

ALEXANDER E. MCPHERSON AND	} APPELLANTS;
OTHERS (DEFENDANTS)	
AND	
GRAND COUNCIL PROVINCIAL	} RESPONDENTS.
WORKMEN'S ASSOCIATION (PLAINTIFFS)	

1914

*Feb. 17.

*May 18.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Benevolent association—Grand council constitution—Incorporation of subordinate lodge—Dissolution—Disposition of property.

The charter of the respondent association provides that upon the dissolution of a subordinate lodge all its property shall vest in the Grand Council to be applied, first, in payment of debts of the lodge and the balance as deemed best for the general interests of the order. There was also a provision allowing any subordinate lodge to become incorporated, and in 1890 Pioneer Lodge No. 1 was incorporated and all its property vested in the corporate body. In 1908 a vote was taken on the question of amalgamation with a kindred society for which Pioneer Lodge was overwhelmingly in favour. The amalgamation was rejected by the Grand Council and the lodge then surrendered its charter, practically all of its members joining the other body.

Held, affirming the judgment appealed against (46 N.S. Rep. 417) that the incorporation of the subordinate lodge did not constitute it an independent body; that it still remained a constituent part of the Association; that the surrender of its charter was a dissolution within the meaning of the provision in respondents' charter above referred to; and that its property on such dissolution became vested in the Grand Council for the purposes mentioned.

Leave to appeal to the Privy Council was refused, 4th Aug., 1914.

APPEAL from a decision of the Supreme Court of Nova Scotia (1), varying the judgment at the trial in favour of the plaintiffs.

*PRESENT:—Sir Charles Fitzpatrick C.J., and Idington, Duff, Anglin and Brodeur JJ.

(1) 46 N.S. Rep. 417.

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The facts affecting this appeal are stated by Mr.

Justice Russell in the court below as follows:—

The Provincial Workmen's Association consists of a number of lodges in various parts of the province, or of the members of the various lodges; it makes no difference which for the purposes of this appeal. The scheme of incorporation is that a Grand Council, which is the governing body of the Association, was incorporated by Act of the Legislature in 1882 "for the purpose of managing the pecuniary affairs of the Association" and for the promotion of the objects of the Association. Subordinate lodges might become incorporated upon the vote of two-thirds of the members present at a regular meeting, and amongst other conditions the filing in the office of the Provincial Secretary of a certificate of its good standing over the hand of the Secretary of the Grand Council. The Grand Council has power to adopt such constitution and by-laws for its government, and subordinate lodges as the lodges shall deem necessary not being inconsistent with the Act or laws of the province, and such subordinate lodges are to have the like powers subject to the approval of the Grand Council. There is a little confusion of idea manifest in this provision, but the general purpose of maintaining the subordinate position of the lodges is sufficiently indicated nevertheless. Upon the dissolution of any subordinate lodge, its property not theretofore disposed of by the lodge in accordance with its by-laws, is to be forthwith vested in the Grand Council to be applied, first, in payment of any debts of the subordinate lodge and the balance, if any, in such manner as the Grand Council of the Association may deem best for the general interests of the order in the province.

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Pioneer Lodge No. 1, of the Association, was incorporated under the provisions of the above cited Act, and although the validity of the proceedings seems to have been attacked in the trial before Mr. Justice Graham no point was made of that sort on the argument of the appeal. But in 1890 an Act of incorporation was passed by the Legislature which, it was contended, created a new juristic person with a new name. The only ground for this contention is what seems to have been a clerical mistake in the substitution of the term "workingmen" for "workmen" in the name of the corporation. The fourth section, conferring power to adopt a constitution and by-laws, expressly states that the exercise of this power is to be subject to the approval of the Grand Council of the Provincial Workingmen's Association, meaning obviously the body incorporated by the Act of 1882, and shewing clearly that the Act of 1890 did not create any new corporation, but merely continued the corporate existence of the subordinate body under the new provisions, in so far as they were new, contained in the Act of 1890.

There was no new organization of the lodge under the Act of 1896. The lodge continued its work with the old organization, and treated the Act as a mere continuation of the existing incorporation.

Section 2 of the Act vests the real and personal property of the lodge in the corporation "created" by the Act, and provides that the corporation may *inter alia* "sell, mortgage, lease, convey or otherwise dispose of the same for the benefit of the lodge."

Sometime in or before the year 1908 a movement was started to amalgamate the Provincial Workmen's Association with another body, the United Mine

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Workers of America, and a poll was held which was without statutory authority and was, of course, a wholly unofficial and informal proceeding. The result was that a majority of the members who voted favoured the amalgamation, but eighteen of the lodges voted against the amalgamation, while only seventeen voted for it, and the lodges all having, I suppose, the same representation on the Grand Council, the vote of the latter body was opposed to the amalgamation. Pioneer Lodge voted by a large majority in favour of the amalgamation, 539 for and only 39 against, with 6 rejected votes. The poll was held on June 24th, 1908, and the result announced by the returning officer on July 6th.

The vote of the Grand Council, I infer, was taken at the meeting in September, 1908.

In pursuance of the policy adopted by the lodge, as I have no doubt, and for the purpose of carrying out a policy of secession, the trustees of the lodge in October, 1908, conveyed the real estate to one David Colwell in trust for the grantors, and on the express condition that the grantee should grant and reconvey the said land and premises to the said McPherson, Blue and Ross (the trustees who conveyed to Colwell), their successors and assigns on demand. The money of the lodge, amounting to upwards of twenty-seven hundred dollars, was also transferred to Colwell on the same trust. The lodge shortly after, in December, 1908, by unanimous resolution, returned its charter to the Secretary of the Association, and its members proceeded to form themselves into a union of the United Mine Workers.

Ralston for the appellants.

Newcombe K.C. and *Mellish K.C.* for the respondents.

THE CHIEF JUSTICE.—I would dismiss this appeal with costs.

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EDINGTON J.—The respondent is a trade union incorporated by chapter 74 of the statutes of Nova Scotia, 1882. And appellant, the Pioneer Lodge No. 1 of Provincial Workmen's Association, is or was a subordinate lodge of the respondent. Of the other appellants some are officers and others alleged trustees of a hall built for lodge purposes and a sum of \$2,700, which was once the property of said subordinate lodge.

The only question raised herein deserving of serious consideration is whether or not section 7 of the Act of 1882, incorporating respondent, entitled it to claim said real and personal property.

The said section reads as follows:—

7. Upon the dissolution of any subordinate lodge so incorporated, the property held by it at the time of the dissolution which shall not have been disposed of by the lodge in accordance with the by-laws, shall forthwith be vested in the Grand Council of the Provincial Workmen's Association, to be applied first in the payment of any debts or liabilities of such subordinate lodge, and the balance, if any, in such manner as the Grand Council of the Provincial Workmen's Association may deem best for the general interests of the order in this province.

The Pioneer Lodge No. 1 Provincial Workmen's Association is the corporate name of said appellant as it appears in section 1 of the Act of 1890, ch. 135, incorporating nine persons named,

and such other persons as are and shall become members of the lodge hereby incorporated according to the rules and by-laws thereof,

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created a body corporate, under the name of Pioneer Lodge No. 1, Provincial Workingmen's Association, for the purpose of holding the property and managing the affairs of the lodge.

The question raised herein is whether or not upon the facts in evidence herein the property come to the hands of this corporate body has by virtue of the first quoted section passed to the respondent.

Prior to this latter Act of incorporation there had been a lodge formed before 1882 named "The Pioneer Lodge No. 1, Provincial Workmen's Association," and at all events from 1882 till the time of this latter Act of incorporation it was in actual affiliation with respondent as a subordinate lodge of that association.

The respondent would seem at the trial to have assumed that this Pioneer Lodge No. 1, and that incorporated in 1890 were identical and hence there does not seem to have been adopted the simple methodical plan of proving that identity by books and documents.

The appellant, McPherson, says in his evidence as follows:—

Q. You are a member of Pioneer Lodge Number 1 ? A. Yes.

Q. It was the lodge originally organized in 1879 ? A. Yes.

Q. As Pioneer Lodge Number 1 ? A. Yes.

Q. When did you come there ? A. About 1884.

Q. From that time on until December, 1908, you were a member of Pioneer Lodge ? A. Yes.

Q. You are one of the Trustees ? A. Yes.

Then one Piggott tells of his connection with Pioneer Lodge No. 1, for a period of twenty-six years, beginning in 1882, and says as follows:—

Q. You know in 1890 the Act where the lodge was given power to sue for its dues ? A. Yes. I think Pioneer made that request and it was brought up in Grand Council.

Q. Did you have any new organization under the Act ? A. No, just went on as we went before.

Q. I understand the object of the Act was to sue for dues ? A.
(Objected to) That was the main object.

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There is a certificate in evidence of date 1882, apparently from the Grand Secretary, that Pioneer Lodge No. 1, is in good standing in Provincial Workmen's Lodge.

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Mr. Justice Graham, the learned trial judge, found the lodge to have been incorporated in 1882 by virtue of the powers in the Act of that year.

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It does not seem to me necessary to pass any opinion upon that question further than to say that the presumption, from its long continued relation with the parent association, is most cogent in favour of its incorporation by virtue of section 3 of the Act of incorporation in 1882.

It seems to me that Pioneer Lodge No. 1, of which we hear in 1882 and earlier was the same which then became affiliated with respondent and, as a subordinate lodge in that association, so continued down to the time that the real and personal property held by its trustees had been directed, in the way complained of, to be conveyed or transferred to the appellant Colwell.

That being the case I do not think it makes any difference whether or not there were two incorporations of the same body for that is what in my reading of above, partly quoted, section one, of the Act of 1890, it comes to.

I need hardly say that the slight difference between the name by which it was incorporated by the special Act of the legislature and that used in the transaction of 1882, by substituting the word "workmen" for "workmen" can in face of such facts affect the determination of this case.

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The continuous relation between the parent association and the subordinate lodge cannot be affected by such trifles as that. Nor do I think that the Act of incorporation of 1890 either impaired or put an end to the relation that had been created by the affiliation. And the argument for appellant derived from the omission in that Act of incorporation of anything relative to what was to be done with the property held by the corporation when it ceased to exist by reason of having no longer any members to keep it alive, seems to me entirely wanting in foundation.

What the lodge wanted and hoped for from legislation was to give its acts relative to property while living some force and effect. When dead and its course had ended there was no need for any provision to dispose of its remaining property.

That had already been provided for by the legislature in the terms of section 7 above quoted from the Act incorporating the parent association. The argument to be derived from the omission to provide in the later incorporation of 1890 seems entirely the converse of that put forward by appellants.

It seems to furnish, further, such cogent evidence of the presumption I have adverted to, as to make it unanswerable.

As the property was by the terms of section 7 to vest in the respondent in the events which have happened, there seems an end to the contention set up by this appeal.

It was admitted by counsel for appellant that every member of this lodge had joined another association in breach of the constitution; and that to my mind *ipso facto* dissolved the corporation and so brought it within the meaning of the apt term "dis-

solution" used in section 7, and rendered that section operative.

The appeal should be dismissed with costs.

DUFF J.—I think the fallacy in Mr. Ralston's able argument lies in the assumption that Pioneer Lodge as a corporate body is a body independent of the Grand Council and of the Order as a whole, having a "*but organisé*" of its own. I think that cannot be sustained. As I read the statutes, the incorporation of the Grand Council and of the individual lodges is merely for the purpose of machinery. The incorporated subordinate lodge as a corporate body has its powers limited by the objects of the incorporation, the grand object being to serve the purposes of the subordinate lodge itself as a member of the order. Any attempt to deal with the property of the lodge inconsistently with this object is in my judgment *ultra vires*. The transaction in question was, as regards the incorporated body, an *ultra vires* transaction.

I think the Grand Council as representing the order as a whole has a sufficient interest to entitle it to sue.

ANGLIN J.—I agree with the disposition made of this case in the provincial courts, and, speaking generally, with the conclusions stated by Graham E.J., and Russell J.

I cannot regard the statute of 1890 as meant to confer upon Pioneer Lodge, which had been incorporated as a subordinate lodge under the Act of 1882 (which also incorporated the Provincial Workmen's Association) a status independent of that association of which it was a constituent part. The reference

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in the statute itself to the Grand Council — admittedly the executive body of the Provincial Workmen's Association — and the subsequent conduct of Pioneer Lodge, make it abundantly clear that it was always intended and understood that the lodge should retain its subordinate position in the association with all the rights, duties and liabilities which that position entailed. Among these were the liabilities and correlative advantages resulting from the provisions of section 7 of the Act of 1882. It is to me inconceivable that the Legislature could have intended to do anything so palpably unfair to the other lodges of the association as to permit Pioneer Lodge to enjoy all the advantages and benefits of membership in the association and at the same time to be free from the obligations and restraints which such membership imposed upon other lodges.

I am satisfied that what occurred in connection with the surrender of its charter by Pioneer Lodge to the Grand Council was equivalent to dissolution of the lodge within the purview of section 7 of the Act of 1882, and that on such dissolution happening the trustees of the lodge held its property for transfer to the Grand Council to be by it dealt with and disposed of for the purposes stated in section 7. Having sought and had the benefit of membership in the Provincial Association the members of Pioneer Lodge must accept the countervailing hardships, if they be such, which that membership imposes. They should have counted the cost of abandoning their membership in the defendant association before deciding to do so — or better still, perhaps, before joining the association.

I would for these reasons dismiss this appeal with costs.

BRODEUR J.—I am of opinion that this appeal should be dismissed with costs for the reasons given by Mr. Justice Russell in the court below.

Appeal dismissed with costs.

Solicitor for the appellants: *J. L. Ralston.*

Solicitor for the respondents: *D. A. Cameron.*

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