1924
*Oct. 22.
*Nov. 19.

THE RUTHENIAN CATHOLIC MISSION OF ST. BASIL THE GREAT IN CANADA (PLAINTIFF) ..... APPELLANT;

AND

THE MUNDARE SCHOOL DISTRICT No. 1603 (DEFENDANT).... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Taxation—Exemption—"Building used for church purposes"—School Assessment Act, R.S.A. (1922), c. 52, s. 24 (d).—Appeal against assessment—Right of further appeal.

A building was owned by a religious order incorporated by Act of Parliament whose members were priests of the Greek Ruthenian Church Rite. It was used and occupied as a seminary for the education of missionary priests, no charge being made for their education and maintenance, and at one end thereof on the first floor was a chapel where the parish mass was usually celebrated daily except on Sundays when it was held in a church of the order on the opposite side of the road.

Per Idington, Duff and Newcombe JJ.—The building could not be deemed to be one "used for church purposes" within the meaning of s. 24 (*d*) of "The School Assessment Act, R.S.A. (1922), c. 52 and was not exempt from taxation. Anglin C.J.C. and Mignault and Rinfret JJ. *contra.*

Held, also, that, although the appellant had already submitted its assessment to the Court of Revision, as provided for by the School Assessment Act of Alberta and had further appealed from that decision to

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

the District Court, it had still the right to institute the present action, as the question involved concerns the jurisdiction to assess. *Toronto Railway Co.* v. *City of Toronto* ([1904] A.C. 809) followed. Idington J. dissenting.

Judgment of the Appellate Division (20 Alta. L.R. 338) affirmed, the court being equally divided.

APPEAL from the decision of the Appellate Division of the Supreme Court of Alberta (1), affirming the judgment of the trial judge and dismissing appellant's claim for a declaration that a certain building and the land on which it stands is exempt from taxation and for an injunction restraining its being sold or forfeited for arrears of taxes.

The material facts of the case are fully stated in the judgment now reported.

W. L. Scott K.C. for the appellant. The building in question is used for church purposes and not used for any other purpose for hire or reward. The word "church" has two meanings: (1) It may be employed in a material sense to indicate an edifice of ecclesiastical character. (2) It may be employed in a spiritual sense, as in the phrases: "the Church of God," "the Presbyterian Church," and so on. Obviously, it is in the latter sense that the word is employed in the statute in question. The word "purposes" being in the plural makes this certain. By no ingenuity can the sentences be made intelligible if the word "church" means an edifice. The sentence must undergo complete metamorphosis if it is to mean "any building used for divine worship"; and the plural "purposes" must be cut down to a single "purpose." The phrase "for church purposes" is the precise equivalent of for the purposes of a church, just as for "national purposes" is equivalent to for the purposes of a nation.

C. C. McCaul K.C. for the respondent. The object and the purpose of the seminary is first to give a general education, secondly, to train and develop instruments to effectuate the purpose and objects of the church. And the building of the appellant is not intended for public worship.

(1) [1924] 20 Alta. L.R. 338.

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ANGLIN C.J.C.—I concur with Mr. Justice Rinfret.

IDINGTON J.—The appellant is a corporation created by the Dominion Parliament and possessed of 14·78 acres, part of the northeast quarter of section 19, township 53, range 16, west of the 4th meridian, in the province of Alberta, whereon is erected a building in which to carry on a seminary.

The respondent is, as its name implies, a corporate school district in Alberta which comprises, amongst many other parcels of land, that above referred to organized under the School Act of said province to levy rates for the maintenance of its school.

That Act provides for the appointment of an assessor to make an assessment roll for the purposes of such levy.

Section 24 of said Assessment Act provides as follows:—

24. (1) All property real and personal in any village or consolidated district not herein declared exempt from taxation shall be subject to assessment and taxation for school purposes.

The second subsection of said section 24 provides as follows:—

(2) The property exempt from taxation under the provisions of this Act shall be * * *

and then proceeds to define by subsections many properties so exempted.

By subsection (*d*) it provides as follows:—

(*d*) any building used for church purposes, and not used for any other purpose for hire or reward, and the lot or lots whereon it stands, not exceeding one-half acre, except such part as may have any other building thereon.

The appellant was assessed for its said land for the year 1923, and, deeming its assessment too high, gave the following notice of appeal from said assessment:—

To the Secretary-Treasurer of School District, No. 1603:

Sir,—I hereby appeal against Assessment No. 4052422 on the following grounds: That the said assessment is too high.

Rev. N. Kryanowsky, appellant,
P.O. Mundare,
17th day of April, 1923.

To the Secretary-Treasurer of School District No. 1603:

Sir,—I hereby appeal against Assessment No. 3132348 on the following grounds: That the said assessment is too high.

Rev. N. Kryanowsky, appellant,
P.O. Mundare,
17th day of April, 1923.

By admissions made at the trial said Rev. Father Kryanowsky was admitted to be the duly authorized agent of appellant, and was so during the said year 1923, when notice of assessment was given the plaintiff (now appellant); and further:—

That notice of assessment was given to the plaintiff;

It appealed to the Court of Revision;

That a Court of Revision was duly held and reduced the assessment of the building in question from $35,000 to the final assessment;

That the plaintiff appealed to the judge of the District Court in accordance with the Act in that regard who dismissed the same;

That the grounds for the appeal to the judge of the District Court as in the said notice of appeal set out, were as follows:

"That the property consisting of the Ruthenian Seminary and the land upon which the same is situated is under the school assessment ordinance exempt from taxation, in that the said building is used or to be used for church purposes and not used for any other purpose for hire or reward."

That the judgment of the judge aforesaid is as follows:—

"The appellant asks for exemption from school tax on a building and one-half acre, under section 24, subsection "D" School Assessment Act, chapter 52, R.S.A.

"The main purpose of the buildings I understood from the evidence was for the education of young men for the priesthood, for which no charge is made. There is a public chapel for children to learn the catechism and for public services. There is no letting for hire. There was no evidence as to how often public service was held in the chapel and I would consider from the fact that there was a church just across the road that the chapel would not be used very often for public church services. The section says that 'any building used for church purposes, and not used for any other purpose, for hire or reward, etc.' shall be exempt.

"As I understand the evidence, the building was erected and is used as a theological college. As such it is not exempt under the Act. The fact that it was a chapel for holding religious services would not bring it under the exemption. While the public on certain occasions might use the chapel, I do not think that this could be construed to exempt the whole building as being used for church purposes.

"While I recognize the fact that education of the candidates for the priesthood is essential for the proper carrying out of the work of any church, yet if the Act had intended such to be exempt such would have been specially mentioned.

"I would dismiss the appeal."

This seems to me to conclude this case as against the appellant.

There was thus brought before the Court of Revision not only the merits of the assessment as made, but also, in course of the appeal to the district judge, due consideration was had of the right to exemption as now claimed herein, and the decision above quoted duly reached as provided for by the said School Assessment Act.

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Section 38 thereof expressly provides for such a proceeding before the district judge. Subsection 11 of said section 38 declares as follows:—

> The decision and judgment of the judge shall be final and conclusive in every case adjudicated upon.

I am, with great respect, of the opinion on the foregoing facts that the said judgment was as expressed in said subsection 11 final and conclusive in law and should have been so held by the learned trial judge and those in the Appellate Division.

When the case of the *Toronto Railway Company* v. *The City of Toronto* (1), cited by Mr. Justice Hyndman, and the relevant facts are closely examined and the law bearing upon this case is also closely examined, and due comparison made, it will be seen that the said decision does not interfere with giving due effect to the said subsection 11 and thereby disposing of this appeal.

The pretension set up herein that the property in question was exempt from assessment, is to my mind so entirely without foundation in law, that I do not feel disposed to follow up the opinion I have just expressed as to the effect of said subsection 11, with prolonged argument in support thereof.

I prefer, having so expressed my opinion on said subsection 11, going direct to the question chiefly discussed in the reasons assigned in the court below in support of appellant's pretension.

I submit that the interpretation given by such an educated man as I assume the Reverend Father Kryanowsky to be, when he gave the said notices of appeal on the ground of the assessment being too high, was the correct interpretation.

It does not seem ever to have occurred to him that the legislature of Alberta could imagine such a ground of exemption as that of a seminary, much less of a purely theological seminary for the selection and training and education of priests of any church. Such a conception I rather imagine to have been the product of some legal mind, fertile in resources when driven by desperate necessities.

(1) [1904] A.C. 809.

The suggestion is a straining of the language used. An exemption from taxation should never be carried further than what is beyond doubt the clearly expressed intention of the legislature and so restricted it is impossible, I submit with great respect, correctly, to turn a very common ground of exemption in favour of buildings used for churches into what is contended for by appellant.

The counsel for appellant could not point to any such exemption as put forward herein ever having taken place in favour of any other religious denomination in Alberta.

In default of any such precedent I can see no justification for supposing that the Alberta legislature could have any such intention.

I am, therefore, for the foregoing reasons of the opinion that this appeal should be dismissed with costs.

DUFF J.—I concur with Mr. Justice Newcombe.

MIGNAULT J.—I concur with Mr. Justice Rinfret.

NEWCOMBE J.—The confusion in this case arises because of the equivocal meaning of the word "church"; it is necessary to interpret the word as found in the School Assessment Act of Alberta, R.S.A. 1922, c. 52, s. 24, which is the beginning of a group of sections relating to assessment and taxation for school purposes in village and consolidated districts. Section 24 provides that all property real and personal in any village or consolidated district not declared exempt from taxation shall be subject to assessment and taxation for school purposes; then follows an enumeration of property which is declared exempt, including

any building used for church purposes and not used for any other purpose for hire or reward, and the lot or lots whereon it stands, not exceeding one-half acre, except such part as may have any other building thereon.

It will be observed that the exemption includes only a building and the land whereon it stands, not exceeding one-half acre, if used for church purposes; the words are certainly not inapt to describe a building used as a place of ministration of divine service, or as a church in the sense of a meeting house for public worship; moreover the area of land which goes with the building, limited to one-half acre, is not unlike that which would be required for a church site and a churchyard in a locality populous

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enough to be a village or consolidated district. The question is whether these " church purposes " are so comprehensive as to embrace those of a theological college or seminary.

The exemptions provided by a preceding group of sections, which relate to rural districts or portions thereof situated in a non-collecting municipal district or in the extra municipal area, are naturally somewhat more generous to the churches so far as concerns the extent of land. The church exemption in these localities is thus defined by s. 6:—

> The land to the extent of three acres held by or for the use of any church on which there is a building used for church purposes.

It will be perceived that the exemption is here somewhat differently expressed, and that the word " church " which appears twice in one line has different meanings; in the first place, the body which uses; in the second place, to qualify or describe the use of a building which is requisite for its exemption, while in s. 24 the term is used only in the latter sense; but, for the rural as well as for the village districts, the land exempted is of small area, such as would be required for the churchyard, having regard to the locality.

The plaintiff order was incorporated in Canada by c. 152 of 1908, " An Act to incorporate the Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada." The Act proceeds upon the preamble that the Reverend Fathers, who are named as the corporators, are members of the Order of St. Basil the Great, an order of religious in communion with the See of Rome, that they are the only members of the Order in Canada and have for several years been engaged in pursuing the objects of their Order in the establishing and carrying on of parishes or missions, and the erection and conduct of churches, schools, colleges, orphanages and hospitals, in the provinces of Manitoba, Saskatchewan and Alberta; the objects of the corporation are declared to be:—

> the maintenance and carrying on of parishes or missions, the erection, maintenance and conduct of churches, cemeteries, schools, colleges, orphanages and hospitals in any of the provinces of Canada, and the advancement in other ways of education and religion, charity and benevolence.

The Superior of the Order for Canada testifies that the members of the Order are priests of the Greek Ruthenian

Catholic Church, that he resides at the village of Mundare, where the Order has a ministry, a convent and a church, and where the Mission is the proprietor of 14·78 acres of land upon which it has built a seminary. This building was begun in 1922 and finished in August 1923 at a cost of nearly $30,000. The building is 120 ft. long by 40 ft. in width, having a basement and two floors above, and it is used as a place for the training and education of those who are to become missionary priests of the Order. It contains dormitories, school room and one large room used as a chapel where mass is said. The building was opened for use in September, 1923, and at the time of trial there were only a few boys or young men in attendance, but the building is designed for the accommodation and use of thirty or forty students. There is a church belonging to and used by the Mission on the opposite side of the street where the Sunday services are held.

It is argued that because it is necessary that young men should be trained for the ministry or priesthood, and because the seminary is a building used for this purpose, therefore it is used for church purposes, and is consequently exempt from taxation. In order to justify this contention it is necessary to interpret the word "church" as connoting not, or not only, in its primary sense, the Lord's house, but a church in the sense of an organized body of christians possessing the same or similar symbols of doctrine and forms of worship, united as a christian denomination, and "purposes" as including any purpose which the competent authority of the church may formulate and adopt. If the word be intended to convey that meaning it may be observed that there is no proof in the case that it is a purpose of the Roman Catholic Church to maintain or to use the seminary for any purpose, although it is well established that the purpose of the appellant Order in the construction and use of the seminary is the training and education of young men to become priests of the Order. I do not think, however, with the utmost respect for the opinion of my learned brothers from whom I am sorry to differ, that education, even for the priesthood, is within the natural, common and ordinary meaning of the expression "church purposes" in the use and context in which it here finds itself. The purposes designed and adopted

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by a body of christians organized as a church in the execution of the general policy of the organization or society might obviously include purposes very remote from those intended by s. 24; for example it might be a purpose of a church organization to establish and maintain an orphanage, or a hospital, or a house of refuge. These and other worthy or benevolent projects, if made part of the general policy of a church, may appropriately be described as church purposes in one sense; but I think a definition which would admit these to the benefit of the exemption would be giving a broader effect to the language than can be reasonably found to have been intended by the legislature.

The words are of popular meaning and should be taken in their popular sense. *The Board of Works for the Wandsworth District* v. *United Telephone Company* (1). Plainly what the legislature intended to exempt was a building in an Alberta village, standing on half an acre of land, used for church purposes, and the inquiry suggests itself as to whether an assessor for a village or consolidated district would regard buildings occupied by colleges for the teaching of Divinity, such as for example, Knox, Wycliffe, or Pine Hill, as within the description, or as used for church purposes. The exemption as already said is concerned with a building and a small area of land, such as is usually appurtenant to a meeting house; in my judgment the sort of building which is intended to be exempt is a building used for the purposes for which a church is used, and therefore I do not doubt that the assessor when determining whether a building should be assessed or exempt would naturally have regard to the use for which a church edifice is designed and to which it is commonly put; he would ascertain the purposes for which the building is used, and the determining fact would be whether or not the ascertained use of the building is that which is peculiar to a church or meeting house; a place set apart and devoted to public worship. The building, of course, may not have the appearance or architectural qualities of a church, though if these indications be present they might not improbably be accepted

(1) [1884] 13 Q.B.D. 904, at pp. 919, 920.

by the assessor as indicative of the apparent use of the building, but it is only a building, satisfying the definition in other respects, which is used as a church edifice is used, according to the common and popular understanding of the nature of such use, that is within the meaning of the exempting clause.

Moreover, there is a principle which finds expression in a recent judgment of the Judicial Committee of the Privy Council that it is incumbent upon those who claim to be exempt from a tax which is generally imposed clearly to establish their immunity. In *City of Montreal* v. *Collège Sainte Marie* (1) my learned brother Duff J. sitting as a member of the Board and pronouncing its judgment, said:—

> Their Lordships are not disposed to differ from the view pressed upon them that an agreement in order to receive effect under the statute must be very clearly made out; such an agreement, if effective, establishes a privilege in respect of taxation, and the principle is not only well settled, but rests upon obvious considerations, that those who advance a claim to special treatment in such matters must show that the privilege invoked has unquestionably been created.

That the interpretation upon which the appellant relies is at best of a dubious and questionable character is shown by the fact that the learned Chief Justice, who tried the case, and three of the learned Judges of the Appellate Division have interpreted the exemption as not including the seminary, while the other two learned Judges of the Appellate Division have come to the opposite conclusion.

I would dismiss the appeal.

RINFRET J.—This appeal turns upon the construction to be put on the words " church purposes."

It comes in this way:

Section 24 of an Act respecting assessment and taxation for school purposes, being chapter 52 of the Revised Statutes of Alberta, 1922, provides as follows:—

> 24. (1) All property real and personal in any village or consolidated district not herein declared exempt from taxation shall be subject to assessment and taxation for school purposes.
>
> (2) The property exempt from taxation under the provisions of this Act shall be,—
>
> (*d*) Any building used for church purposes, and not used for any other purpose for hire or reward, and the lot or lots whereon it stands, not exceeding one-half acre, except such part as may have any other building thereon.

(1) [1921] 1 A.C. 288 at p. 290.

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The appellant is the registered owner of a certain building standing on a portion of the northeast quarter of section 19, township 53, range 16, west of the fourth meridian, which is within the public school district of the respondent established under the "School Act," c. 51 of the Consolidated Statutes of Alberta, 1922. This school district has assessed this building and lands for the year 1923 and has demanded taxes from the appellant in respect thereof. On the ground that they are used for church purposes and not for any other purpose for hire or reward, the appellant now claims a declaratory judgment that the said building and the said lands to the extent of one-half an acre are exempt from assessment and taxation by the respondent as well for the year 1923 as for the future, so long as they are used for the purposes aforesaid. It also prays for an injunction restraining the defendant, its servants and agents from selling or forfeiting or in any other way interfering with the said building and the said lands to the extent aforesaid for arrears of taxes or otherwise howsoever and from assessing the said building and lands in future so long as they are used for the purpose aforesaid.

The facts are undisputed. The building in question contains a chapel, class rooms, dormitories, kitchens, etc. The chapel is used exclusively for divine worship. The building is used solely as a seminary for the education and training of young men for the priesthood. After a year's novitiate or probation, they become members of the Order, are educated for the priesthood, and, after ordination, serve as priests in the parishes and missions in charge of the Order. The building is used for no other purpose. It is not used for any purpose for hire or reward. The students are maintained or educated entirely free of any charge and the building is kept up by free-will offerings and contributions.

Appellant does not make the contention that its building is entitled to exemption under the Act by reason of the fact that it contains a chapel and that therefore the exemption must be extended to the whole building. Its submission is that the building itself, in view of the use to which it is exclusively put, comes under the purview of the statutory exemption.

In order to reach the proper conclusion, the intention of the legislature of Alberta must be looked for as disclosed by the language of the statute.

It is true that a statutory exemption must be strictly construed; but, as was pointed out in *St. Paul's Church* v. *City of Concord* (1),

> while the rule serves to express a principle governing the court in this jurisdiction when passing upon the question of the intention of the legislature in tax-exemption statutes, it is not so narrow and rigid in its application as to defeat the lawmakers' intention ascertained from all the competent evidence. Though called a rule, for convenience of expression, it is merely evidence to be weighed; and its weight depends upon its reasonableness, and not alone upon its verbal applicability. In other words, it is the duty of the court to ascertain and carry out the intention of the legislature; and that fact (*sic*) is to be found, not by mechanical or formal application of words and phrases, but by the exercise of reason and judgment. If the literal significance of statutory language as applied to the facts of a particular case, makes the meaning absurd, strange, or inexplicable, it cannot be adopted as the only test of the legislative purpose, without either imputing to the legislature a senseless design, or judicially evading the duty of ascertaining the intent. If the so-called "rule of strict construction," as applied to statutes exempting certain property from taxation, is so strictly applied as to render the exempting language so narrow and restricted as to defeat the apparent legislative purpose, it is clear that too much sacredness is attached to a mere rule and that it should be either abrogated or applied with more liberality and reason.

The only safe rule in construing statutes and, in fact, the great fundamental principle is that

> the grammatical and ordinary sense of the words is to be adhered to unless that would lead to absurdity, or some repugnancy or inconsistency with the rest of the instrument; in which case, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity, repugnancy, or inconsistency, but no further. (Maxwell On Statutes, 5th ed. p. 4).

This was also the language of Lord Parmoor in *Rex* v. *Canadian Northern Railway Co.* (2); and we are reminded of it by Lord MacNaughton in *Vacher & Sons* v. *London Society of Compositors* (3), where he says, at p. 118, that, in the absence of a preamble, one should depart from the ordinary and common sense of the words in an enactment only where it would lead to some absurdity or it is inconsistent with some other clause in the body of the enactment.

(1) [1910] 27 L.R.A. N.S. 910, at p. 912.
(2) [1923] A.C. 714 at p. 718.
(3) [1913] A.C. 107.

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This leads us to consider the grammatical and ordinary sense of the words used by the legislature of Alberta, and it may be convenient to examine them separately.

There is no doubt that the word "church" was originally used as a name for a house of worship; but, as pointed out in Halsbury's Laws of England, vol. II, p. 355, paragraph 688:—

> The change from a narrower to a wider meaning of the word "ecclesiastical" has been accompanied by a similar change in the meaning of the word "church" when used of a religious body, and the very wide signification given in ordinary legal parlance to that word when so used makes it advisable to base any propositions as to the relations between the state and a church on a careful definition of what that word when so used connotes. Although the words "church" and "denomination" are sometimes used in juxtaposition in a manner which appears to imply that a "church" is to be distinguished from a "denomination," there is no legal definition of the word "denomination" which would enable any useful inference to be drawn from this implication, and the word "church" is in fact used of any ecclesiastical organism which is complete within itself and separate from other churches.

And Fitzgibbon L.J., in *McLaughlin* v. *Campbell* (1), says:—

> "Church" has two different meanings: it may mean the aggregate of the individual members of the "church"; or it may mean the quasi-corporate institution which carries on the religious work of the denomination whose name it bears (e.g. the "Church of Rome" or the "Church of Ireland").

As for the word "purpose," it has been defined:—

> An object to be kept in view or subserved in operation or course of action; end proposed; aim. (Century Dictionary). The object for which anything is done or for which it exists; the result or effect intended, or sought; end, aim. (Murray's New Dictionary, vol. VII).

It would follow therefore that the grammatical and ordinary sense of the words "church" and "purposes" when joined together is the objects for which the religious body exists, the result intended or sought by such body; its ends or aims.

Applying now this meaning to the use which is made by appellant of the building for which it seeks exemption from taxation, it is to be noticed that the appellant was incorporated under the name of "The Ruthenian Catholic Mission of the Order of St. Basil the Great in Canada" by the Dominion Parliament in 1908, chapter 152 of the statute 7-8 Edward VII. It is stated in the preamble of that statute that the incorporators have

(1) [1906] 1 Ir. R. 588 at p. 597.

represented that they are members of the Order of St. Basil the Great, an order of religious in communion with the See of Rome;

and, since incorporation ensued, it follows that this representation was found to be true by Parliament. The appellant is therefore an order forming part of an

ecclesiastical organism which is complete within itself

and which is one of the great religious organizations of the world. Its primary and predominant object, as given in section 4 of its incorporating statute, is

the maintenance and carrying on of parishes and missions (and also) the advancement in other ways of * * * religion.

The words "the advancement of religion" do not call for any special explanation. The alternative use of the expressions "parishes" and "missions" is well known in Alberta, as can be seen by reference to *The Purdy & Henderson Company, Ltd.*, v. *The Corporation of the Parish of St. Patrick* (1), and *Leonard* v. *Corporation* of the *Parish of St. Patrick* (2). A man carrying on a mission, or a missionary, is one sent to propagate religion and to administer its rites and sacraments.

The evidence is that the building now in question is a seminary for the education of young men for the priesthood and that the object of teaching the priests is

for the purpose of carrying on the work of their religion.

The students come there with that sole object in view, that is to be trained in order to become instruments to effectuate the purpose and object of the church.

Preaching the Gospel is one of the commands of Jesus to his Apostles:—

Go ye therefore and teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Ghost, teaching them to observe all things whatsoever I have commanded you; and behold I am with you alway even unto the end of the world (St. Matthew, xxviii, 19-20).

In obeying this command the priests of the Order of St. Basil the Great in Canada are carrying on their missionary work for the advancement of religion; and it is with that object in view that they are trained in the religious establishment for which they now seek exemption from taxation.

Moreover they are also educated in the seminary in question for the purpose of being ordained priests and as such

(1) [1917] 12 Alta. L.R. 263. (2) [1922] 17 Alta. L.R. 262.

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of celebrating (in the words of Lord Birkenhead), the central sacrament in a creed which commands the assent of many millions of our Christian fellow-countrymen (*Bourne* v. *Keane*) (1),

As Mr. Justice Beck justly remarks:—

It is practically the universal practice of Catholic priests to say mass every day and for priests in charge of a parish to say it in a church or chapel open to the entire congregation and to which a considerable number of the congregation daily resort for the purpose of assisting at Mass —to use the fuller expression used by Catholics: "The Holy Sacrifice of the Mass"—a service of worship—no preaching—no singing."

The appellants here would certainly accept, as correctly characterizing the holy sacrifice of the mass, the following exposition made by Lord Birkenhead:—

* * * the sacrament of the mass was, and is, a sacrifice propitiatory of the whole church, both living and dead. The celebration of mass, according to Roman Catholic doctrine, is by no means a benefit entirely confined to the soul or souls of the persons for whom it is directly designed; it benefits (such is the conception) the whole of the living community as well as the dead (*Bourne* v. *Keane*) (1), at page 833.

Now that sacrament

is fundamental in the belief of Roman Catholics, and without which the church and the altar would alike be useless (Lord Birkenhead, loc. cit., at p. 861).

It is

a sacred and sacramental rite, which is an essential and integral part of a service of great solemnity in the liturgy of the Roman Catholic Church (Lord Parmoor in *Bourne* v. *Keane* (1)) at page 917.

The solemnization of this sacred and sacramental rite cannot take place without the priest, who is the essential minister exclusively authorized to celebrate mass. For that end, the Catholic church needs ordained priests, and it is for that purpose also that, in the building in question, young Catholics of Ukrainian nationality are being trained

to become priests of the Greek Ruthenian rite in order that they may serve their fellow Catholics of that rite.

This institution's existence therefore is exclusively and solely for the essential purposes of their church, which

prima facie imports the operative institution which ministers religion and gives spiritual edification to its members. *McLaughlin* v. *Campbell* (2),

It would not be representing the true character of such a seminary to class it among mere educational establishments and to say that as such it cannot claim exemption under the Act, because only the buildings and grounds of public and separate schools which are under the man-

(1) [1919] A.C. 815, at p. 831. (2) [1906] 1 Ir. R. 588, at p. 597.

agement of the Department of Education shall be exempt. The schools contemplated by the Act have for their object the education of students for their own individual and personal ends and benefit, whilst the students in the seminary in question are trained exclusively with the view of promoting the ends and aims of their religion, quite independently of any resulting benefit to themselves; and it is this distinction which takes the seminary out of the category of schools and classifies it as an establishment maintained for church purposes.

In the case of *The People* v. *Muldoon* (1), to which reference is made by Stuart J. in the Appellate Division, it is pointed out that

> exemption from taxation rests on a general public benefit and that in the case of property used for religious purposes a compensation is afforded for the exemption which is not a mere gift to religion, but for a public purpose.

In that particular case it was proven that the nuns engaged in

> prayer and meditation, practices of penance and contemplation, but that they had "no relation near or remote to the public" and were "completely separated and secluded from the world and not in any manner connected with public worship, or public religious observances.

For that reason, it was held that their property should not be exempt. But the distinction upon which the judgment rested in that case would, I think, apply here in favour of the appellant.

Reverting therefore to the purposes for which the building in question is used by the appellant, it would appear that they are entirely covered by the words "church purposes," as expressed in the statute, and even that that is grammatically the meaning which these words convey.

Now the legislature of Alberta must be held to have intended what the words it has used mean, as there is no reason here to depart from their ordinary and common sense, since they lead to no absurdity and are not inconsistent with any clause in the body of the enactment. It is only by so construing the statute that effect will be given to the full meaning of the words "church purposes." I therefore come to the conclusion that by using the word "church" the legislature intended to refer to the whole

(1) [1923] 137 N.E.R. 863.

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body of the religious institution, and not to a mere physical structure or building used exclusively as a place of public worship.

One cannot escape the impression that if the legislature of Alberta had intended to use this word in such a narrow sense and to confine the exemption to a place of public worship, it would have said so in plain words. That impression is strengthened by the use in the charter of the City of Edmonton (1913, c. 23, s. 320 (4)) of the phrase

any building used as a place of worship.

Other legislatures throughout Canada have used similar expressions in corresponding statutes.

British Columbia, Revised Statutes of 1911, vol. 3, p. 2778:—

every place of public worship with the site thereof.

Revised Statutes of Manitoba, 1913, c. 134, s. 4 (p):—

buildings commonly called churches erected and used for the regular stated places of worship of any religious denomination and the lands in connection therewith not exceeding two acres in extent.

R.S.O. 195, s. 5 (2):—

every place of public worship.

R.S. Quebec, art. 5729:—

property held and occupied for public worship, presbyteries, parsonages and cemeteries.

R.S.N.S. (1923), c. 86, s. 4:—

every church and place of worship, the land used in connection therewith and every churchyard and burial ground.

On the other hand, the Saskatchewan statutes use the same language as is used in Alberta (R.S.S., c. 112, s. 5), and we may also refer to the terms of the R.S. Quebec, art. 2897:—

No religious, charitable or educational institution or corporation shall be assessed under this title on the property occupied by them for the object for which they were instituted.

The comparisons just made will tend to show that the legislatures to restrict the exemption to the physical structure or building used for religious worship, have used the words "place of worship"; and one is led to the conclusion that by the broader expression "any building used for church purposes," the legislature of Alberta had in view more than the buildings used merely as churches (in the narrow sense), and must have intended to include all that such wider expression covers.

Before concluding, reference ought to be made to an objection which was taken by the respondent, although not pressed very forcibly that the assessability of the property in question is " res judicata " because the appellant had already submitted its assessment to the Court of Revision, as provided for by the School Assessment Act of Alberta, and further had appealed from the decision of the Court of Revision to the District Court of Edmonton, where its appeal was dismissed.

This objection has been overruled in the courts below; and it should be sufficient to state here that the question involved being one with regard to the jurisdiction to assess, it is concluded adversely to the contention of the respondent by the decision of the Judicial Committee in *Toronto Railway Company* v. *City of Toronto* (1).

In that case the action was for a declaration that the appellants' cars were personal property and, as such, were not liable for $8,775 sought to be levied as taxes thereon by respondents. The latter relied on a plea of *res judicata.* On an appeal from the assessment the cars had been determined by the Court of Appeal to be real estate, and that decision had not been appealed from. The law of Ontario applicable to the point submitted to the Judicial Committee was then contained in the Revised Statutes of Ontario of 1897. There is no substantial difference between that law and the statute of Alberta which applies in the present case, as a comparison between the relevant sections will show.

By section 62 of c. 224, R.S.O. (1897), a revision court of three persons was constituted and their jurisdiction was defined by section 68 as follows:—

68. At the times or time appointed, the court shall meet and try all complaints in regard to persons wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum.

71 (1). Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted in or omitted from the roll, or as having been undercharged or overcharged by the assessor in the roll, may personally, or by his agent give notice in writing to the clerk of the municipality (or assessment commissioner, if any there be), that he considers himself aggrieved for any or all of the causes aforesaid, and shall give a name and address where notices can be served by the clerk as hereinafter provided.

(1) [1904] A.C. 809.

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72. The roll, as finally passed by the court, and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the judge of the County Court, be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or misstatement in the notice required by section 51 of this Act, or the omission to deliver or transmit such notice.

75 (1). An appeal to the County Judge shall lie, not only against a decision of the Court of Revision on an appeal to said court, but also against the omission, neglect or refusal of said court to hear or decide an appeal.

82. The decision and judgment of the judge or acting judge shall be final and conclusive in every case adjudicated, and the clerk of the municipality shall amend the rolls accordingly.

Similar provisions, with a further appeal to the Court of Appeal, are to be found in section 84 of the Ontario Act when the assessment was to an amount agregating $20,000.

In Alberta the Board, by sections 33 (1) and 37 (1) of c. 52 of the Revised Statutes of 1922, is constituted "as a court of revision to hear all appeals and complaints."

35 (1). Any person complaining of an error or omission in that his name has been wrongfully inserted in or omitted from the roll, or in that he has been overcharged by the assessor in the roll may personally or by his agent give notice in writing to the secretary that he considers himself aggrieved for any of the causes aforesaid.

37 (3). The roll as finally passed by the court and certified by the secretary as passed shall, except in so far as the same may be further amended on appeal to a District Court, be valid and bind all parties concerned notwithstanding any defect or error committed in or with regard to such roll, or any defect or error or misstatement in the notices required by any of the four next preceding sections, or the omission to deliver or transmit such notices.

38 (1). If any person is dissatisfied with the decision of the court of revision he may appeal therefore to the District Court.

38 (11). The decision and judgment of the judge shall be final and conclusive in every case adjudicated upon.

In the *Toronto Railway Company Case* (1), the appellants had appealed to the Court of Revision against the assessment on the ground, amongst others, that the property was not liable to assessment as real property. The Court of Revision dismissed the appeal and its decision was affirmed by the County Court Judge and subsequently by the Court of Appeal. Lord Davey, in delivering the judgments of their Lordships of the Judicial Committee (1), at p. 815 said:—

(1) [1904] A.C. 809.

It appears to their Lordships that the jurisdiction of the Court of Revision and of the courts exercising the statutory jurisdiction of appeal from the Court of Revision is confined to the question whether the assessment was too high or too low, and those courts had no jurisdiction to determine the question whether the assessment commissioner had exceeded his powers in assessing property which was not by law assessable. In other words, where the assessment was *ab initio* a nullity they had no jurisdiction to confirm it or give it validity. The order of the Court of Appeal of June 28, 1902, was not, therefore, the decision of a court having competent jurisdiction to decide the question in issue in this action, and it cannot be pleaded as an estoppel.

It may be stated that this decision was in accordance with the opinion already expressed in this court in the case of *City of London* v. *Watt & Sons* (1), where the Chief Justice said, at p. 302:—

I agree with the Court of Appeal in holding that the 65th section of the Ontario Assessment Act (R.S.O. 193) does not make the roll, as finally passed by the Court of Revision, conclusive as regards question of jurisdiction. If there is no power conferred by the statute to make the assessment it must be wholly illegal and void *ab initio* and confirmation by the Court of Revision cannot validate it.

In the *City of London* v. *Watt & Sons* (1), the court construed the revised statutes of Ontario of 1887, where the relevant provisions were similar to those of the Revised Statutes of Ontario of 1897.

I have therefore reached the conclusion that the views of Mr. Justice Beck and Mr. Justice Hyndman, in the Appellate Division of the Supreme Court of Alberta, were right and, with deference, I am of opinion that the appeal should be allowed with costs and that judgment should be entered declaring that the building in question and the one-half acre of land upon which it stands are exempt from taxation under the Act respecting assessment and taxation for school purposes (R.S.A., c. 52).

Appeal dismissed.

Solicitors for the appellant: *Cormack, Sawnla & Basarab.*

Solicitor for the respondent: *H. A. White.*

(1) [1893] 22 Can. S.C.R. 300.