

Assess. Case.]

ONTARIO REPORTS.

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Church is a minister in actual connection with the Church, but without charge, who is sent by the proper committee of the Church, and under its supervision, to supply vacancies, and from the list of such probationers vacant charges are supposed to select their pastor. They have a prior claim to be heard for a call in the vacancies. The Church can only ask a probationer to supply vacancies. A probationer is in the active service of the Church in the sense of supplying pulpits, and performing pastoral duties in congregations to which he may be sent by the Distribution Committee of the Church. Appellant is at present in Manitoba, has permission to perform, and has hitherto been performing missionary services there in connection with the Church. At the time of the assessment he was on the probationer's list in this province. He intends returning to Ontario. The congregations at Kincardine being supplied, the appellant has no duties to perform in that municipality, nor is he liable, under such circumstances, to perform any duty as a clergyman under the direction of the Church or its committees in that municipality.

The printed probationer's list of the Church, together with the regulations affecting their duties, were produced and referred to.

*J. H. Scott*, for appellant.—The effect of the amendment to the former Assessment Act of 1859, is to require an active service to be shewn before exemption can be claimed; or, in other words, in order to establish a claim to exemption, the clergyman or minister must be actually engaged in his calling. This has clearly been shown here. Under the Act of 1859, a retired minister, or even one holding the position of a college professor simply, could claim exemption. A probationer is as actively engaged in the service of the Church as a minister settled over a particular congregation, and he has the same duties to perform. The statute does not require service *within* the municipality where exemption is claimed, as the language is very general and refers to a connection "with *any* church." The word "church" must here mean "religious body." (See definition in "Reid's" and " Worcester's" Dictionaries. If, as no doubt the rule is, these sections must be construed strictly, no intention of the Legislature can be inferred or argued which does not clearly and expressly appear in the Act. The Assessment Acts, C. S.

U. C., cap. 55, sec. 9, sub-sec. 22, and R. S. O. cap. 180, sec. 6, sub-sec. 23, were referred to.

*W. C. Loscombe*, for respondents.—Provision creating exemptions should be strictly construed—*Har. Mun. Man*, 4 Ed. 608, and cases there cited. It must be, but has not been, shown that the claim for exemption comes clearly within the letter of the statute. From the evidence it is proved that appellant is a minister without charge, and so is not in such connection with the Church as contemplated by the 23rd sub-sec. of sec. 6 of the Assessment Act, and is not actually doing duty as a clergyman. The duties to be performed by a minister or clergyman should be performed within the municipality in which exemption claimed. The meaning of the word "Church," as used in the sub-sec. referred to, means that particular church or place of worship situate within the municipality, and not the particular denomination or religious body into which the clergyman has been admitted and ordained. Any duties appellant is performing in connection with the Presbyterian Church are being performed in another province. It never was intended by the statute to exempt from taxation a parsonage for a minister who was doing duty as a clergyman in another country. (See *O'Connor, appellant, and Town of Barrie, respondents*, 13 U. C. L. J. 273. The object in exempting from taxation a parsonage or other dwelling of a minister, and throwing the burden of the taxes on the other ratepayers is so that, in return, they may have the benefit of the minister's services amongst them. If such is the intention, his residing in another province prevented this.

Judgment was delivered as follows on the 18th July, 1882.

KINGSMILL, CO. J.—From a careful examination of the evidence before me I am of the opinion that the Rev. Mr. Stewart's dwelling house and two acres, situate as within described (*i.e.* in statement of appeal), are exempt under sub-sec. 23, sec. 6, R. S. O. c. 180, as I find that the appellant is a minister of religion in actual connection with the Presbyterian Church in Canada, and doing duty as such minister.

I think, therefore, that the appeal must be allowed and the assessment struck out, and the clerk shall forthwith alter and amend the roll accordingly. Each party to pay their own costs.

*Appeal allowed.*