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[G.R. No. 1974. March 15, 1906]

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. A. W. HASTINGS, ASSESSOR AND COLLECTOR OF THE CITY OF MANILA, AND THE CITY OF MANILA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

TRACEY, J.:

This is an action for the return of taxes under protest. Section 48 of Act No. 183 of the Philippine Commission, passed in 1901, reads as follows:

> "*Exemption from taxation*.—Lands or buildings owned by the United States of America, the Central Government of the Philippine Islands, or the city of Manila, and burying grounds, churches and their adjacent parsonages and *conventos*, and lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit, shall be exempt from taxation, but such exemption shall not extend to lands or buildings held for investment, though income therefrom be devoted to religious, charitable, scientific, or educational purposes."

In the year 1901 the assessor and collector of the city of Manila imposed a tax upon the residence of the Roman Catholic archbishop of Manila, overruling the claim that it was exempt from taxation by virtue of the foregoing statute.

This residence is from 80 to 100 meters distant from the Cathedral Church, separated from it by one intervening building the ownership of which has not been proved, is near but not adjoining or contiguous to the church, and communicates with it by a street directly leading from one to the other. It is occupied as a residence by the archbishop, who is the head pastor of all the churches in his diocese, the cathedral being his special church.

There is attached to the cathedral and now under the same roof a chapel of earlier date called "*Del Sagrario*," which is the parish church proper, the only one in the Walled City. It has a separate pastor, whose house, 8 meters away from the chapel, is already exempted from taxation as a parsonage. The parish is properly called "*Del Sagrario*" and not "*Catedral*."

The main reliance of the appellant is on the cardinal rule of American jurisprudence that exemption from taxation not being favored, must be strictly construed against the property owner. This rule rests upon abundant authority. (Providence Bank *vs*. Billing, 4 Peters, 514; Yazoo Company *vs*. Thomas, 132 U. S., 174; Schurz *vs*. Cook, 148 U. S., 397.)

But it has been applied with the greatest strictness where the provisions under consideration were for future exemption, constituting an irrevocable contract, as in the cases cited. In many jurisdictions a qualification is made in favor of works of religion or charity or even of any corporation not formed for profit. (State *vs*. Fisk University, 87 Tenn., 233; Massachusetts General Hospital *vs*. Sommerville, 101 Mass., 319; Trinity Church *vs*. Boston, 118 Mass., 164; Association of Colored Orphans *vs*. Mayor, 104 N. Y., 581; The Matter of Vassar, 127 N. Y., 1; Hennipen *vs*. Brotherhood, 27 Minn., 460.)

And it is laid down that the presumption in favor of the tax should not work a strained or unnatural interpretation of the law. (Louisville Railroad *vs*. Gaines, 3 Fed., Rep., 266; People *vs*. Peck, 157 N. Y., 51; Cooley on Taxation, 3d ed., p. 362; Black on Tax Titles, sec. 57.)

These principles are in accord with the general rules for statutory construction contained in the Code of Civil Procedure of these Islands, sections 286 and 289, and for the interpretation of contracts in book 4, Title II, Chapter 4, of our Civil Code. It is plain that sound reason does not require a departure from established rules of statutory construction in order to favor the Government in this class of cases. To the contrary, where no contractual effect is claimed for a statutory exemption, the State holds in its own hands the remedy for a defective law by repeal or amendment.

The statute before us should therefore be construed strictly, but not unnaturally, and with due regard to the true policy of its enactment. Its terms are of the broadest, and a fair reading indicates no intention to exclude from its benefits any place of worship or any clerical residence used in connection therewith. The express exemption of convents is significant of its purpose and so also is the use of the limiting phrases "and not for profit" and "for investment."

The appellant contends—

First. That the property is not a parsonage.

Second. That it is not adjacent to the cathedral.

Third. That the exemption privilege is already exhausted by its allowance to the parsonage of the adjoining chapel.

The Spanish version of the statute quoted renders the word "parsonage" as "*casa parroquial*," and it is claimed on behalf of the assessor that only parish houses, strictly known as such under the Spanish system, can claim exemption. This interpretation is too narrow; it would not include the residence of Protestant clergymen or of Jewish rabbis, none of which have ever had a parochial status, nor those of Roman Catholic priests not living in territorial parish houses or in church convents.

Our law provides that in the event of a difference arising from the translation of the laws of the Philippine Commission the English text shall govern. (Act No. 63, December 21, 1900. The English word "parsonage" as derived from American usage must be read, not in a technical or ecclesiastical sense, but in the broad meaning of a ministerial residence used in connection with any place of worship of any denomination. It should include the house appurtenant to a cathedral, as well as to a synagogue or a country meeting house. The policy of the law reaches the one as well as the other, and a parsonage does not lose its legal privilege as such because the clergyman residing in it enjoys the added ecclesiastical dignity of archbishop.

From the testimony in this case it appears that the relations of an archbishop to his cathedral are pastoral in character and that he is the ecclesiastical dignitary properly having a residence tributary to it.

The second requirement of the law is that the residence shall be adjacent to the church. In this instance there is a distance from one to the other of from 80 to 100 meters, with an intervening block of buildings, the communication between them being along an open street, affording a passage and a view from one to the other, the cathedral abutting on this street and the residence standing at its head. The word adjacent does not mean contiguous, but on the contrary is frequently used in contradistinction to it and is generally defined by lexicographers as equivalent to "close" or "near by." Reference to the many definitions cited by counsel for plaintiff satisfies us that this is its prevailing meaning. In this acceptation it

can hardly be said that this residence is not close to the cathedral nor near by it; regard must be had to suitability and surroundings, as well as to physical distance. It appears to have been chosen as the fittest available site for this purpose, and its long use in connection with the cathedral furnishes the fairest test of whether it can be considered reasonably near, so as to be adjacent to it. We think it can be so considered and that any other ruling would work a harsh and strained interpretation of the statute.

It has been urged that this statutory word, if not equivalent to contiguous, may yet have such force as to restrict the exemption to such structures only as are not separated by property of different ownership—in other words, that both must stand on one integral lot. It has not been shown whether the plaintiff owns the intervening block or any part of it, so as to render the properties contiguous. Obviously this meaning would bar a parsonage divided from its church by any space, however small; for instance, as is frequently the fact, by a public street or lane, and would thereby shut out many cases plainly within the object and the reason of the law. We do not find, either in the generous terms of the statute or in the physical conditions of church property in these Islands, sufficient justification to establish such a severe rule nor any reason to believe that such was the intention of the Commission. We fail to read the purpose on their part, suggested as a motive for this construction of their enactment, to exempt only convents and parsonages physically annexed to churches or on the same lots with them, as is commonly the condition in Roman Catholic parishes. We think, on the contrary, that the design of the lawmakers was to reach the conditions common to the parsonages of all creeds and religions.

In the third place, it is contended that the residence of a pastor having been already exempted as appurtenant to the chapel "*Del Sagrario*," there can be no further allowance of a parsonage of the cathedral. As presented in the briefs of counsel, this argument also gains force from the use of the Spanish phrase "*casa parroquial*," which is lost when rendered into the English word "parsonage." Though there are not two parishes so as to admit of two parish houses, there may be two churches. We think that the proof in this case establishes that there are. Though the buildings are physically united under one roof, they were built independently and at different periods, stand on different levels, communicating by means of steps, have separate walls, and their common doors, though serving for passage from one to the other, may be, and sometimes are, closed; so that they may be considered practically separate though contiguous buildings. This actual condition might not suffice to prevent their merger had they been used and treated as a unit, but it appears that while one is recognized as the cathedral, the other alone constitutes the parish church, and they have distinct privileges, treasuries, and officers. It is not an unnatural incident that they should

possess distinctive residences for their respective clergy.

On these facts it is not necessary to decide whether one church may not have two or more parsonages as residences for different individuals of its appropriate clergy or to discuss the question, as to which the courts in the United States have differed, whether a parsonage may not be considered "a building used exclusively for religious purposes;" nor do we attempt to lay down any general rule as to the limitations of the word "adjacent," but only hold that, for the reasons stated on the proofs before us in this particular case the appellee has established the exemption claimed and is entitled to recover the tax paid.

The decision of the assessor is not final but is subject to revision by the courts. (Lackawanna *vs*. Commonwealth, 156 Penn. State, 477; National Bank *vs*. City, 53 N. Y., 49; Aetna Co. *vs*. Mayor, 153 N. Y., 331.)

While for an assessment erroneous because excessive the taxpayer must seek redress by appeal to the board of tax appeals as a board of review, yet where that remedy is not expressly made exclusive and where there is a tax in itself illegal, he may resort to the courts. (See cases collected in 2 Cooley on Taxation, third edition, p. 1382, and also Stanley *vs*. Supervisors, 121 U. S., 535, 550.)

The judgment of the inferior court should be affirmed and entered against the city of Manila and its collector in his official capacity, but not individually, declaring that the tax paid by the plaintiff to the defendants under protest, amounting to $1,607.47, United States currency, was improperly collected, and ordering its return by the defendants to the plaintiff with legal interest from the 14th day of January, 1904, but without costs. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded to the lower court for execution. So ordered.

Arellano, C. J., Torres, and *Mapa, JJ.,* concur.

DISSENTING

JOHNSON, J.:

This was an action brought in the Court of First Instance of the city of Manila to recover certain taxes paid by the plaintiff to the city assessor and collector of the city of Manila

under protest. The property assessed was the house of the archbishop of the city of Manila, and the claim on the part of the plaintiff is that the house should be regarded as the parsonage of the cathedral of the city of Manila and should be exempt from taxation under the provisions of section 48 of Act No. 183 (Charter of the city of Manila).

It is the theory of the Government that all property within the State held by individuals or corporations should contribute equally, in proportion to its value, to the support of the Government, in return for the protection which such property receives at the hands of the Government. This being the policy of the Government, a law which relieves any property from this burden should be strictly construed, to the end that no individual or corporation shall be relieved from bearing his or its full share of the burdens of taxation unless the law expressly so provides. This exemption should not be allowed by any strained or unnatural interpretation of the law.

Section 48 of Act No. 183 (the Charter of the city of Manila) provides what property shall be exempt from taxation and reads as follows:

> "Lands or buildings owned by the United States of America, the Central Government of the Philippine Islands, or of the city of Manila, burying grounds, churches and their adjacent parsonages and *conventos*, and lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit, shall be exempt from taxation; but such exemption shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific, or educational purposes."

No plan was introduced during the trial of this cause showing the exact physical relation of the archbishop's palace to the cathedral. A plan was offered in evidence showing the location of the house near the cathedral which was exempted from taxation by virtue of the fact that said house was occupied by the priest who administered the "*Sagrario*,"which was an apartment within the cathedral. A plan was also introduced in evidence which shows the relation of the archbishop's palace to the Postigo Prison, Calle Postigo, and Calle Arzobispo. From the evidence adduced during the trial of said cause showing the relation of the cathedral, the archbishop's palace, and the said house which was exempted from taxation for the reasons above mentioned, in their relation to Calles Magallanes, Cabildo, Beaterio, Palacio, Arzobispo, and Postigo, and the relation of the cathedral to Plaza Palacio (now Plaza McKinley), the following plan was made, which it is believed shows the physical relation of

the house occupied by the archbishop in its relation to the church or cathedral, which house is to be relieved from taxation as a parsonage provided it comes within the law.

Block A on the following map represents the cathedral; B represents the house which was occupied by the priest who administered the "*Sagrario*" and which was exempted from taxation by the city assessor and collector; C represents the land upon which the archbishop's palace is located; D represents Plaza Palacio (now Plaza McKinley); E represents the city wall.

(See map in Philippine Reports Vol. 5, p. 710)

From an examination of this map it will be noted that between the cathedral and the archbishop's palace there lie two streets and one entire block. It is true, as is said in the majority opinion, that it is possible to go from the archbishop's palace through a street to the cathedral at a distance of one block away. It would be true that you could pass from the archbishop's palace to the cathedral through a street or streets if the same were located many blocks away. The fact, however, in my opinion, that one can pass by means of a street or streets from one place to another does not necessarily make the two places adjacent.

If the law provided for the exemption of "churches and their parsonages," then there would be no difficulty in applying the law, but the law provides that a parsonage to be exempt must conform with two conditions:

First. It must be the parsonage of a church; and

Second. It must be adjacent thereto.

If the majority opinion decides anything directly upon the question involved here, it is that a parsonage located at 80 to 100 meters from its church and where it is possible to pass from one to the other by means of an open street, it shall be exempt from taxation under this section. If the Commission, in passing this law, intended to exempt all parsonages from 80 to 100 meters from the church which were accessible by means of a street, it would have been less confusing to have exempted churches and their parsonages simply. The Commission certainly intended to give the word "*adjacent*" some meaning. It would seem natural that they intended to give it its plain and ordinary meaning.

The word "adjacent" is of Latin derivation. An examination of its original use clearly indicates that in order that things shall be adjacent they shall be thrown near together.

Webster in his International Dictionary defines "adjacent" as "lying near, close or contiguous; neighboring; bordering upon;" and gives as synonyms the words "adjoining, contiguous, near."

Rogue Barcia in his "*Diccionario General Etimologico de la Lengua Española*," in defining the word "adjacent," uses as *synonyms* "*inmediato, junto, proximo*." Things can not be "*inmediatas, juntas, proximas*" where other objects intervene.

Vicente Salva in his "*Nuevo Diccionario Frances-Español*" defines the word "adjacent" as "*qui est situe aupres, aux environs*."

Black in his Law Dictionary defines "adjacent" as "lying near or close to; contiguous. The difference between adjacent and adjoining seems to be that the former implies that two objects are not widely separated, though they may not actually touch."

Harpers' Latin Dictionary as revised by Lewis and Short, in defining the word "*ad-jaceo*," which is equivalent to the English word "adjacent," says it means "to lie at or near, to be contiguous to, to border upon."

The Universal Encyclopedia defines an adjacent angle as "an angle contiguous to another, so that one side is common to both angles."

In the case of Miller *vs*. Cabell (81 Ky., 184) it was held that where a change of venue was taken to an adjacent county it must be taken to an adjoining county.

In the case of Camp Hill Borough (142 Penn. State, 517) it was held that the word "adjacent" meant adjoining or contiguous.

In the case of In re Municipality, etc. (7 La. Ann., 76), the court said: "We think the word 'adjacent,' applied to lots, is synonymous with the word 'contiguous.'"

In the case of the People *vs*. Schemerhorne (19 Barber (N. Y.), 576) the court said: "The interpretations given to the word 'adjacent' by Walker are 'lying close, bordering upon something.'"

If the word "adjacent" can be applied to objects 80 to 100 meters away with two streets and a block directly intervening, I see no reason why it might not be applied to property twice or thrice that distance away, and if so, then what is the limitation? If one block may intervene then why not two, and if two why not three, so long as you may be able to pass from one to

the other by means of a street or otherwise? Such an interpretation is entirely too loose to be consistent with the general rules of interpretation for special statutes.

Suppose, for example, that the block occupied by the cathedral upon the above map was a public square and the authorities should by law direct that the same be paved, and should enact a law providing that "all property adjacent thereto should be taxed for that purpose." Would the plaintiff strenuously contend that the property in question here should be taxed for that purpose, upon the theory that it is adjacent thereto? This would be a general law, of general application, and should receive a liberal construction. The chances are—and it would be but natural under a law of this character—that the contention would speedily be made by those interested that the property in question was not adjacent to the said block.

Or suppose that the Charter of the city of Manila provided that property adjacent to the boundary of the same might be annexed to the city upon petition of its owners. Might the owner of land have his property annexed to the city upon the theory that it was adjacent to the same when the property of other owners intervened between his and such boundary? It does seem that an interpretation answering this in the affirmative would not be made by any thoughtful person who had studied the use of the word "adjacent" in its legal relation.

It is true that the word "adjacent" in the ordinary vernacular is used to designate things that are far removed, but this loose interpretation should not be permitted when the word is used in a law which must be strictly construed.

The above illustrations sufficiently demonstrate the embarrassment which is likely to arise from the interpretation given the word "adjacent" in the majority opinion. The only safe and definite interpretation of the word "adjacent," when applied to city lots, and the one which will give the least confusion, is the one given by the various authors quoted above. In order that property shall be considered adjacent in the sense in which the word is used in said section 48, it must be adjoining or contiguous. I am of the opinion that the legislature did not intend that parsonages should be exempt from taxation unless they were upon adjoining and contiguous lands belonging to the church.

The judgment of the lower court should be reversed and the case dismissed.

DISSENTING

CARSON, J.:

I dissent.

I accept the reasoning of Mr. Justice Johnson's dissenting opinion based on the application of the rule of strict construction to the language of the statute before us, and I shall not discuss the question further from that point of view.

I am of opinion, however, that even without the necessity of invoking that rule, if we construe the statute "with due regard to the circumstances and the true policy of its enactment," we must reject any construction which would exempt from taxation parsonages or *conventos* not erected on the same integral lot with their respective churches.

The belief that religious instruction and the exercise of religion tend to make men better citizens is the ground on which is based the public policy of exempting from taxation property dedicated exclusively to religious purposes, and, at first sight, and upon a superficial examination of the statute, it might appear that this was the ground of public policy which led the Commission to exempt from taxation certain parsonages and *conventos*. But the fact that not all are exempted suggests that we must look elsewhere for the true controlling policy of this particular exemption; for, whatever meaning we give to the word "adjacent" as used in the statute, it seems clear that some other consideration than solicitude for the religious welfare of the citizen must have dictated the enactment of a law which requires all parsonages and *conventos* not adjacent to their respective churches to share in the general burden of taxation by the State while others are exempt.

I am not contending that if the lawmaker had been of opinion that, in the interest of religion, the residences of all ministers should be exempt from taxation, such exemption could not be sustained on the same grounds of public policy on which are based exemptions as to churches, but I do insist that the peculiar limitation as to physical location which determines those residences of ministers which are exempt precludes the idea that this exemption was in fact created in the interest of religion or the religious welfare of the citizen or of the State.

I think that an examination of the circumstances under which the statute was enacted throws light upon the subject and makes clear the true policy of this particular exemption and the intention of the legislature which it is our duty to enforce.

The statute was put in effect by the Philippine Commission, which was charged with the

extremely delicate mission of implanting in these Islands a system of government wherein the church and state must be and remain forever separate and apart, thus severing the relation which had always existed theretofore. At best so radical a change involved many difficulties, but it was the duty of the members of the Commission to carry out this policy at all hazards, adopting at the same time every possible measure to avoid injustice to either party and to minimize the necessary friction incident to the change.

When they approached the subject of taxation, they were confronted with a condition which required the exercise of the utmost prudence and good judgment. They found throughout the Islands valuable and relatively extensive properties which had theretofore been exempted from taxation because of its use, direct or indirect, for the furtherance of those objects in which the state church claimed an interest, and it became necessary to determine whether these exemptions should be continued in force as to all or any part of these properties.

On the grounds of public policy as heretofore stated, and in accordance with the general rule in the United States, the exemption from taxation as to all churches and property dedicated exclusively to religious purposes was continued in force.

Having established this exemption it must have been manifest to the Commission that almost insurmountable difficulties would confront an attempt to impose a tax on all the *conventos* in the Philippines while their churches were exempt, and that to do so would give rise to unending disputes and differences between the church and its parishioners on the one hand and the Government and its assessors and tax collectors on the other.

In these Islands churches and their *conventos* usually constitute a single pile, the *convento* abutting on the rear or the side of the church, though in some cases they are separated by air and light spaces, and if the *conventos* so situated were not exempted, questions would necessarily arise touching the proportionate share of the valuation placed on the lot and the buildings which should be included in the assessed valuation of the *convento*, and the discussion and settlement of these questions at each recurring period of assessment could hardly fail to arouse and inflame those feelings of suspicion and enmity which it was the policy of the Commission to allay—feelings which would be intensified to a degree by sales for taxes of buildings which might be regarded as a part of the sacred edifice itself.

Fully alive to all the difficulties of the situation, the Commission, as I believe, wisely determined to adopt the rule well known in the United States of exempting such parsonages

and *conventos* as are built on the same integral lot as that upon which their church is erected, and this not because they believed that ministers' residences so located are more entitled to favor than others differently situated, but solely and exclusively on the ground of expediency, convenience, and neccessity.

If this view of the "circumstances and the true policy of the enactment" of the statute be correct (and I have heard none other which explains the limitation of exempted parsonages and *conventos* to those adjacent to their respective churches), then, of course, any interpretation of the word "adjacent" which would include parsonages and *conventos* other than those on the integral lot where the church is erected is not a natural one, has no reason for being, and should be rejected.

In conclusion, as the majority of the Commission who enacted the statute were Americans, and therefore acquainted with American legislation touching the taxation of church properties, it is worthy of note that while many of the States have at one time or other enacted statutes exempting from taxation parsonages erected on the same integral lot as the church, and a few have exempted all residences of ministers, I have not had my attention directed to a single case where the exemption was made on the basis adopted in the majority opinion, and I might add, as throwing some additional light upon the subject, that in the United States it "is well settled that a parsonage is not included within an exemption such as of buildings for religious, stated or public worship, or for religious purposes," though it is true that in a very few jurisdictions the contrary view has been upheld. (Am. and Eng. Encyc. of Law, second edition, vol. 12, p. 330, and cases there cited.)

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