CANADIAN NATIONAL RAILWAYS.....APPELLANT;

AND

TOWN OF CAPREOL.....RESPONDENT.

1925

*June 10.
*June 18.

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

Assessment and taxes—Exemption—Charitable institution—Construction of statute—Ejusdem generis—Railway building—Ontario Assessment Act (R.S.O. [1914] c. 195, ss. 5 (9) and 47 (3)).

By sec. 5, subsec. 9 of The Ontario Assessment Act every industrial farm, house of industry, etc., "or other charitable institution conducted on philanthropic principles and not for the purpose of profit or gain" is exempt from taxation. By sec. 47, subsec. 3 "the structures * * * on railway lands and used exclusively for railway purposes or incidental thereto * * * shall not be assessed." A railway company erected, on its own land, a building with all facilities for lodging, entertainment and recreation and handed it over to the Y.M.C.A. which agreed to provide suitable lodgings for its own members and employees of the railway. The railway company did not, and the Y.M.C.A. could not, make any financial gain therefrom.

Held, affirming the judgment of the appellate Division (56 Ont. L.R. 62) that the building was not exempt from taxation under sec. 5 (9); the words "or other charitable institution" in that subsection mean an institution *ejusdem generis,* as those previously mentioned; moreover the lodging house in this case was not a charitable institution conducted on philanthropic principles inasmuch as the Y.M.C.A. received an adequate return for the services supplied.

Nor was it exempt under sec. 47 (3); by other provisions of that section the structure must be "in actual use and occupation by the company" and by subsec. 3 it must be "used exclusively for railway purposes or incidental thereto" while other persons than railway employees took advantage of it.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1) refusing the appellant's claim to exemption of its property from taxation.

The nature of the questions in dispute and the necessary facts are set out in the above head-note. The building erected by the railway company and the land on which it stood were assessed by the town and the assessment was confirmed by the Court of Revision and County Judge. The Railway and Municipal Board held that the building was exempt under sec. 47 (3) but the Appellate Division held differently and sent the case back to the Board for consideration of the effect of sec. 9 (5). The Board held against exemption under that provision and the case came again before the Appellate Division which decided that there was no right to exemption under either section.

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

1925

CANADIAN NATIONAL RAILWAYS v. TOWN OF CAPREOL.

Lafleur K.C. and *R. E. Laidlaw* for the appellant. The railway company erected this building for the sole object of improving the living conditions of its employees and realized no profit from it. This would make it a charitable institution in the ordinary sense. See *Commissioners of Income Tax* v. *Pemsel* (1); *In re City of Ottawa and Gray Nuns* (2).

And it is a charitable institution under sec. 5 (9) of the Assessment Act, the fact that the Y.M.C.A. received payment for its services being immaterial. *Shaw* v. *Halifax Corporation* (3); *In re Noailles* (4); *In re City of Ottawa and Gray Nuns* (2); *In re Estlin* (5).

The Municipal and Railway Board found that the fact is that the property was " used exclusively for railway purposes or incidental thereto " and is, therefore, exempt from taxation under sec. 47 (3).

R. S. Robertson K.C. and *G. E. Buchanan K.C.* for the respondent. A charitable institution to be exempt under sec. 5 (9) must be of the same character as those named in said subsection. *In re Stockport Ragged Industrial and Reformatory Schools* (6).

The institution in question is not conducted on philanthropic principles. *Reg.* v. *Sterry* (7); *Rex* v. *St. Giles* (8) at page 579.

The judgment of the court was delivered by

ANGLIN C.J.C.—The appellant claims exemption from liability for assessment either under s.s. 9 of s. 5 or under s.s. 3 of s. 47 of The Ontario Assessment Act (R.S.O., c. 195) for a property in the town of Capreol.

On land owned by it in the town, Canadian Northern Realities, Ltd., a subsidiary corporation of the Canadian Northern Railway Company, erected at a cost of about $80,000 a building containing numerous bed-rooms, a reading-room and other rooms and facilities for lodgings, entertainment and recreation. This building, partly equipped, was handed over to the National Council of the Young Men's Christian Association of Canada to be operated under the terms of an agreement made between that body

(1) [1891] A.C. 531.
(2) 29 Ont. L.R. 568.
(3) [1915] 2 K.B. 170.
(4) 114 L.T. 1089.
(5) 88 L.T. 88.
(6) [1898] 2 Ch. 687.
(7) 12 Ad. & E. 84.
(8) 3 B. & Ad. 573.

and the Canadian Northern Ontario Railway Company. The association agreed to pay a nominal rental ($1 per year), to use the building as a branch of the Young Men's Christian Association and, *inter alia,*

> to provide suitable lodgings at all times, subject to the capacity of the branch, to its own members and to employees of the railway at charges that shall be satisfactory to the Railway Superintendent.

The evidence shows that, although much the greater number of those who availed themselves of these privileges were railway employees, other citizens of Capreol also took advantage of them. The railway company contributed $150 per month towards the upkeep of the branch and provided, free of charge, fuel, water and light, and maintained insurance on the building, fixtures and equipment. The entire revenue is handled by the association which, by its charter, is prevented from making gain or profit for its members.

There is no doubt that the purpose of the railway company in erecting the building and placing it in the hands of the Y.M.C.A. was to improve the social and living conditions of its employees and that the only advantage it derives from the undertaking is in the improved morale and efficiency of its employees who make use of the institution.

In 1922 the town of Capreol assessed the land used in connection with the institution at $3,500 and the building at $50,000. The rate of assessment in the town was stated to be 45 mills on the dollar.

On appeal to the Court of Revision this assessment was confirmed and the District Court judge dismissed a further appeal taken to him. An appeal to the Railway and Municipal Board was allowed, however, and exemption granted under s.s. 3 of s. 47. On a further appeal to the Appellate Divisional Court, that court took a different view and referred the case back to the board to consider the claim for exemption under s.s. 9 of s. 5, in support of which further evidence was to be admitted. But, after hearing such evidence, the board did not consider the appellant entitled to exemption under this subsection and, upon the matter again coming before the Appellate Divisional Court, the claim for exemption on either ground was finally negatived by a majority of the court. Hence the present appeal.

Subsection 9 of section 5 of the Assessment Act exempts from assessment:

1925

CANADIAN NATIONAL RAILWAYS v. TOWN OF CAPREOL.

Anglin C.J.C.

9. Every industrial farm, house of industry, house of refuge, orphan asylum, and every boys' or girls' or infants' home or other charitable institution conducted on philanthropic principles and not for the purpose of profit or gain, and every house belonging to a company for the reformation of offenders, and the land belonging to or connected with the same; but not when occupied by a tenant or lessee. 4 Edw. VII, c. 23, s. 5, par. 9; 1 Geo. V, c. 59, s. 1.

The claim of the appellant was that the Railway Y.M.C.A. at Capreol is

a charitable institution conducted on philanthropic principles and not for the purpose of profit or gain,

and that it is, therefore, entitled to the exemption claimed.

But it seems obvious that every charitable institution so conducted does not fall within s.s. 9 of s. 5. Special exemptions of undertakings of a charitable nature conducted on philanthropic principles and not for purposes of profit and gain are to be found in s.s. 2, 3, 4, 5, 10, 12 and 13. It seems reasonably certain, therefore, that the words

charitable institutions conducted on philanthropic principles and not for the purpose of profit or gain,

are not used in s.s. 9 in their most comprehensive sense.

We agree with Mr. Justice Ferguson that

these words take their colour from and are limited by the other words of the section

in which they are used and must be restricted in their application to institutions *ejusdem generis* as those enumerated. *In re Stockport Ragged, Industrial and Reformatory Schools* (1). The category appears to comprise institutions which provide board and lodging at the public expense, or otherwise gratis, to their inmates—*Tillmanns & Co.* v. *Knutsford* (2).

We cannot think that the legislature meant to exempt as a charitable institution an undertaking of which, as Mr. Justice Ferguson says,

the evidence establishes that the moneys collected by the Y.M.C.A. from their members, boarders and lodgers and received from the railway, were an adequate return to the appellants and the Y.M.C.A. for the lodging accommodation and services rendered by the Y.M.C.A., and that the accommodation, lodging and services were not offered, given or rendered as charities, and were not received or accepted as such.

The learned judge adds that in his opinion that is the meaning of the evidence and of the Board's finding. It would seem strange indeed if this institution, which clearly competes with the hotels, lodging houses and clubs of the

(1) [1898] 2 Ch. 687. (2) [1908] 2 K.B. 385.

town, were exempt from the taxation to which they are subject.

The claim to exemption under s.s. 3 of s. 47 must now be considered. The provisions of s.s. 3 can best be appreciated by reading it in the context in which it is found.

Sec. 47. (1). Every steam railway company shall annually transmit on or before the first of February to the clerk of every municipality in which any part of the roadway or other real property of the company is situate, a statement shewing:

(*a*) The quantity of land occupied by the roadway, and the actual value thereof (according to the average value of land in the locality) as rated on the assessment roll of the previous year;

(*b*) The vacant land not in actual use by the company and the value thereof;

(*c*) The quantity of land occupied by the railway and being part of the highway, street, road or other public land (but not being a highway, street or road which is merely crossed by the line of railway) and the assessable value as hereinafter mentioned of all property belonging to or used by the company upon, in, over, under, or affixed to the same;

(*d*) The real property, other than aforesaid, in actual use and occupation by the company, and its assessable value as hereinafter mentioned;

and the clerk of the municipality shall communicate such statement to the assessor. 4 Edw. VII, c. 23, s. 44 (1).

(2) The assessor shall assess the land and property aforesaid as follows:

(*a*) The roadway or right of way at the actual value thereof according to the average value of land in the locality; but not including the structures, substructures and superstructures, rails, ties, poles and other property thereon;

(*b*) The said vacant land, at its value as other lands are assessed under this Act;

(*c*) The structures, substructures, superstructures, rails, ties, poles and other property belonging to or used by the company (not including rolling stock and not including tunnels or bridges in, over, under or forming part of any highway) upon, in, over, under or affixed to any highway, street or road (not being a highway, street or road merely crossed by the line of railway), at their actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises, regard being had to all circumstances adversely affecting the value including the non-user of such property; and

(*d*) The real property not designated in clauses (*a*), (*b*) and (*c*) of this subsection in actual use and occupation by the company, at its actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises. 4 Edw. VII, c. 23, s. 44 (2).

(3) Notwithstanding anything in this Act contained, the structures, substructures, superstructures, ties, rails, poles, wires and other property on railway lands and used exclusively for railway purposes or incidental thereto (except stations, freight sheds, offices, warehouses, elevators, hotels, roundhouses and machine, repair and other shops) shall not be assessed. 6 Edw. VII, c. 36, s. 13.

1925

CANADIAN NATIONAL RAILWAYS v. TOWN OF CAPREOL.

Anglin C.J.C.

(4) The assessor shall deliver at, or transmit by post to, any station or office of the company a notice, addressed to the company, of the total amount at which he has assessed the said land and property of the company in his municipality or ward shewing the amount for each description of property mentioned in the above statement of the company; and such statement and notice respectively shall be held to be the assessment return and notice of assessment required by sections 18 and 49.

(5) A railway company assessed under this section shall be exempt from assessment in any other manner for municipal purposes except for local improvements. 4 Edw. VII, c. 23, s. 44 (3-4).

Subsection 3 is obviously intended to exempt from taxation property of which the railway company is required to make a return under s.s. 1 and which would otherwise be assessable under s.s. 2. If, therefore, the property under consideration be not within s.s. 1 and s.s. 2, exemption cannot be claimed for it under s.s. 3. The only clauses of s.ss. 1 and 2 within which it might be suggested that this property would fall are the clauses lettered (*d*) in each subsection. But actual use and occupation of the property by the railway company is the condition of the application to it of each of those provisions. That condition excludes this property. Moreover, property exempted under s.s. 3 must be "used exclusively for railway purposes or incidental thereto."

Assuming, but without so deciding, that the use of this property solely as a club and lodging house for railway employees would fulfil the requirement of s.s. 3, that use is not exclusive, since other citizens of Capreol admittedly share in the benefits and advantages offered by the branch Y.M.C.A.

We are, for these reasons, of the opinion that on neither of the grounds set up is the property in question entitled to exemption.

The appeal fails and must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *A. J. Reid.*
Solicitor for the respondent: *George E. Buchanan.*