[HIGH COURT OF AUSTRALIA.]

SISTERS OF MERCY PROPERTY ASSOCIATION . . . . . } APPELLANT;
DEFENDANT,

AND

THE MAYOR, COUNCILLORS AND BURGESSES OF THE TOWN OF NEWTOWN AND CHILWELL . . . . . } RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Oct.* 9; *Nov.* 6.

Latham C.J., Rich, Starke, McTiernan and Williams JJ.

Local Government—Rating—Exemption—Land on which is "situated" a building used in connection with a church—Block of land rated as a whole—Part exempt from rating—Remedy of person rated—Local Government Act 1928-1941 (*Vict.*) (*No.* 3720—*No.* 4869), *s.* 249, *Part X., Div.* 7, *Part XII., Div.* 1.

Section 249 (5) of the *Local Government Act* 1928-1941 (Vict.) provided: "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 shall not be rateable property."

Held, by *Latham* C.J., *Rich*, *Starke* and *Williams* JJ. (*McTiernan* J. dissenting), that the only land on which a building is "situated" within the meaning of this sub-section is the land on which the building is erected and, by *Latham* C.J. and *Williams* J., the curtilage, if any, of the building.

Held, accordingly, where the land on which a building which was within the description in the sub-section was erected was part of a block of land containing a convent and other buildings which were not within the description, that only that part of the land upon which was erected the first-mentioned building was excepted by the sub-section from rating.

Held, further, by *Latham* C.J., *Rich*, *Starke* and *Williams* JJ., that, the block of land having been rated as a whole, it was no defence to a claim for the rates under s. 339 of the Act that part of the land was exempt; the only remedy in such a case was by way of appeal against the rate under Part X., Div. 7.

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SISTERS OF MERCY PROPERTY ASSOCIATION v. NEWTOWN AND CHILWELL CORPORATION.

Decision of the Supreme Court of Victoria (*Gavan Duffy* J.): *Town of Newtown and Chilwell* v. *The Sisters of Mercy Property Association*, (1944) V.L.R. 216, affirmed.

APPEAL from the Supreme Court of Victoria.

The defendant, the Sisters of Mercy Property Association, was a registered incorporated association according to the laws of the State of Victoria and capable of suing and being sued. It was in occupation, management and control of land within the town of Newtown and Chilwell. There were upon the land a convent for the nuns of the religious order of the Sisters of Mercy, a convent chapel (which was primarily intended and used for purposes of worship by the nuns and the purposes of the adjoining convent school but was also open to and used by the public), a college (which was conducted for profit), and a small building which was used exclusively for the preparation of altar bread and for mending church vestments for the religious purposes of the convent chapel and for other Roman Catholic churches in Geelong.

By a complaint in a Court of Petty Sessions at Geelong the municipal corporation of Newtown and Chilwell claimed of the defendant the sum of £1,150 3s. 8d. rates in respect of the land. The defendant admitted that the complainant had complied with all the formalities necessary to fix the liability of the defendant if the land was ratable. The Court of Petty Sessions dismissed the complaint.

The corporation obtained from the Supreme Court of Victoria an order nisi to review this decision. *Gavan Duffy* J. held that under s. 249 (5) of the *Local Government Act* 1928-1941 (Vict.) the land rated was not wholly exempt from rating by reason of the fact that the building used for the preparation of altar bread stood on part of it and that it was not open to the defendant in proceedings for the recovery of rates to challenge the validity of the rate on the ground that part of the land was not ratable; he made the order absolute, set aside the order of the Court of Petty Sessions and substituted an order for the amount claimed: *Town of Newtown and Chilwell* v. *The Sisters of Mercy Property Association* (1).

The defendant appealed to the High Court.

Dean K.C. (with him *Gunson*), for the appellant. Under s. 249 (2) (*c*) of the *Local Government Act* 1928 (before the 1941 amendments) land used for public worship was exempt from rating only if it was *exclusively* so used. For instance, the whole of a block of land upon part of which a church was erected was exempt, if the

(1) (1944) V.L.R. 216.

church was used exclusively for public worship and no part of the land was used for any other purpose; but, if any part of the block of land was used for another purpose, the exemption was lost and the whole block was ratable: See *Nunawading Shire* v. *Adult Deaf and Dumb Society of Victoria* (1); *Southport Corporation* v. *Corporation of the Trustees of the Order of the Sisters of Mercy in Queensland* (2); *Kelly* v. *Municipal Council of Sydney* (3). The *Local Government Act* 1941 (No. 4869), s. 21, in amending s. 249 of the principal Act, was directed in part to overcoming this requirement of "exclusiveness." So far as public worship is concerned the expression inserted at the end of the section has the effect that land used for that purpose may also be used for certain other purposes and still remain exempt. Further, the insertion of sub-s. 5 creates a new exemption. It is important to notice that this sub-section does not refer to land used "exclusively": that word relates to the use of the hall or other building on the land. In this sub-section, as in the other provisions of the section, the "land" referred to must necessarily be the whole block of land which is in the one occupancy: that is the natural meaning of the sub-section in the context in which it appears, and it should be given that meaning notwithstanding that the existence of a small building may have the effect of exempting a large block of land. Alternatively, there are two parts of the block which are exempt from rating: under sub-s. 2 (*c*), that on which the chapel stands, and, under sub-s. 5, that on which the altar-bread building stands. Accordingly, the rate is bad, and the complaint was properly dismissed on that ground. *Gavan Duffy* J., in holding that the defendant could not raise this objection as a defence, relied on *Carlisle Co.* v. *Sandhurst Corporation* (4) and *Preston* v. *Suburban Metropolitan Land Co. Ltd.* (5). Those cases should not be followed or applied in the present case. It is true that s. 343 (2) of the Act provides that the invalidity of a rate shall not be a defence to proceedings "for the recovery of any rate from any person"; but this provision should be read as going only to matters of form in the making of the rate—to the general validity of the rate, not to its application in a particular case. In any other view the appellant would be deprived of any remedy notwithstanding that the respondent has purported to rate it in respect of land which, in part at least, the Act declares to be exempt. It is not correct to say that the appellant could have appealed against the purported rate under s. 302 of the Act. The right of appeal under

(1) (1921) 29 C.L.R. 98.
(2) (1935) 53 C.L.R. 296.
(3) (1920) 28 C.L.R. 203.
(4) (1874) 5 A.J.R. 14.
(5) (1890) 12 A.L.T. 30.

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that section is against a "rate made under the authority of this Act": these words would have to be read as including "something which purports to be a rate but which is not authorized by this Act," if the appellant were to have such a right. [He referred to *Municipal Council of Mosman* v. *Spain* (1); *South Perth Corporation* v. *Hackett* (2).]

Menzies K.C. (with him *Eustace Wilson*), for the respondent. Section 249 (5) does not apply to this case at all. The words "used in connexion with any church" involve that the hall or other building is used as an adjunct to a particular church, that is, to a building constituting a church. That is not the case here. Moreover, "land" in sub-s. 5 means a block of land upon which is situated only the hall or building which answers to the description stipulated; where, as in the present case, there are other buildings on the block, sub-s. 5 does not apply at all. At the most only that part of the block of land which is the actual site of the building is excepted by sub-s. 5. Even on that construction the respondent should succeed. Where it is desired to challenge a rate the Act provides its own remedy. It is a code in that regard: the invalidity of the rate cannot be raised by way of defence in proceedings to recover rates (s. 343 (2)), but under Part X., Div. 7, a rate may be quashed in whole or in part on appeal. Under s. 302 the right of appeal is given to any person aggrieved by the rate or "by any matters included in or omitted from the same": the appellant could have proceeded under that section. [He referred to *Shire of Newstead* v. *Menzies* (3).]

Dean K.C., in reply. Exemptions in a taxing (or rating) Act should in case of doubt be construed in favour of the subject. [He referred to *Roman Catholic Bishop of Perth* v. *Perth Road Board* (4); *Burt* v. *Commissioner of Taxation* (5); *Swinburne* v. *Federal Commissioner of Taxation* (6).] The Victorian cases to the effect that it is a defence to a claim for rates that no part of the land occupied by the defendant is ratable, but that it is no defence that part of the land is exempt, are not logical; there is no logical distinction between a claim for a complete, and one for a partial, exemption from rates. [He referred to *City of Victoria* v. *Bishop of Vancouver Island* (7); *Bankstown Municipal Council* v. *Fripp* (8).]

(1) (1929) 29 S.R. (N.S.W.) 492; 46 W.N. 174.
(2) (1908) 8 C.L.R. 44.
(3) (1870) 1 A.J.R. 97.
(4) (1933) 49 C.L.R. 37, at p. 47.
(5) (1912) 15 C.L.R. 469, at p. 482.
(6) (1920) 27 C.L.R. 377, at p. 382.
(7) (1921) 2 A.C. 384, at p. 388.
(8) (1919) 26 C.L.R. 385, at p. 394.

Eustace Wilson, by leave, referred to *Essendon Corporation* v. *Blackwood* (1).

Cur. adv. vult.

The following written judgments were delivered :—

LATHAM C.J. Appeal from an order of the Supreme Court (*Gavan Duffy* J.) setting aside an order of a Court of Petty Sessions at Geelong dismissing a complaint of the Municipal Corporation of Newtown and Chilwell and ordering that the defendant association (the appellant) pay the sum of £1,150 3s. 8d. for rates upon land occupied by the association.

The land which was rated belonged to and was occupied by the Sisters of Mercy Property Association, which controls the property of a religious order entitled the Sisters of Mercy. Upon the land there was a convent for nuns of the order, a convent chapel, a college with ninety boarders and twenty day scholars and a small building used exclusively for the preparation of altar bread and for mending church vestments for the religious purposes of the convent chapel and for other Roman Catholic churches in Geelong. The school was conducted for profit. The chapel building was used for public worship.

The questions which arise are whether the land or some part of it is exempt from rates under certain provisions of the *Local Government Act* 1928 (Vict.) as amended in 1941, and, if so, whether the appellant association was entitled to rely upon such exemption as a defence to a claim for rates in respect of the whole block of land on which all the aforesaid buildings were placed.

The *Local Government Act* 1928, s. 249, is, so far as relevant, as follows :—" All land shall be rateable property within the meaning of this Act save as is next hereinafter excepted (that is to say) :— . . . (2) Land used exclusively for— . . . (*c*) Public worship . . . (*g*) Primary schools in which education is given free to the scholars . . . (*i*) Charitable purposes . . . shall not be rateable property."

By the amending *Local Government Act* 1941, s. 21, it was provided that at the end of s. 249 of the principal Act there should be inserted the following sub-sections :—

" (5) 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 connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property.

(1) (1877) 2 App. Cas. 574, at p. 584.

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(6) Land vested in or held in trust for any religious body and used exclusively as the residence of a practising minister of religion shall not be rateable property."

This Act also added the following " expression " at the end of s. 249 :—" Land shall not be deemed not to be used exclusively for any of the purposes referred to in paragraphs (*c*) (*g*) (*h*) or (*i*) of sub-section (2) 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 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."

It is necessary in the present case to consider these provisions only in so far as they relate to land used for public worship or for purposes " connected with or in support of the objects of any religious body," and I propose to refer only to the provisions in the legislation which relate to these matters.

Under s. 249 (2) (*c*) (before the amending Act of 1941), in order to justify an exemption from rates, it was necessary that the whole of the land in question should be used exclusively for public worship. This exemption covers the case of a church used exclusively for public worship standing on a block of land, no part of such land being used for any other purpose. The exemption applies not only to the actual ground which the church physically occupies, but also to the curtilage used with the church : See *Commissioners of Taxation* v. *Trustees of St. Mark's Glebe* (1).

Whenever a church or other building was used for any other purpose than public worship as well as for public worship no exemption was claimable under s. 249 (2) (*c*) in respect of any part of the block of land upon which it was situated (*Nunawading Shire* v. *Adult Deaf and Dumb Society of Victoria* (2)). The effect of the " expression " added to s. 249 in 1941 was that exemption would not be lost by reason only that a church or other building on the land was used for other purposes as well as for public worship if those other purposes were connected with or in support of the objects of the church. The combined effect of s. 249 (2) (*c*) and of the added expression is that there is complete exemption for a whole block of land where there are one or more buildings on the block, all the buildings being used exclusively for public worship (s. 249 (2) (*c*)) or all being used, either exclusively for public worship, or for both public worship and the religious purposes mentioned in the added expression. (It should be observed that the added expression applies only to cases where buildings are used, *not only* for public worship, *but also* for other

(1) (1902) A.C. 416, at p. 421.

(2) (1921) 29 C.L.R. 98.

religious purposes.) But if any building on the block of land were not so used there would be no exemption in respect of the whole or any part of the block, because the whole block would fall outside the category of " used exclusively for public worship," even as extended by the amendment made by the 1941 Act.

The case was put in argument of a church used exclusively for public worship on one piece of land and a church hall associated with the church, and in the same ownership, but on a quite separate piece of land, the hall being used for the dual purpose mentioned, that is, public worship and the other religious purposes mentioned in the added expression. Section 249 (2) (*c*) deals with such a case so far as the church itself is concerned and the extension of s. 249 (2) (*c*) made by the added expression would apply to the land used for the hall, and, accordingly, both pieces of land would be exempt.

The position in each of the cases hitherto considered is that the whole of the block of land is exempt as being exclusively used for the purpose of public worship, either under s. 249 (2) (*c*) independently of the statutory extension, or under that provision as extended by the statute in 1941.

In the present case there are buildings on the land which has been rated which do not fall within either of these provisions, namely, the school and the convent, and therefore no exemption can be claimed under those provisions.

The question which arises is whether s. 249 (5) applies so as to create an exemption. If the word " church " in this provision is interpreted as meaning an ecclesiastical organization (such as the Anglican or Roman Catholic Church), as distinct from a church building, then the convent chapel on the land and the altar-bread building are both used in connection with a church, namely the Roman Catholic Church, exclusively for the religious purposes mentioned. If the word " church " be interpreted as applying only to a building, and not to an ecclesiastical organization, as *Lowe* J. held in *Association of Franciscan Order of Friars Minor* v. *City of Kew* (1), then the altar-bread building itself is a building used in connection with a church (namely the convent chapel and other churches in Geelong) exclusively for the religious purposes mentioned. Upon either view of the meaning of the word " church " the altar-bread building is a building used in connection with a church exclusively for the religious purposes mentioned. Thus, upon either view, the whole of the land occupied by the appellant answers the description of " land in the occupation of or under the management and control of any religious body " upon which land

(1) (1944) A.L.R. 230.

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there is a building which is used in connection with a church exclusively for the specified religious purposes. To this extent the conditions required by s. 249 (5) are satisfied. The difficulty arises in relation to the words " and upon which is situated any hall or other building." The altar-bread building may be said to be situated either upon the whole of the land in the occupation of the religious body, or upon a particular part of that land : Cf. *City of Victoria* v. *Bishop of Vancouver Island* (1). If it is regarded as situated upon the whole of that land, then the exemption would extend to the whole block of land, notwithstanding the presence of buildings on the land which are not used for public worship or for the other specified religious purposes, even if those buildings included factories, shops and ordinary residences. Upon this first possible construction of the provision the whole of the land would be exempt. Upon this construction none of the other provisions relating to churches and buildings exclusively used for religious purposes would be necessary. The presence of a building used in connection with any church (if " church " is interpreted as meaning an ecclesiastical organization) exclusively for religious purposes as specified would spread its protection over the whole area ; and the same result would follow from the presence of such a building on land if there were also on the land (or even on other land) a church building used exclusively for public worship in connection with which the building was exclusively used. Thus, if the first construction were given to the provision now under consideration, the other provisions of the legislation relating to the same subject matter would become inoperative and there would be no reason for retaining them in the Act.

On the second construction suggested the hall or other building would be regarded as situated only on the part of the block of land which it physically occupied—with its curtilage. This construction does add a new, though limited, exception to the other provisions, and those provisions would be operative in the other cases which have been mentioned. This result would be much more reasonable than the result of the first construction suggested and, as the words are capable of this construction, it should, in my opinion, be adopted. For these reasons I agree with the judgment of *Gavan Duffy* J. upon the principal question involved in this case, that is, that the land actually occupied by the altar-bread building with its curtilage, if any, is exempt from rates, but that this fact does not bring about the exemption of any other part of the land.

The consequence of this view is that rates have been claimed in respect of land part of which is not ratable. The further question

(1) (1921) 2 A.C. 384, at p. 392.

which arises is whether in these circumstances the full amount of rates claimed is recoverable. The *Local Government Act* 1928, Part X., Div. 7, provides for appeals against rates, and s. 302 contains a provision for appeal to a County Court by a person who thinks himself aggrieved by any rate made under the authority of the Act " or by any matters included in or omitted from the same." Under this provision it would have been possible for the appellant to contest the inclusion in the rate of the exempt area of land.

Section 339 provides that rates may be recovered in proceedings before justices. Section 343 provides that, upon any complaint or action for the recovery of any rate from any person, " the invalidity or badness of the rate, as a whole or in respect to any part thereof, shall not avail to prevent such recovery." For many years it has been held in the Victorian courts that a claim that part of land rated is exempt cannot be used as a defence to proceedings for rates and that the proper course where it is desired to claim partial exemption is to proceed under Part X., Div. 7, of the Act (*Carlisle Co.* v. *Sandhurst Corporation* (1); *Preston Corporation* v. *Suburban & Metropolitan Land Co. Ltd.* (2)). The Act has been amended on many occasions since these decisions were given and no action has been taken by Parliament to alter the law as declared by them. Even if I had some doubt as to the correctness of these long-standing decisions, I would hesitate long before thinking it proper to reconsider them. But I see no reason whatever to doubt their correctness.

In my opinion the appeal should be dismissed.

Rich J. Two questions arise for our consideration in this appeal. The first relates to the proper construction of sub-s. 5 of s. 249 of the *Local Government Act* (Vict.). This sub-section was an amendment to the Act of 1928 made by the *Local Government Act* 1941. The material words are—" 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 connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property." The land which falls within the meaning of this sub-section is not ratable property. In construing this sub-section it appears that exempted land must be, in the first place, land in the occupation of or under the management and control of a religious body and in the second place land upon which is situated a hall or other building used in connection with a church exclusively for the purposes or objects of the religious body having control of the land. The

(1) (1874) 5 A.J.R. 14. (2) (1890) 12 A.L.T. 30.

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material words in this sub-section are, I think, the words "upon which is situated any hall or other building."

It would be a curious result if a large parcel of land comprising many acres and used for pastoral purposes were exempt from rates because upon a small portion of the land there was erected a hall or other building used for religious worship. I think the meaning of the sub-section is that the land which is exempt is the land on which the hall or building is set or placed. This restriction is implied by the latter portion of the sub-section, which suggests that what is exempted land is land used for the purposes of a religious body, such use being effectuated by a hall or building used for such purposes. If there were erected upon land enclosed by a fence or boundary line a Sunday school and a factory, some discriminatory test would need to be adopted to determine whether this land was or was not exempt from rates. The land might be said to be exempted land because it had erected thereon a Sunday school, but it could not be said that because of this the whole area of land was exempted land because on part of it there was erected a Sunday school. This would be an absurd result which ought not to be imputed to the legislature and if a restricted and reasonable meaning can be given to the word "situated" it should be adopted. I therefore think, as I have indicated, that the word "situated" should be construed as meaning actually set upon or placed.

The second question is whether the validity of the rates that were imposed can be challenged on the ground that the whole area should not have been rated. The answer to the question depends upon certain provisions, which have been the subject of numerous cases. Their effect is that the only remedy which "an aggrieved person" may have is an appeal under s. 302 (1) of the Act in question. Moreover, s. 343 of the Act provides that upon a complaint or action for the recovery of any rate the invalidity or badness of the rate, as a whole or in respect to any part thereof, shall not avail to prevent such recovery. And the decisions show that if a person is liable for some portion of the rates his only remedy is by way of an appeal. The law established by the decisions has persisted in this respect without any amendment on the part of the legislature and the current of authority is well settled that courts are loath to interfere in such cases.

For these reasons I consider that the learned primary judge came to a right decision.

STARKE J. All land is ratable property for the purposes of the *Local Government Act* 1928 of Victoria save such as is excepted. One of the exceptions is land used exclusively for public worship.

The use must, as was said in *Nunawading Shire* v. *Adult Deaf and Dumb Society of Victoria* (1), be such as to exclude all purposes but the particular purpose. Churches were commonly used as places of public worship, but often there were attached to or adjoining them halls or buildings that were used for other purposes than public worship, for example, halls for Sunday schools, for recreation and meeting places, and other purposes. Accordingly land so used was not excepted from ratability on the footing that it was used exclusively for public worship.

In 1941 the Act No. 4869, s. 21 (2), provided that " land shall not be deemed not to be used exclusively for any of the purposes referred to in," *inter alia*, par. 2 (*c*) " of this section " (principal Act, s. 249—public worship) " by reason only of the fact that any building on such land is used not only for any purposes referred to in the said 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." This extension of the exemption " only extends," as *Lowe* J. said in *Association of Franciscan Order of Friars Minor* v. *City of Kew* (2), " the meaning of the word ' exclusively,' for its plain meaning is that use for the specified purpose must still be shown. It is ' not only ' that use which is referred to, ' but also ' the use which the addendum allows." This provision does not aid the appellant, for the building in this case was not used for public worship.

The same Act, however (s. 21), added another exception : " 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 connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property." The meaning of this section is far from clear. In terms the words " land in the occupation of or under the management and control of any religious body " refer to an area of land occupied by, or under the management of, a religious body as one area or an integral whole. But then come the words " and upon which is situated any hall or other building used in connexion with any church." The words " any church " refer to a building and not to the collective body of persons forming a religious organization. And so *Lowe* J. held in the case already mentioned. The hall or building must be used in connection with a church, but the section does not require that it shall be upon the same land as the church : it may be upon adjoining or other land. Is the whole area of the land in the occupation or management of the religious body

(1) (1921) 29 C.L.R., at p. 103. (2) (1944) A.L.R., at p. 231.

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Starke J.

upon which the hall or building is situated excepted from ratability or only the land upon which the hall or building is erected (" situated" is the word used in the Act) ? Either construction is difficult, for on one construction a small building situated upon land might except a large area of land from ratability, whilst on the other a pocket or island is created, excepted therefrom, leaving the rest of the land ratable. Thus in the present case it is contended that a large area of land, occupied by a religious body, upon which is erected a convent and a chapel, which is not a place of public worship, is excepted from rating because a small building is erected and situated upon the land adjoining the chapel and used for the preparation of altar bread and the repair of vestments. And, if this small building had been erected upon other land adjoining or near the chapel, then it is suggested that the whole of that other land would have been excepted from rating. Read literally the words of the section aid these contentions, but I think they should be rejected.

The section, it might be supposed, was for the purpose of excepting lands used for public worship notwithstanding that halls or buildings erected on such lands, used in connection with churches, were not so used. But that is not the language of the section. In my opinion the words create a separate and independent exception for land in the occupation or under the management of a religious body upon which is erected or situated a hall or building that is used in connection with a church exclusively for the purposes of that body. It is not the whole area of the land in the occupation of the religious body that is excepted but only the parcel of land upon which the hall or building is situated or erected : the site of the hall or building. This construction will create pockets or islands of non-ratable land, which I believe, despite the decision of this Court in *Federal Commissioner of Taxation* v. *Royal Sydney Golf Club* (1), is contrary to rating practice and law and unnecessarily complicates the ascertainment of ratable values and the administration of the Act. The section, I think, requires reconsideration by the legislature and re-drafting. But this construction of the section involves the dismissal of this appeal, for the proceedings were for the recovery of rates due in respect of the land occupied by the appellant, including the piece of land upon which the altar-bread building is erected. And in proceedings to recover rates it has long been settled under the Victorian Act that it is no defence to establish that part of the land rated was exempt ; it must be shown that the defendant was not a person liable to be rated at all or that no part of the property occupied by him was ratable (*Shire of Warrnambool* v. *Rawe* (2)).

(1) (1943) 67 C.L.R. 599.

(2) (1884) 10 V.L.R. (L.) 347, at p 350.

That part of the land was excepted from rating is a ground of appeal against the rate which can be taken only in the manner prescribed by the Act.

The appeal should be dismissed.

McTIERNAN J. The appellant was the defendant in proceedings which the respondent took under s. 339 of the *Local Government Act* 1928 (Vict.) as amended to recover general rates levied in pursuance of that Act. The appellant's defence in the proceedings was that the land for which it was rated was not ratable property.

The effect of the decisions which were cited in argument dealing with the interpretation of s. 339 is that unless the whole of the land is not ratable property the respondent is entitled to recover the full amount of the rates for which it sued the appellant.

The appellant's defence is based on s. 249 (5) of the Act. This sub-section provides: "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 connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property."

It is necessary to decide whether the land rated is land within the meaning of these provisions.

There is an admission that the land rated was in the appellant's occupation and that the appellant is a religious body. There was no argument about the meaning of this expression.

At all material times there were within the boundaries of the rated land a convent, a school, a chapel, and a small building consisting of one room. It was connected in some way with the chapel but both parties treated it as a separate building.

The convent is occupied by members of the order. These nuns live under the rules and constitution of the Religious Order of the Sisters of Mercy. These rules and the constitution are to be found in a book which is in evidence. Most of the nuns who live in this convent teach in various Catholic primary schools. One of these schools is situated upon land adjacent to but separate from the land rated. That land was not rated. It is exempted apparently by s. 249 (2) (*g*) of the Act, which provides that land used exclusively for a free and primary school shall not be ratable property. Other nuns who live in the convent teach in the school situated on the rated land. This school is conducted for profit and is a source of revenue to the convent. In the convent there are also nuns who do the housework and nuns who make altar breads for the chapel and other Catholic churches. The altar breads are made in the building, which has

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been stated to consist of one room. The Masses celebrated in the chapel and the devotions held in it are attended by the nuns and the children at their schools, and Catholics generally. The chapel, however, is intended primarily for the nuns and the schoolchildren.

The room in which the altar breads are made is by far the least in size of all the buildings on the land.

The appellant relies upon its standing as a religious body, its occupation of the land rated and the making of altar breads in this small building or room, to bring the land rated within s. 249 (5). It was not argued that any other building than this building satisfied the provisions of the sub-section.

The argument was conducted on the basis that "church" in s. 249 (5) means the fabric as distinct from the body of the faithful. But whether the word means the former or the latter, no doubt is raised about the sufficiency of the service of supplying altar breads to bring the room from which it is conducted within the description of a building used in connection with a church exclusively in support of the objects of the Sisters of Mercy.

If the area rated is "land" upon which within the meaning of s. 249 (5) this building is situated, the whole area is not ratable.

It is argued for the respondent that the land rated is in extent but not in character land within the meaning of the sub-section. The argument is based upon a presumption suggested by a consideration of the provisions of s. 249 (2) (*c*) and the way in which provisions of that kind have been interpreted in such cases as *Nunawading Shire* v. *Adult Deaf and Dumb Society of Victoria* (1), and *Southport Corporation* v. *Corporation of the Trustees of the Order of the Sisters of Mercy in Queensland* (2). The conclusion which it is said follows is that s. 249 (5) is limited by necessary implication to land upon which is situated only a building having the prescribed connection with a church. In this view the land rated would not be ratable if the only buildings were the chapel and the room in which the altar breads are made. The words of s. 249 (5) are, however, unambiguous. They are too clear to present the reader with the choice of saying that they mean either land upon which is situated only a building of the prescribed kind or land upon which is situated such a building. The words are capable of the latter meaning only. Land which is described as land upon which a grandstand is situated would not fail to answer that description if besides a grandstand a tent was also situated upon the land. In my opinion s. 249 (5) extends not only to land upon which is situated only a building of the prescribed kind but also to land upon which a building of that

(1) (1921) 29 C.L.R. 98. (2) (1935) 53 C.L.R. 296.

kind and another building or other buildings of a different kind, are situated. *Gavan Duffy* J. held that land upon which the prescribed building is situated does not fail to be land within the sub-section merely because there are situated upon it the prescribed building and other buildings.

The ground upon which *Gavan Duffy* J. reversed the Magistrate's order dismissing the complaint was that the area rated is not in its full extent, within the meaning of the sub-section, land upon which the building in which the altar breads are made is situated. *Gavan Duffy* J. said in his reasons for judgment: "Mr. *Menzies* for the complainants agreed with Mr. *Dean* that the 'land' in s. 249 (5) meant the continuous whole in any one occupation and therefore in this case would be the whole block rated." His Honour rejected that view. His Honour continued: "The question is, what constitutes such 'land', what are its boundaries? Despite the fact that counsel for both parties contended that it must comprise the whole of the land here rated, I see no reason why it should. Rates are levied on lands, not on buildings, and this may explain the form of the sub-section, but the ratable land may be no more than the land on which the building stands: Cf. *Shire of Ferntree Gully* v. *Johnston* (1). It seems to me that there is no compulsion in the words themselves to make me hold that because on some part of a considerable area of land there is, as well as large and important structures, some insignificant building used as the sub-section requires, that the whole area is freed from rates. This appears more clearly perhaps if for 'situated' one or other of its synonyms, 'placed' or 'located', is used. To hold that the land on which the building is situated must of necessity be the whole land within a ring fence which is in one occupation, would bring about so much inconvenience that such a construction should not be adopted unless the words compelled it, which, in my opinion, they do not. This being my view, it is not either necessary or desirable for me to inquire what the land is on which the relevant building is situated; it is enough to say that I think it clearly does not cover all the land in respect of which the claim for rates was made."

Section 249 provides that subject to the exceptions made by this section "all land" shall be ratable property. The property exempted by the section is therefore necessarily land. The property exempted by s. 249 (5) is not a building situated upon land in the occupation of a religious body. If that were the exemption it would be necessary to delimit the situation of the building. It is not apparent that that would, at least in the present case, be a convenient

(1) (1909) V.L.R. 113.

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result. The words of the sub-section do not distinguish between an area which is within the prescribed occupation and a situation within that area. It is nothing less than the land in the occupation that is the subject of the exemption. The sub-section means that if land in the occupation of a religious body has the characteristic or mark of being land upon which is situated any building having the prescribed connection with a church the unit of land in such occupation shall not be ratable property. In the present case the land rated is in the prescribed occupation and the prescribed mark or characteristic is given to that land by the building in which the altar breads are made.

The effect of s. 249 (5) is to extend the exemption made by s. 249 (2) (*c*), which, as has been observed, is limited to land used exclusively for public worship: but it is not possible to read s. 249 (5) as a provision limited to land upon which is situated only a building used in the manner specified in connection with a church.

It may seem strange that, because of the use made of the relatively small building which is regarded as crucial in this case, the effect of s. 249 (5) is to exempt the total area rated. But I think it would be no less strange if the effect of the sub-section is to exempt only the land under and about the room in which the altar breads are made but to leave ratable the rest of the land, which would include not only the parts of the land under and about the convent and the school, but also the land in a similar relation to the chapel. It may well be that the land attached to the room is not wholly distinct from the land attached to and needed for the use of the chapel or either of the other buildings; and the result would be that as land attached to the room it would not be ratable but as land attached to another building it would be ratable. It seems to me that this would not be a convenient or practical result.

It is possible that a hall or building may be used in connection with a church in the manner prescribed by s. 249 (5), yet it does not sustain the character of a hall or building used for public worship. If the land around the hall or building forms part of land used by a church none of the land used by the church is exempt by s. 249 (2) (*c*). As has been stated, this provides that land used exclusively for public worship shall not be ratable property. A case may be supposed of land in the occupation of a religious body upon which are situated a church and a hall or building specified by s. 249 (5) but no other building. The limitation of "land" to the land under and connected with the hall or building would result in the exemption of a piece of land not used for public worship, but in the ratability of the rest of the land. It is difficult to suppose that the legislature

intended s. 249 (5) to have that result in such a case. It is less difficult to suppose that the intention of the legislature was to overcome the effect which the hall or building had in rendering ratable land which was used for public worship, but which was not exempt because there was situated upon it a hall or building connected with a church but not used for public worship.

It is, in my opinion, in accordance with the grammatical sense of s. 249 (5) to interpret land as meaning in extent the land delimited by reference to the religious occupation or control and management. If that land has the mark of being land upon which the prescribed hall or building is situated the land is totally exempt. The area rated here fulfils, in my opinion, the conditions necessary for its exemption by s. 249 (5).

In my opinion the appeal should be allowed and the magistrate's order dismissing the complaint restored.

WILLIAMS J. On this appeal I find myself in substantial agreement with the conclusions of *Gavan Duffy* J. in the court below and have little to add. The material provisions of s. 249 of the Victorian *Local Government Act* 1928 as amended by s. 21 of the *Local Government Act* 1941 are as follows :—

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

(1) . . . (2) Land used exclusively for—(*a*) . . . (*b*) . . . (*c*) Public worship. (*d*) . . . (*e*) . . . (*f*) . . . (*g*) Primary schools in which education is given free to the scholars. (*h*) . . . (*i*) Charitable purposes. (*j*) . . . shall not be rateable property.

Added by *Local Government Act* 1941 No. 4869, s. 21 : (5) 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 connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property.

(6) Land vested in or held in trust for any religious body and used exclusively as the residence of a practising minister of religion shall not be rateable property.

Land shall not be deemed not to be used exclusively for any of the purposes referred to in paragraphs (*c*) (*g*) (*h*) or (*i*) of sub-section (2) 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 paragraphs but also for any purpose connected with or in support of

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the objects of any religious educational or charitable body or authority occupying or controlling such land.

His Honour has described the large area of land which was rated as a whole and the buildings that have been erected on various portions of this area. I agree with him that the small building in which the altar breads are prepared is one which fulfils the conditions prescribed by sub-s. 5, so that the first question which arises is as to the extent to which the whole area of land is thereby exempted from rates.

Sub-section 5 exempts the land upon which the hall or other building is situated. The sub-section must be construed in the context of the whole section. The proviso introduced by the Act of 1941 was intended to cover the case where, in addition to a church used for public worship, there was some other building included within the boundaries of the same land such as a hall which was used as thereby prescribed ; so that Parliament must have intended, when it enacted sub-s. 5, to confer some different exemption to this in the case of land upon which any hall or other building was situated the use of which satisfied the conditions of the sub-section. It probably intended to provide for cases where the hall or other building had been erected on a different parcel of land to that on which any church or churches in connection with which it was used had been erected. It is most improbable that Parliament ever intended to confer an exemption upon an area of land, however large, upon which such a hall or other building, however small, had been erected. But it is clear, of course, that it is not for the court to speculate as to the intention of Parliament. It is the duty of the court to ascertain that intention by giving to the words of the section their ordinary grammatical meaning, and if that meaning is clear and unambiguous to give effect to that meaning, however absurd the result may be. But if the meaning is ambiguous, so that upon one construction a sensible and reasonable operation can be given to the section, whereas the other construction leads to an absurdity, the court is entitled to assume that the former construction was that intended by Parliament (*City of Victoria* v. *Bishop of Vancouver Island* (1)). In that case Lord *Atkinson*, in delivering the judgment of the Privy Council, said that " the word ' site ' has not one and only one precise and definite meaning—that it might be used to describe a plot of land much larger than that on which a building actually stands, or again might describe the situation or local position of a building " (2).

The crucial word in sub-s. 5 for the purposes of this appeal is " situated," so that the sub-section is capable of two constructions

(1) (1921) 2 A.C. 384, at p. 388. (2) (1921) 2 A.C., at p. 392.

dependent upon the choice between two ordinary grammatical meanings of this word. To give the word the first meaning attributed to it by Lord *Atkinson* would lead to an absurd result, while to give it the second meaning would lead to a reasonable result. It is not, as in the case of the original section, a question of ascertaining whether land, which means a particular area of land, is used exclusively for a particular purpose. In such a case the problem must in most cases be considered in relation to the land as a whole (*Shire of Nunawading* v. *Adult Deaf and Dumb Society of Victoria* (1); *Southport Corporation* v. *Corporation of the Trustees of the Order of the Sisters of Mercy in Queensland* (2)). Sub-section 5 is more specific. It refers to the land upon which the hall or other building is situated. The only land upon which such a building is situated within the meaning of the section is, in my opinion, the land on which the building is erected, including the curtilage of the building. But the present building does not appear to have any curtilage, so that I agree with his Honour that only the land upon which the walls of the building stand and the ground embraced within these walls is exempted from rates.

But counsel for the appellant also contended that his client was still entitled to succeed because the respondent had not excluded this small portion from the whole area of ratable land. In answer to this contention counsel for the respondent relied upon ss. 301, 302 (1) and 343 (2) of the *Local Government Act* 1928-1941. Section 301 only applies to appeals to justices in respect of the valuation of any ratable property included in any rates or the amount assessed thereon and would not appear to be applicable to a claim for exemption in respect of non-ratable property. But ss. 302 (1) and 343 (2) are relevant, and, so far as material, are as follows:—

302. (1) If any person thinks himself aggrieved for any cause of grievance, whether cognizable under the last preceding section or not, by any rate made under the authority of this Act, or by any matters included in or omitted from the same, he may at any time . . . within one month after the same is made give notice in writing to the council of his intention to appeal to the next County Court which is held nearest to the rateable property in respect of which such appeal is made.

343. (2) Upon any complaint or action for the recovery of any rate from any person, the invalidity or badness of the rate, as a whole or in respect to any part thereof, shall not avail to prevent such recovery.

In the present case no question arises as to the authority to make the rate: the complaint is that exempt land has been included in

(1) (1921) 29 C.L.R. 98. (2) (1935) 53 C.L.R. 296.

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the ratable land, so that the appellant is aggrieved in respect of a matter included in the rate and that is a grievance which falls within the express words of the section. Section 343 (2) provides that upon any complaint for recovery of any rate the invalidity of the rate in respect to any part thereof shall not avail to prevent such recovery. It has been held, and I think it is clear, that a person who is not ratable at all is outside the scope of the Act altogether, so that, if he is sued for rates, he is not debarred by s. 343 (2) from setting up that he is a person who cannot be rated under the Act (*Shire of Warrnambool* v. *Rawe* (1); *City of Victoria* v. *Bishop of Vancouver Island* (2))—Cf. *St. Lucia Usines and Estates Co. Ltd.* v. *St. Lucia* (*Colonial Treasurer*) (3). But it has been held in Victoria, in the first-mentioned case and in the cases cited in the judgments, that if a person is liable for some part of the rates claimed, his only remedy is to appeal under s. 302, so that, if he fails to do so and is then sued for the amount for which he has been rated, he is debarred by s. 343 (2) from setting up the partial invalidity of the rate.

The Victorian Parliament has not thought fit to legislate to alter this construction which has now stood for 50 years, so that this Court should be slow at this late date to overrule it (*Platz* v. *Osborne* (4)). Counsel for the appellant contended that the Victorian decisions were in conflict with that of the Privy Council in the case already mentioned. If I were satisfied on this point I would of course be bound to disaffirm them. But the decision of the Privy Council related to a different Act, and the cathedral there in question appears to have been erected on the whole of the land, so that it does not necessarily cover the case where a person is liable to some rates under the Act. The construction adopted by the Victorian courts is neither embarrassing nor unjust: on the contrary it appears to me to be a reasonable and convenient construction, and one that was well open upon the language of the sections. It should not, in my opinion, be overruled by this Court.

For these reasons I would dismiss the appeal.

Appeal dismissed with costs.

Solicitor for the appellant, *Daniel P. F. O'Keeffe*, Geelong, by *Mahony, O'Brien & Harty*.

Solicitors for the respondent, *Harwood & Pincott*.

E. F. H.

(1) (1884) 10 V.L.R. (L.) 347.
(2) (1921) 2 A.C. 384.
(3) (1924) A.C. 508.
(4) (1943) 68 C.L.R. 133, at pp. 141, 145, 147.