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THE KING ..... APPELLANT;

AND

THE ASSESSORS OF THE TOWN OF SUNNY BRAE ..... } RESPONDENT.

Ex Parte Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK, APPEAL DIVISION

Assessment—Taxes—Religious Congregation operating laundry and dry cleaning business in competition with other firms in like business—The Rate and Taxes Act, R.S.N.B., 1927, c. 190, s. 4(1) (d) and (g)—Whether appellant's buildings, and equipment exempt under clauses (d) and/or (g)—Meaning of word "charitable" as used in clause (g).

The Rates and Taxes Act, R.S.N.B. 1927, c. 190, exempts from taxation s. 4(1):

"(*d*) Every building of a religious organization used exclusively . . . for the religious, philanthropic or educational work of such organization, with its site and ground surrounding the same upon which no other building is erected, but this exemption shall not include real estate in respect of which rent is received by such organization; also the personal property and income of such organization, used exclusively for religious, philanthropic or educational purposes;

(*g*) The property of any literary or charitable institution."

The appellant is a religious society devoted exclusively to the furtherance of the education of girls generally and in particular to the education and reformation of wayward girls, and the education and care of female orphan children. Its members have taken the vows of poverty and receive no wages and any revenue is expended exclusively for the furtherance of the purposes of the Society. Girls are received regardless of their race or creed or ability to pay. The appellant owns real estate on which is erected a main building which provides accommodation for the inmates and includes a school and a public laundry and dry cleaning plant where the girls are taught habits of industry and fitted to earn a living. The plant is in public competition with commercial laundries. There is also on the property a two-family brick dwelling occupied by two male employees and their families. The men are employed as truck drivers. The appellant was incorporated in 1945 by a special act of the N.B. Legislature for the purpose of carrying out its objects as set out above and was authorized to purchase land and erect buildings for such purposes and as incidental thereto for the maintenance of the institution, to carry on the business of a steam and general laundry.

*PRESENT: Rinfret C.J. and Kerwin, Rand, Kellock, Estey, Locke and Cartwright JJ.

The respondent assessed the laundry equipment, two motor trucks used in the business and the brick dwelling. The appellant claims exemption under s. 4(1) clauses (*d*) and (*g*).

Held: (Rinfret C.J., Kerwin and Cartwright JJ. dissenting).

1. In construing s. 4(1), clause (*g*) must be regarded as a general clause and clause (*d*) as a particular clause and to avoid repugnancy or inconsistency (*d*) must be taken to be an exception to (*g*).
2. The appellant is not a "charitable society or institution" within the meaning of clause (*g*); *Cocks* v. *Manners* L.R. 12 Eq. 574; *In re White* [1893] 2 Ch. 41; but a society of mixed objects, some charitable and some not, and must find exemption, if any, under clause (*d*).
3. The use referred to in (*d*) is the actual use to which the property is put and not the object to which the profits from the business carried on may be devoted.

Per Estey J. The equipment used in the conduct of the business serves not only the appellant organization, but the public generally. It therefore cannot be said to be "used exclusively for religious, philanthropic or educational purposes."

Per: Rinfret C.J., Kerwin and Cartwright JJ., dissenting—Whether the word "charitable" as used in clause (*g*) is to be construed in its legal sense or in its natural and ordinary meaning, the appellant is a "charitable society or institution," notwithstanding its operation of the laundry and dry-cleaning plant, within the meaning of those words as used in clause (*g*). *Birtwistle Trust* v. *Minister of National Revenue* [1938] Ex. C.R. 95 at 101; affirmed by [1940] A.C. 138; In *re Douglas—Obert* v. *Barrow* 35 Ch. D 472 at 479 and 487. In the contemplation of the Legislature as expressed in the statute of incorporation the operation of the laundry business is merely incidental to the charitable purposes of the appellant and the maintenance thereof. This is not the case of an institution carrying on a commercial business and incidentally performing sundry charitable works or paying over its profits to others for charitable purposes, but of a society or institution of which all the primary purposes are purely charitable which is actively engaged on charitable works and as an incidental means of providing some of the money which is required for the prosecution of such charitable works carries on a business under its statutory powers. It is a charitable society or institution within the meaning of those words as used in clause (*g*) and it follows that all its property is exempt from taxation.

APPEAL from a decision of the Supreme Court of New Brunswick, Appeal Division, Richards C.J. and Harrison J. (Hughes J. dissenting) (1) dismissing an application by way of Certiorari by the appellant calling upon the respondent to show cause why an assessment upon the appellants' property in the Town of Sunny Brae should not be quashed.

John Carvell for the appellant. If there is no evidence that rent is *received* for the brick dwelling house, then the finding that it is must be erroneous. The only evidence

(1) (1951) 28 M.P.R. 380; 3 D.L.R. 394.

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regarding the receipt of rent by the Society for any of its property appears in the affidavits of the Town Clerk and the Chairman of the Board of Assessors; these affidavits merely depose the fact that rent is paid for the dwelling "or included in the salary or wages paid" the employees who occupy it. Since the saving of expense by paying employees by supplying them a dwelling is not the *receipt* of rent, this alternative deposition is not evidence that rent is *received*. Therefore the finding that rent is received is erroneous and this building should be exempt from taxation.

The laundry and dry-cleaning equipment, and property used in conjunction therewith, which is the property of the Society, is exempt from taxation if it is used exclusively for religious, philanthropic or educational purposes. *The Rates and Taxes Act*, s. 4(1) (*d*), which is made applicable by s. 75 of *The Towns Incorporation Act*. The finding that this property is not so used is erroneous. The property of the Society is used exclusively for religious, philanthropic or educational purposes since these are the only purposes of the Society. *In re House of the Good Shepherd of Omaha, House of the Good Shepherd of Omaha* v. *Board of Equalization of Douglas County* (1). Where the incorporating statute of the Society provides that it may carry on the business of a general laundry etc. as "incidental to", meaning *part of* its philanthropic and educational purposes, it follows that the laundry and dry-cleaning equipment and property used in conjunction therewith is exempt from taxation.

All the property of the Society is exempt, regardless of its use, if it is the property of a charitable society. *The Rates and Taxes Act* s. 4(1) (*g*), which is made applicable by s. 75 of *The Town Incorporation Act*. It is wrong at law to rule that a religious society cannot claim exemption as a charitable society—The Legislature has provided an exemption; the meaning of the words used is clear and should be given effect to. The ordinary sense of the words used leads to no absurdity, inconsistency with the rest of the instrument, or manifest injustice and does not require modification by the Judiciary. *Re Linton & Sinclair Co.*

(1) [1925] 203 No. West R. 632.

Ltd. (1); *Pemsels'* case (2). Charitable societies and religious societies do not necessarily belong to the same genus. The word "religious" may describe a society which is not a charitable society. *Cocks* v. *Manners* (3) *In re Delaney* (4). Obviously in this case where the Legislature dealt with the property of religious societies and charitable societies in separate exemptions it considered them to be distinct—As gathered from the words used, the intention of the Legislature should be construed to be the subsidization of charitable societies carrying on business. *Halifax* v. *Sisters of Charity* (5). The ruling of the Court of Appeal can only be the result of adding a clause to the Statute, "Provided that the property of a religious society shall not be deemed to be the property of a charitable society"; this is manifestly in error. Maxwell on the Interpretation of Statutes, 9 Ed. p. 14-18.

The appellant is a charitable society since its object is the advancement of education, except in so far as this is tempered with the purpose of relieving poverty and advancing religion. All of these purposes are recognized by the law as charitable, according to the standard set by Lord Macnaghton in *Pemsels'* case, and since it does its work with philanthropic principles, not for the purpose of making a profit. *Re the Township of King and the Marylake Industrial School and Farm Settlement Association* (6). Therefore all the property of the appellant is exempt from taxation.

J. A. Creaghan K.C. for the respondent. Taxation is an act of Sovereignty to be performed as far as conscientiously can be with justice and equity to all and exemptions, no matter how meritorious, are of grace and must be construed strictly. In *Ruthenian Catholic Mission* v. *Mundare School District* (7), Iddington J. at p. 625 said: "An exemption from taxation should never be carried further than what is beyond doubt the clearly expressed intention of the legislature * * * *"

It is a general rule that while a taxing Act is to be construed strictly in favour of the taxpayer, a statute under which an exemption is claimed from a burden imposed

(1) [1937] 1 D.L.R. 137.
(2) [1891] A.C. 534.
(3) (1871) L.R. 12 Eq. 574.
(4) [1902] 2 Ch. 642.
(5) (1904) 40 N.S.R. 481.
(6) [1939] 1 D.L.R. 263.
(7) [1924] S.C.R. 625.

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upon the community at large is also to be narrowly construed against the claim for exemption. To claim exemption under s. 4(1) (*d*) the property must be used exclusively for religious, philanthropic or educational purposes. *Les Commissionaires etc. St. Gabriel* v. *Les Soeurs de la Congregation de Notre Dame de Montréal* (1); Evangelical *Lutheran Synod* v. *Edmonton* (2); *L'Association Catholique etc.* v. *Chicoutimi* (3); *C.N.R.* v. *Capreol* (4).

Section 4(1) (*d*) expressly excludes real estate in respect of which rent is received.

The appellant does not come within the provisions of s. 4(1) (*g*). Richards C.J. "There is no question as to the nature and purposes of the Society in question. It clearly comes within s. 4(1) (*d*) as a religious, philanthropic and educational institution rather than under s. 4(1) (*g*) as merely a literary or charitable society." (5) Harrison J. "The society is, as stated by the Mother Superior, a religious organization, that is to say its purposes are conducive to the advancement of religion." (5). *In re White* (6); *Re Ward* v. *Ward* (7).

"As a religious organization the exemption of the property of this Society is governed by s. 4(1) (*d*). No doubt all religious organizations are classified as charitable under the legal definition of charity, but this class of charitable organization is specifically dealt with in the exemption clauses of *The Rates and Taxes Act,* and therefore this religious organization cannot claim exemption under the general description of charitable society found in clause 4(1) (*g*)."

It is submitted these findings are correct. The same property could not be included in both clauses as the exemptions are different. Hughes J. in his dissenting judgment was at variance with the rules of construction he adopted in *R.* v. *Mullin* (8) and the cases cited by him at p. 308. It is submitted the interpretation there given was the proper one. See also *Pemsel's case* (9) per Lord Halsbury at 551: "The fact however, remains, that in various statutes the word charitable is distinguished by the Legislature from 'public', 'educational', 'religious', and in no

(1) (1886) 12 S.C.R. 45 at 54.
(2) [1934] S.C.R. 280 at 284.
(3) [1940] S.C.R. 511.
(4) [1925] S.C.R. 499 at 502.
(5) 28 M.P.R. 380.
(6) [1893] 2 Ch. 41.
(7) [1941] Ch. 308.
(8) (1946) 19 M.P.R. 298.
(9) [1891] A.C. 531.

one instance that I have been able to find, do the words run 'or other charitable purpose', which one would think would be the natural mode of the meaning now insisted on." In *Adamson* v. *Melbourne & Metropolitan Board of Works* (1) Anglin C.J. in delivering judgment gave a restricted interpretation of the words "charitable institutions."

The judgment of the Chief Justice, Kerwin and Cartwright, JJ. was delivered by:—

CARTWRIGHT J.:—This is an appeal from a judgment of the Supreme Court of New Brunswick, Appeal Division, discharging a rule nisi to quash the assessment made by the assessors of the Town of Sunny Brae against certain property of the appellant.

The appellant was incorporated by special act of the Province of New Brunswick being c. 94 of the Statutes of 1945.

The preamble to this Act reads as follows:—

WHEREAS the Religious Ladies established at Moncton and known as Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur, whose members aim at devoting themselves to the care and reformation of female penitents and the providing of a home for orphan children, have by their petition prayed that the institution may be incorporated in order that they may better accomplish the objects for which it was formed;

Section 1 incorporates three sisters who are named "and all members of 'Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur' and other religious forming the Council of the said Community their associates and successors" under the name of the appellant "with all the general powers and privileges incident to corporations."

Sections 2 and 3 read as follows:—

2. The Corporation shall have power to conduct, control and maintain an educational institution for the support, care and reformation of female penitents and for the care and education of girls generally; an hospital and dispensary for the sick; an asylum for orphan children and a home for the aged and infirm and such other persons who may desire to reside in any establishment of the Corporation according to the rules and by-laws of the Corporation.

3. The Corporation shall have perpetual succession, a common seal and may sue and be sued; may purchase, receive or otherwise acquire lands or buildings in the Province of New Brunswick, may erect on such

(1) (1929) 98 L.J. (P.C.) 20.

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land acquired, as aforesaid, or any of them an educational institution, an hospital, an asylum, a home and any other necessary buildings and works and may use, convert, adapt and maintain all or any of such land, buildings and premises to and for the purposes aforesaid, and incidental thereto for the maintenance of the said institution, hospital, dispensary, asylum and home, may carry on the business of a steam and general laundry and of tailors and makers of dresses and wearing apparels of all kinds, with their usual and necessary adjuncts and generally may enjoy real and personal estate and may mortgage, lease, convey or sell or otherwise dispose of such real and personal estate for the furtherance of the objects of the Corporation.

There appears to be no dispute as to the relevant facts which are set out in affidavits made by the Superior of the appellant and the Town Clerk of the respondent respectively.

The following paragraphs from the affidavit of the Superior are relevant:—

That the said Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur is a Society devoted exclusively to the furtherance of the education of girls generally, and especially to the education and reformation of female penitents and the furtherance of the education and care of orphan female children.

That the said Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur is a religious Society whose members have taken vows of poverty and receive no wages for their services in teaching and caring for the said girls, and any revenue of the said Society has not been distributed as profits or dividends but is retained and expended exclusively for the furtherance of the purposes of the Society.

That the said object of furthering the general education of girls is realized by the provision of a general Christian education to 82 boarding pupils and orphans; and that 35 female penitents are surrounded with virtuous influence and taught the habits of industry, so that they may become useful members of society and fitted to earn a living.

That girls are accepted in our institution regardless of their race, religion, creed or any other consideration.

The following paragraphs from the affidavit of the Town Clerk are also relevant:—

That Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur, commonly known as the "Home of the Good Shepherd" is the owner of a large tract of land situate in the said Town of Sunny Brae, on which is constructed a large building in which it carries on a school for the education and reformation of girls, and a home for female orphan children. The said Home of the Good Shepherd carries on in the said building a very extensive public laundry and dry-cleaning business serving customers in the said Town of Sunny Brae, the City of Moncton, N.B., and generally throughout the surrounding districts. For the purpose of the said laundry and dry-cleaning business it owns and operates two motor trucks for picking up and delivering clothing and other articles

to be laundered and/or dry-cleaned for reward. It is a very keen competitor with other laundry and dry-cleaning establishments in the area served.

That in addition to the main building used for general purposes of the Home, and in part of which the said laundry and dry-cleaning business is carried on, the Home of the Good Shepherd is the owner of a new two family brick dwelling occupied by two male employees and for which rent is paid or included in the salary or wages paid such employees.

The respondent did not assess the lands or the main building of the appellant, but did assess "the laundry and dry-cleaning equipment" as personal property at the sum of $40,000, the trucks at $2,200 and the two-family dwelling house at $8,000, making a total assessment of $50,200. It is the legality of this assessment which is in issue, and the decision of the appeal turns upon the proper construction of section 4 of *The Rates and Taxes Act,* R.S.N.B. (1927) c. 190, which by section 75 of *The Towns Incorporation Act,* R.S.N.B. 1927, c. 179, is made applicable to assessments for town purposes.

Counsel for the appellant concedes that the relevant statutory provisions give the respondent authority to make the assessment in question unless the property assessed is exempt from taxation under the provisions of clauses (*d*) and (*g*) of 4(1) of *The Rates and Taxes Act* which read as follows:—

> 4. (1) The following property shall be exempt from taxation:—
>
> (*d*) Every building of a religious organization used exclusively as a place of worship, or used for the religious, philanthropic or educational work of such organization, with its site and ground surrounding the same upon which no other building is erected, but this exemption shall not include real estate in respect of which rent is received by such organization; also the personal property and income of such organization, used exclusively for religious, philanthropic or educational purposes;
>
> (*g*) The property of any literary or charitable society or institution.

Counsel for the appellant, while conceding the well settled rule that clear words are necessary to give immunity from liability to taxation imposed upon the community at large since every exemption throws an additional burden on the rest of the community, argues that the appellant is a charitable society or institution and that under clause (*g*), quoted above, all its property is exempt from taxation.

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Counsel for the respondent submits that the fact of the appellant carrying on the laundry and dry-cleaning business, mentioned above, prevents it being regarded as a charitable society or institution within the meaning of clause (*g*). Alternatively he submits that even if the appellant would *prima facie* fall within the wording of clause (*g*) it does not do so as it is a religious organization and religious organizations being specially dealt with in clause (*d*) must be deemed to be excluded from clause (*g*).

Neither counsel suggested that there is any statutory definition in New Brunswick of the words "charitable society or institution." In *Commissioner's for Special Purposes of Income Tax* v. *Pemsel* (1) at page 580, Lord Macnaghten says:—

> In construing Acts of Parliament, it is a general rule, not without authority in this House (*Stephenson* v. *Higginson* (2)), that words must be taken in their legal sense unless a contrary intention appears.
>
> * * *
>
> That according to the law of England a technical meaning is attached to the word "charity" and to the word "charitable" in such expressions as "charitable uses", "charitable trusts", or "charitable purposes", cannot, I think, be denied.

Whether the word "charitable" as used in clause (*g*) is to be construed in its legal sense or in its natural and ordinary meaning, it is, I think, beyond question that the appellant is a "charitable society or institution" unless its operation of the laundry and dry-cleaning plant has the effect of excluding it from such class.

A sufficient definition of a charitable institution is to be found in the judgment of Maclean J. in *Peter Birtwistle Trust* v. *Minister of National Revenue* (3).

> A charitable institution is, I think, an organization created for the promotion of some public object of a charitable nature, and functioning as such.

This judgment was reversed, Kerwin J. dissenting, in [1939] S.C.R. 125, and restored *sub nom Minister of National Revenue* v. *Trusts and Guarantee Co.* (4), but there is nothing said in any of the judgments to throw doubt on the accuracy of the definition quoted. A helpful discussion of what is a charitable institution is to be found in *In re*

(1) [1891] A.C. 531.
(2) 3 H.L.C. at p. 686.
(3) [1938] Ex. C.R. 95 at 101.
(4) [1940] A.C. 138.

Douglas. Obert v. *Barrow* (1) where Kay J. at first instance (at page 479) and Lindley L.J. in the Court of Appeal (at page 487) held that the *Home for Lost Dogs* was a charitable institution and neither Cotton L.J. nor Bowen L.J., the other members of the Court of Appeal, said anything to suggest the contrary.

I have reached the conclusion that notwithstanding the operation of the laundry and dry-cleaning business the appellant remains a charitable institution within clause (*g*). The Act of Incorporation and the material filed make it clear that the primary purposes and objects of the appellant are purely charitable. It will be observed that in s. 3 of such Act, after the enumeration of certain purposes, all charitable, it is provided that "incidental thereto for the maintenance of the said institution, hospital, dispensary, asylum and home" the appellant may carry on the business of a laundry. In the contemplation of the legislature as expressed in the Statute and in fact as shewn by the material filed, the operation of the laundry business, large though it be, is merely incidental to the charitable purposes of the appellant and for the maintenance thereof. This is not the case of an institution carrying on a commercial business and incidentally performing sundry charitable works or paying over its profits to be used by others for charitable purposes but rather that of a society or institution of which all the primary purposes are purely charitable which is actively engaged in carrying on charitable works and which as an incidental means of providing some of the money which is required for the prosecution of such charitable works carries on a business under statutory powers.

For the above reasons, I am of opinion that the appellant is a charitable society or institution within the meaning of those words as used in clause (*g*) and it follows that all its property is exempt from taxation for under this clause it is the character of the owner of property rather than the use to which such property is put that determines whether it is liable to assessment.

I have not over-looked the second argument of counsel for the respondent, that the appellant, being a religious organization, must find any exemption to which it is

(1) (1887) 35 Ch. D. 472.

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entitled in clause (*d*) and must be held to be excluded from the operation of clause (*g*). There is no doubt that the appellant is a religious organization but the construction contended for by counsel for the respondent would bring about the result that all the property of a society or institution whose objects were solely charitable would be exempt from taxation if such society were purely secular, or indeed if it were avowedly atheistic, but that a society with identical objects composed of members of a religious order would have only a limited exemption. It seems to me that clear and unambiguous words would be required to achieve such a result.

I can find nothing in the wording of the Statute and I know of no rule of construction which requires us to hold that the thirteen clauses contained in section 4(1) of *The Rates and Taxes Act* are necessarily mutually exclusive. There is no incompatibility between religion and charity but, in law, a society may be religious without being charitable, see for example *Cocks* v. *Manners* (1), or charitable without being religious, for example the *Home for Lost Dogs* referred to in *In re Douglas. Obert* v. *Barrow* (*supra*). If, as must often happen, a society is both a religious organization and a charitable institution I see no reason why it should not be entitled to the exemption afforded by clause (*g*) to a charitable institution. I find nothing in the record to indicate that any of the objects or purposes of the appellant society are religious without being charitable.

For the above reasons, I am of opinion that the appeal should be allowed, the rule *nisi* made absolute and the assessment quashed. The appellant is entitled to its costs in this court and in the Appeal Division of the Supreme Court of New Brunswick.

The judgment of Rand and Locke, JJ. was delivered by:

RAND J.:—The society or institution appealing to this Court is a body corporate by the name "Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur." The incorporation was by special act of the legislature of New Brunswick in 1945. The objects are, to conduct, control and maintain an educational institution for support,

(1) (1871) L.R. 12 Eq. 574.

care, and reformation of female penitents and for the care and education of girls generally; a hospital and dispensary for the sick; an asylum for orphan children and a home for the aged and infirm and such other persons as may desire to reside in an establishment of the society; and as incidental to these purposes and for the maintenance of the institution, power was given to carry on the businesses of a steam and general laundry and of tailors and makers of dresses and wearing apparel of all kinds, with their usual adjuncts.

The corporation has its seat near the city of Moncton and as part of its activities it conducts a general laundry business. Those engaged in the laundry include inmates as well as outside employees, and the business is in public competition with other laundries. Under *The Rates and Taxes Act* of the Province, it has been assessed on the building with its land occupied by two drivers of laundry trucks and the personal property, largely machinery, including the trucks, used in the business, in the sum of $52,200.

Exemption from taxation is claimed under paragraphs (*d*) and (*g*) of section 4 of the statute which are as follows:

> (*d*) Every building of a religious organization used exclusively as a place of worship, or used for the religious, philanthropic or educational work of such organization, with its site and ground surrounding the same upon which no other building is erected, but this exemption shall not include real estate in respect of which rent is received by such organization; also the personal property and income of such organization, used exclusively for religious, philanthropic or educational purposes;"
>
> (*g*) The property of any literary or charitable society or institution;

In the petition for certiorari and in the affidavit of Antoinette des Coteaux, the Superior, the organization is described as a religious society whose members have taken vows of poverty and receive no wages for their services in teaching and caring for the girls, and it is stated that the income is expended exclusively for the furtherance of the purposes of the society. About 60 per cent of those attending the general education classes pay a tuition fee of $20 a month, but the fee is said not to be a condition of admission to or continuance in the institution. Of the female penitents in what is known as the "School of Protection"

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only four pay the fee and eighteen are accommodated free, except for whatever revenue may be derived from their labour.

The question in controversy involves the characterization given to the corporation and its activities. A charity or charitable society is, I should say, one whose purposes are those described in the preamble to the statute 43 Eliz. c. 4 or purposes analogous to them. They can be classified generally, as for the advancement of religion, for the relief of poverty, for the promotion of education, and for other purposes bearing a public interest: and the attributes attaching to all are their voluntariness and, directly or indirectly, their reflex on public welfare.

A religious society may or may not be charitable. In *In re White* (1), it was held that a bequest "to a religious society", without more, meant, prima facie, for religious purposes and so charitable. In *Cocks* v. *Manners* (2), a religious institution consisting of a voluntary association of women whose purpose was "the working out of their own salvation by religious exercises and self-denial" was held not to be charitable. In *Townsend* v. *Carus* (3), in which a legacy was left on trust for the benefit of societies, subscriptions or purposes "having regard to the glory of God, in the spiritual welfare of his creatures", for which a scheme had to be devised, was construed by Wigram V-C. to be a gift for religious purposes and to be restricted to such purposes. In the course of dealing with the argument that ways of expending the property might be suggested which might be conducive to spiritual welfare, but which separately taken would not in themselves be charitable, he observed:—

> It appears to me sufficient to say that if, as I think the case is, the end proposed by the testatrix is charitable, no expenditure can be lawful which is not directly conducive to that end; and the end itself cannot lose its charitable character only because parts of the machinery admissible for its accomplishment are not in themselves abstractedly considered charitable. Writing, for example, is not grammar; but if grammar cannot be so well learned without first learning to write, that may be taught in a pure grammar school, as a step to the learning which is its proper object.

(1) (1893) 2 Ch. 41. (2) L.R. 12 Eq. 574.
(3) 67 E.R. 378.

Lindley L.J. in *In re White, supra,* paraphrases this language thus:—

> Having come to the conclusion that the object of the testator was charitable because it was religious, he says that no mode of carrying out his intention could be proper if that mode was not itself charitable.

This artificial signification, unless the context modifies it, is to be attributed to either "charitable" or "charity" when it appears in a statute: *Commissioners* v. *Pemsel* (1); and the former as used in paragraph (*g*) is to be so interpreted.

As long ago as 1675, in the case of *Webb* v. *Batchelet* (2), specifically holding them chargeable to repairs of highways, the Court declared parsons chargeable with all public duties; and that this is the settled view appears from Phillimore's Ecclesiastical Law, 2nd Ed., Vol. I, p. 477. Taxes, then, are the rule against all, and he who claims an exemption must show that he comes within the language delineating it. It must be shown, as Duff J., later Chief Justice, said, speaking for the Judicial Committee in *Montreal* v. *College of Sainte Marie* (3), "that the privilege invoked has unquestionably been created."

General tax legislation in New Brunswick began at the inception of the province. C. 42 of the consolidated statutes of 1836, providing for county rates, was enacted in 1786 and directs the assessors to "apportion the quota of the said sum or sums of money so to be levied upon the respective towns or parishes, to be paid by the several and respective inhabitants of the said towns or parishes as they in their discretion shall think just and reasonable." In 1875, in a re-cast of the Rates Act of 1853, exemptions pertinent to the question before us first appeared and they were in the form of paragraph (*g*). Previous to this, legislation applying to Saint John and Fredericton had provided for Church and other privileges but they were not uniform. Clause (*d*), on the other hand, was first enacted in 1924.

Mr. Carvell argues that the use of the property is within clause (*d*) by reason of the fact that the entire net income from the business is to be applied to purposes mentioned

(1) [1891] A.C. 531 at 580. (2) 89 E.R. 294.
(3) [1921] 1 A.C. 288 at 291.

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in the paragraph. But the uses contemplated are immediate and actual "religious, philanthropic or educational" activities, not those of ordinary business, whatever the ultimate destination of its revenues. Lands yielding rents have long been used as a form of charitable endowment, but they are excluded from the exemption, which implies, *a fortiori,* that business use is excluded.

Although the benefit to the truck drivers in the occupation of the two houses has not been reduced to a specific sum, it represents a business remuneration: and whether looked upon in the aspect of rent or the nature of the use, it is excluded from the paragraph.

The language of use for the personal property is at least as restrictive as that for the lands; if the word "exclusively" in the first clause is not to be carried forward to the use of all buildings and lands, it is more so; and the use of personal property for business purposes would likewise be excluded. The separate treatment of personal property and income from that of lands results from the fact that several features of the former had to be specially dealt with, and to have combined the language dealing with both of them would have produced an involved and cumbersome locution.

He then appeals to paragraph (*g*). The word "charitable" here connotes solely purposes, works and modes of action of the character described: a society that could, for instance, for all of its objects, receive charitable bequests with their peculiar privileges such as perpetual endowment. The illustration by Wigram V-C. quoted indicates that the carrying on of a business as part of a society's functions would rule it out of that category. Charity is essentially voluntary good works and voluntary donations the accepted means of obtaining the material resources necessary to them, both of which are incompatible with the means here.

If paragraph (*g*) is to be taken to include all societies and institutions having charity as the ultimate destination of their funds by whatever means raised, then clearly a religious society with solely charitable objects and powers would lie within it. At the same time it would be embraced within paragraph (*d*) since "religious, philanthropic and educational" works include all matters of charity and, as

well, some matters of benevolence beyond them. For such an organization, then, what could have been the purpose of introducing paragraph (*d*)? I should find it difficult to imagine any reasonable or practical purpose except to codify and clarify the position of religious societies, and to enlarge the scope of the exempting uses of their property. But whether to enlarge or restrain, the entire class is clearly intended to be withdrawn from (*g*).

If this is not so, a religious society with mixed charitable and business objects, or a non-religious organization, both having ultimate charitable purposes, would remain exempt as to all its property under (*g*), which would mean virtually that the further a society was from a true charity, the broader its exemption. Such an anomaly could not be attributed to the intention of the legislature. What (*g*) envisages are charitable and literary societies and institutions strictly so-called, with neither objects nor powers nor works outside of those descriptions. That the Companies Act should provide as it does in s. 17(2) (*f*) that

> The Company shall not carry on any business or trade for the profit of its members,

the last six words of which were added in 1944, adds nothing to the argument: whatever its effect may be, it is irrelevant to the meaning of the clause I am considering.

A similar exemption of "the property of a literary or scientific institution", in the Income Tax Act of 1842, language which seems to be the prototype of that of clause (*g*) here, was dealt with in *Manchester* v. *McAdam* (1), by the Court of Appeal and, on appeal, by the House of Lords (2). The city of Manchester had set aside certain buildings for a public library administered by a special Board; its purposes were unquestionably literary, and exemption was claimed for it as a "literary institution". The only doubt arose from the fact that it was maintained by rates. The Court of Appeal, Lindley and Rigby L.JJ., with Brett L.J. dissenting, held that it was not within the exemption because of its support by taxes, that what the statute designed was to encourage gifts of land to such institutions, supported in their activities likewise by other gifts or subscriptions, all for the ultimate benefit to the public. The House of Lords took another view; but Lord

(1) [1895] 1 Q.B. 673. (2) [1896] A.C. 500.

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Halsbury L.C., dissenting, speaks of the rate "distinguishing it from the voluntary character of a literary and scientific institution such as existed in 1842". In the opinion of the majority, an institution was to be conceived as an objective establishment for the purpose designated, which the library was, and its support by taxes was not a disqualifying factor. But the fact of such a difference of opinion hinging on such an element satisfies me that had the corporation, for instance, carried on a general printing business as auxiliary to its library administration, though with the net revenue devoted exclusively to the purposes of the library, its exemption could not have been seriously argued. The same principle was applied in *In re Badger,* (1) in which an incorporated body under the Literary and Scientific Institution Act, was held incapable of borrowing money for the purposes of a recreation adjunct.

What is here, then, is not a "charitable society or institution"; it is a society of mixed objects and works or activities, some of which are charitable and some not; and it is not such a society as the legislature had in mind when, in 1875, it first decided to provide so comprehensive an exemption as that of all the property of such owners.

We have today many huge foundations yielding revenues applied solely to charitable purposes; they may consist, as in one case, of a newspaper business; even if these foundations themselves carried on their charitable ministrations, to characterize them as charitable institutions merely because of the ultimate destination of the net revenues, would be to distort the meaning of familiar language; and to make that ultimate application the sole test of their charitable quality would introduce into the law conceptions that might have disruptive implications upon basic principles not only of taxation but of economic and constitutional relations generally. If that is to be done, it must be by the legislature. Concessions to taxation of income or property, as in the Income Tax Act of Great Britain, may expressly provide for meeting the modern development of mixed charitable and business objects as we have them here: but that was remote from what the legislature had in mind in 1875.

(1) [1905] 1 Ch. 568.

As the works and activities of the society, then, are not solely of a charitable nature, it is not within paragraph (*g*); but whether there originally or not, as a religious society, it must find exemption for its property in paragraph (*d*) which, for the reasons given, it cannot do. The appeal must, therefore, be dismissed with costs.

KELLOCK J.:—The error which the appellant alleges to exist in the decision of the Appellate Division is thus set out in its factum:

(*a*) The finding that rent is received for the brick dwelling house.

(*b*) The finding that the laundry and drycleaning equipment, and property used in conjunction therewith, is not used exclusively for the religious, philanthropic or educational work of the Society and is therefore not exempt from taxation.

(*c*) The ruling that exemption from taxation cannot be claimed in respect of the property of Les Dames Religieuses de Notre Dame de Charité du Bon Pasteur under section 4(1) (*g*) of the Rates and Taxes Act, and that the said property is not exempt from taxation thereunder.

I do not find it necessary to deal with the first contention.

The appellant's second contention, based on the provisions of s. 4 (1) (*d*) of the relevant statute, is that it is authorized by its incorporating statute to carry on the laundry and dry-cleaning business as "incidental" to its philanthropic and educational purposes, and therefore, as any profits received by the appellant from the carrying on of the business are devoted to its charitable purposes, the property used in carrying on such business is as much used for its philanthropic and educational purposes as its other property.

The appellant further contends that even if it fails in its second contention on the basis of use, it may have resort for exemption to the provisions of para. (*g*) as a "charitable society or institution," in which case mere ownership is sufficient.

The relevant portions of the statute are as follows:

4. (1) The following property shall be exempt from taxation:

(*d*) Every building of a religious organization used exclusively as a place of worship, or used for the religious, philanthropic or educational work of such organization, with its site and ground surrounding the same upon which no other building is erected, but this exemption shall not include real estate in respect of

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which rent is received by such organization; also the personal property and income of such organization, used exclusively for religious, philanthropic or educational purposes;

(*g*) The property of any literary or charitable society or institution.

With the contention that the use of the property real and personal here in question is brought within the terms of para. (*d*), I find it impossible to agree. That the business is being carried on as "incidental" to the charitable work of the appellant does not alter the fact that the use of the property is for business purposes, and it is immaterial that the appellant, after receipt of the profits from the business, devotes such profits to the support of its actual charitable work.

Coman v. *Governors of the Rotunda Hospital* (1), is in point. The hospital, unquestionably a charity in the strict sense, had certain rooms not used by it for hospital purposes but let out by it for hire for entertainments, concerts and cinema shows. By 5 and 6 Vict. c. 35, s. 60, duties under Schedule "A" of the statute were assessable upon the annual value of premises, but by s. 61 an exception from such duties was provided in the case of "any hospital * * * in respect of the public buildings, offices and premises belonging to such hospital" and upon "the rents and profits of lands, tenements, hereditaments and heritages belonging to such hospital * * * so far as the same are applied to charitable purposes." This statute was extended to Ireland by 16 and 17 Vict. c. 34, s. 3.

By the Valuation (Ireland) Act, 1852, s. 2, the valuing authority was directed "to distinguish all hereditaments and tenements, or portions of the same * * * used for charitable purposes * * * and all such hereditaments or tenements, or portions of the same, so distinguished, shall, so long as they continue to be * * * used for the purposes aforesaid, be deemed exempt from all assessment." Until 1915 the rooms in question had been scheduled as exempt in the Valuation List, and accordingly were not assessed for rating or Schedule "A" purposes. The Crown now sought to tax the profits arising from the hiring out of the rooms under Schedule "D", as being profits from a trade.

On behalf of the hospital it was contended that all profits derived from the lettings of the rooms were applied to the general support of the hospital and that the moneys

(1) [1921] 1 A.C. 1.

so received were rents and profits of tenements belonging to a hospital within s. 61, and that these moneys, so far as they were applied to charitable purposes, were exempt. They contended that they were a single statutory corporation constituting an indivisible charitable trust, and that they were not carrying on a trade or anything in the nature of a trade.

It is clear that, apart from the question as to carrying on a trade, the use of the premises by the respondents for purely hospital purposes would have entitled them to exemption from tax in respect of the annual value of the premises, but it was held that they were carrying on a trade and in so doing went beyond the bounds of the exemption to which they were entitled under Schedule "A". In the course of his judgment, the Earl of Birkenhead L.C. said at p. 14:

> When the facts set out in the case stated and the documents annexed to it are considered as a whole, it becomes plain that the respondents, with the laudable object of raising an income for the support of their charitable activities, have engaged in what can only be described as a business or a concern in the nature of a business, and thereby have earned annual profits which are outside the scope of Schedule A.

In that case and in later cases in the House of Lords, the decision of the Court of Session in *Religious Tract and Book Society* v. *Forbes* (1), was approved.

In the last mentioned case, the object of the plaintiff society, according to its constitution, was "by the circulation of religious tracts and books to diffuse a pure and religious literature among all classes of the community." The constitution went on to provide that "this object shall be carried out by the establishment of central and branch depositories and of auxiliary societies and by means of colportage and other agencies." The society operated two "depositories" or book stores, one at Edinburgh and the other at Belfast, and in addition, carried on the colportage agencies. The sales of all three were of the same goods at the same prices, there being only one stock out of which all its salesmen were supplied. The profits made by the stores were applied to the carrying on of the colportage, a purely charitable activity, which could not be carried on by itself at a profit but required the further aid of

(1) 3 T.C. 415.

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public subscriptions. The Lord President, later Lord Roberston, at p. 418 put the matter thus:

> * * * it may be conceded to the Appellants that the object of their Society is not that of making profit, but the diffusion of religious literature among all classes of the community. But incidental to that large and beneficial purpose they engage in trade * * * It appears that the colportage agency could not be carried on at a profit as a commercial undertaking, and is persevered in merely because the Society find that by appealing to the religious public they are able to obtain subscriptions which enable them to fill up the deficit. When we turn to the methods of the colportage, it appears that they are not commercial methods, that is to say, that the business carried on is not purely that of pushing the sale of their goods, but that on the contrary the duty of the salesman is to dwell over the purchase and make it the occasion of administering religious advice and counsel. Now, under these conditions it seems to me impossible to hold that this is a business, trade, or adventure, which is unfortunately resulting in loss. It is really a charitable mission in which the sale of the Scriptures is made the occasion for doing something more than merely effect the sale of books. And accordingly, while I completely assent to the view that the establishment and conduct of the shops and the establishment and conduct of the colportage all rest upon the same ultimate motive, yet at the same time the two operations seem to be essentially distinguished. The shops are simply book-seller's shops—the other is a combination of the sale of books with a missionary enterprise * * *

At p. 419 Lord Adam said:

> Now, I agree with your Lordship that if a party takes to selling books it does not matter to the Crown what his object is in doing so, whether it is to put profit into his own pocket, or, having made profit, to expend that in charity or donation.

In my opinion, it is too clear for argument that the "use" referred to in para. (d) of the statute in the case at bar, is the actual use to which the property is put, and not the object to which the profits from the business which may be carried on, on the property, after their receipt by the proprietor of the business, may be devoted. Accordingly, I think the judgment below is right in holding that the appellant in respect of the real and personal property here in question does not come within the exempting provisions of para. (d).

The further contention of the appellant that, although as a "religious organization" it is not entitled to exemption under para. (*d*), it may nonetheless claim exemption as a "charitable society or institution" under para. (*g*), requires examination. If sound, it would involve anomalous consequences.

For example, a religious organization, which is a charity in the strict sense, owning productive real property which it does not use but lets to tenants, while denied exemption therefor by the express terms of para. (*d*), would nevertheless, on the basis of this argument, be entitled to exemption in respect of the very same property under para. (*g*). Again, real or personal property, lying idle and not used, would be taxable on the basis of para. (*d*) but exempt under para. (*g*).

All religious organizations are not, of course, charitable organizations; *vide Cocks* v. *Manners* (1). The property of such organizations, therefore, to be entitled to exemption, would have to be brought within clause (*d*). I have no doubt that the great bulk of the religious organizations in the Province of New Brunswick at the time of the enactment for the first time of para. (*d*) in 1924, were charitable institutions within the strict sense of those words. It would seem to be a rather remarkable intention to be attributed to the legislature in the enactment of clause (*d*) that the great majority of religious organizations should be entitled to claim exemption for their real and personal property under the provisions of the new legislation if the use of such property brought it therein, and at the same time that their previously existing exemption to which they were already entitled on the mere basis of ownership should also be preserved to them. In my opinion, the construction of a statute which produces such anomalies is contrary to well settled canons of construction.

A statute is to be construed, if at all possible, "so that there may be no repugnancy or inconsistency between its portions or members;" *City of Victoria* v. *Bishop of Vancouver Island* (2), per Lord Atkinson, at p. 388. The principle applicable is, in my opinion, that stated at p. 176 of the 9th Edition of Maxwell, as follows:

> Where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general one.

(1) L.R. 12 Eq. 574.

(2) [1921] 2 A.C. 384.

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Among the authorities referred to in the judgment of Sir George Jessel M.R. in *Taylor* v. *Oldham* (1). At p. 410 the learned Master of the Rolls said:

> * * * but I think in all these Acts of Parliament, the first thing you have to consider is, that where you have general provisions, whether contained in the same Act or in another Act of Parliament, and where you have special provisions as to a particular property in the ownership of one individual, you must read the special provisions as excepted out of the general.

The statute there under consideration was a private statute, but there is no difference in the application of the principle in the case of a public Act. Clause (*g*) of the section here in question is a general provision including all charitable institutions, and, in order to make the statute consistent with itself, clause (*d*) is to be regarded as an exception out of (*g*). The fact that (*d*) includes religious organizations not charitable, does not affect the principle to be applied.

In *C.N.R.* v. *Capreol* (2), the statute under construction was the Ontario Assessment Act, R.S.O. 1914, c. 195, by s. 5 of which all real property in Ontario was made liable to taxation "subject to the following exemptions:

> 2. Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.
>
> 3. The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a university, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied.
>
> 4. The buildings and grounds of, and attached to, or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for philanthropic, religious, or educational purposes, the whole profits from which are devoted or applied to such purposes only, but such grounds and buildings shall be exempt only while actually used and occupied by such seminary.
>
> 5. Every city or town hall, and every court house, gaol, lock-up and public hospital receiving aid under The Hospitals and Charitable Institutions Act, with the land attached thereto but not land of a public hospital when occupied by any person as tenant or lessee.
>
> 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.

(1) (1876) 4 Ch. D. 395. (2) [1925] S.C.R. 499.

10. The property of any children's aid society incorporated under the Children's Protection Act of Ontario, whether held in the name of the society or in the name of a trustee or otherwise, if used exclusively for the purposes of and in connection with the society.

12. The property of every public library and other public institution, literary or scientific, and of every agricultural or horticultural society or association, to the extent of the actual occupation of such property for the purposes of the institution or society.

13. The land of every company formed for the erection of exhibition buildings to the extent to which the council of the municipality in which such land is situate consents that it shall be exempt.

The question for decision was as to whether or not certain land owned by the railway and a building thereon containing numerous bedrooms, a reading room and other rooms and facilities for lodgings, entertainment and recreation, all operated by the Young Men's Christian Association under the terms of an agreement with the railway calling for payment of a nominal rent to the latter, was exempt under sub-s. 9 above. This was decided adversely to the appellant. In the course of delivering the judgment of the court, Anglin C.J.C. said at p. 502:

> 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 the 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 ss. 9 in their most comprehensive sense.

The learned Chief Justice went on to hold that the sense in which the words, "charitable institutions conducted on philanthropic principles and not for the purpose of profit or gain," were used in clause 9, was *ejusdem generis* with the other institutions mentioned in that clause, but it was "obvious" to the court that the general category of charitable institution mentioned in clause 9 did not include the particular charitable institutions described in the other sub-sections. The particular was to be considered as excepted out of the general provision.

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There is an additional reason, however, why, in my opinion, the appellant, as a religious organization, must find its exemption, if any, in the terms of para. (*d*) exclusively.

As already pointed out, the word "charitable," as used in para. (*g*), is not used in its popular but in its technical sense; *Chesterman* v. *Federal Commissioner of Taxation* (1), 128; *Adamson* v. *Melbourne* (2). A religious society may or may not be a charitable society in this sense, and upon any question arising, the court will inquire into the purposes of the society.

In *Morice* v. *Bishop of Durham* (3), Sir William Grant M.R. formulated the test as follows at p. 406:

> The question is, not, whether he (the testator) may not apply it upon purposes strictly charitable, but whether he is bound so to apply it? I am not aware of any case, in which the bequest has been held charitable, where the testator has not either used that word, to denote his general purpose, or specified some particular purpose, which this Court had determined to be charitable in its nature.

In the case at bar, the objects of the appellant are to conduct an educational institution for the support, care and reformation of female penitents, and for the care and education of girls generally; an hospital and dispensary for the sick; an asylum for orphan children, and a home for the aged and infirm and such other persons who may desire to reside in an establishment of the corporation according to its rules and by-laws; and "incidental" thereto, but nonetheless for the "*maintenance of the said institution*" it is given the power to carry on "the business of a steam and general laundry, and of tailors and makers of dresses and wearing apparels of all kinds with their usual and necessary adjuncts." According to the affidavit of the Town Clerk and Treasurer of the relator, the appellant does carry on in the building here in question

> a very extensive public laundry and drycleaning business serving customers in the said Town of Sunny Brae, the City of Moncton, New Brunswick, and generally throughout the surrounding districts. For the purpose of the said laundry and drycleaning business it owns and operates two motor trucks for picking up and delivering clothing and other articles to be laundered and/or drycleaned for reward. It is a very keen competitor with other laundry and drycleaning establishments in the area served.

(1) [1926] A.C. 128. (2) [1929] A.C. 142.
(3) (1804) 9 Ves. 399; 32 E.R. 947.

In *Brighton College* v. *Marriott* (1), Lord Blanesburgh said at p. 204:

> Whether in any particular case activities which may properly be described as charitable have become trading or commercial must always be a question of fact—one important consideration being whether these activities are being conducted with commercial considerations in view and on commercial principles: see *Religious Tract and Book Society of Scotland* v. *Forbes* (2).

There can be no doubt of the commercial nature of the appellant's laundry and drycleaning business, and a trust for the benefit of the appellant could not meet the test laid down by Sir William Grant.

In *Dunne* v. *Byrne* (3), in which a residuary bequest "to the Roman Catholic Archbishop of Brisbane and his successors to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese," was held not to be a good charitable bequest but void, Lord Macnaghten, in delivering the judgment of the Privy Council, pointed out at p. 410 that it could hardly be disputed that a thing may be "conducive" and in particular circumstances "most conducive" to the good of religion in a particular diocese or in a particular district without being charitable in the sense which the court attaches to the word, and indeed without being in itself in any sense religious. He went on to say:

> In the present case the learned Chief Justice suggests by way of example several modes in which the fund now in question might be employed so as to be conducive to the good of religion *though the mode of application in itself might have nothing of a religious character about it.*

What is thus referred to by Lord Macnaghten is to be found in the judgment of Griffith C.J. in 11 Commonwealth Law Reports, 637 at 645, as follows:

> Again, it seems to me that purposes may reasonably be called conducive to the good of religion although they have no such direct tendency. For instance, it might well be said that * * * *the establishment of a newspaper* conducted on religious or high moral principles * * * would be purposes conducive to the good of religion. Certainly the Archbishop might reasonably think so. I do not at present see my way to deny such a proposition. But I do not think that either purpose would be a charitable purpose.

(1) [1926] A.C. 192. (2) 3 T.C. 415.
(3) [1912] A.C. 407.

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In the case of the appellant, therefore, the carrying on of the laundry business is not a charitable purpose, and the appellant, regarded as an entirety, could not constitute the object of a valid charitable trust, and cannot, therefore, be said to be a charitable corporation.

Even a church, regarded as an entirety, inclusive of all its purposes, parochial as well as ecclesiastical, cannot constitute the object of a valid charitable trust; *Farley* v. Westminster Bank (1); *In re Jackson* (2). Where the testator does not indicate any larger purpose, a trust for the benefit of a church will be saved from invalidity by the presumption of law that the benefit is intended for ecclesiastical purposes only; *In re White* (3).

To apply the same presumption in the case of a trust for the benefit of a corporation such as the appellant would save a trust for its benefit from invalidity, but the presumption has no place under the taxing statute here in question, under which the appellant is to be taken as an entirety, and when so regarded, is not a charitable corporation.

The decision of Vice-Chancellor Wood in *Lechmere* v. *Curtler* (4), casts an interesting side-light upon the matter, which leads to the same result. In that case the testator had bequeathed a sum of money to the treasurer, for the time being, of an asylum thereafter to be instituted "for the humane and charitable purposes of that institution." An asylum was afterwards built under the compulsory provisions of an Act of Parliament. It was supported by compulsory rates, and was used entirely for the maintenance of pauper lunatics. At p. 648 the learned Vice-Chancellor said:

> Nobody questions that the maintenance of lunatics is humane and charitable, and a bequest of this nature might be useful in inducing the Justices to build an asylum. No doubt the legislature had humane and charitable purposes in view, but the building of this asylum was simply compulsory on the Justices. If I gave this £1,000 to this asylum, I should be merely relieving the rates to that extent, and I cannot say that this would be a humane and charitable application of the legacy within the meaning of the testator's will.

(1) [1939] A.C. 430.
(2) [1930] 2 Ch. 389.
(3) [1893] 2 Ch. 41.
(4) 24 L.J. Ch. 647.

In the case at bar, a trust for the benefit of the appellant corporation *simpliciter,* which it would be free to use, say, for the expansion of the laundry with the object of increasing profits, or to replace worn-out equipment, or to tide it over unprofitable periods, could not be said to be, in any sense, a charitable application of the proceeds of the trust. Accordingly, the appellant cannot be regarded as a "charitable society or institution" within the purview of the statute here in question.

I would dismiss the appeal with costs.

ESTEY, J.:—That the appellant, incorporated by an act of the Legislature of New Brunswick in 1945 (S. of N.B. 1945, c. 94), is a religious organization and, therefore, entitled to the exemptions from taxation within the meaning of s. 4(1) (*d*) of *The Rates and Taxes Act* (R.S.N.B. 1927, c. 190), is not disputed. The appellant, however, contests the imposition by the respondent of taxes upon the brick duplex dwelling, occupied by two of its laundry employees, and its personal property consisting of the laundry equipment and two trucks, by virtue of the exceptions contained in this subpara. (*d*). s. 4(1) (*d*) reads as follows:

> 4. (1) The following property shall be exempt from taxation:
> (*d*) Every building of a religious organization used exclusively as a place of worship, or used for the religious, philanthropic or educational work of such organization, with its site and ground surrounding the same upon which no other building is erected, but this exemption shall not include real estate in respect of which rent is received by such organization; also the personal property and income of such organization, used exclusively for religious, philanthropic or educational purposes;

The Appeal Division of the Supreme Court of New Brunswick, Mr. Justice Hughes dissenting, held that the respondent was right in taxing the brick duplex dwelling, as well as the personal property in the laundry and the two trucks.

The record discloses no controversy as to the facts. It sets out that the appellant

> is the owner of a large tract of land situate in the said Town of Sunny Brae, on which is constructed a large building in which it carries on a school for the education and reformation of girls, and a home for female orphan children. The said Home of the Good Shepherd carries on in the said building a very extensive public laundry and drycleaning business serving customers in the said Town of Sunny Brae, the City of Moncton,

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N.B., and generally throughout the surrounding districts. For the purpose of the said laundry and drycleaning business it owns and operates two motor trucks for picking up and delivering clothing and other articles to be laundered and/or drycleaned for reward. It is a very keen competitor with other laundry and drycleaning establishments in the area served.

3. That in addition to the main building used for general purposes of the Home, and in part of which the said laundry and drycleaning business is carried on, the Home of the Good Shepherd is the owner of a new two family brick dwelling occupied by two male employees and for which rent is paid or included in the salary or wages paid such employees.

No further particulars are given as to the wages of the two employees, but the hearing of this appeal proceeded upon the basis that they were hired and their wages paid partly in cash and partly in the permission of each to occupy exclusively one half of the brick duplex. In these circumstances, that the appellant was paid or received remuneration in the form of services for this brick duplex must be conceded. The essential question is whether this remuneration is included in the word "rent" as used in the exception in s. 4(1) (*d*). The word is not defined in *The Rates and Taxes Act*. In Halsbury's Laws of England it is stated:

> Rent—that is, rent-service—is the recompense paid by the lessee to the lessor for the exclusive possession of corporeal hereditaments. It need not consist of the payment of money. It may consist in the render of chattels, or the performance of services. 20 Hals., 2nd Ed., p. 158, para. 170.

See Woodfall's Law of Landlord & Tenant, 24th Ed., 303; Williams on Canadian Landlord & Tenant, 2nd Ed., 159.

> The word "rent" is itself a word of very wide import, not always correctly employed in ordinary current user, particularly in taxing provisions. Lord Wright in *Earl Fitzwilliam's Collieries Company* v. *Phillips*, [1943] A.C. 570 at 581.

In *Vyvyan* v. *Arthur* (1), Thomas Vyvyan, as owner in fee, leased certain premises requiring the payment of certain money "and also doing suit to the mill of the said Thomas, his heirs and assigns, called Tregamere mill, by grinding all such corn there as should grow in or upon the close thereby demised during the term." It was held that the covenant requiring the grinding of the corn was "in the nature of a rent," Bayley J. stating at p. 414:

> The lease contains a reddendum, and whatever services or suits are thereby reserved partake of the character of rent.

(1) (1823) 1 B. & C. 410.

The language adopted by the Legislature in subpara. (*d*) "this exemption shall not include real estate in respect of which rent is received by such organization" does not suggest that it was legislating with reference to rent in the strict sense. It is not the reservation of rent or any right to distrain therefor, which latter Lord Halsbury describes as "the mark of rent" (20 Hals., 2nd Ed., p. 158, para. 170), or, indeed, any of the attributes connected with the word when used in the strict sense. On the contrary, it rather appears that the Legislature adopted the word in the broader sense, as defined in Woodfall's Law of Landlord and Tenant, 24th Ed., p. 303: "Rent is a retribution or compensation for the lands demised." It is not, however, necessary to determine the exact meaning, more than to indicate that the language ought not to be construed in the restricted sense but that it is sufficiently comprehensive to include that which was received by the appellant organization as remuneration for the brick duplex dwelling.

In the absence of facts to the contrary, I think we should assume, because of the returns that must be made in respect of workment's compensation and unemployment insurance, that the total wages were known and, therefore, ascertained. In reality the employees paid for the use of these premises an amount "in the nature of a rent" or "in the character of rent." In these circumstances it would appear that the word "rent," as used in s. 4(1) (*d*), is sufficiently wide to cover this particular payment. See also *Tucker* v. *Morse* (1); *Edney* v. *Benham* (2).

The personal property taxed is used in the conduct of the laundry and dry-cleaning business. The fact that the net income from this business is applied for the purposes of the appellant's religious organization does not detract from the fact that the equipment here taxed is used in the conduct of a business which serves not only the appellant's organization, but the public generally. It, therefore, cannot be said that this personal property is "used exclusively for religious, philanthropic or educational purposes" within the meaning of subpara. (*d*) and it is, therefore, subject to be taxed by the respondent.

(1) (1830) 1 B. & Ad. 365. (2) (1845) 7 Q.B. 976; 115 E.R. 756.

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The appellant, however, claims that even if, under subpara. (*d*), the foregoing property is taxable, it is a charitable institution within the meaning of subpara. (*g*) and, therefore, that its entire property is exempt. Subpara. (*g*) reads as follows:

> (*g*) The property of any literary or charitable society or institution;

Assuming, therefore, as the appellant contends, that it is both a religious organization and a charitable institution, the pertinent issue is, having regard to the provisions of the statute, may it be included and, therefore, entitled to have all of its property exempted under the provisions of subpara. (*g*)?

While the provision in subpara. (*g*) has been included in *The Rates and Taxes Act* since 1850 (S. of N.B. 1850, 13 Vict., c. 30, s. II, art. 17, subpara. (*d*) was not included until the act was consolidated and amended in 1924 (S. of N.B. 1924, 14 Geo. V, c. 3). The language adopted in the enactment of subpara. (*d*) read by itself discloses the Legislature intended that all religious organizations should be subject to the provisions of that subpara. Moreover, it would appear that when subparas. (*d*) and (*g*) are construed together according to the accepted rules of construction, which again the Legislature would intend, the result is that all religious organizations are subject only to the provisions of subpara. (*d*). Subpara. (*d*) is particular in that it applies only to religious organizations, while subpara. (*g*) is more general in character and includes all literary and charitable societies and institutions, which would include the majority of religious organizations as well as all other types of literary and charitable societies and institutions. It is a case, therefore, where the rule, as stated by Sir John Romilly, should be applied:

> The general rules which are applicable to particular and general enactments in statutes are very clear, the only difficulty is in their application. The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. *Pretty* v. *Solly*, 53 E.R. 1032 at 1034.

In another case Sir John Romilly gives this example:

> For instance, if there is an authority in an act of parliament to a corporation to sell a particular piece of land, and there is then a general clause at the end that nothing in this act contained shall authorize the

corporation to sell any land, that would not control the particular enactment, but the particular enactment would take effect notwithstanding it was not clearly expressed and distinct, and the insertion of the exception in the general clause would be supplied. *De Winton* v. *The Mayor, etc. of Brecon,* (1859) 28 Law J. Rep. (N.S.) Chanc. 600 at 604.

It would, therefore, follow that subpara. (*d*), being particular, should apply to all religious organizations, charitable and non-charitable, and that subpara. (*g*), being general, should apply to all other charitable societies and institutions.

The same construction, in the circumstances of this case, finds support in the rule stated by Lord Macnaghten when, after pointing out that where there is no preamble to the statute there are "only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment," goes on to state, as one of these exceptions,

> that there is some other clause in the body of the Act inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed. *Vacher & Sons, Limited* v. *London Society of Compositors,* 1913 A.C. 107 at 118.

See also *Becke* v. *Smith* (1); *The Canadian Northern Railway Co.* v. *The King* (2).

That there is such an inconsistency or repugnancy between these subparas. (*d*) and (*g*) becomes clear when it is appreciated that religious organizations are, for the most part, charitable in character. All religious organizations, charitable and non-charitable, are included in subpara. (*d*) and are exempt from taxation except as provided in the two exceptions therein specified. If, however, those religious organizations which are charitable come also within subpara. (*g*), it follows they are not, under that subpara., subject to the exemptions in subpara. (*d*). If, therefore, the statute be so construed as to include these under subpara. (*g*), the purpose and intent of subpara. (*d*) is largely destroyed and the intention of the legislature, as expressed in subpara. (*d*), substantially defeated. The magnitude and importance of this inconsistency or repugnancy becomes more apaprent when it is appreciated that organizations for religious purposes are, for the most part,

(1) (1836) 2 M. & W. 191 at 195. (2) (1922) 64 Can. S.C.R. 264 at 270.

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charitable. Those which are charitable and non-charitable are discussed by Sir John Wickens, V.C.:

> A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word "charitable" is used in its popular sense or in its legal sense. It is said, in some of the cases, that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public; an annuity to an individual, so long as he spent his time in retirement and constant devotion, would not be charitable, nor would a gift to ten persons, so long as they lived together in retirement and performed acts of devotion, be charitable." *Cocks* v. *Manners,* 1871 L.R. 1 Eq. 574 at 585.

Lord Lindley describes a religious society non-charitable in character

> A society for the promotion of private prayer and devotion by its own members, and which has no wider scope, no public element, no purposes of general utility. *In re White,* (1893) 2 Ch. 41 at 51.

and, as stated by Lord Wrenbury,

> Religious purposes are charitable only if they tend directly or indirectly towards the instruction or the edification of the public. *Chesterman* v. *Federal Commissioner of Taxation,* 1926 A.C. 128 at 131.

A statutory provision that appears so complete and accurate to accomplish the purpose intended, when enacted, subsequently studied in the light of particular facts often appears to be quite different. It then becomes a problem of construction. The problem here presented has occurred so often that the foregoing rules have been dictated by experience as of assistance in determining, in such circumstances, the intention of parliaments and legislatures. Their application in this instance not only avoids the inconsistency or repugnancy already discussed, but also avoids a construction which limits and restricts the comprehensive and inclusive language of subpara. (*d*) in a manner that it cannot be said the Legislature ever intended.

It would, therefore, appear that the intention of the Legislature is given effect to by construing subparas. (*d*) and (*g*) in such a manner that religious organizations, though also charitable, as the appellant's is, are included only under subpara. (*d*).

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Leger & Carvell.*

Solicitors for the respondent: *Creaghan & Creaghan.*