

Appl Cronulla- Sutherland Leagues Club Lid v FCT 20 ATR 1404	Appl SSAU Nominees Pty Lid v FCT [1986] VR 355	Appl Cronulla Sutherland Leagues Club Lid v FCT 23 FCR 82	Appl Cronulla Sutherland Leagues Club Lid v FCT 21 ATR 300	Appl A C T Revenue Collections v Council of the Dominican Sisters (1991) 22 ATR 213	Appl A C T Revenue Collections v Council of Dominican Sisters (1991) 101 ALR 417	Appl A A T Case 8267 (1992) 24 ATR 1068	Refd to Dareton Local Aboriginal Land Council v Wentworth Council 89 LGERA 120
436	Appl Gumbangerrii Aboriginal Corporation v Nambucca Council (1996) 131 FLR 115	Appl A A T Case 12,876: Nat Council of Women of Tasmania & F C T, Re (1998) 38 ATR 1174	Foll Northern Land Council v Comr of Taxes (2001) 48 ATR 700	Cons Northern Land Council v Comr of Taxes (NT) (2002) 12 NCLR 86	COURT		[1943.]

[HIGH COURT OF AUSTRALIA.]

ROYAL AUSTRALASIAN COLLEGE OF } APPELLANT ;
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AND

THE FEDERAL COMMISSIONER OF TAXA- } RESPONDENT.
TION

H. C. OF A. *Income Tax (Cth.)—Assessment—Exempt income—“Scientific . . . institution”*
1943. —*Income Tax Assessment Act 1936-1941 (No. 27 of 1936—No. 69 of 1941),*
s. 23 (e).

MELBOURNE,
Oct. 21;
Nov. 5.

Latham C.J.,
Rich, Starke,
McTiernan and
Williams J.J.

The Royal Australasian College of Surgeons was registered in Victoria as a limited company. Its income and property were to be applied solely towards the promotion of its objects, and no portion thereof was to be paid by way of profits to its members. Its objects as stated in its memorandum of association were partly for the promotion of professional interests and partly for the promotion of surgical knowledge and practice. The members of the College (who were called fellows) were all surgeons; some were foundation members and the others were admitted to fellowship after examination. The College had no power to confer degrees in surgery, and it could not admit its fellows or any other persons to practise surgery. Its principal activities included the holding of conferences of surgeons for the discussion and study of surgical matters and the dissemination of knowledge of surgery; the provision of a technical surgical library for the use of its members and the publication of a surgical journal; the conduct of examinations for admission to fellowship of the College; the administration of funds for surgical research and for the award of scholarships to medical students. The Federal Commissioner of Taxation assessed the College to tax on income received by it from investments.

Held that, as it appeared from the activities of the College that its primary and dominant object was the promotion of surgical science, the College was a scientific institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act 1936-1941* and its income was therefore exempt from income tax.

CASE STATED.

Objections to an assessment of the Royal Australasian College of Surgeons to Federal income tax, having been disallowed, were treated as an appeal to the High Court. *Williams J.* stated for the Full Court a case which was substantially as follows :—

1. In the year 1926 an unincorporated association known as "The College of Surgeons of Australasia" was formed, the members being surgeons practising in Australia and New Zealand.

2. By licence dated 29th October 1930 the Attorney-General for the State of Victoria in exercise of the powers conferred upon him by s. 27 of the *Companies Act* 1928 (Vict.) directed that the association be registered as a company with limited liability without the addition of the word "Limited" to its name.

3. On 24th October 1930 the association was duly registered and incorporated in Victoria as a company under the name of "Australasian College of Surgeons." On 23rd December 1930 Royal assent to the use of the prefix "Royal" was obtained, and on 27th May 1931 the name of the company was duly altered to "Royal Australasian College of Surgeons."

4. The objects of the company as set forth in its memorandum of association are as follows:—

(a) To cultivate and maintain the highest principles of surgical practice and ethics.

(b) To promote the practice of surgery under proper conditions by securing the improvement of hospitals and hospital methods.

(c) To arrange for adequate post-graduate surgical training at universities and hospitals and to conduct examinations of candidates for admission to fellowship.

(d) To promote research in surgery.

(e) To bring together the surgeons of Australia and New Zealand periodically for scientific discussion and practical demonstration of surgical subjects.

(f) To consider all questions affecting the interests of the College and initiate and watch over and if necessary to petition Parliament or promote deputations in relation to measures affecting the College.

(g) To acquire by purchase, donation or otherwise a library of scientific works and to maintain and from time to time extend and improve such library.

(h) To acquire by purchase, taking on lease or otherwise land and buildings and all other property real and personal in Australia and New Zealand which the College for the purposes thereof may from time to time think proper to acquire and which may lawfully be held by it.

(i) To resell underlease or sublet surrender turn to account or dispose of any real and personal property belonging to the College.

(j) To erect upon any land whether of freehold or leasehold tenure or held under a licence or permissive occupancy from the Crown in Australia or New Zealand any building required for the

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purposes of the College and to alter or add to any building erected upon any such land.

(k) To borrow or raise or secure the payment of money for the purposes of the College in such manner as may from time to time be determined.

(l) To invest the moneys of the College not immediately required for any of its objects in such manner as may from time to time be determined.

(m) To draw make accept indorse discount execute and issue bills of exchange promissory notes debentures and other negotiable securities.

(n) To acquire establish print and publish books magazines periodicals newspapers leaflets or other literary or scientific works that the College may think desirable for the promotion of its objects.

(o) To delegate all or any of its powers to the council of the College or any committee or committees consisting of one or more members.

(p) To do all such acts and things as are incidental or subsidiary to all or any of the above objects.

5. [A copy of the Handbook of the Royal Australasian College of Surgeons of June 1940 was exhibited and formed part of the case. It was agreed that the facts stated in this Handbook were correct. In view of the statements in the succeeding paragraphs of the case and the references to the facts in the judgments hereunder it is unnecessary to set out the contents of the handbook.]

6. The College has since its incorporation actively carried out the objects set forth in its memorandum of association and no others. The whole of its members are surgeons and all except honorary members and a few others, eight in all, are surgeons practising in one of the Australian States or in the Dominion of New Zealand and are persons who have been admitted as fellows of the College in accordance with its regulations. The members practising outside the Commonwealth and New Zealand were at the time of their admission practising within the Commonwealth or New Zealand.

Honorary fellowship has been conferred upon distinguished surgeons practising outside the Commonwealth and New Zealand.

7. The principal activities of the College in furtherance of its objects are :—

(a) The holding of periodical conferences of surgeons for the discussion and study of surgical matters and the dissemination of knowledge of surgery. There is an annual meeting of the College as a whole, and, in addition, annual scientific meetings at the leading hospitals in each State. These meetings usually extend

over several days. The papers contributed and practical demonstrations in surgery at these meetings are by leading surgeons.

(b) The provision of a technical library upon surgical subjects for the use of its members; in such library numerous works upon surgery are collected and current surgical literature from other countries is available. The following facilities are available to men conducting research in surgical subjects:—

(i) Translations from foreign surgical journals.

(ii) Copies of articles published in foreign surgical journals are circulated to all States.

(iii) References to literature for the assistance of men engaged in research are supplied.

Members of the profession other than fellows of the College have access to the library and the library service, on the introduction of a fellow.

(c) The publication and distribution to members of the College of a periodical publication, known as "The Australian and New Zealand Journal of Surgery," which commenced in July 1928 and is published quarterly. The Journal is not self-supporting but is financed to a considerable extent by the College.

(d) The conduct of half-yearly examinations of surgeons seeking to be admitted to fellowship of the College in accordance with the regulations.

(e) The administration of funds bequeathed or donated to the College for the purpose of the award of scholarships to medical students.

(f) The administration of a sum of approximately £60,000 bequeathed to the College by R. Gordon Craig deceased upon trust to devote one-half of the income therefrom to the promotion of research in surgery and to devote the other half of such income to assisting young graduates of exceptional ability and promise to undergo adequate post-graduate education.

(g) The collection and collation of records of clinical cases occurring in hospital and private practice. Special attention has been given to the study by these means of hydatid disease.

(h) Evening lectures in surgical subjects are organized from time to time in the various capital cities. Medical practitioners who are not members of the College are invited to attend and do attend such lectures.

(i) It has been agreed to provide a post-graduate school of surgery at the Prince Henry Hospital in Melbourne, but, owing to the war and the large demands made thereby upon members, the actual commencement of this school has been postponed; it is, however,

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intended to proceed with such school at the termination of the war. An agreement relating to such school has been made with the governing body of such hospital.

(j) The College administers a sum of £2,500 donated by the widow and family of the late Sir George Adlington Syme, K.B.E., to provide an honorarium for an oration at each annual general meeting of the College and payment of a research scholar.

(k) The College finances research work in surgery and the results of such research are published from time to time in the Journal. The College has undertaken to finance and organize research work on behalf of the Department of the Army, the Navy and the Air Force. It has for this purpose made available the sum of £100 and will from time to time make available further funds to the Walter and Eliza Hall Institute of Research in Pathology and Medicine at the Royal Melbourne Hospital for the preparation of amnioplastin, a product used in cultural operations, tendons and nerve sutures and abdominal operations, to prevent the formation of adhesions. This product is urgently required by the Australian Army Medical Corps. It has made available the sum of £200 for research into large scale drying of blood plasma and possibly serum also for the Australian Army Medical Corps and will from time to time supply further moneys for this research. This research is being supervised by the University of Sydney. The whole of these activities were being carried on prior to and during the year ended 31st January 1940.

8. The whole of the foregoing activities, including all the cost of administering the trusts referred to in sub-pars. *e*, *f* and *j* of par. 7 have always been financed by the general funds of the College. No part of the income of the College has ever been applied for entertainment or social functions of any kind. The College employs a full-time secretary and clerical assistance and expends its income in general administrative expenses.

9. The Government of the State of Victoria has granted to the College at a rental of one pound per annum a lease of certain Crown lands at Albert Street, East Melbourne, for a term of fifty years from 14th April 1933 with an option of renewal for a further term of fifty years. The land is Crown land set apart for educational purposes in perpetuity. The College has erected buildings, including a lecture hall, library and offices upon the land. This work was completed prior to the end of 1934.

10. During the accounting year of the College ending 31st January 1940 (accepted in lieu of the year ended 30th June 1940) the College

derived income (other than income from the trust funds referred to in par. 7 (e), (f) and (j)) as follows :—

Subscriptions	£3,131	7	6
Interest on investments	£241	4	6

11. The College for the financial year 1940-1941 lodged with the Commissioner a return for the accounting period 1st February 1939 to 31st January 1940 showing income as above.

12. By notice of assessment dated 29th June 1941 the Commissioner assessed the College to income tax upon a taxable income of £235 consisting of £101 interest from Australian Consolidated Stock issued prior to 1st January 1940 and £134 interest from other sources. In the assessment the sum of £101 is erroneously shown as income from personal exertion.

13. By notice of objection dated 12th September 1941 the College objected to the assessment upon the following grounds :—

(i) That the income of the College is exempt from income tax by virtue of s. 23 (e) of the *Income Tax Assessment Act* 1936-1940.

(ii) The College is a scientific institution.

(iii) The College is a charitable institution within the meaning of the word charitable as used in the sub-section.

(iv) The College is a public educational institution.

(v) The College was not established and is not carried on for the purposes of profit or gain to the individual members thereof.

The question asked for the opinion and consideration of the Full Court was as follows :—

Is the income of the appellant exempt from income tax as being the income of a scientific, charitable or public educational institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act* 1936-1941 ?

Menzies K.C. (with him *Mulvany*), for the appellant. The appellant is a scientific or charitable institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act* 1936-1941. It is clearly an "institution" within the section. As to "charitable," see *Swinburne v. Federal Commissioner of Taxation* (1). Whether charitable or not, it is, at all events, scientific (See *Institution of Civil Engineers v. Inland Revenue Commissioners* (2)) and therefore has the same protection as if it were charitable. If an institution exists in part for the benefit of its members, but has also scientific objects, one must look for its main object. If its main object is scientific, then it is a scientific institution within the section, and it is plain in this case that the appellant's main object is the advancement of

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(1) (1920) 27 C.L.R. 377. (2) (1932) 1 K.B. 149, at pp. 151, 157, 161, 165, 171.

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surgery and that any benefit that may accrue to members is secondary. If there is any doubt on this matter, it is proper to look beyond the objects expressed in the memorandum of association and to see what the institution in fact does. In this case it is clear from its activities that the appellant is a scientific institution. [He referred to *Inland Revenue Commissioners v. Forrest* (1); *City of Halifax v. Estate of Fairbanks* (2); *University of Birmingham v. Federal Commissioner of Taxation* (3); *In re Royal College of Surgeons of England* (4).]. In *Sulley v. Royal College of Surgeons, Edinburgh* (5) the objects of the College were mainly to license persons to practise surgery—there was scarcely any educational object at all.

Fullagar K.C. (with him *Coppel*), for the respondent, referred to s. 23 (e) of the Act. A scientific institution is one which has for its sole or dominant object the enlargement of scientific knowledge. If there are two co-ordinate objects, one of which is outside the exception, the exception does not apply. *Sulley's Case* (5), though not quite in point here, most nearly approximates to the present case. [He referred also to *Farmer v. Juridical Society of Edinburgh* (6); *Inland Revenue Commissioners v. Aberdeen Medico-Chirurgical Society* (7).] In the *Institution of Civil Engineers Case* (8) the Institution had as its sole object the advancement of knowledge: See also *Forrest's Case* (9). There is a clear distinction drawn in the cases between the advancement of science and professional advancement of the members. Here the appellant has both objects, and it is impossible to say that one predominates over the other.

Menzies K.C., in reply.

Cur. adv. vult.

Nov. 5.

LATHAM C.J. Case stated upon an appeal from an assessment of the Royal Australasian College of Surgeons to income tax in respect of income derived by the College from investments. It is contended for the appellant that the income of the College is exempt from tax under the *Income Tax Assessment Act* 1936-1941, s. 23 (e), which provides that "the income of a religious, scientific, charitable or public educational institution" shall be exempt from income tax.

(1) (1890) 15 App. Cas. 334.

(2) (1928) A.C. 117.

(3) (1938) 60 C.L.R. 572.

(4) (1899) 1 Q.B. 871, at p. 877.

(5) (1892) 3 Tax Cas. 173.

(6) (1914) 6 Tax Cas. 467.

(7) (1931) 16 Tax Cas. 237, at pp. 249-251.

(8) (1932) 1 K.B. 149.

(9) (1890) 15 App. Cas., at pp. 345, 346.

It is contended for the College that the College is a scientific institution. If it is a scientific institution, then it is a charitable institution. It has not been argued that the College can on the evidence be held to be a charitable institution if it is not a scientific institution. It has not been argued that it is a public educational institution. The only question, therefore, is whether the College is a scientific institution within the meaning of the provision quoted.

The company was incorporated under the *Companies Act* 1928 (Vict.) as a company with limited liability without the addition of the word "limited" to its name (see s. 27 of the Act). The objects of the company as set forth in its memorandum of association are stated in the case. They include the following:—

"(a) To cultivate and maintain the highest principles of surgical practice and ethics—

(b) To promote the practice of Surgery under proper conditions by securing the improvement of hospitals and hospital methods—

(c) To arrange for adequate post-graduate surgical training at Universities and Hospitals and to conduct examinations of candidates for admission to Fellowship—

(d) To promote research in Surgery—

(e) To bring together the Surgeons of Australia and New Zealand periodically for scientific discussion and practical demonstration of surgical subjects—"

"(g) To acquire by purchase, donation or otherwise a library of scientific works and to maintain and from time to time extend and improve such library—"

"(n) To acquire establish print and publish books magazines periodicals newspapers leaflets or other literary or scientific work that the College may think desirable for the promotion of its objects."

Other "objects" are plainly incidental and subsidiary, such as to acquire land and buildings, to erect buildings, to invest moneys, to draw, &c., cheques.

The activities of the College are fully stated in the case. They include the holding of conferences of surgeons for the discussion and study of surgical matters and dissemination of knowledge. Papers are read and addresses are given at these meetings. The programmes of three annual meetings have been put in evidence. They show that a very large number of papers have been read, addresses given and demonstrations conducted, all relating to surgical science. A consideration of the subjects dealt with at the meetings shows that on only one occasion, when a discussion took place upon surgical apprenticeship, was any strictly professional, as distinct

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from a scientific, subject dealt with in an address. The other lectures and addresses and demonstrations, more than three hundred in number, all related to matters of surgical science.

The College also maintains a technical surgical library and publishes a surgical journal. It admits fellows by examination. The fellowship of the College does not constitute a qualification to practise surgery. The College administers funds devoted to surgical research and conducts and assists such research in various ways.

It is plain that the objects and activities of the College include the promotion of surgical science, but the question to be determined is whether it can properly be found upon the evidence that it is a scientific institution. The question for consideration was very clearly expressed in the case of *Inland Revenue Commissioners v. Aberdeen Medico-Chirurgical Society* (1), by the Lord President:—“Now the members and associates of the Society are composed exclusively of members of the medical profession; and while it is easy to grasp the general distinction between a society for the advancement of professional objects and interests, and a society for the advancement of letters and science, the distinction is not always easy to draw in the case of societies composed of professional men just because all professional work belongs to the sphere of either letters or science. Nothing could show this more clearly than the difference of opinion displayed in *Inland Revenue Commissioners v. Forrest* (2). But the question—difficult or easy to answer—must always be—what is the true nature and the objects and activities of the particular society? If these objects and activities are of a mixed character, being partly professional and partly literary or scientific, then the question must be decided according to the prevalent or main character.” In that case it was held that the Society was a professional society and not a scientific institution. See also *Institution of Civil Engineers v. Inland Revenue Commissioners* (3), where the same test was applied in determining whether the Institution of Civil Engineers was a body of persons established for charitable purposes only or a body of persons established for scientific purposes only.

Unless the promotion of surgical science is the main substantial or primary object of the College, it cannot be described as a scientific institution. It is argued for the Commissioner that the College has another object than the promotion of surgical science, namely, the promotion of the professional interests of its members, and

(1) (1931) 16 Tax Cas. 237, at p. 249.

(2) (1887) 19 Q.B.D. 610; (1888) 20 Q.B.D. 621; (1890) 15 App. Cas. 334.

(3) (1932) 1 K.B. 149.

that this object cannot be described as subsidiary or secondary or auxiliary only to the promotion of surgical science. Attention is called in particular to object (a) in the memorandum, namely, "To cultivate and maintain the highest principles of surgical practice and ethics," and also to objects (b) and (c) (which have already been quoted), which also have a relation to the professional practice of surgery. The pursuit of these objects would improve the professional qualifications, and thereby would, in the normal course of events, promote the professional interests, of the members of the College.

Similar arguments were used in the case of an Institution of Civil Engineers, the character of which was considered in *Inland Revenue Commissioners v. Forrest* (1), where the question was whether the property of the Institution was legally appropriated and applied for purposes connected with the promotion of science. It was pointed out that membership of the Society, though valuable to members, did not constitute a qualification to practise, and it was said:—"The Institution of Civil Engineers stands in a very different position from such professional bodies as the Society of Writers to the Signet. The mere fact that membership is confined to those who are actively engaged, and have attained some degree of eminence, in the profession, does not militate against the object of the institution being the advancement of engineering science; because they are really the only persons possessing the knowledge and practical experience requisite for the efficient promotion of that object. Membership is not required for admission to the profession of a civil engineer: it confers no rights or privileges in the practice of that profession, over which the institution neither has, nor professes to have any power of control. A writer to the signet, in carrying on his private business, and practically in no other form, exercises his rights and privileges as a member of the society to which he belongs; but a member of the Society of Civil Engineers does nothing whatever in his corporate capacity except when he takes part in its proceedings within the walls of the Institution. . . I do not doubt that membership is accompanied with a certain amount of prestige which may prove to be of service to the member in his professional career; but I believe that the same result would attend membership of any society which effectively promoted a branch of science intimately connected with the profession or business in which the member was engaged. . . It occurs to me that, if any one were asked to say what would be a more efficient method of promoting engineering science than that which the Institution has adopted, he would have difficulty in making a satisfactory reply." These words of Lord *Watson* (2), applied to engineering science in the

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(1) (1890) 15 App. Cas. 334.

(2) (1890) 15 App. Cas., at pp. 350-352.

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case of the Institution of Civil Engineers, are, in my opinion, equally applicable to surgical science in the case of the College.

In *Institution of Civil Engineers v. Inland Revenue Commissioners* (1), *Lawrence* L.J. quotes *Fry* L.J. in *Forrest's Case* (2):—"It has been pressed upon us that the membership in this society is of pecuniary value to engineers, and I have no doubt that that is the case: but the observation does not appear to me to go far. It is obvious that membership in many bodies formed for the cultivation of science is of pecuniary value to certain classes of persons. A fellowship in the Royal Society is undoubtedly of pecuniary value to medical men, to engineers, chemists, and others; nevertheless it is plain that the object of that society is the promotion of science."

The by-laws of the Institution of Civil Engineers contained "rules as to professional conduct to be observed by all corporate members of the Institution": See *Institution of Civil Engineers v. Inland Revenue Commissioners* (3). This object and activity of the Institution may be compared with object (a) quoted from the memorandum of association of the College. The fact that the Institution concerned itself with the professional conduct of its members did not prevent the conclusion being reached that the Institution was exempt from tax as being carried on for the promotion of engineering science and not for the promotion of the professional interest or advantage of the members.

The College, as already stated, does not grant any degree which is a qualification for professional practice. Accordingly, the constitution of the College is different in this important respect from that of the Royal College of Surgeons of England (See *In re Royal College of Surgeons of England* (4)), and the Royal College of Surgeons of Edinburgh (See *Sulley v. Royal College of Surgeons, Edinburgh* (5)).

In my opinion the College is a scientific institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act* 1936-1941 and the question in the case should be answered in the affirmative.

RICH J. The intention of the legislature as it appears in s. 23 (e) of the *Income Tax Assessment Act* 1936-1941 is to exempt the income, *inter alia*, of a scientific institution. The Act gives no definition of "scientific" and one must therefore look to the objects and practice of the particular institution. By "practice" I understand its activities. The principal activities of the College are set out in par. 7 of the admitted facts contained in the case stated.

(1) (1932) 1 K.B., at p. 171.

(2) (1888) 20 Q.B.D., at p. 631.

(3) (1932) 1 K.B., at p. 151.

(4) (1899) 1 Q.B. 871.

(5) (1892) 3 Tax Cas. 173.

The object clause in the memorandum of association of the College consists partly of purposes and partly of powers. And, as I understand the cases, the test is whether it can be predicated that the College is in the main scientific. The inclusion of an institution in the exemption clause depends upon the intrinsic character of the object which it promotes and not upon the scope of the benefits which may result from its transactions. After considering all the relevant matter in the case stated (including the annexures) I have come to the conclusion that the main or real object of the College is the promotion and advancement of surgery. By this I mean that its essential purpose is to enlarge and extend the boundaries or area of the science of surgery. Its other objects are not collateral or independent but merely concomitant and incidental to the main object. And the fact that some of these subsidiary or ancillary functions and purposes may indirectly and incidentally be of benefit to the members of the profession does not destroy the exemption claimed.

For these reasons I consider that the College is a scientific institution and as such is entitled to the exemption provided in the Act.

STARKE J. Case stated pursuant to the provisions of the *Income Tax Assessment Act* 1936-1941.

The Royal Australasian College of Surgeons is registered as a company pursuant to the provisions of the *Companies Act* 1928 of Victoria. It was assessed to income tax for the financial year 1940-1941 based on income derived during the year ended 31st January 1940. But it claimed the benefit of s. 23 of the Act, which exempts from income tax the income of a religious, scientific, charitable or public educational institution. The case states the following question :—

Is the income of the appellant exempt from income tax as being the income of a scientific, charitable or public educational institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act* 1936-1941 ?

Several cases were cited and a number of relevant decisions are collected in *Konstam on The Law of Income Tax*, 6th ed. (1933), p. 302, note j. It was rightly conceded that the College was an institution. The substantial question is whether the College is a body for the advancement of professional objects and interests or for "something higher and larger," namely, the promotion of science in the advancement of surgical knowledge and practice.

The College would not be the less a scientific institution because it does not confine its activities to abstract or speculative science

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but applies scientific knowledge and practice to the advancement of surgery : See *Inland Revenue Commissioners v. Forrest* (1). It would seem that if the College be not a scientific institution then for much the same reason it would not be a charitable or a public educational institution, but it is unnecessary in the view I take of the case to resolve this question. And I rather think that the question we have to determine is one of fact (*Inland Revenue Commissioners v. Forrest* (2) ; *Inland Revenue Commissioners v. Yorkshire Agricultural Society* (3) ; *Usher's Wiltshire Brewery Ltd. v. Bruce* (4)), but all the relevant facts are stated in the case and may perhaps be regarded as raising a mixed question of law and fact proper to be stated for the opinion of this Court pursuant to s. 198 of the Act.

The College is a limited company, but its income and property is applicable solely towards the promotion of its objects and no portion thereof is payable directly or indirectly by way of dividend, bonus or otherwise by way of profits to its members : See *Companies Act* 1928 (Vict.), s. 27. The objects of the College as stated in its memorandum of association are partly for the promotion of professional interests and partly for the promotion of surgical knowledge and practice. Thus, for example, object (a) is to cultivate and maintain the highest principles of surgical practice and ethics, whilst (d) is to promote research in surgery. The objects of the College are therefore of a mixed character and the memorandum does not make it clear which are its main or dominating characteristics. The activities of the College must therefore be examined.

If it be found that those activities are mainly or predominantly directed towards the promotion or advancement of scientific knowledge or, in other words, the advancement of surgical knowledge and practice, then the authorities make it clear that a finding that the College is a scientific institution is in point of law correct (*Commissioners of Inland Revenue v. Forrest* (5) ; *Inland Revenue Commissioners v. Aberdeen Medico-Chirurgical Society* (6) ; *Inland Revenue Commissioners v. Yorkshire Agricultural Society* (7)). The members of the College are called fellows. The College cannot confer degrees in surgery, nor can it admit its fellows or any other persons to practice as surgeons or as medical practitioners. Some of the fellows are foundation members, and others are admitted after examination by the College to ensure that its fellows have " sound training in the basic principles of surgery " and should be capable of performing operations competently. The fact that fellowship of the College is

(1) (1890) 15 App. Cas. 334, at p. 353.

(2) (1890) 15 App. Cas., at p. 341.

(3) (1928) 1 K.B. 611, at pp. 625, 634.

(4) (1915) A.C. 433, at p. 466.

(5) (1890) 15 App. Cas. 334.

(6) (1931) Sess. Cas. 625.

(7) (1928) 1 K.B. 611, at p. 631.

confined to those who have attained eminence or skill in the practice of surgery “ does not militate against the object of the institution being the advancement ” of surgical knowledge ; “ they are really the only persons possessing the knowledge and practical experience requisite for the efficient promotion of that object ” (*Inland Revenue Commissioners v. Forrest* (1)). But the examination of surgeons for fellowship is not by any means the sole activity of the College. They are set forth at large in the case. The College holds periodical conferences of surgeons for the discussion and study of surgical matters and the dissemination of knowledge of surgery. It publishes and distributes to its members a periodical known as the “ Australian and New Zealand Journal of Surgery ”, containing original articles on various branches of professional knowledge, case reports and résumés of foreign professional publications, reviews of professional books and so forth. It also maintains a library in which are collected numerous works on surgery and current surgical literature for the use of its fellows. It has arranged for the collection and collation of records of clinical cases occurring in hospital and private practice. It has also arranged for the establishment of a school at the Prince Henry Hospital, Melbourne, for post-graduate surgical education, research and investigational work, but the actual commencement of this school has been postponed for the present owing to the outbreak of the war. It has accepted a bequest of some £60,000, one-half of the income whereof is to be applied for research work, and the other half for assisting young graduates of exceptional ability and promise in post-graduate work.

The activities of the College may benefit its fellows, but the facts related speak for themselves and establish that the College is doing “ something higher and larger ” than the mere promotion of professional interests. It is actively engaged in the promotion and advancement of science in the advancement of surgical knowledge and practice. And that, I think, is the main and prevailing and the characteristic nature of the activities of the College. As Lord *Watson* observed in *Inland Revenue Commissioners v. Forrest* (2), “ I do not doubt that membership ” of the College “ is accompanied with a certain amount of prestige which may prove to be of service to the member in his professional career ; but I believe that the same result would attend membership of any society which effectively promoted a branch of science intimately connected with the profession or business in which the member was engaged.”

In short, in my opinion, on the facts stated in the case the Royal Australasian College of Surgeons is a scientific institution, and the question stated should be answered accordingly.

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(1) (1890) 15 App. Cas., at p. 350.

(2) (1890) 15 App. Cas., at p. 351.

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McTIERNAN J. I agree that the question should be answered :
Yes.

The appellant claims that its income derived during the accounting period 1st February 1939 to 31st January 1940 was the income of a scientific or charitable institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act* 1936-1941 and is therefore exempt from taxation. The appellant also claims that it is a charitable institution for the reason that it is a scientific institution, but on no other ground. It is to be observed that in the *Institution of Civil Engineers Case* (1) *Romer* L.J. said: "That the promotion of science is a charitable object is not disputed." In the first place, therefore, the appellant claims that it is a scientific institution. The ground of this claim is that the object of the association is the promotion of the science of surgery. The claim is resisted on the ground that another object of the association relates to the practice of surgery as an art, and the association is therefore not substantially a scientific institution. It is not necessary, to satisfy the section, that the object of the association should be exclusively scientific. But it is necessary that the promotion of the science of surgery should be its main object (*Forrest's Case* (2); *In re Royal College of Surgeons of England* (3); *Institution of Civil Engineers v. Inland Revenue Commissioners* (4); *Inland Revenue Commissioners v. Aberdeen Medico-Chirurgical Society* (5)). It is not possible from the statement of the objects in the memorandum of the appellant to draw any distinction such as is made in the cases last mentioned between the objects for which the appellant was instituted. The only distinction which is apparent from the terms of its memorandum is that some of its objects could be regarded as being ancillary to the scientific and professional objects of the appellant rather than as principal objects in themselves. The members of the association might have devoted their corporate endeavours either to its scientific objects, the promotion of the science of surgery, or to its professional objects, the maintenance of proper standards for the practice of surgery, or to both of these objects. But the question whether the appellant fulfils the description of a scientific institution depends less upon the fact that it can direct its efforts to all these objects than what it does in pursuit of each of them. In the case stated the principal activities of the association are set out. It shows that the activities of the appellant were mainly devoted to the promotion of the science of surgery. That was the primary and dominant object of the activities carried on by it. The facts do not show

(1) (1932) 1 K.B., at p. 177.
(2) (1890) 15 App. Cas. 334.
(3) (1899) 1 Q.B. 871.

(4) (1932) 1 K.B. 149.
(5) (1931) 16 Tax Cas. 237.

more than that its activities were directed to the promotion of surgery merely as an art and to the protection of the professional interests of surgeons, as subordinate and merely concomitant objects. The fact that its memorandum includes these objects does not destroy the exemption to which the appellant is entitled by reason of its activities in the promotion of the science of surgery.

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WILLIAMS J. The question is whether, on the agreed facts as appearing in the body of the case stated and in the annexures and exhibits thereto, the proper conclusion in law is that the Royal Australasian College of Surgeons, which is a company incorporated not for profit under the Victorian *Companies Acts*, is a scientific, charitable or public educational institution within the meaning of s. 23 (e) of the *Income Tax Assessment Act 1936-1941* (*Institution of Civil Engineers v. Commissioners of Inland Revenue* (1); *Royal Choral Society v. Inland Revenue Commissioners* (2)). If, however, the College is a scientific institution within the meaning of the sub-section, it will be unnecessary to discuss whether it is also a charitable institution, while, if it is neither a scientific nor a charitable institution, it would be difficult to establish that it is a public educational institution.

The first question is, therefore, whether it is a scientific institution within the meaning of the sub-section.

This depends upon whether the main and dominant object for which the College was incorporated is to promote the science of surgery (*Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioners* (3)).

Clause 2 of the memorandum of association contains fifteen objects but of these only six, namely, (a), (b), (c), (d), (e) and (g), should be described as objects, while the balance should be described as powers to be exercised in order to enable the objects of the College to be carried into effect.

The principal contention on behalf of the respondent is that the College has two co-ordinate main purposes, the one the promotion of the science of surgery and the other the advancement of the personal and professional interests of its fellows.

It is submitted that objects (a), (b) and (c) are, on their true construction, objects to achieve this second purpose. Object (a), "to cultivate and maintain the highest principles of surgical practice and ethics," would be calculated to promote the second purpose, but object (b) would include within its ambit investigations in order to

(1) (1932) 1 K.B. 149, at p. 163.

(2) (1943) 2 All E.R. 101, at pp. 102-103.

(3) (1932) A.C. 650, at p. 658.

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ascertain what would be desirable improvements in the equipment and methods used in hospitals for surgical operations as well as taking steps to see that this equipment was installed and these methods were adopted, so that this object is equally consistent with the first purpose as with the second. Object (c) is in a similar position as the arrangement of adequate post-graduate surgical training at universities and hospitals could promote knowledge and skill in surgery just as it could promote the professional interests of surgeons. Objects (d) and (e) are objects the purpose of which is plainly to promote surgical knowledge and skill, and object (g) should also be placed in the same category.

But, in order to determine what is the main or dominant purpose of the College, it is a mistake to examine the objects contained in the memorandum in this disjunctive fashion. They should be examined in conjunction with one another and in the light of the circumstances in which the College was formed and of the manner in which the College is fulfilling the purposes for which it was incorporated.

The College holds examinations for candidates for fellowship and has a Board of Censors and an Ethics Committee which inquires into and reports to the Council, which is the governing body of the College, upon the personal qualifications of candidates for fellowship, but these examinations and inquiries are to ensure that the surgeons whom it admits as fellows are men of high professional skill and ethical standards. The College has no right to qualify any surgeon to practise or to disqualify any surgeon from practising his profession. The only disciplinary action which the College can take if a fellow fails to maintain the highest principles of surgical practice and ethics is to expel him from the College.

It has been held in several cases that it is permissible to examine the facts in order to see what are the principal activities which an institution is carrying on in accordance with its constitution. For instance, in *Inland Revenue Commissioners v. Yorkshire Agricultural Society* (1) *Atkin* L.J. said: "The question you have to consider is whether at the relevant time you are dealing with the income of a society established for charitable purposes only, and in respect of that income also you have to consider whether the income is applied in fact to charitable purposes only." In *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioners* (2) Lord *MacMillan*, referring to the income tax code, said: "It looks at the nature of the transactions; it looks at the character of the activities; and it does not look behind these to what may be the motive which has prompted the formation of the company."

(1) (1928) 1 K.B. 611, at p. 633.

(2) (1932) A.C., at p. 661.

When the principal activities which the College has carried on since its incorporation such as the holding of periodical conferences of surgeons for the discussion and study of surgical matters and the dissemination of surgical knowledge, the collection and collation of records of clinical cases occurring in hospital and private practice, the giving of evening lectures in surgical subjects, the provision of a technical library upon surgical subjects, the publication and distribution of a quarterly periodical known as the Australian and New Zealand Journal of Surgery, and research work in surgery are examined, it becomes clear that the College is in fact essentially an institution engaged in the promotion of the science of surgery in both a theoretical and practical sense. It is for this purpose that it has exercised its powers to purchase land, erect buildings, acquire a library and print and publish a scientific journal and other works.

Under the corresponding English Act an institution, in order to obtain exemption, must prove that it is a body of persons established for charitable purposes only, but it has always been held that an institution qualifies for exemption if its main purpose is charitable, although as subsidiary and incidental to that main purpose its members derive some personal and professional benefit from being members of the institution (*Inland Revenue Commissioners v. Yorkshire Agricultural Society* (1); *Institution of Civil Engineers v. Inland Revenue Commissioners* (2); *Royal Choral Society v. Inland Revenue Commissioners* (3)).

The present case is distinguishable on its facts from the *Royal College of Surgeons of England Case* (4), because the objects of that College included the examination of students and others to qualify for practice or honours in surgery and kindred subjects. *Romer L.J.*, delivering the judgment of the Court of Appeal, pointed out that "these examinations by the College have always been of great importance, and the certificates given to those who passed have been highly valued in the surgical profession, and a large income has been derived by the College from the fees on these examinations" (5). The Court came to the conclusion that the facts "amply show the dual nature of the object and purpose of the College" (6). The facts also established the dual nature and purpose of other institutions referred to in other cases which were cited to us and which are collected in *Halsbury's Laws of England*, 2nd ed., vol. 17, pp. 56, 57, note *u*.

The facts in the present case are more close to those in the two cases relating to the Institution of Civil Engineers, *Forrest's Case* (7)

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- (2) (1932) 1 K.B. 149.
- (3) (1943) 2 All E.R. 101.
- (4) (1899) 1 Q.B. 871.

- (5) (1899) 1 Q.B., at p. 880.
- (6) (1899) 1 Q.B., at p. 882.
- (7) (1890) 15 App. Cas. 334.

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and *Institution of Civil Engineers v. Inland Revenue Commissioners* (1). In *Forrest's Case* (2) Lord Watson (in passages most of which are cited by *Romer L.J.* in the latter case (3)), said:—"The mere fact that membership is confined to those who are actively engaged, and have attained some degree of eminence, in the profession, does not militate against the object of the institution being the advancement of engineering science; because they are really the only persons possessing the knowledge and practical experience requisite for the efficient promotion of that object. Membership is not required for admission to the profession of a civil engineer: it confers no rights or privileges in the practice of that profession, over which the institution neither has, nor professes to have any power of control. A writer to the signet, in carrying on his private business, and practically in no other form, exercises his rights and privileges as a member of the society to which he belongs; but a member of the Society of Civil Engineers does nothing whatever in his corporate capacity, except when he takes part in its proceedings within the walls of the institution. . . . I do not doubt that membership is accompanied with a certain amount of prestige which may prove to be of service to the member in his professional career; but I believe that the same result would attend membership of any society which effectively promoted a branch of science intimately connected with the professional business in which the member was engaged. . . . I have accordingly come to the conclusion that the income of the institution is, in fact, applied, not for the professional ends of individuals, but for 'the promotion of science' in the proper sense of the words" (4). These passages apply most aptly, *mutatis mutandis*, to the present appeal, in which a similar conclusion should, in my opinion, be reached to that arrived at in the two cases relating to the Institution of Civil Engineers.

For these reasons I would answer the question asked by saying that the appellant is a scientific institution within the meaning of the sub-section.

Question answered: Yes. Case remitted to Williams J. Costs of case to be costs in appeal.

Solicitors for the appellant, *Gillott, Moir & Ahern*.

Solicitor for the respondent, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

E. F. H.

(1) (1932) 1 K.B. 149.
(2) (1890) 15 App. Cas. 334.

(3) (1932) 1 K.B., at pp. 175, 176.
(4) (1890) 15 App. Cas., at pp. 350-352.