

The Council of the Municipality of Ashfield - - - *Appellant*

v.

Norman James Peel Joyce and others - - - *Respondents*

FROM

**THE SUPREME COURT OF NEW SOUTH WALES
(Court of Appeal Division)**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1976

Present at the Hearing :

LORD WILBERFORCE
LORD MORRIS OF BORTH-Y-GEST
LORD HAILSHAM OF ST. MARYLEBONE
LORD KILBRANDON
LORD SALMON

[Delivered by LORD WILBERFORCE]

This is an appeal from an order dated 17 July 1975 of the Court of Appeal of the Supreme Court of New South Wales answering certain questions of law submitted by way of a Case stated by the Land and Valuation Court. These questions concern the liability, or otherwise, of the respondents for rates in the years 1966 and 1968 in respect of land owned by the respondents and depend for their answer upon the meaning to be given to section 132 (1) (d) of the Local Government Act, 1919, as amended, in particular to the words "land which belongs to any . . . public charity. . .".

The appellant is a municipal council duly constituted under the provisions of the Local Government Act. The respondents are the owners, as trustees, of a large piece of land within the municipality on part of which stands a Church Hall used for religious services by a body known as the Exclusive Brethren. In earlier proceedings between these same parties the Full Court of the Supreme Court of New South Wales held that the land on which the Hall stood was exempt from rating by virtue of section 132 (1) (d) (*Joyce v. Ashfield Municipal Council* (1959) 4 L.G.R.A. 195) but at that time the land which is the subject of this appeal had not been acquired by the respondents. It was bought by them in 1963 and, as is now accepted, was held upon the trusts of a Deed dated 27 November 1945 which contained the following provision:

"The Trustees shall hold the trust property upon trust to employ it for any charitable purpose or purposes which the Trustees may from time to time in their absolute discretion select."

It was, in the main, vacant land used for parking cars by persons attending services in the Hall.

In the rating years in question the appellant did not levy rates upon the land on which the Hall stood but only upon the adjoining land, and it is their claim to do so that is now in issue.

On the appeal by the respondents against the assessments to the Land and Valuation Court it was held by Hardie J. that the subject land was exempt not only under section 132 (1) (d) (as land "which belongs to any . . . public charity, and is used or occupied by the . . . charity . . . for the purposes thereof") but also under section 132 (1) (h) (i) (as land "which belongs to a religious body and which is occupied and used in connection with (i) any church or other building used or occupied for public worship") [that the Exclusive Brethren are "a religious body" is not now disputed and has been held by the High Court]. The Court of Appeal decided that the land was not exempt under section 132 (1) (h) (i)—on the ground that use for "public worship" was not established, but upheld the exemption under section 132 (1) (d).

The respondents did not appeal against the decision against them under section 132 (1) (h) (i) so that the only question before their Lordships is whether the exemption under section 132 (1) (d) applies. The appellant submits that the 1959 decision was wrong and should be overruled: the respondents support it and would have it applied to the present case.

The text of section 132 (1) (d), in full, is as follows:

"(d) land which belongs to any public hospital, public benevolent institution, or public charity, and is used or occupied by the hospital institution or charity as the case may be for the purposes thereof;".

It is part of a subsection which opens with the words

"(1) All land in a municipality or shire (whether the property of the Crown or not) shall be ratable except . . .".

There then follows a list of categories of exempted land in eighteen paragraphs, some of which are divided into subparagraphs, of a miscellaneous and non-homogeneous character. The list includes what may be called public facilities, such as cemeteries, commons, reserves and public places; land owned by the Crown, subject to exceptions; and land used for "charitable" purposes, as that word is used in the law. Thus there is exempted land owned by the University of Sydney, to which has been added over the years land owned by other new Universities in New South Wales *nominatim*; and land belonging to certain specified types of schools—not all schools. Similarly there are exemptions in favour of religion expressed in carefully limited provisions: as has been noted already these are framed so as to exclude the Hall used by the Exclusive Brethren.

In view of the heterogeneous character of this list, which has been increased over the years by additions and amendments, it is not surprising that the task of the Courts in interpreting individual exemptions is a difficult one. The context of any one phrase, both within its own paragraph, and within the subsection as a whole, gives uncertain and sometimes conflicting guidance.

There has been a certain fluctuation in the trend of decisions such that each side is able to point to authority in its favour. Even today it remains the case that, while an individual problem can be resolved, it is difficult to state general principles which can be guides in the future.

Nevertheless, in their Lordships' opinion, the test of experience has validated certain general considerations within which this and other particular cases can be decided.

First, as to the word "charitable" or "charity" appearing in a statute. After some vacillation, there has emerged a judicial opinion which their Lordships firmly endorse, that a strong presumption exists in favour of their interpretation in a legal sense. By this their Lordships mean the interpretation given by the House of Lords in *Pemsel's case* (*Commissioners for Special Purposes of the Income Tax v. Pemsel* [1891] A.C. 531).

It was there laid down that the words "for charitable purposes" and "charity" have a clearly defined legal meaning in English, and, since that case, United Kingdom law, *i.e.* a meaning which is to be derived from that which the courts, including particularly the House of Lords in *Pemsel*, placed upon that expression by reference to the "index or chart" provided by the preamble to the Statute 43 Eliz. 1 (1601).

Thus, Lord Herschell (at p. 570):

"It is said by the respondent that the expression 'trust for charitable purposes' is well known to the law of this country, and has acquired, by a current of decisions in the Court of Chancery, a clearly defined meaning which has been recognised and adopted by the Legislature in numerous enactments, and that the same meaning ought to be attributed to it in the Income Tax Act. There can be no doubt that the words in question have, in the law of England, and of Ireland also, the well-defined meaning alleged".

Lord Macnaghten (at p. 580):

"That according to the law of England a technical meaning is attached to the word 'charity', and to the word 'charitable' in such expressions as 'charitable uses', 'charitable trusts,' or 'charitable purposes', cannot, I think, be denied."

Lord Watson clearly took the same view (*l.c.* p. 555) for himself, as well as concurring in the opinions of Lord Herschell and Lord Macnaghten. Lord Morris concurred "unreservedly" in the opinion of Lord Macnaghten (p. 592). It is hardly necessary to add to this the reminder, from Lord Macnaghten, that

"in construing Acts of Parliament, it is a general rule . . . that words must be taken in their legal sense unless a contrary intention appears" (*l.c.* p. 580).

In Australia, after a period in which the courts showed some willingness to accept an alternative and narrower meaning for "charity" or "charitable purposes", the strength of the presumption in favour of this legal meaning was reaffirmed both by this Board in *Chesterman v. F.C.T.* [1926] A.C. 128 (a case from New South Wales) and in *Adamson v. Melbourne and Metropolitan Board of Works* [1929] A.C. 142 (a case from Victoria), and by the High Court in *Salvation Army (Victoria) Property Trust v. Shire of Fern Tree Gully* (1952) 85 C.L.R. 159 (a case from Victoria). In that case the joint judgment of Dixon J., Williams J. and Webb J. contains the passage:

"There has been, perhaps, too great a tendency in the Australian courts, as the Privy Council rather hinted in *Adamson v. Melbourne and Metropolitan Board of Works*, to depart from the legal meaning of 'charitable' on rather slight grounds. Our courts in the future should be slow to do this unless there is a clear indication of a contrary intention". (*l.c.* p. 175)

Second, and as a counterpart of the first, if it is desired to argue that the well-settled legal meaning of "charity" or "charitable purposes" is to be departed from, it is necessary to be clear as to the alternative which is offered. This is said to be the "popular" meaning. This does not mean merely the meaning in vernacular usage: something more is involved than an appeal to such words as might be used by a beggar appealing

for alms, or in an adjuration from the pulpit as to one's attitude to one's neighbours. We are in search for something capable of legal precision in a statutory setting. But, as has been said many times, there is neither clarity or unanimity as to what this "popular" meaning is. The point was discussed in *Pemsel's case*. Lord Halsbury L.C. (who dissented from the decision) said that

"the real ordinary use of the word 'charitable' as distinguished from any technicalities whatsoever, [sic] always does involve the relief of poverty." (*l.c.* p. 552).

Lord Watson, dealing with the argument that "charitable" had, in Scotland, a meaning different from the English legal meaning, said

"I have been unable to find that the word 'charitable', taken by itself, has any well-defined popular meaning in Scotland or elsewhere. It is a relative term, and takes its colour from the specific objects to which it is applied. Whilst it is applicable to acts and objects of a purely eleemosynary character, it may with equal propriety be used to designate acts and purposes which do not exclusively concern the poor, but are dictated by a spirit of charity or benevolence. In the latter sense the meaning of the term is practically, although not absolutely, co-extensive with that which has been attributed to it by the Courts of Chancery." (p. 558).

Lord Herschell, in an illuminating passage too long to quote, rejects the view that "charities" and "charitable purpose" are popularly used in the restricted sense of relief of poverty or giving of alms and gives instances of other institutions which would generally be termed charities. The popular conception, he considers, covers

"the relief of any form of necessity, destitution, or helplessness which excites the compassion or sympathy of men, and so appeals to their benevolence for relief" (p. 573).

He concludes

"The truth is, that the word 'charity' has no sharply-defined popular meaning. It is used at different times in varying senses, broader or narrower" (p. 573).

Lord Macnaghten:

"No doubt the popular meaning of the words 'charity' and 'charitable' does not coincide with their legal meaning; and no doubt it is easy enough to collect from the books a few decisions which seem to push the doctrine of the Court to the extreme, and to present a contrast between the two meanings in an aspect almost ludicrous. But still it is difficult to fix the point of divergence, and no one as yet has succeeded in defining the popular meaning of the word 'charity'." (p. 583).

And the uncertainty of the supposed "popular" meaning has often been remarked on; see *Chesterman v. F.C.T.* (1923) 32 C.L.R. 362, 384 per Isaacs J. ("flexible to an immeasurable degree"); *Hobart Savings Bank and Launceston Bank for Savings v. F.C.T.* (1930) 43 C.L.R. 364, 373 per Dixon J.; *Campbell College, Belfast (Governors) v. Northern Ireland Valuation Commissioner* [1964] 1 W.L.R. 912, 920 ("never defined") and 931 per Viscount Radcliffe.

The possibility of limiting the meaning of "charitable" in some intelligible way to "eleemosynary" objects rests, so far as authority goes, primarily upon two cases. In *C.I.R. v. Scott* [1892] 2 Q.B. 152 the Court of Appeal was concerned with a statutory exemption of

"property . . . applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts".

The leading judgment was given by Lord Herschell who, naturally, referred to *Pemsel's case* and adhered to what he had said there. But he pointed out that the words which immediately precede and follow the words "for any charitable purpose" were unnecessary if those words bore their legal meaning and he therefore concluded that they could not have that meaning. However he added that it was unnecessary and would be undesirable to attempt a definition of what were "charitable purposes"—however widely interpreted they could not cover the case before him. It is clear that this decision is of only limited assistance to the appellant.

In Australia an influential case has been *Swinburne v. F.C.T.* (1920) 27 C.L.R. 377, regarded for some time as an authority supporting a "popular" interpretation of "charitable". The relevant enactment was the Income Tax Assessment Act 1915–1918, section 18(1)(h)(iii) of which allowed deductions of gifts exceeding £5 each to "public charitable institutions in Australia". These words were construed by the High Court as meaning a public institution which affords relief to persons in necessitous or helpless circumstances.

Even if this case stood alone it would be a weak authority in the appellant's favour. In the joint judgment of Isaacs J., Gavan Duffy J., Rich J. and Starke J., which had first referred to *Pemsel's case* as stating the primary and natural meaning of "charitable", what was said was that:

"no technical signification has attached itself, at all events in Australia, to the expression 'public charitable institution'. We are not to pull the phrase to pieces . . .".

The expression had the limited meaning set out above—

"that that is the popular understanding of the phrase is a matter of common knowledge, and so within our judicial cognizance" (p. 384).

At most therefore this was a decision upon a composite expression.

But even as an authority to that effect, it has been seriously weakened. In *Adamson v. Melbourne and Metropolitan Board of Works* it was said, after discussion of *Swinburne's case* and *Chesterman's case*, that

"it is obvious that, although *Swinburne's case* is not expressly adverted to in the report of the *Chesterman case*, it must be regarded as having been overruled by that decision . . . the principle of construction upon which the *Swinburne case* rests is directly opposed to that which forms the foundation of the judgment of this Board in *Chesterman's case*" (l.c. p. 147).

This was also the view taken by Dixon J. in *Hobart Savings Bank and Launceston Bank for Savings v. F.C.T.* (l.c. p. 373). In their Lordships' view *Swinburne's case*, if standing at all, cannot be regarded as an authority of general application.

Third, there is the argument from overlapping or tautology—the argument in effect that, if "charitable" or "charity" has the legal meaning, other specific exemptions would be unnecessary. This argument is given added force when there are other specific exemptions hedged with restrictions: to give "charitable" or "charity" the full meaning would enable exemptions to extend to those same cases without the restrictions. Their Lordships have no desire to minimise this line of argument, which is a perfectly legitimate element in the process of construction and upon which some powerful arguments can be built, e.g. *Y.M.C.A. v. Sydney City Council* (1954) 20 L.G.R. 35 per Sugerman J., *McGarvie Smith Institute v. Campbelltown M.C.* (1965) 83 W.N. (N.S.W.) 191 per Else Mitchell J.

But, as has often been said, in legislation of this kind, conferring exemptions on particular interests, probably with representation in Parliament, overlapping and tautology and insertion of particular words *ex majore*

cautela, are only to be expected and are indeed unavoidable. It is only necessary to refer to Lord Herschell's observations in *Pemsel* (*l.c.* p. 573-4) to establish this point. Furthermore, this line of argument can often be used to produce opposite results. In the present case, if it may be true that some of the specific and restricted exemptions in favour of educational or religious bodies would be covered by "public charity" in its legal sense, it is also hard to resist the conclusion that "public charity" in its popular sense would be almost, if not wholly, contained in the adjoining expression "public benevolent institution". That expression, as later construed by the High Court, means an institution organised for the relief of poverty, sickness, destitution or helplessness—(*Perpetual Trustee Company Ltd. v. F.C.T.* (1931) 45 C.L.R. 224) which seems to leave the minimum of room for "public charity" in any of the suggested popular meanings.

Fourth, there is the argument from authority, and appeal is made to the principle of *stare decisis*. This is a rating case as to which "*res judicata*" and long practice may not apply with the same force as elsewhere. (See *Campbell College, Belfast (Governors) v. Northern Ireland Valuation Commissioner* ([1964] 1 W.L.R. 912 (H.L.)) But the desirability of respecting established authority remains both in the interest of legal certainty and in justice to those bodies and organisations which may have been formed or which may have acquired property upon the basis that an exemption applied to them. If the law as thought to exist were clearly illfounded, it would be the duty of the courts to put it right but hesitation followed by clear conviction is needed before well established exemptions are disturbed.

In this field, of exemptions under the Local Government Act, 1919, there were a number of cases in the courts of New South Wales in which, under the influence of *Swinburne's case*, it was held or assumed that "public charity" in section 132 (1) (d) meant or included an institution devoted to the relief of persons in necessitous or helpless circumstances. The two latest of these were *Fleming v. Randwick M.C.* (1928) 9 L.G.R. 61 and *Randwick M.C. v. Kessell* (1929) 9 L.G.R. 86 (in which however the exemption was granted). These cases could not stand unless the present appeal were to be allowed.

As regards the High Court, *Swinburne's case* was followed by *Kelly v. Sydney M.C.* (1920) 28 C.L.R. 203 upon a different statute and in *Chesterman's case* (1923) (*supra*) it was held by majority that in the Commonwealth Estate Duty Assessment Act 1914-1916 "charitable purposes" had the popular meaning, but this decision was reversed by this Board.

In *Christ College Trust v. Hobart Corporation* (1928) 40 C.L.R. 308 exemption was claimed for a school under a section containing the words "any hospital, benevolent asylum, or other building used solely for charitable purposes" followed by another exemption of "any public school under the Education Act". The court held that the exemption did not apply on the grounds that the legislature having separately applied its mind to schools could not have intended to bring some schools under "charitable purposes", and partly on the *eiusdem generis* rule, which would require "charitable purposes" to be "public" and also for the relief of suffering. The decision is close to the present case but in their Lordships' opinion has been overtaken by the *Fern Tree Gully case* (see below).

In the same year the High Court in *Roman Catholic Archbishop of Sydney v. Metropolitan Water, Sewerage and Drainage Board* (1928) 40 C.L.R. 472 had to consider a section (88 (1)) of the Metropolitan Water, Sewerage and Drainage Act, 1924, (N.S.W.) which contained two exempting

paragraphs. One (*d*) was in similar form to section 132 (1) (*d*) in the Local Government Act, 1919; the other (*h*) exempted land used or occupied solely for religious teaching. It was held that the exemption in (*h*) applied, but two of the learned justices (Isaacs J. and Powers J.) held that the case was not within (*d*) on the ground that "public charity" should not bear its legal meaning but should be read "in the practical sense of today". Higgins J. however dissented from this conclusion:

"The maxims as to *eiusdem generis* or *noscitur a sociis* afford only a prima facie presumption, and the presumption may not stand against the definite rule laid down by Lord Macnaghten in *Pemsel's case*".

Such was the situation up to 1929 and prior to the decision of this Board in *Adamson's case*.

Since then the trend of authority has been clearly and steadily in favour of an interpretation giving "charitable purposes" and "charity" their legal meaning.

The leading authority is that of the High Court in *Salvation Army (Victoria) Property Trust v. Shire of Fern Tree Gully* (1952) 85 C.L.R. 159. The statute involved was the Local Government Act (Victoria) 1946, section 249 of which contained a long list of exemptions mentioning (*inter alia*) specified categories of schools, certain land occupied or used by religious bodies, other objects which might come within the legal definition of charity as well as land "used exclusively for charitable purposes". The land in question was used for a training farm for delinquent boys and homes for difficult, wayward or underprivileged boys. It was held that the lands were used exclusively for charitable purposes and (McTiernan J. dissenting) that the word "charitable" was to be understood in its technical sense. The joint judgment of Dixon J., Williams J. and Webb J. after referring to *Chesterman's case* contains this passage part of which has been quoted:

"The same arguments as were addressed to us on the importance of adopting a construction which would avoid redundancy and tautology and such like objections were addressed to the Privy Council but did not prevail. There is in this case, as there was in that case, no sufficient indication of intention that the word 'charitable' should be given any other than its legal meaning. There has been, perhaps, too great a tendency in the Australian courts, as the Privy Council rather hinted in *Adamson v. Melbourne and Metropolitan Board of Works*, to depart from the legal meaning of 'charitable' on rather slight grounds. Our courts in the future should be slow to do this unless there is a clear indication of a contrary intention." (p. 175).

Fullagar J. delivered a judgment to the same effect: he treated *Kelly v. Sydney M.C. (u.s.)* as a decision which followed *Swinburne's case* and clearly regarded both as superseded by the decisions of this Board in *Chesterman* and *Adamson* (pp. 180-1). The decision is a strong one, since the "popular" meaning had been given to "used exclusively for charitable purposes" in Victoria in *Queen's College v. Melbourne Corporation* (1905 V.L.R. 247) and thereafter the same provision had been three times re-enacted. Nevertheless the court overruled that decision.

This decision, though upon a Victoria statute, has established a clear and unbroken trend of decisions in the courts of New South Wales that the words "public charity" are to be interpreted in the legal sense. Their Lordships will not go through all the cases: apart from decisions of single judges there are those of the Full Court of the Supreme Court in *Joyce v.*

Ashfield Municipal Council (1959) 4 L.G.R.A. 195 and in *Waverley M.C. v. New South Wales Board of Jewish Education* (1959) 5 L.G.R.A. 122 and of the Court of Appeal in *Trustees of the Diocese of Newcastle v. Shire of Lake Macquarie* (1975) 1 N.S.W.L.R. 521. Among the objects which have been held to be within these words are the *Y.M.C.A. of Sydney* (1954) 20 L.G.R. 35 (where Sugerman J. felt himself constrained by authority to uphold the exemption), the *Boy Scouts' Association, N.S.W. Branch* (1959) 4 L.G.R.A. 260, the *New South Wales Board of Jewish Education* (1959) 5 L.G.R.A. 122, the *Kindergarten Union of New South Wales* (1960) 5 L.G.R.A. 365, and the *McGarvie Smith Institute* (for the manufacture of vaccines and the promotion of veterinary science) (1965) 83 W. N. (N.S.W.) 191. If this appeal were to succeed, exemption would be withdrawn from all these bodies, unless they could be brought under one of the other heads of exemption. Their Lordships would have to be firmly convinced that the existing trend of authority was wrong before disturbing these exemptions.

Before their Lordships attempt to summarise their conclusions, there are two other relevant points to consider. The Local Government Act, 1919 was preceded by similar legislation, the Local Government Act, 1906–1908 (N.S.W.). Section 131 (1) of that Act contained a list of lands exempted from rating. Paragraph (b) of this subsection read:

“cemeteries, public hospitals, benevolent institutions and buildings used exclusively for public charitable purposes”.

In other paragraphs there was the usual miscellaneous catalogue of other exemptions. It seems to their Lordships that it would have been difficult to argue that “charitable purposes” had other than the legal meaning, there being no “genus” or “socii” to control the expression. The question then is whether an intention should be imputed to the legislature to change the scope of the exemption when in 1919 reference was made to “public charity”. Learned Counsel for the appellant boldly argued for such an intention—in effect to cut down the previous exemptions to more narrowly defined categories. But no reason was suggested why this should be so and in their Lordships’ view the change can be simply explained by stylistic considerations. When in 1919 the test was stated in the form “land which belongs to . . .” it was inevitable that “public purposes” should be replaced by some such institutional expression as “public charity”. If this is so, there is an additional argument for reading “public charity” in its legal sense.

Secondly, there was an argument based on the use of the word “public”. It was said that this word would be unnecessary—and meaningless—if charity had its legal meaning, since all charities (with minimal and anomalous exceptions) are by definition public in character. On the other hand the word “public” would have sense and meaning if “charity” were used in a popular sense of some institution relieving poverty or distress. But learned Counsel for the respondents was able to adduce an impressive list of references from dictionaries, text books and authorities in support of the view that “charity” and “public charity” are simply synonymous—or, at most, that “public” merely emphasises the requirement of extensiveness of the class to be exempted. See *Byrne’s Dictionary of English Law* (1923) p. 174, *Jowitt’s Dictionary of English Law* (1959) p. 354, *Story, Equity Jurisprudence* (3rd Eng. ed.) 1920, p. 475, *Underhill on Trusts* (11th ed.) (1959) p. 74, and see *Oppenheim v. Tobacco Securities Trust Co. Ltd.* [1951] A.C. 297, 309, per Lord Normand.

It is not surprising that such use of the word “public” should be made in references to “charity” when it is recalled that it figures in one of the earliest and most classical authorities—*A.G. v. Pearce* (1740) 2 Atk. 87.

The will there under consideration had referred to "public charities" and Lord Hardwicke rejected an argument that the use of the word "public" was to distinguish public from private charities—

"I am rather of opinion that the word 'publick' was meant only by way of description of the nature of them, and not by way of distinguishing one charity from another; for it would be almost impossible to say which are publick and which are private in their nature . . . in the extensiveness of the benefit accruing from them they may very properly be called publick charities".

This decision was followed in a case upon the words "public charity" in 1885 (*Hall v. Derby Sanitary Authority* 16 Q.B.D. 163—per Manisty J.) and again in 1915 (*Shaw v. Halifax Corporation* [1915] 2 K.B. 170 (C.A.)). Their Lordships on this point accept the respondents' argument.

Their Lordships are now able to reach a conclusion on the main point in this appeal. It is that, while they have given all due consideration to arguments based on tautology and overlapping, they do not consider that, in this section, these arguments are strong enough or sufficiently decisive to displace the strong presumption that the expression "public charity"—equivalent to "charity"—has the meaning attributed to it in the law by *Pemsel's case* and other authoritative decisions, that the trend of authority in New South Wales since 1929 is strong and uniform in the same sense, that the legislative history reinforces the conclusion, that *Salvation Army (Victoria) Property Trust v. Shire of Fern Tree Gully* (1952) 85 C.L.R. 159 ought not to be overruled in relation to the rating exemption now claimed, but on the contrary affirmed, and held to be a governing authority upon section 132 of the Local Government Act, 1919.

It only remains to notice a particular argument that, even assuming the *Fern Tree Gully* case to be correct and applicable, there is here no "public charity" within the meaning of the section to which the land can be said to belong. On this their Lordships refer to the judgments in *Joyce v. Ashfield M.C.* (1959) of Owen J. and Walsh J. (see Owen J. at 200-1; Walsh J. at 208-214). They cannot improve upon these judgments and they respectfully adopt them.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

**THE COUNCIL OF THE
MUNICIPALITY OF ASHFIELD**

v.

**NORMAN JAMES PELL JOYCE
AND OTHERS**

**DELIVERED BY
LORD WILBERFORCE**