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ROMAN CATHOLIC BISHOP OF KAMLOOPS

v.

KAMLOOPS ASSESSOR

Supreme Court of British Columbia (5484) Kamloops Registry

Before CHIEF JUSTICE ALLAN McEACHERN

Vancouver, March 24, 1982

N. Fetterley for the Appellant
J. Joe for the Respondent

Reasons for Judgment

March 24, 1982

THE COURT: As I listened to the interesting argument in this matter, I struggled to find a way to do what I subjectively think is the right thing to do, which is to avoid the artificiality of a decision which means that a building under construction, and intended for the public worship of God is not exempt from taxation only because it was not completed by December 31st of the year prior to the commencement of the Taxation Year in question. I must attempt, however, not to just do what I think is right, but what is right according to law.

The statute in question provides an exemption under the *Municipal Act*, (R.S.B.C.) chap. 290, sec. 398 (h) for, "A building set apart and in use for the public worship of God . . ."

As I said in argument, I have in mind a picture of a God-fearing community worshipping God publicly by building a church. I would like to think that would qualify for the exemption, because I do not believe that the *Act* should be read as if it provided an exemption only if there has been a formal ceremony of some kind; but the facts included in the Stated Case, by which I am bound, state:

"2. As of December 31, 1980, the Church Hall was not completed and had not been used for the public worship of God."

Reluctantly, I am bound to find that the Assessment Appeal Board did not err in its disposition of this matter. On the facts properly before me, I feel constrained to answer Questions (1) and (2) in the negative. I think the answer to Question (3) should be in the affirmative, as I believe there was some evidence before the Assessment Appeal Board on which it could have found that a building was set apart and in use for the public worship of God, within the meaning of that phrase, but to give effect to that belief, I would have to look at the evidence, and I do not think I am permitted to do so.

The Assessment Appeal Board made the finding quoted above, and I cannot say that it exceeded its jurisdiction in the decision that it reached in that behalf. Therefore, I think my affirmative answer to Question (3) is not an effective legal answer which is of any assistance to the applicant. I think Question (4) must be answered in the affirmative.

I think that that disposes of this application, does it not?

MR. FETTERLEY: Yes, it does.

THE COURT: Is there any problem about costs?

MR. JOE: We have not been instructed to seek costs, My Lord.

THE COURT: I am relieved of that unpleasant duty, then. Thank you for an interesting argument, then, gentlemen.