[HIGH COURT OF AUSTRALIA.]

KELLY AND OTHERS . . . . . APPELLANTS;
DEFENDANTS,

AND

THE MUNICIPAL COUNCIL OF SYDNEY . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1920.

SYDNEY, *Aug.* 24, 25, 27.

Isaacs, Gavan Duffy and Rich JJ.

Local Government—Rates—Exemption—Building used solely for charitable purposes—Meaning of "charitable purposes"—Roman Catholic presbytery—Appurtenance—Sydney Corporation Act 1902 (*N.S.W.*) (*No.* 35 *of* 1902), *secs.* 3, 110, 206—*Sydney Corporation Amendment Act* 1906 (*N.S.W.*) (*No.* 16 *of* 1906), *sec.* 12.

Sec. 110 (5) of the *Sydney Corporation Act* 1902 (N.S.W.) provides that "No land vested in trustees for purposes of public recreation, health, or enjoyment, and no hospital, benevolent asylum, or other building used solely for charitable purposes, and no building used solely for public worship, or any school under the *Public Instruction Act of* 1880 shall be liable to be assessed or rated in respect of any rate under this Act." By sec. 3 "building" includes the appurtenances thereto belonging.

Held, that the word "charitable" in the section is used in the sense of affording relief to persons in necessitous or helpless circumstances, and in most instances, at all events if required, gratuitously.

Swinburne v. *Federal Commissioner of Taxation*, 27 C.L.R., 377, followed and applied.

On land granted by the Crown to trustees for the purpose of erecting thereon a Roman Catholic chapel, school house and other necessary buildings for persons professing the Roman Catholic religion, were erected a cathedral

H. C. OF A. 1920.

KELLY v. MUNICIPAL COUNCIL OF SYDNEY.

and, near to it, a presbytery which was used as a residence by the Archbishop and the priests who discharged duties in and connected with the cathedral.

Held, that the presbytery was not exempted from rating by sec. 110 (5) either as a building used solely for charitable purposes or as an appurtenance of the cathedral which was exempted as being used solely for public worship.

Decision of the Supreme Court of New South Wales (*Street* C.J. in Eq.): *Municipal Council of Sydney* v. *Kelly*, 20 S.R. (N.S.W.), 107, affirmed.

APPEAL from the Supreme Court of New South Wales.

The Most Reverend Michael Kelly, Roman Catholic Archbishop of Sydney, Patrick Lewis Coonan, the Venerable John Collins, Sir Thomas Hughes and Walter Edmunds were the trustees of a piece of land in Sydney, about two acres in area, which had been granted to their predecessors for the purpose of erecting thereon a Roman Catholic chapel, school house and other necessary buildings for persons professing the Roman Catholic religion. Upon portion of the land was erected St. Mary's Cathedral and upon another portion a presbytery, which was used as a residence by the Archbishop and the priests who discharged their duties in and connected with the Cathedral, and they were required to reside there by the law of the Roman Catholic Church in order that they might discharge those duties.

The Municipal Council of Sydney brought an action in the Supreme Court, against the trustees and the Attorney-General for New South Wales, for a declaration that the plaintiff was entitled to a charge or lien upon the land upon which the presbytery stood for the sum of £175 alleged to be owing for rates thereon, with interest upon such sum. The material defence was that the presbytery was exempted from rating as being either a building used solely for charitable purposes or as being an appurtenance of the Cathedral, which was a building used solely for public worship.

The action was heard by *Street* C.J. in Eq., who made an order that the defendant trustees were liable to pay rates in respect of the presbytery: *Municipal Council of Sydney* v. *Kelly* (1).

From that decision the defendant trustees now, by special leave, appealed to the High Court.

(1) 20 S.R. (N.S.W.), 107.

Flannery K.C. (with him *Leonard*), for the appellants. The words "charitable purposes" in sec. 110 (5) of the *Sydney Corporation Act* 1902 are used in their technical sense, and cover the presbytery in this case. The words preceding those words, namely, "hospital" and "benevolent asylum," do not necessarily import that the buildings so described are used solely for charitable purposes in the technical sense, and the subsequent words are therefore introduced to make that qualification. (See *Attorney-General* v. *Bishop of Chester* (1); *In re Vaughan*; *Vaughan* v. *Thomas* (2); *In re St. Stephen, Coleman Street* (3); *In re Nottage*; *Jones* v. *Palmer* [*No.* 1] (4); *Attorney-General for New Zealand* v. *Brown* (5).) If the words preceding "charitable purposes" do not necessarily import charitable purposes, then the argument as to *ejusdem generis* cannot be used.

[RICH J. referred to *Leichardt Corporation* v. *Moran* (6).

[ISAACS J. referred to *Dilworth* v. *Commissioner of Stamps* (7).]

The technical meaning of "charitable purposes" should not be restricted unless a clear intention is found to restrict it (*Commissioners for Special Purposes of the Income Tax* v. *Pemsel* (8); *Anderson* v. *Anderson* (9)).

[RICH J. referred to *O'Neil* v. *Valuation Commissioner* (10); *M'Kenna* v. *Valuation Commissioner* (11).

[ISAACS J. referred to *Valuation Commissioner* v. *O'Connell* (12); *Heron* v. *Monaghen* (13).]

The words "no building used solely for public worship," which follow the expression "charitable purposes," may be regarded as having been introduced *ex abundanti cautelâ*. [Counsel also referred to *Burton* v. *Reevell* (14); *Laird* v. *Briggs* (15); *Clancy* v. *Valuation Commissioner* (16).]

[RICH J. referred to *Trustees of Magee College* v. *Commissioners of Valuation* (17); *In re Verrall*; *National Trust* v. *Attorney-General* (18).]

(1) 1 Bro. C.C., 444.
(2) 33 Ch. D., 187, at p. 191.
(3) 39 Ch. D., 492.
(4) (1895) 2 Ch., 649.
(5) (1917) A.C., 393.
(6) 4 S.R. (N.S.W.), 361.
(7) (1899) A.C., 99, at p. 107.
(8) (1891) A.C., 531.
(9) (1895) 1 Q.B., 749.
(10) (1914) 2 I.R., 447.
(11) 49 I.L.T., 103.
(12) (1906) 2 I.R., 479.
(13) 22 L.R. Ir., 532.
(14) 16 M. & W., 307, at p. 309.
(15) 19 Ch. D., 22, at p. 34.
(16) (1911) 2 I.R., 173, at p. 186.
(17) 19 W.R., 328.
(18) (1916) 1 Ch., 100.

H. C. OF A. 1920.

KELLY v. MUNICIPAL COUNCIL OF SYDNEY.

The words " charitable purposes " in sec. 206 of the Act of 1902 and in sec. 12 of the *Sydney Corporation Amendment Act* 1906 are used in their technical sense, and it is to be presumed that they are used in the same sense in sec. 110 of the former Act. The presbytery is an appurtenance of the Cathedral, and so by virtue of sec. 3 is exempted with the Cathedral as being used solely for public worship.

Leverrier K.C. (with him *Davidson*), for the respondent. None of the words in sec. 110 (5) are capable in their context of including the presbytery. Where the words " charitable purposes " are accompanied by other words which, if the general words had their wide technical meaning, would be included and rendered unnecessary, then *primâ facie* the general words should be given a narrower meaning. It would be an extraordinary result that lands should not be exempt as being used for a charitable purpose unless they were for purposes of public health, recreation or enjoyment, but that buildings should be exempt if they were used for any of the purposes which are included in the wide meaning that the words " charitable purposes " have in their technical sense. The words are used in order to include other things which are similar to hospitals and benevolent asylums. Sec. 206 does not affect the question, as it deals with an entirely different matter.

Cur. adv. vult.

Aug. 27.

The written judgment of the COURT, which was delivered by ISAACS J., was as follows :—

The question for our decision is whether the presbytery is rateable by the City Council under sec. 110 of the *Sydney Corporation Act* 1902. The material parts of that section are as follow, which, as the result of our consideration, we arrange thus :—Sub-sec. 4 : (1) Every building whether vested in or occupied by the Crown or not, and (2) all lands whether occupied or not, within the city, save as hereinafter mentioned, shall be deemed to be " rateable property," within the meaning of this Act. Sub-sec. 5 : (1) No land vested in trustees for purposes of public recreation, health, or enjoyment, and (2) no (*a*) hospital, (*b*) benevolent asylum, or (*c*) other building used

solely for charitable purposes; and (3) no building used solely for public worship, or (4) any school under the *Public Instruction Act of* 1880, shall be liable to be assessed or rated in respect of any rate under this Act. As to schools, of course, though the words "or any" are not the best form of expression, yet they mean "and no." *Street* C.J. in Eq. held that the presbytery is not exempted. This ruling is challenged on two grounds: (1) that the presbytery is a "building used solely for charitable purposes," within the meaning of sub-sec. 5; and (2) that the presbytery is an appurtenance of the Cathedral and, therefore, is within the expression "building used solely for public worship."

The first ground is rested on the principle that technical expressions in documents should receive their technical meaning, which is primarily their natural meaning, unless that is displaced by the rest of the instrument. The principle is said to be applicable on the authority of *Pemsel's Case* (1), where the word "charitable" was given its Elizabethan signification. In *Swinburne* v. *Federal Commissioner of Taxation* (2) that argument was considered by this Court in relation to another statute, and it was held that no rigid rule can be applied to the determination of the question, following the decision in *Inland Revenue Commissioners* v. *Scott*; *In re Bootham Ward Strays, York* (3). Reading sec. 110 for this purpose, it appears to us very clear that the word "charitable" in sub-sec. 5 is not to be understood in the comprehensive sense which the appellants contend for. The phrase "other building used solely for charitable purposes" is placed in the same category as "hospital" and "benevolent asylum," and this naturally *primâ facie* limits "charitable," as in *Swinburne* v. *Federal Commissioner of Taxation* (4), to the sense of "affording relief to persons in necessitous or helpless circumstances, and in most instances, at all events if required, gratuitously." This is supported by the circumstance that it is the "use" of the building that determines its exemption or non-exemption, and independently of whether there is a trust or not. It is also supported by the circumstance that some trusts are expressly mentioned as to "land" which would be "charities"

(1) (1891) A.C., 531.
(2) 27 C.L.R., 377.
(3) (1892) 2 Q.B., 152, at p. 165.
(4) 27 C.L.R., at p. 384.

H. C. OF A. 1920.

KELLY v. MUNICIPAL COUNCIL OF SYDNEY.

in the technical sense: indeed hospitals and benevolent asylums, and buildings used solely for public worship, and the schools mentioned, would all come under that comprehensive signification. We entertain no doubt that the first ground cannot be sustained.

As to the second ground, it does not appear that the presbytery can be properly described as an appurtenance of the Cathedral, so as to make the Cathedral, as the whole building within the meaning of the definition in sec. 3, include the presbytery. If it did so include the presbytery, there would, as was pointed out during the argument, be a serious danger of involving the Cathedral in rateability, because of the word "solely" in connection with "public worship." Mr. *Flannery* eventually did not press this point; and we are of opinion the presbytery is separate from the Cathedral, and, while the latter is free, the presbytery is not.

The judgment of *Street* C.J. in Eq. must, therefore, be affirmed.

The appeal will be dismissed, with the usual result that the appellants must pay the costs.

Appeal dismissed with costs.

Solicitor for the appellants, *T. J. Purcell.*

Solicitor for the respondent, *T. W. K. Waldron.*

B. L.