[HIGH COURT OF AUSTRALIA.]

UNITED GROCERS, TEA AND DAIRY PRODUCE EMPLOYEES' UNION OF VICTORIA . . . . . APPELLANTS;
COMPLAINANTS,

AND

LINAKER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

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MELBOURNE *Oct.* 17, 20.

Griffith C.J., Barton, Isaacs, Gavan Duffy and Rich JJ.

*Industrial Arbitration—Organization—Rules—Membership—Method of becoming member—Proceedings to recover dues—Estoppel—Commonwealth Conciliation and Arbitration Act* 1904-1915 (*No.* 13 *of* 1904—*No.* 35 *of* 1915), *secs.* 55, 68, *Sched. B.*

The rules of an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1915 on the subjects prescribed by Schedule B to the Act, are peremptory, and therefore a person can only become a member in the manner prescribed by those rules.

By the rules of an organization it was provided that a candidate for admission should fill in a nomination form, pay the entrance fee and should thereupon become a member. On proceedings in a Court of Petty Sessions under sec. 68 of the Act by the organization to recover dues from the defendant, who was alleged to be a member, the Magistrate found that he, not having paid an entrance fee, was not a member,

*Held*, that the defendant was not estopped from denying that he was a member by an agreement by which he undertook to pay to the organization a certain sum per fortnight off his arrears in addition to his ordinary contributions until his arrears had been cleared off.

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Ballarat a complaint was heard whereby the United Grocers, Tea and Dairy Produce Employees' Union of Victoria, an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1915, sought to recover from Robert Linaker, who was alleged to be a member of the Union, the sum of £5 6s. for dues, fines and levies for the period 16th July 1912 to 30th May 1916.

By the rules of the Union it was provided (*inter alia*) that (rule 4) "a candidate for admission shall fill in a nomination form, pay the entrance fee and shall thereupon become a member," and that (rule 5) "every person shall on becoming a member of the Union pay an entrance fee of one shilling."

The Magistrate found that the defendant had not paid the entrance fee, and was therefore not a member, and he dismissed the complaint.

The complainants now appealed from that decision by way of order to review, on the grounds (1) that the evidence showed conclusively that the defendant was a member, and (2) that the defendant had estopped himself from denying that he was a member.

The other material facts are stated in the judgments hereunder.

*Schutt*, for the appellants. The respondent, by signing the agreement to pay off the arrears of his dues, acknowledged that he was a member, and is thereby estopped from denying that he is a member: *Sheffield and Manchester Railway Co.* v. *Woodcock* (1).

[RICH J. referred to *Carr* v. *London and North Western Railway Co.* (2).]

*Pigott*, for the respondent. The rule as to how membership of an organization is to be created is mandatory: *The Tramways Case* [*No.* 2] (3). The mode of becoming a member cannot be varied by estoppel. See *Amalgamated Society of Engineers* v. *Smith* (4); *Prentice* v. *Amalgamated Mining Employees' Association of Victoria and Tasmania* (5). There is no estoppel here, because the appellants

(1) 7 M. & W., 574.
(2) L.R. 10 C.P., 307.
(3) 19 C.L.R., 43, at p. 71.
(4) 16 C.L.R., 537.
(5) 15 C.L.R., 235.

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have not acted to their prejudice on the faith of the agreement nor are they bound by that agreement.

*Schutt*, in reply.

*Cur. adv. vult.*

GRIFFITH C.J. The appellants, who are an organization registered under the *Commonwealth Conciliation and Arbitration Act*, sued the respondent under sec. 68 of that Act in a Court of Petty Sessions to recover dues claimed from him as a member of the organization. He denied membership. Sec. 55 of the Act provides that certain associations may be registered as organizations on compliance with certain conditions. Sub-sec. 2 of that section provides that "the conditions to be complied with by associations so applying for registration shall, until otherwise prescribed, be as set out in Schedule B." The first condition set out in the Schedule is that "the affairs of the association shall be regulated by rules specifying the purposes for which it is formed, and providing for the following matters in relation to the association :— . . . (*g*) The times when and terms on which persons shall become or cease to be members." The rules of the appellant Union have been duly registered. By rule 4 it is provided that "a candidate for admission shall fill in a nomination form, pay the entrance fee and shall thereupon become a member." On 16th July 1912 the respondent signed a document which appears to have been used as a nomination form. He says that he was induced to sign it by misrepresentation, and denies that he paid any entrance fee. He never acted as a member and, indeed, always repudiated membership, at any rate until May 1915. The Police Magistrate was not satisfied that the respondent ever paid an entrance fee, and dismissed the complaint. Whether this Court has or has not jurisdiction to review a decision of a Court of summary jurisdiction on a mere question of fact, it is a settled rule that it will not do so in a case depending on oral evidence and the credibility of witnesses. The case must, therefore, proceed upon the assumption that the respondent did not in fact become a member.

In my opinion the provisions of Schedule B of the Act are peremptory. Very special and important rights are conferred by the

Act on a duly registered organization and its members, rights which are not merely rights *inter se* but against the public.

In my opinion, a man can only become a member of an organization in the manner prescribed by the rules.

It was, however, contended that the respondent is estopped from disputing his membership by a document called an agreement, dated 24th May 1915, by which he agreed to pay two shillings a fortnight off his arrears in addition to his ordinary contributions until the arrears should be cleared off. This document would afford strong evidence of his membership of the Union if it could be created in any other way than that prescribed. But no estoppel will prevail against the law. He, however, alleges facts which, if an action were brought against him on the alleged agreement, might or might not afford a good defence. Whether they would or would not is immaterial in this case, which is not such an action.

For these reasons I think that the Magistrate was right, and that the appeal should be dismissed.

BARTON J. read the following judgment:—The appellant Union is an association registered as an organization under the *Commonwealth Conciliation and Arbitration Act*. Under that Statute, to be capable of such registration, it had to comply (sec. 55 (2)) with certain conditions, which are set out in Schedule B. It cannot become and be an organization until such registration (sub-sec. 3). The first condition set out in Schedule B is that the affairs of the association shall be regulated by rules providing, among other matters, for "(*g*) the times when and terms on which persons shall become or cease to be members."

The appellant has such a body of rules, which is in evidence.

Its complaint, out of which this appeal arises, was laid under sec. 68, of which advantage can only be taken by a registered organization—an organization, therefore, which has complied with Schedule B.

It is thus bound to abide by its rules, and can only succeed in such a case as this so far as it relies on them. For its complaint is based on the alleged membership of the respondent, which he denies. From rules 4 and 5, which came under heading (*g*) of Schedule

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B, it is clear that the payment of the entrance fee is either a condition precedent to membership (rule 4) or the payment and the membership must be concurrent (rule 5); and I think it probable that the former is the correct view. In either case the respondent is not a member unless he has paid the entrance fee before or at the time of nomination. The respondent never paid the entrance fee. Thus he did not become a member in contemplation of the rules. The Magistrate found that he had not paid the entrance fee and was not a member, and therefore dismissed the appellant organization's complaint. This Court will not disturb such a finding so far as it deals with fact alone.

The appellant argues, however, that the respondent cannot now be heard to deny his membership. Two years after the time when it is alleged that he became a member, during which time there was repeated pressure upon him to pay dues and contributions, and under a threat from the appellant's secretary of proceedings which would be taken to "every Arbitration Court of Australia," the respondent signed a paper tendered him, which promised to pay periodical instalments of what were called his "arrears" and his "ordinary contributions." It is said that this paper operates to estop him from defending the present proceedings.

But for the provisions of this Act there might be a good deal in this contention. But as the appellant depends on its status under the Act for its competence as complainant and can only recover in conformity with its own rules, I think it is still bound to that conformity notwithstanding the respondent's signature, and cannot now in this proceeding claim him as a member or recover fees and dues which only a contract of membership, constituted in the manner prescribed by the rules, can entitle the organization to recover. See *The Tramways Case* [*No.* 2] (1), a passage from which it is clear that the rules are mandatory, and that "any action of the organization not in accordance with them is a mere nullity."

Whether an action not based on membership but solely on the paper called an agreement would have lain is not the question before us, and I abstain from expressing an opinion upon it.

I think the appeal fails.

(1) 19 C.L.R., at p. 71.

ISAACS J. I agree that this appeal should be dismissed, but I do so for one reason only. On all ordinary principles of justice and fair play it ought to be allowed. On 16th July 1912 Linaker signed an application to the Union to be admitted as a member. The rules required that he should "fill in a nomination form"—I suppose his signature to the form should be taken as filling it in—and "pay the entrance fee" of one shilling. They trusted him to pay the shilling. He did not pay the shilling, and because he did not pay the shilling he succeeds. On 24th May 1915, nearly three years afterwards, an incident took place which, I think, would in all ordinary circumstances debar Linaker from saying that he was not a member. It would have done so if it had been the case of an ordinary company, notwithstanding the fact that the *Companies Act* requires that some rules and regulations shall exist very much in the way which is prescribed by this Act. Linaker was summoned to attend, and did attend, a meeting of the Union, and at that meeting the question whether he was or was not a member was debated. He was told that, if he took up the attitude of denying that he was a member, the matter would be taken into Court. He says that he disliked publicity, and so agreed that he was a member. At the meeting a resolution was passed that, if Linaker signed an agreement, he would be recognized as a member and would not be taken into Court, and that the Union would not sue him for the arrears which they claimed he was bound to pay and in respect of which he denied liability. He then agreed deliberately to accept that position, and at that meeting and in the presence of the president and secretary signed the following document:—"I R. Linaker hereby agree to pay to the Secretary United Grocers, Tea and Dairy Produce Employees' Union or the Steward appointed by the Union the sum of 2/- (two shillings) per fortnight off my arrears in addition to my ordinary contributions until such time as my arrears have been cleared off."

Notwithstanding that, according to the finding of the Magistrate, Linaker did not pay the shilling entrance fee. I agree that, though this Court has jurisdiction to entertain an appeal from a Court of summary jurisdiction, even on a question of fact, such an appeal is subject to the ordinary rules as to the demeanour of witnesses

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just as is an appeal from any other Court. I think that we cannot, in the circumstances of this case, review the finding of the Magistrate that Linaker did not pay the shilling, and that we must accept such finding. But, notwithstanding that, under ordinary circumstances no Court would listen to Linaker in view of the attitude he adopted three years after the attempted entry into the Union. Still there is a decision of this Court in *The Tramways Case* [*No.* 2] (2), that in regard to organizations registered under the Act there must be a rigid compliance with the rules. If ever there was a case in which that rigidity should have been relaxed it was that case, and for the reasons I there stated. But the law is there clearly laid down that the rules must be rigidly adhered to. It may be worth while for those concerned to consider how far that position is to be allowed to stand. It may be worth while in order to prevent such an injustice as, in my opinion, has occurred in this case, for unions to consider whether they will not add to their rules another one allowing them some elasticity, because it may be that the decision that the rules must be adhered to does not exclude a rule allowing some elasticity. That may have to be considered hereafter. But in the rules of this Union there is no elasticity, and, as there is not, the appellants fail, and the respondent, though he has gone back from his word and has failed to pay a shilling, which he twice undertook to pay, succeeds, but purely on a technicality.

GAVAN DUFFY J. I have some doubt, but upon the whole I agree that the appeal should be dismissed, and I adopt the reasons which have been stated by the Chief Justice.

RICH J. I agree that the appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellants, *Mark Lazarus.*
Solicitor for the respondent, *J. M. Kirkpatrick.*

B. L.

(1) 19 C.L.R., 43.