

BETWEEN:

THOMAS STEPHEN BURTON, HARRY HAUENSCHILD, (Plaintiffs)
CLEM JONES, ROBERT JOHN BRISKEY, THOMAS
LAWRENCE CONWAY, NEAL DAVID KANE, HAROLD
THOMAS MELLOR, WILLIAM EARNEST STON, CECIL
WALLACE EDGAR WILLIAMS JOHN ALAN BIRD,
TERENCE JOSEPH MELLIFONT and NICO BOS suing
on behalf of and representing all members of
THE AUSTRALIAN LABOR PARTY (STATE OF
QUEENSLAND) except the Defendants personally
and as trustees of property belonging to THE
AUSTRALIAN LABOR PARTY (STATE OF QUEENSLAND)
CLEM JONES Appellant

- and -

DENIS JOSEPH PATRICK MURPHY, FRANK NORTHEY (Defendants)
SLEEMAN, IAN KEITH McLEAN, EDMUND DENIS Respondents
CASEY, WILLIAM GEORGE HAYDEN, MANFRED
DOUGLAS CROSS, LORRAINE JOY ARDILL, KEVIN
JOSEPH HOOPER, JOAN MARY McGRATH, PETER
DOUGLAS BEATTIE, MEDELEINE McPHERSON,
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REYNOLDS, JAMES BERNARD KEEFE, BARBARA
LORRAINE ROBSON, LESLIE JOHN KERSLAKE,
RAYMOND JOSEPH McCART, JOHN MURPHY and
HUGHIE JOHN WILLIAMS

DOUGLAS J.

D.M. CAMPBELL J.

W.B. CAMPBELL J.

Judgment delivered by Douglas J., D.M. Campbell J. and W.B.
Campbell J. on 23rd November, 1981.

"APPEAL DISMISSED WITH COSTS. BY CONSENT, ORDER THAT THE MONEYS PAID INTO COURT BY THE APPELLANT AS SECURITY FOR COSTS TOGETHER WITH ACCRETIONS, IF ANY, BE PAID OUT TO THE SOLICITORS FOR THE RESPONDENTS IN SATISFACTION OF TAXED COSTS, AND IF SUCH AMOUNT OF TAXED COSTS EXCEEDS AMOUNT OF SECURITY AND ACCRETIONS, IN PART SATISFACTION OF SUCH TAXED COSTS; ALTERNATIVELY TO THE EXTENT THAT THE AMOUNT OF SUCH SECURITY & ACCRETIONS EXCEEDS THE RESPONDENTS TAXED COSTS, THE EXCESS BE PAID OUT TO THE SOLICITORS FOR THE APPELLANT.

IN THE SUPREME COURT OF QUEENSLAND

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RAYMOND JOSEPH McCART, JOHN MURPHY and

JUDGMENT - DOUGLAS J.

This is an appeal against a refusal to grant certain declarations and orders sought by the appellant and other plaintiffs. They sued the respondents who are those persons who accepted appointment as members of an Interim Administrative Committee appointed by the National Executive of the Australian Labor Party, broadly speaking, to replace the Administrative Committee of the Queensland Branch of the Australian Labor Party, and to take over all property owned by or held in trust for that Branch. The document is reproduced in detail in the judgment of the learned trial judge, Lucas S.P.J., and there is no necessity to set it out again here. I set out paragraph 8 of the Amended Statement of Claim to present a logical sequence -

- "8. On the first day of March 1980 the Chief Administrative Authority of the National Body the National Executive made the following decisions amongst others:-
- "(a) that it declared that the said Administrative Committee of the Queensland body no longer existed;
 - (b) that it declared that the Disputes Tribunal of the Queensland body no longer existed;
 - (c) that it suspended the operation of certain rules of the said Constitution and Rules of the Queensland body;
 - (d) that it set up in place of the said Administrative Committee of the Queensland body an organisation to be known as an 'Interim Administrative Committee' consisting of 29 persons;
 - (e) that it appointed that 'Interim Administrative Committee' to be the sole administrative authority of the Queensland body until the 28th day of February 1981;

- (f) that it set up an 'Interim Disputes Tribunal' consisting of 9 persons."

The principal matters in issue between the parties are contained in paragraph 7A of the Amended Statement of Claim. Germanely I set out paragraphs 7 and 7A.

"7. The current Rules and Standing Orders of the National body were adopted by the National Conference of the National body held at Adelaide in the State of South Australia in the month of July 1979. Such Rules and Standing Orders are contained in a document published by the National body and entitled 'AUSTRALIAN LABOR PARTY PLATFORM CONSTITUTION AND RULES AS APPROVED BY THE 33RD NATIONAL CONFERENCE ADELAIDE 1979'. The Plaintiffs will at the trial of this action refer to that document for its full terms, true meaning and effect.

7A. The current Rules and Standing Orders of the National body referred to in paragraph 7 hereof have at no material time been binding upon the Queensland body.

PARTICULARS

- (a) The Constitution and Rules of the Queensland body do not on their proper construction submit Rules and standing Orders Made by the " National body to bind the Queensland body unless and until such Rules or Standing Orders are adopted by the Queensland body;
- (b) The said Rules and Standing Orders have never in fact been adopted by the Queensland body."

The Rules and Standing Orders of the Australian Labor Party on the national level provide for a National Conference which "shall be the supreme governing authority of the Party and its decisions shall be binding upon every member and every section of the Party"; and a National

Executive which "shall be the chief administrative authority of the Party, subject only to National Conference" and whose decisions "shall be binding upon all sections and members of the ALP subject only to appeal to National Conference".

The power under which the National Executive purported to act is that contained in Rule 7(c)(viii) which, relevantly provides:-

"The National Executive shall -

in the case of any State Executive, State Branch or section of the ALP acting or having acted in a manner deemed by the National Executive to be contrary to the National Constitution, Platform and Policy of the Party as interpreted by the National Executive, the National Executive may over-rule such State Executive, State Branch or section and/or may declare that same no longer exists, and shall set up in place thereof organisation competent to carry out the. National Constitution, Platform and Policy of the ALP. Pending the hearing of any appeal, the decision of the National Executive shall operate. In the event of the National Executive taking any action under this sub-clause, the National Executive shall be the body to approve any selection which otherwise would have been made by the body affected by the National Executive decision."

It is necessary before embarking on the main issues to consider the right of the plaintiffs, as an unincorporated voluntary association, to sue. There is no point taken here, and I am content to adopt the reasoning of the learned trial judge to the effect that they could.

I proceed now to a consideration of the allegations contained in paragraph 7A of the Amended Statement of Claim. I have come to the conclusion that the best approach is to look at the structure of the Australian Labor Party, and, when that is ascertained, to see what the situation is as to the National Executive, and what powers it has particularly in regard to the matter under consideration. In doing so I proceed on what is contained in the

Constitution and Rules of the Australian Labor Party (Queensland Branch) and the Constitution and Rules of the Australian Labor Party as approved by the 33rd National Conference Adelaide 1979.

To determine the eligibility of a person resident in Queensland to be a member of the Australian Labor Party one must look exclusively at the Rules of the Queensland Branch. It is to be noted that throughout this judgment I propose to refer to it as Branch rather than use the somewhat coy calling of it as Body in the pleadings. I realise the word branch becomes complicated by the user of that word further down the hierarchical line but it cannot be avoided. Rule 2 of that Branch headed "Constitution" provides -

"2. The Party shall consist of the Members of such Industrial Unions and Branches and Credit Unions as endorse its Objects, Methods, and Platforms, and which become affiliated or registered and recognised as Branches of the A.L.P."

Therefore basically what constitutes the Queensland Branch is the members of the organisations referred to in that rule provided the organisation conforms to the requirements of the rule Basically it is the organisation which has to be looked at; but once the organisation conforms the member is a Member of the Australian Labor Party. There is a profusion of rules dealing with membership of branches, affiliated unions, credit unions, Australian Young Labor and the Labor Women's Organisation. It is unnecessary to go into the detail of these rules. However it is at this level that we find the individual persons who belong to the Australian Labor Party (Queensland Branch).

Rule 2 of the Queensland Branch Rules really shows us how individual members are defined and the basic organisation at structure of the Australian Labor Party in Queensland. The way I read the rules, one goes straight from the organisations referred to in Rule 2 to the State

Conference. First that organisation consists of delegates representing the organisations referred to in Rule 2, in a proportion are the manner/the other persons whose credentials come from political office, or election to office within the State Conference by the delegates. The State Conference is held in alternate years within certain latitudes. According to the Rules it has the following powers, as set out under the relevant heading -

" Powers of State Conference

13. State Conference shall be the only body which may:

13(a) change rules, provided that such rule changes receive the support of an absolute majority of credentialled delegates;

13(b) revise the State and Local Government platforms;

13(c) determine finally any matter in dispute affecting the welfare of the Queensland Branch; and

13(d) elect all but ex-officio members of the Administrative Committee, the members of the Disputes Tribunal, and delegates to the National Conference and the National Executive, the Chief Returning Officer and 2 Deputy Returning Officers.

In addition, State Conference may refer matters to the National Executive and National Conference."

Additionally Rule 11 provides -

"11. Delegates to the National Conference and the National Executive shall be elected by State Conference."

When one states that one goes straight from the basic organisational structure to State Conference one may be taken to ignore State Council and the Administrative Committee as provided for under the Rules for the Queensland Branch. This is not intended to be so, for these are lateral organisations, both in aid of State Conference, and the latter in aid of the first. They therefore play no part relevantly in our present discussion.

We go now to the Rules and Standing Orders of the Australian Labor Party. Those Rules and Standing Orders do not provide for the individual membership of a person as do the rules of the Queensland Branch.

They provide -

"4. Composition

The Party shall consist of State Branches, the Northern Territory Branch and the Australian Capital Territory Branch (hereinafter referred to as State Branches)."

The individual person/thus belongs to the Australian Labor Party by belonging to the State Branch.

They further provide/for a National Conference and a National Executive, with general powers as previously noted. Rule 6(a)(i) of the Rules and Standing Orders of the Australian Labor Party provides -

"6 Convening National Conference

- a i each State Branch except the Northern Territory Branch and the Australian Capital Territory Branch shall be entitled to send seven (7) delegates to the National Conference, one of whom shall be the State Parliamentary Leader or his nominee as approved by the State Executive."

There are other delegates but it is not necessary to mention them. The National Conference under the rules is to be held in alternate years. I now set out in full the paragraphs I have mentioned previously dealing with the National Conference and the National Executive.

- "b the National Conference shall be the supreme governing authority of the Party and its decisions shall be binding upon every member and every section of the Party;
- c the National Executive shall be the chief administrative authority of the Party, subject only to National Conference."

The National Executive meets at least four times a year, has two delegates from each State Branch, and "decisions of the National Executive shall be binding upon all sections and members of the ALP subject only to appeal to National Conference" (Rule 7(c) Rules and Standing Orders).

It seems that at this stage we have established the relevant hierarchical structure of the Australian Labor Party, and that the ultimate is the National Conference with decisions "binding upon every member and every section of the Party" and that the pen-ultimate is the National Executive with, in its absence, in effect all the powers of the National Conference but subject to it. In particular the National Executive by the Rules and Standing Orders is invested with the particular powers contained in Rule 7(c) (viii) and earlier quoted.

It is in the light of the above that we have to consider what has been alleged in paragraph 7A of the Statement of Claim.

Prima facie it seems to me that the Australian Labor Party starting with the individual, relevantly in the State of Queensland, by the rules referred to us, creates a pyramidal structure with the Federal Conference at the apex.

It is not necessary to make a detailed historical analysis. Indeed history is not very clear. However what appears in the Rules and Standing Orders of the Australian Labor Party as amended by the National Conference in Adelaide has been produced by a rule making process existing over many years, and exercised by, inter alia, delegates or representatives from Queensland. Indeed the Queensland Rules show recognition of the above rules in many places and no more cogently than in Rule 108(d) (ii) where provision is made for the charging of a member of the Australian Labor Party with "infringement of the Party's Federal or State Rules". I find it most difficult to accept the rules as being mutually exclusive, as they would have

to be if there was a requirement to be implied that they be adopted. My view is that, in effect, they grew together, and those who made them intended that this should be so.

Historically there has been organisation on a Federal basis of the Australian Labor Party since 1915, and rules relating back to a short time afterwards. Indeed the particular rule 7(c)(viii) in virtually the present form appeared in 1933, and until now does not seem to have been questioned.

I do not take the view striven for in paragraph 7A of the Statement of Claim. In my opinion the appeal should be dismissed with costs.

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HUGHIE JOHN WILLIAMS

JUDGMENT - D.M. CAMPBELL J.

Clem Jones is a prominent figure in the Australian Labor Party (State of Queensland). At the time of these events he was junior Vice President of the Administrative Committee of the State Branch having been elected to that post at the first State Conference held in Rockhampton in 1979. As junior Vice President he was an ex officio member of the State Council. The State Council is the supreme governing body of the Branch between State Conferences which, under the Constitution and General Rules, are to be held in the month of February in alternate years, unless State Council otherwise decides for political reasons. On May 30, 1980 he joined with eight other members of the State Branch in bringing an action to test the validity of a decision of the National Executive of the Australian Labor Party to intervene in the affairs of the Branch. The defendants were twenty-one members of the State Branch who have been appointed to, and have accepted positions on, an Interim Administrative Committee set up by the National Executive. Mr. Jones is the only appellant. The appeal by him is from a decision of Lucas J. who held that the National Rules under which the National Executive purported to act were binding on the Queensland body. He also held that the National Executive acted within its powers in issuing a resolution dated March 1, 1980 on which intervention was based.

The first part of the resolution was in the following terms:

"A. THE NATIONAL EXECUTIVE of the Australian Labor Party, being the chief administrative authority, the decisions of which are binding upon all sections and members of the ALP subject only to appeal to the National Conference RESOLVES THAT:-

The National Executive is of the opinion that the general welfare of the Labor Movement is affected by the following matters in the Queensland Branch of the Labor Party (described as the Australian Labor Party State of Queensland) (hereinafter called 'the Branch'):-

1. the ineffectiveness of the Branch as shown by the level of representation in the Federal and State Parliaments;
2. the fact that since July 1978 the National Executive has conducted various and lengthy inquiries into the affairs of the Branch and made recommendations as a result;
3. the dissension in the Branch, which is widespread and notorious;
4. the public controversy surrounding the disbanding of the Toowoomba Branches of the Australian Labor Party, the purported sale of Radio 4KQ and the financial situation of the Branch;
5. the failure of the Branch to carry out promptly and in good faith the previous decisions of the National Executive that:-
 - (a) the Administrative Committee has failed to comply with the rules of the Branch (hereinafter called 'the Rules') adopted by the National Executive on 23rd and 24th September, 1978 by:-
 - * failing to call the required number of meetings of the State Council during the year 1979, as required by Rule 29(c);
 - * failing promptly to carry out the provisions of Rule 31 relating to the appointment of Boards of Companies;

* failing to comply with Rule 30(xxiii) and Rule 32 in not obtaining the prior endorsement of State Council to the purchase and disposition of property, land or equipment, the title to which is vested in trustees;

(b) the State Council, on the recommendation of the Administrative Committee, failed to comply with the decision of the National Executive made at its meeting on the 26th and 27th October, 1979 pursuant to Federal Rule 7(c)(vi)(c), and in that, by resolution of the State Council on December 9th 1979, the State Council purported to impose a further condition which was not imposed by the National Executive, namely that Senator Georges give an assurance to the State Council regarding future public statements;

(c) the State Council, on the recommendation of the Administrative Committee, failed to comply with the recommendation of the National Executive, pursuant to Rule 7(c)(vi)(b) made at its meeting on 26th and 27th October, 1979 that Mr. W.G. Harris, whose appeal had been received by the National Executive, be granted leave to appeal by the Branch, the refusal to accept such recommendation having been made at the meeting of the State Council on December 9th 1979, and constituting a denial of civil liberties of a member of the Australian Labor Party;

B. THE NATIONAL EXECUTIVE declares that, by failing to comply with the Rules of the Branch and other decisions of the National Executive, the Branch, its Administrative Committee and State Council have acted and are acting in a manner contrary to the National Constitution, Platform and Policy of the Party as interpreted by the National Executive. PURSUANT to its authority under Rule 7(c)(vii) and Rule 7(c)(viii), the National Executive:-

1. declares that the Administrative Committee of the Branch no longer exists;
2. declares that the Disputes Tribunal of the Branch no longer exists;
3. suspends the operation of Rules 10, 11, 12, 13, 15, 16, 17, 18, 24, 25, 26, 28, 29, 30 (with the exception of clauses (d), (e), (f) and (g), and 113;
4. sets up in place of the Administrative Committee of the Branch an organisation competent to carry out the Federal Constitution, Platform and Policy of the Australian Labor Party, such organisation to be an Interim Administrative Committee consisting of twenty-nine (29) persons ..."

It is not necessary to quote the entire resolution, but it continues on:

"FURTHER AND PURSUANT to the foregoing decisions, the National Executive:-

1. confers on the Interim Administrative Committee all the powers formerly conferred by the Rules on the officers, Administrative Committee, State Council and State Conference of the Branch;
3. authorises the Interim Administrative Committee to take all such steps as may be necessary at law to procure the transfer to the President and Secretary, as Trustees, all property presently owned by or held in trust for the Branch and to procure that the Boards of Labor Broadcasting Station Pty. Ltd. and Labor Enterprises Pty. Ltd. comprise the persons required by Rules 31 and 32 of the Branch;
4. directs the former officers and employees of the Branch to deliver up all books, accounts and property of the Branch to the Officers appointed by this Resolution."

Part A of the resolution is founded on rule 7(c)(vii) of the National Rules. The rule says:

The National Executive shall -

have plenary powers to deal with and decide in matters which, in the opinion of an absolute majority of members of the Executive, affect the general welfare of the Labor Movement, provided that no decision of National Conference shall be abrogated under this rule.

Part B is founded on rule 7(c)(viii) which reads:

The National Executive shall -

in the case of any State Executive, State Branch or section of the ALP acting or having acted in a manner deemed by the National Executive to be contrary to the National Constitution, Platform and Policy of the Party as interpreted by the National Executive, the National Executive may overrule such State Executive, State Branch or section and/or may declare that same no longer exists, and shall set up in place thereof organisation competent to carry out the National Constitution, Platform and Policy of the ALP. Pending the hearing of any appeal the decision of the National Executive shall operate. In the event of the National Executive taking any action under this sub-clause, the National Executive shall be the body to approve any selection which otherwise would have been made by the body affected by the National Executive decision.

It will be noticed that rule 7(c)(vii) gives the National Executive the authority to make decisions in matters affecting the general welfare of the Labor Movement. The rule does not sanction direct interference in the affairs of State Branches such as is authorised by rule 7(c)(viii). That rule may only be invoked should the National Executive consider the actions of a State Branch to be contrary to the National Constitution, Platform and Policy of the Party. The most recent statement of the Platform, Constitution and Rules of the ALP is contained in a publication entitled "Australian Labor Party Platform, Constitution & Rules - As approved by the 33rd Annual Conference Adelaide 1979"

In Part A of the resolution of March 1, 1980 the National Executive resolved that the general welfare of the Labor Movement was affected by a number of matters. Among those matters was the failure of the Administrative Committee to comply with rules 29(c), 30(b)(xxiii), 31 and 32 of the Rules of the State Branch. The rules are as follows:

29.(c) State Council shall meet at least every three months and on Sundays. However, after June 1980 State Council may itself vary the day and time of meetings provided that alternative timing does not exclude delegates from regularly attending. State Conference shall take place of one State Council meeting.

30.(b) (xxiii) Functions (of the Administrative Committee) - to purchase and dispose of any property, land, equipment, etc, the title to which shall be vested in trustees appointed in accordance with these Rules subject to any proposed action being first endorsed by State Council.

31. The Boards of Companies 4KQ and Labor Enterprises to comprise the Officers (President, Vice President (2), and Secretary) together with three other people appointed by a majority of the Administrative Committee. The seven Board members shall meet with others not necessarily from but appointed by the Administrative Committee as a Management Advisory Committee.

32. All real and personal property whatsoever belonging to the Party shall be vested in and be under the control of the President (or a Vice-President) and Secretary of the Party as trustees for the use and benefit of the Party and the members thereof, and such trustees may, with the consent of the State Council, purchase or take upon lease any land, and may sell, exchange, mortgage or let the same, and may with such consent as aforesaid give guarantees for the payment of any monies due and owing by the Party.

In Part B of the resolution the manner in which the Administrative Committee and State Council were declared to have acted contrary to the National Constitution, Platform and Policy was "by failing to comply with the Rules of the

Branch and other decisions of the National Executive". The first inquiry would seem to be whether non-compliance with the Queensland Branch Rules is capable of being considered as running counter to the National Constitution, Platform and Policy.

It appears from what is stated in paragraph 5 of Part A that rules 29(c), 30(b)(xxiii), 31 and 32 were "adopted" (whatever that means) by the National Executive in September 1978. Notwithstanding their adoption, any changes that were mooted in Queensland would have had to have been accepted by the first State Conference (i.e. pre-1979 the Labor-in-Politics Convention). Rule 13(a) of the Queensland Branch Rules provides that a State Conference is the only body which may change rules. No suggestion was made that the four Branch rules became part of the Platform, Constitution and Rules approved by the thirty-third National Conference.

I expressed some reservations during the hearing of the appeal about the sufficiency of the resolution of March 1. This is not the same question as the right to issue a resolution. If the resolution was defective it would make the intervention unlawful. The National Executive can only declare that the Administrative Committee no longer exists and set up an organisation in its place "in the circumstances authorised by the rules; and for the purposes proposed by the constitution; and not for any ulterior purpose": Lewis v. Heiffer (1978) 1 W.L.R. 1061 at p. 1073, per Lord Denning M.R. The sufficiency of the resolution was not raised in the pleadings, but that would not necessarily be fatal as it is a point of law. However, members of the National Executive were not joined as defendants in the action; and counsel for the plaintiffs in the court below and counsel who appeared for the appellant before us did not choose to raise the matter, and I need say no more about it.

The issue raised by the pleadings was simply whether the National Rules were binding on the Queensland Branch;

on one side it was pleaded that the National Rules were not binding for the reason that they had never been adopted by the State Branch, and on the other side it was pleaded that the National Rules were binding on members and Branches throughout Australia and required no adoption to become effective.

The foundation of the ALP goes back to the beginnings of the Commonwealth. Prior to that there were separate Labor Parties in each State. In 1902 a conference of State Labor Parties was held in Sydney. There were meetings at intervals thereafter. At the sixth Commonwealth Conference held at Adelaide in 1915 it was decided to form an Australian Political Labor Executive, and Rules were laid down setting out its composition and objects and providing for future meetings and financial contributions from State organisations. Changes were made in the Rules by the tenth Commonwealth Conference held in Melbourne in 1924. The name of the Australian Political Labor Executive was changed to the Federal Executive. Rule 5(g) declared that the Federal Executive was competent to hear appeals from any State Conference or State Executive where leave to appeal was granted by the State Branch, and 5(h) was introduced giving the Federal Executive plenary powers to deal with any matter which in the opinion of the majority of the full Executive affected the general welfare of the Labor Movement. These rules were the forerunners of rules 7(c)(vi) and 7(c)(vii) of the present Rules. A special Federal Conference was convened in March 1931 when an amendment was carried giving the Federal Executive power to expel a State Branch, following upon which the New South Wales Branch was expelled. The powers of the Federal Executive were expanded at the thirteenth Commonwealth Conference held in Sydney in 1933 by the addition of rule 5(j) giving the Federal Executive the right to intervene directly in State Branch affairs. Rule 5(j) is the same as rule 7(c)(viii) under which the National Executive acted in the present instance. Further changes were made in the Rules at the nineteenth Commonwealth Triennial Conference held in Canberra in 1951 and rules 5(g), 5(h) and 5(i)

became rules 9(h), 9(i) and 9(k). The next major revision took place at the twenty-fourth Commonwealth Conference held in Canberra in 1961. Rule 1 of the revised Rules provided that the name of the Party shall be "The Australian Labor Party", a name which had been in use long before. Rule 2 stated that the Party shall consist of State Labor Parties (referred to as State Branches) and other branches established in Commonwealth Territories. The previous rules 9(h) and 9(i) (with some modifications) and 9(k) now became rules 7(c)(vi), 7(c)(vii) and 7(c)(viii) and they retain this numbering in the current Rules. The Rules were altered at the twenty-fifth Commonwealth Conference held in Perth in 1963, but rules 7(c)(vi), 7(c)(vii) and 7(c)(viii) remained as they were. The Federal Conference and the Federal Executive were renamed the National Conference and the National Executive at the Federal Conference held at Terrigal in 1975. We were informed that no substantial changes have been made since. By rule 4 the ALP is described as consisting of State Branches, the Northern Territory Branch and the Australian Capital Territory Branch. The National Conference is designated by rule 5(b) the supreme governing authority of the Party, and its decisions are stated to be binding upon every member and every section of the Party; and the National Executive is designated by the succeeding rule, 5(c), the chief administrative authority of the Party subject only to the National Conference.

Commenting on the gradual shift in authority from State Branches, Dr. D.J. Murphy wrote in an introduction to a collection of Essays edited by him entitled "Labor in Politics (the state labor parties in australia 1880-1920)" published in 1975 by the University of Queensland Press:

"Before the establishment of the Federal Executive, they had been independent local fiefdoms, untrammelled by the restraints of any superior authority. After 1915 they retained that independence in local State affairs, but as Federal and State politics became inextricably intertwined, as the effects of decisions at one level began to have political implications at the other, so a clear division of responsibilities became less tenable".

It is not contested by the appellant and is indeed acknowledged that the existence of the National Rules is recognised in the State Branch Rules. But it was argued that only those National Rules apply in Queensland as are accepted or treated as applying and rule 7(c)(viii) is not among them. The argument was that the two sets of Rules are inconsistent and except to the extent mentioned the National Rules do not apply in Queensland. The fundamental inconsistency was seen to be with rule 24 which states, "The supreme body of the Party between meetings shall be the State Council". Rule 24(b) gives the State Council the power to determine all matters affecting the Party with the exception of those powers reserved to State Conference and the Administrative Committee. What was being challenged was the effectiveness of a resolution issued by the National Executive under rule 7(c)(viii), not as I have said the sufficiency of the resolution. The point was made that there was no direct evidence of the authority of the two Queensland delegates who attended the thirteenth Commonwealth Conference in Sydney which gave birth to the rule, and it was submitted that the onus was on the respondents to show that it applied.

Entry into the Labor Party in Queensland is through a local branch in an electorate or by being a member of an affiliated union. The proposition was advanced and reiterated that membership of a State Branch does not confer membership of the ALP; but the State Branches are not entities distinct from their members - the very form of the action indicates this. An individual applicant for membership or a union seeking affiliation must pledge himself or itself "to the principles of the Australian Labor Party's State, Federal and Local Government Platforms". In the early days, what a person became a member of was the Labor Party in a particular colony, but political developments, if they have not kept pace with, have not lagged far behind constitutional developments. It is not insignificant, in my opinion, that the name of the Queensland Labor Party was changed to the Australian Labor Party (State of Queensland). The precise date was not given

but it was sometime between February 1918 and June 1920. In my opinion, a member of a State Branch is entitled to regard himself as a member of the ALP. Membership is conditional on him being a member of a State Branch. Bill Hayden, Senator Keefe and Manfred Cross may be in the position of special pleaders in this case, but, clearly, they have always considered themselves to be members of the ALP.

Counsel founded arguments both for and against the proposition that membership is confined to membership of a State Branch, on the provisions of rule 40(c) of the Queensland Rules. The rule takes the following form:

Members of Australian Labor Party branches in other states, on taking up residence in Queensland, and upon proof being shown of their membership in their former state and the bona fides having been vouched for with the State Executives and the Australian Labor Party in the respective states, shall be allowed continuous membership should they join the Australian Labor Party within one month of their coming to Queensland, providing that such application receives the approval of the administrative committee.

Some confusion is caused reading the Queensland Branch Rules because the draftsman has used the term Australian Labor Party indiscriminately to refer to the Federal Party and the State Branch. It was submitted by Mr. McPherson for the appellant that the reference to continuous membership in rule 40(c), which the member is to be "allowed", was a reference to membership of the Australian Labor Party (State of Queensland) for a purpose for which continuity of membership could be relevant, such as to become eligible for selection as a parliamentary candidate. Even if this interpretation be correct - and on reflection I think it is - it does not mean that there is no such thing as membership of the ALP based on membership of a State Branch.

In Conservative Central Office v. Burrell (1980) 3 All E.R. 42, which was cited by the appellant, the question of

law for the opinion of the court was whether funds held by the Central Office of the Conservative Party were held on behalf of an unincorporated association and assessable to corporation tax in respect of income under s. 238(1) of the Income and Corporation Taxes Act 1970. Under the Act "company" is defined as meaning any body corporate or unincorporated association. Holding that the Conservative Party was not an unincorporated association and that the funds held by the Central Office were not held on behalf of such an association, Vinelott J. in giving judgment was prompted to say:

"I can see no reason why an unincorporated association should not agree to send representatives to meet representatives from other unincorporated associations having a common purpose in order to discuss matters of common interest, whether informally or in accordance with some formal constitution, without its members thereby becoming members of a wider unincorporated association".

He was referring to the National Union which was formed as a federation of local Conservative Associations and is controlled by a Central Council whose main function is to provide a meeting place for delegates to come and discuss policy. The remarks were obiter, and the case is, of course, no authority for saying that membership of a State Branch does not carry with it membership of the ALP. But the concession made by the Crown in that case, which Vinelott J. considered to be rightly made, that an unincorporated association cannot itself be a member of another unincorporated association seems to me to run counter to what the appellant is contending in this case.

It is necessary to return to the question of inconsistency which was raised, and, in that connection, to the absence of any provision in the State Rules to the effect that in the event of any conflict between them and the National Rules the latter prevail.

Reference has previously been made to rule 5(b) of the National Rules. That is the rule which provides that the decisions of the National Executive shall be binding upon

every member and section of the Party. There is a similar provision in rule 7(c) with respect to decisions of the National Executive. The word "section" is not defined, but it would seem to include State Branches and other organisations such as the National Labor Women's Organisation. It was submitted by the appellant that these rules do not apply of their own force. The position in Queensland was contrasted with Victoria where the rules were changed in 1970 after negotiation, following an inquiry by the Federal Executive into dissension within the Branch, to resolve any doubt that State Conference was subordinate to the National Conference in policy matters.

But it is evident that the view has been taken in Queensland for a long time that the National Rules and the Branch Rules can exist side by side, without prejudicing the effectiveness of either. Thus, from 1916 to 1918 the Constitution and General Rules of the Queensland Labor Party were distributed to members in a booklet which also contained the Federal Conference Rules of the ALP; from 1923 to 1960 the official booklet containing the Constitution and General Rules of the Australian Labor Party (State of Queensland) included the Federal Rules. The Queensland Branch has been represented from the start at Federal Executive and Federal Conference meetings and has contributed to running expenses. Provision has now been written into the Rules relating to the appointment of delegates and financial contributions.

The Queensland Branch Rules go further than merely recognising the existence of the national organisation. The binding effect on members of the Platform and Rules is expressly recognised, for example, in rule 108(d)(ii). By this rule the Disputes Tribunal, which is set up to hear and determine any matter in dispute within the State Branch, has the right to hear charges against members of "infringement of the Party's Federal or State Rules, Platform or Policy". Furthermore, under rule 13(d), the State Conference may refer matters to the National Executive and National Conference. The implication is that

if matters are referred they are referred for decision or determination.

In the Policy Handbook (Exh. 35) issued after the first State Conference in Rockhampton, the statement appears that "The ALP is organised as a federal body with national machinery superimposed on six States and two Territorial branches". I think that generally sums up the position.

It does not strike me as irreconcilable with the independence of a state branch of a national political movement that the central executive should have power to intervene if it bona fide believes that the branch has acted contrary to the national constitution, platform and policy, provided intervention is confined to that.

The result is, in my opinion, that the appeal must be dismissed.

IN THE SUPREME COURT OF QUEENSLAND

No. 1914 of 1980

BETWEEN:

THOMAS STEPHEN BURTON, HARRY HAUENSCHILD, (Plaintiffs)
CLEM JONES ROBERT JOHN BRISKEY, THOMAS
LAWRENCE CONWAY, NEAL DAVID KANE, HAROLD
THOMAS MELLOR, WILLIAM EARNEST STONE, CECIL
WALLACE EDGAR WILLIAMS, JOHN ALAN BIRD,
TERENCE JOSEPH MELLIFONT and NICO BOS suing
on behalf of and representing all members of
THE AUSTRALIAN LABOR PARTY (STATE OF
QUEENSLAND) except the defendants personally
and as trustees of property belonging to THE
AUSTRALIAN LABOR PARTY (STATE OF QUEENSLAND)
CLEM JONES Appellant

- and -

DENIS JOSEPH PATRICK MURPHY, FRANK NORTHEY (Defendants)
SLEEMAN, IAN KEITH McLEAN, EDMUND DENIS Respondents
CASEY, WILLIAM GEORGE HAYDEN, MANFRED
DOUGLAS CROSS, LORRAINE JOY ARDILL, KEVIN

JOSEPH HOOPER, JOAN MARY McGRATH, PETER DOUGLAS BEATTIE, MEDELEINE McPHERSON, BRYANT ROBERT BURNS, PATRICK EDWARD DUNNE, FRANCIS LISKA HARRISON, MICHAEL FRANCIS REYNOLDS, JAMES BERNARD KEEFE, BARBARA LORRAINE ROBSON, LESLIE JOHN KERSLAKE, RAYMOND JOSEPH McCART, JOHN MURPHY and HUGHIE JOHN WILLIAMS.

JUDGMENT - W.B. CAMPBELL J.

The appellant is one of twelve persons who, on 30 May 1980, issued a writ against the respondents seeking certain declarations and injunctions, and claiming to sue on behalf of and representing all members of the Australian Labor Party (State of Queensland) except the defendants (respondents). The action arose out of certain disputes and differences within a voluntary or unincorporated association known as the Australian Labor Party (State of Queensland). The learned trial Judge held that the plaintiffs were not entitled to any of the relief sought and gave judgment in the action for the respondents with costs. The appellant now appeals from that judgment on the following grounds:

1. The judgment of His Honour the trial judge is wrong in law and in fact.
2. His honour was wrong in holding that the Rules of The Australian Labor Party (hereinafter referred to as "the National body") and alterations of those Rules were binding on individual members from time to time of The Australian Labor Party (State of Queensland).
3. His Honour was wrong in concluding that all or any of the members of The Australian Labor Party (State of Queensland) had agreed to the Rules or alterations of the Rules of the National body.

4. That in so far as His Honour took account of what had been done or what was purported to have been done under the Rules of the National body:-
 - (a) evidence of such matters was irrelevant and ought not to have been admitted at the trial;
 - (b) there was no evidence that in fact anything material had been done or purported to be done under the said Rules;
 - (c) anything done under the said Rules was incapable of varying, altering or affecting:
 - (i) the Rules of The Australian Labor Party (State of Queensland)
 - (ii) the terms of the contracts, agreements or compacts between the individual members inter se of The Australian Labor Party (State of Queensland).
5. His Honour was wrong in holding that, because:-
 - (a) the Rules of The Australian Labor Party (State of Queensland) recognised the existence of the National body;
 - (b) delegations from The Australian Labor Party (State of Queensland) to the National Conference had taken part in the framing and amending of the Rules of the National body;
 - (c) there was no Rule of The Australian Labor Party (State of Queensland) that specifically required adoption by The Australian Labor Party (State of Queensland) as a condition precedent to the National Rules becoming effective in Queensland

it was a difficult task to argue that the Rules of the National body did not of their own force apply in Queensland.

6. His Honour was wrong in holding or in finding that because:-

- (a) Rule 5(b) and Rule 5(c) of the Rules of the National body be given the meaning that the National body was supreme within the framework of its Rules; or
- (b) Rule 5(b) of the Rules of the National body said that the National Conference should be the supreme governing authority of the party and its decisions should be binding on every member and every section of the party; or
- (c) Rule 5(c) and Rule 7(c)(viii) of the said Rules were to be taken to mean what they say -

those Rules were therefore binding on each and every member for the time being of The Australian Labor Party (State of Queensland).

On 1 March 1980 the National Executive of the Australian Labor Party passed a resolution (ex. 1) the terms of which are set out in full in His Honour's reasons for judgment. The resolution commences by reciting that the National Executive is the chief administrative authority the decisions of which are binding upon all sections and members of the A.L.P. subject only to appeal to the National Conference; and that the National Executive is of the opinion that the general welfare of the Labor Movement is affected by certain matters in the Queensland branch of the party, setting out a number of such matters, one of which is the failure of the branch to carry out certain decisions of the National Executive. The resolution then states that the National Executive declares that the Queensland branch, its Administrative Committee and State Council, by failing to comply with the decisions of the branch and other decisions of the National Executive, have acted and are acting in a manner contrary to the National constitution platform and policy of the party and, pursuant to its authority under rr. 7(c)(vii) and 7(c)(viii), in short declares that the Administrative Committee and the

Disputes Tribunal of the Queensland branch no longer exist; suspends the operation of certain branch rules; sets up an Interim Administrative Committee of 29 designated persons to be the sole administrative authority of the branch until it is to be succeeded by an Administrative Committee to be elected by a conference of the branch to be held in February 1981; confers on the Interim Administrative Committee all the powers formerly conferred by the rules on the officers, Administrative Committee, State Council and State Conference of the branch; sets up an Interim Disputes Tribunal; gives certain directions, powers and authority to the Interim Administrative Committee to terminate the position of certain employees (secretary and organiser), to replace such persons with others and to take steps to procure the transfer of property held in trust for the branch; and gives directions relating to the appointment of delegates to the National Executive and the National Conference and to the endorsement of candidates for Federal, State and local government elections.

The statement of claim alleges that the current rules and standing orders of the National body (the Australian Labor Party) have at no material time been binding upon the Queensland body (The Australian Labor Party (State of Queensland)) in that, on their proper construction, the constitution and rules of the Queensland body do not permit rules and standing orders made by the National body to bind the Queensland body unless and until such rules or standing orders are adopted by the Queensland body, and that such rules and standing orders have never in fact been adopted. The statement of claim then alleges that, as a consequence, the decisions contained in the National Executive resolution of 1 March 1980 and the appointments to the Interim Administrative Committee are invalid and of no effect in relation to the Queensland body and its constituent parts.

In his reasons for judgment the learned trial Judge said:

"There is really no dispute as to the facts, and the resolution of the matter depends upon the true construction of the rules of the National body and of the Queensland body, and insofar as it may be necessary to refer to it and insofar as it may be relevant, the interpretation of the practice which has been adopted for many years."

After a consideration of both sets of rules in the light of the historical background His Honour concluded that the National rules were binding upon the Queensland body. He said that he had considered the question "purely as one of construction" and that he was fortified by the evidence of "what has been done over the years". What is involved in this case is whether the National Executive had the authority to interfere in the affairs of the Queensland branch in the manner which I have described. It seems to me that the issue is simply whether a person, upon becoming a member of the Queensland body, agrees to be subject to (or to have his conduct and affairs regulated by) not only the rules made by that body but also the rules made by the National body. In Lewis v. Heffer (1978) 1 W.L.R. 1061, a case concerned with disputes in the Labour Party in England, Ormrod L.J. said, at p. 1076: "Rules of association of this kind ultimately derive their legal effect from the acceptance, by the members, of the terms and conditions of the association when they join the group." I think that His Lordship's formulation is apposite to describe the issue in this case.

The determination of what are the terms and conditions applicable to a person who joins - becomes a member of - the Queensland body obviously requires a construction of the written rules of that body. And here, because of the references in those rules to the National body and by reason of the evidence of established practice and usage of the relationship between the two bodies including evidence as to the understanding of members as to the powers and authority of the National body, it will involve a construction of the rules of the National body. Following upon the sentence which I have cited from the judgment of

Ormrod L.J. in Lewis v. Heffer (supra), His Lordship went on to say:

"Where there is an established and well known and unquestioned practice in use in the association it is some evidence, and indeed it may be strong evidence, that this practice too is part of the terms and conditions which are accepted by persons joining the association.it must require an extraordinarily strong and clear case to justify the court in holding a well-established practice like this to be unconstitutional or ultra vires, more particularly where the organisation concerned is a voluntary, unincorporated and essentially informal body."

In the same case Denning M.R. said, at p. 1072:

"In a body like this, rules are constantly being added to, or supplemented by, practice or usage: and, once accepted, become as effective as if actually written."

I will first set out the National rules under which the National Executive purported to act in passing the resolution. Rule 7(c)(vii) sets out that the National Executive shall:

"have plenary powers to deal with and decide any matters which, in the opinion of an absolute majority of members of the Executive, affect the general welfare of the Labor Movement, provided that no decision of National Conference shall be abrogated under this rule".

Rule 7(c)(viii) reads:

"in the case of any State Executive, State Branch or section of the A.L.P. acting or having acted in a manner deemed by the National Executive to be contrary to the National Constitution, Platform and Policy of the Party as interpreted by the National Executive, the National Executive may over-rule such State Executive, State Branch or section and/or may declare that same no longer exists, and shall set up in place thereof organisation competent to carry out the National Constitution, Platform and Policy of the A.L.P. Pending the hearing of any appeal, the decision of the National Executive shall operate. In the event of the National Executive taking

any action under this sub-clause, the National Executive shall be the body to approve any selection which otherwise would have been made by the body affected by the National Executive decision."

Because of the evidence and because Mr. McPherson Q.C., for the appellant, contended that the rules of the National body are contrary to and inconsistent with some of the rules of the Queensland body, I consider that a proper understanding of the inter-relationship, if any, between the two sets of rules requires an appreciation of the history of the formation and continued existence of the political organisation known as the Australian Labor Party. Both the Queensland body's rules and the National body's rules have been amended and added to from time to time; and the rules of the National body refer to state branches, state branch delegates and state branch administrative organs and the Queensland body's rules likewise refer to the National body and delegates from it to the National body's administrative organs. These matters provide further justification for having regard to the history of the Australian Labor Party.

HISTORY

I will set out only such facts by way of historical background as appear to me to be salient; I will omit other matters of history which may be material but, in my view, are so to a lesser degree. The Australian Labor Party (the National body) came into existence later in point of time than did the Queensland body. History shows that the National body was created as the result of steps taken by separate state political labor parties. In fact, the Queensland body, prior to June 1920, was known as the "Queensland Labor Party". The first Commonwealth Conference of "The Australian Labor Party", to which the Queensland body sent delegates was held in 1902. The Queensland body adopted the name of "The Australian Labor Party (State of Queensland)" in June 1920. At the sixth Commonwealth Conference of the Australian Labor Party held in 1915 a motion was passed for the establishment of an "Australian

Political Labor Executive", the precursor of the present National Executive of the National body. The rules of this Australian or Federal or National Executive were changed from time to time and a rule corresponding to the present National rule 7(c)(vii) was first introduced at the National Conference held in 1924. It was then rule 5(h) and read:

"That the Federal Executive has plenary powers to deal with and decide any matter which in the opinion of the majority of the full Executive affects the general welfare of the Labor Movement. The Executive decision upon such matter shall be binding upon all members of the Australian Labor Party, provided that any Branch or person affected shall have the right to appeal to next Federal Conference against such decision."

The present Rule 7(c)(viii) was introduced in its present terms, with minor immaterial differences, at the National Conference held in 1933. Over the years there were changes in the constitution and rules of the Australian Labor Party and it was at the Federal Conference in 1975 that the name of the former Federal Executive of the Party was changed to "The National Executive."

The Queensland body has at all material times caused to be sent to meetings of the National Conference and of the National Executive (and their precursors) delegates in accordance with the National rules and with the Queensland rules, and those delegates have taken part in the making and amendment of National rules. Those delegates have always reported back to the Queensland body (or State branch). The Queensland body has also, from time to time, paid to the National body such sums, by way of contribution to the latter's funds, as have been required by the National rules.

The Administrative Committee of the Queensland body was for a time formerly known as the "Queensland Central Executive". It appears that from about 1912 until 1960 the Federal rules and the State rules (including the respective platforms of each) were published in the one volume. Mr.

Cross gave evidence that from 1946 until 1960 both sets of rules were bound in the one volume and were available for purchase from the Queensland Central Executive office. It appears that there was a change in 1960 following a discussion which took place about establishing a full time Federal Secretariat of the party. Prior to that time the Federal secretary was one of the state secretaries who did the federal work on a part-time basis. Consequently, from 1960 onwards the Federal body printed its own documents, policy documents and rules and they were not brought out in the same volume as were the State rules. All the Federal documents were on sale through the state branches right throughout Australia from at least 1963 onwards, Prior to 1960 the rules of the State body were not bound in a separate volume. It appears also that the rules of each state branch differed in significant ways from the rules of other state branches.

QUEENSLAND RULES

Exhibit 2 is a booklet entitled "Constitution and General Rules", and on the cover those words appear below the heading "Australian Labor Party Queensland Branch". It appears that there is no constitution as such apart from what is contained in the rules. The booklet contains 115 separately numbered rules, many of which are lengthy.

The name of the Party is "The Australian Labor Party (State of Queensland)" (r. 1); it is provided by r. 2 that "the Party shall consist of the Members of such Industrial Unions and Branches and Credit Unions as endorse its Objects, Methods, and Platforms and which become affiliated or registered and recognised as Branches of the A.L.P." The use of the abbreviation "A.L.P." is not without significance because it not only appears from time to time in the rules of the Queensland body but also in the rules of the National body - see National rr. 7(c) and 7(c) (viii).

It can be seen from r. 2 that the members of the Queensland association are broadly divided into two

classes: (1) individuals who are members of a branch within the State, and (2) members of unions (industrial or credit) which have become affiliated with the State association. Rule 34 provides that an affiliated union shall forward to the State Secretary a return showing the numbers of members of the union, and the latter is obliged to pay capitation fees on the membership. In order to become affiliated the union must also pledge itself to the principles of the Australian Labor Party's State, Federal and local government platforms (r. 36).

All such union members are accordingly subject to the rules of the State body. The union itself, as an entity or separate organisation, is not a member of the State body - this is apparent from the rules and in particular r. 2 which speaks of "members of unions".

It is also not without significance that the "Objective" of the Party as set out in Queensland r. 3 corresponds in its operative parts to the "Objective" of the Australian Labor Party as set out in Ex. 3 (Australian Labor Party Platform Constitution & Rules), except that the objective of the Queensland party refers to "reforms set out in State and Federal Platforms as amended from time to time by the appropriate authority" and the objective of the National Party refers to "reforms set out in this Platform". I draw attention to the reference in the Queensland r. 3 to the Federal platform.

The Queensland rules set out the administrative structure of the Queensland body. Rules 12 to 23 inclusive deal with the State Conference which is to be held in alternate years unless State Council otherwise decides (r. 12); it is the only body which may change rules, revise the State and local government platforms, determine any matter in dispute affecting the welfare of the Queensland branch and elect all but ex-officio members of the Administrative Committee, the Disputes Tribunal and delegates to the National Conference and to the National Executive (r. 13). In addition, the State Conference is given power to refer

matters to the National Executive and to the National Conference. I draw attention to the use of the words "Queensland Branch" and to the specific references to the National Conference and National Executive. Rule 16 sets out the composition of the State Conference which is to be comprised of certain Labor Party leaders in the State, one delegate from each State electorate chosen by plebiscite of branch members, three delegates elected by the Labor Women's Conference, one delegate elected by the Australian Young Labor Conference and a number of delegates representing trade unions and the Union Credit Union.

Rule 24 provides that the supreme body of the Party between meetings of State Conference shall be the State Council. This Council is comprised of certain ex-officio party leaders, two delegates from branches in each Federal Division selected by plebiscite of branch members, one delegate from the Labor Women's Conference, one delegate from the Australian Young Labor Conference and delegates representing trade unions and the Union Credit Union. The State Council is also given the power to refer matters to the National Executive and National Conference (r. 24(b)(xv)). Rule 29(b) provides that the standing orders of State Council shall be those for National Conference. The Council is required to meet at least once every three months. Again I draw attention to the reference to the National Conference and the National Executive. Rule 30 provides that there shall be an Administrative Committee responsible for the administration and management of the Party which shall meet at least monthly. The Administrative Committee is responsible for the overall administration of "the A.L.P. in Queensland" subject to the over-riding authority of the State Council and the State Conference (r. 30(b)). Rule 30(f) provides that the standing orders for Administrative Committee meetings shall be those laid down for National Conference.

The rules provide that branches of the Australian Labor Party may, if approved by the Administrative Committee, be established in any State electorate in

Queensland; and r. 40(c) provides that members of Australian Labor Party branches in other states, on talking up residence in Queensland, "shall be allowed continuous membership should they join the Australian Labor Party within one month of their coming to Queensland". It is clear from the rules that an application for membership of the party is to be made on an official form to a particular branch within the State, and membership is restricted to one branch (r. 92). The application form for membership contains a pledge whereby the applicant pledges himself "to the principles of the Australian Labor Party's State, Federal and Local Government Platforms". Rule 53(a) is of interest in that it makes provision for admission to membership of supporters of "the Australian Labor Party in those areas of Queensland where their normal place of residence is in New South Wales, South Australia or the Northern Territory and in which no branch of the Australian Labor Party operates." Rule 108 sets out the composition and the jurisdiction of the Disputes Tribunal which is elected by State Conference to hear and determine any matter in dispute within "the A.L.P. (Queensland Branch)". Sub-rule (d) of r. 108 is significant because it provides, inter alia, that where any member of the party lays a charge against any other member alleging that the latter has been guilty of "infringement of the Party's Federal or State Rules, Platform or Policy" the matter shall be referred to the Disputes Tribunal. It is clear that the State body in its rules and by its conduct fully recognises the existence, functions, powers and authority of the National body.

NATIONAL RULES

The rules of the National body are in a much shorter form than are the rules of the State body. They provide that the name of the Party shall be "The Australian Labor Party", the objective (r. 2), to which I have already referred, corresponds to the objective of the Queensland Party, and r. 4 provides: "The Party shall consist of State Branches, the Northern Territory Branch and the Australian

Capital Territory Branch (hereinafter referred to as State Branches)."

Rule 5 sets out the structure of the party organisation on the basis of a National Conference, a National Executive, a Federal Parliamentary Labor Party, a National Labor Women's Organisation and an Australian Young Labor. Rule 5(b) provides that the National Conference shall be the supreme governing authority of the Party "and its decisions shall be binding upon every member and every section of the Party". It is also provided (r. 5(c)) that the National Executive shall be the chief administrative authority of the Party subject only to National Conference. Rule 6 provides that each state branch shall be entitled to send seven delegates to the National Conference, one of whom shall be the state parliamentary leader or his nominee as approved by the state executive. Rule 6(b) reads: "National Conferences shall be held in alternate years, the venue and time to be determined by the National Executive which shall have regard to the claims of all States".

The National Executive is comprised of the president, the National secretary, the leader and deputy leader of the Federal Parliamentary Labor Party, the leader and deputy leader in the Senate and two delegates from each state branch. The powers and duties of the National Executive are set out in r. 7(c) which provides that the decisions of the National Executive shall be binding upon "all sections and members of the A.L.P. subject only to appeal to National Conference". Rule 7(c)(vi) provides that the National Executive shall be competent to hear and decide appeals from any affiliated organisation or individual member against the decision of any state conference or state executive alleged to be inconsistent with any national decision or matter. It is provided that, where any member or affiliated organisation desires to appeal to the National Executive on a question which does not involve any national decision or matter, leave to appeal must first be obtained from the state branch concerned (r. 7(c)(vi)(b)).

I have already set out the terms of rr. 7(c)(vii) and (viii).

There was no suggestion that the National rules have not all been validly passed in compliance with the procedures laid down under the relevant standing orders. It was not argued before His Honour or before us that the delegates from the Queensland association to the National body lacked the necessary authority to take part in the making of the rules of the National body. No submission was advanced to the effect that, on the assumption that the National rules applied to the affairs of the Queensland branch, the resolution of 1 March 1980, for example, its suspension of the operation of certain rules of the Queensland body, went beyond the powers given to the National Executive by the terms of r. 7(c)(viii).

CONCLUSION

It was submitted by Mr. McPherson that the rules of the National body are contrary to and inconsistent with many of the rules of the Queensland body. He said that the real point in issue could be stated as follows: By what rules are the affairs of the unincorporated Queensland body regulated - by those contained in ex. 2 or by those contained in ex. 2 and in ex. 3, and if the latter how are the conflicts in the two sets of rules to be resolved? It was also submitted, relying on the words of r. 4, that the members of the National unincorporated body are not individuals but rather the state branches considered as entities or organisations separate and apart from the individuals who comprise their membership. I do not agree with this submission. The National rules purport to be binding on "every member and every section of the Party" (r. 5) and on "all sections and members of the A.L.P." (r. 7(c)). When they speak of "members of the party" they are referring to the individuals who are the members of a state branch. I refer particularly to r. 7(vi)(a) which speaks of appeals by "individual members" against decisions of the state bodies and to sub-r. (vi)(b) which provides that a

member must first obtain leave to appeal from the state branch.

It was also submitted by Mr. McPherson that membership of the party by way of trade union membership relates only to those trade unions which are affiliated with the Queensland body; he pointed out that there is no provision for affiliation of unions at a Federal level so as to produce what might be regarded as an affiliation type of membership of the Federal A.L.P. However, the National rules (rr. 6(e)(i) and 7(c)(iv)) enable Federal trade unions whose state branches are affiliated to the party in each state to send matters to the National Conference and to the National Executive - provisions which impliedly recognise that membership of a state body by means of membership of an affiliated union leads to membership of the National body. In my view the National rules on their proper construction do not lead one to conclude that the members of the National body are the unincorporated non-juristic "entities" which are the political bodies or associations in the states, nor to conclude that the delegates to the National Conference and the delegates to the National Executive - who may well differ from meeting to meeting (and in the case of the Executive may be proxy delegates) - are the members of the National body.

The National rules are the rules of a political party described therein as "the Australian Labor Party" and stated therein to consist of State branches; in 1920 the Queensland body changed its name so as to include the words "Queensland Branch". Following upon the formation of the Australian Political Labor Executive at the Commonwealth Conference of the Australian Labor Party in 1915, it was in 1924 that Federal rules were made in order to give power to the Federal Executive to decide such matters as may be referred to it by any state executive and to provide that its decision on any matter which affected the general welfare of the Labor Movement was binding upon the members of the Australian Labor Party, provided that any branch or person affected should have the right to appeal to the next

Federal Conference against such decision. In my opinion, effect must be given to the words "Queensland Branch" where those words appear in the rules of the State body. I might say that the cover on the booklet (ex. 2), containing the constitution and general rules of the Queensland body, bears the heading "Australian Labor Party Queensland Branch". But I will ignore this title because the name as set out in r. 1 is "The Australian Labor Party (State of Queensland)". However, r. 13(c), dealing with the powers of the State Conference, uses the words "any matter in dispute affecting the welfare of the Queensland Branch". Rule 30(b), setting out the functions of the Administrative Committee, states that it is responsible for the overall administration of "The A.L.P. in Queensland"; r. 96(a)(iv) dealing with the Federal Divisional Executive Committee (a body concerned with the selection and running of the selected candidates for the House of Representatives) requires that Executive to become registered with the "Queensland Branch of the Australian Labor Party". The same words are used in r. 96(b). Rule 112(b) states that the Finance Sub-Committee shall be responsible for the financial supervision of "The A.L.P. Queensland Branch", I have already referred to the provisions of r. 108(b) and to the membership application form, both of which speak of the Federal platform and policy of the Australian Labor Party.

The following figurative meanings of the word "Branch" are given in the standard dictionaries: Oxford - a component portion of an organisation or system, a part of a larger unity (vol. 1, p. 1053); Webster - a member or part of any complex body or work (2nd ed. vol. 1 p. 325); Macquarie - any member or part of a body or system. (p. 246). It seems to me that when the Queensland rules refer to "The Queensland Branch" they are recognising that the Queensland association has become part of a larger association and that individuals, on becoming members of, or joining, the Queensland association, are aware that they are becoming members of the larger body. Indeed the evidence, both oral and documentary, placed before His Honour permits of no other conclusion. I refer to the

evidence given by Senator Keefe, who has held offices at all levels in the party, to the effect that he had never heard any suggestion that the Federal rules did not have authority in Queensland. The leader of the Federal opposition, Mr. Hayden, said that he heard for the first time in 1978 some discussion about the authority of the Federal Executive in terms of its rules to intervene in the affair of the state branches.

Exhibit 25 is a copy of an extract from the Policy Handbook of the Australian Labor Party (State of Queensland) as at February 1979. In the introduction to that handbook one of the plaintiffs, Mr. Burton, said:-

"This handbook contains the policy of the Australian Labor Party Queensland Branch ..." In the same publication under the heading "A.L.P. Organisation" the following statements appear:

"The A.L.P. is organised as a Federal body with National machinery superimposed on six State and two Territorial branches. The National Conference is the supreme governing authority of the Party. Its decisions are binding on every member and every section of the Party. The conference meets every two years and meetings are rotated from State to State..... The chief administrative authority of the Party is the National Executive, which is subject only to the authority of the National Conference. It has very wide powers and can intervene in every aspect of A.L.P. activity.

The Labor Conference, held every two years, is the supreme governing body of the Australian Labor Party in Queensland". (underlining mine).

Although the political party known as the Australian Labor Party started from small beginnings in one or more of the states of the Commonwealth - and this is not unusual - it has been shown by the evidence to have become an Australia-wide political organisation. The current rules of the Queensland body reflect the changes in the organisation and structure of this voluntary association of people which have taken place over the years. In the light of the

argument that the National rules are contrary to and inconsistent with the rules of the Queensland body I have considered that it is proper for me to look at the way these rules have been understood and interpreted over many years, particularly since the formation of administrative or management authorities at a national level. Although many of the rules bear the hallmarks of careful deliberation they are not to be viewed in the same strict way as one might look at statutory rules or those of a corporate body operating in the world of commerce, such as the articles of association of a company. In my opinion, the National Conference and the National Executive represent more than "a meeting place of delegates" as was said by Vinelott J. in Conservative Central Office v. Burrell (1980) 3 All. E.R. 42, at p. 55, when His Lordship was speaking about the constitution of the Central Office of the Conservative Party.

In my opinion the material has shown that the Queensland body is not an organisation which is wholly autonomous and independent; its own rules illustrate that it has through its management organs, acting on behalf of its members, agreed to become part of a larger organisation, namely, the National body. It has recognised that rules are made from time to time by the National body, it has sent delegates to the National body to take part in the making of such rules, and the rules of the State body show that it has agreed that its members are subject to the rules of the National body. A person who is or becomes a member of the Queensland body also becomes a member of the National body. The supreme governing body of the State association is the State Conference which does not comprise all individual party members but only certain delegates chosen to represent other groups of individuals. That body elects delegates to the governing bodies of the National association, namely, the National Conference and the National Executive. The Queensland body's rules, insofar as they speak of "supreme body of the Party" or "determine finally any matter in dispute or use expressions of a similar nature should, in my opinion, be read as having

reference to the affairs of the State branch and as being subject to the overall supremacy of the duly constituted authorities set up by the National body.

In my opinion, it is clear that the conduct of the officers and members of the Queensland body over the last fifty years (approx) has constituted an approval or ratification of the rules made from time to time by the National body, and such conduct has amounted to an acceptance that the National rules regulate the affairs of the members of the Queensland body. The totality of the evidence has persuaded me that the members of the Australian Labor Party (State of Queensland) are, by virtue of that membership, also members of the larger unincorporated association known as "The Australian Labor Party". Consequently, I do not consider that there is any need for the rules of the National association to be formally adopted by the Queensland association before they can be said to be rules which govern the conduct and affairs of the members of the Queensland body. It is individuals, and not separate voluntary associations considered as entities, who constitute the members of a political party. A political party is made up of a number of individual persons associated together for the advancement of the cause of a particular political philosophy. In my view it is meaningless to say that the National association is a political party the members of which are unincorporated associations and not the individuals who have joined themselves together in those unincorporated associations.

In ex. 3, the book which contains the platform constitution and rules of the Australian Labor Party, in the section headed "Preamble to the Platform" the following words appear: "Membership of the Australian Labor Party is open to all residents in Australia who are "prepared to accept its programme and methods and who have associations with no other political party." In my opinion the rules of the National body and of the Queensland body can be read together, and when so read they envisage that there is one

political party in Australia known as The Australian Labor Party and there are not a number of separate independent political parties in each of the states There are then no inconsistencies as between the two sets of rules. It seems to me that all members of the Queensland Association have become members of the "Australian Labor Party". The issue here is whether the National rules are binding on the individual members of the Queensland association. There was no evidence placed before His Honour to the effect that any member of the Queensland body held the view that he was, as such member, bound only by the Queensland rules and not by the National rules. Indeed, as I have said, the evidence was all the other way, namely, to the effect that the members of the Queensland body have always treated the National rules as forming part of the totality of rules by which they have agreed to hold themselves bound when applying for and becoming members of the political party in Queensland. For over fifty years the members of the Labor Party, who have been accepted as members by the Queensland branch, have not considered that they are members of a political party in Queensland separate and apart from the Australian Labor Party throughout Australia. A consideration of the history of the Australian Labor Party and of the rules of both the National organisation and of the State organisation has led me to the conclusion that the National rules are binding on all members of the Australian Labor Party (Queensland Branch).

For the reasons which I have given I consider that the appeal should be dismissed.