proof; and it is not enough to leave it in doubt. In my opinion the matter is *in dubio* and the appeal should be allowed.

Appeals allowed. Order of Law Officer discharged. Order of Registrar restored. Respondent to pay costs of appeals.

Solicitors for the appellant, *Allen, Allen & Hemsley.*
Solicitors for the respondent, *McDonnell & Moffit.*

B. L.

[HIGH COURT OF AUSTRALIA.]

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF MELBOURNE . . . } APPELLANT;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . } RESPONDENT.

Income Tax — Exemption — "Religious institution" — "Charitable institution" — Income Tax Assessment Act 1915-1918 (*No.* 34 *of* 1915—*No.* 18 *of* 1918), *sec.* 11 (1) (*d*).

An association incorporated under the *Hospital and Charities Act* 1890 (Vict.) was formed, as stated in its by-laws, on a certain declaration that it "seeks to unite those young men who, regarding the Lord Jesus Christ as their God and Saviour according to the Holy Scriptures, desire to be His disciples in their doctrine and their life, and to associate their efforts for the extension of His kingdom amongst young men." The by-laws also stated that the object of the association was "the improvement of the spiritual, intellectual, social and physical condition of young men."

Held, by *Isaacs, Gavan Duffy* and *Rich* JJ., that the association was a "religious institution," and, by *Higgins* J., that it was a "charitable

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institution " (and, *semble*, also a " religious institution "), within the meaning of sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915-1918; and therefore that its income was exempt from taxation.

CASE STATED.

On the hearing of an appeal to the High Court by the Young Men's Christian Association of Melbourne from an assessment for Federal income tax for the year ending 30th June 1922, a case, which was substantially as follows, was stated for the opinion of the Full Court :—

1. The appellant is an association incorporated under the *Hospital and Charities Act* 1890 (Vict.) (No. 1099) and carrying on operations in the State of Victoria.

2. The object of the appellant as set forth in its by-laws is carried out (*inter alia*) by the provision of lectures on religion, and economic, literary, geographical, hygienic, civic and national subjects, by the equipping of writing-rooms, billiard-rooms, library and gymnasium, by the holding of religious services, prayer meetings and bible study circles, and by the formation of sports clubs such as cricket, football, tennis, harriers, baseball and basket-ball.

3. The partaking in the games of the various sports clubs and in the playing of billiards is confined to members, but attendance at the other activities of the appellant is open to immigrants, country visitors, wards of the State and unemployed persons, as well as members.

4. The funds of the appellant are derived from donations from persons interested in its work, membership fees, contributions from those members who take part in the various sports and play billiards, subscriptions to the journal of and printed by the appellant known as *Melbourne's Manhood* and charges for advertisements therein and from rents and interest as hereinafter more particularly set forth.

5. The said contributions of those taking part in the various sports, with the exception of billiards, are in no case sufficient to defray the expense of providing the material necessary for the same. In the case of billiards a surplus appears after charging the cost of materials used, but a loss is actually incurred after debiting the proportion of general management expenses applicable thereto.

6. In or about the month of April 1919 the appellant purchased from a fund, composed of moneys donated for the purpose of acquiring additional working facilities for its activities, land and buildings thereon situate at Nos. 114-120 Flinders Street, Melbourne.

7. Pending the receipt of sufficient further donations to enable the said land and buildings to be adapted for such purpose, the said property was leased to tenants, and during the period commencing on 1st January 1920 and ending on 31st December 1920 the appellant received the sum of £3,400 in rents from such tenants, which said sum has been added to the fund for adapting such land and buildings as aforesaid.

8. During the said period the appellant also received the sum of £150 as interest on moneys and bonds donated to it for its general purposes and a further sum of £153 from subscribers to and advertisers in the said journal *Melbourne's Manhood*.

9. In pursuance of the provisions of sec. 28 (3) of the *Income Tax Assessment Act* 1915-1918, on 14th September 1921 the appellant furnished and the respondent accepted a return setting forth a statement of the income derived by the appellant during the twelve months ending on 31st December 1920 instead of a return for the twelve months ending on 30th June 1921.

10. And on 26th May 1922 the appellant furnished a further return showing additional income to the income set out on the said return of 14th September 1921.

11. By a notice of assessment dated 4th January 1924, as altered by an amended notice of assessment dated 7th March 1924, the respondent assessed the taxable income of the appellant upon the said return at the sum of £1,486.

12. The appellant, being dissatisfied with such assessment, lodged notice of objection thereto in writing on 7th April 1924 upon the grounds following: (1) that the appellant is a religious and/or charitable or public educational institution; (2) that no assessment should have been issued in respect of the income derived in view of the express exemption provided in sec. 11 (1) of the *Income Tax Assessment Act* 1915-1918 for institutions of this nature.

13. The respondent considered the objection and wholly disallowed it, and gave written notice of his decision to the appellant.

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14. The appellant, being dissatisfied with the decision of the respondent, requested the respondent to treat its objection as an appeal and required him to forward it to this Honourable Court, and the objection was so treated and forwarded.

The question stated for the opinion of the Court was—

Whether the appellant was rightly assessed for income tax in respect of any and which of the said sums of £3,400, £150 and £153 in view of sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915-1918.

The material portions of the by-laws of the Association, which were part of the case, were as follows :—

" Section I.—Constitution.—(1) The name of the Association is 'The Young Men's Christian Association of Melbourne.' (2) The Association is based upon the declaration which was adopted at the Paris Conference of the Young Men's Christian Associations of all lands, in October 1855, and is the bond which unites Y.M.C.A.'s throughout the world. This declaration, known as the 'Paris Basis,' is as follows : 'The Young Men's Christian Association seeks to unite those young men who, regarding the Lord Jesus Christ as their God and Saviour according to the Holy Scriptures, desire to be His disciples in their doctrine and their life, and to associate their efforts for the extension of His kingdom amongst young men.'

" Section II.—Object.—(3) The object of the Association is the improvement of the spiritual, intellectual, social and physical condition of young men.

" Section III.—Membership.—(4) The Association shall comprise active, associate, sustaining, and honorary members, but active members only shall be entitled to hold office, and only active members and others qualified under by-law 9 shall be entitled to vote at business meetings of the Association. (5) The qualification for active membership shall be as follows :—Any man over 16 years of age, who is a member in good standing of any Evangelical Church or Body, which holds the doctrine of 'Justification by Faith in Christ alone,' may, upon signing an application (in a form approved by the Board), and having obtained the endorsement in writing of two active members, and paid his subscription, be admitted by the

Board as an active member. (6) The qualification for associate membership shall be as follows: Any male of good moral character, upon signing an application (in a form approved by the Board) and paying his subscription, may be admitted by any committee appointed by the Board to inquire into applications for membership. (7) The qualification for sustaining membership shall be as follows: Any person subscribing to the ordinary revenue of the Association not less than five guineas annually, or such other minimum sum as the Board may from time to time determine, shall become a sustaining member. (8) The classes of membership and privileges thereof, age limits, annual fees and their payment, may be determined by the Board at any regular meeting, notice having been given in writing at the previous regular meeting of the Board and the action being approved by an absolute majority of the Board. (9) No member or other person contributing a less sum than £100 per annum shall have the right to vote at any business meeting of the Association unless qualified as an active member under by-law 5."

Owen Dixon K.C. (with him *Russell Martin*), for the appellant. The appellant, which is incorporated under sec. 19 of the *Hospitals and Charities Act* 1915 (Vict.), cannot as a corporation do anything not ancillary or incident to its objects as stated in the by-laws. A body so constituted is a "charitable institution," and may also be said to be a "religious institution" within the meaning of sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915-1918. This institution is "charitable" in the legal sense, and that is the sense in which the word is used in the section (*Chesterman* v. *Federal Commissioner of Taxation* (1); *Swinburne* v. *Federal Commissioner of Taxation* (2); *In re Cranston*; *Webb* v. *Oldfield* (3)). As to its being a religious institution, religion is the central feature of the Association, and there is nothing in its objects which is incompatible with the religious purpose. If so far as it is not a charitable institution the Court is of opinion that it is a religious institution, it is within the exemption.

(1) (1926) A.C. 128; 42 T.L.R. 121; *ante*, 317.
(2) (1920) 27 C.L.R. 377.
(3) (1898) 1 I.R. 431, at pp. 445, 446.

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Sir Edward Mitchell K.C. (with him *Herring*), for the respondent. The word " charitable " in sec. 11 (1) (*d*) is used in its popular sense, and there is no reason why the word should be given a different meaning from that which was given to it in *Swinburne's Case* (1).

[KNOX C.J. referred to *Kelly* v. *Municipal Council of Sydney* (2).]

In order to bring the Association within the exemption in sec. 11 (1) (*d*) the whole of the things which it may do must be religious or charitable (*In re Macduff*; *Macduff* v. *Macduff* (3)). The objects of the Association are the same as those of an ordinary friendly society, and a friendly society is not a charity (*In re Clark's Trust* (4)). Where the members of a society pay subscriptions and by reason of such payments obtain a variety of benefits as members, the society is not charitable (*In re Dutton* (5); *Pease* v. *Pattinson* (6); *Spiller* v. *Maude* (7); *In re Lacy*; *Royal Theatrical Fund Association* v. *Kydd* (8); *In re Wedgwood*; *Allen* v. *Wedgwood* (9); *In re Clarke*; *Clarke* v. *Clarke* (10)).

[ISAACS J. referred to *In re Gray*; *Todd* v. *Taylor* (11).

[HIGGINS J. referred to *Attorney-General* v. *McCarthy* (12).]

The Association is not a religious institution. Only as to one class of members is there a religious test; as to the other classes there is no test.

[ISAACS J. referred to *Grove* v. *Young Men's Christian Association* (13); *Coman* v. *Governors of Rotunda Hospital, Dublin* (14).]

Owen Dixon K.C., in reply, referred to *Commissioners for Special Purposes of Income Tax* v. *Pemsel* (15).

Cur. adv. vult.

Mar. 18.

The following written judgments were delivered :—

KNOX C.J. I do not dissent from the opinion about to be expressed by the majority of the Court to the effect that the appellant is a religious institution within the meaning of sec. 11 (1) (*d*) of the

(1) (1920) 27 C.L.R., at pp. 383, 384.
(2) (1920) 28 C.L.R. 203.
(3) (1896) 2 Ch. 451, at pp. 463, 465, 468-470.
(4) (1875) 1 Ch. D. 497.
(5) (1878) 4 Ex. D. 54, at p. 57.
(6) (1886) 32 Ch. D. 154, at p. 158.
(7) (1881) 32 Ch. D. 158 n.
(8) (1899) 2 Ch. 149, at pp. 153, 156.
(9) (1915) 1 Ch. 113.
(10) (1901) 2 Ch. 110.
(11) (1925) 1 Ch. 362.
(12) (1886) 12 V.L.R. 535.
(13) (1903) 88 L.T. 696.
(14) (1921) 1 A.C. 1.
(15) (1891) A.C. 531, at p. 558.

Income Tax Assessment Act 1915-1918, and that its income is therefore exempt from income tax. It follows that it is unnecessary for me to express an opinion on the question whether the Association is also a charitable institution within the meaning of that section, or upon the further questions whether or to what extent the decision of the Judicial Committee in *Chesterman's Case* (1) is inconsistent with the decisions of this Court in *Swinburne's Case* (2) and *Kelly* v. *Municipal Council of Sydney* (3), and I abstain from doing so.

The question submitted should be answered in the negative.

ISAACS J. The appellant Association claims that under sub-sec. 1 (*d*) of sec. 11 of the Act of 1915-1918 it is exempt from income tax as being (1) a religious institution and (2) a charitable institution within the meaning of that sub-section.

The Association was incorporated under Victorian law as a "philanthropic institution," that being a compendious expression for objects of a very wide ambit tending to improve and elevate human nature. Its by-laws, which perhaps go beyond what the Act describes as "the regulation of its own proceedings," at all events indicate its character in fact. They describe in section I. the "constitution" and in section II. the "object" of the Association. These two section are analogous to the memorandum of association of an ordinary trading company, and these I regard as giving the dominant impress to the Association and determining its real character. The remaining sections are more properly regulative, directly and indirectly.

Reading the two first sections, and having regard also to the evidence as to the way in which the affairs of the Association are conducted, I entertain no doubt it is entitled to exemption. My conclusion rests on the essentially "religious" character of the institution. To repeat an observation I made during the argument, the Association is an institution with a very broad religious platform carried out in an extremely practical manner. It is therefore unnecessary to consider the second ground of exemption claimed, namely, that it is also "a charitable institution" within the meaning of the sub-section.

(1) (1926) A.C. 128; 42 T.L.R. 121; *ante*, 317.
(2) (1920) 27 C.L.R. 377.
(3) (1920) 28 C.L.R. 203.

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Isaacs J.

But for the sake of all concerned it is right to advert to the state of doubt and confusion that exists with regard to this branch of the subject. As is well known to lawyers—though few others of the six million inhabitants of the Commonwealth suspect it—the word "charitable" has in some collocations a technical meaning of a singular nature. It has what is called the Elizabethan sense, and a "charitable purpose" in this sense, according to the decisions, includes, besides what is ordinarily regarded as charity, such purposes as a trust for a "home for starving and forsaken cats," a trust for the promotion of vegetarianism, and trusts for "the promulgation of conservative principles combined with mental and moral improvement, socialism, and anti-vivisection principles" (see *Swifte* v. *Attorney-General* (1); *In re Cranston*; *Webb* v. *Oldfield* (2), and *Halsbury's Laws of England*, vol. IV., sec. 182). That technical sense it has now been decided by the Judicial Committee of the Privy Council (*Chesterman's Case* (3)) must be assigned to the word "charitable" in the *Estate Duty Assessment Act* as it at present stands, because there is nothing to show that Parliament meant to restrict it to the usually accepted sense. The wording of the exemption in that Act differs, however, from that in the *Income Tax Assessment Act*: in the one we find the phrase "charitable purposes," in the other "charitable institution." In the *Land Tax Assessment Act* we find both "charitable purposes" and "charitable institution"; so that there is a certain chance of confusion in the one Act. There stands at present a decision of this Court—*Swinburne* v. *Federal Commissioner of Taxation* (4)—which is not directly touched by the Privy Council decision because it arose under a section of the *Income Tax Assessment Act* where the phrase is "public charitable institutions." There it was held that the technical Elizabethan meaning did not attach to the word "charitable," but that Parliament meant the word in its usual modern sense of relief to persons. That means, of course, in the broad and literal sense of assistance, physical, mental or spiritual, for the benefit of those whose means or opportunities are otherwise insufficient for the purpose. It was strenuously argued before us

(1) (1912) 1 I.R. 133.
(2) (1898) 1 I.R. 431.
(3) (1926) A.C. 128; 42 T.L.R. 121; *ante*, 317.
(4) (1920) 27 C.L.R. 377.

in this case that, since the ultimate decision in *Chesterman's Case* (1), *Swinburne's Case* (2) must be held to be wrong. It is obvious to me that in the interests of all concerned the meaning of Parliament should be legislatively declared beyond doubt. Besides the rights of the Public Treasury, in the first instance, and the possibility of refunds, as well as the administration of the Taxing Branch, which must be seriously hampered by the diversity of expressions and of decisions, the parties immediately concerned as possible taxpayers should be definitely informed, without the necessity of further costly legal proceedings, as to their liability or non-liability, and the general public ought also to know what clear exemptions are intended which cast a heavier burden on the rest of the community. Litigation, perhaps protracted and expensive, is inevitable unless Parliament by a few words declares whether by "charitable" it means to use that word in its ordinary modern sense, or in the technical Elizabethan sense that some quaint Chancery decisions in connection with trusts have affixed to it as its primary legal meaning, extending to objects which include, as I have said, purposes quite outside what any ordinary person would understand by charitable.

As to the amount, since "the income" is exempt it means the whole income, and therefore there is no liability.

HIGGINS J. By sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915-1918 (now sec. 14 (1) (*d*) of the *Income Tax Assessment Act* 1922-1925) the income of a religious, scientific, charitable or public educational institution is exempt from the tax. This Association, which is incorporated under Victorian law, has been assessed by the Commissioner for 1920, as for £3,400 rent received in 1920, £150 interest on moneys and bonds donated to the Association for its general purposes, £153 moneys received from subscribers to and advertisers in the journal of the Association. The Commissioner admits certain deductions from these receipts; but the amount of the deductions is immaterial if, as claimed, the Association is a religious or a charitable institution, and exempt from the tax.

(1) (1926) A.C. 128; 42 T.L.R. 121; *ante*, 317.
(2) (1920) 27 C.L.R. 377.

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Higgins J.

According to its by-laws, the Association is based upon a Paris declaration of 1855, as follows: [The declaration was here set out.]

According to by-law 3, "the object of the Association is the improvement of the spiritual, intellectual, social and physical condition of young men." It is unnecessary to consider the distinctions between "active," "associate," "sustaining" and "honorary" members, or the details of their activities; for not one of the activities is inconsistent with the basic declaration and the object as stated. That basic declaration shows, in my opinion, that the Association is religious; and I am inclined to think that the mere fact that the object includes the improvement of the intellectual, social and physical condition of young men does not detract from the fundamental religious character of the Association.

But the aim is to improve the spiritual, intellectual, social and physical condition of young men, and not only the young men who happen to be members. To improve the "social condition" of young men, I take it, means to make them better members of human society, and not merely to improve what is called their social position. I am clearly of the opinion that the Association is charitable in the technical sense, as being designed for the good of young men generally. The very recent case of *Chesterman* v. *Federal Commissioner of Taxation* (1), on appeal to the Judicial Committee, shows that we are to consider the word "charitable" in the technical sense, and not in any popular sense of eleemosynary, &c. The reasoning of the Judicial Committee in that case may compel us to reconsider the decision in *Swinburne* v. *Federal Commissioner of Taxation* (2), should a similar question arise hereafter. But that decision was as to the meaning of the words "public charitable institutions in Australia" in sec. 18 (1) of the *Income Tax Assessment Act* 1915-1918 (sec. 23 (1) (*h*) (ii.) of the present Act); and it does not necessarily follow that in this different context the word "charitable" should be treated as having the same meaning as in the *Estate Duty Assessment Act* 1914-1916, sec. 8. It has not been argued for the Commissioner that this Association is not an "institution" within the meaning of the Act. The meaning numbered 7 in the *Oxford Dictionary* applies: "An

(1) (1926) A.C. 128; 42 T.L.R. 121; *ante*, 317.
(2) (1920) 27 C.L.R. 377.

establishment, organization, or association, instituted for the promotion of some object, esp. one of public or general utility, religious, charitable, educational, &c., e.g. a church, school, college, hospital, asylum, reformatory, mission, or the like; as a literary and philosophical institution, a deaf and dumb institution, the Royal National Life-boat Institution," &c. It is true that the name is often popularly applied to the *building*, appropriated to the work of a benevolent or educational institution; but this is rather a transferred sense. The existence of a distinctive building is not, I think, essential to the word "institution."

In my opinion, the appellant Association was not rightly assessed for income tax in respect of any of the three sums.

GAVAN DUFFY J. The appellant Association seeks exemption from the payment of income tax on the ground that it is either a "religious institution" or a "charitable institution" within the meaning of sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915. As I am of opinion that it is such a "religious institution" it is unnecessary for me to consider whether it is or is not such a "charitable institution."

The appellant is an association incorporated under the *Hospitals and Charities Act* 1890 (Vict.) and the corporation has made by-laws under sec. 10 of that Act. Sections I. and II. of the by-laws are as follows:—[The sections were here set out.] Section III. deals with membership and section IV. with the management of the corporation. From these sections it appears that the business of the corporation is conducted by a Board and an advisory council appointed by the Board. The Board is elected at an annual meeting by active members and by persons contributing a sum of not less than £100 per annum. The qualification for active membership is as follows: [By-law No. 5 was here set out.] In my opinion the appellant is substantially an association of persons holding specific religious views, and acting together for the purpose of comforting and encouraging one another, and of inducing others to adopt those religious views and to join that Association. It is therefore a "religious institution" within the meaning of sec. 11 (1) (*d*) of the *Income Tax Assessment Act* 1915.

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Rich J.

My answer to the question submitted for our consideration is that the appellant was not rightly assessed for income tax in respect of any of the sums mentioned in the case stated.

RICH J. The appellant claims that its income is exempt from income tax on the ground that it is a religious and/or charitable institution (*Income Tax Assessment Act*, sec. 11 (1) (*d*)).

It has not been suggested that the appellant is not an institution. It was incorporated under the provisions of sec. 19 of the *Hospitals and Charities Act* 1890. And I consider that it is religious. The cardinal principle of the Association is : [The declaration was here set out.] That is the basic idea. Ancillary thereto is " the improvement of the spiritual, intellectual, social and physical condition of young men " (by-law 3).

Reading the by-laws of the Association as a whole document, I find nothing in them to exclude or modify the construction I have adopted. In this view it is unnecessary to express any opinion as to whether the Association is " charitable."

I agree that the appellant is entitled to the exemption claimed.

Question answered No.

Solicitors for the appellant, *Maddock, Jamieson & Lonie.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.