MORAIS J.A. THE AMALGAMATION OF UNINCORPORATED ASSOCIATIONS

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JOY ANN MORAIS

PAPER SUBMITTED FOR LL.M.

BODIES CORPORATE AND UNINCORPORATE

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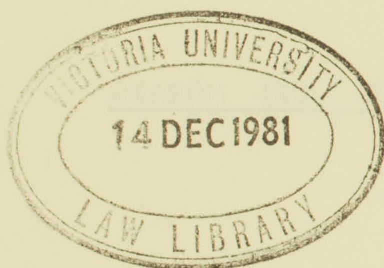

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Introduction:

Unincorporated associations exist in many forms to meet the spectrum of human demands. Churches, trade unions, social clubs are some examples of such groups that may exist as unincorporated associations. It is evident that such associations play an important role in one's social experience.

Unincorporated associations can exist in one of two forms:

(a) those that are governed by legislative enactments

and (b) those not covered by special legislation.

It is proposed to illustrate these two groups by referring to Atkin[1]. He notes that those associations governed by special legislation acquire many of the incidents pertaining to corporations. "In the commercial sphere the clearest example is that of partnerships which are subject to the Partnership Act 1908, while amidst social legislation, the friendly Societies Act 1909 governs registered friendly societies but does not render them bodies corporate"[2].

On those associations that are not covered by special legislation he says:"They may range from transient groupings of no major social importance to others

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which possess large amounts of capital and a degree of power over the lives of individuals. Their purposes are infinitely varied. Some associations may be formed for short term political objectives, others for cultural or sporting activities, others for the pursuit of religious beliefs".[3]

Two factors are important to the concept of these unincorporated associations:

(1) that they come into existence when a number of people, who intend to create contractual relations associate together for a given purpose or purposes - this means that the association will have certain "fundamental objects". However, these objects may not always be clearly defined. In the Free Church of Scotland[4] case, for example, the appelants claimed a certain principle was a fundamental doctrine of their church, while the respondents alleged it was not. The Court had to construe whether or not the particular doctrine was a fundamental tenet of the Church - it came to the conclusion that it was. However, it should be observed that

the lower Court came to the opposite decision - it decided that the particular belief was not of fundamental object of the Church. Thus, if the fundamental objects of an association are not clearly defined, it would be left to the Courts to discover whether the particular object is fundamental.

It should be noted that the relationship between the members is contractual in nature. Blair J.A., describes this contractual relationship. "Unincorporated associations are based on contract which binds the members together for declared common purposes and governs their relationship with each other"[5]
As Rand J. said:"Apart, then, from statute that a union is held together by contractual bonds seems obvious; each member commits himself to a group on a foundation of specific terms governing individual and collective action, a commitment today almost obligatory and made on both sides with the intent that the rules shall bind them in their relations to each other, that means that each is bound to all the others jointly."[6]

and (2) the association normally possesses assets. These assets may be obtained if the purpose of the association is the acquisition of cash or property(such as an association that is formed to establish a widows' and

orphans' fund) or it may be obtained if in relation to the purpose of the association money or property is acquired;(thus, for example, a religious association, a social or sporting club, may not be created for the acquisition of money and property but members contributions to the general funds, in furthering the objects of the association,as well as the property,such as club premises or church buildings,that these associations own, all become part of its assets).

In the case of unincorporated associations governed by statute, these two factors are of value here too. To quote Walton J."..in the present case I am dealing with a society which was registered under the friendly Societies Act 1896. This does not have any effect at all on the unincorporated nature of the society.."(7)

One further observation is necessary here. While the rules of societies governed by legislation can expressly state the relationship of the parties inter se, to quote Walton J. ".. it is.. pertinent to observe that all unincorporated societies rest in contract to this extent, that there is an implied contract between all of the members inter se governed by the rules of the

society."[8]

These two factors become inter-related and sometimes considered as the two important aspects that the Court has to decide upon when an unincorporated association decides to amalgamate with another association or associations(these associations can either be unincorporate or incorporated).

It is the purpose of this study to explore the question of amalgamation. It is proposed to deal with the subject by:(1) looking at the definition of "amalgamation"

(2) considering whether (a) under the rules of the constitution an amalgamation is authorized and provided for? Whether the assets of the association can be transferred from one association to another body;(b) if there is no provision relating to(a) have all the members agreed to the contemplated proceedings.

These questions will be looked at during the course of the paper when the following issues are examined:

(I) The power a society has to alter its objects.

(II) Can there be an amalgamation if the objects of an association are not preserved and what happens to the property of the association?

(III) On amalgamation who gets the property of the voluntary association?

This paper will not deal with charitable associations. Although it will have to look at certain aspects of the question of the distribution of surplus assets on dissolution. This subject is throughly documented by Atkin's thesis[9] and follow up article[10], and it is not proposed to examine this area in any detail.

(1) What does amalgamation mean?

The Courts have been at pains to arrive at some sort of definition for the term. One factor seems to be common in the various definitions. The term does not have a definite 'legal' meaning.[11] (The definitions given are all in relation to companies).

In Re Walker's Settlement, Romer L.J. said: "I find some definition, if it be a definition, of 'amalgamation' in Buckley on the Companies Acts, 11th ed;p.487. It is a definition which, so far as it is a definition, I should like

to adopt as my own; it is there stated as follows:'The word "amalgamation"has no definite legal meaning. It contemplates a state of things under which two companies are so joined as to form a third entity, or one company is absorbed into and blended with another company.'(12)

In an Australian decision, Dixon J, said on this concept:

"Much has been said of the vague and indefinite meaning of the word 'amalgamate' as a description of a transaction between companies.(..) The expression is figurative and is a commercial rather than a legal description. The general notion conveyed by 'amalgamation' is the combination of separate things or separate collections of things into a single uniform or homogeneous whole. In spite of the commercial origin of the use of the terms 'amalgamation', 'reconstruction' and 'reorganisation' as descriptions of company transactions, their meaning is not to be ascertained by considering the lay understanding of the expressions, but rather by referring to text writers upon company law, who are specially conversant with the subject.(...) Text writers concur in treating amalgamation as a description of transactions which,

however carried out, result in the substitution of one corporation for the two or more uniting companies, and the conversion, in effect, of the separate sets of members of the 'uniting' companies into a single set of members of the one corporation".(13)

In one of the early decisions, on the definition of the term, Page Wood, V.C., after stating:"I do not find anywhere any technical definition of the term 'amalgamate' and I have some difficulty in getting at its exact meaning ...."(14). He went on to say,"Mr. Jessel says it consists in making two companies into one; but that is scarcely sufficient. That might suit the case of two companies whose articles of association were identical ... but when you have two companies with different articles this motion would not apply... I should rather assume an amalgamation to be where both companies agree to abandon their respective articles of association, and register themselves under new articles as one body. That would be a new company formed by the coalition or amalgamation of the two old companies."(15)

From these definitions it is submitted that the general understanding of the term 'amalgamation' is the uniting of two or more entities to become a new entity. This definition applies to unincorporated associations also.

Except for the last definition, it is not clear if the amalgamation of companies means that the new body will also have a new set of articles that govern it. The last definition suggests that there can be no amalgamation if there does not exist a new set of articles governing the two (or more) bodies that have united and that previous to the joining had different articles governing them.

In the case of unincorporated association it appears that an amalgamation can take place with the two societies comprising it becoming a new entity, but remaining substantially as two distinct and separate bodies each having its own executive council controlling its own property.(16) How successful such a union will be is another question.

In Keys v. Boulter,(17) two unions, the National Union of Printing, Bookbinding and Paper Works and the National Society of Operating Printers and Assistants (NATSOPA) amalgamated to form 'SOGAT' (Society of Graphical and Allied Trades). This union proved unsuccess- and the two constituent societies came before the Court to get the amalgamated body dissolved. The two constituent unions, had in fact retained to a large extent their own identities. Commenting on the nature of this amalgamation

Megarry J. said:"The amalgamation of the two unions was in substance something resembling a federal form, in that each of them, although comprised in SOGAT, nevertheless continued to a substantial degree to function separately with property under the control of the respective executive councils of the two constituent bodies".[18] The facts of the case do not tell us if there was a conflict in fundamental objects between the societies or if there was one fundamental set of objects once the amalgamation was completed. What the facts clearly state is that a 'federal form' of amalgamation can exist.

I. The Power a Society Has To Alter Its Objects.

The power a society has to alter its objects can be looked at, it is submitted from two aspects:

(a) by looking at its constitution[19] or the terms of the contract that the members agreed will govern and bind them.

and (b) for Societies that own property that is held on trust for the members by looking at the particular purpose for which the trust was created. As Lloyd[20] argues "... the nature of the trust may also constitute part of the governing rules of the association. This will be so where the trust is declared to be for the maintenance of some particular purpose: in such a case, if the trust is binding it will amount to a positive obligation not to divert the property to some other purpose".[21] It follows from this proposition that even if the rules of

> the society can be validly altered and its purposes changed, if the trust was declared only for the original purposes, the trust property cannot be transferred or used for the altered purposes unless the original terms of the trust allow this change.(22)

Thus " .. a society's constitution may be derived both from the terms of the contract between the members and the trust on which the property is held..."(23)

The first principle to be studied is of general application to both the law of contract and of trust: if the constitution of the association or its trust deed does not provide for any alternation of the fundamental rules of the association unanimity is required where such fundamental changes are proposed. As a corollary to this principle a majority of the members has no inherent authority to alter the fundamental rules of the association or the purposes for which the trust was declared.(24)

Before looking at the cases that illustrate this principle two points must be made:

(1) The rule as to unanimity operates in the case of absence of provisions authorizing a fundamental change in the constitutions.(25)

(2) The change or alteration in question must be one that goes beyond the scope of the ordinary purposes and objects of the association. It is not the day-to-day affairs that fall within the scope of the objects and purposes of the association we are concerned with - in such situations the majority vote of the members is sufficient. As Gale J. said, "while it is true that in all internal affairs, that is, in action taken within the boundaries of the rules and regulations which govern the conduct of an association, and always subject to those rules and regulations, a majority of the members can control and guide the fate of the minority under the authorities, that principle does not apply where the group or association is going outside of its powers by seeking to bring an end to its existence or to sever the cord through which it derives its being."(26)

In the Polish Veteran's Corps v. Army, Etc, Veterans,[27] the Court of Appeal of Ontario reviewed the principle of unanimity. It came to the conclusion that the members' unanimous approval was not required, when the unincorporated local association decided to incorporate and formed the new body, its successor, which took over the assets and liabilities of the local unit. In this case the charter of the local unincorporated association was cancelled by its parent national association. The local unincorporated association decided to incorporate as a means of primarily protecting its property.

The majority of the Court held that there was no need for the unanimous approval of all its members to decide to incorporate. On the facts of the case Wilson J.A. held that it would be 'iniquitous ...... if the Polish Veterans in Toronto had to suffer the disintegration of their fellowship and liquidation of their club premises not because of any disunity which developed in their own ranks, but because of the arbitrary and wholly unjustified conduct of the appellant. Yet this would be the result if a unanimous vote of all the former members of Unit 350 were required in order to

form a successor association to pursue the same objects and to hold the club premises."(28)

Blair J.A. after reviewing the authorities which stated that the majority had no inherent right to alter the rules of the constitution drew a distinction between those cases and the case before him:"I mention these authorities only because some attempt was made in argument to cast the respondent in the role of a disloyal factor trying to make off with the property and the intervenant as the loyal minority invoking the protection of the Court. I think this is a traversty of what took place".(29)

Further on in his decision he said:"It would be quite unjust to treat those members who zealously went about the business of creating a new vehicle for their continued fellowship and for the preservation of their property as if they had been disloyal. They were not a disloyal faction who seceded from the existing unit; they were the active and involved members of the Unit who tried to preserve its fellowship and assets in the emergency created by the cancellation of its charter."(30)

On the particular facts of the case unanimous approval of the members would have quite the opposite effect, it is submitted from what the rule was created

to ensure:namely the protection of the interests of the members of the association. It should also be noted that every effort had been made to contact and notify all the members on the association's proposed solution of incorporation(in the event of their charter being cancelled).

Finally, the Court did consider what standards had to be met for the requirement of unanimity to be satisfied.

Wilson J.A. adopted the test set in the dissenting judgment of Laskin J.A. in Astgen et al v. Smith et. al.(31)

"Unanimity does not mean, however,that a member by refusing to attend a meeting or to vote can abort an attempt to reach an effective decision on such matters. I think it is sufficient compliance with the rule of unanimity that adequate notice be given to each member to enable him to vote or cast his ballot, in person or by mail as the case may be, and that only those who do vote need be unanimous."

On the facts of this case, it is submitted, that the above requirements were clearly met.(32) Commenting on this standard of unanimity fulfilling the requirement Wilson J.A. submitted:"I think this less stringent requirement is particularly appropriate where the association is a social club, no change in the purposes

or objects of the association is contemplated, and the only property involved is the club premises."(33)

Could it then be concluded that in fact there are different standards of what constitutes 'unanimity' to be applied in the different cases? Does this mean that the established principle is being eroded?

It is submitted that the law in relation to the requirement of unanimity was established so that the minority member's rights would be protected and not unfairly prejudiced, especially when what the majority was attempting to do was not only to alter the purposes of the association but to make an unauthorized transfer of the assets that were contributed for a particular purpose. Thus, in the Free Church case, it is understandable why the Court applied the doctrine of 'unanimity'. As the Earl of Halsbury L.C. applying Lord Eldon's(34) decision to the facts before him stated:

"With respect to the doctrine of the English law on this subject, if property was given in trust for A,B,C,& c, forming a congregation for religious worship; if the instrument provided for the case of a schism, then the Court would act upon it; but if there was no such provision in the instrument, and the congregation

happened to divide, he did not find that the law of England would execute the trust for a religious society, at the expense of a forfeiture of their property by the cestuis que trust, for adhering to the opinions and principles in which the congregation had originally united. He found no case which authorized him to say that the Court would enforce such a trust, not for those who adhered to the original principles of the society, by merely with a reference to the majority."[35]

In the Free Church case, the Court's stringent application of the rule of unanimity was used to protect the 'loyal' adherents to the associations purposes interests.

However in the Ontario decision, the case before the Courts and the instances Wilson J.A. outlined, do not come, it is submitted within this category of cases. Thus it will not be a violation of the rule of unanimity it is submitted, if it can be clearly demonstrated that in effect the overwhelming majority wish to adopt the change and most importantly the object or purposes of the association are still maintained. It is submitted, that the category of cases where unanimity in the strict sense may not be required is further limited to those instances where adequate notice of the proposed change and the only property involved is the club premises.

In fact, it is submitted that to give in to the minority demands in such cases on the grounds that unanimous approval of the members was not achieved would, in effect bring about an "alteration" to the association. If the Polish Veterans' case is used as an example to satisfy the minority's demands, the association would have to be dissolved and the premises sold.

It is submitted the law must be flexible enough to deal with a situation where rigourous adherence to established principles will bring about the very injustice they were created to prevent. As Rand J.(36) said in an overview of the law governing unincorporated societies "...... resort to the Courts has become more frequent and the warrant for juridical interposition to prevent injustice has called for a more critical analysis of the jural elements involved."(37)

Can the fundamental objects of a Society be altered, if the rules of an association provide for an alteration?

The general principle as to the altering of rules is that if there is express provision in the constitution for alteration, then it is within the competence of the members to do so.

In Thellusson v. Viscount Valentia[38] for the original purpose of pigeon-shooting(rule 2). Under the original rules, express powers were granted to alter any of the rules of the association. Rule 2 was altered to state that the club was instituted for the purpose of providing a ground for pigeon-shooting, polo and other sports.

The plaintiffs brought this action in response to a resolution passed by the majority of members, who in compliance with the rules of the association, resolved that pigeon-shooting should be discontinued.

The plaintiffs contended that pigeon-shooting was a fundamental object of the association and thus could not be altered.

Considering first, the general principles relating to the alteration of rules,Cozens-Hardy M.R. held that, there is a rule which expressly states that "a proposal for adding or altering the rules of the club is within the competence of the members of the club, and that every member of the club, by joining this club, takes it subject to the contingency that the rules may be altered by this particular majority, at a particular majority, at a particular meeting held

according to those rules[39] it is possible for the members to make the alterations.

In Morgan v. Driscoll[40], a priest claimed he was entitled to support, from a fund established for incapacitated secular clergy. He was refused support because under the rules of the society, that had been amended the previous year, the administrators were empowered to refuse support to those members who were already in receipt of adequate renumeration.

Sargant J. said that this case was analogous with Thelluson v. Valentia on the question of whether an alteration of the rules was effective if there was a power to do so.

"Where there was a voluntary association of this kind and a power to alter the rules of the association, such a power was 'prima facie' perfectly valid and if used 'bona fide' had the effect of making all existing members bound by the altered rules".[41]

It is submitted that Sargant J's decision adds a qualification to the power of the members to alter the rules: if the power to alter the rules of the association is not used 'bona fide' a perfectly valid alteration permitted by the rules of the association will not be allowed to stand. Support for this submission

can be found in Lord Lindley's judgment in the Free Church case. When considering the powers of the General Assembly of the Church of Scotland, he said: "I take it to be clear that there is a condition implied in this as well as in other instruments which create powers, namely that the powers shall be used bona fide for the purposes for which they are conferred."(42)

Thus even if a body is conferred very extensive powers it has to use these powers 'bona fide' for the purposes they were granted and the Court has a duty to see that the rights of the individual members are preserved.(43)

In relation to whether the fundamental objects of a society can be altered, it follows from the view that as the articles of the association embody the terms of contract that the members enter into on joining the society, the fundamental object of an association can be changed if under the rules there is provision for a change of objects.(44) Lloyd,(45) it is submitted takes this view a step further when he argues that if there exists an unqualified power of alteration then the association may undertake any alteration it wishes and the Courts should not limit this power by implying any

qualifications of its own. However, this view is debatable.

While it is agreed that when interpreting the rules of the association "the Courts must consider as they would any other contract"[46] is the guiding principle, it seems clear that in the absence of express provisions, provided for by the constitution and by the rules, the Courts will consider whether or not by taking the particular course of action the members are acting within the boundaries of the objects and purposes of the association.[47]

In Thelluson v. Valentia[48] and Morgan v. Driscoll[49], although the Courts did not touch upon the subject expressly the judgements seem to indicate that the Courts will not give effect to an alteration if the fundamental objects of the association were being altered by using the general power of alteration. In Morgan v. Driscoll, the Court found that under the trust deed the rules could be altered in the most unqualified manner. However, the Judge found that the alteration did not "go to the foundation of the association and was not incompatible with the fundamental object of the association."[50] It was only on the basis of this finding that he held that the alteration of the rules was "properly and validly"[51] made.

It must be noted that in the case of merger, amalgamation and dissolution, which are also considered as 'organic and fundamental' changes the majority has no inherent right to effect such a change in the absence of some provision authorizing it to do so. From Gale J.'s decision[52] which was previously quoted, it appears that a general power of alteration is not sufficient to effect such a change. As Evans , J.A., outlined in the Astgen case,[53] which involved a proposed merger of the Canadian Mine, Mill Workers and United Steel Workers of America:

"There is no inherent power in (a) voluntary association to merge with another and in view of the nature of the relationships one to another of the members of the Mine Mill group, such an arrangement could have been accomplished only in one of two ways:

(1) by the unanimous concurrence of every member of the Mine Mill group as a person whose rights existing by virtue of his own contract were sought to be affected; or

(2) by some action which each of the contracting members of the Mine Mill group had expressly or impliedly agreed

to be binding upon him for the purpose of terminating his existing contractual rights and obligation and to bind him to other contractors in a new contractual relationship."(54)

To summarise, it is proposed to follow the same approach Atkin(55) has used. It is submitted that:

(1) The constitution may provide for a change of the fundamental objects, or for the case of the amalgamation of a society. If the procedure set out under this provision is followed the Courts will give effect to the alteration - the result will be binding under the law of contract. The only limitation to this power will be that it has to be used bona fide.(56)

(2) Where the constitution provides for a general power of alteration, a fundamental object or an 'organic change' such as amalgamation cannot be made by using the provision.

(3) In the absence of a power of alteration, the majority has no inherent right to effect such fundamental changes. Thus, it is not within its powers to alter the constitution by making provision for the change of objects or the amalgamation of the society using general rules given to effect the day-to-day administration of the society.

II. (a) Can there be an amalgamation if the objects of an association on amalgamation are not preserved?

(b) What happens to the property of the association?

In Vick v. Toivonen,[57] a temperance society created to work for the advancement of education among the local Canadians of Finnish decent, admitted over seventy new members at an annual meeting. Later in the meeting, a resolution was passed to join the Society with the Socialist Party of Canada. On appeal, the Court held that while under the rules of the Society the admission of the members and the passing of the resolution were perfectly valid the objects and principles of the Socialist Party did not come "within the scope of even the subsidiary objects" of the Society and thus the union was invalid. Maclaren J.A. held:"Without expressing any opinion as to the merits of the principles of the party to which the majority have decided to affiliate the Society, I am of opinion that their compulsory and restrictive methods are at variance with the fundamental principles of freedom of opinion on which the Society was founded".[58] It followed from this

line of reasoning that the members who had contributed to the property and funds of the Society had the right to complain when the funds that were contributed for this purpose were being diverted for another and they were prevented from enjoying the use of the Society's services unless they subcribed to the new rules:

"It is a well-settled principle of law that the property of a voluntary Society like this cannot be diverted by a majority of its members from the purposes for which it was given by those who contributed to it, or devoted to purposes that are alien to or in conflict with the fundamental rules laid down by the Society, and the dissenting minority who adhere to these rules are entitled to have them restrained from so doing"(59).

In the Free Church of Scotland case the House of Lords awarded "eight hundred churches, three universities and more than £1,000,000 of invested funds - the entire properties of the Free Church - to fewer than thirty highland congregations which claimed that the Church had abandoned its characteristic doctrine by voting to merge with the United Presbyterian Church"(60)

Lord James made the following summary of the problem before the Courts:

" The jurisdiction of the Courts .. to determine such differences proceeds from the fact that property held by trustees upon certain trusts has lately been dealt with, or sought to be dealt with, for the purpose of carrying out a union between the Free Church of Scotland and another body, known as the United Presbyterian Church; and the pursuers in the Court below - the appellants .... allege that the application of the properties in question to the purposes of the Churches thus united constitutes a breach of the trusts under which the properties are held".(61)

The appellants case was "that these properties are held under certain trusts;that those who conferred the properties upon the Free Church intended that they should be applied for the purposes of that Church as it existed at the time when the tranfers of property were made. It is also alleged that the Free Church, having united with another body known as the United Presbyterian Church, has so varied its conditions as to cease to retain its original identity. In the Courts below reliance in support of this contention was almost entirely placed upon the argument that a fundamental difference existed between the two Churches in this-that the

Free Church acknowledged and asserted the principle of an established Church, whilst the United Presbyterian Church condemned that principle and was, to the fullest extent, a voluntary Church, accepting voluntaryism as a necessary and fundamental article of its faith".(62)

This was, also the argument that the appellants relied on in the House of Lords.

The majority of the House of Lords found that the establishment principle was a fundamental principle of the Church. It followed then that there could not have been a union between the Free Church and the United Presbyterian Church as the original views of both these churches were in conflict. As the Earl of Halsbury L.C. Commented:" It is not the case of two associated bodies of Christians in complete harmony as to their doctrine agreeing to share their funds, but two bodies each agreeing to keep their separate religious views where they differ ..."(63). He goes on to say:" It becomes but a colourable union, and no trust fund devoted to one form of faith can be shared by another communion simply because they say in effect there are some parts of this or that confession which we will agree not to discuss and we will make our formularies such

that either of us can accept it."(64)

"Such an agreement would not in my view, constitute a Church at all,or it would be ......a Church without a religion."(65)

The majority, the Earl of Halsbury L.C., Lords Davey, James and Alverstone C.J. after stating that the fundamental principle of the Free Church, that is the establishement principle had to be preserved on union held that the General Assembly could not transfer to the new body, property belonging to the Free Church unless the new body after amalgamation preserved the identity of the Free Church.

The two dissenting judges Lords Macnaughter and Lindley held that the General Assembly had the power to pass the Act uniting the two Churches and forming the United Free Church. The General Assembly had the jurisdiction to make alterations and that the establishment principle was not a fundamental principle of the Church. The General Assembly had, thus, the power to convey the property of the Free Church to the new body of trustees for the United Free Church. The line of reasoning the dissenting judges adopted was basically the same as that of the majority, it is submitted. They established, in their opinions that the establishment principle was not

a fundamental principle of the Church, that there was a power to alter the rules and to unite with other Churches, therefore, as the fundamental objects of the association were preserved, the union was perfectly valid and the transfer of assets could be validly made.

III. <u>Who gets the property of the voluntary association on its amalgamation?</u>

When a voluntary association amalgamates what happens is that in fact the original association is usually dissolved and often these societies on dissolution are found with surplus assets.

Thus a society may be dissolved in one of three ways without recourse to the Courts.(66)

(1) by statute: here the rules and procedures for dissolution are provided for in the governing statute under which the society is registered. An unincorporated friendly society, may have its dissolution governed by the Friendly Societies Act 1909.

(2) by provision in the rules of the association: a society may set down a procedure which has to be followed to dissolve it. As it has been already noted if the rules of the association are viewed as a contract by which the members enter into and are bound by, then compliance with this rule is nothing more than the application of simple contract law.

In Rendall-Short v. Grier[67] a recent Australian decision, the Court held that while the defendants, in this case could validly decide to incorporate and register themselves as a Society they could not transfer the assets of the unincorporated association because the specific provisions that had been laid down for dissolution had not been followed and this was a pre-requisite for the transfer of assets to the new body. The Court held that compliance with "the provisions regarding procedures whereby the members of such an association are to vote it out of existence must be regarded as mandatory".[68]

Two points as brought out by Atkin can be made on this aspect of dissolution:

(1) that the only qualification to this is that the courts will clearly not give effect to any rule that is illegal.

(2) Where a Society has a general power of alteration it may use this power as a means of creating a provision that sets down the method for dissolution. The two riders to this general principle are

(a) the Courts may not give effect to a change in the rules which lays down a method of disposal contrary to a fundamental object of the Society.

and (b) the change in the rules must be effected before dissolution takes place.

(3) by agreement:" ..those entitled to participate in a distribution of assets may agree together on a different mode of distribution of the Funds'[69]. As we have already seen, the common law position, for such agreement in the absence of rules providing for the alteration is the unanimous approval of the members. The legal basis for this rule lies also in the law of contract. As Somers J. explained:"The rights of and relations between

members inter se are a matter of contract evidenced by the rules. And such rules are able to be altered, added to or replaced only in accordance with the expressed provisions of the rules themselves. If there is no provision for variation the rules cannot be altered save as a contract is varied - that is by the agreement of all parties."(70)

Finally it should be noted that the Courts have an 'inherent' jurisdiction to wind up such societies in the event of no appropriate machinery existing for securing a proper dissolution.(71)

The question of who is entitled to the assets and how the Court reaches its decision will be examined in the light of the decisions reached in the cases of:

(1) _Re Bucks Constabulary Widows' and Orphans' fund Friendly Society. Thompson v. Holdsworth and Others._(72)

(2) _Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society. Thompson v. Holdsworth and Others._ (No.2).(73)

and (3) _Re West Sussex Constabulary's Widows, Children and Benevolent(1930) Fund Trusts:_

Barnet and another v. Ketteringham and others.[74]

However, before a study of the cases a general outline as to the procedures adopted to distribute surplus assets on methods of dissolution will be given.

In the absence of a statute, rule or unanimous agreement, four other methods of distributing surplus assets of an unincorporated association that has been dissolved will be considered.

(1) The rule in Clayton's Case[75] under this rule ("first in, first out") those members who contributed first to the funds and property of the association, would be entitled first to be recompensed in full before those who contributed subsequently. The Courts have decisively rejected this argument. As Atkin points out the effective result of this rule would be that the funds in many cases would become exhausted before the claims of all the members are satisfied. When a person contributes to a fund, is a matter of pure chance there should be no reason for a person to be able to claim a greater right to be recompensed from a society's surplus funds just because he paid his contribution before another.

"Further, the funds and, likewise the balance of those funds are normally considered as being owned by the members in some form of joint ownership. If so, then the disposition of those funds has nothing to do with seniority unless there are special references in the rules which vary the usual terms of the contract relating to ownership of the funds. The joint owners can act as they will, but one of those joint owners cannot demand extra rights simply because he has been a joint owner longer that anyone else".(76)

(2) <u>"Participation according to Class"</u>: When under the constitution of an association members are divided into different classes with different advantages and obligations on dissolution, according to the circumstances of the case, the division would be according to the differing classes.

Atkin on an analysis of this method of distribution found, therefore, that essentially the inequality in distribution was built in by the contract of membership itself and

it was a question of interpretation for the Courts as to whether or not this inequality applied to distribution. However,".. , it is to be noted that the mere fact that a society is divided into different classes does not mean that participation in distribution will be according to the class to which a member belongs. Rather it is necessary to look closely at the circumstances of the society, the nature of the differences between the classes, the reason for the different classes, and the terms of the contract of membership before the correct mode of distribution can be determined."(77)

(3)"<u>Participation proportionate to contribution</u>"

Under this method, the surplus assets are divided according to the respective contributions the members had made to those assets. This method of distribution has its legal foundation in the resulting trust in favour of existing members.(78) However, as Atkin has

submitted, in the light of the weighty conceptual objections to the use of the resulting trust in this manner its use should be abandoned, except in those situations when a true resulting trust does arise.[79]

(4) "Equal Participation"

This is the simplest method of resolving the problem of how surplus assets are to be distributed. It is also the method recent cases[80] show that even benefit and friendly societies are applying. This approach distributes the surplus assets on a per capita basis, without taking into account such factors (such as the respective contribution of the members) which might lead to inequality. "The legal foundation for this approach is that the property of an unincorporated body is held by all the members of such a body in equal shares, unless otherwise stated in the rules and therefore entitlement to that property on dissolution should likewise in equal shares".[81]

The Re West Sussex and the Re Bucks cases

wil now be considered.

In <u>Re West Sussex</u> a fund had been established in 1930 to provide for the widows and orphans of deceased members of the West Sussex Constabulary. The West Sussex Constabulary amalgamated by order with the police forces in the region and the new body came into force from 1st January 1968. As a result of this amalgamation doubts arose as to how the funds had to be dealt with. An annual general meeting was held by the members of the fund on 7th June 1968; it was decided to amend and add to the rules to enable them to wind up the fund and to apply the fund in accordance with the new rule.

On a summons to determine the distribution of the fund the Court held that the meeting of 7th June 1968 was abortive and that there did not at any time after 31st December 1967 exist any members of the fund capable of holding a meeting, amending the rules or winding up the fund.

On deciding the destination of the fund in these circumstances, Goff J. first distinguished between three kinds of contribution to the fund:(a) that made by the surviving members;(b)that made by former and deceased members and (c) that raised from outside sources.

He then held that, that part of the fund representing contributions from former and surviving members was bona vacantia. The surviving members may have rights in contract on the ground of frustration or total failure of consideration; as for those members who had died while still in membership they could not enforce any claims on a contractual basis because in their case the contract had been fully worked out:

> "Those persons who died whilst still in membership cannot, I conveive, have any rights because in their case the contract has been fully worked out...""The surviving members on the other hand, may well have a right in contract on the ground of frustration or total failure of consideration.."(82)

The outside contributions of specific donations and legacies were differentiated from monies raised from such activities as raffles and entertainment. In the former instance, Goff J. held that these donations and legacies were to be held on resulting trusts for the donors and their estates as the gifts were made for a particular purpose that had failed. The rest of the proceeds raised from outside sources were held bona vacantia.

This was because, it could be implied that the intention on the part of the donor was to part with his money out and out.

It should be observed that this is one of the rare cases where the Crown has been successfully awarded a share in the surplus assets.[83]

In Re Bucks, a registered friendly society the Bucks Constabulary, was set up to provide for widows and orphans and for members of the constabulary during illness and infirmity. In April 1968 the amalgamation of the Bucks Constabulary with other constabularies took effect. In October 1968, the society decided that it should be dissolved. In December 1968, an instrument of dissolution was sent to members, Paragraph 5 of the instrument provided for the distribution of assets. The question before the Courts was whether by virtue of the Friendly Societies Act 1896 and the execution of the instruments of dissolution, the plaintiff, the trustee of the fund, was effectively authorized to dispose of the assets in the manner prescribed by paragraph 5 of the instrument of dissolution. The Court held that by virtue of the governing section of the Act (S.79) on the dissolution of a registered friendly society, after the members and those entitled to the funds claims had been satisfied, S.79(4) authori-

zed a division or appropriation of the funds, for some other purpose than that of carrying into effect the objects of the society.

However, to give effect to the instruments of dissolution the Court had to decide who was entitled to the fund? Could some extraneous body or person be entitled to the fund?

The Court held, that only those who had a claim under the general law were entitled to the fund. Since on evidence both the Thames Valley fund and the Bucks fund had no claim on the Society's assets, it followed that the division or appropriation of the funds among them which the instrument of dissolution purported to authorize could not be enforced as they were not entitled to the property under general law.

The disposition of the fund to the two societies was held to be ineffective. The fund was invalidly disposed off by the instrument of dissolution.

The case was then taken to the Courts for a decision on (a) who was entitled to the fund and (b) how it was to be distributed?

There were two main claimants to the fund in Re Bucks (No.2):(a)the representative of the Crown,

claiming that the assets as ownerless property was bona vacantia and (b) the members of the friendly society at the date of its dissolution.

It was held that:

(1)".. as on dissolution there were members of the society here in question in existence, its assets are held on trust for such members to the total exclusion of any claim on behalf of the Crown".[84]

and (2) the surplus assets ought to be distributed amongst the members in equal share. ".. prima facie there can be no doubt at all but that the distribution is on the basis of equality, because, as between a number of people contractually interested in a fund, there is no other method of distribution if no other method is provided by the terms of the contract, and it is not for one moment suggested here that there is any other method of distribution provided by the contract."[85]

An analysis of the cases will proceed. It is interesting to note how similar the fact situations of both cases are and yet how such different conclusions were reached by the judges. It will be recalled that (a) in Re West Sussex, the funds were declated bona vacantia; the judge also remarked that the members might have a possible claim in contract for frustration or total failure of consideration, their money having been put up on a contractual basis.

and (b) in Re Bucks, the funds were held on trust for the members of the society at the time of the dissolution.

It is understandable why Wilson J., nine years later, when faced with practically the same fact situation as in Re West Sussex expressed 'great concern' (86) before reviewing the case, as it did not fall in line with his method of reasoning. He promptly began by stating that the cases were 'easily distinguishable'(87) because in the case before him, the unincorporated association was a friendly society governed by the 1896 Friendly Societies Act, whereas in Re West Sussex the Courts were faced with the distribution of assets of a simple unincorporated association.

It is submitted that, the fact that the Society in Re Bucks was registered is of no relevance

to the principles that are to be applied to these fact situations, except perhaps to this end:if the Society is registered, the Act provides a general mechanism for dissolution and distribution of the funds. Thus, in a Re West Sussex fact situation, where the rules did not provide for the winding up of the fund, if the Society had been registered, the members could have effectively disposed of the funds according to those general provision(provided for by the Act).

Turning to Goff J's judgment it will be observed that he refused to accept the submission that the funds belonged exclusively and in equal shares to the existing members on December 31st 1967(the day before the amalgamation of the West Sussex Constabulary with the other police forces took place).

It is difficult to understand why Goff J. rejected the concept of the funds being held on analogy of the members club.

It is proposed to outline Walton J's method of reasoning in Re Buck(No.2) so that his valid arguments against Goff J's decision are understood in proper context. It is also proposed that by doing so, to submit that Goff J's decision in Re West Sussex on this point

(the principle of the members club) is clearly not tenable.

It should be recalled that the problem the Courts were faced with in both cases was to decide who was entitled to the assets of the association.

Walton J. arrived at his decision by this reasoning:

(1) The basic principle in relation to the assets of unincorporated associations was that they were held on trust for the members (subject to the contractual claims of anybody having a valid contract with the association and to valid trusts that may have been declared on the property for such third persons). It did not matter for what purpose, the association was formed, this was the basic principle in relation to how and for whom its assets were held:

"Save by way of a valid declaration of trust in their favour, there is no scope for any other person acquiring any rights in the property of the association, although of course it may well be that

third parties may obtain contractual or proprietary rights, such as a mortgage, over those assets as the result of a valid contract with the trustees or members of the committee as representing the association.

I can see no reason for thinking that this analysis is any different whether the purpose for which the members of the association associate are a social club, a sporting club, to establish a widows' and orphans' fund, to obtain a separate Parliament for Cornwall, or to further the advance of alchemy. It matters not. All the assets of the association are held in trust for its members (of course subject to the contractual claims of anybody having a valid contract with the association) save and except to the extent to which valid trusts have otherwise been declared of its property.(88)

(2) Although these assets are held on trust, they formed the subject-matter of the contract which the members had made inter-se. (This point will be elaborated upon subsequently).

Brightman J., describing the particular nature of this trust stated:

"There would be no limit to the type of variation or termination to which all might agree. There is no private trust or trust for charitable purposes or other trust to hinder the process. It follows that if all members agreed, they could decide to wind up the London and Provincial Society and divide the net assets among themselves beneficially. No one would have any locus standi to stop them so doing, The contract is the same as any other contract and concerns only those parties to it, that is to say, the members of the society".(89)

(3) As a general principle it is only the present members of the Society, who have any right to the assets.

"I think pertinent to observe that all unincorporated societies rest in contract to this extent, that there is an implied contract between all of the members inter-se governed by the rules of the society.

In default of any rule to the contrary, and it will seldom if ever be that there is such a rule, when a member ceases to be a member of the association he ipso facto ceases to have any interest in its funds. As membership always ceases on death, past members or the estates of deceased members therefore have no interest in the assets. Further, unless expressly so provided by the rules, unincorporated societies are not really tontine societies, intended to provide benefits for the longest liver of the members."(90)

(4) On dissolution of the society two situations can arise: (1) that there are existing members of the Society at the date of dissolution and thus either the rules of the Society provide for the distribution of the assets, or in the absence of such provision, the funds are distributed among the existing members at the date of dissolution(91) or (2) "A society may sometimes become defunct or moribund by its members either all dying or becoming so reduced in numbers

that it is impossible either to continue the society or to dissolve it by instrument; in such cases the surplus funds after all existing claims(if any) under the rules have been satisfied or provided for, are not divisible among the surviving members ... or the last survivor .. or the representative of the last survivor .. nor is there any resulting trust in favour of the personal representatives of the members of the society.. but a society which, though moribund, had at a testator's death one member and three annuitant beneficiaries, was held to be existing so as to prevent the lapse of a legacy bequeated to it by the testator .. In these circumstances two cases seem to occur:if the purposes of the society are charitable, the surplus will be applicable 'cy-pres'.. but if the society is not a charity, the surplus belongs to the Crown as 'bona vacantia'".[92]

(5) Finally among the cases Walton J analysed <u>Cunnack</u> v. <u>Edwards</u>(93) was held to be a case that should be limited to its particular facts and thus distinguished from the present case. In that case, the personal representatives of the deceased members were claiming the surplus assets of the association. The association was established in 1810 to raise a fund to provide for widows of its deceased members. It was later registered under the Friendly Societies Act 1829. Although this Act was repealed, its material provisions remained in force for those societies registered under it. The three sections of relevance to the case were sections 3, 8 and 26. Rigby L J. in the Court of Appeal summarised section 26 as follows:

"Sect.26 provides for the dissolution of the society, and, among other things, that it shall not be lawful for the society, by any rule made on the dissolution or determination, to direct the division or

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distribution of any part of the stock or fund to or amongst the members, other than for carrying into effect the general intents and purposes of the society declared by them and confirmed by the justices".(94)

Walton J. after considering the rules and the various arguments before the Court in Cunnack v. Edwards concluded as follows :

".. a careful examination of that case reveals that the really crucial fact was that the rules were required to state all the uses applicable to the assets of the society and they stated none in favour of members. On dissolution s.26 governed, and following on the absence of any provision in favour of members in the rules the members were not entitled to any interest in the assets. Hence the inescapable conclusion that the surplus assets had no owner and must go to the Crown. At the risk of repetition, the combined effect of the rules and the 1829 Act made it quite impossible for any argument to the effect that on dissolution the assets rested in the then members in some shares and proportions, which is the normal argument to

be put forward in such a case".[95]

The relevant principles of law, it is submitted that can be obtained from this method part of the judgment are:

(1) That the assets of the association are held only for the members(subject to any contractual rights or trusts declared in favour of third parties)

(2) That the members of a Society have complete control of these assets (unless there is provision to the contrary).

(3) That only existing members are entitled to the funds(unless there are rules to the contrary).

(4) That on dissolution one of two situations can arise:

(a) there are existing members of the society at the date of dissolution

or (b) there are no existing members - for example all the members have died.

In the first situation the fund must be distributed to the existing members, even in the absence of provision distributing

the assets of a society on dissolution.

In the second situation, the assets become bona vacantia.

In the light of these general principles, it is submitted that Goff J's decision to reject the analogy of the members' club cases as applicable to the facts before him is untenable.

He submitted three reasons for his decision: "first, it simply does not look like it. This was nothing but a pensions or dependent relatives fund not at all akin to a club. Secondly in all the cases where the surviving members have taken, with the sole exception of Tierney's case, the club, society or organisation existed for the benefit of the members for the time being exclusively, whereas in the present case as in Cunnack v. Edwards only third parties could benefit. Finally, this very argument was advanced and rejected by Chitty J in the Cunnack case at first instance ,and was abandoned on the hearing of the appeal."(96)

Walton J. criticism of the decision is as follows:

"If all that Goff J meant was that the purposes of the fund before him were totally different from those of a members' club then of course one must agree, but if he meant to imply that there was some totally different principle of law applicable one must ask why that should be. His second reason is that in all the cases where the surviving members had taken, the organisation existed for the benefit of the members for the time being exclusively. This may be so, so far as actual decisions go, but what is the principle? Why are the members not in control, complete control, save as to any existing contractual rights, of the assets belonging to their organisation? One could understand the position being different if valid trusts had been declared of the assets in favour of third parties, for example charities, but that this was emphatically not the case was demonstrated by the fact that Goff J recognised that the members could have altered the rules prior to dissolution and put the assets into their own pockets. If there was no obstacle to their doing this, it shows in my judgment quite clearly that the money was theirs all the time. Finally he purports to follows Gunnack v. Edwards and it will be seen from the analysis which I have already made of that case that it was extremely special in its facts, resting on a curious provision

of the 1829 Act which is no longer applicable". (97)

It is submitted that Walton J's decision covers all the points of ciritcism of Goff J's decision. However, it is wished to draw attention to one further and more fundamental difference between Cunnack v. Edwards and Re West Sussex. In the Cunnack case, all the existing members were dead, all the widows claims were satisfied. Thus, there were no existing members at the date of dissolution. In Re West Sussex, Goff J recognised the fact that there were existing members at the time of dissolution. However, there did not exist at this date any provision to distribute the surplus assets. It is submitted that what should have been done, was for the members to have applied to the Courts to distribute their assets. As it was observed earlier so long as there were existing members the assets should have been divided amongst them.(This was not a case where the members had disappeared).

Finally, it is observed that Goff J. held that the doctrine of resulting trust was inapplicable to the contributions of former and surviving members. He held instead that the money was put up on a contractual basis and not one of trust.

It is submitted that by holding that the members put their money on a contractual basis brings this case in line with the Re Bucks(2) decision. In Re Bucks(no.2) Walton J quoted Brightman J's finding on this aspect:

> "One matter is common ground. It is accepted by all counsel that a fund of this sort is founded in contract and not in trust, that is to say, the right of a member of the fund to receive benefits is a contractual right and the member ceases to have any interest in the fund if and when he has received the totality of the benefits to which he was contractually entitled. In other words, there is no possible claim by any member founded on a resulting trust. I turn to the question whether the fund has already been dissolved or terminated so that its assets have already become distributable. If it has been dissolved or terminated, the members entitled to participate would prima facie be those persons who were members at the date of dissolution or termination".(98)

The final question the Court had to decide in Re Bucks(No.2) was how the surplus assets had to be distributed; whether they had to be distributed in equal shares or alternatively in proportion to the contributions made by the members(existing at the date of dissolution).

Walton J. observed that judicial opinion "has been hardening and is now firmly set along the lines that the interests and rights of persons who are members of any type of unincorporated association are governed exclusively by contract, that is to say the rights between themselves and their rights to any surplus assets".(99)

"That being the case, prima facie there, can be no doubt at all that the distribution, if no other method is provided by the terms of the contract and it is not for one moment suggested here that there is any other method of distribution provided by the contract".(100)

He went on to say that when dealing with the surplus assets of a society, one was dealing with what happens at the end of the life of such associations. Thus the purposes for which such associations were

created for are at an end. Therefore, it is not suitable in such circumstances to look at the society when it was a going concern and thus distribute the assets according to the contributions each member made.

An argument was submitted that the members were entitled to the surplus assets in equity and that these assets were distributable among them according to equitable principles - " .. those principles should, like all equitable principles, be moulded to fit the circumstances of the case."(101) Walton J dismissed this argument, which he found ingenious with some humour. He noted ".... in one case it would therefore be equitable to distribute in equal shares, in another case it might be equitable to distribute in proportion to the subscriptions that they have paid, and I suppose, that in another case it might be equitable to distribute according to the length of their respective feet, following a very well known equitable precedent. Well, I completely deny the basic premise."(102)

He concluded by authoritatively stating that "the members are not entitled in equity to the fund: they are entitled at law."(103)

Conclusion:

From the discoveries of this case certain general submissions which bring to light the question of the 'amalgamation of unincorporated societies will be proposed:

(1) An amalgamation is a fundamental or 'organic change' in an unincorporated association. Thus, for such a change to take place the general provisions relating to the alteration of the rules cannot be used to effect an amalgamation.

(2) The objects of a Society and the property of a Society are of principal importance in an amalgamation. This is because, these Societies may have been established to acquire funds for a particular purpose(such as in Re Bucks and Re West Sussex) or the association may have been created for certain ideological purposes(such as in Vick v. Toivonen) or it may have been created for a combination of both reasons (The Free Church case). Because of the subjective element of why a particular group of people associate together and

agree to be contractually bound, the Courts seem to jealously, protect the interests of the minority if they allege a departure from a fundamental purpose of the Society on its amalgamation with another body.

(3) The amalgamation of a Society with another will normally lead to its dissolution. Thus, the same rules that apply on the dissolution of unincorporated associations and the distribution of surplus assets, apply in the case of amalgamation. Re Bucks (2) is illustrative of the modern trend of judicial opinion in relation to the question of the dissolution of a society and the distribution of its surplus assets (on dissolution).

(4) The "omnipresence" of contractual rules governing the parties and their various activities.

Finally, it should be observed that the questions this study has dealt with relate to some of the fundamental and more important areas of the law in relation to unincorporated associations. A study, such

as the present one, was necessary to give a global appreciation of the subject because although the various issues raised have been considered under the individual aspects of the law in relation to unincorporated associations, "amalgamation", merited attention as a particular aspect of the law of unincorporated associations.

Footnotes:

(1) Atkin: The Dissolution of Unincorporated Associations (LL.M. Thesis V.U.W. 1976)

(2) ibid, p.x

(3) ibid, pp.x-xi

(4) General Assembly of Free Church of Scotland v. Over-Toun(1904) A.C. 515

(5) Polish Veterans' Corps v. Army, Etc., Veterans(1978) 20 O.R. (2d) 331 at 337.

(6) Orchard et al v. Tunney (1957) 8 D.L.R. (2d) 273 at 281.

(7) Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society

Thompson v. Holdsworth and others(No.2)(1979), All E.R. 626 at 628

(8) ibid, at 629

(9) Supra, f.n. (1)

(10) Atkin: Unincorporated Associations - Distribution of Surplus Assets on Dissolution (1979) 8 NZULR 217

(11) (a) Re Walter's Settlement, Royal Exchange Assurance Corpn. v. Walker (1935) Ch.567 at 583;

(b) Re South African Supply & Cold Storage Co. Wild v. South African Supply and Cold Storage Co. (1904) 2 Ch. 268 at 287.

(12) ibid, 11(a)

(13) Citizens & Graziers' Life Assurance Co. Ltd. v. Commonwealth Life (Amalgamated) Assurances, Ltd. (1934), 51 C.L.R. 422 at pp.455, 456

(14) Re Bank of Hindustan, China & Japan Ltd. Higgs' Case (1865), 2 Hem. & M. 657 at pp.666,667.

(15) idem

(16) Keys and another v. Boulter and others (No.2) Williamson and another v. Bennett and others (1972) 2 All E.R. 303.

(17) idem.

(18) ibid at p.304

(19) It is submitted that the constitution of such associations is normally a written one. However, if there does not exist a written constitution, it will be for the Courts to construe the terms that the members had agreed upon as binding and that would govern them, when forming the association.

(20) Lloyd. The Law Relating to Unincorporated Associations (1938)

(21) ibid, p. 99

(22) idem

(23) idem

(24) (a) Harrington v. Sendall (1903) 1 Ch. 921

(b) Free Church of Scotland, supra

(25) As Blair J.A. said: "In the absence of provisions in the rules unanimity is required where organic and fundamental changes are proposed. Examples of such changes include amendments to the constitution ... or dissolution of the association....." "The Courts have been particularly strict, in the absence of the rules permitting majority action, in requiring unanimity where the property rights of members are affected either by proposals of a majority to dispose of the association's property, or to secede from a parent organization."

Supra, f.n. 3. Per Blair J.A. at p.338.

(26) Re Int'L Nickel Co., of Canada, Ltd. 1 D.L.R. 381 at pp. 395-6.

(27) Supra, f.n. 3.

(28) Supra, f.n. 3 per Wilson J.A. p.344 at p. 345

(29) Supra, f.n. 3 per Blair J.A p.331 at p. 339

(30) Supra, f.n.3, per Blair J.A. p.331 at p. 340

(31) (1970), I.D.R. 129 at p.155, 7 D.L.R.(3d.) 657 at p. 683.

(32) See dissenting judgment of Dubin J.A. at p.331 However, it must be noted that even he agrees that " the terms Unanimity in this context may not be an absolute one". p. 331. For submission that requirement was met see principally Blair J.A. at p.333.

(33) Supra, f.n. 3. Per Wilson J.A. at p.346

(34) Craigdaillie v. Aikman (1813) I Don, at p.16

(35) Supra f.n. (21)(b). Earl of Halsbury L.C. p.661 at pp.613, 614.

(36) Orchard et al. v. Tunney (1957) S.C.R. 436 at p.441; 8 D.L.R. (2d) 273 at p.278.

(37) idem.

(38) (1907) 2 ch.1

(39) ibid, Per Cozens-Hardy M.R. p.6 at p.7.

(40) Morgan v. Driscoll (1922) 38 T.L.R. p.251

(41) ibid, Per Sargant J. p. 252

(42) Supra f.n. 21(b) Per Lord Lindley at p.695

(43) idem.

(44) Heine v. Schaffer (1905), 2 W.L.R. 310 (Man)

Re Trustees of Westminister Congregation Smith's Falls v. Ferguson (1924), 27 O.W.N.52

(45) Lloyd, Supra, f.n. (17)

(46) Baker v Jones et al (1954) 2 All E.R. 553, at p.558.

(47) See Polish Vererans' Corps. case, Supra f.n. (3)

(48) Supra, f.n. (35)

(49) Supra, f.n. (37)

(50) Supra, f.n. (37) per Sargant J. p. 252

(51) idem.

(52) Supra, f.n. (23)

(53) Supra, f.n. (28)

(54) ibid, per Evans, J.A. at p. 136 O.R., p.664 D.L.R.

(55) Supra, Atkin f.n. 1 at p. 50

(56) Supra, f.n. (39)

(57) Vick v. Toivonen (1913) 12 D.L.R.

(58) ibid, per Maclaren J.A. 300 at p. 302

(59) ibid, per Maclaren J.A. 300 at p.301

(60) 43 Harv L Per 983 at p. 986

(61) Supra, f.n. 21(b) per Lord James at p.655

(62) ibid, per Lord James at p. 656

(63) ibid, per Earl of Halsbury L.C. at p.627

(64) ibid, per Earl of Halsbury L.C. at p. 628

(65) idem

(66) Please refer to Atkin f.n.(1) and f.n.(16) for detailed study on dissolution and distribution of surplus assets. I wish to acknowledge that I have used these texts extensively for this part of the paper.

(67) (1979) A.C.L., Digest No.606

(68) idem

(69) Supra, f.n. 16 at p. 219

(70) Re Kaiapoi Woollen Mills Employees' Welfare Society, Gray v. Kaiapoi Textiles, Ltd.(1976). Unreported, Christchurch Registry No.A.211/74 at p.9.

(71) Supra, f.n. (11) See per Megarry J. at p.304.

(72) (To be referred to as Re Bucks)
Re Bucks (1978) 2A 11 E.R. 571

(73) (To be referred to as Re Bucks (No.2) Re Bucks(No.2) Supra, f.n. (7)

(74) (To be referred to as Re West Sussex)
Re West Sussex (1970) 1 All E.R. 544.

(75) (1816) 1 Mer. 572.

(76) Supra Atkin f.n. (16) at p.221

(77) Supra, Atkin f.n.(1) at p. 157

(78) Re Printers' and Transferrer's Amalgamated Trades Protection Society (1899) 2 ch., 184, followed in Re Lead Company's Workmen's Fund Society (1904) 2 ch 196.

(79) "A resulting trust arises where the full beneficial interest in a grant had not been disposed of and where an implication can properly be found that it was the intention of the Settlor that in the event of an unexhausted fund, it should revert or result to himself. The most common example of this is where a gift is made for a particular purpose which fails. If the gift is not charitable then is(81c) seems likely that the Courts will adopt the attitude that the gift should revert to the donor (In re the Trusts of the Abbott Fund (1900) 2 ch.326). Where however it prima facie appears that the donor has parted with his interest in the property absolutely, as with persons who contribute anonymously to special collections, then any surplus will not revert to the donors but will go to the Crown as bona vacantia". Supra, Atkin, f.n.(1) p.158.

(80) Supra, f.n.(69) and f.n. (70); Re St. Andrew's Allotment Association Trusts (1969) I.W.L.R.299; In Re Sick and Funeral Society (1973) ch.51.

(81) Supra, f.n. (1) at p.153

(82) Re West Sussex, Supra, 546 at pp.547, 548.

(83) The general policy on the part of the Crown in such cases has been to intervene as little as possible and in fact be in favour of the parties being able to divide the surplus assets among themselves. However it should be noted that there are instances when the Crown will take an active part in the proceedings as in Re Bucks (No.2)

(84) Re Bucks (No.2) Supra, f.n. (7) at 636

(85) ibid at p.637

(86) ibid, Per Wilson J. at 633

(87) idem.

(88) Re Bucks (No.2)

626 at 626, 627.

(89) Re Recher's Will Trusts, (1971) 3 All E.R. 401 at 407 - 408.

(90) Re Bucks (No.2), supra, 626 at p.629

(91) See Baden Fuller, The Law of Friendly Societies (4th Edn.) 926), p.186; quoted in Re Bucks (No.2) supra at p.628.

(92) idem.

(93) (1896) 2 Ch. 697.

(94) ibid, 679 at 687-689.

'Section 3 makes it obligatory on every society established under the Act, before confirmation of the rules by justices as afterwards directed, to declare, by one or more of the rules to be confirmed, all and every the intents and purposes for which the society is intended to be established, and by such rules to direct all and every the uses and purposes to which the money which shall from time to time be subscribed, paid or given to or for the use or benefit of such society, or which shall arise there from, or in any wise shall belong to the society, shall be appropriated and applied, and in what circumstances any member of the society or other person shall become entitled to any part thereof. Sect.8 provides for the rules, when confirmed, becoming binding on the members and officers of the society and the several contributions thereto.'

(95) Re Bucks (No.2), supra, 626 at p.631

(96) Re West Sussex, supra, 546.

(97) Re Bucks (No.2) supra, 626 at p.636.

(98) ibid, at p.633

(99) ibid, pp.636-637.

(100) idem.

(101) idem.

(102) idem.

(103) idem.

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