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THE EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES (DEFENDANT) ..... APPELLANT;

AND

THE CITY OF EDMONTON (PLAINTIFF) ..... RESPONDENT.

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

Taxation—Municipal law—Exemptions—Lands used in connection with and for purposes of a college—Assessment together of exempt and non-exempt land—Taxing Statute—Construction of—The Edmonton Charter, 1913, c. 23, s. 320 (5).

In 1924 the appellant corporation, the "Synod", purchased for the purposes of a college certain blocks of land in the city of Edmonton, containing a little over eight acres, and erected college buildings on a portion thereof, and these have since been used by the Synod for the purposes of the college. In 1930 the Synod acquired six other lots, now in question, which were not contiguous to the lands on which the college buildings were situated, and erected thereon four residences, or dwelling-houses, for the use of the professors of the college. No rent was charged or collected from the professors occupying these residences by the Synod, but the professors were entitled to occupy these residences only while engaged as professors of the college in the service of the Synod, and a condition of their engagement was that residence accommodation would be furnished them rent free. The professors had some duties to perform in the college at night, such, for instance, as superintendence and assistance to the students in their studies, and inspection of dormitories, and meetings of the faculty of the college. The six lots in question had an area of ·572 acres and with 3·428 acres comprising the sites of the college and buildings, formed just 4 acres. Section 320 of the Edmonton Charter provides that "All lands in the city shall be liable to

* PRESENT:—Duff C.J. and Lamont, Cannon, Crocket and Hughes JJ.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

assessments and taxation for both municipal and school purposes, subject to the following exceptions: * * *

(5) The land not exceeding four acres of and attached to or otherwise *bona fide* used in connection with and for the purposes of any * * * college, * * * so long as such land is actually used and occupied by such institutions, but not if otherwise occupied."

Held, Cannon and Crocket JJ. dissenting, that the appellant was not exempted from taxation as to the lots upon which the residence of its professors were situated.

Per Duff C.J. and Lamont and Hughes JJ.—Assuming in the appellant's favour that the professor's residences were "*bona fide* used in connection with and for the purpose of" the college, it has not been established from the facts as disclosed in the special stated case, (and the onus was on the appellant to bring itself strictly within the provision of the statute granting immunity) that these residences were "actually used and occupied by" the appellant institution, and "not otherwise occupied".

Per Duff C.J. and Lamont and Hughes JJ.—Section 320 does not give to an institution to which an exemption is granted the right to select the various pieces of property up to four acres to which the exemption would apply; under the Act, in the absence of any statutory provision indicating that the selection of the exemptions under the section may be made by the donee thereof and for giving notice of the same to the assessor, it is the assessor's duty to select the exemptions.

The other portion of the appellant's land, i.e., the site of the college buildings and the land immediately surrounding them, was assessed as a block described as 8·107 acres with the added words "4·107 taxable, 4 acres exempt".

Per Duff C.J. and Lamont and Hughes JJ.—Such an assessment is invalid as it is impossible to ascertain from that description which particular piece of land is assessed and which is exempt.

Per Cannon J. dissenting.—According to the facts disclosed in the special stated case, the land and the professors' residences erected thereon were exempted from taxation under section 320 of the Edmonton charter. These facts and the plans fyled in the case established that the residence of the principal of the institution was a building used and occupied by him in connection and for the purposes of the college; and there is no difference in the present case, between the nature of the occupation of the principal's residence and that of the professors'. Their presence was required and their residence in close proximity was necessary for the due carrying out of the purposes for which the appellant institution has been established.

Per Crocket J. dissenting (concurring with Cannon J.).—Whatever may be the meaning of the words "attached to," the alternative words " or otherwise *bona fide* used in connection with and for the purposes of" point to other lots and buildings than those which may be contiguous or, to use the words of the enactment, "attached to" one another, and whether the lots and buildings are contiguous or not, the alternative words above quoted extend the statutory exemption to them if they are in fact *bona fide* used in connection with and for the purposes of any of the institutions designated.

Judgment of the Appellate Division ([1933] 2 W.W.R. 310) aff.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1), reversing the judgment of Ford J. (2), which was in favour of the appellant.

The material facts of the case and the questions at issue are stated in the head-note, in the statement below and in the judgments now reported.

The case was a special case stated by leave of the trial judge, of which the principal paragraphs are as follows:

3. Section 320 of the charter of the plaintiff provides in part as follows:

320. All lands in the city shall be liable to assessment and taxation for both municipal and school purposes, subject to the following exemptions:

* * *

(5) The land not exceeding four acres of and attached to or otherwise *bona fide* used in connection with and for the purposes of any university, college, high school, public or separate school, seminary of learning or hospital owned by a corporation, whether vested in a trustee or otherwise, and of the association known as "The Young Men's Christian Association" and "The Young Women's Christian Association" so long as such land is actually used and occupied by such institution but not if otherwise occupied;

(6) The land exempted under the two preceding clauses shall nevertheless be liable to be assessed for local improvements.

15. In the year 1930 the said Synod caused to be erected four residences or dwelling houses for the use of the professors of the said college on the lots enclosed in red upon the said plan being lots 14, 15 and 16, in block 13, and lots 9, 10 and 11, in block 18, Bellevue subdivision aforesaid.

16. The defendant acquired said lots enclosed in red and erected said residences under the belief that such lots and sufficient land upon which the college buildings were erected to the extent in all of four acres were exempt from taxation except local improvement taxes.

17. The four buildings mentioned in paragraph 15 are residences or dwelling houses and are used solely and exclusively as residences or dwelling houses for the professors of the said college in the service of the said Synod; no rent is charged to or collected from the said professors occupying the said residences or dwelling houses by the said Synod and the said professors are entitled to occupy said residences or dwelling houses only while engaged as professors of the said college in the service of the said Synod as aforesaid and a condition of the engagement of the said professors is that residence accommodation be furnished to them rent free.

17a. That the professors who reside in the said residences have duties to perform in the said college at night, such for instance as supervision and assistance of students during study periods in the evening, the supervision of student activities, the inspection of the dormitories at retiring time and the inspection of the college buildings, meetings of the faculty of the college and such other duties as may be assigned to such professors.

25. The question submitted for the opinion of this Court is: is the said Synod by reason of the provisions of said Section 320 of the Edmonton charter entitled to the exemption from taxation except for local improvements, of the said lots 14, 15 and 16, block 13, and said lots 9, 10 and 11, block 18, and 3·428 acres containing the site of the said college buildings and immediately surrounding said college buildings, or is the said City of

(1) [1933] 2 W.W.R. 310. (2)]1932[3 W.W.R. 275.

Edmonton entitled to assess the said Synod in the manner in which it is assessed on the Assessment Roll of 1931 and 1932?

S. Bruce Smith for the appellant.

Geo. B. O'Connor K.C. for the respondent.

The judgment of the majority of the Court (Duff C.J., Lamont and Hughes JJ.) was delivered by

LAMONT J.—In my opinion this appeal should be dismissed. The question which we are called upon to answer is set out in the special case in these words:

25. The question submitted for the opinion of this Court is: is the Synod by reason of the provisions of said section 320 of the Edmonton charter entitled to the exemption from taxation except for local improvements, of the said lots 14, 15 and 16, block 13, and said lots 9, 10 and 11, block 18, and 3·248 acres containing the site of the said college buildings, or is the said city of Edmonton entitled to assess the said Synod in the manner in which it is assessed in the assessment Roll of 1931 and 1932?

The material facts are briefly as follows:

In 1924 the appellant corporation (hereinafter called the "Synod") purchased for the purposes of the college block X, and block 33, as shewn on plan 2677-Q, of the city of Edmonton, containing a little over eight acres, and erected college buildings on a portion thereof, and these have since been used by the Synod for the purposes of the college.

In 1930 the Synod acquired the six lots now in question which are not contiguous to the lands on which the college buildings are situated, and erected thereon four residences, or dwelling-houses for the use of the professors of the college. No rent is charged or collected from the professors occupying the said residences by the Synod, but the professors are entitled to occupy these residences only while engaged as professors of the college in the service of the Synod, and a condition of their engagement is that residence accommodation shall be furnished them rent free.

The professors have some duties to perform in the college at night, such, for instance, as superintendence and assistance to the students in their studies, and inspection of dormitories, and meetings of the faculty of the college.

The six lots in question have an area of ·572 acres and with 3·428 acres comprising the sites of the college and buildings, form just 4 acres.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Lamont J.

Whether the six lots in question are exempt from taxation depends upon the provisions of the exempting statute, which is section 320, subsection (5), of the Edmonton charter, the material portion of which reads as follows:

320. All lands in the city shall be liable to assessments and taxation for both municipal and school purposes, subject to the following exceptions:

(5) The land not exceeding four acres of and attached to or otherwise *bona fide* used in connection with and for the purposes of any * * college, * * * so long as such land is actually used and occupied by such institutions, but not if otherwise occupied.

Under this statutory provision, before the Synod is entitled to have its lands to the extent of four acres exempt from taxation, it must be shewn that

1. the land is *bona fide* used in connection with and for the purposes of the college; and

2. the land is actually used and occupied by the institution. Without deciding the point I will assume in the Synod's favour that the professors' residences are *bona fide* used in connection with and for the purposes of the college. That, however, is not the only condition of the exemption: to be entitled to the exemption they must be "actually used" and "occupied" by the institution, and not otherwise occupied. On the facts as disclosed in the special case is it possible to conclude that the college actually used and occupied these residences? That is the condition imposed by the legislature, and the onus is on the Synod to shew that the condition has been complied with. The Act grants immunity from a burden which most other inhabitants are called upon to bear, and those who claim the benefit of that immunity must bring themselves strictly within the purview of the statute granting it, and shew that the facts, as set out in the case, construing the words in their ordinary sense, do justify the conclusion that the institution did occupy the residences within the meaning of what is ordinarily understood as "occupying" a residence.

It was a term of a professor's engagement that "residence accommodation be furnished" him "rent free." It is, therefore, to be inferred that his occupation was in accordance with the terms of his engagement. The facts disclosed in the special case leave no room for an inference that a professor in his occupation is not to enjoy all the independence and all the control of the residence which he occupies that a tenant of his class would be entitled to enjoy if he

rented the premises. Although he does not pay any rent it cannot be supposed that the furnishing of a free dwelling-house did not constitute a part of the remuneration which the Synod, when it engaged him, agreed to allow him for his services. Had the Synod not agreed to furnish residence free, the remuneration which it would have had to pay its professors would have been increased by the value of the occupation of their dwelling-houses. So that while it may be that the Synod did not collect rent for these residences *qua rent* it reached the same result by agreeing to furnish residence with a smaller monetary remuneration.

There is nothing in the statement of fact to justify even a suggestion that the professors occupied their residences as servants of the Synod. Yet, if they were not the servants of the Synod, how can it be said that the dwellings were occupied by the "institution," and not "otherwise occupied"? In my opinion the dwellings were occupied by the professors, who exercised all the rights and all the independence of an ordinary householder. It is not shewn that the Synod had any right to interfere in any way with a professor's occupation of his house so long as he occupied the position of professor in the college. The Synod was, therefore, not entitled to exemption in respect of the six lots.

It was also argued on behalf of the Synod that the effect of section 320 was to give to the institution to which an exemption was granted the right to select the various pieces of property up to 4 acres to which the exemption would apply. Along with the members of the court below I am unable to see any authority for the proposition that the party claiming the exemption has the right of selection. The right to make the selection, in my opinion, is governed by the same principle as the claim for exemption itself. It is a benefit which is allowed to only a few of His Majesty's subjects and, in order to be entitled to it, the onus rests on the claimant to shew clearly that it was the intention of the legislature that such right of selection should exist. I find absolutely nothing in the legislation from which an inference can reasonably be drawn that such was the legislative intention. In fact if that had been the intention it is surprising that no provision is to be found in the statute by which the Synod would be able to

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Lamont J.

give notice to the assessor that the selection had been made. The assessment roll should shew definitely what property is exempt, and what property has been assessed. To set these out is the duty of the assessor. In the absence of any statutory provision indicating that the selection of the exemptions under the section may be made by the donce thereof and for giving notice of the same to the assessor, I am of opinion that it is the assessor's duty to select the exemptions.

As to the assessment of the property of the Synod other than the six lots, I agree with the court below that it is invalid. The land is assessed as a block which is described as containing "8·107 acres" with the additional words "4·107 acres taxable 4 acres exempt". It is impossible to ascertain from this description which particular piece of land is assessed and which is exempt.

CANNON J. (dissenting).—The dwellings built for the professors are occupied by them not as ordinary tenants, but are placed at their disposal, rent free, while they are in service for the purposes set forth in the stated case which require their residence in close proximity in order to perform some of their duties at night. The education of the students requires from the teachers close supervision, assistance and inspection at night and this has as much importance as the bare teaching given during the day. The exemption is granted to lands (*a*) owned and attached to, or (*b*) owned by and otherwise used in connection with and for the purposes of any seminary of learning.

These are the important words—which are not, to my mind, nullified by the redundance found at the end of the exemption clause. As long as the land is actually used and occupied *bona fide* in connection with and for the purposes of the school, it should be exempt, if within the four acres selected. The selection was made, with the knowledge and consent of the city authorities, and we are not called upon to decide, in the abstract, who, under the statute, is entitled to segregate for exemption the four acres of land—including the buildings erected thereon—by and for the purposes of the school. The only question is: the selection having been made, is the site of these four residences entitled to exemption under the statute?

A college cannot exist without professors in close touch with the students and the principal. It is common ground that under the statute the residence of the principal is used and occupied for the purposes of the college and therefore exempt. The blue print shewing the situation of the properties involved in the case includes, enclosed in green, the residence of the principal to which reference is made as follows in the special case.

21. The portions of block "X" and block 33 enclosed in green are *bona fide* used in connection with and for the purposes of the said college and such land is actually used and occupied by the said college.

24. The building marked "A" upon the said plan has been demolished and the orange coloured figure upon block "X" represents the residence of the principal of the said college which is used and occupied by him upon the same terms and conditions as the other residences are used and occupied by the professors of the said college.

Therefore, for the decision of the case, this building is used and occupied by the principal in connection and for the purposes of the college and such land (including buildings) is actually used and occupied by the said college.

I cannot differentiate, in the present case, between the nature of the occupation of the principal's residence and that of the professors'. Their presence is required, their residence in close proximity is necessary, according to the facts agreed upon, for the due carrying out of the purposes for which the appellant has been established. I do not say that there is any finding on that point in the judgment of the Appellate Division, but I base my reasoning on the facts agreed upon by the parties which, to my mind, have been ignored by the court *a quo*.

I agree with the reasoning of Mr. Justice Ford and would allow the appeal with costs before this Court only, as there seems to be an understanding between the parties that no costs were to be given in the lower courts.

CROCKET J. (dissenting).—This appeal arises out of a stated case and raises the question as to what portion of the defendant corporation's land in the city of Edmonton, if any, is entitled to exemption from taxation under s. 320, ss. 5 of the city of Edmonton charter. That subsection provides for the exemption from all municipal and school taxes, except taxes for local improvement, of

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1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Crocket J.

wise, and of the association known as "The Young Men's Christian Association" and "The Young Women's Christian Association" so long as such land is actually used and occupied by such institution but not if otherwise occupied.

It is agreed in the stated case that the defendant in the years 1931 and 1932, with the assessments for which this action was concerned, was and still is the owner of several parcels of land in the city of Edmonton containing a combined area of more than eight acres. Two of these parcels of land are contiguous, and when acquired by the defendant in the year 1924 constituted the whole of what were then designated in the town plan of Edmonton as blocks X and 33. Block X extended northerly from Jasper St. past what was then the end of 111th Ave. to 112th Ave. Block 33, abutting it on the east, extended only from Jasper St. to 111th Ave. and was bounded on the east by the westerly line of 71st St. The defendant erected its college buildings partly in the centre of block 33, and partly in the southern portion of block X, the principal's residence being placed near the southwesterly corner of block X, 150 ft. or more from the college buildings proper.

In the year 1930 the defendant conveyed to the city a strip off the northerly portion of block X measuring approximately on 112th Ave. 375 ft. by 125 ft., which was afterwards subdivided into building lots, in exchange for several building lots conveyed to it by the city in the southern half of blocks 18 and 13, lying between Jasper St. and 111th Ave. The defendant had previously proposed in 1929 to erect four houses for the use of its professors on that portion of block X, which it subsequently conveyed to the city, but as the result of the exchange of the lots referred to, it erected in the year 1930 two residences for the purpose indicated on lots 9, 10 and 11 of block 18, and two others on lots 16, 15 and 14 of block 13. The lots 9, 10 and 11 in block 18 occupy the southwesterly part of that block and are separated from block 33 and block X, upon which the college buildings are situated, by five apparently vacant building lots, and by 71st St., running north and south, while lots 16, 15 and 14 in block 13 occupy the southwesterly portion of the latter block, and are separated from blocks 33 and X by 70th St., the whole southerly half of block 18 and 71st St. The six lots upon which the professors' residences were built contain a combined area of

·572 acres, while block 33 and the southerly portion of block X lying between the southerly line of 111th Ave. and its prolongation westerly across the width of block X, upon which the college buildings proper and the principal's residence are situated, it is admitted, does not exceed three acres in area.

In the years 1931 and 1932 the city assessors assessed the six lots on which the professors' buildings were erected and all that portion of block X remaining in the possession and ownership of the defendant after the exchange with the city, and the whole of block 33—a total in the last two blocks of 8·107 acres—of which the assessment roll marked "4·107 acres taxable" and "4 acres exempt," without indicating in any way what portion or portions of blocks X and 33 were included in the exemption otherwise than by setting against them $6,080 as the value of the land, and $3,000 as the land exemption, and $81,000 as the value of the buildings and $81,000 as the buildings exemption, leaving $3,080 as the net taxable value of the two blocks.

The defendant claimed that it was entitled to include within the exempted area of four acres the six lots on which the professors' houses were constructed, together with that portion of blocks X and 33 upon which the college buildings proper and the principal's residence are situated, and sufficient land around these buildings to make up the complement of the four-acre exemption, contending that the lots upon which the professors' houses were situated was its land *bona fide* used in connection with and for the purposes of the college, within the meaning of s. 320, ss. 5, and that it was entitled to select the four acres to which the exemption should apply.

The question submitted on the stated case to Mr. Justice Ford of the Supreme Court of Alberta was, therefore, as follows:

> Is the Synod by reason of the provisions of said section 320 of the Edmonton charter, entitled to the exemption from taxation except for local improvements, of the said lots 14, 15 and 16, block 13, and said lots 9, 10 and 11, block 18, and 3·428 acres, containing the site of the said college buildings and immediately surrounding the said college buildings?

He answered this question in the affirmative, but on appeal to the Appeal Division of the Supreme Court of Alberta, his decision was unanimously reversed.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Crocket J.

The decision of the majority of the Appellate Division, Harvey, C.J.A., Mitchell, Lunney and McGillivray, JJ.A., was based upon the ground that the land upon which the professors' residences are located is used and occupied by men who are in the employ of the institution, and that this does not constitute occupation by the institution, within the meaning of the section, and consequently that it does not come within the exemption. Clarke J. A., held that the defendant was not entitled to any exemption so long as its land used and occupied by it for the purposes of the college exceeds four acres in area, and that the city was entitled to assess the whole property without exemption.

Two paragraphs from the special case regarding the occupation of the residences by the professors and the latter's duties in connection with the college appear to be necessary to a full consideration of the question involved. These are paragraphs 17 and 17A, which read as follows:

17. The four buildings mentioned in paragraph 15 are residences or dwelling houses and are used solely and exclusively as residences or dwelling houses for the professors of the said college in the service of the said Synod; no rent is charged to or collected from the said professors occupying the said residences or dwelling houses by the said Synod and the said professors are entitled to occupy said residences or dwelling houses only while engaged as professors of the said college in the service of the said Synod as aforesaid and a condition of the engagement of the said professors is that residence accommodation be furnished to them rent free.

17a. That the professors who reside in the said residences have duties to perform in the said college at night, such for instance as supervision and assistance of students during study periods in the evening, the supervision of student activities, the inspection of the dormitories at retiring time and the inspection of the college buildings, meetings of the faculty of the college and such other duties as may be assigned to such professors.

The respondent in its factum relies upon the following four grounds:

1. The professors' houses are separated from the main college site and the right of selection of exemption up to four acres if in the appellant is confined to the main college site.

2. The professors' houses being used solely and exclusively as residences are not "*bona fide* used in connection with and for the purposes of the college" within the meaning of subsection (5).

3. The lots and residences are not "actually used and occupied by the institution" within the meaning of said subsection (5).

4. In any event the exemption is confined to land and the houses are not exempt.

The fourth point is the one which naturally first arises, and it will, therefore, be convenient to consider this first, although neither the trial judge nor the Appellate Division

appear to have considered it in their reasons. It is not questioned that it is open to the respondent.

This contention is based upon the fact that the Edmonton charter, as amended by c. 23, statutes of Alberta, 1913, did not contemplate the taxation of buildings, except in the case of special franchises, as clearly appears by s. 3 of part I and the whole statute. It is argued that the meaning of the words "the land not exceeding four acres," etc., of s. 320, ss. 5, as it then stood in the charter, was not affected by the amendment which was made to the charter in the year 1918, c. 52, statutes of Alberta, s. 44, which provided for the assessment of buildings.

It appears, however, that in 1917 an amendment was enacted to the charter by c. 46, statutes of Alberta, providing for a plebiscite on the question of assessing buildings and business incomes. By this Act, s. 321 of the charter, which then provided that

land shall be assessed at its fair actual value exclusive of the value of buildings and improvements thereon,

was amended by inserting immediately after these words the words

unless the buildings and improvements shall become assessable as hereinafter provided,

and by adding two subsections to the same section, ss. 2 providing for the plebiscite on the question of the assessment of buildings, and ss. 3 providing for a plebiscite on the question of the assessment of business incomes. The words, "unless the buildings and improvements shall become assessable as hereinafter provided," clearly referred to the event of the adoption as a result of the plebiscite of the proposal to assess buildings, and are still retained in s. 321 of the charter as it stands to-day, making the first sentence thereof read as follows:

Land shall be assessed at its fair actual value exclusive of the value of buildings and improvements thereon unless the buildings and improvements shall become assessable as hereinafter provided;

thus clearly contemplating that whenever buildings and improvements become assessable, they become so as part of the land.

The provision for the assessment of buildings in 1918 was made by the addition to s. 321 of a new section—321A, reading as follows:

In the year 1918 and in each subsequent year all buildings and improvements on the land within the city shall be assessed at sixty per

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Crocket J.

centum of their actual value, *which shall be the amount by which the value of the land is thereby increased;*

This added section, as it appears in the printed consolidated charter of 1931, filed in this case, contains, in addition to the main section just quoted, three subsections, nos. 2, 3 and 4, ss. 4 reading in part as follows:

In assessing land having any buildings thereon, the assessment value of the land and buildings as hereinbefore defined shall be ascertained separately and shall be set down separately in the assessment roll either in the same or separate columns, *and the assessment shall be the sum of such values.*

The underlined words of the main section—321A—and of ss. 4 thereof, quite as plainly indicate, I think, as those of the amended sec. 321, that, although the value of the land and buildings is to be ascertained separately and that they shall be set down separately in the assessment roll, the assessment shall be treated as an assessment of the land, inclusive of the buildings. The effect of these amendments, therefore, must be to render entirely inoperative the words " but in no other cases," in clause (*d*) of s. 12, following the words "in case of special franchises," and thus to give the word " land " the meaning which but for these words it would, undoubtedly, bear, including buildings and improvements. The city itself, by its assessors, seems to have consistently acted upon that interpretation in its assessment of the college from the beginning. I find it, therefore, impossible, to accede to the proposition that the words " land not exceeding four acres," as it now reads in s. 320, ss. 5, do not apply to land, whose value has been increased by the erection upon it as part of the freehold of buildings and permanent improvements.

I am, therefore, of opinion that the word " land " in the exemption subsection includes all buildings affixed thereto.

Although the four points relied upon by the respondent in its factum do not seem to include the ground taken by Clarke J.A., in his reasons for judgment, the respondent's counsel explicitly took it upon this appeal, viz: that because the college lands exceed in area the four acres to which the exemption is limited, they are not entitled to exemption at all.

It is true that the Act does not indicate how or by whom the area of exemption is to be selected, but this in my opinion is not a sufficient reason for limiting the exemption to cases where the college or other institution owns and

occupies no more than four acres of land and thus construing the ownership and use of no more than four acres as a condition without which the exemption is not to apply at all. If that were the true construction, no college or seminary of learning or hospital could extend its land holding beyond four acres without entirely forfeiting its right to the exemption which the legislature, in my opinion, clearly intended to give it. I think the more reasonable view is that the words " land not exceeding four acres," etc., mean land to the extent of four acres.

In the *Mayor, etc., of Whanganui* v. *Whanganui College Board* (1), the Court of Appeal of New Zealand considered a clause in the New Zealand *Rating Act,* which excepted from the payment of rates " land and buildings used for a school * * * *but so that* within any borough or town district not more than four acres be used and occupied by or for the purpose of any such school." The Court unanimously held that the effect of these words—which appear on their face to point much more directly to a condition than the enactment now under consideration—was, if more than four acres were so held, to exempt up to four acres and not to destroy the exemption entirely. Any other construction, it was pointed out by two of the three judges taking part, would lead to such a manifest absurdity and repugnance as to justify the Court in ignoring the strict grammatical meaning of the language of the enactment.

In the present case the interpretation of the words " not exceeding four acres " in the sense indicated does no violence to the grammatical construction of any language used in the enactment.

Once the selection of the four acres to which the exemption is to apply is made, either by the city assessors or by the owner, as it must be, the difficulties suggested by Clarke, J.A., as to the description and identification of the excess in case of a sale for non-payment of taxes, disappears. Counsel for the respondent conceded that if the view taken by Clarke, J.A., were erroneous, the defendant had the right to select the exempted area. This, I think, is true, for the reason that the exemption is intended for the benefit of the college.

(1) (1906) N.Z.L.R. 1167.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Crocket J.

The other points relied upon by the respondent all concern the construction of the words " of and attached to or otherwise *bona fide* used in connection with and for the purposes of any university, college," etc., and the concluding words of the subsection, " so long as such land is actually used and occupied by such institution but not if otherwise occupied."

The subsection is certainly not a model of good phrasing, as will be seen when one tries to link the words " the land * * * of and attached to " with the various institutions named, whether as a group or separately or as buildings or bodies corporate. Whatever may be the meaning of the words " attached to " it is manifest that the alternative words " or otherwise *bona fide* used in connection with and for the purposes of " point to other lots and buildings than those which may be contiguous or, to use the words of the enactment, " attached to " one another, and that, whether the lots and buildings are contiguous or not, the alternative words above quoted extend the statutory exemption to them if they are in fact *bona fide* used in connection with and for the purposes of any of the institutions designated. These words must be construed severally with reference to these various institutions. In the case of a university or a college which is a corporate institution, as the defendant's college is, they must be read as meaning lots and buildings, which are *bona fide* used in connection with and for the purposes of a university or college as such an institution and in the ordinary and popular sense of the language the legislature has employed. There is nothing in the context to indicate otherwise. What then is the ordinary and popular meaning of the words " *bona fide* used in connection with and for the purposes of " a university or a college as a corporate institution? Obviously they cannot refer to a physical connection of lots or buildings. They must, therefore, mean a use in connection with and for the purposes of the corporate institution in the wider sense. Whether the words " in connection with " qualify the words " the purposes of " or the words " any university, college," etc., the result is the same. Subject to the four-acre limitation and to the concluding words of the section they embrace any use of lots and buildings made for legitimate university or college purposes, and would, in my opinion, include a resi-

dence building provided by the college for its principal as they would a residence provided by and managed and controlled by the college for its students, whether physically attached to the college building proper or not, as they would also include, in the case of a hospital, a nurses' home for the use of its nurses. I can see no distinction between the case of a principal's residence and the case of professors' residences. The only suggested distinction is that the professors' residences are separated from the particular lots on which the college buildings are situated, and this fact, as I have already pointed out, does not exclude them from the exemption provision. As a matter of fact, the professors' houses, which were erected, are nearer to and more conveniently situated with reference to the college buildings proper than if they had been erected on the site first intended at the extreme northerly end of block X.

There remains the question as to the effect of the concluding words of the subsection, viz: "so long as such land is *actually used and occupied by such institution, but not if otherwise occupied.*" Are these words intended to alter the scope of the exemption as indicated by the preceding words "*bona fide* used in connection with and for the purposes of" the university, college, etc.? It is contended that they limit the exemption to land which is actually used and occupied by the institution. That the concluding words must be interpreted in the light of the preceding words can hardly be denied. The preceding words indicate the character and scope of the use which must be made of the land of the college to entitle it to exemption, viz: that it be *bona fide* used in connection with and for the purposes of the college. Do the words "actually used and occupied by the institution," etc., mean anything more than the words "*bona fide* used and occupied in connection with and for the purposes of" the institution? In my opinion they do no more than define the duration of the exemption already created, and the residences cannot fairly, in the circumstances stated, be said not to be actually used and occupied in connection with and for the purposes of the college. They are used for the purposes of housing, rent free, professors of the college only while engaged in the service of the college as such professors—professors who, in addition to their daytime duties, have duties to perform in the college at night, such as assist-

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &C. v. THE CITY OF EDMONTON.

Crocket J.

ing the students during study periods and inspecting the dormitories at retiring time, as the stated case sets forth, and who are subject at all times to the orders of the principal. Although in a sense the residences may be said to be used and occupied by the professors, they are none the less *bona fide* used, as the learned trial judge has found, by the institution in connection with and for the purposes of the college, and are, in my opinion, actually used and occupied by it within the contemplation of the subsection, their use having a direct reference to the aims and objects of the college as a corporate institution.

A number of English, Canadian and American cases were cited on the argument dealing with exemption claims under various rating statutes. In none of them is the language of the exemption provision involved identical with that of s. 320 of the Edmonton charter, or the facts the same as in the present case. These cases, therefore, are of little assistance in construing the provision here in question. For instance the respondent's counsel relied strongly on the decision of this Court in *Ruthenian Catholic Mission* v. *Mundare* (1), where the Court divided evenly on an appeal from the decision of the Appellate Division of the Supreme Court of Alberta holding that a building used by the appellant as a seminary was not a building used for church purposes within the meaning of s. 24 (*d*) of the Alberta *School Assessment Act*. It will at once be seen that there is no analogy between the words "any building used for church purposes" and the words "land *bona fide* used in connection with and for the purposes of" any university or college as a corporate institution. In the Nova Scotia case, *Catholic Corporation of Antigonish* v. *Municipality of Richmond* (2), the exemption words were "Every church and place of worship and the land used in connection therewith and every churchyard and burial ground." There were no such words as "*bona fide* used in connection with and for the purposes of" a church in the sense of a corporate institution or a religious denomination. The word "church" clearly meant a building used as a church or place of worship.

The case, which seems to me most nearly to approach the present case, is *The Trustees of Phillips Academy* v.

(1) [1924] S.C.R. 620. (2) [1911] N.S.R. 320.

Andover (1), in which the Supreme Court of Massachusetts considered the question as to whether the occupation of residences belonging to the Academy by the president and professors and the officers of the institution and their families was necessarily inconsistent with the intent of the provision of a taxing Act exempting the real estate of educational and charitable institutions, "occupied by them or their officers for the purposes for which they were incorporated." All of the judges agreed that the exemption contemplated an occupancy which "must have or be supposed to have direct reference to the purposes for which the institution was incorporated and must tend directly to promote them," and further, that "the occupancy does not lose what may be termed its institutional character and purpose because as incidental to it, the president and professors and other officers and their families are provided with homes, for the possession and enjoyment of which by them compensation is allowed or taken into account in some manner." It was contended that the inclusion of the words "or their officers" in the Massachusetts exemption provision, distinguished the *Phillips Academy* (1) case from the present. These words, I think, make no real difference inasmuch as a corporate institution cannot occupy land otherwise than by its officers or servants. It is a question in every case, having regard to all the facts and circumstances, and the intentions and purposes of those in charge of the institution, whether the dominant, controlling consideration of the use or occupancy of the buildings is really the enhancement of the educational advantages of the institution, or the private benefit and convenience of the professors and their families. The words "*bona fide* used" in the exemption clause in the present case point unmistakably to such a consideration as the determining factor.

I should perhaps also refer to a passage used by Lord Davey in delivering the judgment of the Judicial Committee of the Privy Council in *Commissioners of Taxation* v. *Trustee of St. Mark's Glebe* (2). His Lordship, discussing the effect of the words "for and in connection with," said:

> The words "for or in connection with" (say) a hospital or a church are probably intended to include, not only the actual site of the hospital or church, but also other buildings or land occupied in connection with

(1) (1900) 55 N.E.R. 841. (2) [1902] A.C. 416.

1934

EVANGELICAL LUTHERAN SYNOD OF MISSOURI, &c. v. THE CITY OF EDMONTON.

Crocket J.

the principal building, as, for example, land used for a residence for the head or Minister, or a room for church meetings or other similar purposes. This is doubtless a mere dictum, as contended by the respondent's counsel, but it is a dictum of very high authority, and one which, so far as I have been able to discover, has never been authoritatively challenged in a case where identical words were considered.

I would allow the appeal and restore the decision of the learned trial judge with costs of this appeal.

Appeal dismissed with costs.

Solicitors for the appellant: *Parlee, Freeman, Smith & Massie.*

Solicitors for the respondent: *Thomas E. Garside.*