Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of England v. *Webb, from the Supreme Court of Victoria; delivered 3rd August* 1898.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR HENRY STRONG.

[*Delivered by Lord Hobhouse.*]

The formal Appellant in this case is the officer and representative of the Scottish Provident Institution which is the real Appellant. It claims to be exempt from Income Tax, which the Respondent, who is Commissioner of Taxes, seeks to impose upon it. The income in respect of which tax is claimed proceeds from money lent on the security of land in Victoria. The Appellant Company has no other property in the Colony, nor does it carry on business there. Its Head Office is in Edinburgh. The question turns entirely on the construction of the Income Tax Act 1895 and its application to the business of the Company.

The tax is imposed by Section 5 of the Act on all income derived by any person from the produce of property within Victoria. By the definition clause "person" includes every Company except a Company whose head or principal office or principal place of business is in Victoria. It is not disputed that the Appellant Company falls within the terms of Section 5.

Section 7 enacts that there shall be exempt from Income Tax all income derived or received

by persons distributed under 12 heads. The Appellant claims to fall under Head (*e*) which is as follows :—" All trusts societies associations insti- " tutions and public bodies not carrying on any " trade or not being engaged in any trade for the " purposes of gain to be divided among the share- " holders or members thereof." By the definition clause " trade " includes every profession vocation trade business calling employment and occupation. The Supreme Court has held that the Company carries on business for the purpose of gain within Head (*e*) so far as its operations outside Victoria are concerned, though it merely lends money on mortgage in Victoria ; and that it is not exempted. The appeal is from that decision.

The Company was started under a deed of constitution registered in the Books of Council and Session on the 8th June 1837. Its objects as there laid down are correctly stated in the Appellant's case thus :

" (1) To form a common fund on which provisions by way " of capital sums and annuities should be chargeable upon the " failure of lives and upon survivorships by means of " contributions corresponding to the value of such provisions to " be paid by or on behalf of the persons becoming entitled " thereto.

" (2) That whatever surplus might eventually arise upon " such contributions should be reserved for the benefit of " and be equitably apportioned among the persons, or the " representatives or nominees of the persons, from whose " contributions such surplus shall have arisen."

Article 27 of the deed provides that septennial accounts shall be taken and that the surpluses which are then found to have arisen on the common fund shall be available to the members by additions to the sums payable on their policies. From this benefit however certain classes of policies are excluded. In terms of the deed no person can effect any form of assurance with the Company without becoming *ipso facto* a member.

This is an ordinary type of Mutual Insurance Company, on which footing it appears that

the business was conducted for several years. In the year 1848 the Company was incorporated by Act of Parliament and its business was put upon a new footing. It became "entitled to carry on "the business of effecting assurances on lives "and survivorships, purchase and sale of "annuities and of reversions, granting endow-"ments, receiving money for investment and "accumulation, and in general for carrying on "all the business which now is or may come to "be connected with a life assurance society in all "the various branches thereof."

From that time to this the business of the Company has been that which is indicated in the Act of 1848. It is the ordinary business of a Life Assurance Society, and in addition that of a Society for the purchase and sale of annuities and reversions.

When evidence was taken for the trial of the case in the first Court, the County Court of Melbourne, there was a great deal of controversy with reference to gains made from the forfeited policies of members, from grants of annuities to members, and from the classes of policies granted to members on the principle of non-participation in the growing surpluses. All those are parts of the original constitution. Their Lordships pass them by, not finding it necessary to examine whether or no they constitute a trade or business carried on for gain to the Company which is to be divided among its members. Of course it happens, and indeed it is the very principle of a Mutual Insurance Company, that some members receive more than they pay while others pay more than they receive. It is sufficient here to say that in 1848 the Company became one of those which carry on business with strangers for gain to the Company as a whole. It has granted assurances to persons who are not its members; and though it is said that this kind of business has only been done with other Insurance Com-

panies and by way of guarantee, it is done, and on terms calculated for profit. It has also trafficked to some extent in reversions. That is carrying on business for gain, and the gain is to be divided among the members of the Company. It is urged that the additional business of a general kind is very small; and compared with the magnitude of the other transactions it is so; but it is not unsubstantial, and it is enough to prevent the Company from bringing itself within the terms of Head (*e*).

It should also be noticed that the next Head of Exemption (*f*) is expressed as follows: "Any Mutual Life Assurance Company whose "head or principal office or principal place of "business is in Australia." Certainly the inference to be drawn from that exemption is that a Mutual Insurance Company which, like the present Appellant, has not any place of business in Australia is not to be exempt. It is right to be cautious in laying stress on an inference of this sort. But it is at least not improbable that the framers of the Income Tax Act may have looked upon all Companies whose business it is to make money bargains for the benefit of their members, as being Companies which carry on business for gain to their members; and the way in which they have dealt with Mutual Insurance Companies under Head (*f*) lends countenance to the supposition that they did so think.

Another point of much more importance was raised in the course of the argument and discussed at the Bar, though it does not seem to have been raised in the Court below; and that is, whether the trusts, &c., mentioned in Head (*e*) can mean trusts, &c., not operating in Victoria. It seems very strange that the Victorian Parliament should desire to forego income tax in favour of a Scotch Institution which has no connection with Victoria except in its character of a property-owner there. If a

party of friends in England employ a common agent in Victoria to put out the money of each on mortgage, each would be taxed. If then they associate themselves for the purpose of doing so, is it intended that they shall escape tax? And yet they would be an association simply for investment, and not trading for gain.

Moreover there are other Heads of Exemption framed without regard to locality. Head (*c*) exempts "All bodies formed solely for the "purposes of religion." Head (*d*) "All "registered friendly societies provident societies "building societies and trade unions." Head (*h*) "Any mining company." It can hardly be that the Parliament of Victoria has such great regard for social and industrial combinations and efforts all over the world, that it should offer to the Jesuits' Society in Rome, to the Amalgamated Engineers and the Athenæum Club in England, and to the Witwaterstrand Company in Africa, exemption from income tax if they choose to invest their funds in Victorian land, or in mortgages upon it, or, it would seem, in the purchase of Government stock. It would require a much clearer expression than can be found in the general words of these Heads of Exemption to induce their Lordships to infer any such intentions on the part of the Victorian Legislature. It seems to them much more reasonable to suppose that in framing Heads (c) (*d*) and (*h*) the Legislature was speaking of bodies acting in or for Victoria, and the same reason applies to Head (*e*).

Their Lordships therefore come to the same conclusion with the Court below. They will humbly advise Her Majesty to dismiss the appeal, and the Appellant must pay the costs.