

[HIGH COURT OF AUSTRALIA.]

DAVIDSON APPELLANT ;
DEFENDANT,

AND

THE AUSTRALIAN SOCIETY OF PROGRES-
SIVE CARPENTERS AND JOINERS, MEL- } RESPONDENT.
BOURNE BRANCH }
COMPLAINANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

Industrial Arbitration—Organization—Rules—Recovery of contributions due by members—Rights of branches of organization—Commonwealth Conciliation and Arbitration Act 1904-1915 (No. 13 of 1904—No. 35 of 1915), secs. 4, 68. H. C. OF A. 1917.

MELBOURNE,
May 17.
Barton A.C.J.,
Isaacs and
Rich JJ.

The only mode of recovering contributions payable to an organization registered under the *Commonwealth Conciliation and Arbitration Act 1904-1915* by a member thereof is that provided by sec. 68 of the Act, namely, by proceedings in the name of the organization, and a branch of an organization has no authority under that section to take proceedings in its own name to recover them.

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Melbourne before a Police Magistrate a complaint was heard whereby the Australian Society

H. C. OF A. of Progressive Carpenters and Joiners, Melbourne Branch, sought to
 1917. recover from William Davidson the sum of £1 8s. 6d. in respect of
 ~~~~~ which the defendant was alleged to be indebted to the complainant  
 DAVIDSON for contributions to the Society. The Australian Society of Pro-  
 v. gressive Carpenters and Joiners was an organization registered under  
 AUSTRALIAN the *Commonwealth Conciliation and Arbitration Act*, and the com-  
 SOCIETY OF plaintant was a branch of that organization. The defendant was a  
 PROGRESSIVE member of the organization and of the Branch.  
 CARPENTERS  
 AND  
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Among the Rules of the Society were the following :—

“21. Any carpenter or joiner . . . , desiring to join this Society, shall pay the sum of 1s. 6d. as entrance fee and 1s. for the use of medal, and sign the following :—‘I . . . do hereby agree of my own free will and accord to become a member of the Australian Society of Progressive Carpenters and Joiners, and agree to conform to the laws and rules of the said Society, and also agree to pay 1s. 6d. entrance fee and 1s. for the use of a medal.’”

“30. Each member shall pay as contribution the sum of sixpence per week (there are no levies), which shall include his subscription to the Federal Council.”

“55. A subscription of 1s. 6d. per annum” (which was also called a “capitation fee”) “shall be paid by branches for each member . . . for the upkeep of the Federal Council.”

“127. For the convenience of members, branches may be opened in any town in Australia.”

“129. Each branch shall have power to elect its own officers, make its own by-laws (if necessary), with the consent of the Federal Council, and generally to control its own business.”

“132. The branches in each State of the Commonwealth shall, except as to the capitation fee previously mentioned, have full control of their respective funds.”

“149. He” (the secretary of a branch) “shall be the registered officer of the branch, as provided by law to sue and be sued.”

“227. Any member allowing his arrears of contribution, &c., to exceed six shillings shall be deemed unfinancial . . . and if he should allow his arrears to exceed fifteen shillings . . . the



secretary shall be instructed to take the necessary steps for the recovery of such arrears by legal process.”

The Rules contained no provision giving a branch authority to take any proceedings in the name of the Society. It appeared from the minutes of the meetings of the Branch that W. R. Edgar, secretary of the Branch, was appointed “to sue for arrears of contributions on behalf of the Branch.”

The Magistrate made an order for the amount claimed and costs.

From that decision the defendant now appealed to the High Court by way of order to review.

Other material facts are stated in the judgment of *Barton* A.C.J. hereunder.

*Shelton* (*Eager* with him), for the appellant. The contributions are under the Rules payable to the Society, and under sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 proceedings to recover them must be brought by the Society and in the name of the Society (*Christie v. Permewan, Wright & Co. Ltd.* (1)).

[*BARTON* A.C.J. referred to *Federated Sawmill, Timberyard and General Woodworkers' Employees' Association (Adelaide Branch) v. Alexander* (2).

[*ISAACS* J. referred to *In re Winterbottom* ; *Ex parte Winterbottom* (3).]

The Society, being an organization created by the Act, could not itself sue without the authority conferred by sec. 68. [Counsel was stopped.]

*Hogan*, for the respondent. The branch is a separate entity from the Society, and is in itself a voluntary association (*Edgar and Walker v. Meade* (4)). Under the rules the branch is entitled to the contributions of those members who belong to the branch, and arrears of contributions are a debt due to the branch. The branch

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(1) 1 C.L.R., 693.  
(2) 15 C.L.R., 308.

(3) 18 Q.B.D., 446.  
(4) *Ante*, 29.



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is therefore entitled to take proceedings to recover those arrears. Whether the branch should sue in the name of the branch or in the individual names of its members is only a question of form and not of substance, and, if necessary, an amendment should be allowed. Sec. 68 is wide enough to enable a branch which is entitled to the control of fees, &c., to sue for them.

[*Eager*. The word "organization" in that section is defined by sec. 4 as an "organization registered pursuant to this Act," so that it would not include a branch of an organization.]

If it is necessary that proceedings should be taken in the name of the Society, then under r. 227 authority might be given by the branch to the secretary of the branch to take proceedings in that way, and the authority which was in fact given to him was sufficient. [He also referred to *Waterside Workers' Federation of Australia v. Burgess Brothers Ltd.* (1); *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania* (2).]

BARTON A.C.J. Bodies deriving authority to litigate from a Commonwealth Act which created them are of course bound to pursue, in using the authority, the method prescribed by the Act. They have no previously existing authority for litigation or method. Sec. 68 of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 says that "all fines fees levies or dues payable to an organization by any member thereof under its rules may, in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization, be sued for and recovered in the name of the organization in any Court of summary jurisdiction constituted by a Police, Stipendiary, or Special Magistrate." There does not seem to be any other section of the Act which empowers any body of persons industrially associated and deriving its authority from the Act to take legal proceedings to recover such moneys. An organization within the meaning of the Act is, as Mr. *Eager* pointed out, defined by sec. 4, which provides that it is "any organization registered pursuant to this Act, and so far as applicable it also includes any proclaimed organization to which the Governor-General declares this Act to apply." The organization of which



the respondent is a branch is registered pursuant to the Act. The branches are not so registered. A person becoming a member of this organization signs a form in part of which he says, "I . . . do hereby agree . . . to become a member of the Australian Society of Progressive Carpenters and Joiners . . . and also agree to pay 1s. 6d. entrance fee." That is a promise to join the organization which is registered, and which, so far as we know, is the only litigant with which we have to deal, and by r. 30 "each member"—that must mean, of the Society—"shall pay as contribution the sum of sixpence per week (there are no levies), which shall include his subscription to the Federal Council." The contributions sued for amount to £1 8s. 6d. Sec. 68 of the Act speaks of "fines fees levies or dues payable to an organization by any member thereof under its rules." The sixpence a week is a "due" within the section. These contributions may be "sued for and recovered in the name of the organization in any Court of summary jurisdiction" &c. Pursuing the only statutory authority it has, the organization might probably have sued for and recovered these moneys. But it is the Melbourne Branch that has sued for them, and that branch has no separate authority at all derived from the Statute itself or from the regulations under the Statute. It is possible that the Society might authorize the Melbourne Branch to sue in the name of the Society, but apparently it has not done so. The question is whether the Melbourne Branch has properly instituted the proceedings—whether it had a right to appear as complainant to recover the contributions. As far as I can see, it is quite out of the question to say that the branch has an independent right. The right is vested in the organization. When sec. 68 says that the moneys may be sued for and recovered "in the name of the organization," that means primarily by the organization itself. Whether the organization may authorize a branch to sue in the name of the organization is a question on which I can pronounce no opinion at present. It is enough to say that no title is given by sec. 68, and therefore none is given by the Act, to the Melbourne Branch to sue for and recover these contributions.

The appeal should be allowed.

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ISAACS J. I agree. By the social compact constituted by the Rules the member agrees to pay the contributions to the Society as a whole. The Act requires such an obligation to be enforced in the name of the organization. That has not been done, and, therefore, the appeal must succeed.

RICH J. I agree.

*Appeal allowed. Order appealed from set aside with £4 4s. costs. Respondent to pay costs of appeal.*

Solicitors for the appellant, *McInerney & McInerney*.

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

B. L.