

WRIT OF CERTIORARI.

Filed October 5, 1917.

The State of New Jersey to the State
SEAL. Board of Taxes and Assessments and Sisters of Charity of St. Elizabeth: We,
being willing for certain reasons to be certified of
a certain judgment rendered by the State Board of
Taxes and Assessments on an appeal filed with said Board by Sisters of Charity of St. Elizabeth from
the assessment of property situate in the Borough
of Chatham, County of Morris, for the year 1916,
do command you that you send, under your hand
and seal, to our Justices of our Supreme Court of
Judicature at Trenton on the eleventh day of Oc-
tober next, said judgment, the facts submitted to
the said Board and the ground of its determination
thereon together with all things touching and con-
cerning the same, as fully and completely as they
remain before you, together with this writ, that we
may cause further to be done thereon what of right
we shall see fit to be done.

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Witness, William S. Gummere, Chief Justice of
our Supreme Court at Trenton, the 24th day of
September, nineteen hundred and seventeen.

WILLIAM C. GEBHARDT,

Clerk.

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ERNEST L. QUACKENBUSH,

Attorney.

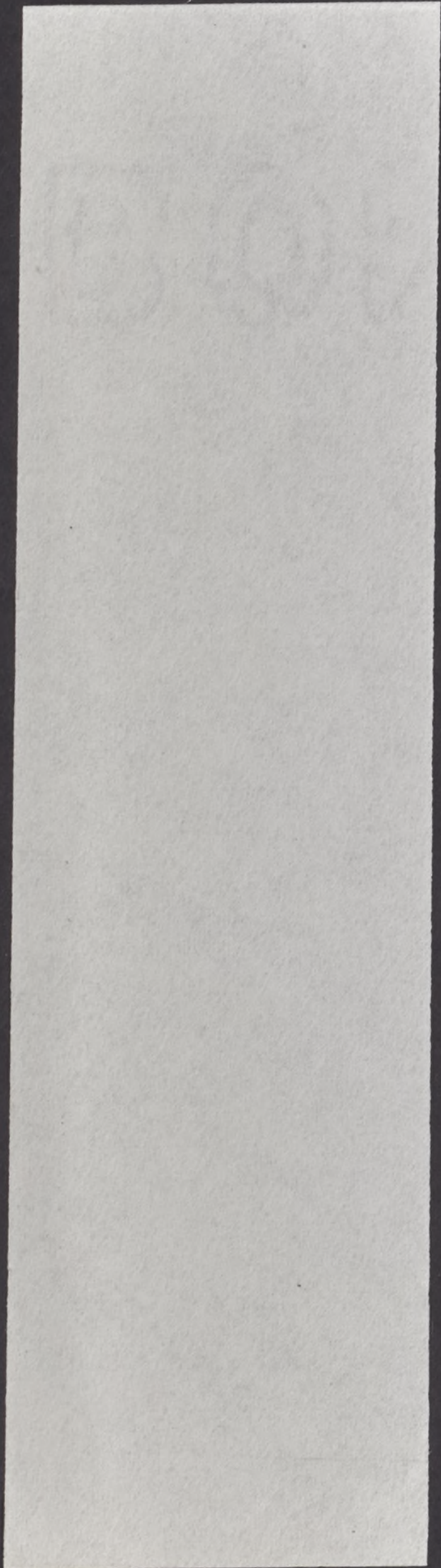
Endorsed: This writ is allowed. Let it be
sealed.

C. W. PARKER,

J. S. C.

Dated September 22, 1917.

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RETURN.

Filed October 5, 1917.

NEW JERSEY SUPREME COURT.

10	BOROUGH OF CHATHAM, a Municipal Corporation, <i>Prosecutor,</i> <i>vs.</i> THE STATE BOARD OF TAXES AND ASSESSMENTS, AND SISTERS OF CHARITY OF ST. ELIZABETH, <i>Respondents.</i>	<i>On</i> <i>Certiorari</i>
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20 The State Board of Taxes and Assessment doth herewith send to the Supreme Court of the State of New Jersey the petition, memorandum, judgment and proceedings in the matter of the appeal of Sisters of Charity of Saint Elizabeth, from the assessment of property located in the Borough of Chatham, County of Morris, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

STATE BOARD OF TAXES
 (Seal.) AND ASSESSMENT.

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By FRANK D. SCHROTH,
Secretary.

In the matter of the application
of SISTERS OF CHARITY OF ST.
ELIZABETH for the reduction
of the tax assessment for the
year 1916 on property situate
in the Borough of Chatham,
County of Morris and State of
New Jersey.

Petition.

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To the State Board of Taxes and Assessment:

Your petitioner, Sisters of Charity of St. Elizabeth, residing at (P. O. address) Chatham, N. J., in the County of Morris and State of New Jersey, respectfully shows that they are the owner of certain property situate in the taxing district of Chatham, County of Morris, consisting of House and Plot. The property is entirely and exclusively used by the sisters of Charity of St. Elizabeth for Religious and Charitable purposes, and known as Page 55, Line 15 and Line 16—4 lots and one House, together with Personal Property.

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That said property has been assessed for the purpose of taxation for the year 1916 at a valuation of Land, \$1,100; Improvement, \$2,500; Personal, \$100; Total, \$3,700, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value.

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

Your petitioner has, therefore, not paid the taxes so levied for the year 1916, and prays that the said assessment of Land, \$1,100; Improvement, \$2,500;

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Personal, \$100; Total, \$3,700, for the year 1916, be reduced to the true value of the property, to wit: Cancelled. Total, \$ Exempt.

SISTERS OF CHARITY
OF ST. ELIZABETH.

By ANDREW J. BRANNAGAN,
Agent.

10 Dated March 21st, 1917.

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

20 Andrew J. Brannagan, 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.

ANDREW J. BRANNAGAN.

Sworn and subscribed before me
this 21st day of March, 1917.

30 JOS. P. McLEAN,
Commissioner of Deeds
for New Jersey.

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

40 Andrew J. Brannagan, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on W. S. Angell

(clerk) of Borough of Chatham (name of taxing district), personally, this 30th day of March, 1917.

ANDREW J. BRANNAGAN.

Sworn and subscribed before me
this 30th day of March, 1917.

JOS. P. McLEAN,
Commissioner of Deeds
for New Jersey.

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

Andrew J. Brannagan, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on J. C. White (Secretary) of the Morris County Board of Taxation, personally, this 29th day of March, 1917.

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ANDREW J. BRANNAGAN.

Sworn and subscribed before me
this 29th day of March, 1917.

JOS. P. McLEAN,
Commissioner of Deeds
for New Jersey.

Endorsed:

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done the said complainant by the assessment of certain property for taxation for the year 1916, located at Borough of Chatham in the County of Morris, consisting of a house and plot known as Page 55, Line 15 and Line 16—4 lots and one house, together with personal property, 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 Andrew J. Brannagan, Agent, for the complainant, and Ernest L. Quackenbush for the Borough of Chatham, and after considering the same, it is on this nineteenth day of June, nineteen hundred and seventeen, at a session of the State Board of Taxes and Assessment, Ordered, Adjudged and Decreed, under and by virtue of Chapter 67 of the Laws of 1905, and Chapter 244 of the Laws of 1915, that the assessment of \$3,700, being \$1,100 on land, \$2,500 on improvements, and \$100 on personal property, be cancelled.

And it is further Ordered, that this order be certified to the Collector or Receiver of Taxes of Borough of Chatham, County of Morris.

....., President.

Geo. T. Bouton
Frank B. Jess
Isaac Barber

.....
State Board of Taxes and Assessment. 30

Attest:

FRANK D. SCHROTH,
Secretary.

Endorsed:

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

	<p style="text-align: center;">In re Appeal of SISTERS OF CHAR- ITY OF ST. ELIZABETH <i>vs.</i> BOROUGH OF CHATHAM, COUNTY OF MORRIS, for the year 1916.</p>
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JUDGMENT.

Decided and filed June 19, 1917.

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

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STATE BOARD OF TAXES AND
ASSESSMENT.

	<p style="text-align: center;">SISTERS OF CHARITY OF ST. ELIZA- BETH <i>vs.</i> BOROUGH OF CHATHAM.</p>
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Memorandum by Mr. Jess.

The assessment brought up by this appeal was levied by the Borough of Chatham, in the County of Morris, against the land, building and personal property owned by the Sisters of Charity of St. Elizabeth and situate in the Borough. The assess-

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ment was divided as follows: Land, \$1,100; Im-

provements, \$2,500; Personal Property, \$100;
Total, \$3,700.

The Appellant seeks to have the entire assessment cancelled on the ground that the property assessed is exempt from taxation.

Section 3, subdivision 4 of the General Tax Act, exempts from taxation, "All buildings actually used for colleges, schools, academies, seminaries, * * *"

The building in question is a frame dwelling house, erected on a plot of land 150 feet in front by 300 feet in depth. This property was acquired by the Sisters of Charity of St. Elizabeth in 1906. The building is used as a place of residence for the Sisters who teach in the parochial school adjoining. The only other use of the building is for the religious devotions of the teachers who occupy it. As a part of these devotions, Mass is celebrated in the building and to this service the general public is admitted.

The property would seem to be entitled to immunity from taxation by virtue of that section of the tax law cited above. The authority for this conclusion is found in the case of *State vs. Ross*, 24 N. J. L., page 497. In that case it was held that the dwelling houses erected by the College of New Jersey for the accommodation of the professors and steward were exempted from taxation by the exemption in the act of 1851, which exempted all colleges, schoolhouses, academies or seminaries of learning and the lands whereupon the same were erected. The language of the exempting clause applicable to the case under consideration is almost precisely the same as that in the act of 1851.

The assessment should, therefore, be cancelled.

FRANK B. JESS.

Endorsed:

SISTERS OF CHARITY OF ST. ELIZABETH
 vs.
 CHATHAM BOROUGH.

Memorandum by Mr. Jess.

Filed June 19, 1917.

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MINUTES.

STATE HOUSE, TRENTON, NEW JERSEY,
 Tuesday, April 10, 1917.

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

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

* * * * *

20 The Board took up for consideration the proposed schedule of hearings throughout the State for the ensuing two months, and ordered the list approved as follows:

* * * * *

Thursday, April 19: Morristown, to hear Morris County appeals.

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COURT HOUSE, MORRISTOWN, NEW JERSEY,
 Thursday, April 19, 1917.

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Mr. Jess, Mr. Bouton and Dr. Barber were present on the above date at 10:30 A. M. to hear appeals from Morris County, referred to them for hearing.

The following calendar of appeals was called:

* * * * *

4. *Sisters of Charity of Saint Elizabeth vs. Borough of Chatham.*

40 Case heard, Mr. Andrew J. Brannagan appearing as agent for the petitioners, and Mr. Ernest L.

Quackenbush appearing for the respondent. The testimony of Andrew J. Brannagan was heard for the petitioners. Decision reserved.

STATE HOUSE, TRENTON, NEW JERSEY,
Tuesday, June 19, 1917.

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

Present, Mr. Bouton, Mr. Jess, Dr. Barber, and Mr. Gentieu. Mr. Bouton was elected President pro tem. 10

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The Board took up the consideration of undecided appeals, and ordered judgments entered as follows:

* * * * *

Sisters of Charity of Saint Elizabeth vs. Borough of Chatham. 20

In this case the Board ordered that the assessment of \$3,700, being \$1,100 on land, \$2,500 on improvements and \$100 on personalty, levied for the year 1916 on a house and plot, page 55, line 15 and line 16—4 lots and one house, together with personal property, be cancelled. A memorandum was filed by Mr. Jess, setting forth the grounds of the Board's conclusions in this case.

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DOCKET.

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Sisters of Charity of St.
Elizabeth

Petitioner,
vs.

Borough of Chatham
County of Morris

Respondent. 40

Petr's Atty. Andrew J.
Brannagan.

Respdt's Atty.

Assessment of 1916.

Property: House and
plot, consisting of 4 lots
and one house, together
with personal property,
page 55, lines 15 & 16.

Amount, \$3,700

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L. 1,100 Judgement,
B. 2,500 Assessment
P. 100 cancelled.

1917

March 30 Petition filed.

April 10 Hearing fixed for April 19 at Morris-
town and notice sent.

“ 19 Case heard.

June 19 Memorandum filed and judgment en-
tered.

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STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

30 I, Frank D. Schroth, Secretary of the State Board
of Taxes and Assessment, do hereby certify that
the foregoing are true copies of the petition, memo-
randum, judgment and proceedings in the matter
of the appeal of Sisters of Charity of Saint Eliza-
beth, from the assessment of property located in
the Borough of Chatham, County of Morris, for the
year 1916, as the same are taken from and com-
pared with the original, filed in the office of the
State Board of Taxes and Assessment, on the thir-
tieth day of March and other dates, A. D. 1917,
40 and now remaining on file and of record therein.

In Testimony Whereof, I have here-
SEAL. unto set my hand and affixed the official
seal of the Board, at Trenton, this sec-
ond day of October, A. D. 1917.

FRANK D. SCHROTH,
Secretary.

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REASONS.

Filed October 11, 1917.

SUPREME COURT OF NEW JERSEY.

BOROUGH OF CHATHAM, a Munic-
ipal corporation,

Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT AND SISTERS OF
CHARITY OF ST. ELIZABETH,

Respondents.

*On
Certiorari.*

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Reasons.

And now comes the prosecutor in the above en-
titled cause and assigns the following reasons in
support of the reversal of the judgment of the
State Board of Taxes and Assessment, namely:

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1. Because the said assessment, set aside by the
aforesaid judgment, was in all respects valid and
made according to law.

2. Because the building assessed herein was not
actually used as a college, school, academy or sem-
inary.

3. Because the said building was not used for
religious purposes.

4. Because the said building was not used for
charitable purposes.

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5. Because the parochial school, itself exempted from taxation, in which the residents of this building teach, is owned otherwise than by respondent Sisters of Charity of St. Elizabeth.

6. Because all of the land concerned in the assessment and covered by the said judgment was not necessary to the fair use and enjoyment of the said building.

7. Because in the year 1916, part of the land was vacant land used for no purpose whatever.

8. Because the said judgment is in all respects illegal, erroneous and contrary to law, and should be set aside and for nothing holden.

ERNEST L. QUACKENBUSH,
Attorney for Prosecutor.

Dated Newark, N. J., October 10, 1917.

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RULE TO TAKE DEPOSITIONS.

Filed October 11, 1917.

SUPREME COURT OF NEW JERSEY.

BOROUGH OF CHATHAM, a Municipal corporation,

Prosecutor,

vs.

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THE STATE BOARD OF TAXES AND ASSESSMENT AND SISTERS OF CHARITY OF ST. ELIZABETH,
Respondents.

*On
Certiorari.*

*Rule to
Take
Depositions.*

Application being made for leave to take depositions to be used in the argument of the above stated cause, it is on this 9th day of October, 1917,

Ordered that the said prosecutor and defendants have leave to take depositions before a Supreme

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Court Commissioner, to be used in the said argument, upon giving the notice provided by law and the rules of this court.

Enter.

C. W. PARKER, J. S. C.

SUPREME COURT OF NEW JERSEY.

BOROUGH OF CHATHAM, a Municipal corporation, <i>Prosecutor,</i> <i>vs.</i> THE STATE BOARD OF TAXES AND ASSESSMENTS, and SISTERS OF CHARITY OF ST. ELIZABETH, <i>Respondents.</i>	}	On <i>Certiorari.</i> <i>Notice.</i>	10 20
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To John W. Westcott and Treacy & Milton, Attorneys of Respondents.

SIRS: Please take notice that pursuant to order granted by Hon. Charles W. Parker, Justice of the Supreme Court, depositions in behalf of the Prosecutor in the above entitled cause will be taken before Nicholas W. Bindseil, Esq., a Supreme Court Commissioner, at his office, Prudential Building, 763 Broad street, Newark, N. J., on Wednesday, October 24, 1917, at four o'clock in the afternoon.

Yours respectfully,
ERNEST L. QUACKENBUSH,
Attorney for Prosecutor.

Endorsed.

Service of the within notice is hereby acknowledged this day of October, 1917.

TREACY & MILTON,
Attys for Sisters of St. Elizabeth.

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NEW JERSEY SUPREME COURT.

Depositions

Filed November 13, 1917.

10	BOROUGH OF CHATHAM, a Municipal corporation, <i>Prosecutor,</i> <i>vs.</i> THE STATE BOARD OF TAXES AND ASSESSMENTS, and SISTERS OF CHARITY OF ST. ELIZABETH, <i>Respondents.</i>	}	<i>On Certiorari.</i> <i>Depositions.</i>
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Depositions taken in the above entitled cause, pursuant to notice hereto annexed, before Nicholas W. Bindseil, Esq., a Supreme Court Commissioner, at his office, Prudential Building, Newark, New Jersey, on Thursday, November 1, 1917, at 2 P. M., said hearing having been adjourned by consent from October 24, 1917, at 4 P. M.

Appearances:

Mr. Ernest L. Quackenbush for Prosecutor.

Mr. Benjamin Treacy, of Treacy & Milton, for Respondent Sisters of Charity of St. Elizabeth.

It is stipulated and agreed by and between the attorneys for the respective parties, that the depositions may be taken stenographically by the Commissioner and afterwards reduced to typewriting, the signatures of the witnesses to their said depositions being waived.

WALTER V. SAYRE sworn for Prosecutor.
 Direct examination by Mr. Quackenbush.

Q. You are the assessor of the Borough of Chatham. A. Yes, sir.

Q. And have you with you your assessor's book?

A. I have.

Q. Will you turn to that and find what assessment, if any, was made against property in the borough standing in the name of the Sisters of Charity of St. Elizabeth? A. I have an assessment on Oliver street of a property \$500, real estate, one lot; \$2,500 for house; \$100 personal; another parcel, consisting of three lots, assessed at \$600.

Q. Are you familiar with this property, Mr. Sayre? A. I am. 10

Q. Can you tell me in detail just the basis of that assessment and just what property it covers?

A. The first tract is a lot of about 100 feet on which there is a frame dwelling.

Q. How far does it extend in the rear. A. Through to Chatham street; from Oliver to Chatham. The other tract consists of three lots of about 50 feet each, running from Oliver to Chatham, adjacent to the other property. 20

Q. By 50 feet each, you mean 50 feet frontage on Oliver street? A. Yes, more or less.

Q. How do you say these properties are assessed, as what kind of properties? A. One property is assessed, with a separate lot, at \$500, on which there is a dwelling assessed at \$2,500.

Q. And what is the other property assessed at? A. The other is assessed as three separate lots.

Q. What kind of lots? A. Where there are no dwellings the description reads just "lots." 30

Q. Do you know as a matter of fact what kind of lots; are they occupied or vacant? A. They are vacant lots.

Q. Mr. Sayre, do you know for what purpose the house is used? A. It is a matter of common report—

Mr. Treacy: You are asked if you know.

A. It is used as a dwelling, and I have seen many times the Sisters—we know them as Sisters of Charity, who are teachers in the school which is 40

next to that building—I have seen them there and I have always understood that they made it their home.

Mr. Treacy: I object to that, and ask that the statement “I have always understood,” from there on be stricken out.

A. (Continuing)—I might say that I know, as I know many things.

10 Mr. Treacy: I object to anything this witness says, except upon his personal knowledge.

Q. Mr. Sayre, you referred to a school; what school is this to which you referred? A. It is a school known as the Parochial School at Chatham.

Q. Have you any records in your books of this school? A. Yes, I have.

Q. Will you turn to them, please, and read what you have there, just as it appears in your book?

20 A. All the assessment to the Catholic Church or just to the school?

Q. Whatever your record shows in regard to the church. A. I have as non-taxable property in Chatham the church property on Washington avenue, on which there is the church; the school is on the same property, Washington avenue and Oliver street, opposite the parsonage.

30 Q. Can you tell us approximately what amount of land they cover, and just where it is located, leaving out the parsonage? A. The church and school occupy the entire frontage on Washington street between Oliver and Chatham street?

Mr. Treacy: Have you got the dimensions?

Witness: I haven't them here.

Q. How much of a frontage on Oliver street? A. About 150 feet.

40 Q. And is that school assessed on property belonging to St. Patrick's Church, the school to which you referred when you spoke about the school in which the Sisters are teachers? A. It is.

Cross-examination by Mr. Treacy:

Q. The church and school and the Sisters' home are all on the same square of property? A. They are not all on the same property.

Q. They are all on the same square, the same block? A. The church is on Washington street.

Q. Can't you answer that question Yes or No? A. What do you mean by "block"?

Q. Don't you know what a block means? You are an assessor; you know what a city block is; they are all in the one block? A. They are. 10

Q. How far is the Sisters' house from the church, will you say? A. 150 to 200 feet.

Q. And from the school? A. 350 or 400 feet.

Q. You are referring to the front of the house or the rear of the house? A. The rear.

Q. There is no property belonging to anybody else between the Sisters' house, which is the property that is the subject of controversy here, and the church and school property? A. There is not. 20

Q. Will you please give me a description again of the two assessments that you have made; I understood you made two separate assessments against the property of the Sisters? A. One is a house lot on which there is an assessment of \$500.

Q. Can you give me the dimensions? A. I have no description in this book.

Q. I would like to know where you got what you call the house lot there? A. Well, there is a lot which the house occupies. 30

Q. What is the width of that? A. About 100 feet.

Q. Is it about 100; when you made those assessments, you must have made them according to some dimensions; you didn't reach up in the air and say, "We will assess about 100 feet," did you? A. I made the assessment because of my intimate knowledge of the property.

Q. But you must have assessed some specific number of feet; you couldn't assess more or less; 40

do I understand you to say you assessed a plot more or less than 100 feet? A. Yes.

Q. The plot which you call the house lot is how wide in the front? A. About 100 feet.

Q. When I say in front, I mean on Oliver street; what is the total width on Oliver street of all the property owned by the Sisters? A. There are three other lots.

10 Q. What is the total width? A. I haven't the figures.

Q. What is the width of each lot? A. In Chatham, in our town, there is nothing meant by a lot; one lot might be 100 feet; other lots might be 25 feet; there are lots in that location that are only 25 feet.

Q. Why do you call these three lots instead of one lot? A. Because they are so mapped.

Q. You haven't brought a map with you? A. No, sir.

20 Mr. Treacy: I object to the testimony of this witness, and ask that it be stricken out—that part of it which states that this property was assessed as one lot with a house on it and three separate lots; this witness showing that he has no personal knowledge of what the lots are or their dimensions; and also, for the reason that the official map of the Borough of Chatham is the best evidence.

30 Q. How did you arrive at a valuation of this property?

Mr. Quackenbush: I object to this, in view of the fact that the amount of the assessment is not under consideration here, and no proceeding was taken before the State Board questioning the amount of the assessment.

40 Q. Will you please state over again just the amounts of the assessments on what you call the house plot and then on the other plots? A. The land value of the house plot is \$500. Do you want the value of the house?

Depositions. Walter V. Sayre—cross, redirect, recross 21

Q. Yes. A. \$2,500; personal, \$100; three lots valued at \$600.

Q. That is the total valuation? A. Yes.

Q. The three lots that you assessed at \$600 are those lying east of the Sisters' house? A. Yes.

Q. And running through from Oliver street to Chatham street? A. Yes.

Re-direct examination by Mr. Quackenbush:

Q. Is there any official tax map for the Borough of Chatham? A. There is not. 10

Q. Are you personally familiar with this property? A. I am.

Q. How long have you lived in Chatham? A. Forty-three years.

Q. You stated, I believe, that the property which you have assessed as the house property, had about 100 foot frontage? A. Yes, sir.

Q. And that the rest of it, I think you testified, was about 150 feet? A. Three lots of about 50 feet each. 20

Re cross-examination by Mr. Treacy.

Q. As a matter of fact, Mr. Sayre, the three lots which you assessed as separate lots and as having a frontage of 50 feet each, have not a frontage of 50 feet each? A. My testimony was they were about that.

Q. As a matter of fact, the frontage of the combined three lots which you assessed separately is 118.11 feet? A. That seems to be correct, according to the map of the New York Homestead Association. 30

Q. There is no way in which you can testify as to dimensions, of your own knowledge? A. No, sir.

Re-direct examination by Mr. Quackenbush:

Q. On that same map has this property a larger or less frontage than on Oliver street? A. Larger, the frontage on Chatham street. 40

Q. How much is that frontage, according to that map? A. 187 feet and a fraction.

Re-cross examination by Mr. Treacy:

Q. As a matter of fact these lots on the rear are separate lots from the front lots, aren't they, on this map which you refer to? A. They are so mapped.

10 Q. Chatham street is an unimproved street? A. No, it is an improved street.

Q. What kind of pavement has it? A. None; it is the same as Oliver street.

Q. Is there any sidewalk on it? A. Yes.

Q. Will you testify that there is a sidewalk in the rear of this property, on Chatham street? A. Not on Chatham street.

Q. And the street is not paved? A. No streets are paved in that location.

20 Q. Nor macadamized? A. They are not, in that location, any of them; this is a country town.

Q. That frontage on Oliver street is the most valuable part of the property? A. It is.

Q. Oliver street being the better street? A. That is a matter of opinion; Chatham street is a good street.

Prosecutor rests.

30 Mr. Treacy: I offer in evidence the charter of the Respondent Sisters of Charity of St. Elizabeth, being an Act of the Legislature of the State of New Jersey, entitled "An Act to Incorporate the Sisters of Charity of St. Elizabeth," passed February 20, 1873, of which the following is a true copy:

40 1. Be it enacted, by the Senate and General Assembly of the State of New Jersey, that Catharine Mehegan, Margaret Ann O'Neil, Antoinette F. Biell, Sarah Agnes Farrel, Ellen Holland, and such other sisters of the religious society called the Sisters of Charity of Saint

Elizabeth, as shall hereafter become sisters of said society in Madison, New Jersey, are hereby constituted a body corporate by the name aforesaid, to have perpetual succession and to have a common seal.

2. And be it enacted, that the essential object of the said corporation shall be the instruction and education of youth, the erection and maintenance of a hospital for the sick and destitute, and affording and rendering assistance to the poor and destitute.

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3. And be it enacted, that the said corporation shall have power to pass by-laws and regulations for the government of the corporation, for the admission of more members, and for the managing, directing, and transacting the affairs of the corporation, as may be deemed necessary and proper; provided, that such by-laws and regulations shall not be repugnant to the constitution and laws of the United States or of this state.

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4. And be it enacted, that the said corporation may receive by gift or devise, and may hold and purchase real and personal estate for their use and benefit.

5. And be it enacted, that the said corporation may possess all the powers and privileges, and be subject to all the restrictions and liabilities contained in the act entitled "An Act concerning corporations," passed and approved February fourteenth, one thousand eight hundred and forty-six, and various supplements thereto.

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6. And be it enacted, that this act shall take effect immediately.

Approved March 11, 1873."

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FATHER RICHARD A. MAHONEY, sworn for Respondent Sisters of Charity of St. Elizabeth.

Direct examination by Mr. Treacy.

Q. Father, you reside in Chatham? A. Yes, sir.

Q. And you are by occupation a clergyman of the Roman Catholic Church? A. Yes.

Q. You are the pastor of St. Patrick's Church located on a plot of ground in the block bounded by
10 Oliver street on the south, Chatham street on the north and Washington avenue on the west? A. Yes, sir.

Q. Will you please tell what buildings are located on the plot of ground fronting on Washington avenue and on Oliver street? A. The church and school are on Washington avenue.

Q. The church and school front on Washington avenue and occupy the whole front of the block between Oliver and Chatham street? A. Yes.

Q. And the church and school property runs
20 east to the property of the Sisters of St. Elizabeth, which is the subject of the assessment in this case? A. Yes.

Q. What is the Sisters' house occupied for? A. Well, it is occupied by the Sisters as a living house and for religious services.

Q. And these religious services, when they take place, the public are invited to attend, or even when the services are not taking place?

30 Mr. Quackenbush: I object to this unless it refers to the period covered by this particular assessment. There is no testimony to show that the father was in charge of that parish at that time.

A. This building is used for religious services, and the sacrifice of the mass is celebrated there, and the public are invited to attend; and it is also used for class room.

Q. Class room for what? A. For the children—
40 singing classes for the children of all the school.

Q. How many children are there in the school?

A. Fifty-nine.

Q. These sisters teach in the Parochial School?

A. Yes.

Q. Which is on the adjoining plot of ground?

A. Yes.

Q. There isn't any tuition fee charged to any of those pupils? A. No.

Q. It is known as a free school? A. Yes.

Q. Do you know anything about the purpose and activities of the Sisters of St. Elizabeth? A. Charitable purposes. 10

Mr. Quackenbush: I move that that be stricken out; that answer is not responsive to the question given.

Q. What are those purposes?

Mr. Quackenbush: I object unless he gives the source of his information.

A. Principally for their own keep. 20

Q. The charitable purposes are what? A. For their own keep, and if they can help anybody out in charity——

Q. Does this association or body of Sisters conduct orphanages or hospitals? A. Yes.

Q. Throughout the State of New Jersey? A. Yes.

Q. Is it among their duties to visit the sick? A. Yes.

Mr. Quackenbush: I object to this question as leading, like all the rest of them were. 30

Q. Do they in the Borough of Chatham carry out some of those purposes? A. Yes.

Q. The Sisters who occupy this property, do they rent out any part of it? A. None.

Q. Do they derive any revenue from it in any way?

Mr. Quackenbush: I object, unless he gives the source of his information.

A. None. 40

Q. It was testified that the assessment was made in two plots, one with the house on it and one adjoining the house; what is the plot adjoining the house used for? A. For garden purposes.

Q. What is raised in the garden, vegetables? A. Vegetables of different kinds.

Q. What use is made of those vegetables? A. For the keep of the Sisters, their own use.

Q. And anything that is left over are devoted to
10 what purposes? A I suppose they give them away.

Mr. Quackenbush: I move that that be stricken out, what he supposes.

Witness: I will say Yes; will that aid you?

Q. They are used for charitable purposes? A. Yes, charitable purposes.

Q. How near is the Sisters' house to the church? A. I don't know that I could give you an answer to that; about 25 feet.

Q. How near is the rear entrance of the Sisters'
20 house to the school? A. About 50 feet.

Q. So that it practically adjoins the school property? A. Yes.

Q. The school is conducted by the church? A. By the church.

Q. And the Sisters who occupy the house and plot of ground that has been assessed teach the pupils in the school? A. Yes.

Q. If the church were to close that school up to-
30 morrow, it would mean that the Borough of Chat- ham would have to make arrangements for all those pupils?

Mr. Quackenbush: I object to that ques- tion.

A. Yes.

Q. And would have to pay teachers to teach those pupils? A. Yes.

Q. And now the church and the Sisters save the Borough all that expense of additional school facil-
40 ities and the compensation of additional school teachers for that purpose?

Mr. Quackenbush: I object to that: first, on the ground that it is leading; and second, on the ground that it is a mere supposition which this witness isn't qualified to testify to.

A. Yes.

Cross-examination by Mr. Quackenbush:

Q. Father, when did you come to Chatham? A. A year ago last May.

Q. The principal primary object of this house is as a place of residence for the Sisters, isn't it? 10

A. I don't know whether you can say that or not.

Q. As a matter of fact, the Sisters do live there?

A. Yes.

Q. And you have testified something about its being used as a place of public worship? A. Yes.

Q. I believe you testified before the State Board that this occasion was when the church chanced to be too cold for that purpose? A. Yes, and not only then, but other times. 20

Q. Did you not testify before the State Board that the time when this was used for religious purposes, for the saying of mass to which the public was invited, was in the cold weather, when the church was too cold for use for that purpose? A. I say not only in the cold weather, but—

Q. Didn't you say that at that time? A. Yes.

Q. And therefore you have no personal knowledge that that practice was carried out in the winter of 1916; by that I mean from January to March, 1916, a year ago this last winter? A. It has been carried on a year ago this last winter; these services have been carried on there for years, not only since I came. 30

Q. Have you any personal knowledge of this custom existing in the winter of 1915-1916? A. You mean mass?

Q. Yes. A. No; I couldn't if I wasn't there.

Mr. Quackenbush: I move now that all the testimony that this witness has given in regard 40

to this particular subject be stricken out, because it is shown that he had no personal knowledge of the matter.

Q. All you have testified has had to do with the management of the parish since you were appointed priest there, isn't that the fact? A. I have to say what I know about myself, but I know of others; I know that this thing has been going on for years.

Q. Someone told you? A. Some priest that was there.

Q. You don't know it of your firsthand knowledge? A. No, when I wasn't there to see it.

Q. Was that all you testified to, what you actually know from your own personal knowledge since you were assigned there? A. That is all anybody could give; I couldn't give more than that if I wasn't there.

Q. About these singing classes; you didn't testify to its being used for singing classes before the State Board? A. No.

Q. That is something recent? A. Yes.

Q. That is since you have come there, because of the overflow of the school? A. Yes, since I came to Chatham.

Q. You came to Chatham in May, 1916? A. Yes.

Q. Do you remember what date? A. I think it was the twenty-first.

Mr. Quackenbush: I move now that all of the testimony which this witness has given in regard to the practice of giving singing lessons to the pupils in this home of the Sisters be stricken out.

Q. Father, in regard to the use of that adjoining plot to which Mr. Treacy has referred, your testimony in regard to that also applies to the period since you have been there, does it not? A. Yes.

Mr. Quackenbush: I move that all of that testimony be stricken out.

Re-direct examination by Mr. Treacy:

Q. Where did you reside before coming to Chatham? A. In Summit.

Q. You were long connected with the Catholic Church in Summit? A. Yes.

Q. Did you at that time know of the situation that existed with reference to this property in Chatham? A. Yes.

Q. Did you know when you were in Summit that mass was said in the Sisters' house in Chatham? A. Yes. 10

Q. So that, although you came in May, 1916, to Chatham, you knew prior to May, 1916, that mass was conducted in the Sisters' house, religious services were given there? A. Yes, sir.

Q. And you knew that during the winter of 1915-1916? A. Yes.

Q. So that when you testified in answer to Mr. Quackenbush, that you referred to the time since you have been pastor of the Chatham church, you did not mean to imply that you had no personal knowledge of what religious services were conducted in the Sisters' house prior to your coming there? 20

Mr. Quackenbush: I object on the ground that it is leading.

A. No.

Re-cross-examination by Mr. Quackenbush: 30

Q. How did you know about this condition?

A. From Father Hampton and Father Maher.

Q. They told you this? A. They told me this.

Q. And that was your source of information? A. Yes.

Re-direct examination by Mr. Treacy:

Q. Had you ever been there to the Sisters' house yourself? A. Not before I went there. Father Hampton used to come to visit down to 40

Summit, and when priests visit, they generally talk over these different things.

Mr. Quackenbush: I make a motion now to strike out all of this last testimony, which is purely hearsay.

ANDREW J. BRANNAGAN, sworn for Respondent Sisters of Charity of St. Elizabeth.

10 Direct examination by Mr. Treacy:

Q. Where do you reside? A. I live in Chatham and claim my residence in Jersey City.

Q. How long have you been living in Chatham? A. Going on five years.

Q. You were living there, of course, during the year 1915-1916, for which the assessment in this case was made? A. Yes, sir.

Q. Do you know, Mr. Brannagan, for what purposes the Sisters' house on the plot which is the subject of the assessment here is used? A. It is used for a home for the Sisters and also for religious purposes; mass is said there pretty near 20 three, four or five times a week.

Q. What purposes was it used for during the year for which the assessment in question was made? A. The same purposes.

Q. Do you know whether there were any instructions of children's classes in the Sisters' house? A. No.

30 Q. You don't know? A. No, not classes. You mean prior to 1916?

Q. Yes. Were there any singing lessons given? A. Not to my knowledge.

Q. You don't know? A. No.

Q. During the year for which this assessment was made, the Sisters who occupied that house were teachers in the Parochial School? A. Yes, sir.

40 Q. That is what is commonly called a free school? A. Yes.

Depositions—Andrew J. Brannagan—direct, cross 31

Q. The plot adjoining the Sisters' house, what purposes was that used for? A. Used for garden purposes, growing vegetables.

Q. For the use of what? A. The Sisters.

Q. That property was used for that purpose during the year 1915 1916 when this assessment was made? A. Yes, every year; I have seen it used ever since I have lived up there.

Q. It has been used in that way since you have been living there during the last five years? A. 10
Yes.

Q. That property has always been used in the same way? A. Just the same way as it is at the present time.

Q. Will you describe how the church and school and Sisters' house are located? A. The church and school are on Washington avenue, comprising the entire frontage extending from Oliver street to Chatham street. The Sisters' house is about 25 feet south of the church property; it practically 20
adjoins the church property; there may be 25 or 30 feet from the house to the church property.

Q. You mean east, not south? A. East.

Q. How far is the school from the Sisters' house? A. About 50 feet; it is all one big plot, no fence.

Cross-examination by Mr. Quackenbush:

Q. You testified before the State Board in the matter of this appeal, didn't you? A. Yes. 30

Q. At that time you testified that the Sisters' house was used for public masses on occasions when the church was too cold for that purpose? A. Not on occasions; I said during all the fall and winter months.

Q. When the church was too cold? A. No, sir; all the fall and winter, the entire fall and winter, excepting during the summer months.

Q. Isn't the church primarily for that purpose? A. Yes. 40

Q. And it was there? A. The church might have been there.

Q. Why was that done, do you know? A. No, I cannot say; it has always been the custom up there since I lived there; the same custom existed under Father Maher and followed by his successor, Father Hampton, and followed by the present rector up there.

Q. Was there any particular reason why the
10 church should not be used? A. I don't know.

Q. You don't know anything about that? A. No.

Q. Would the church and Sisters' house both be used at the same time? A. When they had mass, they would have it in the Sisters' house; they couldn't have mass in the church at the same time.

Q. What masses are held in the Sisters' house?
A. Every day in the week.

Q. For the public? A. Yes.

Q. On those days is the church also open for
20 mass? A. I don't know; I cannot testify to that; I don't know; I wouldn't think so.

Q. How did you know that there was to be mass in the Sisters' house? A. The priest every Sunday on the altar announces the masses that will be held in the Sisters' house during the week, and they are generally every day in the week.

Q. But the church is available for that purpose, isn't it? A. I don't know.

Q. You don't know anything about the church?
30 A. Yes.

Q. You seem to be very familiar? A. I know where the church is, but whether it is available for week days or not I don't know.

Q. It could be made available? A. I don't know; I am not the builder.

Q. Is the church heated? A. Yes, sir.

Q. As a matter of fact, hasn't this been one of the improvements or reforms that Father Ma-
40 honey has emphasized since he came there? A.

No, sir, that condition that exists there has existed since I moved there, five years last September.

Q. Why did you limit your testimony before the State Board to the statement which was made there, that it was celebrated in the Sisters' house when the church was too cold for that purpose?

Mr. Treacy: He says he didn't limit it.

A. I cannot recall at the present time.

Q. In regard to that adjoining plot, you don't mean to say, do you, that that entire plot was used as a garden? A. The same as exists there since 1912—ever since I have lived there; the same thing exists there as when I moved there. 10

Q. At the present time is every bit of vacant lot used as a garden? A. There may be the small northerly end.

Q. What about the Chatham street frontage?

A. Part of that the public walk through for a short cut.

Q. It is not used for any purpose? A. No. 20

Q. As a matter of fact, taking all of the rear of what we have described as the three lots, none of that is used as a garden? A. How much of the rear?

Q. The Chatham street frontage on the rear of the three lots, the rear of the part of the property which has been described as the vacant lots by the assessor, which on the map referred to are 14, 15 and 16? A. About 75 feet, I suppose, is not used for it. 30

Q. What about the Oliver street frontage? A. It is all used on Oliver street.

Q. You mean to testify that every bit of these vacant lots, including the 75 feet frontage, from there back for a distance in the rear of 150 feet, every bit of that was used for garden purposes, during the summer of 1915 and the summer of 1916?

Mr. Treacy: He didn't say that.

A. The most easterly lot is where the people 40

walk through; that street is supposed to exist, but it has never been cut through. They use it practically for a passageway. All except that easterly plot is used for garden purposes.

Q. Then your testimony is to the effect that a frontage of 90 feet, with a depth of 150 feet, has been in the summer of 1915 and the summer of 1916, entirely used for garden purposes? A. Yes.

10 Q. Referring to the frontage on Chatham street, with a depth of approximately 145 feet, how much of that was used; that part of the frontage on Chatham street being immediately in the rear of that which you have just testified? A. I should think 50 feet immediately in the rear, fronting on Oliver street, was used for garden purposes.

Q. Do you mean the entire frontage? A. The southerly 50 feet of that was used.

20 Q. Making a total garden plot during the summer of 1915 and 1916, of 200 feet by 90 feet? A. Yes.

Q. The rest of it was vacant property? A. Yes.

Q. Used for no purpose so far as the use of the house was concerned? A. Yes.

Q. What do you mean by a "free school"? A. Where there is no tuition charged, and books and stationery are furnished to the pupils.

Re-direct examination by Mr. Treacy:

30 Q. All the plot adjoining the Sisters' house and which is known as lots 2 and 3 on the map that has been referred to, and part of lots 15, 14, 13 and 12, do I understand is used for a garden? A. No.

Q. Lots 4 and 5 are the house plot? A. Yes.

Q. Lots 2 and 3 are the garden plot? A. Yes.

Q. They front on Oliver street? A. Yes.

Q. And the garden also extends over to the lots in the rear, Numbers 14 and 15? A. Yes.

40 Q. Which front on Chatham street? A. Yes.

Q. And occupied about 50 feet of those two lots? A. I should judge so.

Q. Does the garden also extend over in the rear of the Sisters' house? A. No, sir.

Q. Lots 13 and 14? A. No, sir.

Q. The school is located on what lots? A. The school practically would be on lots 9, 10 and 11.

Q. And that part of the lots 12, 13, 14, 15 and 16 located on Chatham street is used for what purpose in connection with the school? A. It is used as a playground; I have seen boys of the school here playing ball, and also winter sports. 10

Mr. Quackenbush: You don't know why the Sisters' house is used for a place of public mass instead of the church on the occasions when it is so used? I believe you so testified.

Witness: No.

FRANCIS A. MURPHY, sworn for Respondent Sisters of Charity of St. Elizabeth. 20

Direct examination by Mr. Treacy:

Q. What is your occupation? A. Sexton of St. Patrick's Church in Chatham.

Q. Which adjoins the property of the Sisters of Charity in Chatham? A. Yes.

Q. You know of the location of the Sisters' house? A. Yes.

Q. How long have you been sexton of St. Patrick's Church? A. About thirteen years. 30

Q. During all that time how has that property been occupied, the Sisters' house? A. There has been mass there all the year round, summer and winter.

Q. Religious services all the year round were held there? A. Yes.

Q. And the Sisters occupy the house as living quarters? A. Yes.

Q. It doesn't produce any revenue? 40

Mr. Quackenbush: Objected to as leading.

A. No.

Q. Does it produce any revenue? A. No, sir.

Q. What has the plot next to the Sisters' house been used for? A. Garden purposes.

Q. And the produce of the garden was used for what purpose? A. For their own benefit, the Sisters' benefit.

Q. These Sisters teach in the Parochial School there adjoining that property? A. Yes.

Q. The public are educated free of charge in that school? A. Yes, sir.

Q. The condition that you have testified to existed during the years 1915 and 1916? A. Yes, sir.

Q. Do you know anything about the charitable work that the Sisters do in the parish? A. No.

Cross-examination by Mr. Quackenbush:

Q. You say mass is said all the year round in the Sisters' home? A. Yes.

Q. Who attend those masses? A. Everybody is welcome to come there.

Q. Who as a rule attend the masses in the Sisters' house? A. Do you want me to name the persons?

Q. Any one class? A. No, anybody that wants to go.

Q. As a matter of fact, don't they say masses in the Sisters' house when weather conditions are likely to be so the church would be very cold? A. Sometimes they do, but they say them in the summer just the same.

Q. Has it ever been explained to you by the priest in charge why they say it in the Sisters' home? A. Sometimes in the Sisters' house in the cold weather and sometimes in the church.

Q. What about the summer? A. They are used back and forth; it is all used together.

Q. The church is very close to the Sisters' home? A. Yes.

Q. And it is simply, so far as you know, a matter of convenience that they have it in the Sisters' home? A. The Sisters always have their chapel.

Q. They always have their chapel? A. Yes.

Q. This is public? A. It is public there, too

Q. The church is always available there? A. Yes.

Q. And it could be held in the church every time instead of the Sisters' house, except for cold weather or something like that, when the church isn't comfortable? A. In every Sisters' house there is always a chapel. 10

Q. The church is always available there? A. Yes.

Q. And so far as you know, it would be a little more trouble, but all these masses could be held in the church as well, as far as the church is concerned; you think so, don't you? A. They have their chapel there and they are supposed to have it there. 20

Q. But the public could go to the church just as well, as far as you know? A. They could go to either place.

Q. It is simply a little less trouble to have it in the Sisters' home than it is to have it in the church? A. Yes.

Q. You know that, as janitor, the church is heated? A. Yes. 30

Q. So you do have services there in the winter time? A. Yes.

Q. The Sisters' home hasn't been there as long as you have been janitor? A. Not right there, no, sir.

Q. That was acquired by the Sisters after you became janitor? A. Yes.

Q. Did you keep this garden for the Sisters? A. Yes. 40

Q. Don't take the summer of 1916, but go back of the summer of 1916, just how much of that lot adjoining the Sisters' house was used for a garden? A. I cannot say just how much was used.

Q. About how much? A. I cannot tell you.

Q. The whole of that plot wasn't used way up to what was expected to be the extension of Lum avenue, was it? A. Not as far as Lum avenue, no.

10 Q. Was it a plot 50x100? A. Probably so.

Q. Not much bigger than that? A. I couldn't say; I don't know just how big it was.

Q. You must know something about distance? A. I think I do, yes, sir.

Q. 50x100, wasn't that about what you made in the ordinary season? A. It might be that or a little more.

20 Q. And in 1917, on account of the high cost of living, you plowed up more than the original plot, didn't you, quite a little more? A. Yes.

Q. And even this year, the whole plot there wasn't plowed up, was it? A. It was plowed up to Oliver street.

Q. Right up to Oliver street? A. Yes.

Q. But in 1916 it wasn't plowed up to Oliver street? A. No.

30 Q. It was a plot right in the middle there? A. Yes.

Q. Quite close to the Sisters' house? A. It ran more toward the easterly end.

Q. You mean it was about in the middle of that plot? A. Yes.

Q. Go back again to the year 1916; this produce was all used, so far as you know, for the Sisters' home? A. Yes.

40 Q. And as far as you know, they used it up in their house? A. Yes.

Re-direct examination by Mr. Treacy:

Q. The garden plot ran from Oliver street, or a point close to Oliver street, north towards Chatham street? A. Yes.

Q. And how much of the lots 15, 14 and 13 did the garden plot occupy in the year 1916? A. The same ground as it does now.

Q. About the same proportion as it does now? A. No, not as much in 1916 as in 1917. 10

Q. Lots 15 and 14 are used for garden purposes? A. Yes.

Q. Is any portion of lots 13 and 12 used for garden purposes? A. That is next to the church?

Q. Yes. A. No, that is the lot the house is on.

Re-cross-examination by Mr. Quackenbush:

Q. In other words, the particular plot, which I believe you have testified, was about 50x100 feet, approximately, ran from a point somewhere back of Oliver street down 100 feet toward Chatham street? A. Yes. 20

Q. And was about 50 feet wide in 1916? A. Yes.

Q. What were the lots immediately back of the Sisters' house, fronting on Chatham street, used for? A. A playground for the school.

Q. And all the rest of the property, excepting the lawn surrounding the Sisters' home, wasn't used for any purpose at all; it was just left to go to waste? A. It is all lawn. 30

Q. Taking out the garden, which you testified, and the lawn in front of the Sisters' house, what was the rest used for? A. There is a barn; the rest is a playground mostly.

Q. It wasn't used for any purpose in connection with the home? A. No.

Q. It was used for purposes in connection with the school? A. Yes. 40

Re-direct examination by Mr. Treacy:

Q. The lots in the rear of the Sisters' house, lots 12 and 13, were used in connection with the Sisters' house? A. As a playground.

Q. Where did the Sisters hang out their clothes and things; didn't they use those lots? A. Yes, that is a lawn back of the house.

10 Re-cross-examination by Mr. Quackenbush:

Q. They hung their clothes further up toward the back of the house? A. It is all lawn there.

Q. That is where the children play? A. Back of that, back of the Sisters' house.

Re-direct examination by Mr. Treacy:

Q. Isn't the barn back of the Sisters' house? A. Yes.

20 Q. And then between the barn and the Sisters' house is where the wash is hung out? A. Yes.

Q. And it is used for a rear yard for the Sisters' house? A. Yes.

Re-cross-examination by Mr. Quackenbush:

Q. And back of that it is used as part of the playground? A. Yes.

Q. How far is the barn in from Chatham street? A. The Sisters' barn?

30 Q. Yes. A. I should imagine about 75 feet.

HUGH A. SHIELDS, sworn for Respondent Sisters of Charity of St. Elizabeth.

Direct examination by Mr. Treacy:

Q. Mr. Shields, you are a resident of Chatham? A. Yes.

Q. You belong to St. Patrick's parish? A. Yes.

40 Q. How long have you been going to that church? A. Going on eleven years.

Q. During all that time what was the practice, if you know, in regard to religious services in the Sisters' house? A. On Sunday the priest would announce from the altar that there would be services in the Sisters' chapel such and such a time in the morning.

Cross-examination by Mr. Quackenbush:

Q. Do you know the reason why it was held over there? A. It might be some of the Sisters' rules, for all I know. 10

Q. So far as you know, those masses could have been held in the church, and you don't know but what it was just a matter of convenience to the priest? A. I don't know why they wasn't.

EDWARD H. LUM, sworn in rebuttal for Prosecutor.

Direct examination by Mr. Quackenbush: 20

Q. You live in Oliver street, Chatham? A. Yes.

Q. And are you familiar with the property there which belongs to the Sisters of Charity of St. Elizabeth? A. Yes.

Q. Did you ever observe that property during the summer of 1916? A. Yes, I passed through it a good many times.

Q. Do you know whether or not on that vacant property to the east of the Sisters' house there was a garden? A. Yes, there was. 30

Q. How large was that garden? A. I should say it was about 50x100 feet, something like that.

Q. And about where was it located? A. It was on the side toward Oliver street, and began, I suppose, perhaps 50 feet from the house, something like that.

Q. And did it run up to Oliver street? A. No, I don't think it did; I think there was grass along the side of the street. 40

Q. Do you know of your own knowledge whether or not the garden was any larger or smaller this year, or the same size, during the year 1917? A. I think it came over to the pear tree; it was larger this year.

Q. Where is that? A. Right alongside of what would be the side of Lum avenue, if it was extended up through the property.

Both sides rest.

10

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

I hereby certify that the foregoing depositions were taken on certiorari, pursuant to notice, before me as Supreme Court Commissioner, at my office, Prudential Building, Newark, New Jersey, on Thursday, November 1, 1917, at 2 P. M., in the presence of Mr. Ernest L. Quackenbush for Prosecutor, and Mr. Benjamin Treacy, of Treacy & Milton, for Respondent Sisters of Charity of St. Elizabeth; that it was stipulated and agreed by and between the attorneys for the respective parties that the depositions should be taken stenographically by me and afterwards reduced to typewriting, the signatures of the witnesses to their said depositions being waived; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the depositions of the witnesses produced before me.

20

30

Dated November 3, 1917.

NICHOLAS W. BINDSEIL,
*Supreme Court Commissioner
of New Jersey.*

40

NEW JERSEY SUPREME COURT.

BOROUGH OF CHATHAM, a
Municipal Corporation,
Prosecutor,

vs.

THE STATE BOARD OF TAXES
AND ASSESSMENTS and SIS-
TERS OF CHARITY OF ST.
ELIZABETH,
Defendants.

On Certiorari.

Order.

10

Application having been made to me in behalf of the above named prosecutor to rule on the objections to testimony and motions to strike out the same, which said testimony was taken before a Supreme Court Commissioner pursuant to order granted by me for use in the above entitled proceeding before the New Jersey Supreme Court, and the matter coming on to be heard in the presence of Ernest L. Quackenbush, of counsel for prosecutor, and Treacy & Milton, of counsel with defendants, and it appearing to the court that a single Justice is, under the circumstances, not authorized to rule upon the said motions; 20

It is, therefore, on this 10th day of November, 1917, 30

Ordered that the said motion be denied and that the determination of the said question be reserved for consideration by this court sitting en banc.

Enter

C. W. PARKER, *J. S. C.*

OPINION.

NEW JERSEY SUPREME COURT.

No. 228. Nov. T., 1917.

10	BOROUGH OF CHATHAM, <i>Prosecutor,</i> <i>vs.</i> SISTERS OF CHARITY OF ST. ELIZA- BETH, <i>Defendant.</i>	}	<i>On</i> <i>Certiorari.</i>
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Submitted Dec. 15, 1917. Decided March 4, 1918.

ON CERTIORARI.

This proceeding is brought to review the judgment of the State Board of Taxes and Assessment, granting exemption from 1916 taxes to property belonging to Sisters of Charity of St. Elizabeth in the Borough of Chatham.

The following memorandum was filed by the Board:

“Memorandum by Mr. Jess.

The assessment brought up by this appeal was levied by the Borough of Chatham, in the County of Morris, against the land, building and personal property owned by the Sisters of Charity of St. Elizabeth and situate in the Borough. The assessment was divided as follows: Land, \$1,100; Improvements, \$2,500; Personal Property, \$100; Total, \$3,700.

The Appellant seeks to have the entire assessment cancelled on the ground that the property assessed is exempt from taxation.

Section 3, subdivision 4 of the General Tax Act exempts from taxation “All buildings actually used for colleges, schools, academies, seminaries, * * *”

The building in question is a frame dwelling house, erected on a plot of land 150 feet in front by 300 feet in depth. This property was acquired by the Sisters of Charity of St. Elizabeth in 1916. The building is used as a place of residence for the Sisters who teach in the parochial school adjoining. The only other use of the building is for the religious devotions of the teachers who occupy it. As a part of these devotions, Mass is celebrated in the building and to this service the general public is admitted. 10

The property would seem to be entitled to immunity from taxation by virtue of that section of the tax law cited above. The authority for this conclusion is found in the case of *State vs. Ross*, 24 N. J. L., page 497. In that case it was held that the dwelling houses erected by the College of New Jersey for the accommodation of the professors and steward were exempted from taxation by the exemption in the act of 1851, which exempted all colleges, school houses, academies or seminaries of learning and the lands whereupon the same were erected. The language of the exempting clause applicable to the case under consideration is almost precisely the same as that in the act of 1851. 20

The assessment should, therefore, be cancelled. Before Justices Garrison, Bergen and Black.

ERNEST L. QUACKENBUSH, Esq.,
For the Prosecutor. 30

TREACY & MILTON, Esqs.,
For the Defendant.

Per Curiam.

The judgment of the State Board of Taxes and Assessments is affirmed for the reasons stated in the memorandum filed by the Board.

RULE FOR JUDGMENT.

Filed May 18, 1918.

NEW JERSEY SUPREME COURT.

 BOROUGH OF CHATHAM, a Municipal Corporation,
Prosecutor,

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vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, AND SISTERS OF CHARITY OF ST. ELIZABETH,

Respondents.

*In
Certiorari.**Rule for
Judgment.*

20 This matter coming on to be heard at the November Term, 1917, of this Court in the presence of Ernest L. Quackenbush, of counsel with the Prosecutor, and Treacy & Milton, of counsel with the Respondents, and the Court having inspected the record and heard the arguments of counsel and being of the opinion that the judgment brought up by the writ of certiorari should be affirmed; it is on this eleventh day of May, Nineteen Hundred and Eighteen,

30 Ordered that the judgment brought up by the writ of certiorari in the above entitled matter be and the same is affirmed and that the writ of certiorari be dismissed with costs.

On motion of

Let this rule be entered.

J. J. BERGEN, *Jus. Sup. Ct.*

NOTICE AND GROUNDS OF APPEAL.

Filed May 18, 1918.

SUPREME COURT OF NEW JERSEY.

BOROUGH OF CHATHAM, a Municipal Corporation,

Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT, AND SISTERS OF CHARITY OF ST. ELIZABETH,

Respondents.

On 10
Certiorari.
Notice
and Grounds
of Appeal.

To John W. Wescott, Attorney General, and Treacy & Milton, Attorneys of Respondents.

Take notice that the Prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, upon the following grounds: 20

1. Because the essential features of the testimony of witness Father Richard A. Maloney were legally objectionable. The Supreme Court erred in failing to strike out these parts of the testimony pursuant to the objections entered before the Commissioner. 30

2. Because the Supreme Court erred in affirming the judgment of the State Board of Taxes and Assessment.

3. Because the building assessed herein was not actually used as a college, school, academy or seminary.

4. Because the said building was not used for religious, charitable, benevolent or hospital pur- 40

poses, or any other purpose outlined in the statute in a sense contemplated by the statute to bring it within the exempted class.

5. Because part of the land concerned in the assessment and covered by the said judgment was not necessary to the fair use and enjoyment of the said building.

10 6. Because the said assessment, set aside by the judgment of the State Board of Taxes and Assessment, which said judgment was affirmed by the Supreme Court, was in all respects valid and made according to law.

7. Because the said judgment of the Supreme Court is in all respects illegal, erroneous and contrary to law, and should be set aside and for nothing holden.

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ERNEST L. QUACKENBUSH,
Attorney for Prosecutor-Appellant.

Dated Newark, N. J., May 14th, 1918.

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NEW JERSEY COURT OF ERRORS AND APPEALS

BOROUGH OF CHATHAM, a Municipal Corporation,

Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENT and SISTERS OF CHARITY OF ST. ELIZABETH.

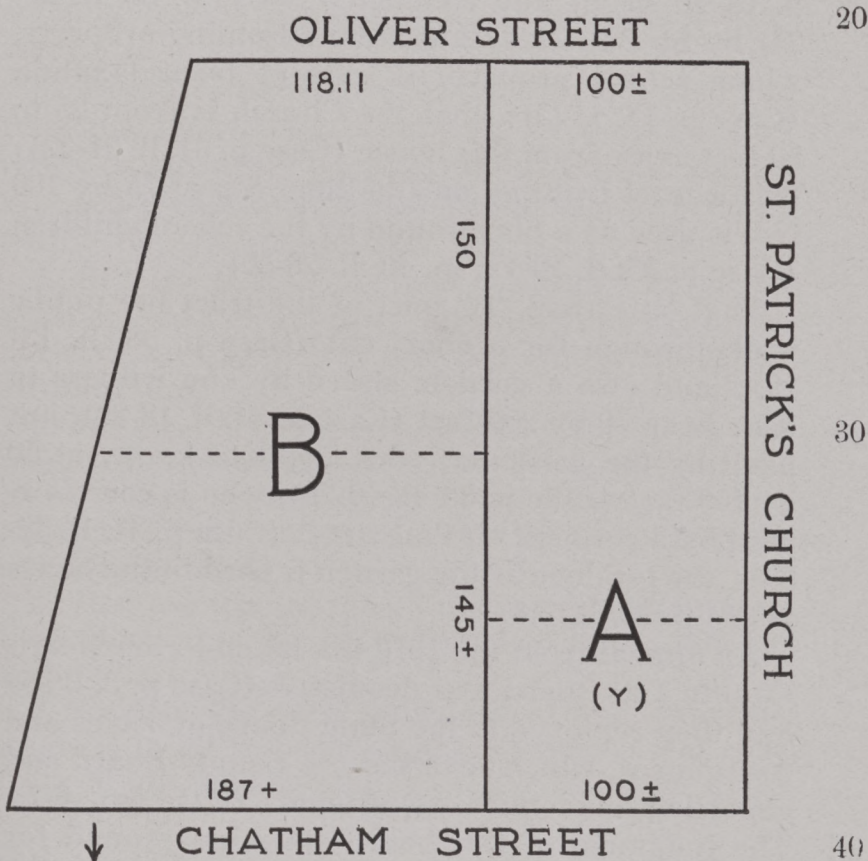
Respondents.

On Appeal.

Brief for Prosecutor-Appellant.

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The Sisters of Charity of St. Elizabeth, respondent, have owned since 1906 (Case p. 9, l. 13) a tract of land in the Borough of Chatham, a sketch of which, designed from the testimony (case p. 19, l. 31; p. 21 l. 30; p. 22, l. 2; p. 33, ll. 34-36; p. 34, l. 10) follows:



The premises, consisting of a house and lot and three vacant lots, were assessed for the year 1916 as follows:

Plot A—Land, \$500.; House, \$2,500.; personal property, \$100.

Plot B—Three lots, \$600. (Case p. 17, ll. 6-10.)

10 The testimony shows parcel A has located there-
on a frame dwelling (Case p. 17, l. 15) owned by
the Sisters of Charity of St. Elizabeth, a corpora-
tion, whose *essential* object, as defined in its char-
ter, is the education of youth, the maintenance of
a hospital and the rendering of assistance to the
poor (Case p. 23, ll. 7-11); and maintained "prin-
cipally for their own keep" (Case p. 25, l. 20);
that this particular building is used by the Sisters
as a living house and for religious services (Case
p. 24, ll. 25-27; p. 30, ll. 25-33; p. 35, ll. 32-39;
p. 36, ll. 20-29); that these Sisters are teachers
in the school (Case p. 18, ll. 37-40) owned (Case
20 p. 18, ll. 25-26) and conducted (Case p. 26, ll. 23-
24) by St. Patrick's Church on adjoining property,
which school property is exempt from taxation
(Case p. 18, l. 22); that the Church is from 25 to
50 feet away from this house (Case p. 31, ll. 21-22);
that a tract fronting on Chatham Street 75 by 100
feet is used as a playground by the school children
(Case p. 35, ll. 10-12; p. 40, ll. 26-30).

30 That on Parcel "B" part of the tract the public
walk through for a short cut (Case p. 33, ll. 18-
19); and also a garden, stated by one witness to
have been 90 by 200 feet (Case p. 34, ll. 18-20), but
fixed by the gardener, who ought to know, at 50
by 100 feet (Case p. 38, ll. 10-20), who is corrobor-
ated by a resident on that street (Case p. 41, ll. 32-
33); the produce of the garden is used in the house
(Case p. 36, ll. 7-8).

40 An appeal from the 1916 tax taken to the Morris
County Tax Board was dismissed (Case p. 3, l. 35)
and then removed to the State Board of Taxes and
Assessment, which reversed the County Board and
cancelled the entire assessment, (Case pp. 6-7).
The judgment of this board states no ground for

such cancellation, but the memorandum filed by Commissioner Jess (Case pp. 8-9) indicates that the grounds of the Board's decision was that the building came within the category of buildings "actually used for colleges, schools, academies, seminaries * * *" upon the authority of State v. Ross, 24 N. J. L. 497. This judgment of the State Board was removed to the Supreme Court by certiorari and there affirmed for the reasons stated in the memorandum filed by the Board (Case p. 45, ll. 34-36). From the judgment of the Supreme Court this appeal is taken. 10

The grounds of appeal served and urged are:

1. Because the essential features of the testimony of witness Father Richard A. Maloney were legally objectionable. The Supreme Court erred in failing to strike out these parts of the testimony pursuant to the objections entered before the Commissioner.

2. Because the building assessed herein was not actually used as a college, school, academy or seminary. 20

3. Because the said building was not used for religious, charitable, benevolent or hospital purposes, or any other purpose outlined in the statute in a sense contemplated by the statute to bring it within the exempted class.

4. Because part of the land concerned in the assessment and covered by the said judgment was not necessary to the fair use and enjoyment of the said building.

5. Because the said assessment, set aside by the judgment of the State Board of Taxes and Assessment, which said judgment was affirmed by the Supreme Court, was in all respects valid and made according to law. 30

6. Because the Supreme Court erred in affirming the judgment of the State Board of Taxes and Assessment.

7. Because the said judgment of the Supreme Court is in all respects illegal, erroneous and contrary to law, and should be set aside and for nothing holden. 40

Is this property in whole or in part exempt from taxation?

The solution of this question here raised for review is to be found in the application of section 3, subdivision 4 of the Tax Act of 1903, as amended by P. L. 1913, p. 570, which reads as follows:

10 "All buildings actually used for colleges, schools, academies, seminaries, associations and corporations organized exclusively for the moral and mental improvement of men and women, or for religious, charitable, benevolent or hospital purposes, or for one or more such purposes, not conducted for profit; also all buildings actually and exclusively used for public libraries, religious worship or for asylums or schools for feeble-minded or idiotic persons and children, and owned by corporations of this State authorized to carry on such charities; the land whereon the same are situated necessary to the fair use and enjoyment thereof, not exceeding five acres in extent for each, the furniture and the personal property used therein * * * shall be exempt under this act."

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The principle which governs the determination of exemptions of this kind is thus defined in *Sisters of Charity v. Cory*, 73 N. J. L. 699, 65 Atl. 500:

30 "A grant of exemption from taxation, being in derogation of the sovereign authority and of common right, must invariably be construed most strictly against the grantee and can never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require."

In order, therefore, to uphold the exemption, respondent here is bound to clearly establish its position as within the purview of the act above cited upon the principle just stated. This the evidence fails to establish.

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I. The Supreme Court erred in failing to strike out parts of the testimony of Father Richard J. Mahoney, which were legally objectionable.

This point, preliminary to the real question involved, is exceedingly important because upon the testimony of this witness respondent depended for the principal evidence as to uses of the property, its relation to St. Patrick's Church and school adjoining and the activities of the respondent sisterhood.

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In the course of his direct examination objection was raised (Case p. 24, ll. 30-34) because it did not appear that the testimony referred to the period covered by the assessment; the examination continued over repeated objections until it developed that this witness came to this parish on May 21, 1916, and that all of his knowledge prior to that date was purely hearsay. Case p. 28, ll. 11-17; p. 29, ll. 31-32.) The law definitely fixes May 20th of each year as the date on which assessments shall be made. State v. Hardin, 34 N. J. L. 79; State v. Town of Union, 36 N. J. L. 300; Brown v. Brown, 72 N. J. Eq. 667, 65 Atl. 739. Hence in the absence of personal knowledge of conditions his testimony respecting the use for religious services (Case p. 24, ll. 35-38), as a class room (Case p. 24, ll. 39-40) and of the uses of the vacant plot adjoining the building (Case p. 26, ll. 14-15), should be stricken out pursuant to motions made to that effect (Case p. 27, l. 39 to p. 28, l. 3; p. 28, ll. 29-40; p. 30, ll. 3-5).

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The testimony of this witness with regard to the activities of the sisterhood is likewise objectionable, both because he fails to show his competency to testify as to the general objects of the order and because he admits no personal knowledge of the particular work being done in Chatham at the particular time the assessment was made.

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II. This property was not, in whole or part, a building actually used for college, school, academy or seminary purposes.

There is not a scintilla of evidence to justify

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such a conclusion. The practice of instruction in singing by reason of lack of room at the school is admitted to have been inaugurated subsequent to the date of the assessment here under review. (Case p. 28, ll. 18-28.) The sole connection with a school is that the teachers reside here who teach in the school located on the adjoining property owned and operated by a church corporation, exempted from taxation. It does not even fall within the decision of *State v. Ross*, 24 N. J. L. 497, cited in the memorandum filed by the State Board. This last mentioned case simply held as exempt from taxation property belonging to Princeton College and used as places of residence for the college professors and steward. In this connection it should be pointed out that the soundness of the principle declared in the Ross case was denied by the Court of Errors and Appeals in *Sisters of Charity v. Cory*, *supra*, when it expressly disapproved of the earlier case of *Sisters of Charity v. Chatham*, 52 N. J. L. 373, 20 Atl. 292, where the Ross doctrine was commended.

To grant exemption for this reason would in effect be a declaration that the property is exempt either because it adjoins the school property or because its residents are teachers in such a school.

III. This property was not used for religious, charitable, benevolent or hospital purposes, or any other purpose outlined in the statute in a sense contemplated by the statute to bring it within the exempted class.

The testimony does show that Masses were said in the building, to which the public were invited. But in spite of persistent urging by counsel on cross-examination, no reason is given for it. The priest gives no reason, witness Brannagan shows a singular lack of knowledge on this point (Case p. 32, ll. 28-40), and respondents' two other witnesses know of no reason unless it were a matter of convenience. (Murphy, Case p. 37, ll. 1-32; Shields, Case p. 41, ll. 10-16.) The Charter (Case pp. 21-22) makes no mention of such a purpose.

Even the reason urged before the State Board, that this house was used when the Church was too cold (Case p. 27, ll. 21-26; p. 33, ll. 3-8) was abandoned here. The Church was very close by and was heated (Case p. 37, ll. 1-2, 29-30) and wasn't so used when the Sisters' house was (Case p. 32) ll. 13-17). Hence no reason appears why this building any more than any other building in the parish should be so used when the Church, organized for that purpose and exempted for that reason, was always available. Under no construction of the exemption act above cited can this building on this ground be brought within its purview. 10

As to the other purposes mentioned in the statute, namely, charitable, benevolent and hospital, there is not a scintilla of evidence to support any claim that this particular property was devoted to any such use.

IV. Even if the building here was entitled to exemption under the statute, it could not carry with it the vacant property adjoining it. 20

It is conceded for the uses of the occupants of the building a tract 100 feet fronting on Oliver Street with a depth of 220 feet, is fairly necessary. The rest of the tract, however, assessed here as three vacant lots and designated on the sketch as B, together with the rear portion of A designated as (Y), with the exception of a plot 50 by 100 on plot B used as a garden, the produce of which is used in the house, are used for no purpose whatever in connection with the building. 30

The testimony is that the plot marked (Y) is used as a playground for children. The most easterly part of lot B is used as a foot path; all the rest is simply not used. The statute exempts "the land whereon the same are situate necessary to the fair use and enjoyment thereof, not exceeding five acres in extent for each."

"The statute creates a double test to be applied for the purpose of determining whether 40

or not a given parcel of land is entitled to exemption from taxation: first, is it the very tract upon which the building was erected * * * and second, if it is the tract upon which the building was erected, then is all of it necessary *for the fair enjoyment of the building?* Lands which do not meet the double test cannot escape taxation." *Sisters of Charity v. Cory, supra.* See also *Nevin v. Krollman*, 38 N. J. L. 574.

Apply this test to the facts established here and the exemption of Plots B and Y must fall except as to the aforementioned garden plot of 50 x 100.

In view of the fact that this exemption was made under a comparatively recent statute (P. L. 1913, p. 570) an examination of the cases interpreting that statute may be of benefit. Two such cases have been decided—*Washington Camp v. Board of Equalization of Taxes*, 87 N. J. L. 53, 93 Atl. 856, by the Supreme Court in 1915, and *Denville Township v. St. Francis Sanitorium*, 89 N. J. L. 293, 98 Atl. 254, by the Court of Errors and Appeals in 1916.

The first mentioned case raised the question as to whether or not a patriotic and benevolent order was entitled to exemption on its building, from part of which revenue was derived. In deciding adversely to such an exemption, the Court in discussing the first part of the section, although inclined to the view that the words "not conducted for profit" applied to the corporation and not to the building, did not find it necessary under the facts as presented, to determine that point, but even if that construction were adopted the Court denied such a right under the circumstances presented.

In the Denville case the Court of Errors and Appeals rejected the Supreme Court's interpretation of that part of the act to this effect:

"By that statute the institutions entitled to exemption are divided into classes * * *

The first class includes *buildings* used for colleges and other institutions of learning, or for the moral and mental improvement of men or women, or for religious, charitable, benevolent or hospital purposes, or for one or more of such purposes, not conducted for profit. The second class is buildings used for public libraries, religious worship, or for asylums or schools for feeble-minded, or idiotic persons and children, and owned by corporations of this State authorized to carry on such charities to which the limitation 'not conducted for profit' does not apply." 10

If we interpolate into this citation the word 'exclusively' as found in the statute, the record here presented shows absolutely no authority for the exemption claimed, whether the same be urged to be within either of the classes above designated.

For all of which reasons it is respectfully submitted that the assessment made by the local assessor in this case was in all respects valid, and his action should be ratified by this Court, to which end the judgment of the Supreme Court should be set aside. 20

Respectfully submitted,

ERNEST L. QUACKENBUSH,
Attorney for and of Counsel with
Prosecutor-Appellant.

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New Jersey Court of Errors and Appeals

BOROUGH OF CHATHAM, <i>Prosecutor-Appellant,</i>	}	On Appeal.	10
<i>vs.</i>			
THE STATE BOARD OF TAXES AND ASSESSMENTS and SISTERS OF CHARITY OF ST. ELIZABETH, <i>Respondents.</i>			

MEMORANDUM FOR RESPONDENT. 20

The prosecutor seeks to overthrow the finding of the State Board of Taxes and Assessments that a building occupied by the respondent, Sisters of Charity of St. Elizabeth and the curtilage thereto are exempt from taxation. The building is a residence. It is assessed at \$2,500, the lot on which it stands is assessed at \$500 and the personalty at \$100. The adjoining plot of 118 feet frontage was assessed at \$600. While the building is primarily a residence the Sisters who occupy it, being a religious body as well as a charitable and educational one, have religious services in one of the rooms to which the public are invited. Singing lessons are also given to some of the children in one of the rooms (Case p. 24, lines 24 to 40). The Sisters' principal occupation is the teaching of children in St. Patrick's parochial free school which immediately adjoins the premises in question, the school house, the church and the Sisters' residence being all within the

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same city block (Case, p. 25, lines 1-10). The Sisters receive no compensation for their services. They are an association or corporation organized under a special act of the Legislature passed February 20, 1873, designated therein as a religious society. The objects for which they were incorporated are "The instruction and education of youth, the erection and maintenance of a hospital for the sick and destitute, and affording and rendering assistance to the poor and destitute" (Case p. 22, line 35 et seq.). They are engaged in the carrying out of these various objects. They not only teach in the free schools but they visit the sick and furnish hospital treatment to them and they care for destitute orphans. They do all these things without pecuniary reward and are now and were at the period covered by the assessment in question engaged in these activities in the Borough of Chatham.

20 The respondent being a religious, charitable and educational association, not conducted for profit, it is entitled by the provisions of Chapter 278 of the Laws of 1913 to exemption from taxation of the building and land upon which the assessment was made.

That act amends section 3, subdivision 4 of the Tax Act so that as amended it reads as follows:

30 All buildings *actually used* for colleges, schools, academies and seminaries (associations and corporations organized exclusively for the moral and mental improvement of men or women, or for religious, charitable, benevolent or hospital purposes, or for one or more such purposes), not conducted for profit; also all buildings actually and exclusively used for public libraries, religious worship or for asylums or schools for feeble-minded or idiotic persons and children, and owned by

40 corporations of this State authorized to carry on such charities; *the land whereon the same are situated necessary to the fair use and employment thereof, not exceeding five acres in extent for*

each; the furniture thereof and personal property used therein, and the endowment or fund held exclusively for the charitable (benevolent or religious purposes) of the corporation owning such buildings; the parsonage and land whereon the same stands to an amount not exceeding five thousand dollars owned by any religious corporation of this State while actually used by the officiating clergyman thereof; also all buildings used exclusively for purposes considered charitable under the common law. 10

If therefore the building which is the subject of the assessment in this case is used (1) as a school or (2) by an association or corporation organized exclusively for the moral and mental improvement of men or women, or for religious, charitable, benevolent or hospital purposes, or for one or more of such purposes, not conducted for profit, it is not taxable. 20

Granting that the question whether or not the teaching of singing constitutes the building a school under the first class of exempt buildings above stated is a debatable one, there can be no question that the building comes within the second class above named for it is used by an association organized exclusively for all the purposes designated, moral, educational, religious, charitable and hospital. 20

So too, the land on which the building is situated and which is necessary to the fair use and enjoyment of the building is exempt. The entire premises being less than five acres, the only question to be decided is whether or not it is all necessary to the fair use and enjoyment of the building. 30

Certainly, the lot on which the building is located is necessary to the fair use and enjoyment of the building for the only part not actually occupied by the building is the lawn or yard, which is used to hang out clothes. 40

The adjoining land also is entitled to exemption. Part of it is used as a garden in which

produce is raised for the support of the Sisters living in the building and the rest of it, that is, the part immediately adjoining the school in which these Sisters teach, is used as a play ground for the children of the school.

10 While the prosecutor now seeks to divide the tract into two plots for assessment purposes the Board of Taxes and Assessments heard the case upon the theory that the plot, including the land
 20 on which the building stands, is an entire one and it decided that the entire premises were entitled to immunity from taxation under the care of *State vs. Ross*, 24 N. J. L. 497. We think this is the proper theory. In the determination of what land is necessary to the use and enjoyment of the building we can see no distinction between the portion used as a yard and the portion used as a garden to supply food for the occupants. Dwelling houses for the accommodation of teachers are, under that decision, exempt. But we also point out, that under the amended subdivision 4 of Section 3 of the tax act as above set forth the property in question, being used by an association organized for religious, charitable and educational purposes is definitely excepted by the express words of the statute from taxation. *Washington Camp v. State Board*, 87 N. J. L. 53, 54. That case holds
 30 that a building actually used by a charitable association not conducted for profit is not taxable. In the present case neither the association nor the building is conducted for profit and the education of children and the caring for the sick, the friendless orphan and the destitute poor bring it within the class exempted by the statute.

Respectfully submitted,

TREACY & MILTON,

Attorneys for Respondent Sisters
 of Charity of St. Elizabeth.

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JOHN MILTON,
 of Counsel.

