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NEW JERSEY

Court of Errors and Appeals

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY, ETC., Prosecutor, Plt'ff in Error, vs. ATLANTIC CITY, Respondent, Def't in Error.	On Error.

Brief for Plaintiff in Error.

The writ of error in this cause is to review the judgment of the Supreme Court dismissing the writ of certiorari sued out by the plaintiff in error to review the assessment made by Atlantic City against property of plaintiff in error for the year eighteen hundred and ninety-nine. Plaintiff in error claims to be and is a charitable corporation, made so by express legislation creating it by the Pamphlet Laws of 1873, page 984, and by reason thereof claims to have its property exempt from taxation by virtue of an act to amend an act entitled "A further supplement to an act entitled 'An act concerning taxes,'" etc. (Pamphlet Laws of 1894, page 354), which act provides, among other things, "and all buildings used exclusively for charitable purposes, with the land whereon the same are erected and

which may be necessary for the fair enjoyment thereof, and the furniture and personal property used therein, etc., shall be exempt from taxation." That the property assessed is within the letter and spirit of the act of 1894 is made clear by the depositions and practically conceded by the municipal authority and by the opinion of the Supreme Court. Such exemption from taxation was refused by the judgment of the Supreme Court upon the ground that as the charter of the corporation limited its right to hold property to the amount of thirty thousand dollars, that the exempting statute should limit the exemption to the value of the land authorized to be held. By a supplement to its charter passed in 1875 (Pamphlet Laws of that year, page 19 of Private Acts), the corporation is authorized to hold land to the amount of one hundred thousand dollars, and by a general act passed in 1890 (Pamphlet Laws, page 46), to which reference is made in the opinion of the Supreme Court, all such corporations may hold real estate not exceeding in value the sum of five hundred thousand dollars. The Supreme Court conceded the right of exemption to plaintiff in error to the amount of five hundred thousand dollars, as provided by the act of 1890, had it not been for section three of that act, which provides "that nothing herein contained shall be construed to exempt the property of said corporation from taxation." The Supreme Court construed this section to prohibit any exemption to plaintiff in error to any amount exceeding the value of the land permitted by it to be held. We urge that there was error in the construction placed upon that section by the Supreme Court. If that section of the act is to be read literally, then no corporation constituted for benevolent and charitable purposes could receive the benefit of the exempting statute. We insist that there should be read into that section the words, "provided, however, said corporation is not otherwise entitled to exemption." It may be that there are corporations constituted for benevolent purposes that would not necessarily be

entitled to the exemption provided by the act of 1894, and that the Legislature, by the act of 1890, had simply decided to prohibit exemption in cases where such corporation was not, by the terms of the exempting statute, entitled to such exemption. If, however, we are wrong in this view, we maintain that the third section of the act of 1890 has been repealed by the act of 1894, at least by implication. That act expressly provides that all of the property of corporations used for charitable purposes, etc., shall be exempt from taxation. This is a later statute than that of 1890, and is clearly inconsistent with the third section of that act. There is no necessary relations between the provision in the charter of plaintiff in error limiting it to a holding capacity of one hundred thousand dollars and its right to exemption. The municipality ought not to be permitted to say that because the corporation may be holding land in value in excess of its charter limitation, that therefore it should not receive the benefit of a statute which by its express terms entitles a corporation to exemption. Exception to such an act on the part of the corporation should be allowed to be taken only by the State by quo warranto proceedings. It is unnecessary to cite authorities to show that our courts have always construed exempting statutes liberally with respect to charitable corporations. The policy of the Legislature and of the courts is to encourage such corporations, and wherever their land and buildings are being utilized solely for the purpose of aiding the needy, they are to be free from taxation. There seems to be no logic in holding that a corporation in whose charter there is no limitation as to holding capacity should have all of its property exempt from taxation, while a like corporation, doing equally as much good, if not more, should be deprived of the taxation simply because by its charter it is limited as to the amount of land it may hold. Such a construction ought not to be placed on the statute of exemption unless forced, and we insist that it is a forced construction that has been

placed upon the statutes by the Supreme Court in the present case. Our insistment is that the only act that has any relevancy to the question at issue is the statute of 1894, which beyond dispute exempts plaintiff in error from taxation for all of its buildings and lands used for charitable purposes. Its act of incorporation shows that it is a corporation created for such purposes, and the depositions demonstrate that the land taxed has been used only for such purposes.

For these reasons the judgment of the Supreme Court should be reversed, the writ of certiorari sustained, and the assessment set aside.

THOMPSON & COLE,
Att'ys Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY, FOR INVALID CHILDREN. Prosecutor, Plaintiff in Error. vs. ATLANTIC CITY, Respondent, Defendant in Error.	On Error.

BRIEF FOR DEFENDANT IN ERROR.

By the judgment brought up by this writ of error, the Supreme Court denied an exemption imposed for taxes by the City of Atlantic City, on lands owned by p'aintiff in error.

The plaintiff in error is a corporation of this State, created for charitable purposes by a special charter (P. L. 1873, p. 984).

By the terms of its charter it was authorized to hold property not to exceed thirty thousand dollars.

By a subsequent general Act such corporations were authorized and empowered to hold property not exceeding in value the sum of five hundred thousand dollars (P. L. 1890, p. 46).

The undisputed facts are substantially that the plaintiff in error owns other property in Atlantic City of the value of two hundred thousand dollars, devoted to charitable purposes, which has been exempted from taxation by the city authorities; that, upon the property thus ex-

empted, are all of the principal buildings; that the property upon which the exemption is claimed is not contiguous but more than a mile distant from the property exempted; that the property upon which the exemption is claimed embraces a whole block; that only about one-fifth of it is used for a month or six weeks during the summer season by erecting thereon canvas tents; that the property is not used or occupied the balance of the year for any purpose; that the plaintiff is a charitable institution.

I.

No immunity from taxes is granted the plaintiff in error by the act of its incorporation. The special charter of the corporation authorizes it to hold and use exclusively for charitable purposes thirty thousand dollars worth of property and no more.

By virtue of Section 5 of a supplement to the tax act (P. L. 1866, p. 1079) the plaintiff in error, when incorporated, was entitled to immunity from taxes on all buildings used exclusively for charitable purposes, with the land whereon the same are erected, and may be necessary for the fair enjoyment thereof, and the personal property used therein, &c.

The immunity thus granted could not exceed thirty thousand dollars, because, by the charter of the corporation, this amount was the limit of its property-holding power.

The Act of 1866 (being the only act in force concerning such exemption) exempted from taxation property held by the corporation not to exceed thirty thousand dollars, while used in the manner described in the Act of 1866 concerning exemptions.

This was the legal status of the corporation until 1890. In 1890 the Legislature passed a general act concerning

corporations constituted for benevolent and charitable purposes, increasing the capacity of such corporations to hold property from thirty thousand dollars to five hundred thousand dollars (P. L. 1890, Section 1).

But while Section 1 of this act increased the property-holding capacity of such corporation, the language of the third section provides "that nothing herein contained shall be construed to exempt the property of such corporation from taxation," therefore, while the capacity of the corporation to hold property was increased, its right to immunity from taxation on such increased holdings is expressly guarded against by the third section of the Act, and the right to enjoy the exemption now claimed must be found elsewhere.

It is claimed that such authority is found in Gen. Stat. p. 3320. When this statute is examined, it will be perceived that the language concerning exemptions to such corporations grants no larger or greater immunity from taxation than was enjoyed by such corporation under the Act of 1866.

At the time the plaintiff in error was incorporated it was exempt from taxation by force of the act of 1866 (P. L. p. 1079) for property held and used by it for charitable purposes, not exceeding thirty thousand dollars, as this amount was the limit of its property-holding power.

The Act of 1866, conferring upon the corporation the right to such exemption, became a part of its charter rights and must be read in connection with its special grant from the State, which limits the exemption to thirty thousand dollars.

Inasmuch as the Statute of 1890, increasing the corporation's property-holding capacity, expressly guarded against any exemption larger than that already enjoyed

by the corporation, and the subsequent act of 1894 (Gen. Stat. p. 3320) has not enlarged such immunity, and, as the corporation is now enjoying an exemption that exhausted the immunity granted, the exemption claimed is without foundation.

II.

The statute exempts all buildings used for charitable purposes and the land whereon the same are erected, and which may be necessary for the fair enjoyment thereof.

The facts in the case show the land upon which the exemption is claimed embraces a whole block, situate about one mile distant from the land and the buildings thereon already exempted by the City authorities; that about one-fifth of the block is used for a month or six weeks during the year by the erection of canvas tents thereon.

These facts we submit do not bring the property within the operation of the statute.

Exemptions depend upon the use of the property. An exemption does not attach absolutely to the property of the beneficiary, but arises from the fact that it is used for some purpose which the Legislature has seen fit to foster by relieving it from the burden of taxation.

Property held, though convenient, is not necessary to the enjoyment and use.

Intention to use at a future time does not entitle to exemption. Congregation St Vincent de Paul v Brokeley 50 Atl Rep 589

It is respectfully submitted that this corporation is already enjoying an exemption that exhausted its special grant, and further, that the facts in the case do not show a use within the general legislative grant to such exemption, and the judgment of the Supreme Court should be affirmed.

GODFREY & GODFREY,

Attorneys for Defendant in Error.

NEW JERSEY, TO WIT:

The State of New Jersey to our Justices of our Supreme Court, GREETING:

Because, in the record and proceedings and also in the giving of the judgment which was in our said Supreme Court before you between the Children's Seashore House at Atlantic City for invalid Children, prosecutor, and Atlantic City, defendant, on a certiorari issued out of our said Supreme Court to William Lowry, Jr., Collector of taxes for said defendant, Atlantic City, directed, as is said, manifest error hath 10 intervened to the damage of the prosecutor as by complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected done accordingly that if judgment be thereupon given that you send distinctly and openly under your seal, the record and proceedings aforesaid with all things touching the same to our Court of Errors and Appeals before the judges thereof, on the twenty-eighth day of May instant and this writ, and that the records and proceedings aforesaid being included, we may cause to be done what of right ought to be done. 20

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the fourteenth day of May in the year nineteen hundred and two.

S. D. DICKINSON,
Clerk.

THOMPSON & COLE,
Attorneys.

The answer of William S. Gummere Chief Justice within named. The record and proceedings whereof mention is within made, with all things concerning the same to the Court of Errors and Appeals in the last resort in all causes, within specified, the day and place within contained, I certify in a certain schedule to this writ annexed, as within I am commanded.

WM. S. GUMMERE, [Seal]
Chief Justice.

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10 NEW JERSEY SUPREME COURT.

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, Prosecutor,	On Certiorari.
vs.	Affirmance.
ATLANTIC CITY, Respondent.	

This matter being regularly on the list for argument and having been argued by counsel for respective parties, and the Court having considered the same and finding no ground for
20 setting aside the assessment and tax brought up for review by the writ of certiorari in this cause,—

It is ordered that the assessment and tax be and the same are affirmed, but without costs.

Entered May 13, 1902.

On motion of GODFREY & GODFREY,
Attorneys for Atlantic City.

I, William Riker, Clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in above stated cause and entered
30 in the minutes thereof.

In testimony whereof, I have hereto set my hand and the seal of said Court this fourteenth day of May, A. D. nineteen hundred and two.

WM. RIKER, JR., [Seal]
Clerk.

The State of New Jersey, Greeting:

To Wm. Lowry Jr., Collector of Atlantic City.

We being willing for certain reasons to be certified of the assessment against the property of "The Children's Seashore House of Atlantic City for Invalid Children," bounded by Annapolis, Richmond, Atlantic avenues and Atlantic Ocean for the year eighteen hundred and ninety-nine, do command you that you certify and send to our Justices of the Supreme Court, at Trenton, on the twenty-third day of May, instant, said assessment with all things touching 10 and concerning the same as fully as they are before you that there may be done what of right and justice ought to be done.

Witness, the Hon. David A. Depue, Chief Justice of our Supreme Court at Trenton aforesaid, this fourth day of May, 1900.

WM. RIKER, Jr.,
Clerk.

THOMPSON & COLE,
Attorneys.

NEW JERSEY SUPREME COURT.

THE CHILDRENS SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, *Pros.* vs. ATLANTIC CITY, *Defendant*	*On Certiorari.*

WRIT.

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10 Returnable May 23, 1900.

THOMPSON & COLE,
Attorneys,

I allow this writ, let it be sealed.

G. C. LUDLOW,
Jus. Sup. Ct.

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

I, William Lowry, Jr., collector of taxes in the city of Atlantic City, in the county of Atlantic, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you, the said Justices, the assessment of taxes against The Children's Seashore House at Atlantic City for Invalid Children, for the year eighteen hundred and ninety-nine, by Andrew J. Withrow, who was the assessor of taxes in the said city of Atlantic City, with all things touching 10 and concerning the same, as fully and entirely as the the same remains in my hands and possesion, as by the said writ I am commanded, as appears by the schedule hereunder written.

In witness whereof, I have hereto set my hand and seal, this 21st day of May, A. D. nineteen hundred.

WM. LOWRY, Jr.,
Collector.

Number or description of block and lot: 76, section 18.

Name: The Children's Sea Shore House at Atlantic City for Invalid Children. 20

Location; Beach and Annapolis avenue.

Description of lots or blocks and acres or size of lot: 300x 344.

Value of real estate: $15,000.00.

Value of personal estate:

Exemption:

Dogs: Total tax: When paid: Remarks: None.

NEW JERSEY SUPREME COURT.

THE CHILDRENS' SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, *Prosecutor,* *vs.* ATLANTIC CITY, *Defendant.*	*On Certiorari. Reasons :*

Prosecutor assigns the following reasons why the assess-
10 ment on the property of the prosecutor for the year eighteen hundred and ninety-nine, should be set aside :

Because the prosecutor is a corporation of the state of New Jersey, and said property is exempt from taxation under the laws of this state by reason of the fact that the buildings and the land whereon the same are erected, are used exclusively for charitable purposes and are necessary for the fair enjoyment thereof.

THOMPSON & COLE,
Attorneys of Prosecutors.

20 5, 21, 1900.

NEW JERSEY SUPREME COURT.

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, *Prosecutor.* *vs.* ATLANTIC CITY, *Defendant.*	*On Certiorari.*

DEPOSITIONS

taken in the above stated cause before the subscriber, Arthur 10
W. Kelly, Supreme Court Commissioner, on Thursday, May 24th, 1900, at eleven o'clock in the forenoon, at his office, Room 18, Real Estate and Law Building, Atlantic City, N. J., under a rule and pursuant to notice, in the presence of Clarence L. Cole, attorney for the prosecutor, and Burrows C. Godfrey, of Messrs. Godfrey & Godfrey, attorney for Atlantic City; it being agreed that the depositions be taken stenographically and signatures of witnesses waived.

It is admitted that the prosecutor is a corporation incorporated under a special act of the Legislature of the State of New 20
Jersey, entitled "An act to incorporate the Children's Seashore house at Atlantic City for Invalid Children" approved February 25th, P. L. 1873 of Section 2, page 984, and further that the property of the prosecutor on Ohio avenue in Atlantic City has been and is exempted from taxation by the authority of Atlantic City.

KENNETH M. BLACKISTON, a witness produced on the part of the prosecutor, being duly sworn according to law, on his oath, testified as follows:

Direct examination.

By Mr. Cole:

Q You are the president of the Children's Seashore House at Atlantic City?

A Yes, sir.

Q How long have you been such?

10 A About five or six years.

Q Does that house own the property bounded by the beach, Atlantic, Richmond and Annapolis avenues in Atlantic City?

A Yes, sir.

Q How long has it owned it?

A Since June 3, 1898.

Q Do you hold in your hand the deed for the property?

A Yes, sir.

Mr. Cole: We offer in evidence a deed dated May 28,
20 1898, from Edward A. Sibley and wife to the Children's Seashore House at Atlantic City for Invalid Children, conveying the premises in question, duly acknowledged and recorded in Book 222 of Deeds, folio 337.

(Deed marked Exhibit P 1.)

The description, as appears in said deed, is: "Beginning at the southwesterly corner of Atlantic and Annapolis avenues and extending thence (1) southwardly along the westerly line of Annapolis avenue three hundred and forty-four feet, more or less, to a corner in the line of ordinary high water mark of
30 the Atlantic ocean; thence (2) westwardly, along said high

water line three hundred feet, more or less, to the easterly line of Richmond avenue; thence (3) northwardly, along the said easterly line of Richmond avenue, three hundred and forty-four feet, more or less, to the southerly line of Atlantic avenue; thence (4) eastwardly along the said southerly line of Atlantic avenue, three hundred feet to the place of beginning."

Q Will you state generally and as briefly as you can, Mr. Blackiston, the objects and purposes of this incorporation and in what way it raises the fund necessary to carry on the business in which it is engaged? 10

A The object is the care of sick children and those requiring sea air during the summer. The money is raised chiefly by subscription, contributions, fairs and in that way.

Q Does any one other than those for whom this society cares reap any benefit from it?

A No, sir.

Q Does any of the money which is raised, either by contribution, or in any other way, go for any other purpose than the charitable purpose you have indicated? 20

A No, sir.

Q Are these children who are cared for entertained by this society there without pay?

A No, we have a nominal charge for board which a few of them pay, but we never refuse a child.

Q Then you do take children without pay who are not able to pay?

A Yes, sir.

Q How is that relatively? Is the number of children there who don't pay larger than the number of those who do? 30

A Very much so. I can't give you the exact figures; I can give you the money figures.

Q Just state for the last year, 1899, the amount of money which was actually received from your patients and the amount

of money which was expended in the care of all the children who were under the care of the society.

A I will read this from the treasurer's report:

"Amount of money received from contribution, entertainments, fairs, etc. $11,085 42

Amount of money received from board of patients, ... 2,567 98

Leaving a difference of $8,517 44

10 Q Was all the money which was received expended?

A Yes, sir.

Q What money was there in the hands of the treasurer at the close of the season of 1899?

A $187.22.

Q And was all that money used in caring for these children who were under the care of this society?

A Yes, sir. I can't give you the exact figures, but that amount of money was all used in caring for the children and the house, keeping it in order, and so forth. There is interest 20 on a mortgage that we have to pay, but I don't think that would be included in that $11,000.

Q Well, the point that I particularly want to have emphasized, Mr. Blackistone, is whether there was any money which was received from any of the sources that you have indicated that goes for any other purpose than the care of these children or the maintenance of the building?

A No, sir.

Q Now, has the society used this property here in question?

A Yes, sir.

30 Q How long has the society used it?

A 1897, 1898 and 1899.

Q Now that calls for an explanation as to the deed which has been offered in evidence. It seems that the society took title in 1898 and you say that you used it 1897?

A Yes, sir.

Q Is that because the society was in fact the owner in 1897?

A Yes, sir.

Q But didn't take a deed from Mr. Sibley until the time it purports to bear date?

A No, sir.

Q Will you state as briefly as you can how this property here in question was used and for what purpose by the society during those years? 10

A It was used as a camp for boys over twelve and thirteen years old, altogether. That was the purpose it was used for.

Q When you say camp, will you tell what you mean by that?

A We have two sleeping tents, one dining tent and a permanent building used for kitchen and laundry and so on.

Will you tell in what respect the care that is given to those children on this ground differs from that which is given to those in the building on Ohio avenue? 20

A No difference whatever that I can say, sir.

Q Then why has the society purchased this piece of land and put these tents up?

A Well, we didn't purchase the land for that purpose. Our object in purchasing that land was to in the future sometime move there our whole building; but after having it for a year we decided to use it for this purpose, to take care of boys that we couldn't take care of in our main institution.

Q You say boys you couldn't take care of. Why was that?

A We don't think it wise to take boys in the buildlng there 30 over thirteen.

Q You mean in the old building on Ohio avenue?

A Yes, sir.

Q So that this land here in question is used exclusively for boys who are over thirteen years of age?

A I think so.

Q At least, that is the intent?

A That is the general intent and purpose, yes, sir.

Q Now is it the same class of boys with respect to condition of health and need of fresh air that you take in the premises here in question as you do on Ohio avenue?

A We won't take a very ill boy there; that is the only difference.

Q You mean in the tent?

10 A Yes, sir.

Q Why is that?

A Well, we wouldn't feel that we could give him as good care and attention there, perhaps. It would not be wise to to take a very ill boy in the tent.

Q For what period of the year are these tents on the ground?

A July 1st to September 1st.

Q And how long is the main institution usually open?

A That is usually open from June 1st until September 1st

20 or 15th, depending upon the amount of money we have to spend.

Q Will you state as nearly as you can how many boys were cared for and what money was expended on this property here in question in the year 1899?

A I can read from this report.

Q Certainly; if you know that to be accurate, it is all right.

A It is the statistical report. The year 1899, the number of days the camp was open, sixty-two. Number of boys admitted, one hundred and thirty. The cost of maintenance,

30 $589.08. Cost of buildings, furniture, etc., $696.50. Those last two figures are approximate and as near as our bookkeeper could get them.

Q Now Mr. Blackiston, was this land and the buildings thereon during the year 1899 and have they been prior to that

time, since the ownership by the society, used exclusively for for charitable purposes?

A Yes, sir. The first year, in 1896, we didn't use them, but we have used them exclusively for charitable purposes.

Q Since you have used them?

A Yes, sir.

Q How has it been with the society; has the number of persons under its charge been increasing as the years go?

A Yes, sir; certainly.

Q Has the society ever any funds of any amount at the 10 close of its season of each year?

A No, sir.

Q What is the experience in the past?

A The experience is that the treasurer is apt to be short at the end of the season. We run close up to the amount of money that we have to spend each year.

Q What is the method, Mr. Blackiston, of getting these children here? In what way do you learn the merits and so forth?

A We send out our circulars and reports very generally 20 through the newspapers, who always publish little articles concerning it. During June we send special invitations to the hospitals to send us their children that they may have free of all cost, and we have examining physicians in Camden, Philadelphia, Trenton, a list of which I have here. Children go to them and are examined to see that they have no contagious disease. A certificate is then sent down to the house here and a notification is sent to the child to come at a certain date.

Q Now you hold in your hand what?

A This is the annual report of the board of managers for 30 1899.

Q In printed form?

A Yes, sir.

Q Do you know if the report as herein set out is substantially correct?

A To the best of my knowledge and belief.

(Report offered in evidence and marked Exhibit P 2.)

Cross examination.

By Mr. Godfrey :

Q The Children's Seashore House still owns the property situate on Ohio avenue?

A Yes, sir.

Q What is the value of that property?

A It is hard to say.

10 Q Well, about?

A I suppose it is worth $200,000.

Q The property on Ohio avenue is the property where the buildings are located?

A Yes, sir.

Q There are no buildings on the property in question?

A Yes, sir; there is a building there that we use for our kitchen and there are three tents which we put up and take down.

Q Well, those tents are not there now, are they?

20 A No, sir; I expect not.

Q What is the character of this building that you use for a kitchen?

A It is a one story frame building.

Q The land in question does not lie contiguous or is not connected with the Ohio avenue property, is it?

A You mean physically? No, it is not near Ohio avenue.

Q How far distant is it from Ohio avenue?

A I can't tell you, sir. I should say it is a mile. I am not acquainted with the distances here.

30 Q How much of the property as described in the deed that has been offered in evidence is used for the purpose of erecting these tents on ?

A How many square feet the tents cover?

Q Yes.

A I can't give you that, sir.

Q Can't you give me an idea?

A No, sir. I believe one of the other witnesses can when the time comes. I couldn't say. It is entirely from memory, and I wouldn't like to put it down.

Q Well, as compared with the whole size of the property, the tents occupy a very small portion of it when erected?

A Possibly one-fifth, something like that. 10

Q How much per week board do you charge?

A We charge $2.50. We don't always get it. We have a number of free patients.

Q You don't always get it?

A No.

Q Do you charge every person that comes there?

A No, sir.

Q Then those whom you do charge, why don't you always get it?

A We get it from those who can pay, that is what I should 20 have said. We get it from those who can pay; those that can't pay we take free.

Q Then you charge only those you think can pay?

A Yes, sir.

Q How do you determine that point, whether they can pay or can't pay?

A It is generally set out in the certificate that comes to us from the examining physician.

Q Have you a certificate with you?

A No, sir. 30

Q Well, by whom is that certificate made?

A It is made out by the examining physician of the city where the boy comes from.

Q One of the number you spoke of in the report there?

A Yes, sir.

Q And what does that certificate usually contain?

A It contains the name and age and condition of the child- I have one here that has been handed to me.

Q Just go on and state.

A There is a testimonial of character accompanies the certificate. Shall I read that to you?

Q No ; just state the substance of it.

A The testimonial of character is taat "I have known the above mentioned applicant for (blank) years. He bears an
10 excellent character and is in moderate circumstances."

Q How do you determine whether or not a person is a subject for a benefit from this charitable institution of yours?

A The examining physician and the person who signs the testimonial determine that for us.

Q Now if a certificate should come stating that a person was in ill health, poor health, and in moderate circumstances, what would you do with that person? How would you act on that?

A We would notify them to come when we had a place for
20 them, in regular rotation.

Q If a certificate should come in stating that a person was only in moderate circumstances, stating only that fact, that the person was in moderate circumstances, how would you act on that certificate?

A We would not accept the certificate, because it must be filled up in full, and that has blanks regarding the health of the applicant.

Q Then the pecuniary condition of the person or applicant is not the criterion by which you determine whether you will
30 accept or take in such a person?

A They must be poor.

Q What other condition?

A They must be poor and in need of sea air.

Q How do you determine from that certificate whether they are in need of sea air?

A We have to depend upon our doctors for that. If you will allow me to suggest, the Country Week Association will often send us children that they know want the sea air and not country air.

Q You would accept that person then in that condition irrespective of their financial condition?

A Irrespective of their ability to pay?

Q Yes.

A Yes, sir.

Q Then you determine wholly upon the physical condition 10 of the patient whether they are a proper subject for the benefit of your institution or not?

A Yes, sir; and the sickest ones come first.

Q Now, you stated that the expenditure last year at the home was so much money in round figures?

A Yes, sir; those were the contributions that I gave you.

Q It was not the expenditures?

A Well, the figures that I gave you were the contributions, and I said that that money was all spent, practically.

Q Well, the money that was spent, was spent for the main- 20 tenance or support of those who paid board the same as those who didn't pay board?

A Yes, sir.

Q Then the difference between the whole amount received and expended and the amount you received for board does not show the amount of money that it cost to maintain those that didn't pay over those that did pay?

A No, sir.

Q Now, the $1,800, didn't I understand you to say that you received for board? 30

A $2,567.98.

Q How was that money expended?

A In the maintenance of the institution.

Q There wasn't any of it expended for any other purpose?

A It is all put in the common fund. There is no difference

made between the money that we get by contribution and the money that is paid for board.

Q That is the report, I understand you, for 1889?

A For the summer of 1899.

Q How much does that show in the hands of the treasurer, if anything, at the close of the year or season?

A $187.22 January 1st.

Q Where is that money?

A That was in the hands of the treasurer.

10 Q Has it been invested since then and used?

A I should say yes.

Q For what purpose?

A Well, there are some slight payments always that we don't get in, and in opening up the institution, cleaning it and getting our servants together, we spend a great deal more than that before the house is absolutely open, before we can open it, new supplies, sheets and blankets and things of that sort.

Q Now the property in question, how much is it worth?

20 A I can't tell you, sir.

Q Well, about what is it worth?

A I have heard two or three figures given to me, from $60,000 to $150,000, and it is a matter of gossip, I expect.

Q You would be willing to pay $60,000 to-day for it, wouldn't you?

A No, I don't think we would.

Q I ask you personally?

A I personally, if I were investing in real estate here, probably would, sir, but I know nothing at all of property values 30 here.

Q Are you now offering that property for sale?

A No, sir.

Q What portion of the persons who camped on this property in question last year, if any, paid board?

A I can't give you those figures.

Q Did any of them pay board?

A Yes, I should say so.

Q You don't know what?

A I cannot, from my own personal knowledge, say yes or no to that.

Q Do you know how that money was used?

A Do you mean the board that was paid?

Q Yes.

A It was used in the maintenance of that camp.

Q It didn't go into the general fund? 10

A Well, I can't tell you really whether the account is kept absolutely separate or not. It must be, because I have a statement here from the bookkeeper showing the maintenance there and the amount spent for buildings, and I knaw that we have had some special contributions for that purpose. We had one last year of $300.

Q Now you have stated in your direct examination that you would not send sick persons, persons whom you determined were sick, into the camp, into the tents?

A I mean bedridden. By sick, I mean absolutely bed- 20 ridden.

Q State, if you know, why the persons who went into the camp were sent there.

A They came to us on doctors' certificates as boys requiring sea air and being in poor health.

Q Well in determining to send them there, did you take into consideration their pecuniary standing?

A No, sir, so that they were poor, that is all.

Q What do you mean, poor physically, or what?

A Poor pecuniarily, financially. 30

Q But you are sure a portion of them that went there did pay board?

A I feel that some of them were competent, yes, sir.

Q You stated in your direct examination that you only sent

boys there that were above the ages of thirteen or fourteen. Why was that?

A Because we don't care to take boys of that age into the main institution.

Q Do you take no boys in the main institution above the age of thirteen?

A I think not. I won't say positive.

Q You are not sure about that?

A I won't say positive, no, sir.

10 Q Is the age of thirteen or fourteen the limit of both sexes in the home?

A No, sir; we take girls over that.

Q Why do you make the distinction?

A Well, it is a distinction that was made before my time. I can't say why it was made.

Q A boy needing the benefit of sea air is as much benefited as a girl, isn't he?

A Yes, I suppose so.

Q Now you stated in your direct examination you didn't 20 purchase this property in question for the object for which it is now being used. Am I right on that?

A That is right, yes, sir. We purchased it for the uses of our institution, but when we did purchase it we didn't purchase it with the idea of putting the camp on it. We purchased it with the idea of using it.

Q Well, using in how?

A By in the future putting buildings on it and moving our institution there.

Q What were you going to do with the land you already 30 owned?

We hoped to sell that and use the money as an endowment or help us in providing for more children. We didn't feel like holding on to a property that was worth so much money.

Q Are you now offering that for sale?

A Yes, sir.

Q What are you asking for that?

A We are asking $200,000.

Q Did I understand you to say that of the money received for the camp on this land in question and the money expended that you couldn't give an accurate account of it?

A I have an approximate account of it.

Q Well, why is it you can't give us an accurate account?

A May I read what the bookkeeper says?

Q No, I ask you.

A Well, the fact is that we send things down there from 10 the Ohio house that are not charged against that house always. The figures that I give are approximate on that account. We have got the receipts for board. The receipts for board are no doubt accurate.

Q Have you those there?

A Yes, sir; I gave those in my direct testimony.

Q I mean for this camp.

A I think I gave that.

Re-direct Examination.

By Mr. Cole: 20

Q Mr. Blackiston, can you say if in those cases where you do receive pay the sum paid is sufficient to enable the society to earn money out of the amount?

A No, sir; the amount paid does not cover the expenditure on that individual.

Q Am I correct in saying that the report which has here been offered in evidence shows the receipts and expenditures of the society in all respects, covering as well the camp ground, for the year 1899?

A I don't think it gives— 30

Q In other words, is there any report from the treasurer other than the one which is here offered?

A No, sir.

Q So that that report does include all the money received for the camp ground purposes and the money which has been expended in maintaining it?

A Yes, sir.

Q Now the reason for accepting girls over thirteen in Ohio avenue and excluding boys is, I take it, one considered by the society as wise management is the reason, is it not?

A Yes, sir.

Q This ground is used by the boys, the part which is not
10 covered by the tents, in roaming around and playing and amusing themselves while there?

A Yes, sir.

Q It fronts right on the ocean?

A Yes, sir.

Q Is there ground on the Ohio avenue property which is not covered by buildings?

A Yes, sir.

Q And is that used for a like purpose?

A As playgrounds.

20 Q The same as the property here in question?

A Yes, sir.

Re-Cross-Examination.

By Mr. Godfrey:

Q Up until 1897, when you began to use the camp, did you receive boys in the home on Ohio avenue at the age of thirteen or fourteen?

A I can't tell you, sir. We don't as a rule, I think, take many boys of that age. I can't state that positively.

Q You know that they take some?

30 A I can't state that positively, no, sir.

Q Well, you were there and connected with this institution at this time?

A As president and as manager; yes, sir.

Q Do any of the reports you have show that?

A I have no reports with me previous to that date; no.

Q Were there any boys in this camp under the age of thirteen?

A I can't state that positively.

Q What is your idea or notion of it, if you have any?

A I gave the age of thirteen because that, I understand, to be the limit. Twelve is the age mentioned on this circular.

Q The report of 1899, does that show whether there were 10 any boys in that camp under the age of thirteen?

A I have changed that to twelve, under the age of twelve. The ages of the children are given for the whole institution, but not for the camp separately.

By Mr. Cole:

Q In other words, does the report show where these children were? It does not, does it?

A It merely states that so many were in the camp and so many in the house on Ohio avenue.

By Mr. Godfrey: 20

Q What are the ages stated there for the males?

A That is not given. The ages are given, number of children between one and two, number of children between three and four; that is all. The sexes are not mentioned.

Annie T. Jeffrey, a witness produced on the part of the prosecutor, being duly sworn according to law on her oath, testified as follows:

Direct Examination.

By Mr. Cole:

Q Do you hold a position with the Children's Seashore House at Atlantic City?

A Yes, sir.

Q What is it?

A Matron.

Q How long have you held it?

A This is my tenth year.

Q Where are you located?

A On Ohio avenue and the beach.

10 Q Will you state in your own way, as briefly as you can, the objects of this society, what it does?

A It is to give to poor, sick, crippled and convalescent children the outing that they could not have in any other way.

Q About when, as a rule, does the house open?

A June 1st.

Q And closes when?

A From the 1st to 15th of September usually.

Q About how many children were accommodated at the Ohio avenue property last year?

20 A The report tells that?

Q Well, the report shows that, does it?

A Yes, sir.

Q Was the house during that period filled?

A It was.

Q Were you crowded?

A We were, decidedly.

Q During the year 1899?

A Yes, sir.

Q Could you have made provision in that building for the 30 boys who were on the camp ground, the property in question?

A We could not, possibly.

Q So that the children who were provided for in the camp ground were practically overflow from the main building?

A Yes, sir.

Q Do you know something of the camp ground?

A Yes, sir.

Q Have you been on it?

A Yes, sir.

Q Were you there during the summer of 1899, while it was in operation?

A Yes, sir.

Q In the general management and care of the children what difference is there between those who were cared for on the camp ground and those in the main building on Ohio avenue? 10

A The children at Ohio avenue are children who must be cared for by the nurses, and the boys who go to the camp are older and enough convalescent to stand the exposures of camp life.

Q So that the only and real difference is that in one case the children are hardier and better able to stand camp life, while the children in the Ohio avenue building are not?

A. Yes, sir.

Q What is the character of the buildings on the camp ground? 20

A A stationary kitchen and laundry.

Q A frame structure?

A Yes, sir; a one-story frame structure.

Q And the other buildings are what?

A The other buildings are tents.

Q The building on Ohio avenue is a frame structure, also, is it not?

A Yes, sir.

Q How long was the camp ground in operation last year?

A From July 1st to September 1st. 30

Q How many tents were there on this ground?

A There were five tents on the ground, counting those for the help.

Q Can you state just from your own recollection, without

referring to the report, what was the average number of boys cared for on the camp ground?

A Well, I think the average must have been about thirty-six. I am not sure.

Q. For what purpose was the ground used that was not covered by the buildings and tents?

A Playgrounds.

Q And was it actually used by the boys for that purpose?

A Yes, sir.

10 Q Can you say whether this institution is one that is devoted exclusively to charity?

A It is.

Q Do you know whether any of the funds which it receives from any source are used for any purpose other than the care of these children?

A Not any other.

Q Then if I understand you, it was necessary to use this property here in question last year in order to care for these children, because you could not have done so at the other 20 building, it being filled?

A We couldn't have taken any in any other way.

Q Now, would the character of the buildings, or did the character of the buildings on the ground here in question serve the same purpose as would have a brick or frame or iron structure?

A Yes, sir; just the same.

Cross-Examination.

By Mr. Godfrey:

Q Have you anything to do with handling the money of 30 this institution?

A Yes, sir. At least, I do all the buying.

Q You spend the money?

A I spend the money; yes, sir.

Q Do you receive any of the money that comes in?

A You mean the donations?

Q Any money that comes in?

A Yes, sir.

Q Now you speak of thirty-six children being accommodated on an average. What do you mean by that?

A. I thought there were probably about that number of boys at the camp all the time it was open. I am not sure of that. The report will tell. 10

Q You say that these buildings, that is, the tents, on the land in question serve the same purpose as the buildings on the property at Ohio avenue?

A Yes, sir.

Q Well, why, then, did you only send the stronger ones there?

A Because there are so many sick ones waiting to come to the main building all the time, and then the boys are generally 20 too old to come to the main building that come down to the camp. It was meant for older boys.

Q How about the older girls?

A We have wards for them at the main building.

Q Now, these boys that you send to the camp, are they boys that you have had in the main building or in the building at Ohio avenue?

A Why, in other years, some of them. As they grow older they come down and go to the camp. But we have used it as an overflow sometimes. If we have a boy that has been 30 at the honse some time, and he is getting better and needs a little longer stay and is well enough to stand exposure, we sometimes send him to the camp and give his bed to a bedridden child, when we have been crowded.

Q You graduate them from this camp?

A We have done that a few times.

Q Do any of them go directly in the camp rather than going to the Ohio avenue property?

A Oh, yes.

Q Now, if application should be made for a boy to enter the home who is poor and sick and in need of such attendance as you give children there, or treatment, and he was over twelve years of age, would you admit him to the camp or home?

A If he were bedridden, we would take him in the home.

10 Q Irrespective of what his age is?

A Yes, sir; irrespective of age.

Q If the boy were not poor—when I speak of poor I mean financially and not physically—and should apply for admission, what would you do?

A We would not take him if he could afford to go to some other building.

Q How do you determine whether he can go to some other place or not?

A We have to take the word of the one who testifies to the

20 character.

Q You said in your direct examination you have been matron of this institution for ten years?

A Yes, sir.

Q This land in question has been used for camping purposes since 1897?

A Yes, sir.

Q What did you do with the overflow before that time?

A We couldn't take them. They had to stay at home.

Q How many such persons as you received would this

30 camp accommodate at any one time?

A Forty.

Q Do you know if there were forty there at any one time last summer?

A Yes, sir; there were.

Q And do you know from where they came?

A I do not. It is on the records at the house now.

Q Do you know if the children occupying the camp were sent direct from the property on Ohio avenue, or whether they came direct from their place of residence or the institution they might have been sent from?

A Most of them direct to the camp.

Q Who determines when they shall be sent from the Ohio avenue property to the camp?

A We do there at the house.

Q Who do you mean by we? 10

A I have a great deal to do with it. Dr. Bennett is there usually. He says what shall be done.

Q What is your criterion for determining that?

A Well, we have physicians in the house, you know. If the boys are well enough, if they have convalesced far enough to go down there the doctors always know.

Q Well, now, if your property or house on Ohio avenue was not full, and in passing upon a case you should find that the child was sufficiently able physically to go to the camp, would you send him there? 20

A Yes, sir; if he was the right age.

By Mr. Cole:

Q There is no difference in the management of the camp and the main building?

A No, sir.

Q All under the same management?

A Yes, sir.

The same persons?

A Yes, sir.

Q And the same record kept of that as of the main institution? 30

A Yes, sir.

Dr. William H. Bennett, a witness produced on the part of the prosecutor, being duly sworn on his oath testified as follows:

Direct examination.

By Mr. Cole:

Q Doctor, you hold a position with the Children's Seashore House?

A Yes, sir.

Q What is it?

10 A I am physician in charge.

Q How long have you held that position?

A Twenty-six years.

Q You therefore know the purposes and objects of this society?

A I do.

Q Will you just state them, please?

A They are to give an outing at the seashore to sick and invalid children of the poor.

Q What are your duties?

20 A I have general supervision, both medical and ministerial.

Q How is the money which this society receives used?

A Entirely in its maintenance.

Q Has it any money invested anywhere?

A Yes.

Q Where?

A I couldn't tell you the investments. The treasurer has charge of that.

Q And where does the money from the investments go?

A It is used entirely in the maintenance of the institution.

30 Q Do you know how it accumulated, the money that is invested?

A It has nearly all been given for the purpose of investment, I think; every cent of it given for the purpose of investment.

Q And used to carry out the purposes of this institution?

A Yes, sir. There are no dividends.

Q I ask you now if there is any money used for private purposes by any person?

A Not a cent.

Q Then is its purpose absolutely charitable?

A Absolutely. There is never a child goes there but what some money is given to the child in the way of its board. Every child that has come to the institution has cost more money than its board. 10

Q From what sources do you receive the money to maintain this institution?

A It comes from, I might say, four sources; contributions, proceeds of entertainments, proceeds of investments and the board paid by the children.

Q Now, are all these moneys put into the common fund?

A All into the common fund.

Q And reported by the treasurer?

A Entirely.

Q And that report appears in the pamphlet which we have 20 introduced?

A It does.

Q Now, respecting the property here in question, to what use has it been put?

A It has been put to the use of an overflow from the main building for the care of boys that it would be improper to allow to be in the main building with the large girls, and for whom there would be no possible accommodations.

Q Now, with respect to the character of these children, is the same attention given to them as to those in the main 30 building?

A It is precisely the same, excepting in the matter of nursing.

Q Is there any discrimination made, aside, perhaps, from the question of age or physical condition of the child, re-

specting those who go to the camp and those who go to the main building?

A Not a particle.

Q Then the fact that the land here in question may be blocks away makes no difference; it is just the same as though it was contiguous to the main building proper?

A Only it is more inconvenient for us. We would be glad to have it contiguous.

Q Have you found, doctor, in these years, that the field of
10 usefulness has increased for this society?

A Enormously. It is growing all the time.

Q I suppose you have demands upon you every year greater than you are able to accommodate?

A Far greater than we can accommodate.

Q Was that true last year?

A Absolutely so.

Q What would have been the effect upon the ability of the society to care for these children had you not had this property here in question?

20 A We couldn't have taken care of one of them.

Q. And you did take care, on an average, of how many during the year?

A The report shows it was twenty.

Q On an average?

A On an average. It was often full.

Q And how many were there when it was full?

A Forty.

Q Now, doctor, how is it with respect to the money in the hands of the treasurer? Do you usually absorb it all or have
30 considerable on hand?

A The treasurer generally has to carry a deficit from one summer to the other.

Q Now, in so far as the question of this society carrying out the purposes of its incorporation, is there any distinction

between the property that is used for camp ground purposes and that used on Ohio avenue?

A Not the slightest.

Q Do you subserve the same purpose so far as these children are concerned, by providing for them in this tent as if you had an iron or brick structure there?

A Exactly the same purpose; probably a better one.

Q Did you during the summer of 1899 care for as many children on this ground as the finances of the society would permit? 10

A As large as they would permit.

Q Now, were any of the children removed from the Ohio avenue property to the camp ground during the summer?

A They were when we didn't have room for them in the Ohio avenue property and they were able to go to the camp ground.

Cross examination.

By Mr. Godfrey :

Q You state that the tents now on this land in question serve as good or better a purpose as the building on the property at Ohio avenue; then please explain what do you mean by sending the children there when they were able? 20

A In every institution for the sick there are the extremely ill, the moderately ill and the convalescent. When those who are in the Ohio avenue property are convalescent and are of sufficient age they are just as well off in the tents, and if we didn't send them there we would have to keep them there in the beds and occupy the places of those that are sick or moderately sick.

Q Then if your accommodations at the camp are as good and as conducive to health as the building on Ohio avenue, why not send the sick there and the child that is getting better, also. 30

A I didn't say that.

Q I ask you the question?

A Because it would not do to put the extremely ill in those tents. Those tents last summer were blown down, and it is very hard to keep up a tent on the seashore. And the crippled—we often have a larger number of crippled children at the Seashore House than at any hospital in Philadelphia, because they come from all hospitals—to put such children out in the air would be to doom them.

10 Q Then the tents that you have on that property in question at the camp do not serve as good a purpose and the same purpose as the buildings on Ohio avenue?

A For the class of children that go there, I said.

(Question repeated.)

A No.

Q Now, the increase of numbers that made application to your institution in 1899 and were admitted, is not that largely due, or to some extent due, to the growth and popularity of Atlantic City?

20 A Undoubtedly.

Q Your twenty-six years in charge of this institution, has it been in Atlantic City all the time?

A All the time; yes, sir.

Q Now, the funds you have had invested, from what sources, did I understand you, that they came?

A They were almost always, and as far as I know, they were always individual contributions given for the purpose of investment and maintenance of the institution.

Q Now, should the institution disband or go out of busi-
30 ness, what disposition would be made of those investments?

A I suppose the courts would have to determine.

Q When the donors made those gifts to the institution did they specify any way and manner in which these funds should be invested?

A I think, so far as my knowledge goes, in no case have they done so. That I can't be sure about.

Q The home has done the investing?

A Yes, sir.

Q How much did I understand you to say you had invested?

A I don't think I said, but I think perhaps I can give you an idea. I think there are about $12,000 invested.

Q Well, the management, if they felt so disposed, or should determine to use those funds, the principal, for the benefit of 10 the institution, it could be used now, couldn't it?

A The principal, I think not.

Q What makes you think not?

A Because I think it is all given as investment, but I am not sure about that.

Q Well, have you any writings?

A Oh, yes; the treasurer would have all of them. In this printed report which has been given in evidence, it is said beds have been endowed by certain people. I just counted them up, and there were twelve beds endowed that way, and I 20 think all of them were given that way. Each bed endowed costs $1,000, and every time the money is given for that purpose it is set aside as an investment, and the interest of it is used in the maintenance of the institution.

Q Then instead of using the money that is given for the institution of a bed, you invest the money and use the income for the support of the institution?

A Yes, sir.

By Mr. Cole:

Q That is the way with all endowments? 30

(Objected to.)

A I suppose so.

By Mr. Godfrey:

Q What portion of the lands in question, if you know, are occupied by the canvas tent and other buildings?

A I couldn't give you the square feet. It is all used as playground, every bit of it.

Q That was not the question. (Question repeated.)

A Roughly, I should say that a strip one-eighth of the depth of the lot.

Q These children that you send there, do they require any medical treatment?

10 A Sometimes, but not generally.

Q Now, if a person was sick and was not poor—financially, I am speaking of now—would he be admitted to this institution?

A Never has been in my recollection, and never will be.

Q Now, if they were sick and had sufficient funds, or their financial condition would permit them to pay for their maintenance and support, would you admit them?

A What do you mean, to pay the cost of their maintenance?

20 Q Pay whatever you have a mind to charge them?

A Yes, we do it all the time. I don't mean to say that every one that is admitted there pays the money, because we never refuse a child who can't pay. Perhaps I don't understand your question.

(Question repeated.)

A Well, I think that is a little different question from what you asked me. Then I will have to say now, because you ask me, to pay for their maintenance and support, no one ever pays for his maintenance and support, completely pays for it.

30 Q Has this institution ever paid any dividends, doctor?

A Never. It has no stockholders. No manager ever received a cent, directly or indirectly. The physician in charge has not for fifteen years received a cent.

Q You now have a surplus of $12,000, haven't you, invested?

A Yes, about that.

Q You could declare a dividend on that to-day, couldn't you, doctor, if you felt so disposed?

(Objected to as a legal question.)

A Certainly not. Who would get the dividend?

ANDREW J. WITHROW, a witness produced on the part of the defendant, being duly sworn according to law on his oath, testified as follows: 10

Direct Examination.

By Mr. Godfrey:

Q You are one of the assessors of Atlantic City?

A Yes, sir.

Q Of what district are you the assessor?

A Third district.

Q Is that the district where the property in question is located or situated?

A Yes, sir.

Q Are you familiar with that property? 20

A Yes, sir.

Q How long have you been familiar with it and known it?

A Well, I have known of the property ten or twelve years, living down at the end of the town there.

Q What was the condition of that property on the 20th of May, 1899, as to buildings or erections of any kind upon it?

A There none on it to my knowledge; no tents there, I know positively. I was over it in May and over it in June. There were tents on it after the first of July, I believe July and August. 30

Q You saw the tents in July and August?

A Yes, sir.

Q How much of these grounds was occupied by the tents?

A I should say thirty-five or forty feet on the end next to the railroad.

Q Do you know if there were tents there in 1898?

A Yes, sir; there were tents there in July and August of 1898.

Q What kind of tents were those that were there in July and August of 1898?

A They were tents such as was all last summer.

10 Q How about 1897?

A 1897 there were tents there.

Q Of the same character?

A The same character.

Q And how far back?

A Well, I think there has been tents on that ground for five years, of some sort.

Q Well, during the five years you have known the property, has the character of the tents changed any?

A Well, I think they have. I think last season they were 20 long, the tents were longer. There were two long tents and either two or three round, smaller tents. Before that I think—that is, five years back—there were tents there, but they seemed to be all round tents.

Q The 20th of May, 1899, were there any buildings of any kind on this land?

A There is no street dividing those blocks, and taking all the way down from Albany avenue down to Richmond or Annapolis, and I was under the impression that little building there was on the Seaview Hotel Company's ground. It may, 30 though, have been on this ground—a small frame building.

By Mr. Cole:

Q That was the building referred to by the other witnesses as a kitchen?

A Yes, sir. That may be on this ground, but there is no dividing line there on that strip of ground.

By Mr. Godfrey:

Q You know where their buildings are on Ohio avenue?
A Yes, sir.
Q What lies between the buildings on Ohio avenue and this land or lot in question?
A You mean all the property?
Q Well just state what there is between.
A The distance. 10
Q I didn't ask the distance. That is down there.
(Question repeated.)
A It is built up land.
Q Isn't it the built up portion of Atlantic City?
A The built up portion of Atlantic City, yes, sir.

ARTHUR W. KELLY,

Supreme Court Com'r.

NEW JERSEY SUPREME COURT.

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY, FOR INVALID CHILDREN

vs.

ATLANTIC CITY.

1. A corporation of this State, authorized by its charter to hold property "not to exceed thirty thousand dollars," owns and uses "exclusively for charitable purposes, certain buildings, with the land whereon the same are erected," valued in 10 excess of that sum, and has been and is exempted from all taxation thereon.

It now claims a like exemption for a more recently acquired tract of land devoted to similar purposes.

HELD: That it is not entitled to the exemption claimed, it being in excess of its grant to exemption, which is limited to property the value of which does not exceed thirty thousand dollars.

On certiorari.

Argued at the June Term, 1900, before Justices Dixon, 20 Garrison and Collins.

For the prosecutor, Thompson & Cole.
For the defendant, Godfrey & Godfrey.

The opinion of the Court was delivered by Garrison, J.:

The prosecutor of this writ is a corporation of this State, created by a special charter (P. L. 1873, p. 984).

The purpose of this writ is to obtain exemption from taxation for certain buildings, and the land whereon the same are erected, upon the ground that they are used exclusively for charitable purposes. (Gen. Stat., p. 3320.)

The facts involved in this statutory exemption claimed most of the attention upon the argument, but there are two other indisputable facts that raise a question of law that must first be dealt with.

These are, that this same prosecutor owns other buildings
10 and land in Atlantic City, of the value of $200,000, devoted in like manner to the same charitable purposes, upon which it "has been and is exempted from taxation by the authorities of Atlantic City"; and that by its charter the Prosecutor is authorized to hold, "real and personal property for the purposes of said house, *but not to exceed thirty thousand dollars.*"

Thirty thousand dollars is unquestionably the limit of the property holding capacity which the Legislature intended to confer on this corporation, and this circumstance must be deemed to have been in the legislative mind in its relation to
20 all prior pertinent legislation, just as the statute of exemption must be thought of as having its bearing upon the special corporate limitation. The two statutes are to be read together, as if the general exemption now claimed by the prosecutor were actually incorporated in its special grant from the State. Thus paraphrased, the prosecutor's charter would authorize it to hold and use for exclusively charitable purposes thirty thousand dollars worth of property, and no more and to be exempt from taxation for the whole of it while so used. In fine, it is an exemption of thirty thousand dollars
30 worth of property, or so much thereof as may be used in the manner described in the General Statutes concerning exemptions.

As the prosecutor is already enjoying an exemption that exhausts the State's grant as thus construed, its present claim

for further exemption is without foundation and must be denied.

"An Act concerning corporations constituted for benevolent and charitable purposes," P. L. 1890, p. 46, cannot, in view of its express terms, be so construed as to exempt from taxation any property of the prosecutor that was not exempt before its passage.

Section 1st of this Act does, it is true, increase the capacity of the prosecutor to hold property from thirty thousand dollars to five hundred thousand dollars. Standing alone 10 this grant would be consistent with the hypothesis that the Legislature intended that all property so held should be exempt from taxation if it fell under the general scheme of exemption. Unfortunately, however, for the prosecutor's contention in this respect, the third section of the Act in question prohibits such a construction. Its language is: "3. That nothing herein contained shall be construed to exempt the property of said corporation from taxation." Assuming that the prosecutor took, under its charter, a right to exempt property to an amount just equal to its capacity to hold property, 20 a favorable construction of this later statute would be that the right of exemption from taxation increased *pari passu* with the enlargement of the capacity to hold property. This, however, would be a construction that exempted the property of the corporation from taxation, which is the result expressly guarded against by the third section.

The certiorari is dismissed, but without costs.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, Prosecutor, Plaintiff in Error.	On Error.
vs.	Assignment of Error.
ATLANTIC CITY, Respondent, Defendant in Error.	

And now at this day plaintiff in error assigns the following causes of error:

1. Because the Supreme Court dismissed the writ of certiorari when it ought to have sustained the writ and set aside the taxes brought up for review. 10

2. Because the Supreme Court held that the property of the plaintiff in error involved in the writ was subject to the tax under review and it ought to have held that it was not subject to taxation, but was exempt as a charitable institution under the laws of this state.

Because the Supreme Court decided that the limit of exemption of the prosecutor was thirty thousand dollars, and it should have decided that its right of exemption was unlimited under the statutes of New Jersey. 20

THOMPSON & COLE,
Attorneys of Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE CHILDREN'S SEASHORE HOUSE AT ATLANTIC CITY FOR INVALID CHILDREN, Prosecutor, Plaintiff in Error.	On Error.
vs.	Joinder in Error.
ATLANTIC CITY, Respondent, Defendant in Error.	

And hereupon comes Atlantic City, the defendant in error and says that there is no error either in the record and proceed-
10 ings aforesaid or in the giving of judgment aforesaid, and it prays the Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error and that the judgment aforesaid may in all things be affirmed.

GODFREY & GODFREY,
Attorneys and of counsel with Defendant in Error.