[HIGH COURT OF AUSTRALIA.]

BENNETT AND ANOTHER . . . . APPELLANTS,
DEFENDANTS,

AND

COOPER . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1948.

PERTH, *Sept.* 15.

MELBOURNE, *Oct.* 18.

Latham C.J., Dixon and McTiernan JJ.

Liquor—Supply on premises of unregistered club—"Club"—Fraternal order divided into lodges—Premises belonging to order—Use by lodge for meeting—"Supply"—Licensing Act 1911-1946 (*No.* 32 *of* 1911—*No.* 43 *of* 1946) (*W.A.*), *s.* 203 (1).

Section 203 (1) of the *Licensing Act* 1911-1946 (W.A.) provides:—"If any liquor is supplied or sold on the premises of an unregistered club, the person supplying or selling such liquor, and every person authorising the supply or sale of such liquor, commits an offence against this Act."

A fraternal order having for its objects the relief of necessitous brethren and social purposes was organized in lodges which met separately. The order owned a building in Perth where the administrative body met and the affairs of the order were centrally administered. Certain minor lodges used the premises for their meetings and not otherwise. At a meeting of a minor lodge in the building two members of the minor lodge filled jugs of beer from a quantity which had been procured by the treasurer of the order, placed the jugs on the table and replenished them. The liquor was paid for from the funds of the minor lodge. The members did not pay separate sums for the liquor they consumed. Neither the order nor the minor lodge was registered as a club under the *Licensing Act* 1911-1946 (W.A.). The members of the minor lodge who filled the jugs were charged with having supplied liquor on the premises of an unregistered club contrary to the provisions of the *Licensing Act* 1911-1946 (W.A.), s. 203 (1).

Held, that the order was not a club within the meaning of s. 203 (1), and the use of the premises was not a use of club premises.

The question whether the acts of the two members in pouring the beer into jugs and putting them where all might help themselves constituted a "supply" within the meaning of s. 203 (1) of the *Licensing Act* discussed.

Decision of the Supreme Court of Western Australia (*Walker* J.) reversed.

APPEAL from the Supreme Court of Western Australia.

The Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England Incorporated is a fraternal order having the objects of relieving necessitous brethren and the dependants of deceased brethren, and of bringing together its brethren for mutual intercourse and encouragement, and the doing of what is conducive to those purposes. The Order is organized in lodges which meet separately: there are Minor Lodges, Provincial Lodges and a Grand Lodge which consists of high office bearers and delegates from Provincial Lodges. (The Grand Lodge at the head of the Order is not to be confused with the incorporated Order, in spite of the nomenclature.) The Order is registered under the provisions of the *Associations Incorporation Act* 1895 (W.A.). There are approximately 35,000 members of the Order throughout Western Australia. The Grand Lodge is constituted of nineteen officers and eight members. The Order owns a two-storeyed building in Perth, described in the rules as the Grand Lodge Office. It is there that the administrative body meets and the affairs of the Order are centrally administered. Certain minor lodges, including the Leederville Lodge, use the premises for meetings.

On 26th October 1947 the Leederville Lodge met in the lodgeroom of the building. Against its meeting the Treasurer of the Order had procured or appropriated to its use, a keg of beer and a large number of bottles of beer which were placed in a locker devoted to the Leederville Lodge and some in the refrigerator in a small bar. Francis Reginald Bennett and Sydney Bawden were the city waiter and assistant city waiter respectively of the Leederville Lodge. In the performance of their duties, they filled jugs of beer from the keg, placed them on the tables for consumption by the members and replenished them. The liquor was paid for from the funds of the Leederville Lodge. The members did not pay separate sums for the liquor they consumed, although the practice was for each member to pay an attendance fee of 1s. per meeting. During the progress of the meeting certain contributions were made by the members in the way of fines and contributions.

Neither the Order nor the Leederville Lodge was registered as a club under the *Licensing Act* 1911-1946 (W.A.).

An unregistered club is defined in s. 180 of the Act as "a club which requires under this Act to be registered but is not registered."

Section 183 sets out the conditions which must exist before a club can be registered.

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On 13th November 1947 a complaint was laid in a court of petty sessions against the Order for unlawfully dealing in liquor contrary to s. 3 of the *Illicit Sale of Liquor Act* 1913 (W.A.), and against Bennett and Bawden for supplying liquor on the premises of an unregistered club, to wit, Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England Incorporated, contrary to s. 203 (1) of the *Licensing Act* 1911-1946 (W.A.). The resident magistrate held that there was no evidence that the Order was cognizant of or approved the circumstances under which the liquor was consumed on the premises and the complaint against the Order was dismissed. He dismissed the complaint against Bennett and Bawden on the ground that the Order was not an unregistered club within the meaning of the Act because it did not satisfy the conditions specified by s. 183 of the *Licensing Act* as conditions which should be shown to exist before a club can be registered.

Upon an appeal by order to review the Supreme Court of Western Australia (*Walker* J.) upheld the dismissal of the complaint against the Order for the reasons given by the magistrate. As to the complaint against Bennett and Bawden, his Honour held that the Order was a club within the meaning of s. 203 (1) of the Act, that the liquor was supplied on the premises and that, therefore, Bennett and Bawden should have been convicted.

The High Court granted Bennett and Bawden special leave to appeal against the decision of *Walker* J.

Downing K.C. (with him *Gibson*) for the appellants. The learned magistrate found on the evidence that the premises were a meeting place only, and that members do not gather together on the premises except for the purpose of lodge meetings; therefore, the Order is not a club within the meaning of s. 203 (1) of the *Licensing Act*. If the Order is a "club," it is not an "unregistered club" which is required to be registered, but is not registered, under s. 180 of the *Licensing Act* 1911-1946: it did not supply liquor to its members, nor did any of the conditions of registration required by s. 183 exist. Although the meeting was held in the premises of the Order, the room in which the meeting was held was provided merely for the convenience of several minor lodges which met there periodically, and accordingly such room did not, whilst so used, form part of the premises of an unregistered club within the meaning of s. 203 (1) of the *Licensing Act*. The liquor which was kept in a locker set apart for the minor lodge was the property of all its members. The appellants did not supply the liquor to the members; they

merely poured it from the containers into glasses, and the members helped themselves. In any event, there was no "supply" within the meaning of s. 203 (1) (*Symes* v. *Stewart* (1)). The facts on which *Ex parte Turner*; *Re Hardy* (2) were decided differed materially from those which were proved in this case.

Nevile, for the respondent, referred to *Hall-Dalwood* v. *Emerson* (3); *Symes* v. *Stewart* (1); *Thompson* v. *Davison* (4); *Williams* v. *Pearce* (5).

Cur. adv. vult.

Oct. 18.

The following written judgments were delivered:—

LATHAM C.J. This is an appeal from an order of the Supreme Court of Western Australia (*Walker* J.) reviewing a decision of a Resident Magistrate upon charges against the Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England and against F. R. Bennett and S. Bawden for offences against the *Licensing Act* 1911-1946, s. 203, sub-s. (1). That section provides in sub-s. (1) as follows:—"If any liquor is supplied or sold on the premises of an unregistered club, the person supplying or selling such liquor, and every person authorising the supply or sale of such liquor, commits an offence against this Act."

So far as the Grand Lodge is concerned, the magistrate held that there was no evidence that the Grand Lodge was cognizant or approved of the circumstances under which liquor was consumed on the premises of the Order and the complaint was dismissed. The complaint against the defendants Bawden and Bennett was dismissed on the ground that the Grand Lodge was not an unregistered club within the meaning of the Act because the Order did not satisfy the conditions specified by s. 183 of the Act as conditions which should be shown to exist before a club could be registered. Upon review *Walker* J. upheld the dismissal of the complaint against the Grand Lodge on the ground that E. H. Egglestone, who was the treasurer of the Order, was acting personally and privately and not as an agent of the Grand Lodge in relation to the dealing with the liquor at a meeting of a minor lodge, the Leederville Lodge, at which, it was alleged, liquor was unlawfully supplied. As to the complaint against Bennett and Bawden, *Walker* J. was of opinion that the Grand Lodge was a club which was required to be registered under the Act, that liquor was supplied on its premises

(1) (1920) 28 C.L.R. 386.
(2) (1947) 48 S.R. (N.S.W.) 133; 65 W.N. 32.
(3) (1917) 87 L.J.K.B. 296.
(4) (1916) 1 K.B. 917.
(5) (1916) 85 L.J.K.B. 959.

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and that therefore Bennett and Bawden should have been convicted. There are 35,000 members of the Order who are interested in the application of the *Licensing Act* to meetings of the lodges of the Order, and special leave to appeal was granted by this court from the decision of the Supreme Court in the cases of Bennett and Bawden.

The appellants contended that the Grand Lodge was not a club, that, if it was a club, it could not be registered under the Act, and that it was therefore not a club which was required to be registered under the Act. An unregistered club is defined in s. 180 as "a club which requires under this Act to be registered but is not registered." Section 183 sets out the conditions which must exist before a club can be registered; *inter alia*, the club must be a bona-fide association, company or body of not less than 30 or 100 persons, according to the date of its establishment. The Grand Lodge consisted of only twenty-seven persons. Accordingly, it was contended that if the Grand Lodge was a club it could not be registered, and therefore could not be a club which required to be registered.

In my opinion this argument should not be accepted. The Act does not in the ordinary sense "require" any club to be registered. A club may lawfully possess all the conditions specified in s. 183 as to number of members, as to the purposes of the club and as to accommodation, premises and disposition of club funds &c., without being registered under the Act. There is no obligation to register a club which complies with the description contained in s. 183. There is no breach of the law if such a club is not registered. There are various provisions in the *Licensing Act* referring to the conduct of registered clubs: see ss. 184-188. They are all directed towards the control of the supply of liquor in such clubs, but they have no application to an unregistered club. When then can it be said that registration of a club is "required" under the Act? This provision can mean only that registration is required for the purposes of the *Licensing Act* in which the provision appears; that is, where registration is necessary in order to comply with the provisions of the Act. There is no such necessity unless liquor is sold or supplied on the premises of the club. If no liquor is sold or supplied on those premises the *Licensing Act* has no application to the club, but a club cannot, by reason of the fact that it does not in its constitution or management comply with the conditions of s. 183, claim that therefore it is unregistrable and is not "required" to be registered under the Act. If a club is not registered under the Act, being required to be registered in the sense stated, that is, in order

to make lawful the sale or supply of liquor upon the premises of the club, then such sale or supply is an offence against s. 203. Such supply could be made lawful only by the club putting itself in a position to comply with the provisions of s. 183 and the other relevant provisions of the Act (e.g. s. 184) and applying for and obtaining registration under the provisions of s. 189 and following sections. Accordingly, if the Grand Lodge is a club but cannot be registered because it fails to satisfy some of the conditions of s. 183, this fact affords no defence to the charge of supplying liquor on the premises of an unregistered club.

This matter has been considered in the courts below in relation to the question whether the Grand Lodge of the Order is an unregistered club. But the Grand Lodge of the Order is only one of the governing bodies of the Order, as its rules show. The registration under the *Associations Incorporation Act* 1895, which constitutes a registered body as a corporation, is a registration of the "Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England." It is the Order, and not the Grand Lodge, which is registered as an association under the Act. Accordingly, in determining whether or not liquor was supplied upon the premises of an unregistered club, the premises being (as was not disputed) the premises of the Order, the question to be considered is not whether the Grand Lodge is a club, but whether the Order is a club. It is argued for the appellant that the Order is not a club.

The premises contained a meeting room, a refreshment room, a waiting room and a bar, as well as bedrooms and storerooms. Thus some of the facilities of a social club were provided on the premises. The rules of the Order provide (rule 2) that the objects of the Order are :—"(*a*) To relieve, by donations, annuities, or otherwise assist, necessitous brethren, widows, orphans, or dependents of deceased brethren. (*b*) The bringing together of its brethren for mutual intercourse and encouragement. (*c*) The doing of all such lawful things as are conducive to the attainment of the above objects." The object specified in (*a*) is the kind of object which is more generally associated with friendly societies than with clubs in the ordinary sense. The rules show that it is sought to attain this object by social gatherings held in accordance with a ritual for breaches of which penalties are imposed which go towards the funds of the lodge.

There is no precise legal definition of the word "club." The description of a club contained in *Wertheimer* on *Clubs* applies to most clubs :—"A club may be defined to be a voluntary association

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of a number of persons meeting together for purposes mainly social, each contributing a certain sum either to a common fund for the benefit of the members or to a particular individual for his own benefit." But it is possible for a voluntary association to be a club though there are no pecuniary contributions or the contributions are uncertain in amount. A club may be a members' club where contributions are paid to a common fund, or a proprietary club where they are paid to an individual or a corporation, and a club may be unincorporated or incorporated. Clubs are voluntary, non-profit making associations but they vary almost indefinitely in other characteristics. Some clubs, for example dining clubs, may have no property at all. They may meet simply for the purpose of enabling the members to dine together. A suburban football club may have no property beyond a couple of footballs and a writing pad. Other clubs may have premises to which members have a right of entry only for particular purposes on particular occasions, e.g. racing clubs and metropolitan cricket and football clubs. In the present case the question whether the Order is a club has to be determined for the purpose of reaching a conclusion as to whether the premises were premises of a club, and therefore the relation of the members of the Order to the premises is the most important consideration. The argument for the prosecution in the present case must be that the premises upon which the liquor was supplied are really premises of a club, namely, a social club. But there is no evidence to show that the members of the Order are entitled to use the premises or do use the premises otherwise than for the purposes of meetings. A friendly society or Masonic Order may have premises in which meetings of many branches or lodges are held. But it would be an undue extension of the meaning of the word "club" to hold that the friendly society itself or the Masonic Order was a club. A club may be established in connection with such an organization. But there is a distinction between the club and the society or Order. In the present case the evidence in my opinion shows only that the Order has premises upon which meetings of the Grand Lodge and minor lodges were held, but it does not show that those premises are used as club premises. Accordingly, the prosecution has not, in my opinion, shown that the liquor was served upon the premises of a club, and for this reason it should be held that the complaint against Bennett and Bawden was rightly dismissed.

It was also argued that the evidence did not show that there was any supply of liquor on the premises of the Order. The evidence was to the effect that the premises were used for the meetings of

certain of the minor lodges, of which seventy-three are in Western Australia. These minor lodges meet regularly. Intoxicating and other liquors are made available for consumption by members at their meetings. The intoxicating liquor was apparently purchased by the treasurer of the Order and paid for by moneys subscribed by way of fines and voluntary contributions (there being no regular subscription) by the members of the minor lodges. When a meeting of a minor lodge is being held liquor is obtained as required from a cupboard or cupboards in which it is kept. The liquor in jugs is placed upon the tables for consumption by members, who do not pay separate sums for the liquor which they consume. Bennett and Bawden, members of the Order, were, on the occasion of the meeting with respect to which police officers gave evidence, acting as waiters, and they placed the liquor upon the tables.

Apparently the liquor became the property of some or all of the members of the Order, there being no clear evidence that any portion of the liquor was appropriated to the service of any particular minor lodge until it was actually brought into the meeting room of the lodge. If so, the disposition of the liquor to the individual members would not constitute a sale of liquor, but would be a release to an individual member of the interests of other members in the liquor: *Graff* v. *Evans* (1); *Bohemians Club* v. *Acting Federal Commissioner of Taxation* (2). But although there is not a sale of liquor in such circumstances, there may be a supply of liquor to the individual member. The word "supply" in s. 203, limited as it is to dealings with liquor in clubs, is evidently intended to attach responsibility to a disposition of liquor which, by reason of the rule established by *Graff* v. *Evans* (3) cannot be held to be a sale.

Mere manual handling by the owner of liquor or by a person on behalf of the owner is not a supply of liquor by the owner. In the present case the evidence does not clearly show more than that the waiters placed liquor in jugs on tables, from which the members of the lodge then helped themselves. Until the liquor was poured into the glass of an individual member it is difficult to say that he or any others at a particular table would acquire any interest in the liquor beyond the interest which they already had as members of the Order or of the lodge. The meaning of the word "supply" varies with the context: *Symes* v. *Stewart* (4). Notwithstanding the fact that the inclusion of the word "supply" in s. 203 in relation to clubs, and only to clubs, supports the contention of the

(1) (1882) 8 Q.B.D. 373.
(2) (1918) 24 C.L.R. 334.
(3) (1882) 8 Q.B.D. 373.
(4) (1920) 28 C.L.R. 386.

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prosecutor on this point, the reasoning in the majority judgments in *Ex parte Turner* ; *Re Hardy* (1) is in favour of the contrary view. But the evidence as to the provenance of the liquor is not clear, and I prefer to base my decision upon the ground that the Order has not been shown to be a club.

For this reason in my opinion the appeal should be allowed and the order of the Supreme Court should be set aside. The result will be that the order of the magistrate dismissing the complaint will stand.

DIXON J. This is an appeal by special leave from an order of the Supreme Court of Western Australia making absolute an order to review a decision of a court of petty sessions whereby a complaint against the appellants was dismissed. The order absolute remitted the matter to the magistrate with a direction to convict the appellants. The charge contained in the complaint is that the appellants did supply liquor on the premises of an unregistered club to wit Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England Incorporated. The offence charged is created by s. 203 (1) of the *Licensing Act* 1911-1946 of Western Australia. By that sub-section it is provided that if any liquor is supplied or sold on the premises of an unregistered club, the person supplying or selling such liquor and every person authorizing the supply or sale of such liquor commits an offence against the Act.

The two appellants are members of the Leederville Lodge of the Order mentioned in the complaint. Neither the Lodge nor the Order is registered as a club. The occasion of the alleged offence was a meeting of the Leederville Lodge in the Lodge Room of the building in Perth belonging to the Order. At the meeting, which was attended by some fifty members, liquor was consumed. Under the rules of the Order the officers of a minor lodge such as the Leederville Lodge include a city waiter and an assistant city waiter. It is the duty of these officers to " attend to all requirements of members and act under the Order of the Worshipful Primo." The appellants respectively occupied the offices of city waiter and assistant city waiter of the Leederville Lodge. They filled and presumably replenished jugs of beer for the meeting from a ten-gallon keg placed at the disposal of the meeting. This, it is said, amounted to " supplying " liquor. Be this as it may, the charge could not be supported as framed, unless it were shown that the

(1) (1947) 48 S.R. (N.S.W.) 133 ; 65 W.N. 32.

premises were those of an unregistered club. In my opinion it has not been so shown.

The complaint correctly lays the premises in the Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England Incorporated. The premises belong to that corporate body, which afforded the use of them to the Leederville Lodge for the evening. The body, which is incorporated by registration under the *Associations Incorporation Act* 1895 of Western Australia, consists of all the members of the order in that State. They number 35,000 and are divided into seventy-three minor lodges, which are distributed over the State. It was necessary for the complainant to show that the whole body so incorporated is a club within the meaning of that expression as used in Part VIII. of the *Licensing Act*. Part VIII. is founded upon Part II. of the English *Licensing Act* 1902 (2 Edw. 7 c. 28), though it omits s. 24 of the latter Act, which explains the form of the definition in both Acts of the words "unregistered club." It is defined as meaning a club which requires under the Act to be registered but is not registered (s. 180 of the Act of Western Australia and s. 32 of the English Act). As a result of the omission of s. 24, which imposes upon the secretary an obligation to register a club if it habitually uses premises that it occupies for the purposes of a club and if liquor is to be sold, there is no express requirement in the Western Australian Act that a club shall register.

But I think that the general sense of the definition must be the same, namely, that it means a club which cannot sell or supply liquor on its premises without registering and nevertheless has not registered. In neither statute is there any definition of the word "club." For that the application of the provisions must depend upon common understanding coupled with the purpose of the enactment. "Club" is a word possessing a very wide and flexible meaning. But the enactment is dealing with the sale of liquor on club premises and we can put aside the application of the word to bodies of people who are associated together for purposes to which the occupation of premises is not indispensable, as for instance a walking club, a dining club, an athletic club and clubs for particular games or exercises. Among the meanings of the word given in the *Oxford English Dictionary* there is one, the fifteenth, which amounts to a careful definition of that class of club which, as I imagine, the statute has in view. It is as follows—An association of persons (admittance into which is usually guarded by ballot), formed mainly for social purposes and having a building (or part of one) appropriated to the exclusive use of the members and always open to

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them as a place of resort or in some cases of temporary residence: the club may be political, literary, military &c., according to the aims and occupations of its members, but its main feature is to provide a place of resort for social intercourse and entertainment. No doubt it is not a necessary attribute of such a body that the club house should be always available to the members and it may be that in other respects this definition is too rigid. But it indicates the general conception which to me appears to lie within the use of the word by the enactment.

In most attempts to state the characteristics of a club prominence is given (*a*) to the nature of the objects for which the members are associated in a body, (*b*) to the contribution of members to a common fund to meet the expenses, and (*c*) to the existence of rules governing the mode in which persons may be chosen for admission to membership. The objects may be social or sporting or they may be for the pursuit or promotion of some branch of knowledge or of art, but the purpose must not be gain; for that would mean a partnership or trading company. It is not necessary that gain to the institution should be rigidly excluded from its every activity or operation; it is the purpose for which the body is established that must not include the pursuit of gain to the body or its members if it is to be a club. In short the association may be formed for any object that is neither gainful nor unlawful: see *Wertheimer* on *Clubs*, 5th ed. (1935), Ch. I., and *Halsbury, Laws of England*, 2nd ed., vol. 4, par. 877.

There are few judicial explanations of the application of the word "club," but statements concerning the nature of members' clubs will be found in *Re the St. James' Club* (1) and in *Wise* v. *Perpetual Trustee Co. Ltd.* (2). In *Bohemians Club* v. *Acting Federal Commissioner of Taxation* (3), *Griffith* C.J. describes a club as a voluntary association of persons who agree to maintain for their common personal benefit, and not for profit, an establishment the expenses of which are to be defrayed by equal contributions of an amount estimated to be sufficient to defray those expenses, and the management of which is entrusted to a committee chosen by themselves. This description, which contemplates a members' club, resembles the definition I have taken from the *Oxford English Dictionary* and, though it may include some merely accidental features, as for instance the equality of the subscriptions, nevertheless by the insistence on an establishment for the common personal benefit of the members, it brings out what is of importance in applying the

(1) (1852) 2 DeG. M. & G. 383, at p. 387 [42 E.R. 920, at p. 922].
(2) (1903) A.C. 139, at p. 149.
(3) (1918) 24 C.L.R. 334, at p. 337.

law with which we are concerned. The Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the Grand Lodge of England Incorporated is a body that in my opinion falls outside any conception of a club as that expression is employed in Part VIII. of the *Licensing Act* and the premises which the body occupies cannot be considered the premises of an unregistered club.

The body appears to be a fraternal order of a characteristic description organized in lodges which meet separately. It has a prescribed ritual, regalia, emblems, ceremonies, signs and passwords, degrees of brotherhood and a pyramid of offices with high-sounding titles. Its formal objects are the relief, by donations, annuities and other assistance, of necessitous brethren and of the widows, orphans and dependants of deceased brethren, the bringing together of its brethren for mutual intercourse and encouragement and the doing of what is conducive to these purposes. The order is divided into Minor Lodges, Provincial Lodges and a Grand Lodge, which consists of higher office-bearers and delegates from Provincial Lodges. The expression "Grand Lodge" occurs in the name of the whole order. But the Grand Lodge which is at the head of the Order is not to be confused with the incorporated Order, in spite of this nomenclature. There are funds for each lodge. Besides a general fund the minor lodges have a lodge benevolent fund from which small sums may be granted to members &c. by way of assistance. Cases for assistance are dealt with by an officer called Alderman of Benevolence. There is a Provincial Lodge Benevolent Fund established to relieve necessitous brethren or their widows, orphans or dependants and administered by the governing authority. There is a third benevolent fund called the Grand Lodge Rule of Obligation Fund established for the relief of the necessities of widows and orphans and administered by the Committee of Management and Finance. Nothing appears in the evidence as to the extent of these funds or as to the practical significance they have in the affairs of the Order. But they evidently form a means of carrying into effect the first part of the objects of the Order. The second part, the bringing together of its brethren for mutual intercourse and encouragement, is accomplished apparently by lodge meetings and by triennial convention, if not in other ways. The Order is possessed of a two-storeyed building in Perth which the rules describe as the Grand Lodge Office. It is there that the Grand Lodge meets, and the affairs of the Order are centrally administered. Certain minor lodges use the premises for their meetings. Four such minor lodges are mentioned in the evidence. The building is described as a two-storeyed structure with offices

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and a large " club " room on the upper floor and a large lodge or meeting room on the ground floor with a refreshment room and waiting room and a small liquor bar. It was in this lodge room that the Leederville Lodge met. Against its meeting the treasurer of the Grand Lodge had procured, or had appropriated to its use, a keg of beer and a large number of bottles of beer, some of which were placed in a locker devoted to the Leederville Lodge and some in the refrigerator in the small bar. The liquor was paid for from the funds of the Leederville Lodge.

The performance by the appellants of their lodge duties as city waiter and assistant city waiter by pouring the beer into jugs whence the company might help themselves is the basis of the charge against them. " Supply " is a very general word and has a wide application, but I doubt whether, when liquor is already at the disposal of a company of men, the act of one or two of them in pouring it into jugs and setting them where all may more readily help themselves falls within it. For to do this does not seem to change the control of the liquor or its dominion. It does not impart the liquor to anyone. The meeting was already " supplied " with the liquor when it took temporary possession of the rooms, the locker and the refrigerator. But however that may be, the charge fails in my opinion because the premises on which the appellants performed their duties belonged, as the charge alleges, to the incorporated Order and it is not an unregistered club. The premises are not appropriated to the exclusive use of the members of the Order as such and they are not, so far as appears, open to them as a place of resort. The size of the Order, the separate organization and meeting of the minor lodges and its purposes of relief combine to place it outside the conception of a club. The premises are offices and rooms made available for the use of constituent lodges from time to time under the directions of the governing authorities. We are not concerned with the question, if it be one, whether a minor lodge may be a club. The evident conviviality of the meetings of the Leederville Lodge is not to the point. The question is whether the whole body is a club and the building is its premises. As has been remarked by a text book, the expression " club " is used in the legislation in the popular sense of the term and the courts must decide, when any concrete case arises, whether the association in question is or is not a club : *Paterson's Licensing Acts,* 55th ed. (1947), p. 753. I have no hesitation in saying that in a popular sense the Royal Antediluvian Order of Buffaloes Grand Lodge of Western Australia under the

Grand Lodge of England Incorporated is not a club and the building it occupies is not the premises of an unregistered club.

In my opinion the appeal should be allowed with costs, the order absolute should be set aside and in lieu thereof the order nisi to review should be discharged with costs.

McTIERNAN J. I agree that the appeal should be allowed for the reason that the " Order " mentioned in the complaint is not a club. I do not think that it is necessary to add anything to the reasons given by the Chief Justice and *Dixon* J. on the question whether the " Order " is a club or not.

The answer to this question is sufficient to dispose of the case.

Appeal allowed with costs. Order of Supreme Court set aside. In lieu thereof order nisi discharged with costs.

Solicitors for the appellants: *Hardwick, Slattery & Gibson.*
Solicitor for the respondent: *Kevin J. Walsh.*

B. McP.