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Harold A.J. Ford
University of Melbourne

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DISPOSITIONS OF PROPERTY TO UNINCORPORATED
NON-PROFIT ASSOCIATIONS†*Harold A. J. Ford**

IN present-day society much stress is placed on the institutional and corporate, but it cannot be said that legal systems with a common law basis provide clear rules regulating all types of group activity in which an individual may engage. For two forms of group activity, the partnership and the incorporated group, the law is comparatively well established on distinctive lines but it has failed to provide a settled place for the unincorporated group not organized for profit.

The term unincorporated non-profit association embraces an extensive range of groups. Within this range are wide variations: in terms of purpose, from the social club concerned simply with securing comfort and prestige for its members to the charitable association concerned also with benefits for non-members; in terms of impact upon society, from the small formally constituted dining club with little or no impact to the powerful trade union whose operations may have significant effects on a nation's economy.

Traditionally, the common law has attempted to answer the legal problems raised by these groups by regarding them simply as aggregations of individuals and endeavoring to resolve any controversy concerning them simply by reference to rules governing co-ownership, contract and agency. Any rules specially developed in regard to them are to be found in the interstices of law developed for individuals. At one time there were policy reasons why this should be so. Developments in England, discernible as early as the reign of Edward III, established that the capacity to act as a group in the legal system did not follow from the fact of being a group, but from a royal grant of the right to be a group.¹ This theory, the franchise theory, which assisted the assertion and maintenance of royal power, produced the common law rule that where a society which had not been incorporated presumed to act as a corporation the members would be guilty of a contempt of the

† This article is being published in two instalments.—Ed.

* Senior Lecturer in Law, University of Melbourne; LL.B. 1948, LL.M. 1949, University of Melbourne.—Ed.

¹ GOEBEL, *THE DEVELOPMENT OF LEGAL INSTITUTIONS* 583-610 (1937).

monarch, inasmuch as they had usurped his prerogative.² In such a climate of thought the royal courts would not be disposed to develop legal techniques to assist the unincorporated groups in the matter of holding property and other matters.

In 1802 Lord Eldon thought "it singular that this Court should sit upon the concerns of an association, which in law has no existence. . . ."³ His refusal to give legal significance to the fact that an association existed for a continuing group enterprise was due to an apprehension that by so doing he would be recognizing as a legal unit something which was neither a natural person nor an artificial person. The category of artificial persons was closed by reason of the policy which regarded group existence in law as a privilege to be obtained only by grant from the monarch.

The political reasons for courts abstaining from giving legal significance to the fact of association in unincorporated groups have waned. That courts now give legal significance to that fact is borne out by their decisions in a number of situations. The definition of the rights of individual associates in the association property upon which courts have embarked is based on a recognition that membership of a definite group has legal consequences.⁴ Decisions which recognize that formation of an association creates a new purpose to which property may be devoted by something akin to a purpose trust point in the same way.⁵ In the field of remedies for wrongful expulsion from associations the notion that the court in giving such remedies is merely enforcing a contract or protecting the property rights of an individual is rendered less plausible as the courts readily imply contracts or expand the concept of property specially for this purpose.

Despite these developments which should accustom courts to doing what Lord Eldon thought singular, modern courts sometimes refuse to recognize that an unincorporated association may be legally significant on the ground that it is not a legal person either natural or artificial. They have thought that by treating it as significant in law they would be improperly adding to a category

² *R. v. Webb*, 14 East. 406, 104 Eng. Rep. 658 (1811); *Duvergier v. Fellows*, 5 Bing. 248 at 268, 130 Eng. Rep. 1056 (1828); *Blundell v. Windsor*, 8 Sim. 601 at 613, 59 Eng. Rep. 238 (1837).

³ *Lloyd v. Loaring*, 6 Ves. Jr. 773 at 778, 31 Eng. Rep. 1302 (1802). Members of a lodge of Freemasons who sued to recover certain goods of the society almost had their bill dismissed because it went too far in disclosing their corporate character. Lord Eldon, however, relented and allowed them to amend their bill so that it would show that they were suing as individuals on behalf of a number of individuals with a joint interest.

⁴ Pages 73-75 *infra*.

⁵ Text beginning at note 83 *infra* [to be published subsequently—Ed.].

which in their view is closed. A legal system by its very nature requires units upon which it can bring its influence to bear in the business of regulating relations. These units have often been called legal persons. The expression is not a happy one. It is capable of conveying the impression that the only real legal unit is the human being and that all other legal units are artificial. In truth, all legal units, including human beings, are artificial. Law being an instrument of social regulation it very often has human beings as its units but there may be occasions when the legal system must determine that something which is not a human being is a legal unit. Oft-quoted examples of this are ships and idols.⁶ When human beings act in concert and the legal system approves the group enterprise to the extent of being prepared to provide facilities for its fulfillment it may, for the more effective provision of these facilities, find it convenient to bracket the collection of individuals behind a smaller unit. Here a mere abstraction, the idea of an entity arising from the association, is treated as a unit. As has been often remarked, the narrowness of the range of purposes for which some human beings, such as slaves and persons civilly dead, have been regarded as legally significant, points to the notion that a legal system can conceivably refuse to recognize a human being as a legal person or unit of the legal system.

To assert that legal personality is not primarily predicated upon human personality does not involve denial of the proposition that law is primarily concerned with regulating the affairs of human beings. The selection of legal units which are not human beings is simply part of a technique whereby that end may be attained. Legal systems are theoretically free to ascribe significance as legal units to things or ideas as required.

For a long time the franchise theory of corporate personality restricted this freedom in Anglo-American law. Changes in the procedure for obtaining incorporation such as those made in England in the nineteenth century reflect the disappearance of the political reasons for this restriction and render the franchise notion an inadequate basis for failure to give unincorporated associations facilities in the law adapted to their needs. Incorporation is now a formal administrative process in which there is so little discretion that it appears to be more a right than a privilege.⁷

⁶ *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*, L.R. 52 Indian App. (P.C.) 245 (1925).

⁷ PATON, *JURISPRUDENCE*, 2d ed., 334-335 (1951).

A question may be raised as to whether any attempt to improve the facilities of the legal system for unincorporated associations should be made in view of the existence of a policy that all groups should be encouraged to become incorporated. A legal system which was concerned with its own smooth working as a primary aim might carry such a policy to the extent of neglecting unincorporated associations altogether. But ease of operation cannot be the primary aim of the legal system. The complexity of modern business is such that incorporation must involve state registration in the interests of certainty. To require all groups to register before obtaining any facilities from the legal system might be regarded as so authoritarian as to be unacceptable to all but a few political philosophies. The decisions of the courts indicate that this harsh view is not taken and that unincorporated group life is recognized as a normal facet of modern society. To attempt to find ways of improving the facilities given by the legal system to unincorporated associations is not necessarily to attempt to give them all the advantages of incorporation. Too often courts have been willing to assist unincorporated associations without appearing to want to do so. They have often assisted them under the pretense of assisting individuals. This has led to uncertainty and needless inconsistencies. The aim of this article is to examine the ways in which courts in common law countries have given this assistance and the problems they have encountered in regard to property transactions.

The simplest method of devoting property to an association from the point of view of the donor is to give the property to trustees to hold upon trust for the existing members of the association. Such a trust is for beneficiaries who are certain and it will not offend any aspect of the law concerning perpetuities if its commencement is not unduly delayed. From the point of view of the association, however, such a disposition vests the equitable interest in the existing members only and changes in membership will need to be supported by assignments. As will be seen later the incidents of equitable co-ownership as associates which the courts have worked out differ from those which attach to beneficiaries of a trust who are otherwise unassociated. Whether this difference in incidents is so great as to prevent a trust for the existing members from really being a trust for individuals will be one aspect of this article's theme. It is sufficient at this stage to say that English conveyancers for a very long time have been content to vest property in associations and devote it to the purposes of a corporate group

by an instrument which is ostensibly one benefiting a class of ascertainable individuals and the courts have been prepared to uphold those instruments on that basis.

Benefactors of associations, however, do not intend to confer benefits on the existing members but on the group-purpose and if in disposing instruments they make this intention manifest by making the gift directly to the association in its name or in trust for the association in its name, difficult problems arise.

So far as dispositions of this kind *inter vivos* are concerned courts in the British Commonwealth do not appear to be faced with them very often. On the other hand, in American case law there are numerous instances of litigation arising out of attempted conveyances of property *inter vivos* to unincorporated groups in the group name. The reason for this disparity is not readily apparent. Although the British lawyer may have exercised circumspection in regard to dispositions *inter vivos* there are many instances of testamentary dispositions in which an attempt has been made to devise or bequeath property directly or in trust for the benefit of an association *eo nomine* and litigation has resulted; these cases are found in British as well as American courts.

I. DISPOSITIONS OF INTERESTS *INTER VIVOS* TO AN ASSOCIATION *EO NOMINE*

A. *Interests in Realty*

Some American courts have said that a deed of conveyance of a legal interest in freehold land in which an association as such is named as the grantee is a nullity.⁸ One reason often given is that an association is not a legal person, natural or artificial, and is thus not a capable grantee.⁹

When this reason is given it is premised on the view that the grantor intended to benefit the group enterprise as a continuing entity separate and distinct from the individuals who happen to be the members at the time the deed is delivered. In most cases this will be a correct assumption as to the intent of the grantor although it is conceivable that a person might want to make a grant to individuals as a class defined by reference to their being volun-

⁸ *Lael v. Crook*, 192 Ark. 1115, 97 S.W. (2d) 436 (1936); *Britton v. Jackson*, 31 Ariz. 97, 250 P. 763 (1926); *Miller Lumber Co. v. Oliver*, 65 Mo. App. 435 (1896); *Jackson ex dem. Cooper v. Cory*, 8 Johns. (N.Y.) 385 (1811), *Hornbeck v. Westbrook*, 9 Johns. (N.Y.) 73 (1812); *Meiselbach v. Banner*, 72 N.Y.S. (2d) 732 (1947); *Heiligenstein v. Schlotterbeck*, 300 Ill. 206, 133 N.E. 188 (1921); *Hawk v. Hawk*, 88 Pa. Super. 581 (1926).

⁹ See, e.g., *Lael v. Crook*, 192 Ark. 1115, 97 S.W. (2d) 436 (1936).

tarily associated under some association name. In any event, courts when confronted with a disposition to an association in such terms that it is doubtful whether the grantor intended a disposition to the continuing group enterprise or a class gift to the members at the time of the grant would nowadays be justified in presuming that the grantor had the former intent. By so doing they would acknowledge that laymen look on many associations as entities. Given that the grantor's intent was to confer a benefit on a continuing group enterprise, that intent is regarded as incapable of effectuation by vesting a legal title in the group *eo nomine* unless the group is incorporated.

Sometimes the grant is held to be ineffective because the grantee is said to be uncertain. In some cases so holding¹⁰ reliance is placed on a statement in *Coke on Littleton*, "So a community not incorporated cannot purchase; as, the parishioners, or inhabitants of Dale."¹¹ Although the description "inhabitants of Dale" would be uncertain in the sense that even if only those persons who were inhabitants at the time of the grant were intended to benefit, they might not be ascertainable, it seems probable that Coke here was not concerned with uncertainty so much as the absence of incorporation. This statement would be appropriate authority for those cases in which the deed has been held void for failure to name as grantee a legal person, when the grantor's intent is taken to be one to benefit a continuing group enterprise as an entity. But it would not conclude the issue when the court is prepared to assume that the grantor intended to benefit those individuals who were members at the time of the delivery of the deed. The question whether the description of the class as members of a certain association would be sufficient would remain open.

There would be the possibility that membership of a particular group might be so well defined that there would be no more difficulty in ascertaining the individual grantees than in ascertaining the grantees under a grant to all the children of J.S. The statement from *Coke on Littleton*, however, was given a wider operation when it was incorporated in the treatment of grants in *Shepard's Touchstone*.¹² There, after illustrative statements that grants to all the sons, or to all the daughters, or to all the children,

¹⁰ See, e.g., *Hornbeck v. Westbrook*, 9 Johns. (N.Y.) 73 (1812). Deed of conveyance of land subject to proviso in favor of the inhabitants of an unincorporated town. Proviso held void.

¹¹ Co. Litt. *3a.

¹² Pages *235, *236, *237.

or to all the issue of *J.S.*, or to the next of blood of *J.S.*, would contain descriptions of the grantees which would be certain enough, it is said that grants "to the parishioners or inhabitants of Dale, or to the good men of Dale. . ." would be bad for uncertainty. This passage has been relied on so as to have the effect of preventing a grant to a group in the nature of an association regardless of whether the members were easily ascertainable.

In a Missouri case of 1856,¹³ a conveyance of real estate to a partnership in which the grantee was described as "W. W. Phelps & Co." was held to transfer the legal title to W. W. Phelps only. The court stated that the objection to the description of the grantee did not turn on whether it was possible to ascertain the members of the partnership. The effect of the reasoning in this case is that a grant to an association *eo nomine* is to be deemed uncertain as to the grantee as a matter of law so that the members cannot even claim to take individually under the group name. On the other hand, some courts have been prepared to allow that such a grant may operate as a grant of an estate to the individuals who made up the association at the date the deed operated.¹⁴ This treatment of a grant to an association *eo nomine* appears at first sight to give the grant an operation which the grantor in many cases would not intend; he usually intends to benefit the continuing group enterprise rather than those individuals who are members at a particular time. The ruling viewed in isolation appears to give the individual members interests in the property which would permit them to seek partition and thus withdraw the property from the group enterprise. This type of decision, however, has to be seen in the light of the authorities dealing with the nature of the interest enjoyed by each individual member in specific property of the association.

From these authorities,¹⁵ it appears that that interest includes the right to enjoy the property jointly with all other members in accordance with the constitution and by-laws of the association but

¹³ *Arthur v. Weston*, 22 Mo. 378 (1856).

¹⁴ *Byam v. Bickford*, 140 Mass. 31, 2 N.E. 687 (1885); *The Golden Rod*, (D.C. Me. 1912) 197 F. 830; *Popovich v. Yugoslav National Home Soc., Inc.*, 106 Ind. App. 195, 18 N.E. (2d) 948 (1939).

¹⁵ *McMahon v. Rauhr*, 47 N.Y. 67 (1871); *Harris ex rel. Carpenters Union No. 2573*, *Oregon Lumber and Sawmill Workers v. Backman*, 160 Ore. 520, 86 P. (2d) 456 (1939); *South Shore Country Club v. People*, 228 Ill. 75, 81 N.E. 805 (1907); *Re St. James's Club*, 2 De G.M. & G. 383, 42 Eng. Rep. 920 (1852); *Seeton v. Merchants' Bank*, 18 N.S.R. 113, 6 C.L.T. 442 (1885); *Re Producers' Defence Fund*, [1954] Vict. L.R. 246, [1954] Arg. L.R. 541.

does not include any right to claim a separate share of that property otherwise than on dissolution of the association with the acquiescence of all other members or a majority required by the constitution for the time being. It does not include the right to assign the member's interest in specific association property otherwise than in the course of an assignment of the interests of all members in the same property. Generally, on his ceasing to be a member by death, resignation, valid expulsion or other cause, he loses his interest in the association property. The ownership of property by associates thus appears to be a special form of co-ownership with incidents different from those of joint tenancy or tenancy in common. Whether this type of co-ownership is a new form which the courts have developed or whether it is the result of contractual variation of the incidents of well established forms of co-ownership is debatable. The contention that it is the latter may be supported by the many cases¹⁶ which proceed on the basis that the members of a voluntary association are in a contractual relationship *inter se* which is evidenced by the constitution and by-laws. A contention that it cannot be the latter may be urged on two bases. First, if there is a contract, the nature of the interest in association property which each member enjoys is very rarely spelled out in any contract document with the result that the court fixes the incidents under the guise of implying terms; secondly, although it has never been suggested that a minor cannot be a member of an association, the bearing of the principle that a minor has limited contractual capacity does not seem to have been considered. If, on the other hand, the true position is that the courts have developed a new form of co-ownership by associates, it can hardly be a common law form of co-ownership, at least where land is involved. The rules governing the transfer of legal interests in land *inter vivos* provide one reason why this could not be so. Generally those rules require the transfer to be evidenced by a deed executed and delivered by the grantor or at least some written manifestation of intention to transfer. The form of co-owner-

¹⁶ *Brown v. Stoerkel*, 74 Mich. 269, 41 N.W. 921 (1889); *Harris ex rel. Carpenters Union No. 2573, Oregon Lumber and Sawmill Workers v. Backman*, 160 Ore. 520, 86 P. (2d) 456 (1939); *Winnetka Trust & Savings Bank v. Practical Refrigerating Engineers Assn.*, 322 Ill. App. 154, 54 N.E. (2d) 253 (1944); *Seslar v. Local Union 901, Inc.*, (D.C. Ind. 1949) 87 F. Supp. 447; *Thadeus Kosciuszko Soc. v. Polish Home Assn.*, (Mo. App. 1949) 218 S.W. (2d) 811; *Blenko v. Schmeltz*, 362 Pa. 365, 67 A. (2d) 99 (1949); *Harrington v. Sendall*, [1903] 1 Ch. 921; *Re Smith*, [1914] 1 Ch. 937; *Stephen v. Stewart*, [1943] 3 W.W.R. 580, 59 B.C.R. 410, [1944] 1 D.L.R. 305; *Re Cain*, [1950] Vict. L.R. 382, [1950] Arg. L.R. 796.

ship by associates contemplates that cessation of membership by resignation would be sufficient to deprive an associate of his interest without a deed or other written instrument. Thus any form of co-ownership by associates must be equitable and those in whom the legal title to land is vested must hold on a trust for the group enterprise, the terms of which include the incidents of enjoyment of each member mentioned above. This trust must be the result of equities arising from the agreement to associate or, if it is true that the relation between members of an association is not always contractual, it must be the result of the courts recognizing the fact of association as having some legal significance of its own force.

Whatever the theoretical basis for the special incidents of ownership by associates may be, those incidents are such as to suggest that a member who takes an individual interest under a grant to the association *eo nomine* is restrained, at least in equity, from claiming his share in severalty. This shows that the construction of a grant to the association *eo nomine* as a grant to the existing individual members is really a type of salvage operation by which courts, recognizing that grantors may wish to benefit group enterprises, do the best they can in the face of a supposed general principle which looks on incorporated groups as the only continuing group enterprises which can take legal title to property directly.

When, therefore, a grant is made to the *X* association some courts may treat it as a grant to *A*, *B*, *C*, and *D* who are all the members at the time the deed takes effect. At common law they must take by one of the recognized forms of co-ownership, either joint tenancy or tenancy in common. One might expect that they would take as joint tenants so as to take advantage of the doctrine of survivorship which would be more appropriate to property holding where an association is involved. The capacity of the legal title for becoming identified with persons outside the association on the death of any of these members would be lessened.¹⁷ But whether the members take as joint tenants or as tenants in common a rule which treats a deed of conveyance in which an association is named as grantee as conveying legal interests to the individual

¹⁷ When discussing the possibility of this type of construction of a devise to an association in *Stewart v. Green*, 5 Ir. R. Eq. 470 (1870), Christian, L.J., assumed that the members would take as joint tenants. The Supreme Judicial Court of Massachusetts held in *Byam v. Bickford*, 140 Mass. 31, 2 N.E. 687 (1885), that the members took as tenants in common. The terms of the grant did not include words of severance. The explanation lies in the Massachusetts statute first passed in 1785 by which dispositions of land to two or more persons create tenancies in common unless a contrary intent is shown. See now Mass. Gen. Laws (1932) c. 184, §7.

members runs counter to the policy aimed at procuring certainty of land titles. Such a rule would permit the individual grantees to be ascertained by a fact of independent significance, their membership of the association, but it would be a fact which is not necessarily disclosed by public records readily available for inspection by prospective purchasers. It is in this respect that a grant to "the X association" differs from a grant to "the children of A." It is the degree of difficulty involved in ascertaining the individuals covered by the deed's description of the grantees rather than the likelihood of success in that search which should make such grants ineffective.¹⁸

The result of this discussion would seem to be that the policy underlying the very formal techniques of conveying legal interests in land *inter vivos* prevents such grants from being effective rather than the fact that the association named as grantee is not a legal person.

A somewhat similar problem is posed by a deed of conveyance to a partnership in which the partnership name is used to describe the grantee. Since the partnership name does not refer to a legal person the courts might have held such a deed to be a nullity as many have done when considering grants to an association *eo nomine*, but usually they have avoided this result.¹⁹

¹⁸ Arthur v. Weston, 22 Mo. 378 (1856).

¹⁹ In the United States, many states have adopted the Uniform Partnership Act which permits a partnership to acquire land in the partnership name and to grant land by a deed in which the partnership is named as grantor. Uniform Partnership Act §§8 (3), 10. To January 1, 1954, the Uniform Partnership Act has been adopted in thirty-one states since the earliest adoptions in 1915. But decisions on the effect of deeds of conveyance to partnerships in the absence of that statute are instructive in this context. A deed of conveyance to a partnership in the firm name has been given effect by American courts in a variety of ways. One method adopted in early cases was to deny that the deed transferred a legal title but to hold that the deed constituted the grantor a trustee for the partnership. [Tidd v. Rines, 26 Minn. 201, 2 N.W. 497 (1879)]. This method satisfies the policy aimed at securing certainty of land titles in favor of prospective purchasers by making use of the trust concept to bring into operation the doctrine of destructibility of outstanding equitable interests by conveyance of the legal title to a bona fide purchaser for value while at the same time giving the partners some interest by virtue of the deed. Another method is to hold that the deed vests the legal title in those persons who are members of the firm at the time of the grant, parol evidence being permitted to identify the members. Blanchard v. Floyd, 93 Ala. 53, 9 S. 418 (1890); Woodward v. McAdam, 101 Cal. 438, 35 P. 1016 (1894); LaFayette Land Co. v. Caswell, 59 Fla. 544, 52 S. 140 (1910); Kentucky Block Cannel Coal Co. v. Sewell, (6th Cir. 1918) 249 F. 840. This has been done even when the firm name included no surname of any partner. Kelley v. Bourne, 15 Ore. 476, 16 P. 40 (1887). Some courts have refused to adopt this approach holding that to allow a conveyance of real property to rest partly in parol would produce indefiniteness which would confuse land titles to an unjustifiable extent. Gille v. Hunt, 35 Minn. 357, 29 N.W. 2 (1886); Barnett v. Lachman, 12 Nev. 361 (1877). Sometimes it has been held that where a partnership name contains the surname of one or more, but not all, of the partners, followed by words such as "and Company," "and Sons" or "and Bros.," the deed of con-

B. *Interests in Personalty*

The difficulties felt in connection with grants of interests in realty to associations are apparently not felt with regard to all kinds of personalty. Money and chattels raise no problem. No case denies that when a member pays his subscription, the disposition of property involved is effective. Many decisions assume that an association may own chattels.²⁰ These decisions imply that the transaction by which the association acquired the property was effective even though an unincorporated group was the recipient. The comparative ease with which ownership of money and chattels may be transferred probably explains the absence of cases dealing with disposition of these types of property to associations *inter vivos*.

Where personalty is of the kind for which it is necessary to have a register in order to assist determination of ownership the position would seem to be different. Registered securities would appear to be similar to realty and it might be expected that they could not

veyance to the partnership in the firm name vests the legal title in the partner or partners whose names so appear, in trust for the partnership. *Percifull v. Platt*, 36 Ark. 456 (1880); *Winter v. Stock*, 29 Cal. 407, 89 Am. Dec. 57 (1866); *Arthur v. Weston*, 22 Mo. 378 (1856); *Holmes v. Jarrett*, 7 Heisk. (54 Tenn.) 506 (1872). In England, in *Wray v. Wray*, [1905] 2 Ch. 349, a very liberal view was taken of a deed of conveyance to a partnership in which the grantee was described as "William Wray." At the time of the conveyance, the partnership conducted business under the name of "William Wray" but no member of the firm bore that name. *Warrington, J.*, held that parol evidence was admissible to prove the names of the persons who were members and he treated the deed as conveying the legal title to them as joint tenants. Cf. *Re Smith*, [1914] 1 Ch. 937. In so doing he followed *Maugham v. Sharpe*, 17 C.B. (n.s.) 463, 144 Eng. Rep. 179 (1864), which, however, was concerned with a bill of sale conveying personalty. The peculiar difficulties arising from the need for certainty of land titles were not adverted to. In some British Commonwealth jurisdictions there is legislation requiring persons who trade under a name other than their own to register that name together with the names of the persons so trading, in a public register. Registration of Business Names Act, 1916, 6 & 7 Geo. 5, c. 58, §1. It may be that the presence of such legislation would justify a decision similar to that in *Wray v. Wray* since the latent ambiguity in the deed could be cleared up without the need for parol evidence. The presence in the legislation relating to registered companies of the United Kingdom and various Dominions and Colonies of a provision limiting the size of unincorporated trading associations to not more than twenty members may also account for a readiness to uphold deeds of conveyance to a partnership in the firm name. E.g., Companies Act, 1948, 11 & 12 Geo. 6, c. 38, §§429, 434.

²⁰ *Lloyd v. Loaring*, 6 Ves. Jr. 773, 31 Eng. Rep. 1302 (1802). Some members of an association might sue as individuals on behalf of themselves and the remaining members to have goods and effects of the association delivered up to the association. *Lavretta v. Holcombe*, 98 Ala. 503, 12 S. 789 (1892). Where a sheriff was required to levy on the personal property of a judgment debtor, an unincorporated association could be heard by its president to make a claim of ownership to property in the judgment debtor's possession. *Curtiss v. Hoyt*, 19 Conn. 154, 48 Am. Dec. 149 (1848). An unincorporated fire company's sale of a building apart from the land on which it stood was not ineffective merely because of the lack of incorporation.

be transferred to an association *eo nomine*. In Missouri, although a deed of conveyance of land to an association has been regarded as a nullity, a transfer of shares to an association has been held to be effective.²¹ It was held that the title to the property vested in the members in their "joint associated capacity" but that the shares should for practical reasons be listed in the name of some officer or officers on trust for the membership. The court accordingly directed a transfer to persons to be designated by the members. A Massachusetts decision²² has held that share certificates in a trust set up to acquire land for the use of a club might be held in the name of the club and that the real owners of the shares were the club members who owned them jointly.

Unless the court is prepared to engage in the administrative process of ensuring a residence for the legal title which will meet the practical difficulties, a disposition of registered securities *inter vivos* to an association would seem to have the vice of uncertainty which affects a deed of conveyance to an association.

Leases to associations raise special problems because the continuing contract element in this type of interest-transferring transaction looms large. Though it may be possible to treat a grant of a freehold interest to an association as conferring an interest on individual members it is more difficult to accord the same treatment to a lease to an association.²³ In the grant of the freehold such a construction confers benefits which usually outweigh in value any liabilities which ownership may impose. But to regard a lease to an association as a lease to the individual members would impose what are usually onerous personal liabilities on them. It is for this reason that courts in the British Commonwealth have refused effect to a lease given to an association *eo nomine*.²⁴ The proper procedure is for the lease to be taken in the name of trustees for the association. The legal system can cope with a lease made to a partnership in the firm name in this way because each member of the partnership has power to pledge the personal credit of every member in transactions entered into by him for the purpose of the partnership business.²⁵ But the mere fact of membership in a non-

²¹ *Thadeus Kosciuszko Soc. v. Polish Home Assn.*, (Mo. App. 1949) 218 S.W. (2d) 811.

²² *Comstock v. Dewey*, 323 Mass. 583, 83 N.E. (2d) 257 (1949). One of the authorities relied on was *Byam v. Bickford*, 140 Mass. 31, 2 N.E. 687 (1885), *supra* note 14.

²³ But see *Sommers v. Reynolds*, 103 Mich. 307, 61 N.W. 501 (1894); *Edwards v. Old Settlers' Assn.*, (Tex. Civ. App. 1914) 166 S.W. 423.

²⁴ *Jarrott v. Ackerley*, 113 L.T. 371, 85 L.J. Ch. 135 (1915); *Henderson v. Toronto General Trusts Corp.*, 62 O.L.R. 303, [1928] 3 D.L.R. 411; *Canada Morning News Co. v. Thompson*, [1930] S.C.R. 338, [1930] 3 D.L.R. 833.

²⁵ *Evans v. Curtis*, 2 C. & P. 296, 172 Eng. Rep. 133 (1826).

profit association does not subject a member to personal liability. The general rule has been that a general authority given by the members to officers of the association to do all things necessary for the accomplishment of the objects of the association does not suffice to fix personal liability on the individual members as the result of a transaction entered into by those officers within the scope of that general authority. To make a member personally liable on a contract ostensibly made for an association it is generally held necessary to prove that he authorized the particular transaction in the course of which the contract was made, that he participated in the transaction or that he ratified the contract after it was made. If a lease to an association in the association name is regarded primarily as a contract, these principles are brought into play. Such a lease has been held to have effect in favor of the members who executed it and the members who authorized or ratified it even though it could not be sustained as a conveyance to the unincorporated group.²⁶

If the lessor is content to look to the property of the association for satisfaction of any claims which he may have arising from the lease, such a transaction entered into by the officers in the exercise of a general managerial authority might be upheld as conferring an interest on each of the individual members.²⁷

This examination of the attitude of the courts to dispositions inter vivos of various types of property suggests that apart from leases it is not the lack of legal personality on the part of the association which prevents such dispositions from always being effective but the absence of conveyancing techniques to meet the need for certainty of title.

II. TESTAMENTARY DISPOSITIONS OF INTERESTS TO AN ASSOCIATION *EO NOMINE*

In this section devises and bequests will be considered together since there has been much interplay between the cases on each.

If the reason why an association cannot take as grantee under a deed of conveyance inter vivos is its lack of legal personality, the

²⁶ Reding v. Anderson, 72 Iowa 498, 34 N.W. 300 (1887); Krall v. Light, (Mo. App. 1948) 210 S.W. (2d) 739.

²⁷ Lamm v. Stoen, 226 Iowa 622, 284 N.W. 465 (1939). The decision in this case upholding a lease to an association *eo nomine* by its president may be regarded as based on the reasoning in the text or on the ground that the lessor by having dealt with the association as a legal entity and having received valuable consideration from it was precluded from denying the validity of the lease on the ground that the association had no legal existence.

same reason should prevent it from taking under a devise to the association *eo nomine*. Many courts have refused to uphold devises of this kind for this reason.²⁸

Many courts have stated a general rule that a legacy or bequest to an association in the association name is ineffective for the same reason. A notable example is provided by the courts of New York.²⁹ But there it was recognized that this principle is unnecessarily artificial and techniques have been developed to save dispositions to associations. These techniques³⁰ are somewhat special and

²⁸ Estate of Ticknor, 13 Mich. 44 (1864); White v. Howard, 46 N.Y. 144 (1871); Marx v. McGlynn, 88 N.Y. 357 (1882); Fisher v. Lister, 130 Misc. 1, 223 N.Y.S. 321 (1927), mod. on other grounds 222 App. Div. 841, 226 N.Y.S. 484 (1928); Matter of Idem, 256 App. Div. 124, 8 N.Y.S. (2d) 970 (1939), affd. without opinion 280 N.Y. 756, 21 N.E. (2d) 522 (1939); In re Gault's Estate, 48 N.Y.S. (2d) 928 (1944); In re Andrejevich's Estate, 57 N.Y.S. (2d) 86 (1945); Society of the Most Precious Blood v. Moll, 51 Minn. 277, 53 N.W. 648 (1892). The opinion in this case does not make it clear whether the devise in question was void because the persons to take were uncertain or because an association can never take because it is not a legal person. Since the court cited German Land Assn. v. Scholler, 10 Minn. 331 (1865), the latter reason could be regarded as controlling the decision.

²⁹ Owens v. Missionary Soc., 14 N.Y. 380 (1856); Sherwood v. American Bible Soc., 1 Keyes (N.Y.) 561 (1864); First Presbyterian Soc. v. Bowen, 21 Hun (N.Y.) 389 (1880); Matter of Grossman, 190 Misc. 521, 75 N.Y.S. (2d) 235 (1947).

³⁰ The salvaging techniques used in New York took the following forms:

(a) Where the will gave the association an interest the enjoyment of which was postponed as, for example, when it was intended to take the property on the death of a life tenant, and the association became incorporated during the currency of the prior interest, the incorporated association could take the gift. Philson v. Moore, 23 Hun (N.Y.) 152 (1880). In this case the court likened the disposition to a bequest to an unborn child. In 1952 the New York Decedent Estate Law was amended [Laws 1952, c. 832] to provide that where a testamentary disposition is made to an unincorporated association which is one authorized to become incorporated the disposition shall not be deemed invalid because of the association's lack of capacity if, within one year after probate of the will or within any period during which the vesting of the disposition is postponed, whichever period is greater, the association shall become incorporated. Provision is made for the vesting of the disposition in trustees in the meantime.

(b) In many cases of wills making gifts to unincorporated groups, the testator has been taken to have intended to make a gift to an entity capable of receiving and his designation of an unincorporated association has been regarded as a use of loose language to which the court was free to fix a meaning which would effectuate his presumed intention. Thus a bequest to the "Home Missionary Society," an unincorporated body, was saved by finding that the testator really intended to benefit the "Presbyterian Committee of Home Missions," an incorporated body. Leonard v. Davenport, 58 How. Pr. (N.Y.) 384 (1877).

(c) Another method, described as the "parent and branch" approach, has been available whenever the unincorporated body designated by the testator is a department or branch of some incorporated body. In this situation the gift is held to be one which could be taken by the incorporated body.

(d) A fourth method saved some testamentary dispositions to charitable associations. Between 1788 and 1893 the law of New York did not cater specially for charitable trusts, the New York Legislature having repealed the English statute 43 Eliz. 1, c. 4 [Laws 1788, c. 46, §37]. In 1893 the New York Legislature restored the law of charitable trusts by an act commonly called the "Tilden Act" [Laws 1893, c. 701] after the failure of Governor Tilden's attempt to set up a substantial charitable trust [5 HARV. L. REV. 389 (1892)]. The Act of 1893, the substance of which is now in New York Real Property Law §113 (1) and New York Personal Property Law §12 (1), was designed to effectuate dispositions to re-

it is not proposed to examine them in detail. Other methods which have appealed to a wide variety of jurisdictions will be considered in the following treatment.

A. *Construction of Disposition as One to the Existing Members*

One way in which a disposition by will to an association might be sustained is to hold that it is a gift to the individual members at the time the will operates. So far as dispositions of land are concerned it has been put above that the reason for the ineffectiveness of a transaction inter vivos lies not in the absence of incorporation but in the technique of conveyancing applicable to such transactions.

When the disposition is by devise other considerations may govern so as to permit the disposition to be treated as one to a group of individual devisees. In the transaction inter vivos the aim is to have the interest pass by virtue of the deed of conveyance aided only by information readily available in public records, such as registers of corporations and companies, births, deaths, proved wills, etc. The desire for smooth transfer of the title and the exigencies of commerce will not admit of anything in the nature of an administrative inquiry as to what individuals might be comprehended by the association name set forth in the deed as the description of the grantee. But in testamentary succession there is always an administrative process and if courts were concerned to uphold a devise to an association as a devise to the individual members, they could use this process to ascertain the individual devisees thus satisfying the demand for certainty in land titles.

Where the testamentary disposition is one of money or chattels the conveyancing difficulties attendant on transactions with land

ligious, educational, charitable or benevolent uses. Before this act a disposition to a charitable association was in no better position than one to a non-charitable association. After the act came into effect, it came to be regarded as warranting a decision that a gift to an association existing for any of the purposes described in the act, even though in form direct, could take effect as a trust for those purposes and that the court could appoint a capable person to take as trustee. In 1953 the New York Real Property Law §113 and the New York Personal Property Law §12 were amended by adding provisions expressly sanctioning this form of judicial power to save gifts to associations which were for religious, educational, charitable or benevolent purposes. The legislation allows the power to be exercised in relation to dispositions inter vivos as well as gifts by will [Laws 1953, c. 715].

These various salvaging methods are described in greater detail in the Report of the Laws Revision Commission of the State of New York, Legislative Document No. 65 (J) (1951).

would not be a reason for rejecting this method of saving a legacy or bequest to an association in the group name.

The reactions of courts to arguments that testamentary dispositions to associations may be upheld in this way will now be examined. Ireland provides a number of illustrations. The argument was put in *Hogan v. Byrne*³¹ where the testator gave his "house and garden, out-office, lawn, to monks named 'Christian Brothers', and £100, in order to pay their rent." The court found that there were in England and Ireland forty-two establishments of Christian Brothers and that in each there were three to seven members. The prospect that, if this argument were acceded to, the one piece of land would vest in about two hundred persons was enough to make the Court of Common Pleas find that the testator could not have intended to benefit any individual members and that he intended to benefit the group enterprise as a continuing entity. The order not being incorporated and the court not having jurisdiction over charitable trusts, the disposition had to be held ineffective. If any possibility existed of its being upheld as a charitable trust, that was a matter for the Court of Chancery.

Stewart v. Green,³² though concerned not with a direct devise to an association but a trust for the "Community of the Sisters of the Order of Mercy" resident in Ballinasloe, evoked statements from Christian, L.J., which favored this argument. His statements are dicta only because counsel for the Superioress of the Community disclaimed the argument. Christian, L.J., recognized that construction of the disposition as one in favor of the members of the community at the testator's death would be in disregard of the testator's intended purpose. But since his real intent to benefit the group enterprise as a continuing entity could not be given legal effect, the court was free to salvage the disposition as far as it could by treating it as a gift to individuals. There was some authority for so treating a bequest of this kind in *Henrion v. Bonham*,³³ a decision of Sir Edward Sugden in 1844.

Shortly after, in England, Sir John Wickens, V.C., in *Cocks v. Manners*³⁴ held that a disposition by will directly to "the Dominican Convent at Carisbrooke," a non-charitable association, was good as a gift to the individual members as at the time the

³¹ 13 Ir. C.L.R. 166 (1862).

³² 5 Ir. R. Eq. 470 (1870).

³³ Reported in O'LEARY, CHARITABLE USES, 1st ed., 89 (1847).

³⁴ L.R. 12 Eq. 574 (1871).

will operated. Then in Ireland, in *Re Delany's Estate*³⁵ a devise of freeholds to a trustee in trust for "the Sisters of Mercy at Bantry" was held to be effective to create a trust in favor of those individuals who were members at the testator's death and who numbered not more than twelve thus being a class easy of ascertainment.³⁶ In another Irish case arising a year later, *Morrow v. McConville*,³⁷ a testator had bequeathed a 999 years leasehold to his wife for her life and had directed that after her death, his trustees should sub-let and from the rents apply moiety to the use of several named beneficiaries including one moiety "to be applied to the use and benefit of the Roman Catholic convent of St. Joseph's, Lurgan." After reviewing all the earlier cases, Chatterton, V.C., held that this was a non-charitable gift and, distinguishing *Re Delany's Estate*, that it could not be regarded as a gift to individuals. As to Christian, L.J.'s, suggestion in *Stewart v. Green* that the gift there might have been upheld as a gift to individuals, Chatterton, V.C., was impressed with the difficulty that such a construction would give the members interests as joint tenants which would be capable of severance and which each could assign or continue to enjoy even in the event of leaving the community. It may be that in 1883 the incidents of membership of an association in relation to the enjoyment of the association property were not as fully worked out as they are today. As has been put earlier,³⁸ those incidents arise either from the contract of association or from equities created by the fact of association and they imply that legal controls would prevent the result he feared. The difficulty felt by Chatterton, V.C., had been adverted to by Christian, L.J., in *Stewart v. Green* but he had sufficient faith in the sincerity of the individual members to believe that in practice they would all apply what they received to the purposes of the community.³⁹ Because of his view of what would happen if the gift were held to benefit the members individually, Chatterton, V.C., could not see the salvage function of the construction he opposed and his judgment condemns it roundly as

³⁵ L.R. 9 Ir. R. 226 (1882).

³⁶ Lord Chancellor Law was apparently prepared to find that the community had charitable objects but he thought it was not necessary to base his decision on this ground. It would seem that if there is any possibility of the association being charitable, that possibility should be excluded before the "gift to individual members" construction is arrived at.

³⁷ L.R. 11 Ir. R. 236 (1883):

³⁸ Pages 73-75 *supra*.

³⁹ This belief may have been inspired by the religious character of the association in question.

being directly inconsistent with the testator's intention. He also took a view of the effect of *Cocks v. Manners* different from that in earlier judgments in that he denied that it decided that the members of the Dominican Convent were held to take as individuals. He appears to have viewed *Cocks v. Manners* as a decision that the gift was one to the Dominican Convent as a unit because Wickens, V.C., implied that no disposition of the property could be made unless all the members of the convent agreed. Viewed in that light, *Cocks v. Manners* could not be followed in Ireland since *Hogan v. Byrne* and *Stewart v. Green* denied quasi-corporate character to the communities of the kind in question.

This rebuff to the "gift-to-existing-members" construction proved to be only temporary for in later cases in Ireland the argument has been accepted. In *Re Wilkinson's Trusts*⁴⁰ the disposition was a bequest of £1,000 to S, "Superioress of the Convent of Mercy at K., to and for the purposes solely of the said convent at my decease." The decision of the court of appeal was that whether or not this was a charitable bequest, it was valid since it was a trust for the existing members of the convent. This is a particularly strong authority because the testator's words show clearly that he was concerned to benefit the group enterprise rather than a particular class of individuals. Later Irish cases adopt the same approach.⁴¹

Meanwhile in England the same argument supported by *Cocks v. Manners* was put in a number of cases with varying success. In *Re Dutton*,⁴² the testator directed his executors to invest the proceeds of conversion of his property and to pay the income therefrom to his wife for her life and after her death the capital was to be paid "unto the trustees for the time being of the Tunstall Athenaeum Mechanics Institution, to be applied by them towards the building fund in connection therewith." The argument that this was a gift to the individual members and not to the group enterprise had to meet the circumstance that under the Literary

⁴⁰ 19 L.R. Ir. 531 (1887).

⁴¹ *Bradshaw v. Jackman*, 21 L.R. Ir. 12 (1887). Bequest to M., Superioress of the St. Anne's Convent of Mercy in trust for the community of the said convent. . . , Bequest to the Marist Sisters of the Convent of C.; Bequest to G., Superioress of the Convent of D., in trust for the support of the said D., Convent. All bequests upheld as being for the benefit of individual members. *Re Byrne*, [1935] Ir. R. 782, 70 Ir. L.T.R. 122. Trust to pay proceeds of conversion "for the absolute use and benefit of the Jesuit Order in Ireland." Upheld by Supreme Court of Ireland with one dissentient as a valid non-charitable gift for the benefit of the class comprising the individual members of the Irish Province of the Jesuit Order.

⁴² 4 Ex. D. (1878).

and Scientific Institutions Act, 1854,⁴³ the members by voting to dissolve the association would not thereupon become entitled to divide the association's assets between themselves since the act provided that such assets should on dissolution go to some other institution ascertained in accordance with the act's provisions. In the opinion of the court, this circumstance made *Cocks v. Mannors* distinguishable. Accordingly the court, applying the rule then regarded as applicable to associations to determine whether gifts of this kind were void as tending to a perpetuity, said that as the members could not on dissolution divide the assets between them, the gift tended to a perpetuity and was void.

*Re Amos*⁴⁴ is a case with some of the features of the Irish cases of *Morrow v. McConville* and *Hogan v. Byrne*. The testamentary dispositions were of a leasehold property and two freehold properties to the Boiler Makers and Iron Ship Builders Society in remainder after life interests in favor of named individuals. North, J., like Chatterton, V.C., in *Morrow v. McConville*, thought that construction of each gift as one to individuals would enable any member to commence an action for partition or sale and to take the control of the property away from the association. This reason for rejecting the construction is no longer valid. A more substantial reason would have been that the property being land and the membership of the association being large the construction would have led to an impracticable result just as it would have done in *Hogan v. Byrne*. Accordingly the dispositions had to be construed as being to the continuing group enterprise and as such they were held to be gifts tending to a perpetuity and therefore void. The perpetuity angle of this case will be considered later. An alternative ground for holding the dispositions void was that under the Trade Union Act, 1871,⁴⁵ a trade union was not authorized to acquire and hold land otherwise than by "purchase." The word "purchase" as used in the act was interpreted in something approaching its popular sense rather than the technical sense of taking otherwise than by descent or escheat and thus the trade union in this case could not acquire the properties in question. Assuming that the "gift-to-existing-members" construction would have been open to the court in this case it is doubtful whether the decision on this alternative ground would have been any differ-

⁴³ 17 & 18 Vict., c. 112, §30.

⁴⁴ [1891] 3 Ch. 159.

⁴⁵ 34 & 35 Vict., c. 31, §7.

ent. The members would have taken not in their individual capacities but as associates and subject to the incidents of ownership by associates. Their collective taking as associates would have constituted acquisition by an unincorporated trade union rather than as non-associated individuals and the restriction in the act would still have been relevant.

In *Re Clarke*,⁴⁶ Byrne, J., upheld a bequest "to the committee for the time being of the Corps of Commissionaires in London to aid in the purchase of their barracks, or in any other way beneficial to that corps." In a passage which has been quoted in many later judgments Byrne, J., said,

"It is, I think, established by the authorities that a gift to a perpetual institution not charitable is not necessarily bad. The test, or one test, appears to be, will the legacy when paid be subject to any trust which will prevent the existing members of the association spending it as they please? If not, the gift is good. So also if the gift is to be construed as a gift to or for the benefit of the individual members of the association. On the other hand, if it appears that the legacy is one which by the terms of the gift, or which by reason of the constitution of the association in whose favour it is made, tends to a perpetuity, the gift is bad."⁴⁷

This passage is not free from ambiguity in the light of the rest of the judgment. Byrne, J., followed *Cocks v. Manners*,⁴⁸ *Re Wilkinson's Trusts*⁴⁹ and *Bradshaw v. Jackman*⁵⁰ and by so doing he would seem to indicate that he construed the bequest as one to the individual members. The passage quoted, however, is capable of suggesting that valid dispositions to associations are not limited to gifts to individuals but may be in the form of trusts provided the existing members are free to spend the subject-matter of the trust. The kind of trust contemplated by the passage is not clear. He may have been referring to a trust for the members as contrasted with a gift directly to the members or he may have been referring to a trust not for any individuals but for the purposes of the association. In some later cases⁵¹ the latter has been taken to be his meaning with the result that dispositions to associations with non-charitable objects have been drawn into the controversy

⁴⁶ [1901] 2 Ch. 110.

⁴⁷ *Id.* at 114.

⁴⁸ L.R. 12 Eq. 574 (1871), note 34 *supra*.

⁴⁹ 19 L.R. Ir. 531 (1887), note 40 *supra*.

⁵⁰ 21 L.R. Ir. 12 (1887), note 41 *supra*.

⁵¹ E.g., *Re Drummond*, [1914] 2 Ch. 90; *Re Price*, [1943] Ch. 422.

as to whether a trust for a non-charitable purpose is valid. The position of dispositions to non-charitable associations in relation to that controversy will be considered in detail later. At this stage, the only point intended to be made is that *Re Clarke* kept alive the salvage construction typified by *Cocks v. Manners*.

A further instance of the notion that a disposition to a non-charitable association is to be construed as a gift to the individual members is provided by *Re Smith*⁵² in which a trust "for the society or institution known as the Franciscan Friars of Clevedon in the county of Somerset absolutely" was upheld on this basis. In reaching this result, reliance was placed on the cases in which dispositions to partnerships in the firm name had been upheld as dispositions to the individual partners.⁵³ Joyce, J., has said:

"So in my opinion a bequest to any unincorporated society or association not charitable is good because, and only because, it is treated as being and is a bequest to the several members of such society or association, who can spend the money as they please. If there should be any understanding, or even contract, between these persons as to how the moneys so derived, that is from legacies, are to be expended, that is something with which in the absence of an express trust or direction in the will the executors who pay the legacy have nothing whatever to do."⁵⁴

Then in *Bourne v. Keane*⁵⁵ a legacy of £200 to the "Jesuit Fathers in Farm Street" was sustained on this ground, Lord Buckmaster⁵⁶ and Lord Parmoor⁵⁷ expressly approving *Cocks v. Manners* and *Re Smith*.

This way of viewing a disposition to a non-charitable association *eo nomine* has also been adopted in a number of other jurisdictions of the British Commonwealth.⁵⁸

⁵² [1914] 1 Ch. 937.

⁵³ E.g., *Wray v. Wray*, [1905] 2 Ch. 349, note 19 *supra*.

⁵⁴ [1914] 1 Ch. 937 at 948.

⁵⁵ [1919] A.C. 815.

⁵⁶ *Id.* at 874.

⁵⁷ *Id.* at 916.

⁵⁸ *Walker v. Murray*, 5 O.R. 638 (1884) (bequest to "the Sisters of Charity at Hamilton . . . to be their property absolutely" considered capable of being upheld as a gift to the individual members of the order); *Re McAuliffe*, [1944] Queensland St. R. 167 (whole estate devised and bequeathed upon trust for conversion and proceeds to be held "upon trust for the T.B. Sailors' and Soldiers' Association of Queensland . . . absolutely for such purposes as the Board or Committee of Management of the said Association shall in its unfettered discretion and in accordance with its Rules at any time and from time to time decide." This was held to be a gift to the members of the association); *Re Cain*, [1950] Vict. L.R. 382, [1950] Arg. L.R. 796; *Re Lester*, [1940] Northern Ir. 92 (legacy and bequest

It will be apparent that the Irish and British courts, while able to treat bequests and legacies as gifts to individuals, have had difficulty in dealing similarly with devises. They have not, however, summarily rejected the possibility that a devise might be so dealt with. If the group is not so large that a holding that the members take as co-owners would lead to impracticable results, the devise may be given effect in this way.

While some American courts have been prepared to allow that a bequest to an association may be upheld as a gift to the individual members⁵⁹ there have been indications that a devise could not be so treated. A reason for this has been stated in the opinion of the Court of Chancery of New Jersey in *Hadden v. Dandy*⁶⁰ as follows:

"It seems to be well settled by what I conceive to be the weight of authority, and in accord with reason, that a voluntary unincorporated association may be a legatee of a legacy like this. It is to be observed, first, that there is here *no devise of real estate* requiring a person, natural or artificial, capable of holding the title; and, second, that there is *no perpetual continuing trust*, which can be administered only by such a person. The gift is of money and is absolute and unlimited by any trust except such as is implied by its being given to a religious society. . . . In order to carry out the intention of the testator, we have only to see to it that the gift reaches the proper officer of the association. What shall afterwards become of it does not concern the court, as, so far as appears, it did not the testator. He appears to have been satisfied to give the money to the association without any direction as to how it was to be used, relying, as he might well do, upon the general and established character of the society."⁶¹

This passage indicates that the reason why there should be doubt

of share of residue to "the Theosophical Society of Belfast" held to be valid gifts to the several persons who were members of the lodges in Belfast at the time of the testatrix's death).

⁵⁹ *Guild v. Allen*, 28 R.I. 430, 67 A. 855 (1907) (bequest of \$1,000 "to the Home Missionary Society of the First Baptist Church of Providence, R.I." held to be a gift to the individual members calling themselves by that name); *Hartman v. Pendleton*, 96 Ore. 503, 186 P. 572, mod in other respects 96 Ore. 503, 190 P. 339 (1920); *American Tract Society v. Atwater*, 30 Ohio St. 77 (1876); *Estate of Ticknor*, 13 Mich. 44 (1864).

⁶⁰ 51 N.J. Eq. 154, 26 A. 464, affd. 51 N.J. Eq. 330, 30 A. 429 (1893). The bequest upheld here was to the Wesleyan Methodist Society of Ireland. The decision was reached without any statement that the court was applying the law of Ireland.

⁶¹ 51 N.J. Eq. 154 at 158-159.

about dispositions to associations is not their lack of legal personality but the inability of the law to provide a technique for collective ownership of certain types of property in the absence of incorporation or trust. In some jurisdictions, however, in which bequests but not devises are held effective, courts find it necessary to say that although an association is not a legal person, it has a quasi-corporate existence in law, as a justification for holding that the bequest is effective.⁶² Sometimes the attribution of a quasi-corporate status is supported by reference to legislation, which exists in many American states, permitting associations to sue and be sued in the association name and other changes in the law which may give associations some powers usually possessed by corporations.⁶³ In this context it is doubtful if the epithet "quasi-corporate" really serves any purpose beyond emboldening the court to escape the doubtful dogma that an association not incorporated has no capacity to take a gift. Whether the association is described as quasi-corporate or not the question of where the title to the property resides still has to be faced. In these cases concerning bequests the subject matter of the gift is held to vest in the individual members. What really allows the courts to give effect to many bequests is the comparative informality with which title to money or goods may be handled. In those American jurisdictions in which deeds of conveyance to associations are upheld it would seem that the courts should be prepared to go as far as the Irish and British courts and give effect to devises as well as bequests.⁶⁴

Under this salvage construction the title to the property given vests in those persons who are members of the association but under the rules developed independently in cases concerned with the administration of the property of associations, those members cannot deal with the property in the manner open to non-associated joint tenants or tenants in common.⁶⁵ They hold the title subject to an obligation to permit the property to be used for the objects of the association in the manner prescribed by the constitution and by-laws of the association. The practical effect of the two currents of authority, one upholding dispositions to associations as

⁶² E.g., *Houk's Estate*, 33 Pa. D. & C. 511 (1938).

⁶³ E.g., *Re Spatz's Estate*, 51 Pa. D. & C. 427 (1944).

⁶⁴ *Byam v. Bickford*, 140 Mass. 31, 2 N.E. 687 (1885); *Popovich v. Yugoslav National Home Soc.*, 106 Ind. App. 195, 18 N.E. (2d) 948 (1939); *Pushor v. Hilton*, 123 Me. 225 at 228, 122 A. 673 (1923).

⁶⁵ Pages 73-75 *supra*.

class dispositions and the other limiting the interest which the recipients of the title obtain, is to enable what could be a perpetual succession. As old members leave the group and new members join, according to the second line of authority, interests in the association property would be constantly changing. Insofar as that association property is made up of money and chattels, the changes of membership would be reflected in changes of residence of the legal title but insofar as that property includes realty, conveyancing difficulties would very soon be encountered even in the smallest association and unnecessary expense would be incurred in ensuring that the residence of the legal title substantially coincided with the state of membership of the association.

Leaving aside these difficulties, the result of this construction is that a benefactor of an association has his intention carried out.

The person who gives property to an association is not concerned to benefit merely the individual members at the time his gift takes effect. He is concerned in most cases to advance the purpose for which the association exists irrespective of who may be the members for the time being. If he uses words of disposition which are amenable to an interpretation that he could conceivably have wanted to benefit the individuals who are members at the time the gift operates, the law, under pretense of giving effect to this imputed intention, really gives effect to his real intent by bringing the rules on the nature of a member's interest into play. But if he should make his real intention so clear that his words of disposition cannot possibly be read as meaning anything other than that he intended to benefit a continuing group enterprise, his intention may be frustrated.

When the disposition is construed as a gift to the existing members all problems which might be raised by the law relating to perpetuities are avoided. The members are thought to take immediate interests which are vested in accordance with the rule against remoteness of vesting and there is no suggestion of any indestructible trust.

[To be concluded.]