

1883
BAND OF HOPE
AND ALBION
CONSOLS

v.
YOUNG BAND
EXTENDED
Q. M. COY.

boundary, that he had authority to make it, and that he made it not merely as applicant for a lease, but as claimholder. The appeal, therefore, ought to be dismissed.

Appeal dismissed, with costs.

Solicitor for the plaintiffs: *C. M. Watson.*

Solicitors for the defendants: *Smale, Hamilton & Wynne*, for *Cuthbert & Wynne*, Ballarat.

April 12.
June 8.

IN THE MATTER OF THE APPLICATION OF THE FOURTH SOUTH MELBOURNE BUILDING SOCIETY TO BE REGISTERED UNDER THE PROVISIONS OF "THE BUILDING SOCIETIES ACT 1874," AND IN THE MATTER OF THE SAID ACT (a).

"The Building Societies Act 1874" (No. 493), secs. 2, 4, 38—Building society—Refusal of Registrar to register—Similarity of names—Existing society—Construction—Interpretation clause.

Where the Registrar of Building Societies refuses to register a society, being of opinion that its name so nearly resembles that of another as to be calculated to deceive, the Court will not review his decision where it is based upon a real and genuine opinion.

The words "existing society" in sec. 4 of "*The Building Societies Act 1874*" (No. 493), are not to be strictly construed according to sec. 2, to mean a society existing at the time of the passing of the Act.

Interpretation clauses in statutes must be interpreted reasonably to promote, and not to defeat, the purposes of the statute; and the restriction, "unless there be something in the subject or context repugnant to such construction," must always of necessity be implied therein.

MOTION calling upon J. B. Gregory, Esq., the Registrar of Building Societies, pursuant to sec. 38 of the Act No. 493, to substantiate and uphold the grounds of his refusal to register a building society.

The Registrar had refused to register the Fourth South Melbourne Building Society under that name, and gave as the ground of his refusal:—

"That the name in my opinion so nearly resembles the name by which an existing society, viz., the "South Melbourne Permanent Building and Investment Society and Deposit Institute," is already registered, a society which is not in course of being terminated or dissolved, and does not consent to such registration, as to be calculated to deceive. (See Act No. 493, sec. 4)."

(a) *Coram*, HOLROYD, J.

Under the Act 18 Vict. No. 41 the "South Melbourne Mutual Benefit Building and Investment Society" was established on the 24th February, 1860. Subsequently the "Second South Melbourne Building and Investment Society" was established under the "*Friendly Societies Statute 1865*." The "Third South Melbourne Building and Investment Society" was incorporated on the 4th May, 1877, under the Act No. 493. The first and second societies had terminated, and the proposed fourth society was being established by the promoters of these societies. "The South Melbourne Permanent Building and Investment Society and Deposit Institute" was registered on the 13th September, 1875, during the existence and without the consent of the "Second South Melbourne Building and Investment Society."

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Mr. Worthington in support of the summons:—

The names are not calculated to deceive. Cases dealing with trade names offer analogous instances, and the like principles should guide the decision here: *London and Provincial Law Assurance Society v. London and Provincial Joint Stock Life Assurance Coy.* (a), *London Assurance v. London and Westminster Assurance Corporation, Limited* (b); *Colonial Life Assurance Coy. v. Home and Colonial Assurance Coy., Limited* (c); *Merchant Banking Coy. v. Merchants' Joint Stock Bank* (d). A strict interpretation must be given to the words "existing society" in sec. 4. The interpretation clause, sec. 2, defines them. The "South Melbourne Permanent Building and Investment Society and Deposit Institute" was not in existence when the Act No. 493 came into operation, it, therefore, was not an "existing Society" under that Act, and cannot, therefore, claim the protection of sec. 4. This society has a prior right to the name. [MR. JUSTICE HOLROYD. Although I may agree with you that the name is not calculated to deceive, yet the registrar, having "in his opinion" thought otherwise, have I any jurisdiction to make him alter his opinion, or register the society? I notice that these words, "in his opinion," are not to be found in the English Statute from

(a) 17 L.J., Chy. 37.

(c) 33 Beav. 548.

(b) 32 L.J., Chy. 664.

(d) 9 Chy. Div. 560.

1883 which this is transcribed: 37 & 38 Vict., c. 42.] The Court has
In the Matter of jurisdiction under sec. 38; and further, can control the capricious
 THE FOURTH or unreasonable exercise of a discretion: *Robinson v. Chartered*
 SOUTH MEL- *Bank (e)*.
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Mr. Webb, Q.C., for the Registrar:—

The cases cited refer to injunctions sought against the use of similar trade names and were based upon the right of the plaintiffs to the name. Such a matter was not in the contemplation of the Legislature in this Act, and the Registrar cannot be supposed to claim a right in the name on behalf of the other society. A comparison of the English and local Statutes and the differences between them indicate the intention of the Legislature to have been to constitute the Registrar the sole judge of the matter: sec. 4. Sec. 38 does not give this Court jurisdiction to review the Registrar's opinion; it applies to other matters, *e.g.*, the refusal to register a rule. The present society can have acquired no right to the name by succession.

If the words "existing society," in sec. 4, mean by sec. 2 a society existing at the time the Act was passed, the Act would become valueless. These societies are nearly all "terminating," and their names after dissolution could not be used by new societies. The interpretation clause must be construed reasonably: *Midland Ry. Coy. v. Ambergate, &c., Ry. Coy. (f)*. The words "existing society" must refer to societies existing at the time of the application to register the new society.

The objections of the Registrar are not captious, and he should therefore be entitled to his costs: *In re The Metropolitan Permanent Building Society (g)*.

Mr. Worthington in reply.

Cur. adv. vult.

MR. JUSTICE HOLROYD:—

The Registrar of Building Societies was summoned to substantiate and uphold the grounds of his refusal to register a society by the name of "The Fourth South Melbourne Building Society."

(e) L.R. 1 Eq. 32.

(f) 10 Hare 359.

(g) *Ante* Vol. VII., E. 86, 92.

His grounds were that in his opinion the proposed name so nearly resembled the name by which an existing society, "The South Melbourne Permanent Building and Investment Society and Deposit Institute," was already registered as to be calculated to deceive, and he relied on the 4th section of "*The Building Societies Act 1874*." The 17th section of the English Act (37 & 38 *Vict.*, c. 42) contains a proviso nearly equivalent to the fourth section of our Act, but omitting the words "in the opinion of the registrar." The interpolation of these words leaves it to the opinion of the registrar to decide what is such a near resemblance of names as to be calculated to deceive.

To uphold a refusal on the ground of an opinion, the opinion must, of course, be genuine. If I were forming an opinion on the subject, I should consider whether a common man, not of weak intellect, but in full possession of his faculties, not educated, but capable of understanding the import of common English words, would be likely to make a mistake between the two names, whether through the eye or through the ear. If two names ring alike, notwithstanding a minute difference of their components, or if the body of each is the same, one only having a prefix or suffix liable to be dropped, a plain man of the class to which many members of building societies belong may easily be deceived. At the same time it is a deceitful resemblance between the names, and not between any abbreviations of them, which is prohibited, and hence the difficulty of the inquiry; for if a single word were omitted from the one which appeared in the other, a careful person could hardly fail to perceive the difference.

The dissimilarity between two names might be so great that it would be impossible to credit the registrar with the opinion that any person possessed of ordinary common sense could confound the one with the other. In that event I think the Court would have jurisdiction to declare that the registrar had not substantiated the grounds of his refusal, there being no opinion on which it could rest. But the opinion of the Court must not supplant the opinion of the registrar when he has one. I cannot doubt that in this case the registrar has grounded his refusal on a real opinion, although I do not say that it coincides with mine.

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Mr. Worthington, however, argued that, inasmuch as the Permanent Society was registered after the Act No. 493 came into operation it was not included in the term "existing society," as interpreted by sec. 2; and that therefore sec. 4 did not apply to the present case. If that term can only mean, as sec. 2 states it to mean, a society existing at the time of the passing of the Act, his argument is unanswerable. Is the sense of the term so limited in every instance? "All interpretation clauses," said Vice-Chancellor Wood in *Midland Ry. Co. v. Ambergate, &c., Ry. Co.* (h) "must be understood to define the meaning, supposing there is nothing else in the Act which is opposed to the particular interpretation." He was speaking with reference to the interpretation clause of the English "*Railway Clauses Consolidation Act*" (8 Vict., c. 20, s. 3), in which the usual restriction, "unless there be something in the subject or context repugnant to such construction," is appended to the definitions. That restriction has not been inserted in sec. 2 of No. 493. But, in my opinion, although for caution's sake the restriction is usually expressed, it must always of necessity be understood.

Interpretation clauses must be themselves interpreted reasonably, to promote, and not to defeat, the purposes of the Act which they are intended to elucidate. The purpose of the Legislature to prevent any registered building society from bearing a name identical with or too nearly approaching that of any other similar society then existing, whether registered before or after the passing of the Act 493, unless such other society is *in extremis* and consents, cannot be mistaken. Sec. 18 explains sec. 4. The object of sec. 18 is to permit a society to change its name, but to prohibit on such change the pirating or too closely copying the name of another society. The object of sec. 4 is to prohibit the pirating or too closely copying the name of another society on the registration of a new society. But sec. 18 embraces in its prohibition an identity or over-close similarity with the name of any other society whenever registered. Are we to assume the prohibition in sec. 4 to be less extensive, or that a building society may always be registered by a name, which, if it had been registered by another, the policy of the law

would prohibit it from taking at any future time? The necessary result of adopting the construction for which Mr. Worthington contended would be that all building societies might hereafter be registered with identical names, while the registration of any society under a name identical with that of a society existing at the time of the passing of the Act No. 493 but since defunct would be forbidden. The subject of sec. 4 appears to me to be entirely inconsistent with that construction. I must dismiss the summons. The registrar having succeeded is entitled as of right to his costs.

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Solicitors for the motion: *Wisewould & Gibbs.*

Solicitor for the Registrar: *Sutherland*, Crown Solicitor.

ROSS *v.* THE VICTORIAN PERMANENT PROPERTY INVESTMENT
AND BUILDING SOCIETY.

May 7, 8.

*Exceptions—Mortgagor and mortgagee—Accounts in Master's office—Appropriation of
payments—Special agreement.*

Where, in taking accounts in a redemption suit, the mortgagor alleges a special agreement as to the appropriation of payments, it should be distinctly stated in writing by way of objection or discharge, and specific evidence should be tendered to the Master in support thereof; otherwise the Court cannot upon exceptions re-open the matter.

EXCEPTIONS, and motion to review the Master's report.

This was a redemption suit by William Murray Ross against the Victorian Permanent Property Investment and Building Society, James Munro, and Andrew Rowan.

On the 10th August, 1882, a decree was made for redemption and certain accounts and inquiries were thereby directed to be taken and made by the Master (a). On the 15th March, 1883, the Master presented his report, which stated what of the lands comprised in the mortgage had been sold, and that after making all just allowances a sum of 27,582*l.* remained due at the date of the report.

(a) *Ante* Vol. VIII., Eq. 254.