Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Commissioners of Taxation v. *The Trustees of St. Mark's Glebe, from the Supreme Court of New South Wales; delivered the 14th May* 1902.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR FORD NORTH.

[*Delivered by Lord Davey.*]

This is an Appeal from the decision of the Supreme Court of New South Wales, upon a Special Case stated by the Court of Review, under Section 45 of the Land and Income Tax Assessment Act of 1895. The question in substance raised by the Special Case was whether certain glebe lands by Crown Grant vested in the Respondents for parochial church purposes in connection with the Church of England, were in the circumstances stated in the Special Case exempted from assessment for land tax. The Supreme Court decided that the glebe lands were exempted and the Commissioners have appealed.

The decision of the question depends on the construction of Section 11, Sub-section V. of the Land and Income Tax Assessment Act of 1895, which is as follows:—

"Part II.—Land Tax.

"Section 11. The lands and classes of lands "hereinafter specified are exempted from assess- "ment for taxation under this Act, viz.:—

"(V.) Lands occupied or used exclusively for "or in connection with public pounds, public "hospitals whether supported wholly or "partly by grants from the Consolidated

"Revenue Fund or not, and which are not "a source of profit or gain to the users or "owners thereof, benevolent institutions, "public charitable purposes, churches, "chapels for public worship, universities, "affiliated colleges, the Sydney Grammar "School, mechanics' institutes and schools "of arts and lands on which are erected "public markets, town halls, or municipal "council chambers or any lands the property "of or vested in any council or municipality, "public hospital, university, or affiliated "college."

Are the lands in question "occupied or used "exclusively for or in connection" with public charitable purposes or a church?

The lands (in area about 40 acres) were vested in trustees appointed under an Act of 8 Will. IV. No. 5 by Crown grant of 3rd June 1857. The object of the grant was therein stated to be to promote religion and education in New South Wales and the trusts were declared to be "for "the appropriation thereof as the glebe annexed "to the Church of England" at Green Oaks Darling Point and known as St. Mark's in conformity with the provisions of the said Act and of another Act of 7 Will. IV. No. 3 so far as applicable.

By Section 21 of the Act 8 Will. IV. No. 5 trustees were empowered with certain consents to demise glebe lands for terms of years and apply the rents and profits (1) in paying an annual sum of 150*l*. a year to the officiating minister of the church as an allowance for the glebe (2) in building or enlarging the church to which the glebe is annexed or a residence for the clergyman (3) in or towards building or enlarging a church in another place in the same township or district and paying a stipend to the officiating minister (4) with the consent of the bishop in or towards the building of other churches and

residences for clergymen and endowing the officiating minister thereof.

Pursuant to this power the glebe lands of St. Mark's have been sub-divided into blocks for sale or to let on building leases. Some of the blocks have been demised by the Respondents on building leases and the lessees have erected private dwellings thereon. Others of the blocks have been demised on building leases but have not yet been built on and the balance of the lands are waste lands and are not (to use the language of the Special Case) "physically occupied or used for " any purpose."

On these facts the Supreme Court has held that the lands are "used in connection with" the charitable purposes of the Crown grant. It cannot be denied that the words in themselves and without a context are capable of that construction. But reading the whole of the Section 11, Sub-section V. of the taxing Act their Lordships think that the words point rather to the use and occupation of the land itself and do not *primâ facie* apply to the use or purpose to which the rents and profits derived from the land may be applied. A private dwelling-house is used and occupied by the owner or lessee of it as a residence for himself and his family and it would in the opinion of their Lordships be a forced construction to say that it was used by the lessors for their own purposes because they apply the rent which they receive in a particular way. If it be said that the land is used by the trustees though not by the lessees for the charitable purpose the answer would seem to be that the land is strictly speaking not used by the trustees at all. They have parted with the use and occupation of it during the term of the lease. It is the money derived from the rents and profits which they use and not the land. Looking at the context it is to be observed that lands used " for or in con- " nection with " public hospitals universities and affiliated colleges are in the first instance

exempted and later in the section as a separate exemption "lands the property of or vested in" any public hospital university or affiliated college are also exempted. According to any admissible use of language the latter exemption must be intended to cover something not included in and different from that comprised in the first exemption. But there is no similar exemption of land the property of or vested in churches or charitable trustees generally. The words "for "or in connection with" (say) a hospital or a church are probably intended to include not only the actual site of the hospital or church but also other buildings or land occupied in connection with the principal building as for example land used for a residence for the head or minister or a room for church meetings or other similar purposes.

In short their Lordships while admitting that the words are not free from ambiguity think that they should be construed strictly. If it had been intended to include all lands which are vested in or held as an endowment only of churches grammar schools and the like they cannot think that the Legislature would not have found apt words to express its meaning.

As to the lands which are not let the Special Case finds that they are not occupied or used for any purpose. They are not therefore on the construction which their Lordships have given to the words of the section within the exemption.

Their Lordships will therefore humbly advise His Majesty that the order of the Supreme Court should be reversed and question 1 in the Special Case should be answered in the affirmative and questions 2 and 3 in the negative and that the present Respondents should pay the costs of the hearing in the Supreme Court. The Appellants will pay the costs of this Appeal, regard being had to the terms on which special leave to appeal was given.