
Commissioner of Land Tax (NSW) v Joyce [1974] HCA 39; (1974) 132 CLR 22 (25 October 1974)

HIGH COURT OF AUSTRALIA

COMMISSIONER OF LAND TAX (N.S.W.) v. JOYCE [1974] HCA 39; (1974) 132 CLR 22

Land Tax (N.S.W.)

High Court of Australia
McTiernan(1), Menzies(2), Gibbs(3), Stephen(4) and Mason(5) JJ.

CATCHWORDS

Land Tax (N.S.W.) - Exemption - Land owned by or in trust for charitable institution carried on solely for charitable purposes and not for pecuniary profit - Land owned by or in trust for any person or society and used solely as a site for a place of worship for a religious society - "Institution" - Land Tax Management Act, 1956 (N.S.W.) as amended, s. 10 (1) (d), (e), (g).

HEARING

Sydney, 1973, November 13, 14; 1974 October 25. 25:10:1974
Appeal from the Supreme Court of New South Wales.

DECISION

1974, October 25.
The following written judgments were delivered:-

McTIERNAN J. This is an appeal from a decision of the Supreme Court of New from a decision of Brereton J. (1971) 2 NSWLR 226 and upholding an objection by the present respondents in respect of an assessment of land tax made by the appellant under the provisions of the Land Tax Management Act, 1956 (N.S.W.) (as amended). The assessment related to two areas of land which were not adjoining, one at Ashfield and one at Burwood, and to which I will refer as "the Ashfield land" and "the Burwood land". On the Ashfield land is a building described as "a brick church or Gospel Hall", and smaller auxiliary buildings. The rest of the land extending from the gospel hall to the boundaries is vacant land, accessible for parking and adapted to that purpose, which is used by persons, adherents of **the Brethren**, attending the gospel hall for purposes of worship. This would seem to be the purpose for which this land is used exclusively. (at p25)

2. The Burwood land has cottages on it, but was purchased as an area on which a new meeting hall might be erected. (at p25)

3. Both areas of land are held by the respondent taxpayers under a trust deed dated 27th November 1945. The trust constituted by the deed is known as the "Ashfield Hall Trust". The material provisions of the deed are as follows:

> "DECLARATION OF TRUST
>
> 2. (i) The trustees shall hold the trust property upon trust to employ it for any charitable purpose or purposes which the trustees may from time to time in their absolute discretion select.
> (ii) The trustees hereby declare that it is their wish and desire that the primary charitable purpose to which the trust property shall be devoted shall be to employ the same for providing a meeting place for religious purposes for Christians but it is to be distinctly understood that this expression of the trustees' wish and desire shall not impose any obligation upon the trustees nor be interpreted as a trust.
>
> USE OF LETTING OF HALL
>
> 3. (a) 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 and may stipulate for such term such rent and such covenants and provisos in all respects as the trustees may in their absolute discretion think fit.
>
> USE OF LETTING OF COTTAGE
>
> 4. The trustees may use the cottage for the purposes of a residence for a caretaker or cleaner of the hall and for such purposes may let the cottage and stipulate for such term such rent and such covenants and provisos in all respects as the trustees may in their absolute discretion think fit.

POWER TO APPLY THE TRUST PROPERTY

18. The trustees may pay or apply the trust property or any part thereof to or for the benefit of any other charitable trust whether or not the trustees of such other charitable trust include the trustees hereof or any of them." (at p25)

4. The Ashfield land and the Burwood land were assessed by the appellant Commissioner for land tax for the year 1969-1970. Pursuant to s. 35 (1) of the Act the respondents objected to the assessment by the appellant of the tax payable in respect of those areas of land on the grounds that the land was exempt from taxation by the provisions of s. 10 of the Act. Section 10 provides:

"(1) Except where otherwise expressly provided in this Act the following lands shall be exempt from taxation under this Act:

. . .
(d) land owned by or in trust for a charitable or educational institution if the institution, however formed or constituted, is carried on solely for charitable or educational purposes and not for pecuniary profit;
(e) land owned by or in trust for a religious society, where the land is held solely for, or the proceeds of the land are devoted solely to, religious, charitable or educational purposes, including the support of the aged or infirm clergy or ministers of the society, or their wives or widows or children;
. . .
(g) land owned by or in trust for any person or society and used or occupied by that person or society solely as a site for -
(i) a place of worship for a religious society, or a place of residence for any clergy or ministers or order of a religious society;

. . .
(iii) a building owned and solely occupied by a society, club or association not carried on for pecuniary profit;
(iv) a charitable institution not carried on for pecuniary profit;
. . ." (at p26)

5. The grounds relied upon to support the objection were as follows: "1. The land is owned by or in trust for a charitable institution

> which is carried on solely for charitable purposes and not for pecuniary profit within the meaning of s. 10 (1) (d) of the Land Tax Management Act.
> 2. Alternatively the land is owned by or in trust for a religious society and the land is held solely for and the proceeds of the land are devoted solely to religious and or charitable and or educational purposes within the meaning of s. 10 (1) (e) of the Land Tax Management Act. 3. Alternatively the land is within the meaning of s. 10

(1) (g)

> of the Land Tax Management Act owned by or in trust for a society or alternatively persons and is used or occupied by that society or those persons solely as a site for -
> (a) a place of worship for a religious society, or,
> (b) a building owned and solely occupied by a society or association not carried on for pecuniary profit, or,
> (c) a charitable institution not carried on for pecuniary profit."

6. The appellant overruled the objection, and the respondents requested the Commissioner to treat the objection as an appeal and to forward it to the Supreme Court, as provided by s. 35 (5) of the Act. Brereton J., who heard the appeal, found in favour of the Commissioner in respect of the grounds based on sub-ss. 10 (1) (d), 10 (1) (e), 10 (1) (g) (iii) and 10 (1) (g) (iv) of the Act, but found in favour of the present respondents on the ground based on s. 10 (1) (g) (i) of the Act, but only as to land "on which the meeting or Gospel Hall is presently erected". There was an appeal by the trustees against the judgment to the extent that it was adverse to their claim for exemption and the Commissioner cross-appealed against the judgment to the extent to which it was in favour of the taxpayers.

7. Brereton J. had decided that neither the trustees, nor the Ashfield Hall Trust were an "institution" or a "religious society" and that the land was not "held in trust for" **the Brethren**: s. 10 (1) (d) and (e). He held that the building was not owned by **the Brethren** as a "society" or "association", and that **the Brethren** were not a "charitable institution": s. 10 (1) (g) (iii) and (iv). He held, however, that the land on which the meeting or gospel hall is presently erected was exempt under the provisions of s. 10 (1) (g) (i). (1971) 2 NSWLR 226 (at p27)

8. In the Court of Appeal (1973) 1 NSWLR 402 , Kerr C.J. and Hope J.A. found in favour of the trustees on the ground that the trustees were a charitable institution, and therefore found that the whole of the land was exempt from land tax under s. 10 (1) (d) of the Act. Hardie J.A. reached a different conclusion. In the first place he held that neither the trustees nor the trust were an institution and agreed with Brereton J. in respect of s. 10 (1) (e), but he decided that all the Ashfield land was exempt under s. 10 (1) (g) (i). It seems to me that the reasoning in Royal Sydney Golf Club v. Federal Commissioner of Taxation [1955] HCA 13; (1955) 91 CLR 610 is applicable here. (at p27)

9. The Commissioner now brings this appeal and claims that none of the land is exempt from land tax. (at p27)

10. The conclusion which I have reached is that the trustees, who are the "owners" of the land as defined in s. 3 of the Act, are not an institution. In my view, it would be a novel application of the term "institution" to apply it to the trustees. (at p27)

11. However, I agree that the Ashfield land is exempt under s. 10 (1) (g) (i) of the Act. In the result, I think that the conclusion of Hardie J.A. was right and I also think that his reasons are correct. I am content to adopt his reasons and have nothing to add. (at p27)

12. I would therefore allow the appeal in part; that is to say, the site of the gospel hall including all the land surrounding it constituting the total area of the Ashfield land is exempt from land tax. (at p27)

MENZIES J. The circumstances with which the court is here concerned are set out in full in the judgment of Stephen J. which I have had the advantage of reading and I do not repeat them. (at p27)

2. In my opinion no part of the land here in question is exempt from the land tax imposed by the Land Tax Management Act, 1956 (N.S.W.) as amended. (at p28)

3. It seems to me that the two provisions of that Act which require consideration are pars. (d) and (g) (i) of s. 10 (1) of the Act. (at p28)

4. Land is exempt from tax under the former provision if it is owned by or held in trust for a charitable institution. The land both at Ashfield and at Burwood is owned by the respondents as trustees but it seems so obvious as to require no discussion that the respondents themselves are not a charitable institution. They are individuals holding as trustees for charitable purposes. The land is not owned by a charitable institution. If then the land or part of it is exempt from tax under s. 10 (1) (d) it must be because the trustees hold the land or some part of it in trust for a charitable institution. The trust, however, is plainly one for charitable purposes and although there is a wish expressed by those who created the trust - i.e. that the primary charitable purpose to which the trust property should be devoted should be to provide a meeting place for Christians - there is no basis upon which to

conclude that the land is held in trust for any institution. It is certainly not held in trust for **the Brethren**. In my opinion s. 10 (1) (d) does not exempt the land from tax. (at p28)

5. Nor do I think that any of the lands in question are exempt from tax by virtue of s. 10 (1) (g) (i) of the Act. To be exempt under this provision land must: (1) be owned or held in trust for any person or society; and (2) used or occupied by that person or society solely as a site for a place of worship for a religious society. The respondents, as I have said, own the land as trustees for purposes not for persons or societies and in the exercise of the discretion they allow **the Brethren** to use the land at Ashfield as a place of worship. The trustees do not themselves use or occupy any part of the land as a site for a place of worship for a religious society; they but permit **the Brethren** to do so. The situation seems to me entirely different from that which would exist if an incorporated church body were to own land and use it as a church; that would be a typical case of a person both owning land and using it for the purpose specified. **The Brethren** do, I consider, use the whole of the land at Ashfield - except the shops - but none of the land at Burwood as the site for a place of worship and **the Brethren** can properly be regarded as a religious society. This of itself, however, is not enough to secure exemption. If the trustees do not themselves use or occupy the land as a site for a place of worship for a religious society it is exempt from tax only if it is held in trust for some person or society by whom it is used as a site for a place of worship for a religious society. However, because I do not regard it as possible to construe the trust deed as constituting a trust in favour of **the Brethren** regarded either as a society or as persons or indeed, for any persons or society, I regard s. 10 (1) (g) (i) as inapplicable. (at p28)

6. Some reliance was placed upon s. 10 (1) (g) (iv) but as, in my opinion, the land is not held in trust for **the Brethren** and the land is not used or occupied as a site for a charitable institution, this provision is not applied. (at p29)

7. In my opinion the appeal should be allowed. (at p29)

GIBBS J. I have had the advantage of reading the reasons for judgment prepared by my brother Stephen, and am in complete agreement with them. I would add only a few words on one aspect of the case. In support of their submission that the Burwood land came within the exemption conferred by s. 10 (1) (g) (i) of the Land Tax Management Act, 1956 (N.S.W.) (as amended), counsel for the respondents laid stress on the words "land . . . used or occupied . . . solely as a site for a place of worship . . . ". The word "site" can refer to a piece of ground intended for building purposes, as well as to one on which a building is constructed. When one speaks of "a site for a church", rather than of "the site of a church", the words naturally suggest that the church is to be built, but has not yet been built, on the site mentioned. Therefore it was submitted that s. 10 (1) (g) (i) looks to the future, and that the Burwood land, being an area on which a place of worship was intended to be built, comes within the exemption. (at p29)

2. I am disposed to think that the exemption conferred by s. 10 (1) (g) is not restricted to land on which something of the kind mentioned in the paragraph is already built or constructed. For example, if the other conditions laid down by the paragraph were fulfilled, land on which a church was in the course of erection, as well as land on which a church had been erected, would be exempt from the tax. But the exemption is not conferred on land which "is a site" - to qualify the land must be "used or occupied . . . solely as a site". When the land in fact is the site of cottages, one at least of which is occupied, and no steps can be taken towards the construction of a gospel hall, because a necessary consent has not been obtained, it seems to me impossible to hold that the land is "used or occupied . . . solely as a site for a place of worship". (at p29)

3. I would allow the appeal to the extent indicated by my brother Stephen. (at p29)

STEPHEN J. The Christian sect known as **the Brethren** is averse to the ownership of property by the sect itself; its places of worship are, in consequence, sometimes owned by members of the sect in the locality, who hold as trustees on charitable trusts, the premises thus being made available as places of worship for the local congregation **of Brethren**. (at p29)

2. Such is the case of **the Brethren** living in the Ashfield district of Sydney; they worship in a large gospel hall in Orchard Crescent, Ashfield but the site of this hall and a considerable area in its vicinity is owned by the present respondents. The trust of which they are the present trustees takes the form of a declaration of trust made by the original trustees in 1945 whereby the trust property is declared to be held "upon trust to employ it for any charitable purpose or purposes which the trustees may from time to time in their absolute discretion select". There follows an expression of the wish of the declarants that the primary charitable purpose to which the trust property should be devoted should be to provide a meeting place for religious purposes for Christians, but this is coupled with an unequivocal statement that this expression of the declarants' wishes "shall not impose any obligation upon the trustees nor be interpreted as a trust", thus ensuring that the sect shall have neither any legal nor any equitable interest in the trust property. In fact the hall has always been used exclusively as a place of worship by members of the sect **of Brethren**, the trustees for the time being making it available only for that purpose. The adjoining lands, some with buildings on them, have been used exclusively for purposes associated with the use of the hall by **the Brethren**. (at p30)

3. The property the subject of the trust deed is not confined to the Ashfield land but also includes land in the Sydney suburb of Burwood, acquired so that it might be used as a gospel hall, concourse and parking area for the religious observances **of Brethren** in that locality. Cottages are still standing on this Burwood land, council approval for its intended use having so far been refused, and these cottages accordingly continue to be occupied as residences although their occupants are charged no rent; their occupation is regarded by the trustees as in the nature of that of caretakers. (at p30)

4. Land tax has been assessed in respect of the whole of the Ashfield and Burwood land owned by

the respondent trustees and this appeal is concerned with whether these lands are exempt from land tax. In the Supreme Court of New South Wales the learned primary judge, Brereton J., held that only the actual site of the Ashfield gospel hall was exempt (1971) 2 NSWLR 226 ; on appeal (1973) 1 NSWLR 402 , a majority of the Court of Appeal Division, consisting of Kerr C.J. and Hope J.A., held that the whole of the Ashfield land and also the Burwood land were exempt. Hardie J.A., on the other hand, concluded that the whole of the Ashfield land was exempt from tax but that none of the Burwood land was exempt. (at p30)

5. It is from the order of the Court of Appeal Division that the Commissioner now appeals, contending that no part of the trust property is exempt from tax. The respondents seek to uphold the exemption from tax of the whole of the property. (at p31)

6. There are only two paragraphs of s. 10 of the Land Tax Management Act, 1956 (as amended) that I find necessary to set out. Paragraph (d) confers an exemption in the following terms:

> "(d) land owned by or in trust for a charitable or educational institution if the institution, however formed or constituted, is carried on solely for charitable or educational purposes and not for pecuniary profit;".

That exemption depends exclusively upon the character of the owner of the land in question; if the necessary character exists all lands so owned will be exempt from tax. It was upon this paragraph that the majority of the Court of Appeal Division relied. (at p31)

7. Paragraph (g) (i) provides an exemption for

> "(g) land owned by or in trust for any person or society and used or occupied by that person or society solely as a site for - (i) a place of worship for a religious society, or a place of residence for any clergy or ministers or orders of a religious society;".

Unlike par. (d) this exemption depends upon the use to which land is put rather than the particular character of the owner. The learned primary judge relied upon this sub-paragraph but held it to be applicable only to land upon which was erected the gospel hall itself, whereas Hardie J.A. regarded it as applicable to the whole of the Ashfield land. (at p31)

8. Counsel for the respondent trustees also relied upon other exempting provisions of s. 10 (1) but it is unnecessary to set them out; I regard them as presently irrelevant, for reasons which I shall later give. (at p31)

9. In s. 10(1) (d) two situations are contemplated; in the first the subject land will be owned by an

"institution", in the second it will be held in trust for an "institution". In the present case, the second situation is inapplicable, the terms of the trust deed already referred to prevent it from being said that the land is owned in trust for any particular institution. Accordingly the land, if it is to fall within this exemption, must be capable of being regarded as owned by an institution. In fact the only owners of the land are the four trustees; are they, then, such an institution as is described by the sub-section, an institution "formed or constituted" and capable of being "carried on" for certain purposes? It is not the verbal infelicities involved in these two phrases when sought to be applied to the trustees that principally influence me to answer "No" to this question. Rather it is because the evidence, when examined, establishes to my satisfaction that the respondents are no more than simple trustees and possess no quality or function which could justify their being described as an institution. These four trustees are in no sense the governing body of the religious sect known as **the Brethren** or of any congregation of that sect. Among **the Brethren** there is no clergy but there are elders, members of a congregation with great experience and thought to possess particular moral worth. There are also Levites, those who preach the Gospel, journeying to meet with and speak to other congregations of **the Brethren**. There are also members who are authorized to celebrate marriages conducted in accordance with the beliefs of **the Brethren**, it being a recognized denomination for the purposes of the Marriage Act 1961 (Cth). There is no evidence that any of the four trustees holds any of these offices, if they may be so described, in any congregation of **the Brethren**; even if they did, it is clear that no group of elders or Levites controls the affairs either of **the Brethren** at large or of any single congregation **of Brethren**. On the contrary, all decisions are taken by the particular congregation as a whole, "the group itself is the governing body", and all decisions are unanimous, unanimity being attained by discussion and moral persuasion, the Scriptures and their interpretation by four venerated teachers over the past 150 years providing the answers to such questions as arise for decision. (at p32)

10. In such circumstances the search for anything answering the description of an institution is not likely to be rewarding, certainly it is not to be found in the trustees, either individually or collectively; they do meet from time to time, make decisions and keep minutes of their proceedings but these proceedings relate exclusively to the management of the trust property and not to the general affairs of **the Brethren**. They have no standing in relation to the religious practices of any congregation and control neither the general funds of **the Brethren** in New South Wales or in Sydney nor even those of the Ashfield congregation; these latter are deposited to the credit of a joint account in the names of three or four other members of **the Brethren** who attend to their proper expenditure. (at p32)

11. The trustees' only function is the management of the trust property consistently with the Trust Deed and with the wish it expresses that the trust property should primarily be devoted to providing a meeting place for Christians. The performance of this function cannot, in my view, confer upon these four trustees the quality of an "institution", however widely that term may be construed. (at p32)

12. In Stratton v. Simpson [1970] HCA 45; (1970) 125 CLR 138, at p 158 , Gibbs J. said of the word "institution" that, although its meaning must depend on its context, it would not ordinarily connote a mere trust; his Honour referred to Minister of National Revenue v. Trusts and Guarantee Co. Ltd. (1940) AC 138 . Here the context appears to me very much to reinforce the ordinary connotation of the word as not extending to a mere trust; par. (d) recognizes that the institutions of which it speaks may either themselves own property or else may have property held upon trust for them by trustees; it thus distinguishes between the institution and the trustees of property held upon trust for it or its charitable purposes. It legislates in terms of the owner of land, legal or equitable, and requires that owner to be an institution carried on for particular purposes; where no trustees are interposed between the legal title to the land and the institution it is the legal owner of the land which must be an institution having those purposes; where the intervention of trustees occurs the paragraph looks beyond them to the institution for which the land is held upon trust and is in no way concerned with the characteristics of those trustees. (at p33)

13. In the present case the only relevant owners of land are the four respondents who are trustees of a charitable trust but are not themselves an institution and there exists no other landowning entity to look to in order to satisfy the characteristics of an institution for which the paragraph calls. (at p33)

14. It may be noted that the meanings assigned to "institution" by Lord Esher M.R. in Mayor, etc. of Manchester v. McAdam (1895) 1 QB 673, at pp 681-682 and, on appeal, by Lord Herschell (1896) AC 500, at p 507 , are in my view inapplicable to these trustees and the same may be said of the meaning of that word adopted by Higgins J. in Young Men's Christian Association v. Federal Commissioner of Taxation [1926] HCA 2; (1926) 37 CLR 351, at pp 360-361 . (at p33)

15. For these reasons I consider that s. 10 (1) (g) (d) has no application to any of the subject lands. (at p33)

16. The exemption afforded by par. (g) (i) of s. 10 (1) will apply (inter alia) if land owned by any person is used by that person solely as a site for a place of worship for a religious society. Part at least of the Ashfield land is undoubtedly used as a place of worship; it also seems to be clear that at least that part of the Ashfield land is "used" by the four respondents "as a site for a place of worship". It is so used by being applied to that purpose; it is not necessary, for this purpose, to establish, as is no doubt the case, that the four respondents personally worship there; the terms of sub-pars (v) and (vi) of s. 10 (1) (g), relating to the use of land as a cemetery or public gardens, are enough to dispose of the notion that personal use is required so as to satisfy the requirement that the land in question be "used" by the owner "as a site for" the various purposes specified in par. (g). (at p33)

17. Part at least of the Ashfield land in question being, then, used by the respondents at the material time as "a site for a place of worship for" members of **the Brethren**, the question arises whether this satisfies the requirement involved in the words "a place of worship for a religious society". (at p33)

18. The appellant relied upon Re Thackrah (1939) 2 All ER 4 , in which Bennett J. held that a bequest to the proper officer of the Oxford Group failed for want of any identifiable association or society of individuals banded together under the name of the Oxford Group; the absence of rules, of some constitution, was held to be fatal; in their absence there was nothing "by which those who are supposed to be members are tied together" (1939) 2 All ER, at p 6 . (at p34)

19. The evidence discloses no written rules or constitution of **the Brethren** but does reveal that each congregation is a close-knit and intimate group the members of which not only know one another well but feel themselves to be linked together by close bonds of common faith; "it is a very intense organization" in which "everyone feels responsible for the whole company to be kept right" and the conduct of each member is apparently open to the scrutiny of all. There are members of **the Brethren** throughout the world, distinguished by their commitment to the teachings of their founder, John Nelson Darby, and of subsequent teachers. (at p34)

20. In the Sydney district there are about fifty small congregations **of Brethren** each with its own meeting place and the Ashfield hall provides a central meeting place for all. To join **the Brethren** involves acceptance, by decision of the whole of the members of a particular local congregation, as a believer in the teachings of the sect and by baptism as **a Brethren**; in addition there follows a review of credentials at the central meeting place in the particular city, in Sydney at the Ashfield hall. Membership, when thus attained, is not membership of a particular congregation but of the whole company **of Brethren** throughout the world. (at p34)

21. There is no Australia-wide organization **of Brethren** and to the extent that anything in the nature of organization may be said to exist it appears to be based upon groups identified by residence within a particular city. The denomination is not only recognized for the purposes of the Commonwealth Marriage Act but also features in the Commonwealth and State Year Books as a named Christian denomination, being the smallest of all separately identified sects, having had, at the time of the 1966 census, some 15,000 members throughout Australia, and some 4,500 in New South Wales. (at p34)

22. Although in Re Thackrah (1939) 2 All ER 4 it was no doubt necessary to seek for rules or a constitution when it was to "the secretary or other proper officer" of the Oxford Group that the bequest was made, I would not, in the context of s. 10 (1) (g), consider their absence to be fatal to the existence of a "religious society". It was so as to identify those who might be joined together by some common bonds so as to form an association that Bennett J. sought unavailingly for rules or a constitution. Here, although rules be absent, yet the distinguishing features of a common belief and common acceptance of recognized doctrine clearly identify members of **the Brethren** and this is accompanied by the outward manifestation of regular worship together in congregations, the members of which are very conscious of their membership, which is only conferred upon those thought worthy and which may be forfeited by acts of unworthy conduct. (at p35)

23. The phrase "religious society" in s. 10 (1) has been said to bear the intended primary sense of a religious denomination (Theosophical Foundation Pty. Ltd. v. Commissioner of Land Tax (1966) 67 SR (NSW) 70, at p 82 , per Sugerman J.A., Christian Enterprises Ltd. v. Commissioner of Land Tax (1968) 88 WN (Pt 2) (NSW) 112, at p 121 , per Walsh J.A.) and **the Brethren** does in my view in all respects answer the description of a religious denomination. (at p35)

24. I accordingly conclude that part at least of the Ashfield land is used by the respondents as a site for a place of worship for a religious society. Nor am I disposed to restrict the area so used to the site upon which the gospel hall itself is erected together with its immediate curtilage. The uses to which other portions of the Ashfield land is put, the vacant land as a car park for those attending services at the hall and as access ways to and from the car park, the buildings as rest rooms for those attending services, as furniture storage areas for equipment used in the gospel hall, as shelters for passengers alighting from cars bringing them to services and as premises for the hall caretaker, all these appear to me to be directly ancillary to and dependent upon the use of the gospel hall as a place of worship. As was said by Hardie J.A. in the Court of Appeal Division "surrounding land used for purposes ancillary to those of the church building, is within the description contained in the exempting provision" (1973) 1 NSWLR, at p 411 ; I agree, with respect, with his Honour's view that this accords with the approach adopted by this Court, in a somewhat different context, in Royal Sydney Golf Club v. Federal Commissioner of Taxation [1955] HCA 13; (1955) 91 CLR 610, at p 626 ; the vacant land and buildings to which I have referred all subserve and contribute to the enjoyment of the gospel hall as a place of worship and are a part of the "site for a place of worship". In saying this I of course exclude the areas upon which two shops stand, areas which it was conceded by the respondents formed no part of the site claimed to fall within the exemption. (at p35)

25. As to the Burwood land, it is in no sense "used" as a site for a place of worship and is not therefore within this exemption. It follows that I would regard all of the Ashfield land other than the two shop-sites, but none of the Burwood land, as exempt from taxation by reason of s. 10 (1) (g) (i) of the Act. (at p35)

26. The respondents sought also to rely upon other exempting provisions of s. 10 and I should state shortly why I do not regard those provisions as helpful. Section 10 (1) (e) applies only to land "owned by or in trust for" a religious society; the respondents are not themselves such a society nor do they hold in trust for any religious society, the terms of the trust deed are conclusive in this regard. Section 10 (1) (g) (iv) grants exemption, inter alia, to land owned by a person and used by that person solely as a site for "a charitable institution not carried on for pecuniary profit". If s. 10 (1) (g) (i) applies to most of the Ashfield land, as I think it does, the respondents gain nothing from seeking to rely upon sub-par. (iv) which can have no wider scope, in the circumstances, than has subpar. (i); indeed to do so raises possible difficulties in relation to the meaning of "institution" in par. (iv). I prefer to rest upon sub-par. (i) and to express no view concerning sub-par. (iv). (at p36)

27. I would allow this appeal to the extent that the order of the Court of Appeal Division upheld in its entirety the respondents' objection to the appellant's assessment. The objection should be allowed in

respect of all the Ashfield land other than the sites of the two shops having frontages to the Hume Highway but the objection should be disallowed so far as concerns the whole of the Burwood land. (at p36)

MASON J. I am in agreement with the separate reasons for judgment prepared by Stephen J. and Gibbs J. and with the order proposed by Stephen J. (at p36)

2. I would merely add that the volume and difficulty of the litigation that has already arisen from the appellants' claims to exemption from rates and land tax in respect of the subject lands suggest that consideration might be given to the introduction of a more uniform statutory approach to exemption from both rates and land tax. (at p36)

ORDER

Appeal allowed in part.

Order of the Supreme Court of New South Wales, Court of Appeal Division, set aside and in lieu thereof order that the appeal to that Court be allowed in respect of the whole of the respondents' land situate in the Municipality of Ashfield other than the shop sites forming part thereof and that otherwise the respondents' objection to the appellant's assessment be disallowed and that the cross-appeal to that Court be dismissed.

Order that the appellant pay such costs of the hearing at first instance as were attributable to the issues on which the respondents have been successful. Further order that the appellant pay two-thirds of the respondents' costs of the appeal to the Court of Appeal Division and the whole of the costs of the cross-appeal to the Court of Appeal Division. Further order that the respondents pay to the appellant one-third of the costs of the appeal to this Court.
