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wool was supplied for appraisalment. Thus their Lordships decided the case by giving effect to what they considered to be the intention permeating the Act, that is to say the intention that the man who supplied participating wool for appraisalment, and (broadly) no one else, should participate in distributions. If I understand the judgment correctly, it was for the purpose of emphasising that intention that the expression "personal gift" was used to describe an amount paid to a participant in a distribution. The moneys payable under the Act, being bestowed as the Parliament had seen fit to bestow them, were described by their Lordships as "payable to the supplier" (1). "It is a true gift", they said, "to the supplier of the wool" (1); "a personal gift to the parties concerned" (2). It seems clear that what their Lordships were insisting upon by their use of the term "personal gift" was that s. 10 must be construed in the light of the essential point in the scheme of the Act, which was that the wool disposals profits were to be put into the very hands from which participating wool had been compulsorily taken. So construed, s. 10 had the effect of attaching to those profits, when they reached the hands of a member of a partnership which had supplied participating wool for appraisalment, the incidents which would have attached *at the time when the wool was supplied* to the proceeds of a sale of the wool made by the partnership at that time. That meant that it was incorrect to give the section such a retrospective operation as it would have if treated as allowing events occurring between the supply of the wool for appraisalment and the distribution under the Act to alter the destination of the moneys distributed. The destination remained what it would have been if those events had not happened; the recipients were selected by reference to the fact that it was they who had supplied wool for appraisalment; the Act operated in favour of them personally.

The point which was decided in the particular case was that the assignment made by one partner after the partnership had supplied wool for appraisalment, even though it was an assignment of his partnership interest as an entirety, could not operate under s. 10 to deprive the assignor of the right to receive for his own benefit his share of moneys distributed under the Act in relation to the partnership wool; for it was to him and his co-partners, and to them alone, that the Act intended the proper proportion of the wool disposals profit to go. It was to go to them as individuals personally selected as having themselves supplied for appraisalment the wool to which the proportion related; it was bestowed

(1) (1952) A.C., at p. 229.

(2) (1952) A.C., at p. 230.



upon them—given to them if you will—as individuals, personally ; it was a personal gift to them.

But this did not mean that moneys received in a distribution under the Act did not possess in the hands of the recipients the same character as would have attached to payments received in satisfaction of a legal right to be paid for the wool supplied. The argument their Lordships were concerned to deny was that the beneficial title to the moneys received was to be determined as if those moneys were paid in satisfaction of a debt which had arisen at the time of the supply and had remained unpaid until the date of distribution. Their Lordships decided, in effect, that s. 10 (3) should be construed as operating only as between the former partners themselves (and of course their estates if they had died), and not so as to give rights to outsiders. And why ? Because it was the partners who had supplied the wool ; it was they who were the chosen beneficiaries of the Act. And bearing that fact in mind, all that s. 10 (3) should be understood as doing was to require, for the purpose of adjusting the rights of the partners *inter se*, the hypothesis of a sale at the date of supply, that is to say a sale on the terms of immediate payment in cash, and not a sale on the terms that a debt for a portion of the price should remain outstanding so as to be exposed to divesting as a result of subsequent events. But all this being granted, the question remains, what was the character in which the subject matter of the “personal gift” came to the hands of the recipients ? Their Lordships gave the answer and underlined it, I should have thought, when they described the payment (1) as “the extra proceeds”, “the extra profit”, “the additional payment”, and “the extra sum paid”. There could hardly be a clearer recognition of the similarity in character of the moneys distributed under the Act and the moneys which at an earlier date had been paid for the wool under the regulations.

It is pertinent to recall some remarks made by *Atkinson J.* in *Calvert v. Wainwright* (2), which was a case concerning tips received by taxi drivers from their passengers. His Lordship said : “I shall deal with the authorities in a moment, but the principle which they establish, if I understand them correctly, is that tips received by a man as a reward for services rendered, voluntary gifts made by people other than the employers, are assessable to tax as part of the profits arising out of the employment if given in the ordinary way ; but, on the other hand, that personal gifts, which means gifts to a man on personal grounds, irrespectively of and without regard to the question of whether services have

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(1) (1952) A.C., at pp. 229, 230.

(2) (1947) K.B. 526.



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been rendered or not, are not assessable. The commissioners have obviously misunderstood what is meant by a personal gift. They have not found that the tips were personal gifts: they have found that they were gifts given to the respondent personally, which is a totally different thing. Every tip is given to a man personally, but that merely means that it is given to him for his own benefit, and not for that of the employers. Having listened to the cases, the commissioners thought the words 'personal gift' meant given to him personally, whereas it is quite clear from the cases that what is meant by 'personal gifts' is a condensation of the full sentence personal gifts given on personal grounds other than for services rendered" (1). To describe the moneys in question in the present case as personal gifts in the sense of the tax cases would be to fall into the very error which the commissioners had made in *Calvert v. Wainwright* (2).

For these reasons I am of opinion that the receipt here in question was a receipt on income account. The question whether it should be included in the assessable income of the year of receipt or of an earlier year presents no difficulty. Under statutes such as that which the House of Lords had to consider in *Gardner, Mountain and D'Ambrumenil Ltd. v. Inland Revenue Commissioners* (3), it is often proper to re-open the accounts of a past year and to attribute a subsequent receipt to that year as being the year in respect of which it arose. No such process is possible here, for under the provisions of the *Income Tax Assessment Act* which govern this case the inclusion of an amount in the assessable income of a year depends upon its having been derived in that year. There is no ground upon which the moneys in question here can be considered to have been derived in any year earlier than that in which the appellant received them.

In my opinion the questions asked in the stated case should be answered:

(i) Yes.

(ii) In the year ended 31st December, 1949.

*Questions in case stated answered as follows*

(i) No. (ii) Does not arise. Costs of case stated reserved for the judge disposing of the appeal.

Solicitors for the appellant, *Whiting & Byrne*.

Solicitor for the respondent, *D. D. Bell*, Crown Solicitor for the Commonwealth.

R. D. B.

(1) (1947) K.B., at p. 527.

(2) (1947) K.B. 526.

(3) (1947) 1 All E.R. 650.



[HIGH COURT OF AUSTRALIA.]

HALL AND OTHERS . . . . . APPELLANTS ;  
PLAINTIFFS,  
  
AND  
  
JOB AND OTHERS . . . . . RESPONDENTS.  
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

Voluntary associations—Real property—Loyal Orange Lodge—Subordinate Lodge—  
Dissolution—Land—Beneficial entitlement—Grand Lodge—Members of subor-  
dinate Lodge not beneficially entitled—Rules.

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SYDNEY,  
Aug. 14, 15.  
MELBOURNE,  
Oct. 30.  
Dixon C.J.,  
McTiernan,  
Webb,  
Fullagar and  
Kitto JJ.

A subordinate Lodge of the Loyal Orange Institution of New South Wales, became defunct. Certain land, which had been bought with moneys of the Lodge, then stood vested in trustees who had declared by a declaration of trust that they held it upon trust for the Lodge, to be dealt with as directed by the members thereof from time to time. Twelve persons, who were members of the Lodge at the time of its dissolution, sought a declaration that the members at that time were beneficially entitled to the land in equal shares. The Lodge had been constituted by the grant of a warrant by the Grand Lodge of the Institution. It was governed by the rules and regulations of the Institution as a branch thereof, and its membership was restricted to members of the Institution.

*Held*, that the land was subject to a trust for the Institution as a whole, and accordingly the persons who were members of the Lodge when it became defunct were not entitled to have the land dealt with for their benefit as if the Lodge had been a voluntary association separate from the Institution.

Decision of the Supreme Court of New South Wales (*Roper* C.J. in Eq.) affirmed.

APPEAL from the Supreme Court of New South Wales.

In a suit brought by way of statement of claim in the equitable jurisdiction of the Supreme Court of New South Wales, the plaintiffs, William Joseph Hall, Leslie Loftus Miller, Herbert Watts, Owen Arnold White, Oswin Thomas Job, Leslie Ward, Harold Ward,



H. C. OF A. Cyril Sampson, Leslie Horton, Harold Laybutt, Kenneth Laybutt,  
1952. Norman Russell Carey and Cecil Arnold Moon, sought to establish  
as against the defendants, Roy Arthur Richard Job, Colin Keith  
Butchers White, John Orr, Silas Alfred Horton, Leonard Wilkinson  
Trevenar, Joseph Sperring and the Registrar-General, that they,  
the plaintiffs, together with certain other persons were beneficially  
entitled to certain land situate in the township of Parkes, the title  
to which was registered under the provisions of the *Real Property  
Act* 1900 (N.S.W.), as amended. They claimed that a group of  
persons who, at a date referred to hereunder, were the members of  
a voluntary organization known as the Loyal Orange Lodge No. 98  
Parkes; were now beneficially entitled to that land as tenants in  
common in equal shares; and that that group included the plaintiffs  
themselves. The land was acquired in or about 1927 by Claude  
William Hamilton, William Henry Ward, and the defendants  
Roy Arthur Richard Job, Colin Keith Butchers White and John  
Orr, and by a memorandum of transfer they became the registered  
proprietors as joint tenants in fee simple of the land, on which was  
erected a hall known as West's Hall, being the whole of the land  
comprised in certificate of title volume 3670, folio 236. Those  
persons were, at the date of the hearing, still registered as the  
proprietors of the land as joint tenants, although it appeared from  
the evidence that Claude William Hamilton died on 11th August  
1935, and William Henry Ward died on 4th February 1945.

On 20th June 1929 those five persons executed a declaration of  
trust setting out the trusts upon which they held the subject land.  
In that declaration of trust, after reciting the transfer to them as  
joint tenants, it was recited that the whole of the purchase money  
was actually paid by the Loyal Orange Lodge No. 98 Parkes, which  
was thereafter called the "said Lodge", and then, after reference  
to a mortgage to secure moneys lent on overdraft granted to the  
said Lodge on the security of the land, it recited that the five persons  
became possessed of the land merely as trustees for the said Lodge  
to be dealt with as directed by the members of the said Lodge from  
time to time, and the deed witnessed that those five persons declared  
that they held the subject land upon trust for the said Lodge and  
the members thereof for the time being, and to be sold, leased,  
mortgaged, or otherwise dealt with as the said Lodge and the  
members thereof for the time being should from time to time  
decide.

For some years, probably since 1902, there had existed in Parkes  
a voluntary association of people who associated under the name  
"Loyal Orange Lodge, Parkes, No. 98", and who met regularly



and carried on their affairs or the affairs of their association under that name. The voluntary association was part of, or was a subordinate Lodge formed under the rules and regulations of, a larger voluntary association known as the Loyal Orange Institution of New South Wales. The Loyal Orange Institution, which has written rules, and at all material times did have written rules and regulations governing its constitution, provided for the existence of subordinate Lodges within its constitution, and the Loyal Orange Lodge, Parkes, No. 98, was one of those subordinate Lodges. In 1933, or perhaps earlier, the members of the said Lodge met with less frequency than they had formerly met, and the membership itself seemed to have fallen off, at all events from the point of view of active participation in its functions, and from the evidence it appeared that there were not any meetings of the said Lodge held after one held on 19th March 1935. In 1934 there had been some meetings but not as provided at regular monthly intervals, because it appeared that from time to time there was not a quorum of members present on the occasions for which the meetings were called. The meetings of the said Lodge were discontinued from and after September 1934, and the said Lodge ceased to function and the members of that Lodge disbanded without having directed the trustees to sell, let or otherwise deal with the said land.

In September 1939 certain of the members of the said land commenced using that land and the hall erected thereon for the purpose of a Lodge known as Loyal Orange Lodge, Parkes No. 98 (hereinafter called "the new Lodge") affiliated with the Loyal Orange Institution of Australia which was alleged to be a voluntary association having similar objects as, but having no connection with, the Loyal Orange Institution of New South Wales, and thenceforth until the present time the new Lodge continued to use and occupy the said hall.

The defendants Silas Alfred Horton, Trevenar and Sperring were, in 1944, and at all material times thereafter, the trustees of the Grand Lodge of the Loyal Orange Institution of New South Wales. On or about 20th October 1944, the surviving registered proprietors of the subject land, at the request of the defendants Silas Alfred Horton, Trevenar and Sperring, pursuant to a resolution, dated 24th January 1944, of the said Grand Lodge signed a transfer under the *Real Property Act* 1900, as amended, in favour of the last-mentioned defendants and it was lodged in the office of the Registrar-General for registration.

The said resolution of the Grand Lodge was in the following terms :—" That in view of the fact that Annual Returns from and

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HALL and known as Parkes Loyal Orange Lodge No. 98 were not received  
v. by this Grand Lodge after the year 1933 and of the further fact  
JOB. that the said former Subordinate Lodge appears to have been  
defunct and its property appears to have been managed and  
controlled by its former Trustees and/or strangers without the  
supervision or control of this Grand Lodge since the year 1933  
—this Grand Executive acting under Rule 26 (a) with all the  
authority of and as and for the Grand Lodge, pursuant to Rule 7 (d)  
and in exercise of all other powers it thereunto enabling doth hereby  
(a) withdraw and call in the Warrant of the said former Subordinate  
Lodge (b) dissolve the said former Subordinate Lodge and declare  
the same to be now and to have been since the year 1933 defunct  
and duly dissolved (c) regulate decide and determine that certain  
land situated in Browne Street Parkes comprised in Certificate  
of Title dated 3rd December 1924, Registered Volume 3670 Folio  
236 standing in the names of certain erstwhile members of the said  
Subordinate Lodge and subject to Mortgage dated 20th August,  
1927, Registered Number B561964 to The Commercial Bank of  
Australia Limited, and all other property (if any) formerly held  
by or in trust for the said former Subordinate Lodge and or the  
Members thereof is now the property of and held for and ever  
since the said former Subordinate Lodge became defunct and or  
dissolved has been and is now, pursuant to Rule 81 (formerly Rule  
80) the property of the Grand Lodge and pursuant to Rule 31 (b)  
shall be forthwith delivered over and transferred to and vested in  
the Grand Lodge Trustees and (d) a copy of this resolution duly  
certified pursuant to Rule 31 (k) shall be forthwith prepared and  
completed and forwarded by the Grand Secretary by Registered  
Post to the last known place of abode or business of each and every  
surviving trustee or person last known to have been acting as a  
trustee of or for the said former Subordinate Lodge in respect  
of the abovementioned land or other property.”

By reason of the insertion of a new rule, which is not material to this report, the rules after the new rule so inserted were re-numbered and rule No. 80 thereupon became rule No. 81.

The plaintiffs said that as members of the Loyal Orange Lodge Parkes No. 98 at the time when the said Lodge ceased to function and its members disbanded they objected to the registration of that memorandum of transfer, the facts being (a) that all the members of the said Lodge at the date when it disbanded in 1934 were beneficially entitled to the land as tenants in common ; (b)



that the Grand Lodge of the Loyal Orange Institution of New South Wales had not and never had any interest in that land and the resolution of the Grand Lodge was inoperative in law to create any beneficial interest in the land in favour of the Grand Lodge and that the surviving registered proprietors were not thereby entitled or obliged to sign that memorandum of transfer; (c) that the memorandum of transfer executed on or about 20th October 1944, by the trustee-signatories thereto constituted a breach of the trusts upon which they held the land; and (d) that the defendants Silas Alfred Horton, Trevenar and Sperring participated in that breach of trust and were not entitled to become registered proprietors of the land.

The defendants John Orr and the Registrar-General each entered a submitting appearance.

In their statement of defence the other defendants pleaded that they did not know and therefore could not admit the various facts alleged in the statement of claim; denied any breaches of trust alleged therein, and said, *inter alia*, that the said Lodge was formed on a date unknown to them but between forty and fifty year prior to 1934. The Loyal Orange Institution of New South Wales and the members thereof were at all material times bound by a written constitution which was altered from time to time in accordance with the terms of that written constitution. The said Lodge, a subordinate Lodge, and its members were at all material times bound by that written constitution and at all material times it was a fundamental provision of the constitution of the said Lodge that it was a subordinate Lodge and part of the Loyal Orange Institution of New South Wales, that its members were members of that Institution, and that the constitution and rules of that Institution were an integral part of the constitution of the said subordinate Lodge. The affairs of the Institution were at all material times directed and controlled by the constitution of the Institution by which constitution the Grand Lodge and its members were at all material times bound. The members of Grand Lodge consisted of certain members of the Institution chosen as representatives of District Lodges in accordance with the said written constitution. The said defendants did not admit that in September 1939 certain members of the said Lodge commenced using the subject land and hall for the purpose of meetings of a Lodge known as the Loyal Orange Lodge Parkes No. 98 affiliated with the Loyal Orange Institution of Australia a voluntary association having similar objects as but not having any connection with the Loyal Orange

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—  
date of the statement of defence that new Lodge continued to use and keep the hall. They submitted that those allegations of fact by the plaintiffs were immaterial to the issues raised in the suit. The said defendants denied (a) that all the members of the said Lodge at the date when it was disbanded in 1934 were beneficially entitled to the land as tenants in common ; (b) that the memorandum of transfer executed on or about 20th October 1944 by the trustee-signatories constituted a breach of the trusts upon which they held the land ; and (c) that the defendants Silas Alfred Horton, Trevenar and Sperring participated in such breach of trust. The said defendants said that at all relevant times the said written constitution contained the following rules—relating to Grand Lodge—7 (c) that “ The Grand Lodge possesses the supreme authority, and alone has the power of enacting laws and regulations for the government of the Institution and of altering, repealing, or abrogating laws ” ; 7 (d) “ The Grand Lodge has also the power of investigating, regulating, and deciding all matter relevant to the Institution, or to particular Lodges, or to individual members, which it may exercise either by itself, or by such delegated authority, as in its wisdom and discretion it may appoint, but the Grand Lodge alone has the power of dissolving Lodges ” ; 80 (81)—relating to “ Lodge Property ”—that, “ All property of the Lodge, such as books, moneys, goods, chattels and effects, shall be placed in the custody of the officer responsible for the same and if any member damage, destroy or take away the warrant, regalia, money, deeds, or other property belonging to a Lodge he shall be expelled or otherwise punished as the Lodge may determine, subject to appeal. (a) All moneys belonging to a Lodge shall be placed in such bank as the Lodge may decide to the credit of such Lodge, the account to be administered by the Worshipful Master, Secretary and Treasurer, and to be operated on by any two of the said officers. (b) In the event of the dissolution of a Lodge all property as aforesaid shall become the property of the Grand Lodge, to be held in trust, and must be immediately forwarded to the Grand Secretary.” At all material times up to 31st March 1938, there had been as part of the said written constitution and rules, rule 31, in the following terms : “ All scrip, deeds or any other papers representing landed or other property belonging to the Grand Lodge, shall without the Grand Lodge determine otherwise, be vested in the names of the Right Worshipful Grand Master, Grand Secretary, and Grand Treasurer, for the time being, who shall sign a document to the effect that such securities are the property of the Grand



Lodge.” At all material times from 3rd March 1938, the said written constitution empowered the appointment in the manner set forth therein of trustees for the Grand Lodge and provided that all real and personal property belonging to and held in trust for the Grand Lodge shall vest in those trustees subject to the trusts (if any) then subsisting or affecting them and that every other person for the time being expressly, impliedly or constructively acting or authorized to act as or being in the position of a trustee or trustees for Grand Lodge of any Grand Lodge property or property held upon any trust for Grand Lodge, shall retire from such position of trusteeship and shall vest or cause to be vested in the said Grand Lodge trustees all such property to the trusts (if any) then subsisting or affecting them.

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The said defendants further said : (a) that in or about 1934 the Loyal Orange Lodge No. 98 Parkes ceased to function or to hold its meetings or to make returns or to pay its capitation dues to the Grand Lodge and became defunct and its former members became disbanded and dispersed without in any manner disposing of or making by-laws or provision by by-laws or otherwise for the disposal of the right, title and interest of the subordinate Lodge and/or its members in and to the said land or other property of the said Lodge such as books, moneys, goods, chattels and effects, warrants, regalia or deeds ; (b) that rule 80 (81) operated so that in the event of the dissolution of “ Lodge 98 Parkes ” all property of that Lodge thereby became the property of the Grand Lodge ; (c) that in March 1937, or, alternatively, in March 1939, the Grand Lodge duly passed a resolution whereby the said subordinate Lodge No. 98 Parkes was duly dissolved ; (d) that on 24th January 1944, the Grand Executive of the Grand Lodge pursuant to the said written constitution as and for the Grand Lodge duly passed a resolution whereby the warrant of the said subordinate Lodge was duly withdrawn and whereby that subordinate Lodge was duly dissolved and declared to be then and since 1933 defunct and duly dissolved and whereby it was decided and determined that the said land was the property of and held for and ever since the said subordinate Lodge became defunct and/or dissolved had been and was the property of Grand Lodge and whereby it was directed that that land be forthwith transferred to and vested in the Grand Lodge trustees ; (e) that pursuant to that resolution a duly certified copy thereof was given to the signatories of the said declaration of trust other than Claude William Hamilton ; (f) that the said signatories other than Hamilton, pursuant to the



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— declaration of trust and the resolution and directions duly executed in favour of Silas Alfred Horton, Trevenar and Sperring a memorandum of transfer of the land and it had been lodged with the Registrar-General for registration, but the plaintiffs, by entering a caveat against the land had prevented that registration; (g) that the dissolution of the subordinate "Lodge No. 98 Parkes" by the Grand Lodge of the Loyal Orange Institution of New South Wales transferred the beneficial ownership in the land to the Grand Lodge under rule 80 (81); and (h) that the power of the Grand Executive under the constitution of the Loyal Orange Institution of New South Wales to make such a resolution in respect of the trusts upon which the said defendants held the property depended upon the true and proper construction of the rules and constitution of the Grand Lodge to which the said defendants craved leave to refer when produced. The said defendants submitted that the statement of claim did not disclose any facts which established that the plaintiffs were beneficially entitled to the land as tenants in common, or that they were entitled in law to the relief sought thereby, nor did it disclose any equity.

In their replication the plaintiffs accepted the statement of the said defendants as to the formation of the Lodge between forty and fifty years ago; denied the allegations as to rule 31, and that the dissolution of the Lodge by the Grand Lodge transferred the beneficial ownership in the land to the Grand Lodge; did not admit the other facts alleged in the statement of defence, and otherwise joined issue.

*Roper C.J.* in Eq. said the ordinary rule was that on the dissolution of a voluntary association the property of the association was to be divided, after satisfying its debts and obligations, amongst its members, but that, of course, was subject to any rule which the members themselves may have entered into as part of their own association. If the members had agreed in their own rules or the constitution governing their association that, upon the dissolution of the association, the property was to be dealt with in a particular way, then they were bound by that agreement if it was still in force at the time of dissolution, and that consideration made it necessary to see what were the rules of this particular association with regard to dissolution and particularly with regard to the disposition of its property upon dissolution. His Honour discussed the rules referred to above and held that the plaintiffs had failed to establish their case. He dismissed the suit with costs.

From that decision the plaintiffs appealed to the High Court.



*A. B. Kerrigan*, for the appellants, referred to *Everingham v. Attorney-General* (1); *Brown v. Dale* (2); *Re Printers and Transferrers Amalgamated Trades Protection Society* (3); *Doust v. Attorney-General* (4); *Young v. Curran* (5); *In re Customs and Excise Officers' Mutual Guarantee Fund*; *Robson v. Attorney-General* (6); *Watson v. J. & A. G. Johnson Ltd.* (7), and *Re Unley Democratic Association* (8).

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*F. G. Myers* Q.C. (with him *R. Else-Mitchell*), for the respondents, referred to *In re Lead Co.'s Workmen's Fund Society*; *Lowes v. Governor and Co. for Smelting Down Lead With Pit and Sea Coal* (9); *Attorney-General v. Doust* (10); and *Hutton v. Watling* (11).

*A. B. Kerrigan*, in reply, referred to *Re Clarke*; *Clarke v. Clarke* (12)

*Cur. adv. vult.*

THE COURT delivered the following written judgment:—

Oct. 30

This is an appeal from a decree of the Supreme Court of New South Wales (*Roper* C.J. in Eq.) dismissing a suit in which twelve persons, who in 1934 were members of the Loyal Orange Lodge No. 98 Parkes, were the plaintiffs, and the trustees of certain land in Browne Street, Parkes, the trustees of the Grand Lodge of the Loyal Orange Institution of New South Wales, and the Registrar-General of New South Wales were the defendants. The object of the suit was to establish that when the Parkes Lodge became defunct, as it did in 1934 or at the latest in March 1935, the persons who then were the members of that Lodge became beneficially entitled to the land in equal shares.

The Parkes Lodge was a subordinate Lodge of the Loyal Orange Institution of New South Wales, which is an unincorporated association formed some time before 1875. The Institution is governed by rules and regulations which had been altered from time to time. Reference will be made to the provisions adopted in 1928, which were in force at all times with which we are concerned. The Institution is not governed by any statutory provisions affecting the questions which arise for decision.

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| (1) <i>Nicholas</i> C.J. in Eq. (unreported)<br>21 Feb. 1941. | (7) (1936) 55 C.L.R. 63, at pp. 67,<br>68, 70.   |
| (2) (1878) 9 Ch. D. 78.                                       | (8) (1936) S.A.S.R. 473, at p. 483.              |
| (3) (1899) 2 Ch. 184, at pp. 185, 188.                        | (9) (1904) 2 Ch. 196.                            |
| (4) (1904) 4 S.R. (N.S.W.) 577, at<br>p. 582; 29 W.N. 198.    | (10) (1904) 4 S.R. (N.S.W.) 577; 21<br>W.N. 198. |
| (5) (1909) 9 S.R. (N.S.W.) 452; 26<br>W.N. 94.                | (11) (1948) Ch. 26.                              |
| (6) (1917) 2 Ch. 18.  | (12) (1901) 2 Ch. 110.                           |



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In or about 1927, the land now in question, upon which there was a small hall, was purchased in the names of five persons who became the registered proprietors as joint tenants of an estate in fee simple therein under the provisions of the *Real Property Act*, 1900 (N.S.W.). It is admitted on the pleadings that the whole of the purchase money was paid by the Parkes Lodge. On 20th June 1929, the registered proprietors executed a declaration of trust reciting that the purchase money had been so paid, and that they had become possessed of the land merely as trustees for the Parkes Lodge "to be dealt with as directed by the members of the said Lodge from time to time"; and they thereby declared that they would thenceforth stand seised and possessed of the land "upon trust for the said Lodge and the Members thereof for the time being and to be sold leased mortgaged or otherwise dealt with as the said Lodge and the Members thereof for the time being shall from time to time direct."

Thereafter, the land and the hall upon it were used for the purposes of the Lodge, and revenue was obtained by the letting of the hall from time to time for other purposes. In March 1935, however, the Lodge meetings, which had attracted dwindling attendances and had been held with diminishing frequency came to an end. No formal steps were taken by the Lodge itself to terminate its existence or to deal with the land; its few remaining members, some nineteen in all, simply ceased to take any further interest in its affairs. An attempt was made to revive the Lodge in 1943, but without success. It seems that the Grand Lodge of the Institution declared the Parkes Lodge "defunct" in 1937, and declared it "dissolved" in 1939; but no steps were taken with respect to the land until 24th January 1944. On that date the Grand Executive of the Institution passed, and on 26th February 1944, it confirmed, a resolution which declared the Lodge to be, and to have been since 1933, defunct and dissolved, and determined that the land now in question was the property of the Grand Lodge and should be transferred to and vested in the Grand Lodge Trustees. Later in the same year the surviving trustees of the land executed a memorandum of transfer of the land in favour of the trustees of the Grand Lodge, but this has not yet been registered. The plaintiffs, attacking the transfer as a breach of trust, sought in the suit an injunction to restrain its registration.

The way in which the plaintiffs put their case is that the Parkes Lodge was an unincorporated voluntary association of persons; that all property held upon trust for it belonged to the general body of members as existing from time to time: *Watson v. J. & A. G.*



*Johnson Ltd.* (1); that the association became dissolved by the tacit consent of all the persons who were members of the Lodge when it became defunct; and that thereupon, subject to their being no outstanding liabilities of the Lodge to be provided for, the property became divisible in equal shares amongst all those persons on the principle of *Brown v. Dale* (2); *Re Printers and Transferrers' Amalgamated Trades Protection Society* (3); *In re Customs and Excise Officers' Mutual Guarantee Fund*; *Robson v. Attorney-General* (4); *Young v. Curran* (5).

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In the Supreme Court, *Roper C.J.* in Eq., rejected this contention and held, following an earlier decision of *Nicholas C.J.* in Eq., in *Everingham v. Attorney-General* (6), that rule 80 (b) of the rules and regulations of the Institution (which will be referred to later) should be construed as entitling the Grand Lodge to the subject land in the events which have happened. In this Court the appellants offered arguments, not without cogency, in favour of construing rule 80 (b) as having no application to land and no materiality in this case. It is unnecessary, however, to pronounce finally upon those arguments. The judgment below must be supported upon a ground which does not depend upon the interpretation of rule 80 (b).

The fundamental objection to the plaintiffs' case is that to invoke the principles of law relating to the dissolution of voluntary associations as if a subordinate Lodge of the Institution were an independent association is to overlook the true character of the subordinate Lodges and their relation to the Institution as a whole. The principles to which the plaintiffs appeal are applicable to that class of voluntary associations of which a club provides a familiar example. Such an association is an exclusive society of persons, between whom a *nexus* is provided by a contract, to which they and no others are parties and by which they agree to pursue together some common purpose of their own. It is only in accordance with the contract between them, or by their common consent, that members may leave or be excluded from the society and that new members may be admitted to it. All the mutual rights and obligations of members as such depend upon the terms of their agreement, and may be altered or abrogated in any manner which the agreement may provide or which the members may unanimously approve. A subordinate Lodge established under the rules and

(1) (1936) 55 C.L.R. 63.

(2) (1878) 9 Ch. D. 78.

(3) (1899) 2 Ch. 184.

(4) (1917) 2 Ch. 18.

(5) (1909) 9 S.R. (N.S.W.) 452; 29 W.N. 94.

(6) 21/2/1941, unreported.



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regulations of the Loyal Orange Institution of New South Wales is an entirely different affair. It does not originate in a contract for its formation entered into by the individuals who become its first members; it is constituted by the grant of a warrant by the Grand Lodge of the Institution to a group of individuals, not fewer than five, who are already members of the Institution. The warrant takes effect by force of the rules of the Institution, which of course comprise the terms of a contract to which all the members of the Institution are parties. Thereafter it is in accordance with the rules of the Institution that the membership of the Lodge may be changed; and it is important to observe that an individual cannot be a member of the Lodge except as a member of the Institution. The mutual rights and obligations of the members of the Lodge spring from the rules of the Institution, and cannot be altered except as those rules provide. The purposes which the members of the Lodge have in common are none other than the purposes for which they are members of the Institution. The Lodge does not exist as a society of persons who desire to associate exclusively with one another for agreed purposes; it exists as an integral part of a larger organization, of which all the members are associated for the pursuit of purposes common to them all in accordance with a constitution which governs them all. A subordinate Lodge is therefore not to be considered as if it were an association by itself; it is in truth a branch of the Institution, a section of its membership, which provides, for those who belong to it or may be admitted to its meetings, machinery for the enjoyment of the rights and benefits, and for the performance of the obligations and functions, which are the incidents of their membership of the Institution.

In order to demonstrate that this is so, a brief survey of the rules of the Institution is all that is required. Its members must be protestants and British subjects resolved "to support and defend the rightful Sovereign, the Protestant Religion, the Laws of the country, and the succession to the Throne in the House of Windsor": (rules 1, 3, 4, 46). Certain principles of a religious and ethical character are prescribed for the members: (rules 1, 2, 3). The government of the Institution is divided amongst a Grand Lodge with State-wide jurisdiction, District Lodges dealing with certain administrative matters, and subordinate Lodges. The affairs of the Institution as a whole are directed and controlled by the Grand Lodge, composed of representatives from each District Lodge, and possessing supreme authority including the power of enacting laws and regulations for the government of the Institution, the



power of investigating, regulating and deciding all matters relating to the Institution, or to particular Lodges, or to individual members, and the power of dissolving Lodges : (rule 7). There is a Grand Executive : (rule 12), which has all the authority of the Grand Lodge during the intervals between its meetings, except as to altering the constitution or laws of the Institution : (rule 26). Its members are entitled to the privilege of membership in every Lodge in the State, including the right to speak and vote on all matters except the election of officers and finance : (rule 16). The subordinate Lodges are grouped into districts, each having a District Lodge : (rule 33). Each District Lodge consists of representatives from its subordinate Lodges : (rule 34), and has powers relating to the membership of the Institution, including (*inter alia*) the confirmation of suspensions, resignations and expulsions ; applications for re-admission of members who have resigned, been suspended or expelled by subordinate Lodges ; dual membership ; and raising candidates to the second degree : (rule 35). The subordinate Lodges themselves are aggregations of individual members of the Institution not less than five in number, who are in possession of a warrant under the seal of the Grand Lodge : (rule 45). The admission of candidates for membership of the Institution is the province of these subordinate Lodges. Candidates must sign an application form for admission as supplied by the Grand Lodge, and the Lodge must be satisfied that the rules have been shown to each candidate and that each candidate has been made fully aware of the requisite qualifications and principles of the Institution : (rule 46). Admission is by ballot : (rule 46 (6) ), and, as is shown by rules 47, 52, 53 and 57, it is admission into the Institution and not only the particular Lodge. Any person rejected by one Lodge and obtaining admission into another without acquainting its members of the rejection is to be expelled from the Institution : (rule 46 (c) ). Resignation is referred to as severing a member's connection with the Institution : (rule 49). Suspension from a Lodge works suspension from the Institution, when confirmed by the District Lodge : (rule 58). Provision is made for a member to belong to more than one Lodge with the permission of the District Lodge in some cases and of the Grand Lodge in others, and suspension or expulsion from one Lodge is to be deemed suspension or expulsion from all others to which such a member belongs : (rule 72). Members may visit Lodges other than their own : (rules 73, 77), and may be transferred from one Lodge to another : (rule 74). A member may in certain events become unattached to any Lodge, one such event being the lapse of his membership through a Lodge

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 1952. by-laws for their own government, but the power is limited by the  
 { requirement of consistency with the rules of the Institution, and of  
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The rules have little to say about property. They contemplate that there may be landed and other property "belonging to" the Grand Lodge: (rule 31); that there may be moneys "belonging to" a district Lodge: (rule 43); and that subordinate Lodges will have financial matters to decide: (rule 16), and will have "funds of the Lodge" into which entrance and other fees and subscriptions will be paid: (rule 57). There are references to "property of the Lodge": (rule 65), and to moneys entrusted to the treasurer's care "on account of or for the use of the Lodge": (rule 66). Rule 80, which is the rule upon which this case was decided in the Supreme Court, contains three provisions, of which the first refers to "all property of the Lodge such as books, moneys, goods, chattels and effects" and also to the "warrant, regalia, money, deeds, or other property belonging to a Lodge", and the second refers to "all monies belonging to a Lodge." The final provision is: "In the event of the dissolution of a Lodge all property, as aforesaid, shall become the property of the Grand Lodge, to be held in trust, and must be immediately forwarded to the Grand Secretary": (rule 80 (b)). But in rules regulating the internal affairs of an association of this general description, references to property as being property "of" or "belonging to" one of the branches or instrumentalities of the association are not necessarily references to beneficial ownership at all; they may refer, and indeed they refer more naturally, to the allocation of the property as amongst the several agencies of the association for the purposes of use, management and disposition.

In the case of a voluntary association of the kind to which the plaintiffs seek to assimilate the Lodge No. 98 Parkes, all property which the association acquires belongs to the members jointly. While it is a going concern the members have such individual rights with respect to the property as the social compact provides; and upon its dissolution, if nothing to the contrary is agreed, surplus assets are, naturally, divisible amongst those who were members at the date of dissolution. But in the case of a subordinate Lodge created under and regulated by the rules of the Loyal Orange Institute of New South Wales, the position is necessarily different. It has already been pointed out that such a Lodge is not governed by a contract peculiar to the members of the Institution of whom it is composed, and that it does not exist to enable those members