

1976, 23

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IN THE PRIVY COUNCIL

19 OF 1976

ON APPEAL FROM THE NEW SOUTH WALES COURT OF APPEAL

BETWEEN:

THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

Appellant

AND:

NORMAN JAMES PEEL JOYCE,  
THOMAS WYNN HEANEY, AUSTIN KEITH SMITH,  
JOHN NELSON JOYCE and FRANCIS ROBERT  
HEANEY

Respondents

## RECORD OF PROCEEDINGS

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SOLICITORS FOR THE APPELLANT

G.M. Laurence Larkins & Hazard,  
247 George Street,  
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SOLICITORS FOR THE RESPONDENTS

Allen Allen & Hemsley,  
2 Castlereagh Street,  
SYDNEY.

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IN THE LAND AND VALUATION COURT

CORAM: HARDIE, J.

FRIDAY, 31st JULY 1970

JOYCE & ORS v. ASHFIELD MUNICIPAL COUNCIL

(Four appeals)

MR. MORLING, Q.C. with MR. BURCHETT appeared for the appellants

MR. RATH, Q.C. with MR. MELVILLE appeared for the respondent

(Mr. Morling outlined to the case for the appellants to his Honour.)

10

MR. MORLING: I will be contending that the rate assessments in question are in valid because of the ground stated in the Notice of Appeal, which is s.132(1)(d), and also because of s.132(1)(h)(i)(iii). (Read). It is my view .... (interrupted).

MR. RATH: I would like my friend not to state his views, but to act in a strict way as an advocate. I do not know what my friend wishes to do.

HIS HONOUR: I would interpret what Mr. Morling has said as an intimation he proposes in due course to submit he is entitled to rely upon another subsection.

20

MR. RATH: If that is what he wants to say, he can put it in that way. In view of the beliefs his clients have, and in view of the way in which the prior case was conducted, they could not rely on this ground because it was contrary to their beliefs so to do,

MR. MORLING: I trust I am opening as an advocate.

HIS HONOUR: You are foreshadowing some application to amend your grounds of appeal.

30

MR. MORLING: Yes. It is my view s. 133 only involves the lodging of a notice of appeal on the grounds of non-rateable. (Ordinance 5 in part read). I submit your Honour is required under s.133 to determine an appeal against the rateability of land.

HIS HONOUR: You will be making that submission in due course?

MR. MORLING: Yes.

HIS HONOUR: Why not make it as a submission instead of as your point of view?

40

MR. MORLING: Because your Honour might be misled by an appeal which limits the alleged ground of rateability to subsection (1)(d).

HIS HONOUR: You are giving the Court and Mr. Rath notice you will be contending you are not bound by the specific ground set out in the notice of appeal. The point before the Court is whether it is exempt or not.

MR. MORLING: Yes.

NORMAN JAMES PEEL JOYCE  
On affirmation:

10

MR. MORLING: Q. What is your full name?

A. Norman James Peel Joyce.

Q. Where do you reside?

A. 7 Willee Street, Enfield.

Q. What is your present occupation?

A. I am retired.

HIS HONOUR: Q. What were you before you retired?

A. A merchantman.

MR. MORLING: Q. In days gone by you were what?

A. A manufacturer earlier.

20

HIS HONOUR: Q. Of boxes? A. No, calico and hessian bags.

MR. MORLING: Q. You are one of a body of people commonly referred to as Plymouth Brethren. (Objected to - rejected at this stage.)

Q. Do you from time to time meet with people for what I might call religious purposes? (Objected to - allowed.) A. Yes.

Q. For how long have you been so meeting?

A. About fifty-five years.

30

HIS HONOUR: Q. Not with the same people over fifty-five years, I take it? A. Some have died and others have been born.

Q. Has there been so meeting at the same place or places? A. Yes.

MR. MORLING: Q. You have lived substantially all your life in Sydney, have you? A. Yes.

Q. Have you been one principal place where you have met in the last few years for religious purposes?

A. Yes.

40

MR. RATH: I gather this is covered by my last objection.

HIS HONOUR: Yes.

MR. MORLING: Q. Where have you met? A. We have met in a number of halls, but principally the hall called the Ashfield Hall at Orchard Crescent, Ashfield.

Q. Up to how many people have met with you on those occasions? A. Up to about 2,500.

HIS HONOUR: Q. All at once? A. All at once. Not that many regularly, but up to that.

10

Q. Could you fit 2,500 into your hall? A. Yes. It is a squeeze, but we can.

Q. When did you last have 2,500 in it? A. About five or six months ago we had that many.

MR. MORLING: Q. Have you met elsewhere away from the hall for religious purposes with other people?

MR. RATH: I submit that would be covered by the same objection.

HIS HONOUR: It will be noted you are objecting to all these questions that use the phrase "meet for religious purposes".

20

MR. MORLING: Q. Have you met at places other than the Ashfield Hall for religious purposes? A. Yes.

Q. Over the 50 years or so? A. Yes.

Q. And in other places in Sydney? A. Yes.

Q. And outside the metropolitan area? A. Yes.

Q. And in any other States of Australia? A. In all the other States. Not the Northern Territory, but all the other States.

HIS HONOUR: Q. Are you speaking about yourself?

30

A. Yes.

MR. MORLING: Q. In other countries of the world?

A. Yes.

Q. Would you tell his Honour what countries of the world you have met for religious purposes? A. Italy, Switzerland, France, Germany, Holland, Sweden, Norway. Each part of Great Britain, that is England, Scotland, and Northern Ireland. South Africa, Canada, United States. Some years ago at Ceylon. New Zealand.

HIS HONOUR: Q. Not in South America, I take it?

A. I have not ever visited South America .....  
(interrupted).

HIS HONOUR: No.

MR. MORLING: Q. At the meetings in Ashfield and elsewhere have there been meetings conducted and people present? A. Yes.

Q. Has there been any significant difference between the type of meetings held in Ashfield and those held in other places in Australia? A. No, no difference. 10

Q. I am not referring to the precise detail of the particular meeting, but the sort of thing which has gone on. A. It would be the same in character.

Q. Does that sameness of character apply to the meetings held in the other countries of the world? A. Yes.

Q. Have you ever heard of the term "Plymouth Brethren"? A. Yes. 20

Q. In respect of what class of people have you heard it applied? A. To persons ... (Objected to in this form - withdrawn).

Q. Have you heard the term applied in respect of persons meeting for religious purposes at the meetings you have just described to his Honour throughout the world? A. Yes, I have heard that.

Q. Have you heard of the term "Exclusive Brethren"? A. Yes.

Q. Have you heard that term applied to people meeting for religious purposes at the type of meetings you have just described to his Honour? A. Yes I have. 30

Q. Can you tell his Honour from your own knowledge approximately how many places in the Sydney metropolitan area there are where persons whom you have heard described as being Plymouth Brethren and Exclusive Brethren met in the 1967-68 period? (Objected to - rejected in this form).

HIS HONOUR: What you want to find out from the witness now is in how many places in Sydney ... (interrupted). 40

MR. MORLING: I said the metropolitan area, where persons whom he has heard described as Plymouth Brethren were meeting in 1967-68.

HIS HONOUR: Where he has personally been himself?

MR. MORLING: Yes, by being there.

MR. RATH: I submit it is a significant matter for your Honour to know whether this is the name these people call themselves or the name given to them by some outsider, and for that reason I submit there is built into a question of this sort an hypothesis.

HIS HONOUR: Woulldn't it be possible at this stage to find out from the witness where he has mixed with people for religious purposes in the metropolitan area in the last few years? 10

MR. MORLING: Yes.

Q. Would you tell us suburb by suburb where you have mixed with people for religious purposes in the ten years before 1968? A. Thornleigh. Two different locations in Beecroft, one at West Pennant Hills. There would be three in the Epping suburb. At Eastwood. At Carlingford. Three in Ryde. Turramurra. Gordon. Lindfield. Chatswood. North Sydney. Lane Cove. Carlton. Haberfield. Two at Ashfield in addition to this one in question. At Croydon Park, two. Lakemba, two. Croydon, three. In Strathfield, four. Fairfield, two. Parramatta, one. Wentworthville. That is all I can recollect at the moment. 20

HIS HONOUR: Q. You have not mentioned any in the eastern suburbs? A. That is correct.

Q. You have not been to any in the eastern suburbs?  
A. Not in recent years.

Q. During the period Mr. Morling referred to?  
A. Yes. 30

MR. MORLING: Q. Would you like to go back? Have you been to meetings in the Eastern Suburbs? A. Yes.

Q. Where? A. Woollahra, and that moved to Bondi Junction. Only one meeting, as we call it, in that area, that I can recollect being to.

HIS HONOUR: Q. Would the bulk of these meetings that you have referred to have been in private homes, or halls or some other sort of structure or in the open air? A. They would have been in halls in almost every case. 40

Q. But in some isolated cases in private homes?  
A. Yes.

Q. Not in the open air? A. Not regularly, on any fixed occasion, in the open air, but many open air impromptu occasions. Many such.

Q. Impromptu meetings with people for religious purposes? A. The preaching of the gospel.

MR. MORLING: Q. What form would that take? A meeting on the street corners? A. Yes, two or three persons.

HIS HONOUR: Q. Two or three persons doing the preaching or two or three persons listening, or two or three persons in both groups? A. Two or three persons doing the talking, and the listeners a varying and moving audience. 10

Q. Have you ever done any of that yourself?  
A. Yes.

Q. Do you do that regularly, or did you do it regularly in the period Mr. Morling asked you about?  
A. Not on fixed days but frequently perhaps over two or three weeks, many times during the year.

Q. Does the preaching take the form of the spoken word only? A. Yes. 20

Q. No singing? A. No.

Q. Does the preaching take the form of reading from a document or a book? A. No, quotations from the book.

Q. Quotations read from a book in your hand in front of you, or quotations from a book you know by heart? A. Quotations from the book known by heart, but often in our hands in case needed.

Q. Often in your hands? A. Yes. 30

MR. MORLING: Q. What book is that? A. The Holy Bible.

HIS HONOUR: I did not hear that.

WITNESS: A. The Bible.

MR. MORLING: Q. Have you seen such books in the possession of people at the meetings held at religious halls? A. Yes.

Q. Can you tell his Honour the percentage of the people holding such books in their hands? Would it



be X or Y per cent? Would it be 100 per cent or not?

A. 100 per cent.

HIS HONOUR: Q. For the purposes of having these books at the meetings do the people bring the books with them or do they obtain them from the hall or house to which they go? A. Habitually they bring them with them.

Q. At your hall in Ashfield that is the subject matter of this litigation or related directly to it, do you have some books available as spares for those who have lost their own book or forgotten to bring it with them? A. Yes. 10

MR. MORLING: Q. Do you have hymn books? A. Yes.

Q. Have you been personally to meeting places outside the metropolitan area in New South Wales in the ten years before 1967-68? A. Yes.

Q. Think for a moment, and to the best of your recollection could you give his Honour an approximate number of such places outside the metropolitan area in New South Wales? A. Just a quick estimate, I would say fifteen. 20

Q. Geographically are you able to indicate the locations of those 15? North, south, east or west, without stating the exact locations? -

HIS HONOUR: Not east.

Q. Is there one at Lord Howe Island? A. No. The most northerly would be Armidale. The most southerly would be Leeton. The most westerly would be Lake Cargelligo.

MR. MORLING: Q. Any in the Wollongong area? A. Yes. 30

Q. And the Newcastle area? A. Yes.

Q. During what years did you visit meetings in the United Kingdom? A. 1931, 1950, 1964 and 1966.

HIS HONOUR: Q. Did you start going to these meetings you have referred to as a child? A. Yes.

Q. Or did you commence going to them in your teens or your adult years? A. As a child.

Q. Did you go with your parents originally?  
A. Yes.

Q. Where was that? Which particular hall or 40

private home, do you remember? Your earliest recollection? A. That hall was at Ashfield but it has been demolished now.

MR. MORLING: Q. A hall on the other side of the railway line? A. It is now the Leagues Club I think.

Q. It is now the Catholic Club, is it not? A. The Catholic Club, is it? Near the railway line in Liverpool Road.

Q. There was one up where the Leagues Club is was there? A. Yes, I believe it is the Leagues Club. 10

Q. Wasn't there a hall at which people met for religious exercise with you over in Charlotte Street?  
A. Subsequently to what I mentioned earlier.

Q. That is now the Catholic Club? A. Yes.

Q. In your visits to the United Kingdom, can you tell me approximately how many separate meeting places you went to? A. Yes.

HIS HONOUR: Q. More than one or more than a dozen? Very generally. A. It would be something like 50 or 60. 20

MR. MORLING: Q. In the United States how many?  
A. Twenty.

Q. Would you like to lump together all the other countries of the world, excluding those you have just referred to, and give his Honour the approximate number of meeting places which you have personally attended, and at which meetings have been held whilst you were there? A. If we include New Zealand it would be about another 60. 30

HIS HONOUR: Q. When you met for religious purposes say in New Zealand, did you do any preaching yourself?  
A. Yes.

Q. And on other occasions you were a member of a congregation, were you? A. Yes.

Q. You were active as a preacher on some occasions were you? A. Yes.

Q. Also in America? A. Yes.

Q. What about Great Britain? A. Yes.

Q. What about here in Sydney? Have you had people 40

for religious purposes with you and others who have come from England or America or New Zealand? A. Yes.

Q. Have they on some occasions taken part in preaching? A. Yes, they have.

Q. Has the person who has done the preaching on those occasions been given a different title or from those just listening? A. No.

Q. Is it always a man? A. Yes.

Q. No women preach? A. No. 10

Q. But women pray? A. Not aloud. They do not pray aloud.

Q. But they do in fact listen? A. Yes.

Q. And pray silently? A. Yes.

Q. At an average meeting at Ashfield what would be the proportion roughly of men and women amongst those meeting there? A. Just a small number of women and the men. Not much difference. Perhaps 48 and 52 per cent each.

Q. Substantially an equal number? A. Yes. 20

Q. And substantially husband and wife? A. Yes, and family.

Q. And sons and daughters? A. Yes.

(Short adjournment.)

(Four Notices of Assessment tendered and marked Exhibit "A".)

MR. MORLING: Q. Before the adjournment you were giving a long list of meeting places which you have attended. Could you give his Honour an indication of the approximate number of people who have attended meetings in the metropolitan area at the places you mentioned? 30  
If you have to give a range, would you give a range?  
If you went to a meeting at West Pennant Hills would there be of the order of so many people there on any one occasion? How many people roughly would there be on any one occasion? A. Forty or fifty.

Q. Would there be less at any other meeting places?  
A. A little less at some.

HIS HONOUR: Q. And more at some? A. A little more at some.

Q. Forty to fifty would be a pretty good average would it? A. Yes.

Q. In an average suburb or average area? A. Yes.

Q. What would be the largest? I am not talking of an abnormal occasion such as when you had 2,500 packed into the Ashfield Hall. What would be your biggest normal group? A. About sixty would be the biggest. 10

MR. MORLING: Q. I want to ask you a few questions about the normal groups. Are you personally familiar with the meetings held at the Ashfield hall? A. Yes.

Q. Would you start at Sunday morning and give his Honour a description of the times at which meetings are commonly held at that hall, and the numbers of people who would normally attend each individual meetings? (Objected to).

MR. RATH: I would suggest the year we are concerned with is the rating year 1968. 20

HIS HONOUR: Yes. If the witness is able to get his mind to that year it would be desirable.

WITNESS: I am trying to recollect the change about that time. I think it would be right to say the meeting commenced at 9 o'clock.

MR. MORLING: Q. On Sunday morning? A. Yes.

Q. What do you call the meetings? A. We call it the Breaking of Bread.

HIS HONOUR: Q. Do you call it a meeting or a service? A. A meeting for the Breaking of Bread. 30

MR. MORLING: Q. Has there been any difference in the physical layout of the parking area or of the hall from 1967 to date? A. No major one, no.

Q. In 1968 was there one main hall? A. Yes.

Q. You said there was a Breaking of Bread. Are there other offices associated with the hall? A. Yes, there are passages for hanging coats and hats, and toilet blocks. A rest room and a room where mothers can take their children, and alongside is the caretaker's cottage, the cleaner's cottage or whatever it may be. 40

Q. Is there a dais at the end of the hall? A. At the side of the hall we have it now for convenience.

Q. In 1968 I am asking you about? A. Yes.

Q. How is the interior of the hall set up? A. A very long dais at the side of the room, which would have been installed about the beginning of 1968 I think with room for three rows of chairs, one slightly elevated to the other.

Q. On the dais? A. Yes. The rest of the chairs in the body of the hall, other than the two galleries, would be set in a form which would direct the occupants of the chairs to be looking at the dais. The two galleries, what we call the north and south galleries, are of bench type seats, the north gallery facing south and the south gallery facing north. 10

Q. Was there some change at some stage? A. Yes, earlier than that we did have a dais in the more usual position for a hall, at one end, at the northern end. That dais was some years ago converted to seating, and the fresh one put in its place. 20

Q. Coming to the Breaking of Bread meeting which I think you said was in 1968 held at 9 a.m. on Sunday - is that right? A. Yes.

Q. In that year approximately how many people would attend that meeting? A. About average. About forty.

Q. From what geographical area would those folk come? (Objected to - withdrawn).

Q. Were you personally attending Breaking of Bread meetings in 1968? A. Not at that room. Not at that hall. Regularly I mean. 30

Q. Had you been from time to time or ever to a Breaking of Bread meeting at that meeting place?  
A. Yes.

Q. Did you recognise any of the people at that meeting? A. Yes.

Q. Many of them or just a few of them? A. All of them.

Q. Did you know where they lived? A. Yes. 40

Q. Could you tell his Honour the broad geographical area from which they came?

A. From perhaps threequarters of a mile or perhaps a mile radius.

Q. All my questions relate to 1967-68. How long did the Breaking of Bread meeting take? A. An hour or a little over.

HIS HONOUR: Q. How many people would be in the three rows of chairs on the dais, approximately? A. That meeting would not use the dais at all. It would be held in the centre. Some chairs in the centre would be moved to make a little circle, two or three circles in the centre of the hall.

10

Q. Would there be preaching of some sort or reading from a book? At the Breaking of Bread meeting?

A. Usually it would include a reading from the book.

Q. The book being the Bible? A. The Bible. The meeting would, after the taking of the Lord's Supper, be largely worship in a vocal sense and singing hymns.

Q. Would there be one person leading the vocal worship? A. No.

20

Q. All would read the same thing or say the same thing in the vocal worship? A. No, each would worship vocally as he felt led at the time, according to an underlying thread, an underlying - I cannot get the right word. The worship sort of flows along certain lines.

Q. There is nobody leading the vocal worship but in fact it works out pretty well all the people at the meeting are saying the same thing? A. Yes.

30

Q. Expressing the same thoughts or the same aspiration or the same prayer at the same time? A. Except there is a certain progression. Not exactly the same. There is a sort of progression in the worship.

Q. Is there any music as a background to the vocal praying you have told us about? A. No.

Q. Is there any music as a background to accompany the singing of hymns on these occasions, the Breaking of Bread meetings? A. No.

Q. Is there any music at any of your meetings? A. No.

40

Q. Have you an organ in your Ashfield Hall? A. No.

Q. No organ in any of them? A. No.

Q. No piano? A. No.

MR. MORLING: Q. You use the term Breaking of Bread. Have you seen those words used in any book? A. Yes, in the Bible.

Q. It may be obvious, but does it include more than the Breaking of Bread? Does it include the taking of wine? A. Yes.

Q. Are these Breaking of Bread meetings meetings at which bread and wine are taken by those present? 10  
A. Yes.

Q. How are they distributed, those elements? Manually by somebody around the room, or do people come to one point, or what happens? A. Manually around the room.

Q. Is that a separate part of the service or is the singing and reading of the Bible part held in conjunction with the taking of the elements? A. Necessarily in conjunction with it. 20

Q. About how long does the Breaking of Bread take?  
A. The whole service takes an hour or just a little over.

Q. This was all the same in 1968, was it? A. Yes.

HIS HONOUR: Q. I suppose you fairly regularly go to a Breaking of Bread meeting or service, do you? You yourself? A. Yes, every Lord's Day.

Q. Does it take, on the occasions when you have been there, the same form on each occasion? A. Yes, wherever I have been. 30

Q. Would the same vocal prayers be said at every meeting? The same prayers, the same text, the same subject matter? A. The same subject matter progressively through the occasion, but there is no repetition, if you understand. There is nothing quoted from memory unless it be a text of scripture in the course of the meeting.

Q. Does somebody select a particular topic or page or chapter or verse from the Bible at the beginning of that service? A. Not at the beginning. 40

Q. During that service? A. During that service someone of the males may feel he would like to read

a short passage and say something about it to encourage the worship.

Q. This would be spontaneous would it? A. Yes.

Q. Never arranged in advance? A. Never arranged in advance.

Q. Does that apply generally to your meetings and your worship? A. Yes.

Q. You do not like to call them services, do you?  
A. Could I refer back to my previous answer? 10

Q. Yes. A. Dealing with meetings of which we have been speaking, there are other types of meetings not yet referred to in the evidence today, where one person may very well suggest a subject or a passage of scripture for discussion, and also there are occasions when one or two or three persons may what we call give an address or a little lecture on the passage of scripture.

Q. And are current affairs and community problems explored or discussed at the religious meetings?

A. Yes, they would come up; they would come up on the discussions on the scriptures at that particular meeting. 20

MR. MORLING: Q. In 1968 at what hours, if any, on Sunday, to your personal knowledge were the meetings held at the Ashfield Hall? A. 12 o'clock would be the next occasion when there would be an average of close on 2,000 at that time who would have come.

HIS HONOUR: Q. 2,000? A. Yes. 1800 anyway.

MR. MORLING: Q. For how long had you been personally attending this hall before 1968, particularly on Sundays? A. Since it was built, in 1940 or 1941. 30

Q. Are you able to give his Honour an estimate of how the number of people attending the 12 o'clock service had fluctuated at meetings at which you had been present? (Mr. Rath objected to the word service).

HIS HONOUR: Meeting.

MR. MORLING: Q. Are you able to give his Honour an account of the fluctuation in the number of people attending the 12 o'clock meeting on occasions when you personally have been there from the opening of the hall to 1968? A. The numbers during that time would have multiplied by three or four times. 40

Q. What form did the 12 o'clock meeting take in 1968?



A. It was a meeting at which after a hymn of praise and a prayer a passage of scripture would be read, and a discussion would take place led largely by those who understand the scriptures best, and many questions are arising, questions are raised and it would be closed finally by another hymn and a prayer at the conclusion.

Q. How long would the meeting normally take? In 1968?

A. About an hour and a quarter all told.

Q. Were you personally familiar with many of the people who attended the 12 o'clock meeting in 1968? 10

A. Very nearly all of them.

Q. Were you personally familiar with the general locality of their homes? A. Yes, I would have been in and visited a great many of their homes.

Q. Could you tell his Honour from what area those people came? A. The area would be practically identical with the area of the number of meetings I mentioned earlier, from Turrumurra and Thornleigh in the north to Carlton and Lakemba in the south, and Westward to ... (interrupted). 20

HIS HONOUR: Q. They came from all over to the 12 o'clock meeting did they? A. Yes.

Q. Is that the only meeting at 12 o'clock that is held in the metropolitan area? A. Yes.

Q. That is why you get so many people is it?

A. Yes.

MR. MORLING: Q. This is a simple meeting place, so to speak? A. Yes.

Q. For some meetings, and also serves as the local place of meeting for the people living closer? A. Yes. 30

HIS HONOUR: Q. To your knowledge do some of the people who go to the 12 o'clock meeting sometimes or regularly go to an earlier meeting in their own particular locality? A. I think broadly all of them have been to an earlier meeting.

MR. MORLING: Q. In 1968 did many attend in motor vehicles? A. Yes.

Q. Look at those two photographs. I am not suggesting to you those photographs were taken in 1968, indeed I think they were exhibited in the last case. I show you the first photograph, the smaller of the two. Can you tell his Honour where those cars are standing in relation to the hall? 40

A. They are in the parking area on the east side of the hall, on the eastern extremity of the parking area.

Q. Could you tell his Honour whether the parking conditions shown in that photograph would give a fair picture of the parking position on a Sunday in 1968 at which you attended a 12 o'clock meeting in the hall? And I ask you to assume it is at least 1965, that photograph, if not earlier. A. Yes, that would be so with one exception. It does not cover surrounding streets where there would be some other parking. 10

HIS HONOUR: Q. Some other cars? A. Yes.

MR. MORLING: Q. I show you the second photograph which I ask you to assume was taken at least as early as 1965. Do you see the railway line in this photograph? A. Yes.

Q. And a large number of cars which appear to be parked on railway property? A. Yes.

Q. As well as a larger number of cars parked to the rear of the railway property? A. Yes. 20

Q. Are the parking conditions shown in that photograph different from the parking conditions that would have pertained at a 12 o'clock Sunday meeting at the hall at which you attended in 1966-68? A. It would be very much like that.

Q. Is this the hall on the right hand side?  
A. Yes.

Q. And this is Liverpool Road at the back?  
A. Liverpool Road runs right along there (Indicating on photograph). 30

Q. These buildings would be shops fronting Liverpool Road would they? A. Yes. That is the Ashfield Town Hall. (Indicating).

(Two abovementioned photographs tendered and marked Exhibit "B".)

HIS HONOUR: Q. Was this at a point of time before the appellant had a car park of its own?

MR. MORLING: No. The Brethren have apparently some licence rights, I assume, to use the railway premises for car parking at certain times, and they have their own parking area or a parking area, to use a neutral term, adjacent to their premises. 40

Q. Will you give now to your knowledge all meetings held on Sundays in 1967-68 after the 12 o'clock service?

A. I am trying to recall the times at that time.

HIS HONOUR: Q. Afternoon or night? A. An afternoon meeting for the preaching of the gospel in which one person at that stage would be, by arrangement with someone in the hall who had undertaken that responsibility, asked to take the meeting. It would be arranged with somebody, some brother, some man, of our company, to take the meeting. He would have a hymn and a prayer at the beginning, and read a passage of scripture and speak of the gospel and speak of the Lord Jesus, and invite persons to come under the benefit of what the Bible offers in Christ, and then that would be closed with another hymn and another prayer.

10

MR. MORLING: Q. How long would that meeting take?

A. Again, just a little over an hour at that stage.

Q. At such meetings at which you attended in that period about how many people attended? A. Down to about fifty.

20

HIS HONOUR: Q. This is a local group, I take it?

A. Yes.

Q. The ones from distant suburbs have gone home long before, and do not come back? A. Not on that occasion.

MR. MORLING: Q. Have you been on Sunday afternoons to meeting places other than this one in Orchard Crescent? A. Yes I have.

Q. Have there been similar afternoon meetings at those other meeting places? A. Yes.

30

Q. In broadly the same form? A. Practically identical.

Q. Come back to the Ashfield Hall; are there any Sunday meetings after that afternoon meeting? A. No.

Q. Were you attending from time to time meetings at the Ashfield Hall in 1967-68 during week days?

A. Yes.

Q. Would you tell his Honour when those meetings were held, starting at Monday and going through?

40

A. On Monday evening there would be a meeting for prayer at which there would be a hymn, and most if not all of the men present would pray.

HIS HONOUR: Q. Pray aloud, I take it? A. Yes, aloud.  
They would be supported with responses. Amen.

Q. Would they pray individually or collectively?  
A. Individually.

Q. Reading from a book or not? A. Not reading  
from a book, no.

Q. Would there be any ladies at these meetings?  
A. Yes.

Q. But they do not pray openly, vocally? A. No, 10  
they do not pray vocally. They follow, and would join  
with us all in the response of Amen.

MR. MORLING: Q. Did you say how many attended that  
type of meeting? A. It would be done to about 30, I  
think, because of children doing homework and that  
sort of thing.

Q. Would it take about an hour? A. Yes.

HIS HONOUR: Q. Only adults? A. Children are often  
there, but not many for various reasons.

MR. MORLING: Q. Are similar meetings held in other 20  
places in Sydney? A. Yes, all of them.

Q. And other meetings? A. Yes, on Tuesday evening  
there is another occasion at Ashfield when everybody  
would normally think of coming, and as many as could  
possibly manage it would come.

Q. How many? A. At that stage there would be about  
1100 or just a little over 1000.

Q. At what time? A. 7.30.

Q. How long would the meeting take? A. About an 30  
hour again. Perhaps an hour and ten minutes.

Q. Much the same sort of meeting as the afternoon  
meeting on Sunday? A. No, this would be one of the  
occasions when after a hymn and a prayer two or three  
of the men would come forward and give a short address.  
Read from the Bible, and give a short address on the  
scriptures they read.

Q. You have said from time to time reading from  
the book, the Bible. Has that been the only book used  
at the meetings for this purpose? A. Yes.

Q. This meeting would take an hour or so would it? 40  
A. Yes.

Q. Would many people come in motor cars? A. Yes, I suppose more than threequarters would come by motor car.

Q. Have you observed the condition of the hall carpark - I do not seek to derive any legal assistance from that - on occasions when there has been these large numbers attending the meeting place? A. Yes, I have.

Q. How has it been used? A. It has been very largely filled. (Objected to - rejected). We have volunteer young men ... (interrupted). 10

Q. Have you seen people doing things in the carpark?  
A. Yes.

Q. Doing what? A. I have seen young men guiding drivers into a parking position, which would make it convenient to get as many as possible in, and facilitate departures.

HIS HONOUR: Q. Is that done to your knowledge on Sundays too? A. Yes. 20

MR. MORLING: A. Do you recognise the young men?  
A. Yes.

Q. Where have you seen them? A. In the meeting room and in their homes, most of them.

Q. That was Tuesday night, was it? A. Yes.

Q. Is there any meeting on Wednesday? A. Wednesday night would be similar as to time and number.

HIS HONOUR: Q. Similar to Tuesday or Monday?  
A. Similar to Tuesday. On this occasion after the hymn and prayer someone would suggest a passage of scripture to be read and a discussion would take place. Usually the one who suggests it would give some sort of lead in the line of discussion on the scripture. 30

Q. Do you often assume this role? You yourself?  
A. Not very often. I have done so, but not very often.

Q. Would I be right in thinking it was normally done by the more senior members of the people at the meeting? A. A little more, but not necessarily so. We frequently make use of a person visiting from another part who may have something fresh that he can suggest. 40

Q. You do get visitors, regularly, do you?  
A. There are frequent visitors, yes.

MR. MORLING: Q. What is the position on Thursday?  
A. There is nothing on Thursday at Ashfield.

Q. And Friday? A. Nothing at Ashfield.

Q. Saturday? A. Saturday morning, 1968. I think I would be right in saying at the time of lodging the appeal on Saturday morning there is also a gathering of all available in the city at 9 o'clock.

10

Q. How many were turning up then? A. Normally there would be something like 700 or 800.

Q. Was the carpark used? A. Yes.

Q. How long would the service take? A. About an hour and a quarter.

Q. What type of service was it? A. Usually a service of the reading type but occasionally it could well be a service of the free address type. Once in a month that meeting becomes what we call a Care Meeting, but it could be styled a sort of business meeting when there are bigger numbers again. It would go up to about 1200 or 1100.

20

Q. What goes on at the Care Meetings? In 1968?  
A. The finance of the company would be looked at briefly.

Q. In what way? What would be said about it and by whom? A. At that stage somebody from each of the smaller rooms, each of the meetings in the city.... (interrupted).

Q. You used the expression "rooms". Is that an expression sometimes used? A. Yes.

30

Q. To describe what? A. The smaller meetings or groups, just for convenience.

Q. Is that a word which you have seen described in the book, or does it have any significance to you?

A. No particular significance, no. Just a place for a meeting.

Q. What would be done? Would reports be submitted?  
A. Verbal reports. They would verbally state what amount of money they have left after paying the expenses in their local room, that is left over from the collections taken at the Breaking of Bread meeting.

40

Q. Collections are taken at that meeting, are they?  
A. Yes.

Q. Are they taken at other meetings? A. No.  
Yes, occasionally.

HIS HONOUR: Q. What happens when a statement is made by the various rooms as to their surpluses for the week or for the month? A. That is for all except one of the Lord's Day collections which are in that. The total is stated, and a decision is made what to do. 10  
The first call always is the amount which is paid to the Ashfield Hall Trust for the use of the room by the group gathering.

Q. Wouldn't that be the same amount each month?  
A. The same amount each month. It is just stated very briefly. There is also the amount paid by the company that meets there, who live in the locality, a much smaller amount which they deduct before stating what their excess is.

Q. Is the amount paid over in cash or cheque at that meeting? A. We have varied it. At that time I would say it was paid over by cheque to the Ashfield Hall Trust. 20

Q. At the meeting? A. No.

Q. Later? A. It may be a week or two before someone hands in a cheque.

MR. MORLING: Q. Is that the only Saturday meeting?  
A. Yes, that would be the only Saturday meeting, other than those mentioned earlier.

HIS HONOUR: Q. Are any other financial topics discussed at that monthly Saturday meeting? A. Yes. I mentioned a moment ago there was one Sunday collection not included in the surplus, but on that occasion we decided at the Saturday meeting how much we want for the following Sunday collection, and we decide how we will spend it, and that amount is almost always forthcoming, surprisingly closely, sometimes a little short, sometimes a little over. 30

Q. What do you call each other at these meetings? Mr. or by your surname or brother? Is there any regular procedure? A. No, it could be any of those. 40

Q. What about the lady members? What do you call them? Mrs. or Miss or by their surname or sister?  
A. All of those we use.

Q. The word "sister" is used? A. Yes.

Q. To describe a lady member? A. Yes,

Q. Of the people who go to the meeting? A. Yes.

Q. And that word is used whether they are married or single? A. Yes.

Q. "Sister"? A. Yes.

MR. MORLING: Q. Is that the only Saturday meeting?

A. I did mention one earlier. Two types I have mentioned;

HIS HONOUR: Q. You said a meeting each Saturday did you not? A. Yes. 10

Q. But once a month you have a Care Meeting?

A. Yes.

Q. Which is really a business or financial meeting?

A. Yes. The other meetings each month are meetings of the reading character, or of the free address character.

Q. What about if one of the people who regularly attends the meetings has fallen on hard times? Could that come up at that meeting? A. Yes, it could. 20

Q. Is that the sort of thing you usually discuss, or dealt with in some other way? A. The greater proportion of such cases are attended to by people living nearby.

Q. Without it coming up at a meeting? A. It is not uncommon if something is required in an area where there is not too much ability to help, they say "We need so much for Mr. or Mrs. So-and-So", and we accept what they recommend without question.

MR. MORLING: Q. There are no Saturday night or afternoon meetings? A. No. 30

Q. In 1968 were funeral services held at the hall?  
A. Yes.

Q. Did you attend them yourself? A. Yes.

Q. Various numbers of people attended, did they?

A. Yes. Usually fewer.

HIS HONOUR: Q. What about wedding services?

A. Services in connection with weddings.

Q. Not the celebration of the marriage? A. No.



Q. That normally takes place in the house, does it?  
A. Yes.

Q. The house of the bride? A. Yes, or a registry office.

MR. MORLING: Q. Is it sometimes common for the bride and groom to attend the services ... (Objected to - withdrawn).

HIS HONOUR: Q. There would be some sort of meeting in relation to burials would there? A. Yes.

10

Q. Do you call those meetings? Funeral meetings or services, or have you another name for them? How would you describe them? A. Just a meeting. There has to be a burial, and so we arrange a meeting in connection with it.

Q. The "funeral service" is a phrase you do not use? A. No. There is no objection to it, but we do not use it.

Q. You tend to concentrate on the word "meeting"?  
A. For the reason it is a more intimate word. "Service" is cold, and we know one another and meet one another.

20

Q. This in in line with the idea of everybody participating is it? A. Yes, everybody being livingly in what is going on, even if not vocally.

MR. MORLING: Q. On the occasions of burials how many persons have you personally seen attend such meetings, in 1968? A. It varies considerably at burials, according to accessibility and how persons are able to come. It would vary from 100 on a small occasion to 500 to 600 on a larger one.

30

Q. Have you seen the carpark used on those occasions? A. Always.

Q. Even on the occasions when there are only 40 to 50 people there, have you noticed any use of the carpark? A. It is always used.

Q. You said before the adjournment you had heard the term "Plymouth Brethren" and "Exclusive Brethren" applied to people meeting for religious purposes with you. Were you reading the Sydney newspapers in the years before 1968? A. Yes.

40

Q. In those newspapers at any time was there any reference to the meetings at Orchard Crescent?

A. Yes. (Objected to - allowed).

Q. Did you observe what description was applied to the meetings in Orchard Crescent? (Objection to - rejected).

HIS HONOUR: Q. You have dealt with burials and weddings. Do you have meetings for naming babies? Christening them? A. No.

Q. Baptising them? Is there any meeting that might in some way refer to naming or baptising or christening a child, or is it done later in life? A. It is done in the home. 10

Q. At what age normally? Days, weeks, months or years? A. It varies somewhat, but it would be weeks or months. Not years as a rule.

Q. There is not an associated or related meeting in your hall? A. Not in the hall, no.

MR. MORLING: Q. When you were in business, from time to time did you have discussion with other business men? A. Yes.

Q. Was the term "Exclusive Brethren" or "Brethren" ever used in your conversations with businessmen? A. Yes. 20

Q. In relation to what people? A. In relation to who we were, yes.

Q. In relation to yourself? A. Yes.

Q. In relation to the people who met with you? A. Yes.

Q. Have you ever had any conversations with ordained ministers of religion? A. Yes.

Q. Any one in particular you can think of? What religion? What denomination? A. Yes, speaking recently to the priest of the Anglican Parish of Burwood. 30

Q. Was any use made in that conversation of the words "Exclusive Brethren"? A. Yes.

Q. In relation to what people? A. In relation to myself and the company I meet with.

HIS HONOUR: Q. On any of the occasions Mr. Morling has asked you about, has the phrase "The Brethren" been used without the word "Exclusive"? A. Yes, it has.

MR. MORLING: Q. Is that a phrase which has been used in relation to yourself? A. Yes. 40

Q. And the group of people with whom you meet at meetings? A. Yes.

Q. Have you had social conversation over the years outside your business connections with people, at which conversations the words "Plymouth Brethren" or "Exclusive Brethren" or "Brethren" have been used? A. Over the years, yes, I have.

Q. In relation to what persons have those expressions been used in those conversations? A. One comes to mind of an occasion when I was spoken to by a gentleman who had a meal at the same table as I did at an eating place in the city, who had noticed I was reading a book, and inquired about it. 10

Q. Is the same reference made with people who meet with you? A. Yes.

Q. Have you interested yourself in reading encyclopaedias in relation to religious matters? A. A certain amount, yes.

Q. Any particular one you can tell his Honour about? A. Yes, I read Chambers Encyclopaedia on some matters. 20

Q. Any matters under the heading of "Brethren" or "Plymouth Brethren" or "Exclusive Brethren"? A. Yes.

Q. Have you recognised in your reading under those headings any similarities between the type of meetings which you have spoken about and the meetings referred to under those headings? (Objected to - rejected).

HIS HONOUR: Am I right in thinking and understanding from your evidence it is not your habit to use the word "religion" or the adjective "religious"? Do you ever use the word "religion" in your conversation, or the adjective "religious"? A. We would not use the word "religion" in our conversation, but the word "religious" would sometimes be used. Not necessarily in a good sense. Having in view what would be found in the dictionary it sometimes means an assumption of a ground which may not be genuinely held. 30

Q. "Religious" to you does tend to convey a rather unfavourable impression rather than a favourable impression of a situation or problem you are dealing with? A. It is often used that way. We have what the scripture says of it. The word is used there. If I may quote from memory what it says is "Pure religion and undefiled is to visit the fathers and the widows in their affliction". 40

MR. MORLING: Q. Would you look at that copy document. Have you had before today occasion to read in the relevant volume of the encyclopaedia from which that is taken the article under the heading - what is it?

A. "Brethren. Plymouth".

Q. What encyclopaedia is that? A. It is a photostat from a copy of Hastings encyclopaedia on religion and ethics.

HIS HONOUR: Q. Is that an American or English publication, or what sort of a publication, do you know?

10

A. No.

MR. MORLING: Q. Do you recognise any similarities in the beliefs and practices of yourself and those who meet with you at Ashfield, to the beliefs and practices referred to in that article? A. Yes I do.

Q. Relating to Exclusive Brethren? A. Yes.

Q. Is it a slight similarity or a marked similarity? (Objected to).

(Document tendered. Tender objected to. Allowed by his Honour as evidence of something the witness has read, but no evidence as to the truth of the matters published. Document marked Exhibit "C".)

20

HIS HONOUR: Q. I take it you have not made a close study of religious subjects or comparative religion?

A. No, not of comparative religion.

Q. Have you made a fairly close study of the Bible and matters that arise at your own meetings? A. Yes, that and quite extensive writings connected with it, with the scriptures I mean.

30

Q. You are referring to the writings of one particular person? A. Not solely, no.

MR. MORLING: Q. I show you a plan (shown). There is shown on it an area of land being described as involved in Volume 5574 Folio 186? A. Yes.

Q. There is a hatched area on that section of land? A. Yes.

Q. Is that the location of the meeting hall? A. Yes.

40

Q. Is there a caretaker's cottage a little to the east of it? A. Yes.

Q. That is shown also hatched? A. That is correct.

Q. Is there road access to it by Orchard Crescent?  
A. Yes, and Drakes Lane.

Q. Is Orchard Crescent the street that leads up near the railway line? A. Yes.

Q. Drakes Lane leads off Hercules Street? A. Yes.

(Certificates of Title Volume 5574 Folio 186 tendered; admitted without objection and marked Exhibit "D".)

10

(Caveat No.K981513 tendered; objected to as not having any evidentiary value. Mr. Rath stated that no effect is given to a caveat by the Real Property Act as evidentiary of any trust; pressed; admitted subject to relevancy and marked Exhibit "E".)

Q. I show you this document (shown). On the right hand side there are four signatures? A. Yes.

Q. Do you recognise those? A. Yes, I do.

20

Q. Whose signature is the first? A. This is Dr. J. Shedden Davis.

Q. Who is he, to your knowledge? A. He was one of the trustees of the hall at the beginning of the trust.

HIS HONOUR: Q. Did he go to your meetings? A. Yes, he did go to the meetings and still does.

MR. MORLING: Q. Who is the next one? A. Mr. William James House.

Q. Did he go to the meetings? A. Yes he did. He is now dead.

30

Q. Who is the third one? A. Mr. Oliver Hills, he went to our meetings and still does. The fourth one is Mr. B.A. Molineaux who also came to our meetings until he died.

Q. They are witnessed by Mr. Lancelot Hills, your present solicitor? A. Yes.

(Deed tendered; objected to. Mr. Rath stated the Court was not concerned with the hall; admitted subject to relevancy and marked Exhibit "F".)

40

Q. On the eastern side of the hall there is an area hatched. Is that land which, as at 1968, was owned by somebody quite foreign to the appellants? A. Yes.

Q. As a matter of interest, there are some discussions at the moment about that which do not arise in this case. There is next shown on this plan an area of land noted as "assessment No.2561" and it has "volume 9694 folio 19" against it? A. Yes.

HIS HONOUR: Would you point to it, Mr. Morling? 10

MR. MORLING: Q. Correct me if I am wrong (indicating)?  
A. Yes, that is it.

HIS HONOUR: A big parcel of land.

MR. MORLING: Q. Prior to 1963 what was that land used for? A. It was vacant for a while but before that it was used as a timber yard.

Q. Was it owned by a company called Walters and Sons? A. It was occupied by Walters and Sons.

Q. Does it now form part of the carpark? A. Yes.

(Certificate of Title Volume 9694 folio 19  
tendered.) 20

MR. MORLING: I draw your Honour's attention and my friend's attention to a notation made by the Registrar General of the stamped caveat as is in the register book just tendered. That caveat covered a number of parcels of land of which this is one.

MR. RATH: Although I do not object to it I would suggest that we make some attempt to identify what appeal it relates to. My friend read from his plan that it was the land in assessment No.2561. Assessment No.2561 relates to the prior appeal. 30

MR. MORLING: I am happy to accept my friend's correction, if he can give it. I do not seek to derive any assistance from my question that incorporates a proposition that the land in Certificate of Title volume 9694 folio 19 was the land in assessment No.2561. We are being rated for it and we own it, but it may be the wrong assessment number. Perhaps I can discuss it with my friend during the lunch hour.

MR. RATH: I must object to it. 40

(Tender objected to; admitted subject to relevancy and marked Exhibit "G".)

(Luncheon adjournment.)

ON RESUMPTION:

(Owing to Mr. Morling's indisposition further hearing adjourned until 2 p.m., Tuesday, 4th August, 1970.)

IN THE LAND AND VALUATION COURT

CORAM: HARDIE, J.

WEDNESDAY, 5TH AUGUST, 1970.

JOYCE & ORS. v. ASHFIELD MUNICIPAL COUNCIL

(Four appeals)

(Part heard)

(Deed of rectification dated 4th January, 1968, tendered. Tender objected to. Admitted subject to relevancy and objection and marked Exhibit "H".)

MR. MORLING: It may be when your Honour comes to rule finally on the admissibility of these documents, if your Honour rules them inadmissible, and felt there was insufficient evidence to prove the appellants' case, if the matter reached that stage we would seek leave to have a case stated on the admissibility of the documents, because they could be of critical importance, a critical matter. 10

HIS HONOUR: I think if there were to be a stated case it would want to cover all points and not just this one. 20

MR. MORLING: Yes.

HIS HONOUR: Where do I find a report of the Court of Appeal decision on the last contest?

MR. MORLING: 14 L.G.R.A. 133. There was handed to me last week through the Court staff three Court files which were missing on the last day. These relate to the appeals in respect of the year 1966. I pass them to the custody of your Honour's associate, and we think it desirable these appeals should be heard together. This would involve me asking a couple of questions to relate the evidence given as to 1968, to 1966. These matters have been going for a long time. 30

HIS HONOUR: You have appeals going for the other years now?

MR. MORLING: Yes. All the appeals, that is the 1966 and 1968 appeals originally came before your Honour, I am informed. That was at a time not long after your Honour was sitting on the Court of Appeal for some time, and all matters were transferred from your Honour's list to the list of Else-Mitchell, J. In his list they were all stood over generally, and it was our understanding they were all to be restored last week, but when we came to Court last week there were only before your Honour the 1968 files. These refer to 1966. There are no 1967 appeals. 40



My submission in respect of the deed is that it would be equally applicable for any year, before or after its execution.

HIS HONOUR: These ones that have been found are 1966. The ones we had the other day were 1968. The deed is dated 4th January, 1968, so it is not before any of the years. It is early in the year 1968.

MR. MORLING: I think it is before service of the rate notice of 1968, but it is after 1st January. We would like to get all the matters dealt with. They have been hanging around for four years, the 1966 ones, and we would ask your Honour to hear the 1966 and 1968 appeals together. 10

HIS HONOUR: Have you any objection to that, Mr. Rath?

MR. RATH: I have not a representative of Council here to instruct me on that matter. Perhaps I could suggest this to my friend, that he does ask his further questions which will tie in these 1966 dates. I would not object to them on the ground they cover a wrong year.

HIS HONOUR: It may be as well to do that, Mr. Morling. 20

NORMAN JAMES PEEL JOYCE

On former affirmation:

MR. MORLING: Q. Last Thursday I asked you a number of questions related to 1967 and 1968; in particular relating to the type of meetings held, the numbers of people attending them, the hours at which services were held, and the use to which the car park was then put by people using cars. A. Yes.

Q. With the exception of the time of the 12 o'clock meeting on Sundays is the evidence which you gave as to those facts as at 1967-68 equally true of 1965-66? A. Yes, I believe it would be. 30

Q. Are there any qualifications at all? A. I cannot think of any differences.

Q. The 12 o'clock meeting was then held at 3 o'clock in the afternoon, wasn't it? A. Yes.

Q. As far as numbers were concerned was there any difference in the numbers attending that meeting in the years 1965-66 compared with 1967-68? A. Very little difference. If anything a little more in the earlier years, but very little difference. 40

Q. Do you claim any beneficial interest in the parking area lands? (Objected to - allowed). A. No.

Q. Have you ever claimed any beneficial interest in the land? A. Never.

Q. On whose behalf do you claim to hold it? (Objected to - allowed). A. On behalf of the Ashfield Hall Trust.

Q. Is there any change in that state of affairs since 1963? A. No.

(Plan prepared on land, dated 20th April, 1965, tendered. Tender objected to by Mr. Rath because of the words in the heading on the plan "Plymouth Brethren Church Land at Ashfield" and the words in the body of the plan "Church or Gospel". Abovementioned words deleted and plan admitted and marked Exhibit "J".)

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(Contract dated 15th October, 1963, between H. Walters & Son Pty. Limited and H.J. Proctor tendered and marked Exhibit "K".)

(Contract dated 30th October, 1963, between E.M. Dance and H.J. Proctor tendered and marked Exhibit "L".)

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(Contract dated 28th November, 1963, between F.W. Flowers Pty. Limited and H.J. Proctor tendered and marked Exhibit "M".)

HIS HONOUR: Mr. Proctor is a solicitor, I gather from the documents. Is there any evidence that he belongs to the group?

MR. MORLING: I think the evidence was given that he did go to the meetings.

(Deed of trust dated 15th October, 1963, tendered and marked Exhibit "N".)

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(Photostat of deed dated 30th October, 1963, tendered and marked Exhibit "O".)

(Deed dated 27th November, 1963, tendered and marked Exhibit "P".)

MR. MORLING: Q. I show you Exhibit "M", which is the contract for the purchase of the land from F.W. Flowers Pty. Limited. A. Yes.

MR. MORLING: It is expressed to be Lot 20 in D.P.956. That is a parcel of land having a frontage to Orchard Crescent, and the dimensions in the contract of 30 foot frontage line-up with the dimensions on the plan.

40

HIS HONOUR: Volume 9914 folio 114.

MR. MORLING: Yes. That contract describes the land as having erected on it a weatherboard cottage known as Number 4 Orchard Crescent, Ashfield.

Q. In November 1963 was there anything on that land? A. Yes, there was an old weatherboard cottage.

Q. Is it there now? A. No, it is not there now.

Q. Approximately when was it removed? A. It would be December, or January I think. 10

Q. Well before 1966? A. Yes, well before 1966.

Q. After it was removed what was done with the land? A. It was cleared and levelled.

Q. Was it used thereafter for any purpose? A. We use it for parking.

Q. In the fashion you indicated last Friday?  
A. Yes.

Q. I show you Exhibit "L", being the contract of the purchase from Dance and others. I show you a plan annexed to it. Firstly that contract refers to what is called Lot 2 on the annexed plan. Do you see that? 20  
A. Yes.

HIS HONOUR: Is this the one that is the battleaxe shape?

MR. MORLING: Yes. The land starts at the rear of the Flowers' lot. It has on it a hatched area, which was an existing laundry. There is another hatched area which is not part of the purchase. This is Liverpool Road here (indicating on map).

Q. Lot 2 on the plan annexed to the Dance contract shows that lot running from the rear of the Flowers' lot. Do you follow me? A. Yes. 30

Q. And going across a right of way? A. Yes.

Q. Then it shows another right of way on the Liverpool Road side of the land? A. Yes.

Q. Do you observe a hatched area on the right-hand side of Lot 2? A. Yes.

Q. Is that a building? A. Yes.

Q. Was it an old laundry? A. Yes.

Q. Was it a laundry in 1963? A. Yes.

Q. Can you tell his Honour who occupied it then?  
A. I have forgotten the name.

Q. Were any moneys paid by the occupant of the laundry to the trustees? A. Yes.

Q. For how long were those moneys paid after 1963?  
A. I think from memory about three years. Two years perhaps. Two or three years.

Q. How much was paid? A. I cannot recollect. The way it was paid was ... (interrupted). . 10

HIS HONOUR: Q. Was it paid to Mr. Proctor? A. Cash to Mr. Proctor and Mr. Proctor accounted for it to us.

MR. MORLING: Q. Did you yourself keep any books in relation to the Ashfield Hall Trust? A. Yes.

Q. What books? A. Cheque book and deposit book to start with, and cash book and ledger and journal.

Q. Have you all these books in Court? A. Yes.

Q. I will be tendering many of them in due course. Did the Ashfield Hall Trust have a bank account? 20  
A. Yes.

Q. Which bank? A. The Bank of New South Wales at the Wales House Branch.

Q. You have bank statements in Court going back for some years, have you not? A. Yes.

Q. Into what bank account did you pay the moneys received in respect of the laundry? A. Into that account, the Ashfield Hall Trust Account at the Wales House Branch.

Q. Can you tell his Honour about when it was you last received a payment in respect of the laundry building? A. I think that was 1965. 30

Q. For what purpose was the laundry building used after you last received a payment? A. It was used for a certain amount of storage of old materials belonging to the Ashfield Hall Trust. Chairs to do with the hall.

Q. It is an old two-storey building, is it not?  
A. Yes.

Q. It looks to be very old, doesn't it? A. Yes, 40

it is. Does the question apply to the building only, or the land.

Q. I will come to the land later. Was the building used, apart from storage, for any other purpose?

A. There was a small room at the southern end which it was discovered the vendors did not know had been sub-let to the person who rented part of the Liverpool Road property.

Q. At some stage did he go? A. Yes. 10

Q. About how long after the laundry people went?

A. I think it took six months to a year to bring about proceedings that he should be evicted.

HIS HONOUR: Q. Were proceedings taken in Court?

A. Yes.

Q. Who took the proceedings? Mr. Proctor? A. No. Mr. Hutley (?) or something like that.

MR. MORLING: Q. Who was he? A. A barrister, now a Q.C.

Q. Did you have a solicitor appearing for you? 20

A. Yes, Mr. Proctor was the solicitor.

Q. Mr. Hutley (?) was paid a fee? A. Yes.

Q. From whose funds was he paid? A. The Ashfield Hall Trust.

Q. After that sub-tenant vacated what use was made of the area? A. That is a very small area. We really have not made any use of that.

Q. One room only? A. Yes.

Q. Which floor? A. The ground floor. Facing south. 30

MR. RATH: For the purpose of this case I do not concede that the hall building, the brick hall, is held on the terms of the Ashfield Hall Trust. I point that out to my friend now because it may have some bearing on his present questions.

MR. MORLING: Q. Do you claim any beneficial interest in the hall shown in the plan Exhibit "J"? A. No, not at all.

Q. On whose behalf do you claim to hold that? 40  
A. On behalf of the Ashfield Hall Trust.

Q. Has that always been the position since you became a trustee? A. Yes, always since I have been a trustee.

Q. When did you become a trustee? A. 1948.

Q. At any time since 1948 has the hall been used otherwise than for the purposes you described last Friday in your evidence? A. Never for any other purpose.

Q. Coming to the area of land surrounding the laundry building, what use was made of that after purchase in 1963? A. We removed fences common to our other properties, and used most of the area for additional parking. The small area at the northern end, we put our incinerator there. The incinerator previously was about central in this area. 10

Q. About the middle of the whole land?  
A. Yes.

Q. How long after the end of 1963 was that done?  
A. That would have been done about 1964. We would have done that early. 20

HIS HONOUR: Q. The land acquired from the Dances, did it have a frontage to Orchard Crescent? A. Yes.

Q. The frontage shown in this Exhibit as Lot 21?  
A. Yes.

MR. MORLING: There are further parcels of land referred to in the contract. This is only the first parcel of several referred to in the same contract.

Q. On Lot 2 is shown firstly a right of way about the middle of the lot? A. Yes. 30

Q. Where is that right of way in relation to Drake's Lane? The right of way in the middle of the lot follows upon an extension of Drake's Lane, is that right? A. Yes, in effect it is an extension of Drake's Lane.

Q. At the time of purchase in 1963 was there on that part of Lot 2 between this right of way and Orchard Crescent some old buildings? A. Yes.

Q. Are they still there? A. Yes, they are still there. 40

Q. Are those buildings shown on the plan Exhibit "J"? A. Yes.

Q. Is the building closest to Orchard Crescent a galvanised iron structure open at both ends? A. Yes, east and west.

Q. Can vehicles be driven into and out of it from the surrounding parking area? A. Yes, they can.

Q. Is it used for setting down passengers? A. Yes.

Q. Who are coming to the hall in cars? A. Yes.

Q. More especially in wet weather? A. Yes.

Q. For what other purpose is it used, if any? 10

A. After meetings the personnel, the ladies and gentlemen, congregate there for conversation prior to their getting into their cars again. Cars come in and pick them up.

Q. Is there any fence or other structure to stop people walking from the hall itself across to that shed? A. No, no fence at all.

HIS HONOUR: Q. Do cars park under it sometimes?

A. Just a few.

MR. MORLING: Q. It will only accommodate three or four, wouldn't it? A. Yes. 20

Q. Next to that and between that and the right of way is another galvanised iron shed, is there not?

A. Yes.

Q. Is that still there? A. Yes.

Q. A fairly old structure? A. Yes.

Q. Used for storage? A. Yes.

Q. Of what? A. Chairs and in particular there is quite a large four-wheeled ladder which is used for attending to the lighting in the hall, and it is stored in there. 30

Q. You have a caretaker, you said, who lives in the cottage, did you not? A. Yes, a caretaker cleaner.

Q. Does he have access to the storeroom? A. Yes, he does.

Q. The area on the Liverpool Road side of that right of way is unsealed, is it not? A. Yes.

Q. On the plan annexed to the contract there is

shown a galvanised iron structure?

A. Yes.

Q. Was that at some stage removed? A. Yes.

Q. About when? A. About December 1963. Perhaps January, but I think December 1963.

Q. Was it a very old structure? A. Pretty old.

Q. That is sufficient. Thereafter for what purpose was the land used between the right of way in the centre of the plan and the southern extremity of Lot 2? 10

A. It was used for parking.

Q. In the same fashion as you described in evidence last week? A. Yes.

Q. Where does the second right of way give access to? A. The shops facing Liverpool Road.

HIS HONOUR: Q. Is it fenced off? A. No, it is not fenced off.

MR. MORLING: Pursuant to the same contract there was also purchased land having a frontage of 40 feet to Orchard Crescent. 20

HIS HONOUR: This is Lot 21, is it not?

MR. MORLING: Yes. It is described here as Certificate of Title 1544 Folio 104, and Volume 958 Folio 58. 5 Orchard Crescent.

Q. Was that next door to Flowers, Number 4?

A. Yes.

Q. What was the condition of that land in 1963? Was that vacant? A. Yes.

Q. That has been used as part of the car park since, has it? A. Yes. 30

HIS HONOUR: Q. Was that used to get into the laundry block? A. No, access to the laundry block was via the right of way.

Q. Via Drake's Lane and the right of way? A. Yes.

MR. MORLING: The third contract is from H. Walters and Son Pty. Limited.

Q. That firstly contained Lots 17, 18 and 19 fronting Orchard Crescent, is that so? A. Yes.



HIS HONOUR: Q. What street numbers did these have?

A. I do not know that any were allocated.

Q. Lot 19 appears to be street number 4. A. Yes.

HIS HONOUR: Therefore it was wrong to say Lot number 20 is street number 4.

MR. MORLING: That is how it was described in the Flowers' contract. In addition to 17, 18 and 19 this contract was in respect of part of Lot 13, being the whole of the land in Certificate of Title 4476 Folio 139. That is the same contract. Walters. The third parcel was Lot B in plan transfer G 700418. That goes down to Orchard Crescent. 10

HIS HONOUR: The result of all that is you finish up owning a large frontage to Orchard Crescent, but one parcel is there between the hall and your newly acquired land, is that right? Number 7?

MR. MORLING: That is right. A builder's workshop, not owned by us.

HIS HONOUR: Land shown as Number 7 Orchard Crescent was not acquired. Putting that on one side you appear to have acquired a large area of land practically the same depth from Orchard Crescent as the hall land is. 20

MR. MORLING: That would be so.

HIS HONOUR: Or a bit more in some cases.

MR. MORLING: Yes.

HIS HONOUR: That is what you say is the car park?

MR. MORLING: Yes. I want to ask the witness about the cottage shown on the plan as being Lot 19.

Q. Was there in 1963 a cottage on that land? 30

A. Yes.

Q. Firstly for what purpose was it being used as at 1st January, 1966? A. Being used as a home for the cleaner and caretaker.

Q. The caretaker of the hall? A. Yes.

Q. This is the cottage on Lot 19, is it? I think you may have misunderstood me. A. I am sorry, I misunderstood.

Q. For what purpose was that land being used at

1st January, 1966? A. We had rented it to a company called the Bible and Tract Depot. It is a trust.

Q. For what purpose was it physically being used?

A. They used it as the office of their trust and stored religious books and Bibles, and distributed them from there, and sold them to any one who came and inquired for them.

HIS HONOUR: Q. Was it open all the time or only on occasions when meetings were held in the hall? 10

A. Practically all the time.

Q. Five or six or seven days a week? A. Five days a week.

Q. Did you employ persons to work in that shop or was this done by people who went to your meetings?

A. The Bible and Tract Depot employed persons.

MR. MORLING: Q. Did they pay you moneys for their occupancy? A. Yes.

Q. How much? A. I think \$20 a week.

Q. What did you do with those moneys? A. I put them in the Ashfield Hall Trust bank account. 20

Q. Until what date did the Bible and Tract Depot continue its occupancy? A. I think that was till 23rd April, 1969.

HIS HONOUR: Q. How did you remember it was 23rd April? A. We issued a receipt for it.

Q. You have looked at that receipt, have you?

A. Yes.

Q. To refresh your memory? A. Yes.

MR. MORLING: I suggest it was 28th March, 1968. Certainly it covers the 1968 rating year. 30

Q. The Ashfield Hall Trustees took no part in conducting the Bible and Tract Depot, did they?

A. No.

(Declaration of Trust dated 29th January, 1937, tendered. Tender objected to. Admitted subject to relevancy and marked Exhibit "Q".)

MR. MORLING: Q. Prior to January 1968 and during 1968 were there any toilet facilities in that Bible and Tract Depot building? A. Yes. 40

Q. Were they put to any use? A. Yes.

Q. What use? A. At the larger gatherings in the hall those toilets were made available for use by those moving around the yard in between meetings.

Q. Could one get from the car park into the curtilage of the depot? A. Yes, the gate in the fence would be open, and the door into the building would be open. That is the southerly door,

Q. About how far are the side fences from the side of the cottage? A. On the west it is very close, perhaps 18 inches. On the east it would be about 10 to 12 feet. On the south it would be perhaps about 8 feet. 10

(Eight deeds appointing new trustees tendered. Tender objected to. Admitted subject to relevancy and marked Exhibit "R".)

HIS HONOUR: Q. The James Joseph Joyce referred to in the Declaration of Trust, was he related to you?

A. He was my father. 20

Q. He has passed away, has he? A. Yes.

Q. Was he active at these meetings up till the date of his death? A. Yes.

Q. Approximately when was that? A. I think it was 1942.

Q. He passed away before the 1945 deed was executed?

A. I think that would be correct.

MR. MORLING: Q. Have trustees of the Ashfield Hall Trust from time to time spent moneys since 1963 on the parking area lands? A. Yes, we have. 30

Q. Have you taken out a list of the moneys over the years ended June 1964 to 1970 inclusive? A. Yes, I took out such a list.

Q. Do you also produce a bundle of accounts and receipts in respect of most of the payments going to make up the list? A. Yes.

Q. Do you have available in Court the cash book which shows the payments which go to make up the list?

A. Yes, that is in Court.

(Abovementioned list and dockets tendered.) 40

Q. The dockets relate to what sorts of matters?  
A. Clearing and levelling of the land. Fencing. Installation of gates. A certain amount of paving material. Installation of lighting. Flood lighting.

Q. Payment of electricity from year to year?  
A. No, that is not segregated from the hall. It is attached to the hall mains.

HIS HONOUR: Q. Do you furnish income tax returns in relation to this venture? A. No. We did, but on submission it was unnecessary, the Department excused us from rendering any other returns. 10

Q. You made application for a ruling that you were exempt from tax, would that be right? A. Yes.

VOIR DIRE EXAMINATION:

MR. RATH: Q. From what source did the moneys referred to in these accounts and receipts come? A. They came out of the Ashfield Hall Trust bank account.

(Voir dire examination concluded.)

MR. RATH: I do not object to the tender. 20

(List and dockets relating to expenses incurred in respect of parking area between 1964 and 1970 inclusive marked Exhibit "S".)

HIS HONOUR: Q. Is K. Smith the same as A.K. Smith?  
A. Yes.

Q. Who is he? A. He is one of the trustees.

MR. MORLING: Q. Do you say all those expenses were defrayed from the bank account of the Ashfield Hall Trust? A. Yes, every one.

Q. Look at that document and tell me whether that is a letter which the trustees received from Mr. Proctor about 13th December, 1963. A. Yes. 30

(Abovementioned letter tendered. Tender objected to. Admitted subject to objection and marked Exhibit "T".)

HIS HONOUR: Is there any evidence as to when those contracts of purchase were completed? They were dated October and November 1963.

MR. MORLING: No evidence at this stage. There will be evidence. 40

(Further hearing adjourned until Thursday, 6th August, 1970, at 10 a.m.)

IN THE LAND AND VALUATION COURT

CORAM: HARDIE, J.

THURSDAY, 6TH AUGUST, 1970.

JOYCE & ORS. v. ASHFIELD MUNICIPAL COUNCIL

(Four appeals)

(Part heard)

MR. MORLING: An officer of the Commonwealth Trading Bank of Australia has handed to me - and I have explained this to my friend - some cheques referred to in a subpoena. I formally give them to your Honour's Associate, and then I would like to have access to them. The subpoena is there too. There are two cheques not produced, one for £450 and one for £4000-odd, and the officer has informed us that a search has been made and these two cheques cannot be found.

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HIS HONOUR: It will be noted that the Commonwealth Bank has produced all the cheques specified in the subpoena of 5th August 1970, except those two which Mr. Morling has just mentioned. I take it you are satisfied they have done their best, and you do not wish them to make any further search.

20

MR. MORLING: Yes, in the circumstances. The cheques are some seven years old.

(Certificate of title volume 7572 folio 195  
tendered and marked Exhibit "U".)

(Certificate of title volume 4476 folio 139  
in respect of the balance of the Walters purchase  
tendered and marked Exhibit "V".)

(Certificate of title volume 10772 folio 26  
in respect of the purchase from the Dance  
Estate tendered.)

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MR. RATH: I want to take an objection to this certificate of title. It may be necessary to do it to protect myself one day. It is in the new form issued by the Registrar General, and purports to say certain people are registered proprietors subject to the exceptions, encumbrances and interests as are shown in the second schedule. In that it purports to show a Registrar General's caveat. I submit that it is not authorised by the Real Property Act.

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HIS HONOUR: You do not object to the certificate of title as such, but you object to that portion that you have just mentioned?

MR. RATH: That portion which notes the caveat as an exception to the title.

HIS HONOUR: It will be admitted subject to that objection.

(Certificate of title volume 10772 folio 26 admitted subject to objection and marked Exhibit "W".)

(Dealing K975857 dated 7th February 1968, which is the request to the Registrar General to note the change of trustees on the titles already tendered, tendered and marked Exhibit "X".)

10

(Balance sheet and income and expenditure accounts of the Ashfield Hall Trust for the years ended 30th June 1962 to 30th June 1969 inclusive tendered. Tender objected to on the ground that they are irrelevant.)

NORMAN JAMES PEEL JOYCE  
On former affirmation:

MR. MORLING: Q. I think the Ashfield Hall Trust kept an annual balance sheet and income and expenditure account. A. Yes, it did.

20

HIS HONOUR: Q. Did you have accountants of your own or did you do the accounts? A. I kept the accounts, but we had an auditor.

Q. Did you prepare draft balance sheet and income and expenditure accounts, or was that done by the auditor? A. I did prepare draft ones, but he made his own apart from what I did.

Q. Are you a qualified accountant? A. No.

MR. MORLING: Q. For the years ended 30th June 1962 and 30th June 1963 apart from bank current account the only assets are shown as being property at cost, Orchard Crescent, Ashfield, for 1962, £15,817.

30

A. Yes.

Q. For 1963, £15,817 plus improvements of £4161.

A. Yes.

Q. Making a total of £19,978? A. Yes.

Q. In 1964, in the assets there is also shown land purchased, in 1964 book value, 30th June 1964, £66,339.

A. That is correct.

40

Q. What is the land referred to in the entry for £66,339? (Objected to in that form).

Q. What is your understanding of the land comprised in the £66,000 figure? A. That was the three parcels of land that were purchased ~~on our behalf~~ by Mr. Proctor.

MR. MORLING: I tender them. (Tender objected to by Mr. Rath).

HIS HONOUR: I will allow the words "Purchased by Mr. Proctor" in the answer. The words "on our behalf" will be struck out.

10

(Balance sheets and income and expenditure accounts of the Ashfield Hall Trust for the years ended 30th June 1962 to 30th June 1969 inclusive, abovementioned, admitted and marked Exhibit "Y". His Honour stated the tender was admitted subject to Mr. Rath's objection).

MR. MORLING: Q. At the conclusion of evidence yesterday I showed you and there was tendered a letter to the Ashfield Hall Trust from Mr. Proctor? A. Yes.

Q. That was Exhibit "T". A. Yes.

20

HIS HONOUR: Q. I notice in the balance sheet for 1969 a very large sum representing deposits, interest free. A large amount of money. Would that be from members of your group? A. Yes.

Q. Have you always been taking interest free deposits like this? A. As need arose, yes. A little at interest sometimes, but generally interest free.

Q. Approximately how many depositors would there be to make up that large item I see in your balance sheet at 30th June 1969? A. At that time it would be about 10 or 15, I think.

30

MR. MORLING: Q. At about the time you received Exhibit "T" from Mr. Proctor, which I show you, did you also receive this document which I now show you?  
A. Yes.

Q. There is some handwriting written on the top of it? A. Yes.

Q. Whose handwriting is that? A. I wrote that.

Q. When you received it from Mr. Proctor, that was not there? A. No.

40

HIS HONOUR: Q. Did you write it shortly after you got it? A. Sometime later. Just to identify it when I was filing it.

(Abovementioned letter tendered. Tender objected to on the ground any reference it has to the Trust is merged in the deeds of trust, Exhibits "N", "O" and "P". Admitted subject to objection and marked Exhibit "Z".)

MR. MORLING: Q. Were meetings of the Ashfield Hall Trustees held in 1963? A. Yes.

Q. Were minutes kept of those meetings? A. Yes, they were.

10

Q. Did the question arise in the second part of 1963 about the possibility of acquiring the parking area lands? A. Yes, it did.

Q. Do you produce the minute book of the trustees?  
A. Yes.

Q. Were you present at the meeting of trustees held on Thursday, 19th September, 1963? A. Yes.

Q. Are the signatures at the foot of page 112 of the minute book, which I show you, the signatures of the then trustees? A. Yes.

20

Q. Does the minute correctly set out the business discussed at that meeting? (Objected to - withdrawn).

Q. Is the minute a correct record of the proceedings of that meeting? (Objected to).

HIS HONOUR: Are they handwritten or in type, Mr. Morling?

MR. MORLING: In handwriting. I have copies of them.

HIS HONOUR: Q. Whose handwriting are they in?

A. Mr. Thomas Heaney.

Q. Is Mr. Thomas Heaney still alive? A. Yes. He is available.

30

HIS HONOUR: Which ones will you be seeking to tender, Mr. Morling?

MR. MORLING: 19th September 1963. 17th November 1963. 11th December 1963.

MR. RATH: We are not concerned with the tender, but with the admissibility of a question the tender will lead to. If this preliminary question is permitted I would then have quite separate objections to the tender.



HIS HONOUR: I will allow the question.

MR. MORLING: Q. Is the minute a correct record of the proceedings of that meeting? A. Yes, they are a correct record.

Q. I show you page 113 of the minute book. Were you present at the meeting of trustees on 17th November, 1963? A. Yes.

Q. You have seen this minute book before, haven't you? A. Yes.

10

Q. When this minute was written did the word "proceeding" appear in the place where it is crossed out? A. Yes, it did.

Q. Three lines down the words "should soon appear" are crossed out. Did those words appear? A. Yes.

Q. Those words "should soon" have been replaced by the word "have"? A. Yes.

Q. In the margin the alterations are initialled, are they not? A. Yes.

Q. When were the alterations made? A. They were made when we read the judgment at the appeal to the decision of Mr. Justice Else-Mitchell. One of the Judges pointed out a discrepancy which when we checked it we found to be correct. His objection as to the wording and the timing was correct, so we adjusted it.

20

Q. As it originally appeared in the minutes, did the minute incorrectly set out the stage at which the conveyancing transactions had reached? (Objected to - allowed). A. Yes.

Q. As altered does the minute of that meeting of 17th November 1963 correctly set forth the business conducted at that meeting? (Objected to - allowed). A. Yes.

30

Q. Were you present at a meeting of the trustees of 11th December 1963? A. Yes.

Q. Does the minute of that meeting correctly set forth the business discussed at that meeting? (Objected to - allowed). A. Yes, that is correct.

Q. At that meeting was there anybody present other than the trustees? A. Yes, Mr. Proctor was there.

40

(Abovementioned minutes dated 19th September 1963, 17th November 1963 and 11th December 1963 tendered)

(Tender objected to.)

HIS HONOUR: On what grounds do you say these documents are admissible in evidence, Mr. Morling?

MR. MORLING: Firstly section 14B. Secondly evidence of intention. In respect of the first two, the trustees' intentions and in respect of the third the trustees' and Mr. Proctor's intentions.

HIS HONOUR: On what grounds do you say the documents are not admissible, Mr. Rath? 10

MR. RATH: I object to all three. I will deal with them separately. I will deal firstly with the 19th September 1963 one. It is a matter of fact, not a matter of relevant intention. There is a resolution that an offer be made for certain land. This does indicate that the trustees had in mind to buy certain land, not very well defined, land on the eastern side of the hall. It does not say what their intention was in regard to any land which was later bought. Then it provides it confirms finance be made available to the Trust to purchase the land. In no way can that be regarded as an intention statement. If that is to be admitted, it must be on the basis of its being an external fact. It does not say who said it, so s.14B does not apply. Then it resolves that Mr. Proctor be asked to act on behalf of these people to buy the land. That is not an intention statement either, but at most is an appointment of an agent. This is not the way to prove that a person was appointed an agent. Section 14B cannot apply to that either. 20 30

The next one is 17th November 1963. The first objection under s.14B to this is that the Court will observe that it deals with certain reports that were made by Mr. J.N. Joyce. Mr. J.N. Joyce has not been called, and until he is called s.14B does not apply. Unless the Court were to exercise its dispensing power under s.14B, and the Court cannot do that unless a case is first made out for the exercise of its power to dispense with Mr. Joyce being called. All it purports to do is say certain negotiations for purchase were going on. That does not deal with the matter of intention with respect to this land. 40

Now comes the most important part of this document, and that is the second heading of "business". "Mr. J.N. Joyce reported that the C. & N. Company, of which he is a partner, would make funds available to the trustees up to £76,000 to enable the trustees to complete the purchase of the three properties above referred to. Of this amount £50,000 would be a gift

to the Trust by himself, and the other members of the said firm, and the remainder would be an interest-free loan to the Trust repayable at the pleasure of the trustees only".

That undoubtedly goes to the intentions of Mr. J.N. Joyce in respect of the money provided or to be provided, but first of all he cannot speak of the intention of anybody except himself.

Under s.14B the primary ground of admissibility is that if a witness went into the box he would be permitted to say what is contained in his statement, because s.14B begins with the words "Where direct oral testimony of any fact would be admissible then a statement tending to prove that fact....". So our first test in every case under s.14B is would Mr. J.N. Joyce be permitted to say in the box the C. & N. Company of which he is a partner intends to make funds available to them. He would not be. If he would not be permitted to say that in the witness box that would be a complete bar to this part, the most important of this which is being tendered. Another fundamental objection at this stage is that Mr. J.N. Joyce is not called.

All the points I have raised on the first one I apply to all three of them, but I am setting out separate points with regard to the most important parts of the different ones. The most important part we have come to in the two so far is Mr. J.N. Joyce's report about what the C. & N. Company intended. That really does go to the root of this case, what the C. & N. Company intended. What goes to the root of the case is where did the moneys come from and were they impressed with a trust. One can create a trust of money without s.23C being observed. It is very important in this case that strict proof should be given of what trust was impressed upon the money which we are informed by my friend did come from the C. & N. Company. It could not be proved by Mr. Joyce going into the box and saying what he is alleged to have said in the minute of 17th November.

HIS HONOUR: Before we leave the minutes of 17th November, I take it Mr. Morling you are tendering those minutes in the form in which they stood before the alteration was made, in the light of the decision of the Court of Appeal.

MR. MORLING: It seems to me I can simply tender the document in this sense. I have given an explanation of the alteration. The document goes in as a document with the original words there crossed out, and the words above.

HIS HONOUR: I would have thought you would have tendered it without the words put in many years after, but that is a detail.

MR. RATH: With regard to the minute of 11th December, this deals with the report of Mr. Proctor, and what Mr. Proctor is reported as saying may go to what he intends, but it cannot go to what the trustees intend. So far as what Mr. Proctor intended is concerned, that must be first of all shown by the deeds which he executed. Further, what Mr. Proctor says cannot be admissible. What he states cannot be admissible under s.14B unless he is called or the Court in exercise of certain limited powers it has under s.14B were to dispense with his being called. I suppose one of the most important parts of this 11th December minute is the second last paragraph. And the last paragraph. (Portion read). Applying the test of s.14B, would Mr. Proctor be allowed to say that in that form in the witness box. I submit it is clear that he would not.

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HIS HONOUR: The final sentence I think is the one which is critical, but I would not like you to read it at the moment because I may wish to put a question to Mr. Joyce on that.

MR. RATH: Yes. May I point out first of all it contradicts something.

HIS HONOUR: It contradicts the deed, you say.

MR. RATH: It is inconsistent with a certain thing. Might I mention this too, I do not want to say very much about this because certain other witnesses may be called, and we have not had a witness' order, and I do not ask for one, but what is the Ashfield Hall Trust when various other people speak of it. That may be a very critical matter in this case. Would a person be permitted to say in the box "I hold or do something on behalf of that trust"? Could that be said in the terms of s.14B to be direct oral testimony? If we want to prove what Mr. Proctor's intention was at the time, he can be called, if s.14B does not apply or a document can be produced to show what he did intend at the time, being a contemporaneous document, and we have such a document here.

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To sum it up I submit that the most important parts of these various minutes do not represent anybody's intention at all. In so far as other parts do represent certain persons' intentions, such as Mr. Proctor and Mr. J.N. Joyce, they have not been called, and thirdly and perhaps most importantly of all, if you want to prove a person's intention under s.14B it must be done in a way in which he himself could testify to

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in the box. It would have to be, in the words of that provision, direct oral evidence. I emphasise the "direct oral" part of those words.

HIS HONOUR: I propose to admit these documents subject to the objections taken by Mr. Rath. I will rule on them in due course.

(Minutes of 19th September 1963, 17th November 1963 and 11th December 1963 admitted subject to objection and marked Exhibits "AA", "AB" and "AC".)

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HIS HONOUR: Q. Do you recall these meetings? A. Yes.

Q. I am particularly interested to get your recollection as to the final of these meetings, on 11th December 1963. That was the one at which Mr. Proctor I gather was present? A. Yes.

Q. The final of the three we have been discussing?  
A. Yes.

Q. Mr. Proctor was known to all you gentlemen, wasn't he? A. Yes.

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Q. And known quite well? A. Yes.

Q. Was this a long meeting or a short meeting, do you recollect? A matter of minutes or a matter of hours, do you recollect? A. It would be, as I recollect it, about an hour or an hour and a half.

Q. Was he one of the members who used to go to your religious meetings? A. Yes.

Q. He told you four trustees something that day did he? A. Yes.

Q. Tell me as far as you can recollect, it, what he said to you. (Objected to by Mr. Rath). A. As I recollect it he said the purchases were not completed, that is that the contracts had been entered into in each case for the three properties that we desired to purchase, and that they had been paid for out of funds which the C. & N. Company had made available to the trustees. They were sending them direct to Mr. Proctor.

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Q. Was anything said about a deed of trust?  
A. Oh yes.

Q. That had been or was to be executed? Was anything said on that point? A. Yes, deeds of trust had been executed.

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Q. A deed or deeds? A. A deed in respect of each property had been executed, and that he held the property in trust for the trustees of the Ashfield Hall Trust.

Q. That is as far as you can recollect this conversation at this stage, is it? A. Yes.

MR. MORLING: I do not wish to lengthen this case, but if at any point of time these documents were ruled inadmissible, I would wish to take a lot of time through this witness and some of the other trustees at least to orally go through their recollections of these three meetings. I do not want to lengthen the hearing, but I want to protect myself in the event of your Honour ruling these documents are not admissible. 10

HIS HONOUR: My present inclination is that they are admissible for some purpose.

MR. MORLING: Might I have this position clear; before your Honour decided this case on the basis these documents were inadmissible, I would like to be given an opportunity of calling oral evidence as to what happened at those three meetings. I do not want to do that unnecessarily. 20

HIS HONOUR: I see your point. Do you wish to ask Mr. Joyce anything following on what I put to him?

MR. MORLING: No, I won't discuss the minutes with Mr. Joyce over the short adjournment.

(Short adjournment.)

MR. MORLING: Might I ask my friend whether he has had any instructions about the 1966 appeals? 30

MR. RATH: We do not object to the 1966 appeals being heard together with those of 1968.

(Three notices of assessment in respect of the year 1966 tendered and marked Exhibit "AD".)

MR. MORLING: Q. I think none of the moneys which were applied towards the payment of the deposits, the balance of purchase moneys, or the solicitor's costs, and stamp duty, on any of the purchases, came from the Ashfield Hall Trust's bank account. Is that correct? A. That is correct. 40

HIS HONOUR: Q. Or from any cash moneys you had in collections at meetings?

A. That is correct.

Q. Not from that source? A. Not from that source.

MR. MORLING: Q. I think over the years the Hall Trustees have kept a ledger, a journal and a cash book, have they not? A. Yes, that is correct.

Q. Firstly who made the writings in the journal?

A. Of recent times my daughter has done the writing at my direction.

Q. I show you page 18 of the journal. Whose writing is that in? There may be two writings there. 10

A. Yes. This is my daughter's writing. This is mine. This is written in by the auditors.

Q. The writing at the top of the page is your daughter's is it? A. Yes.

Q. The auditor's writing appears under the heading of "Trust Property Account", is that so? A. That is correct. That entry.

Q. Who were your auditors at the time this was written? A. Mr. R. Dyason.

Q. The book is a running book, and has entries going back to previous years, and continuing on, is that right? A. Yes. 20

Q. Can you tell his Honour approximately when Mr. Dyason made that entry? A. He made it when he was auditing our books, and completing them for the year ended June 30th, 1964.

Q. You have the ledger in Court, have you not?  
A. Yes.

Q. Have you marked the pages of the ledger which relate to the journal entry? A. That is correct. 30

Q. Do you see the auditor's entry on page 18 some more handwriting? A. Yes.

Q. Is that your daughter's handwriting again?  
A. Yes.

Q. Under whose direction was that put in there?  
A. Under my direction. I told her to put that in.

(Page 18 of the journal tendered.)

MR. MORLING: I am prepared to tender the ledger. I do not think it assists, but I am prepared to put it in. 40

HIS HONOUR: Which are the pages of the ledger which relate to the journal entries? A

MR. MORLING: 66, 84 and 104.

HIS HONOUR: Were you referring to entries in the ledger that dealt with or led up to the journal entries, or ledger entries that followed from the journal entry?

MR. MORLING: I will have that clarified.

Q. Did you hear his Honour's question? A. Yes. It would be the latter. The entries in the journal in- 10  
to the ledger.

HIS HONOUR: Q. The entries in the ledger were posted from the journal entries? A. Yes.

MR. MORLING: Q. Would you indicate on page 66 the relevant ledger entries which tie in with the journal entries? A. That is the first of them on this page.

Q. May I put a large cross there? A. Yes. The second one. The second entry,

Q. That is page 67? Do I put a cross there? A. Yes. 20

Q. Page 83? A. Yes.

Q. Page 104? A. That one.

HIS HONOUR: Q. I suppose one of those entries relates to property accounts, does it? A. Yes.

Q. You debited the property account, I take it, and credited the depositors' account? A. The depositors' account and gift account. Some to each,

Q. That is why you have got three pages, is it? A. Yes.

Q. The debit to property account is in an amount equal to the aggregate of the amounts credited to gift account and depositors' account? A. Yes. 30

Q. In other words, these entries Mr. Morling has just directed your attention to are not in any way reflected in the cash book? They do not come out of your cash book? A. No, that is correct.

Q. The journal entry is the sole source of these entries? A. That is correct.



VOIR DIRE EXAMINATION:

MR. RATH: I show you the journal at page 18, and I point to the entry under June 30th, 1964, headed "Trust Property Account". I think you have explained, have you not, that that particular entry is in your daughter's handwriting? A. That is the one that is not in her handwriting. The others are in her handwriting.

MR. MORLING: That is the auditor's handwriting. 10

MR. RATH: At what time was the particular entry that I point to in the auditor's handwriting put in this book? If you do not know, say so? A. I know approximately. It would be when he was auditing the books for that year, which would be about August or September when we asked him to bring the transaction into the books in a proper way.

HIS HONOUR: Q. When you say "We asked him", who is "we"? You or somebody else? A. The trustees.

Q. Did you ring him up or write him a letter? 20  
A. I would have done that. I would have spoken to him on the telephone about that.

MR. RATH: Q. You had closed off the book for the year yourself under the prior entry, had you not? A. Yes, that is right. We had at this stage gone as far as we were able to go.

Q. Could you explain how it comes about in the entry that I show you the date 1964 appears to be altered? Would you agree it does appear to be altered?  
A. Yes, I would agree it appears to be altered. 30

HIS HONOUR: From what?

MR. RATH: Q. Can you see from what? I suggest 1965.  
A. That could be so.

Q. Does that suggest to you it was put in in 1965?  
A. No, it does not suggest that.

Q. Do you know how it came to be altered? A. No, I cannot understand why he would have done that.

Q. I now refer you to your ledger, at page 66, which is one of the pages referred to in the journal entry that we have discussed. A. Yes. 40

Q. Are the figures at page 66 under June 30th,

"C. & N. Company, J18, £50,000, Small Company, £43,228", are they put in this book by you? A. No.

Q. Who were they put in by? A. They were put in by the auditor.

Q. They were both put in you say by the auditor, were they? A. The one that corresponds with this entry here.

Q. That is the C. & N. Company? A. Yes.

Q. He interlined that in the book, didn't he? 10  
A. That is correct.

Q. As a result of that he changed into 65,124 a figure which you had had of £15,124? A. That is right.

Q. Did you discuss with your co-trustees as to instructing the auditor to make these changes in your books of account? A. No, I cannot say I did discuss it with them. I do not recollect doing so.

(Voir dire examination concluded.)

MR. RATH: I object to the tender on two grounds; one that the trustees' books are not relevant, and I object on the further ground that the particular entries on which my friend relies are not, on what has been ascertained on the voir dire, shown to be part of the books of account of the trustees. 20

HIS HONOUR: As to relevancy, I won't rule on that. As to the other objection taken by Mr. Rath, I admit the sheets that have been tendered, and their relevancy can be discussed later.

(Page 18 of journal tendered and marked Exhibit "AE".) 30

(Page 63 of ledger tendered and marked Exhibit "AF".)

(Page 83 of ledger tendered and marked Exhibit "AG".)

(Page 104 of ledger tendered and marked Exhibit "AH".)

HIS HONOUR: Q. I was noticing that the balance sheet of the Ashfield Hall Trust as at 30th June 1964 has attached to it the auditor's report, which appears to have been furnished not in 1964 but in September 1965. 40

Have you a recollection of some delay in the preparation or certification of the balance sheet as at 30th June 1964? A. No.

Q. Until well after the conclusion of the following financial year. Do you recall that at all? A. No. I do not recall that.

HIS HONOUR: It could have some bearing on a point that was raised a moment ago.

MR. MORLING: Q. I think you said you instructed the auditor to do what was necessary to make the book correctly show the Trust Affairs. Apart from giving him that instruction, did you give him any other instruction as to how he should go about it? A. I knew that the books of account had been closed off, and I asked him to bring them into accord with the correct situation. 10

HIS HONOUR: Q. You told Mr. Rath in answer to a question he asked you that you thought that would have been done a few months after the close of that financial year, a few months after 30th June 1964. A. Yes. 20

Q. Now I bring to your notice the fact that the auditor's report attached to the balance sheet for the year ended 30th June 1964 is dated September 1965, 15 months later; do you think you might have erred in your recollection as to when you gave the auditor instructions on this point? A. I do not think I would have erred in the instructions I gave him as to the transaction, no. I do not think so.

Q. He must have been very busy if he took twelve months to get round to certifying a simple set of accounts like this. The auditor. You have no recollection of the delay of over a year? A. No. I just have the impression he felt it necessary to see.... (interrupted). 30

Q. Is this something he told you? A. Yes. (Objected to by Mr. Rath).

HIS HONOUR: I won't press that answer. I might remind the witness that the balance sheet for the year ended 30th June 1962 was reported upon by the auditor in October 1962. The following year the balance sheet for the year ended 30th June 1963 was reported upon in December 1963. Then the following year the report did not come in until September 1965, 15 months after the end of the financial year. 40

Q. There is a ledger sheet at page 66 headed

"Contributions towards expenses". That is an unusual heading to give an account, is it not? A. Yes. It was commenced that way when it formed only contributions from the occupants of the hall, and gifts were small, but it was continued under that heading.

Q. It is really gifts? A. Yes.

HIS HONOUR: There seem to have been many alterations made on page 83 of the ledger. Something was in there at one stage and it has been rubbed out.

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Q. Looking at page 83 of this ledger, on 30th June you have a number of entries. Do you see them in ink?  
A. Yes.

Q. Whose handwriting is that? A. That is the auditor's handwriting. The one marked with the cross.

Q. Beneath it originally there was some other writing, do you agree? A. Yes.

Q. You can see some of it faintly, can't you?  
A. Yes.

Q. Are you able to say whose handwriting that was?  
A. I think my daughter had commenced to write in the next period.

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Q. You think it is your daughter's handwriting?  
A. Yes.

Q. Are you able to decipher any part of it? A. I can only say it looks very much like to me the two entries which the auditor has entered lower down, below the balance, and he has removed them from higher up and put them lower down. It was necessary to close the books for that year.

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Q. Does that indicate it was done not in 1964 but in 1965? (no answer).

Q. You can think about that. You would like to think about that, would you? A. Yes, I would like to study it.

MR. MORLING: Q. The minutes in evidence refer to gifts and loans by the C. & N. Company. A. Yes.

Q. At some time after the parking area lands had been purchased were any sums of money paid from the Ashfield Hall Trust to the C. & N. Company? A. Yes.

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Q. Can you by reference to the cash books tell

his Honour the sums of money paid and when they were paid? A. On January 20th, 1965, £3000 was paid to the C. & N. Company. On July the 15th of 1965, marked "Balance of loan", £3339.3.2d was paid to the C. & N. Company.

Q. What were those payments for? (Objected to - allowed). A. The C. & N. Company advanced the money for the whole of the purchase of these three properties, of which they first give £50,000, and a little later gave £10,000, which left a balance of £6339.3.2d, on interest free loan, which we repaid out of the Ashfield Hall Trust's bank account. 10

HIS HONOUR: Q. On the dates you mentioned? A. On the dates we mentioned.

Q. Partly in January 1965 and the balance in July 1965? A. Yes.

Q. You can point to other entries in the books bearing on that transaction, can you? Those payments would appear in the ledger accounts, would they? 20

A. Yes, they appear in the ledger accounts, and appear on the bank pass sheet.

MR. MORLING: Q. I do not think you have told us from time to time the trustees received moneys for the occupancy of the hall. Is that right? A. That is right.

Q. From whom do they get moneys, and this is related to 1966 and 1968 now. A. They received moneys from the small companies that occupied the hall for what we may speak of as the lesser occasions, and also money from the whole of our body for their occupancy of the hall. 30

HIS HONOUR: Q. When you say the "small companies", are you referring to the local companies? A. Yes, the local companies, they pay an amount.

Q. Why do you use the word "companies" when you wish to refer to them? Is that a phrase commonly used? Groups? A. Meetings is a common word.

Q. Do you use the word "congregations"? A. Not usually. We do not object to it, but we do not commonly use it. 40

Q. You do not use the word "church" do you? A. Yes, we do quite a lot. It is a scriptural word and we like it.

(Certificate of title volume 1914 folio 114  
tendered. Tender objected to. Admitted  
subject to objection and marked Exhibit "AJ".)

MR. MORLING: Q. I want to deal with a few more  
matters relating to the activities in the hall. Firstly  
are there any documents which you can point to which  
would state your beliefs as to religious matters?

Q. The references made briefly to the Exclusive  
Brethren in the photostat copies from an encyclopaedia,  
that have already been tendered. They are correct. 10  
Mr. Darby was asked at one time ....(Objected to).

Q. I think that Exhibit refers to "Exclusive  
Brethren" and to other Brethren. A. Yes.

Q. You have referred to Exclusive Brethren in your  
answer. A. Yes.

Q. You referred to Mr. Darby. Who is he?  
(Objected to - rejected).

HIS HONOUR: Mr. Morling, you can always apply to me  
to re-open your case if you are taken by surprise. 20

MR. RATH: Your Honour, I thought I made it clear that  
one of the matters I was going to raise was that the  
people who use this hall do not, in the terms of the  
decided cases, form a section or class of the public  
who are within the terms of the decided cases, but  
they are within the terms of the decided cases a fluc-  
tuating body of private individuals, so they are, from  
another case, those who have not got a common equity of  
an impersonal kind. I thought I had made that plain,  
and that is a submission that I will elaborate upon at 30  
length; that there is not for this company of people,  
to use the term that Mr. Joyce used, there is not the  
requisite nexus to bring them within the Act.

MR. MORLING: Q. For how long have you been attending  
religious meetings? A. Since I was about - since  
babyhood.

Q. Take the last 50 years of your life, how fre-  
quently have you attended religious meetings over that  
period? (Objected to).

HIS HONOUR: Now that we have been told about what  
happens, the sort of activities that take place at  
these meetings, I think it would be somewhat difficult,  
would it not, to suggest that they do not partake of  
religious qualities. I will allow you to use the  
word "religious meetings". 40

MR. MORLING: Q. I think my question was how frequently over the last 50 years or so have you been attending these meetings of the kind that you have described to his Honour last week? A. Every week that I was not ill. I would be in the earlier days perhaps three or four meetings a week.

Q. At those meetings have you heard people expressing - well, have you heard people who have spoken to the assembled company? A. Yes.

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Q. And how have the views which they have expressed in their talks, to use a neutral term, coincided with your own views as to Biblical matters? A. Well, they have been very much in accord.

Q. And how have they coincided with the views and comments related to the Exclusive Brethren in the Exhibit? A. They are quite in accord with that.

HIS HONOUR: Q. Don't you ever get any difference of opinion expressed in these discussions on the Bible, or on any other writings that you might study? A. Differences of opinion might be expressed, but any different opinion on the scriptures would be immediately brought to light and discussed.

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Q. Well, some senior member of the group would then rule on the opinion, would he? A. It works remarkably unanimously, your Honour. We have such respect for the authority of description, if someone draws attention to the scripture being discussed we discuss it then at some length.

MR. MORLING: Q. In your experience has there been any restriction as to race or creed of people who have wished to join your group? A. No.

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HIS HONOUR: Q. I am not clear what you mean by that. What do you understand by "joining your group". Making an application to join, or just coming along or what? A. Actually being admitted to the breaking of bread, which is the Christian term of fellowship.

MR. MORLING: Q. I want to ask you about what you called the care meetings, and you did tell his Honour some of the things that went on at such meetings, and I want to ask you some more questions about care meetings. Will you tell his Honour about any further matters which from time to time are dealt with at care meetings? A. The question of persons who wish to break bread in our fellowship would be decided there.

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Q. How would this be done? A. Someone whom they

had approached would bring the facts as to their being clear of any association that would not be in accord with our fellowship, and that they were genuine, and that they were - such things as that they were baptised.

Q. And how would the decision be made as to whether he would be admitted to your fellowship? A. Allowed to break bread - we are not rigid as to the terms.

Q. Do you place some significance on allowing a person to break bread with you? A. Yes. 10

Q. What significance is that? A. The scripture makes the breaking of bread the basis of having fellowship together.

Q. And assuming a decision is taken that the particular person will be accepted to break bread with you is some indication sent to him or what happens?

A. He would just be informed -

HIS HONOUR: Q. By letter, or by word of mouth?

A. By word of mouth, your Honour.

MR. MORLING: Q. And would he then come along, if he is interested? A. Yes, come along to the next available meeting. 20

HIS HONOUR: Q. Before you leave that. Did I understand you to say that his qualifications or his standing or status would be discussed among you first, a group of you, as to his suitability? A. His suitability is discussed before the whole company, your Honour.

Q. That is, the local group? A. No, your Honour, the whole group. 30

Q. The metropolitan group? A. Yes, your Honour.

Q. Is there any written material, any references or anything like that in writing produced, or is it just word of mouth? A. The word of witnesses who have been speaking with the person, your Honour.

Q. Then is a decision made by the company that day, or do they decide they will adjourn it and make further enquiries? A. Usually a decision is given immediately, but occasionally it may need further enquiries.

MR. MORLING: Q. And let me assume he happened to come from Europe, say, and not well-known locally. Would there be any means adopted of finding out something about him? A. One of our company coming from 40



Europe who was not well-known would carry what the Bible calls a letter of commendation.

Q. And what is that? A. It is a letter from someone that we would know in the company he comes from, recommending him to us.

HIS HONOUR: Q. Has your company got a register of members? A. No, your Honour, we know one another so well.

MR. MORLING: Q. Do you have some list of meetings? 10  
A. Yes.

Q. In respect of what geographical area? - (Objected to; allowed).

Q. Is a list of places at which meetings of the kind you have described in your evidence - (withdrawn). Is a list of meeting places kept of places at which meetings of the kind you have described in your evidence are held? A. Yes, several lists.

Q. I show you those three booklets, are they lists which you have seen in the past yourself, the past years, and the years following the dates which appear on them? A. Yes, I have. 20

Q. Have you yourself been to any of the meeting places shown in those booklets? A. I have been to a great many of them.

HIS HONOUR: Q. How do you describe these documents?

MR. RATH: They are called List of Meetings, as endorsed on the front of them, with the year. One is endorsed 1954, another 1955 and another 1962, your Honour.

(List of meetings booklet for 1954 admitted subject to relevance and marked Exhibit "AK".) 30

(List of meetings booklet for 1955 admitted subject to relevance and marked Exhibit "AL".)

(List of meetings booklet for 1962 admitted subject to relevance and marked Exhibit "AM".)

HIS HONOUR: Q. Is a similar publication still used? A. Yes, your Honour. Not published every year, but from time to time.

Q. When was the last one published, to your knowledge? A. I think I have one at home dated 1965. 40

Q. But there has not been one since? A. I am not aware of one since.

Q. But if there was one since you would be aware of it? A. Not necessarily, your Honour. I have not enquired for another one because I have not had the need for the use of one since 1965.

Q. What is the need for it, who decides what is to go into it? A. They are all done by voluntary work, your Honour.

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Q. Have you ever published one yourself? A. No, I have not.

MR. MORLING: Q. They are published by whom - (Objected to - rejected).

Q. Have you ever been to the premises of the Stowe Hill Bible & Tract Depot? A. Yes.

Q. Where are they? A. Kingston on Thames, near London.

Q. Have you seen any publications there on display?  
A. Yes.

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Q. Seen documents of the kind just tendered?  
A. Yes, many of them.

Q. And have you seen that name, Stowe Bible & Tract Depot, on other documents? A. Very constantly, yes, many of them.

Q. What kind of documents? A. They are all religious. Addresses, records of meetings.

Q. Coming back to the care meeting, what other matters are from time to time dealt with? A. As numbers may increase we may be in need of another meeting place.

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Q. And what type of consideration would be given at the meetings to that problem? A. As to whether there were sufficient numbers in a fresh area of the metropolitan area, dealing with Sydney, that warranted such a meeting; whether finance was available.

Q. And let me assume a decision is taken that there is such a need. What is done? A. Some persons will undertake the building of the room, and in almost every case they will enter into a form of trust similar to -

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HIS HONOUR: Q. The building of the room. Why do you call it a room? A. Just a habit. A hall. We call them halls too.

MR. MORLING: Q. Let me take the converse of the situation, where the numbers have fallen in a particular area. Would this be the type of matter discussed at a care meeting. A. Yes, it would.

Q. And what action might be taken in respect of such a situation? A. It would be decided if numbers were too few that it would be better for the personnel of that meeting to attend other meetings nearby. 10

Q. Is any consideration given at care meetings to speakers who might be - special speakers - who might be asked to address the meeting at some future point of time? A. Yes. Any such special meetings are arranged at the care meeting for special persons that we know have ability to do, or are likely to come, we arrange an occasion for them, or specially invite such persons from overseas sometimes. 20

Q. And you mentioned in your evidence last week that there was a dais in one section of the hall; Who is sitting on the dais? A. The person who in such a case as we have mentioned, the person who has been asked will sit in the centre of the dais with a microphone for his own use, and on each side will sit some of those who speak most, and then there are three rows, there will be others that often speak who will sit in the other rows.

HIS HONOUR: Q. When you say, some of those who speak most, have they got some type of name or designation, those who speak most. Have you got a name for them, who they are? A. Not officially, your Honour. In the case of matters of decision we may speak of elders, who are morally qualified to be elders. 30

Q. And does every group or every company have at least one elder? A. Unofficially we would look for that, yes.

Q. And what is the greatest number of elders you could have or you would expect in one group? A. Well, we would not necessarily limit the group by the number of elders, your Honour. It is the number of persons. The group is limited in size by the breaking of bread, as to how many are able conveniently to partake of the Last Supper on that occasion. 40

Q. But I am trying to find out how many elders do you normally have in a group or a meeting. One or

two or half a dozen? A. It depends how many are experienced that happen to be living in that area, your Honour. It may be one or it may be half a dozen.

Q. How do you become an elder. Do you become an elder when you are a certain age, or when you have attended so many breakings of bread, or what? A. By demonstrating that you have acquired experience and wisdom over the years that you have been attending to spiritual matters.

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Q. But who makes the decision to call you an elder, or to treat you as an elder. The existing elders do, do they? A. I would say just generally. It is clear to all and it is accepted by all.

Q. Can you cease to be an elder if you do not come regularly to your meeting? A. It could be, your Honour. Though I may stress that it is unofficial.

Q. There is no list of elders? A. No.

Q. Or of members? A. No.

(Agreement of 27th November, 1945, for purchase of hall land admitted subject to relevance and marked Exhibit "AN".)

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(Letter of 19th February 1969 from respondent Council to Mr. Joyce admitted subject to relevance and marked Exhibit "A0".)

MR. MORLING: Q. At one of the Sunday meetings are announcements made of future meetings? A. Yes, All the meetings for that week are announced, and the names of the persons who may be preaching the gospel are given for all the meetings within the city.

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HIS HONOUR: Q. When you say the city, you mean metropolitan area? A. Yes, metropolitan area.

CROSS-EXAMINATION:

MR. RATH: Q. Mr. Joyce, you have indicated to my learned friend Mr. Morling, that you were in agreement generally with the views expressed in the extract of Hastings Encyclopaedia, which has been tendered, in so far as it relates to the Exclusive Brethren? Is that so? A. Yes.

Q. Do you agree with the following statement that appears at page 847, in the second column at the foot of the page - "In the present condition of the church they do not believe in appointing elders, seeing that

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their meeting is but a fragment of the body of the true Christians resident in their own locality and some who might be elders are in the churches around." Do you agree with that - (Mr. Morling asks that the witness be allowed to have a copy of the Exhibit).

HIS HONOUR: Yes. What do you say about that?

A. Yes. We agree that there are many Christians outside of our group.

MR. RATH: Q. And do you agree that you do not believe in appointing elders? A. Yes. We do not believe in appointing elders officially. 10

Q. What do you mean by, not appointing them officially? A. We do not submit to a meeting - will Mr. Jones be admitted as an elder or will he not. We do not submit that.

Q. Have you any system of recognising people who are not officially appointed as elders as being in any way different from the other people who gather in your company? A. They do not sit any differently, other than tend towards an area because they speak most. There is no official distinction. 20

Q. Is the sole difference between these honoured people and other members of your company that they speak more than the other members? A. Oh, they speak more, we listen to them, because through our intimate knowledge of them they carry more moral weight in what they say. That is obvious to all.

Q. Do you believe in this, "Spirits, freely, to use whomsoever he believes in the assembly will gather in the Lord's name for worship and ministry"? A. Yes, I believe in that. 30

Q. And that is the very antithesis of any doctrine that some people have more right to speak than other people, is it not? A. Oh no.

Q. What do you take the words to mean, "Spirits, freely, to use whomsoever he believes in the assembly will gather in the Lord's name for worship or ministry"? A. I take that to be a reference to the scriptures. It says, "When the Spirit brings gifts from heaven and gives them to whomsoever he will; and it becomes evidence that the person has received a gift from the Holy Spirit and that therefore man must accept what God has done." 40

Q. And of course this gift might be visited upon a person irrespective of age, might it not? A. Yes - within reason of course, not to a babe.

Q. And the persons whom you honour above others are not necessarily elders in any sense of age. That is correct, is it not? A. Well, it would involve a certain amount of evidence that the Spirit has been active. It is rarely in a person who is quite young, Very rare. It is not impossible.

MR. MORLING: My friend is continually saying, you believe so and so. I would like it made clear whether he is referring to this witness, or to his company.

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HIS HONOUR: Q. You understand these questions to be directed to your own belief, do you? A. Yes, your Honour, I do.

MR. RATH: Q. Do you believe that separateness from the world is necessary? A. Yes. (Objected to; allowed).

Q. Do you believe that separateness from the world is necessary? A. Yes, I believe the Bible, it says that.

Q. And what do you take that to mean, that separateness from the world is necessary? A. The scripture makes the world a system that is opposed to Christianity, and the elements that have grown up in the world system are elements that a Christian must be separated from.

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Q. And you would agree with this as a reason, what I am going to put to you, for separateness of the world being necessary, namely that the "Lord was at hand and everyone must be ready to meet him"? A. That would be one reason, the authority of the scripture.

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Q. And does that imply that to meet the Lord you must tread a separate and lone path? A. No, it does not put it that way, no.

Q. It does mean, does it not, you must not belong to any organised religious body? A. Yes. That is what the scripture says.

HIS HONOUR: Q. And that is what you believe? A. That is what I believe, in the scripture, yes your Honour.

Q. You must not belong to any organised religious body? A. No, other than one that is completely governed by the scripture.

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MR. RATH: Q. And one completely governed by the scripture is a company of people who walk together, is it not? A. Yes.

Q. And people who walk together are all known to one another? A. Very largely. There is a great many, but -

Q. If anyone of them is not known to them all he is known at least to some of them and commended by them? A. That is correct, yes.

Q. It is a purely personal nexus which joins you - which binds you to your company, is it not, in this whole? A. I do not understand the question.

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HIS HONOUR: Q. Mr. Rath asked you something about commending somebody. I am a little puzzled about this commendation. I notice in the list of meeting books that were tendered there is a foreword in each case that says, "This list of meetings is issued with a desire that it may help those writing letters of commendation to have the correct address." What is the significance of those letters of commendation. What do you understand by it? A. It is a scriptural expression, your Honour, where a person moving into an area where they may not be known are bearers of a letter commending them to that company. The letter would be written by somebody who would be known.

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Q. Is this the sort of thing you referred to earlier in your evidence, when you were asked a question about somebody coming from Europe? A. Yes, your Honour.

Q. It is really a letter that indicates you belonged to such and such a meeting or group in another part of the world; and what, asking that you be, or suggesting that you be allowed to, or invited into a group in the area to which you are going? A. Yes. The scriptural expression would be "We commend to you". And it would be addressed to one of the persons at this meeting.

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Q. We commend to you Mr. so-and-so, or just, we commend to you? A. It might be either way, your Honour. It might identify the person by name and Christian name who is visiting your parts, and joining your fellowship.

MR. RATH: Q. Is the letter of commendation a letter which comes from an individual person or persons - (Objected to).

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Q. You used the expression, in regard to the letter of commendation, in reply to a question that his Honour put to you, "We commend to you". Do you remember saying that? A. Yes.

Q. Do the "We" identify themselves in any way in the letter of commendation.

Q. How do they identify themselves? A. As those who are breaking bread at a certain meeting. If I may correct one word - I would say "I" instead of "We". The scriptural way is "I commend". The Apostle Paul says, "I commend".

Q. Does this person "I" sign his letter? A. Yes.

HIS HONOUR: Q. And it is written on plain paper, I suppose, not on any letterhead? A. Unless he has a personal letterhead, your Honour. 10

Q. But not on any official or organisational letterhead? A. No.

MR. RATH: Q. To whom is the letter or commendation addressed? A. It would be addressed to those meeting at a certain meeting room.

Q. Addressed to them by name, or addressed to them as the persons meeting at a certain meeting room?

Q. There would be a lot of names - I just don't follow the question. 20

Q. Would it mention the names of the persons addressed, or would it merely describe them not by name but as the persons meeting at a certain meeting place?

A. It would be the latter, persons meeting at a certain meeting place.

Q. Would you look at Exhibit "AK". I want you to look at it with this view to answering this question. That there is nothing in it to indicate what sort of meetings are held at the listed places? A. I do not understand the expression "what sort of meetings". 30

Q. Well, there is nothing to describe them, is there, as religious meetings? A. Yes, there is.

Q. What is there, in that? A. I am looking at page 3, the beginning of it.

Q. What does it say? A. Such as "B.B.", that is what we would all understand as "Breaking of Bread"; Rdg. That stands for Reading. Reading of the scriptures; and Gos., Gospel Preaching; P.M., Prayer Meeting and then Rdg. again. And lower down "City reading", that is reading of the scriptures for all of the city; and later down "Meeting for Ministry", the name of another meeting, meeting for ministry of the word; and lower down "Address", that is the name 40



of the meeting where one brother serves and gives an address to the company.

Q. And is there anything in the book to indicate as to what people would attend such meetings? A. Yes.

Q. What is there, in that book? A. Under the heading of the foreword there is the inscription, "Gospel Book and Trade Depot, 62 Cooper Square, N.Y.3."

Q. And do you have some belief as to what that body is? A. Yes, I have visited that body. 10

Q. And is it merely because of that in the book that you can tell what meetings the book is referring to? A. Oh no. I can tell other ways. On page 3 again, "San Francisco 234 Teresita Boulevard". I have been there.

Q. So you would know then that that book refers to meeting places of the Exclusive Order of the Exclusive Brethren for two reasons, one, because of the body which prints the book, and because you recognise some of the meeting places as meeting places of meetings that you have been to? A. That is correct. 20

Q. I show you now Exhibit "AL", and I refer you to the first inside page of the cover. At the foot of it it is said, "The book is for private circulation only"? A. Yes.

Q. What do you understand by, the book being for private circulation only? A. That it is for use by persons who may be required to write letters of commendation.

Q. Are these three books, Exhibits "AK", "AL" and "AM" your own personal property, Mr. Joyce; these lists of meeting books? A. I do not think those three particular ones are. I had similar ones, and have similar ones. 30

Q. And how did you come into possession of the books which you personally possess? A. There would be different ways. I have asked I think - most I would have got by asking for them at the Bible & Tract Depot. In the case of this one I would have asked the gentleman who compiled it, being in his home. 40

Q. Are the books for public sale, at any place?  
A. No.

Q. Do you know any people who describe themselves as "Open Brethren"? A. I know just a few.

Q. And do they, as you know them, fraternise freely with other Christians? A. Some of them do. I cannot say widely to them.

Q. Is it true of people whom you know as people who call themselves Exclusive Brethren, is it true of those that they do not fraternise with other Christians? I read to you from the extract in Hastings Encyclopaedia which has been tendered, page 845, Exhibit "C". In the second paragraph there is the paragraph beginning, "amongst the Open Brethren disputes have been few..." 10  
A. Yes.

Q. And then it goes on later to say, "The Open Brethren are active and earnest, fraternise freely with other Christians and do not evoke the same opposition as the Exclusives." Do you agree with what is said there about what you know of people who call themselves the Open Brethren? A. Some that I do know do fraternise freely with other Christians yes.

Q. Now is it true of people whom you know who call themselves Exclusive Brethren, that they do not in that same sense as you have just used the word "fraternise" they do not fraternise with other Christians? A. That would be correct, yes. 20

Q. And it is true of yourself, personally? A. Yes.

Q. And is this because, in the case of yourself, that you believe in the doctrine of separateness?  
A. Yes, I do, but - -

Q. But what I put to you is whether your own reluctance to fraternise freely is because of a belief by you in a necessary doctrine of separateness? 30  
A. That is correct, yes.

HIS HONOUR: Q. Does that mean that from a practical point of view you do not invite anybody into your own home other than people who belong to your Brethren?  
A. That would be normally, your Honour.

Q. And normally you do not go to any other private home except to a member of your company? A. Yes, and I would always be open to anyone desiring help.

Q. Would that mean, if there were social functions held in other places other than private homes, you would not go normally, except to other members of your group? Say a function held in a local hall to say farewell to somebody who had been a prominent public figure in the area. Suppose you were asked to go to a function like that, at which there could be some members of your Brethren, and many other people, some of 40

the Christians, people of other persuasions, and non-Christians at all. Would you feel that you would go to such a function as that? A. We would not go to such a function as that at all, your Honour.

Q. In other words your people meet together in your views for one purpose only? A. Yes, Christianity being the whole life matter.

Q. And therefore of course in your business dealings you have to admit some exceptions to those principles? A. The scripture makes provisions for there being exceptions in our business, buying and selling for instance. 10

MR. RATH: Q. I would like to say on the transcript that I would like Mr. Joyce to appreciate that I am not just trying to probe his beliefs just for the purpose of doing so, but because of the case which I have put to the Court.

(Luncheon adjournment.)

MR. RATH: Q. Mr. Joyce, I am looking again at the extract from Hastings Encyclopaedia at page 847 and in the second column on that page it says, "The Brethren all take the place of the Christian Priesthood and gather to the Lord's name". What do you understand that to mean? A. The first part, "All take the place of the Christian Priesthood" I understand to mean that every Christian is constituted a priest. The second part, "Gathered to the Lord's name," means that the gathering involves committal to the authority of the Lord Jesus. 20 30

Q. I want to refer you to page 845, the first column, and the paragraph beginning with the words, "When Bethesda had judged the question in this fashion, Darby called on Muller with the accounts of the reconciliation.... and this the Exclusive Brethren hold with inflexible strictness to this day". Do you yourself hold that view? A. Yes.

Q. Then the passage proceeds, "Fellowship with meetings where evil doctrines are held is repudiated and no one is allowed fellowship unless he has sound doctrine and leads a Godly life". Do you agree with that? A. Yes. 40

Q. Turning to page 847, at the foot of the first column, the paragraph beginning, "Another storm burst after Raven's death". And then there is a reference to Mr. Taylor and there is a reference to Mr. Taylor's so-called errors being criticised - but you would not

concede that he ever fell into any error, would you?

A. I do not know of any errors that he ever fell into.

Q. And then it says, "A controversy ensued", and at the top of page 847 there is the reference to certain local disputes at Allonwicke in Northumberland, and there is a reference to persons who withdrew from the fellowship at Newcastle, and then it goes on, "Effort was made to suspend fellowship with the North-  
umberland meetings, as they were in confusion. This principle of suspending fellowship was resented in many places and finally when a sister from Wadney Bay presented a letter of commendation from George Street, Edinburgh, the Brethren there refused this principle of suspended ownership and received her." The question I want to put to you is this, is the reason that you would require a letter of commendation in respect of any person you did not know before you would keep company in the breaking of bread with that person, is your reason for that to ensure that you are not being in fellowship with a person who may hold an evil doctrine? A. That would be one of the reasons. 10 20

Q. I notice that this extract from Hastings makes use of the word "church". I draw your attention to the use of it at page 847. In the second column, "In the present condition of the church they do not believe in appointing elders, seeing that their meeting is but a fragment of the body of true Christians resident in their own locality". In what sense do you understand the word "church" as used there? A. I understand the writer is meaning to include all true Christians. 30

Q. In your use of the word "church", is that what you understand it to mean? A. Yes. Can I add that a body which most truly represents the full meaning of the word "church" also deserves the word "church".

Q. You apply, do you not, Mr. Joyce, the word "church" to an assembly of people and not to a place - (Question withdrawn). You would not yourself apply the word "church" to a place where you met in fellowship, to break bread? A. Not as amongst ourselves, but to persons not with us I would and do and have done. Can I give an illustration. In a new room being desired to be built, or hall, we could quite well, and I have applied for permission to be built. 40

Q. Do you mean you have applied to a local council for permission for a church to be built? A. Yes.

HIS HONOUR: Q. That is because the council officers would understand the word church better there than a hall or room? A. Yes, and that is the meaning of a church.

Q. And you then use the terminology that is used and understood by council officers? A. Yes.

Q. But normally you would use the word "church" as indicating all Christians? A. Yes, your Honour, because that is the scriptural use of the word. 10

Q. Mr. Joyce, I suppose at your various meetings that frequently somebody would seek enlightenment on whether it is proper and consistent with your principles to participate in some activity which is not a religious activity, such as going to a meeting or taking part in some group activity. Do those sort of questions arise, or are your members so clear as to what separate-ness means that this does not happen? a. We have a history of partnership which has carried forward and excepting perhaps newcomers we would all understand that now. 20

Q. You permit your members of course to participate in the daily job of earning a living? A. We believe it is essential they must do that, as a question of righteousness.

Q. What about voting? A. They do that, because they believe they leave the Government in God's hands.

Q. And that is why they never stand for election?  
A. Yes.

Q. And I suppose some of their children go to private schools - and some of them do go to private schools? A. Some do, occasionally. 30

Q. Would you as a parent think it right to join in the Parents & Citizens? A. No, I would not do that, your Honour.

Q. So you take this non-participation in community affairs to some distance? A. Yes, your Honour.

MR. RATH: Q. I may remind you, Mr. Joyce, that the Minutes of the 64th Meeting of the Ashfield Hall Trust of the 11th December, 1963 says at the end, "Mr. Proctor further reported that he had executed deed of trust in respect of each of the three properties purchased to establish that he had purchased and held them on behalf of the Ashfield Hall Trust"? A. Yes. 40

Q. And in a question which his Honour put to you as to what Mr. Proctor said you gave a very similar account as to what Mr. Proctor did say? A. Yes.

Q. As you understood it Mr. Proctor was referring to the lands with which we are concerned in these appeals? A. Yes.

Q. What did you understand by the expression "Ashfield Hall Trust"? A. I understood the trust declared by the originators of the trust, of whom I was now a trustee. 10

HIS HONOUR: Q. Mr. Joyce, I do not suppose you took part in any of the discussions that preceded and led up to the execution of the deed of trust of November 1945? A. No, your Honour, I was not a participant in that.

Q. You were not present at any conferences with solicitors or barristers in relation to it? A. No.

MR. RATH: Q. You understood his reference, did you, to the Ashfield Hall Trust as a reference to the trust that was set up by the deed of trust which is dated 27th November 1945? A. Yes. 20

Q. And are you aware that under that deed of trust the trust property is held on this trust, "The Trustee 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. The trustees hereby declare that it is their wish and desire that the primary charitable purpose to which the trust property shall be devoted shall be to employ the same for providing a meeting place for religious performances for Christians, but it is to be distinctly understood that this expression of the trustee 'wish and desire' shall not impose any obligation upon the trustees nor be interpreted as a trust." Now when you understood Mr. Proctor to be referring to the Ashfield Hall Trust did you understand him to be referring to a trust in these terms? 30

A. Yes, in very broad terms too.

Q. You were at the time Mr. Proctor spoke one of the trustees of that trust? A. Yes. 40

Q. And you still are one of the trustees of that trust? A. Yes.

Q. And in your understanding, Mr. Joyce, you own the lands, you hold the lands the subject of these appeals, on these trusts? A. Those trusts and those alone, yes.

Q. What is the nearest church to your hall - I don't mean a church occupied by brethren but a church in the sense that it is used as a meeting place for other Christians. What is the nearest church to your hall in Ashfield? A. I think probably the Roman Catholic Church would be the nearest.

Q. Would you consider it within your power as a trustee to permit the use of the lands in these appeals for the parking of the vehicles of persons attending a service in that Catholic Church? (Objected to - allowed). A. I understand it is within the powers of myself and my co-trustees to make it available as a parking area for the Roman Catholics. 10

Q. You would yourself never permit it so to be used, would you? A. No, I would never permit it to be used in that way.

HIS HONOUR: Q. The occasion has never arisen, I take it? A. No, I have never been faced with such a call from any religious body, wanting to use it for parking. 20

Q. Or have you ever been faced with a request from any other religious body to use your hall? A. No.

Q. Or any other group of Christians to use your hall? A. No, not any other group of Christians.

MR. RATH: Q. Are you aware that in the trust deed there is a clause No.23 in these terms, "Any one trustee may at any time be removed by a deed executed by the other trustees"? A. Yes.

Q. And all the trustees of this trust, ever since it was formed, have been people in your company, in whose company you personally break bread? A. Yes. 30

Q. Mr. Joyce, I read to you from the Hastings Encyclopaedia extract certain words relating to doctrines of evil. Do you recall my having read that to you? A. Yes.

Q. In your view is every organised religious body an evil institution (Objected to - objection withdrawn). A. I would not say just that, I would put it another way.

Q. Would you put it in the way that you regard as a satisfactory formulation? A. I believe that every other church body holds as erroneous doctrines which in sight of God would be evil. 40

Q. And is this in your view inherent in any form of organised church? A. If the scripture says so, so in my view it is so.

HIS HONOUR: Q. I suppose your view extends not only to some of the doctrines of other established churches but also to many of their practices and rituals?

A. Yes, your Honour, I think your Honour will understand when I say some sects which claim to religious sects are patently dishonest - well, we have no claim with dishonesty of any sort. 10

Q. When you say patently dishonest, you mean they do not conform to the principles as the Bible as you interpret them? A. Yes, and they turn principles of the Bible to a dishonest meaning.

MR. RATH: Q. As a matter of history do you understand this to be the case, that those who call themselves Exclusive Brethren originally broke away from those who called themselves generally Plymouth Brethren because they disagreed with the church organisation that was being introduced by the Open Brethren? A. That would be part only of the reason. As to Exclusive Brethren, it is what we are called, we do not disown the idea of what is exclusive. The principal of separation that I have referred to in evidence involves the idea of exclusiveness. 20

Q. And the principle of separation, Mr. Joyce, involves, does it not, that these people in it cannot belong to any organised religious body? A. Yes. That has marked the church right from the earliest days, 2000 years ago. 30

Q. And you would carry it this far, would you not, that you would not permit a person to break bread with that person who was a member of any religious body? A. That is correct.

HIS HONOUR: Q. And if any member of a religious body sought to join your group you would have to be satisfied that they had completely severed themselves from the previous association, would you not? A. Yes, your Honour. 40

MR. RATH: Q. I want to pass to certain aspects of the conduct of meetings at the Ashfield Hall. Take first of all the meeting at which you break bread together. You break bread in the company of other people. Would everybody attending such a meeting on your understanding, know one another? A. Yes.

Q. Are the doors of the hall closed at some stage prior to the breaking of bread? (Objected to - allowed).



Q. At a stage prior to the breaking of bread the doors are closed, I think you have already answered that? A. Yes.

Q. And I think you have already agreed with this, that on your understanding those breaking of bread meetings are confined to people who know one another? A. Yes.

Q. Now you have mentioned another class of meeting which quite a large number of people attend? A. Yes. 10

Q. I think that was on a Sunday about mid-day and one other day of the week? A. Yes, and on two other days.

Q. Did you have a name for this larger class of meeting, which was a meeting where addresses are given? A. One of them was a meeting where addresses are given, we call it a meeting for ministry of the word - the Word of God being inferred.

Q. And what was the other one? A. Reading of the Scriptures. 20

Q. Now at these meetings are any steps taken to ensure that people are not present in the hall who are not known to the other people there? A. No, not quite that.

Q. What does take place? A. Persons coming in are noticed and if any person comes that is clearly unknown someone would enter into conversation with them to enquire who they were and why they wanted to come.

Q. And what takes place after that, if any such event occurs? A. Well, if they can identify themselves, with maybe one of those letters of commendation referred to, then they would be admitted. 30

HIS HONOUR: Q. How else can they identify themselves other than by letter of commendation? A. By naming somebody in the company that they knew. But that would be very rare.

Q. From the practical point of view if someone came in off the street and had not been there before, and had not a letter of commendation, they would be told quite clearly that they were not welcome? A. No, not at all. 40

MR. RATH: Q. What would they be told? A. They would be enquired of first. They would be asked why they wanted to come, and what their interest was. Whether

they were Christians at all, whether they were interested in becoming Christians. Such questions would be asked, and if they were thought to be genuine in their desire to get help from the scriptures the person would be admitted.

HIS HONOUR: Q. Who would make the decision? A. The person who was discussing it with them.

Q. Any person within your group? A. If he had any doubt he might draw in one or two others to discuss it with him, but we understand one another's thoughts very well, your Honour. 10

Q. Is there such a formula such as a person saying, "I will walk with him"? A. Not as to a stranger.

Q. That is a phrase that is used, is it not, "I will walk with him"? A. Yes, it is used in certain circumstances.

Q. What is that circumstances? A. Maybe when someone is being proposed as a member, or proposed to come and break bread with us, join our partnership, then someone or two may express that they have had converse with the person and that they are free to walk with him, that they see no hindrance to that. 20

Q. It is true, is it not, that every person attending any meeting at Ashfield is a person who walks with somebody else, who regularly attends such meetings?

A. Other than those we have just been speaking of who might just come casually, yes, that would be the case.

Q. And that casual person is not allowed to attend, is he? A. Depending on his answers, he may be or may not be allowed to attend. 30

Q. He is allowed to attend I put it, only if somebody there thought that he might be accepted into the company? A. If somebody thought that was a possibility that it could become that way, in future, that is.

Q. So that there is a personal relationship between every person who attends with some other person or persons who attend? A. Yes, that is scriptural, that is the way Christians met at the beginning, so we do it that way now. 40

Q. And that is the cohesive principle of your company? A. Yes. It has been as the church for 2000 years.

Q. And is the sole cohesive principle? A. I do not know that I can say it is the sole cohesive principle.

Q. Can you think of another? A. The main cohesive principle is that we have the common object of finding worship on proper grounds, scriptural grounds I would say.

Q. With regard to the use of car park, Mr. Joyce, you told my learned friend Mr. Morling that there are certain people in attendance in the car park who are people with whom you keep company - I think that is what you said? A. Yes. 10

Q. And that is correct. What do these people in attendance at the car park do. What is their function?  
A. They guide the cars into orderly parking, to the best advantage.

Q. They have no other function? A. Not while they are in the - or, perhaps -

Q. Do they as you understand it, themselves know everybody that attends the hall? A. Broadly that would be correct, yes. 20

Q. And they would not permit into the car park, would they, the car of a person whom they did not know?  
A. Only subject to what we have said earlier, as an enquiring person.

Q. Before you had this car park I think you used - and by you I mean you and the people with whom you break bread - you used some land adjacent to the railway for car parking purposes? A. We did and still do hire the actual goods yard. 30

HIS HONOUR: Q. You hire it just for the period at which you have your meetings? A. We have an arrangement with the Railway whereby we are able to use it on all our occasions, unless it interferes with their shunting.

Q. Who is the "we" you are referring to? A. Our body, the company.

Q. And who pays for the hire? A. It is paid out of the funds of the group. 40

Q. And who is the person who transmits the money to the Railway or the authorities? A. That would be paid by the Signatories of an account which is called the City Clearing Account.

Q. You have mentioned the members of your company on duty in the car park. Have you any such members of your company on duty in the railway land? A. Yes, just the same.

Q. Mr. Joyce, is it in your understanding that there is any religious training in the hall? A. Yes.

Q. What is it that takes place in the hall that you say falls within that expression? A. The readings of the scriptures are very much on that line, and the preachings of the Gospel are very much on that line, teaching, training. 10

Q. And who is it that is training? A. The persons who are present.

Q. All of them? A. Yes, all according to their requirements.

Q. But there is not anybody trained, is there, as persons who are going to preach, or perform some other service. You do not train in that sense, do you? A. Not in the worldly sense, no. 20

Q. What do you mean by "not in the worldly sense"? A. Well, not in the sense of sending to a technical college, or anything of that nature.

HIS HONOUR: Q. Do not some of your members sometimes study religion and divinity at University? A. Not at universities, your Honour, but we all study religion all the time.

MR. RATH: Q. And what does your study consist of? A. In the meeting?

Q. I am speaking of yourself personally, at the present time. First of all, in the hall? A. In the hall the scriptures are read, and the meanings of them are gone into in considerable detail, many questions are asked by old and young - not babies of course, but those old enough to work, those in their teens may ask a question. 30

Q. And do you read from the Old Testament? A. Oh yes, from the Bible.

Q. And is there any edition of the Bible which is the one that you personally read there? A. We prefer the translation by Mr. J.N. Darby, which is widely recognised to be a very good one. I understand it is the standard one in Germany. 40

Q. Did he translate both the Old and the New Testaments? A. Yes. I do not know that he quite completed the New Testament. He translated the whole into German, and the whole into French, and the greater part of the New Testament into English.

Q. That does not include what I think the Church of England calls the Apocryphal books? A. No, it does not include that; it includes all that is in the St. James Bible.

10

Q. And at your meetings is any use made of any Bible concordance? A. Not at the meeting, no.

Q. Is it made by you personally? A. Yes.

Q. But it is not used in the hall? A. Not in the hall, no.

Q. So that in the hall, is this true, what you would term religious teaching or training is confined to reading from the Bible, and members of the Company giving a dissertation upon the Bible reading?

A. Having in mind they would have in mind, or I, if I happened to be speaking, the need for teaching or need for instruction that was present, that I knew to be present in the company. It would not be just at random.

20

Q. How would you ascertain the need that was present in the company, Mr. Joyce? A. By my personal knowledge of the many present, and shall I say exercises or practical matters that they may be faced with, at any given time.

Q. Would it be possible for you to briefly indicate by way of example, Mr. Joyce, what you mean by religious teaching or training to which you might be so moved by the occasion? A. Religious teaching as I understand it, and training, would be to help persons become more spiritual, more in the understanding of the divine mind, as obstacles in the scriptures and helping more in accord with what they understand to be the divine mind.

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Q. What does that involve, beyond the reading of a passage of the Bible? A. It involves the saying of how that passage would apply to any particular circumstances.

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RE-EXAMINATION:

MR. MORLING: Q. My friend put some questions to

you about you regarding as evil, and his words were, "Any organised church", or some such words as that?

A. Yes.

Q. What did you understand by "an organised church", in that sense? A. I understand one of the known bodies of Christians.

Q. Does it have regard to the fact to their legal incorporation, or their hierarchical structure or what, that you regard as being non-scripture?

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A. The history of the church has been a succession of break-aways from the very beginning, and every break-away was right or wrong, and those that remained were right or wrong, and the right has remained consistently through the years.

Q. Break-away from what? A. It was originally from the scriptural writings, a break-away from the church as it was said to be by the Apostles, and that break-away would be evil, because it rejects the principles of the Apostles, as recorded in the scriptures, and so throughout the years, and in the history of what is broadly called the Plymouth Brethren, there has been similar turnings away from the truth, and every turning away from the truth is something that one who wants to go on with the truth must reject.

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Q. And do you hold the views which you have expressed in the witness box, that they are the truth?

A. We would hold that they are the truth as held by the Apostles.

MR. MORLING: Q. Do you regard yourself as having any common holding of the truth with people in your meetings? A. Yes.

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Q. Both at Ashfield and at the meetings elsewhere?

A. Yes, we regard our fellowship - we often remind one another it is really a partnership having common beliefs and responsibilities as to the truth.

Q. As to letters of commendation, is it the fact that whether a letter of commendation is to be given to somebody is sometimes discussed at meetings?

A. Yes, I would not give a letter of commendation to a person without reading it out to the assembled company at Ashfield.

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HIS HONOUR: Q. To the assembled company? A. Yes.

MR. MORLING: Q. Although it might be sent by you, it would be read out before it was sent? A. Yes. Recently I did that, and I was asked to correct a paragraph that was not quite right.

HIS HONOUR: Q. Sometimes your letter of commendation would be fairly detailed, would it? A. Not very it was only a short letter, but one short paragraph was incorrect.

Q. You say you would refer to this person holding the right sort of views. Would you give more detail than that? A. We would say where they were accustomed to break bread, and very briefly, usually, the reason for their moving; travelling. Whether it be business, or if they might want to go and settle in a place, that would come up for consideration. 10

MR. MORLING: Q. You told my friend that the lists of meetings were available for public sale, I think were your words. A. Yes.

Q. Do members of the public go into the Stowe Hill Bible & Tract Depot for the purpose of buying things? (Objected to).

Q. Have you been there? A. I have been there.

HIS HONOUR: Q. How long ago? A. It would be 1964 when I was last there. 20

MR. MORLING: Q. Is it a shop or an office? What is it? A. It is really a warehouse.

Q. Have you seen people buying things there?  
A. No, I have not seen people buying things there.

Q. As to regularity and times of meetings, is there any common time at which any meetings are held, as between meetings in various places? A. As far as possible throughout the world we meet at the same time. (Objected to). 30

HIS HONOUR: Put it as to his own experience.

MR. MORLING: Q. From your own experience, travelling to the places you mentioned last week, has there been any common meeting time observed? A. Yes, there has.

Q. Has this been so only in this city or the State or in what areas has it been common? A. The breaking of bread is common in every meeting I have been at at that particular time. There have been changes, but the changes are in every meeting I have been to. At every meeting I have been to there may be differences, but there is very little difference. 40

HIS HONOUR: Q. The breaking of bread is at 9 o'clock is it? A. Yes. The next meeting at 12 o'clock has been regular all over the world where I have been to.

Q. That is not a breaking of bread meeting?  
A. No.

MR. MORLING: Q. Have you endeavoured to give some more thought to the question his Honour asked as to whether the auditor's report was done in 1964 or 1965?  
A. Yes.

Q. Are you able to throw any more light on that matter? A. No, I cannot, except this, I gave no instructions for any delays, I do not do that. I like things done promptly. 10

HIS HONOUR: Q. You do not recall the auditors being ill or something like that, or abroad, or away at one stage? A. No. I have an impression there was a waiting for some document or some confirmation, but I cannot recollect what it was. I cannot say.

(Witness retired.)

CECIL EDWARD JOYCE  
On affirmation:

MR. MORLING: Q. What is your full name? A. Cecil Edward Joyce. 20

Q. Where do you reside? A. Wollongong.

Q. What address? A. 14 Foley's Road, Gwynneville.

HIS HONOUR: Q. Is that a suburb of Wollongong?  
A. Yes.

MR. MORLING: Q. What is your occupation? A. Investor.

Q. Before 1963 were you interested in a company which carried on the business of the Cecil Box Company?  
A. Yes.

Q. Was that a business in a substantial way? 30  
A. Yes.

Q. Was it a business you had built up over many years? A. Yes.

Q. About 1963 was it an incorporated company?  
A. Yes.

Q. In which you had some shares, and members of your family had some shares? A. Yes.

Q. Were your shares governing shares? A. Yes.



Q. Did the members of the family agree to sell out their share holdings to a large public company?

A. Yes.

Q. And the members of the family include yourself and your wife and some daughters, is that right?

A. One son and five daughters.

Q. Had you taken steps in the shareholding of the company to endeavour to spread the shareholding so as to particularly minimise your own taxation and death duty position? A. Yes.

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Q. When did the public company acquire the shares in the family company? A. I should think 1962.

Q. Was the consideration by the public company paid in cash? A. Cash deposit. Over three years the balance - -

Q. What was the total consideration paid to the members of the family company for their shareholdings?

A. Approximately three-quarters of a million pounds.

Q. In 1962 had you, your wife, John Nelson Joyce and his wife entered into a partnership agreement?

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A. Yes.

(Abovementioned partnership agreement tendered and marked Exhibit "AP".)

HIS HONOUR: Q. The box company did not come into this picture? A. No, that was sold. This was the funds from the box company.

MR. MORLING: I am not so sure that is right.

HIS HONOUR: 1st January 1962.

MR. MORLING: The partnership agreement was apparently dated 1962.

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Q. Had you sold out the box company then? A. Yes.

Q. You had? A. That is right.

Q. Had the family got the moneys? A. The deposit, but not the balance of the funds.

Q. Had you been attending meetings in the hall in Orchard Crescent for some years prior to 1963? A. Yes.

Q. You had been attending meetings in the hall there? A. Yes.

Q. Had you seen the car parking position?

A. Yes.

Q. Had your wife been going with you? A. Yes.

Q. And Mr. Nelson Joyce? A. Yes.

Q. And his wife? A. Yes.

Q. Did you hold any belief it would be a good thing to have a car park near the hall? A. Yes.

Q. In 1963 did you become aware that there were lands for sale to the east of the hall? A. Yes.

10

Q. Did you have any talk with the other members of the C. & N. Partnership relative to those parking lands?

A. Yes.

Q. Particularly did you have some discussion with Mr. Nelson Joyce? A. Yes.

Q. Can you tell his Honour what it was you discussed about those lands? A. Yes.

Q. What discussions did you have with him? (Objected to - allowed).

Q. Can you tell his Honour as best you can re- collect what you and Mr. Nelson Joyce said on the subject of these parking lands? -

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HIS HONOUR: Q. Were your respective wives present at this conversation, or just the two of you? A. I should say my wife would be present.

Q. Where did it take place? The first conversation?

A. The first conversation would be in my home at Pacific Highway, Gordon.

Q. Tell us as far as you can what was said on the subject. A. My son indicated that it was possible to buy the lands, and we decided together that we would back the purchase of the lands and give moneys up to £60,000 to the Ashfield Hall Trust to enable the purchase of the properties to go through. My son was in full agreement with the matter, which at that time I understood I had the authority to do, but he was in full agreement with it.

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MR. MORLING: Q. Did your wife express any view about it? A. Only that she agreed.

Q. Were you from time to time seeing Mrs. Nelson Joyce in the latter part of 1963? A. Yes, frequently, either in my home or in her home.

Q. Can you recollect the subject of the proposed gift ever being mentioned in her presence? A. Yes.

Q. Did she ever express....(Objected to).

Q. What did she say on the subject? A. All I can say is she agreed, as wives do, sometimes.

Q. Did you know a Mr. Proctor in those days? 10  
A. Yes.

Q. Do you still know him? A. Yes.

Q. Is he a solicitor? A. Yes.

HIS HONOUR: Q. Had he acted for you in any of your legal matters hitherto? A. Yes.

Q. Was he your regular solicitor at this time?  
A. Yes.

MR. MORLING: Q. Was Mr. Nelson Joyce a trustee?  
A. Yes.

Q. Thereafter did you and Mr. Nelson Joyce sign the cheque which I show to you? A. Yes. 20

Q. That cheque is made out to whom? A. W. Harrison and Co.

Q. What company is that? A. Estate Agent at Ryde.

Q. Was that in respect of a deposit on one of these parcels of land? A. Yes.

Q. Did you have any discussion with Mr. Proctor as to giving you any instructions on behalf of the partnership? A. Mr. Nelson Joyce was in touch with Mr. Proctor, and carried out... (interrupted). 30

Q. Did you personally give any instructions to Mr. Proctor? A. Only via Nelson.

Q. In making the payment of the cheque in front of you, what was your intention as to how the money should be applied? (Objected to - rejected).

HIS HONOUR: Q. What is the date of that cheque?  
A. The cheque is dated 3rd October 1963.

MR. MORLING: Q. Look at the other two cheques. What are the dates of those? A. 23rd September 1963 and 19th November 1963.

Q. All payable to Harrison and Co.? A. Yes.

(Abovementioned three cheques dated 3rd October 1963, 23rd September 1963 and 19th November 1963 tendered and marked Exhibit "AQ".)

HIS HONOUR: Q. Harrison and Co. had these three properties on their hands for sale as far as you can recollect, did they, or did you engage Harrison and Co. as agents for the purchases? Do you remember? 10  
A. Well, I suppose it amounted to that, yes.

Q. You did not have any conversation with Mr. Harrison, did you? A. Yes.

MR. MORLING: Q. Was he the agent for the vendor or not? Do you recall that? A. I know he went direct to the vendor for us.

Q. On your behalf? A. Yes.

Q. The first cheque is dated some date in September 1963? A. Yes. 20

Q. Are you able by reference to the date of that cheque to say approximately when it was that you had the discussion with Nelson and your wife about the acquisition of these lands? A. I should say about a week, I should think.

Q. Was there some reason why you did not pay the moneys to the Ashfield Hall Trust, and let them do the contractual arrangements in the first instance?

A. Well, on one of the main properties there was someone else after it, and it was thought that we should not disclose anything of that character, of the character of what it was wanted for, and Mr. Harrison thought it wise that the matter should be handled by himself, and work with Mr. Proctor in relation to it. 30

Q. Did Mr. Proctor's name appear, as we have seen on the contracts? A. Yes.

HIS HONOUR: Q. It was to conceal from the vendors the identity of the real purchasers, is that right?

A. That would be right. 40

Q. Lest the vendors might be disposed to look for buyers elsewhere? A. Not quite.

MR. MORLING: Q. Thereafter did you and Mr. Nelson Joyce send certain moneys by cheque to Mr. Proctor?

A. Yes.

Q. Are those four cheques, which I show you, respectively dated 31st October 1963 for £900, 19th November 1963 for £31,720, 11th December 1963 for £6,680 and 6th May 1964 for £23,150, cheques which were signed by yourself and your son and sent to Mr. Proctor?

A. Yes.

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(Abovementioned four cheques tendered and marked Exhibit "AR".)

HIS HONOUR: Q. Were you ever on the Trust, the subject matter of this litigation? A. No.

MR. MORLING: Q. Why did you make those payments to Mr. Proctor? (Objected to).

HIS HONOUR: Q. What was the means of communication between your side and Mr. Proctor? Did you hand them to Mr. Proctor or send them to him by letter, or did Mr. Nelson Joyce give them to Mr. Proctor? Did you give them to him to give to Mr. Proctor? A. I can recollect handing one envelope with a cheque in it to Mr. Proctor, outside the Ashfield Hall.

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MR. RATH: I submit this is covered by the Court's previous ruling.

HIS HONOUR: No.

Q. You recall one of those occasions when you gave one of those cheques to Mr. Proctor personally, do you?

A. Yes.

Q. Did you say something to him? A. Yes, I said that was the money he was requiring, and asked me to give him in order to complete the purchase of the properties.

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Q. So far as the other three are concerned, is it your recollection that Mr. Nelson Joyce attended to the despatch or handing of them to Mr. Proctor? A. That would be right.

Q. How long ago did you move to Wollongong?

A. Just under a year.

MR. MORLING: Q. In respect of the Walters' purchase did you or did the partnership on or shortly after 21st November 1963 receive that document from Mr. Proctor? (shown) A. Yes.

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HIS HONOUR: Q. Did Mr. Proctor hand it to you or send it by post, or how did you get it? A. He sent it by post.

HIS HONOUR: That is dated?

MR. MORLING: 21st November 1963. There are some annexures, I won't burden the record with those, but because they are there I will tender them. There are statements of account. I will tender the lot.

(Document dated 21st November 1963 together with annexures tendered. Tender objected to. Admitted subject to objection and relevancy and marked Exhibit "AS".)

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HIS HONOUR: Would I be right in thinking this is the letter a copy of which is set out in Exhibit "T"?

MR. MORLING: Exhibit "T" is a letter from Mr. Proctor to the trustees of the Ashfield Hall Trust.

MR. RATH: This is addressed to the C. & N. Company.

HIS HONOUR: In that letter Mr. Proctor said, "As requested by you...21st November 1963". That is the report I take it in the form of a letter.

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MR. MORLING: Yes.

Q. On or shortly after 16th December 1963 did you receive a letter from Mr. Proctor with the annexures attached? (shown) A. Yes.

(Abovementioned letter dated 16th December 1963 tendered. Tender objected to. Admitted subject to relevancy and marked Exhibit "AT".)

MR. MORLING: Q. On or shortly after 12th May 1964 did you receive a "With Compliments" note together with a copy letter which is annexed to it, from Mr. Proctor? (shown). A. Yes.

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Q. Can you recollect receiving the original of that? A. No, I cannot recollect it.

(Abovementioned letter dated 12th May 1964 tendered. Tender objected to. Admitted subject to relevancy and marked Exhibit "AU".)

MR. MORLING: Q. On or shortly after 24th December 1963 did the C. & N. Company receive the letter which I now show you from Mr. Proctor?

A. Yes.

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(Abovementioned letter dated 24th December 1963 tendered. Tender objected to. Admitted subject to relevancy and marked Exhibit "AV".)

MR. MORLING: Q. Did you have any discussion at all with Mr. Nelson Joyce and the other members of the partnership about the loan of the money to the Ashfield Hall Trust? A. Yes.

Q. Can you tell his Honour approximately when this conversation would be? A. It would be about the same time as discussion in regard to the purchase. 10

Q. Can you tell his Honour as best you can what was said between those present? A. In discussion my son and I,..(Objected to).

HIS HONOUR: Q. You are going to tell us about a conversation between yourself and Mr. Nelson Joyce, are you? A. Yes.

Q. None of the wives were there, or were they?  
A. I would think one would be.

Q. Your wife? A. My wife. 20

Q. Tell us what was said as far as you can recollect it at this late stage? A. As far as I can recollect we decided we would back the whole purchase. We would give to the Ashfield Hall Trust up to £60,000 and the balance we would advance as a loan. We were not aware as to what it would be, but we had some estimate in our minds what it would be, and we were prepared to back it.

MR. MORLING: Q. At any later point of time did you have any further discussion with any of the partners as to the making of any further gifts to the Trust? A. No, I cannot recollect that. 30

Q. Did you subsequently receive from the Ashfield Hall Trust certain payments? Did the C. & N. Company receive payments from the Ashfield Hall Trust? A. Yes.

MR. MORLING: These are the cheques referred to by Mr. Norman Joyce. He read the amounts from the cash book.

HIS HONOUR: Are these in evidence?

MR. MORLING: The cheques are not in evidence. 40

Q. Do you remember the cheques, one for £3000 and one for £3000-odd? A. Yes.

Q. On the Hall Trust bank account? A. Yes.

Q. Do you know how they came into your possession?

HIS HONOUR: Q. Did they come through the post?

A. As I remember, posted to me by Mr. Norman Joyce.

(Two cheques dated 20th January 1965 and 15th July 1965 tendered and marked Exhibit "AW".)

MR. MORLING: Q. Are those the only moneys received by the C. & N. Company from the Ashfield Hall Trust in respect of the payments out made in 1963-64?

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A. I believe so.

Q. Were you aware in 1963 of the existence of the Ashfield Hall Trust deed? A. Yes.

Q. Were you yourself a trustee of any other piece of real estate upon which was erected a meeting hall at which folk of your beliefs met? A. Yes.

Q. For how long had you been a trustee of such a meeting hall? (Objected to).

HIS HONOUR: Q. Whereabouts was it? A. Turrumurra Hall.

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MR. MORLING: Q. Had you seen the Ashfield Hall Trust deed? A. No.

Q. Did you have any belief as to its terms? That is the Ashfield Hall Trust deed? A. Yes. (Objected to - allowed).

Q. Did you have any belief as to the terms of the Ashfield Hall Trust deed? A. Yes, I knew the general terms.

Q. Had you actually seen the trust deed of the land of which you were a trustee? A. Yes. (Objected to - allowed).

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HIS HONOUR: I did rule I would allow Mr. Morling to ask this witness what his belief was, and his understanding, and he has not given his answer to that as yet.

MR. MORLING: Q. What was your understanding as to the terms upon which the Ashfield Hall Trustees held the lands vested in them? A. On the same terms as was already in the Turrumurra Hall Trust.

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Q. What were they? (Objected to - allowed).



A. The terms were that they were holding the hall for the purposes of meetings of a religious character and also as a charitable trust.

Q. Did the C. & N. Company or you personally make any payments for the maintenance or improvements of the parking area lands after they had been acquired?

A. No.

Q. Do you yourself claim any beneficial ownership in any of those lands? A. No.

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Q. Has the C. & N. Company at any time made any claim to the beneficial ownership of those lands?

A. No.

Q. Has the C. & N. Company or yourself received any rents or profits or income from the land since it was acquired? A. No.

Q. Did you seek any interest from the Ashfield Hall Trustees on any of the moneys you had advanced?

A. No.

Q. To Mr. Harrison or Mr. Proctor? A. No.

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CROSS-EXAMINATION:

MR. RATH: Q. You told us of a conversation between yourself and your son. His name is John Nelson Joyce, is it? A. Yes.

Q. When the matter of a proposed gift was first discussed. Will you tell us what you recall was then said? A. By whom?

Q. By yourself and by him and your wife. I think you said you believed she was present, did you not?

A. Well, as I said before, the son indicated to me that certain lands alongside the Ashfield Hall - it would be possible to buy them, and the suggestion was made as to whether we could do anything in regard to it, seeing it was so urgently required for parking space, and indeed my son pressed the fact it would be very difficult to continue holding meetings without having a parking area alongside the hall, and we decided that as it had always been in our minds ... (interrupted).

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Q. What did you say rather than what you decided, if you don't mind? A. I see what you mean. He said that he thought it would be good if we were prepared to do this.

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Q. To buy these lands? A. Yes, and back the whole

thing, because it became clear on his knowledge of the Trust that the Trust was not able to buy it without assistance from us or someone who could provide funds. He said "What will we do?" I said "I am prepared to go to £50,000", and then he said "Well, that would be good". It was further said that more than that may be required, which led to the mention by me of a sum of perhaps £60,000. But if it was anything over that, I told him I thought it should be on loan, as that would be sufficient gift from these funds, and he moved accordingly. He said he would do that, and follow the matter through.

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Q. Is there anything more you can recollect that was said at that meeting with your son? A. A lot of things were said about other things.

Q. Was anything more said about the proposed gift or the use of the gift or the purpose of the gift?

A. The purpose of the gift was ....(interrupted).

Q. No, I only want to know what was said about it.

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A. I do not know how to put it. I am not used to these things, but I will put it this way: I said to my son that this would be the amount that we would give to the Ashfield Hall Trust, and he said that he agreed with that, and would see that the matter was backed as we had already arranged.

Q. Did you discuss for what purpose it would be given to the Ashfield Hall Trust? A. It was given to the Ashfield Hall Trust as an absolute gift, but they could use it to buy ...(interrupted).

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Q. Was this what the two of you said, or one of you said? A. No, not absolutely outright.

Q. Is it not correct to say all that you said as to the use of the gift was for buying land for use as a car park for those who attended the hall meetings?

A. It arose out of that, yes.

Q. And it was said, wasn't it, the way to effect this was to give it to those people who made up the Ashfield Hall Trust? A. I do not know about "those people". It was given to the Ashfield Hall Trust.

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Q. Where did you get your belief as to what the Ashfield Hall Trust was? A. Well, I knew, and it was confirmed by the fact I had the Turramurra Hall Trust deed, which I understood was the same, and if not the same then similar to the Ashfield Trust deed.

Q. Is it your understanding that any trust relating

to property used by the people with whom you keep company must be expressed in general terms, because you cannot find words to describe as a class the people with whom you keep company? Is that your belief? (Objected to - allowed). A. Would you repeat that?

Q. You cannot find words to describe as a class the people with whom you keep company? A. I can describe them.

(Further hearing adjourned until Friday, 7th August, 1970, at 11.30 a.m.)

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IN THE LAND AND VALUATION COURT

CORAM: HARDIE, J.

FRIDAY, 7TH AUGUST, 1970

JOYCE & ORS. v. ASHFIELD MUNICIPAL COUNCIL

(Four appeals)

(Part heard)

MR. RATH: I do not propose to ask Mr. Joyce any further questions.

HIS HONOUR: Do you wish to ask Mr. Joyce anything further, Mr. Morling?

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MR. MORLING: No.

(Mr. C.E. Joyce retired)

(Mr. Rath referred to pages 47 and 50 of the transcript, and suggested amendments thereto which were adopted by his Honour and counsel for the appellants)

MR. MORLING: My friend took exception to the witness saying what the terms of his trust deed were, in relation to his position as a trustee. It is true your Honour overruled the objection, and the answer was given. I have the document here, and I would seek to tender it. I think my friend objected and stated it was oral evidence of a written document.

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HIS HONOUR: You are tendering it for this limited purpose, are you?

MR. MORLING: Yes, I would like to have the protection of the document.

HIS HONOUR: Do you object to this, Mr. Rath, in view of what happened on this point before? Do you object to it on the limited basis on which Mr. Morling wants to use it, as referable to and helping us to ascertain what his intentions were or what his thinking was?

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MR. RATH: Yes, I do object to it. Your Honour ruled against the objection that I raised, and your Honour may still take the view you rightly so ruled against it. It appears at the end of page 66. "Did you have any belief as to its terms. That is the Ashfield Hall trust deed? A. Yes. (Objected to - allowed.) Q. Did you have any belief as to the terms of the Ashfield Hall Trust Deed? A. Yes, I knew the general terms." At the next page, "What was your understanding

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as to the terms upon which the Ashfield Hall Trustees held the lands vested in them? A. On the same terms as was already in the Turrumurra Hall Trust. Q. What were they? (Objected to; allowed). A. The terms were that they were holding the hall for the purposes of meetings of a religious character, and also as a charitable trust". What my friend is endeavouring to ascertain is, what was his understanding at the time that he spoke to his son, and to what were the terms upon which he was making his gift. He was speaking in terms of giving to the Ashfield Hall Trust. That appears from the fourth question at the top of page 66. As I understood the way your Honour ruled on the matter, the relevant matter was not what was at that time in the Turrumurra Hall Trust but what he understood was in the Turrumurra Hall Trust. 10

HIS HONOUR: Yes, this was going to his knowledge, I think I had earlier rejected questions put to him as to what his intention was. I took the view intention was to be inferred from what he said and knew at the time, and this is why I let in evidence as to his knowledge. This is the difficulty I feel Mr. Morling might be in, as it stands at the moment. Reading the transcript, "What were the terms of that trust?" which was objected to and allowed, if the matter got to the Court of Appeal or the High Court it could be said it was objected to, and it is about the terms of a written document. 20

MR. MORLING: I can tell my friend what it is. It seems to be a matter which Else-Mitchell, J. took into account in declining to hold in the 12 L.G.R.A. case a matter of importance to him, indeed a matter of doubt to him, that persons would be willing to advance very substantial sums of money on the broad terms of the Ashfield Hall Trust. This seemed to be a matter which his Honour found difficulty in accepting. Whilst I would be asking your Honour to have no such difficulty in finding such an acceptance, it is a precaution against any such view being pressed by my friend, it is to seek to show this very witness himself is a trustee under a deed of trust which he says is in very broad terms of another Brethren Hall. There is nothing special about the Ashfield Hall Trust. 30 40

HIS HONOUR: You are now seeking to use the contents of this document for some purpose I had not anticipated when you tendered it this morning. I thought when you tendered it this morning you did not want to get into a position in which you might have to seek to sustain my allowance over Mr. Rath's objection oral evidence of the contents of a document. Now I gather it is on that and other grounds. 50

MR. MORLING: The reason that oral evidence was given

is that I propose in offering comment on his Honour Mr. Justice Else-Mitchell's difficulty in this regard, to advert to the oral evidence given by the witness that his trust was much the same, and to back it up if there is any doubt about it by reference to the document. That is the purpose of it, and of course to overcome also any objection if it is later held to be valid that Mr. Joyce's reply was inadmissible because it was oral evidence of a written document. It is on those two bases.

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MR. RATH: If the Court looks at page 67, the fourth question, "What were they?" my friend asked what the terms were. He chose to ask a question of that sort and he chose to rely on the fact that your Honour ruled in his favour. He had a perfect choice if he liked when he heard I objected to it; he could have asked "What did you then understand that to be?" That would have been a very different matter. He chose to ask a form of question which asked for the contents of a written document. I would respectfully suggest that when the Court allowed his question it really did say because it really construed it as meaning what was the witness' then understanding of the matter. That could be cleared up.

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HIS HONOUR: At this stage, to clear the air, I did so construe Mr. Morling's third question "What were they?" as coloured by the opening words of the previous question.

MR. RATH: I would not have objected then as to what his understanding was. The form in which it was put seemed to extract as a substantive matter what the terms in fact were as distinct from what the witness' understanding was. I now state that I would not have objected to the witness' understanding.

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So far as the new ground of tender is concerned, I would submit that the mere fact that a person is a trustee of some trust is not evidentiary of his intention in this matter. I do not want to take up the Court's time any further.

HIS HONOUR: On this point you could probably meet this part of the tender if you disclaimed any intention of relying upon that point that Else-Mitchell, J. put in the forefront of his judgment, but that probably would not be a fair thing to ask you to do. Until all the evidence is finished, and you have heard Mr. Morling, it would not be fair to expect you to disclaim it.

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MR. RATH: No, I do not think I should do it in this case.

HIS HONOUR: I will admit this document subject to relevancy and Mr. Rath's objection.

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(Deed of Trust of 4th May 1961 re the Turrumurra land tendered. Tender objected to. Admitted subject to relevancy and objection and marked Exhibit "AX".)

HIS HONOUR: Have you any further evidence, Mr. Morling?

MR. MORLING: I have one tender. I tender the Census Bulletin No. 9. 1 of 30th June 1966, being a summary of population taken at the Census of the Commonwealth of Australia.

HIS HONOUR: Did it divide them into religious beliefs? 10

MR. MORLING: Yes.

HIS HONOUR: Is there some provision in the Census Act that makes it relevant?

MR. MORLING: I have not had an opportunity of checking that, but it would seem from Phipson that your Honour has a right without the tender of any documents to refer to the officials of a public department when in doubt as to any matter on which one can take judicial notice, and one could refer to this department to get these figures. 20

HIS HONOUR: It may be Mr. Rath does not object to it. Could you refer me to the passage of the transcript where I asked Mr. N.J.P. Joyce about the ledger yesterday?

MR. MORLING: Page 38, I think.

HIS HONOUR: Yes. The questions I put on this subject begin towards the top of page 41.

MR. RATH: I object to the document. The relevant page appears to be page 35. Table 24, which is "Population by Religious Denominations. States and Territories. Australia. Census 30th June 1966", and under that general heading of "Christian" it has a heading of "Brethren". The figures are undoubtedly significant figures. It could even be that it assists me, but in this case I have conducted it on the basis of objecting whenever I thought any matter was not strictly admissible, and I do so on this basis now. It could not mean anything more than in the returns people when asked what their religious denomination is have listed themselves as "Christian" and "Brethren". That cannot be of any evidentiary value. 30 40

HIS HONOUR: Might that be an indication that a Department of State, in the Statistician's Office, recognises it as a Christian religion?

MR. MORLING: That is the basis on which I am putting it.

HIS HONOUR: Rather than the numbers?

MR. MORLING: Both.

MR. RATH: On that basis I would certainly object to it. The view of a Department of State on a matter which is before this Court is, I submit, a completely irrelevant matter. My friend has put nothing before the Court to show this is a Departmental view of it, or that they act upon it. A further ground of objection is, we do not know what Brethren it is referring to. 10

HIS HONOUR: I will admit it subject to relevancy.

(Census Bulletin No.9. 1 of 30th June 1966 admitted subject to objection and relevancy and marked Exhibit "AY".)

HIS HONOUR: Did you appear for the appellant in the proceedings before Else-Mitchell, J. Mr. Morling?

MR. MORLING: No, I have not appeared in any proceedings before this case. Mr. Fox led Mr. Burchett before, and then Mr. Byers came into the appeal, I am told. 20

MR. RATH: Could I raise one further matter on the last tender; in view of certain answers given in this Court, would an Exclusive Brother answer this question on a census return? Nobody is bound to answer this question. It is one of the few optional questions.

HIS HONOUR: I assume you want me to look at Table 24 on page 35, Mr. Morling, headed "Population by Religious Denominations"?

MR. MORLING: Yes. I would tender two extracts from the Oxford English Dictionary, Vol. 8 published in 1933, as to definitions of "Brethren" and "Brethrenism" and "Plymouth Brethren". 30

MR. RATH: I have not seen the definitions, but I object to the tender.

HIS HONOUR: I can look at them. I do not know that they need to be tendered. They will not become exhibits. Mr. Morling, can Mr. Burchett indicate to you whether the books of account which have been tendered in this case were, as far as he can recall, in Court during the previous proceedings? 40

MR. MORLING: He thinks they were in Court.



NORMAN JAMES PEEL JOYCE  
On former affirmation:

Further cross-examination:

MR. RATH: Q. In the 1966 Census did you fill in a census return? A. Yes.

Q. In the form were you asked what your religious denomination was? A. Yes.

Q. You do recall you were asked that question?  
A. Yes.

Q. Did you answer it? A. Yes. 10

Q. What was your answer? A. Brethren.

HIS HONOUR: Q. You would not regard that as in any way inconsistent with your religious convictions?  
A. No.

Q. Yet you feel you should not record a vote, is that right? A. Yes. We regard that differently.

Q. Is it because you regard governments as unnecessary? A. No.

Q. Or misconceived? A. No. It is because of our respect for government. 20

Q. How do you respect government by not participating in the limited way in which adults can participate in government under our system? How do you respect it that way? A. Scripture tells us that God gives authority to the Government, and we firmly believe that, and I do not believe that it is for me to exercise any influence as to who God may choose to be in government, but thankfully accept whatever person God sets in government and in authority, and we are subject to them as far we are able in our conscience, and if we have a conscience we would submit it to the government's consideration and ask them to make provision for it, as they have done in the case of voting, on our behalf. 30

Q. Has this always been your view on this point?  
A. Yes.

Q. As far as your reading goes, and your thinking goes, it has always been the principle of the members of the Brethren. Is that so? A. Yes. We do greatly respect the government, and are obedient to it in every possible way. 40

Q. Yet you do not want to participate in it at all?  
A. Yes.

MR. RATH: There are two further matters I wish to put to the witness.

MR. MORLING: I have no objection, but there is one matter I would seek leave to put. It is a very short matter, and I suggest it may be convenient if I do it now.

HIS HONOUR: Yes.

MR. MORLING: Q. Have you heard the expression "Levite" used in your circle of meetings? A. Yes.

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Q. In relation to what class of person have you heard it used? A. Persons who commit themselves to do service on behalf of Christians, whether the service of preaching or whether the service of ministering the Word, or whether the service of visiting the sick and caring for them. Anyone who commits these services. The Levites were the tribe in Israel God chose to give service, the Children of Israel, and we use that as a name to explain those who serve Christians. Serve the believers.

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Q. Serving in what particular fashion? A. Serving in taking meetings, being able to and committing themselves to be able to be fitted to take large meetings, to be able to preach the Gospel, whether preaching within halls or preaching on the street corners; it requires a certain ability which is God-given.

Q. In 1966 to 1968 were there any persons of whom you heard the description Levite applied at the Ashfield meetings? A. Yes, there would be many of them.

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Q. Were you yourself one of those? Were you ever in the company referred to by others as a Levite?  
A. Yes.

Q. In 1966 to 1968 and before those years were any meetings held of Levites? A. Yes, there were.

Q. As distinct from meetings of attenders who were not Levites? A. Yes, there were such meetings.

Q. How frequently were they held? A. At least once a year.

Q. In any particular place? A. The place was chosen year by year, usually in Great Britain, sometimes in the United States, and once in Australia.

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Q. Have you yourself attended a meeting of Levites?  
A. Yes, I have attended three of them.

Q. What matters were raised and discussed at such meetings? A. The matters of the truth of the Holy Scriptures as they especially applied to the needs of the particular moment, the particular year, so that all those who serve would have opportunity to consult together and to discuss the current needs.

Q. How many approximately would attend the meeting of Levites? A. Those in Great Britain and the United States would be more than the one here, because of travel troubles. 10

Q. The total number of the last one you attended was approximately how many? First of all where was this? A. The last one would have been London.

Q. What year? A. 1950.

Q. How many were there then? A. About two thousand.

Q. How many from Australia? A. About thirty from Australia. 20

Q. And from any particular part of Australia?  
A. Each State would have some.

HIS HONOUR: Did you say there has been one held in Australia? A. Yes, in 1947.

Q. Were you at that? A. Yes.

Q. Approximately how many were at that? A. There would have been about 900 at that.

Q. Brethren from Australia and Brethren from overseas? A. Yes. I had the privilege of inviting them on that occasion. 30

MR. MORLING: Q. Where was that meeting held?  
A. In the Ashfield Hall.

HIS HONOUR: Q. You invited them by letter I take it?  
A. Yes.

Q. Did you write your letter on some letterhead or on plain paper? A. No, we had forms of letter printed, seeing there were a good many more invited than would be able to come, and we invited perhaps one thousand.

Q. Printed letterheads? A. Yes.

Q. What form did the letterhead take? Not every word. A. It would not have said anything about the hall. It would have been the private address of one of the four signatories, of which I was one.

Q. When you and the other three gentlemen signed, was there some description given as to whether you were an elder or some title, or just your names? A. Just our names. We would refer in the letter to persons being invited as being servants, the equivalent of the word "Levite" that has been used. 10

FURTHER CROSS-EXAMINATION:

MR. RATH: Q. Did you personally know everyone who was invited? A. On that occasion I could not say I knew quite everyone, but very nearly.

Q. Would every one of the persons invited be known to one or more of the four persons who signed the letters? A. Yes, they would be known to everyone. To one.

Q. This term "Levite" which you say is a term by which some of you are referred to by other members of your company - I have put it correctly have I not? A. Yes. 20

Q. Under what circumstances is this term bestowed upon a member of the company? A. When a person undertakes and carries out service along the lines I have indicated. When he commits himself to it; everybody at Ashfield would know each one who was committing himself. It becomes quite clear by what they do, what they say, and we speak of them to one another personally along these lines. 30

Q. What do you say to one another about it? A. "Mr. So-and-so is committing himself to the preaching of the Word of God, and God is evidently helping him in it". So he is clearly carrying out levitical service.

Q. When you speak of a brother as committing himself to preach the Word of the Lord, have you in mind preaching at some place? I withdraw that. Has the preaching that you have spoken of as taking place on a street corner anything to do with one being called a Levite? A. Yes, it would be one of the reasons. 40

Q. What are the other reasons? A. As mentioned earlier it would be those who commit themselves to serve by bringing forward the Word of God and bringing instruction out from it. As to those who are preaching;

those who are preaching with evident support of God; those who exercise government; those who are able by their moral authority to hold position in the organization and control of the body. They would be called Levites. Those whose authority because of their moral power and committal and personal holiness is such they have wider influence, an influence that may be very widespread. They would be called Levites.

HIS HONOUR: Q. There is no list of them anywhere is there? A. There is not any list. We could make one up. A list could always be made up. We know all such. It is not difficult to make a list of those. 10

Q. Once a Levite always a Levite, or could you, if you did not take a very active part in exercising government or leading prayer, cease to be a Levite? A. That could be. It is rare.

Q. Has it happened to your knowledge? A. Yes.

Q. Or if a man's health deteriorated and he was not able to take the active part he did theretofore, he would cease to be a Levite then would he? A. No, he would be regarded as still committed to the work but unable to carry it out physically. There is provision in scripture for that class of person. 20

MR. RATH: What is that provision? A. That the Levite's age of service - what we call types(?) pictures that the Old Testament gives of the New Testament teaching - the Levites serve between certain ages, from 30 years old to 60 years old, but of course Christians do not take those ages literally. It does take time for committal to service to become evident, and there is a time when persons who are Levites are physically unable to serve. Maybe if he is 90. Recently a very urgent preacher of the Gospel died, and he was well into his nineties and he preached every chance he got up to his deathbed. 30

Q. The great bulk of teaching that you have done has been in a hall of people who are in your company, as you have just described it. Would that be so? A. No, in my case it would be about equal, I would think. 40

Q. That on the street corner with that in the hall? A. Yes.

Q. I may not be able to use the right words, but I may be able to convey the idea of my question to you. Does the preaching on a street corner in your view commend you in the eye of the Lord? To use the words

used in certain places, does it give you grace? Do you follow my question? Because of a language barrier it might be difficult. Let me withdraw it and put it this way: Is there a spiritual benefit that accrues to you personally from preaching on a street corner?  
A. Could I answer that by quoting a scripture?

HIS HONOUR: Q. If that is the most effective way of answering it you may do so, but do not forget what the question is. A. Yes.

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MR. RATH: Q. When you quote it will be a quote of something which you believe, will it? A. Yes. "That the preaching is a sweet odour of Christ to God", and I believe that it is right for me to provide a sweet odour of Christ to God and I love to do it.

Q. Would it be correct to say it is not one of your motives when you so preach on a street corner to proselytise? A. That would not be correct. The Gospel which is preached is unto all, and that is my outlook in preaching with any persons who hear me; I would be glad to talk to any person who hears me.

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HIS HONOUR: Therefore isn't one of the reasons for you preaching in the open to Christians who do not belong to your organisation, to interest them in your beliefs and your organisation? A. Yes, that would be correct.

Q. That would be one of the motives? A. Yes, it would.

Q. That is what Mr. Rath really wanted to find out. You feel that you are a better brother if you can bring other Christians that are now not brothers into the Brethren's fold; do you feel that? A. No, I do not feel quite that. I love persons to get to know the Lord Jesus that I know, and I love to speak of Him and I love to have some who are interested in Him to speak to and would always speak to them, of whatever denomination. If they came and said, "You are speaking about the Lord Jesus, I know the Lord Jesus", I would say, "I am very glad to meet you, and I would like to have a talk to you."

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Q. Have you ever spoken in the Sydney Domain?  
A. No.

Q. Have any of the Brethren you know spoken there?  
A. Yes.

Q. Do they have a regular speaking place on Sunday afternoons, or have they in years gone by? A. I do not think Sunday afternoons. I cannot speak of

certainty as to the Domain, but in the city, and I think in the Domain there are regular preachings during lunch-hours.

MR. RATH: Q. Is there some way in which a person who is once of your company can cease to be of it?

A. Yes.

Q. What are the ways in which a person once accepted as part of your company can cease to be of it?

A. If he falls into some public sin, first.

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Q. I was not so much concerned, if I might interrupt you, with the causes or the grounds upon which he would cease to be a member, but the method or machinery as it were by which he would cease to be a member. Could you answer that? A. Yes, I can answer that. It would first be a question of some inquiry as to the condition of things that would raise such a question. If the person concerned were minded to speak of it. There would be, in such a case, if the person were minded to speak of it, some discussion as to the principles involved. If the person were not minded to speak of it we would just take our stand as a company, of not proceeding with one who was not minded to speak with us, because of the fellowship, being a common lot together much like a legal partnership.

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Q. If it were decided that he or she should be no longer of your company, then what would be the consequence of that from the point of view of your having any further intercourse with that person? A. We would regard such a person as one who does not wish to receive the help that we believe is available to them, but if they were to say, "Well, I would like some help", we would gladly speak to them. In any case we may - that is persons who are qualified, who believe themselves to be qualified - go privately to seek to reason with them.

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Q. And this means by which a person ceased to be of your company would be simply carried out, wouldn't it, at some meeting of your company? A. Yes.

Q. And it would be something which would arise, as I understand what you are saying, because some member of the company raises the question as to whether Brother X or Sister X should any longer be of your company? A. That is right.

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Q. The matter is then considered by the whole company present, is it? A. Yes.

Q. How does the company signify that the person is

no longer a member of the company? A. One or another, some person, usually one who knows the details best, on the principle of witness in the Old Testament teaching - the witnesses are the ones who must first take action in any penalty. On the basis of that someone would say they themselves as a person would not be able any longer to walk with this person, and then we would all unite in our assent to that.

Q. Speaking of you personally, if you could not walk with a person, would you in your view that involve that you could not live in the same house with that person? A. That would be a question of considerable investigation of the details of the particular case. 10

Q. I do not think that is quite what I asked. What I have asked is, let us suppose that you and I were members of your company, and you made up your mind that you could not any longer walk with me. A. Yes. (Objected to). 20

MR. RATH: The basic question before the Court is whether the charity is for the advancement of religion, and what that means must be governed by the Statute of Elizabeth, I submit.

HIS HONOUR: I will allow the question.

MR. RATH: Let us suppose you and I were members of your company and you decided you could no longer walk with me. Let us suppose further that up to that time you and I had lived in the same household. Could you then continue to live in the same household with me? A. I would have to say not, unless under certain circumstances, but generally, if you would like yes or no, no, I could not live in the same house with you or walk with you. That involves living in the same house. 30

Q. What would the circumstances be that would create an exception to that? A. Maybe you had been ill and I have been caring for you. I would not just pitch you out in the street.

Q. You would wait till I got better, would you? A. I would show what I believe would be a Christian attitude. 40

Q. This consequence that you could no longer walk with me is a consequence of your belief in separatism is it not? A. Yes.

Q. I put this in a general way, the consequences



of a husband not being able to walk with his wife could be very serious from a family point of view, is that right? A. It could be.

Q. And from the point of view of any children?

A. It could be, yes.

MR. RATH: I do not propose to press that any further for the point I wish to submit to the Court. I did press it a little further in the prior matter but then with a different purpose in mind.

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MR. MORLING: I take it my objection would go to my friend's subsequent questions following my objection?

HIS HONOUR: Yes, I think that would be right.

MR. RATH: Q. I want to pass to perhaps a related matter. His Honour I think asked you certain questions about sending children to private schools. Do you recall that? A. Yes.

Q. In the normal rule that your children go to State schools? By that I mean those with whom you keep company? A. If you speak of "rule", I do not know about that.

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Q. "Rule" is the wrong word. Is it the normal practice? A. More would go to State schools than private schools.

Q. In the case of State schools it is true, is it not, that there are certain portions of the school day set aside for religious instruction to the school pupils? A. Yes.

MR. MORLING: May I take it my objection would cover all this line of cross-examination?

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HIS HONOUR: Yes.

MR. RATH: Q. Does your company provide any person to attend the State schools to give religious instruction there to children of members of your company?

A. They do that in the home.

Q. Is it the case that your children do not participate - and I mean the children of people with whom you keep company - in any religious instruction that takes place in a State school? A. They usually do not. They just go into another room with the other children that also do not take the religious instruction.

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Q. Would the same apply in the case of private schools? A. Yes, it would - -

Q. One further matter, all of the land in these appeals is land used as the car park is it not?

A. That is one of the uses.

Q. The land which is used by the Tract Society Trust, that is not part of the land that we are concerned with here, is it? A. Yes, it is.

Q. I had missed that before, and I would like to direct certain questions to that. Could you identify it? Look at Exhibit "J". I am speaking of the year 1966, first of all. Would you point to the land which was then in use by the Tract Trust? A. From this point here to there.

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Q. I will mark it with a dotted line. I have put those broken lines around the land which was used by what I will term the Tract Trust. Around the area that you have indicated there would appear to be a fence, is that right? A. Yes.

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Q. There is a fence to the east? A. Yes.

Q. And there is a fence to the south? A. Yes.

Q. There is a fence on the north and a fence on the west, too, is there not? A. Yes.

Q. And erected upon part of the land is a brick cottage? A. Not a cottage.

HIS HONOUR: Q. Was there a brick cottage at one stage?

A. Not a cottage. A brick building. It was the office of Walters & Co., the timber people.

Q. And they vacated it as soon as you bought it, did they? A. Yes.

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MR. RATH: Q. On this plan it has written "Bk. Cott".

A. Yes.

Q. You say it is not really a cottage, and that is a mistake on the plan, do you? A. I believe it is a mistake to call it a cottage.

HIS HONOUR: Q. Might it many years ago have been used as a cottage, and then converted into an office?

A. I used to go to school by it, and I think it was erected as an office, from my memory. I am not absolutely certain that the fence shown on this plan is the exact fence that is there at the moment.

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MR. RATH: Q. That is what I want to put to you, because your counsel has doubt as to whether you are correct in that regard. How far to the east of the brick building is the eastern fence of the Tract Trust land? A. I have not any recollection of ever having measured that.

MR. RATH: I will withdraw that. My friend thought that the fence was not more than 15 feet away, but I see this scale is 30 feet to the inch, and on that scale it does make the fence about 15 feet away. 10

HIS HONOUR: Q. Is that area used as a parking area now, or is it used by the Tract Trust? A. The Bible and Tract Depot are not using it any more now.

MR. RATH: Q. But they did use it in 1966? A. Yes.

Q. Did they use it in 1968? A. Yes.

MR. MORLING: To March 1968.

HIS HONOUR: Q. They used it in part of 1968, did they? A. Yes.

MR. RATH: Q. With regard to the use of that building and land by the Tract, did they use it to print these tracts? A. No. 20

Q. What was it used by them for in those years, 1966 and 1968, that is up to the date in March you have given? A. It was used to distribute tracts, to receive them into the store, to pack parcels and despatch them, or sell to any who may have come in through the front gate.

Q. Since the date in March 1968 that you gave, how was the building and the land which you have indicated with the broken red line used? For the balance of the year 1968? A. I said earlier that the toilet facilities have been made available on a number of occasions for use by persons on the concourse of what is sometimes called the parking area. 30

Q. For the balance of the year 1968 did it remain fenced off from the parking area? A. Yes.

Q. And it was not used for the parking of vehicles? A. That is correct.

Q. When it was being used in 1966 and 1968 for the tracts, how many people were employed there? A. I was not a trustee, and I cannot answer that with accuracy, but I would estimate three employees, plus voluntary workers. 40

Q. To whom were the tracts or other printed works that were kept on this land given or sold? A. They would be sold to many of the persons who met with us, and any persons who do not meet with us but had expressed their wish to have these journals or books or tracts, and a certain number of those who would know the location, and see it printed on the tract they had already been sent, and come to the premises and ask to buy them.

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Q. So far as you know the Tract Trust did not give away or sell its tracts and other works by going from door to door? A. No, I would say they did not do that.

HIS HONOUR: Q. Do you remember yesterday I asked you some questions about some entires in the ledger, at page 83, that you agreed had been rubbed out, and then I asked you whether you could decipher what had been rubbed out, and you said it was your opinion or your belief that the two entries that appeared lower in the page had originally appeared in that position.

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A. Yes, I believe that.

Q. Then I put a question to you as to whether that indicated to you the entries, the alterations in the book, were made some time in 1965, and not in 1964, and you hesitated with your answer, and I said you could think about it, and I asked you would you like to think about it, and you said you would like to study it. Have you thought about that matter? A. Yes.

Q. Have you had the benefit of the views or knowledge or belief of anybody else on the subject?

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A. No.

Q. You have not spoken to the auditor? A. An effort was made to contact the auditor, but he was not available.

Q. Have you spoken to your daughter on it? A. My daughter is in the United States.

Q. You are relying on your own recollection are you?

A. Yes.

Q. Since you have thought about it what would you say about whether the entries on that page indicated they were made some time after 30th June 1964, and to be more specific some time between October 1964 and October 1965? A. I would agree they must have been made after October 1964.

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Q. And looking at the book wouldn't you agree it must have been or probably was some time before October 1965? A. Yes, it must have been between those two dates.

Q. Do you recall the case before Else-Mitchell, J. was heard by him in September 1965? A. Yes.

Q. Were these books under close study by you at that time, do you remember? A. Yes, they were.

Q. Have you a recollection whether what was done, that alteration that was made, was made at that time, or some weeks before or some months before, or a long time before? A. I believe it was done some time before. I shouldn't say how long. I believe, on thinking it over that the auditor was wanting to see the minutes, and I think the minute book was held in custody until the time - shall I put it this way, it was held in Court for some time when that case took place before Mr. Justice Else-Mitchell. 10

Q. Is it your recollection the auditor wanted to see that minute book before he made the entry in the ledger? A. Any entries with regard to properties he checks with the minute book from year to year.

Q. Is the explanation or is probably the explanation those ledger entries were made some date between October 1964 and October 1965? A. I believe it was the auditor wanting to carry out his responsibilities as auditor carefully. 20

Q. Is it your belief that was the reason why the auditor's letter or report covering the accounts for the financial year ended 30th June 1964 was dated September or October 1965? A. I think that must have been the reason, on thinking it over.

Q. Are you satisfied in your mind that the investigation of this matter for the purposes of the last case Else-Mitchell, J. heard was not the cause of that being done? A. I do not think that was the cause of that being done. 30

Q. You do not think so? A. No.

Q. You agree, do you not, that if your balance sheet as at 30th June 1964 had been prepared from your ledger, from the entries in the ledger at folio 83 under the heading "Trust Property Account" had the balance sheet been prepared from the entries as they stood at 30th June 1964, this land we are concerned with in this case would not have shown as an asset of the Trust? A. Yes, that is so, and that would not have been correct. 40

Q. You told me yesterday it was your daughter's handwriting on folio 83, did you not? The bulk of it? A. Yes.

Q. And it was your daughter's handwriting that had been rubbed out? A. Yes.

Q. And the new writing was in the auditor's handwriting? A. Yes. I mention that the auditor is accustomed to take the books not immediately after the close of the year, because of his other work, but towards the end of the year, which is when he normally takes the books, and on that occasion I can recollect he had them away from us for quite some time before we commenced posting again.

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Q. Do you agree this was done between October 1964 and October 1965? A. From the evidence it looks very much that way.

Q. You are not able to help me as to whether it was closer to October 1964 than October 1965? A. No.

Q. A full period of twelve months, and you cannot define it any more precisely? A. I cannot at this stage. My firm belief is it would have been early, but I could not say I think that as my personal knowledge.

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FURTHER RE-EXAMINATION:

MR. MORLING: Q. You did say yesterday apart from instructing the auditor who properly prepare the books, you gave him no other instructions did you not?

A. No other instructions.

Q. Have you given anybody else any other instructions as to the manner in which the books shall be kept?

A. No, only that it must be done right.

Q. My friend asked you some questions about you preaching on the streets? Were you doing that in 1966 and 1968? A. Yes.

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Q. Were other brethren or people meeting with you at the Ashfield Hall doing that in those years?

A. They were.

Q. Has it been done ever since you were attending the Ashfield Hall? A. Yes.

Q. At that sort of meeting were any tracts offered to people who wanted to take them? A. Yes, they were.

FURTHER CROSS-EXAMINATION:

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MR. RATH: Q. Do you recall at the hearing before Else-Mitchell, J. on 16th September 1965, while Mr. John

Nelson Joyce was in the witness box, there was produced in Court the balance sheet and income and expenditure account of the Trust as at 30th June 1964? Do you recall that? If you do not, say so. A. No I just do not recall it.

Q. Can you recollect whether the Trustees' Counsel on the occasion of the matter being heard by Else-Mitchell, J. had available to them the journal and ledger of the Trust? A. I do not recall whether they were produced to them. They were available to be produced. I do not recollect that. 10

Q. Do you recall whether those books were in Court on that occasion? A. No I cannot recall that.

MR. MORLING: Mr. Burchett thinks they were under subpoena. That could be checked.

WITNESS: My inclination is to think they were here, but I could not state definitely.

(Witness retired.)

(Case for the Appellants closed.) 20

HIS HONOUR: Is there any evidence, Mr. Rath?

MR. RATH: No.

HIS HONOUR: I would like it clearly stated. I gathered the impression from something you said early in the case that you would be contending that your clients were entitled to the exemption they are claiming either under s.132 (1) (d) or under s.132(1)(h), Mr. Morling. Is that right?

MR. MORLING: Yes.

HIS HONOUR: Am I right in understanding that in the other two cases, on the other two occasions on which your clients challenged the rateability of this or nearby land, they disclaimed any reliance upon sub-clause (h) of s.132 (1)? 30

MR. MORLING: It was not argued.

HIS HONOUR: I think it was expressly disclaimed in the first place.

MR. MORLING: I cannot say. I was not there.

HIS HONOUR: Neither you nor Mr. Burchett were in that litigation? 40

MR. MORLING: No.

HIS HONOUR: This could become an important point, because the way the evidence has emerged in this case, it may be the case you have presented is just as strong under (h) as (d).

MR. MORLING: My submission is that it is. It appears clearly from the decision of Else-Mitchell, J. and the Court of Appeal decision that no consideration was given to the situation in the last appeal or in the Court of Appeal as to what the position was on the assumption taken against my clients that the lands were not held by the trustees on the terms of the Ashfield Hall Trust. That is why I said early in the proceedings your Honour will have to determine on what basis they are held, whether held beneficially by the appellants, and if not, on what trusts? 10

HIS HONOUR: Is this briefly what you will be contending? You have lodged an objection to these rates?

MR. MORLING: Yes.

HIS HONOUR: That your form of objection refers either by number or by text to the language of s.132(1)(d)? 20

MR. MORLING: By text.

HIS HONOUR: It does not refer by text or otherwise to subclause (h)?

MR. MORLING: That is so.

HIS HONOUR: But your point is that that is not a necessary or essential part of your notice of appeal?

MR. MORLING: That is so.

HIS HONOUR: Your notice of appeal opens up the question as to whether the land is rateable? 30

MR. MORLING: Yes.

HIS HONOUR: And that a limiting of the grounds or your argument in the notice of appeal does not as a matter of law narrow the grounds available to you?

MR. MORLING: Yes.

HIS HONOUR: The only relevance would be if the other party, the respondent, was misled and taken by surprise?

MR. MORLING: Yes.

HIS HONOUR: You say there is no surprise element in this case because you told him the first day? 40



MR. MORLING: Yes. Before the case started,

MR. RATH: A day or two before my friend advised me that he may raise as a fresh grounds, 132 (1)(h).

HIS HONOUR: In case the transcript does not already record it, he did indicate at some stage on the first day of hearing that he would be so contending.

MR. RATH: Yes.

MR. MORLING: The consequence would be, if it were not dealt with in this way - let me assume I lost on (d).

HIS HONOUR: On the public charity?

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MR. MORLING: Yes. My friend and I would have to go to the Supreme Court in a cause to determine the same issue. So it must be manifestly convenient to have the matter determined in the one place.

HIS HONOUR: Do you think you would be able to complete your address this afternoon, Mr. Rath?

MR. RATH: Yes, but I request that the Court does not sit beyond four.

HIS HONOUR: Yes.

(Luncheon Adjournment.)

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MR. RATH: Might I ask leave to fill up a lapse of mine by the recalling of Mr. Joyce?

HIS HONOUR: Yes.

NORMAN JAMES PEEL JOYCE  
On former affirmation:

MR. RATH: Q. Is there any belief so far as the Brethren are concerned relating to the common ownership of property, the manner of dealing with property?

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MR. MORLING: May I ask my friend to indicate what he means by "the Brethren"?

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HIS HONOUR: Are you referring to the group the appellant belongs to Mr. Rath?

MR. MORLING: My friend says they do not exist.

HIS HONOUR: I will allow the question.

MR. RATH: Q. Is there any belief so far as the Brethren are concerned relating to the common ownership

of property, the manner of dealing with property?

A. Yes, we believe that it is not for the company to own property directly but through trustees or through the personnel of the company; not necessarily a trustee, I should have said.

Q. Would this be a correct reply to the question I put to you? Listen to it carefully. Do you remember the question I put to you? A. Yes.

Q. I ask you whether this is a correct reply to that question; "We can see nothing in the scriptures to support the whole body owning property, the Halls are owned by individuals". A. Yes, that is correct. 10

MR. MORLING: Q. In the context of that word "owned", do you mean owned by the persons to be applied for their own benefit as they wish? A. No.

(Witness retired.)

(Counsel addressed. See separate transcript.)

(Further hearing adjourned until Monday, 10th August, 1970 at 10.30 a.m.) 20

IN THE LAND AND VALUATION COURT

CORAM: HARDIE, J.

Friday, 21st August, 1970.

JOYCE & ORS. v. ASHFIELD MUNICIPAL COUNCIL

JUDGMENT

HIS HONOUR: The appellants are the registered proprietors of three parcels of land in the area of the respondent Council and have been assessed for rates levied in respect of those parcels under the provisions of the Local Government Act 1919 (as amended). The appellants objected to the assessments for the years 1966 and 1968 pursuant to s. 133(2) of the Act. The respective Notices of Objection claimed that the land was not rateable, and went on to state the ground of the objection as being that the land belonged to a public charity and was used or occupied by the charity for the purposes thereof. This ground was set out in the Notice of Objection in compliance with the form prescribed by Ordinance No. 5. Early in the hearing counsel for the appellants indicated that his clients' case would be presented on the basis that the issue for determination was whether or not the land was rateable, and that it would be contended that the appellants were entitled to rely upon any one or more of the exemptions specified in s. 132 (1) of the Act, and that they were entitled to exemption either under sub-clause (d) of s. 132(1) or under sub-clause (h) (i) of that sub-section.

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I am satisfied that this submission of the appellants is soundly based, and that they are entitled to rely on both the exempting provisions referred to either alternatively or cumulatively.

In litigation between the same parties (Joyce v. Ashfield Municipal Council 2 L.G.R.A. 300 and 4 L.G.R.A. 195) the appellants succeeded in their claim to be exempt from rates on the church hall adjoining the land the subject of these appeals. The exemption claimed and established was that contained in s. 132(1)(d). 10

The parcels of land the subject of these appeals were purchased in the latter half of 1963 under three contracts in which one, H.J. Proctor, was named as purchaser. In respect of each parcel the purchaser executed a Declaration of Trust in favour of four named persons, the appellants in these appeals. Mr. Proctor and those named persons were members of the religious sect known as the Exclusive Brethren or the Brethren; the four named persons were in fact the trustees under the Declaration of Trust of the hall which was the subject of the earlier litigation. The Declarations of Trust executed by Mr. Proctor did not refer to the persons in question as trustees or as trustees of any particular trust. 20

The appellants objected to the rates assessed upon them by reason of their ownership of the three

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parcels of land; that objection was heard by this Court in September 1965 and the decision was given in November 1965. The Court rejected the claim for exemption on the ground that the evidence deduced did not establish affirmatively that the relevant lands belonged to them as trustees for a public charity within the meaning of s. 132 (1)(d) of the Act. The judgment included the following pertinent passage:- 10

"... if I had been satisfied of the existence of a binding trust of the subject land I should not have regarded the trust as identical in terms with the trust set out in the declaration of the trust of the hall property for, having regard to their beliefs, I think it hardly likely that the donors of the funds used to purchase the subject lands would have intended that the large areas of valuable vacant land should be capable of being used at the discretion of the trustees for the time being, whoever they might be, for any charitable purpose whatsoever, whether of a religious or secular nature and, if for a religious purpose, for any of the many varieties of different forms of Christianity which are widely practiced in Western countries". 20

In those proceedings the appellants confined their case, as they had done in the earlier litigation of 1956, to the provisions of s. 132(1)(d). The challenge by the appellants to that decision on the ground that it was erroneous in law was unsuccessful. (Joyce & Ors. v. Ashfield Municipal Council 14 L.G.R.A. 133). 30

In support of the instant appeal the appellants relied upon oral and documentary evidence similar to or identical with that used in the previous litigation and a substantial body of additional oral and documentary

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evidence. Included in that additional evidence were the minutes of the meeting of the trustees of the Ashfield Hall Trust held on 11th December 1963, the last two paragraphs of which stated that the moneys for the purchase of the subject land were being made available on behalf of the trust and that Mr. Proctor had executed a Deed of Trust in respect of each of the properties "to establish that he had purchased and held them on behalf of the Ashfield Hall Trust". There was also tendered in these proceedings a Deed of Rectification of 4th January 1968 made between Mr. Proctor and the four appellants. This Deed purported to rectify the earlier Declarations of Trust signed by Mr. Proctor in 1963 by declaring that the whole of the purchase money for the three parcels of the land had been provided from funds belonging to the Ashfield Hall Trust and that the land had been purchased by Mr. Proctor on behalf of the appellants "as Trustees of the said Ashfield Hall Trust". Detailed oral evidence was given by Mr. C.E. Joyce, the senior and managing partner in the partnership which had made available by way of gift the bulk of the money used to purchase the three properties and by way of loan the balance of such moneys, and by Mr. N.J.P. Joyce, one of the four appellant trustees.

The additional evidence provided strong support for the case of the appellants that the subject areas

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had been acquired for the purposes of and were now held on the trusts contained in the Declaration of Trust applicable to the Ashfield Hall and dated 27th November, 1945. I am satisfied that the members of the partnership which provided the purchase money at no time had any beneficial interest in the subject lands and that the four appellants are and were during the periods relevant to the challenged rate assessments trustees of those lands. The really difficult question arises when one seeks to identify and specify the relevant trusts. It could well be that the trusts are those contained in the trust instrument of 27th November 1945 applicable to the hall property. However, no contemporary document or instrument has so identified them. What the contemporary documents refer to are "the Trustees of the Ashfield Hall Trust" and also to "the Ashfield Hall Trust". Those words, when used without any explanatory setting or context, are not without ambiguity and uncertainty. The Ashfield Hall was during the period prior and up to the purchase of the subject parcels being used regularly and frequently for the purposes of worship and associated activities by local Ashfield members of the Brethren and at least once a week by members of the sect drawn from the metropolitan area. To the mind of a layman without the Trust Deed in his hands or a lawyer at his side, references to the Ashfield

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Hall Trust or to the trustees of the Ashfield Hall Trust do not of necessity incorporate or imply the wide and unusual trusts contemplated and permissible under the deed of November 1945.

The really critical question is what was intended by the four members of the partnership who made the funds available and by the four trustees. The senior member of the partnership, Mr. C.E. Joyce has given evidence, as has Mr. N.P.J. Joyce, one of the trustees. They both say and believe that they had in mind the trusts applicable to the hall, being those set out in the earlier Declaration of Trust of November 1945. Both witnesses were, in my view, honest and sought to put before the Court the facts as they occurred in the latter half of 1963. However, at this point of time their recollections must of necessity have faded, particularly on questions that are now coloured to some extent by the litigation that has taken place. I am satisfied that the four trustees decided to buy the land and the members of the partnership made the funds available so that the land could be purchased to provide members of the sect going to the hall with convenient parking facilities for their motor vehicles. I am satisfied that it was the intention of the trustees and of the members of the partnership that these benefits should be available to the members of the sect attending

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the hall for the purposes of religious worship.

Although there is a substantial body of oral and documentary evidence supporting the view that the then relevant intention of the trustees and of the donors of the purchase money was to acquire the adjoining land to be held on the trusts specified in the Deed of November 1945, I am of the opinion that this is by no means clearly established; further, unless it is essential so to do, this issue should not be determined in proceedings other than in a suit in Equity in which the Attorney-General would be a party. For reasons set out later it is not essential to decide that issue.

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It is clear in my view that the lands are held by the trustees either on the general charitable trusts as expressed in the Deed of November 1945 or on trust for use in connection with the adjoining hall so long as it continues to be used by the Brethren for religious worship and related activities. In my view it matters not, for the purposes of the appellants' case, which of these inferences should be drawn from the oral and documentary evidence. If the relevant trusts are those specified in the Deed of November 1945 then the decision in the earlier litigation (supra 4 L.G.R.A. 195) establishes the claim of the appellants. If on the other hand the trusts are of a more limited nature referable to the use of the hall by the members of the particular

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sect to which the trustees belong, then in my view the land qualifies for the exemption specified in s. 132 (1)(h)(i). In other words, it is land belonging to a religious body occupied and used in connection with a church or other building used or occupied for public worship.

Counsel for the respondent submitted interesting arguments to the effect that members of the sect did not constitute "a religious body" and that the religious services and exercises conducted in the hall were of a private nature and did not constitute "public worship". I am of the opinion that although there is a close personal association between the members of the sect who use the hall for their religious activities, nevertheless they constitute a religious body and engage in public worship within the meaning of the Section. In this connection the principle stated in Hawthorn v. Victorian Welfare Association (1970 V.R. 205 at 207) cited by counsel for the appellants is relevant. 10 20

Counsel for the respondent also submitted that the phrase "in connection with" in s. 132(1)(h)(i) should be construed narrowly and that, so construed, it did not extend to the use of the subject land for the accommodation of motor vehicles driven by members of the sect attending the hall for the purpose of religious worship. In my view this portion of the sub-clause is

wide enough to bring within the benefit of the exemp-  
tion the ancillary use of the subject land. (Leigh  
Memorial Methodist Church v. Parramatta City Council  
4 L.G.R.A. 325 at 331).

For the reasons indicated I am of the opinion  
that the appellants have established their right to be  
exempt from rates levied by the respondent for the years 10  
1966 and 1968 in respect of the subject land, except  
the area occupied under lease by a laundry undertaking  
and the area occupied under lease or licence by the  
Bible & Tract Depot during the period of those occu-  
pancies. It appears that the laundry occupancy ceased  
at the end of October 1966 and the Bible and Tract  
occupancy continued on during the whole of the two  
relevant years.

A considerable body of documentary evidence and  
small portions of the oral evidence were admitted sub- 20  
ject to relevancy. Should either party seek a stated  
case it may be necessary to rule individually on the  
various objections. At this stage it is sufficient to  
indicate that most of the evidence so admitted was  
treated by me as admissible and relevant. However, I  
am of the opinion that the Registrar-General's caveat  
placed on the title of the subject parcels is not ad-  
missible. It merely indicates the view taken by the  
Registrar-General that the trusts affecting the subject

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land are those contained in the Deed of November 1945,  
a view which I have said earlier may or may not be  
correct.

I will stand the matter over for settlement of  
Short Minutes of Order on 1st October, 1970; order to  
date as of that date. Exhibits coming from the custody  
of the Registrar-General to be handed out. The ques-  
tion of costs to stand over until the settlement of  
Short Minutes.

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IN THE LAND AND VALUATION COURT

Land and Valuation Court 6344, 6345, 6346, &  
6544, 6546, 6547.

Term of 1971.

IN THE MATTER OF the Local Government Act, 1919.

AND IN THE MATTER OF an Appeal by Norman James  
Peel Joyce, Thomas Wynn Heaney, Austin Keith  
Smith and John Nelson Joyce against Rate Notice  
Assessment Nos. 2561, 1857, 1858.

AND IN THE MATTER OF an Appeal by Norman James 10  
Peel Joyce, Thomas Wynn Heaney, Austin Keith  
Smith and Francis Robert Heaney against Rate  
Notice Assessment Nos. 6899, 6900, 8007 (in the  
Notice of Appeal called 6901), 6902.

BETWEEN:

NORMAN JAMES PEEL JOYCE, THOMAS WYNN  
HEANEY, AUSTIN KEITH SMITH, JOHN NELSON  
JOYCE, and FRANCIS ROBERT HEANEY

Appellants

AND:

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THE COUNCIL OF THE MUNICIPALITY OF  
ASHFIELD

Respondent

CASE STATED BY THE LAND AND VALUATION COURT FOR THE  
DECISION OF THE SUPREME COURT THEREON IN PURSUANCE OF  
SECTION 17 OF THE LAND AND VALUATION COURT ACT,  
1921-1955.

Pursuant to the requirement in writing of the above-  
named Respondent I do state the following case for the  
decision of the Supreme Court on the question of law 30  
hereinafter set forth.

1. In 1966 and at all material times the Appellants,  
Norman James Peel Joyce, Thomas Wynn Heaney,  
Austin Keith Smith and John Nelson Joyce, were  
the registered proprietors as joint tenants of

Case Stated

parcels of land situated in Orchard Crescent, Ashfield and respectively comprised in Certificates of Title registered Volume 4476 Folio 139, Volume 7572 Folio 195, Volume 812 Folio 12 and Volume 9694 Folio 19.

2. The Respondent levied rates upon the parcels of land referred to in Paragraph 1 for the year 1966 by notices of assessment of rates by the Respondent and duly served upon the Appellants, 10  
copies whereof are annexed hereto and marked respectively with the letters, "A", "B" and "C".

3. In 1968, and at all material times the Appellants, Norman James Peel Joyce, Thomas Wynn Heaney, Austin Keith Smith and Francis Robert Heaney were the registered proprietors as joint tenants of parcels of land situated in Orchard Crescent, Ashfield and respectively comprised in Certificates of Title registered Volume 4476, Folio 139, Volume 7572 Folio 195, Volume 812 Folio 12, 20  
Volume 9694 Folio 19 and Volume 9914 Folio 14.

4. The Respondent levied rates upon the land referred to in Paragraph 3 hereof for the year 1968 by notices of assessment of rates by the Respondent and duly served upon the Appellants, copies whereof are annexed hereto and marked respectively with the letters "D", "E", "F" & "G".

5. The Appellants duly appealed to this Court under the provisions of Section 133(2) of the Local

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Government Act, 1919 (as amended) against each of the said assessments referred to in Paragraphs 2 & 4 claiming that the said parcels of land were, and each of them was, not rateable either under Section 132(1)(d) or Section 132(1)(h)(i) of the said Act.

6. The Appellants, Norman James Peel Joyce, Thomas Wynn Heaney, Austin Keith Smith and Francis Robert Heaney are the present trustees of the trust known as the Ashfield Hall Trust constituted by a deed of trust a copy of which is annexed hereto and marked with the letter "H". Upon the land described in the Schedule to the said deed is erected a hall known as the Ashfield Hall which adjoins the area formed by the said parcels of land described in Paragraph 3. 10

7. The parcels of land referred to in Paragraphs 1 & 3 were purchased in the latter half of 1963 under three contracts in which one H.J. Proctor was named as purchaser. 20

8. In respect of each of the said parcels of land the purchaser executed a declaration of trust in favour of four named persons, being Norman James Peel Joyce, Thomas Wynn Heaney, Austin Keith Smith and John Nelson Joyce, true copies of the said deeds being annexed hereto and marked "I", "J" & "K".

9. The said declarations of trust executed by

Case Stated

Mr. Proctor did not refer to the said four persons as trustees or as trustees of any particular trust.

10. Mr. Proctor and the said four named persons were members of the religious sect known as The Exclusive Brethren or The Brethren.

11. The bulk of the moneys used to purchase the parcels of land referred to in Paragraphs 1 & 3 were made available by members of a partnership, in part by way of gift and in part, by way of loan, and the balance of the moneys had been made available by way of gift by Mr. N.J.P. Joyce, one of the five Appellants. 10

12. The subject parcels of land were set forth in a plan being Exhibit "J", a copy of which is annexed hereto and marked "L".

13. Part of the said lands were used by a commercial laundry and a further part was a Bible and Tract depot as delineated respectively on the said plan, Exhibit "J". 20

14. The balance of the said lands were at all material times used for parking of vehicles for persons attending meetings of The Exclusive Brethren or Brethren in the adjoining Ashfield Hall.

15. The gifts and loan were discussed and considered at two meetings of the trustees of the Ashfield Hall Trust held respectively on 19th September,



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1963 and 17th November, 1963. True copies of the minutes thereof are annexed hereto marked "M" & "N".

16. A further meeting of the said trustees of the Ashfield Hall Trust was held on 11th December, 1963 and a true copy of the minutes of that meeting is annexed hereto marked "O".

17. Mr. Proctor and the Appellants, Norman James Peel Joyce, Thomas Wynn Heaney, Austin Keith Smith and Francis John Heaney, executed a deed of rectification of the 4th January, 1968 a true copy whereof is annexed hereto marked "P". This deed purported to rectify the earlier declarations of trust executed by Mr. Proctor in 1963 as referred to in Paragraph 8 hereof by declaring that the whole of the purchase money for the said parcels of land had been provided from funds belonging to the Ashfield Hall Trust and that the lands had been purchased by Mr. Proctor on behalf of the Appellants as trustees of the said Ashfield Hall Trust.

18. Appeals were instituted in respect of the 1966 assessments by notices of appeal dated 22nd day of April, 1966, copies of which are hereunto annexed and marked with the letters "Q", "R" & "S" against the said notices of assessment and came before this Court on the 5th, 6th, 7th and

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10th August, 1970 when they were heard together by consent.

19. Appeals in respect of the 1968 assessments were instituted by notices of appeal dated the 8th day of March, 1968 copies of which are annexed hereto and marked with the letters "T", "U", "V" & "W", against the said notices and came before this Court on the 5th, 6th, 7th and 10th August, with MFH 1970 when they were heard together ~~and-at-the~~ 10 ~~same-time-as~~ the appeals in respect of assessments referred to in Paragraph 18 hereof by consent.

MFH Copy of the transcript of evidence & the exhibits are annexed hereto.

20. The Court was satisfied:

- (i) that the members of the partnership which provided the purchase money and Mr. N.J.P. Joyce at no time had any beneficial interest in the subject land;
- (ii) that the Appellants are and were during 20 the material times relevant to the said respective notices of assessment of rates trustees of the lands;
- (iii) that the then trustees decided to buy the lands and the members of the partnership made the funds available so that the lands could be purchased to provide members of the sect going to the Hall with convenient parking facilities for their motor vehicles;

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(iv) that it was the intention of the trustees and of the members of the partnership that those benefits should be made available to the members of the Sect attending the Hall for the purposes of religious worship.

21. As appears from the finding and reasons set out in my judgment a copy of which is annexed hereto and marked "X", I found for the Appellants and allowed the said appeals except as to the small areas referred to in my judgment, namely:- 10

(a) for the year 1966, excluding the area of land occupied under lease or licence by the Bible and Tract depot and the area of land occupied under lease by the laundry,

(b) for the year 1968, excluding the area of land occupied under lease or licence by the Bible and Tract depot.

22. The court allowed the said appeals except as to the areas marked as referred to in Paragraph 21 hereof. 20

THE QUESTIONS OF LAW STATED FOR THE DECISION OF THE SUPREME COURT ARE:

(1) On the facts found by me, is the subject land exempt from rating by the Respondent either by virtue of Section 132(1)(d) or by virtue of Section 132(1)(h)(i) of the Local Government Act, 1919 (as amended)?

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- (2) Whether there was any evidence from which the inference could be drawn that members of the Brethren did constitute a religious body and that the religious services and exercises conducted in the Ashfield Hall constituted public worship within the meaning of Section 132(1)(h)(i) of the Local Government Act, 1919.

DATED this 30th day of June 1972.

M.F. Hardie  
Judge of the Land and Valuation  
Court.

TO ALL TO WHOM THESE PRESENT SHALL COME, WE, JAMES

SHEDDEN DAVIS of Croydon near Sydney in the State of New South Wales, Medical Practitioner, WILLIAM JAMES HOUSE of North Sydney in the said State, Merchant, OLIVER HILLS of Ashfield near Sydney aforesaid, Managing Clerk, and BOULTON ARTHUR MOLINEAUX of Lane Cove near Sydney aforesaid, Contractor, SEND GREETINGS:

WHEREAS by Agreement dated the twenty seventh day of November One thousand nine hundred and forty-five made between the said James Shedden Davis, William James House and Thomas Heaney, Ernest Stanley Wallace and Herbert Samuel House (hereinafter referred to as "the vendors") of the one part and ourselves of the other part, the vendors agreed to sell to us the real and personal property set forth in the schedule hereto upon condition that immediately upon completion of the sale in accordance with the said agreement we would execute a declaration of trust in the terms of these presents

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AND WHEREAS the said sale has now been duly completed in accordance with the said agreement NOW THESE PRESENTS

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WITNESS that in pursuance of the said agreement we, the said James Shedden Davis, William James House, Oliver Hills and Boulton Arthur Molineaux (hereinafter called "the trustees" or included in that expression) DO HEREBY DECLARE AND AGREE that we shall hold the trust property as hereinafter defined upon the trusts and with and subject to the powers hereinafter declared and set forth, that is to say:-

INTERPRETATION. 1. In this deed unless the contrary intention appears:- "The trust property" shall mean the whole of the said real and personal property set forth in the schedule hereto and all other real and personal property which may hereafter be acquired by and for the time being be held by the trustees for the purposes of the trusts hereof.

"The trust land" shall mean all land for the time being comprising part of the trust property. 10

"The hall" shall mean any hall for the time being standing upon the trust land together with the furniture and fittings for the time being thereof and shall be known as "the Ashfield Hall".

"The cottage" shall mean any cottage for the time being standing upon the trust land together with so much of the land surrounding such cottage as the trustees shall for the time being make available for the use of the persons residing therein; 20

"The trust fund" shall mean the Ashfield Hall Trust Fund hereinafter constituted.

"The trust" shall mean the trust hereby constituted, and shall be known as "the Ashfield Hall Trust".

"The trustees" shall mean the trustees for the time being of the trusts hereof whether original or substituted. The singular shall include the plural and the plural the singular and the masculine shall include the feminine.

DECLARATION OF TRUST. 2. (i) 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.

(ii) The trustees hereby declare that it is their wish and desire that the primary charitable purpose to which the trust property shall be devoted shall be to employ the same for providing a meeting place for religious purposes for Christians but it is to be distinctly understood that this expression of the trustees' wish and desire shall not impose any obligation upon the Trustees nor be interpreted as a trust. 10

USE OR LETTING OF HALL. 3. (a) The trustees may use the hall or permit the hall to be used for meetings therein of Christians for religious purposes or for any other charitable purpose or purposes which the trustees may from time to time in their absolute discretion select but for no other purposes and may stipulate for such term such rent and such covenants and provisos in all respects as the trustees may in their absolute discretion think fit. 20

USE OR LETTING OF COTTAGE. 4. The trustees may use the cottage for the purposes of a residence for a caretaker or cleaner of the hall and for such purposes may let the cottage and stipulate for such term such rent and such covenants and provisos in all respects as the trustees may in their absolute discretion think fit.

GIFTS, LEGACIES ETC. 5. The trustees may receive gifts, legacies and benefactions of any kind and any gift, legacy or benefaction so received shall be held and applied by the trustees for in and about the purposes of the trusts hereof.

TRUST FUND. 6. There shall be a trust fund to be known as "The Ashfield Hall Trust Fund" which shall consist of all moneys (whether capital or income and whether gifts legacies benefactions or otherwise) received by the trustees under the trusts hereof. 10

APPLICATION OF TRUST FUND. 7. The trustees may from time to time apply the trust fund or any part thereof (whether capital or income) in payment of any interest payable under any mortgage or charge over the trust property or in payment of any other moneys payable thereunder or for the purposes of any expenditure authorised by or incurred in or resulting from any of the trusts hereof or the performance or exercise thereof. 20

INVESTMENT. 8. The trustees may from time to time invest all or any moneys standing in the trust fund which in their opinion are not immediately required to be expended for the purposes of the trusts hereof in any form of investment authorised by law for the investment of trust funds and may from time to time sell call in convert into money dispose of vary or transpose any such investment.

POWER TO INSURE. 9. The trustees shall insure the hall



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and the cottage and any part of the trust property suitable for insurance against fire and may insure themselves against any risk or liability which they may incur or which may possibly affect them as owners or occupiers or persons in possession of the trust property or any part thereof.

POWER TO REPAIR. 10. The trustees may from time to time repair renovate remodel or improve and keep in repair the hall and the cottage and any other part of the trust property. 10

POWER TO REBUILD ETC. 11. The trustees may from time to time extend add to alter demolish reconstruct or rebuild the hall or the cottage or any other building or improvement now or hereafter standing upon the trust land and may erect new additional or further or other buildings or improvements thereon whether in addition to or in substitution for the buildings and improvements now or hereafter thereon or not and may furnish and fit out any such building and may alter or replace or add to by purchase or otherwise the furniture and fittings of the hall or of any other building now or hereafter standing upon the trust land. 20

APPLICATION OF TRUSTS TO REBUILT PREMISES ETC. 12. The trusts hereof shall extend and apply to any such extended added to altered reconstructed rebuilt new additional or further or other buildings or improvements and to any

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furniture or fittings thereof in like manner as if the same had originally formed part of the trust property and so that the trusts hereof more particularly applicable to the hall shall apply to any hall forming part of any such buildings and to the furniture and fittings of such hall and the trusts hereof more particularly applicable to the cottage shall apply to any cottage forming part of any such buildings.

10

PAYMENT OF TAXES ETC. 13. The trustees may from the trust fund pay and discharge all rates taxes assessments insurance premiums and charges and other outgoings in respect of the trust property or any part thereof or of the income of the trust property or any part thereof and all wages and other expenditure which they may be obliged to incur or may think fit to incur in relation thereto or in relation to the trusts hereof or the performance or exercise thereof or otherwise under these presents.

20

GENERAL POWER OF MANAGEMENT. 14. The trustees shall in all respects have full power and discretion to manage and control the trust property for the purposes of the trust.

POWER TO MORTGAGE. 15. The trustees may from time to time at their absolute discretion for any of the purposes of the trusts hereof or the performance or exercise thereof borrow money either with or without security

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and for the purposes of any borrowing may mortgage or charge the trust property or any part thereof.

POWER TO SELL. 16. The trustees may from time to time or at any time at their absolute discretion sell the trust property or any part thereof for cash or upon terms and at such price and upon such terms and conditions as they shall in their absolute discretion think fit.

10

POWER TO ACQUIRE LANDS. 17. The trustees may from time to time at their absolute discretion acquire by purchase or otherwise any land or land and buildings whether adjoining the trust land or not and any land or land and buildings so acquired shall be held by the trustees upon the trusts hereof.

POWER TO APPLY THE TRUST PROPERTY. 18. The trustees may pay or apply the trust property or any part thereof to or for the benefit of any other charitable trust whether or not the trustees of such other charitable trust include the trustees hereof or any of them.

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AUTHORITY TO RECEIVE MONEYS. 19. Any moneys to be paid to the trustees for the purposes of the trust may be paid to any two trustees whose receipt shall be a full and effectual receipt and discharge for such moneys.

CHEQUES ETC. 20. All cheques and orders for the payment of money by the trustees may be signed by any two trustees.

ACCOUNTS & AUDIT, 21. Proper accounts showing the  
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assets and liabilities of the trust and all receipts and disbursements had and made on behalf of the trust shall be kept by the trustees and as soon as may be after the Thirtieth day of June in each and every year the trustees shall prepare a balance sheet as at the said Thirtieth day of June and an income and expenditure account for the period of twelve months ending on the said Thirtieth day of June or in the case of the first such account for the period beginning with the commencement of the trust and ending on the Thirtieth day of June. Forthwith after preparation of such balance sheet and income and expenditure account the trustees shall cause the accounts in respect of which such balance sheet and income and expenditure account have been prepared to be examined or audited by a person from time to time selected by them (not being one of themselves) who publicly carries on the business of an accountant and shall for that purpose produce such vouchers and give such information as such person shall require.

APPOINTMENT OF NEW TRUSTEES. 22. The trustees may at any time appoint a new trustee. The number of trustees shall not by any appointment of a new trustee be increased beyond five. The trustees shall at all times make such appointments of new trustees as shall be necessary to ensure that the number of trustees shall not for any considerable time be reduced below four.

REMOVAL OF TRUSTEE. 23. Any one trustee may at any time be removed by deed executed by the other trustees and duly registered in the office of the Registrar General in accordance with the provisions of the Trustee Act 1925 for the time being in force relating to the registration of instruments by which a new trustee is appointed or by which a trustee retires or disclaims. Upon such registration being effected production of the deed shall for all purposes be conclusive evidence of the removal of the trustee. 10

EMPLOYMENT OF AGENTS. 24. The trustees may, instead of acting personally, employ and pay any other person or persons or body to transact any business or keep any accounts or records on their behalf or to do any act or carry out any work in relation to the trust property and shall not be personally liable for any loss incurred by or in any way arising out of such employment or of the incompetence neglect or wilful misconduct of any person or body so employed. 20

POWER TO EMPLOY TRUSTEES AND RIGHT OF TRUSTEES TO BE PAID.

25. Any trustee being a solicitor or accountant or any other person engaged in any profession or business or occupation may (subject to clause 21 hereof) be so employed and shall be entitled to charge and be paid all professional and other charges for any business or act done by him or his firm or his or their clerks or

employees in connection with the trusts hereof including any business or act which a trustee not being a solicitor or accountant or other person engaged in any profession or business or occupation could have done personally.

POWER TO TRUSTEES TO COMPROMISE CLAIMS ETC. 26. The trustees may at their absolute discretion without being in any way personally liable or responsible for any loss occasioned to the trust or any diminution of the trust property accept any composition or any security real or personal for any debt or for any property claimed, allow any time for payment for any debt, compromise compound abandon submit to arbitration or otherwise settle any debt account claim or thing whatever relating to the trust or the trust property and for any of such purposes may enter into give execute and do such agreements instruments of composition or arrangement releases and other things as to them may seem expedient. 10 20

POWER TO TRUSTEES TO REFRAIN FROM TAKING LEGAL PROCEEDINGS.

27. The trustees may at their absolute discretion without being in any way personally liable or responsible for any loss occasioned to the trust or the trust property refrain from suing for any debt or from prosecuting any claim or from taking any legal action or proceedings whatever in relation to any matter or thing whatever relating or in any way connected with the trust or the trust property. 30

POWER TO TRUSTEES TO TAKE AND ACT ON COUNSEL'S OPINION.

28. The trustees may at any time take and act upon the opinion of any counsel practising in the State of New South Wales as to the interpretation of these presents or any other document or statute or as to the performance or exercise of the trusts hereof or as to any other matter or thing in any way arising out of or under these presents on the powers or duties of the trustees hereunder and they shall not be in any way personally liable or responsible in respect of any act done by them in accordance with such opinion.

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INDEMNITY. 29. The trustees may indemnify or reimburse themselves out of the trust property or any part thereof for any liability or expenditure or expense to which they may be put or which they may incur in relation to the trust or the trust property or in relation to performing or exercising the trusts hereof.

TRUSTEES' LIABILITY. 30. No trustee shall be liable for any loss not attributable to his own dishonesty or gross or wilful neglect or to the wilful commission by him of an act known by him to be a breach of trust and in particular he shall not be bound to take any proceedings against a co-trustee for any breach or alleged breach of trust committed by such co-trustee.

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PROTECTION TO PERSONS DEALING WITH TRUSTEES. 31. Neither the Registrar General nor any person dealing in good faith with the trustees or any of them whether as vendor

purchaser mortgagee or otherwise in any capacity whether of a like or different nature shall be concerned to enquire or see whether the occasion for performing or exercising any of the trusts hereof has arisen or whether any condition has been fulfilled or authority given or as to the purpose of the trustees in performing or exercising any of the trusts hereof or whether any meeting has been held or has been regularly or properly convened or held or whether the provisions hereof or of the general law as to the appointment removal or retirement of trustees have been observed or otherwise howsoever as to the propriety or regularity of any act of the trustees or to see to the application of any moneys paid to the trustees and shall not be affected by the non-application or mis-application of any moneys paid to the trustees. 10

APPLICATION OF GENERAL LAW. 32. The rights powers privileges immunities protections and indemnities hereby conferred upon the trustees and each of them and upon the Registrar General shall be in addition to and not in derogation from any rights powers privileges immunities protections and indemnities conferred upon trustees and persons dealing with them and upon the Registrar General by any Act or Acts for the time being in force of the Parliament of the State of New South Wales the Commonwealth of Australia or the United Kingdom or by any regulations or other delegated legislation 20



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for the time being in force or by the general law for  
the time being.

POWER TO MAKE BY-LAWS. 33. The trustees shall have  
power to make by-laws regulating the conduct of their  
businesses as such trustees and the management of the  
trust. Any such by-laws may be repealed altered or  
amended at a meeting of the trustees.

SIDENOTES. 34. The sidenotes inserted beside the sev- 10  
eral provisions hereof are for purposes of reference  
only and shall not be regarded as forming part of or  
affecting the construction of these presents or any part  
of these presents.

IN WITNESS WHEREOF the parties hereto have hereunto  
set their hands and seals the twenty-seventh day of  
November One thousand nine hundred and forty-five.

THE SCHEDULE HEREINBEFORE REFERRED TO

REAL PROPERTY:-

County of Cumberland, Parish of Concord, the 20  
whole of the land in Certificates of Title  
Volume 5136 Folios 157, 158, 159, 160, 161 and  
162.

PERSONAL PROPERTY:-

Hall - 1080 chairs.  
Ladies Rest Room - 2 settees, 5 chairs and 1  
table.  
Gents Rest Room - 1 settee, 4 chairs and 1 table.  
Amplification - 5 microphones.

SIGNED SEALED AND DELIVERED  
by the said JAMES SHEDDEN  
DAVIS, WILLIAM JAMES HOUSE,  
OLIVER HILLS and BOULTON  
ARTHUR MOLINEAUX in the  
presence of:

} J. Shedden Davis 30  
} W.J. House  
} Oliver Hills  
} B.A. Molineaux

Lancelot N. Hills  
Solicitor, Sydney.

THIS DEED made the fifteenth day of October One thousand nine hundred and sixty-three BETWEEN HEDLEY JOHN PROCTOR of 9-11 O'Connell Street Sydney in the State of New South Wales Solicitor (hereinafter called "the Trustee") of the One Part AND NORMAN JAMES PEEL JOYCE of Willee Street Burwood in the State aforesaid Company Director JOHN NELSON JOYCE of 3 Garden Square Gordon in the State aforesaid Company Director THOMAS WYNN HEANEY of 19 Sylvan Avenue East Lindfield in the State aforesaid Manufacturer AND AUSTIN KEITH SMITH of 1 Angas Street Meadowbank in the State aforesaid Factory Manager (hereinafter called "the Purchasers") of the Other Part WHEREAS by Contract dated the Fifteenth day of October One thousand nine hundred and sixty-three the Trustee entered into a contract with H. Walters and Son Pty. Limited for the purchase of ALL THAT the pieces or parcels of land situated in the Parishes of Concord and Petersham and the County of Cumberland having a frontage of 150 feet to Orchard Street Ashfield by an irregular depth of 269 feet 9½ inches on the one side and 291 feet 1½ inches on the other side and being the whole of the land comprised in Certificates of Title Registered Volume 812 Folio 12 Volume 4476 Folio 139 and Volume 7572 Folio 195 for the sum of Thirty-five thousand pounds (£35,000) AND WHEREAS the deposit payable therein of Three thousand five hundred pounds (£3,500) was provided by the Purchasers and it is intended that the before mentioned real property should be transferred

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and conveyed to the Trustee merely as Trustee for the Purchasers AND WHEREAS the further sum of Thirty-one thousand five hundred pounds (£31,500) will be provided by the Purchasers to complete the Purchase as the Trustee doth hereby acknowledge NOW THIS DEED WITNESSETH THAT the Trustee hereby declares that he holds and will continue to hold the said real property in trust for the Purchasers in fee simple as joint tenants and hereby agrees that he will at the request and cost of the Purchasers transfer and convey such property to such person or persons at such time or times and in such manner deal with the same as the Purchasers shall direct or appoint and make such applications and execute and do all such instruments act and things as may be necessary for the purpose of securing the said lands and the Purchasers hereby indemnify and will keep indemnified and save harmless the Trustee in respect of all claims demands proceedings costs and expenses whatsoever in respect of the trust property and of the Trustee's dealings therewith.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED by the )  
said HEDLEY JOHN PROCTOR in the ) H.J. Proctor  
presence of -

S.R. Proctor  
Clerk, 9-11 O'Connell Street,  
Sydney.

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SIGNED SEALED AND DELIVERED by the )  
said NORMAN JAMES PEEL JOYCE in ) N.J.P. Joyce  
the presence of )

Thomas W. Heaney  
19 Sylvan Ave.  
East Lindfield.

SIGNED SEALED AND DELIVERED by the )  
said JOHN NELSON JOYCE in the ) J.N. Joyce 10  
presence of )

Thomas W. Heaney  
19 Sylvan Ave.  
East Lindfield.

SIGNED SEALED AND DELIVERED by the )  
said THOMAS WYNNE HEANEY in the ) Thomas W. Heaney  
presence of )

N.J.P. Joyce  
7 Willee St.,  
Enfield.

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SIGNED SEALED AND DELIVERED by the )  
said AUSTIN KEITH SMITH in the ) A.K. Smith  
presence of )

Thomas W. Heaney  
19 Sylvan Ave.  
East Lindfield.

THIS DEED made the Thirtieth day of October One thousand nine hundred and sixty-three BETWEEN HEDLEY JOHN PROCTOR of 9-11 O'Connell Street Sydney in the State of New South Wales Solicitor (hereinafter called "the Trustee") of the One Part AND NORMAN JAMES PEEL JOYCE of Willee Street Burwood in the State aforesaid Company Director JOHN NELSON JOYCE of 3 Garden Square Gordon in the State aforesaid Company Director THOMAS WYNNE HEANEY of 19 Sylvan Avenue East Lindfield in the State aforesaid Manufacturer AND AUSTIN KEITH SMITH of 1 Angas Street Meadowbank in the State aforesaid Factory Manager (hereinafter called "the Purchasers") of the Other Part WHEREAS by Contract dated the Thirtieth day of October One thousand nine hundred and sixty-three the Trustee entered into a contract with Alfred Dance Eleanor Mavis Dance Percival John Dance as Executors of the Will and Codicils of the late May Dance for the purchase of ALL THAT pieces or parcels of land situated in the Parish of Concord and County of Cumberland being Lot 2 in the Plan annexed to the contract between the Trustee and the said executors of the Will and Codicils of the late May Dance dated the Thirtieth day of October One thousand nine hundred and sixty-three being part of the land comprised in Certificate of Title Registered Volume 8313 Folio 210 and also being that parcel of land situated as aforesaid having a combined frontage to Orchard Crescent of about 40 feet by a depth on one side of 87 feet 4 inches and on the other side of about

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88 feet 6½ inches and a rear line of about 40 feet and being the whole of the land comprised in Certificates of Title Registered Volume 1544 Folio 104 and Volume 958 Folio 58 for the sum of Twenty-five thousand pounds (£25,000) AND WHEREAS the deposit payable therein of Two thousand five hundred pounds (£2,500) was provided by the Purchasers and it is intended that the beforementioned real property should be transferred and conveyed 10 to the Trustee merely as Trustee for the Purchasers AND WHEREAS the further sum of Twenty-two thousand five hundred pounds (£22,500) will be provided by the Purchasers to complete the purchase as the Trustee doth hereby acknowledge NOW THIS DEED WITNESSETH that the Trustee hereby declares that he holds and will continue to hold the said real property in trust for the Purchasers in fee simple as joint tenants and hereby agrees that he will at the request and cost of the Purchasers transfer and convey such property to such person or 20 persons at such time or times and in such manner deal with the same as the Purchasers shall direct or appoint and make such applications and execute and do all such instruments act and things as may be necessary for the purpose of securing the said lands and the purchasers hereby indemnify and keep indemnified the Trustee and save him harmless in respect of all claims demands proceedings costs and expenses whatsoever in respect of the trust property and of the Trustee's dealings therewith.

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IN WITNESS WHEREOF the parties hereto have hereunto set  
their hands and seals on the day and year first herein-  
before written.

SIGNED SEALED AND DELIVERED by the  
said HEDLEY JOHN PROCTOR in the  
presence of -

)  
) H.J. Proctor  
)

S.R. Proctor  
Clerk  
9-11 O'Connell Street,  
Sydney.

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SIGNED SEALED AND DELIVERED by the  
said NORMAN JAMES PEEL JOYCE in  
the presence of -

)  
) N.J.P. Joyce  
)

A.K. Smith  
1 Angas St.  
Meadowbank.

SIGNED SEALED AND DELIVERED by the  
said JOHN NELSON JOYCE in the  
presence of -

)  
) J.N. Joyce  
)

A.K. Smith  
1 Angas St.  
Meadowbank.

20

SIGNED SEALED AND DELIVERED  
THOMAS WYNNE HEANEY in the  
presence of

)  
) Thomas W. Heaney  
)

N.J.P. Joyce  
7 Willee St.  
Enfield.

SIGNED SEALED AND DELIVERED by the  
said AUSTIN KEITH SMITH in the  
presence of -

)  
) A.K. Smith  
)

30

Thomas W. Heaney  
19 Sylvan Ave.  
East Lindfield.

This is the Third Schedule mentioned and referred to in the Deed of Rectification between Hedley John Proctor, Norman James Peel Joyce, John Nelson Joyce, Thomas Wynne Heaney, Austin Keith Smith, dated the Fourth day of January, 1968.

THIS DEED made the Twenty-seventh day of November One thousand nine hundred and sixty-three BETWEEN HEDLEY JOHN PROCTOR of 9-11 O'Connell Street Sydney in the State of New South Wales Solicitor (hereinafter called "the Trustee") of the One Part AND NORMAN JAMES PEEL JOYCE of Willee Street Burwood in the State aforesaid Company Director JOHN NELSON JOYCE of 3 Garden Square Gordon in the State aforesaid Company Director THOMAS WYNNE HEANEY of 19 Sylvan Avenue East Lindfield in the State aforesaid Manufacturer AND AUSTIN KEITH SMITH of 1 Angas Street Meadowbank in the State aforesaid Factory Manager (hereinafter called "the Purchasers") of the Other Part WHEREAS by Contract dated the Twenty seventh day of November One thousand nine hundred and sixty-three the Trustee entered into a contract with F.W. Flowers Pty. Limited for the purchase of ALL THAT piece of land situate in the Municipality of Ashfield Parish of Concord and County of Cumberland having a frontage of 30 feet to Orchard Crescent Ashfield by a depth of 86 feet five inches on one side and 87 feet 4 inches on the other side with a rear line of 30 feet being Lot 20 in Deposited Plan No. 956 and the whole of the land comprised in Certificate of Title Volume 1054 Folio 90 on which is erected a weatherboard cottage known as No. 4 Orchard Crescent, Ashfield for the sum of Four thousand

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five hundred pounds (£4,500) AND WHEREAS the deposit payable therein of Four hundred and fifty pounds (£450) was provided by the Purchasers and it is intended that the before mentioned real property should be transferred and conveyed to the Trustee merely as Trustee for the Purchasers AND WHEREAS the further sum of Four thousand and fifty pounds (£4,050) will be provided by the Purchasers to complete the Purchase as the Trustee doth hereby acknowledge NOW THIS DEED WITNESSETH THAT the Trustee hereby declares that he holds and will continue to hold the said real property in trust for the Purchasers in fee simple as joint tenants and hereby agrees that he will at the request and cost of the Purchasers transfer and convey such property to such person or persons at such time or times and in such manner deal with the same as the Purchasers shall direct or appoint and make such applications and execute and do all such instruments act and things as may be necessary for the purpose of securing the said lands and the Purchasers hereby indemnify and will keep indemnified and save harmless the Trustee in respect of all claims demands proceedings costs and expenses whatsoever in respect of the trust property and of the Trustee's dealings therewith.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore written.

Annexure "K" to Case  
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SIGNED SEALED AND DELIVERED by the  
said HEDLEY JOHN PROCTOR in the  
presence of

H.J. Proctor

D. Matheson

SIGNED SEALED AND DELIVERED by the  
said NORMAN JAMES PEEL JOYCE in  
the presence of

N.J.P. Joyce

Thomas W. Heaney

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SIGNED SEALED AND DELIVERED by the  
said JOHN NELSON JOYCE in the  
presence of

J.N. Joyce

A.K. Smith

SIGNED SEALED AND DELIVERED by the  
said THOMAS WYNNE HEANEY in the  
presence of

Thomas W. Heaney

N.J.P. Joyce

SIGNED SEALED AND DELIVERED by the  
said AUSTIN KEITH SMITH in the  
presence of

A.K. Smith

20

J.N. Joyce

MINUTES OF THE 62nd MEETING OF THE TRUST HELD AT ORCHARD  
CRESCENT ON THURSDAY 19 Sept, 1963 in the p.m.

Present Mr. T.W. Heaney, Mr. J.N. Joyce, Mr. N.J.P. Joyce and Mr. A.K. Smith.

Minutes No Minutes read.

Business The purpose of the meeting was to consider the purchase of the land on the eastern side of the hall.

Resolved That an offer for the 2 sections be made on behalf of the trustees for £25,000 and £35,000 10

Finance It was confirmed that finance would be made available for the trust to purchase the land.

Resolves further to request Mr. Hedley Proctor to act as our solicitor in this matter and also that he be requested to negotiate in his own name and if successful to make the purchase in trust for the trustees. 20

Thomas W. Heaney N.J.P. Joyce  
J.N. Joyce A.K. Smith

MINUTES OF THE 63rd MEETING OF THE ASHFIELD HALL TRUST  
HELD AT ORCHARD CRESCENT ON TUESDAY THE 17th DAY OF  
NOVEMBER 1963.

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Present Mr. T.W. Heaney, Mr. J.N. Joyce, Mr. N.J.P. Joyce, Mr. A.K. Smith.

Minutes Minutes of the 60th 61st and 62nd meetings of the trust were read, confirmed accepted and signed.

Business Mr. J.N. Joyce reported to the meeting  
TWH AKS that negotiations were ~~proceeding~~ concluded for 10  
TWH AKS the two sections of land in Orchard Crescent  
TWH AKS Ashfield on the east side of the meeting hall  
and that Mr. H.J. Proctor, solicitor ~~should-see~~  
had secured contracts for their purchase on behalf of the trust.

Mr. Joyce further reported that a cottage adjoining these properties was also on the market for sale at a price of £4600.

Resolution It was resolved that Mr. H.J. Proctor be 20  
instructed to purchase this cottage property  
also on behalf of the Trust in his own name for  
up to £4600.

Business Mr. J.N. Joyce reported that C & N Co. 30  
of which he was a partner would make funds  
available to the Trustees up to £76,000 to enable the trustees to complete the purchase of the three properties above referred to. Of this amount £50,000 would be a gift to the trust by himself and the other members of the said firm and the remainder would be an interest free loan to the Trust repayable at the pleasure of the Trustees only.

Resolution It was resolved that Mr. Joyce offer of  
the sum of £76,000 be accepted and that he be  
requested to make the money available as and  
when required direct to Mr. H.J. Proctor to be  
used for purposes of the purchase of the said  
properties by Mr. Proctor on behalf of the Trust.

Confirmed and signed by and behalf of the 40  
Trustees.

A.K. Smith

J.N. Joyce

MINUTES OF THE 64th MEETING OF THE ASHFIELD HALL TRUST  
HELD AT ORCHARD CRESCENT ON THE 11th DEC 1963.

Present: Mr. N.J.P. Joyce, Mr. J.N. Joyce, Mr.  
T.W. Heaney, Mr. A.K. Smith, Mr. H.J. Proctor  
in attendance by invitation.

Mr. Proctor reported that in accordance with the trustees instructions he had purchased in his own name three properties each having a frontage to Orchard Crescent Ashfield particulars whereof are as follows:

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1. Land having a total area of 3 roods 21 perches being the whole of the land comprised in Certificate of Title registered Volume 812 Folio 12 Volume 4476 Folio 139 and Volume 7572 Folio 195 formerly used as a timber yard purchased from H. Walters & Sons Pty. Ltd. for the sum of £35,000. The purchase of this property had been completed on 20th November, 1963.

2. Land having an area of 2 roods 33 perches being Lot 2 on plan of subdivision recently approved by the Ashfield Municipal Council and now in progress of registration at the Land Titles Office being part of the land in Certificates of Title registered Volume 958 Folio 58 Volume 1544 Folio 104 and Volume 8313 Folio 210 purchased from the Estate of the late May Dance for the sum of £25,000. This property was purchased subject to the existing tenancy of the building occupied as a laundry on part of the land and also subject to any tenancy which may still exist with regard to the factory on part of the land which was recently destroyed by fire and was also subject to certain rights of way 20 feet wide over part of the land. The purchase of the property cannot be completed until the new plan of subdivision is registered at the Land Titles Office. Mr. Proctor reported that he had entered into negotiations with the Vendor's Solicitor for a Licence Agreement to permit the use and occupation of the land pending completion of the purchase for the sum of £20 per week.

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3. Land having an area of 9½ perches being the whole of the land comprised in Certificate of Title Volume 1054 Folio 90 purchased from F.W. Flowers Pty. Ltd. for the sum of £4500. The purchase of the property is expected to be completed on 12th December 1963.

Mr. Proctor reported that all moneys for purchase of the above properties on behalf of

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Annexure "O" to Case  
Stated

the Trust was being furnished to him by Mr. J.N. Joyce in accordance with arrangements made between Mr. J.N. Joyce and the Trustees.

Mr. Proctor further reported that he had executed a Deed of Trust in respect of each of the 3 properties purchased to establish that he had purchased and held them on behalf of the Ashfield Hall Trust.

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Confirmed and signed by and on behalf of the  
Trustees

A.K. Smith

J.N. Joyce

THIS DEED OF RECTIFICATION made the Fourth day of January One thousand nine hundred and sixty-eight BETWEEN HEDLEY JOHN PROCTOR of 9-11 O'Connell Street Sydney in the State of New South Wales Solicitor (hereinafter called "the Trustee") of the One Part AND NORMAN JAMES PEEL JOYCE of Willee Street Burwood near Sydney in the State aforesaid Company Director JOHN NELSON JOYCE of 3 Garden Square Gordon near Sydney in the State aforesaid Company Director THOMAS WYNNE HEANEY of 3A Milray Street Lindfield near Sydney in the State aforesaid (formerly of 19 Sylvan Avenue East Lindfield) Manufacturer AND AUSTIN KEITH SMITH of 13 Culgoa Avenue Eastwood near Sydney aforesaid (formerly of 1 Angus Street Meadowbank) Factory Manager (hereinafter called "the Purchasers") of

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the Other Part WHEREAS the Purchasers have since the This date should be Thirteenth day of August One thousand nine hundred and 1.6.61

sixty one been the Trustees of the charitable trust known as the Ashfield Hall Trust constituted by Declaration of Trust dated the Twenty seventh day of November One thousand nine hundred and forty five Registered Number 679 Book 1988 in the Register of Deeds at the Registrar General's Department at Sydney aforesaid and are the present Trustees of the said Trust AND WHEREAS -

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1. By Deed made the Fifteenth day of October One thousand nine hundred and sixty three between the Trustee of the One Part and the Purchasers of the Other Part (a copy whereof is set forth in the First Schedule hereto) it was recited that by contract dated the

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Annexure "P" to Case  
Stated

Fifteenth day of October One thousand nine hundred and sixty three between the Trustee of the One Part and H. Walters & Son Pty. Limited of the Other Part the Trustee had purchased certain lands comprised in Certificates of Title Registered Volume 812 Folio 12 Volume 4476 Folio 139 and Volume 7572 Folio 195 for the sum of Thirty-five thousand pounds (£35,000) and that such purchase was being made by the Trustee with moneys supplied by the Purchasers and that such purchase was being made by the Trustee on behalf of the purchasers.

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2. By Deed made the Thirtieth day of October One thousand nine hundred and sixty three between the Trustee of the One Part and the Purchasers of the Other Part (a copy whereof is set forth in the Second Schedule hereto) it was recited that by Contract dated the Thirtieth day of October One thousand nine hundred and sixty three between the Trustee of the One Part and the Executors of the Will and Codicils of the late May Dance of the Other Part the Trustee had purchased certain lands therein described now being the whole of the land comprised in Certificate of Title Registered Volume 9694 Folio 19 for the sum of Twenty five thousand pounds (£25000) and that such purchase was being made by the Trustee with moneys supplied by the Purchasers and that such purchase was being made by the Trustee on behalf of the Purchasers, and

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Annexure "P" to Case  
Stated

3. By Deed made the Twenty seventh day of November One thousand nine hundred and sixty three between the Trustee of the One Part and the Purchasers of the Other Part (a copy whereof is set forth in the Third Schedule hereto) it was recited that by contract dated the Twenty seventh day of November One thousand nine hundred and sixty three between the Trustee of the One part and F.W. Flowers Pty. Limited of the other part the Trustee had purchased certain lands therein described now being the whole of the land comprised in Certificate of Title Registered Volume 9914 Folio 114 for the sum of Four thousand five hundred pounds (£4500) and that such purchase was being made by the Trustee with moneys supplied by the Purchasers and that such purchase was being made by the Trustee on behalf of the Purchasers 10

AND WHEREAS it was inadvertently omitted from each of the said Deeds made between the Trustee and the Purchasers that the whole of the purchase money for the purchases therein referred to was provided by the Purchasers from funds belonging to the said Ashfield Hall Trust and also that all the lands referred to in the said Deeds had been purchased by the Trustee on behalf of the Purchasers as Trustees of the said Ashfield Hall Trust and not otherwise AND WHEREAS the parties hereto have agreed to enter into these presents for the purpose of correcting such omissions NOW THIS DEED WITNESSETH 20

AND IT IS HEREBY DECLARED THAT -

Annexure "P" to Case  
Stated

1. THE whole of the purchase money for the purchases made by the Trustee on behalf of the Purchasers as referred to in the said Deeds made between the Trustee and the Purchasers was provided by the Purchasers from funds belonging to the said Ashfield Hall Trust.

2. ALL of the said lands purchased by the Trustee on behalf of the Purchasers as referred to in the said Deeds made between the Trustee and the Purchasers were purchased by the Trustee on behalf of the Purchasers as Trustees of the said Ashfield Hall Trust and not otherwise.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED by the  
said HEDLEY JOHN PROCTOR in the  
presence of ) H.J. Proctor

D. Matheson  
9-11 O'Connell Street,  
Sydney. Clerk

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SIGNED SEALED AND DELIVERED by the said  
NORMAN JAMES PEEL JOYCE in the  
presence of ) N.J.P. Joyce

D. Matheson  
9-11 O'Connell Street,  
Sydney. Clerk

Annexure "P" to Case  
Stated

SIGNED SEALED AND DELIVERED by the )  
said JOHN NELSON JOYCE in the )  
presence of )

SIGNED SEALED AND DELIVERED by the )  
said THOMAS WYNNE HEANEY in the ) Thomas W. Heaney  
presence of )

D. Matheson  
9-11 O'Connell Street,  
Sydney. Clerk

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SIGNED SEALED AND DELIVERED by the )  
said AUSTIN KEITH SMITH in the ) A.K. Smith  
presence of )

D. Matheson  
9-11 O'Connell Street,  
Sydney. Clerk



IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

C.A. No. 74 of 1975

CORAM: REYNOLDS, J.A.  
HUTLEY, J.A.  
SAMUELS, J.A.

17th July, 1975.  
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THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

V.

JOYCE & ORS.

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JUDGMENT

HUTLEY, J.A.: This is an appeal by way of stated case from a decision of the Land and Valuation Court (Hardie, J.) given on 21st August, 1970. The court was informed that the delay in bringing forward this matter was due to the desire of the parties to obtain the benefit of the judgment of the High Court in land tax appeals involving the same land.

The questions stated by the court for determination of this court are as follows:

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1, On the facts found by me, is the subject land exempt from rating by the respondent either by virtue of s. 132(1)(d) or by virtue of s. 132(1)(h)(i) of the Local Government Act 1919 (as amended)?

2, Whether there was any evidence from which the inference could be drawn that members of the Brethren did constitute a religious body and that the religious services and exercises conducted in the Ashfield Hall constituted public worship within the meaning of s. 132 (1)(h)(i) of the Local Government Act 1919.

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There are six appeals consolidated in this stated case

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171. Mr. Justice Hutley

but they all involve the same issues, namely, whether the lands which are held by the respondents as trustees are exempt from municipal rates. The lands are occupied by a hall which is used for the meetings of a religious sect known as the Exclusive Brethren and used for a car park to provide members of the sect with convenient parking space for their motor vehicles.

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The question as to whether or not the trust of the hall was a public charitable trust was litigated and decided in favour of the respondents in earlier litigation, reported 4 L.G.R.A., 195. The question as to whether the lands acquired for a car park were held on similar trusts was also the subject of litigation reported 14 L.G.R.A. 133. This litigation was decided adversely to the respondents but purely on the ground that the trust had not been established to the satisfaction of Else-Mitchell, J. In these proceedings which were in respect of rates in later years the court was satisfied that there was a trust and the respondents had no beneficial interest in the car park lands.

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It is convenient to deal first with the second question.

In Commissioner of Land Tax v. Joyce, 48 A.L.J.R. 432 the High Court held the Exclusive Brethren were a religious society and it was not disputed that the members did constitute a religious body, but it was contended

that the religious services and exercises conducted in the Ashfield Hall did not constitute public worship. In all the multifarious contests between the appellant and respondents it does not seem that this question has been seriously debated heretofore. It was argued that in the light of evidence given by the trustees as to the way in which the sect conducted its religious observances the only inference to be drawn was that the worship was not public. 10

Mr. N.J.P. Joyce, one of the respondents, gave the following evidence:

"Q. As a matter of history do you understand this to be the case, that those who call themselves Exclusive Brethren originally broke away from those who called themselves Plymouth Brethren because they disagreed with the church organisation that was being introduced by the Open Brethren? 20

A. That would be part only of the reason. As to Exclusive Brethren, it is what we are called, we do not disown the idea of what is exclusive. The principle of separation that I have referred to in evidence involves the idea of exclusiveness.

Q. And the principle of separation, Mr. Joyce, involves, does it not, that these people in it cannot belong to any organised religious body?

A. Yes. That has marked the church right from the earliest days, 2000 years ago. 30

Q. And you would carry it this far, would you not, that you would not permit a person to break bread with that person who was a member of any religious body?

A. That is correct.

Q. And if any member of a religious body sought to join your group you would have to be satisfied that they had completely severed themselves from the previous association, would you not?

A. Yes, your Honour.

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Q. I want to pass to certain aspects of the conduct of meetings at the Ashfield Hall. Take first of all the meeting at which you break bread together. You break bread in the company of other people. Would everybody attending such a meeting on your understanding, know one another?

A. Yes.

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Q. Are the doors of the hall closed at some stage prior to the breaking of bread? (Objected to; allowed.)

Q. At a stage prior to the breaking of bread the doors are closed, I think you have already answered that?

A. Yes.

Q. And I think you have already agreed with this, that on your understanding those breaking of bread meetings are confined to people who know one another?

A. Yes.

20

Q. Now you have mentioned another class of meeting which quite a large number of people attend?

A. Yes.

Q. I think that was on a Sunday about mid-day, and one other day of the week?

A. Yes, and on two other days.

Q. Did you have a name for this larger class of meeting, which was a meeting where addresses are given?

A. One of them was a meeting where addresses are given, we call it a meeting for ministry of the word - the Word of God being inferred.

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Q. And what was the other one?

A. Reading of the Scriptures.

Q. Now at these meetings are any steps taken to ensure that people who are not present in the hall who are not known to the other people there?

A. No, not quite that.

Q. What does take place?

A. Persons coming in are noticed and if any person comes that is clearly unknown someone would enter into conversation with them to enquire who they were and why they wanted to come.

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Q. And what takes place after that, if any such event occurs?

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of his Honour,  
Mr. Justice Hutley

A. Well, if they can identify themselves, with maybe one of those letters of commendation referred to, then they would be admitted.

Q. How else can they identify themselves other than by letters of commendation?

A. By naming somebody in the company that they knew. But that would be very rare.

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Q. From the practical point of view if someone came in off the street and had not been there before, and had not a letter of commendation, they would be told quite clearly that they were not welcome?

A. No, not at all.

Q. What would they be told?

A. They would be enquired of first. They would be asked why they wanted to come, and what their interest was. Whether they were Christians at all, whether they were interested in becoming Christians. Such questions would be asked, and if they were thought to be genuine in their desire to get help from the scriptures the person would be admitted.

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Q. Who would make the decision?

A. The person who was discussing it with them.

Q. Any person within your group?

A. If he had any doubt he might draw in one or two others to discuss it with him, but we understand one another's thoughts very well, your Honour.

Q. Is there such a formula such as a person saying, "I will walk with him"?

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A. Not as to a stranger.

Q. That is a phrase that is used, is it not, "I will walk with him"?

A. Yes, it is used in certain circumstances.

Q. What is that circumstance?

A. Maybe when someone is being proposed as a member, or proposed to come and break bread with us, join our partnership, then someone or two may express that they have had converse with the person and that they are free to walk with him, that they see no hindrance to that.

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Q. It is true, is it not, that every person attending any meeting at Ashfield is a person who walks with somebody else, who regularly attends such meetings?

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Mr. Justice Hutley

A. Other than those we have just been speaking of who might just come casually, yes, that would be the case,

Q. And that casual person is not allowed to attend, is he?

A. Depending on his answers, he may be or may not be allowed to attend,

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Q. He is allowed to attend I put it, only if somebody there thought that he might be accepted into the company?

A. If somebody thought that was a possibility that it would become that way, in future, that is.

Q. So that there is a personal relationship between every person who attends with some other person or persons who attend?

A. Yes, that is scriptural, that is the way Christians met at the beginning, so we do it that way now."

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Though much other evidence was given, the doctrines and practices of the Exclusive Brethren which it was contended denied their proceedings the character of "public worship" are clearly set forth in this passage of the evidence. For the appellant to succeed it is necessary that both types of ceremony referred to be held not to have the character of public worship. The fact that at the time when the ceremony of breaking bread is performed the doors are closed and only those who had been admitted into the circle of the church are then present would not be sufficient. The building does not cease to be in the words of s. 132(h)(i) "used or occupied for public worship" because there are ceremonies of a purely private nature also performed on the premises.

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Mr. Justice Hutley

The critical question is whether meetings for the "ministry of the word" are open to the public. It is clear that strangers are not welcomed. A stranger has to identify himself. This he can do by producing letters of commendation (as they are called) from other assemblies of brethren or by naming somebody in the company whom he knows, which was conceded to be very rare, 10  
or after interrogation establishing to the satisfaction of the member or members of the brethren who interrogated him that he had a genuine desire to get help from the scriptures. Having regard to the evidence as to the extreme narrowness and rigidity of the doctrines of the Brethren in relation to the scriptures, the class of person who would pass this interrogation must be very limited. The manner in which the witnesses for the Brethren spoke of such a class clearly indicates that the Brethren are not a proselytising sect and though 20  
they did not wholly repel recruits they did not seek to attract them. The only conclusion which can be drawn from the evidence in my opinion is that the ceremonies of the Brethren performed in the hall were ceremonies from which the general public is excluded, but that a small and rare class of stranger attracted to the Brethren whose credentials had not been fully established and were under scrutiny would not be driven away. The

The question therefore is - is such use of the hall public worship?

In Henning v. Church of Jesus Christ of Latter Day Saints, (1964) A.C. p. 420, the House of Lords had to consider whether a Mormon temple was entitled to exemption from rating as a place "of public religious worship". In my opinion public worship and public religious worship are identical in meaning and the decision of the House of Lords should be applied, there being no decision of the Privy Council or the High Court to the contrary.

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The Mormons differentiated between temples and chapels and worship in a temple was confined to certain members of the sect. Lord Pearce at page 436 described the temple in these terms:

"The temple, however, is a special building. There is only one temple in the United Kingdom and certain sacred ceremonies are performed therein. It is not open to the public or even to every Mormon but only to a Mormon "of good standing". Such a person is defined in the agreed statement of facts as: 'One whose spiritual and secular qualities entitle him in the view of a local bishop to a "Recommend" to a President who if in turn satisfied that the holder is entitled by his personal qualities to the appellation of "Mormon of good standing" endorses the "Recommend"'. "

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Only Mormons of good standing can enter the temple. The House of Lords held that the temple was not a building of public religious worship though it was a building used for religious worship. Lord Morris of

Borth-y-gest said at page 435:

"I consider that there is a distinction between private or domestic or family worship on the one hand and public religious worship on the other. In my view the conception of public religious worship involves the coming together for corporate worship of a congregation or meeting or assembly of people, but I think that it further involves that the worship is in a place which is open to all properly disposed persons who wish to be present."

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I do not consider that properly disposed persons are believers or even intending believers. The concept of public religious worship means that worship is something in the nature of a spectacle which persons who are interested have a right to see. Though it is perhaps a little ludicrous to treat the austere and sober assemblies of the Brethren as spectacles, religious performances and ceremonial are of general interest to all members of the community and only worship which can be seen is public worship.

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In referring to properly disposed persons His Lordship was indicating that the worship did not cease to be public because some people were excluded, and it is to be noted that he referred to properly disposed persons "who wish to be present" (my emphasis), not "who wish to worship". Worship confined to believers, from which mere observers are excluded, is not public.

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Lord Pearce approved of the views of Lowe, J. in The Association of Franciscan Orders of Friars

Minor v. City of Kew, (1944) V.L.R. 199:

"that for worship to be public must ... be open without discrimination to the relevant public. By the word 'relevant' he left open the question, how universally indiscriminating must be the admission of the public. The question is one of fact and there might clearly be different questions where mere discrimination might be insufficient to deprive the worship of its public character."

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This propounds a slightly different test, but it again emphasises that the essence of public worship is that it is open to the public not in the sense that the public is entitled to participate in the worship - this would be an intolerable interference with the autonomy of religious bodies who have to be left the privilege of determining those who are properly equipped to approach the deity in the approved manner, but who cannot if they wish to retain privileges attendant upon public worship exclude the general multitude from an observing role.

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By these standards it would seem to me that the evidence as to the ministry of the word permits only one answer, namely, that it was not public worship. It is worship which is available even for observation only to a select and approved class. That the ceremony of the breaking of the bread is not public worship is a fortiori.

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The trustees already have the benefit of a decision, the correctness of which was only formally

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challenged in this court as a decision on the material then before the court, that the trust on which the hall was held was a public charitable trust. It was, however, submitted that in the light of further evidence which was not before the court when the decision reported in 4 L.G.R.A. page 195 was given as to the degree of exclusiveness of the Brethren, the court should hold that the land was not used for the purposes of public charity. The operations of the Brethren on the land, it was submitted, were similar in quality to those of a closed order in the Roman Catholic church. That a trust for a closed order of nuns was not charitable was established by the House of Lords in Gilmour v. Coats (1949) A.C. 446. The evidence in the form of an affidavit by His Eminence, the Roman Catholic Archbishop of Westminster contained the following passage:

"They (i.e. the Discalced Nuns of the Order of our Blessed Lady of Mt. Carmel) are so called because their members are strictly enclosed in their convents and engage in no exterior works but devote their lives to contemplation and penance, contemplation including not only assisting at mass and reciting the Divine Office and other vocal prayers but also reflection of the mind of God and the things of God which evokes from the will or heart acts of adoration, propitiation, love and intercession towards God, and which in the case of contemplatives as a general rule passes sooner or later and to a less or greater degree into mystical prayer. The contemplative Orders are so called to distinguish them from what are called the Active Orders ... the members of which engage in exterior works such as teaching, nursing the sick, tending the poor ..."

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Lord Simonds said at page 446, speaking in the House of  
Lords:

"It is, no doubt, true that the advancement of religion is, generally speaking, one of the heads of charity. But it does not follow from this that the court must accept as proved whatever a particular church believes. The faithful must embrace their faith believing where they cannot prove; the court can only act on proof." 10

The belief of the Roman Catholic church and of the nuns that prayer and self sanctification confers benefits on all failed because it was not perceptible to their lordships that the necessary public benefit followed. This doctrine that religious activities are subject to proof that they are for the public benefit could give rise to great problems in that it might lead to the scrutiny by courts of the public benefit of all religious practices. 20

As Keeton and Sheridan, *The Modern Law of Charities*, 2nd ed., say at page 69:

"Yet it must always be difficult to adduce evidence to prove to a Court that any given religious observance or ceremony or teaching or organisation is for the public benefit in the sense that public benefit accrues from the advancement of education, the relief of poverty or the performance of works of general utility. The most intelligible doctrine is that the advancement of religion is itself for the public benefit and that a religious trust is not charitable when religion is not advanced by it." 30

This of course again poses a most difficult problem: when can it be said that religion is advanced or not advanced? It would seem to me that the case of Gilmour



v. Coats must be confined to those religious bodies who take no part in the secular world. In Re Delaney (1902) Ch.D 642 at 648-9 Farwell, J. said :

"There is in truth, no charity in attempting to improve one's own mind or save one's own soul. Charity is necessarily altruistic and involves the idea of aid or benefit to others and this is why gifts for the benefit of closed orders are not charitable."

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The problem of Orders primarily concerned with self sanctification which also play a part in the secular world by providing religious services and carrying out educational work arose for consideration in the Court of Appeal, Supreme Court of Northern Ireland. In two cases involving liability for rates, The Commissioner of Valuation v. Trustees of the Redemptorist Order; The Commissioner of Valuation v. Trustees of the Newry Christian Bros. (1971) N.I.114, the majority of the Court of Appeal of the Supreme Court of Northern Ireland, MacDermott, Lord Chief Justice, and Lowry, J. (Curran, L.J. dissenting) held that these orders were engaged in charitable activities. The rating law required that to qualify for exemption the properties had to be used exclusively for charitable purposes and the majority held that the element of personal sanctification did not prevent the use being exclusively charitable.

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Lord MacDermott said at page 139 :

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"A process of self sanctification (perhaps depending on how 'closed' the particular

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Order is) may still blossom in charitable works as, apparently, it did in the case of Selley Oak Sisters in Cocks v. Manners (1871) 12 Eq.574. So, if the user of this Monastery is to any extent for the purpose of personal sanctification why should that not be regarded as directly facilitating the main charitable work of the Order? I am satisfied that it should be so regarded and that it is indeed a first step towards the effectual accomplishment of the Order's main charitable work which by its very nature demands the service of those who are devoted and strong in their faith. And, further, whatever the emphasis placed on personal sanctification by the Order's Constitutions may be, a religious community life coupled with works of public charity has long been recognised as a method of ensuring spiritual discipline and the maintenance of spiritual standards." 10 20

and Lowry, J. said at page 172 :

"... the reasonable belief that spiritual preparation will increase the ability to convey a religious message by precept and example or to impart a Christian character to teaching requires no more justification to the Court than the belief in the public benefit of public worship, by whichever denomination it is practised." 30

Even if the ceremonies of the Exclusive Brethren in the hall can be regarded as a temporary withdrawal from the world, those ceremonies are a preparation for the assumption of their place in the world in which they will battle according to their religious views to raise the standards of the world by precept and example. From the fact that they prepare themselves in private nothing can be deduced to deny the conclusion that these religious ceremonies have the same public value in improving the standards of the believer in the world as any public worship. I am therefore of the opinion 40

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of his Honour,  
Mr. Justice Hutley

that the doctrine of Gilmour v. Coats does not apply to the Exclusive Brethren and from the fact that their religious ceremonies cannot be classed as public worship it cannot be deduced that they are not for the public benefit.

It was sought to rely upon the decision of the High Court in Thompson v. Federal Commissioner of Taxation, 102 C.L.R.315, to establish that as the worship of the Brethren was not public worship it followed that the trusts upon which its properties were held could not be public charities. Thompson v. Federal Commissioner of Taxation concerns exemption from estate duty of property bequeathed for public educational purposes. The property was bequeathed for certain masonic schools and entry to masonic schools was confined to children of deceased and present members of lodges under the jurisdiction of the Grand Lodge. The High Court by majority held that education because of this restriction, Menzies, J. dissented and in the course of his judgment pointed out that members of a religious community of themselves constituted a section of the community for the purposes of the principle that a charitable purpose must have a public element (see at page 329). In other words, it is not to the point where a trust is for the benefit of religion that such advantages are not available to the public

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Reasons for Judgment  
of his Honour,  
Mr. Justice Hutley

generally. The same had also been pointed out by Lord Reid in his dissenting judgment in Inland Revenue Commissioners v. Baddeley (1955) A.C.572 at 612 where he said :

"... so if the members of a religious denomination do not constitute a section of the public (or the community) then a trust solely for the advancement of religion or of education would not be a charitable trust if limited to members of a particular church."

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Though these are dissenting judgments it is obvious they must be correct on this issue. The exclusiveness which is so notable a feature of the Brethren is recognised as a legitimate feature of many religious sects and trusts to support religious observances confined to quite small groups of worshippers have always been treated as charitable. In my opinion it is not correct to attempt to apply principles as to the public element which have been laid down in respect of the other heads of charitable trusts to trusts for the benefit of religion.

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Attention was also drawn to the fact that the beliefs of the Exclusive Brethren lead to them declining to participate in a number of activities in the community, e.g., in order to be permitted to break bread a person had to dissociate himself from any other religious body. Historically this type of exclusiveness has been customary throughout Christendom. The belief that there is a particular path to salvation from

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which there must be no deviation goes hand in hand with a rejection of association with those who pursue other paths. Their beliefs require that their members should abstain from voting and from other community activities such as joining Parents' and Citizens' Associations.

If the Court, in dealing with questions of whether religious activities were charitable, were required to engage in a general survey of the public worth of any particular religion, this abstention from political activity and other ordinary community co-operation might cause some difficulty, but in leaving the decision as to who is to govern in God's hands they are literally following the example of the early Christians in the days of the Roman Empire and such esteemed religious bodies as the Quakers, and there is no public duty to join Parents' and Citizens' Associations. Unless early Christianity is to be rejected as the exemplar of religion, the abstention from many types of social co-operation in consequence of religious beliefs does not deprive the properties where these beliefs are inculcated of the privilege of being regarded as being used by public charities. 10

In my opinion, question 1. should be answered by saying that the subject land is exempt from rating by virtue of s.132(i)(d) but not by virtue of s.132(1)(h)(i) of the Local Government Act and the appeal should be dismissed with costs. 20



IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

74 of 1975

BETWEEN:

THE COUNCIL OF THE MUNICIPALITY OF  
ASHFIELD

Applicant (Plaintiff)

AND:

NORMAN JAMES PEEL JOYCE, THOMAS WYNN  
HEANEY, AUSTIN KEITH SMITH, JOHN NELSON  
JOYCE and FRANCIS ROBERT HEANEY

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Respondents (Defendants)

ORDER

The Court orders that -

1. Question 1 in the stated case be answered as follows:

The subject land is exempt from rating by virtue of section 132(1)(d) of the Local Government Act 1919 but not by virtue of section 132(1)(h)(i).

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2. Question 2 be not answered.

3. The appeal be dismissed with costs.

Ordered 17 July 1975 and entered 20 August 1975.

By the Court

(sgd) G. Whalan (L.S.)

Registrar

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

}  
74 of 1975.

BETWEEN:

THE COUNCIL OF THE MUNICIPALITY OF  
ASHFIELD

Applicant (Plaintiff)

AND:

NORMAN JAMES PEEL JOYCE, THOMAS WYNN  
HEANEY, AUSTIN KEITH SMITH, JOHN NELSON  
JOYCE and FRANCIS ROBERT HEANEY

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Respondents (Defendants)

ORDER GRANTING FINAL LEAVE TO APPEAL

The Court orders that -

Final leave to appeal to Her Majesty in Council from  
the Judgment of this Court be granted to the Council  
of the Municipality of Ashfield.

Ordered 17 November 1975 and entered 1 December 1975.

By the Court

(sgd) G. Whalan (L.S.)

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Registrar



IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

No. 74 of 1975.

THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

Plaintiff

NORMAN JAMES PEEL JOYCE, THOMAS WYNN HEANEY,  
AUSTIN KEITH SMITH, JOHN NELSON JOYCE and  
FRANCIS ROBERT HEANEY

Defendants

CERTIFICATE OF REGISTRAR

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I, GERALD KEITH WHALAN of Sydney, New South Wales,  
Australia certify that the sheets hereto annexed and  
contained in pages numbered 1 to 190 inclusive contain  
a true copy of all the documents relevant to the appeal  
by the appellant THE COUNCIL OF THE MUNICIPALITY OF  
ASHFIELD to Her Majesty in Her Majesty's Privy Council  
from the Order made in the above mentioned appeal by  
this Court on the 17th day of July, 1975 so far as the  
same have relation to the matters of the said appeal to-  
gether with the reasons for the said Order given by the  
Court and an index of all the papers documents and ex-  
hibits in the said appeal included in the annexed trans-  
cript record which true copy is transmitted to the Privy  
Council pursuant to The Judicial Committee Rules 1957.  
In faith and testimony whereof I have hereunto set my  
hand and caused the seal of this Court to be affixed  
hereto this Twenty-second day of April, 1976.

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G. WHALAN (L.S.)

Registrar  
Court of Appeal

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IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COURT OF APPEAL

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No. 74 of 1975.

THE COUNCIL OF THE MUNICIPALITY OF ASHFIELD

Plaintiff

NORMAN JAMES PEEL JOYCE, THOMAS WYNN HEANEY,  
AUSTIN KEITH SMITH, JOHN NELSON JOYCE and  
FRANCIS ROBERT HEANEY

Defendants

CERTIFICATE OF CHIEF JUSTICE

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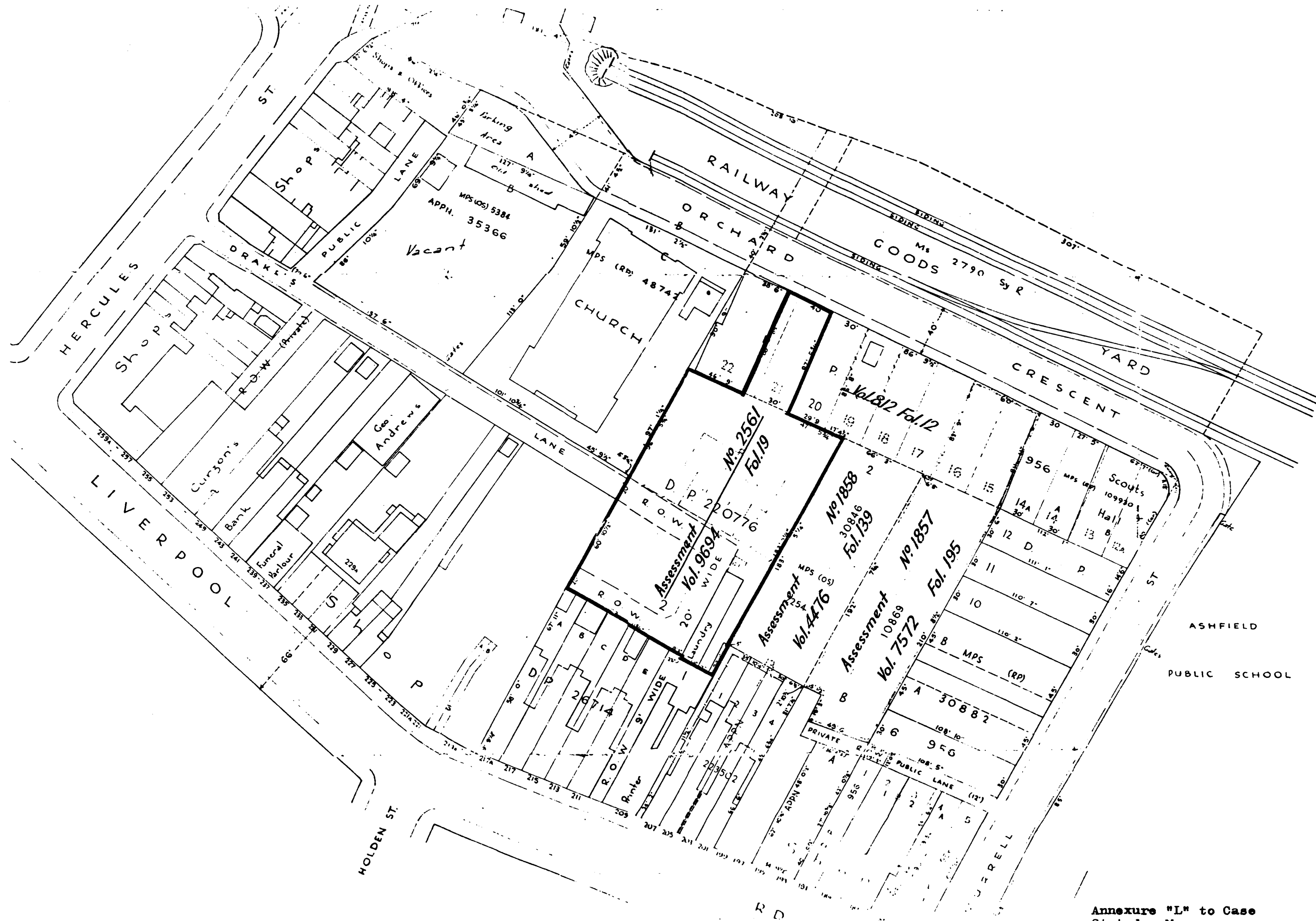
I, the HONOURABLE SIR LAURENCE WHISTLER STREET, Knight  
Commander of the Most Distinguished Order of St. Michael  
and St. George and Knight of the Order of St. John,  
Chief Justice of the Supreme Court of New South Wales  
do hereby certify that GERALD KEITH WHALAN who has  
signed the certificate above written is the Registrar  
of the Supreme Court of New South Wales Court of Appeal  
and that he has the custody of the records of the said  
Court of Appeal.

In faith and testimony whereof I have hereunto set my  
hand and caused the Seal of the said Supreme Court to  
be affixed this 28<sup>th</sup> day of April, 1976.

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L.W. Street (L.S.)

Chief Justice  
of the Supreme Court of New South Wales



Annexure "L" to Case Stated - Map