

Cheshire, }
Dec., 1899. }

THE YOUNG MEN'S CHRISTIAN ASSOCIATION v. KEENE.

70	223
74	485
74	548

The rented real estate of a corporation formed solely for benevolent and charitable purposes is not exempted from taxation as property "used for the purposes of the association."

BILL IN EQUITY, for an abatement of taxes. Facts found by the court. The plaintiffs were organized as a corporation under the General Laws, and own a three-story brick building on West street, the principal part of which is used for the purposes of the organization. They rent two stores on the first floor, one for a crockery store and the other for a restaurant. The primary object in renting the stores is to obtain revenue, for use in carrying on the work of the organization. An incidental object is to draw people to the vicinity of the building, so that they may become interested in the work of the association. It is desirable that there should be a restaurant near by, where meals may be furnished to members and those whom the association assists. The tax was assessed upon that part of the building which is rented. The plaintiffs claim an exemption under chapter 259, Laws 1893.

Joseph Madden, for the plaintiffs.

John T. Abbott, for the defendants.

PEASLEE, J. The plaintiffs' property on West street is exempt from taxation "so long as and to the extent that it is used for the purposes of the association." Laws 1893, c. 259. The preamble to the act declares that those purposes are solely benevolent and charitable. That portion of the building which is let to tenants is not used for the purposes of the association, but to obtain an income, or, in the language of the preamble, "for the purpose of profit or gain." The use made of the income does not entitle the plaintiffs to an exemption of the property from which the income is derived. Nor is the fact that the use incidentally promotes the objects of the association of controlling effect. The use must be exclusively for those objects, or there is no exemption. The reason for this conclusion has been fully stated in recent cases, and the question cannot now be considered to be open in this state. *Phillips Exeter Academy v. Exeter*, 58 N. H. 306; *Alton etc. Association v. Alton*, 69 N. H. 311; *New London v. Academy*, 69 N. H. 443. The tax was rightfully assessed.

This conclusion renders it unnecessary to consider whether the plaintiffs' misconception of the form of their remedy is a sufficient defence. P. S., c. 59, s. 11; *Perley v. Dolloff*, 60 N. H. 504; *Rockingham Ten Cent Savings Bank v. Portsmouth*, 52 N. H. 17, 29.

Bill dismissed.

PIKE, J., did not sit: the others concurred.

70	224
72	494
72	501

Sullivan, }
Dec., 1899. }

FIRST NATIONAL BANK OF NEWPORT v. HUNTON & a.

Where a married woman repudiates her promissory note given in discharge of her husband's debt, the payee thereof will be subrogated to her rights in the proceeds of a note given by the husband to indemnify her for assuming his obligation.

In such case, the right of subrogation sought to be enforced by a bill in equity will not be affected by a subsequent attachment of the funds in the hands of the defendant.

BILL IN EQUITY. Facts found by the court. Prior to February 24, 1896, the defendant, Edwin M. Hunton, and one Barker, being partners in business under the firm name of Hunton & Barker, dissolved the partnership upon the agreement that Hunton should have its assets and pay its indebtedness, including the firm's note of \$1,500 to the plaintiff. On that date Hunton's wife, Alice, made and executed to the plaintiffs her note for \$1,500 and took up the partnership note for that amount. Subsequently, and as a part of this transaction, Edwin gave to his wife a note for \$1,500.

Edwin continued the business, but was unsuccessful, and July 16, 1896, filed his petition in insolvency, naming among his creditors Alice, who made due proof of her claim upon the \$1,500 note. Edwin made an agreement of compromise with his creditors proving their claims, whereby they were to accept sixty per cent of their claims in full discharge thereof. Alice signed this agreement and a receipt for her sixty per cent, but did not in fact receive any money. To carry out this agreement, Edwin obtained a loan from the defendant Rawson upon a written agreement by which he was authorized to take possession of Edwin's assets, sell them, and reimburse himself for the loan and expenses, and to pay any balance to Edwin. Rawson, after reimbursing himself in