[HIGH COURT OF AUSTRALIA.]

EDGAR . . . . . PLAINTIFF;

AGAINST

MEADE AND OTHERS . . . . . DEFENDANTS.

WALKER AND OTHERS . . . . . PLAINTIFFS;

AGAINST

MEADE AND OTHERS . . . . . DEFENDANTS.

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MELBOURNE, *Oct.* 30, 31; *Nov.* 1, 2, 3, 6, 9.

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Industrial Arbitration—Organization—Rules—Procedure for amendment—Validity—Referendum—Members—Branches—Enforcement of rights—Invalid resolution for expulsion—Commonwealth Conciliation and Arbitration Act 1904-1915 (*No.* 13 *of* 1904—*No.* 35 *of* 1915), *Part V.*

Practice (*High Court*)—*Costs—Successful plaintiff failing as to some issues—Fixing amount payable for costs.*

The rules of an organization registered under the *Commonwealth Conciliation and Arbitration Act* created a "federal council" whose duties were (*inter alia*) to administer the rules, to be guided by any referenda of the members, and to hear and determine appeals submitted by branches. They also provided that the supreme government should be a triennial conference, that all decisions of the conference in altering or amending the rules should be submitted to a referendum of all the members and that all alterations or amendments carried by a majority vote should be binding on all members. The rules, also, by a rule dealing specially with "amendment of rules" (rule 9) provided that all proposals for the amendment of rules should be submitted to the secretary of the federal council, which should also have power to suggest amendments; that the secretary should prepare an agenda paper for the

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conference, a copy of which should be sent to each branch; and that (rule 9 (*c*)) "the federal council . . . shall, on the urgent representation of any branch, take a referendum on any matter of vital importance to the welfare of the" organization. "Should such referendum be favourable to the proposal, it shall have the same effect as if passed by triennial conference."

Held, by *Isaacs* J., that r. 9 (*c*) applied to the amendment of the rules, that a referendum might be taken on an amendment of the rules formulated by the federal council and submitted by it to the whole of the members, and that if the result was favourable the effect would be the same as if the referendum had followed upon a decision of the triennial conference.

Validity of rules and mode of taking a referendum discussed.

A member of an organization registered under the Act or a group of such members forming a branch recognized by the rules of the organization may, even when there is no proprietary right in him or them, assert in a Court of competent jurisdiction his or their legal rights to remain a member or a branch of the organization notwithstanding an invalid resolution to expel him or them and thereby to exclude him or them from the status and benefits intended by the Act to be conferred on him or them.

A member of an organization charged with misconduct has, in the absence of express provision in the rules to the contrary, a right to be heard before the matter is determined against him, and if he is not afforded a proper opportunity of being heard, then, irrespective of the merits, the decision is contrary to natural justice and cannot stand.

Lapointe v. *L'Association de Bienfaisance et de Retraite de la Police de Montreal*, (1906) A.C., 535, and *Green* v. *Howell*, (1910) 1 Ch., 495, applied.

Where the plaintiffs succeeded in the action but failed on some issues, the Court in order to avoid taxation fixed a sum to be paid by the defendants to the plaintiffs, instead of awarding costs.

Willmott v. *Barber*, 17 Ch. D., 772, applied.

Observations upon the rigidity of the Act as to rules of organizations.

HEARING of actions.

Two actions were brought in the High Court, and were heard together by *Isaacs* J., in whose judgment the parties, the nature of the claims and the material facts are set out.

H. I. Cohen and *D. C. Robertson*, for the plaintiffs.

Stanley Lewis, for the defendants.

Cur. adv. vult.

Nov. 9.

ISAACS J. read the following judgment:—These two actions are brought in this Court in original jurisdiction based on diversity of

residence, no objection as to jurisdiction being taken on behalf of any defendant. By order, the two actions have been heard together, and the evidence applies to both. The first action is brought by William Rae Edgar against Patrick Meade, the president, Frederick Lock, the vice-president, Lion Geering, the treasurer, A. E. Johnson, the secretary, and Charles Bradley, John Woods and Thomas Symons, the trustees of the Federal Council of the defendant Society, who are all sued both personally and officially as representing themselves and all the other members of the Society except the members of the Melbourne Branch; and the remaining defendant is the Society called the Australian Society of Progressive Carpenters and Joiners, an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1911. Edgar claims, in substance, a declaration that a resolution of the Federal Council of 6th August 1915 expelling him from the Society is invalid, an injunction against enforcing it, and £100 damages.

In the second action Phillip Edward Walker and others, the officers of the Melbourne Branch of the organization, sue the same defendants for a declaration that a fine of £25 imposed by the Federal Council on 20th September 1915 upon the Melbourne Branch is invalid, and for a declaration that a resolution passed at a Conference in Adelaide in February 1916 closing the Melbourne Branch is invalid, appropriate injunctions and £500 damages. The case has been very ably conducted on both sides.

The material facts as I find them are as follows :—On 21st March 1912 the defendant Society was registered under the Act mentioned as an organization of employees. By its original registered rules branches might be opened in any town of Australia; and the branches, said rule 18 (*b*), "shall, except as to the capitation fee . . ., have full control of their respective funds. But it shall be deemed the bounden duty of branches, wherever situated, to support and assist morally and financially those branches requiring assistance."

Provision was made for a Federal Council, and its functions were stated. It is sufficient for present purposes to say that its duties, among other things, included the following: (1) to administer the rules of the Society; (2) to be guided by any referenda of the members; (3) to hear and determine appeals submitted by branches.

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The general body of the organization as such had not, and has not, apart from the capitation fees, the control of any property or funds. Otherwise the whole property and funds consist of what is held by the several branches as their own distinct and separate property. Whether the branch property and funds are, nevertheless, the property of the organization as a corporate body is not a question that now calls for any decision. For general governmental purposes the original rules provided (7*b*) that a subscription of 1s. 3d. per annum should be paid by branches for each member. This is what has been called the "capitation fee." The rule mentioned appropriates it to various purposes such as "upkeep of Federal Council," "taking advantage of such legislative enactments as are necessary for the best interests of the Society," "for forwarding the interests of the Society generally," to "defray all expenses of delegates to Triennial Meetings." By the terms of the original rule 7 (*b*) "no rule dealing with the alteration of capitation fee shall become law unless passed by a two-thirds majority in each branch at a special meeting called for that purpose," &c. This was not done, and it is clear the true capitation fee still stands at 1s. 3d. only.

Rule 6 (*a*) declared :—"The supreme government of this Society shall be a Triennial Conference composed of one delegate from each State. All decisions arrived at by Conference in altering or amending the rules of this Society, shall be submitted to a referendum of the whole of the members of the Society; and such alterations or amendments carried by a majority vote shall be binding on all members of the Society."

Rule 9 dealt specially with "Amendment of Rules." Clause (*a*) of that rule was in these words :—"All proposals for the amendment of rules or general business of this Society shall be submitted to the secretary of the Federal Council at least two months before the date appointed for holding of Triennial Conference, by the secretary of branch desiring such amendments. The Federal Council shall also have power to suggest amendments. The secretary of Federal Council shall thereupon prepare an agenda paper of business for discussion at the Triennial Conference, and a copy of such agenda paper shall be forwarded to each branch a month previous to the

Conference, so that delegates may be instructed how to vote on such proposed alterations or amendments of rules." Clause (*b*) related to registration of the amendments. Clause (*c*), which has assumed great prominence in this case, is in these words :—" The Federal Council of this Society shall, on the urgent representation of any branch, take a referendum on any matter of vital importance to the welfare of the Society. Should such referendum be favourable to the proposal, it shall have the same effect as if passed by Triennial Conference." I need not quote clause (*d*).

It is evident that apart from clause (*c*) of rule 9 there could be no alteration or amendment of rules, except by waiting for the Triennial Conference, and then having a referendum as to its decisions. The organization being constituted in March 1912, the first Triennial Conference would take place in 1915. It was felt, however, that some amendments were necessary long before that date. On 8th May 1913 the Melbourne Branch passed a resolution that the Federal Council and the other branches be requested to agree to hold a special Conference to alter these rules, and for other purposes. The branch secretary (Edgar) shortly afterwards communicated accordingly with the Federal Council and other branches. The Federal Council received the communication of the resolution and, as to that part of it which referred to the Melbourne Branch, addressing the other branches direct, replied on 9th June 1913 that that was the Council's function. The Council, however, said nothing against the request for it to act, and by its conduct accepted that request. It communicated with the other branches on the subject.

I should here state what I understand to be the effect of clause 9 (*c*). In my opinion it certainly includes amendment of rules, because of the heading to the whole rule 9, of which (*c*) is only a sub-clause, and because the referendum provision in rule 6 (*a*) expressly refers to alteration or amendment of rules of the Society and the referendum in rule 9 (*c*) is obviously created to take the place of the former. When an emergency presents itself which in the opinion of a branch calls for any amendment of the rules, and the branch urgently represents to the Federal Council that amendment is necessary, the Federal Council " shall " take the referendum if it appears to be a matter

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of vital importance to the welfare of the Society. "Urgent representation" is to a large extent a matter of fact and opinion; and so is the "vital importance" of the proposal. If a branch makes a positive request and gives strong reasons for its acceptance in order to convince the governing body of its "vital importance," and the governing body assents and acts upon the request, a Court would be very slow to conclude the occasion had not arisen which everybody familiar with the concerns of the Society then thought had arisen. But in my opinion, further, the sub-clause, when put into operation, means this: that a referendum may be taken on some amendment of the rules formulated by the Federal Council and submitted by it to the whole of the members, and if the result is favourable it is to have the same effect as if the referendum had followed upon a decision of the Triennial Conference. That, however, involves the position that the amendments of the rules, in order to become law, must themselves be submitted to the referendum of the members.

Now I come to consider what it was the Council did. It sent out ballot-papers for a referendum on the matter of holding the Conference, to consider what amendments should be made in the rules. Edgar himself says it was of supreme importance to the Society that the referendum should be held. He assisted to take it, and he says it was overwhelmingly in favour of the Conference being held. Reading the letter of request and considering the action taken, it is evident that the occasion contemplated by rule 9 (*c*) had arisen, and such is my clear opinion. Delegates were appointed for the Conference, which was held in Sydney in December 1913. An agenda paper was prepared in October and upon it appeared a proposed new rule suggested by the Melbourne Branch, which is now substantially rule 78 of the new rules. That rule provides that "The Council shall have power to fine or expel (or both) any member of the Society who refuses to conform to the rules, or who by his action brings the Society into discredit." This proposed new rule was moved by the plaintiff Edgar, and after amendment was passed. It is the rule under which the resolution for his expulsion was passed.

The rebuke conveyed by the Federal Council to the Melbourne Branch by the letter of 9th June 1913 appears to have somewhat annoyed the Melbourne Branch or its delegates. Shortly after the

special Conference met, objection was raised by Edgar to Woods, the president of the Federal Council, being chairman, and he even objected to the Federal Council being present at all. Some difference of statement has arisen between the witnesses as to what part the Federal Council actually took at the meeting. I think the account given by the defendants' witnesses is substantially correct. I do not enter into the details, because I think the point immaterial. I regard it as immaterial, because the Conference in law could do no more than formulate proposals to be submitted to a referendum of the members themselves. If then adopted, rule 9 (*c*) does not stipulate for a Conference; if not so adopted, they do not become law even if the Federal Council abstained from taking part in the Conference. The Conference agreed as to certain amendments.

The Conference was quite alive to the necessity of taking a referendum to approve of the amended rules, and a question arose not specifically pleaded by the defendants, but as to which I have, in the interests of justice, allowed evidence to be taken, and offered to the plaintiffs any adjournment or other step they thought necessary to avoid prejudice to them. The question arose in this way:—A practical difficulty, one of ways and means, presented itself to the Conference with respect to taking the referendum. The Council having no funds for the purpose, it was suggested by Mr. Wright, a Brisbane delegate, that therefore each branch, which of course had its own funds, should severally take its own referendum vote on the amended rules. This was, as I find, unanimously agreed to. I should observe that the Melbourne Branch in its original request of 11th May 1913 had suggested that each branch should pay its own delegates to the Conference on the ground that "the Council have not got the funds to pay the costs of a Conference."

The general secretary, Johnson, did not send out ballot-papers, because of the agreement arrived at as to each branch attending to the matter for itself. One branch, Daylesford, rejected the rules on the ground that they had been illegally passed. The defendants claim that a referendum was taken upon the rules themselves sufficient at all events to satisfy the requirements of rule 9 (*c*). On 31st December 1913 there were 3,733 members of the organization, of whom 1,612 were in Victoria, 1,503 in New South Wales, 490 in

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Queensland and 128 in South Australia. There were about eighteen or nineteen branches in Australia. Twelve of the branches representing about 2,000 members made returns as to the adoption of the new rules; of these twelve one branch only was opposed to the adoption —Daylesford, which numbered 8 members, all of whom voted against adoption. Seven branches returned the actual figures, which came to 341 for and 10 against, the 10 being composed of the Daylesford 8 and 2 dissentients in the Sydney Branch. The remaining five branches, portion of the seven, who returned actual figures showed unanimous votes in favour of the adoption. In addition to those seven, five other branches without returning figures replied that the members voted unanimously in favour. An absolute majority of members, if membership of branches be regarded, was consequently registered in favour of adopting the new rules.

On the other hand, the Melbourne Branch, which Edgar says then contained from 1,200 to 1,500 members, did not vote one way or the other. Geelong numbered about 50, and refused to take a vote; Leeton in Queensland—about 25 members—took no vote; Maryborough in Queensland, which had about 20 members, took no vote; Bendigo, having about 40 members, made no return; none from Queanbeyan (Queensland), having about 20 or 25 members at that time. A serious difficulty however, does exist, as was frankly admitted by Mr. *Lewis*, the defendants' counsel, because the Sydney Branch vote was only 83 to 2, the rest of its members not having voted, whereas the Melbourne Branch, numbering 1,200 to 1,500 members, took no vote, and if its members had been asked to vote they might have turned the scale the other way. If, therefore, there was what I may call an "official irregularity" in the conduct of these proceedings, and the result may have been vitiated thereby, then it is for the party supporting the result to show that it was not in fact so vitiated. See the fourth proposition in my judgment in *Bridge* v. *Bowen* (1).

Legal problems might also arise as to the meaning of the word "referendum" in such a rule as 9 (*c*), and as to whether there is any necessary manner of taking it. Wherever this notice was complied

(1) 21 C.L.R., 582, at p. 623.

with, I think the referendum may be treated as taken by the Federal Council by its agents. Where it was not complied with, then the persons requested declined to act as the Federal Council's agents, and the referendum so far was not taken. It would in all similar cases be well to specify in the rules what methods are open to be adopted for taking a referendum.

The Melbourne Branch still disputed the binding character of the rules, and as to that branch further events occurred. On 25th February 1914 Johnson had written to Edgar, sending under separate cover fifty copies of the new rules, and adding "would you kindly place them before your members for confirmation," &c. Reference was also made to expenses of the Federal Council delegates, and to Melbourne Branch No. 2, re-named Carlton Branch, its meetings to be held in Carlton. This was, in respect of the request for confirmation, a typical request made by Johnson as general secretary to all the then existing branches. I find that, having regard to the agreement at Conference, Johnson in fact gave proper notice to the branches to take their respective referenda.

Some unpleasantness arose with respect to Johnson's letter to the Melbourne Branch as indicated by a letter from Edgar, a reply from Johnson, a further letter of 7th April from the Melbourne Branch and other letters. At last Edgar for the Melbourne Branch took the most desirable course of inviting Johnson to come to Melbourne in order to see if an amicable settlement could be brought about. Johnson came, arriving in Melbourne on 9th September 1914. A meeting took place between him and representatives of the branch. A considerable conflict has arisen among the witnesses as to what occurred. I think much of that conflict is due to erroneous present impressions created by bias or interest, which have affected the recollection of some of the witnesses. On the whole I accept Johnson's version. He is strongly supported by one of the plaintiff's witnesses, Budgeon. Johnson is also supported by a most material circumstance, namely, the written document executed by the parties at the time as a permanent record of the transaction. I find as a fact that that document represents the true agreement as to the rules, that is, an agreement accepting them; that there was no condition attached to that agreement with respect to the Carlton

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Branch or with respect to arrears owing by members of the Melbourne Branch who had gone over to the Carlton Branch. Those matters were mentioned, but at a stage later than the agreement regarding the rules, and as matters quite independent of that agreement. It was for the plaintiffs to satisfy me that an expressed condition of the very existence of the agreement as a binding agreement was made a condition that affected not only the Melbourne Branch, but the whole Society. They have not so satisfied me. I need not pursue that matter further than to say the Melbourne Branch recognized for a considerable time the validity of the rules. A few days after Johnson's agreement the Melbourne Branch acted on the new capitation rule of 1s. 6d. instead of 1s. 3d., and ordered 1,000 copies of the new rules, which were supplied by Johnson and were distributed among the Melbourne Branch members. Edgar himself swears: "We recognized and followed the new rules as new rules."

In January 1915 a general Conference was held in Brisbane. Edgar attended with Mayne, another Victorian delegate. Amendments were made to the rules as they then stood, and these amendments (not the rules as a whole) were submitted to a referendum. Edgar took part in the referendum, the ballot-papers for his branch being supplied by the branch, and the Brisbane amendments were endorsed. Rule 78 was not among these, and therefore has not been specifically adopted at a referendum. The Sydney Conference rules, up to this point, however, appear to have been ultimately universally accepted in practice by the organization from 11th September 1914 to about July 1915, and a *modus vivendi* established.

Suddenly circumstances arose which have led to the revival of all the old objections and the suggestions of new ones. In February 1915 there was trouble with regard to men getting preference; a meeting of unemployed in Melbourne passed certain resolutions which were approved of by the committee of the Melbourne Branch and adopted formally at a meeting of the branch in February 1915. In substance those resolutions were, as Mr. Edmonds says, that the order of men on the roll was to be adhered to except in special cases when the secretary (Edgar) was to have discretion in designating the men. I accept Edgar's statement that these resolutions were adopted quite independently of any difficulty about Whippey.

Edgar had been designated by the Federal Council as the proper officer to control the appropriate supply of men for Government work.

Some time after this—about 22nd March—a member of the Melbourne Branch named Whippey brought a charge in that branch against Edgar, and on 8th May 1915, in consequence, as Whippey stated in his letter, of a branch resolution to that effect, though there is no evidence before me one way or the other as to such a resolution, he wrote to Johnson, as general secretary, charging Edgar with certain conduct injurious to Whippey and his trade. A second complaint against Edgar was received by the Federal Council, made by a member of the Carlton Branch named Ferguson, and forwarded by the secretary of that branch. The complaint as to Whippey was only personal to Whippey. The complaint as to Ferguson was not only personal to Ferguson, but, if true, involved disobedience to express instructions from the Federal Council.

The Federal Council, in the result, held that both complaints were substantiated against Edgar, that he deserved in respect of each of them expulsion from the Society, and more particularly in respect of the Ferguson charge, and under new rule 78 they passed a formal resolution on 5th August 1915 expelling Edgar accordingly. This resolution is said on his behalf to be invalid for three reasons. First, it is said that the new rule 78 under which the Council acted is itself invalid, because not passed according to the strict requirements of the original rules, and therefore, notwithstanding the definite acceptance of it both by Edgar and the Melbourne Branch, by conduct and by solemn written agreement, it should be held invalid in conformity with the decision of this Court in the *Tramways Case* [*No.* 2] (1) and very recently in *United Grocers, Tea and Dairy Produce Employees' Union of Victoria* v. *Linaker* (2). The second ground taken is that in coming to their decision the Federal Council were not acting *bonâ fide*, but were moved by sinister motives; that they had determined to get rid of him somehow, and so, without considering the matters on their merits, they merely used them as a pretext and fraudulently resolved to expel him. The third ground is that assuming rule 78 is valid, and assuming also honesty of purpose, the

(1) 19 C.L.R., 43, at p. 54. (2) 22 C.L.R., 176.

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Federal Council did not comply with the requirements of natural justice in giving Edgar a fair opportunity to defend himself.

As to the first point, the validity of the rules, I entirely sympathize with those who urged that, if possible, such questions of rules not in themselves contrary to law, but involving merely matter of formal precedure, should be settled in some way within the Society itself. It is a thousand pities that hard-earned money of skilled operatives should be wasted in litigation over procedural technicalities when it could be so much more usefully applied. It is equally regrettable that among workmen or others associated for mutual welfare such hard words should be used, and such evil motives imputed, as I have had to listen to during the last few days.

I shall express no definite opinion as to the validity of the rules, except that a serious doubt exists both as to their validity and as to the *de jure* existence of the Federal Council. I do not know how far the doubt extends to branch affairs. I do, however, repeat the warning that I gave a few days ago in *United Grocers, Tea and Dairy Produce Employees' Union of Victoria* v. *Linaker* (1). In view of the strict and rigid adherence to original rules which it is now established the law requires, it may be that this and many other organizations that have purported to alter their rules, and have made some slip in doing so, are, notwithstanding the practical adoption of the new rules, in a state of entanglement from which nothing but fresh legislation can extricate them. As to new organizations it is possible that some elastic rule may succeed in offering a solution; but apart from that, great doubt may at any moment arise in the cases to which I have referred, whether a member may not successfully defy a branch or the whole Society, whether a branch may not with equal success defy the central governing body, and whether, as its rules stand, a Society is capable of entering lawfully into an industrial dispute at all. Having a means of determining this case without deciding the very knotty question of the validity of the rules, I think it better on the whole to leave that question unsolved, for the present at all events, notwithstanding the earnest request made to me to decide the point.

As to the second matter, the motives of the Federal Council,

(1) 22 C.L.R., 176.

I entertain no doubt whatever that they acted in the most absolute good faith. Mistake or severity is one thing: fraud is another. The omission of laymen to observe all the requirements of the law may lead to the invalidation of what they do; but it does not follow that they have wicked minds. As regards all the Federal Council, other than Johnson, there is really nothing to support the suggestion but the conjecture that the members of the Council lent themselves to Johnson to "down Edgar," as learned counsel phrased it. The omission from the Federal Council minutes of the Ferguson case was relied on for the purpose, but that was not Johnson's omission, and it tells both ways; and to agree with the plaintiff's suggestion I should have to find not only a wicked conspiracy against Edgar at the time, but also the additional crime of perjury on the part of Johnson and Woods in their evidence before me. The reception of testimony against Edgar which was sent by letter from time to time and not placed before Edgar is also relied on. This evidence was in fact taken into consideration by the Federal Council in relation to the Whippey case. Regarding that for the present moment on the issue only of wicked minds and having heard the evidence concerning it, I am satisfied that the governing body of the Society, the Federal Council, were not inspired by the malicious motives and sinister resolve suggested. I acquit them all, including Johnson, of the baseness attributed to them. I am of opinion they honestly thought that they had done all the law required of them, they thought that Edgar was contumacious, and they thought the case was proved and demanded severe treatment if the objects of the Society were to be maintained and order preserved. At the same time the way in which the matter was in fact conducted and what happened in relation to the evidence received from time to time, the want of notification to Edgar to be present, and Johnson's correspondence with Whippey, were all very unfortunate and injudicious; and I can understand how a man in Edgar's position, with an irritated mind and so much to lose, might through hasty conclusions entertain suspicions and form and possibly retain a wrong impression of the motives actuating those who had condemned him. Edgar's charge, persisted in, I pronounce to be unjustified in fact, but in justice to him I cannot say that he did not in fact put the worst possible aspect

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on some unusual circumstances prejudicially and greatly affecting him. And it is also to be noted that Edgar in his letter of 17th June 1915 did most distinctly point out that he was entitled to be present to cross-examine any witness, and did object to *ex parte* statements. However, both he and the general body of members should be gratified to be assured by judicial opinion that whatever mistakes were made by those in authority were really errors and not wilful departures from the honest path.

The third point upon which the expulsion is challenged is that Edgar had not that proper opportunity which, in the absence of unequivocal expression in the rules to the contrary, the law requires every person should have in such a position. On this point I come to a conclusion in Edgar's favour. I do not, of course, express any opinion that he was right on the merits; nor have I formed any opinion on the subject. It is not my province to ascertain or determine whether he was right or not; that is for the proper domestic tribunal—if there is one. I do say, however, that the charges against him were, as charges, substantial and serious, and were supported by what appeared to be up to that point substantial evidence. As to the Whippey charge, it is admitted that the procedure was so faulty as to vitiate the resolution so far as it rests on that charge. I agree with the contention for the defendants that at all events the Ferguson charge if brought home involved conduct which, looking at the matter from the standpoint of unionism and union control, would or might bring the Society into discredit. It is also a fact that he had a full opportunity of laying his primary version of the Ferguson case and his direct evidence before the Council. Further, on 19th July, by a letter from Johnson, he was informed, with reference to Ferguson's charge, that "if a satisfactory reply is not received within fourteen days, the Council will take drastic steps in the matter," and reference was made to rule 78. To this Edgar made no reply whatsoever, and on 6th August 1915 the Council acted.

But, though I think the Council dealt separately with the two charges, I am forced, even assuming rule 78 to be valid, to determine in Edgar's favour for the following reasons. Some more explicit notice should have been given to him of the fact and the time that the Council intended to sit formally and consider the charges which

involved such serious consequences. Dealing with the Ferguson charge only, he might have asked for a chance to test Ferguson's statement, or indeed, as he urged, Ferguson's existence, and he might have offered reasons why his own version was the more acceptable. He had a right as the rule stands to be heard, if he wished, either personally or by a representative, and certainly, if for nothing else, at least as to the punishment to be inflicted in case the Council took an adverse view of the facts. He had, as I have already pointed out, urged his right to be present, and this was tacitly overruled. I deal with the matter broadly, and think that although the Council did believe that having regard to the nature of their constitution they had given him ample opportunity to state his position and that he had failed to do so satisfactorily, and did believe they were acting fairly and after they had given Edgar a proper chance of defence, yet on the whole I feel, whatever the merits might be on complete investigation, the requirements of natural justice were not fully satisfied as to either of the charges, and so the decision for expulsion cannot be sustained. As the authorities are so well known, and are for the most part collected by the Privy Council in the recent case of *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montreal* (1), I think it unnecessary to refer to them, except by citing the subsequent case of *Green* v. *Howell* (2), particularly at pp. 504, 508 and 510.

As to the Melbourne Branch, or, rather, the members of the branch, I should first notice an objection made that the branch is not affected in respect of any proprietary right. I lay aside the question of the fine of £25, which has now been admitted to be unsustainable.

As to the resolution of the Conference to close the branch, the view I take of the matter is this :—In the case of a purely voluntary association, a Court of equity bases its jurisdiction on property, there being nothing else for it to act on. A Court of common law before the *Judicature Act* regarded the invalid expulsion as void, and gave no damages. So between the two jurisdictions the plaintiff could rely only on property as the basis of jurisdiction. But here the situation, in my opinion, calls for another view.

This organization is the creature of the Federal Parliament for a

(1) (1906) A.C., 535. (2) (1910) 1 Ch., 495.

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special reason, and as incidental to a specific power in the Constitution. The incorporation of employees in such an organization is a matter of public policy, and to effectuate the object of the Act. For this purpose rules are required to be registered, and in my opinion a member or a group of members forming a branch recognized by the rules have a *locus standi* to assert in a competent Court their legal rights to remain members of the organization, notwithstanding an invalid resolution to expel him or them, and so exclude him or them from the status and benefits which the Act intended them to have.

As to Edgar he has a proprietary right; but, as to both him and the plaintiffs in the second action, I hold their rights to sue do not in such a case as this depend on the question of property affected. The very object of the legislative provisions in incorporating such associations and facilitating the settlement of industrial disputes might be defeated if members and branches could be excluded by a governing body, contrary to rules, unless property was involved. The organization is therefore not in the same position as a voluntary club.

Now, the fine was inflicted on 10th September 1915. The resolution to exclude was in February 1916 at the Adelaide Annual Conference. The branch got no intimation from the Federal Council or its secretary that such a step was contemplated. It may be that the branch was defiant; I do not know, and it is not my province to inquire. It was by everyone, including itself, thought to be in default in not paying the capitation fees, and therefore not entitled to notice to attend the Conference as a participant in the general business. That belief was admittedly well founded, so far as there was failure to pay 1s. 3d. fees, but so far as concerns the difference between that rate and 1s. 6d. the belief was erroneous, because, as already pointed out, the capitation fee was not yet validly raised from 1s. 3d. to 1s. 6d. But in any case, and even if there is under the rules power in a Conference in any circumstances whatever to close a branch—which I by no means decide—the branch was entitled as a party charged at all events to notice that it was to be made the subject of penal consideration for an alleged offence.

The decision as to the branch exclusion cannot be sustained.

In *Edgar's Case* I adjudge as follows :—(1) Declare that the resolution of 6th August 1915 purporting to expel him is invalid, and that he is still a member of the defendant organization. (2) Injunction to restrain defendants from enforcing or giving effect to that resolution, or denying to the plaintiff in consequence thereof the right of membership of the organization.

In *Walker's Case* I adjudge as follows :—(1) Declare that the resolution of 10th September 1915 purporting to inflict a fine of £25 was invalid. (2) Declare that the resolution of February 1916 purporting to close the Melbourne Branch was invalid, and that that branch is still an existing branch of the defendant organization. (3) Injunction restraining the defendants from enforcing or giving effect to either of those resolutions or from denying to the Melbourne Branch or the members thereof the rights they would otherwise have under the rules of the organization.

No damages were proved, even if in view of *Wood* v. *Woad* (1) they would have been recoverable for a mere void resolution of exclusion. Any arrears are still assumed to be recoverable, and no amounts were proved. No damages were asked for by counsel, and so in any case I give none. If nominal damages were awarded, no other point in the case either on the merits or as to costs would, so far as I am concerned, be affected.

The question of costs has caused me very serious hesitation. The considerations affecting my mind on this subject are very numerous and complicated. The plaintiffs have succeeded in getting a judgment, and *primâ facie* in ordinary circumstances a completely successful party should get his costs. But the plaintiffs in this combined contest are not completely successful, and they have failed on some very important issues, and should not receive, but *primâ facie* in ordinary circumstances should pay, the costs of those issues. I need not recapitulate those issues.

Then I consider the relations of the parties, and their attitude so far as each of them has by conduct rendered this contest necessary in whole or in part, and how far that conduct has prolonged the case or increased its costs. I bear in mind the abandonment at the trial by the defendants of issues which may have occasioned considerable

(1) L.R. 9 Ex., 190.

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expense up to that point, and the saving of subsequent costs by the abandonment at that stage. I do not say these considerations are exhaustive, and I abstain from more detailed expression of reasons for the sake of not creating any unnecessary obstacles to the future harmonious working of the Society. But taking everything into consideration, including the several findings in favour of the respective parties, and realizing the desirability of putting an end to unnecessary further expense, I act on the principle laid down or recognized by the Court of Appeal in *Willmott v. Barber* (1). It was there stated that the discretion of the Judge as to costs is very large and extends even to the course which *Jessel* M.R. said he sometimes adopted, and generally found the parties were grateful to him for so doing. He thus described the course: "fix a definite sum for one party to pay to the other, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed."

In saying what I am about to say, I bear in mind that to a great extent the two actions followed on the same lines and the work that was done for the one served for the other.

I give no costs whatever to or against any of the individual defendants.

I order that as against the defendant registered organization the Australian Society of Progressive Carpenters and Joiners, and as against that defendant only, the plaintiffs respectively recover the following amounts for costs, that is to say, the plaintiff Edgar in action No. 75 shall recover for costs the sum of £100, and the plaintiffs Walker and others in action No. 76 shall recover for costs the sum of £25, and except as to those respective sums I exercise my discretion upon the whole circumstances of the case by giving no costs whatever to or against any of the parties.

Order accordingly.

Solicitors for the plaintiffs, *E. L. Vail & Son.*

Solicitors for the defendants, *McInerney & McInerney.*

B. L.

(1) 17 Ch. D., 772.