Privy Council Appeal No. 11 *of* 1921.

The Corporation of the City of Victoria - - - - *Appellant*

v.

The Bishop of Vancouver Island - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST AUGUST, 1921.

Present at the Hearing:

VISCOUNT CAVE.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW.
LORD PHILLIMORE.

[*Delivered by* LORD ATKINSON.]

This is an appeal from the judgment of the Court of Appeal of British Columbia, dated the 15th September, 1920, allowing an appeal from the judgment, dated 28th November, 1919, of the Trial Judge, Mr. Justice Macdonald by which latter judgment the respondent's action was dismissed and the appellants given judgment on their counter-claim.

The action out of which the appeal has arisen was brought by the Bishop of Vancouver Island, who is by the Statute of British Columbia of 1892, c. 56, created a corporation sole, against the Corporation of the City of Victoria, claiming in the first place, a declaration that no rates or taxes had been lawfully imposed upon certain lands, belonging to him by virtue of his office, upon which lands there had been at all material times erected a building known as St. Andrew's Cathedral dedicated and set apart and in constant use for the public worship of God, and in the second place, an injunction restraining the defendants and their collector of taxes from offering for sale for taxes the aforesaid lands upon which the said Cathedral had been erected or any part thereof on the 26th of May, 1919, or any other date, and thirdly general relief.

To this statement of claim the defendants filed a lengthy defence setting forth the provisions of many statutes which they alleged conferred upon them the power, under the conditions above mentioned, to tax the aforesaid lands upon which the said Cathedral stands, described as Lots 9, 10 and 11, Block 12, in the City of Victoria, and also other provisions which it was alleged barred the plaintiff's right to obtain the relief claimed, and averring that there was due in respect of these lands for general rates and taxes and also for local improvement rates and taxes, together a sum of $15,934.44 for which they counter-claimed.

To this defence the plaintiff filed a reply, and to the defendants' counter-claim a defence; to which latter again the defendants filed a reply.

Notwithstanding the voluminous character of these pleadings two questions alone emerge for decision on this appeal. The first and main question is whether by the provisions of the 197th Section of the Municipal Act c. 52 of the Statutes of British Columbia, 1914, hereafter referred to as the Act of 1914, the land upon which the fabric of St. Andrew's Cathedral stands is exempted from liability for all rates and taxes as completely as the fabric itself is admitted to be. The second and subsidiary question is whether, even if the said lands are not by these provisions so exempted, yet in the events which have happened the general and local rates and taxes in fact assessed upon the said lands for the year 1914 to 1918 both inclusive, amounting to the aforesaid sum of $15,934.44, are due and recoverable by the Corporation under their counter-claim. This latter question though raised in the pleadings is not alluded to in the judgment delivered by the learned judges who decided the appeal; but counsel assure their Lordships it was argued and, of course, they accept that assurance.

The 197th Section of the Act of 1914 upon which the main question turns, runs as follows :—

PART VIII.

TAXATION, INCLUDING LICENCES AND STATUTE LABOUR.

Division (1).—*Taxes on Land or Improvements.*

197. Rates and taxes may be settled, imposed and levied upon land or upon real property or upon improvements within a municipality by the Council thereof, subject to the following exemptions, that is to say :—

(1) Every building set apart and in use for the public worship of God.

(2) Every burying-ground in actual use solely as such, and every cemetery.

(3) Every building set apart and in use solely as a hospital in which the sick, injured, infirm or aged are received, treated or maintained, and the land adjoining thereto and actually used therewith, not, however, exceeding 20 acres in case of a public hospital and three acres in case of a private hospital.

(4) All property vested in or held by His Majesty, or vested in any public body or body corporate, officer or person, in trust for His Majesty, or for the public uses of the province, and also all property vested in or held by His Majesty, or any other person or body corporate, in trust for or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity:

(a) Where any property mentioned in the last preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable.

(5) All land and improvements the property of the municipality.

(6) The buildings of every institution which has for its object the care and charge of orphan and destitute children, and the lands actually used for the purposes of and surrounding the same, not to exceed five acres.

(7) The buildings of every horticultural or agricultural society which is affiliated with the Farmers' Institute and in which there are neither shareholders or stockholders, and the lands actually used for the purpose of and surrounding the same, not exceeding five acres. (R.S. 1911, c. 170, Sec. 228; 1912, c. 25, Sec. 34.)

In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In *Grey* v. *Pearson* (6 H.L.C. p. 106), Lord Wensleydale said :—

"I have been long and deeply impressed with the wisdom of the rule now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing titles, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency but no further."

Lord Blackburn quoted this passage with approval in *The Caledonian Railway Co.* v. *The North British Railway Co.* (6 A.C. 114, 131), as did also Jessel, M. R. in *ex parte Walton, in re Levy* (17 Ch. D. 746). There is another principle in the construction of statutes specially applicable to this section. It is thus stated by Lord Esher in *Reg* v. *The Judge of the City of London Court* (1892) 1, Q.B. 273 at 290 :—

"If the words of an Act are clear you must follow them even though they lead to a manifest absurdity. The Court has nothing to do with the question whether or not the Legislature committed an absurdity. In my opinion the rule has always been this :—If the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity and the other does not, the Court will conclude that the Legislature did not intend to lead to an absurdity and will adopt the other interpretation."

And Lord Halsbury in *Cooke* v. *The Charles A. Vogeler Co.* (1901 A.C. 102, 107), said :—

"But a Court of Law has nothing to do with the reasonableness or unreasonableness of a provision except so far as it may help them in interpreting what the Legislature has said."

Which necessarily means that for this latter purpose it is legitimate to take into consideration the reasonableness or unreasonableness of a provisions of a statute. Again a section of a statute should, if possible, be construed so that there may be no repugnancy or inconsistency between its different portions or members.

Taking then Section 197 by itself and considering it apart from all other sections, one has to ask oneself what ideas its language, taken in its ordinary grammatic sense, conveys to the mind of one who reads it. Mr. Robertson, in his forcible argument on behalf of the appellants, insisted much upon the fact that under the system of taxation set up by this Act of 1914, and earlier statutes, " land " and " improvements " in the sense defined, which includes buildings, were separately assessed (Section 199), and rates were levied on the land and improvements so assessed (Section 201).

That, no doubt, is so, but that fact affords little help to the true construction of this Section 197, for the obvious reason that several of the subjects of property mentioned in it are admittedly expressly or impliedly put outside the reach of the taxing powers of Municipal Councils. Of those impliedly so put outside the reach of those powers, graveyards and cemeteries are good examples. Unless the land be in these cases exempted from taxation there is nothing to exempt, nothing upon which the exempting clause can reasonably operate. As to them it becomes simply a collection of idle words without sense or meaning. The question for decision is, are the lands under the buildings set apart and used for the public worship of God dealt with in Sub-section 1 of this section, also impliedly put outside the reach of those taxing powers.

If one takes the first sub-section of this Section 197 and asks oneself what idea do those words in their ordinary grammatic meaning convey to the mind, the answer must be, a building in which the public worship of God can be carried on. The words " in actual use for " necessarily convey that, and therefore that everything needed to have that worship carried on is comprised in the description of the edifice in which it is to be carried on.

The thing most necessary for the use of the cathedral as a place for public worship is that the congregation which frequents it should be able to stand or kneel upon the ground embraced within its walls and forming the floor of it, or sit upon chairs resting upon that floor. The use of the floor is infinitely more essential than the use of a roof. In fact, it is impossible to conceive the public worship of God being carried on in a building without the use of the land which it embraces within its walls, as it is impossible to conceive walls existing without the support, direct or indirect, of the soil of the earth. The conception of such things is not the less impossible because the Legislature has by statute made the attempt fancifully to divide for the purpose of taxation concrete entities notionally into sections or portions which are presumably mutually exclusive and independent of each other. Their attempt will be abortive unless the language used be clear and plain. Should it not be so, one must judge by the meaning of the ordinary language used what is the nature of the thing to be dealt with as it is described in that language.

To hold that the ground upon which the cathedral stands is exempt from taxation though not by express words is only to do what to avoid gross absurdity must be done in the case of the buildings mentioned in Sub-sections 3, 6 and 7 of this very Section 197. In the case of a building set apart and solely used as a hospital, the land adjoining thereto and actually used therewith, not exceeding 20 acres in the case of a public hospital and 3 acres in the case of a private hospital, is expressly exempted from taxation, but the ground upon which the hospital stands is not expressly exempted, though it necessarily contributes more to the services of suffering mankind than does the adjoining land. The only rational explanation of that provision is that the latter lands are impliedly exempted because the word building, as used in ordinary language, comprises not only the fabric of the building, but the land upon which it stands. The same considerations apply to the case of an orphanage mentioned in Sub-section 6 and to the horticultural societies mentioned in Sub-section 7.

If in these sub-sections the ordinary and natural meaning be given to the word building, as including fabric and the ground on which it stands, the legislation is rational. If to that word be given the meaning of fabric without the ground upon which it stands the results are absurd. But if, to make sense, this comprehensive meaning be given to the word building as used in Sub-sections 3, 6 and 7, it would be contrary to every sound principle of construction to create an antagonism and inconsistency between these sub-sections and the first sub-section by not giving to the word building in the first the same comprehensive meaning it bears in the others, especially as the purposes for which the building is to be used go strongly to show that it should get the comprehensive meaning, and there is no provision to show it should get the restricted one. Taking Section 197 by itself, their Lordships are clearly of opinion that, if rationally and justly construed, the word building must receive the same meaning in Sections 1, 3, 6 and 7, that is its natural and ordinary meaning, including the fabric of which it is composed, the ground upon which its walls stand, and the ground embraced within those walls.

It is contended, however, on the part of the appellants that Section 197 of the Act of 1914 cannot be considered by itself, that on the contrary it must be considered in conjunction with the other statutes *in pari materia* which preceded; and that the provisions of these latter require that the word building, found in Sub-section 1 of this Section 197, should thus receive a meaning different from its ordinary meaning, namely one including the fabric, but not the ground on which it stands. The particular provisions most relied upon by the appellants on this point are those contained in Section 228 of c. 170 of the statutes of British Columbia of 1911, hereinafter referred to as the Act of 1911. This section is in the main identical with Section 197 of the Act of 1914. They differ, however, in two particulars. The former contains no sub-section corresponding with Sub-section 7 of the latter, and in Sub-section 1 of Section 228, the words

" or the site thereof " are introduced after the word building, so that the sub-section runs thus: " Every building or the site thereof set apart and in use for the public worship of God." By an Act c. 47 of the Statutes of British Columbia 1913, hereafter referred to as the Act of 1913, this Section 228 is amended by striking out the words, " or the site thereof," thereby restoring the section to what it was in the earlier statute, *i.e.* Section 157 of c. 29 of the Statute of British Columbia, 1891, and what it continued to be up to the passing of the Act of 1914. Their Lordships' attention has not been called to anything expressly suggesting the object to effect which these words were introduced into the Act of 1911, and deleted two years later, or what construction was given to the section by the Courts while these words formed part of it. The explanation of their deletion may possibly be that they were considered mere surplusage, and that the true construction of the word " building " by itself was considered to be that for which the respondent the Bishop now contends; or it may conceivably be that the Legislature which added these words discovered, as the fact is, that the word " site " has not one and only one precise and definite meaning—that it might be used to describe a plot of land much larger than that on which a building actually stands, or again might describe the situation or local position of a building. In Webster's " New International Dictionary," the word site is defined as " the place where anything is or is to be fixed, situation or position, as the site of a City or a Church." In the " Imperial Dictionary," it is defined as " situation or local position as the site of a City or a House, and in Architecture the situation of a building, or the plot of ground on which it stands. And in Johnson's Dictionary, site is defined as " situation or position." He gives two quotations in which the word occurs to illustrate its meaning. The first from Fairfax :—

> " The city's self he strongly fortifies,
> Three sides by site it well defenced has."

and the second from Bacon :—

> " Manifold streams of goodly navigable rivers, as so many chains, environed the same site and temple."

The mystery, however, remains unsolved, why if the Legislature, as the appellants now contend, deleted these words in 1913 for the very purpose of indicating their intention that the ground upon which a building of the kind described in Subsection 1 of Section 197 of the Act of 1914 stood, should not be exempt from taxation, they did not take the trouble of substituting in 1913 for the words deleted, the words " exclusive of the land upon which the walls of the buildings stand, and also of the lands these walls embrace within them." In this condition of things, it appears to their Lordships impossible to hold that the above-mentioned enactments give any adequate indication of an intention on the part of the Legislature of British

Columbia that the word building occurring in Section 197, Sub-section 1 of the Act of 1914, should have any meaning other than its ordinary meaning, namely a thing composed of the fabric of the building and the ground that the fabric rests upon and encloses.

The second class of provisions upon which the appellants relied in support of their contention as to the meaning of the word building as used in Sub-section 1 of Section 197 of the Act of 1914, were the definitions of "land," "real property" and "improvements" respectively contained in Section 2 of the Act of 1914, and the statutes *in pari materia* preceding it. They contend that by the legislation anterior to the year 1891 every place of worship, with the land requisite for its use, was exempt from taxation, but that the changes introduced in that year, not in legislation *ad hoc* but in the definitions of "land," "real property" and "improvements" respectively, perpetuated in subsequent statutes, make it clear that by Section 197, Sub-section 1, of the Act of 1914 the buildings mentioned in this later enactment, and not the ground they rest upon, are exempt from taxation. But these definitions, old and new, are as applicable to hospitals, orphanages and agricultural institutions as they are to places of public worship. And there fore, if the contention of the appellants be sound, these definitions must have been designed to bring about or have resulted in bringing about the intense absurdity as to Sub-sections 3, 6 and 7 of this same Section 197, of taxing the land upon which the buildings stand but not taxing the large plots of land adjoining those buildings.

It is not disputed that from the year 1872 till the year 1889, both inclusive, four statutes were passed dealing with this matter of exemption from rates and taxes in each of which the following clauses were to be found :—

> "(4) Every place of public worship, churchyard, burying-ground, public school house, public roadway, square, township or city hall, gaol, hospital, with the land requisite for the due enjoyment thereof;
>
> "(5) Real estate and improvements, the property of any Fire Department or Company, or of any Mechanics' Institute or public library."

It is equally beyond dispute that in the year 1891 an Act entitled an Act to consolidate and amend the Municipal Acts was passed, containing the following definitions :—

> "'Land' shall mean the land itself with all things therein and thereunder, and all trees or underwood growing upon the land, and all mines (other than gold mines), minerals (other than gold), quarries and fossils in and under the land, except mines belonging to Her Majesty.
>
> "'Real property' shall mean and include not only the land itself with all things therein and thereunder, and all trees or underwood growing upon the land, and all mines (other than gold mines), minerals (other than gold), quarries and fossils, in and under the land, except mines belonging to Her Majesty, but also all buildings, structures, or other things erected upon or affixed to the land, improvements made to the land, and all machinery or other things affixed to any building on the land, so as to form in law part of the realty.

"'Improvements' shall mean all buildings, structures or other things erected upon or affixed to the land, or improvements made to the land, and all machinery or other things affixed to any building on the land so as to form in law part of the realty."

The definitions of "land" and of real property respectively are practically repeated in the statute of 1911 and that of 1914. But the definition of improvements is somewhat altered in the latter of these Acts, in which it runs thus :—

"'Improvements,' when used with regard to city municipalities, shall extend to and mean all buildings and structures, and all machinery and fixtures annexed to any building or structure ; and when used with regard to town, township or district municipalities shall extend to and mean everything annexed to the soil by the hand of man, such as buildings, structures, fences and all machinery or other things affixed to any building or other structures erected upon or affixed to the soil, or improvements made by clearing, dyking, draining or cultivating the soil ; but the erection of buildings and machinery and the construction of skid-roads for temporary use in connection with logging operations or taking lumber off lands (unless a statutory declaration be made that such logging will be forthwith followed by clearance of or settlement upon the land) shall not be deemed improvement for the purpose of this Act."

A proviso follows which does not affect the point in controversy in the present case.

"Land" and "real property" bear the same meaning whether situated within city municipalities or without them, but the word improvements when used with regard to city municipalities means and includes less than it does when used with reference to town, townships or district municipalities. The main difference between the two consists in this—that in the latter but not in the former the word improvements means and includes improvement made by clearing, dyking, draining or cultivating the soil. The difference is presumably due to the fact that farming operations were not carried on to any extent within city municipalities.

"Land" and "real property" which latter includes the soil and everything annexed to it, such as buildings, structures, &c., and improvements of the soil made by clearing, dyking, draining, planting or cultivating it, are equally assessable wherever situated. This is shown by the nine sections of the Act of 1914, numbered from 205 to 213, both inclusive. Their Lordships fail therefore entirely to see how the several definitions above mentioned of the word "improvements" tend in any way to support the contention that the word "building" found in Sub-section 1, Section 197 of the Act of 1914 means only the fabric of the building and not in addition the land upon which the fabric stands.

The next point relied upon by the appellants is that involving the second question urged before their Lordships, but not dealt with in the judgments in the Court of Appeal. It amounts to this that even assuming that the land on which the Cathedral stands is not liable to be taxed, it has, in fact, been taxed to the amount claimed in the counter-claim, and owing to the events which have happened, the respondent is estopped or rendered incapable of contesting his liability for the sum claimed.

This contention is based in the first instance upon the provisions of Sections 216 and 230 of the Act of 1914. They provide that every person complaining of an "error or omission in regard to himself as having been wrongfully placed upon the Assessment Roll for general taxes" shall have a right of appeal to a Court of Revision, and that the Assessment Roll as revised confirmed and passed by the Court of Revision except as so far as amended on appeal by one of the tribunals mentioned shall be deemed valid and binding on all persons concerned, notwithstanding any defect or error committed in or with regard to such Roll or any defect, error or mis-statement in the notice required or transcript of such notice.

It was admitted that the Bishop took no objection to the Assessment Rolls for the years 1914 to 1917, both inclusive, and that the said rolls were passed and confirmed by the Revision Court, no appeal having been taken; and it was resolutely contended on behalf of the appellants that these Assessment Rolls become under these circumstances valid and binding on the respondent, and that he could not now be permitted to impeach their accuracy. The same considerations apply to each of these two sections. But these sections are merely machinery sections dealing with irregularities, mistakes and errors occurring in the drawing up, shaping and forming of the Assessment Rolls, and do not by any means empower the Corporation or its officers to assess and tax any kind of property expressly or impliedly exempted from taxation by the provisions of these very statutes from 1914 to 1918, both inclusive. To hold that they did so would amount to holding that the Corporation and its officers had the power of repealing express provisions of these statutes.

The whole question comes back to the proper construction of Sub-section 1 of Section 197 of the Act of 1914. If according to the true construction of that section the land upon which the cathedral stands is exempted from taxation, then if the Corporation or its officers attempt through the medium of these machinery sections to assess and tax it, their act is *ultra vires* and illegal, and the respondent is not disabled from assailing it despite the terms of their Assessment Rolls. In their Lordships' view these sections in no way disentitled the respondent from insisting on the contention that the ground on which the cathedral stands is exempted from general taxation.

As regards taxation in respect of local improvements, much reliance was placed by the appellants on certain statutory enactments. It was contended that the assessment made under bye-law No. 1946 is valid and binding on the respondent, by reason of the provision contained in Sections 141, 241 and 478 of c. 52 of the Statute of British Columbia 1914. The first of the sections provides that when debentures have been issued by a Municipal Council under a bye-law which has not been quashed, and interest has been paid on these debentures for one year by the Municipality, the bye-law and debentures issued thereunder shall be binding on the Municipality and the ratepayers, and on all parties concerned. That does not mean that a ratepayer having lands that are exempted shall be bound by this bye-law, but that ratepayers in the charged area, shall, as a body, *i.e.* collectively, be liable to be made answerable for the debenture debt and the interest. The second of these sections provides that any Municipal Council or any Municipality may from time to time make, alter or repeal bye-laws, naming and appointing a day upon or before which any person who pays the annual tax assessed, levied on land, real property, or improvements shall be entitled to the deductions named.

This section is obviously entirely irrelevant. The third of these three sections, that numbered 478, provides that "the production of a certificate issued under this part of the Act, or of the certified copy of a certificate shall in all Courts and places, and for all purposes whatever be conclusive evidence that the Bye-law Debenture Stock or Treasury Certificate, described in the certificate has been lawfully and validly made and issued, and that all statutory requirements, have been complied with, and the validity of such Debenture or Stock or Treasury Certificate shall not be attacked or questioned, or adjudicated upon in any action suit, or proceeding whatsoever in any Courts of the Province." This only means that the production of the certificate conclusively proves that all proper and necessary steps have been taken to make valid bye-laws, and that the Debentures have been validly issued, and all the statutory and other requirements complied with, but the section does not help in any way to determine what is the true meaning of the word "building," as used in Sub-section 1 of Section 197 of this Act of 1914, still less does it amount to an enactment to the effect that the Council can by passing any particular bye-law, or issuing any set of debentures, n the result tax any subject of property which is exempted from taxation by Section 197 of this very Act of 1914. It does not make legitimate that which is *ultra vires*.

Their Lordships are clearly of opinion that there is nothing in the several statutory enactments hereinbefore mentioned, and so much relied upon by the appellants to indicate much less require that the word building occuring in Sub-section 1, Section 197 of the Act of 1914, should be construed as meaning something different from its ordinary meaning as used in popular language namely as including not only the actual fabric of the building, but in addition the soil upon which it stands. They think this latter is its true meaning, and therefore that the land upon which the Cathedral stands is exempt from taxation. As to the main point contended for as well as the second point the appeal fails.

There only remains for consideration the application of Section 484 of this Act of 1914 to the appellants' action. That section only deals with actions brought against a Municipality for the unlawful doing of a thing which the Municipality might have lawfully done. The Bishop's action is not of that character. It is an action brought to obtain a declaration that the land upon which his Cathedral stands is not taxable, and an injunction restraining the Corporation from offering this land for sale in respect of unpaid rates, on the 26th May, 1919, or any other day.

Their Lordships are therefore of opinion that the judgment appealed against was right, and should be affirmed, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE CORPORATION OF THE CITY OF VICTORIA

v.

THE BISHOP OF VANCOUVER ISLAND.

DELIVERED BY LORD ATKINSON.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1921