

## Legal Department.

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OF OSGOODE HALL, BARRISTER-AT-LAW.

### Assessment for Local Improvements.

Through the courtesy of His Honor Judge Hughes, Senior Judge of the County of Elgin, we are enabled to publish the following very interesting judgment:

IN the matter of the appeal of the Roman Catholic Episcopal Corporation of the Diocese of London against the decision of the Court of Revision, respecting the assessment of its property in the City of St. Thomas for local improvements and frontage tax on its property on Talbot street.

#### THE PROPERTY.

The land upon which the Catholic Church, the Separate School, the pastor's house, and that in which the Sisters dwell, was conveyed by a deed of trust to the then existing bishop—the Hon. and Right Reverend Bishop McDonell, D. D., of the then existing Diocese of Regiopolis, and others, and their successors in office, on the 31st May, 1831, *"upon trust for the use and purpose of erecting thereon a Roman Catholic Church and to and for the use and purpose of a burial ground, and to and for a Roman Catholic congregation and no other."* It was, but has ceased to be used for a burial ground, for many years.

The Provincial Parliament of the former Province of Canada, recognizing the Right Reverend Michael Power, the then Roman Catholic Bishop of Toronto, as the successor in office of the deceased Bishop first named, in so far as the Diocese of Toronto was concerned, and the Right Reverend Patrick Phelan, Roman Catholic Bishop and Administrator of the Diocese of Kingston, incorporated those Roman Catholic Bishops of Kingston and Toronto respectively, and enabled each of them and their successors to hold and acquire real estate in the province for religious purposes, and constituted each of them, respectively, a body corporate in his own diocese, in deed and in name, the Bishop of Toronto and his successor and successors for the time being, by the name of "The Roman Catholic Episcopal Corporation of the Diocese of Toronto in Canada," enabling him by that name to have, hold, purchase, acquire, possess and enjoy for the general use or uses—eleemosynary, ecclesiastical or educational—of the said church, or of the religious community, or of any portion of the same community, within his diocese, any lands which might be afterwards acquired.

By the same enactment, the soil and freehold, as well as the fee, of all lands and of all burial grounds and churches and chapels then belonging to and used,

held, occupied possessed or enjoyed by the said Bishop of Toronto or his church, and of all churches and chapels then being erected (on the 29th March, 1845), or to be thereafter erected in his diocese, are declared to be vested in him, and his successor and successors for the time being, for the purposes aforesaid.

By Section IV., persons holding property in trust, for the benefit of churches, might convey the same to the bishop of the diocese for the time being.

We thus find that for the purposes of the trusts first named, the trustees are changed, and the newly-constituted corporation is substituted (see Statute of Canada, 1845, 8 Victoria, Cap. 82) for the original unincorporated trustees.

By the Statute of Ontario (1873), 36 Victoria, Cap. cxlii., the Roman Catholic Corporation of the Diocese of London was incorporated, and had vested in it the soil and freehold, as well as the fee, of all lands, etc., and of all burial grounds, churches and chapels held in the name of, or conveyed to the Roman Catholic Corporation of the Diocese of London.

I find also that power is given, in addition to the powers conferred by the last-mentioned Act, to borrow money on mortgage security, of the real estate of said corporation, for the purpose of erecting or finishing any church or clergyman's residence, erected or to be erected, and for enlarging the same, subject to a compliance with the requirements of the fifth section of the Act therein recited.

So that taking the whole of the provisions of these statutes into review, we find that the trust created by the instrument, of which a registered memorial was produced before me, as executed by the late Archibald McNeel, was transferred, and the trust is now vested in the Roman Catholic Episcopal Corporation of this diocese, but we do not find that there was any power conferred, to either mortgage the lands for the purpose of erecting any public or separate school thereon, or to lease or demise or convey the lands for that or any purpose which would be inconsistent with the original trust, away from the purpose of erecting a place of worship, for a burying-ground or for the congregational uses of the church.

1. We find first that the property held in trust by the Roman Catholic Corporation of this diocese, the Appellant in this case, is not all used in connection with the place of worship, that the north eastern part of it is used for purposes of a Separate school, for Roman Catholic children, which is maintained partly by a legislative grant and partly by a school tax.

2. Next we find that the centre portion of it is used in connection with the place of worship, viz., that part of the trust property on which the church is erected, and

3. Last, we find that the western portion is used, not in connection with the place of worship, but as a pastor's residence, and grounds connected therewith.

4. Under section 684 of the Act hereinafter referred to, the buildings and grounds of an incorporated seminary of learning, whether owned by the seminary, or vested in a trustee, or otherwise, are liable to be assessed in the same manner and to the same extent as other land is assessed, for local improvements, made or to be made, except that it does not apply to schools, which are maintained in whole or in part by a legislative grant or a school tax.

I take the meaning of this proviso to be that "schools," referred to therein, are not to be assessed for local improvements if the "incorporated seminary of learning" own buildings or grounds either vested in themselves or a trustee, or "otherwise." I take the "otherwise" to mean and refer to tenants referred to in section 668 and subsection (2) of the Municipal Act.

#### WHAT IS A PUBLIC SCHOOL?

The Public Schools Act and the Separate Schools Act are each entirely independent of the other, in their objects and provisions. The one is for the education of the youth of the province generally; the other is for the education of certain classes of youth in particular, and as apart from all the rest.

By the 93rd section of the British North America Act, the legislature of each of our provinces has the exclusive right to make laws in relation to education, subject to certain restrictions therein specified, which, speaking in the broad terms employed by subsection 1, are that any law to be passed was not prejudicially to affect any right or privilege with respect to denominational schools, which any class of persons had by law, in the province, at the union.

Here is a plain line drawn between what were to be regarded as laws in relation to education generally—and as exemplified by our Public Schools Acts—and those in relation to denominational schools exemplified by our Separate Schools Acts.

The case reported in 18 Ont., 606, *re Roman Catholic Separate Schools*, deals with a case in which a plain distinction is kept up throughout between what is recognized as a public school and a denominational school or separate school.

There is no right that I can find conferred upon our youth generally to obtain an education at or to enter a denominational school.

The trustees of these separate schools are elected by persons of the denominations for whom, and for the education of whose children, the schools exist as separated from public schools.

The sections following section 18 of the Separate Schools Act apply exclusively to Roman Catholics, and by section 18 an interpretation is given to certain expressions used in the Act—unless a contrary