

that the enactment passed (sec. 15 of Act No. 2104 of 1932) can do the work it was designed to do. Perhaps he is right.

In the circumstances I am content that the appeal be dismissed with costs.

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Appeal dismissed with costs.

Solicitors for the appellant, *Varley, Evan, Thomson & Buttrose.*
Solicitor for the respondent, *D. Menzies.*

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[HIGH COURT OF AUSTRALIA.]

THE ROMAN CATHOLIC BISHOP OF PERTH APPELLANT ;
APPELLANT,

AND

THE PERTH ROAD BOARD RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF
WESTERN AUSTRALIA.

Rates—Exemption—“ Land belonging to any religious body, and used or held exclusively as or for a place of public worship ”—Land held by religious body and intended to be used for a church in the future—Whether “ used or held exclusively as or for a place of public worship ”—Road Districts Act 1919 (No. 38 of 1919) (W.A.), sec. 212 (2).

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The Roman Catholic Bishop of Perth was registered as the proprietor of a piece of land which was purchased for the purpose of erecting at a future date a place of public worship thereon and for a place of residence of an officiating priest of the Roman Catholic Church and at the date of hearing was still being held for that purpose.

Rich, Starke,
Dixon, Evatt
and McTiernan
JJ.

Held, the facts disclosed by the case stated did not establish that the land in question was “ used or held exclusively as or for ” “ a place of public worship ”

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or "a place of residence of a minister of religion" within the meaning of sec. 212 (2) of the *Road Districts Act* 1919 (W.A.) and, therefore, it was not exempt under that section from liability to rates.

Decision of the Supreme Court of Western Australia (Full Court): *Roman Catholic Bishop of Perth v. Perth Road Board*, (1932) 35 W.A.L.R. 19, affirmed on different grounds.

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CASE STATED.

On an appeal by the Roman Catholic Bishop of Perth to the High Court from an assessment of him for rates levied by the Perth Road Board upon land of which he was registered as proprietor, the Magistrate of the Local Court at Perth stated, for the opinion of the Full Court of Western Australia, a special case under sec. 248 of the *Road Districts Act* 1919 (W.A.), which was substantially as follows :—

1. This is a case stated by me the Magistrate of the Local Court at Perth under sec. 248 of the *Road Districts Act* 1919 desiring direction on the question of law hereinafter referred to.

2. The appellant is a corporation sole having its office at Victoria Square, Perth, and is the registered proprietor of lots 2 to 5, 16 to 19 of Location 1094 containing an area of two acres and twelve perches and being the land comprised in certificate of title, volume 952, folio 110. A copy of the said certificate of title is hereto annexed. It is admitted that the said lands belong to a religious body within the meaning of the *Road Districts Act* No. 38 of 1919 (W.A.), sec. 212, sub-sec. 2.

3. The said land is situated in the Perth Road Board District.

4. The respondent Board rated such land under the provisions of the *Road Districts Act* 1919, and an appeal was lodged by the appellant to the respondent Board under sec. 242 of the said Act against such rating on the ground that the said property was not ratable at the time of the completion of the rate-book. The said appeal was heard by the respondent Board and the facts as set forth in the annexure marked "A" hereto were accepted by the said Board and its solicitors, Messrs. Villeneuve Smith and Keall, on the hearing of the said appeal as evidence and as being correct and the said annexure is incorporated in and forms part of this case.

5. The respondent Board dismissed the said appeal and decided that the land was ratable at the time of the completion of the rate-book.

6. From this decision the appellant appealed to the Local Court at Perth under sec. 246 of the said Act.

7. The appellant contends that the said land is exempt from rating under sec. 212, sub-sec. 2, of the said Act.

8. I am desirous of obtaining the direction of the Full Court as to whether the said land is ratable property under the provisions of the said Act.

The facts set forth in the annexure marked "A" referred to in par. 4 of the special case were as follows:—"John Francis Maloney states: I am the parish priest in charge of the Leederville Parish. In 1927 I purchased on behalf of the Roman Catholic Bishop of Perth, a corporation sole having its office at Victoria Square, Perth, the land the subject of assessment number 2622. These lands were purchased for the purpose of erecting at a future date a place of public worship thereon and for a place of residence for an officiating priest of the Roman Catholic Church and is still being held for that purpose. Since the land was purchased it has not been used for any purpose whatsoever. Owing to the arrest of development by the prevailing depression and owing to the difficulty in obtaining finance occasioned by the depression, no buildings have been erected upon these lands, but it is the intention of the Roman Catholic Bishop of Perth so soon as circumstances warrant it to erect thereon a church of public worship and/or a place of residence for a priest in charge thereof. The land is vacant and unfenced, and was purchased from Mr. W. H. Melvin for £80. The title now stands in the name of The Roman Catholic Bishop of Perth, a corporation sole having its office at Victoria Square, Perth."

The Full Court, constituted by *Northmore C.J.* and *Draper J.*, was of the opinion that the land mentioned in the case stated was ratable property under the provisions of the *Road Districts Act: Roman Catholic Bishop of Perth v. Perth Road Board* (1).

From that decision the Roman Catholic Bishop of Perth now by special leave appealed to the High Court.

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Wilbur Ham K.C. and *Hassett*, for the appellant. It is not disputed that the land in question belongs to a religious body, and it is accepted as between the parties that the land was purchased for use as a place of public worship and as a minister's residence. The fact that there is no written instrument of trust is not conclusive that there is no trust, and if the Bishop, who is a corporation sole, got this land and held it on an implied trust for these purposes, that would bring the land within the exemption. So long as the land is held for the purposes of a church and a priest's residence and for no other purpose it comes within the exception and is not taxable. It does not matter that the land has never been used as a place for public worship. The special case states that the land was bought for a church and that it is being held for a church and is not being used for any other purpose. It is only a question of fact whether the land is being used for such purpose. If the land was purchased by the Roman Catholic Church for the specific purpose of erecting a church thereon, there is a trust created for that purpose. Writing is unnecessary. The *Roman Catholic Church Property Act* 1911 vests lands held by the Church in the Roman Catholic Bishop subject to trusts for religious purposes, and the Act of 1916 gives the Bishop power to sell land acquired for church purposes freed from the trusts on which they were held, and it also gives power to lease. The existence of a written trust would not make any difference because the Bishop could sell or lease the land discharged from the trust. Land which is held as well as land which is used as a place for public worship is exempt.

Fullagar (with him *Byrne*), for the respondent. There is no trust of this land in any relevant sense. The land is held in trust by the Bishop for the Roman Catholic Church as an organization but not for the purpose of any particular church. There must be something binding the corporation sole at least in a particular way before the land comes within the exemption. The Legislature had in mind an actual physical structure on the land, or at least an actual use for the purpose of a church. The word "held" was introduced to cover a part of the land not actually covered by the church structure

(*Commissioners of Taxation v. Trustees of St. Mark's Glebe* (1)). There the words were "used for or in connection with" a church. The proviso does not help the appellant in any way. There must be attached to the land, before it is exempt, the character of being exclusively held for some purpose. A present intention which may change from time to time is not sufficient to give the land such character.

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Hassett, in reply. It is necessary only that the land should be held for the purpose of a church. That may imply a present use or a future use. Land held as a place of public worship includes a piece of land on which it is intended to build a place of public worship, though such place is not built at present.

Cur. adv. vult.

The following written judgments were delivered :—

Mar. 27.

RICH J. This is an appeal from a decision of the Supreme Court of Western Australia on a case stated by the Magistrate of the Local Court at Perth under sec. 248 of the *Road Districts Act* 1919, by which he sought a direction as to whether certain land situated in the Road Board District of Perth was ratable property. Sec. 212 of the *Road Districts Act*, so far as material, provides that all "land shall be ratable property . . . save as hereinafter excepted, that is to say . . . (2) Land belonging to any religious body, and used or held exclusively as or for a place of public worship, a Sunday school, a place of residence of a minister of religion, a convent, nunnery, or monastery, or occupied exclusively by a religious brotherhood or sisterhood . . . Provided that—(a) any land exempted by " sub-sec. 2 "shall be deemed ratable property while the same is leased or occupied for any private purpose." The land in question is vested in the Roman Catholic Bishop of Perth, a statutory corporation sole, who is the appellant. He is registered as the proprietor of an estate in fee simple in possession free from encumbrances. The land was bought in 1927 on his behalf by the parish priest in charge of the Leederville Parish, where it is situated. The land remains vacant and is not fenced. By an agreement between the parties a statement

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

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of facts by the parish priest was accepted as correct. All we know of the relevant circumstances is contained in this statement, and, as the proceeding is by way of case stated, although we are at liberty to make implications in ascertaining what facts were intended to be stated, we are not at liberty to treat the facts so ascertained as circumstantial evidence from which further facts may be inferred. Possibly this restriction may be unfortunate for the appellant in the present case. The material part of the statement of the parish priest is as follows :—" These lands were purchased for the purpose of erecting at a future date a place of public worship thereon and for a place of residence for an officiating priest of the Roman Catholic Church and is still being held for that purpose. Since the land was purchased it has not been used for any purpose whatsoever. Owing to the arrest of development by the prevailing depression and owing to the difficulty in obtaining finance occasioned by the depression, no buildings have been erected upon these lands, but it is the intention of the Roman Catholic Bishop of Perth so soon as circumstances warrant it to erect thereon a church for public worship and/or a place of residence for a priest in charge thereof." In the Supreme Court the exemption conferred by sec. 212 (2) was construed narrowly. The phrase " held exclusively as or for a place of public worship " was treated as requiring a trust confining the use of the land to that sole purpose. In addition, one of the learned Judges, *Draper J.*, considered, as I understand his judgment, that the trust must appear in or from the muniments of title, for he says (1) :—" It is stated that the appellant intends to use the land exclusively for such purposes, but evidence of intention is not in my opinion evidence which was admissible. The land vests in the Roman Catholic Archbishop of Perth as a corporation sole, it is vested in him in fee simple, and evidence to contradict that title is not admissible." In view of these rulings, which appeared to be of great importance in the application of sec. 212, this Court granted special leave to appeal notwithstanding the smallness of the sum involved in the particular case. Having had the benefit of an argument upon the meaning of the sub-section, I am convinced that the decision appealed from gives it too narrow a meaning and too limited an application.

(1) (1932) 35 W.A.L.R., at p. 20.

The first and most important element in its interpretation is the requirement that the land shall belong to a religious body. These are not technical expressions, but they serve to fix the ownership of the land and to fix it in a public body pursuing objects which the law regards as charitable although not always exclusively so. It results from this requirement that under the law of property the land must be devoted to objects pursued by the religious body, and *prima facie* there is no need for a further restriction operating as a trust or other limitation affecting title. The purpose of the words "used or held exclusively as or for a place of public worship" is to select from among the various objects to which the religious body may appropriate its land that of public worship and make that another condition of the exemption. "Use" goes to use in fact, and depends in no way upon legal and equitable obligations. If the body in actual practice during the time relevant to the rate confines the use of the land to public worship the condition is satisfied. The expression "held as or for" includes a present holding for a future purpose. The real difficulty in the case lies in the necessity that the present holding shall be "exclusively" for that purpose. Mere individual or collective intention of members of the faith holding authority in the Church is not, I think, sufficient to manifest the requisite exclusion of other possible purposes for which the land may be used. In the absence of a church or other building or erection suitable for public worship on the land, and in the absence of use of the land for that purpose, there must, I think, be some immediate exclusion operating upon those controlling the enjoyment of the land. The proviso to the section shows that the restriction need not be of a permanent or indefinite character: it is enough that it exists for the time being. If a requirement exists cognizable at law confining the use of the land to public worship, I should think it was sufficient for the purposes of the exemption although it did not amount to a trust or limitation or condition affecting title, but arose only from the exercise of an authority vested in an ecclesiastical body, but it must be expressed in some resolution, decree or order recognized as binding, while it remains unrepealed, those in a position to control the use of the land, including the person or body who or which is the repository of the legal title. The statement of

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the parish priest as to the intention to erect a church and the purpose for which the land was bought may, in fact, be founded upon the existence of some such effective obligation as I have described. Indeed, from all that appears an equitable obligation may be impressed upon the land because of the character of the fund with which the land was acquired. It is clear that, in establishing by evidence the existence of a sufficient restriction which the law would recognize upon the purposes for which the land is held, there is no inconsistency with the documents describing the legal title. On the other hand, in the present case the statement of the parish priest does not amount to more than a statement of intention which may mean no more than the collective intentions of individuals unrecorded or the corporate intention of the Bishop unrecorded and unauthoritative. It is, therefore, not established that a requisite condition of exemption is fulfilled in this case, and the appeal must be dismissed.

STARKE AND EVATT JJ. The *Road Districts Act* 1919 of Western Australia, sec. 212, provides that all land shall be ratable property within the meaning of the Act, save as thereafter excepted. One of the exceptions is land belonging to any religious body and used or held exclusively as or for a place of public worship, a residence of a minister of religion, or certain other specified religious purposes.

In 1927, certain lands, portion of Swan Location, were purchased on behalf of the Roman Catholic Bishop of Perth. The Bishop is constituted a corporation sole under the *Roman Catholic Church Property Acts* 1911-1916, various lands are vested in him, and he is empowered to purchase, take and hold property, and, subject to the consent of "Advisers" to sell, lease, mortgage, encumber, or otherwise dispose of, any property vested in him. The Bishop is registered as the proprietor of the lands now in question. The certificate of title does not set forth the purpose for which the land was acquired, nor place any restriction upon its use: it is a clear title. But the land was in fact purchased for the purpose of erecting thereon at a future date a place of public worship and a place of residence for an officiating priest. It has not yet been so used, but it is the intention of the Bishop to erect upon it, so soon as circumstances permit, a church and a residence for a priest.

The land undoubtedly belongs to a religious body, and is vested in the Bishop for the purposes of the Roman Catholic Church. It is at present vacant, but is said to be held exclusively as and for a place of public worship. But, whatever the intention of the Church authority, the land is held for and may be devoted to any purpose of the Church that may be expedient. There is nothing upon the certificate of title, nor in any act of the Church authority, dedicating the land for use as a place of public worship, or in any way requiring its use as and for a place of public worship. There is, in other words, no limitation or restriction upon its use. But the section requires that the land shall be held exclusively as or for a place of public worship, &c., that is, for those particular purposes to the exclusion of all other purposes (*Nunawading Shire v. Adult Deaf and Dumb Society of Victoria* (1)). The appeal therefore fails, and should be dismissed.

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DIXON J. The question for consideration upon this appeal is whether a claim to exemption from ratability under sec. 212 (2) of the *Road Districts Act* 1919 of Western Australia has been established. The material part of the provision exempts land belonging to any religious body and used or held exclusively as or for a place of public worship. The land for which immunity from rates is claimed is vested in the appellant who, under the name of the Roman Catholic Bishop of Perth, is a corporation sole in which are vested lands belonging to the Roman Catholic Church or granted or conveyed for the purposes of the Church (Acts 22 Vict. No. 4 ; 1 Geo. V. No. 47 (No. 36 of 1911) and 7 Geo. V. No. 4 (No. 4 of 1916)). It is clear, therefore, that the land belongs to a religious body. But the question in dispute is whether it is “ used or held exclusively as or for a place of public worship.” The land is at present vacant and unfenced, and was bought in 1927 on behalf of the Roman Catholic Bishop of Perth by the priest of the parish in which the land is situated. A statement of facts was made by the parish priest to the Road Board and those facts were accepted as correct. But in deciding the question the Court is limited to the facts which this statement contains. The critical portion of it is as follows :—“ These lands were purchased for the

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purpose of erecting at a future date a place of public worship thereon and for a place of residence for an officiating priest of the Roman Catholic Church and is still being held for that purpose. Since the land was purchased it has not been used for any purpose whatsoever. Owing to the arrest of development by the prevailing depression and owing to the difficulty in obtaining finance occasioned by the depression, no buildings have been erected upon these lands, but it is the intention of the Roman Catholic Bishop of Perth so soon as circumstances warrant it to erect thereon a church for public worship and/or a place of residence for a priest in charge thereof."

The Supreme Court held that these facts did not bring the land within the exemption (1). *Northmore C.J.* did so upon the ground that the sub-section refers to land which, either is held upon trust to use exclusively for a place of public worship, or is in fact used for that purpose. *Draper J.* considered that evidence of intention was inadmissible because it contradicted the certificate of title according to which the appellant was entitled to an unencumbered estate in fee simple. I am unable to agree with these reasons. To require that the land should be held upon trust for a place of public worship is, I think, too narrow an interpretation of the expression "held . . . as or for a place of public worship." The first condition of the exemption is that the land should "belong" to a "religious body." It is not necessary to consider what is enough to satisfy this condition because, clearly, it is fulfilled in this case. But it at least requires that the beneficial enjoyment of the land should in point of law belong to or be under the control of the Church. The second condition, which is expressed in the alternative, goes to the actual exercise of this control by the Church: the land must either be used or be held as or for a place of public worship. But in each alternative there must be an exclusion of other purposes. If in the exercise of its control the Church uses the land for public worship and for no other purpose, the first alternative of this condition is satisfied. If, although the land has not been presently used for public worship, there has yet been an express determination by a competent ecclesiastical authority requiring that it should be held for no other purpose than as a place of public worship, and that

(1) (1932) 35 W.A.L.R. 19.

determination is recognized by law as binding those otherwise entitled to control and direct the use of the land, then, while that determination remains unrevoked I think it would suffice to satisfy the second alternative of the condition and the land would be held exclusively for a place of public worship within the meaning of the provision. It is not essential that the estate should actually be affected by a trust or condition confining the use of the land to public worship. Even if a trust or condition were necessary, the ground given by *Draper J.* for excluding evidence of intention overlooks the fact that a trust might exist which need not and could not appear upon the certificate of title. Indeed a trust of land for purposes of public worship might well arise without any declaration in writing; as, for instance, if land were acquired from a fund raised by public subscription for that purpose. But, although, in my opinion, the expression "held exclusively as or for a place of public worship" should receive a wide interpretation and a flexible application, I do not think the condition it expresses is fulfilled by the mere existence of a future intention, manifested by no formal or overt decree, determination, regulation or direction which, until altered, must be obeyed.

The difficulty in the present case is that the statement of the parish priest is consistent with no more having occurred than the formation of such an intention. For this reason I think the actual decision of this particular case must be that the claim to exemption has not been established.

It follows that the appeal should be dismissed.

McTIERNAN J. I agree that the appeal should be dismissed. But I do not concur in the reasons of the Supreme Court of Western Australia. The Legislature did not make it a condition of exemption granted by sub-sec. 2 of sec. 212 of the *Road Districts Act* 1919 of Western Australia, that the land should belong to the religious body upon a trust requiring that it be used or held or occupied exclusively as or for one or more of the purposes specified in the sub-section. The intention of the Legislature which is to be gathered from the language of the section is that land belonging to a religious body and used or held or occupied, as the case may be, exclusively for

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one or more of those purposes should be excepted from the property made ratable by the Act. "Used" means, I think, in fact used, not upon trust to use. There does not appear to be any reason for departing from this meaning by construing the word "held" to mean "held on trust." The question in the present case should therefore be determined by inquiring whether the land is in fact held exclusively as or for a place of public worship and/or for a priest's house. There is no need to repeat the facts in detail upon which the claim of the appellant is based. The only overt acts which have taken place are the purchase of the land on behalf of the appellant and the transfer of it to the appellant as proprietor for an estate in fee simple in possession. The result of these acts is that the land appears to be held for religious purposes generally and not exclusively for the purposes relied upon. This result is not altered by the fact that the land was purchased for the purpose of building a church and a priest's residence and that it is the appellant's intention to use it as a site for these buildings. The purpose and intention of the appellant *per se* do not operate to impress the land, which is ostensibly held for religious purposes generally, with the recognizable character of land held exclusively as or for a site for a church and/or a priest's house. In the absence of some overt action of an authoritative and definitive character, setting the land aside exclusively for these purposes or either of them, I think that upon the facts, the appellant has not proved that the land in question is within the exemption.

Appeal dismissed with costs.

Solicitors for the appellant, *Lavan, Walsh & Seaton.*

Solicitors for the respondent, *Villeneuve Smith & Keall.*

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