Privy Council Appeal No. 33 *of* 1932.

Charles Wright and another - - - - - *Appellants*

v.

Universal Negro Improvement Association, Inc. - - *Respondents*

FROM

THE SUPREME COURT OF BRITISH HONDURAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1935.

Present at the Hearing:

LORD BLANESBURGH.

SIR LANCELOT SANDERSON.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD BLANESBURGH.]

On the 7th April, 1924, Isaiah Emmanuel Morter, died at Belize, domiciled in the Colony of British Honduras, possessed of considerable property. By his will dated the 15th February, 1924, he devised and bequeathed his residuary real and personal estate with other benefits to " The Parent Body of the Universal Negro Improvement Association for the African Redemption Fund ". On the 8th September, 1924, his will was duly proved by the executors therein named. In successive administration actions in the Colony the will has been in litigation ever since, a partial intestacy being set up, in the first of these actions by the testator's widow to whom a legacy of $25 only was bequeathed by the will, and in the second by one of his next of kin on the allegation in each to the effect : first : that the gifts made by the will to the " parent body " therein mentioned were void for uncertainty as to the identity of the beneficiary : and secondly that if it were to be held that either the respondent corporation or the association represented by the appellants was the beneficiary named by the testator, then the gifts still failed, for that these bodies were each of them formed for an illegal purpose and were engaged in the furtherance of illegal aims.

No claim to be the parent body referred to in the will has been made except by the respondent corporation or on behalf of the association. In the present appeal the claim of the association as against that of the respondent corporation is being put forward. It will be convenient therefore at the outset to ascertain something about these claimants and the relation in which they stand to each other.

The respondent corporation was on the 17th June, 1918, incorporated in the State of New York, United States of America, pursuant to the provisions of the Membership Corporation Law. Its chartered purpose was, inter alia :

> " To promote and practise the principles of benevolence . . . and to extend a friendly and constructive hand to the negroes of the United States."

On the 26th July, 1918, another corporation with the title of African Communities League, Inc. was formed in the State of New York as a stock corporation pursuant to the provisions of the Business Corporation Law of that State. It was authorised by its certificate of incorporation to carry on business operations of the most varied and comprehensive description. This corporation was subsidiary to the respondent corporation, which as now appears held all its stock and was throughout in complete control of its operations.

A Mr. Marcus Garvey very frequently referred to in the record was apparently the leader of a movement in the interests of the negro race throughout the world, of which these corporations were designed by him to be an instrument.

A document bearing the title of " The Constitution and Book of Laws made for the Government of the Universal Negro Improvement Association, Inc. and African Communities League, Inc. of the World " (to be referred to as " the constitution book ") bulks largely in the case and the respondent corporation contends that it having been so decided by this Board " the constitution book," whatever it may be in relation to the association, must now be taken to be the body of rules governing the respondent corporation. It must undoubtedly be taken that the activities authorised by the constitution book are not illegal for that certainly has been so held by the Board.

The final importance of the constitution book is in these circumstances to be found in the fact that an " African Redemption Fund " is thereby constituted—a circumstance which perhaps more than any other has so far enabled the respondent corporation to maintain its identity with the parent body referred to in the will.

The association whose members are represented by the appellants—and which for convenience only and without prejudice will now be referred to as the association—cannot be described with similar or indeed with any precision. It is called by the appellants a voluntary society which has, they say, existed since 1918. Its relation to the respondent corporation is nowhere defined : its activities as distinct from those of the corporation remain in doubt. It is even asserted by the respondent corporation that in its present form at all events it has existed only since the year 1929. All this however is for the moment by the way. Their Lordships are not at this stage inquiring into the validity or otherwise of the association's claim to be the parent body of the will. For the present it suffices with reference to it to say that the appellants claim to represent the same association as that which

through other representatives came forward before the Board in 1924 as co-appellant with the respondent corporation and that like that corporation it was the conception of Mr. Marcus Garney and that, unlike the corporation, it still remains under his influence. Its purposes and activities are put forward as being similar to those of the respondent corporation. The association claims to follow the constitution book, whether the rules of that book name it or not.

Now this is an appeal in an administration action, the second of the two actions already referred to. The appellants seek by it to establish the claim of the association to be the " parent body " of the will. But they have not thought fit to make parties to the appeal either the plaintiff to the action, as representative of the testator's next of kin, or the executor defendants. It is of course no answer to this objection that neither the plaintiff nor the executors have themselves thought fit to or persisted in an appeal. Whether any relief is competent to the appellants in a proceeding so constituted will be a serious question if it ever becomes material.

But more important is it now that in the opinion of the learned Chief Justice of British Honduras, against whose judgment of the 26th February, 1931, the appeal is brought, this Board has already decided in the first administration action that the respondent corporation and not the association is the " parent body " of the will. To this the appellants' reply is that no such decision is to be found in the judgment of the Board referred to when properly understood : and if there is such a decision, it was given *per incuriam*. It is however conceded, and, as their Lordships think, necessarily conceded by the appellants that if neither reply is available to them, this appeal of theirs must fail. They rightly agree, as their Lordships read their printed case, that in that event it is not permissible for them now to contend that the decision of the Board is open to review or that they are not bound by it. Indeed it was a pleaded defence of theirs in the action that the contentions of the plaintiff therein were *res judicata* or in the alternative had already been decided adversely to the contentions of the plaintiff by decisions which ought to be followed. Their Lordships accordingly before they can entertain the appeal upon what may be called its merits must first decide whether the claim thereby set up by the appellants on behalf of the association has not already been finally disposed of against them and whether if it has not it can be effectively raised and decided in their favour in a proceeding to which the respondent corporation is alone made a party. All of this turns upon the position of the association as against the respondent corporation resulting from the litigation in the widow's action and in particular from the decision of the Board therein just referred to.

The widow's action for administration was commenced in May, 1924. The executors in the first instance were the only defendants. The claim made therein has been already summarised.

The second action, out of which as has been indicated, this appeal arises was commenced on the 11th September, 1924, by Lillian Beeks, one of the testator's next of kin. It too is an administration action instituted in the matter of the estate of the testator. To it also, with relief claimed the same in substance as that sought in the widow's action, the executors were at first the only defendants.

It is one of the tragedies of the ensuing litigation that an application to the Court on the 20th January, 1925, to consolidate the two actions was not entertained, and that on that application the only order made was that the second action should be stayed until after the trial of the first. There has, in consequence, resulted the almost intolerable position from the point of view of economical procedure that the same question with two appeals to His Majesty in Council, has been litigated before the same Judge in two actions, when it might all so easily have been finally settled in one.

As contemplated by the order the first action was at once proceeded with. To it by order of the 20th December, 1924, the respondent corporation had been added as a defendant. To it, while the action was in the Supreme Court, the association never was nor did it ever claim to be made a party. In that Court the respondent corporation, made defendant, appeared as the only claimant under the will, with the full knowledge as is now clear, of those then controlling the association. For the chief officers of both bodies were the same, and at the trial the view presented by the respondent corporation was the view which was, as it says, finally adopted by this Board. The corporation was the parent body referred to in the testator's will: the constitution book together with its charter were the documents from which its legality could be established, and its African Redemption Fund was the fund referred to under that name in the will.

To all that at the trial the widow's last answer was, that even if the respondent corporation was the parent body of the will, its essential illegality was disclosed, *inter alia*, by the constitution book. And her case on this point was accepted by the learned Chief Justice. He held that any body governed by the constitution book was engaged in the furtherance of an illegal purpose and accordingly that the will of the testator so far as it gave any real or personal estate to such a parent body was inoperative and void for illegality and he declared that the testator had died intestate as to the residue of his real and personal estate.

But the learned Judge went further. Although the finding was in no way necessary to his decision, he found in the constitution book frequent references to the body to which the book applied as one bearing the name of " The Universal Negro Improvement Association and African Communities League "—the words, that is to say, of the title-page omitting the " Inc." where that abbreviation twice occurs—and he reached the conclusion, notwithstanding that no claim had been put forward on behalf of the association and notwithstanding evidence that the two corporations were

commonly so described, and mainly it would seem because the book contained the rules of one body and not of two that it was the book not of the respondent corporation with its subsidiary but of the association. Accordingly in the absence of the association and of anyone representing it he held that it was the " parent body " referred to in the will. With greater difficulty perhaps owing to its absence he held—and that without any other evidence as to its establishment, existence or aims—that its purposes were illegal and accordingly he decreed the widow's action as above stated.

The appellants in their printed case on this appeal have summarised in a convenient form the findings of the learned Chief Justice on that occasion. They seek now to have these findings restored. The summary is in substance as follows. It will be found convenient for later reference.

The learned Chief Justice then held

(1) That the Universal Negro Improvement Association in the will referred to was a voluntary society independent of the respondent corporation or the African Communities League Inc. and the constitution book contained the constitution and laws of the said voluntary Society only, whatever use the said two corporations might make of them.

(2) That the testator must have been cognisant of the constitution book.

(3) That the expression " Parent Body of the Negro Improvement Association " in the will was used as meaning the Parent Body of the said Society as distinguished from its branches or divisions.

(4) That the testator in his will meant by the " African Redemption Fund " the fund of that name referred to in the constitution book.

(5) That in the constitution book (*a*) the term " organisation " meant the said Society and (*b*) the term building up of Africa meant the same as the redemption of Africa.

(6) That the ultimate object of the said Society was the redemption of Africa and all its objects were subsidiary to and in pursuance of that particular object and that the said gifts in the will were therefore gifts to the said Society for the purpose of carrying out the object of the redemption of Africa.

(7) That there was nothing to prevent the said Society from spending the money when paid to them as they pleased in the same way as any other moneys of the Society. There was no trust created and the gifts did not fail for uncertainty.

On the 12th May, 1926, the respondent corporation obtained conditional leave, and on the 20th July, 1926, final leave to appeal to His Majesty in Council from the judgment of the Chief Justice of the 7th April, 1926. At that time the relations between the Association as then constituted with the respondent corporation were, as already indicated, of the closest. It was pointed out by the learned Chief Justice in his judgment as to the costs of the first action

that the chief officers of the Association were the same as the directors of the respondent corporation. Plainly the worst disaster that could overtake the cause in which both were interested was that neither body should be held to be the parent body of the will.

Their Lordships can have no doubt that the course then adopted by the respondent corporation on the one hand and the Association on the other was to avoid any such danger, by securing on the appeal the presentation of the claims of each —these being of course mutually exclusive—in succession one after the other and not as claims in conflict the one with the other. It was no longer possible in view of the learned Chief Justice's judgment to ignore the association altogether.

And what they did was this. On the 27th April, 1927, at a meeting of the Council of the Association it is stated that it was amongst other things resolved to authorise the intervention in and the prosecution of the appeal by the Association either through the representatives of the respondent corporation or through representatives of its own. Following upon that resolution a joint petition was presented to His Majesty in Council by the respondent corporation and Ferrara Levi Lord and Fred Augustus Tate representative of the Association praying that the Association might have leave to intervene in and prosecute the appeal in conjunction with the respondent corporation such conjunction being effected by the appointment of the corporation to represent the Association for the purposes of the appeal. It is interesting to note that Mr. Lord, one of the petitioners representing the Association, was at that time the Auditor-General of the respondent corporation. (See first Record, p. 50, line 6.) Indeed, the whole purpose of the petitioners is made plain by para. 13 of their petition which runs as follows:

> "That it is in the interest of all persons interested in the estate of the testator and of the said executors that upon this appeal it should be finally determined on the merits whether the gifts in question in the will are or are not valid and effectual. Whereas if the decision of the Court below that the gift is not to the appellants but to the [Association] is correct the appeal would probably fail to result in any final decision as to the validity of the gifts."

That is to say and this will be found later to be a fact of vital significance the then appellants the corporation were contending and proposed still to contend that the decision of the Chief Justice that the gifts in question were not gifts to them was wrong.

The prayer of the petition was duly acceded to. On the petitioners agreeing by their Counsel that the interveners should be treated in all respects and heard on the appeal as if they had been original parties to the suit leave was granted by Order in Council of the 3rd November, 1927, to the representatives of the Association to intervene in the appeal and to be added as appellants upon condition that they joined with the appellants in lodging one printed case and were not separately represented by Counsel at the hearing.

Full advantage of this liberty was taken. A joint printed case on behalf of both appellants and interveners was lodged. Having set forth in paragraph 12 the above summarised reasons of the learned Chief Justice for his judgment the case in paragraphs 18 and 19 says this :

> " 18. Neither the appellant corporation nor the interveners as representing the society [the association] dispute that by the reference in the testator's will to ' the African Redemption Fund he meant the fund of that name referred to . . . in the constitution book and no question is raised on this appeal as between the appellant corporation and the ' said society.
>
> " 19. The appellant corporation and also the interveners as representing the said society submit that the said judgment of the Chief Justice . . . was erroneous and ought to be reversed and that it ought to be ordered that the said action be dismissed . . . or in the alternative that a declaration ought to be made that the said gifts in the testator's will are valid and effectual."

In their Lordships' judgment these statements are quite unambiguous. It was essential, whether the action was to be dismissed or the validity of the gifts declared, that the Board its identity being challenged by the widow should decide who was the donee of the gifts and it was clearly contemplated that at the hearing those representing the appellants and interveners would place before the Board all relevant considerations, whether on behalf of the respondent corporation or of the Association, in order that paraphrasing the words of the petition already quoted " the appeal might not fail to result in a final decision as to the validity of the gift," on both issues whether of certainty or of legality and necessarily on the one as much as on the other.

The course of subsequent events is illuminated by a reference to the printed case for the widow. In paragraph 12 of that case there is the statement that at the trial it was proved or admitted that " the Parent Body of the Universal Negro Improvement Association " was capable of being interpreted as : *inter alios*

The respondent corporation and African Communities League Inc. together.

With reference to the constitution book it is stated in the same paragraph as amongst the things proved or admitted that it was in 1920 adopted by the respondent Corporation as its rules and printed by its orders.

And with reference to the Association the following statements are made

> Para. 3. " The body of persons (hereinafter called ' the U.N.C.A. and A.C.I.') . . . is a voluntary society or association not incorporated alleged to have its principal office in New York City and consisting of a number of persons whose names and number are not known to the respondent and vary from time to time and being apparently a voluntary combination of the first appellant and of the [African Communities League, Inc.].
>
> Para. 18. " The learned Judge also held that the testator must be taken to have intended that the U.N.C.A. and A.C.I. is the body to benefit by the said gift. The respondent must if necessary contend that this holding was wrong and that the said gift is void for uncertainty."

The case accordingly was presented to the Board as one in which, contrary to the finding of the Chief Justice, it was admitted by the respondent, the widow, that the constitution book did contain the Rules of the respondent corporation, and that that Corporation might be the Parent Body referred to by the will. Further it was made plain by the widow's printed case that to the claim of the association to be the parent body of the will objections would be pressed by her which would not apply to the claim of the corporation to be so regarded.

The actual arguments presented to the Board are not on record but their bearing may be gathered from the judgment of their Lordships delivered by Lord Haldane. There upon examination will be found expressed the conclusions of the Board which led to the allowance of the appeal and the dismissal of the first action by Order in Council.

The Board as appears from the judgment were at variance with the learned Chief Justice on every important issue. They displaced his main, if not his only, reason for the conclusion that the association was the parent body of the will when they found as they did that the constitution book was the book of the respondent corporation. They note the already cited statement from the printed case of the widow in relation to the identity of that corporation with the parent body, although they do not specify the source from which the statement comes. Treating the matter as one of general admission they hold that the respondent corporation might be taken as representing the parent body referred to in the will. True, they treat the learned Chief Justice as concurring in that view, and the judgment has been criticized for this supposed inaccuracy. It is clear, however, that this would have been the learned Chief Justice's conclusion had he been able, like the Board, to regard the constitution book as containing the rules of the respondent corporation. And Lord Haldane did not, their Lordships think, intend to say more than that, although his words may seem to go further. That these must be taken to bear the more limited construction is shown by the fact that otherwise Lord Haldane's statement would be in direct conflict with the later passage in the judgment where he says :

> " There was also a voluntary body called the Universal Negro Improvement Association and African Communities League which the learned Chief Justice found to be the body intended by the testator under the description of the Parent Body of the Universal Negro Improvement Association."

As to the suggested illegality of the aims and activities of the respondent corporation as disclosed in the constitution book and in other directions referred to by the widow the Board were in direct disagreement with the learned Chief Justice. Lord Haldane saw in these no sufficient evidence of any illegality. And—most important now—he found support for that conclusion in a circumstance from which the association could have claimed no corresponding support, viz., that the respondent corporation was an American

incorporated institution and that the United States authorities had seen no reason for interfering with it.

In short their Lordships are quite satisfied that the following taken in substance from the judgment of the learned Chief Justice now under review is an accurate summary of the findings of the Board which called for the dismissal of the first action.

(*a*) The respondent corporation is the parent body referred to in the testator's will.

(*b*) The African Redemption Fund of the will is the fund of that name in the constitution book.

(*c*) No trust is created by the will or by the constitution book in respect of that fund but the testator's bequests to the parent body are to be used for the purposes of that fund.

(*d*) The gifts by the will to the parent body are not void, nor have they lapsed, nor did the testator die intestate on any ground suggested as to any part of his estate.

And their Lordships are satisfied further that the above statement represents the meaning and effect of the judgment of the Board. And it follows that the appellants' contention that the Board did not then find that the respondent corporation was the parent body referred to by the testator cannot be sustained. Accordingly, as already stated, this appeal must even at this stage fail unless the appellants are well founded in their alternative contention that the judgment to that effect was given without any argument on the point and *per incuriam*.

This contention, in their Lordships' judgment, rests upon a fundamental misapprehension by the appellants of the position before the Board in the first action of the two co-appellants—the respondent corporation and the representatives of the association. The misapprehension is disclosed in paragraph 12 of their printed case in the present appeal, which runs as follows:

> "In the case for the appellants on such appeal it was stated that such appellants did not question any of the conclusions of the Chief Justice in paragraph 10 hereof—
>
> [that is the summary of his reasons above set forth]
>
> and also that no question was raised on that appeal as between the Appellant Society and the Respondent Corporation.

Their Lordships have already set out the paragraph 18 of the joint printed case to which reference is here made, and a comparison of its words with the above statement of its effect will show the misapprehension, quite natural, of the appellants. But although natural that misapprehension is in the present connection of the very essence. Had paragraph 18 of the joint case been to the effect stated the respondent corporation by its own admission would have ceased to retain any interest whatever in the first appeal—the petition presented to the Board instead of being a petition to join the association as co-appellants, must have been one to substitute the association for the respondent corporation. Their Lordships in the

earlier part of this judgment have been at pains to show by reference to paragraph 13 of that petition and its plain implication, that nothing was further from the minds or intentions of the parties at that time than that the claim of the respondent corporation—the first appellants—a claim which alone had been put forward in the action and was alone supported by evidence given at the trial, should be abandoned before the Board in face of the widow. It is accordingly in their Lordships' opinion impossible to say that the judgment of the Board was given in any sense *per incuriam*. It was, on the contrary, a reasoned judgment as much desired by the representatives of the association—one of them, as has been shown, an official of the respondent corporation—as it was by the respondent corporation itself. It was essential if a decree dismissing the first action was to be obtained that the Board should definitely determine the identity of the parent body. That identity depended upon evidence, and could not be a matter of agreement between rival claimants. Their Lordships accordingly cannot doubt that in that situation the Board were left by the appellants to decide, if they were not indeed invited to decide, that the parent body was the respondent corporation and none other. When their Lordships have regard to the attitude of the widow in relation to the claim of the association, and to the preferable position of the respondent corporation over the association on the issue of illegality, their Lordships doubt whether, but for the acceptance by the Board of the respondent corporation as the parent body, the appeal would not have failed altogether.

This is sufficient to dispose of this appeal. Their Lordships, although impressed by its complete futility, are dispensed from tracing the second action to its long drawn out conclusion in the judgment of the Chief Justice appealed from or from dealing with the irregularities in procedure which led to the non-representation therein of the respondent Corporation. They are dispensed from dealing with the other obstacles to the appellants' success, both formal and substantial. To one of these reference has already been made. They are dispensed above all from the necessity of dealing with the very grave issues raised by the evidence in support of the respondent's petition to adduce further evidence issues so serious that at the close of the arguments it was recognised on behalf of the appellants that until disposed of in their favour their claim on the appeal could not be accepted. The appeal however is disposed of finally at an earlier stage. Their Lordships need say no more than that the judgment appealed from, based as it was on the former judgment of this Board, was inevitable. This appeal from it must, they think, be dismissed, and with costs.

And they will humbly advise His Majesty accordingly.

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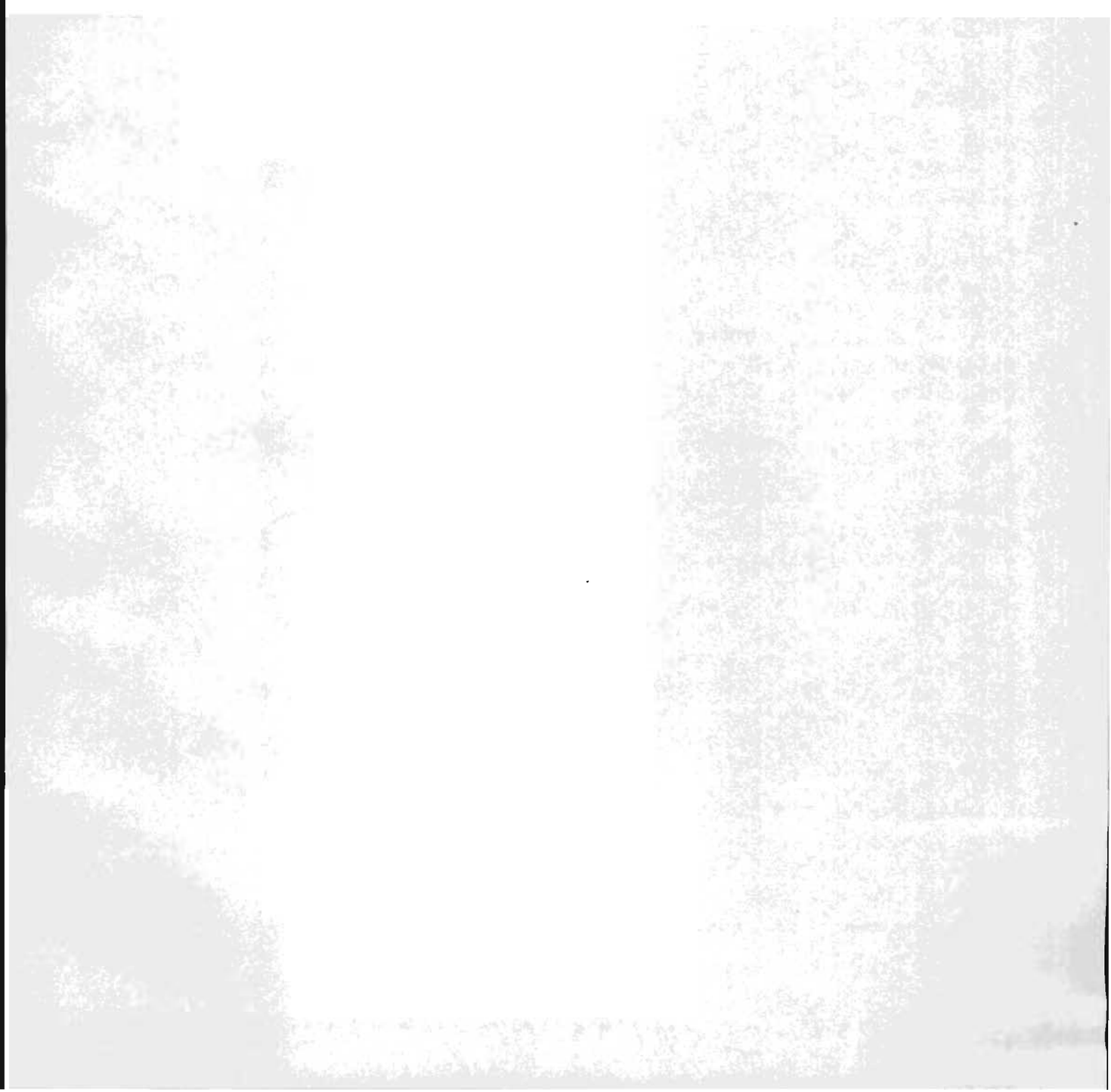

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