[HIGH COURT OF AUSTRALIA.]

THE PRESIDENT, COUNCILLORS AND RATEPAYERS OF THE SHIRE OF NUNAWADING . . . . . APPELLANTS;
DEFENDANTS,

AND

THE ADULT DEAF AND DUMB SOCIETY OF VICTORIA . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Feb.* 25; *Mar.* 16.

KNOX C.J., RICH and STARKE JJ.

Local Government—Rates—Rateable property—Exemption—Land used exclusively for charitable purposes—Institute for relief of deaf mutes—Growing of flowers as method of treatment and instruction—Sale of flowers—Charges made for use of land for recreation—Local Government Act 1903 (*Vict.*) (*No.* 1893), *sec.* 249 (2) (*h*)—*Local Government Act* 1915 (*Vict.*) (*No.* 2686), *sec.* 249 (2) (*i*).

Sec. 249 of the *Local Government Acts* of 1903 and 1915 (Vict.) provides that all land shall be rateable property within the meaning of the Act with certain exceptions, including land used exclusively for charitable purposes.

Land was held by a society, some of whose objects were charitable and others not. On the land deaf and dumb persons in poor circumstances were housed and were treated, trained and instructed by the society, and a flower garden was maintained as a method of treating, training and instructing those persons. By means of the flower garden a business of selling flowers to the public was also carried on, and from that business a substantial income was received which was applied to the upkeep of the institution. On the land was a lake, and the society habitually allowed boating and picnic parties to use the lake and part of the land, the society making charges therefor, the income from which was substantial and was applied to the upkeep of the institution.

Held, that the land was not "used exclusively for charitable purposes" within the meaning of sec. 249 of the *Local Government Acts* of 1903 and 1915 (Vict.), and therefore was not exempt from rating.

Decision of the Supreme Court of Victoria (*McArthur J.*): *Adult Deaf and Dumb Society of Victoria* v. *President &c. of the Shire of Nunawading*, (1920) V.L.R., 369 ; 42 A.L.T., 28, reversed.

APPEAL from the Supreme Court of Victoria.

The Adult Deaf and Dumb Society of Victoria was a company registered under the Victorian Companies Acts, and among the objects for which it was established as set out in the memorandum of association were the following: To establish and carry on farms, nurseries, orchards and homes for the benefit of adult deaf and for infirm or feeble-minded deaf persons irrespective of age, and to stock, plant and furnish the same, and to breed, grow and deal in all kinds of stock, plants and produce, and generally develop the resources of such farms, nurseries and orchards; to provide maintenance and technical and other education for the adult deaf and for infirm and feeble-minded deaf persons irrespective of age, and as part of their maintenance to provide them with all necessary and proper clothing, board and medicine and medical and surgical attendance, appliances, nursing and comforts, and as a part of their training to pay any sum by way of premium or otherwise to any employer to teach them a handicraft or other occupation, and generally to engage or pay teachers of various kinds and to supply all necessary machinery, tools, implements, plants, materials and other requisites for such maintenance and education; to manufacture, buy, sell, supply and deal in goods of all kinds and establish and carry on any business for the purpose of furnishing employment to or otherwise aiding the adult deaf. By the memorandum it was also provided that the income and property of the Society should be applied solely towards the promotion of the objects of the Society as set forth in the memorandum, and that no portion thereof should be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Society.

The Society owned certain land in the Shire of Nunawading known as the Blackburn Home, the area of which was about seventy-five acres. On the land were an artificial lake about eight acres in area,

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and buildings in which the managing staff and the inmates of the Home were housed. The inmates were all deaf mutes who suffered also from other disabilities, such as blindness, epilepsy, lameness, old age and infirmness or mental deficiency. About twenty-two acres of the land was cultivated, of which a large portion was devoted to the growing of flowers. The work connected with the growing of the flowers was done by the inmates who were mentally deficient, under the direction of members of the staff. That work had been chosen by the manager of the Home as a method of treating, training and instructing those inmates, and was carried on with that object. The flowers, when cut, were sold by the Society, and there were contracts made by which the Society had to supply definite quantities of flowers. The sums realized from such sales were applied to the maintenance of the Home, and amounted in 1909-1910 to £24 11s., in 1910-1911 to £217 15s., in 1911-1912 to £430 4s. 11d., in 1912-1913 to £55 0s. 3d., in 1913-1914 to £592 17s. 9d., in 1914-1915 to £716 2s. 2d., in 1915-1916 to £743 19s. 11d., in 1916-1917 to £771 5s. 3d., in 1917-1918 to £745 12s. 10d. and in 1918-1919 to £653 18s. 10d. Charges were made by the Society for the use of part of the land for picnics, and for the hire of boats upon the lake. The sums derived from such charges, which were also applied to the maintenance of the Home, amounted in 1909-1910 to £46 14s. 2d., in 1910-1911 to £79 1s. 3d., in 1911-1912 to £167 2s. 1d., in 1912-1913 to £111 18s. 10d., in 1913-1914 to £42 18s. 1d., in 1914-1915 to £64 15s. 3d., in 1915-1916 to £74 4s. 3d., in 1916-1917 to £90 4s. 9d., in 1917-1918 to £54 11s. 1d. and in 1918-1919 to £36 4s. 8d.

An action was brought in the Supreme Court by the Society against the President, Councillors and Ratepayers of the Shire of Nunawading, asking for declarations (*inter alia*) that the land was not rateable property within the meaning of the *Local Government Act* 1903 and the *Local Government Act* 1915, and that the land was used exclusively for charitable purposes within the meaning of those Acts.

The action was heard by *McArthur* J., who made declarations in the terms asked, holding that neither by reason of the sale of cut flowers nor by reason of the making of charges for picnics and boating did the use of the land become other than a use exclusively for

charitable purposes: *Adult Deaf and Dumb Society of Victoria* v. *President &c. of the Shire of Nunawading* (1).

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

Owen Dixon, for the appellants. By reason both of the sale of flowers and of the making of charges for picnics and boating the use of the land is not exclusively for charitable purposes within sec. 249 of the *Local Government Acts*. Among the objects with which the Society was established were those of carrying on farms and nurseries, and of growing all kinds of plants and produce, and also of carrying on any business for the purpose of affording employment for the inmates of the Home. Those objects were not charitable, and the carrying of them out by growing flowers for sale was not a charitable use of the land. The use of the land in such a way prevented the use of the land from being exclusively for charitable purposes. A very slight use of land for other than charitable purposes will take it out of the exemption of land used exclusively for charitable purposes. The permitting the land to be used for picnics and the lake to be used for boating and making a charge for such user were also sufficient to prevent the exemption from operating. [Counsel referred to *Commissioners of Taxation* v. *Trustees of St. Mark's Glebe* (2); *St. Andrew's Hospital, Northampton*, v. *Shearsmith* (3); *Trustees of Magee College* v. *Commissioners of Valuation* (4); *Geelong Mechanics' Institute* v. *Mayor &c. of Geelong* (5); *President &c. of Borung* v. *Dunstan* (6); *Kelly* v. *Mayor &c. of Fitzroy* (7); *Mayor &c. of Sebastopol* v. *Murray* (8); *R.* v. *Sterry* (9).]

[RICH J. referred to *Kelly* v. *Sydney Municipality* (10); *Commissioners of Inland Revenue* v. *Forrest* (11); *Dublin Cemeteries Committee* v. *Commissioner of Valuation* (12).

[STARKE J. referred to *Purvis* v. *Traill* (13); *R.* v. *Overseers of Manchester* (14); *Marylebone Vestry* v. *Zoological Society* (15);

(1) (1920) V.L.R., 369; 42 A.L.T., 28.
(2) (1902) A.C., 416.
(3) 19 Q.B.D., 624.
(4) 19 W.R., 328.
(5) (1907) V.L.R., 580; 29 A.L.T., 33.
(6) 16 A.L.T., 95.
(7) 29 V.L.R., 604; 25 A.L.T., 194.
(8) (1920) V.L.R., 211; 41 A.L.T., 178.
(9) 12 A. & E., 84.
(10) 28 C.L.R., 203.
(11) 15 App. Cas., 334, at p. 339.
(12) (1897) 2 I.R., 157.
(13) 3 Ex., 344.
(14) 16 Q.B., 449.
(15) 3 El. & Bl., 807.

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Jenner Institute of Preventive Medicine v. *Assessment Committee of St. George's, Hanover Square* (1).]

J. R. Macfarlan K.C. and *Lowe*, for the respondent. If land is used for a charitable purpose and in the course of that user some article is produced, the disposal of that article, whether by sale or otherwise, does not take the use of the land out of the category of use for charitable purposes exclusively. As to the picnics and boats, a slight departure from the charitable use of the land will not take the case out of the exemption. A mere permission to come upon the land is not such a use of the land as to take the case out of the exemption. If the main and substantial user of the land is for charitable purposes, that is sufficient to bring the case within the exemption. [Counsel referred to *Commissioners of Inland Revenue* v. *Forrest* (2); *Borough of Leichhardt* v. *Moran* (3); *Mayor &c. of Sale* v. *Bearup* (4); *Kelly* v. *Mayor &c. of Fitzroy* (5); *R.* v. *Overseers of Fulbourn* (6).]

Owen Dixon, in reply. If the idea of profit never entered into the growing of flowers, that would not take the case out of the exemption. But the operations cannot be severed, and the combined effect of all of them is that the user of the land is not exclusively for charitable purposes. [Counsel referred to *Earl of Clarendon* v. *Vestry of St. James* (7); *Hadfield* v. *Mayor &c. of Liverpool* (8); *R.* v. *Churchwardens &c. of St. Martin-in-the-Fields* (9).]

Cur. adv. vult.

March 16.

The written judgment of the COURT was as follows :—

This was an appeal by special leave from a decision of *McArthur* J. in an action by the respondent, the Adult Deaf and Dumb Society of Victoria, against the appellants, the President, Councillors and Ratepayers of the Shire of Nunawading, for a declaration that certain land at Blackburn occupied by them and on which rates had

(1) 16 T.L.R., 444.
(2) 15 App. Cas., at p. 338.
(3) 4 S.R. (N.S.W.), 361.
(4) 16 V.L.R., 658; 12 A.L.T., 97.
(5) 29 V.L.R., at p. 609.
(6) 34 L.J. M.C., 106.
(7) 10 C.B., 806.
(8) 80 L.T., 566.
(9) 21 L.J. M.C., 53.

been assessed under the *Local Government Acts* of 1903 and 1915 was exempt from rating. This land was rated as a single tenement, and no part of it was separately occupied or rated. Exemption was claimed under sec. 249 of the Acts on the ground that the land was used exclusively for charitable purposes. *McArthur* J. decided that this contention was well founded.

The memorandum of association of the Society contains some objects which are charitable, *e.g.*, to provide maintenance and technical education for the adult deaf; and others which are not, *e.g.*, to establish and carry on farms, nurseries, orchards, homes, and to breed, grow and deal in all kinds of stock, plants and produce, and generally develop the resources of such farms, nurseries and orchards, and to manufacture, buy, sell, supply and deal in goods of all kinds, and establish and carry on any business for the purpose of furnishing employment to or otherwise aiding the adult deaf.

The question at issue is not, however, whether the purposes of the Society are exclusively charitable, but whether the land is used exclusively for charitable purposes. The objects of the Society may throw some light upon the use of the land, but they are certainly not conclusive. Now, the word "exclusively" in sec. 249 of the Acts cannot be disregarded (*R.* v. *Cockburn* (1)). The use must be so as to exclude all purposes but the particular purpose. Thus, in *Hadfield* v. *Mayor &c. of Liverpool* (2), *Wills* J. said that used exclusively for a given purpose meant used exclusively for that purpose, and nothing else, and *Ridley* J. said the words meant used for that purpose only. Again, in *Commissioners of Inland Revenue* v. *Forrest* (3), Lord *Watson* points out the importance attached to the use of the word "exclusively" in rating statutes. "Then it is not sufficient compliance with the plain language of the Act that a society be established chiefly for the purpose of promoting science, literature, or the fine arts. One or other of these must be its exclusive object; so that an institution which also contemplated some other, though altogether subsidiary object, could not claim the benefit of the exemption." See also *Guardians of Waterford Union* v. *Barton* (4).

The facts of this case are not really in dispute. A number of

(1) 16 Q.B., 480, at p. 491.
(2) 80 L.T., 566.
(3) 15 App. Cas., at p. 348.
(4) (1896) 2 Ir., 538.

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unfortunate persons who are deaf and dumb were housed upon the land, and were treated, trained and instructed. A flower garden has been made and is maintained as a method of treating, training and instructing these persons. But the flower-growing scheme went far beyond these purposes. A business, which consisted of selling flowers to the public, was carried on, with the result that a large return accrued to the Society in each year. (See Annual Reports of the Society 1910-1918.) It is true that the motive for establishing the flower garden was the treatment and instruction of the deaf and dumb. The inquiry, however, is not what was the motive for bringing, or, to use the language of *McArthur* J., the sequence of ideas that brought, the land into use, but whether that use was exclusively for charitable purposes. It is not enough that the primary or main object of the use of the land was for charitable purposes, unless it can be affirmed that the land was used for these purposes only. The use of the land in the present case was twofold—(1) the treatment and training of the inmates of the Home, and (2) the carrying on the business of growing and selling flowers to assist in the upkeep of the institution. The latter purpose is not in any sense a charitable purpose, and so excludes the exemption claimed. Some reliance was placed upon the fact that the proceeds from the sale of flowers were applied to the upkeep of the institution, but the appropriation of these proceeds is not the criterion for determining the purpose for which the land was used. In addition to using the land for a flower garden, the Society habitually allowed boating and picnic parties to enter upon and use portions of the land, charging various sums of money for such use, and the sums received were not inconsiderable. We are not called upon in this case to say whether a use of the land on some isolated occasion for some trivial purpose would exclude the exemption claimed by the Society. See *Kelly* v. *Mayor &c. of Fitzroy* (1) and *Mayor &c. of Sale* v. *Bearup* (2). The use of the land as a kind of recreation reserve for boating and picnicking parties is not a charitable purpose, and consequently excludes the exemption claimed by the Society.

Special leave to appeal was granted on the representation of the

(1) 29 V.L.R., 604; 25 A.L.T., 194. (2) 16 V.L.R., 658; 12 A.L.T., 97.

appellants that the interpretation of sec. 249 was of general importance to rating authorities, and as a condition of granting leave the Court required an undertaking from the appellants to abide by any order the Court might make as to costs. We think a just provision as to costs in the special circumstances of the respondent will be that the appellants pay the costs of this appeal, and that otherwise the parties abide their own costs of the action.

Action dismissed, the judgment of the Supreme Court set aside, the appellants to pay the respondent's costs of the appeal to this Court.

Appeal allowed. Judgment appealed from set aside. Action dismissed. Appellants to pay respondent's costs of this appeal.

Solicitors for the appellants, *Maddock, Jamieson & Lonie.*

Solicitors for the respondent, *Derham, Robertson & Derham.*

B. L.