ASSESSMENT CASE.

In the Third Division Court of the County of Elgin.

FRANCHON v. THE CORPORATION OF ST. THOMAS.

Assessment—Dwelling-house of Clergyman.

Held—1. That assessors are not bound to inquire into trusts upon which lands are held, but to view each man's premises and find out whether or not he is assessable, or whether or not he comes under any of the exemptions allowed by law.
2. That the assessor, upon seeing a dwelling house occupied as such by a minister of religion for his private residence, the assessor is bound to assess the occupant for it, no matter upon what trust the freehold in the land upon which the house stands is held.

The appellant was the pastor of the Roman Catholic congregation at St. Thomas. His predecessor had built a house for a priest's residence, upon property conveyed in trust for a site of a church and burial ground. The appellant was assessed as the occupant of a dwelling-house at its taxable value. He appealed, first to the Court of Revision, which refused to disturb the assessment, and subsequently to the County Judge.

Scatcherd, for the appellant, contended that the property upon which the house occupied by the appellant was erected, being held by trustees for the use of a religious body for a place of worship, church yard or burial ground, is not assessable; that this house was built in a church yard and burial ground; that the land cannot be sold away from the trust, supposing the appellant does not pay the taxes, or if it should be returned as absentee land. He also contended that the names entered upon the roll were wrong, because he showed that the property belonged to "The Roman Catholic Corporation of the Diocese of London." No objection was made that the quantity of land occupied does not amount to a quarter of an acre, nor that the assessed value was excessive.

Ellis, for the Corporation, contended that the assessor is not to inquire about trust property; he has to assess all land and property liable to taxation, which is not made the subject of exemption. If parties choose to assume the right to use the trust property, they must take the consequences. Neither the place of worship, the church yard, nor the burial ground, had here been assessed, but the private dwelling of the priest, at its ratable value. It was true, the freehold in this property belonged to the trustees, although used for private purposes; but private dwelling houses belonging to religious corporations are not exempted from taxation, the same as property belonging to a county, city, town or township. This house is therefore assessable, and the appeal should be dismissed with costs. The wrong done to the trust here gives the right to taxes.

HUGHES, Co. J.—I am of opinion that I cannot set aside this assessment, because I conceive the assessors are not bound to inquire into trusts upon which lands are held, but to view each man's premises, and find out whether or not he is assessable, or whether or not he comes under any of the exemptions allowed by law. Upon seeing a dwelling house occupied as such for his private residence by a minister of religion, the assessor is bound to assess the occupant for it, no matter upon what trust the free hold in the land upon which the house stands is held.

The fact of the assessment law providing no remedy authorizing the charging of the property with this assessment in case the appellant should leave it before the collector takes his round, does not, as I conceive, affect the question before me. All I have to consider is, whether the occupant is rightly or wrongly assessed, and not the remedy for recovering the taxes when assessed; and as I do not find there is any objection made, that the land used in connection with this house does not amount in quantity to a quarter of an acre, nor any as to the value, I cannot, I think, properly set aside the assessment upon the points urged for the appellant.

As to the objection to the names inserted on the roll, it is a ground for amendment only, and not for setting the whole assessment aside.

I therefore order that the assessment roll be amended by inserting the name of "The Rev. Mr. Franchon," as the party assessed, and by substituting the name of "The Roman Catholic Corporation of the Diocese of London" as the owners, instead of those persons already designated as the occupants and owners respectively, and that the appellant do pay the costs.

GENERAL CORRESPONDENCE.

Act of last Session, abolishing Registration of Judgments.

TO THE EDITORS OF THE LAW JOURNAL.

DEAR SIRS—Various and contradictory are the constructions which it seems have been given to this act by those of the profession who have been bold enough to venture an opinion at all upon it: and complaints are made of its ambiguity. I will not say that there is absolutely no ground for these, but will venture the opinion, that when carefully analyzed, the act admits of but one construction.

In your very pleasing commentary upon this act, you are shown to be among those who make the complaint of ambiguity. You do so when speaking of the two last sections, by terming them "incoherent," and saying—"The construction of which will, we fancy, puzzle the courts as they now puzzle us."

In submitting my view of this act, I shall reply to your suggestions. In the end I shall give the construction consolidated, which, I think, will be found after all, to be very brief and very simple.

It is perhaps best to recite before proceeding, the two sections you complain of.

10. "Nothing in this act contained shall be taken, read, or "construed, to affect any suit or action on or before the 18th day "of May, 1861, pending in any court in Upper Canada in which "any judgment creditor is a party."

11. "This act shall take effect on the 1st day of September "next, and in cases of judgments heretofore registered, all writs "of execution against land issued before the said first day of "September, shall have priority according to the respective times "of the registration of the judgments on which they have issued "or shall issue respectively."

You ask—If the first clause of the 11th section means that the act is not to take effect before the 1st September, what is the meaning of the 10th section.* "That nothing in the act contained shall be taken, &c., to affect any suit, &c., on or before the 18th May, 1861, pending, &c."

The act is an universal destroyer of the power of judgment, &c., to create or operate as liens, &c., with this 10th section as a proviso—as a saving clause. The act takes universal effect providing it does not affect any such suits as is described in this section. The act is affirmative, declaring what shall be done, and the time expressed, the 1st September is the time when it shall be done, and this clause is an exception to the rule of what shall be done—it is a negative clause, declaring what shall not be done, and the time expressed in it is merely descriptive of what is the exception to the rule, or what it is that shall not be done, and is not a time expressed as a date, either for the commencement or ending of any proceeding or operation.

You say—"Surely if the act is not to take effect till the 1st September, it cannot very well affect suits pending on or before the 18th May." Your own answer to this is, that by reading the clause, which says when the act is to take effect, alone, you would say it can not; but by reading this clause and the 10th section together, you would say it can. The 10th

* These sections are now numbered 11 and 12 in the statutes.