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WRIT OF CERTIORARI.

NEW JERSEY, ss.

State of New Jersey to State Board
of Taxes and Assessments and The
(SEAL) Taxing District of the Township of
Blairstown in the County of Warren, 10

GREETING:

We being willing for certain reasons to be
certified of and concerning a certain order, judg-
ment or decree made on the 14th day of Febru-
ary, 1928, denying the application of the Trustees
of the Presbytery of Newton to be made a party
to a certain proceeding pending before the said
State Board of Taxes and Assessments "In the
matter of the application of The Taxing District
of the Township of Blairstown in the County of
Warren," from the action of the Warren County
Board of Taxation in cancelling the tax assess-
ment levied for the year 1927 on property of the
Board of Trustees and the Board of Managers of
Blair Academy or Blair Academy, situate in the
Township of Blairstown, County of Warren and
State of New Jersey; and further applying for
leave to open the proceedings and for a re-hear-
ing on behalf of the said Board of Trustees of
the Presbytery of Newton, and any and all things
touching and concerning the same, we command
you that the said order, judgment and decree,
together with all proceedings had and taken by
the State Board of Taxes and Assessments, upon
which the same was 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 said order, 20
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Writ of Certiorari.

10 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 11th day of April next, that we may cause to be done thereon what, according to law and the Constitution of New Jersey, ought to be done.

WITNESS, THOMAS W. TRENCHARD, Esq., a Justice of our Supreme Court, at Trenton, this 22nd day of March, 1928.

EDWARD J. KELLEHER,
Acting Clerk.

FRANCIS CHILD,
JEHIEL G. SHIPMAN,
Attorneys.

20

Service of the within writ is hereby acknowledged this 23rd day of March, 1928.

EGBERT ROSECRANS,
Attorney of Taxing District of the Township of Blairstown in the County of Warren.

30 I allow this writ. Let it be sealed March 22, 1928.

THOMAS W. TRENCHARD,
J. S. C.

40

RETURN TO WRIT.

NEW JERSEY SUPREME COURT.

TRUSTEES OF THE PRESBYTERY OF NEWTON,	}	<i>Prosecutor,</i>	10
STATE BOARD OF TAXES AND AS- SESSMENTS and THE TAXING DISTRICT OF THE TOWNSHIP OF BLAIRSTOWN IN THE COUNTY OF WARREN,		<i>Defendants.</i>	<i>On Certiorari.</i>

The State Board of Taxes and Assessments doth herewith send to the Supreme Court of the State of New Jersey the petition, memorandum and proceedings in re application of the Trustees of the Presbytery of Newton to be made a party defendant in the appeal of the Township of Blairstown *v.* Blair Academy and Warren County Board of Taxation, 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 Charles E. Cook.

Petition.

STATE BOARD OF TAXES AND
ASSESSMENTS.

10 In the Matter of the Application
of the Township of Blairstown, in the County of Warren, from the action of the Warren County Board of Taxation in reducing the tax assessment for the year 1927 on property of "The Board of Trustees of Blair Academy and the Board of Managers of Blair Academy, or Blair Academy."

20

Petition of Trustees of Presbytery of Newton to be Admitted as a Party Defendant.

To the Honorable Board of Taxes and Assessment of the State of New Jersey.

The petition of the Trustees of the Presbytery of Newton, a corporation of the State of New Jersey, respectfully shows:

30 1. Petitioner was duly incorporated under the laws of the State of New Jersey on the 10th day of May, 1875. Such incorporation was affected by virtue of Chapter 363 of the Laws of 1872 of said State and petitioner has all the powers conferred to it by said act.

40 2. Petitioner has an equitable title and ownership in the property which has been assessed by the Township of Blairstown for taxes for the year 1927, such assessments having been made on property of the "Board of Trustee of Blair Academy and the Board of Managers or Blair Academy, or Blair Academy."

Petition.

3. Petitioner's title and ownership in said property arises by virtue of the provisions of certain trust deeds executed by John I. Blair and wife, as follows: Deed executed August 22, 1848, from John I. Blair and wife to certain persons who are "constituted and appointed trustees for the purpose of receiving this deed or gift" * * * "and which land is hereby given and conveyed for the purpose and under all the conditions hereinafter mentioned and enjoined and is intended for building and erecting an academy upon the same." Said trusts and conditions being more fully set forth in said deed, which has been duly admitted as evidence in this proceeding and marked Exhibit P. 2. 10

A deed dated April 11, 1870, made by John I. Blair and wife, conveying some nine acres of land to the party of the second part and its successors upon certain trusts which are defined in said deed and which deed has been admitted as evidence in this case and marked Exhibit P. 3. 20

A deed dated May 24, 1889, from John I. Blair and wife to certain persons and their successors "in trust nevertheless, for the uses and purposes hereinafter fully stated," which said trusts are more fully stated therein; which deed has been admitted as evidence in this case and marked Exhibit P. 4. 30

4. Petitioner shows that by the provisions of all the trusts set forth in the said deeds, Exhibits P. 2, P. 3 and P. 4 herein, your petitioner has the entire management and control of the school erected and conducted upon the property conveyed therein and said deeds provide that the lands and premises conveyed "are to be held 40

Petition.

by the said parties of the second part and their successors, in trust for the said Presbytery of Newton," your petitioner; that said lands conveyed by said deeds are part of the same lands which have been assessed by the Tax District of the Township of Blairstown and are involved
 10 in this proceeding; that petitioner has an equitable ownership therein and as such is entitled to be heard in this proceeding, which involves an assessment upon said property for taxing purposes.

5. Your petitioner, therefore, states that it is a corporation organized under the laws of the State of New Jersey and that by virtue of the powers under its charter and the laws of the State of New Jersey under which it was incorporated and the provisions of the said trust deeds,
 20 it is carrying on the management of the school known as "Blair Hall," and that the buildings and the lands on which they stand, which have been here assessed, are not conducted for profit.

Petitioner, therefore, prays that it be made a party defendant to this proceeding, with leave to apply to open the proceedings for re-hearing on its behalf before this Honorable Board.

30 TRUSTEES OF PRESBYTERY OF NEWTON,

By Robert Robinson,
 Treasurer,
 Petitioner.

CHILD, SHIPMAN & PLUMER,
 Attorneys for Petitioner.

Petition.

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

ROBERT ROBINSON, being duly sworn on his his
 oath according to law, deposes and says that he
 is Treasurer of the Trustees of the Presbytery
 of Newton, which is a corporation of the State
 of New Jersey, the petitioner in the foregoing
 petition; that he has read the contents of said
 petition and the facts contained therein are true
 to the best of his knowledge and belief. 10

ROBERT ROBINSON,
 Treasurer.

Sworn and subscribed to before me
 this 27th day of January, 1928.

BESSIE S. FRITTS, 20
 Notary Public of New Jersey.

30

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Petition.

Endorsed:

STATE BOARD OF TAXES AND
ASSESSMENTS.

10 In the matter of the application of the
Township of Blairstown, in the County
of Warren, from the action of the
Warren County Board of Taxation
in reducing the tax assessment for the
year 1927 on property of "The Board
of Trustees of Blair Academy and
the Board of Managers of Blair
Academy, or Blair Academy."

20 Petition of Trustees of Presbytery of
Newton to be admitted as a party de-
fendant.

Filed February 14, 1928.

CHILD, SHIPMAN & PLUMER,
Counselors at Law,
24 Commerce St., Newark N. J.
Federal Trust Building,
Counsel for Petitioner.

30

40

Memorandum.

Filed February 14, 1928.

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

10

In the matter of the application of the Township of Blairstown from the action of the Warren County Board of Taxation in cancelling the tax assessment levied for the year 1927 on property of Blair Academy, situate in the Township of Blairstown, County of Warren and State of New Jersey.

Memorandum.

20

For the motion, Child, Shipman & Plumer.

Contra, Egbert Rosecrans.

The Board: The Presbytery of Newton has presented and filed with this Board a petition setting forth that it is a corporation of New Jersey and has the management and ownership of the property known as Blair Academy, assessed by the taxing district of Blairstown, for the taxes of 1927. It has now moved, pursuant to the prayer of the petition, "that it be made a party defendant to this proceeding, with leave to apply to open the proceedings for re-hearing on its behalf, before this Honorable Board."

30

The proponents of the controversy, into which it is proposed to project the Presbytery of Newton, first appeared before the Warren County

40

Memorandum.

Tax Board and urged that the property in question was not subject to taxation. An exemption was allowed. The matter then came to this Board. After a full hearing, the action of the County Board was reversed and a judgment entered in accordance with the finding of this Board.

10 The present petitioner apparently hopes to establish its right to relief from taxation. There are several cogent reasons why the motion should not be entertained. The case has been heard, a conclusion reached and judgment entered restoring the assessment.

20 The Presbytery failed to file an appeal with the County Board and now, when the case is closed, seeks to assert its claim. Parties claiming exemption from taxation should act promptly in pursuit of whatever remedy the statute affords. It is no answer to say that someone else, not entitled to relief, was making a claim. Especially is this true in this class of appeals, as exemptions are not viewed with favor. To grant the motion would permit a new party to appear and file an appeal with this Board, not only out of time, but by a party not before the County Board. It is too late to admit a new party to these proceedings.

30 The introduction of the Presbytery of Newton into the record of this case would be of no avail. No doubt it is a corporation of New Jersey and assuming it is not carried on for profit and has some interest in the property which amounts to ownership, yet it is not authorized to conduct a school or academy. It is incorporated for religious and charitable purposes, under Chapter 363, Laws of 1872 (3 Comp. Statutes, 4339). The
40 buildings are not used for any such purpose.

Memorandum.

In the first place, the use of the buildings controls the exemption—and the corporation must be authorized to carry out the purpose to which the buildings are devoted. It is argued that a school is charitable in its nature. It is a mere *petitio principii* to say that Blair School is a charity, when the act of the Legislature so clearly classifies institutions entitled to exemption. If this corporation wants exemption, let it devote its buildings to religious and charitable purposes. The statute must be strictly construed.

Motion denied.

Endorsed:

STATE OF NEW JERSEY.

20

STATE BOARD OF TAXES AND
ASSESSMENT.

In re

Township of Blairstown

vs.

Blair Academy and Warren County
Board of Taxation for the year 1927.

30

MEMORANDUM.

Filed February 14, 1928.

(Denial of Motion of Presbytery
of Newton.)

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DOCKET.

5586

10 Application of the Trustees
of the Presbytery of New-
ton to be made a party de-
fendant in re appeal of
Township of Blirstown *vs.*
Blair Academy and Warren
County Board of Taxation,
with leave to apply to re-
open the proceedings for a
re-hearing.

20 Petitioner's attorneys, Child, Shipman &
Plumer.

Respondent's attorney, Egbert Rosecrans.

1928.

Jan. 31. Petition presented to Board.

30 " 31. Motion that petitioner be made a party
defendant, with leave to re-open the
proceedings, in re appeal of Town-
ship of Blirstown *vs.* Blair Acad-
emy and Warren County Board of
Taxation, heard. Decision reserved.

Feb. 14. Petition filed.

" 14. Memorandum filed. Motion denied.

MINUTES.

State House, Trenton, New Jersey,
Tuesday, January 31, 1928.

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

Present, President Baker, Commissioners Barber, Huegel, Margerum and Weaver.

10

* * * * * * *

In the matter of the application for the admission of the Presbytery of Newton as a party defendant and the re-opening of the judgment of the Board rendered in the appeal of Township of Blirstown *vs.* Blair Academy and Warren County Board of Taxation, Mr. Egbert Rosecrans appeared for the Township of Blirstown and Mr. Francis Child for the Trustee of the Presbytery of Newton.

20

Mr. Child moved that the Trustees of the Presbytery of Newton be admitted as a party to this appeal, and presented a petition in writing, in order that the rights of the Trustees of the Presbytery of Newton be preserved. Mr. Child also moved that the judgment of the Board be opened so that if the Presbytery of Newton is admitted as a respondent, that the case be listed for further hearing.

30

Decision on the motion of Mr. Child and on the application for re-opening of the judgment was reserved by the Board.

* * * * * * *

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Minutes.

State House, Trenton, New Jersey,
Tuesday, February 14, 1928.

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

10 Present, President Baker, Commissioners Barber, Huegel and Weaver.

* * * * *

The Board denied the motion made by Mr. Francis Child, counsel for the Trustees of the Presbytery of Newton, that they be admitted as a party defendant in the matter of the appeal of Township of Blairstown *vs.* Blair Academy and Warren County Board of Taxation, with leave to apply to open the proceedings for re-hearing, on its behalf, before this Board.

20 A memorandum was filed, setting forth the reasons for denying this motion.

* * * * *

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Certificate of Secretary.

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

I, CHAS. E. COOK, Secretary of the State Board
of Taxes and Assessment, Do HEREBY CERTIFY, 10
that the foregoing are true copies of the petition,
memorandum and proceedings in re application
of the Trustees of the Presbytery of Newton to
be made a party defendant in the appeal of the
Township of Blairstown *vs.* Blair Academy and
Warren County Board of Taxation, 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 31st day of January,
A. D. 1928, and now remaning on file and of 20
record therein.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the official seal of the Board,
at Trenton, this 9th day of April, A. D. 1928.

CHARLES E. COOK,
Secretary.

(SEAL)

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REASONS.

NEW JERSEY SUPREME COURT.

10	TRUSTEES OF THE PRESBYTERY OF NEWTON, <div style="text-align: right;"><i>Prosecutor,</i></div>	}	<i>On Certiorari. Reasons.</i>
	<div style="text-align: center;"><i>vs.</i></div> STATE BOARD OF TAXES AND AS- SESSMENTS AND THE TAXING DISTRICT OF THE TOWNSHIP OF BLAIRSTOWN OF THE COUNTY OF WARREN, <div style="text-align: right;"><i>Defendants.</i></div>		

20 The prosecutor, by Francis Child and Jehiel G. Shipman, its attorneys, comes and prays that the order of judgments of the State Board of Taxes and Assessments dated February 14, 1928, denying the motion of the prosecutor to be made a party defendant to the proceedings entitled "In the Matter of the Application of the Township of Blairstown from the action of the Warren County Board of Taxation in cancelling the tax assessment levied for the year 1927, on

30 property of Blair Academy, situated in the Township of Blairstown, County of Warren and State of New Jersey," and to open said proceedings for re-hearing on behalf of the prosecutor, be cancelled, set aside and for nothing holden, for the following reasons:

40 1. The order of the State Board of Taxes and Assessments dated February 14, 1928, denying the motion of the prosecutor to be made a party to the proceedings entitled "In the Matter of

Reasons.

the Application of the Township of Blairstown from the action of the Warren County Board of Taxation in cancelling the tax assessment levied for the year 1927, on property of Blair Academy, situated in the Township of Blairstown, County of Warren and State of New Jersey," and for leave to have a re-hearing on behalf of the prosecutor, is illegal and improper because the prosecutor has a part ownership in the property assessed for taxation for 1927, by the Taxing District of the Township of Blairstown, and is entitled to claim an exemption from such taxation on behalf of the said property so assessed, because the prosecutor is an association, corporation or institution which owns the property and is incorporated or organized under the laws of this State and is authorized to carry out the purposes on account of which the exemption is claimed, within the meaning of Chapter 221, of the Laws of 1925, section 203, paragraph 4.

2. The order of the State Board of Taxes and Assessments dated February 14, 1928, denying the application of the prosecutor to be made a party to the proceedings entitled "In the Matter of the Application of the Township of Blairstown from the action of the Warren County Board of Taxation in cancelling the tax assessment levied for the year 1927, on property of Blair Academy, situated in the Township of Blairstown, County of Warren and State of New Jersey," is illegal and improper because the buildings assessed are actually used for college, school or academic purposes and the lands whereon the buildings are erected and the personal property contained therein, are necessary for the fair enjoyment thereof and are devoted to no other purpose than the last men-

Reasons.

tioned and said lands do not exceed five acres in extent; that the association, corporation or institution using and occupying the same, is not conducted for profit; that the prosecutor is a corporation, association or institution which owns the property in question and is incorporated or organized under the laws of this State and is authorized to carry out the purpose of conducting the school or academy known as "Blair Academy" which occupies the lands assessed. The prosecutor is, therefore, entitled to claim an exemption from taxation under Chapter 221 of the Laws of 1925, section 203, paragraph 4; that the prosecutor has had no opportunity to apply to either the State Board of Taxes and Assessments or the County Board for such exemption, and that the order of the said State Board, therefore, denies to the prosecutor its right to make such claim for exemption from taxation on said lands and buildings thereon and said order is consequently illegal and improper and should be set aside.

3. The said order of the State Board of Taxes and Assessments dated February 14, 1928, denying the motion of the prosecutor to be made a party to the said proceedings entitled "In the Matter of the Application of the Township of Blairstown from the action of the Warren County Board of Taxation in cancelling the tax assessment levied for the year 1927, on property of Blair Academy, situated in the Township of Blairstown, County of Warren and State of New Jersey," is in divers and other respects illegal and improper and unjust and said order should be set aside and for nothing holden.

FRANCIS CHILD,
JEHIEL G. SHIPMAN,
Attorneys of Prosecutor.

Reasons.

Service of the within reasons is hereby acknowledged this 16th day of April, 1928.

EGBERT ROSECRANS,
Attorney for Taxing District of
Township of Blirstown.

EDWARD L. KATZENBACH, 10
Attorney for State Board of
Taxes and Assessments.

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OPINION OF SUPREME COURT.

Filed May 14, 1928.

NEW JERSEY SUPREME COURT.

No. 257, May Term, 1928.

TRUSTEES OF THE PRESBYTERY OF NEWTON, <p style="text-align: center;"><i>Prosecutors,</i></p> <p style="text-align: center;"><i>vs.</i></p> STATE BOARD OF TAXES AND AS- SESSMENT, <i>et als.</i> , <p style="text-align: center;"><i>Defendants.</i></p>	}	<p style="text-align: center;"><i>On</i> <i>Certiorari.</i></p>	10
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Argued May 3, 1928; decided May 14, 1928. 20

Before Justices Minturn, Black and Campbell.

For the prosecutors: Messrs. Francis Child
and Jehiel G. Shipman.

For the defendant Taxing District of the
Township of Blairstown: Egbert Rosecrans,
Esq.

For the defendant State Board of Taxes and
Assessment: Edward L. Katzenbach, Attorney-
General. 30

PER CURIAM:

This is a companion case to No. 256, the pres-
ent May term of the court. The certiorari was
allowed to review an order or judgment of the
State Board of Taxes and Assessment dated
February 14, 1928, denying the application of the
prosecutor, Trustees of the Presbytery of Newton,
to be made a party to certain proceedings pend-
ing before the State Board, *i. e.*, Case No. 256, 40

Opinion of Supreme Court.

as stated above. The application of the prosecutor was denied, on the ground, in substance, that the case had been heard, a conclusion reached and a judgment entered restoring the assessment. The Presbytery failed to file an appeal with the County Board and now, when the case is closed, seeks to assert its claim.

Parties claiming exemption from taxation should act promptly in pursuit of whatever remedy the statute affords. It is no answer to say that someone else not entitled to relief was making the claim. To grant the motion would permit a new party to appear and file an appeal with the State Board, not only out of time, but by a party not before the County Board. It is too late to admit a new party to these proceedings.

With the conclusion reached and the reasons given by the State Board of Taxes and Assessment we agree. The order or judgment of the State Board of Taxes and Assessment is affirmed with costs.

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RULE ON AFFIRMANCE.

NEW JERSEY SUPREME COURT.

TRUSTEES OF THE PRESBYTERY
OF NEWTON,

Prosecutors,

vs.

STATE BOARD OF TAXES AND AS-
SESSMENT AND TAXING DISTRICT
OF THE TOWNSHIP OF BLAIRS-
TOWN IN THE COUNTY OF
WARREN,

Defendants.

10

*On
Certiorari.*

*Rule on
Affirmance.*

This cause having been duly argued at the
May, 1928 term of this court by Francis Child
and Jehiel G. Shipman, of counsel with the
prosecutors, and Edward L. Katzenbach, At-
torney-General, and Egbert Rosecrans, of counsel
with defendants, and the Court having con-
sidered the same and finding no error in the
record or judgment and assessment of the State
Board of Taxes and Assessment;

20

It is, thereupon, ORDERED and ADJUDGED, that
the judgment and assessment of the State Board
of Taxes and Assessment, removed by writ of
certiorari in this cause, be affirmed with costs,
and that the record be remitted to the State
Board of Taxes and Assessment to be pro-
ceeded with in accordance with this judgment and
the practice in such case made and provided.

30

Rule entered, July 5, 1928.

On motion of

EGBERT ROSECRANS,

Attorney for Defendants.

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NOTICE AND GROUNDS OF APPEAL.

Filed July 12, 1928.

NEW JERSEY SUPREME COURT.

10	TRUSTEES OF THE PRESBYTERY OF NEWTON, <div style="text-align: right;"><i>Appellants,</i></div>	}	<i>On</i>
	<i>vs.</i>		<i>Certiorari.</i>
	STATE BOARD OF TAXES AND AS- SESSMENT AND TAXING DISTRICT OF THE TOWNSHIP OF BLAIRS- TOWN IN THE COUNTY OF WARREN, <div style="text-align: right;"><i>Respondents.</i></div>	}	<i>Notice of</i>
20			<i>Appeal and</i>
			<i>Grounds.</i>

To Egbert Rosecrans, attorney for the Taxing District of the Township of Blairstown, and Edward L. Katzenbach, attorney for State Board of Taxes and Assessments, respondents;

30 TAKE NOTICE, that the appellants, Trustees of the Presbytery of Newton, hereby appeal to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause on the following grounds:

1. The judgment of the Supreme Court which affirmed the judgment and assessment of the State Board of Taxes and Assessments in the above-entitled cause, was illegal and improper.
 2. The Supreme Court should have reversed the judgment of the State Board of Taxes and Assessments in the above-entitled case; whereas,
- 40

Notice and Grounds of Appeal.

the Supreme Court illegally and improperly affirmed said judgment.

3. The judgment of the Supreme Court in the above-entitled cause, affirming the judgment of the State Board of Taxes and Assessments, is illegal and improper because it denied the application of the appellants to be made a party to the proceedings held before the State Board of Taxes and Assessments, by the Board of Trustees and Managers of Blair Academy, and for hearing on behalf of the appellants herein in said proceedings. 10

4. The judgment of the Supreme Court in the above-entitled cause, affirming the judgment of the State Board of Taxes and Assessments, is illegal and improper because said judgment holds that the lands and buildings assessed by the Taxing District of the Township of Blirstown, the respondent herein, are not entitled to claim exemption as owners of the said lands and buildings so assessed, under Section 203, Sub-division 4, of Chapter 221 of the Laws of 1925. 20

5. The judgment of the Supreme Court in the above-entitled cause, affirming the judgment of the State Board of Taxes and Assessments, is in divers other respects illegal and improper and should be reversed. 30

FRANCIS CHILD,
JEHIEL G. SHIPMAN,
Attorneys for the Appellants.

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1020

Notice and Grounds of Appeal.

Service of the within notice of appeal is hereby acknowledged this 7th day of July, 1928.

EGBERT ROSECRANS,
Attorney for Respondent, The Taxing District of the Township of Blairstown.

10

Service of the within notice of appeal is hereby acknowledged this 10th day of July, 1928.

EDWARD L. KATZENBACH,
Attorney for State Board of Taxes and Assessments.

20

30

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101 OCT. 1. 1928

102 OCT. 1. 1928

New Jersey Court of Errors and Appeals

BOARD OF TRUSTEES AND BOARD OF
MANAGERS OF BLAIR ACADEMY
and BLAIR ACADEMY,

Prosecutors-Appellants,

vs.

STATE BOARD OF TAXES AND AS-
SESSMENT AND TAXING DIS-
TRICT OF THE TOWNSHIP OF
BLAIRSTOWN in the County of
Warren,

Defendants-Respondents.

On Appeal
from Supreme
Court.

TRUSTEES OF THE PRESBYTERY OF
NEWTON,

Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND AS-
SESSMENT AND THE TAXING DIS-
TRICT OF THE TOWNSHIP OF
BLAIRSTOWN in the County of
Warren,

Defendants-Respondents.

On Appeal
from Supreme
Court.

BRIEF FOR DEFENDANTS-RE- SPONDENTS.

STATEMENT.

These two cases arise out of the same tax levy for the year 1927. The appellants seek reversal

of the Supreme Court judgment affirming the State Board of Taxes and Assessment in sustaining a levy on the property of Blair Academy. After a full hearing and after judgment was rendered on January 10, 1928, the Presbytery of Newton sought by petition filed February 14, 1928, to have the State Board "open the proceedings for rehearing on its behalf" (p. 6, l. 25). The opinions of the State Board (cases, p. 9) and of the Supreme Court succinctly and logically set forth the reasons why the tax was sustained and why the tardy petition of the Presbytery was denied.

POINT I.

The grounds of appeal are irregular.

There is no ground of appeal in this court in either case stating that the Supreme Court erred in giving judgment for the respondent instead of for the appellants for one or more of the reasons filed in the Supreme Court and brought up with the record.

Diamond Mills Paper Co. v. Leonard
Ice Co., 95 N. J. L. 540, 543.

State v. Verona, 93 N. J. L. 389.

For this reason the appeal should be dismissed.

POINT II.

Blair Academy is not incorporated or organized under the law.

“Provided further that the foregoing exemptions shall apply *only* where the association, corporation or institution *claiming the exemption* owns the property in question and is incorporated or organized *under the laws of the state* and authorized to carry out the purposes on account of which such exemption is claimed.”

Sub. 4 of Par. 4 of Tax Act.

It is admitted that neither Blair Academy nor its trustees or manager are incorporated. But by an ingenious argument they contend now, for the first time, that they are “organized.” The Act provides that they must be organized under the laws of this state and authorized *by the laws of the state* to carry out the purpose for which the exemption is claimed. An organization pursuant to the authorization of an individual does not meet the requirements of the strictly to be construed, Tax Act.

POINT III.

The application of the Presbytery of Newton came too late.

The Presbytery took no appeal to the County Board. Its first appearance was by petition to the State Board filed February 14, 1928 (C. B., p. 8), more than a month after the judgment in the main case.

Appeals shall be taken to the County Board on or before June 15, and appeals to the State Board on or before October 1.

To grant the petition would in effect have been to admit an appeal which came too late.

There is no power vested in the State Board to hear original appeals.

Kenilworth v. State Board, 78 N. J. L. 302, 305.

Appeals must be taken within the statutory time.

Acquackanonk Water Co. v. Passaic Bd., 88 N. J. L. 555.

Jersey City v. State Board, 70 N. J. L. 159.

The case book does not set forth the articles of incorporation of the Presbytery. But even if they be considered as in the record, they show no grant of power to conduct this school. The Act (3 Comp. Stat. 4339) merely empowers such incorporated Presbytery to hold lands, etc., granted to it "for the promotion of its religious and charitable objects" (Sec. 3). Nowhere are such objects specifically mentioned and it would require a stretch of imagination to include in such general terms the operation of a school. Nor does the Presbytery "own the property in question." The title is in the "Board of Trustees of Blair Academy" and the Presbytery has the power to fill vacancies. The Presbytery has neither legal nor equitable title to the lands.

POINT IV.

The institution is not in any other way entitled to exemption.

The facts in this case are practically parallel with those in *Cartaret Academy v. State Board*, 102 N. J. L. 525.

Reading the testimony of Dr. Sharpe, Headmaster, we find that in the last fiscal year the loans were reduced by \$19,000.00, besides the expenditure of about \$40,000.00 for a new building (East Hall). This money was taken from the general fund of the school and represents earnings. Besides, for several years past new buildings were added and repairs made out of this general fund. Certainly the capital account has been increased. Teachers are paid the same as in schools of similar standing and the tuition fees are no lower. Does this not all tend to show that the school is operated for profit and that the charges are fixed with the intention of yielding a surplus over the actual cost?

This school operates a public laundry, ice business and summer conferences. Does this comply with the Act which provides that the property shall be "devoted to the purposes above mentioned and to no other purpose?"

POINT V.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

EGBERT ROSECRANS,

Of counsel with the Taxing District of the Township of Blairstown in the County of Warren.

ARTICLE 1

The institution is not to be dissolved or altered in any manner without the consent of the majority of the members.

The laws of the State shall be observed in all the proceedings of the institution.

The members shall be elected annually on the first day of January.

The members shall be elected by ballot, and the election shall be held on the first day of January.

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New Jersey Court of Errors and Appeals

TRUSTEES OF THE PRESBYTERY OF
NEWTON,
Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND
ASSESSMENTS AND THE TAXING
DISTRICT OF THE TOWNSHIP OF
BLAIRSTOWN, of the County of
Warren,
Defendants-Respondents.

*On Appeal
from the
Supreme
Court.*

BRIEF FOR PROSECUTOR-APPELLANT.

This case is a companion case to the case of Trustees of Blair Academy against State Board of Taxes and Assessments.

After the State Board had reversed the judgment of the Warren County Board and reinstated the assessment against Blair Academy, the appellant here applied to the State Board to be made a party to the proceedings and filed a petition for this purpose. The State Board denied the application and the appellant was granted a writ of certiorari to review the denial of the motion (memorandum of the State Board, p. 9). The writ was argued before the Supreme Court, which affirmed the order of the State Board (see Opinion, p. 21). The Supreme Court decided the motion on the same grounds as the State Board, that is, because the case had already been heard and a conclusion reached and a judgment entered reinstating the assessment before the appellant applied to be made a party. The language of its opinion (p. 2), is the same

as that of the State Board (p. 10, par. 3). This is the only reason given by the opinion of the Supreme Court, namely, that it was too late for the prosecutor to be allowed to be made a party as it would amount to permitting an appeal after the time for the appeal had expired.

We differ with the Supreme Court.

The petition of the appellant, filed with the State Board, sets out quite fully the grounds upon which the appellant applied to be admitted as a party for the Tax Board, and we cannot do better than refer the Court to the petition. The interest which the appellant has in the property assessed is fully set forth in a brief filed by Blair Academy, which is argued simultaneously with this case and which quotes at length from the deeds referred to in the petition from John I. Blair and wife, bearing dates, August 24, 1848; April 11, 1870 and May 24, 1889. These deeds were admitted on the arguments before the State Board on the application of the appellant to be made a party, therefore, we will not repeat these quotations from these deeds, but refer the Court to the reference to the deeds in the Blair Academy brief, and to the deeds themselves as executed (Blair Academy Case, pp. 116-133). The purpose being to show that the appellant has an equitable ownership in the property. In fact, the Board practically admits this to be so in its memorandum.

Parties are always entitled to be admitted in proceedings at any stage of the proceedings, even in the Court of Errors and Appeals.

Section 8 of the Practice Act of 1912 (Sheen, Sec. 268) says, "Where a person, not a party, has an interest or title which the judgment will

affect, the Court, on his application, shall direct him to be made a party."

While this act relates to practice in the Supreme Court and Circuit Courts, it seems to us that it would be equally available to practice before the Tax Board which sits as a court, and whose judgments are reviewable by this court.

It is not the contention of the appellant that it is the absolute owner of the property assessed, and that the assessment should have been made against appellant as the owner; but we do say that appellant is the equitable owner.

We argued in the other case that Blair Academy is an institution organized by means of trust deeds and is composed of trustees named in the deeds and their successors, and the present appellant, the Presbytery of Newton, which has the equitable title to the lands and buildings thereon, and is *cestui que* trust and has the management and control of the school; it has the authority to appoint the Board of Managers which has the active management of the school, and to appoint its successors, and it confirms the acts of the Board of Managers in its conduct of managing and carrying on the school. As such, the appellant is an equitable owner of the lands and buildings and, therefore, is entitled to participate in any proceedings which affect the property in any way, and particularly in tax proceedings which affect the financial position of the school.

It is for this reason that we apply to be made a party.

The Board apparently, from the language of its memorandum, thinks that the purpose of the present application of the appellant was this:

The Board had already held that Blair Academy was not an institution organized under the laws of this State and authorized to carry out the purposes for which the exemption was claimed. The appellant, on the other hand, is a corporation, organized under the laws of New Jersey, therefore, the Board evidently thought this appellant was trying to be made a party so that it can qualify as being entitled to claim exemption under the statute as a corporation organized under the laws of the State and authorized to carry out the purpose of conducting the school.

While this is one of the purposes of the appellant in applying to be made a party, it was not by any means the sole or principal purpose.

We fully agree with the arguments in the Academy case, that the school as it is now organized is an institution which is entitled to claim the exemption without the aid of the appellant in its corporate capacity. The school can qualify under the statute and does not have to have the present appellant made a party to bolster up its case after judgment had been rendered against it, which seems to be the idea which the Tax Board has.

Our purpose in applying to be made a party at this time was because we have an equitable ownership in the lands and buildings and should be allowed to appear at all proceedings which affect it and this is a proceeding which most vitally does affect the property.

The property was assessed in the name of Blair Academy, naturally Blair Academy and the Board of Trustees took the appeal to the County Board.

Suppose the appellant had been made a party, what would have been the effect? It would require the State Board to decide whether the Presbytery as an equitable owner, and being a corporation, had any better standing to claim the exemption than Blair Academy.

The State Board considered further than the Supreme Court and said that, "Even though the appellant here was made a party it would be of no avail under the authority granted by its charter it was not authorized to conduct the school," (p. 10, ll. 30-40). As a matter of fact, the Presbytery conducted the school under the authority of the trust long before it was incorporated, from 1848 to 1875. It was not incorporated until 1875, under Chapter 363, of the Laws of 1872, and its charter follows the language of the statute. We think that the language of the statute is broad enough to conduct a school, it says: "Taking, acquiring, receiving, having and holding for charitable and religious purposes by gift, devise, bequest, grant or purchase any lands, tenements, legacies, donations, moneys, goods and chattels now held for the benefit of or which hath been or may hereafter be given, devised, bequeathed, sold or granted to said corporation or said Presbytery for the promotion of its religious and charitable objects * * * and to make and adopt all necessary by-laws, rules and regulations necessary and proper for the control and management of the affairs and carry into effect the objects of said corporation." However, the Newton Presbytery derived its authority to manage and control the school from the trusts contained in the deeds; for even if its charter specifically gave it the power to carry on a school it could not exer-

cise management over Blair Academy without the authority contained in the trust deeds.

It is by virtue of these trust deeds alone that the Presbytery exercises and has exercised its authority over the conducting of the school all these years.

The limitations, if any, in the charter of the appellant do not restrict its powers to carry out the purposes of the trusts conferred upon it by the trust deeds. The corporation has such powers as may be granted it by its charter and by-law. Here is a power which, if not granted by the charter, is granted by law, that is, under the provisions of the trust deeds.

The appellant is a corporation and as such is entitled to claim the exemption and for that reason it should have been admitted as a party. It is a technical objection to say that it is too late to be brought into the proceedings. It is true that the statutes relating to taxation should be construed strictly, but this is not a question of strict construction under the statute. Very often in cases, parties that have an interest are brought into the proceedings after an appeal has been taken by a party to the suit.

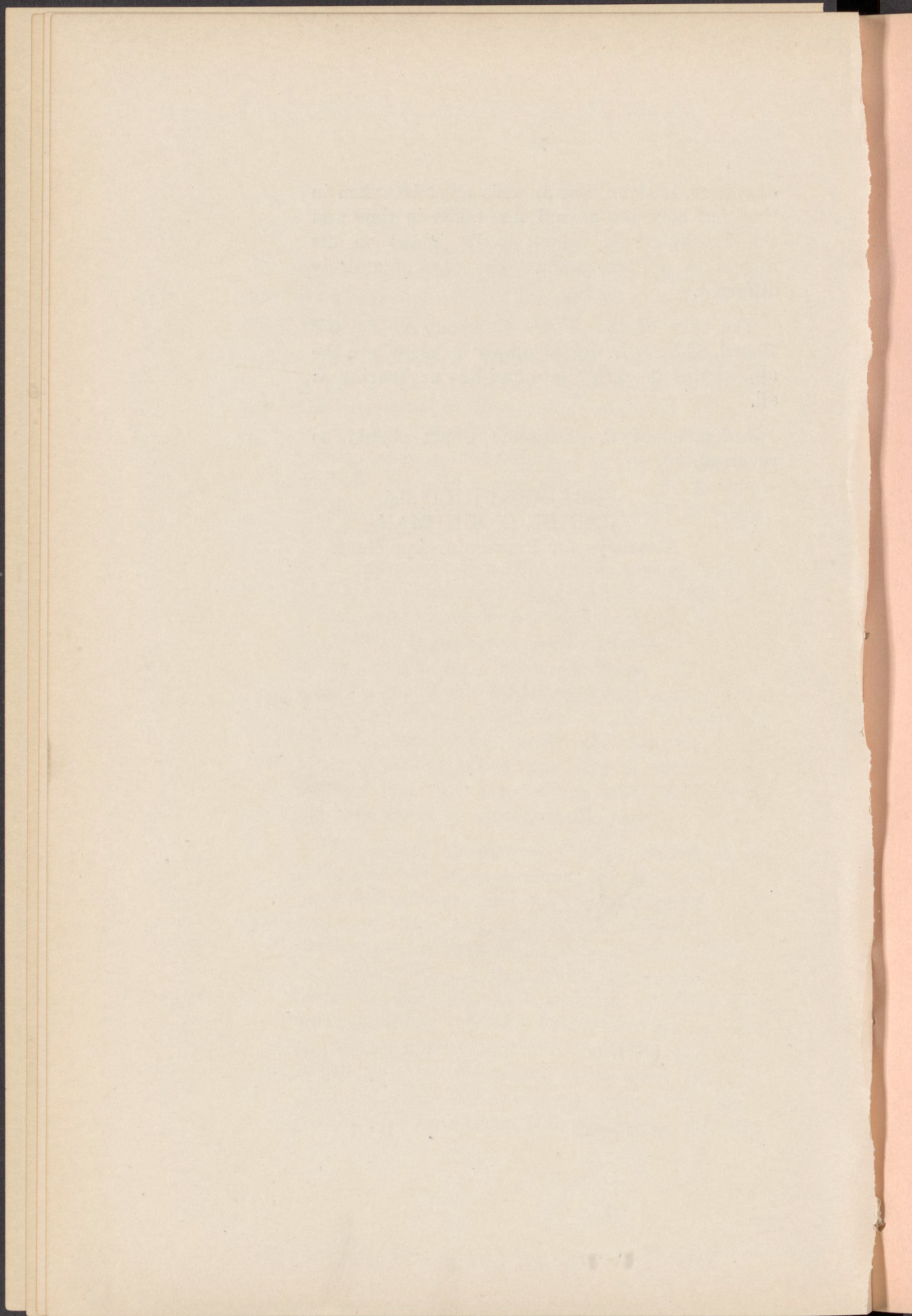
The case of *Kenilworth v. State Board*, 78 N. J. L. 302, has no application, for there the Borough of Kenilworth did not appeal until after the statutory time had expired, in respect to the assessment on certain property of which it was the owner, but the taxpayer's appeal had been taken in time upon an assessment covering different property. If the Presbytery had sought to take an appeal now or be heard by the State Board upon an assessment made upon different property from the property owned by Blair Academy, it would have no standing, as the rule,

of course, is clear that appeals must be taken in time but here the appeal was taken in time and the Presbytery is asking to be joined on the appeal as a part owner. The case is entirely different.

The case of the *Water Company v. Passaic Board*, 88 N. J. L. 555, is simply a case where the appeal was taken too late and has no bearing at all.

Judgment of the Supreme Court should be reversed.

FRANCIS CHILD and
JEHIEL G. SHIPMAN,
Attorneys for Prosecutor-Appellant.



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