get and make up the deficiency of the tuition fees to pay for the actual cost of the instruction in part of self-sacrificing devotion of the teachers and in part by the bounty of past generations." It further said that such appeared to be aim of the prosecutor in that case, and the facts show that the school was conducted by a religious sisterhood; that the teachers received no salary and that some of the pupils paid no tuition and others paid less than the full charge; and that the receipts were not sufficient to meet the expenses, the difference being made up by donations to the institute to meet the deficiency.

In the case of *Princeton v. State Board, supra*, it appeared that a Miss Fine had been conducting a day school for a number of years which she sold to a corporation organized under the "Act to incorporate associations not for pecuniary profit." At the time the new corporation was formed it received as a gift from Miss Fine the good-will, furniture and equipment of her old school. The school was supported in part by an endowment and gifts from friends, and the charges for tuition were much lower than other schools of like character. Miss Fine had no pecuniary interest in the new school with the exception of the salary received by her as its principal, and none of the other teachers had a pecuniary interest in it except as to their salaries.

In both of these cases the Supreme Court decided on the facts that they were fundamentally philanthropic and were entitled to the exemptions allowed schools not conducted for profit under the State statutes.

The thought of the Legislature in allowing exemption from taxes to certain educational institutions was apparently that by so lightening their financial burdens they would be enabled to extend their work over a broader field and furnish an education to more pupils at a lower cost, but in the case at bar, we find that the cost of tuition furnished by prosecutor increases from year to year, notwithstanding the fact that the value of the dollar has remained nearly stationary for several years past.

It can hardly be said that this corporation is not operated for a profit while its three former proprietors, Messrs. Mead, Waff and Soule, still continue to own \$40,000 of its six per cent. bonds upon which they receive an annual return in in-

terest of \$2,400 and are apparently the largest bondholders of the institution.

This case would appear to be a parallel case to that of *Town of Montclair v. State Board of Equalization of Taxes*, 86 N. J. L. 497. In that case it appears that Montclair Academy was originally incorporated under the General Corporation Act and was taxed under the General Tax Act of 1903; that afterwards a new corporation was organized under the "Act of 1898 to incorporate associations not for pecuniary profit," and the academy corporation conveyed all of its property to the new association and then claimed to be exempt from taxes because it was an incorporated association not for pecuniary profit.

The Supreme Court held in construing the Fourth Paragraph of Section 3 of the 1903 Tax Act, which paragraph is substantially the same as that now under consideration, that the exemption therein granted related to institutions of a religious, philanthropic or charitable character. It said that a school not conducted for profit must necessarily be fundamentally philanthropic or charitable and only incidentally a source of income for its staff. It further said that there was nothing in the case to show either a deficiency of tuition fees, an endowment or that the teachers were underpaid and served as an act of charity or philanthropy; and that the school was as it always had been, a business proposition, conducted to make an adequate living for its real owner. The decision in this case was affirmed by the Court of Errors and Appeals. (See 88 N. J. L. 374.)

In the decision now under review the Supreme Court said "We observe no difference essentially

except in form between the former situation and that now presented and the case therefore becomes *res judicata*;" and it is respectfully submitted that the judgment of that Court in this case is correct and should be affirmed.

WILLIAM A. CALHOUN,
Counsel for Defendant,
The City of Orange.

October Term, 1926.

New Jersey Court of Errors and Appeals

CARTERET ACADEMY, an association not for pecuniary profit, Incorporated under the Laws of New Jersey,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, and THE CITY OF ORANGE,
Defendants-Respondents.

*On
Certiorari.*

*On Appeal
from
Supreme
Court.*

REPLY MEMORANDUM FOR PROSECUTOR-APPELLANT.

The respondent's brief discusses a question not considered below, namely the alleged excess in amount of the lands that are required for school purposes. It also goes entirely outside of the record in the statement of certain facts, all of which requires a short comment.

I.

With reference to the extent of the lands owned and enjoyed by the school.

The provision of the statute is that not only the buildings that are used for a school, but

“the land whereon the same are situated necessary to a fair use and enjoyment thereof, not exceeding five acres in extent for each”

shall be exempt.

The only thing in the record bearing upon this new phase of the case is the map or sketch at the close of the book of exhibits. The plot on

the northwest side of Carteret Place is the old site, and is used for the older boys. The vacant part outside of the school building is just large enough to accommodate one game of baseball or one game of football, and has on its outer edge a cinder running track. Obviously the games that are played there under the direction of the physical director, cannot be shared in by the children of the junior school, who go to the other place on the southeast side of Carteret Place, which is 2.32 acres in extent. These junior scholars have swings and other athletic paraphernalia that could not be erected or used on the other playground, and it is a false and elusive idea that these two buildings have an inch more of space around them than is necessary for the use to which the buildings are devoted. In this day, all educators are committed to the theory of a sound mind in a sound body, and it is unfair at this late date, when the issue heretofore has wholly been upon the question whether the institution was or was not conducted for profit, to raise this point, and accent it by making it the most important.

The averments of the respondent's brief with reference to a public playground across the street from the school of the prosecutor, is entirely outside of the record. It is, however, a fact, and this public playground is probably about five acres in extent, but it is primarily used as the athletic field and playground of the Orange High School, which immediately adjoins the prosecutor, and the Lincoln Avenue Grammar School two hundred feet away from the playground. The High School has over eight hundred pupils, and the Lincoln Avenue Grammar School has over fifteen hundred pupils. These two schools certainly need all of this playground for their

own recreational purposes. I feel that the departure from the record in the brief of respondent with reference to this public school playground, justifies a similar departure by us as to the foregoing facts.

The Legislature has fixed the limit of exempt land at five acres for each building. It is hardly the province of the Court to change the statute, certainly not unless there is some evidence that the property is not in good faith being used for school purposes. There is absolutely no such evidence in our case. Anyone should know that it is not practical to use the same playground for a Junior School and for a High School. The public schools separate their school system so as to have a different location for their high schools from that of their grammar schools and in the public playgrounds a similar division is made so that there will not be any interference of the older boys with the younger boys. Two or three acres certainly is no more than is reasonably required for one hundred boys, and it will be remembered that there are about one hundred boys in each of the two schools of the prosecutor, making two hundred in all.

The *Stevens Institute* case cited by counsel is not in point, for the reason that there the athletic field was half a mile away from the school, and *there was no school building erected thereon*. The reverse, of course, is the fact here.

II.

The comparison of the present and past indebtedness is apart from the record and untrue and unfair.

Counsel for respondent compares the present \$187,600 of bonds with the former \$68,000 of

bonds and \$10,000 of stock, but omits to say that \$42,000 of this difference is represented in the cost of the Junior School and its equipment. He says that the appraised price of the property at \$153,000 was greatly in excess of its true value. This is the amount at which it was appraised by real estate experts in 1920 when the present school purchased it.

There is absolutely no evidence in the case to show that this was an excessive valuation. The price paid for the property, however, was not \$153,000, but was \$143,000. It is assessed for taxes at \$88,700 which is 62% of the sales price and it is generally known that property is not assessed for more than about sixty to seventy per cent. of its sales value. If Mr. Calhoun were fair, he would not claim that the present corporation paid too much for the property. He would admit that the property was bought at a very cheap price and that the present value is at least double what was paid for it. He has gone so far out of the record to make these arguments and statements that the only way in which they can be met is by prosecutor also going outside of the record and stating the facts. There is nothing in the record to show that the old school paid no dividends. I do not know whether it paid dividends or whether it omitted to pay dividends. However, if it did not pay dividends for the nineteen years from 1901, when it was incorporated, to 1920, when it sold out to the present corporation, that is a very good reason why the value should have materially increased. So long as the accumulations of earning were re-invested in betterment and additions, it was natural that the school should increase in value. In 1901, when the school was built, they were able to borrow \$35,000. In 1914, when the school

building was added to, they borrowed \$70,000. It is not to be assumed that they borrowed the full value of the property. Of course we do not know that the \$35,000 of mortgage and \$10,000 of stock represented the actual value in 1901 when the school was started, but even though this were the fact, it is not to be wondered at that the value increased from \$45,000 in 1901 to \$143,000 in 1920. It certainly has doubled in value in the last six years.

The reason that the present school does not show receipts which will pay its expenses, is that it provides a better school than the public is asked to pay for. It gives more than it receives in tuition and other charges.

Respectfully,

ROBERT H. McCARTER,
Counsel for Appellant.

New Jersey Court of Errors and Appeals

CARTERET ACADEMY, an association not for pecuniary profit, incorporated under the Laws of New Jersey,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT and THE CITY OF ORANGE,
Defendants-Respondents.

*On
Certiorari.*

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SUPPLEMENTAL BRIEF FOR RESPONDENT THE CITY OF ORANGE.

Appellant filed a reply memorandum in which it has made certain statements that I believe should be answered.

This memorandum states that the question of the alleged excess in the amount of lands held by the Academy over that required for school purposes was not considered in the Supreme Court.

This question was raised in the Court below and appellant devoted a page and a half of its reply brief in that Court to a discussion of it. It is true that it is not mentioned in the Court's opinion, and presumably the reason for its not being mentioned is the fact that the case was decided by that Court on the broader ground that the Academy was not fundamentally philanthropic and that the case at bar was *res judicata*.

The statute under which exemption is claimed in this case is Chapter 276, P. L. 1922. Appellant in its reply brief says: "The provision of

the statute is that not only the buildings that are used for a school but 'the land whereon the same are situated necessary to a fair use and enjoyment thereof not exceeding five acres in extent for each' shall be exempt." This quotation is incorrect; the words "for each" are not contained in this paragraph of the 1922 Act.

In view of the fact that appellant placed in evidence a map of the property showing not only the two tracts owned by the Academy, but also the Orange Playground (Exhibit A. 6) I am unable to see where reference to this Playground is either unfair or outside of the record as alleged by it.

The statement that the Legislature has fixed the limit of exempt ground as five acres for each building is not a fact as may readily be ascertained by an examination of the statute involved.

Mr. McCarter states that \$42,000 is represented in the cost of its junior school and its equipment. I do not know from where these figures were obtained, as they do not appear in the State of the Case. The cost of the lands and buildings occupied by the junior school were \$25,000 (see Exhibit A. 5), and Hedley V. Cooke, one of the Trustees of the Academy, testified that the cost of equipping this school was about \$10,000 (Case, l. 16, p. 31).

The statement is made in the reply brief that the property was appraised in 1920 by real estate experts at \$153,000. There is nothing in the case to show that the property was appraised by real estate experts, or by whom it was appraised. Exhibit A. 5, pp. 22, 23, places the estimated value of the land and building purchased from the former corporation at \$153,000,

but fails to show by whom this estimate was made.

Exception is taken to the statement that the old school paid no dividends. Hedley V. Cooke, a witness for the appellant, testified that he had never heard of any dividends having been paid upon its stock (Case, p. 35, l. 30), and I think it is fair to assume that no dividends were paid. Whether dividends were paid or not, however, would seem to be immaterial; the point is that this Academy greatly increased its fixed charges at the time of its incorporation by creating the new issue of six per cent. bonds, of which there is outstanding \$122,600. The interest on these bonds is, of course, a fixed charge which has to be met when due, whereas when the corporation was a business corporation dividends would have only been paid on the stock when earned. I firmly believe that the financial troubles of this institution are largely due to the excessive amount of its bonded indebtedness, the payment of the interest on which eats up a large portion of its earnings.

Respectfully submitted,

WILLIAM A. CALHOUN,
Counsel for Respondent, The City of Orange.

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