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JOHN GERKE, COUNTY TREASURER, AND WALKER M. YEATMAN, COUNTY AUDITOR, OF HAMILTON COUNTY, v. JOHN B. PURCELL.

1. The act of April 10, 1856, which authorizes the enjoining of the illegal assessment of taxes, and the collection of taxes illegally assessed, applies as well to taxes assessed on land, as upon personal property; and the jurisdiction conferred by said act is, by section 20 of the act to establish the Superior Court of Cincinnati, made applicable to that court.
2. In section 2, article 12, of the constitution, which authorizes the general assembly to exempt from taxation the classes of property therein described, the word "public" is used, in some instances, to describe the ownership of the property, in others as merely descriptive of the use to which the property is applied. As applied to school-houses, it is used in the former sense; and by "public school-houses" is meant such as belong to the public, and are designed for schools established and conducted under public authority.
3. The fact that the use of property is free, is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public upon equal terms, the use will be public, whether compensation be exacted or not. Whether the use is free or not, becomes material only where some other element is involved than that of its public character, as, for instance, whether the use is charitable as well as public.
4. A charity, in a legal sense, includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, without any particular reference to the poor.
5. Schools established by private donations, and which are carried on for the benefit of the public, and not with a view to profit, are "institutions of purely public charity" within the meaning of the provision of the constitution, which authorizes such institutions to be exempt from taxation.
6. The constitution, in directing the levying of taxes and in authorizing exemptions from taxation, has reference to property, and the uses to which it is applied; and where property is appropriated to the support of a charity which is purely public, the legislature may exempt it from taxation, without reference to the manner in which the title is held, and without regard to the form or character of the organization adopted to administer the charity.
7. The statute, in exempting property from taxation classifies it according to legislative discretion; and if the property which the statute under-

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takes to exempt, comes within the exemption authorized by the constitution, it is immaterial how the property is classified or described.

8. In the description of the property exempted from taxation in section 3 of the tax law, as amended March 21, 1864, the word public, as therein applied to school-houses, colleges, academies, and other institutions of learning, is descriptive of the uses to which the property is devoted. The schools and instruction which the property is used to support must be for the benefit of the public; and when private property is thus appropriated without any view to profit, it constitutes a "purely public charity" within the meaning of the constitutional provision.
9. The express authority given in the constitution to exempt from taxation "houses used exclusively for public worship," carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use; but such grounds must subserve the same exclusive use to which the buildings are required to be devoted.
10. A parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, does not come within the exemption. The ground in such case is appropriated to a new and different use. Instead of being used exclusively for public worship, it becomes a place of private residence. The exemption is not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship.

ERROR to the Superior Court of Cincinnati.

The original petition was filed by the defendant in error, John B. Purcell, in the Superior Court of Cincinnati, to enjoin the collection of the taxes levied upon various parcels of real property, which he claimed to be exempt from taxation.

The defendant in error is the archbishop of the Roman Catholic Church for the diocese of Cincinnati, and the property which is the subject of controversy, is held by him in trust, for the sole use and benefit of said church, as places of public worship, for its public schools, parsonages, and other purposes. As to a part of the property embraced in the petition, a perpetual injunction was granted, and as to the remainder the petition was dismissed.

The principal grounds of error are: 1. That the court erred in enjoining the collection of the taxes levied on the parochial school-houses and the play-grounds connected

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therewith; and, 2. In enjoining the taxes levied on the property used as parsonages. The schools are distributed among the different parishes of the Catholic Church. The school-houses are, in some instances, upon the same premises as the church edifices, and in others upon grounds obtained and used for that exclusive purpose. To some of the school-houses is attached a limited amount of land, used as a play-ground by the children attending the school.

The average attendance in these schools, as appears from the evidence, is about fifteen thousand children. The course of instruction is substantially the same as that pursued in the common schools; but a leading purpose is to educate the children of Catholic parents so as to keep them within the fold of the Catholic Church. Accordingly, religious services, such as are required by the Catholic Church, form part, although a small part, of the daily exercises of the schools. At these exercises the children of Catholic parents are expected, and other scholars are merely permitted, to be present. The schools are open for the admission of children of parents of all denominations, and the instruction afforded by them is substantially gratuitous, no compensation being exacted, and no conditions imposed, except those of good behavior and the observance of the rules and discipline of the school. Small contributions of twenty-five or fifty cents per month are expected from parents who are able to contribute; but the aggregate amount of these contributions is small. The schools are substantially supported out of the revenues of the church. They are not established or carried on with a view to profit.

The parsonages are usually, though not invariably, built on the ground attached to the church edifice. The grounds thus occupied are not more extensive than they might be, and be exempt from taxation, if used for no other purpose than as connected with the church edifice as a place of public worship. These houses are sometimes separated from the church edifice, and in others are directly connected with it. They are the residences of the priests, for

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which they pay no rent, and from which source the church derives no profit, otherwise than saving the expense of providing such residences elsewhere.

Forrest & Lindemann, for plaintiff in error:

I. Has the Superior Court of Cincinnati jurisdiction to enjoin the collection of taxes assessed upon real estate?

That court has a limited jurisdiction, not only as to territory, but as to the subject-matter of the litigation; and when the legislature, in the act which took effect May 1, 1856 (53 Ohio L. 178), confined the jurisdiction therein conferred, to Courts of Common Pleas, it meant no less than the clear intendment of the language of the act. *Chatsfield, Adm'r, v. Faran*, 1 Disney, 448.

But does the act in question confer jurisdiction upon any court to enjoin the collection of taxes upon real estate? Does it not refer exclusively to chattels?

The treasurer is empowered to collect taxes upon personalty by the summary process of distraint—to seize and sell it.

To enable the courts to give redress against an arbitrary exercise of this power, the act in question was passed.

In this case no irreparable injury will result from the act complained of, and as the injury about to be done can be compensated in damages, equity will not intervene by injunction. *Fisher v. Murdock*, 1 Handy, 544; *Van Doren v. Mayor of N. Y.*, 9 Paige, 388; 1 Swan & Critchfield, 389, sec. 14; *Mechanics and Traders' Bank v. Debolt*, 1 Ohio St. 591; *Brooklyn v. Meserole*, 26 Wendell, 132; *Bouten v. Brooklyn*, 7 Howard, 206-208; *Van Rensselaer v. Kidd*, 4 Barb. 16; *McCoy v. Chillicothe*, 3 Ohio, 370; *Banks & Hayne v. Busey*, 34 Maryland, 439; *Lucas v. McBlair*, 12 Gill & J. 1; *O'Neal v. Bridge Co.*, 18 Maryland, 1; *Stoddard v. Ward*, 31 Maryland, 563; *Erie Canal Co. v. Lowrie*, 5 Penn. L. J. 464; *Audenried v. Phila. & Reading R. R. Co.*, 68 Penn. St. 370.

II. If the act of March 21, 1864 (S. & S. 761), is to be interpreted as claimed in this case, the legislature, in its en-

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actment, exceeded the power delegated by the constitution, art. 11, sec. 2; 2 Smith's Debates Con. Con. 15, 41, 43, 44, 46, 698, 702, 723, 734; *C. W. & Z. R. R. Co. v. Comm'rs of Clinton County*, 1 Ohio St. 77; and may be treated as void without affecting the validity of the remainder of the act. *Exchange Bank of Columbus v. Hines*, 3 Ohio St. 1.

The *Cincinnati College case*, 19 Ohio, 110, was decided under the provisions of the act of 1848, an act almost identical with the one we criticize, and was passed under the sanction of the constitution of 1802, which left, without restriction, the power of taxation and exemption in the hands of the general assembly.

The power of taxation being a sovereign power, can only be exercised by the general assembly when and as conferred by the constitution. *Mays v. Cincinnati*, 1 Ohio St. 268.

The spirit of the constitution is to be ascertained through the letter of the instrument. *State v. Cincinnati*, 19 Ohio, 197.

III. The theory that the question of how much of its property should be exempt from taxation, should be submitted to each religious association in the state, is illogical and irrational. *Cincinnati College v. The State*, 19 Ohio, 110; *Orr v. Baker*, 4 Ind. 88.

Archbishop Purcell, holding the property in question in trust for the benefit of the church, stands in the relation of the representative of a private corporation. All the grounds which he holds in trust belong to the pope, who is the church, a corporation sole, a private corporation. In no sense are his houses, monasteries, schools, and colleges public; and it matters not whether he sets that property aside for uses and purposes assumed to be charitable, or otherwise. *Dartmouth College case*, 4 Wheat. 634.

IV. In no legal sense are the schools of the Roman Catholic Church public and within the exemptions of the act, nor are they free. Revenue is derived from them, and

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whether the amount is sufficient to maintain them is immaterial.

For a definition of "public," "common," see Webster, Walker, and Johnson. If these words are to be differently construed, then there is no exemption for common or state schools, and public schools owned by private individuals or corporations are.

It seems to us that the words "public" and "common," as used in connection with the schools in the 6th and 12th articles of the constitution, were intended to refer to the same schools, to have the same significance; and that the general assembly, in the enactment of section 3 of the amendatory act of 1864, as well as the framers of the constitution, contemplated no different meaning to be attached to the words; and that no other "school-houses" should be exempt, except such as were supported by the "income arising from the school trust-fund," and by taxation. The words *common* and *public* mean purely and simply *state* schools, to foster and support which all the property in the state is taxed. There is nothing private in their organization; no private interests of any sort are connected with them; and the organic law excludes the possibility of these schools, or the fund supporting them, ever being controlled by any sectarian denomination. They are *free, common, public* to all.

The Catholic schools of the defendant in error are purely private and sectarian. They are controlled, conducted, fostered, and supported by Catholic authority and Catholic means—Catholic, as contradicting from Protestant, in a religious, sectarian sense. No teachers of the Protestant faith are employed; none but Catholic. Can such schools, with reason, be said to be *free, common, or public?* *Jenkins v. Andover*, 103 Mass. 98; *Board of Education of Cincinnati v. Minor et al.*, 23 Ohio St. 211; *The People v. Board of Education of Brooklyn*, 13 Barb. 409; *Allen v. McKeen*, 1 Sumner, 296.

The act of February 21, 1849 (47 Stat. 22), examined in conjunction with legislation on the same subject subse-

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quent thereto, shows the convertibility of the terms "common" and "public," as used in relation to schools in Ohio; that they are used to designate the same object—that is, the *state* school.

It is clear that the schools of the defendant in error do not fall within the class referred to in these enactments, or within any class of schools legislated for by any act of the Ohio legislature. There is no responsibility to the public for the proper administration of their affairs, nor have the state authorities any right of visitation or criticism; so to all intents and purposes they are private, not public schools.

The system of *public* education in Ohio is the creature of the constitution and statutory laws of the state. *State v. McCann*, 21 Ohio St. 205; *Van Camp v. Board of Education of Logan*, 9 Ib. 406.

If honestly entertained religious convictions prevent the Catholic powers from permitting the use of the public schools to the children of Catholic parents, and they insist upon establishing denominational schools for the dissemination of the doctrines of their church, they have no just right to complain of injustice or oppression if the state exacts the payment of the same proportion of taxation which holders of other property are compelled to pay. *O'Kane v. Treat et al.*, 25 Ill. 561.

The fixed, unbending rule of taxation, made part of our fundamental law, is, that all property (except that belonging to the public or used exclusively for religious worship) shall be taxed by uniform rule. *Exchange Bank of Columbus v. Hines*, 3 Ohio St. 1; *Zanesville v. Auditor of Muskingum Co.*, 5 Ib. 592; *Maloy v. Marietta*, 11 Ib. 638; *Weeks v. Milwaukee*, 10 Wis. 242.

The construction insisted on by counsel for defendant is opposed to this rule. 3 Kernan, 230; *Chegary v. City of New York et al.*, 13 N. Y. 220.

V. There is no constitutional sanction looking to the exemption of the vacant ground, and play-grounds for the children attending these schools, and the construction sought to be put upon the act of March 21, 1864, is wrong. Sec-

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tion 7 of the bill of rights declares that "it shall be the duty of the general assembly to pass suitable laws to protect religious denominations . . . and to encourage schools," etc. What is meant by this? Nothing more than simply to declare that no one religious society should have superior advantages over another, and to declare the intention to make perpetual the wise and beneficent system of public (or "common") schools then being established. *Trustees M. E. Church v. Ellis et al.*, 38 Ind. 3.

Hoadly & Johnson, Pugh & Throop, and Lincoln, Smith & Stevens, for defendant in error:

I. Sections 14 and 26 of the act to estublish the Superior Court of Cincinnati, passed April 7, 1854 (1 S. & C. 388), give that court jurisdiction of this case.

This act was amended March 17, 1856, and February 10, 1857 (1 S. & C. 391), so that it has been twice, as it were, re-enacted, since its original passage—an amendment, like a codicil to a will, being equivalent to a republication or second adoption of the act, as amended. *McKibben v. Lester*, 8 Ohio St. 627. So that, in legal effect, this act dates both before and after the act of April 10, 1856, authorizing injunctions against illegal taxes. 2 S. & C. 1151.

As the property in controversy is within the city of Cincinnati, and both Treasurer Gerke and Auditor Yeatman were served with summons within the city, and have answered to the merits, the requirements of the act are complied with, and there seems to be no room for a successful denial of jurisdiction.

II. As to the power to enjoin the illegal taxation of real estate.

The act, 2 S. & C. 1151, does not discriminate between real and personal property. The reasons for enjoining the illegal taxation of personalty, apply with added force to realty. *Burnet v. Cincinnati*, 3 Ohio, 73; *Culbertson v. Cincinnati*, 16 Ib. 574; *Jonas v. Cincinnati*, 18 Ib. 318.

III. As to the construction of the exemptions in the act of March 21, 1864 (2 S. & C. 761), and in the constitution.

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There are four classes of property, the taxation of which is in dispute in this case: 1. The Roman Catholic parochial school-houses; 2. The play-grounds connected therewith; 3. Two vacant lots used in connection with church edifices; 4. Priests' dwellings.

The play-grounds are "lands connected with public institutions of learning, not used with a view to profit."

They are also necessary for the proper occupancy, use, and enjoyment of the same. On both these grounds they are exempt. *Cincinnati College v. The State*, 19 Ohio, 114.

It is just as true that the dwellings of the clergy are necessary to the proper occupancy, use, and enjoyment of the churches and schools of the Roman Catholics. These clergymen are celibates, wedded only to the service of Christ, and their dwellings are not the abodes of families or homesteads, as in 38 Indiana, but edifices, of which the title is held in trust, for ecclesiastical uses, as resting places of men whose only and constant office is to serve the church. This court will recognize the usages of this and every other denomination (*Watson v. Jones*, 13 Wal. 679), and so far as not required by some paramount rule of the civil law, protect and enforce them. This duty is required by the constitution. There is, there can be no Roman Catholic church without an ordained priest, to offer upon its altar the sacrifice of the mass.

In the higher sense of the necessities of spiritual culture, according to the usages of the denomination, they are indispensable and essential parts of the churches. *Mass. Gen. Hospital v. Somerville*, 101 Mass. 319; *Wesleyan Academy v. Wilbraham*, 99 Mass. 599; *Maitlack v. Jones et al.*, 2 Disney, 2.

1. The word "public," as used in this act, and in the constitution, does not refer here to the nature of the title to the property, but to the character of its uses. It is "public" not because owned by the state, city, county, or school-district, but because open for public use.

The words "public worship" and "public charity" are

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used in the same sense, and public school-houses in no other. *Philips v. Bury*, 2 Term, 353.

2. Contemporaneous construction proves this. From the adoption of the present constitution, it has, until recently, been held, in all the departments of the state government, that these Roman Catholic schools are exempt from taxation.

The words of the constitution, "public school-houses," must be construed to include institutions of higher as well as lower grades. Contemporaneous construction has defined them in this larger sense. The first tax law, passed in 1852, and every subsequent tax law, has exempted "public colleges," as well as school-houses of other grades. And that these "colleges" did not, in the acts of 1852 and 1853, refer exclusively to institutions owned by the state, is very clear from the language of exemption there used: "All colleges, academies; *all endowments made for their support.*" 50 Ohio L. 137; Swan's Stat. of 1854, p. 924.

The provisos to the act of 1864 also prove our proposition.

3. The word "colleges" has no application to any institution owned by the public.

There are no "public academies" in the sense in which our learned antagonists use the word "public." There are union schools and high schools, but no academy can be shown, the title to which is held by the public, so far as we know.

4. The constitution uses this word "public" to define the school-houses exempt from taxation, but the word "common" to define the schools supported by taxation. Art. 6, sec. 2.

Had the language of the exemption been "common school-houses," there might have been some force in our learned friend's objection. In statutes, and, *a fortiori*, in constitutions, every word must receive its proper force, and where two different qualifying adjectives have been used, what rational purpose can we suppose to have been designed, except to express two different meanings? Is the

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public school of article 12 identical with the common school of article 6? If so, why not have used the same adjective? If not, it is easy to understand why. If the word "public," in article 12, to qualify the word "school-houses," is used in the same sense as when, in the same juxtaposition, it qualifies the words "worship" (houses used exclusively for public worship) and "charity" ("institutions of purely public charity"), then the reason is supplied for using the word "public" in this article, and "common" in article 6, where reference is exclusively had to schools supported by taxation, or "the income from the school trust-fund."

If the court finds that some or all of this property is properly taxable by the constitution, but has been improperly exempted by the statute, it by no means follows that Auditor Yeatman and Treasurer Gerke have the right to correct the errors of the general assembly, and make a law of taxation, where none exists on the statute-book.

The true rule on this subject was announced by Judge Welch, in *Frazier et al. v. Siebern et al.*, 16 Ohio St. 614, 622.

WHITE, J. Before proceeding to consider the questions raised in this case on the merits, it is proper to dispose of a preliminary question raised in argument as to whether the court below had jurisdiction of the action.

The objection to the jurisdiction is placed on two grounds:

1. That the act of April 10, 1856, which authorizes the court to enjoin the illegal assessment of taxes, and the collection of taxes illegally assessed, does not apply to taxes assessed on real estate.

2. That the operation of the act is limited to the Courts of Common Pleas.

We consider neither of these positions well taken. There is no indication in the terms of the act of an intention to restrict its operation to taxes assessed on personalty, and we see no good reason why it should be so restricted.

The act in terms confers the jurisdiction therein mentioned on the Courts of Common Pleas; and if the jurisdiction in question depended alone on that act, the Superior

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Court could of course exercise no authority under it. But section 20 of the act to establish the Superior Court provides that all laws then in force, or which may thereafter be enacted, conferring jurisdiction, in the classes of actions therein enumerated, upon the Courts of Common Pleas, shall extend to the Superior Court as fully as they extend to the Courts of Common Pleas, unless the same be inconsistent with that act or plainly inapplicable. The original suit belongs to the class of actions enumerated in the act to establish the Superior Court, and the authority conferred by the act of April 10, 1856, is not inconsistent with that act nor inapplicable to the Superior Court.

On the merits of this case two questions arise for determination. The first is whether the legislature is invested with authority to exempt from taxation the property in question. If it has such authority, the second question is whether the authority has been exercised.

The first question depends on the construction of section 2, article 12, of the constitution; and the second on the construction of section 3 of the tax law of 1859, as amended March 21, 1864. S. & S. 761.

The constitutional provision declares that "laws shall be passed, taxing by a uniform rule . . . all real and personal property, according to its true value in money; but burying-grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, . . . may, by general laws, be exempt from taxation."

The first question arising on the construction of this constitutional provision is as to the meaning of the terms "public school-houses."

It is claimed for the plaintiffs in error that by these terms are meant school-houses owned by the public; and designed for the schools established and conducted under the authority of the state; while the defendant in error contends that the terms embrace all school-houses in which schools are carried on that are open to the public without charge,

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irrespective of the question as to who owns the property, or under what authority the schools are conducted.

The word "public" is used in various senses. It is sometimes applied to describe the use to which the property is applied; at others, to describe the character in which it is held. The circumstance that the use of the property is free, is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public upon equal terms, the use will be public whether compensation be exacted or not. Thus, on some public highways, tolls are charged, while others are free; but both are equally public. Railways owned by private corporations, and the canals owned by the state, are public highways, yet compensation is exacted from the public for their use. A college consisting of a private corporation, and having a private foundation, is devoted to a public use, yet the use is none the less public because tuition is charged.

So, a hotel, which is private property, is called a public house, because it is for the use of the public. And if tuition were required to be paid for attending the schools established and carried on under the authority of the state, the schools would be no less public than they now are.

The question whether the use is free or not, or is established with a view to profit, becomes material only where some other element is involved than that of its public character—as, for instance, whether the use is charitable as well as public.

The constitution manifests careful circumspection in regard to restricting the exercise of legislative discretion on the subject of taxation.

The provision now under consideration enjoins upon the general assembly, in explicit terms, the duty of passing laws taxing by a uniform rule all real and personal property according to its true value in money. In discharging this duty, however, it is authorized to exempt, by general laws, certain specified classes of property from taxation; but

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such laws are made subject to alteration or repeal, and the value of all property exempted is required from time to time to be ascertained and published.

With the exception of a limited amount of personal property, which is authorized to be allowed to individuals, the property that may be exempted from taxation depends either upon its ownership or the use to which it is applied, or upon both.

The exemption of "burying-grounds," "houses used exclusively for public worship," and "institutions of purely public charity," does not depend on the ownership of the property. The uses that such property subserves, constitute the grounds for its exemption. The burying-grounds may be either public or private; but the houses of worship must be houses of *public* worship, and the institutions of charity must be of a charity that is *purely public*.

The other classes of property that may be exempted from taxation, are described as "public school-houses," and "public property used exclusively for any public purpose."

It appears to us that the word "public," as applied to school-houses, is used in the same sense in which it is used in the second instance, as applied to property; and that the school-houses intended are such as belong to the public, such as are designed for the schools established and conducted under the authority of the public. In the classification, public school-houses, from the nature of their use, are named as a distinct species of public property that may be exempted; and we see nothing inconsistent or unreasonable in such specific designation, arising from the fact that the subsequent provision authorizes the exemption of public property generally where it is used exclusively for some public purpose.

If all school-houses in which schools are kept, that are open to such of the public as choose to patronize them, were to be regarded as public school-houses, such property might be exempted, although owned by private parties and used by them solely with the view to profit in prosecuting their business. That a school-house thus owned and used

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would not be a public school-house, within the meaning of the constitutional provision, is clear; nor does it seem to us that it would become such from the mere fact that the school taught in it might be a free school.

The next question is whether the constitution authorizes the exemption of the school property in question, as property devoted to public charity.

The meaning of the word "charity," in its legal sense, is different from the signification which it ordinarily bears. In its legal sense it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose. 3 Steph. Com. 229. Lord Camden described a charity as a "gift to a general public use, which extends to the rich as well as the poor." Ambl. 651.

The maintenance of a school is a charity. Gifts for the following purposes have been declared to be charities: For schools of learning, free schools, and scholars of universities (2 Story's Eq. Jur., sec. 1160); to establish new scholarships in a college (*Attorney-General v. Andrews*, 3 Ves. 638); to found and endow a college (*Attorney-General v. Bower*, 3 Ves. 714); and in the case of the *American Academy v. Harvard College*, 12 Gray, 594, it was said to be well established, that "a gift designed to promote the public good, by the encouragement of learning, science, and the useful arts, without any particular reference to the poor, is a charity."

And in *Phillips v. Bury*, 2 Term, 353, it was said by Lord Holt: "Now, there is no manner of difference between a college and a hospital, except only in degree; a hospital is for those that are poor, and mean, and low, and sickly; a college is for another sort of indigent persons; but it hath another intent, to study in, and breed up persons in the world, that have not otherwise to live; but still it is as much within the reason of hospitals, . . . and both are eleemosynary."

But admitting the charitable nature of the use to which

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the property is devoted, the next question is whether it comes within the description of "institutions of purely public charity."

It is to be observed that the duty to tax as well as the authority to exempt from taxation, has reference to property. It is property alone that is required to be taxed, and property also is the object of the authorized exemptions.

Two questions arise on this branch of the subject: 1. Whether the charity to which the property is devoted is purely public; 2. Whether it is competent for the legislature to recognize these schools, as they are established and carried on, as institutions within the meaning of the constitutional provision.

As to the first of these questions, it seems to us the charity is to be regarded as purely public. For the purpose of determining the public nature of the charity, it is not material through what particular forms the charity may be administered. If it is established and maintained for the use and benefit of the public, and so conducted that the public can make it available, this is all that is required.

But is it competent for the legislature to treat the buildings and lands connected therewith, used for carrying on the schools, as institutions, or as property belonging to institutions? The term "institution" is sometimes used as descriptive of the establishment or place where the business or operations of a society or association is carried on; at other times it is used to designate the organized body. It is used in both senses in the third section of the tax law brought under consideration in this case. It is used in the former sense in the first clause of the section, where it is declared that "all lands connected with public institutions of learning, not used with a view to profit," shall be exempt from taxation. In the sixth clause of the section it is used in the latter sense, and the property referred to is described as belonging to the institutions named.

As used in the constitutional provision, the term may be applied by legislation in either sense; but in whichever

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sense it may be used, its only operation, as respects taxation, will be its effect upon property.

Laying out of view the nature of the organization by which the charity is administered, the property in question stands on the same footing as the property devoted to the support of colleges and other higher institutions of learning not founded by the state. All of these institutions stand, as respects their claim to exemption from taxation under the constitution, on the ground of their being institutions of purely public charity. If property is appropriated to the support of a charity which is purely public, we see no good reason why the legislature may not exempt it from taxation, without reference to the manner in which the legal title is held, and without regard to the form or character of the organization adopted to administer the charity. To illustrate: If the organization by which these schools are maintained were incorporated, no question could be made as to the existence of authority to exempt their property from taxation. Now, if the property is appropriated to the same public uses, and the same ends are accomplished, we see no constitutional obstacle to prevent the legislature from exempting it as fully without incorporation as with it. What the legislature might accomplish indirectly, through the intervention of a corporation—a thing of its own creation—it may accomplish directly. Nor is it essential to the existence of an institution as an organization that it should be constituted under corporate or legislative authority. *In re the Manchester College*, 19 Eng. L. & Eq. 404.

But admitting the constitutional power of the legislature to make the exemption, the next question is, whether the exemption is authorized by the statute.

The classification of the property that may be exempted from taxation is much more minute in the statute than in the constitution. The constitutional provision deals with legislative power, and defines its limits. The statute deals directly with the property, and classifies it according to legislative discretion; and if the property which the statute

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undertakes to exempt comes within the exemptions authorized by the constitution, it is immaterial how the property is classified or described.

The section of the statute under consideration consists of nine subdivisions, in which are described the various classes of exempted property. Where persons or organizations are mentioned in the section, it is only done as a means of describing property, and the uses to which it is applied, for the purpose of drawing the line between that which is exempt and that which is not. This is apparent from the first clause of the section, which declares that all *property* thereafter described, shall be exempt from taxation.

The property exempted by the first subdivision of the section is described as follows:

"All public school-houses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning, not used with the view to profit. This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning of this state; provided, nevertheless, that all leaseholds, or other estates or property whatsoever, real or personal, the rents, issues, profits, and income of which have been or hereafter shall be given to any city, town, village, school-district or subdistrict, in this state, exclusively for the use, endowment, or support of schools for the free education of youth without charge, are and shall be exempt from taxation so long as such property, or the rents, issues, profits, and income thereof, shall be used and applied exclusively for the support of free education by such city, town, village, district, or subdistrict."

A consideration of this provision of the statute shows that the word "public," as here applied to school-houses, colleges, and institutions of learning, is not used in the sense

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of ownership; but as descriptive of the uses to which the property is devoted. The schools and instruction which the property is used to support, must be for the benefit of the public. The word *public* as applied to school-houses, is obviously used in the same sense as when applied to colleges, academies, and other institutions of learning. The statute must be construed in the light of the state of things upon which it was intended to operate. At the time of its passage, there were few, if any (and we know of none), colleges or academies in the state owned by the public, while there were many such institutions in the different parts of the state owned by private, corporate, or other organizations, and founded, mostly, by private donations.

Besides, the condition prescribing that the property, in order to be exempt, must not be used with a view to profit, does not seem appropriate if intended to apply only to institutions established by the public. Such institutions are never established and carried on by the public with a view to profit. But the condition has marked significance when applied to private property, which is often used for the purposes of education, like property in ordinary business, as a means of profit. But when private property is appropriated to the support of education for the benefit of the public without any view to profit, it constitutes a charity which is purely public. When the charity is public, the exclusion of all idea of private gain or profit is equivalent, in effect, to the force of "purely" as applied to public charity in the constitution.

The remaining question is, whether the court erred in exempting the grounds attached to church edifices and the parsonages erected on such grounds.

The authority of the general assembly to exempt this description of property is limited to "houses used exclusively for public worship." The statute declares the exemption in the following language: "houses used exclusively for public worship . . . and the grounds attached to such buildings necessary for the proper occupancy, use,

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and enjoyment of the same, and not leased or otherwise used with a view to profit."

The plaintiff in error claims, in effect, that only so much ground can be exempt as is essential to support the church edifice, and to afford facilities for light and air, and ingress and egress to and from the building.

We do not think the constitution requires a construction so rigid; nor, when fairly construed, do we see in the provision of the statute an unwarranted assumption of power.

The express authority given in the constitution to exempt buildings of the description named, carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use. The ground in such case becomes annexed to the building as an incident; but the ground so annexed must subserve the same exclusive use to which the building is required to be devoted.

It is not required that the ground should be indispensable to the use of the building as a place of worship. If the ground is no more than is reasonably appropriate to the purpose, and is used for no other, it comes fairly within the limits prescribed by the constitution and the statute.

One of the conditions prescribed by the statute is, that the ground, in order to be exempt, must not be used with a view to profit. This excludes, no doubt, not only ground used for present profit, but such as may be held by way of investment for prospective profit.

But a parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, does not come within the exemption. The ground in such case is appropriated to a new and different use. Instead of its being used exclusively for public worship, it becomes a place of private residence. Nor does it make any difference that, by the usages of the church, the presence of a priest or pastor is essential to conduct the services of public worship. Other persons are necessary to carry on public worship as well as a minister to conduct the services. There must be a laity or congregation as well as a minister

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or preacher, and it is equally necessary that they should have places of abode; yet it would not be claimed that their residences could be exempt.

For the purposes of taxation, there is a marked distinction between property appropriated for the support of public worship, and that which is appropriated as a place of public worship. The exemptions authorized are not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship.

Nor does it seem to us that the question as to whether the parsonages are taxable or not, depends upon their proximity to the church edifice. On the contrary, that question, in our opinion, is to be determined by the direct and immediate uses to which they are applied.

The view we take of this question is supported by the principle of construction adopted in *Kendrick v. Farquar*, 8 Ohio, 196, and in *Cincinnati College v. The State*, 19 Ohio, 110.

The judgment, in so far as it enjoins the collection of the taxes on the parsonages, is reversed, and in other respects affirmed.

DAY, C.J., McLLVAIN, WELCH, and REX, JJ., concurred.