

Appl
Case [2000]
ATA 1080
(2000) 46
ATR 1025

[HIGH COURT OF AUSTRALIA.]

LLOYD AND ANOTHER APPELLANTS ;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

*Estate Duty (Cth.)—Assessment—Exemption—Estate devised etc. for “ public educa-
tional purposes ” in Australia—Meaning of words—Applicability to educational
activities not conducted or controlled by State—Bequest for Navy League Sea
Cadet Corps—Whether exempt—Estate Duty Assessment Act 1914-1947 (No. 22
of 1914—No. 16 of 1947), s. 8 (5) (8).*

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MELBOURNE,
Oct. 13, 14 ;
SYDNEY,
Dec. 15.
Dixon C.J.,
McTiernan,
Webb,
Fullagar and
Kitto JJ.

Section 8 (5) of the *Estate Duty Assessment Act 1914-1947* exempts from estate duty “ so much of the estate as is devised or bequeathed for . . . public educational purposes in Australia ” and sub-s. (8) provides that “ public educational purposes ” includes “ the establishment or endowment of an educational institution for the benefit of the public or a section of the public ”.

The Navy League, Victorian Branch, was a voluntary association having among its purposes the teaching of the history, spirit and traditions of the sea services in schools and elsewhere and the maintenance and developing of the Sea Cadet Corps in Victoria. Pursuant to this last object it established a body called the Navy League, Sea Cadet Corps, Victoria, with a branch organization at Geelong, Victoria. The general direction of the policy and administration of the league was entrusted to an executive committee which was elected annually and which controlled the corps and appointed the more senior officers. Company officers, who ranked as “ lieutenants navy league ”, were responsible for the training and discipline of the cadets of the company as well as the care of the depot, equipment, boats, etc. A company might be part of a branch organization, as it was at Geelong. The executive committee of the league might convene a public meeting where a company was to be formed and invite persons interested to become associate members of the Sea Cadet Corps branch in that place. The associate members might then elect a local committee, one of the members of which had to be the company officer. The work of a local committee included the raising of funds for the Sea Cadet Company, the assisting of the officers in carrying out their duties “ in order to ensure the spirit of comradeship and complete co-ordination of effort essential to the well-being of the sub-branch and company and the corps as a whole ” and the endeavouring “ to secure progressive and harmonious working with religious civic and educational authorities parent and citizens’ associations and all recognized organizations devoted to the welfare of boy

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life". Boys were enlisted in the Sea Cadet Corps between the ages of ten and seventeen years. There was a prescribed uniform which petty officers and cadets must wear when required by the officer in charge. Colour patches distinguished the companies. The effective strength of a company was not to be less than twenty or more than seventy-five petty officers and cadets. Camps might be held, both general and company camps. The constitution of the Navy League Sea Cadet Corps, Victoria, stated the aims of the Sea Cadet Movement to be "to keep alive the sea spirit of our race, also to assist cadets to become good citizens of Australia and the Empire by voluntarily accepting discipline and by doing their duty in the spirit of the motto, For God, Queen, the Empire and Australia". The same document gave a catalogue of the training in twelve brief descriptions, viz. (1) character building; (2) swimming, life saving (first aid); (3) squad drill, marching; (4) mariners' compass construction and uses; (5) helm construction and uses; (6) anchors, construction and uses; (7) boat management, oars and sail; (8) knots, bends, hitches and splices; (9) rule of the road; (10) lead line and markings; (11) semaphore signalling; (12) healthy recreation. The forming of classes was left to the company officer, with the direction that he was to form one as circumstances and the exigency of the occasion demanded and that variety was necessary to hold the interest of the boys. The Geelong Branch held mid-week evening parades and Saturday afternoon parades in uniform. The cadets were inspected. Some time was given to lectures and instruction. There were sports and indoor games and sailing and rowing. The lectures and instruction covered hygiene, conduct, citizenship, something under the head "subjects of general education", knots, splices, bends and hitches, navigation lights and rule of the road and hearing and visual signalling. Instruction had also been given in sea history, general seamanship, compass and steering, rigging, squad drill, service and leadership, first aid and life saving and physical and recreational training. There were regular sporting competitions. A testator by will directed his trustees to hold the income from certain property in trust for the Navy League Sea Cadet Corps, Geelong Branch.

Held, by *McTiernan, Webb and Kitto JJ.* (*Dixon C.J.* and *Fullagar J.* dissenting), that the bequest was for "public educational purposes" within the meaning of s. 8 (5) and (8) of the *Estate Duty Assessment Act 1914-1947*.

Per McTiernan, Webb, Fullagar and Kitto JJ.: "The exemption given by s. 8 (5) of the *Estate Duty Assessment Act 1914-1947* to gifts for 'public educational purposes' as defined by s. 8 (8) of that Act is not confined to educational institutions or activities conducted or controlled by the State".

In re Belcher dec'd. (1950) V.L.R. 11, commented on by *Fullagar J.*

CASE STATED.

In an appeal by Benjamin Lloyd and the Trustees Executors & Agency Co. Ltd. as administrators of the estate of Edward Norman Belcher deceased against an assessment of estate duty, *Dixon C.J.* on 29th June 1955 with the concurrence of the parties and

pursuant to s. 28 of the *Estate Duty Assessment Act* 1914-1947 stated a case for the opinion of a Full Court which was substantially as follows :—

1. The deceased died on 31st January 1947 and probate of his will dated 20th October 1946 was granted by the Supreme Court of Victoria on 2nd December 1947 to the appellants who are the executors named therein.

Clause 25 of the said will was as follows :—“ 25. Regarding my quarter share in Belcher's Corner I direct my trustees to hold in trust the income therefrom for the Navy League Sea Cadets Geelong Branch or any other youth welfare organization male or female as in their wisdom they deem fit. And not to sell my share in Belcher's Corner unless compelled to do so and then to invest the proceeds for such organizations as herein before mentioned.”

2. The said deceased was a bachelor aged sixty-seven years and domiciled in Victoria at the time of his death. He left property in Victoria and New South Wales sworn for federal estate duty purposes as of a net value of £32,888 in which the interest of the deceased described in cl. 25 of the said will as “ my quarter share in Belcher's Corner ” was included as of a value of £24,355.

3. An originating summons in which the appellants as executors of the will of the said deceased were plaintiffs, Herbert Percival Page as representing the Navy League Sea Cadet Corps, Victoria, Alan Belcher as representing himself and all other next-of-kin of the testator, and the Attorney-General for the State of Victoria were defendants, was issued out of the Supreme Court of Victoria for the determination of the following questions :—(i) Is the bequest contained in cl. 25 of the will or any part thereof void for uncertainty or for any other reason ? (ii) Is the bequest so far as it relates to— (a) the Navy League Sea Cadets, Geelong Branch (b) any other youth welfare organization a valid charitable bequest ? If nay, does s. 131 of the *Property Law Act* 1928 have any and what effect on the construction of the clause ? (iii) Is there any intestacy as to the testator's share in the property described as Belcher's Corner ? (iv) In what manner and for the benefit of what persons, institutions or organizations should the executors apply the property described in cl. 25 ?

4. On 22nd August 1949 the said court ordered that the said questions be answered—(i) The bequest is not void for uncertainty or for any other reason. (ii) The bequest is, so far as it relates to the Navy League Sea Cadets, Geelong Branch, but not otherwise, a valid charitable bequest. (iii) No. (iv) The executors should apply the whole of the property described in cl. 25 of the will of the

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testator for the benefit of the Navy League Sea Cadets, Geelong Branch.

5. The Navy League Sea Cadet Corps, Victoria, is and at all times material has been an unincorporated body established and conducted under the auspices of the unincorporated organization known as "The Navy League Victorian Branch" which is and at all times material has been associated with an organization known as "The Navy League" which has its head office in London, England. The aims and organization of the said "The Navy League Sea Cadet Corps Victoria" as at all times material are set forth in a document entitled "Organization and Regulations of The Navy League Victorian Branch governing The Navy League Sea Cadet Corps of Victoria" the material portions of which are as follows :—

Name

The movement shall be named "The Navy League Sea Cadet Corps, Victoria". The corps shall be strictly non-political and non-sectarian and all positions shall be honorary. Sea Cadet officers, officer-bearers and members shall be bound by the regulations herein laid down.

Aims of the Sea Cadet Movement

To keep alive the sea spirit of our race, also to assist cadets to become good citizens of Australia and the Empire by voluntarily accepting discipline and by doing their duty in the spirit of the motto, "For God, Queen, The Empire, and Australia."

Training

1. Character building. 2. Swimming, life saving (first aid). 3. Squad drill, marching. 4. Mariners' compass construction and uses. 5. Helm construction and uses. 6. Anchors, construction and uses. 7. Boat management, oars and sail. 8. Knots, bends, hitches, and splices. 9. Rule of the road. 10. Lead line and markings. 11. Semaphore signalling. 12. Healthy recreation.

Executive Organization

State Commandant (with rank of Captain, Navy League) State Commander, Assistant State Commandant (with rank of Commander, Navy League) District Officer (with rank of Lieut. Comdr., Navy League) Company Officers (Lieut., Navy League).

Appointments

All appointments for officers of rank of Lieutenant or above shall be made by the executive committee of the Navy League, Victorian Branch, and may be terminated by either party at any time.

Warrants of appointment shall be issued by the executive signed by the chairman and the secretary.

Organization

The Navy League executive committee shall control the movement and its decision shall be binding on all officers and ratings. There shall be a State Captain, State Commander, and secretary, district lieutenant commanders, lieutenant, sub-lieutenants, petty officers, and cadets. There shall be a senior officers committee consisting of the State Captain, State Commander and secretary, and district lieutenant commanders. Such committee shall meet as required and shall be convened by the State Captain or the secretary of the Navy League by direction of the Navy League executive committee. There shall be an officers committee as specified later. Branch Organization shall consist of the following bodies :—a. Executive Committee ; b. Welfare Executive Committee ; c. Welfare Committee ; d. Associates. The formation of all or any of the above may be omitted at the discretion of the Navy League executive committee. All or any of the above or any in existence may be terminated at any time at the discretion of the Navy League executive committee.

Powers and Duties

The State Captain shall have seniority over all other Sea Cadet officers and generally supervise the whole corps. Remembering that the movement is a voluntary one, he shall consult with and in general be guided by the majority vote of the senior officers committee. He shall receive applications for positions of and above the rank of company officers and shall report thereon to the executive committee. He shall, when necessary, call meetings of officers and either he or his appointee shall preside thereat. The Assistant State Commandant shall generally act as executive officer to the State Captain. A District Lieutenant Commander shall visit depots and companies in his region with the object of advising and assisting company officers, and report on his district to the State Captain. He shall take charge of companies in his district at all general parades. Company officers shall not be less than twenty-one years of age except when holding appointment in an acting capacity. They shall be appointed on probation for at least three months. It is desirable that they should have had some service at sea and if possible with the naval forces. A company officer shall be chief executive officer of the company, and shall have authority over the company in all matters affecting the conduct, training and discipline

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of all subordinate officers and cadets. In consultation with District Lieut. Commander and after consultation with his executive committee, he shall appoint the officers and instructors of his company. In the event of any disagreement hereon the decision of the State Captain shall be final. Company officers shall have rank of Lieutenant, Navy League. A company officer may be granted the acting rank of Lieutenant Commander, Navy League. All officers appointed by the company officer shall be deemed junior officers. An appointee to the position of company officer shall hold the rank of Lieutenant. He shall be responsible for the training of the cadets, for the cleanliness of the depot, for the safe custody of all equipment, and the housing or mooring of boats used by his company. He shall cause a roll to be kept showing the strength of the company, age of each boy, date of enlistment, and date of departure. He shall cause a record to be kept of all moneys received from the boys under his charge and shall see that such moneys are handed to the hon. treasurer of the local executive committee forthwith and receive an official receipt for the same. A list is to be posted on the company notice board every three months or less showing the amounts of subscriptions received from the boys. A copy of the said list is to be furnished to the hon. treasurer of the local executive committee. In co-operation with the district officer and the local executive committee and welfare committee, he shall endeavour to secure the interest of the religious, civic, and educational bodies, also of parents' and citizens' associations and other recognized bodies interested in the welfare of the boys. He shall encourage the boys under his charge to acquire a wider understanding of the value of the British Empire, of right citizenship, i.e. that discipline, courtesy, and service to one's fellows produce the most worthy citizens.

Equipment Officers. There shall be a senior equipment officer who shall have charge of equipment at headquarters and general supervision of all equipment. Senior Equipment Officer shall be a member of the senior officers committee.

Miscellaneous

Age of Entry. Boys shall be enlisted between the ages of ten and seventeen years.

Uniforms. Petty officers and cadets shall wear the uniforms prescribed in the Sea Cadet Corps when so required by their officers in charge. Company colour patches shall be suitably affixed to each jumper, and no cadet shall be without such. When an officer or cadet resigns or is dismissed from the corps, he shall not wear the uniform as prescribed in the corps.

Swimming and boat work. Cadets shall learn to swim as soon as practicable. Non-swimmers shall not be allowed in league boats under sail, nor shall the officer in charge permit them to bathe near deep or dangerous water.

Church Parades. Officers shall encourage cadets to attend religious services in church or chapel, but under no circumstances shall a cadet be required to attend places of worship other than those of his own denomination.

Classes and hours of instruction. Classes shall be formed by the company officer or his deputy as circumstances and the exigencies of the occasion demand. Variety is necessary to hold the interest of the boys.

Discipline and training. The company officer of the company shall be held responsible for the training of cadets and for the discipline of all those placed under him. The local committee shall not interfere in these matters, but in the event of complaints from members of the public, as to the behaviour of officers or cadets, a local committee, through its chairman or his deputy shall make representations to district lieut. commander, and, if the complaint warrants, direct to Headquarters of the League, Victorian Branch.

Officers Meetings. Company officers and all officers senior to them shall hold a meeting at least six times a year for the purpose of discussing matters affecting training and welfare of cadets and of the movement generally.

Local Committee

Formation. A public meeting shall be convened under the official patronage of the Navy League executive committee and its proper representatives at which the company shall be formed. At this meeting, all interested shall be asked to join as associate members of the Sea Cadet Corps Branch of the Navy League, sign a declaration that they recognize the authority of the Navy League executive committee in all matters pertaining to the Navy League Sea Cadet Corps, and shall pay a subscription of one shilling annually which shall be allotted to the Sea Cadet Corps funds. All such associate members shall have the right to vote for the election of officers for the local committee. These shall consist of president, vice-president, or vice-presidents, secretary, and two members. At its first meeting, this committee shall appoint a treasurer from within its number, or otherwise, and decide a quorum number. It may co-opt any numbers it considers desirable during the year and a general meeting of all associate members residing in the area covered by the company shall be called, and a new committee elected as

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previously. All officers and members of committees shall be eligible for re-election. Local committees shall be empowered to appoint a welfare committee or itself act as welfare committee, but when so acting, the functions and business shall be solely those connected with welfare matters, and in no instance in such an event, shall the meeting be a local committee meeting. A welfare committee may also be appointed by the executive committee of the Navy League for such a term, and on such conditions as such executive committee deems fit. Any sub-committee formed to raise funds by entertainments shall for this purpose come under the jurisdiction of the welfare committee. Meetings should take place not less than six times a year. Where a local committee has been duly constituted, the company officer shall have the rights, duties, powers, and privileges for all purposes of an ordinary local committee member, but in no instance shall a duly appointed officer of the Sea Cadets hold office on a local committee. No Navy League officer, petty officer, or cadet, shall incur any liability whatsoever in the name of the sub-branch and/or company without the written authority of the sub-branch committee. Note. Where there is no properly constituted sub-branch committee or welfare committee, the officer in charge of a company may be authorized by the executive committee of the Navy League, Vic. Branch, in writing under proper safeguards, to raise funds under the auspices of the League for the exclusive use of such Sea Cadet Company. In this event the officer in charge shall be held responsible for all debts contracted by him on the company's behalf.

Duties. To create an atmosphere favorable to the establishment and growth of the Navy League Sea Cadet Corps. To assist the appointed officers of the corps to carry out their duties in order to ensure the spirit of the comradeship and complete co-ordination of effect essential to the well-being of the sub-branch and company and the corps as a whole. To use its best endeavour to secure progressive and harmonious working with religious, civic, and educational authorities, parent and citizens' associations and all recognized organizations devoted to the welfare of boy life. Although such officers and commanding officers shall have been elected at a public meeting or a general meeting of the branch, it shall be lawful :

1. For the district lieut. commander and company acting in unison to write to the Navy League executive committee declaring that the president should be removed from office and the Navy League executive committee shall have then the power to carry out such recommendations and appoint whomsoever shall have been recommended, or they shall think fit, to that office for the remainder of

the year. 2. For the district lieut. commander, company officer and president, if unanimous in the opinion that the welfare of the branch necessitates it, to declare any committee dissolved or any member of any committee to be no longer such, or to declare that any office provided that they shall within three days of taking such action, notify the secretary of the Navy League by means of a declaration which he shall then have cause to read at the next meeting of the Navy League executive committee. Such declaration shall state :—1. The action taken. 2. The reasons for such action, and shall be signed by all three under the statement as follows :—
 “ We the undersigned, do unanimously agree that the action taken was essential to the continued welfare of the branch of the Navy League Sea Cadet Corps ”. In the event of alleged misconduct on the part of a company officer, the district officer in unison with the president shall have the power to suspend such officer and place the company temporarily under the command of the senior subordinate officer pending an inquiry by the Navy League executive committee or representatives appointed by them. The Navy League executive committee shall hold such inquiry or cause it to be held at the earliest possible moment.

Dissolution. On sufficient cause being shown, the executive committee of the Navy League, Vic. Branch, may determine the operation of and functioning of any Navy League Sea Cadet local committees or companies. Each Navy League Sea Cadet Corps local committee shall be dissolved on 30th November each year, and the election of a committee and office bearers for the ensuing year take place. This provision shall not apply to any committee formed during the preceding three months, which shall continue in power until 30th November in the next ensuing year.

The objects and purposes for which the said “ Navy League Victorian Branch ” is established and the constitution thereof as at all times material are set forth in a document entitled “ Constitution of The Navy League Victorian Branch ” the material portions of which are as follows : 1. The objects and purposes for which the league is established are :—(a) To secure as the primary object of national policy the complete naval protection of British subjects and British commerce all the world over. (b) To urge this policy on all citizens of the British Empire and upon the government of the day. (c) To spread information showing the vital importance to the British Empire of maintaining such naval strength as will ensure the permanent safety of our trade and Empire, and of our food supply, and secure British prestige on every sea and in every port of the world. (d) To teach the history, spirit

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and traditions of the sea services in all schools and elsewhere by such means as may be deemed most expedient. (e) To maintain and develop the Sea Cadet Corps in Victoria. (f) To collect, receive and hold funds and property by voluntary contributions, subscriptions, gifts and legacies for the objects of the league or such of them as donors may direct. (g) To do all such other lawful things as are incidental or conducive to the attainment of the above or similar objects. 2. The league shall be an association of voluntary members and its objects, membership, management and conduct shall be absolutely free from party politics and unconnected with any political organization. 3. All Australian citizens signifying their approval of the objects of the league shall be eligible to become members. The members of the league shall consist of Life Fellows, Life Members, Fellows, Members and Associate Members. 5. (i) The general direction of the policy and administration of the league shall be vested in the executive committee consisting of :—(a) President, (b) Vice-Presidents, (c) Honorary Treasurer, (d) Secretary, (e) Fifteen Fellows. (vi) The executive committee may make such by-laws and regulations as it may think fit for carrying out the objects of the league. 6. Sub-branches of the league may be formed wherever and whenever the executive committee deems necessary. They shall be constituted by a warrant authorized by the executive committee and signed by the president. Such warrant shall be granted upon a requisition, in writing, addressed to the executive committee and shall state, *inter alia*, the suggested situation and name of the proposed sub-branch. The warrant shall set forth the constitution of the sub-branch which shall be binding on the same. 14. In the event of dissolution or winding up the surplus assets of the league after payment of all expenses and liabilities shall be applied in such manner as the executive committee may in its discretion decide in the furtherance of all or any of the objects set out in cl. (1) of this constitution.

The case stated continues :

6. The Navy League Sea Cadets, Geelong Branch, is a branch of the said Navy League Sea Cadet Corps, Victoria, and was formed in April 1932 at a public meeting held at Geelong convened under the official patronage of the executive committee of the Navy League, Victorian Branch, and its proper representatives. The affairs and activities of the said Geelong Branch are and at all times material have been controlled by a committee elected annually at a general meeting of all those entitled to vote being any persons who have become members of the said branch by signing a declaration that they recognize the authority of the Navy League executive com-

mittee in all matters pertaining to the said branch and who pay an annual subscription of one shilling. The committee elected consists of a president, two vice-presidents, secretary-treasurer and five other members. The members of the committee have at all times material acted in an honorary capacity. The committee met in May 1932.

7. The number of sea cadets belonging to the said Geelong Branch and the number of instructors attached thereto has varied from time to time. In 1940 there were fifty members and four instructors; in 1941 there were eighty-one members and four instructors; in 1946 there were fifty-two members and five instructors; in 1951 there were thirty-four members and four instructors and in 1954 there were ninety members and seven instructors, and there is a waiting list for membership.

8. Since the said Geelong Branch was formed it has been engaged continuously in carrying out the aims and training set forth in the aforesaid document entitled "Organization and Regulations of The Navy League Victorian Branch governing The Navy League Sea Cadet Corps of Victoria". The activities of the said Geelong Branch include midweek (evening) and Saturday afternoon parades in uniform at which there are inspections by officers and time is taken up by receiving lectures on hygiene, conduct, citizenship, and subjects of general education, instruction in knots and splices, bends and hitches, rule of the road as applying to navigation, navigation lights, and hearing and visual signalling. In addition there is some study of British naval traditions, recreation by indoor games and sports, sailing and rowing. During the 1939-1945 war approximately thirty of the cadets of the said branch served in the Royal Australian Navy some of whom attained petty officer rank. Instruction has been given in the following specific subjects:—(a) sea history, (b) general seamanship, (c) compass and steering, (d) signalling, (e) squad drill, (f) rigging, (g) service and leadership, (h) first aid and life saving, (j) physical and recreational training. Regular sporting competitions have been conducted within the said Geelong Branch and also between teams representing the said Geelong Branch and teams from kindred associations. Senior cadets have been required to act as instructors to classes of recruit cadets and to assist in the conduct and organization of the activities of the branch.

9. The money required for conducting the said Geelong Branch has been obtained mainly from donations and subscriptions from the public, proceeds of public functions held by a ladies' auxiliary, proceeds of street appeals to the public of Geelong and district

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by way of " Button Days " and to a small extent from contributions from sea cadets. Each cadet who was a member of the said Geelong branch was required to pay two pence a week for each week he attended at the branch; receipts from a button day with stalls authorized by the Geelong City Council in 1946 were £109 2s. 4d.; receipts from card evenings, public dances and social evenings in 1942 £82 3s. 6d., in 1943 £94 18s. 0d., in 1944 £102 3s. 4d.; receipts from direct donations were in 1944 £25, in 1945 £55 10s. 0d., in 1946 £23 2s. 0d. and in 1947 £10 10s. 0d. All the other revenue of the said branch from 1940 to 1947 inclusive was small.

10. On the hearing of the appeal before me the following question which, in my opinion, is a question of law, has arisen and at the request of the parties I state the case for the opinion of the Full Court of the High Court upon such question:—" On the facts stated in the case, is the bequest and devise of that portion of the deceased's estate, being his one-quarter share of the property known as Belcher's Corner, bequeathed and devised by cl. 25 of the deceased's will a bequest or devise for public educational purposes in Australia within the meaning of the *Estate Duty Assessment Acts* ? "

A. D. G. Adam Q.C. (with him *G. Just*), for the appellants. The first eleven matters in which, under the constitution of the Navy League, Sea Cadet Corps, Victoria, training is to be imparted to cadets involve the imparting of knowledge and are within the meaning of education in its narrowest sense. The twelfth matter " healthy recreation " is indispensable in this scheme and is within the concept of education. [He referred to *Chesterman v. Federal Commissioner of Taxation* (1); *Whicker v. Hume* (2); *In re Mariette*; *Mariette v. Governing Body of Aldenham School* (3); *Minahan v. Commissioner of Stamp Duties* (4); *Royal Choral Society v. Commissioners of Inland Revenue* (5); *Heaslip v. Hase-mer* (6); *Halsbury's Laws of England*, 3rd ed., vol. 4, pp. 218 et seq.] Public educational purposes mean that the educational purposes must be those of a public as distinct from a private character. If those benefited by the purposes represent a section of the public the test is complied with. That is borne out by s. 8 (8) of the *Estate Duty Assessment Act* 1914-1947. The objects of the trust here,

(1) (1923) 32 C.L.R. 362, at pp. 385, 386, 391, 400 (H.C.); (1925) 37 C.L.R. 317, at pp. 320, 321 (P.C.).

(2) (1858) 7 H.L.C. 124, at pp. 153, 154 [11 E.R. 50, at p. 62].

(3) (1915) 2 Ch. 284, at p. 288.

(4) (1926) 26 S.R. (N.S.W.) 480, at p. 482; 43 W.N. 157, at p. 158.

(5) (1943) 2 All E.R. 101, at pp. 104-106.

(6) (1927) 44 T.L.R. 112.

which falls within the words of that sub-section, are the public, or a section of it and in addition the organization is publicly controlled. The Geelong branch of the cadets, although a branch of a wider organization, has its own members and its own committee. It is an institution. [He referred to *Young Men's Christian Association v. Federal Commissioner of Taxation* (1); *Minister of National Revenue v. Trusts & Guarantee Co.* (2).]

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D. I. Menzies Q.C. (with him *J. A. Nimmo*), for the respondent. Under the constitution of the Navy League Sea Cadet Corps, Victoria, a branch includes adult members, as well as instructors and cadets, the latter class being in no way restricted by any age limit. The expression "public educational purposes" in s. 8 (5) of the *Estate Duty Assessment Act* 1914-1947 is a compound expression, and is to be construed as such. A guide to the meaning of "public education" is provided by the *Education Act* 1928 (Vict.), Pts. V, VI. The question of ownership, public or private, of the educational institution is irrelevant but it is essential that it be recognized by the State as providing education before the education provided by it can be said to be public. The exemption is not concerned with distinctions between what is charitable and what is not charitable in a technical sense. [He referred to *Chesterman v. Federal Commissioner of Taxation* (3).] The Geelong Branch of the Navy League Sea Cadet Corps is the creature of the Navy League from which it takes its colour. The league has a right to refuse membership to anyone. It is not a public body or publicly controlled. It is primarily a patriotic body and is not an educational body. [He referred to *Girls' Public Day School Trust v. Ereaut* (4); *Public Trustee (N.S.W.) v. Federal Commissioner of Taxation* (5); *The Little Company of Mary (S.A.) Incorporated v. The Commonwealth* (6); *Maughan v. Federal Commissioner of Taxation* (7); *Lemm v. Federal Commissioner of Taxation* (8).] The observations of *Morton J.* in *In re Corbyn*; *Midland Bank Executor & Trustee Co. v. Attorney-General* (9) are not applicable here, inasmuch as the instruction in question here is not directed towards preparing the boys for a particular career although some of the boys might go from the corps into the Navy.

(1) (1926) 37 C.L.R. 351, at pp. 360, 361.

(2) (1940) A.C. 138, at pp. 149, 150.

(3) (1923) 32 C.L.R. 362, at pp. 385, 386.

(4) (1931) A.C. 12, at pp. 21 et seq.

(5) (1934) 51 C.L.R. 75, at p. 100.

(6) (1942) 66 C.L.R. 368, at pp. 379, 386.

(7) (1942) 66 C.L.R. 388, at pp. 395, 396, 397.

(8) (1942) 66 C.L.R. 399, at p. 410.

(9) (1941) Ch. 400, at pp. 403, 404.

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A. D. G. Adam Q.C., in reply. If the expression “public educational purposes” is capable of more than one meaning, that most favourable to the appellant should be adopted. [He referred to *Armstrong v. Wilkinson* (1); *Burt v. Commissioner of Taxation* (2).]

Cur. adv. vult.

The following written judgments were delivered:—

DIXON C.J. Sub-section (5) of s. 8 of the *Estate Duty Assessment Act* 1914-1947 excludes from an assessment of estate duty, *inter alia*, so much of the estate as is devised or bequeathed for religious scientific or public educational purposes in Australia. Sub-section (8) defines “public educational purposes” to include the establishment or endowment of an educational institution for the benefit of the public or a section of the public.

By his last will Edward Norman Belcher of Geelong, who died on 31st January 1947, made a disposition for which exemption from estate duty is claimed as one for public educational purposes. The subject of the disposition is the deceased’s one-fourth interest, valued at £24,355, in a piece of land called Belcher’s Corner. The terms of the disposition are as follows:—“Regarding my quarter share in Belcher’s Corner I direct my trustees to hold in trust the income therefrom for the Navy League Sea Cadets Geelong Branch or any other youth welfare organization male or female as in their wisdom they deem fit.” This is followed by a direction not to sell the interest unless under compulsion and then to invest the proceeds for such organizations as those before mentioned in the clause. With the help of s. 131 of the *Property Law Act* 1928 (Vict.) the validity of this disposition was upheld as a charitable gift so far as it concerns the Navy League Sea Cadets, Geelong Branch, and, because the other purposes mentioned in the clause went beyond what is charitable, the application of the entire interest of the deceased in Belcher’s Corner was confined to that corps or body: *In re Belcher dec’d.* (3).

The question for our decision is whether it forms a devise or bequest for public educational purposes so as to be excluded from estate duty.

The Geelong branch forms part of the Navy League Sea Cadet Corps, Victoria. The Navy League, Victorian Branch, is a voluntary association the objects of which are directed to the maintenance of British naval strength and kindred policies. Among the purposes

(1) (1878) 3 App. Cas. 355, at pp. 369, 370.

(2) (1912) 15 C.L.R. 469, at p. 487.

(3) (1950) V.L.R. 11.

enumerated in the constitution of the Victorian branch of the league are the teaching of the history, spirit and traditions of the sea services in all schools and elsewhere by such means as may be deemed most expedient and the maintenance and developing of the Sea Cadet Corps in Victoria. Pursuant to this last object the league established the body called the Navy League Sea Cadet Corps, Victoria, with a branch organization at Geelong. The league entrusts the general direction of its own policy and administration to an executive committee which it elects annually. The Navy League Sea Cadet Corps of Victoria is governed by a constitution which may be amended by the Navy League Executive Committee and doubtless owes its origin to that body. The control of the corps is placed in the executive committee of the league, and it appoints the more senior officers. There is a State Commandant or Captain, a State Commander and an Assistant State Commander and district lieutenant commanders so appointed and these form a senior officers committee, with which the State Captain consults. Company officers, who rank as "Lieutenants Navy League", are responsible for the training and discipline of the cadets of the company as well as the care of the depot, equipment, boats and the like. A company is or may be part of a branch organization, as it is in Geelong. The Executive Committee of the Navy League may convene a public meeting where a company is to be formed and invite persons interested to become associate members of the Sea Cadet Corps branch in that place. The associate members may then elect a local committee. The company officer must be one of its members. The work of a local committee includes the raising of funds for the Sea Cadet Company, the assisting of the officers in carrying out their duties "in order to ensure the spirit of comradeship and complete co-ordination of effort essential to the well being of the sub-branch and company and the corps as a whole" and the endeavouring "to secure progressive and harmonious working with religious civic and educational authorities parent and citizens' associations and all recognized organizations devoted to the welfare of boy life".

Boys are enlisted in the Sea Cadet Corps when they are between the ages of ten and seventeen years. There is a prescribed uniform which petty officers and cadets must wear when required by the officer in charge. Colour patches distinguish the companies. The effective strength of a company must not be less than twenty or more than seventy-five petty officers and cadets. Camps may be held, both general and company camps. The constitution of the Navy League Sea Cadet Corps, Victoria, states the aims of the

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Sea Cadet Movement to be “to keep alive the sea spirit of our race, also to assist cadets to become good citizens of Australia and the Empire by voluntarily accepting discipline and by doing their duty in the spirit of the motto, For God, Queen, the Empire and Australia”. The same document gives a catalogue of the training in twelve brief descriptions, viz. (1) character building; (2) swimming, life saving (first aid); (3) squad drill, marching; (4) mariners’ compass construction and uses; (5) helm construction and uses; (6) anchors, construction and uses; (7) boat management, oars and sail; (8) knots, bends, hitches and splices; (9) rule of the road; (10) lead line and markings; (11) semaphore signalling; (12) healthy recreation. The forming of classes is left to the company officer, with the direction that he is to form one as circumstances and the exigency of the occasion demand and that variety is necessary to hold the interest of the boys.

The Geelong branch holds midweek evening parades and Saturday afternoon parades in uniform. The cadets are inspected. Some time is given to lectures and instruction. There are sports and indoor games and sailing and rowing. The lectures and instruction cover hygiene, conduct, citizenship, something under the head “subject of general education”, knots, splices, bends and hitches, navigation lights and rule of the road and hearing and visual signalling. Instruction has also been given, it is stated, in sea history, general seamanship, compass and steering, rigging, squad drill, service and leadership, first aid and life saving and physical and recreational training. There are regular sporting competitions.

The question we have to decide does not concern the value or merit of the organization, the importance of its contribution to youth welfare, sea training and loyal citizenship, or the advantage to the community of its work. It is concerned only with the claim to apply to the Sea Cadet Corps the description “public educational purposes” as that expression is used in s. 8 (5) and (8) of the *Estate Duty Assessment Act*. For myself I find it too difficult to give the expression a sufficiently wide meaning to comprehend the objects and operations of the Navy League Sea Cadets Corps, Victoria. It is a compound phrase and like most compound phrases its application cannot safely be ascertained by taking each separate word of which it is composed and then exploring the uses of which by itself the word is capable. No doubt the word “educational” may be used with reference to any process of instruction direction or control to which the young are submitted, however intermittently, if it has a purpose or tendency, or supposed tendency, of developing some of the faculties or of forming character. Again the word

“public” is not incapable of a use which implies nothing more than that the thing to which it refers must not be “private” either in the sense of being conducted for private profit or of being established for the private advantage of a class of individuals and not for the benefit of the public at large or a section of the public. It seems to me that only by first attaching large constructions like these to the respective terms and then combining them is it possible to fit the Navy League Sea Cadet Corps, Victoria, within their meaning. But the application to the corps of the expression “public educational purposes” as a compound expression strikes one as most unnatural. The central or basal characteristics to which the exemption is directed may be seen in the schools, colleges, universities, technical schools and schools of art which are so familiar to us. It may be conceded that the application of the exemption is not restricted to such institutions. Instruction and training of the young may take many different forms and no doubt the expression “public educational purposes” will find applications to systematic methods or procedures for the inculcation of knowledge, whether scholastic or vocational, for the cultivation of the mental and physical powers and for the development of character although they may vary widely from those practised or illustrated in the examples of formal education that are more familiar to the community. But even so the Sea Cadet Corps seems remote indeed in objects organization and procedure from anything which may be supposed to fall within the denotation of the expression. Its organization and discipline are reflected from the Navy. The cadets assemble for comparatively brief periods twice a week. There is no organized course of study, no systematic preparation for a defined end. What is done is for the promotion of the welfare of youth by providing associations, interests and discipline arising from the sea and the naval and maritime services. Highly as this may be commended, it does not seem to me to be what the legislature meant by “public educational purposes”.

My answer to the question in the case stated is therefore in the negative.

McTIERNAN J. The objects of the Navy League Sea Cadet Corps are essentially patriotic but are fit to be attained by educational means. The claim that the purposes of the Geelong branch of this organization are “public educational purposes” rests upon the instruction and training which it provides for the youths who join it. The rules of the central organization contain a curriculum of subjects and activities which is carried out by the branch. The

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constituents of this curriculum are set out in the case stated. The principal, if not the only, activity provided in the rules for attaining the aims of the organization is the carrying out of this curriculum. The methods mentioned are classes and camps conducted by officers of the corps for the benefit of the cadets. The Geelong branch follows the curriculum and these methods. The particulars of the educational activities which it carries out are contained in the case stated. It does not appear that it has any other activities. Looking at the particulars of the curriculum prescribed by the corps for the training of its cadets and at the particulars of the instruction and knowledge imparted by the branch's instructors and officers to the cadets I think that it is right to describe it as a body whose principal purposes are educational. If the subjects of the programme of instruction are taken individually it may be said with force that instruction in a number of them would not ordinarily be regarded as education. I think that the proper method is to consider the subjects as a combination designed as a preparation for the calling of a sailor and a way of teaching youths its traditions and ideals of service. Viewing the work of the corps in that way I think it is correct to say that its purposes are educational.

The next question is concerned with the meaning of "public". A guide is to be found in s. 8 (8) of the Act. I think that it can be inferred from this provision that the scope of the term "public educational purposes" in s. 8 (5) is not limited to education provided or recognized by the State, as the respondent contended. It is clear from s. 8 (8) that an admissible test under the former provision is whether the purposes are to the benefit of the public or a section of the public. I think that the Navy Cadet Corps and its Geelong Branch satisfy that test. Their objects are entirely public. Neither of them is carried on purely for private gain. Upon the facts stated in the case I think that the educational activities in which the central body of the organization and this branch engage are conducted for the public benefit and especially for the section of the public consisting of the youth who are training as cadets.

I think the question in the case should be answered "Yes".

WEBB J. Case stated by *Dixon C.J.* pursuant to s. 28 of the *Estate Duty Assessment Act 1914-1947*. The late Edward Norman Belcher by his will directed, *inter alia* :—"Regarding my quarter share in Belcher's corner I direct my trustee to hold in trust the income therefrom for the Navy League Sea Cadets Geelong Branch"

The question for determination is whether this provision was for “public educational purposes in Australia” within the meaning of s. 8 (5) of the *Estate Duty Assessment Act*. By s. 8 (8) “public educational purposes” includes the endowment of “an educational institution for the benefit of the public or a section of the public”.

It is necessary to set out at some length the origin and activities of the Navy League Sea Cadets, Geelong Branch. It is a branch of the Navy League Sea Cadets Corps, Victoria, and was formed at a public meeting at Geelong convened under the official patronage of the Executive Committee of the Navy League, Victoria Branch. The affairs and activities of the Geelong Branch are controlled by a committee elected annually at a general meeting of those entitled to vote, being any persons who have become members of the branch by signing a declaration that they recognize the authority of the Navy League Executive Committee and who pay an annual subscription of one shilling.

Since its formation the Geelong Branch has been engaged continuously in carrying out the aims and training set forth in a document entitled “Organization and Regulations of the Navy League Victorian Branch governing the Navy League Sea Cadets of Victoria”. The activities of the branch include the formation of a company of cadets somewhat along the lines of naval cadets. The age of entry is between ten and seventeen years. Parades in uniform take place twice weekly and there are lectures to cadets on hygiene, conduct, citizenship and subjects of general education, instruction in knots and splices, bends and hitches, rule of the road as applying to navigation, navigation lights and signalling. There is also some study of British naval traditions. Sailing, rowing, games and sports are also part of the curriculum. Instruction has been given in sea history, general seamanship, compass and steering, squad drill, rigging, service and leadership, first aid and life saving, physical and recreational training. The money required for conducting the branch has been obtained mainly from donations and subscriptions from the public, the proceeds of functions and street appeals. The Navy League Sea Cadet Corps of Victoria is an unincorporated body established and conducted under the auspices of another unincorporated organization known as “The Navy League Victoria Branch”. The latter body is associated with an organization known as “The Navy League” which has its head office in London, England. As to the constitution and activities of the English body we have no particulars. However, the aims and organization of “The Navy League Sea Cadets Corps Victoria” are set forth in the above document, which, in addition to the

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matters already mentioned, refers to the Navy League Sea Cadets Corps Victoria as a "Movement" and states that the aims of the movement are "to keep alive the sea spirit of our race, also to assist cadets to become good citizens of Australia and the Empire by voluntarily accepting discipline and by doing their duty in the spirit of the motto 'For God, the Queen, the Empire, and Australia' ". It provides for training under the following headings :— (1) character building, (2) swimming, life saving (first aid), (3) squad drill, marching, (4) marine compass construction and uses, (5) helm construction and uses, (6) anchor, construction and uses, (7) boat management, oars and drill, (8) knots, bends, hitches and splices, (9) rule of the road, (10) lead line and marking, (11) semaphore signalling, and (12) healthy recreation.

It also provides that the "Navy League Executive Committee" shall control the "Movement" and that their decision shall be binding on all officers and ratings. I take this to mean the Navy League Victoria Branch Executive Committee. It further provides that if a donor expresses a wish that his gift shall be used for a specific purpose that wish shall be respected.

The constitution of "The Navy League Victoria Branch" states that the objects and purposes of the league are: (1) to secure as the primary object of national policy the complete naval protection of British subjects and British commerce all the world over; (2) to urge this policy on all citizens of the British Empire and upon the government of the day; (3) to spread information showing the vital importance to the British Empire of maintaining such naval strength as will ensure the permanent safety of our trade and Empire, and our food supply, and secure British prestige on every sea and in every part of the world; (4) to teach the history, spirit and traditions of the sea services in all schools and elsewhere by such means as may be deemed most expedient; (5) to maintain and develop the Sea Cadet Corps of Victoria; (6) to collect, receive and hold funds and property by voluntary collection, subscription, gifts and legacies for the objectives of the league or such of them as the donors may direct. All Australian citizens signifying their approval of the objects of the league shall be eligible to become members. Members' subscriptions range from one shilling to one guinea.

The general direction of the policy and administration of the league is vested in the executive committee which, among other things, may refuse to accept any person as a member without giving a reason.

I think the constitution and activities of the Geelong branch as revealed by the case and its annexures sufficiently show that it is established for "public educational purposes", as it is "an educational institution for the benefit of the public or of a section of the public" and is confined to such purposes by appropriate documents: *Royal Choral Society v. Commissioners of Inland Revenue* (1), per Lord Greene M.R. (2). A liberal construction should be given to words of exception from tax: *Armstrong v. Wilkinson* (3); *Burt v. Commissioner of Taxation* (4), per *Higgins J.* (5). Now from the documents referred to I conclude that it is an institution: see *Minister of National Revenue v. Trusts & Guarantee Co.* (6); *Royal Choral Society's Case* (1). It is also, I think, an educational institution in as much as its main purpose is systematically to impart useful knowledge of a technical nature to youths, with a view to such knowledge being employed eventually to the public advantage as well as their own. It is not necessary that the instruction imparted should be of a general educational nature: *Royal Choral Society's Case* (1). The recreation provided for is merely incidental to the main purpose. Lastly it is clearly for the benefit of a section of the public. However, but for the extension of the definition of "public educational purposes in Australia" by s. 8 (8) of the Act, I would have had some difficulty in holding that the Geelong branch is constituted or conducted for such purposes. No doubt there is public control of the branch, of the "Movement" and of the parent body that brought it into existence in the sense that public control was exercised in *Maughan v. Federal Commissioner of Taxation* (7); that is to say because their constitutions provide for those members of the public who are sufficiently interested in the work of these associations or societies to subscribe to their funds and thereby become annual members and as such eligible to vote at the elections of the controlling bodies. But the compound expression "public educational purposes in Australia", according to the common understanding of that expression as revealed more particularly in the public statutes, seems to me to imply some State control, exercised either directly or indirectly, and there is no such control of the Geelong branch, or of the "Movement" or of the parent body through which it came into existence, or of their activities.

I would answer the question in the case: Yes.

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(1) (1943) 2 All E.R. 101.

(2) (1943) 2 All E.R. 101, at p. 105.

(3) (1878) 3 App. Cas. 355.

(4) (1912) 15 C.L.R. 469.

(5) (1912) 15 C.L.R., at p. 487.

(6) (1940) A.C. 138, at pp. 149, 150.

(7) (1942) 66 C.L.R. 388.

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FULLAGAR J. Edward Norman Belcher died on 21st January 1947. Clause 25 of his will, referring to a valuable property in the city of Geelong, read :—“ Regarding my quarter share in Belcher’s Corner, I direct my trustees to hold in trust the income therefrom for the Navy League Sea Cadets Geelong Branch or any other youth welfare organization male or female as in their wisdom they deem fit ”. The question for decision is whether this disposition falls within s. 8 (5) of the *Estate Duty Assessment Act* 1914-1947, which exempts from estate duty “ so much of the estate as is devised or bequeathed for religious scientific or public educational purposes in Australia ”. The contention of the executors is that the gift is a gift for “ public educational purposes ”. Section 8 (8) provides that “ public educational purposes ” includes “ the establishment or endowment of an educational institution for the benefit of the public or a section of the public ”. The constitution and the objects and activities of the Navy League Sea Cadets are expounded fully in the judgment of the Chief Justice and need not be repeated.

I had to consider the validity and effect of the gift in question in *In re Belcher dec’d.* (1) in which I held that a gift to the Navy League Sea Cadets was a gift for charitable purposes, but that a gift to “ other youth welfare organizations ” was a gift for purposes which included non-charitable purposes. I then had to consider the effect on the actual gift made by the will of s. 131 of the *Property Law Act* 1928 (Vict.). I concluded that the gift took effect as a gift of the income of the whole of the testator’s interest in Belcher’s Corner to the Navy League Sea Cadets.

The correctness of this decision on the effect of the statute was, of course, in no way in question on this appeal. I think I should mention, however, that my attention was not called either to an article by Mr. E. H. Coghill “ *Mixed Charitable and Non-Charitable Gifts* ” (2), or to the decision of Nicholas C.J. in Eq. in *Union Trustee Co. of Australia Ltd. v. Church of England Property Trust, Diocese of Sydney* (3). I have not considered whether, if I had had these before me, I should have taken a different view, but I have thought that I ought to mention them, and to mention also two later articles by Mr. Coghill (4), in the latter of which he cites the recent case in New Zealand of *In re Ashton (dec’d.)*; *Siddall v. Gordon* (5).

In considering in *In re Belcher dec’d.* (1) the question whether the trust for the Navy League Sea Cadets was a charitable trust I do not think that I was greatly concerned to determine whether

(1) (1950) V.L.R. 11.

(2) (1940) 14 A.L.J. 58.

(3) (1946) 46 S.R. (N.S.W.) 298 ; 63
 W.N. 153.

(4) (1950) 24 A.L.J. 239 ; (1955) 29

A.L.J. 62.

(5) (1955) N.Z.L.R. 192.

that trust would be more correctly placed in the second or in the fourth of the "categories" in *Commissioners for Special Purposes of Income Tax v. Pemsel* (1), or partly in the one and partly in the other. It seemed to me clear enough that it was a charitable trust. But the second category has always been regarded as casting a very wide net, and I thought that the purposes of the Navy League Sea Cadets were educational in the relevant sense. I have not seen any reason to doubt the correctness of this view, nor did I understand it to be in any way challenged. It does not, however, follow from this view that the purposes of the Navy League Sea Cadets are "public educational purposes" within the meaning of s. 8 (5) of the *Estate Duty Assessment Act*. In considering whether the trust is charitable, we are concerned with the meaning of the word "education" as used in a judgment, and as intended merely to describe in a very broad and general way one particular kind of purpose which should be held to be within the "spirit and intentment" of the statute of *Elizabeth I*. In considering whether the subject matter of the trust is dutiable, we are concerned with a compound expression—"public educational purposes"—used in a statute, and intended to define the nature of certain gifts which are to be exempt from duty. The elements which make up that compound expression cannot be separated and considered in isolation from one another. There is one single question, and that question is whether the trust for the Navy League Sea Cadets, Geelong Branch is a trust for "public educational purposes". That question is not answered by saying that there is an educational element in the trust, or that the work which the trust is designed to forward has a high educational value—as indeed I think it has.

I am quite unable to agree with one view suggested by Mr. *Menzies*. The exemption given by the words in question is not, in my opinion, confined to educational institutions or activities which are conducted or controlled by the State. I would think it clear that the word "public" had reference primarily not to the instruments by which education is to be imparted, but to the persons to whom education is to be imparted. The primary intention is to exclude private trusts such as a trust for the education of AB or of the children of AB. The benefit of the trust must be open to "the public" or a section of "the public".

I have, however, come to the conclusion that we have not here a trust for public educational purposes within the meaning of s. 8 (5). The question, as so often happens, is very largely a matter of one's conception of the natural meaning of a word or phrase.

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Here the words of the statute convey immediately to my mind a definite impression of something more formal, more continuous, and more systematic, than what is provided by the Navy League Sea Cadets. Then, pursuing the matter a little further, one reflects that purposes which would certainly come primarily within those words are the purposes of a university, or an ordinary school or college for girls or boys. Such institutions are, I think, characterized by the fact that they exist for the purpose of imparting knowledge as such, whether the ultimate aim of the pupil be vocational or generally cultural or what you will. I am not able to regard the Navy League Sea Cadets as another species of the same genus. The activities of that body have an educational aspect and an educational value, and this aspect and this value are more than mere accidentals. But the imparting of knowledge as such is not its *raison d'être*. A soldier has to be taught many things in the Army, but no one would say that the Army was a public educational institution in any relevant sense. A "nautical school" (of the kind familiar in England) for the training of officers for the Navy or the Merchant Navy would probably be a public educational institution, but I cannot think of the Navy League Sea Cadets as a nautical school, and the reason is, I think, that the one does, and the other does not, exist for the essential purpose of the communication of knowledge by teachers to pupils.

The question in the case stated should, in my opinion, be answered :—No.

KIRTO J. Edward Norman Belcher died possessed of a one-quarter share in certain real estate known as Belcher's Corner. He left a will, by cl. 25 of which he directed his trustees to hold the income from his share in Belcher's Corner in trust for "the Navy League Sea Cadets Geelong Branch or other youth welfare organization male or female as in their wisdom they deem fit". On an originating summons it was held in the Supreme Court of Victoria that the gift so made was not void for uncertainty or for any other reason; that so far as it related to the Navy League Sea Cadets, Geelong Branch, but not otherwise, it was a valid charitable bequest; that there was no intestacy as to the testator's share in Belcher's Corner; and that the trustees should apply the whole of it for the benefit of the Navy League Sea Cadets Geelong Branch: *In re Belcher dec'd.* (1).

An appeal against the assessment of estate duty in respect of the testator's estate was brought to this Court, and in the course

of it the question arose whether the gift contained in cl. 25 of the will was a devise or bequest for public educational purposes in Australia, within the meaning of s. 8 (5) of the *Estate Duty Assessment Act* 1914-1947. If it was, estate duty is not assessable or payable upon the property to which given, for s. 8 (5) provides that "Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed . . . for religious, scientific, or public educational purposes in Australia . . .". The question now comes before the Full Court by way of case stated under s. 28 of the Act.

In construing the crucial words of s. 8 (5) no assistance is afforded by any other provision of the Act, except s. 8 (8) which provides that "In this Act, 'public educational purposes' includes the establishment or endowment of an educational institution for the benefit of the public or a section of the public". It is clear from this provision that where a devise or bequest is made to an educational institution it is not necessary to find that the institution is subject to some form of public control in order to conclude that its purposes satisfy the description "public educational purposes". Reasoning such as that which led the majority of the Court to hold, in *The Little Company of Mary (S.A.) Incorporated v. The Commonwealth* (1), that the institution there being considered was not a "public hospital" within the meaning of a National Security Regulation has no place under s. 8 (8). The test which the Act makes sufficient is that which *Jordan C.J.* stated in *O'Connell v. Newcastle Municipal Council* (2): "it is the purposes to which the (institution) is directed, not the manner in which it is controlled, which determines whether it should be regarded as a public (institution)" (3). This was re-stated by *Williams J.* when he said with the concurrence of *Rich J.* in *Maughan v. Federal Commissioner of Taxation* (4): "an institution which aims at benefiting an appreciable . . . section of the community is a public institution" (5): see also *Lemm v. Federal Commissioner of Taxation* (6).

Such being the situation which the Act specifically creates with respect to educational institutions, the conclusion almost necessarily follows that the "public" element in the conception "public educational purposes" is present, even in the case of a devise or bequest which is not for the establishment or endowment of an institution, whenever the educational purposes aimed at are for

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(1) (1942) 66 C.L.R. 368.

(2) (1941) 41 S.R. (N.S.W.) 190; 58 W.N. 166.

(3) (1941) 41 S.R. (N.S.W.) 190, at p. 193; 58 W.N. 166, at p. 168.

(4) (1942) 66 C.L.R. 388.

(5) (1942) 66 C.L.R., at p. 398.

(6) (1942) 66 C.L.R. 399.

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the benefit of the public or a section of the public. The submission was made on behalf of the commissioner that the meaning of the compound expression “public educational purposes” is not to be found by asking first whether the purposes in view are educational and secondly whether they are public. It is true that the expression is a compound one, the words “public educational” going together as the adjectival form of public education; but “public education” is not an expression which in common understanding in Australia has any special signification different from the aggregate of the meanings of its components. Moreover, it is not unambiguous. In some contexts, no doubt, it may refer to education of the kind usually offered by schools, colleges and universities when provided, controlled, supervised, approved or recognized in some manner or degree by a department of State or a body exercising governmental or statutory authority. But to give the expression any such shade of meaning in the context of s. 8 (5) in so far as it applies to a devise or bequest which is not to an institution, and yet to give full effect to s. 8 (8) where the gift is to an institution, would be to treat the one exemption provision as intended to effectuate two divergent policies according as the educational purposes of a devise or bequest are or are not to be served through the medium of an institution. Whatever view might have been taken if s. 8 (8) were not in the Act, that sub-section really necessitates separate consideration of the public element and the educational element in a purpose for which the exemption is claimed. The conclusion would seem to be that educational purposes for the benefit of the public or a section of the public are public educational purposes in the intended sense, and that the office of s. 8 (8) is to make it clear that where the devise or bequest is to an institution it is not necessary to find a public element in the control of the institution itself, so long as the institution is characterized by educational purposes which are for the benefit of the public or a section of the public. The words “public” and “benefit” point to two essentials: first, that the education must be provided for persons selected as members of the public or a section of the public and not selected for reasons of private concern or as members of some private class; and, secondly, that the provision of the education must not be a means of obtaining private profit for those who provide it. To use the language of the Privy Council in *Dilworth v. Commissioner of Stamps* (1) the devise or bequest must be such that “the beneficial interest in it is not vested in any private person, but belongs inalienably to the public” (2). Those who receive education provided under such a

(1) (1899) A.C. 99.

(2) (1899) A.C., at p. 109.

gift cannot "with propriety be described as the recipients of private education" (1): and the effect of s. 8 (8) seems to be that they may with propriety be described as the recipients of public education, in the sense which is relevant under s. 8 (5).

On this construction of the legislation it is neither here nor there whether a body to which a devise or bequest is made is an "institution". Section 8 (8) does not make the exemption in s. 8 (5) more extensive where the gift is to an institution than where it is not; it only ensures that the exemption is equally extensive in the one case as in the other by making irrelevant the question of public or private control. Whether the application of the property to the purposes of the gift is entrusted to an individual, a group of individuals otherwise unassociated, an association of persons, or a corporation, it seems to me that the one question determines the right to the exemption: are the purposes for which the devise or bequest is made educational purposes for the benefit of the public or a section of the public? In the case of a gift to an individual or individuals it is necessary to find that by the terms of the gift he or they are effectually restricted in the application of the property given so that the gift satisfies the description in s. 8 (5). In the case of gift to a body, incorporated or unincorporated, it is necessary to find that the constitution of the body prescribes a similarly restricted scope of application. In neither case is the restriction as precise as it would be if the word "exclusively" or "only" were found in s. 8 (5) after "public educational purposes", for then no gift could attract the exemption if any part of the corpus or income of the property given could be applied, consistently with the gift, for any purpose, however minor in importance, which was collateral or independent as distinguished from being a purpose of or incidental to public education: cf. *Inland Revenue Commissioners v. City of Glasgow Police Athletic Association* (2); *Metropolitan Borough of Battersea v. British Iron & Steel Research Association* (3). But even without any such word having been "anxiously introduced" (4), the exemption extends only to cases in which purposes of public education characterize the gift; and that cannot be the case unless the gift so deals with the property that it is devoted to such purposes, if not exclusively, at least chiefly: *Commissioners of Inland Revenue v. Forrest* (5); *Public Trustee (N.S.W.) v. Federal Commissioner of Taxation* (6); *Royal Australasian College of Surgeons v. Federal Commissioner of Taxation* (7);

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(1) (1899) A.C., at p. 109.

(2) (1953) A.C. 380.

(3) (1949) 1 K.B. 434.

(4) (1890) 15 App. Cas. 334, at p. 352.

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

(6) (1934) 51 C.L.R. 75, at p. 100.

(7) (1943) 68 C.L.R. 436.

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Salvation Army (Victoria) Property Trust v. Fern Tree Gully Corporation (1); *Royal College of Surgeons of England v. National Provincial Bank Ltd.* (2); *Minahan v. Commissioner of Stamp Duties* (3).

With these considerations in mind, I turn to the gift made by cl. 25 of the will. There is an unincorporated body known as "The Navy League Sea Cadet Corps, Victoria", and it has a Geelong branch which is conceded to be the body referred to. The Navy League Sea Cadet Corps, Victoria, was established and is conducted under the auspices of another unincorporated organization, known as "The Navy League Victorian Branch". The latter is in turn associated with a wider organization, known as "The Navy League" which has its head office in London. We have no information concerning the Navy League, but the constitution of the Navy League Victorian Branch is before us. The objects and purposes of that body (which may be referred to as the league) include maintaining and developing the Sea Cadet Corps in Victoria. The league is declared by its constitution to be free from party politics and unconnected with any political organization. The general direction of its policy and administration are vested in an executive committee, which is given power to make such by-laws and regulations as it thinks fit for carrying out the league's objects.

In some manner which does not appear, but possibly by an exercise of the powers of this executive committee, a constitution has been provided for the Navy League Sea Cadet Corps, Victoria, which will be referred to as the corps. This document is entitled "Organization and Regulations of the Navy League Victorian Branch Concerning the Navy League Sea Cadet Corps of Victoria". It commences by naming the corps and providing that it shall be strictly non-political and non-sectarian and that all positions shall be honorary. The aims of the corps are stated to be "To keep alive the sea spirit of our race, also to assist cadets to become good citizens of Australia and the Empire by voluntarily accepting discipline and by doing their duty in the spirit of the motto, "For God, Queen, The Empire and Australia". This general statement is followed immediately by a list headed "Training". The list is : 1. character building ; 2. swimming, life saving (first aid) ; 3. squad drill, marching ; 4. mariners' compass construction and uses ; 5. helm, construction and uses ; 6. anchors, construction and uses ; 7. boat management, oars and sail ; 8. knots, bends, hitches and splices ; 9. rule of the road ; 10. lead line and markings ;

(1) (1952) 85 C.L.R. 159, at p. 172.

(2) (1952) A.C. 631, at pp. 655-659, 661.

(3) (1926) 26 S.R. (N.S.W.) 480 ; 43 W.N. 157.

11. semaphore signalling; 12. healthy recreation. An executive organization is provided for, consisting of a State Commandant, a State Commander and Assistant State Commandant, a District Officer and company officers. All appointments to these ranks are to be made by the executive committee of the league. That committee is to control the corps and its decisions are binding on all officers and ratings. Branch organization is to consist of an executive committee, a welfare executive committee, a welfare committee and associates, but any of these may be omitted, and all or any of them which are in existence may be terminated, at the discretion of the executive committee of the league. The members of the corps are organized in ranks which are given naval titles. It is inferred rather than provided that the unit of local organization is a branch, having attached to it a company under the command of a company officer. The effective strength of a company is not less than twenty or more than seventy-five petty officers and cadets, though double companies may be formed which are to be separate for internal organization and drill but under the supreme command of a senior company officer. It is declared to be desirable that company officers, who are not to be less than twenty-one years of age unless holding acting appointments, shall have had some service at sea, and if possible with the naval forces. A company officer is responsible for the training of cadets, the cleanliness of the depot, the safe custody of all equipment and the housing and mooring of boats used by his company. He is to cause a roll to be kept, showing the strength of the company, and in respect of each boy his age, his date of enlistment and date of departure. In addition to other duties, he is to endeavour to secure the interest of religious, civic and educational bodies, and of parents' and citizens' associations and other recognized bodies interested in the welfare of the boys, and is to "encourage the boys under his charge to acquire a wider understanding of the value of the British Empire and of right citizenship, i.e. that discipline, courtesy and service to one's fellows produce the most worthy citizens". Boys are to be enlisted between the ages of ten and seventeen. The wearing of uniforms is provided for. Cadets are to learn to swim as soon as practicable. There are regulations concerning the holding of company camps. It is provided that classes shall be formed by the company officer or his deputy as circumstances and the exigencies of the occasion demand, variety, it is stated, being necessary to hold the interest of the boys. The company officer is responsible for the training of cadets and for the discipline of all those placed under him, and he and all his senior officers are to hold a meeting

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at least six times a year for the purpose of discussing matters affecting training and the welfare of cadets and of the corps generally.

The constitution prescribes, as the method of forming a company, that a public meeting shall be convened under the official patronage of the executive committee of the league, at which all interested shall be asked to join as associate members of the branch, sign a declaration recognizing the authority of the executive committee of the league in all matters pertaining to the corps, and pay an annual subscription of one shilling. The associate members have the right to vote for the election of officers for a local committee, which has the duties of creating an atmosphere favourable to the establishment and growth of the corps, assisting the appointed officers of the corps to carry out their duties, and using its best endeavour to secure progressive and harmonious working with religious, civic and educational authorities, parents' and citizens' associations and all recognized organizations devoted to the welfare of boy life.

As required by this constitution, the Geelong branch of the corps was formed at a public meeting convened under the official patronage of the executive committee of the corps. It was formed in April 1932, and a local committee which was then elected met in the following month. In each subsequent year a general meeting of the associate members has been held and has elected a committee. The number of boys who have been sea cadets belonging to the branch, and the number of instructors attached to it, have varied from time to time. In 1940 there were fifty cadets and four instructors; in 1941, eighty-one cadets and four instructors; in 1946, fifty-two cadets and five instructors; in 1951, thirty-four cadets and four instructors; and in 1954, ninety cadets and seven instructors. There is a waiting list for cadets.

Ever since its formation, the branch has been engaged continuously in carrying out the aims and training described in the constitution of the corps. Its activities include mid-week evening parades and Saturday afternoon parades, at which there are lectures on hygiene, conduct, citizenship and subjects of general education and instruction is given in knots and splices, bends and hitches, the rule of the road as applying to navigation, and the following specific subjects: sea history, general seamanship, compass and steering, squad drill, rigging, service and leadership, first aid, life saving and physical and recreational training. In addition there is some study of British naval traditions, recreation by indoor games and sports, sailing and rowing.

An organization such as this is plainly charitable in the legal sense of the term, as the Supreme Court of Victoria has held, and

property given to it is therefore held upon trust for charitable purposes and cannot lawfully be diverted therefrom: *In re Manchester Royal Infirmary; Manchester Royal Infirmary v. Attorney-General* (1). The gift made by cl. 25 of the testator's will is accordingly a gift for those purposes. Are those purposes wholly or predominantly purposes of public education in the sense which has already been discussed? They undoubtedly are purposes for the benefit of a section of the public, for they have to do with the development, along the lines which the constitution of the corps describes, of boys drawn from the public generally and not selected by reference to any restrictive qualification. No element of private profit-making is involved, for every position in the organization is honorary and none of the money or other property of the corps could legitimately be appropriated to the private use of any individual. As to whether the purposes are educational in character, it is in point to recall that in the Supreme Court of Victoria Fullagar J. said of the trust created by cl. 25 that it is "primarily and essentially" a trust for the advancement of education (2). It seems to me to be aptly so described. The account which has been given of the subjects in which training is contemplated by the constitution of the corps, and of the activities in which the cadets engage, is sufficient to show that instruction in certain practical and theoretical subjects and the development of the mind in particular directions are the pre-occupation and chief concern of the corps in general and of the Geelong branch in particular. In *Chesterman v. Federal Commissioner of Taxation* (3), Isaacs J. spoke of the general understanding of the words "public education" in the context of s. 8 (5) as having the sense of "imparting knowledge or assisting and guiding the development of body or mind" (4); and Starke J. said that "the essential idea of education is training or teaching" (5). The conception is unquestionably much wider than mere book-learning, and wider than any category of subjects which might be thought to comprise general education as distinguished from education in specialized subjects concerned primarily with particular occupations. The case of *In re Corbyn; Midland Bank Executor & Trustee Co. v. Attorney-General* (6) to which Fullagar J. referred in his judgment, contains an expression of Morton J.'s inclination to consider that a gift to enable boys from a training ship to be trained elsewhere with a view to their taking commissions in the Royal Navy or becoming officers in the mercantile marine is in the nature of a gift "for

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(1) (1889) 43 Ch. D. 420, at p. 428.

(2) (1950) V.L.R. 11, at p. 13.

(3) (1923) 32 C.L.R. 362.

(4) (1923) 32 C.L.R. 362, at p. 386.

(5) (1923) 32 C.L.R., at p. 400.

(6) (1941) Ch. 400.

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education in a particular branch of study ” and for that reason charitable. So, too, tuition for a commercial career has been recognized as educational in the charity sense of the word: *In re Koettgen's Will Trusts* (1). The training which is the *raison d'être* of the corps is such as would teach a lad whose ambitions lie towards a sea-going career some of the rudiments of his intended craft and afford him some intellectual equipment and some stimulus towards further preparation. It is evident, of course, that the majority of cadets will not be of this kind and will join and continue in the corps for the sake of the interest, and the fun, which they get out of its activities. That fact, however, seems to me to be irrelevant, for it cannot affect the true characterization of the purposes to which property is devoted when given to a branch of the corps. Those purposes, seriously pursued as they are by a responsible body acting in an organized and disciplined manner, appear to me to be essentially and predominantly educational. I have not forgotten that the constitution, almost at the outset, describes as an aim of the Sea Cadet Movement the objective of keeping alive the sea spirit of the race; but I should agree with *Fullagar J.* that this is “rather a justification put forward for the educational aims and objects of the Sea Cadets than a statement of aims and objects as such” (2). And the statement of the additional objective to assist cadets to become good citizens by voluntarily accepting discipline and by doing their duty in the spirit of the motto which is quoted, is of the same kind. Coupled with the injunction to company officers to encourage a wider understanding of the value of the British Empire and of right citizenship, it simply sets ideals before those who take part in the training and instruction which form the immediate purposes of the corps.

In my opinion the question in the case stated should be answered, Yes.

Question in the case stated answered: Yes. Costs of the case stated reserved for the judge disposing of the appeal.

Solicitors for the appellants, *Whyte, Just & Moore*, Geelong by *Gillott, Moir & Ahern*.

Solicitor for the respondent *H. E. Renfree*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.

(1) (1954) 1 Ch. 252.

(2) (1950) V.L.R., at p. 14.