

IN THE PRIVY COUNCIL

19 - - - - - 1976

ON APPEAL FROM THE NEW SOUTH WALES COURT OF APPEAL

BETWEEN:

THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

Appellant

AND:

NORMAN JAMES PEEL JOYCE, THOMAS WYNN HEANEY,  
AUSTIN KEITH SMITH, JOHN NELSON JOYCE and  
FRANCIS ROBERT HEANEY

Respondents

**CASE FOR THE APPELLANT**

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SOLICITORS FOR THE APPELLANT

G.M. Laurence Larkins & Hazard,  
247 George Street,  
SYDNEY

SOLICITORS FOR THE RESPONDENTS

Allen Allen & Hemsley,  
2 Castlereagh Street,  
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BETWEEN:

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ASHFIELD

Appellant

AND:

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NORMAN JAMES PEEL JOYCE & ORS.

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CASE FOR THE APPELLANT

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RECORD

HISTORY OF PROCEEDINGS

1. This is an appeal as of right from  
a final order of the Court of Appeal  
of the Supreme Court of New South  
Wales (Reynolds, Hutley and Samuels  
J.J.A.) made on the 17th July, p.189  
1975 on a case stated by the Land  
and Valuation Court. p.131
2. The Land and Valuation Court  
(Hardie J.) had allowed appeals by  
the respondents against rates p.121  
levied by the appellant for the p.132 L1.7-  
12  
1966 and 1968 years in respect of L1.22-27  
land owned by the respondents on  
the grounds that the land in ques-  
tion was exempt from rating pursuant

to both sec. 132 (1) (d) ("land which belongs to any ... public charity, and is used or occupied by the ... charity ... for the purposes thereof) and sec. 132(1) (h)(i) ("land which belongs to a religious body and which is occupied and used in connection with -  
10 (i) any church or other building used or occupied for public worship") of the Local Government Act 1919 as amended (the Act).

3. The Court of Appeal ordered that Question 1 in the stated case be answered as follows:-

p.189

"The subject land is exempt from rating by virtue of section 132 (1)(d) of (the  
20 Act) but not by virtue of section 132 (1)(h)(i)."

and further ordered that the appellant's appeal to that Court be dismissed with costs.

p.189

4. The Court of Appeal held following Church of Jesus Christ of Latter Day Saints v. Henning (1964) A.C. 420 that the main building on the land was not used or occupied

p.178-  
p.180

for public worship, and therefor  
the respondents claim to exemption  
under section 132 (1)(h)(i) was not  
made out. The respondents have not  
cross appealed from the Order of the  
Court of Appeal, and the appellant  
has been informed that the respon-  
dents will not rely upon section 132  
10 (1)(h)(i) before the Board.

5. The issue before the Board in this  
appeal, therefore, is whether the  
subject land was exempted from rat-  
ing in the years in question by sec-  
tion 132 (1)(d) of the Act. The full  
text of this paragraph is as follows:

"(d) land which belongs to any  
public hospital, public  
benevolent institution,  
20 or public charity, and  
is used or occupied by  
the hospital institution  
or charity as the case  
may be for the purposes  
thereof;"

6. The respondents are the owners of a p.131 L.32  
large parcel of land within the p.132 L.5

30 Municipality on part of which stands p.132 L1.13-  
21

a Church Hall used for religious services by a religious body known as the Exclusive Brethren. The remaining land was in the main vacant land used by the persons attending services in the Hall for parking their motor vehicles.

p.133 L1 13-17

10

The respondents held the land on which the Church Hall stood on the terms of a Trust Deed dated 27th November, 1945, which provided inter alia:

p.133 L1.13-17

p.141 L1.15-23

20

"The trustees may use the Hall or permit the Hall to be used for meetings therein of Christians for religious purposes or for any other charitable purpose or purposes which the trustees may from time to time in their absolute discretion select but for no other purposes."

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7. In earlier proceedings between these parties the Full Court of the Supreme Court of New South Wales had held in 1959 (Joyce v. Ashfield Municipal Council 4 L.G.R.A. 195) that the land on

which the Hall stood was exempt from rating pursuant to section 132(1)(d) of the Act.

8. In the rating years in question in this appeal the appellant did not levy rates on the land upon which the Hall stood, but only on the adjoining vacant land used for car parking and on other adjoining land occupied by other buildings. p.133 L1.13-20  
p.131 L.32  
p.132 L.27
- 10 10. One of the issues which were litigated in the Land and Valuation Court was whether or not the lands in question were held upon the trusts of the Deed of 27th November, 1945. p.134 L1.18-25  
p.123 L.34  
p.128 L.9
- 20 10. Hardie J. in his reasons for judgment said:
- "It is clear in my view that the lands are held by the trustees either on the general charitable trusts as expressed in the Deed of November 1945 or on trust for use in connection with the adjoining hall so long as it continues to be used by the Brethren for religious worship p.127 L.16  
p.128 L.9
- 30

and related activities.

In my view it matters not,  
for the purposes of the  
appellants' case which of  
these inferences should be  
drawn from the oral and  
documentary evidence. If  
the relevant trusts are  
those specified in the Deed  
of November 1945 then the  
decision in the earlier  
litigation (Supra 4 L.G.R.A.  
195) establishes the claim  
of the appellants. If on  
the other hand the trusts  
are of a more limited  
nature referable to the use  
of the hall by the members  
of the particular sect to  
which the trustees belong  
then in my view the land  
qualifies for the exemption  
specified in section 132(1)  
(h)(i).

10

20

11. The Court of Appeal held that the  
lands in question were not exempt  
from rating under section 132(1)(h) p.189  
(i). Now in this further appeal to



the Board the appellant challenges the correctness of the 1959 decision of the Full Court in Joyce v. Ashfield Municipal Council (above) that the trusts of the Deed of November 1945 and the use of the land attract the exemption conferred by section 132(1)(d) of the Act on "public charities."

10

BASIS OF APPEAL

12. The appellant submits that the decision of the Full Court in Joyce v. Ashfield Municipal Council (1959) 4 L.G.R.A. 195 was erroneous, and should now be overruled for the following reasons:

(a) The expression "public charity" found in section 132(1)(d) of the Act is not a technical legal expression which attracts the rule in I.R.C. v. Pemsel (1891) A.C. 531 at 580 where Lord Macnaghten said:

20

"... according to the Law of England a technical meaning is attached to the

word 'charity' and to the word 'charitable' in such expressions as 'charitable uses,' 'charitable trusts' or 'charitable purposes.'"

10

(b) In any event the context in which the expression "public charity" is found in section 132(1)(d) and section 132 as a whole are sufficient to displace any prima facie presumption that the word 'charity' in section 132(1)(d) is used in a technical legal sense.

20

(c) In its context in section 132 (1)(d) of the Act "public charity" means an institution devoted to the relief of human poverty and distress.

(d) The dictum of the Judicial Committee in Adamson v. Melbourne Board of Works (1929) A.C. 142 at 147 that the decision of the Judicial Committee in Chesterman v. Federal Commissioner of Taxation (1926) A.C. 128 must be regarded as

having overruled the earlier decision of the High Court in Swinburne v. F.C.T. (1919) 27 CLR 377 was incorrect and should not be followed.

(e) The principles established by Swinburne v. F.C.T. (above) remain good law, and are applicable to the construction of section 132(1)(d) of the Act.

10

(f) The High Court was in error in following and applying the dictum in Adamson's case and the decision in Chesterman's case when deciding Salvation Army Property Trust v. Shire of Ferntree Gully (1952) 85 CLR 159 (an appeal from Victoria).

20

(g) The New South Wales Courts have been in error in holding that the dictum in Adamson's case, the decision of the Judicial Committee in Chesterman's case and the decision of the High Court in

the Salvation Army case (above) bound them to give the expression "charity" in section 132(1) (d) of the Act its technical legal meaning.

(h) The 1959 decision of the Full Court in Joyce v. Ashfield Municipal Council in any event is incorrect because a group of private individuals holding real estate upon general discretionary charitable trusts cannot constitute a "public charity", and having regard to the terms of the trusts upon which the hall was held the land was not used or occupied by a public charity but by the individuals who attended religious services at the hall.

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13. Neither the High Court nor the Privy Council has hitherto been called upon to consider that part of section 132(1)(d) of the Act which exempts from rating land belonging to a "public charity".

14. As Lord Denning speaking for the  
Judicial Committee in Newcastle  
City Council v. Royal Newcastle  
Hospital (1959) A.C. 248 at 254  
said:

10

"It should be noticed at  
the outset that rates are  
levied in New South Wales,  
not on the occupiers as in  
England, but on the owners;  
and they are calculated, not  
by reference to the annual  
value as in England, but  
by reference to the unim-  
proved capital value: and  
all land, occupied or un-  
occupied, is subject to the  
payment of rates unless it  
can be brought within one of  
the statutory exceptions."

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HISTORY AND INTERPRETATION OF SECTION PRIOR TO  
ADAMSON'S CASE

15. So far as relevant the Local Government  
Act 1919 came into operation on 1st  
January, 1920. Section 132(1) as  
then enacted is set out in Appendix  
A. At that time section 132(1)(d)  
contained a requirement that the use

and occupation of the land be solely by the public charity etc. for the purposes thereof. This requirement was removed by Act No. 33 of 1927.

16. Section 6 of the Act repealed inter alia the Local Government Act 1906 and the Local Government (Amending) Act 1908 which contained the exemptions from rating which were in force immediately before the commencement of the Act. The relevant section of the earlier legislation was section 131(1), the full text of which is set out in Appendix B. Section 131(1)(b) of the earlier legislation exempted from rating -

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20

"cemeteries, public hospitals, benevolent institutions and buildings used exclusively for public charitable purposes."

17. It is submitted that a comparison between the exempting sections of the 1906 and 1919 Acts leads to a conclusion that in 1919 the N.S.W. Parliament substituted an exemption in favour of "public charity" for the

earlier exemption in respect of  
"... buildings used exclusively  
for public charitable purposes"  
in order to limit the scope of  
the exemption hitherto available.

18. In these circumstances it is sub-  
mitted that the expression "public  
charity" in section 132(1)(d) of  
10 the 1919 Act should not be con-  
strued as if it were equivalent  
to "public charitable purposes"  
or "charitable purposes".

19. Nevertheless that is the effect  
of the N.S.W. decisions which have  
been given on this part of section  
132(1)(d) since 1929.

20. In Swinburne v. F.C.T. (1920) 27  
CLR 377 the High Court held that  
20 in section 18(1) of the Common-  
wealth Income Tax Assessment Act  
1915 as amended the expression  
"public charitable institution"  
meant a public institution which  
was charitable in the sense that  
it afforded relief to persons in  
necessitous or helpless circum-  
stances. It was held that the

context of that particular legisla-  
tion excluded the principle stated  
by Lord Macnaghten in I.R.C. v.  
Pemsel quoted above, and that the  
word "charitable" in that context  
did not bear its technical legal  
meaning.

10 21. Between 1923 and 1929, influenced  
at least in part by Swinburne's  
case, the N.S.W. Courts in a  
series of decisions held or assumed  
that the expression "public charity"  
in section 132(1)(d) comprehended  
an institution devoted to the relief  
of persons in necessitous or help-  
less circumstances. The relevant  
decisions were -

- 20 (i) Farrell v. Bathurst Municipal  
Council (1923) 6 LGR 108;
- (ii) Meaney v. Waratah Municipal  
Council (1923) 6 LGR 127;
- (iii) Whatmore v. St. Peters  
Municipal Council (1926) 8  
LGR 42;
- (iv) Fleming v. Randwick Municipal  
Council (1928) 9 LGR 61, and
- (v) Randwick Municipal Council v.  
Kessell (1929) 9 LGR 86.



22. During this period the High Court reached similar conclusions on other legislation. See -

(i) Kelly v. Municipal Council of Sydney (1920) 28 CLR 203;

(ii) Christ College Trust v. City of Hobart (1928) 40 CLR 308,  
and

10 (iii) Roman Catholic Archbishop of Sydney v. Metropolitan Water etc. Board (1928) 40 CLR 472.

CHESTERMAN'S CASE AND ADAMSON'S CASE

23. In 1923 the High Court by majority held in Chesterman v. F.C.T. 32 CLR 362 that in section 8(5) of the Estate Duty Assessment Act 1914-1916 (Commonwealth) the expression "charitable purposes" was used in its popular and not in its technical legal sense. At that time section 8(5) of that Act provided -

20

"Estate Duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed ... for religious, scientific, charitable or public educational purposes." 15.

24. However, on appeal to the Privy Council the decision of the High Court was reversed. Chesterman v. F.C.T. (1926) A.C. 128. The Board rejected the respondent's arguments based on tautology, and held that although there was overlapping between the categories referred to in section 8(5) the reference to "charitable ... purposes" added something to the other words, and there was nothing in the subsection as a whole which required that a non technical meaning be given to that expression. The advice prepared by Lord Wrenbury did not refer to Swinburne's case.
- 10
- 20 25. Then in 1928 Adamson v. Melbourne etc. Board of Works (1929) A.C. 142 was decided. The appeal involved the construction of section 94 of the Melbourne and Metropolitan Board of Works Act 1915 (Vic.) which granted an exemption from water rates in favour of "charitable institutions". Anglin C.J. speaking for the Board said at page 147:

" ... it is obvious that, although Swinburne's case is not expressly adverted to in the report of the Chesterman case it must be regarded as overruled by that decision. Indeed the principle of construction upon which the Swinburne case rests is directly opposed to that which forms the foundation of the judgment of this Board in Chesterman's case."

10

26. However, in Adamson's case the ultimate decision was that on the true construction of the section the rating exemption was only available to charitable institutions which were owned or conducted by a municipal council, so that the Lost Dogs' Home which had claimed the benefit of the exemption was not entitled to it.

20

27. The appellant does not in any way challenge the correctness of the decision in Chesterman's case.

However, it does submit that the passage from the advice of the Board in Adamson's case which has been quoted above was not necessary for the decision and was erroneous.

10 28. The principle of construction on which the Swinburne decision rested is summarised in the majority judgment at 27 CLR page 384 where after citing Lord Macnaghten's well known remarks in Pemsel's case they said:

20 "But no technical signi-  
fication has attached it-  
self at all events in  
Australia, to the expres-  
sion "public charitable  
institution". We are  
not to pull the phrase  
to pieces and consider  
the various meanings of  
its component parts but  
we have to read the com-  
posite expression as  
written ...".

DEVELOPMENTS AFTER ADAMSON'S CASE

29. In 1952 came the High Court decision in Salvation Army (Victoria) Property Trust v. Shire of Ferntree Gully 85 CLR 159. In that case it was held that land used for a training farm for delinquent boys was used "exclusively for charitable purposes" within the meaning of Section 249(1)(b)(ix) of the Local Government Act 1946 (Vic.), and that the expression "charitable purposes" in that section should be given its technical legal meaning.
- 10
30. In a joint judgment Dixon, Williams and Webb J.J. applied the Privy Council decision in Chesterman's case and rejected an argument for the respondent that Parliament must have intended to use the word "charitable" in its popular sense, because the other construction would lead to redundancy and tautology. At page 175 their
- 20

Honours said after referring to  
Chesterman's case -

10 "There is in this case, as  
there was in that case, no  
sufficient indication of  
intention that the word  
"charitable" should be  
given any other than its  
legal meaning. There has  
been, perhaps, too great a  
tendency in the Australian  
Courts, as the Privy Coun-  
cil rather hinted in  
Adamson v. Melbourne etc.  
Board of Works to depart  
from the legal meaning of  
"charitable" on rather  
slight grounds. Our Courts  
20 in the future should be  
slow to do this unless  
there is a clear indica-  
tion of a contrary inten-  
tion."

31. In a separate concurring judgment  
Fullagar J. at page 182 said that  
the relevant passage from the judg-  
ment of the Board in Adamson's case

had the force of a dictum only.

He went on to say:

"Moreover there is much to be said for the view that making full allowance for Chesterman's case, the actual decision in Swinburne's case was nevertheless correct."

10

He then held that Chesterman's case established that the legislative context, and the existence of overlapping exemptions in that case were not sufficient to displace the prima facie rule.

32. The text of section 249 of the Victorian Act which was before the High Court in the Salvation Army case is set out in Appendix C.

20

33. Then in 1954 for the first time since Adamson's case the construction of the expression "public charity" in section 132 (1)(d) of the Act was squarely raised for decision in Y.M.C.A. v. Sydney City Council (1954)

20 L.G.R. 34 before Sugerman J.  
His Honour held at pages 40-43  
that Chesterman's case, Adamson's  
case and the Salvation Army case  
required him to hold that the  
word "charity" in section 132(1)  
(d) should be given its technical  
legal meaning.

10 34. Sugerman J. stated the conclusion  
he felt constrained to reach in  
the Y.M.C.A. case at page 41 -

"In construing section 132  
(1)(d), we must, therefore,  
take the word "charity" in  
the phrase "public charity"  
in its legal sense unless a  
contrary intention appears;  
Pemsel's case, and the in-  
dications of a contrary in-  
tention must be clear;  
Salvation Army (Vic.) case.  
"Charity" and "charitable"  
are primarily to be read  
thus, not only when used  
alone or in such expressions  
as "charitable purposes",  
but also when used in such

20



expressions as "public  
charitable institution"  
or "public charity".

The appellant submits that his  
Honour was in error in holding  
that Chesterman's case, Adamson's  
case, and the Salvation Army case  
compelled him to reach this con-  
10 clusion.

35. His Honour continued at page 41-42:

"We are not at liberty to  
approach the collocation of  
words "public hospital,  
Public benevolent institu-  
tion, or public charity" from  
the standpoint of enquiring  
what is their natural or  
ordinary or popular meaning  
20 when they are thus gathered  
together in paragraph (d),  
and thereby segregated from  
the other subjects of exemp-  
tion set out in their separ-  
ate paragraphs. Nor may we  
conclude that, making such an  
approach, their collocation  
and segregation in paragraph (d),

the word "public" which runs through them, the eleemosynary character of a public benevolent institution and the eleemosynary ingredient in the idea of a public hospital ... sufficiently indicate that the expression "public charity" was also intended to have an eleemosynary reference."

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36. His Honour then proceeded to examine some of the other paragraphs of section 132(1) and said at page 42:

"Thus it might be enquired what purpose is served by the words of paragraph (h) (i) -

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'land which belongs to a religious body and which is occupied and used in connection with any church or other building used or occupied for public worship' - if this same subject matter is

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in any event covered by the exemption in paragraph (d) construed as extending generally to "charity" in its legal sense. And it might be enquired why the legislature should have been at pains to specify with precision this and other purposes of use of land owned by religious bodies which are necessary to gain exemption if it intended that "public charity" in paragraph (d) should have its legal meaning so as to confer exemption in respect of this purpose and of all such other religious purposes as are also charitable. As between paragraph (d) and paragraph (h)(i) there is not an overlap of the two exemptions with non-overlapping margins covered only by one or other of the exemptions such as occurred

in Chesterman's case; the overlap of paragraph (h)(i) by paragraph (d) is complete. The answer to these difficulties also is that so far as this Court is concerned the matter is concluded by authority."

- 10 37. In Joyce v. Ashfield Municipal Council (1959) 4 L.G.R.A. 195 the Full Court followed the Y.M.C.A. case but Walsh J. (as he then was) at pages 211-212 after expressing doubts about the correctness of the construction of section 132(1)(d) adopted in the Y.M.C.A. case said that he felt constrained to follow it because of the authorities in
- 20 the Privy Council and the High Court to which Sugerman J. had referred.
38. Subsequently in McGarvie Smith Institute v. Campbelltown Municipal Council (1965) 83 W.N. (part 1) 191 at 192-194 Else-Mitchell J. expressed his independent opinion that the result in the Y.M.C.A. case was

not correct, but he too felt constrained to follow it. Further reference to this question was made in the Court of Appeal in Joyce v. Commissioner of Land Tax (1973) 1 N.S.W. L.R. 402 at 404, 409-410 and 417.

- 10 39. Section 132(1) as in force throughout the 1966 and 1968 rating years is set out in Appendix D.

1959 JOYCE DECISION INCORRECT IN ANY EVENT

- 20 40. Even if the Y.M.C.A. decision is correct there is still no "public charity" in this case within the meaning of the section. At best the land is held by trustees for charitable purposes and this does not establish the existence of a "public charity" for the purposes of section 132(1)(d). In our submission the mere execution of the Deed of Trust of November 1945 and the vesting of real estate in the trustees of that trust cannot suffice to constitute a "public charity".

41. There is in the present case no

p.139-p.151  
p.133 Ll.13-  
17

"public charity" to which the land can be said to belong and there is no "public charity" which uses or occupies the land for its purposes.

10 42. The fact that the trustees under this trust use the land or permit it to be used for a purpose that is within the charitable trusts on which the land is held does not constitute use or occupation by a public charity for the purposes of that charity within the meaning of section 132(1)(d).

p.134 L1.23-26  
p.125 L1.23-28

20 43. Other paragraphs of section 132(1) specifically exempt land vested in trustees, and used for some particular purpose, but section 132(1)(d) contains no express reference to trustees, or to land vested in trustees. The reference in the paragraph to land which belongs to a public charity, and is used or occupied by the charity for the purposes thereof indicates in our submission that there must be something more than a mere charitable trust and user of the land

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in accordance with that trust be-  
fore there can be a "public charity"  
within the section.

44. In any event the 1945 Deed does not p.141  
limit the charitable trusts on which  
the land is held to "public" chari-  
table trusts. Without such an ex-  
press limitation the land cannot  
10 be held to "belong" to "public  
charity" so as to fall within  
section 132(1)(d). Mere occupa-  
tion or user by the public charity  
do not fulfil the requirements of  
the paragraph.

STARE DECISIS NOT APPLICABLE

45. The questions in issue in this  
appeal are not covered by any  
decision of either the Privy  
20 Council or the High Court which  
is precisely in point, and it has  
been clear ever since 1954 that  
the decisions on section 132(1)  
(d) were open to challenge in  
an appeal to the Board or to the  
High Court.
46. In any event the decision of the  
House of Lords in Campbell College

Belfast v. Commissioner of Valuation for Northern Ireland (1964)

1 W.L.R. 912 establishes that the doctrine of stare decisis is not relevant in the field of rating law because the rating charge occurs afresh each year and an incorrect basis of rating should not be perpetuated.

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47. The appellant, therefore, submits that the appeal should be allowed for the following (amongst other) -

REASONS

1. The dictum of the Privy Council in Adamson v. Melbourne etc. Board of Works (1929) A.C. 142 at 147 was not correct and should not be followed.
2. The decisions of the Privy Council in Chesterman v. F.C.T. (1926) A.C. 128 and in Adamson's case (above) do not govern the construction of section 132(1)(d) of the Act.
3. Salvation Army Property Trust v. Shire of Ferntree Gully

20



(1952) 85 CLR 159 should be overruled in relation to the construction of the rating exemption there in question.

4. In any event the Salvation Army case does not govern the construction of section 132(1)(d) of the N.S.W. Act.

10

5. Y.M.C.A. v. Sydney City Council (1954) 20 LGR 35 and Joyce v. Ashfield Municipal Council (1959) 4 LGRA 195 were wrongly decided and should be overruled.

6. The rule enunciated by Lord Macnaghten in I.R.C. v. Pemsel (1891) A.C. 531 at 580 is not applicable to the construction of the expression "public charity" in section 132(1)(d) of the Act.

20

7. Section 132(1) as a whole, and paragraph (d) in particular indicate with sufficient clarity a legislative intention that the word "charity"

in paragraph (d) should not be given its technical legal meaning.

- 10
8. A comparison between the form of the rating exemption in favour of charities in force immediately prior to the passing of the 1919 Act and the form of section 132(1)(d) establishes that the legislature used the word "charity" in its narrower eleemosynary sense, and not in its technical sense in section 132(1)(d) of the Act.
- 20
9. Joyce v. Ashfield Municipal Council (1959) 4 L.G.R.A. 195 in any event was wrongly decided and should be overruled.
10. The present case is covered by the decision of the Court of Appeal in I.R.C. v. Scott (1892) 2 QB 152 rather than by the decision of the Privy

Council in Chesterman v.

F.C.T. (1926) A.C. 128.

K.R. HANDLEY Q.C.

NOEL A. HEMMINGS

COUNSEL FOR THE APPELLANT

APPENDIX A

LOCAL GOVERNMENT ACT 1919 (NSW)

Section 132(1) All land in a municipal-  
ity or shire (whether the property  
of the Crown or not) shall be rat-  
able except -

Definition of  
ratable land.

cf. L.G. Acts,  
1906-8, s.131

10

(a) land which is vested in the  
Crown or in a public body or  
in trustees and is used for  
a public cemetery; and

(b) land which is vested in the  
Crown or in a public body or  
in trustees and is used for  
a common; and

20

(c) land which is vested in the  
Crown or in a public body or  
in trustees and is used for  
a public reserve; and

(d) land which belongs to any  
public hospital, public  
benevolent institution, or  
public charity, and is used  
or occupied by the hospital  
institution or charity as  
the case may be solely for  
the purposes thereof; and

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(e) land which is vested in the  
Crown or in a public body or

in trustees and is used solely for the purposes of a free public library; and

10 (f) land which is vested in the University of Sydney or in a college thereof and is used or occupied by the University or college as the case may be solely for the purposes thereof; and

(g) land (other than land which is dedicated as a State forest or reserved for the growth of timber) which is the property of the Crown and is not occupied or is occupied only by public works which are in course of construction by or for the Crown; and

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(h) land which is occupied by and is used directly in connection with a church or other building which is used or occupied solely for public worship; and

(i) land which is a public place.

APPENDIX B

LOCAL GOVERNMENT ACT 1906-1908 (NSW)

Section 131(1) All land, whether the property of Her Majesty or not, shall be ratable, except the following descriptions of land and the land occupied by and used in connection with the buildings hereinafter mentioned:-

- 10 (a) Commons, public parks, and public reserves not held under lease or license;
- (b) cemeteries, public hospitals, benevolent institutions, and buildings used exclusively for public charitable purposes;
- (c) churches and other buildings used exclusively for  
20 for public worship, and free public libraries;
- (d) lands the property of the Crown which are not occupied or on which any public works are in course of construction by or for the Crown;
- (e) lands vested in the University of Sydney, or in the colleges

thereof, and occupied and used by such university or colleges, or any of them, solely for the purposes of education; and

- (f) lands held under lease or agreement for lease from the Crown for purposes of oyster culture.

APPENDIX C

LOCAL GOVERNMENT ACT 1946 (Vic.)

Section 249(1) All land shall be ratable property within the meaning of this Act save as is next hereinafter excepted (that is to say):-

- (a) Land the property of His Majesty which is unoccupied or used for public purposes.
- 10 (b) Land used exclusively for -
  - (i) Commons
  - (ii) Mines
  - (iii) Public Worship
  - (iv) Mechanics' institutes
  - (v) Public Libraries
  - (vi) Cemeteries
  - (vii) Primary schools in which education is given free to the
  - 20 scholars
  - (viii) Institutions or schools for technical instruction which receive in aid of their funds any sums from the consolidated revenue
  - (ix) Charitable purposes
  - (x) Lands dedicated by the trustees of agricultural



colleges as sites for  
agricultural colleges or  
experimental farms.

(c) Land vested in or in the occupa-  
tion of or held in trust for or  
under the management and control  
of -

(i) Any municipality or the  
council thereof, or,

10

(ii) any authority under the  
Water Acts.

(d) Land vested in fee in -

(i) The Victorian Railways  
Commissioners.

(ii) The Minister of Public  
Instruction.

(iii) The Board of Land and  
Works.

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(iv) The Commissioners of the  
Melbourne Harbour Trust.

(v) The Melbourne and Metro-  
politan Board of Works.

(vi) The Commissioners of the  
Geelong Harbour Trust.

(vii) The Geelong Waterworks  
and Sewerage Trust.

(e) Land held in trust and used  
exclusively for the purposes  
of -

- (i) a memorial to persons who served in the war which commenced in the year One Thousand Nine Hundred and Fourteen or the war which commenced in the year One Thousand Nine Hundred and Thirty-Nine or any continuation thereof;
- 10 (ii) a club the members of which are persons who served in either or both of the said wars and no others.
- (f) Land in the occupation of or under the management and control of any religious body and upon which is situated any hall or other building used in connection with any church exclusively for any purposes connected with or in support of the objects of such religious body.
- 20 (g) Land vested in or held in trust for any religious body and used exclusively for either or both of the following purposes:-
- (i) As a residence of a practising Minister of religion;

(ii) Education and training  
of persons to be mini-  
sters of religion.

(h) Land in the occupation of or  
under the management and con-  
trol of any committee or man-  
agers of any hospital (being  
a subsidized institution under  
the Hospitals and Charities  
Acts) if upon that land there  
is established a hospital or  
part of a hospital conducted  
by such committee or managers  
in association with such sub-  
sidized institution and that  
land is part of or contiguous  
with the land upon which such  
subsidized institution is  
established.

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20 (2) Land shall not be deemed not to be  
used exclusively for any of the pur-  
poses referred to in sub-paragraphs  
(iii), (vii), (viii) or (ix) of para-  
graph (b) of subsection (1) of this  
section by reason only of the fact that  
any building on such land is used not  
only for any purposes referred to in  
the said sub-paragraphs but also for

any purpose connected with or in support of the objects of any religious educational or charitable body or authority occupying or controlling such land.

APPENDIX D

LOCAL GOVERNMENT ACT 1919-1967 (NSW)

Section 132(1) All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except -

Definition of ratable land.

cf.L.G. Acts. 1906-8, s.131

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(a) land which is vested in the Crown or in a public body or in trustees and is used for a public cemetery; and

(b) land which is vested in the Crown or in a public body or in trustees and is used for a common; and

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(c) land which is vested in the Crown or in a public body or in trustees and is used for a public reserve; and

(d) land which belongs to any public hospital, public benevolent institution, or public charity, and is used or occupied by the hospital institution or charity as the case may be for the purposes thereof; and

Amended, Act No. 33 1927, s.7 (d)(i)

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(e) land which is vested in the Crown or in a public body or

in trustees and is used  
solely for the purposes of  
a free public library; and

(f) land which is vested in the  
University of Sydney or in  
a college thereof and is  
used or occupied by the  
University or college as  
the case may be solely for  
the purposes thereof; and

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(fi) land which is vested in the  
University of New England  
or in a college thereof and  
is used or occupied by the  
University or college as  
the case may be solely for  
the purposes thereof; and

New paragraph  
added, Act No.  
34 1953, s.40

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(fii) land which is vested in the  
Macquarie University, or in  
a college thereof, and is  
used or occupied by the  
University or college, as  
the case may be, solely for  
the purposes thereof; and

New paragraph  
added, Act No.  
29 1964, s.32

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(fiii) land which is vested in the  
University of Newcastle or  
in a college thereof and is  
used or occupied by the

New paragraph  
added, Act No.  
72 1964, s.36

University or college, as  
the case may be, solely for  
the purposes thereof; and

(g) land owned by the Crown, not being - Substituted paragraph, Act No.65, 1931, s.4 (b)(i)

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(i) land held under a lease from the Crown by any person for private purposes;

(ii) land occupied and used by the Crown in connection with any industrial undertaking; and Amended Act No.35 1937, s.3 and Second Schedule

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(h) land which belongs to a religious body and which is occupied and used in connection with - Substituted paragraph, Act No.65 1931, s.8 (a)

(i) any church or other building used or occupied for public worship;

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(ii) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building; Amended Act No.35, 1937, s.3 and second schedule

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- (iii) any building used or occupied for the purpose of religious teaching or training;
- (iv) any building used or occupied solely as the residence of the official head and/or the assistant official head of any religious body in the State of New South Wales or in any diocese within that State; and

(i) land which is a public place;  
and

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(j) land which belongs to and which is occupied and used in connection with any school registered under the Bursary Endowment Act 1912, or any certified school under the Public Instruction (Amendment) Act, 1916, including any playground which

New paragraph added, Act No. 33 1927, s.7 (d)(iii)

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belongs to and is used in connection with any such school and any building occupied as a residence by

Substituted paragraph, Act No.41 1928, s.6 (b)

Amended Act No.65 1931, s.8 (b): Act No.7 1962, s.3 (1)



any caretaker, servant, or  
teacher of any such school  
which belongs to and is used  
in connection with the  
school; and

- (k) land reserved for any purpose under a scheme prescribed under Part XIIIA of this Act where such land has been acquired by a responsible authority in accordance with the provisions of the scheme and is not land held under a lease from the responsible authority for private purposes.

New paragraph  
added Ibid

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