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January 29.

DR. COUDERT *v.* THE MUNICIPAL COUNCIL OF COLOMBO.

D. C., Colombo, 21,662.

Assessment—" School building "—" Building" —Ordinances No. 7 of 1887, s. 3, and No. 7 of 1902, s. 127.

" School buildings " which under the proviso to section 13 of Ordinance No. 7 of 1902 are exempted from taxation, are only such buildings as are actually used for tuition and private study, and do not include other rooms and buildings such as refectories, dormitories, kitchens, residences of masters, bathrooms, &c., in the school premises, which are not used for such purposes.

THE facts are sufficiently set forth in the judgment.

Bawa, for the appellant.

Dornhorst, K.C., and *Sampayo, K.C.*, for the respondent.

29th January, 1906. GRENIER, A.J.— 1906. January 29.

The plaintiff in this case is the Archbishop of Colombo and the owner and proprietor of the buildings and premises bearing assessment Nos. 9 and 9A, situated at Sutherland road. These buildings and premises are those of St. Joseph's College, and the defendant Council, the Municipal Council of Colombo, assessed the same for the year 1905 at the respective annual values of Rs. 3,020 and Rs. 1,000, aggregating the sum of Rs. 4,020, for the purposes of the police, lighting, and water-rates, and leviable at the times stated in the 3rd paragraph of the plaint.

On the 26th January, 1905, notices of the said assessments were served on the plaintiff, who subsequently preferred a statement of objections to the said assessments and required the defendant Council to exempt the said buildings and premises from the payment of the said rates in terms of the provisions contained in the proviso attached to section 127 of Ordinance No. 7 of 1902. The defendant Council having refused to exempt the said building and premises, this action was brought so that there might be an inquiry by the District Court into the objections raised by the plaintiff in regard to their rateability. At the trial only one issue was proposed by the plaintiff's counsel, which was agreed to by the other side, with the exception of certain words, the presence of which affected the question whether the whole of the buildings and premises, or only a part thereof, were or were not exempt from the rates.

The District Judge accepted the issue as proposed. It certainly would have been more satisfactory if the defendant Council had at this stage stated to the Court what part of the buildings and premises they considered rateable, in order that this Court might have had a clear understanding of the position of the parties. I say this in view of what the District Judge has recorded as part of the address of defendant's advocate, at the close of the plaintiff's case, that the Council has exempted only the class rooms, *i.e.*, where the classes meet, the library, and students' rooms used for private study, and that every other portion of the building has been assessed. I suppose I am accordingly entitled to assume that this was an admission by the defendant Council that particular parts of the buildings and premises are not liable to be assessed in terms of the provisions contained in the proviso to section 127 of Ordinance No. 7 of 1902. I think, however, that the defendant Council might have made the matter clearer by the production of a plan by a competent person of the buildings and premises, and have indicated on it what the parts were that were exempted from the payment of the rates.

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The question then that the Court below had to adjudicate upon was whether the whole of the buildings and premises bearing assessment Nos. 9 and 9A were rateable, or only some parts of it. It is necessary in the first place to ascertain the meaning of the term " building " as used and defined in section 3 of Ordinance No. 7 of 1887. The definition is as follows:—" Unless the context otherwise requires, ' building ' means any house, hut, shed, or roofed enclosure, whether used for the purpose of a human habitation or otherwise or any wall." The introductory words " unless the context otherwise requires " can only mean that if there is anything in any of the sections of the Ordinance, or in other words in the whole text of the Ordinance, which calls for the application of any other meaning than that given by section 3, the terms must be understood and read as conveying the meaning given by that section and no other meaning. There is nothing in the context, as far as I can see, which gives the term " building " the very wide meaning which the District Judge has given to it, or which requires or justifies such a meaning. The District Judge says that ordinarily the term " building " means the fabric, the edifice. That is admittedly so, if there is no word qualifying it. But I must confess I cannot follow him when he proceeds to state as his conclusion, from the use of the words " unless the text otherwise requires," &c., in section 3, that the Ordinance did not intend to restrict, nor did it restrict, the word " building " to any house, hut, shed, or roofed enclosure, and, if the context otherwise required it, building may mean something more than the edifice or " fabric."

The fallacy underlying this statement and which renders the conclusion wrong, in my opinion, is that it seems to have been assumed either that the definition in section 3 of the term " buildings " had been amplified and enlarged in the context, or that by implication such an effect could be given to it as would justify the use of the term in a most elastic sense, or that the intention of the Legislature was that it should be so used. The matter has, to my mind, been placed beyond controversy by the use of the word ' school ' before the word " buildings."

Now " school buildings " are expressly exempted from the payment of rates by the proviso to section 13 of The Municipal Councils' Ordinance of 1902, which amended in some respects the principal Ordinance. When the Legislature made use of the term " school buildings," I do not think that it intended to give it more than the ordinary popular meaning " of buildings " in which classes meet day by day for tuition and for private study. We are all familiar with such buildings, and if a visitor asked any intelligent schoolmaster

to show him over the school buildings, he would not, I am sure, make any mistake about them, but would take his visitor over the buildings in which the class rooms were. As has often been pointed out by this Court, we must gather the intention of the Legislature by looking at the whole scope and object of any enactment, avoiding subtle interpolations, giving words which are not used in any obviously technical sense their plain ordinary meaning. Therefore, I fail to see how there could be any difference of opinion as to the meaning of the term " school buildings," or even as regards the meaning of the term " building " as defined in the principal Ordinance.

Now, such being my finding on this point, it follows that I must hold that the buildings and premises in question are rateable, save and except such parts thereof as are used as class rooms where the classes meet for tuition and private study. It would appear from the evidence of the Rector of St. Joseph's College that besides the class rooms there are several other rooms and buildings which are not used as class rooms, and which, therefore, do not come under the description of school buildings and are rateable. Some of the authorities cited to us at the argument, although they do run on parallel lines with the present case, contain the principles which should govern cases of this nature. I find that the term used in the English statute is " school house," and not " school building." Possibly our Legislature might with advantage have used the term " school house," which is by no means an ambiguous term, and which certainly does not admit of any subtle disputations as to its meaning.

In the matter of the Oxford University and the City of Oxford Poor Rate, reported in the 27 *L. J. Rep., Mag. Cas.* 33, it was held by Coleridge, J., the other Judges sitting with him being Lord Campbell, C. J., and Crompton, J., that the University was exempt from the payment of poor rate under 17 and 18, Vict. Ch. CCXIX. in respect only of the occupation of buildings which were necessary for the public purposes for which the University was erected, namely, the advancement of national religion and learning; but that the exemption did not extend to a cellar under the Sheldonian Theatre which was used by an individual as a place of deposit for his books, nor to the tower part of the building containing the Ashmolean Museum which was fitted up and used as a residence by the Reader in Mineralogy, nor to so much of the Taylor Institution as was used as a residence for the Librarian, not necessarily, but for his own convenience.

The District Judge has referred to the case of *Rex v. Overseers of Fulbourn*, 6 *B. and S.* 451, which, he thought, indicated the spirit

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in which exemptions should be regarded. It was held in that case, and in my humble opinion rightly, upon the words in " The Lunatic Asylum Act, 1853 " (8 and 9, Vict. C. 126; 16 and 17, Vict. C. 97), that as the buildings and the lands were used for the purpose of an asylum within section 35, the primary object of the farm and garden being the sanitary occupation of patients with a view to their cure, the Committee of Visitors were not rateable in respect of the profits. The Lunatic Asylum not only consisted of the building, but of land about fifty acres in extent, and were acquired for the purpose of a Lunatic Asylum; and the farm and garden were cultivated by gardeners, who were part of the establishment, assisted by the patients. There was, therefore, no question that the building and land were used for the purposes of an asylum within the meaning of section 35 of the Act.

There is no analogy, as far as I can see, between the English cases and the present case. Here we have our local Ordinance in which the word " school buildings " is used, and no mention made of any land or buildings attached to such buildings. The evidence of the Rector shows that there is a fairly large piece of ground on which there are several cocoanut trees. There are refectories, dormitories, kitchens, residences, or rooms for some of the masters, bathrooms, &c. There is a tuck-room, a room for the washing, an infirmary, and some rooms used by the Catholic Club. All these are rateable. It is impossible in the state of the record for this Court to declare which particular parts of the buildings and premises are rateable and which not.

The order appealed from will, therefore, be set aside, and the case sent back for the District Judge to find definitely on the point, exempting from the payment of rates the class rooms and the rooms where the classes meet for tuition or for private study. The appellant will have the costs of this appeal and of the Court below.

WENDT, J.—I agree.